

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.

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 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.

Recommendations

Recommendation 1:

Being a survivor of gender-based violence be included as a protected attribute in the *Anti-Discrimination Act 1977*

Recommendation 2:

Socio - economic status be included as a protected attribute in the *Anti-Discrimination Act 1977*

Recommendation 3

The evidential burden should be shifted to landlords, to prove they did not discriminate against a renter or prospective renter based on a protected attribute.

This should include ensuring that the tenancy application process avoids facilitating unlawful discrimination, particularly through transparency of decision-making and reasons for refusal to rent.

Recommendation 4

The *Anti-Discrimination Act 1977* should protect against intersectional discrimination and should allow for discrimination complaints to include both direct and indirect discrimination.

Recommendation 5

Prohibit sexual harassment in private accommodation with an exception for accommodation provided by a near relative.

The Tenants' Union submission addresses some of the key issues and barriers renters in NSW face in relation to discrimination and in taking legal action against discrimination in the rental system.

In the private rental system in NSW renters face discrimination in all aspects of the interaction with the system. From the point of applying to rent a home through to eviction. The power imbalance that exists between renters and landlords and real estate agents means it is very difficult for renters to have access to information to establish grounds of discrimination. With a shortage of social and affordable housing and the failure of the private rental system to meet the needs of very low, low and medium income households, more people are living in shared accommodation, many of which fall outside the coverage of discrimination laws. Another factor is the increasing use of digital technologies to access housing, manage properties and mediate landlord/agent/tenant relationships. This is an emerging area of influence on the private rental system and has the potential to perpetuate discrimination and needs to be closely monitored and restricted.

Potential new attributes

Regulation of the application process for private rental housing is improving in NSW with the *Residential Tenancies Amendment (Protection of Personal Information) Bill 2025* currently before NSW Parliament. The amendments in this Bill are important as they will provide greater protection against discriminatory and/or intrusive requests for information at application. They include the introduction of a prescribed standard rental application form. This will provide greater protection against a landlord or agent from unlawfully discriminating against an applicant by ensuring they are not able to request any information about a renter that could be discriminatory under the *NSW Anti-Discrimination Act 1977 (the Act)*. Along with these important amendments changes are also required to the Act to ensure that all forms of discrimination are captured. Survivors of gender based violence are not currently protected under the Act and they should be added as a new attribute.

The Tenants' Union is aware through the case work of the Tenants Advice and Advocacy Services that survivors of gender based violence often experience discrimination in the private rental system. This is particularly the case when a renter has been approved for Start Safely subsidy which is specifically for people escaping domestic violence.

Some examples of discriminatory behaviour:

- Agent in conversation with Tenant Advocate referred to the tenant as "one of those social housing scumbags" as she was moving into transitional housing to escape domestic violence. The Agent took photos of the tenants car number plate while she was removing her belongings from the property during an organised access time. The removalists that were helping the tenant told her they would finish up and she could leave as the verbal abuse continued from the Agent.
- An Agent blamed a tenant for an arson attack when she was the victim of horrific domestic violence in an email to Tenant Advocate
- Agent referred to a previous bad experience with a tenant who was receiving Start

Safely as the reason they will not accept an application from a tenant who is on this subsidy

Another new attribute that should be protected in the Act is socio-economic status. In the private rental system people with low socio-economic status face discrimination in particular at the point of applying for a home. A renter's employment status whether they are receiving social security benefit or a pension or unemployed often results in an application being rejected.

Recommendation

Being a survivor of gender-based violence be included as a protected attribute in the *Anti-Discrimination Act 1977*

Socio - economic status be included as a protected attribute in the *Anti-Discrimination Act 1977*

Burden of proof

Renters are subject to direct or indirect forms of discrimination based on their attributes. NSW's anti-discrimination laws do not offer adequate protection for renters because of the difficulties that they face in satisfying the evidential burden of discrimination. The lack of transparency regarding the decision making process for applicants in the private market system is one of the biggest barriers. During the tenancy application process, prospective tenants face difficulties bringing about a claim because they have to satisfy the evidential burden of discrimination. In terms of direct discrimination, it is difficult for the prospective tenant to prove the landlord's reason for rejecting a tenancy application: there is a significant information discrepancy between the landlord and the prospective tenant, because the genuine reason why a landlord refuses a tenancy application is usually known only to the landlord or its agent. Discrimination can take various forms and may be subtle and not overt which makes it extremely difficult to identify and respond. Part of the application process in the private rental system involves the landlord or agent doing a risk assessment where they are selecting what they consider is the renter with the lowest risk but also feeding into this assessment can be direct and indirect discrimination and which often is based on more than one attribute.

A complaint of indirect discrimination during the application process is often hindered by complex questions of fact and law, especially with the evidential burden proving that the condition or requirement has a discriminatory effect. Even if the prospective tenant is able to prove that the landlord had imposed the impugned condition, the prospective tenant would further be required to establish that a substantially higher proportion of individuals without the protective attribute can comply with the impugned condition. It is onerous for the prospective tenant to gather such evidence for a tribunal or court hearing, particularly when they are self-represented and lacking legal knowledge.

The Tenants' Union recommends the evidential burden should be shifted onto respondents; in tenancy matters that would be the landlords, to prove that they did refuse

a prospective tenant's application for a reason other than a protected attribute. This responds to the information discrepancy between prospective tenants and landlords which makes it prohibitively difficult for a prospective tenant to bring about a claim.

Regulation under the *Residential Tenancies Act 2010* should ensure the process of the application considers how the decision-making ensures unlawful discrimination is both prevented and transparent. An individual application should be provided with a reason their application has been rejected, and be confident that this is the genuine reason and not a cover for unlawful direct or indirect discrimination. The *Residential Tenancies Amendment (Protection of Personal Information) Bill 2025* does not attempt to address this aspect and further work should commence to prevent unlawful discrimination.

The Tenants' Union supports the ability of a claimant to lodge a dispute which involves direct and indirect discrimination and also that intersectionality of attributes can be considered.

Recommendation

The evidential burden should be shifted to landlords, to prove they did not discriminate against a tenant or prospective tenant based on a protected attribute.

This should include ensuring that the tenancy application process avoids facilitating unlawful discrimination, particularly through transparency of decision-making and reasons for refusal to rent.

The *Anti Discrimination Act* should protect against intersectional discrimination and should allow for discrimination complaints to include both direct and indirect discrimination.

Options for redress

Pathways for redress must be worth pursuing for renters; they must be affordable, not overly time consuming, straightforward, and where appropriate, compensation should be paid and/or the opportunity to continue in a tenancy. They should also ensure that there is sufficient jeopardy for a person engaging in unlawful discriminatory behaviour from continuing to do so, and not merely a cost of doing business in their preferred, discriminatory, manner.

Sexual harassment in private accommodation

There should be no exception for sexual harassment in private accommodation. With the shortage of housing and rising costs more people are moving to living in shared accommodation. Research conducted by the Tenants' Union showed that people who live in share house arrangements are unlikely to have all tenants covered by written tenancy agreements, which means that the majority of tenants have no legal protection against eviction or access services that assist with tenant dispute resolution. For those renters who are not covered they have limited rights and options to pursue issues that may arise

in their home. We need to ensure these renters are adequately protected and this should include prohibiting sexual harassment. The Sex Discrimination Act does not exclude all private accommodation and sensibly retains an exclusion only when the accommodation is being provided by a near relative.

Recommendation

Prohibit sexual harassment in private accommodation with an exception for accommodation provided by a near relative.