

National Association of Tenant Organisations

**Submission to the
Productivity Commission
Inquiry into First Home Ownership**

October 2003

Tenants' Union of New South Wales, on behalf of the National Association of Tenant Organisations

About NATO

The National Association of Tenant Organisations (NATO) is a federation of State- and Territory-based Tenants' Unions and Tenant Advice Services across Australia. NATO's membership comprises the Tenants' Union ACT, the Tenants' Union of New South Wales, the Tenants' Union of Queensland, the Tenants' Union of Tasmania, the Tenants' Union of Victoria, the Tenants Advice Service (Western Australia), and Shelter South Australia.

NATO is an affiliate member of National Shelter, and is Australia's representative member of the International Union of Tenants.

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1. First home ownership and tenancy

NATO welcomes the opportunity to make submissions to the Productivity Commission's Inquiry into First Home Ownership. The connections between NATO's member-organisations and their constituents, and first home ownership, are close – perhaps closer than is at first apparent. After all, the typical aspirant to first home ownership is a renter. The sacrifices that many first home owners are prepared to make to achieve their aspiration, and the disappointment and concern felt by and for aspirants to home ownership when their aspirations are frustrated or delayed, are an implicit commentary on the conditions of rental housing.

Attached to this submission is a report by NATO, *Leaking Roofs: Australian Tenancy Law*. [Please contact the Tenants' Union of New South Wales for publication details.] The Report provides a detailed survey and comparison of residential tenancies legislation in all Australian States and Territories, identifies and illustrates the key deficiencies in each jurisdiction, and makes recommendations for a national standard of residential tenancy legislation that protects the right to housing of tenants and other renters.

The present submission draws on the *Leaking Roofs* report to give, in Part 2 of the submission, a sketch of the main characteristics of the contemporary state of rental housing in Australia and a brief analysis, in Part 3, of how the major instruments of housing policy in relation in the rental housing system. Part 4 of the submission provides a summary of key deficiencies in Australian residential tenancies legislation, as identified by NATO's member-organisations in *Leaking Roofs*, and Part 5 presents NATO's recommendations for tenancy law reform.

NATO's recommendations for better renting laws and a better rental housing system address the issue of first home ownership in two ways. First, for those who are attempting, at great cost, to achieve first home ownership, a better rental housing system offers a real choice in housing – a choice that, on present comparisons between tenures, is lacking. Second, for those households for whom housing tenure is not, and will never be, about 'choice' – that is, for those who will never own a house – rental housing should be a place where they can make a home and lead a secure, dignified life.

2. Tenancy in Australia

The following sections give a brief sketch of the main features of tenancy in Australia: the people who are trying to make a home for themselves and their families in rental housing, and how the tenure delivers – or fails to deliver – in terms of affordability and security.

Who rents?

One in four Australian households rent. At the 2001 Census, 26.3 per cent of all occupied private dwellings in Australia were rented. Put another way, more than 1 858 324 Australian households live in rented housing.

Most of these households (82.7 per cent, or 1 537 060 households) rent from private landlords: a minority (4.5 per cent of total households, or 317 171 households) rent from a social housing authority in each State and Territory.¹

Additionally, there are other households, not accurately counted at the 2001 Census, who live on caravan parks and manufactured home estates, many of whom own their dwelling but rent the site on which it sits.² The Census figures also do not count all of those people who live in boarding or rooming houses.

For many people, rental housing is seen as more or less temporary housing. This is particularly the case for private rental, which is often characterised as a ‘staging-post’ tenure, between moving out of the parental home and entering into home ownership, or between periods of owner-occupation. This perception is implicit in the language of housing policy makers, and concepts such as the ‘housing ladder’. It is a view often held by renters themselves. According to the Negotiating the Life Course (NLC) survey, more than half (54.3 per cent) of people not in owner-occupied housing stated that buying a house in the next three years was very important or important to them (Merlo & McDonald, 2002). The perception of renting as short-term, temporary housing for aspiring home owners is also, with little doubt, at least as common amongst politicians.

Social housing has been regarded, historically, as something of an exception to the assumption that renting should be short-term and temporary, but this exceptionalism is becoming less observed, and perceptions of social housing’s relative permanence are changing, if not becoming inverted. Previous assurances of security of tenure in the Commonwealth-State Housing Agreement (CSHA) have been replaced by the principle that housing should be provided for the ‘duration of need’. The perception, if not the practice, is that social housing should be a staging-post tenure, much like the enduring view of private rental housing.

¹ ABS, *2001 Census of Population and Housing: B19 – Dwelling Structure by Tenure Type and Landlord Type*. Note that in the figures presented here, the number of rented dwellings where the landlord type was not stated (22398) is distributed proportionally between private rental housing and social housing.

² At the 2001 Census, caravans were counted with cabins and houseboats: 94 723 dwellings were counted in this category. It may be assumed that the majority of these dwellings are caravans, and that the majority of these caravans are either rented by their occupants or sit upon a site that is rented, but the Census did not capture these distributions. Also, the Census did not identify and account for the large number of manufactured homes and moveable dwellings other than caravans, the majority of which also may be assumed to sit upon a site that is rented.

The reality is very different. Home ownership rates among younger households are declining.³ Of the NLC survey respondents who regarded buying a home within three years as important or very important, by the end of that period more than two-thirds (69 per cent) had not become home buyers and most were still renting⁴. In addition to renters whose aspirations for home-ownership are being delayed or frustrated, there is evidence that the aspiration for home ownership has, over time, become less commonly held, especially amongst young households.⁵

Households who are renting are more likely to be renting for the long-term rather than short-term. From Wulff & Maher's analysis of the private rental market, we know that 40 per cent of all renters have been renting for more than 10 years.⁶

Of tenants who have been renting continuously since moving out of the parental home, those renting long-term (more than 10 years) outnumber those renting short-term (0-4 years) or medium-term (5-10 years). This is the group who, in housing ladder terms, leave home, rent for a few years and then buy a house: in truth, more of them rent for much longer than the conventional wisdom assumes.

A significant number of tenants (about 40 per cent) are not continuous renters, but rather have returned to renting after a period in home ownership. Again, the conventional wisdom views these renters as predominantly short-term renters in-between periods of owner-occupation; in fact, the short-term renters in this group only marginally outnumber those who have been renting for more than 10 years.⁷

Put at its simplest: many people rent; more people rent long-term than short-term; and many ex-home owners return to long-term renting. None of this, in itself, should be viewed as a problem. Problems do lie, however, in the conditions of the tenure.

The rental housing system – the lack of affordable rental housing

The rental housing system is not delivering affordable housing. The National Housing Strategy considered that a reasonable benchmark for housing affordability was met when a household's housing costs were equivalent to 30 per cent or less of the household's income. Where the housing costs of a household in the lowest 40 per cent of the income distribution range are above 30 per cent of income, the household can be said to be in 'housing stress'.⁸

³ Judith Yates (2001) 'Australia's Housing Choices: retrospect and prospect', *Urban Policy and Research*, vol 1 no 4.

⁴ Rosangela Merlo & Peter McDonald (2002) *Outcomes of Home Ownership Aspirations and their Determinants*, AHURI, Melbourne. The survey's questions about home-ownership were asked of 'those who were not living in a home that was owned or being purchased by the respondent or his/her partner' but does not distinguish between those who were renting their housing, and those who were not (for example, those living with parents). It is assumed here that most, but not all, respondents were renters.

⁵ Scott Baum & Maryann Wulff (2003) *Housing Aspirations of Australian Households*, AHURI, Melbourne.

⁶ Maryann Wulff & Chris Maher (1998) 'Long-term Renters in the Australian Housing Market', *Housing Studies*, vol 13 no 1.

⁷ *ibid.*

⁸ National Housing Strategy (1991) *The Affordability of Australian Housing*, NHS, Canberra.

The lack of affordable rental housing is a growing problem, for private renters generally and low income private renters especially. Research by the Affordable Housing National Research Consortium shows that in the ten years from 1986 to 1996, the number of private renter households paying more than 30 per cent of their income in rent grew by 74 per cent across seven capital cities, from approximately 157 770 households to 274 520 households.⁹ Over the same period, the number of private renter households in housing stress (that is, paying more than 30 per cent of income in rent, and in the lowest 40 per cent of income) in the seven capitals grew by a total of 90 000 to 227 480 households, and in five of seven capital cities the rate of growth of stressed renter households outpaced that of renter households overall. Most private renters (54 per cent) are in housing stress;¹⁰ and many of those who, on account of their income, are not in 'stress' still pay more than the benchmark for affordability.

The market in which renter households try to find housing has changed too. In the ten years from 1986 to 1996, Australia's rental housing stock grew by 516 827 dwellings (34 per cent) – and not a single unit of low to moderate rental housing was added to the stock. In fact, over the period there was a real loss of almost 70 000 low cost rental dwellings.¹¹ Further, many households who could afford to pay a higher rent 'trade down' in the market, resulting in a considerable amount of low-cost rental housing going to other than low-income households. Considering changes in households incomes, Yates & Wulff estimate that, at the mid 1990s, about 150 000 dwellings were required make good the shortage in affordable rental dwellings, and the Affordable Housing National Research Consortium suggests that since then the shortage has deepened – and will continue to deepen.

The rental housing system – the insecurity of rental housing

The rental housing system is not delivering secure housing. Reference has been made to the 'rental housing stock', which can give the impression that rental housing exists as a discrete collection of houses and units for rent. It is important to recognise, however, the extent to which the rental housing and owner-occupation markets are linked, and how units of housing exist at different times in both – that is, how 'rental' housing passes into and out of periods of owner-occupation. In Mowbray's longitudinal analysis of rental housing in New South Wales, just over half (52.4 per cent) of rental dwellings were sold in an eight year period. Of those sold, 63.1 per cent were owned for less than ten years, and 19 per cent had been owned for less than five years.¹² Many of these properties were sold out of the rental market into owner-occupation (at three years after sale, less than 8 per cent remained in the rental market), and some returned (at ten years sale, more than 18 per cent were rented); yet others dropped out of private rental without being sold. The motivations for these

⁹ Affordable Housing National Research Consortium (2001) *Policy Options for Stimulating Private Sector Investment in Affordable Housing in Australia: stage 1 report: outlining the need for action*, AHURI, Melbourne.

¹⁰ *ibid.*

¹¹ Judith Yates & Maryann Wulff (2000) 'W(h)ither Low Cost Private Rental Housing?', *Urban Policy and Research*, vol 18, no 1.

¹² Robert Mowbray (1996) *Contemporary Landlordism: implications for tenants' rights*, PhD thesis, University of Sydney.

transfers between tenures are numerous, but the realisation of capital gains on rented premises at owner-occupation market values is a primary driver. There are a few exceptions to this ready transferability: for example, the old single-owner blocks of flats, but legal changes such as strata titling have progressively removed barriers to transfer. The greatest bulwark is permanent social housing, which is not subject to the same motivations for the transfer of stock out of rental tenure, but this is a small and declining sector of the Australian housing system.

The movement of housing stock between tenures has obvious implications for tenants – as houses move between tenures, tenants must move between houses. A recent survey of tenants in Queensland shows that more than 17 per cent of tenants had made their last move because the property was no longer available.¹³ A further troubling dimension to mobility and insecurity in rental housing is developed in Wulff's analysis of long-term renters. Many remain highly mobile even after renting long-term.¹⁴ Whether this mobility is the result or choice or a lack of choice warrants further research: it will suffice here to acknowledge that while many long-term renters may be mobile by choice, other aspects of long-term renters' experience caution against making this a general assumption. Long-term renters generally are less likely than other renters to rent through a real estate agent, or lodge a bond, or have a written lease¹⁵ – in other words, they are more likely to be in the informal rental sub-market of private landlords, boarding houses and 'granny flats', without the documents that give a reassurance of security, and indeed often without security at law.

3. Tenancy and housing policy

The contemporary state of tenancy in Australia is marked by the erosion of affordability, especially at the lower-income end of the rental housing market, and persistent insecurity, including for long-term renters. The major items in the current array of housing policies scarcely address these problems.

In financial terms, the impact of housing policy is significant, but its priorities and outcomes fail tenants. In 2001, the total amount of direct and indirect housing assistance, through the federal tax system, Commonwealth Rent Assistance and the CSHA, was approximately \$21 billion.¹⁶ In light of the number of people in the rental housing sector, and the pressures they face, the distribution of this assistance is profoundly skewed.

¹³ John Minnery, *et al* (2003) *Tenure Security and its Impact on Private Renters in Queensland*, AHURI, Melbourne. This reason was cited only fractionally less often than the most common reason, 'wanted a bigger dwelling' (17.9 per cent); 4.7 per cent moved because they could no longer afford the rent.

¹⁴ Maryann Wulff (1997) 'Private Renter Households: who are the long-term renters?', *Urban Policy and Research*, vol 15 no 3.

¹⁵ Wulff & Maher (1998), n 6.

¹⁶ Judith Yates (2002) *A Distributional Analysis of the Impact of Direct and Indirect Housing Assistance*, AHURI, Melbourne.

Housing assistance	Tenure benefited	Approximate amount per annum (2001)
Tax expenditures (capital gains and imputed rents)	Homeownership	\$17 billion
First Home Owners Grant	Homeownership	\$1 billion
Rent Assistance	Rental (private)	\$2 billion
CSHA	Rental (public)	\$1 billion

(derived from Yates (2002)¹⁷)

A brief examination of each stream of housing assistance reveals further inequities and policy failure. Of the \$17 billion directed through the tax system to homeowners, the greatest benefit was enjoyed by higher income households.¹⁸ The First Home Owners Grant, too, has been criticised for being poorly targeted, especially where this non-means tested benefit is used to purchase million-dollar dwellings.¹⁹ Less prominent, but more serious, is the concern that while the grant may have assisted some tenants who wanted to buy a home, it has also had the effect of withdrawing rental housing stock, especially from the lower-cost section of the market and from tight regional rental markets.

Another benefit delivered through the tax system, negative gearing, is not considered in Yates' analysis²⁰. Often defended for its alleged depressive influence on the level of rents, negative gearing is, at the level of policy, without any sort of direction or targeting in relation to affordability. In practice, negative gearing is most attractive to investors holding high value rental properties, and encourages investment in high value – and hence relatively high rental – properties at the expense of lower cost housing.²¹

For renters, Commonwealth Rent Assistance is the major form of housing assistance. Rent Assistance is provided, through Centrelink, as a non-taxable income supplement to people receiving an income support payment (except Austudy, and including Family Tax Benefit Part A where above the base rate). Currently about 1 million Australians receive Rent Assistance, and more than half (57 per cent) receive it at the maximum rate.²² In terms of housing affordability, the achievements of Rent Assistance are underwhelming: more than one-third of recipients still spend more than 30 per cent of their income on rent, and 9 per cent of recipients spend more than 50 per cent.

¹⁷ *ibid.*

¹⁸ *ibid.*

¹⁹ 'Millionaires' Home Grab', *Herald-Sun*, 3 October 2003; 'Home Grant Rorters Buy, Then Rent Out', *West Australian*, 5 October 2003.

²⁰ Tax expenditures do not include negative gearing, as negative gearing – its popularity with residential property investors notwithstanding – is applicable to the taxation of investments generally.

²¹ National Shelter (2002) *Submission to the Productivity Commission Inquiry into First Home Ownership*, National Shelter/Shelter WA, Perth.

²² National Shelter and ACOSS (2003) *Rent Assistance: does it deliver affordability?*, ACOSS, Redfern.

The CSHA, as the main source of funding for social housing, makes a valuable, but all too small, contribution to the rental housing market. The smallest and most closely scrutinised item of the housing assistance policies considered here, CSHA funding has declined, in real terms, by 54 per cent over the past 10 years.²³ As a result, social housing has been utterly unable to make good any of the shortage in affordable rental housing. New social housing commencements are at unprecedentedly low levels – in New South Wales, just 671 units of social housing will be added to the stock this year – and the proportion of social housing stock to both total housing and total rental housing has declined.²⁴ Eligibility for housing has become tightly targeted to the most poor and crisis-afflicted households, simultaneously placing pressure on the sustainability of the finances social housing authorities through the diminution of their rental incomes, and placing pressure on the sustainability of the neighbourhoods in which so much disadvantage is concentrated.

Another major instrument of housing policy is tenancy law, and while the details of the law are to be considered in the Parts that follow, it is important here to acknowledge its place in the context of policy. The Commonwealth is almost entirely absent from this area of policy. It has not developed a role in legislative standards for private rental housing, and provisions relating to security of tenure in previous Agreements have been omitted from the current CSHA. In Australia, residential tenancy legislation presently is a matter determined exclusively by the States and Territories, and approached by all State and Territory governments as a matter of consumer protection and fair trading.

Implicit in this Report's analysis of residential tenancies legislation is a criticism of the consumer protection approach to tenancy. First, and on its own terms, 'consumer protection' has not gone far enough in its analysis of the relations in the rental housing system. For example, the predominance of small investors in the rental housing market is often taken to prove that it is a competitive, non-monopolistic market, where in fact the position occupied by landlords in relation to *individual* tenants is decidedly monopolistic. Tenants cannot just take their business elsewhere, to another housing provider: the sheer financial costs restrict against moving, but more importantly so do the social connections that households make with their neighbourhoods, workplaces, schools and services, and the singular, emotional connection that households make with the place they call home.

This leads to a second criticism: perhaps a consumer protection approach alone cannot ever satisfactorily address the fundamental disparity between landlords and tenants, being that tenants are not merely contracting for the provision of a service, but are also trying to make a *home*. The sense of having a home to go to, and of being at home, allows a person to create and explore one's sense of oneself, one's individuality. This sensibility fosters the growth and learning of children, and sustains a person away from work.²⁵ The disparity of interests between landlords and tenants is not wholly addressed through consumer protection concepts of levelling out

²³ *ibid.*

²⁴ ABS, *2001 Census of Population and Housing: B19 – Dwelling Structure by Tenure Type and Landlord Type*; ABS, *1996 Census of Population and Housing: B25 – Household Type and Family Type by Tenure Type and Landlord Type*.

²⁵ Mary Perkins (1998) *Home – the place where tenants and landlords collide*, MA thesis, University of Sydney.

inequalities of information or of bargaining power between parties. The situation of tenants and other renters, and the protection of their interests, are better comprehended as matters of human rights.

Tenancy and human rights

Housing is an element of universal human rights. This is recognised in Article 21 of the United Nations' Universal Declaration of Human Rights (1948) and is stated, in similar terms, in Article 11(1) of the UN International Covenant on Economic, Social and Cultural Rights (1968):

Article 11(1): The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself [*sic*] and his family, including adequate food, clothing and *housing*, and to the continuous improvement of living conditions.

Australia is a party to both the Declaration and the Covenant. The UN Committee on Economic Social and Cultural Rights has elaborated on the right to housing in its General Comment No. 4, 'The Right to Adequate Housing':

In the Committee's view, the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity.... [T]he right to housing is integrally linked to other human rights and to the fundamental principles upon which the Covenant is premised.²⁶

An indication of how international elaborations of the right to housing can inform the principles of legislation is given in the Tenants' Charter, drafted by the International Union of Tenants (IUT) and based on the UN documents²⁷. Amongst other things, the Charter advocates for affordable rents:

As housing is a human right, with reference to the Universal Declaration of Human Rights (1948 Article 21.1) and the UN International Covenant on Economic, Social and Cultural Rights (1966 Article 11), rents have to be set at an affordable level.

Rents should be in reasonable proportion to income.

Rents should be set in participation with the tenant or/and his/her tenant organisation.

The IUT Charter also emphasises the need for security of tenure:

Security derives from the fact that the right of access to, and use of land and property, is underwritten by a known set of rules, and that this right is justiciable.

A person or household should have Secure Tenure so that they are protected from involuntary removal from their residence, except in exceptional circumstances, and then only by means of a known and agreed legal procedure, which must itself be objective, equally applicable, contestable and independent.

Evictions on social causes can not be accepted without the tenant obtaining another adequate dwelling....

²⁶ UN Committee on Economic, Social and Cultural Rights (1999) 'The Right to Adequate Housing', *General Comment No 4*.

²⁷ International Union of Tenants, Tenants' Charter <http://www.iut.nu/>

The owner, administrator or landlord can end the tenancy only for a certain number of reasons, which are listed in the tenancy agreement or lease.

All tenants must be given full protection against notices to quit, which are not founded on strong facts. On social grounds it can not be accepted that a tenant is evicted without obtaining another suitable dwelling.

NATO takes the view that legal recognition of housing as a human right can serve as an important beachhead in securing better conditions for people who live in rental housing. The protection of the interests of tenants should be based in the enduring, universal values of human dignity and security in the place where one lives, rather than the less stable notion of what constitutes a fair trade between consumers and providers in a market subject to the forces and pressures evident in the Australian rental housing system.

4. Deficiencies in Australian residential tenancies law

As the title of the *Leaking Roofs* report implies, the coverage of Australian residential tenancies legislation is incomplete, and does not provide tenants and other renters with adequate protection from all the forces that bear upon rental housing.

Each State and Territory in Australia has its own residential tenancies laws. The protection afforded to tenants and other renters under residential tenancies legislation varies significantly in different parts of Australia. Some legislation is relatively comprehensive and rigorous; some is weak and fails to address the needs and rights of tenants. When looked at closely, even the relatively comprehensive and rigorous tenancy legislation contains provisions that are weak and that fail tenants.

The following sections consider a few of the key deficiencies identified by NATO member-organisations through their casework and policy experience. A number are illustrated with case studies from NATO member-organisations, in which the names and some details have been changed to ensure confidentiality.

Some of the problems identified here show how, for those people who do have the resources to exercise some choice in their housing, tenancy really does not stand as an option when compared to home ownership. Others of the problems identified demonstrate how, for those without choice in housing, tenancy all too often means exposure to frustration and conflict, and always uncertainty.

Legislation and its application – lack of legislated rights for boarders and lodgers and caravan park residents

In a number of States and Territories, residential tenancies legislation applies only to ‘tenants’ narrowly defined. In the ACT, New South Wales, and Western Australia, boarders and lodgers have no legislated rights. An economically vulnerable group in a highly pressurised sector of the rental housing system, boarders and lodgers have negligible market power with which to bargain for housing on fair terms. Where landlords break agreements, boarders and lodgers have no effective means of redress.

In the ACT and the Northern Territory, residents of caravan parks are without legislated rights. These renters must rely on the terms of their licences and the common law of contract – a completely inadequate basis for the protection of these

renters' right to housing. Even in States where caravan park residents do have legislated rights, the law does not adequately respect the great investments, both financial and personal, made by caravan park residents – and in particular, residents who own their own dwelling and rent the site.

Rents and other costs – rent increases

Almost all Australian States and Territories follow the same model of regulation in relation to rent levels, under which tenants may seek an order when they consider that a proposed rent increase is unreasonable (the exception is Western Australia, which allows tenants to seek such an order only where the rent increase was motivated by a desire to end the tenancy – rent increases are otherwise unregulated). This is an inadequate protection. The primary factor in determining what is 'unreasonable' is the general market level of rents; whether the rent is affordability is not considered. Also, in New South Wales, the Northern Territory, Queensland, South Australia and Tasmania, the onus falls on the tenant to prove that a rent increase is unreasonable in terms of the market level of rents. It is often an impossible task to even prepare such a case.

Tenancy terms and conditions – lack of habitation standards

All States' and Territories' residential tenancies legislation contains provisions relating to the making of repairs, and require that premises are habitable, but otherwise do not address physical standards of premises. This lack of clear regulation leads, in some cases, to landlords making outrageous claims about the respective responsibilities of themselves and their tenants in relation to their substandard properties.

Case study: Iman and Mohammad, newly arrived in Australia, rented a one bedroom flat from a private landlord. They were provided with a condition report, which described the property as being in excellent condition. After moving in the couple discovered that a number of repairs were needed, but the landlord told them that they would be responsible for all repairs. When the bedroom ceiling fell in because of structural problems, the couple were forced to sleep in the lounge room. The State Emergency Service propped up the ceiling and told the couple that it wasn't safe to enter the bedroom. At the subsequent Tribunal hearing the landlord claimed that the damage was the fault of the tenants because they were not using the exhaust fans (which weren't working) when cooking and showering and the condensation had caused the ceiling to fall in. The landlord said that the tenants should have been showering with all the doors open. The landlord also tried to claim compensation from the tenants for the damage to the bedroom.

Security of Tenure, Terminations and Evictions – terminations without grounds

In every Australian State and Territory, except for Tasmania, landlords can instigate termination and eviction proceedings without grounds. This is inconsistent with the right to housing and any sense of the security that most people associate with home.

Tenancy Tribunals may refuse to order a retaliatory eviction, but this is little protection. Most tenants, on receiving a notice of termination without grounds, take the ending of their tenancy as given.

Case study : Loretta, an 86 year-old single woman, had lived in her flat for 14 years when the building was sold to a new landlord. The new landlord decided to renovate the flats for a new clientele, and wrote to Loretta advising that she would shortly have to move out, and that she would receive 90 days notice before she had to leave. Shortly thereafter, Loretta was served with a 60 day notice of termination, without grounds.

Loretta was approved by the Department of Housing for Priority Assistance, but the Department could not offer suitable accommodation within the 60 days. At a hearing of the Consumer, Trader and Tenancy Tribunal, the Tribunal ordered the Loretta give vacant possession in 14 days, though she nowhere to go.

An alert, upright woman at the beginning of this time, Loretta was by the time of her eviction prone to falls and lapses of memory, frail and scared. A day before the sheriff was due to evict her, Loretta had still not packed her things, and the landlord's agent refused any extra time. Loretta's tenants advocate did the last-minute packing as Loretta was entirely unable to deal with the situation. The agent claimed the bond.

Access to Housing – no regulation of tenant databases

Tenant databases have operated without regulation for more than a decade, and have proved to be a massively abusive presence in the rental housing system. The negative effect of tenant databases is two-fold. First, a database listing has a specific and severe impact on the person listed: it can effectively make them homeless. Secondly, the threat of being listed hangs over all tenants, for the duration of their tenancies and after, and generally discourages them from asserting their rights or taking up issues with their landlords. In this respect, tenant databases undermine the protections provided by residential tenancies legislation.

Additionally, tenant databases are so riddled with out-of-date, trivial and inaccurate information that they do not even offer a credible basis for assessing tenancy applications. The only thing tenant databases do well is threaten tenants.

Case study: Kim ended her tenancy and moved out, owing one week's rent. Kim told the agent that she would be back to pay it the next week when she received her pay, and she did exactly that. The agent, however, listed Kim on TICA as having left with an amount of rent arrears owing. According to the database operator's current practice, Kim will be listed as having been in arrears for the next five years, and thereafter will be listed as having a 'tenancy history' permanently.

5. Recommendations for a better rental housing system

Tenants and other renters deserve a better rental housing system. Australia's residential tenancies laws are part of the problem. Across jurisdictions, the legislation

is inconsistent; within jurisdictions, each Residential Tenancies Act contains shortcomings, flaws and unjust provisions, and insufficiently protects tenants' interests from the structural pressures that operate in the contemporary rental housing system.

National tenancy law reform is an opportunity to build on the provisions of the current legislation, strengthening its regime of consumer protection with the express acknowledgement of housing as a human right. Residential tenancies legislation should go beyond negotiating a fair trade between service providers and consumers, and be concerned to protect the right to housing as an element necessary to the realisation of other human rights and of a secure, dignified life.

The following recommendations are for law and policy reform according to the headings used in the *Leaking Roofs* report's survey of Australian residential tenancies legislation. Most of the recommendations are for the inclusion of specific provisions in residential tenancies legislation, and are phrased that way (that is to say, when we recommend that rents may be increased only in a particular manner, it should be taken impliedly that we recommend that this should be in residential tenancies legislation). Also, these recommendations should be read as applying to all renters: that is, in addition to tenancy agreements for residential premises, to tenancy agreements for caravans and moveable dwellings, boarding (rooming house) agreements, and site agreements, except as specified in the particular recommendation.

Aside from legislative reform, other housing policy instruments need to be developed to support households in rental housing. Questions of affordability and a realistic choice in tenures must be addressed across of range of policy fronts: direct assistance and subsidies, taxation, finance and investment. Security in rental housing must be reinforced by the presence of a large, growing stock of rental housing that resists being switched between tenures – that is, social housing. NATO adds its support to the call by National Shelter, ACOSS and many other non-government and community sector organisations around Australia for a reorientation of government housing policy to deal concertedly with unaffordable, insecure housing, especially in the private rental and public rental sectors of the Australian housing system.

NATO recommends

1. That a National Housing Policy Framework be developed to inform housing policy at all levels of government over the next five to ten years.
2. That the Commonwealth and State and Territory Governments increase funding for social housing under the Commonwealth-State Housing Agreement to \$4.7 billion per year or, failing this, to a level where social housing is at least maintained at its current proportion of total housing stock.

The Legislation, and its application

All Australian renting households should be protected by comprehensive residential tenancies legislation that enshrines the human right to housing.

The principal Acts

Australian residential tenancies legislation should be based on the recognition of the right to housing. All Australian Governments have a responsibility to the households

who are trying to make a home in rental housing to improve the conditions of the tenure and to ensure, in legislation, that their right to secure, dignified housing is protected. To this end, Governments should enact a national standard of best practice in the protection of tenants' and other renters' rights.

The enactment of uniform legislation would appear to be a logical, though not necessary, implication of a national standard based on the right to housing. Uniformity offers benefits in its own right, such as tenants (and rental housing professionals, such as real estate agents) being able to transfer their knowledge of tenancy laws, rights and obligations between different States and Territories.

NATO recommends

3. That the Commonwealth enact in legislation recognition of the right to housing.
4. That the Commonwealth, State and Territory Governments enact, whether through uniform residential tenancy legislation or otherwise, a national standard of best practice in the protection of the rights of tenants and other renters consistent with the right to housing.
5. The Commonwealth, State and Territory Governments, consistent with the recognition of the right to housing as a human right, prosecute breaches of residential tenancy legislation by landlords and their agents as breaches of a human right.

Extent of Application

The only test relevant to whether residential tenancies legislation should apply to a contract for the provision of rental housing should be whether the premises are to be used as the person's principal place of residence. Residential tenancies legislation should reflect the differences between forms of rental housing, such as boarding and rooming houses and caravan parks, but do so by making different provisions in legislation, and not by denying some agreements and some renters from effective legal protection.

NATO recommends

6. That residential tenancies legislation apply to all persons who are granted a right to occupy premises, whether exclusively or not, as their principal place of residence.
7. That residential tenancies legislation include provisions specific to boarding (rooming house) agreements, consistent with the right to housing and maintaining the relative flexibility of this tenure.
8. That residential tenancies legislation include provisions specific to tenancy agreements relating to caravans and moveable dwellings, and site agreements in caravan and moveable dwelling parks, consistent with the right to housing and cognisant of the communal relations that develop on parks.
9. That residential tenancies legislation provide a model share housing agreement relating to the liabilities between occupants of share housing; and that while not strictly binding on occupants, this model be used as a consideration in the determination of disputes between occupants of share housing.

Tenancy Agreements

Residential tenancies legislation should prescribe terms and standard forms for tenancy agreements (and boarding (rooming house) agreements, and site agreements), and not allow any contracting out. Tenants should not have to scrutinise the fine print of agreements for varied clauses or negotiate over terms relating to their right to housing.

A standard form for tenancy applications should also be prescribed. The information collected during tenancy applications should be limited, so as to guard against infringements of applicants' privacy and prejudicial decisions on the part of landlords and their agents.

NATO recommends

10. That residential tenancies legislation prescribe standard terms and standard forms of agreement for all tenancy agreements, boarding (rooming house) agreements, and site agreements respectively.
11. That residential tenancies legislation prescribe a standard form of agreement for share housing, which could be elected to be used at the commence of the tenancy, and which provides, in addition to the provisions of the usual standard form of agreement, for subsequent occupants to be included as parties to the agreement, and for departing occupants to be removed from the agreement.
12. That a landlord may not unreasonably withhold approval for transferring or assigning a tenancy, or subletting, or including a subsequent occupant in a share housing agreement.
13. That the standard form of agreement be written in plain English, and include a condition report for the premises.
14. That at the commencement of a tenancy the landlord be required to give to the tenant a copy of the agreement, and a prescribed statement as to the rights and obligations of tenants, including referral details for dispute resolution, complaints and enforcement, and tenants advice and advocacy.
15. That terms in tenancy agreements which are inconsistent with the provisions of residential tenancies legislation be void, and contracting out of residential tenancies legislation be prohibited; and that no additional term may be inserted into an agreement where the overall effect is to place an additional obligation or disadvantage on the tenant.
16. That residential tenancies legislation prescribe a standard form for tenancy applications, which makes clear that the application is an expression of interest in being offered a tenancy by the landlord, and which asks for information as to proof of the applicant's identity, ability to pay the rent, and references only.

Rents and other costs

It is appropriate that rents and other costs related to rental housing should be subject to close regulation. In terms of consumer protection, at the point of applying for a tenancy a prospective tenants is in a position that is vulnerable to exploitation, having little knowledge of how many other people are competing for housing, and being in need – perhaps urgent need – of the service for which they are competing. In terms of

the human right to housing, their access to a basic requirement for a dignified life should not be restricted. For both reasons, the costs that may be charged by landlords should be regulated, and kept to a reasonable minimum.

Charges Paid by Tenants

Residential tenancies legislation has generally restricted against exploitative charges such as premiums and key money, but inequities remain under current laws.

NATO recommends

17. That a tenant be required to pay only rent, bond and charges for utilities provided by the landlord, and that charges for utilities may be levied only where the services are separately metered and on the basis of cost.

Bonds

Bonds are another cost levied at a stage in negotiations between landlord and tenant where the tenant is vulnerable to exploitation. The amount should be limited and the limit should be universally applicable – differential treatment (for, say, furnished premises, or premises above a certain rent) may encourage sharp practice.

Tenants' bonds are best administered by compulsory lodgement with a central statutory authority. Bond authorities protect tenants (and landlords) by ensuring that bond monies are available for claim at the end of their tenancies, and work for tenants' collective advantage by earning interest that can be put to services for tenants. Bond authorities also produce valuable data on rents and the rental housing system that can be used to better inform housing policy.

NATO recommends

18. That bonds be limited to the equivalent of 4 weeks rent, and 2 weeks rent in the case of boarding (rooming house) agreements.
19. That all bonds for residential premises be lodged with a rental bond authority established by each State and Territory for the receipt, management and payment of rental bonds; and that each bond authority be governed by an independent board, the majority of whose members are representatives of tenants.
20. That landlords be required to make any claims on bonds within 14 days of the termination of a tenancy; and that where a landlord does not make a claim within this time, the bond is automatically returned to the tenant by electronic funds transfer or some other method.
21. That the interest earned on bonds lodged be directed only to services for the benefit of tenants and renters generally and interest payments to tenants individually.

Rent Payments and Receipts

Tenants should not have to pay to have their rent collected. If a landlord or agent wants rent to be paid in a particular manner, they should pay any fee incurred in doing so.

NATO recommends

22. That the period of rent in advance be limited to 2 weeks.
23. That a receipt be provided for each payment of rent received by the landlord, their agent, or the body that receives payments on behalf of the agent.
24. That where a method of rent payment, provided for under a tenancy agreement, involves the payment of a fee, the landlord or landlord's agent pay the fee.

Rent Increases

Once a tenant has established themselves and their family in premises and come to call the premises home, the landlord has even greater leverage to use the tenants' need for the premises to extract an extortionate rent. Protection against rent increases is also crucial to security of tenure – legislation that protects against terminations and evictions means little if a tenant cannot afford the rent.

Residential tenancies legislation should give an objective standard for determining whether an increase is excessive, and this standard should refer to general pricing levels. Legislation should also permit the making of regulations limiting rents and rent increases in particular locations where that location is subject to pressures from extraordinary events: for example, an international sporting event, a bush fire or another natural disaster, or a large-scale housing redevelopment.

NATO recommends

25. That rent may be increased only after a landlord gives the tenant a written notice of not less than 90 days, specifying the amount of the increased rent and the date on which it is to take effect, including where the increased rent is to take effect under a new tenancy agreement.
26. That, on receiving a notice of rent increase, a tenant may apply to a Tenancy Tribunal for an order that the notified increase is excessive, and that the rent be set at a reasonable amount for 12 months; for this purpose, where the rate of a rent increase is greater than the Consumer Price Index, the rent increase is presumed to be excessive, and the onus is on the landlord to satisfy the Tribunal that it is not excessive.
27. That, in addition to the above provision, tenancy legislation provide that a regulation may be made to set additional controls on rent increases in locations affected by a hallmark event.

Tenancy terms and conditions

The standard terms prescribed by residential tenancies legislation should implement the right to housing, in terms of both the physical condition of the rented dwelling, and its use as a sanctuary of enjoyment and freedom from imposition.

Habitability, Repairs and Maintenance

While all States' and Territories' residential tenancies legislation includes provisions relating to the state of premises and the making of repairs, the absence of any specific, prescribed content of landlords' obligations in this regard is a major shortcoming.

Residential tenancies legislation should set out specific standards of habitability and energy efficiency in the conditions and facilities provided under tenancy agreements.

NATO recommends

28. That a national housing standards code for residential premises, boarding and rooming houses and caravan parks, developed in consultation with building industry bodies and tenant organisations, and covering health, heating, insulation, water and plumbing, and security, be incorporated into residential tenancies legislation and included as a term of every tenancy agreement.

Quiet Enjoyment, Privacy and Access by Landlords

The right to quiet enjoyment and freedom from interference from the landlord are crucial protections for tenants' sense of home. Under current residential tenancies legislation, the provisions in relation to quiet enjoyment are diminished by the provisions relating to access. For many tenants, the sale of their premises can mean phone calls throughout the week from the landlord's agent asking to bring a prospective buyer around, and losing a substantial part of the weekend to open-house property inspections – for an unspecified period. The prospect of having to move out after a sale is stressful enough, but losing one's privacy – and in a way, one's home – while living in premises subject to unspecified numbers of inspections by strangers is a nightmare for tenants.

NATO recommends

29. That every tenancy agreement provide that a landlord must not offer the premises for sale, other than to the tenant, during the fixed term of the tenancy agreement.
30. That where premises are offered for sale or reletting, a written schedule for access by the landlord with prospective purchasers or tenants will be negotiated between the landlord and the tenant; and that in the event of disagreement or dispute the Tenancy Tribunal may determine a schedule for access, consistent with the tenant's right to housing and the right to quiet enjoyment.

Tenants' Use of Premises

Tenants need no special treatment in relation to the criminal law and the law of nuisance, and it is right that these laws apply to tenants like anyone else – by the same token, tenants should not have to bear legal obligations additional to those of the general law. Illegal purpose and nuisance provisions in residential tenancies legislation have the effect of policing the conduct of tenants in a way that does not apply to home owners. The penalty under this additional level of policing is severe: people can lose their homes. Complaints and proceedings under these provisions are often motivated by ignorance or prejudice, and the tenants subject of such complaints are all too often those who are already the most marginalised and victimised.

For similar reasons, the provisions of residential tenancies legislation dealing with boarding (rooming) houses and caravan parks should permit the making of house rules and park rules only on matters that bear on the health and safety of residents.

Residential tenancies legislation should also provide for an equality of treatment between tenants and home owners as regards the keeping of pets. The companionship

of an animal is a simple pleasure that should not be denied to people just because they rent.

NATO recommends

31. That every tenancy agreement provide that a tenant is not to use the premises for an illegal purpose, where the result is that the premises are not used predominantly as a residence.
32. That no provisions relating to nuisance, additional to the general law, be contained in residential tenancies legislation or any tenancy agreement.
33. That every tenancy agreement provide that a tenant may keep an animal, or animals, suitable to the premises.
34. That house rules (in relation to boarding rooming) houses and park rules (in relation to caravan parks) may be made on matters relating to the health and safety of residents.

Security of tenure, terminations and evictions

The provisions of residential tenancies legislation relating to termination of tenancies should give peace of mind and security throughout the tenancy, and protect the interests of tenants when a tenancy is to end.

Terminations by Landlords, and Evictions

The power of landlords to terminate tenancies without grounds is anathema to the right to housing and tenants' sense of belonging and security in their homes. Tenancies should be terminated against the wishes of tenants only where grounds, as prescribed by residential tenancies legislation, exist; where appropriate notice is given; and where a Tribunal determines that in all the circumstances of the case it is appropriate to end the tenancy. The tenant's prospects of finding alternative housing should be paramount in these considerations.

Review by a Tenancy Tribunal is crucial to the protection of tenants' rights in relation to terminations. It should never fall to the tenant to have to apply to the Tribunal to stop a termination from proceeding.

NATO recommends

35. That a landlord may initiate the process to terminate a tenancy by giving a notice of request to vacate on the following grounds only:
 - unremedied breach by the tenant (14 days)
 - frustration – premises uninhabitable (2 days)
 - the landlord, or a member of the landlord's immediate family, needs the premises to occupy as their own principal place of residence (120 days; periodic agreement only)
 - a contract of sale for the premises requires vacant possession (120 days; periodic agreement only)

- the premises are to be demolished, changed to a non-residential use, or substantially renovated such that vacant possession is required (180 days; periodic agreement only).
36. That a landlord may give a notice of request to vacate on the grounds of that the tenant is in breach of the agreement only in the following circumstances:
- the landlord has twice given the tenant a notice to remedy requiring that the breach be remedied within 14 days;
 - the tenant has not remedied the breach in that period; and
 - the breach is serious or persistent.
37. That where a tenant remains in occupation of premises past the date in a notice of request to vacate, the landlord may apply to the Tenancy Tribunal for orders of termination and possession; and that the onus should never fall on the tenant to apply for orders preventing the termination of the tenancy
38. That the Tenancy Tribunal, on the application of a landlord for a termination order, conduct a hearing; and that the Tribunal make orders terminating a tenancy only where it is satisfied that:
- the grounds in the notice of request to leave exist;
 - the proceedings are not motivated, wholly or in part, by the fact that the tenant has indicated that they may take steps to enforce their rights as a tenant;
 - if the grounds were the tenant’s breach, the breach was serious or persistent such that the tenancy cannot reasonably be continued; and
 - in all the circumstances of the case, and particularly with regard to the right to housing, termination of the tenancy is justified.
39. That where a Tribunal makes an order terminating a tenancy, the Tribunal will also specify a date for the return of possession of the premises to the landlord, considering all the circumstances of the case and primarily the tenant’s prospects of finding alternative housing.
40. That where a tenant remains in possession of premises past the date given in an order of the Tribunal, the landlord may, within 30 days, apply to the Tribunal for a warrant of possession; and that the warrant is to be enforced only by a sheriff or bailiff, or the police, after 2 days notice to the tenant.

Terminations by Tenants

The period of notice for a tenant terminating a tenancy should be limited to two weeks, so as to keep reasonably short the period for which a tenant may be paying rent on two premises. Residential tenancies legislation should also recognise that sometimes events arise that justify a tenant ending a tenancy during the fixed term of the agreement, and permit them to do so without the usual liabilities incurred in breaking an agreement.

NATO recommends

41. That a tenant (other than a boarder or rooming house resident) may terminate a periodic tenancy agreement by giving a notice of intention to vacate of 14 days and vacating the premises.
42. That a tenant (other than a boarder or rooming house resident or caravan park resident) may terminate a fixed term tenancy agreement without liability by giving a notice of intention to vacate, on the following grounds, and then vacating the premises:
 - a breach by the landlord (14 days)
 - the tenant is accepting an offer of social housing premises (14 days)
 - the tenant requires care, hospitalisation or crisis accommodation (14 days)
 - the death of a co-tenant (14 days)
 - an unforeseen change of circumstances that requires the tenant to reside elsewhere (for example, a change of employment, or a relative's need for care) (14 days)
43. That a boarder (rooming house resident) may terminate a boarding agreement by giving a notice of intention to vacate, verbally or in writing, of 2 days and then vacating the premises.
44. That a caravan park resident may terminate a tenancy agreement by giving a notice of intention to vacate, verbally or in writing, of 7 days and then vacating the caravan or site.

Domestic Violence

The right to secure housing means something other than protection against eviction when considered in the context of domestic violence. Residential tenancies legislation should allow victims of domestic violence to make changes to their residential arrangements in order to be safe.

NATO recommends

45. That an occupant of premises, whether a co-tenant or otherwise, may apply to a Tenancy Tribunal for an order terminating the tenancy where the tenant has committed an act of domestic violence against the occupant.
46. That where a Tenancy Tribunal terminates a tenancy on the grounds of a tenant's act of domestic violence towards an occupant, the Tribunal may, on the application of the occupant, make an order vesting a tenancy in the occupant.

Dispute resolution

The enforcement of residential tenancies legislation and the prosecution of breaches of the law are important, but at least as important is the resolution of disputes between landlords and tenants.

Cheap, accessible and accountable dispute resolution by a specialist adjudicator empowered to deal with all aspects of disputes arising from tenancy agreements supports the right to housing.

Forum for Tenancy Disputes

Specialist Tenancy Tribunals are the most appropriate forums for the residential tenancies disputes. They can provide cheap, informal and quick access to specialised dispute resolution. They should be guided in the performance of this function by express acknowledgement of the right to housing.

Informality and accessibility are important features of Tenancy Tribunals' operations, but must be balanced by the conscientious application of the principles of procedural fairness. Tribunals should provide services for the facilitated conciliation of disputes, but the value of conciliation should always be considered in terms of whether conciliation contributes to a just outcome, and it should be recognised that in some circumstances conciliation is not appropriate.

Tenancy dispute resolution benefits from the development in Tenancy Tribunals of specialist knowledge of housing, and Tenancy Tribunals benefit from having amongst their members persons whose experience and expertise is other than in the law.

NATO recommends

47. That specialist Tenancy Tribunals, established by each State and Territory, hear and determine all disputes under tenancy agreements, and applications under residential tenancies legislation; and that their jurisdiction be exclusive.
48. That Tenancy Tribunals operate relatively informally and, except in specific circumstances (for example, applications relating to violence), provide an opportunity and facilities for the conciliated settlement of disputes.
49. That Tenancy Tribunals operate according to the principles of procedural fairness; and that where the Tribunal fails to afford procedural fairness, the Tribunal must rehear the application and stay any orders (including termination and possession orders) made in contravention of the requirements of procedural fairness.
50. That, where a Tenancy Tribunal makes an error of law, a party may appeal to the Supreme Court of the relevant State or Territory.
51. That Tenancy Tribunals provide written reasons for a decision on request of either party to proceedings, and publish all written reasons and decisions in an accessible form.
52. That, in proceedings before a Tenancy Tribunal, tenants have the right to be represented by a tenants advocate (other than a legal practitioner), and landlords have the right to be represented by the usual property manager for the premises (other than a legal practitioner); and that the Tribunal may grant leave to either party to be represented by a legal practitioner where they would otherwise be at a disadvantage.
53. That States and Territories fund their respective Tenancy Tribunals from Consolidated Revenue, and fund them sufficiently to ensure that all Tribunal venues can provide timely hearings (including urgent hearings), conciliation facilities and services, interpreters, recording and transcription services, and child-care, and are accessible to people with disabilities.

54. That no application fee should be charged on applications by a tenant in relation to a landlord's breach, a rent increase, access by the landlord, bond or uncollected goods.

Orders

Tenancy Tribunals need a range of powers to deal with tenancy disputes. Applicants should not have to apply to other jurisdictions to have a matter arising from a tenancy agreement or residential tenancies legislation dealt with.

NATO recommends

55. That each Tenancy Tribunal have power to make orders as to the following:
- rent, including orders disallowing a rent increase and setting the rent at a reasonable amount, and orders reducing the rent where the rent is excessive, or where goods, service, facilities provided with the premises are withdrawn, or where the standard of accommodation has become diminished
 - breach of a provision of residential tenancies legislation or a term of a tenancy agreement, including orders for specific performance of a term of a tenancy agreement, injunctions against breach, and orders for compensation for loss resulting from a breach
 - access by the landlord, including schedules of access in the event of sale or reletting
 - house rules and park rules
 - termination and possession
 - uncollected goods
 - bonds
 - disputes between co-tenants and occupants of share housing
 - recognition of occupants as tenants
56. That the power to make orders as to compensation for breach include the power to award compensation for a tenants' non-economic loss, and the power to award exemplary damages against landlords, in recognition of the significance of the right to housing.

Uncollected Goods

Residential tenancies legislation should provide for a way of dealing with goods left behind at premises that protects tenants' belongings, as well as giving certainty to landlords who deal with goods properly. Tenants should be able to seek orders, including for compensation, where landlords do not follow the prescribed procedure. Safe storage for tenants' documents and other personal effects is especially important, but currently in many jurisdictions these items are the least protected.

NATO recommends

57. That any goods, being personal documents, tools of trade, photographs, jewelry, clothes and therapeutic furniture and appliances, left uncollected at premises be stored safely by the landlord for not less than 6 months from the date of the landlord taking possession.
58. That any other uncollected goods, except perishables, be stored for not less than 60 days from the date of the landlord taking possession.
59. That a landlord notify the tenant of the storage of any uncollected goods, and deliver up the goods to the tenant upon request
60. That under no circumstances shall a landlord demand the payment of any amount of money for delivering up uncollected goods
61. That in the event of a dispute about uncollected goods, the tenant may apply to the Tenancy Tribunal for orders in relation to the goods, including for compensation where the goods have been disposed or destroyed other than in accordance with legislation.
62. That, after storing uncollected goods for the required period, a landlord must sell goods of value at auction, and account to the tenant the proceeds of the sale, less storage and sales costs and any amounts owed by the tenant under an order of the Tenancy Tribunal.

Access to housing

Recognition of the right to housing demands that barriers to housing be broken down, both in residential tenancies legislation – such as in provisions dealing with tenant databases and discrimination – and in policies and services that assist tenants, such as bond and rent contribution programs and tenants advice and advocacy services.

Tenant databases

Tenant databases have no place in a just rental housing system. Being listed on a database can make a person homeless, and the possibility of being listed is an implicit threat in tenancy disputes that undermines tenants' legal rights.

NATO recommends

63. That the use, maintenance and operation of a tenant database be prohibited.

Anti-Discrimination Provisions

The provision of rental housing, like other relationships, is subject to anti-discrimination legislation and should continue to be so. A number of issues, however, have special importance in relation to the rental housing system, such that residential tenancies legislation should make particular provisions guarding against discrimination on these grounds.

On the other hand, some exemptions from anti-discrimination legislation are justifiable in the case of share housing arrangements, and the law should reflect this

(for example, if a single female tenant wants to live only with another single female, she should be able to choose her house mate accordingly).

NATO recommends

64. That discrimination in the provision of rental housing on the following grounds be specifically prohibited in residential tenancies legislation:
 - that a child is to live at the rented premises
 - the source of a person's income
 - a person's employment status.
65. That an exemption from anti-discrimination provisions in residential tenancies legislation and other legislation be provided for occupants under a share housing agreement, except in relation to race and ethnicity.

Financial Assistance to Tenants

Financial assistance to tenants from the Commonwealth and State and Territory Governments could, with justification, be maintained on the grounds of equity of treatment with other households, given the assistance and subsidies that are provided to home owners. More importantly, Commonwealth Rent Assistance and financial assistance from the State and Territory Governments also represent policy tools that potentially improve access to housing and affordability. However, serious questions have been raised over the efficacy Commonwealth Rent Assistance, and these issues must be investigated to ensure that housing policy dollars deliver the most benefit possible to tenants.

NATO recommends

66. That in consultation with the community sector, tenants advocates and industry, the Commonwealth review the Commonwealth Rent Assistance program, and consider the efficacy of the program compared with supply-side programs such as social housing and the effect, if any, of the program on the level of rents.
67. That, in reviewing the Commonwealth Rent Assistance program, the Commonwealth also consider whether the following adjustments to the program would better deliver affordable housing to recipient households:
 - introducing benchmarks as to affordability, security of tenure, and housing standards
 - removing rent thresholds
 - expanding eligibility to working tenants who are in housing stress
 - regional variations in payments, to account for variations in rent levels (and providing that no recipient should be worse off under a regionally varied model)
68. That States' and Territories' public housing authorities provide bond assistance to eligible persons renting in the private market.
69. That housing access programs which provide, on a selective basis, an additional demand-side assistance (for example, guarantees additional to bond) be reviewed to ensure that such programs do not have the effect of rewarding landlords for

current discriminatory practice, or of increasing the general level of requirements for housing access.

Advocacy

Access to housing is not just about getting a foot in the door – it also means maintaining housing and ensuring that it continues to be provided on fair and legal terms. In this regard, the availability of advice and advocacy services for tenants is vital.

In day-to-day tenancy matters, most tenants are at a disadvantage, relative to real estate agents and professional landlords, in terms of knowledge, experience and confidence – tenants advice services address this disadvantage through the provision of independent information, advice, advocacy and education. The disadvantage is felt many times over in Tribunal proceedings, where no matter the effort put into making proceedings informal and accessible agents and landlords will still have the advantage of experience.

It is appropriate that interest earned on tenants' bonds should fund tenants' advice and advocacy services.

Tenants advocates must also be resourced and consulted in relation to law reform. The experience of tenants advocates should be considered an essential input into law reform and the continuing development of housing policy.

NATO recommends

That each State and Territory fund an independent non-government tenancy organisation, or network of organisations, to provide information, advice and advocacy to tenants, and to promote the continued protection and advancement of the rights of tenants and renters in the Australian housing system.