



Statutory Review of Residential Tenancies Act 2010
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Submission on the Statutory Review of the Residential Tenancies Act 2010: Discussion Paper – October 2015

The Illawarra Forum operates across the regions of Wollongong, Shellharbour, Kiama and Nowra. We welcome the opportunity to contribute to the discussion into social housing in NSW, as the issue of safe, affordable and secure housing affects the service delivery of most of our member organisations.

This submission has been prepared following consultations with Illawarra Forum members.

About the Illawarra Forum

The Illawarra Forum, established in 1990, is the peak body working for community services and organisations in the Illawarra and the Shoalhaven. It supports community organisations, promotes expertise and innovation in community development, fosters industry development and provides advocacy for social justice. The Illawarra Forum is an independent organisation governed by a committee of management elected annually by the membership.

The Illawarra Forum represents the non-government community services industry in the Illawarra and Shoalhaven, which consists of approximately 300 organisations which provide support to vulnerable people across the region including:

- Social housing providers
- Homelessness services
- Home and community care services
- People with disability
- Individuals and families with multiple layers of social and financial disadvantage
- Victims of domestic violence and sexual assault
- Youth work programs
- Community health services, including mental health and drug/alcohol services
- Community legal centre services
- Community development and community capacity building programs.

Through our role as the Voice, Influence and Leader of the community services industry, the Illawarra Forum has worked to improve housing security and availability in the region. Activities include The Illawarra Forum has worked to improve housing security and availability in the region. Activities include

- Submission to NSW Legislative Council Select Committee on Social Public and Affordable Housing in 2014, and subsequently appearing as witnesses to the Inquiry
- Submission to Department of Family and Community Services on Social Housing in NSW: A discussion paper for input and comment
- Participation in the Social and Affordable Housing Fund Consultations
- Lobbying and advocacy around the Residential Tenancies and Housing Legislation Amendment (Public Housing - Antisocial Behaviour) Bill 2015
- Issues Paper on Homelessness (Illawarra Forum, 2012)
- Establishment of a Social Housing Forum through the South East/Illawarra Tenant Participation Resource Service
- Training for generalist NGOs on housing strategies
- Hosting of a Housing Pathways Forum for community workers.

General Comments

The Illawarra Forum welcomes the review of the Residential Tenancies Act 2010 and its aims to strike the balance between the interest of landlords and the interest of tenants.

Homelessness and the lack of affordable housing is regularly reported by our members as the most significant issue impacting vulnerable communities in the Illawarra. Homelessness impacts on the work of our members, as having a safe, stable and affordable place to live is fundamental before other issues such as mental illness, domestic or family violence, substance abuse, or unemployment can be addressed.

Rental affordability in this region is a major issue, and there are minimal properties available which would be affordable to those members of our community who earn the least income – Commonwealth benefit recipients and minimum wage earners. The lack of affordable rental properties has a huge impact on the cost of rent and while market values dictate the cost of rent, the income of potential tenants is never taken into account.

The Anglicare Australia 2014 Rental Affordability Snapshot indicates that in the Illawarra, Shoalhaven, and Southern Highlands, only between 4% and 5% of all available rental properties could be classified as affordable to the cohort of minimal income earners. For example, only 199 properties out of 1037 available were affordable and appropriate for families with more than one child¹

¹ Anglicare Australia 2014 Rental Affordability Snapshot
http://www.anglicare.asn.au/site/rental_affordability_snapshot.php

The lack of appropriate private tenancies means that competition for properties is intense, and the most vulnerable people, including those on Commonwealth benefits, will be less likely to obtain appropriate private rental properties.

In addition, many of the affordable properties have major issues of transport accessibility, being located in outlying areas which are difficult to access by public transport.

The Illawarra Forum recommends the implementation of incentives for Landlords to rent out their property as social and affordable housing. A government register recommending landlords who are prepared to rent to social tenants could be developed and promoted. The register could award the landlords a star rating and a guaranteed flow of income for their property. This would include lobbying for a new negative gearing structure which includes a higher rates of negative gearing for property rented as social housing tenants and affordable housing with a downward sliding scale for landlords who charge full commercial rent.

While 'gazumping' is more common in property sales, there is anecdotal evidence that it also occurs in the rental market. Because of the quick turnaround required at the end of a lease agreement, tenants undergo significant stress searching for a home before they have to be out of their current rental. 'Gazumping' is an added stress factor which needs to be addressed through legislation.

Recommendations:

- **Introduce incentives for landlords to rent at a fair and just rate e.g. Government register and 'star rating' system**
- **Lobby for amendments to negative gearing to incentivise rental to social housing tenants**
- **Legislation to address 'gazumping' in the rental market**

Current Regulatory Framework

While the aims and objectives of the Act as outlined are still valid, we recommend defining 'suitable' in clearer terms, outlining criteria by which suitability could be measured

Accommodation Services in the Sharing Economy

The Illawarra Forum recommends that if legislation is developed in the short term renting economy where the intent of use of property is outlined clearly, then it does not need to be included in the Residential Tenancies Act. However for guest houses or boarding houses which often become a longer term solution for people who are searching for rental accommodation and in essence serve as transition housing, provisions must be included to ensure the safety and security of the tenants, especially families with young children.

Recommendations:

- **Development of separate, appropriate legislation for the short term renting economy**
- **Include a provision for guest houses/boarding houses**

Starting a Tenancy

The Illawarra Forum is satisfied that the standard tenancy agreement is fair but requires an additional clause to protect the tenant in the event that a contract is drawn up to sell the house within 90 days of the lease being signed.

The condition report should be amended to include 'smell'. For example, the property may be lying vacant for some time and there may be a smell when potential tenants initially view and move into the property which disappears after the windows are open and people have been living in the property for a period of time. However, there can be instances where the smell does not disappear e.g. mouldy carpet etc. and then the tenant is held responsible for it at a later date. It would be very useful to have a field in the condition report where this can be noted by the tenant in the first instance.

We further recommend that the period of time in which to return a condition report is extended to **7 working days** as opposed to 7 days.

We also recommend that, where relevant, strata by-laws be provided with the tenancy agreement upon lease signing and that this should also be included in the 'New Tenant Checklist'.

We do not agree that information on existing mortgages over the property should be disclosed. It is vital, however, that landlords disclose information on any leaking taps, pipes, pools etc. unless water usage is included in the rent.

It may be worth exploring the idea of an independent certifying body which assesses the energy and utility rating of a property. Precedence for such a body is established internationally e.g. Ireland where a Building Energy Rating Certificate is compulsory for all homes offered for sale or rent². This could be expanded in Australia to include water usage.

Recommendations

- **A 'break fee' and extended notice in the tenancy agreement in the event that a contract is drawn up to sell the house within 90 days of the lease being signed.**
- **Insert a section in the condition report for 'smell' in a property**
- **Compulsory provision of strata by-laws with the tenancy agreement**

² http://www.seai.ie/Your_Building/BER

- **Introduce independent certification for the energy and utility rating of a home and compulsory independent certification on energy and utilities for all homes offered for rent**
- **Extend the period of time to return a condition report from 7 days to 7 working days**

Length of Tenancy Agreements

The Illawarra Forum is strongly supportive of longer term leases that benefit both the tenant and landlord. There are many incentives that would encourage the use of longer term leases for both tenants and landlords.

Recommendations

Incentives for tenants

- **Condition of property** - a tenant would be more likely to sign a longer term lease if kitchens, bathrooms and appliances were regularly updated. The property should also be clean and secure.
- **Maintenance contract** – Landlords could agree to do preventative and routine maintenance on an annual basis, tied in with inspections and also commit to prompt attention to maintenance issues as they arise
- **Cheaper rent for longevity of tenure** – Landlords offer reduced rent for longer term leases
- **Personal touches** – If landlords permit tenants to make cosmetic changes e.g. paint in a colour of their choice, hang photos and art, and add some personal touches, they would be more likely to sign a long term lease and make it a home
- **Break fee** – Tenants would be encouraged to sign longer term leases if the break fee is not prohibitive if they break the lease

Incentives for Landlords

- **Care of property** – Landlords may be open to longer term leases if they have assurances that the property will be cared for adequately. This could be ascertained pre-signing by references from previous landlords
- **Consistent rent** – Landlords could be enticed by the consistent income from rent with no breaks between tenants
- **Cost of changing tenants** – Landlords would save on agent fees, end of property maintenance etc. if they had a long term tenant
- **Negative gearing** – Landlords would support longer term leases if negative gearing was structured to incentivise longer term leases lower rents.

Rental Bonds

The Illawarra Forum agrees that the maximum bond of 4 weeks rent is appropriate. We believe strongly, however, given the growing surplus that currently stands at approximately \$66 million, the interest generated should be used:

- A larger percentage should go back to the tenant when they claim a refund on their bond;
- Advice, advocacy and support services for tenants should be resourced adequately;
- In light of the current housing crisis, the surplus could be used to build more social and affordable housing stock.

Moving homes for tenants can be a very expensive process. We recommend the development of a method to transfer bonds from one property to another if there is no contest. For people who are struggling to find the money for a new bond, a no interest bond loan through NSW Housing would be a beneficial to both the tenant and the landlord as it would allow for shorter time periods between tenants.

Recommendations

- **Return a higher percentage when a tenant claims a refund on their bond**
- **Adequately resource advice, advocacy and frontline service for tenants**
- **Build more social and affordable housing stock**
- **Enable transfer of bonds from between properties when tenants move**
- **Offer no interest bond loans to tenants**

Rent and other charges

The Illawarra Forum believes that rent should not be raised more than once a year, and should be no more than the Consumer Price Index. This should apply to periodic as well as fixed term leases. This type of rent control should be incorporated into legislation as in other jurisdictions i.e. San Francisco, CA, USA where the current allowable annual increase amount is 1.6% in line with the CPI for urban consumers in that area³

We do not recommend the introduction of late fees for rent owing as this will push already vulnerable tenants into spiralling poverty. The NSW Civil and Administrative Tribunal and other tenancy support organisations could liaise with the landlord and assist the tenants in setting up a payment plan to get them back on track.

The split incentive issue could be addressed in the residential tenancy market through longer term leases as outlined previously in this document

The aforementioned compulsory independent certification on energy and utilities for all homes offered for rent would encourage landlords to improve energy and water efficiency; and longer term leases and low interest loans might encourage tenants to invest in further environmental efficiencies e.g. a rain water tank for the property. In such cases, landlords and tenants could share cost i.e. the landlord pays for the tank and the tenant pays to have it installed.

The number of inspections of a premises per year should be reassessed if there is proof the

³ <http://sfrb.org/node/3301>

tenant is trustworthy and there has never been any issues with maintenance and cleanliness in the past. There should be provisions in the Act to ensure that no photos or videos of tenants' personal property are used to advertise the premises for sale or lease

The Illawarra Forum has concerns for the protection of sub or co-tenants in the case of domestic violence. If the perpetrator is named on the lease, then the victim may be disadvantaged and unable to escape a violent situation because they cannot provide a safe home for themselves and children.

As mentioned already in this document, the Illawarra Forum would recommend a clearer definition of 'suitable' in terms of rental accommodation. We would also suggest this in terms of minimum standards and suggest developing criteria by which suitability and standards could be measured

Recommendations

- **Introduce 'rent control' where rent is not raised more than once a year, and any increase is linked to the Consumer Price Index**
- **Establish an energy and rain water scheme with incentives for landlords and tenants**
- **Protect the privacy of tenants by reducing the number of inspections per year for longer term tenants, and preventing photos or videos of personal property being used for the purpose of sale or lease of the property**
- **Ensure that legislation considers the protection of sub or co-tenants in the event of domestic violence**
- **Develop criteria by which minimum standards and suitability can be measured**

Terminations

The Illawarra Forum recommends a 60 days' notice for 'no grounds' termination or in the case of sale of a property. Competition for properties is very high in the current rental market and it can often take longer than 30 days to find somewhere new to live. Thirty days is insufficient time for vulnerable tenants to save for a new bond and the other general costs of moving.

The Illawarra Forum believes that if 'no grounds' termination of tenancy should ever happen, landlords should have to give a reason for terminating a tenancy such as extensive renovations, sale of the house or their intention to move a family member or themselves into the property. Further, there should be proof of claim if tenants are forced to vacate a property for repairs etc. There has to be a clear evidence-based need to vacate a tenant due to maintenance or renovation of a property.

A tenant should be able to terminate a residential agreement without penalty in cases where necessary maintenance has not been completed, or on hardship grounds such as lack of income due to the death of a partner.

The notice period for mortgagee repossession should be 60 days for the tenant, including a 30 day rent-free period to enable them to save for removal costs.

Recommendations

- **'No grounds' termination should not be permitted**
- **60 days' notice for 'no grounds' termination or sale of property and mortgagee repossession**
- **Proof of claim for vacating a property for repairs, maintenance or renovation**
- **No penalty termination for tenants in the event of hardship grounds e.g. job loss or death of partner; or when necessary maintenance is not completed, despite repeated requests**

Resolving Disputes

The current dispute resolution systems operate adequately, but often landlords and tenants wait until an issue escalates before addressing it. We recommend the promotion of Community Justice Centres' mediation services; and that mediation to be compulsory before going to the Tribunal. This could be included in the 'New Tenant Checklist' so that tenants and landlords can approach an issue in a more conciliatory manner.

Recommendation

- **Include information about the NSW Civil and Administrative Tribunal and Community Justice Centres' mediation services on the 'New Tenant Checklist'**
- **Make mediation compulsory before going to Tribunal**

Other Key Issues

The residential tenancy databases raised a number of concerns among members of the Illawarra Forum. Databases should not be run by private and commercially owned entities as it is in their interest to collect and hold information about tenants. These databases should be run by a regulated independent body so that the rights of tenants can be protected in a fair manner, balanced against the rights of the landlord. Members also felt that 3 years is a long time to remain on the database as it could continue to impact unfairly on a person for mistakes of the past. We recommend a review after one year to establish if the original issue has been positively resolved.

The Illawarra Forum recognises that email and SMS are now accepted methods for a number of government departments to communicate with the public. In light of this, we agree that they are acceptable methods of giving notice. However, it is important to request a 'read receipt' or 'acknowledgement of receipt' to reduce any potential disputes. It is also important that the landlord is certain they have the current phone number and email address for the tenant.

Recommendation

- **Establish a regulated independent body to collect and hold tenants' data**
- **Review data after one year to ascertain if tenant's information can be removed for the database**
- **Landlords to request a 'read receipt' or 'acknowledgement of receipt' if giving notice via email or SMS**

Thank you for the opportunity to comment on the review of the Residential Tenancies Act. We would be happy to discuss our comments or recommendations in more detail if required.

We agree to our submission being made publicly available.



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