Submission No 10

INQUIRY INTO RESIDENTIAL TENANCIES AMENDMENT (PROTECTION OF PERSONAL INFORMATION) BILL 2025

Organisation: Tenants Union of NSW

Date Received: 9 March 2026

Submission to the Inquiry into the *Residential Tenancies Amendment (Protection of Personal Information) Bill 2025*

March, 2026

TENANTS' UNION OF NEW SOUTH WALES

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 35,000 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 Renters Organisations (NARO), 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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Contents

About this submission

The Tenants' Union welcomes the opportunity to contribute to the Inquiry into the *Residential Tenancies Amendment (Protection of Personal Information) Bill 2025* (the Bill). We understand that the Inquiry is particularly focused on looking at possible unintended effects of the proposed legislation on pet owners.

The current pet application process in the *Residential Tenancies Act 2010* provides no avenue for a renter who has a pet and is applying for a property to seek consent for the pet without the risk of discrimination in the process of applying for a home.

The current pet application process in NSW is based on the assumption that a renter will not have a pet at the time they move into a new rental home. We know that this is not the case and currently these renters are in a very difficult position. The provisions in this Bill are attempting to work around this gap.

Ultimately the solution to many of the concerns relating to pets raised during the progress of the Bill in the Legislative Council requires amending the current process of applying for a home. No jurisdiction in Australia has addressed this part of making renting with pets fairer, and this gap creates problems for renters and industry stakeholders. Ensuring that moving with a pet creates no disadvantage to finding a safe, affordable and appropriate home should be an aim for the NSW government.

This Inquiry is attempting to resolve the issues caused by the absence of reform to the application process. While there will inevitably remain unresolved issues, there are significant improvements we can make. Implementing in NSW the standard pet application process set in the majority of Australian jurisdictions would ensure that an unreasonable refusal by the landlord is prevented in the first instance. Placing the onus onto the landlord to seek an order from the NSW Civil and Administrative Tribunal (NCAT) if they wish to prohibit pets in their premises is a key way to remove unintended effects of this Bill on pet owners. Renters who don't currently have a pet have also raised there are barriers in the requirement to seek consent for a specific pet rather than seeking consent to have a particular type of pet for example a cat or a small dog. We recommend that the NSW Government do further work looking at the pet application process that commenced in May 2025 to ensure its fit for purpose.

In the meantime we need to provide an avenue for renters moving into a premises with a pet to have a mechanism to seek consent while at the same time not requiring disclosure at the point of application.

We recommend the Bill extend the current proposed 7 day grace period, introduce additional mandatory disclosures at the point of advertising, allow a renter to end their

tenancy without penalty if consent for their pet is refused by the landlord and introduce penalties for landlords or Agents that provide misleading information to renters on the application process. These amendments to the Bill would reduce renters moving into premises where there are genuine reasonable grounds for a landlord's refusal under NSW's current pet application process. They will also provide an avenue for a renter to vacate the premises where consent is refused and not be placed into financial hardship or have to rehome their pet/animal.

In addition to strengthening the provisions in the Bill we strongly encourage further community education work to ensure that renters are aware of the reasonable grounds in the legislation that a landlord can refuse a pet application. It's important that this information is readily available before and during the application process and not just at the time of signing the lease agreement.

Good data collection on pet applications and NCAT decisions under section 73G are crucial to enable a thorough assessment and review to understand how the pet application process is working in NSW.

We understand the Inquiry's focus is primarily on the pet provisions in the Bill but there are considerations we would like to bring to the attention of the Inquiry that relate to other aspects of the Bill. We have provided recommendations below which we believe will enhance the Bill and ensure that it meets its objectives.

The Bill is also an opportunity to ensure better regulation of the advertising stage of the rental process. The Bill provides some regulation by requiring disclosure of exclusive supply networks and if digitally altered photos have been used in the advertising. We strongly recommend that this be expanded to require further disclosure to help a renter to get a better understanding of a property to decide if they should attend an inspection. Additional disclosure around accessibility of the property will be valuable information for prospective tenants.

Recommendations

Recommendation 1:

Review current pet application process in the Residential Tenancies Act 2010 and consider implementing the process in place in other States and Territories where onus is on landlord to apply to NCAT if they wish to prohibit pets at the premises

Recommendation 2:

Maintain the requirement for tenancy application to be in the "approved form" and ensure the approved form prohibits a landlord from asking a renter if they have or intend to keep a pet(s)

Recommendation 3:

Amend section 73B(1) to include

(1A) A tenant who, within 14 days after entering into a residential tenancy agreement, applies under section 73C for the landlord's consent to keep an animal at the residential premises may keep the animal at the premises until the landlord gives a written response to the tenant under section 73D,

(1B) If the landlord has refused to give consent and the tenant who made an application under 73C within 14 days of entering into a residential tenancy agreement has applied to NCAT under section 73G within 28 days of the landlord refusing consent, the tenant may continue to keep the animal at the premises until the NCAT proceedings are completed.

(1C) If consent is not given the tenant must remove the pet from the premises within 30 days of the landlord's decision or the NCAT decision under section 73G.

Recommendation 4:

Amend section 22B to include terms to the effect that:

A landlord or landlord's agent must not advertise or otherwise offer for rent residential premises where the landlord lives at the property unless it is stated in the advertisement or offer that the landlord lives at the property.

Maximum penalty—

(a) for an individual—50 penalty units, or

(b) otherwise—100 penalty units.

A landlord or landlord's agent must not advertise or otherwise offer for rent residential premises where animals are not permitted because of the operation of:

(i) an Act or other law,

(ii) a local council order,

(iii) for premises forming part of a scheme—a by-law of the scheme that has legal effect,

(iv) for premises forming part of a residential community—a community rule of the residential community,

unless it is stated in the advertisement or offer that such restrictions exist.

Maximum penalty—

(a) for an individual—50 penalty units, or

(b) otherwise—100 penalty units.

Recommendation 5:

Make necessary amendments to the rest of Section 22B regarding regulation-making power and reasonable defences.

Recommendation 6:

Amend the Bill to require the landlord or Agent to disclose to all prospective tenants submitting an application high level details of all pet applications that were refused in the past 5 years at the premises

Recommendation 7:

Insert into the Bill a clause that allows a tenant to give a 30 day notice of termination to the landlord if they refuse consent to keep a pet/animal and the pet application was lodged during the required grace period. The tenant may keep the pet at the premises during the notice period and is not liable to pay compensation or any additional amount for the termination of the agreement during the fixed term.

Recommendation 8:

Insert into the Bill a clause that requires a landlord to pay the tenants reasonable moving costs if the reasonable ground for refusal is a ground that is required to be disclosed at the point of advertising or when the property was offered for rent and it was not disclosed.

Recommendation 9:

Further work on community education for renters on the reasonable grounds a landlord can refuse a pet application, particularly at the point of inspecting and applying for a rental property.

Recommendation 10:

Insert into the Bill penalty units for landlords and Agents who provide misleading information to tenants about and during the pet application process.

Recommendation 11:

Insert into the Bill a requirement for the outcome of pet applications lodged during the tenancy agreement to be disclosed during the mandatory survey through Rental Bonds Online

Recommendation 12:

Work with NCAT to access deidentified outcome data from NCAT for applications under section 73G and make this data available.

Recommendation 13:

Amend section 210E to

(1) A residential tenancy entity may collect identity verification information about a tenant only if the landlord—

(a) intends to enter into a residential tenancy agreement with the tenant, and

(b) before collecting the information, notifies the tenant in writing of the landlord's intent.

Maximum penalty—

(a) for an individual—50 penalty units, or

(b) otherwise—200 penalty units.

(2) Unless the regulations provide otherwise, a residential tenancy entity that holds identity verification information of a tenant, or documents or other evidence containing identify verification information of a tenant, must—

(a) hold the information, documents or evidence no longer than two business days after the tenants application has been approved

Maximum penalty—

(a) for an individual—50 penalty units, or

(b) otherwise—200 penalty units.

(3) Subsection (2) does not apply to a record of the tenant's name and date of birth.

Recommendation 14:

Remove the amendments to section 214 and retain 7 days as the requirements for landlords and agents to notify database operator if information is inaccurate, ambiguous, out of date, incomplete, irrelevant or misleading

Recommendation 15:

Amend section 215 to require database operators to make changes to listings within 7 days

Recommendation 16:

Amend section 216(3) to the following effect:

(3) A landlord, agent of a landlord or database operator—

(a) must give the person the confirmation and a copy of the information, if any—

(i) as soon as possible, and

(ii) no longer than one business day, and

(b) must not charge a fee for giving the confirmation or a copy of the Information.

With penalties in line with others proposed.

Recommendation 17:

Amend section 187(2)(b1)

(b1) Economic and non economic loss suffered by a person as a result of a contravention of a provision of Part 11, Division 1A or 1B or the regulations made under Part 11, Division 1A, 1B or 3.

Recommendation 18:

Insert into the Bill a mandatory requirement for a current floorplan to be included in advertisements and reference any steps/stairs in the property

Review pet application process as currently not fit for purpose

Preventing an unreasonable refusal by the landlord in the first instance would prevent some of the possible unintended consequences on pet owners of the pet clauses in this Bill. The landlord in the current pet application process makes the determination on whether they have reasonable grounds to refuse a pet application and the only way for there to be any oversight on whether this is a reasonable application of the grounds to this particular pet and premises is NCAT. The responsibility falls on the tenant to take this matter to NCAT even in situations where the landlord's refusal is clearly unreasonable.

The guiding principle for NSW's pet application process should be that renters should 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. Given it is the landlord who is seeking to restrict the actions of the renter, and to limit the renters' contractual rights to peace, comfort and privacy the responsibility to apply to NCAT and the onus of proof should be placed on them. There should not be a list of valid reasons for a landlord to say no to a pet. The landlord should go to NCAT for all reasons where the renter does not agree. This is a model similar to those that apply in Victoria, the ACT and the NT. If this process was implemented in NSW there would be no requirement for renters to apply to NCAT after they move in with their pet, the onus would be on the landlord if they wished to refuse consent.

The current pet application process, particularly through the mandatory form combined with the permission dispute pathway above, essentially requires a person to already know the specific animal for which they are seeking permission. For cats and dogs the tenant is asked to provide the microchip number and for all animals the tenant is encouraged to provide 'as much information as possible'.[1] Failure to provide this information can be used as a trigger to refuse permission by asserting that the form has not been completed or that some other element has not been satisfied, regardless of how reasonably, which forces the tenant to apply to the Tribunal to progress, placing a barrier on the path. This places an effective requirement for someone to go to significant lengths in gathering information about an animal which may not be available should they be successful in their application, or otherwise encourage riskier pet ownership behaviour by obtaining the animal before knowing whether permission will ultimately be gained.

We strongly encourage the Inquiry to recommend to the NSW Government to review the current pet application process.

[1]NSW Fair Trading (2025) *Form to apply to keep a pet in a rental property* https://www.nsw.gov.au/housing-and-construction/rental-forms-surveys-and-data/resources/form-to-apply-to-keep-a-pet-a-rental-property accessed 6th March 2026

Our recommendation

1) Review current pet application process in the *Residential Tenancies Act 2010* and reconsider implementing the process in place in other States and Territories where onus is on landlord to apply to NCAT if they wish to prohibit pets at the premises

Tenancy application to be in the "approved form"

The Tenants' Union is aware from renters of the difficulties they face in finding a home where they can live with their pets. At present renters are generally asked to disclose if they have a pet when applying for a new property. Landlords and agents may simply reject all applications where applicants have indicated they have a pet. Currently when a renter's application to rent a home is rejected by a landlord they have no access to the information for why this decision was made by the landlord. It can be extremely difficult to prove that discrimination is the reason for any individual application to be rejected, and currently only in instances where the pet was an assistance animal would such discrimination be unlawful. For this reason and to not undermine the rental laws that commenced in 2025 which improved renters rights to have pets, it is vital that landlords are not allowed to ask if a renter has or intends to have a pet on the application form.

Our recommendation

2) Maintain the requirement for tenancy application to be in the "approved form" and ensure the approved form prohibits a landlord from asking a renter if they have or intend to keep a pet(s)

7 day "grace period"

The Bill introduces a new pet provision in section 73B(1)(1A) that allows 7 days for renters to apply to have a pet after they move in and can keep the pet until the landlord responds to their application under 73G. The Tenants' Union is supportive of this additional term as it accounts for common circumstances where a renter moves into a rental property and they already have a pet(s) or know they intend to introduce a pet. The application process has not been made safe for the renter to disclose pets without jeopardising their chance of securing a home.

Our concern with the new provision is the short time frame provided. A 7 day timeframe may not be long enough, noting particularly that regular mail service is now 7 days. If a renter has to mail the pet application form to their landlord, this reduces their effective timeframe to 0 days. We recommend this be extended to 14 days.

There also needs to be consideration given to allowing the renter to keep their pet if they have decided to challenge any refusal by making an application under section 73G at NCAT. We note that due to the Government's last minute decision to deviate from the standard process set in the majority of Australian jurisdictions, the Act does not prevent an unreasonable refusal in the first instance, it instead allows that an unreasonable refusal can be overturned by the Tribunal. Allowing the renter to keep the pet while they are challenging the landlord's refusal will give more purposeful effect to the NCAT process and recognition that the Tribunal can override the landlord's refusal, without the risk of a breach notice of termination being served in the meantime, or the breach being recorded in future references. If the pet/animal is forced to be removed because the initial 7 day time period is up the renter may feel it pointless to challenge the refusal at NCAT and be placed into the difficult position of breaking their lease or rehoming their pet/animal.

The Bill is silent on a timeframe for the renter to remove their pet/animal if the landlord refuses consent. Providing an adequate timeframe for the renter to find a new home for their pet will ensure the renter can act in the best interests of the pet in finding a suitable place for rehoming. Putting the renter under pressure by not providing any timeframe or too short a timeframe may put them in an impossible situation which could have consequences for the pet/animals welfare. We consider that 30 days would be a sufficient time period. If there are any issues with the pet/animal during this period under the *Residential Tenancies Act 2010* the tenant is responsible for ensuring they do not damage the premises deliberately or negligently which provides an avenue for the landlord.

Our recommendation

3) Amend section 73B(1) to include

(1A) A tenant who, within 14 days after entering into a residential tenancy agreement, applies under section 73C for the landlord's consent to keep an animal at the residential premises may keep the animal at the premises until the landlord gives a written response to the tenant under section 73D,

(1B) If the landlord has refused to give consent and the tenant who made an application under 73C within 14 days of entering into a residential tenancy agreement has applied to NCAT

under section 73G within 28 days of the landlord refusing consent, the tenant may continue to keep the animal at the premises until the NCAT proceedings are completed.

(1C) If consent is not given the tenant must remove the pet from the premises within 30 days of the landlord's decision or the NCAT decision under section 73G.

Additional disclosure requirements

The Tenants' Union recommends that mandatory disclosure requirements be introduced into the Bill to reduce the risk of a renter moving into a premises with an animal and the landlord refusing the pet application on genuine reasonable grounds that are known to the landlord prior to the commencement of the tenancy. Early disclosure will help smooth the process of allowing pets in suitable properties and reduce disputes.

While we note that the landlord's assertion may not be valid and a renter may still determine that they will move in and challenge the assertion, they will do so in a more informed manner, being aware that doing so may be risky. We expect few renters to take the risk where the declaration appears reasonable. We note that while there is now a restriction on landlords or agents advertising premises as 'no pets', there is no restriction on landlords or agents advertising that they will refuse pets on some ground. Providing guidance to industry participants can also help guide the development of this and avoid sharp practice intended to deceive renters about their ability to apply for a pet.

The landlord living at the property and any applicable legal instruments are potentially lawful grounds to refuse consent for an animal that relates to the property independent of the particular animal. They are outside of the control of the renter and should be disclosed at the point of advertising the premises. This will reduce the number of disputes, by avoiding situations where renters move into premises that are not suitable. The other grounds for reasonable refusal are about the particular pet/animal and their suitability to the premises and the renter is the only party with the ability to consider and control those aspects prior to a pet application being made. A renter during an inspection of the premises will have the opportunity to consider whether the premises are suitable for their particular pet/animal needs.

Disclosure is the best way to resolve potential situations of a renter moving in and the landlord having a reasonable ground to refuse an application to keep their pet.

Other reasonable grounds for refusal for example forecasting damage on bond is not a reasonable ground in our view and the Tenants' Advice and Advocacy Services have heard

from renters who have been successful in disputing this reason to refuse consent by landlords through the NCAT process.

At the point where a prospective tenant submits an application to rent a home we recommend that the landlord or Agent must disclose any pet application they refused within the last 5 years. High level details such as the type of animal, the reasonable grounds for refusal and whether NCAT orders were made. This information will be helpful for a prospective tenant to have as part of their decision making on whether this property is suitable for their particular pet/animal.

Our recommendation

4) Amend section 22B to include terms to the effect that:

A landlord or landlord's agent must not advertise or otherwise offer for rent residential premises where the landlord lives at the property unless it is stated in the advertisement or offer that the landlord lives at the property.

Maximum penalty—

(a) for an individual—50 penalty units, or

(b) otherwise—100 penalty units.

A landlord or landlord's agent must not advertise or otherwise offer for rent residential premises where animals are not permitted because of the operation of:

(i) an Act or other law,

(ii) a local council order,

(iii) for premises forming part of a scheme—a by-law of the scheme that has legal effect,

(iv) for premises forming part of a residential community—a community rule of the residential community,

unless it is stated in the advertisement or offer that such restrictions exist.

Maximum penalty—

(a) for an individual—50 penalty units, or

(b) otherwise—100 penalty units.

5) Make necessary amendments to the rest of Section 22B regarding regulation-making power and reasonable defences.
6) Amend the Bill to require the landlord or Agent to disclose to all prospective tenants submitting an application high level details of all pet applications that were refused in the past 5 years at the premises.

End tenancy early without penalty

There may be situations where a renter does end up in a situation where they have their pet application refused by their landlord for legitimate reasonable grounds. We expect this to be very rare if the amendments we proposed earlier are included in the Bill. It is important to provide measures that will ensure a renter is not forced to make the impossible decision of rehoming their pet or placed into financial hardship if they are in this situation.

The Tenants' Union recommends the grounds for ending a tenancy during the fixed term without penalty be expanded to include where the landlord or NCAT determine that a pet application is refused. This will allow the renter to vacate the premises and keep their pet/animal at the same time without being placed in financial difficulty of paying a 4 week break lease fee.

Where the reasonable grounds for refuting the pet application include facts that are required to be disclosed at the point of advertising and they were not disclosed the landlord should be required to pay the renters reasonable moving costs in addition to the renter being able to end their tenancy without penalty.

Our recommendation

7) Insert into the Bill a clause that allows a tenant to give a 30 day notice of termination to the landlord if they refuse consent to keep a pet/animal and the pet application was lodged during the required grace period. The tenant may keep the pet at the premises during the notice period and is not liable to pay compensation or any additional amount for the termination of the agreement during the fixed term.

8) Insert into the Bill a clause that requires a landlord to pay the tenants reasonable moving costs if the reasonable ground for refusal is a ground that is required to be disclosed at the point of advertising or when the property was offered for rent and it was not disclosed.

Community education to raise awareness of reasonable grounds for refusal

Community education has an important role to play to ensure that renters are aware of the reasonable grounds that landlords can refuse a pet application under our current rental laws. Awareness of these grounds will help reduce disputes where a renter moves into a premises with their pet/animal and the landlord is able to refuse consent on reasonable grounds. Currently the Tenant Information Statement is provided at the time the renter signs the tenancy agreement. It would be more helpful and potentially reduce

disputes if this key information was provided to renters at the point they are applying for a rental property. This will help to ensure they are aware of all the necessary conditions they need to meet in order to ensure their pet/animal is suitable for the particular premise. Potential avenues for distributing this information could be through common places renters look for rental advertisements for example realestate.com.au, domain.com and specific real estate agent website rental listings.

Our recommendation

9) Further work on community education for renters on the reasonable grounds a landlord can refuse a pet application, particularly at the point of inspecting and applying for a rental property.

Penalty for misleading information

The Tenants' Union is aware of misleading information from landlords and Agents to renters about the pet application laws and processes. Where the landlord has not provided a response within the required timeframe after a pet application has been lodged we are aware renters have been told they still need to seek consent from NCAT to keep a pet. We are aware of unreasonable conditions being placed on renters as part of the landlord giving consent to keep the pet. More work needs to be undertaken to educate landlords and Agents about these new provisions and also introduce penalties into the Bill for misleading information.

Our recommendation

10) Insert into the Bill penalty units for landlords and Agents who provide misleading information to tenants about and during the pet application process.

Data collection

Currently there is no data collected on pet applications in NSW. This data is crucial in assessing and reviewing whether the provisions are working for renters. We recommend that measures be put in place to require this information to be provided by landlords when they are completing the mandatory survey through Rental Bonds Online. Accessing the outcomes data from NCAT for all applications lodged under section 73G will also enable a proper review of the reasonable grounds and the pet application process to ensure it is fulfilling the intention of this important change to rental laws in NSW.

Our recommendation

11) Insert into the Bill a requirement for the outcome of pet applications lodged during the tenancy agreement to be disclosed during the mandatory survey through Rental Bonds Online

12) Work with NCAT to access deidentified outcome data from NCAT for applications under section 73G and make this data available.

Protection of renters personal information reforms

The primary focus of the reforms introduced through the Bill will allow renters to retain control of their personal information and have confidence that its use is to their benefit. Personal information gathered during the application process will only be for the purpose of assessing whether the prospective tenancy agreement is likely to be sustained. Regulation of the application process for private rental housing is necessary to provide greater protection against discriminatory and/or intrusive requests for information at application, as well as greater transparency regarding the decision making process for applicants. Limiting collection of personal information as well as ensuring confidential destruction of personal information no longer needed for a permitted purpose is also important from a safety perspective. The Bill though does not go far enough to protect renters from discrimination at the point of application and we encourage the NSW Government to do further work in redesigning the application process.

The Bill is currently missing any requirements for tenants identify verification information to be destroyed after it is no longer required.

The Tenants' Union recommends that this requirement is included for residential tenancy entities to ensure that data is protected from misuse, interference and loss especially in cases of data breach. In addition any data that is no longer needed for a permitted purpose must be deleted. As the data is collected purely for the purpose of verifying a renters identity once that has been completed the information should be deleted within one business day, with a record noting the process occurred being sufficient for subsequent requirements.

Our recommendation

13) Amend section 210E to

(1) A residential tenancy entity may collect identity verification information about a tenant only if the landlord—

(a) intends to enter into a residential tenancy agreement with the tenant, and

(b) before collecting the information, notifies the tenant in writing of the landlord's intent.

Maximum penalty—

(a) for an individual—50 penalty units, or

(b) otherwise—200 penalty units.

(2) Unless the regulations provide otherwise, a residential tenancy entity that holds identity verification information of a tenant, or documents or other evidence containing identify verification information of a tenant, must—

(a) hold the information, documents or evidence no longer than two business days after the tenants application has been approved

Maximum penalty—

(a) for an individual—50 penalty units, or

(b) otherwise—200 penalty units.

(3) Subsection (2) does not apply to a record of the tenant's name and date of birth.

The Bill removes from section 214 the standard 7 day time period for landlords and agents to notify database operators if information is inaccurate, ambiguous, out-of-date, incomplete, irrelevant or misleading. The notification process is online and therefore 7 days is more than enough time to meet this requirement. We also note that delay in doing so causes significant harm to tenants who may need the information to be updated in order to find housing. There should not be any extension of this time period and 7 days should remain as the standard.

The Bill also removes from section 215 the standard 14 day time period for database operators to make changes to listing when they have been advised the information is inaccurate, ambiguous, out-of-date, incomplete, irrelevant or misleading. There should not be any extension of this time period and we recommend the stipulated time period be reduced to 7 days.

Our recommendation

14) Remove the amendments to section 214 and retain 7 days as the requirements for landlords and agents to notify database operator if information is inaccurate, ambiguous, out of date, incomplete, irrelevant or misleading

15) Amend section 215 to require database operators to make changes to listings within 7 days

The Bill in section 216 now requires landlords and database operators to provide confirmation and copy of information listed within a prescribed period or if no period as soon as practicable. A standard time period is much better than as soon as practicable.

If residential tenancy databases are to continue to be entertained as part of the rental sector, they should be required to use their best efforts to provide the required information held about a person as soon as possible. This can be defined as providing the information as quickly as it can be provided to any other person requesting the information (such as a subscriber).

Landlords and landlord's agents have no obligation to participate in listing renters on residential tenancy databases and many decline to do so. Landlords and landlord's agents who wish to participate in listing renters on residential tenancy databases should do so with care. The impact of a listing on a person's ability to be safely housed is immense. It is appropriate that they also be required to provide information as close to immediately as possible, and if they are concerned they will not be able to do so are free not to participate.

Our recommendation

16) Amend section 216(3) to the following effect:

(3) A landlord, agent of a landlord or database operator—

(a) must give the person the confirmation and a copy of the information, if any—

(i) as soon as possible, and

(ii) no longer than one business day, and

(b) must not charge a fee for giving the confirmation or a copy of the Information.

With penalties in line with others proposed.

The Bill amends section 187(2) to add in the ability for the NCAT to award economic loss compensation due to breach of the new requirements around personal information and databases. This is a welcome inclusion in the Bill but the Tenants' Union warns against restricting compensation to economic loss only. Tenant losses may not materialise precisely in a financial way because the harm done by the breach could mean loss of opportunity, stability or safety (of identity). These are not impacts that can be neatly substantiated with a receipt. Access to non-economic compensation is an important element of ensuring meaningful rectification of breaches of contract and it is important to let NCAT administer justice without undue restriction. The issue of non-economic

compensation being payable in tenancy matters has been the subject of significant disruption in recent years.

Prior to Insight Vacations v Young (2010) in the Supreme Court of Appeal, it was uncontroversial that tenants could recover damages for distress and anxiety flowing from a landlord's breach, but following Insight and its application in Flightcentre v Louw (2011), the Tribunal felt bound to assess such claims under the Civil Liability Act 2002. This resulted in significant reduction in tenants' ability to claim non-economic compensation.

However this position was ultimately displaced by the High Court in Moore v Scenic Tours (2020), which reaffirmed the earlier Baltic Shipping that damages for disappointment and distress are recoverable where the contract included 'promises of enjoyment, relaxation or freedom from molestation, breach of which results directly in disappointment and distress'[2].

Contracts relating to the handling of private information make similar promises, and it is not appropriate for Parliament to restrict the options for the Tribunal to consider as remedies for affected parties who have made their case.This includes allowing for rightful compensation for actions that are not fair, cause disappointment and upset and are in breach of privacy principles but their losses cannot be demonstrated in a purely economic sense.

Real deterrence is the point of this amendment, confining compensation to economic loss creates a situation for ongoing frustration and upset for renters and allows unscrupulous participants in the industry to undermine the privacy principles.

Our recommendation

17) Amend section 187(2)(b1)

(b1) Economic and non economic loss suffered by a person as a result of a contravention of a provision of Part 11, Division 1A or 1B or the regulations made under Part 11, Division 1A, 1B or 3.

Further regulation of the advertising process

The Bill includes new mandatory disclosures for rental advertisements that will help prospective renters navigate which properties they should inspect when they are searching for a home. We hear from renters how frustrating it is to be misled into taking the time to inspect a property that is not suitable and looks nothing like the photos advertised. Inflating the number of interested applicants facilitates a false sense of increased interest that may be misleadingly leveraged into higher rental prices. This is not a dynamic that should be encouraged.

[2] *Moore v Scenic Tours Pty Ltd* [2020] HCA 17 (24 April 2020) at [46].

There should be further consideration of the information provided during advertisement and application processes to ensure consumer tenants are not mislead with irrelevant or misleading, including by omission, information that would influence their decision-making.

A floor plan is also important information that should be made available to prospective renters as it provides key information around the accessibility of the property which could significantly impact a renter's interest. A floor plan provides transparency for a renter on the layout of the premises and contains important information around accessibility for example stairs/steps. Currently a prospective tenant has no information to verify if a property will meet their accessibility requirements and only upon arriving at a premises can they determine if it is safe and functional for them to inspect or live in the premises.

Our recommendation

18) Insert into the Bill a mandatory requirement for a current floor plan to be included in advertisements and reference any steps/stairs in the property