

The Real Estate Institute of New South Wales Limited

Submission dated 18 January 2017

Long-Term Residential Tenancies

Statutory Review of the Residential Tenancies Act 2010 (NSW)

To: Mr Lachlan Malloch
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Better Regulation Division
Department of Finance, Services and Innovation

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1. Introduction

This Submission has been prepared by The Real Estate Institute of New South Wales Limited (**REINSW**) and is in response to an invitation from the Department of Finance, Services and Innovation on 5 December 2016 to make a written submission on long term residential tenancies in New South Wales. The invitation followed a Ministerial Stakeholder Roundtable held on 21 November 2016 on options for long-term tenancies.

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

2. REINSW's proposed model for longer fixed term tenancies

Property management industry experts comprising REINSW's Property Management Chapter committee have advised REINSW that the current practice of entering into leases with a term of 6 or 12 months does not need to change as it is acceptable in the market and works well for all parties. These experts have also confirmed that the majority of tenants are not seeking nor do they wish to enter into longer term leases because their primary focus is on the flexibility, mobility and spontaneity associated with shorter term tenancies. Further, with interest rates currently at an all-time low, tenants are more interested in buying their own property rather than locking themselves in to a long-term lease. Having said that, REINSW recognises that there is a very small cohort that do want longer term tenancies and, for that reason, REINSW makes the submission below.

Recommendation 16 in the Statutory Review provides that section 20 of the Act be amended to reduce the applicable term to 5 years to encourage longer fixed term tenancies. Unfortunately, neither the Statutory Review nor Government (including the Ministerial Stakeholder Roundtable) have provided any substantial guidance on the implementation of Recommendation 16 so REINSW presents its position based on advice it has received from industry experts.

Whilst REINSW agrees that reducing the applicable term from 20 years to 5 years is an incentive for people to enter into longer fixed term tenancies, a bigger incentive for landlords to enter into 5-year leases would be to remove the registration obligation and the requirement to pay registration fees. Accordingly, REINSW recommends that section 53 of the *Real Property Act 1900 (NSW)* (**RPA Act**) be amended to require registration of a lease if that lease has a term of more than 5 years as opposed to 3 years. If landlords are not required to pay registration fees for registering a 5-year lease, then they will be encouraged to use these longer-term leases. If this recommendation is not implemented, then REINSW proposes that residential leases with a term exceeding 5 years should be exempt from the registration requirement in section 53 of the RPA Act.



In addition to REINSW's proposal to amend section 53 of the RPA Act, REINSW also suggests that it is not made mandatory to offer a 5-year lease on the basis that a lease of that duration is not always suitable because tenants and landlords have differing circumstances.

Another motivation for landlords to use 5-year leases would be to enable them to stipulate terms and conditions that are prohibited or not included in the current standard form residential tenancy agreement. However, for ease of administrative purposes, REINSW proposes a framework be provided where both parties to the lease could clearly understand all of their rights and responsibilities. The framework would have set terms that may be negotiated by the parties including, without limitation, provisions about maintenance and repair, bonds, carpet cleaning, rent increases and rent reviews.

If Recommendation 16 of the Statutory Review were to proceed, REINSW recommends that there be a prescribed but not mandatory 5-year lease which includes terms incentivising landlords to use that lease as opposed to the standard form residential tenancy agreement. Such terms should include but are not limited to:

- the tenant being responsible for making certain repairs (for example, to door handles or damage from the use of hot plates on stoves);
- the tenant being responsible for repairing damage from minor alterations (for instance, drilling into walls, tiles, etc);
- a bond top-up option;
- the inclusion of a break fee provision whereby the break fee is a higher amount than that in the standard form residential tenancy agreement because the balance of the term is likely to be longer;
- obligations on the tenant to reimburse the landlord for any call out fees where the tenant fails to provide access to the premises for safety inspections (e.g. smoke alarms);
- obligations on the tenant to advise the landlord immediately if there is an issue with a safety matter on the premises (e.g. smoke alarms, pool fences or window locks);
- obligations on the tenant not to interfere with safety installations on the premises (e.g. smoke alarms, pool fences or window locks);
- the insertion of an additional term prohibiting smoking;
- the inclusion of a provision to deal with the prevention of mould by the tenant;



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- the inclusion of a provision that the tenant is to pay for any pest control required after the first 90 days of the commencement of the tenancy;
- the option available under the previous residential tenancies legislation whereby the landlord and tenant could agree on the timing and responsibility for payment of carpet cleaning;
- the ability for the landlord to require a higher bond in respect of furnished premises or where pets are kept on the premises;
- the inclusion of a provision that the tenant will have the carpet professionally cleaned and have the property fumigated in leases where the keeping of pets is permitted (currently the lease requires the tenant to either professionally clean the carpet or fumigate if pets are permitted, however, REINSW believes it should offer both);
- the optional ability to provide for servicing of residential premises (eg. cleaning); and
- the insertion of a holding over clause in the operative provisions of the agreement rather than in the Notes where it currently sits.

To be clear, REINSW envisages that the proposed 5-year prescribed agreement would have no impact on the current standard form residential tenancy agreement and would be a stand-alone agreement.

3. Conclusion

It is REINSW's understanding from its attendance at the Ministerial Stakeholder Roundtable that the Minister is interested in having a prescribed 5-year lease prepared and used in the market. REINSW encourages the Minister to ensure that his interest becomes a reality.

REINSW appreciated the invitation to attend the Ministerial Stakeholder Roundtable and appreciates the opportunity to provide input on this topic. REINSW hopes that the Government seriously consider REINSW's proposed model for longer fixed term tenancies under the Act and is happy to explore the issue further with the Minister and/or relevant policy officers.

Yours faithfully

Tim McKibbin
Chief Executive Officer
The Real Estate Institute of New South Wales Limited