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Submission

Review of the *Rental Tenancies Act 2010*





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About Youth Action

Youth Action is the peak organisation representing young people and youth services in NSW. Our work helps build the capacity of young people, youth workers and youth services, and we advocate for positive change on issues affecting these groups.

It is the role of Youth Action to:

1. Respond to social and political agendas relating to young people and the youth service sector.
2. Provide proactive leadership and advocacy to shape the agenda on issues affecting young people and youth services.
3. Collaborate on issues that affect young people and youth workers.
4. Promote a positive profile in the media and the community of young people and youth services.
5. Build capacity for young people to speak out and take action on issues that affect them.
6. Enhance the capacity of the youth services sector to provide high quality services.
7. Ensure Youth Action's organisational development, efficiency, effectiveness and good governance.



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RECOMMENDATIONS

To improve outcomes for young people through the *Rental Tenancies Act 2010* (RTA) reform process, Youth Action NSW recommends:

Recommendation 1: Restrict the number of rent increases that can be made to one per year for both periodic agreements and fixed-term agreements.

Recommendation 2: Prohibit rent increases that are proportionately greater than increases in the Consumer Price Index (CPI), or require landlords to show that any rent increase that is greater than an increase in the CPI is reasonable.

Recommendation 3: To provide greater certainty, revise the terms used in Section 62 and Section 63 of Division 5 of the RTA regarding the respective obligations of landlords and tenants to repair and maintain the premises.

Recommendation 4: Provide tenants with the option of having an impartial surveyor complete the mandatory condition report in RTA Schedule 2, Appendix C.

Recommendation 5: Require a schedule of inspections for repairs and maintenance needs for rental properties.

Recommendation 6: Assume landlord consent to minor property modifications unless the landlord withdraws consent successfully through the Civil and Administrative Tribunal.

Recommendation 7: Make section 94 of the RTA regarding the termination of long-term tenancies applicable to tenancies of ten or more years.

Recommendation 8: Extend the required notice periods for rent increases and terminations according to how long the tenant has been renting the premises.

Recommendation 9: Should the NSW government prefer to maintain the temporary nature of periodic agreements, automatically renew fixed-term agreements instead of rolling them over to periodic agreements.

Recommendation 10: Prohibit the use of 'no grounds' termination notices, or require a baseline of six months' notice when 'no grounds' termination notices are issued.

Recommendation 11: Include further reasons for ending a tenancy to encourage the use of termination notices with grounds.

Recommendation 12: Prohibit terminations for unsound reasons such as retaliation and discrimination against a tenant on the grounds of age, culture and/or religion.



EXECUTIVE SUMMARY

Youth Action welcomes the opportunity to make a submission to the NSW Department of Fair Trading regarding the review of the Residential Tenancies Act 2010 (RTA). Young people are important stakeholders with unique experiences and different needs. Youth Action's submission seeks to highlight areas in the RTA where improvements can be made to ensure better housing outcomes for young people in NSW.

For young people in NSW, the situation is vastly different than for past generations. The housing context for young people today is characterised by declining homeownership rates, decreasing housing and rental affordability, a decline in the availability of social housing, and rising youth homelessness. The review of the RTA must therefore consider how regulatory frameworks can support young people to access stable and appropriate housing in a vastly changed landscape.

There are provisions in the RTA that have exacerbated housing issues for young people. First, the RTA lacks sufficient protections on excessive rent increases, which has placed young people who rent in further financial stress and at risk of homelessness. There is also ambiguity in the RTA regarding the respective rights of landlords and tenants to make repairs and alterations to rental premises, which has resulted in young people being uncertain about when and if they can enforce their rights. Third, the provisions in the RTA regarding long-term tenancies are limited and therefore do not reflect the current housing situation in NSW whereby young people are far more likely to be long-term renters (i.e. less young people moving from renting to homeownership) than past generations. Finally, the RTA allows landlords to evict without grounds, which places young people in further



rental stress as they are at risk of eviction even if they are fully compliant with the original rental agreement.

Youth Action makes specific recommendations to address these issues arising in the RTA for young people. These recommendations seek to ensure that the needs of young people in NSW are met under the regulatory framework, and that this framework is adjusted for the current era of housing.



INTRODUCTION: THE CASE FOR REFORM

Young people in NSW

In NSW, there are an estimated 1.25 million people aged between 12 and 25 years old.¹ Given that this age group represents almost 18% of the state's population, it is essential to consider their needs in policy reform.²

Young people have unique needs that are different to those of adults, and that require specific consideration when making policy decisions that affect them. However, young people can be difficult to reach for community consultation. Youth Action's recommendations aid the review of the RTA by the NSW government by ensuring that there is consideration of younger renters in the review.

When it comes to accessing housing generally, young people face barriers and discrimination. High rental costs, low incomes, insecure share housing, and the lack of affordable housing and social housing stock all make independent living a challenge for many young people. Indeed, while some young people are staying at home for longer, for others this simply isn't an option.

With more young people expected to enter the private rental market, and renting for a longer period of time than previous generations, it is important to ensure that private rental properties are safe, affordable and accessible to young people.

In this climate, it is increasingly crucial that the RTA responds and evolves as the context for housing changes, and becomes platform for a stable and appropriate

¹ Department of Family & Community Services, *Snapshot of young people in NSW*, Department of Family and Community Services, Canberra, 2013, viewed 1 January 2016, <<http://youth.nsw.gov.au/youth-snapshot/>>.

² Ibid.

housing for young people in NSW. These various segments of housing for young people are explored below in greater detail, to provide context for changes necessary to the RTA.

Housing is a basic right

Housing is crucial both physically and psychologically. Elementally, it provides physical shelter. It shapes an individual's psychological wellbeing by providing a sense of security, stability, and social inclusion.³ The importance of housing has been acknowledged universally through the addition of 'adequate housing' as a basic right in the *International Covenant on Economic, Social and Cultural Rights* and the *Convention on the Rights of the Child*.⁴ Australia is a signatory to both treaties, and therefore has an obligation to uphold this basic right. 'Adequate housing' is assessed on the basis of multiple factors including accessibility; legal security of tenure; habitability; location; availability of services, facilities, and infrastructure; and affordability.

In Australia, the private rental sector has become a practical solution for many young people struggling to compete in a housing market where property prices are high and the supply of social housing does not meet demand.⁵ Government subsidies in the form of rent support programs and grants have been used to

³ Australian Human Rights Commission (AHRC), *Housing, homelessness and human rights*, Sydney, 2009, viewed 28 January 2016, <<https://www.humanrights.gov.au/our-work/rights-and-freedoms/projects/housing-homelessness-and-human-rights>>.

⁴ Office of the High Commissioner for Human Rights (OHCHR), *International Covenant on Economic, Social and Cultural Rights*, United Nations Human Rights: Office of the High Commissioner, 2016, viewed 28 January 2016 < <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>>; OHCHR, *Convention on the Rights of the Child*, United Nations Human Rights: Office of the High Commissioner, 2016, viewed 28 January 2016 < <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>>.

⁵ Australian Housing and Urban Research Institute (AHURI), *How effective are private rental support programs?*, issue 80, Australian Housing and Urban Research Institute, Melbourne, 2006.

encourage landlords to lease their property to low-income earners, such as young people, and alleviate public housing shortages.⁶ However, improvements must be made in the RTA to prevent young people from undue rent increases, discrimination, unliveable housing standards, and unnecessary exits from the rental market that cause them to seek assistance from already strained social housing programs or from becoming homeless.

Homeownership is decreasing for young people

As homeownership becomes less achievable, young people are renting for longer. Historically, Australia has had high rates of homeownership.⁷ However, there has been a steady decline in homeownership rates over the past 30 years: in 1981, the homeownership rate in Australia for those aged between 25 and 34 years,⁸ with or without a mortgage, was 61.4%; in 2011, it was 48.4%.⁹ This reflects the fact that it is increasingly difficult for young people to purchase their first home, especially for those living in Sydney, where the median housing price reached \$1 million at the end of 2015.¹⁰ Indeed, Sydney has the least affordable housing market in Australia and the second least affordable market among a total of 87 major metropolitan markets across the world.¹¹

⁶ *ibid*; S Tually, M Slatter, S Oakley & D Faulkner, *The role of private rental support programs in housing outcomes for vulnerable Australians*, Australian Housing and Urban Research Institute, Melbourne, 2015.

⁷ Australian Bureau of Statistics (ABS), *Perspectives on regional Australia: Housing arrangements - home ownership in local government areas*, Australian Bureau of Statistics, Canberra, 2013, viewed 1 January 2016, <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/1380.0.55.010Main+Features12011>>.

⁸ Although not 'youth' specifically, this is a reflection on movements for young people more generally

⁹ T Burke, W Stone, & L Ralston, *Generational change in home purchase opportunity in Australia*, Australian Housing and Urban Research Institute, Melbourne, 2014, p. 21.

¹⁰ S Hutchison, 'Sydney closes in on \$1m median house price', *Financial Review*, 2015.

¹¹ Demographia & Performance Urban Planning, *12th Annual Demographia International Housing Affordability Survey: 2016*, Demographia, Illinois, 2016, p. 11.

The difficulty of entering the housing market in Australia is reinforced by the country's high rate of exits from homeownership. Between 2001 and 2010, 22% of Australian homeowners dropped out of home ownership, with 9% of these being long-term departures.¹² In the UK, by contrast, only 9% of homeowners ceased owning their own home, with 5% of these being long-term departures.¹³ The Australian Housing and Urban Research Institute (AHURI) attributes this high departure rate to financial stress and a lack of social security support for mortgagors in distress.¹⁴ These grim prospects for first homebuyers have led young people to leave their parental home later or move back into their parental home after having already moved out.¹⁵ As already noted, for some young people there is no parental home to return to.

Private renting is increasingly unviable

Many young people have turned to the private rental market as an alternative to the increasingly unaffordable housing market, which is shown by the 14.1% increase in renters aged between 15 and 24 years from 2005 to 2012.¹⁶ Indeed, in 2012, 77.7% of those aged between 15 and 24 in Australia were renting in the private rental market.¹⁷ However, the rental market is also becoming increasingly unviable for young people due to problems with the affordability and stability of renting in NSW.

¹² AHURI, *The edges of homeownership*, issue 181, Australian Housing and Urban Research Institute, Melbourne, 2014, p. 1.

¹³ *Ibid.*

¹⁴ *Ibid.*, pp. 2-3.

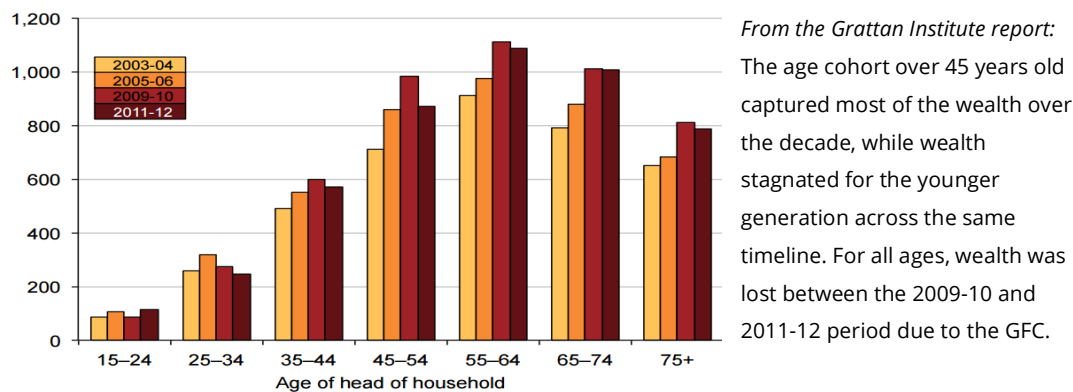
¹⁵ ABS, *Home and Away: The Living Arrangements of Young People*, Australian Bureau of Statistics, Canberra, 2009, viewed 15 January 2016, <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4102.0Main+Features50June+2009>>.

¹⁶ M Lovering, *Evidence review 058: Marrying later, renting longer*, Australian Housing and Urban Research Institute, Melbourne, 2014.

¹⁷ *Ibid.*

'Affordable housing' is housing that requires a tenant or owner to spend equal to or less than 30% of their total household income on housing.¹⁸ According to AHURI, four out of five 'very low-income' households pay an unaffordable rent.¹⁹ A quarter of these households pay rent in excess of 50% of their total income.²⁰ In Sydney specifically, there is only one affordable and available rental dwelling for every 15 very low-income households.²¹

Today's generation of young people often fall into this category of very low-income household. According to the Grattan Institute, one of the principal reasons for this trend is that younger generations face increasing stagnation of wealth accumulation, as most household wealth attained by older generations comes from property investment.²² Due to the limited opportunities to purchase property for investment today, young people face difficulty in accruing capital gains from property investment.



¹⁸ Welfare Rights Centre (NSW) and Shelter NSW, *The impact of rent assistance on housing affordability for low-income renters: New South Wales*, Welfare Rights Centre (NSW) and Shelter NSW, 2014, viewed 28 January 2016, <https://welfareinstitute.files.wordpress.com/2015/01/rent-assistance-report_0.pdf>

¹⁹ AHURI, 2015, op.cit.

²⁰ *ibid.*

²¹ *ibid.*

²² J Daley & D Wood, *The wealth of generations*, Grattan Institute, Victoria, 2014.

Young people are also at a point in their lives in which they are employed part-time or casually, in part to enable flexibility for study commitments or to undertake apprenticeships. By virtue of their age and stage in life, young people are also less skilled and experienced in the workforce, which accounts for their occupation of lower-paid and lower-level positions. A Universities Australia study, for instance, revealed that 67% of full time domestic undergraduate students received an annual income of less than \$20,000 in 2012, whilst 21% received less than \$10,000.²³

Young people often need to live close to transport, work, and educational institutions. This means that they must often move to urban areas where rent is high. This compels young people to cover their living expenses by foregoing other essentials, such as food in the case of an estimated average of 17% of students.²⁴

In light of these issues, young people are often eligible recipients of Commonwealth Rent Assistance (CRA), a non-taxable income supplement payable to individuals struggling with rental stress. Young people who receive benefits and allowances such as Youth Allowance or Newstart are eligible for CRA.²⁵ As of September 2015, the maximum payment that a single person without children can receive is \$129.40, provided that their fortnightly rent is more than \$287.53.²⁶ However, these payments are inadequate: according to Shelter NSW, 40% of CRA recipients

²³ E Bexley, S Daroesman, S Arkoudis & R James, *University Student Finances in 2012: A study of the financial circumstances of domestic and international students in Australia's universities*, The University of Melbourne, Melbourne, 2013, p. 8.

²⁴ *ibid.*

²⁵ Department of Human Services, *Rent Assistance*, Canberra, 2016, viewed 28 January 2016, <<http://www.humanservices.gov.au/customer/services/centrelink/rent-assistance>>.

²⁶ *ibid.*

continue to experience housing stress even after receiving CRA.²⁷ In support of this finding, the National Welfare Rights Network reports that almost 75% of young people receiving Rent Assistance still pay unaffordable rent.²⁸ It is also important to note that the impact of Rent Assistance is lower for Sydney renters relative to other renters in NSW due to the area's higher rents.²⁹

Family situation	Maximum payment per fortnight	No payment if your fortnightly rent is less than	Maximum payment if your fortnightly rent is more than
Single, with no children	\$129.40	\$115.00	\$287.53
Single, with no children, sharer	\$86.27	\$115.00	\$230.02
Couple, with no children	\$121.80	\$186.80	\$349.20
1 of a couple who are separated due to illness, with no children	\$129.40	\$115.00	\$287.53
1 of a couple who are temporarily separated, with no children	\$121.80	\$115.00	\$277.40

From the Department of Human Services website: Current Rent Assistance rates if you do not have dependent children.

Social housing

Social housing is low-cost housing available to moderate or low-income earners that are unable to afford or purchase housing or rent in the private market.³⁰ There are three ways social housing is provided in NSW: community housing, delivered by community organisations and local governments; and both public and Aboriginal

²⁷ Welfare Rights Centre (NSW) and Shelter NSW, *The impact of Rent Assistance on housing affordability for low-income renters: New South Wales*, Welfare Rights Centre (NSW), New South Wales, 2014, p. 7.

²⁸ Welfare Rights Centre NSW and the National Welfare Rights Network, *A home on the range or a home out of range?*, report, National Welfare Rights Network, 2013, p. 13.

²⁹ Welfare Rights Centre (NSW) and Shelter NSW, *The impact of rent assistance on housing affordability for low-income renters: New South Wales*, Welfare Rights Centre (NSW), New South Wales, 2014, p. 8.

³⁰ NSW Federation of Housing Associations Inc., *Community Housing in NSW*, NSW Federation of Housing Associations Inc., NSW, 2015, viewed 31 January 2016, <http://www.communityhousing.org.au/C1_CH_in_NSW.html>.

housing, which are delivered by the government.³¹ Young people benefit from social housing via access to not only affordable housing, but also other essential services offered by their community housing providers to support education and employment transitions, including scholarships, education grants, and volunteer work experience.³² Community housing offers tenancy schemes, like the Community Housing Leasing Program, which allow community housing providers to meet the difference between social housing rent and market rent charged by landlords.³³

Social housing plays an important role in assisting some young people's transition to independence, as it provides them with housing affordability and stability. Social housing is not, however, a substitute for an affordable housing market that allows young people to afford rental properties and transition to homeownership where desired and relevant. Moreover, cutbacks in government funding over time mean that social housing is limited.³⁴ Indeed, as of the 30 June 2015, there were 49,588 households on the NSW social housing waitlist.³⁵ Urban areas in and around the city of Sydney (including the South Eastern Sydney and Northern Sydney districts) and South West Sydney had particularly long expected waiting times, with most

³¹ Department of Family & Community Services (FaCS), *What is Community Housing*, Family & Community Services, NSW, 2015 viewed 31 January 2016, <<http://www.housing.nsw.gov.au/community-housing-division/about-us/what-is-community-housing>>.

³² NSW Federation of Housing Associations Inc., *The community housing industry*, NSW Federation of Housing Associations Inc., NSW, 2014, p. 5.

³³ M Frolich, *Community Housing Engagement with the Private Rental Market*, NSW Federation of Housing Associations Inc., Surry Hills, 2014, p. 10.

³⁴ FaCS, *Social Housing in NSW*, viewed January 2016, <<http://www.facs.nsw.gov.au/reforms/social-housing/social-housing-in-nsw>>.

³⁵ FaCS, *Expected waiting times for social housing June 2015 – Overview*, Department of Family and Community Services, 2015, viewed 31 January 2016, <http://www.housingpathways.nsw.gov.au/__data/assets/pdf_file/0003/332274/2015-EWT-Overview-table.pdf>.

people waiting for more than ten years for social housing in a majority of suburbs in these regions.³⁶ These are major urban areas that are popular among young people, due to the need to access employment and further education options.³⁷ Although the NSW government has recently released its ten year plan for social housing, it will take time to lift the burden from social housing, which can only happen in partnership with shifts across other parts of the housing spectrum.

Alternative housing solutions

Youth Action has explored and released papers regarding different accommodation models that may ease the demand for affordable housing, such as the Homeshare model. Homeshare is a model that matches older people or people with a disability to suitable tenants, in this case, young people, who are looking for affordable accommodation. The model is based on social exchange theory, whereby the homesharer undertakes an agreed number of hours of, for example, household work, shopping, and companionship, but also enables a sense of security for the owner-occupant. In return, the homesharer receives rent-free or low-rent accommodation.³⁸ Homeshare has been successfully applied across the UK, Europe, and the USA. In Australia, the model has been implemented by not-for-profit organisations and is yet to receive ongoing government support.

Youth homelessness is increasing

Housing and rental unaffordability have increased the risk of youth homelessness. Young people are overrepresented in the homeless population: almost 7,000 of those aged between 12 and 24 experienced homelessness in 2011 and represented

³⁶ *ibid.*

³⁷ ABS, *Australian Social Trends, Young adults: Then and now. Where do young adults live?*, Australian Bureau of Statistics, Canberra, 2013.

³⁸ Youth ACtion, *Homeshare: An affordable housing alternative*, Surry Hills, 2015, p. 5.

approximately 25% of the homeless population in NSW,³⁹ despite the fact that this age group constitutes only 18% of the total NSW population.⁴⁰ Furthermore, in comparison with other states and territories, NSW has the largest number of young people experiencing homelessness.⁴¹ It is important to note that youth homelessness figures are generally accepted as vastly underestimated, with ongoing difficulties in accounting for those who are couch surfing or living in overcrowded accommodation.

These young people are often misrepresented as 'runaways' or 'street kids', which ignore the factors that cause instability for young people, implying such young people are making a choice. The most common reasons for homelessness among young people include the housing crisis, relationship and/or family breakdown, and domestic and family violence.⁴² In particular, it is common among young women that have experienced domestic and family violence to access a specialist homelessness service for the purpose of leaving their household. Indeed, each year, one in 42 women aged between 15 to 24 years will access a specialist homelessness service.⁴³

³⁹ Homelessness Australia, *Homelessness in New South Wales*, Homelessness Australia, Australian Capital Territory, 2013, viewed 31 January 2016, <http://www.homelessnessaustralia.org.au/images/publications/Infographics/NSW_-_updated_Jan_2014.pdf>.

⁴⁰ FaCS, *Snapshot of young people in NSW*, Department of Family and Community Services, Canberra, 2013, viewed 1 January 2016, <<http://youth.nsw.gov.au/youth-snapshot/>>.

⁴¹ Homelessness Australia, *Homelessness in New South Wales*, Homelessness Australia, Australian Capital Territory, 2013, 31 January 2016, <http://www.homelessnessaustralia.org.au/images/publications/Infographics/NSW_-_updated_Jan_2014.pdf>.

⁴² Homelessness Australia, *Homelessness and Young People: fact sheet*, Homelessness Australia, Australian Capital Territory, 2015.

⁴³ Homelessness Australia, *Homelessness and Women: fact sheet*, Homelessness Australia, Australian Capital Territory, 2015.

Accordingly, Youth Action endorses the submission by Women's Legal Services NSW in response to the review of the RTA, which advocates for stronger protections for victims of domestic violence, including specifying in the RTA that domestic violence is an accepted reason for lease termination and doesn't require the compensation of a landlord upon termination.⁴⁴

RESPONSE TO THE STATUTORY REVIEW OF THE RESIDENTIAL TENANCIES ACT 2010: DISCUSSION PAPER

Rent increases

Discussion Paper Question 15: Do the existing provisions governing excessive rent increases strike the right balance between the interests of landlords and tenants?

The existing provisions governing excessive rent increases burden young people to an extent disproportionate to the benefits landlords accrue from them, as the RTA provides landlords with almost unlimited discretion to increase the size and frequency of rent increases. This is especially the case for periodic agreements, as the RTA limits neither the number of rent increases that can be made nor the amount of the rent increase beyond the requirement that it not be 'excessive'.

Fixed-agreements are also problematic: for fixed-agreements of two years or less, there are no limits on the amount or number of rent increases, provided the agreement specifies the increased rent or the method for calculating it; for fixed-agreements of more than two years, the amount of increase is unlimited, but must not be excessive or increased more than once over 12 months.

⁴⁴ Women's Legal Services NSW, *Statutory Review of the Residential Tenancies Act 2010*, Women's Legal Services NSW, 2016.

As discussed previously, young people have difficulty affording rent in NSW. This is problematic given that young people in NSW are expected to rent more than previous generations, and for longer periods of time. In 2015, four out of five very low-income households paid a rent greater than 30% of their total household income.⁴⁵ Young people tend to fall into these low-income categories as they are often at a stage in their lives in which they are employed part-time or casually to enable flexibility for study commitments or to undertake apprenticeships and/or internships. Thus, under these circumstances, any increase in rent above the Consumer Price Index (CPI) will push young people into further housing stress and place them at greater risk of homelessness. The protections offered by the RTA must be relevant to the current housing context in NSW and must therefore be strengthened by further restrictions on the frequency and size of rent increases.

Youth Action recommends the following as a means to strengthen these protections:

Recommendation 1: Restrict the number of rent increases that can be made to one per year for both periodic agreements and fixed-term agreements.

The RTA limits the frequency of rent increases to one increase per year only for fixed-term agreements of more than 2 years. This limitation should be extended to all fixed-term agreements and periodic agreements. This would mean tenants benefit from a strongly regulated rental market affording them a high level of housing security. The German model, for example, specifies that the rent must remain unchanged for at least one year at a time, unless the lessor has carried out

⁴⁵ AHURI, *How great is the shortage of affordable housing in Australia's private rental market?*, issue 144, Australian Housing and Urban Research Institute, Melbourne, 2015.

structural measures due to unforeseen circumstances.⁴⁶ There are also European housing systems with less predominant rental markets than Germany that have similar protections where rent can be revised only once a year, and only if a clause in the contract specifies it.⁴⁷

Extending the limitation on the frequency of rent increases in fixed-term and periodic agreements would provide young people with greater certainty regarding future prices and tenancy security. The German rental market has been chosen as a relevant point of reference due to the substantial role this market plays in Germany: private landlords, including private housing companies, private individuals, institutional investors and companies controlled by financial investors, own approximately 47% of all dwellings. By comparison, in most developed countries, privately rented dwellings constitute 10 to 20% of total housing stock.⁴⁸ Although this figure is shaped by unique cultural, political and sociological differences,⁴⁹ the regulation of the frequency of rent increases has indeed contributed to tenancy security and is thus a relevant model.

Recommendation 2: Prohibit rent increases that are proportionately greater than increases in the Consumer Price Index (CPI), or require landlords to show that any rent increase that is greater than an increase in the CPI is reasonable.

⁴⁶ Bundesministerium der Justiz und für Verbraucherschutz, *German Civil Code*, Bundesministerium der Justiz und für Verbraucherschutz, viewed 28 January 2016, <http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p2100>.

⁴⁷ Global Property Guide, *Tenant protection laws are onerous*, Global Property Guide, 2006, viewed 28 January 2016, <<http://www.globalpropertyguide.com/Europe/France/Landlord-and-Tenant>>.

⁴⁸ S Kofner, 'The German housing system: fundamentally resilient?', *Journal of Housing and the Built Environment*, vol. 29, no. 2, 2014, pp. 255-275.

⁴⁹ M Voigtländer, 'The stability of the German housing market', *Journal of Housing and the Built Environment*, vol. 29, no. 4, 2014, pp. 583-594.

There are few restrictions in the RTA regarding the permissible amount of rent increase, which has contributed to rental stress and insecurity among young people. Accordingly, Youth Action recommends that the RTA prohibit rent increases that exceed a rise in the CPI, or require landlords to show that any rent increase that exceeds a rise in the CPI is reasonable. This would accord more closely with systems of rent price formation, whereby the 'local reference rent'⁵⁰ functions as an upper limit for rent levels in ongoing contracts.⁵¹ Moreover, there are other models that specify that rent cannot be increased by more than 30% in 3 years, and requires landlords to provide justification for a rent increase demand.⁵² Multiple countries offers similar protections, where rent increases are capped to CPI increases, and, if a rent increase exceeds 10% of the rent previously paid by the tenant, it must be spread over a period of six years.⁵³

Given the absence of specific restrictions on the amount of rent increases in NSW, Youth Action recommends that the RTA prohibit rent increases that exceed a rise in the CPI as a primary measure. Further restrictions such as the prohibition on increases in rent of more than 30% in three years, should be considered once this primary measure is firmly in place.

Repairs and alterations

⁵⁰ A rent index that is based on the average rent agreed in the last four years taking into account the age of the building, quality and location.

⁵¹ S Kofner, 'The German housing system: fundamentally resilient?', *Journal of Housing and Built Environment*, vol. 29, no. 2, 2014, pp. 255-275.

⁵² Bundesministerium der Justiz und für Verbraucherschutz, Code ss 558 and 558a, *German Civil Code*, Bundesministerium der Justiz und für Verbraucherschutz, viewed 28 January 2016, <http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p2100>.

⁵³ Global Property Guide, *Tenant protection laws are onerous*, Global Property Guide, 2006, viewed 28 January 2016, <<http://www.globalpropertyguide.com/Europe/France/Landlord-and-Tenant>>.

Discussion Paper Question 21: Is further guidance required in relation to whose responsibility it is to repair the premises and when the repairs must be carried out?

Further guidance is required in relation to the repair of rental premises. First, section 62 of the RTA does not specify that subtenants may use the section 64 urgent repair provisions of the Act. This has created confusion regarding the relative responsibilities of landlords and subtenants to repair, especially among young people with low incomes who sublet to afford their rent. Subletting is pertinent to young people given that students often sublet rooms to other students to reduce their overall rent. Youth Action therefore considers it necessary to remove ambiguity about the rights of subtenants in this particular area, given that urgent repairs are crucial.

The RTA also provides a limited range of enforcement options against landlords who do not meet their obligation to maintain rental premises in a reasonable state of repair. Indeed, tenants can only enforce this obligation through obtaining an order from the NSW Civil and Administrative Tribunal (NCAT). Young people are reluctant to exercise their rights to repairs due to their often-precarious economic situation and the ability of the landlord to require tenants to vacate for no reason. According to the Council to Homeless Persons, retaliatory evictions are prohibited, although are difficult to prove.⁵⁴

It is also important to note that the mandatory condition report (RTA Schedule 2, Appendix C) that must be completed at the start and end of a tenancy does not adequately involve tenants. This is because the RTA requires the landlord or their

⁵⁴ Council to Homeless Persons, *Submission to the consultation paper on the Review of the Residential Tenancies Act*, Council to Homeless Persons, Victoria, 2015, p. 5.

agent to undertake the inspection of the rental estate; the tenant is only to sign the agreement and indicate agreement or disagreement with the reported conditions. As a result, the condition report may be biased in the landlord's favour, which can lead to the underreporting of defects and other issues regarding the property's condition.

Discussion Paper Question 22: Are the current provisions regarding making alterations to a rental premises appropriate?

The RTA requires the consent of the landlord before the tenant can make alterations or additions to the residential premises. The tenant can only challenge the landlord's refusal of consent in the NCAT. Even minor alterations, such as installing curtains and hanging pictures, and those necessary for people with disability, such as installing handrails and ramps, require the landlord's consent. As a result, young people often fear being given a notice to vacate if they make minor alterations without consent, given their weaker negotiating power relative to landlords. This jeopardises their right to a residential estate that is accessible and comfortable, as well as affordable.

Discussion Paper Question 25: Should the number of inspections allowed per year be reduced for long-term tenants?

The RTA allows a landlord or their agent to inspect the rental property up to four times per year. The notice period for a normal inspection is 7 days' written notice. The limitation on the frequency of inspections and the notice period for inspections is not altered according to how long the tenant has resided in the premises. This has been at the expense of the right of privacy of long-term tenants, as the RTA does not recognise or validate the duration of a tenancy. This is an issue pertinent

to young people due to the higher likelihood in the current housing market of long-term renting by young people, as well as low-income earners generally.

To address the problems discussed above, Youth Action recommends the following:

Recommendation 3: To provide greater certainty, revise the terms used in Section 62 and Section 63 of Division 5 of the RTA regarding the respective obligations of landlords and tenants to repair and maintain the premises.

Further guidance is required in the RTA to reduce confusion regarding the respective responsibilities of landlords and tenants to repair rental premises. Given that the responsibilities that landlords owe to subtenants are particularly unclear, the 'urgent repairs' definition in section 62 should be reworded to make clear that subtenants may use the urgent repair provisions in Division 5.

In addition, the RTA should elaborate further in section 62 as to what constitutes a 'reasonable state of repair', as this is the sole standard by which judgment of whether or not a landlord has met their general obligation is made, and is prone to ambiguity. A more detailed explanation of a 'reasonable state of repair' should include the maintenance of certain facilities including heating, ventilation, cooking amenities and running water, the installation of safety measures including working locks, electrical safety switches and window-limiting devices, as well as the removal of health hazards such as mould. Electrical safety switches are the only known solution to protecting people from earth fault electric shocks, and window-limiting devices prevent young, unsupervised children from falling off ledges.⁵⁵

⁵⁵ Tenant's Union of New South Wales, *Residential current detectors (RCDs): briefing paper*, Tenant's Union of NSW, Surry Hills, 2014; Tenant's Union of New South Wales, *Raise the standard of rental housing*, Tenant's Union of NSW, Surry Hills, viewed 28 January 2016, <<http://www.tenantsunion.org.au/policy/just-renting/60-raise-the-standard>>.

Recommendation 4: Provide tenants with the option of having an impartial surveyor complete the mandatory condition report in RTA Schedule 2, Appendix C.

The mandatory condition report (RTA Schedule 2, Appendix C) produced at the start and end of a tenancy should require more direct involvement of the tenant. At present, the RTA requires the landlord or the landlord's estate agent to complete the inspection. To place greater emphasis on the tenant's requirements and opinion, an alternative process should be available to tenants whereby an independent surveyor, whose costs are split evenly between the landlord and tenant, is hired to inspect the property. This would align closer to systems where a surveyor's presence ensures impartiality in the inspection and resolution of differences in opinion between each party.⁵⁶ Moreover, in some European rental sectors the condition report forms part of the tenancy agreement, meaning that the surveyor's impartial inspection effectively becomes law.⁵⁷ It would be beneficial for landlords as well as tenants if NSW adopted this system, as it would assist landlords in proving that any damage to the rental property was caused by the tenant's negligence, thereby allowing them to charge the tenant the repair cost for the damage. For a NSW system, subsidies could be offered to low-income earners to ensure that young people don't waive their access to an impartial assessment.

Recommendation 5: Require a schedule of inspections for repairs and maintenance needs for rental properties.

The RTA should require a schedule of inspections for repairs and maintenance needs to ensure that the rental estate remains in a 'reasonable state of repair' during the tenancy. This schedule should be aligned to provisions for inspections, to

⁵⁶ French Property, *Letting Property in France*, 10. *Property Condition Report – L'Etat des Lieux*, French Property, viewed 28 January 2016, <<http://www.french-property.com/guides/france/working-in-france/letting-property/condition-report/>>.

⁵⁷ Ibid.

safeguard the privacy rights of tenants by allowing them to prepare for inspections, avoid additional and unnecessary inspections and avoid unforeseen interruptions by landlords. Moreover, apart from inspections concerning emergencies or repairs, a further limitation on the allowed frequency of inspections by landlords should be introduced for tenants that have resided in the same premises for five or more years. This would give recognition to the growing trend of long-term tenancies in NSW, as well as improve conditions for long term tenants, like freedom from disturbance.

Recommendation 6: Assume landlord consent to minor property modifications unless the landlord withdraws consent successfully through the NSW Civil and Administrative Tribunal.

The RTA should assume landlord consent to minor property modifications unless the landlord withdraws consent successfully through the NCAT.⁵⁸ This would resemble the regulatory framework in France, which requires landlords to provide serious and justifiable reasons for refusing minor alterations made to the property.⁵⁹ Placing the onus on the landlord to withdraw consent via the NCAT would also eliminate prolonged waiting periods for alterations as minor as installing curtains and hanging pictures, as well as those made for people with disability such as installing handrails and ramps.

Long-term tenancies

Discussion Paper Question 31: Are the provisions applying to long-term tenancies appropriate?

⁵⁸ Council to Homeless Persons, *Submission to the consultation paper on the review of the Residential Tenancies Act*, Council to Homeless Persons, 2015, p. 6.

⁵⁹ French Property, *Letting Property in France, 10. Property Condition Report – L'Etat des Lieux*, French Property, viewed 28 January 2016, <<http://www.french-property.com/guides/france/working-in-france/letting-property/condition-report/>>.

In the past, rental markets were understood as allowing for transitional phases as people moved from the parental home, to rental properties, through to homeownership. Indeed, the establishment of an independent household and homeownership were considered to be early steps to adulthood for young people, especially during the 1950s and 1960s.⁶⁰ However, due to changes in public policy and economic, demographic and social factors, it is no longer the case that occupancy in the private rental sector is always short term.⁶¹

The RTA's long-term tenancy provisions are highly relevant to young people, as young people today are more likely to face the prospect of long-term renting than previous generations. This is due to the declining rate of homeownership among young people; in 1981, 61.4% of Australians aged between 25 and 34 were purchasing or owned a home, but in 2011, only 48.4% did so.⁶²

The RTA does not appropriately take into account this tendency. First, the protections for long-term tenants regarding termination apply only to those who have been residing in the same premises for 20 years, which is an extensive amount of time.

As previously discussed, for fixed-agreements of more than 2 years, the only restrictions on the amount of rent increases are that they cannot be 'excessive' and that they cannot be raised more than once over 12 months. This threatens the

⁶⁰ W Stone, 'Young people's access to home ownership', *Australian Institute of Family Studies: Family Matters*, no. 49, 1998, pp. 38-43.

⁶¹ Ibid.

⁶² T Burke, W Stone, & L Ralston, *Generational change in home purchase opportunity in Australia*, Australian Housing and Urban Research Institute, Melbourne, 2014, p. 21.

security of occupancy for young people with long-term tenancy agreements, as landlords still retain much discretion regarding the frequency and size of rent increases. Accordingly, the RTA must be altered to provide greater security for young people who are inheriting a housing market in which it is increasingly difficult to transition from renting to homeownership.

While this generation of young people, at least, are likely to be renting for longer than previous generations, there is also a need to allow for flexibility at the same time. For all young people, across the ages, this stage of life tends to be characterised by multiple social, economic and workplace changes, which result in changes in occupancy. A young person may, for instance, transition from share housing to living independently or with a partner, or move to a property that is located closer to education options or a workplace. Those aged between ten and 24 years have the greatest tendency to move house. In 2011, 64% of young people lived in a place different to where they were living five years earlier, and 29% lived in a place different to where they were living a year earlier.⁶³ Other Australians were less mobile: only 33% lived at an address different to the address they were living at five years earlier, and 12% lived at an address different to the address they were living at a year earlier.⁶⁴

These complex fluctuations warrant greater protections for long-term tenancies in the RTA. These protections should not deny young people the flexibility they need

⁶³ ABS, 2013, op.cit.

⁶⁴ Ibid.

to alter their living arrangements; they would instead provide added and necessary security to those who have decided to reside in a property long-term or permanently.

Youth Action recommends the following to ensure the RTA provides such security:

Recommendation 7: Make section 94 of the RTA regarding the termination of long-term tenancies applicable to tenancies of five or more years.

Greater protection of long-term tenants regarding termination is warranted, as these tenants tend to be more economically vulnerable and thus more likely to find relocating difficult. Indeed, the number of long-term renters as a proportion of Australian households is now greater than that of public renters,⁶⁵ and 45.5% of these long-term renters are in the lowest 40% of income distribution.⁶⁶

While section 94 of the RTA allows for the termination of tenancies of 20 years or more if the NCAT is satisfied that it is appropriate to do so in the circumstances of the case, other tenancies should be considered. The allowance should be extended earlier, given the circumstances of a market which is likely to host more long-term tenants, and is important for low income households.⁶⁷ Youth Action recommends earlier provision of more security to tenants that have been in continual possession of the same premises for a period of five years or more.

⁶⁵ W Stone, T Burke, K Hulse & L Ralston, *Long-term private rental in a changing Australian private rental sector*, Australian Housing and Urban Research Institute, Melbourne, 2013, p. 45

⁶⁶ L Roth, *Private rental housing and security of tenure*, NSW Parliamentary Research Service, 2015, p.2.

⁶⁷ W Stone, T Burke, K Hulse & L Ralston, *Long-term private rental in a changing Australian private rental sector*, Australian Housing and Urban Research Institute, Melbourne, 2013.

Recommendation 8: Extend the required notice periods for rent increases and terminations according to how long the tenant has been renting the premises for.

The RTA requires 60 days' notice before the landlord can increase the rent, and 90 days' notice before the landlord can terminate a periodic agreement without grounds. The notice periods for the termination of fixed-term agreements, and agreements without grounds, are shorter. To achieve greater security of tenancy for long-term tenants, longer notice periods should apply to tenants that have been in continual possession of the same premises for five or more years.

Other relevant models require the notice period (usually three months) to be extended by three months in each case, five and eight years after the tenant is permitted to use the residential space. This applies to leases for an indefinite period of time. For fixed-term leases, the tenant may, four months prior to the expiry of the term, demand the landlord to notify them within one month whether the grounds for the fixed term still apply.⁶⁸ Indefinite leases are more common than fixed-term leases, as landlords wanting to specify a fixed-term must provide reasons.⁶⁹ Thus, the longer notice periods required for long-term tenants are of common use.

⁶⁸ Bundesministerium der Justiz und für Verbraucherschutz, Section 575(2), *German Civil Code*, Bundesministerium der Justiz und für Verbraucherschutz, viewed 28 January 2016, <http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p2100>.

⁶⁹ Bundesministerium der Justiz und für Verbraucherschutz, Section 575(1), *German Civil Code*, Bundesministerium der Justiz und für Verbraucherschutz, viewed 28 January 2016, <http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html#p2100>.

Similar provisions should be adopted in the RTA given the growing importance of long-term renting and the fact that 45.5% of long-term renters are low-income households.⁷⁰ This means that long-term tenants often require more time to find appropriate and affordable housing, accumulate sufficient funds or decide to relocate following a rent increase.

Recommendation 9: Should the government prefer to maintain the temporary nature of periodic agreements, automatically renew fixed-term agreements instead of rolling them over to periodic agreements

The majority of recommendations in this submission are indiscriminate towards periodic and fixed-term agreements, as they seek to improve the protections offered by both agreements. However, should the NSW government prefer to preserve the temporary nature of periodic agreements and increase the protections offered in fixed-term agreements, the RTA should encourage a greater prevalence of fixed-term agreements accordingly. This could be achieved by requiring the automatic renewal of fixed-term agreements following their expiry, instead of rolling them over to periodic agreements. There are some other models that could apply in this case. For instance, a furnished property has a contract of one year and is automatically renewed at the end of the tenure period, unless either side provides sufficient notice of termination of the lease at the end of the fixed term.⁷¹ In the case of Australia, this would enhance housing security by ensuring that tenants benefit from the protections negotiated in their original fixed-term agreements for the entire duration of their lease.

⁷⁰ L Roth, *Private rental housing and security of tenure*, NSW Parliamentary Research Service, 2015, p.2.

⁷¹ Global Property Guide, *Tenant protection laws are onerous*, Global Property Guide, 2006, viewed 25 January 2016, <<http://www.globalpropertyguide.com/Europe/france/Landlord-and-Tenant>>.

Termination

Discussion Paper Question 33: Should landlords be required to provide a reason for terminating a tenancy?

The 'no grounds' termination provisions in sections 84 and 85 of the RTA unduly increase rental insecurity for young people. By not requiring landlords to provide a reason for terminating a tenancy, the RTA has unknowingly introduced the possibility of terminations motivated by discrimination and/or retaliation. The Tenants Advice and Advisory Services, for instance, report that 'no grounds' termination notices seem to be used more widely now than they were under the previous Act.⁷²

These 'no grounds' terminations have placed young people in further rental stress and risk of homelessness, as tenancy may be terminated even if they are fully compliant with the original rental agreement. Sections 84 and 85 also deter tenants from asserting their rights: in 2014, for instance, an Affordable Housing Survey by the Tenants' Union NSW demonstrated that 77% of tenants surveyed declined to pursue their tenancy rights due to the fear of 'adverse consequences' if they raised the relevant problem with their landlord.⁷³ This is an issue pertinent to young people as they are vulnerable in the private rental market due to their relatively low incomes, rental experience, and knowledge of their tenancy rights.

⁷² Tenants' Union of New South Wales, *Residential Tenancies Act 2010: Report*, Tenants' Union of New South Wales, 2012, viewed 28 January 2016, < <http://tenantsunion.org.au/residential-tenancies-act-report>>.

⁷³ Tenants' Union of New South Wales, *2014 Survey Report: Affordable housing and the New South Wales rental market*, Tenants' Union of New South Wales, 2014, p. 11.

To address the problems created by sections 84 and 85 of the RTA, Youth Action recommends the following:

Recommendation 10: Prohibit the use of ‘no grounds’ termination notices, or require a baseline of six months’ notice when ‘no grounds’ termination notices are issued.

The use of ‘without grounds’ termination notices in the RTA should be prohibited entirely, as these notices facilitate terminations based on retaliatory and/or discriminatory reasons. To ensure that landlords retain the ability to terminate for sound reasons, the RTA should include a list of additional sound reasons for ending a tenancy. These potential reasons are discussed in Recommendation 11.

If the NSW government prefers to retain the ‘without grounds’ termination notice provisions in the RTA, a baseline of six months’ notice should be required when a ‘no grounds’ termination notice is issued. At present, landlords are required to give only 30 days’ notice to terminate without grounds for a fixed-term agreement, and 90 days’ notice for a periodic agreement. Youth Action agrees with the Tenant’s Union that a six months’ notice period would be a more appropriate time frame,⁷⁴ as it would benefit young people two-fold: landlords would be encouraged to use termination notices with grounds, and young people would have more time to find another affordable rental premises. This six-month notice period should only be a baseline. To protect the tenancy security of long-term tenants, longer notice

⁷⁴ Tenant’s Union of New South Wales, *Residential Tenancies Act 2010: Report*, Tenant’s Union of NSW, Surry Hills, 2012, viewed 25 January 2016, <<http://www.tenantsunion.org.au/residential-tenancies-act-report>>.

periods should be required for tenants that have resided in the same rental premises for five or more years. Youth Action recommends the following model: six months' notice for a tenancy of less than five years; nine months' notice for a tenancy of five to nine years; and 12 months notice for a tenancy of more than ten years.

Recommendation 11: Include further reasons for ending a tenancy to encourage the use of termination notices with grounds.

In the RTA, landlords can use the following reasons to terminate with grounds:

- Breach of agreement by the tenant;
- Sale of property subject to vacant possession;
- Rent arrears;
- Severe damage or injury to a person at the residency by the tenant or subtenant;
- Use of the property for an illegal purpose;
- Hardship to the landlord if the tenant continues to reside there; or,
- Threat, abuse, intimidation or harassment by the tenant to the landlord.⁷⁵

To encourage the use of termination notices with grounds instead of termination notices without grounds, the RTA should include a list of additional reasons for ending a tenancy. This would mean greater tenancy security for young people by helping to avoid and discourage terminations based on age discrimination and/or retaliation. Youth Action agrees with the Tenant's Union that other such potential reasons should include the following:

⁷⁵ *Residential Tenancies Act 2010* (NSW) ss 87-93.

- The landlord, or a family member of the landlord, requires the property for personal use; and,
- The property is to be substantially renovated, such that a tenant cannot live in the property for the duration of the work.⁷⁶

Recommendation 12: Prohibit terminations for unsound reasons such as retaliation and discrimination against a tenant on the grounds of age, culture and/or religion.

Section 115 of the RTA provides a check and balance on landlords ending tenancies for retaliatory reasons by providing tenants with the ability to challenge a termination notice in the NCAT. The NCAT can make an order that the termination has no effect if it is satisfied that the termination notice given was retaliatory.

However, section 115 requires review and/or strengthening, as its use by tenants is limited. To address this issue, Youth Action recommends the prohibition of terminations for unsound and/or arbitrary reasons in the RTA. If adopted, this prohibition would remove the ability of landlords to terminate tenancies for discriminatory and retaliatory reasons, as landlords would be able to terminate only on the basis of approved grounds and supporting evidence. Indeed, as mentioned in section 5.2, since retaliatory and discriminatory evictions are difficult to prove, the RTA should focus on removing the *ability* of landlords to evict for retaliatory and discriminatory reasons, rather than on strengthening the mechanisms for challenging these evictions in the NCAT after they have occurred.

⁷⁶ Tenant's Union of New South Wales, *Residential Tenancies Act 2010: Report*, Tenant's Union of NSW, Surry Hills, 2012, viewed 25 January 2016, <<http://www.tenantsunion.org.au/residential-tenancies-act-report>>.



CONCLUSION

The very nature of the rental market has significantly shifted and it is crucial to the wellbeing of young people that the regulatory frameworks evolve accordingly.

This submission is produced to inform the upcoming review of the *Residential Tenancies Act 2010*. Youth Action has highlighted changes that should be made to the Act to ensure that there is adequate support and protection for young people who are either entering the private rental market or currently leasing. This support is essential for young people in NSW due to a combination of housing issues driving the increasing necessity for them to rent. However, even the viability of renting for young people has declined over the past several years, partly due to insufficient protections offered by the RTA. These protections must be strengthened.

This submission details four key areas of the RTA that requires amendments to improve the outcomes for young people. Youth Action recommends the RTA be amended to:

- Restrict unreasonable rent increases;
- Improve guidance regarding responsibilities to make repairs and alterations;
- Improve safeguards for long-term tenants; and,
- Reduce risks associated with 'without grounds' termination notices

Youth Action has made specific recommendations to address these problems. In doing so, Youth Action represents young people to ensure that their needs are met



under the current housing legislation, that their outcomes are improved, and that the legislation is adjusted for today's era of housing.