

PIAC submission to the inquiry into the worsening rental crisis in Australia

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About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is a leading social justice law and policy centre. Established in 1982, we are an independent, non-profit organisation that works with people and communities who are marginalised and facing disadvantage.

PIAC builds a fairer, stronger society by helping to change laws, policies and practices that cause injustice and inequality. Our work combines:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change and public interest outcomes.

Our priorities include:

- Reducing homelessness, through the Homeless Persons' Legal Service
- Access for people with disability to basic services like public transport, financial services, media and digital technologies
- Justice for First Nations people
- Access to sustainable and affordable energy and water (the Energy and Water Consumers' Advocacy Program)
- Fair use of police powers
- Rights of people in detention, including equal access to health care for asylum seekers (the Asylum Seeker Health Rights Project)
- Improving outcomes for people under the National Disability Insurance Scheme
- Truth-telling and government accountability
- Climate change and social justice.

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Summary of Recommendations

Recommendation 1 Privacy Act to apply to all real estate agencies

Amend the Australian Privacy Act to apply to all real estate agencies, irrespective of turnover.

Recommendation 2 Provide funding to States and Territories to increase support for people leaving prison

Provide funding to States and Territories to increase community-based post-release and other transitional support services.

Recommendation 3 Consistent building accessibility standards

Work with NSW Government to integrate NCC 2022 liveable housing design requirements into NSW legislation through the Building Ministers' Meeting.

Recommendation 4 The National Housing and Homelessness Strategy to be mandatory

Create a legislative obligation for the Minister for Housing to regularly make and update a National Housing and Homelessness Strategy and regularly and publicly report on its progress.

Recommendation 5 Increase Commonwealth Rent Assistance by 50%

Recommendation 6 Review Commonwealth Rent Assistance

Undertake a review of Commonwealth Rent Assistance, with a view to improve its efficiency and targeting, in consultation with housing and social services peak bodies and housing policy experts.

Recommendation 7 Create a national rent increase regulation framework

The Ministerial Council on Housing and Homelessness to develop a national framework for better regulation of rent increases based on the ACT model.

Recommendation 8 Increase supply of social housing

Provide capital funding of \$7 billion to the States and Territories to deliver 20,000-30,000 social housing dwellings.

Recommendation 9 Create a national framework for eviction legislation

The Ministerial Council on Housing and Homelessness to develop a framework for reform of tenancy legislation to replace no grounds evictions with sets of prescribed, reasonable grounds across all jurisdictions, to be integrated in the National Housing and Homelessness Strategy.

1. Introduction

PIAC welcomes the opportunity to make a submission to the inquiry into the worsening rental crisis in Australia conducted by the Senate Standing Committee on Community Affairs.

The Public Interest Advocacy Centre (PIAC) provides free legal advice and assistance to people experiencing or at risk of homelessness through the Homeless Persons Legal Service (HPLS) and the Women's Homelessness Prevention Service (WHPS). Our policy and advocacy work to address the structural causes of homelessness is informed by the experiences of HPLS clients and the advice of a group of lived experience advocates with diverse experiences of homelessness, StreetCare.

Housing and homelessness legislation and policy is predominantly a State prerogative. But there are policy levers the federal Government can use to address the rental crisis in Australia. This includes the upcoming National Housing and Homelessness Strategy (NHHS) and associated finance mechanisms for the States to deliver housing and homelessness strategies, delivery of social and affordable housing, Commonwealth Rent Assistance (CRA) policy reform, leadership to promote tenancy law reform and housing taxation policy settings.

We see daily the consequences of inadequate housing policy and regulation of rental housing and how it contributes to the risk and incidence of homelessness. There are multiple opportunities to address the worsening rental crisis in Australia to improve the experience of people who rent their home and end homelessness. This includes tenancy law reform to provide security of tenure for people who rent their home, better regulation of rent increases, and direct intervention in the housing market under the form of demand side subsidies (CRA) and supply side action (delivery of social and affordable housing).

PIAC advocates for a housing system that provides a safe, secure, affordable home for all and ensures any experience of homelessness is rare, brief, and non-recurrent. We make recommendations to address unsustainable rent rises, end no-grounds evictions and provide security of tenure for renters, and to deliver secure and affordable homes for people who are unable to access adequate housing in the private rental market.

This submission follows the structure of the terms of reference of the inquiry, focusing on terms (a)-(d). It draws on the experiences, needs and aspirations of people experiencing homelessness, at risk, living on low incomes or facing other forms of disadvantage. When referring to State level legislation and policy, we refer to NSW unless stated otherwise.

2. The experience of renters and people seeking rental housing

People who rent their home overwhelmingly experience housing insecurity and the consequences of tenancy legislation creating a power imbalance with their landlord, preventing them or making them fearful to assert their rights at law. People seeking rental housing must deal with the scarce availability of adequate, affordable rental housing and unregulated application processes open to discrimination and invasive information collection. Some cohorts such as people who are currently homeless, people with disability and people exiting prison face specific challenges.

2.1 Housing insecurity and power imbalance

Because of the difficulty in securing a long term home in the private rental market, people who rent their home overwhelmingly experience housing insecurity. While the duration of lease terms can be for any number of years or up to a fixed date, most people in Australia rent their home on a six or twelve months fixed term lease. In NSW, the median duration of a tenancy is 17 months. Based on bond refund data, over 30% of renters vacate their home within 12 months.¹

Forced moves are expensive, costing on average \$4,075 in NSW.² Eviction can contribute to financial hardship and risk of homelessness. Forced moves also create stress and anxiety for people renting their home, impacting health and wellbeing and causing increased expenditure on government services. They also disrupt schooling arrangements for children, leading to worse educational outcomes, and prevent people from fully engaging with their local community.³

The tenant and landlord relationship is characterised by a fundamental power imbalance. Landlords seek to maximise investment returns on an asset – which happens to be a residential property – while tenants seek to make a home. For landlords, issues with the tenancy might lead to poor financial outcomes, but for tenants, losing their home might mean uprooting from their community, losing ties with friends and family, financial hardship or homelessness.

This fundamental imbalance is exacerbated by tenancy legislation that allows for no-grounds evictions. Because people who rent their home know they might be evicted without the landlord having to provide any grounds,⁴ they are fearful or at least hesitant to assert any other rights they have at law, including requesting minor alterations to the property or even basic repairs and maintenance.

¹ Kate Burke, The Sydney postcodes with the shortest and longest tenancies, *Domain* (Online, 27 Apr 2021) <<https://www.domain.com.au/news/the-sydney-postcodes-with-the-shortest-and-longest-tenancies-1046718/>>.

² Tenants Union of NSW, *Eviction Hardship and the Housing Crisis* (Special report, February 2022) p8.

³ *Ibid.*

⁴ In NSW, with 30 days notice at the end of a fixed term lease or 90 days notice on a periodic tenancy. *Residential Tenancies Act 2012* (NSW) s 84, s 85.

Legislation and policy reform is urgently needed to make renting in Australia a viable, sustainable housing option. This has the potential to support labor market mobility and reduce pressure on housing prices.

2.2 The experience of people seeking rental housing

People seeking rental housing face uncertainty regarding the application process, including what personal information they have to provide and how it will be stored, discrimination, and a severely unaffordable rental market.

Practices of landlords and real estate agents differ widely when it comes to requesting personal information. Some only require standard information such as proof of identity documents (ID) and income and tenancy history. Others request extensive, sometimes invasive personal information, including bank statements over a long period, and in extreme cases, links to social media and even whether prospective tenants have prominent tattoos.⁵

Collecting extensive personal information is not only irrelevant and contains potential for judging applicants based on prejudice, it also creates a risk that cyber-criminals steal personal data from real estate agencies systems. Better regulation of collection, use, storage and destruction of personal information of rental tenancies applicants would reduce this risk and improve the experience of people who rent their home.

Lack of regulation of the application process creates potential for discrimination. Because people seeking rental housing usually inspect properties in person, real estate agents and landlords can assess and/or assume their personal characteristics, such as age, ethnicity, sexual orientation, and whether they live with disability. People who feel they have been discriminated against confront significant challenges in proving it, as well as little recourse against it due to the opacity and lack of regulation of the application process. PIAC has previously described this issue and suggested options to address it.⁶

The *Privacy Act 1988* (Cth) regulates organisations with an annual turnover of more than \$3 million dollars. It is based on 13 principles regulating the way personal information collected from individuals is handled, including collection, use and disclosure. While in our view, the *Privacy Act* provides adequate principles to guide handling of renters personal information, it only covers an estimated 45% of real estate agencies.⁷

⁵ Cait Ke y, 'W d west : Austr a s wou d-be tenants asked about tattoos and soc a med a as ca s grow for regu at on', *The Guardian* (On ne, 12 June 2023) <<https://www.theguardian.com/australia-news/2023/jun/12/w-d-west-australia-would-be-tenants-asked-about-tattoos-and-social-media-as-cas-grow-for-regulation>>.

⁶ Public Interest Advocacy Centre, Subm ss on no 10 to the Leg s at ve Assemb y Se ct Comm ttee on the Res dent a Tenanc es Amendment (Renta Fa ness) B 2023, Par ament of New South Wa es, *Inquiry into the the Residential Tenancies Amendment (Rental Fairness) Bill 2023*. See also Ev dence to the Leg s at ve Assemb y Se ct Comm ttee on the Res dent a Tenanc es Amendment (Renta Fa ness) B 2023, Par ament of New South Wa es, Sydney, 2 June 2023, 4-5 (Thomas Cha oux, Po cy Off cer).

⁷ Department of Customer Serv ce, NSW Government, *Improving NSW rental laws consultation paper* (Consu tat on paper, Ju y 2023) p9.

There are opportunities to ensure more people seeking a rental property and/or who rent their home are protected by Commonwealth legislation by extending the coverage of the Act and ensuring there are adequate enforcement mechanisms in place. We note that the Act has been amended in November 2022 and support the increased investigative powers conferred to the Australian Privacy regulator, the Office of the Australian Information Commissioner.⁸

PIAC recommends that the Act is further amended so that the Australian Privacy Principles (APP) cover all real estate agencies. This could be done by changing the threshold of annual revenue from which the Act applies to organisations, or by creating a specific provision for real estate agencies in order to avoid capturing other small businesses. In our view, it is appropriate for more detailed regulation to be left to State jurisdictions, but the APP should apply to all real estate agencies. NSW is currently considering how best to regulate collection, use, disclosure and destruction of renters personal information.⁹

Recommendation 1 Privacy Act to apply to all real estate agencies

Amend the Australian Privacy Act to apply to all real estate agencies, irrespective of turnover.

2.2.1 The experiences of people with disability, people exiting prison and people experiencing homelessness

Some people face specific challenges when renting their home or trying to access rental housing.

People exiting prison often have no rental history or references, and face discrimination when they disclose the reason. Difficulties in obtaining identity documents after exiting prison is also an issue. This makes accessing the rental market very difficult, especially given they usually have a low income.

People experiencing homelessness often have difficulties entering or re-entering the private rental market for similar reasons. People who have experienced prolonged periods of homelessness have no recent rental history or references. Many have lost ID and other documents required for rental applications. And because homelessness carries stigma, some real estate agents and landlords are less likely to rent to people who have previously or are currently experiencing homelessness.

Difficulties in securing affordable, adequate housing and other challenges in returning to the community lead some people to experience cycles of homelessness and incarceration.¹⁰ Not only does this cause tremendous distress to people experiencing it, it also creates additional police, justice and custody costs. Research shows that providing people exiting prison with public

⁸ Robyn Chatwood, Macom Lu, Dentons, Australian Privacy Law Update – Proposed Enhancements to Regulatory Investigation and Enforcement Powers, *Dentons Knowledge* (Web Page, 1 December 2022) <<https://www.dentons.com/en/news/updates/articles/2022/december/1/australian-privacy-law-updates>>

⁹ *Ibid.*

¹⁰ Louis Schetzer and StreetCare, Public Interest Advocacy Centre, *Beyond the Prison Gates: The experiences of people recently released from prison into homelessness and housing crisis* (Report, July 2013) p33-45.

housing generates net benefits of \$5,200 to \$35,000 over five years.¹¹ But due to lack of funding, availability of post-release accommodation and other transitional support is scarce. Providing people exiting prison with social housing is an opportunity to reduce re-offending, generate cost savings in the justice system, and support people with experience of incarceration to pursue their aspirations and live meaningful lives.

Recommendation 2 Provide funding to States and Territories to increase support for people leaving prison

Provide funding to States and Territories to increase community-based post-release and other transitional support services.

Some people with disability need a dwelling with specific characteristics in order to live safely and independently. The lack of suitable stock that meets even basic accessibility standards such as the Silver Level of the Liveable Housing Design (LHD) guidelines makes finding a home that meets their needs difficult for people with disability, particularly those on lower incomes. This challenge is exacerbated by the fact it is usually not a viable option to find a property and then modify it, because of cost and because substantial modifications are difficult to negotiate with landlords and cannot be made without their consent.

Recent changes to the National Construction Code (NCC) mandating that new dwellings meet the Silver Level of the LHD guidelines will eventually improve the experience of people with disability. But because they only apply to new dwellings, it will take a long time before a substantial proportion of stock meets this standard. In NSW, the Government has not yet adopted this requirement in building standard legislation and the previous Government refused to adopt it. Consistent accessibility standards across jurisdictions not only ensure that people with disability can access safe, adequate housing, it also reduces cost and increases quality standards in the construction industry because standards do not vary across jurisdictions.¹²

Recommendation 3 Consistent building accessibility standards

Work with NSW Government to integrate NCC 2022 liveable housing design requirements into NSW legislation through the Building Ministers' Meeting.

3. Rising rents and rental affordability

Rents have been increasing rapidly in 2022/23 in NSW. Between 2022 Q3 and 2023 Q3, rents increased 20.4% in Greater Sydney and 6.7% in the rest of NSW, with areas such as Ryde, Parramatta, and Inner West and South West Sydney recording rent increases of close to or over

¹¹ Chris Martin et al., *Exiting prison with complex support needs: The role of housing assistance* (AHURI Final Report No. 361, August 2021) p5.

¹² Jane Brango, *Centre for Universal Design Australia*, New South Wales standard (Blog post, 9 August 2021) <<https://universaldesignaustralia.net.au/new-south-wales-standard/>> [no/?utm_source=mailto:poet&utm_medium=email&utm_campaign=cuda-newsletter-of-atest-posts_3](https://universaldesignaustralia.net.au/new-south-wales-standard/?utm_source=mailto:poet&utm_medium=email&utm_campaign=cuda-newsletter-of-atest-posts_3)

25%.¹³ This increase in rents far outpaces wage growth (3.7%)¹⁴ as well as recent planned increase to the base rate of some social security payments (5.8%).¹⁵

This means that rental affordability has severely decreased, especially given its already extremely low base for people living on social security payments and more broadly on lower incomes.

Anglicare has been conducting Australia's Rental Affordability Snapshot for 14 years. The 2023 Snapshot recorded that:

- the number of rental listings across the country (45,895) was the lowest on record
- vacancy rate (0.8%) was the lowest on record
- average rents rose 11% annually
- **four rentals were affordable across the entire country** for a single person living on the JobSeeker payment
- unemployed couples, single parents living on social security payments and people receiving the Disability Support pension could afford 0.2% of listed rentals
- a single pensioner could afford 0.4% of listed rentals
- a person earning minimum wage could afford 1% of listed rentals, the lowest rental affordability on record for this cohort.¹⁶

This shows there is virtually no housing that is affordable to people living on lower incomes across the country. Other research such as National Shelter Rental Affordability Index shows similar results.¹⁷

It is also important to note that just because a dwelling is affordable to a person on a low income does not mean they will be able to secure it. Indeed, people in the private rental market compete to secure properties, with applicants on higher incomes overwhelmingly favoured by landlords and real estate agents. In areas affected by natural disasters (e.g. NSW Northern Rivers area) or under pressure from people with higher financial capacity relocating from metropolitan areas (e.g. Shoalhaven area) the situation is even more dire for people on lower incomes, increasing incidence and risk of homelessness.

4. Actions that can be taken by governments to reduce rents or limit rent rises

¹³ Tenants Union of NSW, Rent Tracker Area Too (Web Page, used 5 July 2023) <
<https://www.tenants.org.au/tu/rent-tracker-area-too> >

¹⁴ Australian Bureau of Statistics, Annual wage growth increases to 3.7% in March quarter 2023 (Media release, 27 May 2023).

¹⁵ Services Australia, Australian Government, Budget 2023-24, *Budget* (Web Page, 22 June 2023) <
<https://www.servicesaustralia.gov.au/budget-2023-24?context=1> >

¹⁶ Anglicare Australia, *Rental Affordability Snapshot. Fourteenth Edition*. (National report, 2023) p6.

¹⁷ SGS Economics & Planning for National Shelter, *Rental Affordability Index. Key Findings*. (Report, November 2022)

There are several policy and regulatory levers that can be used by the federal and State governments to reduce rents and/or limit rent rises:

- Increasing CRA, followed by reform of the payment to improve targeting and effect on rents
- Better regulation of frequency and amount of rent increases, and
- Providing enough social and affordable housing to create competition with the lower price points of the private rental market.

While policy and regulatory action to reduce rents or limit rent rises will vary between jurisdictions to fit local needs and preferences and market conditions, PIAC notes the important role the upcoming National Housing and Homelessness Strategy (NHHS) can play in providing leadership, coordination, and a clear vision to end homelessness and for a fit for purpose rental housing system, including an adequate legislative framework. It is crucial that the NHHS is regularly updated and evaluated, and that progress towards its objectives is reported on, including publicly. PIAC recommends that there is a legislative obligation for the Minister for Housing to do this.

Recommendation 4 The National Housing and Homelessness Strategy to be mandatory

Create a legislative obligation for the Minister for Housing to regularly make and update a National Housing and Homelessness Strategy and regularly and publicly report on its progress.

4.1 Reform of Commonwealth Rent Assistance

Commonwealth Rent Assistance has not kept pace with rapidly increasing rents. After CRA is deducted from rents, over 30% of low income households still experience housing stress, paying more than 30% of their income in rent.¹⁸ PIAC strongly supports the Commonwealth Government announcement in the 2022/23 budget to increase CRA by 15%.¹⁹ This increase, however, will only provide limited cost-of-living relief to low income households, leaving too many in situations of housing stress and at risk of homelessness.

Research by the Australian Housing and Urban Research Institute (AHURI) conducted in 2020 showed that raising the maximum rate of CRA by 30% would improve affordability outcomes for 44% of private low income renters.²⁰ Increasing CRA will deliver immediate rent reductions for large numbers of low income renters – over 620,000 based on 2020 modelling – easing cost of living pressure and reducing risk and incidence of homelessness.

¹⁸ Rache Ong et al., Demand-side assistance in Australia's rental housing market: exploring reform options (AHURI Final Report No. 342, October 2020) p37.

¹⁹ Amanda Rishworth, Minister for Social Services, Boosting support payments to help with cost-of-living pressures (Media release, 9 May 2023).

²⁰ Rache Ong et al., Demand-side assistance in Australia's rental housing market: exploring reform options (AHURI Final Report No. 342, October 2020) p47.

In line with recommendations of the Australian Council of Social Service (ACOSS), PIAC strongly supports an immediate increase to CRA of 50% (based on the 2022 CRA rate - inclusive of the 15% increase announced in May 2023) followed by a review of the payment.

CRA, in its current design, is not an efficient demand side subsidy. Significant subsidy amounts – 32.4% - are shifted into higher rents, particularly in severely disadvantaged areas, due to low housing supply elasticity at lower price points.²¹ This means a large proportion of the subsidy is captured by landlords instead of benefitting low income renters.

CRA is also poorly targeted. 18% of low income renters experience housing stress but are ineligible for CRA. For example, the payment favours families with children, who are over-represented amongst income units who are not experiencing housing stress but still receive CRA, over people who are single, who make up 80% of low income private renters in housing stress not receiving CRA. The overall targeting error of the payment – i.e. CRA accuracy in being paid to low income renters experiencing housing stress – is estimated at 41%.²²

This means there is opportunity to improve the efficiency and targeting of CRA to better relieve housing stress and mitigate risk of homelessness amongst low income renters. PIAC recommends that a review of CRA be undertaken in order to improve the performance of the payment.

Recommendation 5 Increase Commonwealth Rent Assistance by 50%

Recommendation 6 Review Commonwealth Rent Assistance

Undertake a review of Commonwealth Rent Assistance, with a view to improve its efficiency and targeting, in consultation with housing and social services peak bodies and housing policy experts.

4.2 Better regulation of rent increases

Housing is a basic need and an essential service that must be regulated as such. Better regulation of rent increases has the potential to reduce risk of homelessness by increasing rental affordability for people who are housed, and facilitating entry or re-entry into housing for people experiencing homelessness.

Rent increase regulation is a State responsibility. Every jurisdiction in Australia already regulates rent increases through regulation of notice periods, frequency of rent increases, and providing a process to challenge excessive rent increases. For example, in NSW, rent can only be increased once in a 12-month period, with a minimum notice of 60 days. Rent cannot be increased under agreements with a fixed term of less than 2 years unless the original agreement sets out the increase or a method for calculating it.²³

²¹ *Ib d*, p1.

²² *Ib d*, p46.

²³ *Residential Tenancies Act 2012* (NSW) s 41, s 42.

The ACT is the only jurisdiction regulating rent increases amounts. Under s 64B (1) of the *Residential Tenancies Act 1997* (ACT), a lessor may only increase rent by more than the amount prescribed by regulation if the tenancy agreement allows it, the tenant agrees in writing, or after obtaining the approval of the ACT Civil & Administrative Tribunal. Currently, regulation sets the prescribed rent increase amount at 110% of the increase in CPI for rents. We note that the ACT model allows for vacancy decontrol, meaning rent increases are not regulated in between tenancy agreements. NSW is currently considering whether landlords should be required to show that a rent increase exceeding CPI is not 'excessive'.²⁴

Better regulation of rent increases, including fairer limits on rent increases amounts and stronger protections against excessive rent increases, can provide relief to people who rent their home and facilitate re-entry of people experiencing homelessness in private housing through downward pressure on overall rents. We note that reform of no grounds evictions to prescribe grounds is a pre-requisite to regulation of rent increases amounts. Otherwise, landlords who wish to raise the rent can simply evict the current tenant through a no grounds eviction and re-advertise the property at a higher price.

The ACT legislation could be used as a framework by other jurisdictions to be adapted to local market conditions and legislative context.

Recommendation 7 Create a national rent increase regulation framework

The Ministerial Council on Housing and Homelessness to develop a national framework for better regulation of rent increases based on the ACT model.

4.3 Supply side intervention: provision of social and affordable housing

Benefits of social and affordable housing to address and prevent homelessness and housing instability for people who are unable to access safe, secure, affordable housing in the private rental market – and for essential workers who cannot afford to live sufficiently close to where they work – are well documented.²⁵

The potential for social and affordable housing to compete with private rental market properties at the lower price points of the housing market, however, is seldom discussed in Australia. If there is sufficient stock of social and affordable housing for people on low incomes (i.e. the first and second income quintiles and some specific key workers with third quintile incomes) to have reasonable prospects to access social or affordable housing within the short to medium term, it might create competition at the lower end price points of the market. Private rental market landlords looking to attract tenants at price points competing with social and affordable housing might have to offer additional amenity and/or reduce rents.

²⁴ Department of Customer Service, NSW Government, *Improving NSW rental laws consultation paper* (Consultation paper, July 2023) p18.

²⁵ See for example Julie Lawson et al., *Social housing as infrastructure: rationale, prioritisation and investment pathway*, (AHURI Final Report No. 315, 26 June 2019).

PIAC strongly supports the commitments of the Commonwealth Government to support State and Territories to deliver new social and affordable housing through the \$2 billion Social Housing Accelerator Payment and the establishment of the Housing Australia Future Fund. In addition to these investments, we support recommendation 23 of ACOSS 2022/23 pre-budget submission to provide States and Territories with \$7 billion capital funding over 3 years to deliver 20,000-30,000 social housing dwellings, with most construction happening within the first 2 years.²⁶

Recommendation 8 Increase supply of social housing

Provide capital funding of \$7 billion to the States and Territories to deliver 20,000-30,000 social housing dwellings.

5. Improvements to renters' rights, including rent stabilisation, length of leases and no grounds evictions

PIAC considers better regulation of rent increases to be a form of rent stabilisation even with the inclusion of vacancy decontrol. This is covered in section 4.2. This section focuses on strengthening renters rights to increase length and security of tenure. We note that tenancy legislation is a State prerogative. The Commonwealth Government, however, can provide leadership and support harmonisation of legislation across Australian jurisdictions.

5.1 Reform of no grounds evictions

Most Australian jurisdictions currently allow landlords to terminate a tenancy without having to provide a reason. This is referred to as a 'no grounds' evictions. Australian jurisdictions are outliers amongst OECD jurisdictions in allowing no grounds evictions.²⁷

The right to adequate housing is recognised as a human right as part of the right to an adequate standard of living under the 1948 Universal Declaration of Human Rights and in the 1966 International Covenant on Economic, Social and Cultural Rights. The general comment no 7 on forced evictions has clarified that:

'it is clear that legislation against forced evictions is an essential basis upon which to build a system of effective protection. Such legislation should include measures which (a) provide the greatest possible security of tenure to occupiers of houses and land, (b) conform to the Covenant and (c) are designed to control strictly the circumstances under which evictions may be carried out.'²⁸

²⁶ ACOSS, Submission no 8 to the Minister for Housing and Assistant Treasurer, Australian Government, 2022-23 *Pre-Budget Submissions*, p31.

²⁷ Cat Keay, Housing horrors: Australian renters go head to head with landlords over rights, *The New Daily* (Online, 4 Apr 2019) <<https://thenewdaily.com.au/finance/property/2019/04/04/no-rights-for-renters/>>.

²⁸ Committee on Economic, Social and Cultural Rights, *General Comment no 7 on forced evictions* (1997) 9.

Allowing no grounds evictions does not provide the greatest possible security of tenure to people who rent their home. By definition, it also does not control the circumstances under which evictions may be carried out.

By allowing the landlord to end a tenancy without having to provide a reason, no grounds evictions create an inappropriate, severe power imbalance. They also increase the risk and incidence of retaliatory evictions. HPLS regularly defends clients who are obviously being evicted under no grounds provisions because they have asserted their rights under tenancy law. While there are provisions in NSW against retaliatory evictions, they are hard to prove and rarely used.

The possibility alone of a no ground eviction undermines every other rights tenants have at law. Indeed, if a tenant can be evicted from their home without a reason being provided, they may be fearful or at least hesitant to assert their rights, including basic, essential rights such as adequate repairs and maintenance. This is especially true for people at risk of homelessness if they are evicted.

Reform of tenancy legislation to replace no grounds evictions with a set of prescribed, reasonable grounds is urgently needed. This must apply to both fixed and periodic term tenancy agreements to provide greater security of tenure to people who rent their home. It is important to note that arguments for retaining no grounds evictions for fixed term tenancies - on the basis that the contract 'has reached its end date' - misrepresent the contractual relationship the tenant and landlord have entered. Once the initial period of the fixed term agreement reaches its end, the agreement continues whether or not a new fixed term agreement is signed. This occurs either under the form of a periodic agreement or of a new fixed term agreement. The contractual relationship itself, where the landlord provides a service (occupation of the premises) in exchange for a fee (rent) does not end unless it is terminated by one of the parties.²⁹

More practically, reform of no grounds evictions that would only apply to periodic tenancies creates a loophole severely undermining its objectives. This is because landlords can simply ensure they retain the option of using no grounds evictions by making sure they terminate each fixed term agreement and enter a new one should they wish the tenancy to continue.

Reform of no grounds evictions across all Australian jurisdictions is a low-cost, sensible measure that will provide greater security of tenure to people who rent their home, and improve their overall experience while reducing the number of evictions into homelessness. It will also ensure Australia complies with its obligations under international human rights legislation. The Commonwealth can play a leadership and harmonisation role in these essential reforms through the Ministerial Council on Housing and Homelessness. The ACT has recently removed all forms of tenancy termination without a legitimate cause.³⁰ This new legislation provides a model that can be used to work towards harmonised tenancy legislation across jurisdictions.

²⁹ Leo Patterson Ross, No-grounds evictions are unfair, *Australian Lawyers Alliance* (Blog post, 21 Apr 2022).

³⁰ ACT Government, Strengthening renters' rights with ban on no-cause evictions, (Webpage, 21 March 2023) <[---

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Recommendation 9 Create a national framework for eviction legislation

The Ministerial Council on Housing and Homelessness to develop a framework for reform of tenancy legislation to replace no grounds evictions with sets of prescribed, reasonable grounds across all jurisdictions, to be integrated in the National Housing and Homelessness Strategy.

5.2 Length of leases

All Australian jurisdictions already allow for long-term leases. Longer leases have the potential to provide people who rent their home with greater stability and security of tenure in some circumstances. It is important, however, that encouraging longer leases is not seen as an alternative to reform of no grounds evictions and does not reduce flexibility and mobility for people who rent their home. Longer leases do not address the fact no-ground evictions undermine other rights tenants have at law, especially towards the end of the fixed term (as tenants will be worried the landlord will end the lease).

Reform of no grounds evictions is potentially sufficient to guarantee security of tenure for people who wish to stay in their home while allowing for flexibility and mobility in the rental market. In our view, encouraging longer leases is not the most needed or efficient way to address the worsening rental crisis. Consideration of whether and how to encourage longer leases is best left to individual jurisdictions.