

**Submission
No 43**

TENANCY MANAGEMENT IN SOCIAL HOUSING

Organisation: Redern Legal Centre
Name: Ms Jacqui Swinburne
Position: Acting Chief Executive Officer
Date Received: 25/08/2014

Redfern Legal Centre



David Hale
The Committee Manager
Public Accounts Committee (PAC)
Parliament House
Macquarie St
Sydney NSW 2000

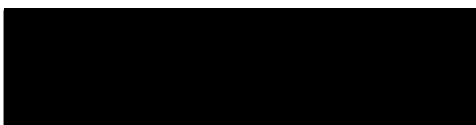
22 August 2014

Attention: The Committee Manager

Please find attached our submission in response to the Legislative Assembly Inquiry conducted by the Public Accounts Committee into Tenancy Management arrangements in NSW Social Housing.

We would welcome the opportunity to meet with you to further discuss our submission.

Yours faithfully,
REDFERN LEGAL CENTRE


Jacqui Swinburne
Acting Chief Executive Officer

Redfern Legal Centre



SUBMISSION: Tenancy Management in Social Housing

AUTHORS:

Natalie Bradshaw, Solicitor and Acting Coordinator, Inner Sydney Tenants' Advice and Advocacy Service

Katie Pearce, Practical Legal Training Student, Redfern Legal Centre

DATE: 22 August 2014



Table of Contents

1. Introduction: Redfern Legal Centre	4
2. RLC's work in tenancy	4
3. RLC's view in summary	4
4. Responses to specific issues	6
4.1 The cost effectiveness of current tenancy management arrangements in public housing, particularly compared to private and community housing sectors – Terms of reference (1)	6
4.2 The range and effectiveness of support services provided to tenants in social housing – Terms of reference (2)	8
4.3 Outcomes for tenants from current tenancy management arrangements – Terms of reference (3)	12
4.4 Possible measures to improve tenancy management services – Terms of reference (4)	15
5. Recommendations	17

1. Introduction: Redfern Legal Centre

Redfern Legal Centre (RLC) is an independent, non-profit, community-based legal organisation with a prominent profile in the Redfern area.

RLC has a particular focus on human rights and social justice. Our specialist areas of work are tenancy, domestic violence, credit and debt, employment, discrimination and complaints about police and other governmental agencies. By working collaboratively with key partners, RLC specialist lawyers and advocates provide free advice, conduct case work, deliver community legal education and write publications and submissions. RLC works towards reforming our legal system for the benefit of the community.

2. RLC's work in Tenancy

RLC has a long history of providing advice, assistance and advocacy to the local community, with a key focus on the provision of information and services to public housing tenants and strong emphasis on the prevention of homelessness. Since RLC was founded in 1976, tenancy has been one of our core areas of advice. Since 1995, RLC has been funded by NSW Fair Trading to run the Inner Sydney Tenants' Advice and Advocacy Service (ISTAAS). ISTAAS assists tenants living in City of Sydney, Leichardt and Botany local government areas through advice, advocacy and representation.

The Inner Sydney area has a significant number of people living in public housing and there are now over well over 9,449 public housing dwellings¹ in this area. Our submission is informed by the experiences of our clients, the majority of whom are public housing tenants.

As well as assisting a large number of public housing tenants in our catchment area, RLC also advises those not protected by the *Residential Tenancies Act 2010 (RTA)* – including sub-tenants in share accommodation and boarding house residents in disputes with proprietors. RLC has advocated for stronger protections for tenants who may have fewer options in the private rental market.

3. RLC's view in summary

Tenancy management in social housing is a specialised service, which calls for experience and expertise beyond the capacity of the private sector. In particular, it not only requires skills and knowledge of the *Residential Tenancies Act 2010 (NSW)* but also housing policy, government policy, administrative law and specialised customer care and services in accordance with the *Housing Act 2001 (NSW)*, which dictates that the approach to tenancy management should be different from the private sector. It comes with a responsibility and accountability that is specific to a government department. In particular, the objectives listed in section 5 of the *Housing Act 2001 (NSW)* state:

1(e) to maximise the opportunities for tenants of public and community housing programs to participate in the management of their housing and in the development of public and community housing policies and

¹ ABS 2006 Census Quick Stats: Inner Sydney (Statistical Region Sector)

1(f) to ensure that the public housing system focuses on housing people who are most in need.

Our experience shows that the social housing sector is responsible for the management of the most vulnerable and disadvantaged in our community. In our catchment area, our clients include vulnerable and marginalised tenants in both private and public housing. The Inner Sydney Area has had a steady increase in rental properties, as well as a significant number of people living in public housing. Our clients have a wide range of complex issues, with our statistics showing a high number of assistance given to:

- Culturally and linguistically diverse (CALD) tenants;
- Indigenous tenants;
- Newly settled migrants;
- People seeking asylum;
- Mentally ill tenants;
- Intellectually and/or physically impaired tenants;
- The elderly;
- Young people;
- Victims of domestic violence; and
- Substance dependent tenants.

Working with tenants who have complex issues requires a high level of engagement from our caseworkers to assist clients through their cases, connect them with social support services and ensure their tenancies are viable in the long term. Due to our intake policy of opening files for clients based on need and their risk of homelessness, almost 90% of our clients for the past 12 months were social housing tenants.

Given our experience, it is our opinion that the same level of engagement with social housing tenants is required by the body managing tenancies, to ensure the viability of their tenancies. The need for a specialised understanding and approach to social housing has also been recognised by the New South Wales Civil and Administrative Tribunal. In 2008 the then Consumer Trader and Tenancy Tribunal established a Social Housing Division, recognising that social housing matters required better support, and assigning social housing cases to Tribunal Members with specialist knowledge. Tenancy advocates also require specialist knowledge to manage social housing cases and to support vulnerable tenants in dealing with social housing landlords. It follows that tenancy management in social housing has the same requirements and specialised skills of other service providers and the Tribunal that deals with tenancy disputes.

It is imperative that the highest level of accountability, transparency, a robust review of decision making and the model litigant policy for civil litigation are provided to social housing tenants. RLC is concerned that if social housing is compared to tenancy management in the private sector and community housing, vulnerable public housing tenants will lose these safeguards.

There are opportunities to improve the cost effectiveness of current tenancy management, however the importance of the role of the State providing public housing should not be overshadowed by cost in providing an effective service and compliance with the objectives of the *Housing Act 2001* (NSW).

4. RLC's responses to specific issues

4.1 The cost effectiveness of current tenancy management arrangements in public housing, particularly compared to private and community housing sectors – Terms of reference (1)

An important part of the work by our tenancy service is the prevention of homelessness; it is in fact our core "business". Many clients of ISTAAS are on low incomes and are tenants of NSW Land and Housing Corporation. These clients often face social disadvantage and would have great difficulty finding accommodation in the current private rental market. Tenants are only approved for social housing if they can show they are unable to afford private rent, and can wait significant amounts of time to be placed, especially in the inner city area. When a social housing tenancy is terminated, a tenant will again have to wait for a substantial amount of time to be housed, and in some cases will be permanently ineligible for public housing. Therefore, losing their tenancy would likely lead to homelessness.

In the period 2012 to 2013, around 75% of applications in the Tenancy Division of the CTTT were lodged by landlords. This was a 3% decrease on the previous year. This number, however is even greater in the Social Housing Division where over 95% of all applications were lodged by a social housing provider (landlords), with the overwhelming majority of the orders sought being for termination. This is a 10% increase from the previous year.

Last year, we collected extra statistics over a three-month period in order to gain data on our homelessness prevention work. During this period, we assisted 76 tenants who were at risk of homelessness. The work involved in saving these tenancies was diverse, including representation at the CTTT for 23 hearings.

This sample of tenants demonstrates the types of vulnerabilities of our clients facing homelessness.

- The majority of these 76 tenants had a disability;
- 18.5% included young people (aged under 25 years old);
- 14.5% identified as Aboriginal or Torres Strait Islander;
- 13% were elderly; and
- 4% were victims of domestic violence.

Given the vulnerabilities of tenants living in social housing it is preferable that using the Tribunal, which is a stressful process, should be avoided whenever possible. Applications to the Tribunal not only take an emotional toll, they are also costly. A Tribunal hearing involves the cost of the Tribunal, tenancy and other services and resources from Housing NSW or Land and Housing Corporation staff.

Social Housing providers could look at cost effectiveness when making applications to the Tribunal. There is a significant disparity in the number of applications made to the Tribunal compared to the private sector, where in fact applications to the Tribunal are decreasing compared to the use of the Tribunal for the social housing sector. The case study below is a clear example of how current practices are not particularly cost effective.

Case study

Maryanne is an Aboriginal Housing NSW tenant. She had lived in house for nearly 25 years. She had a young child that lived with her and a number of adult children, who were homeless. Maryanne fell into arrears when one of her parents died leaving her with some unexpected debts. She was doing what she could to financially assist her adult children and grandchild. Her main sources of income were Newstart, and casual work that varied from week to week.

Maryanne appeared at the Tribunal unrepresented for termination for rent arrears. To save her tenancy she agreed to the repayment plan proposed by her landlord, even though she could not afford the repayments.

Maryanne was unable to maintain repayments, especially when her casual work had decreased. The matter was relisted at the Tribunal. Maryanne came into the ISTAAS for advice. At the first hearing the matter was adjourned because the tenant disputed the amount of rental arrears and the landlord refused to enter into a lower repayment plan.

Following this hearing ISTAAS arranged for the tenant to speak with a financial counsellor. A budget that was prepared showed that the repayments proposed would mean that the tenant would have a deficit income. Our Service attended a meeting with Housing NSW at their office to try and resolve the issue and agree to a repayment plan that the tenant could afford. These negotiations were unsuccessful. Housing NSW did agree to recalculate the tenant's subsidised rent.

With the assistance of our service and another support agency, the tenant collected the numerous documents that the landlord requested to calculate her rent. The matter was listed at the Tribunal again, however the tenant had not been informed in relation to the outcome of her rent review. Before the Tribunal hearing the tenant agreed to the repayment plan proposed by Housing NSW. Our Service asked Housing NSW to withdraw the matter from the Tribunal as the rent review had not been complete and the tenant was willing to enter into a repayment plan that they proposed.

Housing NSW refused to withdraw the matter from the Tribunal, seeking to formalise the repayment plan. The landlord came to the Tribunal, with a complete rent review. It had not been made available before the hearing. Our Service indicated that it was incorrect, therefore the ledger was incorrect, despite the tenant providing all documentation requested of her.

Exhausted by the Tribunal process and the anxiety her tenancy being at risk, the tenant consented to orders for the repayment. Unable to be certain about the ledger when it was challenged the orders included a notation that another rent review would be conducted to clarify her rent and arrears, which took months to clarify.

This case study exemplifies a number of issues that could be addressed to cost effectiveness of current tenancy management arrangements in public housing, including the difficulty involved in calculating rent, especially when a tenant has a fluctuating income. It is onerous and complex task and is not easy to manage and results in significant inaccuracies. It also demonstrates that the model litigant policy to avoid litigation where possible, should be taken into consideration at all levels of tenancy management.

Recommendation

1. Avoid litigation and use of the Tribunal whenever it is possible to negotiate an outcome.
2. Simplify Housing NSW policy so that staff using the policies can apply them with accuracy and consistently.
3. Improving access to policies by making them shorter, clearly titled and easy to find.

4.2 The range and effectiveness of support services provided to tenants in social housing – Terms of reference (2)

RLC submits that tenancy management services should continue to be managed by the public sector. RLC is concerned that moving social housing management away from Housing NSW will severely impact two of the Terms of Reference of the inquiry, namely the effectiveness of support services provided to tenants in social housing and the outcomes for tenants from current tenancy management arrangements.

Our concerns are particularly related to our experiences with clients suffering from mental health issues and the possibility that the focus they receive from the current intermingling of the Housing Act 2001 and obligations provided by agreements between Housing NSW (HNSW), NSW Health (NSWH) and the Department of Family and Community Services (FACS) will be lost if the service is extended to multiple providers.

HNSW works under the objectives of the Housing Act and in particular has a strong concentration on section 5(1)(f) to ensure that the public housing system focuses on housing people who are most in need. The NSW Auditor General's Report states that "HNSW's and LAHC's internal objectives have not achieved a balance between the objects of the Housing Act 2001. HNSW's and LAHC's internal objectives, indicators and measures only show a limited picture of each agency's performance. None demonstrate how the agency is delivering on objectives to achieve social sustainability, or allow an assessment against the objects of the Housing Act 2001 in total".²

A number of partnerships have been established aimed at this vulnerable sector of the community with the overarching goal of creating and maintaining successful tenancies. Within this sector of particular importance is the commitment to persons with mental health issues and disabilities.

The *Housing and Accommodation Support Initiative* (HASI) is a collaboration between NSW Health, Housing NSW and various non-government organisations (NGOs). It is based on NSW Health's 2002 *Framework for Housing and Accommodation Support for People with Mental Health Problems and Disorders*. The initiative is a provision of access to stable housing linked to clinical and psychosocial rehabilitation service for those with mental health issues. A review of the Initiative in 2012 showed not only a 90% tenancy maintenance rate but also improved mental health and independence of its participants.³ The collaboration works to provide:

² NSW Auditor General's Report, Making the best use of public housing (2013)

³ Evaluation of HASI – Final Report accessible at

<http://www.health.nsw.gov.au/mhdao/publications/Publications/pub-hasi-final-report.pdf>

- Accommodation and support and rehabilitation associated with disability
- Clinical care and rehabilitation
- Long-term, secure and affordable housing and property and tenancy management services

The *Housing and Mental Health Agreement* (HMHA) is collaboration between FACS and NSW Health and developed in conjunction with other housing and mental illness focused government agencies and NGOs. It is designed with a focus on improving the housing outcomes and general wellbeing of people with mental health issues aged over 16 years and living in social housing, or who are homeless or risk becoming homeless. The agreement facilitates the best possible provision of services to those with a mental health issue through coordinating and integrating housing, health and support services at a local level. It replaces the *Joint Guarantee of Service for People with Mental Health Problems and Disorders Living in Aboriginal, Community and Public Housing* (JGOS). Some of the commitments established by the agreement include:

- Promoting good practice in delivering coordinated services at the local level
- Delivering coordinated client-focused services
- Improving transition planning to prevent homelessness

These partnerships recognise the complexities and challenges associated with those experiencing mental illness and its impact on their tenancies. They have structures and commitments in place to deliver an integrated level of service to provide and maintain tenancies at a level which real estate and other housing providers would not be equipped to obtain. The success of such services is demonstrated by NSW Health and HNSW being jointly awarded the 2006 Premier's Public Sector Gold award in Service Delivery for implementation of the HASI program.

RLC is concerned that the benefits of these well-established partnerships will be lost if public housing is transitioned to other providers. Many of these services require additional resources due to high demand and lack of funding. Our experience shows that additional resources are required and the risk of tenancy management moving to a non-government agency is that these support services will not be utilised and the partnership that is currently being consolidated will not reach its full potential.

Those experiencing mental health issues need to also be provided with health and support services that complement their ability to maintain tenancies in conjunction with their housing service rather than separately. While these services are on offer in the community those who need them may not understand the need for them or they may not have the ability to comprehend how to access them. It should be noted that those suffering from mental health issues sometimes lack the recognition of their illness or disability completely.

Case Study 1

Phillip (not his real name) is a 63-year-old public housing tenant in Redfern. He has lived at his current address for 17 years without incident. He is on a disability support pension due to mental illness around stress and trauma. His application for housing included information about being on a methadone maintenance program and was granted on the basis of his vulnerability.

A few years ago due to additional social stresses his mental illness began to manifest in collection furniture and other items. As the condition worsened his belongings and collections impinged out

onto the common areas outside his apartment and into the corridor.

Hoarding is recognized mental illness that requires treatment and ongoing support. Housing NSW identified the problem with Phillip's belongings being in the common areas, however were unsure on what services referral could be given to for a hoarder. The staff noted the limitations on assistance that an identified service Catholic Community Services (CCS) could give. Phillip then received a notice to remove all items from the common area within seven days. Following this he received a Notice of Termination and HNSW applied to the Tribunal.

RLC was contacted and made immediate referral to Catholic Community Services and after intense advocacy was able to secure an assessment for Phillip. There were Tribunal hearings on a monthly basis with special performance orders to Phillip. CCS was able to assist Phillip in clearing the common area within a few weeks of assessment.

RLC and CCS identify gaps in CCS's ability to provide assistance to hoarders who haven't been provided with requisite mental illness treatment and directed Phillip to health resources. In this time HNSW relisted the Notice of Termination due to ongoing issues at Phillip's residence. CCS identified that in Phillip's case with the complexities of a hoarding disorder and other health factor's a tenancy could be sustainable with assistance and treatment given the time and correct support. Housing NSW consented to orders to allow the tenant more time to clear the premises. The Tribunal made orders for the matter to return within months for determination of the termination application.

Before the matter was heard again before NCAT, HNSW withdrew their application to allow the tenant to continue to engage with support services and reduce the level of items at his property to a safe level. A timeline for these terms of settlement was agreed upon so each party was satisfied with the resolution.

Phillip's actions are a manifestation of his mental illness and directly correlate with his need for public housing. If Phillip's tenancy were terminated, there would be little or no options for him in the private market for relocation. The consequence would be that Phillip, suffering from mental illness and recovering from addiction would be homelessness. Through the collaboration of an integrated network of agencies and HNSW policy to work with tenants with needs, Phillip's tenancy continued.

The above demonstrates the complexities of those with mental illness negotiating tenancies. HNSW has a unique understanding of the issues surrounding vulnerable persons such as these and is equipped to respond with services and leniencies in these situations, which not necessary extend to other sectors. It is doubtful that a real estate agent or other housing service provider's staff would have the training or sensitivities to respond appropriately to those with mental illness. In diluting the services available to tenants in social housing this will consequently further disadvantage those suffering from mental health issues. Additionally this may result in higher instances of termination for those who have few or no options for relocation. Mental illness is an issue that must be dealt with in conjunction with health. In this case the breach arose directly as a result of the tenant's mental illness. Eviction for having a mental illness creates an injustice for the tenant, without the connection to a housing provider the tenant is exposed the risk homelessness, access to health services and other support.

Case study 2

Monica was homeless for several years before she was housed. She had chronic mental illness and was recovering from substance dependency. She was a victim of domestic violence, in a relationship with a very controlling and violent perpetrator. Support services were engaged assisting Monica work through these issues.

During this period Monica was issued a notice of termination for rent arrears. Monica came to our Service for assistance for rent arrears. While assisting Monica our Service became aware that there was mould throughout her property. When Monica moved into her premises there was an issue water leaking into the property and mould soon began to appear throughout the property. Information obtained under GIPAA laws indicated that the property had possibly had a mould problem before the tenant moved in. The property had been painted throughout before the tenant moved in, however the water issues had not been repaired properly, so the mould returned.

The repair issue was reported to the landlord. Our Service advocated on the tenants' behalf. The team leader from the local Housing NSW office came to our Service to negotiate an outcome. From these discussions a Support Plan was developed. The Plan sets out that Monica's goal was to maintain her tenancy and significantly reduce her debt with Housing NSW. Monica's Community Support worker arranged for brokerage, set up for her rent to be automatically deducted from her Centrelink payments, notified maintenance about issues in respect to mould and arranged for outreach appointments with the community organisation to continue on a fortnightly basis.

Housing NSW made arrangements for repairs to be carried out and for a rent reduction to be applied to the period that the landlord was aware of the need for repairs and failed to carry out proper repairs and the tenant had reduced use of the property. The tenant did not have to attend the Tribunal, as both parties were able to negotiate an outcome outside of the Tribunal.

This case study demonstrates that when appropriate support services are engaged that Housing NSW tenants can sustain their tenancies and can work collaboratively towards housing, health and safety outcomes for clients. It is also exemplary conduct to avoid litigation and the stress and anxiety that comes with litigation. Both parties were able to reach satisfactory outcomes, without engaging in an adversarial process. It is also an indication of good outcomes that can be reached with Housing NSW works cooperatively with support services and tenant advocates, committed to sustaining tenancies (Terms of reference 3).

It is RLC's opinion that it is essential that public housing tenants have the benefit of the Model Litigant policy for civil litigation, which obliges the State and its agencies to act as a model litigant in the conduct of litigation. Of particular relevance are clauses:

- 3.1 It also goes beyond the requirement for lawyers to act in accordance with their ethical obligations. Essentially it requires that the State and its agencies act with complete propriety, fairly and in accordance with the highest professional standards;
- 3.2 (d) endeavoring to avoid litigation, wherever possible and
(f) not taking advantage of a claimant who lacks the resources to litigate a legitimate claim

RLC has assisted many public housing tenants with repairs issues. In the last 12 months our Service has engaged in direct communication with Land and Housing Corporation where tenants have been unable to have repairs completed. We have observed an improvement over this period, as well a significant reduction in matters that we assist tenants pursue their tenancy rights for repairs through the Tribunal. A better response to repairs in terms of time and proper repairs carried out, not only reduces the need for litigation, it also is cost effective as it protects the landlords asset, results in fewer call outs if done properly and prevents reoccurrence. Repairs is an area that was managed in a manner that was not cost effective. While our casework indicates that there has been a shift, anecdotally we still hear that it is an issue that tenants of long delay and still assist through our advice service. There is still need for the system to improvements so that tenants dealing with LAHC directly experience the same response when they request repairs.

Recommendation

1. Effective partnership with NSW Health to approach mental health issues from a health perspective and non-punitive outcomes.
2. Additional resources to directly assist tenants with mental illness.
3. LAHC continue to work with Tenants' Advice and Advocacy Services in NSW to develop a plan to improve response to tenants' request for repairs

4.3. Outcomes for tenants from current tenancy management arrangements – Terms of reference (3)

Redfern Legal Centre is concerned that the current mechanisms for appealing a Housing New South Wales decision are inadequate and provide insufficient protections for vulnerable tenants in social housing. The current system of review is not adequate to ensure that there just and equitable outcomes for tenants.

Housing NSW has two levels of review of decisions. There is great inconsistency in the outcome of first tier appeals. Often these appeals are not decided within the timeframe set out in Housing NSW policy and when decisions are made often inadequate reasons are provided.

If the tenant is not successful at the first level of appeal there is a final level. This appeal is lodged with the Housing Appeals Committee. HAC is independent from Housing NSW it is not a judicial body and does not have the power to make binding decisions. Rather HAC makes recommendations to social housing providers, who then have the discretion to amend their decisions. While HAC's decisions have no binding force, few recommendations are not followed in full or in part. There is still a high level of concern that the decision made by HAC is not binding.

The Housing Appeals Committee is a ministerial advisory body and, as such, has no legislative basis. The NSW Housing Appeals Committee Charter issued by the Minister for Family and Community Service that outlines its role, jurisdiction and powers binds the Committee. This means that the HAC may be changed or abolished without any parliamentary oversight. Furthermore, applying to the Committee is further complicated as the jurisdiction listed in its charter is ambiguous.

An improved mechanism to ensure procedural fairness and decisions ultimately able to be reviewed by a judicial body, such as NCAT, would go a long way to address concerns about the current review process.

Procedural Fairness Issues

The NSW Social Housing External Appeals Policy Framework states a desire by the HAC to maintain an informal, non-adversarial procedure. While this is based on the positive aim of making the Committee more friendly & accessible to applicants and tenants, it also introduces some significant procedural fairness issues.

The Housing Appeals Committee is under no obligation to supply any information to the applicant in relation to their file. The case against the tenant and evidence that has been relied on to make the decision is not made available to the tenant and opportunity given to the tenant to respond adequately to this evidence.

The current system of review is contrary to the core principle of procedural fairness, namely that a party is required to be given adequate notice of the case being made against it. This also increases the likelihood for unfair and incorrect decisions, as applicants are not given the opportunity to provide reasonable explanations or correct incorrect evidence put forward by the primary decision maker.

As will be demonstrated in the case study below, these procedural issues increase the risk of manifestly unfair or incorrect decisions. This is acutely inequitable as many applicants to HAC commonly face significant socioeconomic disadvantage, are from a non-English speaking background, are particularly vulnerable and may be affected by mental illness. The importance of strict procedural fairness is all the more significant as, in numerous cases there is a significant risk that the applicant will be made homeless as a result of an unfavourable Committee decision.

As such, the vulnerability of the applicants paired with the real risk of homelessness means that the desire for informality is significantly outweighed by the need for more rigorous procedural fairness protections.

The Committee is only empowered to give recommendations

The Housing Appeals Committee is only able to give non-binding recommendations. The community-housing provider, and particularly Housing NSW, is under no obligation to abide by these recommendations.

According to the Committee's figures, only 8% of its recommendations were not followed. This means that these tenants were forced to abide by a decision that had been ruled improper or unfair. As such, it seems equitable that the HAC be given the capacity to make binding decisions to make the second tier review process meaningful. It undermines the significance of the second tier review, if the ultimate decision is left to the discretion of Housing NSW.

The need for another level of review

As a result of the above procedural fairness issues associated with the Housing Appeals Committee proceedings, there is a potential need for a third tier appeal. It is RLC's opinion that NCAT has the

expertise and procedural rigour to adequately perform this function.

Currently, members of the NCAT have jurisdiction in relation to the *Residential Tenancies Act 2010* (NSW). It is often difficult for Housing NSW tenants to understand that NCAT can not review decisions made by Housing NSW that ultimately impact on their tenancy. In particular, NCAT has no jurisdiction to make determinations when a tenant challenges issues around rent, when considering an application for termination for rent arrears.

Further, since January 2014 the Administrative and Equal Opportunity Division of NCAT has taken up some of the work of the former Administrative Decisions Tribunal. In this division, NCAT already reviews administrative decisions made by NSW Government agencies. NCAT's procedural requirements would more adequately ensure high quality, equitable decisions are made which will protect vulnerable tenants.

The Tribunal is required under s38(5) of the *Civil and Administrative Tribunal Act 2013* to ensure that the parties understand the nature of proceedings and (6) ensure that all relevant material is disclosed. This positive obligation to inform the parties is the complete inverse of the Housing Appeals Committee that lacks these procedural obligations.

Making NCAT available as a third tier appeal body is appropriate to provide housing tenants with a just, cheap and fast review process. Currently, tenants have virtually no redress if HAC makes an improper decision, or a recommendation isn't followed by Housing NSW. This is because the only alternate avenue is in the Supreme Court of New South Wales. For individuals in social housing, the expense and other barriers that inhibit access to the just system, associated with appearing in the Supreme Court means that this is not a realistic option.

Case Study

Pundit is a Thai tenant living in Housing NSW for over 10 years. During this time she separated from her husband and remained in the property with two of her three children. Pundit does not speak English and suffered from severe mental illness, including depression and anxiety disorder. As her health deteriorated, Pundit's ex-husband and oldest daughter returned to her property a few times a week to help clean and look after the younger children. HNSW cancelled Pundit's subsidy, alleging that her ex-husband and daughter were living with her. Pundit appealed this decision to the Housing Appeals Committee.

During an interview, HAC mentioned that it had documents proving that Pundit had unauthorised occupants in her property. HAC was unable to give Pundit or her advocate access to these documents and they were not provided in full under the *Government Information Public Access Act*.

Concurrent Tribunal proceedings were on foot for termination for rental arrears, which were created by the cancelled subsidy. Housing NSW refused to withdraw termination proceedings from NCAT until there was an outcome of the appeal. This resulted in several adjournments, while the appeals process continued.

The tenant's appeal was successful and her subsidy was reinstated. To reach this outcome, there were at least four appearances in NCAT, two appeals, a several month long investigation into the household by the fraud unit pulling in several other government departments, eventually two

months worth of IT issues reversing the debt and correcting the tenant's ledger to reflect HAC's decision.

This case demonstrates, that although there was ultimately a positive outcome for the tenant it required extensive work and resources, which could have been avoided if Housing NSW had just put to her the evidence they had. The outcome of the current system creates a huge amount of inefficient bureaucracy tenants have to go through to challenge decisions. RLC is concerned that a tenant like Pundit, who did not speak English and suffered mental illness, would not have been able to successfully challenge this decision, without a tenant advocate. In addition, with concurrent Tribunal proceedings for termination as preparing for an appeal, the impact for a tenant already suffering from anxiety and depression and caring for a minor, are significant.

Recommendation

1. Adequate written reasons for decisions provided by Housing NSW to tenants, containing information and particulars that the tenant can respond to.
2. Place more stringent procedural fairness requirements on the Housing Appeal Committee.
3. HAC decisions be binding.
4. HAC decisions to be appealable to the NCAT.

4.4. Possible measures to improve tenancy management services – Terms of reference (4)

RLC is concerned that providing effective support services is impeded by the practice of frequently moving frontline from office to office. The result is that tenants do not know who their CSO is and do not have a contact person that they have some rapport with. This level of trust would facilitate referring tenants to support services, if necessary, as well as allowing tenants to feel that they can approach their landlord if they are experiencing difficulties during their tenancy.

Also, given the high needs of Housing NSW tenants, it is appropriate to have frontline workers with a diverse skill set and adequate training. This would perhaps assist with high levels of staff turn over, which impedes tenants ability to build rapport with CSOs.

Case study

Sue came to our service because her sister, Penelope, a public housing tenant, had been issued a notice of termination for having too many occupants living in her premises. Sue and her two young children moved into Penelope's 2 bedroom Housing NSW premises, to escape extreme domestic violence. After a serious assault, Sue fled her family home with her children at night, leaving with nothing other than the clothes they were wearing. Sue's domestic circumstances meant that she had no access to bank accounts, was unable to work and had no other family or support to turn to. Her sister's home was the only safe place for her and her children to go to and remain together.

The only way for the tenant to avoid eviction was to ask her sister and her children to leave her Housing NSW premises. Sue made her own application for housing and asked Housing NSW to allow her to stay with her sister until her family could be housed. This request was refused.

Our Service lodged a first tier appeal on behalf of the Housing NSW tenant in relation to the notice of termination, which was successful.

Our Service also assisted Sue make her application for housing. During the application process Sue gave evidence to Housing NSW of the severe domestic violence that she was escaping from. This included handing over a letter to Housing NSW, in which her husband threatened to kill their children. A CSO in the local office said that he could not read the handwriting and asked Sue to read out the letter to him. Reading this letter, threatening her children's life was distressing for Sue and ultimately unnecessary in determining her application for housing as police had also provided documented evidence of assaults and harassing behaviour of the perpetrator.

This case study demonstrates the importance of taking a flexible approach to housing management and opportunities to achieve outcomes shared by different government agencies. The strengthening of these partnerships will go a long way to avoid the situation of the case study above. In addition, this case indicates the importance of proper training of frontline workers, to assist them to deal with vulnerable clients appropriately.

Recommendation

1. Improved recruitment, training and support for Housing NSW frontline staff.
2. Reduced number of tenants that CSOs provides service to.
3. Focus on staff retention and reduction on moving staff from one office to another.

5. RLC's Recommendations

Recommendation 1

Avoid litigation and use of the Tribunal whenever it is possible to negotiate an outcome.

Recommendation 2

Simplify Housing NSW policy so that staff using the policies can apply them with accuracy and consistently.

Recommendation 3

Improving access to policies by making them shorter, clearly titled and easy to find.

Recommendation 4

Effective partnership with NSW Health to approach mental health issues from a health perspective and non-punitive outcomes.

Recommendation 5

Additional resources to directly assist tenants with mental illness.

Recommendation 6

LAHC continue to work with Tenants' Advice and Advocacy Services in NSW to develop a plan to improve response to tenants' request for repairs.

Recommendation 7

Adequate written reasons for decisions provided by Housing NSW, containing information and particulars that the tenant can respond to.

Recommendation 8

Place more stringent procedural fairness requirements on the Housing Appeal Committee.

Recommendation 9

HAC decisions be binding;

Recommendation 10

HAC decisions to be appealable to the NCAT.

Recommendation 11

Improved recruitment, training and support for Housing NSW frontline staff.

Recommendation 12

Reduced number of tenants that CSOs provides service to.

Recommendation 13

Focus on staff retention and reduction on moving staff from one office to another.

