

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 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.

Contact

Tenants' Union of NSW
Level 5, 257 Clarence St
Sydney, NSW 2000
Ph: 02 8117 3700
Email: eloise.parrab@tenantsunion.org.au
Website: tenants.org.au

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 welcomes the opportunity to provide a submission to the Community Services Committee inquiry into a Human Rights Act in NSW. Our submission is guided by our work with renters and the casework experience of the local Tenants' Advice and Advocacy Services across NSW.

We are also a member of the Human Rights Act for NSW - an alliance of more than 130 legal and community, faith bodies and trade unions who work across NSW and who are calling for the enactment of a Human Rights Act for NSW.

The ACT, Queensland and Victoria have all implemented a Human Rights Act and NSW is falling behind. The lack of human rights protections in NSW has serious impacts on the everyday lives of many people in our community.

A Human Rights Act for NSW should protect the rights that Australia has already promised to uphold under international law.

We know that NSW renters' human rights are currently overlooked and ignored due to the lack of a right to housing enshrined in legislation. A Human Rights Act for NSW must explicitly protect our right to adequate housing. The right to adequate housing is more than just having a roof over our head, it's also about the affordability, security, location and accessibility of the home. We must also protect rights that help us secure housing or stay in our home. Human rights like the right to privacy and family, the rights of children, the right to property or to equality before the law, have all been used to protect people's right to housing in other jurisdictions with a Human Rights Act.

Recommendations

Recommendation 1:

We recommend the enactment of a comprehensive Human Rights Act in New South Wales, including the right to adequate housing

Recommendation 2:

A Human Rights Act for NSW should articulate and protect the rights that Australia has already promised to uphold under international law.

Recommendation 3

A Human Rights Act for NSW should impose specific duties on NSW public authorities

Recommendation 4

A Human Rights Act for NSW should include accessible complaints mechanisms so that the people can take fast, low cost and effective action when they believe that their human rights have been breached.

Recommendation 5

A Human Rights Act for NSW should provide a robust parliamentary scrutiny process to ensure all proposed laws are assessed for compatibility with human rights.

Recommendation 6

A Human Rights Act for NSW should help courts to uphold people's rights when making decisions.

Recommendation 7

A Human Rights Act for NSW should be reviewed regularly so that it can reflect the values and needs of the people of NSW.

Recommendation 8

A Human Rights Act for NSW should be accompanied by adequate resourcing and a measurement framework.

Rental and housing crisis in NSW

There is a serious shortage of safe, stable and affordable housing in NSW. Our rental and housing crisis has placed many in our community under enormous financial pressure that has impacted all aspects of their lives. Rents are increasingly not affordable and renters make difficult decisions each day between buying food, medicine and paying rent or being pushed out of their communities because of insufficient homes in the locations they need. In Everybody's Home Priced Out report in 2025 it highlighted worsening rental affordability across a broad range of income levels in NSW. Sydney is particularly unaffordable with even high income renters on over \$100,000 per year paying more than 30% of their income on housing costs.¹

We heard from renters at the Renters Forums we ran in 2024 that their homes are too hot in summer and too cold in winter, and the cost of running appliances to try and regulate the temperature is excessive and prohibitive.² Habitability requirements in our tenancy legislation are minimal, and don't guarantee the availability of services, and they also place a heavy burden on the renter to take action if the landlord is not fulfilling their responsibilities. Currently, in NSW, our rental laws allow a renter to be evicted from their home by the NSW Civil and Administrative Tribunal (NCAT) on specified reasonable grounds that only take into account the circumstances and needs of landlords. There is no discretion provided to NCAT to consider the renters' circumstances and decide not to terminate their tenancy agreement.

Compounding the issues in our private rental system is the failure of our social housing system to meet the needs of all those that need assistance. In 2023 there were 220,000 households across NSW whose housing needs were not being met, as a result of rental stress or homelessness.³ Homelessness affects a broad range of people in NSW, but most significantly, the impact is on marginalised and disadvantaged groups, including Aboriginal people, women experiencing family violence, young people and people with disabilities.

The housing crisis is the result of decades of policy choices that have prioritised property investment over homes for people. As a result, rent and house prices are out of reach for many. Growing housing inequality has wide reaching impacts, leading to an increase in health, social and economic inequalities.

In NSW, successive governments have failed to treat housing as a human right. This is evident in the level of protections provided to private renters in NSW. It's clearly evident in the failure to invest appropriately in social housing, including building sufficient homes and maintaining current homes at a reasonable standard. The overuse of the NSW Civil

¹ Azize, M. (2025). *Priced Out: An Index of Affordable Rentals for Australian Voters* (3rd ed.). Everybody's Home. <https://everybodyshome.com.au/resources/priced-out-priced-out-an-index-of-affordable-rentals-for-australian-voters/>

² Tenants' Union of NSW. (2025). *Listening to Renters' Voices: Renters' Forums: Summary of key outcomes*. <https://files.tenants.org.au/policy/2025-04-29-listening-renters-voices-report.pdf>

³ van den Nouwelant, R., Troy, L., & Soundararaj, B. (2022). *Quantifying Australia's unmet housing need: A national snapshot*. Community Housing Industry Association. <https://apo.org.au/sites/default/files/resource-files/2022-11/apo-nid320820.pdf>

and Administrative Tribunal by social housing providers for termination applications and NCAT orders evicting people into homelessness is further evidence that we are failing to apply human rights to the decision making process in our housing system.

NSW needs a Human Rights Act

The Australian government has made commitments under international law to not violate human rights, but there is currently no legislative requirement for the NSW government to uphold our human rights and there are limited avenues for people to seek redress for violations of their human rights.

In NSW we need a comprehensive and effective Human Rights Act to help resolve some of the challenges we face in NSW. Those challenges include the failure of our housing system to provide adequate housing to meet needs of the community, cost of living crisis and domestic violence.

The ACT, Victoria and Queensland all have Human Rights Acts in their jurisdictions. At the federal level and in South Australia parliamentary inquiries have recommended the implementation of a Human Rights Act in those jurisdictions. NSW is falling behind, and we must not delay any longer.

Polling by Amnesty International highlights that this is an important issue for many in NSW, with 76% of people in NSW supporting the introduction of a Human Rights Act for NSW.⁴

In NSW a Human Rights Act should protect our civil, political, economic, social and cultural rights which are contained in the International Covenant of Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights which Australia is a signatory.

Human rights need to be considered at the point decisions are being made every day, rather than being an afterthought. A Human Rights Act can provide guidance for making fair and caring decisions on issues which impact people's everyday lives. The Act should include a positive obligation on public authorities including private business, non government organisations and contractors performing public functions to act in a way that is compatible with the human rights protected. This would importantly support decisions to be made being mindful of the individual's circumstances rather than a blanket approach applied.

The Victorian Attorney General made this comment when referring to the Victorian Charter and the inclusion of this positive duty *"It seeks to ensure that human rights are observed in administrative practice and the development of policy within the public sector without the need for recourse to the courts. The experience in other jurisdictions that have used this model is that it is in the area of administrative compliance that the real success*

⁴ <https://www.amnesty.org.au/three-in-four-australians-support-a-human-rights-act-new-research/>

story of human rights lies. Many public sector bodies that already deal with difficult issues of balancing competing rights and obligations in carrying out their functions have welcomed the clarity and authority that a human rights bill provides in dealing with these issues.”⁵

A Human Rights Act for NSW should include accessible complaints mechanisms so that the people can take fast, low cost and effective action when they believe that their human rights have been breached. People who believe that their human rights have been breached should be able to make a complaint directly to the relevant public authority or entity, and a statutory body such as a NSW Human Rights Commission and have access to other remedies such as NSW Courts.

A Human Rights Act for NSW should provide a robust parliamentary scrutiny process to ensure all proposed laws are assessed for compatibility with human rights. All legislative instruments must include a statement of compatibility which outlines how the legislation complies with our Human Rights Act and if it does not comply outline the extent of the incompatibility. The Act should establish a Parliamentary Joint Committee on Human Rights or amend the functions, powers and resourcing of an existing committee such as the Legislative Review Committee.

Another important mechanism that should be included in a Human Rights Act for NSW is a requirement for all statutory provisions in NSW to be interpreted in a way that is compatible with human rights. This will enable Courts and Tribunals and other decision making bodies to consider human rights when making decisions under legislation that was enacted prior to any Human Rights Act introduced in NSW. Where a section or clause of existing legislation cannot be interpreted in a way that makes it compatible, a mechanism for setting aside the incompatible clause and the expedited replacement of a compatible amendment should be available.

A requirement for timely and comprehensive statutory reviews must also be included in a Human Rights Act for NSW. This will ensure that the legislation is meeting its objective and, importantly, allow for amendments to the Act if it is not meeting the needs of the NSW community. The review should be completed by an independent body and include public consultation with the community and civil society. This review process has been important in other jurisdictions, and amendments have been made to strengthen their Human Rights Act.

To ensure success and a measurable difference in people's lives after the implementation of a Human Rights Act in NSW, there must be appropriate resources provided to deliver a program of human rights education. This program is key to increasing understanding, awareness and importantly respect for human rights. In addition, additional funding should be provided for community legal centres and other community based legal advice programs like Tenants Advice and Advocacy Program to ensure that people can obtain advice and assistance about their human rights. This should be accompanied by an iterative process to design and implement a measurement framework of progress towards recognition and protection of rights, to assist in the review and education for

⁵Australian Human Rights Commission, Dec 2022, *Free and Equal: A Human Rights Act for Australia*, (Position Paper) <<https://humanrights.gov.au/human-rights-act-for-australia>>

government and community.

The right to adequate housing

Everyone deserves a home. Housing is the basis for ensuring our communities' well-being. This is not simply about the material, physical and structural protections housing provides, but also a sense of home and belonging within a wider community. People require not just basic shelter but a good home to live a safe, healthy and dignified life. It is well accepted that improving housing outcomes leads to improvements in health and well being. Currently, though, housing in NSW has been transferred from a place to live into a mechanism to consolidate and pass on family wealth.

A Human Rights Act in NSW, which includes the right to adequate housing as a human right, would assist in ensuring a more equitable housing system. It would require the right to adequate housing to be at the centre of all decision making by governments on service provision, policy development and legislation. Those in our community who are most vulnerable to becoming homeless are those who most need to have their human rights protected.

It would be an important consideration for all Courts and Tribunals making decisions on whether to terminate a tenancy agreement to look at the impact of the decision from a human rights framework.

Adequate housing is more than having a roof over one's head. There are other key criteria that rental housing must meet in NSW in order for it to be adequate. Currently, a failure to meet these elements adds to the housing inequity that many renters experience.

The International Covenant on Economic, Social and Cultural Rights (ICESCR) in Article 11 states:

"The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."

The Special Rapporteur on the right to adequate housing outlines a number of conditions that must be met before particular forms of shelter can be considered to constitute "adequate housing." These elements are just as fundamental as the basic supply and availability of housing. For housing to be adequate, it must, at a minimum, meet the following criteria: security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy.⁶

"Adequate housing", as understood by the United Nations Committee on Economic, Social and Cultural Rights, is a broad right for people to "live somewhere in security, peace and dignity"⁷.

⁶ Office of the United Nations High Commissioner for Human Rights. (n.d.). *The human right to adequate housing*. <https://www.ohchr.org/en/special-procedures/sr-housing/human-right-adequate-housing>

⁷ https://www.ohchr.org/sites/default/files/Documents/Publications/FS21_rev_1_Housing_en.pdf

In this context *Secure tenure* requires guarantees of legal protection against forced evictions other than as a last resort, harassment, and other threats that may force a person out of their home.

The *Availability of services, materials, facilities and infrastructure* ensures that residents have access to safe drinking water, waste disposal, and appropriate food storage.

Affordability under ICESCR is considered to be achieved when the cost of rent doesn't threaten or compromise the occupants' enjoyment of other human rights. As a measure of affordability, 30% of a household's income is seen as the maximum any person should pay - not a target. For very low income people a 25%-30% measure still places them in a financial position that causes harm.

Habitability requires that the dwelling be structurally safe, providing physical safety and shelter from cold, damp, and heat. The *Accessibility* element is a protection for disadvantaged groups, aimed at ensuring their housing needs are accounted for including but not limited to physical modifications. *Location* refers to the need for proximity to employment, education, and essential services, as well as the appropriate protection from living in dangerous or polluted areas. Finally, the *Cultural Adequacy* of housing requires consideration of residents' cultural identity and how it can be expressed safely.

NSW's current rental laws and policies are not leading to a rental system that meets these elements and therefore are failing to ensure renters have adequate housing, and this only increases housing inequity.

Including a right to adequate housing for all of the community is an important step in ensuring a fairer and more equitable housing system in NSW. It's vital we do not set a precedent that different populations can be given different human rights. In some states and territories, they have failed to include a right to adequate housing in their legislation or have applied the right only to public housing tenants. Applying the right only to public housing tenants is convenient, as we know that in most jurisdictions in Australia, public housing tenants are already the most protected against arbitrary eviction and unaffordable rents.

In Queensland in 2019, the enacted Human Rights Act failed to include the right to adequate housing among the codified human rights. Under the QHRA, only publicly funded entities must consider individuals' human rights when delivering housing services; all other Queenslanders' right to adequate housing is not covered by the Act in its current form.

The fact that the majority of people in Queensland do not have their human right to adequate housing protected under the QHRA is lamented by the public and community organisations, as evidenced by a high volume of submissions citing the need for the inclusion of that right to adequate housing in the recent Review of the QHRA.⁸

In its submission to the 2024 Review, Amnesty International Australia included a case

⁸ <https://www.parliament.qld.gov.au/Work-of-the-Assembly/Tabled-Papers/docs/5825T0232/5825t232.pdf>

study of a public housing tenant who avoided homelessness by using the Act to protect her rights.

Tenants Queensland used the Act to help a single mother who had experienced domestic violence to avoid eviction. The tenant's housing provider had sought to terminate her lease for serious breaches caused by her ex-partner, who refused to leave the premises. Tenants Queensland assisted the mother to draft a letter of complaint under the Human Rights Act, which led to the housing provider withdrawing the application for termination. A protected right to an adequate standard of living, including adequate housing, food, and water, would strengthen people's ability to realise their rights in the face of an unprecedented housing crisis in Queensland.

This need for change, articulated by nearly a third of all submissions to the Review, led to the Reviewer's recommendation to amend the QHRA to include the right to adequate housing based on article 11(1) of the International Covenant of Economic, Social and Cultural Rights (ICESCR), which provides for "[an] adequate standard of living, including adequate food, clothing and housing".

The codification of the ICESCR doesn't compel the state to provide a house to every resident. Instead, it creates a legal and policy framework to deliver opportunities for people to access their right to adequate housing, with government parties taking *whatever measures necessary to achieve the full realisation of this right to the maximum of their available resources*. The right to adequate housing is made accessible through states utilising so-called 'negative' obligations, such as the repeal of discriminatory laws, and the regulation of the private sector and through the application of 'positive' obligations like the provision of subsidised housing, innovative housing finance schemes, and support services for those who cannot otherwise access housing.

The combination of these policy interventions creates a legal environment conducive to successfully securing people's right to adequate housing, irrespective of income or access to economic resources. This was evident in the case brought against the Spanish state by a family with very young children evicted into homelessness in 2015 (Djazia and Bellili v Spain, UN Doc E/C.12/61/D/5/2015).

In Djazia and Bellili v Spain, the Committee on Economic, Social and Cultural Rights confirmed that the right to adequate housing applies to all rental housing including private and public tenants. The decision reinforces that any eviction of private tenants must comply with the right to adequate housing. It also pointed to the importance of special protection for vulnerable groups. Spanish authorities had failed to provide adequate alternative accommodation for this family, a breach of their obligation for the right to housing.⁹

"The Committee rejected the State's argument that fault lay with the family for failing to improve their financial situation so as to be able to afford market rents, noting that 'the lack of housing is often the result of structural problems, such as high unemployment or

⁹<https://www.escr-net.org/caselaw/2017/mohamed-ben-djazia-and-naouel-bellili-v-spain-cescr-communication-no-52015-un-doc/>

systemic patterns of social exclusion, which it is the responsibility of the authorities to resolve ... to the maximum of their available resources’.

The facts showed that the Madrid housing authorities had received 8,000 annual requests for public housing places, and were able to allocate only 260 units, revealing a severe lack of public housing. Djazia and Belilli had applied for public housing on numerous occasions over more than a decade. Yet, even in this situation, the State had decided to sell off social housing to private investment funds ‘in the middle of a severe economic crisis’ reducing supply even further below need, a fact the Committee was highly critical of. The Committee held that the State failed to demonstrate that it had taken all reasonable measures, to the maximum of available resources, to prevent the violation of the right to housing.”¹⁰

Impacts of Human Rights Act on renters' rights

Under the International Covenant of Economic, Social and Cultural Rights, which Australia is a signatory to, *the human right to adequate housing is a fundamental right central to the enjoyment of all economic, social and cultural rights and is inextricably linked to other human rights, including those set in the International Covenant on Civil and Political Rights.*¹¹

The spirit (though not the letter) of these provisions was applied in a case of a Victorian man suffering from physical disabilities and limited mobility, who continued to live in his family home after his mother had been admitted to an elderly care unit and placed under a financial administration order. In order to prevent the home from being sold, the man's advocate raised the right to property under the Victorian Charter of Human Rights and Responsibilities Act. In consideration of this right, an agreement was reached so that the man could continue living in the house as a tenant paying rent.¹²

The man's right to adequate housing, and with it his fundamental right to enjoyment of all economic, social and cultural rights, were preserved thanks to the property provisions of the Charter. This needn't be the case if all human rights, including the fundamental right to adequate housing, were included in the Victorian Charter, guaranteeing that ‘the right to housing should be ensured to all persons irrespective of income or access to economic resources, and States parties should take whatever measures are necessary to achieve the full realization of this right to the maximum of their available resources.’¹³

The human right to adequate housing, being inextricably linked to other human rights, was also demonstrated in the case of a young woman who was threatened with the loss of her

¹⁰ Hohmann, Jessie (2022). *A Right to Housing for the Victorian Charter of Human Rights and Responsibilities? Assessing Potential Models under the International Covenant on Economic, Social and Cultural Rights; the European Social Charter; and the South African Constitution*. Monash University. Journal contribution. <https://doi.org/10.26180/21606387.v2>

¹¹ [1] General comment No. 4 (1991), on the right to adequate housing, para. 1 https://hln.org.in/documents/CESCR_General_Comment_4.pdf

¹² <https://alhr.org.au/wp/wp-content/uploads/2026/02/HRA4NSW-Case-Studies-March-26-R.pdf>

¹³ General comment No. 4 (1991), on the right to adequate housing, para. 7 and 9 https://hln.org.in/documents/CESCR_General_Comment_4.pdf

and her siblings' public housing tenancy.

Following the death of her father and incarceration of her mother, a 23 year old woman became the guardian of her three younger siblings. She maintained their public housing tenancy and had rental payments deducted from her Youth Allowance payments. She went overseas on a study tour, and her Youth Allowance was cancelled, causing her to accrue significant rental arrears that she didn't receive notice of. The Victorian Department of Housing applied for a possession order after having issued a notice to vacate. The woman's advocates argued that the Department had failed to consider the rights of the young woman and her siblings, as protected in the Victorian Charter of Human Rights and Responsibilities Act. Instead of making a possession order, the Victorian Civil and Administrative Tribunal made an order that the young woman pay \$10 per week towards her rental arrears in addition to her rent.¹⁴

The state's capacity to take *whatever measures are necessary to achieve the full realisation of this right to the maximum of their available resources* to ensure people's right to adequate housing was secured, was proven in the case of a Queensland woman who lost her tenancy but was able to access the mental health services she needed through additional supports.

Following an eviction order being made against her by a tribunal, a woman experiencing mental health issues was facing homelessness. Stable accommodation was critical for her accessing support services, so Tenants Queensland helped her to use her rights under the Queensland Human Rights Act to negotiate with her housing provider and to seek an adjournment at the tribunal for the human rights complaint to be addressed. While the tribunal proceeded to terminate the tenancy, she avoided becoming homeless after the housing provider offered to help her access necessary support services.¹⁵

The matters illustrated by the above case studies suggest that the codification of adequate housing as a human right in the Human Rights Act for NSW would be sure to provide an opportunity for NCAT to deliver human-centric decisions by considering personal circumstances of tenants and shield them from adverse consequences of eviction into homelessness, loss of security and subsequently their ability to fully realise their other human rights.

We need a Human Rights Act for NSW to give decision makers and law enforcers, such as NCAT Members, a clear mandate to consider the intersecting challenges impacting people's lives and deliberate on the outcome most compatible with protecting and respecting NSW's human rights obligations.

¹⁴ <https://alhr.org.au/wp/wp-content/uploads/2026/02/HRA4NSW-Case-Studies-March-26-R.pdf>

¹⁵ The First Annual Report on the Operation of Queensland's Human Rights Act 2019-20, p. 113