

**Submission
No 14**

RESIDENTIAL TENANCIES AMENDMENT (PROHIBITING NO GROUNDS EVICTIONS) BILL 2024

Organisation: Real Estate Institute of NSW (REINSW)

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***Residential Tenancies Amendment (Prohibiting No
Grounds Evictions) Bill 2024***

**The Real Estate Institute of New South Wales
Limited**

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

26 June 2024

TO: *Legislative Assembly Select Committee*
By email: nogroundsevictions@parliament.nsw.gov.au

1. Introduction

This Submission has been prepared by The Real Estate Institute of New South Wales Limited (**REINSW**) and is in response to the *Residential Tenancies Amendment (Prohibiting No Grounds Evictions) Bill 2024 (No Grounds Bill)*.

REINSW is the largest professional association of real estate agents and other property professionals in New South Wales. REINSW seeks to promote the interests of its members and the property sector on property-related issues. In doing so, REINSW plays a substantial role in the formation of regulatory policy in New South Wales.

This Submission outlines issues and recommendations for Parliament and the Legislative Assembly Select Committee (**Select Committee**) to consider in relation to the No Grounds Bill.

2. No Grounds Bill

REINSW opposes the No Grounds Bill which is currently before Parliament and the removal of no ground termination notices for periodic and fixed term leases under the *Residential Tenancies Act 2010 (NSW) (RT Act)*, more generally.

The reasons for REINSW's opposition of both the No Grounds Bill and proposals to abolish no ground termination notices more broadly are outlined in detail in the following submissions which are enclosed as, respectively, **Annexure A and B** to this Submission.

- REINSW's submission on the Improving NSW Rental Laws Consultation Paper dated 16 August 2023 (**Rent Reforms Submission**); and
- REINSW's submission on the *Residential Tenancies Amendment (Tenant Protections and Flood Response) Bill 2022* and the proposed changes as set out in that draft Bill dated 9 May 2022 (**Tenant Protections Submission**).

REINSW refers Parliament and the Select Committee to reasons given in these submissions. However, some of the main reasons for opposing the No Grounds Bill are as follows:

- **It will exacerbate the rental crisis:** It is common ground between stakeholders that undersupply is the main cause of the critical shortage of rental accommodation which New South Wales is currently facing. Where there are insufficient rental properties comparative to the demand, market competitiveness increases and drives up prices. Reforms to the residential tenancies legislation such as removing no ground termination notices will only discourage investors, reducing available and affordable accommodation and further increasing rental prices.
- **It impedes on owners' property rights:** Article 17 of the Universal Declaration of Human Rights states that:
 1. *Everyone has the right to own property alone as well as in association with others.*
 2. *No one shall be arbitrarily deprived of his property.*

REINSW's view is that removing no ground termination notices unjustifiably impedes on a landlord's right to make choices about their asset. When considering the No

Grounds Bill, and proposals to remove no ground terminations more generally, Parliament and the Select Committee must be confident that such reforms would not breach Article 17.

The No Grounds Bill was recently reviewed by the Legislation Review Committee (**Committee**) who scrutinises “Bills introduced into Parliament” and reports on, amongst other things, whether such Bills “trespass unduly on personal rights and liberties” and “inappropriately delegates legislative powers”.¹

The March edition of the Committee’s Legislation Review Digest commented on the No Grounds Bill and found that the Bill may “impact a property owner’s contract and property rights by limiting the way in which they may use their property” and that “the right of a property owner to use their private property and freedom of contract are fundamental legal rights”.² REINSW supports the Committee’s positions in this regard.

- **It provides limited grounds for termination:** The current drafting of the No Grounds Bill proposes to only permit termination (for fixed and periodic leases) in three limited circumstances (a concern raised by the Minister for Better Regulation and Fair Trading during the No Ground Bill’s second reading speech)³:
 - the landlord or “a person associated with” them (**Associated Person**) (which has been narrowly defined in the No Grounds Bill) intends to live in the property for at least 12 months;
 - for renovations or repairs which will “render the premises uninhabitable for at least 4 weeks”;
 - where the rental property “will be used in a way, used in a way, or kept in a state” where it “cannot be used as a residence for at least 6 months”; or
 - other grounds prescribed by regulation.⁴

REINSW’s view is that a landlord, as the asset’s owner, should be entitled to end a lease without grounds after providing requisite notice. However, were any such reforms to be implemented which limits the circumstances in which landlords can terminate a tenancy, a landlord must be allowed to terminate for legitimate reasons and the grounds currently proposed in the No Grounds Bill are restrictive and prohibitive. REINSW refers Parliament and the Committee to page 7 of its Rent Reforms Submission which outlines a range of scenarios where a landlord may need to end a tenancy.

- **The current provisions for no ground terminations work well in practice:** REINSW’s view is that the current legislative framework in relation to termination adequately balances tenant and landlord’s rights. For example, a tenant is protected from retaliatory evictions under section 115 of the RT Act and prescribed notice periods allow tenants enough time to find alternative accommodation.

¹ Legislation Review Committee, “Legislation Review Digest No.10/58”, Parliament of New South Wales (12 March 2024), 5.

² Ibid,

³ New South Wales, *Parliamentary Debates*, Legislative Assembly, 9 May 2024, 20 (Anoulack Chanthivong, Minister for Better Regulation and Fair Trading).

⁴ Residential Tenancies Amendment (Prohibiting No Ground Evictions) Bill 2024, (‘No Grounds Bill’) sch 1 iltems 3-5.

- **It impacts a landlord's privacy:** Landlords should not be required to provide reasons for terminating a lease because such reasons may be personal and multifactorial (for example, divorce, illness, redundancy and financial hardship may be contributing factors). Their reasons for termination are not relevant to the tenant, especially as tenants do not need to provide reasons to the landlord if they wish to terminate a lease or break a lease early in the case of fixed term tenancies - something which landlords cannot do.
- **It contravenes freedom to contract principles:** The No Grounds Bill proposes to abolish no ground terminations for fixed term tenancies as well as periodic leases. **REINSW opposes** the removal of no ground termination notices for both periodic and fixed term leases, and would like to point out that fixed term leases differ significantly from periodic leases. Unlike periodic tenancies where the parties have agreed to contract on an ongoing basis, the parties' clear intention for fixed term leases is to only enter into a lease for a specified period of time with no obligation and without necessarily intending to renew the lease at the expiry of the term. REINSW's view is that limiting the parties' rights to choose not to renew a lease at the end of this mutually agreed period goes against the parties' clear intentions and interferes with freedom to contract principles.

Additionally, the landlord, who owns the asset, should be able to acquire possession of their property when the term has, and the parties' contractual obligations have, ended without needing to provide any justification as to why they want possession of their own property. While **REINSW opposes** the removal of no ground termination notices in general, were Government to implement any reforms which restrict a landlord's right to terminate a lease without grounds, **REINSW recommends** an approach similar to Queensland where a landlord is not required to provide reasons for ending a fixed term agreement upon its expiry.

Furthermore, item 6 of Schedule 1 to the No Grounds Bill proposes to grant the Tribunal powers to make the following orders, if satisfied that the rental property was used for a reason other than for which notice of termination had been given:

- direct the landlord (or Associated Person) to use or occupy the property in accordance with the ground for termination given to the tenant;
- to deem "the premises to be subject to a residential tenancy agreement between the landlord and tenant for a term, and on the conditions, specified by the Tribunal; or
- to order the landlord to compensate the tenant for wrongful termination.⁵

REINSW draws attention to the Committee's comments in the Legislation Review Digest that such broad powers (in particular, the proposed power to create a new binding residential tenancy agreement between the landlord and tenant) "interfere with the fundamental common law principle of freedom to contract" which goes against contract law principles that courts and tribunals cannot remake a contract, only to give effect to the parties' intentions.⁶

Furthermore, this proposed provision unjustifiably restricts how a landlord can use their property with potentially serious consequences for the landlord – especially if there are

⁵ No Grounds Bill sch 1 item 6.

⁶ Legislation Review Committee, "Legislation Review Digest No.10/58", Parliament of New South Wales (12 March 2024), 55-56.

legitimate reasons as to why a landlord's circumstances change and they must use the property for another reason. Just two examples include where a landlord terminates a lease intending to:

- occupy the premises. However, 6 months into occupying the premises they accept a job interstate and need to release the property.
- rent a property to an Associated Person (such as an ageing parent) but the parent subsequently passes away.

Orders directing the landlord to use the property in accordance with the ground for termination, enter into a new lease with the previous tenants or pay the tenant compensation (in circumstances where the tenant does not even own the property) unjustly penalises the landlord for circumstances which were beyond their knowledge and control at the time in which the termination notice was served.

- **The Associated Person definition not reflective of modern norms:** REINSW's view is that the definition of a "person associated with a landlord" in item 2, Schedule 1 to the No Grounds Bill is too narrow and not reflective of today's modern world with blended families. REINSW's view is that a property's owner should be free to rent their property to whomever they choose.
- **Additional concerns raised by the Committee:** REINSW is concerned about the following matters that were identified by the Committee in the Legislation Digest Review:
 - That item 6 of Schedule 1 to the No Grounds Bill imposes a maximum absolute liability offence of \$11,000 (100 penalty units) if a landlord uses the rental property for a purpose other than the ground on which termination notice was issued. As the Committee states, absolute liability offences "depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability".⁷ Not only is REINSW of the view that landlords should not be penalised for choosing how they wish to use their asset, but that this is a significant penalty which will see landlords unjustly penalised if circumstances beyond their control do not allow them to use the rental property for the reason they intended when issuing the termination notice.
 - That item 7 of Schedule 1 to the No Grounds Bill states that the Bill will apply retrospectively to current leases. REINSW is concerned about the retrospective application of this provision from a freedom to contract perspective as the parties have already commercially negotiated the terms of the lease. REINSW supports the Committee's comment that "provisions that are drafted to have retrospective effect...impact on the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time" and that "the proposed amendments may impact individuals' fundamental rights as well as creating new absolute liability offences and broad remedies".⁸
 - That Items 3 and 5 of Schedule 1 to the No Grounds Bill proposes "another ground [for termination] prescribed by the regulation". REINSW supports the

⁷ Ibid, 56.

⁸ Ibid, 57.

Committee's comments that grounds for termination should be "clearly specified in primary legislation to ensure that individuals are able to clearly ascertain their rights and obligations" and to "ensure an appropriate level of parliamentary scrutiny".

- **90 days' notice is impractical:** proposed section 84(2)(b) in item 3 of Schedule 1 to the No Grounds Bill states that at least 90 days' notice of termination is required. Not only is this triple the current notice period prescribed by the current section 84(2) of the RT Act but, in the case of leases which have a term of 6 months or less, it would be half the term of the lease which is impractical.

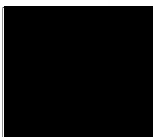
For the reasons above and in the annexed submissions **REINSW opposes** the No Grounds Bill in its entirety. Rather than restricting landlords' rights through reforms to the residential tenancies legislation to address the rental crisis, **REINSW recommends** Government focus on the underlying housing supply issues and incentivising property investment (especially institutional investors who have the resources to purchase and build apartment blocks specifically for residential rental accommodation) to increase the number of residential rental properties available on the market. **REINSW also refers** Parliament and the Committee to comments and recommendations in relation to the removal of no grounds termination notices more generally in its Rent Reforms Submission annexed to this Submission.

Conclusion

REINSW has considered the No Grounds Bill and has provided its comments above, aiming to provide input on as many pertinent aspects of the No Grounds Bill as possible. However, REINSW's resources are very limited and, accordingly, it does not have the capacity to undertake a thorough review and is unable to exhaustively investigate all potential issues in this Submission. Nonetheless, REINSW has identified a number of matters that it believes will cause significant consumer detriment, some of which appear above.

REINSW appreciates the opportunity to provide this Submission and would be pleased to discuss it further, if required.

Yours faithfully



Tim McKibbin
Chief Executive Officer

Attachment to Submission 14 – Real Estate Institute of Australia

[Residential Tenancies Act 2010 \(NSW\), Residential Tenancies Regulation 2019 \(NSW\) - The Real Estate Institute of New South Wales Limited - Submission on the Improving NSW Rental Laws Consultation Paper - 16 August 2023](#)