

**Submission
No 19**

RESIDENTIAL TENANCIES AMENDMENT (PROHIBITING NO GROUNDS EVICTIONS) BILL 2024

Organisation: Caravan, Camping & Touring Industry & Manufactured Housing Industry
Association of NSW Ltd

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Select Committee on the Residential Tenancies Amendment (Prohibiting No Grounds Evictions) Bill 2024
Legislative Assembly
Parliament of New South Wales

By email: nogroundsevictionsbill@parliament.nsw.gov.au

Dear Jenny Leong, MP, and fellow Committee Members

CCIA NSW SUBMISSION ON SELECT COMMITTEE INQUIRY INTO THE RESIDENTIAL TENANCIES AMENDMENT (PROHIBITING NO GROUNDS EVICTIONS) BILL 2024

The Caravan, Camping & Touring Industry & Manufactured Housing Industry Association of NSW (CCIA NSW) welcomes the opportunity to provide feedback on the Select Committee's inquiry into the *Residential Tenancies Amendment (Prohibiting No Grounds Evictions) Bill 2024*, including the provisions of the Bill, the grounds for evictions, enforceability and possible unintended consequences.

CCIA NSW is the State's peak industry body representing the interests of over 500 holiday parks and residential land lease communities (residential parks, including caravan parks and manufactured home estates) and over 200 manufacturers, retailers and repairers of recreational vehicles (RVs, including caravans, campervans, motorhomes, camper trailers, tent trailers, fifth wheelers and slide-ons), camping equipment suppliers, manufactured home builders and service providers to these businesses.

There are several residential land lease communities in NSW where **operators rent a moveable dwelling and a site to tenants under residential tenancy agreements**. These agreements are regulated under the *Residential Tenancies Act 2010* (RT Act).

While tenants have different rights and obligations to home owners who rent only a site, tenants are, however, residents in residential land lease communities and are also subject to the *Residential (Land Lease) Communities Act 2013* (RLLC Act) in relation to compliance with community rules and residents' committees.

GROUNDS FOR EVICTIONS

In August 2023 we provided feedback to the NSW Department of Customer Service's *Improving NSW Rental Laws Consultation Paper* (July 2023) submitting that the policy decision to end no grounds terminations (which appeared to have already been made by the Government prior to consultation) would be to the detriment of current and future tenants and landlords.

The arguments generally presented in favour of removing no grounds terminations include giving tenants more security when renting a home, and addressing the 'problems' of no grounds termination notices used during a periodic tenancy, such as discrimination or retaliation against a tenant seeking to exercise their rights (e.g., requesting repairs). This

approach, however, is misdirected because removing no grounds terminations is likely to negatively impact the rental market.

This is because the change will result in landlords having less flexibility and certainty regarding their investment properties, which will discourage investment in this area and thereby reduce rental supply – right at a time when NSW is dealing with a housing availability and affordability crisis.

While there are provisions in the RT Act that enable landlords to address issues such as non-payment of rent, property damage, or disruptive behaviour by tenants, they are costly and often result in delays. In such situations, landlords can experience financial strain if they are unable to terminate leases when necessary. For instance, if a tenant stops paying rent or violates the lease terms, due to inherent delays in the NSW Civil and Administrative Tribunal (NCAT) process, landlords are unable to take swift action and often suffer hardship as a result.

Notwithstanding this, there are potential negative consequences of prohibiting termination of leases on no grounds. As one example, a landlord may want to have a long-term lease or multiple year leases in place, but if a tenant refuses to enter a further fixed term lease and moves to a periodic lease, the proposed changes means the landlord will lose their ability to terminate the lease on no grounds until a prescribed ground arises in the future. While the tenant will enjoy significantly more flexibility with the ability to terminate the lease with very little notice (currently only 21 days notice under section 97 of the RT Act) the landlord will miss out on executing their preferred investment strategy for their own property, which in this case would contribute to long-term rental housing.

There will also be cases where a landlord has a legitimate ground for terminating a lease, but the RT Act may not accommodate it and this could leave the landlord in a difficult position. For example, privacy could be a concern if a landlord has a legitimate ground to terminate a lease, but they want to end the lease on 'no grounds' because they do not wish to disclose personal matters to the tenant. Landlords should not be forced to disclose information about their personal affairs where they do not feel comfortable or safe doing so.

There is also the perverse outcome that removing no grounds terminations will force landlords to try to use other grounds to terminate leases, which may leave tenants with a shorter notice period to find alternative housing than the current 90 days notice for no grounds terminations. Further, in the absence of a no grounds termination option, unscrupulous landlords might resort to other tactics to encourage tenants to leave, which could lead to tenant harassment or pressure to vacate.

If the reform objective is to increase housing security for tenants, then the NSW Government should not be unfairly targeting landlords. Rather, the focus should be on increasing the rental housing stock in NSW by removing the barriers to more housing supply, and adopting policies that drive investment into the market. This includes addressing land availability, planning restrictions and the lengthy, overly complex development approvals processes.

We can attest to these issues creating challenges, given the primary constraint on the supply of more residential land lease community developments in NSW right now is the difficulty in getting land use approvals. We are also raising these issues with the Department of Planning, Housing and Infrastructure and advisors to the Hon. Paul Scully, Minister for Planning and Public Spaces and the Hon. Ron Hoenig, Minister for Local Government.

Landlords should be encouraged and incentivised to enter and keep their homes in the long-term rental market, otherwise some will look to place their investment dollars elsewhere (such as in the short-term rental accommodation market) to avoid the risk of being stuck with problematic tenants.

This will lead to fewer rental properties, and a decrease in rental housing supply would exacerbate current affordability issues. When supply is limited, rents tend to rise, making it harder for low-income individuals and families to find affordable housing.

We therefore oppose the Bill removing no grounds terminations because it is not the appropriate policy response to the rental and housing crisis in NSW. While prohibiting no grounds termination aims to provide stability for tenants, it also has potential downsides for landlords, tenants, and overall housing availability. The NSW Government adopting policies that generate more rental properties to create a 'renters' market' is what will put tenants in a better position over the long term.

For example, the Government could offer incentives to landlords who rent to low-income tenants or participate in affordable housing programs. Programs that boost and support 'build to rent' solutions encouraging developers to commit to long-term rentals before they enter the market. The Government could also collaborate with financial institutions to offer favourable mortgage terms to landlords who invest in affordable housing. Lower interest rates or longer repayment periods can incentivise investment.

In the short term, a fairer approach for all parties would be to retain no grounds terminations and consider increasing the notice period in section 85 (2) of the RT Act. The Government could also consider improvements to provisions in the RT Act to strengthen protections for tenants against things like discrimination or retaliatory conduct¹ if they are not currently working as intended.

Notwithstanding our opposition to removing no grounds terminations, if the Bill proceeds we make the following comments:

1. Ending a Fixed Term Lease

The amendments in the Bill to section 84 of the RT Act should be deleted. Landlords and tenants should not need to have a reason to end a fixed term lease. The agreement of a landlord and tenant that a lease will be for a fixed term and it will end after the agreed term is finished should be sufficient. This should apply regardless of whether the tenancy arrangement is an initial fixed term or additional fixed terms. The Bill should be amended to at least allow landlords and tenants to retain this flexibility.

2. Grounds for Ending a Fixed Term or Periodic Lease

The provisions in the Bill are too limited in providing grounds or reasons for ending a lease. Grounds that should be added so landlords can properly terminate a lease when they need to include:

- a) As note above - **the fixed term tenancy is reaching the end of its agreed term.**
- b) The **property is being prepared for sale.**
- c) The **property will go through reconstruction, extension, repair or renovation that requires it to be vacant.**
- d) The property will be **demolished.**

¹ Section 115 of the Act already protects tenants from retaliatory evictions.

- e) There will be a **change of use of the property** (e.g. change from a home to a shop or office) or conversion to a short-term rental or holiday home. An all-encompassing term such as 'non-residential purpose' should suffice.
- f) The property is to be **acquired for a public purpose**.

The suggested notice period for these grounds is 30 Days – consistent with current notice periods in the RT Act – see section 84 (end of fixed term tenancy) and section 86 (sale of premises).

- g) The **tenant threatens, harasses or intimidates the landlord, the landlord's agent, an employee or contractor of the landlord or the landlord's agent, or a person in a neighbouring property or common area**.

Currently, under section 90 of the RT Act the NCAT may, on application by a landlord, make a termination order if it is satisfied that the tenant, or any person who although not a tenant is occupying or jointly occupying the residential premises, has intentionally or recklessly caused or permitted—

- (a) serious damage to the residential premises or any neighbouring property (including any property available for use by the tenant in common with others),
or
- (b) injury to the landlord, the landlord's agent, an employee or contractor of the landlord or the landlord's agent, or an occupier or person on neighbouring property or premises used in common with the tenant.

This ground requires damage or injury to have occurred and fails to deal with behaviour that justifies termination of a lease. Given residential land lease communities are a form of communal living, for the safety and security of everyone, operators should have the ability to address instances of tenants from threatening, harassing or intimidating other residents.

The suggested notice period for this ground is 14 days – consistent with current notice period in the RT Act – section 87 (breach of agreement).

In addition, the amendments in the Bill to sections 84 1) a) and 85 1) a) of the RT Act are far too limited and should be expanded. The reason of the 'individual' landlord, or a 'person associated with the landlord,' intending to occupy the residential premises for at least 12 is too rigid.

This ground should not be restricted only to those persons set out in the proposed definition of a person 'associated with a landlord who is an individual' being:

- (a) a spouse, de facto partner, child or parent of the landlord, or
- (b) a parent of the spouse or de facto partner of the landlord, or
- (c) another individual who—
 - (i) normally lives with the landlord, and
 - (ii) is wholly or substantially dependent on the landlord.

It is inappropriate for the Government to restrict a landlord from rightfully assisting a person in their family who needs somewhere to live. A landlord should be free to assist any member of their family with housing if they are able, whether they are an immediate or extended family member, and there should be no time period applied for such a person to occupy the premises.

TENANTS' REMEDIES RELATING TO USE OF PREMISES AFTER TERMINATION OF RESIDENTIAL TENANCY AGREEMENT

There are issues with enforceability of proposed section 85B (2) (a) in the Bill. If implemented, this provision could cause immense unfairness and upheaval for certain persons.

For example, if an unscrupulous landlord terminates a tenancy agreement on the basis that a person 'associated' with them intends to occupy the premises for 12 months, but that is a lie and the person is completely unaware of this and has no such intention, there is a risk of this person being exposed to an order from the Tribunal.

Empowering the Tribunal to bind them without their knowledge or consent, is inherently unfair and undermines due process. This provision must be deleted.

RETROSPECTIVE PROVISIONS

We oppose the proposed amendment to Schedule 2 Savings, transitional and other provisions of the RT Act that the 'amendments made by the Residential Tenancies Amendment (Prohibiting No Grounds Evictions) Act 2024 extend to a residential tenancy agreement entered into before the commencement of that Act.'

Any changes **must not** apply retrospectively. This would be unfair and unjust because it would undermine existing rights of landlords and tenants who entered into tenancy agreements based on the current legal framework. Landlords and tenants should be able to rely on existing laws when making choices, enabling them to enter into agreements with confidence.

Apart from the importance of maintaining fairness, retrospective laws harm legal certainty by eroding the Rule of Law, which requires that laws be known, accessible and consistent. Retrospective laws undermine this by altering past legal consequences.

Everyone in NSW should have confidence and reasonably expect that their lawful actions will not later be deemed by the Government to unlawful due to retroactive changes. The Bill must be amended to remove the retrospective application of amendments to the RT Act.

CONCLUSION

Thank you for considering the issues we have raised. As the peak industry body representing residential land lease communities in NSW, CCIA NSW is an important stakeholder in relation to the review of rental laws in NSW.

We look forward to our continued involvement in the consultation process.

For any questions or further information please contact [REDACTED], General Manager Policy & Engagement on [REDACTED] or email [REDACTED]

Yours sincerely



Lyndel Gray
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