

# NCOSS Submission to the NSW Improving Rental Laws Consultation

16 August 2023

## About NCOSS

NSW Council of Social Service (NCOSS) is the peak body for non-government organisations in the health and community services sector in NSW. NCOSS works to progress social justice and shape positive change toward a NSW free from inequality and disadvantage. We are an independent voice advocating for the wellbeing of NSW communities. At NCOSS, we believe that a diverse, well-resourced and knowledgeable social service sector is fundamental to reducing economic and social inequality.

## Acknowledgement of Country

NCOSS respectfully acknowledges the sovereign Custodians of Gadigal Country and pay our respects to Elders, past, present and emerging. We acknowledge the rich cultures, customs and continued survival of First Nations peoples on Gadigal Country, and on the many diverse First Nations lands and waters across NSW.

We acknowledge the spirit of the Uluru Statement from the Heart and accept the invitation to walk with First Nations peoples in a movement of the Australian people for a better future.

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## Introduction

NCOSS welcomes the invitation from the Minister for Better Regulation and Fair Trading, The Hon. Anoulack Chanthivong MP, to comment on the rental reform proposals outlined in *Improving Rental Laws Consultation Paper July 2023*. With declining home ownership across Australia and skyrocketing rents, rental reform has never been more urgent.<sup>1</sup>

NCOSS and our partners have developed extensive research, reports, and submissions in recent years on housing and homelessness and how they intersect with poverty. These include:

- [\*Barely Hanging On – the Cost of Living in NSW 2023\* \(August 2023\)](#)
- [\*Mapping Economic Disadvantage in NSW\* \(May 2023\)](#)
- [\*Aftershock: Addressing the Economic and Social Costs of the Pandemic and Natural Disasters Report Three – Housing Security\* \(October 2022\)](#)
- [\*Homelessness in People Over 55\* \(June 2022\)](#)

These reports and submissions highlight the impacts on particular demographics and locations, the associated social and economic costs, and the solutions needed to address the current housing crisis and improve housing outcomes for people in NSW experiencing poverty and disadvantage. Building on this work and drawing on feedback and consultations with our members, this submission outlines our recommendations for improving rental regulation in NSW. We also acknowledge the detailed work of our colleagues at the Tenants Union of NSW in guiding our approach.

While this submission responds to the suite of proposed rental law changes, outlining a total of 42 recommendations, NCOSS highlights the following areas as the priorities for urgent action:

- End No Grounds evictions (on all tenancy types).
- Change the rules to allow pets in rentals.
- Limit rental increases through a fair and transparent process.
- Set enforceable energy efficiency standards.
- Increase funding for tenants advice and advocacy services.

## The Grim Reality of Renting

Renters in NSW face skyrocketing rents, insecure tenancies, housing that can be poorly maintained and unhealthy, an inadequate regulatory framework, and a social and affordable housing safety net that is diminished and not able to 'catch' people in desperate need. Renters are also burdened with the primary responsibility for enforcement of rental regulation.

NCOSS' 2023 [\*Mapping Economic Disadvantage in NSW\*](#) research shows the grim reality of poverty in NSW and how private renters are amongst the hardest hit. Across the State, of all housing tenures, the private rental market has the largest number of people experiencing poverty – at over 412,000. This means that 1 in 5 private renters in NSW live in poverty. Groups most impacted include single parents, older single adults living alone (particularly women) and people with disability.

In Greater Sydney, the rate of poverty for private renters increased by 10% since 2016. In some parts of Greater Sydney, the rate of poverty for people living in private rentals has reached almost 50%, while other

areas across NSW are over 50% (i.e. more than half of private renters in that area live below the poverty line)<sup>3</sup>.

At the same time as poverty rates have increased for this group, so too has the proportion of people living in rental properties. This is a warning for the future – as more people become reliant on the private rental market, more people are at risk of experiencing poverty.

The escalating cost of renting, coupled with a legislative and taxation framework that prioritises rental housing as assets rather than as people's homes, has placed a tremendous burden on individuals and families. The case study below clearly articulates the reality for many renters, particularly in the current cost-of-living crisis – intense stress, disruption, and sacrifice, all of which have severe intergenerational impacts.

## Impacts – Rising rents and housing insecurity:

is a migrant who came to Australia 32 years ago and has 5 children. She cares for one of her daughters who has a disability and pays for the university costs of her eldest daughter, as her daughter is not eligible to receive a study allowance from Centrelink. The most challenging issue Leila faces is finding a stable home for her and her children.

*"I've lived in 49 houses over 3 states... my kids don't have a lot of friends because we keep moving... sometimes the rent goes up, or sometimes the owner wants to sell the house... I'm so stressed, I can't move anymore... it's too much for me, it's too stressful for my kids... it's affected my daughter with a disability, it's too much. It affects me a lot, to wake up every morning and say I have to prepare my kids to move... I don't want to tell my daughter that. Now it's stable, and I don't want her to go back to zero again."*

has had to go to extreme lengths to cut costs around the house. She doesn't use the heater and has stopped using the oven as it uses too much electricity. She keeps the lights off as much as possible. Her rent is subsidised via government assistance, which a women's association helped her to access. However, once this expires she will be paying up to 85% of her wages on rent.

*"If I pay for [the full cost of] rent I don't even have money to get food for my kids... it's going to be tough. Everything goes up – clothes, food, everything. Wages don't go up. I go shopping every two weeks, and every two weeks the same food I get goes up every time."*

Institute for Public Policy and Governance 2023 p44

## Summary of Recommendations

### Ending No Grounds Evictions

1. Landlords should not be able to end any type of lease without a prescribed reason, evidence to support the reason, and restrictions on re-letting (where there has been no tenant breach).
2. The notification period for a lease ended for anything other than a tenant breach should be at least 120 days. Tenants must be free to leave at any time during the notification period without penalty.
3. New reasons for eviction should be limited to:
  - The property:
    - will go through reconstruction, repair or renovation that requires it to be vacant.
    - will change its use (e.g. change from a home to a shop or office).
    - will be demolished.
  - The landlord:
    - will move into the property, or a member of their immediate family will move in.
4. After a notification for the reasons outlined above, properties should not be able to be re-let for a period of 6 months (from the date at which the landlord regains possession of the property).
5. Written reasons with supporting evidence should be provided for ending the lease. Acceptable evidence could include statutory declarations, development applications, and quotes from a tradesperson for renovations or demolition.
6. If the landlord has been intentionally misleading or willfully misused the termination process to wrongly evict a tenant, the landlord should face a significant penalty (a fine) and be required to compensate the renter for any reasonable moving costs.

### Changing the Rules to Allow Pets in Rentals

7. Renters should be informed of any regulations prohibiting the keeping of pets at a property at the property marketing stage.
8. The Residential Tenancies Act 2010 (The Act) should prohibit landlords and agents from asking about pet ownership at the application stage.
9. 14 days is a reasonable amount of time for a landlord to consider and respond to a renter's written request to keep a pet. Where a landlord is seeking an order to refuse a request for a pet they should be required to do this within a 14 day timeframe from the written request.
10. Landlords should be required to seek an order at the NSW Civil and Administrative Tribunal (The Tribunal) if they wish to refuse a pet/s.
11. The Tribunal should consider the welfare of the animal as the primary consideration when determining whether it is reasonable to refuse the keeping of pet/s at the property. The determination should be made with reference to relevant animal welfare guidelines and/or other companion animals regulation, as well as local regulations.
12. The Tribunal should not be able to give the landlord the ongoing right to say no to animals at the property.



## Protecting Personal Information

13. A standard rental application form should be prescribed by regulation.
14. Limits should be placed on the types of additional information and the number of pieces of information that can be requested for specific categories of information (Proof of identity; Ability to pay agreed rent; Suitability) as part of the application process.
15. Prospective renters should be able to choose which pieces of information (from the acceptable types) that they supply for each of the three categories.
16. Information about previous bonds should be excluded from the application process.
17. Prospective renters should have confidence that any information collected about them is held only for reason of assessing their application and only in regards to their identity, their ability to pay the rent, and their suitability. This information should be held only for the period of time required to assess their application. This means:
  - a. For landlords and agents:
    - For a successful applicant**
      - Contact information such as phone and email address needed for the ongoing relationship should be stored securely.
      - The tenant should be provided with copies of any information held about them and then all non-contact information destroyed within 2 months of entering into the agreement.
    - For unsuccessful applicants**
      - Information and documentation should be destroyed once an agreement has been entered into, unless the unsuccessful applicant gives explicit and withdrawable consent for the retention of information in response to a plain language explanation of its use for a specific time frame of no more than 6 months or as directed by the person. At the end of that time frame, information must be destroyed or consent renewed.
  - b. For third parties:
 

Information should be destroyed upon completion of the application unless the person gives explicit and withdrawable consent for the retention of information in response to a plain language explanation of its use for a specific time frame of no more than 6 months, or as directed by the person. At the end of that time frame, the information must be destroyed or consent renewed.
  - c. For all:
 

Renters should be given access to personal information (including specifying this be free, reasonably accessible, and clear timeframes for response) and the ability to correct this.

## Automated decision making

18. Automated decision making should be disallowed until such time as suitable protections are put in place to ensure that its use is fair and non-discriminatory.
19. Automation of decision-making or assistance should only be used where the automation rules are transparently published and reliable and have been tested by an independent and expert entity.
20. The Act should make clear that applications must also be offered on paper; and that all applications, online or paper, should be considered equally.

## Portable Bonds

21. Renters should be provided a minimum of 14 days to top up the bond if there is a difference between the bond required at a new property and the bond refunded from their old property.
22. The payment of bond to the new landlord should be guaranteed, with the cost to be recovered from the renter.
23. A renter who defaults should not be barred from the portable bond scheme in future. Appropriate hardship support should be made available for those renters struggling to pay the difference.
24. Landlords should not be able to end a lease because someone has defaulted on their differential bond payment.

## Limiting Rental Increases

25. To ensure the data is reliable and timely, landlords or their agents should be required to report a rent increase to the NSW Government using an online system (such as Rental Bonds Online).
26. The frequency of rent increases should be limited to a maximum of once every 12 months for all types of agreement, including when switching between different types of agreements.
27. Limits for rental increases that act as a threshold should be introduced, above which landlords must prove that a rent increase is not excessive. Thresholds should be set with reference to an appropriate measure (such as the Consumer Price Index), and developed through a consultation process led by the Rental Commissioner or another relevant independent agency.
28. Consideration should be given to applying the threshold and frequency of increases to the property rather than the tenancy.
29. A fixed rental price should be advertised at the time a property is put up for rent. This advertised rate would act as a ceiling.
30. Landlords, real estate agents, other third parties and potential tenants should be prohibited from offering, soliciting, or accepting a higher rental rate than the originally advertised rate.

## Embedded Networks

31. Landlords or their agents should provide potential applicants with a standard information sheet outlining relevant information about all services provided through embedded networks including where to get further information.
32. Landlords or their agents should be required to disclose this information when listing (advertising) the property for rent, at inspections for the property, as well as in the tenancy agreement.

## Free Ways to Pay

33. The law should require a landlord or real estate agent to offer an electronic way to pay rent that is free to use, such as a direct bank transfer option.



## Strata

- 34. By-laws should be provided with the tenancy agreement by the landlord or agent with penalties for failure to provide. They should also be published and available through the Strata Hub. Penalties should also be attached to failure to notify the strata committee of a new tenant within a specified timeframe.
- 35. Owners should be directly responsible for urgent repairs and maintenance and empowered to pass on reasonable costs to strata.
- 36. A breach of by-laws should not constitute a breach of the tenancy agreement.

## Hardship Framework

- 37. A permanent hardship framework should be introduced to support renters to maintain their tenancy and avoid eviction. This could include measures such as temporary rent variations and an expansion to government subsidies such as Rent Choice.
- 38. Where tenants are evicted for reasons other than a breach, provisions should be introduced requiring compensation for moving costs by the landlord.
- 39. Consideration should be given to the feasibility of a mandatory landlord insurance scheme and/or landlord rental bond scheme to cover the cost of hardship provisions such as rent reductions or provision of moving costs.

## Energy Efficiency Standards

- 40. Legally enforceable energy efficiency standards for rental housing should be set, to protect against heat, cold, mould, and pollution.

## Better regulatory support for renters

- 41. Current arrangements should be reviewed with a view to ensuring adequate enforcement, oversight, and accountability in private rental markets.
- 42. Funding for Tenancy Advice and Advocacy Services across NSW should be increased by \$9.5m per annum to respond to growing demand and improve access to free advice, assistance and advocacy.

## Improving Rental Laws

### Ending No Grounds Evictions

Urgent reform is needed in NSW to address the inadequacies in the Residential Tenancies Act 2010 (“the Act”) and to make renting a viable, long-term housing option.

Ending the ability of landlords to terminate agreements without justification is a much needed reform to the current system. Over 80% of renters in NSW have lived in their current rental for less than 5 years, with a third for less than one year. 20-30% of renters move due to an eviction, around a quarter of which are due to ‘no fault’ termination or ‘no grounds’ evictions.<sup>2</sup>

The cost, short-timeframe, and disruption of an eviction can be a significant driver of poverty and homelessness, with the average cost of moving for renters being \$3,500.

*“Many low-income renting households are not able to raise the relatively large sum of money required to secure alternative housing and move at short notice.”* Tenants Union 2022 p 45<sup>3</sup>

Immediate improvements should be made by ensuring renters have legislative protection against unfair evictions including a list of reasonable grounds, and protections against the false use of eviction grounds. We note the proposed grounds for termination and broadly agree, with the exception regarding preparation of the property for sale. There is no reason tenants should be forced to move because a property is being prepared for sale. If vacant possession is required this is already covered by the existing reason “the property was sold and needs vacant possession”.<sup>4</sup> If major renovations are required the proposed new reason “the property will go through reconstruction, repair or renovation that requires it to be vacant” provides a suitable reason.

#### Impacts – Housing Insecurity

*“I work in social services. Every week I talk to someone who is privately renting and 1/ being evicted due to sale of property, or 2/using their savings to pay rent, or 3/ skipping meals to pay rent. I am having to recommend social housing to people who have never considered it before because it offers low rent and security. The application is a very demoralising process and they are repeatedly told there is no housing and the wait for a home is 10 years. But I have nothing else to offer them...”*

The Act would be significantly improved by establishing prescribed reasons for all types of leases, notification periods of at least 120 days, restrictions on re-letting, evidence requirements, and significant penalties for breaches of the law.

It should be noted that 4 months is not a long time period in which to find another property in a very tight rental market, amidst all of the administrative and financial burden that it entails, including: re-prioritising household budgets; finding savings for moving and new housing costs; planning for time off work; organising removalists; changing utility and internet connections; and enrolling children in new schools if required.

#### Recommendations:

1. Landlords should not be able to end any type of lease without a prescribed reason, evidence to support the reason, and restrictions on re-letting (where there has been no tenant breach).

2. The notification period for a lease ended for anything other than a tenant breach should be at least 120 days. Tenants must be free to leave at any time during the notification period without penalty.
3. New reasons for eviction should be limited to:
  - The property:
    - will go through reconstruction, repair or renovation that requires it to be vacant.
    - will change its use (e.g. change from a home to a shop or office).
    - will be demolished.
  - The landlord:
    - will move into the property, or a member of their immediate family will move in.
4. After a notification for the reasons outlined above, properties should not be able to be re-let for a period of 6 months (from the date at which the landlord regains possession of the property).
5. Written reasons with supporting evidence should be provided for ending the lease. Acceptable evidence could include statutory declarations, development applications, and quotes from a tradesperson for renovations or demolition.
6. If the landlord has been intentionally misleading or willfully misused the termination process to wrongly evict a tenant, the landlord should face a significant penalty (a fine) and be required to compensate the renter for any reasonable moving costs.

## Changing the Rules to Allow Pets in Rentals

Pet ownership in Australia is one of the highest in the world – pets support mental health, provide companionship to the socially isolated, and are a key factor in choice of housing for many.

### **Impacts – Pets in Rentals**

*“(There is) minimal availability in rentals and what is available will not allow pets – many young people that we work with have pets – and as this usually is the only reliable thing they have in life many won’t consider housing without their pet”*

Renters already constrained in their choice of housing by low incomes, the inadequate supply of affordable housing, and the general precarity of renting, should not be further constrained by rental legislation that disallows pets. Nor should the onus be on vulnerable renters to press their case for having their pets live with them in their own home.<sup>5</sup>

It is not necessary to include reasons for refusing a pet in the Residential Tenancies Act 2010 as this is covered by existing local regulations, by-laws, and other legislation such as the NSW Companion Animals Act 1998. Renters should not have to go to extensive lengths to assert their rights to keep pets. To ensure that disputes are kept to a minimum landlords should have to seek an order from the Tribunal to refuse a request for pets. The Tribunal can then be guided by local laws and existing legislation.

Likewise, all renters should have access to a Tribunal ruling regarding the keeping of pets so the Tribunal should not be able to provide an ongoing right to the landlord to say no to pets.

### **Recommendations:**

7. Renters should be informed of any regulations prohibiting the keeping of pets at a property at the property marketing stage.

8. The Residential Tenancies Act 2010 (The Act) should prohibit landlords and agents from asking about pet ownership at the application stage.
9. 14 days is a reasonable amount of time for a landlord to consider and respond to a renter's written request to keep a pet. Where a landlord is seeking an order to refuse a request for a pet they should be required to do this within a 14 day timeframe from the written request.
10. Landlords should be required to seek an order at the NSW Civil and Administrative Tribunal if they wish to refuse a pet/s.
11. The Tribunal should consider the welfare of the animal as the primary consideration when determining whether it is reasonable to refuse the keeping of pet/s at the property. The determination should be made with reference to relevant animal welfare guidelines and/or other companion animals regulation, as well as local regulations.
12. The Tribunal should not be able to give the landlord the ongoing right to say no to animals at the property.

## Protecting Personal Information

Filling out a rental application should not leave renters feeling open to discrimination, or vulnerable to scams or identity theft. Limits should be imposed on the type and amount of information that can be collected through the implementation of a standard rental application form.

The Act should include the table of acceptable documents laid out on pages 10 and 11 of the consultation paper (section 5.2) - with the exception of information about previous bonds. This is irrelevant to the applicant's suitability as a tenant and can create pressures for tenants to dispute bond claims even if they are reasonable.

In addition the applicant should be able to choose (within the parameters set out in the table) which particular pieces of information they supply, have confidence that their information will be kept securely and not be used for any other purpose, and that it will be safely destroyed at the appropriate time.

### *Recommendations:*

13. A standard rental application form should be prescribed by regulation.
14. Limits should be placed on the types of additional information and the number of pieces of information that can be requested for specific categories of information (Proof of identity; Ability to pay agreed rent; Suitability) as part of the application process.
15. Prospective renters should be able to choose which pieces of information (from the acceptable types) that they supply for each of the three categories.
16. Information about previous bonds should be excluded from the application process.
17. Prospective renters should have confidence that any information collected about them is held only for reason of assessing their application and only in regards to their identity, their ability to pay the rent, and their suitability. This information should be held only for the period of time required to assess their application. This means:



a. For landlords and agents:

**For a successful applicant**

- Contact information such as phone and email address needed for the ongoing relationship should be stored securely.
- The tenant should be provided with copies of any information held about them and then all non-contact information destroyed within 2 months of entering into the agreement.

**For unsuccessful applicants**

- Information and documentation should be destroyed once an agreement has been entered into, unless the unsuccessful applicant gives explicit and withdrawable consent for the retention of information in response to a plain language explanation of its use for a specific time frame of no more than 6 months or as directed by the person. At the end of that time frame, information must be destroyed or consent renewed.

b. For third parties:

Information should be destroyed upon completion of the application unless the person gives explicit and withdrawable consent for the retention of information in response to a plain language explanation of its use for a specific time frame of no more than 6 months, or as directed by the person. At the end of that time frame, the information must be destroyed or consent renewed.

c. For all:

Renters should be given access to personal information (including specifying this be free, reasonably accessible, and clear timeframes for response) and the ability to correct this.

## Automated decision making

There are several issues to consider in addressing the use of automated decision-making for assessing rental applications. First and foremost should be the issue of discrimination. Information that can be used to discriminate against people should be disallowed, such as a person's age, postcode, and whether they have children or pets. Postcodes can be used to discriminate against applicants based on a likelihood of their having a particular cultural background.<sup>6</sup>

Secondly, equity and transparency should be addressed by ensuring that automation rules are transparent and have been independently tested for perverse or discriminatory outcomes; and that all applicants have access to making an application for any property whether they use technology or not.

### **Impacts - Discrimination**

*"My family are Aboriginal and have gone into agencies seeking rentals to be told there is nothing, their close friends (non-Aboriginal) walked in after to be told about 2 properties that were coming up in the next week by the same worker, same property scope, same employer, my son earns more than the other family and he also has more job security (permanent employment instead of casual) - his application for housing was stronger on many grounds. The only difference being his Aboriginality. Although this has happened only once to him, it is common theme for Aboriginal families with 4 of the 6 or so local real estate agents in the area"*



## Recommendations:

18. Automated decision making should be disallowed until such time as suitable protections are put in place to ensure that its use is fair and non-discriminatory.
19. Automation of decision-making or assistance should only be used where the automation rules are transparently published and reliable and have been tested by an independent and expert entity.
20. The Act should make clear that applications must also be offered on paper; and that all applications, online or paper, should be considered equally.

## Portable Bonds

Disputes between landlords and renters can be minimized through a bond guarantee to landlords. Costs can then be recovered from the renters with suitable timeframes for payment and hardship support if they cannot pay. Renters should not be punished for previous defaults, recognising that such a system would create perverse outcomes; for example, by punishing women and children escaping domestic violence, or poor people for being poor.

To ensure that the system is affordable and simple to administer, consideration should be given to making it compulsory and adequate resources provided to establish appropriate hardship supports

## Recommendations:

21. Renters should be provided a minimum of 14 days to top up the bond if there is a difference between the bond required at a new property and the bond refunded from their old property.
22. The payment of bond to the new landlord should be guaranteed, with the cost to be recovered from the renter.
23. A renter that defaults should not be barred from the portable bond scheme in future. Appropriate hardship support should be made available for those renters struggling to pay the difference.
24. Landlords should not be able to end a lease because someone has defaulted on their differential bond payment.

## Limiting Rental Increases

With rents rising across Australia and increases in Sydney over the last 12 months of between 29% to 40%,<sup>7</sup> more and more households are going into housing stress. As at 2022, 58% of lower income households in the private rental market are paying more than a third of their income on rent.<sup>8</sup> In regional NSW, the number of low-income households paying more than half of their income in rent, a measure of severe housing stress, increased by 52 per cent between 2020 and 2022.<sup>9</sup>

Recent research demonstrates it is even worse today. NCOSS released its *Barely Hanging On – the Cost of Living in NSW 2023*<sup>10</sup> research in August 2023, which surveyed over 1,100 NSW households in April/May 2023 that lived below the poverty line or on low incomes. It found that 79% of private renters lived in housing stress, and 33% lived in extreme housing stress. For extreme housing stress, this was an increase of 22% compared to the 2022 survey.

While greater transparency is always welcome, collecting information on rent increases and making it publicly available for renters will do little to stem skyrocketing rents. Comprehensive reforms to the Residential Tenancies Act are needed to make increases fair and reasonable.

## **Impacts – Rising Rents**

### **Single Person Household, [REDACTED]**

*"You keep quiet and you be a good tenant in the hope that you will be a small target...you put up with things because you don't want to be evicted out of spite. So, it was really upsetting to get a rent increase ...I had a mental health breakdown the day that I got the letter – I had psychologically prepared myself as I know landlords are taking advantage of the current climate to put rents up, even though I know he doesn't have to pay a cent on this house because it is fully owned. I got that email and started crying and just curled up in my bed – I couldn't process it, it was just so gutting...to accommodate \$20 is one thing, but to accommodate \$45 is a lot. I just felt like I was losing all housing security..."* Institute for Public Policy and Governance 2023 p41

### **Single Parent, [REDACTED]**

[REDACTED] is a single mother of three girls who lives on the Central Coast. In the past two years, her rent has jumped from \$410 to \$570 per week, and as she only works part-time, she struggles to pay this. However, Kim is apprehensive to move because of the rental crisis, the cost of moving and the instability for her kids. Instead, she has cut down on special occasions and holidays, going out, and getting take-away food. [REDACTED] says she is living pay check-to-pay check and avoids driving long distances because of the cost of fuel.

*"The rent's going up, but my wage hasn't gone up, government assistance hasn't gone up and I have got to keep a roof over mine and my kids' heads... I live cent to cent, right down to my last 5 cents... I don't think [the government] really understand how hard it is... not just for single parents, but for people on dual incomes. Unless you have lived it, you don't know the struggle."*

[REDACTED] had to pull her four year old out of childcare because she can't afford it, and she now brings her child to work with her. Although she receives government assistance, [REDACTED] says she doesn't want to become reliant on it.

*"You want to be a good role model for your kids and have a strong work ethic and not have to rely on anyone else to dig you out of your hole."* Institute for Public Policy and Governance 2023 p42

NCOSS acknowledges that there are several ways in which a regulatory limit on rent increases could be implemented, including using the Consumer Price Index or other suitable measures. The limit could then be included in the Act as a threshold above which a landlord must prove that a rent increase is not excessive. The NSW Government should undertake a consultation process to design the regulatory limit, potentially overseen by the NSW Rental Commissioner.

In addition, rent increases should be limited to once every 12 months after an initial 12 months has lapsed for any type of lease. This will prevent landlords switching between lease types to affect a rent increase. Likewise, the frequency and amount of rent increases should be tied to the property rather than to a tenancy. This will help to stabilise rents across the private rental sector by preventing landlords from putting up their rent by excessive amounts between tenancies.

Reforms are also needed to eliminate rent bidding and put in place fair and administratively simple processes where:

- A fixed rental price must be advertised at the time a property is put up for rent. This advertised rate would act as a ceiling.
- Landlords, real estate agents, other third parties and potential tenants must not offer, solicit, or accept a higher rental rate than the originally advertised rate.<sup>11</sup>

These changes will limit the worst impacts on low-income renters and provide greater certainty for renters and landlords alike.

## *Recommendations:*

25. To ensure the data is reliable and timely, landlords or their agents should be required to report a rent increase to the NSW Government using an online system (such as Rental Bonds Online).
26. The frequency of rent increases should be limited to a maximum of once every 12 months for all types of agreement, including when switching between different types of agreements.
27. Limits for rental increases that act as a threshold should be introduced, above which landlords must prove that a rent increase is not excessive. Thresholds should be set with reference to an appropriate measure (such as the Consumer Price Index), and developed through a consultation process led by the Rental Commissioner or another relevant independent agency.
28. Consideration should be given to applying the threshold and frequency of increases to the property rather than the tenancy.
29. A fixed rental price should be advertised at the time a property is put up for rent. This advertised rate would act as a ceiling.
30. Landlords, real estate agents, other third parties and potential tenants should be prohibited from offering, soliciting, or accepting a higher rental rate than the originally advertised rate.

## **Embedded Networks**

Renters should be able to make informed decisions about whether a property is affordable for them. Information about embedded networks should be included at the marketing stage as well as at property inspections and should include:

- Services supplied and the provider
- Expected costs
- Any reduced consumer protections or other negative impacts
- Where to get further information.

## *Recommendations:*

31. Landlords or their agents should provide potential applicants with a standard information sheet outlining relevant information about all services provided through embedded networks including where to get further information.
32. Landlords or their agents should be required to disclose this information when listing (advertising) the property for rent, at inspections for the property, as well as in the tenancy agreement.

## Free Ways to Pay

Free ways to pay rent should be convenient and accessible for all renters. Renters should have a choice of how to pay their rent without incurring fees. Some people prefer cash but for most it is inconvenient, can be unsafe, and is increasingly difficult to access with the closure of bank branches and ATM's. Renters should be offered an electronic way to pay rent that is free to use.

### *Recommendations:*

33. The law should require a landlord or real estate agent to offer an electronic way to pay rent that is free to use, such as a direct bank transfer option.

## Strata

Renters can be at a disadvantage in a strata setting, as they are not able to provide input into by-laws and shared decision making. To mitigate this, renters need information about by-laws and meetings to which they are entitled to attend. A copy of the by-laws should be supplied with the tenancy agreement and requirements around notification of new tenants and their registration on the strata roll should be enforced.

Strata regulations and by-laws can cause considerable disincentives for landlords to properly maintain their properties. To ensure adequate standards for rental properties and encourage prompt attention to repairs and Maintenance, landlords should be empowered to make any necessary repairs and pass the costs on to strata management.

### *Recommendations:*

34. By-laws should be provided with the tenancy agreement by the landlord or agent with penalties for failure to provide. They should also be published and available through the Strata Hub. Penalties should also be attached to failure to notify the strata committee of a new tenant within a specified timeframe.
35. Owners should be directly responsible for urgent repairs and maintenance and empowered to pass on reasonable costs to strata.
36. A breach of by-laws should not constitute a breach of the tenancy agreement.



## Additional Issues

### Hardship Framework

An increasing number of people in NSW are likely to rent through their entire lives. Over a lifetime, many people are unable to maintain their income without interruption from health issues, economic restructuring, family emergencies, natural disasters, childcare, or global crises such as the COVID-19 pandemic. Temporary changes in life circumstances should not put people's homes at risk.

Current hardship provisions in the NSW Act are rarely used and are skewed in favour of the landlord.<sup>12</sup> A number of reforms could be pursued that would improve tenancy stability, as well as reduce the burden of costs imposed on renters from forced evictions.

#### *Recommendations:*

37. A permanent hardship framework should be introduced to support renters to maintain their tenancy and avoid eviction. This could include measures such as temporary rent variations and an expansion to government subsidies such as Rent Choice.
38. Where tenants are evicted for reasons other than a breach, provisions should be introduced requiring compensation for moving costs by the landlord.
39. Consideration should be given to the feasibility of a mandatory landlord insurance scheme and/or landlord rental bond scheme to cover the cost of hardship provisions such as rent reductions or provision of moving costs.

### Energy Efficiency Standards

Households living on lower incomes continue to spend a significant part of their disposable income on energy costs.<sup>13</sup> They often have little control over the energy efficiency of their home and little financial capacity to upgrade appliances, install adequate heating or cooling, or address damp and mould. Unhealthy homes are making tenants and their families sick.<sup>14</sup> With landlords retaining the power to evict tenants with no justification, renters are not in a position to insist on adequate standards.<sup>15</sup>

Rental reform establishing minimum standards for energy efficiency and putting the onus on landlords to show their properties comply will create local jobs, savings for the health system, and protect the environment. [\*The Community Sector Blueprint: National Framework for Minimum Energy Efficiency Rental Requirements\*](#) details how this can be done effectively and fairly.

#### *Recommendations:*

40. Legally enforceable energy efficiency standards for rental housing should be set, to protect against heat, cold, mould, and pollution.



## Better regulatory support for renters

In order for rental reforms to be effective they must be backed up by better enforcement, oversight and accountability. Too often the responsibility lies with vulnerable renters to take action to enforce the laws. Government agencies should have the resources they need to effectively enforce rental regulations and penalties for non-compliance, as well as support tenant self-advocacy.

Tenancy Advice and Advocacy Services are key services providing advice and assistance for renters. These services sustain tenancies, reduce evictions directly into homelessness, and reduce debts. However, the funding for such services has not kept pace with the growth in renting and increasing vulnerability of low-income renters.<sup>16</sup> Likewise, funding for systemic housing advocates is also limited.

Mechanisms to support accountability, data collection and oversight such as landlord registration or licensing schemes must also be considered.

### *Recommendations:*

41. Current arrangements should be reviewed with a view to ensuring adequate enforcement, oversight, and accountability in private rental markets.
42. Funding for Tenancy Advice and Advocacy Services across NSW should be increased by \$9.5m per annum to respond to growing demand and improve access to free advice, assistance and advocacy.

## References

- <sup>1</sup>Young and early middle age adults between 25 to 39 years have seen a large decline in home ownership from the 1990's (66%) to the same cohort now (55%) so we can expect growth into the future of households reliant on the rental market. Australian Bureau of Statistics 2022 *Back in my day – comparing Millennials with earlier generations* viewed 27 July 2023 <https://www.abs.gov.au/articles/back-my-day-comparing-millennials-earlier-generations>
- <sup>2</sup> Tenants Union NSW 2022 *Eviction, Hardship, and The Housing Crisis* viewed 17 July 2023 <https://files.tenants.org.au/policy/2022-Eviction-Hardship-and-the-Housing-Crisis-TUNSW.pdf>
- <sup>3</sup> Ibid.
- <sup>4</sup> NSW Department of Customer Service 2023 *Improving NSW Rental Laws Consultation Paper July 2023* p5
- <sup>5</sup> Tenants Union NSW 2022 *Submission: Keeping Pets in Rental Properties* viewed 26 July 2023 <https://files.tenants.org.au/policy/2022-11-TUNSW-Submission-Keeping-pets-in-rental-properties.pdf>
- <sup>6</sup> Advice from Tenants Union NSW.
- <sup>7</sup> Lang A *Ten Sydney suburbs with the biggest rent increases revealed* viewed 31 July 2023 <https://www.news.com.au/national/nsw-act/news/ten-sydney-suburbs-with-the-biggest-rent-increases-revealed/news-story/1e20d2ae53e2477a932d91947a2029f5>
- <sup>8</sup>SGS Economics and Planning 2022 *Rental affordability crisis requires urgent intervention* viewed 1 August 2023 <https://sgsep.com.au/publications/insights/rental-affordability-crisis-requires-urgent-intervention>
- <sup>9</sup> Impact Economics and Policy 2022 *Aftershock – Addressing the social and economic costs of the pandemic and natural disasters. Report Three – Housing Insecurity Sydney*
- <sup>10</sup> Institute for Public Policy and Governance University of Technology Sydney 2023 *Barely Hanging On: Cost of Living in NSW 2023* NCOSS
- <sup>11</sup> NCOSS 2023 *Submission to the Select Committee on the Residential Tenancies Amendment (Rental Fairness) Bill 2023*
- <sup>12</sup> Tenants Union NSW 2022 *Eviction, Hardship, and The Housing Crisis* viewed 17 July 2023 <https://files.tenants.org.au/policy/2022-Eviction-Hardship-and-the-Housing-Crisis-TUNSW.pdf>
- <sup>13</sup> Institute for Public Policy and Governance University of Technology Sydney 2023 *Barely Hanging On: Cost of Living in NSW 2023* NCOSS
- <sup>14</sup> Healthy Homes for Renters *Everyone Should Have a Healthy Home* viewed 7 August 2023 <https://www.healthyhomes.org.au/>
- <sup>15</sup> Tenants Union NSW 2022 *Eviction, Hardship, and The Housing Crisis* viewed 17 July 2023 <https://files.tenants.org.au/policy/2022-Eviction-Hardship-and-the-Housing-Crisis-TUNSW.pdf>
- <sup>16</sup> Tenants Union NSW 2023 *Tenants' Advice and Advocacy Program Funding Briefing Note July 2023*