Submission No 41

TENANCY MANAGEMENT IN SOCIAL HOUSING

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Inquiry into Tenancy Management in Social Housing

Legal Aid NSW submission

to the Public Accounts Committee

August 2014

Legal Aid NSW welcomes the opportunity to respond to the terms of reference to the Legislative Council Inquiry into social, public and affordable housing currently being conducted by the Social, public and affordable housing Committee.

Legal Aid NSW is an independent statutory body established under the *Legal Aid Commission Act 1979* (NSW) to provide legal assistance, with a particular focus on the needs of people who are economically or socially disadvantaged. Legal Aid NSW provides information, community legal education, advice, minor assistance and representation, through a large in-house legal practice and through grants of aid to private practitioners.

Our civil law solicitors advise clients living in social and public housing, with a particular focus on clients experiencing, or at risk of, eviction or homelessness. Where appropriate, we litigate on behalf of our clients. This practical experience provides a strong base from which to provide comment to the inquiry.

Cost effectiveness of current tenancy management arrangements in public housing

The management of public housing tenancies has become an increasingly complex task over the last decade as allocations of housing have been more effectively targeted towards people with the greatest need. It is our experience that social housing tenants typically suffer high levels of disadvantage for reasons including unemployment, poor health, disability, domestic violence, substance abuse and family breakdown. They can also be particularly vulnerable in their experience of legal, health and social issues.

Given this context, the management of public housing tenancies rightfully focuses on supporting tenants and sustaining tenancies. This is consistent with the role of a social housing provider to prevent homelessness, provide opportunities to engage tenants and promote social inclusion.

Housing NSW is uniquely placed to perform these functions. It has the resources of the government to draw on, can access relationships with other government and non-government agencies and has mechanisms to facilitate input from the community.

It is difficult to envisage the private sector being able to perform these functions. A social housing tenancy is inherently different to a private residential tenancy, and the private sector would be ill equipped to deliver the same or similar outcomes, and to be able to adequately respond to an emerging need in a timely and flexible manner when the key drivers are not market forces.

There is a widely-held view that community housing is more responsive to tenants and generally achieve better outcomes. We refer the Committee to the recent report by the Australian Housing and Urban Research Institute, *'Public housing transfers: past, present and prospective',*[1] which found that there is an absence of direct qualitative evidence that community housing providers were better at delivering tenancy services, and further that the proposition that community housing is more cost-effective than public housing should be viewed with caution.

Range and effectiveness of support services provided to tenants in social housing

It is essential that tenants in need of support are provided with services at the earliest possible opportunity so as to sustain their tenancies. Housing NSW currently attempts to link people with appropriate support at the beginning of their tenancies. There have been targeted programs that do this that have met with considerable success, most notably the Housing and Support Initiative, which aimed to assists adults with a mental health diagnosis with access to clinical services and accommodation support.

However, too frequently Legal Aid NSW encounters clients who are at the brink of losing their public housing tenancy and becoming homeless because they have had inadequate support. We frequently assist public housing clients in circumstances of unpaid rent, property damage or neighbourhood disturbance. These issues are often manifestations of deeper problems that have either arisen since the commencement of the tenancy such as mental illness or family breakdown or violence, or were present from the outset but supports were not in place or not necessary at that stage.

Our concern is that at times, Housing NSW does not commit appropriate resources to providing primary intervention support services to tenants. This can result in problematic behaviour escalating and Housing NSW taking action to evict. The process of eviction can further exacerbate adverse health, social or legal outcomes, as indeed can the resultant homelessness which increases need, disadvantage and vulnerability, and constitutes a further barrier to accessing appropriate support. Eviction from public housing places further, and often more acute, demands and stresses elsewhere in the system. Resources should be allocated to focus on early intervention and prevention to support tenants to remain in social housing.

[1] AHURI Final Report 215, Melbourne, 2013

Outcomes for tenants from current tenancy management arrangements and possible measures to improve tenancy management services

Many public housing tenants report positive outcomes from their living arrangements – they have secure and affordable housing, there are opportunities to engage with their community and there is a strong support network among tenants. However, we have identified a number of recurrent issues through our advice and casework that we have highlighted below.

Repairs

Problems in having adequate repairs done in a timely fashion is, in our experience, the most widespread problem in public housing over the last few years. There are often lengthy delays in having repairs done, and then they are performed in a manner that is either substandard or otherwise fails to resolve the problem, requiring the repair person to be called back, resulting in further delay. Many tenants need to apply to the NSW Civil and Administrative Tribunal (NCAT), formerly the Consumer, Trader and Tenancy Tribunal (CTTT), to obtain orders for repairs to be done, and even then, the orders are not always complied with.

For example, Legal Aid NSW acted in one matter where a tenant had a number of items in her property in need of repair. With our assistance, she obtained Tribunal orders in 2012 to have the repair done. However, the repair was not completed until July 2014 following three further applications to the Tribunal.

These problems are caused by failures in communication and accountability between Housing NSW, who manages the properties, the Repairs and Maintenance Hotline where the faults are recorded, the NSW Land and Housing Corporation, who controls the property assets, and the contracting firms who are engaged to perform the work. This system needs to be reviewed and reformed to ensure that repairs can be conducted in a timely and efficient manner.

Need for early intervention and greater collaboration

As we referred to previously, our clients often contact us when they are on the brink of losing their public housing tenancy. The assistance that we are required to provide is normally intensive and urgent, and is a drain on both our service and the resources of Housing NSW.

We are of the view that many of these cases could be resolved at a much earlier stage through the provision of timely, appropriate and integrated support. Outcomes for tenants could be improved if Housing NSW reviewed its referral processes and put in place systems to identify underlying issues, including legal and health issues, as early as possible and referred clients to relevant agencies and services for support.

Need for regular inspections

Under the *Residential Tenancies Act 2010*, a landlord is entitled to inspect a property up to 4 times a year. However, inspections are very rarely carried out in public housing, if at all.

Resources should be directed to conducting regular inspections once or twice a year. This would serve to identify repair issues in a timely and cost effective manner, as well as giving Housing NSW an opportunity to engage with individual tenants and communities to identify any issues and needs.

Use of evictions and the eviction process

In most cases, the eviction process starts with the issuing of a notice of termination by the landlord. This is a letter that states that a tenant is required to vacate the property by a certain date. Understandably, the receipt of such a notice is very stressful for a tenant.

It is our experience that the issue of a notice of termination could have been avoided on many occasions if some preliminary inquiries were made by Housing NSW. For example, one of our clients was issued with a notice of termination twice in a five month period because the Housing NSW computer system didn't recognise a repayment plan that had been sanctioned by the Tribunal. Approval should be obtained from senior management and all records, including Tribunal outcomes, should be reviewed before a notice of termination is issued.

A further issue is that Housing NSW often attempts to evict those tenants who have incurred a debt to Housing NSW because they received a rental subsidy for which they were later found to be ineligible. In our view, there is no sound policy rationale for depriving a person of their entitlement to public housing in these circumstances. There are provisions in the *Housing Act* 2001 that create offences for making false statements or representations to obtain a benefit, or to fail to disclose any material change of circumstances, and these offences carry penalties including a maximum of 3 months imprisonment or a fine of $2,200, or both. This is a reasonable and sufficient sanction. A similar situation exists in social security. A person may be prosecuted for wilfully obtaining a benefit of payment that he or she was not entitled to. However, this does not bar that person from rightfully obtaining a benefit or payment in future. Housing NSW policies could be significantly improved by clarifying that a debt owed to Housing NSW is not an appropriate basis on which to take action to evict tenants.

Internal decision-making and review

Housing NSW is charged with the management of the state's public housing stock. As a government agency, there is an expectation that it will not only be efficient and effective in its administration, but also fair, equitable, accountable and transparent. These characteristics are the embodiment of good governance. It is therefore important for Housing NSW to ensure that:

- Policies and legislation are correctly applied
- It is clear what factors are taken into account in a decision
- Decisions are made in a timely manner
- Adequate reasons are given for decisions
- Decisions are consistent across the Department
- Discretion is exercised in appropriate cases

We have found that where these practices are not followed, problems can be exacerbated by a confusing arrangement of policies and the absence of a proper

system of review. Presently, a person aggrieved by a decision of Housing NSW may apply to the Housing Appeals Committee (HAC). The HAC has no basis in legislation and is only able to make a recommendation that may or may not be implemented by Housing NSW. Housing NSW's own policies provide no guidance about the circumstances in which a HAC recommendation might be implemented.

Further, after the HAC stage there is no further mechanism for merit review of decisions nor any easily accessible forum for judicial review. The sole recourse available is to seek judicial review in the Supreme Court. Legal Aid NSW currently has conduct of a number of these cases, and they are prohibitively expensive for both the applicant and Housing NSW. It is recourse that would be beyond the means of most, and especially economically and socially disadvantaged people who typically interact with Housing NSW.

Legal Aid NSW recently had carriage in the Supreme Court of the judicial review matter of [redacted] *v New South Wales Land and Housing Corporation* [2014] NSWSC 7, and a copy of the judgment is **attached** to this submission. That case concerned the decision to cancel a tenant's rent subsidy following an allegation that her former partner resided in the property. The subsidy was cancelled by the tenant's local Housing NSW office despite internal advice from the Tenant Fraud Unit to not do so (see paragraph 26). Our client sought review at the Housing Appeals Committee, which recommended that the subsidy should be reinstated. This recommendation was not implemented by Housing NSW, which then took steps to terminate our client's tenancy. With the assistance of Legal Aid NSW, the tenant was able to have the decision of Housing NSW set aside. The NSW Land and Housing Corporation has since filed a Notice of Intention to Appeal in the Court of Appeal in respect of this decision.

This case illustrates the action and resources currently required to correct decisions of Housing NSW. But for the intervention of Legal Aid NSW, the tenant and her children would have lost their public housing tenancy.

Instead of having to take action of this magnitude, review of Housing NSW decisions should be available in the Administrative and Equal Opportunity Division of the NSW Civil and Administrative Tribunal (NCAT). This is the forum of review for many other government decisions and the Division has the expertise to efficiently deal with these matters. Representation at the NCAT is not required and its processes are geared towards accessibility for non-represented parties.

Having recourse to accessible review encourages a culture of good decision-making within an agency and can lead to substantial improvements to processes and practice. It would also promote good governance by enhancing public perceptions of the fairness of Housing NSW decision-making.

In relation to community housing, a request for review may be made to the Housing Appeals Committee, but beyond that stage, the role of the Courts to oversee the administrative decisions of a community housing provider is unclear, even though the provider may be exercising functions of a public nature. This uncertainty gives community housing tenants fewer and less effective rights of review than the tenants of Housing NSW.

Better drafted policies

Policies are the tools of discourse between Housing NSW on the one hand and its clients and their advocates on the other. They are the external measure by which Housing NSW is accountable to the public, and its conduct can be assessed by the Housing Appeals Committee, the Ombudsman and the Courts.

The policies can be accessed by the internet; policies about eligibility and allocation are found at *Housing Pathways,* and all other policies are on the Housing NSW site. These policies are a labyrinth to the uninitiated. They are difficult to navigate through and are sometimes inconsistent. Often there are many different policies within the one document.

Greater accountability can be achieved by having Housing NSW policies drafted in a more consistent, accessible and integrated manner. Policies should be clearly named and numbered. Guidelines should also be issued to provide guidance to the decision-makers, the public and their advisers.

In relation to community housing providers, there is often stark differences in the policies from one provider to the next. This presents difficulties for tenants and their advisers, especially where policies cannot be accessed easily. Many providers have policies on their websites, but this is not always the case.

Conclusion

While public housing provides a range of positive outcomes to tenants, there is scope to further enhance outcomes for tenants by:

- Introducing systems to identify and address issues which may compromise a tenancy at a primary, rather than a tertiary stage
- Allocating appropriate resources to early intervention initiatives that support tenants to remain in social housing
- Collaborating with other agencies, including Legal Aid NSW, to address any underlying issues impacting upon a tenancy
- Ensuring that eviction is only pursued as a measure of last resort
- Clarifying that a debt owed to Housing NSW is not a bar to a social housing tenancy
- Reviewing systems to ensure that repairs are carried out in a timely manner, and where necessary, in accordance with Tribunal orders
- Conducting regular property inspections
- Enabling Housing NSW decisions to be reviewed in the Administrative and Equal Opportunity Division of the NSW Civil and Administrative Tribunal (NCAT)
- Reviewing and amending Housing NSW policies to ensure that they are set out in an accessible and integrated manner

We encourage the Committee to exercise caution if considering the appropriateness of outsourcing social housing tenancy management to private service providers. Any cost assessment should consider the integral importance of social support services when managing social housing tenancies, the importance and value of cross-agency collaboration and the significant costs incurred by

government if a social housing tenant becomes homeless and then requires a range of more acute government services.

Legal Aid NSW appreciates the opportunity to provide these submissions. For further information, please contact Damien Hennessy on [redacted] or by email at [redacted].

Supreme Court
New South Wales
Common Law Division

Case Title:	[redacted] v New South Wales Land and Housing Corporation
Medium Neutral Citation:	[2014] NSWSC 7
Hearing Date(s):	22 November 2012; further written submissions by leave closed 23 January 2014
Decision Date:	31 January 2014
Jurisdiction:	Common law
Before:	[redacted]
Decision:	Orders made in the nature of certiorari quashing the decisions purporting to cancel the plaintiff's rental rebate and purporting to require the plaintiff to pay a debt of $12,235.79 to the Corporation; order made in the nature of prohibition prohibiting the defendant from acting upon the purported cancellation decision or the purported debt decision; defendant ordered to pay the plaintiff's costs as agreed or assessed.
Catchwords:	ADMINISTRATIVE LAW – Housing Act - decision to cancel rental rebate – whether power to make decision lawfully exercised – jurisdictional requirement to conduct an investigation under section 58 – whether satisfied
Legislation Cited:	Housing Act 2001 Supreme Court Act 1970
Cases Cited:	Lafu v Minister for Immigration and Citizenship (2009) 112 ALD1; [2009] FCAFC 140 New South Wales Land and Housing Corporation v Navazi [2013] NSWCA 431 R v Secretary of State for the Home

	Department; ex parte Venables [1998] AC 407 Telstra Corporation v Australian Competition Tribunals (2009) 175 FCR 201
Texts Cited:	
Category:	Principal judgment
Parties:	[redacted] (plaintiff) New South Wales Land and Housing Corporation (defendant)
Representation	
	Counsel: [redacted] (plaintiff) [redacted] (defendant)
	Solicitors: Legal Aid NSW (plaintiff) NSW Land and Housing Corporation (defendant)
File number(s):	2012/103201
Publication Restriction:	None

JUDGMENT

1 **HER HONOUR:** This is an application for judicial review of a decision under the *Housing Act* 2001. The application also seeks review of two internal decisions affirming the original decision but there is a dispute as to whether those decisions are amenable to the review now sought.

2 [redacted] is a tenant of the New South Wales Land and Housing Corporation, which is established under s 6 of the *Housing Act*. The tenancy commenced on 17 April 2000. It was a term of the tenancy agreement that [redacted] give the Corporation written notice within 28 days of any change of household membership or the number of persons

residing in the premises for longer than 28 days (clause 29.1, page 15 of exhibit A).

3 Between 25 January 2004 and 6 November 2006, the Corporation was on notice that [redacted]'s husband, [redacted], was residing in the household as an additional occupant. At some later point the Corporation was informed that the couple had separated and that, from 6 November 2006, [redacted] was not or would no longer be an occupant (page 69 of exhibit A). From about December 2006, on the strength of that information, [redacted] was granted a rental rebate in accordance with s 56 of the *Housing Act*, which reduced her weekly rent from $205 to $108.15 (page 194 of exhibit A).

4 On 4 January 2011, after receiving an anonymous allegation that [redacted] and [redacted]'s brother, [redacted], had been residing at the premises, the Corporation decided to cancel [redacted]'s rental rebate and to debit her rental account retrospectively with a debt of $12,235.79.

5 [redacted] sought internal ("first-tier") review and external ("second-tier") review of that decision. Each of those applications was unsuccessful. [redacted] now seeks judicial review of the original decision and of each of the review decisions affirming that decision.

6 The application invokes the jurisdiction recognised in s 69 of the *Supreme Court Act* 1970. The grounds of review are set out in an amended summons filed 2 August 2012.

Circumstances in which the application is brought

7 [redacted] tendered a bundle of documents obtained on notice to produce and subpoena to the Corporation (exhibit A). There was no objection to the admission of that material into evidence. The Corporation acknowledged at the hearing that the bundle reproduces the Corporation's

documents in the order in which that material was produced in response to the notice to produce and the subpoena (T47-48).

8 The three decisions of which review is sought are:

(a) the Corporation's decision notified by letter dated 4 January 2011 to cancel [redacted]'s rental rebate retrospectively and to raise a debt of $12,235.79 against her rental account (page 78 of exhibit A);

(b) the Corporation's decision notified by letter dated 17 October 2011 to affirm the original decision (page 106 of exhibit A);

(c) the Corporation's decision made on or about 30 January 2012 not to accept the recommendation of the Housing Appeals Committee made on 12 December 2011 and to affirm the original decision (recorded at page 165 of exhibit A).

9 The Corporation's power to grant rental rebate is contained in s 56 of the *Housing Act*. The power to vary or cancel any rental rebate granted under s 56 is contained in s 57 of the Act. In each case, the power is expressed to arise after "making" (s 56) or "conducting" (s 57) "an investigation under section 58".

10 The power to vary or cancel a rebate may be exercised with retrospective operation, in which event the amount of any overpayment can be recovered. Section 57(4) of the Act provides:

(4) If the Corporation reduces or cancels a tenant's rental rebate under this Part with effect from a preceding date, the Corporation may, by notice in writing to the tenant, require the tenant to pay to the Corporation:

(a) an amount equal to any rental rebate or part of a rental rebate received by the tenant on or after the date that the variation or cancellation took effect to which, because of the variation or cancellation, the tenant was not entitled, and

(b) interest (at the rate prescribed under section 101 of the Civil Procedure Act 2005 in respect of unpaid judgments) on any outstanding amount under paragraph (a) from a date specified in the notice, being a date not earlier than the date on which the notice is issued to the tenant.

11 A critical issue in the present application is the content of the requirement to conduct an investigation under s 58. That section provides:

> 58 Investigation of application
>
> (1) The Corporation may make an investigation to determine the weekly income of:
>
> (a) a person who is an applicant for, or a recipient of, a rental rebate under this Part, and
>
> (b) any other resident of the house in which that person resides.
>
> (2) The Corporation may require a person who is an applicant for, or a recipient of, a rental rebate under this Part to produce such evidence as the Corporation thinks fit of the person's weekly income and of the weekly income of any other resident of the house in which that person resides.

12 It was an agreed premise of the argument before me that the power to cancel the rental rebate was not enlivened unless there had been an investigation within the meaning of that section (see T18.17). The Court of Appeal has recently confirmed the correctness of that premise, whilst also holding that the required investigation need not be confined to the purpose stated in the section (of determining the weekly income of the relevant persons). The Court further held that the considerations relevant to the exercise of the power are not confined to the matters discovered upon such investigation or to matters pertaining to income: see *New South Wales Land and Housing Corporation v Navazi* [2013] NSWCA 431 at [7] per Barrett JA; at [29], [38] and [47] per Leeming JA; and see [3] per Basten JA.

13 Basten JA expressed the tentative view that, since the investigation contemplated under s 58 is directed to determining the weekly income of the relevant persons, whereas "it may readily be envisaged that a person may be ineligible on other grounds", s 58 arguably does not operate in all cases. However, as already noted, it was conceded by the Corporation that it operated in the circumstances of the present case. The present application is accordingly governed by the principle stated by the Court of Appeal in *Navazi* that the purpose identified in s 58 (of determining the weekly income of the relevant persons) must be a purpose of the investigation, but need not be its sole purpose.

14 The decision in *Navazi* also holds that there is no requirement that the investigation be exhaustive or conclusive. Leeming JA said (at [46]):

> The Act leaves all those matters uncircumscribed. Putting to one side an "investigation" where there was no bona fide attempt to obtain information, there is no reason to imply a minimal standard of diligence or success which must be attained before there is an "investigation under section 58".

15 Those remarks reveal that, while there is no minimum standard of diligence or success, there must at least be a bona fide attempt to obtain information. His Honour was plainly referring in that context to information on the topic identified in s 58, namely, the weekly income of the relevant persons.

16 The event that prompted the Corporation to re-assess [redacted]'s entitlement to a rental rebate was the receipt in May 2010 of anonymous allegations through the Corporation's "fraud and corruption hotline". There does not appear to be any contemporaneous record of those allegations. Two records were forwarded to the Tenant Fraud Unit by email on 24 June 2010 but it is not clear whether those emails were intended to pass on the May allegations or whether they were separate reports by the same or a different complainant (see pages 37-38B of exhibit A). In any event, it is clear enough that the Corporation received an anonymous allegation that

[redacted] had been residing at the premises for four years and that [redacted] had been residing there for a period variously referred to as being in the order of one to four months. It was also alleged that [redacted] had been arrested some time earlier for growing cannabis at the premises (see pages 37 and 65 of exhibit A).

17 On 18 June 2010, the Corporation wrote to [redacted] informing her of the first part of the allegation (that [redacted] and [redacted] had been residing at the premises) and requesting her to attend an interview. The letter referred to the Corporation's power to undertake an investigation in the terms of s 58 of the Act (page 35 of exhibit A).

18 Separately, on the same day, the department requested information from the New South Wales Police concerning the allegation that drugs had been found at the premises (page 33 of exhibit A). On 28 June 2010, police responded to that request by providing a statement of facts relating to the arrest of [redacted] on 11 January 2008 for possession of two cannabis plants in the rear yard of the premises. The statement of facts recorded that [redacted] admitted ownership of the cannabis plants.

19 [redacted] attended the Corporation for an interview on 6 July 2010. Exhibit A does not contain any contemporaneous note of that interview. A summary of the interview contained in a memorandum dated 25 August 2010 records discussion only of the issue whether [redacted] and [redacted] were in fact residing at the premises, as alleged by the anonymous caller (page 65 of exhibit A).

20 On 7 July 2010, [redacted] on behalf of the Corporation requested further information from [redacted]. The request was made in the following terms:

- Information to confirm [redacted]'s residential address. Bank statements, driver's licence or proof of rental details.

- Information to confirm [redacted]'s residential address. Bank statements, proof of rental details, copy of lease.

21 The letter sought no information as to the income of either man.

22 As already noted, the Corporation acknowledges that the documents in exhibit A replicate the original bundle of material as produced by the Corporation on subpoena in these proceedings. The sequence in which that material appears suggests that the only information in relation to [redacted] and [redacted] provided by [redacted] in response to [redacted]'s letter was the material at pages 45 to 56 of exhibit A. That conclusion is reinforced by the contents of the memorandum dated 25 August 2010 which lists the "requested documentary evidence provided" (pages 65 to 66 of exhibit A). I am satisfied that the material provided by [redacted] in response to [redacted]'s request was as follows:

(a) a handwritten letter by [redacted]. [redacted] stated "I will not deny that I do visit my children everyday, as you could well understand. But I do not live there." He explained that the previous three to four years had been tumultuous and that, during that time, he had had multiple residences including three specified addresses at Eaglevale, Ingleburn and Ambarvale and "a few other places along the way". [redacted] explained that he worked locally, which made visiting easier. He said that, since he had not had a stable place of residence following the breakdown of his marriage, it had been convenient to keep the Housing Commission premises as his address.

[redacted] also acknowledged that he had been present at the premises when police executed a search warrant and seized two marijuana plants. He said "I told the police that this was my place of residence to protect [redacted] and the kids fearing they would be evicted for my stupidity".

[redacted] also volunteered that [redacted] had asked him to stay at her place on Tuesday nights "to watch the kids" as she had recently started working on those nights at Woolworths (pages 45 and 46 of exhibit A);

(b) a letter dated 13 July 2010 from the occupant of the Ingleburn address stating that [redacted] had been living with him for the past three months (page 47 of exhibit A);

(c) a letter from [redacted] and [redacted] to "certify" that [redacted] had lived at the Eaglevale address with them in 2008 prior to [redacted] having a stroke (page 48 of exhibit A);

(d) a letter from the occupant of the Ambarvale address stating that [redacted] lived with them for 20 months (undated) (page 49 of exhibit A);

(e) a letter from [redacted] providing details consistent with the other correspondence (page 50 of exhibit A);

(f) a letter from [redacted] and [redacted] to "certify" that [redacted] was then living with them at the Eaglevale address (page 51 of exhibit A);

(g) a Telstra bill dated 10 June 2010 addressed to [redacted] at the Eaglevale address (page 52 of exhibit A);

(h) a notice of assessment from the Australian Taxation Office dated 9 September 2009 addressed to [redacted] at the Eaglevale address (page 53 of exhibit A);

(i) a letter from the Australian Taxation Office to [redacted] dated 28 April 2008 addressed to the Eaglevale address (page 54 of exhibit A);

(j) two superannuation letters dated 19 March 2008 and 4 December 2009 addressed to [redacted] at a different Ambarvale address (pages 55 and 56 of exhibit A);

23 The different Ambervale address identified in the last two letters listed above later assumed some significance. That address will be referred in this judgment as the second Ambarvale address

24 The only information relating to the income of either [redacted] or [redacted] contained in that material is the notice of assessment addressed to [redacted]. It is clear that the notice was supplied to the Corporation in response to Ms Weir's request for information to confirm [redacted]' residential address. The notice relates to the year ending 30 June 2009, which is before the period identified by the anonymous caller as the period during which [redacted] allegedly resided at [redacted]'s premises.

25 On 3 August 2010, [redacted] made a fresh rent subsidy application which included the information that on 10 June 2010 she had started work (pages 57 to 60 of exhibit A). The application attached two pay slips. The copies reproduced in exhibit A at pages 61 and 62 are difficult to read but appear to be consistent with her having worked something in the order of four to seven hours per week for the period disclosed in the application.

26 A memorandum prepared by an investigator of the tenant fraud unit dated 25 August 2010 set out a careful and considered analysis of that material and recorded the conclusion that the evidence provided by the tenant was stronger than the evidence held by the Corporation (pages 65 to 67 of exhibit A). The memorandum made no recommendation for further action by the tenant fraud unit. That appears to have disposed of any suggestion of criminal proceedings.

27 Ms Weir then prepared a memorandum dated 24 September 2010 recommending that [redacted]'s rental subsidy nonetheless be cancelled from 19 November 2006 to 29 August 2010 (pages 69 to 70 of exhibit A). The memorandum calculated an estimated debt of $20,029.20.

28 The memorandum appears to have been annotated by the team leader on 9 November 2010 with a recommendation "that no further action in this matter be warranted". It is not clear whether that recommendation was confined to the issue of any criminal prosecution or whether it also comprehended the issue of rental rebate.

29 In any event, on 12 November 2010, [redacted] evidently formed a different view. She wrote (in an email):

> Following a review of the reports and evidence provided I believe HNSW is within its rights to challange (sic) the integrity of the evidence provided, as I have determined that one of the addresses provided as an alternative address for [redacted] is also a HNSW property and that [redacted] was never included or approved at that address as an additional occupant.
>
> HNSW will calculated the outstanding debt for dates that evidence supports his occupancy (approximately $9,500) and will proceed will proceed with action at the CTTT to recoup the outstanding debt or seek termination. Staff will also interview the occupant at [the second Ambarvale address] concerning Mr Twaddell's unauthorised occupancy for the period between 08/09 to determine the validity of the tenant's statement, and if confirmed will calculate the debt owing to HNSW by the tenant at [the second Ambarvale address], if the tenant subsequently denies [redacted] resided at the address action may be taken against the tenant for providing a false statement to HNSW, and the debt will then be included on to [redacted]'s rental account.

30 [redacted], who appeared with [redacted] for the Corporation, submitted that [redacted]'s email set out above should be regarded as the record of the decision to cancel [redacted]'s rental rebate. The only further consideration following that email was a series of exchanges about the calculation of the debt, including the following email dated 4 January 2011 by [redacted]:

> [redacted], I have completed the fraud and done the account adjustments for this tenancy. We now have to investigate [the second Ambarvale address] for non disclosure for [redacted] for between March 2008 until January 2010, this will have to be done when we get another CSO, if we can't prove the non disclosure for [the second Ambarvale address] then we will have to put the debt on [redacted]'s address].

31 Acknowledging that I must not distract myself with the merits of the decision under review, it is difficult to understand the basis for [redacted]'s conclusion that [redacted] had lived at the second Ambarvale address between March 2008 and January 2010. Those dates appear to have been drawn from the two superannuation letters directed to [redacted] at that address (pages 55 and 56 of exhibit A). However, within the material provided at the same time, the Corporation had a document dated 28 April 2008 directed to [redacted] at the Eaglevale address, the home of [redacted]'s parents, and a letter from them stating that he was living with them in 2008. [redacted] had never put the second Ambarvale address forward as an address at which he lived during that time.

32 As already noted, the Corporation submitted that the record of the decision to cancel the rental rebate was [redacted]'s email dated 12 November 2010 (part of page 76 of exhibit A). [redacted], who appeared with [redacted] for [redacted], submitted that the relevant document recording the decision was the letter dated 4 January 2011 from [redacted] to [redacted] (page 78 of exhibit A). In that letter, [redacted] wrote:

> As you are aware, Housing NSW has received information that:
>
> - Your husband [redacted] had been residing at your premises between November 2006 and March 2008.
> - Housing NSW was also provided information that your husband provided your address as his residential address to the RTA between 2004 to 2010.
> - Housing has been provided with information that your husband is currently residing at your premises and has been since January 2010.

33 The letter stated that, after considering all the circumstances, it had been decided that [redacted] had failed to disclose the matters recorded in

the first and third bullet points and that, "as a result", her rent subsidy had been re-assessed.

34 The letter continued:

> Due to your subsidy reassessment, a total debt of $12,235.79 has been placed on your rental account. As at 04 January 2011, your current balance is now $12,418.42 in debit.

Grounds for review of the original decision

35 [redacted] relies upon the following grounds for review of the original decision (paragraph 7 of the amended summons):

> (a) The original decision is affected by error in that the decision-maker failed to comply with section 58 of the Act before purporting to cancel or vary the plaintiff's rent subsidy pursuant to section 57(1) of the Act.
>
> (b) The original decision is affected by error in that the decision-maker failed to comply with section 57(4) of the Act in that the decision-maker determined that the plaintiff was required to pay an amount to the defendant pursuant to the sub-section without first exercising her discretion.
>
> (c) Accordingly, by reason of the invalidity of the original decision, the second and third decisions are also invalid in that they rely or partly rely on the validity of the original decision for their validity.

36 Ground 7(a) raises the jurisdictional issue whether the Corporation conducted "an investigation under s 58".

37 The decision of the Court of Appeal in *Navazi* establishes that it is wrong to construe s 57 on the basis that the investigation under s 58 must have a single purpose of determining the weekly income of the relevant persons. As noted by Leeming JA at [38] of the decision, an investigation is "merely a series of inquiries and analysis directed to a particular topic" and may have "multiple characters and multiple purposes". Its nature may change as it proceeds.

38 It may certainly be concluded from the material considered above that the investigation in the present case had purposes other than the purpose identified in s 58 (to determine the weekly income of the relevant persons). The critical question is whether the purpose identified in s 58 was any part of the purpose of the investigation at any stage before the original decision was made. The Corporation accepted at the hearing before me that, if it was not, the power to cancel or vary [redacted]'s rental rebate was not enlivened.

39 In determining that issue, it is not appropriate to attempt to ascertain [redacted]'s actual purpose (or that of any other person involved in the investigation). The task is to determine the character of the investigation objectively: see *Navazi* at [41]. As revealed by Leeming JA's consideration of the nature of an investigation, it is helpful to begin by considering the particular topics to which the Corporation's inquiries and analysis were directed.

40 My review of the material summarised above has led me to conclude that the investigation made by the Corporation prior to its purported exercise of the power to cancel [redacted]'s rental rebate bore nothing of the character of an investigation to determine the weekly income of the relevant persons. The anonymous allegations received by the Corporation related primarily to the presence of unauthorised additional occupants, combined with the reference to a drug raid. Those were the topics to which the Corporation's inquiries and analysis were directed.

41 It may be accepted that the question whether there was "any other resident of the house" (apart from [redacted]) within the meaning of s 58 was a threshold question which had to be determined before any investigation of the topic identified in the section could be conducted. But it would be false logic to conclude that, since an inquiry to determine income requires identification of the relevant persons, an inquiry to identify the relevant persons is an inquiry to determine income. Perhaps failure to disclose the presence of additional residents, regardless of their income,

was viewed as a discrete basis for exercising the power to cancel the rebate (of the kind contemplated by Basten JA in *Navazi* at [3]) but that is not the basis on which the present application was argued on behalf of the Corporation. I am repeating myself, but it was expressly acknowledged that, if there was no investigation within the meaning of s 58 in the present case, there was no power under s 57 to cancel the rebate (T18.17). No other source of power to cancel the rebate was relied upon. The decision was defended on the basis that the required investigation had been conducted.

42 After a careful consideration of the material before me, I am satisfied that it was no purpose of the investigation at any stage before the original decision was made to determine the weekly income of either of the alleged additional residents.

43 The Corporation relies upon the fact that the letter announcing the investigation set out the purpose identified in s 58 in terms (page 35 of exhibit A). I do not think that determines the character of the investigation that in fact followed.

44 One of the documents relied upon by the Corporation as indicating the character of the investigation as one to determine [redacted]'s weekly income is a notice of assessment to him from the Australian Taxation Office dated 26 August 2010 (page 88 of exhibit A). The Court was informed at the hearing that the Corporation could not say whether that document was before the first decision-maker. In my view, it is clear that it was not. As already noted, the evidence before the original decision-maker is carefully listed in the memorandum dated 25 August 2010 (page 65 of the bundle). That material did not include any notice of assessment in respect of [redacted].

45 Three notices of assessment were provided to the Corporation (pages 86 to 88 of exhibit A). It is clear enough from the order in which the documents appear in the bundle that those documents were provided in

support of the application for first-tier review (page 84 of exhibit A). All three were directed to [redacted] within the relevant period at the Eaglevale and Ingleburn addresses he had previously nominated as places where he had lived during that period.

46 Within the material relied upon by the Corporation on this issue, the only other information concerning [redacted]'s income was the anonymous complaint at page 37 of exhibit A, in which it is recorded that both [redacted] and [redacted] "work full time" and the memorandum prepared by [redacted] dated 24 September 2010. In that memorandum, [redacted] records that, on 17 May 2010, a caller advised that [redacted] was working full time "and has an income of over $1,000 per week". However, as already noted, there is no contemporaneous record of that call anywhere in the Corporation's file (exhibit A). The source of [redacted]'s understanding, over four months later, that a particular income was specified by the caller is not clear.

47 In my view, the bare recitation of an anonymous allegation, with no information as to the author of the information or his or her ability to know the matters reported, indicates that there was no bona fide attempt to obtain information about [redacted]'s income. The investigation focused, and focused exclusively (so far as he was concerned), on the issue whether he was a resident of the house at any relevant time. That was a necessary predicate to his being an object of any investigation to determine income. However, there was no attempt to obtain any information as to his income.

48 For those reasons, I am satisfied that there was no investigation within the meaning of s 58 and, accordingly, that the power to cancel [redacted]'s rental rebate was not enlivened at the time the Corporation purportedly made the original decision (whether that was on 12 November 2010 or on 4 January 2011).

49 In my view, it follows that the second and third decisions are also invalid. Each was a decision affirming the original decision. Each accordingly implicitly assumed the validity of the original decision. That indeed is the position for which the Corporation contends. It would follow from the Corporation's position on that issue that my conclusion as to the original decision is sufficient to dispose of the present application.

50 However, [redacted] also seeks judicial review of each of the internal review decisions. Accordingly, in case my conclusion as to the original decision is wrong, I do not think I am spared of the task of determining the remaining grounds for review.

51 Ground (b) set out above relates to the determination that [redacted] was required to pay an amount by way of debt to the Corporation. As submitted by [redacted] on behalf of the Corporation, that may more appropriately be regarded as a separate decision from the decision to cancel the rental rebate (although it would necessarily fall with that decision).

52 [redacted] submitted that s 57(4) plainly confers a specific statutory discretion on the decision-maker. He submitted that the power to require the tenant to pay such an amount must be exercised on each occasion in light of the circumstances at that time: *R v Secretary of State for the Home Department; ex parte Venables* [1998] AC 407, 496-7. [redacted] submitted that the record reveals that the discretion was not in fact exercised. Rather, the author of the letter dated 4 January 2011 evidently regarded the requirement to pay the amount identified as following inexorably from the cancellation of the rental rebate.

53 [redacted] submitted that there was accordingly a failure to exercise the specific discretion conferred by s 57(4) which constituted either jurisdictional error or error of law on the face of the record. The submissions put on behalf of the Corporation did not specifically address the proper characterisation of any such error, but it was not sought to

contend that the Corporation had authority to make an error of that kind. Apart from the dispute as to whether the relevant "decision" was the letter dated 4 January 2011 (at page 78 of exhibit A) or the email dated 12 November 2010 (at page 76 of exhibit A), the parties did not address me as to what constitutes the record of the decision (cf *Navazi* at [26]).

54 The Corporation submitted that there was nothing to show that the discretion was not exercised. In particular, [redacted] noted that no interest was applied to the debt as provided for by s 57(4)(b) of the Act. He submitted that this indicatel the decision to exercise the power to recover the debt entailed specific deliberation and was not regarded as automatic.

55 I do not think the absence of any claim for interest informs the issue. The subsection referred to permits the Corporation to require the tenant to pay interest only after the date of the notice. It follows that no past interest could have been claimed in the notice.

56 In my view, the terms of the letter dated 4 January 2011 confirm the submission put on behalf of [redacted] that the decision-maker regarded a requirement to pay the debt as following inexorably from the decision under s 57(1) of the Act to cancel the rental rebate. The only indication of any reason for exercising the power to recover the alleged debt is that it was "due to your subsidy reassessment".

57 Consideration of the record relied upon by the Corporation as constituting the decision (page 76 of exhibit A) only reinforces that conclusion. [redacted]'s email dated 12 November 2010 evidently regarded the debt as an amount that had to be recovered, either from [redacted] or from the occupier of the second Ambarvale address. That, of course, was a false dichotomy. A third option (never evidently considered) was not to recover the debt.

58 Rachel Weir adopted the same approach in her email dated 4 January 2011 (also page 76 of exhibit A, set out above). That is reinforced in [redacted]

[redacted]'s statement "if we can't prove the non-disclosure for [the second Ambarvale address] then we will have to put the debt on [redacted]'s house].

59 On any view as to what constitutes the relevant record, it is clear in my view that the Corporation regarded recovery of the debt as an imperative, regardless of [redacted]'s individual circumstances. Accordingly, had it been necessary to decide the issue, I would have upheld ground 7(b).

Internal ("first-tier") review

60 The letter notifying [redacted] of the original decision informed her that, if she believed the wrong decision had been made, she could ask for a formal review of the decision. [redacted] availed herself of that opportunity by filing an application in the required form on 27 May 2011 (pages 84 and 85 of exhibit A).

61 As already noted, in ground 7(c) of the amended summons, [redacted] contends that the invalidity of the original decision renders the two decisions affirming the original decision invalid. As I have also already indicated, in my view that is the correct position. That is the basis on which the litigation was conducted in *Navazi*: see [25] of the judgment. Unfortunately, however, that was not common ground at the hearing before me. Whilst contending that the invalidity of the original decision also renders the second and third decisions invalid, [redacted] submitted that the second and third decisions are each amenable to judicial review. The Corporation, on the other hand, submitted that the second and third decisions have no statutory force and, accordingly, that I need only concern myself with the first decision (see T36).

62 The curiosity of those competing contentions is that, notwithstanding [redacted]'s success on ground 7(a) and the Corporation's apparent concession that the application should be determined accordingly, [redacted] asks the Court to determine the correctness of the second and

third decisions on the alternative premise. That approach poses an interesting complication since, whereas the first decision-maker neither sought nor obtained any information as to the weekly income of [redacted], information was placed before the decision-maker on the first-tier appeal which established [redacted]'s taxable income for the years ending 30 June 2007, 30 June 2008 and 30 June 2010.

63 The subjective purpose for which that information was placed before the decision-maker was probably to demonstrate that he had notified the Australian Taxation Office of residential addresses other than [redacted]'s address. However, the fact is that the material provided the Corporation with information as to [redacted]'s income. The receipt of such information probably alters the objective character of the investigation with the result that, unlike the original decision, the second decision (if properly characterised as a separate administrative decision) may be said to have been made after the Corporation had conducted an investigation under s 58 of the Act.

64 The assessment of the application for internal review was completed by [redacted] (presumably the person to whom [redacted] sent her email dated 4 January 2011 set out above). [redacted] recommended that the original decision stand.

65 In her appeal report, [redacted] said (at page 104 of exhibit A):

> [redacted] (sic) has not substantiated to Housing NSW that [redacted] was not residing at her premises. The documentation provided to HNSW from [redacted] are signed letters from family and friends with no real dates to confirm [redacted] residing at the premises. [redacted] did not change his address when claiming that he lived at other residences other than [redacted]'s premises]. [redacted] is still the bill holder of several amenity accounts within the household of [redacted]'s premises] and when police completed a raid at the premises [redacted] provided his address as [redacted]'s premises].
>
> Documentation that [redacted] supplied relating to the addresses of [redacted] have been taken into consideration and

> should be noted that the letters are not timeframe specific, are letters written by friends and family (not statutory declarations) and the other address supplied in that documentation relates to another HNSW premises which has been confirmed that [redacted] was not residing at. The tenant [the second Ambarvale address] has denied that [redacted] was residing at this premises and has provided a statutory declaration outlining that [redacted] has not resided at the premises since he was removed from the household in 1998.
>
> HNSW became aware of [redacted] residing at the premises due to several complaints received about his residency at [[redacted]'s premises]. Information that HNSW has in relation to [redacted]'s residential address including Foxtel and amenities etc indicate that [redacted] is the account holder. It should be noted that people will have bills in their name where they reside and no other bills have been provided to HNSW for [redacted] at another address.

66 The decision-maker reviewed the appeal report and decided to decline the appeal. He said (at page 105 of exhibit A):

> [redacted] has been unable to provide any evidence that would substantiate that [redacted] has not been residing at [the address]. The documentation provided by [redacted] does not counter Housing NSW's evidence. It is also noted that a statutory declaration has been supplied by the tenant at [the second Ambarvale address] that refutes [redacted]'s claim that [redacted] was residing there.

67 As already noted, it had never been claimed that [redacted] was residing at the second Ambarvale address.

68 The second decision-maker had other information which was not placed before the first decision-maker. Apart from the three notices of assessment from the Australian Taxation Office, there was a statement from the occupier of the second Ambarvale address, who was evidently contacted as foreshadowed in [redacted]'s email dated 4 January 2011 (set out above). He stated that [redacted] had lived at his address between 22 June 1987 and 14 June 1998, adding "I did the right thing by the department" during that time (page 82 of exhibit A).

69 Upon analysis, that statement ought to have reinforced [redacted]'s representation to the Corporation that the reason [redacted] had not changed his address in RTA and other records after moving out from her house was that he was not careful about such matters. The statement tended to show that, although [redacted] left the second Ambarvale address in June 1998, he was still receiving correspondence about his superannuation at that address 10 years later.

Grounds of review of second decision

70 The grounds of review relied upon in respect of the second decision are:

> (d) The second decision is affected by error in that the officer of the defendant who provided the decision-maker with her formal recommendations denied the plaintiff natural justice or procedural fairness in that the said officer criticised the plaintiff for not providing "statutory declarations" in support of her submission when the plaintiff was not asked to provide "statutory declarations" when she was requested to provide information to the defendant. The second decision is accordingly invalid.
>
> (e) The second decision is affected by error in that the decision-maker failed to understand the task or mistook the nature of the task he sought to undertake in that:
>
> i. He failed to take into account the material adduced by the plaintiff in that he failed to regard it as "*evidence*";
>
> ii. He relied on "*documentation*" over and above any other form of material in making his determination;
>
> iii. His duties in assessing or weighing up the material before him miscarried in that he impermissibly regarded the exercise as one where one set of material had to "*counter*" the other material or be "*stronger*";
>
> iv. He failed to understand the nature of the material before him in that he asserted that the plaintiff had made a "*claim*" about [the second Ambarvale address], when she did no such thing.

71 I doubt whether either of the review decisions, each of which merely affirmed the decision under review, is properly regarded as a discrete decision under the *Housing Act*. Nonetheless, for present purposes, having regard to my primary conclusion as to ground 7(a), it is convenient to assume, without deciding, that each is amenable to judicial review.

72 The Corporation submitted that the matters raised in grounds 7(d) and 7(e) raise questions of weight as to which this Court cannot intervene. In my view, there is force in that submission. The grounds relied upon amount, in substance, to an invitation to review the merits of the decision. Ground 7(d) raises a discrete point alleging denial of procedural fairness but I do not think there is any substance in that ground.

73 As already noted, it is difficult to understand the Corporation's reliance upon the statement provided by the occupier of the second Ambarvale address when it is clear, upon a review of the evidence, that [redacted] never pretended to have stayed at that house after he and [redacted] separated in November 2006, but my impression on that issue descends into the merits.

74 Notwithstanding my strong disagreement with the factual conclusions reached by the Corporation on the material placed before it, I think I am compelled to accede to the Corporation's submissions on this issue. Had it been necessary for me to decide grounds 7(d) and (e), I would have rejected those grounds.

External ("second-tier") review

75 After being notified of the outcome of the internal (first-tier) review application, [redacted] lodged a "second level appeal" (page 109 of exhibit A) to the Housing Appeals Committee. The second level review is external in the sense that the application is made to a body external to the Corporation, but the Corporation is not bound by any recommendation made by that body.

76 On 5 December 2011, the Committee concluded that the Corporation had relied upon insufficient evidence in their decision that [redacted] lived at [redacted]'s premises between 2006 and 2010. The Committee recommended that [redacted]'s rental subsidy be reinstated.

77 For reasons that are at best inscrutable, the Corporation did not accede to that recommendation (page 165 of exhibit A). The author of the assessment of the review was [redacted]. She stated:

> The arguments by HAC that HNSW has insufficient evidence is interesting as in the report provided it advises that while there is evidentry (sic) material to show a number of addresses there is no clear evidence as to where he currently resides (rent receipts etc). HNSW is expected to accept that due to [redacted]'s poor organisational skills and or carelessness re his living circumstances we must give the benefit of the doubt to the client.
>
> I would argue that the evidentiary material provided by the client to refute the allegation includes evidence that he resided as an unauthorised occupant at another HNSW property in the [the second Ambarvale address] for a period of 3 or more years 2003 to 2006 and again in 2007/8. He also accepted responsibility for growing marijuana plants at his wife's property and was arrested by the Police for same.
>
> Regardless of the outstanding debt to HNSW the evidence provided is clearly not credible as suggested by the HAC in fact it demonstrates a history of defrauding and growing of illegal substances in a property with children residing in it. Some of the evidence does suggest that he may have resided in another property [address provided] in 2010 but the earliest date on a receipt is September 2010 after action had been taken by HNSW against [redacted] and is therefore inadmissible.

78 [redacted]'s analysis was sent by email to [redacted] at 4.13pm on 30 January 2012. Less than 47 minutes later, [redacted] endorsed the recommendation not to accept the recommendation of the Housing Appeals Committee. The only remark recorded by [redacted] upon endorsing the recommendation was:

> I also note that many of the addressed super statements tendered as evidence of him living elsewhere went to that address before the relationship ended.

79 That remark reflected a continuation of the misapprehension as to the relevance of the second Ambarvale address. A careful analysis of the material before the Corporation by this time would have revealed that [redacted], having resided with the occupant of the second Ambarvale address between 1987 and 1998, had never notified his superannuation trustee that he no longer lived at that address. As already noted, that evidence tended to reinforce, rather than undermine, [redacted]'s contention that the explanation for [redacted] still having her address as his nominated address for the purposes of licence and motor vehicle registration was that he was not careful in the administration of his personal affairs.

Grounds of review of third decision

80 The grounds for review relied upon in respect of the third decision are:

> (f) The third decision is affected by error in that the decision-maker took into account a report and recommendation by an officer of the defendant, [redacted], Area Director, who had earlier made adverse decisions against the plaintiff and taken adverse action against her on 10 and 12 November 2012 and whose views about the plaintiff as conveyed t the decision-maker were afflicted with apprehended bias.
>
> (g) The third decision is affected by error in that the decision-maker failed to understand the task or mistook the nature of the task he sought to undertake in that he failed to have proper, genuine or realistic consideration to the report of the Housing Appeals Committee.

81 As to ground (f), the Corporation submitted that the ground invoked the wrong test. The decision-maker was [redacted], not [redacted]. Had it been necessary for me to determine this ground, I would have accepted that submission. Further, it is doubtful whether a basis is established for an objective observer to apprehend bias on the part of [redacted]

[redacted]. She certainly expressed robust views but that is not the same as bias.

82 Curiously, as to ground (g), having contended that the decision-maker was [redacted], the Corporation seeks to invoke support from the analysis made by [redacted] in her memorandum. The Corporation submitted that the contention that there was no genuine proper and realistic consideration given to the recommendation of the Housing Appeals Committee "cannot stand in the light of what has been written by [redacted]".

83 Had it been necessary for me to determine ground 7(g), I would have upheld that ground. In my view, [redacted] wholly failed to give any proper genuine or realistic consideration to the report of the Housing Appeals Committee.

84 [redacted] submitted that, in order for the decision-maker to have shown a proper realistic and genuine consideration of the decision, there must have been demonstrated some "active intellectual process" of engagement by him in relation to the relevant issue: *Lafu v Minister for Immigration and Citizenship* (2009) 112 ALD1; [2009] FCAFC 140 at [47] and [52] and [54] (Lindgren, Rares and Foster JJ); *Telstra Corporation v Australian Competition Tribunals* (2009) 175 FCR 201 at 242.

85 The terms of [redacted]'s decision reveal the most cursory analysis of the matters he was required to consider. I do not think it can fairly be concluded, on the strength of the material before me, that there was any active intellectual process in [redacted]'s endorsement of [redacted]'s recommendation.

86 In any event, the application ultimately falls to be determined in accordance with my conclusion as to ground 7(a). The orders I propose are:

(1) An order in the nature of certiorari quashing the decision notified on or about 4 January 2011 purporting to cancel the plaintiff's rental rebate ("the purported cancellation decision");

(2) An order in the nature of certiorari quashing the decision notified on or about 4 January 2011 purporting to require the plaintiff to pay a debt of $12,235.79 to the Corporation ("the purported debt decision");

(3) An order in the nature of prohibition, prohibiting the defendant from acting upon the purported cancellation decision or the purported debt decision;

(4) An order that the defendant pay the plaintiff's costs as agreed or assessed.

I certify that this and the 26 preceding pages are a true copy of the reasons for judgment herein of the Honourable Justice [redacted].

31/1/14
DATED

[redacted]
Associate