

**INQUIRY INTO HOMELESSNESS AMONGST OLDER
PEOPLE AGED OVER 55 IN NEW SOUTH WALES**

Organisation: Tenant's Union of NSW

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Inquiry into Homelessness among older people aged over 55 in NSW



June, 2022

About the Tenants' Union of NSW

The Tenants' Union of NSW is the peak body representing the interests of tenants in New South Wales. We are a Community Legal Centre specialising in residential tenancy law and policy, and the main resourcing body for the state-wide network of Tenants Advice and Advocacy Services (TAASs) in New South Wales.

The TAAS network assists more than 25,000 tenants, land lease community residents, and other renters each year. We have long-standing expertise in renting law, policy and practice. The Tenants' Union of NSW is a member of the National Association of Tenant Organisations (NATO), an unfunded federation of State and Territory-based Tenants' Unions and Tenant Advice Services across Australia. We are also a member of the International Union of Tenants.

The Tenants Advice and Advocacy Program (TAAP) plays an effective role in homelessness prevention by consistent, successful negotiation to protect renters from being made homeless. People come to TAASs when they are at risk of homelessness, seeking advice and assistance early to stop initial problems becoming large. Across the network, in 2021, TAASs assisted in approximately 5,900 cases involving older renters aged over 55, and the proportion of cases across the network involving older renters aged over 55 has been steadily increasing over the past several years.

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The Tenants' Union of NSW' office is located on the unceded land of the Gadigal of the Eora Nation.

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About this submission

Everyone needs a home. Housing is the basis from which we ensure our communities' well-being. This is not simply about the material, physical and structural protections housing provides, but also the sense of home and belonging within a wider community. The NSW housing system, and in particular the private rental market, has failed to ensure everyone has access to safe, secure, affordable housing. This failure increases both the risk of homelessness for renting households, and the barriers to people developing a pathway out of homelessness. Various features of the NSW renting system put older renters at particular risk of being made homeless.

This submission focuses on the insufficient protections and supports provided for people, and especially older people aged over 55, who rent their homes. We outline a range of policy and legislative reforms to our rental housing system/s to address homelessness, including increasing the supply of social housing and addressing rental affordability by placing fairer limits on rent increases within and between tenancies.

This submission addresses the following Terms of Reference:

- (b) factors affecting the incidence of homelessness,
- (c) opportunities for early intervention to prevent homelessness,
- (d) services to support older people who are homeless or at risk of homelessness, including housing assistance, social housing and specialist homelessness services,
- (g) options to better support older people to obtain and maintain secure accommodation and avoid homelessness,
- (j) the specific impact of homelessness ... on older women,
- (k) the impact of homelessness, including the increased risk of homelessness in the community, on older people in vulnerable groups, and
- (l) any other related matter.

Recommendations

Recommendation 1 (p 13)

Commit over the next 20 years to building new, additional public and community housing that adequately meets current and future need to provide housing that is genuinely affordable for people currently experiencing housing stress and/or homelessness.

Recommendation 2 (p 15)

Lower the age criteria for priority housing assistance from 80 to 55 years old.

Recommendation 3 (p 18)

Reform NSW tenancy law to set fairer limits on the amount rents can be increased within an existing tenancy and between tenancies.

Recommendation 4 (p 23)

Remove 'no grounds' eviction provisions (sections 84 and 85) of the *Residential Tenancies Act 2010* and replace them with a range of 'reasonable' grounds for ending a tenancy.

Recommendation 5 (p 24)

Where a renting household is evicted for reasons other than breach, compensation for moving costs be payable by the landlord.

Recommendation 6 (p27)

Implement an explicit policy within the NSW Ageing Strategy (or other relevant strategy) on 'ageing-in-place' and establish benchmarks against which wider government policies can be measured regarding consistency.

Recommendation 7 (p 28)

Prohibit blanket 'no pets' clauses in rental contracts.

Recommendation 8 (p 29)

Increase current funding of the Tenants Advice and Advocacy Program to more adequately and appropriately resource free, independent legal advice and advocacy services for renters. Maintain funding in proportion with demand for services.

Ensure assessment of adequacy of resourcing takes into account the additional funding required for effective and accessible provision of information, advice and advocacy supports for older renters, as well as Aboriginal and Torres Strait Islander renters, renters from culturally and linguistically diverse communities, and renters with a disability.

Recommendation 9 (p 29)

Establish a state-wide housing information and support service for older people to provide a central point of contact for older people at immediate risk of homelessness and those who wish to plan for their retirement housing futures.

1. Background

1.1 Homelessness among older people aged over 55 in NSW

The NSW Government has stated a commitment to creating a holistic housing and homelessness system that supports people at risk of or experiencing homelessness, and works to ensure people are able to access secure housing.

Our goal is that by working together with our non-government organisation partners and across government we will create a system that is able to prevent and respond more effectively to homelessness. Only by creating an effective system that recognises the complex nature of homelessness and responds holistically can we help break the cycle of disadvantage and support people to live happier, more secure lives.

The Strategy sets the direction for the next five years, focusing on prevention responses that address the root causes of homelessness, and early intervention responses that will reduce the longer-term impact of homelessness.¹

In practice, NSW Government action falls far short of this stated commitment. According to the 2016 Census - the most recent available census data - 37,715 people in New South Wales were homeless, an increase of 37% from 27,479 in 2011.² Of this group, 17%, or 6,412 people, were over 55 years of age. The number of older people, particularly women, seeking support from homelessness services has been increasing. Between 2013/14 and 2016/17, NSW saw an 88% growth in the number of women aged 55 years and over, accessing homelessness services.

The 2016 Census found a significant increase in the number of people renting in New South Wales.³ There was a slight shift away from home ownership towards renting. There were 826,922 renter households at the 2016 Census, which was 83,870 more than there were in 2011. This is nearly double the increase between 2006 and 2011. This means the NSW renting population has gone up in percentage terms too - from 30.1% in 2011 to 31.8% in 2016. It also means that more people are renting for longer.

On top of this, Australia's population is ageing. Those aged 65 years and over account for 16% of the total population in 2016, compared to 14% in 2011. People who rent their homes are at a greater risk of homelessness than people who own their homes.⁴ As the

¹ Pru Goward, *NSW Homelessness Strategy 2018-23*. Viewed at: https://www.facs.nsw.gov.au/_data/assets/pdf_file/0007/590515/NSW-Homelessness-Strategy-2018-2023.pdf

² The 2021 Census results will be published in the second half of 2022. So, at this point in time, we rely upon the 2016 Census.

³ All data drawn from the Australian Bureau of Statistics 2016 Census.

⁴ Australian Government Productivity Commission (2019), *Vulnerable Private Renters: Evidence and Options*, September 2019.

number of older people who rent their homes increases, so does the number of older people who are at a greater risk of being made homeless.

Another indicator of the deteriorating situation for older people is the increasing number of applicants 55 years of age and over who were admitted to the NSW Housing Register. This increased by 9% between 2011-12 and 2019-20.⁵

There is a strong relationship between the state of the rental market and homelessness, especially amongst older people. In recent years, there has been increasing recognition of the housing vulnerability and financial disadvantage older renters in particular experience.⁶

The current deteriorating situation for older renters was not unforeseen. Since 2015 there has been a growing body of research on older Australians, and in particular their housing experience, warning of the consequences if no action was taken to address the lack of suitable, affordable housing for older renters. The research highlights older renters' housing precarity and the cost of living pressures they face when forced to rent in the private rental market increasing their vulnerability to poverty and homelessness.⁷ As one

⁵ DCJ (2020), *DCJ Annual Statistical Report, 2020*, Table A2B1C2D0N68, Viewed at: https://public.tableau.com/app/profile/dcj.statistics/viz/TableA2B1C2D0N68_/Performance_measure

⁶ Abby Bloom, 'The people overlooked in the housing affordability conversation', *The Sydney Morning Herald*, 23 March 2017. Viewed at: <https://www.smh.com.au/opinion/the-people-overlooked-in-the-housing-affordability-conversation-20170323-gv4kos.html>; Digital Finance Analytics blog entitled: 'Retirees renting need more than \$1 million to be comfortable' Viewed at <http://digitalfinanceanalytics.com/blog/retirees-renting-need-more-than-1-million-to-be-comfortable/>; Peter Martin, 'Who's to blame for rising house prices? We are, actually', *The Sydney Morning Herald*, 27 October 2016. Viewed at: <https://www.smh.com.au/opinion/whos-to-blame-for-rising-house-prices-we-are-actually-20161026-gsamj2.html>; Patricia Karvelas, 'Older homeless women, the new face of poverty in Australia', *ABC*, 19 October 2016. Viewed at: <https://www.abc.net.au/radionational/programs/breakfast/older-homeless-women/7944946>; Andrea Sharam, Liss Ralston and Sharon Parkinson, 'Security in retirement: the impact of housing and key critical life events', Swinburne Institute for Social Research, 8 October 2016. Viewed at: <https://apo.org.au/node/66261>

⁷ Eileen Webb and Gill North, 'Suitable, affordable housing is key to our population ageing well', *The Conversation*, 19 March 2015. Viewed at: <https://theconversation.com/suitable-affordable-housing-is-key-to-our-population-ageing-well-38644>; Alan Morris, *The Australian Dream : Housing Experiences of Older Australians*, CSIRO, 2016. Also, check the Tenants' Union of NSW blog entitled: 'The Australian Dream'. Viewed at: <http://tunswblog.blogspot.com/2016/10/the-australian-dream.html>; Anwen Crawford, 'Nowhere to go – older women and housing vulnerability', *Right Now*, 4 October 2016. Viewed at: <https://rightnow.org.au/essay/sydney-housing-affordability-crisis/>; Teresa Somes, 'More and more older Australians will be homeless unless we act now', *The Conversation*, 24 November 2017. Viewed at: <https://theconversation.com/more-and-more-older-australians-will-be-homeless-unless-we-act-now-87685>; Ben Phillips, 'Housing costs are actually the same as in 1993, but renters still struggle', *The Conversation*, 22 May 2018. Viewed at: <https://theconversation.com/housing-costs-are-actually-the-same-as-in-1993-but-renters-still-struggle-95286>

older renter told Alan Morris about his experience of housing in the private rental market:

*It's like a pressure cooker. You don't know where to go or what to do ... It was so desperate, the search for affordable accommodation, that I went down with a heart thing and was rushed to hospital.*⁸

An increasing proportion of older Australians on the age pension will be dependent on the private rental sector in coming decades.⁹ At least 100,000 older Australians in the private rental sector are living in 'dire circumstances', and this figure is expected to grow substantially if current policies and approaches to housing affordability aren't changed.¹⁰ Andrea Sharam et al in their 2016 report on *Security in Retirement* found:

The proportion of aged persons in Australia is set to increase significantly, posing many challenges. Amongst these is the growing number of households who lack housing security in retirement. ... Our findings indicate that social change, and adverse 'critical life events' have significant impacts on households by and at midlife, and beyond.

*Of particular concern is that the housing market itself is a key source of wealth accumulation and dispossession. A very marked outcome is that to be a private renter at 45 years of age is likely to mean being a renter and highly impoverished, in retirement.*¹¹

Service data from Tenants Advice and Advocacy Services (TAAS) across NSW indicates that older renters are experiencing increased disadvantage over recent years. The proportion of all TAAS network cases that involve people over the age of 55 years is steadily increasing. Additionally, for all cases involving termination, an increasing proportion are renters over the age of 55 years.

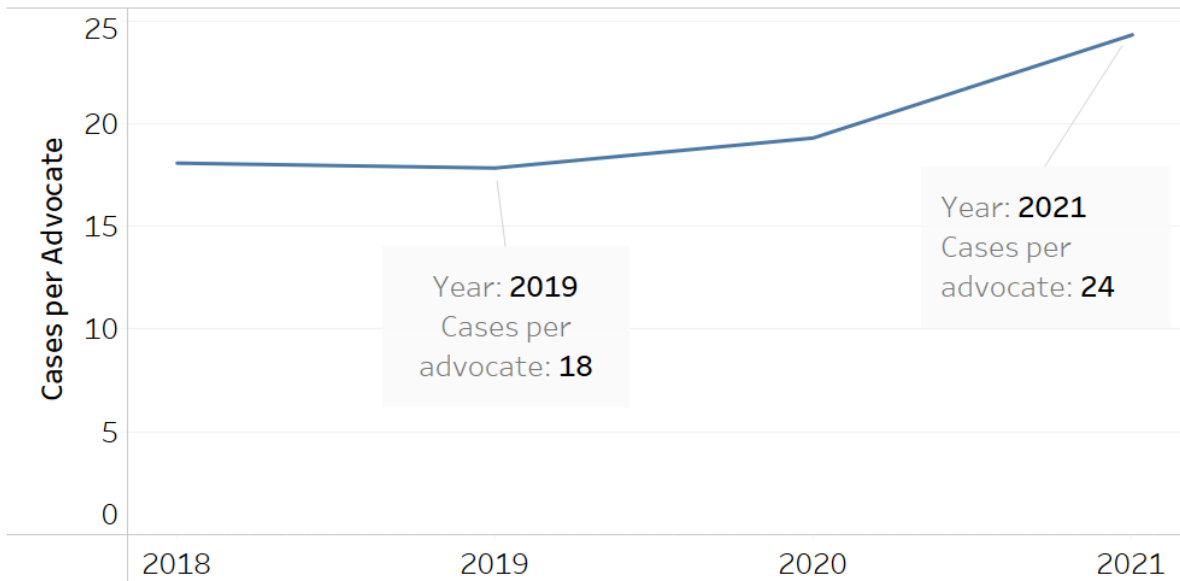
Since 2019 significantly more older renters have accessed TAAS services for matters related to eviction. Between 2019 and 2021 the number of older renters contacting TAASs about eviction increased by 36%. In 2019 the proportion of calls from renters over the age of 55 years that related to termination was just over one quarter. In 2021 this had increased by 31% to over a third.

⁸ Alan Morris (2016).

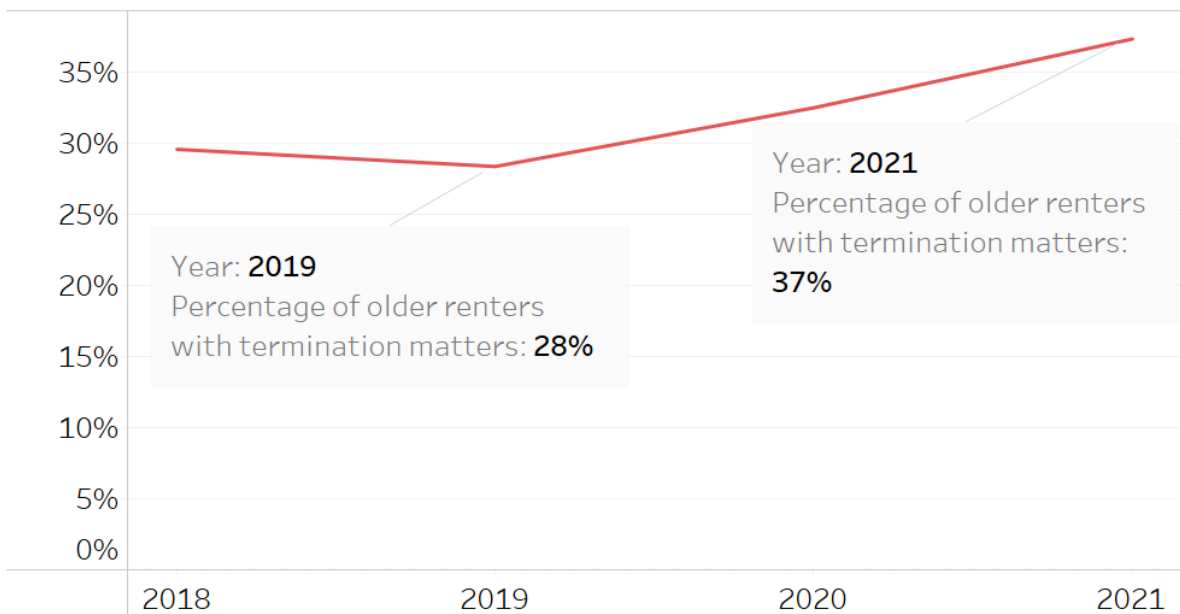
⁹ Alan Morris, 'Why secure and affordable housing is an increasing worry for age pensioners', *The Conversation*, 12 December 2016. Viewed at: <https://theconversation.com/why-secure-and-affordable-housing-is-an-increasing-worry-for-age-pensioners-69350>

¹⁰ Andrea Sharam, Liss Ralston, Sharon Parkinson (2016) *Security in retirement. The impact of housing and key critical life events*, Swinburne Institute for Social Research, Viewed at: <https://researchbank.swinburne.edu.au/items/bea2ad60-2914-452e-85f4-d93ff9e6a323/1/>; Report mentioned in *Domain* (07/10/2016, 24/10/2016)

¹¹ Sharam et al (2016).



The average number of cases an advocate would take on from older renters concerned about eviction has increased by 36%. Now, on average, an advocate will have 24 cases of older renters with termination matters compared to 18 in 2019.



Concerns about eviction has increased by 31% amongst cases with older renters. Now, over a third (37%) of cases include termination matters compared to 28% in 2019.

The most likely explanation for this trend is the significantly faster-growing cost of living as compared to income. As a group, older renters are more likely to be on a fixed income, but are nonetheless subjected to the same large cost of living increases - including housing costs (i.e. rent). Private renters are generally much more likely to have lower economic resources, that is both low income and low wealth (i.e. falling within the lowest

two deciles).¹² This is particularly the case for older renters.

Older renters in long term tenancies may also have been particularly impacted by movements in prices - both house prices and rents - within the housing market. More landlords may be selling their properties to take advantage of the growth in house prices in the current housing market. It is quite common for landlords to evict sitting renters prior to sale of property in order to sell with vacant possession and maximise capital gain. Other landlords have taken the opportunity to increase rents in line with the steep rise in the market. We have seen this especially in regional NSW. Where a renter has been in a single property for a longer period, their rent is more likely to have remained stable and below the rents advertised in listings. Increases to bring rent up to what the landlord believes is the market rent can create significant price shock for the longer-term renter. For many renters, and particularly older renters, their existing housing may no longer be affordable. When they look to the available properties in their area - or further afield - they may not find any alternative affordable options to relocate to. (Also, see Section 4.1 which discusses the importance of 'ageing in place' for older renters.) Finding themselves in rental stress, these households are at a higher risk of eviction, including eviction into homelessness.

1.2 Homelessness among older women aged over 55 in NSW

An increasing number of older women in the private rental market are facing homelessness. Many have lived conventional lives and never previously experienced a personal housing crisis. Now, as private renters in the especially tight housing market across most of NSW, they face the reality of unaffordable rents, insecure housing, eviction and - for some - homelessness. A report released in August of 2020 by the Housing for the Aged Action Group found that around 240,000 women aged 55 years or older and another 165,000 women aged 45-54 years are currently at risk of homelessness across Australia¹³. Another report released by the Housing for the Aged Action Group at the same time focused on older women in the private rental market. It concluded:

Older women renters are struggling in an insecure and unaffordable rental housing market. A combination of high rents and low incomes leaves many living in substandard housing and unable to afford necessities like food and energy bills ... rent

¹² Australian Bureau of Statistics (2022), *Factsheet 3: Low Economic Resource households for 2019/2020*, viewed at: <https://www.abs.gov.au/statistics/economy/finance/household-income-and-wealth-australia/latest-release>

¹³ Laurence Lester and Debbie Faulkner (2020), *At Risk: Understanding the population size and demographics of older women at risk of homelessness in Australia*, Centre for Housing, Urban and Regional Planning, The University of Adelaide, August 2020. Viewed at: https://www.oldertenants.org.au/sites/default/files/at_risk_final_report_web.pdf

*increases further stress household budgets, and evictions magnify these risks.*¹⁴

The NSW Government's own 2018 Homelessness Strategy states that NSW has seen an 88% increase in the number of women over the age of 55 years accessing homelessness services in the four years between 2013 and 2017. Further, as highlighted in a November 2021 Ageing on the Edge report, in 2021 there were still almost 5,000 women over the age of 55 on the social housing waitlist in NSW.¹⁵

The issue of older people, particularly older women, who have become homeless, is now an established subject of public discussion. Some of these women find accommodation in caravan parks, but others are sleeping in cars and vans, or resorting to short-term holiday letting like Airbnb, hotels, tents, and shipping containers.¹⁶ As an example of what this looks like at the local level, it is worth considering the Byron Bay area.¹⁷ As with much of regional NSW, vacancy rates in Byron Bay are very low, rents are increasing rapidly, and the area has a high volume of short-term holiday lettings¹⁸. The low supply of affordable long-term housing has resulted in this area being home to the fastest growing cohort of homeless people in Australia today. In recognition of the crisis, Byron Shire councillors in 2021 voted to declare a "housing emergency" and establish a place where locals

¹⁴ Emma Power (2020), *Older Women in the Private Rental Sector: Unaffordable, Substandard and Insecure Housing*, August 2020. Viewed at: <https://researchdirect.westernsydney.edu.au/islandora/object/uws%3A56836/datastream/PDF/download/citation.pdf>

¹⁵ Ageing on the Edge NSW Forum (2021) *Home at last: Solutions to end homelessness of older people in NSW*, December 2021. Viewed at: https://www.olderrenters.org.au/sites/default/files/home_at_last_report_web.pdf

¹⁶ Susan Chenery, 'Housing Crisis: the Aussie women forced to live in campervans', *The Australian Women's Weekly*, 15 July 2021. Viewed at: <https://www.pressreader.com/australia/the-australian-womens-weekly/20210715/287565248066143>; Sage Swinton, 'Our Backyard helps Jenny Ransom, 74, find a home after being homeless and sleeping in car', *Newcastle Herald*, 8 August 2021. Viewed at: <https://www.newcastleherald.com.au/story/7375947/i-never-dreamed-itd-happen-to-me-jennys-horrific-homeless-experience/>; Alice Dempster, 'Housing crisis worsening on the Fleurieu Peninsula as homes sold and rent hiked, leaving people homeless', *ABC*, 4 March 2022. Viewed at: <https://www.abc.net.au/news/2022-03-04/fleurieu-peninsula-housing-homeless-reaching-crisis-point/100880842>; Adam Langenberg, 'Rental stress, cost of living pressures forcing Tasmanians into cars as winter approaches', *ABC*, 17 May 2022. Viewed at: <https://www.abc.net.au/news/2022-05-17/rental-hikes-force-tasmanians-onto-streets-into-cars/101069852>; Isaac Nowroozi and Donal Sheil, 'Rising cost of living dragging Canberrans below poverty line in what many call Australia's most affluent city' *ABC*, 17 May 2022. Viewed at: <https://www.abc.net.au/news/2022-05-17/act-service-providers-worried-more-canberrans-below-poverty-line/101066100>.

¹⁷ David Lester, 'Byron blues: how mega money and global exposure are changing an Australian paradise', *Sydney Morning Herald*, 17 July 2021. Viewed at: <https://www.smh.com.au/national/nsw/byron-blues-how-mega-money-and-global-exposure-are-changing-an-australian-paradise-20210623-p583pa.html>

¹⁸ Inside Airbnb. 'Northern Rivers', 1 June 2022. Viewed at <http://insideairbnb.com/northern-rivers/>

squeezed out of permanent housing can park vans and cars they're living in.¹⁹

Below we re-share two personal stories of women's experience facing homelessness published in this *Good Weekend* article in 2021:

"Merrilee Leonard, an 80-year-old grandmother and filmmaker who's lived in the area for more than 20 years and, short of a miracle, will soon be homeless. That's because the rental property she's been in for the past six years has been sold to a family relocating from the city. Often, she says, she curls up foetal on the couch and weeps, because every time she inspects another property there's as many as 70 other applicants for the same place, for prices that have risen by nearly 30 per cent in the past 12 months."

"Nada Loiterton, 68, has been living in her car for the past three years: most recently a Ford Territory decked out with a custom-made latex mattress, solar-powered fridge, small single-burner gas cooker, pots and pans and a 15-litre water bottle. Tonight she will sleep in the council car park in Mullumbimby so she can cook dinner under lights."²⁰

¹⁹Hannah Ross and Eloise Farrow-Smith (2021), 'War of words heats up as governments pass the buck on housing crisis', *ABC*, 28 March 2021. Viewed at: <https://www.abc.net.au/news/2021-03-28/blame-game-on-housing-crisis/100019404>

²⁰ Lester (2021).

2. Older renters need homes that are affordable

2.1 Significantly increase investment in social housing

There is currently a significant shortfall in available social housing. A 2021 report by Compass Housing found that the social housing waitlist in NSW was 51,395 households, and predicted that with current social housing funding allocations, the 10-year shortfall just to meet the current waitlist would be 38,396 households. The predicted 10-year shortfall when taking into account population growth was predicted at 65,411 households.²¹ The shortage in social housing is resulting in unmanageable wait times for thousands of households who are eligible for, and urgently need to, access social housing. In NSW the wait times for public housing range from between 2-10+ years across the state. In the Greater Sydney area wait times are consistently 5 years or longer, and in the inner west and Eastern suburbs 10+ years.²² This does not include the full number of people unable to access housing that is affordable for them. The current shortfall in provision of genuinely affordable dwellings for people in receipt of the lowest 40% of incomes in NSW was calculated to be 216,500 in 2016 and is projected to rise to 316,700 by 2036.²³

Significant investment in public and community housing by the NSW government is urgently required. The provision of housing by governments, whether it takes the form of public housing or funding delivered to community housing with direct operating grants, is the most effective means of addressing the lack of genuinely affordable rental housing available. As well as reducing the need for measures like rent assistance, provision of 'non-market' housing provides positive pressure on market housing by introducing real competition and higher standards. It is an effective lever for governments to drive positive outcomes for both recipients of rental subsidies such as the Commonwealth Rent Assistance - including older renters in receipt of the Age Pension - and others.

Recommendation 1

Commit over the next 20 years to building new, additional public and community housing that adequately meets current and future need to provide housing that is genuinely affordable for people currently experiencing housing stress and/or homelessness.

²¹ Compass Housing Services (2021), *Meeting Social Housing Need: A Tipping Point for Federal Intervention*, August 2021, Viewed at: https://homeinplace.org/wp-content/uploads/2022/04/Meeting-Social-Housing-Need-A-Tipping-Point-for-Federal-Intervention_August-2021.pdf

²² Department of Communities and Justice NSW, *Expected Wait Times*, Viewed at: <https://www.facs.nsw.gov.au/housing/help/applying-assistance/expected-waiting-times>

²³ Troy, L., van den Nouwelant, R., Randolph, B., (2019) *Estimating need and costs of social and affordable housing delivery*, City Futures Research Centre, March 2019, pp2-3, Viewed at: <https://apo.org.au/node/225051>

2.2 Lower the age criteria from 80 to 55 years old for priority housing assistance

A crucial part of preventing and reducing homelessness among older people is improving their access to appropriate social and affordable housing. At present, the qualifying age for expediting approval for priority housing assistance is 80 years or older or 55 years or older for an Aboriginal or Torres Strait Islander person.

The policies of the NSW Department of Communities and Justice Housing (DCJ Housing) make at least two references to the importance of being aged 80 years or over in order to be given preference in allocation of social housing. The first reference to being aged 80 years is in the 'Eligibility for Social Housing' policy and refers to the need to be aged 80 years (or 55 years or older for an Aboriginal or Torres Strait Islander person) for preferred location to be considered when applying for priority housing.²⁴ Many applicants miss out because of a 'locational needs assessment' which reads:

Due to the demand for housing and limited supply options in certain areas, not everyone who wants to live in a high demand area can be housed in their preferred area. Clients who may need priority housing assistance require urgent housing ahead of other people on the NSW Housing Register. Their need for secure, affordable housing in the shortest possible waiting time is their primary need. Their need for a particular area represents a secondary need that should not take precedence over their urgent need for housing.

However, the policy does provide exceptions, including where an applicant can demonstrate that living in a high demand area is necessary for their physical or mental health, or where applicants are 80 years or older or for Aboriginal or Torres Strait Islander applicants where they are 55 years or older.

The second reference to being aged 80 years or older is in the 'Managing the NSW Housing Register' policy which lists the order in which social housing providers in NSW will house clients.²⁵ The NSW Housing Register is a single list of approved clients waiting for social housing. It lists clients in order according to their required housing location, their approval category and approval date. Generally, social housing providers will house clients in the following order:

- Clients approved for Emergency Temporary Accommodation;
- Clients approved for priority status on the NSW Housing Register and clients approved for transfers or relocations on the grounds of under-occupancy;

²⁴ DCJ Housing, *Eligibility for social housing*. Viewed at:

<https://www.facs.nsw.gov.au/housing/policies/eligibility-social-housing-policy>

²⁵ DCJ Housing, *Managing the NSW Housing Register Policy*. Viewed at:

Viewed at: <https://www.facs.nsw.gov.au/housing/policies/managing-nsw-housing-register-policy>

- Elderly clients (clients who are aged 80 and over, or 55 and over if Aboriginal or Torres Strait Islander);
- Clients approved for a transfer on a priority basis, or clients being relocated for management purposes;
- Clients approved for wait turn housing and wait turn transfer.

In NSW, older people on the waiting list for social housing who are aged 80 years or older (or aged 55 years or older where an Aboriginal or Torres Strait Islander person) receive a higher priority as soon as their application is approved.

As discussed in section 1 above, there is significant research identifying the risk of homelessness older renters, and especially older women, face. This evidence provides a strong case for lowering the current priority criteria for social housing in NSW from 80 to 55 years of age. Lowering of the age criteria from 80 to 55 years old for priority housing assistance in NSW would greatly assist older persons to negotiate the present housing system and prevent older renters from being made homeless. Consideration of whether a realignment of the appropriate age for an Aboriginal or Torres Strait Islander person should also be given.

The Victorian Government has recently changed their policies to ensure that people aged over 55 years are eligible for priority social housing, recognising the severe impact that homelessness has on older people. NSW could follow this example, with all references in DCJ Housing policies to 80 years lowered to 55 years. This would bring these policies in line with the already generally used definition of 'older people' in the context of homelessness.²⁶

Recommendation 2

Lower the age criteria for priority housing assistance from 80 to 55 years old.

2.3 Address the lack of appropriate, accessible social housing stock for older renters

Under current policy, households on the social housing waitlist may receive up to two reasonable offers of housing. The idea of providing two offers is to allow the applicant some choice in relation to their housing on features of the property over and above any features that have been identified as necessary to ensure their housing is safe, accessible

²⁶ Australian Institute of Health and Welfare, (2021) *Specialist homelessness services annual report 2020–21*, 7 December 2021. Viewed at: <https://www.aihw.gov.au/reports/homelessness-services/specialist-homelessness-services-annual-report/contents/older-clients#client-characteristics> Includes a summary of statistics on older clients.

and appropriate. For an offer of a property to count as a 'reasonable offer', the property is meant to match the required number of bedrooms, allocation zone, and other property features that the household has been assessed as needing.

With such limited availability of stock current applicants rarely experience real 'choice' in relation to the social housing property they are offered. In practice, we know people are accepting inappropriate, potentially inaccessible or otherwise unsafe, housing. We have heard from many people who are offered a property that does not meet their demonstrated needs, or is in disrepair or not fit for purpose. The applicant, however, often feels under pressure to accept a property in these circumstances even when it will not be suitable for them. They are concerned that, despite the legitimate reasons for their rejection of the offer, it will be deemed a 'reasonable offer' and that they may risk suspension of their application. They worry that, even if the offer is found not to be 'reasonable', there will either be a long wait before they are offered another property and/or they report being told by the housing worker that the next property offered "will just be worse".

This is a particular concern to older renters who may have more specific requirements for their homes in order to make them suitable, such as accessibility requirements. Older renters may also have more specific location-based needs, such as being close to family, support services, or being within a particular distance of public transport.

If there was a larger stock of social housing, and in particular housing that is suitable for and meets the accessibility requirements of applicants on the social housing waiting list, a limit on the number of offers to be made would not be required, and applicants would experience real choice of social housing property at the point of housing allocation. See Recommendation 1.

2.4 Fairer laws to regulate rent increases in the private market

Regional NSW is in a rental crisis. Vacancy rates are as low as 0.3% in some areas, and rent costs are skyrocketing. In NSW, rents outside Greater Sydney have increased 22% from Quarter 1 2019 to Quarter 1 2022 – this is an average 11% each year since 2019 but most of the increase has come in the last year. Particular areas such as the Richmond-Tweed and Mid-North Coast have seen new rents increase by 18-20% in the last year.²⁷ As a result, many renters are being made homeless. In some cases, landlords raise rents significantly, and renters are unable to pay and have to leave. In others, landlords issue 'no grounds' or other termination notices in order to remove the renter and place the rental property back on the market for a significantly higher rent.

²⁷ Tenants' Union of NSW' analysis of Rental Bonds Data provided by NSW Fair Trading updated to February 2022, viewed at: <https://www.fairtrading.nsw.gov.au/about-fair-trading/rental-bond-data>

Many renters facing eviction are struggling to find alternative accommodation and are extremely concerned about homelessness. Renters are reporting numerous unsuccessful applications and no available properties in the area left for them to apply for. Local Tenants Advice and Advocacy Services have seen a dramatic increase in the number of tenants calling them for advice about what to do if they can't find alternative housing. Many tenants are worried once an order to vacate is made they'll be forced to move in with family or friends, sleep in their car, or worse. As one coordinator of a regional NSW Tenants Advice and Advocacy Service told us in 2021:

We need about 400 houses in the region. There's nothing in Tamworth, nothing in Dubbo. There are people in Dubbo paying \$450/week rent who cannot get another place. We have heard of things like rent auctions, people offering way above asking price. There are simply no vacancies. We have a client in Broken Hill who is thousands of dollars in rent arrears. The Sheriff is coming today. The client has no grounds for appeal. He has a COVID impacted 22-year-old disabled son living with him. He will be moving into his car today.

Older people are particularly impacted by the regional rental crisis. Older people aged over 55 make up a larger proportion of people living in regional NSW (making up 34% of the population), as compared to those living in greater Sydney (24% of the population). As discussed earlier, older renters may also have lived in their homes for a longer period of time than other renters, and so their rents may have lagged behind market increases. As a result, they are more significantly impacted by dramatic rent increases, either within a tenancy or when moving between tenancies.

Case study: Priscilla's story

Priscilla²⁸ is a renter aged in her 70s in Dubbo, who was renting through an agent. She has significant health issues. There are four units in Priscilla's block, where all tenants are aged over 60 and have been living there for many years. The landlord took advantage of the significantly increasing property prices in Dubbo and sold the block of units. The new owner wanted to increase the rent by over \$100 a week, and issued all four tenants with 90-day no grounds termination notices.

The agent was quite upset about four older tenants being made homeless. She had a meeting with all of the tenants and said she could end their tenancies as instructed by the landlord, but that they could each move into a different unit within the same building. For instance, the tenant in unit 1 could move into unit 2, the tenant in unit 2 could move into unit 3, and so on. However, Priscilla could not afford the increased rent and so she had to leave.

The significant increases in rent that have been experienced by renters over the last 6

²⁸ Name changed for anonymity

months, and particularly in regional areas of NSW, points to the need for fairer limits on the amount rents can be increased within a tenancy and between tenancies.

Currently in NSW, if a renter is outside the fixed term of their tenancy, a landlord can increase the rent once a year. However, there is no set limit on how much they can increase it by. A renter who believes their rent increase is excessive and wants to challenge an increase must apply to the Tribunal, and the onus of proof lies with the renter. The Tribunal then decides whether the increase is excessive, taking into account market rents and a number of other factors. Challenging a rent increase is difficult, with much of the information required at Tribunal not easily available to renters. As a result very few renters challenge a rent increase through the Tribunal.

A fairer, more effective way to challenge rent increases is required. The Tenants' Union of NSW believes a reasonable limit should be placed on increases during a tenancy. A reasonable limit would not rule out an increase over this amount, but act as a 'threshold'. Where a landlord wants to increase rent by more than the set limit they would need the renter's explicit consent, or must apply to the Tribunal for the increase and be able to demonstrate why an increase above the set limit is justified. This 'limit' could be based on the Consumer Price Index (CPI) or alternatively Independent Pricing and Regulatory Tribunal (IPART) - or another appropriate body - could be empowered to regularly determine the limit or threshold. The ACT recently introduced this framework for rent increases, with the current threshold for reasonable increases set at 110% of CPI for rents.²⁹

To strengthen protections reasonable limits could also be placed on new rents, for example new rents could be required to be set within a reasonable range of the median rent of comparable houses in the area. Similar reforms around limits on rents are being considered in a number of other countries also facing the same problem of an increasingly unaffordable rental housing market.

Recommendation 3

Reform NSW tenancy law to set fairer limits on the amount rents can be increased within an existing tenancy and between tenancies.

²⁹ See Section 64B of the ACT *Residential Tenancies Act 1997*. The current threshold for reasonable increases is prescribed in the regulation as 110% of the percentage increase in CPI for rents. That is, a landlord can increase the rent on a property by 10% *more* than the increase in the CPI.

3. Older renters need secure homes

Eviction is a significant driver of homelessness. Eviction drives adverse financial and other outcomes for households. For renting households, eviction can lead to significant financial disadvantage, poverty, negative health impacts and negative impacts on employment. Improving security and stability for renting households can significantly reduce homelessness.³⁰

Over 80% of renting households in the private rental market will move at least once every five years. A third of private renters will move between 2 - 3 times, and 10% will move 5 times or more in that period. For over half of renting households this means the direct costs of moving - on average \$4,075 for each move - over a 5-year period are considerable and can place low-income renting households at significant financial disadvantage. Where the renter who is moving is an older person, the costs associated with moving may be significantly higher due to potential physical limitations. The renter may need to spend more money on removalists, or rely more heavily on family and community.³¹

Many low-income renting households are not able to raise the relatively large sum of money required to secure alternative housing and move at short notice. This may be particularly the case for older people on pensions or otherwise without employment. For these households, the risk of homelessness increases. Particularly where a household has been evicted for rent arrears, the household can find themselves trapped in a repeated cycle of securing housing, seeing debts continue to accumulate, and again being evicted - each time finding it harder to secure a new home. Ultimately, this can lead to the renter being made homeless.

Eviction can often mean a loss of community and family ties where an evicted person or household is forced to move away from their home community in order to secure a new rental property that suits their needs and that they can afford. For older people who may have particular accessibility requirements and are evicted, the likelihood that they will have to move far away from their support networks in order to find an appropriate property increases.

Where an older renter is forced to move away from their support networks and community, there is the potential for significant additional costs: where they may previously have relied on family or friends for transport to medical or other appointments, they may now need to take a taxi or ride-share. Where they may have previously had assistance from their support networks for tasks such as household maintenance and

³⁰ Tenants' Union of NSW, (2022) *Eviction, Hardship, and the Housing Crisis*, February 2022, <https://www.tenants.org.au/news/tenants-union-nsw-publishes-special-report-eviction-hardship-and-housing-crisis>, accessed 19 May 2022.

³¹ Tenants' Union of NSW (2022).

cleaning, they may now need to hire workers to provide this assistance. Where they may have previously relied on certain community support services such as meal delivery or transport services, in their new area they may not be able to access similar services. As such, the costs associated with eviction can be even more significant for older renters than for other renters.

3.1 Improved security for renters

In NSW renters can be evicted for no reason or 'no grounds' and no reason is required to be provided to the renter. A significant number of renters who receive a 'no grounds' eviction notice are evicted in retaliation (for asserting a right) or because of discrimination, including unlawful age discrimination.

Case study: Yvonne's story

Yvonne³² is a 70-year-old grandmother living on the age pension. She recently received a 90 days 'no grounds' eviction after years of living in her current rented home.

Yvonne has been a passionate gardener for decades, but one day recently the landlord sent workpeople over to come and remove the entire garden.

"I thought I was meant to have 'peaceful enjoyment' of the property. I nourished the garden for years, but it's horrible that since I'm a renter at any time they can come and ruin it. I don't feel welcome."

Yvonne believes she received the eviction notice, at least in part, because her landlord thinks she is 'too old' to keep the house and garden maintained as well as a younger renter.

Yvonne has been trying to find alternative accommodation for months, but without any success.

Case study: Paul's story

Paul³³ is an older renter living in Tamworth in a Retirement Village. He had a medical episode and needed to press the emergency buzzer for an ambulance, and he then had to have major heart surgery. Paul has now been issued with a 90 day 'no

³² Name changed for anonymity

³³ Name changed for anonymity

grounds' termination notice.

Paul says there are another four units that have been empty in the village for some time, and he is questioning why his tenancy is being terminated when he has no arrears, there is availability, and he gets on well with all of the other tenants in the units around him.

'No grounds' eviction provisions in tenancy law fundamentally undermine the security of the tenancy contract. Renters are often deterred from asking for repairs or requesting improvements because they fear eviction.³⁴ For older renters the possibility of receiving a 'no grounds' eviction can deter them from requesting alterations to their home to improve accessibility, with negative health and quality of life consequences to the renter.

The impact of a 'no grounds' or no reason eviction and subsequent forced move is profound. There is an immediate and significant impact for households that receive a 'no grounds' eviction in terms of household upheaval, emotional stress, and financial strain. For low income and vulnerable renters in particular, it increases the risk of eviction into homelessness. Recognising this, the Australian Productivity Commission in 2019 recommended two specific proposals to improve the welfare of vulnerable private renters by strengthening certainty of tenure:

FINDING 5.3

*Reforms to prohibit 'no-grounds' eviction and extend notice periods for 'no-fault' evictions (including on sale of a property), if well designed, offer avenues for improving the welfare of vulnerable private renters. Some jurisdictions have already started down this road. The arguments that favour extending notice periods do not apply where tenants have failed to pay rent, damaged the property or otherwise breached the lease agreement.*³⁵

It argued that these policy options would require landlords to be more transparent regarding their investment intentions, and make the process of landlord-initiated terminations more predictable and less disruptive. This would benefit renters — and particularly vulnerable private renters — who face more acute costs from involuntary and

³⁴ A survey Tenants' Union NSW undertook with Marrickville Legal Centre of over 600 NSW renters in 2018 found 75% of renters reported just the possibility of a receiving 'no grounds' eviction deters them from asking for repairs or requesting improvements to their home. Tenants' Union of NSW, Marrickville Legal Centre (2018), *Lives Turned Upside Down*, viewed at: <https://files.tenants.org.au/policy/2019-Lives-turned-upside-down.pdf>

³⁵ Australian Productivity Commission (2019) *Vulnerable Private Renters: Evidence and Options*, Research Paper, September 2019. See particularly pp 117-123. Viewed at: <https://www.pc.gov.au/research/completed/renters/private-renters.pdf> See also Selina Tually et al., 'Alternative housing models for precariously housed older Australians', *AHURI*, May 2022, p 32). Viewed at: <https://www.ahuri.edu.au/research/final-reports/378>

unpredictable moves.

Case study: Ed's story

Ed³⁶ is an 80-year-old renter in the New England area, who is renting from a private landlord. The agreement was informal, but a few repairs issues arose, and the landlord wanted Ed to begin paying water for the property. The landlord issued a termination notice for breach of the agreement. The termination was invalid, however upon being informed that the termination was not valid, the landlord issued Ed with a 90-day no grounds termination notice.

In social housing renters generally have much stronger security of tenure. Department of Communities and Justice Housing and community housing providers have generally committed to not using 'no grounds' evictions, and to avoid eviction where possible. Despite this, unfortunately some social housing providers continue to make use of 'no grounds' evictions, including in circumstances where the renters experience this eviction as retaliatory - that is, they receive the eviction notice following an attempt to assert their tenancy rights. It is worth reiterating that when a renter is evicted from social or Aboriginal housing, they are at a significantly higher risk of eviction into homelessness.

Case study: Frances' story

Frances³⁷ lives in a local Aboriginal Lands Council property and is over 60 years of age. She has been a tenant for over 15 years. Frances' daughter moved in as her carer 9 years ago and is listed as an additional occupant. Frances asked for some repairs to be carried out at her property. Shortly after this Frances and her daughter were issued with a 90 day 'no grounds' termination notice.

Case study: Leonard's story

Leonard³⁸ is a renter aged in his 70s, living in far-Western NSW. He lives in an Aboriginal Housing Office property. Leonard himself is not Aboriginal but his partner was and Leonard is listed as an additional occupant. They had been living in the property for 14 years when Leonard's partner passed away in September 2021. Leonard has been evicted for 'no grounds'.

As a priority, NSW tenancy law needs to be changed to improve security for renters. Current provisions in tenancy legislation allowing evictions for 'no grounds' (i.e. no reason) should be removed and replaced with a range of 'reasonable' grounds for ending

³⁶ Name changed for anonymity

³⁷ Name changed for anonymity

³⁸ Name changed for anonymity

a tenancy. Termination where a renter is in breach of their agreement is already available within NSW tenancy law. Other 'reasonable grounds' that might be added could include situations where, for example:

- the landlord wants to move in, or
- the premises are to be extensively renovated, or
- the property is to be put to a different use.

It should be noted that NSW lags behind other jurisdictions - internationally, as well as domestically - in their continued use of 'no grounds' termination provisions within tenancy law. In Victoria substantial improvements were implemented within their *Residential Tenancies Act* in 2021, almost completely removing 'no reason' or without grounds terminations, the exception being a 'no specified reason' termination is allowed at the end of the first fixed term tenancy agreement. Other countries with similar private rental markets, such as Germany, Canada and Sweden, have much stronger renter protections in place, and do not allow any 'no grounds' or 'no reason' evictions.³⁹ In May 2022, in the United Kingdom, the Queen's Speech foreshadowed the *Renters Reform Bill* which will deliver a Tory manifesto commitment to end "no fault" evictions after tenancies end.⁴⁰

Recommendation 4

Remove 'no grounds' eviction provisions (sections 84 and 85) of the *Residential Tenancies Act 2010* and replace with a range of 'reasonable' grounds for ending a tenancy.

3.2 A fairer distribution of the costs of eviction

Currently there are a number of ways in which renters can be evicted from their homes, despite not having breached their rental agreement in any way. These evictions can include circumstances such as the landlord or one of their family members wishing to move into the property, the property requiring significant repairs, or the landlord having sold the property. The costs - financial and otherwise - of eviction are high for most or all renters but, as established above, can be particularly significant for older renters. It is important to introduce reforms that will deter landlords from unnecessarily evicting older renters, or assist them to contribute to mitigating the costs of eviction to the older renter.

³⁹ AHURI (2020) *Private rental for lower income households*, Australian Housing and Urban Research Institute, Melbourne, Viewed at: <https://www.ahuri.edu.au/analysis/policy-analysis/private-rental-for-lower-income-households>.

⁴⁰ See BBC report, *Queen's Speech 2022: Key points at-a-glance*, 10 May 2022, Viewed at: <https://www.bbc.com/news/uk-politics-61000688> Check under 'Housing'.

One proposal is to require that landlords contribute to or cover those costs where the renter is evicted through no fault of their own. Several other international jurisdictions have measures like this. For instance, in San Francisco, landlords are required to pay for relocation expenses of renters who are evicted for the owner or a relative to move in, or where the property will be renovated or demolished. Under the provisions, each authorised occupant in the renting household, regardless of age, who has resided in the property for at least one year, is entitled to a relocation payment of USD \$4,500, up to a maximum of USD \$13,500 for the tenancy.⁴¹

Relocation costs for evictions of this type are already available for a limited number of renters in NSW. In public housing in NSW, landlords already generally offer relocation expenses where a renter is forced to move and leave a property to relocate for portfolio management purposes.⁴² This includes assistance with moving expenses, utility reconnection fees, or establishment expenses in the new property, as well as where relevant reimbursement for approved alterations made to the renter's current property. In some cases, moving expenses are also covered where a relocation is for tenancy management purposes - so, potentially related to a breach - where the assistance will help them establish and maintain a successful tenancy in the new property. Many community housing providers have adopted a similar approach in their relocation policies and also cover relocation expenses in these circumstances.

Requiring landlords to provide compensation for relocation costs would not only reduce the financial pressure on the evicted renter, but also act as a clear disincentive against unnecessary eviction. Landlords who use 'no grounds' provisions unnecessarily, potentially for retaliatory or discriminatory reasons, may find that the obligation to pay compensation for moving costs is a sufficient disincentive to dissuade them from issuing an eviction notice.

Recommendation 5

Where a renting household is evicted for reasons other than breach, compensation for moving costs be payable by the landlord.

3.3 Additional interventions to discourage unnecessary eviction

Earlier this year the Tenants' Union of NSW published a report examining the costs of

⁴¹ City and County of San Francisco (2019), *Schedule of Tenant Relocation Payments 2019 - 2021*, sfrb.org/sites/default/files/Document/Form/579%20Multilingual%20Relocation%20Payments%2037.9C%2021-22.pdf, accessed 25 January 2022

⁴² DCJ Housing (2022) *Tenancy Management Policy Supplement*, updated 19 January 2022, facs.nsw.gov.au/housing/policies/tenancy-policy-supplement#relocation1, accessed 25 January 2022

eviction for renting households, *Eviction, Hardship and the Housing Crisis*.⁴³ In it we set out a range of strategies and policy reforms we believe are required to more effectively prevent unnecessary eviction. These included the reforms outlined in Recommendations 4 and 5. Along with these, we recommend:

- The introduction of an increased fee for applications for eviction matters at the NSW Civil and Administrative Tribunal. This would provide a clear disincentive on the unnecessary applications for eviction, and prioritise dispute resolution which holds the continuation of the home and the relationship as the preferred outcome.
- The introduction of a more effective and permanent hardship framework, one that ensures appropriate support is provided to households experiencing hardship - whether as a result of a climate event, such as bushfire or floods, a health crisis, or a personal life crisis - to sustain their tenancy as the household recovers from the crisis. This would help ensure eviction is considered only an action of last resort.

These recommendations are discussed in more detail in *Eviction, Hardship and the Housing Crisis*.

Given the significant impact of eviction for older renters, including significant barriers to finding alternative affordable and accessible accommodation, and an increased risk of homelessness, we provide two briefings on the report as an **Appendix** to allow the Standing Committee on Social Issues to further consider the report's other key recommendations.

4. Other factors of note

4.1 Ageing in place

The Family and Community Services' NSW Ageing Strategy 2016-2020⁴⁴ identifies older people's ability to live in affordable, accessible, adaptable and stable housing as a priority of the NSW Government. It identifies 'older people increasingly prefer to "age in place" and grow older in their own communities – close to friends, family and services'. The 2018 NSW Ageing Strategy Research Report also acknowledges the need for a wide range of housing options to cater for older people, with most older people rejecting the idea of moving into a retirement village or similar until they are 'old and frail'. While the NSW Government does not have an explicit 'ageing-in-place' policy, a number of significant

⁴³ Tenants Union of NSW (2022).

⁴⁴ Family and Community Services (now Department of Communities and Justice) (2016), *NSW Ageing Strategy, 2016 – 2020*, Viewed at: https://www.facs.nsw.gov.au/_data/assets/pdf_file/0005/382829/NSW_Ageing_Strategy_2016-2020.pdf

documents commissioned as part of the NSW Ageing Strategy 2016-2020 refer to it.⁴⁵

A basic principle underlying 'ageing in place' is that older people know what is best for their own lives and have the right to make decisions on their own behalf. An 'ageing-in-place' friendly policy provides the incentives for individuals to remain living in a community to which they have a strong attachment, either in their existing residence or alternate accommodation with service supports.

An 'ageing in place' policy is an appropriate consideration for the Committee because the forced relocation of older persons places enormous stress on those being displaced. They may - and in our experience do - accept inappropriate offers of relocation because of the fear that, otherwise, they will be thrown into homelessness.

Despite the NSW Ageing Strategy 2016-2020 we refer to above, the NSW Government through this period evicted older residents from the inner Sydney suburb of Millers Point. These evictions were in conflict with the principle of ageing-in-place, and illustrate a failure to deliver practical outcomes and supports to ensure older people can remain living in their community where social and health supports are established and familiar. The impact for residents was significant. In 2015 and 2017, the Tenants' Union of NSW made submissions to Elder Abuse Inquiries of both the NSW Legislative Council and the Australian Law Reform Commission, arguing that government policy itself in this instance constituted a form of elder abuse and that the NSW Government's decision to relocate all of the social housing renters in Millers Point was an example of systemic elder abuse.⁴⁶

Adhering to ageing in place principles can protect older renters from becoming homeless. Ensuring older renters can stay living in their home community as they age can help maintain access to vital services, protect strong social ties, and therefore improve financial and other stability.

It is important that any future strategy include an explicit policy on 'ageing-in-place' and establish benchmarks against which wider Government policies can be measured regarding consistency. A concrete example of this would be to ensure agencies commit to and implement a set of clear principles when undertaking urban renewal in public and

⁴⁵ Family and Community Services (now Department of Communities and Justice), (2018) *NSW Ageing Strategy Research Report*, Viewed at:

https://www.facs.nsw.gov.au/_data/assets/pdf_file/0007/631888/NSW-Ageing-Strategy-60-79-Research-Report-January-2018.PDF, p130

⁴⁶ Tenants' Union NSW, 2015, *Submission to the Inquiry into Elder Abuse NSW*, Viewed at:

<https://www.parliament.nsw.gov.au/committees/DBAssets/InquirySubmission/Body/53723/0039%20Tenants%20Union%20of%20New%20South%20Wales.pdf>, Tenants' Union NSW, 2017, *Elder Abuse Inquiry Australian Law Reform Commission*, Viewed at: <https://files.tenants.org.au/policy/2016-09-14-ALRC-elder-abuse-inquiry.pdf>. See also Alan Morris (2019), *Gentrification and Displacement: The Forced Relocation of Public Housing Tenants in Inner-Sydney*, Springer.

community housing that align with 'ageing in place'.⁴⁷

Recommendation 6

Implement an explicit policy within the NSW Ageing Strategy (or other relevant strategy) on 'ageing-in-place'. Establish benchmarks against which wider government policies can be measured regarding consistency.

4.2 Companion animals in rental homes

Pet ownership in Australia is among the highest in the world. Almost two-thirds of Australian households have a pet today, and 90% have had a pet at some time.⁴⁸ This includes a significant proportion of renting households. There are significant social, health and wellbeing benefits for those who have pets.

For older people pets can provide structure in their lives post-retirement or after the loss of a partner. Research shows that pets can also be a great tool in managing long-term mental health conditions, and can even be prescribed as part of mental health treatment plans. Pets encourage healthy exercise and routine, and can add purpose to older people's lives after they may have stopped working or engaging in some other activities. Pets can increase security for older people as thieves are less likely to break into a home where they can hear a dog barking. Pets can also help older people build and maintain strong social connections - taking the animal to the park, groomer, vet, breed meet-ups or the pet store can provide opportunities for socialising.⁴⁹

Unfortunately, NSW tenancy law still allows for blanket 'no pets' clauses, so landlords can continue to refuse renters' requests to get a pet for any reason, or no reason at all. Older people who rent in the private rental market can find it very difficult to find appropriate and affordable housing.⁵⁰ They may be forced to relinquish much-loved animals to

⁴⁷ See, for example, Tenants' Union of NSW, Shelter NSW, UNSW City Futures (2017), *A Compact for Renewal: What tenants want from Renewal*. Viewed at:

<https://files.tenants.org.au/resources/what-tenants-want-from-renewal.pdf> The principles underlying the Compact align closely with those of 'ageing in place', that is that residents should be given every opportunity to influence and shape the renewal and redevelopment process and be consulted on how best to avoid, minimise and avoid damaging or disruptive impacts. Residents should be given choice wherever possible and as much control as possible over their circumstances.

⁴⁸ Animal Medicines Australia (2019), *Pets in Australia: A national survey of pets and people*, https://animalmedicinesaustralia.org.au/wp-content/uploads/2019/10/ANIM001-Pet-Survey-Report19_v1.7_WEB_high-res.pdf, accessed 19 May 2022.

⁴⁹ Aging in Place (2022), *Top 6 Reasons Seniors Should Adopt a Pet*, <https://aginginplace.org/seniors-and-pets/>, accessed 18 May 2022.

⁵⁰ Wendy Stone, Emma Power et al. (2020) *Housing and housing assistance pathways with companion animals: risks, costs, benefits and opportunities*, AHURI Final Report No. 350, Viewed at:

shelters, to the detriment of the animal and renter alike. This can be extremely traumatic for the renter, and can have a particularly profound impact on older renters who may rely heavily on the animal for emotional support. In cases where renters are unwilling to relinquish the animal, a lack of pet-friendly rentals can result in people being made homeless with their animals.

Case study: Beatrice's story

Beatrice⁵¹ is a 70-year-old grandmother living on the NSW South Coast with her two cats, who was issued a 'no grounds' termination notice in late-2021. Beatrice's community had been in housing crisis for several years because of bushfires, floods and the COVID-19 pandemic. She has been applying for rental properties for months, but has been unable to find a new home, let alone one that is pet-friendly. She told us: "Giving up my cats is not an option, they're part of the family. I don't know what I'll do if I can't find a new home for myself and my cats - I'd live in a car or tent before giving them up." We've seen an increase in homeless people with animals sleeping rough because they can't find a place, let alone one that will allow them to take their cat, or dog. Shelter is a basic right but too many people here can't access it now.

Recommendation 7

Prohibit blanket 'no pets' clauses in rental contracts.

4.3 Advocacy and support for renters

4.3.1 Adequate, appropriate funding for Tenancy Advice and Advocacy Services

The Tenants Advice and Advocacy Program (TAAP) plays an often unrecognised, but effective role in homelessness prevention by consistent, successful negotiation to protect renters from being made homeless.

In NSW the Tenants Advice and Advocacy Program (TAAP) funds a network of 21 organisations across New South Wales, including fifteen generalist and four Aboriginal Tenants Advice and Advocacy Services. These services provide free information, advice and advocacy to tenants in their local areas. The network brings together the skills and expertise of highly skilled advocates who work to ensure that high quality professional advice and advocacy is available to all tenants in New South Wales. The Tenants Advice and Advocacy Services are resourced by the Tenants' Union of NSW. The Program is in the unique position of having four specialist Aboriginal TAASs, plus an Aboriginal

<https://www.ahuri.edu.au/research/final-reports/350>

⁵¹ Name changed for anonymity

Resource Unit and Aboriginal Legal Officer who is based at the Tenants' Union of NSW.

In our experience people come to Tenants Advice and Advocacy Services (TAAS) when they are at risk of homelessness, seeking advice and assistance early to stop initial problems becoming large. NSW Tenants Advice and Advocacy Services play a significant role in preventing evictions and maintaining tenancies, which benefits both tenants and landlords. A 6-month research project we undertook with the TAAP network in 2012 found that in over 80% of cases involving a high risk of termination, assistance provided by TAAP workers helped prevent eviction.

The adequate resourcing of Tenants Advice and Advocacy Services should be understood as an essential part of any strategy to prevent homelessness.

Recommendation 8

Increase current funding of the Tenants Advice and Advocacy Program to more adequately and appropriately resource free, independent legal advice and advocacy services for renters. Maintain funding in proportion with demand for services.

Ensure assessment of adequacy of resourcing takes into account the additional funding required for effective and accessible provision of information, advice and advocacy supports for older renters, as well as Aboriginal and Torres Strait Islander renters, renters from culturally and linguistically diverse communities, and renters with a disability.

4.3.2 Funding for a Specialist Seniors Housing Support Service

Given the particular complex housing concerns that can arise for older renters, this demographic would benefit from a specialist seniors housing support service. Such a service could be modelled on the 'Home at Last' service model in Victoria. We are aware that *Uniting* has indicated their willingness to put funds aside for such a service, but it would also require funding from the NSW Government. Tenants Advice and Advocacy Services would then work closely with the specialist seniors housing support service.

Recommendation 9

Establish a state-wide housing information and support service for older people to provide a central point of contact for older people at immediate risk of homelessness and those who wish to plan for their retirement housing futures.

Appendix

The Tenants' Union of NSW published a Special Report, [*Eviction, Hardship and the Housing Crisis*](#), on the cost and impacts of eviction in February 2022. We provide the following two briefings on the report:

- [Policy Briefing 1](#): *Protections to ensure renters are not unnecessarily forced to move*
- [Policy Briefing 2](#): *Support for renting households experiencing hardship through crisis*

The two briefings outline the key recommendations we make within the report.

The full report can be downloaded here:

- <https://files.tenants.org.au/policy/2022-Eviction-Hardship-and-the-Housing-Crisis-TUNSW.pdf>

Eviction is a significant, often traumatic, event that can compound the personal crisis a household may be facing. It can destabilise a household and push them further into financial hardship. Renting households carry the primary burden of the direct costs associated with evictions, especially in the immediate term. In the longer-term evictions result in increased expenditure on government services and significant impact on the health and wellbeing of the broader community. When a household is made homeless, eviction makes recovery significantly more difficult. During and following a life crisis, a stable home is a fundamental precondition for recovery. In terms of the costs faced, eviction into homelessness carries with it much higher financial and social costs for everyone, especially over the longer term.

However, it is currently relatively easy for a landlord to evict a renter, and often accepted as a standard or common practice. Recent Australian research on renting has identified that Australia, prior to Covid-19, was already experiencing an incipient 'eviction crisis'. Given the significant costs and harm associated with eviction more needs to be done to ensure renting households are not unnecessarily forced to move.

IMMEDIATE, DIRECT COSTS OF EVICTION

Eviction, Hardship and the Housing Crisis: building a crisis-resilient renting system considers the experience of eviction from start to finish and identifies the various financial costs experienced at the point of eviction and relocation. The report estimates:

- Renting households in NSW face basic costs of \$2,520 when they move, and generally are more likely to face costs of around \$4,075 to move.
- The 'core cost' of a move for renting households in NSW ranges from \$2,015 for a single person household in Greater Sydney through to \$3245 for a family household in Regional NSW
- The 'average cost' of a move for renting households in NSW ranges from \$3,215 for a single person household in Greater Sydney through to \$5,400 for a family household in Regional NSW

Landlords also face a number of costs when evicting a renter, including a reletting and advertising fee. Where eviction requires an application to the NSW Civil and Administrative Tribunal (NCAT) there is a Tribunal application fee and the property manager's Tribunal attendance fee. We estimate costs for the landlord at between \$1,100 - 1,400.

Annually NSW Treasury has estimated the direct cost of evictions for the NSW economy is around \$115 million pa. Our estimate, using the same method of calculation with updated estimates on costs, similarly estimates costs at around \$122 million pa.

MEDIUM - LONGER TERM COSTS: EVICTION COMPOUNDS DISADVANTAGE

Eviction is a driver of poverty over the medium to longer term. Renters move more often than other households (owner occupied households). Over 80% of private renters have moved in the last 5 years; a third have moved between 2 - 3 times; and 10% have moved 5 times or more. The direct costs of moving - on average \$4,075 for each move - are substantial and

when considered over a 5-year period, are placing especially low-income renting households at a significant financial disadvantage.

The report provides an overview of the substantial research into the medium to longer term impacts of eviction. Eviction is associated with long term impacts on employment, health and education outcomes, an increased demand on health and housing services, and a loss of capacity for the building of social networks and community.

When a household is evicted into homelessness costs are significantly higher again. Eviction has serious impacts on the physical health and mental well being of the individual. They are more likely to experience under and unemployment, face violence and discrimination, and are at increased risk of contact with the criminal justice system. AHURI research on the additional costs for Australian governments estimates that supporting an individual experiencing homelessness costs around \$29,450 each year.

WHAT CAN BE DONE?

Given the high costs associated with eviction overall, how can we better discourage their use except where it is necessary? Where eviction is necessary, how can we better minimise or mitigate impacts and more equitably distribute the associated costs? *Eviction, Hardship and the Housing Crisis: building a crisis-resilient renting system* proposes three ways in which tenancy law could be changed to better discourage the unnecessary use of eviction.

- 1. In current NSW tenancy law 'no grounds' eviction provisions should be replaced with a range of specified reasonable grounds for ending a tenancy.**

If the *Residential Tenancies Act 2010* was amended to provide an expanded list of 'reasonable grounds' for ending a tenancy this would allow landlords to be more transparent about their reasons. Where a dispute arose about the eviction, for example where a renter held concerns the eviction was retaliatory or otherwise unjustified, the landlord would be required to provide evidence to the Tribunal to demonstrate the reason provided for eviction was genuine before the Tribunal made an order.

- 2. The landlord should be required to cover basic moving costs for the household where a renting household is evicted for reasons other than breach (for 'no fault' evictions).**

Requiring landlords to pay the relocation costs for an eviction where there was no breach by the renter would act as a clear disincentive against unnecessary - frivolous or potentially retaliatory or discriminatory - evictions. If the landlord can demonstrate they will face significant hardship in paying relocation costs, the landlord should have access to a hardship relief fund to ensure they can meet their legal obligations.

- 3. Fees for applications for eviction at the NSW Civil and Administrative Tribunal should be set higher compared to other matters.**

A higher fee for applications for eviction, compared to other matters, would better reflect the seriousness of and costs involved in eviction proceedings. Increasing the fee charged specifically for applications for eviction matters would put a clearer disincentive on the unnecessary applications for eviction, and prioritise dispute resolution which holds the continuation of the home and the relationship as the preferred outcome.

Adequate housing provides shelter and safety, and access to basic services and utilities, such as sanitation facilities, electricity and clean water. Stable, secure housing enables stronger social connections and a sense of belonging, stable employment, and better education outcomes for households. For most people, a home is absolutely necessary to living a fulfilled, safe, happy life. It is not a luxury, it is essential.

The introduction of emergency measures via the NSW Eviction Moratoriums in 2020 and 2021 was an acknowledgment that access to housing is essential. The moratoriums recognised the importance of supporting renting households to sustain their tenancies through crisis. However, the need for the rapid introduction of hardship protections via the moratoriums demonstrated the weakness and very limited nature of existing hardship protections. Existing protections and policy settings were shown to be insufficient to protect against the 'wave of evictions' widely anticipated once the pandemic's economic impact began to be felt.

While the pandemic created something of a unique circumstance in placing so many households into hardship simultaneously, the circumstance of financial hardship these households faced was itself not particularly unique. In the context of the current climate crisis, extreme weather events will become more severe, and occur more often. Much as the COVID-19 pandemic has put significant and unforeseen strain on our housing system, unpredictable events such as bushfires, floods and storms will cause similar strain in future. Moreover, a renter, outside of a pandemic, is likely to face some form of unforeseen circumstance or 'life crisis' at some time in their life.

A wealth of research indicates that unexpected negative life events - unforeseen events or personal crises - are a significant driver of homelessness in Australia. Events such as sudden job loss, domestic violence, illness, and deaths in the family heighten a person's or household's risk of becoming homeless, and can be key triggers for that person or household becoming homeless.

RENTING HOUSEHOLDS IN CRISIS AT HIGH RISK OF EVICTION FOR RENT ARREARS

When renting households experience a crisis or unforeseen change in circumstances, they may experience financial difficulty as a result. Renting households in financial hardship can struggle to pay rent and fall into arrears. Without appropriate support they are at high risk of eviction.

Breach eviction, especially for rent arrears, increases the likelihood of eviction into homelessness as the evicted renter is likely to experience difficulty securing a new tenancy. This is because the renter is more likely to be in financial hardship, and so will be considered a higher risk to potential landlords. They may also hold a bad rental record,

and the options available within their price range are likely more limited. Breach evictions carry shorter notice periods than other forms of eviction, so the time available to secure a new tenancy is more limited. If the breach eviction is as a result of a personal crisis for one or more members of the household, that crisis may compound the difficulties associated with securing a new tenancy.

Where a renting household is evicted into homelessness, the costs involved increase substantially.

EXISTING PROTECTIONS FOR RENTING HOUSEHOLDS EXPERIENCING HARDSHIP

There are currently only limited provisions within tenancy law to provide protection in these circumstances. Instead, the failure to comply with the renting contract when falling into arrears can very quickly lead to an end to the contract via eviction.

The *Residential Tenancies Act 2010 (RTA)* contains only extremely limited provisions relating to hardship. Section 104 of the RTA sets out provisions for either landlord or tenant to end a fixed-term early without penalty if the 'special circumstances' of the case mean that continuing the tenancy would result in undue hardship. However, even these limited provisions are difficult for tenants to access and therefore rarely used. Instead, renters in financial hardship will often leave and incur the break fees in order to avoid a possible build-up of arrears.

Sections 88 and 89 of the *Act* relate to non-payment of rent and set out that no termination order can be made for non-payment if a tenant:

- is able to repay rent arrears or other unpaid charges in full, *OR*
 - enters into (and fully complies with) a repayment plan for arrears or charges agreed to by the landlord,
- AND
- has not been found to have frequently failed to pay on time.

This can support some tenants experiencing very short-term hardship, but does not support tenants who need more than a few weeks to recover, does not allow for a rent variation, and provides no financial relief to assist the tenant to sustain their tenancy. It can also encourage tenants to enter into other unsustainable financial arrangements such as taking out personal loans.

Commonwealth Rent Assistance (CRA) and several other Commonwealth payments are available to some renters experiencing financial hardship. These supports are crucial but inadequate to support renters in financial hardship facing eviction for rent arrears. Application and approval processes take time, and renters facing eviction need financial relief immediately. Further, eligibility criteria are narrow and do not account for the range of renters who may face financial hardship.

NSW private rental subsidies provide support for some low-income renting households who have experienced a major financial setback, but who are otherwise considered able

to sustain a tenancy in the private rental sector. However, many renters are unaware of the availability of subsidies, and eligibility and access are limited due to funding constraints.

A PERMANENT, EFFECTIVE HARDSHIP FRAMEWORK NEEDED FOR NSW RENTERS

Building a more crisis-resilient renting system requires the introduction of a more effective and permanent hardship framework, one that ensures appropriate support is provided to households experiencing hardship to sustain their tenancy through recovery, with eviction considered only an action of last resort.

The proposed permanent hardship framework set out in *Eviction, Hardship and the Housing Crisis* draws on, and strengthens hardship measures introduced during the NSW Eviction Moratoriums in 2020 and 2021.

The report proposes a permanent hardship framework must include the following key elements:

- Provisions for temporary rent variation (rent reduction) in circumstances of hardship
- A mandated minimum rent variation (rent reduction)
- A rent relief hardship fund to offset the costs of a mandated rent variation
- Appropriate restrictions on eviction for renters experiencing hardship
- Eligibility criteria that recognises the range of circumstance in which hardship variation should appropriately be applied
- Easy access to hardship provisions, with prescribed timeframes for determining and applying a hardship rent variation
- Resourced advocacy and other relevant supports, including e.g. independent advice for renters, and access to a financial counsellor as part of the process

MITIGATION AGAINST LANDLORDS' COSTS

To ensure the feasibility of implementing a permanent hardship framework, mitigation measures against possible losses or associated risk for landlords and/or government may be required. *Eviction, Hardship and the Housing Crisis* puts forward two possible models for mitigating the costs or loss that a landlord may face in circumstances where a hardship rent variation is applied. These are a mandatory landlord insurance, and/or the establishment of a hardship relief fund financed through the introduction of a residential landlord rental bond scheme.

- *Mandatory landlord insurance scheme*

A mandatory landlord insurance scheme would ensure that if hardship variation provisions were introduced, landlords would be able to meet their obligations in relation to these. Coverage against the loss of rental income due to a rent variation for financial hardship should be included as a standard insured event. More broadly, requiring

landlords to have insurance would improve the financial capacity of landlords to meet basic legal responsibilities, and mitigate the risk attached to property investment.

- *Hardship relief funded through the introduction of a mandatory landlord bond scheme*

The residential tenancy support package available during the July-November 2021 Moratorium was implemented specifically to support landlords to meet their obligation to reduce rents for impacted households facing hardship. If permanent hardship provisions are introduced a similar hardship fund would likely be required, with a set amount of relief per tenancy for each instance of hardship as with the Covid-19 relief package.

In order to resource a hardship relief fund the government could consider introducing a landlord bond scheme. The bond could be held by the NSW Rental Bond Board which already acts as an independent and impartial custodian of rental bonds taken on private tenancies in NSW. The interest earned from investment of landlord bonds could help fund a landlord hardship relief fund.

Further consideration of the benefits and feasibility is needed regarding the implementation of a mandatory landlord insurance scheme or landlord rental bond scheme.