**Submission**

**No 61**

# Outsourcing Community Service Delivery


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# Submission to the Community Services Committee Inquiry into Outsourcing Community Service Delivery

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The Tenants' Union of NSW (TU) is the peak body representing tenants in NSW. We are a specialist community legal centre with our own legal practice in residential tenancies law, and the primary resourcing body for the State-wide network of Tenants Advice & Advocacy Services (TAASs) funded by Fair Trading NSW. Through our own practice and our contact with TAASs we are well informed of trends and issues in the NSW rental housing sector. This includes social housing and, in particular, its outsourced delivery as community housing.

We have an ongoing interest in the behaviour of landlords who are registered as Community Housing Providers under the *Housing Act 2001*. These are non-Government organisations that, on account of their registration, are eligible to contract with Government to provide housing assistance to social housing applicants.

We have frequent contact with the NSW Federation of Community Housing Associations, the Community Housing Division of HNSW, the Centre for Affordable Housing within HNSW, and Housing NSW itself. We are represented on various reference groups and committees of relevance, such as the 'HNSW NGO Partners Reference Group' and the Community Housing 'Registrar's Advisory Forum'.

We are in a unique position to comment on the outsourced delivery of housing services in NSW, with a focus on outcomes for tenants. Our comments to this inquiry will be informed by this perspective, and will be limited to our interest in this aspect of the inquiry. In particular, we will focus on:

1. problems relating to operational policies; and
2. problems relating to the termination of tenancies without grounds.

We would welcome the opportunity to further assist the Committee's inquiry.

# 1. Problems relating to operational policies

It is of fundamental importance that government services are delivered to consumers fairly and transparently. In the context of community housing, this means more than just knowing that the provisions of the *Residential Tenancies Act 2010* will be applied, or that Community Housing service providers will adhere to the Regulatory Code for Community Housing Providers. It means that tenants should know the basis on which any decision about the delivery of service may be made, particularly where a decision is likely to affect the quality of service, or the eligibility of the consumer to continue to receive it. Accessible, comprehensive operational policies are crucial to ensuring this.

Unfortunately this is not always the experience for consumers of outsourced housing services. At a time when Community Housing Providers are experiencing significant and rapid growth – due to the acquisition of properties built under the one-off Nation Building Economic Stimulus package, but also the ongoing requirements of the National Affordable Housing Agreement – tenants continue to report of difficulties in obtaining written information about the basis on which decisions that affect their housing entitlements are made.

### Past practice

In 2011 we tried to obtain from all class 1, 2 and 3 registered Community Housing Providers (that is, all registered providers offering housing under residential tenancy agreements, rather than short-term refuge or transitional accommodation – for more information on provider classification see the *Housing Regulation 2009*) copies of their respective tenancy management policies. Where information was not readily available on a Provider's website, we contacted them directly and asked for a copy of their tenancy management policies. We found that:

- Class 1 providers were more likely to have a greater number of policies available in an easily accessible manner than class 2 and class 3 providers, but even some large class 1 providers did not allow easy access.

- There was a high level of variability amongst class 2 providers in giving access to their policies. Approximately half allowed convenient access to policies while the remaining providers offered no or limited access to policies.

- Class 3 providers did not appear to allow access to their policies.

- Providers who had a functioning website were more likely to provide a number of policies for tenants to access directly, but even some of those providers that had otherwise well-supported websites did not publish their policies there.

It was also clear from our inquiries that where a provider's policies were accessible, they were often incomplete. For instance, policies concerning rent subsidies, arrears, debts, repairs and appeals were more frequently available than policies concerning succession of tenancy, domestic violence, terminations and relocations.

## Current practice

As a consequence of the above exercise, we raised concerns with the Community Housing Division of HNSW, whose role it is to oversee the policy and contractual framework within which Community Housing Providers are to operate. While we have had productive discussions with the Community Housing Division and the Federation of Community Housing Associations on this issue, we continue to receive reports from tenants and TAASs that it remains difficult to obtain tenancy management policies from some Community Housing Providers.

We note the recent publication by the Community Housing Division of an updated "Community Housing Access Policy" which states that 'community housing providers must have written operational policies which are publicly available and easily accessible'. We understand that, prior to the publication of this updated policy, the Registrar of Community Housing could not require providers to publish their policies as a matter of compliance with the Regulatory Code for Community Housing Providers. We expect that providers will slowly come to comply with this requirement, however it is anticipated that some advocacy may be required before compliance is universal.

We recommend that a clear timeframe of 12 months be set for compliance with the Community Housing Access Policy, and that the CHD or Registrar should promptly test compliance through their existing mechanisms.

## 2. Problems relating to terminations without grounds

For many years, it was our experience that Community Housing Providers followed a similar practice to that of the public housing provider, Housing NSW, in relation to the termination of tenancies. They would seek termination only where they had grounds for doing so (being the grounds for termination prescribed by the Residential Tenancies Act: for example, breach of a term of the tenancy agreement), and would give a termination notice on those grounds.

This practice is consistent with the principles of procedural fairness that, as a matter of administrative law, apply to Housing NSW as a government agency. The application of administrative law principles to Community Housing Providers is less clear, but observance of principles of procedural fairness, particularly in relation to the termination of a social housing tenancy, is certainly regarded as best practice.

In recent years, however, we have observed the increasing use by Community Housing Providers of termination notices without grounds. It appears that in some cases, a termination notice with grounds could have been appropriately given, which would have allowed the tenant an opportunity to respond to the grounds (for example, by remedying the breach, or presenting a case as to why they are not in breach), and allowed the Tribunal to consider whether the ground is proved, as well as other circumstances of the case, before making appropriate orders. In other cases, it appears that none of the prescribed grounds could be made out.

This issue is illustrated by the following recent example:

> A tenant in an apartment block that is entirely owned and managed by a single Community Housing Provider was the victim of a violent home invasion. During the incident he was assaulted with a hammer in the hallway outside his flat. Some of his neighbours witnessed this assault, and made representations to the landlord that they feared for their own safety. The landlord issued a notice of termination without grounds, but attached a note that confirmed the eviction was sought because of a perceived risk to his neighbours. When the matter was heard in the Consumer, Trader and Tenancy Tribunal, the tenancy was immediately terminated with no consideration of the circumstances of the case. The tenant was not given the opportunity to demonstrate that he did not in fact pose a risk to his neighbours.

We can conjecture as to the reasons behind this increased use of notices without grounds. One is the lack of clear operational policies, as discussed above; in particular, the lack of an operational policy that the Community Housing Provider will seek to terminate a tenancy only where it has grounds to do so and where it has no other reasonable option. Another reason may be the change, which commenced in January 2011, to the provisions relating to terminations without grounds under the Residential Tenancies Act 2010: this removed the discretion previously had by the Tribunal, such that the Tribunal must end a tenancy where a termination notice without grounds has been given, regardless of the circumstances of the case.

Whatever the reason for it, the use by Community Housing Providers of termination notices without grounds is contrary to longstanding notions of best practice; is likely to

be contrary to their legal obligations under administrative law; and as a matter of policy should be stopped.

The Community Housing Division's recently updated Community Housing Access Policy includes provisions relating to the termination of tenancies. Tenants of Community Housing Providers can now expect to be advised of the circumstances in which a tenancy may be terminated. Following a decision to terminate a tenancy, a Community Housing Provider must issue, in writing, a notice to the tenant explaining the termination and setting out a reasonable timeframe to vacate the premises, in accordance with the *Residential Tenancies Act 2010.* We understand that, prior to the publication of this updated policy, the Registrar of Community Housing could not compel providers to refrain from ending tenancies without grounds as a matter of compliance with the Regulatory Code for Community Housing Providers. We expect that providers will slowly come to comply with this policy, however it is anticipated that some advocacy may be required before compliance is universal.

We recommend that a clear timeframe of 12 months be set for compliance with the Community Housing Access Policy, and that the CHD or Registrar should promptly test compliance through their existing mechanisms.