

**Submission
No 30**

TENANCY MANAGEMENT IN SOCIAL HOUSING

Organisation: Office of the NSW Ombudsman
Name: Mr Chris Wheeler
Position: Deputy Ombudsman
Date Received: 11/08/2014

11 August 2014

Contact: 
Telephone: 

Mr Jonathan O'Dea, MP
Chair
Legislative Assembly Public Accounts Committee
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Mr Chair,

Tenancy Management in Social Housing - submission

I am pleased to have the opportunity on behalf of the Ombudsman to provide a submission on this important topic. Our office has a long history of dealing with complaints and assessing systemic issues arising in relation to social housing. These can include everyday complaints about issues such as delayed repairs through to systemic inquiries assessing the effectiveness of programs and initiatives aimed at providing effective housing support to some of the most vulnerable groups in our community.

The attached information outlines some of the work this office is currently undertaking that may be of interest to the Committee. Central among these is ensuring those in social housing do not lose the ability to access an avenue of complaint that is truly independent of those providing services. I have also enclosed copies of two earlier reports that may be of use, and both reports are also available at the Ombudsman's website.

The first is the Ombudsman's 2009 report to Parliament following a comprehensive review of the former Joint Guarantee of Service for People with Mental Health Problems and Disorders Living in Aboriginal, Community and Public Housing (JGOS). We assessed the effectiveness of the implementation of the JGOS, and found evidence of good work to implement the principles that underpinned the JGOS in some areas, but patchy and inconsistent implementation elsewhere. The discussion at page 78 of coordinating support to people with complex needs to help them sustain their tenancies may be of particular interest to the Committee.

Since the JGOS report, the Department of Family and Community Services and NSW Health have developed a Housing and Mental Health Agreement. This office has been monitoring the implementation of the agreement, and receives six monthly updates from each Department.

The second report that may be of assistance to the Committee is our 2012 report *Denial of Rights: the need to improve accommodation and support for people with psychiatric disability*. This report outlined our findings and recommendations following a comprehensive inquiry into

the circumstances of people with a psychiatric disability living in mental health facilities. We found that many people are remaining in these facilities for longer than they need to. Some of the obstacles to people leaving mental health facilities included:

- the scarcity of appropriate community based accommodation and support
- the exclusion of people with a primary diagnosis of mental illness from accommodation funded under the *Disability Services Act*
- mental health staff in some districts appearing to have limited knowledge of available accommodation and support options, and the eligibility criteria of services and programs

The Committee may find the discussion from page 53 on the availability of appropriate community-based accommodation and support of interest.

I hope the Committee finds the attached material and reports of interest, and please do not hesitate to contact the Ombudsman's Executive Officer Tom Millett on [REDACTED] or [REDACTED] if you would like any further information regarding the material provided or any other aspect of our office's work.

Yours sincerely

[REDACTED]
Chris Wheeler
Deputy Ombudsman

11/8/2014.

Submission by the NSW Ombudsman’s Office to the NSW Parliament’s Public Accounts Committee Inquiry into Tenancy Management in Social Housing

Social housing tenants include a range of people, from those who simply require some form of financial assistance to obtain stable housing to those who also require other assistance to ensure they can maintain stable housing. Stable housing is understood as fundamental in assisting people achieve stability in their daily lives. Our experience shows that while best intentions often exist, tenants and social housing providers must have the support of other relevant services to ensure a fair and responsive system. To that end, a fair, transparent and functioning complaints system is an imperative.

Social housing tenants, in both public and private community housing, should have access to the same effective standard of complaint handling which features appropriate internal and external avenues of redress. In this regard, the revised and soon to be released Australian and New Zealand Standard ‘*Guidelines for complaint handling in organizations*’ (AS/NZS ISO 10002:2014) will help providers establish and maintain an effective complaint handling system. In particular, the guidelines explain the need for a three-level system:

“System

The organization should plan and design an effective and efficient complaint-handling system that is fair, and is seen to be fair.

Subject to any relevant legal obligations, the organization’s complaint-handling system should allow relevant information arising from the complaint to be shared with relevant organizations, including suppliers that are involved with the complaint, to enable improvements.

Review process

An effective complaint-handling system should provide three levels of review.

The aim of the organization should be to have the majority of complaints resolved by frontline staff (i.e. at level one of the three level model).

Complainants who are dissatisfied with how frontline staff have addressed their complaint or its outcome should have the option of escalating their complaint to a person or area other frontline staff (i.e. at level two of the three level model).

If the complaint is still dissatisfied with the handling of their complaint, they should have the option to seek a review by an appropriate external complaint handling mechanism or body (i.e. at level three of the three level model).”¹

Under the *Ombudsman Act 1974*, this office has the role of ensuring that NSW public sector agencies, and many private sector agencies, fulfil their responsibilities by acting reasonably and adhering to good standards of administration. As such, we have an interest in ensuring that social housing tenancy management is both effective and reasonable. From our work in response to social housing tenants complaining to us about Housing NSW, the Land & Housing Corporation and the office of the Registrar of Community Housing, we have identified the following matters which may assist in the current inquiry.

¹ See Part 7, “Planning and Design”, of the Australian and New Zealand Standard AS/NZS ISO 10002:2014.

- 1) Social housing tenants and other interested parties, such as advocates and neighbours, should have access to an effective three-level complaint handling system which meets the requirements of the revised Standard AS/NZS ISO 10002. That system should be fair and seen to be fair. It would also, in most cases, be more appropriate and efficient than legal avenues of redress.
- 2) Social housing providers should also have effective oversight, consistent with the Standard, to be responsive to complaints about service provision, including contractor maintenance services. Where problems arise, such as delay or poor quality service, providers should have processes for addressing those problems and providing tenants with adequate explanations without a need for avenues of legal redress.

Effective complaint handling

Social housing providers should have appropriate internal mechanisms to address complaints in an effective, consistent and responsive manner at the first two levels mentioned above. Tenants should also have the option to escalate their complaints externally at the third level. These options would ensure that tenants and providers can resolve issues as quickly and cost effectively as possible and in many cases, especially maintenance matters, avoid resorting to legal action, such as before the NSW Civil and Administrative Tribunal or court. For many tenants, particularly vulnerable tenants, legal proceedings are likely to be unnecessarily adversarial, complex, formal and potentially costly.

Public housing sector

In the public housing sector, this office has jurisdiction, as an independent external body, to handle complaints about Housing NSW and the Land & Housing Corporation (the public housing agencies). In terms of the Australian and New Zealand Standard, we operate at the third level of the three level complaint handling system. We are pleased to see that Housing NSW is in the process of implementing a new frontline complaint handling system which should improve its ability to record, monitor and respond to complaints at the first two levels. We welcomed the opportunity to provide advice to Housing NSW when it ran its pilot project on the system from December 2013 to March 2014. We will continue to assist Housing NSW in evaluating its processes through our regular liaison and complaint handling work.

Community housing sector

We do not have jurisdiction over private community housing providers approved and regulated by the Registrar of Community Housing (RCH). We do, however, have jurisdiction to take complaints about the RCH's administrative conduct. We are concerned that the present regulatory framework over community housing, with the commencement of the Community Housing Providers National Law² on 1 January 2014, continues to create a discrepancy in the kind of complaint resolution processes available to both types of tenants. As such, we consider that there needs to be changes to ensure community housing tenants can access a third level external complaint handling body such as the NSW Ombudsman's office. An example of such

² The Community Housing Providers National Law is set out in the Appendix to the *Community Housing Providers (Adoption of National Law) Act 2012*.

access is in the community and disability sector where the Ombudsman can handle complaints about both government and non-government providers.³

Tenants in community housing should be able to make use of their providers' internal complaint processes. This is because the National Regulatory Code, under the National Law, requires that:

“The community housing provider is fair, transparent and responsive in delivering housing assistance to tenants, residents and other clients particularly in relation to the following...

(f) managing and addressing complaints and appeals relating to the provision of housing services”⁴

If their concerns are not resolved, tenants can complain about compliance issues to the relevant Registrar in the participating jurisdiction. In NSW, the RCH has this role. Our concern is about the way the RCH's role is framed in legislation and what appears to be its narrow focus on community housing providers' compliance with the applicable regulatory code rather than, more broadly, their administrative practices.

Prior to the National Law, community housing providers were registered under the *Housing Act 2001*. Under section 67B(c) of that Act, one of the RCH's functions was:

“to investigate complaints and other matters in respect of registered community housing providers”

Section 10(1)(e) of the National Law, which NSW has adopted, now provides that the RCH's function is:

“to investigate complaints about the compliance of registered community housing providers with community housing legislation”

The change appears to further emphasise the RCH's role as a compliance monitoring body rather than a complaint resolution body. From our work, we are aware that the RCH's approach to complaints is from a compliance perspective even under the previous law. In our discussions with the RCH, we advised that it would be unlikely that tenants would or could phrase their complaints in terms of the regulatory code covering community housing providers. While we are pleased to see the RCH active in accepting and dealing with complaints, we continue to have concerns about how those complaints are being assessed.

To the extent that a tenant's complaint to the RCH cannot be characterised as non-compliance with community housing legislation, it would appear there is no other appropriate third level body the tenant can complain to. Legal action, on the part of the tenant, would also not be a suitable option if the complaint cannot be framed as involving a breach of law or rights. Even if legal action is possible, that avenue is generally adversarial, legally complex and not supportive of a healthy ongoing relationship between the tenant and the provider.

By way of example, this office can investigate administrative issues such as delay or a failure to respond to complaints on the part of the public housing agencies. We regularly facilitate reasonable outcomes or explanations from agencies in their response to complaints. In respect of community housing providers, such issues would appear unlikely to constitute a breach of

³ See *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

⁴ See clause 1 of Schedule 1, “National Regulatory Code”, of the Community Housing Providers National Law.

community housing legislation. Of course, it is up to the Registrar to determine whether the issues, or the providers' handling of these issues, should be treated as non-compliance, especially where there are serious or systemic concerns. However, given the Registrar's function as stated under section 10(1)(e) of the National Law, it would appear the scope for resolving administrative issues is quite limited. Aside from complaining to the Registrar, it would be unreasonable to expect tenants to have to seek redress at the Tribunal or court over issues which are administrative rather than legal.

Effective management of property maintenance

This office has identified that property maintenance is a common area of complaint for tenants. In the previous financial year (1 July 2013 to 30 June 2014), 27% of all complaints we assessed about the public housing agencies were about maintenance. Approximately 20% of the enquiries we responded to about those agencies were about maintenance. The complaints we acted on were about maintenance problems which were urgent, significantly delayed or persistently unresolved.

In some of these cases, the problem identified was poor service on the part of the contractor. This suggests the need for strong oversight and responsive complaint handling on the part of the social housing provider. The provider should be able to investigate the complaint and if necessary, take reasonable steps towards resolving the problem. They should then be able to explain to the complainant why the problem occurred and how their complaint was resolved. If, after investigating, the provider decides to take no action, this decision should also be clearly explained to the complainant. Finally, to the extent possible, the provider should be committed to resolving any systemic issues identified to prevent similar problems in the future.

In other cases, there may be a divergence in tenants' expectations and providers' priorities. For example it may not be possible for the provider to carry out the requested maintenance as quickly as the tenant would like. In these cases, we consider that providers have a responsibility to provide tenants with an estimated timeframe for the work and a meaningful explanation as to why the work will take that long to carry out. Generally speaking, it is our experience that if a complainant understands a decision they are much more likely to accept it. Even where a tenant's dissatisfaction stems from unreasonable expectations, in handling their complaint the provider should recognise the tenant's right to be heard and respect their views about how they want to be treated.

Unless there is a genuine need for legal adjudication, providers should aim to act fairly and reasonably so that tenants do not have to commence legal proceedings to have their concerns dealt with. Such an approach is not only much more cost effective, it is also more beneficial to the ongoing relationship between the tenant and the provider. The process of taking a matter to the tribunal can be highly stressful for tenants and is likely to cause a further deterioration of their relationship with the provider. By contrast, effective complaint handling can efficiently resolve disputes as they arise and restore the tenant's trust in the provider.