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## Introduction

The Tenants' Union of NSW is the peak body representing the interests of renters and their advocates in NSW. We are a specialist community legal centre specialising in residential law and policy, and the main resourcing body for the statewide network of Tenants' Advice and Advocacy Services (TAAS).

The TAAS network assists more than 35,000 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 Renters' Organisations (NARO), 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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## Budget 2024-25 recommendations

### 1. Increase funding for the Tenants' Advice and Advocacy Program (Department of Customer Service)

The Tenants' Advice and Advocacy Program<sup>1</sup> provides invaluable support to renters, assisting them to navigate the rental sector. Through advice, representation and community education advice services assist to resolve issues early and spread awareness of legal rights and responsibilities. The program is properly considered a homelessness prevention service, contributing to significant savings to whole-of-government by preventing issues escalating further.

The Program is currently funded to provide the same amount of service as it was in 2008, though the needs of the community have grown significantly since.<sup>2</sup> Funding is available and there are two legislatively-empowered sources of funding that need to be unlocked with increased whole of department funding.

The *Residential Tenancies Act 2010 (NSW)* 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,*'

The *Property Stock and Agents Act 2002 (NSW)* 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.*'

Funding for the Tenants' Advice and Advocacy Program is currently only being drawn from the Rental Bond Board. The availability of funds in the Property Services Statutory Interest Account and the cessation of funding for Mascot Towers presents an opportunity to restore funding to meet community needs. Appendix 1 details the funding available between the Rental Bond Board and the Property Services Statutory Interest Account and current costs.

We draw particular attention to the previously provided funding briefing which will continue to be updated to reflect population and community needs alongside cost of service delivery.

#### **Recommendation**

Increase funding to Tenants' Advice and Advocacy Program to a total \$24.78m in 2024-25 and funding model adapted to reflect growing community need into the future.

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<sup>1</sup> Tenants' Union of NSW (2023) 'Tenants' Advice and Advocacy Funding' is available at <https://files.tenants.org.au/policy/2023-07-TAAPFundingBriefing.pdf>, accessed 08/03/2024

<sup>2</sup> Ibid.

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This requires an increase in the Department of Customer Service budget to allow expenditure from Rental Bond Board Interest Account and Property Services Statutory Interest Account.

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## 2. Reform unfair evictions (*Department of Customer Service*)

### Cost of living - cost of moving

All people deserve to live with stability and peace of mind, including people who rent their homes. Moving house is generally considered one of life's most stressful events: the financial costs, and stress involved are substantial, and these are exacerbated when a household is forced to move.

We have previously estimated the average immediate and direct costs of eviction at around \$4000 for renting households, not including the rental bond required up front to secure a new tenancy.<sup>3</sup> Adjusted for inflation this figure is over \$4,500. Our estimate includes, for example, costs related to hiring removalists or a moving van, packing materials, cleaning costs, taking time off work, travelling to property inspections, school relocation costs, mail redirection, utility disconnection and reconnection, and replacing furniture or appliances. The NSW Productivity Commission conservatively placed the costs to the NSW economy at \$116 million per annum.<sup>4</sup> Adjusted for inflation this is closer to \$135 million per annum.

Given the significant impacts - both financial and emotional - for individual households, and the costs for our communities and to the economy, our renting laws need to better prevent unnecessary forced moves, specifically unfair eviction. Landlords should not be able to end a tenancy for no reason ('no grounds' eviction). Rental reform is urgently needed to introduce a requirement for a landlord to provide a valid reason for terminating a tenancy. The aim is to ensure fairness and stability. There will also be substantial gains for the NSW economy, and savings for individual households who will not face the substantial costs involved with a forced move.

### **Recommendation**

Replace 'no grounds' eviction provisions in current NSW tenancy law with a range of specified reasonable grounds for ending a tenancy.

### Provide relief for *all* renters

Reforms to end 'no grounds' eviction must apply for renters in periodic tenancies and at the end of fixed-term leases. Current data reveals the majority of NSW renters are currently on a

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<sup>3</sup> Tenants' Union of NSW (2022), *Eviction, Hardship and the Housing Crisis*, Available at: <https://files.tenants.org.au/policy/2022-Eviction-Hardship-and-the-Housing-Crisis-TUNSW.pdf>, accessed 08/03/2024

<sup>4</sup> The NSW Productivity Commission (2019), *Kickstarting the productivity conversation*, p119. Available at: [https://www.productivity.nsw.gov.au/sites/default/files/2019-10/0709-04\\_Productivity%20paper\\_Full%20version-Final-R.pdf](https://www.productivity.nsw.gov.au/sites/default/files/2019-10/0709-04_Productivity%20paper_Full%20version-Final-R.pdf), accessed 08/03/2024

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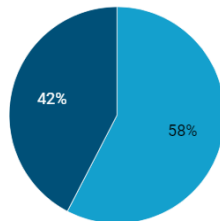


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fixed term agreement (58%), and that those who are on a fixed term are more likely to face a 'no grounds' eviction (71%).

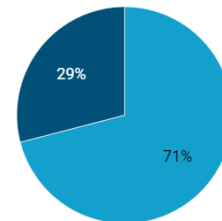
## Fixed term and periodic

■ Fixed term agreement ■ Periodic agreement



All tenancies

Total:  
53,700



No grounds evictions

Total:  
4,943

Chart: TUNSW • Source: Fair Trading • Created with Datawrapper

There is a 'no grounds' eviction served every 18 minutes in NSW. That is around 30,000 every year. If reforms only apply for renters in periodic tenancies, 2 out of every 3 impacted renting households will not be protected. Experience from other jurisdictions, such as Queensland and Tasmania, has also shown that market practice moves to take account of this loophole, with landlords shifting renters onto short term fixed term leases to continue to allow them to evict for no reason.

## Recommendation

Reforms to end 'no grounds' evictions must apply to fixed term and periodic tenancy agreements, i.e. removal of sections 84 and 85 of the *Residential Tenancies Act 2010*, replacing them with specific reasons and supporting evidence for termination.

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### 3. Support regulatory activity, including provider registration (Department of Customer Service)

#### Support regulatory activity

Both the perception and actual presence of an active regulator in a sector is crucial to community trust in the success of a regulatory system. The current system in renting relies too heavily on the consumer renter to initiate and carry the risk of enforcing the law. This is because most responsibilities of service providers are expressed through contract provisions in a residential tenancy agreement.

The creation of the role of NSW Rental Commissioner was and remains an opportunity to reset the relationship between government, community and industry.<sup>5</sup>

The Department of Customer Services reported in Budget estimates that there were 11 real estate investigators with responsibility for investigating breaches of the *Residential Tenancies Act 2010* amongst other investigations<sup>6</sup>. This amounts to more than 80,000 rental properties per investigator in residential tenancies, before accounting for their responsibilities in other areas such as property services.

In 2022/23 there were a total of 10 penalty notices issued under the *Residential Tenancies Act 2010* with an average cost of \$1,166.<sup>7</sup> We suggest this outcome is not reflective of the rate of non-compliance with tenancy laws. Complaint-making by renters is hampered by the lack of protection against retaliation if they make a complaint, and a lack of trust that they will see a positive outcome.

The Department is given a limited range of items that can be enforced, and an even more limited budget to do so. This deficit of both powers and funding risks creating a perception within the industry that breaches of the law are an acceptable risk and the rare chance of enforcement activity becomes a cost of doing business. Consumer renters are then left with the impression that breaches of the law are routine and normalised, and making a complaint will not resolve an issue. Compliance with the law as a matter of contract is hampered by the existence of 'no grounds' evictions and minimal protection against retaliatory grounds, which allow a provider to avoid scrutiny.

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<sup>5</sup> Tenants' Union of NSW (2023) 'A rental commissioner in NSW' accessible at <https://files.tenants.org.au/policy/230413-TUNSW-NSW-Rental-Commissioner.pdf>, accessed 08/03/2024

<sup>6</sup> NSW Legislative Council Portfolio Committee 8 (2023) *Budget estimates 2023-24: Supplementary Questions* p.100  
<https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=3001#tab-otherdocuments> accessed 8/03/2024

<sup>7</sup> Ibid p.102

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NSW Fair Trading previously published complaints and enforcement data by legislative area, deidentified. This was a useful transparency measure. In 2018 this practice was ceased. WE recommend it recommence and provide the community and industry with transparency concerning how breaches of different consumer legislation are dealt with.

## Recommendation

1. Provide additional funds to the Department of Customer Service for compliance and enforcement activities with a focus on residential sectors via the NSW Rental Commissioner, at least \$12m pa.
2. Recommence publishing compliance and enforcement data.

## Registration

An important element of trust in service delivery is knowing the person who is responsible and accountable for the service. Unlike the service providers who built the house, who perform electrical, plumbing or property management, the service providers who are legally responsible for coordinating these things are not required to register. This creates difficulties in setting up communication with government including during times of crisis when greater support may be needed. Registration of rental properties should be explored within the next financial year with an intention to implement as soon as possible.

Registration of short-term letting properties is currently set at \$65 for initial registration and \$25 for renewal per property, costing \$115 over a 3 year period. Projecting forward over implementation and an increase in bonds held of 2%, a registration scheme would raise approximately \$60m in its first year, covering implementation costs and approximately \$25m each year which can be used for administration of the scheme itself and regulatory support.

We suggest \$25 per year is a minimal expense. The Scottish registration scheme is £75 principal fee (including multiple parties) and £17 property fee renewed every three years (regardless of size).<sup>8</sup> For a 2 bedroom apartment in Scotland this equates to 0.3% of the 3 years worth of rent at current prices. If this amount was applied in NSW the fee would equate to a cost of \$97 per annum which would significantly increase the capacity for funds to be used to support the sector, but still represent a minimal expense item.

Registration brings a number of benefits to the system beyond revenue, including communication with industry, data and transparency and clear lines of responsibility. Currently property managers are viewed as an equivalence, but they do not hold legal responsibility for performance of residential tenancy contracts or other regulation. This also places pressure on property managers leading to burnout and stress within the industry.

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<sup>8</sup> Landlord Registration Scotland (2024) 'Landlord registration fees'  
<https://www.landlordregistrationscotland.gov.uk/fees-information>

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We recommend that registration apply to the legal entity responsible for regulatory compliance including performance of the tenancy contract. This relieves concerns from a property owner who does not wish to have responsibility for regulatory compliance but does not leave consumer renters without protection. We anticipate existing or new property management structures will adapt to provide services that include accountability for regulatory compliance.

**Recommendation:**

Resource exploration of the concept of registration with stakeholders with a view to prioritise implementation. Program has significant potential for a negative net cost of service.



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#### 4. Improve service of NSW Civil and Administrative Tribunal (Attorney-General, Department of Customer Service)

Review of NCAT in relation to renting

Prior to the election, NSW Labor committed to a comprehensive review of the NSW Civil and Administrative Tribunal. The Tribunal has been in operation since 2014 and as part of the creation of the 'super-tribunal' responsibility of residential and consumer elements were transferred from the Fair Trading NSW Minister to Attorney-General.

Significant funds are still provided from the Department of Customer Service. NCAT received \$26m in 2022-23 from the Rental Bond Board Interest Account and Property Services Statutory Interest Account on top of application fees to deliver this important dispute resolution service and this is required expenditure under statute.

In the leadup to the NSW election in 2023 the now government announced a review of the NCAT stating

*"Applications to NCAT can be a long and expensive process, and decisions made by the tribunal can be inconsistent. NSW Labor will conduct a review of the application process, case resolutions and hearing proceedings.*

*NCAT should be an accessible and transparent process to help renters and property owners resolve issues or disputes."*<sup>9</sup>

The Attorney-General confirmed during Budget Estimates on 6 March that the review was progressing.

#### **Recommendation**

We recommend this review proceed as soon as possible.

Online registry services

We also draw attention to the need for expenditure to restore integrity to the online registry services. The roll-out in November 2023 appears not to have occurred with sufficient user testing or consultation. It attempted to utilise the system for Courts NSW without accounting for significant differences between the two bodies.

In NSW Civil and Administrative Tribunal there is a presumption that applicants and respondents are not represented. This is dissimilar to the courts system where

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<sup>9</sup> NSW Labor, 21st March 2023 "Protecting renters and making the system fairer" Media Release accessed at <https://ozarab.media/nsw-labor-protecting-renters-making-the-system-fairer/>, accessed 08/-3/2024

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representation is the norm. The registration process appears primarily set up for representative services rather than individuals who may engage with the Tribunal only once.

For renters with particular need for assistance, the Tenants' Advice and Advocacy Services are funded by NSW government to assist with representation as specialist community advocates. Some services are located within legal centres, while the majority are not.

Regardless of the background, these services have been assessed in a competitive process and awarded contracts with NSW Fair Trading to deliver advice and advocacy services, including representation at the Tribunal. Collectively the non-legal practice services assisted in 1800 cases in NCAT last year, and across those cases attended more than 20,000 hearings. They sign contracts in the form of client agreements that clearly state the tasks and boundaries of any representations, and contribute significantly to the smooth running of the Civil and Administrative Tribunal through ensuring documents from renters are well organised, lodged and available for all parties.

In the expansion of the online registry services, a new category of e-org was created to facilitate real estate agents being able to handle cases on behalf of their clients. However, the specialist government funded organisations offering representation services - the Tenants' Advice and Advocacy Services - were not facilitated in the system.

These specialist community advocates are currently unable to access the online registry system and lodge or manage cases on behalf of their clients. Many clients attempting to use the system as individuals are reporting issues with the identification systems, they may have language or other capacity barriers which can be rectified by a representative utilising the e-org account as their representative. This is causing a significant access to justice issue for their clients, especially as the parties are not treated equally - one party may have a representative with access to the system and the improved case and document handling, and the other party is not.

The NCAT receives significant resources from the Rental Bond Board and Property Services Statutory Interest Account (\$26million pa) - the same sources of funding as the Tenants' Advice and Advocacy Program.<sup>10</sup> We believe it is appropriate that these programs of government are able to work together to deliver effective dispute resolution processes and this should be addressed as a matter of urgency, including providing funds required.

## **Recommendation**

Such resources as required to resolve issues with the online registry system be made immediately available to the NSW Online Registry and NSW Civil and Administrative Tribunal to work with stakeholders to ensure ongoing access to justice and the delivery of the NCAT's guiding principle.

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<sup>10</sup> See Appendix for further details

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## 5. Invest in the creation of Homes NSW (*Department of Communities and Justice*)

We are encouraged by the creation of Homes NSW and recommend that investment in the Department to ensure housing becomes available and affordable to those not served by the current private rental sector.

We recommend that Homes NSW not seek only to meet the needs of people currently on the waiting list for social housing, but all people currently unable to find affordable housing. Using the 2021 Census [UNSW researchers calculated](#) that 221,000 households are currently in need of genuinely affordable housing, and projected that this number will grow to 320,000 by 2041. This should be the focus of Homes NSW.

We note the Minister's vision that Homes NSW should be the best landlord in Australia. Delivering this will have transformative impact on the experience and will require genuine commitment from government to do so.

We recommend expenditure on public and community housing should be aimed, across all levels of government, to deliver an outcome that at least 10% of all housing in NSW is social housing by 2036. This means a growth in the number of homes. We therefore do not support strategies that shift stock rather than grow stock.

In particular we strongly recommend against continuing the practice of transferring properties from public housing to community housing without seeking community support first, including during estate renewals. This practice creates tension in the community and inevitably requires comparison between community housing and public housing providers. Focus should instead be on lifting standards of all provision of social housing. Government should support growth in community housing through external expenditure rather than reallocation internally. Greater and genuine involvement in decision-making from the residents of existing housing should be sought.

Greater supply of housing should not only include building housing, but acquisition of housing - particularly distressed sales, investors who cannot or will not maintain properties. Acquisition can be through purchase or reformed private head-leasing programs which provide properties for significant periods (such as 20+ years).

Shortfalls in repairs and maintenance, including upgrades, have been a legacy of decades of under-funding and do not appear to be solved by greater reliance on the community housing

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sector alone. Homes NSW should investigate rent setting and eligibility models that produce a sustainable operating budget and resources should be allocated to that end.

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6. Continue implementation of portable bonds scheme (*Department of Customer Service, Homes NSW*)

We understand that work continues on planning the implementation of a portable bonds scheme. We understand full implementation may require modernisation of the Rental Bond Board data infrastructure. This is an overdue investment in the Bond Board which will allow a number of other shortfalls to be addressed. One clear example is for victims of DV who are currently forced to continue to engage with the perpetrators of abuse to obtain their bond because the Bond Board system operates on a household setting rather than individuals. We encourage work to continue in this space and recommend resources be allocated to ensure it is effective and trusted.

In the meantime, much of the pressure of double payment of bonds could be eased by expanding access to Bond Loans such as those provided by Department of Communities and Justice, now Homes NSW. In the ACT [bond loans](#) are provided to a wider range of people. The income eligibility limits are up to \$109,215.60 per annum as a single applicant, compared to \$40,147 in NSW. Making bond loans available to a wider range of people

**Recommendation**

Continue to implement a portable bond scheme in NSW, and consider interim measures such as expanding bond loans.

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## Appendix

**Table 1. Property Services Statutory Interest Account**

	Reported expenditure (\$m)			Total Expenditure* (\$m)	Balance at EOFY <sup>^</sup> (\$m)
	Administration*	NCAT*	TAAP*		
2018-19	18	10.8	3.6	32.4	<b>249.2</b>
2019-20	37.2	12.1	0	49.3	<b>229.8</b>
2020-21	38.1	11.1	0	49.5	<b>186.8</b>
2021-22	39.1	12.7	0	51.8	<b>140.1</b>
2022-23	40.1	13.0	0	53.1	<b>192.5</b>

**Table 2. Rental Bond Board**

	Selected expenditure (\$m)			Total Expenditure <sup>^</sup> (\$m)	Balance at EOFY <sup>^</sup> (\$m)
	Administration <sup>^</sup>	NCAT <sup>^</sup>	TAAP <sup>^</sup>		
2018-19	32.0	10.8	3.61	59.1	<b>66.5</b>
2019-20	31.3	11.0	11.7	61.8	<b>59.5</b>
2020-21	30.0	11.1	13.5	69.1	<b>206.2</b>
2021-22	30.4	12.7	16.8 <sup>+</sup>	77.1	<b>194.2</b>
2022-23	32.9	13.0	14.5	78.7	<b>193.0</b>

\*Provided to Budget Estimates, Answer to Supplementary Questions in November 2023. Answers to budget questions are not equivalent to full financial reports and may not have full information.<sup>11</sup>

<sup>^</sup> from DCS/DFSI Annual Reports, multiple years.

<sup>+</sup>includes one-off \$3.1m payment for additional COVID-19 support to renters

<sup>11</sup> NSW Legislative Council Portfolio Committee 8 (2023) *Budget estimates 2023-24: Supplementary Questions* p.101

<https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=3001#tab-othdocuments> accessed 8/03/2024

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**Table 3. Consolidated from above**

	Selected expenditure (\$m)			Total Expenditure (\$m)	Balance at EOFY (\$m)
	Administration	NCAT	TAAP		
2018-19	50.0	21.6	7.2	91.5	<b>315.6</b>
2019-20	68.5	23.1	11.7	111.1	<b>289.3</b>
2020-21	68.1	22.2	13.5	118.6	<b>393.1</b>
2021-22	69.5	25.4	16.8*	128.9	<b>334.4</b>
2022-23	73.0	26.0	14.5	131.8	<b>385.6</b>

NB: expenditure may be reported in a different financial year to the intended expense depending on when a grant is paid in the calendar year.