

**Submission
No 13**

RESIDENTIAL TENANCIES AMENDMENT (PROHIBITING NO GROUNDS EVICTIONS) BILL 2024

Organisation: Mid Coast Tenants Advice & Advocacy Service

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About Mid Coast Tenants Advice & Advocacy Service

Mid Coast Tenants Advice & Advocacy Service ('MCTAAS') is funded as part of the state-wide Tenants Advice and Advocacy Program administered by NSW Fair Trading and is one of many services operated by the Port Macquarie Neighbourhood Centre/Hastings Neighbourhood Services.

MCTAAS services a catchment area comprising Coffs Harbour, Nambucca Valley, Bellingen Shire, Kempsey Shire, Port Macquarie-Hastings, and the Greater Taree part of Mid-Coast local government areas. MCTAAS provides advice, information, referrals, community education and advocacy and representation, including before the NSW Civil & Administrative Tribunal ('the Tribunal'), to tenants, boarding house residents and home owners in residential communities.

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Introduction

We are grateful for the opportunity to contribute to the Legislative Assembly Select Committee's inquiry and report on the *Residential Tenancies Amendment (Prohibiting No Grounds Evictions) Bill 2024* ('the Bill').

This submission is informed by our Service's expertise in tenancy law and our vast experiences in working with and advocating for tenants on the Mid North Coast over many years.

We have focused this submission on the 'reasonable grounds' as well as issues relating to evidence, compliance and enforcement. Case studies have been provided at the end of the submission, which demonstrate the impact and effect of no grounds evictions on tenants on the Mid North Coast. They also operate as a reminder that there is a person and a story behind every eviction which occurs.

We believe that renters are entitled to safety and security of tenure; they are also entitled to dignity and a sense of comfort in the rented premises which they call home. The no grounds eviction provisions which currently exist under the *Residential Tenancies Act 2010* (NSW) ('The Act') simply do not allow renters to live in such a way. It is vital that *all* no grounds evictions, meaning both periodic and end of fixed term, are prohibited so that tenants can live more peacefully and in a more secure position from which they can enforce their rights under the Act. For as long as no grounds evictions exist, it will remain incredibly difficult for tenants to enforce their rights.

Reasonable Grounds Generally

We support the introduction of limited, reasonable grounds to replace the existing no grounds provisions under the Act. We also cannot emphasise enough the importance of ensuring that reform of no grounds eviction extends to *both* periodic and fixed term tenancies, as is proposed by this Bill. To do one or the other would irreparably undermine true no grounds rental reform in NSW.

We don't believe that any additional reasonable grounds should be included, such as an expansive 'intention to sell' ground as has been raised previously by the NSW Government, or retaining an end of fixed term ground, as that by itself is not a reason for ending a tenancy.

The Bill provides for a 90 day termination notice period under both of the proposed s 84 and s 85. We know that many tenants struggle to find appropriate, alternative accommodation within 90 days, and this seems unlikely to improve substantially any time soon. Regional areas in particular, with less housing supply and diversity of supply, greater access issues, including technological barriers in being able to apply for housing and lack of public transport to facilitate travel to inspect rentals, may face different barriers than those living in cities. As such, we would recommend and support longer notice periods of between 6 and 12 months for the proposed reasonable grounds set out in the Bill.

We would also welcome and encourage an explicit ban on a landlord re-letting a premises which has been terminated under one of the proposed reasonable grounds of termination, for a specified period of time. This would mitigate the likelihood of landlords misusing and exploiting the reasonable ground provisions.

Landlord or Landlord Associate Occupying Premises Ground

This ground, found at s 84(1)(a) and s 85(1)(a) of the Bill, permits a landlord to issue a termination notice where 'the landlord, or a person associated with the landlord, intends to occupy the residential premises for at least 12 months'. We generally support this ground as being reasonable and appropriate.

With respect to the definition of a person who is associated with a landlord at s 83A of the Bill, it appears appropriate and in line with the definitions used in equivalent legislation in Tasmania and Victoria.

However, we believe that it should be clearly specified that the person who is going to be residing at the premises will be doing so as their ‘principal place of residence’. It would not be appropriate for a person’s tenancy to be terminated so the landlord or their associate can occupy the premises on an ad hoc or part-time basis while maintaining a principal place of residence elsewhere.

The landlord should bear the burden of satisfying the Tribunal that the ground for termination applies and that it is appropriate overall to terminate the tenancy after considering the circumstances of the parties. The landlord should be required to provide documentary evidence of a genuine intent to have the relevant person occupy the premises and demonstrate that steps have or are being taken to relocate and facilitate the occupation. Additionally, statutory declarations should be required from the landlord and (if applicable) the associated person who is proposing to move into the premises.

Renovations/Repairs Grounds

Under s 84(1)(b) and s 85(1)(b) of the Bill, this ground of termination allows the landlord to issue a termination notice if they intend ‘to carry out renovations or repairs to the residential premises that will render the premises uninhabitable for at least 4 weeks’. It is also quite appropriately proposed at s 84(1)(b)(ii) and s 85(1)(b)(ii) that the landlord has obtained all necessary permits and consents before being able to rely on this ground.

While we agree there should be an ability to end the tenancy where, for example, the premises are going to be demolished and rebuilt, we do not agree that repairs and/or renovations are reasonable grounds for termination of a tenancy. We also have concern that the proposed provision may be subject to abuse by landlords.

Repairs represent a significant issue in tenancies. In the last 12 months, more than one in four matters dealt with by our Service are repair-related and we see a considerable number of cases where tenants struggle to get their landlord to do necessary repairs. As a result, they may be living in unsafe and agonising conditions.

We have heard from significant numbers of tenants that the presence of no grounds evictions makes them fearful of enforcing their rights, particularly around repairs. Simply put, they do not wish to ‘rock the boat’, so instead they are forced to reside in substandard homes because they know that should they make demands for basic repairs, they may be evicted without grounds. To eliminate no grounds evictions and therefore to improve a tenant’s ability to get repairs done on one hand, but then incentivise landlords to ignore and neglect repairs with a view to preserving the ability to evict the tenant under this ground on the other, is not reasonable or fair.

It is the landlord’s obligation under s 63(1) of the Act to provide and maintain the residential premises in a reasonable state of repair. It is not appropriate for landlords to take advantage of a state of disrepair caused by their own failure to comply with this obligation under the Act to evict a tenant. A tenant should be entitled to maintain their tenancy and get the benefit of repairs.

We also question whether the 4 week time period specified at s 84(1)(b)(i) and s 85(1)(b)(i) of the Bill is appropriate. In regional areas where premises can be remote and tradespersons may be limited, even repair works which are not substantial may take extended periods of time to complete.

We urge the removal of repairs and renovations as a ground of termination as this does not constitute a ‘reasonable’ ground for eviction. In the event these grounds are maintained in some capacity, we would support an increase of the 4 week period to ensure only genuinely substantial works are captured by this provision, along with the introduction of a ban on re-letting the premises for a specified period of time after the landlord evicts a tenant under this ground, as a means of ensuring the use of this ground is genuine and reduce the likelihood it will be abused.

It is appropriate that the landlord should be required to provide sufficient documentary evidence which shows there is a genuine need that substantial works be carried out, and that they have organised the works through relevant quotes, invoices, consents and permissions. Further, the Tribunal should retain discretion to determine whether termination is appropriate in the case, after weighing the circumstances of the parties.

Change in Use Ground

Under s 84(1)(c) and s 85(1)(c) of the Bill, this proposed ground permits a termination notice to be issued where the premises will not be used as a residence for at least 6 months.

Overall, this is likely a reasonable ground for termination, provided it is a genuine change of use (such as from residential to business/commercial) and is supported by appropriate documentary evidence. The evidence required will naturally differ depending on the exact new use proposed for the premises, but we would anticipate that documentary evidence showing what steps have been taken to facilitate the relevant change of use would be necessary, statutory decorations from the landlord or other relevant person and consents or permits from the Council.

It is also appropriate that the Tribunal will have the ability to consider whether the change in use means it is appropriate in the circumstances to warrant termination of the tenancy.

Additionally, it should also be made clear that certain changes in use, such as using the premises for short-term rental accommodation arrangements, are *not* grounds for issuing a termination notice under this provision.

Enforcement and Remedies

There must be clear punishments for landlords who break the law and misuse the Bill's provisions to evict a tenant. We support the proposed s 85A establishing a significant penalty regime in situations where the landlord fails to ensure the premises are relevantly used in accordance with the grounds termination which were relied on to terminate the tenancy.

It is also wholly necessary to provide a mechanism for tenants to apply to NCAT as per the proposed s 85B of the Bill to pursue relevant remedies, including compensation. We support the inclusion of that provision.

We note that it will also be necessary to ensure NSW Fair Trading, as the regulator, is adequately trained and resourced to be able to pursue penalties against landlords.

Conclusion

Being evicted and forced to move is often a distressing and terrifying experience for renters. This is especially the case where no grounds eviction is involved. It is a very basic and reasonable proposition that if someone is to be made to leave the place they call home, then they should be provided with a reason. Those reasons should be limited and sensible.

As a Service, we have had the privilege and the misfortune of hearing renters' stories over many years. This experience tells us that we are overwhelmingly overdue for legislative reform. We look forward to commonsense and reasonable law reform to abolish all no grounds evictions in NSW.

Case Study #1 - End of Fixed Term Eviction Following Utility and Access Dispute

John and his young family had been in their tenancy for several years without incident. John was in a fixed term agreement. He had always paid his rent on time and taken good care of the home. John expressed concern to the landlord's real estate agent about the landlord's constant presence at the premises, without notice, and that he seemed to be residing in a shed on the premises. There were also numerous outstanding repairs which had been reported but never addressed. John was concerned about both the interference with his peace, comfort and privacy, as well as the landlord's consumption of his utilities, as the shed was not separately metered, and John was paying for all utilities used on the property. Soon after raising all of these concerns, John was issued with a 30 day s 84 end of fixed term termination notice and decided to vacate the property rather than attempt to dispute the eviction notice as retaliatory.

Case Study #2 - No Grounds Eviction Following Rent Increase Dispute

Melissa had been complaining about repairs during her tenancy. Several repairs went unattended, while others took longer than necessary to fix - Melissa was without a working oven in the premises for more than 4 weeks. Melissa was issued a rent increase notice, which she took issue with, particularly as the premises remained in a state of disrepair. A few weeks after Melissa sought to dispute the rent increase notice, she was issued with a s 85 termination notice with 90 days notice.

Case Study #3 - End of Fixed Term Eviction and Retaliatory Notice re Repairs

James had been in the tenancy for more than 3 years. He had always maintained the premises to a high standard and paid rent and utilities on time. Despite taking excellent care of the property and ventilating it at every opportunity, James noticed extensive mould in the property, including walls, ceilings, around windows, and on his belongings. James had to dispose of a number of his goods as a result and spent a lot of money on cleaning products and dehumidifiers. James was coming to the end of his fixed term agreement; however, the landlord and agent had previously expressed their desire for him to stay on under a new fixed term and had discussed and verbally offered to draw up a new fixed term agreement so he could stay for at least another 12 months. This offer was withdrawn, and no new written agreement was forthcoming after James continued to raise concerns about the impact of mould and rising damp in the premises, and sought to have these issues rectified before entering into a new agreement. At the same time, James was issued a 30 day end of fixed term termination notice under s 84.

Case Study #4 - Fear of Enforcing Repairs Due to No Grounds Eviction

Kate has been in the tenancy for some 3 years. Since first moving in, Kate has been raising various repair issues, including mould throughout the house, dampness and moisture issues caused by water constantly pooling under the house and inadequate ventilation and drainage. Kate has acquired her own expert evidence which confirmed the mould was caused by structural issues. Despite this, the landlord had not done anything to address the repair issues. Kate had been really sick and believed it was caused by the mould and condition of the house. Despite living in a cold, damp environment which was causing her distress and harm, Kate was fearful of enforcing her rights around repairs as she was concerned about being issued with a no grounds termination notice and having nowhere to go.