

**Submission
No 33**

RESIDENTIAL TENANCIES AMENDMENT (PROHIBITING NO GROUNDS EVICTIONS) BILL 2024

Organisation: Change the Record

Date Received: 27 June 2024



**Submission to the NSW Select Committee Inquiry into the Residential Tenancies
Amendment (Prohibiting No Grounds Evictions) Bill 2024**

June 2024

About Change the Record

Change the Record is Australia's only national First Nations-led justice coalition. We are a coalition of legal, health, human rights and First Nations organisations.

Change the Record has two key objectives - to end the mass incarceration of First Nations peoples and the disproportionate rates of family violence experienced by Aboriginal and Torres Strait Islander women and children. Housing justice is crucial in achieving these goals.

We welcome the opportunity to provide this submission on the immense risks First Nations peoples and communities face as a result of housing precarity and a lack of adequate tenancy protection and regulation.

Summary

Safe, secure, affordable housing is a human right, a crucial determinant of health and wellbeing, and a strong protective factor against family violence and exposure to the criminal legal system. The importance of stable and appropriate housing to improving the health and wellbeing of First Nations peoples is well established and accepted by government and civil society, and acknowledged in the inclusion of a housing target in the National Agreement on Closing the Gap.

First Nations peoples are disproportionately affected by the unfair Australian housing system, being more likely to rent while experiencing discrimination in the market, more likely to live in poverty, more likely to become homeless as a result of poverty, violence and discrimination, less likely to own a home and build asset wealth, and less likely to inherit asset wealth.

The result of decades of bipartisan prioritisation of asset ownership and encouragement of property speculation is severe financial stress and housing insecurity for millions of people, and worsening inequality. Entrenched discrimination in the private rental market against First Nations peoples places mob at increased risk of no grounds eviction.

The housing affordability and overcrowding crises facing First Nations peoples in Australia are the products of government policy settings and choices about funding and governance priorities. The operation of Australia's property and rental markets is entirely deliberate. That means they can be changed.

To ease the burden of housing precarity for everyone in NSW, we recommend:

1. That the Residential Tenancies Amendment (Prohibiting No Grounds Evictions) Bill 2024 be passed.
2. That the NSW government legislate a robust system of renters rights, including at a minimum:
 - An end to no grounds evictions, including at the end of a fixed term lease;
 - Restrictions on the collection, storage and retention of tenants' private information;

- Minimum standards for rental homes including disability accessibility, climate resilience and energy efficiency, dwelling quality and maintenance;
 - Independent enforcement of rental rules and regulations, including genuine protection from housing discrimination;
 - Reliable, adequate funding for mainstream and First Nations community-controlled tenant's advocacy and legal services to assist tenants to know and pursue their rights; and
 - Guaranteeing renters rights for public and community housing tenants.
3. That the NSW government implement a system of rent controls which limit the frequency of rent increases and the amount by which rent may be raised.
 4. That the NSW government invest in public and community-controlled housing to meet current and projected need.

First Nations women's experiences of discrimination in the private rental market

Aboriginal and Torres Strait Islander people are disproportionately renters, with home ownership rates at 42.3% compared with 66% of the general population at the last Census. First Nations households are consistently more likely than other households to live in a rental, at 56.1% compared with 30.6% of non-Indigenous people.¹

Despite the increased likelihood of needing to find accommodation in the private rental market, First Nations households experience significant discrimination in being able to secure tenancies.

In the first report of her Wiyi Yani U Thangani (Women's Voices) project, Aboriginal and Torres Strait Islander Social Justice Commissioner June Oscar explores the impacts of housing precarity, discrimination and inequality on First Nations women and girls at length, in their own words.²

According to Commissioner Oscar, women and girls contributing to the Wiyi Yani U Thangani project 'felt that real estate agents were discriminating against Aboriginal and Torres Strait Islander applicants without directly saying so, but through the constant awarding of successful applications to non-Aboriginal applicants. Some women told me they felt that the only way to secure a lease was not to identify as Aboriginal or Torres Strait Islander.'

'Women and girls reported that they were discriminated against in applying for private and social housing because of the size of their families, being a single mother, having inadequate references, or for being on social welfare.'

Kempsey women: *Racism is an issue in our community, definitely with real estate and housing. There is judgement. I think they lie to you, they say, 'yeah, yeah, yeah, it's going through'. And then another family comes in, and they give them the house.*

Nowra women and girls: *Renting is also really hard. When people know you are Aboriginal, they won't want to rent to you. Me and my friend used to rent, and we never*

¹ Australian Bureau of Statistics, [Housing statistics for Aboriginal and Torres Strait Islander peoples](#), September 2022; Australian Bureau of Statistics, [Housing: Census](#), June 2022.

² Australian Human Rights Commission and Oscar, J. et al, ['Wiyi Yani U Thangani \(Women's Voices\): Securing Our Rights. Securing Our Future Report'](#), Australian Human Rights Commission, 2020, p298-303.

told the real estate that we were Aboriginal ... because we had trouble with that in the past.

Kempsey women: *Buckley's [chance] to get a house in town because they only want people that are white, two-person family and both work, 1-2 kids ... you are not going to get it because of who you are.*

The Commissioner continued, 'Aboriginal and Torres Strait Islander women are understandably frustrated at the lack of legal protections for marginal renters and those in social housing. At one major city engagement, women highlighted the importance of tenancy advocates and support services in helping women to understand their rights.'

The report identifies many ways discrimination against First Nations peoples and families manifests in the housing market, including systemic prejudice from neighbours, landlords and property managers. The report raises serious concerns about no grounds evictions and lack of other tenant protection, advocating for rental reform and increased support for tenants advocacy.

A 2021 AHURI report, 'Understanding discrimination effects in private rental housing', explores the power imbalances between landlord and agents and tenant and suggests ways forward to reduce precarity and the effects of discrimination in private rental. The report is clear that "Longer-term, secure tenancies are one of the most critical factors in reducing discrimination across the rental system."³

'Identified across the social categories discussed in the evidence review in Chapter 2, power imbalances with landlords (and agents) emerged as crucial to tenants' experiences of discrimination in Australia's PRS. The panel drew a clear link between the severity of these imbalances and the profound financialisation of housing in Australia.

The introduction and enforcement of genuine renters rights, including a total ban on unfair no grounds evictions, is essential.

³ Maalsen, S., Wolifson, P., Rogers, D., Nelson, J. and Buckle, C. (2021) *Understanding discrimination effects in private rental housing*, AHURI Final Report No. 363, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/363>, doi: 10.18408/ahuri7324501, page 43

Failure of the private rental market to meet the needs of criminalised and formerly incarcerated people

People leaving custody experience significant stigma and housing precarity. At the same time as the number of incarcerated people in Australia is increasing, the availability of housing support has decreased.

According to Australian Institute of Health and Welfare data⁴, in 2019 one third (33%) of incarcerated people were homeless in the 30 days before entering custody. 27% of incarcerated women had been in crisis accommodation in the preceding 30 days. In 2021, more than half (54%) of incarcerated people leaving custody were homeless upon release.

A 2021 paper from the Australian Housing and Urban Research Institute estimates ‘there were approximately 65,000 releases from prison in 2019, and one in seven of these resulted in a request for assistance from a specialist homelessness service. Ex-prisoners have been the fastest growing client category for specialist homelessness services (SHS) over the past decade.’⁵

The research report included interviews with incarcerated and formerly incarcerated people. The report found as a result of these conversations that securing private tenancies was ‘extremely challenging’ and ‘for many, impossible’.

Factors included unaffordability, stigma from property managers and landlords, gaps in rental histories, lack of references, and property managers and landlords refusing to let properties to people with support animals. Direct investment in public housing and bail beds, and tenancy reform to prevent discrimination are urgently needed to help address the needs of criminalised and formerly incarcerated adults and children.

⁴ Australian Institute of Health and Welfare, [Clients exiting custodial arrangements](#), Specialist Homelessness Services annual report 2021-2022, 8 December 2022.

⁵ Martin, C., Reeve, R., McCausland, R., Baldry, E., Burton, P., White, R. and Thomas, S. [Exiting prison with complex support needs: the role of housing assistance](#), AHURI Final Report No. 361, Australian Housing and Urban Research Institute Limited, Melbourne, 2021

Measures to improve rental affordability and increase security of tenure

Governments have two main options for direct market interventions to end the related crises of housing precarity and skyrocketing private market rents, which should be taken urgently. The first is through regulation of rents and protecting and enforcing the rights of renters, and the second is the direct provision of public housing at scale and the entrenchment of First Nations community-controlled housing.

The private market has proven itself incapable of providing low-cost housing. Claims from the property and banking industries and allied politicians that the solution to the housing crisis is to simply ‘unlock supply’ by liberalising planning systems are predictable and tired, and deliberately obscure the true structural causes of housing precarity in Australia.

The predicament we find ourselves in was caused by a combination of factors: governments vacating the field of housing provision, highly favourable tax treatment of property investment compared to owner-occupiers and non-asset-owners, the almost complete absence of rental market regulation, decades of low interest rates combined with lax prudential regulation, and financial deregulation and the significant exposure of the Australian banking sector to the housing market.

1. Ban no grounds evictions and improve renters rights

The NSW Labor government’s commitment to ending no grounds eviction at the 2023 election was welcome, and it’s time to implement it. These reforms should first and foremost advance the objective of ensuring security of tenure for renters and shifting the power balance towards renters and away from their landlords.

At a bare minimum, protections and reforms required include:

- An end to no grounds evictions, including at the end of a fixed term lease;
- Restrictions on the collection, storage and retention of tenants’ private information;
- Minimum standards for rental homes including disability accessibility, climate resilience and energy efficiency, dwelling quality and maintenance;

- Independent enforcement of rental rules and regulations, including genuine protection from housing discrimination; and
- Reliable, adequate funding for mainstream and First Nations community-controlled tenant's advocacy and legal services to assist tenants to know and pursue their rights.

These rights must also be enjoyed by public and community housing tenants.

2. Regulate rents

The introduction and enforcement of strong renters rights should be accompanied by rent controls that limit the amount and regularity of rent increases. In recent years, calls for regulation of private rents through rent freezes, caps and other rent controls have gained greater prominence.

During earlier periods of the Covid-19 pandemic, when governments briefly recognised the vital importance of housing security to public health, wellbeing and economic stability, moratoriums on residential evictions and rent increases were coordinated through the National Cabinet. From April 2020, all jurisdictions except the Northern Territory implemented temporary eviction bans for at least 6 months, and all jurisdictions except NSW and the NT implemented a ban on rent increases for at least 6 months.⁶

Australia had previously enjoyed decades of rent control across jurisdictions from the Great Depression to the 1980s, including a period of nationally coordinated rent control from 1939 to 1948.⁷

Ultimately, whether or not the current rental crisis justifies the reimposition of price controls is a political and moral question for governments, not a question of whether regulation of rents is possible. Change the Record supports regulating rents, and endorsed the [joint submission of 80 of our civil society colleagues](#) to this inquiry calling for limits on rent increases and reform to stabilise rent prices.

⁶ Baker, E., Daniel, L., Beer, A., Rowley, S., Stone, W., Bentley, R., Caines, R. and Sansom, G., [The impact of the pandemic on the Australian rental sector](#), AHURI Final Report No. 389, Australian Housing and Urban Research Institute Limited, Melbourne, 2022.

⁷ Davies, L., [Australia had rent control in wartime. War on coronavirus demands the same response](#), The Conversation, 13 April 2020.

3. Direct investment in public and community-controlled housing

The other market intervention available to governments to boost supply of low-cost properties is for the government to supply low-cost properties. In the short term, governments should purchase existing properties to increase public housing stock. In the long term, governments should direct sustained investment in building and acquiring stock to massively increase the market share of public and community-controlled housing.