

Adequate housing provides shelter and safety, and access to basic services and utilities, such as sanitation facilities, electricity and clean water. Stable, secure housing enables stronger social connections and a sense of belonging, stable employment, and better education outcomes for households. For most people, a home is absolutely necessary to living a fulfilled, safe, happy life. It is not a luxury, it is essential.

The emergency measures introduced via the NSW Eviction Moratoriums in 2020 and 2021 was an acknowledgment that access to housing is essential. The moratoriums recognised the importance of supporting renting households to sustain their tenancies through crisis. However, the need for the rapid introduction of hardship protections via the moratoriums demonstrated the weakness and very limited nature of existing hardship protections. Existing protections and policy settings were shown to be insufficient to protect against the 'wave of evictions' widely anticipated once the pandemic's economic impact began to be felt.

While the pandemic created something of a unique circumstance in placing so many households into hardship simultaneously, the circumstance of financial hardship these households faced was itself not particularly unique. In the context of the current climate crisis, extreme weather events will become more severe, and occur more often. 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 cause similar strain in future. Moreover, a renter, outside of a pandemic, is likely to face some form of unforeseen circumstance or 'life crisis' at some time in their life.

A wealth of research indicates that unexpected negative life events - unforeseen events or personal crises - are a significant driver of homelessness in Australia. Events such as sudden job loss, domestic violence, illness, and deaths in the family heighten a person's or household's risk of becoming homeless, and can be key triggers for that person or household becoming homeless.

RENTING HOUSEHOLDS IN CRISIS AT HIGH RISK OF EVICTION FOR RENT ARREARS

When renting households experience a crisis or unforeseen change in circumstances (such as job loss, a death in the family, illness or injury, marital breakdown, and more), they may experience financial difficulty as a result. Renting households in financial hardship can struggle to pay rent and fall into arrears. Without appropriate support they are at high risk of eviction.

Breach eviction, especially for rent arrears, increases the likelihood of eviction into homelessness as the evicted renter is likely to experience difficulty securing a new tenancy. This is because the renter is more likely to be in financial hardship, and so will be considered a higher risk to potential landlords. They may also hold a bad rental record, and the options available within their price range are likely more limited. Breach evictions carry shorter notice periods than other forms of eviction, so the time available to secure a new tenancy is more limited. If the breach eviction is as a result of a personal crisis for one or more members of

the household, that crisis may compound the difficulties associated with securing a new tenancy.

Where a renting household is evicted into homelessness, the costs involved increase substantially.

EXISTING PROTECTIONS FOR RENTING HOUSEHOLDS EXPERIENCING HARDSHIP

There are currently only limited provisions within tenancy law to provide protection in these circumstances. Instead, the failure to comply with the renting contract when falling into arrears can very quickly lead to an end to the contract via eviction.

The *Residential Tenancies Act 2010 (RTA)* contains only extremely limited provisions relating to hardship. Section 104 of the RTA sets out provisions for either landlord or tenant to end a fixed-term early without penalty if the 'special circumstances' of the case mean that continuing the tenancy would result in undue hardship. Even these limited provisions are difficult for tenants to access and therefore rarely used. Instead, renters in financial hardship will often leave and incur the break fees in order to avoid build-up of arrears.

Sections 88 and 89 of the *Act* relate to non-payment of rent and set out that if a tenant is able to repay rent arrears or other unpaid charges, and enters into (and fully complies with) a repayment plan agreed to by the landlord, and has not been found to have frequently failed to pay on time, then no termination order can be made for non-payment. This can support some tenants experiencing very short-term hardship, but does not support tenants who need more than a few weeks to recover, does not allow for a rent variation, and provides no financial relief to assist the tenant to sustain their tenancy. It can also encourage tenants to enter into other unsustainable financial arrangements such as taking out personal loans.

Commonwealth Rent Assistance (CRA) and several other Commonwealth payments are available to some renters experiencing financial hardship. These supports are crucial but inadequate to support renters in financial hardship facing eviction for rent arrears. Application and approval processes take time, and renters facing eviction need financial relief immediately. Further, eligibility criteria are narrow and do not account for the range of renters who may face financial hardship.

NSW private rental subsidies provide support for some low-income renting households who have experienced a major financial setback, but who are otherwise considered able to sustain a tenancy in the private rental sector. However, many renters are unaware of the availability of subsidies, and eligibility and access are limited due to funding constraints.

A PERMANENT, EFFECTIVE HARDSHIP FRAMEWORK NEEDED FOR NSW RENTERS

Building a more crisis-resilient renting system requires the introduction of a more effective and permanent hardship framework, one that ensures appropriate support is provided to households experiencing hardship to sustain their tenancy through recovery, with eviction considered only an action of last resort.

The proposed permanent hardship framework set out in *Eviction, Hardship and the Housing Crisis* draws on, and strengthens hardship measures introduced during the NSW Eviction Moratoriums in 2020 and 2021.

The report proposes a permanent hardship framework must include the following key elements:

- Provisions for temporary rent variation (rent reduction) in circumstances of hardship
- A mandated minimum rent variation (rent reduction)
- A rent relief hardship fund to offset the costs of a mandated rent variation
- Appropriate restrictions on eviction for renters experiencing hardship
- Eligibility criteria that recognises the range of circumstance in which hardship variation should appropriately be applied
- Easy access to hardship provisions, with prescribed timeframes for determining and applying a hardship rent variation
- Resourced advocacy and other relevant supports, including e.g. independent advice for renters, and access to a financial counsellor as part of the process

MITIGATION AGAINST LANDLORDS' COSTS

To ensure the feasibility of implementing a permanent hardship framework, mitigation measures against possible losses or associated risk for landlords and/or government may be required. *Eviction, Hardship and the Housing Crisis* puts forward two possible models for mitigating the costs or loss that a landlord may face in circumstances where a hardship rent variation is applied. These are a mandatory landlord insurance, and/or the establishment of a hardship relief fund financed through the introduction of a residential landlord rental bond scheme.

Mandatory landlord insurance scheme A mandatory landlord insurance scheme would ensure that if hardship variation provisions were introduced, landlords would be able to meet their obligations in relation to these. Coverage against the loss of rental income due to a rent variation for financial hardship should be included as a standard insured event. More broadly, requiring landlords to have insurance would improve the financial capacity of landlords to meet basic legal responsibilities, and mitigate the risk attached to property investment.

Hardship relief funded through the introduction of a mandatory landlord bond scheme The residential tenancy support package available during the July-November 2021 Moratorium was implemented specifically to support landlords to meet their obligation to reduce rents for impacted households facing hardship. If permanent hardship provisions are introduced a similar hardship fund would likely be required, with a set amount of relief per tenancy for each instance of hardship as with the Covid-19 relief package.

In order to resource a hardship relief fund the government could consider introducing a landlord bond scheme. The bond could be held by the NSW Rental Bond Board which already acts as an independent and impartial custodian of rental bonds taken on private tenancies in NSW. The interest earned from investment of landlord bonds could help fund a landlord hardship relief fund.

Further consideration of the benefits and feasibility is needed regarding the implementation of a mandatory landlord insurance scheme or landlord rental bond scheme.