

March, 2022

## About the Tenants' Union of NSW

The Tenants' Union of NSW is the peak body representing the interests of tenants in New South Wales. We are a Community Legal Centre specialising in residential tenancy law and policy, and the main resourcing body for the state-wide network of Tenants Advice and Advocacy Services (TAASs) in New South Wales.

The TAAS network assists more than 25,000 tenants, land lease community residents, and other renters each year. We have long-standing expertise in renting law, policy and practice. The Tenants' Union NSW is a member of the National Association of Tenant Organisations (NATO), an unfunded federation of State and Territory-based Tenants' Unions and Tenant Advice Services across Australia. We are also a member of the International Union of Tenants.

## About this Submission

Everyone deserves a home. Housing is the basis from which we ensure our communities' well-being. This is not simply about the material, physical and structural protections housing provide, but also a sense of home and belonging within a wider community.

The Australian housing system has failed to ensure everyone has access to safe, secure, affordable housing. This is particularly true in relation for those renting in the private rental market, a problem exacerbated by the very limited availability of non-market rental housing options (including public and community housing). Unfortunately, due to chronic under-resourcing and the adoption of 'pathways' frameworks by many governments and community housing providers across Australian jurisdictions this is also too often the experience for renters of public and community housing. This failure increases both the risk of homelessness for vulnerable renting households, and the barriers to people developing a pathway out of homelessness.

The Tenants' Union of NSW appreciates the opportunity to provide a submission to the Productivity Commission's review of the National Housing and Homelessness Agreement. We welcome the opportunity to offer comment on key terms, objectives, scope, outcome and outputs. Our focus in this brief submission is on how the agreement can deliver better housing outcomes for those in the broad private rental market, and for those renting in non-market rental housing (public and community housing) by introducing some specific targets and outcomes in relation to security, health and safety, and accessibility. We primarily discuss the experience of renters in NSW, however the recommendations we make are generally appropriate across all Australian jurisdictions.

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*The Tenants' Union of NSW' office is located on the unceded land of the Gadigal of the Eora Nation.*

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## Recommendations

### **Recommendation 1: Increased, substantial investment in social housing**

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*The NHHA provide for a substantially increased level of funding from the Commonwealth and state governments for the building of new, additional social housing stock, and for required maintenance and upgrades or retrofitting of older stock.*

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**Recommendation 2: CRA and the funding of Community Housing Providers**

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*Consideration over the cycle of this agreement to the design and implementation of an alternative funding model that separates the funding required to meet the day-to-day operational costs, and the source of funds for growth.*

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**Recommendation 3: Community Land Trusts and Co-operatives**

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*Negotiations around the NHHA allow for discussion of how the role of NHFIC could be expanded to include long term, fixed rate development finance to community and cooperative housing organisations.*

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**Recommendation 4: Tenancy reform to improve security for renters**

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*That the National Housing and Homelessness Agreement include outcomes relating to tenancy reform to improve security for renters in the private rental market, specifically that all state and territory governments remove no grounds or no reason eviction provisions at the end of a fixed-term tenancy or during a continuing tenancy from tenancy law*

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**Recommendation 5 & 6: Ensure the adequate resourcing of advocacy support for renters**

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*The NHHA must ensure states and territories adequately resource free, independent legal advice and advocacy services for renters.*

*Assessment of adequacy of resourcing must consider the additional funding required for effective and appropriate provision of information, advice and advocacy supports for Aboriginal and Torres Strait Islander renters, renters from culturally and linguistically diverse communities, and renters with a disability.*

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**Recommendation 7: A national peak body for renters**

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*The NHHA provides funding to adequately resource coordination of the National Association of Tenants Organisations (NATO) to ensure renters have a national voice and an active peak body able to represent their interests at the national level.*

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**Recommendation 8: Energy efficiency and rented homes (general)**

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*Incentivize states and territories to implement best practice minimum standards for energy efficiency in rental homes.*

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**Recommendation 9: Energy efficiency and rented homes (public & community housing)**

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*Ensure adequate resourcing and inputs to allow public and community housing providers to undertake the upgrades, retrofitting and new builds required to ensure all social housing dwelling meet the minimum standards for energy efficiency requirements in their jurisdiction.*

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**Recommendation 10: Accessibility and housing (general)**

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*The NHHAs should provide an incentive to state and territory governments to commit to implementation of the new minimum accessibility standards of the National Construction Code.*

### **Recommendation 11 & 12: Accessibility and housing (public & community housing)**

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*The NHHAs should encourage states and territories to establish clear and ambitious targets and guidelines regarding the percentage of LHD Gold Standard dwellings in all new social housing developments.*

*The NHHAs must take account of the resourcing requirements for various jurisdictions to meet the current LHD Silver level standard, and to work towards incrementally increasing to 100% LHD Gold Standard in new social housing developments over a reasonable timeframe.*

### **Recommendation 13: Tenant Participation**

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*The NHHAs should encourage consideration of how tenant participation in governance and general organisational decision making can be built into the regulatory framework for community housing providers.*

### **Recommendation 14: Participation of renters in the NHHAs process**

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*That future NHHAs provide specific funding for a specific consultative process for ensuring renters' voice and those with lived experience of homelessness are part of the conversation about their needs, and their desired outcomes and deliverables from the agreement.*

### **Recommendation 15: Data sharing regarding private rental market**

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*The NHHAs provide an incentive for states and territories to provide accurate information about the commencement and end of tenancies, including data about tenancy commencement and end of tenancies.*

### **Recommendation 16: Data sharing regarding public and community housing**

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*More comprehensive data be required to be made available and publicly accessible under the NHHAs regarding public and community housing properties and tenancy management practice in relation to the following: existing property data; tenant provided income; repairs responses; court or tribunal activity; bonds; exits; number of tenancies re-entering social housing after exit; development of new stock*

### **Recommendation 17: Landlord registration**

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*The NHHAs encourage state and territories to establish a landlord registration scheme to provide transparency, accountability and data to our renting systems.*

# 1. PROVIDING GENUINELY AFFORDABLE HOMES

## 1.1 What is 'genuinely affordable' housing?

The Issues Paper usefully provides a definition of housing affordability, including reference to the current common measure of housing affordability used - the 30/40 rule, which defines 'housing stress' or unaffordability as where a household in the bottom two quintiles of income distribution pays more than 30% of their income in housing costs. While the 30/40 rule is relatively simple to understand, it is nonetheless inadequate in capturing the problem of affordability for some households, particularly for those on very low-incomes. As an example of its inadequacy, while renters of public and community housing would not be considered in housing stress according to the 30/40 rule because none pay more than 30% of their income on rent, more than two thirds are unable to meet basic living standards after housing costs and are living in poverty.<sup>1</sup> The Issues Paper recognises the limited, blunt nature of the 30/40 rule to some extent when drawing on the explanation of housing affordability outlined by Stone, Burke and Ralston in their 2011 AHURI research on *The Residual Income Approach to Housing Affordability*. As they explain, affordability is a relationship between housing and people: "for some people, all housing is affordable, no matter how expensive; for others, no housing is affordable unless it is free".

Building on this recognition, some attention should be given to how the agreement might adopt a residual affordability method for assessing affordability alongside the well-established 30-40 rule. Residual income methods calculate for different households how much is left over for housing costs after relevant expenditure as measured by a budget standard<sup>2</sup> is considered. Where a household does not have enough money left over to cover their basic expenses after paying for housing, the household is considered to have an affordability problem.

During COVID-19 NSW government ensured that the Coronavirus Supplement was not classified as assessable income under either the public housing or community housing rent policies. This meant that households in receipt of the Supplement had an effective rent of as low as 12.5% of household income, or as Pawson et al. put it, the Supplement was an effective 130% boost to income<sup>3</sup>. The result was a marked decrease in rent arrears and a generally higher capacity to meet the needs of the household, without a

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<sup>1</sup> The 30/40 rule sets out that a household is in housing stress when it is in the bottom 40% of Australia's income distribution and is paying more than 30% of its income on housing costs. The estimation of 2/3 of social housing renters not being able to afford basic necessities is based on an assessment of housing affordability using the residual income. See Burke, T., Stone, M. and Ralston, L.

(2011) *The residual income method: a new lens on housing affordability and market behaviour*, AHURI Final Report No. 176, [ahuri.edu.au/research/final-reports/176](http://ahuri.edu.au/research/final-reports/176), accessed 22 January 2022

<sup>2</sup> For Australian households, the indicative budget standards generally referenced are those developed by the Social Policy Research Centre at the University of New South Wales. Peter Saunders, Megan Bedford (2017) [New Minimum Income for Healthy Living Budget Standards for Low Paid and Unemployed Australians](#), Social Policy Research Centre, UNSW 2017

<sup>3</sup> Pawson, H., Martin, C., Sisson, A., Thompson, S., Fitzpatrick, S. and Marsh, A. (2021) 'COVID-19: Rental housing and homelessness impacts – an initial analysis'; ACOSS/UNSW Poverty and Inequality Partnership Report No. 7, Sydney

reduction in the housing provider's income which was reported at generally less than 3%<sup>4</sup> despite the financial shocks of COVID-19.

More consistent consideration of residual affordability methods would better capture the extent and distribution of our housing affordability problem, as well as improve our understanding of the measures required to wholly address the problem.

## **1.2 Greater capital investment by government required to deliver affordable homes**

Substantial investment in public and community housing is required from both federal and state governments. Australia's stock of public and community housing has fallen consistently over recent years, and overall the number of social housing dwellings available is not increasing at a rate sufficient to keep up with demand.

Significant investment in non-market housing (specifically, public and community housing) would put positive pressure on market housing by introducing real competition and higher standards. It would effectively challenge the private market to do better, especially for housing available at the lower end of the private rental market.

### **Recommendation 1**

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*The NHHA provide for a substantially increased level of funding from the Commonwealth and state governments for the building of new, additional social housing stock, and for required maintenance and upgrades or retrofitting of older stock.*

## **1.3 Increase in government income support**

Consideration of housing affordability cannot be separated from income. For some renters, on their current levels of income there is no level of rent that is affordable. As discussed earlier this includes a majority of tenants in public and community housing if affordability is assessed on the basis of what is left over after rent to cover off on basic needs. Give social housing providers rely primarily on the income generated from tenants' rents, it may not currently be feasible for them to further subsidise housing costs (reduce rents) for tenants without significant impact on their ability to meet the maintenance costs of current housing, let alone upgrade existing dwellings or build new stock.

Greater provision of non-market housing by government is required (see recommendation 1). There is also a need to increase in income support for individual renters to ensure they have greater capacity to meet basic expenses after rent. Currently entitlement and level or adequacy of government income support payments and allowances available is formally outside of the scope of the NHHA. However, a more

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<sup>4</sup> NHFIC (2020) *Australia's affordable and social housing sector: A resilient response to COVID-19* <https://www.nhfic.gov.au/media/1414/australias-socialand-affordable-housing-sector-28-october-2020.pdf>

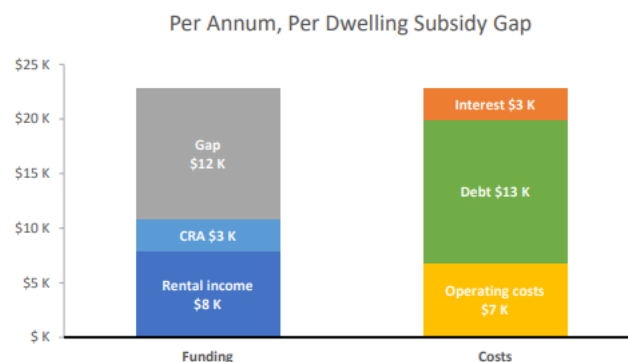
concrete and transparent connection between the outcomes established under the NHHA and income support policies is required.

Additionally, consideration should be given to how the agreement can increase the resourcing of non-market housing providers, specifically to allow them to further subsidise housing costs for those on very low incomes (reduce rents) without impacting their ability to meet their operational costs.

## 1.4 Reconsideration of current funding model for Community Housing Providers

The inadequacy of the level of direct investment in social housing saw the 2018 National Housing and Homelessness Agreement shift to encourage the transfer of management of social and affordable housing to Community Housing Providers. The rationale for this being that community housing tenants are eligible for Commonwealth Rent Assistance (CRA) whereas public housing tenants are not, enabling community housing providers to charge higher rents without reducing the tenant's net income. Where the provider has a sufficiently sized asset base, they are then understood to be able to use the expectation of ongoing higher rental income to leverage financing and further expand their (and the generally available) stock of social housing.

Troy et al. (2019)<sup>5</sup> in estimating the cost of provision neatly demonstrates the issue with this model. The average actual operating costs are met or closely met by the rent paid by the tenant based on their non-CRA income. The CRA is generally able to cover any operating costs gap. The issue is that providers are expected to also account for development costs and where this is met through a loan rather than a direct grant, the gap is far above CRA.



Troy et al (2019) "Figure 4: Per annum, per dwelling subsidy gap for social housing operating subsidy model"

What this also doesn't take account of is the role the individual renter in this scenario is forced to take on. Essentially the individual renter under this system is expected to apply for federal funds on behalf of the state social housing system. In our experience, a renter can bear a significant cost – and can on occasion even face the risk of losing their tenancy - if they don't comply or if there are inadvertent delays or differing calculations

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<sup>5</sup> Troy, L., van den Nouwelant, R. & Randolph, B. (2019) *Estimating need and costs of social and affordable housing delivery*, City Futures Research Centre, UNSW 2019



made by government agencies and housing provider. We have a case which has been ongoing for more than 7 years where the cycle of mismatching calculations between Centrelink and the housing provider plunge the tenant into arrears, before a new round of appeals corrects the calculation and removes the arrears – until the next review. It is an undue administrative burden to place upon the renters.

We acknowledge the process to shift away from this CRA-based funding will not be a light undertaking.

## **Recommendation 2**

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*Consideration over the cycle of this agreement to the design and implementation of an alternative funding model that separates the funding required to meet the day-to-day operational costs, and the source of funds for growth.*

## **1.5 Community land trusts and co-operatives**

There is a significant amount of evidence to support the suitability of these housing models as being capable of meeting the aims of providing stable and affordable housing and delivering amenity, tenure security, high quality urban design and social capital.

Co-operatives in particular enable greater tenant rights in practice, encourage a place in the community and provide more than just the physical housing form, including ensuring residents having an ongoing say in provider activities. The 2020 Institute for Culture and Society's submission to the NSW Housing Strategy Discussion Paper sets out a number of ways in which governments can play a vital part in encouraging stable and effective housing models such as Community Land Trusts and cooperatives, including through the diversification of available funding models.<sup>6</sup>

## **Recommendation 3**

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*Negotiations around the NHHA allow for discussion of how the role of NHFIC could be expanded to include long term, fixed rate development finance to community and cooperative housing organisations.*

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<sup>6</sup> Institute for Culture and Society, Western Sydney University (2020) *Submission to the Housing Strategy for NSW – Discussion Paper*, [www.westernsydney.edu.au/\\_\\_data/assets/pdf\\_file/0020/1731143/housing-strategy-for-nswsubmission-ics.pdf](http://www.westernsydney.edu.au/__data/assets/pdf_file/0020/1731143/housing-strategy-for-nswsubmission-ics.pdf), accessed 24/08/20217

## 2. TENANCY REFORM TO ENCOURAGE SECURITY OF TENURE

### 2.1 Addressing homelessness by preventing unnecessary eviction

More focus is required on prevention and early intervention to sustain tenancies. The number of people in NSW experiencing homelessness continues to increase. According to the 2016 census, 37,715 people in NSW were homeless, an increase of 37% from 27,479 in 2011. Of this group, 35% were aged under 25 years, 17% over 55 years; and 6% identified as Aboriginal and Torres Strait Islander.<sup>7</sup> The number of older people, particularly women seeking support from homelessness services has increased significantly; between 2013/14 and 2016/17, NSW saw an 88% growth in the number of women aged of 55 and over, accessing homelessness services.<sup>8</sup>

Recent AHURI research led by Deborah Batterham looking into the populations most at risk of homelessness identified the risk factors for being made homeless as firstly residing in rental housing; and secondly experiencing at least two of the following:

- low income;
- vulnerability to discrimination;
- low social resources and supports;
- needing support to access or maintain a living situation;
- and/or a tight housing market context.<sup>9</sup>

Batterham et al go on to identify those at-risk as renters, and more likely to be female, Indigenous and living in a lone person or lone parent household. People who identify as lesbian, gay or bisexual, and report fair or poor health are also more likely to be at risk. Households who have a low-income, are unemployed or outside the labour force, and in receipt of income support payments and people with lower levels of educational attainment are at risk. All of these factors indicate someone is more likely “to report difficulty paying bills and rent on time and are more likely to experience a range of indicators of material deprivation such as skipping meals and being unable to heat their home.”<sup>10</sup> If evicted, they are at a higher risk of homelessness.

States and territories are responsible for tenancy legislation and regulation. The 2018 NHHA specified that tenancy reform encouraging security of tenure in the private rental market was a national housing priority policy area for the agreement.

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<sup>7</sup> Homelessness NSW, *Homelessness in New South Wales*, homelessnessnsw.org.au/wp-content/uploads/2021/03/Homelessness-in-New-South-Wales-.pdf, accessed 25 January 2022.

<sup>8</sup> NSW Ageing on the Edge (2021), *Home at Last: Solutions to End Homelessness of Older People in NSW*, oldertenants.org.au/national-action/ageing-the-edge-nsw-forum, accessed 25 January 2022

<sup>9</sup> Batterham, D., Nygaard, C. A., Reynolds, M., & de Vries, J., (2021) *Estimating the population at-risk of homelessness in small areas*, AHURI, November 2021, p.1, ahuri.edu.au/sites/default/files/documents/2021-11/AHURI-Final-Report-370-Estimating-the-population-at-risk-of-homelessness-in-small-areas.pdf, accessed 25 January 2022

<sup>10</sup> AHURI Policy Evidence Summary (2021): A nationwide analysis of the risk of homelessness in Australia, Based on AHURI Final Report No. 370: *Estimating the population at-risk of homelessness in small areas*, ahuri.edu.au/sites/default/files/documents/2021-11/PES-370-A-nationwide-analysis-of-the-risk-of-homelessness-in-Australia.pdf, accessed 25 January 2022

Housing advocates have long called for tenancy law reforms to improve security for renters, in particular pointing to the ability for landlords to give termination notices with no grounds or no specified reason, at the end of a fixed-term tenancy or during a continuing tenancy as contrary to genuine security.<sup>11</sup> Removing these provisions from Australian tenancy law has been a longstanding recommendation of housing policy experts, because of the way 'no grounds' evictions compromise the integrity of otherwise well-designed legislation. 'No grounds' termination notices give cover for bad reasons for seeking termination, such as retaliation and discrimination. The recommendation to remove 'no grounds' evictions was included in the seminal report to the Inquiry into Poverty by Professor Sackville, 'Law and Poverty in Australia'.<sup>12</sup>

The report, published 46 years ago, laid the framework of the modern era and still current Residential Tenancies Acts introduced in all states and territories over the 1980s and 1990s. It recommended the creation of Rental Bond Boards and tenancy tribunals, minimum property standards, and recourse to tribunals, amongst many other features now taken for granted. Though elements of the Sackville report have been replaced with 21<sup>st</sup> century approaches, the fundamental issue it presents in regards to creating balanced tenancy law is still of great value.

The report made the point that implementing the recommendations would simply have no effect if the ability to end the tenancy without grounds were to continue in either periodic or at the end of fixed term agreements, because, particularly in relation to retaliatory notices they say "any other view would render worthless many of the substantive reforms we have suggested, since a tenant is hardly likely to insist on the full measure of his legal entitlement if the price of his actions is eviction from the premises."<sup>13</sup>

Sackville recommended landlord's notices be restricted to only these grounds:

- rent arrears, other breaches or illegal conduct;
- the tenant serving their own notice but then not moving;
- the landlord or their immediate family moving in, or demolishing and reconstruction;
- the landlord having sold the premises to another owner occupier who requires possession.

As 'no grounds' evictions have continued, many of the subsequent improvements to the law have not made the substantive difference that their respective governments hoped.

Since the signing of the 2018 NHHA agreement most jurisdictions have either completed statutory reviews, or reviews are currently still underway. While improved security for renters was a focus in many of the completed reviews in NSW, ACT and Victoria, only in Victoria were any substantial improvements made. Victoria amended its Residential Tenancies Act to almost completely remove 'no reason' or without grounds terminations,

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<sup>11</sup> Domain (2018), No More No Grounds Terminations: Experts unite in open letter on rental housing reform in NSW, [www.domain.com.au/news/time-evict-no-grounds-termination-open-letter-rental-housing-reform-nsw-766696/](http://www.domain.com.au/news/time-evict-no-grounds-termination-open-letter-rental-housing-reform-nsw-766696/), accessed 18/3/2022

<sup>12</sup> Commission of Inquiry into Poverty, (1975) *Law and Poverty in Australia* (Parliamentary Paper no. 294, October 1975) Commonwealth of Australia, 80-81.

<sup>13</sup> Commission of Inquiry into Poverty, (1975).

the exception being a 'no specified reason' termination is allowed at the end of the first fixed term tenancy agreement. Anecdotal information shared by the real estate industry in Victoria suggests many real estates and landlords are now using this power to evict renters they don't like or feel may be 'problematic' in the future who they will no longer be able to evict after the first term without evidence of a breach or for the reasons otherwise specified in the Act. ACT and NSW did not introduce reforms in relation to security. 'No grounds' evictions, and retaliatory evictions, are both still permitted features of NSW law. The reviews in Queensland, Western Australia and the Northern Territory are ongoing, though it is not clear they will introduce any reforms relating to improved security.

Another factor undermining the effectiveness of the National Housing and Homelessness Agreement is rapid rent growth in many areas of the country. In NSW, rents outside Greater Sydney have increased 22% from Quarter 1 2019 to Quarter 1 2022 – this is an average 11% each year since 2019 but most of the increase has come in the last year. Particular areas such as the Richmond-Tweed, Mid-North Coast have seen new rents increase by 18-20% in the last year<sup>14</sup>. These extreme increases are related to low supply of genuinely affordable housing and significantly increase demand on housing and homelessness services. The effectiveness of current responses to affordability, including levers in relevant tenancy law, should be considered.

#### **Recommendation 4**

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*That the National Housing and Homelessness Agreement include outcomes relating to tenancy reform to improve security for renters in the private rental market, specifically that all state and territory governments remove no grounds or no reason eviction provisions at the end of a fixed-term tenancy or during a continuing tenancy from tenancy law*

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<sup>14</sup> Author's own analysis of open Rental Bonds Data provided by NSW Fair Trading updated to February 2022, accessed at: <https://www.fairtrading.nsw.gov.au/about-fair-trading/rental-bond-data>

## 3. ACCESS TO ADVICE AND ADVOCACY FOR RENTERS

### 3.1 Ensure adequate funding for independent advocacy services for renters

In NSW the Tenants Advice and Advocacy Program (TAAP) funds a network of 24 organisations across New South Wales. These services provide free information, advice and advocacy to tenants in their local areas. The network brings together the skills and expertise of highly skilled advocates who work to ensure that high quality professional advice and advocacy is available to all tenants in New South Wales.

In NSW the Tenancy Advice and Advocacy Program is in the unique position of having four specialist Aboriginal TAASs, plus an Aboriginal Resource Unit and Aboriginal Legal Officer who is based at the Tenants' Union NSW.

In our experience people come to Tenants' Advice and Advocacy Services (TAAS) when they are at risk of homelessness, seeking advice and assistance early to stop initial problems becoming large. NSW Tenants' Advice and Advocacy services play a significant role in preventing evictions and maintaining tenancies, which benefits both tenants and landlords.

Over the last fifteen years demand for tenancy advice and advocacy services has increased and the indications are that demand will continue to increase for the foreseeable future. Resourcing of services has not kept pace with the growth in the number of residential tenancies in NSW and the growth in the number of disadvantaged households in the rental market whose tenancies are especially precarious. The capacity of Tenants' Advice and Advocacy Services to provide assistance has been significantly constrained by the lack of adequate resourcing for the network. In 2021 the network received a very modest permanent increase to its funding, and has also received two one-off grants of additional funding during Covid-19 in response to the increased support needs of renters. The need for a more substantial permanent increase in funding of the network remains.

Ensuring all states and territories are adequately resourcing Tenants' Advice and Advocacy Services should be considered an essential feature of the Housing and Homelessness Agreement. Funding for such services should in all jurisdictions be increased to ensure services can better meet demand, with increases to funding tied to growth in the number of tenancies, and the number of disadvantaged tenants. Additional funding for services and supports targeted to particularly vulnerable groups and/or those with specific needs around accessibility is also required.

#### **Recommendation 5 & 6**

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*The NHHA must ensure states and territories adequately resource free, independent legal advice and advocacy services for renters.*

*Assessment of adequacy of resourcing must consider the additional funding required for effective and appropriate provision of information, advice and advocacy supports for Aboriginal and Torres Strait Islander renters, renters from culturally and linguistically diverse communities, and renters with a disability.*

## 3.2 A national voice for renters

While there are peak real estate industry bodies, state and territory and nationally, as well as community and public housing providers this is not the case for renters. As consumers, renters are disadvantaged and vulnerable to market changes.

Over the past two years the COVID-19 pandemic has again made clear the need for housing advocates with experience and expertise in residential tenancy systems to be resourced to take part at the national level. During Covid-19 our experience has been that all state and territory-based tenant organisations have faced significant demands within their own jurisdictions and capacity has been severely limited.

Currently the National Association of Tenant Organisations (NATO), the federation of State and Territory-based Tenants' Unions and Tenant Advice Services across Australia, is an unfunded body. Resourcing NATO by providing funding for at least 1 x full time equivalent (FTE) position and funding the administrative and operational costs in coordinating and facilitating the various functions of the federation, and provide a voice for renters and their interests within national housing and homelessness conversations. It would ensure tenant organisations across Australia can provide collective input and understanding on how residential tenancy legislation and practice can be better aligned with commonwealth levers and legislation, including general tax settings, and legislation, standards and initiatives relating to financial and insurance services to ensure hoped for outcomes, such as homelessness prevention.

### **Recommendation 7**

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*The NHHA provides funding to adequately resource coordination of the National Association of Tenants Organisations (NATO) to ensure renters have a national voice and more active peak body better able to represent their interests at the national level.*

## 4. SUSTAINABLE, HEALTHY HOMES

### 4.1 Minimum energy efficiency standards in rented homes

Every year cold weather in Australia kills at least 2,600 Australians.<sup>15</sup> Many of these deaths are avoidable, and relate to the poor standard of housing and people's inability to keep it comfortably warm. Low income renters struggle to keep their homes warm in winter. Their housing is likely to be lower quality, in need of repair and poorly insulated. The recently completed Australian Housing Conditions Dataset (2019) indicates 1 in 5 Australian renters (20%) on very low income, and 1 in 7 (14%) on low income are not able to keep their homes warm in winter. Renting households overall were much more likely to be struggling to heat or cool their homes than their homeowner counterparts. As a result, they are also hardest hit by energy poverty.

Research undertaken by sector advocates indicates on average low-income households (lowest 20% of the income spread) spend 6.4% of their income on energy, with the top 25% spending more than 8.8%, compared to high income households paying an average of 1.5%.<sup>16</sup> Those households dependent on income support payments such as Newstart and related allowance are hit hardest by high prices, with one in four of these households spending more than 9.7% of their incomes on energy. Across the board renters struggle significantly more than their homeowner counterparts to heat and cool their homes to a comfortable temperature primarily because of the lower standard of the housing they are living in.<sup>17</sup> Paying for housing costs - not just rent but also the costs involved to make a house liveable: the energy and utility bills - mean that many low-income renters are going without essentials such as food and medication just to get by. Others are forced to choose not to heat (or in summer, cool) their homes to keep their energy use down, with significant impacts for their families' health. Many lower income renters find that it costs them more to heat or cool their home and many are struggling with energy bills - a significant number of low-income rental households are in 'energy poverty'.

The Tenants' Union of NSW and local Tenants Advice and Advocacy Services are frequently asked for assistance by renters who are having issues with heating or cooling their rented homes, and it is impacting their health. This is because basic repairs and maintenance in their homes are not getting done. Around 8% of Australian renters report

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<sup>15</sup> Gasparrini et al (2015), 'Mortality Risks Attributable to high and low ambient temperature', *The Lancet*, 1:9991, ([https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(14\)62114-0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(14)62114-0/fulltext), accessed 18/03/2022

<sup>16</sup> Australian Council of Social Services, Brotherhood of St Laurence, (2018) *Energy Stressed*, <https://www.acoss.org.au/wp-content/uploads/2018/10/Energy-Stressed-in-Australia.pdf>, accessed 18/03/2022

<sup>17</sup> Liu, Martin, Easthope, 'Chilly House, Mouldy Rooms', *The Conversation*, <https://theconversation.com/chilly-house-mouldy-rooms-heres-how-to-improve-low-incomerenters-access-to-decent-housing-116749>, accessed 18/03/2022, see also Shelter NSW, UNSW City Futures (2019) Shelter Brief no. 63, Poor quality housing and low-income households, <https://sheltersnsw.org.au/wp-content/uploads/2020/09/Poor-quality-Housing-and-Low-Income-Households-Review-of-Evidence-and-Options-for-Reform-2019.pdf>, accessed 18/03/2022

their homes need urgent repairs that are not getting done.<sup>18</sup> Many are also struggling because their housing is poorly insulated with doors and windows that let in draughts and cold air, or there is little to no insulation.

Commonwealth and state and territory governments through the COAG Energy Council have committed to a Trajectory for Low Energy Buildings, a national plan that sets a trajectory towards zero energy (and carbon) ready buildings.<sup>19</sup> In November 2019 the Council as part of the trajectory plan committed to a timeline to bring all existing homes up to standard, including introducing requirements for minimum energy efficiency standards in existing rental housing by 2025.<sup>20</sup>

The Victorian Department of Environment, Land, Water and Planning is currently working with other Australian jurisdictions to develop a national framework to guide the design and development of energy efficiency standards in rented homes. This framework will identify best practice principles for jurisdictions.

The NHHA can play a role encouraging jurisdictions to adopt best practice minimum standards for energy efficiency in rented homes. The agreement must also take account of the additional resourcing requirements over the timeframe set out for implementation of minimum standards to ensure all jurisdictions are able to undertake upgrades and retro-fitting of social housing properties, and/or deliver on new builds of social housing stock that meet the minimum energy efficiency requirements. Provisions for funding must consider the resourcing requirements of both public housing providers and community housing providers.

## **Recommendations 8 & 9**

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*Incentivize states and territories to implement best practice minimum standards for energy efficiency in rental homes.*

*Ensure adequate resourcing and inputs to allow public and community housing providers to undertake the upgrades, retrofitting and new builds required to ensure all social housing dwelling meet the minimum standards for energy efficiency requirements in their jurisdiction.*

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<sup>18</sup> Choice, National Shelter, NATO (2017), *Unsettled*, <https://shelertas.org.au/wp-content/uploads/2017/02/The-Australian-Rental-Market-Report-Final.pdf>, accessed 18/03/2022

<sup>19</sup> COAG Energy Council (2018) *Trajectory for Low Energy Buildings*, <https://www.energy.gov.au/government-priorities/buildings/residential-buildings>, accessed 18/03/2022

<sup>20</sup> COAG Energy Council (2019) *Addendum to the Trajectory for Low Energy Buildings*, <https://www.energy.gov.au/publications/trajectory-for-low-energy-buildings-addendum>, accessed 18/03/2022



## 5. ACCESSIBLE HOMES

### 5.1 Increasing the accessibility of all homes

There is a significant shortage of homes that are accessible for people with a disability. Renters with a disability are in a particularly hard spot. They may have to pay a premium or accept inappropriate, possibly unsafe, housing due to the limited choice of properties available to them. Even if funded to modify a rented home through schemes such as NDIS, the Aged Care scheme, or iCare they must seek permission of their landlord and face the prospect of investing substantial funds to modify the property without any real security in their rented home.

Towards implementing a strategy to ensure greater accessibility of all housing, in 2021 the National Construction Code was revised to adopt new mandatory minimum accessibility standards at the LHD Silver level rating for all new builds. The Silver Level of the LHD Guidelines contains seven core elements that allow for accessibility, and future flexibility and adaptability.<sup>21</sup> It provides for step free access and internal movement, toilet access and reinforced structural features allowing for future retrofitting.

Unfortunately, the basic accessibility provisions within the new Code are not binding and not all states and territories committed to implementing it. NSW, Western Australia, and South Australia have not committed to implementation.

#### **Recommendation 10**

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*The NHHA should provide an incentive to state and territory governments to commit to implementation of the new minimum accessibility standards of the National Construction Code.*

### 5.2 Accessible social housing for renters with disability

People living in community and public housing properties are often older, and many have a disability or are facing a range of challenging life circumstances. In NSW a third of renters in social housing according to 2016 data were older than 55, and more than 35% had a disability. This trend continues due to the prioritisation policy for new entrants. In NSW in 2018-19, 56.3% of new entrants in community and public housing were classified as households in greatest need. This would include significant amounts of people who are elderly and/or have a disability. The latest data available shows that at the national level, older tenants, including people over the age of 55 (35%) and people over the age of 75 (14%) are a significant tenant group, as well as people with disability (37%).<sup>22</sup>

It is essential that social housing dwellings meet the needs of their occupants. In a number of Australian jurisdictions governments are not adequately meeting the needs of residents in relation to general amenity, ease of access and entry, and modifications for

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<sup>21</sup> Livable Housing Australia (2017) Livable Housing Design Guidelines.

<sup>22</sup> Australian Institute of Health and Welfare (2020) *Housing Assistance in Australia 2020*, Figure OCCUPANTS.1, Supplementary table HOUSEHOLDS.3

special needs.<sup>23</sup> The relatively significant high numbers of residents who do not consider their access and entry needs to be met (13% in NSW) is particularly concerning for safety reasons. In case of an emergency, it could be difficult for many people to exit their dwelling rapidly and safely.

New social housing dwellings must be built to a high quality, accessible, liveable standard to support the health and wellbeing of older tenants and people with disability. Currently, most social housing providers have committed to a LHD Silver level rating for all new builds.<sup>24</sup> However, while a LHD Silver level rating should be thought of as an entry point accessibility standard, it will not meet the needs of most people ageing and with disability. It allows for elderly people and people with disability to visit a home reasonably easily, but not to live comfortably without further modifications.

In 2010, the National Dialogue on Universal Housing Design, including representative bodies for architects, real estate professionals, developers, disability advocates and local government, released a Strategic Plan recommending ambitious targets for all state and territory social housing providers. One target was for all new social housing dwellings to meet the LHD Gold Standard by 2019. Unfortunately, this was not implemented in all jurisdictions including NSW, and at present Australian jurisdictions are not building sufficient gold standard properties to ensure we will meet the needs of those living in social housing.

## **Recommendations 11 & 12**

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*The NHHA should encourage states and territories to establish clear and ambitious targets and guidelines regarding the percentage of LHD Gold Standard dwellings in all new social housing developments.*

*The NHHA must take account of the resourcing requirements for various jurisdictions to meet the current LHD Silver level standard, and to work towards incrementally increasing to 100% LHD Gold Standard in new social housing developments over a reasonable timeframe.*

## **6. TENANT PARTICIPATION**

Renegotiation of the NHHA provides an opportunity to consider how more robust forms of tenant participation in the governance structure of providers might be required of public and community housing providers. Available evidence suggests this leads to improved service standards and tenant satisfaction, but also contributes to the financial sustainability of housing providers.<sup>25</sup> The English and Scottish regulatory regimes for community housing associations provide a good example of how the value of tenant participation can be more explicitly recognized and concretely put into practice.

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<sup>23</sup> Australian Institute of Health and Welfare. (2019). National Social Housing Survey 2018. <https://www.aihw.gov.au/reports/housing-assistance/national-social-housing-survey-2018-key-results>

<sup>24</sup> Land and Housing Corporation (2020) LAHC Dwelling Requirements.

<sup>25</sup> Bliss N, Lambert B, Halfacre C, Bell T & Mullins D (2015) *An investment not a cost: the business benefits of tenant involvement*, Department for Communities and Local Government (UK)

Tenants across social housing should be given more opportunities to influence and be involved in:

- formulation of housing-related policies and strategic priorities
- making of decisions about how housing-related services are delivered, including the setting of service standards
- scrutiny of landlords' performance and the making of recommendations about how performance might be improved
- management of their homes, where applicable
- management of repair and maintenance services.

The current National Regulatory Code requires housing providers to 'engage' their communities but not to support or encourage an independent tenant voice. As research evidence shows, this is to the detriment of tenant outcomes and may diminish the financial strength of the sector and its attractiveness to investors. The small number of tenants who do participate at board level are usually selected on the basis of other skills. However, current experience as a tenant constitutes an area of knowledge and expertise that should be valued highly at board level. Social housing providers, in particular community housing providers, should be required to demonstrate that they provide support and training for those who wish to bring their experience as tenants to organisational decision making structures without compromising the independence or integrity of governance processes.

Understanding that elected tenant representation on boards is not constitutionally possible for most social housing providers there is a need to specify a role for tenant representative organisations within the regulatory governance framework. Government support at both the Commonwealth and state and territory level for the development of appropriate state and national structures will be required to facilitate this.

### **Recommendations 13 & 14**

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*The NHHA should encourage consideration to how tenant participation in both governance and general organisational decision making can be built into the regulatory framework for community housing providers.*

*That future NHHA provide specific funding for a specific consultative process for ensuring renters' voice and those with lived experience of homelessness are part of the conversation about their needs, and their desired outcomes and deliverables from the agreement.*

## 7. IMPROVED ACCESS TO DATA

### 7.1 Monitoring the efficacy of tenancy reforms: better collection of data relating to private rental market

Across Australian jurisdictions there is very limited available data relating to important aspects of private rental. There is little that measures important aspects of private rental, and very limited accurate and meaningful data allowing us to assess whether regulation relating to tenancy and renting is sufficient. This is a serious omission that could be addressed by a requirement on jurisdictions to provide more data relating to the private rental market.

The NSW Government provides data for recent rental bond lodgements and refunds as well as data on the total rental bond holdings. They also recently implemented a voluntary End of Tenancy survey in August 2021, following on from a pilot study the previous year. The survey will help track more closely who in NSW is ending tenancies, and why they are ending. It also collects information about the rent at the end of the tenancy, allowing us to calculate how much rents are generally increasing during tenancies. However Fair Trading notes the representativeness of the survey may still be limited, due to the sample being self-selected and drawn from the pool of respondents who use Rental Bonds Online to both lodge and claim rental bond.<sup>26</sup> Those who did not use the Rental Bonds Online system are not given the option to do the survey. At present there appears a relatively low rate of response from real estate agents and landlords. The NSW End of Tenancy survey nonetheless provides us with the most comprehensive information into how and why tenancies end in Australia.

The value of this data would be significantly improved if made mandatory and across jurisdictions, and became a built-in feature of their process for submitting a claim for refund of a rental bond.

#### **Recommendation 15**

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*The NHHA provide an incentive for states and territories to provide accurate information about the commencement and end of tenancies, including:*

***Tenancy commencement***

- *Postcode location*
- *Commencement date of tenancy*
- *Starting rent & bond lodged*

***Tenancy end***

- *Postcode location*
- *Date tenancy ended*
- *Amount of bond released to tenant*
- *Who initiated termination of agreement*
- *Why agreement was terminated*
- *Rent at end of agreement*

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<sup>26</sup> Fair Trading (2020) *Results of pilot survey - why tenancies ended*, published on website at [fairtrading.nsw.gov.au/housing-and-property/pilot-bond-exit-survey](https://fairtrading.nsw.gov.au/housing-and-property/pilot-bond-exit-survey), accessed 25 January 2022

## 7.2 Open, transparent sharing of data about public and community housing

The Tenants' Union of NSW often has difficulty finding up to date published information or data about the condition of current social housing stock in NSW. This includes information about the repairs and maintenance backlog for public housing properties owned by LAHC and for properties owned by the Aboriginal Housing Office. We have also had considerable difficulty in finding up to date information about planned and current social housing developments being delivered through Communities Plus and the Social and Affordable Housing Fund. In general information about expected outcomes from the Social and Affordable Housing Fund is easier to locate, though it is not always clear what the timeframes are for delivery. Information about Communities Plus projects is much harder to track.

We also have difficulty finding detailed practice and performance data about community housing providers. Community housing providers operate under government auspice and exist to fulfil a public purpose so we believe no good argument exists for their performance data to remain confidential.

We propose the following schedule of data about public and community housing properties and tenancy management practice could usefully be made publicly available across all jurisdictions:

### **Property data.**

- Owned, managed, headleased, planned for completion in next 12 months,
- Social, affordable, market
- Accessibility rating
- Bedrooms and dwelling structure
- Assessed condition of dwelling, including need for retrofit/upgrade to meet impending minimum standard implementation (possibly for example, energy efficiency, accessibility)
- Owner type (e.g. state government, local government, private company, private individual)
- Locational need

### **Tenant provided income**

- Rent revenue
- Rent collection rate
- *For community housing providers:* CRA calculated and received
- Water and other charges

### **Repairs responses**

- Maintenance requests and classification of expected time frame
- Resolution rate within expected time frame

### **Court or Tribunal activity**

- For applications made by provider and by tenants
- Orders sought
- Result (application successful, negotiated outcome, application unsuccessful)

### **Bonds (where claimed within reporting period)**

- Claimed from tenant

### **Exits**

- Tenant initiated

- Reason (including unknown or not provided) ○
- Landlord initiated
  - Reason
  - Notice of termination served
  - Tribunal action initiated

**Number of tenancies re-entering social housing after exit in last 12 months/last 5 years**

- From the same provider
- From a different provider

**Development of stock**

- Number of social housing properties planned, in construction, and/or delivered
- Notification in advance of any redevelopment plans

**Recommendation 16**

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*More comprehensive data be required to be made available and publicly accessible under the NHHHA regarding public and community housing properties and tenancy management practice in relation to the following: existing property data; tenant provided income; repairs responses; court or tribunal activity; bonds; exits; number of tenancies re-entering social housing after exit; development of new stock*

**7.3 Improving renters' access to information: landlord registration and licensing**

Studies such as the Australian Housing Conditions Dataset<sup>27</sup> and consumer surveys such as those by Choice, National Shelter and the National Association of Tenants Organisations<sup>28</sup> point to the low standard of rental housing being provided.

In NSW renters report a perceived reluctance on the part of the regulator to issue penalties under the Residential Tenancies Act 2010. As an example, over 2018/19 financial year NSW Fair Trading issued only 26 penalty notices for a total of only \$12,540 for breaches of the Residential Tenancies Act. This was out of a total of 2197 notices with penalties of a total of \$2,281,485. Penalties for renting matters represented just 0.5% of the value of total penalties, despite tenancy being one of the leading reasons for complaints. This may result in a message to industry that there are no consequences for poor behaviour.

In addition, once a tenancy has ended it is very hard for a renter to pursue a complaint hoping to improve the behavior of their landlord. As one example, New South Wales in 2020 introduced some minimum standards following a review of the Residential Tenancies Act 2010, and already has clear and legislated repairs obligations. However, the enforcement of these standards relies on tenants who are vulnerable to eviction and, especially for those living in the worst conditions, in a weak bargaining position. Further, as the standards are only a contractual obligation any orders made concerning one

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<sup>27</sup> Emma Baker et al (2019) "The Australian Housing Conditions Dataset", doi:10.26193/RDMRD3, ADA Dataverse, V1

<sup>28</sup> Choice, National Shelter, NATO (2018) *Disrupted*, shelter.org.au/site/wpcontent/uploads/Disrupted-2018-Report-by-CHOICE-National-Shelter-and-NATO-WebVersion.pdf, accessed 29 July 2020

tenancy agreement end at the end of that tenancy. The next tenant must begin the legal process entirely afresh.

A registration system would better enable monitoring of property standards, including rectification orders, between tenancies. Registration schemes, known as selective licensing schemes, have been legislated since 2004 in the UK and their use has expanded across the UK since 2015. Australia can learn from the experience in the UK. The systems have made a significant impact on the standard of housing in areas where the system was effective and resourced.<sup>29</sup> The fees associated are set to recover costs, are a tax deduction and are in any event not onerous. Australian jurisdictions should evaluate and improve on the UK experiences. A registration system would also open up the transparency and available data in the sector. This would provide consumers with greater information and surety about the service provider they are considering moving in with.

Just as building trades, real estate agents and other service providers are registered in NSW's license check systems and complaints against them recorded it is appropriate for housing service providers to do this. At the moment, the only position this can occur is the current NSW Complaints Register. However, this requires 10 complainants in one month. Given less than 5% of NSW Landlord's own more than six properties, and subsequently it is impossible for the overwhelming majority of landlords to ever appear on the complaints register. Real estate agents are often listed for issues which are the landlord's responsibility, such as repairs, which muddies their own reputation. A clear and different solution is required.

A landlord registration scheme would help ensure homes are provided to a standard that modern Australian communities expect and that service providers are in a position to meet both their contractual and societal obligations.

### **Recommendation 17**

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*The NHHA encourage state and territories to establish a landlord registration scheme to provide transparency, accountability and data to our renting systems.*

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<sup>29</sup> Ministry of Housing, Communities and Local Government UK (2019) *An Independent Review of the Use and Effectiveness of Selective Licensing*, pp8-10.