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Committee Secretary Senate Standing  
Committees on Community Affairs  
PO Box 6100 Parliament House  
Canberra ACT 2600

21 August 2023

Dear Committee,

**Re: Inquiry into the Worsening Rental Crisis in Australia**

The Tenants' Union of NSW appreciates the opportunity to contribute to the Senate Inquiry into the Worsening Rental Crisis in Australia.

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, policy and practice, 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 35,000 tenants, land lease community residents, and other renters each year. Our short submission is focused on the security and affordability challenges faced by renters, with particular reference to the experiences faced by renters and those seeking rental housing in NSW.

The Tenants' Union NSW is also a member of the National Association of Renters' Organisations (NARO), an unfunded federation of State and Territory-based Tenants' Unions and Tenant Advice Services across Australia. We note we have already jointly provided an initial statement to the Inquiry, as a member of the National Association of Renters' Organisations (NARO) and along with 86 other organisations including renting and housing, health, youth and community advocacy organisations, community legal centres, unions and faith based organisations. We attach the Joint Statement as an appendix.

In reading our submission, we encourage the Committee to understand renting as an essential service. People require not just basic shelter but a good home to live a safe, healthy and dignified life. Homes are our base from which we are connected to communities, broader society and can engage in social, cultural and economic activities. We recognise the renting sector requires a rebalancing to achieve this, with a new and elevated conversation that prioritises the common purpose across government, industry and community of ensuring all homes are good homes.

Our hope is that over time, regulation, planning and other structural levers such as planning and taxation, can be used to help in rebalancing the rental sector and in particular the

assumptions underpinning investment in the rental sector. Investment, both public and private, should be seen as a mechanism by which we deliver on the needs of the community, rather than the primary purpose of the sector. As with other essential services, like energy, health-care, food and more, there needs to be a recognition that avoiding harm, both physical and financial, is a necessary and achievable part of the regulatory framework, and that this provides greater certainty and stability for both investors and consumer renters. It also sets a social license under which investment occurs with greater harmony across the community.

Yours sincerely,

**Leo Patterson Ross**

CEO, Tenants' Union of NSW

## The Experience of Renters and People Seeking Rental Housing

NSW is in the midst of a genuine renting crisis, especially for households on moderate and low incomes. The sector needs significant reforms to both the availability of homes at a diversity of price points and the regulatory framework to set expectations for both renters and landlords with a fair, clear set of rules for both parties.

There are a number of areas we know in which the renting sector is falling short. In particular, alongside affordability (discussed in greater depth below) the insecurity and lack of stability of home that renters face must be highlighted. Mental health outcomes for renters and owner-occupiers equalise at 5-6 years of stable occupancy - but the current median tenure in NSW is just 18 months.<sup>1</sup>

In most jurisdictions across Australia renters can still be evicted for 'no grounds' or 'no cause'. We know many renters hold back from asserting their rights because they fear doing so will lead to retaliation. Large numbers of renters - individuals and families - report living with unattended repairs and maintenance, mould or with poor thermal comfort, in large part due to concerns of putting their current or future housing at risk.<sup>2</sup> This ongoing fear of eviction also limits their ability to create a stable home environment, plan for the future, and put down roots in their communities.

ACT is the only jurisdiction so far to have comprehensively removed 'no cause' evictions from their tenancy law, though South Australia and NSW have also made commitments to do so and are in the process of implementing these. Western Australia and the Northern Territory are currently reviewing their tenancy laws, and are hopefully working to remove 'no cause' evictions through the reviews.

Queensland, Victoria and Tasmania do not allow 'no cause' evictions during a periodic tenancy, but all still allow them at the end of fixed term tenancies (though their use is limited only to the first fixed term in Victoria). There is no fair justification for terminating merely because a fixed term tenancy agreement has ended. All the same problems in relation to insecurity remain for renters on fixed term leases. In Australian jurisdictions where 'no cause' evictions remain possible at the end of the fixed term, landlords have largely shifted renters onto short fixed term tenancies to ensure they can continue to use these.

Without better protections against no cause evictions, including at the end of fixed-term leases, renters cannot assert other rights without fear of reprisal. Reforms to tenancy laws to

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<sup>1</sup> Ang Li, Emma Baker, and Rebecca Bentley (2022) [Understanding the mental health effects of instability in the private rental sector: A longitudinal analysis of a national cohort](#), *Social Science and Medicine*; Ang Li et al, [Stability and security: the keys to closing the mental health gap between renters and home owners](#), *The Conversation*, accessed 18th August 2023

<sup>2</sup> Lyrian Daniel, Emma Baker, Andrew Beer & Rebecca Bentley (2023) [Australian rental housing standards: institutional shifts to reprioritize the housing-health nexus](#), *Regional Studies, Regional Science*, 10:1, 461-470

ensure landlords must provide renters with a valid reason for terminating a tenancy are required.

### Rising Rents and Rental Affordability

The alarming rise in rental costs is a key driver of the rental crisis. Market rents are unaffordable for far too many renters. Escalating rents are consuming a disproportionate share of renters' incomes, leaving them with little financial room for other necessities. Low-income households are impacted most significantly, and for many the recent increase in rent they have experienced is pushing them beyond their financial capacity and into hardship and increasing their housing insecurity.

Table 1 shows that the gap between new rents and both wage and consumer price indices deviated significantly from around the 2007-08 financial year and had not fully recovered. This gap peaked previously in early 2018 with an annual gap of \$7468 from new rents paid compared to the rent adjusted in line with wage price index, to a current gap of over \$10,000 per annum.

The current period of particularly acute crisis did not arrive in a vacuum, and must be understood within this context. Solutions to ease rent pressures must recognise the history beyond the current system.

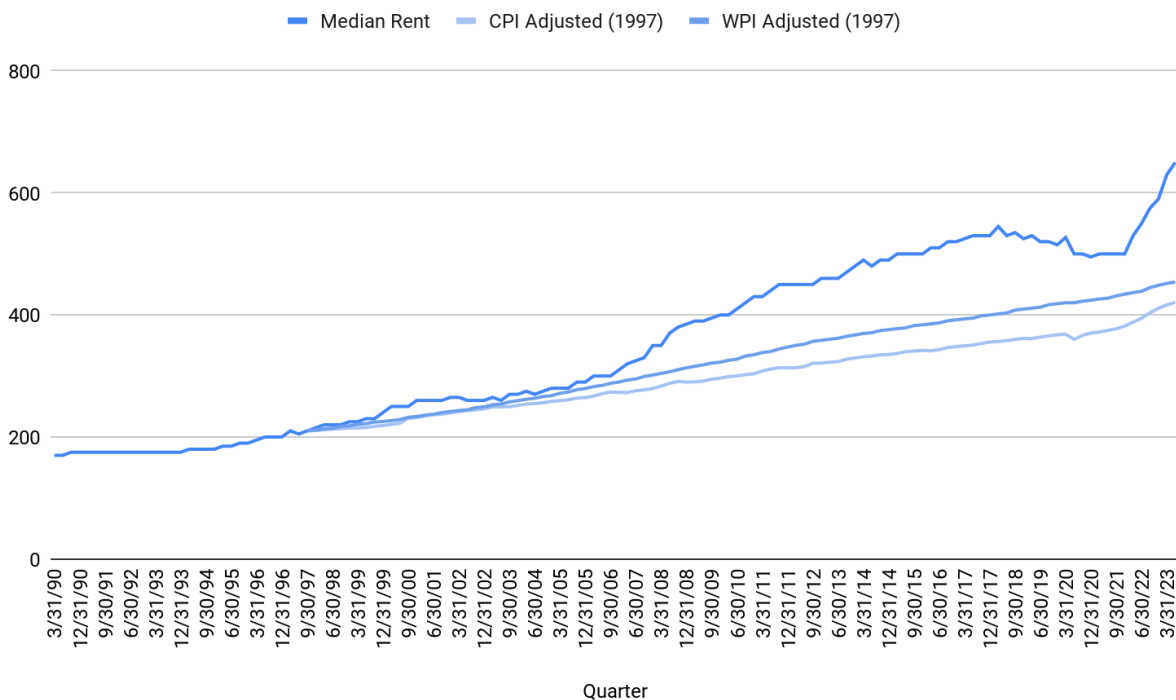


Table 1: Median new rent in Greater Sydney, with comparison to consumer price and wage price indices. ABS, NSW Fair Trading.

When a renter receives a rent increase they have very few options. They certainly are not currently in a position to simply go to the market to look for a cheaper alternative. There are very few affordable rentals available and at all price points, but in particular at the lower end of the market.

In NSW we have seen a significant increase in the number of renters calling the network of local Tenants' Advice Services to get advice about a rent increase. Prior to Covid, around 2.5% (700 calls/year) of cases were about rent increases. This has roughly tripled, to around 7% (2,500 calls/year) of all calls to local services in the last year.

In polling we co-commissioned earlier this year (March) with renters in Western Sydney 86% of renters told us they had experienced increases in their housing costs (rents) in the last year. Data we have received from the NSW Civil and Administrative Tribunal (NCAT) suggests applications by renters for matters relating to rent and other payments (a strong indicator of applications challenging excessive rent increases) increased by around 50% in 2022 compared to 2021. This is almost double the number of applications being made annually prior to Covid.

Renters don't generally challenge rent increases for a range of reasons – including little confidence they will be successful, fear of retaliation (and see discussion below). Cost of living pressures are hitting households so hard that there are no more budget hacks or scrimping that households can do to pay the higher rent. The threat of eviction is no longer as much of a concern (barrier to challenging at Tribunal) if you literally can't afford to stay.

This situation underscores the urgency for measures that regulate fair limits on rent increases.

### **Actions to Reduce Rents or Limit Rent Rises**

Currently in most Australian jurisdictions, the onus is on individual renters to challenge a rent increase, and the only basis to do this is if they believe it is excessive. Many renters do not feel confident challenging an excessive rent increase, and they may worry the landlord may retaliate in response.

In the ACT however, the responsibility lies primarily with the landlord. They are required to prove that a rent increase is not 'excessive' where a rent increase exceeds a certain threshold - set out in the legislation as 110% of the change in CPI since the last rent increase or since the tenancy agreement began. Unless the renter consents to the increase a landlord must apply to the Tribunal for the increase, and provide evidence for why an increase above the threshold is justified. If the increase is below that threshold (110% of change in CPI for rents) the increase is considered reasonable. In this case, the renter who wants to challenge an increase must apply to the Tribunal and provide evidence as to why they feel it is excessive in the circumstances.

A model of this kind could usefully be considered more broadly. This would not set a 'hard cap' on rents, it would simply and more fairly allocate responsibility to the landlord to justify and provide evidence for a rent increase over a certain amount. Serious consideration and

consultation should be given to the best measure to be used to determine the threshold. A measure or mechanism should be determined, in substantial part, on how reliable it is as an indicator and reflection of renting households' capacity to pay. While the ACT draws on a % change in CPI for rents, we have also previously raised the idea of empowering an independent agency or body in the relevant jurisdiction to make regular (for example quarterly, 6 monthly) determinations on thresholds having considered all relevant factors and stakeholder feedback on these. This would allow for thresholds that are responsive to local conditions, as well being able to factor in a range of data and measures – such as general costs, wages and other relevant factors.

In addition, jurisdictions must consider changes to the factors to be considered by the relevant Tribunal when determining whether a rent increase is excessive. Currently in most jurisdictions, the primary and weighted consideration is that of the current 'market rent'. However, the failure of the rental housing system – with tight supply and little to no regulation of rents – has generally resulted in current market rents not being in line with what the community considers 'fair market value'. 'Fair market value' is generally considered to be a price both parties are willing to enter into, where both are acting in their own best interests and are free of undue pressure.

Under the current system, rents are being set at a price that renters are 'willing to pay', that is – they accept the rent increase and may not move out – but this is only because they feel forced to. They are facing undue pressure given the current housing crisis.

Reconsideration of whether 'market rents' should continue to be given such weight under tenancy law is required. We submit they are not the best mechanism for delivering fair rents. The market sets a self referential value on rents, it pushes rents as far as it is able whatever market conditions prevail – even if those market conditions are causing serious harm.

To ensure fairer rents and access to housing Australian tenancy law should consider the 'fair market value' of rents for comparable premises rather than 'market value' to ensure better outcomes from our private rental housing system, particularly where general market level is reflective of market failure.

The factors considered when determining whether a rent increase is excessive must also be broadened, in particular to ensure other factors are more seriously considered, including the renting household's ability to pay an increase and more general affordability concerns.

### **Improvements to Renters' Rights**

Residential tenancy legislation is a matter for state and territory governments. This has led to variation and inconsistency across jurisdictions, leaving some without basic key protections. NARO, our national federation of renters' organisations, has identified nine national principles that should be considered in a national plan to strengthen renters' rights:

1. Provide greater stability by ending all no cause terminations
2. Introduce appropriate affordability measures to stabilise rent prices

3. Ensure liveability of homes by introducing minimum standards for all rental homes, including energy efficiency
4. Improve compliance and accountability through accessible and robust frameworks that better ensure effectiveness of existing laws
5. Independent rental authorities to hold, safeguard and manage tenants' money (rental bonds) and provide prompt return and a source for resourcing services that benefit renters
6. Better protect private information and against discrimination implementing better transparency and protections in relation to collection and unlawful use of information
7. Resource support/advice and advocacy for all renters
8. Ensure universality of protections for all people renting their home
9. Collect and use data to inform policy

These nine principles have been determined based on the experience of tenancy legal services across the country.

### **Factors Impacting Supply and Demand of Affordable Rentals**

Alongside rental reforms, governments should recognise that housing is a complex system with interacting parts. Supply and demand dynamics significantly impact the availability of affordable rentals. The lack of new affordable housing homes being delivered into the market, coupled with surging demand has driven rental prices upwards. To address this, governments need to prioritise the expansion of social housing. A robust and healthy social housing system alleviates pressure on the private rental market at the same time that it provides a much-needed safety net for those struggling with housing costs.

Unfortunately instead we have seen Australia's stock of social housing fall consistently over the last few decades. Current models of investment, and renewal and redevelopment have not delivered the number of social housing homes required. Nor has reliance on the transfer of public housing properties and/or management to Community Housing Providers, coupled with availability of lower cost finance to community housing. A substantial injection of capital investment from governments is required. We would like to see governments be ambitious, aiming for investment consistent with meeting a target of a minimum 10% of all housing being public or community housing by 2036.

### **Other related matter: Access to advice and advocacy for renters**

In NSW the Tenants Advice and Advocacy Program (TAAP) funds a network of 24 organisations across New South Wales. 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. In NSW the Tenancy Advice and

Advocacy Program is in the unique position of having four specialist Aboriginal TAASs, plus an Aboriginal Resource Unit and Aboriginal Legal Officer who is based at the Tenants' Union 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. Over the last fifteen years demand for tenancy advice and advocacy services has increased and the indications are that demand will continue to increase for the foreseeable future. Resourcing of services has not kept pace with the growth in the number of residential tenancies in NSW and the growth in the number of disadvantaged households in the rental market whose tenancies are especially precarious. The capacity of Tenants' Advice and Advocacy Services to provide assistance has been significantly constrained by the lack of adequate resourcing for the network.

Over the last 3 years the NSW network has received (2021) and had government commitments (2023) to modest permanent increases to its funding. The need for a more substantial permanent increase in funding of the network remains.

Adequately resourcing Tenants' Advice and Advocacy Services is essential to ensure renters are provided the support and assistance they need when disputes and problems arise. Funding for such services should in all jurisdictions be increased to ensure services can better meet demand, with increases to funding tied to growth in the number of tenancies, and the number of disadvantaged tenants. Additional funding for services and supports targeted to particularly vulnerable groups and/or those with specific needs around accessibility is also required.

In addition, resourcing is needed to ensure that renters' voices are heard in the ongoing conversations about homelessness, renters' rights, and the rental housing system. While there are peak real estate industry bodies in each state and territory and nationally, as well as community and public housing providers this is not the case for renters. Currently the National Association of Renters' Organisations (NARO), the federation of State and Territory-based Tenants' Unions and Tenant Advice Services across Australia, is an unfunded body. Funding for the National Association of Renters' Organisations would ensure there is a peak body better able to represent and platform the interests and voices of renters at the national level.

### **Other related matter: Regulating banks, financial institutions**

The committee should consider the role that banking and tax policies have had on the renting sector in Australia. While some tax policies such as capital gains tax discounts are primarily aimed at owner occupiers, they have increasingly become part of the strategy around purchasing investment properties, with the '6 year rule', particularly alongside first home



owner grants, contributing to a short-term approach to investment<sup>3</sup>. This may contribute to the average holding periods of 4-10 years observed by a number of reports.

Banking has received less attention, but lending practices have contributed to the current crises where some investors are or feel unable to meet their contractual obligations, or entertain the idea of renting rules changing because of the size of their loans. It appears likely that many people have borrowed significant sums of money to access an investment without being advised of the likelihood of interest rate rises. Banking practices, primarily loans, and investment advice must also be made appropriate with the provision of an essential service.

The Tenants' Union of NSW again thanks the Committee for the opportunity to contribute. We remain committed to advocating for better outcomes for people who rent their homes across Australia, and hope the ongoing conversation about our rental housing system our governments are now engaging in can deliver this.

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<sup>3</sup> Williams, S. 2022 'Six-year rule': How rentvestors can avoid capital gains tax, Domain. <https://www.domain.com.au/news/property-investor-march-22-pre-1200229/>