

September, 2021

## About the Tenants' Union of NSW

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

- [Blue Mountains Tenants' Advice and Advocacy Service](#)
- [Central Coast Tenants' Advice & Advocacy Service](#)
- [Hunter Tenants' Advice and Advocacy Service](#)
- [Illawarra & South Coast Tenants Service](#)
- [Mid Coast Tenants' Advice and Advocacy Service](#)
- [Murra Mia Tenant Advocacy Service \(Southern NSW Aboriginal TAAS\)](#)
- [New England and Western Tenants Advice and Advocacy Service Inc.](#)
- [Northern NSW Aboriginal Tenants Advice and Advocacy Service](#)
- [Northern Rivers Tenants' Advice & Advocacy Service](#)
- [VERTO South West Tenants' Advice Service](#)
- [Western Aboriginal Tenants Advice and Advocacy Service](#)

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

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

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## About this submission

The Tenants' Union of NSW commends the NSW Government for establishing the Regional Housing Taskforce and recognizing the need for immediate action to address and respond to the housing crisis in regional NSW. The impact of the crisis is being felt particularly by households who rent their homes.

In this submission we provide data on the record low vacancy rates and the sharp increases in market rent in the private rental sector in the regions. We identify some of the key drivers of this trend. We also outline the various ways in which the crisis is being experienced by renters, including

- an increased use of 'no grounds' eviction
- privacy concerns and the experience of discrimination during the application process
- pressure on renters to engage in 'rent bidding'
- difficulty securing alternative accommodation
- eviction into homelessness.

There are no easy or quick solutions to the general housing crisis, and the various problems being experienced by renters across the private rental sector in the regions. This requires a longer-term strategy and a significant commitment of resources. Additionally, while the planning system must be part of any longer-term response, increasing housing supply and streamlining and/or removing impediments within the planning system will not alone address the housing crisis. A much broader response and commitments across government are required to deliver on the secure, affordable, and liveable housing that the NSW Government is committed to delivering.

For this reason, our submission provides a number of recommendations outside of the formal scope set out in the terms of reference of this review. We hope, nonetheless, they will be considered by the taskforce and by the NSW Government.

## Recommendations

### Recommendation 1

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

### Recommendation 2

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Introduce appropriate value capture mechanisms, such as mandatory inclusionary zoning targets, to ensure property and land developments contribute to the supply of genuinely affordable housing in regional areas.

### Recommendation 3

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Comprehensive data be made available about current and planned public and community housing properties.

### Recommendation 4

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Fair Trading's rental bond exit survey be integrated as a mandatory step in the rental bond refund process.

### Recommendation 5

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Consider the role the NSW Government could play in encouraging the development of community land trusts and rental housing cooperatives, including in regional NSW.

### Recommendation 6

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

### Recommendation 7

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Introduce explicit provisions prohibiting 'rent bidding' into NSW tenancy law.

## 1. A housing crisis in regional NSW

There were already clear indications of increasing rental stress and rates of homelessness in regional areas prior to 2020. A number of factors have exacerbated this trend over the last 2 years, including:

- **Impact of major infrastructure projects** Major infrastructure projects in regional areas, while bringing economic benefits for these areas, often put significant pressure on local rental markets. The significant, though generally temporary, demand to house the influx of workers puts pressure on rents in the area often forcing out or displacing local renters.
- **Impact of natural disasters** Bushfires and floods across various regional areas of NSW through 2019 – 2020 that caused significant damage or destruction of the homes of owner occupiers and renters alike, also significantly disrupted the local private rental market in impacted areas.
- **Impact of Covid-19** Since the start of the Covid-19 health crisis, there has also been significant movement of people, a large number of them renters, from Greater Sydney into regional areas. Between end March 2020 and March 2021 almost 24,500 people from Greater Sydney moved to regional NSW.

### 1.1 Rental vacancy rates and market rents

As a result of the factors outlined above, many areas of regional NSW are currently experiencing unprecedented low vacancy rates. The Real Estate Institute of NSW July 2021 vacancy rate survey saw vacancy rates across much of regional NSW sitting at well below 2% (from 0.5 through 1.9) including a large number of areas at just 1% or below including Albury, the Central West, Riverina, Hunter (excluding Newcastle) and the South Coast.<sup>1</sup>

Over the last year there has been a marked increase in market rents in regional areas of NSW. The median weekly rent across regional NSW has increased by just over 11%. In Figure 1 we provide data on median weekly rents, and the increase (year on year change) to rents seen across the regions how to provide further detail on how this breaks down across the regions.

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<sup>1</sup> REINSW (2021), *Vacancy Rate Survey Results July 2021*, [https://www.reinsw.com.au/REINSW\\_Docs/Vacancy%20Rates/2021/REINSW-Vacancy-Rate-Result-July-2021.pdf](https://www.reinsw.com.au/REINSW_Docs/Vacancy%20Rates/2021/REINSW-Vacancy-Rate-Result-July-2021.pdf), accessed 24/08/21

Regions	Median weekly rent	Annual change
Greater Sydney	\$500	0.00%
NSW excl. Sydney	\$400	11.11%
Central Coast	\$460	15.00%
Capital Region	\$400	14.29%
Central West	\$360	12.50%
Coffs Harbour - Grafton	\$440	15.79%
Far West and Orana	\$280	3.70%
Hunter Valley excl Newcastle	\$420	12.00%
NSW excl. Sydney Illawarra	\$490	8.89%
Mid North Coast	\$400	14.29%
Murray	\$300	11.11%
New England and North West	\$300	3.45%
Newcastle and Lake Macquarie	\$460	9.52%
Richmond - Tweed	\$540	20.00%
Riverina	\$320	6.67%
Southern Highlands and Shoalhaven	\$430	17.81%

Figure 3: Median rents across regional NSW, August 2021, source: TUNSW Rent Tracker, <https://www.tenants.org.au/tu/rent-tracker>

## 1.2 The experience of renting in the private rental market

The very tight markets in regional areas are causing great pressure on communities. Local renters are anxious they may be evicted, and are often avoiding reporting or requesting required repairs and maintenance or asserting other rights. Renters that are facing eviction struggle to find alternative affordable accommodation.

### Increased use of 'no grounds' evictions

We believe the increased demand for rental properties in regional areas has resulted in a 'spike' in the use of 'no grounds' notices. The Tenants' Advice and Advocacy Program (TAAP) network, in particular the regional services, have seen a significant increase in advice requests from renters who have been evicted for 'no grounds' (that is, given termination notices under section 84 and 85 of the *Residential Tenancies Act 2010*).

Figure 2 demonstrates the sharp upward trend in assistance provided by local services in regional areas beginning from the first half of 2020 and continuing to increase as the regional housing crisis has worsened.

We are concerned landlords are using 'no grounds' to end existing tenancies so they might take advantage of the increased local demand and low vacancy rates to significantly increase rent on their property.

We are seeing people receiving 'no grounds notices' because of assumptions being made about landlords being able to get more rent elsewhere. The market right now is a basket case for tenants, who are completely vulnerable. The balance here has certainly tipped in the landlord's favour and exploitation is rife.

Coordinator, Illawarra and South Coast Tenants' Advice and Advocacy Service

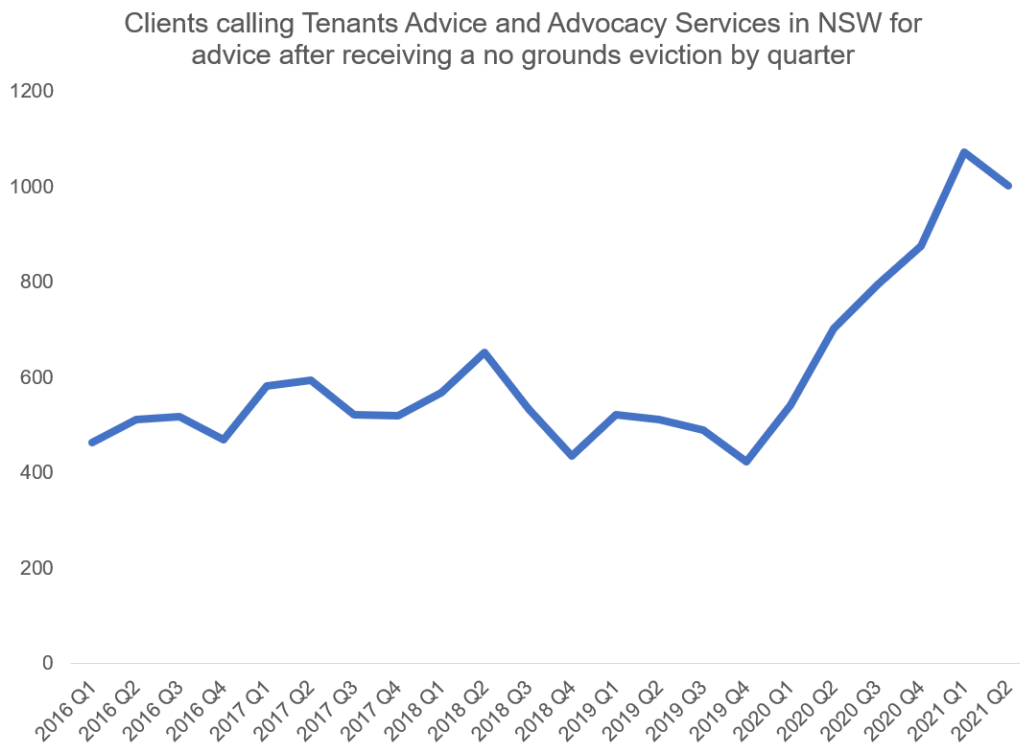


Figure 4: Trend in advice provided for 'no grounds' eviction by Tenants' Advice and Advocacy Services



## Difficulty securing alternative accommodation in the private rental sector

In some areas competition for properties is so marked some real estate agents are able to demand prospective tenants complete a full rental application, including providing private details and personal documents, before they allow them to attend a property inspection. The Tenants' Union NSW has seen this practice – once rare – become quite common practice across regional areas, in particular in the Central Coast, Illawarra, Hunter Valley, New England and Riverina areas.

It is very difficult for renters in regional areas, particularly on a low income, to find a new home that is affordable. They are often being forced to accept much lower quality housing and losing amenity. Many regional renters, unable to secure any alternative rental properties in their local area, are being forced to relocate to other towns, or even across state borders. This can mean they are forced to travel long distances for their job or seek new employment, change their children's schooling and/or care arrangements, and/or change medical providers or other support services. It also significantly increases the costs incurred for relocation. It also creates a flow on effect across regions, placing pressure in and driving up new areas as more people are displaced.

### Case study 1:

#### ***Renting in Regional NSW: Insecurity and forced relocation***

Earlier this year Rachel, a single mum living with her two children on the Mid North Coast, received a retaliatory 'no grounds' eviction after seeking repairs to the property she was renting after major rainfall in the area. She began looking for alternative accommodation immediately.

*I applied for sometimes 40 properties a day just to try to find somewhere for my kids and I to go ... I travelled many hours both north and south to try to find somewhere as there were no properties in my area. Including 10 hours north across into Queensland.*

Rachel eventually found another property, but it was in a different town four hours north from the community she and her children had been living in.

*Being a single mum and not being able to [secure] a rental alone, I had to lean on a family member [to be co-applicant] to get a property as the new area is far more expensive. That really takes away your independence.*

As Rachel's family moved soon before the 2021 COVID-19 lockdown began, her children haven't been able to make any friends or go to school since moving to a new area. The kids loved their old school, and her teenage son had to leave his job. They've also had to move into a much smaller home, which made the two months of preparing for the move very difficult and they were unable to bring all of their furniture.

## 'Rent bidding' in regional private rental markets

'Rent bidding' or a 'rent auction' generally happens when there's a shortage of available rental properties. Applicants for a property compete against each other, and are encouraged to make an offer to pay rent above the advertised price in order to secure a property.

In the context of 'tight markets' we're aware there has been an increase in the number of real estate agents and landlords actively soliciting rent bidding from prospective tenants in regional areas. An agent may respond to a prospective tenant who has applied for a property asking whether they would be willing to offer a higher rent in order to make their application more competitive, or tell the prospective tenant that another person has sent in an application offering above the asking price and offer them the opportunity "to match or beat the price".

The Tenants' Union of NSW has observed high rates of properties in regional areas being advertised without a price listed, or listing "offers above \$X", "price on application", or listing a price range. For us, this is a strong indication that agents and landlords may be actively encouraging rent bidding among prospective tenants. Our analysis of the two main property sites, Domain and RealEstate.com, for advertised rental properties across various regional parts of NSW earlier this year (2021) found worryingly high rates of ambiguously listed rental properties. For instance, of the 811 advertised rental properties in South Coast and Illawarra on Domain, 74 listed no price and 165 listed a price range. This is over 20% of all advertised properties in the area. In the Northern Rivers, we found 11% of advertised properties either listed no price or a price range; in the Central Coast, 8% and in Broken Hill, 9%.

Households may feel forced to engage in 'rent bidding' in a competitive market, especially where an agent or landlord solicits a higher offer. As a result, many households may find themselves locked into rental contracts that are unaffordable. More broadly the more widespread this practice becomes, the greater the impact on the rental market. Rent bidding puts direct upward pressure on rent prices.

## Eviction into homelessness

Local Tenants' Advice Services in regional areas have seen a dramatic increase in the number of tenants calling them for advice about what to do if they can't find alternative accommodation. Clients are calling in great distress, extremely concerned about homelessness as they report they have made numerous (20+) unsuccessful applications and there are no available properties in the area left to apply for. Many are worried once an order to vacate is made they'll be forced to move in with family or friends, sleep in their car, or worse.

Local Specialist Homelessness Services are stretched to capacity and often unable to help. In one regional area, advocates report Link2Home is handing out tents to clients evicted into homelessness who require temporary accommodation, because no alternative accommodation is available in the area.

## Case study 2:

### *Renting in regional NSW: Evicted with nowhere to go*

Lauren, a single mum supporting her daughter on a low income, has lived in her rental on the South Coast for a number of years. The local community has been badly affected by COVID and the bushfires. She also lives in a region where there are significant infrastructure projects underway, so workers are living in the area while carrying out those works.

Lauren recently received a 'no grounds' notice and was told the landlord wanted to move in, even though the landlord lives in South Australia. Lauren was told COVID had changed the landlord's circumstances and they were moving back to the area.

A few days later, Lauren was chatting with a check-out woman at the supermarket, and discovered the woman she was talking with was going to be moving into Lauren's property. When Lauren contacted the agent to ask about it, she was told they just didn't think she could afford the higher rent at \$50 a week more. She wasn't even considered or consulted.

When Lauren spoke to us she was facing the very real prospect of not being able to find anywhere in the 90 days' notice she's been given. Her daughter is doing her HSC. Lauren couldn't have easily afforded the extra rent but she'd have preferred to struggle and pay it than face homelessness.

## Comment: Coordinators of Regional NSW Tenants' Advice and Advocacy Services

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

[Coordinator, New England and Western NSW Tenants' Advice and Advocacy Service](#)

It's very common in the Blue Mountains at the moment, with very low vacancy rates and increasingly high rents, that tenants can't find any alternative accommodation if they are forced to move. Agents can afford to be more selective in their choice of tenants, and any blemish on a ledger – even where these are rent arrears because the household was COVID impacted and this shouldn't count against them - will work against people. There is little to no social housing available in the area, and transitional properties are in use. Homelessness support services in the area are also stretched and limited in their capacity to offer assistance.

[Coordinator, Blue Mountains Tenants' Advice and Advocacy Service](#)

The vast majority of tenants who contact our Service in relation to termination have been unable secure alternative accommodation due to low vacancy rates across our area (i.e. Wauchope is 0.2%; Port Macquarie is 0.4%; Coffs Harbour is 0.7%; Bellingen is 0.4%; Taree is 0.9%). Many tenants are being forced to live in their cars, couch surf or rely on emergency accommodation. A number of tenants who have contacted us have stated they have applied for 10-30 properties and are unable to find a place to live.

[Coordinator, Mid Coast Tenants' Advice and Advocacy Service](#)

### Case study 3:

#### ***Renting in Regional NSW: Unable to find a new home***

Corinne, her husband, and their two teenage children had been living in their home in the Lake Macquarie region for two years when they were issued a 'no grounds' termination notice following requesting necessary repairs. The disrepair of the property has resulted in two injuries this year.

In April of 2021, Corinne was told that if they wanted a new lease agreement, the rent would be increasing from \$400 to \$480 per week. Corinne told the agent they'd consider signing the new lease if the repairs were carried out. In response, the agent issued Corinne's family the eviction notice.

Corinne began to look for new properties, but at the end of the 90-day period had not been able to secure a new property due to extremely low vacancy rates in their area. The agent took Corinne's family to the Tribunal (the NSW Civil and Administrative Tribunal). The Tribunal gave them two months longer to find a new home, but increased the rent to \$480 per week. The extra two months will finish in just over a month from the time of writing, and Corinne's family is very anxious that they will be unable to find a new home and move house before then, particularly with continued low vacancy rates, as well as the COVID-19 pandemic and harsh lockdown restrictions.

Corinne is extremely hesitant to move her family away from their home community. Both kids are in high school, and her seventeen-year-old daughter is in the middle of her HSC. However, after months of being knocked back from four or five properties a day, she has begun to search further and further away.

If Corinne's family cannot find a new home in time, they plan to go through Link2Home and get a motel room until they can find a place to live permanently.

***"It's so hard. It literally makes you feel like a loser. Every single knock back just takes another bit of your soul away. Some days when you've had multiple knock-backs you're just debilitated, and you can't do anything. This experience has seriously gotten in the way of getting work done.***

***Other days you just don't want to get out of bed, but we have to because we have the kids. For the kids, some days you're just cranky, and it's not their fault."***

## 2. What can be done?

### 2.1 Deliver social and affordable housing across regional NSW

#### Substantial investment in public and community housing is required

The NSW Government's delivery of social and affordable housing has not kept pace with population growth and need. While the number of people renting their homes has significantly increased over the last 20 years, the percentage of households renting their homes from a state or territory housing authority has dropped from 6% to 3%.<sup>2</sup>

In regional NSW the wait times for public or community housing generally range from between 2 and 10 years, with an increasing number sitting at 5 years or longer.<sup>3</sup> Given the crisis, the number of people in regional areas now waiting for social housing has likely significantly increased since the data regarding the number of applicants on the NSW Housing Register and expected waiting times was last updated (30 June 2020).

Significant investment in public and community housing in regional areas – that is, increased supply of 'non-market' housing - would put positive pressure on market housing by introducing real competition and higher standards. It would effectively challenge the private market to do better, especially for housing available at the lower end of the private rental market.

**Recommendation 1: Commit over the next 20 years to building new, additional public and community housing that adequately meets current and future need to provide housing that is genuinely affordable for people currently experiencing housing stress and/or homelessness**

#### Mandatory Inclusionary Zoning targets

The NSW planning system, including across regional areas of NSW, should introduce more appropriate land value capture mechanisms to ensure residential land and housing developments in regional areas are adequately contributing to the supply of genuinely affordable housing in these areas for local households on very low, low and moderate incomes.

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<sup>2</sup> Australian Bureau Statistics (2019) *Housing Occupancy and Costs 2017 - 2018*, <https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4130.0~2017-18~Main%20Features~Housing%20Tenure~3>, accessed 23/08/21

<sup>3</sup> Department of Communities and Justice NSW, *Expected Wait Times*, <https://www.facs.nsw.gov.au/housing/help/applying-assistance/expected-waiting-times>, accessed 24/08/2021

This could include the introduction of ambitious mandatory inclusionary zoning targets for local government areas, inclusive of all LGAs outside of the Greater Sydney Area. Any affordable rental housing dwellings that are delivered or financed as a result should be provided as 'affordable housing' in perpetuity, with rent set for tenants as a percentage of income (to a maximum of 30%).

**Recommendation 2: Introduce appropriate value capture mechanisms, such as mandatory inclusionary zoning targets, to ensure property and land developments contribute to the supply of genuinely affordable housing in regional areas.**

## Open and better data collection and analysis

### *Data regarding public and community housing*

The Tenants' Union of NSW often has difficulty finding up to date published information or data about the condition of current social housing stock. This includes information about the repairs and maintenance backlog for public housing properties owned by LAHC and for properties owned by the Aboriginal Housing Office.

We have also had considerable difficulty in finding up to date information about planned and current social housing developments being delivered through Communities Plus and the Social and Affordable Housing Fund. In general information about expected outcomes from the Social and Affordable Housing Fund is easier to locate, though it is not always clear what the timeframes are for delivery. Information about Communities Plus projects is much harder to track.

**Recommendation 3: Comprehensive data be made available about public and community housing properties, including:**

- the number of LAHC social housing properties planned, in construction, and/or delivered
- the condition of current social housing stock, including all public housing properties owned by LAHC and owned by the Aboriginal Housing Office
- the repairs and maintenance backlog for public housing properties owned by LAHC and for properties owned by the Aboriginal Housing Office.

### *Data regarding the private rental sector*

In our submission on the NSW Housing Strategy – Discussion Paper, we highlighted the inadequacies of current reporting and monitoring mechanisms and data collection on the private rental housing system. At that time there was particularly inadequate data available regarding evictions and the ending of tenancies generally. However in early August 2021 the NSW Government demonstrated a clear commitment to improving on the data available, introducing a voluntary bond exit survey which will help track more closely how NSW tenancies end. We hope the usefulness of the initial data collected will

encourage the NSW Government to implement the survey as an integrated required step in the rental bond refund process.

Other useful data in relation to the identification of rental issues can also be sourced from Fair Trading including bond data, and the Short Term Holiday Letting Register, NSW Land Registry Services, and the NSW Civil and Administrative Tribunal.

We are aware the [NSW Government Data Strategy](#) encourages “a collaborative, coordinated, consistent and safe approach to using and sharing data and insights across government to inform government decisions and actions”. However, we are aware of barriers to sharing and publishing data, and/or a lack of awareness about available data across different government departments and agencies that hold relevant data relating to the NSW private rental sector. Further resourcing may be required to allow appropriate identification, ‘strategic alignment’, analysis and publication of available data.

**Recommendation 4: Fair Trading’s rental bond exit survey be integrated as a mandatory step in the rental bond refund process.**

### Community land trusts and co-operatives

There is a significant amount of evidence to support the suitability of these housing models as being capable of meeting the aims of providing stable and affordable housing and delivering amenity, tenure security, high quality urban design and social capital. Their potential in a NSW context has been set out in detail in the submission to the *NSW Housing Strategy – Discussion Paper* by the Institute for Culture and Society, Western Sydney University.<sup>4</sup> In particular we note their reference to how co-operatives enable greater tenant rights in practice, encourage a place in the community and provide more than just the physical housing form, including ensuring residents having an ongoing say in provider activities.

The Institute for Culture and Society’s submission sets out a number of ways in which the NSW Government could play a vital part in enabling diversification into stable and effective housing models such as Community Land Trusts and cooperatives, including:

- Transfers of land and/or housing stock into appropriately constituted entities via freehold or long-term leases; and
- Working with other states and territories to encourage the Federal government to expand the role of NHFIC to include long term, fixed rate development finance to

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<sup>4</sup> Institute for Culture and Society, Western Sydney University (2020) *Submission to the Housing Strategy for NSW – Discussion Paper*, [https://www.westernsydney.edu.au/\\_data/assets/pdf\\_file/0020/1731143/housing-strategy-for-nsw-submission-ics.pdf](https://www.westernsydney.edu.au/_data/assets/pdf_file/0020/1731143/housing-strategy-for-nsw-submission-ics.pdf), accessed 24/08/2021



community and cooperative housing organisations.

Although construction costs may be slightly higher in regional areas, the greater availability of land and/or the lower purchase price for existing dwellings may mean that Community Land Trusts and cooperatives may actually face less barriers to development in regional areas, if adequate supports including possible subsidies, are provided by government.

**Recommendation 5: Consider the role the NSW Government could play in encouraging the development of community land trusts and rental housing cooperatives, including in regional NSW.**

## 2.2 NSW tenancy law reform required

### Remove 'no grounds' eviction provisions from NSW tenancy law

Improved security for renters could be easily achieved by removing current provisions in tenancy legislation allowing evictions for 'no grounds' (i.e. no reason and replacing them with a range of 'reasonable' grounds for ending a tenancy. 'Reasonable grounds' could include situations, for example, where:

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

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

**Recommendation 6: Reform current NSW tenancy law to remove no grounds eviction provisions.**

### Introduce an explicit ban on 'rent bidding' in NSW tenancy law

Currently there is no explicit prohibition on rent bidding built into NSW tenancy law. There are a number of ways in which the practice is currently discouraged, for example the active solicitation of rent bidding on the part of real estate agent would be a breach of the rules of conduct regarding 'Honesty, fairness and professionalism' set out for agents in the *Property and Stock Agents Regulation 2014*, as well as in the *Real Estate Institute of NSW Code of Practice*. It would also be a breach of Australian Consumer Law, which should apply to both agents and landlords.

Stronger protections could be provided through NSW tenancy law by introducing provisions that would allow landlords only to advertise or offer rental properties at a fixed price, and explicitly ban them from inviting rental bids or soliciting offers of rent higher than the advertised price. These protections currently exist in tenancy law in other Australian jurisdictions, including Victoria and Queensland.

**Recommendation 7: Introduce explicit provisions prohibiting 'rent bidding' into NSW tenancy law**