

Responses to Homelessness, January 2021

About the Tenants' Union 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 Network 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.

About this submission

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

This submission focuses on the insufficient protections and supports provided for people who rent their homes. We outline a range of policy and legislative reforms to our rental housing system/s to address the three focus areas identified in the *NSW Homelessness Strategy 2018-2023*: intervening early and preventing crisis, providing effective supports and responses, and creating an integrated, person-centred service system. This submission also provides feedback on the department's response to the COVID-19 pandemic.

Recommendations

In summary we recommend:

- That the NSW Government removes no grounds eviction provisions from tenancy law and replaces them with a range of 'reasonable grounds' for ending a tenancy.
- That the NSW Government extends notice periods for all 'no fault' eviction provisions, including for sale of property.
- That the NSW Government should consider and develop an appropriate hardship framework for renters who experience unexpected financial hardship which impacts their ability to pay their rent.
- That the NSW Government introduce better regulation in relation to the rental application process. This can be achieved through a requirement for increased transparency regarding the decision making process for applicants, and the introduction of standardised rental application forms that remove the ability to seek unnecessary information.
- That the NSW Government amend existing programs billed as 'Housing First' to ensure they genuinely align with Housing First principles.
- That the NSW Government fund a significant expansion to Housing First programs that demonstrate alignment with Housing First principles to meet the need for these programs.
- That the NSW Government invest substantially in social housing by building new stock, repairing old stock, and acquiring and repurposing available private market stock as social housing stock as part of economic stimulus for COVID-19 recovery.
- That the NSW Government make data relating to the number of people moving from the social housing waiting list into social housing publicly available on a quarterly basis.
- That the NSW Government review funding arrangements, including rent and eligibility processes, for public and community housing to ensure a sustainable and valued system.
- That the NSW Government make public data on the outcomes of the Rent Choice Assist program.

- That if the Australian Government chooses to maintain rates of social security payments below the poverty line, the NSW Government should fund additional financial support to people in NSW in receipt of income support, to ensure their income is at or above the poverty line.
- That the NSW Government, in consultation with Aboriginal and Torres Strait Islander stakeholders and community, develop and implement guidelines to improve communication and coordination between housing officers and child protection caseworkers who are working with families that have intersecting housing and child protection issues.
- That the NSW Government adequately resources free, independent legal advice and advocacy services for renters.
- That assessment of adequacy of resourcing takes into account the additional funding required for effective and appropriate provision of information, advice and advocacy supports for Aboriginal and Torres Strait Islander renters, renters from culturally and linguistically diverse communities, and renters with a disability.
- That the NSW Government adequately resource the Tenants' Union of NSW to ensure renters have a voice and peak body able to represent their interests.

1. Background: Failure of the NSW Government to meet its commitments to prevent and respond to homelessness

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

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

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

Pru Goward, Minister for Family and Community Services, Minister for Social Housing, Minister for the Prevention of Domestic Violence and Sexual Assault, *NSW Homelessness Strategy 2018-23*

The NSW housing system has, however, failed to ensure everyone has access to safe, secure, affordable housing. Issues around the lack of security and affordable housing are particularly acute for those who rent their homes, who on average are on lower incomes than homeowners; and are more likely to have precarious employment. This places them at particular risk in times of crises, whether that is individual life crises such as illness or loss of a family member or broader crises, such as bushfires or a pandemic. Low income renters are particularly vulnerable.

The precariousness of low-income renters 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.¹ Over the last 20 years there has been an increasing reliance on the private rental market for those on low or very low income, relative to social housing. Just over a million low income households rent in the private rental sector.² Two-thirds (66%) of these households are paying more than

¹ 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 28 January 2021.

² Ibid.

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.³

This leaves vulnerable households in a very precarious position, with little money left each week for other necessary household items. People are going without basic essentials such as food and medication to pay the rent.⁴ Almost a third of all low income private renters do not have \$500 in savings for use in an emergency.⁵ This places these people and families at a higher risk of homelessness if faced with an unexpected life event, such as serious illness or injury, death of a spouse, loss of employment, or family separation. NSW Treasury has estimated that over 23,000 households are forced to move each year, and calculate the total direct costs to be \$116 million.⁶ This represents a cost of \$5,000 per move, highlighting the financial pressure that a move represents especially to low-income renting households and the risk of homelessness as a result.

Moreover, the Productivity Commission's analysis shows that among low-income private renters in rental stress, older persons, people with a disability, people with low educational attainment, and Aboriginal or Torres Strait Islander people are much more likely to be in rental stress (that is, paying over 30% of their income towards rent).⁷ Households with Aboriginal or Torres Strait Islander people are both more likely to be renting and face a range of health vulnerabilities as a community. Aboriginal and Torres Strait Islander people are three times more likely to be living in overcrowded homes.⁸

Each of these factors compounds the difficulty of dealing with affordability problems and the risk posed by evictions. Mounting debts and eviction for these renters increases the risk of homelessness and long term poverty. In order to quickly and effectively reduce the rates of people being made homeless, the NSW Government should improve security in the private rental market. Reforms to provide greater security can relatively quickly and easily be achieved, alongside several more long-

³ Productivity Commission (2019), p53.

⁴ NSW Council of Social Services (2020) *Cost of Living in NSW: Austerity hits home*, <https://www.ncoss.org.au/wp-content/uploads/2020/04/Cost-of-Living-final.pdf>, accessed 28 January 2021

⁵ Productivity Commission (2019), p54.

⁶ NSW Productivity Commission (2019) *Kickstarting the productivity conversation*, October 2019, http://productivity.nsw.gov.au/sites/default/files/2019-10/0709-04_Productivity%20paper_Full%20version-Final-RRR_1.pdf, accessed 25 January 2021, p120.

⁷ Productivity Commission (2019), p67

⁸ Australian Institute for Health and Welfare (2019) *Indigenous housing*, <https://www.aihw.gov.au/reports/australias-welfare/indigenous-housing>, accessed 29 January 2021

term initiatives to increase the supply of permanent, affordable housing as well as other supports.

The experience of residential renting is built on the threat of homelessness as behavioural control. Across private, public and community housing people renting their homes are constantly reminded that they are always potentially one infraction and a matter of weeks away from homelessness. When considered as part of a homelessness strategy, it is apparent that this use of the threat of homelessness works against the aim of preventing homelessness. A person facing financial or health crises is made homeless despite clear risk of homelessness. A new approach needs to develop that recognises in real, practical ways that an eviction-based renting system works against a homelessness strategy aimed at preventing homelessness.

NSW's homelessness prevention and response strategy can not be separated from our broader housing policy and regulatory environment, with particular focus on the experience of people with lower wealth and income. These are people who overwhelmingly rent their home.

2. Impacts and opportunities identified during the COVID-19 pandemic

The COVID-19 pandemic has highlighted and exacerbated the existing inequalities of our failing housing system. As the United Nations Special Rapporteur on the Right to Adequate Housing, Leilani Farha, noted in her COVID-19 Guidance Notes:

“In the face of this pandemic, a lack of access to adequate housing is a potential death sentence for people living in homelessness and puts the broader population at continued risk. COVID-19 has exposed the myth of individualism, revealing the ways in which our collective wellbeing depends not only on our own ability to “stay home”, but the ability of others to do the same.”⁹

Many renters have been, and continue to be, impacted significantly by the pandemic. Many have lost jobs or income. Despite the National Cabinet's announcement of an Evictions Moratorium at the end of March 2020, many people lost or continue to face the prospect of losing their rented homes as a result of the pandemic. While everyone has for much of the past year been told to stay 'safe at home' and limit or avoid contact as much as possible, many renters have been facing the health implications of being forced to move. Many have left or are leaving their rented homes because of financial hardship, ending their agreement because they are not able to afford the rent, are unable to negotiate an affordable reduction to their rent, and may be concerned about accruing significant debt in their current tenancy. Despite the Eviction Moratorium, many vulnerable tenants have also faced eviction during the pandemic - largely because the Moratorium protections were too limited and introduced too late.

The Eviction Moratorium measures in NSW only applied to renters in the private rental sector, and some boarding house renters. Social housing tenants and many affordable housing tenants are specifically exempted from the protections.

The Moratorium in NSW also only addresses evictions for rent arrears where renters are able to demonstrate they are COVID-19 impacted, according to the definition set out in the moratorium. The Moratorium defines a COVID-19 'impacted tenant' as a tenant in a household (meaning any tenants or other persons living together in the same residential premises) which has had a reduction or loss of work and/or income because of the pandemic and as a result, the weekly household income has been reduced by 25%. Low income households who lost income below the required threshold during the crisis, or who were already under or unemployed prior to the

⁹ Leilani Farha (2020) *COVID-19 Guidance Note: Protecting those living in homelessness April 2020*, https://www.ohchr.org/Documents/Issues/Housing/SR_housing_COVID-19_guidance_homeless.pdf, accessed 27 January 2020

crisis have not been able to seek rent reduction or protection against eviction under the NSW moratorium.

Evictions for no reason (i.e. 'no grounds' including end of fixed term agreement), for sale of home, and eviction for other breach grounds continued. Indeed we are aware some COVID-19 impacted renters received 'no grounds' evictions, following a request to their landlords for a rent reduction – allowing some landlords to circumvent the moratorium protections in place.

The key protection implemented through the NSW Eviction Moratorium measures was the requirement for landlords wishing to terminate a tenancy on grounds of rental arrears to first engage in a rent reduction negotiation. Unfortunately, the framework for rent reduction negotiations in NSW was relatively weak. It is not mandated, as it is with commercial tenancies, and does not provide for independent arbitration with the ability to set a fair rent where negotiations fail. Many tenants – and landlords and agents – found the negotiation process confusing, and especially at the start of the crises complained about the lack of clarity and information available to guide them through negotiations.

Many local Tenant Advice and Advocacy Services reported a significant number of renters contacted them during the last few months of 2020 because a dispute had arisen regarding their negotiated rent reduction. Tenants were calling for advice because the rent reduction as waiver they understood they had negotiated, was being treated by the landlord or agent at the end of the rent reduction period as a deferral and the tenant was now being told by the landlord they were in significant rental arrears. This caused significant financial and emotional stress for renters, and in some cases resulted in homelessness.

In our report, *Supporting Renters through the Pandemic: NSW renters' experience in the Private Rental Market during the COVID19 health crisis* we illustrate a fuller picture of the impact of the pandemic on renters in NSW.¹⁰ For a comprehensive overview and analysis of the successes and limitations of the Evictions Moratorium measures, we recommend to you the National Association of Tenants Organisations submission to the Select Senate Committee on COVID-19's Inquiry into the Australian Government's Response to COVID-19. The submission addresses all Australian jurisdictions, including NSW.

While we believe the NSW Moratorium can be further strengthened, we welcomed the extension of the NSW Moratorium by the NSW Government for a further 6 months to 26 March 2021. We hope the protections will remain in place while the economic impacts of the COVID-19 health crisis continue, continuing at least 6 months beyond

¹⁰ Tenants' Union of NSW (2020) *Supporting Renters Through The Pandemic: NSW renters' experience in the Private Rental Market during the COVID19 health crisis*, https://files.tenants.org.au/policy/202009_TUNSW_Supporting_renters_through_pandemic.pdf, accessed 27 January 2020

provision of the Commonwealth COVID-19 income support protections. This would give renters more time to transition out from circumstances of financial or other hardship that the pandemic may have placed them under.

The COVID-19 crisis has demonstrated our housing system is ill-prepared for crises. The measures implemented to protect renters during the pandemic were insufficient, but also faced delays in introduction and implementation. In some cases this meant renters were unable to make use of them to their fullest extent. As an example, the two-week cap on break fees for COVID-19 impacted tenants was introduced only after many renters had already been forced to end their tenancy early, facing a break fee of hundreds or thousands of dollars. We are also aware the lack of clarity and regulation of the rent reduction negotiation framework discouraged renters from entering into negotiations because they did not have confidence the process would result in a positive outcome.

It is vital our housing system be set up to anticipate and account for emergency situations. As climate change progresses, extreme weather events will become more severe, and occur more often.¹¹ Much as the COVID-19 pandemic has put significant and unforeseen strain on our housing system, unpredictable events such as bushfires, floods and storms will similarly strain our housing system. It is sensible public policy that the NSW Government takes seriously the lessons learned during the COVID-19 pandemic, and does not attempt to simply return to 'normal' (i.e. our pre-COVID-19 system). Protections for renters implemented during the pandemic were, while insufficient, a positive step forward. Many of these protections should be further strengthened, and remain in place long-term or permanently, both in anticipation and preparation for potential future crises, and to make our housing system fairer and more functional.

Case study: Monica's story – eviction during the pandemic

Monica lost her income in April 2020, and was in severe financial stress until she began to receive JobKeeper in June. During that period, she asked for a rent reduction, and provided all relevant financial information to the agent. They agreed on a reduction of \$350 per week, but the agent offered this as a deferral rather than a waiver. Monica went to Fair Trading as she wished to enter a formal negotiation process. Monica and the agent were unable to come to an agreement as to whether the reduction would be a deferral or a waiver. Monica received a 90 days no-grounds eviction notice in June, so began to prepare for the end of the tenancy.

One week before the end of the eviction period, Monica received another notice of termination, due to rental arrears. She also received a letter notifying her of a Tribunal

¹¹ Australian Academy of Science, *The science of climate change*, How are extreme events changing?, <https://www.science.org.au/learning/general-audience/science-climate-change/5-how-are-extreme-events-changing> accessed on 20 January 2021

hearing. She attended the hearing and was ordered to pay all outstanding rental arrears, and lost her bond. The financial strain and insecurity of this situation caused Monica a huge amount of stress and psychological hardship. She had to sell most of her assets and move to Queensland to live with her sister, and was separated from her son.

Case study: Laura's story – bad faith rent reduction negotiations

Laura and her partner both lost their incomes due to the crisis. They were living together in a property in the southern suburbs of Sydney, and approached their landlord to request a 50% reduction in rent. They specified that this reduction would be a waiver, not a deferral. The landlord agreed to the reduction.

Later, however, the matter was opened up again. As Laura explained to us:

I was approached by the real estate agent. They informed me I was in rental arrears of \$4000. This was really confronting as I believed we had a clear agreement for a reduction of 50%, not a deferral. I refused to pay the arrears. On the 12th of July I received a letter telling me I had 12 days to move out. I also received an email informing me the landlord was taking me to the Tribunal over the rental arrears. My partner and I moved into a new property and prepared for the hearing.

For months my partner and I gathered evidence showing the bad state the property was in when we moved in and the costs involved to clean it and make it liveable (to bring it to a minimum standard. We also collected together the evidence to show we had entered into an agreement for a rental reduction (not a deferral). Our real estate agent had also advised us to use our superannuation money to pay rent, which we'd done - and now we've been left with no super.

On the date of the hearing, I was at home waiting for the hearing to commence – all hearings were by phone. After a couple of hours, I called NCAT to check to see why they hadn't called. The landlords had pulled the case and I'd been given no notification. I subsequently found out the landlord had claimed my bond in full, received an insurance settlement for the arrears they claimed I'd built up and had released the property to new tenants without addressing any of the issues we'd raised with them

Case study: Li Mei's story – bad faith rent reduction negotiations

Li Mei was living in a rental unit with her husband and daughter when the pandemic began. Both Li Mei and her husband lost their incomes due to the pandemic. They contacted their agent to request a 50% rent reduction, which was refused. Once the couple's Centrelink payments started, they reviewed their budget and assessed that they would be able to pay 65% of the rental price. The agent agreed to this reduction on a temporary basis. They agreed that it would be treated as a deferral, to be paid back in \$200 instalments once the family had income again.

Ten (10) weeks after the deferral began, Li Mei's husband got a job. The agent then asked the couple to pay back the deferred rent in full, which was \$1,500. This was very distressing for the family, as they were unable to pay. They accessed their

superannuation early in order to pay off this debt. Once the family's fixed-term lease ended, they were not offered a renewal.

Case study: Beatrice's story – failed rent reduction negotiation

Beatrice and her husband were living on the NSW South Coast when COVID-19 hit and their income was impacted. They requested a rent reduction, however, after asking for a significant amount of personal information from Beatrice, the landlord refused entirely, and told them to use their superannuation to pay the rent. They were unwilling to access their superannuation, so they had to move out of the property as they could not afford the rent. Once the couple had left the property, they saw that it was back on the rental market for a cheaper price.

The couple moved into a different property, and Beatrice has found full-time employment in order to afford rent. However, Beatrice's job is a 2-and-a-half hour commute from the couple's home, which is taking a significant toll on her.

Case study: George's story – rent negotiations

George was living in a rental property in the Eastern Suburbs when the COVID-19 pandemic began. His income was impacted by the pandemic. In March 2020, he reached out to his real estate agent to request a rent reduction on the basis of loss of income. The agent refused to negotiate, and advised George to access his superannuation early and use those funds to pay rent. George was unwilling to erode his superannuation, but without a rent reduction would not be able to afford to pay rent.

He informed the agent that he would have to move out of the property if they could not agree on a rent reduction. The agent then agreed to negotiate, and the two of them came to an agreement on a rent reduction over a period of time. However, once that period had ended, the agent contacted George arguing that the rent reduction was a deferral rather than a waiver, and that George was now in rental arrears which he must pay.

3. Focus Area 1: Intervening early and preventing crisis

Support people to maintain tenancies and avoid entering the homelessness system

Increase early identification of at-risk groups

Prevent exits from government services into homelessness

3.1 Evictions for no reason increase homelessness

Close to a third of all Australian households rent their homes. Current trends indicate this number is increasing. In NSW, for example, the number of households renting increased from 31% in 2015/16 to 34% of households in 2017/2018. Households are also renting for longer. A third of all private renters are long-term renters who have been renting continuously for 10 years or more.

Unfortunately, renters do not experience the same security and comfort in their homes as homeowners. Many are constantly worried about losing their home and feel powerless to assert their rights. A significant cause of this is the legal insecurity they face. In NSW renters can be evicted for no reason or 'no grounds'. This means a landlord can evict a tenant where no breach of agreement has occurred and no reason is required to be provided to the tenant. We are aware that a significant number of renters who receive a 'no grounds' eviction notice are evicted in retaliation (for asserting a right) or because of discrimination.

'No grounds' eviction provisions in tenancy law fundamentally undermine the security of the tenancy contract. A survey Tenants' Union NSW undertook with Marrickville Legal Centre of over 600 NSW renters in 2018 found 75% of renters reported just the possibility of a receiving 'no grounds' eviction deters them from asking for repairs or requesting improvements to their home. Renters' responses indicated many - close to two thirds of those surveyed - live in a constant state of anxiety about the security of their housing.¹² This rose to close to three quarters among renters who had previously experienced a 'no grounds' eviction.

The impact of a 'no grounds' or no reason eviction and subsequent forced move is profound. There is an immediate and significant impact for households that receive a 'no grounds' eviction in terms of household upheaval, emotional stress, and financial strain. For low income and vulnerable renters in particular, it increases the risk of

¹² Tenants' Union NSW and Marrickville Legal Centre (2019) *Lives Turned Upside Down – NSW renters' experience of 'no grounds' evictions*, <https://files.tenants.org.au/policy/2019-Lives-turned-upside-down.pdf>, p6, accessed 28 January 2021.

eviction into homelessness. Recognising this, the Australian Productivity Commission recently recommended removing all no grounds or no reason eviction provisions from Australian tenancy law as a necessary reform to improve the welfare of vulnerable private renters.¹³ It also recommended extending notice periods for all 'no fault' eviction provisions (including sale of property).

Apart from being an effective homelessness prevention strategy, reforming tenancy law in this way would be good for the economy. The NSW Productivity Commission has identified that evictions have a significant direct cost to the NSW economy.¹⁴ They cited NSW Treasury's estimate that the over 23,000 renting households forced to move each year result in total direct costs of \$116 million per annum, primarily due to the relocation costs incurred by renters.

We recommend no grounds eviction provisions (sections 84 and 85) of the *Residential Tenancies Act 2010* are removed and replaced with a range of 'reasonable' grounds for ending a tenancy. 'Reasonable grounds' could include situations 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.

In addition, when hearing an application for an eviction (on whatever grounds) the Tribunal should be able to decline to evict someone after considering the case, and deciding that the reasons are not made out. A range of measures could be introduced to ensure a landlord is held accountable for the reasons they provide, such as penalties for extreme misconduct such as misleading the Tribunal, or a restriction on re-letting for a specified period.

Case study: Katherine's story – no grounds eviction and the risk of homelessness

Katherine is in her sixties and lives in the Far South Coast community. She has been living there for over ten years; all her supports are located in this community. Katherine's landlord has issued her with a 90-day no grounds termination notice as he wishes for his brother to move into the property.

Katherine has been trying for three months to find another property to rent in the area, but there are very few suitable properties in the area. The few suitable properties that

¹³ 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 22 January 2021

¹⁴ 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 28 January 2021.

are available are being inundated with so many applications that Katherine is not being approved.

Katherine's mental health has been impacted by this upheaval to her life, and she is very concerned she will either risk being made homeless, or be forced to leave the area and lose all of her supports. To make matters more difficult for Katherine, the landlord is demanding she allow them access to the garage so the landlord's brother can store his items until they can get vacant possession orders from NCAT.

Case study: Laura's story – no grounds termination

Laura suffers from Post-Traumatic Stress Disorder, which manifests in difficulty with administrative tasks like reading mail. Laura also has issues with her memory. In the past there have been problems with Laura not receiving notices of general inspections from the real estate agency, so she requested in writing that they telephone her to let her know of any notices.

The landlord issued Laura a 90-day no grounds termination notice, which she did not receive and was not aware of until two weeks before the vacant possession date, when the real estate agency sent Laura an email to ask whether she had secured a new property.

Laura requires support and time to move tenancies, and moving is very distressing for her. She froze and was unable to do anything in response to the notice of termination or the email. When she did not reply to the email, the real estate agent came to the property without notice and began shouting at Laura through the front door.

Laura contacted the Tenants' Union, and we managed to assist her to negotiate with the landlord to withdraw the termination notice in order to give Laura more time to get the supports in place that she will need in order to move. However, as the law currently stands, the Tribunal would have no discretion but to terminate if the landlord had made an application for termination and possession orders based on a 90 day no grounds notice.

Recommendations

- That the NSW Government removes no grounds eviction provisions from tenancy law and replaces with a range of 'reasonable grounds' for ending a tenancy.
- That the NSW Government extends notice periods for all 'no fault' eviction provisions, including for sale of property.

3.2 Strengthening available supports to help people remain in their rental homes

The *NSW Homelessness Strategy 2018-2023* suggests a way to assist people to maintain their tenancies and prevent entrance to the homelessness system is to 'support and encourage financial institutions, including telecommunications and energy companies, to offer information on a full suite of Commonwealth and state supports for their customers who are experiencing financial hardship'. There is a significant role for financial institutions to play in preventing homelessness through offering supports to people in financial hardship, thereby allowing them to continue to pay rent and remain in their home. However, this should go beyond offering information on Commonwealth and state supports.

Many financial institutions such as credit providers, telecommunications companies and energy companies, are governed by Codes of Practice that set out obligations and frameworks for those institutions to discuss and negotiate 'hardship arrangements' where a consumer can demonstrate they are experiencing financial hardship. These arrangements can include periods of reduced payments, and in some cases partial or total debt waivers.

These measures are not only intended to provide relief for the benefit of the consumer in hardship, but also support the continued relationship between the institution and the consumer. If a consumer defaults on a loan, is under severe financial stress, and will likely never be able to pay back a debt, both the consumer and the financial institution suffer. If a consumer is given appropriate leeway and support to get back on their feet, they will likely remain a customer of that financial institution.

Strengthening existing hardship obligations for financial institutions is one measure that can reduce financial strain on renters who are struggling, and assist them to continue to pay rent and remain in their home. While the hardship frameworks set out in these Codes are not perfect – particularly for those Codes that are not accompanied by co-regulation and are therefore not legally binding – the fact that there are frameworks and obligations set out is positive. In contrast, under usual circumstances there is no obligation or encouragement for landlords to enter into hardship arrangements with tenants experiencing financial hardship, and even the temporary rent reduction negotiation measures implemented during COVID-19 were in many ways inadequate, as outlined above in section 2.

Currently the Residential Tenancies Act makes no mention of financial hardship as grounds for a tenant to request a rent reduction. Consideration should be given to the permanent introduction of a requirement for landlords to enter into rent reduction negotiations where a renter can demonstrate they are experiencing financial hardship as a result of a change in circumstances.

We understand there are significant differences between large financial institutions and individual landlords – particularly those with just one or two investment properties. Many landlords have also been financially impacted by the crisis. The COVID-19 health crisis demonstrated many landlords do not have the capacity to

withstand the risks of the business model they have entered into, especially in times of crisis. Nevertheless, it is unfair that a person who owns a house and is paying off a mortgage is able to access a significantly stronger financial hardship framework through their credit provider than does a person renting their house. Banks, telecommunications companies and energy companies are easily weather losses in the hundreds or thousands if a consumer is in financial hardship, especially where this means an ongoing, financially beneficial relationship with that consumer. Some landlords are less able to weather that type of loss. This should not mean however, that hardship frameworks are not made available to renters in financial hardship. Instead consideration should also be given regarding how to support landlords for whom compliance with a hardship framework would in turn lead to financial hardship.

Recommendation

- That the NSW Government should consider and develop an appropriate hardship framework for renters who experience unexpected financial hardship impacting their ability to pay their rent

3.3 Improve protections from discrimination in the private rental market and in community housing

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.¹⁵ Many face discrimination, both lawful and unlawful, during the rental application process.

Across all Australian jurisdictions there are some legislative protections against discrimination in the provision of rental housing on the grounds of a tenant's age,

¹⁵ 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.

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 are inadequate for addressing unlawful discrimination.

Discrimination in the private rental sector in Australia is well established.¹⁶ 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.¹⁷ 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%). See Table below.

People experiencing discrimination on these bases are disproportionately members of demographics that are at higher risk of homelessness. For instance, the Aboriginal and Torres Strait Islander population faces a number of inter-related challenges linked to poverty at far higher rates than the general population, including family violence, substance abuse disorder and other mental illnesses, and more. They are also likely to face direct or indirect discrimination when accessing Social Service Agencies. All of these factors result in increased rates of eviction and homelessness, and longer wait times for housing, for Aboriginal and Torres Strait Islander people as compared to the general population. As of the 2016 census, Aboriginal and Torres Strait Islander people were experiencing homelessness at a rate of 9.6 times that of the general population.¹⁸

Being homeless in and of itself is a serious axis for discrimination during the private rental market application process. In the experience of TAAS workers, many renters are discriminated against on the basis that they are accessing support services. This can leave people stuck in a difficult cycle where they are unable to secure housing in part because of the fact that they are homeless. Discrimination limits options for

¹⁶ 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 28 January 2021

See also: Short P, Seelig T, Warren C, Susilawati C, Thompson A (2008) *Risk-assessment practices in the private rental sector: Implications for low-income renters*, AHURI Final Report No.117; Solonec, Tammy, (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

¹⁷ 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 28 January 2021

¹⁸ Australian Institute of Health and Welfare (2019) *Aboriginal and Torres Strait Islander people: a focus report on housing and homelessness*, March 2019, <https://www.aihw.gov.au/reports/housing-assistance/indigenous-people-focus-housing-homelessness/data>, accessed 20 January 2021

renters, and where alternative accommodation is not easily found increases significantly the risk of vulnerable and low income renters being pushed into homelessness.¹⁹ It should be noted discrimination during the application process is likely to be a live issue for many of the individuals and families in NSW looking for new rental housing when the temporary accommodation provided by the NSW Government via a one off \$34 million funding allocation for homelessness strategy is no longer available.

WHO IS REPORTING DISCRIMINATION?




Who?	Why? Key areas of discrimination	Comparison
75% of people who previously had a disagreement with their landlord or agent about the bond	For receiving a government payment (42%), Having a pet (39%), Age (24%), Having young kids (23%), Being a single parent (18%), Needing to use a bond loan (18%), Gender (12%) and Disability (11%)	+31% more likely to face discrimination than people who haven't had a disagreement
60% of households with income less than \$50,000 per annum	For receiving a government payment (33%), Being a single parent (17%), Needing to use a bond loan (10%), Disability (9%)	Households with incomes over \$100,000 report similar levels of discrimination but for fewer reasons – better off households are only as likely to face discrimination as low income households if they own a pet. 
59% of people with personal income less than \$35,000 per annum	For receiving a government payment (33%), Disability (9%), Needing to use a bond loan (8%) 	+13% more likely to face discrimination than people with personal incomes over \$100,000
56% of women 	For having a pet (31%: +17% more than men), Having young kids (13%), Being a single parent (11%), Needing to use a bond loan (7%)	+14% more likely to face discrimination than men
55% of people under 35 years old	Age (22%)	+14% more likely to face discrimination than those over 35
54% of regional renters	Having a pet (33%), Having young kids (15%)	+6% more likely to face discrimination than metro renters

Table: Who is Reporting Discrimination? Source: Choice, National Shelter, NATO, Unsettled: Life in Australia's Private Rental Market, 2017, p22

¹⁹ Australian Productivity Commission (2019) Vulnerable Private Renters: Evidence and Options, September 2019, p87, <https://www.pc.gov.au/research/completed/renters/private-renters.pdf>, accessed 28 January 2021

Case study: Farhad's story – racial discrimination in the rental market

Farhad is an Iranian man living in Sydney. He has two Masters degrees, but has struggled to be accepted for a rental property. He believes this is related directly to his racial background. In early 2020, Farhad was living in his car, and applying for rental properties. On several occasions, Farhad had hopes of securing a rental property, however upon speaking over the phone with the agent would be told that the property was no longer available, which he believes is due to his accent. He went as far as to offer to pay an entire year's rent up front, but was unsuccessful.

In April 2020, Farhad was approved for a rental property on the Central Coast. However, since moving there he has faced consistent aggression from his neighbor, and has been advised by friends and the police to leave the property for his own safety. Due to his concerns about racial discrimination in the rental market, he is apprehensive about leaving the property. He is continuing to apply for other properties but continues to face rejection. As he explained to us:

"I have applied to over 20 houses in the past year and have been getting rejected. I feel as though I am experiencing racism and discrimination for my ethnicity and I am struggling to move forward...I fear I will be forced to become homeless as I cannot stay at my home much longer."

It is not only in the private rental market that discrimination can impact renters. Discrimination regularly impacts renters in community and public housing, and people accessing homelessness services. This discrimination occurs both intentionally and unintentionally. Both social housing and homelessness support services have often served as a crucial safety net and a buffer for those who struggle to find and sustain housing in the private rental market, at least in part because of the unlawful discrimination experienced there. The NSW Government must strengthen and enforce protections from discrimination in the context of social housing and homelessness services, and prevent moves that would weaken renters' protections from discrimination.²⁰

Recommendation

- That the NSW Government introduce better regulation in relation to the rental application process. This can be achieved through a requirement for increased transparency regarding the decision making process for applicants, and the

²⁰ See our blog post outlining our concerns with the *Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020* currently being considered by NSW Parliament. Should it pass in full or in part, this may legitimise discrimination by some homelessness services and some community housing providers. Read here: <https://www.tenants.org.au/blog/what-could-nsw-religious-freedoms-bill-mean-renters>

introduction of standardised rental application forms that remove the ability to seek unnecessary information.

4. Focus Area 2: Providing effective supports and responses

Strengthen Housing First in NSW to reduce rough sleeping and prevent chronic homelessness through flexible, tailored supports

Provide targeted housing options to prevent homelessness or chronic homelessness for high risk groups

Provide choice and the right supports for people to address the issues putting them at risk of homelessness and to reduce repeat homelessness

4.1 Housing First principles are strong, but must be correctly implemented

"There is no right to housing in Australia. A 'housing first' response, that is, access to permanent housing, with additional support if needed, mitigates the detrimental effects of homelessness and the shelter environment on the outcomes of families and children"

Kylie Valentine, Hazel Blunden, et al, *Supporting families effectively through the homelessness services system*, AHURI Final Report²¹

Housing First is an international model for housing and supporting people who have experienced long-term and reoccurring homelessness. Housing First Principles have been developed for Australia, based on experiences of other countries' Housing First strategies. Australia's Housing First Principles are:

- People have a right to a home
- Flexible support for as long as it is needed
- Housing and support are separated
- Choice and self-determination
- Active engagement without coercion
- Recovery oriented practice
- Social and community inclusion

²¹ Valentine, K., Blunden, H., Zufferey, C., Spinney, A. and Zirakbash, F., *Supporting families effectively through the homelessness services system*, AHURI Final Report 330, 2020, p33, https://www.ahuri.edu.au/_data/assets/pdf_file/0023/63428/AHURI-Final-Report-330-Supporting-families-effectively-through-the-homelessness-services-system.pdf, accessed 28 January 2021

- Harm reduction approach²²

The NSW Homelessness Strategy states a commitment to Housing First principles. However in practice there does not seem to be a Housing First approach to existing social housing or homelessness services. The first significant problem with the 'Housing First' approach outlined in the NSW Homelessness Strategy is that it proposes only an additional 120 housing places over four years. This falls significantly short of the need in the community that it undermines the stated commitment to the principle that people have a right to a home.

The Supported Transition and Engagement Program (STEP) highlighted in the strategy as a Housing First model is not truly in line with Housing First principles. STEP is a transitional housing model, where the primary focus remains to transition people into the private rental market. This focus is at odds with the principle that housing and support should be provided for as long as they are needed – which for some people with complex needs may mean long term support. In addition, people accessing housing through STEP are often subjected to operational requirements, such as the requirement of a rental diary, the requirement that people prove they are searching or have searched for properties in the private rental market, and that people must “engage” with the Department of Communities and Justice while in transitional accommodation. The Department of Communities and Justice (DCJ) reports people have left the program because of failure to engage. We have also heard directly from people who have exited the program that they have done so as the requirements are too onerous, particularly for people with complex needs and/or mental health issues. These types of requirements are contradictory to the principles that people have the right to a home, and that there be active engagement without coercion and undermine the commitment to trauma informed care outlined through the principles.

The Together Home program implemented to assist rough sleepers during the COVID-19 pandemic is a positive program, however is not truly in alignment with a Housing First model as it has been designed using STEP principles – and generally offers only two years of accommodation and support.²³

There are examples of Housing First programs that align with the Housing first principles set out above in NSW, including the Common Ground program run through Mission Australia and based in Camperdown. It provides quality, permanent,

²² Homelessness Australia (2020) *Housing First Principles for Australia*, <https://www.homelessnessaustralia.org.au/campaigns/housing-first-australia>, accessed 19 January 2021

²³ NSW Government (2020), *Together Home Program: Housing and support for people street sleeping during COVID-19*, Program Guidelines, https://www.coronavirus.dcj.nsw.gov.au/___data/assets/pdf_file/0010/785377/Together-Home-Program-Program-Guidelines.pdf, accessed 19 January 2020.

affordable housing with separate, distinct, on-site support services.²⁴ However, due to limited resources, this program is limited to people with very high and complex needs, including having a long and repeated history of homelessness, as well as often mental health illnesses.

We acknowledge that to apply a genuine Housing First approach to homelessness in NSW would be very expensive. This is not a reason not to support Housing First, but does provide a compelling argument for swiftly adopting cheaper, preventative approaches to reducing homelessness, including those outlined above in section 3. A combination of improving security for renters from eviction, and increasing supports and finances available to renters, would significantly reduce the need for Housing First interventions.

Recommendation

- That the NSW Government amend existing programs billed as 'Housing First' to ensure they genuinely align with Housing First principles.
- That the NSW Government fund a significant expansion to Housing First programs that demonstrate alignment with Housing First principles to meet the need for these programs.

4.2 Address housing affordability through genuine investment in social housing

4.2.1 The importance of social housing

To adequately address provision of affordable, secure, safe housing governments needs to invest substantially in public and community housing. 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 2-10+ 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

²⁴ Mission Australia (2016) *5 Years Common Ground*, <https://www.missionaustralia.com.au/documents/housing/miscellaneous/668-common-ground-5-year-anniversary>, accessed 20 January 2021

²⁵ Department of Communities and Justice NSW, *Expected Wait Times*, <https://www.facs.nsw.gov.au/housing/help/applying-assistance/expected-waiting-times>, accessed 20 January 2021

The above data does 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 in NSW was calculated by Troy et al (2019) to be 216,500 in 2016 and is projected to rise to 316,700 by 2036.²⁶ A large number of people experiencing this shortfall are currently being supported, though inadequately, by Commonwealth Rent Assistance.

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. 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 dropped from 6% to 3%.²⁷

The most effective protection against an increase in rent assistance costs, particularly for housing costs, is the provision of housing by governments, whether it takes the form of public housing or funding delivered to community housing with direct operating grants. As well as reducing the need for measures like rent assistance, provision of 'non-market' housing provides positive pressure on market housing by introducing real competition and higher standards. It is an effective lever for governments to drive positive outcomes for both direct assistance recipients and others.

Supporting community recovery from the COVID-19 pandemic, including economic recovery and the easing of inequality and disadvantage that have emerged, could usefully be achieved via significant investment in social and affordable housing. Investment could involve the following:

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

4.2.2 Issues with head-leasing as an alternative to building additional social housing

²⁶ Troy, L., van den Nouwelant, R., Randolph, B., (2019) *Estimating need and costs of social and affordable housing delivery*, City Futures Research Centre, March 2019, pp2-3, <https://apo.org.au/node/225051>, accessed 25 January 2021

²⁷ 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 20 January 2021

These measures are preferable to further investment in programs that are based on private rental market short leases, such as the Together Home program. The Together Home program has been quite effective at assisting people to move out of homelessness into housing for the medium-term, but the program is undermined by its reliance on head-leasing. As a result, it is vulnerable to many of the shortfalls of the private rental market, including the use of ‘no grounds’ evictions – where the private landlord evicts the social housing provider, and the social housing tenant is forced to move or may themselves face eviction.

Head-leasing of private properties can also result in people being placed in inappropriate housing. People who are former rough sleepers with complex needs may not be best supported by being placed in this type of arrangement, as there may arise neighbour disputes that are difficult to resolve. In addition, the program is based on two-year leases. Many of the people eligible for this program have complex needs and it is unreasonable to assume that they will be ready to move into the private rental market after just two years, or in some cases, ever. The system should be set up to respect, accommodate and account for people for whom the private rental market will never be appropriate. This again means it is necessary to move away from stopgap solutions that are based on private rental market short leases, and prioritising creating additional, permanent social housing stock.

4.2.3 Future Directions for Social Housing in NSW

Future Directions for Social Housing in NSW sets out the NSW Government’s vision for social housing over the ten years from 2016-2026. The NSW Government describes this vision as one that will:

“reduce homelessness, provide more housing and support for those needing social housing and provide more support to help people divert from or successfully transition out of the social housing system.”

Future Directions is underpinned by three priorities: more social housing; more opportunities, support and incentives to avoid and/or leave social housing; and a better social housing experience. To begin to address the first of these priorities, the NSW Government has initiated the ‘*Communities Plus*’ social housing redevelopment funding model. This is billed as a project that will deliver ‘up to 23,000 social housing dwellings, 500 affordable housing dwellings and 40,000 private dwellings’.²⁸

According to the annual *Report on Government Services*, as published by the Productivity Commission in January each year, NSW has seen a decrease in the

²⁸ NSW Land and Housing Corporation (2020) *Communities Plus, About us*, accessed 19 January 2021, <https://www.communitiesplus.com.au/about-us>

number of social housing dwellings and a decrease in expenditure of over \$32 million (in real terms) from the 2018-19 financial year to the 2019-20 financial year, and \$240m over the last two years²⁹ This was substantially a reduction in public housing expenditure and capital expenditure -(\$300m reduction over two years), with increases in other areas not making up the shortfall. This data calls into question the NSW Government's commitment to increasing social housing stock in NSW, and the effectiveness of *Communities Plus*. The number of households in social housing has increased by an average of 0.52% per annum³⁰ so far over the 4 reported years of Future Directions, while NSW households are projected to increase by average 2% per annum over the life of the policy (to 2026).³¹

There are further issues with *Communities Plus*. The model adheres to a 70:30 Private:Social mix of dwellings, without regard for the specific site or community in which a particular development is being built³². In some cases, a different ratio may be more appropriate, even retaining 50-100% social housing. Funding restrictions such as zero net costs should be lifted and appropriate funding levels implemented. The NSW Government should ensure each redevelopment site is appropriately tailored to the community it exists in, with significant consideration of existing tenants and their needs.

We are also concerned with the focus on dwelling numbers rather than number of people that can be housed. While redevelopments promise higher numbers of dwellings, there is little information made publicly available around the number of bedrooms per dwelling. The redevelopment in Franklyn St, Glebe, for example, may not result in any additional beds at all – it may even result in fewer people being housed in social housing.³³ The proposed redevelopment site in Eveleigh currently

²⁹ Productivity Commission (2021) *Report on Government Services 2021*, <https://www.pc.gov.au/research/ongoing/report-on-government-services/2021/housing-and-homelessness/housing/rogs-2021-partq-section18-housing-data-tables.xlsx>, accessed 27 January 2021

³⁰ Author's calculations from *Report on Government Services 2021*, excludes Indigenous Community Housing due to lack of data for current year. This underestimates the increase per annum by a small amount.

³¹ NSW Department of Planning, Industry and Environment (2019) *Population, Household and Implied Dwelling Projections, by Greater Sydney Region and Regional NSW*, Sheet: NSW Household overview <https://www.planning.nsw.gov.au/-/media/Files/DPE/Other/Research-and-demography/Population-Projections/2019-NSW-Population-Projections-GSR-RoS.xlsx> accessed 31 January 2021

³² Darcy, M. and Rogers, D. (2019) *Finding the Right Mix in Public Housing Redevelopment: Review of Literature and Research Findings*, University of Sydney <https://www.sydney.edu.au/content/dam/corporate/documents/henry-halloran-trust/hht-social-mix-discussion-paper.pdf> accessed 31 January 2021

³³ Shelter NSW (2020) Submission Franklyn Street, Glebe Redevelopment Proposal, December 2020, <https://sheltersnsw.org.au/wp-content/uploads/2020/12/Shelter-NSW-Submission-Franklyn-Street-Glebe.pdf>, accessed 20 January 2021

consists of 46 townhouses, with three, four or five bedrooms. The proposed redevelopment will result in 430 dwellings, of which 120 will be social housing dwellings. On the surface this appears positive: a net increase of 74 social housing dwellings. However, the dwellings being built will be a mix of studio, one-bedroom and two-bedroom apartments. This means that many of the families currently living on the site will not be able to live there after the redevelopment, and there is a real possibility that no additional people will be able to move from the social housing wait list into housing.

The focus on often arbitrary targets and ratios rather than actual human experiences and needs means that many of the plans made under *Communities Plus* are not person-centred and will not necessarily meet the needs of the people and families who require social housing. Government announcements of ambitious targets for many additional dwellings often fail to centre the people and families that need to be housed. The focus should be on ensuring a substantial net increase in the number of people moving off the social housing list and into appropriate housing – particularly people from the priority list who are at high risk for homelessness.

4.2.4 Social housing offers: two is not enough

Households on the social housing waitlist are only given two offers of housing. We believe this is not sufficient. For an offer of a property to count as a 'reasonable offer' it is meant to match the required number of bedrooms, allocation zone, and other property features that the household has been assessed as needing.

However, we have heard from many people who have been offered a social housing property that does not meet these requirements, or is in disrepair or not fit for purpose. An applicant often feels under undue pressure to accept a property in these circumstances, even when it will not be suitable for them, as they are concerned that despite the legitimate reasons for their rejection of the offer it will be deemed a 'reasonable offer' and they may risk suspension of their application. If a person or household is unfortunate enough to be offered two properties that both do not suit their needs, they are simply unable to access appropriate social housing. If there were a larger stock of social housing, it would be easy to remove inappropriate restrictions like this limit on social housing offers.

4.2.5 Social housing data

It is difficult to get a full picture of the impact of social housing redevelopments being carried out by the NSW Government. Data relating to the numbers of people moving from the social housing waiting list into appropriate housing is only irregularly made public. Data relating to expected waiting times on the DCJ Housing website has only recently been updated after lengthy delay. Given public interest in this data we feel

updates of both the expected waiting times, and further data available on the 'Social Housing residential dwelling dashboard' reports should be published quarterly. The public should be able to easily access information about the NSW Government's commitments and targets, and data relating to their progress against those targets. We discuss our concerns around a lack of available data in more detail below in section 5.1.

4.2.6 Residualisation in social 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'.³⁴ 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 Directions for Social Housing in NSW* policy.

A shift 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. 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 income – and a significant number of very low income – working households to the private rental market, many of whom are experiencing rental stress as a result.

Just over a million low income households rent in the private rental sector.³⁵ 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.³⁶

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

³⁴ AHURI Brief (2019) *Understanding the residualisation of social housing*, <https://www.ahuri.edu.au/research/ahuri-briefs/understanding-the-residualisation-of-social-housing>, accessed 28 January 2021

³⁵ Productivity Commission (2019) *Vulnerable Private Renters: Evidence and Options*, Commission Research Paper, Canberra, September 2019, <https://www.pc.gov.au/research/completed/renters/private-renters.pdf>, p53, accessed 28 January 2021

³⁶ *Ibid.*

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. The security of tenure 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.³⁷

This would result in a higher number of waged tenants and higher rent income for social housing providers, allowing for 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, particularly for lower income households.

Recommendations

- That the NSW Government invest substantially in social housing by building new stock, repairing old stock, and acquiring and repurposing available private market stock as social housing stock as part of economic stimulus for COVID-19 recovery.
- That the NSW Government publishes data relating to the number of people moving from the social housing waiting list into social housing publicly available on a quarterly basis.
- That the NSW Government review funding arrangements, including rent and eligibility processes, for public and community housing to ensure a sustainable and valued system.

4.3 Rental subsidies

4.3.1 Rent Choice Assist COVID-19

Rent Choice Assist COVID-19 was a NSW Government rental assistance program made available in 2020 as a support to many households whose income and assets significantly reduced due to COVID-19.

³⁷ 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/research1determiningfinancialbarrierstoworkfull.pdf> accessed 28 January 2020

Rent Choice Assist COVID-19 may be able to assist low income households who are homeless or at risk of homelessness, who have suffered a significant loss of income due to the COVID-19 to maintain affordable housing in the private rental market by:

- *Assisting them to sustain their tenancy while they recover from job loss, reduction in hours or needing to self-isolate or care for family members due to COVID-19,*
- *Paying a proportion of the rent for up to 6 months, and*
- *Where required, helping to find safe and affordable accommodation.*³⁸

In March 2020, the NSW Government committed \$20 million specifically to provide rental subsidies to assist vulnerable people in the private rental market during the COVID-19 crisis. DCJ used around half of this allocation to provide Rent Choice Assist COVID-19, assistance targeted at people who are homeless or at risk of homelessness, through a subsidy for a period of six months, with the possibility of extending to twelve months in certain circumstances. The subsidy was calculated as the difference between a reasonable market rent and 25% of the client's current gross assessable household income (including 100% of their Commonwealth Rent Assistance entitlement, if applicable).

'Rent Choice Assist COVID-19 Response' was a positive response to tenants struggling during the COVID-19 crisis. Eligibility was based on a 'low income' band which has a higher cut off than for social housing. This means that people were able to access the package who would under normal circumstances be unlikely to want to access social housing, but who were experiencing temporary financial hardship. The introduction of this program meant that these people and families were supported to maintain their tenancies for the duration of the financial difficulties rather than potentially enter the social housing waiting list.

However, a significant downside to the product is that it was limited to Australian citizens and permanent residents – leaving out international students, migrant workers, refugees and asylum seekers and more. This was particularly concerning at a time when those very demographics were struggling due to the pandemic and ineligible for government income support.

While the program overall had promise as a relatively straightforward intervention to prevent or end a person or family's cycle of housing insecurity and homelessness, in order to properly assess its merits, more data should be made public. It is unclear how many people it provided or is providing assistance to, and what the outcomes are for those people. We are concerned that as the product was not widely promoted, while

³⁸ NSW Government (2020) *Rent Choice Assist – COVID-19 For help renting in the private market*, https://facs-web.squiz.cloud/_data/assets/file/0008/784043/Rent-Choice-Assist-COVID-19-Client-FAQs.pdf, accessed 18 January 2021

workers within housing and homelessness services may have been aware of it, the general public were for the most part unaware that it existed. Many people and families who would have been eligible and would have greatly benefited from the product were unable to access it. The product should be further developed, made available not just to Australian citizens and permanent residents, appropriately funded, and promoted more broadly.

4.3.2 Accessing assistance

In experience of TAAS workers, it can be very difficult for a client to be approved for many of the various rent subsidy products promoted by DCJ. Often a renter is rejected for a subsidy as the private rental they are looking to move in to is deemed above the client's affordability, making the rental 'unsustainable' in the long term. However, due to the current housing affordability crisis, in much of NSW there are simply no rental properties available on the market that would be deemed affordable for many low-income renters. This means that many of the people in most need of financial assistance to pay their rent are unable to access many or any of the rent subsidy products offered by the NSW Government.

Recommendations

- That the NSW Government make public data on the outcomes of the Rent Choice Assist program.

4.4 Raise the rate of Jobseeker

During the pandemic the Australian Government introduced a COVID-19 Supplement to be paid to those on Jobseeker, Youth Allowance and other eligible payments. This supplement has played a significant role in supporting those who unexpectedly lost employment as a result of the pandemic. It also had the added benefit of providing much needed relief for those already on Newstart (now Jobseeker), Youth Allowance, and other payments who had been struggling to meet daily living costs because of the low level of payments.³⁹ The November 2019 Rental Affordability Index reported prior to the COVID-19 supplement a single person on Newstart (now Jobseeker) would be

³⁹ NSW Council of Social Services (2020) *Cost of Living in NSW: Austerity hits home*, <https://www.ncoss.org.au/sites/default/files/public/policy/Cost%20of%20Living%20final.pdf>, accessed 23 June 2020

required to pay at least 77% of their income on rent to live in a capital city, and 135% of their income to live in Greater Sydney.⁴⁰

The recent Senate Inquiry into the adequacy of Newstart and other related payments acknowledged the inadequacy of payment levels. Newstart and other support payments have not seen an increase in real terms in 25 years. The Inquiry recommended that a national definition of poverty be established, and that Newstart (now Jobseekers) and other related social security payments be set at a level to ensure those relying on payments were not living in poverty.

In May of 2020, the Raise the Rate campaign surveyed 955 people in receipt of income support payments to find out how the coronavirus supplement was impacting their lives. A few of the statistics from their findings include:⁴¹

Before the introduction of the Coronavirus Supplement,

- 66% of people had less than \$14 a day to live on, after paying their rent or mortgage
- 75% of people said they skipped meals because of a lack of funds
- 20% of people said they were skipping at least 1 meal per day
- 70% of people were struggling with medical costs

After the introduction of the Coronavirus Supplement,

- The number of people skipping meals because of a lack of funds had dropped by over half, to 33%
- 93% of people reported that they can afford more fresh fruit and vegetables
- The number of people reporting that they were struggling with medical costs had dropped by over 40%, with only two in five people now reporting that they were experiencing difficulties paying for medicines and health services
- 94% reported that the end of the additional payment would have either a significant or severe impact on their finances.

According to one of the people surveyed,

"This supplement has reduced anxiety and stress in my household. It has helped me get my car fixed, we now eat better and healthier. We are able to set aside money for emergencies and small holidays to see family. I can afford my water, electricity and gas bills, and to have the Internet (which is an essential

⁴⁰ SGS Economics and Planning, Rental Affordability Index, *November 2019 Report*, https://www.sgsep.com.au/assets/main/Projects/SGS-Economics-and-Planning_RAI-November-2019.pdf, accessed 23 June 2020

⁴¹ Raise the Rate (2020) *I Can Finally Eat Fresh Fruit and Vegetables' Survey Of 955 People Receiving The New Rate Of JobSeeker And Other Allowances*, <https://www.acoss.org.au/wp-content/uploads/2020/06/200624-I-Can-Finally-Eat-Fresh-Fruit-And-Vegetables-Results-Of-The-Coronaviru...pdf>, accessed 27 January 2021

*for my studies). I can afford to upgrade my fridge, freezer and other goods that raise my bills.*⁴²

Following the introduction of the coronavirus supplement, social housing providers reported a significant fall in rental arrears, as social housing rent costs did not rise with the introduction of the supplement. This shows that when renters are able to, they prioritise making rental payments; income support levels without the coronavirus supplement are simply too low for many income support recipients to be able to pay their rent consistently.

The federal government is currently in the process of phasing out the Coronavirus Supplement. In September of 2020, the Supplement was cut by \$300 down to \$250 per fortnight. On 1 January 2021, the Supplement was cut further, down to just \$150 per fortnight. The Supplement is set to be removed entirely as of 31 March, which will see recipients of income support pushed far below the poverty line (50% median income) and their risk of homelessness significantly increased.

Recommendation

- That if the Australian Government chooses to maintain rates of social security payments below the poverty line, the NSW Government should fund additional financial support to people in NSW in receipt of income support, to ensure their income is at or above the poverty line.

4.5 Temporary accommodation should be appropriate and safe

In an ideal world, temporary accommodation would not be required. With sufficient, accessible, appropriate social and affordable housing stock, a person experiencing homelessness as a result of a crisis or emergency could simply be provided with suitable accommodation, for as long as they need it. Unfortunately, demand for social and affordable housing far outstrips available housing, and so many people who may otherwise be in danger and/or sleeping rough, need temporary accommodation. Even though temporary accommodation is short-term and often accommodation of last resort, it should still have minimum standards that it must adhere to.

At present, accessing temporary accommodation is a very onerous process for many people to manage. People requiring more than a three-day stay are expected to pack up their belongings every three days and present at the local housing office to seek an extension, without certainty as to where they might be sent next. They might be sent

⁴² Ibid.

to a local motel, a motel an hour away, or a refuge two hours away. Many motels and refuges are not accessible via public transport.

Many people require assistance and advocacy throughout the process of accessing temporary accommodation due to mental health issues, medical reasons, disabilities, or simply because of the complexity of the system. We have heard from the Blue Mountains TAAS that there was a period of time when people accessing temporary accommodation in Lithgow would be required to present at the Penrith housing office. This is a two-hour train journey, with trains running every second hour. If a person had appointments to get to, children to pick up from school, or employment commitments, they were unable to present at Penrith.

If a person needs accommodation at extremely short notice, they should still be able to expect that it is appropriate and meets a certain minimum standard; and there should be enough options for temporary accommodation that a person's basic needs are met, and boundaries respected. Many temporary accommodation options do not allow for companion animals, which can be a significant deterrent. For a person escaping domestic violence, for instance, if they are unable to bring their companion animal with them, some will choose to remain in the dangerous home or sleep rough rather than abandon their animal. There is also a shortage of options for temporary accommodation that are broken down by gender, and so women and non-binary people, who may be uncomfortable sharing accommodation with men, may have to choose between sleeping rough or staying in accommodation that makes them feel unsafe. We have heard from TAAS workers who have worked with many clients who would complete their 28 days of temporary accommodation and then return to sleeping rough or couch surfing.

We refer you to the Homelessness NSW submission to the Parliament of Australia House of Representatives Standing Committee on Social Policy and Legal Affairs *Inquiry into homelessness in Australia 2020* for a more detailed analysis of the required changes to temporary accommodation.

5. Focus Area 3: Creating an integrated, person-centred service system

Improve accountability by agencies and services for homelessness outcomes in order to drive systemic change

Improve services by increasing trauma-informed care and culturally appropriate practice

Increase service integration and collaboration to enhance person-centred responses

5.1 Data reporting

There are significant gaps in the data available to the public relating to the performance of social housing providers. There should be more visibility of data particularly relating to evictions of social housing tenants, and relating to rates of returns to social housing by people who have previously been deemed no longer in need of social housing. It becomes very difficult to hold the NSW Government accountable to commitments they make in relation to social housing when data is unavailable.

There are a number of data sets that we believe should be made publicly available, which are listed below. We are particularly interested in data focusing on actual human experiences. As discussed above in section 4.2, social housing should not solely focus on bricks and mortar and dollars: it should focus on the people being housed (or not being able to access housing), and about their experiences and outcomes.

We propose the following schedule of information should be collected by social housing providers and made available for public scrutiny on an individual provider and where appropriate area level. Some of this data is already published, most is already collected and submitted to the state registrar. It is also made available to participating providers for benchmarking purposes but on a strictly confidential basis.

- Property data: reporting for the following characteristics for each property. The intention is that it must be possible to analyse different combinations of these features. It is not the intention that individual properties can be identified in public reporting:
 - Owned, managed, head leased, planned for completion in next 12 months,
 - Social, affordable, market

- Accessibility rating⁴³
- Bedrooms and dwelling structure⁴⁴
- Owner type (e.g. state government, local government, private company, private individual)
- Locational need⁴⁵
- Tenant provided income
 - Rent revenue
 - Rent collection rate
 - CRA calculated and received
 - Water and other charges
- Repairs responses
 - Maintenance requests and classification of expected time frame
 - Resolution rate within expected time frame
- Court or Tribunal activity
 - For applications made by provider and by tenants
 - Orders sought
 - Result (application successful, negotiated outcome, application unsuccessful)
- Bonds (where claimed within reporting period)
 - Claimed from tenant
- Exits
 - Tenant initiated
 - Reason (including unknown or not provided)
 - Landlord initiated
 - Reason
 - Notice of termination served
 - Tribunal action initiated
- Number of tenancies re-entering social housing after exit in last 12 months/last 5 years.
 - From the same provider
 - From a different provider

We are also concerned with a lack of transparency relating to Link2Home. Link2Home is the NSW Government's first advertised step for anyone seeking emergency housing assistance, however it is very difficult to obtain data relating to the service's success – in particular relating to the human experiences of people accessing the service. We

⁴³ Livable Housing Guidelines – Silver, Gold, Platinum or not certified
<http://www.livablehousingaustralia.org.au/>, accessed 28 January 2021

⁴⁴ As defined in Census category 'STRD – Dwelling Structure'
<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2901.0Chapter9502016>, accessed 28 January 2021

⁴⁵ To be defined – intention is not to identify location of property, but instead to measure the degree to which housing is provided in areas of need. The ABS SEIFA index rating of the property may be the most obvious measure but already includes rent as an indicator.

propose that the following information should be made available to the public at regular intervals:

- Number of callers
- Average waiting time for callers
- The rates of callers hanging up due to long hold times
- Rates of successful referrals to appropriate services

We are particularly concerned about rising homelessness in regional areas, where there are many evictions and very little available temporary accommodation. As such, this information should be broken down by region, so that it is possible to assess whether a standardized approach to Link2Home is suitable and effective in regional, rural and remote areas.

5.2 Evictions from social housing can leave people vulnerable to homelessness

The NSW Homelessness Strategy states a commitment to increasing trauma-informed care, however social housing providers are increasingly introducing policies that undermine their ability to deliver on this commitment. For instance, the local allocation strategy adopted in Redfern does not allow any person who has had a drug conviction in the past five years to be provided with housing in the Inner Sydney estates. This leaves many people either at risk of homelessness or placed in alternative housing separated from family, community and other supports. This in turn leaves the person vulnerable to their mental health and/or substance use conditions worsening. This is just one example of the NSW Government's failure to meet its commitment to person-centred and trauma informed practice.

Many evictions from social housing are unduly harsh, unjust, and can lead to homelessness. The NSW Government has stated in their *No Exits from Government Services into Homelessness Framework 2020* a vision that no person exits from a government service into homelessness, and that people with complex needs and risk factors – including mental health, substance abuse, criminal history or currently unresolved criminal issues – should be accounted for and supported to avoid homelessness. However, in practice, NSW Government policy contradicts this principle. Many people are unjustly evicted from social housing into situations where they are at great risk of homelessness.

In October 2015, NSW Parliament passed the *Residential Tenancies and Housing Legislation Amendments (Public Housing–Antisocial Behaviour) Act 2015*. The resulting changes, including section 154D (mandatory terminations) and 154G (orders for possession), have been in operation since February 2016. Section 154D introduced mandatory eviction where a social housing landlord is evicting a tenant on the basis of illegal use of the property (section 91) or serious damage to property or injury to a neighbour or the landlord (section 90). Very limited exceptions to the mandatory

eviction provision exist for especially vulnerable tenants, and tenants with children who face hardship if evicted.

The introduction of this provision effectively removed much of the discretion of NCAT not to terminate a tenancy where to do so would result in an unjust outcome. Previously NCAT had been required to consider whether the breach was sufficient to justify termination, and had much wider discretion in all cases to consider hardship and other circumstances of the case before making an order for termination.

Eviction is a blunt and harsh measure where additional support would often be a more appropriate response. Many cases involving noise or nuisance, damage to a property, injury to the landlord or agent, or illegal use, are inextricably tied together with complex mental health conditions and substance use disorders, which are only exacerbated if the person is made homeless.

Evictions from social housing due to a breach not only puts a person at immediate heightened risk for homelessness, but can also impact that person's ability to access social housing long into the future – through making the tenant ineligible permanently, or making them wait for a period of time before being allowed back onto the waitlist. It is unclear what these people are expected to do in the meantime, particularly where a breach has been linked to substance use or mental health conditions. At present, DCJ can move too quickly to evict a person into homelessness on the basis of one incident of inappropriate behaviour by the person or a visitor, with little or no consideration of that person's trauma and personal circumstances.

We recognise the disproportionate impact of antisocial behaviour policies for Aboriginal tenants of public housing. Almost a third of all ASB allegations made have been registered against Aboriginal tenants, while Aboriginal households make up only around 7.6% of public housing tenancies. In the experience of TAASs who have provided support for Aboriginal tenants challenging allegations, there is often an element of racial discrimination or targeting involved with the allegations made. Many of these cases in which assistance has been provided have involved women and children.

Case study: Grace's story: eviction from public housing

Grace is a young Aboriginal woman living in public housing in Newcastle who suffers from bipolar disorder. Grace has a child, who is not currently in Grace's custody. Grace had previously been homeless, living in a park for a very long time, and had only recently secured housing, and secured visitation with her child. She had also just recently managed to purchase her first car.

Contractors engaged by DCJ housing to do some repairs in common areas of the building Grace lived in scratched her car. Grace saw this happening, from the balcony of her apartment. Grace became very upset; her car was precious to her, she could not afford to fix it, and the scratch would impact its resale value. She shouted down at the contractors from her balcony. They shouted profanity back to her in response, as well

as derogatory comments about her being on welfare. The contractors then came up inside the building to Grace's apartment to intimidate her. They made her feel very unsafe, particularly due to Grace's history of trauma.

Grace later received a notice of termination on the basis of one incident of verbal harassment containing profanity, causing injury to the landlord or the landlord's agent. Grace had no representation at the Tribunal. Her hearing was via phone due to COVID-19, and Grace became uncomfortable and hung up. The contractors only reported Grace's shouting, and omitted all of their own destructive and abusive behaviour; and Grace was unable to report her side of the story. The termination notice did not take into account Grace's mental health condition and trauma, which impact the ways in which she expresses frustration when feeling afraid.

Grace sought legal assistance from a TAAS following the Tribunal hearing, and is being assisted to appeal the decision on the basis that Grace has a disability and will suffer undue hardship if evicted.

If the appeal is unsuccessful, Grace will be made homeless within a few weeks' time, and will likely lose visitation with her child.

Under section 51, a public housing tenant is liable for actions of people who do not reside there but who are inside the home with the tenant's consent. This can lead to some very damaging outcomes for social housing tenants who have themselves not engaged in any illegal or damaging behaviour.

Case study: Lily's story – eviction from public housing

Lily is an Aboriginal woman with a disability living in public housing. She had written to the Department of Housing with an application for an additional occupant so that her partner could live with her, and had not received a response. Lily's partner, Jack, was homeless at the time, and had been staying with Lily as her carer, but was not an authorised occupant.

One day, there were some DCJ workers at Lily's apartment building conducting repairs. Jack was in one of the common areas of the building, and got into a verbal altercation with one of the DCJ workers. Jack threw an egg at the staff member.

Lily had been inside her apartment at the time, had not been part of or witnessed the incident. She later found out what had happened only because another building occupant informed her.

Lily received a termination notice on the basis of her partner's behaviour, despite the facts that he had not even been inside her apartment when he threw the egg, and that Lily was unaware he had done it. If the termination had been completed, Lily would have likely been made homeless.

Lily sought assistance from a TAAS and successfully avoided eviction. Lily came to an agreement with the landlord that Jack would not return to the property. She then applied for a transfer to alternative accommodation so that she and Jack could live together.

It becomes difficult for DCJ when they must assess neighbourhood disputes between two public housing tenants. Some public housing tenants, particularly those with complex needs or mental health conditions, can engage in behaviours that interfere with the peace, comfort and privacy of another tenant. In these situations, DCJ may terminate the tenant engaging in problematic behaviours. While DCJ does have the obligation to protect the tenant on the receiving end of problematic behaviours, these situations should be assessed in a trauma-informed way, based on case-by-case examination of the circumstances. Depending on the behaviour, and the root causes for the behaviour, termination can be inappropriate. In many cases, the provision of additional support services could address the problem in a compassionate way, possibly combined with a transfer of the tenant.

There are also situations that arise between tenants where both have engaged in problematic behaviour towards each other, and the response from DCJ is to terminate one or both tenants. In many of these situations, provision of additional support including mediation can be a solution to sustain both tenancies, rather than termination.

Case study: Liam's story: eviction from public housing

Liam is a public housing tenant who has a mental health condition. His neighbour, also a public housing tenant, filmed Liam swearing in frustration at a difficult situation, and contacted DCJ to complain about Liam. Liam was then sent a termination notice.

Liam sought assistance from a TAAS, who is negotiating with the local AHO office to try to resolve the situation in a way that sustains Liam's tenancy.

Lily, Grace and Liam's stories clearly illustrate that the NSW Government's provision of public housing is not trauma-informed, and is certainly not within a Housing First framework.

5.3 Relationship between social housing and the child protection services

The recent *Family is Culture: Independent Review of Aboriginal Children and Young People in Out-Of-Home Care* final report identifies a lack of appropriate housing as a driver for child removal and an impediment to restoration. It further states that 'department-wide policies may compound the difficulties faced by families attempting to satisfy restoration requirements'.⁴⁶

For example, Housing policy provides that families seeking restoration of children from [out-of-home care (OOHC)], and families experiencing domestic and family violence, may be eligible for priority housing assistance. This acknowledges the importance of secure housing to vulnerable families. However, the requirements imposed on parents seeking to access this policy provide an unnecessary barrier to families who are already in crisis.

In practice, many parents are caught up in a "catch-22" when seeking restoration. They have been allocated housing appropriate for a single person or a couple, as that is the household at the time of application. They seek restoration with their children, but as they do not have suitable accommodation, they are rejected. However, they then find it very difficult to access an appropriate, larger dwelling, as their household make-up has not yet changed. In our experience, it is not uncommon that parents who have had their children removed from their care have their tenancy terminated, as the household make-up has changed. These parents are then in turn unable to have their children come for home visits, as there is nowhere for the child to stay and the new accommodation is deemed inappropriate.

The *Family Is Culture* report argues that:

Much of this information would already be held by caseworkers. In circumstances where housing is required for restoration to progress, caseworkers should provide this information to the housing division directly to reduce the burden on the family. The perpetuation of silos within the department places an unnecessary strain on vulnerable families. The free flow of information within FACS could create a less onerous process for families

⁴⁶ Family Is Culture, *Family Is Culture: Independent Review of Aboriginal Children and Young People in Out-Of-Home Care, Final Report* (2019) 171-2 and 359-360, https://www.familyisculture.nsw.gov.au/_data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf, accessed 18 January 2020.

experiencing or facing imminent homelessness and reduce the amount of time that children remain in OOHC.

Supporting family restoration is one important way to prevent and reduce homelessness, particularly for Aboriginal and Torres Strait Islander young people. Young people leaving OOHC when they reach adulthood are at significantly greater risk of homelessness than the general population.⁴⁷ This risk can be lessened through supporting swift restoration of children to their families where possible and appropriate – which certainly includes situations where inappropriate provision of housing to the parent is the biggest impediment to restoration. The NSW Government's own preferred position is restoration, as reflected in the Permanent Placement Principles (PPPs) contained in s 10A(3) of the Children and Young Persons (Care and Protection) Act 1998 (NSW) (Care Act)⁴⁸, however current practice undermines this principle, leaving young people needlessly in OOHC and by extension at greater risk of homelessness.

Recommendation

- That the NSW Government, in consultation with Aboriginal and Torres Strait Islander stakeholders and community, develop and implement guidelines to improve communication and coordination between housing officers and child protection caseworkers who are working with families that have intersecting housing and child protection issues.

5.4 Genuine tenant engagement should give residents a voice

Social housing regulation should prioritise genuine tenant engagement and good tenant outcomes. This means going beyond conventional tenant consultation and engagement practices or satisfaction surveys. Building robust forms of participation into governance structures for social housing landlords not only 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 explicitly recognise the value of tenant involvement in governance, and accept the business case for meaningful forms of participation. Both place considerable emphasis on participation and empowerment arrangements as a threshold requirement for accreditation of providers. In 2015, UK Communities Minister Stephen Williams said:

⁴⁷ Australian Institute of Family Studies (2016) *Supporting young people leaving out-of-home care*, <https://aifs.gov.au/cfca/publications/supporting-young-people-leaving-out-home-care>, accessed 18 January 2021

⁴⁸ Noted in the Family Is Culture report p344

“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.”

Opportunities for tenant participation in governance have been systematically reduced as Australian community housing providers 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.

Presently, very few community housing providers have any form of tenant participation (let alone representation) on their boards, or structured opportunities for tenants to independently discuss and provide input to decision-making. The National Regulatory System for Community Housing Providers (the Code) requires housing providers to ‘engage’ their communities, but falls short of requiring that they 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. We contend that current experience as a tenant constitutes an area of knowledge and expertise that should be valued highly at board level. 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 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.

The NSW Aboriginal Housing Office (AHO) has engaged the Aboriginal Resource Unit to develop and provide an options paper to establish Aboriginal Tenant Engagement Groups (ATEG) across NSW and in line with their Aboriginal Cultural Advocacy Model. ATEG will provide Aboriginal tenants a mechanism whereby they are able to be engaged in a structure that allows voices from the ground up on matters impacting in relation to Aboriginal Housing in NSW.

The ATEG model aims to have a positive impact on client-centered care, client experience and housing outcomes; to work collaboratively with Aboriginal Communities and stakeholders to identify and communicate the unmet housing needs of Aboriginal Communities and to build the capacity and capabilities of housing clients to participate in the design, delivery and evaluation of their housing care. The Tenants’ Union understands that the options paper is being considered by AHO and

would support adequate funding for a program model to be developed based on the one of the options submitted.

5.5 Resourcing of support and systemic advocacy

Tenants Advice and Advocacy Program (TAAP) workers play an 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 24 organisations across New South Wales. These services provide free information, advice and advocacy to tenants in their local areas. The network brings together the skills and expertise of highly skilled advocates who work to ensure that high quality professional advice and advocacy is available to all tenants in New South Wales. In NSW the Tenancy Advice and Advocacy Program is in the unique position of having four specialist Aboriginal TAASs, plus an Aboriginal Resource Unit and Aboriginal Legal Officer who is based at the Tenants' Union NSW.

In our experience people come to Tenants' Advice and Advocacy Services (TAAS) when they are at risk of homelessness, seeking advice and assistance early to stop initial problems becoming large. NSW Tenants' Advice and Advocacy services play a significant role in preventing evictions and maintaining tenancies, which benefits both tenants and landlords. 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 and the indications are that demand will continue to increase for the foreseeable future. Resourcing of services has not kept pace with the growth in the number of residential tenancies in NSW and the growth in the number of disadvantaged households in the rental market whose tenancies are especially precarious. The capacity of Tenants' Advice and Advocacy Services to provide assistance has been significantly constrained by the lack of adequate resourcing for the network.

COVID-19 again proved 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 COVID-19 and Renting Information page was visited in 1.2million 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.

NSW Government recognised the need for additional resourcing of Tenants' Advice and Advocacy Services during this time and provided a one-off funding grant of \$2.5 million for 2020 - 2021 for the TAAP 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 and \$290,000 in technological upgrades across the network to ensure ongoing service provision.

However, the ongoing funding shortfall remains at \$5million per year, and will continue to grow with a growing renting population. The adequate resourcing of Tenants' Advice and Advocacy Services needs to be understood as an essential part of any 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 to growth in the number of tenancies, and the number of disadvantaged tenants. Additional funding for services and supports targeted to particularly vulnerable groups and/or those with specific needs around accessibility is also required.

It is vital that sufficient resourcing be provided to supporting Aboriginal and Torres Strait Islander renters. One example of a very successful investment into supporting Aboriginal people to sustain their tenancies is the Sustaining Aboriginal Tenancies Program (SATP). The NSW Aboriginal Housing Office engaged the Aboriginal Resource Unit to pilot the SATP for a period of 12 months.

The pilot through the service model aims for a seamless integration based on coordinated referrals, community outreach, case management and monitoring outcomes. SATP delivers improved outcomes for Aboriginal families by sustaining tenancies, preventing eviction. Clients are supported by Aboriginal support workers to meet their tenancy obligations and assisted to overcome barriers that may place their tenancy at risk. The program works closely with clients for up to 12 months to assess underlying issues and develop a case plan with the client in a culturally responsive way. The pilot is currently operating in Grafton and Batemans Bay and is due to end June 2021.

Recommendation

- That the NSW Government adequately resources free, independent legal advice and advocacy services for renters.
- That assessment of adequacy of resourcing takes into account the additional funding required for effective and appropriate provision of information, advice and advocacy supports for Aboriginal and Torres Strait Islander renters, renters

from culturally and linguistically diverse communities, and renters with a disability.

- That the NSW Government adequately resource the Tenants' Union of NSW to ensure renters have a voice and peak body able to represent their interests, including undertaking systemic advocacy on their behalf.