

Mr Lachlan Malloch
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Better Regulation Division
NSW Fair Trading

By email: lachlan.malloch@finance.nsw.gov.au

17 October 2016

Dear Lachlan

**REINSW Submission – Amendment to the *Residential Tenancies Act 2010* (NSW)
Online Rental Bond Service**

We refer to the following communications:

- (a) Leona Fernandez's email of 11 October 2016 in relation to the amendment to the *Residential Tenancies Act 2010* (NSW) (**Act**) with respect to the online rental bond service;
- (b) your subsequent e-mail to Nicole Unger on 12 October 2016 extending the deadline for our response until Monday, 17 October 2016; and
- (c) Tim McKibbin's e-mail to Leona Fernandez on 13 October 2016 in relation to the ridiculously short 4 hour and 58 minute turnaround timeframe given to stakeholders to comment on the proposed amendment, such short notice preventing stakeholders from submitting considered responses on the issue.

As you know, The Real Estate Institute of New South Wales Limited (**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.

This Submission has been prepared after consultation with REINSW members who sit on REINSW's Property Management Chapter committee (**PM Committee**). Members of the PM Committee are licensed real estate professionals with particular experience and expertise in the residential property management area of real estate practice, which includes the leasing and management of residential properties and the lodgement, management and release of rental bonds.

REINSW supports the introduction of the proposed section 159(1A) of the Act as set out in the extract attached to Leona's e-mail. However, REINSW is of the view that, whilst agents will comply with the amendment because it is legislated, the amendment causes complexity for both parties around the release of the bond which is an unsatisfactory outcome for all parties.

Whilst REINSW welcomes a system that decreases the administrative burden imposed on small business operators, one of the main reasons why agents are not utilising the online rental bond service is because of the insufficient refund process at the back end of the system.

The online rental bond system, as it currently stands, allows the tenant to claim the bond immediately upon vacating the premises. The system also negatively impacts the necessary timeframe required for the parties to communicate and conciliate in relation to the release of the bond. If there is insufficient time for the parties to conciliate properly, the only likely way forward is for either party to apply to NCAT (which is costly in both time and money as it involves the landlord paying the NCAT application fee and all parties waiting 14 days for a resolution). Unfortunately, this process will have a significant impact on NCAT as it will substantially and unnecessarily increase the number of NCAT hearings, ultimately increasing NCAT's time, costs and other resources as well as red tape. As a result, the online service will work against the idea of reducing burden on all stakeholders involved.

REINSW applauds the feature in the online system which comprises a checklist for the tenant to complete before applying for the release of the bond. However, the tenant may incorrectly or even fraudulently complete the checklist with no penalty as it is not currently enforceable. REINSW recommends that the legislation be enhanced by the inclusion of a 7-day grace period (commencing upon vacation of the premises and the return of keys) whereby both parties are prevented from making a claim on the bond during the 7 days without mutual consent. This grace period will enable effective conciliation to take place between the parties. REINSW believes that the online system is currently unattractive because it permits tenants to apply for the release of the bond immediately, which is counterproductive to any form of conciliation or agreement.

Thank you for the opportunity to contribute on this issue.

Yours faithfully



Tim McKibbin
Chief Executive Officer