



**Department of Customer Service**

**Shelter NSW submission on  
*Improving NSW rental laws*  
*Consultation Paper***



## About Shelter NSW

Shelter NSW has been operating since 1975 as the State's peak housing policy and advocacy body. Our vision is to create a sustainable housing system that provides secure homes for all. We provide systemic advocacy and advice on policy and legislation for the whole NSW housing system to resolve housing inequality.

We are especially concerned for low-income households which struggle to afford good-quality and well-located housing in the private market. We consider a sustainable housing system one that delivers what we call Triple-A housing and Triple-P outcomes.

Affordable and diverse homes	Accessible, well-located housing	Appropriate, high-quality development
Housing supply and demand	Proximity to jobs and services	Amenity and aesthetics
Tenure forms and rights	Access to public transport	Energy and environment
Housing types and sizes	Accessibility and adaptability	Standards and maintenance
Productive cities and regions	Poverty-free communities	Protected neighbourhoods
Access to jobs and services	Housing stress and homelessness	Energy use and consumption
Housing costs and consumption	Physical and mental health	Urban heat
Financial and economic stability	Education access and attainment	Climate resilience and adaptation

At Shelter NSW, we believe that all people deserve to live in housing that delivers these priorities and objectives. We believe the housing system should deliver safe, secure, and affordable living outcomes for all, regardless of tenure type. Ahead of the NSW 2023 State election, Shelter NSW developed a comprehensive policy platform. Central to that platform was our call for a better deal for renters.



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## 1. About our submission

Shelter NSW thanks the Department of Customer Service for the opportunity to comment on the *Improving NSW rental laws consultation paper*. We trust that this Consultation Paper will be the first of many to propose rental reform in NSW, and that submissions received will act as a launching pad for broader (and deeper) work by the newly appointed Rental Commissioner.

Shelter NSW is proud to work with many other key sector organisations and our response to the Consultation Paper draws heavily on input from bodies such as: Tenants' Union of NSW (the Tenant's Union); National Shelter; NSW Council of Social Services (NCOSS); Digital Rights Watch Australia; Public Interest and Advocacy Centre (PIAC); People with Disability; Western Sydney Community Forum; Sydney and Hunter Community Alliances. Further we are active partners in renter campaigns and alliances such as: Homes for People; Make Renting Fair; Healthy Homes for Renters; Ageing on the Edge and Building Better Homes.

Given its technical expertise, deep insight into the plight of renters and alignment with Shelter NSW, much of the observations and recommendations in this paper will reflect the Tenants' Union submission. We have however, gone further making comments about areas that we at Shelter NSW have particular expertise in such as the need to more adequately regulate "non hosted short term rental accommodation", for example.

Housing is an essential service and therefore taking on the role of providing that service, for a commercial return, is a serious business. Shelter NSW enters the community conversation about rental reform with a clear view that the private rental system is tipped against tenants, with landlords having too much power and too few obligations. We are unashamedly recommending that this imbalance be addressed and expect significant resistance from (past, current, or aspiring) landlords and the real estate sector. We encourage the NSW Government to push on, safe in the knowledge that any private landlord unable or unprepared to remain a supplier of housing services in this reformed market will hand the reigns to another landlord, or the keys to a first homebuyer and find some other avenue for their investment plans.

A summary of our recommendations begins on page 36.

## 1a. Guiding principles for rental reform

The following table sets out a series of guiding principles shared with us by the Tenants' Union of NSW. We think they provide a useful set of simple design principles for the creation of a better, fairer and more secure private rental system.

Beyond these, we encourage the NSW Government to look across to other essential service sectors, especially those where the customer is put at the centre, protected by a series of laws and regulations regarding product and service standards, contracting, privacy, data protection and pricing. We ask that customers of property services, that is tenants, be not accorded any less protection than that they would be entitled to in those other core sectors.

Table 1. Our guiding principles for rental reform (informed by Tenants Union NSW).

<b><i>Policy Area</i></b>	<b><i>Guiding Principle</i></b>
Removing 'no grounds' terminations	A renter should be able to stay in a rental home unless the property is no longer available for rent
Appropriate notice periods	Renters have enough time to find alternative accommodation when they are forced to move homes through no fault of their own
Evidence requirements (eviction)	If a renter is being evicted, the landlord must be able to provide sufficient evidence to demonstrate the validity of the reason for termination, and where possible the evidence should be independently verifiable (i.e. not created by the landlord but issued independently). The landlord must be responsible for demonstrating validity, rather than the renter being required to disprove it.
A new model for keeping pets	Renters should decide whether they have a pet, with reference to the appropriateness of the dwelling for that animal and any relevant animal welfare or community safety considerations.
Renters' personal information	Renters should retain control of their personal information and have confidence that its use is to their benefit. Personal information gathered during the application process should only be for the purpose of assessing whether the prospective tenancy agreement is likely to be sustained.
Automated Decision Making	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.
Portable rental bond scheme	A rental bond is a surety against a renters' potential not actual liability that is provided at the start of the tenancy. Where a renter is facing financial difficulty at the start of a tenancy, they should be offered appropriate support to sustain their tenancy rather than face a breach and risk losing their home and placed at an increased risk of homelessness.
Rent increases	Landlords should have to justify rent increases over a certain threshold through NCAT. Reliable and timely data on rents will provide much greater visibility of rent movements (change in rents) across the private rental market, and better ensure evidence driven policy making and deliver better outcomes for renters.

## 2. Background

The Australian housing market has moved a long way from what many would say is its inherent and essential purpose – to provide secure, functional, and affordable shelter to all people at various stages of their lives. Since the 1990s, the renting cohort in Australia has grown and dove-tailed with a decrease in home ownership:

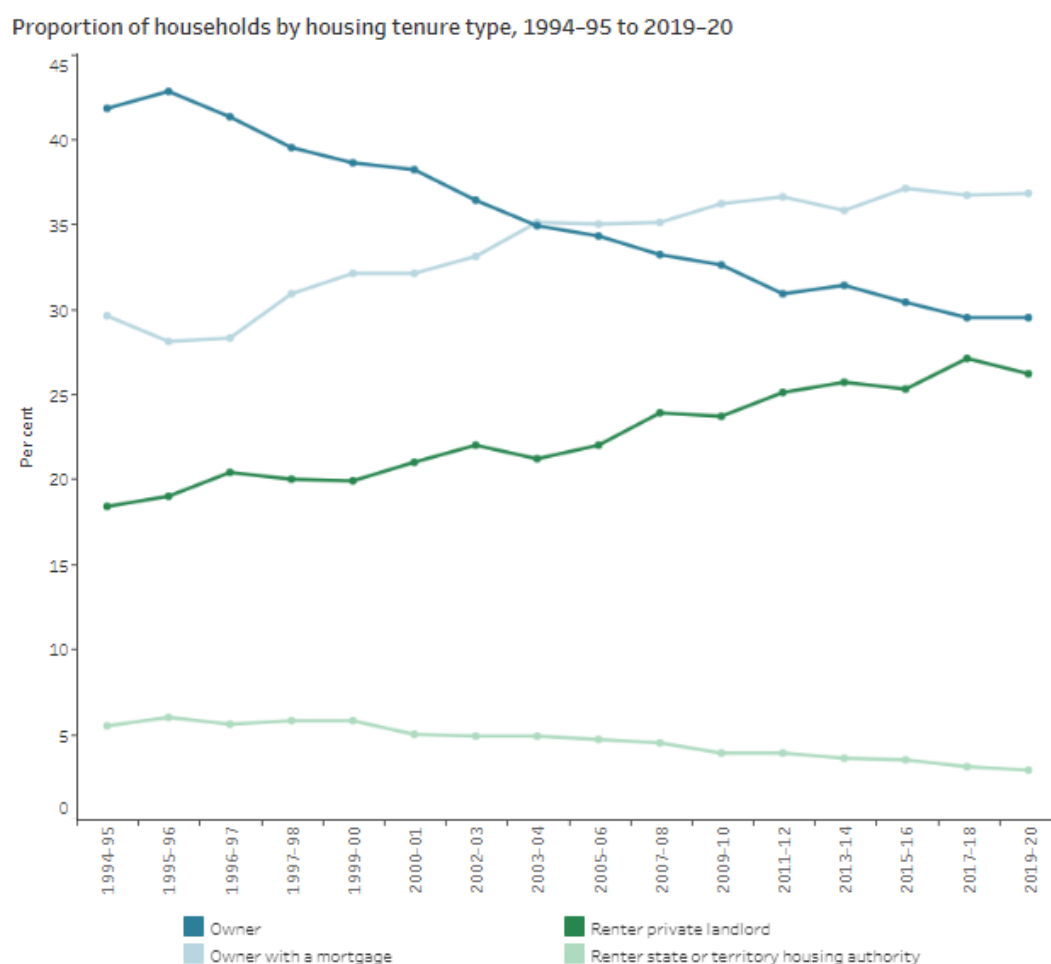


Fig 1. Extracted from [Australian Institute of Health & Welfare](#).

Similarly, growth in social housing tenancies has taken a backseat and as such, many households of varying incomes and life stages are surviving/struggling in the ‘wild west’ of the private rental market.

These changes in tenure dynamics are no accident; it is through Commonwealth and State tax settings, concessions, investments, policies, and legislation that ‘housing’ has become a financial product or a wealth-creation vehicle (for a few landholders). The private housing market in this country is consistently and persistently failing to provide secure, well-located, and affordable shelter especially for the lowest 40 percent of income earners.

According to the ABS in its June CPI report, rental price increases across Australia are the highest since 2009, up by 6.7 per cent annually – reflecting low vacancy rates amid a tight

rental market across the country<sup>1</sup>. This backs up the experiences of renters forced into the rental marketplace – whether driven there by eviction or affordability constraints. This of course is the phenomenon that has attracted community, media, political concern and attention. At Shelter NSW, however, this is not an exclusively 2023 concern.

**Regardless of rental vacancy rates or newly added housing stock, low-income renters always struggle to compete with higher income households.** The private rental market is designed not to comfortably accommodate those who are less ‘willing (able) to pay’<sup>2</sup>:

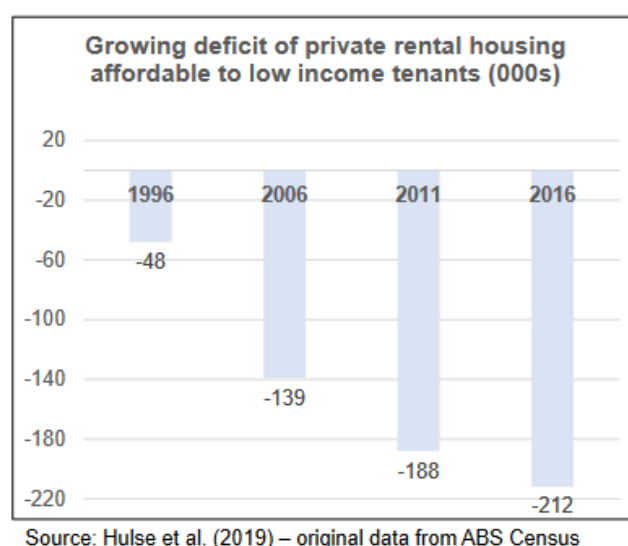


Fig 2. Extracted from [UNSW City Futures Research Centre presentation](#) by Hal Pawson.

We are at a crucial juncture in rental reform history in NSW and Australia more broadly. In response to the active Federal *Senate Standing Committee Inquiry into The Worsening Rental Crisis in Australia*, Shelter NSW and National Shelter have joined other peak bodies and organisations to outline our views on the need for national, state, and territory governments to work together to develop a consultative framework and national plan for rental reform. A coordinated approach – led by National Cabinet – will ensure renters’ rights do not regress in any jurisdiction. The bar needs to be raised, not lowered, and we have included in our submission references to some examples from other states where we believe the bar is at about the right height on various matters (such as limiting rent increases).

<sup>1</sup> Australian Bureau of Statistics (ABS) Consumer Price Index June 2023 Quarter Report: [accessed from ABS site 17 August 2023](#)

<sup>2</sup> Nygaard, C., van den Nouwelant, R., Glackin, S., Martin, C. and Sisson, A. (15 September 2022). *Filtering as a source of low-income housing in Australia: conceptualisation and testing*, Final Report No. 387 in AHURI. Retrieved from <https://www.ahuri.edu.au/research/final-reports/387>; Pawson, H. (4 July 2023). *Housing policy challenges for Australia: How does the Albanese Government’s investment and reform package measure up?* [Powerpoint presentation]. UNSW City Futures Research Centre. Retrieved from [https://cityfutures.ad.unsw.edu.au/documents/720/ACTU\\_presentation\\_4\\_July\\_2023\\_v2.pdf](https://cityfutures.ad.unsw.edu.au/documents/720/ACTU_presentation_4_July_2023_v2.pdf)



The NSW State Government should not wait, however, to enact positive changes in the private rental market – especially changes that have been fought for since the 1970s by the likes of the Tenants Union NSW. One such change is the move to end no-grounds evictions for all lease types. This reform, in of itself, is hugely important to the welfare of all renters and the health of the rental market. Once enacted, this reform will serve two key purposes: correct the power imbalance inherent in the private rental market; and reduce the frenetic and stressful speed dynamic of the current market (kicked along by evictions and largely unfettered rent increases). So, at the outset, we congratulate the NSW Government on proposing this critical reform in the Consultation Paper.

For too long, the language around renting in Australia has been that it's predominantly a 'lifestyle choice'. This could not be further from the truth for low-income households that have little to no capital to buy into the persistently unaffordable and hyper-inflated housing market on the one hand and excessive and stressful waits on the State's social housing waiting list<sup>3</sup>.

NSW needs to substantially grow its social housing portfolio; but unless (and until) that happens, the ***NSW Government needs to recognise the differential experiences of low-income and routinely discriminated against households in the private rental market and respond accordingly.***

Notwithstanding some positive signals in the Consultation Paper, we assert that the zeitgeist around renting and rental pressures in this State – and country – still does not do justice to the unique set of challenges faced by low-income and otherwise marginalised households (First Nations; people with disability; single parent families; CALD households; older people; women escaping domestic violence) in the private rental market.

In our recent presentation to the *NSW Select Committee on the Residential Tenancies Amendment (Rental Fairness) Bill 2023*, we urged that consideration be given to how any new law and regulations – once implemented – will be practically experienced by any vulnerable cohort trying to compete on the uneven playing field that is currently (and always), the private rental sector. We ask that again as we head into a broader set of reforms.

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<sup>3</sup> Pawson, H. and Lilley, D. (2022). *Managing Access to Social Housing in Australia: Unpacking policy frameworks and service provision outcomes*; CFRC Working Paper; Sydney: UNSW City Futures Research Centre accessed from [City Futures website](#)

## 3. Removing ‘no-grounds’ terminations

### 3a. Periodic *and* fixed term leases

As a nation, we are living longer in rental households<sup>4</sup>; attempting to put down roots, getting pets, starting families, entering retirement, and a whole host of other life milestones. Families, in the formative schooling years for children, are facing constant anxiety about their next move at the end of a fixed term contract – bracing for no-grounds evictions and having to navigate a new school in a new suburb every 6 to 12 months. This is not socially sustainable.

Putting an end to no-grounds evictions will only be a worthwhile exercise where no-grounds terminations are abolished for households on periodic **as well as** fixed term leases. **The end of a fixed term contract is not grounds enough for eviction**, in the same way that when an internet plan contract expires, your internet provider does not cut off your service. The NSW Government must remove section 84 of the *Residential Tenancies Act 2010*.

#### Q1. What is your preferred model for ending fixed term leases and why?

We support [Better Renting's submission](#) and the Tenants Union positions on the matter of ending no-grounds evictions for both lease types. In particular, the NSW Government should adopt the ACT model and require a landlord to have a reason when ending any type of lease. Both the Queensland and Victorian models leave renters open to retaliatory eviction. In particular, the Queensland model is easily being skirted by landlords, who simply use the threat of eviction to force tenants to sign rolling fixed-term agreements, thus avoiding periodic tenancies and forever preserving the option to effect a no-grounds termination<sup>5</sup>. In Victoria, reforms to get rid of no-grounds evictions came into effect in March 2021. They have disallowed the use of ‘no reason’ terminations, except at the end of the first fixed term. This model creates an incentive for landlords to increase the churn of renters in properties in order to ensure they always maintain control over the premises with each first fixed term agreement.

No-grounds evictions are currently being used in NSW to dispose of tenants who exercise their rights to ask for maintenance repairs<sup>6</sup> or, in some instances, to circumvent regulations that are otherwise in place to limit annual rent increases<sup>7</sup>. For these reasons, **legislation abolishing no-grounds evictions needs to be in concert with other rental reforms**. For example, banning no-grounds evictions without also legislating limits on

<sup>4</sup> Australian Government – Australian Institute of Family Studies. (July 2020). *Families Then & Now: Housing*. Retrieved from <https://aifs.gov.au/research/research-reports/families-then-now-housing>

<sup>5</sup> Hinchliffe, J. in *The Guardian*. (4 August 2022). *Queensland real estate body tells landlords how to skirt new no-grounds eviction laws*. Retrieved from <https://www.theguardian.com/australia-news/2022/aug/05/queensland-real-estate-body-tells-landlords-how-to-skirt-new-no-grounds-eviction-laws>

<sup>6</sup> Wallace, N. in *9Now*. (13 October 2022). *Tenants claim they face eviction for complaining ‘too much’*. Retrieved from <https://9now.nine.com.au/a-current-affair/sydney-tenants-speak-out-over-eviction/935cdb5b-b940-43e1-8467-9018dbd86395>

<sup>7</sup> VERTO Tenancy Advice and Advocacy Service. (2022). *Supporting vulnerable tenants during a rental crisis*. Retrieved from <https://www.verto.org.au/blog/supporting-vulnerable-tenants-during-a-rental-crisis>

rental increases may serve to create a de facto process of eviction by way of landlords simply raising rents beyond any reasonable amount for an incumbent tenant to meet.

### 3b. Proposed reasonable grounds for termination

#### **“Prepare for sale”**

Like our peers at the Tenants Union and Better Renting, we view the excuse of “preparing for sale” as **not good enough** to end a tenancy, of any type. Forcing tenants to move out simply to “prepare a property for sale” reduces the utilisation of existing housing stock, results in unnecessary forced moves (as the property may be sold to a residential investor who would have happily retained the tenants), and opens more possibilities for fraudulent terminations.

As the Consultation Paper points out, there already exists a provision for termination based on the requirements of “vacant possession” at sale (for periodic leases). The Consultation Paper proposes another new reason being termination due to property “undergoing reconstruction, repair, or renovation that requires it to be vacant” or “being demolished”. Also, it is proposed that other reasons be included for “landlord/landlord family... moving into the property” or “the property will change use (from home to commercial)”. Between these four reasons (one existing, three proposed), we fail to see the need for **yet another** reason in the form of the vague intent to “prepare a property for sale”.

In **actual** preparation for sale, the selling landlord can rely on a “**significant** reconstruction/renovation” or demolition clause if absolutely necessary, as could any other future owner. When a property is sold, it is sold to either an investor or an owner-occupier. If a residential investor purchases the property, the property will continue to be available to rent and the sitting tenant should be able to remain. If a commercial investor purchases the property, there is the option to terminate under the “change of use” clause. If a prospective owner-occupier moves into the property, then they can rely on the otherwise proposed “landlord move-in” clause.

In short, the inclusion of “preparing for sale” as a standalone new reason for lease termination is nonsensical (and prone to abuse) in light of the other proposed valid reasons for terminating a lease.

#### **Q2. Are there any specific situations where a landlord should be able to end a lease?**

##### **Renovation, repair, demolition**

Like our colleagues at the Tenants Union, we are concerned that this excuse (without amendments) may be misused by landlords.

Renovation or general repair should not be considered a valid reason; landlords may opt to let their properties deteriorate to the point of needing to ‘evict’ for what were once basic or urgent repairs (that went untended to). This breaching of contractual obligations

on the part of landlords already occurs in the market<sup>8</sup>. What we do not want to see is a valid avenue open up for landlords to justify their dereliction of duty with an eviction notice.

If the language of repair and renovation is included, it must be clarified that this is allowable only where the landlord genuinely intends to carry out **significant** repair and renovation of the residential premises and where the repairs are not required as a result of the landlord's breach of the agreement. The works will render premises uninhabitable for a minimum period of time (for example, a minimum of 6 weeks or longer) and that the work can only be undertaken if the property is vacant. The renter must also have been given the option to continue the tenancy agreement with an abated rent during the repair and renovation period and declined.

### **Change of use**

We accept that landowners may wish to use a residential property for commercial or other purposes and that these proposed changes of use are generally required to obtain Development Application consent or Complying Development certificates through relevant planning authorities.

Shelter NSW asserts that this clause must be accompanied by parallel legislation in the NSW planning framework (*Housing SEPP 2021* or *Standard Instrument Local Environmental Plan 2006*) that re-identifies "non-hosted short term rental accommodation" (over a certain number of days use per year) as a form of "tourist and visitor accommodation", in line with the Independent Planning Commission's ('IPC') recent report<sup>9</sup> and supporting report by AHURI<sup>10</sup>. This factor is crucial to ensuring long term rental stock does not leach out into the lucrative 'Airbnb' market, and that any such land-use changes are adequately regulated by the planning system. See section **8c. Adequately regulating "STRA"**.

### **Landlord or family move-in clause**

We are in agreeance with Tenants Union on this move-in clause. That is to say, the landlord/landlord's family shall intend to occupy the property for at least 12 months as their principal place of residence.

A definition of 'family' for the purposes of enacting this reason must be legislated, as is the case in Tasmania and Victoria.

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<sup>8</sup> Tenants Union NSW. (June 2021). *Young Renters Survey and Roundtable*. Retrieved from <https://files.tenants.org.au/policy/2021-young-renters-report-final.pdf>

<sup>9</sup> Coakes, S., Grant, J. and Mackay, R. (24 April 2023). *Byron Shire Short-Term Rental Accommodation Planning Proposal: Final advice report*. NSW Independent Planning Commission. Retrieved from [https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2022/12/byron-shire-short-term-rental-pp/advice/230424\\_byron-stra-pp\\_advice-report\\_final.pdf](https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2022/12/byron-shire-short-term-rental-pp/advice/230424_byron-stra-pp_advice-report_final.pdf)

<sup>10</sup> Burke, T., Ralston, L., Stone, W. and Goodall, Z. (April 2023). *Short term rental accommodation: new directions, new debates*. AHURI advising the IPC. Retrieved from <https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2022/12/byron-shire-short-term-rental-pp/ahuri-report/ahuri-report.pdf>

**Q5. Should any reasons have a temporary ban on renting again after using them? If so, which ones and how long should the ban be?**

All reasons should include a temporary ban on re-letting the premises again:

- **Significant renovation, repair, demolition** – as a disincentive for misusing this reason, a 6 month ban on re-letting the property shall apply from the time of the eviction taking effect.
- **Change of use** – as a disincentive for misusing this reason, a 12 month ban on re-letting the property for residential purposes shall apply from the time of the eviction taking effect.
- **Landlord or family move-in clause** – the property shall not be re-let to non-family within 12 months of the eviction taking effect.

“Prepare for sale” is not a valid, standalone reason to evict a tenant (see discussion on page 7).

### 3c. Proof of valid reasons for termination

**Q4. What reasons should require evidence from the landlord? What should the evidence be?**

In all scenarios that valid reasons for no-fault terminations may be invoked, **these reasons must be accompanied by evidence**. Some evidentiary documentation that should be required by the legislation, per advice from the Tenants Union:

Table 2. Evidence requirements in Victoria which should be adapted for NSW

Reason	Victoria
<b>Change of use</b>	A witnessed <a href="#">Statutory Declaration</a> of intention to use the premises for business purposes, including details of the particular business and stating that the premises will not be re-let as a residence before the end of 6 months after the date the notice was given.  And one or more of the following: <ul style="list-style-type: none"> <li>• the ABN of the business; or</li> <li>• Business registration or licence; or</li> <li>• Council planning permit.</li> </ul>
<b>Demolition</b>	Both of the following: <ul style="list-style-type: none"> <li>• Building permit for demolition; and</li> <li>• Contract with a suitably qualified Builder-demolisher, stating the date that demolition will occur.</li> </ul>
<b>Landlord or immediate family moving in</b>	A witnessed Statutory Declaration signed by the rental provider, stating either: <ul style="list-style-type: none"> <li>• they intend to reside in the rented premises, or</li> <li>• the name of the person who will occupy the rented premises, their relationship to the rental provider, and declaring whether the person is a dependent, and</li> <li>• that the rental provider understands that they must not re-let the premises to any person (other than the person named to be moving in to the rented premises in the statutory declaration) for use primarily as a residence before the end of 6 months after the date on which notice was given, unless approved by VCAT</li> </ul>
<b>Sale</b>	Contract of sale, signed by the vendor and purchaser and dated

Additionally, our friends at the [Western Sydney Community Forum in their submission](#) are calling for more stringent evidence in the case of the family move-in clause (contractual agreement between the owner and family member for use as a principal place of residence).

The onus must always be on the landlord to prove their termination reason is valid, and it must not be up to renters to pursue the landlord to provide sufficient evidence. In this vein, the types of acceptable evidentiary documentation for each valid reason (and how/when these documents are turned over to the tenant) must be prescribed in legislation. ***A notice for eviction served without evidentiary documentation is not considered valid.***

All evidentiary documentation shall not only be supplied to the tenant as part of the notice to vacate, but shall also be supplied to the Rental Commissioner or equivalent body (e.g. Fair Trading) to log as evidence. This repository of evidence linked to each property will ensure greater oversight and ease compliance checks of landlords misusing any grounds of eviction.

### 3d. Notice periods and compensation to tenant

#### **Q3. What would be an appropriate notice period for the proposed reasons? Why is it reasonable?**

Eviction, even with valid reasons, is a hugely disruptive and costly event for renters – whether a renter is on a fixed or period lease. Renters calling Tenants' Advice Services about notices to vacate are often enquiring as to how to secure accommodation in less than 90 days or stay at their home beyond the 90 day notice period if no other housing is available to them<sup>11</sup>. For any 'no fault' eviction (ie where a renter is not in breach of the agreement), the Tenants Union recommends no less than 120 days notice should be given or 6 months in other cases.

To further ease the disruption and costs to tenants of paying overlapping rent for weeks, they must be able to move out at any time once a valid termination notice has been served. This should apply to tenants on both fixed and periodic leases. Alternatively, we support [Better Renting's submission](#) that rent should be waived for a certain period of time following the issue of a notice to vacate (especially where the renter is not at fault, as is the case with all of the proposed 'reasonable' grounds for evictions). The Tenants Union calls for tenant moving costs to be compensated by landlords in the cases of all no-fault evictions.

Compensation should be payable to tenants where landlords have lied or misused 'reasonable' grounds in order to evict someone. This compensatory process acknowledges the unnecessary disruption to a renter's life and home situation by the landlord, whilst also serving as a deterrent to landlords generally in misusing 'reasonable'

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<sup>11</sup> Insight from Tenants Union NSW



grounds for eviction. In the ACT, where wrongful eviction has occurred, renters are able to seek compensation or alternatively request their reinstatement as a tenant<sup>12</sup>.

## 4. A new model for keeping pets

Pet ownership for many, is an integral part of making a house a home. Pet ownership in Australia is among the highest in the world, and keeping pets has been shown to significantly improve physical and mental health and wellbeing.

Our view is that it should be renters who decide whether they have a pet, taking account of the appropriateness of the dwelling for that animal in terms of its welfare and of course community safety. Renters should not be subject to additional rules that others in the community are not required to follow.

In 2019, the NSW Civil and Administrative Tribunal (NCAT) in a strata law decision reaffirmed its position that a by-law which entirely bans pet ownership is “harsh, unconscionable and oppressive”<sup>13</sup>. We would like to see a similar spirit extended to the renting environment. Given the multitude of potential combinations of pets, dwellings and circumstances, each pet request should be assessed on its own merits. We urge the NSW Government to adopt broad principles rather than overly specific reasons regarding pets in rentals.

Shelter NSW recommends that there be a reversing of the burden of proof, that is, that it be incumbent on a landlord to demonstrate, on a case-by-case basis that a pet is not suitable for a dwelling. Given it is the landlord who is seeking to restrict the actions of the renter, and to limit the renters’ contractual rights to peace, comfort, and privacy – the responsibility to apply to the Tribunal should be placed on them and not the tenant.

There are a couple of other considerations for the lay observer of this debate. Many will reasonably speculate that landlords fear damage to their properties due to pets. In communicating any future changes, the NSW Government should remind people that there is already regulation in place for landlords to seek financial recourse for any damage done to a property.

And a general reminder of the significance of pets. The RSPCA is reporting higher volumes than usual of pet surrenders to shelters, with those surrendering citing the ongoing rental crisis as reasons for surrender<sup>14</sup>. This surely can only be adding to the distress of renters in the current market. More concerning is the well-known phenomena of women trying to leave violent households being constrained through lack of options to rehome their beloved pets or options in the rental market where they and their pet are welcome. Reform in this area of tenancy law is welcome and overdue.

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<sup>12</sup> ACT [Residential Tenancy Act 1997](#) (s58)

<sup>13</sup> Holding Redlich. (20 November 2019). *NCAT reinforces its position on pets in strata schemes*. Retrieved from <https://www.holdingredlich.com/ncat-reinforces-its-position-on-pets-in-strata>

<sup>14</sup> RSPCA NSW. (29 November 2022). *Have your say about keeping pets in rental homes*. Retrieved from <https://www.rspcansw.org.au/blog/media-releases/have-their-say-about-pets-in-rental-homes/>

**Q6. Is 21 days the right amount of time for a landlord to consider a request to keep a pet?  
If not, should the landlord have more or less time?**

Renters require a response to their request within a reasonably short time frame so that they can make an informed decision in relation to their pets (or planned pets) and for the broader household.

Shelter NSW believes 14 days is a reasonable amount of time for a landlord to consider and respond to a renter's request to keep a pet, as is the case in the ACT. 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 date on which the renter made a written request.

**Q7. What are valid reasons why a landlord should be able to refuse a pet without going to the Tribunal? Why?**

**Q8. Should the Tribunal be able to allow a landlord to refuse the keeping of animals at a specific rental property on an ongoing basis? Please explain.**

There should not be a list of valid reasons for a landlord to say no to a pet but rather a requirement that each case be considered on its merits. There should be no blanket ban on a specific property. The landlord should go to the Tribunal for all reasons where the tenant does not agree. This is a model similar to those that apply in Victoria, the ACT and the NT.

The Tribunal should consider the welfare of the animal as the primary consideration when determining whether it is reasonable to refuse a request for a pet at the property. They should be guided to determine this with reference to relevant animal welfare guidelines and/or other companion animals regulation.

**Q9. What other conditions could a landlord reasonably set for keeping a pet in the property? What conditions should not be allowed?**

Shelter NSW understands that there is already other legislation such as the *Companion Animals Act 1998* which provides rules based on welfare concerns for keeping pets. There may also be local government ordinances and rules that set certain conditions on pet owners, and these already apply to renters once they move into an area. These don't need to be specified again in a tenancy agreement.



## 5. Renters' personal information

Shelter NSW is pleased that the issue of collection and storage of tenants' personal information is being recognised at National Cabinet. Specifically, we note the following [commitments out of National Cabinet](#) this week:

*"Make rental applications easier and protect renters' personal information:*

- i. Prescribe a rental application form in each jurisdiction, with required documents limited to two in each of the following categories: identity, financial ability to pay rent, suitability;*
- ii. Require the destruction of renters' personal information three years after a tenancy ends and three months after tenancy begins for an unsuccessful applicant;*
- iii. Require tenants' personal information to be provided and corrected within 30 days of a request by a tenant or prospective tenant; and*
- iv. Specify information not allowed to be collected from a tenant or more generally (e.g. disputes with landlords)"*

These announcements, as well as the focus dedicated to this issue in the Consultation Paper, are heartening. We offer more guidance on this topic as informed by the Tenants Union and Digital Rights Watch Australia. We wholeheartedly commend the recommendations outlined in [Digital Rights Watch submission](#) on this Consultation Paper.

Overall, Shelter NSW calls on the NSW Government to make the whole rental application journey simpler, fairer, and easier to interrogate for consumers. This is especially important for culturally and linguistically diverse households.

### 5a. Australian Privacy Principles and the digital age

**Q14. Do you support new laws that set out how landlords and agents can use and disclose renters' personal information? Why/why not?**

Renters are an under-served consumer group in terms of their protection by Australian Privacy Principles and Consumer Affairs bodies. For example, there is a lack of reciprocal access to information about landlords (as there is about tenants). In many other sectors, government agencies blacklist or name-and-shame dodgy tradespeople and food establishments to strengthen the rights of consumers. There is no registration scheme for being a landlord in NSW and very few unscrupulous landlords are reprimanded through NCAT. Tenants are reluctant to exercise what little rights they have through any formal process that could be 'marked' against their name (even if tenants are vindicated

through NCAT, there exists 'shadow blacklists' of renters on various landlord and property manager forums<sup>15</sup>).

Now add into this toxic brew of tenants' unable to exercise their privacy and consumer rights, the proliferation of PropTech and data collection. Australians are increasingly concerned about how their data is being collected, stored, accessed, and sold in online spheres. There are significant individual and government costs associated with 'data breaches'<sup>16</sup> and an otherwise lax approach to data architecture and security persists despite cautionary tales of such breaches. PropTech and RentTech are poorly understood and regulated in Australia. Profit and fee structures associated with property management apps vary widely, and tenants are left in the dark on how multitudes of data reaped from applications are being used and sold (let alone deleted or destroyed).

**Q15. What should applicants be told about how their information will be used before they submit a tenancy application? Why?**

Everything. They should be told everything about how information collected will be used, why it is being collected, and how long the information will be stored before being destroyed.

**Q16. Do you support new laws to require anyone holding renter personal information to secure it? Why/Why not?**

Yes. In recent PropTech surveys conducted by Yardi on real estate 'leaders' in the Asia Pacific, it was found that:

*"... a third of Asia Pacific companies we surveyed had only the bare minimum technical requirements for data protection fulfilled."*<sup>17</sup>

Then, on the very next page, the report recommends Artificial Intelligence as the next leap in data management and analytics for the real estate industry.

We have seen this premature leap in recent times, with the real estate sector relying heavily on data automation and algorithms to 'sort' through rental applications – meanwhile, their underlying data culture, architecture, and security systems are immature and prone to information leaks. Highly sensitive personal information (including prospective tenants' bank transaction histories in some cases) languishes in online application spheres, collected for dubious purposes and never fully destroyed

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<sup>15</sup> ABC News. (24 April 2023). *VIDEO: Renters concerned of being listed on informal rent blacklists*. Retrieved from <https://www.abc.net.au/news/2023-04-24/renters-concerned-of-being-listed-on-informal-rent/102261714>

<sup>16</sup> Australian Financial Review. (23 September 2022). *The Optus hack will cost millions (and not just in payouts)*. Retrieved from <https://www.afr.com/chanticleer/the-optus-hack-will-cost-millions-and-not-just-in-payouts-20220923-p5bkkm>

<sup>17</sup> Yardi. (2022, p. 9). *Data Governance: Five opportunities to optimise data management*. Retrieved from [https://info.yardi.asia/wp-q422-fotoydm?utm\\_source=pca&utm\\_medium=article&utm\\_campaign=q4wpfotoydm](https://info.yardi.asia/wp-q422-fotoydm?utm_source=pca&utm_medium=article&utm_campaign=q4wpfotoydm)

from platforms that can then go on to use sensitive personal information for training of AI and algorithms<sup>18</sup>.

#### **Renter's story, Orange NSW**

*My property manager has recently emailed us to say that they "have heard what tenants are asking for in wanting more flexible ways to pay rent" which is laughable, as paying rent at the moment is depositing money into a BSB account – pretty straightforward, no fees. I highly doubt my peers have been harassing our real estate agent about this, when so many in my town are talking about repair and maintenance requests that go unanswered for years.*

*Anyway, apparently we need to now download and use an app called Ailo to pay rent. I don't know anything about this app, and the email I have been sent doesn't include a link to find out more about where this app comes from, what fees are involved, what data it will be collecting, if it's even downloadable on an Android phone...*

*This whole situation is even more crazy to me because not too long ago, I had to physically go into the real estate agency's office to sign some paperwork, and when I asked for my property manager, the receptionist got up and left the front desk unattended. All tabs open, email open, and the way the screen was tilted I could easily see personal information and photos being displayed on screen. I could have totally leaned over and forwarded whatever emails to myself. I was shocked. These people have my passport and bank transaction history somewhere on file?!*

*I was reluctant to say anything or complain about any of this really... We could easily be served a no-grounds eviction at the end of our fixed agreement if we rock the boat, and it's so hard to prove it would be a 'retaliatory' eviction because "hey well, your fixed term has ended, don't take it personally"...*

**Q19. Are you aware of automated decision making having unfair outcomes for rental applicants? Please explain.**

**Q20. What should we consider as we explore options to address the use of automated decision making to assess rental applications?**

Artificial Intelligence is a machine learning tool, taught to identify patterns in information fed to it so as to 'learn' how to spit out new information in new contexts. It is commonly accepted that AI bakes-in existing social biases in decision-making processes. Thus, we support the Tenants Union in their calls for:

- Renters being provided with the option to apply with a paper form and paper applications must be accepted and considered equally alongside online applications
- Any information that can be used to unlawfully discriminate against a renter (renter's age or suburb) not being allowed to be used by computer programs for decision making

<sup>18</sup> Digital Rights Watch. (July 2023). Departmental consultation on improving NSW rental laws - Submission. Retrieved from <https://digitalrightswatch.org.au/wp-content/uploads/2023/08/Submission-to-the-NSW-Department-of-Customer-Services-Improving-NSW-rental-laws-consultation-August-2023.pdf>

- Full transparency regarding how a computer program will make recommendations or decisions about renters' applications. Information about this should be made publicly available by those relying on the program
- Before automation is used above an identified threshold to allow for limited, small-scale pilots, automation should be tested by an authority resourced to do so (testing both the technology itself and the appropriateness of the technology).

**Q18. Do you support requiring landlords, agents or proptechs to:**

**(a) give rental applicants' access their personal information,**

**(b) correct rental applicants' personal information?**

**Please explain your concerns (if any).**

Yes. Where renters have provided information or are aware information has been collected about them, they should be able to request access to this. Landlords, agents and PropTech/RentTech companies should be required to correct rental applicants' personal information as necessary.

**Q17. How long should landlords, agents or proptechs be able to keep renter personal information? Please explain.**

We support the Tenants Union in their position that information should be destroyed within 2-6 months of an application being received, with timeframes varying depending on whether the applicant was successful or not in securing the property. For successful applicants, only their contact information shall be held on file by property managers. Third party holders of information (apps and the like) shall be subjected to similar timeframes.

## **5b. Prescribed standard application form and reference questions**

**Q10. Do you support limiting the information that applicants can be asked for in a tenancy application? Why/why not?**

Limiting the invasiveness of rental application questions and questions of referees is long overdue. Often, prospective tenants are already "sized up" on dubious grounds at a property viewing; this practice is encouraged, with LJ Hooker recommending property managers "ask a few pointed questions" at a property viewing and then follow this up with essentially stalking prospective tenants' social media presence<sup>19</sup>.

<sup>19</sup> Howe, R. (11 July 2019). *How to comprehensively screen your tenants*, hosted on LJ Hooker blog. Retrieved from <https://www.ljhooker.com.au/blog/how-to-screen-tenants>

Fig 3. Photo taken of a rental reference form sent from one property manager to another, asking “has there been any social media comments posted by the known occupants that would damage the landlord/agents reputation?” (screenshot mid 2022).

**Q11. Do you have any concerns with landlords or agents only being able to collect the information set out in the exhibited table to assess a tenancy application? Please explain.**

No, the exhibited table is actually too generous in the scope of information that can be collected under the ‘Suitability’ column.

The scope of questions that can be asked of character referees knows no bounds. Employers report having uncomfortable phone conversations with property managers where overreaching questions such as “Has the employee ever been reprimanded? Do they leave dirty dishes in staff kitchen? What hours do they work?” are posed. Not only this, people who are making several rental applications each week then report strained relationships with their bosses who are hounded by property managers seeking character references (refer to the following disturbing anecdotes shared in renter support groups):

Hubby's Mum was a reference, she was getting five+ forms (each from different sites that didn't share the info with other houses we applied too) to fill out for -every house we applied for-. We applied for hundreds.. No less than 10-15 per day. In the end it was so stressful for her that we made a fake email and started filling it in ourselves. Then hubby's boss, who was getting just as many, started getting ticked off because he was spending hours After work filling the forms in. He said that while they were 'easy forms to fill in' they asked stupid questions such as what our house looks like (He's never been to our house..) and what pets we have (...why would he know, he's the employer and was never in a 'friend' relationship with hubby). He didn't know how to answer half of the questions and ended up being mad at hubby, which then effected his employment!

I applied and got approved for an apartment after they called me to ask if my husband had face tattoos, I lied and said no 🙄 He's a tattooist ffs lol

Imagine a car rental hire agency asking these questions of ‘external references’ before one could hire a vehicle?

***Q13. Do you think that limiting the information that may be collected from rental applicants will help reduce discrimination in the application process?***

Yes, and not just limiting the information that can be asked for in rental applications, but the information that can be asked for in character references (written or verbal).

Increasingly, it is not enough for prospective tenants to show proof of their ability to pay rent. Tenants report feeling like they are in a job interview process, but with more invasive questions and much higher stakes if they are perceived not to be to the landlord’s liking.

It is little wonder that prospective tenants who have limited capacity to pay rent and unlimited rent increases (most acutely felt by low-income households) face an uphill battle to prove their ‘worth’ as well as their ‘character’ in a highly subjective, discriminatory rental application process.

***Q12. Do you support the use of a standard tenancy application form that limits the information that can be collected?***

For several reasons, we agree with the Tenants Union that the best solution against landlord/property manager overreach (and to protect the privacy of renters) is to prescribe a standardised application form and set of referee questions in the regulations. Extra consideration should be given to the type of standard tenancy application form requirements that may differ for prospective tenants of social and affordable rental housing.

An explicit prohibition against asking discriminatory questions shall be included in the Act as a failsafe measure. Questions about current or past use of a Portable Rental Bond Scheme must also be disallowed – see sections **6a** and **6c** for our views on the design and visibility of a Portable Rental Bond Scheme.

## **5c. Prescribed standard listing information**

Currently, rental applicants can be asked to supply photos of their pets and bank transaction histories, or even be requested to fill out an application form **before** being able to view a property! Check out this listing:



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Fig 4. Rental listing demanding application forms be filled in prior to viewing a property (screenshot 11 August 2023).

Conversely, applicants trying to find out from a property listing whether a home uses gas or electric hot water (or is locked into an embedded network!) are left in the dark – usually until such time that a lease has been signed and the successful tenant goes to connect utilities.

Fig 5. Rental listing with no information on heating or cooling (screenshot 11 August 2023).

To further advance consumer rights in the private rental market, we urge for standard, core information about a property being included in a listing.

## 6. Portable rental bond scheme

### 6a. Design of the Scheme

**Q25. What other (if any) things should we consider as we design and implement the portable bond scheme? Please explain.**

Shelter NSW welcomes the announcement of a Portable Rental Bond Scheme ('PRBS'). We would like to remind the Department of Customer Service that a rental bond is a surety against a renters' potential **not actual** liability that is provided at the start of the tenancy. Claims against the bond amount cannot be made until the end of a tenancy.

The costs to tenants in moving houses – especially unexpected moves following a no-grounds eviction – is on average \$4,000 per move per household in NSW<sup>20</sup> and this estimate **excludes** the up-front cost of forking out for a whole new bond. The ability to transfer bond money in a seamless way between properties would alleviate financial pressure on renters during this highly disruptive time. We recognise that systems will need to be in place to ensure 'the difference' in bond can be guaranteed between various properties. Ultimately, however, we agree with the Tenants Union that caution needs to be exercised by the Government in ensuring the PRBS does not become another source of discrimination against low-income and marginalised renters in the private rental market.

On the spectrum of a voluntary opt-in PRBS for renters through to a mandatory PRBS for all renters, we have been in discussions with the Tenants Union and agree that an opt-in scheme for renters is workable. However, if the following conditions (sections 6b to 6e) cannot be met with regards to a voluntary PRBS, the PRBS may need to be mandatory for all tenants to use in order to circumvent any discriminatory practices employed by landlords and property managers against tenants who opt in (or have previously opted in) to use the PRBS. We understand that a mandatory scheme for renters may be large and cumbersome to operate across NSW, so Shelter NSW trusts that the Government will ensure a voluntary PRBS for renters enacts the below-listed measures and that the **Government will imbue the voluntary PRBS with strong anti-discriminatory principles.**

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<sup>20</sup> Tenants Union NSW. (February 2022). *Eviction, Hardship and the Housing Crisis*. Retrieved from <https://www.tenants.org.au/news/tenants-union-nsw-publishes-special-report-eviction-hardship-and-housing-crisis>



## 6b. Eligibility of PRBS

**Q23. Should this scheme be available to all renters, or should it only be available to some? Please explain why.**

Eligibility to use the PRBS should be for any renter who wants to access the scheme. That's it. Administering a means-tested or approval process for access to the PRBS is unwieldy for this relatively small, one-off monetary transfer guarantee.

**Q24. Who should have a choice on whether to use the scheme?**

Landlords and property managers should not be given the choice on whether to opt-in or opt-out of accepting renters who use the PRBS. The existence of the PRBS is mandatory for landlords and property managers to accept and work alongside.

## 6c. Visibility of PRBS (to landlords and property managers)

Landlords and property managers should not have visibility of who has (or has previously) used the PRBS and they should only be informed that bond has been secured for their property, **but not how it has been paid or what guarantees are in place for payment**. We therefore reject the Government's proposal to "issue a certificate to the new landlord..." **unless** the manner of this certificate is exactly the same in nature as what all other landlords receive at the start of a tenancy from the Rental Bonds Board about payment being received.

## 6d. Bond top-ups

**Q21. How long should a renter have to top up the new bond if some or part of the bond has been claimed by the previous landlord?**

As for how bond is topped-up between properties, we agree with the Tenants Union that renters should be provided a minimum of 14 days to top-up the bond in the instances where there is a difference between the bond required at a new property and the bond refunded from their old property. We reject the proposal by the Government that:

*"If the new bond costs more than the old bond, the renter would need to pay the difference before being able to use the scheme and before entering into the new tenancy agreement."*

Whether the 'gap' in the bond is a result of money being claimed against the old property or the new property simply requiring more bond money than the old property, flexibility should be given to renters to pay the additional amount required (minimum 14 days). This uniform applicability in timeframes is simple to administer, requires fewer 'back and forth' interactions between the renter and the PRBS, and is easier to communicate to tenants in terms of their obligations. Above all else, however, this minimum 14-day arrangement to top-up bond in any circumstance is more in keeping with the

Government's purported principles of the PRBS to "reduce financial strain and cost of living pressures on renters when moving between rental properties".

## 6e. Guaranteeing the bond

**Q22. What should happen if the renter does not top up the second bond on time?**

**Please explain why.**

If a renter is not able to pay the difference in bond within the time limit, the new landlord's bond should be guaranteed by government. Landlords should not be able to terminate a tenancy on the grounds of a renter not paying the difference in bond on time, as this is a matter between the renter and the Government as guarantor. As stated earlier, landlords should not even be privy to PRBS arrangements of the new renter.

Where the Government guarantees the bond, they may then seek repayment of the difference in bond and offer appropriate support if the renter is facing financial hardship. Support could be provided through a NILS loan (i.e. a no or low interest loan scheme) or some form of payment plan arrangement. The Department of Communities and Justice already has a bond loan scheme with structures in place to facilitate repayment of the loan into the Bond Board, and statutory protection of interests. The loans are only available to low-income households eligible for social housing and the rate of default is reported to be almost non-existent<sup>21</sup>. In the case of rare defaults on the loans, these are best referred to government debt collection services.

## 7. Rent increases

We note that this section of the consultation paper is headlined as "Information to help renters know when a rent increase is excessive". Shelter NSW is of the opinion that this part of the consultation paper is far too narrow in its scope, and that the opportunity for discussion on rental increases more generally should take place here rather than under the "Other" category of the paper.

Shelter NSW was recently quoted in [this article](#), where we noted that whilst the removal of no-grounds evictions would take some heat out of the private rental market, NSW has very few mechanisms for "keeping a lid on what seems to be some pretty outrageous (rent) increases". We pointed to the ACT, which limits rent increases to 110 per cent of inflation as measured by the consumer price index, as being a reasonable approach for NSW to consider.

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<sup>21</sup> Analysis by Tenants Union NSW (2023).

The 2023 Anglicare Rental Affordability Snapshot<sup>22</sup> highlights that affordability has crashed to new lows. We, along with many other advocates, know that beyond affordability and issues of vacancy rates, the renting and tenancy system is fundamentally flawed. In late June, we [joined other advocates](#) in urging the NSW Government to ease pressure on renting households and tackle unaffordable rents in the private rental housing market. We noted that this could include, among other measures, reforms to introduce fairer limits and stronger protections against excessive rent increases.

## 7a. Limiting rent increases

**Q28. Do you think the 'one increase per 12 months' limit should carry over if the renter is swapped to a different type of tenancy agreement (periodic or fixed term)? Please explain.**

Yes, and this approach is consistent with the [announcement out of National Cabinet](#) this week.

**Q29. Do you think fixed term agreements under two years should be limited to one increase within a 12 month period? Why or why not?**

Yes. Shelter NSW supports annual limits to rent increases, regardless of tenancy type and especially when moving from one lease type to another; a once-per-year limit to rent increases must apply to the **property** itself rather than to any overlaying lease agreement.

Shelter NSW is currently sponsoring a Rental Reform and Price-setting Paper with Macquarie University and will have more to say on this topic in the coming months.

In the interim, we note that AHURI has undertaken recent research into "the regulation of residential tenancies and impacts on investment", and in doing so, has seemingly busted a few myths.

The Paper<sup>23</sup> examines the 2010 "major rental reform period" in NSW (with the introduction of the *Residential Tenancies Act 2010*) against baseline limited regulatory changes in Victoria at the same point in time. The Paper found no statistically significant change to the number of rental properties in the market or bonds being lodged as a result of the introduction of the 2010 NSW legislation. This is despite the 2010 changes limiting the number of rent increases per year for all lease types (or more frequently for fixed agreements but only if increase(s) were built into the written agreement at the outset). Additionally, one of the key findings of the paper was that landlords sell their investment properties for a variety of reasons – mostly to do with wanting to realise capital gains of

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<sup>22</sup> Anglicare Australia. (2023). *Rental Affordability Snapshot*. Retrieved from <https://www.anglicare.asn.au/publications/2023-rental-affordability-snapshot/>

<sup>23</sup> Martin, C., Hulse, K., Ghasri, M. et al. (November 2022). *Regulation of Residential Tenancies and Impacts on Investment*, Final Report No 391, AHURI. Retrieved from <https://www.ahuri.edu.au/sites/default/files/documents/2022-11/AHURI-Final-Report-391-Regulation-of-residential-tenancies-and-impacts-on-investment.pdf>

the land or the need to liquidise assets. ***Rental legislation was not found to be a hugely influential factor in the buying or selling of an investment property.***

Arguably, therefore, recent State history reveals that reform to limit rental increases has not been a significant disrupter to rental stock availability in NSW and further reforms to limit excessive rent increases can be explored without the State Government kow-towing to landlord or real estate sector boogeyman stories.

## 7b. 'Excessive' rent increases

High and rising rents mean that more than one-third (35%) of renters<sup>24</sup> and around half of all low-income renters<sup>25</sup> are in rental stress<sup>26</sup>. Profound rental stress leaves people without sufficient money for essentials, such as food, energy bills, or fuel. Many are forced to move away from their communities, schools, and jobs or settle for poor quality housing that does not meet their needs. Increasing numbers of renters are being pushed into homelessness.

The NSW Government needs to provide clear plans to address the pricing of this essential service to bring it in line with community needs and expectations.

We support the ACT model as starting point to limiting excessive rent increases. In the ACT, a landlord is required to prove that a rent increase is not 'excessive' where a rent increase exceeds 110% of the change in CPI since the last rent increase or since the tenancy agreement began. Unless the renter consents to the increase, a landlord must apply to the Tribunal for the increase, and provide evidence for why an increase above the threshold is justified.

# 8. Other changes to improve rental affordability

## 8a. Increase social housing stock

A key component of the housing spectrum which is necessary for any community to sustainably function and thrive, is the provision of social housing. The intent of both public and community housing (as subsets of social housing) is to accommodate people on very low, low, and moderate incomes. Social housing renewal, construction, acquisition, and augmentation is a State responsibility.

Public housing has moved away from being a valued part of the housing mix in the 1950s – housing workers and welfare recipients alike – to being a highly rationed form of

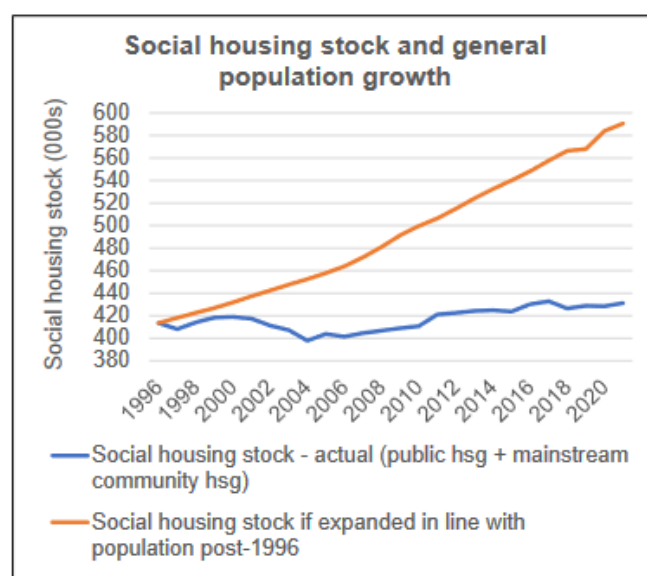
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<sup>24</sup> Australian Government – National Housing Finance and Investment Corporation. (2023, p. 85). *State of the Nation's Housing 2022–23*. Retrieved from <https://www.nhfc.gov.au/research/state-nations-housing-report-2022-23>

<sup>25</sup> Australian Bureau of Statistics. (2019-20). *Housing Occupancy and Costs, Table 13.1 Rental affordability, lower income renter households, national housing and homelessness agreement basis*. Retrieved from <https://www.abs.gov.au/statistics/people/housing/housing-occupancy-and-costs/2019-20>

<sup>26</sup> Rental stress is defined as those people in the lowest 40% of income brackets who are paying more than 30% of that income in rent.

housing for very vulnerable populations with complex needs<sup>27</sup>. Thus, social housing stock has been in real decline across the State for at least a decade<sup>28</sup>. Further, there is a widening gap between population growth and the commensurate required growth in social housing:



Sources: ABS; Productivity Commission ROGS



Fig 6. Extracted from [UNSW City Futures Research Centre presentation](#) by Hal Pawson.

In NSW, close to 50% of the 47,000 or more people seeking accommodation assistance from the Specialist Homelessness Sector were turned away during the reporting period of 2020-21<sup>29</sup>. Malcolm Roberts of the Productivity Commission identified the private rental market as the “epicentre of the affordability problem” in the housing system and for adding significant strain to the crisis accommodation sector<sup>30</sup>.

<sup>27</sup> Pawson, H., Milligan, V., & Yates, J. (2020, p. 104). *Housing Policy in Australia: A case for system reform*. (P. Macmillan, Ed.) Singapore: Springer Nature. doi:<https://doi.org/10.1007/978-981-15-0780-9>; Pawson, H. & Lilley, D. (May 2022). Working Paper: Managing Access to Social Housing in Australia - unpacking policy frameworks and service provision outcomes. UNSW City Futures Research Centre. Retrieved from [https://shelternewsw.org.au/wp-content/uploads/2022/05/Waithood\\_paper.pdf](https://shelternewsw.org.au/wp-content/uploads/2022/05/Waithood_paper.pdf)

<sup>28</sup> NSW Parliament, Legislative Council. (1 March 2021, pp. 57 & 83). *Budget Estimates 2020-2021 Portfolio Committee No. 4 Industry: Answers to supplementary questions (Pavey)*. Retrieved from <https://www.parliament.nsw.gov.au/lcdocs/other/15376/Answers%20to%20supplementary%20questions%20-%20Pavey.pdf>

<sup>29</sup> Australian Government – Productivity Commission. (20 January 2021). *Report on Government Services, Part G Housing and Homelessness*. Retrieved from <https://www.pc.gov.au/ongoing/report-on-government-services/2021/housing-and-homelessness>

<sup>30</sup> Convery, S. in *The Guardian*. (30 September 2022). *Private rental market ‘the epicentre’ of Australia’s housing affordability problem, report finds*. Retrieved from <https://www.theguardian.com/australia-news/2022/sep/30/private-rental-market-the-epicentre-of-australias-housing-affordability-problem-report-finds>

***The people of NSW need genuine alternatives to the private rental market.*** In other countries<sup>31</sup>, a large and robust social housing program provides real competition (both in quality and affordability) to the private rental market.

Given our firmly held position that the private market fails to provide enough quality, well-located, affordable housing, we call on governments to make an urgent and widespread investment in social housing acquisition and construction. A report jointly prepared by SGS Economics and Housing All Australians<sup>32</sup> has anticipated the cost to the economy (lost economic productivity; corrections; health) of not investing now in social and affordable housing on a large-scale across Australia will be \$25,000,000,000 annually (in 2021 dollars) from 2051 onward.

The most efficient and most direct way to alleviate housing stress for low-income households is through restoring social housing stock levels to 5% of all dwelling stock in each LGA, with 10% of all housing stock being social housing by 2040 in NSW. These are not fantastical or unrealistic percentages; in Australia up until a decade or so ago, 5% of housing as social housing was the norm<sup>33</sup>. Shelter NSW advocacy in the 5-10% range would put NSW *below the average* of other OECD jurisdictions<sup>34</sup>.

## 8b. Affordable Rental Housing

We are strong advocates for Affordable Rental Housing in addition to social housing, ***not instead of it.***

This type of housing and tenure responds to a vital group of households that are often overlooked – financially stressed renters in the insecure, private residential housing market who otherwise generally may not qualify for social housing. It also caters to key workers such as aged care workers, delivery personnel, and early childhood educators who are increasingly falling into rental stress with all-time-low national rental vacancy rates<sup>35</sup>, and are being pushed further out of the same suburbs in which they are expected to work<sup>36</sup>.

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<sup>31</sup> Quince, A. and Baker, N. in *ABC Radio National* (4 August 2023). *Vienna has created an equitable and affordable housing market, here's how.* Retrieved from <https://www.abc.net.au/news/2023-08-04/vienna-s-social-housing-and-low-rent-strategy/102639674>

<sup>32</sup> SGS Economics & Planning, Housing All Australians. (June 2022). *Give Me Shelter: The long-term costs of underproviding public, social and affordable housing.* Retrieved from <https://housingallaustralians.org.au/wp-content/uploads/2022/06/Give-Me-Shelter.pdf>

<sup>33</sup> Pawson, H., Milligan, V., & Yates, J. (2020). *Housing Policy in Australia: A case for system reform.* (P. Macmillan, Ed.) Singapore: Springer Nature. doi:<https://doi.org/10.1007/978-981-15-0780-9>

<sup>34</sup> OECD Affordable Housing Database. (2022). *PH4.1 Social Rental Housing Stock.* Retrieved from <https://www.oecd.org/els/family/PH4-2-Social-rental-housing-stock.pdf>

<sup>35</sup> Lutton, E in *Domain AU*. (3 February 2023). *Tenants struggle to find homes as rental vacancy rate hits new low.* Retrieved from <https://www.domain.com.au/news/national-vacancy-rates-hit-their-lowest-point-since-domain-records-began-1116239/>

<sup>36</sup> Gilbert, C., Nasreen, Z. and Gurran, N. (2021). *Housing key workers: scoping challenges, aspirations, and policy responses for Australian cities, AHURI Final Report No. 355.* Australian Housing and Urban Research Institute Limited, Melbourne. Retrieved from <https://www.ahuri.edu.au/research/final-reports/355>



The National Rental Assistance Scheme is ending, with approximately 1000 properties already expired and a further 5600 properties to be taken out of circulation by 2026 when the Scheme ends<sup>37</sup>. In-perpetuity Affordable Rental Housing is needed more than ever to accommodate not just key workers but also those tenants who are no longer supported by NRAS accommodation.

Shelter NSW commends [the announcement out of National Cabinet](#) this week for:

*“Consideration of the phased introduction of inclusionary zoning to support permanent affordable, social and special housing in ways that do not add to construction costs.”*

It is prudent to note that the existence of affordable housing contribution requirements places downward pressure on the price paid for land by developers, rather than developers ‘passing on’ the costs of mandatory contributions to future homebuyers on a developed site<sup>38</sup>. In particular, where land receives value uplift through changes to planning controls (e.g. increase in height of buildings overlay), there exists greater capacity for governments to capture some of this uplift for the public good (i.e. affordable housing)<sup>39</sup>.

We, and our peers at Shelter WA and National Shelter, regularly tout The Constellation Project’s calls for mandatory inclusionary zoning (10% of all new housing developments) to boost affordable housing supply across all jurisdictions<sup>40</sup>. In [our submission to the Greater Cities Commission](#) last year, we recommended that all LGAs in the 6 cities footprint should work toward an Affordable Housing Scheme contribution rate of 10-15 percent, with the Department of Planning & Environment waiving cumbersome viability justifications for contribution rates that sit within this range.

### 8c. Adequately regulating “STRA”

Shelter NSW welcomes the Independent Planning Commission’s [Final Advice Report](#) to the Planning Minister on the matter of short term rental accommodation regulation for Byron Shire Council. This Final Advice Report included broader recommendations for the Planning Minister to consider in their treatment not just of the ‘Byron case’ but of all LGAs wishing to regulate whole-home holiday accommodation conversions more stringently than what is currently possible under the *Housing SEPP*.

In this regard, we are pleased that many of our recommendations to the IPC have made it into the Final Advice Report, including:

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<sup>37</sup> Australian Government - Department of Social Services. (June 2021). *NRAS*. Retrieved from [https://www.dss.gov.au/sites/default/files/documents/08\\_2021/nras-quarterly-report-30-jun-2021.pdf](https://www.dss.gov.au/sites/default/files/documents/08_2021/nras-quarterly-report-30-jun-2021.pdf)

<sup>38</sup> Spiller, M., Mackevicius, L, and Spencer, A. (28 March 2018). *Development contributions for affordable housing: Theory and implementation*. SGS Economics & Planning. Retrieved from <https://sgsep.com.au/assets/main/SGS-Economics-and-Planning-Development-contributions-for-affordable-housing.pdf>

<sup>39</sup> Ibid.

<sup>40</sup> The Constellation Project. (2021). *Establishing a National Framework for Mandatory Inclusionary Zoning*. Retrieved from [https://theconstellationproject.com.au/wp-content/uploads/2021/09/Mandatory\\_Inclusionary\\_Zoning-Final.pdf](https://theconstellationproject.com.au/wp-content/uploads/2021/09/Mandatory_Inclusionary_Zoning-Final.pdf)

- Non-hosted whole-home holiday accommodation is a change of use from a “dwelling house”, particularly in circumstances where the use occurs (or is proposed/likely to occur) for more than 60 days per calendar year
- Require change of use DA consent from “dwelling house” to “tourist and visitor accommodation” (“serviced apartment”) in circumstances where non-hosted whole-home holiday accommodation is or is likely to exceed the locally accepted cap (90, 60, 30 days).

The full suite of our recommendations to the IPC can be found in [our submission](#). We also pose questions to the Department of Planning & Environment about the monitoring, auditing, reporting, transparency, and enforceability of the State “STRA” register, noting grievances we have heard from Council compliance officers.

## 9. Other changes to make rental laws better

### 9a. Embedded networks

**Q31. Do you support new laws to require landlords or their agents to tell rental applicants if a rental property uses any embedded network? Why/why not?**

**Q32. When should a rental applicant be told that a property uses an embedded network?**

**Q33. What information should a renter be told about a rental property using an embedded network? Please explain.**

Low-income households are particularly prone to “bill shock” in embedded networks, where there is no competition in energy retailers able to service a dwelling. Shelter NSW recognises [the significant advocacy work by PIAC](#) on the issue of embedded networks in NSW. We therefore support their calls for:

14. Ensuring the definition of ‘embedded network’ is broad enough to capture hot and chilled water embedded networks and potential future networks such as electric vehicle charging embedded networks
15. Improving disclosure of ‘embedded networks’ ahead of starting a tenancy – in the rental listing/advertisement, during inspection, at application, *and* ahead of signing a lease
16. At all milestones (listed above) *before* a lease agreement is formalised, written and verbal disclosures of ‘embedded networks’ must be accompanied by a plain-language factsheet on the definition of ‘embedded networks’; the scope of reduced protections for consumers; core conditions from the AER’s *Retail Exempt Selling Guideline*; and links to further information about embedded networks from the Tenants Union and Energy Ombudsman.



## 9b. Free ways to pay rent

**Q34. What would be the best way to ensure that the free way for renters to pay rent is convenient or easy to use? Please explain.**

**Q35. Should the law require a landlord or agent to offer an electronic way to pay rent that is free to use? Why/why not?**

Yes. We support the Tenants Union in these regards.

## 9c. Renters moving into strata schemes

**Q36. What are the issues faced by renters when moving into a strata scheme? Would better disclosure about the strata rules for moving in help with this?**

We acknowledge the work done by the Tenants Union and support their recommendations. Most notably, we agree that a breach of by-laws should not constitute a breach of the tenancy agreement.

## 9d. Climate change and minimum building standards

Like our peers at Better Renting, we are dismayed by the lack of discussion in the Consultation Paper on climate-ready rental homes.

NSW is part of the cross-jurisdictional process of developing a National Framework for Minimum Rental Requirements, under the *Trajectory for low energy buildings*<sup>41</sup>. The timeline for this has jurisdictions beginning processes to implement rental schemes before the end of 2023. Treasurer Mookhey has previously committed to begin consultation on implementing rental standards<sup>42</sup>. This Consultation Paper was a missed opportunity to begin this consultation. Delaying action on this means higher energy costs for renters, and more unnecessary sickness and death from allowing landlords to rent out unhealthy homes.

### **Climate change**

As anthropogenic global warming continues to be a major society-shaping factor into 2050 and beyond, homes and neighbourhoods need to be well-located and resilient to alternating flood and bushfire events<sup>43</sup>.

Through successive 'Renter Researcher' rounds over the past 3 years, Better Renting has demonstrated that the impacts of climate change are already being keenly felt by renting households across Australia and in NSW. The following is a sample of what renters

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<sup>41</sup> Australian Government – Department of Climate Change, Energy. (n.d.). *Trajectory for low energy buildings*. Retrieved from <https://www.energy.gov.au/government-priorities/buildings/trajectory-low-energy-buildings>

<sup>42</sup> In-person commitment at Sydney Alliance assembly, Westmead, 28 February 2023. Further details: <https://www.sydneyalliance.org.au/assembly>

<sup>43</sup> Intergovernmental Panel on Climate Change. (February 2022). *IPCC Sixth Assessment Report*. Retrieved from <https://www.ipcc.ch/report/ar6/wg2/>

tracking temperature and relative humidity in their households over the summer of 2022-23 had to say<sup>44</sup>:

*"We requested our landlord to purchase curtains for our living area as it faces directly west and it can get so warm in summer that I've needed to wear sunscreen and sunglasses inside my house so I don't get burnt. Our landlord refused to do so...."*

*Bek, NSW*

*"I've just been having to deal with the extra expense from electricity bills of running the AC nearly all the time during these rotating heatwaves and humid storms as I can't really afford to sacrifice my health either, but this isn't financially sustainable."*

*Murray, NSW*

In addition to the highly localised, individual experiences of climate-extremes in subpar housing, whole communities are being decimated by increasingly intense and frequent flood and bushfire events. The newly-established NSW Reconstruction Authority<sup>45</sup> is dedicated to disaster preparedness, recovery, and reconstruction from natural disasters. Our hope is that the authority's remit will take in the actions required to prepare and support communities (not just the physical construction/reconstruction activities). This might include the support of more social housing and crisis accommodation and **the establishment of a Renting Hardship Fund and protocol** (see section 9f. Assistance to renters for more discussion on a Hardship Fund).

### **"Structurally sound" properties – according to whom?**

There is a misconception in societal discourse about tenant expectations, being "renters just want air conditioning" in their homes. Whilst standard energy efficient appliances across all rental homes are needed, this is not 'step one'. Renters need homes that meet minimum built-form standards including adequate sealing, ventilation, window coverings, and insulation<sup>46</sup>.

No building compliance/inspection report is required when listing a property on the private rental market. Section 52 of the *NSW Residential Tenancies Act 2010*<sup>47</sup> states that the premises must be "structurally sound"; in practice, we understand this to be an eyeball estimate performed by the property manager before listing the property.

Prospective tenants are generally given a two-minute walk through a rental property before applying for the property, and many structural defects are not detected until well into the tenancy. Recourse for neglected maintenance repairs generally end up before

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<sup>44</sup> Better Renting. (March 2023). *Sweaty and Stressed: Renting in an Australian summer*. Retrieved from [https://www.betterrenting.org.au/renter\\_researchers\\_summer\\_23](https://www.betterrenting.org.au/renter_researchers_summer_23)

<sup>45</sup> NSW Department of Planning and Environment. (9 November 2022). *NSW Reconstruction Authority*. Retrieved from <https://www.dpie.nsw.gov.au/about-us/our-agencies/nsw-reconstruction-authority>

<sup>46</sup> Better Renting. (March 2022). *Hot Homes: Renter Researchers' experiences of summer 2021-22*. Retrieved from [https://www.betterrenting.org.au/renter\\_researchers\\_summer21-22](https://www.betterrenting.org.au/renter_researchers_summer21-22)

<sup>47</sup> NSW Legislation. (3 August 2023). *NSW Residential Tenancies Act 2010 No 42 (s52)*. Retrieved from <https://legislation.nsw.gov.au/view/html/inforce/current/act-2010-042>

NCAT as many matters do not fall within the scope of ‘urgent repair’ in the Act. For example, ***structural dampness resulting in mould is not explicitly listed as an urgent repair*** (s62 of Act), and so no timeframe for repair is mandated under the Act.

Shelter NSW is of the view that the requirement for a rental property to be “structurally sound” needs to be certified by a Building Inspector and not left as a judgement call from property managers who have a conflict of interest in wanting to believe properties are structurally sound, in order to secure commission from these properties:

Fig 7. Rental listing with a dwelling that is clearly not “structurally sound” (screenshot 11 August 2023).

This ***“structurally sound” certification by a Building Inspector shall be performed before a property is listed for rent and/or before each tenancy agreement is entered into***. This certification also provides an impartial point-in-time record on maintenance (or lack thereof), in addition to entry and exit condition reports filled in by property managers, landlords, and renters.

### **Energy and thermal performance standards**

People on low incomes are more likely to be renters (40%), as are First Nations adults (68%)<sup>48</sup>. People with disability have lower heat tolerances and mental health disorders/medication can negatively impact the ability to self-regulate body temperature<sup>49</sup>. Low-income and marginalised households are more likely to live in the

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<sup>48</sup> Australian Government – Australian Institute of Health and Welfare. (16 September 2021). *Indigenous Housing*. Retrieved from <https://www.aihw.gov.au/reports/australias-welfare/indigenous-housing>

<sup>49</sup> American Psychiatric Association. (30 June 2021). *Extreme heat contributes to worsening mental health, especially among vulnerable populations*. Retrieved from <https://www.psychiatry.org/news-room/news-releases/extreme-heat-contributes-to-worsening-mental-health>

most inefficient houses and spend a greater proportion of their income on utility bills compared to owner occupiers<sup>50</sup>.

Passive heating/cooling through design and retrofits is superior to installing energy-efficient appliances in otherwise energy inefficient dwellings<sup>51</sup>. In this regard, we turn to the recent matter of ceiling insulation being a mandatory requirement for rental dwellings (new and existing) in the ACT<sup>52</sup>. Shelter NSW strongly supports this level of commitment to ensuring renters do not unfairly 'foot the [energy] bill' of poorly designed and constructed properties.

As noted by NSW Council of Social Services ('NCOSS') in its Pre-Budget Submission<sup>53</sup>, there are considerable carbon emission reductions and household savings possible through improving the quality of existing rental homes:

*"... Upgrades made to 1,230 existing homes by one NSW community housing provider – such as insulation, drought proofing and LED replacement, and installation of heat pumps for hot water systems, ceiling fans and solar – delivered an estimated energy saving of 2,270,000 kWh of energy per year and an average saving of \$400 per dwelling."*<sup>54</sup>

We call on the NSW Government to look to the ACT model and implement the recommendations outlined (and endorsed by 50+ community organisations) in Healthy Homes for Renter's [Community Sector Blueprint](#).

## 9e. Discrimination in the rental market

According to this 2021 AHURI research<sup>55</sup>, discrimination happens right across the rental system, from application through to eviction and is felt across age, gender, race, ethnicity, and disability status. People in these groups describe this discrimination as active and obvious; and felt over time regardless of the health of the rental market supply. Our colleagues at the Western Sydney Community Forum report this as a common and distressing experience for many people, but particularly women fleeing domestic violence, who are already struggling in the large and high-pressure renter environment in Sydney's south and western regions.

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<sup>50</sup> Razaghi, T. in *Sydney Morning Herald*. (26 May 2022). *Renters slugged with \$150 extra in home energy bill costs per year*. Retrieved from <https://www.smh.com.au/property/news/renters-slugged-with-150-extra-in-home-energy-bill-costs-per-year-20220518-p5amgs.html>

<sup>51</sup> Healthy Homes for Renters. (2022). *Community Sector Blueprint: National Framework for Minimum Energy Efficiency Rental Requirements*. Retrieved from <https://www.healthyhomes.org.au/news/community-sector-blueprint>

<sup>52</sup> ACT Government – Justice and Community Safety Directorate. (2023). *Minimum energy efficiency standards for rental homes*. Retrieved from <https://www.justice.act.gov.au/renting-and-occupancy-laws/energy-efficiency-standards-for-rental-homes>

<sup>53</sup> NCOSS. (August 2023). *Pre-Budget Submission 2022-23*. Retrieved from <https://www.ncoss.org.au/policy-advocacy/policy-research-publications/ncoss-pre-budget-submission-2022-23/>

<sup>54</sup> Clean Energy Finance Corporation. (May 2020). *Clean energy and community housing*. Retrieved from [https://www.cefc.com.au/media/2vqg5rly/cefc\\_investmentinsights\\_communityhousing.pdf](https://www.cefc.com.au/media/2vqg5rly/cefc_investmentinsights_communityhousing.pdf)

<sup>55</sup> Maalsen, S., Wolfson, P., Rogers, D., Nelson, J. and Buckle, C. (2021). *Understanding discrimination effects in private rental housing*, AHURI Final Report No. 363. Retrieved from <https://www.ahuri.edu.au/research/finalreports/363>

One cohort reports discrimination as a common experience. The private rental market routinely discriminates against First Nations applicants, and this is particularly the case when rental vacancy rates are at all-time lows as currently being experienced in regional NSW. The Murra Mia AC - Aboriginal Tenant Advice and Advocacy Service described the various forms this takes in a recent submission to the NSW Parliamentary Inquiry into the (then) proposed 'Rental Fairness' Bill (2023)<sup>56</sup>.

While not a direct consideration of this Consultation Paper, Shelter NSW calls on the NSW Government to seek to understand the experience of these groups, testing the design of any reformed law, regulation or practice against the needs of these groups. We also see the need to eradicate discrimination as one of the compelling reasons for governments to invest in tenancy support and advocacy services.

## 9f. Assistance to renters

State and Commonwealth governments are awash with policies and funding packages for 'first home buyers' that arguably have an inflationary effect on house prices. But what about renters? At the very least, renters should be afforded equivalent levels of (often expensive) support that is provided to first home buyers in the pursuit of tenure security<sup>57</sup>.

### **Tenancy services**

We need a well-resourced and supported tenants' advocacy service in NSW. Tenancy services are not being funded to keep up with the demands of a growing renting population<sup>58</sup> and pressures of the ongoing housing crisis.

According to the NSW Government, the Tenants Advice and Advocacy program (TAAP)<sup>59</sup> provides tenancy advice and advocacy services to tenants throughout NSW. According to the Tenants' Union of NSW, there are 15 generalist Tenants Advice and Advocacy Services (TAASs), 4 specialist Aboriginal services, and a specialist resourcing body for the Aboriginal TAASs. Each is run by a local non-government organisation. They are funded by NSW Fair Trading under the Tenants Advice and Advocacy Program (TAAP), which uses money from the Rental Bond Board Interest Account and the Property Services Statutory Interest Account. The TAAS network responds to approximately 30,000 requests annually for tenancy advice and provides ongoing assistance to approximately 10,000 tenants annually<sup>60</sup>.

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<sup>56</sup> Murra Mia AC – Aboriginal Resource Unit – Aboriginal Tenant Advice and Advocacy Services (May 2023). Submission to the *NSW Parliamentary Inquiry into the Rental Tenancies Amendment (Rental Fairness) Bill 2023*, accessed from the [NSW Parliament Committee website](#)

<sup>57</sup> NSW Government – Revenue NSW. (2023). *First Homebuyers Assistance Scheme*. Retrieved from <https://www.nsw.gov.au/housing-and-construction/home-buying-assistance/first-home-buyers-assistance-scheme>

<sup>58</sup> Australian Government – Australian Institute of Family Studies. (July 2020). *Families Then & Now: Housing*. Retrieved from <https://aifs.gov.au/research/research-reports/families-then-now-housing>

<sup>59</sup> NSW Government – Department of Customer Service. (2023) *Tenants Advice and Advocacy Program*. Retrieved from <https://www.nsw.gov.au/grants-and-funding/tenants-advice-and-advocacy-program>

<sup>60</sup> Tenants Union NSW. (n.d.). TAAS. Retrieved from <https://www.tenants.org.au/all/taas>

A key part of the Tenants' Advice and Advocacy Services approach to homelessness avoidance is to prevent evictions, both by ensuring the law is applied in an appropriate and just way, and by negotiating alternatives to evictions. In the 2021 and 2022 calendar years, Tenants' Advice and Advocacy Services have prevented eviction in 5,845 cases<sup>61</sup>.

The Tenants Union forecasts that a funding boost to TAASs will generate greater efficiency for government expenditure, reducing costs on Fair Trading NSW complaints centre, the NSW Civil and Administrative Tribunal, Office of the Sheriff NSW, and across housing, homelessness, and health services.

In [Shelter NSW pre-Budget submission 2023-2024](#) to the NSW Treasurer, we called for an additional \$4.62 million p.a increase to the Tenancy Advice & Advocacy Program (general and specialist Aboriginal services) to match the growth of the renting population and the challenges of the housing market.

### **Older renters**

Renting is no longer just a young person's game. Older people are at increased risk of homelessness and need specialised services to support them find and sustain housing in the private rental market. Adequately supporting older renters is crucial to preventing premature entry into the residential aged care system.

There are currently no services within NSW dedicated to supporting the growing cohort of older renters experiencing actual or threatened homelessness. Shelter NSW is an active member of the *Ageing on the Edge NSW Forum*<sup>62</sup> ('AOTE'), a network focused on improving housing security for older people at risk of homelessness.

According to Ageing on the Edge, many people aged over 55 who are experiencing housing insecurity (for the first time in their lives, in some instances) are unaware or unable to access the services they need to avoid homelessness and remain in the private housing system.

AOTE has called for<sup>63</sup> the funding of a specialist older person's housing information and support service that comprises a prevention, early intervention and crisis response, similar to the *Home at Last* model in Victoria<sup>64</sup>. In [Shelter NSW pre-Budget submission 2023-2024](#) to the NSW Treasurer, we outlined the case for approximately \$2 million to be set aside to establish and operate this type of housing information and support service for older renters.

### **Standing Hardship fund**

The Tenants Union has done significant work on building a case for the creation of a Standing Hardship fund to benefit renters and tangentially, landlords. In this section, we draw mostly from the Tenants Union paper, [Eviction, Hardship and the Housing Crisis](#).

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<sup>61</sup> Figure provided by Tenants Union NSW

<sup>62</sup> Ageing on the Edge NSW Forum. (20 May 2018). *Terms of Reference*. Retrieved from <https://www.olderrenters.org.au/news/ageing-the-edge-new-south-wales-forum-terms-reference>

<sup>63</sup> Ageing on the Edge NSW Forum. (16 November 2022). *State Election platform*. Retrieved from <https://www.olderrenters.org.au/news/new-coalition-calls-for-housing-solutions-for-everyone-in-nsw-state-election>

<sup>64</sup> Housing for the Aged Action Group. (n. d.). *Home at Last*. Retrieved from [https://www.olderrenters.org.au/home\\_at\\_last](https://www.olderrenters.org.au/home_at_last)

The COVID-19 pandemic thrust into the public sphere discussions of unprecedented times and how we collectively respond and work together during these times. For low-income and otherwise marginalised households who are constantly on the edge of breaking point, these larger societal shocks are keenly felt and poorly mitigated by our social services.

NSW is increasingly experiencing climate-fuelled and macroeconomic-driven housing crises that require proactive and responsive government policy changes – including a commitment to a Standing Hardship Fund and policy protocol.

A permanent hardship protection framework will help ensure continuation of support to people facing crises – whether every day or extraordinary – sustain their tenancies, allowing them to keep their basic needs of housing met.

Some recommended aspects of a Hardship Fund have already been alluded to elsewhere in our submission – such as compensating tenants' moving costs for no-fault evictions. Other aspects of a proposed Hardship Fund are necessary and logical steps to further rebalance the power of landlords over tenants; instituting a mandatory landlord insurance scheme and/or landlord rental bond scheme (to guarantee maintenance requests can be fulfilled).

A Hardship Fund framework may also be accompanied by education/training programs and qualification schemes to ensure landlords and property managers know their obligations when providing housing in the private rental market in NSW. Regardless, Shelter NSW is of the view that enhanced training and qualification frameworks for landlords and property managers is sorely needed to mature the private rental market beyond its current culture of exploitation and routine discrimination.



## Summary of recommendations

We support the Tenants Union's recommendations on all matters related to this Consultation Paper. For clarity, our core recommendations are:

### **Guiding principles**

1. Guide rental reform through the lens of the renter in a private market being a customer worthy of consumer protections
  - a. Look across to other essential service sectors, especially those where the customer is put at the centre, protected by a series of laws and regulations regarding product and service standards, contracting, privacy, data protection and pricing
  - b. Customers of property services, that is tenants, be not accorded any less protection than that they would be entitled to in those other core sectors.

### **Removing no-grounds terminations**

2. Put an end to no-grounds evictions for periodic as well as fixed term leases
  - a. The end of a fixed term contract is not grounds enough for eviction
  - b. The NSW Government must remove section 84 of the *Residential Tenancies Act 2010*
3. Legislation abolishing no-grounds evictions needs to be in concert with other rental reforms
  - a. Limits on rental increases (to prevent de facto process of eviction by way of landlords simply raising rents beyond any reasonable amount for an incumbent tenant to meet)
  - b. Re-identify "non-hosted short term rental accommodation" or "STRA" (over a certain number of days use per year) as a form of "tourist and visitor accommodation" requiring DA change of use in the NSW Planning framework
4. Do not include "prepare for sale" as a standalone reasonable ground for eviction
  - a. In actual preparation for sale, the selling landlord can rely on a "significant reconstruction/renovation" or "demolition" clause if absolutely necessary, as could any other future owner
  - b. When a property is sold, it is sold to either an investor or an owner-occupier
  - c. If a residential investor purchases the property, the property will continue to be available to rent and the sitting tenant should be able to remain
  - d. If a commercial investor purchases the property, there is the option to terminate under the "change of use" clause
  - e. If a prospective owner-occupier moves into the property, then they can rely on the otherwise proposed "landlord move-in" clause
5. Renovation or general repair should not be considered a valid reason



- a. If the language of repair and renovation is included, it must be clarified that this is allowable only where the landlord genuinely intends to carry out **significant** repair and renovation of the residential premises and where the repairs are not required as a result of the landlord's breach of the agreement
  - b. The renter must also have been given the option to continue the tenancy agreement with an abated rent during the repair and renovation period and declined.
6. For the landlord/landlord's family move-in clause, party(ies) shall intend to occupy the property for at least 12 months as their principal place of residence
  - a. A definition of 'family' for the purposes of enacting this reason must be legislated
7. All reasons should include a temporary ban on re-letting the premises again
  - a. "Prepare for sale" – n/a as not a valid reason and should not be permitted as a valid reason in the legislation
  - b. Significant renovation, repair, demolition – as a disincentive for misusing this reason, a 6 month ban on re-letting the property shall apply from the time of the eviction taking effect
  - c. Change of use – as a disincentive for misusing this reason, a 12 month ban on re-letting the property for residential purposes shall apply from the time of the eviction taking effect
  - d. Landlord or family move-in clause – the property shall not be re-let to non-family within 12 months of the eviction taking effect
8. In all scenarios that valid reasons for no-fault terminations may be invoked, these reasons must be accompanied by evidence
  - a. Refer Table 2 in body of submission for examples of sufficient evidence
  - b. The types of acceptable evidentiary documentation for each valid reason (and how/when these documents are turned over to the tenant) must be prescribed in legislation
9. A notice for eviction served without evidentiary documentation is not considered valid
  - a. All evidentiary documentation shall not only be supplied to the tenant as part of the notice to vacate, but shall also be supplied to the Rental Commissioner or equivalent body (e.g. Fair Trading) to log as evidence
10. For any 'no fault' eviction (ie where a renter is not in breach of the agreement), the Tenants Union recommends no less than 120 days notice should be given (or 6 months in other cases)

11. To further ease the disruption and costs to tenants of paying overlapping rent for weeks, they must be able to move out at any time once a valid termination notice has been served
  - a. This should apply to tenants on both fixed and periodic leases.
12. Rent should be waived for a certain period of time following the issue of a notice to vacate (especially where the renter is not at fault, as is the case with all of the proposed 'reasonable' grounds for evictions)
  - a. Tenant moving costs to be compensated by landlords in the cases of all no-fault evictions
13. Compensation should be payable to tenants where landlords have lied or misused 'reasonable' grounds in order to evict someone.

### **Keeping pets**

14. Renters should not be subject to additional rules that others in the community are not required to follow when it comes to acquiring pets
15. Reverse the burden of proof, that is, that it be incumbent on a landlord to demonstrate (on a case-by-case basis) that a pet is not suitable for a dwelling
16. Remind the community (and landlords) that there is already regulation in place for landlords to seek financial recourse for any damage done to a property
17. 14 days is a reasonable amount of time for a landlord to consider and respond to a renter's request to keep a pet
  - a. 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 date on which the renter made a written request
18. There should not be a list of valid reasons for a landlord to say no to a pet but rather a requirement that each case be considered on its merits
  - a. There should be no blanket ban on a specific property
  - b. The landlord should go to the Tribunal for all reasons where the tenant does not agree
19. Local government ordinances and rules that set certain conditions on pet owners already apply to renters once they move into the area. These don't need to be specified again in a tenancy agreement.

### **Renters' personal information**

20. Make the whole rental application journey simpler, fairer, and easier to interrogate for consumers (renters)

21. Prospective tenants should be told everything about how information collected will be used, why it is being collected, and how long the information will be stored before being destroyed
22. Require anyone holding renter personal information to secure it
  - a. Where renters have provided information or are aware information has been collected about them, they should be able to request access to this
23. Landlords, agents, and PropTech/RentTech companies should be required to correct rental applicants' personal information as necessary
24. We support the Tenants Union requests for:
  - a. Renters being provided with the option to apply with a paper form and paper applications must be accepted and considered equally alongside online applications
  - b. Any information that can be used to unlawfully discriminate against a renter (renter's age or suburb) not being allowed to be used by computer programs for decision making
  - c. Full transparency regarding how a computer program will make recommendations or decisions about renters' applications. Information about this should be made publicly available by those relying on the program
  - d. Before automation is used above an identified threshold to allow for limited, small-scale pilots, automation should be tested by an authority resourced to do so (testing both the technology itself and the appropriateness of the technology).
25. We support the Tenants Union in their position that information should be destroyed within 2-6 months of an application being received, with timeframes varying depending on whether the applicant was successful or not in securing the property.
  - a. For successful applicants, only their contact information shall be held on file by property managers. Third party holders of information (apps and the like) shall be subjected to similar timeframes.
26. Prescribe a standardised application form and set of referee questions in the regulations
  - a. Questions about current or past use of the Portable Rental Bond Scheme are disallowed from the application form or referee questions
  - b. The scope of information that can be collected under the 'Suitability' column in the exhibited Table is too broad
  - c. Extra consideration should be given to the type of standard tenancy application form requirements that may differ for prospective tenants of social and affordable rental housing

27. An explicit prohibition against asking discriminatory questions on prospective tenants and their referees shall be included in the Act as a failsafe measure
28. Standard, core information about a property must be included in its advertisement listing.

### **Portable rental bond scheme**

29. If strong anti-discrimination measures are imbued in the Portable Rental Bond Scheme's design, the PRBS should be voluntary for renters to use. The PRBS shall not be voluntary for landlords/property managers to accept
30. Eligibility to use the PRBS should be for any renter who wants to access the scheme
31. Landlords and property managers should not have visibility of who has (or has previously) used the PRBS
  - a. Any confirmation issued to landlords on bond secured should not disclose PRBS status or make any reference to the PRBS whatsoever
32. Renters should be provided an absolute 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
  - a. This minimum timeframe shall apply whether or not the 'gap' in the bond is the result of money being claimed against the old property or the new property simply requires more bond money than the old property
33. If a renter is not able to pay the difference in bond within the time limit, the new landlord's bond should be guaranteed by government
  - a. Where the Government guarantees the bond, they may then seek repayment of the difference in bond and offer appropriate support if the renter is facing financial hardship
34. Landlords should only be informed that bond has been secured for their property, but not how it has been paid or what guarantees are in place for payment
35. Landlords should not be able to terminate a tenancy on the grounds of a renter not paying the difference in bond on time, as this is a matter between the renter and the Government as guarantor
36. Renters should not be barred from future participation in the PRBS where they have previously been in arrears on the top-up payment.

### **Rent increases**

37. Limit rent increases to once per year for any lease type
  - a. Once-per-year limit to increases must apply to property itself rather than to any overlaying lease agreement
38. Pursue rental reform to cap excessive rent increases

- a. Living in a rental home is an essential service being rendered to the occupants. The occupants should not be subject to price-gouging techniques
- b. Adapt the ACT model of linking rent increases to CPI
- c. Move the burden of proof of justifying increases onto the landlord (rather than requiring the tenant to prove that increases are 'excessive').

### **Other changes to improve rental affordability**

- 39. Provide genuine alternatives to the private rental market by heralding in a new golden era of widespread public housing building/acquisition
  - a. Restore 5% of all housing stock as social housing in the State, with a State-wide target of 10% of all housing stock being social housing by 2040
  - b. Conduct an audit of State-owned land (held by entities such as LAHC, Transport Asset Holding Entity, Landcom, TAFE, School Infrastructure NSW, Crown Lands) to be repurposed or activated for social housing delivery
- 40. Mandate Affordable Rental Housing in addition to (not instead of) social housing
- 41. Develop a State-wide Inclusionary Zoning framework for social and affordable housing
  - a. Minimum 10% of all new housing developments
- 42. Affordable Housing Contributions Schemes for land subject to planning uplift
  - a. Rapidly instate 10-15% contribution rate across the 6 cities metropolis, and higher rates subject to viability testing.

### **Other changes to make rental laws better**

#### *Embedded networks*

- 43. Ensure the definition of 'embedded network' is broad enough to capture hot and chilled water embedded networks and potential future networks such as electric vehicle charging embedded networks
- 44. Improve disclosure of 'embedded networks' ahead of starting a tenancy – in the rental listing/advertisement, during inspection, at application, *and* ahead of signing a lease
  - a. At all milestones (listed above) *before* a lease agreement is formalised, written and verbal disclosures of 'embedded networks' must be accompanied by a plain-language factsheet on the definition of 'embedded networks'; the scope of reduced protections for consumers; core conditions from the AER's *Retail Exempt Selling Guideline*; and links to further information about embedded networks from the Tenants Union and Energy Ombudsman.

#### *Free ways to pay rent*

- 45. Renters must be offered online and in-person fee-free methods to pay rent.

### *Strata schemes*

46. Breach of by-laws by renters should not constitute a breach of the tenancy agreement.

### *Climate change and minimum building standards*

47. Do not delay consultation on minimum structural, thermal, and energy standards for rental properties (new and existing), per the mandatory (and behind schedule) bilateral government agreement on the *Trajectory for low energy buildings*
48. The NSW Reconstruction Authority's remit shall consider the actions required to prepare and support communities through social infrastructure such as safely located social housing and crisis accommodation provision
49. Structural dampness resulting in mould shall be explicitly listed as an 'urgent repair' under the Act
50. The requirement for a rental property to be "structurally sound" needs to be certified by a Building Inspector
  - a. This "structurally sound" certification by a Building Inspector shall be performed before a property is listed for rent and/or before each tenancy agreement is entered into
51. Implement the recommendations outlined (and endorsed by 50+ community organisations) in Healthy Homes for Renter's [Community Sector Blueprint](#)
  - a. Passive heating/cooling through design and retrofits is superior to installing energy-efficient appliances in otherwise energy inefficient dwellings
52. Look to the ACT model of mandating minimum ceiling insulation requirements for all new and existing rental properties.

### **Assistance to renters**

53. Eradication of discrimination against low-income and marginalised renter cohorts must be a core reason for the continued and augmented funding to tenant advocacy services
  - a. Test the design of any proposed reforms to policies, practices, guidelines, or legislation against the needs of these groups
54. Fund and sustain a well-resourced and supported tenants' advocacy service in NSW
  - a. An additional \$4.62 million p.a increase to the Tenancy Advice & Advocacy Program (general and specialist Aboriginal services) to match the growth of the renting population and the challenges of the housing market
55. Fund a specialist older person's housing information and support service that comprises a prevention, early intervention and crisis response, similar to the *Home at Last* model in Victoria

- a. Approximately \$2 million to be set aside to establish and operate this type of housing information and support service for older renters
56. Commit to creating a Standing Hardship Fund and policy protocol
- a. Defer to the Tenants Union Paper *Eviction, Hardship and the Housing Crisis*
  - b. Institute a mandatory landlord insurance scheme and/or landlord rental bond scheme (to guarantee maintenance requests can be fulfilled)
57. Provide and require enhanced education/training and qualification frameworks for landlords and property managers to understand their obligations to renters and to mature the private rental market beyond its current culture of exploitation and routine discrimination.