CPSA COMBINED PENSIONERS & SUPERANNUANTS ASSOCIATION

Submission to the Department of Finance, Services and Innovation's *Easy and Transparent Trading* Consultation Paper

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CPSA receives funding support from the New South Wales and Australian Governments

CPSA is a non-profit, non-party-political membership association founded in 1931 which serves pensioners of all ages, superannuants and low-income retirees. CPSA has 98 branches and affiliated organisations with a combined membership of over 23,000 people living throughout NSW. CPSA's aim is to improve the standard of living and well-being of its members and constituents. CPSA receives funding support from the NSW Government Departments of Family & Community Services and Health and the Australian Government Department of Social Service.

Summary of Recommendations:

- **Recommendation 1:** That the NSW Government funds a specialised older person's tenancy service, with specialisation in protected tenancies, for public advocacy and to collect data on protected tenancies in NSW.
- **Recommendation 2:** That the key provisions of the *Landlord and Tenant (Amendment) Act 1948* are not inserted into the *Residential Tenancies Act 2010.*
- **Recommendation 3:** That the *Landlord and Tenant (Amendment) Act 1948* is left as is and to naturally phase itself out.
- **Recommendation 4:** That the NSW Government does not implement a register of protected tenants.
- **Recommendation 5:** That the NSW Government does not use a register of protected tenants as a basis to repeal the *Landlord and Tenant (Amendment) Act 1948.*
- **Recommendation 6:** That the NSW Government does not place the burden of proof on individuals to prove they live in prescribed premises.
- **Recommendation 7:** That tenants can lodge their bond with the Rental Bond Board in instalments.
- **Recommendation 8:** That interest free loans are available to tenants, funded from the interest on bonds lodged with the Rental Bond Board, to be paid back in instalments.
- **Recommendation 9:** That modelling is conducted to determine if there would be reduction of funding available for tenant advice and advocacy services, currently funded by the interest on rental bonds, if alternative rental products are allowed in NSW.
- **Recommendation 10:** That the current tenancy bond system is maintained with the exception of any improvements being made to the existing system that allow for the more efficient transfer of bonds between rental properties.
- **Recommendation 11:** That a bond transfer system is developed for the partial or full transfer of bonds between rental properties to prevent tenants tying up money for two bonds despite only living in one rental property.
- **Recommendation 12:** That the tenancy legislation allowing evictions for 'no grounds' be removed and replaced with a range of reasonable grounds for ending a lease.
- **Recommendation 13:** That a public education campaign is developed to ensure renters are aware of their rights, particularly in relation to their right to claim their bond and dispute their landlords claim on the bond.

CPSA welcomes the opportunity to provide feedback on the *Easy and Transparent Trading* consultation paper released by the Department of Finance, Services and Innovation.

This submission responds to two sections of the *Easy and Transparent Trading* consultation paper. The first is section 1.12 Repealing Redundant Statutes, in reference to the proposed review of the *Landlord and Tenant (Amendment) Act 1948* and the *Landlord and Tenant Act 1899*. CPSA has extensive knowledge in relation to protected tenancies, particular in light of having auspiced the Older Persons Tenants Service (OPTS) and its previous iterations since 1986, until OPTS was defunded in 2013. CPSA is greatly concerned by the proposal to repeal or amend these Acts, which play a vital role in protecting a key service, housing, to vulnerable people.

CPSA would like to highlight at the outset that the proposal to repeal and amend these two acts follow the same lines, almost to the letter, with the exception of an added suggestion of a register, as the 2011 attempt to repeal the legislation. As such, CPSA's arguments follow similar lines as OPTS' submission to the proposed appeals in 2011. This very detailed submission by OPTS is attached for your information as OPTS worked extensively with protected tenants and had a wealth of knowledge in this area.

CPSA also responds to section 2.7, entitled 'rental bond surety products'. CPSA represents pensioners of all ages and low income retirees. As increasing numbers of people are struggling to access affordable and appropriate housing, in particular in the current private rental market, CPSA is greatly concerned by the proposal to allow private entities to administer bonds and urges for a comprehensive consideration of the potential negative ramifications.

While CPSA understands the desire to keep legislation and regulation up to date, it is vital that no tenant protections are compromised in the name of meeting quotas for minimising red tape.

Response to 1.12 Repealing Redundant Statutes

1. Landlord and Tenant (Amendment) Act 1948

1.1 History and context

The *Landlord and Tenant (Amendment) Act 1948* (1948 Act) has a rich and complicated history. The 1948 Act began as Commonwealth regulation. After World War II the Commonwealth introduced *Fair Rents Regulations* that pegged rents of houses, shops and factories at rates prevailing on 31 December 1940. The states could choose to adopt this regulation, however, only Victoria, Queensland and Tasmania did so. The Federal Government changed on 7 October 1941 and introduced the *National Security (Landlord and Tenant) Regulations* on 28 November 1941, which applied to all states and territories and pegged rents at rates prevailing on 31 August 1939. Victoria and Queensland retained rents pegged at rates prevailing on 31 December 1940 as per the previous *Fair Rents Regulations.*

The National Security Regulation lapsed on 30 December 1946 and rent was included in the *Defence (Transitional Provisions) Act 1946.* The Commonwealth attempted to obtain permanent control over rents by amending the Constitution and a referendum was held on 29 May 1948. The referendum was defeated and control of tenancies was transferred to the states on 16 August 1948. The states adopted the substance of the Commonwealth Landlord and Tenant Regulations in their own legislation.

1.2 Comparison of NSW and Victorian protected tenancy legislation

In NSW, *the Landlord and Tenant (Amendment) Act 1948* commenced on 16 August 1948. This repealed the *Fair Rents Act 1939* and amended the *Landlord and Tenant Act 1899*. The 1948 Act does not apply to a person but rather to a property, described as ‘prescribed premises’. The only buildings that can be prescribed are houses, residential units, sheds and garages that were built or under construction before 16 December 1954. These dwellings can be prescribed only if the agreement, whether under written lease or oral, began on or before 1 January 1986. If a building was subdivided into residential units, those units can be prescribed only if the subdivision took place before 1 January 1969.

Contrastingly, after Victoria resumed control of tenancies from the Commonwealth on 16 August 1948 it already had seven similar Acts covering tenancies. The *Landlord and Tenant Act 1958* was assented on 30 September 1958. The 1958 Act had five separate parts with Part V covering tenancies prior to 1956. Part V, s.43(1) defines 'prescribed tenancies' as premises not excluded by the former Acts, built before 1 February 1954, rented between 31 December 1940 to 1 February 1954, with the existing tenancy commencing before January 1956. Additionally, premises were not owned by the crown, a local government authority or any water works trust.[1]

The important distinction between the NSW and Victorian protected tenancy legislation is that the Victorian criteria for a prescribed tenancy greatly restricted the number of protected tenancies in existence in Victoria to a very low number, compared to New South Wales wherein criterion was broader and encompassed a greater number of households. Consumer Affairs Victoria placed the number of protected tenants in Victoria at 44 in 2008. This is very different to the situation in NSW in 2011, where OPTS put the number of protected tenancies at between 600 and 1,400. However, in NSW the number of protected tenancies still in existence is impossible to estimate and this number may be higher.

Due to the differing history and development of protected tenancy legislation in NSW and Victoria, it is not appropriate to assume that what appears to work in Victoria will do so in NSW. In fact, doing so is likely to have unintended consequences**.**

1.3 Who are protected tenants?

Although it is impossible to estimate how many protected tenancies are still in existence in NSW, what we do know is that most protected tenants are older people and often very vulnerable.[2] Protected tenants tend to live in older suburbs where there was an abundance of rental housing in the 1950s and 1960s or in country areas where paperwork was not a priority. To be a possible protected tenant, the dwelling must have been rented from a landlord other than the Crown for at least over 32 years (before 1 January 1986). The

[1] For a thorough comparison between the NSW and Victorian Legislation see OPTS, 'Proposed repeals of the *Landlord and Tenants (Amendment) Act* and the *Landlord and Tenant Act 1899*', Submission to the Commissioner for Fair Trading, 14 October 2011.

[2] See Robert Mowbray and Andrew Boulton, "Don't grow old as a protected tenant", Older Persons Tenants' Service*, The Voice*, no. 73, (July 2008): 16-17, https://www.cpsa.org.au/files/OPTS/Newsletter73_proofs2_pp16-7%203.pdf; Robert Mowbray and Andrew Boulton, 'An oral history of protected tenants', Older Persons Tenants' Service, *Around the House,* no. 83 (2010): http://www.cpsa.org.au/files/OPTS/Newsletter83_11-13.pdf, 11-13.

chance of being a protected tenant increases dramatically if the dwelling has been rented for over 49 years (before 1 January 1969).

The number of protected tenancies is potentially higher than estimated as many tenants do not know what legislation their tenancy falls under until there is a problem, such as a large rent increase or eviction, and they then seek advice and assistance. OPTS assisted 181 ‘protected tenants’ and ‘possible protected tenants’ between 1 January 2007 and 30 June 2011. However, OPTS services only reached a small proportion of protected tenants in NSW. Accordingly, many remained unknown to the service. As it stands now, without a key service like OPTS with specialised knowledge of protected tenancies legislation many more protected tenancies are likely to go unidentified.

As ‘protected tenants’ tend to be elderly and thus vulnerable, changes to legislation has the potential to have unintended consequences that may increase risk for homelessness or push people into residential aged care.

Recommendation 1: That the NSW Government funds a specialised older persons’ tenancy service, with specialisation in protected tenancies, for both public advocacy and to collect data on protected tenancies in NSW.

1.4 Proposal to incorporate 1948 Act into the *Residential Tenancies Act 2010*

As the 1948 Act has a rich, complicated and detailed history, tampering with the Act may create new and unanticipated problems.

The 1948 Act is written in a complicated legalese, whilst the *Residential Tenancies Act 2010* is written in plain English. Therefore, key protections in the 1948 Act may be lost in translation or at the very least compromised by incorporating the 1948 Act into the 2010 Act. As most protected tenancies are older people and very vulnerable, CPSA is concerned that they cannot be guaranteed the full protections of the 1948 Act if it is incorporated into the 2010 Act.

There are key provisions that would need to be incorporated into any savings provisions in the 2010 Act. These provisions are:

- the entitlement to pay 'fair rent' [sections 17A, 21, 26B, 27 and 31MAA];
- a protected tenancy cannot be terminated by the landlord without grounds [s.62];
- tighter access provisions and protections of enjoyment of premises [s. 81(1)]; and
- the ability to negotiate a settlement if tenants agree to vacate.

To incorporate the appropriate provisions in a way that ensures no one is compromised will be a challenging task. Given that the stated objective is not to change the key provisions of the 1948 Act, beyond changes in succession rights to children, and given that the number of protected tenancies in NSW is relatively small, CPSA suggests that it does not present a cost effective measure to incorporate the 1948 Act into the 2010 Act. This is particularly relevant if there is an attempt to re-write its provisions in plain English. In addition, CPSA recommends that the NSW Government consider the consequences of a growing residential tenancies act that may become unwieldy for those it is designed to protect.

The difficulties of successfully incorporating all protections of the 1948 Act into the 2010 Act is evidenced by misinterpretation of the 1948 Act that has occurred. For example, in 2007, OPTS advocated in a tribunal case at the Consumer, Trader and Tenancy Tribunal (CTTT) which ultimately resulted in an error of law and thus poor outcome for the tenant involved due to the CTTT member's incomplete understanding of the *Landlord and Tenant (Amendment) Act 1948*.[3]

[3] See Robert Mowbray and Andrew Boulton, "Don't grow old as a protected tenant", Older Persons Tenants' Service, *The Voice*, no. 73, (July 2008): 16-17, https://www.cpsa.org.au/files/OPTS/Newsletter73_proofs2_pp16-7%203.pdf.

The consultation paper also proposes to remove the hereditary rights of protected tenancy status to children. Children, along with spouses, are referred to as 'statutory protected tenants'. The key question here is what will be done to ensure that those who are currently 'statutory protected tenants' are not compromised? CPSA urges that if the incorporation of the 1948 Act into the 2010 Act was to go ahead, that existing 'statutory protected tenants' are included in savings provisions.

The 1948 Act will naturally phase out. There are a limited number of protected tenancies left in existence in NSW, and due to the age of these tenants, this will only continue to decrease. However, changes to the 1948 Act now will likely disadvantage these people. It is also not a cost effective measure due to the time and resources it would take to interpret and effectively transplant the 1948 Act into the 2010 Act in a manner in which no key provisions are lost, if this is at all possible.

Recommendation 2: That the key provisions of the *Landlord and Tenant (Amendment) Act 1948* not be inserted into the *Residential Tenancies Act 2010.*

Recommendation 3: That the *Landlord and Tenant (Amendment) Act 1948* is left as is and to naturally phase itself out.

1.5 Proposal of a Register of Protected Tenancies

The consultation paper proposes that a register of protect premises be kept by NSW Fair Trading, with 12 months for protected tenants to register. CPSA strongly suggests that this measure not be implemented, as it is an unfair process, will have unfair outcomes and is likely to fail. The creation of a register will likely be counterproductive to reducing red tape, by creating a bureaucratic headache for those charged with managing and maintaining such a register.

Such a register has been attempted in the past with a poor response and outcome. A register was opened between October 1989 and June 1990, but the response from tenants and landlords was very poor. As no new protected tenancies have been entered into since 1986, the protected tenants will be the same people as when the previous register was attempted, albeit older, and therefore will still remain unlikely to provide a satisfactory response rate.

CPSA urges that a register is not implemented. It is unfair and destined to fail if responsibility for registering is placed on tenants. There are many people who do not know they are protected tenants. In addition, many are elderly and thus vulnerable people. CPSA believes it is disingenuous to impose a 12 month deadline on these people, potentially without access to the internet, poor literacy skills and without access to advocacy services that can assist them. CPSA urges that such a register should not be used to justify repeal of the 1948 Act.

CPSA has some questions:

- How does NSW Fair Trading propose to make people aware of the existence of such a register?
- Is NSW Fair Trading proposing to send a letter to all households in NSW living in premises built prior to 16 December 1954 to provide information on what a protected tenancy is; how people can find help to determine if they fall under protected tenancies legislation; and how to sign up to the register?
- How will NSW Fair Trading manage the many people who do not know they live in a protected tenancy; people who due to their vulnerabilities cannot sign up to the register; or people who due to their advanced age wish to get on with their lives without needing to sign up to register that has no direct benefit for them?
- Due to the complexities of the legislation, what specialist services are available to assist older people who are often very vulnerable to work out if they are a protected tenant and help them understand what this means?
- How will specialist services locate and contact ‘protected tenants’ who are likely to be unaware that they are in fact ‘protected tenants’?

Another key problem with requiring protected tenants to register is in cases where people 'become' protected tenants as a result of a Supreme Court decision, such as May v Ceedive, or where the Crown ceases to be their landlord, in the case of Welfare Street, Homebush West. In May v Ceedive the NSW Court of Appeal ruled that a resident who thought that he owned the house but rented the land was in fact a protected tenant. Welfare Street concerns cottages built for abattoir workers in the 1920s and owned by statutory bodies, that of the Meat Board to Sydney Olympic Park Authority, continuously until November 2014. The houses were sold by tender and soon after on-sold at an auction as separate lots. Before the auction, each of the tenants received termination notices. However, the tenants who refused to vacate, all pensioners who had lived in their houses for between 30 and 70 years, were found to be protected tenants. Both

these cases highlight a key problem for a register with a time limit, which is where tenants 'become' protected tenants.[4]

Recommendation 4: That NSW Fair Trading does not implement a register of protected tenants.

Recommendation 5: That NSW Fair Trading does not use a register of protected tenants as a basis to repeal the *Landlord and Tenant (Amendment) Act 1948.*

Recommendation 6: That NSW Fair Trading does not place the burden of proof on individuals to prove they live in prescribed premises.

[4] Correspondence with Robert Mowbray, Project Officer, Tenants Union of NSW.

2 The *Landlord and Tenant Act 1899*

Today the *Landlord and Tenant Act 1899* (1899 Act) is largely limited to procedures relating to recovery of possession of rented premises. With the enactment of the Residential Tenancies Acts in NSW (*Residential Tenancies Act 1987* and *Residential Tenancies Act 2010*), most residential tenancies ceased to be covered by this Act. Section 1B of the 1899 Act states that the Act does not apply to:

- a residential tenancy agreement, or land that is subject to a residential tenancy agreement, to which the Residential Tenancies Act 2010 applies, or
- a site agreement, or a residential site, to which the Residential (Land Lease) Communities Act 2013 applies.

In 2015, the *Landlord and Tenant Act 1899* was amended, providing for the automatic repeal of this Act in five years' time. As such, section 1D of the 1899 Act states 'this Act is repealed five years after the day on which this section commences or on such earlier day as may be appointed by proclamation'. This section commenced on 15 July 2015. Accordingly, this Act will cease to exist no later than 15 July 2020. CPSA contests the assertions in the *Easy and Transparent Trading* consultation paper the 1899 Act has 'no practical application' and highlights that its repeal will in fact have ramifications for the 1948 Act.

2.1 The *Landlord and Tenant Act 1899* <u>does</u> have a practical application

The statement in the *Easy and Transparent Trading* consultation paper that the *Landlord and Tenant Act 1899* has no practical application is incorrect, because it still has current application. Such a statement, "that the 1899 Act has no practical application", is misleading and should be corrected in this consultation paper.

Classes of tenants of premises or residential tenancy agreements excluded explicitly or omitted by default from the provisions of the *Residential Tenancies Act 2010* may fall under the *Landlord and Tenant Act 1899.* For example:

- tenancies under the *Landlord and Tenant (Amendment) Act 1948*;
- a tenant with a residential tenancy agreement with a fixed term of 99 years or more [excluded by s.8 (1) (j) of the *Residential Tenancies Act 2010*];
- a sub-tenant in share housing who is not on a written agreement [excluded by s. 10 of the *Residential Tenancies Act 2010*];

- head leasing arrangements involving social housing providers where the residential tenancy agreement includes a term to state that the *Residential Tenancies Act 2010* does not apply [excluded by s. 156 *Residential Tenancies Act 2010*]; and
- a tenant with a residential tenancy agreement with a fixed term of that person's life, commonly referred to as a 'life tenancy' [excluded by cl. 19 of the *Residential Tenancies Regulation 2010*].

The key provisions of the 1899 Act provide an important safety net for these tenants not covered by the 2010 Act or the 1948 Act. These provisions are:

- s.2AA: Evictions from a 'dwelling-house' must be through the court;
- s.2B: Spouse's tenancy rights on separation or desertion;
- s.3: Supreme Court or Local Court may refuse to give judgement in the case of retaliatory eviction where tenant previously had applied to NCAT in relation to rent payable or rent increase, with onus on landlord to prove it is not retaliatory; and
- Part 2 and Part 4: Recovery of possession in Supreme and Local Court respectively.[5]

As shown above, the 1899 Act covers tenancies not covered in other legislation to the benefit of both tenants and landlords. S.2AA, that evictions from a 'dwelling house' must be through the court, is a particularly important provision. For tenancies not covered by the 2010 Act, it is the sole machinery for recovery of possession therefore action must be pursued in the courts. Without this provision, common law or contract law with action in the Supreme Court or self-help in the form of lock out by a landlord will prevail. Should tenants and landlords have to rely upon the common law to resolve disputes, they both may incur heavy costs. If the 1899 Act were repealed, there would be uncertainty as to the legal procedure for recovering possession of properties subject to the classes of tenancies to which the Act applies. The need to clarify the legal uncertainty created by the repeal of the 1899 Act would amount to a greater regulatory burden than anything provided by the 1899 Act itself.

There have also been several contemporary cases in which the Act was referred to or relied upon by a party in a court or tribunal, or in which a court has made some use of the Act.[6]

2.2 Repeal will affect the operation of the *Landlord and Tenant (Amendment) Act 1948*

[5] Correspondence with Robert Mowbray, Project Officer, Tenants Union of NSW.

[6] See, Tenants Union of NSW, *Comment on the proposed repeal of the Landlord and Tenant Act 1899*, submission, June 1 2018, https://files.tenants.org.au/policy/comment_on_proposed_repeal_of_the_landlord_and_tenant_act.pdf.

The 1899 Act still covers all tenancies under the 1948 Act. The latter is an amendment act and does not stand on its own. Of concern is that the *Landlord and Tenant (Amendment) Act 1948* may cease to operate should the *Landlord and Tenant Act 1899* cease to exist as the 1899 Act is the machinery that allows the 1948 Act to work. The repeal of the *Landlord and Tenant Act 1899* will have adverse consequences for the 1948 Act.

Most importantly, the 1899 Act provides an important protection for tenants under the 1948 Act against unlawful eviction. S. 62 of the 1948 Act prevents recovery proceedings without a valid notice to quit and s.81 prohibits interference with use or enjoyment of premises. However, there is no equivalent in the 1948 Act of the prevention of eviction without court order provided by s.2AA of the 1899 Act. The repeal of the 1899 Act will be to the significant detriment of the tenants under the 1948 Act, as it will remove their fundamental protection against eviction without regard to the courts.

The 1948 Act also relies on the 1899 Act for termination proceedings, subject to certain qualifications made by the 1948 Act (s. 69). The 1899 Act provides landlords with procedures for the recovery of possession through either the Supreme Court or the Local Court.

The 1899 Act has benefits for both tenants and landlords and repealing the Act will complicate matters further, rather than reduce regulatory burden.

Response to 2.7 Rental Bond Surety Products

3.1 The problems with alternative bond products

The consultation paper cites the reason for allowing alternative bond products as both to increase efficiency and also to enable 'greater choice for tenants'. There are many considerations for if alternative bond products should be allowed, beyond the consideration that it increases choice.

CPSA emphasises that the introduction of alternative bond products will likely be counterproductive to the aim of the consultation paper. Rather than decreasing regulatory burden, these products will be burdensome administratively for Fair Trading to regulate. In this way, the introduction of these products would increase red tape and cost, contrary to the aim of the consultation paper.

Alternative bond products also have the potential to create a two tiered system of bond lodgement between those who can afford an upfront traditional bond and those who are less able to afford an upfront traditional bond. The consultation paper states that 'such fees may also be annual, non-refundable and may not contribute towards the cost of any successful claim paid to the landlord'. People on low incomes may be compelled by a lack of financial resources to purchase a bond product rather than paying for an upfront bond, even if it is not the best option for them. In this case, those who are less able to afford an upfront traditional bond are likely to be faced with the loss of a constant stream of money, compared to those with the capacity to afford a bond that will be no worse off at the end of their tenancy.

The effect of bond products also needs to be considered in the context that 80% of tenants in rental houses move before three years.[7] Tenants do not always move voluntarily, for example in NSW they may face 'no grounds' evictions, unaffordable rent increases, have a need for more accessible housing but are not given permission to modify their current rental home, etc. In all of these cases, there is the potential for continued and greater loss of money if there are set up fees or if prices are higher in the first year of taking out the alternative bond product.

The consultation paper notes that 'it is important that tenants are able to decide whether the bond product is right for them and they need to have sufficient information provided

[7] Tenants Union of NSW, 'Does BondCover have you covered?', *The Brown Couch, (2018):* http://tunswblog.blogspot.com/2018/05/does-bondcover-have-you-covered.html

to them so that they can make a meaningful decision'. CPSA agrees that it must be ensured that tenants are aware of the costs of using these products. For example, some bond products could cost a tenant more over the life of a tenancy than a traditional bond, and that they may still need to pay any amounts for damage or rent owing. Tenants should be provided with a comparison in which they can compare their financial situation over the course of a tenancy by using such products rather than traditional rental bonds.

CPSA would like to comment that the consultation paper states that 'landlords need to be protected so that the claims process does not leave them in a worse position than what they currently face when claiming a bond'. This is a one sided statement as it must also be recognised that it is important to ensure tenants are protected and that they are not made worse off through the introduction of alternative bond products.

The key question that needs to be asked is: What is the purpose of these alternative bond products? As it is unlikely that they are of any benefit to tenants, it appears that there is no good reason to make them available. A fairer and simpler system would be to allow for tenants to pay for the bond in instalments or for them to be able to access interest free loans to pay the bond, from the interest accrued on bonds, to be paid back in instalments. An interest-free bond loan scheme of this kind already exists. The FACS RentStart Bond Loan allows those eligible up to three years to pay back their bond loan. As this is a low cost, high impact program that could easily be expanded, CPSA recommends that the eligibility requirements for this scheme be broadened to greater access to tenants.

Recommendation 7: That tenants can lodge their bond with the Rental Bond Board in instalments.

Recommendation 8: That interest free loans are available to tenants, funded from the interest on bonds lodged with the Rental Bond Board, to be paid back in instalments.

3.2. The effect on revenue collected to fund tenancy services

The interest accrued on the investment of rental bonds helps fund tenancy services offered by NSW Fair Trading and the NSW Civil and Administrative Tribunal, as well as other services, including non-government advice and advocacy services.

It must be acknowledged that tenant advice and advocacy services are fundamental to tenants' rights. Tenant advocacy services are already stretched to capacity, showing not

only a growing demand for these services but that any reductions in funding would be detrimental to tenants' rights. CPSA is concerned that allowing alternative bond products into the market would have an effect on the ability to fund tenant advice and advocacy services. Even if efforts are made to induce providers to contribute to the cost of such services, there must be modelling implemented to ensure that funding available for these advice and advocacy services is not reduced by the introduction of alternative bond products.

Recommendation 9: That modelling is conducted to determine if there would be reduction of funding available for tenant advice and advocacy services, currently funded by the interest on rental bonds held by NSW Fair Trading, if alternative rental products are allowed in NSW.

3.3. Maintain the status quo

It is the view of CPSA that the current bond collection system is an effective and efficient system. The interest accrued on bonds held by the NSW Government is an effective way to fund services including the Tenant Advice and Advocacy Program and NSW Fair Trading. CPSA supports the option to 'maintain the status quo', allowing for any improvements made to the existing system to provide for the more efficient transfer of bonds.

Recommendation 10: That the current tenancy bond system is maintained with the exception of any improvements being made to the existing system that allow for the more efficient transfer of bonds between rental properties.

3.4. Transfer of bonds between properties

When moving between rental properties, tenants are often required to fund a new bond before they have received the return of their old bond, thus effectively tying up money for two bonds despite only living in one rental property. CPSA's members and constituents are pensioners and low income retirees. CPSA is thus aware of the burden that finding the finance to fund a new bond with each move places on renters.

As more people on low incomes are pushed into renting in the private market this may become a significant issue, particularly in light of the fact that currently in NSW tenants can be evicted for no reason, or 'no grounds', and in turn be faced with involuntary mobility between rental homes. As only 20% of tenants make it to three years in a particular rental property, regularly refinancing a bond can be a significant financial

strain. If the NSW Government is seeking ways to reduce the burden of consistently finding finance for a bond, ending ‘no grounds’ evictions is an excellent place to start.

CPSA supports the development of a system that enables the partial or full transfer of bonds between rental properties, reducing the need for tenants to be paying a ‘double bond’ when they move between rental properties. However, such a bond transfer system must be carefully designed so that a tenant’s rights to ‘claim’ for their bond without the landlord’s consent is retained. In addition, tenants must be able to easily and quickly dispute any claims to the bond so that they are not left to refinance portions of a new bond unexpectedly. Difficulties may also arise if the bond is held in a state of limbo because of a competing claim.

Recommendation 11: That a bond transfer system is developed to transfer partial or full bonds between rental properties to prevent tenants tying up money for two bonds despite only living in one rental property.

Recommendation 12: That the tenancy legislation allowing evictions for ‘no grounds’ be removed and replaced with a range of reasonable grounds for ending a lease.

Recommendation 13: That a public education campaign is developed to ensure renters are aware of their rights, particularly in relation to their right to claim their bond and dispute their landlords’ claims on bonds.