



Council of Social Service of New South Wales

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The Principal Policy Officer
Residential Tenancies Bill 2009
Fair Trading Policy Division
NSW Fair Trading
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Dear Sir or Madam

As the peak body for the non government community services sector in NSW, NCOSS welcomes this opportunity to comment on the draft Residential Tenancies Bill 2009.

NCOSS contributed to the Government's previous reviews of the *Residential Tenancies Act 1987* in 2005 and 2007. Those reviews identified a considerable number of deficiencies with the current legislation.

We recognise that the current draft Bill is the first attempt to conduct a comprehensive rewrite of the Act since it came into force more than 20 years ago. NCOSS considers that the draft Bill, if enacted, would substantially improve the current law and we would urge the Government to ensure that the final Bill when approved by cabinet is considered by the Parliament in the first half of next year.

We note below particular changes that are welcome, and then identify some omissions and weaknesses that warrant further consideration by the Government.

Tenancy databases

NGOs working with people who are homeless, or who have other complex needs, have frequently expressed concern at the implications of an adverse listing on a tenancy database. It is clear that the current legislation dealing with this issue, whilst introduced with the best of intentions, has proven to be ineffectual. This is largely because it relates to the licensing of real estate agents and thus does not provide for any effective sanction to be imposed on non-compliant listings made directly by landlords or others.

NCOSS welcomes the inclusion in the draft Bill of provisions that would limit the type of information that can be listed on a database and would set limits on how long such information can be kept. We also strongly endorse the proposal to give the Consumer, Trading and Tenancy Tribunal (CTTT) broad powers to resolve disputes about database listings.

Importantly the reforms in this area will apply to landlords, agents and the operators of databases.

Applications for rent arrears evictions

The draft Bill would enable a landlord to more quickly obtain a Tribunal hearing where the tenant is behind in the payment of rent. Accompanying this is a new *guarantee* that a tenancy can continue where a tenant subsequently pays their rent arrears or where they follow an agreed repayment plan.

NCOSS consider that this proposal fairly balances the rights and obligations of tenants and landlords. It will likely see more tenancies saved and more landlords paid.

Breaking a lease early

The draft Bill would enable tenants to break a lease early without penalty in specified situations, such as where they accept an offer of public housing or need to move into a nursing home. Where these specified grounds do not apply, a landlord would be entitled to impose a 'break fee', of either four or six weeks rent, on tenants who break a lease early. NCOSS considers this to be a reasonable proposal.

Omissions and weaknesses

The draft Bill largely continues the current situation where tenants are at risk of receiving a '*no grounds*' notice of termination. This situation means that renting is an inherently insecure form of housing, with many long-term tenants facing frequent and costly moves from one rented dwelling to another. This is particularly disruptive to tenants who have children in childcare or school education, or who need to live close to carers and treatment and support facilities.

NCOSS notes that the Government's 2007 Discussion Paper (Residential Tenancy Law Reform: A New Direction) indicated that about 40% of tenants have been renting for 10 years or more. Given this NCOSS would prefer to see the legislation specify the grounds on which a termination notice can be given.

The draft Bill does increase the required notice period – from 14 days to 30 days for notices at the end of a fixed term, and otherwise from 60 days to 90 days.

We are also disappointed that the draft Bill does not alter the exclusion of boarders and lodgers from the protection of the Act. NCOSS is particularly concerned at the risks faced by vulnerable people living in privately operated boarding houses.

We note that the recent Affordable Rental Housing State Environmental Planning Policy (SEPP) makes boarding houses permissible in a broader range of locations, which will potentially add to the current problems. Whilst the SEPP does seek to encourage new models of boarding houses, incorporating additional private facilities such as a kitchenette and an ensuite bathroom, these additional facilities are not mandatory. (The SEPP does include mandatory standards for room sizes and requires on-site manager accommodation where there are more than 20 lodgers).

NCOSS recognises that the extension of a standard residential lease to boarding house residents would not be the best way to proceed. Instead we would support the introduction

of a standard form of occupancy agreement that covers all 'marginal' rental housing. The ACT already has a system of occupancy agreements that specifies how agreements may be terminated and how much notice must be given.

The Tenants' Union has suggested that other forms of 'marginal' rental housing that could be governed by occupancy agreements include designated student accommodation, lodgers in private homes, and supported accommodation for homeless people. Residential (caravan) parks are already regulated by the *Residential Parks Act 1998*.

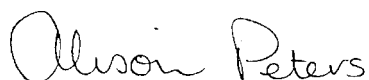
Conclusion

Despite these omissions and weaknesses, NCOSS considers that the draft Bill is a significant advance on the current law. Given the time that has elapsed since the reviews conducted in 2005 and 2007, we would strongly urge the Government to ensure that amending legislation is ready for implementation from the beginning of the 2010-11 financial year.

Finally whilst the draft Bill does not alter the role and level of funding for the 22 organisations that are funded under the Tenants Advice and Advocacy Program (TAAP network), NCOSS wishes to place on record its strong support for the work of these services. We note that in 2008-09 services funded under the Program responded to over 33,000 requests for tenancy advice, and provided ongoing assistance to almost 10,000 tenants.

If you require any clarification of this submission, please do not hesitate to contact Mr Warren Gardiner, Senior Policy Officer, on 02 9211 2599 ext 112 or email warren@ncoss.org.au

Yours faithfully



Alison Peters
Director