

**Submission
No 30**

RESIDENTIAL TENANCIES AMENDMENT (PROHIBITING NO GROUNDS EVICTIONS) BILL 2024

Organisation: New England and Western Tenants Advice and Advocacy Service

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Select Committee on the Residential Tenancies Amendment (Prohibiting No Grounds Evictions) Bills 2024

Submission by New England and Western Tenants Advice and Advocacy Service

About NEWTAAS

The New England and Western Tenants Advice and Advocacy Service Inc. (NEWTAAS) has provided tenants and renters with information, advice, advocacy and representation since 1 October 2002. Since then, we have directly assisted more than 22,000 individual clients over more than 29,130 matters.

We are frontline workers with a deep understanding of the lived experience of renting in our region of NSW. We work daily at the interface where tenancy law, housing policy and economic systems meet the circumstances of the people living in the homes.

We are part of the state-wide network of Tenants Advice and Advocacy Services funded by Fair Trading's Tenancy Advice and Advocacy Program (TAAP) as part of the consumer protection brief. We cover 55% of NSW, including the New England, Western and Far West.

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About this Submission

Thank you for the invitation to make this submission to the Select Committee. We are grateful that we can bring to you the lived experience of tenants living in our region.

NEWTAAS supports the end of no grounds termination notices in NSW for both Section 84 end of fixed term agreements and Section 85 periodic agreements.

This submission generally supports the *Residential Tenancies Amendment (Prohibiting No Grounds Evictions) Bill 2024* with some caveats detailed within.

We support the submission made by the Tenants Union of NSW, and limit our submissions to case studies from tenants renting in our regional and rural areas.

We provide examples from our work of each of the terms of reference in turn. All of the case studies we provide have been deidentified.

In addition, our August 2023 *Submission regarding Improving NSW rental laws consultation paper* is attached as an Appendix to this submission. It contains significant contextual information about the clients NEWTAAS assists and what assistance we can provide. It particularly shows how the “chilling effect” of no grounds termination notices operates to stop tenants from complaining and rocking the boat.

I provide for the Committee this quote from that submission to assist you to understand the impact of termination notices given without a reason:

These are some of the stories of tenants and their families from across our region who have received ‘no grounds’ termination notices.

We cannot help them. We cannot prevent the loss of their home. All we can do is beg their landlord and agent to reconsider, and NCAT for a little more time.

It’s really important that government recognise that this is the reality of the situation. Right now, there is no obligation on the landlord to listen, or to acknowledge the people living in the home. There is no dignity and little respect for tenants in this situation. They are at the mercy of the market.

We are witness to the quiet despair, to the willingness of parents to do whatever it takes to keep the roof over their heads, to the anger and frustration and tears as tenants struggle to find another home while continuing to keep normal life going for their families.

I urge the Committee to take the situation of tenants in NSW seriously, and to be thoughtful in your considerations. More than anything else however, I urge you to act. It is past time.

This has to end.

Reference term (i) The grounds for which an eviction is reasonable

We support the submission made by the Tenants Union of NSW.

We agree that additional new grounds for termination are necessary for the successful operation of the Act without no grounds termination notices.

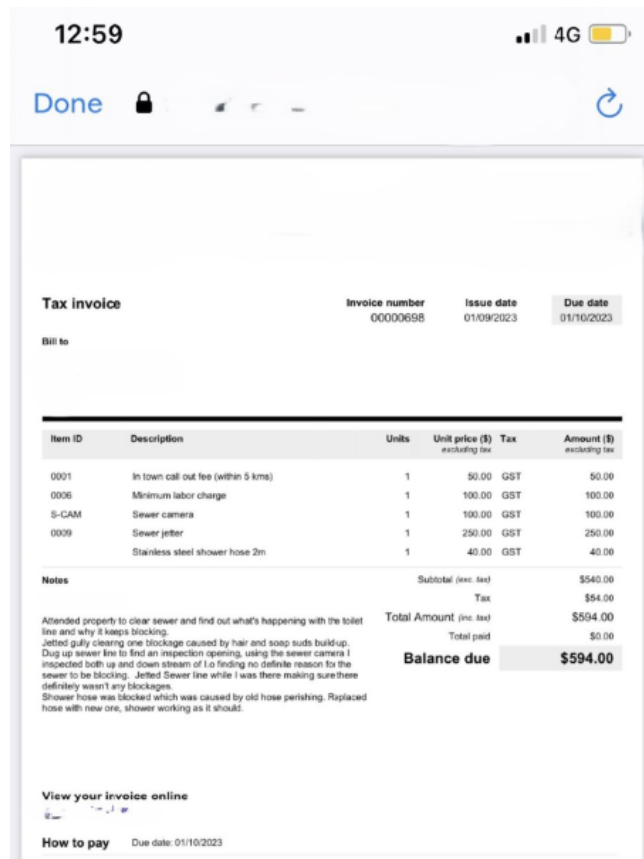
We support the addition of the following grounds:

1. Landlord or immediate family moving in
2. Demolition and reconstruction of a property
3. Change of use

We do not support the continuation of end of fixed term as a ground for termination.

We provide the following case study to illustrate how the continued allowance of end of fixed term termination notices operates to pressure tenants to agree to onerous conditions to have their landlord consider continuing their fixed term tenancy.

Jane – how much will you pay to continue your tenancy?



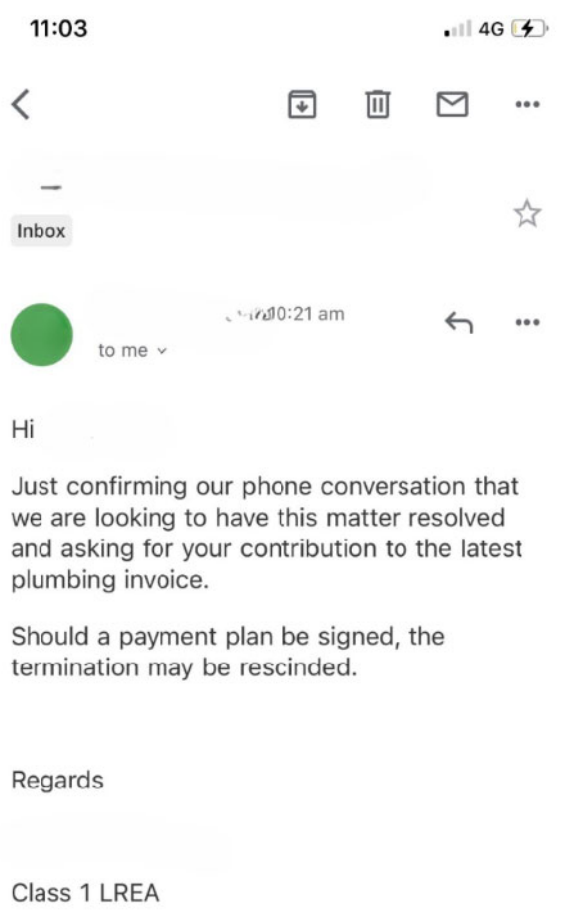
Jane is a young Aboriginal woman living in a larger country town. She’s been in the tenancy five months. She’s a great tenant, she works part-time while her child is in school, rent is always up-to-date and she keeps the house immaculately.

There’s been some problems with the plumbing, as the shower is backing up regularly. She has asked for the plumber to come out.

After the plumber’s visit, Jane has been given an end of fixed term termination notice. She’s then been sent the plumber’s invoice.

Jane rang the agent to say that she isn’t responsible for the bill, it’s a build up of hair and soap over an unknown period of time, that the blockage in the shower is from a perishing hose and no explanation for why the blockages are occurring has been provided.

The agent reminds Jane about the termination notice, and then says she'll send an email. This is the email:



Situations like this can only happen because there is no possibility of contesting an end of fixed term termination notice. If the tenant doesn't leave, the landlord through their agent applies to NCAT. With no discretion, the tenancy ends.

Jane contacted us to find out if there was a way she could contest this account but make sure her tenancy continued. There was no way – she could have applied to NCAT to say that the termination notice was retaliatory but there is little prospect of success. We made representations to the agent for Jane, but the agent pushed back. Jane made the pragmatic decision she needed to make for her little family.

In Jane's town, there's no need for a tenancy database. The agents chat to each other, and tenants who apply to NCAT find it harder to get another tenancy. Jane is a young woman, she's a single mum and she's Aboriginal. She lives in a town where there's a lot of demand for every vacant house. In those circumstances, you do what you need to do.

An additional event we see frequently now is the shortening of the fixed term being offered, now more commonly to six months, and the turnover of tenants that allows the rent to be increased for the new tenancy.

Changing the tenant and entering into a new residential tenancy agreement evades the provision of Section 41(1)(b) within the *Act* that prevents more than one rent increase being given for a periodic tenancy for any twelve month period.

The rent increase works for the agents who make a commission for each changeover of tenants and the work that must be done as part of that process. It works for the landlord who receives a higher amount. The only people it doesn't work for are the tenants, who are being churned through a system that encourages both agents and landlords to maximise the value of their investments. Balance needs to be brought back to the system, reminding that the landlord is not only maximising the value of their investment, but also providing an essential service.

We do not support intention to sell as a ground.

Following is a case study from a different town of our region.

Margaret – 78 years old, 19½ years in the tenancy

Margaret rang us in great distress after receiving a termination notice with no grounds. She had just been told by her landlord, who managed her block of units himself, that he had decided to redevelop the units and that meant that she was going to have to leave. The six units are at the rear of a small shopping complex.

Margaret was devastated. She used to work in one of the shops for the owner, and had a little rent reduction in return. That little rent reduction hadn't been cancelled after she became too frail to work, so she was paying about \$40.00 per week below the market rate. She doesn't have family, only the friends around her, one of whom had told Margaret to talk to us. Margaret doesn't drive, so she was dependent on her friends and public transport. Margaret had believed that she was going to be able to stay in her little unit until she died.

The length of Margaret's tenancy was a red flag to us. At twenty years, discretion returns to NCAT in determining whether to terminate a tenancy.

When we contacted Margaret's landlord, he was vague about his plans to redevelop. He was making business decisions, he said, and while he appreciated that Margaret was now an old woman, he was thinking of splitting the block up, or maybe renovating the units. Anyway, Margaret was going to have to leave. He'd been good to her and he was sorry for her, but charity had to start at home. His dad had bought the complex many years ago, and he was thinking about his options.

We helped Margaret to apply for social housing, and helped her to look at some possible private tenancies in her town. Margaret was worried about living on a "Houso" estate, but was equally worried about being able to afford the rent.

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As the date for vacant possession came closer, Margaret became more anxious. She was very concerned about the costs of moving, as it would take money that she didn't have. We had put Margaret into the hands of the local homelessness service, and we backed them up by talking to local charities to help her with moving. We pushed hard at social housing, knowing that in the private market Margaret would always be vulnerable to market driven rent increases and no grounds termination notices. Margaret is elderly and frail but determined. She wanted to stay in her own place, with her own things, until she was on death's door.

Fortunately for Margaret, a vacancy came up in a little social housing complex. At that complex, vacancies only really occur when the occupant dies or goes into higher levels of care. She's very grateful for the lovely unit she has now, and for the comfort of knowing that this tenancy won't be terminated without a reason.

Situations like Margaret's are not uncommon to us. Older people are very vulnerable to no grounds notices and can be frightened and angry of what will become of them.

Our Intake Officer provides the following case study:

Patricia – older, frail and needing modified premises

In January 2024, Patricia called us after receiving a no grounds termination notice. She was very distressed as she is older and disabled. She told us that it took her 2 months to find her current rental, as many places were unsuitable to her needs, and her condition had since worsened which means the required standards are higher.

Several of our Tenant Advocates have had to give her the unfortunate advice that there is nothing to be done, it's a no grounds termination and it's legal. NCAT might award her some extra time when it comes to a hearing, but the Tribunal Member must terminate, and extra time cannot be guaranteed.

The tenant has contacted us repeatedly since this advice, desperately trying to beg and bargain a way into having some fight against this notice. She has repeatedly explained to myself and other members of staff that she pays her rent on time, keeps a clean house and has never caused trouble. It is emotionally distressing for the tenant and myself to keep going around the same information as she tries to make sense of the fact she can be terminated with no reason. This tenant has been rude to me, and to other staff due to her extreme distress at facing possible homelessness, or a home not at all suited to her needs. She cannot believe that this is happening and that it is legal.

As the Intake Officer, I pride myself on being able to give tenants the space to be heard. Sometimes all they need in that moment is a small ray of hope. That ray of hope is often as simple as knowing they've spoken to me and that I have assured them an advocate will call them with advice. For this tenant I feel such sadness and guilt. No matter how many times she calls, the advice will remain the same.

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I came onboard at NEWTAAS in December 2023 and was told by the staff here how hard tenancy services and the Tenants Union have been fighting to abolish no grounds termination notices because of the terrible effects they have on renters and their families. Our staff have been so pleased it is finally going to happen. We need it to happen soon, so that all of the Patricia's we talk to no longer have to go through the unthinkable.

Patricia has moved only three weeks ago. She found a more expensive tenancy that she will struggle to afford. The unit is on the market, and she was only able to get a six month tenancy agreement. She's worried it's going to happen again and again. She's angry and frightened, and we are a safe place for her to be angry and frightened. Her landlord's agent applied to NCAT to end the tenancy and Patricia is beside herself. The agent has claimed the bond, and this is money Patricia can't afford to lose.

We'll be assisting Patricia at NCAT to protect her bond.

For us as Advocates, part of the drive to remove no grounds comes from the frequent situation we see where the landlord or their agent wants to just get rid of the tenant without having to go through any process where they might be challenged.

It's so easy that even social housing providers who are not meant to use no grounds do so. The assisting Advocate writes:

Kelly – it's easier to terminate for no grounds than prove a breach

Kelly, an Aboriginal woman and single parent, has been renting her current home since 2022. The property is owned by the NSW Aboriginal Housing Office (AHO) and managed by a local Aboriginal Housing Corporation.

Kelly has been part of the social housing sector for many years, and over this time she has experienced past tenancy issues, including arrears and property care concerns. Whilst Kelly might not be considered to be a perfect tenant (whatever that may be), she has faced these issues and remedied any claimed breach in order to fulfill her obligations as a tenant and sustain her tenancy, her family's home.

On 3/5/2024, Kelly received a termination notice under Section 84 of the Residential Tenancies Act 2010. This is an end of fixed term termination notice and provides 30 days for her family to vacate the property, with vacant possession required 27/6/2024. A Section 84 termination notice cannot be disputed by a tenant.

Kelly immediately contacted her housing provider to understand why they were **choosing** to terminate her tenancy instead of offering a new fixed term. Their response was *"as far as the termination letter being sent. It is a condition of your tenancy that no further damage was done to the property. Recent damage to the bathroom has been done therefore you are in breach of the agreement"*.

Section 87 of the *Residential Tenancy Agreement 2010* allows landlords to address tenant breaches with a 14-day termination notice. A Section 87 termination notice provides a tenant with an opportunity to dispute allegations of a claimed breach and/or remedy the breach if proven, in order to save their tenancy.

If you are unfamiliar with tenancy legislation, it might appear that Kelly's housing provider has been lenient in choosing a form of termination that would allow the longest notice period. Sadly, however, this is far from the case.

Through the use of a Section 84 termination notice, the landlord is abusing their power and knowingly denying Kelly the opportunity to defend the breach claim being made against her, which they have openly confirmed as being the underlying reason for the Section 84 termination notice.

We suspect that the housing provider lacks sufficient evidence to support a Section 87 termination notice, and has therefore chosen the easy path to terminate this tenancy.

Our service fully accepts that under the *Residential Tenancies Act 2020* there are several different means that allow for termination of tenancies by landlords. We strongly believe however that the appropriate means should be applied, and that all tenants should have the opportunity to tell their side of the story. Often within the tenant's story is a life of complex needs and circumstances that should be taken into consideration, just as the landlord's circumstances should be taken into consideration.

Ensuring that Aboriginal and Torres Strait Islander people in New South Wales have access to affordable, quality housing, and sustainable tenancies are the key values of the AHO. The actions of this Aboriginal Housing Corporation, representing and managing AHO properties, do not align with those of the AHO.

Sustaining this tenancy is vital for Kelly's family. If made homeless, couch surfing would be their only option, and staying together becomes challenging due to their size.

Kelly feels targeted by her housing provider's unjust actions, and is understandably extremely anxious and uncertain about her family's future. She's still in the tenancy, and we are appealing the administrative decision that was made to issue the no grounds notice. We can't force them to change their decision, but we hope to push them to rethink.

There's a particular feature of the use of no grounds notices that is often recognised, but rarely publicly spoken of, and that is the role of real estate agents in managing tenancies, and how they do so.

I'm sure that every member of the Committee has constituents that can best be described as "cranky" – people that are a little harder to get along with, who can be demanding and sometimes unreasonable.

Without the security of owning their own home, these folk who are tenants are taught by the no grounds provisions not to stand up and demand their rights, and in particular not to do it in a loud and aggressive manner. Those who don't learn, are moved on.

One of our Advocates writes Robert's story:

Robert – not being nice doesn't mean you should be homeless

Robert has been a returning client of the service over the past fifteen years. In his late seventies, he lives alone. He's been in his most recent tenancy for three months, and for a few years in the one previous.

Robert is a really good tenant. He keeps his home clean, doesn't talk to his neighbours and hates it when they interfere with him. He pays his rent on time, and absolutely demands that his landlords meet the same high standards that he brings to his tenancy contract.

His previous tenancy was ended by an end of fixed term termination notice after asking for repairs. He contacted the agent multiple times over the course of several weeks, demanding that the landlord fix the plumbing issue. He complained about the landlord and that the agent wasn't doing enough to get the repairs done. He was unhappy about the standard of their work, and made sure that the agents knew it.

The termination notice was issued in April 2023, with the fixed term ending in January 2024.

After the termination notice arrived, Robert was calling us. We helped him to complain more appropriately about his need for repairs, but managing his anxiety about the end of fixed term was much harder.

The agents would not agree for Robert to leave the fixed term early without penalty. If he were to find a place sooner than January, he would have to pay the break lease penalty. Robert was outraged by this, but he waited the tenancy out, calling us regularly to complain. Robert could not understand how his landlord was able to terminate him on the recommendation of the management agent, and could not accept that he could lose his place even if he did not breach his agreement.

In his small town, Robert wasn't able to get another tenancy. During the pandemic, a lot of regional housing was sold and there are significant housing shortages across our region, and much competition for every vacancy. In that environment, it's very easy to refuse an application from a cranky old man.

Robert was able to find another tenancy in January 2024, but it was in a tiny town nearby.

Robert moved, and on moving in and complaining about the lack of pressure in the hot water supply was told by the landlord that another family member needed the unit and his fixed term of six months would not be extended.



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There's no recourse for Robert. I believe this is a particularly sad case, because older men and women are at risk of homelessness more than ever. They live alone on the aged pension, and their rent is a constant struggle. It's not ideal for a 78 year old man or woman to be having to look for a new property, through no breach or fault of their own but fundamentally because they aren't nice enough and accepting enough and complain too much.

NEWTAAS does not support the provision in the Bill that would allow additional grounds to be provided for within the supporting Regulation.

We strongly believe that when additional grounds are identified, they should be changed through a transparent law reform process, not a lobbying process.

Reference term (ii) The appropriateness of evidence requirements to support reasonable grounds or a penalty scheme for those who falsely claim a reasonable ground

It is essential that a penalty scheme exists to prevent landlords and agents from lying about the grounds on which they wish to terminate a tenancy.

We support the Tenants Union's submission that evidence must be provided with the termination notice, and that effective penalties must apply for landlords and agents who make false claims.

We provide the following case study from the Advocate about a landlord who didn't like what he saw in the family that rented his investment property.

Rainbow families are also renting families

Our service assisted a family in Western New South Wales who rented a property that was managed by a local real estate agency. The family included a married couple and their three children. The tenancy proceeded without issue for a lengthy period of time, and the relationship between the tenants and the agent was friendly and productive.

One day, the landlord decided to attend a routine inspection with the agent. It was the first time he had met the tenants; everything had previously been managed by the agent and the landlord only knew the tenants as they appeared on paper.

The landlord did not react well to meeting a family that included a wife and wife, rather than the husband and wife he was expecting. One of the tenants was a transgender woman who had yet to legally change the name she was given at birth. At the inspection, the tenants could sense that he was uncomfortable and upset about her gender identity.

The landlord immediately terminated his contract with the agent and took over management of the property himself. He then applied to the Tribunal for a termination order based on hardship. Despite living and working on the other side of the state, he claimed he was suffering financial hardship and needed to move into the property himself.

The Tribunal dismissed the application for termination based on hardship. The landlord then issued a valid no grounds termination notice which meant the tenants had to find a new home.

The family was forced to leave their home simply because their landlord didn't like their non-nuclear family. On top of the pressures and discrimination LGBTQIA+ people face in everyday life, this loving, close-knit family was also uprooted because of it.

The landlord's financial hardship suddenly evaporated after the tenants left, and he completed some small renovations at the home and very quickly rented it out to new tenants. He evicted a family based on nothing but bigotry, and the law allowed him to do it.

No grounds terminations must be removed to prevent such injustices from occurring.

The fact that the landlord applied to NCAT to terminate the tenancy for hardship and lost shows that the law can be effective when there is a proper framework for action.

That the landlord then turned to no grounds because he was perfectly able to do so, shows how a very broken system works.

A further case study shows how far some will push to use no grounds termination notices. If this landlord had been required to provide evidence, it's likely the case would have ended very differently. If there had been a penalty provision, then it may never have arrived at NCAT at all.

The assisting Advocate writes:

Keiran, long COVID and a determined landlord

Our service assisted a young man who was a tenant in his home for 12 years. Keiran had always paid his rent on time and had always kept the home in an immaculate condition. In addition to having a successful and issue-free tenancy, he also ran a successful small business.

In 2020, Keiran contracted COVID and was very sick. Despite having previously been a healthy young man, he was significantly impacted by long COVID. For a period of time, he required a walker to assist in his mobility. As a result of these health issues, the landlord decided to issue a no-grounds termination notice, despite the positive opinion of him held by the managing agent.

The managing real estate agent knew that Keiran was an excellent tenant and assisted him in finding a new home. The landlord insisted on taking Tribunal action for the termination of the tenancy. Despite the tenant having a new home to move into within 4 weeks and despite the support of the agent, the landlord insisted at the Tribunal hearing that the tenant give vacant possession within seven days. The landlord was in tears at the hearing, saying that they themselves were imminently homeless and needed to move in immediately. Their performance was Oscar-worthy.

In light of the landlord's claimed imminent homelessness, the Tribunal only gave Keiran 21 days to vacate, despite him needing 4 weeks until his new home was available.

Upon vacating, the landlord immediately listed the home for rent at a significantly higher price.

Under current legislation, the Tribunal has no discretion but to terminate a tenancy after a valid no grounds termination notice is issued. Landlords have no obligation to prove their circumstances or prove why they are seeking to end a tenancy. A valid no grounds notice means the Tribunal must end a tenancy, regardless of the motives of the landlord.

In the case study above, the actions of the landlord would have incurred a penalty. Allowing a tenant to make a compensation claim against a landlord who makes false representations to



end their tenancy for the costs of relocation would be one way. Prohibiting the premises from being relet for a period of time is also a provision we would support.

Reference term (iii) Any unintended consequences, including on housing affordability and availability, for renters and owners.

There is much concern expressed within the media about private landlords choosing to leave the rental market if their current freedom to use no grounds termination notices is restricted.

Any such landlords are not going to keep those properties and keep them vacant. Should the volume of deliberately vacant properties increase, then a provision for a study on the impact of empty dwelling taxes might assist in preventing that from occurring.

A landlord who no longer wants to be a landlord will sell. In our region, those properties will be bought by families who are currently renting and cannot get into the hot market that is being driven by investor purchasers.

We don't believe there will be an extreme effect on housing affordability and availability.

I thank the Committee for this opportunity to speak to you about the experiences of people renting their homes in our region. Should the Committee decide to conduct hearings, we would be happy to provide any further information and answer questions.

Attachment

[Submission regarding Improving NSW rental laws consultation, New England and Western Tenants Advice and Advocacy Service](#)