

To the Committee Secretary,

**Re: The worsening rental crisis in Australia**

Thank you for your investigation into the issues confronting people who rent in Australia. Better Renting is a community of renters working together for stable, affordable, and healthy homes. With more people locked out of ownership, we want to make sure that renters can also have decent homes.

In the body of this submission we recommend limits on rent increases, greater control for tenants over how tenancies end, and the establishment of minimum energy efficiency standards for rentals to provide healthy homes for renters. But we want to use our opening remarks to help frame the issue.

Long-term demographic shifts are underway in Australia changing not just how many people are renting, but also the composition of this demographic. Because it is harder for renters to transition from renting to ownership, it's common for people to be renting for longer: a 2013 report indicated about one in three private renters had been renting continuously for more than ten years, up from 25% in 1994.<sup>1</sup> Because people are renting longer, the private rental sector is increasingly composed of parents, with around 40% of rental households now including dependent children.<sup>2</sup> As these trends work their way through the system, we will see a growing number of pensioners who are renting. The Retirement Incomes Review found that around 12.5% of households over 65 are renting; currently almost one in two of these households experience income poverty, with the rate rising to 60% for single renter households.<sup>3</sup> In parallel, we've seen long-term underinvestment in social housing, forcing more of these renters to compete in the under-regulated private rental sector.

These long-term trends are interacting with a more urgent crunch experienced in the years following the Covid-19 pandemic. Since mid-2020, landlords and property

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<sup>1</sup> Wendy Stone et al., 'Long-Term Private Rental in a Changing Australian Private Rental Sector' (AHURI, July 2013).

<sup>2</sup> Stone et al.

<sup>3</sup> Michael Callaghan, Deborah Ralston, and Carolyn Kay, 'Retirement Income Review - Final Report' (Commonwealth of Australia, July 2020), <https://treasury.gov.au/publication/p2020-100554>.

managers have increased rents at a rate higher than any time in recent memory. Corelogic data points to an increase in the annual growth in rents from 0.56% in August 2020 to 9.4% by December 2021.<sup>4</sup> Analysis by the Reserve Bank of Australia shows a similar trend.<sup>5</sup> We've heard from many renters who have been pushed to the brink by these runaway rent increases, forced to move out of their homes or to cut back on basic needs just to keep paying the rent. In an extreme example, we spoke with a renter, Natasha, who faced a 38% rent increase from \$360 to \$500 per week. She has been relying on a Centrelink payment after stopping work due to a cancer diagnosis; her rent takes up half of her fortnightly income.<sup>6</sup>

These recent increases are partly caused by short-term phenomena like smaller renter households and a growth in the renter population. But that is only part of the picture: these short-term dynamics interact with long-term trends to create the perfect storm we see today. As such, a lasting solution also requires attention to the long-term trends.

This lasting solution requires re-establishing the importance of rentals as homes for people, and not as assets for speculators. Much of our housing system and tenancy law has been designed to accommodate landlords and their interests<sup>7</sup>: you can buy a property, rent it out with few obligations, increase rents by any amount, use any losses to reduce your taxable income, evict the tenants to sell it, and then pay tax on only half of the capital gain. It's a sweet deal for owners, but it ignores the people who are trying to make a home in the middle of it all.

The shifts we call for in this submission go some way towards making it easier for renters to make homes in the rental sector. This crisis won't be addressed by just trying to increase ownership rates. People want to own homes because it offers a level of security and wellbeing that renters are currently being denied. What we should be doing is changing rental laws and our housing system so that renters can have security and wellbeing without needing to own property. Only then can people who rent have the decent homes we need and deserve.

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<sup>4</sup> Eliza Owen, 'Could the Peak in Interest Rates Signal an End to Rising Rents?', CoreLogic Australia, 19 July 2023, <https://www.corelogic.com.au/news-research/news/2023/could-the-peak-in-interest-rates-signal-an-end-to-rising-rents>.

<sup>5</sup> Fred Hanmer and Michelle Marquardt, 'New Insights into the Rental Market | Bulletin - June 2023' (Reserve Bank of Australia, 2023), Australia, <http://www.rba.gov.au/publications/bulletin/2023/jun/new-insights-into-the-rental-market.html>.

<sup>6</sup> Josephine Lim, 'Mother of Eight Struggles to Find New Rental amid Spiking Prices across SA', ABC News, 6 July 2022, <https://www.abc.net.au/news/2022-07-07/sa-mother-struggles-to-find-new-rental/101215162>.

<sup>7</sup> Chris Martin, 'Australian Residential Tenancies Law Reform: A New Agenda for 2023 and Beyond', *Parity*, June 2023, <https://chp.org.au/wp-content/uploads/2023/07/Parity-Vol36-04-June.pdf>.

## Limit rent increases for stability and affordability

Better Renting recommends that jurisdictions implement limits on rent increases primarily as a measure to reduce forced moves caused by hefty increases in housing costs.

In most jurisdictions, the current model is that tenants are responsible for applying to their Tribunal to oppose a rent increase by arguing that it is 'excessive'. Yet 'excessive' rarely considers the amount of the increase, the household income, or the financial impact of the increase. Instead, it is mostly framed around comparable market rents: if rents are going up a lot, then the Tribunal is required to allow a rent increase that raises rent by a lot. In effect, Tribunals are being asked to license profiteering.

Since early 2021, rent increases of over 10% have become much more common. Over 60% of new tenancies are now advertised with a rent increase above 10%. While continuing tenancies are somewhat more protected, about one in five rent increases for existing tenants is now over 10%.<sup>8</sup> Increases like this outpace inflation and wage growth, taking advantage of changing market dynamics to increase real rents without any improvement in the quality of housing provided. It is this profiteering behaviour that has ignited recent calls for limits on rent increases.

Limits are not just an *affordability* measure — they also support stability for both individual households and for neighbourhoods. They recognise the legitimate interest that tenants have in being able to remain in their home, and so part of their benefit is making it less likely that households are forced out by sudden and large rent increases.<sup>9</sup> This also functions at the neighbourhood level, helping to preserve greater economic diversity and stability within neighbourhoods, with all the benefits that this brings at the community level. Rent controls also curb the market power of landlords, limiting the ability of landlords to extract economic rents.

In this section of our submission we discuss an alternative model and how it can be designed to encourage greater financing of new supply. Our alternative model involves:

- Rules for determining a threshold,
- The process for a proposed rent increase above the threshold,
- Protections apply across tenancies, &

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<sup>8</sup> Hanmer and Marquardt, 'New Insights into the Rental Market | Bulletin – June 2023'.

<sup>9</sup> J W Mason, 'Why Rent Control Works', *Jacobin*, November 2019, <https://jacobinmag.com/2019/11/rent-control-housing-crisis-affordability-supply>.

- New supply is temporarily exempt from limits.

### **Rules for determining a threshold**

The first step is to have rules for establishing a threshold. A rent increase at or below this threshold takes effect unless the tenant takes it to Tribunal. The threshold should be determined annually, publicised, and communicated directly to agents and tenants. The threshold could be calculated with reference to CPI, WPI, a flat percentage amount, or some weighted average of these. For example, it might be  $WPI + 2\%$ , or the lower of CPI and 5%, or an average of CPI and WPI. Whatever the system, it should result in a single figure that is calculated and communicated once annually.

### **The process for rent increases above the threshold**

An increase above the threshold would take effect only where the tenant agrees to it or the landlord secures approval from a Tribunal. A tenant might agree if, for example, the landlord agreed to certain quality improvements to the property, such as installing rooftop solar. But where the tenant disagrees, the landlord must choose to go with a lower increase, or to apply to the Tribunal.

When the Tribunal is ruling on a rent increase, their decision should not be based upon market rents. Firstly, this is a furphy: what even *is* market rent? Properties are not fungible with each other, and advertised rents are a poor indication of actual rents being charged for the majority of tenancies. But most of all, we just don't think that profiteering should be the norm here: increases in rents should be based upon improvements in the quality of the property, not just the fact that there is less supply or more demand.

What then should a decision be based upon? Many Tribunals are allowed to consider changes in landlord costs, and we don't think this should change, although it should be taken with a grain of salt given that many landlords deliberately purchase properties with negative cash flow, hoping to profit from capital gains. Investment carries risk, and it's not the role of the Tribunal to guarantee landlord investment returns. Most importantly, Tribunals should be required to consider the household income of the people renting the home, and the financial impact on them of a rent increase. A Tribunal should also be able to consider a lessor's financial position and what risk of hardship they may face if an increase didn't proceed. This represents a more clear-eyed approach that gives long overdue weight to the person who is using the property for housing, not just as a speculative investment.

### **Protections across tenancies**

Limits on rent increases should apply across tenancies. That is, if a tenancy ends, the property should be re-advertised with a rent increase based on the annual threshold at most.

The purpose of such a restriction is to remove the perverse incentive for landlords to try to kick tenants out in order to charge higher rent — a phenomenon seen in some jurisdictions with rent controls.<sup>10</sup> Even with limited grounds for lease terminations, property managers can be conniving, and the opportunity to charge higher rents rarely motivates pro-social behaviour. Rather than play whack-a-mole trying to stop avaricious evictions, tenancy laws should remove the incentive by confirming that an eviction is not a chance to lock-in higher rents.

### **Approach to new housing**

Limits on rent increases need not apply initially to new housing. The reasoning for this is twofold. Firstly, new supply does not initially have incumbent tenants who would be adversely affected by a large rent increase. Secondly, we want to encourage investment in new supply, and this should serve to channel investment towards this.

How long should this exemption apply? We suggest five years. We see this as a fairly long period of time that gives investors ample opportunity to realise returns on their investment, while eventually bringing the property into the pool of rent-stabilised homes.

### **Impact on investment**

A common canard deployed against limits on rent increases is that this will discourage new supply, eventually resulting in higher rents than would otherwise have been the case. We tend to be sceptical of this argument, given that it comes from the real estate industry which otherwise favours higher rents, and also because it's the very same argument they use against everything else, from mandatory smoke alarms to giving renters the right to have a pet. Belying the Henny-Penny claims made by the industry, despite years of iterative rental reform in Australia and other jurisdictions, the sky has never yet fallen in.

The model we've sketched here is highly unlikely to materially affect landlord investment. Many rent increases would still be allowed, and as the bulk of landlord revenue comes from the existing rent (not the marginal increase), the impact on profitability would be marginal. By knocking out just the highest, worst rent increases, a model like this has the

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<sup>10</sup> Hettie O'Brien, 'The Blackstone Rebellion: How One Country Took on the World's Biggest Commercial Landlord', *The Guardian*, 29 September 2022, sec. Business, <https://www.theguardian.com/business/2022/sep/29/blackstone-rebellion-how-one-country-worlds-biggest-commercial-landlord-denmark>.

greatest benefit for tenants, without significantly altering the normal ebb and flow of rental markets. It's implausible that landlords are making investment decisions on the basis of being able to increase rents by 10% every year *ad infinitum*.

On the numbers, it's also unlikely to make a big difference. ABS data indicates that investors contribute about 25% of the finance going into building or purchasing new dwellings.<sup>11</sup> Limits on rent increases might reduce this, but could also increase it if landlords shifted investment *from* existing dwellings and *towards* new dwellings. If there was a reduction in landlord interest, it might also be offset by increased demand from owner-occupiers, including from renters who would have more purchasing power due to limits on rent increases. Landlord finance is not unique or irreplaceable.

## Tenants in control of tenancy length

Better Renting supports measures that give tenants more control over the length of their tenancy and how it ends. This should be achieved through limiting the grounds on which landlords can end a tenancy. It should not be achieved through long fixed-term leases.

Our objective is not for tenants to have long tenancies. As a former Prime Minister once observed, "Shit happens".<sup>12</sup> People lose their jobs, relationships change, families move. Or, sometimes your landlord is a jerk and you'd rather move somewhere else. In these situations, it would be harmful for people to be trapped in a long fixed-term and face potential penalties for 'breaking lease'.

Rather, we want tenants to be in control of their tenancy. If people want to keep staying in their home, they should have that option. If they want to move out, they should have that option. This is best achieved through open-ended tenancies, with limits on the grounds for which a landlord can end a tenancy.<sup>13</sup>

As such, the most important change in all jurisdictions is to end no-cause terminations, which allow a lessor to end a tenancy without having to provide any reason. Western Australia and the Northern Territory continue to allow this exploitative practice. Queensland, Victoria and Tasmania have limited the practice somewhat, but can still allow it at the end of a fixed-term tenancy. Every jurisdiction should ban no-cause terminations,

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<sup>11</sup> Australian Bureau of Statistics, 'Lending Indicators, June 2023 | Australian Bureau of Statistics', 1 August 2023, <https://www.abs.gov.au/statistics/economy/finance/lending-indicators/latest-release>.

<sup>12</sup> "Shit Happens": Abbott Grilled over Digger Remark', ABC News, 8 February 2011, <https://www.abc.net.au/news/2011-02-08/shit-happens-abbott-grilled-over-digger-remark/1935128>.

<sup>13</sup> Chris Martin, 'Improving Housing Security through Tenancy Law Reform: Alternatives to Long Fixed Term Agreements', *Property Law Review* 7 (2018).

including at the end of a fixed term. The ACT has done this already, and NSW and SA have committed to the same.

This is crucial because no-cause evictions pose a significant threat to the security and well-being of tenants. They create an environment of fear and uncertainty, discouraging tenants from exercising their rights due to the risk of retaliation. This imbalance of power can lead to tenants enduring substandard living conditions, reluctant to request necessary repairs or modifications for fear of eviction.

A clear example of this is the case of Karen Thorne, a tenant living with fibromyalgia and Scheuermann's disease, which affects her spine and mobility. As reported by *The Guardian*<sup>14</sup>, Thorne requested a minor modification to her bathroom under her NDIS plan - the installation of a handrail in the shower. However, following her request, she received a no-grounds eviction notice. Thorne interpreted this as retaliation for her attempts to assert her rights as a renter with a disability. This case illustrates the chilling effect no-cause evictions can have on tenants, particularly those with disabilities who may require modifications to their homes. In fact, past survey data shows that renters with a disability are much more likely to have received a no-grounds termination notice.<sup>15</sup>

What about no-fault terminations where there is a cause? We recommend that, over time, these too should be wound down. For example, sale of property does not require a lease to be terminated. Although many jurisdictions allow this, they should not. Given the disruption and harm of lease termination, even with a cause, we should move towards limiting grounds and reducing the frequency.

This should also be achieved through mandatory compensation when a landlord terminates a tenancy and the tenant is not at fault. We propose compensation equivalent to four weeks' rent, automatically applied as a rent waiver for four weeks following a notice to vacate. This straightforward policy discourages terminations and would make a landlord think twice and proceed only if there was a genuine need. In addition, it provides renters with a financial cushion to reduce the economic shock of a forced move, which can often be thousands of dollars.<sup>16</sup> We recommend mandatory compensation for a no-fault termination as it reduces both the likelihood and the negative impact of a forced move.

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<sup>14</sup> Stephanie Convery, 'Sydney Renter Receives No-Grounds Eviction Notice after Requesting Shower Rail under NDIS Plan', *The Guardian*, 20 July 2023, sec. Australia news, <https://www.theguardian.com/australia-news/2023/jul/21/renter-evicted-ndis-shower-rail>.

<sup>15</sup> CHOICE, National Shelter, and National Association of Tenant Organisations, 'Disrupted: The Consumer Experience of Renting in Australia', 2018, <https://www.choice.com.au/disrupted>.

<sup>16</sup> Jemima Mowbray, 'The True Cost of Eviction', Tenants' Union of New South Wales, 22 February 2022, <https://www.tenants.org.au/blog/true-cost-eviction>.

## Establish minimum energy efficiency standards

We recommend that jurisdictions implement minimum energy efficiency standards for rental homes, requiring basic features such as ceiling insulation, draught-proofing, and efficient appliances.

### Why there should be minimum energy efficiency standards

There should be minimum energy efficiency standards for rentals because everybody needs a healthy home. While it's inevitable that the quality of properties will vary, and some people will readily pay more for extra quality or amenity in their home, we must nonetheless ensure that the worst and often lowest-rent properties still meet a minimum standard that keeps occupants safe and healthy.

Sadly, this is not currently the case. Many rental properties make it virtually impossible for people to achieve a healthy temperature indoors in summer and winter. It's not just a case of being able to afford the energy — in some cases, the physics of the substandard property are such that people simply can't heat it enough to get it to a liveable temperature in winter. These dynamics mean people can end up with very expensive energy bills, which can result in energy debt, rental arrears, or having to cut back on other basics such as food. It also means that people live in unhealthy indoor temperatures, which has adverse effects on respiratory and cardiovascular health, mental health, and immune system function.

Renters are unique in that they cannot make the changes themselves that would make their home liveable. We have been in touch with renters who are architects, scientists, and even qualified assessors for the Nationwide House Energy Rating Scheme. These people know what their home needs, but they can't make it happen and they can't make their landlord make it happen. Landlords are running a business of renting out a home, and must have concomitant responsibilities to make sure that the home is actually decent to live in.

### Implementing minimum energy efficiency standards

We endorse the *Community Sector Blueprint*, developed through the Healthy Homes for Renters collaboration, as a model for implementing minimum energy efficiency standards.<sup>17</sup> It reviews and deals with design questions in great detail, informed by a wealth of expertise.

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<sup>17</sup> Healthy Homes for Renters, 'Community Sector Blueprint: A National Framework for Minimum Energy Efficiency Rental Requirements', Healthy Homes for Renters, 28 November 2022, <https://www.healthyhomes.org.au/news/community-sector-blueprint>.



In general, the model is what we have already seen in Victoria and ACT. In Victoria, there is a requirement for an energy-efficient heater in the main living area. In the ACT, properties must have at least R2 ceiling insulation. While we support an eventual shift to a standard based on modeled performance, initially a standard could require specific individual features such as insulation, efficient heating and cooling, and draught-proofing.

### **The role of the Commonwealth**

The Commonwealth is already playing a role around the development of a National Framework for Minimum Rental Requirements through the National Trajectory for Low Energy Buildings. But more is needed, and in this we support the announcement in the latest budget of \$300m to support energy performance upgrades for social housing. Building on this commitment, we call for a larger commitment from the Commonwealth that is at the scale needed to retrofit *all* public and community housing with basic energy efficiency features. The Commonwealth should offer such funding to jurisdictions on the proviso that they also commit to minimum energy efficiency standards to cover social and private rentals. Financial support could then also include ‘carrots’ for private landlords, for example subsidised finance, but any such support must accompany mandatory standards and not be an alternative to them.

## **How the Commonwealth can do this**

While the Commonwealth government does not directly control tenancy legislation, it possesses several levers that can be used to influence outcomes for renters.

One of the most potent tools at its disposal is financial incentives. The Commonwealth has the capacity to fund outcomes that benefit renters, as demonstrated by initiatives such as the National Housing and Homelessness Agreement. However, it is crucial that the Commonwealth ensures these funds are used effectively and not undermined by state or territory policies that could sabotage the intended outcomes. For example, certain jurisdictional governments allow no-cause terminations and unlimited rent increases. Both of these measures worsen the rental crisis and put more pressure on the social housing sector. The Commonwealth’s investment through the NHHa would be more impactful if jurisdictions were required to make complementary changes to their tenancy laws.

The Commonwealth can also play a significant role in coordinating efforts across states and territories. For instance, the cap on gas prices implemented last year exemplifies how the Commonwealth can broker agreements at a state-by-state level to achieve national outcomes. Similarly, the Commonwealth could take immediate action on conditions for

renters at the upcoming National Cabinet and National Housing Ministers meetings. This could be achieved by offering the states and territories an additional financial incentive through the National Housing and Homelessness Agreement in return for action on rental reform, in areas such as security of tenure and limits on rent increases.

Moreover, the Commonwealth has previously used 'tied grants' to guide states in specific directions in areas such as health and education. The \$2 billion social housing accelerator, offered to states in exchange for planning reforms, is a prime example of this approach. We argue that the Commonwealth could apply the same strategy to the rental market, using financial incentives to encourage states and territories to implement reforms that benefit renters. This approach would ensure that the Commonwealth's financial resources are used effectively to improve the lives of renters across Australia.