

A Housing Strategy for NSW: NSW Department of Planning, Industry and Environment

Tenants' Union of NSW Submission, August 2020

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 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.

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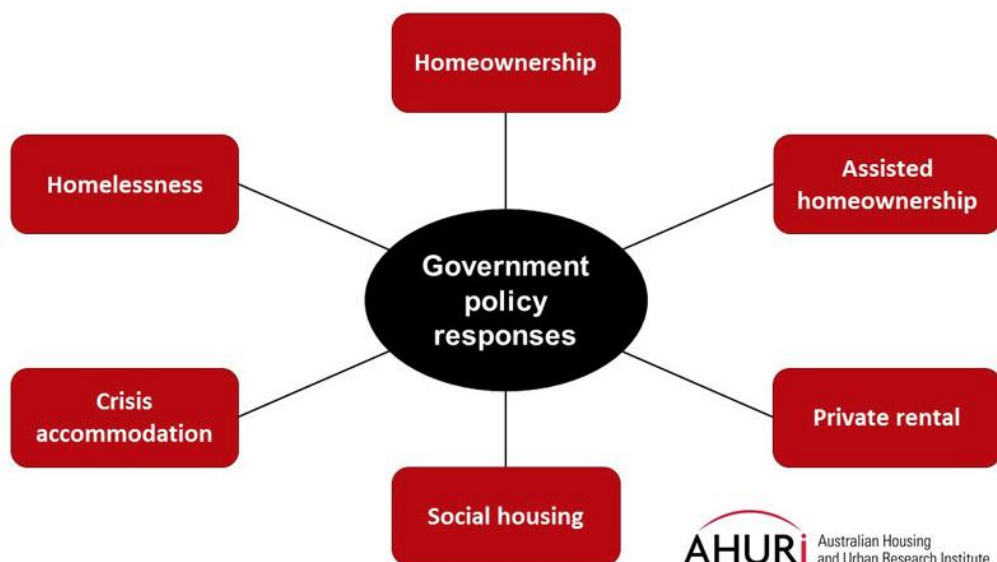
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About this submission

A focus on people renting their homes

We welcome the opportunity to provide comment and insight to help shape a long term Housing Plan for NSW that will deliver secure, affordable, and liveable housing for everyone, including renters. This submission refers to themes and questions raised in the Discussion Paper. However, there are crucial elements of a comprehensive housing strategy that the four themes do not give adequate weight to and this submission highlights them. Our submission outlines what the key priorities are for renters, a significant stakeholder cohort making up 33.6% of NSW households.¹

It is necessary that a comprehensive, long-term strategy reflects the reality of people's housing experiences and not consider housing as a linear continuum with home ownership as the end of a progression. As reflected by AHURI, households do not transition through the different parts of the continuum in a linear manner, but move between them depending on their life circumstances and housing needs at a particular point in time.²



In NSW, as across Australia, more people are renting and they are renting for longer. The 2016 Census found a significant increase in the number of people renting in New South Wales, including a shift away from home ownership towards renting - the renting

¹ ABS *Housing Occupancy and Costs, 2017-18*, 41300.0 Table 12.5 *Household Estimates, Selected household characteristics, States and territories, 2017-18*, accessed 27 July 2020

² AHURI Brief (2017) *Understanding the housing continuum*, 21 November 2017, <https://www.ahuri.edu.au/policy/ahuri-briefs/understanding-the-housing-continuum>, accessed 29 July 2020

population increased from 30.1% in 2011 to 31.8% in 2016. There were 826,922 renter households at the 2016 Census, 83,870 more than there were in 2011. This is an increase almost double that identified between 2006 and 2011. The current ABS estimate for 2017-18 of 983,237 (2,603,530 persons) indicates this trend is continuing.

A 20 year NSW Housing Strategy that hopes to deliver security, affordability, liveability, resilience, accessibility and diversity of housing, must take into account the experience of people who rent their homes. Delivering these outcomes for all people and communities across NSW is not solely or even primarily a question of supply, but requires explicit commitments in the NSW Housing Strategy, and corresponding targets in relevant state agencies' action plans on:

- necessary reform of current legislation including tenancy, tax and planning laws,
- investment in public and community housing as essential infrastructure required to ensure provision of housing as an essential service, and
- the adequate resourcing of advocacy and supports for renters.

Summary of recommendations

1. Housing that is secure

Security of tenure

1.1. Reform current NSW tenancy law to remove no grounds eviction provisions

Securing a home

1.2 Reform current NSW tenancy law to introduce regulation of the application process for private rental housing to better protect a person's access to housing through:

1.2.1 a requirement for increased transparency regarding the decision-making process for applicants, and

1.2.2 a standardised rental application form that removes the ability of the landlord to seek or require unnecessary information.

1.3 Review of tenancy and discrimination law further to consider the appropriate interaction of renting and accommodation laws, regulations and rules (including community rules or by-laws as allowed under the *Residential (Land Lease) Communities Act 2013* and *Strata Schemes Management Act 2015*) and Australian Federal and NSW anti-discrimination laws.

Protection for all renters

1.4 Expand coverage and strengthen current tenancy laws to ensure adequate and accessible consumer protections are in place for all people renting their home, including 'marginal renters' such as renters living in boarding houses, and lodging and sharing arrangements, many of whom are excluded from protection under current legislation.

Ageing in Place

1.5 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.

2. Housing that is affordable

Investment in public and community housing

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

2.2 Review funding arrangements, including rent and eligibility processes, for public and community housing to ensure a sustainable and valued system.

Land tax reform

2.3 Reform and expand land tax in line with the following principles – broadening of the base to include all residential land, with only limited exemptions; reforming of the rates structure; and replacing other taxes.

Requirements and compliance within the NSW Government Affordable Housing SEPP

2.4 Reconsider the requirements and available compliance and enforcement mechanisms of the Affordable Housing SEPP, specifically to facilitate affordable rent setting requirements where exemptions on the basis of affordability have been provided.

3. Housing that is liveable

Improving the energy efficiency of rental housing stock

3.1 Immediately introduce minimum energy efficiency standards into NSW tenancy law in advance of the COAG Energy Council mandated schedule for tenancy law reform.

3.2 Support the transition to and compliance with introduced minimum energy efficiency standards in private rental housing through grants to landlords to subsidise the upgrade of poor performing rental properties.

Invest in public and community housing

3.3 Work closely with and match funds with the Federal Government to repair old social housing stock, including retrofitting public housing and Aboriginal housing properties to bring them up to minimum energy efficiency standards

3.4 Ensure new public and community housing stock demonstrates best practice design in relation to safety, amenity, energy efficiency, and accessibility delivering well above minimum standards required in Building Code of Australia (BCA) or Australian standards.

4. Autonomy for people who rent their home

Recognise renting should not be a 'second-class' housing experience

4.1 Ensure the NSW Housing Strategy and its subsequent aims, policies and outcomes include tenure neutrality in relation to housing experience and autonomy, as well as financial aspects.

Address renters' lack of autonomy in their rental homes

4.2 Ensure renters are able to appropriately act on personal decisions about their home and living arrangements, including specific concerns relating to pets and family.

4.2.1. Reform current tenancy law to prohibit terms in a residential tenancy agreement that restrict the keeping of companion animals, except where the restriction reflects another law.

4.2.2. Reform current tenancy law to provide that the maximum number of residents set out in the agreement must be reasonable, and not used against a partner or child.

4.3 For renters living in strata premises, develop and extend on mechanisms allowing renters greater participation in the management of strata schemes through improved information and access to community decision-making processes.

Involve public and community housing residents in decisions about their housing

4.4 Ensure public and community housing providers demonstrate a systematic approach to residents' involvement and empowerment, including providing support and training for renters in public and community housing to participate in conversations and decision-making processes that affect their housing and community.

4.5 Ensure and resource, especially in relation to community housing providers, a clear role for tenant representative organisations in governance.

4.6 Ensure agencies commit to and implement a set of clear principles in line with those set out in [A Compact for Renewal](#), when undertaking urban renewal in public and community housing to guide involvement and engagement with residents of public and community housing affected by the renewal.

5. Advocacy and support for renters

Adequately resource appropriate and accessible support

5.1 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.

5.2 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 Aboriginal and Torres Strait Islander renters, renters from culturally and linguistically diverse communities, older renters and renters with a disability.

5.3 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.

6. A strategy responsive to crises

6.1 Ensure the NSW Housing Strategy, and specifically NSW tenancy laws, provides a responsive legislative framework that can account for and adapt quickly in the event of a health, economic or natural disaster crisis.

7. Monitoring and accountability

7.1 Establish clear targets and metrics across the short, medium and long term for outcomes that address current failures in relation to security, affordability, liveability, amenity, accessibility, and diversity of housing, including specifically in relation to rental housing

7.2 Provide transparent evaluation mechanisms for monitoring and measuring outcomes, and share available relevant data regarding outcomes

7.3 Establish a landlord registration scheme to provide transparency, accountability and data for our renting system. A registration scheme ensures homes are provided to a standard that modern Australian communities expect and that service providers are in a position to meet both their contractual and societal obligations.

7.4 Within the current registration scheme for Residential Land Lease Communities consider how standards relating to an operators' professional conduct and practice may be more closely tied to their ongoing provision of service.

8. Further engagement necessary

8.1 Commit to further consultation and co-design of the NSW Housing Strategy with the community and community sector, including reviewing the first draft and providing ongoing feedback.

Housing that is secure

While the Discussion Paper clearly states an intended aim of the Strategy is to ensure all households have access to secure and stable housing³ and includes further references to the importance of it, it is disappointing that this is not more clearly articulated in terms of how this is to be achieved for all people living in NSW. The Discussion Paper seems to reflect the assumption that security is not an issue of concern for homeowners and purchasers, but rather an expectation of what their homes provide for them via ownership. However, over a third of NSW households are neither homeowners nor purchasers and do not experience security or stability. A Housing Strategy must acknowledge and address this significant inequity with clear goals and achievable targets.

Security of tenure

Moving house is universally recognised as one of the most stressful and disruptive life events and this is even more profound if the move is involuntary. The effect is then compounded for low income or vulnerable households. Recognising this, the Australian Productivity Commission recently recommended removing all no grounds or no reason eviction provisions from tenancy law as a necessary reform to improve the welfare of vulnerable private renters. It also recommended extending notice periods for all 'no fault' eviction provisions (including sale of property).⁴

The costs of involuntary residential mobility are far-reaching, over and above the transaction costs of moving, as recognised by the NSW Productivity Commission.⁵ They cite the OECD finding that for families with school-aged children educational performance can be affected and the risk of behavioural issues increases. More broadly, the disruption of social networks and relationships results in declining social capital. In terms of economic costs, the NSW Productivity Commission identified evictions as having a significant direct cost to the NSW economy. They cite NSW Treasury's estimate that the over 23,000 renting households forced to move each year results in total direct costs of \$116 million per annum, primarily due to the relocation costs incurred by renter.⁶

³ NSW Government (2020) *Discussion Paper: A Housing Strategy for NSW*, p65, <https://www.planning.nsw.gov.au/-/media/Files/DPE/Discussion-papers/Policy-and-legislation/Housing/A-Housing-Strategy-for-NSW-Discussion-Paper-2020-05-29.pdf>, accessed 23 June 2020

⁴ Australian Productivity Commission (2019) *Vulnerable Private Renters: Evidence and Options*, September 2019, p123, <https://www.pc.gov.au/research/completed/renters/private-renters.pdf>, accessed 23 June 2020

⁵ NSW Productivity Commission (2019) *Kickstarting the productivity conversation*, October 2019, p120, http://productivity.nsw.gov.au/sites/default/files/2019-10/0709-04_Productivity%20paper_Full%20version-Final-RRR_1.pdf, accessed 23 June 2020

⁶ NSW Productivity Commission (2019) *Kickstarting the productivity conversation*, p120

In relation to renters' experience in their homes, no grounds' eviction provisions in NSW tenancy law fundamentally undermine the security of the tenancy contract. A survey the Tenants' Union of 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. Renters' responses indicated many - close to two thirds of those surveyed - live in a constant state of anxiety about the security of their housing.⁷ This rose to close to three quarters of renters who had previously experienced a 'no grounds' eviction. Feeling secure about housing ensures renters can make 'home' in the places they live. That secure base allows renters to fully participate in their communities, in education and learning, in the workforce.

The Discussion Paper itself refers to a study that found that in the five years to 2018, nearly half of Greater Sydney renters experienced at least one involuntary move, and concluded that coupled with unanticipated moving costs and the need to provide upfront rental bonds, this can be a stressful and disruptive experience.⁸ It recognised that lack of stability can increase pressure on public and community housing and negatively impact personal and community wellbeing.

This lack of security and stability for renters and the subsequent effects on individuals, families and the community are well documented, understood and generally not disputed. In 2019 the Good Growth Compact developed by the NSW Government in partnership with the Good Growth Alliance recognised a key step required to deliver more diverse and secure housing for NSW was improved security of tenure for renters.⁹ Discussion at the summit leading to the Compact indicated reform of the *Residential Tenancies Act 2010* may be required. However the problem of security for renters continues to be overlooked in terms of policy and law development.

To the extent that the Discussion Paper addresses this question it seems to suggest long term leases as a solution.¹⁰ Reliance on mechanisms such as long fixed term rental agreements as a way to address housing insecurity has been contested by housing researchers and tenancy law experts for some time. They suggest the encouragement of long fixed term tenancies as the solution to the problem of security for renters is limited in scope and efficacy, and detracts from the need to address the broader issue. If there is a genuine desire to achieve stability and security in all housing in NSW it is crucial to look beyond these marginal measures. To achieve this policy must take into account all relevant elements including the structure of the Australian

⁷ Tenants' Union NSW and Marrickville Legal Centre (2019) *Lives Turned Upside Down – NSW renters' experience of 'no grounds' evictions*, p6, <https://files.tenants.org.au/policy/2019-Lives-turned-upside-down.pdf><https://files.tenants.org.au/policy/2019-Lives-turned-upside-down.pdf>, accessed 29 July 2020

⁸ NSW Government (2020) *Discussion Paper: A Housing Strategy for NSW*, p57

⁹ Department of Industry Publication (2019) *Good Growth Compact*, <https://www.planning.nsw.gov.au/-/media/Files/DPE/Other/About-us/Our-work/good-growth-compact-2019-12-19.pdf?la=en>, accessed 29 July 2020

¹⁰ NSW Government (2020) *Discussion Paper: A Housing Strategy for NSW*, p58, 65

rental housing sector, tenants' subjective experiences of security, and international experience. On doing this Chris Martin determined that "long fixed terms as currently conceived of (by the laws of New South Wales, Queensland and Victoria) are not useful for either landlord or tenants. Furthermore, recent law reform proposals to facilitate their greater use do not make them much more useful, and may be to the disadvantage of vulnerable tenants. The better approach is law reform to remove 'without grounds' terminations by landlords, and provide only for 'just grounds'".¹¹

Australian tenancy laws fare badly in a comparison of security of tenure internationally. Australia is one of the few OECD countries to have 'no grounds' eviction provisions in their tenancy laws.¹² Currently only the United Kingdom, New Zealand and some parts of the United States of America also allow 'no grounds' or no reason eviction. The United Kingdom and New Zealand are currently progressing plans to remove these provisions.

NSW is now also falling behind other Australian states and territories, who are introducing or currently seriously considering reform to remove 'no grounds' eviction provisions from their tenancy laws. Improved security for renters could be easily achieved by removing current provisions in tenancy legislation allowing evictions for 'no grounds' (i.e. no reason and replacing them with a range of 'reasonable' grounds for ending a tenancy. 'Reasonable grounds' could include situations, for example, where:

- the renter is in breach of their lease, or
- 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.

Renters would be able to put those reasons to the test, if necessary. When hearing an application for an eviction, the Tribunal would be able to decline to evict someone after considering the case, and deciding that the reasons are not made out. Amending tenancy legislation in this way would mean that landlords would be required to be transparent about their reasons for ending a tenancy, and renters would be protected against an unfair eviction.

¹¹ Chris Martin (2018) 'Improving Housing Security through Tenancy Law Reform: Alternatives to Long Fixed Term Agreements', *Property Law Review*, vol. 7, pp184 – 194

¹² Chris Martin, Katherine Hulse et al (2017) *The changing institutions of private rental housing: an international review*, AHURI Final Report No. 292, Australian Housing and Urban Research Institute Limited, Melbourne, <http://www.ahuri.edu.au/research/final-reports/292>, doi: 10.18408/ahuri7112201; see also 'Open Letter on Rental Housing Reform', *The Conversation* (2018), <https://theconversation.com/an-open-letter-on-rental-housing-reform-103825>, accessed 29 July 2020

Recommendation: security of tenure

1.1. Reform current NSW tenancy law to remove no grounds eviction provisions

Securing a home in the private rental sector

While the Discussion Paper includes a clear aim to ensure all households have access to safe, secure and stable housing¹³, a crucial element that is neither identified nor addressed is discrimination in relation to securing housing. It is likely that again this is generally an issue for renters because of the nature of the rental market and rarely a concern for housing purchasers.

In the private rental market the process for applying for housing is competitive, with the decision to accept or reject an application lying solely with the landlord, or in many cases a real estate agent advising the landlord. This puts many, especially vulnerable and/or low income, tenants at a disadvantage.¹⁴ Many renters report having experienced discrimination, both lawful and unlawful, during the rental application process.¹⁵ A national survey of renters undertaken in 2017 by Choice, National Shelter and NATO found widespread discrimination in the private rental market. One in two renters reported experiencing discrimination when applying for a rental property in the previous five years.¹⁶ This included discrimination on the basis of having a pet (23%); receiving government payments (17%); age (14%); having young children (10%); being a single parent (7%); race (6%); needing to use a bond loan (5%); gender (5%); disability (5%) and sexuality (2%). Previous research has pointed to particular risk of discrimination for households with children, and in particular single-parent households.¹⁷

The Australian Productivity Commission has highlighted how discrimination, especially on the basis of low income, limits options for renters, and can increase significantly the risk of vulnerable and low income renters being pushed into homelessness.¹⁸

¹³ NSW Government (2020) *Discussion Paper: A Housing Strategy for NSW*, p6

¹⁴ Bronwyn Bate (2020) 'Rental security and the property manager in a tenant's search for a private rental property', *Housing Studies*, vol.35, no.4, pp.589-611.

¹⁵ See various publications from Western Sydney University's Ethnic Discrimination in the Private Rental Housing Market project, https://www.westernsydney.edu.au/challengingracism/challenging_racism_project/our_research/ethnic_discrimination_in_the_private_rental_housing_market, accessed 23 June 2020.

¹⁶ Choice, National Shelter, NATO (2017) *Unsettled: Life in Australia's Private Rental Market*, p20, https://files.tenants.org.au/policy/Unsettled_Report_2017.pdf, accessed 23 June 2020

¹⁷ Steven Rowley, Amity James (2018) *Private Rental Sector in Australia*, BCEC Research Report No. 18/18 October 2018, https://bcec.edu.au/assets/BCEC-Private-Rental-Sector-in-Australia-Report_final_web.pdf, accessed 29 July 2020

¹⁸ Australian Productivity Commission (2019) *Vulnerable Private Renters: Evidence and Options*, September 2019, p87, <https://www.pc.gov.au/research/completed/renters/private-renters.pdf>

In NSW there is a range of legislation at the state and Federal level that provide some basic, overlapping protections against discrimination in the provision of rental housing on the grounds of a tenant's age, disability, race, sex, sexual orientation, marital status, pregnancy or responsibilities as a carer. However the prevalence of renters reporting experience of discrimination suggests current legislative protections and the process for enforcing these are inadequate for addressing this form of unlawful discrimination.

Regulation of the application process for private rental housing is required to provide protections against discriminatory and/or intrusive requests for information at application, as well as greater transparency regarding the decision making process for applicants.

Recommendation: discrimination in rental housing

1.2 Reform current NSW tenancy law to introduce regulation of the application process for private rental housing to better protect a person's access to housing via:

1.2.1 a requirement for increased transparency regarding the decision-making process for applicants, and

1.2.2 a standardised rental application form that removes the ability of the landlord to seek or require unnecessary information.

Age discrimination in Residential Land Lease Communities

Since the commencement of the *Residential (Land Lease) Communities Act* (RLLC Act) there has been a significant increase in the introduction of age restrictions in community rules in land lease communities. The age restriction rules generally provide that no-one under a certain age (usually 50 or 55) is permitted to reside in a community.

The *Residential (Land Lease) Communities Act* provides for community rules to be put in place about the use, enjoyment, control and management of the community. This is where references to age restrictions are commonly found. However, a community rule is of no effect if it is inconsistent with the Act or any other Act or law. There have been a number of cases heard at the Tribunal in relation to whether age restrictions are a breach of the *NSW Anti Discrimination Act*. It remains unclear what the status of community rules restricting age in residential land lease communities.

Some Tribunal decisions recently made regarding community rules in residential land lease communities, may have implications or otherwise highlight concerns for how other rules including by-laws under the *Strata Schemes Management Act 2015* interact

accessed 23 June 2020 See also: Short, Seelig et al (2008) *Risk-assessment practices in the private rental sector: Implications for low-income renters*, AHURI Final Report No.117; Tammy Solonec (2000) *Racial Discrimination in the Private Rental Market: Overcoming Stereotypes and Breaking the Cycle of Housing Despair in Western Australia*, 5(2) *Indigenous Law Bulletin* 4

with anti-discrimination law. We feel further consideration of tenancy law and state and federal discrimination law is required to consider the appropriate interaction of renting and accommodation laws, regulations and rules.

Recommendation: Age restrictions in land lease communities

1.3 Review of tenancy and discrimination law further to consider the appropriate interaction of renting and accommodation laws, regulations and rules including community rules or by-laws as allowed under the *Residential (Land Lease) Communities Act 2013* and *Strata Schemes Management Act 2015* and Australian Federal and NSW anti-discrimination laws.

Protection for all renters

While there are references throughout the Discussion Paper to supporting diversity of housing models and it is listed as one of the interrelated themes, there is little in relation to identifying and addressing the particular vulnerabilities and needs of different cohorts and communities in their housing, including marginal renters, older people renting, Aboriginal renters, people with disabilities, and temporary visa holders, including asylum seekers.

Focusing on marginal renters, this refers to those people who rent their housing but currently have no coverage by our tenancy legislation. The Residential Tenancies Act 2010 expressly excludes boarders and lodgers and numerous other categories of renters.

The Boarding Houses Act 2012 introduced coverage for some renters – residents of registrable boarding houses – who previously were not covered. But still, many people in boarding and lodging arrangements are not covered by any legislation about their housing. These marginal renters include residents of small boarding houses, lodgements in private houses, share houses, residential colleges, refuges and crisis accommodation. Some of them are the most vulnerable people in our community. Their exclusion from tenancy legislation makes them more vulnerable.

Marginal renters' housing arrangements are governed primarily by the common law of lodging. The terms of the lodging contract are those that the parties have bargained for. In practice, the landlord sets the terms. This means the rent may be increased, or the contract terminated and the lodger evicted, with little or no notice. It also means that you may have few or no rights in relation to repairs, security, access and privacy, and no realistic avenues for resolving disputes.

Some marginal renters may have some legal rights and remedies under the Australian Consumer Law, but this depends on the circumstances. In particular, if you are a lodger in a private house or share house, you probably are not covered by consumer law, and so have no legislated rights or remedies in relation to your housing.

The Tenants' Union of NSW believes all renters who are otherwise excluded from

tenancy legislation should be covered by the occupancy principles set out in the Boarding Houses Act, with straightforward access to the NSW Civil and Administrative to deal with disputes. However, there are still a number of key reforms required to the current occupancy principles and their enforcement in practice.

We recognise the NSW Government and Fair Trading are currently reviewing the Boarding Houses Act with a view to strengthening rights for occupants, and are considering seriously how coverage under the Act or a similar Act might provide adequate, accessible protections for all those living in the range of shared accommodation situations. We look forward to being engaged in further conversation and consultation towards this outcome.

Recommendation: Coverage for marginal renters

1.4 Expand coverage and strengthen current tenancy laws to ensure adequate and accessible consumer protections are in place for all people renting their home, including ‘marginal renters’ such as renters living in boarding houses, and lodging and sharing arrangements, many of whom are excluded from protection under current legislation.

Ageing in Place

The Family and Community Services’ *NSW Ageing Strategy 2016-2020* identifies older people’s ability to live in affordable, accessible, adaptable and stable housing as a priority of the NSW Government.¹⁹ 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’.²⁰ While the NSW Government does not have an explicit ‘ageing-in-place’ policy, a number of significant documents commissioned as part of the NSW Ageing Strategy 2016-2020, such as the above reports, refer to it.

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

¹⁹ Family and Community Services (now Department of Communities and Justice), *NSW Ageing Strategy 2016-2020*, https://www.facs.nsw.gov.au/__data/assets/pdf_file/0005/382829/NSW_Ageing_Strategy_2016-2020.pdf, accessed 29 July 2020, pp. 26-28

²⁰ Family and Community Services (now Department of Communities and Justice), (2018) *NSW Ageing Strategy Research Report*, https://www.facs.nsw.gov.au/__data/assets/pdf_file/0007/631888/NSW-Ageing-Strategy-60-79-Research-Report,-January-2018.PDF, accessed 29 July 2019, p130

community to which they have a strong attachment, either in their existing residence or alternate accommodation with service supports.

Yet, over the life of the NSW Ageing Strategy 2016-2020, the NSW Government continued to evict older residents from the inner Sydney suburb of Millers Point. These evictions were in conflict with the principle of ageing-in-place. The forced relocation of residents of Millers Point highlights the failings of Government in delivering practical outcomes and supports towards ensuring older people can remain living in their community where social and health supports are established and familiar. The impact for residents was significant, and the Tenants' Union of NSW has previously argued that the NSW Government's decision to relocate all the social housing tenants in the suburb of Millers Point constituted an example of systemic elder abuse.²¹

The Tenants' Union of NSW believes 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 community housing that align with 'ageing in place'. The redevelopment of old public housing estates poses real hardships for many older tenants. In order to ensure public housing tenants are fully consulted in future redevelopment projects and that no repetition of what transpired in Millers Point occurs, in 2017 Shelter NSW, Tenants' Union of NSW and City Futures Research Centre at the University of NSW consulted widely with public housing tenants and produced a report entitled *A Compact for Renewal: What tenants want from Renewal*.²² 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.

While the Department of Communities and Justice has been engaged in ongoing conversation on a 'principles of engagement' document based on the findings of the Compact report, negotiations have currently stalled. This is unfortunate given the importance and need for such principles and guidance during the development of a masterplan for Waterloo.²³ Many of the residents in Waterloo are ageing, as they were

²¹ Tenants' Union NSW, 2015, *Submission to the Inquiry into Elder Abuse NSW*, <https://www.parliament.nsw.gov.au/committees/DBAssets/InquirySubmission/Body/53723/0039%20Tenants%20Union%20of%20New%20South%20Wales.pdf>, accessed 29 July 2020; Tenants' Union NSW, 2017, *Elder Abuse Inquiry Australian Law Reform Commission*, <https://files.tenants.org.au/policy/2016-09-14-ALRC-elder-abuse-inquiry.pdf>, accessed 29 July 2020

²² Shelter NSW, Tenants' Union of NSW, City Futures Research Centre (UNSW), 2017, *A Compact for Renewal*, <https://www.tenants.org.au/resource/compact-renewal-what-tenants-want-renewal>, accessed 29 July 2020

²³ For further information regards Waterloo masterplan development process see

in Millers Point.

Recommendation: Ageing in place

1.5 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

<https://www.planning.nsw.gov.au/Plans-for-your-area/State-Significant-Precincts/Waterloo>
accessed 29 July 2020

Housing that is affordable

Investment in public and community housing

To adequately address provision of affordable, secure, safe housing, governments need to invest substantially in public and community housing. While the number of people renting their homes has significantly increased over the last 20 years, the percentage of households renting their homes from a state or territory housing authority has dropped from 6% to 3%.²⁴ As a result, social housing waiting lists in each state and territory are long and unwieldy.

Prior to the COVID-19 health crisis close to 200,000 eligible applicants across Australia were waiting for social housing. In NSW the wait times for public housing range from between 2 and 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.²⁵ The number of people now waiting for social housing has likely significantly increased since the health crisis. We do not have social housing systems that are able to absorb and quickly house people forced out of the private rental market due to a sudden loss of income.

The above figures do not include the full number of people requiring social housing to ensure their housing costs are affordable. The current shortfall in provision of genuinely affordable dwellings for people in receipt of the lowest 40% of incomes was calculated by the City Futures Research Centre in 2019 to be 651, 200 in 2016 and is projected to rise to 1, 023, 900 by 2036.²⁶

Provision of 'non-market' housing provides positive pressure on market housing by introducing real competition and higher standards. An increased supply of social housing would effectively challenge the private market to do better, especially in terms of housing available for low- and moderate-income households.

In the current context significant investment in social and affordable housing would also support economic recovery from the COVID-19 pandemic, and may help ease some of the inequality and disadvantage that have emerged. Investment could, as others have identified in further detail,²⁷ involve the following:

²⁴ Australian Bureau Statistics (2019) *Housing Occupancy and Costs 2017 - 2018*, <https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4130.0~2017-18~Main%20Features~Housing%20Tenure~3>, accessed 23 June 2020

²⁵ Department of Communities and Justice NSW, *Expected Wait Times*, <https://www.facs.nsw.gov.au/housing/help/applying-assistance/expected-waiting-times>, accessed 23 June 2020

²⁶ Laurence Troy et al (2019) *Estimating need and costs of social and affordable housing delivery*, https://cityfutures.be.unsw.edu.au/documents/522/Modelling_costs_of_housing_provision_FI_NAL.pdf, accessed 29 July 2020

²⁷ Equity Economics, *Supporting Economic Recovery in NSW*, <https://www.ncoss.org.au/sites/default/files/public/policy/Equity%20Economics%20->

- Building new, additional social and affordable housing stock in states and territories
- Repairing old social housing stock
- Rapidly acquiring available properties in the private market to repurpose as social housing stock

Recommendation: Investment in public and community housing

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

Value public and community housing

Public and community housing in NSW, and across Australia, is often described as experiencing ‘residualisation’. AHURI describes the residualised ‘social housing’ model as one that assumes social housing tenants who have the means will choose to exit this tenure, with the effect of leaving behind ‘neighbourhoods comprised of those with least resources and opportunities’.²⁸ The current ‘residualised’ model of social housing in NSW assumes it is ‘housing of last resort’, and seeks to encourage renters to exit as soon as possible. This is made explicit in the current *Future Direction for Social Housing in NSW* policy.

The Discussion Paper observes the shift that has occurred within the NSW public and community housing system over time, evolving from a system that housed mostly working class families to one that now supports only very-low income and pension-dependent households.²⁹ However this ‘evolution’ was not one driven by tenants ‘successfully exiting’ into the private rental market. Instead the ‘evolution’ occurred in line with the introduction of increasingly narrow and restrictive means testing and other eligibility and ‘priority’ criteria and the more recently introduced regime of fixed term tenancy agreements and ongoing eligibility review for tenants.

The current model effectively restricts low, and a significant number of very low,

%20Supporting%20Economic%20Recovery%20in%20NSW_Final_220620.pdf, accessed 23 June 2020, see also Community Housing Industry Association, *SHARP Proposal*, <https://www.communityhousing.com.au/wp-content/uploads/2020/05/SHARP-Program.pdf?fbclid=IwAR1mVAcZS0brXfw5evX-uLtWhro4OgBgSsysUZwCldxyyWv5sJpiV7jaLhE>, accessed 23 June 2020

²⁸ AHURI Brief (2019) *Understanding the residualisation of social housing*, <https://www.ahuri.edu.au/research/ahuri-briefs/understanding-the-residualisation-of-social-housing>, accessed 29 July 2020

²⁹ NSW Government (2020) *Discussion Paper: A Housing Strategy for NSW*, p62

income working households to the private rental market – many of whom are experiencing rental stress as a result. The challenge of finding affordable housing for those on lower incomes is set out in some detail in the Discussion Paper. The Discussion Paper acknowledges in particular the very high cost of renting in Greater Sydney as well as particular challenges in relation to availability and affordability across regional areas in NSW.³⁰ The precariousness of low-income renters in the private rental market is evident in the latest data in the Australian Bureau of Statistics' Housing Costs and Occupancy series, and the detailed analysis provided by the Productivity Commission.³¹ Just over a million low income households rent in the private rental sector.³² Two-thirds (66%) of these households are paying more than they can afford, with more than 30 percent of their weekly income being spent on rent. Almost a quarter spend more than half of their income on rent.³³

The current 'residualised' model of social housing has created significant problems for the sustainability of the social housing system. The effect of housing only very low income or pension dependent households is that they are therefore paying very low rents. The system has been starved of funds to adequately maintain itself, let alone expand in line with need. Significant investment is required to deliver greatly increased supply of social housing sufficient to meet the housing needs of low income households. Alongside this, an expansion of eligibility for social housing should be considered and the policy of fixed term tenancies and ongoing review of eligibility for existing tenants discontinued. Many studies have shown that the security of tenure that would be achieved through provision of continuous tenure - previously NSW policy until 1 July 2005 - is the most important factor contributing to long term positive outcomes for social housing tenants.³⁴

This would result in a higher number of waged tenants, higher rent income for social housing providers, and an effective cross subsidisation across the system. Moreover, a social housing system more widely available and accessible would improve the negotiating power of renters in the private rental market, and particularly for lower income households.

³⁰ NSW Government (2020) *Discussion Paper: A Housing Strategy for NSW*, pp59-61

³¹ Australian Bureau of Statistics (2019) *Housing Occupancy and Costs, 2017-18* – cat no 4130.0; Productivity Commission (2019) *Vulnerable Private Renters: Evidence and Options*, Commission Research Paper, Canberra; Australian Productivity Commission, *Vulnerable Private Renters: Evidence and Options*, September 2019, <https://www.pc.gov.au/research/completed/renters/private-renters.pdf>, accessed 23 June 2020

³² Productivity Commission (2019), *Vulnerable Private Renters*, p53.

³³ Productivity Commission (2019), *Vulnerable Private Renters*, p53.

³⁴ Michael Darcy, Hazel Blunden (2014) *Determining the Financial Barriers moving from Welfare to Work*. Sydney: University of Western Sydney and Pacific Link Housing Ltd., <https://www.pacificlink.org.au/sites/default/files/research1determiningfinancialbarrierstoworkfuII.pdf>, accessed 4 August 2020

Recommendation

2.2 Review funding arrangements, including rent and eligibility processes, for public and community housing to ensure a sustainable and valued system.

Land tax

The Tenants' Union of NSW has long supported a move towards land tax as a tax collection tool that is more efficient one with minimal negative impacts, relative to other taxes, and significant positive impacts. We support an expansion of land taxes.

In principle, land tax is simple and fair, and would contribute to affordability and productivity. Land tax contributes to the affordability of land and housing through discouraging speculative land holding. Instead, land tax liability motivates owners to put land to its best use, or sell it to someone else. In this way it also encourages the development of improvements to land, such as new housing, and allows greater rewards for work and enterprise in this way contributing to economic growth. Land tax has practical advantages as a source of revenue for the government. It is very hard to evade and less volatile than transfer duty. This also means the cost of collection for government is reduced.

It also has a range of efficiency advantages: it does not reduce supply but instead encourages productive use of land; it does not discourage owners from transferring to more suitable housing where this is appropriate and necessary; it is simple to administer and pay.

We have previously provided comment to the NSW Productivity Commission recommending the broadening of the base by lowering the threshold at which land tax applies and significantly reducing exemptions.³⁵ In particular, this would include removing the exemption for land used for owner occupied housing. Where an exemption is provided there should be a clear public policy benefit, such as where provision of more affordable and/or secure housing on the land can be clearly demonstrated. We provide further comment below on Build to Rent in general, but draw attention as an example to the recently announced land tax discount for Build to Rent operators in NSW.³⁶ This substantial subsidy for Build to Rent developers should only be made available in Built to Rent properties where a better tenant experience can be demonstrated. This could be achieved by including within the guidelines clear requirements and accountability mechanisms in relation to security of tenure, affordability and tenant participation outcomes.

Finally the present structure of land tax rates requires reform. The current threshold is

³⁵ Tenants' Union of NSW, (2019) *Submission: Kickstarting the Productivity Conversation*, https://files.tenants.org.au/policy/20191127_TUNSW_NSWProductivityCommission_Paper.pdf, accessed 29 July 2020

³⁶

too high at \$692,000 to be justified as an exemption for lowcost housing. Levying land tax on an owner's total land values at an increasing marginal rate discourages large institutions, such as superfunds, from owning residential rental properties. These institutions may otherwise be better able to offer long-term affordable tenancies, and more professional management, than are individual landlords operating on an amateur, speculative basis.

Recommendation: Reform and expand land tax

2.3 Reform and expand land tax in line with the following principles – broadening of the base to include all residential land, with only limited exemptions; reforming of the rates structure; and replacing other taxes.

Requirements and compliance within the NSW Government Affordable Housing SEPP

The Affordable Housing SEPP (*State Environmental Planning Policy (Affordable Rental Housing) 2009*) sets out the policy framework in NSW for facilitating effective delivery of new affordable rental housing. Unfortunately as research undertaken by City Futures Research Centre and others has identified, the SEPP has fast tracked a significant amount of new housing, but has not delivered housing that is affordable for those on lower incomes.³⁷ There have also been failures in relation to monitoring and enforcement of provisions. Certainly they have not provided additional or alternative housing options for those on very low incomes, those who we previously have seen accommodated in 'traditional' older style boarding houses. Instead we are seeing 'boarding houses' which deliver smaller, compromised design and reduced amenity but not affordability. The impact of this, we believe, has degraded the social license of buildings created through the SEPP.

Currently the Affordable Housing SEPP operates to allow various exemptions from planning controls for the purpose of affordability but has no mechanism to ensure affordability flows from the SEPP. Given the generous exemptions or variations for planning requirements the ARH SEPP provides, it should be more explicitly tied to an affordability requirement.

Recommendation

2.4 Reconsider the requirements and available compliance and enforcement mechanisms of the Affordable Housing SEPP, specifically to facilitate affordable rent setting requirements where exemptions on the basis of affordability have been

³⁷ Laurence Troy et al (2020) *Secondary Dwellings in Central and Southern Sydney, Report for the South Sydney Regional Organisation of Councils*, City Futures Research Centre, UNSW Sydney

provided.

Innovative models and increasing diversity

As noted in the Paper it is beneficial to maximise consumer choice and affordability through encouraging a diversity of housing forms, however when doing this it is vital to ensure that there are no unintended negative consequences for individuals or communities. Driving innovation should never occur for the sake of it. There must be careful, thorough and transparent consideration of implications for housing consumers as well as industry and government partners. If the government is to encourage and assist development of workable models they must first demonstrate a clear community benefit. They should meet the aims of providing housing security and stability in high quality living spaces that build community cohesion.

The Paper highlights several examples of models identified as innovative housing activities, they are addressed below.

Community land trusts and cooperatives

There is a significant amount of evidence to support the suitability of these housing models as being capable of meeting the aims of providing stable and affordable housing and delivering amenity, tenure security, high quality urban design and social capital. Their potential as detailed in the submission by the Institute for Culture and Society, Western Sydney University³⁸ is acknowledged. In particular we note their reference to the vital nature of greater tenant rights, place in the community and providing more than just the physical housing form, including having an ongoing say in provider activities. We also echo the point that resilience is not limited to design and must include consideration of social capital and networks.

Residential land lease

We generally do not consider the current role of residential land lease communities should be expanded, especially not as a form of 'affordable' owner occupation housing. Land lease communities are not the affordable housing option they are often thought to be. However, we would encourage investigation into how home-owners in residential land lease communities may be facilitated to form cooperatives or community land trusts that own and manage their own residential parks.³⁹

³⁸https://www.westernsydney.edu.au/__data/assets/pdf_file/0020/1731143/housing-strategy-for-nsw-submission-ics.pdf

³⁹ Much of the initial groundwork toward this has been done in NSW, see for example the feasibility modelling undertaken by Karalta Road Park Home Owners Inc in 2006.

Julie Lee, Jill Edmonds (2019) 'Cooperative Communities', *Outasite: The Noticeboard*, August 2019, <https://www.tenants.org.au/thenoticeboard/news/cooperative-communities>, accessed 31 July 2020

Short-term rental accommodation

It is of concern that this form of accommodation is listed as an innovative housing activity. As it currently stands there is a need for significantly stronger regulation if it is to be affordable or innovative housing of any value to the community rather than a small scale alternative to formal and traditional commercial short-term accommodation such as hotels.

Build to Rent

We acknowledge that the NSW Government has recently made a clear commitment to support this housing model through land tax concessions and note the Paper refers to its potential in providing affordability and stability. However, we urge further consideration of this support and draw attention to the concerns raised by Institute for Culture and Society, Western Sydney University and the advice against the pursuit and implementation of for profit models.⁴⁰ This is supported by the Landcom findings that except where supported by some form of public subsidy or under rezoning, Build to Rent will not generate affordable housing. Nor will it significantly ease wider housing affordability.⁴¹ Landcom also found that it is not really achievable without a strategic national framework that integrates tax reform, revenue support, land and planning levers, because it will fail to generate rental at scale. In this regard Australia will continue to lag comparable countries like the US and UK.

In terms of the examples currently in NSW we have not seen affordable rents or security of tenure, nor tenant participation or mechanisms for reporting against these elements that would justify significant ongoing government subsidy or support.

⁴⁰P5,https://www.westernsydney.edu.au/_data/assets/pdf_file/0020/1731143/housing-strategy-for-nsw-submission-ics.pdf

⁴¹ P9, Landcom (2019), *Build-to-rent in Australia: Product feasibility and potential affordable housing contribution*, https://cityfutures.be.unsw.edu.au/documents/558/LCOM_0000_Build_to_Rent_Report_WEB.pdf, accessed 29 July 2020

Housing that is liveable

Energy efficiency

Every year cold weather in Australia kills at least 2,600 Australians.⁴² Many of these deaths are avoidable, and relate to the poor standard of housing and people's inability to keep it comfortably warm. The study also found Sydney has a higher rate of deaths that can be attributed to cold than other cities across Australia, including Melbourne - 7.6% (Sydney) vs 5.99% (Melbourne).

Low income renters struggle to keep their homes warm in winter. Their housing is likely to be lower quality, in need of repair and poorly insulated. The recently completed [Australian Housing Conditions Dataset](#) (2019) indicates 1 in 5 Australian renters (20%) on very low income, and 1 in 7 (14%) on low income are not able to keep their homes warm in winter. Renting households overall were much more likely to be struggling to heat or cool their homes than their homeowner counterparts.

As a result they are also hardest hit by energy poverty. Research undertaken by sector advocates indicates on average low-income households (lowest 20% of the income spread) spend 6.4% of their income on energy, with the top 25% spending more than 8.8%, compared to high income households paying an average of 1.5%.⁴³ Those households dependent on income support payments such as Newstart and related allowance are hit hardest by high prices, with one in four of these households spending more than 9.7% of their incomes on energy.

Across the board renters struggle significantly more than their homeowner counterparts to heat and cool their homes to a comfortable temperature primarily because of the lower standard of the housing they are living in.⁴⁴ Paying for housing costs - not just rent but also the costs involved to make a house liveable: the energy and utility bills - mean that many low income renters are going without essentials such as food and medication just to get by. Others are forced to choose not to heat (or in summer, cool) their homes to keep their energy use down, with significant impacts for their families' health. Research in the UK in 2000 attributed low quality housing stock costs to the National Health Service at approximately £2 billion per year on health

⁴² Gasparrini et al (2015), 'Mortality Risks Attributable to high and low ambient temperature', *The Lancet*, 1:9991, ([https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(14\)62114-0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(14)62114-0/fulltext), accessed 31 July 2020

⁴³ Australian Council of Social Services, Brotherhood of St Laurence, (2018) *Energy Stressed*, <https://www.acoss.org.au/wp-content/uploads/2018/10/Energy-Stressed-in-Australia.pdf>

⁴⁴ Liu, Martin, Easthope, 'Chilly House, Mouldy Rooms', *The Conversation*, <https://theconversation.com/chilly-house-mouldy-rooms-heres-how-to-improve-low-income-renters-access-to-decent-housing-116749>, accessed 31 July 2020, see also Shelter NSW, UNSW City Futures (2019) Shelter Brief no. 63, *Poor quality housing and low income households*, http://www.sheltersnsw.org.au/uploads/1/2/1/3/121320015/poor_quality_housing_report_2019.pdf, accessed 31 July 2020

expenditure, an amount that would likely have increased since then.

Many lower income renters find that it costs them more to heat or cool their home and many are struggling with energy bills - a significant number of low income rental households are in 'energy poverty'. We have seen this have particular impacts during COVID when we are aware households are spending more time at home and using more energy - lights are on, people are spending more time on computers and TV, and they need to keep their homes warm. Heating costs during winter generally account for over a third of most household energy bills. Recent analysis by Energy Networks Australia showed Victorians during the first phase of restrictions or lockdown were using 14% more energy in their homes post lockdown compared to a few weeks earlier prior to lockdown.⁴⁵ Similarly households are using 5% more energy during COVID than in the same period last year. We would expect analysis of households in NSW would bring similar results. People will be experiencing this as an increase in their bills at a time when many are already financially struggling, and potentially facing real hardship because of COVID and loss of income or employment.

The Tenants' Union of NSW and local Tenants Advice Services are frequently asked for assistance by renters who are having issues with heating or cooling their rented homes, and it is impacting their health. This is because basic repairs and maintenance in their homes are not getting done. Around 8% of Australian renters report their homes are in need of urgent repairs that are not getting done.⁴⁶ (Choice, National Shelter, NATO, 2017). Many are also struggling because their housing is poorly insulated with doors and windows that let in draughts and cold air, or there is little to no insulation. At the moment there's no real incentive for landlords to make improvements and get the property up to standard (the 'split incentive' problem, landlords don't see the benefit from upgrading the energy efficiency of their investment properties).

The most effective way to bring rental homes up to standard – to improve home temperatures and reduce illness - is to set minimum standards for health, safety and efficiency, including:

- Ceiling insulation
- Draught proofing
- Efficient systems for heating and cooling; and
- Efficient hot water systems.

The benefits of bringing rental homes up to scratch will far exceed the cost. Standards would result in improvements to public health, reductions to household energy costs,

⁴⁵ Energy Networks Australia (2020) Commercial down vs Residential Up: Covid19's electricity impact, 2020 *Energy Insider*, <https://www.energynetworks.com.au/news/energy-insider/2020-energy-insider/commercial-down-v-residential-up-covid-19s-electricity-impact/>, accessed 30 July 2020

⁴⁶ Choice, National Shelter, NATO (2017) *Unsettled: Life in Australia's Private Rental Market*, https://files.tenants.org.au/policy/Unsettled_Report_2017.pdf, accessed 28 July 2020

mitigation of climate pollution, and the creation of local jobs. Rental standards will be particularly beneficial for low-income renters, people with disabilities, and older Australian renters.

NSW through its participation in the COAG Energy Council has agreed to a Trajectory for Low Energy Buildings, a national plan that sets a trajectory towards zero energy (and carbon) ready buildings.⁴⁷ In November 2019 the Council also committed to a timeline to bring all existing homes up to standard, including introducing requirements for minimum energy efficiency standards in existing rental housing by 2025.⁴⁸ We suggest NSW could take a lead and introduce this requirement through tenancy law in advance of the COAG Energy Council schedule for implementation as set out in trajectory documents. Together with others from across the sector we have strongly advocated to build back stronger in the context of Covid-19 by investing in resilient, healthy, affordable homes.⁴⁹

Recommendation

3.1 Immediately introduce minimum energy efficiency standards into NSW tenancy law in advance of the COAG Energy Council schedule for tenancy law reform

3.2 Support the transition to and compliance with introduced minimum energy efficiency standards in private rental housing through grants to landlords to subsidise the upgrade of poor performing rental properties.

Invest in public and community housing: best practice builds

As the largest landlord in NSW, the Land and Housing Corporation has an opportunity to lead the way by ensuring all public housing and Aboriginal housing stock meet best practice energy efficiency standards. This would require significant investment of funds - from the Federal and NSW government - to repair older housing stock and retrofit all properties to ensure they meet these standards. Funds should also be allocated for similar measures to be undertaken in community housing properties. This

⁴⁷ COAG Energy Council (2018) *Trajectory for Low Energy Buildings*, <http://coagenergycouncil.gov.au/publications/trajectory-low-energy-buildings>, accessed 31 July 2020

⁴⁸ COAG Energy Council (2019) *Addendum to the Trajectory for Low Energy Buildings*, http://coagenergycouncil.gov.au/sites/prod.energycouncil/files/publications/documents/Trajectory%20Addendum%20-%20ADDENDUM%20TRAJECTORY%20FOR%20LOW%20ENERGY%20BUILDINGS_0.pdf, accessed 31 July 2020

⁴⁹ ACOSS et al (2020) *Joint Proposal for Economic Stimulus, Healthy & affordable homes: national low-income energy productivity program*, <https://files.tenants.org.au/policy/2020-Economic-Stimulus-Healthy-Affordable-Homes-NLEPP-June-2020-Final-18062020.pdf>, accessed 29 July 2020

form of targeted initiative would help ensure NSW meets commitments made towards the COAG Energy Council's Trajectory for Low-Energy Buildings (discussed above). It would also be a cost effective use of funds, given the clear economic and health benefits for the tenants living in these homes, and the lower ongoing maintenance requirements for upgraded stock.

The Discussion Paper indicates the importance of people with disability having choice and amenity in relation to housing.⁵⁰ We have elsewhere recommended investment to significantly increase social housing stock. The opportunity exists for the NSW government in their delivery of new social housing stock to demonstrate best practice in relation to accessibility requirements in building standards (i.e. gold standard universal design), with NSW government to lead the way by ensuring that in renewal projects and/or major renovations best practice universal design level is adopted.

Recommendation

3.3 Work closely with and match funds with Federal Government to repair old social housing stock, including retrofitting public housing and Aboriginal housing properties to bring them up to minimum energy efficiency standards

3.4 Ensure new public and community housing stock demonstrates best practice design in relation to safety, amenity, energy efficiency, and accessibility delivering well above minimum standards required in Building Code of Australia (BCA) or Australian standards.

⁵⁰ NSW Government (2020) *Discussion Paper: A Housing Strategy for NSW*, p49

Role of housing - beyond the structures

Recognise renting should not be a 'second-class' housing experience

"Housing is essential to wellbeing - Housing benefits everyone - from individuals to households, communities and the economy. When people feel comfortable in a home they can afford and feel comfortable in, where they can easily access school or work, they will feel safer and part of the community. This has mental and physical health benefits" -

Discussion paper introduction

The goal of ensuring that people have access to the right type of housing at the right time and a Strategy that is responsive to housing needs, supporting security, comfort and choice for all people at all stages of their lives is underpinned by an assumption of tenure neutrality. That is, that people can move seamlessly through tenures because they all provide the same level of basic amenity and experience, providing them with the ability to build a sense of home, community and place. Tenure neutrality is often only considered in terms of the financial aspects, but should be applied across the housing experience. Autonomy to determine the conditions of your housing is an essential part of being able to make a home.

People do not transition through the different parts of the housing continuum in a linear manner but move between them depending on their life circumstances and housing need at a particular point in time. Renting should not be considered a second-class housing experience, and people living in rental housing - whether that is private market forms or public or community rental housing - should not have to experience lesser rights or degraded access to a secure, affordable, liveable and accessible home.

Recommendation: tenure neutrality

4.1 Ensure the NSW housing strategy and its subsequent aims, policies and outcomes include tenure neutrality in relation to housing experience and autonomy, as well as financial aspects.

Making home: a household's autonomy over use and experience of their housing

Modifications in the home

The Discussion Paper states that older tenants and people with disability are able to make minor adjustments to their homes as a result of recent amendments to the Residential Tenancies Act 2010.⁵¹ However the reality for older persons and others with disability who rent is they still experience restricted access to home modifications. Private landlords have little incentive to modify properties to suit the needs of older

⁵¹ NSW Government (2020) *Discussion Paper: A Housing Strategy for NSW*, p48

tenants. Residential tenancy legislation fails to adequately address this, although the recent legislative changes have improved the situation for tenants.⁵² Nevertheless, the processes are cumbersome and sometimes costly for the tenant. Also, when vacating, the tenant must restore residential premises to the same condition, less ordinary wear and tear, as existed before any modification. Otherwise, the landlord may make a claim against the tenant's rental bond or initiate a claim for compensation at NCAT. More often than not, older renters are forced to move as dwellings are no longer appropriate to their needs.

Households and living arrangements

Most tenancy agreements set a maximum number of persons – including children – who may ordinarily live at the premises. Under New South Wales tenancy laws, there is nothing to stop landlords from setting an unreasonably low and restrictive maximum number. It is common for landlords and agents to set the maximum number of persons to simply reflect the number of persons in the application for the tenancy rather than the size of the property. This means that tenants may have to ask for their landlords' consent before an additional occupant – such as a partner, spouse or even a new baby – moves in. Though it may surprise some, the Tenants' Union NSW is aware of cases where landlords have refused to allow children to join a household, and have given termination notices because the addition of a child breaches the maximum number of persons allowed. With the increasing prevalence of multigenerational family households, and the discrimination many multigenerational families report they experience in the private rental market⁵³, we are concerned instances of unreasonable refusal or threat of breach may increase.

Tenancy laws should be changed to provide that the maximum number of residents in a house must be reasonable, and that the term cannot be used to restrict the addition of a partner or other family member to the household.

Pet ownership and people who rent their homes

Noticeably absent from the Discussion Paper is the importance of pets as members of households in NSW, and the important role the ability to have a pet plays for many in making their housing feel like 'home'. Australia has one of the highest rates of pet ownership in the world: 63% of Australian households have a pet.⁵⁴ Yet rental properties almost exclusively disallow pets.⁵⁵

Rental properties have become 'home' for an increasing number of people in NSW,

⁵² Current provisions in tenancy law for modifications are set out in further detail on the Tenants Union NSW website at <https://www.tenants.org.au/resource/property-modifications-older-tenants>

⁵³ Steven Rowley, Amity James (2018) *Private Rental Sector in Australia*, p15

⁵⁴ Animal Medicines Australia (2016). *Pet Ownership in Australia*. Newsgate Research, pp1-66.

⁵⁵ Emma Power (2016). Renting with pets: a pathway to housing insecurity?, *Housing Studies*, 32(3), pp336-360.

rental policies need to ensure that tenants can achieve a sense of secure occupancy and feel at home in their rentals.

Pets have consistently been reported to be of benefit to the mental, physical and social health of owners. Pet ownership in rental housing is an issue with particular meaning for older renters, given the role companion animals often play in connecting older people with community and place and the particular vulnerability facing older people who rent their homes (see our discussion of Ageing in Place above).

We know securing alternative rental accommodation quickly can be a particularly acute problem for people renting and experiencing domestic violence. The consequences of this are concerning, given research clearly indicates a significant number of people experiencing domestic violence (anywhere between 18 - 68%) delay leaving a situation of violence because they are not able to secure alternative accommodation that will allow them to take their pets with them, especially in instances where animal abuse has occurred.⁵⁶

If renting is going to continue to grow in NSW and become a site of homemaking, policies need to be amended to reflect this. Reforms to ensure renters are able to have pets without concern about securing a new rental home, or losing their current one, would reflect both the changing nature of the family and home and the growing population of long-term renters in NSW. The decision to keep pets should sit with people who rent, rather than their landlords.

Recommendation: Address renters' lack of autonomy in rental homes

4.2 Ensure renters are able to appropriately act on personal decisions about their home and living arrangements, including specific concerns relating to pets and family

4.2.1. Reform current tenancy law to prohibit terms in a residential tenancy agreement that restrict the keeping of companion animals, except where the restriction reflects another law.

4.2.2. Reform current tenancy law to provide that the maximum number of residents set out in the agreement must be reasonable, and not used against a partner or child.

⁵⁶ Faver and Strand (2003) 'To Leave or to Stay? Battered Women's Concern for Vulnerable Pets' *Journal of Interpersonal Violence* 18(12) 1367; Ascione, F. (2007), 'Emerging Research on Animal Abuse as a Risk Factor for Intimate Partner Violence' in Kendall-Tackett, K. & Giacconi, S. (eds.) *Intimate Partner Violence*, Kingston, N.J.: Civic Research Institute 3-1 – 3-17; Coorey-Ewings et al (2018) 'Animal Victims of Domestic and Family Violence: Raising Youth Awareness' *Animal Studies Journal*, 7(1) 1; <https://www.rspcansw.org.au/what-we-do/working-in-communities/community-domestic-violence-program/>, accessed 30 July 2020

Renting in strata

People renting in strata should have the opportunity to be engaged in discussion and participate in decisions about their housing and various aspects of community living. This might range from input on by-laws, involvement in conversations about and possibly decision making on renewable infrastructure, and general repairs and maintenance issues for communal infrastructure, as these are all aspects of community living that directly impact on their lives.

Reforms introduced to strata through the *Strata Schemes Management Act 2015* allowed tenants to participate in the management of strata schemes for the first time, facilitating easier access to owners corporations and allowing for attendance at some meetings.

In strata schemes where at least half (50%) or more residents are renters they are able to nominate a tenant representative for appointment on an owners corporation's strata committee. This was a clear step forward, though the tenant representative has no substantive power in the strata committee, as they can attend and speak on occasion, but are prevented from voting, holding office or acting as an office-bearer, or being counted towards a quorum. They can also be excluded from strata committee meetings during discussions of a financial concern.

The Tenants' Union would like to see these reforms built on and extended to ensure renters living in strata premises can more meaningfully participate. There is a clear opportunity for this with the coming statutory review of the Act.

Recommendation: Greater engagement with renters in strata

4.3 For renters living in strata premises develop and extend on mechanisms allowing renters greater participation in the management of strata schemes through improved information and access to community decision-making processes.

Living in social housing

Similarly residents of public and community (or social) housing should have the opportunity to be engaged with and participate in decision making about their housing and their local communities, including regarding policy that affects their tenancies, and broader governance issues relating to their provider and their management of their tenancies and housing stock.

Available evidence suggests that building robust forms of participation into governance structures leads to improved service standards and tenant satisfaction, but also contributes to the financial sustainability of housing providers. Both the English and Scottish regulatory regimes for community housing associations explicitly recognise the value of tenant involvement in governance, and accept the business case for meaningful forms of participation. Research commissioned by the UK Department

for Communities and Local Government in 2015 found significant cost savings and management efficiencies arising from tenant involvement in governance.⁵⁷ In 2015, UK Communities Minister Stephen Williams said:

“Social housing tenants know their homes and communities better than anyone else and with that insight comes the ability to make a huge contribution to the areas in which they live ... By giving tenants greater control the sector could create savings of up to £118 million a year helping to create a stronger economy and fairer society at the same time.”⁵⁸

In Australia opportunities for tenant participation in governance in community housing providers have been systematically reduced as they have grown larger and emphasised professional skills on boards and company membership structures. The Tenants' Union contends that this trend needs to be balanced by recognition of the unique knowledge and experience that only tenants can bring to governance and decision making.

We suggest tenants across social housing should be given more opportunities to influence and be involved in:

- formulation of housing-related policies and strategic priorities
- making of decisions about how housing-related services are delivered, including the setting of service standards
- scrutiny of landlords' performance and the making of recommendations about how performance might be improved
- management of their homes, where applicable
- management of repair and maintenance services.

The suggestions above are in line with the Tenant Involvement and Empowerment Standard developed by the Homes and Community Agency (the English housing regulator) in 2017.⁵⁹ Greater responsiveness and commitment to tenant involvement have long been listed amongst the reasons for supporting the growth of community housing. But as Pawson et al point out the aspiration to enhance tenant participation has been far less prominent as a driver of growth in Australia.⁶⁰ A case in point is the current program of tenancy transfers to community housing providers in NSW. This required enactment of legislative changes which specifically excluded tenant involvement or choice in decisions affecting management of their housing.

Very few if any Tier 1 NSW Community Housing Providers have any form of tenant

⁵⁷ Bliss N, Lambert B, Halfacre C, Bell T & Mullins D (2015) *An investment not a cost: the business benefits of tenant involvement*, Department for Communities and Local Government (UK)

⁵⁸ Ministry of Housing, Communities & Local Government and Stephen Williams (2015) <https://www.gov.uk/government/news/tenant-involvement-could-save-millions-says-communities-minister-stephen-williams>, accessed 30 July 2020

⁵⁹ Homes and Community Agency (2017) *Tenant Involvement and Empowerment Standard*.

⁶⁰ Pawson et al. (2013) *Public housing transfers: past, present and prospective*, AHURI Final Report No.215. Melbourne: Australian Housing and Urban Research Institute

participation (let alone representation) on their boards, or structured opportunities for tenants to independently discuss and provide input to decision-making. The current National Regulatory Code requires housing providers to 'engage' their communities but not to support or encourage an independent tenant voice. As research evidence shows, this is to the detriment of tenant outcomes and may diminish the financial strength of the sector and its attractiveness to investors. The small number of tenants who do participate at board level are usually selected on the basis of other skills. However, current experience as a tenant constitutes an area of knowledge and expertise that should be valued highly at board level.

Social housing providers, in particular community housing providers, should be required to demonstrate that they provide support and training for those who wish to bring their experience as tenants to organisational decision making structures without compromising the independence or integrity of governance processes. Understanding that elected tenant representation on boards is not constitutionally possible for most social housing providers there is a need to specify a role for tenant representative organisations within the regulatory governance framework. Government support for the development of appropriate state and national structures will be required to facilitate this.

Recommendation: Involve public and community housing residents in decisions about their housing

4.4 Ensure public and community housing providers demonstrate a systematic approach to residents' involvement and empowerment including providing support and training for renters in public and community housing to participate in conversations and decision-making processes that affect their housing and community

4.5 Ensure and resource, especially in relation to community housing providers, a clear role for tenant representative organisations in governance.

4.6 Ensure agencies commit to and implement a set of clear principles in line with those set out in A Compact for Renewal, when undertaking urban renewal in public and community housing to guide involvement and engagement with residents of public and community housing affected by the renewal.

Advocacy and support for renters

Adequately resource appropriate and accessible support

The Tenants Advice and Advocacy Program (TAAP) plays an often unrecognised, but effective role in homelessness prevention by consistent, successful negotiation to save vulnerable tenants from homelessness.

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 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. Tenants' Advice and Advocacy Services assist in stabilising the housing situation of tens of thousands of people every year and help prevent homelessness and the disruption of schooling and employment for individuals and families.

Over the last fifteen years demand for Tenancy Advice and Advocacy Services has increased significantly. All indications suggest demand will continue to increase for the foreseeable future. Resourcing of services in terms of funding 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. Over the last few years the capacity of Tenants' Advice and Advocacy Services to provide assistance has been increasingly constrained by the lack of adequate resourcing for the network.

The COVID-19 pandemic has again proven the importance of free, independent and accessible legal information, advice and advocacy support for renters. In just one month at the start of the COVID-19 pandemic, the Tenants' Union NSW [Renters' Guide to COVID-19](#) was visited in 1.2 million sessions. Website sessions seeking information on tenants leaving their tenancy early increased 602%, and rent arrears factsheet increased 493% in the period 23rd March to 4 May compared to the equivalent period in 2019. Visits that sought contact details for local Tenants' Advice and Advocacy Services increased 900% and average 10,000 each week over the period. We also

experienced a significant increase in requests for assistance through social media channels while requests for assistance in other areas (i.e. non COVID-19 related matters) largely continued at the same rate prior to the pandemic.

Recognising the need for additional resourcing of Tenants' Advice and Advocacy Services during this time the NSW Government has provided a one-off funding grant of \$2.3 million for 2020 - 2021 for the TAAS network to provide support for renters with questions about COVID-19 related matters. This funding for the network provides one additional worker for a year in each mainstream Tenants' Advice and Advocacy Service in NSW.

The adequate resourcing of Tenants' Advice and Advocacy Services should be understood as an essential part of the NSW homelessness prevention strategy. Funding for such services should in all jurisdictions be increased to ensure services can better meet demand. Future increases to funding should be tied not only to growth in the number of tenancies, but also 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 required.

Recommendation

5.1 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.

5.2 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 Aboriginal and Torres Strait Islander renters, renters from culturally and linguistically diverse communities, older renters and renters with a disability.

Establish a specialist seniors housing support service

The Discussion Paper in relation to improving housing options for older people explains:

Helping older people to stay in their local area may require accessibility supports – physical or virtual healthcare or lower maintenance in their own home – and a greater mix of choices near easy-to-access places for people seeking to downsize. The NSW Housing Strategy could consider specialist housing for seniors, including encouraging this development in regional areas. Retirement living or high care facilities must be well located and integrated into communities, so that people can retain family, community and cultural connections.⁶¹

The NSW Housing Strategy could consider universal design to make housing suitable for

⁶¹ NSW Government (2020) *Discussion Paper: A Housing Strategy for NSW*, p48

all potential residents, planning provisions that will help to create housing appropriate for older people, or innovative options such as home sharing platforms and digital technology to enable more people to live independently.

But this strategy is silent on the need for timely advice and support services which are the key to its success. It focuses exclusively on the physical design and location of housing. Accordingly, its scope is limited, because it overlooks the real life experiences of older persons who are homeless or at risk of homelessness. The Australian Housing and Urban Research Institute (AHURI) provides an excellent analysis of the situation facing older low income tenants in the private rental sector.⁶² It identifies key vulnerabilities of older renters in relation to others in terms of: their limited incomes (and significant reliance on aged pension); lack of future earnings potential; possible dependence of family members; higher likelihood of experiencing physical disability or mental health issues; less resilience to change; and increased risk of isolation. More broadly older people find it very challenging to navigate complex housing and aged care systems.

The Tenants' Union of NSW is a member of the 'Ageing on the Edge NSW Forum'. We are aware the 'Ageing on the Edge NSW Forum' has provided a submission in response to this Discussion Paper. We endorse their submission. Given the particular vulnerabilities and complex housing concerns that can arise for older people, and especially those renting their homes we draw your attention to their recommendation to establish a trial specialist seniors housing support service.

The service they propose is one based on the 'Home at Last' service model in Victoria. *Uniting* has indicated its willingness to put funds aside for such a service, but it also would require funding from the NSW Government and the Tenants' Union of NSW is supportive of this. Tenants' Advice and Advocacy Services would work closely with a 'specialist seniors housing support service.

Recommendation

5.3 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

⁶² AHURI (2018) *Policy Brief: Supporting older lower income tenants in the private rental sector*, <https://www.ahuri.edu.au/housing/policy-analysis/supporting-older-lower-income-tenants-in-the-private-rental-sector>, accessed 28 July 2020

A strategy responsive to crises

Over the last 12 months NSW has experienced one crisis, and then another. First bushfires, and then a health pandemic. In many ways these have tested existing systems and structures. The COVID19 pandemic, in particular, has highlighted and exacerbated the existing inequalities in our housing system.

The NSW Evictions Moratorium that was implemented in response, has failed to adequately support renters. Many impacted renters have been forced to leave their homes because they have not been able to negotiate a reduced rent they can afford, many have faced eviction. The measures are not strong enough, but their failure has also underlined the existing failings of our tenancy laws. A clear lesson must be that NSW requires a legislative framework that can be responsive to crises, whether that be natural disaster or health pandemic.

This could be through legislated crisis protection frameworks that are ready to be implemented across affected regions or communities when health, economic or natural disaster crisis hits. It could also be achieved through generally improving our existing tenancy laws to ensure that before any eviction can take place all relevant circumstances are considered, and when a crisis hits (a household, a community) appropriate mechanisms for adjusting rents are in place so impacted households can afford to stay in their homes.

Recommendation

6.1 Ensure the NSW Housing Strategy, and specifically NSW tenancy laws, provides a responsive legislative framework that can account for and adapt quickly in the event of a health, economic or natural disaster crisis.

Targets, monitoring and accountability

We note that the Paper commits to “providing an ‘end-to-end’ NSW Government position on all housing, from homelessness to home ownership. It will include action plans that identify actions for State agencies and will be updated every 4 years; be supported by data collection and consultation; monitoring and evaluation against intended outcomes”

The current health pandemic placed significant pressure on policy makers to draft and implement a broad range of measures through the NSW Evictions Moratorium in a very short timeframe. As they now attempt to monitor and evaluate the effectiveness of these measures, and consider what *further* response/s are required, the inadequacies of our current reporting and monitoring mechanisms and data collection on the private rental housing system have become apparent - particularly in relation to evictions and the ending of tenancies generally.

Data

Accurate and meaningful data is essential and this is recognised in the Discussion Paper. We are concerned that there is little that measures important aspects of private rental in terms of the elements identified as necessary for a comprehensive Housing Strategy. The Housing Strategy Fact Book details what is currently used to measure affordability and stability - vacancy rates, advertised rents and homelessness figures. There is no reference to data or reporting in relation to issues to determine if regulation relating to tenancy and renting is sufficient, this is a serious omission that must be addressed.

The NSW Government has demonstrated a commitment to improve on this, not least in their recent pilot of a bond exit survey which will help track more closely how tenancies end.⁶³ We hope the usefulness and viability of the survey is demonstrated when the pilot data is applied to monitoring the early impacts of the recent pandemic, and that the NSW Government commits to resourcing the implementation of an ongoing bond exit survey.

Useful data in relation to the identification of rental issues can also be sourced from Fair Trading, NSW Civil and Administrative Tribunal and tenancy services.

Implementing the NSW Housing Strategy

Successful implementation of the NSW Housing Strategy requires the setting of clear targets and metrics that measure outcomes relating to security, affordability, liveability, amenity, accessibility and diversity especially in relation to rental housing outcomes. Transparency and accountability about progress towards meeting targets and evaluation of the effectiveness of measures, including regular review of instruments is

⁶³ <https://www.tenants.org.au/tu/news/rental-bond-exit-survey-launched>

required.

Recommendation

7.1 Establish clear targets and metrics across the short, medium and long term for outcomes that address current failures in relation to security, affordability, liveability, amenity, accessibility, and diversity of housing, including specifically in relation to rental housing

7.2 Provide transparent evaluation mechanisms for monitoring and measuring outcomes, and share available relevant data regarding outcomes

Landlord conduct

Adequate housing is a fundamental need for a healthy life and recognised as a human right. In that context we recognise property investors are essential service providers. It is appropriate to consider whether the provider of an essential service is fit-for-purpose in delivering their role. This can speak to their financial management, character, and training.

Studies such as the Australian Housing Conditions Dataset⁶⁴ and consumer surveys such as those by Choice, National Shelter and the National Association of Tenants Organisations⁶⁵ point to the low standard of rental housing being provided.

Tenants report a perceived reluctance on the part of the regulator, NSW Fair Trading, to issue penalties under the *Residential Tenancies Act 2010*. Over 2018/19 financial year (the most recent full year) 26 penalty notices for a total of only \$12,540 were issued for breaches of the *Residential Tenancies Act* out of 2197 notices totalling \$2,281,485. Penalties represent just 0.5% of the value of total penalties, despite tenancy being one of the leading reasons for complaints.

This may result in a message to industry that there are no consequences for poor behaviour.

New South Wales introduced some minimum standards in 2020 following a review of the *Residential Tenancies Act 2010*, and already has clear and legislated repairs obligations. However, the enforcement of these standards relies on tenants who are vulnerable to eviction and, especially for those living in the worst conditions, in a weak bargaining position. Further, as the standards are only a contractual obligation any orders made concerning one tenancy agreement end at the end of that tenancy. The next tenant must begin the legal process entirely afresh. A registration system would

⁶⁴ Emma Baker et al (2019) "The Australian Housing Conditions Dataset", doi:10.26193/RDMRD3, ADA Dataverse, V1

⁶⁵ Choice, National Shelter, NATO (2018) *Disrupted*, <http://shelter.org.au/site/wp-content/uploads/Disrupted-2018-Report-by-CHOICE-National-Shelter-and-NATO-Web-Version.pdf>, accessed 29 July 2020

better enable monitoring of property standards, including rectification orders, between tenancies.

Registration schemes, known as selective licencing schemes, have been legislated since 2004 in the UK⁶⁶ and their use has expanded across the UK since 2015. In NSW we can learn from the experience in the UK. The systems have made a significant impact on the standard of housing in areas where the system was effective and resourced.⁶⁷ The fees associated are set to recover costs, are a tax deduction and are in any event not onerous. NSW should evaluate and improve on the UK experiences.

A registration system would also open up the transparency and available data in the sector. This would provide consumers with greater information and surety about the service provider they are considering moving in with. Just as building trades, real estate agents and other service providers are registered in NSW's licence check systems and complaints against them recorded it is appropriate for housing service providers to do this. At the moment, the only position this can occur is the current NSW Complaints Register. However this requires 10 complainants in one month. Given less than 5% of NSW Landlord's own more than six properties, and subsequently it is impossible for the overwhelming majority of landlords to ever appear on the complaints register. Real estate agents are often listed for issues which are the landlord's responsibility, such as repairs, which muddies their own reputation. A clear and different solution is required.

Recommendation

7.3 Establish a landlord registration scheme to provide transparency, accountability and data to our renting system. A registration scheme ensures homes are provided to a standard that modern Australian communities expect and that service providers are in a position to meet both their contractual and societal obligations.

Operator conduct

Residential land lease communities have a registration scheme in place currently. Consideration of this scheme will form part of the statutory review of the *Residential (Land Lease) Communities Act 2013* and the ongoing monitoring of the effectiveness of this act and any amendments should form part of the 20 year housing strategy.

We argue this registration scheme should be expanded and made more comprehensive. Residents report that one of the most difficult issues in land lease communities to resolve is operator conduct. Residents of land lease communities report some operators behave appallingly, and current measures to deal with

⁶⁶ *Housing Act 2004* (UK), Part 3

⁶⁷ Ministry of Housing, Communities and Local Government UK (2019) *An Independent Review of the Use and Effectiveness of Selective Licencing*, pp8-10.

unprofessional conduct are ineffective.

The current registration scheme is applied primarily to the park itself. Consideration should be given to tying standards of behaviour and practice of park operators to their ongoing provision of service.

Residents report a reluctance on the part of the regulator, NSW Fair Trading, to issue penalties under the *Residential Land Lease Communities Act*. Over 2018/19 financial year (the most recent full year) no penalty notices were issued. This may result in a message to industry that there are no consequences for poor behaviour or unprofessional conduct.

Consideration should also be given to whether NSW Fair Trading has been given sufficient resources to effectively enforce the *Residential Land Lease Communities Act*, and whether registration should attract a fee that recovers the reasonable costs, and whether penalties need to be increased to cover both the costs of enforcement and to better act as a disincentive for misconduct.

Recommendation

7.4 Within the current registration scheme for Residential Land Lease Communities consider how standards relating to an operators' professional conduct and practice may be more closely tied to their ongoing provision of service.

Further engagement necessary

The importance of working in partnership to develop a NSW Housing Strategy that will deliver better housing outcomes is recognised in the Discussion Paper, with the report noting success requires collaboration with delivery partners and drawing on their expertise.⁶⁸ We agree, but believe this should be further extended to ensure that the people and communities whose homes are being planned for are given an appropriate opportunity to be involved in the process of development, implementation and evaluation of the Strategy.

The Discussion Paper asked us to consider what influence and experience or expertise the Tenants' Union of NSW might contribute towards delivery of the NSW Housing Strategy.

The Tenants' Union of NSW is part of the broader community services and housing and homelessness sector, a sector with expertise as well as extensive experience working with people and communities experiencing disadvantage, poverty and homelessness across NSW. We are particularly well placed to identify and highlight key issues and concerns related to housing for these communities, as well as representing the interests and perspectives of other renters who comprise more general 'housing consumers'. It is of particular concern that the role rental and housing and homelessness advocates can play in assisting in the design and implementation of a NSW housing strategy is not recognised in the Housing Strategy discussion paper's reference to partners who must also be involved.⁶⁹

Prior to the release of the Discussion Paper we believe there was a missed opportunity for greater consultation with key housing and homelessness peaks and community sector organisations. In addition to this submission, the Tenants' Union of NSW in coalition with others from the sector, has formally requested the NSW government commit to further consultation and co-design of the NSW Housing Strategy. Specifically we asked for the opportunity to review the first draft and provide ongoing feedback on the strategy's further development, and any further iterations.

In our joint letter and formal request we also recommended the Premier's current priority of reducing street homelessness be expanded to include all forms of homelessness and inadequate housing, with a special focus on the largest category 'severe overcrowding'.

Better tenancy regulation and provision of supports for renters is key to the prevention of homelessness. An effective strategy to eliminate homelessness must acknowledge the necessity of reform to policy and legislation and build in a timeframe for implementation of this, as well as commit to real investment in housing as infrastructure and resourcing of support and advocacy for those renting their homes.

⁶⁸ NSW Government (2020) *Discussion Paper: A Housing Strategy for NSW*, p6

⁶⁹ NSW Government (2020) *Discussion Paper: A Housing Strategy for NSW*, p68

Recommendation

8.1 Commit to further consultation and co-design of the NSW Housing Strategy with the community and community sector, including reviewing the first draft and providing ongoing feedback.