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**BETTER REGULATION DIVISION-NSW DEPARTMENT OF
FINANCE SERVICES AND INNOVATION**

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**BETTER BUSINESS REFORMS PACKAGE 2018
REPEAL OF THE LANDLORD AND TENANT ACT 1899**

Submission from
The Property Owners Association of NSW Inc



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We do thank Fair Trading for the opportunity to make comment on this review. The Property Owners Association of NSW is the peak body representing the interests of the private landlord market and has done so since 1951.

This submission is in relation to stakeholders making commentary on the repeal of The Landlord and Tenant Act 1899. This submission has been prepared by the POANSW executive committee and committee of management members who have all been short to long term landlords providing residential accommodation across the NSW market place but the Sydney market. The committee is made up of licensed real estate agents, valuers, boarding house operators, boutique hotel operators and single to multiple investment property landlords.

The Residential Tenancies Act needs major and far reaching review in order to match tenancies to the considerable pressures of housing in the State of NSW.

These pressures include: -

1. The rapid rise in housing/property prices.
2. The inability of many people to have the ability to own a home of their own. This especially applies to first home buyers most of whom are attempting to move from the rental market to become owner occupiers.
3. The increasing inability of private people to own more than one investment property is placing great pressure on the supply of rental properties and adding pressure on rent values to rise.
4. The inability of the State Government to expand the social housing supply to match the needs and demands of those seeking to occupy state owned properties.

The key strategies for revised Residential Tenancies and their Acts must be to:-

1. Ensure the viability of the private landlord in order to allow private ownership of rental property. If there is no viability, then there is no rental home and thus no tenancy.
2. To ensure that the terms and conditions imposed by a Residential Tenancies Act are not an impediment to rental property ownership.
3. That the Residential Tenancies Act is uniform and functional to all forms of residential tenancies in order to reduce the confusion of hard to read and interpret rules and regulations.

From our standpoint the 1899 Act is superfluous, and we support its repeal as we have done so in past submissions to past ministers. In fact, it is fair to say that in 2018 such an Act as old one from 1899 is an anachronism.



No doubt at the centre of this 1899 Act as well as the 1948 Act that we also requested to be repealed in 2011 and use this opportunity to request the repeal again is government dealing with a “protected tenant” or rent controlled tenancies of which to date we have not seen any hard evidence of how many exist in NSW. Sure there has been some guestimates on this front of around 400 tenancies but we have never seen such surveys or reports of where such statistics have been obtained from. Secondly the need to register such tenancies (old 5A Leases) ceased to exist back on 1 January 1986. But many tenancies prior to that were simply not registered at all even if there was amendment to the rent value by agreement between landlords and tenants, we would not like to see landlords and tenants going into lengthy complex litigations for non-compliance.

Present day landlords, tenants and real estate practitioners such as property managers know very little knowledge about such legislation and it is hardly discussed or being delivered as any form of education and training in the property industry sector.

NCAT hearings about rent control tenancies have to be at an all-time low and there would not be any NCAT member that has any expertise in this area of tenancy. We have heard of a situation from one of our members many years ago of a retired magistrate being called in to address a matter and we do not know or are aware of any landlord or tenant advocates who are available to advise on such matters. The last one known to us died well over a decade ago.

The Landlord and Tenant Act 1899 only contains a small number of provisions, mainly dealing with eviction processes in the Local Courts. The modern-day tenancy laws (recently updated in the *Residential Tenancies Act 2010*) provide for an eviction/termination process at NCAT level under section 94 (20 + tenancies) rather than through the courts.

The Chief Magistrate of the Local Courts has advised that cases under the Act are very rare; the Courts have details of only three matters under this Act in the last five years, each of which appear to have been a misguided application, with none proceeding to hearing and all being settled out of court.

While it is possible that no protected tenancies remain, some stakeholders have expressed concern that, if there are some, removing the legislation would put these tenants at risk of significant rent increases or eviction. We say that in the absence of accurate and reliable data on protected tenancies that it really makes it impossible to contact and consult with affected parties who may or may not be alive or who may have had succession of over their tenancy’s original tenancies.

We propose that the Act be repealed, with transitional provisions giving any remaining protected tenants a 12-month grace period to secure alternative affordable housing. The 1899 Act has no practical application or relevance in today’s society.

The POANSW executive committee would like to thank the minister and his subordinates for continued open communication, feedback and face to face meetings in this review process and welcomes any further discussion of the points and issues raised.

Yours Faithfully,

John Gilmovich
President-POANSW