

PIAC submission to the ‘Improving NSW rental laws’ consultation

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About the Public Interest Advocacy Centre

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

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

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

Our priorities include:

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

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Summary of Recommendations

Recommendation 1 *Require landlords to provide a valid reason to terminate a tenancy*

Amend the Act to require landlords to provide a valid reason to terminate a tenancy. Prescribe a set of reasonable grounds limited to:

- *Significant repair, renovation or reconstruction of the property*
- *Demolition of the property*
- *Change of use*
- *Owner or their immediate family moving in the property as their principal place of residence.*

Recommendation 2 *Prescribe adequate notice periods for each reasonable ground to terminate a tenancy*

Recommendation 3 *Amend the Act to allow tenants to move out at any time*

Amend the Act to allow tenants who have been served a termination notice using a reasonable ground to move out at any time.

Recommendation 4 *Landlords using grounds in a misleading manner to pay a fine and compensation to wrongfully evicted tenants*

Recommendation 5 *Legislate rules regarding use, storage, disclosure and destruction of renters' personal information*

Legislate rules to ensure no more information than necessary to assess applications and good property management is collected, and that this information is stored, used, disclosed to renters and destroyed appropriately.

Recommendation 6 *Standardised application process*

Standardise the application process for rental properties through an application form prescribed by regulation, including what kind of information may be collected to assess an application.

Recommendation 7 *Set the period for renters to top up the new bond to 30 days or more*

Recommendation 8 Create a universal, mandatory, Government guaranteed portable bond scheme

The portable bond scheme to be mandatory for landlords and universally accessible for renters, including for people who have previously failed to top up the new bond. Alternatively, any exclusion period to be limited to 16 months maximum. Payment of the new bond to landlords is to be guaranteed by NSW Government.

Recommendation 9 Mandate for a free and reasonably convenient way to pay rent to be available

Require landlords and real estate agents to 'provide a free, reasonably convenient way to pay rent, including at least one electronic way'.

Recommendation 10 Set a threshold for excessive rent increases

The Rental Commissioner, or another adequate independent agency, to set an appropriately determined threshold over which landlords are required to prove through the Tribunal a rent increase is not excessive.

Recommendation 11 The NSW Government to develop a rental hardship and homelessness prevention scheme

NSW Government, in consultation with the NSW Rental Commissioner and relevant stakeholders, to develop and implement a rental hardship and homelessness prevention scheme to support people experiencing sudden difficulties to pay their rent due to loss of income.

Recommendation 12

The definition of 'embedded network' should be broad enough to not just capture traditional embedded networks, but also hot and chilled water embedded networks and potential future embedded networks such as electric vehicle charging.

Recommendation 13

Develop a plain language factsheet (also available in community languages) that contains a simple definition of what an embedded network is; an explanation about reduced protections for consumers; information listed in Condition 2 in Appendix A-2: Core exemption conditions of the AER's 'Retail Exempt Selling Guideline'; and links to information about embedded networks from TU and EWON.

Recommendation 14

The existence of an embedded network should be disclosed at time of advertising, along with a brief explanation of what an embedded network is, the specifics of the embedded network arrangement; estimated costs; a plain language statement informing prospective tenants that they would receive less protections; and a link to a plain language factsheet as described in this submission.

Recommendation 15

At time of inspection, prospective tenants should be provided with a hardcopy of the plain language factsheet described in this submission, along with a verbal explanation by the leasing

agent that the dwelling is in an embedded network, which means that the protections and supports required by authorised retailers for the provision of energy do not apply.

Recommendation 16

Applications for homes that are in embedded networks should include a statement that the dwelling is in an embedded network, with a brief explanation of what that is and a statement about what that would mean for their rights and a link to the plain language factsheet described in this submission.

Recommendation 17

The factsheet described in this submission be provided ahead of the lease being signed, in the form of a plain language factsheet (available in community languages) and accompanied by a verbal explanation.

Recommendation 18

Conditions 3 through to 22 as well as 26 in Appendix A-2: Core exemption conditions of the 'Retail Exempt Selling Guideline' should be provided to tenants when they sign their lease.

Recommendation 19 Mandate minimum energy efficiency standards for rental properties

Require rental properties to achieve a certain level of energy efficiency through performance based standards or through feature based standards in the short term before moving to performance based standards, based on the Community Blueprint for Energy Efficiency Rental Standards.

Recommendation 20 Require landlords or their real estate agent to report rent increases

Require landlords or the real estate agent representing them to report rent increases to the NSW Government through an online system such as the Rental Bond Board online system.

Recommendation 21 Review the operation of NSW new rental laws after 24 months

Mandate the NSW Rental Commissioner to review the operation of the new NSW rental laws, including consultation with stakeholders, after they have been in operation for 24 months.

1. Introduction

The Public Interest Advocacy Centre (PIAC) welcomes the opportunity to contribute to the 'Improving NSW rental laws consultation paper' (the 'discussion paper'). Reform of tenancy legislation is urgently needed to provide a fair and transparent framework, adequate protection, and housing security to people who rent their home. PIAC commends the NSW Government for considering housing regulation reform a priority and committing to improving rental laws to support renters early in its term.

PIAC provides free legal advice and assistance to people experiencing or at risk of homelessness through the Homeless Persons Legal Service (HPLS) and the Women's Homelessness Prevention Service (WHPS). PIAC advocates for a housing system that provides a safe, secure, affordable home for all and ensures any experience of homelessness is rare, brief, and non-recurrent. Our policy and advocacy work is informed by the experiences of HPLS clients and the advice of a group of lived experience advocates with diverse experiences of homelessness, StreetCare.

We see daily the consequences of inadequate regulation of rental housing and how it contributes to disadvantage, housing insecurity, and the risk and incidence of homelessness. There are multiple opportunities to reform tenancy legislation and related policy to (a) improve the experience of people who rent their home or trying to access rental housing and (b) strike the right balance between rights and responsibilities of tenants and landlords.

This includes increasing housing security, fairness and transparency through requiring landlords to provide a valid reason to terminate a tenancy, protecting people who rent their home against discrimination and inappropriate use of their personal information, and mechanisms to address rental affordability and housing stress such as better regulation of rent increases and the creation of portable bond and rental hardship and homelessness prevention schemes.

This submission follows the structure of the terms of reference of the consultation. It draws on the experiences of HPLS clients and more broadly on the needs and aspirations of people who rent their home, experiencing homelessness, at risk, living on low incomes or facing other forms of disadvantage.

2. Removing 'no-grounds' terminations

2.1 Goal and principles

People who rent should be able to stay in their home unless it is no longer available for rent. Landlords should be able to terminate a tenancy by providing evidence of a valid reason when the property is no longer available for rent.

This goal is underpinned by the following principles:

- Housing is a human right. The function of housing as a home is to be prioritised over the functions of housing as a financial asset and wealth accumulation mechanism.
- Housing is fundamental to health and welfare. It is an essential service that must be regulated as such.
- Housing regulation and policy should prevent evictions into homelessness.
- Security of tenure to people who rent their home should be guaranteed as far as reasonably practical.

2.2 Why do we need to remove ‘no-grounds’ terminations?

People who rent their home need better protection from arbitrary and unfair treatment and retaliatory evictions. Reform of no grounds eviction so that landlords must provide evidence of a valid reason to terminate a tenancy agreement is essential to begin addressing the power imbalance between landlords and tenants. This will provide adequate protection and greater security of tenure to people who rent their home, as is the case in most OECD countries.

No grounds evictions undermine *every other right tenants have at law*, both when it is used by landlords and because of *the possibility* it might be used. The prospect of landlords evicting tenants on no grounds make tenants fearful or at least hesitant to assert even their most basic rights.¹ This is especially true for people at risk of homelessness if they are evicted. Reform of no grounds evictions is the pre-requisite to designing and implementing a legislative framework that adequately protects people who rent their home and allows them to exercise their rights at law. Reform of no grounds evictions is also a homelessness prevention measure through reduction of unfair and retaliatory evictions.

While there are provisions in NSW against retaliatory evictions,² they are hard to prove and rarely used. Requiring landlords to provide evidence of a valid reason to terminate a tenancy will increase fairness, transparency, and contribute to preventing retaliatory evictions.

Reform of no grounds evictions is a low-cost, sensible measure that will provide greater security of tenure to people who rent their home in NSW, and improve their overall experience while reducing the number of evictions into homelessness. It will also ensure NSW complies with its obligations under international human rights legislation.

2.3 Better protections for renters against unfair evictions

2.3.1 Coverage of the new legislation

¹ See for example National Shelter, Choice, NATO ‘Disrupted: The consumer experience of renting in Australia’ (Report, 2018) < <https://shelter.org.au/site/wp-content/uploads/Disrupted-2018-Report-by-CHOICE-National-Shelter-and-NATO-Web-Version.pdf> >

Residential Tenancies Act 2010 (NSW) s 52 specifies the minimum requirements that must be met for residential premises to be fit to live in.

² *Residential Tenancies Act 2010* (NSW) s 115.

Landlords must be required to provide a valid reason to end all tenancies regardless of whether they are periodic or a fixed term lease. This means replacing no grounds evictions with a set of prescribed, reasonable grounds to end both fixed and periodic term tenancy agreements.

(a) Avoiding creation of a loophole by protecting all tenants

Reform of no grounds evictions that does not cover all people who rent their home will not achieve its objective of making renting fairer and providing protection to renters. It does not meet the goals and principles outlined in section 2.2. Protecting only people with a periodic tenancy agreement will perpetuate the ‘chilling effect’ on tenants on fixed term leases to exercise their rights at law. It will also create a loophole that landlords can use to ensure they always have the option of using a no grounds eviction. Tenant advocates and legal assistance services report that in states where reform has failed to protect people on fixed term tenancies, such as Queensland, Victoria and Tasmania, an overwhelming majority of landlords keep tenants on short term fixed term tenancies to ensure they retain the option of using ‘no-grounds’ evictions. This results in housing insecurity and retaliatory evictions continuing in spite of law reform.

Providing housing security to people on fixed term leases supports them to ‘make a home’ and get involved in their community, make local connections and develop informal support networks. It also reduces the risk of evictions disrupting schooling arrangements and causing poor educational outcomes for children.

(b) Recognising the ongoing nature of tenancy agreements

It is important to note that arguments for retaining no grounds evictions for fixed term tenancies - on the basis that the contract ‘has reached its end date’ - misrepresent the contractual relationship the tenant and landlord have entered. Once the initial period of the fixed term agreement reaches its end, the agreement continues whether or not a new fixed term agreement is signed. If a new fixed term agreement is not signed, this occurs under the form of a periodic agreement. The contractual relationship itself, where the landlord provides a service (occupation of the premises) in exchange for a fee (rent) does not end unless it is terminated by one of the parties.³

For these reasons, the recommendations outlined in the sections below (i.e. regarding reasonable grounds, notice periods, tenant to be able to move at any time) should apply to both fixed term and periodic tenancies.

2.3.2 Valid reasons for terminating tenancies

In addition to ‘no grounds’, the Act currently includes a number of reasons allowing landlords to end a tenancy. PIAC agrees that landlords should be able to continue to terminate a rental agreement for reasons such as breaches of contract (e.g. not paying rent, causing serious damage). We propose, however, that a support scheme to prevent rental hardship and homelessness be available to people having difficulties paying their rent. This is discussed in section 6.3.

³ Leo Patterson Ross, ‘No-grounds’ evictions are unfair’, Australian Lawyers Alliance (Blog post, 21 April 2022).

The discussion paper contemplates introducing new reasons which would constitute a valid reason to end the tenancy.⁴ These include:

- The property is being prepared for sale
- The property will go through reconstruction, repair or renovation that requires it to be vacant
- The property will change its use
- The property will be demolished
- The landlord will move into the property, or a member of their immediate family will move in.

With the exception of 'being prepared for sale', PIAC is overall supportive of the new reasons proposed as valid reasons to end a tenancy. We do however suggest introducing safeguards to guarantee security of tenure to people who rent their home as far as practical and ensure landlords do not misuse reasons for terminating tenancies.

Sale of the property

In some circumstances, the sale of the property will require the end of the tenancy but not always. For this reason, to permit landlords to terminate on the grounds that the property is 'being prepared for sale' is too broad and should not amount to a valid reason to terminate a tenancy. There are other options to ensure landlords can sell their asset while providing security of tenure as far as reasonably practical to tenants.⁵

Where a property is sold, it is either sold to an owner occupier or to another investor. If the sale contract requires vacant possession, existing grounds under the Act can be used to terminate the tenancy. If the property is sold to another investor, the tenancy should continue unless the new landlord uses one of the valid reasons to terminate it. Therefore, we do not consider 'sale of the property' to be a valid reason to terminate a tenancy.

If NSW Government does decide to introduce any ground based on 'intention to sell' it must only be permitted in circumstances where the landlord can provide adequate evidence that the property will indeed be sold. A blanket temporary prohibition on re-letting the property (e.g. 6 to 12 months) should also be legislated. This will ensure that landlords using this ground to terminate a tenancy genuinely intend to sell the property. There should be strong enforcement measures to ensure landlords are not able to mislead the NSW Civil & Administrative Tribunal (NCAT) (the Tribunal) when using provisions related to 'intention to sell'. This could include options for renters to seek compensation where they have been wrongfully evicted.

Where there has been a genuine change in the landlord circumstances, a temporary ban on re-letting the property for 6 to 12 months should be sufficient to ensure only landlords with genuine changes of circumstances use this ground to terminate a tenancy.

⁴ NSW Government, Department of Customer Service, 'Improving NSW rental laws consultation paper' (Discussion paper, July 2023).

⁵ For example, NSW Government might want to consider providing tenants with a preemption right for a certain period if the property they rent is being put for sale. We do not discuss this in detail because buying the property they rent would not be an option for HPLS clients.

We support the continuation of the existing reason that permits landlords to terminate a tenancy when the landlord has entered a contract for sale requiring them to give vacant possession of the premises.⁶

Reconstruction, repair, renovation or demolition

Reconstruction, repair or renovation rendering premises unfit for habitation should be considered a valid reason for terminating a tenancy. In order to maximise security of tenure for tenants and minimise the risk landlords use this ground to evict a tenant and re-let the property at a higher price, there needs to be safeguards built into the legislation.

First, only *significant* repairs or renovation should be considered a valid reason. Regulation should define significant repairs or renovation to clarify that this is work rendering the premises unfit for habitation for a certain period of time, for example a minimum of 6 weeks or longer. There should be a temporary ban on re-letting the premises (e.g. 6months) to limit inappropriate or disingenuous use of this ground.

Second, the tenant should have choice as to whether they want to terminate or continue the tenancy. Regulation must require that landlords offer the tenant the option to continue the tenancy agreement with abated rent during the renovation or repairs period.

Third, landlords must be required to provide evidence to show they are undertaking significant repairs or renovation. This could be a building permit and/or a contract with a building license holder. Landlords should show they have obtained all necessary permits and consents. In the event renovation, repairs or demolition is not allowed to proceed, the temporary ban on re-letting the premises should still apply where tenants have been evicted in order to prevent disingenuous use of this ground.

Change of use

Change of use, for example from a residential to a commercial property, should be a valid reason for terminating a tenancy. Landlords should be required to provide evidence, such as council development consent, in order to use this ground. There should also be a temporary ban on re-letting the premises (e.g. 12 months) to limit inappropriate or disingenuous use of this ground.

Landlord or immediate family moving into the property

The landlord or their immediate family intending to move in to use the rental property as their principal place of residence should be a valid reason to terminate a tenancy. In some circumstances, owners or their immediate family might face serious hardship or homelessness if they are not able to move in a property being rented, meaning it should be considered a reasonable ground.

It is important however that the Act provides a clear definition of 'immediate family' in order to reduce inappropriate use of this ground and disputes leading to Tribunal applications. We suggest that the definition of 'immediate family' include:

⁶ *Residential Tenancies Act 2010* (NSW) s 86.

- The owner's domestic partner
- The owner's child or parent
- The owner's domestic partner child or parent
- Another person who ordinarily lives with the owner and is wholly or substantially dependent on the owner.

There should also be a temporary ban of a minimum of 12 months on re-letting the premises when using this ground to terminate a tenancy in order to ensure owners genuinely need to move in and are not using it to terminate the tenancy and re-let the premises.

Recommendation 1 Require landlords to provide a valid reason to terminate a tenancy

Amend the Act to require landlords to provide a valid reason to terminate a tenancy. Prescribe a set of reasonable grounds limited to:

- *Significant repair, renovation or reconstruction of the property*
- *Demolition of the property*
- *Change of use*
- *Owner or their immediate family moving in the property as their principal place of residence.*

Adequate notice periods

Tenants who are evicted from their home through no fault of their own should be afforded adequate time to find alternative accommodation. This is particularly important to prevent evictions into homelessness and reduce the risk people who rent their home will accept alternative housing that is inadequate to their needs or that they cannot afford over the long term.

Notice periods must be underpinned by the principle to prioritise housing as homes over housing as financial assets, and strike the right balance between the needs of tenants and landlords. For example, notice periods must recognise that the landlord needing to move into the property for use as their principal place of residence is more urgent than demolishing the property or changing its use to a commercial building.

We recommend the following notice periods:

- Reconstruction, repair, renovation or demolition: 6 months
- Change of use: 6 months
- Landlord or immediate family moving in: 90 days
- Sale requiring vacant possession: 120 days

Recommendation 2 Prescribe adequate notice periods for each reasonable ground to terminate a tenancy

Tenant to be able to move out at any time

Tenants should be able to move out at any time after a termination notice other than for breach of contract has been served. Currently, only tenants evicted during a periodic agreement are able to move out and stop paying rent at any time after a termination notice has been served.⁷ Tenants being able to move out at any time between the serve of the notice and the termination date appropriately recognises they are forced to move out through no fault of their own and reduces the risk of the tenancy termination causing them financial hardship (e.g. through paying double rent and other additional costs associated with an unflexible moving date).

Recommendation 3 Amend the Act to allow tenants to move out at any time

Amend the Act to allow tenants who have been served a termination notice using a reasonable ground to move out at any time.

2.4 Enforcement and compliance

Penalty to apply for landlords wrongfully evicting tenants

Temporary bans on re-letting properties are an appropriate disincentive for landlords to use reasonable grounds lightly, while dealing appropriately with situations where there are genuine changes in landlord's circumstances.

There should be other compliance and enforcement provisions where landlords have intentionally been misleading and/or misused a reasonable grounds for terminating a tenancy. A penalty should apply where landlords are found to have intentionally and wrongfully used reasonable grounds. Regulations should also prescribe compensation to tenants who have been wrongfully evicted, to be paid by the landlord. Compensation amounts should be commensurate to reasonable moving costs tenants would have incurred as a result of the eviction.

Recommendation 4 Landlords using grounds in a misleading manner to pay a fine and compensation to wrongfully evicted tenants

Reducing risk of misuse of grounds through changes to Tribunal proceedings

There are a number of changes to Tribunal powers and proceedings that can reduce the potential for misuse of both existing grounds and new grounds for termination of tenancies.

These include:

- Shifting the onus of proof from the tenant to the landlord to show use of reasonable grounds is warranted

⁷ Residential Tenancies Act 2010 (NSW) s 110.

- Creating a preclusion periods for another termination notice to be served after the Tribunal has declared a termination notice has no effect or refuses to make a termination order
- Provide the Tribunal with discretion to decline termination if it considers it would not be appropriate after consideration of the relevant factors and circumstances of the case.

3. A new model for keeping pets

The current legislative framework for keeping pets in rental properties does not adequately balance between the rights and responsibilities of landlords and tenants. Many people experiencing homelessness have pets, and consider them part of their family and essential to their health and wellbeing, including when it might make it more difficult for them to secure a home. Pet ownership can contribute to homelessness and housing stress, because people will pay extra to secure a rental allowing pets, or because they are unable to find an affordable home, or a home at all, that will meet their needs and the needs of their companion animals.

Given the focus of HPLS on homelessness rather than wider rental housing regulation issues, we defer to the expertise of the Tenants Union of NSW on this issue, and endorse their recommendations in-principle.

4. Protecting renters' personal information

The collection of extensive, sensitive personal information from tenants and applicants for rental properties creates a risk that their personal data might be used for inadequate purposes. It also represents a cyber-security risk and is often unnecessary for the purposes of managing residential property. More broadly, PIAC has previously noted that lack of regulation of residential property application processes creates potential for discrimination:

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

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

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

Lack of regulation of the application process creates potential for discrimination. Because people seeking rental housing usually inspect properties in person, real estate agents and landlords can assess and/or assume their personal characteristics, such as age, ethnicity, sexual orientation, and whether they live with disability. People who feel they have been discriminated against confront significant challenges in proving it, as well as little recourse against it due to the opacity and lack of regulation of the application process.’⁸

PIAC recommends that all real estate agencies are covered by the *Privacy Act 1988* (Cth). There are also opportunities as part of the reform of NSW rental laws to better protect renters’ personal information. There should be rules to ensure that no more information than necessary to assess applications and rental property management is collected by landlords and their agents, and that this information is used appropriately. These rules should be legislated to ensure adequate enforcement and compliance. We do not consider the real estate agents ‘Rules of Conduct’ issued by Fair Trading to be sufficient for the purposes of protecting renters’ personal information.

Recommendation 5 Legislate rules regarding use, storage, disclosure and destruction of renters’ personal information

Legislate rules to ensure no more information than necessary to assess applications and good property management is collected, and that this information is stored, used, disclosed to renters and destroyed appropriately.

4.1 Standardised application process

A standardised application process for tenancies including a prescribed application form would provide greater protection to people applying for a rental property. There should be rules outlining what kind of information might be collected in order to assess an application. Flexibility should remain for how/what kind of documents tenants may use to provide the relevant information.

Recommendation 6 Standardised application process

Standardise the application process for rental properties through an application form prescribed by regulation, including what kind of information may be collected to assess an application.

4.2 Provisions for collection, use, disclosure, and destruction of personal information

Personal information provided by renters or applicants should only be used for assessing applications or tenancy management purposes. Renters do not benefit in any way from their personal information being on sold to third parties or otherwise used for marketing purposes. On

⁸ PIAC submission to the Commonwealth inquiry into the worsening rental crisis. Because this is not yet publicly available, we have directly quoted the relevant section.

the contrary, this can cause them harm, particularly for people at risk of discrimination or having difficulties securing a rental property. It should be expressly restricted.

PIAC endorses the detailed recommendations of the Tenants Union of NSW regarding the collection, use, disclosure and destruction of renters' personal information.

5. Portable rental bond scheme

A portable bond scheme will reduce the cost associated with moving for renters and provide certainty to landlords. PIAC supports the introduction of a universal, mandatory, government guaranteed portable bond scheme.

Allowing landlords to opt-out from the scheme would jeopardise its impact and should not be permitted. To avoid creating financial risk and uncertainty for landlords, where the new bond costs more than the old bond, or because part of the previous bond has been claimed by the former landlord, NSW Government should guarantee payment of the new bond to the landlord. Based on the principle of 'eviction as last resort', and given the likely minimal cost to government, this is preferable to allowing landlords to terminate the tenancy agreement if tenants do not top up the difference with their previous bond within the allocated timeframe. NSW Government may then seek repayment of the difference in bond from renters who have failed to top up their bond in time, or offer other appropriate support, for example as described in section 6.3.

Timing for topping up the new bond

Moving is expensive. According to the Tenants Union of NSW, the average cost of moving is around \$4,075.⁹ The portable bond scheme should provide an appropriate amount of time for people to top up the new bond where it is higher than the old bond, or part of the old bond has been claimed. This will reduce financial hardship and distress associated with moving home.

Since most people are paid fortnightly, renters should be provided with a minimum of 14 days to top up the new bond. A period of 30 days or more would be ideal to maximise flexibility and the positive impact of the portable bond scheme.

Recommendation 7 Set the period for renters to top up the new bond to 30 days or more

Eligibility

All people with a bond held for a previous tenancy should be eligible for the scheme. People who have previously failed to top up their bond in time should continue to be eligible for the scheme. In the alternative, any exclusion from the scheme should be limited in time and not exceed the length of the average tenancy in NSW (currently 17 months).

⁹ Tenants Union of NSW, *Eviction, Hardship and the Housing Crisis* (Special report, February 2022) p8.

People with financial difficulties should be supported to sustain private rental market housing. Making people who have previously failed to top up their bond in time ineligible for the scheme puts them at risk of homelessness, with devastating personal consequences and further cost to government through the homelessness and social housing system. There are many circumstances in which people might have had difficulties topping up their previous bond for legitimate reasons, for example because part of their previous bond was claimed due to domestic violence or other reasons out of their control. HPLS regularly assists clients in these circumstances.

Recommendation 8 Create a universal, mandatory, Government guaranteed portable bond scheme

The portable bond scheme to be mandatory for landlords and universally accessible for renters, including for people who have previously failed to top up the new bond. Alternatively, any exclusion period to be limited to 16 months maximum. Payment of the new bond to landlords is to be guaranteed by NSW Government.

6. Other ways to make it easier for renters

6.1 Free way to pay rent

Currently, the law requires landlords and their agents to provide at least one free way to pay rent, but this method of payment is not always reasonably available or convenient.¹⁰ Regulation should ensure all people who rent their home have access to a free, easy to use and convenient way to pay rent, including at least one electronic way to reflect the most common preference.

Recommendation 9 Mandate for a free and reasonably convenient way to pay rent to be available

Require landlords and real estate agents to 'provide a free, reasonably convenient way to pay rent, including at least one electronic way'.

6.2 Better regulation of rent increases

Unsustainable, rapidly rising rents in the last few years have put more people at risk of homelessness.

Better regulation of excessive rent increases would provide better protections to people who rent their home. It might also put some – albeit limited - deflationary pressure on the overall rental market.

¹⁰ Discussion paper, 9.2.1-3.

NSW already regulates rent increases through regulation of frequency of rent increases, notice periods, and a process to challenge excessive rent increases. Regulation of these parameters can be further improved, for example by closing the loophole allowing landlords to increase rent more than once every twelve months by switching between lease types. There should be a blanket prohibition on increasing rent more than once every twelve months.

The single most effective way to improve rental affordability and better protect people who rent their home is to regulate amount of rent increases to clarify that increases over a certain amount are excessive. Currently, the onus is on renters to challenge rent increases they believe are excessive. Very few renters challenge rent increases for two main reasons:

1. fear of retaliation
2. it is hard for individual renters to determine what might constitute an 'excessive rent increase', and to provide information and evidence to the Tribunal to demonstrate that a rent increase is excessive. This is particularly true for people living on low incomes or facing other forms of disadvantage.

The onus should be reversed so that landlords or their real estate agent have the burden of proving that a rent increase is not excessive when exceeding a certain threshold compared to the previous rent. This would recognise it is landlords and real estate agents who benefit from increases in rent. They also have easy access to information about local market rents and other parameters determining adequate rent level compared to renters. For example, in the ACT, the landlord is required to prove that a rent increase is not excessive when it exceeds 110% of rent CPI. Under this threshold, the rent increase is considered reasonable and the onus of proof stays on the tenant.

Recommendation 10 Set a threshold for excessive rent increases

The Rental Commissioner, or another adequate independent agency, to set an appropriately determined threshold over which landlords are required to prove through the Tribunal a rent increase is not excessive.

6.3 Create a rental hardship and homelessness prevention scheme

Reform of 'no-grounds' evictions and better regulation of excessive rent increases alone will not be sufficient to prevent homelessness. There will be people in financial hardship who will be unable to sustain their tenancy because they do not have the capacity to pay rent. Non-payment of rent constitutes a breach of contract and should be a valid reason for a landlord to terminate a tenancy.

It is the role of NSW Government to prevent homelessness by providing support to people who find themselves in temporary hardship causing them difficulties to pay rent. A rental hardship and homelessness prevention scheme, similar to provisions in place during the Covid-19 crisis, has potential to support people with temporary payment difficulties to sustain their tenancies. Not only would this prevent severe negative impact on people's health and wellbeing, it would also create cost savings through reduced expenditure over the long term in housing and homelessness services.

A rental hardship and homelessness scheme would support people experiencing a significant, sudden decrease in income. For example, eligibility could be set to support people facing a decrease in their income of more than 25% over a three month period and who pay more than 50% of their income in rent.

Options for the scheme include a payment to tenants or a direct payment to landlords. The former having the advantage of preventing the landlord knowing about the tenant precarious situation, which could endanger the future of the tenancy, while the latter ensures payment of rent and could reassure some landlords.

The best options for the scheme should be determined through further consultation with stakeholders including housing and homelessness policy experts, people with lived experience of sudden financial hardship, landlords and property management professionals. To limit costs to government and ensure sustainability of the scheme, a process to determine re-payment plans for tenants (e.g. similar to No Interest Loans) who have the capacity to do so in the future could be included in the scheme.

Recommendation 11 The NSW Government to develop a rental hardship and homelessness prevention scheme

NSW Government, in consultation with the NSW Rental Commissioner and relevant stakeholders, to develop and implement a rental hardship and homelessness prevention scheme to support people experiencing sudden difficulties to pay their rent due to loss of income.

7. Better standards for energy and water

7.1 Telling renters about the use of embedded networks

PIAC's Energy and Water Consumers' Advocacy Program works for better regulatory and policy outcomes so people's needs are met by clean, resilient and efficient energy and water systems. We ensure consumer protections and assistance limit disadvantage, and people can make meaningful choices in effective markets without experiencing detriment if they cannot participate. In this submission we limit our comments about embedded networks to energy services, including the provision of hot and chilled water and potential future embedded networks such as for electric vehicle charging.

All NSW households should have equivalent expectations in their access to the energy they need, and equivalent supports and protections for that access regardless of where they live.

The Australian Energy Regulator's (AER) exempt selling framework has created an incentive to use embedded networks and exempt selling arrangements as an additional or improved revenue stream in new developments, and to improve the profitability of commercial operations through providing a poorer, less reliable, less affordable, less safe or less supported essential service to NSW residents residing in embedded networks. This does not support or promote the interests of consumers, but rather it creates an inequality of service expectations and protections that leave

many residents served by embedded networks and exempt sellers materially disadvantaged and more vulnerable.

Embedded networks can help enable better consumer outcomes, such as where they support household benefit from renewable energy and storage. However, PIAC does not see compelling evidence of material consumer benefit for residents in most embedded networks. As expressed by a resident in an embedded network to the Committee on Law and Safety Report No 3/57 *Embedded networks in NSW*: 'I found it extraordinary that a government would allow such a manifestly unfair system to be in place for services that are essential.'

In addition, many people residing in an embedded network, such as those in social housing, retirement and nursing homes, and residential parks may be some of the most vulnerable members of the community. The potential for harmful impacts is significantly higher for residents in embedded networks, both because of their circumstances and their limited access to supports and protections.

It is also important to note that there is currently little to no transparency and enforcement activity in embedded networks.

Requiring disclosure and explanation of what rights do exist through the leasing system is an important way to improve embedded network consumer protections.

Improving disclosure ahead of starting a tenancy

Disclosure and consumer awareness should be improved by ensuring prospective tenants of any embedded network are aware that it is an embedded network and what this would mean for their access to essential services.

The definition of 'embedded network' should be broad enough to not just capture traditional embedded networks, but also hot and chilled water embedded networks and potential future embedded networks such as electric vehicle charging.

Recommendation 12

The definition of 'embedded network' should be broad enough to not just capture traditional embedded networks, but also hot and chilled water embedded networks and potential future embedded networks such as electric vehicle charging.

This disclosure should occur at the time of advertising the property, at inspection, at application, as well ahead of signing the lease. Disclosure should be accompanied, in plain language, by what an embedded network is and what they mean for consumers in practical terms, including expected costs, reduced consumer protections, lack of choice and where to get further information.

Fact sheet

PIAC recommends that a plain language factsheet, available in community languages, be developed to be provided at various points to prospective tenants.

The factsheet should provide a simple explanation of what an embedded network is and make it clear that people in embedded networks currently have no price protections and reduced consumer protections compared to consumers of authorised retailers.

Condition 2 in Appendix A-2: Core exemption conditions of the AER's *Retail Exempt Selling Guideline* requires information to be provided in writing to residential consumers at the start of their tenancy/residency agreement. This information should be included in the factsheet in plain language.

Given the nature of embedded networks that are currently operating in NSW, where there is little to no consumer benefit or transparency, the factsheet should include links to information about embedded networks from the Tenants Union NSW (TU) and the Energy and Water Ombudsman NSW (EWON).

Recommendation 13

Develop a plain language factsheet (also available in community languages) that contains a simple definition of what an embedded network is; an explanation about reduced protections for consumers; information listed in Condition 2 in Appendix A-2: Core exemption conditions of the AER's 'Retail Exempt Selling Guideline'; and links to information about embedded networks from TU and EWON.

At time of advertising

Potential residents should be informed that the dwelling is in an embedded network, a brief explanation of what an embedded network is, specifics of the arrangement (for example whether retail competition can be accessed), estimated costs and a plain language statement explaining the AER's statement: 'that the exempt seller is not subject to all the obligations of an authorised retailer, and the exempt customer will not receive the same protections as it would if it were purchasing from an authorised retailer' and a link to the plain language factsheet described above.

Recommendation 14

The existence of an embedded network should be disclosed at time of advertising, along with a brief explanation of what an embedded network is, the specifics of the embedded network arrangement; estimated costs; a plain language statement informing prospective tenants that they would receive less protections; and a link to a plain language factsheet as described in this submission.

At time of inspection

Provide a hardcopy of the plain language factsheet described above at the time of inspection of a dwelling that is in an embedded network.

The factsheet should be accompanied by a verbal explanation by the leasing agent that the dwelling is in an embedded network, which means that the protections and supports required by authorised retailers for the provision of energy do not apply.

Recommendation 15

At time of inspection, prospective tenants should be provided with a hardcopy of the plain language factsheet described in this submission, along with a verbal explanation by the leasing agent that the dwelling is in an embedded network, which means that the protections and supports required by authorised retailers for the provision of energy do not apply.

At time of applying for the property

People applying to live in a home that is in an embedded network should be provided with a statement on the property application that the dwelling is in an embedded network, with a brief explanation of what that is and a statement about what that would mean for their rights and a link to the plain language factsheet described above.

Recommendation 16

Applications for homes that are in embedded networks should include a statement that the dwelling is in an embedded network, with a brief explanation of what that is and a statement about what that would mean for their rights and a link to the plain language factsheet described in this submission.

At time of signing the lease

As above, the *Retail Exempt Selling Guideline* requires information at Condition 2 in Appendix A-2 to be provided in writing at the start of the tenancy/residency/agreement. This information should be provided in a plain language factsheet and be provided ahead of signing the lease rather than 'at the start'.

This factsheet should be accompanied by a verbal explanation by the leasing agent, to ensure that the person leasing the property is aware of the embedded network and its implications.

Recommendation 17

The factsheet described in this submission be provided ahead of the lease being signed, in the form of a plain language factsheet (available in community languages) and accompanied by a verbal explanation.

Conditions 3 through to 22 as well as 26 in Appendix A-2: Core exemption conditions of the *Retail Exempt Selling Guideline* contains important information about rules and expectations for people in embedded networks but is difficult for residents to find. This information should also be

provided to tenants when they sign their lease to ensure they are properly informed of their rights.

Recommendation 18

Conditions 3 through to 22 as well as 26 in Appendix A-2: Core exemption conditions of the 'Retail Exempt Selling Guideline' should be provided to tenants when they sign their lease.

7.2 Minimum energy efficiency standards

Being able to maintain a safe, comfortable indoor temperature is fundamental to physical and mental health and wellbeing. But too often, people who rent their home are forced to live in homes that are detrimental to their wellbeing because they are too hard to heat or cool down. They lack the capacity to address this because they legally cannot make changes to the thermal performance of their home – without the consent of their landlord, who has no incentive to improve the dwelling - and/or they lack the financial capacity to upgrade their appliances. Housing is an essential service. Rental housing providers should provide housing that is safe and supports the health and wellbeing of its occupants. The most straightforward and cost efficient way to ensure this is by implementing minimum energy efficiency standards, either performance based or features based in the short term before moving to performance based standards.

The Community Sector has developed a Blueprint for Energy Efficiency Rental Standards providing detailed guidance about the options to design and implement such standards.¹¹

Recommendation 19 Mandate minimum energy efficiency standards for rental properties

Require rental properties to achieve a certain level of energy efficiency through performance based standards or through feature based standards in the short term before moving to performance based standards, based on the Community Blueprint for Energy Efficiency Rental Standards.

8. Monitoring and reviewing of regulation

A review of the operation of NSW rental laws should be conducted after 24 months, taking into consideration but not limited to number of applications to NCAT for termination orders, the operation of the portable bond scheme, and rent increases data. In order to have good visibility of rent levels and movements across the NSW private rental market, we recommend that landlords and real estate agents be required to report rent increases through an online data collection system. An easy and low cost way to implement this would be to collect this data through the Rental Bond Board online system.

¹¹ Healthy Homes for Renters, 'Community Sector Blueprint: National Framework for minimum energy efficiency rental requirements' (Report, 28 November 2022).

Recommendation 20 Require landlords or their real estate agent to report rent increases

Require landlords or the real estate agent representing them to report rent increases to the NSW Government through an online system such as the Rental Bond Board online system.

Recommendation 21 Review the operation of NSW new rental laws after 24 months

Mandate the NSW Rental Commissioner to review the operation of the new NSW rental laws, including consultation with stakeholders, after they have been in operation for 24 months.