

03/08/23

Standing Reference Committee for Community Affairs
Parliament House
Canberra, ACT 2600

Re: Submission to the Inquiry into the Worsening Rental Crisis in Australia

Thank you for the opportunity to make this submission on Australia's worsening rental crisis. We commend the Standing Committee for Community Affairs for investigating the urgent and unrelenting situation renters are currently facing.

About us

Anika Legal is a community legal service, registered charity and social enterprise that provides free legal support to renters who are locked out of the justice system. Anika Legal's services provide online legal casework to renters, in the hope that their rights to safe, secure housing are realised without need for litigation.

In the last financial year, Anika assisted over 200 renters to maintain safe and secure housing. Our client base consists largely of renters who live in private rentals (90%), receive income support (50%) and are in rental stress (75%).

Our services focus on:

- Helping renters entering a tenancy to ensure it is up to standard, and take steps to prevent tenancy issues from arising in the future;
- Helping renters ask rental providers to carry out their duties to perform urgent and non-urgent repairs;
- Helping renters negotiate a settlement to bond disputes at VCAT; and
- Helping renters maintain safe housing by avoiding evictions on the basis of rental arrears.

Our responses to the Committee's terms of reference

Anika Legal's focus is squarely on representing renters. Our responses are based on observations of the systemic legal, economic and social barriers that renters face, drawn from our continued provision of legal services. As such, our submission is limited to terms of reference relevant to our client base:

- The experience of renters and people seeking rental housing
- Improvements to renters' rights, including rent stabilisation, length of leases and no ground evictions
- Rising rents and affordability
- Actions that can be taken by governments to reduce rents or limit rent rises
- Any other related matters.

Increasing affordable housing stock for renters is vital, but only addresses part of the problem. Government has an equally important role to play in safeguarding the quality and cost of new and existing rental properties, so that all Australian renters have access to a safe, secure and affordable home which supports their quality of life. Unless there is better regulation of rental homes and tenancies, Australians will continue to live in rentals that are damaging to their health and cost more than they can afford, with the fear of being evicted at any point.

The experience of renters and people seeking rental housing

There is a growing body of research to show that poor quality housing has a number of health and wellbeing impacts on individuals and communities which can consolidate inequities. For example, we concur with Better Renting's 2022 findings that renters are at an increased risk of anxiety, depression and isolation in winter because of a lack of energy-efficient heating, and that physical risks from cold homes can be as serious as cardiovascular and respiratory disease. Despite this, renters in Australia continue to face barriers to enjoying safe, secure and functional homes.

These findings are borne out through our rental repairs service. We regularly see matters which highlight that renters are making do in homes that are not up to standard and pose an unacceptable risk to their health, safety and security. Often there is a lack of action or refusal from the rental provider or agent to conduct serious or relatively straightforward repairs, such as:

- black mould;
- inadequate heating or cooling;
- dysfunctional and unsafe fixtures and fittings; and
- electrical faults.

These health and wellbeing impacts of the current rental crisis are compounded by other issues we see recurring through our services, including:

- financial stressors from sudden, radical increases in rental payments, bonds being unfairly withheld, and evictions leaving people to pay for short-term accommodation or the cost of moving homes at short notice;
- a proliferation of co-occurring legal issues. For example, we often see clients who are struggling to make rental payments incur debt from energy bills they cannot pay off due to their rentals being energy inefficient. When multiple setbacks like this turn into legal issues, they can become intractable without further legal, social or economic support, entrenching renters within a cycle of disadvantage.

Recommendations:

1. Fund regular national research into, and collect reliable data on, the quality of rental homes in each jurisdiction, the impacts of poor quality homes on tenants, and the circumstances/demographics who are most at risk.
2. Invest in partnerships between legal service providers so that the co-occurrence of separate legal issues, and their impacts on renters, can be captured and addressed

Improvements to renters' rights, including rent stabilisation, length of leases and no ground evictions

There are multiple steps that governments across Australia could implement to improve the position of renters, for example:

- ending no-cause tenancy terminations, including at the end of a fixed-term lease;
- limiting rent increases through rent caps.

Recent reforms to tenancy laws in Victoria, New South Wales, the Australian Capital Territory, and Queensland have made small steps towards ensuring renting in Australia is fairer and safer. We commend the introduction of rental reforms in Victoria, including the introduction of Rental Minimum Standards. However, there is a lot more to be done. In all states, there has been insufficient proactive regulation of rental standards, with the system relying on renters to advocate for themselves in order to enforce their rights. We refer to this as 'self enforcement'. Anika Legal believes that expanding renters' rights will be ineffective if tenancy systems across Australian jurisdictions do not begin proactively regulating residential tenancies through independent and well-resourced regulators.

The problem with self enforcement

Last year, Anika Legal released a report, 'Repairing Rental Homes: Why self enforcement fails tenants' (Annexure 1), which centres around the difficulties renters face when seeking repairs to residential properties despite legislative safeguards, because of self-enforcement. The report explores the power imbalance involved where renters are required to assert their rights against estate agents and landlords.

Self enforcement of tenancy laws - not just in relation to requesting repairs but in all aspects of residential tenancy - is a problem at the heart of tenancy systems across Australia. Self enforcement assumes that renters have the understanding and capacity to enforce their legal rights, and courage to tackle the significant power imbalance between themselves and their rental provider or real estate agent. This ignores the reality that many renters face multifaceted social and economic challenges which prevent them from being able to effectively advocate for themselves, and presumes that rental providers and real estate agents are always acting in good faith.

We commonly see clients who have not asserted their rights for fear of retaliation from their rental provider or real estate agent, such as a rent increase or eviction notice. Renters who are experiencing disadvantage in other aspects of their lives are often those less equipped to advocate for better living conditions for themselves. Regularly, it is not until a legal service like Anika Legal is involved that rental providers or their agents take action on a renter's attempt to advocate for themselves. Even then, the need to litigate a matter - even with the support of a legal service - can be too great a hurdle for renters to overcome to take advantage of legal protections.

A need for more proactive regulation and enforcement

Tenancy laws are not proactively enforced, leaving insufficient protection for renters where a rental provider or real estate agent has failed to adhere to them. Renters have rights on paper but, in practice, these are rarely upheld without significant efforts from renters themselves or multiple complaints to the relevant regulatory body in relation to a repeat perpetrator. This gap in effective regulation against misconduct from rental providers or real estate agents can lead to a laissez-faire approach to complying with tenancy laws on one end of the spectrum, and intentional exploitation of renters on the other.

In terms of misconduct that is inadvertent, or involves a failure to act:

- We regularly assist clients because rental providers or real estate agents do not understand or incorrectly apply tenancy laws. For example, in Victoria there are still agents who are unwilling to respond to requests in relation to the new renter entitlements that were introduced in the Victorian jurisdiction in March 2021, due to a lack of comprehension of the new laws.
- Often, rental providers and real estate agents are unable or unwilling to communicate proactively or effectively with renters, resulting in a heightened risk of disputes. A common complaint we hear from our client base is that rental providers or agents simply ignore their requests for repairs.

In terms of misconduct that is deliberately exploitative:

- Some of our clients have reported that rental providers or their agents have used intimidatory tactics to coerce them out of asserting their rights as renters, for example:
 - threatening litigation, eviction or blacklisting of the renter without cause;
 - submitting a bond claim to the relevant tribunal with little or no evidence to force renters to give up some or all of their bond;
 - issuing a notice to vacate, then not following the reason given for the notice. For instance, we sometimes see renters asked to vacate so that the rental provider can move into the property, only for the property to be returned to the rental market or become Airbnbs
- This type of conduct can be particularly threatening for renters who are most in need of protection, for example:
 - Renters who do not have Australian permanent residency or citizenship are in fear that litigation will put their visa status in jeopardy; or
 - Renters with multiple dependents who cannot afford to be at risk of homelessness if evicted from their rental property.

Compounding these instances of poor conduct, existing enforcement mechanisms fall short. For example, delays through relevant state or territory tribunals discourage renters from pursuing their rights to the point of a final, enforceable decision. In fact, rental providers sometimes rely on these delays to coerce renters to drop or settle their claim, resulting in unfavourable outcomes for renters.

Rental providers and their agents will continue to treat renters poorly as long as there is a low risk that they will face negative consequences and there are no effective mechanisms to quickly address misconduct.

Recommendations

3. Provide greater funding to renter support services, to make sure Victorian renters have access to affordable casework and advocacy when they need it.

Rising rents and affordability

Housing is an essential service – one that we can't afford to leave entirely to the free market without sturdy regulations and guardrails in place. Current tenancy laws across Australia, even when followed, don't give renters housing security or affordability. Australians are still at risk of having to forego other basics, such as petrol, medical bills, utilities and even food, or else uproot their lives because they have received a rent increase they can't afford.

Government must proactively protect access to secure and affordable rental housing in Australia. The federal government can encourage state and territory jurisdictions to adopt initiatives that ensure tenants have the choice and can afford to stay in their rental homes for longer periods of time, for example through rental freezes or caps and a shift to long term leases. While these actions won't address the underlying market conditions that have seen landlords increasing rents so dramatically across Australia over recent months, they will begin to shift the cultural narrative from one where rental properties are seen purely as financial investments, to one that upholds renters living in a quality home as a core human right.

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

Support Better Renting's recent calls that a rental freeze or increase rental controls tied to wage growth or CPI ought to be implemented across Australia. Rental control will have a two-fold effect:

- A slowing down of ever-increasing rent rises that are pushing rents up and up - especially in capital cities - and forcing people out of their homes and communities.
- A stop to rental providers using punitive rent increases, or threatening to, in order to resist actioning renters rights or requests - something that we see too often through our services.

Additionally, governments across Australia should minimise incentives for investors to buy up housing stock without consideration of the renters who will occupy the property. For instance, landlords enjoy tax deductions from their investment property regardless of whether they meet the obligations they owe their renters. Negative gearing is also available to investment property owners who provide short-term accommodation through platforms like Airbnb which don't adequately protect renters, and exacerbate the shortage of secure, affordable homes. Negative gearing could be used to incentivise long term leases, and could be made contingent on rental providers' history of compliance with their obligations under the tenancy laws of the relevant jurisdiction. Government should also incentivise rental providers to provide open-ended,

indefinite tenancies at the outset, removing renters from the possibility of having to move upon the expiration of every fixed term lease.

Recommendations:

4. Encourage state and territory jurisdictions to implement rental freezes, or rental caps tied to CPI.
5. Incentivise better landlord behaviour and long-term leases through making negative gearing contingent on a property owners' compliance with relevant tenancy laws, and provision of long-term rent.

Any other related matters

Though the federal government has limited direct levers in relation to residential tenancies, more could be done to set the national agenda and expectations around rent reform.

Anika recommends that a national body could be convened to set the policy direction and generate national cohesion amongst state and territory jurisdictions, with an aim to bring all jurisdictions up to international best practice on residential tenancy regulation. Such a body could be relatively light touch and based on consensus building between jurisdictions in relation to tackling the rental crisis, similar to the role that National Cabinet played during the worst stages of the COVID-19 pandemic. Alternatively, the body could develop best-practice national tenancy and housing policy, with an aim to provide advice on best practice tenancy regulation and develop model tenancy laws, operating in a similar way to Safe Work Australia's role in relation to work health and safety policy.

Additionally, the federal government should actively create an enabling environment for state and territory jurisdictions to implement better tenancy law systems and regulation. Financial support or other services that reduce hardship provided at the federal level, could be more acutely targeted to renters as a class, or designed with the impacts of the rental crisis upon Australian renters in mind.

Recommendations:

6. Convene a standing national body which focuses on providing national leadership and setting national best practice in relation to jurisdictional tenancy laws and regulations. Such a body should ensure a nationally consistent approach on matters such as:
 - Instilling rent caps or freezes
 - Enabling long-term leases
 - Ensuring proactive, independent regulation of tenancy law, so that jurisdictions across Australia move away from the damaging self-enforcement model.
7. Target assistance at the federal level to renters as a class, for instance through taxation, social services, health and employment benefits, services and programs.

Conclusion

All Australians are deserving of a place to call home. As our Repairs Report suggests, access to a safe home that is in good repair, is affordable, and is secure is essential to the health and wellbeing of Australians and our communities. A home is a core human right, and a home that promotes a decent quality of living is at the heart of sustained mental and physical health.

We thank the Committee again for inviting Anika Legal to submit to the inquiry, and welcome the opportunity to provide the Committee with further comment or clarification.

Regards,

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Annexure: Repairs Report