

**Submission
No 18**

RESIDENTIAL TENANCIES AMENDMENT (PROHIBITING NO GROUNDS EVICTIONS) BILL 2024

Organisation: Community Housing Industry Association NSW (CHIA NSW)

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

Parliament Housing
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SYDNEY NSW 2000

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Submission: Inquiry into the Residential Tenancies Amendment (Prohibiting No Grounds Evictions) Bill 2024

The Community Housing Industry Association NSW (CHIA NSW) welcomes the opportunity to provide a submission to the Select Committee. Our submission has been informed by consultation with not-for-profit community housing providers.

CHIA NSW represents nearly 100 registered, not-for-profit community housing providers (CHPs) in NSW. Our members currently own or manage more than 54,000 homes across NSW for individuals and families who cannot afford to rent or purchase a home on the private market. This includes approximately 40,000 social and affordable rental homes managed on behalf of the NSW Government and other owners, including local councils and private landlords.

CHIA NSW recognises the concerns regarding the misuse of sections 84 (End of fixed term tenancy) and 85 (No grounds eviction) of the *Residential Tenancies Act* (the Act), and the poor tenant outcomes that can result. As purpose driven organisations, CHPs take great care to ensure that their obligations as social landlords are met or exceeded, and to ensure that tenants are provided with appropriate support to sustain their tenancies. Evictions are a last resort measure, and they are rare.

CHIA NSW supports the prohibition of no grounds evictions. However, additional grounds need to be listed in the Act to recognise the reasonable circumstances for eviction that not-for-profit CHPs may encounter in the exercise of their legal and management obligations. These include the termination of headlease agreements where CHPs are managing homes owned by others, the end of fixed term and transitional leases, and the protection of staff and/or neighbours' safety and wellbeing.

Further comments and recommendations outlining this position are set out below.

[NSW Registrar of Community Housing review of no grounds evictions](#)

CHPs in NSW are highly regulated under the National Regulatory System for Community Housing (NRSCH) to ensure a sustainable, well-managed and well-governed industry. Under the NRSCH, a CHP's performance is examined across several domains, including tenant and housing services, housing assets, community engagement, and financial viability. CHPs are monitored and assessed against a set of operational and performance standards, including for arrears, the rate of evictions, and tenant satisfaction. The current performance of registered CHPs in NSW against these benchmarks is outlined below:

Metric	Performance benchmark ¹	Industry average ²
Eviction rate	<10% of total exits	3.8%
Overall tenant satisfaction	>75%	82%
Rent foregone	<5% of total potential rent income	0.3%

In NSW, regulatory activity is overseen by the NSW Registrar for Community Housing (the Registrar). In 2018 the NSW Registrar conducted an investigation into the use of no grounds evictions by large and medium sized (Tier 1 and Tier 2) CHPs. The Registrar found:

...no evidence of misuse of section 85 in terminating a tenancy. The section appears to be rarely used and is considered on a case-by-case basis by CHPs. The provision appears to be applied in line with NSW housing policy; in circumstances where all other avenues to sustain the tenancy have been exhausted.³

Use of no-ground evictions amongst CHPs

Across community housing, eviction orders by the NSW Civil and Administrative Tribunal (NCAT) account for less than two per cent of tenancies⁴. Less than half of these result in a warrant for possession.⁵

A CHIA NSW review of CHP evictions data⁶, indicates that approximately 10% of eviction orders granted to CHPs by NCAT drew on section 84 of the Act (7 per cent), and on section 85 (3 per cent). The remaining 90 per cent of evictions were for tenancy agreement breaches arising from abandonment of homes, rental arrears, property damage, anti-social behaviour, long term incarceration, and using the home for illegal activity.

The 61 cases that drew on section 84 (End of fixed term tenancy) pertain to short-term accommodation such as crisis, transitional, and other forms of accommodation that are designed to be used for a time-limited period. It is important that tenants relocate from these homes within prescribed timeframes, to ensure that access is provided to others who have short to medium term housing needs. CHPs provide support for tenants to make appropriate transitions, which, in many cases, involves rehousing them into appropriate, long term, social housing.

Most other eviction orders granted to CHPs pertain to properties that are head leased from private landlords. For example, under the NSW Government's Community Housing Leasing Program, Homes NSW provides funding for participating CHPs to lease nearly 6,000 homes from the private rental market for use as social housing. Consequently, CHPs do not have control over the long-term leasing arrangements for these properties. When a CHP receives a 90-day eviction notice from a private landlord that it is head leasing a property from, they are required to issue their tenant with an equivalent 90-day notice, to ensure they meet their contractual obligations. CHPs have well-established policies in place to ensure that these tenants are rehoused into alternate social housing as quickly as possible.

Rarely, no grounds evictions have been used by CHPs to address unforeseen circumstances where there were no alternatives. For example, one eviction was issued on the advice of NSW Police as a means of protecting staff and neighbours from a dangerous tenant. Another CHP was required to

¹ [National Regulatory System for Community Housing, Metrics for Operational and Financial Performance](#)

² CHIA NSW [House Keys](#) (benchmarking data)

³ NSW Registrar of Community Housing (2018) *Use of Section 85 by Community Housing Providers under the Residential Tenancies Act 2010 (NSW) – Summary Paper*, p. 1.

⁴ NSW Civil and Administrative Tribunal eviction data, provided to CHIA NSW upon request, received 22 April 2024.

⁵ CHIA NSW survey of member CHPs, conducted June 2024.

⁶ The CHIA NSW data set comprised records for 830 eviction orders issued since 1 July 2022, approximately 40 per cent of all orders granted to CHPs by NCAT.

issue an eviction in response to a tenant who advised that she was not currently living in the property, intended to end her tenancy, and no longer met affordable housing income eligibility criteria.

Recommended amendments to grounds for eviction

Given the context within which CHPs operate, the following additional grounds for eviction must be allowed for under the Act, should sections 84 and 85 be amended or repealed:

- *End of headlease*: Where CHPs are head leasing properties, it is critical that there are grounds that allow them to enact any legitimate eviction orders they receive from the owner of the property. For example, a private landlord may issue an eviction notice to a CHP on the basis that they are planning to sell the home. In such circumstances, CHPs are required to issue a corresponding notice to their tenants. As noted above, CHPs have policies in place to ensure that tenants' social housing entitlements are maintained.
- *End of fixed term crisis and transitional leases*: To maintain the availability of crisis, transitional, and other forms of short to medium term accommodation, it is important that there are provisions in place for tenants to be evicted if they seek to stay beyond the period of their lease or the prescribed timeframe in the relevant program guidelines. As noted above, CHPs endeavour to provide tenants with appropriate social housing and/or other support and opportunities in these circumstances.
- *To protect staff and/or neighbours' safety and wellbeing*: Regrettably, in a small number of cases, social housing tenants engage in behaviour that threatens the safety, health, and wellbeing of staff and/or neighbours. In scenarios where collecting evidence for an NCAT application may exacerbate the threat, an appropriate mechanism is required to protect the safety of staff and neighbours. Such a mechanism can be safeguarded against misuse by requiring the approval of the CEO or Board of the CHP.

CHIA NSW appreciates the opportunity to participate in the inquiry. Please contact [REDACTED], Senior Policy Officer, on [REDACTED] or at [REDACTED], if you require any further information regarding this submission.

Kind regards,

[REDACTED]

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