

18 August 2015

**The Hon Brad Hazzard MP  
Minister for Social Housing**

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**By email**

Dear Minister

**RESIDENTIAL TENANCIES & HOUSING LEGISLATION AMENDMENT  
(ANTI-SOCIAL BEHAVIOUR) BILL 2015**

Community Legal Centres New South Wales (CLCNSW) is the peak body for community legal centres in NSW. We represent a network of 38 legal centres throughout the State, providing free legal advice to the most vulnerable members of our community. Social housing tenancy matters make up a significant part of the work of many of our legal centres, especially those with specialist tenancy services.

CLCNSW has considered the Residential Tenancies & Housing Legislation Amendment (Anti-Social Behaviour) Bill 2015 and we have serious concerns about the impact that the proposed changes would have on vulnerable social housing tenants. We endorse the comments and recommendations made by the Tenants Union of New South Wales, the coalition of community legal centres (Illawarra Legal Centre, Kingsford Legal Centre, Marrickville Legal Centre, Redfern Legal Centre and Eastern Area Tenancy Service) and the Law Society of NSW.

**1. Overview**

CLCNSW acknowledges the importance of a social housing system that is safe and fair. Everyone has a right to feel safe in their home and having secure and affordable housing is a critical requirement for people to gain employment, access social support and to contribute to their community. It is appropriate for the law to provide mechanisms for landlords to control serious criminal and anti-social conduct in social housing.

However, we believe that the law currently provides adequate powers for social housing landlords to control criminal, anti-social or fraudulent conduct by tenants or

occupants in social housing. While the Bill is focused on the behaviour of '*a minority of tenants*', it goes far beyond controlling the behaviour of that small group and will strip away fundamental legal safeguards for all social housing tenants. This will have a disproportionate impact on vulnerable tenants – such as those who are experiencing domestic violence, those with mental health conditions, Aboriginal & Torres Strait Islander tenants and those who speak English as a second language – and will expose them to a real risk of homelessness.

Our specific concerns are set out in detail below.

## **2. Retaining the Tribunal's discretion**

A fair hearing before an independent judicial body that decides the facts and applies the law is a cornerstone of our legal system. We are concerned that the Bill, by removing the discretion of the Tribunal, will undermine this fundamental principle and transform the Tribunal from a judicial into an administrative body. CLCNSW believes that such a significant change in the role of the Tribunal is not a proportionate response in dealing with the actions of a small minority of tenants.

## **3. Impact on vulnerable tenants**

The proposed changes will require the mandatory eviction of tenants who may have no knowledge of, or involvement, in the alleged criminal activity. Tenants who are victims of domestic violence, those with mental health issues, the elderly and Aboriginal & Torres Strait Islanders may be evicted because of the actions of other occupants. The Tribunal must terminate the tenancy even if the tenant did not know what was occurring and did not condone the criminal conduct.

CLCNSW is particularly concerned about the impact that the Bill will have on these innocent tenants whose occupants may engage in anti-social or illegal behaviour. For example, section 154D would require the Tribunal to evict a tenant with an intellectual disability whose brother sold a small amount of marijuana to friends from home, or a woman with little English whose violent partner stored an unlicensed gun at her home and used this gun to threaten her.

The Bill also undermines rehabilitative sentencing options for tenants who are convicted of criminal offences. In some circumstances, it is appropriate that a tenant who has committed a serious criminal offence, but who has shown a willingness to correct their offending behavior, be given the opportunity to rehabilitate, remain in social housing and sustain their tenancy. The removal of Tribunal discretion will mean that, without secure housing for the offender, courts will be limited in the extent to which they can consider rehabilitation and other non-custodial sentencing options and these orders require a person to have stable and secure accommodation.

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<sup>1</sup> New South Wales, *Parliamentary Debates*, Legislative Assembly, 5 August 2015, 20-23 (Brad Hazzard, Minister for Social Housing)

#### **4. Three strikes termination**

Sections 154B, 154C and 156A introduce a 'three strikes' process which allows a 'strike notice' to be issued to a tenant if they are believed to have breach the tenancy agreement.

CLCNSW is concerned that vulnerable tenants, such as those with a disability, limited English, mental health issues or Aboriginal & Torres Strait Islanders will be disproportionately affected by these changes. An investigation into the 'three strikes' eviction policy introduced in Western Australia found that it had a greater impact on Aboriginal tenants, who accounted for 82 of the 137 tenancies terminated under the new policy. Amongst the Aboriginal tenants evicted was a woman with four children, who received three strikes for disturbances related to domestic violence perpetrated by her ex-partner<sup>2</sup>.

Further, it is unrealistic to expect that vulnerable clients will be able to comply with the very short 14-day time limit to apply for review of a strike notice, as within that time they must contact a legal service, get legal advice, gather evidence and make submissions (s154C).

The consequences for these vulnerable tenants will be serious. If they did not seek review, the notice will be conclusive proof of the breach in Tribunal proceedings for termination and the tenant cannot challenge that evidence (s156A). Even those tenants who do seek review of the notice will still bear the burden of proving that the breach did not occur (s156A). It is a fundamental principle of the law that a person seeking orders from a court, such as termination orders, must prove their claim. The proposed changes overturn this principle and will place vulnerable tenants at a real risk of eviction based on untested and unproven allegations.

CLCNSW is also concerned that the 'three strikes' process discourages landlords from pursuing alternative dispute resolution strategies and increases the likelihood that landlords will use the Tribunal to control very minor breaches of the tenancy agreement.

#### **5. Anonymous neighbour statements**

Section 154F will allow the Tribunal to consider anonymous evidence given by neighbours in termination proceedings. Allowing such anonymous evidence overturns another fundamental principle of law, that a person should know the case against them and be able to test that case. Tenant's may face eviction based on evidence motivated by prejudice or inter-personal disputes, but be unable to effectively question or challenge those allegations. CLCNSW is concerned that this

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<sup>2</sup> Andrew O'Connor, 'Public housing evictions are on the rise and families face homelessness with three strikes policy', ABC News Website (26 December 2013) <<http://www.abc.net.au/news/2013-12-26/wa-evictions-feature/5170316>>

will lead to unfair and unjust outcomes for tenants, who may be evicted based on entirely false or misleading statements made by persons unknown.

## 6. Conclusive evidence of costs of work

Section 156B will allow a social housing provider to submit a certificate to the Tribunal as conclusive proof of the costs of work performed on the property. This undermines another long held principle of the law that a person must do what is reasonable to reduce their losses when claiming compensation. Allowing social housing landlords to conclusively declare their costs of work, without the tenant being able to question that evidence, will remove the incentive for the landlord to mitigate or control those costs. This is of particular concern given the Auditor-General's Report highlighting the lack of accountability and inefficiency of contractors engaged by public housing agencies.<sup>3</sup>

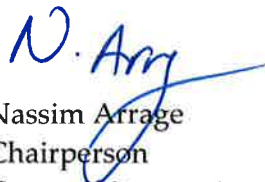
The impact of this proposed change would be significant. The higher debts that tenants may bear will affect their eligibility for social housing in the future. Former tenants must repay the money or face a lengthy wait for housing assistance and the higher the debt the longer they will remain homeless or in marginal and insecure accommodation.

## 7. Summary

We call on the NSW Government to implement the recommendations made by the Tenants' Union of NSW, the coalition of community legal centres and the Law Society of NSW. Such significant changes to social housing policy and to the rule of law in New South Wales must be justified and proportionate to the identified problem. The current system is adequate to deal with crime and anti-social behaviour in social housing and the law should continue to provide safeguards for the most vulnerable members of our community.

We thank you for your consideration of our concerns. Please contact Martin Barker, CLCNSW Law Reform and Policy Committee Co-convenor on 0415 673 604 should you have any further questions or wish to discuss any of the matters raised in this letter.

Yours sincerely,



Nassim Arrage  
Chairperson  
Community Legal Centres NSW

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<sup>3</sup> New South Wales Auditor General, Performance Audit, 'Making the best use of public housing', 30 July 2013

**cc.**

Ms Tania Mihailuk

Ms Jan Barham, MLC

The Hon. Paul Green, MLC

The Hon. Robert Borsak, MLC

The Hon. Robert Brown, MLC

