

*Residential Tenancies Amendment (Tenant  
Protections and Flood Response) Bill 2022  
("the Draft Bill")*

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

**Submission on the proposed changes  
as set out in the Draft Bill**

**9 May 2022**

**To: Mr Philip Donato, MP  
Shooters, Fishers and Farmers Party**  
**By email: [PDonato@sff.net.au](mailto:PDonato@sff.net.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 Draft Bill introduced by Ms Jenny Leong, MP which provides for a number of changes to the *Residential Tenancies Act 2010* NSW (**Act**).

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 legislative and regulatory policy in New South Wales.

This Submission has been prepared with the assistance of members of REINSW's Residential Tenancies Act Sub-Committee, who comprise members of REINSW's broader Property Management Chapter Committee. These members are licensed real estate professionals with a high level of experience and expertise in residential property management.

## 2. The Nature of the Changes in the Draft Bill

REINSW is concerned that the Draft Bill contains a number of significant and adverse changes to the Act, which have been presented as support for NSW flood impacted tenants ("**flood impacted tenants**"). Whilst REINSW supports assistance targeting flood impacted tenants, it takes issue with using the *Residential Tenancies Act* as the tool to do it.

Having regard to the magnitude and impact of the proposed changes that are not related to the floods and which impact all NSW residential tenancies ("**the other changes**"), **REINSW recommends that the Draft Bill be opposed and other means of support be employed to assist flood impacted tenants.** At a minimum the proposed changes should be subject to sufficient public consultation with all relevant stakeholders due to their significance and impact on the industry.

REINSW has a number of other suggested amendments to the Act that it would like to propose and would welcome the opportunity to put these forward at the same time as the other changes are considered during the public consultation process suggested above.

## 3. The Draft Bill

It is REINSW's preference that Parliament not support the Bill. Nonetheless REINSW sets out its comments and recommendations in relation to all of the proposed changes. Table 1 provides a high-level summary of REINSW's position on the proposed

changes, while Table 2 provides in depth reasons and recommendations in support of its position.

**Table 1**

| <b>REINSW's Position on Proposed Changes not Related to Flood Impacted Tenants</b> |   |                                    |  |
|--|---|------------------------------------|--|
| <b>Item Number</b>   | <b>Proposed Change</b>  | <b>Section from the Draft Bill</b> | <b>Comment</b>                         |
| Item 1   | Section 41 Rent Increases   | Sch. 1 [1]                         | <i>REINSW opposes this change.</i>     |
| Item 2   | Restricting Rent Increases to the Lesser of the Public Sector Wage Increase and CPI                   | Sch. 1 [2]                         | <b><i>Not supported by REINSW.</i></b> |
| Item 3   | Section 52 – premises with 'mould' will not be 'fit for habitation'                                   | Sch. 1 [3]                         | <b><i>Not supported by REINSW.</i></b> |
| Item 4   | Section 52 – landlords are required to ensure that residential premises have adequate 'waterproofing' | Sch. 1 [4]                         | <b><i>Not supported by REINSW.</i></b> |
| Item 5   | Section 80 – definition of "member of the landlord's family"  | Sch. 1 [5]                         | <b><i>Not supported by REINSW.</i></b> |
| Item 6   | Section 82 – change to termination notices provision  | Sch. 1 [6]                         | <b><i>Not supported by REINSW.</i></b> |
| Item 7   | Sections 84-85A – end of fixed term tenancy and removal of no-grounds notice of termination           | Sch. 1 [7]                         | <b><i>Not supported by REINSW.</i></b> |
| Item 8   | Section 85 – termination of periodic agreement  | Sch. 1 [7]                         | <b><i>Not supported by REINSW.</i></b> |
| Item 9   | Section 85A – consequences for wrongful termination under sections 84 and 85                          | Sch. 1 [7]                         | <b><i>Not supported by REINSW.</i></b> |
| Item 10  | Section 115 – Retaliatory Evictions   | Sch. 1 [8]                         | <b><i>Not supported by REINSW.</i></b> |
| Item 11  | Section 115(2)(d) – expand the scope of the retaliatory eviction                                      | Sch. 1 [9]                         | <b><i>Not supported by REINSW.</i></b> |

|         |  |             |                                 |
|---------|--|-------------|---------------------------------|
| Item 12 | Section 115(2A) – termination not in retaliation             | Sch. 1 [10] | <b>Not supported by REINSW.</b> |
| Item 13 | Section 115A – limitation on landlord’s ability to terminate | Sch. 1 [11] | <b>Not supported by REINSW.</b> |

| <b>REINSW’s Position on Proposed Changes Related to Flood Impacted Tenants</b> |   |             |  |
|--|---|-------------|--|
| Item 14  | Sections 229 to 232 – provisions dealing with flood affected properties | Sch. 1 [12] | <b>Not supported by REINSW with amendment.</b> |

**Table 2**

| <b>Item Number</b> | <b>Proposed Change</b>  | <b>Section from the Draft Bill</b> | <b>Comment</b>  |
|--------------------|---|------------------------------------|---|
| Item 1             | Section 41 Rent Increases   | Sch. 1 [1]                         | <p><b>REINSW opposes this change.</b></p> <p>REINSW opposes this proposed change to the Draft Bill but would welcome the opportunity to comment on rent increase provisions during a future consultation process.</p>   |
| Item 2             | Restricting Rent Increases to the Lesser of the Public Sector Wage Increase and CPI | Sch. 1 [2]                         | <p><b>Not supported by REINSW.</b></p> <p>REINSW opposes these changes as they seek to amend the fundamental right of ‘freedom to contract’ by impinging on the maximum rental increase that parties can agree at their own discretion.</p> <p>Market rent, as defined by the Australian Property Institute is:</p> <p><i>“The estimated amount for which an interest in real property should be leased on the valuation date between a willing lessor and a willing lessee on appropriate lease terms in an arm’s length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion”.</i></p> <p>REINSW’s view is that parties should be free to set the commercial terms upon which they agree on any rent increases.</p> <p>REINSW is also concerned that the limit proposed (being, the lower of the public sector wage increase and CPI), will mean that very minimal increases will occur to rent amounts (given that the growth of CPI is predicted to be minimal) whilst expenses for landlords will continue to grow</p> |

|  |  |  |  |
|--|--|--|--|
|  |  |  | <p>exponentially (for instance, increased mortgage interest rates, council rates and other property expenses).</p> <p>REINSW is also opposed to this proposed change for the following additional reasons:</p> <ul style="list-style-type: none"> <li>• <b>Market value must determine rents.</b> It is not right to impose restrictions on rental increases that inhibit a landlord's right to use market value and market conditions to dictate the rent they can receive for their property, especially in an environment where many landlords have already frozen rent increases for extended periods to assist tenants during the COVID-19 pandemic.</li> <li>• <b>Market conditions are always changing.</b> Legislative instruments should not be influenced by current market conditions and must provide fair outcomes for both landlords and tenants across varied markets and geographic locations.</li> <li>• <b>Landlords' ability to make improvements will be limited.</b> Curtailing rent reviews to an arbitrary limit will cause the net return on investments for landlords to dwindle. This will, in turn, limit funds available to make improvements to properties for the benefit of tenants.</li> <li>• <b>Landlords and Tenants should be free to deal with each other commercially. This is essential to the operation of a market economy.</b> The amendment effectively hinders the freedom of landlords and tenants to deal with each other in a mutually agreed manner.</li> <li>• <b>All consumers need to be considered, not just some.</b> Landlords are consumers too, and their ability to secure rent at market value and therefore maximise their return on investment will be stymied.</li> <li>• <b>The proposed changes are, in effect, a form of rent control.</b> The proposed changes will effectively be a form of rent control which will have unintended economic impacts. Rent control artificially pushes down the price of rent below what would have otherwise prevailed in a free market. This creates a phenomenal rise in the quantity of rentals demanded while discouraging the quality of rentals supplied. The immediate result is a shortage of rental accommodation. In 2012, a survey of leading economists on the effectiveness of rent controls implemented in San Francisco and New York City found that only 2 per cent agreed that the policy had a positive impact on the quantity and quality of affordable housing (<i>"Evidence of Rent Control – It's Harmful and Ineffective"</i>, Martha Njolomole, 2012).</li> <li>• The irony of this proposal is that tenants will be adversely impacted as investors leave the</li> </ul> |
|--|--|--|--|

|        |   |            |   |
|--------|---|------------|---|
|        |   |            | <p>residential rental market in favour of other investment opportunities.</p> <p>For the above reasons, REINSW recommends the deletion of these proposed changes.</p> <p>However, should Parliament reject REINSW's recommendations, proposed section 41(1C) should clarify the quarter upon which the CPI increases will be based. Currently, this proposed section refers to the lesser of the public sector wage increase which occurs annually whereas CPI is generally calculated quarterly.</p>   |
| Item 3 | Section 52 – premises with 'mould' will not be 'fit for habitation'                                   | Sch. 1 [3] | <p><b>Not supported by REINSW.</b></p> <p>This proposed change will likely have a significant unintended consequence because there is no distinction between 'mould impacted properties' which are uninhabitable, and 'mould affected properties' which are still habitable.</p> <p>The change appears to be unreasonably onerous on those landlords who always have, and will do, the right thing to treat any mould (even minor) on a property. REINSW is also concerned that given recent weather conditions in NSW, that many properties could potentially fall within the ambit of not being habitable because they are not "free of mould", whereas the truth is that the mould can be remedied and the property can be occupied. Furthermore, REINSW would like to highlight that tenants themselves can contribute to, or exacerbate, mould situations so it would not be fair or equitable for the obligation of keeping a premises free of mould to rest with the landlord who is not in occupation.</p> <p>As a compromise, REINSW recommends that this proposed section be changed to:</p> <p><i>"have not been deemed to be uninhabitable by a certified occupational mould hygienist"</i></p> |
| Item 4 | Section 52 – landlords are required to ensure that residential premises have adequate 'waterproofing' | Sch. 1 [4] | <p><b>Not supported by REINSW.</b></p> <p>REINSW is concerned that this amendment creates unnecessary ambiguity about what landlords are required to do to ensure waterproofing in relation to residential premises. Whether a premises satisfies the requirement to have adequate waterproofing is subjective and is not something that can easily or readily be identifiable unless and until an issue arises. This is especially so in circumstances where many properties which were considered adequately waterproofed have, due to recent extraordinary weather conditions, now been rendered inadequate.</p> <p>REINSW has, on many occasions, expressed its concern to government that landlords and property managers are not qualified, licensed or experienced building contractors and, therefore, should not be providing expert advice on building issues, including waterproofing. Landlords are investors and property managers manage the tenancy. As such, they cannot ensure compliance with this proposed change and the onus should not rest with them.</p>  |

|        |   |            |   |
|--------|---|------------|---|
|        |   |            | For these reasons, REINSW recommends the deletion of this proposed change.  |
| Item 5 | Section 80 – definition of “member of the landlord’s family”                                | Sch. 1 [5] | <p><b>Not supported by REINSW.</b></p> <p>This definition relates to the proposed changes to the proposed circumstances in which a landlord may terminate a residential tenancy agreement [see <i>Item 7 below</i>].</p> <p>REINSW is of the view that it is extremely difficult for the Legislature to attempt to define who should be included as a ‘member of the landlord’s family. In today’s modern world with blended families, attempting to attach a definition will lead to certain family members being discriminated against and ignored. For example, the proposed definition does not capture a landlord’s sibling, because the sibling may not be substantially dependent on the landlord. It doesn’t capture cousins, relatives or even a child’s partner who lives with the landlord but is not substantially dependent on them.</p> <p>For these reasons, REINSW recommends the deletion of this expression.</p>  |
| Item 6 | Section 82 – change to termination notices provision  | Sch. 1 [6] | <p><b>Not supported by REINSW.</b></p> <p>[see <i>Item 7 below</i>].</p>  |
| Item 7 | Sections 84-85A – end of fixed term tenancy and removal of no-grounds notice of termination | Sch. 1 [7] | <p><b>Not supported by REINSW.</b></p> <p>These changes seek to remove the ability for a landlord to terminate both a fixed term agreement or a periodic agreement without specifying any particular grounds (“<b>a no-grounds termination notice</b>”).</p> <p>The removal of a no-grounds termination notice means that landlords will only be able to terminate a fixed term tenancy, at the end of its fixed term, or a periodic tenancy, in very limited and prohibitive circumstances.</p> <p>It is a well-accepted principle in the industry that either party to a fixed term agreement may terminate the agreement at the end of the fixed term without specifying a particular ground for termination. This again goes to the ‘freedom to contract’ principle where parties should be free to commercially negotiate and agree on the terms that will apply to their specific residential tenancy agreement and circumstances.</p> <p><b>By way of comparison</b>, the following States/Territories allow for ‘no-ground’ termination rights at the end of a fixed term tenancy by requiring the listed notification period by a landlord:</p> <p><b><u>Northern Territory</u></b> – 14 days’ notice</p> <p><b><u>Australian Capital Territory</u></b> – 26 weeks’ notice</p> <p><b><u>South Australia</u></b> – 28 days’ notice</p> <p><b><u>Western Australia</u></b> – 30 days’ notice</p> <p><b><u>Tasmania</u></b> – 42 days’ notice</p> |

|  |  |  |  |
|--|--|--|--|
|  |  |  | <p><b>Queensland</b> – 2 months’ notice</p> <p><b>Victoria</b> – initial fixed term agreement only. 60 days’ notice for tenancies of less than 6 months and 90 days’ notice for agreements of more than 6 months.</p> <p>This comparison shows that all States and Territories (other than Victoria) allow for ‘no ground’ termination rights at the end of fixed terms generally and even Victoria allows for ‘no ground’ termination rights at the end of the initial fixed term. The proposed changes in this Draft Bill go one step further to abolish these rights entirely and provide only limited grounds for termination at the end of a fixed term lease (regardless of whether it is the initial or a subsequent fixed term lease). Accordingly, if these proposed changes in the Draft Bill were implemented, <b>NSW will be the only jurisdiction</b> to go against these well-established principles. REINSW hopes that the Parliament considers the impact of implementing these changes on the shortage of the supply of property in NSW and on the industry, generally. REINSW is concerned that the changes will deter investors from investing in property in our State because of the unnecessary onerous provisions sought to be implemented. This will exacerbate the shortage of supply factor and make investing in shares and other investment portfolios more attractive to investors than property.</p> <p>Further, REINSW does not understand why there should be a difference in the rights of the landlord versus the tenant with respect to termination at the end of a fixed term agreement. As the tenant’s right to a ‘no-grounds termination’ is not proposed to be amended (section 96 of the Act), we are of the view that the landlord’s right should also remain unfettered. In addition, REINSW notes that a tenant is only required to provide 14 days’ notice under section 96, whereas a landlord must provide 30 days’ notice. To be fair to all consumers concerned, REINSW suggests that the tenant’s notification period be mirrored to match that of the landlord.</p> <p>The <i>Residential Tenancies Act 1987</i> allowed a landlord to terminate a tenancy without specifying their grounds to do so, provided the tenants were given a minimum of 60 days’ notice in writing. If the tenant disputed a no grounds termination notice, the tribunal had discretion to uphold the termination notice “if satisfied, having considered the circumstances of the case, it [was] appropriate to do so”.</p> <p>When the <i>Residential Tenancies Act 2010</i> commenced, the tribunal’s discretion was removed (to give landlords greater certainty of being able to regain possession of their property) and the notice period was extended to 90 days. It should be noted that this notice period is considerably longer than the notice periods that apply to any other reason for termination. Accordingly, where a no grounds termination has been correctly issued and the tenant has been given a minimum of 90 days’ notice to vacate, the tribunal must order the tenant to vacate.</p> <p><b>REINSW believes the current provisions relating to no grounds termination are sufficient.</b> REINSW does not believe that a landlord’s right to terminate without grounds undermines a tenant’s other rights under the Act. For</p> |
|--|--|--|--|



|  |  |  |   |
|--|--|--|---|
|  |  |  | <p>example, a tenant is protected against retaliatory eviction by the landlord under section 115.</p> <p>Further to this, REINSW does not agree with the proposition that no grounds' terminations should be removed from the legislation and opposes the landlord being required to provide grounds for termination of a fixed term agreement from a very restrictive prescribed list of possible reasons. In particular, REINSW notes that this prescribed list excludes a common ground for seeking vacant possession; to prepare and list a property for sale (which, in some circumstances, may be due to the landlord's financial hardship). Again, the landlord should be able to deal with their property and make decisions regarding it as they see fit. They shouldn't be required to disclose the reasons (which can be multifactorial and of a sensitive, financial or personal nature) for their decision to terminate the tenancy.</p> <p>A landlord has the right to privacy and should not be expected to disclose personal issues that are not relevant to the technical termination. Why should they be expected to forego their right to privacy and disclose circumstances of divorce, illness, redundancy, financial strife etc. <b>A tenant doesn't need to give a reason why they want to terminate a lease. Why should a landlord?</b></p> <p>If a landlord is required to give a reason for termination, what happens if that reason changes?</p> <p>Landlords' personal circumstances can change, just as tenants' circumstances can change. For example, a landlord located in Brisbane may decide to terminate the tenancy of their investment property in Sydney because they are relocating to Sydney for a job. They provide this as the reason when terminating the tenancy. What if the job falls through at the last minute and the landlord stays in Brisbane? The terminated tenant has already signed a new lease and at that time, or shortly thereafter, they find out that the property they had been renting is being re-listed. This situation has evolved due to circumstances outside the landlord's control. How does the ability for the tenant to pursue the landlord for compensation help the situation? It does no more than extend any unhappiness or bitterness the tenant may already feel about having to move. Instead of moving past the situation, they may then spend further weeks and months challenging an already enacted termination notice.</p> <p>Accordingly, <b>REINSW recommends</b> that:</p> <ol style="list-style-type: none"> <li>1. No changes are made to the existing section 84,</li> <li>2. If changes are made to the existing section 84 of the RT Act then they should be limited to the notice period in the existing section 84(2) so that it be increased from 30 to 90 days,</li> <li>3. If the Parliament rejects REINSW's recommendation to keep the existing section 84 as is in the Act, as a further alternative and a last resort, the proposed grounds to terminate in the proposed section 84 in the Draft Bill should be amended as follows: <ol style="list-style-type: none"> <li>a. The fixed term agreement can be terminated if the landlord or its family require use of the property (i.e. the landlord requires use of its property at the</li> </ol> </li> </ol> |
|--|--|--|---|

|        |  |            |   |
|--------|--|------------|---|
|        |  |            | <p>end of the fixed term). Therefore, the reference to a 12-month period should be removed as circumstances change and a landlord's intention may change due to necessity over the span of a year,</p> <p>b. Include proposed section 84(1)(b) but delete the words "...that will render the premises uninhabitable for a period not less than 4 weeks" so that there is no prescribed timeframe for the repairs or renovations,</p> <p>c. Proposed section 84(1)(c) to remain included,</p> <p>d. New rights of termination to be included as follows:</p> <ol style="list-style-type: none"> <li>i. preparation to market and sell the residential premises,</li> <li>ii. where a tenant refuses to enter into a new fixed-term tenancy,</li> <li>iii. where a landlord requires a tenant to enter into a new fixed term tenancy (including for insurance purposes) and the tenant refuses to do so,</li> <li>iv. the residential premises are going to be demolished,</li> <li>v. a government authority owns the property and needs it for public purposes,</li> <li>vi. the landlord wants to do something else with the property (e.g. use it for a business or to provide short term rental accommodation).</li> </ol> |
| Item 8 | Section 85 – termination of periodic agreement                               | Sch. 1 [7] | <p><b>Not supported by REINSW.</b></p> <p>REINSW opposes these amendments for the same reasons as set out in Item 7 (above) and recommends that they be deleted from the Draft Bill.</p>  |
| Item 9 | Section 85A – consequences for wrongful termination under sections 84 and 85 | Sch. 1 [7] | <p><b>Not supported by REINSW.</b></p> <p>REINSW does not support the introduction of this new section 85A which seeks to penalise a landlord for wrongful termination under the new proposed provisions.</p> <p>If REINSW's recommendation is adopted that the amendments to sections 84 and 85 should not be entertained, then section 85A is not required.</p> <p>However, should the proposed amendments to sections 84 and 85 (or some compromised form of the changes) be accepted, then REINSW opposes section 85A for the following reasons:</p> <ol style="list-style-type: none"> <li>1. Whether a landlord formed the requisite intent necessary to give rise to a termination ground is a 'point-in-time' test and is also extremely subjective. A landlord may have the necessary intent to give rise to the right to terminate at the time of providing the notice, but due to circumstances beyond the landlord's control,</li> </ol>  |

|  |  |  |   |
|--|--|--|---|
|  |  |  | <p>those grounds may change over time. The wording of proposed section 85A(2) does not state for how long a landlord is prohibited from using, or permitting the use of, the premises in a manner different to those given in the grounds for termination.. Just one example of how circumstances can change over time is where a landlord terminates a tenancy so that his/ her elderly parents can move into the property but, shortly thereafter, one of the parents passes away and the other doesn't wish to live there anymore. REINSW is concerned that a landlord may be unnecessarily punished in these cases. Furthermore, proposed section 85A is contrary to the interests of tenants. Landlords will be hesitant to run afoul of these provisions and so more properties will remain vacant exacerbating a shortage of available rental properties when so many people need shelter and housing. Vacant properties are also more likely to be subject to damage, acts of vandalism and squatters.</p> <p>If Parliament rejects REINSW's recommendation to remove this proposed section entirely, the wording of proposed section 85A(2) should be amended so that:</p> <ol style="list-style-type: none"> <li>a. any prohibition period on reletting or using the property for a purpose other than given in the ground for termination is limited to a maximum of 30 days. It is common for most insurance policies to exclude coverage of properties that are vacant for more than 30-60 days; or alternatively,</li> <li>b. there is a penalty against the landlord whereby a sum equivalent to no more than 4 weeks rent is paid to the vacating tenant on a sliding scale depending on the timeframe in which the property is re-let (or used for a purpose other than given in the grounds for termination).</li> </ol> <p>REINSW's view is such an amendment would address the subjectivity and ambiguity of this provision, benefit tenants by reducing the likelihood of rental shortages due to vacant properties, would not impact the validity of a property's building insurance, would prevent damage, acts of vandalism or squatters as a result of properties remaining vacant for long periods of time and would be less prejudicial should the landlord's circumstances change.</p> <ol style="list-style-type: none"> <li>2. The proposed penalty in section 85A(2) can potentially put a third party at risk of being liable for a penalty if the premises are used for a reason other than that which formed the ground for termination, even if they didn't know about that ground for termination.</li> <li>3. A landlord may have several grounds to terminate an agreement under the amended sections 84 or 85, however, a penalty under section 85A will be</li> </ol> |
|--|--|--|---|

|         |  |             |   |
|---------|--|-------------|---|
|         |  |             | <p>imposed if the one ground that was relied upon for the termination no longer exists after termination. Accordingly, REINSW recommends that this proposed section should be amended to provide that a breach only occurs where no grounds exist under sections 84 or 85.</p> <p>4. Proposed section 85A(3) is unreasonable, and dictates how a landlord must use its own property by allowing the Tribunal to determine the commercial terms which will apply to a reinstated lease.</p> <p>5. Proposed section 85A(4) is uncertain and ambiguous – how is compensation intended to be calculated? What factors would a Tribunal be required to consider? REINSW recommends that these matters be clarified in the Draft Bill.</p> <p>It is important to understand what the intended ‘prescribed period’ is for the purposes of proposed section 85A(5). Without knowing this period, stakeholders are unable to properly consider the complete impact of this proposed section.</p> |
| Item 10 | Section 115 – Retaliatory Evictions                              | Sch. 1 [8]  | <p><b>Not supported by REINSW.</b></p> <p>Tribunals, like courts, are independent – they are separated from the executive and legislative branches of government. The proposed change seeks to remove the Tribunal’s discretion by requiring that they “must” make such an order. REINSW opposes this impingement on the separation of powers.</p> <p>The current drafting in the legislation should remain because it requires the Tribunal to consider whether it is appropriate on the facts of a particular case as to whether to make an order.</p>  |
| Item 11 | Section 115(2)(d) – expand the scope of the retaliatory eviction | Sch. 1 [9]  | <p><b>Not supported by REINSW.</b></p> <p>REINSW does not support this change, nevertheless, if Parliament is minded to make the proposed changes to section 115, REINSW’s view is that it is appropriate for the Tribunal to consider all relevant matters in reaching a decision.</p>   |
| Item 12 | Section 115(2A) – termination not in retaliation                 | Sch. 1 [10] | <p><b>Not supported by REINSW.</b></p> <p>The Tribunal will make a decision, on the evidence before it at the time, whether it is appropriate to make an order under section 115. REINSW sees no benefit in placing the burden of proof on the landlord to demonstrate that a termination is not retaliatory.</p> <p>Furthermore, property managers, who often appear in property-related Tribunal proceedings as the agent for the landlord, do not have the appropriate training or expertise to deal with complex issues such as burdens of proof. REINSW is concerned that if these provisions were implemented it may result in landlords, who have lost a case, seeking compensation from property managers. This</p>   |

|         |  |             |   |
|---------|--|-------------|---|
|         |  |             | <p>gives rise to issues about whether this would be covered by a property manager's insurance.</p> <p>While REINSW does not support this provision, if it were to be implemented REINSW's view is that landlords should represent themselves in proceedings of this nature, or engage a solicitor to argue the case, the latter of which would be costly and time consuming.</p>  |
| Item 13 | Section 115A – limitation on landlord's ability to terminate | Sch. 1 [11] | <p><b><i>Not supported by REINSW.</i></b></p> <p>REINSW does not support the amendment which prevents a landlord from issuing a further termination notice for at least 12 months if the Tribunal finds that a termination notice was retaliatory.</p> <p>Circumstances throughout a lease can change and REINSW is opposed to usurping a landlord's legitimate right of termination. Further, a landlord should not receive a penalty where it does issue a subsequent termination notice within that 12-month period if the grounds are legitimate. REINSW's view is that the parties can refer the matter to the Tribunal if a subsequent termination notice is alleged to be retaliatory.</p> |

The following amendments set out in the Draft Bill are aimed at addressing the 2022 NSW floods:

|         |   |             |   |
|---------|---|-------------|---|
| Item 14 | Sections 229 to 232 – provisions dealing with flood affected properties | Sch. 1 [12] | <p><b><i>Not supported by REINSW with amendment.</i></b></p> <p>REINSW supports the need to assist tenants impacted by the recent NSW floods. However, a legislative solution is cumbersome. There are other more flexible solutions available.</p> <p>However, if Parliament is minded to consider this matter, then the following is relevant.</p> <p>REINSW is concerned that the proposed provisions are all-encompassing and will have the unintended effect of applying to properties that have not been affected by the floods.</p> <p>The proposed drafting makes an 'impacted lease' one in which the premises are located in a 'flood impacted area'. There is no further condition on this. REINSW believes that this will have the unintended and unreasonable effects on landlords for properties not ever having been affected by the floods or not being significantly impacted by the floods. Not all of the local government areas listed in the definition of 'flood impacted area' were actually or significantly impacted by the floods and so the definition doesn't work and has unintended effects on consumers.</p> <p>REINSW's understanding is that the current local government areas defined in proposed section 229 reflect the local government areas that are eligible for the Australian Government Disaster Recovery Payment. However, there is a distinction between a one off lump sum payment and imposing on landlords a 12-month moratorium on termination and rent increases, and REINSW's view is</p> |
|---------|---|-------------|---|

|  |  |   |
|--|--|---|
|  |  | <p>that the scope of this definition should be narrowed so as to only apply to areas directly impacted by flooding.</p> <p>REINSW also seeks to highlight the current environment to provide context as to the additional burden these changes will create for landlords. These changes are proposed close to the end of a very difficult time for both landlords and tenants alike, as a result of COVID-19. Landlords have been subject to restrictions on rent increases, amongst other things, due to COVID-19. Further, REINSW is concerned about the effect of these proposed changes on landlords who have been impacted by the recent floods. To implement these additional changes during an already difficult period will cause unreasonable and unnecessary burden on landlords, many of whom are currently experiencing financial hardship as a result of COVID-19 and/or the floods. In REINSW's view, the Government is better placed than consumers to provide financial relief to those impacted by the floods as it has more resources, and is better able to assess the needs of the community at large.</p> <p>REINSW recommends that a definition be inserted for a <b>'flood impacted property'</b> being a property located within a 'flood impacted area' that has in fact suffered material damage as a result of the 2022 NSW floods.</p> <p>REINSW also recommends, that where only specific suburbs within a local government area have been significantly impacted by flooding, Government should specify only these suburbs, as opposed to the entire local government area, in the definition of "flood impacted areas".</p> <p>Any drafting that seeks to apply these provisions to properties not directly affected by the floods is unreasonable, uncommercial and unfair to consumers.</p> <p>With respect to proposed sections 231(2) and 231(3), REINSW is of the view that it is unreasonable and uncommercial in the current market to restrict a landlord from entering into a lease for a property in a flood impacted area if the rent is more than that payable under an agreement in existence on 25 February 2022 or, otherwise, the median rent for the same type of premises. Given that most agreements in existence on 25 February 2022 were entered into a significant period of time before that date, it is unlikely that it reflects market rent as at the present time. Further, the definition of "type of premises" refers to outdated data from the December 2021 Quarter. Therefore, REINSW recommends the deletion of section 231(3) and for section 231(2) to be amended to refer to the market rent as at 25 February 2022.</p> |
|--|--|---|

## 4. Conclusion

As set out above, REINSW does not support the Bill. The assistance tenants require should come from Government and not landlords.

REINSW has considered the Draft Bill and has provided its comments above, aiming to provide input on as many pertinent aspects of the Draft 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**