

## Summary

### End 'no grounds' evictions

All renters should be provided with a valid reason for ending a tenancy. Landlords must be required to provide a reason to end a rolling (periodic) lease and a fixed term lease.

Reasonable grounds for termination should be based on the principle that a tenancy terminated for 'no fault' should only occur where the landlord genuinely no longer intends to rent the property in the private rental market.

### Recommendation

Sections 84 and 85 of the *Residential Tenancies Act 2010* should be removed and replaced with provisions allowing termination of the agreement for the following reasons and with supporting evidence:

1. The landlord or a member of their immediate family wants to move into the premises for a reasonable length of time, e.g. at least 12 months
2. The landlord genuinely intends to demolish, and/or reconstruct the premises, and has obtained all necessary permits and consents for this
3. The property is to be put to a different use

### Reforms to ending 'no grounds' evictions must include fixed term agreements

The end of a fixed term is not a genuine reason in and of itself for an eviction, with actual practice demonstrating no presumption that the commercial relationship is expected to end. If NSW continues to allow landlords to evict without having to provide a valid reason at the end of a fixed term tenancy, reforms to end 'no grounds' eviction will be undermined and fail to deliver the greater protection and stability promised.

### Recommendation

Terminations on the basis of 'End of residential tenancy agreement at end of fixed term tenancy' (section 84, *Residential Tenancies Act 2010*) are evictions without a valid and contestable reason. Removing 'no grounds' evictions must include amendment of section 84.

## Background

### 'No grounds' termination provisions in NSW tenancy law

'No grounds' evictions in NSW refer to the practice of landlords evicting tenants without being required to provide a reason. The following provisions within the *Residential Tenancies Act 2010* (RTA or 'the Act') allow for eviction without a reason:

Section 84 End of residential tenancy agreement at end of fixed term tenancy

Section 85 Termination of periodic agreement – no grounds required

Fair Trading's [End of Tenancy survey](#) provides valuable insight into the nature of tenancy agreements (fixed term leases vs periodic leases) in NSW and why tenancies end. A majority (58%) of renters who filled out the End of Tenancy survey in NSW between August 2021 and September 2022 indicated they were on a fixed-term lease.<sup>1</sup> The survey also shows renters on fixed term leases are more likely to receive a 'no-grounds' eviction notice. The majority of renters (71%) who indicated in the survey they had received a 'no grounds' eviction received these at the end of a fixed term tenancy (vs 29% on a periodic lease).

#### Fixed term and periodic

■ Fixed term agreement ■ Periodic agreement



Figure 1: Chart illustrating the proportion of different types of rental agreements in NSW and proportion of 'no grounds' evictions by agreement type (from [NSW Fair Trading data](#))

## Ending 'no grounds' evictions during periodic and fixed term agreements

'No-grounds' eviction significantly undermines the security and stability of tenancies, as well as renters' capacity to utilise other parts of the law as designed by the government.

In the current housing crisis, we have observed a distressing relationship between increasing market rents, low vacancy rates and the use of 'no grounds' eviction. NSW tenant advocates report that in the context of low vacancy rates and increasing rents, they are already seeing a disturbing trend where landlords or their agents are issuing a notice of termination for the end of a fixed term agreement and a notice for a substantial rent increase at the same time.

They also note an increasing number of landlords or their agents are shifting renters onto back-to-back short term tenancies to facilitate this practice. Putting renters on fixed term agreements allows landlords to use a section 84 termination notice, which requires only 30 days notice in comparison to the 90 days notice required for a section 85 eviction notice.

<sup>1</sup> Based on Fair Trading's [End of Tenancy survey results](#) from August 2021 to September 2022. Information was collected for approximately 1 in 6 of all tenancies that ended during this period.

At law, a tenancy agreement doesn't end because a fixed term agreement comes to an end. The agreement continues on unless a party to the agreement seeks to end it and gives notice.

Of the 966,000 active bonds held by the Rental Bond Board, only 34.05% have been held for less than 12 months, indicating that the majority of tenancies have come to the end of a fixed term and continued on either as a periodic agreement or as a new fixed term.<sup>2</sup> These real world outcomes confirm there is no presumption from either party to the tenancy that the agreement will come to an end at the end of the fixed term contract.

NSW currently appears to have a higher usage of periodic agreements than in other states, meaning that ending no grounds in only periodic agreements is likely to lead to greater disruption of current practice as the industry adjusts to retain the power to arbitrarily evict.<sup>3</sup>

### What is the type and duration of renters' current rental agreement?

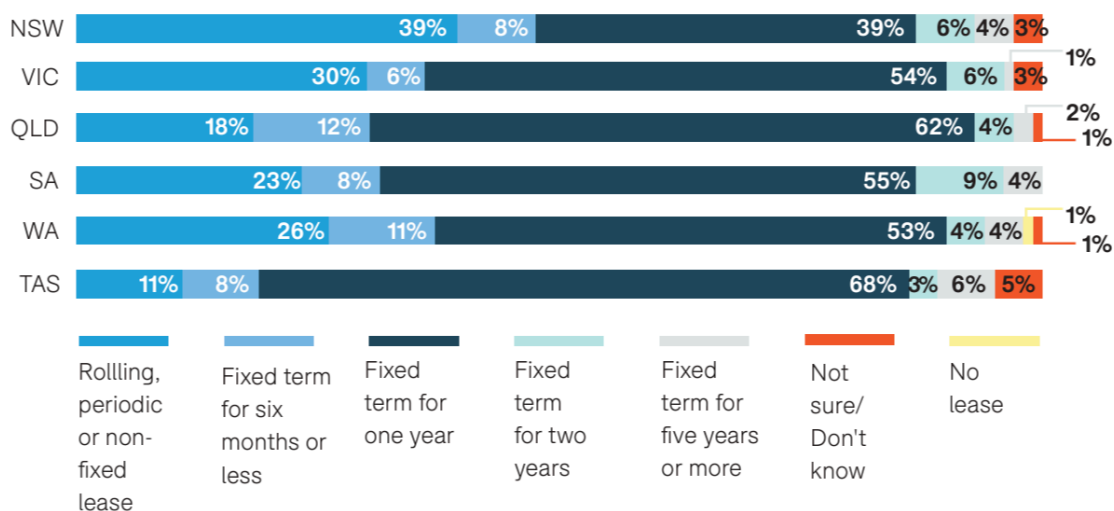


Figure 2: Graph illustrating the proportion of different types of rental agreements across states and territories, *Disrupted: The consumer experience of renting in Australia*

## Impacts of reform

### Other Australian jurisdictions' reforms to end 'no cause' evictions

The ACT recently implemented reforms to remove equivalent 'no cause' evictions from their tenancy law. These have been in effect since 1 April 2023 and apply to tenancies on a fixed term lease or a periodic lease.

<sup>2</sup> Special data request to the NSW Rental Bond Board, October 2023.

<sup>3</sup> Choice, National Shelter & The National Association of Renters' Organisations, *Disrupted: The consumer experience of renting in Australia*, available at <https://www.tenants.org.au/tu/news/latest-report-renting-shows-nsw-tops-country-rental-homes-need-repairs-fear-eviction>

In November 2023, the government of South Australia reformed its residential tenancy laws to include provisions ensuring that 'landlords will only be able to end a periodic tenancy or to not renew a fixed term lease for a prescribed reason, including breaches by the tenant, wanting to sell, renovate or occupy the property.'

In jurisdictions where reforms to end 'no cause' evictions have not gone far enough, renters have continued to face insecurity and eviction for retaliatory or discriminatory reasons. Queensland, for example, only ended 'no grounds' evictions for renters on periodic agreements, introducing 'end of a fixed term agreement' as a prescribed reason for ending a tenancy. The industry in Queensland in response, changed its behaviour by serving the end of fixed term notice at the same time as signing every new fixed term and then withdrawing the notice of termination if they intend to renew.<sup>4</sup> This practice clearly demonstrates that the end of a fixed term itself does not carry with it an expectation from either party that the tenancy as a whole will not continue, only that the landlord wishes to maintain the ability to evict arbitrarily without disclosing a genuine or evidenced reason.

Tasmania has similarly limited 'no grounds' evictions to the end of fixed terms since 1997. Around 84% of renters in Tasmania are now on fixed term agreements, preserving the ability of landlords to end agreements every 6 to 12 months without being required to provide a reason beyond 'end of fixed term'.

In Victoria, reforms to get rid of no grounds came into effect in March 2021. They have disallowed the use of 'no reason' terminations except at the end of the first fixed term. This model creates an incentive for landlords to increase the churn of tenancies in order to ensure they always maintain control over the premises. We are aware many landlords consider the first term a probationary period, placing extra pressure on renters early on in their tenancies not to 'rock the boat' or assert their rights. In NSW introduction of reforms along the lines of the Victorian model would mean over 300,000 – or up to 1 in 3 renters – would still be at risk of eviction for no reason (an eviction without grounds at the end of the first fixed term lease) each year.

If NSW continues to allow landlords to evict without having to provide a valid reason at the end of a fixed term tenancy, we will see a significant number of landlords and their agents shift renters onto short fixed term leases, as is the current practice in Tasmania and Queensland. This will mean reforms to end 'no grounds' eviction are undermined and fail to deliver the greater protection and stability promised.

The NSW Government is firmly committed to ending 'no grounds' eviction. To achieve this renters on fixed term agreements, alongside those on periodic tenancies, must have the same protection against eviction without a valid reason.

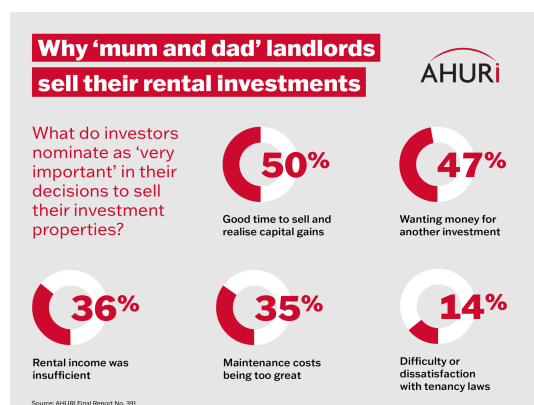
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<sup>4</sup> Michelle Christmas (2022), *Legislative amendments to affect the issuing of Notices to Leave from 1 October 2022* available at <https://www.reiq.com/articles/property-management/legislative-amendments-to-affect-the-issuing-of-notices-to-leave-from-1-october-2022>

## Law changes haven't impacted investment in the private rental market

Recent research, 'Regulation of residential tenancies and impacts on investment', undertaken for AHURI by researchers from UNSW Sydney, Swinburne University of Technology and University of South Australia, investigates the impacts of rental law regulation on landlords' market participation.<sup>5</sup>

The research examined closely the impact of previous tenancy law reform interventions in NSW and Victoria, including the recent Victorian reforms that removed 'no reason' evictions. Bond data was analysed to see whether reforms had affected trends in properties entering (investment) and exiting (disinvestment) the private rental sector.



Their analysis found that in NSW, there was no impact on the number of properties entering the private rental sector, while fewer properties than expected exited the sector. In the Victorian review, slightly fewer properties entered the sector after the review commenced; however, there was no effect on the number of properties exiting the private rental sector. Additionally, only 14 % of investors surveyed nominated dissatisfaction with tenancy laws as 'very important' in their decision to sell.

In summary, their research found that "Australian residential tenancies law reform accommodated, even facilitated, the long-term growth of the private rental sector, rather than causing disinvestment".<sup>6</sup>

<sup>5</sup> Martin, C. Hulse, K., Ghasri, M., Ralston, L., Crommelin, L., Goodall, Z., Parkinson, S. and O'Brien Webb, E. (2022) *Regulation of residential tenancies and impacts on investment*, AHURI Final Report No. 391, Australian Housing and Urban Research Institute Limited, available at <https://www.ahuri.edu.au/research/finalreports/391>.

<sup>6</sup> AHURI (2022), *News: Improving tenancy laws hasn't stopped rental investment* available at <https://www.ahuri.edu.au/analysis/news/improving-tenancy-laws-hasnt-stopped-rental-investment>