



Peninsula
Community
Legal Centre

Submission

Senate Committee

**Inquiry into the Worsening Rental Crisis in
Australia**

July 2023

Executive Summary

PCLC welcomes this opportunity to contribute to the Committee's Inquiry into the Worsening Rental Crisis in Australia.

The cost of living and housing crises are having a disproportionate effect on our low-income community members, particularly women and children. Housing & Tenancy Support organisations such as PCLC are seeing record numbers of people seeking assistance, with high numbers facing eviction or significant rental increases.

We join the call for a substantial investment in increasing supply with social and community housing. However, we recognise that such an increase in supply will take time and are urging Government to consider an immediate relief package to ensure renters can sustain their current housing, to prevent any further unfair evictions and alleviate the constant fear for renters of homelessness. The rental relief package could include, support to the States to increase in rental relief funding such as the Private Rental Access program (PRAP) and Housing Establishment Fund (HEF), increased funding to tenancy support/advocacy organisations and an increase in emergency relief funding.

Renters reflect a diverse range of the population and as such require a broad response to their housing needs. With the limited supply of affordable housing, coupled with a cost of living crisis, it is critical that all levels of government devote more resources to support renters to sustain their housing.

Our submission focuses on renter's access to justice and legal services, in particular the barriers they face and their unmet legal and non-legal needs. We will provide examples of our clients' experience trying to access appropriate and affordable housing with case studies, some of which are individual client cases and others examples of types of cases that we commonly see. We will also make a number of recommendations based on our client's experiences, some of which have been made in previous access to justice reviews by ourselves and others.

Summary of Recommendations

1. Recommendation:

Review and expand Tenancy Assistance Service funding to enhance service delivery for vulnerable renters facing eviction proceedings.

2. Recommendation:

Federal & State Governments, commit to a long- term increase in social housing, offering a broad range of housing stock to support the diversity of renters.

3. Recommendation:

Commonwealth facilitate a national approach to rent increases with the relevant legislation amended to include rental increases using an agreed prescribed formula, such as CPI plus 10%.

In the alternate, introduce legislation that can trigger a rent increase moratorium in times of housing supply crises.

4. Recommendation:

The Commonwealth work with the States and Local Governments to develop a innovative scheme to promote and incentivise private rental providers to offer and support long term leases of a minimum of 5 years.

5. Recommendation:

Commonwealth facilitate National Reform to include the abolishment of no reason/cause Notices to Vacate and incorporate principles that require the reason for the notice be clearly articulated on the Notice.

6. Recommendation:

Increase funding to the legal assistance sector to ensure that vulnerable women can be represented throughout legal processes and finalise their separation in a cost effective and just way to support their housing options.

7. Recommendation:

The Commonwealth Government explore enhancing the Shared Equity Scheme to support women escaping violence to retain home ownership.

About Peninsula Community Legal Centre

Peninsula Community Legal Centre is an independent, not-for-profit organisation that has been providing fee legal services to Melbourne's south eastern communities since 1977.

In addition to our general services and programs, we operate the Tenancy Assistance and Advocacy Program (TAAP) and the Rooming Housing Outreach Program (RHOP). We currently receive funding from Consumer Affairs Victoria to deliver advice and advocacy assistance across ten local government areas, which enables the Centre's advocates to provide advice, casework, negotiation, representation at the Victorian Civil and Administrative Tribunal (VCAT), including Duty Advocate Services (DAS) at the Frankston and Oakleigh VCAT, and undertake community legal education.

PCLC's Rooming House Outreach Program conducts a visiting outreach service to residents and tenants of private rooming houses across a vast catchment in the south east region consisting of 17 local government areas (LGA's) and over 800 registered rooming houses. The Program provides tenancy advice and support services. The program aims to identify and actively connect single people living in private rooming houses, who are inappropriately housed, to support services who will assist them to secure long term housing appropriate to their needs and reduce their risk of homelessness. The Program also aims to identify non-registered rooming houses and those rooming houses that are operating outside of the *Minimum standards in rooming houses*.

Our clients overwhelmingly experience disadvantage, with around three-quarters reporting no or low income (less than \$26,000 per annum). Tenancy issues were in the top 10 problem types addressed by our Centre in the last year. We commonly help with a wide range of matters including possession, rent arrears, repairs, compensation, bond claims, lease breaks, tenancy agreements, and rent increases. The Centre has considerable experience in tenancy related matters.

Access to Justice

There is currently a crisis in access to justice in Australia. Every year, more than 8 million Australians have legal problems but only half are able to get the legal help they need. An ever-increasing number of Victorians cannot afford a private lawyer but do not qualify for legal aid, leaving them with few options to obtain the legal assistance they need. Community legal centre's would normally fill this gap but due to a chronic lack of funding they are unable to meet the level of demand for their services.

Barriers to Accessing Legal Services

Rental vacancies remain very low across Melbourne at 0.9% in the April quarter, and the problem is particularly acute for affordable rental accommodation. According to PropTrack's March Quarter Rent Report (PropTrack report), total rental listings are down 32.6 per cent year on year across Melbourne.

For clients in PCLC's region, competition for rental accommodation is high. Anecdotally, some of our clients reported seeing anywhere from 50-100 prospective renters attending rental open for inspections.

Even for those fortunate enough to have a rental property, the scarcity of affordable housing still presents problems. Some clients say they are fearful that if they make a complaint about their accommodation, the rental provider may seek to evict them (or not renew the tenancy), and they will simply have nowhere to live. This problem is reflected in the nearly 10% jump in people seeking help from homelessness services which were already difficult to access (ABC News, *Rents rising at slower pace despite 'record high' 10pc surge last year, CoreLogic says*, posted Wed 11 Jan 2023).

It is not surprising that demand for PCLC's tenancy services has soared, with 42% of clients accessing PCLC's TAAP service in this last six months relating to Notices to Vacate. Short Victorian Civil & Administrative Tribunal (VCAT) hearing notice periods (sometimes no more than a week) combined with (at-times) lengthy wait lists to speak to a TAAP advocate results in some clients being turned away due to lack of resources.

The role of TAAP workers is highly specialised, representing renters in VCAT and conducting casework as tenancy legislation continues to develop. Jurisdictional issues have forced some matters into the more formal and process-driven Magistrate's Court; reasonable and proportionate arguments under s330 of the Residential Tenancy Act 1997 (Act) require the interrogation of parties' personal circumstances; additional renters rights in regards to property maintenance results in increased VCAT applications; and stronger protections for family violence victims in rental properties require nuanced and sensitive approaches.

Adequate tenancy funding is key to ensuring that renters have access to assistance to defend notices, within the reasonable and proportionate provisions of the RTA, given the significant impact of not being able to secure alternative premises and to alleviate renters fears of being blacklisted for future housing when exercising their rights. In the past six months 40% of the representation we provided to vulnerable renters with Notices to Vacate resulted in the prevention of the eviction.

In addition to the above, PCLC also reports some rental providers using rent increases as a way to price renters who assert their rights out of their properties where traditional means fail.

Case Study

Wendy is a 75-year-old widow, renting a property with her daughter (a family violence survivor) and her teenage granddaughter. Over the 10-year tenancy, the rental provider had done the bare minimum in terms of repairs. After speaking to our client, PCLC wrote to the rental provider requesting repairs. The residential provider responded with a Notice to Vacate under s91X of the Act (repair, renovation, reconstruction). When VCAT declined to make a possession order, the residential rental provider issued a 49% rent increase. With PCLC's assistance this was also successfully challenged.*

Whilst this client was able to achieve a good outcome with PCLC's help, not all renters seek legal assistance. Indeed, some renters in Wendy's position may opt to pay a retaliatory rent increase, in preference to seeking alternative accommodation in a tight rental market.

Recommendation: *Review and expand Tenancy Assistance Service funding to enhance service delivery for vulnerable renters facing eviction proceedings.*

Investment in Social Housing

Current social housing stock is inadequate to meet the needs of an increasing cohort of people unable to afford to reside in the private rental market. Social housing makes up less than 3.5% of all housing in Victoria (86,000 dwellings), with 80% public housing and 20% community housing.

As at June 2022, there were 64,168 households across all of Victoria on the wait list for social housing. Average times for priority applicants during 2021/22 exceeded departmental targets by 45% for priority access or priority transfer, and 63% for priority access due to family violence.¹

Recommendation: *Federal & State Governments, commit to a long term increase in social housing, offering a broad range of housing stock to support the diversity of renters.*

Rising rents and rental affordability

The Department of Fairness, Families & Housing's (DFFH) reports² that the Melbourne Rent Index (MRI) increased by 14.6% in the twelve months to March 2023. This is the highest increase since these reports began in 2000.

DFFH also reports 6.3% increase in the Regional Rent Index (RRI) for the same period. Though this rate of increase is less than the previous year (10.1%), the Department points out that it is well above the long-term average over the past decade of 4.2%.

According to their 2021-22 Annual Report³, Consumer Affairs Victoria provided a total of 2452 rent increase reports. This is twice as many as pre-pandemic levels.

The significant increase in rents could simply be viewed as a result of supply and demand. Indeed, the Residential Tenancies Bond Authority (RTBA) reports⁴ a slowing of growth when it comes to the number of bonds being held. Pre-pandemic, the rate of growth was sitting at 3.4%, whereas the RTBA reports only a 1.6% increase in the 12 months to March 2023.

It is worth considering, however, other factors that may be at play.

During the pandemic PCLC assisted a number of renters who had received Notices to Vacate where the rental provider cited the need to sell as the reason. Many of these rental providers spoke about financial pressures following loss of income as a result of COVID-19.

¹ Frankston Zero Frankston City Housing Forum and Roundtables 2022 February 2023

² Homes Victoria Rental Report - March quarter 2023

³ Consumer Affairs Victoria: Annual Report 2021-22

⁴ Tables from Rental Report – March quarter 2023

Whereas some of these properties may have remained in the rental market, the slowing of supply suggests that a number did not. For those that did remain in the market, however, renters were displaced only to see their home being re-advertised, often at a higher rent with a new owner.

In the middle of the pandemic, the Victorian State Government introduced much-needed reforms to the Residential Tenancies Act. One of the key changes was the introduction of rental minimum standards – an attempt at improving the conditions of rental properties across the state.

This was welcomed reform, however, some rental providers reported to PCLC the cost of bringing an investment property up to standard as a reason for selling. Other rental providers, simply passed those costs onto renters in the form of rent increases.

More recently, the Victorian State Government has announced increased land tax for those that own more than one property. Almost immediately, the Real Estate Institute Victoria released a statement⁵ indicating rental providers would pass these costs onto renters, driving rents up even further. This is despite investors already receiving record rent returns.

This is an opportunity for the Commonwealth & State Governments to develop a national rental framework that reviews rents and can set fair limits on increases with protections incorporated to prevent excessive rent increases.

Options to reduce rents or limit rent rises.

PCLC supports limiting rent increases by legislation.

This can be done by one of two ways: capping rent increases or rent increase moratoriums.

Rent increase caps

PCLC's preferred method is the capping of rent increases in much the same way as ACT.

Section 64B of the Residential Tenancies Act 1997 provides that a rental provider cannot increase rent more than the prescribed amount. In this case, the prescribed amount is 110% of the percentage increase in CPI for rents (in other words, CPI plus 10%). There are a few exceptions to this, such as where the renter agrees to a higher rent increase in writing or where the Tribunal allows a higher increase.

This method has multiple benefits: It provides certainty for renters and rental providers alike, allowing parties to budget and plan ahead; it prevents rental providers from taking advantage of short supply; it prevents rental providers from passing on costs that are designed to be borne by them (ie: increases in land tax); it prevents rental providers from taking advantage of increases to Centrelink payments; it prevents unscrupulous rental providers from using rent increases in a retaliatory manner; and it saves Government resources by removing the need for Consumer Regulatory bodies to conduct rent

⁵ <https://reiv.com.au/policy-resources/latest-news/state-budget-bad-news-for-victorian-renters>

assessments, as well as freeing up Tribunal resources by negating the need for excessive rent applications by renters.

Opponents of this approach often claim that rent increase caps lead to three possible outcomes; increased eviction rates as rental providers seek to increase the rent beyond what the legislation allows for a sitting renter; a decline in maintenance standards as rental providers see a reduction in their returns; and a reduction in supply as investors exit the market.

Each of these issues can be managed by strong renter protection. The Act provides protection, with VCAT required to consider whether eviction is reasonable and proportionate in the circumstances (s330), and the introduction of rental minimum standards.

Meanwhile, recent research conducted by AHURI⁶ indicates that “while the prospect of reforms may cause some would-be investors to pause, the analysis does not support the contention that tenancy law reforms have caused landlords to disinvest.”

Regulating rent increases in this way brings housing into line other with essential services.

Rent increase moratoriums

Alternatively, Governments could introduce legislation that enables it to call a rent increase moratorium in times of rental crisis. This could also extend to areas effected by natural disasters. This approach was used during the pandemic in Victoria with some success.

The inherent shortcomings of this approach are that it only regulates the market during a specified time of crisis; retaliatory rent increases, the passing on of extra taxes, and market uncertainty will continue at all other times. It is also require’s that the crisis be on foot before the moratorium can be enacted.

Case Study

“Rose” is a single parent with one child, she has been issued with a rent increase of \$250 per month. (15%)

Rose is currently paying 50% of her net income on rent, the propose increase will place Rose in severe financial hardship. Rose was unsuccessful trying to negotiate a more affordable increase with the agent.

The premises had been in disrepair for some time, including a lack of heating, despite previous reports from Consumer Affairs Victoria that a rent increase would be excessive given the state of the premises another rent increase notice was issued by the new agent.

This notice was subsequently deemed invalid by the Tribunal. PCLC is supporting Rose to have urgent and non- urgent repairs undertaken.

⁶ AHURI Final Report 391: Regulation of residential tenancies and impacts on investment

Recommendation: Commonwealth facilitate a national approach to rent increases with the relevant legislation amended to include rental increases using an agreed prescribed formula, such as CPI plus 10%.

In the alternate, introduce legislation that can trigger a rent increase moratorium in times of housing supply crises.

The experience of, and impacts on renters

The lack of housing options and rising rents is having a profound impact for renters in the South-Eastern suburbs of Melbourne. It is not uncommon for renters to be paying in excess of 50% of their income on rent. Local community organisations are reporting record number of community members seeking emergency relief in the form of rent assistance and food. PCLC outreach workers have observed the emergence of clients living in precarious housing situations such as cars, sheds, and garages as well as informal house sharing arrangements. We are concerned that we do not have a central repository to record emerging trends during the crisis. We would welcome an expansion of the functional zero models in each local government area, the zero models use a by name list tool to record the details of rough sleepers allowing a real time record of the number of rough sleepers at any given time.

We are concerned that the longevity of the housing crisis will only increase the risk of price gouging by some rental providers and questionable conduct in the pursuit of maximum returns without principles and legislative interventions on fair rents. On a recent visit to a local rooming house the team met a couple paying \$700 per week for a room in a rooming house, the couple who had previously experienced homelessness outlining that was all that was available.

Case Study

“Jenny” is a single- women with a disability, relying on the Disability Support Benefit as her sole income, she requires a full-time carer.

Jenny had been served with another notice to vacate on the grounds that the rental provider was moving in.

Jenny was concerned that the notice was served in response to her previously successfully challenging a rent increase.

PCLC undertook research on behalf of Jenny, establishing the rental provider owned at least two other substantive properties, one of which was his primary residence.

PCLC successfully argued that the reasonable and proportionate test should apply with the Tribunal dismissing the application for possession.

Housing Sustainability - Long Term Leases

Home Ownership has increasingly becoming unaffordable for many in the community, with the rental market being their primary housing option. This cultural renting shift has been steadily progressing over time, with a growing number of people needing to rent long term, for some, renting their entire adult life.

In some states we have seen the introduction of longer- term leases, however in our experience, rental providers routinely do not offer long term leases. The vast majority of renters we see, present with 6-12month leases initially, followed by either yearly renewals or the renter transitions to a periodic tenancy. This leads to uncertainty and insecurity for renters, particularly where there is a housing supply issue and as our case studies demonstrate can often lead to renters being issued with notices to vacate, in the rental providers pursuit of higher paying renters and avoidance of rental increase frequency provisions.

Internationally, such as Europe the focus is less on home ownership and more on the provision of secure housing and thus the focus is on longer term rental arrangements (10-15 years) for those on lower income. This would require a shift in mindset around home ownership as well as investor incentives, such as tax credits and rate relief to develop such an asset class. Existing Programs such as the Commonwealth Statutory Authority, Defence Housing Australia and initiatives such as Homeground Real Estate that target socially minded property owners and support them to make their properties available to people experiencing homelessness at market rent discounts could be explored and enhanced to develop a long term private rental scheme.

Recommendation: *The Commonwealth work with the States and Local Governments to develop an innovative scheme to promote and incentivise private rental providers to offer and support long term leases at a minimum of 5 years.*

Case Study

“Mary is single female, who has been issued with the Notice to Vacate as the rental provider wishes to move in part-time.

Mary had been residing in the premises for some time, having been offered a further fixed term tenancy agreement which she had accepted and signed. The rental provider claimed that the fixed term agreement had been rescinded, unbeknown to Mary.

PCLC assisted Mary with an application to the Tribunal, submitting evidence of the fixed term agreement. The real estate agent subsequently revoked the Notice to Vacate and possession proceedings were withdrawn.

Recommendation: *Commonwealth facilitate National Reform to include the abolishment of no reason/cause Notices to Vacate and incorporate principles that require the reason for the notice be clearly articulated on the Notice.*

Barriers to home ownership and the impact this has on rental stock

Currently home ownership is not a possibility for most people who have experienced family violence. Housing, especially long-term housing, is difficult to obtain after leaving situations

of family violence. Family violence workers indicated that 89% of women “very frequently” had difficulty obtaining housing after family violence, and a further 8% observed this “sometimes”⁷ Every family violence worker who responded to the survey indicated that a lack of available housing influenced a woman’s decision to leave a violent relationship.ⁱ The Australian Institute of Health outline that 42% of people supported by specialist homelessness services have experienced family violence.⁸

When a home is owned by the couple, evidence suggests that many survivors are unable to pay out the other party and hence are forced to move and take up rental accommodation providing little long- term housing stability. The disruption of moving often leads to upheaval in the networks and education of the children involved. During this difficult time the parent’s ability to undertake paid work is often compromised which has long term implications for the financial stability of the victim survivor and her family. At this point there is not always an obvious path to finding a permanent home.

Some transitional and non-permanent housing, sometimes with family violence services, sometimes with friends and families exists. Over extended waiting lists for public or community housing also exist. These are not always accessible or timely, and may often be out of the victim-survivors local area.

Beyond increasing funding for social housing, there is an opportunity to deliver on this directly for a cohort of people escaping family violence by remaining in their family home through shared equity schemes. Shared equity schemes are already operating in Victoria and could be expanded to establish a stand- alone scheme for women and children escaping family violence. This proposed program could work in tandem or work directly with the Victorian Home Buyer Fund.

In addition, this scheme should be supported by free financial, legal and other supports to ensure that the mortgage can be supported in the long term and is a viable option. A pilot previously undertaken in 2021/22 by Peninsula Community Legal Centre found that with the right support at the right time the victim-survivor can access a more equitable share of assets. During the pilot, a total of 43 women were assisted with family law property advice, with 20 receiving ongoing support. The pilot resolved 10 matters resulting in a monetary benefit of \$1,177,673 resulting in significant financial stability to those families involved. In 2022/23 the pilot was extended to finalise a further 8 matters at a monetary value of \$754,565.⁹

The above illustrates the need for further funding for representation of family violence victims, especially those of limited means or victims who are denied access to family funds.

Recommendation:

⁷ Smallwood,E. (2015) Stepping Stones: legal Barriers to economic equality after family violence, Women’s Legal Service Victoria, Melbourne,

[https://www.womenslegal.org.au/files/file/Stepping%20Stones%20REport\(1\).pdf](https://www.womenslegal.org.au/files/file/Stepping%20Stones%20REport(1).pdf)

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⁸ Family, domestic <https://www.aihw.gov.au/reports-data/behaviours-ris-factors/domestic-violence/reports>

⁹ Peninsula Community Legal Centre Enhancing economic justice for vulnerable women

Increase funding to legal assistance sector to ensure that vulnerable women can be represented throughout legal processes and finalise their separation in a cost effective and just way to support their housing options.

Recommendation:

The Commonwealth Government explore enhancing the Shared Equity Scheme to support women escaping violence to retain home ownership.
