

Introduction

The Tenants' Advice and Advocacy Program is administered by NSW Fair Trading and is funded by the Rental Bond Interest Account with a matched contribution from the Property Services Interest Account. Funding of the program assists NSW Fair Trading in meeting the objectives of promoting fairness in the marketplace and ensuring consumer protection.

Tenants' Advice and Advocacy Services assist renters understand their rights and obligations so they can make better and more informed decisions and prevent the escalation of matters in the future. They prevent homelessness and other negative outcomes, reduce unnecessary legal conflict and assist in the swift resolution of necessary legal disputes.

For further information, contact Leo Patterson Ross, Chief Executive Officer of the Tenants' Union of NSW on ceo@tenantsunion.org.au or (02) 8117 3701.

Recommendation

In order to meet community need for advice and advocacy for renters, increase funding to the NSW Tenants' Advice and Advocacy Program to bring total funding to \$19.87m-\$24.78m per annum.

This represents an increase between 30.36%-62.53%, \$4.63m-\$9.53m per annum to restore the funding gap.

Between 2003 and 2022 The Tenants' Advice and Advocacy Program has received only very modest increases to its funding in real terms. Over the last 19 years funding for the Tenants' Advice and Advocacy Program has been increased with indexation payments and occasional time-limited increases to assist with significant events such as the introduction of the *Residential Tenancies Act 2010* and the COVID-19 health crisis. In 2021 the NSW Government announced an ongoing increase in funding of \$1 million across the program. In 2023 the new NSW Government announced a further increase of \$1 million across the program, which is expected to be included in the September 2023 Budget.

While gratefully received, these increases have not adequately accounted for the growth in the number of renters in New South Wales (NSW).

Between 2006 and 2021 the latest ABS Census data shows the number of people renting their homes has grown by 43 percent.

This population growth combined with the increasing complexity of casework as housing crises place greater pressure on the rental sector has left Tenants' Advice and Advocacy Services (TAAS) stretched thin.

Increasingly, renters are missing out on the services they need to live a dignified life.

Background

The Tenants' Advice and Advocacy Program has a long and successful history of delivering effective advice and advocacy services to the renters of NSW.

The program was approved and funded in 1994 by the Fahey government and began operations in early 1995. Since then more than half a million renters have benefited from the advice and advocacy work of the services.

There are two parallel streams in the program.

Generalist services

There are 15 generalist direct services open to all renters but with clear priority groups focussing on renters with financial or economic disadvantage.

Aboriginal services

There are 4 Aboriginal-focussed and led direct services.

These services are supported with training, legal advice, operational support and policy development by 2 resource services - the generalist resource service (the Tenants' Union of NSW) and the Aboriginal Resource Unit.

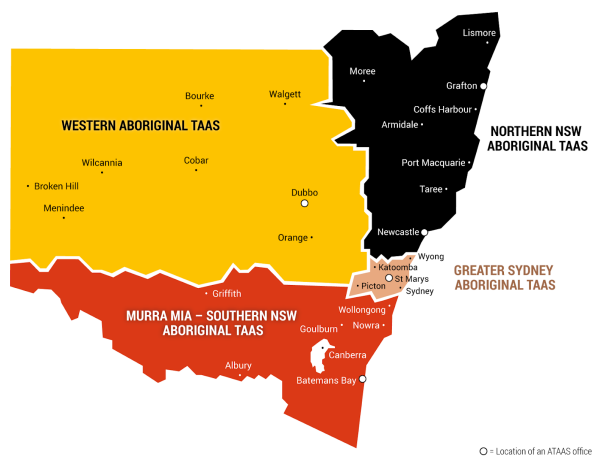
Tenants Advice and Advocacy Services – regional NSW



Tenants Advice and Advocacy Services – Sydney



Aboriginal Tenants Advice and Advocacy Services



Tenants Advice and Advocacy Service model of assistance

Tenants' Advice and Advocacy Services provide a range of services to renters of NSW from information and resources, advice to ongoing representation and case management.

NSW TAAP Guidelines excerpt

The objectives of the program are:

- To assist tenants, understand their rights and responsibilities under relevant legislation, primarily the Residential Tenancies Act 2010, Residential (Land Lease) Communities Regulation 2015, the Civil and Administrative Tribunal Act 2013, Boarding Houses Act 2012 and associated Regulations (referred to collectively in these Guidelines as 'the legislation') and any subsequent amendments or legislation that replaces these Acts;
- to assist tenants to achieve satisfactory resolution of tenancy problems and disputes with a focus on achieving resolution through negotiation;
- to assist tenants in the preparation of cases for NSW Civil and Administrative Tribunal (the Tribunal) hearings;
- to provide advocacy on behalf of tenants at the Tribunal with a focus on assisting tenants in conciliation between parties;
- to provide advocacy at Tribunal hearings when conciliation between parties has not succeeded including the provision of duty advocacy, where appropriate; and
- to provide appropriate referrals to other service providers.

In Financial Year 2021-22 TAAS opened more than 30,000 case files which comprised more than 100,000 sessions of assistance. Of these sessions, 68% involved assistance for the renter to resolve the dispute themselves, whether through advice or the provision of other resources.

Advocacy work on behalf of renters includes representing the tenant at the Tribunal or other dispute resolutions, or commonly in negotiations intended to avoid formal dispute resolution. More than 13,000 sessions of assistance were dedicated directly to this purpose.

Where more significant work was provided, TAAS achieved a resolution rate of 85% - creating an outcome materially improving the renter's situation compared to where they may have been without intervention.

Increasing demand and unmet need

Increased population, particularly in the priority service groups for the program, means maintaining funding only at the level provided in previous years increases the numbers of renters in need of assistance who are missing out on the benefits of the service.

2021 Census data shows significant increase in NSW renting households

The 2021 Census tells us there are now 2,363,324 people who rent their homes in NSW, close to 1 in 3 households (32.6%). The number of people renting their home continues to grow, and it is increasing significantly faster than general population growth. In the 15 years 2006-2021 the number of renters has increased by over 40%, while general population growth sat around 23%. This trend continues with population growth of 1.7% over the last year, but bonds held growing by 2.3%.

More renting households are renting long term (more than 10 years). Many are raising children, with families the most common renting household type in NSW. There are now more than 600,000 young people aged under 20 in rented homes. An increasing number of people over 60 find themselves retiring while still renting in the private rental market. The number of renters over 60 has increased by 82%, a significantly higher increase than the general population. There has also been a significant increase in the number of people renting while on a lower income. This is a leading indicator of the need for legal services.

Evidence of unmet need

Tenants' Union of NSW analysis of calls to Tenants' Advice and Advocacy Services in March 2021 suggested that during the original COVID-19 funding boost there was still a level of unmet demand of about 27%, or one in four calls. On current baseline funding this would translate to an unmet demand of 52%. An increase in funding should seek to meet this level of unmet demand in the aggregate. Recurrent funding is required to ensure demand is met in an ongoing manner and allow services to respond to changing environments in the most flexible and responsive manner.

ABS Census 2021 indicators of increased need

Number

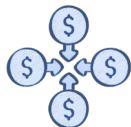
% Increase
since 2006



NSW total renters

2,363,324

43.1%



Renters earning less than 80% of median NSW income

1,066,750

40.2%



Aboriginal or Torres Strait Islander renters

196,270

84.7%



Renters born outside of Australia

927,310

68.5%

Renters who speak a language other than English at home

841,169

95.4%



Renters in need of assistance with core activities (people with disabilities)

133,058

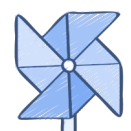
115.6%



Renters aged over 60

261,748

82.4%



Children in renting homes

608,891

24.7%

Current funding levels and sources

Funding sources

Historically the Program has been funded from monies generated by the renting sector itself. Currently 100% of the funding is obtained from the Rental Bond Interest Account. Previously, the Property Services Statutory Interest Account also contributed a matched amount. These are both legislatively empowered and protected funding sources. The *Residential Tenancies Act 2010* provides at s186 (3) provides that

'the Secretary may make a grant or loan, on the recommendation of the Board and with the approval of the Minister, from the Rental Bond Interest Account for the following purposes— (a) establishing and administering tenancy advisory services,'

and the *Property Stock and Agents Act 2002* which provides at s189 (2) that

'the Secretary may, with the consent of the Minister, apply money held in the Statutory Interest Account for all or any of the following purposes— ... (c) providing money for the establishment or administration of rental advisory services.'

The Rental Bond Board holds tenants' money in trust for them in the event that money is owed at the end of the tenancy. The Rental Bond Interest Account experienced low returns on investments in the years following the Global Financial Crisis, though both the number and value (inflation adjusted) of bonds held has increased by 52% from 2006-2022. The NSW Government has sought to address this issue by transferring the rental bonds to NSW Treasury accounts and funding the legislated purposes through appropriations. In doing so the Rental Bond Board retained a cash surplus of \$206m at June 2022, though some funds may have been used since. This pool alone is sufficient to fund the entire proposed increase to the TAAP program for 16 years (including average 4%pa increases) without needing further government support.

The Property Services Statutory Interest Account receives income derived from trust accounts which predominantly hold rent collected and sales deposits and so has not been tied to returns on government investment but rather the activity in the rental and sale of property. From June 2008 to June 2022 (the most recent report) the interest account has grown an average of 10.85%pa to a balance of \$140m, though this significantly understates the performance of the account as the interest account was utilised to assist with the state's response to COVID-19 amongst others and drew down from a peak of \$249m in June 2019.

The combined accounts therefore have a current cash balance of approximately \$346m, before any additional net revenue is accounted for, which could be used to support the prescribed legislative purposes, including funding the Tenants' Advice and Advocacy Program, without otherwise placing pressure on the finances of the NSW Government. Funding for the TAAP may

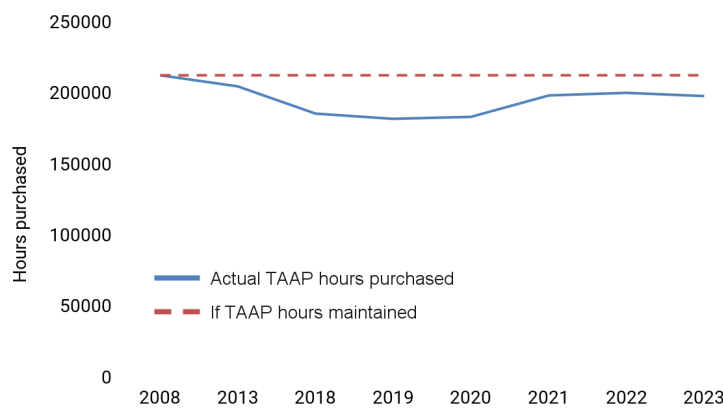
also be sourced directly from consolidated revenue or other Departments but this appears unnecessary.

Reduced real funding means reduced capacity

Funding has reduced in real terms as well as in relation to community need.

We have calculated a reference wage for a typical advocate with some experience working on an award wage as \$24.81ph in 2008. With wage increases including the Equal Remuneration Order the same advocate at the same award grade and experience in 2023 receives \$49.65ph.

TAAP Hours purchased 2008-2023



This is an increase of 100.1% over 15 years. The ordinary grant has increased by 89.6% over the same period. This means that the baseline grant was sufficient to purchase 212,743 hours of TAAS work in 2008, but only 197,969 hours in 2023. This translates into an effective funding gap of \$1.14m pa needed to maintained wages at the existing service level compared to 2008, without reference to population changes.

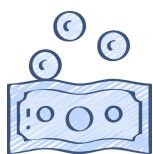
To use another reference point, in 2008 the funding provided per bond of \$12.65, (\$20.09 in the equivalent 2022) was sufficient to provide 20 minutes of TAAS advice per bond lodged. In 2022 with the increase in both wages and number of renting households, the funding provided per bond of \$15.41 was sufficient for less than 12 and a half minutes per bond lodged. These amounts represent an indirect contribution of 1.08% pa from each bond held in 2008 to 0.83%pa in 2022. The average cost per client in 2021-22 was \$427, with simple advices costing much less and ongoing casework significantly more.



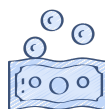
In 2008 core TAAP funding purchased 20mins and 9 seconds of support per bond held



In 2023 this has reduced to purchasing 12mins and 22seconds of support per bond held



In 2008 TAAP received 1.08% of each bond held: The equivalent of \$20.09 per bond (\$2022)



In 2023 TAAP now receives just 0.83% of each bond held or \$15.41 per bond

In order to maintain the equivalent contribution as the renting population increases, program funding would need to be lifted to \$20.68 per bond. This requires program funding to be lifted to \$19.87m pa. an increase of 30.36% or \$4.62m.

To ensure the funding required can provide the same level of service, accounting for increased costs, in line with the needs of the population funding would need to be set at \$24.78m pa. an increase of 62.5% or \$9.53m. We know that TAAS also seek to ensure their services are delivered as efficiently as possible and take up opportunities to improve service delivery.

In 2008 the Robyn Kennedy review of the program on behalf of Fair Trading recommended an increase of between 8% (to maintain the program funding in real terms) to 29% (to meet the demand needs). At the time an increase of 29% would have brought the total FTEs under the program to 116, or the equivalent of a \$2.45m increase. However the renting population has continued to grow as we discuss below.

Demonstrated increased delivery of service with one-off grants and increases

To assist in the response to COVID-19 the network received two staffing boosts of 18 FTE from May 2020-April 2021 and 21 FTE from October 2021 to October 2022. This boost assisted services to assist more people with greater complexity. The number of cases assisted has risen 23% from FY 2019-20 to F Y2021-22 and the sessions required to resolve each case rose from 2.2 to 3.5, resulting in an increased workload of 60% for the period of the boost. Given the boosts increased staffing by 20%, the program outperformed an expected output.

A permanent increase would ensure that service delivery can continue to meet demand by creating new positions and retaining trained staff. Ten (10) of the 19 direct Tenants' Advice and Advocacy Services are located in regional areas, ensuring employment opportunities created through this increase are distributed both in and beyond the Greater Sydney region.

Expenditure

We have previously presented a range of proposals concerning how increased funding can be used. These proposals included the creation of a new Aboriginal service in South West NSW as the current funding; the return of specialist funding for older renters and renters in residential land lease communities; and the provision of a duty advocacy program.

We expect that following agreement for increased funding NSW Fair Trading will consider the distribution of additional funding across the grant area. We expect this distribution to meet the relative needs of those local communities with a commitment to ensuring no service's capacity is reduced.

We explore here one of the likely ways an increased funding pool can be used to meet the program objectives - the provision of a Duty Advocacy program.

Funding for duty advocacy

Duty advocacy plays an important role in the TAAP's homelessness prevention. It is a just-in-time intervention that meets people at the Tribunal and ensures that people who may not have been aware of the relevant laws and processes are able to engage effectively in the conciliation phase and seek negotiated outcomes, preventing unnecessary and costly hearings.

At present, duty advocacy is encouraged but not required under the TAAP guidelines and therefore there is no specific funding provided for this labour and time intensive role. Most services provide a limited duty advocacy service, being present for 5-10% of NCAT general or initial hearing lists.

In 2006, the Tribunal members were asked their views on the effectiveness of TAAP duty advocacy services:

- 82 percent agreed the services assist to achieve conciliation outcomes.
- 88 percent agreed that duty advocates improve the efficiency of conciliations.
- 76 percent indicated that TAAP duty advocates improve the efficiency of the Tribunal sessions.

Robyn Kennedy Consultants (2010) for Fair Trading estimated from Tribunal caseload that there an additional 15.9 FTE positions for generalist direct services would be needed to provide regular duty advocacy in their regions.¹ Based on these 2010 calculations - without adjusting for any change in matters heard - if 16 positions were costed at today's cost per FTE of \$144,680, (including operational costs) the total additional funding required would be \$2.31m.

In 2021-22 there were 41,632 applications made for matters relating to residential tenancies at the NSW Civil and Administrative Tribunal (the Tribunal). Over 50% - 21,826 - of all applications to the Tribunal were for eviction. 68% of landlord applications relating to tenancies in the private rental market were for eviction. 72% of applications made by social housing landlords were for eviction. Provision of duty advocacy to ensure social housing renters facing eviction at Tribunal are able to access advocacy would provide invaluable support, especially given renters evicted from social housing are at a significantly higher risk of homelessness.

¹ Robyn Kennedy Consultants (2010), *Tenants Advice and Advocacy Program: Research Project on Duty Advocacy, Aboriginal Services and the TAAP Funding Formula*, Final report to Fair Trading, December 2010

Whole of government savings

TAAP prevents homeless and costs of homelessness

The NSW Productivity Commission identified evictions as having a significant direct cost to the NSW economy. They cite NSW Treasury's estimate that the over 23,000 renting households forced to move each year results in total direct costs of \$116 million per annum, primarily due to the relocation costs incurred by renter², which lines up with our own research. This was a cost of \$5000 per forced move in 2019.

When a household experiences homelessness costs are significantly higher again. Eviction has serious impacts on the physical health and mental well being of the individual as well as impacting their financial and economic position which require high costs to the government to rectify. The Department of Communities and Justice Final Report on *Pathways to Homelessness* in 2021, authored by Taylor & Fry, estimated the average cost to the government of supporting an individual experiencing homelessness costs \$166,000 over 6 years.³ This complements previous research from AHURI which found the annual cost to be \$29,450.⁴ TAAS prevented homelessness in 3,800 cases each year representing a potential annual saving to governments of more than \$105m. This money is now available to be spent on other government priorities.

A key part of the Tenants' Advice and Advocacy Services approach to homelessness avoidance is to prevent evictions both by ensuring the law is applied in an appropriate and just way, and by negotiating alternatives to evictions. In the 2021 and 2022 calendar years Tenants' Advice and Advocacy Services have prevented eviction in 5,845 cases. Using NSW Treasury estimation, these interventions have saved renting households an equivalent of \$29.2 million per annum in relocation costs. This money is now available to be spent in the broader economy spreading greater benefit to the whole NSW community. Many of these cases would otherwise need greater support from the social housing or specialist homelessness services.

Tenants' Advice and Advocacy Services are effective. In cases over 2021-2022 involving the risk of eviction, TAAS maintained a positive resolution rate of issues in 87% of cases where they were able to offer services beyond advice only, either by preventing the eviction, or

² NSW Productivity Commission (2019) [Kickstarting the productivity conversation](#), October 2019, p120
Research undertaken in 2022 by the Tenants' Union using the same method of calculation with updated and comparable estimates on costs (\$5,220 per move), estimated direct costs of around \$122 million pa.
Tenants' Union of NSW (2022) [Eviction, Hardship and the Housing Crisis](#), February 2022

³ NSW Dept of Communities and Justice (2021) [Pathways to homelessness](#), Final Report, December 2021, The distribution of cost to government, p.67

⁴ Zaretsky et al (2013) [The cost of homelessness and the net benefit of homelessness programs: a national study](#) - Findings from the Baseline Client Survey, p.4,

ensuring the person had sufficient time to find new accommodation without experiencing homelessness or other harm.

A funding boost to the Tenants Advice and Advocacy Services creates greater efficiency for government expenditure reducing costs on Fair Trading NSW complaints centre, the NSW Civil and Administrative Tribunal, Office of the Sheriff NSW, and across housing, homelessness and health services. A Tenants' Advice and Advocacy Program funded at \$19.87m would see a proportionate increase in cases preventing homelessness and evictions, and is likely to represent a cost benefit ratio to government on the whole-costs of government of better than 1:5.

Proposals for increase to funding

Recommendation: Increase funding to the NSW Tenants' Advice and Advocacy Program by 30.36%-62.53%, \$4.63m-\$9.53m per annum to bring total funding to \$19.87m-\$24.78m per annum.

We note NSW Government has committed to an increase of \$1m pa as an election commitment in the March 2023. These figures do not include that increase.

Option A: Increase funding by \$1.138m pa to \$16.383m pa, a 7.46% increase on current levels, restore the program to the same amount of service hours as was funded in 2008 without addressing population growth.

Option B (supported): Increase funding by \$4.628m pa to \$19.873m pa, a 30.36% increase on current levels, to restore the program to the equivalent funding per bond of 1.1% pa. This option represents a more affordable approach but still ensures funding is still responsive to growth.

Option C (supported): Increase funding by \$9.529m pa to \$24.774m pa, a 62.51% increase on current levels, to restore the program to meet the change in population and costs of service delivery. While this is the most expensive option, it also ensures the high level of need in the community is being met at a consistent and reliable level.