

**Submission
No 24**

RESIDENTIAL TENANCIES AMENDMENT (PROHIBITING NO GROUNDS EVICTIONS) BILL 2024

Organisation: NSW Council of Social Service (NCOSS)

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NCOSS Submission to the Select Committee on the Residential Tenancies Amendment (Prohibiting No Grounds Evictions) Bill

26 June 2024

About NCOSS

NSW Council of Social Service (NCOSS) is the peak body for non-government organisations in the health and community services sector in NSW. NCOSS works to progress social justice and shape positive change toward a NSW free from inequality and disadvantage. We are an independent voice advocating for the wellbeing of NSW communities. At NCOSS, we believe that a diverse, well-resourced and knowledgeable social service sector is fundamental to reducing economic and social inequality.

Acknowledgement of Country

NCOSS respectfully acknowledges the sovereign Custodians of Gadigal Country and pay our respects to Elders, past, present and emerging. We acknowledge the rich cultures, customs and continued survival of First Nations peoples on Gadigal Country, and on the many diverse First Nations lands and waters across NSW.

We acknowledge the spirit of the Uluru Statement from the Heart and accept the invitation to walk with First Nations peoples in a movement of the Australian people for a better future.

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Introduction

NCOSS welcomes the invitation to provide a submission to the Legislative Assembly Select Committee on the Residential Tenancies Amendment (Prohibiting No Grounds Evictions) Bill 2024. With declining home ownership across Australia and skyrocketing rents, rental reform has never been more urgent.¹

NCOSS and our partners have developed extensive research, reports, and submissions in recent years on housing and homelessness and how they intersect with poverty. These include:

- [NCOSS Submission to the NSW Improving Rental Laws Consultation](#) (August 2023)
- [Barely Hanging On – the Cost of Living in NSW 2023](#) (August 2023)
- [Mapping Economic Disadvantage in NSW](#) (May 2023)
- [Aftershock: Addressing the Economic and Social Costs of the Pandemic and Natural Disasters Report Three – Housing Security](#) (October 2022)
- [Homelessness in People Over 55](#) (June 2022)

These reports and submissions highlight the impacts on particular demographics and locations, the associated social and economic costs, and the solutions needed to address the current housing crisis and improve housing outcomes for people in NSW experiencing poverty and disadvantage.

This submission

Building on this work and drawing on feedback and consultations with our members, this submission responds to the Terms of Reference and outlines our recommendations for improving rental regulation in NSW in regards to grounds for evictions. We also acknowledge the detailed work of our colleagues at the Tenants Union of NSW in guiding our approach.

This submissions particularly covers the following from the Terms of Reference:

- (i) The grounds for which an eviction is reasonable.
- (ii) The appropriateness of evidence requirements to support reasonable grounds or a penalty scheme for those who falsely claim a reasonable ground; and

¹ Young and early middle age adults between 25 to 39 years have seen a large decline in home ownership from the 1990s (66%) to the same cohort now (55%). Australian Bureau of Statistics 2022 *Back in my day – comparing Millennials with earlier generations* viewed 27 July 2023 <https://www.abs.gov.au/articles/back-my-day-comparing-millennials-earlier-generations>

Background and Context: The Reality of Renting in NSW

Renters in NSW face skyrocketing rents, insecure tenancies, housing that can be poorly maintained and unhealthy, an inadequate regulatory framework, and a social and affordable housing safety net that is diminished and not able to 'catch' people in desperate need. Renters are also burdened with the primary responsibility for enforcement of rental regulation. Any perversity in current or proposed regulations will have greater impacts on people who are already experiencing poverty and disadvantage.

NCOSS' 2023 [Mapping Economic Disadvantage in NSW](#) research shows the grim reality of poverty in NSW and how private renters are amongst the hardest hit. Across the State, of all housing tenures, the private rental market has the largest number of people experiencing poverty – at over 412,000. This means that 1 in 5 private renters in NSW live in poverty. Groups most impacted include single parents, older single adults living alone (particularly women) and people with disability.

In Greater Sydney, the rate of poverty for private renters increased by 10% since 2016. In some parts of Greater Sydney, the rate of poverty for people living in private rentals has reached almost 50%, while other areas across NSW are over 50% (i.e. more than half of private renters in that area live below the poverty line)³. The escalating cost of renting, coupled with a legislative and taxation framework that prioritises rental housing as assets rather than as people's homes, has placed a tremendous burden on individuals and families. The case study below clearly articulates the reality for many renters, particularly in the current cost-of-living crisis – intense stress, disruption, and sacrifice, all of which have severe intergenerational impacts.

No Grounds Evictions

Ending the ability of landlords to terminate agreements without justification is a much needed reform to the current system. Over 80% of renters in NSW have lived in their current rental for less than 5 years, with a third for less than one year. 20-30% of renters move due to an eviction, around a quarter of which are due to 'no fault' termination or 'no grounds' evictions.²

Fair Trading's End of Tenancy survey indicates that a majority of renters in NSW are in fixed term tenancy agreements (58%). They are more likely than renters in a periodic tenancy to receive an eviction for no reason - (71%) of all 'no grounds' evictions are served to renters at the end of their fixed term.³

The cost, short-timeframe, and disruption of an eviction can be a significant driver of poverty and homelessness, with the average cost of moving for renters being \$3,500.

"Many low-income renting households are not able to raise the relatively large sum of money required to secure alternative housing and move at short notice." Tenants Union 2022 p 45⁴

All renters should have legislative protection against unfair evictions including a list of reasonable grounds, and protections against the false use of eviction grounds. We note the experience in other jurisdictions where no grounds rules have been removed for periodic agreements only leading to more and more tenants

² Tenants Union NSW 2022 *Eviction, Hardship, and The Housing Crisis* viewed 17 July 2023 <https://files.tenants.org.au/policy/2022-Eviction-Hardship-and-the-Housing-Crisis-TUNSW.pdf>

³ Tenants Union NSW 2022 *Eviction, Hardship, and The Housing Crisis* viewed 17 July 2023 <https://files.tenants.org.au/policy/2022-Eviction-Hardship-and-the-Housing-Crisis-TUNSW.pdf>

⁴ Ibid.

being moved on to fixed term agreements so that landlords are able to continue retaliatory eviction practices and keep rents high.⁵

Urgent reform is needed in NSW to address the inadequacies in the Residential Tenancies Act 2010 and to make renting a viable, long-term housing option.

Impacts – Rising rents and housing insecurity: Leila

Leila is a migrant who came to Australia 32 years ago and has 5 children. She cares for one of her daughters who has a disability and pays for the university costs of her eldest daughter, as her daughter is not eligible to receive a study allowance from Centrelink. The most challenging issue Leila faces is finding a stable home for her and her children.

“I’ve lived in 49 houses over 3 states... my kids don’t have a lot of friends because we keep moving... sometimes the rent goes up, or sometimes the owner wants to sell the house... I’m so stressed, I can’t move anymore... it’s too much for me, it’s too stressful for my kids... it’s affected my daughter with a disability, it’s too much. It affects me a lot, to wake up every morning and say I have to prepare my kids to move... I don’t want to tell my daughter that. Now it’s stable, and I don’t want her to go back to zero again.”

Leila has had to go to extreme lengths to cut costs around the house. She doesn’t use the heater and has stopped using the oven as it uses too much electricity. She keeps the lights off as much as possible. Her rent is subsidised via government assistance, which a women’s association helped her to access. However, once this expires she will be paying up to 85% of her wages on rent.

“If I pay for [the full cost of] rent I don’t even have money to get food for my kids... it’s going to be tough. Everything goes up – clothes, food, everything. Wages don’t go up. I go shopping every two weeks, and every two weeks the same food I get goes up every time.”

NCOSS and Institute for Public Policy and Governance 2023 p44
Barely Hanging On: Cost of Living in NSW 2023

⁵ Tenants Union NSW 2024 *Ending No Grounds Evictions in NSW Briefing* viewed 24 June 2024
<https://files.tenants.org.au/policy/2401-Reasonable-grounds-reforms-TUNSW-briefing.pdf>

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Key principles that must be considered

To ensure that tenants are sufficiently protected, while also recognising the rights of landlords, the following should be considered in designing a legislative and regulatory framework for ending no grounds evictions:

1. Landlords should not be able to end any type of lease (periodic or fixed) without a prescribed reason.
2. New reasons for evictions should be limited to:
 - The property:
 - will go through reconstruction that requires it to be vacant.
 - will change its use (e.g. change from a home to a shop or office).
 - will be demolished.
 - The landlord:
 - will move into the property, or a member of their immediate family will move in.
3. Temporary bans on re-letting after a notification for the reasons outlined above should be implemented. Properties should not be able to be re-let for a minimum period of 6 months (from the date at which the landlord regains possession of the property).
4. Landlords should be required to provide documentary evidence for all termination grounds and renters should be empowered to challenge insufficient evidence.
5. A tiered penalty system for false or misleading use of eviction grounds should be introduced, and tenants should have the right to seek compensation for wrongful evictions.
6. The notification period for a lease ended for anything other than a tenant breach should be 120 days. Tenants must be free to leave at any time during the notification period without penalty.

Recommendations for this Bill

Based on the above, NCOSS makes the following comments regarding the draft Bill:

1. The Bill explicitly includes protections for tenants on both periodic and fixed leases. This is critical and must be maintained in reform of eviction laws.
2. Sections 84(1) and 85(1) capture four grounds on which tenants may be evicted:
 - i. The landlord or a person associated with the landlord intends to occupy the premises for at least 12 months
 - ii. The landlord intends to carry out renovations or repairs to the premises that will render the premises uninhabitable for at least 4 weeks,
 - iii. 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
 - iv. another ground prescribed by the regulations.

Grounds (i) and (iii) align with NCOSS's expectations. However:

- NCOSS does not support (ii) as currently drafted. By allowing landlords to evict people for minor renovations of 4 weeks duration, the Bill provides a pathway for landlords to circumvent the purpose of the legislation. This ground should be rewritten to only relate to significant renovations and reconstructions, and a longer duration.

- NCOSS does not support (iv), with the inclusion of a regulation-making power through 84(1)(d) and 85(1)(d). This risks regulation being used to include additional reasons for eviction that undermine the purpose of the Bill.
3. NCOSS notes that there is no requirement for landlords to provide documentary evidence to tenants. Instead, the Bill relies on landlords or tenants making applications to the Tribunal. This risks unnecessarily adding to the load of the Tribunal, and risks tenants not making an application at all due to the significant financial and administrative burden of doing so. NCOSS recommends adding a requirement for landlords to provide documentary evidence to tenants that supports the eviction reason.
 4. The Bill specifies a notice period of 90 days. NCOSS recommends this be extended to 120 days, and that tenants be free to leave at any time during the notification period without penalty.