

**Submission
No 68**

**INQUIRY INTO SOCIAL, PUBLIC AND AFFORDABLE
HOUSING**

Organisation: Tenants' Union of New South Wales

Date received: 28/02/2014

Submission to the
NSW Legislative Council Select Committee
on Social, Public and Affordable Housing

February 2014

Introduction

The TU is the State's peak non-government organisation for residential tenants. We represent the interests of all renters in New South Wales, whether in the private market, social housing, residential parks, boarding houses or marginal rental accommodation. We are a specialist community legal centre, with our own legal practice in residential tenancies law, and the primary resource agency for the State-wide network of local Tenants Advice and Advocacy Services (TAASs).

We welcome the opportunity to make this submission to the Select Committee. We make this submission on our own behalf, and on behalf of the TAASs.

This submission has two purposes. First, it reviews the current state and recent history of the housing market, with particular attention to the huge inflation in house prices over the past two decades; the causes of inflation in policy settings that encourage speculation; and the further effect of speculative inflation in the loss of affordable rental housing. At this point we consider briefly what can be done by governments to address affordability problems, and legal problems, in the wider rental sector.

Second, within the context of these wider problems of housing market policy, we consider the current state and recent history of the social housing system, with particular attention to the insufficient supply of social housing. This is the basic problem of the social housing system in New South Wales today, and from it flows so many of the social housing system's other problems.

A key point of reference for our discussion of this problem is the report of the NSW Auditor-General, 'Making the Best Use of Public Housing' (2013). We agree with the Auditor-General's finding that the system is in decline, leaves too much need unmet, and is not sustainable. We strongly agree that 'the time has come for the NSW Government to set a new, sustainable direction for public housing in New South Wales' (NSW Auditor-General, media release, 30 July 2013). We respectfully disagree, however, that this is a matter of Housing NSW 'making better use' of a declining stock, or otherwise trying to administer or ration its way out of the social housing supply shortfall. The only real solution to the shortfall is for governments to fund increased supply.

This is easily stated, less easily effected; however, it is the only real solution to social housing's basic problem. Without sustained additional funding for increases in supply, the social housing system will continue in its present spiral of declining revenues, declining stocks and declining services.

Housing NSW cannot administer or ration its way out of this problem. It has been trying to do so for years, by various measures that have tightened eligibility, increased rents and reduced security and other conditions of housing assistance, with the intention of more narrowly delivering assistance to the neediest targets. The experience shows that these measures can do little good, and may do considerable

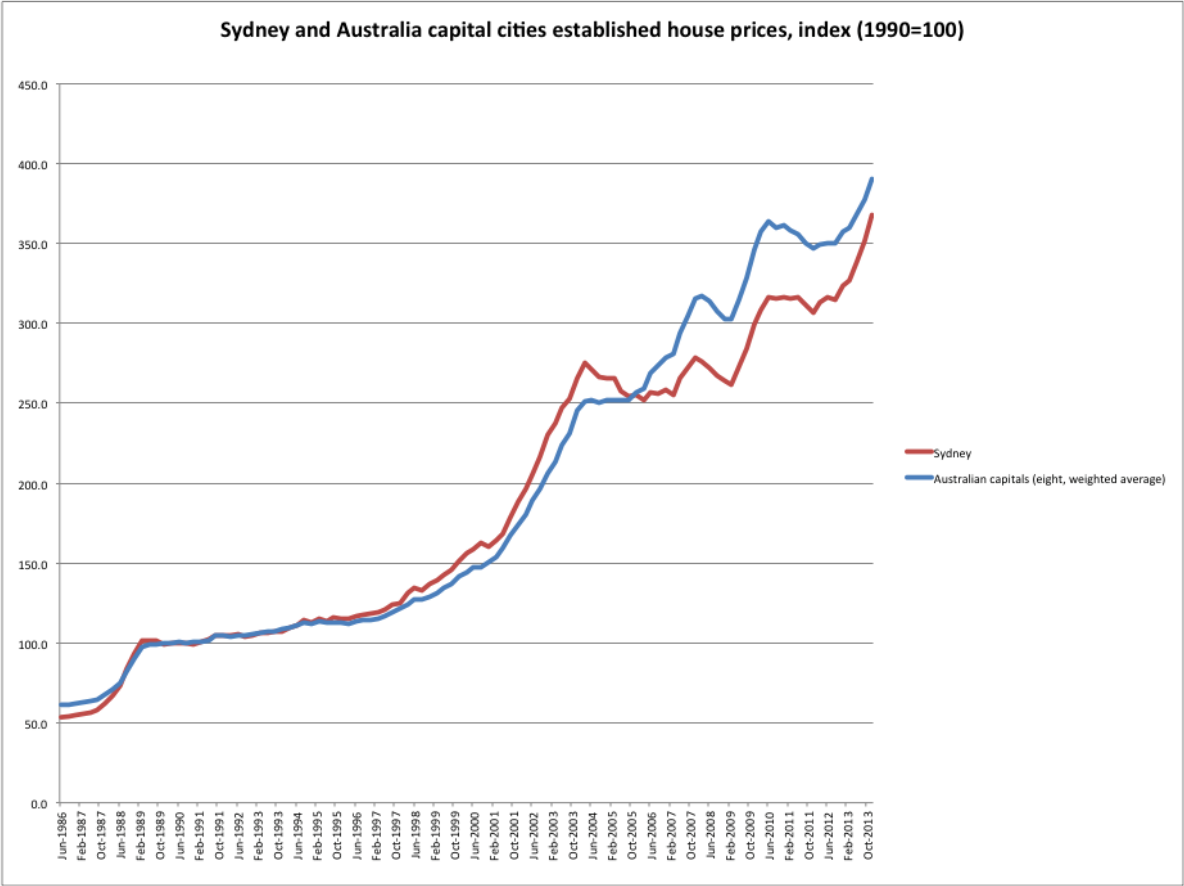
harm. Some – such as the recent reforms to ‘succession’ in public housing – have only marginally increased opportunities for assisting new clients, but at the cost of hardship for some tenants and increased administrative complexity and inefficiency for the system. Others – in particular, reviews of tenants’ eligibility, and higher rents for ‘moderate income’ tenants – have failed disastrously, by making public housing a poverty trap and actually reducing opportunities to assist new clients.

The wider context: housing inflation and the lack of affordable rental housing.

This a brief review of the recent history and current state of the wider housing system. Much of the available data refer to Australia as a whole; where possible, we also present data for New South Wales. The presentation will sometimes be different, because of differences in datasets, but the trends and influences they show are mostly in common.

Over the past two decades there has been a huge inflation in house prices (Figure 1).

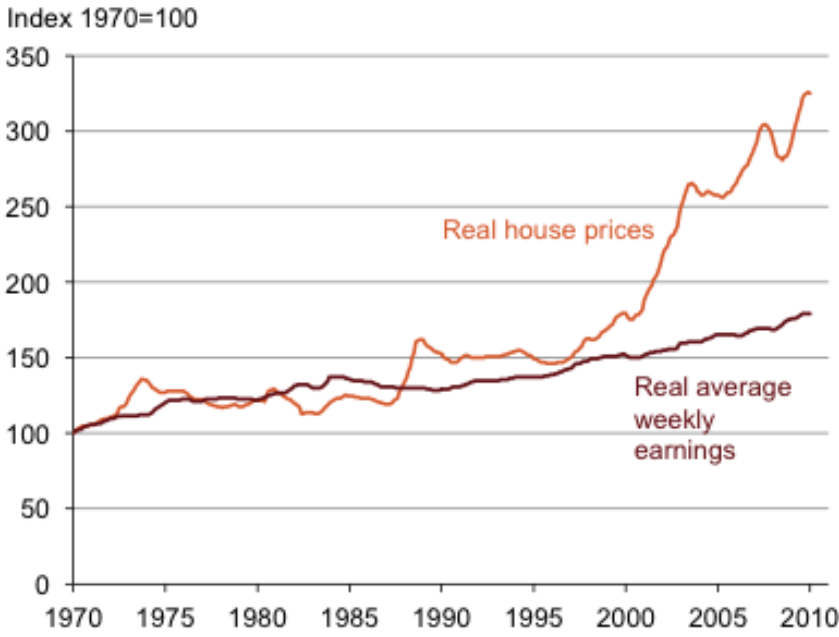
Figure 1. House price inflation.



Source: ABS, Residential Property Price Indexes.

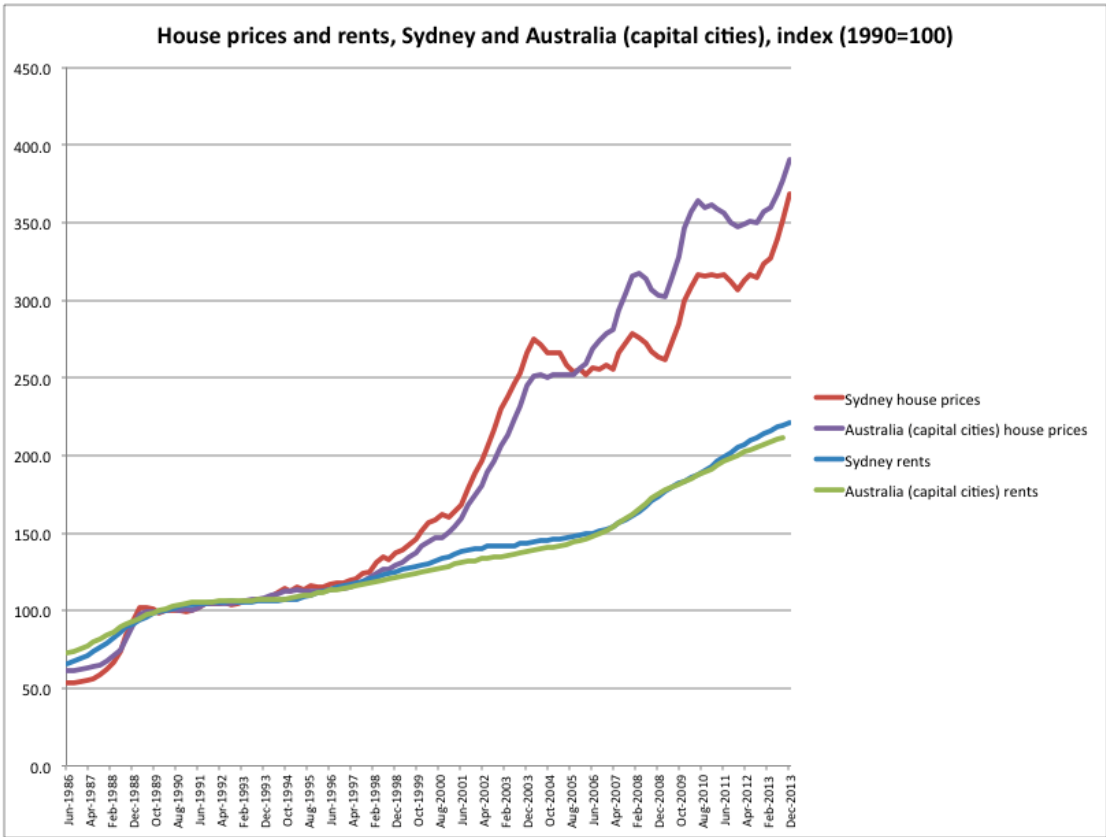
This inflation has been out of proportion to increases in incomes (Figure 2) and in the price of shelter – as reflected in rents (Figure 3).

Figure 2. House prices versus incomes.



Source: Grattan Institute (2013).

Figure 3. House prices versus rents.

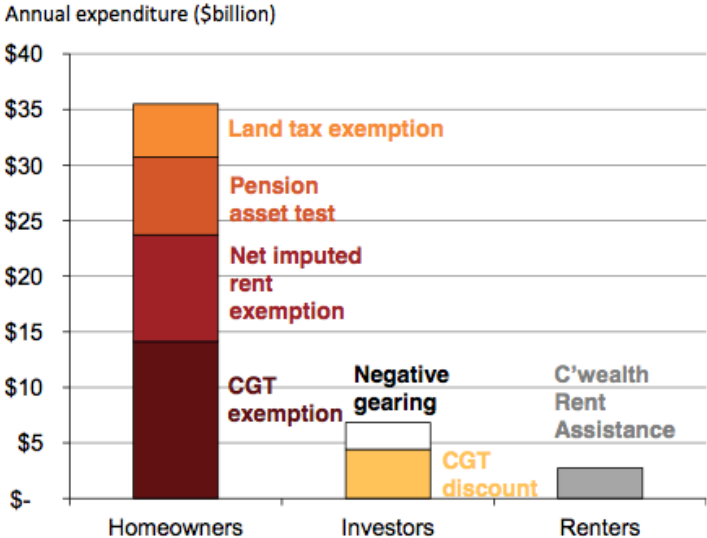


Source: ABS, Residential Property Prices Indexes; Consumer Price Index (Rents).

The inflation, therefore, is at least largely a speculative inflation, based on expectations of further price increases, and encouraged by the strongly preferential treatment of housing in Australia’s tax and transfer systems (Figure 4).

The strongest preferential treatment is for owner-occupied housing, which is exempt from capital gains tax, income tax (on imputed rent), State land tax, and the means test for the Age Pension, and which has also attracted, from time to time, First Home Buyer Grants.

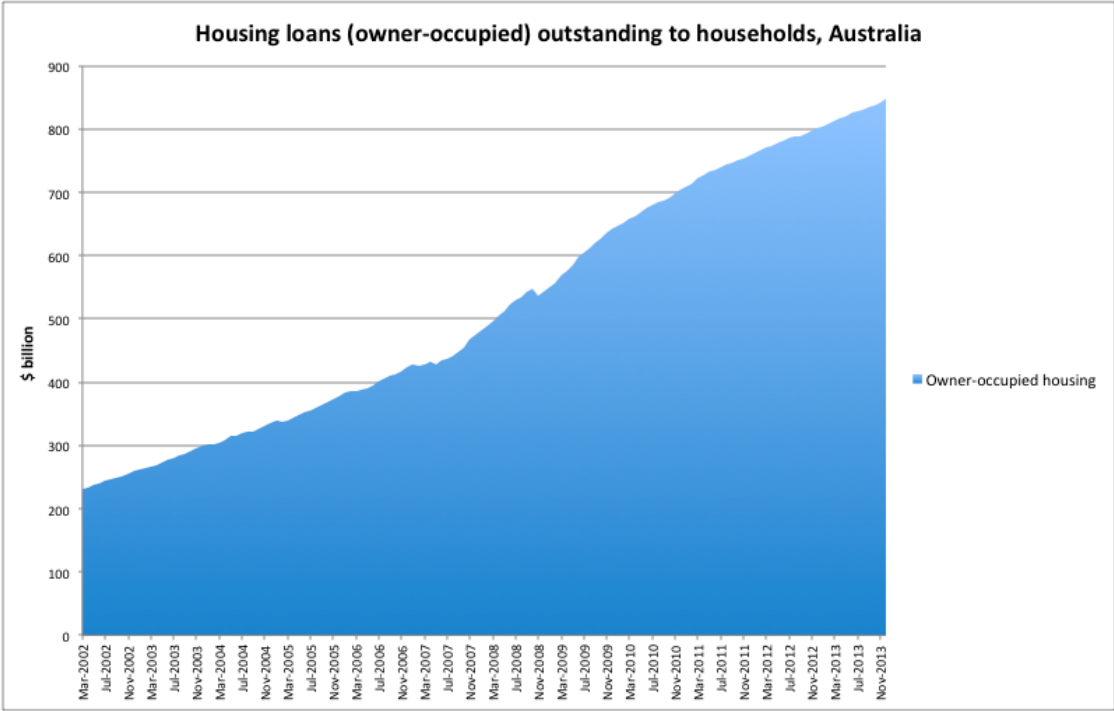
Figure 4. Preferential treatment of housing (transfers and ‘tax expenditures’), by tenure of recipient



Source: Grattan Institute

This preferential treatment has the general effect of encouraging persons with money to spare to spend it - or rather, leverage it and spend it (Figure 5) - on their own housing.

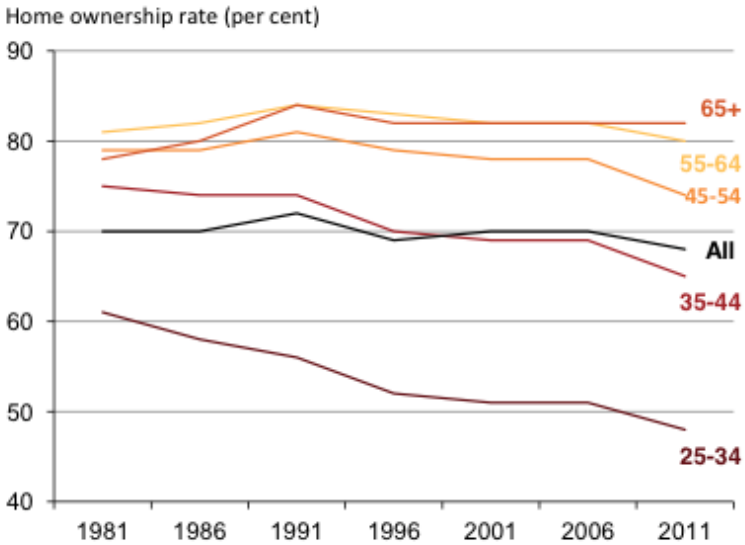
Figure 5. Owner-occupied housing debt.



Source: ABS, Housing Finance.

The preferential treatment has not, however, led to an expansion of owner-occupation; on the contrary, rates of owner-occupation have declined over recent decades, especially for younger households (the overall rate has been kept up by older owner-occupiers living longer into old age) (Figure 6).

Figure 6. Declining owner-occupation rates, by age.



Source: Grattan Institute (2013).

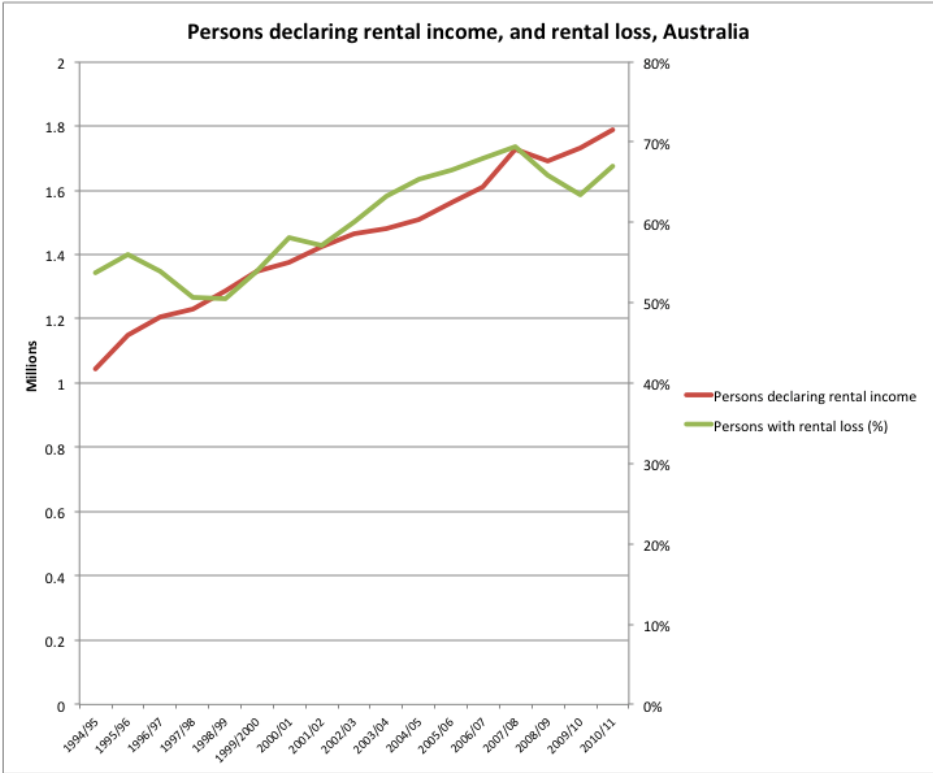
In fact, the inflation in house prices has largely been driven by persons buying as landlords. Housing owned by landlords is not exempt from capital gains tax, land tax and the Age Pension means test, but it trades in the same market as owner-occupied housing, so its price is similarly distorted. Furthermore, in other respects tax settings are generous to landlords, particularly those who buy with borrowed funds in pursuit of speculative gains.

First, the Australian tax system’s treatment of negatively geared assets allows landlords to deduct interest and other costs incurred in owning a property to be deducted not just from income from the property, from but from all of their income (such as wages), thus reducing their tax liability on that income.

Secondly, under provisions introduced in 2000, capital gains realised on the sale of an asset are taxed at half the rate of other forms of income (such as wages, or rents).

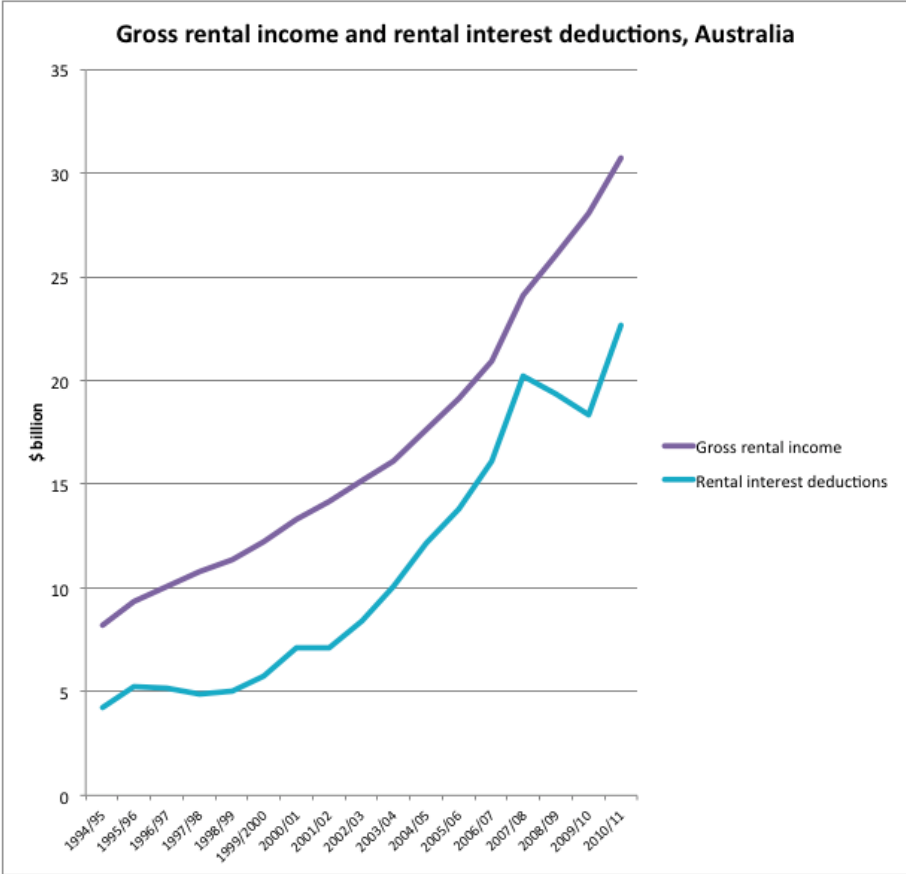
Together, these tax settings subsidise landlords’ costs of speculation, and amplify speculative gains, with greater advantage given to landlords with higher incomes and higher levels of gearing. These settings have encouraged many persons to become speculative landlords (Figures 7 and 8).

Figure 7. Speculator landlords, numbers.



Source: ATO Taxation Statistics.

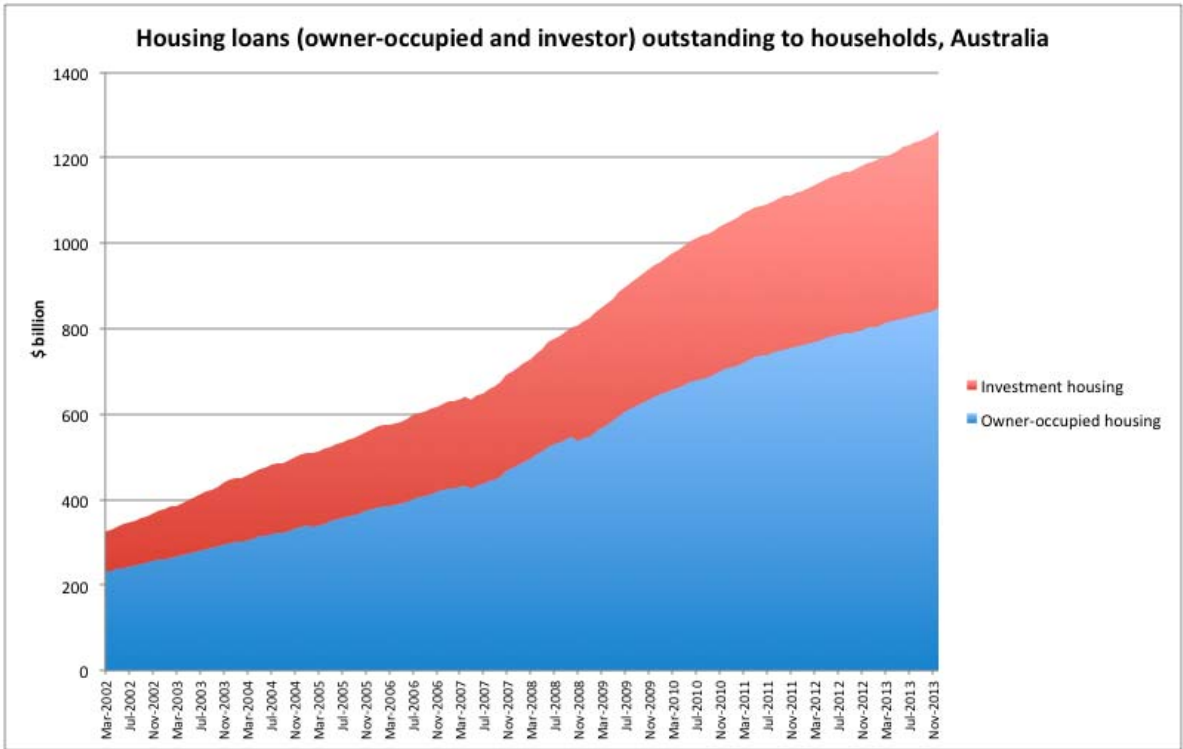
Figure 8. Landlords' income and interest deductions.



Source: ATO Taxation Statistics, Personal Tax

And in becoming speculator landlords, they have borrowed a huge amount of money (Figure 9) - thus inflating house prices.

Figure 9. Owner-occupiers' and landlords' housing debt.

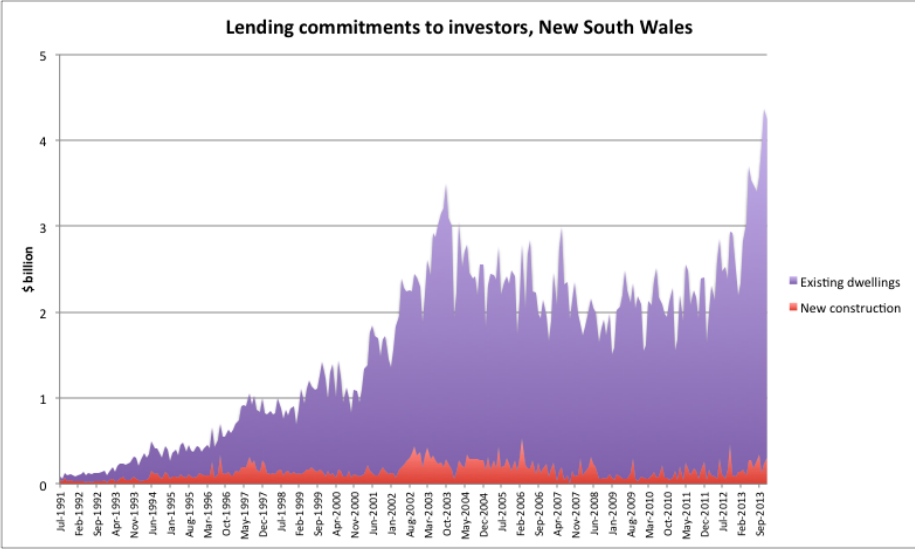


Source: ABS, Housing Finance

Although house prices have inflated out of proportion with rents, speculation has significantly altered the rental market, both in terms of the stock of properties and the persons in the market.

Overall, the stock of properties has become more expensive to rent. First, we should be clear: negative gearing does not induce individual landlords to reduce rents – rather, it induces them to increase their leverage. And collectively, speculator landlords have added very little supply, in net terms, to the rental sector – overwhelmingly they purchase established dwellings (which are either already in the rental sector or, if purchased from the owner-occupied sector, also adds the number of renters).

Figure 10. Lending to landlords, established dwellings versus new construction.



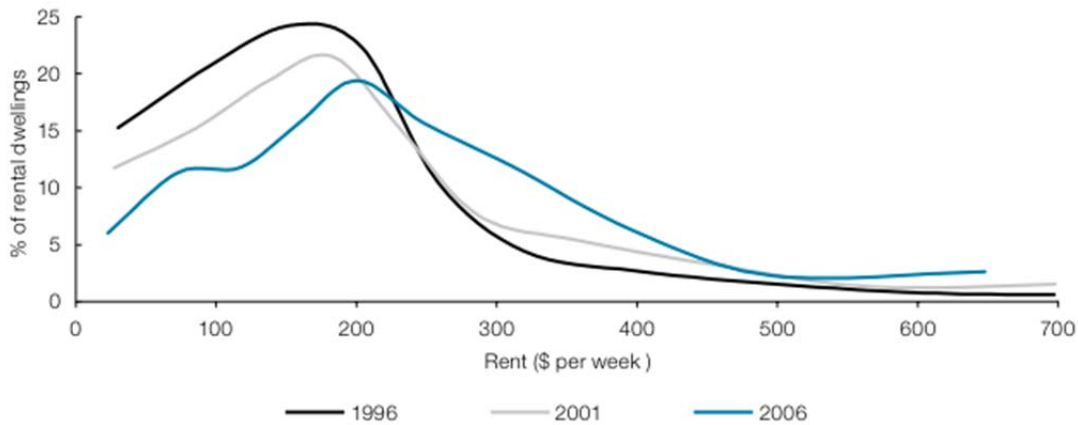
Source: ABS, Lending Finance. Note this depicts the flow of commitments (contrast Figures 5 and 9, which depict the stock of loans outstanding).

Speculation has, on the other hand, changed the stock in the rental market. In particular, the amount of low-cost rental stock has declined, both relatively and, at the lowest end of the market, absolutely.

This is because landlords in pursuit of speculative gains tend to purchase existing stock with high prospects of capital gain, and high values – and hence high rents. When low-prospect, low-value, low-rent stock comes up for sale, speculator landlords tend to pass over it, and it drops out of the rental market – and such stock as remains becomes scarcer, and less cheap to rent.

Figure 11, from the National Housing Supply Council (NHSC), depicts the changing shape of the Australian rental market over the Census years 1996, 2001 and 2006. Note the bulge of properties let in 1996 at less than \$200 per week flattening out and pushing up the scale of rents in subsequent years.

Figure 11. The changing shape of the Australian rental market.

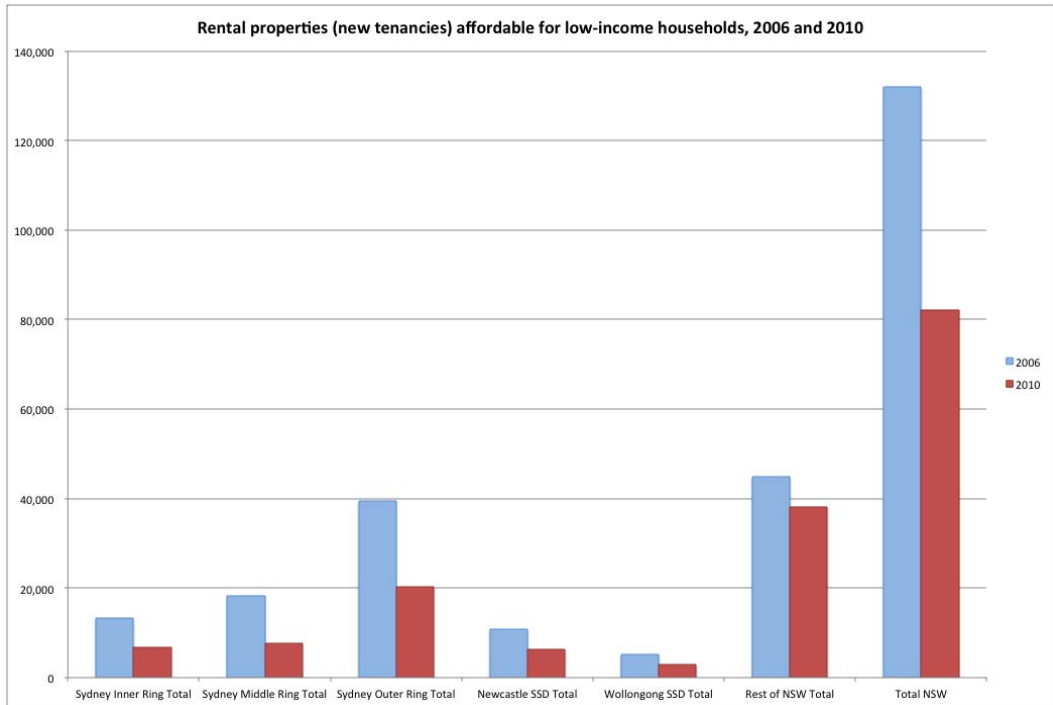


Note: rents are denominated in 2006 dollars.

Source: NHSC (2010)

Figure 12 depicts differently a similar trend in the New South Wales rental market. It shows, for 2006 and 2010, the number of properties where new tenancies were entered into at rents that were affordable for low-income households.¹ Across New South Wales, there were almost 50 000 fewer tenancies affordable for low-income households entered into in 2010 than four years previously.

Figure 12. The loss of affordable rental properties in New South Wales.

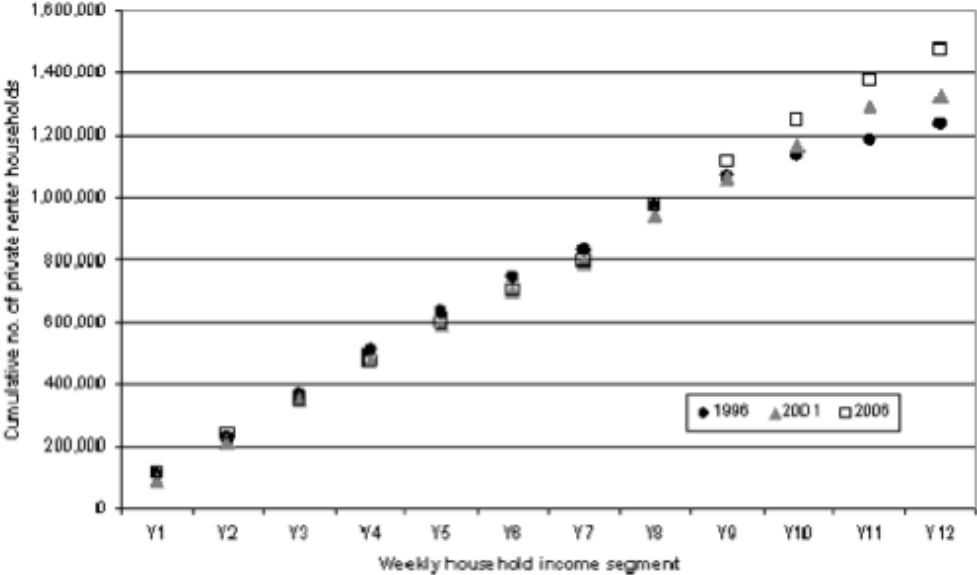


Source: Housing NSW (2013a).

¹ That is, rents that were less than 30 per cent of 80 per cent of median income (approximating the 40th percentile) for households of a size appropriate to the property.

The demographics of the market have changed too. As noted above, the proportion of households renting has increased; this increase has come from higher-income households (at least in part because they have been priced out of owner-occupation) (Figure 13).

Figure 13. The changing shape of Australian private rental households, by income.



Source: Wulff et al (2011).

Many of these higher income tenants compete with low-income tenants for the low cost stock that remains in the rental market – a competition they win, by offering higher rents or just appearing to be less risk.

The NHSC has discussed and quantified this problem in terms of the actual ‘availability’ to low-income households of the dwellings that are affordable for them. The NHSC found that across Australia in 2012:

- 1 256 000 dwellings were let at rents affordable for the 857 000 private renter households at or below the 40th percentile by income – an apparent surplus of 398 000. This was, however, less than two years previously, when there was an apparent surplus of 670 000 affordable dwellings.
- However, of the 1 256 000 affordable dwellings, 937 000 were occupied by higher income households, turning the apparent surplus into a shortage of 539 000. This was worse than the shortage of 473 000 two years previously.

Figure 14 summarises the results.

Figure 14. The availability of affordable rental.

Affordable rental dwellings		Affordable <i>and available</i> rental dwellings	
2009-10	2007-08	2009-10	2007-08

Australia	398 000	670 000	-539 000	-473 000
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Source: NHSC (2012).

As a result, many low-income households in the private rental market are doing badly. Most are in housing stress (that is, they are spending more than 30 per cent of their income on housing); a large minority are in housing crisis (spending more than 50 per cent of their income on housing) (Figure 15).

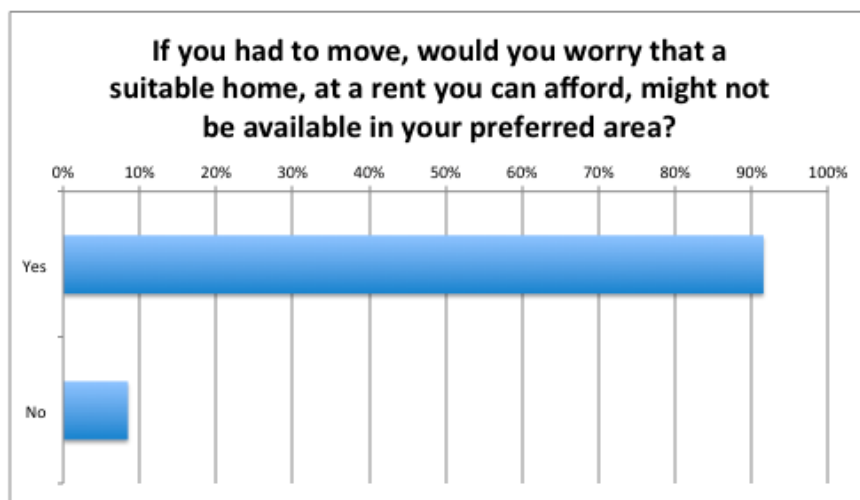
Figure 15. Low-income private renters in housing stress and housing crisis.

	Rent 30% or more of income (housing stress)		Rent 50% or more of income (housing crisis)	
	2009-10	2007-08	2009-10	2007-08
New South Wales	62%	65%	28%	22%
Australia	60%	57%	25%	20%

Source: NHSC (2012).

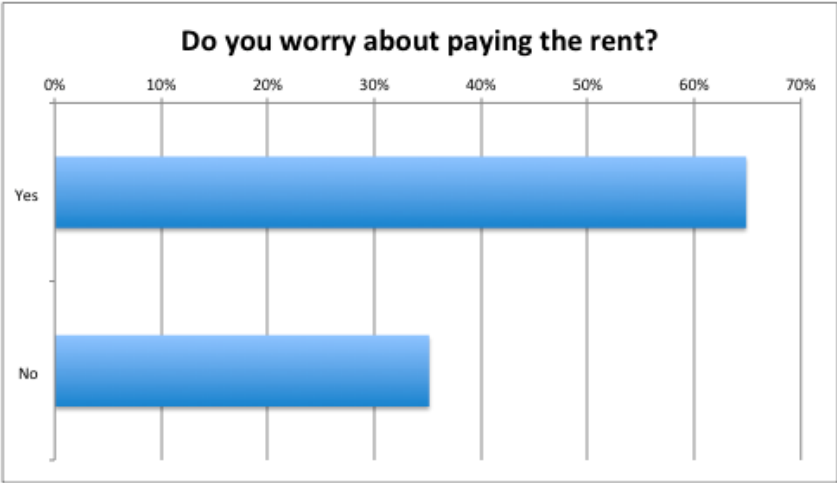
And as a further result, private rental is a stressed and worried tenure. This is demonstrated in the results of the TU's 'Housing Affordability Survey', in which 580 tenants (low-income and otherwise) participated in January-February this year. Amongst other things, we asked tenants about some common occurrences in renting: being able to find suitable alternative housing in the event of having to move; paying the rent; and the decision whether to assert one's tenancy rights in the event of a problem. Of renters in the private market, 92 per cent worried that they might not find an affordable alternative home; 65 per cent worried about paying the rent; and 79 per cent had put up with a problem rather than assert their rights.

Figure 16. Worried about finding an affordable home, if you had to move.



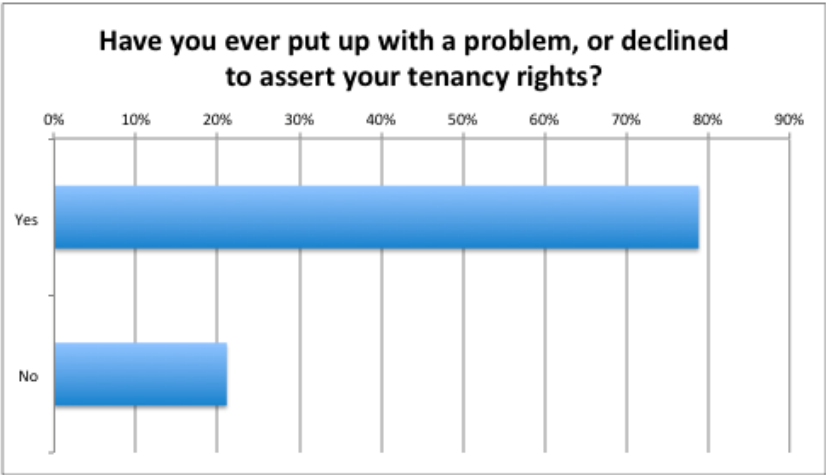
Source: TU (2014).

Figure 17. Worried about paying the rent.



Source: TU (2014).

Figure 18. Declined to assert tenancy rights.



Source: TU (2014).

The problems of house price inflation and the lack of affordable rental housing are not just problems for the individual persons who suffer from and worry about them. To presage the discussion of social housing, below, house price inflation makes it difficult for social housing providers to expand their stock to even keep up with population growth, much less any increase in demand from persons suffering worsening affordability problems.

Ultimately, the solution to these problems lies in restraining speculation in housing. This means resetting the tax settings that give preferential treatment to owner-occupied housing, and that encourage people to lever up and speculate as landlords.

Most of those settings are in the hands of the Federal Government. The generous treatment of negative gearing could be reformed so that losses incurred from owning an asset may set only against income from that asset class, not deducted from other sources of income; alternatively, income from a (non-business) asset could be subject to a tax discount, reducing (but not eliminating) the deductibility of losses against other sources of income and the preferential treatment of speculative gains (this is

the recommendation of the Henry Review). Alternatively again, reforms specific to housing investment could be implemented: for example, allowing deductibility against other sources of income only in the case of newly constructed housing.

Capital gains tax could be reformed to remove the 50 per cent discount; or, alternatively, by the Henry Review's recommendation for a lesser discount for all incomes from assets. It could also be reformed to apply to owner-occupied housing above a high value threshold.

At the level of the State Government, land tax can be reformed to restrain speculation, particularly by applying it to owner-occupied housing (again, as recommended by the Henry Review).

In modelling the land tax recommendations of the Henry Review, Wood, et al (2013) found that a broad-based revenue-neutral land tax (that is, applying to owner-occupied housing, and replacing stamp duties) would achieve average land value reductions of 8-12 per cent, with the largest reductions in higher value locations close to the CBD (in Wood's model, Melbourne CBD), and improve the affordability of housing for owner-occupiers and renters. A broad-based land tax replacing stamp duties would also benefit the State Treasury – even implemented on a revenue-neutral basis – because it is a much less volatile source of revenue.

We recommend that the NSW State Government enter into discussions with other Australian governments on the necessity of restraining speculation in housing, particularly by reforms to tax settings that encourage speculation.

Recommendation.

That the NSW State Government and other Australian governments commit to the necessity of restraining speculation in housing, particularly by:

- Reforming the tax treatment of negative gearing, to reduce the deductibility of losses (either by limiting losses to income from the same asset class, or by a discount applied to all non-business asset incomes);
- Reforming capital gains tax, to remove or reduce the discount applied to capital gains, and to apply capital gains tax to high-value owner-occupied property.
- Reforming State land tax, to broaden the base to include owner-occupied housing, and abolish stamp duties.

Apart from reforms to address housing speculation and affordability, the State Government could improve the legal conditions of rental housing, through reforms to residential tenancies law. The areas of reform are the most important to making rental housing a more just – and less worried – tenure.

- **Fairer process for where landlords seek termination.** The termination provisions of the Residential Tenancies Act 2010 are unfair in two main ways. First, landlords are allowed to give termination notices without grounds. These notices give cover to terminations that are retaliatory, discriminatory, harsh or unfair; this is unjust to the tenants who receive them, and the prospect of a no-grounds notice discourages tenants generally from asserting their legal rights. Secondly, where a landlord seeks a termination order following a no-grounds notice, the NSW Civil and Administrative Tribunal has no discretion to decline the order (except where the tenant can prove it is retaliatory). This makes no-grounds notices a trump card for landlords.

The Residential Tenancies Act 2010 should be reformed to provide a list of reasonable grounds for termination by landlords – one of which could be ‘any other reason stated by the landlord’. The Act should also be reformed to give the Tribunal discretion to decline a termination order, if it considers it appropriate in the circumstances of the case.

- **Fairer process for determining excessive rent increases.** The *Residential Tenancies Act 2010* provides for the resolution of disputes about excessive rent increases, but places all of the onus of proof on the tenant, whereas the landlord typically has access to the relevant information. A fairer process would share the onus of proof: where the rent increase is less than the increase in the CPI, the tenant would have the onus of proving that it is excessive; where it is more than the increase in the CPI, the landlord would have to prove that it is not excessive.
- **Greater freedom of choice.** Because of additional terms inserted in tenancy agreement, tenants often are prohibited from doing ordinary everyday things,

such as keeping a pet, or decorating their home, or even adding a new member to their household. As reasonable adults, tenants should be able to choose for themselves whether to do these things and still comply with their obligations not to damage the property or cause a nuisance. The *Residential Tenancies Act 2010* should be reformed to provide that tenancy agreements must not unreasonably restrict the keeping of pets, minor redecoration and alterations, and the number of household members.

- **Occupancy agreements for all marginal renters.** Numerous small categories of renters –many share house residents, and persons accommodated by educational institutions, refuges and crisis accommodation – are excluded from both the *Residential Tenancies Act 2010* and the *Boarding Houses Act 2012*. The provisions of the *Boarding Houses Act 2012* for occupancy agreements should be extended to all renters otherwise excluded from residential tenancies legislation.

Recommendation.

That New South Wales residential tenancies legislation be reformed to provide:

- A fairer process where landlords seek termination, so that landlords may give termination notices on reasonable grounds only, and the Tribunal has a discretion to decline termination if appropriate in the circumstances of the case.
- A fairer process for determining excessive rent increases, so that landlords bear the onus of proof where an increase is above the CPI.
- Greater freedom of choice, so that tenancy agreements cannot unreasonably restrict tenants keeping pets, making minor alterations and adding members to their households.
- Occupancy agreements for all renters not otherwise covered by residential tenancies legislation.

The role of residential parks

The Select Committee inquires specifically about the role of residential parks in the provision of affordable housing.

Residential parks are a relatively small but significant part of the housing system in New South Wales. According to NSW Fair Trading's Residential Parks Register, at 2012 there were 477 residential parks in New South Wales, and 33 632 residents (NSW Fair Trading, 2012).²

Generally speaking, residential parks serve two main purposes; individual parks may serve either or, in many cases, both.

² The Register probably understates the numbers of residential parks and residents. The TAASs advise that they are aware of residential parks purporting to be holiday parks that in fact have permanent residents.

One purpose is to accommodate, more or less permanently, persons who own their own manufactured dwellings. This may be regarded as a niche form of owner-occupation, differentiated from mainstream owner-occupation by the fact that another party owns the site of the home and the surrounding infrastructure.

Typically, the cost to purchase manufactured dwellings is much less than a dwelling on its own land title, but we are aware of some dwellings for sale for more than \$300 000. Owners of manufactured dwellings typically are older persons, with few assets other than their dwelling, and they often form strong communities – often in tension, if not opposition, with the park operator.

The other role of residential parks is to accommodate persons on low-incomes in rented vans or dwellings, on a more ready, and usually temporary, basis. This role is similar to that of boarding houses.

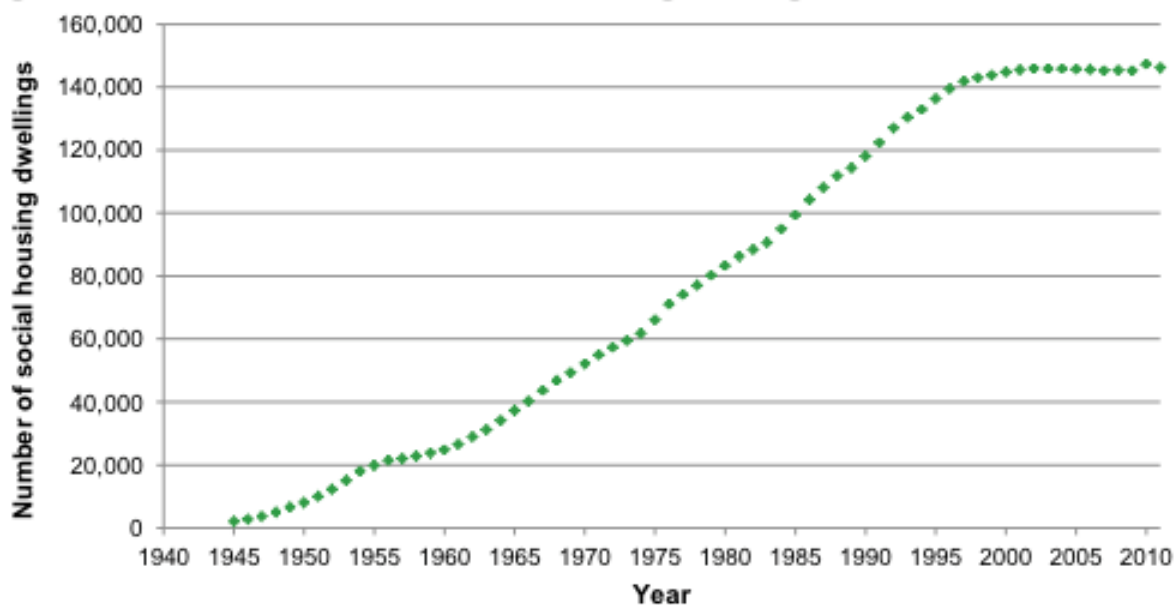
We support reasonable measures aimed at keeping residential parks as part of the housing system and performing both of these roles. We also support action to keep individual residential parks operating as residential parks, particularly so that owners of dwellings may remain in their homes and communities. We encourage investigation into how dwelling owners may be facilitated to form co-operatives that own and manage their own residential parks.

Otherwise, however, we do not consider that the NSW State Government should attempt to expand the role of residential parks as a form of ‘affordable’ owner-occupation beyond its present niche. The basic proposition of owner-occupation in a residential park is that a person buys an expensive, depreciating asset, then puts it on land, and connects it to infrastructure, owned by another person. This is a very problematic proposition, made even more difficult when, as is often the case, the dwelling owner has a modest income, no other assets and is at a stage in their life when relocating is difficult, and the park owner is holding the land with a view to subdivision and development. Dwelling owners are at a unique disadvantage, and need strong consumer protection legislation to protect their interests. We respect those who, despite their disadvantaged position, make homes and communities in residential parks, but do not think the State Government should encourage others into this position in the name of housing affordability.

The basic problem in social housing: the shortfall in supply

For half a century New South Wales had a growing social housing system. Figure 19 charts the period of social housing's growth, and beyond.

Figure 19. Social housing in New South Wales.

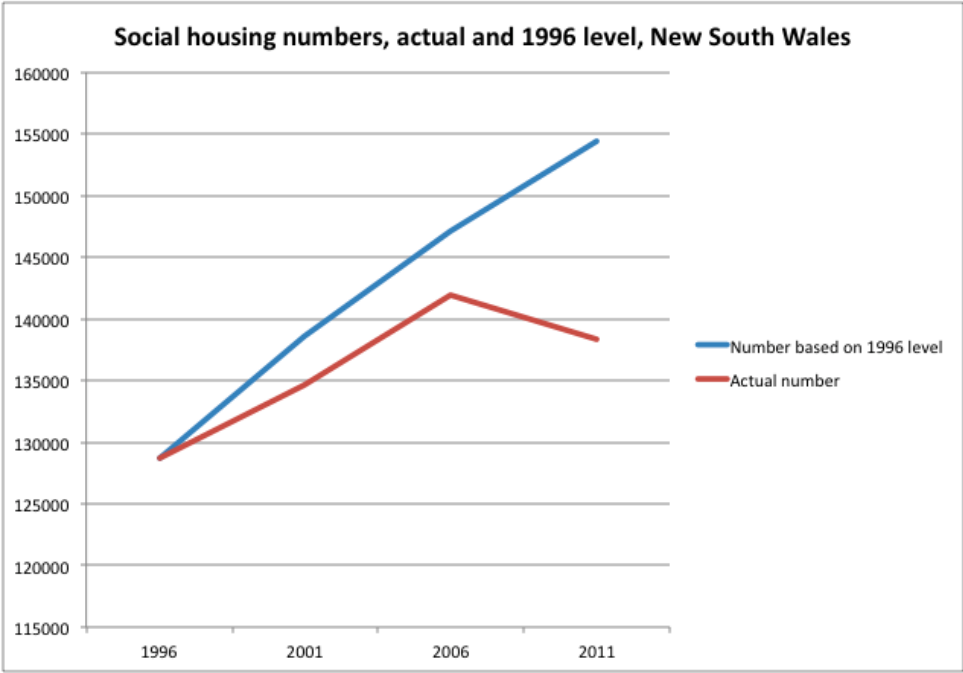


Source: Auditor-General (2013).

If anything, Figure 19 understates the contribution made by the State housing authority (at the time, the NSW Housing Commission) to the provision of affordable housing in the post-war period, because it does not include the very large number of social housing properties sold to eligible persons. From 1956-1969, more than 32 000 dwellings built by the Housing Commission were sold – about one-third of all the dwellings it had built to the latter date. Even so, the rate of building was such that in the early 1970s, most social housing allocations were to newly built dwellings (Jones, 1972).

However, over the past two decades, in the face of growing need for housing assistance – from simple population growth, and from growing affordability problems in private rental – the supply of social housing in New South Wales has not kept up. From the mid-1990s, growth stopped and for a decade and a half the stock remained about constant in absolute terms – which is to say, it declined relative to the growth in the number of households. At 2011, there were 16 000 fewer social housing properties in New South Wales than there would have been had its 1996 level, relative to households, been maintained (Figure 20).

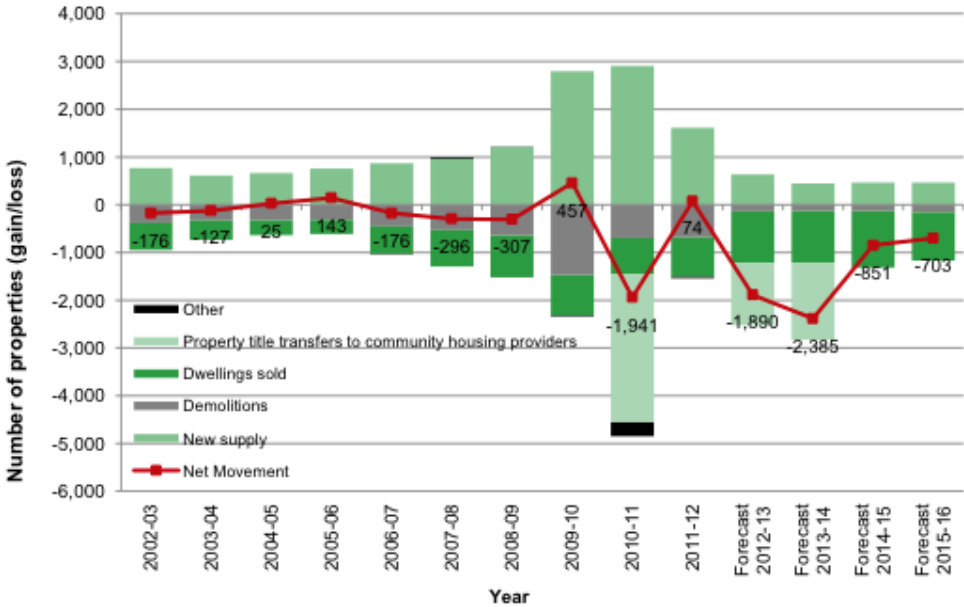
Figure 20. The relative decline of social housing, 1996-2011, New South Wales.



Source: ABS, Census, 1996-2011.

Over the last three years, the social housing stock owned by the NSW Land and Housing Corporation (LAHC) has declined absolutely, and LAHC forecasts that it will decline further in the years ahead (Figure 21).

Figure 21. Net movements in LAHC-owned social housing stock



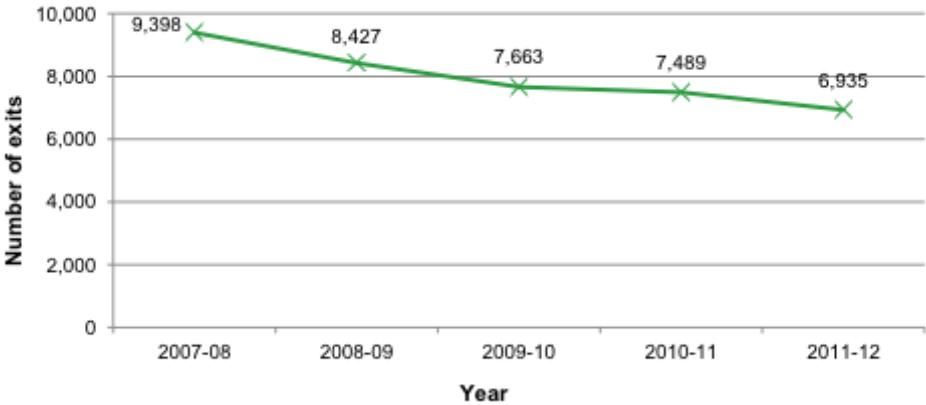
Source: Auditor-General (2013).

It is important to note that some of LAHC’s loss of stock is the result of a transfer of titles to community housing organisations. These properties are not lost to the social housing system as a whole, and it is anticipated that community housing

organisations will leverage the purchase of an additional 1 200 properties over 10 years – so, an average of 120 additional dwellings per year. We also note, however, that over the past decade, LAHC has sold, on average, about 500 dwellings per year (Auditor-General (2013), p 22-23).

Furthermore, in recent years, the turn-over of the public housing stock has also slowed, resulting in fewer opportunities for new allocations of existing social housing. (Figure 22).

Figure 22. Exits from public housing.

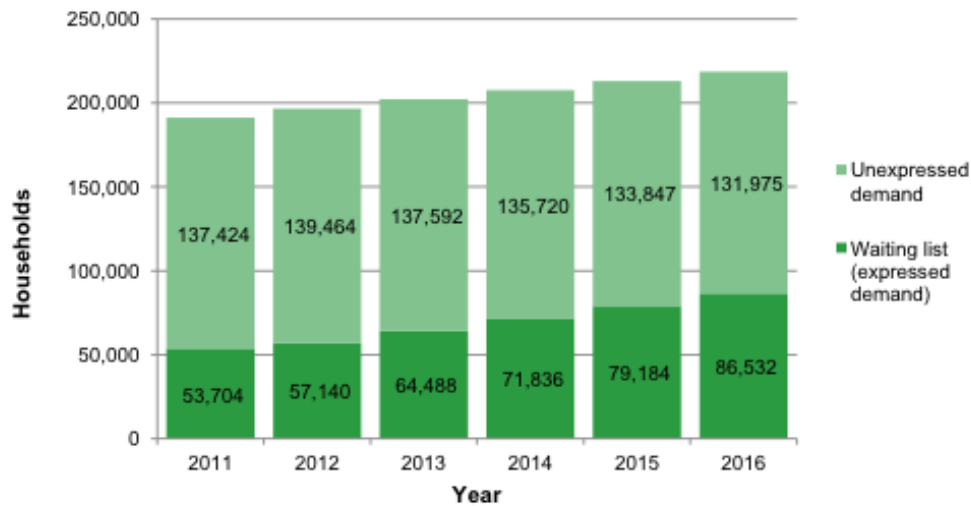


Source: Auditor-General (2013).

The current reduced state of the social housing system has effects for the persons who might seek assistance from it, and for the system itself.

The result for persons who need housing assistance is a social housing system that falls far short of meeting their total need. On Housing NSW’s estimate, reported by the Auditor-General, the social housing system currently meets only 44 per cent of housing need (being the ratio of households in social housing tenancies to households who are eligible for, but not housed in, social housing) (Figure 23). In coming years, this rate will fall further, as unmet need rises.

Figure 23. Unmet need for social housing.



Source: Auditor-General (2013).

We submit that this is a reasonable estimate of the scale of the shortfall; if anything, it may be regarded as conservative. There are approximately 290 000 low-income households in private rental in New South Wales³; as shown at Figure 15, most of these households are in housing stress, and the minority who are currently renting affordably have no assurance of security, and rightly worry that they may not find an affordable alternative home if they had to move.

For persons in need of housing assistance, the time spent waiting for social housing represents another dimension of the shortfall. Of Housing NSW's Sydney allocation zones, almost half indicate a wait time for non-priority applicants in excess of 10 years for all property types. Indeed, for all property types across all Sydney allocation zones – with the exception of three and four bedroom properties in Wingecarribee (total 360 properties) – the indicated wait time is in excess of five years (Figure 24).

³ TU estimate, based on ABS, Housing Occupancy and Costs (2011-2012).

Figure 24. Applicants, allocations and wait-times for public housing, 2013.

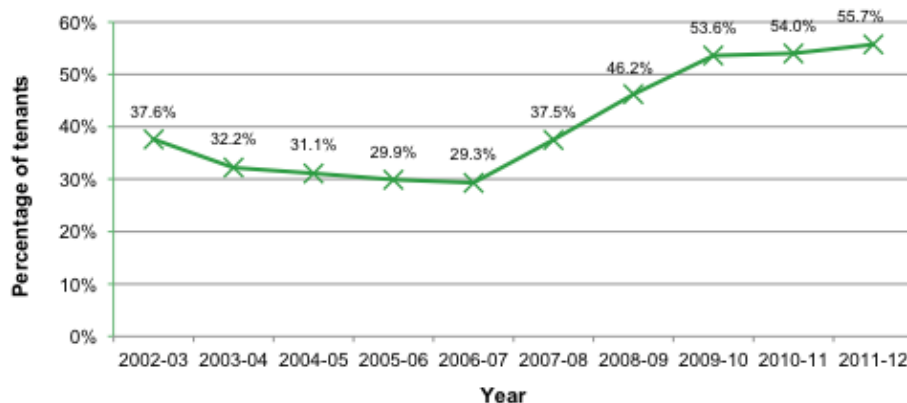
ALLOCATION ZONE	ALL SOCIAL HOUSING RESIDENTIAL PROPERTIES (as at 30 June 2013)					APPLICANTS HOUSED IN 12 MONTH PERIOD (as at 30 June 2013)			APPLICANTS ON HOUSING REGISTER (as at 30 June 2013)			EXPECTED WAITING TIME FOR GENERAL APPLICANTS ON THE HOUSING REGISTER			
	BEDROOMS					Priority	General	TOTAL	Priority	General	TOTAL	BEDROOM ENTITLEMENT			
	Studio/1	2	3	4+	Total							1	2	3	4
Sydney District															
CS3 LEICHHARDT/MARRICKVILLE	1,713	2,153	1,005	329	5,200	164	31	195	343	1037	1380				
CS6 CANTERBURY	380	836	367	116	1,699	39	25	64	75	892	967				
CS7 INNER WEST	1,031	1,075	425	101	2,360	72	33	105	164	1193	1357				
CS10 RIVERWOOD	688	911	528	43	2,170	30	78	108	10	458	468				
Sydney Total	3,812	4,703	2,325	589	11,429	305	167	472	592	3,580	4,172				
South Eastern Sydney District															
CS1 SYDNEY	2,945	3,530	1,063	211	7,749	454	83	537	493	1405	1898				
CS2 EASTERN SUBURBS	2,493	2,735	1,464	154	6,846	286	72	358	255	1347	1602				
CS8 SUTHERLAND	868	732	665	110	2,375	73	45	118	82	673	755				
CS9 ST GEORGE	922	1,075	583	115	2,695	77	22	99	161	1889	2050				
South Eastern Sydney Total	7,228	8,072	3,775	590	19,665	890	222	1,112	991	5,314	6,305				
Northern Sydney District															
CS4 NORTHERN SUBURBS	1,856	1,382	817	128	4,183	157	39	196	190	1327	1517				
CS5 NORTHERN BEACHES	1,100	511	298	52	1,961	92	9	101	186	654	840				
Northern Sydney Total	2,956	1,893	1,115	180	6,144	249	48	297	376	1,981	2,357				
South Western Sydney															
GW9 BANKSTOWN	2,200	2,381	2,013	424	7,018	103	172	275	122	2959	3081				
GW10 FAIRFIELD	1,243	1,290	2,585	459	5,577	113	33	146	177	3988	4165				
GW11 LIVERPOOL	1,297	1,531	2,125	716	5,669	197	108	305	177	2685	2862				
GW12 CAMPBELLTOWN	505	811	4,563	870	6,749	127	162	289	87	1836	1923				
GW13 CAMDEN	117	61	177	65	420	8	6	14	3	144	147				
GW14 WOLLONDILLY	50	26	102	13	191	9	7	16	17	73	90				
GW15 WINGECARRIBEE	68	185	307	60	620	23	9	32	17	238	255				
South Western Sydney Total	5,480	6,285	11,872	2,607	26,244	580	497	1,077	600	11,923	12,523				
Western Sydney															
GW1 PARRAMATTA	1,485	2,086	1,273	279	5,123	193	112	305	189	2473	2662				
GW2 AUBURN/GRANVILLE	914	1,126	675	112	2,827	75	59	134	90	1393	1483				
GW3 BLACKTOWN	936	1,000	2,225	394	4,555	151	43	194	154	1697	1851				
GW4 MT DRUITT	594	439	3,219	1,202	5,454	131	94	225	63	1370	1433				
GW8 HOLROYD	535	1,518	647	84	2,784	66	31	97	72	643	715				
Western Sydney Total	4,464	6,169	8,039	2,071	20,743	616	339	955	568	7,576	8,144				

	Up to 2 years
	2 to 5 years
	5 to 10 years
	10+ years
	No properties

Source: Housing NSW (2013b).

In terms of the social housing system itself, the reduced state of the system generates further compounding problems and an unsustainable spiral of decline. As the Auditor-General observes, the shortfall in the supply of social housing has led to an increase in the proportion of allocations made to the most needy households, particularly those eligible on a priority basis (Figure 25 – see also Figure 24, which shows that some zones have priority allocation rates much higher than the average).

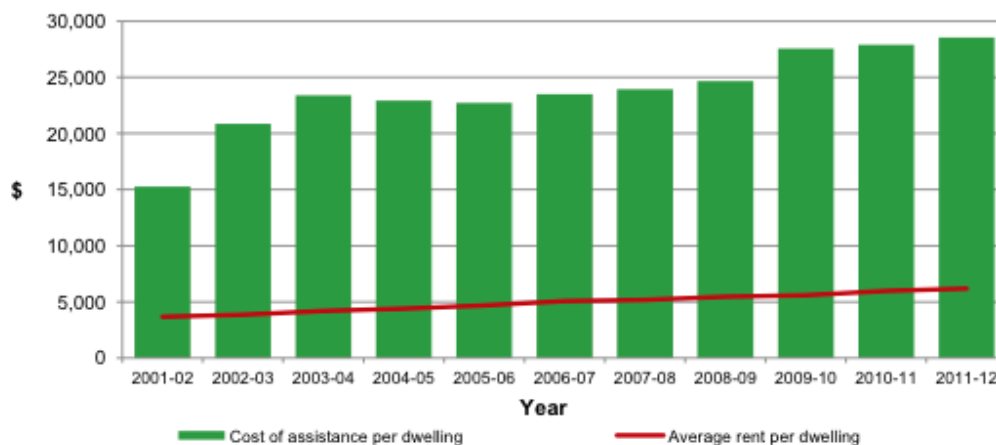
Figure 25. Allocations of public housing to priority applicants.



Source: Auditor-General (2013). We note that the decline in the rate of priority allocations from 2002-03 to 2006-07 occurred at a time when the income eligibility criteria were tightening, so allocations to the most needy were probably rising, even as ‘priority’ allocations were declining. Since 2007, the income eligibility criteria have risen approximately in line with average weekly earnings – but allocations have increasingly been on a priority basis.

The problem for the social housing system is that most of these households have very low incomes and therefore pay low rents. Social housing rental revenues have reduced, while costs have increased (even when leaving aside the increased cost of purchasing new dwellings) (Figure 26).

Figure 26. Public housing costs versus rent revenues.



Source: Auditor-General (2013).

To manage the gap between costs and revenues, LAHC has been reducing its spending on repairs and maintenance – we discuss this further below – and selling properties (Auditor-General, 2013: 22). This in turns reduces the stock of social housing, leads to further targeting of allocations, reduced revenues, higher costs, more sales, reduced stock, and so on. The Auditor-General states that ‘this approach is not financially sustainable.’ We agree.

In recent years, hopes for the social housing system’s growth and greater sustainability have come to lie with community housing. We consider that

community housing providers, by adding diversity to the social housing system, foster innovation and improvement in service delivery, and we support their growth.

But we also think it is important to be clear that community housing providers are no better placed than the LAHC to access finance for additional supply – except to the extent that governments impose upon themselves constraints as to the financing of State housing authorities. The State Government could choose to grant LAHC additional funds, and if necessary borrow for that purpose; the Federal Government could choose to grant funds without borrowing. Community housing providers do not have access to income or tax advantages that the LAHC does not – except to the extent that governments impose the differential treatment. Community housing organisations’ access to Commonwealth Rent Assistance is really an operating subsidy that the Federal Government has chosen to grant to those providers and not to the State housing authorities (and to deliver it via the scenic route of Centrelink payments and individual tenants’ bank accounts). Governments can make their financing of social housing as intricate (housing bonds, social benefit bonds) or as straightforward (grants) as they choose. They could also make it more effective, by taking action to restrain speculation and house price inflation, as discussed above.

We recommend that all Australian governments commit to financing, in much enhanced and clearer terms, the growth and ongoing operations of the social housing system. We support the recommendation of National Shelter that Australian governments establish a social housing growth fund for the delivery of an additional 200 000 dwellings in social housing and affordable housing programs by 2021. The amount of the growth fund would be \$2.5 billion per year above existing funding arrangements, and allocated to States and Territories on a per capita basis. There should also be a reformed operating subsidy for existing social housing, allocated to States and Territories on a ‘per dwelling’ basis.

Recommendation

That the NSW State Government and other Australian governments commit, under the National Affordable Housing Agreement, to the establishment of:

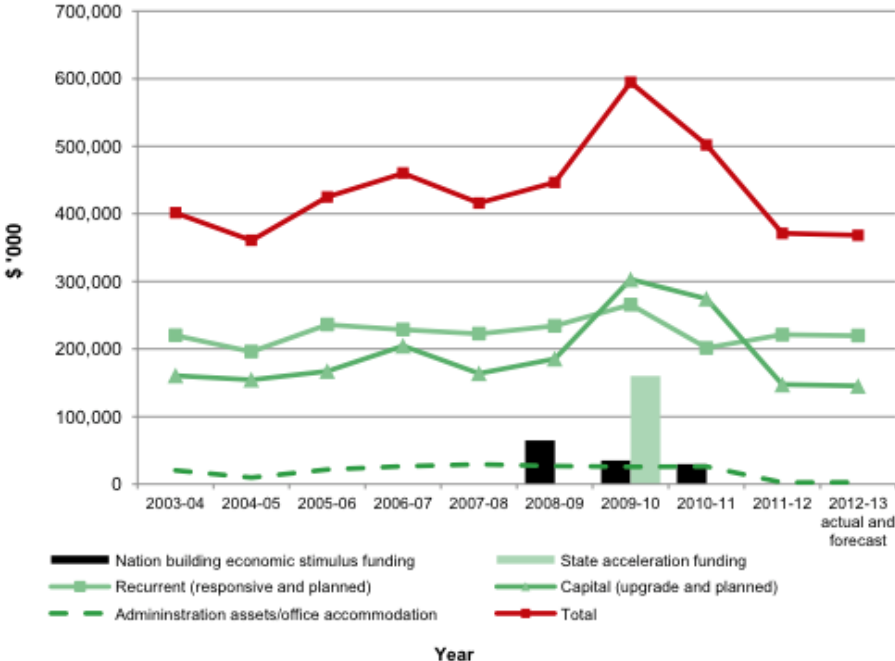
- a social housing growth fund, in the amount \$2.5 billion per year above existing funding arrangements, for the delivery of an additional 200 000 dwellings in social housing and affordable housing programs by 2021, to be allocated to States and Territories on a per capita basis;
- a reformed operating subsidy for existing social housing, allocated to States and Territories on a ‘per dwelling’ basis.

Defective properties and poor maintenance

The Select Committee inquires specifically about maintenance in social housing.

The Auditor General observes that while the need for repairs and maintenance of ageing public housing properties is increasing, expenditure on repairs and maintenance is currently in decline (Figure 27).

Figure 27. Total annual expenditure for the LAHC housing portfolio.



Source: Auditor-General (2013).

Social housing tenants and tenants advocates have observed this decline too. It is evident in the unsatisfactory condition of many social housing properties, recorded in the case studies at <getitfixednsw.com>, and in the Report on Government Services (2014), which found that only 67.8 per cent of public housing properties in New South Wales were in ‘acceptable condition’.⁴

Under the *Residential Tenancies Act 2010*, all landlords are obliged to provide and maintain properties according to an absolute standard, and a relative standard. The absolute standard is that the premises are provided in a state of cleanliness and fit for habitation (section 52(1)); the relative standard is that the premises are provided and maintained in a reasonable state of repair, having regard to the age, rent payable for, and prospective life of the premises (section 63(1)). The operation of the two standards together means, for example, that where the rent payable is a peppercorn, the absolute standard – and not a lower standard – will still apply, but where the rent is very high, the standard of repair will be much higher than merely ‘habitable’.

LAHC’s own interpretation of its obligation is that it must maintain properties in a ‘clean, safe and habitable’ condition. LAHC also considers that it may classify work with no urgent implications for the health or safety of occupants as ‘non-urgent’, and considers any need for a ‘non-urgent’ repair as a low priority. Repairs that do have implications for the health or safety of occupants are regarded as a higher priority, depending on the implication. In any event, repairs are restricted to restoring

⁴ Productivity Commission (2014), Table 16A.15. ‘A house is assessed as being of an acceptable standard if it has at least four working facilities (for washing people, for washing clothes/bedding, for storing/preparing food, and sewerage) and not more than two major structural problems’.

properties to the 'clean, safe and habitable' standard. The tendency is for LAHC to repair the symptoms, rather than address the underlying cause of a problem.

In taking this approach, LAHC operates to a standard that is closer to the absolute standard than anything higher, and often fails to meet even that, placing it in breach of its contractual obligations to tenants. It also means that LAHC does not extend, and may reduce, the prospective life of its properties.

Non-solutions: trying to administer a way out of the shortfall

The Auditor-General recommends that the NSW Government ‘develop a clear direction for a sustainable social housing sector that can function *within the available funding....*’ (2013: p 5; emphasis added).

We submit that the social housing sector cannot be made sustainable, or function to meet a greater proportion of need, without additional funding for additional supply. We submit with respect that to try to make social housing sustainable within the funding presently made available is to try to administer a way out of the supply shortfall, and will not work.

Indeed, Housing NSW has been trying to administer a way out of the shortfall for years. The tightening of eligibility and the shift to priority allocations are administrative responses to the shortfall and, as discussed, these responses have contributed to the system’s spiral of decline.

Below we will consider a range of other administrative measures taken by Housing NSW with the intention of more efficiently using the declining stock of social housing to maximise opportunities for allocations to those most in need. The claim to efficiency is, however, dubious at best. The constraints of administering a declining system mean that there is little scope for these sorts of measures to do any good, and considerable scope for administrative complexity, hardship and perverse outcomes.

In particular, two of these measures – higher rents for tenants on ‘moderate incomes’, and reviews of tenancies subject to continuing eligibility – which attempt to free up housing by removing higher income tenants from the system have failed disastrously, discouraging tenants from earning an income and reducing opportunities for allocations. Tenants, applicants and the social housing system have been made worse off by these policies. We begin with them.

Higher rent rates for moderate income earners

Housing NSW introduced its policy of higher rent rates for tenants on so-called ‘moderate incomes’ in 2005. The policy revised the Housing NSW’s system of income-related rents, which provides rebates to eligible tenants so that the rent the tenant pays is about 25 per cent of the tenant’s household income. Under the revised system, tenants whose household income is above the ‘moderate income threshold’ pay, on a sliding scale, 25-30 per cent of their household income. Tenants whose household income is above a second threshold (the ‘30 per cent threshold’, at the top of the sliding scale) pay 30 per cent (Figure 28).

Figure 28. Thresholds for moderate income rent rates, from 18 March 2013.

Household	Moderate income threshold	30 per cent threshold	Ineligible for rental rebate
First adult	\$710 pw	\$888 pw	\$1 325 pw
Additional adult	+ \$190 pw	+ \$238 pw	+ \$350 pw
First child	+ \$140 pw	+ \$175 pw	+ \$265 pw

Additional child	+ \$95 pw	+ \$119 pw	+ \$175 pw
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Source: Housing NSW, 'Tenancy Charges and Account Management Policy Supplement'.

It is important to note that the 25-30 per cent sliding rate applies not just to income in the moderate income range (nor does the 30 per cent rate apply only to income above the 30 per cent threshold). These rates are not marginal rates; they apply to that part of a tenant's household income below the range too.

This means that earning additional amounts of income in the moderate income range comes at a large cost in terms of additional rent due. If the 25-30 per cent sliding rate was expressed as a marginal rate, it would be, on average, 50 per cent over the moderate income range (45-55 per cent); in other words, on average 50 cents in every additional dollar earned by a tenant in the moderate income range would go to Housing NSW in rent. When it is considered that each additional dollar will also be subject to income tax and other costs associated with work (for example, childcare), a tenant could easily end up with little reward, or even a loss of income, from working. For example, a single person earning \$800 per week will be in the middle of the moderate income range and the 32.5 per cent income tax bracket, and therefore face an effective marginal tax rate of 82.5 per cent (from rent and income tax alone). Such a high effective marginal tax rate is a powerful work disincentive.

The moderate income thresholds are set higher than the income thresholds at which most Centrelink payments are reduced to zero, so the effective marginal tax rates generated by Centrelink payment reduction will not stack with those generated by the moderate income rent rates. However, while they do not stack, they do sit side-by-side, so the effect is that public housing tenants face very high effective marginal tax rates for an extended range of incomes – longer than other persons. Many part-time jobs pay incomes in this range, and may present opportunities for earning additional amounts; however, public housing tenants would receive little reward from doing this work.

The intention of this policy was that public housing tenants with opportunities to do such work would move out of public housing and thereby enjoy a lower effective marginal tax rate. This is utterly unrealistic, as it does not take account of the higher cost of private rental and the relative security of public housing. More realistic is that a public housing tenant – reluctantly – will not take up those work opportunities. That this has been the result is indicated by the results of the policy of reviews as to eligibility, discussed below.

Reviews as to continuing eligibility

In 2005, when it introduced higher rents for tenants on moderate incomes, Housing NSW also introduced a policy of signing up new public housing tenants to fixed term agreements subject to review towards the end of their fixed terms. Each review considers the tenant's household income and their continuing eligibility to remain in public housing. Where a tenant's household income is above the relevant income

threshold (the 30 per cent threshold under the moderate income rents policy – see Figure 28 – with additional adjustments made for people with disability), Housing NSW will proceed to terminate the tenancy.

In fact, very few public housing tenants are found to be ineligible at review: less than two per cent, according to figures provided by Housing NSW to the Auditor-General.⁵

This is not because the thresholds are set too high. On the contrary, the incomes at which tenants become ineligible are insufficient to afford the median rent for appropriately sized dwellings in New South Wales overall. Unaffordability is especially acute in inner and middle Sydney (Figure 29).

Figure 29. Unaffordability of private rental dwellings at thresholds for loss of eligibility for various households.

	One bedroom dwelling			Two bedroom dwelling			Three bedroom dwelling		
	Single	Single (disab)	Couple	Single + child	Single + two children	Couple + child	Single + two children	Couple + two children	Couple + two adults (disab)
Sydney	Red	Red	Red	Red	Red	Red	Dark Red	Dark Red	Dark Red
Inner	Dark Red	Dark Red	Dark Red	Dark Red	Dark Red	Dark Red	Dark Red	Dark Red	Dark Red
Middle	Red	Red	Red	Red	Red	Red	Dark Red	Dark Red	Dark Red
Outer	Red	White	White	Red	Red	White	Red	Red	Red
NSW	Red	Red	Red	Red	Red	Red	Red	Red	White

Key

Median rent ≤ 30 per cent of threshold (affordable)	White
Median rent > 30 per cent of threshold (housing stress)	Red
Median rent > 50 per cent of threshold (housing crisis)	Dark Red

Source: TU analysis based on Housing NSW, ‘Tenancy Policy Supplement’; Housing NSW (2014).

This at least partly explains why so few tenants are found to be ineligible: faced with the prospect of losing their homes and renting unaffordably and insecurely in the private market, tenants who might otherwise have increased their income through work have not done so, and have stayed poor in order to stay housed.

We have spoken with public housing tenants who have declined – in all cases, reluctantly – opportunities of work because of this prospect. We have also spoken with public housing tenants who have had to contemplate other undesired courses of action – such as asking a child who has commenced paid work to move out – so that they will pass the review and remain housed.

⁵ In 2008, the TU was advised by Housing NSW that of tenants reviewed to date, just 0.8 per cent (that is, 28 individual tenants) were found ineligible.

We note that the operation of the policies for reviews as to continuing eligibility and higher rents for moderate-income tenants has coincided with the reduction of turnover in public housing tenancies (Figure 22, above). We submit that the policies have contributed to the reduction, and so operated to the disadvantage of applicants waiting for social housing too.

We recommend the immediate abolition of the moderate income rent rates and reviews as to continuing eligibility. This would cost Housing NSW little (it may even increase rent revenues) and would improve the rewards of work for public housing tenants – and, as tenants become more secure in employment, they may be more inclined to move out into the private market and create opportunities for new social housing allocations.

Recommendation.

Abolish Housing NSW's policies for higher rent rates for moderate-income tenants, and reviews as to continuing eligibility.

Succession and recognition as a tenant

In 2013 Housing NSW revised its policy on 'succession of tenancy', which allowed, subject to certain conditions, an occupant in a public housing tenant's household to be granted a tenancy following the death or permanent departure of the tenant. Those conditions included that the occupant, if other than the tenant's spouse, must have been an approved additional occupant for not less than two years, and eligible for social housing according to the usual criteria.

The revised policy makes the conditions more restrictive, and changes the application process.

Under the changed conditions, the occupant – including an occupant who is the tenant's spouse, but not an occupant aged 55 years and over, or an Aboriginal occupant – must have been an approved additional occupant for not less than two years, and eligible for social housing according to the priority criteria. Occupants who do not meet the conditions will, after an interim period, have to leave the premises – even if they are eligible for social housing.

The priority criteria are tighter than the usual criteria – the applicant must also show that they have an 'urgent need for housing' – and conceptually a poor fit for the circumstances of this sort of application: the priority criteria are designed to identify a person in a bad housing situation and get them out of it, whereas an application for succession or recognition as a tenant is for the purpose of staying in one's current housing.

Despite the conceptual difficulty of applying the priority criteria, we are concerned that some occupants will, when faced with the prospect of losing their homes, do their hardest to satisfy the criteria, and convince Housing NSW – and themselves – that they are too poor and too sick to cope in the private market. The stated intention

of the changes was to 'discourage dependence'; we submit that it may have the opposite effect.

The changes to the application process appear at first glance to be benign: in particular, the changes provide for an interim six-month fixed term tenancy for all occupants who apply within six weeks of the departure of the tenant (occupants who apply outside the six-week period are eligible only for a three-month fixed term agreement, and not succession to a longer term public housing tenancy). This creates, however, a Catch 22: an occupant who has a six-month fixed term tenancy ahead of them cannot have an 'urgent housing need', per the priority criteria, and so cannot be eligible to be recognised as a tenant.

This absurdity is not merely hypothetical. We are aware of one application for recognition as a tenant that has been declined on this basis. The case is presented below.

Case study: recognition as a tenant.

O had lived in the relevant public housing dwelling her whole life, and had cared for her father, the tenant, until his death. When she applied for recognition as a tenant, O was unemployed, depressed and included in her household a sister, who had a disability. O was eligible for social housing. Housing NSW granted O a six-month fixed term interim tenancy, then declined her application for a longer tenancy because she could not demonstrate an urgent need for housing – specifically because of the six-month interim tenancy. This decision was upheld on review by both Housing NSW and the Housing Appeals Committee.

Over the course of the six months, O and her sister applied unsuccessfully for numerous private market tenancies and, as the end of the interim tenancy approached, faced the prospect of homelessness. O applied for priority housing: this application was approved: now she had an urgent need for housing. However, under the express terms of the revised policy, O would still have to vacate the property, despite now being approved for priority housing.

By coincidence, in the week O was due to vacate another public housing dwelling in the same complex became vacant. Rather than require O to vacate and then house her again across the walkway, Housing NSW allowed O to be allocated, on a priority basis, to the dwelling she had always occupied.

Despite the sensible problem-solving at the end of O's case, it should not be regarded as a satisfactory outcome: the opportunity for it came by sheer luck, and O suffered a great deal of stress over the period. We expect that in some other cases, Housing NSW officers may try other ways of working around the Catch 22 in the policy. It remains, however, a policy of undue harshness that generates administrative complexity and may perversely affect behaviour. None of this is 'efficient'. The previous policy was simpler, fairer and represented an appropriate balancing of priorities in allocations. It should be restored, with provision made for a six-month interim tenancy for occupants who are ineligible.

Recommendation

Restore the previous policy on succession, and make provision for six-month interim tenancies for occupants who are not eligible.

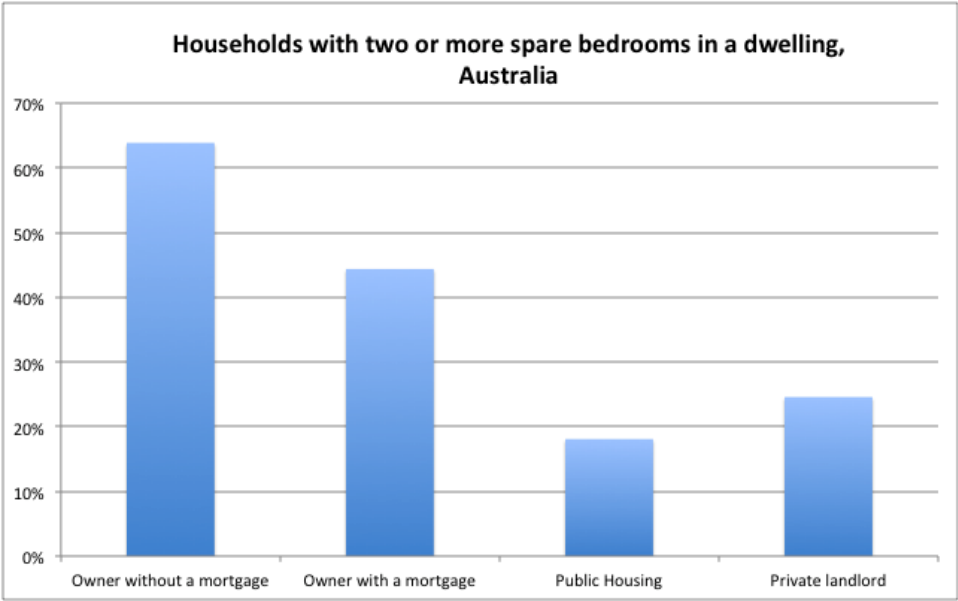
Management of 'underoccupancy' and the vacant bedrooms charge

In June last year, the State Government announced that it would introduce a charge for public housing tenants with vacant bedrooms. The announcement anticipated the Auditor-General's report, which discussed prominently the 'underoccupancy' of public housing and recommended that Housing NSW takes measures to address it. From September, Housing NSW has been asking some tenants who have more than their 'entitlement' of bedrooms to agree to consider offers of transfers to smaller

properties and charging those who refuse the request an additional \$20 (for single tenants) or \$30 per week.

We submit that there is relatively little scope for measures against underoccupancy in public housing. Of all the tenures, public housing is the most 'efficient', in terms of utilisation of rooms (Figure 30). The rate of underoccupancy is highest in owner-occupied housing, especially amongst owner-occupiers without a mortgage.

Figure 30. Underoccupancy by tenure.



Source: ABS, Housing Mobility and Conditions.

It should also be acknowledged that underoccupancy in public housing in New South Wales is less common than 'overoccupancy' – that is, households living in dwellings that are smaller than they are entitled to (Figure 31).

Figure 31. Underoccupancy and overoccupancy.

		Size of dwelling required by tenants			
		Two bedrooms	Three bedrooms	Four bedrooms	Five or more bedrooms
Size of dwelling tenants are living in	One or two bedrooms*	52,772	6,230	700	101
	Three bedrooms	13,460	13,516	6,243	1,681
	Four bedrooms	1,155	1,457	1,927	1,686
	Five or more bedrooms	9	36	63	190

Key: [] overcrowded dwellings [] under-occupied dwellings [] dwelling size matches tenant requirements.

Source: Auditor-General (2013).

On close analysis, Figure 31 shows that even if Housing NSW were able to move underoccupying and overoccupying households to better fitting accommodation,

without regard to location, it would still have both underoccupation and overoccupation.

This is because, as observed by the Auditor-General, public housing's clientele has changed relative to the housing stock. This is not surprising, as growth of the stock would have presented opportunities to change it, but the stock has not been allowed to grow. The trend to increased priority applications has compounded the difficulty in matching households precisely to dwellings. Housing NSW could probably achieve more precise matches – at the cost of leaving dwellings vacant longer.

We acknowledge that underoccupancy in public housing raises a question of equity, particularly considering the system of income-related rents. Indeed, the question arises wherever there are differences in the level of amenity provided by social housing dwellings, whether because of size, location, or quality – that is to say, the question arises everywhere in the social housing system. We recommend that Housing NSW conduct a comprehensive review of the current rent rebate system and income-related rents, in consultation with tenants and community sector organisations, to consider whether other rent-setting methods might be more equitable, while still achieving affordability. The current vacant bedrooms charge should be suspended, pending the review.

Recommendation.

That Housing NSW suspend the vacant bedrooms charge pending a review of the rent rebate system and income-related rents, including a wide and thorough consultation with tenants and the community sector.

Summary of recommendations

- That the NSW State Government and other Australian governments commit to the necessity of restraining speculation in housing, particularly by:
 - reforming the tax treatment of negative gearing, to reduce the deductability of losses (either by limiting losses to income from the same asset class, or by a discount applied to all non-business asset incomes);
 - reforming capital gains tax, to remove or reduce the discount applied to capital gains, and to apply capital gains tax to high-value owner-occupied property.
 - reforming State land tax, to broaden the base to include owner-occupied housing, and abolish stamp duties.
- That New South Wales residential tenancies legislation be reformed to provide:
 - a fairer process where landlords seek termination, so that landlords may give termination notices on reasonable grounds only, and the Tribunal has a discretion to decline termination if appropriate in the circumstances of the case;
 - a fairer process for determining excessive rent increases, so that landlords bear the onus of proof where an increase is above the CPI;
 - greater freedom of choice, so that tenancy agreements cannot unreasonably restrict tenants keeping pets, making minor alterations and adding members to their households;
 - occupancy agreements for all renters not otherwise covered by residential tenancies legislation.
- That the NSW State Government and other Australian governments commit, under the National Affordable Housing Agreement, to the establishment of:
 - a social housing growth fund, in the amount \$2.5 billion per year above existing funding arrangements, for the delivery of an additional 200 000 dwellings in social housing and affordable housing programs by 2021, to be allocated to States and Territories on a per capita basis;
 - a reformed operating subsidy for existing social housing, allocated to States and Territories on a 'per dwelling' basis.
- That Housing NSW abolish its policies for higher rent rates for moderate-income tenants and reviews as to continuing eligibility.
- That Housing NSW restore the previous policy on succession, and make provision for six-month interim tenancies for occupants who are not eligible.
- That Housing NSW suspend the vacant bedrooms charge pending a review of the rent rebate system and income-related rents, including a wide and thorough consultation with tenants and the community sector.

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