Residential Tenancies Amendment (Prohibiting No Grounds Evictions) Bill 2024

The Real Estate Institute of New South Wales Limited

Submission on the *Residential Tenancies Amendment (Prohibiting No Grounds Evictions) Bill 2024*

26 June 2024

TO: ***Legislative Assembly Select Committee***
By email: nogroundsevictions@parliament.nsw.gov.au

1. Introduction

This Submission has been prepared by The Real Estate Institute of New South Wales Limited (**REINSW**) and is in response to the *Residential Tenancies Amendment (Prohibiting No Grounds Evictions) Bill 2024* (**No Grounds Bill**).

REINSW is the largest professional association of real estate agents and other property professionals in New South Wales. REINSW seeks to promote the interests of its members and the property sector on property-related issues. In doing so, REINSW plays a substantial role in the formation of regulatory policy in New South Wales.

This Submission outlines issues and recommendations for Parliament and the Legislative Assembly Select Committee (**Select Committee**) to consider in relation to the No Grounds Bill.

2. No Grounds Bill

REINSW opposes the No Grounds Bill which is currently before Parliament and the removal of no ground termination notices for periodic and fixed term leases under the *Residential Tenancies Act 2010* (NSW) (**RT Act**), more generally.

The reasons for REINSW's opposition of both the No Grounds Bill and proposals to abolish no ground termination notices more broadly are outlined in detail in the following submissions which are enclosed as, respectively, **Annexure A and B** to this Submission.

- REINSW's submission on the Improving NSW Rental Laws Consultation Paper dated 16 August 2023 (**Rent Reforms Submission**); and

- REINSW's submission on the *Residential Tenancies Amendment (Tenant Protections and Flood Response) Bill 2022* and the proposed changes as set out in that draft Bill dated 9 May 2022 (**Tenant Protections Submission**).

REINSW refers Parliament and the Select Committee to reasons given in these submissions. However, some of the main reasons for opposing the No Grounds Bill are as follows:

- **It will exacerbate the rental crisis**: It is common ground between stakeholders that undersupply is the main cause of the critical shortage of rental accommodation which New South Wales is currently facing. Where there are insufficient rental properties comparative to the demand, market competitiveness increases and drives up prices. Reforms to the residential tenancies legislation such as removing no ground termination notices will only discourage investors, reducing available and affordable accommodation and further increasing rental prices.

- **It impedes on owners' property rights:** Article 17 of the Universal Declaration of Human Rights states that:

  1. Everyone has the right to own property alone as well as in association with others.
  2. No one shall be arbitrarily deprived of his property.

  REINSW's view is that removing no ground termination notices unjustifiably impedes on a landlord's right to make choices about their asset. When considering the No

Grounds Bill, and proposals to remove no ground terminations more generally, Parliament and the Select Committee must be confident that such reforms would not breach Article 17.

The No Grounds Bill was recently reviewed by the Legislation Review Committee (**Committee**) who scrutinises "Bills introduced into Parliament" and reports on, amongst other things, whether such Bills "trespass unduly on personal rights and liberties" and "inappropriately delegates legislative powers".[1]

The March edition of the Committee's Legislation Review Digest commented on the No Grounds Bill and found that the Bill may "impact a property owner's contract and property rights by limiting the way in which they may use their property" and that "the right of a property owner to use their private property and freedom of contract are fundamental legal rights".[2] REINSW supports the Committee's positions in this regard.

- **It provides limited grounds for termination:** The current drafting of the No Grounds Bill proposes to only permit termination (for fixed and periodic leases) in three limited circumstances (a concern raised by the Minister for Better Regulation and Fair Trading during the No Ground Bill's second reading speech)[3]:

    - the landlord or "a person associated with" them (**Associated Person**) (which has been narrowly defined in the No Grounds Bill) intends to live in the property for at least 12 months;
    - for renovations or repairs which will "render the premises uninhabitable for at least 4 weeks";
    - where the rental property "will be used in a way, used in a way, or kept in a state" where it "cannot be used as a residence for at least 6 months"; or
    - other grounds prescribed by regulation.[4]

  REINSW's view is that a landlord, as the asset's owner, should be entitled to end a lease without grounds after providing requisite notice. However, were any such reforms to be implemented which limits the circumstances in which landlords can terminate a tenancy, a landlord must be allowed to terminate for legitimate reasons and the grounds currently proposed in the No Grounds Bill are restrictive and prohibitive. REINSW refers Parliament and the Committee to page 7 of its Rent Reforms Submission which outlines a range of scenarios where a landlord may need to end a tenancy.

- **The current provisions for no ground terminations work well in practice:** REINSW's view is that the current legislative framework in relation to termination adequately balances tenant and landlord's rights. For example, a tenant is protected from retaliatory evictions under section 115 of the RT Act and prescribed notice periods allow tenants enough time to find alternative accommodation.

[1] Legislation Review Committee, "Legislation Review Digest No.10/58", Parliament of New South Wales (12 March 2024), 5.
[2] Ibid,
[3] New South Wales, *Parliamentary Debates*, Legislative Assembly, 9 May 2024, 20 (Anoulack Chanthivong, Minister for Better Regulation and Fair Trading).
[4] Residential Tenancies Amendment (Prohibiting No Ground Evictions) Bill 2024, ('No Grounds Bill') sch 1 iItems 3-5.

- **It impacts a landlord's privacy:** Landlords should not be required to provide reasons for terminating a lease because such reasons may be personal and multifactorial (for example, divorce, illness, redundancy and financial hardship may be contributing factors). Their reasons for termination are not relevant to the tenant, especially as tenants do not need to provide reasons to the landlord if they wish to terminate a lease or break a lease early in the case of fixed term tenancies - something which landlords cannot do.

- **It contravenes freedom to contract principles:** The No Grounds Bill proposes to abolish no ground terminations for fixed term tenancies as well as periodic leases. ***REINSW opposes*** the removal of no ground termination notices for both periodic and fixed term leases, and would like to point out that fixed term leases differ significantly from periodic leases. Unlike periodic tenancies where the parties have agreed to contract on an ongoing basis, the parties' clear intention for fixed term leases is to only enter into a lease for a specified period of time with no obligation and without necessarily intending to renew the lease at the expiry of the term. REINSW's view is that limiting the parties' rights to choose not to renew a lease at the end of this mutually agreed period goes against the parties' clear intentions and interferes with freedom to contract principles.

  Additionally, the landlord, who owns the asset, should be able to acquire possession of their property when the term has, and the parties' contractual obligations have, ended without needing to provide any justification as to why they want possession of their own property. While ***REINSW opposes*** the removal of no ground termination notices in general, were Government to implement any reforms which restrict a landlord's right to terminate a lease without grounds, ***REINSW recommends*** an approach similar to Queensland where a landlord is not required to provide reasons for ending a fixed term agreement upon its expiry.

  Furthermore, item 6 of Schedule 1 to the No Grounds Bill proposes to grant the Tribunal powers to make the following orders, if satisfied that the rental property was used for a reason other than for which notice of termination had been given:

  - direct the landlord (or Associated Person) to use or occupy the property in accordance with the ground for termination given to the tenant;
  - to deem "the premises to be subject to a residential tenancy agreement between the landlord and tenant for a term, and on the conditions, specified by the Tribunal; or
  - to order the landlord to compensate the tenant for wrongful termination.[5]

  REINSW draws attention to the Committee's comments in the Legislation Review Digest that such broad powers (in particular, the proposed power to create a new binding residential tenancy agreement between the landlord and tenant) "interfere with the fundamental common law principle of freedom to contract" which goes against contract law principles that courts and tribunals cannot remake a contract, only to give effect to the parties' intentions.[6]

  Furthermore, this proposed provision unjustifiably restricts how a landlord can use their property with potentially serious consequences for the landlord – especially if there are

[5] No Grounds Bill sch 1 item 6.

[6] Legislation Review Committee, "Legislation Review Digest No.10/58", Parliament of New South Wales (12 March 2024), 55-56.

legitimate reasons as to why a landlord's circumstances change and they must use the property for another reason. Just two examples include where a landlord terminates a lease intending to:

- occupy the premises. However, 6 months into occupying the premises they accept a job interstate and need to release the property.

- rent a property to an Associated Person (such as an ageing parent) but the parent subsequently passes away.

Orders directing the landlord to use the property in accordance with the ground for termination, enter into a new lease with the previous tenants or pay the tenant compensation (in circumstances where the tenant does not even own the property) unjustly penalises the landlord for circumstances which were beyond their knowledge and control at the time in which the termination notice was served.

- **The Associated Person definition not reflective of modern norms**: REINSW's view is that the definition of a "person associated with a landlord" in item 2, Schedule 1 to the No Grounds Bill is too narrow and not reflective of today's modern world with blended families. REINSW's view is that a property's owner should be free to rent their property to whomever they choose.

- **Additional concerns raised by the Committee:** REINSW is concerned about the following matters that were identified by the Committee in the Legislation Digest Review:

  - That item 6 of Schedule 1 to the No Grounds Bill imposes a maximum absolute liability offence of $11,000 (100 penalty units) if a landlord uses the rental property for a purpose other than the ground on which termination notice was issued. As the Committee states, absolute liability offences "depart from the common law principle that the mental element of 'fault' should be proven to establish criminal liability".[7] Not only is REINSW of the view that landlords should not be penalised for choosing how they wish to use their asset, but that this is a significant penalty which will see landlords unjustly penalised if circumstances beyond their control do not allow them to use the rental property for the reason they intended when issuing the termination notice.

  - That item 7 of Schedule 1 to the No Grounds Bill states that the Bill will apply retrospectively to current leases. REINSW is concerned about the retrospective application of this provision from a freedom to contract perspective as the parties have already commercially negotiated the terms of the lease. REINSW supports the Committee's comment that "provisions that are drafted to have retrospective effect…impact on the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time" and that "the proposed amendments may impact individuals' fundamental rights as well as creating new absolute liability offences and broad remedies".[8]

  - That Items 3 and 5 of Schedule 1 to the No Grounds Bill proposes "another ground [for termination] prescribed by the regulation". REINSW supports the

[7] Ibid, 56.
[8] Ibid, 57.

Committee's comments that grounds for termination should be "clearly specified in primary legislation to ensure that individuals are able to clearly ascertain their rights and obligations" and to "ensure an appropriate level of parliamentary scrutiny".

- **90 days' notice is impractical:** proposed section 84(2)(b) in item 3 of Schedule 1 to the No Grounds Bill states that at least 90 days' notice of termination is required. Not only is this triple the current notice period prescribed by the current section 84(2) of the RT Act but, in the case of leases which have a term of 6 months or less, it would be half the term of the lease which is impractical.

For the reasons above and in the annexed submissions ***REINSW opposes*** the No Grounds Bill in its entirety. Rather than restricting landlords' rights through reforms to the residential tenancies legislation to address the rental crisis, ***REINSW recommends*** Government focus on the underlying housing supply issues and incentivising property investment (especially institutional investors who have the resources to purchase and build apartment blocks specifically for residential rental accommodation) to increase the number of residential rental properties available on the market. ***REINSW also refers*** Parliament and the Committee to comments and recommendations in relation to the removal of no grounds termination notices more generally in its Rent Reforms Submission annexed to this Submission.

Conclusion

REINSW has considered the No Grounds Bill and has provided its comments above, aiming to provide input on as many pertinent aspects of the No Grounds Bill as possible. However, REINSW's resources are very limited and, accordingly, it does not have the capacity to undertake a thorough review and is unable to exhaustively investigate all potential issues in this Submission. Nonetheless, REINSW has identified a number of matters that it believes will cause significant consumer detriment, some of which appear above.

REINSW appreciates the opportunity to provide this Submission and would be pleased to discuss it further, if required.

Yours faithfully

Tim McKibbin
Chief Executive Officer

Annexure A

The following pages include REINSW's submission on the Improving NSW Rental Laws Consultation Paper dated 16 August 2023.

Residential Tenancies Act 2010 (NSW), Residential Tenancies Regulation 2019 (NSW)

The Real Estate Institute of New South Wales Limited

Submission on the Improving NSW Rental Laws Consultation Paper

16 August 2023

TO: **Real Estate and Housing Policy Team**
Regulatory Policy, NSW Fair Trading
Better Regulation Division
Department of Customer Service
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1. Introduction

This Submission has been prepared by The Real Estate Institute of New South Wales Limited (**REINSW**) and is in response to the Improving NSW Rental Laws Consultation Paper (**Consultation Paper**).

REINSW is the largest professional association of real estate agents and other property professionals in New South Wales. REINSW seeks to promote the interests of its members and the property sector on property-related issues. In doing so, REINSW plays a substantial role in the formation of regulatory policy in New South Wales.

This submission has been prepared in consultation with REINSW's Property Management Chapter Committee who are licensed real estate professionals with experience and expertise in the field of property management. Their extensive knowledge within the industry allows them to offer valuable insight about how the proposed changes to the rental laws in New South Wales might apply in practice. This submission outlines issues and recommendations for Government to consider and implement based on the questions raised in the accompanying Consultation Paper.

2. The Rental Crisis

It has been proven that New South Wales is experiencing a critical shortage of rental properties which makes it difficult for tenants to find shelter. It is also common ground between stakeholders that an undersupply of rental properties is the main cause of the housing crisis. Where there are not enough rental properties to meet demand, it increases the market's competitiveness and drives up rental prices.

Rather than invest resources in making reforms within the property management space which will alienate and drive away existing investors from the property market, ***REINSW recommends*** that Government should focus on the underlying housing supply issues, especially issues within the development and construction industries. However, building more accommodation takes time. In fact, landlords are in a unique position to be part of the solution to the housing crisis as approximately 86.7% of rental properties in New South Wales are privately owned (compared with social housing).[1] The Government needs to utilise the amount of available residential rental properties and work to increase that amount, rather than exacerbate the shortage of available rentals which are already at historic lows.[2]

The fundamental question which ***REINSW recommends*** Government consider in relation to the rental reforms proposed in the Consultation Paper is whether these proposals will retain and encourage investors, or drive them away?

For the reasons which follow, REINSW's view is that many of the proposed changes to the residential tenancy laws, such as removing no ground termination notices, changing the law on pets, introducing portable bonds and proposing rent control measures will discourage

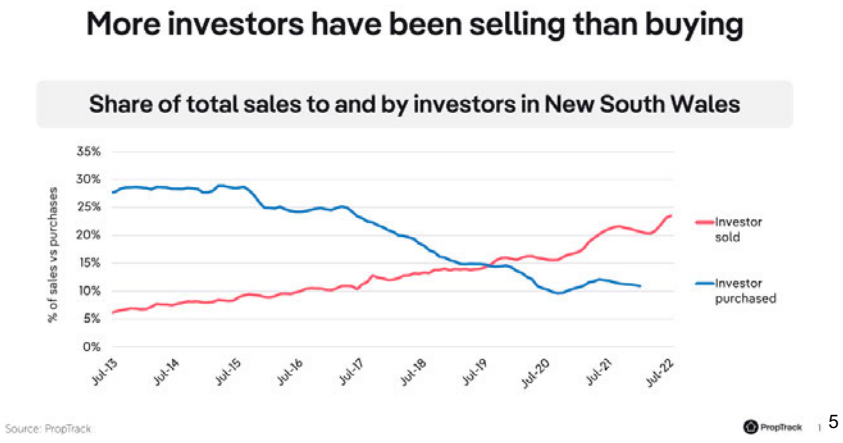
[1] .ID Community, "New South Wales Housing Tenure" profile.id.com.au (accessed 09.02.23).
[2] Cameron Kusher, "Rental Report -December 2022 Quarter", realestate.com.au (published 19 January 2023, accessed 07 February 2023).

investors further, reducing available and affordable accommodation. As a result, rental prices will only increase as supply decreases. Whilst this is the way economics goes, it will not solve the housing crisis.

In fact, REINSW is already seeing a downturn in property investment. The Property Investment Professionals of Australia Annual Investor Sentiment Survey found that 16.7% of participants had sold property within the last year or two. Not all participants gave reasons for selling, but of those who did:

- 25.10% selected "changing tenancy legislation making it too costly or hard to manage".
- 22.8% selected "the threat of loosing control of your asset because of new or potential government legislation".
- 12.74% selected "the threat of rent freezes being enforced by governments".[3]

These attitudes are corroborated by the 2022 Australian Property Investor survey, whereby in the third quarter of last year, only 23% of participants (compared with 40% in 2020) indicated that they were looking to buy in 2023.[4] The following two graphs also indicate that fewer investors are looking to invest in real estate:



Investor Selling and Buying trends from Proptrack

[3] Property Investment Professionals of Australia, "Property Annual Investor Sentiment Survey 2022" https://www.pipa.asn.au, 2;[3] Property Investment Professionals of Australia, "2022 PIPA Annual Investor Sentiment Survey Results" https://www.pipa.asn.au, 13, 17-18.

[4] Australian Property Investor, "Property Sentiment Report Quarter 3, 2022", apimagazine.com.au ,3.

[5] PropTrack, https://www.proptrack.com.au/

[6]

Australian Property Investor graph showing a downwards trend in survey respondents who are looking to enter the property market

REINSW has seen similar sentiments echoed by real estate agents and landlords during two housing rent crisis campaigns which it ran between February and August 2023 and then again throughout August 2023. During these campaigns, REINSW provided, through a microsite on its website, information about the housing crisis, survey questions and the ability for landlords and agents to contact their local members of Parliament to share their views about the proposed rent reforms. The data from each of these campaigns have been compiled into two reports which REINSW has enclosed as **Annexures A and B** to this submission. [redacted]

[redacted]

[6] Australian Property Investor, "Property Sentiment Report Quarter 3, 2022", apimagazine.com.au ,3.

REINSW's view is that the data and feedback received from landlords and agents from these campaigns indicate that the proposed reforms, such as removing no ground termination notices or introducing portable bonds or rent control measures, is unlikely to be effectives strategies to resolve the housing crisis. Instead, such legislative changes are likely to exacerbate the issue by discouraging private investors from remaining in the property market.

According to REINSW, a healthy property market is one which balances the rights of all stakeholders, tenants, landlords and property professionals alike. Contrary to popular portrayals in the media, most landlords are simply ordinary people who, like tenants, have their own lives, responsibilities, and financial obligations. They have simply chosen to invest in only one property compared with other investment vehicles and want to make sure that the property towards which they are contributing savings, is adequately protected and that their investment is viable so they can continue to afford their mortgage repayments.

REINSW also draws Government's attention to Article 17 of the Universal Declaration of Human Rights, which states that:

1. *Everyone has the right to own property alone as well as in association with others.*
2. *No one shall be arbitrarily deprived of his property.*

REINSW's view is that reforms like those proposed in the Consultation Paper unjustifiably impede on a landlord's right to make choices about their asset, so if Government were to implement them then it would need to be confident that they would not be in breach of Article 17.

Rather than changing the residential tenancies legislation to restrict landlords' rights, ***REINSW recommends*** that Government instead look at ways that they can incentivise property

investment to increase the number of residential rental properties available on the market. ***REINSW further recommends*** Government look at incentivising institutional investors who have funds to purchase and build apartment blocks specifically for residential rental accommodation.

3. No Ground Termination Notices

REINSW opposes the proposed removal of no ground termination notices for both periodic and fixed term leases under the *Residential Tenancies Act 2010* (NSW) (**RT Act**). REINSW's view is that the no ground termination provisions are already fair and appropriately balance the tenant's need for accommodation security with the landlord's right to make decisions, based on their own individual circumstances, about an asset into which they have purchased.

Generally, landlords do not terminate a tenancy without good reason – or reasons, as to their decision to terminate a tenancy or not to renew a fixed term lease, might be multifactorial. Many reasons might be personal in nature (for example, separation, divorce, illness, loss or financial hardship) and REINSW's view is that it is not appropriate, and in most cases, not relevant, for landlords to be required to provide reasons to tenants. Tenants are not required to justify to a landlord why they end a lease, choose not to renew a fixed term lease or, in the case of fixed term leases, break a lease early (which landlords do not have the ability to do). REINSW believes that landlords should be entitled to this same level of privacy. Furthermore, section 115 of the RT Act already provides mechanisms to protect tenants against a retaliatory eviction.

The Consultation Paper states that "Government is committed to improving rental laws and making them fairer for everyone in NSW".[7] However, removing the right for landlords to choose when to end a lease except in limited prescribed circumstances (effectively binding them to a tenancy against freedom of contract principles) is not fair, especially as the landlord holds the financial interest in the property and carries the financial risk should they not be able to afford the mortgage. ***REINSW recommends against*** removing no ground termination notices for periodic and fixed term leases. The current termination provisions within the RT Act are working well in practice and should not be changed.

REINSW also notes that many periodic tenancies initially begin as a fixed term lease but automatically become a periodic tenancy on the lapsing of this term. REINSW questions whether Government's proposal to end no ground termination notices for periodic tenancies would apply to this initial term too, or whether it would only come into effect once the tenancy becomes a periodic tenancy?

3.1 Question 1: What is your preferred model for ending fixed term leases and why?

To reiterate and for the reasons given above, ***REINSW opposes*** the removal of no ground termination notices in general – both in the case of periodic and fixed term leases. However, should Government decide to abolish no ground termination notices in periodic tenancies,

[7] NSW Fair Trading, "Improving NSW rental laws consultation paper", July 2023, 3.

REINSW recommends taking the same approach as Queensland where a landlord is not required to provide reasons for ending a fixed term agreement upon its expiry.

However, fixed term tenancies, by their very nature, allow parties to mutually choose to enter a tenancy for a specific term upon signing the residential tenancy agreement. It is important, for freedom to contract purposes, that both parties are free to choose not to renew this agreement (with appropriate notice) and should not be required to give reasons, or meet specific criteria prescribed by legislation.

The Consultation Paper states that fixed term tenancies are "less flexible for renters",[8] However, REINSW's view is that this statement applies to landlords as much as it does to tenants, perhaps even moreso because tenants can break a lease. The tension and trade-off between security and flexibility is a necessary part of any residential tenancy agreement, as there are two parties' rights and interests which need to be balanced. REINSW believes that no changes should be made to the current legislative framework because the parties' need for security versus flexibility has already been considered in previous reforms and to make further changes would negatively impact the status quo. Details, such as the length of the term of the lease or whether to renew a fixed term or end a tenancy with appropriate notice, is best commercially negotiated between the parties who know the specifics of their respective circumstances.

3.2 Question 2: Are there any other specific situations where a landlord should be able to end a lease?

For the reasons given in paragraph 3 above, ***REINSW opposes*** the removal of termination on no grounds for periodic and fixed term tenancies. However, were Government to implement such a reform, the below table comments on the proposed reasons for termination set out on page 5 of the Consultation Paper. This table proposes additional reasons which ***REINSW recommends*** should be grounds upon which a landlord can end a tenancy and amendments which ***REINSW recommends*** should be made to existing reasons within the RT Act to ensure that a landlord can end a lease where necessary.

New reasons for termination proposed on page 5 of the Consultation Paper	**REINSW's comments were Government to abolish no ground termination notices (which REINSW opposes)**
Preparation for sale	This should be a ground for termination.
Reconstruction, renovation, repair	This should be a ground for termination.
Change of use (e.g. change from home to a shop or office)	This should be a ground for termination. However, ***REINSW recommends*** that this ground should apply to changes of use in whole or in part. There may be circumstances where part of the property's use is changed which nevertheless impacts the existing residential tenancy agreement. For example, where a block of land is subdivided and developed and so the existing rental property must be re-leased and advertised as being on a

[8] Ibid., 4.

	smaller plot, or where only the lower level of residential property is converted to a shop or office. While only a partial change of use, the nature of the rental property described in the lease has changed and so the legislation should allow for termination in these circumstances. ***REINSW also recommends*** that "change of use" should include where a landlord decides to lease out the property as short-term rental accommodation as opposed to a residential tenancy. This is an important investment strategy decision which landlords should have the freedom to make about their asset.
Demolition	This should be a ground for termination. However, ***REINSW recommends*** that this ground should apply to demolition of the property in whole or in part. It may be necessary to issue a termination notice, even if only part of the property is being demolished, for the health and safety of the tenants. For example, if the part of the property subject to demolition contains asbestos. Furthermore, as mentioned above in relation to change of use, the nature of the rental property as described in the lease has changed and so the legislation should allow for termination in these circumstances.
Landlord will move into the property, or a member of their immediate family will move in.	A landlord moving into the property, or needing vacant possession, should be grounds for termination. ***REINSW opposes*** limiting this ground to "immediate family members". Such a requirement is too restrictive. It does not consider modern blended family systems, extended family members or friends to whom a landlord might wish to offer shelter. A landlord might wish to offer their rental property to a friend, extended member, or acquaintance who is experiencing difficult personal circumstances such as domestic violence, financial hardship or illness. A number of landlords have also come back into possession of their property so that a vulnerable member of society can move in. REINSW's view is that the landlord should be able to rent their property to whomever they choose. Limiting to whom a landlord can rent not only prevents them from having a choice in this matter but is also not an effective strategy for resolving the housing crisis. With this ground for termination, the

	disparity between rental stock and tenants seeking shelter remains the same (ie. vacancy rates will not change) whether the landlord rents the property to one tenant over another. This is why it is important to address the underlying supply issue. If anything, limiting this ground to immediate family members may increase homelessness as it prevents landlords from offering their rental property to those who need shelter, including vulnerable members of society who are greatly affected by the housing crisis. ***REINSW recommends*** this proposed termination ground should be amended so that a landlord can terminate a tenancy if they would like to rent the property to someone else of their choosing.
Additional new reasons for termination which should be included in the RT Act, if no ground termination notices is abolished	**Comments**
Renting to someone else	For the same reasons discussed above, ***REINSW recommends*** inserting into the RT Act a clause to permit a landlord to terminate a tenancy if they would like to rent the property to someone else. Landlords should have a right to choose who they would like to rent their property to. It has no impact on the macro issue (that is, the shortage of rental accommodation in New South Wales) whether a landlord rents their property to one tenant over another and landlords, who have the financial interest in this asset, should be free to terminate a tenancy if they would like someone else, of their choosing, to move in – irrespective of the relationship that third person has to the landlord.
Failure to comply with an NCAT order	***REINSW recommends*** inserting into the RT Act a clause to permit a landlord to terminate a tenancy if the tenant has not complied with a Tribunal order.
Uninhabitability	***REINSW recommends*** inserting into the RT Act a clause to permit a landlord to terminate a tenancy if the premises are unfit for habitation
Defence clause	***REINSW recommends*** inserting into the RT Act a clause to permit a landlord or tenant to terminate a tenancy due to a defence force deployment.
False or misleading statement by tenant	***REINSW recommends*** that a landlord should be able to terminate a tenancy if induced to enter into a residential tenancy agreement based on a tenant's false or misleading statement.
Tenancy as part of employment	***REINSW recommends*** inserting into the RT Act a clause to permit a landlord to terminate a tenancy if it was provided as part of the tenant's employment and the employment contract has ended.

Student accommodation	***REINSW recommends*** inserting into the RT Act a clause to permit a landlord to terminate a student accommodation tenancy if the tenant is no longer a student.
Supported accommodation	***REINSW recommends*** inserting into the RT Act a clause to permit a landlord to terminate a tenancy where the tenant becomes ineligible for the supported accommodation the subject of the lease.
Loose-fill asbestos	***REINSW recommends*** inserting into the RT Act a clause to permit a landlord to terminate a tenancy agreement where a property is found to have loose-fill asbestos insulation.
Successor in title	***REINSW recommends*** inserting into the RT Act a clause to permit termination of a lease by a person who is a successor in title (other than by sale).
Government action	***REINSW recommends*** inserting into the RT Act a clause to permit a landlord to terminate a tenancy agreement if a property is affected by Government action or compulsory acquisition.
Repudiation	***REINSW recommends*** that a landlord can terminate a contract for repudiation where a tenant gives written notice of ending a tenancy but then fails to vacate the property.
Pet Conditions	***REINSW recommends*** inserting into the RT Act a clause to permit a landlord to terminate a tenancy agreement where there has been a breach of any conditions imposed on the keeping of pets.
Injury by Tenant	***REINSW recommends*** inserting into the RT Act a clause to permit a landlord to terminate a tenancy agreement if the tenant has caused (or recklessly permits) any injury to the landlord or other person, including a member of the landlord's family.
Tenant becomes the landlord	***REINSW recommends*** inserting into the RT Act a clause to permit a landlord to terminate a tenancy agreement if the landlord and tenant become the same person.
Proposed amendments to reasons already included in the RT Act	**Reasons for amending ground for termination**
Amend section 90 of the RT Act to remove reference to "serious".	Section 90(1)(a) of the RT Act allows a landlord to apply to the Tribunal for a termination order on the basis that a tenant or occupant has caused "serious damage" to the rental property or a neighbour's property. If the Government decides to remove no ground termination notices (which REINSW opposes), ***REINSW recommends*** amending section 90(1)(a) so that it applies to "**any** damage", not just "serious damage". If a landlord is no longer permitted to terminate a tenancy without giving a reason, this threshold should be lowered so that a landlord can

	terminate a tenancy for property damage (irrespective of whether the damage is serious) so that they can feel confident that their property is being cared for and the property's market value retained.
Amend section 92 of the RT Act to remove reference to "seriously and persistently"	Section 92(1) of the RT Act allows a landlord to apply to the Tribunal for a termination order on the basis (amongst other things) that a tenant or occupant has "seriously or persistently threatened or abused the landlord, the landlord's agent or any employee or contractor." REINSW's view is that, if a landlord cannot issue a termination notice without grounds, the threshold in section 92(1) should be lowered to **any** threats, abuse, harassment or intimidation. It is important that a landlord and their agent or contractor feel safe and comfortable in their dealings with the tenant or other occupants. Accordingly, ***REINSW recommends*** amending section 92 of the RT Act to permit a landlord to terminate a lease if a tenant or occupant threatens, abuses, harasses or intimidates a landlord, their agent, a contractor or other person.
Amend section 93 of the RT Act to remove reference to "undue"	A Tribunal can make a termination order, pursuant to section 93(1) of the RT Act, if satisfied that the landlord would "suffer undue hardship". Often, to establish this ground before the Tribunal, the landlord must show evidence that the mortgagee will exercise powers of sale. Landlords often fall back on no ground termination notices where they cannot establish this threshold of financial hardship but are nonetheless legitimately struggling. REINSW's view is that a landlord may be in legitimate financial hardship far before repossession occurs and should not be required to wait for the mortgagee to take extreme measures before they can terminate a lease and take steps to become more financially stable. If Government decides to remove no ground termination notices (which REINSW opposes), ***REINSW recommends*** amending section 93 of the RT Act to lower the threshold so that a landlord can terminate a lease if suffering from **any** financial hardship.
Subletting without consent	***REINSW recommends*** amending the RT Act to permit a landlord to terminate a tenancy if a tenant sublets the property without consent, including

	where a tenant sublets the property via a short-term rental accommodation platform (for example, Airbnb or VRBO).

3.3 Question 3: What would be an appropriate notice period for the five proposed reasons (and for any other reasons you have suggested)? Why is it reasonable?

REINSW opposes the removal of no ground termination notices. However, should Government implement this reform, ***REINSW recommends*** that the notice period for the proposed reasons for termination, the additional reasons proposed by REINSW in paragraph 3.2 above and amendments to existing grounds for termination in the RT Act, should be as follows:

- **Immediately where there is a risk to health and safety**: where the property requires urgent repairs, becomes uninhabitable, is structurally unsound, needs to be demolished, or is not safe to live in, termination should be effective immediately as a longer termination period could be a risk to the health and safety of others (including tenants, their guests and invitees).

- **14 days' notice period for breach**: where the tenancy ends because a tenant has breached their obligations under the residential tenancy agreement, 14 days' notice is an appropriate timeframe and is consistent with current legislative provisions in section 87 of the RT Act.

- **30 days' notice period for change of title/ownership, repudiation or government action**: where the tenant repudiates a lease, a property changes title or where the property is affected by government action such as compulsory acquisition, REINSW's view is that 30 days is an appropriate notice period.

- **60 days' notice period for other termination grounds**: traditionally 60 days was the notice period required by a landlord to terminate a tenancy. This was extended to 90 days, as a compromise, to preserve landlords' rights to terminate a tenancy on no grounds. Should Government remove no ground termination notices, ***REINSW recommends*** that this notice period should revert to 60 days which is a reasonable timeframe for a tenant to find a new property. REINSW notes that tenants only need to give landlords no less than 21 days' notice of termination for a periodic tenancy and no less than 14 days' notice of termination in the case of a fixed term tenancy even though landlords rely upon rent to cover mortgage repayments, utilities, outgoings and other expenses.

REINSW recommends that Government also consider the notice period when a matter is taken to NCAT because NCAT might decide on a shorter notice period to that prescribed by the legislation, and the legislation needs to factor in this scenario.

3.4 Question 4: What reasons should require evidence from the landlord? What should the evidence be?

Should Government remove the right for a landlord to terminate a lease without grounds (which REINSW opposes), **REINSW also opposes** a landlord being required to provide evidence as to the genuineness of that ground for the following reasons:

- **Privacy**: as mentioned above in paragraph 3, the reasons for ending a tenancy or not renewing a lease may be personal in nature and it is not appropriate, or not

  relevant, for a landlord to be required to disclose these reasons to a tenant. REINSW maintains that tenants are not required to provide a reason for terminating a lease and neither should landlords.

  REINSW holds concerns about evidence required to be provided in other states who have already abolished no ground termination notices. For example:

  - In Victoria, if a landlord wishes to list a property for sale they must provide evidence of the contract for sale, the preparation of a contract for sale or a real estate agent's agency agreement. REINSW's view is that these are commercially sensitive documents which contain private information about the landlord, but also third parties such as the agent or a prospective purchaser. These third parties may not have consented to the disclosure of this information. A landlord should not be required to provide these documents to a tenant. ***REINSW opposes*** any legislative reforms which might impose similar evidentiary requirements on landlords in New South Wales.

  - In Victoria, if a landlord wishes to have a family member move into the property they must provide a statutory declaration with the family member's name and relationship to the landlord. REINSW's view is that this is not appropriate and is a privacy concern for the family member who has not consented to having this information shared and may put them at risk if they were in circumstances of domestic violence (or other personal circumstance).

- **Multifactorial Reasons**: It may not be one ground, but multiple personal, financial and tenancy related factors which lead a landlord to end a tenancy. Life is rarely as black and white as the grounds listed in legislation and sometimes this decision may come down to the "straw which broke the camel's back". REINSW's view is that, in such circumstances, providing evidence about the reasons can be difficult without going into specifics which, as mentioned above, interferes with the landlord (and potentially third parties') privacy.

- **Change in circumstances**: As discussed in more detail below in paragraph 3.5, a landlord's circumstances might change after the time in which notice/evidence is given.

If Government takes a different view to REINSW, **REINSW recommends** that any evidence should only need to be provided at the tenant's request and that evidence should be limited to either:

- a standardised form, as is the case with the Declaration by Competent Person form in schedule 3 to the *Residential Tenancies Regulation 2019* (NSW) (**RT Regulation**); or
- in the alternative, though less preferrable, a statutory declaration.

3.5 Question 5: Should any reasons have a temporary ban on renting again after using them? If so, which ones and how long should the ban be?

Should Government remove the right for a landlord to terminate a lease on no grounds (which REINSW opposes), **REINSW would also oppose** introducing a temporary ban on renting the property again after ending a tenancy. REINSW understands that the policy intent of this proposal is to deter landlords from wrongful termination. REINSW's view is that this is not an effective strategy, and is likely to do more harm than good, to the housing crisis and should not be entertained.

3.5.1 A temporary ban will exacerbate the housing crisis

It is common ground that an undersupply of appropriate rental accommodation is causing the rental crisis in New South Wales. REINSW therefore questions why Government would want to remove further rental properties from the market by temporarily banning landlords from re-leasing their property to another tenant for a period of 6 months (or any period, for that matter), as this is only going to exacerbate undersupply. If anything, REINSW's view is that a temporary ban on re-leasing will further encourage landlords to exit the property investment market. If landlords are not able to earn rental income from their property, many will not be in a position to continue to afford mortgage repayments especially in light of rising interest rates.

3.5.2 The landlord's circumstances can change

The landlord's intent is subjective and based on their plans at a particular point in time. The landlord might terminate a tenancy on a certain ground, but their circumstances may change after a termination notice is given. For example, in the two following scenarios:

- A landlord intends to sell their primary place of residence and move into their investment property. As a result, they terminate the tenancy. However, the auction for their primary residence is passed in and they need to rent out their investment property again in the short-term until they can sell their primary residence.

- A landlord terminates a tenancy so that an elderly relative or parent can move into the rental property. However, the relative or parent passes away unexpectedly, or their health deteriorates rapidly so that they can no longer live on their own and must be moved into a nursing home.

In both scenarios, the landlord's intent to terminate a tenancy for a particular reason is genuine at the time of termination but their circumstances change due to unforeseeable circumstances. REINSW's view is that it would be unfair if a landlord was unable to rent out their property for the following six months and it would also mean that a rental property would be vacant when rental accommodation is already in such high demand (which would not be an effective strategy to resolving the housing crisis).

3.5.3 Statutory declaration already carries serious penalties

Finally, as mentioned above in relation to paragraph 3.4, REINSW maintains that a landlord should not be required to provide evidence substantiating their reasons for termination. However, were Government to require a landlord to provide evidence, it should only be at the tenant's request and should be limited to a standard form (as is the case with a Declaration by a Competent Person), or, less preferably, a statutory declaration. In relation to the latter, REINSW notes that sections 25 and 25A of the *Oaths Act 1900* (NSW) already carry serious, indictable penalties (including imprisonment) if a statutory declaration is made falsely – hence, the reason for it being less preferred. In REINSW's view, these penalties are more than sufficient deterrence against providing false grounds for termination. A landlord could then provide a supplementary statutory declaration explaining how their circumstances have changed if unforeseen events occurred which changed their plans for the rental property.

4. Keeping Pets in Rental Properties

REINSW opposes changes to the laws in relation to the keeping of pets in rental properties and refers Government to its submission in response to the NSW Consultation Paper on Keeping Pets in Residential Tenancies dated 1 December 2022 (**Pets Submission**) (enclosed as **Annexure C** to this submission). However, in summary, ***REINSW recommends against*** any changes to the law on the keeping of pets for the following reasons:

- Pets are wonderful companions and can positively impact people's health and wellbeing. However, REINSW's view is that the current legislative framework on the keeping of pets in rental properties is working well in practice and should not be changed.

- The current legislative framework is effective and works well because it is not a "one size fits all" approach and appropriately balances the rights of the landlord and tenant. The tenant can seek permission to keep a pet at the property and the landlord, who has an in-depth understanding of the property and its requirements, can decide whether the property is suitable for the pet requested. Not all pets will be suitable for all properties and the landlord is best placed to consider a pet's suitability on a case-by-case basis, having regard to various different factors. Furthermore, a landlord, as the person who owns the asset, should be able to choose if they want a pet in their rental property.

- REINSW refers to the list of factors which might impact a landlord's assessment of whether the requested pet is suitable for their rental property on page 4-5 of its Pets Submission. However, just a few reasons include the type of pet and their size, the pet's level of training, potential impacts on wildlife, whether the property is urban or rural, key features of the rental property, whether the landlord has any pet allergies,

and whether the property is in a strata scheme which might have its own by-laws impacting the keeping of pets.

- REINSW is supportive of the current legislative framework which allows people who require assistance animals to keep pets in rental properties.

4.1 Question 6: Is 21 days the right amount of time for a landlord to consider a request to keep a pet? If not, should the landlord have more or less time?

As mentioned above, ***REINSW opposes*** any changes to the legislation regarding pets as it is working well in practice. However, if Government were to create a standard pet form which requires a landlord to make a decision within a certain timeframe, ***REINSW recommends*** that:

- A pet form should not apply to tenancy applications. A request to keep a pet is already part of the tenancy application and this factor, amongst various others, will be considered by the landlord when assessing the prospective tenant's application as a whole.

- Where a tenant requests a pet during a tenancy, 30 days is an appropriate timeframe for a landlord to respond, with the exception of a tenancy within a strata scheme. This allows the agent time to contact the landlord (in particular, where they are overseas or unreachable). It also allows an agent to go back to the tenant for more information about the prospective pet, if required.

- For a rental property within a strata scheme, REINSW's view is that this timeframe should be 30 days from the date of the next owners' corporation's general meeting. Strata schemes will often have by-laws about pets and the landlord might need to seek permission for the tenant to keep a pet from the owners' corporation, but will need to wait until the next general meeting.

4.2 Question 7: What are valid reasons why a landlord should be able to refuse a pet without going to the Tribunal?

Again, ***REINSW opposes*** changes to legislation which restrict a landlord's right to refuse a pet in their rental property. However, were Government to prescribe valid reasons for refusal, ***REINSW recommends*** inserting reasons similar to those prescribed in Queensland (as set out in Appendix A of the Consultation Paper) as well as, additionally, the following:

- the rental property has been severely damaged by pets in the past;
- the pet might damage the property beyond the cost of the bond;
- the landlord has a pet allergy and intends to move back into the property;
- the landlord doesn't allow pets in the property where they reside and doesn't want one in their rental property.

4.3 Question 8: Should the Tribunal be able to allow a landlord to refuse the keeping of animals at a specific rental property on an ongoing basis? Please explain.

REINSW opposes changes to legislation which requires landlords to apply to the Tribunal to refuse a request to keep a pet in their rental property. As mentioned in paragraph 4 above, the landlord, as the person with the financial interest in the property, should be able to choose if they want a pet in their rental property. However, if such a Tribunal order is required, ***REINSW recommends*** that it should apply on an ongoing basis.

Where a Tribunal rules in favour of the landlord, it is likely that the basis for refusal to keep a pet will apply to subsequent tenancies as well as the current one. For example, if refusal to keep a pet was granted because the property was unsuitable due to inadequate fencing or because the landlord has a severe pet allergy then these reasons will remain valid for future pet requests too.

REINSW's view is that it will also put the parties to unnecessary time and expense if a landlord has to re-apply for permission to refuse a pet when there is already precedent from a previous tenancy. It will also put unnecessary strain on NCAT's case load and resources.

REINSW recommends that if a Tribunal has granted the landlord an exemption to refuse a pet on one occasion, then that ruling should also apply to subsequent tenancies.

4.4 Question 9: What other conditions could a landlord reasonably set for keeping a pet in the property? What conditions should not be allowed?

REINSW opposes any change to legislation which restricts a landlord's right to refuse a pet in their property for reasons stated above. However, were the Government to implement any changes to the current legislative framework which would limit, to any degree, the right of a landlord to choose whether to allow pets in their rental property, REINSW refers the Government to its response to question 4 of its Pets Submission which, in summary, recommends the following conditions:

- Prior to approval of a tenancy application, the landlord can disclose that they do not want pets in their rental property. This encourages a landlord to be transparent with the tenant, from the outset, about their position on pets in the rental property. The tenant could then choose not to enter the lease if they feel this property is not a good fit for them.

- Landlords are able to determine if a property is suitable for the type of pet that the tenant would like to have (for example, if the property does not have a yard or fence then the landlord would not be obligated to permit a dog).

- The landlord is able to stipulate that the pet (eg. a dog) is strictly only permitted to be kept outside (ie. the pet is only to be kept in the backyard and not inside the property). If the landlord permits a pet to be inside the property, they must also be able to stipulate conditions (for example, that the dog is only allowed inside when the tenant is home and supervising it, or that a dog is only to be permitted on tiled areas inside the property).

- The Department of Communities and Justice housing policies on pets (see REINSW's Pets Submission, page 9) should be included as standard regulation.

Further to these conditions, if the Government implements changes to the pet laws, ***REINSW recommends*** that the following minimum pre-requisites also be required as prescribed terms in the residential tenancy agreement:

- The tenant must pay a fee equivalent to 1 week's rent or a pet bond to protect the property against potential damage.

- Alternatively, the Government should work with the insurance industry to create a pet insurance product for tenants. Where a tenant wants to keep a pet, they should be required to purchase and maintain the pet insurance for the duration of the tenancy and would be required to produce, on request, a copy of the certificate of currency so that the landlord can be confident that the tenant is maintaining the requisite level of cover.

- There should be a requirement for the tenant to arrange an ongoing, annual professional flea treatment, deodorising and carpet cleaning (noting that these are all separate services). The tenant must be able to provide the agent with supporting evidence of such treatments with it being a ground to terminate the residential tenancy agreement if the tenant fails to comply with this requirement.

REINSW recommends that failure by the tenant to comply with any of the conditions listed above should be a ground upon which the landlord can terminate the tenancy.

5. Renters Personal Information

5.1 Question 10: Do you support limiting the information that applicants can be asked for in a tenancy application? Why/why not?

REINSW does not support limiting the information that applicants can be asked to provide in a tenancy application or enshrining within legislation the information contained in NSW Fair Trading Commissioner's guidance on personal information and tenancy applications (**Commissioner's Guidance**).

REINSW's view is that those who are governed by the *Privacy Act 1988* (Cth) (**Privacy Act**) must already comply with its robust framework to guide the collection, use and disclosure of personal information which is sufficient for the protection of personal information across most industries. For those not regulated by the *Privacy Act*, they should be able to use their professional judgement to obtain reasonable information which is necessary to assess a prospective tenant for a rental property. This can be done with reference to the Commissioner's Guidance. There is nothing notable about the property industry (compared to other industries) which would require a more prescriptive approach, and the *Privacy Act* captures those entities who should be governed.

REINSW does support the Commissioner's Guidance in its current form as a document which provides a framework and useful information about how the requirements of the *Privacy Act*

and the Australian Privacy Principles (**APPs**) apply in practice within the context of the property industry.

5.2 Question 11: Do you have any concerns with landlords or agents only being able to collect the information set out in the table above to assess a tenancy application? Please explain.

REINSW reiterates its response in paragraph 5.1 above and opposes changes to legislation which limits the information applicants can be asked for in a tenancy application.

REINSW opposes enshrining the table set out on pages 10-11 of the Consultation Paper in legislation but ***recommends*** that it should be included, as best practice, in the Commissioner's Guidance. ***REINSW also recommends*** the following changes be made to this table:

- **Proof of identity column:** REINSW's view is that the information should not be restricted to two (2) forms of documentation; rather it should be restricted to 100 points of identity documents.

- **Ability to pay agreed rent column**:

    - There should be no limit on the number of documents needed to establish that a tenant can afford the rent. Sometimes a combination of different evidence is required to substantiate a tenant's ability to pay rent. For example, a prospective tenant might work multiple part time jobs, receive government assistance and have money transferred into different bank accounts. A tenant may also have to provide more payslips if they are paid weekly as opposed to monthly. Restricting the quantity of information provided by the tenant is detrimental as they will not be approved if they cannot show proof of their ability to pay rent.

    - The daily transactions of bank statements should not be required to be redacted as some tenants rely upon transactions to substantiate their income.

- **Suitability column**:

    - REINSW's view is that there should be no restrictions on the number of documents required to establish a prospective tenant's suitability. Sometimes multiple sources are needed to establish suitability. For example, if a tenant lived in their previous rental property for only 3 months, and the rental property prior to that for 4 months, then two rental ledgers would already meet the threshold of 2 supporting documents. However, more evidence, for example a rental reference, might be necessary. Agents should be able to request the information reasonably necessary to establish a prospective tenant's suitability regardless of how many documents that entails.

    - This column should include a rates notice. If a prospective tenant claims not to have a rental reference because they are an owner occupier, a rates notice may be necessary to establish their ownership of the property.

5.3 Question 12: Do you support the use of a standard tenancy application form that limits the information that can be collected?

REINSW opposes a prescribed tenancy application. However, ***REINSW would support*** a standard tenancy application form which could be tailored and adapted, as necessary, so that it is user friendly for the consumer. A standard tenancy application form (as opposed to a prescribed form) could be more easily adapted to facilitate the emergence of new technologies and electronic formats, and would allow for easier integration with widely used industry programs and software.

Furthermore, should Government change the legislation to restrict the circumstances in which a landlord can terminate a tenancy (which ***REINSW opposes***), the landlord might wish to include additional questions to ensure that the tenant is a good fit. A standard tenancy application form would allow for this adaptability.

5.4 Question 13: Do you think that limiting the information that may be collected from rental applicants will help reduce discrimination in the application process?

REINSW's view is that limiting the information that may be collected from rental applicants ***will not*** help reduce discrimination in the application process. REINSW believes that the current anti-discrimination legislation already provides robust protection in this respect. REINSW queries how many complaints about discrimination during the tenancy application process have been made in this regard to warrant the inclusion of this topic in the Consultation Paper.

5.5 Question 14: Do you support new laws that set out how landlords and agents can use and disclose renter's personal information? Why/why not?

REINSW does not support new laws which limit how landlords and agents can use or disclose renter's personal information. REINSW's view is that, for those entities that require governance by the *Privacy Act* and APPs (including APP 6.1), they must already comply with the requirements for use and disclosure of personal information as set out in that legislation. For other entities not captured, the Commissioner's Guidance is sufficient on the use and disclosure of personal information. REINSW reiterates its view raised in paragraph 5.1 above that there is nothing especially notable about the property industry (compared to other industries) which would require a more prescriptive approach to privacy.

REINSW opposes proposed amendments to the RT Act which seeks to limit the disclosure of a tenant's personal information for the purposes of "confirming a rental applicant's identity, ability to pay the rent and suitability for the property" (subject to certain exceptions) and which "outline what renters must be told about how their collected information will be used before they apply for a property". Such an amendment would restrict a property manager's daily duties, as sometimes it is necessary to share a tenant's personal information when managing the tenancy (for example, where a property manager provides information to the contractor who is conducting repairs or maintenance on the rental property).

While REINSW's view is that the current framework is working well in practice and should not be changed, if the policy intent is to capture small agencies which might be exempt from the *Privacy Act*, ***REINSW instead recommends*** inserting into the RT Act a clause which effectively limits use and disclosure of a tenant's personal information except for where use and disclosure is to facilitate the management of a tenancy.

5.6 Question 15: What should applicants be told about how their information will be used before they submit a tenancy application? Why?

REINSW is aware that, in practice, tenancy applications already disclose how personal information collected is going to be used and disclosed as part of an agency's privacy policy obligations. For instance, REINSW's template Tenancy Application and Residential Tenancy Agreement (available in the market for agents to use) already include privacy provisions to this effect. However, ***REINSW recommends*** that private landlords (who do not use an agent) should also be required to disclose upfront what their privacy policy is and how they will use the personal information collected in the application form.

5.7 Question 16: Do you support new laws to require anyone holding renter personal information to secure it? Why/Why not?

REINSW supports the safe and secure storage of tenants' personal information especially when containing important documents such as personal documents, identity documents, and financial/bank details and records.

REINSW's view is that agents can secure any tenants' personal information which is stored by them. However, property technology companies (**Proptech**) play an important role in the tenancy application process and the management of residential tenancies. Proptechs may, as part of this service, separately collect and store personal information about tenants. As agents have no control over what personal information Proptechs store, and how it is stored, Proptechs should be separately liable for personal information obtained or held in the course of providing services.

5.8 Question 17: How long should landlords, agents or proptechs be able to keep renter personal information? Please explain.

REINSW's view is that the timeframes proposed by the South Australian Bill for the destruction of renter personal information (that is, 3 years from the end of a tenancy for a successful applicant and 6 months post collection (with consent) or 30 days after entering into a residential tenancy agreement) are reasonable.

As mentioned above in paragraph 5.7, agents can take steps to remove, destroy and delete personal information about tenants which they might possess. However, agents have no control over when, and whether, third-party Proptechs destroy personal information collected while providing their services. ***REINSW recommends*** that Proptechs should be separately liable for the destruction of any personal information which they might hold.

5.9 Question 18: Do you support requiring landlords, agents or proptechs to (a) give rental applicants' access their personal information, (b) correct rental applicants' personal information? Please explain your concerns (if any).

REINSW supports requiring landlords, agents and Proptechs to give rental applicants the ability to access, and correct, personal information held about them.

5.10 Question 19: Are you aware of automated decision making having unfair outcomes for rental applicants? Please explain.

REINSW is not aware of any programs which automatically make decisions about rental applicants. REINSW is aware of programs which "filter" applications for completeness and a prospective tenant's income ratio. However, the filtered results are only used to assist agents with the shortlisting process and are not relied upon exclusively. Agents and landlords still manually review the applications (including references), and decisions cannot be made by any such program without the involvement and consent of the landlord.

REINSW is also ***not*** aware of any programs which filter tenancy applications based on factors which are discriminatory (for example, gender or race). Not only would such a program be a breach of the anti-discrimination legislation, but REINSW understands that agents and landlords base their decisions about prospective applicants on the tenant's ability to pay rent in a timely manner and to look after the property. Completeness of the application form is also important as, without all the relevant information, an agent or landlord cannot properly assess a person's identity, ability to pay rent and suitability, and so applications with missing information will be rejected. The filtration process assists with efficiency and identifying incomplete applications when assessing a high volume of applicants in a short timeframe. It is not used to make automatic decisions that will have unfair outcomes with respect to applications.

5.11 Question 20: What should we consider as we explore options to address the use of automated decision making to assess rental applications?

REINSW recommends that Government should undertake further research into Proptechs and third-party software providers to determine if there are, in fact, any programs which automatically make decisions about rental applications. If there are, REINSW's view is that any automatic decision-making parameters should comply with the anti-discrimination legislation and focus on the core criteria when assessing applications (that is, completeness, identity – are they who they say they are, ability to pay rent and suitability).

6. Portable Rental Bond Scheme

REINSW opposes the introduction of a portable rental bond scheme. It is not possible for two parties to share the one bond. Landlords, who have the financial interest in the property, must have full, unfettered access to the bond money from the date that the tenancy commences to the date it ends, to protect their asset. Because the release of the bond from the previous tenancy always needs to occur after the final inspection and the bond for the new tenancy

needs to be paid upfront, it is simply not possible to facilitate such a scheme in a fair, efficient manner.

There are three additional reasons why having a full, unfettered bond in place from the commencement of the residential tenancy agreement, for the duration of the tenancy, is important:

- **Purpose of a 4-week bond**: The bond is the equivalent to four (4) weeks' rent for good reason. Four (4) weeks' rent gives the landlord sufficient time to issue a termination notice for rent arrears pursuant to section 88 of the RT Act if the tenant stops paying rent immediately. This is because section 88(1) of the RT Act requires that the arrears have "remained unpaid in breach of the agreement for not less than 14 days before the non-payment notice is given". It is also the equivalent sum to the break lease fee which a tenant must pay pursuant to section 107(4)(a) of the RT Act, should they terminate the tenancy immediately upon, or shortly after, moving into the property. A landlord will not be protected if they do not have access to the full bond immediately.

- **Landlord insurance**: A portable bonds scheme impacts the landlord's ability to claim on their property insurance. While each policy is different, REINSW is aware that insurance providers assume a full bond at the commencement of the tenancy and REINSW understands that this is standard practice for landlords insurance policies. If an insurance claim for property damage is made against a policy, insurance providers require proof that the landlord has made a claim for the bond money. Without a bond, the insurance provider would generally reduce any money paid out by four weeks' rent - to the financial detriment of the landlord.

- **High risk tenants**: REINSW's view is that under the current bond framework, the time in which a tenant is out of pocket for two (2) bonds is not lengthy – provided that there is no damage, or disputes over the state of the rental property. Therefore, it is of concern to landlords and agents if a tenant has difficulty covering the cost of two bonds, as this can indicate that they might not have sufficient financial resources to meet other rental obligations under a residential tenancy agreement which, as discussed above, is one of the core criteria in assessing a prospective tenant during the application process. It is important to recognise that landlords, too, have financial obligations and are relying on rent to meet mortgage repayments as well as on the bond to ensure that the market value of their asset is retained.

While ***REINSW opposes*** a portable bonds scheme for the reasons above, were Government to implement such a scheme, ***REINSW recommends*** that it must be optional so that a landlord can decide whether to participate in the scheme.

6.1 Question 22: What should happen if the renter does not top up the second bond on time? Please explain why.

REINSW's view is that the landlord would be at significant risk were they to terminate a tenancy without the financial security of the bond. If the tenant does not top up the second bond on time, the matter could end up at NCAT, where more government resources would be required to deal with these new types of matters. REINSW is concerned that by the time it goes to a formal hearing at NCAT, the timeframe for paying the second bond will have expired such that the landlord is out of pocket this second bond as well as rent that has not been paid

in the meantime. The landlord will be significantly out of pocket with this proposed scheme in place.

6.2 Consultation Paper Questions 21 and 23-24.

As mentioned above, a landlord should have full, unfettered access to the bond from the date on which the residential tenancy agreement is signed. A portable bonds scheme would not be able to offer a landlord this security and so ***REINSW re-iterates its opposition*** to this scheme and its view that it is simply not possible to facilitate a portable bonds scheme in a fair, efficient manner.

6.3 Question 25: What other (if any) things should we consider as we design and implement the portable bond scheme? Please explain.

Rather than a portable bond scheme, ***REINSW recommends*** an optional bond saving scheme. Government could set up a platform, connected to the Rental Bonds Board, into which tenants could make optional, incremental contributions. The tenant could put any money contributed towards this scheme to their next bond, meaning they would have to pay less upfront for any next property if they were to move.

7. Information to help renters know when a rent increase is 'excessive'

7.1 Question 26: Do you have any concerns about the NSW Government collecting information on rent increases and making it publicly available for renters? If yes, please provide details.

REINSW opposes the proposal to collect, and make public, any information about rent increases because:

- The landlord has the financial interest in the rental property and should be free to set rent at an amount commensurate with the property's market value.
- Rent increase figures are commercially sensitive information and should not be prescribed or made publicly available.
- The data derived from collecting, and making public, information about rent increases would not be useful without more context, such as the reasons for which rent was increased. REINSW is concerned that, without this context, the information would be misinterpreted and weaponised to justify rent control measures without understanding the bigger picture. Some examples of why context is important include:
    - Where a rental property has been demolished and rebuilt, rent is likely to increase significantly as the new property's market value is higher than the old one.
    - A landlord might not have increased rent for many years so, even if they significantly increase the rent, the property might still be below market value of

similar comparable properties in the area. Therefore, the rent increase wouldn't be indicative of the whole market.

- A landlord might have had to reduce rent as a result of the COVID-19 pandemic but now has to increase the rent to ensure that they can meet their mortgage repayments in light of increasing interest rates or else they will be at risk of financial hardship.

- A landlord might have had to increase rent because they made changes to the rental property (for example, spent $10,000 installing air conditioning) for the tenant's benefit.

- Any voluntary survey (as referred to in the Consultation Paper) for the collection of information about rent increases cannot be mandated, and not everyone will complete it. This will result in the publicly available data being inaccurate, not useful and misleading.

- Such data would only show rent increases, not rent reductions such as those provided by landlords during the New South Wales floods or the COVID-19 pandemic.

- Government can monitor rent increase trends via publicly available data from the Rental Bond Board or other sources. A bond is the equivalent of four (4) weeks' rent so rent increases will be reflected in increases to bonds. REINSW notes concerns already raised about focusing too much on the rent increase figures without knowing the context in which the rent increases occurred.

7.2 Question 27: What do you think is the best way to collect this information?

As mentioned above in paragraph 7.2, ***REINSW opposes*** the collection of this commercially sensitive information. REINSW's view is that data from the Rental Bond Board already provides an indication of general rent increase trends but ***recommends*** that Government should be cautious about drawing any conclusions about rent increase figures without further context. ***REINSW also recommends*** that Government use other sources to collect this information as opposed to collecting it via a consumer survey.

8. Other Changes to Improve Rental Affordability

8.1 Question 28: Do you think the 'one increase per 12 months' limit should carry over if the renter is swapped to a different type of tenancy agreement (periodic or fixed term)? Please explain.

REINSW recommends against rent increases being limited to 12 months if a tenant changes between a fixed term to a periodic agreement (and vice versa). ***REINSW opposes***, in general, any form of restrictions which limits a landlord's rights to set and increase rent as they see fit. REINSW's view is that landlords, as the owner of the property, should be free to set and increase rent based on market value and to ensure they can continue to afford the property. REINSW re-iterates its views raised in paragraph 2 above that any form of rent control will only exacerbate the rental housing crisis as it will further deter landlords from investing in property and, as a result, there will be fewer rental properties available in an already competitive market.

8.2 Question 29: Do you think fixed term agreements under two years should be limited to one increase within a 12 month period? Why or why not?

REINSW opposes limiting fixed term agreements under two (2) years to one (1) rent increase within a 12 month period for freedom to contract reasons. Unlike periodic leases, fixed term agreements under 2 years can only increase rent during the term if the "agreement specifies the increased rent or the method of calculating the increases": section 42(1) of the RT Act. This means that tenants are aware of, and agree to, any rent increase before entering into the tenancy.

REINSW recommends that fixed term leases under 2 years are a different category where parties should be left to commercially negotiate rent increases, having regard to their individual circumstances at the time. To impose a restriction on rent increases would be to introduce rent control measures to which REINSW opposes.

8.3 Question 30: What do you think about the above options? Please provide detail.

REINSW opposes any requirement for a landlord to prove that rent is not 'excessive', for example, if it exceeds the consumer price index (**CPI**). REINSW re-iterates its view in paragraph 8.1 above that landlords should be free to set, and increase, the rent for their property having regard to their specific circumstances at the time.

CPI is also not a relevant factor when determining rent for a residential property. Rent for a commercial property (as opposed to residential) may be linked to CPI. Instead, rent for a residential premises is set based on market value and a landlord's investment expenses. As discussed in paragraph 7.1, there are many legitimate reasons why a landlord might need to increase rent, such as renovations, increased interest rates or because a landlord has not increased rent for a property in several years. It is also possible that a landlord's rent increase might exceed CPI while still remaining well below the rental property's market value. Interest rates, landlord's investment costs, and contractors' prices are not capped at CPI and so landlords should not be required to justify why a rent increase which exceeds CPI is 'excessive'.

REINSW also opposes any proposals to amend the criteria to define when a rent increase is "excessive". REINSW's view is that the current criteria are still relevant and is reflective of what is affordable to the owner to continue to hold the property in the property market.

9. Other changes to make rental laws better

9.1 Question 31: Do you support new laws to require landlords or their agents to tell rental applicants if a rental property uses any embedded network? Why/why not?

While not especially common, ***REINSW recommends*** that where an embedded network impacts a rental property, it should be disclosed to tenants.

9.2 Question 32: When should a rental applicant be told that a property uses an embedded network?

REINSW recommends that the tenant should be informed that a property has an embedded network on or before the commencement of the tenancy agreement.

9.3 Question 33: What information should a renter be told about a rental property using an embedded network? Please explain.

REINSW recommends that a tenant should be told details about the embedded network provider, the utilities which are serviced by the embedded network, any imposed obligations and that the tenant does not have a choice to change provider.

9.4 Question 34: What would be the best way to ensure that the free way for renters to pay rent is convenient or easy to use? Please explain.

REINSW's view is that the current legislative requirement, that a free way to pay rent is "reasonably available", is working well in practice and should not be changed.

REINSW does not support changing the legislation to "reasonably convenient" because the term "convenient" is subjective; what may be convenient for one tenant may differ to what is convenient for another tenant. What may be operationally convenient for the agent may be different from what is convenient for the tenant.

Should Government consider changing the residential tenancies legislation to require a "reasonably convenient" free way to pay rent, REINSW makes the following comments:

- Payment fees are not set by a landlord or agent; rather they are charged by third party financial institutions and concerns about fees are more appropriately raised with these entities. The issue is between these financial institutions and tenants.

- Fees are the cost of convenience for using a particular payment method and are generally incurred by the person benefiting from the service or convenience – in this case the tenant. Similarly, when the landlord incurs the benefit, such as having rent paid to them directly from Centrepay, they incur the fee from the Government for that convenience. Another example is where an ATM charges a fee for the convenience of being able to take out cash at any time of the day (as opposed to attending a local bank branch during opening hours).

- Landlords and agents might be more amendable to offering more payment options if they could on-charge fees to tenants.

9.5 Question 35. Should the law require a landlord or agent to offer an electronic way to pay rent that is free to use? Why/why not?

REINSW does not support a law which requires a landlord or agent to offer a free electronic way to pay rent. Most transaction fees are charged by financial institutions for the convenience of using a particular payment method. Each financial institution's fees are different, and an agent or landlord has no control over, or way of knowing, whether the tenant incurs a fee directly from their bank for the cost of the transaction. ***REINSW recommends*** that any

concerns or complaints about fees for electronic payment methods should be taken up with the entities charging the fees, namely, the financial institutions. The issue is between these financial institutions and tenants.

9.6 Question 36: What are the issues faced by renters when moving into a strata scheme? Would better disclosure about the strata rules for moving in help with this?

REINSW's view is that a landlord or agent is already required to provide a copy of the strata scheme by-laws to the tenant "within 7 days of entering into" the residential tenancy: clauses 38 and 39 of Schedule 1 to the RT Regulations; section 26(2A) of the RT Act. However, they should not be required to provide additional disclosure about strata rules. Tenants are responsible for reading the strata by-laws which contain important information about the strata scheme - just as they are expected to read the terms of the lease and any other relevant information.

Nevertheless, ***REINSW recommends*** that NSW Fair Trading could provide tenants with further education about the importance of reading the by-laws. ***REINSW recommends*** that this education could be provided by way of the Tenant Information Statement. Currently, that document mentions a landlord or agent's obligation to give the tenant a "copy of the by-laws, if the property is in a strata scheme". However, ***REINSW recommends*** that the Tenant Information Statement could be expanded to inform tenants about the importance of reading the by-laws upon commencement of the tenancy.

10. Summary

REINSW's positions and recommendations on the matters outlined in the Consultation Paper are summarised below.

The Rental Crisis

- REINSW recommends that Government should focus on the underlying housing supply issues, especially issues within the development and construction industries.
- The fundamental question which REINSW recommends Government consider in relation to the rental reforms proposed in the Consultation Paper is whether these proposals will retain and encourage investors, or drive them away?
- REINSW recommends that Government instead look at ways that they can incentivise property investment to increase the number of residential rental properties available on the market.
- REINSW recommends Government look at incentivising institutional investors who have funds to purchase and build apartment blocks specifically for residential rental accommodation.

No Ground Termination Notices:

- REINSW opposes the proposed removal of no ground termination notices for both periodic and fixed term leases under the RT Act. However, were Government to abolish no ground termination notices in periodic tenancies, REINSW recommends taking Queensland's approach where a landlord is not required to provide reasons for ending a fixed term agreement upon its expiry.

- Refer to the table in paragraph 3.2 above for REINSW's recommendations with respect to the grounds for termination proposed in the Consultation Paper, as well as new grounds and amendments which it proposes should be made to existing grounds, should Government remove no ground termination notices.

- REINSW recommends the following notice periods for the grounds for termination proposed in paragraph 3.2 above:

    - immediate termination where the ground is based on a health or safety risk;
    - 14 days' notice where the termination is due to breach;
    - 30 days' notice for repudiation, change of title/ownership or government action; and
    - 60 days' notice for all remaining grounds (as this was the traditional notice period required by a landlord to terminate a tenancy and was only recently extended to 90 days, as a compromise, to preserve landlords' rights to terminate a tenancy on no grounds).

  REINSW also recommends that Government consider the notice period when a matter is taken to NCAT because NCAT might decide on a shorter notice period to that prescribed by the legislation, and the legislation needs to factor in this scenario.

- REINSW opposes a landlord being required to provide evidence as to the genuineness of the ground for termination. However, should evidence be required, REINSW recommends that any evidence should only need to be provided at the tenant's request and that evidence should be limited to either:

    - a standardised form, as is the case with the Declaration by Competent Person form in schedule 3 to the *Residential Tenancies Regulation 2019* (NSW) (**RT Regulation**); or
    - in the alternative, though less preferrable, a statutory declaration.

- REINSW opposes introducing a temporary ban on re-letting the property after a tenancy and other reforms which penalise a landlord for terminating the tenancy.

Pets in rental properties:

- REINSW opposes changes to the laws in relation to the keeping of pets in rental properties as the current legislative framework works well in practice, the landlord is best placed to consider the pet's suitability for the rental property and the landlord should have the right to choose if they want a pet in their rental property.

- REINSW opposes changes to the laws in relation to the keeping of pets in rental properties. However, were Government to create a pet form, REINSW recommends that:

    - it should not apply to tenancy applications;

- for a request to keep a pet made during a tenancy, 30 days' notice is appropriate with the exception of rental properties in strata schemes where the notice period should be 30 days after the owners' corporation's next general meeting.

- REINSW opposes changes to legislation which restrict a landlord's right to refuse a pet in their rental property. However, were Government to prescribe valid reasons for refusal, REINSW recommends reasons similar to those prescribed in Queensland and, additionally, the following:

    - the rental property has been severely damaged by pets in the past;
    - the pet might damage the property beyond the cost of the bond;
    - the landlord has a pet allergy and intends to move back into the property; and
    - the landlord doesn't allow pets in the property where they reside and doesn't want one in their rental property.

- REINSW opposes changes to legislation which requires landlords to apply to the Tribunal to refuse a request to keep a pet in their rental property. However, if such a Tribunal order is required, REINSW recommends that it should apply on an ongoing basis and should also apply to subsequent tenancies.

- Were Government to implement any changes to the current legislative framework which would limit, to any degree, the right of a landlord to choose whether to allow pets in their rental property, REINSW recommends the following conditions:

    - prior to approval of a tenancy application, the landlord can disclose that they do not want pets in their rental property;
    - landlords can determine if the property is suitable for the type of pet requested;
    - the landlord can stipulate that the pet (like a dog) is strictly only permitted outside or, if they permit a pet inside the property, the landlord can stipulate other conditions; and
    - the Department of Communities and Justice housing policies on pets (see REINSW's Pets Submission, page 9) should be included as standard regulation.

- REINSW also recommends the following minimum pre-requisites also be required as prescribed terms in the residential tenancy agreement:

    - the tenant must pay a pet fee equivalent to 1 week's rent or a pet bond or, alternatively, the Government should work with the insurance industry to develop a pet insurance product for tenants which they would be required to purchase and maintain throughout the tenancy;
    - the tenant must arrange the ongoing, annual professional flea treatment, deodorising and carpet cleaning of which they must be able to provide evidence.

- REINSW recommends that failure to comply with conditions should be a ground upon which the landlord can terminate the tenancy.

Personal Information:

- REINSW does not support limiting the information that applicants can be asked for in a tenancy application or, enshrining within legislation, information contained in the

Commissioner's Guidance. However, REINSW does support the Commissioner's Guidance in its current form.

- REINSW opposes enshrining in legislation the contents of the table set out on pages 10-11 of the Consultation Paper but recommends that it should be included, as best practice, in the Commissioner's Guidance.

- REINSW also recommends the following changes be made to this table:

    - The proof of identity column should be limited to 100 points of identity documentation.
    - There should be no limit on the number of documents needed to establish the prospective tenant's ability to pay rent or on documents required to establish a prospective tenant's suitability.
    - Bank statements should not be required to be redacted.
    - The suitability column should include a rates notice.

- REINSW opposes a prescribed tenancy application but would support a standard tenancy application.

- REINSW does not support new laws which limit how landlords and agents can use or disclose tenants' personal information and opposes amendments to the RT Act which seeks to limit the disclosure of a tenant's personal information for the purposes of "confirming a rental applicant's identity, ability to pay the rent and suitability for the property" (subject to certain exceptions) and which "outline what renters must be told about how their collected information will be used before they apply for a property". Instead, REINSW recommends inserting into the RT Act a clause which limits use and disclosure of a tenant's personal information except for where use and disclosure is required to facilitate the management of a tenancy.

- REINSW recommends that private landlords (who do not use an agent) should be required to disclose upfront what their privacy policy is and how they will use the personal information collected in the application form.

- REINSW supports the safe and secure storage of tenants' personal information but recommends that Proptechs should be separately liable for personal information obtained or held while providing their services.

- REINSW recommends that Proptechs should be separately liable for the destruction of any personal information which they might hold but otherwise takes the view that the timeframes proposed by the South Australian Bill for the destruction of tenants' personal information are reasonable.

- REINSW supports requiring landlords, agents and Proptechs to give rental applicants the ability to access, and correct, personal information held about them.

- REINSW recommends that Government should undertake further research into Proptechs and third-party software providers to determine if there are, in fact, any programs which automatically make decisions about rental applications. If there are, REINSW's view is any automatic decision-making parameters should not breach anti-discrimination laws and should focus on the core criteria (that is, completeness, identity – are they who they say they are, ability to pay rent and suitability).

Portable Rental Bond Scheme:

- REINSW opposes the introduction of a portable rental bond scheme. It is simply not possible to facilitate such a scheme in a fair, efficient manner.

- However, should Government implement such a scheme, REINSW recommends that it should be optional so that a landlord can decide whether to participate in the scheme.

- REINSW recommends a bond saving scheme into which tenants could make optional, incremental contributions which could be offset against any future bond.

Information to help renters know when a rent increase is 'excessive':

- REINSW opposes the proposal to collect, and make public, any information about rent increases and recommends that Government should be cautious about drawing any conclusions about rent increase figures without further context. However, were Government to collect any information about rent increases, REINSW recommends it use other sources (like the Rental Bonds Board Data) as opposed to collecting it via a consumer survey which is likely to be inaccurate, not useful and misleading.

- REINSW recommends against rent increases being limited to 12 months if a tenant changes between a fixed term and periodic agreement (and vice versa) and opposes, in general, any form of restrictions which limits a landlord's rights to set and increase rent as they see fit.

- REINSW opposes limiting fixed term agreements under two (2) years to one (1) rent increase within a 12-month period for freedom to contract reasons.

- REINSW opposes any requirement for a landlord to prove that rent is not 'excessive' or proposals to amend the criteria to define when a rent increase is "excessive".

Other changes to make rental laws better:

- REINSW recommends that, where an embedded network impacts a rental property, it should be disclosed to tenants.

- REINSW recommends that the tenant should be informed that a property has an embedded network on or before the commencement of the tenancy agreement.

- REINSW recommends that a tenant should be told details about the embedded network provider, the utilities which are serviced by the embedded network, any imposed obligations and that the tenant does not have a choice to change provider.

- REINSW does not support changing the legislation to require that the free way to pay is "reasonably convenient" because the term "convenient" is subjective and the current legislative requirement is working well in practice and should not be changed.

- REINSW does not support a law which requires a landlord or agent to offer a free electronic way to pay rent and recommends that concerns or complaints about fees for electronic payments should be taken up with the entities charging the fees, namely, financial institutions.

- REINSW recommends that NSW Fair Trading could provide tenants with further education about reading strata by-laws via the Tenant Information Statement. REINSW recommends that NSW Fair Trading expand the reference to the by-laws in

this document to inform tenants about the importance of reading the by-laws upon commencement of the tenancy.

11. Conclusion

REINSW has considered the Consultation Paper and has provided its comments above, aiming to provide input on as many pertinent aspects of this document and the questions posed in it as possible. However, REINSW's resources are very limited and, accordingly, it does not have the capacity to undertake a thorough review and is unable to exhaustively investigate all potential issues in this Submission. Nonetheless, REINSW has identified a number of matters that it believes will cause significant consumer detriment, some of which appear above.

REINSW appreciates the opportunity to provide this Submission and would be pleased to discuss it further, if required.

Yours faithfully

Tim McKibbin
Chief Executive Officer

Annexure A

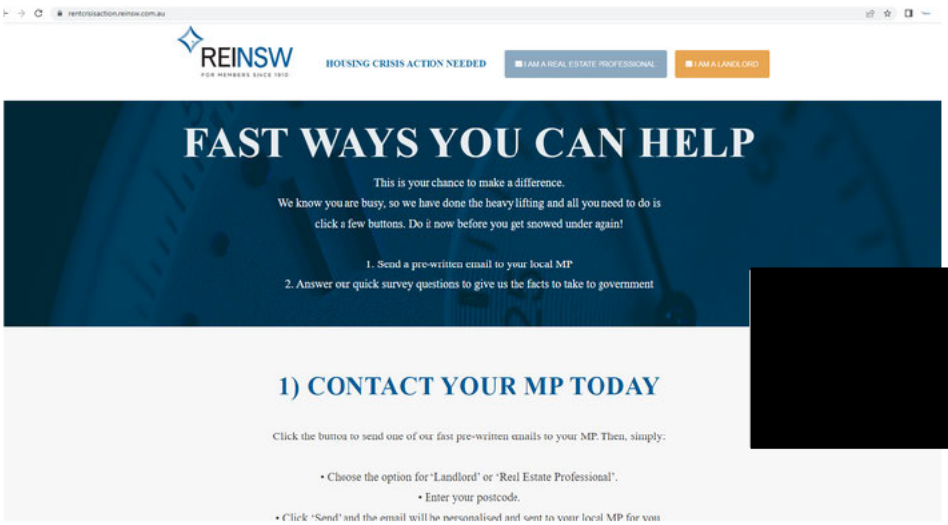
The following pages include REINSW's Housing Rent Crisis Campaign Report for February to August 2023 data as at 15 August 2023.

HOUSING RENT CRISIS CAMPAIGN REPORT

DATA AS AT 15TH AUGUST 2023

WEB PAGE UPDATE

https://rentcrisisaction.reinsw.com.au/



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SURVEY RESULTS

LETTERS TO MPS

REINSW
FOR MEMBERS SINCE 1910

HOUSING CRISIS ACTION NEEDED

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1) CONTACT YOUR MP TODAY

Click the button to send one of our fast pre-written emails to your MP. Then, simply:

- Choose the option for 'Landlord' or 'Real Estate Professional'.
- Enter your postcode.
- Click 'Send' and the email will be personalised and sent to your local MP for you.

REAL ESTATE PROFESSIONAL

CONTACT YOUR POLITICIAN

LANDLORDS

CONTACT YOUR POLITICIAN

SOCIAL MEDIA AND DIGITAL ADVERTISING

FACEBOOK, INSTAGRAM & LINKED IN

[redacted]

Send a pre-written letter to your MP and join the fight against the housing crisis!
... See more

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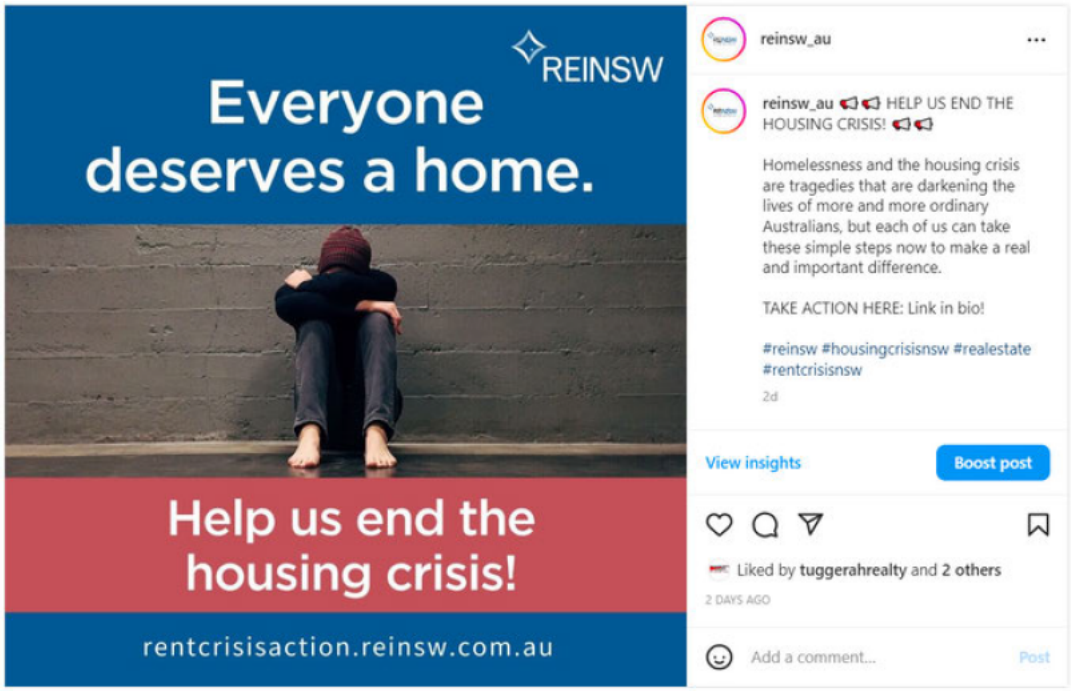
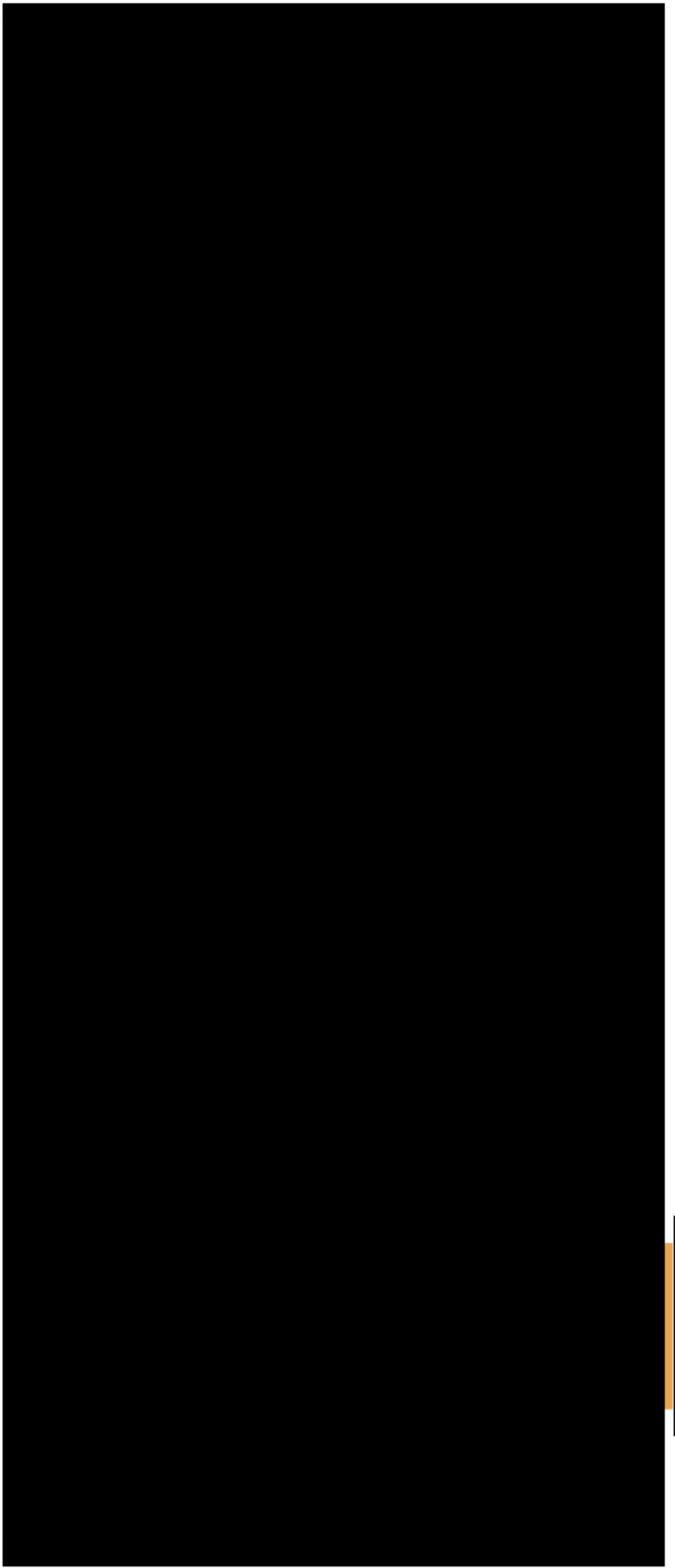


PAID DIGITAL ADVERTISING - FACEBOOK, INSTAGRAM, GOOGLE, LINKED IN & TIKTOK

EMAIL



Campaign Report 1 Feb 2023 - 15 Aug 2023

EMAILS - PROPERTY MANAGEMENT CHAPTER MEMBERS + NON MEMBERS

EMAILS - GENERAL MEMBERS + NON MEMBERS

Campaign Report 1 Feb 2023 - 15 Aug 2023

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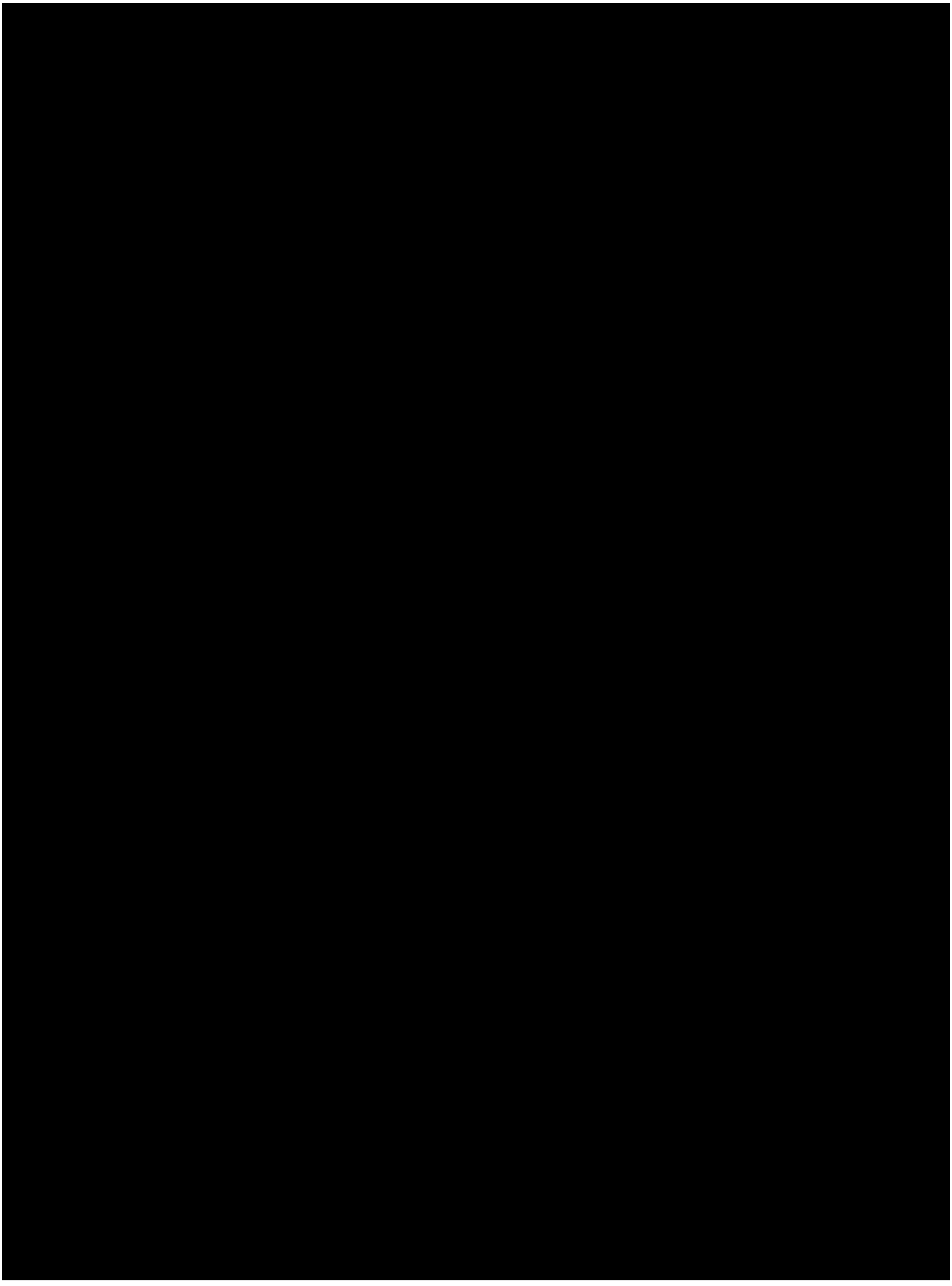
ONLINE COMMENTS



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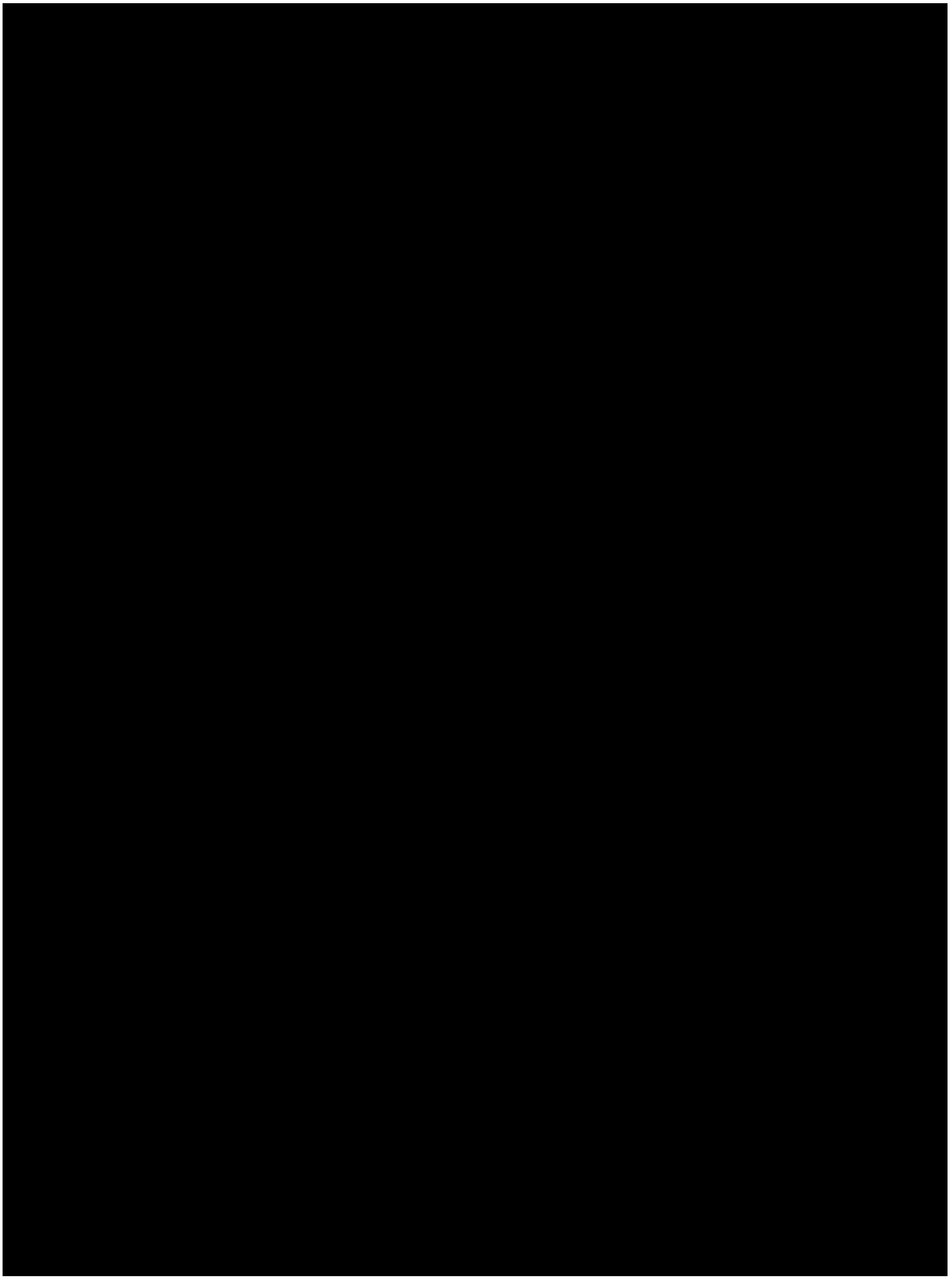

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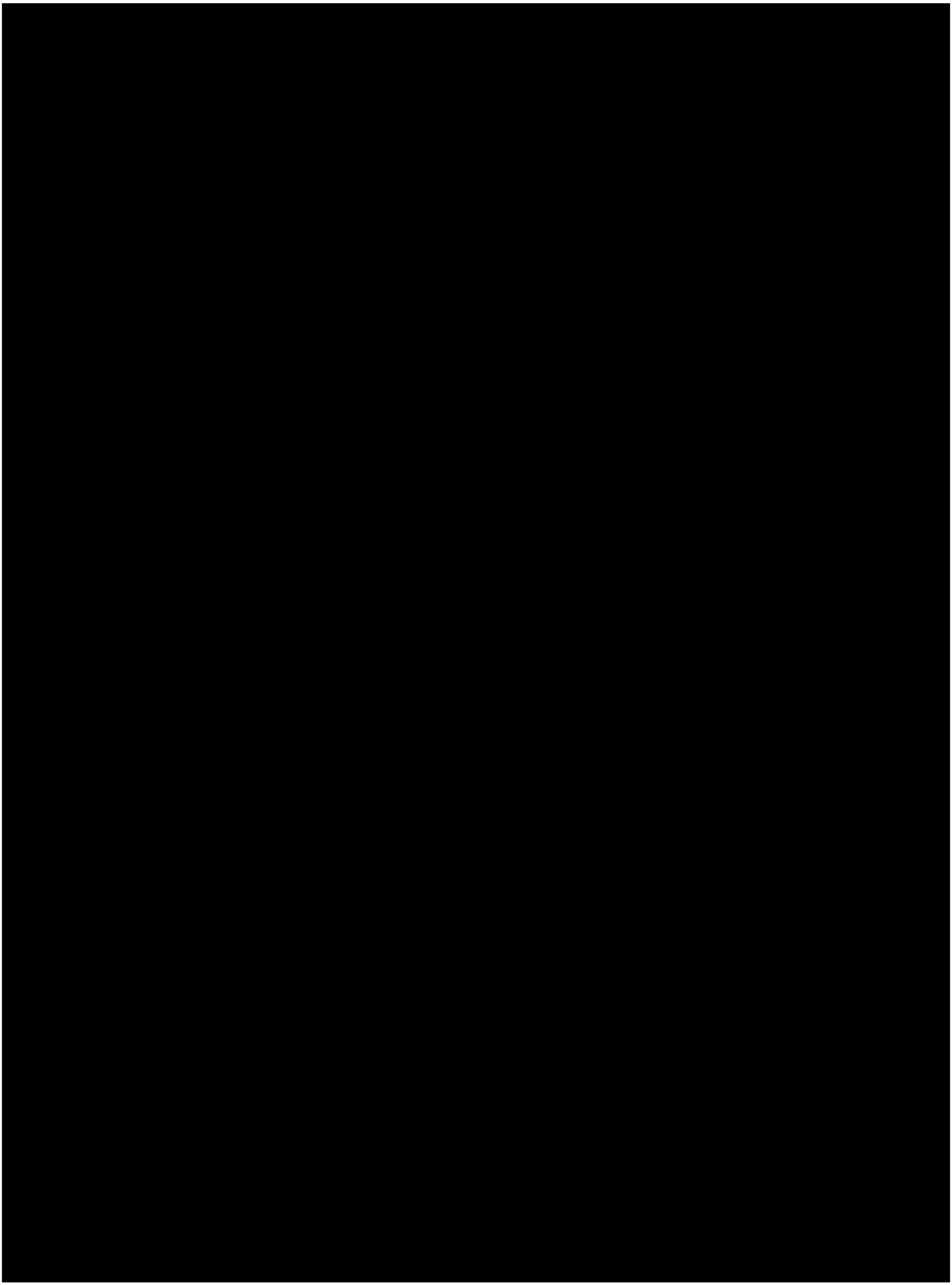

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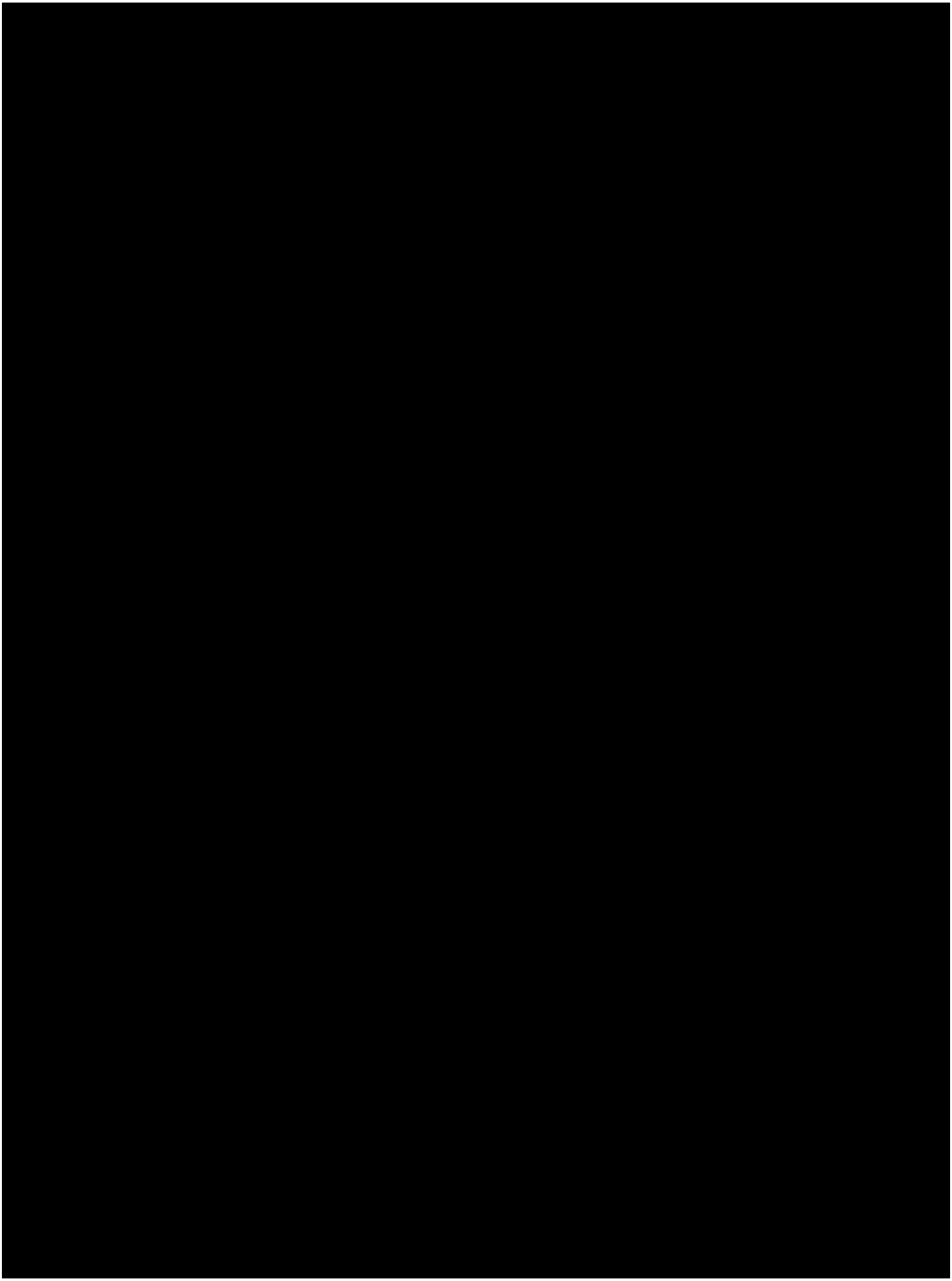

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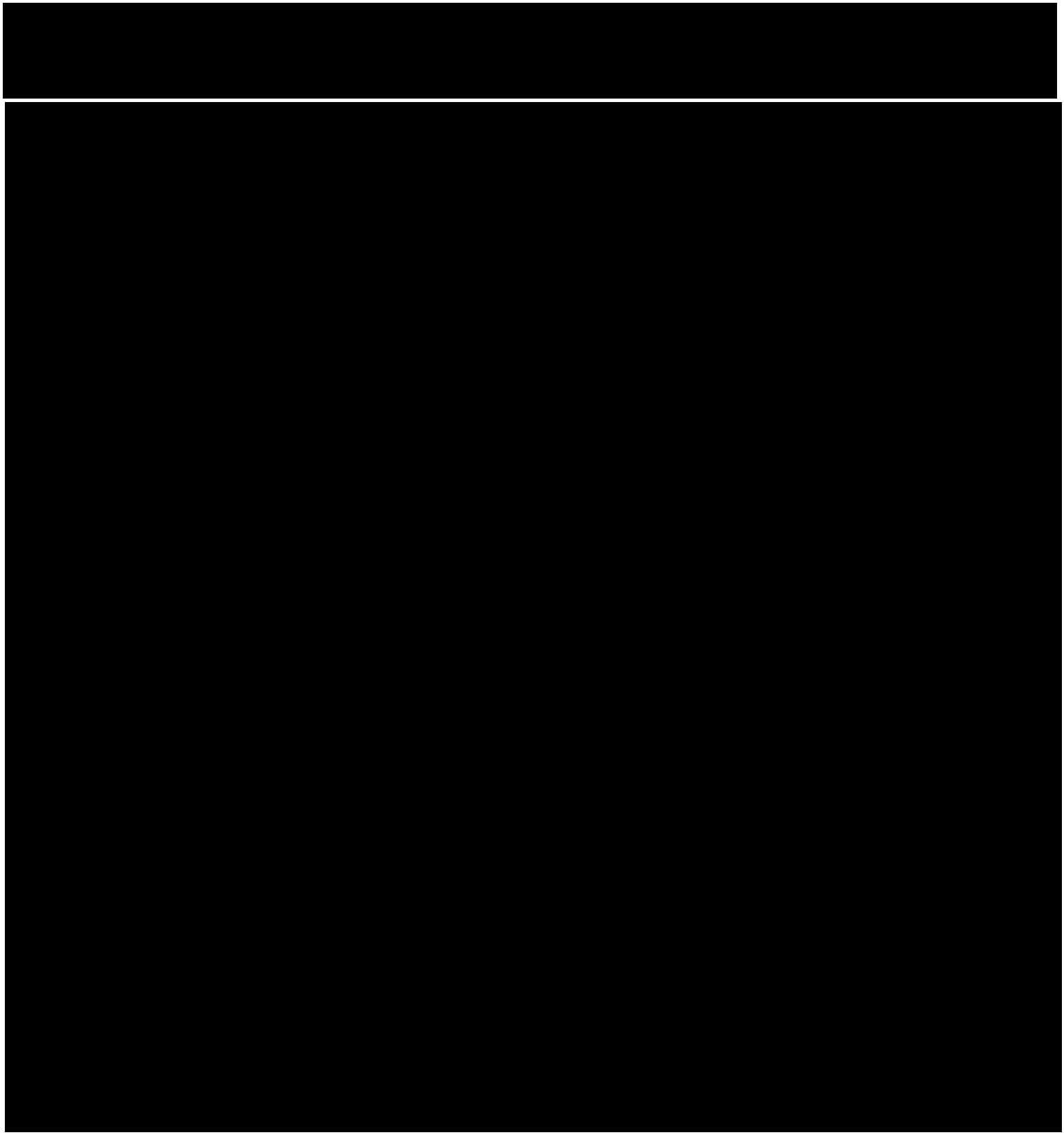

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Annexure B

The following pages include REINSW's Housing Rent Crisis Campaign Report for August 2023 data as at 15 August 2023.

HOUSING RENT CRISIS CAMPAIGN REPORT

DATA AS AT 15TH AUGUST 2023

WEB PAGE UPDATE

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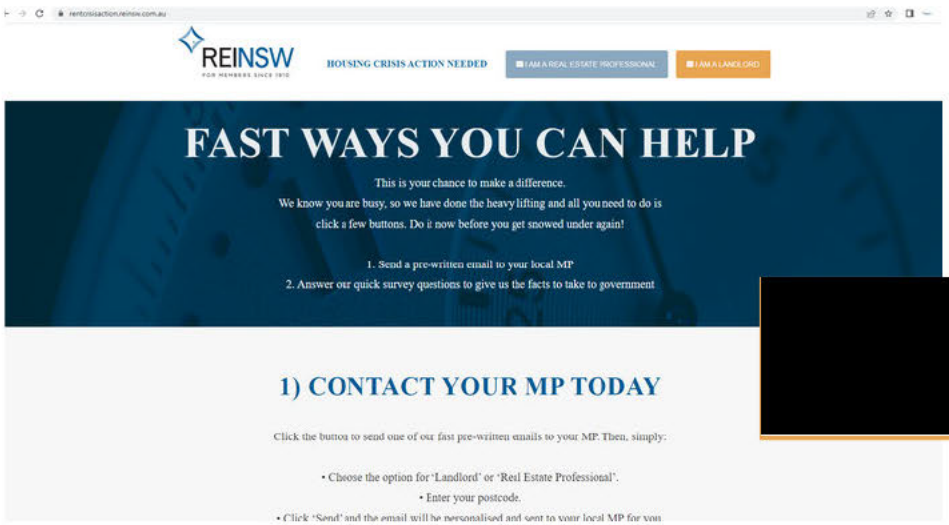

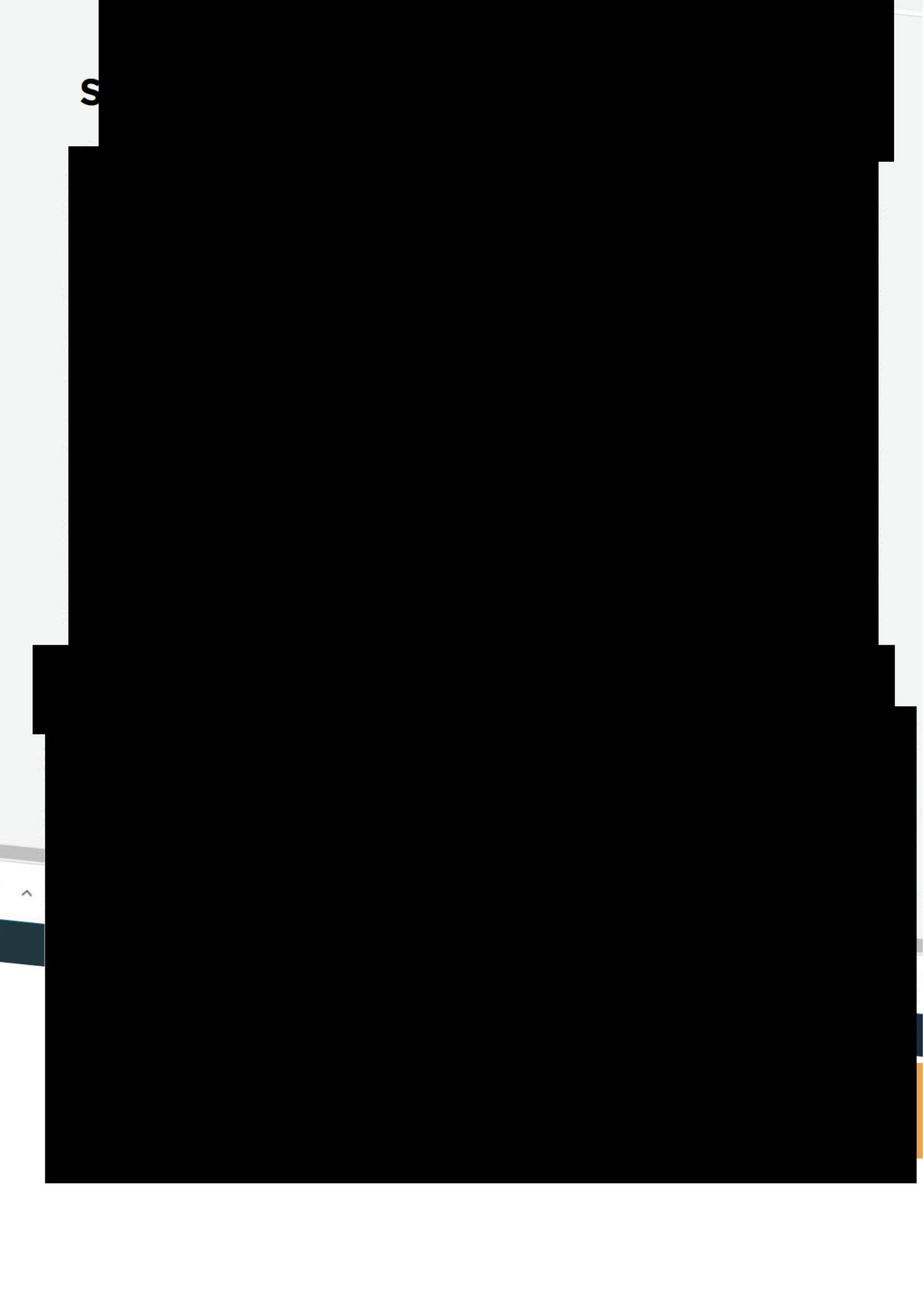

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SOCIAL MEDIA AND DIGITAL ADVERTISING

FACEBOOK, INSTAGRAM & LINKED IN

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WE NEED YOUR SUPPORT! HELP US END THE HOUSING CRISIS!
... See more

Send a pre-written letter to your MP and join the fight against the housing crisis!
... See more

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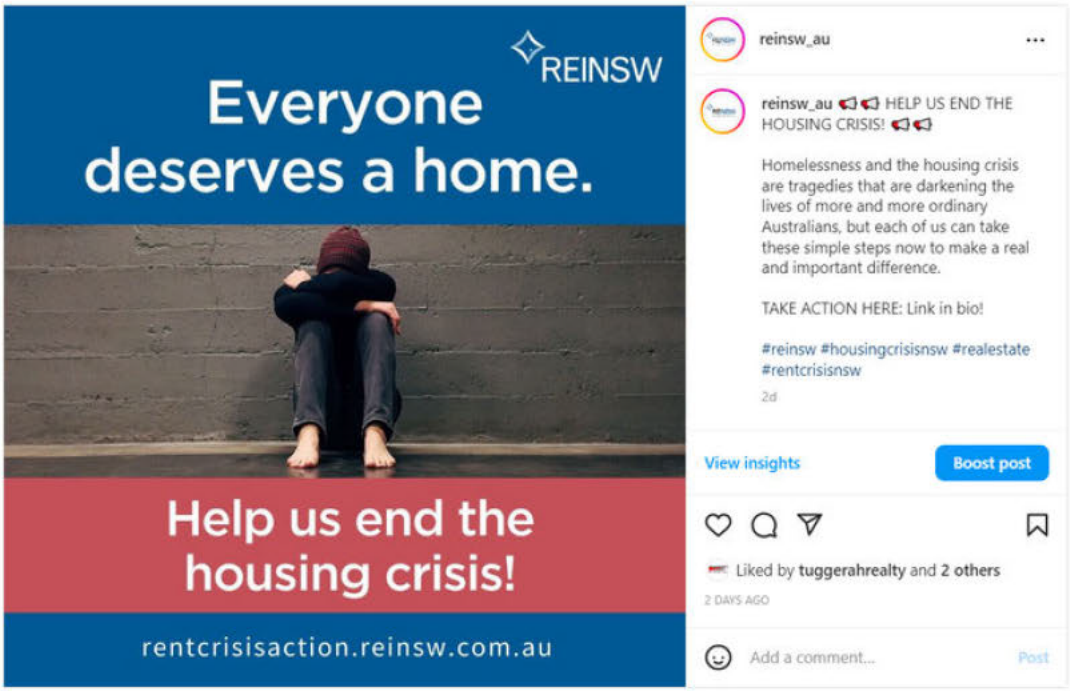

EMAIL

Campaign Report 2 Aug 2023 - 15 Aug 2023

EMAILS - PROPERTY MANAGEMENT CHAPTER MEMBERS + NON MEMBERS

EMAILS - GENERAL MEMBERS

Campaign Report 2 Aug 2023 - 15 Aug 2023

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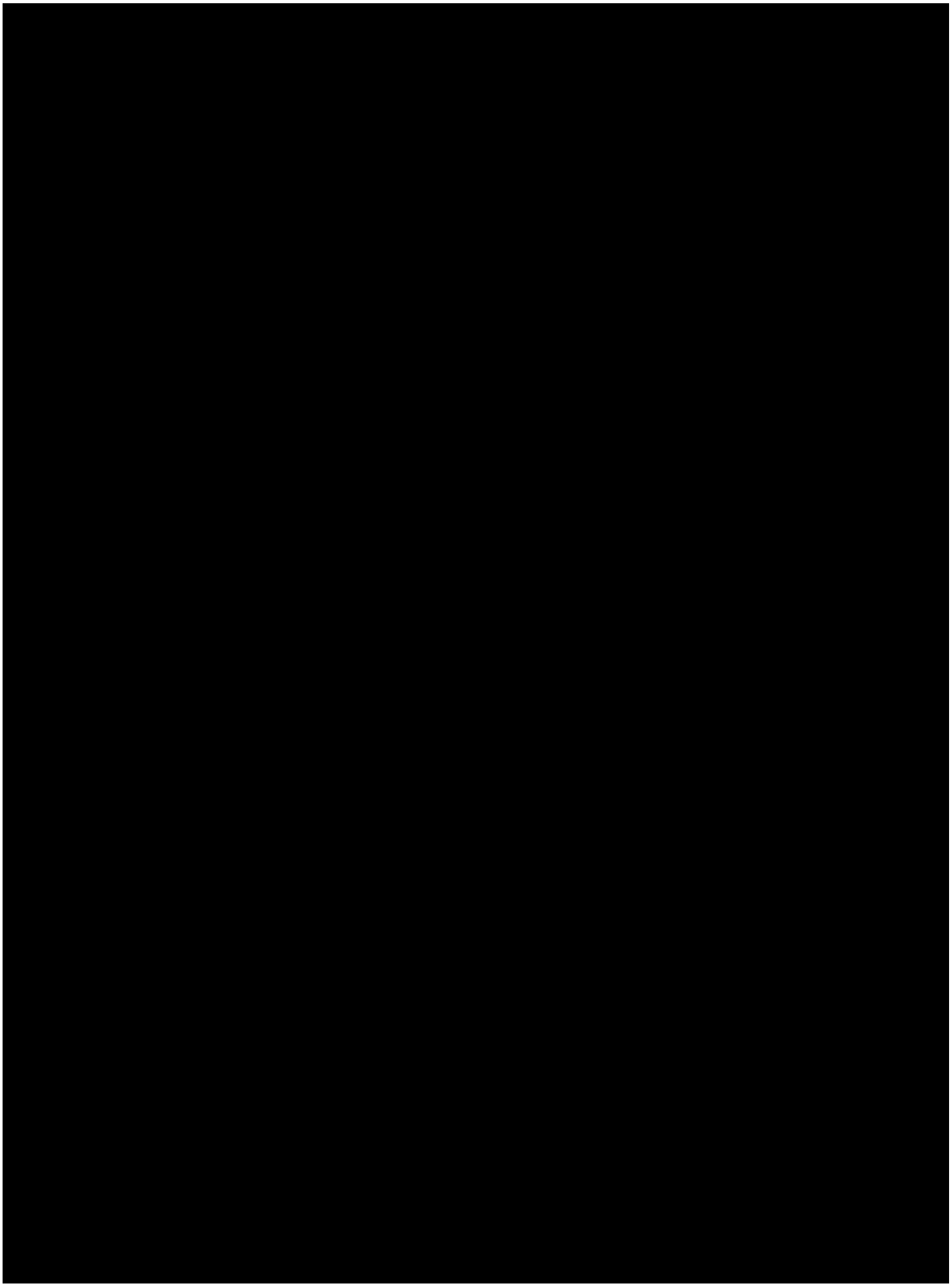

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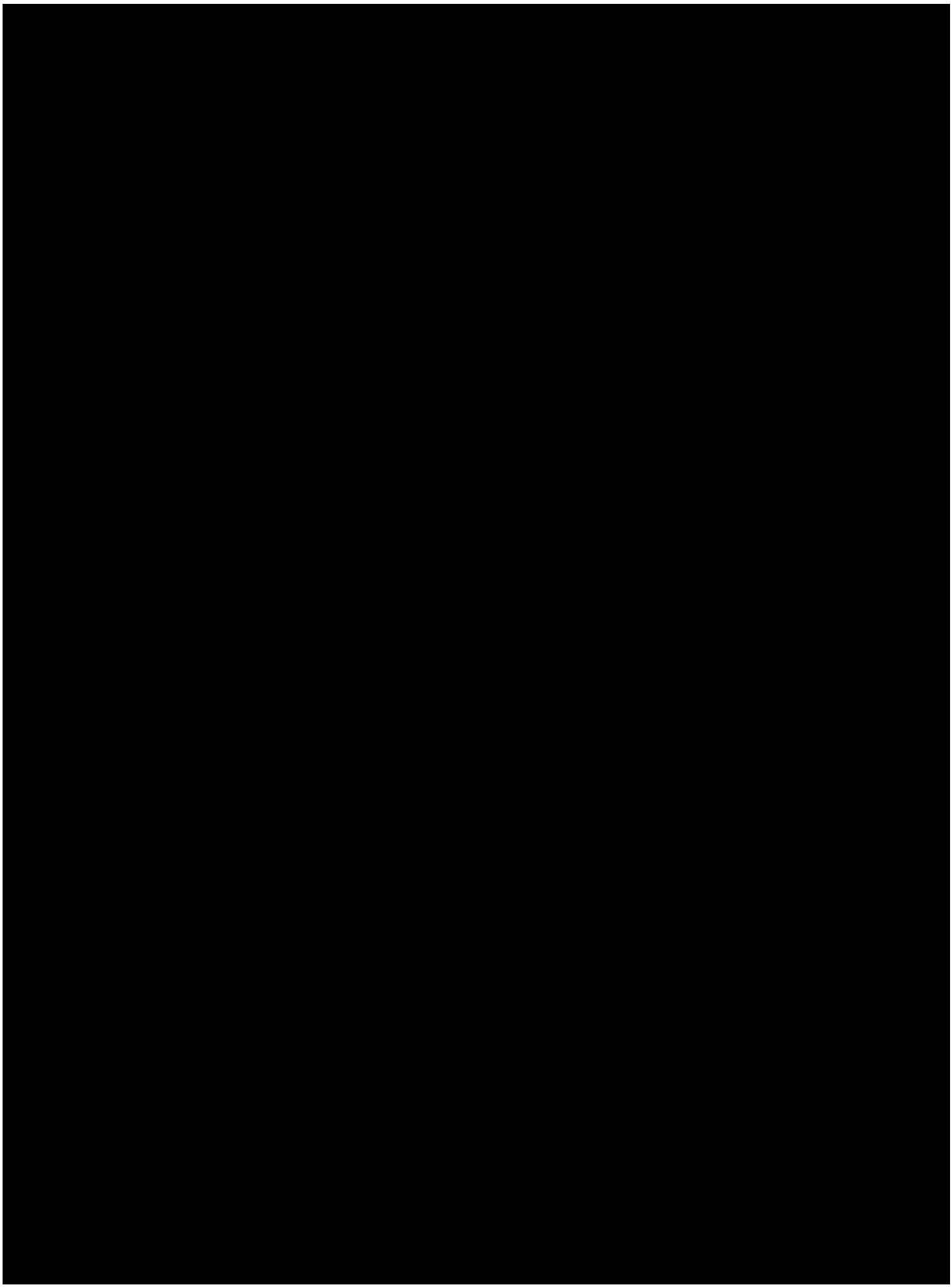

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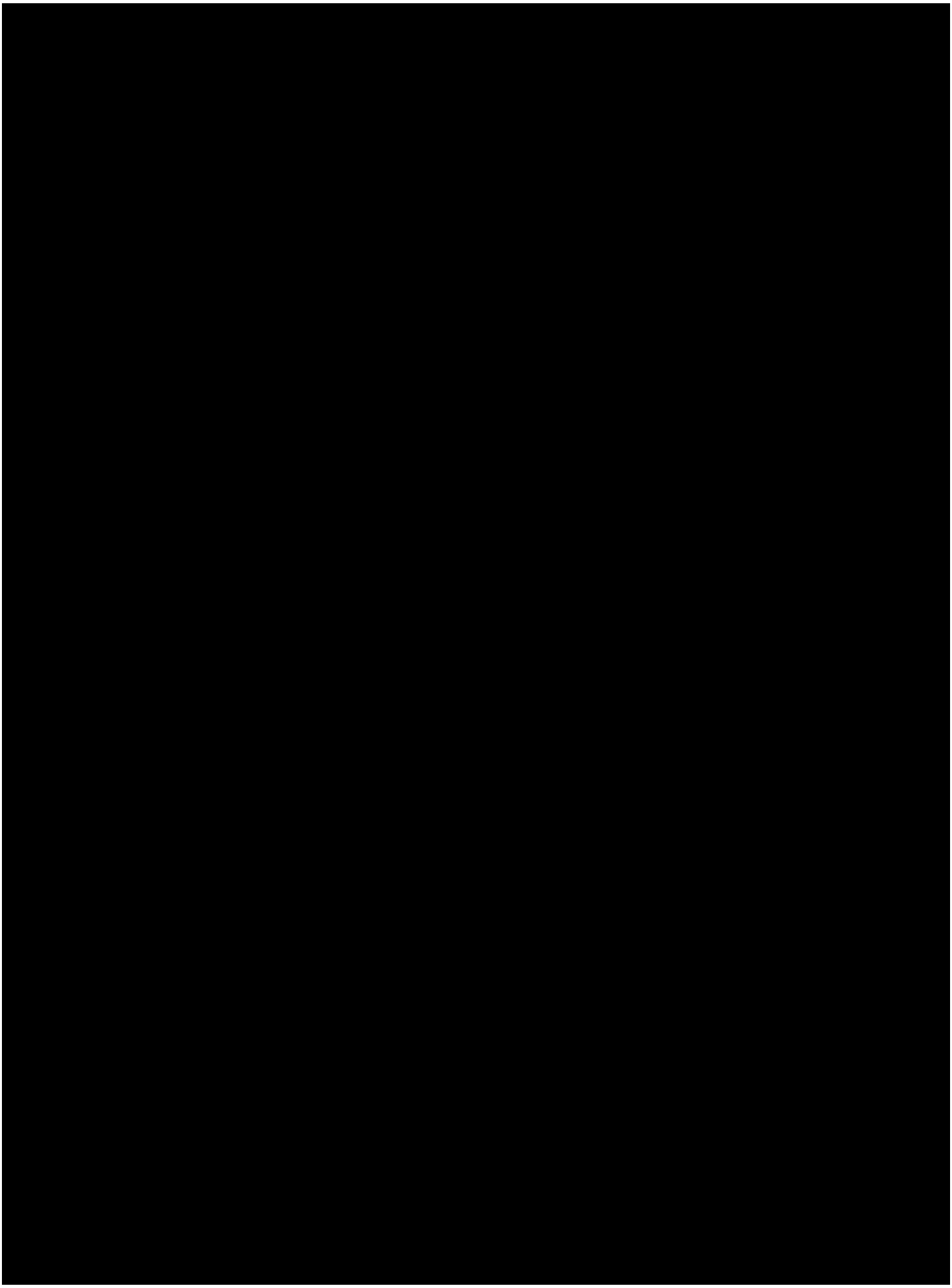

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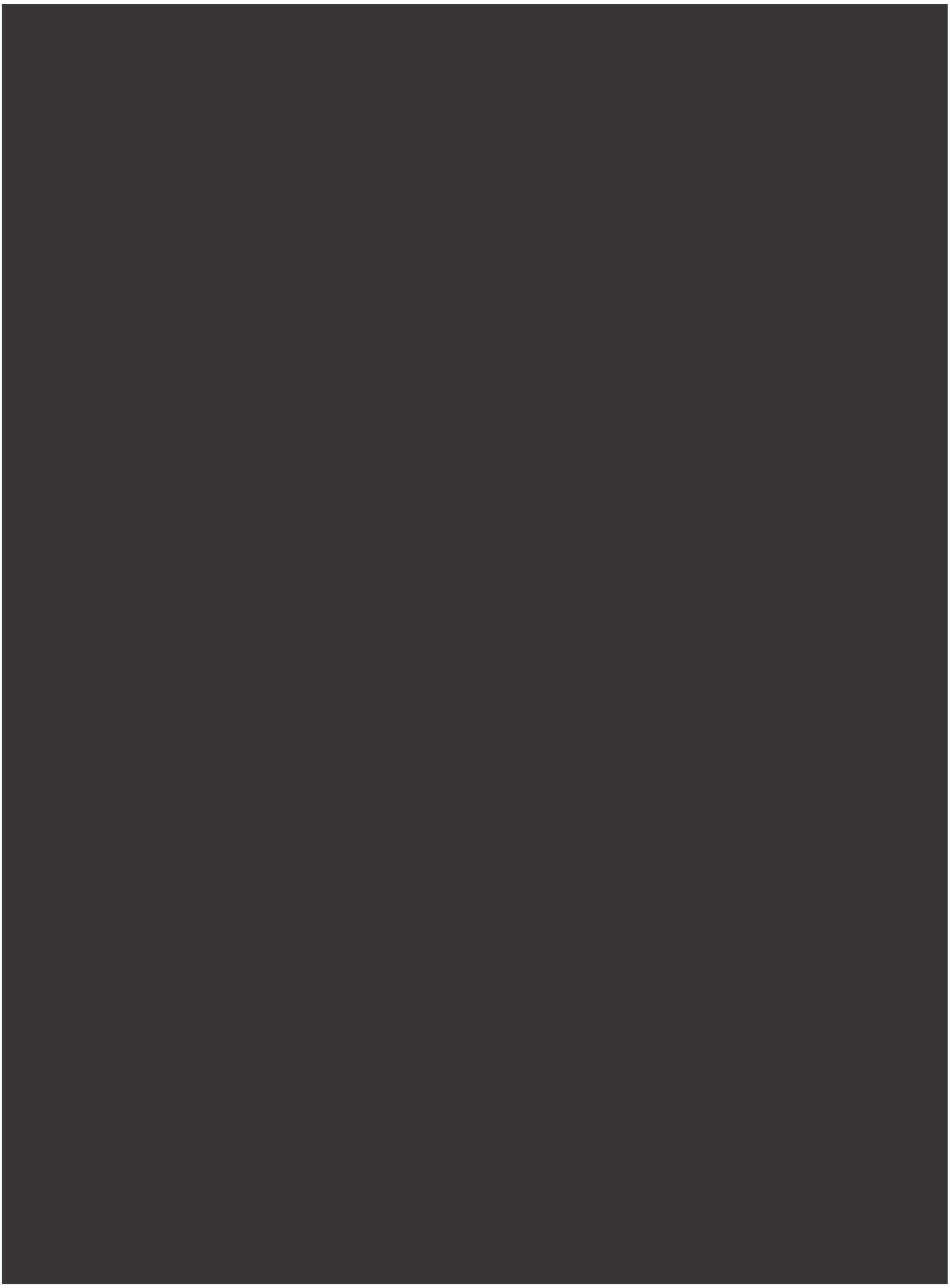

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Annexure C

The following pages include REINSW's submission in response to the NSW Consultation Paper on Keeping Pets in Residential Tenancies dated 1 December 2022.

REINSW
for members since 1910

Residential Tenancies Act 2010 (NSW) and the Residential Tenancies Regulation 2019 (NSW)

The Real Estate Institute of New South Wales Limited

Submission in response to the NSW Consultation Paper on keeping pets in residential tenancies

1 December 2022

TO: **Residential Tenancies – Pets Consultation**
Policy & Strategy, Better Regulation Division
Department of Customer Service

By email: **residentialtenancy@customerservice.nsw.gov.au**

1. Introduction

This Submission has been prepared by The Real Estate Institute of New South Wales Limited (**REINSW**) and is in response to the NSW Consultation Paper about keeping pets in residential tenancies (**Consultation Paper**).

REINSW is the largest professional association of real estate agents and other property professionals in New South Wales. REINSW seeks to promote the interests of its members and the property sector on property-related issues. In doing so, REINSW plays a substantial role in the formation of regulatory policy in New South Wales.

This submission has been prepared with the assistance of the Legislation and Compliance Sub-committee which comprises members of REINSW's Property Management Chapter Committee. The Legislation and Compliance Sub-committee was formed to provide feedback, and comment on, issues related to the *Residential Tenancies Act 2010* (NSW) and the *Residential Tenancies Regulation 2019* (NSW) (collectively, **Residential Tenancies Legislation**). These members are licensed real estate professionals with experience and expertise in property management and so are able to offer an in depth understanding of the practical workings of this legislation and its application. This submission outlines issues, and makes recommendations related to, the questions posed in the Consultation Paper which we hope will assist the Department of Customer Service (**Department**) when reviewing the current legislative framework on pets in rental properties.

2. Consultation Paper Questions

Question 1: Should NSW residential tenancy laws on keeping pets in rental properties be changed? Why or why not?

As the Consultation Paper states:

> *"NSW Government's position has been that a landlord and tenant are best placed to negotiate whether keeping a particular pet should be allowed for a given property. Rental properties can vary greatly and certain types of pets may not be suitable for all properties".*[1]

REINSW supports this position and is of the view that the current legislative framework on the keeping of pets in rental properties in NSW is working well in practice. For the reasons elaborated on below, REINSW advocates against any changes to the current legislation.

[1] Department of Customer Service, "NSW Consultation Paper: Keeping Pets in Residential Tenancies" (October 2022), p4-5.

a) Universal Declaration of Human Rights

A major reason that the current legislative framework in NSW works well is that it aligns with Article 17 of the *Universal Declaration of Human Rights* by allowing landlords to choose how their asset is used. Article 17 states that:

1. *Everyone has the right to own property alone as well as in association with others.*
2. *No one shall be arbitrarily deprived of his property.*

REINSW is of the view that laws which unjustifiably impede on a landlord's right to make choices about their asset breaches Article 17. Further, REINSW's view is that a rental property is no different from any other asset owned by any other person. A landlord has saved up to purchase that asset and so should be able to make decisions about it, especially ones which will affect its overall market value. The current system in NSW works effectively by allowing landlords to consider, and make a decision, as to whether their property is suitable for the keeping of a pet. REINSW is of the view that laws which impede upon this decision would "arbitrarily deprive" landlords of their right to use their property as they see fit.

b) Current Process is Working Well in Practice

REINSW's view is that the current legislative framework is already functioning effectively. Consistent with freedom to contract principles, just as parties to a tenancy are free to negotiate other non-essential terms of the lease based on their individual circumstances (such as the duration of the lease), so too should they be able to negotiate whether to keep a pet in a particular rental property.

Under the current model, tenants can already ask a landlord if they can keep a pet in a rental property. REINSW's feedback from members is that landlords will generally not withhold consent for a tenant to do so unless they have legitimate reasons. However, as the rental property is the landlord's asset, they should be able to make that determination. Some legitimate reasons for a landlord withholding this consent include, for example, if the particular property is not suitable for the kind of pet requested, there are health and safety risks, there is a significant risk of property damage, there are strata by-law restrictions or the landlord has allergies to a certain kind of pet and intends to return to the property to live after the duration of the tenancy (for example, landlords who suffer from anaphylaxis in relation to dogs and cats. REINSW is aware of such a landlord where, if a pet resides in her property, which she intends returning to, she would need to have the property cleaned forensically).

REINSW's view is that the current practice works well as the tenant is able to provide the landlord with information about their particular pet. Landlords, who have an intimate knowledge of the property – their asset – can assess the property's suitability for that particular pet, taking into consideration a range of factors, and can choose to grant or deny that request, or grant it subject to certain conditions. Tenants are equally free to negotiate with the landlord certain conditions or parameters which might influence the landlord's decision. For example, a landlord, who might have severe cat allergies and wants to live in the property after the tenancy, might be willing to allow a tenant to keep a pet if the tenant agrees to an additional fumigation and carpet cleaning clause in the residential tenancy agreement. This allows parties room to negotiate and to reach a mutual position which suit their individual

circumstances. REINSW's view is that this is far superior than trying to impose a "one-size-fits-all" approach on parties about whether pets are allowed in rental properties.

REINSW's view is that NSW's current legislative framework for keeping pets in tenancies appropriately balances the rights of the landlord and tenant; tenants and landlords can engage in negotiations about the keeping of a pet, consistent with freedom to contract principles, without restricting the landlord's rights to make important decisions about their rental property.

c) Suitability of the Rental Property

REINSW agrees that pets have a positive impact on people's mental health and wellbeing and REINSW is fully in support of the current available avenues for people who require assistance animals. REINSW also supports the keeping of pets with the landlord's consent, more generally, provided the rental property is suitable for the pet. However, not all pets will be suitable for all premises and one of the reasons NSW's laws on the keeping of pets in rental properties works so well in practice is that it is not a "one size fits all" approach, rather it allows a landlord (who is best placed to consider a mirage of factors, on a case by case basis) to determine whether the particular pet requested is suitable for the rental premises. Just a few factors which might impact a landlord's decision to grant a request for a pet are as follows:

- the type of pet (a tenant's request to keep a goldfish is very different than the request for a large dog, goat or donkey);
- the level of training that the pet has, or requires;
- the size and energy levels of the pet;
- the noise of certain pets (cats are often quiet but other pets, for example, roosters or some breeds of dogs can be noisy);
- the impact of the pet on the natural wildlife – for example, some pets, like cats, can be quite detrimental on the natural wildlife;
- the number of pets requested (one cat might be different to 25 cats);
- whether the rental premises is furnished or not furnished;
- the size of the rental premises and whether it is a house or apartment;
- key features of the rental premises (i.e. Is it carpeted? Does it have a balcony or shade? Are there common areas or outdoor areas? What floor level is it on? Does it have grass?);
- whether the rental property is located in an urban or rural area;
- the landlord's personal intentions for the rental property. For example, some landlords might intend to temporarily rent out the premises but want to move back into it after the duration of the lease or in the future, whereas others may have no intention to move into it as a home in the future and it is simply an investment. This might impact the landlord's decision if they have an allergy to a particular pet – such as the example of a landlord with an anaphylactic reaction to cats and dogs given above);
- the duration of the lease;
- whether the rental property is in a strata scheme (noting that there are a significant number of strata schemes in Sydney metropolitan areas) and any by-law requirements of the particular strata scheme;
- animal welfare requirements – it is not always fair on the animal to be kept in a premises which is unsuitable; and
- the safety and wellbeing of neighbours and the community. REINSW's view is that it is important to consider all parties' wellbeing including tenants, the community and landlords. There are other people, especially in strata complexes with common areas,

who might be impacted by a tenant keeping a pet and it is important that their health, safety and wellbeing are also considered. For example, the wellbeing of children and neighbours in the community where a tenant wants to keep a vicious dog in a rental property with no fencing, or the wellbeing of neighbours in a strata complex where the dog barks loudly or damages common areas.

The RSPCA recently published a paper titled "*Should I share my apartment with a dog? A guide to apartment living for you and your dog*". Although this paper was limited to dogs in apartments it is relevant given that a large percentage of people in metropolitan NSW reside in apartment complexes and dogs are one of the most popular forms of pets. In particular, this paper lists a number of considerations that people thinking of getting a dog in an apartment should consider (similar to some of the factors listed above). One of the factors listed was the suitability of the apartment which stated:

> ***Is the apartment suitable**. There may be gaps under the balcony where a small dog could fit. These will need to be fixed so that the dog does not fall through. If you live in a high-rise apartment you will want a dog that you can comfortably pick up and carry. A Great Dane living in a 6th floor apartment is going to be problematic.*[2]

This supports REINSW's argument that, while pets are wonderful companions, not all rental premises will be suitable for all pets. It also highlights complicated issues which could arise in practice were a landlord not able to refuse a tenant's request to keep a pet. For example, if a rental premises has gaps under a balcony where a small dog could fit and this is the type of pet owned by the tenant making the request, should a landlord be required to fix these small gaps and modify their property simply to accommodate the tenant's pet even if the tenant is only living there for a short period of time (especially if the rental property is in a strata complex where the landlord has to obtain permission from the owners corporation to make certain alterations to the premises)?

Another example of where problems might arise is in circumstances where the landlord owns an entire apartment complex and has multiple tenants. When considering whether to grant permission for one tenant to have a pet, especially a pet such as a large dog, it has to consider the wellbeing of all tenants in the complex. A member agent shared with REINSW an example of a tenant in an apartment complex, whose dog began barking every time a person walked up the communal stairs which disturbed the peace and quiet of other tenants or lot owners.

The above examples highlight some of the complex scenarios which could arise if landlords had to grant tenants' requests for a pet. This outlines why the current laws, which allows landlords to assess the suitability of a premises before allowing a pet, work so well in practice.

REINSW notes that the Department of Communities and Justice also recognises that the suitability of the property and interference with the "reasonable peace, comfort and privacy of neighbours" as an important pre-requisite for tenants when keeping pets in social housing. Furthermore, dogs which are "restricted" by the *Companion Animals Act 1998* (NSW)

[2] RSPCA New South Wales "Should I Share my Apartment with a Dog? A Guide to Apartment Living for you and your Dog", https://www.rspcansw.org.au/wp-content/uploads/2017/09/rspca-act-dogs-in-apartments.pdf

(**Companion Animals Act**) or "declared a dangerous dog, by a local council or local court, under the Companion Animals Act" are prohibited. This supports REINSW's view that the suitability of the property for the specific pet and the wellbeing and safety of the community also needs to be factored into whether a pet is allowed in a property – a decision which, in REINSW's view, the landlord is best placed to make.[3]

It is REINSW's view that it is the landlord who is best placed to consider all of these factors when choosing whether to grant a tenant's request for a pet as they have the most complete knowledge of the rental property, their circumstances, the pet in question and the impact any pet living in the premises will have on the property, neighbours and community.

Question 2: Would you support a model where a landlord can only refuse permission to keep a pet if they obtain a Tribunal order allowing them to do so? This is similar to the model that applies in Victoria, the ACT and NT. Why or why not?

REINSW opposes this model. REINSW's view is that the model for the keeping of pets in rental properties in Victoria, the Australian Capital Territory (**ACT**) and the Northern Territory (**NT**) is problematic. This model prohibits a landlord from refusing a tenant's request for a pet, even if the rental property is not suitable for that kind of pet, unless the Tribunal grants them permission to do so.

a) Breach of Universal Declaration of Human Rights

As discussed above in response to question 1 of the Issues Paper, REINSW is of the view that a rental property is a landlord's asset, and they should be the one to decide whether the tenant is allowed to keep a pet in their asset, as this is their human right in Article 17 of the *Universal Declaration of Human Rights*. REINSW believes that the current Victorian, ACT and NT model unjustifiably impedes on a landlord's right to make choices about *their* asset and so breaches Article 17.

REINSW questions why a landlord should have to apply to a Tribunal and incur costs of the application to seek permission to refuse a tenant from using their property in a particular way – especially if the pet may cause damage to the property. REINSW's view is that this "arbitrarily deprives" landlords of their right to use their property as they see fit. As mentioned above, a rental property is the same as any other asset owned by another person; a landlord has saved up to purchase that asset and so should be able to make decisions about it, especially ones which will affect its overall market value.

[3] NSW Department of Communities & Justice, "Pets", https://www.facs.nsw.gov.au/housing/living/rights-responsibilities/pets , published 10 November 2017, last updated 2 June 2020 (accessed 29 November 2022).

b) Tribunal Precedents Prevent Landlords from Seeking Permission to Refuse Pets in Tenancies

REINSW understands from its members that many ACT landlords don't challenge a tenant's request to keep pets in rental properties because of Tribunal precedents which found it was reasonable to have large dogs in small apartments. For example, in the ACT decision of *MMP Investors Pty Ltd v Brunne* [2020] ACAT 52 the landlord's application to refuse a pet in a tenancy was refused by the Tribunal even in circumstances where the:

- pet was a Siberian husky;
- rental property was a one bedroom third floor apartment;
- strata scheme had policies about pets; and
- landlord was concerned about property damage and the welfare of the pet.[4]

By finding in favour of the tenant in even extreme circumstances described above, the Tribunal set a precedent which influences other Tribunal decisions and effectively renders it futile for landlords in all but the most outlandish cases to apply to the Tribunal for permission to refuse a tenant's request to own a pet. This is so even in cases where the rental property is not suitable for that pet and the landlord is worried about the pet causing damage to property. REINSW's view is that this unreasonably limits how a landlord is entitled to deal with his or her property in a way which is inconsistent with their human right in Article 17 of the Universal Declaration of Human Rights, as already mentioned above.

c) This Model would Exacerbate Housing Shortages

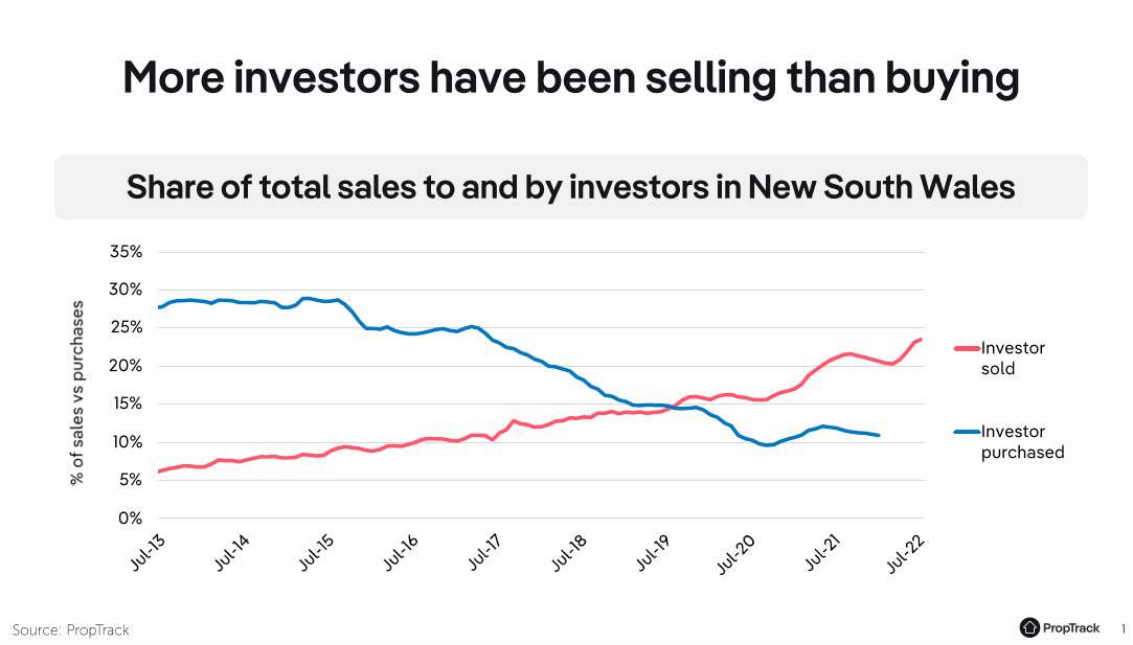
Another reason REINSW strongly opposes implementing in NSW a legislative framework for pets in tenancies similar to that in Victoria, the ACT and the NT is that it would greatly exacerbate the housing crisis and would make it more difficult for tenants to get the shelter they need.

As the Department would be aware, there is currently a shortage of affordable housing for tenants in NSW, especially in lower rental price brackets. REINSW believes that this housing crisis needs to be addressed because everyone has a right to safe and affordable housing and shelter. The reasons for, and how to best address this issue, are complex and there is not sufficient space to cover them in detail in this submission.

However, putting more "red tape" on what landlords can and can't do with their property will only significantly exacerbate this housing crisis. This is because it will cause more investors to sell their properties or move to short-term rental accommodation, so there will be fewer rental properties on the market thus driving up the price of such rentals. It is, quite simply, an issue of supply and demand. Over the past year, landlords have been impacted by both the rental freeze as a result of the pandemic and natural disasters. This, in connection with proposals which have been raised before Parliament to remove the "no grounds" termination provisions and implement a "portable bond", has left landlords feeling disenfranchised and looking for other more stable investment options elsewhere. This is evident from the below PropTrack graph which records sales "to and by investors in New South Wales". It shows that

[4] *MMP Investors Pty Ltd v Brunne* [2020] ACAT 52 [5]-[7], [10].

as at July 2022 there was a significant increase in the number of properties that were being sold and a significant decline in the number of properties being bought by investors.



[5]

Furthermore, we know for a fact that imposing more restrictions on landlords' rights to choose what to do with their asset will not solve the housing crisis as there are equivalent provisions already in place in different states in Australia (for example, in Victoria, the ACT, the NT and Queensland). These States and Territories, even with such provisions, still struggle with homelessness and housing shortages.

REINSW's view is that if legislative changes were made in NSW which prohibited landlords from refusing a pet in a rental property, unless they have a Tribunal order which allows them to do so, it would be the "straw that breaks the camel's back" (as the saying goes) for many investors in NSW. As a result, there would be even fewer rental property options on the market for tenants who need affordable housing. For these reasons, **REINSW recommends against** implementing in NSW, a model equivalent to that in Victoria, the ACT and the NT.

Question 3: Would you support a model where the landlord can only refuse permission to keep a pet on specified grounds, and the tenant can go to the Tribunal to challenge a refusal based on those grounds? This is similar to the model that applies in Queensland. Why or why not?

REINSW maintains that NSW's current provisions on pets in tenancies are working effectively and allows a landlord the right to choose whether the property is suitable for the pet requested

[5] PropTrack (Realestate.com.au)

by the tenant. REINSW re-iterates its responses given above in relation to Question 1, that there should not be any change to NSW's current legislative framework on pets in tenancies.

REINSW is still strongly of the view that a landlord should have an unfettered right to decide whether to refuse a pet in a rental property as it is their asset. Therefore, **REINSW recommends** retaining the current NSW model unchanged as, for the reasons already elaborated on above, this model already works well in practice.

Question 4: Is there another model for regulating the keeping of pets in tenancies that you would prefer? If yes, please outline the model.

As mentioned above in REINSW's response to Question 1 of the Consultation Paper, REINSW's view is that the current laws for pets in rental properties in NSW are working well in practice and do not need to be changed. REINSW also maintains that the landlord is best placed to assess the suitability of a pet for a particular rental property.

However, were the Department to propose changes to the current legislative framework which would limit, to any degree, the right of a landlord to choose whether to allow pets in their rental property, there should be a provision that:

a) landlords should be able to determine if a property is suitable for the type of pet that the tenant would like to have (for example, if the property does not have a yard then the landlord would not be obligated to permit a dog);

b) landlords should be able to stipulate that the pet is strictly only permitted to be kept outside (i.e. the pet is only to be kept in the backyard and not inside the property).

Further to these recommendations, if the Department does make changes, then the current Department of Communities and Justice housing policies should be included as a standard regulation:

> *" As a tenant in a DCJ Housing or Aboriginal Housing Office property you are allowed to have pets if:*
>
> - *The property is suitable for the animal*
> - *The pets do not interfere with the reasonable peace, comfort and privacy of neighbours, and*
> - *You comply with the Companion Animals Act 1998.*
>
> *Tenants are not allowed to have a dog if it is:*
>
> - *a restricted dog as defined by the Companion Animals Act,*
> - *declared a dangerous dog, by a local council or local court, under the Companion Animals Act.*
>
> *If your animal causes a nuisance or annoyance to neighbours, we may require you to remove your pet.*

If you are a DCJ Housing tenant in a property not owned by DCJ Housing, you may not be permitted to have a pet. Pets are often prohibited by private property owners and strata by-laws".[6]

REINSW recommends that the following minimum pre-requisites also be required as prescribed terms of the residential tenancy agreement:

a) a pet bond; or

b) alternatively, require tenants to take out and maintain compulsory pet insurance for the duration of the tenancy; and

c) the tenant should be required to fumigate and have the carpets professionally cleaned at the end of the tenancy.

REINSW also recommends that a "pet" be clearly defined in the residential tenancies legislation so as to limit any disputes which might arise over both the type and nature of the animals that the tenant has requested.

Furthermore, even if the Department does not change the legislative framework, REINSW's view is that it could still consider implementing the above requirements if it was wanting to facilitate pets in tenancies. REINSW's view is that if the Department could help landlords address common concerns which often lead them to refuse a pet in a tenancy, it may see a significant rise in the number of landlords who consent to pets in tenancies without the need for Government to limit or take away the landlord's choice in the matter.

a) Pet Bonds

Property damage is a factor for landlords when considering a tenant's request for a pet. REINSW believes that more landlords would allow pets in rentals if they could be confident that their property would be well maintained to a high standard or that they would be fairly reimbursed for the cost of all damage the pet had caused.

Such a concern is supported by the RSPCA which states that "some pet owners believe that … landlords refuse applications from pet owners based on the fear that pets will damage property and reduce the value of the dwelling over time".[7] While property damage is not the sole reason landlords refuse requests for pets, it is a factor which, if appropriately addressed, would see many landlords being more amendable to the keeping of a pet in a rental premises. Furthermore, property damage is a concern which could be easily addressed through either a pet bond or pet insurance model.

[6] NSW Department of Communities & Justice, "Pets", https://www.facs.nsw.gov.au/housing/living/rights-responsibilities/pets , published 10 November 2017, last updated 2 June 2020 (accessed 29 November 2022).
[7] RSPCA New South Wales, "Pets and Rental Properties", https://www.rspcansw.org.au/what-we-do/care-for-animals/owning-apet/pets-and-rental-properties/

While a standard tenancy bond covers minor repairs, it is only four weeks rent and is rarely sufficient to cover significant pet damage let alone other property damage caused by the tenant. The cost of damage caused to a rental property by some kinds of pets can be significant and landlords are often left to pay for such damage out of their own pockets. Examples of expensive pet damage include:

a) dogs which have chewed up irrigation systems and air conditioning units;
b) door frames or furniture which have been chewed;
c) lawns which need to be re-turfed or trees and flower beds which need to be re-planted because a dog or other animal have dug them up or destroyed them;
d) carpets which need replacing due to pet urine, stains or odours; and
e) fumigation due to fleas.

To assist the Department with understanding the extent of property damage caused by pets in premises, REINSW refers the Department to Annexure A **enclosed** with this submission. This annexure contains photographs from property managers (not on REINSW's Property Management Chapter Committee), providing examples and an indication of significant damage resulting from pets in rental properties – especially where the pet was unsuitable for the property or was not adequately cared for. These property managers shared with REINSW that some of the damage (such as odours, flea infestations and urine damage to carpets) were not visible in photographs. They also mentioned that the bond was often not sufficient to rectify the damage, especially in instances where carpets had to be replaced in full due to pet urination, or that the damage was not covered by the landlord's insurance.

REINSW recommends that a tenant should have to lodge a pet bond, comprising of a fixed amount of 1-2 weeks' rent, as a proposed standard amount, with the Rental Bonds Board if they want to keep a pet in a rental property. This would be similar to the previous rental bond requirement for furnished properties, which required an additional 2 weeks' rent amount, with the total bond amount required for a furnished property being the amount equivalent to 6 weeks' rent. REINSW envisages that a pet bond would function in a similar way to the current bond model but would be specific to costs associated with, or damage caused to, the property at the end of the tenancy that a landlord might need to rectify as a result of the pet.

The concept of a pet bond is supported by the RSPCA who encourages pet owners to:

- Provide the landlord with enough information about the requested pet to assist them in making an informed decision about whether the rental premises is suitable for the pet (for example, by putting together a "pet resume", getting pet references from previous landlords, trainers or vets and showing photos of enclosures, if relevant).
- Putting the landlord at ease that their property will be looked after by giving the landlord a "written declaration that [they] will pay for any and all damages that may be caused to the property by [their] pet" or offering the landlord a pet bond.[8]

[8] RSPCA New South Wales, "Pets and Rental Properties", https://www.rspcansw.org.au/what-we-do/care-for-animals/owning-apet/pets-and-rental-properties/

b) Compulsory Tenant Pet Insurance

As an alternative to the pet bond proposed above, **REINSW recommends** that the Department work with the insurance industry to create a pet insurance product for tenants. Where a tenant wants to keep a pet they should be required to purchase and maintain the pet insurance for the entirety of the tenancy and would be required to produce, on request, a copy of the certificate of currency so that the landlord can be confident that the tenant is maintaining the requisite level of cover.

The Department would also need to work with the insurance industry to address how property damage is valued. This is because the depreciation value of the property does not adequately reflect the damage caused. For example, the carpet in a rental property might be in excellent condition but is 9 years old. If this carpet was damaged during the tenancy so that it needed replacing, the depreciation value claimable by the landlords would be negligible despite the fact that the landlords are now put to the expense of putting down new carpet when it did not need replacing prior to the tenancy. **REINSW recommends** that there should be different ways to value property which has been damaged by pets (for example, like for like) for the purpose of this cover so that the true cost, as opposed to the depreciated cost, of the damage is recoverable.

c) Fumigation and carpet cleaning at the end of a tenancy

As raised in paragraph 4(u) of REINSW's submission in response to the Public Consultation Draft *Residential Tenancies Regulation 2019* (NSW) dated 8 August 2019 (**enclosed as Annexure B** to this submission), where a pet is kept in a rental property, the tenant should be responsible for ensuring that any carpets are professionally cleaned and the property fumigated at the end of the lease. Carpets can collect traces of pet hair, odours, urine stains and pests (like fleas) from common household pets (such as dogs and cats), which are not readily apparent and might only become identifiable problems after the bond has been released. For example, urine stains are not always clearly visible and flea eggs can take time to hatch. Requiring a tenant, as a prescribed term in the residential tenancy agreement, to ensure that carpets are professionally cleaned and the premises fumigated at the end of a lease is important for the health, safety and wellbeing of future tenants and other visitors to the property.

d) Definition of a "pet"

Should the Department decide to make any changes to the current legislation, REINSW's view is that a "pet" needs to be clearly defined. In this regard, we note the definition of a companion animal in section 5 of the Companion Animals Act, being "a dog", "a cat" (being a *Felis catus* species) or another animal that the relevant regulation specifies is appropriate. REINSW's view is that both the type and number of animals permitted to be kept in a rental property need to be clearly specified in the legislation (noting that the Consultation Paper refers to "pet" singular), otherwise it will lead to unfair, absurd and, in some cases, straight out dangerous situations for which a rental property is not suited. There also needs to be a distinction between the type and number of pets permitted in rural properties compared to urban properties. For example, there is a big difference between keeping one dog and six dogs in a small apartment or a goat on a 10 acre property in a rural area compared to a small 200 square metre suburban lot. REINSW's view is that this only serves to reinforce its argument that the landlord is in the

best position to use their discretion, based on the individual circumstances, as to whether a certain type of pet or pets are suitable to live in their rental property. However, if the Department does choose to make changes to this legislative framework, the requisite parameters need to be clearly set out in the Residential Tenancies Legislation and the residential tenancy agreement.

3. Summary

In summary:

1. REINSW recommends the Department retain, without change, the current residential tenancy laws in NSW on keeping pets in rental premises.

2. REINSW opposes a model, similar to that implemented in Victoria, the ACT and NT, where landlords have to seek consent of a Tribunal before they can refuse permission to keep a pet in a rental premises.

3. REINSW opposes a model, similar to that implemented in Queensland, where a landlord can, on certain prescribed grounds, refuse a tenant's request to keep a pet in a rental premises which a tenant can challenge at Tribunal if they disagree.

4. As per REINSW's recommendation in paragraph 1 above, REINSW re-iterates that no changes should be made to the current laws on pets in NSW. However, were the Department to make changes to the current provisions, REINSW recommends that:

    a. landlords should be able to determine if a property is suitable for the type of pet that the tenant would like to have (for example, if the property has no yard, the landlord would not be obligated to permit a dog); and

    b. landlords should be able to stipulate that the pet is strictly only permitted to be kept outside (i.e. that the pet is only to be kept in the backyard and not inside the property).

5. If the Department were to make changes to the legislative framework on pets in rental properties in NSW, REINSW recommends that the current Department of Communities and Justice housing policies in relation to pets should also be included as a standard regulation.

6. REINSW recommends that the following minimum pre-requisites also be required as prescribed terms of the residential tenancy agreement:

    a. tenants should be required to put down a compulsory pet bond or, alternatively, the Department should work with insurance providers to create a pet insurance product which tenants are required take out and maintain for the duration of the tenancy to ensure that the landlord can recover any damage that the pet causes to the property;

    b. there should be different ways to value property which has been damaged by pets (for example, like for like) for the purpose of compulsory pet insurance cover so that the true cost, as opposed to the depreciated cost, of the damage is recoverable;

c. tenants should be responsible for ensuring the rental property is fumigated and the carpets professionally cleaned at the end of the lease; and

7. REINSW recommends that the Department should clearly define what animals constitute a "pet" and how many pets are allowed for the purpose of the Residential Tenancy Legislation.

4. Conclusion

REINSW has considered the Consultation Paper and has provided its comments above, aiming to provide input on as many pertinent aspects of the issue of keeping pets in rental properties and commentary on the specific questions posed in the Consultation Paper as possible. However, REINSW's resources are very limited and, accordingly, it does not have the capacity to undertake a thorough review and is unable to exhaustively investigate all potential issues in this submission. Nonetheless, REINSW has identified a number of matters that it believes will cause significant consumer detriment, some of which appear above.

REINSW appreciates the opportunity to provide this submission and would be pleased to discuss it further, if required.

Yours faithfully

Tim McKibbin
Chief Executive Officer

Annexure B

The following pages include REINSW's submission on the *Residential Tenancies Amendment (Tenant Protections and Flood Response) Bill 2022* and the proposed changes as set out in that draft Bill dated 9 May 2022.

REINSW
for members since 1910

Residential Tenancies Amendment (Tenant Protections and Flood Response) Bill 2022 ("the Draft Bill")

The Real Estate Institute of New South Wales Limited

Submission on the proposed changes as set out in the Draft Bill

9 May 2022

To: **The Office of The Hon Courtney Houssos MLC**
Shadow Minister for Better Regulation and Innovation
Parliament of New South Wales
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1. Introduction

This Submission has been prepared by The Real Estate Institute of New South Wales Limited (**REINSW**) and is in response to the Draft Bill introduced by Ms Jenny Leong, MP which provides for a number of changes to the *Residential Tenancies Act 2010* NSW (**Act**).

REINSW is the largest professional association of real estate agents and other property professionals in New South Wales. REINSW seeks to promote the interests of its members and the property sector on property-related issues. In doing so, REINSW plays a substantial role in the formation of legislative and regulatory policy in New South Wales.

This Submission has been prepared with the assistance of members of REINSW's Residential Tenancies Act Sub-Committee, who comprise members of REINSW's broader Property Management Chapter Committee. These members are licensed real estate professionals with a high level of experience and expertise in residential property management.

2. The Nature of the Changes in the Draft Bill

REINSW is concerned that the Draft Bill contains a number of significant and adverse changes to the Act, which have been presented as support for NSW flood impacted tenants ("**flood impacted tenants**"). Whilst REINSW supports assistance targeting flood impacted tenants, it takes issue with using the *Residential Tenancies Act* as the tool to do it.

Having regard to the magnitude and impact of the proposed changes that are not related to the floods and which impact all NSW residential tenancies ("**the other changes**"), **REINSW recommends that the Draft Bill be opposed and other means of support be employed to assist flood impacted tenants.** At a minimum the proposed changes should be subject to sufficient public consultation with all relevant stakeholders due to their significance and impact on the industry.

REINSW has a number of other suggested amendments to the Act that it would like to propose and would welcome the opportunity to put these forward at the same time as the other changes are considered during the public consultation process suggested above.

3. The Draft Bill

It is REINSW's preference that Parliament not support the Bill. Nonetheless REINSW sets out its comments and recommendations in relation to all of the proposed changes. Table 1 provides a high-level summary of REINSW's position on the proposed

changes, while Table 2 provides in depth reasons and recommendations in support of its position.

Table 1

REINSW's Position on Proposed Changes not Related to Flood Impacted Tenants			
Item Number	**Proposed Change**	**Section from the Draft Bill**	**Comment**
Item 1	Section 41 Rent Increases	Sch. 1 [1]	*REINSW **opposes** this change.*
Item 2	Restricting Rent Increases to the Lesser of the Public Sector Wage Increase and CPI	Sch. 1 [2]	***Not supported** by REINSW.*
Item 3	Section 52 – premises with 'mould' will not be 'fit for habitation'	Sch. 1 [3]	***Not supported** by REINSW.*
Item 4	Section 52 – landlords are required to ensure that residential premises have adequate 'waterproofing'	Sch. 1 [4]	***Not supported** by REINSW.*
Item 5	Section 80 – definition of "member of the landlord's family"	Sch. 1 [5]	***Not supported** by REINSW.*
Item 6	Section 82 – change to termination notices provision	Sch. 1 [6]	***Not supported** by REINSW.*
Item 7	Sections 84-85A – end of fixed term tenancy and removal of no-grounds notice of termination	Sch. 1 [7]	***Not supported** by REINSW.*
Item 8	Section 85 – termination of periodic agreement	Sch. 1 [7]	***Not supported** by REINSW.*
Item 9	Section 85A – consequences for wrongful termination under sections 84 and 85	Sch. 1 [7]	***Not supported** by REINSW.*
Item 10	Section 115 – Retaliatory Evictions	Sch. 1 [8]	***Not supported** by REINSW.*
Item 11	Section 115(2)(d) – expand the scope of the retaliatory eviction	Sch. 1 [9]	***Not supported** by REINSW.*

Item 12	Section 115(2A) – termination not in retaliation	Sch. 1 [10]	***Not supported** by REINSW.*
Item 13	Section 115A – limitation on landlord's ability to terminate	Sch. 1 [11]	***Not supported** by REINSW.*

REINSW's Position on Proposed Changes Related to Flood Impacted Tenants			
Item 14	Sections 229 to 232 – provisions dealing with flood affected properties	Sch. 1 [12]	***Not supported** by REINSW with amendment.*

Table 2

Item Number	Proposed Change	Section from the Draft Bill	Comment
Item 1	Section 41 Rent Increases	Sch. 1 [1]	*REINSW **opposes** this change.* REINSW opposes this proposed change to the Draft Bill but would welcome the opportunity to comment on rent increase provisions during a future consultation process.
Item 2	Restricting Rent Increases to the Lesser of the Public Sector Wage Increase and CPI	Sch. 1 [2]	***Not supported** by REINSW.* REINSW opposes these changes as they seek to amend the fundamental right of 'freedom to contract' by impinging on the maximum rental increase that parties can agree at their own discretion. Market rent, as defined by the Australian Property Institute is: *"The estimated amount for which an interest in real property should be leased on the valuation date between a willing lessor and a willing lessee on appropriate lease terms in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion".* REINSW's view is that parties should be free to set the commercial terms upon which they agree on any rent increases. REINSW is also concerned that the limit proposed (being, the lower of the public sector wage increase and CPI), will mean that very minimal increases will occur to rent amounts (given that the growth of CPI is predicted to be minimal) whilst expenses for landlords will continue to grow

			exponentially (for instance, increased mortgage interest rates, council rates and other property expenses). REINSW is also opposed to this proposed change for the following additional reasons: • **Market value must determine rents.** It is not right to impose restrictions on rental increases that inhibit a landlord's right to use market value and market conditions to dictate the rent they can receive for their property, especially in an environment where many landlords have already frozen rent increases for extended periods to assist tenants during the COVID-19 pandemic. • **Market conditions are always changing.** Legislative instruments should not be influenced by current market conditions and must provide fair outcomes for both landlords and tenants across varied markets and geographic locations. • **Landlords' ability to make improvements will be limited.** Curtailing rent reviews to an arbitrary limit will cause the net return on investments for landlords to dwindle. This will, in turn, limit funds available to make improvements to properties for the benefit of tenants. • **Landlords and Tenants should be free to deal with each other commercially. This is essential to the operation of a market economy.** The amendment effectively hinders the freedom of landlords and tenants to deal with each other in a mutually agreed manner. • **All consumers need to be considered, not just some.** Landlords are consumers too, and their ability to secure rent at market value and therefore maximise their return on investment will be stymied. • **The proposed changes are, in effect, a form of rent control.** The proposed changes will effectively be a form of rent control which will have unintended economic impacts. Rent control artificially pushes down the price of rent below what would have otherwise prevailed in a free market. This creates a phenomenal rise in the quantity of rentals demanded while discouraging the quality of rentals supplied. The immediate result is a shortage of rental accommodation. In 2012, a survey of leading economists on the effectiveness of rent controls implemented in San Francisco and New York City found that only 2 per cent agreed that the policy had a positive impact on the quantity and quality of affordable housing *("Evidence of Rent Control – It's Harmful and Ineffective", Martha Njolomole, 2012*). • The irony of this proposal is that tenants will be adversely impacted as investors leave the

			residential rental market in favour of other investment opportunities. For the above reasons, REINSW recommends the deletion of these proposed changes. However, should Parliament reject REINSW's recommendations, proposed section 41(1C) should clarify the quarter upon which the CPI increases will be based. Currently, this proposed section refers to the lesser of the public sector wage increase which occurs annually whereas CPI is generally calculated quarterly.
Item 3	Section 52 – premises with 'mould' will not be 'fit for habitation'	Sch. 1 [3]	***Not supported** by REINSW.* This proposed change will likely have a significant unintended consequence because there is no distinction between 'mould impacted properties' which are uninhabitable, and 'mould affected properties' which are still habitable. The change appears to be unreasonably onerous on those landlords who always have, and will do, the right thing to treat any mould (even minor) on a property. REINSW is also concerned that given recent weather conditions in NSW, that many properties could potentially fall within the ambit of not being habitable because they are not "free of mould", whereas the truth is that the mould can be remedied and the property can be occupied. Furthermore, REINSW would like to highlight that tenants themselves can contribute to, or exacerbate, mould situations so it would not be fair or equitable for the obligation of keeping a premises free of mould to rest with the landlord who is not in occupation. As a compromise, REINSW recommends that this proposed section be changed to: *"have not been deemed to be uninhabitable by a certified occupational mould hygienist"*
Item 4	Section 52 – landlords are required to ensure that residential premises have adequate 'waterproofing'	Sch. 1 [4]	***Not supported** by REINSW.* REINSW is concerned that this amendment creates unnecessary ambiguity about what landlords are required to do to ensure waterproofing in relation to residential premises. Whether a premises satisfies the requirement to have adequate waterproofing is subjective and is not something that can easily or readily be identifiable unless and until an issue arises. This is especially so in circumstances where many properties which were considered adequately waterproofed have, due to recent extraordinary weather conditions, now been rendered inadequate. REINSW has, on many occasions, expressed its concern to government that landlords and property managers are not qualified, licensed or experienced building contractors and, therefore, should not be providing expert advice on building issues, including waterproofing. Landlords are investors and property managers manage the tenancy. As such, they cannot ensure compliance with this proposed change and the onus should not rest with them.

			For these reasons, REINSW recommends the deletion of this proposed change.
Item 5	Section 80 – definition of "member of the landlord's family"	Sch. 1 [5]	***Not supported** by REINSW.* This definition relates to the proposed changes to the proposed circumstances in which a landlord may terminate a residential tenancy agreement [*see Item 7 below*]. REINSW is of the view that it is extremely difficult for the Legislature to attempt to define who should be included as a 'member of the landlord's family. In today's modern world with blended families, attempting to attach a definition will lead to certain family members being discriminated against and ignored. For example, the proposed definition does not capture a landlord's sibling, because the sibling may not be substantially dependent on the landlord. It doesn't capture cousins, relatives or even a child's partner who lives with the landlord but is not substantially dependent on them. For these reasons, REINSW recommends the deletion of this expression.
Item 6	Section 82 – change to termination notices provision	Sch. 1 [6]	***Not supported** by REINSW.* [*see Item 7 below*].
Item 7	Sections 84-85A – end of fixed term tenancy and removal of no-grounds notice of termination	Sch. 1 [7]	***Not supported** by REINSW.* These changes seek to remove the ability for a landlord to terminate both a fixed term agreement or a periodic agreement without specifying any particular grounds (**"a no-grounds termination notice"**). The removal of a no-grounds termination notice means that landlords will only be able to terminate a fixed term tenancy, at the end of its fixed term, or a periodic tenancy, in very limited and prohibitive circumstances. It is a well-accepted principle in the industry that either party to a fixed term agreement may terminate the agreement at the end of the fixed term without specifying a particular ground for termination. This again goes to the 'freedom to contract' principle where parties should be free to commercially negotiate and agree on the terms that will apply to their specific residential tenancy agreement and circumstances. **By way of comparison**, the following States/Territories allow for 'no-ground' termination rights at the end of a fixed term tenancy by requiring the listed notification period by a landlord: ***Northern Territory*** – 14 days' notice ***Australian Capital Territory*** – 26 weeks' notice ***South Australia*** – 28 days' notice ***Western Australia*** – 30 days' notice ***Tasmania*** – 42 days' notice

			Queensland – 2 months' notice ***Victoria*** – initial fixed term agreement only. 60 days' notice for tenancies of less than 6 months and 90 days' notice for agreements of more than 6 months. This comparison shows that all States and Territories (other than Victoria) allow for 'no ground' termination rights at the end of fixed terms generally and even Victoria allows for 'no ground' termination rights at the end of the initial fixed term. The proposed changes in this Draft Bill go one step further to abolish these rights entirely and provide only limited grounds for termination at the end of a fixed term lease (regardless of whether it is the initial or a subsequent fixed term lease). Accordingly, if these proposed changes in the Draft Bill were implemented, **NSW will be the only jurisdiction** to go against these well-established principles. REINSW hopes that the Parliament considers the impact of implementing these changes on the shortage of the supply of property in NSW and on the industry, generally. REINSW is concerned that the changes will deter investors from investing in property in our State because of the unnecessary onerous provisions sought to be implemented. This will exacerbate the shortage of supply factor and make investing in shares and other investment portfolios more attractive to investors than property. Further, REINSW does not understand why there should be a difference in the rights of the landlord versus the tenant with respect to termination at the end of a fixed term agreement. As the tenant's right to a 'no-grounds termination' is not proposed to be amended (section 96 of the Act), we are of the view that the landlord's right should also remain unfettered. In addition, REINSW notes that a tenant is only required to provide 14 days' notice under section 96, whereas a landlord must provide 30 days' notice. To be fair to all consumers concerned, REINSW suggests that the tenant's notification period be mirrored to match that of the landlord. The *Residential Tenancies Act 1987* allowed a landlord to terminate a tenancy without specifying their grounds to do so, provided the tenants were given a minimum of 60 days' notice in writing. If the tenant disputed a no grounds termination notice, the tribunal had discretion to uphold the termination notice "if satisfied, having considered the circumstances of the case, it [was] appropriate to do so". When the *Residential Tenancies Act 2010* commenced, the tribunal's discretion was removed (to give landlords greater certainty of being able to regain possession of their property) and the notice period was extended to 90 days. It should be noted that this notice period is considerably longer than the notice periods that apply to any other reason for termination. Accordingly, where a no grounds termination has been correctly issued and the tenant has been given a minimum of 90 days' notice to vacate, the tribunal must order the tenant to vacate. **REINSW believes the current provisions relating to no grounds termination are sufficient.** REINSW does not believe that a landlord's right to terminate without grounds undermines a tenant's other rights under the Act. For

			example, a tenant is protected against retaliatory eviction by the landlord under section 115. Further to this, REINSW does not agree with the proposition that no grounds' terminations should be removed from the legislation and opposes the landlord being required to provide grounds for termination of a fixed term agreement from a very restrictive prescribed list of possible reasons. In particular, REINSW notes that this prescribed list excludes a common ground for seeking vacant possession; to prepare and list a property for sale (which, in some circumstances, may be due to the landlord's financial hardship). Again, the landlord should be able to deal with their property and make decisions regarding it as they see fit. They shouldn't be required to disclose the reasons (which can be multifactorial and of a sensitive, financial or personal nature) for their decision to terminate the tenancy. A landlord has the right to privacy and should not be expected to disclose personal issues that are not relevant to the technical termination. Why should they be expected to forego their right to privacy and disclose circumstances of divorce, illness, redundancy, financial strife etc. **A tenant doesn't need to give a reason why they want to terminate a lease. Why should a landlord?** If a landlord is required to give a reason for termination, what happens if that reason changes? Landlords' personal circumstances can change, just as tenants' circumstances can change. For example, a landlord located in Brisbane may decide to terminate the tenancy of their investment property in Sydney because they are relocating to Sydney for a job. They provide this as the reason when terminating the tenancy. What if the job falls through at the last minute and the landlord stays in Brisbane? The terminated tenant has already signed a new lease and at that time, or shortly thereafter, they find out that the property they had been renting is being re-listed. This situation has evolved due to circumstances outside the landlord's control. How does the ability for the tenant to pursue the landlord for compensation help the situation? It does no more than extend any unhappiness or bitterness the tenant may already feel about having to move. Instead of moving past the situation, they may then spend further weeks and months challenging an already enacted termination notice. Accordingly, **REINSW recommends** that: 1. No changes are made to the existing section 84, 2. If changes are made to the existing section 84 of the RT Act then they should be limited to the notice period in the existing section 84(2) so that it be increased from 30 to 90 days, 3. If the Parliament rejects REINSW's recommendation to keep the existing section 84 as is in the Act, as a further alternative and a last resort, the proposed grounds to terminate in the proposed section 84 in the Draft Bill should be amended as follows: a. The fixed term agreement can be terminated if the landlord or its family require use of the property (i.e. the landlord requires use of its property at the

			end of the fixed term). Therefore, the reference to a 12-month period should be removed as circumstances change and a landlord's intention may change due to necessity over the span of a year, b. Include proposed section 84(1)(b) but delete the words "…that will render the premises uninhabitable for a period not less than 4 weeks" so that there is no prescribed timeframe for the repairs or renovations, c. Proposed section 84(1)(c) to remain included, d. New rights of termination to be included as follows: i. preparation to market and sell the residential premises, ii. where a tenant refuses to enter into a new fixed-term tenancy, iii. where a landlord requires a tenant to enter into a new fixed term tenancy (including for insurance purposes) and the tenant refuses to do so, iv. the residential premises are going to be demolished, v. a government authority owns the property and needs it for public purposes, vi. the landlord wants to do something else with the property (e.g. use it for a business or to provide short term rental accommodation).
Item 8	Section 85 – termination of periodic agreement	Sch. 1 [7]	***Not supported*** *by REINSW.* REINSW opposes these amendments for the same reasons as set out in Item 7 (above) and recommends that they be deleted from the Draft Bill.
Item 9	Section 85A – consequences for wrongful termination under sections 84 and 85	Sch. 1 [7]	***Not supported*** *by REINSW.* REINSW does not support the introduction of this new section 85A which seeks to penalise a landlord for wrongful termination under the new proposed provisions. If REINSW's recommendation is adopted that the amendments to sections 84 and 85 should not be entertained, then section 85A is not required. However, should the proposed amendments to sections 84 and 85 (or some compromised form of the changes) be accepted, then REINSW opposes section 85A for the following reasons: 1. Whether a landlord formed the requisite intent necessary to give rise to a termination ground is a 'point-in-time' test and is also extremely subjective. A landlord may have the necessary intent to give rise to the right to terminate at the time of providing the notice, but due to circumstances beyond the landlord's control,

			those grounds may change over time. The wording of proposed section 85A(2) does not state for how long a landlord is prohibited from using, or permitting the use of, the premises in a manner different to those given in the grounds for termination.. Just one example of how circumstances can change over time is where a landlord terminates a tenancy so that his/ her elderly parents can move into the property but, shortly thereafter, one of the parents passes away and the other doesn't wish to live there anymore. REINSW is concerned that a landlord may be unnecessarily punished in these cases. Furthermore, proposed section 85A is contrary to the interests of tenants. Landlords will be hesitant to run afoul of these provisions and so more properties will remain vacant exacerbating a shortage of available rental properties when so many people need shelter and housing. Vacant properties are also more likely to be subject to damage, acts of vandalism and squatters. If Parliament rejects REINSW's recommendation to remove this proposed section entirely, the wording of proposed section 85A(2) should be amended so that: a. any prohibition period on reletting or using the property for a purpose other than given in the ground for termination is limited to a maximum of 30 days. It is common for most insurance policies to exclude coverage of properties that are vacant for more than 30-60 days; or alternatively, b. there is a penalty against the landlord whereby a sum equivalent to no more than 4 weeks rent is paid to the vacating tenant on a sliding scale depending on the timeframe in which the property is re-let (or used for a purpose other than given in the grounds for termination). REINSW's view is such an amendment would address the subjectivity and ambiguity of this provision, benefit tenants by reducing the likelihood of rental shortages due to vacant properties, would not impact the validity of a property's building insurance, would prevent damage, acts of vandalism or squatters as a result of properties remaining vacant for long periods of time and would be less prejudicial should the landlord's circumstances change. 2. The proposed penalty in section 85A(2) can potentially put a third party at risk of being liable for a penalty if the premises are used for a reason other than that which formed the ground for termination, even if they didn't know about that ground for termination. 3. A landlord may have several grounds to terminate an agreement under the amended sections 84 or 85, however, a penalty under section 85A will be

			imposed if the one ground that was relied upon for the termination no longer exists after termination. Accordingly, REINSW recommends that this proposed section should be amended to provide that a breach only occurs where no grounds exist under sections 84 or 85. 4. Proposed section 85A(3) is unreasonable, and dictates how a landlord must use its own property by allowing the Tribunal to determine the commercial terms which will apply to a reinstated lease. 5. Proposed section 85A(4) is uncertain and ambiguous – how is compensation intended to be calculated? What factors would a Tribunal be required to consider? REINSW recommends that these matters be clarified in the Draft Bill. It is important to understand what the intended 'prescribed period' is for the purposes of proposed section 85A(5). Without knowing this period, stakeholders are unable to properly consider the complete impact of this proposed section.
Item 10	Section 115 – Retaliatory Evictions	Sch. 1 [8]	***Not supported** by REINSW.* Tribunals, like courts, are independent – they are separated from the executive and legislative branches of government. The proposed change seeks to remove the Tribunal's discretion by requiring that they "must" make such an order. REINSW opposes this impingement on the separation of powers. The current drafting in the legislation should remain because it requires the Tribunal to consider whether it is appropriate on the facts of a particular case as to whether to make an order.
Item 11	Section 115(2)(d) – expand the scope of the retaliatory eviction	Sch. 1 [9]	***Not supported** by REINSW.* REINSW does not support this change, nevertheless, if Parliament is minded to make the proposed changes to section 115, REINSW's view is that it is appropriate for the Tribunal to consider all relevant matters in reaching a decision.
Item 12	Section 115(2A) – termination not in retaliation	Sch. 1 [10]	***Not supported** by REINSW.* The Tribunal will make a decision, on the evidence before it at the time, whether it is appropriate to make an order under section 115. REINSW sees no benefit in placing the burden of proof on the landlord to demonstrate that a termination is not retaliatory. Furthermore, property managers, who often appear in property-related Tribunal proceedings as the agent for the landlord, do not have the appropriate training or expertise to deal with complex issues such as burdens of proof. REINSW is concerned that if these provisions were implemented it may result in landlords, who have lost a case, seeking compensation from property managers. This

			gives rise to issues about whether this would be covered by a property manager's insurance. While REINSW does not support this provision, if it were to be implemented REINSW's view is that landlords should represent themselves in proceedings of this nature, or engage a solicitor to argue the case, the latter of which would be costly and time consuming.
Item 13	Section 115A – limitation on landlord's ability to terminate	Sch. 1 [11]	***Not supported** by REINSW.* REINSW does not support the amendment which prevents a landlord from issuing a further termination notice for at least 12 months if the Tribunal finds that a termination notice was retaliatory. Circumstances throughout a lease can change and REINSW is opposed to usurping a landlord's legitimate right of termination. Further, a landlord should not receive a penalty where it does issue a subsequent termination notice within that 12-month period if the grounds are legitimate. REINSW's view is that the parties can refer the matter to the Tribunal if a subsequent termination notice is alleged to be retaliatory.

The following amendments set out in the Draft Bill are aimed at addressing the 2022 NSW floods:

Item 14	Sections 229 to 232 – provisions dealing with flood affected properties	Sch. 1 [12]	***Not supported** by REINSW with amendment.* REINSW supports the need to assist tenants impacted by the recent NSW floods. However, a legislative solution is cumbersome. There are other more flexible solutions available. However, if Parliament is minded to consider this matter, then the following is relevant. REINSW is concerned that the proposed provisions are all-encompassing and will have the unintended effect of applying to properties that have not been affected by the floods. The proposed drafting makes an 'impacted lease' one in which the premises are located in a 'flood impacted area'. There is no further condition on this. REINSW believes that this will have the unintended and unreasonable effects on landlords for properties not ever having been affected by the floods or not being significantly impacted by the floods. Not all of the local government areas listed in the definition of 'flood impacted area' were actually or significantly impacted by the floods and so the definition doesn't work and has unintended effects on consumers. REINSW's understanding is that the current local government areas defined in proposed section 229 reflect the local government areas that are eligible for the Australian Government Disaster Recovery Payment. However, there is a distinction between a one off lump sum payment and imposing on landlords a 12-month moratorium on termination and rent increases, and REINSW's view is

			that the scope of this definition should be narrowed so as to only apply to areas directly impacted by flooding. REINSW also seeks to highlight the current environment to provide context as to the additional burden these changes will create for landlords. These changes are proposed close to the end of a very difficult time for both landlords and tenants alike, as a result of COVID-19. Landlords have been subject to restrictions on rent increases, amongst other things, due to COVID-19. Further, REINSW is concerned about the effect of these proposed changes on landlords who have been impacted by the recent floods. To implement these additional changes during an already difficult period will cause unreasonable and unnecessary burden on landlords, many of whom are currently experiencing financial hardship as a result of COVID-19 and/or the floods. In REINSW's view, the Government is better placed than consumers to provide financial relief to those impacted by the floods as it has more resources, and is better able to assess the needs of the community at large. REINSW recommends that a definition be inserted for a '**flood impacted property**' being a property located within a 'flood impacted area' that has in fact suffered material damage as a result of the 2022 NSW floods. REINSW also recommends, that where only specific suburbs within a local government area have been significantly impacted by flooding, Government should specify only these suburbs, as opposed to the entire local government area, in the definition of "flood impacted areas". Any drafting that seeks to apply these provisions to properties not directly affected by the floods is unreasonable, uncommercial and unfair to consumers. With respect to proposed sections 231(2) and 231(3), REINSW is of the view that it is unreasonable and uncommercial in the current market to restrict a landlord from entering into a lease for a property in a flood impacted area if the rent is more than that payable under an agreement in existence on 25 February 2022 or, otherwise, the median rent for the same type of premises. Given that most agreements in existence on 25 February 2022 were entered into a significant period of time before that date, it is unlikely that it reflects market rent as at the present time. Further, the definition of "type of premises" refers to outdated data from the December 2021 Quarter. Therefore, REINSW recommends the deletion of section 231(3) and for section 231(2) to be amended to refer to the market rent as at 25 February 2022.

4. Conclusion

As set out above, REINSW does not support the Bill. The assistance tenants require should come from Government and not landlords.

REINSW has considered the Draft Bill and has provided its comments above, aiming to provide input on as many pertinent aspects of the Draft Bill as possible. However,

REINSW's resources are very limited and , accordingly, it does not have the capacity to undertake a thorough review and is unable to exhaustively investigate all potential issues in this Submission. Nonetheless, REINSW has identified a number of matters that it believes will cause significant consumer detriment, some of which appear above.

REINSW appreciates the opportunity to provide this Submission and would be pleased to discuss it further, if required.

Yours faithfully

Tim McKibbin
Chief Executive Officer