

**19<sup>th</sup> December 2018**

Regulatory Policy, Better Regulation Division  
Department of Finance, Services and Innovation

## **TUNSW Submission: Better Business Reforms Implementation Options Paper**

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.

Our submission is concerned with items related to uncollected goods, utility agreements in strata schemes and the repeal of the *Landlord and Tenant Act 1899*. We will comment on each in the order presented in the Options Paper.

We anticipate being part of further discussion around the drafting of regulations and other planning activities. We welcome the opportunity to discuss any of our recommendations made here.

### **3. Streamlining the uncollected goods regime**

This process removes uncollected goods provisions out of various acts, including the *Residential Tenancies Act 2010* (RTAct) and *Residential (Land Lease) Communities Act 2013* (R(LL)CAct) and include them in the *Uncollected Goods Act 2010* (UGAct). We remain concerned this approach has not adequately considered the current system surrounding uncollected goods at the end of tenancies and that it has added rather than reduced complexity. We are concerned this added complexity will add to the NSW Civil and Administrative Tribunal caseload.

We encourage ongoing monitoring of the effectiveness of this new system and would be happy to work with the Department in relation to an evaluation framework.

Currently the RTAct and R(LL)C Acts operate as a one-stop shop for both tenants and landlords dealing with uncollected goods. The Act covers storage, disposal and proceeds of sale neatly within a few sections. Under the new Uncollected Goods Act, residents, tenants and landlords will need to deal across the RTAct or the R(LL)C Acts, the UGAct and the *Unclaimed Money Act 1995*. This appears contrary to the intended purpose of the Act to reduce complexity.

#### *Protecting people's homes*

Asking a landlord or real estate agent to accurately value goods appears to ask for a skill set beyond their training or expertise. We are concerned a number of disputes may arise because of undervaluing of tenants' and community residents' belongings, and that tenants will not be able to effectively resolve these disputes.

In particular, the R(LL)CAct currently ensures that the dwelling on a site agreement can only be dealt with by Tribunal order. We believe this is appropriate, even where the physical structure may be argued to be worth less than \$20,000, in recognition of the special use of the home. This is particularly likely to happen where the dwelling has technically depreciated in value, despite continuing to be in good condition and functional as a dwelling.

We recommended during parliamentary processes that the Bill be amended to ensure that a home on a residential site subject to the R(LL)CAct is always considered a 'high value' good. However government chose not to amend the Bill. We do not see a way for the regulations to address this flaw, and recommend amendments to the UGAct.

#### *Goods left behind in shared residential premises*

The RTAct currently provides for situations where goods are left behind by a co-tenant where other co-tenants remain in possession of the premises and so the goods are not in the possession of the landlord. This situation was not included in the UGAct.

We recommended the inclusion of an equivalent section, and necessary other amendments, to the current RTAct s134(2A) allowing the Tribunal to provide direction to co-tenants whose goods are left behind but in possession of their landlord.

It is likely that this situation is more appropriate for a more comprehensive piece of amending legislation dealing with share-housing. However we do support the inclusion in the regulation of goods left behind by a former co-tenant. This will give greater clarity in situations which can become very messy. We will consider this inclusion as temporary until a more comprehensive consideration of share-housing regulation can occur.

#### *Timeframe*

Implementation in 1 October 2019 appears feasible.

#### 4. Utilities supply agreements in Strata

We note that a substantial group, potentially more than half, of people affected by this change will have no ability to participate in decision-making processes.

We make two recommendations regarding implementation.

1. The Department should specifically consider tenants in its communications plan for this change. Education should particularly focus the impact of the utility supply agreement on a person's other consumer rights, such as the general ability to choose your own provider, under the National Energy Retail Law.
2. The Government should include disclosure of utility supply agreements under cl 7 of the *Residential Tenancies Regulation 2010*. While we believe this disclosure currently comes far too late to be useful information, it would still operate to give more transparency about the premises and the conditions of the contract. We believe this is an appropriate and equivalent level of disclosure to other items, such as that council waste services will be provided on a different basis than other premises.

#### 6. Landlord and Tenant Act 1899 Repeal

We approve of the process laid out in the Implementation Paper regarding the *Landlord and Tenant Act 1899* (the 1899 Act). Our understanding of the proposed process will constitute a two stage consultation process.

The first step is a process of consultation examining the current provisions of the 1899 Act and identifying elements which may need modification. The second step is the drafting of savings and transitional regulation preserving the modified 1899 Act. These two stages result in the implementation of both the regulations and the full repeal of the 1899 Act on 1 October 2019.

We acknowledge that this is the continuation of a process around repealing the 1899 Act. Rather than reproducing previous material we refer to the two key documents canvassing our advice on this issue:

- Our response in 2015 to the *Fair Trading Legislation (Repeal and Amendment) Bill 2015*<sup>1</sup>;
- Our response in 2018 to the Easy and Transparent Trading Consultation Paper<sup>2</sup>.

These documents detailed the potential impacts and risks of repeal. It is clear that some of these concerns have had influence on the process so far. We look forward to continuing to work with the Department in developing regulation to ensure that the repeal process does not cause undue harm to the often vulnerable residents who can rely on its coverage.

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<sup>1</sup> Available at:

[https://files.tenants.org.au/policy/comment\\_on\\_proposed\\_repeal\\_of\\_the\\_landlord\\_and\\_tenant\\_act.pdf](https://files.tenants.org.au/policy/comment_on_proposed_repeal_of_the_landlord_and_tenant_act.pdf)

<sup>2</sup> Available at: <https://files.tenants.org.au/policy/20180827-ETT-Submission-TUNSW-Final.pdf>

We are comfortable that a commencement date of 1 October 2019 is achievable. We do however recommend that should it become apparent that the date will not be met before the consultation processes are complete, an extension on the date should be preferred rather than contracting the process of drafting regulation.

It is the view of the Tenants' Union of NSW that all people who pay a rent for their home should have protection against unfair evictions, and should have access to a no or low-cost, accessible dispute resolution jurisdiction. The history of the Act demonstrates the NSW state's historic concurrence with this position – the 1899 Act replaced an older 1853 legislation which also restricted the forceful eviction of a tenant without court sanction. What has developed over the intervening 165 years is a deeper understanding of what may constitute an unfair eviction.

We consider that the 1899 Act operates as a form of regulatory safety net for those tenants who are without legal protection otherwise. This is the key function of the 1899 which will be crucial to preserve. We also acknowledge that there are people renting their homes in NSW who are not covered by the 1899 Act, and recommend a consideration of how best to provide coverage to those people.

Throughout the regulatory process we will have further and more specific recommendations around necessary modifications, which we would characterise as modernisations to an Act written before Federation. These include moving jurisdiction of most cases heard under the 1899 Act to the NSW Civil and Administrative Tribunal; considering widening coverage to more closely align with the original intention of the law; and ensuring no unintended consequences of moving the text to a schedule, particularly in its interaction with the substantive text of the to-be-repealed *Landlord and Tenant (Amendment) Act 1948*.