



TENANTS' UNION OF NSW

**TENANCY POLICY
for the
NSW STATE ELECTION
2003**

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Tenants' Union of NSW

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ABOUT THE TENANTS' UNION

The Tenants' Union of NSW is the State's peak non-government tenancy organisation. Our role is to represent the interests of private tenants, public tenants, boarders and lodgers and caravan park residents, by:

- raising awareness of tenants' problems and rights;
- providing high quality advocacy and advice to tenants;
- lobbying for improvements in residential tenancy laws;
- promoting secure and appropriate housing solutions; and
- supporting, training and resourcing the statewide network of Tenants' Advice and Advocacy Services.

Since 1976, the Tenants' Union has advanced the rights of tenants by taking a leading role in the campaign for law reform that led to the *Residential Tenancies Act 1987* and, later, the *Residential Parks Act 1998*. The Tenants' Union also contributed to the establishment of the Rental Bond Board in 1977, and the creation of the statewide network of tenants advice services under the Tenants Advice and Advocacy Program.

We continue to advance the rights of tenants through the following work:

Law reform and policy development. The Tenants' Union's policy work draws on the experiences of our own advocates and tenants advocates from Tenants Advice and Advocacy Services across the State. The Tenants' Union convenes the Tenancy Legal Working Party, which brings together the Tenants' Union, tenants advocates, solicitors from the Legal Aid Commission and academics, to analyse the law and develop proposals for reform. We also convene two specialist subcommittees: the Boarders and Lodgers Action Group and the Public Housing Issues Working Party.

Test case litigation. The Tenants' Union's legal practice runs test cases that clarify and extend the law in favour of tenants.

Tenants' Hotline. Our telephone advice service is available 5 days a week from 9:30 am to 5pm, staffed by the Tenants' Union and a network of volunteer services.

Publications. The Tenants' Union's publications include: 'Tenants News', a newsletter produced 3 times per year and circulated to over 5000 tenants across the State; the 'Tenants Rights Manual', soon to enter its third edition; the 'Tenants Have Rights' Fact Sheets; and a website, www.tenants.org.au.

Resources and training. The Tenants' Union provides resources and training for an innovative network of 20 Tenants Advice and Advocacy Services across New South Wales, funded under the Tenants Advice and Advocacy Program from interest earned on monies lodged with the Rental Bond Board, administered through the Department of Fair Trading.

TENANCY POLICY FOR THE NSW STATE ELECTION 2003

The Tenants' Union has identified five areas of tenancy policy that have become urgent priorities for New South Wales tenants. The next Parliament must address the following tenancy priorities:

- 1. Reform of the Residential Tenancies Act 1987**, in particular to provide:
 - protections against unjust terminations;
 - protections against unfair rent increases;
 - rights for victims of domestic violence;
 - resolution of share housing and co-tenancy disputes; and
 - rights for tenants whose goods are unlawfully destroyed or disposed of by their landlords at the end of a tenancy.
- 2. Legislated rights for boarders and lodgers**
- 3. Legislation against tenant databases**
- 4. Growth and enhancement of affordable housing, including social housing**
- 5. Retention of accommodation on residential parks**

This document contains the Tenants' Union's policy recommendations for addressing each of the five priority areas, for the consideration of all parties.

The Tenants' Union is assessing the policies of parties and candidates contesting the 2003 State Election, particularly as to how well they address these priorities. We will provide our assessment of parties' and candidates' policies to our constituents and the general public. We will also note when a party or candidate does not have a policy or does not respond.

What we are asking of parties. The Tenants' Union urges that you consider the Tenants' Union's policy recommendations. We request that you provide us with copies of your housing, fair trading and planning policies, and that your spokesperson answer the following questions regarding the five tenancy priorities.

1. *Does your party support reform of the Residential Tenancies Act 1987, particularly to provide:*
 - *protections against unjust terminations?*
 - *protections against unfair rent increases?*
 - *rights for victims of domestic violence?*
 - *resolution of share housing and co-tenancy disputes?*
 - *rights for tenants whose goods are unlawfully destroyed or disposed of by their landlords at the end a tenancy?*
2. *Does your party support legislated rights for boarders and lodgers?*
3. *Does your party support legislation against tenant databases?*
4. *Does your party support increasing the State's stock of affordable housing and social housing, and improving tenancy rights for social housing tenants?*
5. *Does your party support acting to retain accommodation on residential parks?*

Please send answers to the questionnaire and copies of your housing, fair trading and planning policies by 5 March 2003 to:

Tenants' Union of NSW
68 Bettington Street
Millers Point NSW 2000



SUMMARY OF MAIN RECOMMENDATIONS

1 REFORM OF THE RESIDENTIAL TENANCIES ACT 1987

Thirteen years after it commenced, the Residential Tenancies Act needs to be reformed.

1.1 Protections against unjust terminations

Under the current law, tenants can be evicted from their homes without grounds. This is a fundamental injustice.

- Amend the Residential Tenancies Act to provide that a landlord may give a notice of termination only on just grounds prescribed by the Act.

1.2 Protections against unfair rent increases

Current rent increase provisions are ineffective, and do not protect tenants from unfair rent hikes.

- Amend the Residential Tenancies Act to provide that rent may not be increased more than once in any 12 month period, that the market level of rents is only one of a range of factors in determining if rent is excessive, and that the landlord bears the onus of proving that a rent increase is not excessive.

1.3 Rights for victims of domestic violence

The current law does not recognise that victims of domestic violence may need to change their tenancy arrangements to make themselves safe.

- Amend the Residential Tenancies Act to provide that a person in a domestic relationship with the tenant, and who is or is likely to be the victim of domestic violence, may apply to the Consumer, Trader and Tenancy Tribunal for an order terminating the tenancy and vesting a tenancy in the applicant's name only.

1.4 Resolution of share housing and co-tenancy disputes

People living as co-tenants and in share housing need better ways to resolve tenancy matters.

- Amend the Residential Tenancies Act to allow one co-tenant to make application to the Consumer, Trader and Tenancy Tribunal for an order terminating the tenancy, and to give the Consumer, Trader and Tenancy Tribunal jurisdiction to hear disputes between co-tenants relating to the tenancy.

1.5 Rights for tenants whose goods are unlawfully destroyed or disposed of by their landlords at the end of a tenancy

The current law does not enforce its own provisions about tenants' goods. This flaw must be changed.

- Amend the Residential Tenancies Act to allow a former tenant to make application to the Consumer, Trader and Tenancy Tribunal for an order that the former landlord pay compensation for losses incurred by the tenant as a result of the landlord dealing with the tenant's uncollected goods other than as provided by the Act or an order of the Tribunal.

2 LEGISLATED RIGHTS FOR BOARDERS AND LODGERS

Boarders and lodgers are the most disadvantaged people in the housing system. Under the current law, they have no legal rights and are subject to arbitrary eviction and rent increases.

- Pass a Boarders Act, based on the Residential Tenancies Act, providing boarders and lodgers with a regime of rights and responsibilities similar to those of other New South Wales tenants.

3 LEGISLATION AGAINST TENANT DATABASES

Tenant databases undermine all tenants' rights, and can effectively make you homeless if you are listed. Tenant databases do not have a valid place in the rental housing system.

- Prohibit the use and operation of tenant databases.

4 GROWTH AND ENHANCEMENT OF AFFORDABLE HOUSING, INCLUDING SOCIAL HOUSING

The costs of housing are unaffordable for tens of thousands of New South Wales households. Without a whole-of-government plan, and more and better social housing, the crisis will worsen.

- Implement a comprehensive State Housing Plan, including an Affordable Housing State Environmental Planning Policy.
- Increase, over the next ten years, the stock of social housing to double its current proportion, and broaden the Department of Housing's income eligibility criteria.
- Repeal the Department of Housing's renewable tenancies policy and rental bonds policy, and implement a policy on public housing redevelopments including protocols for consultation with tenants at all stages of the redevelopment process.

5 RETENTION OF ACCOMMODATION ON RESIDENTIAL PARKS

Thousands of caravan park residents face losing their housing as more parks close.

- Amend the Residential Parks Act 1998 to allow residents who are entitled to compensation for the costs of relocation to apply to the Consumer, Trader and Tenancy Tribunal for orders that these costs be paid before, rather than after, a relocation.
- Implement a State Environmental Planning Policy to retain parks as a provider of permanent, affordable accommodation.

TENANCY PRIORITIES

1 REFORM OF THE RESIDENTIAL TENANCIES ACT 1987

The Residential Tenancies Act 1987 was proclaimed on 30 October 1989 and has now been law for over 13 years.

Previously, tenants had had to rely on the Landlord and Tenant Act 1899 and the feudal provisions of the common law of tenancy. While the Residential Tenancies Act was a much overdue improvement, it did not in a single step address all aspects of the contemporary rental practice or the basic inequality of tenants in the landlord-tenant relationship.

In the 13 years of its operations, it has become apparent that tenancy law under the Residential Tenancies Act remains weighted in favour of landlords. Significant provisions of the Act are unfair and oppressive to tenants, and numerous other provisions are not clear or do not work adequately.

Through our ongoing law reform work, the Tenants' Union has produced a comprehensive set of proposed amendments to the Residential Tenancies Act. Five of the amendments are discussed below, in the context of the problems they address. Of the legislative regime established by the Residential Tenancies Act, these aspects most urgently need reform.

Two other areas of legislative reform – rights for boarders and lodgers, and the regulation of tenant databases – are each discussed further below (Priority 2 and Priority 3) as policy priorities in their own right.

1.1 Protections against unjust terminations

The most basic flaw in the Residential Tenancies Act is its failure to provide security of tenure for New South Wales tenants. Under the current law, a tenant can be given notice of 60 days, without grounds, to vacate their home. Both the amount of notice, and the absence of any requirement to have grounds for the termination of a tenancy, are unfair to tenants.

The law does not acknowledge a fundamental difference between landlords and tenants as parties to a tenancy agreement. Landlords do not make great emotional investments in tenancies. Tenants do. When tenants are required to vacate against their wishes, they must uproot themselves and their household from their home and their neighbourhood – and, often, friends, schools, doctors and other services, and places of work. The emotional and social cost borne by tenants and their families can be immense. Tenants should be required to bear this cost only where there is just cause and termination is, in all the circumstances, appropriate.

Without the requirement for just cause, the termination provisions of the Residential Tenancies Act are open to retaliatory use. ‘Without grounds’ termination notices give unscrupulous landlords and real estate agents the means to threaten and evict tenants who have asked for repairs or queried rent increases. The Residential Tenancies Act does provide the Consumer, Trader and Tenancy Tribunal with a discretion to decline to order the termination of a tenancy if it is retaliatory, but this is a deficient safeguard. It is difficult for a tenant to produce evidence as to whether the landlord’s intention is retaliatory, and in those rare cases where termination orders are declined, there is nothing to stop the landlord simply serving another ‘without grounds’ notice. In any event, such instances are few: most tenants who are served a ‘without grounds’ notice take the termination of their tenancy for granted and simply move out.

No other State provides for shorter periods of notice than New South Wales. Victoria has recently increased the amount of notice required for termination without grounds to 120 days. No tenants have poorer security of tenure than New South Wales tenants.

Just causes for termination by a landlord should be prescribed by the Residential Tenancies Act. These causes should be limited to situations in which the return of vacant possession of premises to the landlord is essential – that is, where:

- the landlord requires the premises for their own accommodation;
- the premises have been sold and the purchaser requires vacant possession as a condition of the contract of sale;
- the premises are to be subject to major renovations, change to a non-residential use, or demolition; or
- the tenant is in serious and persistent breach of the tenancy agreement, and has failed to remedy the breach after a formal Notice to Remedy.

The Consumer, Trader and Tenancy Tribunal should retain its current obligation to consider all the circumstances of the case in determining whether termination is appropriate.

Also, where a landlord has reasons for seeking the termination of a tenancy, the onus should be on the landlord to apply to the Consumer, Trader and Tenancy Tribunal, and to prove the existence of the grounds on which they rely. This is how the Residential Tenancies Act and the Consumer, Trader and Tenancy Tribunal Act 2001 currently operate with regard to proceedings, with grounds, for termination. It should

never fall on the tenant to have to apply to the Tribunal to maintain their tenancy. Those provisions of the Residential Tenancies Act that place the onus on landlords to make application and prove their cases should be retained.

Policy recommendations

- *Amend Part 5 of the Residential Tenancies Act to provide that a landlord may give a notice of request to vacate, on any of the following grounds:*
 - *the landlord requires the premises for their own accommodation (30 days);*
 - *the premises have been sold and the purchaser requires vacant possession as a condition of the contract of sale (60 days);*
 - *the premises are to be subject to major renovations, change to a non-residential use, or demolition (90 days);*
 - *the tenant is in serious and persistent breach of the tenancy agreement, and has failed to remedy the breach (14 days).*

After the relevant period of notice, a landlord may apply to the Consumer, Trader and Tenancy Tribunal for an order of termination and possession. At a hearing, the Tribunal must consider whether the existence of the grounds relied upon have been proved, and all the circumstances of the case, before making orders.

- *Amend the Residential Tenancies Act to provide for a 'Notice to Remedy'. Where a landlord believes a tenant to be in breach, the landlord may give a Notice to Remedy of not less than 28 days (14 in the case of rent arrears). Only when a tenant has failed to remedy a breach after a Notice of Remedy should a landlord be able to serve a Notice of Termination.*
- *Amend the Residential Tenancies Act to replace the term 'Notice of Termination' with the term 'Notice of Request to Vacate'. The term 'Notice of Termination' does not accurately reflect the legal effect of giving such a notice, and is misleading to tenants and landlords. The term 'Notice of Request to Vacate' accurately reflects the effect, under the Residential Tenancies Act, of such a notice.*

1.2 Protections against unfair rent increases

The current excessive rent provisions of the Residential Tenancies Act are unfair to tenants and do not provide adequate protection against unfair rent increases. As consumer protection legislation, these provisions simply do not do their job.

Currently, there is no limit on the number of times a landlord may increase the rent, or the frequency of increases. There is no limit on the amount by which rent can be increased, other than that a tenant may apply to the Consumer, Trader and Tenancy Tribunal for an order that the amount is 'excessive'. The 'overriding' determinant of what is excessive is the level of market rents. This is unfair for all tenants when rents generally are increasing, and especially for tenants on fixed incomes. Whether the rent increase is affordable, or in line with general cost of living increases, is not considered.

Furthermore, when a tenant seeks such an order, the onus of proving the increase is excessive relative to market rents falls on the tenant. It is almost impossible for tenants to get access to evidence of this kind.

Policy recommendations

- *Amend section 46 of the Residential Tenancies Act 1987 to provide that rent may not be increased more than once in any 12 month period.*
- *Amend section 46 of the Residential Tenancies Act 1987 to provide that the landlord bears the onus of proving that a rent increase is not excessive.*
- *Amend section 48 of the Residential Tenancies Act 1987 to provide that the general market level of rent is one of the factors to which the Tribunal may have regard in determining whether rent is excessive, and not an overriding factor.*
- *Amend section 48 of the Residential Tenancies Act 1987 to provide that the Consumer Price Index is one of the factors to which the Tribunal may have regard in determining whether rent is excessive.*

1.3 Rights for victims of domestic violence

While the criminal law is clear about condemning domestic violence, New South Wales tenancy law fails victims of domestic violence. The Apprehended Violence Order provisions of Part 15A of the Crimes Act 1900 help give security to victims of domestic violence, but these provisions do not deal with the particular legal problems that arise where a victim of violence and the perpetrator live together in rented premises. The Residential Tenancies Act 1987 fails to give victims of domestic violence the options they need to get away from the perpetrators of violence and get on with their lives.

Under the current law, where victim and perpetrator are co-tenants and the victim is forced to flee their home, the victim remains liable for any damage or rent arrears caused by the perpetrator until the end of the tenancy. Furthermore, the victim has no clear rights to end the tenancy. Many victims of violence who have sought orders of the Consumer, Trader and Tenancy Tribunal to end their tenancies have had their applications dismissed because the perpetrators of violence did not authorise the making of the application.

In other cases, where a victim of domestic violence lives in premises rented in the name of the perpetrator, the victim's own tenancy status is unclear. They may be a sub-tenant, with some tenancy rights against the head tenant; they may be a lodger or licensee without enforceable rights. In either case, the victim has no right under the current law to apply to the Consumer, Trader and Tenancy Tribunal for recognition as a tenant unless the perpetrator has moved out, either voluntarily or by force of an additional exclusion order under an Apprehended Domestic Violence Order.

In 1999, a Bill for inserting domestic violence provisions in the Residential Tenancies Act 1987 was moved in the Legislative Council, but was unsupported by the Labor Government and was lost. Labor's Minister for Women stated that domestic violence should be dealt with through the criminal law. Indeed it should – and the law should recognise that victims of domestic violence may also need to end or change tenancy agreements in order to secure their safety.

Policy recommendations

- *Amend the Residential Tenancies Act to provide that a co-tenant who is or is likely to be the victim of domestic violence may apply to the Consumer, Trader and Tenancy Tribunal for an order terminating the tenancy, or an order terminating the tenancy and vesting a tenancy in the applicant's name only.*
- *Amend the Residential Tenancies Act to provide that a person in a domestic relationship with the tenant, and who is or is likely to be the victim of domestic violence, may apply to the Consumer, Trader and Tenancy Tribunal for an order terminating the tenancy and vesting a tenancy in the applicant's name only.*
- *Amend the Residential Tenancies Act to prohibit the Consumer, Trader and Tenancy Tribunal from conciliating matters involving domestic violence.*

1.4 Resolution of share housing and co-tenancy disputes

More than 250 000 people in New South Wales live in share housing, and many more will have had an experience of sharing house at some stage during their lives. When one considers also the number of couples who rent and are co-tenants, co-tenancies and share-housing arrangements dominate the rental housing system.

For many people, share housing and co-tenancy is uncomplicated and positive, but when relationships between occupants deteriorate or end, the current law does little to provide solutions. Co-tenants cannot seek to have disputes arising from the co-tenancy – for example, apportionment of rent arrears – resolved by the Consumer, Trader and Tenancy Tribunal. Instead, co-tenants must take matters in dispute through the courts. Also, a co-tenant who is moving out has no clear right to take steps to end their liability under a co-tenancy, even after the fixed term of the tenancy has expired.

Policy recommendations

- *Amend section 69 of the Residential Tenancies Act to allow one co-tenant to make application to the Consumer, Trader and Tenancy Tribunal for an order terminating the tenancy. The Consumer, Trader and Tenancy Tribunal should not make an order unless it is satisfied that all co-tenants have been notified of the order and, having regard to the circumstances of the case, it is reasonable to make such an order. Orders may either terminate the tenancy all together, or remove one or more co-tenants from their obligations under the residential tenancy agreement, and may include orders for compensation.*
- *Amend the Residential Tenancies Act to give the Consumer, Trader and Tenancy Tribunal jurisdiction to hear disputes between co-tenants relating to the tenancy. This includes disputes relating to the apportionment of bonds and rent arrears, and termination of the tenancy.*
- *Amend the Residential Tenancies Act and the Residential Tenancies (Residential Premises) Regulation 1995 to create a Shared Tenancy Agreement as a standard form of residential tenancy agreement.*
- *Amend the Residential Tenancies Act to provide that landlords may not unreasonably withhold their permission for a tenant to sub-let or assign a tenancy.*

1.5 Rights for tenants whose goods are unlawfully destroyed or disposed of at the end of their tenancies

When a tenancy ends, goods belonging to the tenant often remain uncollected, but not abandoned, at the premises. This is especially so when the tenancy has ended suddenly, such as through eviction. The Residential Tenancies Act, and the Residential Tenancies (Residential Premises) Regulation, set out the law as it relates to these goods, providing former tenants with a right to have their goods stored and returned to them, and former landlords with a procedure for lawfully dealing with the goods.

However, where landlords break the law, and unlawfully destroy or dispose of tenants' uncollected goods, the Residential Tenancies Act fails. The Act does not provide means of enforcing its provisions for uncollected goods. It does not provide a penalty for former landlords who unlawfully destroy or dispose of their former tenants' goods. Nor does it provide the Consumer, Trader and Tenancy Tribunal with the power to order landlords to compensate tenants whose goods have been unlawfully disposed of at the end of their tenancies.

Under the current law, the only course available to tenants whose goods have been unlawfully destroyed or disposed of by their landlord is to take action through the courts. Such a course of action is expensive and time consuming for both parties – and usually prohibitively expensive for tenants – and contrary to the scheme of quick, accessible dispute resolution provided by the Consumer, Trader and Tenancy Tribunal Act.

In a recent decision, the Consumer, Trader and Tenancy Tribunal criticised the uncollected goods provisions of the Residential Tenancies Act, noting:

‘Frankly, other than providing some useful guidelines for a bailment claim there appears to be no work for those regulations at all.

‘This is clearly an unsatisfactory situation...’

The Residential Tenancies Act also makes poor provision for uncollected goods that have minimal economic value but which are personally very valuable, such as photographs and personal papers. As the law currently stands, where the cost of storing goods is higher than their economic value the goods need not be stored and after two working days may be destroyed – with potentially devastating effect on their owner.

Policy recommendations

- *Amend section 79A of the Residential Tenancies Act to allow a former tenant to make application to the Consumer, Trader and Tenancy Tribunal for an order that the former landlord pay compensation for losses incurred by the tenant as a result of the landlord dealing with the tenant's uncollected goods other than as provided by the Act or an order of the Tribunal.*
- *Amend section 79A of the Residential Tenancies Act to provide that goods which are personal effects be stored safely for a period of not less than 6 months. This includes personal papers, photographs, tools of trade, jewellery, clothing and therapeutic furniture and appliances.*

2 LEGISLATED RIGHTS FOR BOARDERS AND LODGERS

No other New South Wales householders are as systematically disadvantaged as boarders and lodgers. No other area of the law is in more pressing need of reform that regarding boarders and lodgers.

No economic power... Boarders and lodgers are an economically vulnerable group in a highly pressurised sector of the rental housing system. Many boarders and lodgers are elderly; many have physical, intellectual or psychiatric disabilities; most rely for their income on Centrelink payments. Many boarders and lodgers put up with poor amenities, and the presence of the landlord or boarding house manager on site too often means invasions of their privacy, sudden withdrawals of facilities, and conflict. Boarding house vacancies, however, are few. A decade of significant losses of boarding house accommodation through redevelopment, and the addition of more and more people looking for accommodation in the sector because of deinstitutionalisation, has made the boarding house sector a very tight market, in which boarders and lodgers are consumers with negligible market power.

...and no legal rights. In terms of their legal rights, the current law fails boarders and lodgers utterly.

Boarders and lodgers are expressly excluded from the Residential Tenancies Act. Boarders and lodgers have no protection against unfair terminations – usually a week’s notice is legally sufficient, depending on the terms of the licence – and no effective protections against evictions without any notice. They have no effective protections against arbitrary rent increases, withdrawals of facilities or invasions of their privacy. They are still required to pay charges like key money, long recognised as exploitative and prohibited in the residential tenancy market, and their landlords cannot be held effectively to account for bond and rent payments. Boarders and lodgers have no way of requiring their landlords to make even basic repairs and maintenance, and cannot take disputes to the Consumer, Trader and Tenancy Tribunal.

A history of failing boarders and lodgers. Successive governments have long been aware of the need for law reform, but have failed to provide legislated rights for boarders and lodgers. In 1991-92, the Coalition Government introduced a Boarding Houses and Lodging Houses Bill but it failed to secure basic protections against arbitrary evictions. When the Labor Opposition and the cross benches proposed amendments to improve the legislation, the Government allowed the Bill to lapse. Since Labor took office in 1995, it has introduced no legislation providing rights for boarders and lodgers. A working party of the Department of Fair Trading was established in 1998 to investigate the need for law reform; its report still has not been released.

The Tenants’ Union, particularly through the Boarders and Lodgers Action Group, has long drawn attention to the injustice experienced by boarders and lodgers, and made proposals for fair legislation. Legislated rights for boarders and lodgers have also been recommended by the New South Wales Tenancy Commissioner (1990), consultants to the Commonwealth Department of Housing and Regional Development (1995), and the Legal Aid Commission of NSW (1998). In 2000, over 70 non-government organisations endorsed the Boarders and Lodgers Action Group’s call for law reform, including the New South Wales Council of Social Service, Shelter NSW, the Combined Community Legal Centres of NSW, the Combined Pensioners and

Superannuants Association, People With Disabilities NSW, the Mental Health Coordinating Council, the Uniting Church and Mission Australia. Since 1990, the parliaments of Victoria, South Australia and Queensland have passed legislation giving some rights to boarders and/or lodgers.

Law reform for boarders and lodgers in New South Wales is long overdue. No party in New South Wales can claim that it has a just housing policy until it supports legislated rights for boarders and lodgers.

Policy recommendations

- *Pass a Boarders Act, based on the Residential Tenancies Act, providing boarders and lodgers with a regime of rights and responsibilities similar to those of other New South Wales tenants.*
- *Provide, under a Boarders Act, a standard form of boarding agreement, including a statement of each party's respective rights and responsibilities.*
- *Provide, under a Boarders Act, for proceedings for the termination of boarding agreements and evictions to go through the Consumer, Trader and Tenancy Tribunal.*
- *Provide, under a Boarders Act, protection for boarders' and lodgers' privacy and rights of access to rooms.*
- *Provide, under a Boarders Act, regulation of house rules.*
- *Limit, under a Boarders Act, rental bonds under boarding agreements to no more than the equivalent of one week's rent, and provide that bonds must be lodged with the Rental Bond Board.*
- *Provide, under a Boarders Act, the Consumer, Trader and Tenancy Tribunal with jurisdiction to determine disputes arising from boarding agreements.*

3 LEGISLATION AGAINST TENANT DATABASES

Tenant databases, also known as ‘bad tenant databases’ and ‘blacklists’, first started operating in New South Wales in the late 1980s and early 1990s. Since then, tenant database operators have, on their own estimations, collected personal information about hundreds of thousands of tenants, for dissemination to real estate agents, landlord, park operators and numerous otherwise unrelated businesses, including video operators and mercantile agents. Throughout that time tenant databases have proved to be a massively abusive presence in the rental housing system.

Tenant databases have a two-fold impact for tenants. First, tenant databases have a general impact affecting all tenants. Secondly, tenant databases have a specific and severe impact on the individuals they list.

Threatening all tenants – ‘good’ and ‘bad’. Real estate agents and landlords can and do collect personal information from all their tenants. In the context of a rental market in which tenant databases operate, this information becomes a potential weapon, apt to be given to a tenant database and effectively used against the tenant who provided it. This implicit threat applies to all tenants – so-called ‘good’ and ‘bad’ alike. It stands for the duration of the tenancy and after. Most tenants will think twice about entering into any dispute – even to assert their rights where the landlord is in breach of the agreement – when this threat is hanging over them. The presence of databases in the rental housing system has the general effect of discouraging tenants from asserting their rights as consumers. As consumer protection legislation, the Residential Tenancies Act is undermined by tenant databases.

The injustice of being listed. The Tenants’ Union and Tenants Advice and Advocacy Service have recorded hundreds of instances in which tenants have been listed for reasons that are trivial, out-of-date, unsubstantiated, incorrect or just plain retaliatory.

The consequences of being listed can be devastating. A listing can effectively exclude a person from the rental market and make them homeless. This is especially a problem in coastal regions of New South Wales, where in some towns all agents subscribe to the same database. Some tenants who are listed may find accommodation in boarding houses and residential parks, and so add to the pressures on those sectors of the housing system. Of those who find rental accommodation again, many report being asked to sign very short fixed term agreements.

A poor tool for landlords. Tenant databases are riddled with listings of inaccurate, old or trivial information. This is not a credible basis for the assessment of tenancy applications, and landlords and agents who use tenant databases to vet applications are simply not getting a reliable service. Tenant databases are a poor risk management tool. They are truly effective only as a means of threatening and exacting retribution on tenants.

Landlords have recognised the need to regulate tenant databases. In May 2001, the Property Service Advisory Council, comprising representatives from the real estate industry, property owners’ groups, and the Tenants’ Union, made recommendations to the Minister for Fair Trading for a legislative regime regulating tenant databases and giving the Consumer, Trader and Tenancy Tribunal power to deal with tenant database disputes. The Minister welcomed and commended the recommendations, but the Government still has yet to act.

The need for tenant database legislation. The activities of tenant databases have, until recently, been almost entirely unregulated. Under the recent Private Sector Amendments to the Privacy Act 1988 (Commonwealth), some parts of that Act now apply to tenant database operators. It does not, however, deal with the main problems caused by tenant databases. There remains no State-level regulation of tenant databases.

The central objective of the Privacy Act is to prevent information collected for one purpose being used for another; it is not directed at why databases list tenants. The Privacy Act does not address the general, pervasive threat of listing, nor does it address the listing of information that is trivial, out-of-date, unrelated to breach of a tenancy agreement, or unsubstantiated by Tribunal proceedings. Also, the complaints investigations procedures set up by the Office of the Federal Privacy Commissioner are not quick or accessible enough for complaints about tenant databases. This is particularly so when a listing is preventing a person from being housed.

The negative impacts of tenant databases are pervasive and severe and the appropriate course of legislative action is to prohibit them. If governments are to continue to allow tenant databases to operate, they must legislate for database regulation, to achieve at least the following:

- Restrict the type of information that can be collected by landlords from applicants for a tenancy, and prohibit landlords from making the assessment of an application conditional upon the applicant consenting to any release of their information to a tenant database operator.
- Provide that a person may be listed on a tenant database only for breaches, as prescribed, and subject of orders of the Consumer, Trader and Tenancy Tribunal.
- Provide that where a person is listed on a tenant database, that the person must be informed of the listing and its contents at the time the listing is made, and whenever a tenancy application by that person is declined.
- Provide that a person may at any time require a tenant database operator to provide them with a copy of a database listing pertaining to them, at no charge.
- Provide that tenant database operators must maintain a complaints procedure of a prescribed standard.
- Provide that on the application of a person who has been listed on a tenant database, the Consumer, Trader and Tenancy Tribunal may make an order for the removal or amendment of a listing, and for the payment of compensation. Applications should be able to be made where the tenant is not satisfied with the outcome of their complaint under the prescribed process, or where the tenant claims that the tenant database operator is in breach of the prescribed process, or where the matter is urgent.
- Provide for penalties for breach of the provisions of the Act. Penalties should be imposed on the listing member, the refusing member, or the tenant database operator, depending on the circumstances.

An end to tenant databases. Ultimately, parties must recognise that tenant databases do not have a valid place in the New South Wales rental housing system. Housing is

an essential need, and the provision of rental accommodation is an essential service. No other essential service is refused to consumers on the basis on the unsubstantiated allegations of a previous service provider. In no other market for an essential service is consumer protection legislation so comprehensively undermined by the threat that a consumer's identity may, at any time, be marked by an allegation of wrong-doing and disseminated throughout the market. Tenant databases are an abuse that should be prohibited by law.

Policy recommendation

- *Prohibit the use and operation of tenant databases.*

4 GROWTH AND ENHANCEMENT OF AFFORDABLE HOUSING, INCLUDING SOCIAL HOUSING

The cost of housing is a basic concern for all households, and especially for those who are renting. In the prevailing context of housing costs increasing relative to incomes, and of increasing numbers of households in ‘housing stress’, policies for affordable housing must be a priority for governments.

In developing and implementing a State Housing plan, the central, necessary role of social housing must be acknowledged. After withering cuts in Commonwealth-State Housing Agreement funding – more than 20 per cent over the last ten years¹ – a heavy investment in social housing is needed to return the sector to a sustainable condition.

As well as growing social housing, it is also time to expand the Department of Housing’s very tight eligibility criteria and repeal recent harsh, punitive policies. The Department also needs to improve the way it approaches the question of redeveloping its estates.

The crisis in affordability. Where a household spends more than 30 per cent of its income on housing costs, that household is said to be in housing stress and their housing unaffordable. Housing stress is not just a problem isolated in the inner suburbs of Sydney. Current research by Bill Randolph and Darren Holloway of the University of Western Sydney shows that households living in housing stress are spread throughout Sydney. In fact, Blacktown, Fairfield and Canterbury top the list of local government areas with the greatest number of households in rental stress, and Wyong and Gosford are ranked 6th and 7th.² Tenants advocates also report that rental markets in many regional centres are also very tight, and that as a consequence many regional tenants are paying unaffordable rents.

Amending the rent increase provisions of the Residential Tenancies Act (discussed at Priority 1.2, above) will help in individual cases, but a more comprehensive approach, cutting across the range of government activities, is also needed. The use of the planning system is crucial to the retention and creation of more affordable housing in the housing system generally. New South Wales needs an Affordable Housing State Environmental Planning Policy that mandates all local government authorities to plan for affordable housing and require, as a condition of development, that developers contribute dwellings, land, or money to affordable housing programs. The planning system also has a role to play in retaining the affordable, permanent accommodation provided by residential parks (as discussed in Priority 5, below).

Important as the use of the planning system is, however, it is not sufficient. As Randolph and Holloway note, planning mechanisms promise to be effective where returns on developments are high, but may have little leverage in other areas. The provision of affordable housing, in the necessary volume and in all the places where it is needed, will require diverse programs across a range of areas of government policy. New South Wales needs a comprehensive State Housing Plan that can coordinate government actions to delivering better, more affordable housing.

Grow social housing. A growing, sustainable stock of social housing is the necessary basis on which policies for affordable private housing can be built. This means

¹ Productivity Commission (2003) ‘Report on Government Services 2003’: 16.6.

² Bill Randolph and Darren Holloway (2002) ‘The Anatomy of Housing Stress in Sydney’ *Urban Policy and Research*, vol 20 no 4: 329-355.

investment by governments in the existing social housing system, as well as new affordable housing programs.

NCOSS and Shelter NSW estimate that the New South Wales needs, over the next ten years, to double the proportion of social housing, to address the needs of those people on the waiting list and generate rent revenues to sustain the system.

Both Federal and State governments must increase their commitment to the capital funding of social housing. At present, the Commonwealth-State Housing Agreement is being renegotiated, and the first offer put by the Commonwealth Government is plainly inadequate. The Tenants' Union supports attempts by the State Government to secure better funding for social housing from the Commonwealth through the CSHA. It is not enough, however, for the State Government only to call on the Commonwealth to do more – the State Government itself must increase its investment in affordable housing and social housing.

As housing prices have boomed, so have State Government receipts from tax and stamp duties. In other words, the housing inflation that has made home-ownership and rental housing unaffordable for thousands of New South Wales households has been a windfall for the State Government. These revenues should be directed to affordable housing and social housing programs.

Bring public housing back from the margins. About 130 000 New South Wales households live in public housing – that is, as tenants of the Department of Housing.³ The combination of extremely tight income eligibility criteria, and an increase in application from people with high and often unmet support needs, has placed public housing neighbourhoods under great stress. Approaches to tenancy management that emphasise 'getting tough' on tenants and eroding their tenancy rights only further pressurise and marginalise public housing tenants.

In 2002 the Department of Housing implemented a 'renewable tenancies' policy and announced the introduction of rental bonds for public housing tenancies. Both policies are unfair and damaging for public housing tenants.

The renewable tenancies policy erodes the security of tenure that public housing tenants have previously had and that all tenants ought to be able to expect. Under the renewable tenancies policy, new public housing tenants are required to sign a series of fixed term tenancies, and are subject to review at the end of each fixed term. If they fail a review, the Department may serve the tenant with a 'no grounds' notice of termination. The Department's review criteria are vague, and the information that tenants receive about their rights is misleading. The Tenants' Union is concerned that under the policy, tenants will be pressured into giving up their tenancies when they have a right to continue. We are also concerned that the policy will most affect those tenants who are already the most marginalised, such as Aboriginal people and people with mental illnesses. The policy fails to deliver on the Department of Housing's obligations as a social housing provider.

The introduction of rental bonds for public housing has been announced for early 2003. Under this policy it is proposed that new public housing tenants must pay a bond based on market rents (not the actual rebated rent the tenant pays) at the start of

³ In addition to those in *public housing*, a further 11 800 New South Wales households live in *community housing* (that is, their landlord is a community organisation), and almost 4 000 in dwellings owned by the Aboriginal Housing Office. Altogether, about 146 000 households live in *social housing* in New South Wales (Department of Housing NSW, *Annual Report 2001-2002*).

the tenancy or in instalments over the term of the tenancy. For a single person receiving a Centrelink payment, they could be paying these additional instalments for up to 20 months. Rental bonds for public housing increase the cost of housing for people least able to pay, and will increase rent arrears.

Both the renewable tenancies and rental bonds policies should be dropped.

Redevelopments. In 2002, the Department of Housing announced major redevelopments of two of its estates. One of those proposed redevelopments, at the historic Erskineville Estate, was unanimously opposed by local residents, and the Department of Housing has since decided not to go ahead. The other redevelopment, at Minto, is continuing. While tenants there do not oppose outright a redevelopment, they are concerned at the very poor condition into which the Department has allowed the estate to decline, and at the uncertainty hanging over their tenancies.

In both cases, the processes followed by the Department have left tenants unconsulted, uninformed and unnecessarily anxious for the future of their housing. A more sensitive approach to the redevelopment of public housing estates is needed, starting with consultations with tenants on the need to redevelop in the first place.

Policy recommendations

- *Implement a comprehensive State Housing Plan, including an Affordable Housing State Environmental Planning Policy.*
- *Increase, over the next ten years, the stock of social housing to double its current proportion, and broaden the Department of Housing's income eligibility criteria.*
- *Repeal the Department of Housing's renewable tenancies and rental bonds policies.*
- *Implement a policy on public housing redevelopments, including protocols for consultation with tenants at all stages of the redevelopment process. This includes consulting with tenants as to whether there is a need to redevelop a particular site at all. The policy itself should be developed in consultation with public housing tenants and non-government peak housing organizations, such as the Tenants' Union, Shelter NSW, and NCOSS.*

5 RETENTION OF ACCOMMODATION ON RESIDENTIAL PARKS

Residential parks play an important role in the New South Wales housing system. All parties must recognise this role, and the need to address problems that are faced by park residents.

Up to 50 000 people in New South Wales live permanently in caravans and manufactured homes on residential parks. Increasing numbers of these residents are faced with losing their housing. In recent years, many parks have closed, and more are set to close. The Park and Village Service, a member service of the Tenants' Union, is monitoring park closures and projects the following losses of housing through closures over the next 12 to 18 months⁴:

<i>Sydney Region</i>	<i>loss of accommodation for 2 000 persons</i>
<i>Hunter Region</i>	<i>loss of accommodation for 270 persons</i>
<i>Central Coast</i>	<i>loss of accommodation for 240 persons</i>
<i>Northern Rivers/North Coast</i>	<i>loss of accommodation for 200 persons</i>

In addition, in other parks permanent accommodation is being lost as parks change their permanent sites to tourist use, and affordable accommodation is being lost as parks make way for expensive manufactured homes by removing their vans.

'Owner-renters'. Park residents ought to be able to enjoy greater security in their homes. Many park residents own their home, and rent the site on which it is located. Most of these residents are retirees, and have invested their life's savings in their homes. They cannot easily move between tenures in the housing system. Most cannot easily move between different parks: the up-front costs of relocation are up to \$12000.

The provisions of the Residential Parks Act 1998 regarding compensation for these costs are defective. Under the Act, residents can seek compensation for these costs only after they have relocated (and paid up-front); otherwise they must wait until the park owner has applied to the Consumer, Trader and Tenancy Tribunal for orders to evict them. The first course of action is financially impossible for most residents and, by the time the park owner applies the Tribunal, residents often find that few realistic sites for relocation remain. Under the current law, park residents who have to relocate their home cannot get compensation at the time when they actually need the money.

Relocation also exacts a social and emotional cost. Park residents often form tight-knit communities on which they depend for support.

'Renter-renters'. Many other park residents rent both their van and their site. Many of these residents have been excluded from the private rental market, either by the high cost of renting or because of a listing on a tenant database. Some have accessed park accommodation because of a crisis in their lives – many of these residents having been referred to the park by the Department of Housing. For these residents, loss of accommodation on parks can mean being homeless.

⁴ Parks and Villages Service (2002) *No Place for Home: the loss of permanent accommodation on NSW residential parks 2002*, CPSA, Sydney.

The retention and enhancement of permanent accommodation on parks should be a priority for all parties. It requires action by the whole of government as part of a State Housing Plan, including amendment of the Residential Parks Act, funding of local services, and the development and implementation of new planning instruments.

Policy recommendations

- *Amend the Residential Parks Act to allow residents who are entitled to compensation for the costs of relocation to apply to the Consumer, Trader and Tenancy Tribunal for orders that these costs be paid before, rather than after, a relocation.*
- *Implement a State Environmental Planning Policy, as a part of a State Housing Plan, to retain parks as a provider of permanent, affordable accommodation.*
- *Establish minimum standards for park accommodation, and monitor compliance.*
- *Establish a program of funding for local services to assist residents in the event of a park closure.*