

# TENANT NEWS

NEWSLETTER OF THE TENANTS' UNION OF NSW

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## New Zealand



*A snapshot from Aotearoa New Zealand: The Nyasse family are social housing tenants. When the first public houses were built in New Zealand, they were designed and constructed to very high standards – to avoid replicating the working-class slums of Britain. The houses were also all individually designed to reduce stigma. See inside for more tenant snaps from around the world.*

## THE BIG ISSUES FACED BY RENTERS TODAY

*Julie Foreman – Executive Officer, Tenants' Union of NSW*

In this issue of *Tenant News* we look at the big picture for renters today, and turn our attention to the growing need for change.

We look at how changes to two key areas of the tax system can have a positive impact on affordability – negative gearing at the Federal level and land tax at the State level; and we investigate one of the

fundamental barriers to change – the interest politicians have in housing investment.

We also present a collection of 'global snapshots' – photos of tenants from around the world, supplied by the *International Union of Tenants*. Each photo is accompanied by a comment about renting in that country revealing some of the different

approaches to tenancy around the world.

Here in New South Wales, everyone is suddenly talking about the price of getting into and staying in the Sydney housing market. Is there or is there not a 'housing bubble'? In early June, Glenn Stevens, the Governor of the Reserve Bank said, "I am very concerned about Sydney. I think some of what is

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## THE BIG ISSUES FACED BY RENTERS TODAY

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happening is crazy". At the same time Treasurer Joe Hockey said that anyone in Sydney can afford a house if they have a good job that pays good money, leading to criticism that he was out of touch with the prospect facing first home buyers that are not high earners, including nurses & teachers.

Parliamentary Budget Office modelling shows the abolition of negative gearing could save \$3 billion in foregone tax revenue over four years, and improve housing affordability. The current tax settings, along with the discount on capital gains tax, means investors can make more money from selling properties than other types of investment. This directly impacts on security and stability for renters, who can be forced to move when homes are sold.

When housing is out of reach for first home-buyers it puts pressure on rents. Unaffordable housing-to-buy equals unaffordable housing-to-rent, and it's the private rental market where the real pain of an unaffordable housing market is felt. But it's not all bad news – as more and more households rent (almost 1 in 3 at the last census, possibly more in 2015) we can collectively call for changes to policy and law that will make a difference.

We will continue to call for stronger rights for tenants during the scheduled review of the Residential Tenancies Act this year. We hope you will join us! 🏠

# GLOBAL SNAPSHOTS

## TENANTS' LIVES AROUND THE WORLD

*Leo Patterson Ross – Advocacy & Research Officer, Tenants' Union of NSW*

Scattered through this edition of *Tenant News*, you'll find a series of photos of tenants from around the world, along with comments about how tenancy works in their countries. Thanks to the *International Union of Tenants* for kindly supplying these photos. Each snap gives a glimpse of what life is like for tenants in other places, and might help us imagine how things could be different in Australia.

One thing you'll notice is how different the laws and policies governing tenancy are in each place. In fact, these photos only represent the tip of the iceberg – there's much more diversity in tenancy law than we've been able to capture here.

For example, in Utah in the USA, landlords have to undertake 'Good Landlord' training. In South Korea there's a system called 'Jeonse' in which tenants pay their rent for the whole agreement term up front, but get it all back at the end – in essence, tenants lend their landlord the rent money!

In France, almost half of all rental stock is designated as affordable. All towns and cities have to have a minimum of 20% affordable housing, to ensure a mix across the country.

There are certainly many interesting ideas around the world for improving the lives of tenants. Some of these may well offer ways to solve the difficulties we face here. 🏠

*In New York, rent controls continue to protect almost a million tenants from some of the highest and most unaffordable rents in the world. In San Francisco, there's no such thing as a no-ground termination, and for non-breach terminations, tenants are paid an amount for relocation costs.*



**U.S.A**



# A PLACE TO CALL HOME

## HOUSING SECURITY AND MENTAL HEALTH



*El Gibbs is a freelance writer who has written widely on disability and social policy. This is an extract from her winning entry in the Gavin Mooney Memorial Essay Competition. The full essay, which outlines the policy details that have led to Mary's story, can be found at [insidestory.org.au](http://insidestory.org.au)*

House prices are booming in major city centres across Australia. Increasing numbers of investors use tax concessions such as negative gearing, which raises the prices of existing properties. Home ownership is falling among first home buyers and rents have exploded in traditionally affordable suburbs. This combination of factors has a direct impact on vulnerable people, such as those with a mental illness, by putting safe, secure housing out of reach.

People on low incomes, many of whom have mental health concerns, are being pushed further and further away from services that people on higher incomes take for granted. If people can't get access to healthcare, are we permanently consigning them to life at the bottom? How can people recover from mental illness if they don't have a place to call home?

I first met "Mary" through her music. Late one night, tired from my commute to Sydney, I sat on my back verandah in the Blue Mountains, drinking a glass of wine and smoking a cigarette. The mist had drifted up slowly until all I could see was the faint glow of the moon and the reflection of the streetlights. And through that mist came the sweet sound of Nina Simone, layered over prickly jazz chords.

Mary loved this kind of music; all spiky crescendos and loud wailing brass. Her battered old record player would start up downstairs about nine most nights as she worked through her collection. Occasionally, the needle on the player would get stuck, and small fragments of notes would repeat, and repeat.

It was months later when I finally met my neighbour in person – my commute meant I was rarely home during the day, and asleep by the time she cranked up the tunes each night. But she often took my bin out or brought it back in. One rare weekend at home, I came back from the supermarket, and there was Mary sitting on her doorstep.

She was a tiny lady, all fine-lined skin over pointy bones; thin white hair fading from blonde and bright blue eyes. It was a cold morning, but she was only wearing a t-shirt and skirt. I said hello and she jumped; far away in her thoughts, she hadn't even noticed I was coming past. I smiled and told her how much I liked her music. It took a while to convince her that I meant it. She lit a cigarette; I put down my shopping bags and did the same.

Over the next few years, Mary and I often had a cigarette on the doorstep. She'd leave me presents when I was in Sydney; coming home, I'd discover a card, or a cake, or some flowers at my door. I'd leave groceries at her door when I knew

*"Late one night, tired from my commute to Sydney, I sat on my back verandah in the Blue Mountains, drinking a glass of wine and smoking a cigarette. The mist had drifted up slowly until all I could see was the faint glow of the moon and the reflection of the streetlights."*

I'd be away for a week or more. We gardened out the back of the house on those clear, cold and sunny Blue Mountains mornings.

I loved the mountains, despite the commute. I had room to breathe and space that I could never afford in Sydney. I'd trudge up Katoomba Street before six most mornings and let the rattle of the train down the hill lull me off to sleep. I loved the diversity of people in my town; rents were still low enough then that lots of different folks lived together, rubbing up against each other.

Everyone needs somewhere to live, and yet housing has become just another way to make money. The idea of a right to a home seems quaint in a world of renovation programs and eye-popping auction results that are breathlessly reported in the major newspapers. But it wasn't always this way.

Previous Australian governments believed that affordable housing was not only important for individuals and families, but also valuable for the wellbeing of the

*Continued overleaf...*

# A PLACE TO CALL HOME

*Continued from page 3*

whole Commonwealth. In 1945, a government report stated: "We consider that a dwelling of good standard and equipment is not only the need but the right of every citizen – whether the dwelling is to be rented or purchased, no tenant or purchaser should be exploited for excessive profit." Public housing was integral through to the 1970s to ensure a degree of equity. By the mid 1960s, one in five Australians lived in public housing.

Over the last two decades, housing has become less and less affordable. Inner-city areas, close to services and work, have become gentrified and expensive. This is more than just the market at work. Government policy now is to favour those who already own property, through negative gearing and capital gains tax concessions, while doing little to support renters, particularly those on low incomes. Governments at all levels have also stepped far away from being direct providers of housing, with new public housing falling to its lowest level in 2007.

Katoomba is a tourist town and has been for over a century. Guesthouses line the streets, some now made over as backpacker hostels, some as private rental properties, and some as boarding houses. Behind the shops in Katoomba Street is a rabbit warren of small flats in various states of disrepair and often lacking documentation and regulation. As the Sydney housing boom continued and rents climbed further and further, more people arrived to try to find a place to call home.

And as they came, the people who already had a home here were pushed even further to the margins. Hotels became crisis accommodation, and more people were living in their cars or sleeping rough in the cold bush.

In 2009, ABC TV's Four Corners featured a program on homelessness in Katoomba.

A motel converted to crisis accommodation; exploitative landlords; terrible boarding house conditions. None of these a surprise to people living there.

Committees were formed, action plans were agreed, and a few new properties were built. But the fragile links set up between support services, housing providers and people at risk of ending up homeless proved not enough to help Mary.

***"Everyone needs somewhere to live, and yet housing has become just another way to make money."***

Mary's situation was what was meant to happen when the large psychiatric institutions were shut down in the 1980s. Her diagnosis of schizophrenia, which once condemned people to a life locked away, was no longer a barrier to her living in the community and having her music close by. Here, in her little, sparsely furnished flat, she could have friends over and stay up late dancing. Mary's case worker visited regularly, her medication helped smooth out the rough edges of her illness and people in the neighbourhood looked out for her, reminding her to eat when her dreamings took her far away.

She had been a teacher in a former life; her only child was in another state. I don't know how old she was, or how long she'd lived downstairs. When I asked, she told me that she'd always been there. She coughed long and hard, then had another cigarette.

A few weeks before Christmas one year, I got home from Sydney late one Friday night – the light tricking me into staying at the office longer than I had intended. Walking home from the station was a blissful relief from a day sweating

in the sweltering heat on the plains. Checking the letterbox, I found a note from the real estate agency that I promptly ignored until the next day. I'm glad I did, because an eviction notice is never a good way to end the week.

The owner was selling the whole building, and we all had to get out. At Christmas. Of course they had every right to do that under the current law, but it was a punch in the guts to have to leave my lovely flat, with the wonderful verandah. And then I heard screaming.

The eviction notice broke Mary. I found her curled into the tiniest of balls on her lounge room floor, smashed records lying all around her. I rang the mental health crisis team and stayed with her till they came. There was nothing I could do to comfort her; she couldn't conceive of not being able to stay in her home. And the loss of her home took something else away from her – independence.

Mary never came back. Her meagre belongings were packed away and space found for her in a nursing home that specialised in psycho-gerontology and "secure facilities for wanderers." And I only knew that because the bloke at the tobacconist told me that Mary had come in after running away.

I only saw her once after that, passing her on the street. She didn't remember me – away from what was familiar, I was just another intrusive noise. I don't know if she has her music anymore, those soaring voices she'd accompany in fragile soprano tones.

...

Over and over reports are written about why housing is as important as having enough to eat, and just as integral to health and wellbeing. Yet they are ignored, condemning people on low incomes to poor health. A place to call home is more than a roof over our heads, or a way to make money. Secure, affordable housing has to be part of all health policies, particularly for people with a mental illness. Without a home, it's damn hard to get well and stay well. 🏠



## Sweden



*This family are tenants in Sweden. In that country, the Swedish Union of Tenants, Hyresgästföreningen, negotiates the rent increases for most renting households each year. Over 20% of housing stock is run by co-ops, where residents agree to share the rent and the costs of maintenance.*

*These tenants are part of a Tenants' Committee in Durban, South Africa. Partly due to the work of the committees, in South Africa no tenant can be evicted without good reason, and without a court order.*



## South Africa



*Lhea is a tenant in Oslo, Norway. One of her signs reads, "People need houses – houses need people". In Norway, bonds can be the equivalent of up to six months rent, but the tenant gets the interest earned.*



Norway

Switzerland



*Tenants at a demonstration in Lausanne, Switzerland, carrying a model house, with the words, "A roof, a right" on its side. The Swiss Tenants' Association, Mieterverband, celebrated its 100th birthday this year.*

# WHY STRIVE FOR BALANCE?

## THE RESIDENTIAL TENANCIES ACT REVIEW SHOULD AIM TO PROTECT TENANTS

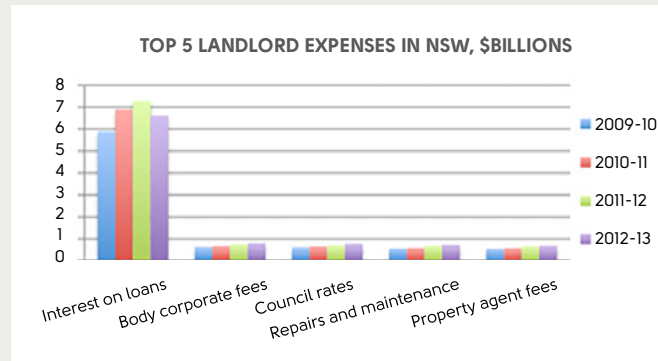
Ned Cutchner – Senior Policy Officer, Tenants' Union of NSW

In June 2010 the *Residential Tenancies Act* became law in NSW, replacing long-standing renting laws that had been on our statute books for almost a quarter of a century. The Act didn't result in any radical rebalancing of the rights and obligations of landlords and tenants, but it made some necessary changes around things like shared tenancies and listings on residential tenancy databases.

Now, five years on, the Act is in line for its statutory review. The responsible Minister, the Hon. Victor Dominello, is to undertake a review of the Act to determine whether its policy objectives remain valid, and whether the terms of the Act remain appropriate for securing those objectives.

There may be some conjecture about what these policy objectives are, since they are not expressly mentioned within the legislation. But, when giving the second reading speech for the bill that would "modernise and reform the existing tenancy laws", then Minister for Fair Trading Virginia Judge said, "This government wants to see landlords being able to manage their investments in a way that optimises their returns; at the same time we want to see tenants having access to suitable rental accommodation and being able to make informed choices about where they live, how long they live there, and what exactly they are paying for... The bill strikes a fair and equal balance between the often competing interests of landlords and tenants."

The Tenants' Union has never been convinced it is the role of a Residential Tenancies Act to balance these interests. Rather, we look to the different motivations of landlords and tenants, & the power imbalance that exists between them, and wonder why our renting laws are not more directly tasked with protecting vulnerable households from the vagaries of a property market that they can only engage with in limited ways.



The TU has just published a new report: *5 Years of the Residential Tenancies Act*. Read it online via our website: [tenantsunion.org.au](http://tenantsunion.org.au)

It is often suggested that property investors will turn to other markets, or indeed investment products, if renting laws unduly increase their burden. It's assumed that an increase in costs to landlords would be a disaster for tenants, because any landlord who does remain in the market would simply pass costs on through higher rents. Of course, nobody asks what landlords would do if all the tenants suddenly dried up. While that may seem a frivolous discussion for tenants to get caught up in, we wonder why more focus is not placed on the actual costs of being a landlord in the first place, and how those costs are met.

The latest statistics from the Australian Taxation Office show that in the 2012-13 financial year, tax-paying landlords claimed an astonishing \$12.56 billion in tax-deductible expenses, for properties in NSW. Their most significant expense – interest paid on loans – came in at \$6.63 billion. The next most significant expenses were body corporate fees, at almost \$784 million, and council rates, at more than \$745 million.

In other words, more than half of all costs borne by NSW's landlords are payments to their financial institutions; and none of their top 3 expenses relate directly to any burden placed upon them by renting laws. Costs relating to repairs and maintenance come in at fourth place, with nearly \$703 million in deductions claimed.

It is expensive to invest in property, and it stands to reason that it's even more expensive to be a landlord. However, on the other side of the coin are tenants, who pay a lot of rent. The tax data that tells us how much it costs to be a landlord also gives a pretty good indication of what it costs to be a tenant. It tells us how much rental income landlords declare each year. In 2012-13, they declared \$12.14 billion for tenancies in NSW, leaving landlords with about a \$500 million loss to factor into their tax returns. That's a \$500 million dollar loss from an outlay of over \$12.5 billion, where the majority of costs were incurred regardless of whether properties sat empty, or were tenanted.

But, mostly, investment properties are tenanted, and the number of tenancies is growing rapidly in Australia. When you ask tenants why they rent, as we did in our Affordable Housing Survey in 2014, the majority will tell you it's because they can't afford to buy. Only a few will say they prefer the flexibility and mobility it gives them to move around as they chose.

Without tenants and their rent, property investment would not simply be costly; it would be completely untenable. That may seem completely obvious, but it should be at the forefront of any discussion of the interests of landlords and tenants. It's precisely where the imbalance of power lies between property investors & people who need somewhere to live, and it's why rental laws should do more than simply try to achieve a 'balance'. 🏠



# MILLION DOLLAR HOMES: GENTRIFICATION IN RESIDENTIAL PARKS

*Julie Lee – Residential Parks Officer,  
Tenants' Union of NSW*

'Residential parks' are manufactured home estates and caravan parks. They provide long-term accommodation to around 34,000 people in NSW. To many, the mention of caravan park living invokes an image of old caravans, unsealed roads, shared amenities and people at the lower end of the socio-economic scale, but is that the reality?

Caravan parks originally provided holiday or tourist accommodation and because of this they are found mainly on the coast. People liked staying in caravan parks so much they didn't want to leave. In the 1980s park living was legalised in NSW.

In the early days homes in parks were the caravans that had been used as holiday accommodation. Annexes were added to create more living space and these annexes now commonly contain bathrooms, making the homes self-contained. As park living expanded the nature of homes started to change and relocateable or manufactured homes became popular.

Today 87 percent of park residents own their home and rent the site from the park owner. When compared to the general community the cost to purchase a home in residential parks is lower. This is one of the reasons parks have always been considered an affordable housing option. The other reason is that once the home is purchased, the only other housing associated cost is the weekly site rent.

Affordability is not the sole reason people choose to live in residential parks however. For many it is the lifestyle, the community and the location. Unfortunately this idyll is fast becoming unaffordable for current residents and those chasing the dream.



*Oaklands Residential Park was purchased by Gateway Lifestyle in 2013.*

## GENTRIFICATION AND AFFORDABILITY IN RESIDENTIAL PARKS

Like towns and suburbs throughout the State, residential parks in NSW are undergoing gentrification. Older homes are being replaced with new ones, infrastructure is being upgraded, and in newly developed parks extensive communal facilities are the new norm. Gentrification can have a positive impact on parks – it often leads to a more pleasing aesthetic and better amenities but it also affects affordability. Site fees inevitably increase and so does the price of homes.

The biggest increase in home purchase prices are for new homes because park owners have branched out into sales. This is a change that has come along with new players in the market such as Gateway Lifestyle, Ingenia Communities and the Hampshire Property Group. These park owners buy up older style homes in their parks, often at low prices, and replace them with new

homes that they then sell for a significant profit.

Across NSW home ownership in residential parks is becoming less affordable and in some cases beyond the reach of ordinary retirees. Fern Bay is a new residential park development on the Hunter River. The homes for sale are new and purchase prices range between \$369,000 and \$560,000. Palm Lake Resort, the company behind Fern Bay, has opened a similar park on the Tweed River. Home prices in the Tweed River park range from \$428,000 to over \$1 million for the 'Marina Penthouse'.

Facilities offered in parks like Fern Bay are exceptional and include a clubhouse, swimming pools, bowling greens, movie theatres and more. The Palm Lake Resort brochure boasts that it offers luxury living: "we don't just sell a home, we sell everything else that comes with it – a lifestyle ...". What they fail to make clear in their promotional materials is that purchasing a luxury home in



the 'resort' does not provide security of tenure. These homes are chattels, just like in other residential parks and the home owner does not have any land rights – occupation is a leasehold right only.

A \$1 million home in a residential park is at the extreme end of the scale, but it demonstrates the changing nature of parks. Walter Elliot Holdings, the company behind the Palm Lake Resort developments has 19 similar villages across Australia. Ingenia Communities has 18 lifestyle estates in NSW and two in Queensland, Gateway Lifestyle has 22 parks in NSW, Queensland and Victoria and the Hampshire Property Group has seven villages in NSW and Victoria.

These companies claim they are providing 'affordable living' but how affordable is it really and are these homes a good investment?

***"These companies claim they are providing 'affordable living' but how affordable is it really and are these homes a good investment?"***

In 2008 the Land and Environment Court rejected an appeal by

Wygiren Pty Ltd against the decision of Kiama Municipal Council to refuse a development application for a residential park at Toolijooa near Kiama (*Wygiren v Kiama Municipal Council and Anor* [2008] NSWLEC 1233). One of the many issues the Court considered before making its decision was whether the proposed development provided for affordable low cost housing. The likely cost of a premium dwelling located in the development was to be up to \$280,000 despite the fact that an equivalent dwelling could be purchased directly from the manufacturer for \$156,000 installed.

The Court found 'that when the cost of a dwelling is compared to other housing options in the area, it is not low cost housing'. Further, for people on low to moderate incomes who would have to borrow to purchase a dwelling, this type of housing is likely to constitute a poverty trap that is exacerbated by security of tenure issues.

Hand in glove with gentrification has come an increase in residential parks marketed at older people. Such marketing enables park owners to tap into an expanding retiree market who are looking for an alternative to more traditional retirement communities. A large number of parks are now advertised as active 'lifestyle villages' for over 50s or over 55s. This type of marketing

can mislead because people may expect certain services or facilities to be provided and they are usually disappointed - residential parks are not retirement villages.

Recently the Senate Economics References Committee released its report from their Inquiry into Affordable Housing. While residential parks were not the subject of a specific recommendation, the report noted that issues of concern in parks include the lack of security of tenure and the sale of parks to developers with consequent displacement of residents. Recognising the shift to marketing long-term accommodation in residential parks to an older demographic, the Committee also noted that the legislative environment is much patchier than retirement village legislation. The Report suggested the regulatory environment needed to be examined carefully to make sure there were good consumer protections in place.

In NSW the legislation governing residential parks has been under review since late 2011. The new *Residential (Land Lease) Communities Act 2013* that came out of the review is due to commence in the latter part of this year. Disappointingly for residents the Act provides improved benefits to park operators through increased fees and charges and voluntary sharing arrangements, but a reduction in consumer rights for residents.

So what does the future hold for residential parks in NSW? People will always be attracted to the park lifestyle and in some parks affordable homes will remain available. Only time will tell whether slick marketing by the big operators will continue to attract retirees to part with ever increasing amounts of money for a home with very limited security of tenure. 🏠

***Allawah Cabins & Caravan Park, North Bendalong – no longer a registered residential park.***



# NEW FACE OF POVERTY: OLDER PRIVATE RENTERS

Robert Mowbray – Project Officer, Older Tenants, Tenants' Union of NSW

In February of this year *Australian Housing and Urban Research Institute (AHURI) Research and Policy Bulletin* reported that the private rental sector across Australia has grown in size and significance in the last 30 years. It now provides a long term tenancy for a growing and diverse number of households.

AHURI concluded that policy makers will need to address the lack of security of tenure in this sector, because, "If large numbers of long term renters aged 45-64 years remain in the sector they could swell the number of long-term private renters aged 65 years and above quite substantially in the coming decades." This is particularly concerning when our age pension system is paid at a low level (by international standards) because it assumes outright home ownership.

The number of older, single women in the private rental market increased by a massive 50 percent between the 2006 and 2011 ABS Censuses. At the *Older Women and Homelessness - Current Issues* forum last year, Felicity Reynolds of the Mercy Foundation described many of these women as "conventional" women, because:

- They have mostly led lives that have involved family: caring for children or other family members.
- They may not have been in, or are in and out of, paid work.
- They have no or little super –

especially the current demographic of older women.

- They may have jointly owned a house, but also may have had a life of renting with a partner.

With the death of a partner, divorce or financial crisis at the end of a working life, often in casual employment and without significant savings in super, this equates to the new face of poverty: older private renters, especially older women. Felicity Reynolds was drawing upon the work of Maree Petersen and others in their report, *Preventing first time homelessness amongst older Australians*. They discuss the "inability of Australia's housing, particularly the private rental market, to facilitate older people ageing in place," and "the deprivation and vulnerability older people reliant on the pension experience while managing private rental payments." They point to physical access issues, notice to vacate and lack of affordability, as contributing to the housing crisis faced by older people.

## CHANGES NEEDED IN THE PRIVATE RENTAL MARKET

The vulnerability of such people in the private rental market arises because of the high rents and lack of security. Private rental housing is both legally and structurally insecure. It is legally insecure because in NSW (and elsewhere in Australia) landlords may give termination notices without grounds. The Tenants' Union has called for

greater legal security by reforming the law to provide for terminations on reasonable grounds only.

Private rental housing is structurally insecure because the private rental market is enmeshed in the owner-occupier market. Most landlords are individual persons who own a single rental property for speculative purposes (that is, most are operating at a loss – they are negatively geared and hoping for capital gains). They are sometimes referred to as 'mum and dad' investors. In order to maximise the prospect of capital gains, they need to be able to sell their property with vacant possession when it suits them, selling to either other landlords or to owner-occupiers. This speculative strategy is encouraged by our taxation laws.

Private tenants will only achieve greater structural security by policies that discourage speculation in housing, and that instead foster an increased number of institutional landlords. It is envisaged that institutional landlords would be motivated more by the pursuit of rental income, and less likely to trade properties into the owner-occupier market.

The push for institutional landlords requires a number of reforms, for example to current land tax laws applied across the various States which discourages larger land holdings. But also it would be greatly enhanced by the injection of super funds into residential rental housing, preferably through community housing providers, but also through for-profit bodies. Indeed, Australian workers have over one trillion dollars in super assets. Australians have more money invested in managed funds per capita than any other economy. In recent years a powerful coalition comprising peak social service, union, housing industry and community housing bodies has been lobbying for super funds to invest in affordable rental housing, but so far with limited success.

In March 2014 National Shelter, in a submission to the Senate



*This is a Tenants Management Council in Germany. Recently, the German Justice Minister said, "Rental properties are more than just a commodity, they are the homes of people. Maximising profits cannot be the sole objective." In Berlin, the rules were changed in June so that new tenants can't be charged more than 10% over the local average rent.*



Standing Committee on Economics' inquiry into Affordable Housing, recommended that the Federal Government support the creation of vehicles such as unit investment trusts (in which investors can invest in the overall fund instead of in individual properties) and Affordable Housing Bonds for attracting and managing institutional investment in rental housing.

In June 2014 Shelter NSW released a paper on the potential role of social enterprises, philanthropy and social bonds to increase supply of affordable housing and provision of housing services. Indeed, a recent article by Sally Rose in the *Sydney Morning Herald*, reported that National Australia Bank wants to be 'the bank of choice for social enterprises'. The bank reports lots of interest from the big super funds for impact-investment opportunities and are involved here in brokering loans to social enterprises, including one social housing deal tipped to be worth more than \$100 million.

In September 2014, the NSW Parliament's Legislative Council Select Committee on Social, Public and Affordable Housing released a report: *Social, public and affordable housing*. This picked up on the issue of developing mechanisms to promote growth in the supply of social and affordable housing, including social benefit bonds and recommended that the NSW Government consider recognising social housing as a form of infrastructure. The report also recommended enabling proceeds from Waratah Bonds (which are issued and guaranteed by the NSW Government) to fund new supply of social, public and affordable housing. Following on from this in March – just prior to the State Election – the NSW Government announced a new deal that aims to bring \$1 billion in new funding for social and affordable housing. The details are still to be worked through.

There's a long way to go, but the structure of the private rental market must move away from 'mum and dad' investors if we are to address the new face of poverty. 🏠

# HOUSING AFFORDABILITY

## JOINT STATEMENT BY HOUSING AND HOMELESSNESS PEAK BODIES

This statement was recently issued by a group of seven housing and homelessness peak bodies in NSW: The Tenants' Union, the Council of Social Services of NSW, Shelter NSW, Homelessness NSW, Domestic Violence NSW, Churches Housing and Yfoundations.

There is an increasing public discourse on the housing system and in particular the availability of accessible and affordable housing. Clearly the system is failing many individuals and families. We have considerable experience and expertise in understanding the housing markets and call on all levels of government to work to ensure a fairer housing system.

A lack of affordable housing has both economic and social consequences. Without safe and secure housing women and children can't leave violent situations, recidivism increases, homelessness will not be solved and essential service workers will increasingly be unable to live in the communities they serve.

We reject claims that increasing supply will solve the affordability crisis. In recent years NSW has seen strong increases in supply, but affordability has only worsened. Increasing supply will only make a difference if it is specifically targeted to the lower end of both the home ownership and rental markets.

Changes in employment that have resulted in greater levels of casualization, contracting and insecurity have had a serious impact on first home owners capacity to sign up to long term mortgages with confidence. Workers under the age of 30 are more likely to be casual than ever before. If the trend continues into the prime working age years it will come at the cost of income security. Almost a quarter of all employees in Australia (23.9 percent, or 2.2 million people) in 2012 reported as casual employees. The proportion is even higher after adding more than a million contractors and the hundreds

of thousands employed through agencies. In addition wages growth is almost flat.

In much of NSW attempts to assist people on low incomes into the private rental market is an almost impossible task. This is clearly evidenced in the Anglicare Rental Affordability Snapshot. Additionally at the 2011 Census over 86,000 households in NSW were in rental housing stress, paying more than 30% of their income in rent. This is unsustainable.

Tax reform is necessary. We would urge all parties to re-examine the findings of the Henry Tax Review. There is clear evidence that negative gearing and the capital gains tax discounts drive speculation, increasing house prices. There is scant evidence that making adjustments to negative gearing will cause rents to increase.

While the NSW government has made a start in establishing an incentive fund for social and affordable housing, more needs to be done. There is an enormous gap between government sponsored housing and the private rental market. We would support direct investment by the state government to increase affordable housing supply. Private investors need encouragement to provide affordable housing.

The NSW laws need to change to allow increased security of tenure for tenants as well as fairer laws on rent increases. We believe that the *Boarding House Act*, while a step in the right direction has failed to ensure an adequate standard of accommodation for many people who are marginally housed.

We would support moves by local councils to increase the supply of affordable housing and urge them to work with communities to encourage new development, by highlighting the significant social benefits of secure and affordable housing. 🏠

# LAND TAX: THE FAIREST TAX ON EARTH

*Dr Chris Martin – Former Senior Policy Officer, Tenants' Union of NSW, now Research Fellow, Housing Policy and Practice, City Futures Research Centre, University of New South Wales.*

Land tax is an important source of NSW State Government revenue. Land tax has the potential to improve housing affordability for purchasers and renters, and economic activity generally. Our present system of land tax does not realise this potential, and should be reformed.

## WHAT IS LAND TAX?

Land tax is tax, levied annually, on the value of land. Properly, land tax is levied on the 'unimproved' value of the land – that is, not including the value of improvements, such as buildings, added by the owner. Land tax is quite different to stamp duty ('transfer duty'), which is levied on sale or transfer of a property, not annually.

Land tax contributes to the affordability of land and housing, because it discourages speculative land holding. Instead, the land tax liability motivates owners to put land to its best use, or sell it to someone else. In this way it also encourages the development of improvements to land, such as new housing, and allows greater rewards for work and enterprise – and so contributes to economic growth.

## ADVANTAGES AND DISADVANTAGES OF LAND TAX

Land tax has practical advantages as a source of revenue for government, because land tax cannot be evaded (by its nature, land cannot be hidden or taken out of the state) and is less volatile than transfer duty.



*These tenants are members of an Estate Council in Hong Kong. In Hong Kong, a land tax is used to raise nearly 40% of government revenue. As a result, income tax is very low. More than 30% of Hong Kong's residents live in public rental housing – over 2 million people!*

In principle, land tax is simple, fair and efficient; however, in practice, our present system does not realise all these advantages.

The present system is too narrow, because:

- Owner-occupied housing is exempt from land tax. This removes 60% of the potential tax base, and encourages speculative holding of land for owner-occupied housing. Because land in other uses may be turned to owner-occupation, the exemption encourages speculative holding even where land tax presently applies.
- Other uses of land – primary production, retirement villages and residential parks for retired persons – are also exempt from land tax, which similarly detracts from the advantages of land tax without delivering some other public policy benefit. Two exemptions – for low-cost boarding houses and low-cost inner-Sydney rental housing – do deliver a public policy benefit, because they are available only where the owner provides low-cost housing. The exemptions for retirement villages and residential parks are not subject to such a requirement.



The present structure of land tax rates is also problematic:

- The threshold is too high – \$412,000 is too high to be justified as an exemption for low-cost housing.
- Levying land tax on an owner's total land values at an increasing marginal rate discourages large institutions, such as superfunds, from owning residential rental properties. These institutions may otherwise be better able to offer long-term affordable tenancies, and more professional management, than individual landlords operating on an amateur, speculative basis.

The Tenants' Union supports reforming land tax according to the following principles:

- Broaden the base – in particular, to include land used for owner-occupied housing.
- Provide few exemptions, for well-defined public policy benefits. The current exemptions for low-cost boarding houses and low-cost inner-Sydney rental properties should be retained. Other exemptions – if any – should be similarly narrow and well-defined.
- Reform the rates structure.

This may be done in either of two ways. The threshold could be reduced and a single rate applied to the total value of properties owned. Alternatively, land tax could be levied on properties separately, at increasing marginal rates according to the value per square metre (the method recommended by the Henry Review.)

- Remove other taxes – in particular, stamp duty. Consideration should also be given to using land tax to reduce or replace taxes on work and enterprise.

## TENANTS AND LAND TAX

Land tax is payable by the owner of land. The *Residential Tenancies Act 2010* (NSW) provides that taxes payable on a rented property must be paid by the landlord (section 40).

Landlords sometimes claim that they pass land tax on to tenants by charging higher rents. This is a dubious claim. Generally speaking, landlords charge what the market will bear. It is unlikely that landlords would charge any less than market rents if land tax were not levied. It is also unlikely that market rents are

pushed up by land tax. Because land tax is payable regardless of whether rental premises are let, the liability tends to encourage landlords to find a tenant and meet the market, and discourage them from holding out for a higher rent. (Contrast a sales tax, which is payable only when an item is sold, so which permits holding out for a higher price, in effect passing the tax on to the buyer.)

It is true that during the period of a tenancy the operation of market forces may be inhibited by the large costs faced by tenants on moving out. As a result, a landlord may be able to increase the rent above the general market level. The *Residential Tenancies Act 2010* (NSW) provides that a tenant may take proceedings to challenge a rent increase because it is excessive, considering the general market level of rents and other factors (section 44).

The Tenants' Union supports strengthening this provision, to provide that where the increase is greater than the increase in the Consumer Price Index Rents series for the relevant period, the landlord bears the onus of proving that the increase is not excessive. 🏠



Hong Kong

For more information and analysis of land tax, negative gearing, GST, capital gains, and other taxation policies that affect tenants, check out the Tenants' Union's blog, *The Brown Couch* at [tunswblog.blogspot.com.au](http://tunswblog.blogspot.com.au). Use the search box in the top left corner to find articles on the subject you're interested in.

Mr and Mrs Au – tenants in Hong Kong.

# POLITICIANS' LOVE OF REAL ESTATE

Robert Mowbray – Project Officer, Older Tenants, Tenants' Union of NSW

In June this year, we saw coverage of Federal Parliamentary Budget Office modelling that showed the Government could save \$3 billion in four years by abolishing negative gearing.

Greens Senator Scott Ludlam said scrapping the measure was, "long overdue ... Having such concessionary tax treatment of housing has meant that effectively we are subsidising housing investors to bid up the price of property... [it's] priced first-home buyers completely out of the market, particularly young people, and that's what has been contributing to pushing up rent."

The Federal Government has not shown any signs of wanting to tackle negative gearing and the Opposition is ambivalent. It is not just the electoral backlash they fear. Many politicians are compromised when it comes to real estate. In a second media story, again in June this year, Treasury and Reserve Bank officials voiced concerns about a bubble in Sydney's "risky" and "over-heated" property market. In response, Prime Minister Tony Abbott said that, as a Sydney homeowner himself, he welcomed rising house prices. An analysis of politicians' holdings in real estate makes clear a real conflict of interest.

*"An analysis of politicians' holdings in real estate makes clear a real conflict of interest."*

Up until 2010 studies found that between seven and ten percent of households across Australia were investors in residential rental property, although this figure was closer to five percent in New South Wales. There have been no more recent studies. However, it is highly likely that the figure is much greater today, because of a significant increase in funds being lent by financial institutions for the purposes of investment in residential rental housing. Indeed, figures published by the Australian Taxation Office in April of this year show that just over 15 per cent of individuals who lodged tax returns in the 2012-13 tax year, both across Australia and in New South Wales, reported receiving rental income.

The Register of Disclosures of the New South Wales Parliament

requires Members to declare whether they own residential rent investment property and receive income from rent. For the period 1 July to 31 December 2013, the Register shows that the proportion of State MPs who are residential landlords is significantly higher than the population as a whole. This proportion is between 24 and 37 percent (the latter if we include possible residential landlords because, amongst other things, Members are poor form fillers). Indeed, politicians hold significant property portfolios, with 135 members in both houses of parliament with an ownership stake of 267 properties. The median holding is two properties. One MP declared a portfolio of 12 properties.

In the middle of 2014, Lindsay David, Paul Egan and Philip Soos researched the property holdings of politicians in the Federal Parliament. They found at least one in three own rental properties. Again, politicians hold significant property portfolios, with 226 members in both houses of parliament having an ownership stake in a total of 563 properties, conservatively estimated at around \$300 million in July 2014. One Senator declared a portfolio of 50 properties. These findings were replicated in 2014 for politicians in both Victoria and Queensland.

Research does not show a causal link between decisions of politicians and property holdings. However, the higher than average property holdings of politicians at both Federal and State levels is arguably a barrier to achieving reforms in the area of taxation policy at the Federal level and residential tenancy laws at State level. MPs across the whole political spectrum have vested interests in maintaining the status quo.

My tale ends with the conclusion that politicians are unable to see the wood from the trees. 🏠

## Uganda



*Most homes in Uganda are rented, and there has been a ban on no-ground terminations since 1949! However, there are still reports of illegal evictions, as tenants have difficulty accessing courts in time. Politicians everywhere need to ensure tenants rights are protected – in law and in practice.*



# TENANCY Q&A: REPAIRS

Grant Arbuthnot – Principal Solicitor, Tenants' Union of NSW

**Q** "There are lots of repairs needed in our house. We have been renting here for five years. The original lease ran out more than four years ago. We have told the agent by phone and email, but nothing happens. What can we do? If we complain, can the landlord evict us?"

**A** Your original agreement is still working for you. At the end of the original fixed term, it became a periodic agreement with nearly all of the same terms and rules. The big changes are:

- That if the landlord wants to end the agreement without giving grounds, the notice of termination must be of 90 days, and
- The rent can be increased by the landlord giving you 60 days notice.

Under your agreement, the landlord has an obligation to maintain the premises in reasonable condition. It is good that you have informed the agent by email, it is evidence that the landlord/agent knows of the need for repair.

You can send another email listing the repairs and giving a deadline for satisfactory response and then apply to the NSW Civil and Administrative Tribunal. If the previous email was less than three months ago, you can immediately apply to the Tribunal. The Tribunal can make orders including:

- That the landlord do the needed repairs,
- That the landlord compensate you for any material loss caused by breach of the agreement
- That the rent be reduced for loss of amenity of the premises
- That the rent be paid into the Tribunal until the repairs are done.

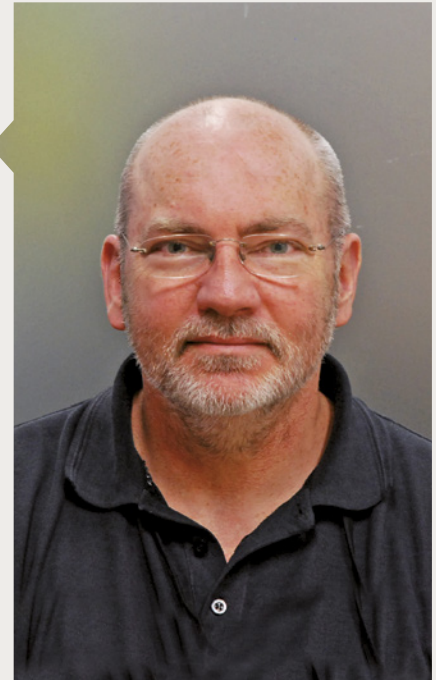
*"It is clear that no grounds termination of tenancy agreements undermines tenants' rights in the agreement."*

If the landlord's response to your Tribunal application is to give you a notice of termination of your tenancy agreement, you can apply to the Tribunal for an order that the notice is void for being retaliatory for you taking action to secure your rights.

Unfortunately, it is possible for the Tribunal to find that the notice of termination was retaliatory, and not order that the notice is void. This is because the Tribunal has discretion to give, or not give, that order based on evidence given by the parties.

We recommend that tenants make the application against retaliatory notices of termination because the decision will tell you whether you have to leave according to the notice or not. It is better than raising the issue in the landlord's (later) eviction application. The time limit regarding a 90 day notice of termination is 30 days from receiving the notice, but do not delay.

We regret that we have to give the above advice. It is clear that no grounds termination of tenancy



agreements undermines tenants' rights in the agreement. In your case, it discourages Tribunal application about repairs. It makes your decisions more difficult, and the uncertainty regarding retaliatory eviction does not help.

Please contact your local Tenants Advice and Advocacy Service if you want to discuss the matter further. Contact details are available on the back page, or using the postcode engine on the Tenants NSW website, [tenants.org.au](http://tenants.org.au).

You might also consider a complaint to Fair Trading NSW. They can help with negotiation with the landlord in some cases. 🏠

Contact your local Tenants Advice and Advocacy Service with any further questions. For contact details see the back page, or [tenants.org.au](http://tenants.org.au). On our website you'll also find factsheets on repairs and other tenancy matters.

# STAY IN TOUCH

The Tenants' Union of NSW is a membership-based co-operative and a community legal centre specialising in NSW residential tenancies law. We're also the resourcing body for Tenants Advice & Advocacy Services.

The Tenants' Union has represented the interests of all tenants in NSW since 1976. We have a proven track record of improving tenancy laws and providing legal assistance and training.

We encourage you to support us in our work for safe, secure and affordable housing. Together we can achieve more. Please fill in this form, tick the appropriate boxes and return to the address below.

Name:

Organisation:   
(if applicable)

Address:

Email:

Phone:

## SUBSCRIBE (It's free!)

- ☐ Send me *Tenant News*.
- ☐ Send me the Tenants' Union email bulletins.
- ☐ Send me  additional copies of *Tenant News* to give to others.

## VOLUNTEER

- ☐ I would like to participate in the TU's volunteer program.

## JOIN (You don't need to join to get advice or subscribe.)

I apply for membership of the Tenants' Union of NSW Cooperative Ltd as an: ☐ individual tenant ☐ individual (non-tenant)  
☐ tenant organisation ☐ organisation (non-tenant)

Membership fees (GST included):	1 year	5 years
Low wage / pension / benefit	\$8.00 <input type="checkbox"/>	\$35.00 <input type="checkbox"/>
Waged worker	\$16.00 <input type="checkbox"/>	\$70.00 <input type="checkbox"/>
Organisation	\$32.00 <input type="checkbox"/>	\$150.00 <input type="checkbox"/>

Donation: \$  Total: \$

Signed:  Dated:

Name (please print):

### Payment method

- ☐ Enclosed cheque or money order payable to Tenants' Union of NSW
- ☐ Deposit into our bank account below  
(for online deposits, please give reference: "MEM" plus your surname)

**Account name:** Tenants' Union of NSW

**BSB:** 062-004

**Account number:** 00802624

**Address:** Suite 201, 55 Holt St,  
Surry Hills NSW 2010

**Phone:** 02 8117 3700

**Fax:** 02 8117 3777

**Web:** tenantsunion.org.au



**TENANTS'  
UNION**  
OF NEW SOUTH WALES

## Get free tenancy advice



## Tenants Advice and Advocacy Services

Eastern Sydney	9386 9147
Inner Sydney	9698 5975
Inner West Sydney	9559 2899
Northern Sydney	8198 8650
Southern Sydney	9787 4679
South Western Sydney	4628 1678
Western Sydney	8833 0933
Blue Mountains	4782 4155
Central Coast	4353 5515
Hunter	4969 7666
Illawarra South Coast	4274 3475
Mid Coast	6583 9866
Northern Rivers	6621 1022
North Western NSW	1800 836 268
South Western NSW	1300 483 786



## Aboriginal Tenants Advice and Advocacy Services

Greater Sydney	9698 0873
Western NSW	6884 0969
Southern NSW	1800 672 185
Northern NSW	1800 248 913

Free Tenants Rights Factsheets are available on the Tenants NSW website  
**[www.tenants.org.au](http://www.tenants.org.au)**

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