

**Submission  
No 25**

**RESIDENTIAL TENANCIES AMENDMENT (PROHIBITING NO GROUNDS  
EVICTIONS) BILL 2024**

**Organisation:** Illawarra Legal Centre

**Date Received:** 26 June 2024



ILLAWARRA  
LEGAL CENTRE

# Submission to the Legislative Assembly Select Committee on the Residential Tenancies Amendment (Prohibiting No Grounds Evictions) Bill 2024

7 Greene St, Warrawong NSW 2502  
PO Box 139, Warrawong NSW 2502

 02 4276 1939

 [www.illawarralegalcentre.org.au](http://www.illawarralegalcentre.org.au)

**25<sup>th</sup> June 2024**

Legislative Assembly Select Committee on the Residential Tenancies Amendment (Prohibiting No Grounds Evictions) Bill 2024

Email: [nogroundsevictionsbill@parliament.nsw.gov.au](mailto:nogroundsevictionsbill@parliament.nsw.gov.au)

## **Submission on Ending No Grounds Evictions**

Illawarra Legal Centre welcomes the opportunity to make this submission to the Legislative Assembly Select Committee on the Residential Tenancies Amendment (Prohibiting No Grounds Evictions) Bill 2024. Where we share our clients' experiences, names and any identifying information has been changed to protect client confidentiality.

### **About Illawarra Legal Centre**

ILC is a community legal centre providing free legal advice, casework and community legal education to people residing in the Illawarra and South Coast region.

Commencing in 1985, we have been providing free legal services across a range of issues including domestic violence, discrimination, victims' compensation, welfare rights, financial counselling, child support and tenant advice and casework. We assist approximately 5000 people every year with direct advice, advocacy and casework.

ILC delivers the Illawarra Tenants Service, providing advice and advocacy services from Helensburgh down to the NSW southern border, including the Wollongong, Shellharbour, Kiama, Wingecarribee, Shoalhaven, Eurobodalla and Bega Valley areas. In the 2022-23 financial year, we had 1204 cases and provided advice, assistance and representation to over 1000 clients. We operate a free phone and in-person advice service to inform tenants of their rights, appear before the NSW Civil and Administrative Tribunal (NCAT) as representatives for disadvantaged tenants and provide duty advocacy services at NCAT hearings in our catchment.

### **The Approach of this Submission**

These submissions focus on the importance of ending No Grounds Evictions in NSW to ensure the overall fairness and equity of the NSW rental system. Central to our submissions is the recognition that housing is a human right and the dire need for more secure and affordable housing in NSW. We will be providing submissions on the grounds for which an eviction is reasonable, evidence requirements from landlords to support their reasonable grounds eviction and penalties for landlords who falsely claim a reasonable ground.

### **Primary Contributors**

*Ela Akyol* is a tenant advocate at the Illawarra Legal Centre. Ela provides advice to tenants and has appeared before the NSW Civil and Administrative Tribunal's Consumer and Commercial Division. Outside her work, Ela is the Women's Officer

for the National Union of Students and consistently campaigns on issues related to ending student poverty. Ela is passionate about advocating for an economically equitable society and views housing as a necessary human right to achieving this.

*Claire Brown* is the Tenancy Team Leader at Illawarra Legal Centre. Claire has a background in working with young people initially as a Science Teacher in high schools and then leading a team of youth workers at a drug and alcohol rehabilitation service. Through working with people with complex disadvantage Claire has gained a deep respect for the idea of housing as a basic human right.

Jackson Cocks is a solicitor at the Illawarra Legal Centre. Jackson provides advice to tenants and has appeared before the NSW Civil and Administrative Tribunal's Consumer and Commercial Division and Appeal Panel on many occasions. Outside his work, Jackson is also a co-chair of the Greater Cities Commission Youth Advisory Panel. Jackson was previously a member of the Council (board) of the University of Wollongong, one of the largest providers of accommodation in the Illawarra. In his degree, Jackson has specifically studied the use of AI in legal contexts as well as how relationships in contracts can be used to promote environmental, social and governance goals. Jackson focuses on complex matters involving disputes of law as well as termination matters with disadvantaged tenants.

Claudia Robinson is a solicitor admitted to practice law in New South Wales, in the Australian federal courts and in New Zealand. Claudia volunteers at the Illawarra Legal Centre and provides advice to clients out of normal office hours. Claudia has practised in insurance and commercial law, and is studying a Masters of Laws focusing on international and human rights law. Claudia has a passion for making sure those who may be in a position of lesser power have their legal and fundamental human rights recognised.

## **Overview of Positions**

Throughout this submission the ILC's positions can generally be summarised as follows:

1. Abolishment of 'No Grounds' terminations for both periodic and fixed-term leases. Without better protections against no-grounds evictions, including at the end of fixed term leases, renters cannot enforce their rights without fear of 'No Grounds' terminations. We recommend the prioritising of reforms to ensure landlords must provide renters with valid reasons for terminating a tenancy to provide better protection against arbitrary and unfair evictions.
2. Reasonable grounds for terminating a tenancy should be implemented. The ground 'preparing for sale and conducting repairs' should be removed
3. Tenants should be protected from landlords misusing the reasonable grounds. Landlords should be required to provide evidence for the termination reason.
4. Landlords should be temporarily banned from renting out a property with penalties and compensation payable if they falsely claim a reasonable ground.

## 1. Removing ‘no grounds’ terminations

### **Our preferred modelling for ending ‘no grounds’ evictions.**

We recommend that no-ground terminations be abolished for both periodic and fixed-term leases. We recommend that both sections 84 and 85 of the Residential Tenancies Act be repealed, and a new section be introduced for dealing with termination for reasonable grounds. We recommend that as a part of this new provision, a landlord should not be able to issue a reasonable-grounds notice of termination with a date for vacant possession before the end of any fixed-term agreement. The effect of this will be to allow terminations for reasonable grounds at any time in a periodic lease or at the end of a fixed-term agreement.

In the 2022-2023 financial year, a quarter of the ILC’s tenancy cases involved issues of termination. More than half of our files recorded tenants as being on a fixed term agreement, which included 42% of our advices on termination of a tenancy. It is also likely that tenants in fixed term tenancies are underrepresented in our cases as tenants understand that there is currently very little that can be done when facing termination. In other areas, fixed term tenants made up 59% of our 340 cases dealing with repair issues and approximately half of our cases dealing with rent and other charges. Overall, the ILC observed that fixed-term tenants, especially those in their first terms, are more likely not to want to report repair issues for fear of termination as these tenants have less of a relationship with their landlord. We also saw that self-represented landlords were 26% more likely to have tenants in a periodic agreement than landlords who had agents. Given these statistics, it is important to provide equal protection to both periodic and fixed-term tenants. Failing to do so would leave a significant portion of tenants in NSW unprotected (and this portion would only grow, leaving more tenants without stability of housing).

The disappointing aspect of no-grounds evictions is that they are rarely issued for ‘no reason’. Rather, there are reasons which do not satisfy the current provisions of the Residential Tenancies Act and thus a no-ground notice escapes the protections afforded to tenants. For example, the Tenant may have committed a minor breach or failed to do something at the request of the real estate agent which was not required under the tenancy agreement. Furthermore, we have observed a trend of no-ground evictions, both for fixed-term and periodic tenancies occurring in response to requests for repair. The use of no-grounds termination allows for the propagation of discrimination by allowing landlords to terminate tenancies for protected factors under the Anti-discrimination Act without giving the tenant any evidence or reason for termination. Often, the properties are relet shortly after the tenant vacates.

*Case Study:* The ILC represented Mary (name changed) in a tenancy matter where the landlord sought to end her tenancy after nearly 20 years as a tenant. Mary suffered from a number of medical conditions and had been a victim of domestic violence before she moved into the premises. The landlord issued a no ground notice

of termination after the tenant had been asking for work to be done to the property. The Tenant had also been complaining about issues of the landlord interfering with her use of the property. The Tenant was charged for water that was not separately metered. Unfortunately, there was no case for the termination being retaliatory as there was insufficient evidence about the tenant's complaints (they were made in person or over the phone). Our initial call with the tenant went for over two hours to discuss the multiple complex issues the case presented. After 6 months of hearings before the Tribunal, Mary's tenancy was terminated as the Tribunal found it must terminate the agreement, and she was given 6 weeks to leave the house, after living there for 20 years.

### **Recommendations:**

A valid reason should be required to end a fixed-term lease.

A fixed-term tenancy should not be terminated during the fixed term.

## 2. Reasonable Grounds for Terminating a Tenancy

### **The Property is being prepared for sale.**

Section 86(1) of the Residential Tenancies Act 2010 (NSW) already permits a landlord to terminate a tenancy on the basis that the landlord has entered into a contract for the sale of the property under which they have agreed to give vacant possession of the property. However, owing to the tight turnaround times in standard contracts for sale in NSW, tenants are only given 30 days' notice.

We foresee that this may lead to landlords 'intending' to sell the property, evicting the current tenants, 'changing their mind' and re-letting the property to new tenants. It is also the case that often properties may be sold while tenanted. Moving to a system where landlords will terminate tenancies prior to selling the property may unnecessarily displace tenants when the purchaser may wish to immediately re-tenant the property.

To combat these issues, we recommend amending section 86 to involve a process incorporating the following:

- a) The landlord may give notice for this reason, giving the tenant 90 days notice before vacant possession is required;
- b) The tenant is able to vacate the premises at any point after receiving the notice without penalty;
- c) The landlord must give to the Tenant, an executed copy of the contract for the sale of the property which requires vacant possession of the property (as

opposed to allowing the property to be tenanted) at least 30 days before the date for vacant possession.

- d) If the contract for sale has not been signed before 30 days before the end of the termination notice, the landlord can issue another termination notice giving not less than 60 days notice until a contract for sale has been signed and served on the Tenant

### **The Property will be reconstructed, renovated or repaired.**

We do not agree that the property being reconstructed, renovated or repaired generally should be considered as a reason to terminate a tenancy.

Presently, the landlord has a duty to repair the property under the Residential Tenancies Act and should not be permitted to evict a tenant in order to carry out general maintenance or small-scale repairs. In the event the premises have become severely damaged (for example due to extreme weather events), landlords can evict a tenant on the basis that the property is uninhabitable.

This reason to terminate a tenancy should only be permitted where a significant renovation or reconstruction is necessary and is not due to the landlord's breach of the tenancy agreement. The landlord undertaking repairs (being restoration to the premises to a state similar to the start of the tenancy) is a duty under the tenancy agreement and should not be a reason to end a tenancy agreement. For example, this will prevent the landlord from failing to do repairs to the point where the property becomes significantly affected, and then issuing a notice of termination. Instead, as it is the landlord's breach of the agreement which led to the issues with the property, the tenant should have the ability to elect to either remain at the premises and require the landlord to repair it, or to leave the premises by terminating the agreement.

Termination under the reasonable ground of reconstruction or renovation should also be limited to work that will render premises uninhabitable for a minimum period of time and that the work can only be undertaken if the property is vacant. We recommend the minimum period of vacant possession should be 2 months, with the landlord being required to prove it is more likely than not that vacant possession will be required for 2 months or more. Importantly, if the improvements can be done while the tenants live at the property, this section should not apply.

### **The landlord, or a person associated with the landlord, intends to occupy the residential premises for at least 12 months.**

We do not agree with the wording "a person associated with the landlord" and believe it offers a far too broad interpretation. We suggest that the wording should be changed to "landlord or a member of their immediate family intends to occupy the residential premises for at least 12 months".

To clarify the scope of the definition of 'immediate family,' we recommend adopting Victoria's comprehensive definition as below: -

In the case of a residential rental provider who is an individual—

- (i) by the residential rental provider's partner, child, parent or partner's parent; or
- (ii) by another person who normally lives with the residential rental provider and is wholly or substantially dependent on the residential rental provider.

By adopting this definition, we aim to establish transparent criteria, ensuring fair tenancy termination while safeguarding against misuse.

**The residential premises will be used in a way, or kept in a state, that means the premises cannot be used as a residence for at least 6 months.**

We suggest that the wording of this new proposed section is broad and vague. We believe that the wording in this section should be more precise and ensure the landlord provide evidence of why the premises cannot be used as residence for 6 months.

We also raise the issue of how these premises will be monitored to ensure they are not rented and are empty for 6 months. If tenants were able to apply to NCAT for compensation if the premises are re-let within 6 months, this would likely be a deterrent to the landlord falsely using this ground. It is the tenant who suffers most of the cost when evicted and so compensation for false eviction is reasonable.

### 3. Evidence for Termination Reasons

We recommend that the landlord should be required to provide evidence for the notice of termination as early as possible in the termination process. For this reason, we recommend they should be required to prove evidence complying with the rules when the notice of termination is issued for the notice of termination to be considered valid. This should apply to all of the reasonable grounds being added to the Residential Tenancies Act.

In Victoria the Director of Consumer Affairs determines - approves and publishes – the appropriate documentary evidence that is required to support the reason for giving a notice to vacate for each 'no fault' reason available. In the ACT their RTA requires that a notice to vacate is accompanied by written evidence supporting the landlord's reason for the notice. They provide examples of appropriate written



evidence that might be provided, including statutory declarations, development applications, and quotes from a tradesperson for renovations.

The Victorian model provides clarity and some flexibility to ensure all parties are aware of requirements, and that requirements can be updated as the relevant forms of evidence or documentation change over time.

For this reason, we would recommend an approach similar to that taken in Victoria be taken, that the evidence provided with the notice of termination for a reasonable ground must meet the evidentiary document requirements approved by the Commissioner of Fair Trading. There should also be a requirement to consult the Rental Commissioner on the evidentiary requirements.

<b>Ground</b>	<b>Document</b>
<p>The property will go through reconstruction or renovation that requires it to be vacant.</p>	<p>Both of the following:</p> <ul style="list-style-type: none"> <li>- Building permit for repairs or reconstruction, or evidence that a permit is not required.</li> <li>- Contract with, or quotation from, a suitably qualified tradesperson for carrying out planned works, stating:               <ol style="list-style-type: none"> <li>1. the nature of the renovations or reconstruction,</li> <li>2. the reason why the premises need to be vacated by the renter in order to carry out the repairs, and</li> <li>3. an estimate of the length of time it will take to complete the repairs.</li> </ol> </li> </ul>
<p>The landlord, or a person associated with the landlord, intends to occupy the residential premises for at least 12 months.</p>	<p>A Statutory Declaration signed by the landlord, stating the following:</p> <ol style="list-style-type: none"> <li>1. They intend to reside in the rented premises and the reason for intending to reside in the residential premises, or</li> <li>2. the name of the person who will occupy the rented premises, their relationship to the rental provider, a declaration whether the person is a dependent, and the reason for the person intends to move into the premises, and</li> <li>3. that the rental provider understands that they must not re-let the premises to any</li> </ol>

	<p>person (other than the person named to be moving into the rented premises in the statutory declaration) for use primarily as a residence before the end of 12 months after the date on which notice was given.</p>
<p>The residential premises will be used in a way, or kept in a state, that means the premises cannot be used as a residence for at least 6 months</p>	<p>A Statutory Declaration signed by the landlord, stating the following:</p> <ol style="list-style-type: none"> <li>1. What they intend to do with the premises</li> <li>2. Why it cannot be used as residence for 6 months +</li> <li>3. That the rental provider understands that they must not re-let the premises to any person for use primarily as a residence before the end of 6 months after the date on which notice was given.</li> </ol>

#### 4. Penalties for a False Reasonable Ground Claim

To ensure the effectiveness of the reforms, it is important to have strong compliance and enforcement provisions. It has been important in other jurisdictions to ensure there is a jeopardy for falsely relying on ‘reasonable grounds’ terms. For example, the Residential Tenancy Act provides that landlords and their agents cannot mislead a tenant when entering into a tenancy agreement, however the Act does not specifically allow the Tribunal to order compensation for misleading statements. The legislation must make it clear where previous tenants may seek compensation and where a landlord has falsely relied on one of the above grounds to terminate a tenancy, there should be penalties.

In 2022, the Tenants Union released their [Special Report in Eviction, Hardship and the Housing Crisis](#). This report addressed the cost of moving tenancies for tenants and the difficulties it creates. The Tribunal has traditionally been hesitant to award moving costs even in the circumstances of the landlord improperly evicting them. The basis of this rested on the tenant’s consent (even when being misled) and the fact the tenant would eventually be required to move anyway if a 90-day no grounds notice was issued. However, with the removal of no-ground evictions, this can no longer be justified where the costs of moving have been estimated as follows:

- Renting households in NSW face basic costs of \$2,520 when they move, and generally are more likely to face costs of around \$4,075 to move.
- The ‘core cost’ of a move for renting households in NSW ranges from \$2,015 for a single person household in Greater Sydney through to \$3245 for a family household in Regional NSW.
- The ‘average cost’ of a move for renting households in NSW ranges from \$3,215 for a single person household in Greater Sydney through to \$5,400 for a family household in Regional NSW.
- Landlords also face a number of costs when evicting a renter, including a reletting and advertising fee. We estimate costs for the landlord at between \$1,100 - 1,400.

In the ACT where wrongful eviction has occurred, renters are able to seek compensation or alternatively request their reinstatement as tenants. The power to reinstate a tenancy is a difficult one, given the expensive nature of the move to a new property. Allowing reinstatement may also affect the assessment of compensation to tenants where the Tribunal suggests a tenant may move back in if they are unhappy. We recommend the focus be upon compensation for failure to comply with the temporary bans, and penalties in addition to compensation for intentionally or recklessly misusing the termination reasons.

In NSW, the ‘break lease’ fee has seen significant success in relation to tenants leaving a fixed-term tenancy before the end date of the lease. These break lease fees provide an estimation of the loss to the landlord, providing both parties with certainty and improving the quality of the process. For this reason, we recommend adopting a similar approach for non-malicious failures to comply with the temporary bans. We recommend the following framework be adopted as a whole:

**Recommendation:**

<b>Breach / Offence</b>	<b>Consequence</b>
Intentionally or recklessly misusing the termination reasons where the tenant gave vacant possession.	The tenant is to be paid the sum of 12 weeks of the cost of rent at the end of the residential tenancy agreement, or compensation for the cost of moving and for other breaches of the agreement pursuant to the notice (such as distress from harassment), whichever is more
Intentionally or recklessly misusing the termination reasons (whether or not the tenancy was terminated).	A criminal offence punishable by up to 50 penalty units.

<p>Failing to provide the required documents without a good reason</p>	<p>A criminal offence punishable by up to 10 penalty units.</p> <p>The invalidity of the notice of termination (for failing to provide the documents)</p>
--	---