



# NSW Legislative Assembly Select Committee

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

***A secure home for all***

27 June 2024



# About Shelter NSW

Shelter NSW has been operating since 1975 as the State’s peak housing policy and advocacy body. Our vision is to create a sustainable housing system that provides secure homes for all. We provide systemic advocacy and advice on policy and legislation for the whole NSW housing system to resolve housing inequality.

We are especially concerned for low-income households which struggle to afford good-quality and well-located housing in the private market. We consider a sustainable housing system one that delivers what we call Triple-A housing and Triple-P outcomes.

<b>Affordable and diverse homes</b>	<b>Accessible, well-located housing</b>	<b>Appropriate, high-quality development</b>
Housing supply and demand Tenure forms and rights Housing types and sizes	Proximity to jobs and services Access to public transport Accessibility and adaptability	Amenity and aesthetics Energy and environment Standards and maintenance
<b>Productive cities and regions</b>	<b>Poverty-free communities</b>	<b>Protected neighbourhoods</b>
Access to jobs and services  Housing costs and consumption Financial and economic stability	Housing stress and homelessness Physical and mental health Education access and attainment	Energy use and consumption  Urban heat Climate resilience and adaptation

At Shelter NSW, we believe that all people deserve to live in housing that delivers these priorities and objectives. We believe the housing system should deliver safe, secure, and affordable living outcomes for all, regardless of tenure type. Ahead of the NSW 2023 State election, Shelter NSW developed a comprehensive policy platform. Central to that platform was our call for a better deal for renters.

**Shelter NSW**

**2023 - 2027  
Priorities for NSW**

*A secure home for all*

- 1

**Restore the social housing safety net to 5% by 2027, 10% by 2040. Build/acquire 5,000 dwellings per year**

Includes maintenance, upgrades + 3 youth foyers
- 2

**Increase Specialist Homelessness annual funding by 20%**

Move beyond crisis. Focus on women, aged and First Nations
- 3

**Make the planning system deliver Affordable Rental Housing for lower income people**

Rezoning targets: 10 – 30/45%
- 4

**Build more accessible & climate ready dwellings**

Minimum standards set & met for rental dwellings
- 5

**Support Renters and Renting**

Remove *No Grounds Evictions*  
Create a *Home at Last* service  
Create a standing hardship fund & protocol for times of crisis  
Get the balance right between housing for tourists and housing for locals



# Table of Contents

About Shelter NSW .....	i
1. About our submission .....	1
1.1 Background to our submission.....	1
<b>2. Summary of recommendations .....</b>	<b>3</b>
3. The rental crisis.....	5
4. Prohibiting 'no-grounds' evictions.....	7
4.1 Periodic <i>and</i> fixed term leases.....	7
4.2 Retaliatory evictions .....	9
4.3 Prescribed reasonable grounds for eviction .....	10
Landlord or family move-in clause.....	10
Demolition and reconstruction of a property.....	10
Change of use .....	11
EXCLUDE: Preparation of property for sale .....	12
4.4 Temporary ban on re-letting.....	12
4.5 Proof of valid reasons for termination .....	13
4.6 Notice periods and compensation to tenant.....	13
5. Rent increases as de facto evictions .....	15

# 1. About our submission

Shelter NSW thanks the Select Committee for the opportunity to comment on the *Residential Tenancies Amendment (Prohibiting No Grounds Evictions Bill 2024* ('the Bill'). References to the Residential Tenancies Act 2010 throughout this submission are abbreviated to "the RTA" or "the Act".

We will respond as much as possible to the terms of reference, whilst also noting that [our submission](#) in August last year to the Rental Commissioner on the *Improving Rental Laws Consultation Paper* provides a fuller account of our views on how rental reform must be urgently pursued in NSW. In the August 2023 submission, we noted the hugely important and prioritised role that ending no-grounds evictions will have on the welfare of all renters and the health of the rental market. Once enacted, this reform will serve two key purposes: correct the power imbalance inherent in the private rental market and reduce the frenetic and stressful speed dynamic of the current market (fuelled by evictions and largely unfettered rent increases).

Shelter NSW is proud to work with many key sector organisations, alliances, and campaigns such as Make Renting Fair, Healthy Homes for Renters, and Ageing on the Edge. **Wherever possible, we align our recommendations and advocacy with that of the Tenants Union NSW.**

For any questions in relation this submission, please contact John Engeler, CEO Shelter NSW, via email [admin@shelternsw.org.au](mailto:admin@shelternsw.org.au).

## 1.1 Background to our submission

**Everyone deserves to live with stability and peace of mind, including those who rent their homes.** Moving house is often cited as one of life's most stressful events due to the significant financial costs and emotional strain involved, which are further intensified when a household is forced to move.

If a renter is being forced to move, and they have not breached their agreement, it does not seem unreasonable that their landlord be required to provide a genuine reason for ending their tenancy. This would mean where the validity of the specified 'reasonable' grounds was in question, it could be contested by the renter. Where eviction without reason is allowed, it is not possible to contest, and for this reason can serve as a tool for retaliation or other unlawful or unfair practice.

There is always a reason to end a tenancy – whether it is a fair reason or not has had zero scrutiny in NSW (up until now). **Shelter NSW wants Government to safeguard the good reasons and cast out the bad reasons.** This will help usher in a new era of landlords and their real estate agents who really understand their obligations and understand how property investment pursuits fit in with the rights of tenants to home.

**Housing is an essential service and therefore taking on the role of providing that service, for a commercial return, is a serious business.** Shelter NSW enters the community conversation about rental reform with a clear view that the private rental system is tipped against tenants, with landlords having too much power and too few obligations. We are unashamedly recommending that this imbalance be addressed and expect significant resistance from (past, current, or aspiring) landlords and the real estate sector (all of whom profit from this extreme power imbalance). We encourage the NSW Government to push on, safe in the knowledge that **any private landlord unable or unprepared to remain a supplier of housing services in this reformed market will hand the reigns to another landlord, or the keys to a first homebuyer and find some other avenue for their investment plans.**

This inquiry, amongst other things, contemplates the risk of unintended consequences specifically in relation to how ending no-grounds evictions may ultimately make the plight of renters worse in NSW. **Shelter NSW calls on the Committee to acknowledge that renters are already living with the consequences of a private rental market that operates very imperfectly.** Addressing the perverse effects that exist **now** as a result of current legislation is the higher-order reform we ask the Committee to pursue.

Current legislation for example, enables landlords to evict tenants in order to increase rent more than once per year. **The act of limiting evictions to a set of prescribed, reasonable grounds is intended to remedy some of these perverse effects.**

For clarity and completeness Shelter NSW is calling for the ending of no-grounds evictions for all types of tenancies – **periodic and fixed term**. Taking a ‘middle of the road’ approach and stopping short of ending no-grounds evictions for all lease types **will** result in perverse but totally foreseeable consequences (refer to section 4.1 below).

Additionally, **Shelter NSW rejects the narrative that rental reform to end no-grounds evictions will ‘crash’ the rental market.** We note that the Australian Housing and Urban Research Institute (‘AHURI’) has undertaken research into “the regulation of residential tenancies and impacts on investment”, and in doing so, has seemingly busted a few myths. The Paper<sup>1</sup> examines the 2010 “major rental reform period” in NSW (with the introduction of the *Residential Tenancies Act 2010*) against baseline limited regulatory changes in Victoria at the same point in time.

The AHURI Paper<sup>2</sup> found no statistically significant change to the number of rental properties in the market or bonds being lodged as a result of the introduction of the 2010 NSW legislation. This is despite the 2010 changes limiting the number of rent increases per year for all lease types (or more frequently for fixed agreements but only if increase(s) were built into the written agreement at the outset). The AHURI Report also found that LANDlords are overwhelmingly in the property investment game for the LAND; to realise

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<sup>1</sup> Martin, C., Hulse, K., Ghasri, M. et al. (November 2022). *Regulation of Residential Tenancies and Impacts on Investment*, Final Report No 391, AHURI. Retrieved from <https://www.ahuri.edu.au/sites/default/files/documents/2022-11/AHURI-Final-Report-391-Regulation-of-residential-tenancies-and-impacts-on-investment.pdf>

<sup>2</sup> Ibid.

capital gains on their dirt. The churn in property sales in a hot property market is evidence of property investors (landlords) selling at a time that the market signals they will make the most capital gains or a need to liquidise assets. Most landlords in the study admitted that their knowledge of tenancy law was poor and this knowledge (or lack thereof) did not factor much into whether they chose to buy/sell/retain an investment property.

**Shelter NSW recognises that the proposal to end no-grounds evictions goes to the heart of the power differential between landlords and tenants.** The differential must be corrected to remedy worsening social inequality<sup>3</sup>. Landlords must also take heed that they are LANDlords and not HOMElords – their entitlement to the land is limited by way of rental agreements; rental agreements that give renters the right to a home.

**The proposal to end no-grounds evictions also goes to the heart of a business model that profits from the churn of renters in and out of tenancies.** Real estate agents profit off higher churn in the rental market through listing fees, drafting up contract fees, and the ability to increase rent between tenancies and receive a greater cut on commission. That sector would logically then resist this reform. **We call on the Committee to look to the higher-order goals of the reform when assessing their concerns.**

## 2. Summary of recommendations

Our core recommendations to the Select Committee are:

1. Recognise that the act of limiting evictions to a set of prescribed, reasonable grounds is intended to remedy some of the substantial perverse effects that presently exist within the highly imperfect private rental market.
2. Delete no-grounds evictions provisions in sections 84 and 85 of the Act (ie for fixed term agreements and periodic leases)
  - a. Reinforce that the end of a fixed term agreement does not automatically translate to an eviction date.
3. Pursue ending no-grounds evictions for all lease types in concert with (or leading) other reforms, such as:
  - a. Changes to the planning system to formalise “non hosted short term rental accommodation” as a “tourist and visitor accommodation” change of use
  - b. Improve the retaliatory evictions process at NCAT (s115 of the Act)
  - c. Limiting rental increases by quantum within tenancies (and across lease types for the same tenancy).

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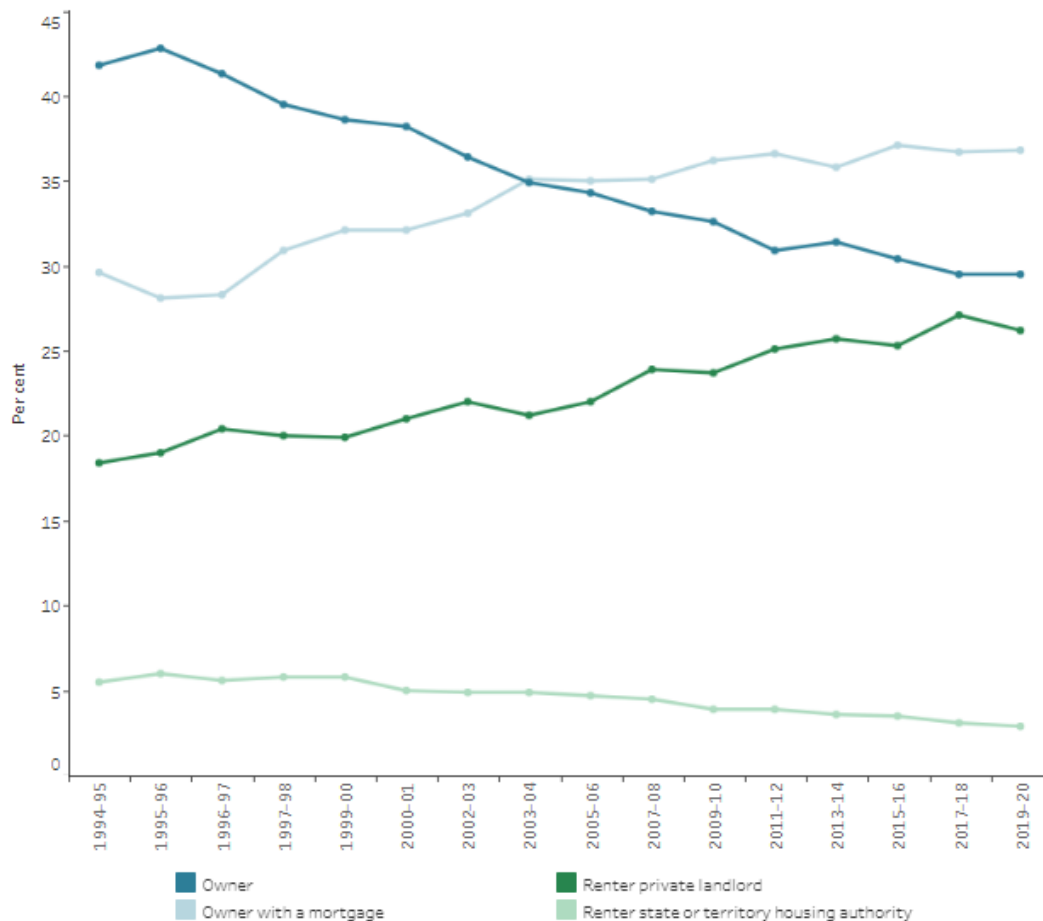
<sup>3</sup> (Pawson, Milligan, & Yates, 2020)

4. Prescribe a set list of additional reasonable grounds for eviction within the Act:
  - a. Landlord or family move-in clause
  - b. Demolition and reconstruction of a property clause
  - c. Change of use clause.
5. Mandate any other reasons that are not prescribed within the Act are not considered valid reasons for terminating a tenancy (e.g. "preparation of property for sale" should be expressly excluded from the list of additional reasonable grounds for eviction).
6. For all additional reasonable grounds for eviction, institute temporary bans on re-letting premises.
7. Require multiple sources of proof of the reasonable grounds to be served to tenants alongside the eviction notice:
  - a. Prescribed list of suitable evidentiary documents must be legislated
  - b. Evidentiary documents shall also be logged in a centralised location with the Rental Commissioner or Fair Trading
  - c. A notice for eviction served without prescribed evidentiary documentation is not valid.
8. For any 'no fault' eviction (ie where a renter is not in breach of the agreement), suitable notice periods (equal to or greater than 120 days) should be given to tenants.
9. Tenants must be able to move out as soon as a valid notice has been given, without financial penalty.
  - a. Compensated moving costs and rent waiver periods should be available to the impacted tenant.
10. Compensation payable to tenants, in addition to penalties outlined in the proposed Bill at section 85A, where landlords have fraudulently evicted (or sought to evict) tenants
  - a. Any compensation framework shall be indexed quarterly to adequately reflect the costs to renters for disruptive and unlawful eviction notices.

### 3. The rental crisis

The Australian housing market has moved a long way from what many would say is its inherent and essential purpose – to provide secure, functional, and affordable shelter to all people at various stages of their lives. Since the 1990s, the renting cohort in Australia has grown and dove-tailed with a decrease in home ownership:

Proportion of households by housing tenure type, 1994–95 to 2019–20



Extracted from [Australian Institute of Health & Welfare](#).

Similarly, growth in social housing tenancies has taken a backseat and as such, many households of varying incomes and life stages are surviving/struggling in the ‘wild west’ of the private rental market.

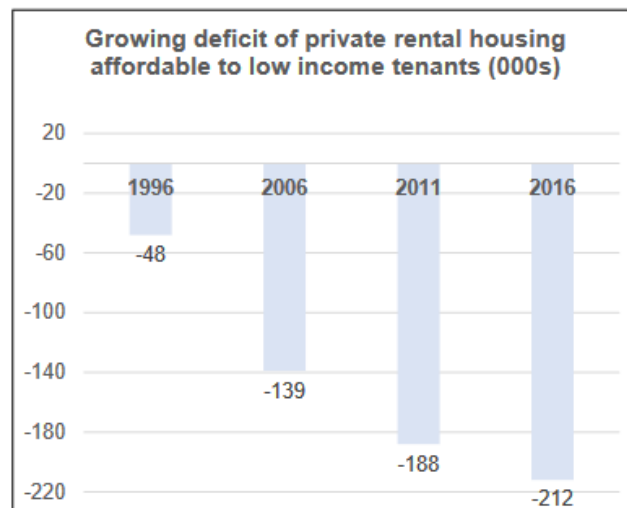
These changes in tenure dynamics are no accident; it is through Commonwealth and State tax settings, concessions, investments, policies, and legislation that ‘housing’ has become a financial product or a wealth-creation vehicle (for a few landholders). The private housing market in this country is consistently and persistently failing to provide secure, well-located, and affordable shelter especially for the lowest 40 percent of income earners.

According to the ABS in its March CPI report, rental price increases across Australia are the highest since 2009, up by 7.8% annually – reflecting low vacancy rates amid a tight



rental market across the country<sup>4</sup>. This backs up the experiences of renters forced into the rental marketplace – whether driven there by eviction or affordability constraints. This of course is the phenomenon that has attracted community, media, political concern and attention. At Shelter NSW, however, this is not an exclusively 2024 concern.

**Regardless of rental vacancy rates or newly added housing stock, low-income renters always struggle to compete with higher income households.** The private rental market is designed not to comfortably accommodate those who are less ‘willing (able) to pay’<sup>5</sup>:



Source: Hulse et al. (2019) – original data from ABS Census



Extracted from [UNSW City Futures Research Centre presentation](#) by Hal Pawson.

For too long, the language around renting in Australia has been that it's predominantly a 'lifestyle choice'. This could not be further from the truth for low-income households that have little to no capital to buy into the persistently unaffordable and hyper-inflated housing market on the one hand, and excessive and stressful waits on the State's social housing waiting list on the other hand<sup>6</sup>.

NSW needs to substantially grow its social housing portfolio; but unless (and until) that happens, the **NSW Government needs to recognise the differential experiences of**

<sup>4</sup> Australian Bureau of Statistics (ABS). *Consumer Price Index March 2024 Quarter Report*. Accessed from ABS site 26 June 2024

<sup>5</sup> Nygaard, C., van den Nouwelant, R., Glackin, S., Martin, C. and Sisson, A. (15 September 2022). *Filtering as a source of low-income housing in Australia: conceptualisation and testing*, Final Report No. 387 in AHURI. Retrieved from <https://www.ahuri.edu.au/research/final-reports/387>; Pawson, H. (4 July 2023). *Housing policy challenges for Australia: How does the Albanese Government's investment and reform package measure up?* [Powerpoint presentation]. UNSW City Futures Research Centre. Retrieved from [https://cityfutures.adu.unsw.edu.au/documents/720/ACTU\\_presentation\\_4\\_July\\_2023\\_v2.pdf](https://cityfutures.adu.unsw.edu.au/documents/720/ACTU_presentation_4_July_2023_v2.pdf)

<sup>6</sup> Pawson, H. and Lilley, D. (2022). *Managing Access to Social Housing in Australia: Unpacking policy frameworks and service provision outcomes*; CFRC Working Paper; Sydney: UNSW City Futures Research Centre accessed from [City Futures website](#)

## low-income and routinely discriminated against households in the private rental market and respond accordingly.

We assert that the zeitgeist around renting and rental pressures in this State – and country – still does not do justice to the unique set of challenges faced by low-income and otherwise marginalised households (First Nations; people with disability; single parent families; CALD households; older people; young adults leaving out-of-home care; some members of the LGBTQIA+ community; women escaping domestic violence; people exiting correctional facilities) in the private rental market. The imperfect private rental market perpetuates an enduring power differential – not only between landlords and tenants – but between low-income and marginalised households and their higher income renter counterparts.

There has been increasing concern about domestic violence atrocities in NSW, with the NSW Budget 2024-2025 committing funding to a big build of social housing for women and children fleeing domestic violence<sup>7</sup>. **It is not hyperbole to state that ending no-grounds evictions must truly be part of the solution to safeguarding social cohesion and ending gendered violence:**

*I have been evicted twice since then with no grounds and have seriously considered suicide both times. I am now in a relationship with a home owner and put up with things that border on domestic violence because I am so afraid of being suddenly homeless again.*  
**Kylie, 40s, Illawarra**

Quote extracted from [A Constant Worry: Survey Report](#) (Tenants Union NSW, April 2024, p. 17).

## 4. Prohibiting ‘no-grounds’ evictions

### 4.1 Periodic *and* fixed term leases

As a nation, we are living longer in rental households<sup>8</sup>; attempting to put down roots, getting pets, starting families, entering retirement, and a whole host of other life milestones. Families, in the formative schooling years for children, are facing constant anxiety about their next move at the end of a fixed term contract – bracing for no-grounds evictions and having to navigate a new school in a new suburb every 6 to 12 months. This is not socially sustainable.

The majority of renters in NSW (nearly 60%) are on fixed term leases, and the majority of no-grounds evictions (71%) are served to households at the end of a fixed term lease<sup>9</sup>.

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<sup>7</sup> NSW Government. (18 June 2024). *NSW Budget: Social housing and homelessness investment* [media release]. Retrieved from <https://www.nsw.gov.au/media-releases/nsw-budget-social-housing-and-homelessness-investment>

<sup>8</sup> Australian Government – Australian Institute of Family Studies. (July 2020). *Families Then & Now: Housing*. Retrieved from <https://aifs.gov.au/research/research-reports/families-then-now-housing>

<sup>9</sup> Tenants Union NSW. (January 2024). *Briefing: Ending ‘no grounds’ evictions in NSW*. Retrieved from <https://www.tenants.org.au/reports/ending-no-grounds-evictions-all-nsw-renters-briefings>

**Putting an end to no-grounds evictions will only be a worthwhile exercise where no-grounds terminations are abolished for households on periodic as well as fixed term leases.** Both the Queensland and Victorian models for ending no-grounds terminations leave renters open to bad-faith evictions because they do not unequivocally end no-grounds evictions for all lease types. In particular, the Queensland model is easily being skirted by landlords, who simply use the threat of eviction to force tenants to sign short fixed-term agreements, thus avoiding periodic tenancies and forever preserving the option to effect a no-grounds termination at the end of each 3 to 6-month fixed term agreement<sup>10</sup>. In Victoria, reforms to get rid of no-grounds evictions came into effect in March 2021. They have disallowed the use of ‘no reason’ terminations, except at the end of the first fixed term. This model creates an incentive for landlords to increase the churn of renters in properties in order to ensure they always maintain absolute control over the premises with each first fixed term agreement<sup>11</sup>. **The ACT and South Australia, in observing the missteps of other jurisdictions, have banned no-grounds evictions for fixed term and periodic tenancies.**

The Legislative Review Digest No. 10/58 commenting on the proposed Bill makes broad references to “the [inherent] right of a property owner to use their private property”<sup>12</sup>; as alluded to earlier in this submission, once landlords enter into a contract for a party to rent their property, they automatically sign-up to limitations on how they can interact with that property as it is being rent by a tenant and occupied for residential purposes. **Thus, the private rental market as a whole limits the inherent rights of a property owner to use their private property as they wish, because many of these rights are RENTED by the tenant occupying the property.** It is similarly disingenuous to claim that there will be some new sinister dynamic at play that undermines Article 17 of the Universal Declaration of Human Rights<sup>13</sup> if rental reforms provide guardrails to reinforce the rights of tenants to occupy residential premises in exchange for paying rent.

The Legislation Review Digest No. 10/58 also warns against limiting landlord rights to “terminate tenancy agreements” as it may go against established “freedom of contract principles”<sup>14</sup>. **We question whether this is a genuine concern.**

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<sup>10</sup> Hinchliffe, J. in *The Guardian*. (4 August 2022). *Queensland real estate body tells landlords how to skirt new no-grounds eviction laws*. Retrieved from <https://www.theguardian.com/australia-news/2022/aug/05/queensland-real-estate-body-tells-landlords-how-to-skirt-new-no-grounds-eviction-laws>

<sup>11</sup> Roth, L. & Lamerton, C. for NSW Parliamentary Research Service. (June 2024). *Residential tenancy law reforms: no grounds evictions*, Research Paper 2024-05. Retrieved from <https://www.parliament.nsw.gov.au/researchpapers/Documents/Residential%20tenancy%20law%20reforms%20no%20grounds%20evictions.pdf>

<sup>12</sup> Parliament of NSW, Legislation Review Committee. (12 March 2024, p. 55). *Legislation Review Digest No. 10/58*. Retrieved from <https://www.parliament.nsw.gov.au/ladocs/digests/697/Legislation%20Review%20Digest%20No%2010%20of%2058%20-%2012%20March%202024.pdf>

<sup>13</sup> As comically referred to in [REINSW submission on the Improving Rental Laws Consultation Paper](#) last year

<sup>14</sup> Parliament of NSW, Legislation Review Committee. (12 March 2024, p. 54). *Legislation Review Digest No. 10/58*. Retrieved from

It presently does not seem to matter much (to contract law) whether subsequent fixed term contracts are entered into between incumbent tenants and landlords, so long as rent continues to be paid and the tenant abides by the law (RTA) and initial terms of the fixed term agreement. In all circumstances where a fixed term agreement is not renewed and the tenant is not evicted, the end of a fixed term agreement rolls over to a periodic lease where the incumbent tenant retains the right to occupy the property. Indeed, this rolling-over function paves the way for many households ending up on periodic leases currently<sup>15</sup>.

Further, notification timeframes are presently required to **evict** tenants at the end of a fixed term agreement (30 days<sup>16</sup>), as **the end of a fixed term agreement does not automatically translate to an eviction date**, without separate steps being involved.

With these factors in mind, how does the argument stack up that requiring reasonable grounds to evict at the **end** of a fixed term agreement violates “freedom of contract principles” **when presently**, the end date of a fixed term agreement does **not** automatically serve as an eviction notice anyway? Were “freedom of contract” fears wheeled out in earlier rental reform iterations to the RTA? Or, if “freedom of contract” fears were genuine legalistic concerns in previous rental reform iterations, how were these overcome and why could they not be overcome now?

## 4.2 Retaliatory evictions

**Wherever the option exists for landlords to exercise no-grounds evictions, there exists the opportunity for retaliatory evictions in response to renters asserting their rights.**

The current threshold for proving an eviction notice is retaliatory (pursuant to s115 of the Act) is high with the burden of proof on the tenant. This process requires a lot of paperwork to be hoarded by tenants and usually a compelling ‘temporal’ connection between tenants asserting rights to repair (or some other right under the legislation, such as challenging an excessive rent increase) and the date of the termination notice being served<sup>17</sup>. Challenging a tenancy termination notice as retaliatory requires proceedings to be brought to NCAT by the tenant within 14-30 days of the notice of termination being given<sup>18</sup>. Even if the Tribunal finds a termination notice was likely retaliatory or vengeful, the termination notice is not automatically overturned<sup>19</sup>.

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<https://www.parliament.nsw.gov.au/ladocs/digests/697/Legislation%20Review%20Digest%20No%2010%20of%2058%20-%2012%20March%202024.pdf>

<sup>15</sup> Tenants Union NSW. (January 2024). *Briefing: Ending ‘no grounds’ evictions in NSW*. Retrieved from

<https://www.tenants.org.au/reports/ending-no-grounds-evictions-all-nsw-renters-briefings>

<sup>16</sup> <https://legislation.nsw.gov.au/view/html/inforce/current/act-2010-042#sec.84>

<sup>17</sup> Verbal advice by South West NSW Tenants Advice and Advocacy Service (VERTO)

<sup>18</sup> <https://legislation.nsw.gov.au/view/html/inforce/current/si-2019-0629#sec.39>

<sup>19</sup> Steinbeck v McDonald [2015] NSWCATAP 90 at [26]

Pursuing action against a landlord or real estate agency through NCAT is a risky venture in of itself, as tenants require good references from existing property managers to secure future rentals. For these reasons (and many more), renters are reluctant to assert their rights under the Act for fear of being served a no-grounds (but ultimately retaliatory) eviction notice.

### 4.3 Prescribed reasonable grounds for eviction

There is always a reason to end a tenancy – whether it is a fair reason or not has had zero scrutiny in NSW (up until now). **Shelter NSW wants Government to safeguard the good reasons and cast out the bad reasons.** This will help usher in a new era of landlords and their real estate agents who really understand their obligations and understand how property investment pursuits fit in with the rights of tenants to home.

A set list of reasons must be prescribed in the Act when landlords seek to evict tenants. **If a reason is not prescribed in the Act, it is therefore not an acceptable ground to evict a household.**

There already exists legislated avenues in the RTA for landlords to reasonably end non-social housing tenancies, including at sections 86 (sale of premises requires vacant possession), 93 (landlord hardship), 108 (death of tenant), 109 (natural disasters or compulsory acquisition by government). Most of these avenues require some oversight by the Tribunal so they are not subject to misuse.

**These existing, reasonable grounds for eviction are however undermined by sections 84 and 85 of the Act,** which allow for tenancies to be terminated without any grounds needing to be stated. These two sections foster a culture of mistrust between tenants, landlords, and property managers. **Reforming/deleting no-grounds provisions in sections 84 and 85 of the Act and replacing with additional reasonable grounds is recommended.**

#### **Landlord or family move-in clause**

We are in agreeance with Tenants' Union on this move-in clause. That is to say, the landlord/landlord's family shall intend to occupy the property for at least 12 months as their principal place of residence.

A definition of 'family' for the purposes of enacting this reason must be legislated, as is the case in Tasmania and Victoria.

#### **Demolition and reconstruction of a property**

Renovation or general repair should not be considered a valid reason; landlords may opt to let their properties deteriorate to the point of needing to 'evict' for what were once basic or urgent repairs (that went untended to). This breaching of contractual obligations

on the part of landlords already occurs in the market<sup>20</sup>. What we do not want to see is a valid avenue open up for landlords to justify their dereliction of duty with an eviction notice.

If the language of repair and renovation is included, it must be clarified that this is allowable only where the landlord genuinely intends to carry out **substantial and significant** building work of the residential premises and where the repairs are not required as a result of the landlord's breach of the agreement. The works will render premises uninhabitable for a minimum period of time (for example, a minimum of 6 weeks or longer) and that the work can only be undertaken if the property is vacant. The renter must also have been given the option to continue the tenancy agreement with an abated rent or for part of the premises during the building work period and declined.

### **Change of use**

We accept that landowners may wish to use a residential property for commercial or other purposes and that these proposed changes of use are generally required to obtain Development Application consent or Complying Development certificates through relevant planning authorities.

**The proposed Bill<sup>21</sup> at section 84(1)(c) is ambiguous and should instead refer to the fact that the property will not be used as a residence and will undergo a change of use.**

Shelter NSW asserts that this clause must be accompanied by parallel legislation in the NSW planning framework (*Housing SEPP 2021* or *Standard Instrument Local Environmental Plan 2006*) that re-identifies "non-hosted short term rental accommodation" (over a certain number of days use per year) as a form of "tourist and visitor accommodation", in line with the Independent Planning Commission's ('IPC') recent report<sup>22</sup> and supporting report by AHURI<sup>23</sup>. This factor is crucial to ensuring long term rental stock does not leach out into the lucrative 'Airbnb' market:

*"So many families come to us because of landlord reno-victions for Airbnb" – Community service provider, Blue Mountains*

Any such land-use changes must be adequately regulated by the planning system – rather than leaving it up to NCAT to hear and decide on individual cases of whether an eviction for this 'change of use' purpose is reasonable.

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<sup>20</sup> Tenants' Union NSW. (June 2021). *Young Renters Survey and Roundtable*. Retrieved from <https://files.tenants.org.au/policy/2021-young-renters-report-final.pdf>

<sup>21</sup> <https://www.parliament.nsw.gov.au/bill/files/18544/First%20Print.pdf>

<sup>22</sup> Coakes, S., Grant, J. and Mackay, R. (24 April 2023). *Byron Shire Short-Term Rental Accommodation Planning Proposal: Final advice report*. NSW Independent Planning Commission. Retrieved from [https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2022/12/byron-shire-short-term-rental-pp/advice/230424\\_byron-stra-pp\\_advice-report\\_final.pdf](https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2022/12/byron-shire-short-term-rental-pp/advice/230424_byron-stra-pp_advice-report_final.pdf)

<sup>23</sup> Burke, T., Ralston, L., Stone, W. and Goodall, Z. (April 2023). *Short term rental accommodation: new directions, new debates*. AHURI advising the IPC. Retrieved from <https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2022/12/byron-shire-short-term-rental-pp/ahuri-report/ahuri-report.pdf>

## **EXCLUDE: Preparation of property for sale**

**Like our peers at the Tenants' Union and Better Renting, we view the excuse of "preparation for sale" as NOT good enough to evict a household, of any type.** Forcing tenants to move out simply to "prepare a property for sale" reduces the utilisation of existing housing stock, results in unnecessary forced moves (as the property may be sold to a residential investor who would have happily retained the tenants), and opens more possibilities for fraudulent terminations.

The inconvenience to a landlord or selling agent of having to navigate home viewings and interior decorations around the incumbent household **must not win out** over the inconvenience to the incumbent household of being evicted (potentially into homelessness).

There already exists a provision for termination based on the requirements of "vacant possession" at sale (for periodic leases). In **actual** preparation for sale, the selling landlord can rely on a "significant or substantial building works" or demolition clause if absolutely necessary, as could any other future owner. When a property is sold, it is sold to either an investor or an owner-occupier:

- If a residential investor purchases the property, the property will continue to be available to rent and the sitting tenant should be able to remain.
- If a commercial investor purchases the property, there is the option to terminate under the "change of use" clause.
- If a prospective owner-occupier wants to occupy the property, they can rely on the otherwise proposed "landlord move-in" clause.

In short, the inclusion of "preparing for sale" as a standalone new reason for lease termination is nonsensical (and prone to abuse) in light of the other proposed valid reasons for terminating a lease.

## **4.4 Temporary ban on re-letting**

All prescribed reasons should include a temporary ban on re-letting the premises again to discourage fraudulent behaviour:

- **Landlord or family move-in clause** – the property shall not be re-let to non-family within 12 months of the eviction taking effect.
- **Demolition and reconstruction works** – a 6 month ban on re-letting the property shall apply from the time of the eviction taking effect.
- **Change of use** – a 12 month ban on re-letting the property for residential purposes shall apply from the time of the eviction taking effect.

"Preparation for sale" is not a valid, standalone reason to evict a tenant (see previous discussion). If it is instituted as a prescribed reason, however, it must similarly be underpinned by a temporary ban on re-letting of 6 months since the time of eviction taking effect or sale of property has occurred (whichever is the sooner).

## 4.5 Proof of valid reasons for termination

In all scenarios that valid reasons for no-fault terminations may be invoked, **these reasons must be accompanied by evidence served to tenants, alongside eviction notices.**

- **Landlord or family move-in clause** – witnessed statutory declarations, contractual agreement between the landlord and family member for use of the property as principal place of residence.
- **Demolition and reconstruction works** – building works agreements (dated), trades quotes (dated), witnessed statutory declarations, Council permits.
- **Change of use** – Council permits, business registration and ABN documents, witnessed statutory declarations.

“Preparation for sale” is not a valid, standalone reason to evict a tenant (see discussion on page 12). If it is instituted as a prescribed reason, however, it must similarly be underpinned by evidentiary requirements such as a contract with a selling agent to render services.

The onus must always be on the landlord to prove their termination reason is valid, and it must not be up to renters to pursue the landlord to provide sufficient evidence. In this vein, the types of acceptable evidentiary documentation for each valid reason (and how/when these documents are turned over to the tenant) must be prescribed in legislation. **A notice for eviction served without evidentiary documentation is not considered valid.**

All evidentiary documentation shall not only be supplied to the tenant as part of the notice to vacate, but **shall also be supplied to the Rental Commissioner or Fair Trading to log as evidence.** This repository of evidence linked to each property will ensure greater oversight and ease compliance checks of landlords misusing any grounds of eviction.

## 4.6 Notice periods and compensation to tenant

**Eviction, even with valid reasons, is a hugely disruptive and costly event for renters – averaging \$4,100 per move<sup>24</sup>.** Renters calling Tenants’ Advice Services about notices to vacate are often enquiring as to how to secure accommodation in less than 90 days or stay at their home beyond the 90-day notice period if no other housing is available to them<sup>25</sup>. For any ‘no fault’ eviction (ie where a renter is not in breach of the agreement),

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<sup>24</sup> Tenants Union NSW. (February 2022, p. 58). Eviction, Hardship, and the Housing Crisis. Retrieved from <https://files.tenants.org.au/policy/2022-Eviction-Hardship-and-the-Housing-Crisis-TUNSW.pdf>

<sup>25</sup> Insight from Tenants’ Union NSW



the Tenants' Union has previously recommended no less than 120 days notice should be given or 6 months in other cases<sup>26</sup>.

**To further ease the disruption and costs to tenants of paying overlapping rent for weeks, they must be able to move out at any time once a valid termination notice has been served without financial penalty.** This should apply to tenants on both fixed and periodic leases. Alternatively, we support [Better Renting's position](#) that rent should be waived for a certain period of time following the issue of a notice to vacate (especially where the renter is not at fault, as is the case with all of the proposed additional 'reasonable' grounds for evictions). The Tenants' Union calls for tenant moving costs to be compensated by landlords in the cases of all no-fault evictions (ie where the tenant has not breached the terms of the agreement). Tiered compensation frameworks must be indexed quarterly to ensure the actual costs to renters are compensated.

**Compensation should be payable to tenants where landlords have lied or misused 'reasonable' grounds in order to evict (or attempt to evict) someone.** Compensation should be in addition to penalties outlined in the proposed Bill at section 85A. This compensatory process acknowledges the unnecessary disruption to a renter's life and home situation by the landlord, whilst also serving as a deterrent to landlords generally in misusing 'reasonable' grounds for eviction. In the ACT, where wrongful eviction has occurred, renters are able to seek compensation or alternatively request their reinstatement as a tenant<sup>27</sup>.

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<sup>26</sup> Tenants Union NSW. (August 2023). *Submission on Improving NSW Rental Laws Consultation Paper*. Retrieved from <https://www.tenants.org.au/reports/submission-improving-nsw-rental-laws>

<sup>27</sup> ACT [Residential Tenancy Act 1997](#) (s58)

## 5. Rent increases as de facto evictions

**Banning no-grounds evictions without also legislating quantum limits on rental increases may serve to create a de facto process of eviction** by way of landlords simply raising rents beyond any reasonable amount for an incumbent tenant to meet<sup>28</sup>.

The *2024 Anglicare Rental Affordability Snapshot*<sup>29</sup> highlights that affordability has crashed to new lows. We, along with many other advocates, know that **beyond affordability and issues of vacancy rates, the renting and tenancy system is fundamentally flawed**.

No-grounds evictions are currently being used in NSW to dispose of tenants who exercise their rights to ask for maintenance repairs<sup>30</sup> or, in some instances, to circumvent regulations that are otherwise in place to limit annual rent increases<sup>31</sup>. **For these reasons, legislation abolishing no-grounds evictions needs to be in concert with other rental reforms**.

Late last year, Shelter NSW in conjunction with the Tenants Union and Macquarie University prepared a Paper called [“Regulating rents: international examples and experience”](#). The Paper supports the position that **it is viable and necessary to limit quantum increases in rent within tenancies**, either as a fixed percentage cap or an inflation-linked cap.

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<sup>28</sup> Sisson, A. & Bowyer-Pont, P. (2023). *Regulating rents: international examples and experience*. Sydney: Shelter NSW & Tenants Union NSW. Retrieved from <https://sheltersnsw.org.au/wp-content/uploads/2023/12/2023-11-RentRegulation-Sisson.pdf>

<sup>29</sup> Anglicare Australia. (2024). *Rental Affordability Snapshot*. Retrieved from <https://www.anglicare.asn.au/publications/2024-rental-affordability-snapshot/>

<sup>30</sup> Wallace, N. in *9Now*. (13 October 2022). *Tenants claim they face eviction for complaining 'too much'*. Retrieved from <https://9now.nine.com.au/a-current-affair/sydney-tenants-speak-out-over-eviction/935cdb5b-b940-43e1-8467-9018dbd86395>

<sup>31</sup> VERTO Tenancy Advice and Advocacy Service. (2022). *Supporting vulnerable tenants during a rental crisis*. Retrieved from <https://www.verto.org.au/blog/supporting-vulnerable-tenants-during-a-rental-crisis>