

**Submission
No 22**

RESIDENTIAL TENANCIES AMENDMENT (PROHIBITING NO GROUNDS EVICTIONS) BILL 2024

Organisation: Public Interest Advocacy Centre (PIAC)

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**Submission to the *Residential
Tenancies Amendment
(Prohibiting No Grounds
Evictions) Bill 2024* inquiry**

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About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is leading social justice law and policy centre. Established in 1982, we are an independent, non-profit organisation that works with people and communities who are marginalised and facing disadvantage.

PIAC builds a fairer, stronger society by helping to change laws, policies and practices that cause injustice and inequality. Our work combines:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change and public interest outcomes.

Our priorities include:

- Reducing homelessness, through the Homeless Persons' Legal Service
- Access for people with disability to basic services like public transport, financial services, media and digital technologies
- Justice for First Nations people
- Access to sustainable and affordable energy and water (the Energy and Water Consumers' Advocacy Program)
- Fair use of police powers
- Rights of people in detention, including equal access to health care for asylum seekers (the Asylum Seeker Health Rights Project)
- Improving outcomes for people under the National Disability Insurance Scheme
- Truth-telling and government accountability
- Climate change and social justice

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Recommendations

Recommendation 1

The Bill should be amended to require documentary evidence for each reasonable ground for eviction.

Recommendation 2

The Bill should be amended to require the landlord to provide documentary evidence for the reasonable ground to the tenant.

Recommendation 3

The Bill should be amended to require the landlord to offer the tenant a choice between terminating or continuing the tenancy in the event of renovations or repairs.

Recommendation 4

The Bill should omit clauses 84(1)(d) and 85(1)(d).

Recommendation 5

The Bill should be amended to require longer notice periods. This should include 120 days notice for a landlord or associate moving in; 6 months notice for renovation or repairs and 6 months notice for where premises cannot be used as a residence for at least 6 months.

Recommendation 6

The Bill should be amended to allow tenants who have been served a termination notice with the proposed reasonable grounds to move out at any time.

Recommendation 7

The NSW Government should consider inserting an additional provision in the Bill to allow NCAT to order a temporary ban on re-letting the property.

Recommendation 8

The NSW Government should consider how to improve compliance and enforcement of reasonable eviction grounds, including a landlord register.

Recommendation 9

The NSW Government should consider regulating rent increases alongside the introduction of reasonable grounds for eviction.

1. Introduction

PIAC welcomes the opportunity to make a submission to the Legislative Assembly Select Committee on the Residential Tenancies Amendment (Rental Fairness) Bill 2023 (the Bill).

The Public Interest Advocacy Centre (PIAC) provides free legal advice and assistance to people experiencing or at risk of homelessness through the Homeless Persons Legal Service (HPLS) and the Women's Homelessness Prevention Service (WHPS).

Our clients are impacted by the consequences of inadequate regulation of rental housing and how it contributes to risk and incidence of homelessness. This is exacerbated by the current rental crisis. NSW renters are under significant strain due to low rental vacancy rates, a lack of affordable rentals, and cost of living pressures. This highlights the urgency of introducing reasonable grounds for eviction.

The ability for a landlord to evict a tenant without reason contributes to an insecure and unstable rental system and exacerbates the fundamental power imbalance between a tenant and landlord. Unfair evictions are a source of significant stress and hardship for renters in NSW, as documented in the report '*A Constant Worry*' by the Tenants Union of NSW.¹ No grounds evictions are also a driver of homelessness.

The prospect of a no grounds eviction, and the ineffectiveness of provisions against retaliatory evictions, also makes tenants hesitant to assert their rights – therefore undermining existing legislative protections. This is especially true for renters who will be at risk of homelessness if evicted.

This submission makes recommendations on the proposed grounds for which an eviction is reasonable. PIAC supports a narrow set of reasonable grounds for eviction which ensure renters are protected from unfair evictions. We discuss the appropriateness of evidence requirements and the need for a strong penalty scheme for those who falsely claim a reasonable ground. Throughout the submission we compare the Bill to the eviction policies of other jurisdictions. We conclude by briefly considering the claims of unintended consequences resulting from no grounds eviction reform.

Housing is a basic need and an essential service that must be adequately regulated. Reform of no grounds eviction will reduce evictions into homelessness, support greater housing security and improve the health and wellbeing of renters.

¹ Tenants Union of New South Wales, *A Constant Worry: Renters Confront the Impact of Unfair Evictions* (Survey Report, April 2024).

2. Reasonable grounds for eviction and appropriate evidence requirements

PIAC supports the introduction of reasonable grounds that limit the landlord's right to evict a tenant only when the landlord genuinely no longer intends to rent the property in the private rental market.

2.1 Scope of reasonable grounds

We are pleased to see the provisions of this Bill extend to both fixed and periodic agreements and urge the NSW government to ensure this is retained. It is crucial that reforms protect renters on both types of agreement to avoid a legal loophole for landlords to continue no grounds eviction.

This loophole has been reported by tenants advocacy services in Queensland and Tasmania where evictions reforms only applied to tenants on periodic leases.² In these jurisdictions, it has been observed that landlords will shift tenants onto short, fixed term tenancies to keep the option of evicting without reasonable grounds.³

The NSW Government should also avoid replicating the Victorian provisions which allow no grounds evictions to fixed term tenancies at the end of the first term.⁴ The Victorian Government reported that this approach has led to a marked increase in evictions of tenants at the end of the first fixed-term period of their lease and an increase in rents as landlords use the opportunity to raise the rent when re-letting the property.⁵

Ensuring both fixed and periodic tenancies are covered by this Bill is necessary to delivering protection and stability to all renters.

2.2 Evidence requirements

All reasonable grounds for eviction should include evidence requirements to ensure the validity of termination. We discuss evidence requirements in more detail in relation to each ground.

We also recommend that the landlord be required to provide evidence of the eviction ground to the tenant alongside their termination notice. This will improve the fairness and transparency of

² *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) s 291; *Residential Tenancy Act 1997* (Tas) s 42.

³ Tenants Union of NSW, Submission No 321 to NSW Government, *Improving Rental Laws* (August 2023) 11.

⁴ *Residential Tenancies Act 1997* (Vic) s 91ZZD.

⁵ Victoria Government, *Protecting renters' rights* (webpage, 20 September 2023) <<https://www.vic.gov.au/protecting-renters-rights>>.

the eviction process and will support the tenant to make a more informed decision about making a potential application to the NSW Civil and Administrative Tribunal (NCAT).

Recommendation 1

The Bill should be amended to require documentary evidence for each reasonable ground for eviction.

Recommendation 2

The Bill should be amended to require the landlord to provide documentary evidence for the reasonable ground to the tenant.

2.3 Reasonable grounds for eviction

Occupation of premises for at least 12 months

With the addition of an evidence requirement, we support clause 84(1)(a) and 85(1)(a). We draw the Committee's attention to Victoria's policy which includes a requirement for a witnessed, statutory declaration.⁶

We accept that it is a reasonable ground to terminate a tenancy if the landlord or their immediate family intend to move in to the rental property for at least 12 months. We recognise that in some circumstances, owners or their immediate family might face serious hardship or homelessness if they are not able to move in to a property being rented.

However, it is important that the ground is only available where the landlord or family is moving in for at least 12 months. This safeguard will ensure owners or their family genuinely need to move in and are not falsely terminating the tenancy to re-let the premises.

We also support the inclusion of clause 83A to define 'a person associated with a landlord' as this will reduce inappropriate use of this ground and provide clarity on the scope of this provision. The clause is consistent with similar definitions in Tasmania's and Victoria's tenancy law.⁷

Renovations or repairs

With proper safeguards in place, undertaking renovations or repairs that render the property uninhabitable may also be a reasonable ground for terminating a tenancy. It is appropriate that the ground is only available for significant renovations and repairs that make the property uninhabitable.

⁶ Consumer Affairs Victoria, *Notice to vacate in rental properties* (Webpage, 9 February 2023) <<https://www.consumer.vic.gov.au/housing/renting/moving-out-giving-notice-and-evictions/notice-to-vacate/giving-notice-to-a-renter>>.

⁷ *Residential Tenancies Act 1997* (Tas) s 42(5); *Residential Tenancies Act 1997* (Vic) s 91ZZA(1).

We support the inclusion of clause 84(1)(b)(ii) and 85(1)(b)(ii) which requires the landlord to obtain all necessary permits and consent to carry out the renovation or repairs before the termination notice is issued. This evidence requirement will limit improper evictions. It will also allow tenants to remain in the property for as long as possible without being pre-emptorily evicted in the anticipation of renovation or repairs.

To further improve protections for tenants, we recommend that the tenant should be given a choice as to whether they want to terminate or continue the tenancy while the property undergoes repairs or renovations. For some tenants, it may be preferable to make temporary, alternative accommodation arrangements for a few weeks and return to their home, rather than go through the arduous process of moving and finding another rental. This will maximise the security of the tenant and supports genuine negotiation between landlords and tenants.

The Bill should be amended to require that landlords offer the tenant the option to continue the tenancy agreement with abated rent during the renovation or repairs period.

Recommendation 3

The Bill should be amended to require the landlord to offer the tenant a choice between terminating or continuing the tenancy in the event of renovations or repairs.

Premises cannot be used as a residence for at least 6 months

Clause 84(1)(c) and 85(1)(c) allow the landlord to evict the tenant if 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 understand that this is intended to allow for the property's change of use, for example from a residential to business use. We support this as a reasonable ground.

However, the Bill should be amended to require evidence of the intended changed use and that the premises will not be used as a residence for 6 months. For example, an intention to change a property from residential to business use in Victoria requires:

- a witnessed statutory declaration, and
- the ABN of the business, business registration or license, or a council planning permit.⁸

⁸ Consumer Affairs Victoria, *Notice to vacate in rental properties* (Webpage, 9 February 2023) <<https://www.consumer.vic.gov.au/housing/renting/moving-out-giving-notice-and-evictions/notice-to-vacate/giving-notice-to-a-renter>>.

Another ground prescribed by the regulations

Clauses 84(1)(d) and 85(1)(d) allow additional grounds for eviction to be prescribed in the regulations. We suggest that any ground for eviction should be determined through parliamentary processes to ensure sufficient scrutiny. We strongly recommend this clause is omitted.

Recommendation 4

The Bill should omit clauses 84(1)(d) and 85(1)(d).

2.4 Notice period

Notice provided by landlord in termination

Tenants who are evicted from their home through no fault of their own should be afforded adequate time to find alternative accommodation. As highlighted by the Productivity Commission, forced evictions can increase the risk of financial hardship and homelessness – particularly if inadequate notice is provided.⁹

Clauses 84(2) and 85(2) require that the landlord provides the tenant 90 days notice to terminate a tenancy under the proposed grounds. Although this would be an improvement on the current notice period of 30 days required for ending a fixed term tenancy,¹⁰ we suggest the introduction of longer notice periods. This is particularly important to prevent evictions into homelessness and reduce the risk that renters will be forced to accept housing that is inadequate to their needs or that they cannot afford over the long term.¹¹

Notice periods must be underpinned by the principle of prioritising housing as homes, rather than housing as financial assets. The appropriate amount of notice may vary according to the eviction ground relied upon. For example, notice periods should recognise that the landlord needing to move into the property for use as their principal place of residence is more urgent than renovating a property.

We recommend that clause 84(2) and 85(2) be amended to require the following standard notice periods:

- 120 days notice for a landlord or associate of the landlord to move in to the property;
- 6 months notice for renovation or repairs; and

⁹ Productivity Commission, *Vulnerable Private Renters: Evidence and Options* (Commission Research Paper, September 2019) 11.

¹⁰ *Residential Tenancies Act 2010* (NSW) s 84(2).

¹¹ Productivity Commission, *Vulnerable Private Renters: Evidence and Options* (Commission Research Paper, September 2019) 122.

- 6 months notice for where premises cannot be used as a residence for at least 6 months.¹²

This will increase the opportunity for a tenant to find a suitable alternative property, significantly reduce stress and hardship and decrease the risk of homelessness.

Recommendation 5

The Bill should be amended to require longer notice periods. This should include 120 days notice for a landlord or associate moving in; 6 months notice for renovation or repairs and 6 months notice for where premises cannot be used as a residence for at least 6 months.

Tenant able to move out once termination notice served

Tenants should be able to move out and stop paying rent at any time after a termination notice other than for breach of contract has been served. Currently, only tenants evicted during a periodic agreement are able to do so after a termination notice has been served.¹³

Tenants being able to move out at any time between the serve of the notice and the termination date appropriately recognises they are forced to move out through no fault of their own and reduces the risk of the tenancy termination causing them financial hardship (e.g. through paying double rent and other additional costs associated with an unflexible moving date).

Recommendation 6

The Bill should be amended to allow tenants who have been served a termination notice with the proposed reasonable grounds to move out at any time.

¹² A landlord can also seek a shorter notice period by application to NCAT if they would suffer undue hardship if the tenancy continued: *Residential Tenancies Act 2010* (NSW) s 93.

¹³ *Residential Tenancies Act 2010* (NSW) s 110.

3. Penalty scheme for false claims

It is essential that no grounds eviction reform is underpinned by strong compliance and enforcement mechanisms. There must be appropriate penalties for landlords who falsely claim a reasonable ground for eviction that provides a sufficient disincentive for landlords.

3.1 Offence for use of premises after termination

We support clause 85A. It is important that a penalty applies where landlords have wrongfully used reasonable grounds for eviction.

3.2 NCAT orders

Order to use occupy or use premises

Clause 85B(2)(a) gives NCAT power to make an order directing the landlord, or their associate, to use the premises in accordance with the reasonable ground used in the termination order. This would provide an appropriate disincentive to prevent fraudulent evictions where the intention is to have the property vacant to rent out again.

However, there will be circumstances where it is no longer appropriate to order the landlord to occupy or use the premises in accordance with the ground on which the termination order was made. For example, if the landlord's associate can no longer move in. We suggest that a clause be added to give NCAT the option of making an order temporarily preventing the landlord from re-letting the property. This order would be an additional disincentive to discourage unlawful evictions and prevent the landlord from financially benefiting from their breach of the law by re-releasing the property.

Recommendation 7

The NSW Government should consider inserting an additional provision in the Bill to allow NCAT to order a temporary ban on re-letting the property.

Order for a residential tenancy agreement

We support clause 85B(2)(b) which allows NCAT to reinstate a residential tenancy agreement if appropriate in the circumstances. This would be a useful order which supports housing security and which could effectively avoid a tenant experiencing homelessness. We suggest that the NSW Government consider specifying what factors should be considered in determining whether reinstatement is appropriate. For example, in the ACT the Tribunal must not make an order for

reinstatement is the landlord has entered a residential agreement with another tenant,¹⁴ as would unfairly impact the new tenant.

Order for compensation

We support clause 85B(2)(c) which allows NCAT to order that the landlord pay compensation to the tenant for wrongful termination of the residential agreement. This recognises the disruption and stress caused by the eviction, and also provides a disincentive to misuse of reasonable grounds. Compensation amounts should be at least commensurate to reasonable moving costs incurred by the tenant as a result of the eviction.

3.3 Strengthening compliance and enforcement

Burden on the evicted tenant

We are concerned that the enforcement of the scheme relies wholly on the evicted tenant to lodge an application to NCAT. While many tenants have positive experiences resolving their disputes through NCAT, many of our clients face significant challenges accessing NCAT and obtaining a favourable/just outcome. This means that even if they are wrongfully evicted many tenants may not apply to NCAT, resulting in a lack of consequences for the landlord.

Additionally, there will be many circumstances where a tenant is not aware that the landlord has failed to comply with the ground specified in their termination order. For example, the landlord may evict the tenant because they plan to move into the property, but the property may remain vacant after the tenant has moved out. We expect that tenants may only discover that a reasonable ground was falsely relied upon after seeing the property re-listed for rent. Relying on evicted tenants to monitor rental sites for their previous rentals is an inconsistent method of ensuring compliance with legislation that inappropriately places the regulatory burden on tenants.

We recommend that the NSW Government consider how to strengthen the Bill's compliance and enforcement approach. This should include considering a landlord register – a public, centralised database with information on landlords and their properties. As noted by the National Association of Renters' Organisations, Scotland, Wales and Northern Ireland already operate landlord registers and it is a mechanism which supports greater transparency, accountability and data for private rentals.¹⁵

Landlords would be required to register their property if they intend to lease it out on the private rental market. The landlord would be required to update the register with the details of their property and any changes. It would be an offence for the landlord to operate unregistered. This would enable oversight of landlords who re-lease a property after falsely relying on a reasonable termination ground – allowing the impacted tenant to identify if they were wrongfully evicted.

¹⁴ *Residential Tenancies Act 1997 (ACT)* s 58(4).

¹⁵ National Association of Renters' Organisations, *The National Nine: Principles for Strengthening Renters' Rights* (Report, 2023) 24.

The agency responsible for administering the register could also be empowered to undertake compliance where landlords breach their responsibilities. This could be a suitable role for NSW Fair Trading which already has investigation and enforcement powers for breaches such as a landlord's failure to keep a property in a reasonable state of repair.¹⁶ Application fees for registering could also be directed to support the investigation of complaints including wrongful termination.

Recommendation 8

The NSW Government should consider how to improve compliance and enforcement of reasonable eviction grounds, including a landlord register.

Rent increases used to circumvent grounds for eviction

It is possible that the removal of no grounds evictions will result in some landlords using rent increases as a de facto eviction process. This is where the landlord avoids the need for a reasonable ground and instead raises the rent beyond what is reasonable.

While the risk of rent increases should be carefully considered, this issue exists regardless of no grounds reform and requires urgent attention. We recommend that the NSW Government consider how no grounds eviction reform can be accompanied by better regulation of rent increases to ensure that the Bill's significant positive benefits are not undermined.

The improved regulation of rent increases, including fairer limits on rent increases and stronger protections against excessive rent increases, can provide relief to people who rent their home and facilitate re-entry of people experiencing homelessness into housing through downward pressure on overall rents.

Recommendation 9

The NSW Government should consider regulating rent increases alongside the introduction of reasonable grounds for eviction.

¹⁶ *Residential Tenancies Act 2010* (NSW) s 65C.

4. Any unintended consequences for renters and owners

4.1 Assumptions about impact on investment

The prospect of introducing reasonable grounds for eviction is often met with claims that it will discourage investment in housing, and this will in turn lead to a reduction in the supply of housing. For example, this was noted in the Parliamentary research paper on no grounds eviction as an argument for retaining eviction without grounds.¹⁷

We draw the Committee's attention to the research report 'Regulation of residential tenancies and impacts on investment' by the Australian Housing and Urban Research Institute (AHURI).¹⁸ This report reviewed the evidence-base about factors shaping and impacting rental investment and found that there is little evidence that landlords disinvest as a result of reforms to tenancy law.¹⁹

Even where disinvestment does occur, it is important to highlight that this does not necessarily affect the supply of housing. As explained in the AHURI report:

Where landlords or their representatives say it is too difficult and they will disinvest from existing [private rental sector] dwellings, this should not be taken as a threat, but as a good thing: that is, the incapable and the unwilling exiting the sector, and thereby opening up prospects instead for new owner-occupiers or for differently oriented landlords—especially non-profit rental housing providers. On the same reasoning, were higher standards and expectations to discourage new private landlords from entering the sector, there would be more scope opened up for new owner-occupiers and investors less inclined to churn properties and households.²⁰

Ultimately, the function of housing as a home should be prioritised over the function of housing as a financial asset. The introduction of reasonable grounds for eviction should not be held back solely due to the indeterminate impact of such reforms on investment properties.

¹⁷ Parliamentary Research Service, Parliament of NSW, *Residential tenancy law reforms: no grounds eviction* (Research paper 2024-5, June 2024) 6.

¹⁸ Chris Martin et al, *Regulation of residential tenancies and impacts on investment* (AHURI Final Report No. 391, November 2022).

¹⁹ *Ibid* 2-3.

²⁰ *Ibid* 83.