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About the Tenants' Union of NSW

The Tenants' Union of NSW is the peak body representing the interests of tenants in New South Wales. We are a Community Legal Centre specialising in residential tenancy law and policy, and the main resourcing body for the state-wide network of Tenants Advice and Advocacy Services (TAASs) in New South Wales.

The TAAS network assists more than 25,000 tenants, land lease community residents, and other renters each year. We have long-standing expertise in renting law, policy and practice. The Tenants' Union NSW is a member of the National Association of Tenant Organisations (NATO), an unfunded federation of State and Territory-based Tenants' Unions and Tenant Advice Services across Australia. We are also a member of the International Union of Tenants.

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The Tenants' Union of NSW' office is located on the unceded land of the Gadigal of the Eora Nation.

About this submission

We are pleased to provide comment on NSW Treasury's proposal for reforms to our current tax system. We are primarily interested in the experience of people who rent their home in NSW and how the proposed introduction of a new property tax to replace stamp duty may impact them. The Tenants' Union of NSW has long supported a move towards land tax as a more efficient tax collection tool with minimal negative impacts relative to other taxes, and significant positive impacts. We note and welcome NSW Treasury's consideration of the impact of the property tax for NSW renters, and what protections and/or monitoring mechanisms should appropriately be put in place. We are pleased these issues are being closely examined.

Recommendations

Recommendation 1

A faster transition framework be considered for introducing the new annual property tax, with measures such as credits and/or hardship provisions to be included to ensure equitable implementation during transition.

Recommendation 2

The rate schedule for the annual property tax be reviewed regularly to ensure adequacy and appropriateness.

Recommendation 3

Exemptions or discounts to the annual property tax on the basis of improving renters' experience must include well defined, demonstrable requirements (e.g. set measures to apply for affordability, stability and tenancy management).

Recommendation 4

That an independent agency be resourced to collect, provide analysis on, and publish relevant data relating to house prices and market rents.

Recommendation 5

Consideration be given to the role such an agency might play in determining and making recommendations on reasonable rent increases in a given period.

Recommendation 6

Reform NSW tenancy law to provide where a proposed rent increase exceeds the determination regarding reasonable percentage rent increases (see above), the onus should be on the landlord to show the increase is not excessive. Where the increase is

lower than the determined reasonable percentage rent increase, the onus should be on the tenant to show it is excessive.

Recommendation 7

Reform current NSW tenancy law to remove no grounds eviction provisions.

1. Tenants' Union of NSW supports a broad-based land tax

1.1 NSW Government's proposed property tax reform

We support the introduction of a new annual property tax as a broad-based annual tax applied against the unimproved land value of an individual property. Applied as a broad-based land tax this is a fairer tax, one that we believe has potential to shift the overall tax burden from low income households to high income households, and improve the efficiency of housing and land markets. A broad-based land tax helps can make housing more affordable for purchasers in the long term, by tapping some of the value stored up in housing and providing a moderating influence on house price inflation. In the long term a broad-based land tax is easier to administer, and is a far more predictable and reliable source of revenue for government.

1.2 Transition framework towards a 'modern tax system'

The Tenants' Union of NSW would prefer to see a faster transition from the current stamp duty regime across to the broad application of the new annual property tax regime. We highlight the potential disadvantage of gradual transition is a shortfall in tax revenues, noting the more gradual the transition to a broad-based land tax, the greater the shortfall in tax revenue. We suggest consideration be given to alternate transition measures.

We recommend a more immediate implementation of the new property tax to be applied across all properties, but with transition measures at implementation so that owners receive credit for stamp duty paid which is set against their land tax liability. We support, under this transition framework, provisions for low-income owners to avoid hardship by deferring their land tax liabilities to such time as their property is transferred. We note that such hardship provisions are already, under the currently proposed model, being considered.

If an immediate application of the new property tax is not adopted, we suggest instead that all properties are gradually transitioned across from the current stamp duty regime to the new annual property tax at point of sale. This would involve removal of the option to 'opt in' and much faster transition. Previous AHURI research estimates that under this transition framework around 75 per cent of dwellings would be on the new annual property tax regime within 10 years.¹

Recommendation 1: A faster transition framework be considered for introducing the new annual property tax, with measures such as credits and/or hardship provisions to be included to ensure equitable implementation during transition.

¹ Wood, Gavin and Ong, Rachel and Winter, Ian. (2012) *Stamp duties, land tax and housing affordability: the case for reform*. Australian Tax Forum. 27: pp. 331-349.

1.3 Proposed rate schedule and price thresholds

While the proposed rate schedule sets the new property tax rates quite low, we understand the proposed rates are to some extent influenced by the 'opt in' nature of the transition model and therefore set at a rate that allows the property tax to be an attractive or competitive option for new purchasers of a property. We feel though it will be crucial to regularly review the rate structure to ensure their adequacy and appropriateness.

Recommendation 2: The rate schedule for the annual property tax be reviewed regularly to ensure adequacy and appropriateness.

1.4 Exemptions and discounts

The introduction of a property tax and its broad-based application provides government with an opportunity to provide appropriate incentives (or disincentives) in relation to investor behavior and/or practice. In general, we recommend exemptions and/or discounts from the annual property tax be provided only where the public policy benefit of an exemption or discount is well-defined and demonstrable.

For example, we feel exemptions or discounts to encourage a better renting experience, including around affordability, stability and minimum standards may usefully be considered. We would support a similar, appropriate application of exemptions in line with current land tax exemptions for Boarding Houses where providers of housing are able to demonstrate the provision of lower cost housing, clearly and appropriately defined.

However, we have concerns about how exemptions and discounts have been applied so far in relation to land tax. The NSW Government recently committed to support the development of the Build to Rent sector by providing a 50% discount on land valuations for the purposes of calculating land tax in build to rent developments. The discount was explained on the basis of the potential of the sector to deliver improvements to affordability and stability for renting households. We are concerned this discount for the Build to Rent sector may be provided to developers without any clear requirements they meet basic affordability and stability measures or targets.

Recommendation 3: Exemptions or discounts to the annual property tax on the basis of improving renters' experience must include well defined, demonstrable requirements (e.g. set measures to apply for affordability, stability and tenancy management).

2. Protections for NSW renters during transition

The Discussion Paper *Buying in NSW, Building a Future* raises the need for monitoring of the rental market, and possible legislative change to ensure NSW renters are protected from rental increases as a result of the introduction of a new property tax (i.e. the pass through of the property tax to the tenant). We believe the close and proactive monitoring of house prices and rents are required, and support the proposal for legislative reform to ensure our current tenancy laws can adequately protect against any unintended negative impacts for NSW renters. Given the higher turnover of properties, we suggest reform is also needed to ensure greater protection against unfair eviction and a fair process for renters in the lead up to and during the sale process.

2.1 Impact of implementation on rental prices

Land tax is payable by the owner of land. The *Residential Tenancies Act 2010* (NSW) currently provides that taxes payable on a rented property must be paid by the landlord (section 40). While landlords sometimes claim that they pass land tax onto tenants by charging higher rents, generally speaking landlords charge what the market will bear. It is not our opinion that landlords who are currently not required to pay land tax because they fall under the threshold for low cost housing are charging any less for market rent than if land tax were to be applied. We do not anticipate that in the longer-term market rents will be pushed up by the implementation of an annual broad-based land tax.

However, during the period of a tenancy, the operation of market forces may be inhibited by the large costs faced by tenants on moving out. As a result, a new owner may be able to pass on the cost and increase the rent above the general market level. We also recognise the possible risk that during the transition to implement a new tax regime, new owners 'opting in' may seek to pass through the annual cost as a higher market rent when listing their new property for rent, with the effect of pushing up market rents at the point of listing and across rental listing sites. We strongly support the proposal for the monitoring of market rents and tenancy law reform to ensure renters are better protected from excessive rent increases as a result of the implementation of a new property tax.

2.1.1 Close monitoring of housing prices and market rents

It will be crucial that the impact of the introduction of the new property tax on house prices and rents is monitored closely. There is a clear need for a resourced and independent agency to collect, provide analysis on, and publish relevant data.

The Independent Pricing and Regulatory Tribunal (IPART) currently acts as independent pricing regulator for a range of sectors, and undertakes reviews and investigations on a wide range of economic and policy issues. We believe if resourced adequately IPART could be an appropriate agency to take on the proposed role of monitoring and review of market rents. To effectively play this role they will require access to available data - and possibly authority/discretion to create or collect new data - relating to market rents,

increases and terminations.

In keeping with their existing role as regulator we would further suggest the review process for market rents include a determination regarding a reasonable percentage increase to market rent within a defined period (e.g. each quarter), taking into account a consideration of market rents in the preceding period, and a range of other relevant factors to be determined. The criteria and data on which the determination is based would, as it is in other review process undertaken, necessarily be transparent and where possible made publicly available.

Determinations would be made at regular intervals and separate determinations would necessarily be required for local areas, and possibly dwelling types, etc. Determinations may suggest a maximum percentage increase, no increase, or decrease to current rents.

It is not suggested the determination would apply an increase, nor would it *necessarily* limit a rent increase. It would instead provide a general reference point for both renters and landlords assessing the appropriate rent for their rental. The determination might also intersect usefully with tenancy law, to allow an appropriate and timely reference to activate or engage greater protections against excessive rent increase for renters (see proposal immediately following).

The proposed IPART review as with other IPART processes may be a process with which industry and consumer representatives engage to enable the Tribunal to deliver a fully explored determination. It is important that consumer tenant representatives are able to engage in this process on equal footing with industry. As with other consumer representatives, the structure and makeup of the system will require resources to be provided to the consumer advocates. It may be appropriate this funding come from the collection of property taxes.

Recommendation 4: That an independent agency be resourced to collect, provide analysis on, and publish relevant data relating to house prices and market rents.

Recommendation 5: Consideration be given to the role such an agency might play in determining and making recommendations on reasonable rent increases in a given period.

2.1.2 Reversing the onus of proof for excessive rent increases

The *Residential Tenancies Act 2010* (NSW) provides that a tenant may take proceedings to challenge a rent increase because it is excessive, considering the general market level of rents and other factors (section 44). As the applicant, it is the tenant who bears the onus of proof. Much of the information required to challenge an increase and prompt full consideration of the matters at Tribunal are not easily available to the tenant. This information and evidence are generally more readily available to landlords.

Tenants are also disincentivised from challenging a rent increase above market rent

because of the risk of eviction. This can be a viable route for a landlord because the Tribunal process properly considers both the level of rents in the area and the quality and level of repair of the premises. When the premises are put on the market, the actual condition of the premises may not be ascertainable during brief inspection windows.

In the context of the introduction of property tax we believe this provision could usefully and appropriately be strengthened to provide some protection against the pass through of the property tax to the tenant. We propose that the provision could provide that where a rent increase is greater than the allowable increase determined by IPART as reasonable for the relevant period, the landlord would bear the onus of proving that the increase is not excessive.

Recommendation 6: Reform NSW tenancy law to provide where a proposed rent increase exceeds the determination regarding reasonable percentage rent increases (see above), the onus should be on the landlord to show the increase is not excessive. Where the increase is lower than the determined reasonable percentage rent increase, the onus should be on the tenant to show it is excessive.

2.2 Stronger protections to limit unnecessary eviction

An intended and anticipated outcome of the introduction of the annual property tax is an increased turnover of properties. The Discussion Paper estimates there will be an increase in property transactions of around 50% in the long term. We are concerned this will impact renters significantly, given the disruption experienced during the sales process. This includes the significant risk of eviction a sitting tenant outside of their fixed term faces. Currently many tenants in this situation may be : served a no-ground notice because of the owners' preference to list a vacant property for sale; evicted following a sale with vacant possession (regardless of whether the purchaser is an occupier or an investor; and/or evicted in retaliation following a tenant's assertion of rights around privacy and access in the lead up to sale.

This should be addressed by removing current 'no grounds' eviction provisions and replacing them with a range of reasonable grounds. This would also address any possible concerns around new owners' use of 'no grounds' as a means of evading protections put in place to restrict 'pass through' of property tax costs via an increase to rent by simply evicting the sitting tenant and starting a new tenancy at the higher rent.

Recommendation 7: Reform current NSW tenancy law to remove no grounds eviction provisions.