



St Vincent de Paul Society  
NSW  
*good works*

# Improving NSW rental laws

Submission to the NSW Department of Customer Service

11 August 2023

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# 1. Summary of recommendations

The St Vincent de Paul Society NSW makes the following recommendations to the NSW Government to strengthen NSW tenancy laws:

## **Removing 'no grounds' terminations**

1. No-grounds evictions must be removed for both periodic and fixed term leases.
2. The ACT model for ending fixed term leases must be adopted in NSW, which requires the landlord to have a prescribed reason for terminating a lease irrespective of whether it is a fixed term or periodic agreement.
3. The proposed reasonable ground that the property is being prepared for sale must be strengthened beyond an 'intent' to sell and be supported by a strict evidentiary onus on the landlord and a temporary ban on re-letting for at least six months.
4. The proposed reasonable ground that the property will go through reconstruction, repair or renovation that requires it to be vacant must be strengthened by stipulating that the repair or renovation of the residential premises is 'significant' and is not required because of the landlord's breach of the agreement.
5. Tenants must be provided with notice periods of no less than three months but ideally six months for a reasonable grounds termination.
6. All tenants, on fixed term or periodic leases, who are issued with a reasonable grounds termination notice must be allowed to move out and stop paying rent before the termination date listed on the notice.
7. The evidence required from landlords to support a reasonable grounds termination must be based on the level and type of evidentiary requirements used in Victoria.
8. There must be a temporary ban on re-letting the property after a tenant is evicted for any of the proposed reasonable grounds of no less than six months but ideally up to 12 months. In exceptional circumstance, the landlord or their agent should be permitted to seek approval from the Tribunal for a shorter moratorium period of no less than three months.
9. Enforcement and compliance provisions must be instated for landlords who intentionally or wilfully misuse a reasonable grounds termination as occurs in the ACT, along with compensation or redress for tenants.

## **A new model for keeping pets**

10. The reasonable amount of time for a landlord to consider and respond to a renter's request to keep a pet should be 14 days as per the ACT model.
11. Amend the Residential Tenancies Act 2010 to prohibit landlords and agents from asking about pet ownership at the application stage.
12. The Tribunal should not be able to give the landlord the ongoing right to say no to animals at the property.
13. Landlords must not be allowed to set other conditions for keeping a pet and current laws preventing landlords from requesting a pet bond must be maintained.

## **Renters' personal information**

14. Limits should be placed on the types and number of additional information that can be requested to assess a tenancy application, as proposed in the consultation paper, with modifications to remove the bond refund information and to redact sensitive personal information.

15. Introduce a standard rental application form, along with a prescribed set of additional information that can be requested to assess an application.
16. Applicants must be told why landlords and agents are collecting their personal information, what they will do with it and who else might see it.
17. Landlords and agents must only collect and use the applicant's personal information for assessing their suitability for a rental property.
18. Laws must be implemented in line with privacy principles to require anyone holding renter personal information to secure it.
19. Landlords, agents or proptechs must not be allowed to keep applicants' personal information for any longer than required for assessing and entering into a tenancy agreement, with the exception of the tenant's personal and emergency contact information or unless otherwise specifically requested by the applicant or tenant.
20. Landlords, agents and proptechs must be required to provide applicants with access to their personal information within a reasonable timeframe, and to take steps to correct any errors in an applicants' personal information, in line with established privacy principles and legislation.

#### **Portable rental bond scheme**

21. Renters should be provided a minimum of 30 days to top up the bond if there is a difference between the bond required at a new property and the bond refunded from their old property.
22. Renters who do not top-up the second bond within the prescribed timeframe should be supported to make the payment, such as through a negotiated payment plan arrangement or no interest loan.
23. The portable rental bond scheme should be available to all renters as an opt-in scheme for renters.

#### **Information to help renters know when a rent increase is 'excessive'**

24. Landlords or their agents must be required to report rent increase information to the NSW Government, and the NSW Government must make this information publicly available for renters.
25. Rent increases for a residential property should be limited to one increase per 12 months, irrespective of the type of tenancy agreement, its duration or whether a new or different lease type has been entered.
26. Landlords must be required to justify a rent increase if it is over an independently set, reasonable threshold.

#### **Other changes to make rental laws better**

27. Landlords or their agents must be required to disclose where any services are provided via embedded networks when listing (advertising) the property for rent, at inspections for the property, as well as in the tenancy agreement. Information should be provided in plain English and include the average cost, the lack of choice of retailer and reduced consumer protections, and where to go for further information.
28. The NSW government must further reform embedded networks as recommended by the 2022 NSW Parliamentary Committee on Law and Safety.
29. The law should require a landlord or real estate agent to offer an electronic way for tenants to pay their rent that is free, such as direct bank transfer or direct debit.
30. Landlords or their agents must be required to provide tenants with the building by-laws at the same time as the tenancy agreement.

**Other comments**

31. Existing rental standards in the Residential Tenancies Act must be strengthened by introducing penalties for landlords who breach the obligation for habitability.
32. NSW government agencies and independent bodies must be adequately resourced to undertake compliance and enforcement of the Residential Tenancies Act.

## 2. Introduction

St Vincent de Paul Society NSW (the Society) makes this submission to the NSW Department of Customer Service's consultation on improving NSW rental laws. We welcome the NSW Government's commitment to make renting fairer for the 2.4 million people in our state who rent their homes as signalled by this consultation process and by the appointment of the inaugural NSW Rental Commissioner.

As a provider of material relief as well as housing and homelessness services, the Society witnesses first-hand the damaging impacts of our unaffordable and inequitable rental housing market on people who are on low incomes or otherwise experience disadvantage. The Society has long advocated for a fairer rental system, including an end to no-grounds evictions, prohibiting the ban on pets, and setting fair limits on rent increases.

This submission draws on our previous rental housing work and has been informed by additional consultation with the Society's Housing and Homelessness Division along with our member-based Social Justice Committee. We have also drawn on guidance material developed by the Tenants' Union of NSW (TUNSW) and acknowledge their ongoing advocacy and work on behalf of renters in NSW.

This Submission responds to the consultation paper's 36 questions and is structured according to the paper's key themes. These are:

1. Removing 'no grounds' terminations
2. A new model for keeping pets
3. Renters' personal information
4. Portable rental bond scheme
5. Information to help renters know when a rent increase is 'excessive'
6. Other changes to improve rental affordability
7. Other changes to make rental laws better
8. Other comments

## 3. Response to the consultation questions

### 3.1. Removing 'no grounds' terminations

#### 1. What is your preferred model for ending fixed term leases and why?

The Society strongly supports ending no-grounds evictions for both periodic and fixed term leases and the introduction of reasonable grounds terminations. Ending evictions without cause is critical to reducing insecurity of tenure and the inequitable power relationship between landlords and tenants. It also provides a foundation for the introduction of other safeguards and reforms.

The Society's preferred model for ending a lease is the ACT model that requires the landlord to have a prescribed reason for terminating either a fixed term lease or a periodic lease. The end of a fixed term is not a valid reason in and of itself for a termination. Retaining the ability for landlords to end a fixed term lease without a reason undermines the policy intent to provide greater security and stability to tenants, as has occurred in other jurisdictions.

In Queensland where the end of any fixed term tenancy agreement is a prescribed reason for ending a tenancy, anecdotal evidence is that landlords and their agents have moved

renters onto shorter term fixed-term tenancies so they can continue to evict without grounds. In Victoria, where the end of only the first fixed term agreement is reasonable grounds for eviction, landlords are incentivised to evict their tenants after 12 months to maintain control over the premises, risking high housing insecurity.

*Recommendation:*

- No-grounds evictions must be removed for both periodic and fixed term leases.
- The ACT model for ending fixed term leases must be adopted in NSW, which requires the landlord to have a prescribed reason for terminating a lease irrespective of whether it is a fixed term or periodic agreement.

## **2. Are there any other specific situations where a landlord should be able to end a lease?**

The Society broadly supports the five reasons proposed in the discussion paper as grounds to end the lease, with the caveats on the following two reasons:

- *The property is being prepared for sale* – it is imperative that this ground be strengthened beyond an ‘intent’ to sell to minimise the potential for this provision to be misused as a loophole to unfairly evict tenants. The Society would only support this ground if there were also a strict evidentiary onus on the landlord, such as the requirement to provide at a minimum a contract of engagement/authority to sell with a licensed estate agent as occurs in Victoria, accompanied by a prohibition on the landlord from re-letting the property for at least six months. There must also be an appropriate compliance and enforcement mechanism to deter misuse and so the tenant can seek compensation or request reinstatement if they have been wrongfully evicted.
- *The property will go through reconstruction, repair or renovation that requires it to be vacant* - this ground must be strengthened by stipulating that the repair or renovation of the residential premises is ‘significant’ and is not required because of the landlord’s breach of the agreement. This will close a potential loophole that would allow the landlord to evict a tenant to undertake a general repair or minor renovation and mitigate the risk that a landlord would leave the property to fall into disrepair as a basis to evict a tenant. The landlord must be required to demonstrate they have obtained all necessary permits and consents to carry out the planned reconstruction or renovation if used as a reason for termination.

*Recommendation:*

- The proposed reasonable ground that the property is being prepared for sale must be strengthened beyond an ‘intent’ to sell and be supported by a strict evidentiary onus on the landlord and a temporary ban on re-letting for at least six months.
- The proposed reasonable ground that the property will go through reconstruction, repair or renovation that requires it to be vacant must be strengthened by stipulating that the repair or renovation of the residential premises is ‘significant’ and is not required because of the landlord’s breach of the agreement.

## **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?**

Renters must be given adequate time to find alternative accommodation when they are forced to move homes through no fault of their own. Particularly with the current shortage of rental accommodation, people frequently report spending many months viewing and applying for rental properties before they are successful in securing a lease. There is in

addition to the time needed to plan and prepare for moving, including arranging utilities and internet connections, removalists, and enrolling children in new schools.

The Society supports appropriate notice periods according to the reason provided for termination, as recommended by the TUNSW. These should be no less than three months but ideally six months. Additionally, once a landlord has issued a notice to terminate on reasonable grounds, the tenant must be permitted to move out and stop paying rent before the termination date listed on the notice. This is currently not the case for renters on fixed term leases under s84 of the Act.

*Recommendation:*

- Tenants must be provided with notice periods of no less than three months but ideally six months for a reasonable grounds termination.
- All tenants, on fixed term or periodic leases, who are issued with a reasonable grounds termination notice must be allowed to move out and stop paying rent before the termination date listed on the notice.

**4. What reasons should require evidence from the landlord? What should the evidence be?**

The Society contends that in all cases where a landlord is evicting a tenant on any of the proposed reasonable grounds, then the onus must be on the landlord to provide evidence in writing to demonstrate the validity of the reason for termination, and where possible the evidence should be independently verifiable. The landlord must provide this evidence to the tenant at the time the notice to terminate is issued.

The Society supports adopting the level and type of evidentiary requirements used in Victoria for the proposed new reasons as recommended by the TUNSW:

Proposed grounds	Evidence required in Victoria <sup>1</sup>
Change of use	<p>A witnessed Statutory Declaration of intention to use the premises for business purposes, including details of the particular business and stating that the premises will not be re-let as a residence before the end of 6 months after the date the notice was given, AND one or more of the following:</p> <ul style="list-style-type: none"> <li>• ABN of the business; or</li> <li>• Business registration or licence; or</li> <li>• Council planning permit.</li> </ul>
Significant repairs or renovations or reconstruction that requires the property to be vacant	<p>Photographic proof that repairs are required; and a contract with, or quotation from, a suitably qualified tradesperson for carrying out planned repairs, stating:</p> <ol style="list-style-type: none"> <li>1. the nature of the repairs required,</li> <li>2. the reasons why the premises need to be vacated by the renter in order to carry out the repairs, and</li> <li>3. an estimate of the length of time it will take to complete the repairs.</li> </ol> <p>Or the following:</p> <ul style="list-style-type: none"> <li>• Building permit for repairs or renovation.</li> </ul>

1. Consumer Affairs Victoria (2023) *Notice to vacate in rental properties*, webpage, <https://www.consumer.vic.gov.au/housing/renting/moving-out-giving-notice-and-evictions/notice-to-vacate/giving-notice-to-a-renter>



Demolition	Building permit for demolition; and Contract with a suitably qualified Builder-demolisher, stating the date that demolition will occur.
Landlord or immediate family moving in	A witnessed Statutory Declaration signed by the rental provider, stating either: <ul style="list-style-type: none"> <li>• they intend to reside in the rented premises, or</li> <li>• the name of the person who will occupy the rented premises, their relationship to the rental provider, and declaring whether the person is a dependent, and</li> <li>• that the rental provider understands that they must not re-let the premises to any person (other than the person named to be moving in to the rented premises in the statutory declaration) for use primarily as a residence before the end of 6 months after the date on which notice was given, unless approved by VCAT</li> </ul>
Sale	Contract of sale, signed by the vendor and purchaser and dated

*Recommendation:*

- The evidence required from landlords to support a reasonable grounds termination must be based on the level and type of evidentiary requirements used in Victoria.

**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?**

The Society submits that there must be a temporary ban on renting the property again after a tenant is evicted for any of the proposed reasonable grounds. This will help safeguard against landlords gaming the provisions to have the property vacant to rent out again. The Society supports temporary ban periods of no less than six months but ideally up to 12 months depending on the grounds, as a disincentive to misuse and in recognition of the hardship and inconvenience caused to tenants.

The Society acknowledges that in the case of significant repairs or renovation that a shorter time period may be warranted. In this situation, the landlord or their agent should be permitted to seek approval from the Tribunal for a shorter moratorium period, of no less than three months, on an exception basis.

In addition to disincentives through re-letting bans, there must be robust enforcement and compliance provisions for landlords who intentionally or wilfully misuse a reasonable grounds termination. These provisions must not put the burden of proof on the tenant. We recommend considering the ACT model where tenants can seek compensation or alternatively request their reinstatement where wrongful eviction has occurred.<sup>2</sup>

*Recommendation:*

- There must be a temporary ban on re-letting the property after a tenant is evicted for any of the proposed reasonable grounds of no less than six months but ideally up to 12 months. In exceptional circumstance, the landlord or their agent should be permitted to seek approval from the Tribunal for a shorter moratorium period of no less than three months.

<sup>2</sup> ACT Residential Tenancy Act 1997 at section 58(2)&(3).

- Enforcement and compliance provisions must be instated for landlords who intentionally or wilfully misuse a reasonable grounds termination as occurs in the ACT, along with compensation or redress for tenants.

## 3.2. A new model for keeping pets

The Society strongly supports changing NSW tenancy laws to prohibit the ban on pets, as outlined in our 2022 [submission to the previous NSW government consultation on keeping pets in residential tenancies](#). Submissions to this consultation reinforced that this change is strongly supported by the majority of the community. More than two-thirds of Australians have pets, and they bring significant physical and mental health benefits. Pets are an important source of companionship and means of social connection for many people that we assist, particularly people experiencing homelessness.

Tenants should be able to decide whether they have a pet, with reference to the appropriateness of the dwelling for that animal and any relevant animal welfare or community safety considerations.

### **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?**

The Society contends that 21 days is too long for a landlord to consider a pet request. Landlords should be required to respond in a timely manner, particularly for renters who already have a pet and are seeking to move into a premises as they need time to make an informed decision about what to do with their pets. The Society supports the ACT model which allows landlords 14 days once a request has been received to respond and stipulates that they must apply to the Tribunal within this time if they are seeking to refuse the request for a pet.

The Society also submits that prospective tenants must not be required to disclose that they own a pet at the point of application to mitigate the risk of discrimination in favour of non-pet owning applicants. Once the tenant's housing application is successful, then they should apply to the landlord to keep their pet, with a presumption in favour of the tenant being allowed to keep the pet in their home.

#### *Recommendations:*

- The reasonable amount of time for a landlord to consider and respond to a renter's request to keep a pet should be 14 days as per the ACT model.
- Amend the Residential Tenancies Act 2010 to prohibit landlords and agents from asking about pet ownership at the application stage.

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

The Society supports the principle that tenants should be allowed to have a pet, subject to the same considerations as homeowners, and that the onus should be on the landlord to demonstrate why a pet should not be allowed at a premises. Notwithstanding, the Society supports the three reasons suggested in the consultation paper for when a landlord can validly refuse a pet. These reasons should be limited to the pet being a restricted or declared dangerous dog; keeping the animal breaks other laws; or the landlord has previously received an exclusion from the Tribunal for the property, type of animal, or number of animals.

The Society notes concerns raised by TUNSW that these exclusions put the onus on the renter to go to the Tribunal if they believe the landlord has wrongly refused permission for a pet, and we share their concerns about the inequity for tenants in accessing the Tribunal. At the same time, we do not wish matters going to Tribunal unnecessarily as this is stressful and costly for both the tenant and the landlord. As an alternative we suggest establishing financial penalties for landlords who intentionally or wilfully misuse the provision to refuse a pet as a disincentive, along with monitoring of the operation of the provision with a view to removing the valid reasons if they are being misused.

We support the TUNSW recommendation that in the case of a dispute, that Tribunal should consider the welfare of the animal as the primary consideration when determining whether it is reasonable to refuse a request for a pet at the property. They should be guided to determine this with reference to relevant animal welfare guidelines and/or other companion animals regulation.

### **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.**

In keeping with the principle that tenants should be permitted to keep a pet, the Society does not support a landlord being allowed to refuse the keeping of animals at a specific rental property on an ongoing basis. Each pet request should be assessed on its own merits, and with reference to the circumstances of the specific companion animal and the property at the point in time that the request is made.

#### *Recommendation:*

- The Tribunal should not be able to give the landlord the ongoing right to say no to animals at the property.

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

The Society does not support the landlord being able to set any further conditions for keeping a pet beyond what already exists within NSW tenancy law. Renters already pay bonds to cover potential damage to the property, whether this damage is from a pet or human, and landlords can require the tenant to pay for carpet cleaning and fumigation if they have a pet. Other legislation such as the Companion Animals Act already provides rules based on welfare concerns for keeping pets and these do not need to be duplicated in tenancy agreements.

In consultation for this submission, the Society heard examples of how permitting additional conditions on tenants keeping pets leads to misuse and discrimination. In one example, a community housing provider required a tenant to desex their pet and pay full market rate for their bond plus rent in advance to keep a pet. This condition made the tenant ineligible for Bond Extra and liable to pay thousands of dollars upfront to move into the property. This had the effect of prohibiting the tenant from keeping a pet given that the eligible cohort for community housing is by definition people who are on low-incomes and experiencing disadvantage.

Given the Society's concern to ensure that people on low incomes with pets can afford, and are not disadvantaged or precluded from housing because of their pet, we support maintaining current laws that prohibit landlords and real estate agents requesting extra bond money from renters with pets.

#### *Recommendation:*

- Landlords must not be allowed to set other conditions for keeping a pet and current laws preventing landlords from requesting a pet bond must be maintained.

### 3.3. Renters' personal information

#### **10. Do you support limiting the information that applicants can be asked for in a tenancy application? Why/why not?**

The Society supports implementing and enforcing strong limits on the information that applicants can be asked for and required to provide in applying for a rental home to better protect renters' rights and to reduce discrimination against prospective applicants.

#### **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.**

The Society does not have any concerns with landlords or agents only being able to collect the information set out in the table and supports limiting the information that a landlord or agent can collect to assess a tenancy application as proposed in the consultation paper table (p10-11). However, we endorse the TUNSW concerns about three types of information identified in the table as follows:

- Information about refund of bonds – this is not a reliable indicator of a tenants' ability to meet the terms of the tenancy agreement.
- Redaction of personal information - sensitive personal information on bank statements and or other financial documents should be redacted.
- Provision of information to tenant- Where a third-party information source is used, this should be supplied to the applicant at the same time the agent receives it or as soon as possible after.

#### *Recommendation:*

- Limits should be placed on the types and amount of additional information that can be requested to assess a tenancy application, as proposed in the consultation paper, with modifications to remove the bond refund information and to redact sensitive personal information.

#### **12. Do you support the use of a standard tenancy application form that limits the information that can be collected?**

The Society supports introducing and mandating the use of a standard rental application form, in conjunction with the use of prescribed information to assess a tenancy application, to facilitate a more balanced, objective approach to tenant's personal information.

#### *Recommendation:*

- Introduce a standard rental application form, along with a prescribed set of additional information that can be requested to assess an application.

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

Yes. In consultation for this submission, the Society heard from our members and professional housing services of numerous instances of discrimination against prospective applicants due to their ethnic background or their income, particularly against people reliant on income support payments. Limiting information and giving tenants agency over which sources of information they provide from the prescribed list will minimise the opportunities for

agents and landlords to unlawfully discriminate against people on the basis of their income source or background.

#### **14. Do you support new laws that set out how landlords and agents can use and disclose renters' personal information? Why/why not?**

The Society strongly supports new laws that set out how landlords and agents can use and disclose renters' personal information as essential to uphold renters' rights to privacy and to control of their own personal information.

Applicants are currently asked to submit a large amount of highly personal information to landlords and real estate agents for the purposes of securing a tenancy. Yet less than half of Real Estate agents are regulated by the Australian Privacy Act 1988 and NSW does not have specific laws regulating what information can be collected from rental applicants or how it must be handled and destroyed. This leaves renters personal information vulnerable to data breaches, exploitation for commercial gain, and misuse.

We note that NSW public sector agencies are required to abide by the NSW Privacy and Personal Information Protection Act 1998, which sets out how individual personal information is collected, stored, used and released guided by 12 Information Protection Principles.<sup>3</sup> These principles could inform the regulation of landlords and agents' collection, use, storage, and disclose of renters' personal information.

#### **15. What should applicants be told about how their information will be used before they submit a tenancy application? Why?**

In line with the NSW Information Privacy Principles, landlords and agents must inform applicants why they are collecting the information, what they will do with it and who else might see it. Landlords and agents must only collect and use the applicant's personal information for assessing their suitability for a rental property.

*Recommendation:*

- Applicants must be told why landlords and agents are collecting their personal information, what they will do with it and who else might see it.
- Landlords and agents must only collect and use the applicant's personal information for assessing their suitability for a rental property.

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

The Society strongly supports laws to require anyone who must hold renters' personal information to secure it to minimise the risk of a data breach or cyber-attack. This is essential given the large volume of detailed personal information about applicants that is collected by landlords and agents.

*Recommendation:*

- Laws must be implemented in line with privacy principles to require anyone holding renter personal information to secure it.

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<sup>3</sup> NSW Information and Privacy Commission (2020) *Fact sheet - Information Protection Principles (IPPs) for agencies*, NSW Government, <https://www.ipc.nsw.gov.au/information-protection-principles-ipps-agencies>

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

In line with Information Privacy Principle of secure Storage, the Society submits that landlords, agents and proptechs should not be able to keep renter personal information for any longer than is necessary to assess an application. Once a tenancy agreement is entered into, then all personal information must be destroyed, with an exception for personal and emergency contact information such as email addresses and phone numbers, or unless specifically requested otherwise by the applicant or tenant.

*Recommendation:*

- Landlords, agents or proptechs must not be allowed to keep applicants' personal information for any longer than required for assessing and entering into a tenancy agreement, with the exception of the tenant's personal and emergency contact information or unless otherwise specifically requested by the applicant or tenant.

**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).**

The Society supports a requirement on landlords, agents and proptechs to provide applicants with access to their personal information and to correct their personal information, in keeping with Information Privacy Principles of Access and Accuracy.

*Recommendation:*

- Landlords, agents and proptechs must be required to provide applicants with access to their personal information within a reasonable timeframe, and to take steps to correct any errors in an applicants' personal information, in line with established privacy principles and legislation.

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

No comment.

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

No comment.

## **3.4. Portable rental bond scheme**

The Society welcomes the introduction of a portable rental bond scheme in recognition of the hardship that some renters, particularly low-income renters, experience in being able to pay the second bond for their new rental property whilst awaiting the return of their bond from their previous property.

**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?**

The Society submits that renters should have at least 30 days to top up the new bond if some or part of the bond has been claimed by the previous landlord or if the new bond is

greater than their previous bond. The one-month period allows for a tenant to receive two Centrelink income support payments, which provides them with greater financial means to pay the additional bond. It also recognises that some workers are paid monthly.

*Recommendation:*

- Renters should be provided a minimum of 30 days to top up the bond if there is a difference between the bond required at a new property and the bond refunded from their old property.

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

Renters who do not top-up the second bond within the prescribed timeframe should be supported to make the payment through a negotiated payment plan arrangement and/or through a No Interest Loans Scheme (NILS) loan. The Society's Conferences in some areas such as Glen Innes, Armidale, and Wollongong assist people who have difficulty paying their bonds.

This flexible approach is consistent with the policy intent of the portable bond scheme to offer assistance to people experiencing financial difficulty to access and maintain rental housing in the private market. Tenants must not be breached or evicted and face the risk of homelessness.

*Recommendation:*

- Renters who do not top-up the second bond within the prescribed timeframe should be supported to make the payment, such as through a negotiated payment plan arrangement or no interest loan.

**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?**

The portable rental bond scheme should be available to all renters, and it should be optional for renters to use, to reduce the risk of discrimination and stigma against tenants.

*Recommendation:*

- The portable rental bond scheme should be available to all renters as an opt-in scheme for renters.

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

No comment.

## 3.5. Information to help renters know when a rent increase is 'excessive'

**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.**

The Society supports the NSW Government collecting information on rent increases and making it publicly available for renters to provide greater transparency and visibility across the private rental market.

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

Landlords or their agents must be required to report rent and rent increase information to the NSW Government for the purposes of public reporting. This mandatory reporting approach may have an added benefit of making landlords and agents re-think excessive rental price increases by virtue of 'name and shame' if localised data is published.

*Recommendation:*

- Landlords or their agents must be required to report rent increase information to the NSW Government, and the NSW Government must make this information publicly available for renters.

## **3.6. Other changes to improve rental affordability**

**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?**

The Society supports limiting rent increases to once in a 12-month period irrespective of whether the renter is on a periodic or fixed term lease or if the renter is swapped onto a different type of tenancy agreement. Limiting the number of times that a tenant's rent can be increased, combined with the removal of no-grounds evictions, may reduce the unintended and adverse consequences associated with some landlords using the Act's loophole as a means for profiteering. However, setting fair limits on rent increases is much more urgent and will have a much greater impact than limiting the frequency of rent increases, as discussed below.

*Recommendation:*

- Rent increases for a residential property should be limited to one increase per 12 months, irrespective of the type of tenancy agreement, its duration or whether a new or different lease type has been entered.

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

The Society strongly supports implementing a provision to require a landlord to provide that a rent increase is not excessive as an important mechanism to mitigate against the rising cost of living and to reduce the numbers of people who are being pushed into homelessness due to unaffordable rental housing prices.

Renting in NSW is becoming increasingly expensive and competitive. Some Local Government Areas have seen rent increases of more than 30% in the past three years.<sup>4</sup> Research shows that less than 1% of NSW properties are affordable for single people on the minimum wage and virtually no properties are affordable for people on JobSeeker, Youth

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<sup>4</sup> National Housing Finance and Investment Corporation (2023) *State of the Nation's Housing 2022–23*, Australian Government, <https://www.nhfc.gov.au/research/state-nations-housing-report-2022-23>



Allowance or Parenting Payment Single.<sup>5</sup> High and rising rents mean that more than one-third (35%) of renters<sup>6</sup> and around half of all low-income renters<sup>7</sup> are in rental stress.<sup>8</sup> At the same time, rental vacancy rates across the state are at record lows.<sup>9</sup>

NSW tenancy laws put the onus on the tenant, rather than the landlord, to know when the rent increase is excessive and to prove it to the Tribunal. However, scarce rental market supply, along with a lack of comparable rental data, and the threat of no-grounds eviction currently makes it difficult for renters to know when it is reasonable to challenge a rent increase, and feel confident that a challenge will result in a fair outcome.

The Society supports the TUNSW recommendation that landlords must be required to justify a rent increase if it is over a reasonable threshold as determined by the Rental Commissioner or another relevant independent agency. The responsibility to prove a rent increase is not excessive should sit with the landlord. Introducing stronger protections in NSW tenancy law against excessive rent increases during a tenancy would ease the financial pressure renters are currently experiencing due to skyrocketing rents.

*Recommendation:*

- Landlords must be required to justify a rent increase if it is over an independently set, reasonable threshold.

### 3.7. Other changes to make rental laws better

**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.**

The Society supports tenants having full and transparent information about their rental properties, including use of an embedded network. Renters living in properties with an embedded network face significant risks of high bills and limited consumer protections. This has the greatest impact on people on low-incomes and/or experiencing disadvantage.

A recent NSW Parliamentary Committee on Law and Safety found an unreasonable lack of disclosure and transparency about embedded networks. It recommended that " ... *the NSW government ensure there are appropriate requirements to disclose embedded network services to a potential ... tenant before they ... lease a property, including requiring real estate advertisements to disclose the average recurring costs of all services...* ".<sup>10</sup>

Disclosure of an embedded network at a rental property should be made at the time of listing (advertising) a rental property and at the time of inspection as well as in the standard tenancy agreement. Information provided should include the name of the retailer and that

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<sup>5</sup> Anglicare Australia (2023) *Rental Affordability Snapshot, National Report 2023*, <https://www.anglicare.asn.au/wp-content/uploads/2023/04/Rental-Affordability-Snapshot-National-Report.pdf>

<sup>6</sup> National Housing Finance and Investment Corporation (2023) *State of the Nation's Housing 2022–23*, Australian Government, 85, <https://www.nhfc.gov.au/research/state-nations-housing-report-2022-23>

<sup>7</sup> Australian Bureau of Statistics. (2019–20). *Housing Occupancy and Costs, Table 13.1 Rental affordability, lower income renter households, national housing and homelessness agreement basis*. ABS. <https://www.abs.gov.au/statistics/people/housing/housing-occupancy-and-costs/2019-20>

<sup>8</sup> Rental stress is defined as those people in the lowest 40% of income brackets who are paying more than 30% of that income in rent.

<sup>9</sup> Domain Research House (2022 September 2) *Vacancy rates: August 2022*, Domain, <https://www.domain.com.au/research/vacancy-rates-august-2022-1164176/> [As at 31 July 2023]

<sup>10</sup> Recommendation 9, Committee on Law and Safety (2022) *Embedded Networks in NSW Report*, Report 3/57, NSW Parliament, p9, <https://www.parliament.nsw.gov.au/ladocs/inquiries/2873/Report%20-%20Embedded%20Networks%20in%20New%20South%20Wales.pdf>

there is a lack of choice of retailer available, average cost per period and how the cost is calculated, period of notice for price increases and how they will be calculated, nature of the service which is an embedded network, and that there are reduced consumer protections.

Whilst we acknowledge that this information will assist renters, the reality is that in the current low vacancy market, renters may not have much choice except to accept a property with an embedded network. The NSW government must therefore undertake further systemic embedded network reforms, consistent with the recommendations of the 2022 Parliamentary Committee to allow a choice of retailer, improve the transparency and certainty of pricing and information about energy bills, and increase access to hardship protections, particularly for renters who are from low income or disadvantaged households.

*Recommendation:*

- Landlord or their agents must be required to disclose where any services are provided via embedded networks when listing (advertising) the property for rent, at inspections for the property, as well as in the tenancy agreement. Information should be provided in plain English and include the average cost, the lack of choice of retailer and reduced consumer protections and where to go for further information.
- The NSW government must further reform embedded networks as recommended by the 2022 NSW Parliamentary Committee on Law and Safety.

**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?**

Renters should not be charged a fee to pay their rent. Given the primacy of electronic banking, landlords or their agents must be required to offer at least one free electronic means for tenants to pay their rent, such as direct bank transfer or direct debit.

*Recommendation:*

- The law should require a landlord or real estate agent to offer an electronic way for tenants to pay their rent that is free, such as direct bank transfer or direct debit.

**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?**

The Society supports strata rules and by-laws being provided to tenants along with the tenancy agreement to better inform tenants about their rights and responsibilities in strata buildings.

*Recommendation:*

- Landlords or their agents must be required to provide tenants with the building by-laws at the same time as the tenancy agreement.

## 4. Other comments

An issue raised by some of our members and housing and homelessness staff during consultation for this submission was the lack of robust and enforceable rental standards. They identified that many of the low income and disadvantaged people that the Society assists are left with no choice but to live in very poor-quality rental properties riddled with mould or that are severely overcrowded without adequate facilities for the number of

residents, due to the unscrupulous practices of some landlords who fail to keep their property in a reasonable state of repair.

The NSW Residential Tenancy Act (s52 [1A] & [1B]) sets a condition that the dwelling is 'fit for habitation' and in a reasonable state of cleanliness and repair. However, AHURI notes there is no penalty on the landlord for breach of this obligation for habitability, nor requirement or provide an alternate dwelling until corrected.<sup>11</sup>

This problem underscores a larger issue with tenant's ability to have their rights under the Act enforced and upheld, and to obtain redress where their rights have been breached. Where tenants' rights are enshrined in the legislation, all too often the onus is on the tenant to take action against their landlord's lack of compliance to the Tribunal, incurring considerable financial and other costs.

The Society calls for the Office of Fair Trading and the new Rental Commission to be adequately resourced to enforce and uphold renters' existing rights under the Act and any additional rights granted from this consultation process.

*Recommendation:*

- Existing rental standards in the Residential Tenancies Act must be strengthened by introducing penalties for landlords who breach the obligation for habitability.
- NSW government agencies and independent bodies must be adequately resourced to undertake compliance and enforcement of the Residential Tenancies Act.

## 5. Conclusion

This consultation represents an important opportunity for the NSW government to modernise NSW's tenancy laws and rebalance the rental system so tenants can afford a secure and stable place to call home. Ending no grounds evictions, making it easier to keep pets, better protecting applicants' personal information and setting fair limits on rent increases will make a significant difference to the lives of the more than one-third of people in NSW who rent.

The Society notes that the NSW government has tasked the Rental Commissioner with implementing these reforms, and as such the Commissioner must be adequately resourced and empowered to lead this, and future, work. Critically, there must be adequate enforcement and compliance of these measures, including by the Office of Fair Trading.

While this consultation process is focused on the operational aspects of the proposed measures, a broader question remains about the role of private rental housing in the NSW housing system. This strategic policy question should be considered by the Rental Commissioner, grounded in an understanding of housing as a human right, and with the provision of safe, secure, affordable, healthy and appropriate housing across the life course as the overarching goal of the housing system.

## 6. About the St Vincent de Paul Society in NSW

In 1833 in Paris, 20-year-old student Frederic Ozanam resolved to do what he could to bear witness to his Christian upbringing by assisting those less fortunate in the community. Together with a group of friends, he sought the advice of Sr Rosalie Rendu, who guided their

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<sup>11</sup> AHURI (2022) Final Report No. 391 Regulation of residential tenancies and impacts on investment, p68, <https://www.ahuri.edu.au/sites/default/files/documents/2022-11/AHURI-Final-Report-391-Regulation-of-residential-tenancies-and-impacts-on-investment.pdf>

approach towards one that affirms the dignity of each human being and invites a deep relationship of solidarity.

Declaring that no form of charity would be foreign to their work, the first 'Conference of Charity' has since grown into a worldwide movement that continues to seek out and address poverty in all its forms.

In NSW, the Society was established over 140 years ago. It now has over 3,500 members who offer material and financial assistance to people in their communities as well as companionship and social support. Members of the Society who visit people who need help in their homes, refer those at risk to our services, where we offer case management, support services, and referral to other agencies to help keep people at home. Specialist responses are provided for women and children wishing to leave family and domestic violence while retaining existing housing.

Professional services have been established in response to the needs of people at risk of or experiencing homelessness, people with disability, people seeking support in relation to alcohol and other drug use, and people experiencing other forms of exclusion. In 2022-2023, our specialist homelessness services supported more than 9,000 people. Overall, we provided \$13.4 million of assistance in NSW an increase of nearly 60% on the previous financial year.

Through our community housing provider, Amélie Housing, we provide social and affordable housing with tailored support to meet the needs of the growing number of people locked out of the private rental market. Amélie Housing manages approximately 1,400 dwellings in NSW.

We are inspired to create a more just and compassionate society and to offer a 'hand-up' to people experiencing the most disadvantage. We respect their dignity and encourage them to take control of their own destiny.

For further information about this submission, contact:

Solange Frost  
A/Manager Policy and Advocacy  
St Vincent de Paul Society of NSW  
[Solange.frost@vinnies.org.au](mailto:Solange.frost@vinnies.org.au)