

19 July 2019

The Secretary
House of Assembly Select Committee on Housing Affordability
Parliament of Tasmania
Parliament House
Hobart TAS 7000

Sent via email: housing@parliament.tas.gov.au

To James Reynolds,

Re: House of Assembly Select Committee on Housing Affordability

The Tenants' Union of Tasmania welcomes the opportunity to provide comment to the House of Assembly's Select Committee on Housing Affordability.

The Tenants' Union of Tasmania is a not for profit community organisation offering information, advice and representation to residential tenants. We also offer community legal education and training and advocate for the improvement of residential tenants' rights. We are an incorporated body run by members through an elected Management Committee, and staffed by employees and volunteers.

Our submission is focused on the following terms of reference, as we have limited resources and must prioritise providing tenant services:¹

(j) changes to Tasmania's residential tenancy laws that could improve housing affordability, security and living standards in Tasmania;

(l) any other matters incidental thereto.

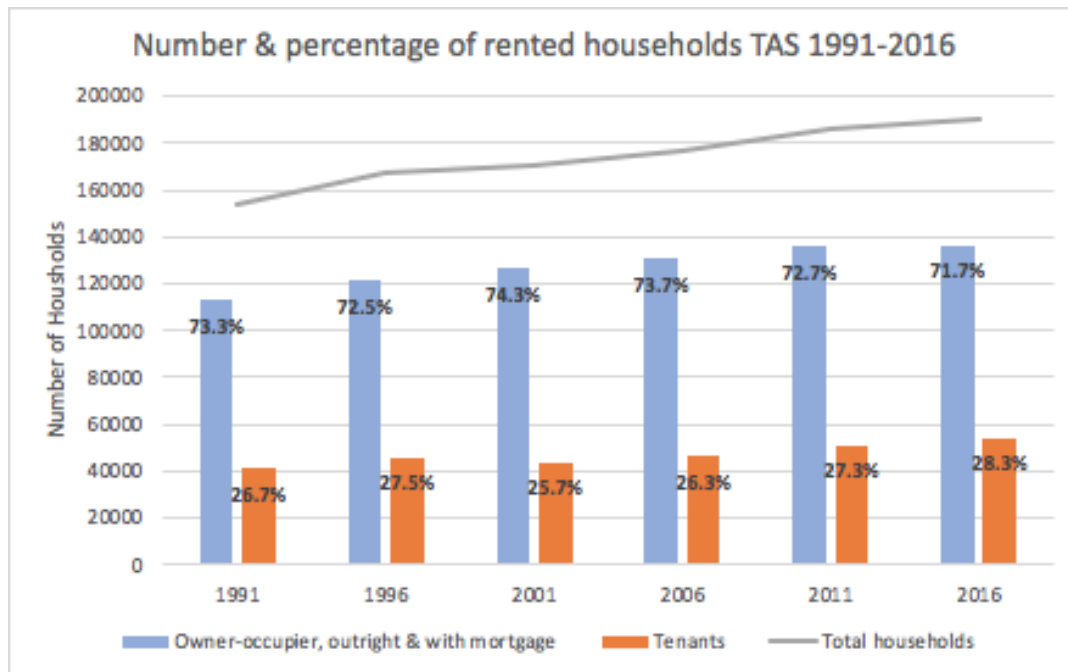
In particular, our submission seeks to provide an overview of residential tenancies in Tasmania, the lack of protections afforded to tenants, and reforms that will put tenants on a more level playing field. Everyone deserves the right to a safe, secure and affordable home, whether or not they are lucky enough to be owner-occupiers.

An Overview of Renting in Tasmania

According to the Australian Bureau of Statistics, there are a growing number of households renting, rising from 25.7 per cent of the Australian

¹ We are happy to go into greater detail on these, and the other terms of reference, upon request.

population in 1994-95 to 30 per cent in 2015-16.² Whilst Tasmania has historically had a high rate of home ownership, there has been a similar upwards trajectory in households renting, particularly over the last decade.



In raw numbers, the Productivity Commission *Report on Government Services 2019* found that over the last decade the number of households renting in Tasmania has increased by 18 per cent from 45,600 in 2006 to over 54,000 in 2016.³ In the period 2008-18 public housing stock dropped from 11,618 to 7,005.⁴ While that has been offset by the growth of the community housing sector, resulting in a net increase of social housing stock,⁵ it has not been proportionate to the growth of the rental market overall.

Rents have skyrocketed in the same period. For example, according to the most recent data published by the Tenants' Union of Tasmania, based on data provided by the Rental Deposit Authority (see graph below), median rents increased by 27 per cent in Tasmania's South and by 14 per cent in Tasmania's North between March 2016 and March 2019.⁶ As well, the data demonstrates that median rents in Southern Tasmania are 34 per

² Australian Bureau of Statistics (2017), '4130.0 – Housing Occupancy and Costs, Australia 2015-16', Table 1.

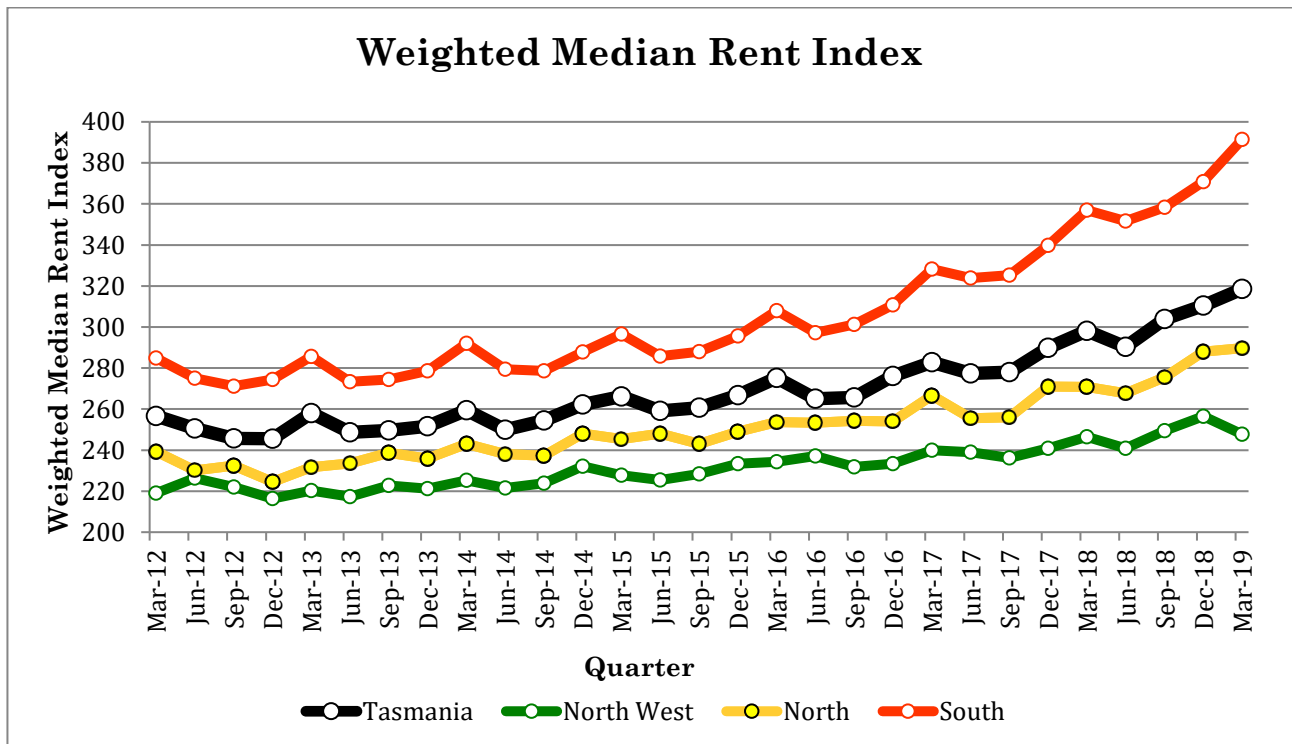
³ Productivity Commission, *Report on Government Services 2019*, Tables 2A.25, 2A.27.

⁴ Productivity Commission, *Report on Government Services 2019*, Table 18A.3 & Productivity Commission, *Report on Government Services 2016*, Table 17A.3.

⁵ Ibid.

⁶ Rental Deposit Authority and Tenants' Union of Tasmania, *Tasmanian Rents* (March Quarter 2019). As found at <http://tutas.org.au/wp-content/uploads/2019/03/Tasmanian-Rents-March-2019.pdf> (Accessed 8 July 2019).

cent higher than in Northern Tasmania, which are in turn 16 per cent higher than in North West Tasmania.



To put this into perspective, the Rental Affordability Index, a study published bi-annually by National Shelter and SGS Economics & Planning, concludes in its most recent report that Hobart is now Australia’s least affordable city. The report finds that tenants in Hobart have to spend around 30 per cent of their income on rent – placing the median tenant in rental stress.⁷ Outside Hobart, regional Tasmania is the most expensive region relative to income in the country.⁸

Further, Anglicare Tasmania’s annual *Rental Affordability Snapshot Tasmania 2019* found that there were no affordable rental properties in Tasmania for persons in receipt of Youth Allowance, only eight affordable rental properties for people in receipt of Newstart or the Family Tax Benefit (located exclusively in Queenstown and Rosebery), and only thirty affordable properties for recipients of a Disability Support Pension - all located in the North and North-West.⁹

Despite the increasing number of households renting both in Tasmania and Australia, many tenants continue to experience housing that is poor

⁷ National Shelter and SGS Economics & Planning, *Rental Affordability Index* (November 2018). As found at <https://www.sheltertass.org.au/wp-content/uploads/2018/11/RAI-Nov-2018-high-quality.pdf> (Accessed 8 July 2019).

⁸ Ibid

⁹ Anglicare Tasmania, *Rental Affordability Snapshot Tasmania 2019* (April 2019). As found at <https://www.socialactionresearchcentre.org.au/research/rental-affordability-snapshot-tasmania-2019/> (Accessed 8 July 2019).

quality, insecure and unaffordable. In 2017 Choice Magazine, National Shelter, and the National Association of Tenant Organisations released a major report on renting in Australia, which found:¹⁰

- Half of all tenants (51 per cent) in Australia have moved homes three times or more, including 19 per cent of those who have been renting for less than five years and 42 per cent of those aged under 35. Just under one in ten tenants have moved homes 11 times or more.
- Three quarters of tenants believing that competition for properties is fierce. As a result, prospective tenants do not feel like they can ask for changes and need to simply take what is on offer (62 per cent), and worry that they will need to offer more money if they want to secure a place to live (55 per cent).
- Tenants also feel like the amount of information they are required to give for an application is excessive (60 per cent) and unreasonable (46 per cent). This creates concerns over privacy, with some tenants (45 per cent) fearing that their information will not be handled in accordance with the law.
- 11 per cent of tenants were notified of a rent increase after requesting a repair and 10 per cent said that their landlord or agent became angry after they requested a repair. Some tenants have even faced eviction for making a complaint (2 per cent), requesting a repair (2 per cent) or for taking their complaint to a third party like a tribunal or a tenants' rights organisation (2 per cent).
- Half of all tenants report having experienced some form of discrimination when looking for a rental property in the last five years. This includes discrimination for having a pet (23 per cent), for receiving government payments (17 per cent), on the basis of age (14 per cent), for having young children (10 per cent) and being a single parent (7 per cent). Discrimination on the basis of race (6 per cent), for needing to use a bond loan (5 per cent), gender (5 per cent), disability (5 per cent) and sexuality (2 per cent) are also experienced, though are less common.

These issues are likely to become more pronounced in the years to come as the proportion of persons relying on the private rental market grows. It is therefore imperative that jurisdictions around Australia, including Tasmania, consider reforms that improve the plight of tenants.

¹⁰ Choice Magazine, National Shelter and the National Association of Tenant Organisations, *Unsettled: Life in Australia's private rental market* (February 2017). As found at <https://www.choice.com.au/money/property/renting/articles/choice-rental-market-report> (Accessed 7 July 2019).

Reforms to the Residential Tenancy Act 1997

It has been more than five years since the last significant amendments to the *Residential Tenancy Act 1997*. With other Australian jurisdictions having passed significant tenancy reforms over the last couple of years, we strongly recommend that the Tasmanian Parliament prioritise the following reforms which will better protect tenants' rights and ensure access to quality, stable and affordable housing for all.

Security of Tenure

- *Protect tenants from being arbitrarily and unfairly evicted.*

Adequate housing provides the base from which people can participate effectively in their community. As such, tenancy should be viewed as the provision of a basic need rather than as a simple contractual arrangement for a discretionary or luxury good or service. Stability and certainty must be protected so that tenants are able to assert their rights without fear of eviction. Currently this is not the case, with Choice finding that around half of all tenants worry they will be blacklisted from future tenancies and 14 per cent refuse to stand up for their rights because of the possibility of landlord retaliation.¹¹

It is particularly concerning that Housing Tasmania (as well as other social housing providers) have for many years listed lease expiration as the basis for a notice to vacate, rather than the genuine underlying reason, thereby deliberately circumventing the tenant's ability to challenge the true basis for the eviction. A recently published Right to Information request found that in 2017 and 2018 Housing Tasmania sought to evict 36 public housing tenants without providing them with the underlying reason for their eviction, or with a true right of review.¹²

Tenants should be able to maintain their tenure unless they have seriously breached their residential tenancy agreement, or the landlord requires, and proves, that they need to change the use of the property (and provide lengthy notice and compensation). We therefore recommend the repeal of the sections of the Act that permit fixed term tenancies.

If fixed terms are abolished, tenants will no longer have to rely on being offered a renewal or extension, or moderate or suppress any complaints

¹¹ Choice, National Shelter and the National Association of Tenant Organisations, *Unsettled: Life in Australia's private rental market* (February 2017). The report can be accessed at <https://www.choice.com.au/money/property/renting/articles/choice-rental-market-report> (accessed 8 July 2019).

¹² Communities Tasmania, Right to Information No.: RTI201718-038-CT. As found at https://www.dhhs.tas.gov.au/_data/assets/pdf_file/0004/375880/RTI201819-038-CT.pdf (Accessed 12 July 2019).

against their landlords in order to secure a renewal or extension, or take the risk challenging an end of lease notice to vacate because it is not genuine or just. Intuitively, this should result in the average length of a lease increasing, and housing stress decreasing.

Currently if a tenant breaks a fixed term lease (without giving a valid notice to terminate) they must continue to pay rent until a new tenancy is formed, or the fixed term ends, whichever is sooner (provided that the landlord does everything reasonable to enter a new tenancy agreement as soon as possible). By contrast, a tenant that has a non-fixed lease can terminate their tenancy without providing a reason with 14 days notice, and does not have to continue paying rent beyond those 14 days. The effect of the abolition of fixed term leases, and thus break-lease compensation, would be to incentivise landlords to try and keep their tenants happy by making improvements and/or lowering the rent, as they will not be compensated if the tenant leaves. It will increase tenants' power to demand higher quality, and cheaper, rental premises.

Abolishing fixed term leases would likely result in the length of the average tenancy increasing, lowering the churn of housing stock. As there are currently few limits on increasing rent between tenancies as opposed to during tenancies,¹³ this may slow the growth of rents.¹⁴

Rent Controls:

- *Limit the rent increases to CPI or a fixed percentage; or*
- *Freeze rents.*

It is clear that market mechanisms are not working efficiently in the Tasmanian and Australian housing markets. Since the turn of the millennium market conditions have deteriorated for tenants with rental prices dramatically outstripping general inflation; between 2001 and 2016 rents increased by 121 per cent, while general inflation was 46 per cent.¹⁵ In the two and a half years following the 2016 Census, new rents in Tasmania have risen by 20%, with the most drastic increases being seen in Southern Tasmania, where new rents rose by 30%.¹⁶

¹³ If a tenant breaks their lease, the landlord is required to take reasonable measures to enter into a new tenancy agreement, per section 64A of the Act. The Residential Tenancy Commissioner has held that an landlord will not be taking reasonable measures if they increase the rent unreasonably.

¹⁴ Bill Davies, Charlotte Snelling, Ed Turner and Susan Marquardt, "Lessons from Germany: Tenant Power in the Rental Market", *Institute for Public Policy Research*, January 2017, p28.

¹⁵ Shelter Tas, *Renting in Tas*, <https://www.sheltertass.org.au/renting-in-tasmania/>

¹⁶ Rental Deposit Authority and Tenants' Union of Tasmania, *Tasmanian Rents* (March 2019) & Rental Deposit Authority and Tenants' Union of Tasmania, *Tasmanian Rents* (September 2016).

The current protections in the Act against “unreasonable” rent increases are grossly inadequate, as (1) the increase will not be deemed unreasonable unless it exceeds market rent, which provides no solace to tenants when market rent has increased dramatically; and (2) the Act places the onus on tenants to apply for a ruling, rather than the landlord to justify the increase.

As such, we support direct rent controls that either freeze rents at their current rate for a fixed period, as has occurred in Berlin,¹⁷ or limits increases to at or below the general rate of inflation, as New York City has done recently.¹⁸

Family Violence

- *Remove the ability to blacklist victims of family violence for damage or rental arrears caused by perpetrators; and*
- *Remove the liability of victims for the acts or omissions of perpetrators lawfully on the premises.*

The Act allows landlords to keep a residential tenancy database (i.e. a blacklist) of tenants who have breached the terms of their lease agreement. Tenants can only be blacklisted for breaches that still require the repayment of monies (unpaid rent or damage to property) or for evictions from an immediate termination.¹⁹

In practice, this means that many family violence victims continue to be punished for a perpetrator’s actions. If a victim of family violence applies for a family violence order and the perpetrator is subsequently removed from the agreement, the victim will often be required to pay all of the rent. This may lead to financial hardship and the risk that the victim will fall into rental arrears. If the victim is subsequently evicted due to rental arrears the landlord may blacklist the victim making it difficult to find alternative accommodation. As well, where a victim is evicted from their property due to the perpetrator’s ongoing damage of the property, or where damage has been done to the property by the perpetrator the landlord can have the victim blacklisted.

We strongly recommend that Part 4C of the Act is amended to prohibit landlords and real estate agents from blacklisting tenants for actions arising from the actions of the perpetrator including damage to property and unpaid rent.

¹⁷ Agence France-Presse, “City of Berlin backs plan to freeze rents for five years” *The Guardian* (19 June 2019) <https://www.theguardian.com/world/2019/jun/18/city-of-berlin-backs-plan-to-freeze-rents-for-five-years>.

¹⁸ Luis Ferre-Sadurni, “Live in a Regulated Apartment? New York City Just Decided Your Rent” *The New York Times* (25 June 2019) <https://www.nytimes.com/2019/06/25/nyregion/new-rent-laws-nyc.html>.

¹⁹ Section 41 of the *Residential Tenancy Act 1997*.

Finally, the Act provides that a tenant is liable for any act or omission of persons lawfully on the premises.²⁰ We strongly recommend that the automatic liability of tenants for the acts or omissions of others should be removed in circumstances where tenants can prove that the damage arose from family violence.²¹

Standard Forms and Lease Agreements

➤ *Introduce standard application forms and lease agreements.*

Most lease agreements contain provisions that purport to exclude, restrict or modify the operation of the Act. A recent review by our lawyers of their current case files found a number of provisions contained in residential lease agreements that were inconsistent with the Act, including:

- That the tenant is responsible for the repair or replacement of whitegoods that came with the property; and
- That the landlord can increase the rent every six months;
- That the tenant accepts the property in its current condition, regardless of the minimum standards; and
- That the tenant must allow access to the property to carry out a valuation or appraisal; and
- That the tenant not cause a disturbance or annoyance to anyone else; and
- That the tenant have the carpets cleaned by a specific professional cleaning company approved by the landlord; and
- That the tenant is responsible for all costs associated with lodging a debt with a debt collection agency including the debt collectors' costs.

The lack of standardisation means that many tenants believe that they are forced to comply clauses that are unlawful under the Act. Given that every State and Territory bar the Northern Territory and Tasmania have standard lease agreements this can and should be done.

Tenants often raise their concern at the different forms used by landlords and real estate agents and the information contained therein. An excellent

²⁰ Section 59 of the *Residential Tenancy Act 1997*.

²¹ This would bring Tasmania into line with other jurisdictions including section 233C of the *Residential Tenancies Act 1997* (Vic), section 54(1A) of the *Residential Tenancies Act 2010* (NSW) and section 89A(11) of the *Residential Tenancies Act 1995* (SA).

example is the application form provided to prospective tenants with a recent report finding that 60 per cent of tenants surveyed believed that they were required to provide an excessive amount of information on the application form.²²

Last year we carried out a review of all real estate agencies who make their application forms publicly available and our investigation found that there is information requested of prospective tenants in some application forms that may be unlawful. There is also information required that we believe is discriminatory, amounts to an invasion of privacy or is simply unnecessary. Examples include:

- The requirement that prospective tenants provide a criminal history check; and/or a credit check; and
- The refusal of tenants who require Colony 47 financial assistance to pay the bond; and
- The refusal of any prospective tenant who has an outstanding debt; and
- The requirement that prospective tenants list their financial commitments; and
- The requirement that prospective tenants provide a minimum of four referees.

Much of this information is irrelevant to the tenancy or the ability of persons to maintain the tenancy successfully. Tenants who feel uncomfortable about providing information will often contact us requesting advice about their right to refuse. The lack of a standard application form means that there is practically very little that can be done. The tenant must provide the information required or face the very real risk that the application will be rejected in favour of someone who is prepared to provide the information.

We therefore strongly recommend that a standard residential lease agreement as well a standard application form, for all prospective tenants, should be introduced. Penalties should be imposed if a landlord breaches this requirement.

Pets

- *Allow pets unless landlord has a good reason for their exclusion; and*

²² Choice, National Shelter and the National Association of Tenant Organisations, *Unsettled: Life in Australia's private rental market* (February 2017). The report can be accessed at <https://www.choice.com.au/money/property/renting/articles/choice-rental-market-report> (accessed 8 July 2018).

- *Include ‘assistance animal’ in list of exceptions.*

The Act currently provides that a tenant is not allowed to have a pet without the landlord’s permission.²³ In practice, most lease agreements include a no pets clause meaning that the landlord does not have to give any thought to the tenant’s request. As a result, many tenants with pets are forced to look for rental accommodation in areas less accessible by public transport or to surrender their pet, with the RSPCA recently reporting that 15 per cent of all cats and dogs surrendered to them were as a result of their owners moving and being unable to take their pets with them.²⁴

The Act should be amended, as has recently occurred in Victoria, so that all tenants have the ability to have a pet unless the landlord has reasonable grounds for their exclusion.²⁵

Loosening the current restrictions on pets should not result in the introduction of a pet bond. Skyrocketing rents and the associated increases in bonds more than protect landlords; over the past three years the average bond has increased by around \$200.00. Because rent and bond increases have little to do with the actual costs of maintaining and repairing a dwelling, the pet bonds are not justified.

Average Bonds Collected by the Residential Deposit Authority

Financial Year	Average Bond
2015	\$1068.25
2016	\$1,107.66
2017	\$1,177.67
2018	\$1,267.30

It should also be noted that the current exclusion of pets from rental properties does not apply to guide dogs.²⁶ In our opinion, this should be broadened to include ‘assistance animals’. This would make the Act consistent with the *Anti-Discrimination Act 1998* and the *Disability Discrimination Act 1992* (Cth). The failure to expressly include ‘assistance animal’ has meant that we have had to institute legal proceedings on

²³ Section 64B of the *Residential Tenancy Act 1997*.

²⁴ Jonathan Hair and Brendan Arrow, ‘Victorian tenants given right to have a pet under sweeping changes to rental laws’, Australian Broadcasting Corporation 8th October 2017. The article can be accessed at <http://www.abc.net.au/news/2017-10-08/victorian-tenants-allowed-pets-in-rental-properties/9027000> (accessed 23 January 2018).

²⁵ Section 61 of the *Residential Tenancies Amendment Act 2018* (Vic).

²⁶ Section 64B(2) of the *Residential Tenancy Act 1997*.

behalf of a number of tenants who have required such animals for their medical conditions.²⁷

Regulation of ‘Sharing’ Accommodation

➤ *Scrap de-regulation model.*

There is clear evidence that short stay accommodation has a negative impact on Tasmanian tenants, particularly in Hobart. Short stay accommodation has likely caused the median rent in Tasmania to increase by hundreds of dollars per year, and reduced supply by hundreds of homes.²⁸ In our 2018 submission to the *Legislative Council Select Committee on Short Stay Accommodation in Tasmania* we noted that rental stock in the Hobart City Council municipality has decreased by 6.1 per cent and in Greater Hobart by 2.8 per cent, and that Airbnb listings comprise 40 per cent of rental stock in Glamorgan/Spring Bay and 17 per cent in Break O’Day municipalities.²⁹

The benefits of unregulated short stay accommodation do not offset the costs. As such, we support sensible regulations that have been adopted by some of the most visited locations in the world, including New York, San Francisco and Barcelona.

We believe that for the above reforms regarding security of tenure and rent control to be truly effective, they must be accompanied by restrictions on the use of premises for anything other than long-term residential occupation.

In particular, we strongly recommend:

- Use of investment properties for short-stay accommodation to be prohibited within Greater Hobart and other areas where the impact on local communities has been detrimental; and
- Outside Greater Hobart, use of investment properties for short stay accommodation to be restricted to 60 days per annum; and
- Hosts to be required to register their listing with Government, and be permitted only one listing at any one time; and
- CBOS be given the power to penalise hosts, providers or guests that do not comply with regulations, and/or cause a nuisance to neighbours.

²⁷ As defined in section 9(2) of the *Disability Discrimination Act* (Cth). Examples include a dog trained to predict when its owner was likely to have an epileptic seizure and a pet bird who alleviated the side effects of its owner’s mental illness.

²⁸ Eccleston, R., Warren, N., Verdouw, J., Flanagan, K. and Eslake, S., (2018) A Blueprint for improving housing outcomes in Tasmania, Institute Insights, Insight Three, Institute for the Study of Social Change, University of Tasmania, Hobart.

²⁹ For further information, see our submission to the *Legislative Council Select Committee on Short Stay Accommodation in Tasmania* (September 2018). As found at <http://tutas.org.au/upper-house-inquiry-short-stay-accommodation/> (Accessed 13 July 2019).

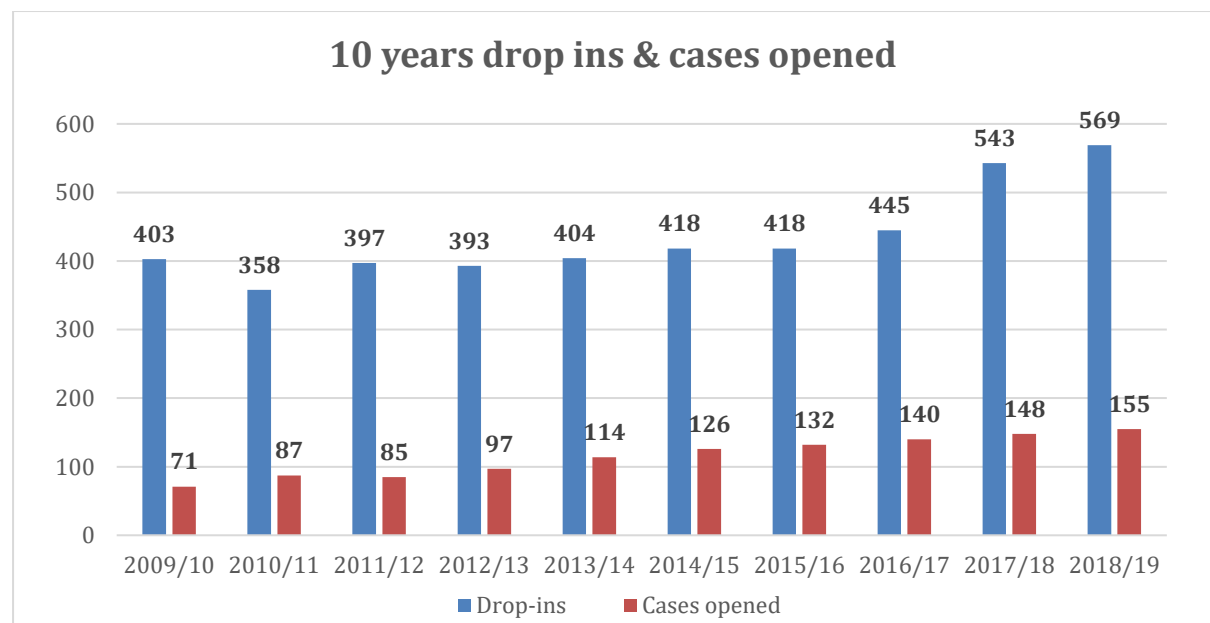
Tenant Advocacy

- *Increase funding for tenants' services, and the regulator.*

Appropriate levels of funding are not being provided to organisations advocating on behalf of tenants, including our own. For example, over the last decade there has been an 18 per cent increase in the number of households renting in Tasmania³⁰ and yet there has been no increase in our core funding.

Given our current circumstances, the Tenants' Union will soon have little alternative but to reduce services available to Tasmanian residential tenants. Having to rely heavily on one off Grants such as the Solicitors' Guarantee Fund is simply not an effective financial continuum. It is imperative in times of housing stress that tenants' rights are protected and services are actively available to support them.

As the chart below demonstrates, there has been a 41 per cent increase in the number of tenants seeking face-to-face legal advice from us and a doubling in the number of cases we have opened. In short, we have been expected to do more without a concomitant increase in our funding.



We are also concerned by the lack of security of funding. For a number of years, we have been in receipt of 12-month funding contracts which has resulted in job insecurity and difficulties in retaining staff. The loss of staff in turn results in a loss of knowledge and an inefficient use of the

³⁰ The number of households renting has increased from 45,600 in 2006 to 54,000 in 2016. As found in Productivity Commission, *Report on Government Services 2019*, Tables 2A.25, 2A.27.

organisation's time as new staff need to be trained. We believe that a more sustainable model would see core funding provided for a minimum of three years.

Finally, we would also note that whilst the powers of the Residential Tenancy Commissioner have expanded significantly over the last six years, there has been no increase in resourcing.³¹ Expressed in another way, since 2013 the Residential Tenancy Commissioner has been responsible for determining unreasonable rent increases, issuing infringement notices in cases of serious breaches of the Act, ensuring that all rental properties meet minimum standards and issuing orders to landlords carry out repairs and maintenance to properties, but has received no additional funding to carry out these important tasks.

In summary, we hope that you will carefully consider adopting the policy reforms and funding suggestions outlined above which in our opinion will provide significant protections to more than 54,000 households across Tasmania.

If we can be of any further assistance, please do not hesitate to contact us.

Yours faithfully,



Meredith Barton
Principal Solicitor
Tenants' Union of Tasmania

³¹ Parliament of Tasmania, *Hansard*, 5 June 2019. Question asked by Rosalie Woodruff during Budget Estimates to Sarah Courtney MP, Minister for Building and Construction.