

Department of Customer Service

Improving NSW rental laws consultation paper

July 2023



Acknowledgement of Country

The NSW Department of Customer Service acknowledges the Traditional Custodians of the lands where we work and live. We celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of NSW.

We pay our respects to Elders past, present and emerging and acknowledge the Aboriginal and Torres Strait Islander people that contributed to the development of this Policy.

We advise this resource may contain images, or names of deceased persons in photographs or historical content.

Improving NSW rental laws consultation paper

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1 Minister's Message



With renters experiencing one of the tightest rental markets in recent memory, the NSW Government is prioritising implementation of our election commitments to make renting in NSW fairer and more affordable and to provide more protection for renters.

We are appointing a new Rental Commissioner who will be an advocate and voice for renters, working closely with the Government, landlords, industry and renters. The Rental Commissioner will help implement our commitments, including:

- removing 'no grounds' evictions,
- making it easier for tenants to have pets,
- improving protection of renters' data and privacy, and
- implementing a portable bond scheme.

Through this consultation paper, we are seeking your comments on these and a number of other issues affecting renting in NSW.

Firstly, we ask for your feedback on what reasons are valid and what evidence is needed for a landlord to end a tenancy. Requiring a valid reason to end a tenancy will provide renters with greater certainty to build their lives in a rental home and to know when and why they can be asked to move.

Secondly, we have proposed a model for allowing renters to more easily be able to keep pets. We seek feedback on how the proposed changes meet the needs of renters and landlords, and whether any adjustments are necessary.

Thirdly, we consider the best way to protect renters' personal information during the rental application process, including managing how their information is collected, used, stored and destroyed. This work builds on NSW Fair Trading's best practice guidance for the collection of renters' information, and will give renters more security and confidence about how their data is handled.

Fourthly, we seek feedback on the design of a portable bond scheme. This scheme is intended to reduce the burden on renters when moving to a new rental property by allowing them to transfer the bond from their old property.

Finally, we have also asked for your thoughts on other potential changes to rental laws to help address issues around rental affordability, disclosure of information and current gaps in rental protections.

This is one more step toward implementing the Government's commitments to improve residential tenancy laws and make renting fairer. We will continue consulting with stakeholders and the community to develop a modern approach to renting that meets the needs of NSW residents.

Balanced law reform requires us to all work together, build trust and work towards a system that doesn't create an adversarial relationship between landlords and tenants.

I am excited to lead this work and to hear from the people of NSW about their experiences and where we can most improve.

The Hon. Anoulack Chanthivong MP
Minister for Better Regulation and Fair Trading
Minister for Industry and Trade
Minister for Innovation, Science and Technology
Minister for Building
Minister for Corrections

2 Purpose of this consultation paper

The purpose of this consultation paper is to get feedback from the public about proposed changes to tenancy laws. Feedback will help to make the changes better. NSW Fair Trading, within the Department of Customer Service, is holding the consultation and will carefully consider all feedback.

2.1 Have Your Say

We invite you to read this paper and give feedback on the proposed tenancy law changes.

We would prefer to receive your submission using the online options on the Have Your Say consultation website, or by email in an accessible format. Accessibility is about making documents easily available to all members of the public, including those who have an impairment (such as visual, physical or cognitive). Further information on how you can make your submission accessible is at <http://webaim.org/techniques/word/>.

You can give feedback in many ways:

- complete a survey or upload a submission at <https://www.haveyoursay.nsw.gov.au/improving-nsw-rental-laws>
- by email to residentialtenancy@customerservice.nsw.gov.au
- by post to:

Residential Tenancies
Policy & Strategy, NSW Fair Trading,
Better Regulation Division
Department of Customer Service
4 Parramatta Square
12 Darcy Street
Parramatta NSW 2150.

Submissions are open until Friday 11 August 2023.

Important note: publication of submissions

Submissions may be made publicly available. If you do not want your personal details or any part of your submission published, please indicate this clearly in your submission. Automatically generated confidentiality statements in emails are not sufficient. Submissions may be referred to in a report on the outcome of the consultation. If you have concerns about your submission being published or being connected back to you, or if it raised concerns for your safety, anonymous submissions will also be accepted and will be referred to as such in the report.

Please note, there may be circumstances where the Government is required by law to release the information in your submission. For example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*.

2.2 Introduction

The current rental market in NSW is the toughest that renters have seen for decades. The NSW Government is committed to improving rental laws and making them fairer for everyone in NSW.

The Government's election commitments include:

- appointing a Rental Commissioner to be a voice for renters
- addressing secret rent bidding
- amending landlords' ability to end a lease without a reason
- making it easier for renters to have pets
- introducing new data protection requirements for real estate agents when they handle renters' personal information
- implementing a portable rental bond scheme.

On 10 May 2023, the Government introduced the Residential Tenancies Amendment (Rental Fairness) Bill 2023 into the NSW Parliament, to expand protections for rent bidding and support implementing a portable rental bond scheme. The Bill was passed by the Parliament on 22 June 2023. The process to appoint a Rental Commissioner as an advocate for renters' rights is also underway.

This public consultation is the next step in delivering rental reforms to further strengthen protections for renters and make rental laws fairer.

This paper seeks feedback on the Government's approach to:

- amend a landlord's ability to end a lease without a reason,
- make it easier for renters to have pets,
- increase protections for renters' personal information, and
- design of the portable rental bond scheme.

Other improvements are also being explored including:

- collecting more timely data about rent increases and making this publicly available,
- strengthening existing limits on rent increases,
- telling renters about a rental property's use of embedded networks,
- strengthening laws about free ways to pay rent, and
- considering how automated decision making may unfairly affect renters.

For more information about the current tenancy laws, visit the Renting page on the NSW Fair Trading website at www.fairtrading.nsw.gov.au/housing-and-property/renting.

3 Removing ‘no grounds’ terminations

3.1 The current law

The *Residential Tenancies Act 2010* (the Act) lists reasons why a landlord can end a tenancy, such as because the renter didn't pay their rent or the landlord has sold the property.

It also includes an ability for the landlord to end the tenancy without needing any reason. Ending a tenancy without a reason is called a ‘no grounds’ termination.

For a **periodic (‘week-to-week’ or ‘rolling’) lease**, the landlord can end the tenancy at any time without a reason, but they must give the renter at least 90 days’ notice.

For a **fixed term lease (tenancy for an agreed amount of time, such as one year)**, the landlord cannot end the tenancy during the agreed time (except in exceptional circumstances). For example, the landlord cannot generally end a 12-month lease until the 12 months have passed.

If the landlord wants the renter to leave at the end of the agreed time, they must give the renter at least 30 days’ notice. They do not need a reason as to why they are ending the tenancy.

3.2 What we want to know

The NSW Government has committed to ending ‘no grounds’ terminations. However, we are after feedback on three specific issues that will help inform the details of the new laws:

1. If requiring a landlord to give a reason should apply just to periodic leases, or also where a fixed term lease is being ended.
 2. The list of prescribed reasons (‘grounds’) on which tenancies should be able to be ended.
 3. The evidence that a landlord must show to prove the reason is genuine.
-

3.3 Ending a fixed term lease

Fixed term leases can give greater certainty to renters, as the renter generally can't be asked to leave until the agreed amount of time has passed. However, they are also less flexible for renters. The renter must pay a break-lease fee if they want to leave the property early.

The NSW Government has committed to requiring landlords to have a valid reason to end a periodic lease (also known as a ‘rolling’ or ‘week-to-week’ lease). We want to know if you think that landlords should also need to have a reason to end a fixed term lease.

Here are three options used in other states and territories:

1 – The Queensland model.

The landlord does not need a reason to end a fixed term lease after the agreed term of the lease has finished.

2 – The Victorian model.

The landlord does not need a reason if they end a fixed term lease after one term. But if the renter stays for additional fixed terms, then the landlord must have a reason to end the lease.

3 – The Australian Capital Territory (ACT) model.

The landlord needs a reason when ending any type of lease.

3.4 New reasons for ending a lease

The Act already allows landlords to terminate for a range of reasons, but it does not yet cover every valid reason for ending a tenancy. We are seeking feedback on what new reasons should be added to the Act so that landlords can properly end a tenancy when they need to.

These reasons would apply both when a landlord ends a fixed term lease at the end of the agreed time, and for rolling leases.

There are five new reasons currently being considered. These are in the table below.

Reasons already included in the Act that landlords can use to end a tenancy	Proposed new reasons
<p>The renter:</p> <ul style="list-style-type: none"> • breached their agreement • didn't pay rent or utilities • caused serious damage or injury • used the property for illegal activity • threatened, abused or harassed the landlord, agent or a contractor • abandoned the property • didn't fulfill a rectification order • no longer meets criteria for social housing • refused alternative social housing • gave up possession of the property with consent of the landlord <p>The property:</p> <ul style="list-style-type: none"> • was sold and needs vacant possession • is unfit for habitation <p>The landlord:</p> <ul style="list-style-type: none"> • is suffering financial hardship 	<p>The property:</p> <ul style="list-style-type: none"> • is being prepared for sale • will go through reconstruction, repair or renovation that requires it to be vacant • will change its use (e.g. change from a home to a shop or office) • will be demolished <p>The landlord:</p> <ul style="list-style-type: none"> • will move into the property, or a member of their immediate family will move in

2. Are there any other specific situations where a landlord should be able to end a lease?
3. What would be an appropriate notice period for the five proposed reasons (and for any other reasons you have suggested)? Why is it reasonable?

3.5 Evidence and other restrictions could apply

In other states and territories, the landlord must provide some evidence to the renter when they end the tenancy for particular reasons.¹ For example, in Victoria if a landlord wants to end the tenancy to make repairs or renovate, they must give evidence that their reason is genuine. This evidence could be a contract with a tradesperson or a building permit.

Also, after the tenancy has ended, the landlord cannot rent out the property again for six months.² For example, in Queensland if the tenancy was ended because the landlord said they would move in, then that property cannot be rented again for the six months after the renter left it.

Requirements like evidence or temporarily banning the property from being rented again are meant to stop landlords from using a reason that isn't true.

4. What reasons should require evidence from the landlord? What should the evidence be?
5. Should any reasons have a temporary ban on renting again after using them? If so, which ones and how long should the ban be?

¹ *Residential Tenancies Act 1997* (VIC), s91ZZO; *Residential Tenancies Act 1997* (ACT), s 96.

² *Residential Tenancies Act 1997* (VIC), s91ZZH; *Residential Tenancy and Rooming Accommodation Act 2008* (QLD), s 365B – 365D.

4 A new model for keeping pets

4.1 The current law

In NSW a pet can only be kept in a property if the landlord agrees, unless it is an assistance animal (like a guide dog). Landlords can refuse tenancy applicants who have pets, and they may also refuse existing renters' requests to get a pet during a tenancy, without providing a reason.

Australia has one of the highest rates of pet ownership in the world with 69% of households owning a pet.³ Pets are a part of Australian life and bring important benefits like companionship and improved mental and physical health.

In 2022, the Department of Customer Service asked the public if they support changes to tenancy law to make it easier for renters to keep pets. The consultation showed strong support for change with 82% of survey respondents and 73% of written submissions in favour.⁴

The NSW Government supports the right of renters to keep a pet on a rental property but also recognises the need for landlords to be able to manage genuine risks to their rental property.

4.2 Our proposed model to make it easier to keep pets

Changes will need to be made to tenancy laws to make it easier for renters to keep pets.

We are seeking feedback on the proposals below to help ensure that the right balance is reached for landlords and renters.

Pet form

There will be a standard pet form that a renter can use to notify a landlord that they want to keep a pet. The landlord will have 21 days to consider the notice. If the landlord doesn't object, then the pet is approved.

6. Is 21 days the right amount of time for a landlord to consider a request to keep a pet? If not, should the landlord have more or less time?

Refusing permission

In the recent consultation, we heard that the reasons why a landlord can refuse an animal should be clear and specific and listed clearly in the Act or Regulation. This will minimise disputes between the landlord and renter.

For example, valid reasons to refuse an animal could be:

³ Animal Medicines Australia, *Pets and the Pandemic: A social research snapshot of pets and people in the COVID-19 era*, (2021); Animal Medicines Australia, *Pets in Australia: A national survey of pets and people*, (2019).

⁴ In the survey, 95% of tenants supported change. Landlords were split 48% against to 46% in favour. Real estate agents were the group least supporting change, with 72% against and only 23% in favour.

- it is a restricted dog, or a dog declared to be dangerous or menacing,
- keeping the animal breaks other laws, such as the *Prevention of Cruelty to Animals Act 1979*, council zoning laws or council ordinances,
- the landlord has previously received an exclusion from the NSW Civil and Administrative Tribunal (the Tribunal) for the property, type of animal, or number of animals.

If the landlord does not want to allow the pet in the property for any other reason, they must apply to the Tribunal for an order.

The prescribed reasons for landlords to refuse a pet in Queensland tenancy laws are at [Appendix A](#).

7. What are valid reasons why a landlord should be able to refuse a pet without going to the Tribunal? Why?

8. Should the Tribunal be able to allow a landlord to refuse the keeping of animals at a specific rental property on an ongoing basis? Please explain.

Setting conditions

Landlords can already require renters to pay for carpet cleaning and fumigation if the renter has a pet.

Another condition that could be considered is requiring the animal to be outside the home if it is a type of animal usually kept outside, like a chicken.

Conditions that a landlord can set should be reasonable.

9. What other conditions could a landlord reasonably set for keeping a pet in the property? What conditions should not be allowed?

5 Renters' personal information

5.1 The current law

Rental applicants (people applying for a rental property) are typically asked to provide a lot of personal information to agents, landlords, or property technology companies (proptech). Proptechs provide apps that agents use to manage rental applications.

Applicants provide personal information such as their driver's licence, Medicare card, passports, work details, and financial information.

Applicants may be asked to provide far more personal information than is needed. This risks exposing their personal information to cyber-attacks or data breaches. It can also lead to unfair or discriminatory outcomes. These risks are greater in the current rental market as applicants may need to apply for multiple properties. Applicants' personal information may then be held by multiple agencies and across multiple platforms.

NSW does not have specific laws regulating what information can be collected from rental applicants or how it must be handled and destroyed. NSW Digital Identity is also being trialed in NSW. It will provide an easier way for people to prove their identity. However, a full roll out of NSW Digital Identity will take time.

Australian Privacy Act

The Australian *Privacy Act 1988* (Privacy Act) regulates organisations with an annual turnover of over \$3 million. It is estimated that this covers around 45% of real estate agencies.⁵ The Australian Government is considering removing this threshold, however this change is likely to take some time.

The Privacy Act includes 13 Australian Privacy Principles, which provide the standards, rights and obligations relating to collection, use and disclosure of personal information. These principles do not provide strict rules or guidance for any particular industry - such as real estate agents and proptech.

Obligations on real estate agents and NSW Fair Trading guidance

Specific laws that apply to real estate agents in NSW require them:

- not to use or disclose confidential information unless the client or customer authorises this use, or it is otherwise required by law,
- to act honestly, fairly and professionally, and with reasonable skill, care and diligence.

These obligations are enforceable, and carry fines for non-compliance.⁶ However, these obligations do not apply to proptech or landlords.

In March 2023 the Fair Trading Commissioner issued best practice guidance on dealing with renter personal information collected during the rental application process. This guidance is not legally enforceable at the moment.

The Fair Trading Commissioner's guidance is available on the Fair Trading website:

<https://www.fairtrading.nsw.gov.au/housing-and-property/renting/personal-information-and-tenancy-applications>.

⁵ Kylie Dulhunty 'Are the proposed Privacy Act recommendations a regulatory overreach?', *Elite Agent*, 20 April 2023: <https://eliteagent.com/are-the-proposed-privacy-act-recommendations-a-regulatory-overreach>

⁶ Property and Stock Agents Regulation 2022, Schedule 1.

5.2 Proposed new model

To protect renters' personal information and reduce the risk that their information will be misused, the Act could be amended to:

- limit what information can be **collected** from applicants,
- restrict how renter information is **used and disclosed**,
- detail how renter information should be **stored and destroyed**,
- ensure renters have a right to **see and correct information** held about them.

Information that can be collected

Broadly speaking, there are three types of information that landlords and agents may need to assess a tenancy application:

- identity information - to prove the applicant is who they say they are,
- financial information - to show the applicant can pay the rent, by showing that they have a job or alternative source of income,
- suitability information - to show if the applicant is likely to look after the home and is reliable.

There are a number of ways that the information that is collected from people applying for a tenancy could be limited. These could include:

- specifying that only certain information can be collected (this could include the use of a prescribed tenancy application form),
- specifying what information is **not** allowed to be collected (this is the Victorian approach, which limits collection of certain information such as whether a renter has taken legal action or had a dispute with a rental provider),
- providing general rules about information collection, such as that the information collected must be limited to information that is reasonably necessary to assess a tenancy application (this is the approach in the Privacy Act),
- only collect information that is reasonably necessary and the Act, regulations, or a prescribed tenancy application form could set out details about what is “reasonably necessary”.

It could be possible to use a combination of some of the above approaches (for example, providing general rules about information collection and specifying certain information, or reasonably necessary information) that can be collected. This could have the benefit of maintaining flexibility in the tenancy application process, while making any requirements more easily enforceable.

A possible approach could limit the information collected to the following:

Proof of identity	Ability to pay agreed rent	Suitability
No more than 2 of the following	No more than 2 of the following	No more than 2 of the following
Driver's licence	Confirmation of pay with employer	Rental ledger from previous rental property
Proof of age card	Employment contract with sensitive details redacted	Previous three months of rent receipts
Passport (and visa, if relevant)	Payslips from previous two months	Character reference in writing
Medicare card	Bank statement with daily transactions redacted	Contact for oral character reference

Utilities bill at current address	Evidence of income from other sources, e.g. trusts, Centrelink income	Was bond refunded in full at previous address? If not, explain why
Letter from Government department addressed to current address	Evidence of savings (with proof of ownership, if relevant)	
	Copy of tax return, with sensitive details redacted	

10. Do you support limiting the information that applicants can be asked for in a tenancy application? Why/why not?
11. Do you have any concerns with landlords or agents only being able to collect the information set out in the table above to assess a tenancy application? Please explain.
12. Do you support the use of a standard tenancy application form that limits the information that can be collected?

Discrimination against rental applicants

We have heard that some rental applicants may be subject to discrimination when applying for a property. Certain groups, such as people with children, older people, Aboriginal and Torres Strait Islander people, or people from certain cultural backgrounds may find it harder than others to be approved for a rental property.

During the application process, a landlord can use the information they collected about applicants to help make their decision on who to rent to. Landlords have the right to select the most appropriate person to rent their property but must do so in accordance with anti-discrimination laws. The *NSW Anti-Discrimination Act 1977* makes it illegal to refuse to rent, or to make an offer of rent on less favourable conditions, on the grounds of an applicant's sex, race, age, disability, marital status, gender, or sexual identity.

Limiting the information that is collected may help reduce discrimination for rental applicants. For example, a standard application form or a combination of a standard application form with other requirements about information collection may prevent a landlord or agent collecting some information that forms the basis for discrimination.

13. Do you think that limiting the information that may be collected from rental applicants will help reduce discrimination in the application process?

Use and disclosure of renter information

Other jurisdictions' approach to use and disclosure of renter personal information

Use and disclosure is addressed differently in different jurisdictions:

- in Victoria, landlords may only use personal information to assess the person’s suitability as a renter⁷.
- in South Australia, the Residential Tenancies (Protection of Prospective Tenants) Amendment Bill 2023 proposes banning a person from disclosing renter information, unless an exception applies (e.g. with consent of the renter or where required by law). Note that this Bill has not yet become law.
- in the Northern Territory, landlords, renters, or agents for either party may not disclose information about a person’s financial or personal affairs if that information was obtained in the course of negotiating a rental agreement.⁸
- the Privacy Act provides that organisations may only use or disclose personal information for a purpose for which it was collected, or for a secondary purpose if an exception applies.

Potential use and disclosure obligations in NSW

Amending the Act to impose use and disclosure obligations on all parties who handle renter personal information would support better protection of renter information and data.

This could be done by amending the Act to:

- provide that renter personal information may only be used or disclosed for confirming a rental applicant’s identity, ability to pay the rent and suitability for the property. Exceptions could include:
 - to assess tenancy applications for other properties in the future but only if the renter agrees to their information being used for this,
 - if required to by law (e.g. in the context of a criminal investigation).
- outline what renters must be told about how their collected information will be used before they apply for a property.

14. Do you support new laws that set out how landlords and agents can use and disclose renters’ personal information? Why/why not?
15. What should applicants be told about how their information will be used before they submit a tenancy application? Why?

How renter personal information should be stored and destroyed

For organisations not covered by the Privacy Act, there are currently no restrictions in NSW on how renter personal information is stored or when it must be destroyed.

Real estate agents may feel like they need to keep as much renter personal information as possible to show:

- their clients (landlords) that they have properly done their job and selected the best renter for a property, and
- they have followed the laws that apply to them if this is ever questioned.

In the absence of any obligation to delete renter personal information, this means that agents may keep vast amounts of renter personal information for far longer than is necessary.

Other jurisdictions approach to storage and destruction of renter personal information

⁷ Residential Tenancies Act 1997 (Vic), s 30B.

⁸ Residential Tenancies Act 1999 (NT), s 157M. Note this section only applies while a COVID-19 public health emergency has been declared.

The Privacy Act requires organisations holding personal information to take reasonable steps to protect that information from misuse, interference and loss, and from unauthorised access, modification or disclosure.

The South Australian Bill includes similar obligations. Additionally, the Bill requires that renter personal information must be destroyed:

- for the successful applicant, three years after a tenancy ends
- for the unsuccessful applicant:
 - six months after collecting the information (with the applicant’s consent), or
 - 30 days after a lease was entered into.⁹

Potential storage and destruction of renter personal information in NSW

To ensure that renter personal information is securely stored, and deleted when it is no longer needed, the Act could be amended to set out:

- how renter personal information must be stored. This could be specific storage and security requirements, or a general obligation to protect the information from misuse
- when information must be destroyed. The Act could detail when information should be deleted, or that personal information should be deleted when it is no longer necessary.

16. Do you support new laws to require anyone holding renter personal information to secure it? Why/Why not?

17. How long should landlords, agents or proptechs be able to keep renter personal information? Please explain.

Renter’s right to view and correct their personal information

The Department has heard that agents, landlords, and proptech sometimes search for references to renters on the internet, including social media and Court details. As part of the changes on how renter information is gathered and used, renters should also be able to ask to access the personal information held about them, and have that information corrected if it is wrong.

Organisations covered by the Privacy Act are already required to do this within a reasonable timeframe. The Act could be amended to extend this to anyone holding renter personal information, and to set out when these actions must be done.

The Act could require anyone holding renter personal information to:

- respond to applicants’ requests to access their personal information within 30 days; and
- take reasonable steps to correct any errors in the applicant’s information that the applicant makes the agent, landlord or proptech aware of within 30 days.

18. Do you support requiring landlords, agents or proptechs to:
(a) give rental applicants’ access their personal information,
(b) correct rental applicants’ personal information?
Please explain your concerns (if any).

⁹ Residential Tenancies (Protection of Prospective Tenants) Amendment Bill 2023, Part 2, s 5 – new s 76B.

5.3 Automated decision making

5.3.1 Automated decision making could be unfair for rental applicants

The Department understands that property technology companies' apps often sort, rate and rank rental applicants. This can include creating a shortlist of recommended applicants for the landlord or agent to consider. The process may be done using computer programs and data, with no or minimal human supervision. This kind of process is known as "automated decision making" (ADM).

The use of ADM in the tenancy application process could lead to unfair outcomes for applicants. In some situations, a person's application may never go to an agent or landlord as the ADM rules unfairly exclude them. Without human oversight, cases of mistaken identity can go uncorrected. It has also been suggested that data that appears 'neutral', such as an applicant's current postcode, could be used to guess other characteristics, like an applicant's ethnicity.

5.3.2 Potential options to support fairness for applicants

Potential options to protect rental applicants where ADM is used to assess a tenancy application could include:

- prohibiting the use of certain data (e.g. applicant age or suburb) to assess a rental application,
- requiring agents and landlords to accept non-digital applications, and to not penalise applicants for using them,
- requiring any organisation using ADM to explain to Fair Trading, or customers, the ADM rules used to assess applications.

19. Are you aware of automated decision making having unfair outcomes for rental applicants? Please explain.

20. What should we consider as we explore options to address the use of automated decision making to assess rental applications?

6 Portable rental bond scheme

6.1 The current law

When renters move into a new home, they pay a rental bond. This bond pays for any damage to the property when they move out. If there is no damage, then the renter can claim all the bond money back.

When the renter moves out of their old home and into a new rental property, they pay another bond. Usually, the renter pays the new property's bond before they can get the old property's bond back.

This adds to renters' moving expenses, because they have paid two rental bonds at the same time – one for the old property and one for the new property. They may get the old property's bond back but it can take time.

Section 186A of the *Residential Tenancies Act 2010* gives the Government powers to create a portable rental bond scheme.

The NSW Government committed to implementing a portable rental bond scheme.

The new scheme will allow a renter to transfer their bond from the old property to the new property, before the bond from the old property has been repaid. This should help reduce financial strain and cost of living pressure on renters when moving between rental properties.

6.2 Design of the portable bond scheme

We are seeking feedback on how to best set up the scheme. Your feedback will help us make sure that a portable bond scheme is customer focused and works for renters, landlords and real estate agents.

Design of the scheme

The scheme would involve a renter who has a bond held for their previous landlord being able to use this bond for payment to the new landlord before the first bond is released.

If the new bond costs more than the old bond, the renter would need to pay the difference before being able to use the scheme and before entering into the new tenancy agreement.

The Government could then issue a certificate to the new landlord stating the amount that is held as a bond and that this amount can be used for the new bond.

If the previous landlord successfully claims part of the bond (for example for damage or rent owing), this amount will not be available in the bond for the new landlord. The renter will then need to 'top up' the bond amount for the new landlord.

Timing for topping up the new bond

If the renter needs to pay extra money to 'top up' the bond for the new landlord because the previous landlord has claimed part of their bond, the renter will need to do so within a certain timeframe. For example, this timeframe could be seven or 14 days, or one month.

21. How long should a renter have to top up the new bond if some or part of the bond has been claimed by the previous landlord?

Consequences if the renter does not top up the second bond

If a renter fails to top up the second bond within the required timeframe, one option would be for the new landlord to be able to terminate the tenancy agreement and find a new renter.

Alternatively the payment of bond to the new landlord could be guaranteed in some way, with the cost to be recovered from the renter.

Further consequences could involve the renter no longer being eligible to use the scheme for future tenancies.

22. What should happen if the renter does not top up the second bond on time?
Please explain why.

Should using the scheme be optional or compulsory?

The Government wants to make the scheme available to as many renters as possible. However, there may be situations where a renter should not be able to use the scheme. For example, if a renter has previously failed to pay back a bond under the scheme.

Some landlords may also want to be able to choose whether to accept a renter who wishes to use the scheme. There is a risk that if the scheme is optional, landlords may prefer renters who do not use the scheme and pay the full bond upfront. However, if the scheme does not involve any risk to the new landlord, this is less likely to occur.

23. Should this scheme be available to all renters, or should it only be available to some? Please explain why.
24. Who should have a choice on whether to use the scheme?

Other feedback about the design and implementation of the scheme

The design and implementation of the portable bond scheme is complex. It will also require changes to Rental Bonds Online (the system that is currently used to lodge bonds digitally). The Government invites you to give any other feedback that you think may help us as we design and implement the scheme.

25. What other (if any) things should we consider as we design and implement the portable bond scheme? Please explain.

7 Information to help renters know when a rent increase is ‘excessive’

7.1 The current law

Having access to timely and accurate information is important for consumers to make informed decisions and to exercise their rights. This is especially important for renters because one of the key ways they can dispute a rent increase is by applying to the Tribunal for a hearing if they consider an increase to be ‘excessive’.

At the moment, there is a lack of information about average rents paid and rent increases available from an easy to access central source. This includes data on how much rents go up:

- on average,
- based on location,
- based on property (e.g. apartments vs houses).

This makes it difficult for renters to work out if a potential increase in rent, or existing rent, for a particular property or location is fair and how it compares with similar properties. This then also makes it difficult for renters to know if a rent increase is ‘excessive’ and if they should dispute it by applying to the Tribunal.

7.2 Some possible options

Making data on rents and increases more transparent and having this information available to renters could:

- allow renters to more easily challenge rent increases that are unfair as they could more easily assess if it meets the criteria of being ‘excessive’,
- make rent charges and increases fairer and more transparent overall as renters and landlords could more easily compare rents for similar properties in similar locations.

The NSW Government could collect rent increase information and make it publicly available by, for example:

- requiring landlords or their agents to report rent increases to the NSW Government using an online system (e.g. Rental Bonds Online), or
- sending out a voluntary survey to renters, landlords or their agents asking if and by how much rent for a particular property has increased throughout the tenancy.

26. Do you have any concerns about the NSW Government collecting information on rent increases and making it publicly available for renters? If yes, please provide details.

27. What do you think is the best way to collect this information?

8 Other changes to improve rental affordability

8.1 The current law

There are some protections in the Act that limit rent increases. For example:

- a landlord can only increase rent once every 12 months where a renter has a periodic agreement or fixed term agreement that is longer than two years (see s 41 of the Act),
- for fixed term agreements less than two years, landlords can only increase rent if the agreement sets out the increase amount or how the increase will be calculated (see s 42 of the Act).

These protections give certainty to renters - so they know what to expect when they rent a property, and do not face continual rent increases.

8.2 Clarifying the limits on rent increases

The NSW Government is considering clarifying the existing laws that place limits on how often landlords can increase rent by making it clear that the limit continues into a new type of agreement.

For example, currently the rent under a periodic agreement and a fixed term agreement of more than 2 years cannot be increased more than once in 12 months. However, if someone switches from a periodic agreement to a fixed term agreement the rent can increase even if there was an increase within the last 12 months under the periodic agreement. The law could be changed to prohibit rent being increased twice in 12 months simply because a renter has changed their agreement type.

It would also be possible to prevent rent being increased more than once every 12 months for fixed term agreements of less than two years. However, this may create an incentive for landlords to terminate a tenancy so that they can get a new tenant and increase the rent.

28. Do you think the 'one increase per 12 months' limit should carry over if the renter is swapped to a different type of tenancy agreement (periodic or fixed term)? Please explain.

29. Do you think fixed term agreements under two years should be limited to one increase within a 12 month period? Why or why not?

8.3 Other options to address affordability

There are other options the NSW Government could explore to improve rental affordability through limiting rent increases. These other options include to:

- Require a landlord to prove that a rent increase is *not* 'excessive' where, for example, a rent increase exceeds CPI over a certain period.
- Amend the criteria in the Act for when a rent increase is 'excessive'. Currently, the list of factors that may be taken into account in considering if an increase is 'excessive' includes the market level of rent for comparable properties and the state of repair of the property.

30. What do you think about the above options? Please provide detail.

9 Other changes to make rental laws better

9.1 Telling renters about the use of embedded networks

9.1.1 The current law

An embedded network is a privately owned network that supplies services (such as electricity and internet) to many properties and residents. Embedded networks are often found in apartment buildings and caravan parks. Renters cannot choose the retailer for the services supplied by an embedded network, as they are limited to having their service supplied by the embedded network operator. This may mean the renter cannot shop around for the price they want.

The standard form tenancy agreement requires landlords to tell rental applicants if a rental property uses an embedded network for electricity or gas. The Act does not require landlords or agents to tell renters about any other embedded networks that a rental property may use.

9.1.2 Options to ensure renters know about embedded networks

The NSW Parliament's Committee on Law and Safety completed an inquiry into embedded networks in November 2022. The Committee recommended that rental applicants be told about embedded network services before they rent a property, including in the advertisement.

To ensure that renters know if a rental property uses an embedded network and the potential costs they will face, the Act could require landlords or agents to tell rental applicants if a rental property uses any type of embedded network by:

- stating that the property is part of an embedded network in the **advertisement**, or
- giving out a **standard information sheet** to enquirers (for example, during open house inspections).

31. Do you support new laws to require landlords or their agents to tell rental applicants if a rental property uses any embedded network? Why/why not?
32. When should a rental applicant be told that a property uses an embedded network?
33. What information should a renter be told about a rental property using an embedded network? Please explain.

9.2 Free ways to pay rent

9.2.1 The current law

The Act currently requires landlords and agents to give renters at least one free way to pay their rent that is 'reasonably available'. This rule is meant to protect renters from being charged a fee for paying their rent.

Landlords and agents may offer renters many different ways to pay rent. Not every way must be free to use. As long as there is at least one that is free and available to renters, then this meets the rules under the current law.

9.2.2 Problems with the free way to pay rent

The Department has received complaints from renters that, even though a landlord or agent offers a way to pay rent without fees, the method they offer is difficult to use. For example, it may require the renter to go to the agent's office in person, or to pay by cheque or cash.

Although it is possible for a renter to use these ways to pay rent, they are not easy or convenient. Going to the bank to collect a cheque or cash, or taking payments to a landlord or agent in person, takes a lot of time. It is even more inconvenient if you must do this every week to pay rent.

9.2.3 Options for a free and easy way to pay

The NSW Government supports renters having a genuine free and easy way to pay rent. The law already requires renters to have a free option. However, this may not be working well enough to give renters a way to pay that is also convenient and easy to use.

We are considering what changes need to be made to fix this. We know that some people do not think the term 'reasonably available' is strong enough to make sure that the free way to pay is also easy to use. They may prefer the rule to be that the free way to pay is 'reasonably convenient'.

Also, many people nowadays prefer to make payments electronically because it is quick and can be done easily at any time. The rule could instead require that the landlord or agent offer renters a free electronic way to pay their rent.

34. What would be the best way to ensure that the free way for renters to pay rent is convenient or easy to use? Please explain.

35. Should the law require a landlord or agent to offer an electronic way to pay rent that is free to use? Why/why not?

9.3 Renters moving into strata schemes

9.3.1 The current law

Many renters in NSW live in a strata scheme, for example in a townhouse or apartment. Strata schemes have their own rules, which are called by-laws. All the people who live in a strata scheme – renters and owners – must follow these rules.

Currently, the Act requires that renters who apply to a rental property in a strata scheme are given a copy of the by-laws before they sign their tenancy agreement. This helps renters know about the scheme's rules, such as rules for keeping pets or for parking, before they decide to live there.

9.3.2 Issues experienced by renters

The Government has heard about some issues renters experience when they move into a strata scheme. For example, in an apartment block there may be rules about the days or times that residents are allowed to use the elevators for moving in.

These rules should be recorded in the by-laws, however we have heard that sometimes renters do not know about these rules. One option to address this is to require renters to be specifically told about moving restrictions before they sign an agreement.

36. What are the issues faced by renters when moving into a strata scheme? Would better disclosure about the strata rules for moving in help with this?

Appendix A

The *Residential Tenancy and Rooming Accommodation Act 2008* (Queensland) prescribes the reasons why a landlord can refuse permission for a tenant to keep a pet.

The reasons are:

- Keeping the pet would exceed a reasonable number of animals being kept at the property.
- The property is unsuitable for keeping the pet because of a lack of appropriate fencing, open space or another item necessary to humanely accommodate the pet.
- Keeping the pet is likely to cause damage to the property and in addition could or would be likely to result in damage that could not practically be repaired for a cost less than the rental bond for the premises.
- Keeping the pet would pose an unacceptable risk to the health and safety of a person, including, for example, because the pet is venomous.
- Keeping the pet would contravene a law.
- Keeping the pet would contravene a body corporate by-law, house rules or park rules applying to the property.
- The tenant has not agreed to the reasonable conditions proposed by the lessor for approval to keep the pet.
- The animal stated in the request is not a pet.
- If the property is a moveable dwelling, and keeping the pet would contravene a condition of a licence applying to the property.
- Other grounds prescribed by regulation (none currently prescribed).

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