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## Parity

### Australia's national homelessness publication

Published by Council to Homeless Persons

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Contributions to Parity are welcome. Each issue of Parity has a central focus or theme. However, prospective contributors should not feel restricted by this as Parity seeks to discuss the whole range of issues connected with homelessness and the provision of housing and services to people experiencing homelessness. Where necessary, contributions will be edited. Where possible this will be done in consultation with the contributor. Contributions can be emailed to [parity@chp.org.au](mailto:parity@chp.org.au) in Microsoft Word or rtf format. If this option is not possible, contributions can be mailed to CHP at the above address.

Proposed 2023 Parity Publication Schedule

July: New Responses to Rough Sleeping

August: Gender and Homelessness

September: Housing First: From Theory to Practice

October: Poverty and Homelessness

November: The Future of Youth Foyers

December: Intersections: Climate Change, Housing and Homelessness

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# Editorial

Deborah Di Natale, Chief Executive Officer, Council to Homeless Persons



The role and place of renting is now a major housing policy issue in Australia and one that has recently generated policy heat and debate, particularly in the context of the deferred decision on the Federal Government's proposed Housing Australia Future Fund. In this debate the point is clearly made that about a third of all Australians rely on renting for housing.

Our current context brings ongoing and rapid increases in rental cost. These increases are in large part due to the crisis in the lack of affordable rental stock and the continued failure of the housing market to provide sufficient housing supply to meet demand.

The acknowledged and long-reported inequity of the rental market over the last decade has seen strident calls for the reform of the governing legislation in all States and Territories that regulate the powers, rights and responsibilities of lessors and their tenants.

The reform of the various Residential Tenancies Acts (RTA) in Australia to improve and secure tenants rights has long been championed by the Tenants Unions as well as many other housing and social services agencies and advocates like the national Shelter

network, community legal services, the various Councils of Social Services and peak housing and homelessness advocacy bodies, including the Council to Homeless Persons and through *Parity*. Indeed, this edition is the most recent of a series that has been dedicated to the discussion.

In many ways, this edition is a report card on the advancements in rental reform that have taken place since the establishment of the role of the Victorian Residential Tenancies Commissioner in 2018. Victoria has had a leadership role in national RTA reform and that the reforms implemented in 2021 served as a model for several other jurisdictions in Australia. These reforms have been used and modified to meet local and jurisdictional differences in several states and territories. Changes to several RTAs now include a ban on rental bidding, the establishment of minimal rental standards, allowable modifications by renters, the requirement for urgent repairs, and in some jurisdictions the right for tenants to have pets (under certain conditions). Most importantly, RTA reform has seen the movement towards prohibiting eviction without reasonable cause that can now provide tenants with a level of housing security.

In this edition, Dr Chris Martin reports in April this year National Cabinet, agreed to develop a new law reform agenda to 'strengthen renters' rights across the country' with the Housing Ministers of all states and territories.

For the first time, the Federal Government albeit through the mechanism of the National Cabinet, is assuming an interest and hopefully taking a role in the ongoing task of rental reform. This provides an opportunity for national leadership in partnership with States and

Territories around discussion of the establishment of a set national standards and improved levels of housing security for renters.

The initiative of the Australian Capital Territory Government to establish a form of rent increase capping by limiting increases to ten per cent more than the annual Consumer Price Index, potentially provides a model that can inform other jurisdictions. In light of increasing demand and limited supply, we have seen rents skyrocket to unaffordable and unsustainable levels and placing considerable strain on Australians.

The determined and persistent work of advocates of rental reform has resulted in some progress. It is a good start, and we can build from here.

Rental reform can have an impact on making renting a viable option for those experiencing or at risk of homelessness. However, with ongoing rental reform is the need to provide access to affordable rental housing. The private rental market has thus far not proven adequate to this task, meaning that government must step up and provide the required levels of affordable social housing rentals to those excluded from the private rental market. Committing to this would ultimately be the most effective form of rental reform.

## Acknowledgements

CHP would like to thank and acknowledge all our edition co-sponsors: The Victorian Government through the Office of the Residential Tenancies Commissioner, The Tenants Union of New South Wales, Shelter New South Wales, ACT Shelter, Tenants Victoria and Tenants Queensland. On behalf of CHP, thank you for your work on rental reform and your support for this edition of *Parity*.

# Homelessness Australia Update

Kate Colvin, Chief Executive Officer, Homelessness Australia



## Policy News

### The Housing Crisis Becomes a National Political Focus

In June, conflict between Labor and the Greens around renters and social and affordable housing investment intensified, with the Greens teaming up with the Coalition to delay a vote on the Housing Australia Future Fund investment for four months.

This delay followed several months of debate and negotiations between Labor and the cross bench that resulted in a number of important amendments to strengthen the Bill, including establishing a minimum annual disbursement for housing investment.

Many of these amendments had been recommended by Homelessness Australia and/or housing peak bodies.

Homelessness Australia has been closely collaborating with other peak bodies in relation to the housing legislation. This included holding a joint press conference together with the Community Housing Industry Association, National Shelter, the National Aboriginal

Torres Strait Islander Housing Association, Everybody's Home, Industry Super Australia and the Property Council, and key crossbenchers, to call for the Senate to pass the strengthened legislation.

The failure to pass the legislation in June has serious consequences, with shovel-ready community housing projects that have been developed in anticipation of access to these resources now indefinitely delayed. Community housing agencies report that many of these projects may fall over where development partners can't wait, or where the costs of the delay in staff time or finance render them non-viable.

One silver lining to this disappointing outcome is the deepening of media attention on the housing crisis, particularly the need for a significant scale of investment in social housing. Longer-term, this should result in further commitments to new housing investment.

## Homelessness Australia Events



### Homelessness Week is just around the corner

Each year, Homelessness Australia hosts Homelessness Week to raise awareness of solutions to homelessness. In 2023, Homelessness Week will be held from 7-13 August with the theme *'It's time to end homelessness'*.

The theme reflects the importance of the Federal Government having an ambition to end homelessness when it begins developing the 10-year National Housing and Homelessness Plan in 2023.



Allegra Spender, MP; Charles Northcote, CEO, BLue CHP; Toby O'Connor, CEO, SVDP National Council; Travis Gilbert, CEO, ACT Shelter; Emma Greenhalgh, CEO, National Shelter; Matt Linden, Deputy CEO, Industry Super; Maiy Azize, Spokesperson Everybody's Home; Wendy Hayhurst, CEO, CHIA National; Kate Colvin, CEO, Homelessness Australia; Mike Zorbas, CEO, Property Council of Australia; Senator Tammy Tyrell; Nick Proud, CEO, Powerhousing; Senator David Pocock; Ivan Simon, CEO National Aboriginal and Torres Strait Islander Housing Association

Our aim is for the plan to be ambitious and include the reforms needed both within and outside the homelessness service system that are critical to ending homelessness, like people having adequate incomes, access to affordable housing, freedom from violence, and the support they need.

You can find information on how to be involved in Homelessness Week on the website at:

<https://homelessnessaustralia.org.au/homelessness-week/>.

### Join the Homelessness Week Launch on First Nations Homelessness

Homelessness Australia, working with Aboriginal Housing Victoria, is hosting a Homelessness Week launch on First Nations homelessness.

Federal Housing and Homelessness Minister, The Hon Julie Collins MP, will launch the event. Aboriginal and Torres Strait Islander Social Justice Commissioner June Oscar AO will give a keynote presentation, followed by a panel including Darren Smith, CEO, Aboriginal Housing Victoria, Ivan Simon, CEO National Aboriginal



Torres Strait Islander Housing Association and Tina Ugle, Managing Director, Noongar Mia Mia.

For more information and to register go to <https://homelessnessaustralia.org.au/homelessness-week/>.

## AUSTRALIA'S PREMIER HOUSING EVENT

### National Housing Conference 2023 Brisbane / 10-12 October

### A WAY FORWARD



Register now at [nhc.edu.au](https://nhc.edu.au)

# Is it Time for a Homelessness Commissioner?

Karen Sheridan, Principal Solicitor, Slink and Keating, Accredited Criminal Law Specialists



It is trite to note that the plight of the homeless in Victoria is appalling and unacceptable to right-thinking members of the community. No doubt any reader of *Parity* is well aware of the problem.

It is not the purpose of this article to elaborate on this situation: it is considered notorious that the problem is long-standing, deep-seated and requiring of an urgent and permanent solution. I consider that the time has come for stopgap measures and myriad miscellaneous efforts to be coalesced into a government-driven solution.

I suggest that Victoria creates a position to be designated as the Office of the Homelessness Commissioner. This role would follow the model created for many such positions in this state. In fact, by my reading, there are 29 Commissioners and 15 Advisory Councils or Boards in Victoria.

There is no doubt that the creation of offices known as Commissioners is a respected tradition in Victoria, which lends itself to the concept which I am advancing. For excellent

working examples, consider the roles of the Residential Tenancies Commissioner, Disability Services Commissioner, the Commissioners for Children and Young People (formerly the Office of the Child Safety Commissioner) and the Equal Opportunity and Human Rights Commissioner. It is suggested that the office I am contemplating would fit well within Victoria's legal, social and cultural landscape.

I suggest that the Commissioner's role be two-fold. Firstly, she or he is to report on and advise government generally on issues relating to people who are homeless in Victoria. I call this the advisory role. Secondly, she or he is to take whatever steps are reasonable and necessary to assist persons in respect of difficulties associated with, or causative of, homelessness. This may be referred to as the humane role.

In considering the establishment of the Office of the Commissioner, I have taken into account a number of factors, including the following:

1. Homelessness is complex. In most cases, it is not simply an absence of a home. After all, the expression is homelessness, not houselessness. It is usually associated with or the result of other factors, or a combination of factors, including mental health issues, drug addiction, loss or separation from family, penury and family violence. Complex problems require complex solutions.
2. The state of Victoria will be immeasurably better off, both at an individual and macro level, if it relieves its population of the scourge of homelessness and its attendant issues.
3. At present, there is no primary central place where persons who are 'living rough' can go to receive information and have their basic needs satisfied.
4. At present, there is no overarching body responsible for attending to these basic needs; this role has primarily been undertaken by a plethora of governmental, semi-governmental and charitable bodies. In my view, there needs to be such a body to avoid duplication, identify unfilled needs and respond to such needs. Accordingly, the Office will act as a conduit between people who are homeless, and the organisations or individuals best placed to help them.
5. For the vast majority of people who are homeless, their situation is not a matter of choice, but the culmination of a myriad of events in their lives. The Office would be safe, non-judgmental and populated by experienced professional personnel.
6. Governments have the primary responsibility to look after the basic human rights of all Victorians. Undoubtedly, these include the right to reasonable accommodation, food, water and clothing. It is noted that there are several models for understanding the motivations for human behaviour, including Maslow's Hierarchy of Needs, which theorises physiological needs including shelter and clothing as a basic need, akin to breathing, where a person simply cannot reach their full potential without

these needs being first satisfied. In relation to people who are homeless, this responsibility has been shared with many governmental, semi-governmental and charitable organisations. It is envisaged that this situation will be considerably improved within an organised and co-ordinated framework.

A Commissioner would be a non-partisan and continuing 'voice' to parliament on homelessness.

It is envisaged that philanthropic and charitable organisations will continue to play a strong role in the operations of the Commissioner. Further, it is to be hoped that this initiative will produce, for charitable organisations, considerable financial and in-kind contributions from people from all walks of life who simply wish to contribute towards reducing homelessness. Anecdotally, many people are presently reluctant to make a contribution for the homeless, either financial or in-

kind, simply because they don't know how or where to do so. Additionally, it is recognised that some people do not contribute because they have concerns about the administrative costs of some organisations. It is hoped that such concerns will be dispelled by the establishment of the Office.

The Commissioner will report to Parliament each year, reporting on the state of homelessness in Victoria, and making such recommendations as she or he thinks are appropriate or necessary.

The Commissioner will have the power to order or conduct inquiries into any matter germane to the Office.

It is likely that the most important work to be done by the Commissioner will be in the therapeutic and advisory role outlined above. It is imperative, for this idea to be successful, that the Commissioner not only act in an advisory role to people who are homeless; she or he must be able to successfully

refer such persons to appropriate bodies which are properly resourced to actually help the person with their needs. It is anticipated that, in many cases, this referral will be to organisations which already exist, but which are properly funded to receive such referrals.

Obviously, appropriate legislation will need to be drafted to ensure the role of the Commissioner is clearly spelled out.

In terms of funding the Office and initiatives which it will undoubtedly generate, it is recommended that an appropriate source of funds is stamp duty receipts on the purchase of real estate. I suggest that, as a general rule, Victorians will be pleased to see such revenue committed towards an initiative which ameliorates the scourge of homelessness.

For more information or to discuss how you can support this proposal, please feel free to contact me on 0481 988 003 or [karen.sheridan@slinkandkeating.com.au](mailto:karen.sheridan@slinkandkeating.com.au). Alternatively, please sign our online petition for change at <https://chng.it/XvBQ9pv7vV>



# Introduction

Damien Patterson, Council to Homeless Persons Policy and Advocacy Officer and Guest Editor



As National Cabinet looks at means for strengthening the rights of renters, it is useful to consider what has been achieved in my home state of Victoria. Rental reforms have had an impact on homelessness and make a compelling argument in favour of limiting evictions further across the nation. It's also instructive to look at what remains to be done both locally and nationally.

In 2015, when the Victorian Government kicked off what became a string of residential tenancy law reviews across the country seeking to improve renters' rights, renters in Australia, across every jurisdiction, had far weaker rights than global comparator countries. Despite our Federal division of powers meaning that eight residential tenancy regimes existed independently of each other across the eight jurisdictions,

something in the history and culture of the nation saw a dominant belief that the rights of landlords come before those of renters.

In 2017, Council to Homeless Persons (CHP), along with the many partner organisations with whom we worked so hard for improved tenancy rights, celebrated the new Victorian *Residential Tenancies Act*. At the time we said that measures like removing the no-reason notice to vacate (for ongoing tenancies), the 'reasonable and proportionate' test for evictions, and stronger protections against eviction for late payment would see a permanent decrease in homelessness in Victoria.

While attribution is tricky, today, we have good reason to believe that those hopes have borne out. Figure 1 below shows the number of people attending Victorian homelessness services each year whose main reason for presenting is 'housing crisis', a term that describes evictions.

Victorians have had increased protections against eviction since financial year 2019-20, first in the form of pandemic-related protections, and now through the permanent Residential Tenancies Act. Since this time, the number of people seeking homelessness assistance due to eviction has decreased. So, to have evictions as a proportion of all reasons for presenting to homelessness services.

Changes like these, and others that we hope to see in the future, such as the removal of 'no reason' notices to vacate at the end of the first periodic tenancy, can reduce evictions, stemming the flow of people into homelessness.

Figure 1. Housing crisis as the main reason for presenting to specialist homelessness services in Victoria, by year.

Other changes to residential tenancy laws have sought to improve the situation of renters. Even before the current disastrously low vacancy rates, Australian rental markets were enormously competitive.

Recent rental market trends see an acceleration of a long-standing trend, in which our rental markets are becoming less affordable, especially for people on very low incomes. Once, rents clustered towards the affordable end of the market, reflecting the role of the private rental market in providing somewhat affordable housing options for people on low incomes and those seeking to save a home deposit. Today, rents are clustered towards the middle.<sup>1</sup>

This results in increased competition between low-and middle-income earners, and an almost complete absence of affordably priced housing options for low-income renters.

There are a variety of reasons for this change in where costs cluster, but Commonwealth tax settings are a key factor.

	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
<b>Housing Crisis</b>	9,776	11,165	14,068	19,036	20,450	22,526	22,625	20,563	16,316	13,743	14,979
<b>Total*</b>	<b>69,786</b>	<b>76,014</b>	<b>88,784</b>	<b>101,199</b>	<b>104,672</b>	<b>109,288</b>	<b>116,169</b>	<b>112,072</b>	<b>114,578</b>	<b>104,588</b>	<b>100,826</b>
<b>Percentage</b>	<b>14</b>	<b>15</b>	<b>16</b>	<b>19</b>	<b>20</b>	<b>21</b>	<b>19</b>	<b>18</b>	<b>14</b>	<b>13</b>	<b>15</b>

\* Total does not include those for whom we do not have a recorded main reason for presenting.

The resultant rental market competition has a disproportionate effect on those experiencing or having previously experienced homelessness. These cohorts have perhaps the least market power of anybody in the private rental system and are therefore far more likely to receive offers of only the worst maintained properties. In some instances, these properties would be considered by most of the community to be uninhabitable, typifying both homelessness and rent stress.

But changes like the introduction and strengthening of minimum standards for rental properties can have an impact. The establishment of minimum standards for rental properties likely saw many well-meaning landlords actively comply. In many other instances, less disempowered renters can request or compel landlords to meet the standards. They're also an important tool for legal advocates and support workers. In total, it can be said that more rental properties meet the basic standards that you would expect of a home.

Despite this, this edition of *Parity* is full of examples of the structural reasons that mean that renters don't always feel safe to assert these rights. When somebody controls your access to a home, and when homelessness is a real and evident threat, a power dynamic is at play. Dodd and Marzohl's interesting article later in this edition of *Parity* calls for a redefinition tenant-landlord dynamics, based on the idea of stewardship.

These power relations are important, and they're maintained by landlords' easy access to evictions. It should be an expectation of all advocates for people without homes that the nationwide strengthening of renter's rights that was recently announced by National Cabinet should remove 'no reason' notices to vacate, and limit 'for cause' evictions. As CHP has long argued, there is no such thing as an eviction for 'no reason', there are only evictions for reasons not allowed for in the law. Wherever the



law (whether tenancy or otherwise) allows such wide discretion, it will always be used most against marginalised people, often in ways the Parliament doesn't intend.

At the current moment in time, the implicit threat of eviction is especially powerful, as across the country rental vacancy rates are devastatingly low, and the price of newly advertised rentals is skyrocketing. For our clients there has long been too few affordably priced homes. Now, there are too few affordable homes for most renters. Interesting reforms in the Australian Capital Territory, outlined by Pippen later in this *Parity*, explore admirable legislative approaches to preventing excessive rent hikes.

But legislative reform can't be the only aim of advocates for housing security. As noted above, until recently Australian jurisdictions have had universally weak protections for renters. Stronger renters' rights are part of the solution, but the prevailing culture which preferences landlords means that it is likely that millions of Australian renters assume that their rights are less than they actually are, and that landlords assume the same. These assumptions make it difficult to uphold a right that you don't know that you have.

Anecdote isn't evidence, but I've had to leave all of my neighbourhood's social media groups in frustration. People regularly turn to these groups for advice on the unfair circumstances

they're facing in their rented home. These groups do provide advice, but rarely based on the Residential Tenancies Act. This advice is almost always based on what individual commenters think would be a fair outcome. It's almost always far less than what the law provides. What many people feel is fair is often pretty degrading to the renter, who just wants a peaceful home.

I don't anticipate any time soon a level of service provision in Australia whereby every renter has reliable access to legal support. So, for Australian rental systems to operate

as intended, we need to achieve a culture change piece. Only when renters, and the community more broadly, expect more for renters, will we see the system start to self-regulate — when people understand their rights, and enforcing them is not only risk-free, but expected, we'll know that the rights contained in residential tenancy laws are being upheld.

National Cabinet's move to improve renters' rights is both a positive step, and hopefully, a reflection that the culture of supporting landlords over renters is shifting. But it's also an opportunity to further the culture change piece of work that we need to do. A national conversation will soon be underway on the rights of renters in Australia. There will be many who argue for continued priority on landlords' property rights. But it's also an important opportunity to shift the dial on the public narrative and encourage people to challenge their perceptions of what the rights of renters might be.

Because while improved rental laws can do a lot to help renters, many of these improvements will only really be applied when Australians understand that renters deserve better than they currently get.

#### Endnote

1. Hulse K., Reynolds M., Stone W and Yates, J 2015, *Supply shortages and affordability outcomes in the private rental sector: short- and longer-term trends*, AHURI Final Report No. 241, Australian Housing and Urban Research Institute Limited, Melbourne, p.31

## Chapter 1: Learning From Lived Experience

# The Lived Experience of Renting

In 2021, more than 130 reforms to Victoria's renting rules came into effect. Some of the key changes include a ban on rental bidding, new rental minimum standards, no eviction without a reason, allowable modifications by renters, and new rules around urgent repairs.

Members of the Council to Homeless Persons (CHP) Peer Education Support Program (PESP) met recently to discuss and share their experiences of renting following the reforms.

This article will share some of their concerns and then set out their recommendations for addressing these concerns.

In particular, property maintenance issues and the cost of rent were raised by many of the participants. The following quotes outline their experiences.

### Maintenance and Rent

*There are issues with the state of the property. When it's clear that there are these issues, maintenance people are not always able to fix the problems, or there are delays in getting it fixed.*

*I have a gate without a lock on it.*

*The workmanship on properties can be rough.*

*What are they doing to make sure that the properties under the Big Housing Build are safe and built well?*

*There is water coming through the lights.*

*Getting people to fix things or doing the right thing by them is just not happening.*

*The private rental market is worse. The previous house I lived in, the landlord did no maintenance on it for 10 years, then we were told that it was not sound to live in.*

*Prior to being without a home, I had a pretty wild ride in rentals. I took a landlord to court. It was a big old-style house, they separated it into two places. I had to complain quite a lot about issues. They didn't get fixed.*

*All it takes is proper maintenance and for people to actually give a shit.*

*We have to make sure they meet standards, which doesn't get talked about a lot.*

*My landlord put tiles on the veranda, which got frosty in winter and were dangerously slippery. It turns out they were only meant to be used in warm environments.*

*Rent increased just before I moved into a property. This is common. It went up \$90 a month. It was already expensive.*

*It's tough for the renters, they just keep getting slammed.*

*My public housing rent has gone up \$2.50 a week twice in the last two months and this is public housing. When are they going to stop?*

*These slumlords get away with murder.*

*I signed a lease on the 8th, but I didn't get the keys until the 20th. I refused to pay the rent until I had the keys and so they took me to the Victorian Civil and Administrative Tribunal. There are maintenance issues that still need*

*to be dealt with. They are happy to put the rent up but when it comes down to what they should be doing, they don't want a bar of it. They do as they please. There are no standards. You pay your rent and do what you're supposed to do, but you still don't get the help you're supposed to get.*

*Single males who are Aboriginal or Torres Strait Islander get it pretty hard. They end up in boarding houses. There's nothing out there for us. We are lucky to even get a scumbag landlord.*

*The system works against you.*

### Landlords

*During COVID it seemed like everyone was willing to help and be kind. But since then, they seem like they are just trying to get their money back.*

*Landlords should be held accountable. There seems to be no slap on the wrist, no fines.*

*There are ethical landlords, (for example) through HomeGround. I'm pretty lucky to be with them. They seem to be understanding and compassionate, but I still don't know if that's going to end.*

*As a single male, I don't know of any ethical landlords.*

*There needs to be more real estate agents who are ethical and not-for-profit. But that's never going to happen.*

*People have to have compassion and be kind and have understanding about peoples' lives and their stories.*

*Property managers and landlords should do mental health training.*

*No empathy, no licence.*

*It wouldn't be as daunting to approach a real estate agency if you knew it was a safe space.*

*Landlords need to be regulated and controlled, have standards, only raise rent once a year, only by a certain amount. It should be proven that they need to raise the rent in order to manage that property. Tenure should be more secure. Landlords have to have a bloody good reason to get someone out of their property.*

*They may claim it is necessary because interest rates are so high.*

*Many have already paid the property off, they are just making a profit off it.*

*If you are buying a car, you can do a personal property search that tells you about the standard of the car. We should have this for rentals.*

*Landlords seem to get away with murder.*

*Maybe we should have a list of good landlords.*

*Landlord should meet set standards, follow policies and procedures to meet these standards. These standards need to be set out in a clear document that everyone is legally bound to follow.*

*VCAT should have the power and staff to mediate these standards.*

*Landlords aren't happy with new (tenancy) rules and just keep hiking up rents.*

*There should not be such a disproportionate response just because we have some more rights.*

## Recommendations

*There needs to be property checks and housing audits before*



*they are rented. An independent body should do this.*

*Let's look at overseas models. We should look to Finland or other countries. Think of Housing First. Let's research what works and then do it that way. The way renting is here now is crap, and it feels like it is never going to change.*

*We are one of the few places in the world that allow people to invest in properties and then allow them to sit vacant. Why is that?*

*If people are sharing a house at present, the real estate agent is stuck with an old system where they only look at one person to be legally responsible for the lease. It should be possible to go into a rental agreement with others if you can't afford a rental on your own.*

*We need some rental advocacy.*

*I'd like to see a more flexible approach to joint lease agreements.*

*If someone has no rental history, this shouldn't prevent them from getting them a lease.*

*Landlords and real estate agents should not be able to discriminate against anyone who can afford the rent. Rental history or not, there should not be discrimination based on cultural differences, being a single parent, being young people or people who identify as LGBTQI+.*

*We need an independent watchdog, to make sure these things get through. Make it more transparent.*

*Rental bidding must be banned.*

*It's rich vs poor again.*

*Properties should not be allowed to sit empty for more than a month. If owners do this, they should be fined.*

*There should be mandatory training for people who work with vulnerable community members, potentially mental health training.*

*People who have the lived experience of renting should have input into renting standards, procedures and policies and the whole rental experience.*

*We would like to see a report on the Big Housing Build, so we can see where we are up to.*

*The Government needs to ensure that affordable housing is affordable and available to the most vulnerable.*

*We need to go back to the public housing model, and not just focus on so-called affordable housing.*

*The needs of the lowest income earners must be considered.*

*Always include lived experience in the housing decisions.*

## Conclusion

While the most recent residential tenancy reforms in Victoria were welcomed, it seems that regardless of whether people are living in private or public housing, many tenants are still experiencing difficulties with the cost of rent and with maintenance issues. Moreover, they are not happy with the way they believe they are treated by their landlords. The perspectives and recommendations set out above are serious food for thought because they come from those with the lived experience of renting. If we are to improve the renting experience, we must pay attention to renters' concerns and issues and find a way to them heard.

# Chapter 2: Background and Context

## Australian Residential Tenancies Law Reform: A New Agenda for 2023 and Beyond

Dr Chris Martin, Senior Research Fellow, City Futures Research Centre, University of New South Wales

On 28 April 2023, Australian governments, meeting as the National Cabinet, agreed to develop a new law reform agenda to 'strengthen renters' rights across the country'.<sup>1</sup> Housing ministers are now tasked with drafting proposals to take back to National Cabinet in the latter half of the year.

Although no details have yet been produced, the announcement of the national reform agenda is remarkable for two reasons.

First, the agenda is being developed in collaboration by states and territories, co-ordinated through a national forum.

This contrasts with the experience of recent decades when states and territories have almost always gone it alone when reviewing and revising their residential tenancies legislation.

The result of that pattern in the past is tenancy laws that are increasingly divergent, while gaps have gone unaddressed. The divergences include key topics, such as security of tenure and whether landlords can give termination notices without grounds. The Australian Capital Territory (ACT) has recently amended its legislation to remove provision for without-grounds terminations, both at the end of the fixed term of a tenancy and during a periodic tenancy, while Victoria allows them only at the end of the first fixed term of a tenancy, but not for subsequent fixed terms

or periodic ('month-to-month') tenancies. Queensland and Tasmania allow without-grounds terminations at the end of a fixed term, and not periodic tenancies, so tenants can be on a string of fixed terms and still face without-grounds termination. Other jurisdictions still allow terminations without grounds at the end of fixed terms and for periodic tenancies, although the new New South Wales (NSW) Government has promised to remove them.

Another area of divergence is family and domestic violence (FDV). Until relatively recently, residential tenancy laws did not make any provision for tenants experiencing FDV. Over the past decade, all states and territories have amended their legislation to address FDV but taken different approaches. Tenants seeking to stay and remove a FDV perpetrator can do so through FDV order proceedings in NSW, Tasmania and the Northern Territory, (NT) but elsewhere must apply separately to the tenancy tribunal to end the perpetrator's tenancy. If they want to leave a tenancy early and end their liability, they can give a notice certified by certain professionals in NSW, Queensland and Western Australia, but must apply for court or tribunal orders in other jurisdictions. Three states have made changes to the rules about tenants' vicarious liability for damage and other breaches in FDV situations; in other jurisdictions, the usual rules still apply.

It is not only on substantial issues that laws are diverging: residential tenancies legislation looks and reads differently across jurisdictions. For example, Victoria's *Residential Tenancies Act* is about seven times the length of Tasmania's, and only a little shorter than Melville's *Moby Dick*. Although recent amendments have mostly improved the law for Victorian tenants, they have also made the Act a complex, difficult-to-navigate piece of legislation.

The second reason why the National Cabinet's decision is remarkable is that it expressly states that the reforms should 'strengthen renters' rights'. This contrasts with the theme of 'finding the right balance' between landlords' and tenants' interests that has marked most state- and territory-level reviews, and which has tended to produce only modest improvements while bigger issues of housing justice go unaddressed.

Australian residential tenancy laws are generally very accommodating of landlords and their interests. They present no barrier to landlords entering the rental sector: no training, registration or licensing requirements — all you need is a dwelling to let. (All states and territories require that the dwelling must be fit for habitation, but the onus is on applicants and tenants to police this.)

Tenancy laws also generally allow landlords to exit the sector when it suits them to do other things with

Figure 1. Without-grounds terminations across Australia: notice periods, where allowed

	NSW	Qld	SA	Tas	Vic	WA	ACT	NT
<b>End of fixed term</b>	60 days	2 months	28 days	60 days	90 days*	30 days	Not allowed	14 days
<b>Periodic</b>	90 days	Not allowed	90 days	Not allowed	Not allowed	60 days	Not allowed	42 days

\*60 days if the fixed term is less than six months. End of first fixed term only.

their properties, whether that's selling, or using the property for their own housing or other purposes (for example, Airbnb). Even those states that have removed or restricted the use of without-grounds terminations still allow termination on grounds such as preparing the premises for sale (Victoria and Queensland).

And as long as they are in the rental sector, landlords can increase rents in line with the general market level of rents for comparable premises. Most jurisdictions have limits on the frequency of rent increases (once in six or 12 months), but none limit the amount or rate of increase. The ACT has a legislated 'guideline' (1.1 times the rate of the rent index for Canberra in the Consumer Price Index), and landlords seeking rent increases above the guideline must apply to the tribunal and show the increase is not excessive to the general level of rents for comparable premises. This procedural step probably discourages increases above the guideline (which is a good thing) but it is not a firm cap on rents. The issue of rent increases has been conspicuously absent from state- and territory-level reviews.

Research commissioned by the Australian Housing and Urban Research Institute (AHURI) shows how accommodating Australian tenancy laws are of landlords.<sup>2</sup> In a survey of just under 1,000 landlords, a significant portion (44 per cent) said tenancy laws were a 'very important' consideration in their decision to invest; however, of landlords who



had disposed of a property, only 14 per cent nominated dissatisfaction with tenancy laws as 'very important' to their decision — placing tenancy laws last among a range of possible factors in disinvestment decisions. By far more commonly cited 'very important' reasons for disposing of a rental property were 'it was a good time to sell and realise capital gains' (50 per cent) and 'I wanted money for another investment' (47 per cent).

The research also put to the test the claim that tenancy law reform causes landlords to disinvest. Analysis of rental bond records found no statistically significant increase in properties exiting the Sydney and Melbourne sectors around law reform events in those states (the commencement of the *Residential Tenancies Act 2010* (NSW) and the start of the Victoria's laws reform review in 2015). In fact, Sydney property exits were slightly lower after the NSW reforms.

The most striking finding of the research was how frequently properties enter and exit the rental sector — whether the law is changing or not. In both Sydney and Melbourne, more than half of properties exit within five years of entering the rental sector. Properties churn rapidly through the sector, as it suits their owners — and as a result tenants are churned out of their homes.

While past law reforms have not caused landlords to disinvest, a stronger law reform agenda that is less accommodating of landlords' interests might have that effect — and that would be no bad thing. Among other reforms, the new agenda should strengthen tenants' security by getting rid of without-grounds termination, narrowing the scope of termination grounds, and ensuring tribunals can decline termination where it is not justified or would result in homelessness. It should also regulate rent increases, by caps or an ACT-style guideline. Landlords can either meet these standards or leave — and if they do leave, that's more room for would-be homeowners or for a different, better type of rental housing provider.

#### Endnotes

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2. Martin C, Hulse K, Ghasri M, Ralston L, Crommelin L, Goodall Z, Parkinson S and O'Brien Webb E 2022, *Regulation of Residential Tenancies and Impacts on Investment*, AHURI Final Report No. 391, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/finalreports/391>, doi: 10.18408/ahuri7124801.

Figure 2. Family and domestic violence provisions across Australia

	NSW	Qld	SA	Tas	Vic	WA	ACT	NT
<b>Tenant stays, removes perpetrator</b>	FDV order may terminate perpetrator's tenancy	Apply to tribuna, satisfy as to FDV	Apply to tribunal, satisfy as to FDV	FDV order may terminate perpetrator's tenancy	Apply to tribunal, satisfy as to FDV	Apply to court, satisfy as to FDV	Apply to tribunal, satisfy as to FDV	FDV order may terminate perpetrator's tenancy
<b>Tenant leaves, ends liability</b>	Tenant may give notice with evidence/certificate	Tenant may give notice with evidence/certificate	Apply to tribunal, satisfy as to FDV	FDV order may terminate tenancy	Apply to tribunal, satisfy as to FDV	Give notice with evidence/certificate	Apply to tribunal, satisfy as to FDV	FDV order may terminate tenancy
<b>Vicarious liability</b>	Tenant not liable for FDV damage	Tenant not liable for FDV damage	Per usual	Per usual	Tenant may apply to dismiss FDV-related termination proceedings	Per usual	Per usual	Per usual

# Reforming Residential Tenancy Acts in Australia: Enhancing Stewardship for Improved Rental Property Standards and Tenant Protections

Dr Tracey Dodd and Mr Nicholas Alex Gerald Marzohl, Adelaide Business School, the University of Adelaide

Residential tenancy laws play a crucial role in balancing the rights and responsibilities of landlords and tenants. However, to ensure safe and sustainable rental housing for all Australians, reforms to the various Residential Tenancy Acts (RTAs) across Australian states and territories — alongside recent RTA reforms<sup>1,2</sup> — must be considered to include a greater sense of care for the needs of each party (that is, stewardship). Key areas of RTA reforms that may increase stewardship — leading to 'other-oriented'<sup>3,4</sup> behaviours mutually benefiting all parties — include redefining tenant-landlord dynamics relating to safety and well-being standards and expectations, property upkeep and accountability and tenancy requirements and practices. Reforms of such nature are covered in the article below, wherein stewardship is used to highlight how such reforms provide benefits to all parties.

Reforming RTAs to establish minimum standards for rental properties and housing is vital to ensure safe and habitable living conditions. Reforms should address structural integrity, insulation, ventilation, sanitation, heating, cooling, and electrical safety standards. Additionally, streamlined maintenance and repair processes are necessary to address issues promptly. RTA reforms should focus on clear guidelines for landlord responsibilities, timely response requirements, effective dispute resolution mechanisms, and regular inspections, licencing, and standard compliance. Enhancing property stewardship is mutually beneficial,<sup>5</sup> providing tenants with habitable living conditions while maintaining property value. Additionally, stewardship-based educational initiatives<sup>6</sup> for landlords

and tenants fosters awareness and responsibility toward maintaining high-quality rental properties.

Addressing the issue of tenant responsibility for wilful damage requires a fair and balanced approach. Intentional misconduct and accidental damage need clear differentiation in RTA reforms, holding tenants accountable for damage — caused by deliberate action or negligence — and landlords responsible for separately accounting for reasonable wear and tear. Mechanisms such as comprehensive entry and exit inspections, documentation of evidence, and fair dispute resolution

processes aid in attributing liability and protecting both parties' interests.

Accountability for, and deterrent against, non-compliant behaviours may be promoted through a landlord and agent 'blacklist'. Reforms should establish publicly accessible databases listing parties (that is, landlords) who have breached RTA legislation, yet with fair and transparent appeal processes to rectify any past breaches before being listed. This enables prospective tenants to make informed decisions, avoid engaging with known culprits for misconduct, and provide a greater sense of security.



Reforms in bond requirements — such as establishing clearer guidelines on the permissible reasons for withholding a bond — should protect landlords’ interests, ensure tenants’ financial security, and expedite dispute resolution processes. Reforms should introduce reasonable limitations to prevent excessive rent hikes and unjustifiable additional costs while establishing regular intervals for rental increases, therein providing tenants with predictability and affordability in their housing arrangements.

RTA reforms should prohibit rent bidding and require fixed rental prices in advertising to enhance rental market transparency and fairness. This will prevent competitive rental bidding, often resulting in inflated rental prices. Fixed rental prices allow tenants to assess their affordability and make informed decisions without the pressure of competing with others. This reform supports a more equitable rental market and promotes stability, with stewardship practices enhancing housing security among renters.<sup>7,8</sup>

RTA reforms should be developed to ensure a fair and balanced approach — considering property damage, hygiene and other reasonable conditions — on allowing pets in rental properties to improve tenant and pet well-being. Such considerations may include mandates to gain consent, provision of detailed pet agreement (including pet-related responsibilities) and implementing mechanisms for dispute resolution. In stewardship of the property<sup>9</sup> tenants can be expected to maintain and care for the property — including all pets — as their own, with such an expectation being achievable through clear guidelines and open communication between both parties.

RTA reforms should incorporate measures to protect adults and children experiencing family violence. This can include provisions allowing victims to terminate a lease without financial penalties, ensure privacy and security, and implement mandatory recognition and response family violence training for landlords and property. Collaborative efforts

between the rental sector, support services, and relevant authorities are crucial to establishing comprehensive measures prioritising the safety and well-being of vulnerable tenants.

Reforming RTAs in Australian states and territories is crucial to achieving fair and equitable outcomes for tenants, landlords, and agencies. Drawing on the idea of stewardship, we argue that these reforms can enhance the rights and responsibilities of landlords and tenants. Specifically, stewardship can manifest a higher sense of care between landlords and tenants. Reforms to integrate stewardship into RTAs seek to promote fairness and contribute to a more sustainable and equitable rental housing sector in Australia. Collaboration between policymakers, industry stakeholders, and tenant advocacy groups is key to shaping effective reforms that benefit landlords and tenants. As outlined in our article, the recommendations provide direction to proactively address the prevalent issues facing tenants and landlords, address immediate issues and instil effective processes to ensure the longevity of sustainable housing practices in Australia.

#### Endnotes

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# The Opportunities and Limitations of Tenancy Reform for Better Homes

Joel Dignam, Executive Director, Better Renting

It is not a great time to be a renter. While renting is earning attention in our newspapers and in commentary on the Federal Budget, this is largely due to conditions somehow managing to get even worse. Affordability is a particular challenge, but this intersects with security of tenure and also has implications for whether people can secure a decent home in the first place.

In this context, reforming Residential Tenancy Acts (RTAs) is one pathway to help improve conditions. We have seen a lot of talk and even a bit of action in this space over the last half decade, with many jurisdictions enacting a variety of reforms in response to the changing demographics and politics of this issue.

At the same time, we have seen the limitations of this approach. You cannot do everything just by reforming RTAs. A reluctance to enforce new or pre-existing laws and a very tight rental market make it hard for tenancy reform to do the heaving lifting on its own when

it comes to making renting better for the growing number of people in Australia who depend on it.

So, in this article, I will first explore what law reform can do. I will then turn to some of the limitations of law reform and explore other avenues that can help to improve outcomes for people who rent.

## Tenancy Reform Grants More Legal Power to Existing Renters

While renters struggle with affordability, instability, and substandard homes, governments can improve conditions by reforming RTAs to strengthen renters' legal entitlements.

Central to this is ending unfair evictions — 'no-cause' or 'without-grounds' terminations.

Currently, numerous jurisdictions allow a landlord to end a tenancy without having to provide any reason. Queensland and Tasmania allow this at the end of a fixed-term, and Victoria allows it only at the end of the first fixed term. Only the Australian

Capital Territory (ACT), as of 1 April this year, requires a landlord to have a good cause to end a tenancy.

This matters because of its direct relationship to stability: fewer grounds for termination means fewer forced moves and more renters able to stay in their homes and avoid the significant economic and non-economic costs of moving. It also has implications for affordability, as many landlords are using unfair evictions to kick out incumbent tenants to see what rent price they can fetch on the open market. More profoundly, the threat of an unfair eviction is a sword of Damocles over the head of every renter, with the fear of such retaliation making it difficult for renters to exercise their *de jure* rights. As such, ending this practice adds to the efficacy of all other existing and potential renter protections.

Here, a key jurisdiction to watch is New South Wales. Prior to the recent state election, the then Coalition Government committed to limiting no-cause terminations to the end of a fixed-term, like Queensland and Tasmania. The then Labor Opposition promised to go further. Whether they make good on this promise is a key test of whether they are serious about standing up for renters. As the experience from Queensland shows, if you get this wrong, the industry will happily exploit every available loophole.

But maybe your concern is excessive rent increases. In this case, why not just limit rent increases? In the last 12 months, rent caps have gone from the margin to the mainstream as a viable short-term solution to landlord profiteering. As an example of what is possible, a landlord in the ACT can increase rent during a periodic tenancy by no more than



110 per cent of the Consumer Price Index (CPI) for rents, unless they obtain tenant permission or sign-off from the Tribunal. This shifts the onus from the tenant to appeal against an excessive increase to the landlord to justify an excessive increase. A stronger system would also apply to lease renewals, would apply between tenancies ('vacancy control'), and might set a threshold based upon a fixed percentage amount or the generic CPI. As it stands, the Tribunal is likely to approve an increase where the landlord can show it is in line with market rates. So, while this change is a start, and an example for other jurisdictions, more is needed.

A third issue when you do not have enough rental homes is people being compelled to live in substandard properties. While jurisdictions do have existing requirements for properties to be habitable, this has historically been understood as being a very low floor. In practice, many renters deal with issues like mould and damp or are forced to live in properties that are virtually uninhabitable in the heights of summer or the depths of winter. Stronger minimum standards could have explicit requirements around energy efficiency, mould prevention and electrical safety.

While people on lower incomes will tend to live in worse rental homes, we must still ensure at the very least that every property is going to keep people safe and healthy.

As I have described above, tenancy reform can improve housing conditions by reducing the risk of retaliatory evictions, limiting excessive rent increases, and guaranteeing a minimum standard of housing for all renters. In practice, however, there are significant gaps between renters' *de jure* entitlements and their *de facto* experiences. In the next section, I turn to the limitations of rental reform.

### Limitations

A key factor influencing the efficacy of law reform is the extent to which governments enforce their own laws. 'No grounds' evictions may be abolished, but what's to stop landlords making false claims that allow termination on other grounds? What is to discourage a landlord from trying on an excessive rent increase and hoping tenants

don't know their rights? Who is checking that rental properties comply with minimum standards?

An unfortunate lesson of history is that RTA reform will not change behaviour by fiat. Yes, it will make a difference. But it will make much more of a difference if landlords and agents feel that they face a realistic chance of being caught and penalised for any wrongdoing. Even a token amount of enforcement would go some of the way to creating a deterrent for other infractions.

But there is a more fundamental problem here. Even with stronger laws, in a tight rental market tenants are unlikely to risk a negative rental reference, and landlords can shirk their responsibilities with the knowledge that their tenant is unlikely to move out, and that it would be easy to replace them if they did. Landlords still have vast extra-legal power.

This is what is so important about the idea of having much more housing available. Not only could this do wonders for affordability, increased rental availability would also do wonders for the impact of RTAs and the whole range of tenant experiences. If landlords felt market pressure to provide a better service, you can bet it would be easier to have a pet, to wall-mount a bookshelf, to get a ceiling fan installed or a heater repaired.

Fundamentally, tenancy reform cannot ensure that everyone can access the affordable housing they need, nor can it create a dynamic where landlords are proactively following the law. However, a greater supply of good rentals can complement tenancy reform by addressing the power imbalance and helping to give more leverage to renters.

This could be achieved through more private rental housing. But it can also be achieved by governments taking some responsibility for buying or building housing and renting it out. In addition to having a direct effect on supply, this could create a public landlord that competes with amateur private landlords and push them to be more professional and improve their conduct. For this to work best, public housing should exist at scale and be

made available for all, regardless of income — which would also make it more financially self-sustaining.

Just changing tenancy laws can only get us so far. In addition to law reform, governments need to enforce laws to deter non-compliance. Complementing this, addressing rental scarcity will shift the market power away from landlords and towards renters — something governments could achieve by playing a larger role as public landlords.

### A Culture of Excellence

If tenants have more *de jure* rights and more power to exercise them due to a shift in the housing system, what remains?

The final piece is our culture. Our culture shapes our tenancy system — but it is also shaped by our tenancy system. Different laws and a different rental market would, over time, result in a different kind of landlord. This landlord may still be self-interested. But perhaps they would also have a sense of a weighty responsibility and a certain duty of care to the people whose rent they take. They might still be an amateur landlord keen to own an investment property, but they would understand that this investment is also somebody else's home. Is this so unrealistic? It didn't take too long for landlordism to become valorised in Australia. Maybe it needn't take too long for that process to be reversed.

In summary then, we should continue to improve conditions for renters by pursuing incremental reforms to RTAs. This is complemented by promoting enforcement action and pushing for governments to aim for higher vacancy rates — something they can do through greater provision of public housing. An important effect of this, which also contributes to making the whole system work better, is a changed culture around renting and landlordism. The place you rent becomes your home. The more landlords see it that way, and renters are empowered to act that way, the better off we will all be.

Joel Dignam is the Executive Director of Better Renting, a community of renters working together for stable, affordable, and healthy homes. They are coordinating the 'Healthy Homes for Renters' collaboration for minimum energy efficiency standards for rental homes. <http://betterrenting.org.au>

# Raising the Bar: Energy Efficiency Mandates in Rental Homes and the Role of Residential Tenancy Acts

Bernadette Barrett, National Coordinator of the Healthy Homes for Renters Collaboration

## Introduction

When Tourism Australia is putting together its latest campaign to encourage travellers from around the world to come 'say G'day', it would never think to show videos of the millions of Australians who shiver in their freezing homes over winter or flee their homes to seek refuge in air-conditioned shopping centres in summer. Even though this is as much of an Australian experience as trekking around the base of Uluru or enjoying a game of backyard cricket, it's not something you would advertise to the world.

This shameful side of Australian culture is in part caused by a lack of vital regulation across Australian states and territories, regulation that would make rental homes healthy, affordable and safe. Our homes are the centre of our world, they are the foundation of our lives — yet many of the eight million renters are being forced to live in homes that are woefully substandard because of this lack of regulation.

We live in a country that sees the most extremes in weather and temperature — from the Kimberley in Western Australia where we saw 50°C days in 2023 to nearly 0°C days in Tasmania. Our homes are simply not keeping us safe during these extreme temperatures. But it's not just those extreme temperatures that are dangerous; our homes are failing us even during moderate weather. The World Health Organization tells us that our homes should sit within a temperature range of 18°C to 24°C to keep us healthy.<sup>1</sup> So, even when it's 12°C outside and only 15°C inside, our home is failing to keep us safe.

This is why a range of organisations across the tenancy, community and climate sectors got together to form the Healthy Homes for Renters collaboration — a collaboration of more than 120 Australian organisations fighting for minimum energy efficiency standards for rental homes in all states and territories. Because everyone deserves a healthy home. Because governments ought to be doing more to ensure that housing, an essential service, is being provided at a minimum standard that keeps people safe.

## The Problem

Energy inefficient homes are expensive to run, they're bad for the environment and they are detrimental to the health and wellbeing of the people who live in them. Renters in Australia are in a lose-lose situation because not only have governments failed to regulate energy efficiency standards in rental homes which would require landlords to improve the energy performance of their homes, renters also lack the power and agency to make these positive changes themselves.

This has resulted in a system that sees renters forced to accept substandard and unhealthy homes, with no power to make improvements.

Australian homes on average are inefficient: the average Australian home reaches just 1.8 out of 10 stars on the Nationwide House Energy Rating Scheme (NatHERS) energy performance rating,<sup>2</sup> but unfortunately renters' homes are often worse. Rental homes are less likely to have energy efficient features and appliances, including appliances that manage temperature. While 70 per cent of owner-occupied homes have ceiling insulation, just 30 per cent of rental homes have this energy saving feature.<sup>3</sup>

Homes that are too hot or too cold make people sick. Homes that are too hot cause increased risk of dehydration, heatstroke, heart and kidney disease, and worsening mental health. We see a rise in emergency room presentations during hot weather along with an increase in family and domestic violence. When homes are too

cold, we see similar issues — poorer respiratory and cardiovascular health and adverse mental health impacts. In the worst-case scenarios, people die. A study released in 2015 showed that in Australia, 6.5 per cent of all deaths are attributable to cold, compared to 3.7 per cent in Sweden.<sup>4</sup> People die from cold in Australia more than they do in Sweden — a country that frequently reaches sub-zero temperatures.

There is also a financial cost to renters. As energy prices continue to rise, homes that are more inefficient are



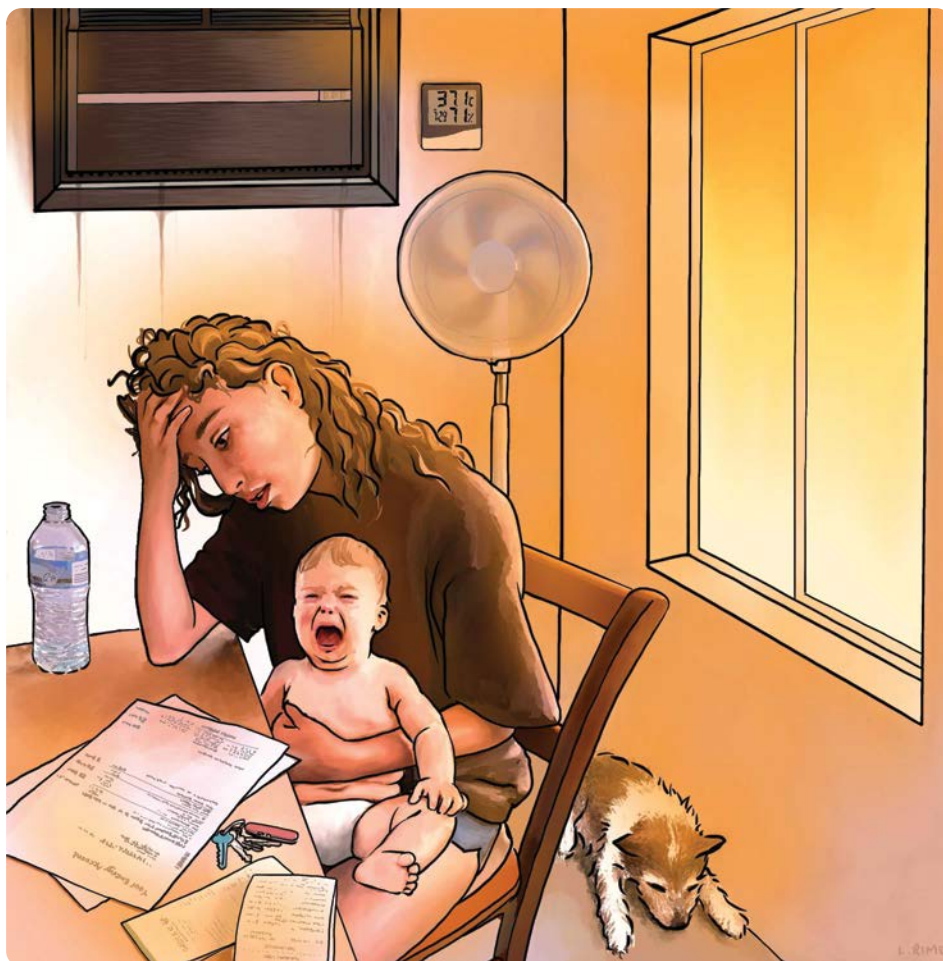
putting renters further into energy poverty — unable to afford to heat and cool their homes or sacrificing on essentials such as groceries and medication in order to heat and cool their homes. People who rent typically have lower incomes; this means they are spending more of their total income on energy bills or, what typically happens, choosing to not use heating and cooling so are dealing with the adverse consequences of living in unhealthy homes.

### The Solution

Governments can solve this problem. We can use Residential Tenancy Act reforms, that are happening right across the country, to mandate minimum energy efficiency standards for rental homes. Victoria and the Australian Capital Territory (ACT) have already begun this work: in March 2023, Victoria introduced its first minimum energy efficiency standard for rental homes, requiring all rental homes to have a minimum two star energy efficient fixed heater in the main living room. The ACT came next in April 2023, introducing a minimum requirement for R5 ceiling insulation in rental homes with insulation below an R2 rating.

The work has been done to show what a solution looks like. In late 2022, the Healthy Homes for Renters collaboration released the *Community Sector Blueprint: a National Framework for Minimum Energy Efficiency Rental Standards* (the Blueprint),<sup>5</sup> drawing on the expertise of the nearly 130 organisational members of the collaboration. It provides an outline of the best practice principles for a framework for minimum energy efficiency standards for rental homes and goes into detail about the models a framework could implement, the certification and compliance requirements as well as the legislative requirements to make an effective framework in all Australian states and territories. In all states and territories, the relevant Residential Tenancy Act plays a role in delivering these standards.

The information and solutions to the problem of inefficient substandard housing are out there for governments to use. Minimum energy efficiency standards for rental homes are the low hanging fruit that will do a lot of good. The benefits of upgrading the energy



efficiency of rental and low-income households are substantial. Sustainability Victoria conducted a program that provided low-cost energy efficient retrofits to low-income households, averaging at around \$2,800 per household. The results showed an overall improvement in people's reported quality of life, better respiratory health, better mental health and improved wellbeing. It also showed that for every \$1 saved on energy, \$10 was saved in health — which translated to \$887 per person during the winter period and meant that, within just three years, the upgrades would be cost saving.<sup>6</sup>

### Conclusion

State and territory governments need to update their Residential Tenancy Acts to implement minimum energy efficiency standards for rental homes. This is a cost saving measure. It is also a life saving measure.

For far too long, renters have been treated as second-rate citizens, denied the opportunity to have a home that provides them with comfort and keeps them healthy. By incorporating minimum energy efficiency standards into our Residential Tenancy Acts, we can use

legal reforms to enhance renters' well-being, reduce the financial burdens on those with low incomes, and ensure that every individual has a house that truly feels like home.

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# Chapter 3: Residential Tenancy Act Reform: The National Picture

## *The Australian Capital Territory*

# Are We There Yet? Residential Tenancy Act Reform in the Australian Capital Territory

Deb Phippen, Research and Policy Coordinator, ACT Shelter

On 1 April 2023, the Australian Capital Territory (ACT) Government proudly announced the latest of a series of significant amendments to the *Residential Tenancies Act 1997* (RTA) that culminated in the genuine elimination of all no-cause termination of tenancy agreements. This is a nation first and was due in no small part to years of advocacy and a change in the composition of the ACT Government.

As is the case in many other jurisdictions, there have been numerous reviews and changes to our RTA over the years. The reforms benefiting tenants that are highlighted below began in November 2019 after a lengthy three-year consultation process reviewing specific renting and tenancy issues. The reforms have resulted in dramatic changes in the lives of some renters in the ACT, and the possibility of longer-term change for many more, as renters (as well as housing providers) fully appreciate, come to understand and accept them. As the National Cabinet currently looks at tenancy rights (for the first time) across Australia, the real questions remain: what has been the impact of these changes? Have they achieved the desired result? Are there tenancy reform issues that still need to be addressed?

### An Overview of the Changes

Below are the most significant reforms, plus some statements about their key consequences. Further details about the changes are available on the ACT Justice and Community Safety Directorate website.<sup>1</sup>

#### November 2019

Amendments focused on excessive rent increases, pets, minor home modifications and providing a fairer method for calculating the cost to a tenant who uses a break lease clause.<sup>2</sup>

- **Excessive rent increases** — since its commencement in 1997, the RTA has included an ability for tenants to have excessive increases reviewed by the ACT Civil and Administrative Tribunal (ACAT) and contained a formula that has been used as a guide to determine what is excessive. However, the onus had always been on the tenant to make an application for a review. This was an issue constantly raised by tenant advocates because renters are more unlikely to (a) know about the process and formula and (b) assert their rights.

The 2019 changes addressed this by including the following:

- A new requirement for the landlord to seek ACAT approval of any rental increases above the prescribed amount if the tenant does not agree.
- The prescribed formula changed from 20 per cent to 10 per cent greater than the rents component of the housing group of the Consumer Price Index for Canberra.
- A lessor does not have to seek ACAT approval if the tenant and lessor agree to the increase.

*Outcomes* — the new onus on the landlord to seek approval for an excessive increase in rent is very significant. However, it is substantially weakened by the provision that it is only if the tenant refuses, that the landlord must seek approval from ACAT. In this rental market, tenants are very unlikely to refuse a rent

*increase notice, or even know that they can do so. It also remains difficult to access the formula and know how to apply it.*

- **Tenants' right to have a pet** — the standard residential tenancy terms<sup>3</sup> now express this right but add that a landlord can require their written consent, noting that there are limits to refusing consent. The Act sets out the timeframes and process for this.

*Outcomes* — there is community awareness of the right to have pets. However, the wording of the standard terms has provided landlords and agents with the opportunity to work around the provisions by omitting references in their documents to the limits and the process for refusal as detailed in the Act. They also ask about pets in applications and just refuse people with pets because they don't need to provide a reason for not accepting a person (unless there is discrimination under discrimination law).<sup>4</sup>

- **Tenants making minor modifications to their homes.**

*Outcomes* — as with the pet clauses, there may be some awareness of some changes but little real understanding and many examples of leases that omit details about the processes.

#### August 2020

Amendments covered eight areas,<sup>5</sup> the most notable being:

- Upfront costs for tenants (the rent in advance limit) changed from four to two weeks' rent in advance.
- Introduction of the mechanism for the Attorney General to



And it feels like home 1 by Novie

Image Courtesy ITD

prescribe minimum standards for rental properties by regulation rather than going through the process of changing the law.

They are standards in relation to:

- physical accessibility
- energy efficiency
- safety and security
- sanitation
- amenity.
- Rights for tenants when their rental home is being sold:
  - Limits on access to the property for inspections
  - A new right for tenants to terminate a fixed term lease early where the sale process is too onerous.
- Transitions to social housing or aged care: tenants can terminate their leases at short notice if they have accepted a place in social housing or aged care.
- The notice period for tenants being required to move out

because the landlord (or someone close to them) wants to move in was extended from four weeks to eight weeks.

### March 2021

These amendments focused on new provisions for share housing and some changes to long term occupancy provisions for renters not defined (and protected) as tenants.<sup>6</sup> They included:

- Share housing arrangements were included in the Act for the first time, in particular co-tenancies (where tenants are on the same lease). Issues regulated now include:
  - joining a co-tenancy
  - leaving a co-tenancy
  - disputes in co-tenancies
  - bonds and condition reports in co-tenancies and share housing.
- Changes for renters not defined as tenants — referred to as occupants (people in crisis accommodation, student accommodation associated with education providers, boarding

and lodging arrangements, supported housing programs, and residing in caravan or residential parks) — included:

- Changing the definition of what an occupancy agreement is, and the circumstances in which one may be used.
- Creating mandatory minimum principles for occupancy agreements.
- Introducing a security deposit (bond) framework for occupancy agreements.
- Introducing enforceable conciliation of occupancy disputes through the ACT Human Rights Commission.
- Creating specific rules in relation to occupancy agreements in residential parks.
- Creating specific rules in relation to education provider occupancy agreements.

### 1 April 2023

Following the 2020 ACT Election, ACT Labor and the ACT Greens signed a Parliamentary and Governing Agreement that specifically included ending no-cause evictions as a priority reform. No-cause evictions had not been a priority for the previous Labor Government but was recognised and promoted as one by the ACT Greens during many years' work with tenancy advocates and other community organisations. In 2021, another consultation process commenced<sup>7</sup> to address four key issues: ending no-cause evictions; prohibiting rent bidding; establishing minimum standards for rental properties; and ensuring renters have the freedom to grow their own food and to compost.

The resulting amendments commenced on 1 April this year:<sup>8</sup>

- Removing the 26 weeks no-cause termination provision. Unlike other jurisdictions, fixed term termination was not introduced, however there are new grounds for termination specifically for public and social housing providers.

- Strengthening of retaliatory provisions.
- Prohibiting landlords and agents from soliciting rent bids and requiring that rental properties must be advertised at a fixed rental rate. Tenants are still able to offer to pay amounts above the advertised rent.
- A new energy efficiency standard for ceiling insulation in rental homes. New rules to support compliance with the new ceiling insulation standard and any future minimum housing standards for rental homes.
- Tenants now have a greater freedom to grow their own food and compost.

### What Has it All Meant?

As highlighted above, there have been significant positive changes to our tenancy law over the past few years in the ACT; the most important issue relating to them now is whether these reforms have resulted in the intended outcomes for renters. The reality is it has been a bit of a mixed bag. That said, the following issues can be addressed.

Experience reported by tenants and readily seen in advertising and rental agreements demonstrates structural and drafting issues that can be rectified. As already noted, provisions for pets and modifications are spread over both the standard terms and the RTA, allowing for practices that omit details of the full extent of the new rules.

In some instances, the desire for 'balance', choice, and not interfering with the market has led to the watering down of provisions to the extent that they are undermined. To ensure choice, landlords are able to propose any rent increase so that the tenant can choose to accept it and it is only if they refuse that landlord must go to ACAT. This completely ignores the reality of the power imbalance between the parties and a tenant's fear of retaliation for asserting their rights. Similarly, the prohibition of rent auctions does not apply to a tenant initiating bidding: this does not stop the practice and the subsequent distortion of rents and the possibility of rents being unsustainable.

The removal of no-cause evictions has resulted in new grounds that apply only to tenants in public and community housing, thereby creating inequities across tenures.

Ineffective communication and community education has resulted in confusion and misunderstandings of changes. The best law in the country is only effective if the relevant people are aware of and understand it. This year for the first time, in addition to some media and social media, notices of the changes were distributed by the Office of Rental Bonds to renters and landlords as well as real estate agents and other providers.

Unfortunately, more detailed information is not easily accessible and not all up to date, including the ACT Government publication, *The Renting Book*<sup>9</sup> (it is being updated). In recognition of this, ACT Shelter is conducting a review of resources available to ACT renters as well as those providing housing.

This lack of awareness is exemplified by the continuing lack of understanding across the community of basic elements of the RTA that affect the efficacy of the law:

- There is a pervasive belief that the ACT law allows a landlord (housing provider) to terminate a tenancy agreement at the end of the fixed term. This has never been the case: it is only a tenant who can terminate for this reason and, if they don't take any action, it automatically becomes an ongoing (periodic) agreement.
- Similarly, there is a belief that a fixed-term agreement has to be 'renewed', thereby assuming the tenant must rely on the landlord's permission to remain in the premises.
- The lack of an easily accessible standard agreement means no consistency for tenants or landlords (and other providers) and the mistaken belief that if a tenant signs anything they are bound by it.

As well as the issues identified with our reforms there remain

significant outstanding issues, including but not limited to:

- Occupancy provisions are not sufficient to protect the most vulnerable.
- Rental applications are not regulated, and this affects the use of private information as well as access to housing.
- The RTA does regulate renters' behaviour, and for renters the consequence is ultimately the loss of home. However, the consequences for housing providers is not proportional. There are few penalties in the RTA to act as serious disincentives for breaching provisions.

While on the face of it the ACT might be nearly there in relation to adequate tenancy and rental laws, we still have some way to go.

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# Rental Reform in South Australia: It's Time for Change

Rachael Pearse, Advocacy Project Officer, Uniting Communities

### Where Are We Now/ How Did We Get Here?

There has been increased pressure to improve the rights of tenants in Australia. State and territory governments are recognising the detrimental impact that poor rental laws have on tenants. As a not-for-profit organisation, Uniting Communities recognises that some of the most disadvantaged people are private-sector renters, making up a significant portion of the clients we support in the community.

The current review of the *Residential Tenancies Act 1995* in South Australia has been long awaited, amid concerns it provides very few protections for tenants. The last review was nearly a decade ago in 2014 when the median rent in metropolitan areas was \$300 compared to \$430 in 2023.<sup>1</sup>

Unfortunately, for many people, renting is no longer a stepping stone to home ownership but a destination as the prospect of owning a home is now out of reach. It is crucial that laws affecting rental properties are suitable for long-term housing.

When considering issues with the rental market it is important to remember that rental properties are also homes and that everyone has a right to a roof over their head. Rental properties are unlike other financial investments as they directly impact the life of an individual, including their wellbeing, health and safety.

Some argue that rental reform disincentivises landlords out of the rental market, although the evidence suggests otherwise. A recent report by the Australian Housing and Urban Research Institute found no evidence that properties were removed from the private rental sector following the

introduction of tenancy law reforms in New South Wales and Victoria.<sup>2</sup>

Following a South Australian Government forum in August 2022, the Consumer and Business Services department released a discussion paper in November 2022 and opened a consultation on the Act. Over 150 submissions and 5,000 survey results were submitted, highlighting the demand for the Act to be amended.

On 8 March 2023, the *Residential Tenancies (Protection of Prospective Tenants) Amendment Bill* was introduced to the House of Assembly and focused on rent bidding, rental application forms and data protection. Uniting Communities acknowledged the bill included enhancements to the Act, however rent bidding was only limited instead of banned. The bill does not prevent prospective tenants from offering more than the advertised price. Due to a highly competitive rental market, prospective tenants who can afford to will continue to offer more than the advertised price locking lower-income tenants out of the rental market.

The State Government has indicated that further amendments to the Act will be introduced to Parliament in the second half of 2023. The most significant reforms that will have a long-lasting impact on affordability, security and safety include ending no-cause evictions, limiting rent increases, implementing minimum energy efficiency standards, allowing pets in rentals and provisions for domestic violence victims.

### Priority Reforms

#### No-cause evictions

It is astonishing that current laws do not protect tenants from being

unfairly evicted. No-cause evictions are referring to section 83 and 83A of the Act that allows a landlord to evict a tenant during a periodic lease or at the end of a fixed term agreement for no reason, even if the reason is ill-intentioned.

Retaliatory evictions are a reality for many tenants who have received an eviction notice after reporting an issue with their rental property. Tenants are living in unsafe and unhealthy housing as they fear a retaliatory eviction if they make a complaint. Due to the current unaffordability of the rental market, an eviction can lead to homelessness, and should only be allowed for legitimate reasons.

#### Limiting rent increases

Currently in South Australia a landlord can increase the rent of their property once every 12 months, however there is no limit on how much they increase it. Excessive rent increases are contributing to the unaffordability of the rental market. The Act does not define what a 'reasonable rent increase' is and currently places the responsibility on the tenant to apply to the South Australian Civil and Administrative Tribunal (SACAT) if they think the rent increase is excessive. Tenants are currently avoiding SACAT hearings due to the fear of retaliatory eviction.

Evidence suggests that some property owners are increasing rent amounts more than necessary. For new tenants, 2.5 per cent of rent increases were over 10 per cent in June 2019 compared to 68.2 per cent in February 2023.<sup>3</sup> For existing tenants, only 1.7 per cent of rent increases were over 10 per cent in June 2019 compared to 24.9 per cent in February 2023.<sup>4</sup> This data highlights a massive shift in the rate of rent increases in Australia. Rent increases



# Residential Tenancies Act Reform is a Good Start

Alice Clark, Chief Executive Officer, SA Shelter

The South Australian review of the *Residential Tenancies Act* (the Act) commenced in late 2022. A workshop was delivered by the Minister responsible and the Consumer and Business Services Commissioner. Attendance at the workshop was by invitation and included peak bodies, service providers and public servants.

I was pleased to see that a broad range of issues was canvassed at the workshop, including rooming houses, also covered within the Act, as the for-profit provision of this accommodation is not suitable or safe for our most vulnerable citizens who have few or no other options to access shelter. There has been no action taken over many years on improving the regulation of the for-profit sector rooming house sector.

After the workshop, a discussion paper was released by Consumer and Business Services accompanied by an online platform for citizens to answer survey questions related to the discussion paper. Unfortunately, the discussion paper was much more limited in scope than the issues discussed at the workshop and posed specific, perhaps leading, questions for participants.

Anecdotally there were 5,000 survey responses and approximately 150 submissions to the discussion paper. Shelter SA and others have asked for the results of the survey and the submissions to be made public. We were still awaiting the outcomes of the process at the time of writing.

Shelter SA worked with members, other stakeholders and the media to prepare for the review, submissions and advocacy around improving the Act. That included collaborating with the Real Estate Institute of South Australia (SA)

on areas of agreement to provide information for the Minister in an attempt to avoid some of the usual debates we hear between pro-tenant and pro-agent groups.

Public debate on the review of the Act seemed to centre on improving affordability and availability in the private rental market, but this rhetoric does not recognise that there is little that rental legislation can do to improve either unless regulators are willing to impose rent controls or somehow change the rules around who can own investment properties and encourage greater investment. Rent control has already been ruled out by the South Australian Government; instead, defining acceptable rent increases has been recommended, similar to the Australian Capital Territory legislation.

The most positive improvement to assist with affordability has already been achieved. Before 1 April 2023, landlords were able to claim residential bonds equivalent to a maximum six-weeks' rent when the weekly rent was more than \$250, with only a four-week bond entitled to be claimed for properties falling below that threshold. The bond threshold has been raised to \$800 to ensure that for the majority of rental properties in South Australia, only a four-week bond is required.) This change reflects increased rents and will assist some people with affordability when they are seeking a new home.

Rental laws can, however, improve security of tenure in the market through the abolition of no-cause evictions and the non-renewal



of leases without cause. To date, the South Australian Government has demonstrated little appetite to address these areas.

The first recommendations for change have been very limited. The abolition of rent bidding has been touted, to prevent real estate agents from conducting rent auctions. However, there is nothing to prevent prospective tenants from offering higher rents, nor to prevent agents from accepting them or erecting signs at or near the properties containing a range of rent amounts.

There are vague ideas about limiting the personal information that rental applicants are required to provide. While in theory this is a good idea to attempt to prevent discrimination and possible data breaches, it does not go far enough. Anecdotally, people are being required to provide all sorts of private information just to attend open inspections. Shelter SA has recommended limiting the requirement to provide identification to approved applicants only and not retaining data beyond the initial lease.

Shelter SA has urged the State Government to expedite the next raft of improvements, but we are still hearing arguments that too much regulation of a private market will encourage investors to sell their rental properties. There is no evidence base for this argument.

If sales did start to occur in very large numbers, given the average length of owning a rental property is five years for 'mum and dad investors' anyway, it could disproportionately affect people living on low incomes who are locked out of home ownership and investment markets and reduce rental supply. But again, there is no proof that legislative changes will cause a high level of sales.

Improving renting legislation is only part of the story for renters. Tenant access to their legal rights is another matter entirely. Shelter SA's 2022 rental exit survey showed that only 2 per cent of respondents accessed the South Australian Civil and Administrative Tribunal (SACAT) to challenge

decisions made by owners and agents. South Australia is the only Australian jurisdiction that does not provide State Government funding to its Shelter organisation, a peak body for homelessness or a tenant union, which means that tenant and citizen voices, along with systems advocacy, are curtailed.

There is much to be done to improve tenant rights in the private rental market, redress the power imbalance that exists between owners of an investment vehicle and those who need a place to call home, and systemic advocacy.

Government investment in social housing is key to increasing the supply of rental housing and addressing rental affordability and availability challenges, but even with governments who are acting in this space, the time lag between the crisis we have now and when we will start to see any improvement is many years into the future. All government levers should be on the table to help citizens achieve a safe, affordable place to call home.



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# Residential Tenancies Reform in Western Australia

Penny Lipscombe, Director Legislation and Policy Consumer Protection, Department of Mines, Industry Regulation and Safety, Western Australia

In Western Australia (WA), the *Residential Tenancies Act 1987* is administered by the Department of Mines, Industry Regulation and Safety — Consumer Protection division (Consumer Protection). In December 2019 Consumer Protection began its review of the Act by releasing a consultation paper (called a Consultation Regulatory Impact Statement or C-RIS) which sought feedback on a broad range of potential reform options across the tenancy lifecycle, from before the tenancy begins until termination of the tenancy agreement.

In response to the consultation paper, Consumer Protection received over 350 written submissions from a diverse range of stakeholders, including individual tenants, landlords, tenant advocate groups, property industry representative groups and government agencies. Most tenants and their advocates supported changes that would increase tenants' rights and most landlords, agents and their advocates resisted these changes.

Due to delays caused by the COVID-19 pandemic, a few topics from the consultation paper were chosen for priority implementation in a first tranche of reforms, with remaining topics to be progressed later.

On 26 May 2023 the WA Government announced the first tranche of amendments to the Act.

These changes are as follows:

- Landlords and property managers/agents will be prohibited from encouraging tenants to offer more rent to secure the rental property (known as rent bidding). If they wish, tenants may

still offer to pay more than the advertised rent.

- Rent may only be increased once in a 12-month period, instead of once in a six-month period.
- Tenants will be allowed to keep a pet or pets in a rental premises in most cases. Landlords will be able to refuse the tenant's request to keep a pet, but only when it is reasonable to do so. Landlords will also be able to place conditions on the keeping of a pet.
- Tenants will be able to make certain minor modifications to the rental premises, such as painting an internal wall and hanging paintings and the landlord will only be able to refuse consent on certain grounds.
- Release of security bonds at the end of a tenancy will be

streamlined, allowing tenants and landlords to apply for the bond separately.

- Disputes over bond payments, as well as disagreements about pets and minor modifications, will be referred to the Commissioner for Consumer Protection for determination. This will provide an additional avenue for the resolution of tenancy disputes and reduce the number of disputes heard by the Magistrates Court (currently the only forum for tenancy dispute resolution).

Consumer Protection is developing a second tranche of recommendations for Government consideration on outstanding issues discussed in the C-RIS.

A Bill giving effect to the first tranche of changes is now being drafted for consideration by the WA Parliament.



# The Northern Territory's Residential Tenancy Act: Some of the Worst Protections for Tenants in Australia

Alex Gibson, Housing Projects Manager, NT Shelter

It is a common complaint amongst renters in the Northern Territory (NT), and widely acknowledged by those familiar with the Territory's tenancy laws, that the *Residential Tenancies Act 1999 (NT)* (the RTA) has some of the worst protections for tenants in Australia.

NT tenants are at the mercy of relatively short notice periods around terminations of tenancies, the potential for rent increases every six months, no limit on the degree of rental increases, no minimum standards, scant protections for victims of domestic and family violence, and no restrictions on rent bidding.

Newcomers to the NT are often shocked by the antiquated and landlord-favouring provisions in the RTA. That this is the case is unsurprising given there has been no comprehensive review of the RTA since its inception in 1999.

### 'Comprehensive Review'

In 2010, the NT Government released an Issues Paper which identified a range of problems with the RTA, including some of the provisions already mentioned. No substantive action was taken in the years that followed the release of the Discussion Paper and the submissions received in response.

In 2018, following an inquiry into the RTA, the NT's Economic Policy Scrutiny Committee recommended that the Government undertake a comprehensive review of the RTA to identify opportunities for improvement and propose amendments to contemporise the Act.<sup>1</sup> In May that year, then NT Attorney General, Natasha Fyles, promised a 'comprehensive review',<sup>2</sup> with a public consultation period to be launched by the end of that

year. The NT Chief Minister was quoted as saying: *'The Act has been operating for more than 18 years and no longer adequately reflects the shift in residential rental trends which include people renting for longer periods of time.'*<sup>3</sup>

The reality was that consultation did not eventuate until July 2019, was only open for one month and not publicly promoted. Requests for additional time to provide submissions were rejected. This resulted in just 20 submissions.

The purpose of the review is to modernise the RTA and bring it up to contemporary standards. This is not solely aimed at improving protections for tenants to provide them with security of tenure and comfort in their ability to make their rental property their home, but to also recognise that tenancy law is there to simultaneously protect the rights of the landlord.

The Working Group convened as part of the review was, in many ways, a productive mechanism for stakeholder consultation and for determining appropriate ways in which reform of the legislation could be achieved. Many positive changes were agreed by the Working Group and formed the basis of recommendations for reform put to the Attorney General, including streamlining processes associated with condition reports, clearly defining the extent of liability of co-tenants, prohibiting rent bidding, including provisions that empowered tenants to adequately secure their properties, standardising reporting for repairs, ensuring repairs are responded to in a timely manner and strengthening protections for persons who have been the victims of domestic and family violence including in relation to tenancy databases.

Since late 2021, those engaged with the Working Group have waited with anticipation to see those amendments come to fruition. Disappointingly, however, the latest advice is that the amendments will not be on the current legislative agenda. Whilst there is apparently no opposition to the proposal to reform the RTA, it isn't enough of a priority to make it into the list of legislation to come before Parliament. In short, the review has stalled.

### The NT Context

The failure to prioritise reform of residential tenancy legislation is baffling to many within the housing sector, and to tenants alike.

In the NT, just under 50 per cent of the population are renters,<sup>4</sup> a higher percentage than any other jurisdiction in Australia. In remote NT, almost all housing is public housing which is subject to the RTA. In other words, almost all of the NT's remote setting will be influenced by reform of the RTA. NT's remote areas are also home to some of its most vulnerable tenants. Domestic violence and homelessness are also disproportionately high in the NT, particularly in remote areas, with a rate of homelessness 12 times the national average. The reforms that are proposed seek to address a range of issues which will impact those vulnerable tenants.

The refusal to prioritise reform of the RTA is short-sighted when viewed in the context of the Government's promise of a \$40 billion economy by 2030. To achieve this ambitious target, the Territory will need to attract and retain a skilled workforce, many of whom will be renters. The Territory Economic Reconstruction Commission's report highlighted the need for population growth in order to



Ntaria Hermannsburg

Photo courtesy of NT Shelter

achieve the Government’s goals, and the parallel need for improvements in liveability and access to housing both to retain the existing population and attract newcomers.<sup>5</sup> It is difficult to see how the NT will position itself as an attractive place to live when its residential tenancy arrangements are lagging behind the other states, particularly where vacancy rates are making it difficult for renters to find appropriate accommodation.

### We Need to Talk About Rent Increases (and More)

This all paints a dismal picture. But what is perhaps most disappointing is that we are still to even speak about the big-ticket items.

The Working Group met numerous times but had little opportunity to address the key areas for reform.

### Rent Increases and Excessive Rents

Reasonable rent increases and recourse against excessive rents were repeatedly denied proper consideration by stakeholders. Submissions made in response to the 2019 Discussion Paper highlighted the desire of many stakeholders to discuss rental caps or constraints

around the extent to which rents could be increased. A 2022 survey of tenants carried out by NT Shelter highlighted how profound the issue of rent increases had become, with the following being amongst some reports that were made:

*‘Mine [rent] went from \$425 at end of lease to \$580 — that’s almost a 40 per cent increase.’*

*‘My rent has increased from \$500 in 2019, to \$650 to \$750 in July [2021].’*

Under section 42 of the RTA, the only considerations the Tribunal can have regard to in determining whether rent is excessive is:

- the general level of rents for comparable premises in the same or similar localities and the cost of any services provided in connection with the tenancy agreement by the landlord or the tenant; or
- whether the level of services provided under the agreement has been reduced to a significant extent.

Adopting a provision like section 92(5) in the Queensland legislation<sup>6</sup> would allow far greater protection for tenants and limit the unconscionable raising of rents that too many renters in the NT have experienced of late. By implementing these protections, we will stem the flow of NT renters who are being forced out of their homes by skyrocketing rents.<sup>7</sup>

### Minimum Standards

While the NT’s legislation requires properties to be provided and maintained in a specified state, and that premises be fit or habitable throughout the tenancy, these provisions are very loosely defined. Severe mould, lack of basic locks and security, no provision of heating or cooling, vermin and pest issues and lack of basic kitchen facilities are frequently reported.<sup>8</sup> The ongoing litigation surrounding public housing tenancies in the remote community of Santa Teresa has demonstrated that not even the Government provides or maintains rental properties that meet the requirements of the RTA. While that case has focused on the question of what constitutes ‘habitable’ under the RTA, it highlights the need for the introduction of

minimum standards to clearly articulate what is acceptable by way of basic amenity in a rental property.

### No-grounds Evictions

The removal of no-grounds evictions is a positive piece of tenancy reform that has occurred in Victoria, Queensland, Tasmania and the Australian Capital Territory (ACT) in recent years. New South Wales (NSW) will also follow suit this year. With the intention behind the current review of the RTA being to modernise the legislation and bring it up to contemporary standards, removing no-grounds evictions in the NT would seem to be a no-brainer. The threat of no-grounds evictions weighs heavily on tenants, with many afraid to assert their rights for fear of being evicted from their home. In the current climate of low vacancy rates and the difficulty that brings with securing a new rental property, tenants are particularly wary of the threat of no-grounds evictions. Even tenants who know

their rights and are confident in their ability to have informed discussions with their landlord or agent around their tenancy are opting not to do so for fear of repercussions.

### Independent Bond Board

The NT is the only jurisdiction in Australia that has no independent bond holding authority. Bonds are retained by the landlord or their agent, on trust. The return of the bond is discretionary and commonly leads to long-winded disputes and tenants being unnecessarily out of pocket or without the benefit of those funds at the crucial time of being required to provide a bond for their next rental property. An independent bond board would streamline the process for exiting a tenancy and relieve the stress placed on tenants and landlords. Furthermore, the existence of a bond authority would create the possibility of a portable bond scheme like that which is being considered in

New South Wales — something that would be welcomed by many tenants who struggle with finding the cash to pay the ingoing bond on a new rental property, while waiting for their existing bond to be released.

### Currently...

It is nearly five years since the review of the RTA was announced and, except for some positive amendments to provisions relating to keeping pets in rental properties, Territorian renters are no better off than they were in 2018. In the meantime, we have continued to slip further and further behind most other jurisdictions in terms of the state of our legislation and the protections we offer to tenants. The current Attorney General is keen to see positive reform occur to ensure that our RTA reflects modern standards. We need the rest of the Government to get on board and recognise the importance of making changes to legislation that affects nearly half of its constituents.



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Photo courtesy of NT Shelter

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# Much To Gain by Finishing What We Started: Reform of the Residential Tenancies Act 1999 (NT)

Harley Dannatt, Senior Civil Solicitor and Project Manager,  
Northern Territory Legal Aid Commission\*

Like other states, the Northern Territory (NT) has sought to reform its residential tenancy legislation over the past five to ten years. Like other states, temporary measures to protect renters were brought in during the COVID 19 pandemic and — to put it somewhat summarily — the sky did not fall in for landlords as a result. Now, for a very complex set of reasons, like the rest of the country, the NT is deep in a post-COVID housing crisis. Unlike most other states however, four years later the NT is yet to take tangible steps to draft or legislate the modern tenancy reforms commenced by the review.

It shocks no one when the NT falls behind on social and legal reform. In fact, it might be the seeming intransigence of our deep-set and complex legal and social issues that inspires the view that the Territory's place is at the back of the pack. And this is despite leading reform in many areas, such as recent reform of our *Anti-Discrimination Act (NT)* and a step in the right direction in raising the age of criminal responsibility. Or maybe, in the face of the many other urgent issues, tenancy reform just doesn't get a look in. Renters: the overlooked middle child, stuck between the political powerhouse of mortgage payers and the desperate struggle of our colossal homeless population.

This article seeks to reverse the perceived thinking that tenancy reform is low priority, identifying the features that make the NT particularly ready for reform and outlining the critical role that reform to the *Residential Tenancies Act 1999 (NT)* (RTA) could play in broader societal reform.

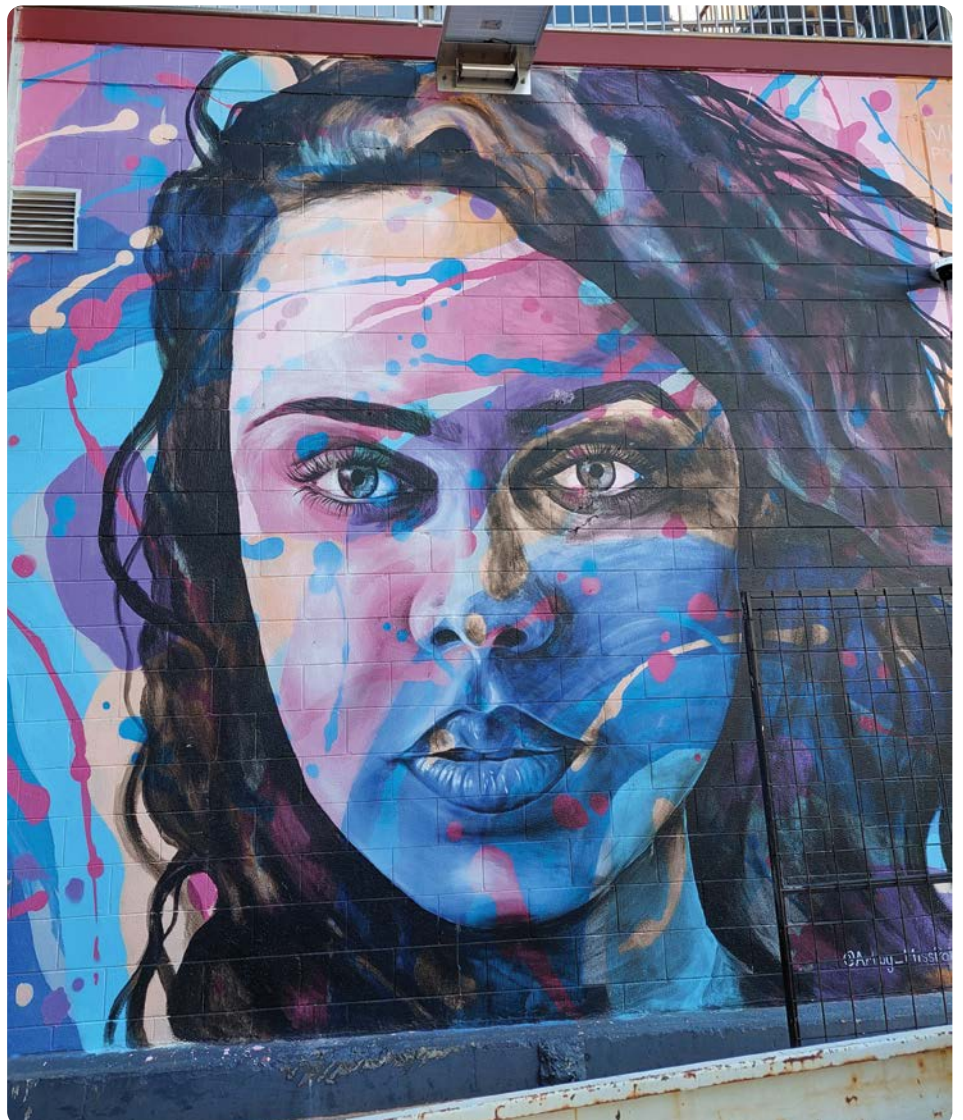
## Strong Tenancy Laws Uphold Broader Stability

It is important to note that the NT began a process of reform in 2019 with a Discussion Paper for reform of the RTA, following calls for review for many years by advocacy groups.<sup>1</sup> Since then, the discussion has continued to some degree, but with no final position or publicly available draft amendments as a result.

In its submission to the 2019 Discussion Paper on tenancy

reform, NT Shelter (the peak body for housing and homelessness in the NT) led with a simple and unassailable tenet:

*The provision of housing is a basic human need. It is a need that remains unmet for many Territorians.... Residential tenancies protections have a critical role in balancing the rights of landlord and tenants — ensuring stability and predictability, removing subjectivism.<sup>2</sup>*



Street art, Darwin



Street art, Darwin

When submitted to the NT Government Review four years ago this foundational submission was far from 'out of scope', with the discussion paper outlining in the overview that:

*Legislation such as the Act will not, on its own, drive the cultural shift needed to adapt to the emerging changes in the rental market. ... The Act can, however, continue to provide a guiding framework for interactions between landlords and tenants.*

In real terms, stability means families and individuals building on a sense of permanence. Putting down roots. Investing time and energy into becoming part of a community. These are lofty goals, but it is hard to argue with their virtue. Importantly, stability is jeopardised when rental housing can be arbitrarily ended with little notice.

The NT is already highly impacted by transience. Many key industries (health, defence, education) are staffed by people doing a 'two-year stint' in the NT, before heading back South. The mobility of Aboriginal

people and families across communities is well documented.<sup>3</sup> With this in mind, it is understandable that the NT has the greatest proportion of renters to homeowners of any state or territory — data from 2016 shows 50.3 per cent of all dwellings in the NT were rented compared to 30.9 per cent nationally.<sup>4</sup> Small communities are highly vulnerable to single industry or environmental impacts. The completion of a single Darwin gas project in 2018 precipitated a 53 per cent drop in real estate value across four years as construction workers left.<sup>5</sup> The uncovering of per- and polyfluoroalkyl substances (PFAS) contamination in Katherine in 2017 led to house prices dropping and vacancies soaring, only to be counteracted in 2020 when increased construction workers were brought in to develop the same Air Force base that produced the contaminants.<sup>6</sup>

Given a volatile rental environment, arguably the response should be greater housing stability underpinned by the RTA. A key way this could be achieved is through reforming without-grounds rental terminations,

either through removing them all together or extending notice periods. This refers to periodic or 'month to month' tenancies under which a landlord can evict a tenant without any reason, with the provision of 42 days' notice.<sup>7</sup> This is the shortest notice period of all Australian tenancy regimes. It effectively means that, once any fixed term has ended, a landlord can remove a tenant for any reason. Modern residential tenancy acts, such as the recently enacted in Victoria, still allow for a landlord to evict if the tenancy agreement is breached (that is, failure to pay rent or significant damage), or there is genuine reason to need the house back.<sup>8</sup> It means that so long as the agreement is kept or barring a particular termination reason (that can be tested at tribunal), a tenant can treat their house as their own. This key reform alone would bring significant stability to a highly volatile dynamic and begin shifting perceptions of the Territory's housing from 'semi-permanent workers accommodation' to 'homes for members for the community.'

### Low Hanging Fruit

It is worth noting there are some straightforward reforms that would seem to have immediate benefit and bring the NT into line with the minimum standards of other states. A brief list includes:

- A Central Bond Authority to hold, administer and regulate the retention of bonds. Currently, bonds are held by landlords or real estate agents. Like in all other states, this would allow for collection of interest on bonds to pay for crucial tenancy supports.
- Consolidation of Domestic Violence protections for renters, including ability to bring applications to protect victims to the Northern Territory Civil and Administrative Tribunal (NTCAT) (the tenancy tribunal). Currently such applications are heard in the Local Court under s23 of the *Domestic and Family Violence Act 2003 (NT)*.
- Structuring a provision to allow pets as a default with appropriate protections for landlords but removal landlord absolute discretion.

Each of these reforms has been dealt with in various ways across the country, each going some way to providing certainty to tenants and stabilising homes and communities. The longer the NT waits to do so, the further we fall behind.

### Significance of the Public Housing Sector

Public housing in the NT plays a particularly significant role in the rental landscape and, as such, the Department of Housing's policy decisions have had a substantial influence on the housing sector in the NT. Over the past 20 years, as the rest of the country shifted control of vast proportions of housing stock from government run (public housing) to independent or non-government run (community housing), the NT went in the opposite direction. Following the Northern Territory Emergency Response (the Intervention), hundreds of millions of dollars of investment under the Strategic Indigenous Housing Infrastructure Project (SIHIP) flowed on the condition that Aboriginal communities leased land back to the Government, so that the Department of Housing could lease each residential tenancy back to individual tenants under the RTA. More recently, transfers to community housing are underway in urban centres. However, the Department of Territory Families, Housing and Communities remains by far the Territory's largest landlord.

The effect of the Department's disproportionate role in the space is that the dialogue and discourse for reform becomes centred on government policy. For example, significant policy work over the past 12 months has centred around the Department's decision to change the model for how rent in remote communities should be calculated (the merits to be discussed elsewhere). Changes in force from February 2023 have meant an effective rent rise for a significant portion of households.<sup>9</sup> Arguably, the 'air in the room' has been taken up by this policy discussion, rather than the sensible recommendation to reform the RTA regarding frequency of rent raises or fixing a method of rent increases

beyond landlord discretion (although this idea has now entered national housing debate at federal level).

Similarly, the Department's approach to timeframes for urgent and non-urgent repairs by landlords and appropriate damages for breach is currently being reviewed in the High Court in the form of a compensation claim by a group of Central Australian public housing tenants.<sup>10</sup> The legal issues in the case are varied and for broader discussion elsewhere, but it raises the general question of 'how long should it take for a landlord to make repairs?' The RTA directs that landlords should make non-urgent repairs with 'reasonable diligence'<sup>11</sup> but doesn't give clearly delineated legislated timeframes. Clarity on such issues would move the debate away from a departmental approach to 'reasonable diligence' and toward a clear benchmark all can understand.

States such as Victoria have enshrined minimum standards for heating and cooling in all tenancies<sup>12</sup> and it has been recommended the NT do the same. Staggering 2022 research linking NT health outcomes of heat stress to poor heating and cooling infrastructure in housing would suggest this is imperative.<sup>13</sup> However, again much of the debate in this space has centred on the Department's response to improving housing or building codes. Tenancy reform would force all landlords to comply with measures to ensure health outcomes.

Finally, it should be noted that as more social housing becomes community based and no longer under the Department's policy framework, there is more need for a stronger RTA. As in private tenancies, the RTA will be the cornerstone set of legal protections for the most vulnerable in housing.

### Conclusion

Many see the NT as the lawless outback and not the sort of place you would expect to find progressive renters rights. Why not? The RTA as it currently stands allows for arbitrary decision-making by landlords, undermining the security and stability of housing. Other gaps, such as the lack of a central

bond authority, are common sense protections that support long-term, mutually beneficial tenancies. Surely clear, legal obligation trumps cycling public housing policy? The NT Government took some promising steps in 2019 with its Discussion Paper. By following through and bringing amendments to Parliament, the Northern Territory has much to gain.

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# What's Mould Got to do With It? Victoria's Rental Reforms Examined

Jennifer Beveridge, Chief Executive Officer, Tenants Victoria

More than 130 changes to Victoria's rental laws for residential homes came into effect in March 2021 amid the COVID-19 pandemic. In the wake of these long-overdue changes, the economic after-effects of the pandemic emergency have been among the factors driving the biggest housing affordability crises in decades.

At the same time renting has increasingly become the norm and no longer just a 'life stage' for young people before buying a property.

In 2021, there were 618,419 Victorian households renting compared to 607,354 in 2016. Almost 90 per cent of renters in 2021 were renting in the highly competitive private rental market and the remainder were renting in the public housing and community housing sectors.<sup>1</sup>

The demand for rental properties has meant that many Victorian renters, often unaware of their rights, are worried that asking for repairs may mean they are hit with a rent increase, or even face eviction, despite the 2021 changes increasing protections in these areas.

Although other jurisdictions cite Victoria's model, there is no escaping the reality that rental law reforms are still an unfinished project in our state. The persistent problem of mould in rental homes offers a compelling case study of this point.

Changes to Victoria's *Residential Tenancies Act 1997* were long fought for and welcome. Yet for Victorian renters living in cold and mouldy homes this winter, it is evident there is still much more to be done. Lack of understanding of the causes and impacts of mould, as well as weak enforcement

provisions of rental laws, mean that renters are still struggling to make their homes safe and healthy.

Among the 10,000 inquiries Tenants Victoria handles each year, the fungal growth commonly known as mould, aggravatingly remains in the top 10 of most frequent complaints or inquiries. The World Health Organization has estimated that the prevalence of indoor dampness, linked to mould in dwellings, may affect 10-50 per cent of housing across Australia.<sup>2</sup>

Melbourne-based researchers Professor Rebecca Bentley, Dr Nicola Willard and Tim Law have concluded that household mould is worse in rentals than in privately owned properties because rental properties tend to be poorly maintained.

Writing in *The Conversation* on 15 May 2023, they summarised that '*mould growth is more likely when homes are cold, humid, lack air flow, or suffer from water damage*' and '*when its pores settle on moist, plant-based construction materials such as wood, wallpaper or plasterboard, they can form a new colony*'.<sup>3</sup>

But when water is pooling in roofs, under floors, behind walls or in downpipes, it can be easier for landlords or real estate agents to ignore it, explain it away as a 'winter thing' or shift the responsibility of dealing with it to the renter rather than fix it. A study by Victoria University found half the defects that caused mould were water-related and these are more expensive to fix than other problems by an average of \$7,000.

It might be expensive to fix but mould is dangerous to health. *The Conversation* article noted that a 2022 Asthma Australia report

revealed people living in mouldy homes were more likely to have asthma and allergies. A systematic review of peer-reviewed research found children living in mouldy homes were more likely to experience asthma, wheezing and allergic irritation of the eyes, nose, throat and mouth (allergic rhinitis).

Housing is without doubt a social determinant of our health, and mould is a glaring example of the impact of unhealthy homes.

Mould also puts another financial burden on renters because damp dwellings are more expensive to heat, can also affect the health of pets and can ruin personal items such as clothing, bedding, furniture and books.

The health consequences were among the reasons the 2021 rental law changes gave Victorian renters more rights to deal with mould. The legislation deemed mould an 'urgent repair' that required a hearing at the Victorian Civil and Administrative Tribunal (VCAT) within two business days of a renter making an application to the tribunal. In addition, mould must now be disclosed to renters before they enter a residential lease. The updated Victorian law also states that '*each room in the rented premises must be free from mould and damp caused by or related to the building structure*' and the landlord must disclose if they have treated mould in the past three years.

But despite the improvements to rental laws, each winter still sees an uptick of inquiries and complaints about mould to Tenants Victoria with confusion as to whose responsibility it is to repair the mould issue and how renters can

get a response in a timely manner. The seasonal increase in the occurrence of mould, the nebulous nature of its source and its frequent invisibility helps in reinforcing the age-old power imbalances between the renter and landlord.

Renters often believe that it is their responsibility to clean mould with erroneous expectations often set by landlords and real estate agents who advise renters that they should change their behaviour at home to minimise mould with remedies including opening windows during winter, not drying clothes inside, or taking to mould infested surfaces with a scrubbing brush and a domestic mould remover. However, mould is often caused by hidden structural issues within the buildings which are beyond a renter's control.

Rental homes are for living in; they must tolerate renters' showering, cooking, drying clothes, and breathing.

The surge in mould complaints was addressed by Tenants Victoria in winter 2021 when we launched our now annual Mould Clinic to assist renters with legal help. It was clear many renters find the legal process doesn't offer a clear and quick solution to their problem, and instead they often move to a new property with all the attendant financial costs and stressors. For those renters who can't afford to leave, or live in social housing with limited transfer options, there can be ongoing serious impacts on their physical and mental health and further property damage.

In May 2023, Tenants Victoria launched its inaugural Mould Report<sup>4</sup> in Law Week. This snapshot report drew on 103 complaints processed by the Mould Clinic between June and September 2022 and paints a disturbing picture. More than a third of the renters said mould had damaged their furniture and clothing. Almost two thirds were concerned about their health and, for some, the health of their children. Nearly a fifth of the renters involved could not sleep in their rented homes because of the severity of the mould — one said they had spent \$2,500 of their own funds on hotel rooms. Two people, meanwhile, had no choice other than to sleep in their cars.

Astonishingly, these 103 complaints revealed that 32 of the landlords involved explicitly refused requests for repairs and a further 57 landlords delayed the mould repairs or simply did not respond to the renters' requests for repairs. The slow responses of real estate agents were also raised as a concern by many renters who consulted the Mould Clinic.

One renter told Tenants Victoria:

*'I inspected a property that was perfectly suited to me but noticed a roof leak with severe mould. Upon being offered the property I was told this was rectified and the mould was sorted. I moved in, and four weeks [later], the roof started leaking again and the mould started to reappear. It was then I realised this was only painted over and not fixed.*

*The more it rained the worse it became, and my floor was soaked, and the mould was starting to become severe. I was constantly ignored, and nothing was getting done to fix it when I reported it to my landlord. It started to affect my respiratory system and eventually [I] had mushrooms growing inside the home.'*

Another said:

*'I know I'm entitled to an "urgent repair", but since the mould is caused by inadequate ventilation, major work would have to be done to treat it, e.g., installing a fan or replacing the windows so that I can open them. I wouldn't have anywhere to stay while this work is being done and I wouldn't feel comfortable at home during the renovation ... I feel completely powerless. The estate agent didn't disclose that there was mould before I moved in, so I didn't know about it.'*

In one case, a renter served the landlord with a 'breach of duty' notice requesting a rent reduction and mutual termination of the lease. The landlord denied they were in breach of the legislation because they had 'booked' a mould inspector (who was yet to arrive, necessitating the tenant to couch surf to escape the mould)

and so, the landlord argued, they had fulfilled their obligations under the legislative provisions for undertaking 'urgent repairs'.

With the assistance of Tenants Victoria, the renter negotiated temporary accommodation while outstanding repairs were undertaken. By the end of the month, repairs were finally done, and the renter was able to return to their home.

Tenants Victoria fought for changes to the *Residential Tenancies Act 1997* that have helped to make housing more secure for tenants. Yet the vagaries and inconsistencies that perpetuate around how mould repairs are dealt with continue. This problem is not going away despite the legal changes introduced in 2021.

Further modifications of rental laws should include minimum standards such as ceiling insulation and window coverings which provide thermal insulation. Such changes would help keep renters warm and reduce mould. In the longer-term, we must move towards a public health model, acknowledging the important role that housing plays in health and wellbeing.

In Victoria we have universal health and universal education, but universal housing is clearly a missing piece. Government has a key role in resetting the public dialogue about housing, to establish it as a public good and to recognise it, and legislate for it, as infrastructure of equal importance to transport, hospitals and schools.

#### Endnotes

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# Ending No-grounds Eviction in NSW: Renters Driving Real Change During a Housing Crisis

Jemima Mowbray, Tenants' Union of NSW

In New South Wales (NSW) the newly elected State Government's commitment to end no-grounds evictions represents a milestone in housing justice for renters. This much needed reform to tenancy law has been a long time coming. In this article I explore the vital role community campaigning has played in amplifying renters' voices and getting renters issues on the agenda.

## The Problem: 'No-grounds' or No-cause Eviction

For far too long, renters in NSW have faced the insecurity and vulnerability of no-grounds evictions. Landlords in NSW have the power to terminate tenancy agreements without providing a reason, leaving tenants with almost no recourse to challenge the eviction. This imbalance of power has often led to unfair evictions, housing instability, and uncertainty for renters.

The ability for landlords to give a no-cause or no-grounds eviction is a fundamental weakness of our tenancy laws. It undermines all other rights and protections renters might have. As one renter's experience shared with us makes very clear, it is not because renters are unaware of their rights or protections but instead very often make a strategic calculation about the risk they face if they were to assert their rights:

*I have been working in the legal sector for 15 years. Despite this, I am still too scared to enforce my rights for fear of rent increase or eviction. Being a renter often seems like a constant exercise in weighing up options: asking for repairs vs threat of eviction; asking for repairs during the tenancy vs arguing wear and tear in a bond dispute. The theory vs the reality.*

— Sarah\* rents her home in Sydney's Inner west with her husband and five children

In 1976, Justice Ronald Sackville, who led the Australian Government Commission of Inquiry into Poverty, recommended in his lauded *Law and Poverty* report that no-cause evictions ('no grounds' evictions) should not be a feature of tenancy law. This was both to provide greater stability and security for renters, but also to ensure other substantive tenancy reforms recommended within the report would be effective. For close to 50 years since publication, housing advocates have pushed to end no-grounds. More recently they have been joined by a broad coalition of community organisations, faith-based peaks, unions, and of course renters themselves via a coordinated community campaign and advocacy efforts.

## Changing Gears: Community Campaigning and the *Make Renting Fair* Campaign in NSW

In 2015 in NSW the *Residential Tenancies Act 2010* came under statutory review. The early engagement with the consultation for the review process was strong, with renters, the renting and housing sector, community organisations, even local Councils providing formal submissions that raised concerns about no-grounds evictions. Even with substantial evidence of the problem, and a coherent, consistent voice on the issue from housing advocates and the community sector, decision-makers were hard to budge.

Recognising the urgent need for change, and the failure of previous 'inside track' and formal consultation processes to push the envelope forward, the Tenants' Union of NSW shifted gears to commit resources and energy into a community campaign — *Make Renting Fair*. Similarly, *Make Renting Fair* campaigns have also been coordinated by our sister organisations in Victoria, Queensland and more recently Western Australia.

In NSW, it was slow going. *Make Renting Fair* when it was initially launched in 2017 focused on ending no-grounds evictions. The campaign raised awareness



Make Renting Fair advocacy campaign, phase 1 — left to right: 2018 Assembly; Penny 2016, Home is homes is; Home is; Gruffalo photo; Rent in oz 2019

of the problem by sharing stories of renters' experiences of unfair eviction and highlighting the human impact and real costs associated with no-grounds evictions. We took action, working collaboratively with campaign supporters on social media actions, community stalls, interventions into traditional media, meetings with decision-makers, a targeted letter-writing campaign and a joint Town Hall Assembly on Housing in 2019 with an audience of around 2,000 people.

A significant win came in late 2017 when NSW Labor, in the context of the campaign, announced it would commit to end no-grounds if elected at the 2019 NSW election.<sup>1</sup> By the end of the review process the campaign had also forced Matt Kean, then NSW Coalition Minister for Better Regulation, to explicitly recognise the problem.<sup>2</sup> Unfortunately, this acknowledgement did not translate into reform on the issue. A number of important reforms were introduced through the statutory review process — for example, housing advocates won significant changes to the law to provide greater protection for renters experiencing domestic violence<sup>3</sup> — but no-grounds evictions were not touched.

### Raising Up Renters' Voices: COVID and Its Impact

Many housing researchers have discussed the ways in which COVID-19 radically changed the housing landscape, with many of the negative impacts — rising rents and housing prices, broader cost of living pressures and a construction industry at capacity — ongoing and still to be adequately confronted.<sup>4</sup> While discussed less, the emergence of renters' forums was a positive development during COVID. People shared experiences, resources,

and information and organised collectively on renting issues.

This can be seen in the emergence of member-run organisations like the Renters and Housing Union (RAHU) in Victoria, the South East Queensland Union of Renters (SEQUR), and the Housing Defence Coalition in NSW.<sup>5</sup> Through COVID we also saw online renters' groups expand and build quite significant online communities via platforms such as Facebook, Instagram, and TikTok. This includes the 55,000 strong Facebook group *Don't Rent Me* where renters ask each other for information and advice or unpack and debrief about a particularly nasty recent interaction with their landlord or agent.

These communities have confronted and challenged some of the persistent barriers to effective organising encountered by those of us pushing for rental reform. By facilitating conversation and solidarity between renters they encouraged renters to stop accepting such poor standards and behaviour (that is, to raise traditionally very low expectations of the renting experience). Perhaps most significantly, where previously people who rent their homes may have felt the only solution was to 'buy' their way out of the rental market by purchasing a home (increasingly impossible in the context of rapidly increasing housing prices) the emerging renters' communities empowered renters to demand more systemic change within the rental system.

### Engaging Decision Makers: The Election Housing Assembly and the #NSWRentersElection23

Coming out of COVID lockdowns and into an election campaigning period in the lead up to the NSW 2023 state election, we refocused

our advocacy efforts in NSW through *Make Renting Fair*.

What became clear to us was that this time around we were in a very different political context to the previous election. The acute pressures on cost of living due to the ongoing housing crisis sat alongside fresh recognition by media and decision-makers that the community considered housing a key election issue, something that could decide their vote. And, most importantly, there was a recognition that renters — one in three within the community — would not necessarily be looking for support 'escaping' the rental sector (for example, the staple election offer of a variation on first home buyers grants). They wanted change and commitments that directly addressed the problems facing renters now.

Our more recent organising in NSW was as a result more directly focused on working with renters in the community and working collectively with organisational supporters of the campaign to facilitate and empower renters to be involved in actions putting pressure on decision-makers. What did this look like? In many ways it meant the long, slow grind of organising work involving face to face conversations and direct investment in people (renters) to organise actions. It also meant collaboration with others committed to organising — for us this was primarily through the Sydney Alliance. This collaboration resulted in community hubs raising renters' voices on the ground and via social media, along with community town hall style assemblies where decision makers — including then-Treasurer Matt Kean and shadow Daniel Mookhey — were asked to front communities across western Sydney, considered a key battleground during the election,



and directly respond to priority asks on housing policy commitments. Our collective interventions also resulted in headlines across traditional media recognising the importance of renters as a voting constituent in the weeks leading up to the NSW election.

## Conclusion

The concerted efforts of community campaigning and strategic advocacy paid off. In the lead up to the March 2023 state election we saw the then-Coalition Government commit to ending no-grounds evictions during periodic tenancies (rolling leases), and NSW Labor recommitting publicly to ending no-grounds evictions during periodic and fixed term tenancies.

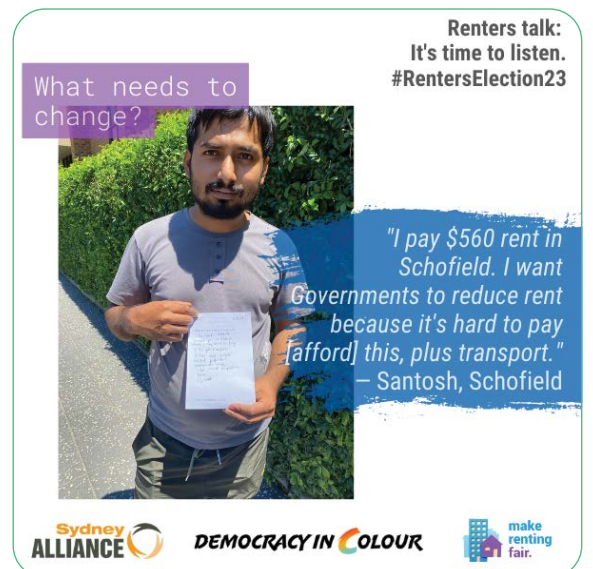
Now holding government in NSW, Labor's commitment to ending no-grounds at the end of a fixed term is significant. Reforming tenancy law without removing no-grounds evictions at the end of a fixed term would leave a significant loophole.<sup>6</sup> We've seen landlords and agents in other jurisdictions — most recently Queensland — take advantage of this loophole by shifting renters onto rolling shorter fixed term contracts

to ensure they can still evict without having to provide reasonable grounds. At the moment in NSW, a majority of no-grounds evictions issued — around 70 per cent — are given to renters at the end of a fixed term tenancy.

It has taken a while — and a housing crisis! — to get NSW over the line on this reform. Nonetheless, our experience serves as a powerful reminder that when communities work together and renters are empowered to demand change, they can overcome systemic barriers and win meaningful reform.

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Make Renting Fair advocacy campaign, phase 2 — top left to bottom right: 2023 Assembly; 2023 — our peeps; 2023 lead articles of *Daily Telegraph* during March election); Santosh Schofield

# Make Renting Fair for New South Wales: Renting Pets and Their People

Riley Brooke, Tenants' Union of New South Wales

## Pets and Renting: What Does New South Wales Law Say Right Now?

New South Wales (NSW) tenancy law still allows landlords to refuse renters permission to keep a pet, for any reason, or no reason at all. In 2020, NSW saw changes to strata regulation that had implications for owner-occupiers, and a small proportion of renters, in strata properties. However, these changes did not remove the barriers from the vast majority of renting households wishing to get a pet.

The Tenants' Union of NSW has long maintained that the law needs to be changed to make it easier for renters to keep pets, and one of the *Make Renting Fair* campaign's key demands is to change the law on pets and renting in NSW.

## Why We Need to Change the Laws on Pets and Renting

A rental is not just a landlord's investment property, it's a person or family's home. Renters should have the same rights as owner-occupiers, including the choice to adopt a pet.

The benefits to changing NSW laws to make it easier for renters to keep pets include:

### Animal Welfare

Refusal to allow pets can severely restrict a renter's ability to find appropriate and affordable housing. This can lead to much-wanted pets being given up to shelters or abandoned. In some cases, renters are unwilling to give up their pet and experience homelessness as a result.<sup>1</sup>

### Physical and mental health and wellbeing benefits for people who keep pets

Keeping pets is associated with lower blood pressure, lower cholesterol and triglyceride levels, fewer visits to the doctor, and increased physical activity overall. For children, growing up with pets can strengthen the immune system, and children with pets are less likely to miss days of school due to illness.<sup>2</sup> Renters should not be denied access to these benefits because of their tenure.

### Improving safety of people experiencing domestic and family violence who may otherwise delay leaving violence because of a concern for their animals' safety

The inability to find or secure a pet-friendly rental property poses significant risks in situations where a person is experiencing domestic violence. People with animals often delay leaving violent circumstances because they are unable to find a new pet-friendly home. Domestic Violence New South Wales' July 2020 survey of domestic and family violence and community workers found 48 per cent of respondents reported clients have delayed leaving a perpetrator by more than a year due to fear or threat of an animal being harmed.<sup>3</sup>

### Tenants' Union and *Make Renting Fair*: Campaigning and Advocacy Surrounding the 2022 Consultation on Keeping Pets in Rental Homes

In October of 2022, then-Minister for Fair Trading, Victor Dominello, announced a six-week consultation on keeping pets in rental homes. The Tenants' Union of NSW and the *Make Renting Fair* campaign engaged in a wide range of policy,

advocacy and campaigning activities throughout the consultation period.

We put forward recommendations and policy solutions in the Tenants' Union of NSW's submission to the consultation, drawing on research, available data, and our experience and expertise.

To make sure renters' experiences got the consideration they deserve, we also collated a *Make Renting Fair* NSW community submission, highlighting the lived experiences and perspectives of NSW renters.

Renters' stories and views warrant sharing, but individual renters often face barriers making their own submissions to government consultations. We gathered renters' stories and contributions in a number of ways:

- We set up a form for renters to submit their stories, opinions, and photos of pets.
- We asked our community questions on social media, and collected stories and views through comments, messages and emails.
- We held an event at a dog-park in Newtown, a suburb with a high proportion of renters.

At the event in Newtown, alongside collecting stories and views from the renters, we discussed the *Make Renting Fair* community submission. We encouraged people to individually answer the survey on the consultation website and pass on information about the consultation to their friends and family. We also invited local elected representatives to have a conversation with *Make Renting Fair* about the issues

surrounding pets and renting as well as the need for reform — the local MP and several local councillors came along. The event enabled the *Make Renting Fair* campaign to upskill some of our active renter supporters in campaigning skills, boosting their confidence and connection to the campaign.

Throughout the consultation period, we ensured *all* interested parties could have a say — including the pets themselves — by creating a ‘pet petition’.

This was a sign-on that renters could print out and have their pets ‘sign’ with a pawprint or a photo, and we also received a number of dog sign-ons at the dog park event. The fun, visual element of this particular tactic meant that plenty of renters whose pets participated posted about the issue and the consultation from their own social media channels.

The *Make Renting Fair* campaign community submission included contributions from over 80 renters, and creating the submission involved conversations with many more.

### The NSW Government’s Proposed Reforms

In January 2023, NSW Labor announced their plan for reforms to streamline the process for renters to apply for landlord permission to have a pet. Under their proposed model, they will introduce a standardised form for tenants to lodge with their landlord to request consent for a pet. If the landlord does not provide a detailed response outlining their reasons for refusal within 21 days, the request will be automatically approved.

This model looks similar to the rules surrounding pets and renting in place in Queensland, where there is a list of specific grounds on which a landlord can refuse permission to keep a pet. If the renter disagrees with the landlord’s reasons for refusal, the renter can choose to go to the Tribunal to challenge the refusal.

While a model like this would be an improvement on the rules currently in place in NSW, it would still leave renters with significant barriers to renting with pets.

### The Tenants’ Union of NSW’s Proposed Model for Pets and Renting

We support a model where a landlord can only refuse permission or challenge the keeping of a pet if the landlord obtains a Tribunal order allowing them to do so. This is a model similar to those that apply in Victoria, the Australian Capital Territory (ACT) and the Northern Territory.

In the ACT, a renter can apply in writing for a landlord’s consent to keep an animal, and the landlord is only able to refuse consent (or impose conditions for consent) with approval from the Tribunal. If a landlord does not apply to the Tribunal within 14 days of receiving a renter’s request for consent to keep a pet, consent is taken as granted.

### Tribunal Proceedings

Landlords initiate Tribunal proceedings far more often than renters — over three quarters (77.7 per cent) of all Tribunal applications for tenancy matters in NSW are made by landlords. Renters face many barriers in accessing the Tribunal, such as financial and time constraints, a lack of confidence to navigate Tribunal processes, and concern about potential retaliation for accessing the Tribunal.

The decision whether or not to keep a pet is a matter of basic autonomy. Renters are often denied the opportunity to make simple decisions about the homes they live in around things that owner-occupiers take for granted, including whether or not to adopt an animal. If a landlord wishes to infringe on a renter’s autonomy in this way, the onus should be on the landlord to justify, with specific evidence, what unacceptable risks would be posed to the property if a particular pet were to live there.

The responsibility for applying to the Tribunal should be placed on the party with greater resources and demonstrated ability to access the Tribunal, and the party attempting to keep someone else from living reasonably in their home — landlords.

### Discrimination

The other element that must be addressed is the discrimination that pet-owning renters can experience at the application stage. With vacancy rates in much of the country hitting record low levels and competition for rentals extreme, many real estate agents and landlords are in a position where they can simply ignore all rental applications from renters who disclose they have a pet.

There are a number of grounds on which renters experience discrimination at the application stage, beyond the issue of pet ownership. Some of the means by which this discrimination can be mitigated include:

- increased transparency in how landlords and real estate agents determine the “best” applicant for a rental property
- standardised rental application forms that limit the amounts, types, and storage of data that can be collected during an application process.

### Conclusion

There is now a real opportunity for changes to be made to NSW renting law to make the rules fairer for renters with pets. There is an opportunity here to avoid the mistakes or half measures we’ve seen in places like Queensland. Instead, NSW now can lead the country by implementing a robust and genuinely fair system for regulating the keeping of pets in rental homes, to the benefit of pets and their people alike.

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# While Rents Rise Tasmanian Tenancy Reform Stalls

Dr. Jed Donoghue, National General Manager Homelessness,  
The Salvation Army Southern Territory

Renting in the private rental market is no longer a short-term option. Many people are renting for longer periods of time. In fact, 40 per cent of Tasmanian renters spend over 10 years in the rental market. However, the 2018 Choice Report<sup>1</sup> on the consumer experience of renting in Australia reveals a lack of consumer protection. Despite paying tens of thousands of dollars each year, tenants often experience unsatisfactory conditions and are afraid to complain. Reasonable people realise that it is important to maintain a tenancy system that protects both tenants and landlords and enables people who rent their homes to lead healthy, safe and productive lives.

There is a need for a refresh of the regulation of the private rental market. As more people are renting for longer periods, renting is no longer a transitional tenure. Tasmania has an opportunity to improve the regulatory framework for private rental to ensure it is better adapted to the current environment. This would include a review of the regulation of short-stay accommodation, to ensure that the permit system delivers sufficient funds to ensure appropriate monitoring and compliance with permits and exemptions, and that local decision-makers are empowered to make place-based decisions to balance short-stay visitor accommodation with the needs of local workers and residents for appropriate rental accommodation.

This would assist Tasmania to align with best national practice on matters such as potential exemptions from the *Residential Tenancy Act* (RTA), pet friendly options, digital rights, energy efficiency and emerging technologies such as apps for tenants and landlords.

In 2023 Shelter Tasmania<sup>2</sup> has called for:

- Additional resources for the Residential Tenancy Commissioner to ensure effective monitoring and enforcement of the Residential Tenancy Act, and to enable the Commissioner to undertake proactive inspections to ensure compliance with the minimum standards.
- An audit of the funds held by the Residential Deposit Authority to ensure transparency about the holdings and uses of bond money, and the introduction of an annual report showing how these funds are allocated.
- Adequate funding for the Tenants' Union of Tasmania to ensure a sustainable model for legal representation of tenants across the state.
- Funding for the Residential Tenancy Commissioner to implement an exit survey for renters and landlords on reclaiming bond money. More research needs to be undertaken on the use and return of bonds nationally.<sup>3</sup>

## Short-Stay Accommodation

Information about the impact of the short-stay accommodation industry is important in order to manage it successfully. Shelter Tasmania has produced a series of independent Baseline reports with Professor Peter Phibbs<sup>4</sup> that monitor the impacts of short-stay accommodation to inform the Tasmanian housing sector and government. When governments support the development of new supply, there is a need to manage the risk of these new properties

being diverted into short-stay accommodation, rather than being retained as rental properties.

In situations where a financial contribution has been provided by the State Government, a covenant or caveat could be placed on the title to the effect that it is not to be used for short-stay accommodation until 30 years have passed, or unless the subsidy is repaid. This would ensure that subsidies intended for local residents are used for that purpose.

The Baseline Report clearly shows there is a need to manage the flow of properties from long-term to visitor rentals, especially for any properties that receive grants or other financial support from the State Government. Shelter Tasmania<sup>5</sup> recommends:

- New dwellings that have received funds from Government should not be converted into short-stay accommodation.
- Local Councils should be empowered to limit the use of entire homes for short-stay accommodation where there is a shortfall of homes for local people.
- Short-stay accommodation should be included in the planning system to ensure that any displacement of local homes or loss of amenity can be managed.
- A review of the regulation of short-stay accommodation is needed, to ensure that:
  - the permit system delivers sufficient funds to ensure appropriate monitoring and compliance with permits and exemptions



- local decision-makers are empowered to make place-based decisions to balance short-stay visitor accommodation against the needs of local workers and residents for appropriate rental accommodation.

### Pet Friendly Options

For many people pets form an essential part of the household and play a vital role in people's health and wellbeing. This is particularly true for children and older people. It is well known that threats to harm family pets can be a barrier to families leaving violent and abusive situations. The lack of an option to care for a pet is also a barrier to people seeking emergency accommodation — placing people at higher risk,

imposing additional stress and preventing people finding assistance. Pets can help people manage the effects of trauma and need to be included in trauma-informed responses. Appropriate pet friendly options need to be developed for shelters, and pet accommodation needs to be included in new purpose-built shelters.

### Conclusion

This paper presents several proposals to enhance the delivery of safe, secure, affordable and appropriate rental housing for Tasmanians who are experiencing homelessness, are at risk of homelessness, or are in housing hardship. We need initiatives and investment that will ensure that all Tasmanians, regardless of their income, can access the rental housing

that they need to feel safe, remain healthy and participate in the benefits of the community and economy.

### Endnotes

1. Choice, National Shelter, National Association of Tenant Organisations 2018, *DISRUPTED: The Consumer Experience of Renting in Australia*, Choice, <https://www.choice.com.au/money/property/renting/articles/choice-rental-rights-report-dec-2018>.
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4. Phibbs P & Ely E 2022, *Monitoring The Impact Of Short-Term Rentals On Tasmanian Housing Markets: Baseline Report — June 2022*, [https://shelertas.org.au/wp-content/uploads/2022/01/STR-Baseline-Report-June-2022\\_FINAL-combined-files.pdf](https://shelertas.org.au/wp-content/uploads/2022/01/STR-Baseline-Report-June-2022_FINAL-combined-files.pdf)
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# Renting in Queensland

Jackson Hills, Manager, Policy and Strategic Engagement, Queensland Shelter

In February 2023, rental unaffordability in Queensland made headlines when the latest CoreLogic report showed the median Brisbane rent had, for the first time, overtaken Melbourne. In many ways this wasn't a surprise — the National Rental Affordability Index, published several months earlier, had already revealed that Queensland had the largest decline of rental affordability in Australia in 2022.

But it drove a nail into the coffin of a collective belief we have long cherished: that Queensland is an enviable state — not just for our climate, beaches, and success in a certain footie competition — but also for our housing affordability (relative to other states and territories).

Q Shelter is part of the *Make Renting Fair* in Queensland campaign (MRFQ) — an alliance of organisations that support progressive reform of our renting laws so that all Queenslanders can make the place they live in their home, whether they rent or own.

After years of advocacy from MRFQ and other organisations and individuals, the Queensland Government passed the *Housing Legislation Amendment Act 2021* (HLA Act) to progress Stage 1 of Queensland's rental law reform.

These reforms included domestic and family violence protections, removal of 'without grounds' as a reason to end a tenancy and changes making it easier for renters to have a pet. The reforms also strengthened repair and maintenance obligations for landlords, set minimum housing standards (these changes will begin from 1 September 2023) and strengthened protections for renters against retaliatory actions (such as eviction) if they tried to enforce their rights.

Have the reforms helped? Yes — to a point. In particular, the reforms around domestic and family violence (DFV) protections have already had an enormous impact, even as the real estate industry continues to help educate tenants around their new rights and embed DFV protections within their own practices.

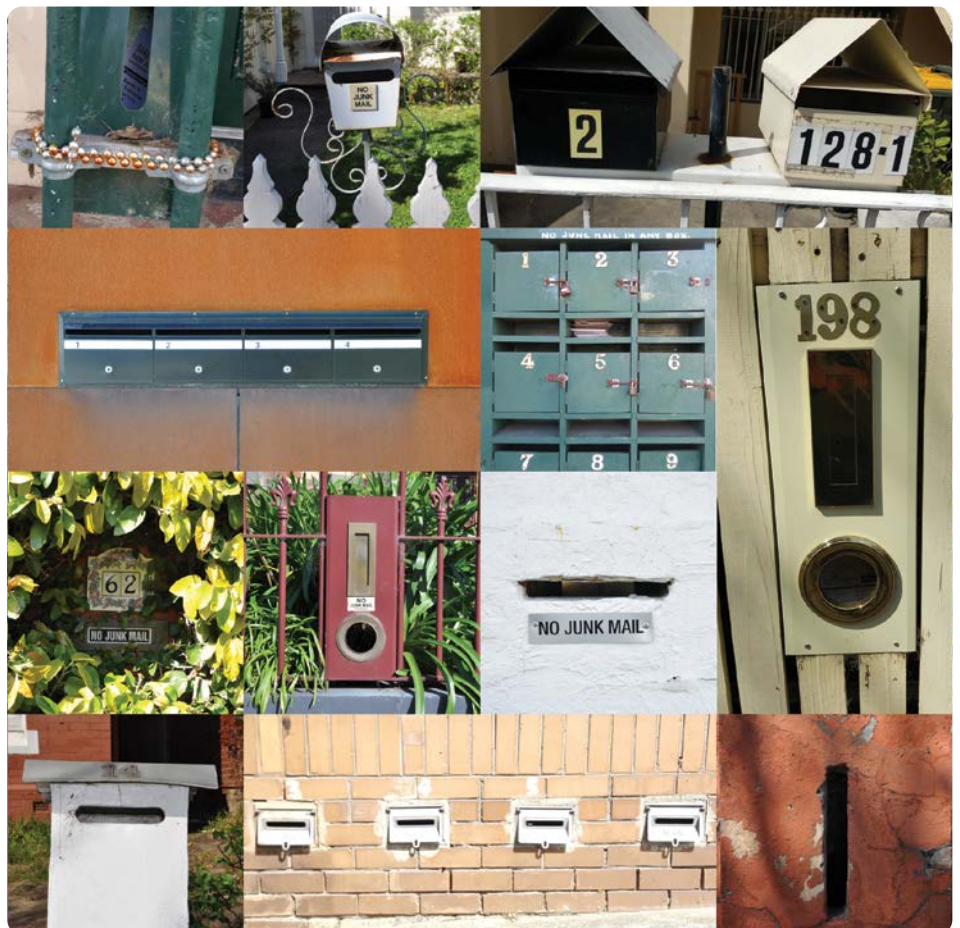
However, the power imbalance between landlords and renters is still enormous and, overwhelmingly, a single issue comes up again and again in our engagement with renters: rental increases are too frequent and too large.

We were encouraged when the State Government recently moved to make changes to how frequently rents

can be increased in Queensland. Legislation passed on 19 April 2023, to come into effect from 1 July, will prohibit rents being increased more than once a year. However, this only addresses part of the problem.

With record low vacancy rates (Queensland has seen ten consecutive quarters below 1 per cent) and without a framework guiding how much rents can be increased, a once-a-year increase will still tip many tenants who are faced with an exorbitant increase into homelessness.

In Queensland, the conversation around rental reforms continues, with the Government recently closing consultation on the second stage of reforms.



There were many good suggestions within the Stage 1 options paper, covering topics including installing modifications to support Queenslanders with disabilities, making personalisation changes to rental properties, balancing privacy and access, and improving the rental bond process. However, glaringly absent was any discussion around a framework to manage the amount that a tenant's rent could be increased.

In addition to that framework, Q Shelter is advocating for rapidly expanded build-to-rent initiatives, led by community housing providers, to create mixed-tenure and mixed-use sites that have long-term, sustainable social and affordable housing outcomes.

Build-to-rent is an important property class overseas, and we believe it would provide opportunities for longer-term security of tenure for more

Queensland renters, especially among the lowest income quintile (that is, the bottom 20 per cent of household incomes).

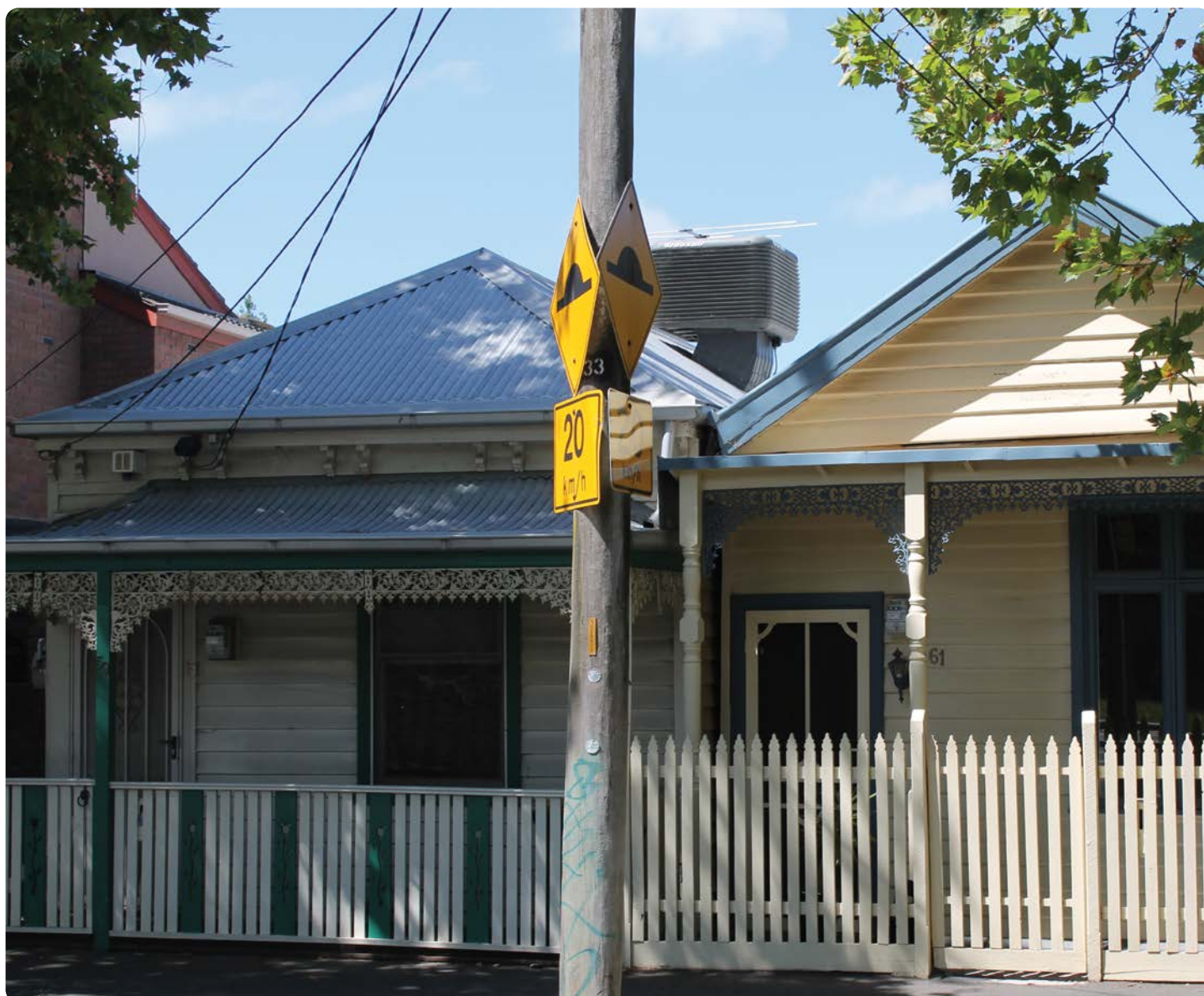
For this to become a reality, we need to ensure incentives promoting build-to-rent include affordable housing in perpetuity in the mix, along with a consistent definition of what constitutes 'Affordable Housing'. It is critical that Affordable Housing (with a capital A) targets people on the bottom two income quintiles who can't afford to spend more than 30 per cent of their household income on rent.

Build-to-rent also offers an opportunity to significantly diversify the rental market, which, in Australia, is predominantly mum and dad investors who own one or two properties. Therefore, any increases in the housing market are typically passed on to renters.

In Queensland, 35.9 per cent of households are renting, and renting has been on the rise among all age groups nationally since 2001. At Q Shelter, much of our policy framework includes upstream measures to prevent homelessness. Continuing to progress tenancy law reform is a vital piece of that puzzle.

Many landlords do the right thing by their tenants regardless of their legislated responsibilities, but leaving tenants at the goodwill of their landlords is not the path to ensuring that the place they live in is a home — somewhere they can afford, that appropriately caters to their individual needs, and a place where they can develop long-term connections within their communities.

Jackson Hills is the Manager, Policy and Strategic Engagement at Q Shelter. Q Shelter has worked for more than 35 years as a peak body to influence solutions to housing need and homelessness.



# Dr Heather Holst

Victorian Commissioner for Residential Tenancies



This edition of *Parity* comes at a time when the pressures of affordability and insecure housing are significant.

I am now in my fifth year as Victoria's first Commissioner for Residential Tenancies after many years working in homelessness services.

I was appointed to strengthen the voice of renters in relation to Government policy and processes during a time of significant change and reform.

Just before commencing my tenure as Commissioner for Residential Tenancies, more than 130 reforms were introduced through the *Residential Tenancies Act* to ensure greater legal protection for renters, which radically transformed the rental environment, and they have all now been implemented. Victorian renters now have stronger minimum standards in their housing, can keep pets under most circumstances, can perform minor alterations to living spaces,

and are protected by stronger eviction and discriminatory conduct rules and regulations.

Gas and electrical safety checks are now required across rental properties, and people living in Specialist Disability Accommodation as part of their National Disability Insurance Scheme (NDIS) packages are now entitled to the rights of other Victorian renters, lessening their reliance on the relevant accommodation providers.

Renters are also now given opportunity more often to make up rent arrears through repayment plans in Victorian Civil and Administrative Tribunal (VCAT) cases, rather than being evicted, which is a direct outcome of the 'reasonable and proportionate test' as part of eviction hearings.

These are all very important improvements to better protect Victorian renters.

These amendments were a first in Australia, and put Victoria at the forefront of renter protection, with other states and territories subsequently adopting similar amendments.

New South Wales will soon appoint its first Rental Commissioner to address the issues currently experienced by renters across the state and I'm looking forward to seeing what protections will be afforded to our northern neighbours.

In my role as Commissioner for Residential Tenancies, I'm responsible for representing all private rental and community housing tenancies, including

renters in rooming houses, caravan parks, residential parks, community housing and specialist disability housing.

I took on this role because these are the main places that people on low incomes live. I believe that rental housing must have all the features of a home, which includes being of decent quality, with stable tenure at an affordable price, and in the community in which the household wants to live.

In my time as Commissioner, I have launched the Aboriginal Private Rental Access in Victoria Report, which details important issues faced by the Aboriginal community in Victoria. The report recognises the barriers Aboriginal people face when seeking private rental and provides recommendations for change. This is an area of work I am passionate about, and I will continue to advocate for better outcomes alongside the Aboriginal communities of Victoria.

The affordability of private rental properties also continues to be an area of concern and focus of my tenure, and it is of the utmost importance to me that low-income Victorians have equitable access to affordable and secure housing.

It is pleasing to see that the Victoria Government is building more social and affordable housing to address the issues facing the rental market, but we must also continue to ensure all rental options are safe, secure and of a standard that is suitable for all Victorians.

I look forward to continuing my work as Commissioner and representing Victorian renters in the best way possible.

# Kasy Chambers

Chief Executive Officer, Anglicare Australia



Open any newspaper and you will see story after story on Australia's housing crisis. With record numbers of people doing it tough, and rents surging to eye watering highs, it seems that we have now moved beyond crisis. Housing stress in Australia has simply become a way of life.

Almost all of us knows someone who has had a huge rent increase over the last few months. Many of us also know someone who has been evicted, who can't afford to live in their home, or who has been pushed out of their own communities because they can't afford to live there anymore. Those of us working on the frontlines of housing and homelessness are seeing daily how this crisis is climbing the income ladder and migrating from cities to regions.

These experiences are borne out by hard statistics. In April, Anglicare Australia surveyed almost 46,000 rental listings from across the country for our Rental Affordability Snapshot. We found that 0 per cent were affordable for a person on JobSeeker, the Disability Support Pension, or Youth Allowance.

The Government's small increase to some of these payments will be swallowed by rent increases before it even comes into effect. When we ran the numbers from the May Budget, our Snapshot numbers barely changed. We found that just five rentals would be affordable out of 46,000 listings across the country for a person on the new rate of JobSeeker — up from four under the old rate. Not a single listing would be affordable for someone on Youth Allowance.

We found that age pensioners are doing it tougher than ever, with less than half a percent of rentals in their budget. With more and more older people retiring into renting, this is a dire result. It is easy to see why older people in regional areas can be pushed into aged care well before they are ready, and sometimes end up being forced out of their local communities altogether as they get older.

For the first time in the history of our Snapshot, we found that a person on the minimum wage could afford less than one percent of rentals. That assumes the renter is working full-time. People in part-time or casual jobs will have even fewer choices.

When we sifted through the handful of affordable listings for people on low incomes, the situation becomes worse. We looked at rooms in decaying share houses, sheds, and even a mattress in a kitchen. The myth that regional areas offer a reprieve from cities has well and truly been busted. Regional areas have barely any rentals listed, much less affordable options.

You might be thinking that help is available for Australians doing it tough in the rental market. But our

calculations already include rent assistance and family tax benefits. We also assume that single people can live in a share house.

It is in these conditions that millions of people will live for good — pensioners competing for rooms in share houses, people in full-time work on the brink of homelessness, and young people with disabilities stuck in aged care because they can't find a home. People in regional areas face twice the challenge, with affordability at record lows alongside lower incomes, fewer jobs, and more expensive transport.

Each year journalists ask us why, when this crisis has engulfed so many people, haven't we seen real action?

*The truth is that there has been action — the wrong kind.*

The past three decades have marked a shift in how the Federal Government tackles housing. It used to fund and build homes as its answer to housing affordability. This provided secure homes for working people on low incomes and freed up affordable rentals for people on middle incomes. It also ensured that regional communities got the homes they need, instead of being left to the mercy of whether builders found it profitable to build there.

This changed in the 1990s, when the Government began relying on the private market to do the heavy lifting. It offered people grants and payments instead of providing affordable homes itself.

Anyone can see that this approach is failing. The shortage of affordable rentals has been soaring since 1996, even though every region in Australia has an oversupply of homes.

Supply continues to be the solution favoured by most commentators. Yet Australia already builds anywhere between 165,000 and 240,000 new homes each year, growing faster than our population. Even though supply is growing, it is not making housing more affordable. Building more homes is only part of the answer — we also need a plan to make those homes affordable, something the private sector has shown it cannot do on its own.

It is social and affordable housing that has not kept pace with our population. We have a shortfall of 640,000 homes across the country, and that number is only growing. Australia's undersupply is not in housing, but in affordable housing.

Private rentals do not 'trickle down' and become more affordable, but social housing has benefits that trickle up to all Australians. It helps people in need, it frees up cheap rentals for everyone else, and building it helps communities recover after disasters like floods and fires. It is a lifeline for regional

areas, ensuring that young people and essential workers can afford to keep living in their own communities. Our own Prime Minister grew up in public housing and has said that he would not be where he is today without it.

All of this sounds like a no-brainer but building these homes costs money. Ending our shortfall would mean building 25,000 homes each year for the next two decades. Even maintaining our current share of public and community housing would mean building 15,000 new homes a year. Our current rate is about 3,000 — nowhere near what is needed to end the crisis, or even stop it from getting worse.

As a nation, Australia has the money to turn this around but, as always, it's a question of priorities. Last year, modelling from Anglicare Australia showed that we could end the social housing shortfall for much less than the cost of the planned Stage Three tax cuts. If we can afford to spend \$250 billion on tax cuts for people who don't even

want them, we can surely afford to make sure everyone has a home.

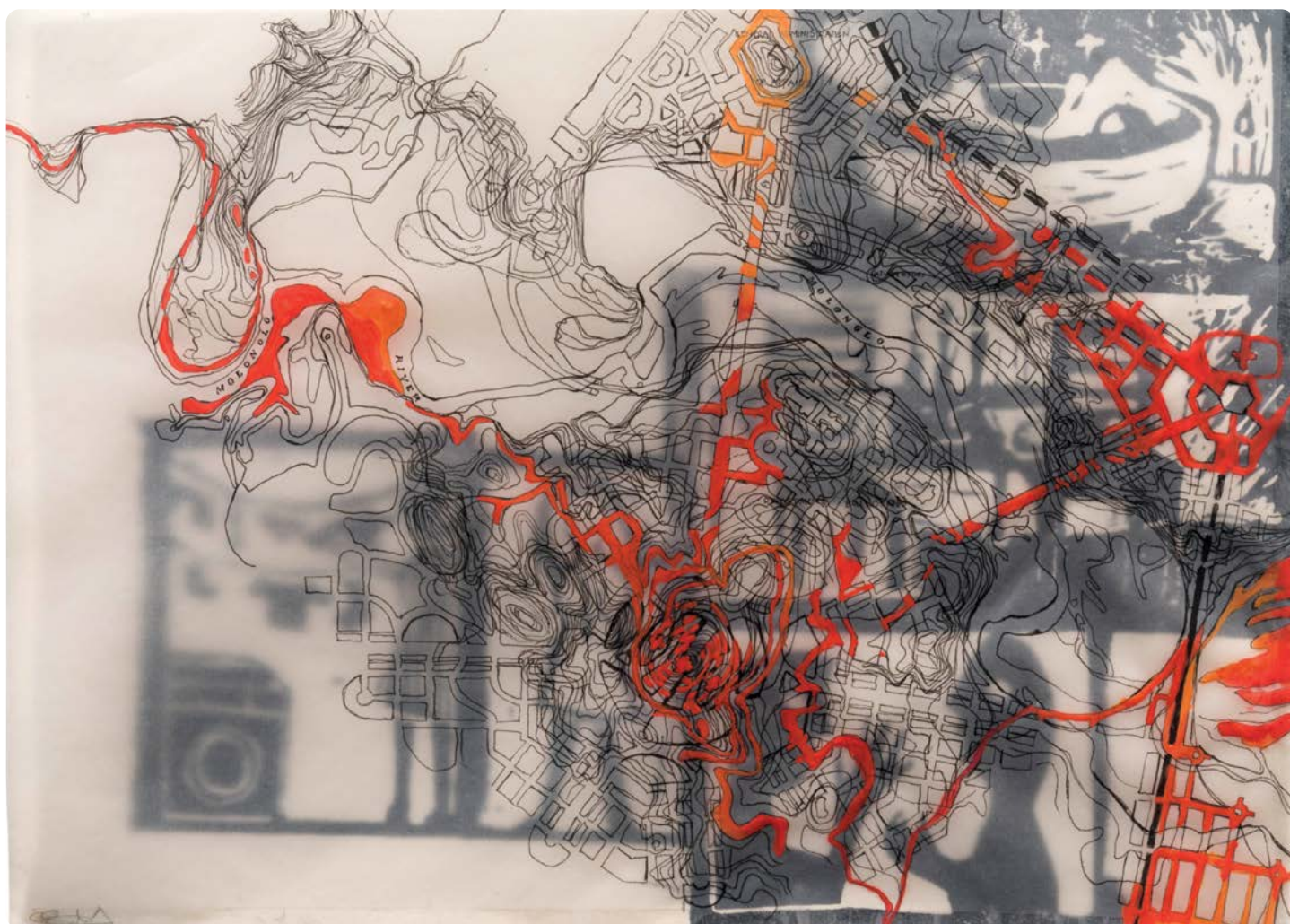
Of course, the current Government did not create this crisis. They inherited it. But that does not change the fact that years of government decisions created this problem. Only government action will fix it.

Tackling this crisis will take time, and a willingness to put the interests of Australians who need a home ahead of other interests.

Rental stress, insecurity, and homelessness does not have to be the way of the future. We can and we must invest in affordable homes for everyone, especially people who need them the most, and ensure that everyone has a place to call home.

With homes on the line, the stakes for our housing system couldn't be higher. Australia cannot afford more lost opportunities to tackle this crisis.

Our hope is that Australia will finally reach a tipping point that spurs the right kind of action.



*if the heart is there, it's home* by Elizabeth Errol and Annie McCarthy

Image Courtesy ITD

# Maiy Azize

Everybody's Home Campaign Spokesperson



## Just Out of Reach?

Over the last decade, much has been said about the need to get a fairer deal for renters.

There was the Henry Tax Review, which called for tax reforms to make housing cheaper.

Months later Anglicare Australia released its first Rental Affordability Snapshot. It found that most rentals were out of reach for people on low incomes and the minimum wage.

Then it was the OECD. It said that Australia had some of the most expensive housing in the developed world.

By 2019, the Productivity Commission joined the chorus line. It found that renters on low incomes were in severe rental stress.

Fast forward another year. The Australian Housing and Urban Research Institute found that Australia had a chronic shortage of affordable rentals for people who need them.

I will spare you the full year-by-year list. Needless to say, the past decade has seen inquiries, reviews, and countless organisations beg for change. Study after study, report after report, have made the same call.

Earlier this year Everybody's Home joined the fray with Priced Out, a report looking at rents for 15 essential worker categories. We found that none of them would be able to afford rent on an average unit in Australia.

Across every region in Australia, we saw the same result. Rents were out of reach for a person working full-time in these essential roles, sometimes by hundreds of dollars. Most would have to spend two-thirds of their income to rent a unit, putting them in severe rental stress.

This helps explain why housing has been a top-tier issue among voters for years — although it can't explain why it has been absent from the political debate for so long.

Polling released by Everybody's Home before the 2022 federal election showed how fearful Australians have become about the housing crisis. More than half feel too stretched to meet their current housing commitments. And a staggering 42 per cent are worried about becoming homeless themselves if their circumstances change.

Think about that for a moment. While we lose billions each year subsidising landlords, 42 per cent of Australians fear becoming homeless.

We should be especially concerned about the situation facing older people. Retirees need stable housing more than ever. Yet record

numbers of older people, especially women, are becoming homeless. And with CoreLogic estimating that rents are set to go up by another 10 per cent over the next year, renting as an older person is only getting worse.

What this tells us is that no one is shielded from Australia's overheated rental market. But if we believe media commentators, the property industry, and many politicians, there is only so much we can do to protect renters. Protecting them from unfair rent increases, we're told, will somehow make things worse.

Here's the problem with that argument. The light-touch approach favoured by the industry has been failing renters for decades.

We have gone from being a country where renting was temporary to one where many people will rent for life. In that time, rents have skyrocketed while protections for renters have failed to keep up.

At the same time, governments have stepped away from building social housing, leaving renters on the lowest incomes to the mercy of the private market. We are relying on private landlords to do a job that used to be done by government, with few guard rails or rules to protect people.

The solution is obvious to most Australians, even if the political class has been slow to catch up. They want much more intervention from government.

Later this year, National Cabinet will finally look at the needs of renters and how to protect them. This is a huge opportunity to finally secure the protections that renters have needed for decades



— an end to no-cause evictions, real standards for rental homes, and an end to unfair rent increases.

These moves are not revolutionary, and they are popular with Australians. In May, a *Guardian* Essential Poll showed that 60 per cent of Australians want action on rent increases.

That level of support tells us something. Most Australians know that a fair society is one that responds to need. And they can see that Australia's housing system has been leaving renters behind for years, excluding them from the opportunities our political leaders like to talk about.

Australia's renters can't afford another decade of lost opportunities. With the momentum behind us for change, we need to make the most of this moment and lock in the rights that renters deserve.



# Travis Gilbert

Chief Executive Officer, ACT Shelter



Repeal without a cause (evictions):  
The Australian Capital Territory's  
(ACT) notice to remedy renting laws  
is good news for tenants (like me).

Canberra is a beautiful place to call home in Autumn. This year it was even more so if, like me, you happen to be one of Canberra's roughly 100,000 private tenants.

Like a leaf from a deciduous tree, the ability of a lessor to terminate a tenancy without cause (grounds) was removed from the *Residential Tenancies Act 1997* (RTA), on April Fool's Day, no less. Unlike said leaf, we hope the nixed clause will see no Spring renaissance.

I have never understood the steadfast resistance to providing a reason for terminating a tenancy, given that the end result of a Notice to Vacate for a recipient can be eviction into homelessness.

Losing your home is recognised as a traumatic event. It is destabilising, demoralising, and abruptly limits the ability to plan for the future. I know

this, because I have been given notice to vacate (no breaches on my part) from seven of 11 properties that I have rented since 2003. How's the stability? So much stability.<sup>1</sup>

On two such occasions, no reason for the termination was given. It was confusing the first time this happened as I had not been renting for long and had not breached any of the terms of my lease. Many years later, it happened again after we (share house folks) received a rent reduction as a result of living with a stove that sometimes only had one working burner out of a possible four, and a door that warped on an unforgiving winter morning, breaking the lock. We reasoned 14 weeks without a working stove and lockable front door was tribunal-grade suboptimal.

I did not know the term 'retaliatory eviction' then. I cannot be sure it was one, even now. Nevertheless, the fact is, no-cause evictions are often used to mask a plethora of grounds for evicting someone into homelessness. Those grounds may be reasonable, or they may not be. Agents argue that when they are not, ACT tenants can challenge their legality at the ACT Civil & Administrative Tribunal. However, I have known dozens of tenants in my life. Yet I only know three who have taken a grievance during a tenancy to a Tribunal. If very few tertiary educated tenants go to any Tribunal, what do you reckon the percentage might be of all private and social tenants?

There were already a significant number of causes to serve a Notice to Vacate in the ACT RTA and, as a result of removing the ability to terminate a lease without saying why, there are now a few more. A full list of termination grounds can be accessed

via the link in this footnote<sup>2</sup> but are summarised below for convenience:

- termination where either the tenant or the lessor has engaged in threatening, harassing, intimidating or abusive conduct towards the other party
- termination where the landlord genuinely requires the property for a lawful non-residential purpose (such as establishing a business)
- termination grounds specific to public housing tenancies
- termination grounds specific to community housing tenancies, and
- termination grounds specific to subsidised accommodation (including social and community housing properties provided by community housing providers).

Having rented for the better part of two decades in three jurisdictions, it was easy to become jaded as I was not sure rebels against 'without a cause' terminations would ever succeed.

I want to thank the Justice and Community Safety Directorate, the Attorney General and the ACT Government for tabling and assenting to this important law reform. While this reform is testament to the steadfast advocacy of many, the reform also faced vocal public opposition from lessors across all three tenures. Here I can only speak to the increased security of tenure that the reform offers me as a private tenant, as that is my lived experience. We tend to be somewhat invisible in the housing landscape.

The second significant reform is regulation that also commenced

on April Fool's Day. It is the first regulation regarding setting standards for rental properties introduced by amendments in February 2020 and is limited to ceiling insulation. While these are small steps, hopefully this will gradually change. It is imperative that private tenants organise to prioritise the inclusion of a suite of minimum rental standards that best suit the conditions and circumstances of the ACT.

Commencing with ceiling insulation, the ACT Attorney General can now prescribe minimum standards that properties will need to meet in order to be deemed habitable and eligible for renting out. I know I am probably overselling it but, in a jurisdiction with a Human Rights Act, this positive step sparks the activist flicker of hope. Hope, that is, that we can provide the United Nations Special Rapporteur on the Right to Adequate Housing with some good news for Article III of their mandate when they next report:

*Give particular emphasis to practical solutions with regard to the implementation of the rights relevant to the mandate.<sup>3</sup>*

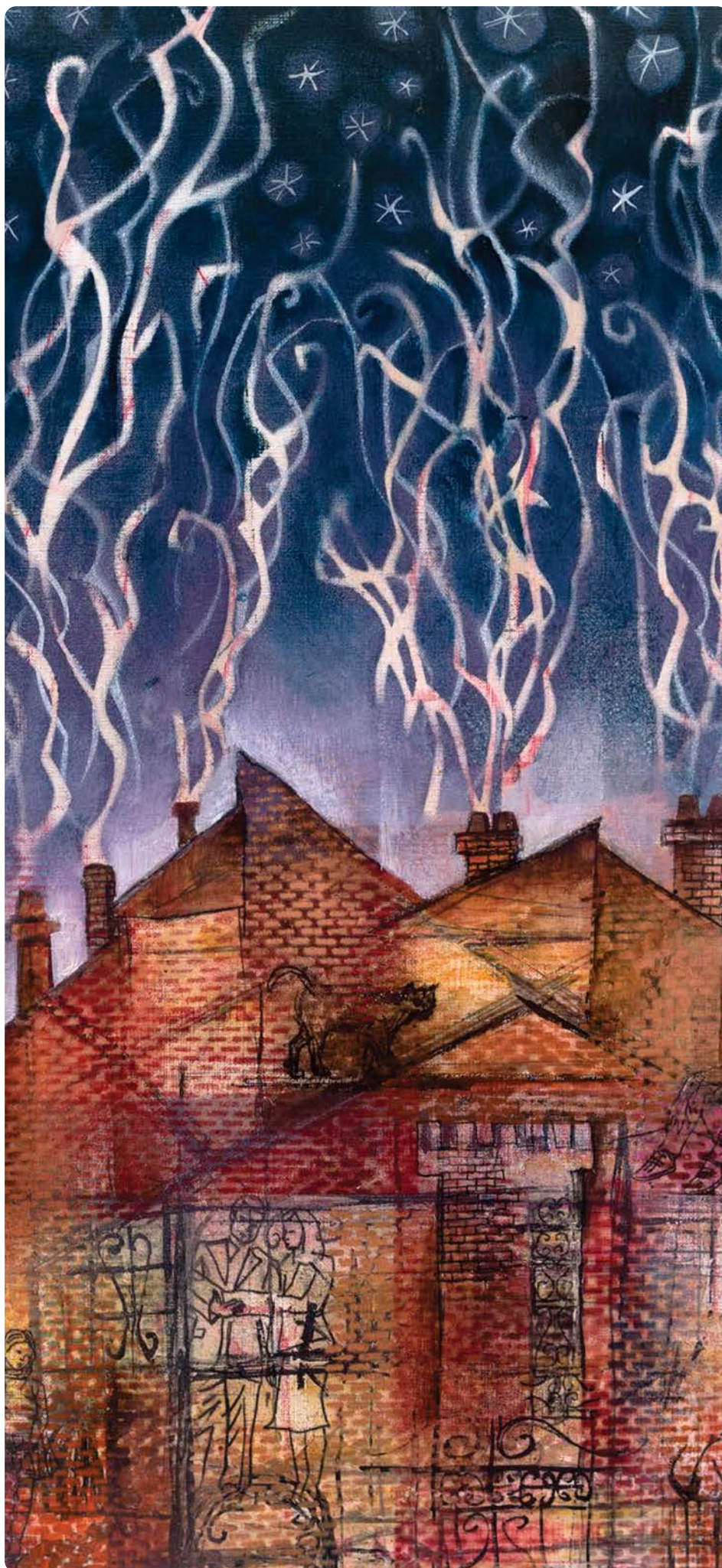
After all, the ACT has not seceded from the Commonwealth, and Australia is a signatory to the International Covenant on Economic, Social and Cultural Rights.

In the housing space we hear and talk a lot about affordability, but much less so about security of tenure, amenity or liveability or safety. Yet these are equally or possibly more important elements of what makes a house 'a home' than how much money we are required to pay in rent.

With the first of what I hope will be a suite of meaningful minimum standards prescribed in the ACT now being phased in, we can move closer to rented houses feeling more like actual homes.

#### Endnotes

1. To be read in the voices of Daryl and Dale Kerrigan from 'The Castle'.
2. ACT Government, *Fact Sheet: Tenancy Termination Grounds For Landlords*, [https://www.justice.act.gov.au/\\_\\_data/assets/pdf\\_file/0014/2200442/Fact-Sheet-Tenancy-Termination-Provisions-1-April-2023.pdf](https://www.justice.act.gov.au/__data/assets/pdf_file/0014/2200442/Fact-Sheet-Tenancy-Termination-Provisions-1-April-2023.pdf)
3. United Nations, *Special Rapporteur on the Right to Adequate Housing*, <https://www.ohchr.org/en/special-procedures/sr-housing>



Artwork supplied by ACT Shelter

# Leo Patterson Ross

Chief Executive Officer, Tenants' Union of New South Wales



## Modernising Consumer Protection in Renting: From Individualised to Systemic Protections

Over the last 50 years, tenancy acts have been directed by the results of the national inquiry conducted by Ron Sackville as part of the Whitlam Government poverty inquiries. The recommendations of that inquiry built on previous attempts to carve out protections from the common law and balance the individual interests of a renter and a landlord. What will drive reform in the coming years and decades? I believe it needs to be a shift to protection and regulatory design at the systemic level.

In Sackville's Report, *'Law and Poverty in Australia'*, the section on renting made 37 recommendations covering Tribunals to Bond Boards to minimum standards and rules for eviction. These recommendations shaped the modern tenancy system that has been implemented across the country — though only the ACT (and only since April this year) has implemented

the final, key recommendation of ending no-grounds evictions.

These recommendations sought to set standards in the contract between renter and landlord and provide sites for resolving disputes. What they did not do is reach between tenancies.

When you buy an avocado in Australia, you can be pretty confident it won't harm you (or your chances of purchasing property). Consumers generally have two levels of protection. Firstly, they have their own individual consumer rights to return a dodgy avo. Secondly, there are regulations in place to ensure avos are grown and stored in a manner that minimises the risks of toxins. Food safety standards, including licencing and registration, covers every food vendor from your local greengrocer to the multi-hatted restaurants of the *Good Food Guide* to the food truck at your local markets. These two levels of protection mean you don't have to try and find out if they have been cleaning out the back — the food standard authority does that for you.

Like food, everyone needs a home, although there are many conceptions of what a home should look, smell or feel like. However, the current individualised approach to safeguarding renters falls well short, leaving widespread systemic issues and degrading faith in the system as a whole.

The limitations of individual protections in renting are evident in the growing frustration people have with the experience of renting. While Australian renters have, on paper, many of the rights that modern community standards expect, they do not have the practical experience of those rights.

One of the most obvious examples, and easily TikTok-able, are the repairs and maintenance standards. As a tenant advocate, one of the most common calls I received was from people who were moving out of a place that had been poorly maintained and wanting to know what they could do to prevent someone else having to deal with it. However, those calls were still outweighed by calls from people moving into poorly maintained home because the answer is the law stops covering the property while no one is renting it.

Renting regulation today relies heavily on the renter to do the heavy lifting, even where consumer affairs or the Tribunals are able to assist. It is the renter who has to stick their neck out to raise issues, potentially jeopardising their current tenancy while we maintain no-grounds evictions, as well as their future tenancies if their willingness to enforce their rights and respect the contract is noted in references.

This means that, for many, a good renting experience is a mix of luck and privilege. Lucky if you find an owner and agent who are willing and able to honour not only the tenancy agreement but also the responsibility of providing space for you to make your home. Privileged to have the income, the references, and other options if enforcing your rights goes wrong. It's hard to believe it is a coincidence that eviction rates are far lower in the north and east of Sydney than in the south and west.<sup>1</sup>

At the end of the day, a landlord is an investor seeking a return on their investment. A renter is trying to keep safe and create a home for themselves and their family. These interests are not balanced,

because there is significantly more at stake for one than the other. We need to ensure the purpose of the rental sector is recognised to be about providing good, safe, stable and affordable homes, with any investment a means to that end — not the end itself. There are other forms of investment available to people without the capacity or willingness to engage with this purpose, and they should be encouraged to explore those options.

To rectify the shortcomings of individualised protections, we must adopt a systemic approach. Systemic consumer protections offer numerous advantages, including broader coverage, robust enforcement mechanisms, and a more balanced power dynamic between landlords and renters. By shifting our focus to systemic measures, we can truly safeguard the rights and interests of all renters.

To build a framework of systemic consumer protections, we need to shift the locus of enforcement away from the individual renters alone.

- Standardised lease agreements and applications ensure transparency and prevent unfair terms.
- Mandatory property inspections and maintenance standards guarantee habitable living conditions.
- Registration and licencing schemes open up the communication between regulator and industry, provide the opportunity for the swift and fair resolution of disputes and complement the operation of robust complaint resolution mechanisms.
- Rent price stabilisation measures protect renters from skyrocketing rental prices.
- Funding support services, such as the Tenants' Advice and Advocacy Services, to be able to actually meet the needs of the community, for instance attending all eviction hearings, empowers renters with knowledge and resources to navigate the individualised aspects confidently.

Implementing systemic consumer protections is not without its challenges. Opposition from landlords and industry groups is expected, as it may disrupt existing business models. Concerns, both valid and fanciful, about potential impacts on rental sector dynamics will be raised requiring government to engage in careful analysis and planning. Overcoming political and legislative barriers demands concerted efforts and unwavering commitment to protect the rights of renters.

To pave the way for systemic consumer protections, collaboration among stakeholders is essential. Policymakers, landlords, and renters must come together to shape policies that effectively leverage the immediate effectiveness of regulation alongside better

planning for growing population and changing needs. Legislative reforms and policy initiatives need to be introduced and championed by forward-thinking lawmakers. Importantly, we must learn from successful examples and adapt them to the unique contexts of different regions.

Expanding consumer protection to include a systemic approach is not a luxury; it is a necessity in today's rental market. By transitioning from individualised to include systemic protections, we can ensure that all renters are afforded fair treatment, adequate living conditions, and the ability to assert their rights.

#### Endnote

1. Moon J 2022, *Who is Using the Tribunal and Why?*, Tenants Union of NSW, <https://www.tenants.org.au/blog/who-using-tribunal-and-why>





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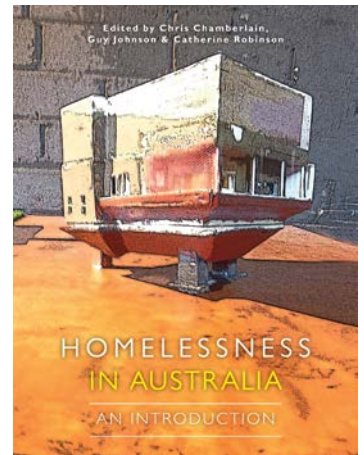
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