# Submission on the discussion paper

# ‘Social Housing in NSW’

**Tenants’ Union of NSW**

**February 2015**

## Introduction

### About the Tenants’ Union of NSW

The Tenant’s Union of NSW (TU) is the State’s peak non-government organisation for tenants. We are a specialist community legal centre with our own practice in residential tenancy law, and the primary resource agency for the State-wide network of local Tenants Advice and Advocacy Services (TAASs).

Together the TU and TAASs work a lot with social housing tenants. In 2013-14, the TAASs recorded in excess of 4 500 contacts with social housing tenants, representing 18 per cent of all contacts. Forty per cent of these contacts resulted in a tenants advocate advocating on behalf of the tenant; about one in six resulted in a tenants advocate attending a Tribunal hearing for the tenant.

On the other hand, we work a lot with tenants in private rental housing too, with more than 20 000 contacts in 2013-14. We bring our extensive experience and expertise in relation to both sectors to the present discussion.

### About this submission

This submission is made on out own behalf, and on behalf of the network of TAASs.

We welcome the present discussion of social housing in New South Wales. We are convinced that the discussion must go further, and consider the social housing sector in the context of the wider housing system.

Much gets said about the ‘failings’ of the social housing sector; not nearly enough is said about the failings of the private sector. The private sector fails to provide low- and moderate-income households with sufficient opportunities to own their housing affordably, or to rent their housing affordably and securely. These failings have worsened over the past two decades, as speculation in housing has inflated house prices, and changed the composition of the stock in the rental market to the detriment of low-income tenants.

These failings have contributed to more urgent and persistent demands being made by individual persons on the social housing system; and the speculative inflation of house prices has made the acquisition of additional social housing more expensive, and hence constrained the ability of the social housing sector to respond to the failings of the private sector.

The interrelation of problems in the social housing and private sectors goes deeper, and we will discuss their interrelation throughout the present submission, following the discussion paper’s device of three ‘pillars’. Each of these pillars has, so to speak, footings in the wider housing system, and their coherence and integrity may be undermined by conditions in the wider housing system – and the policy settings of governments that shape those conditions.

As we are convinced that the discussion of social housing must consider its wider housing context, so are we convinced that the NSW State Government’s pending social housing policy must be complemented by a policy for the whole of the housing system.

### About the wider housing system

We briefly note here the salient features of the wider housing system, with a focus on the private rental sector. The owner-occupied sector can be dealt with very briefly: speculation has inflated house prices so much that low-income households have little opportunity to access owner-occupation. According to data compiled by the Centre for Affordable Housing[[1]](#footnote-1), less than 10 per cent of dwellings are currently sold at a price for which low-income households can affordably borrow; that measure, however, takes no account of whether the affordably priced dwelling is appropriate to the household’s size, so the availability of affordable appropriate housing for owner-occupation is considerably worse.

In terms of the ‘pathways’ envisaged by the discussion paper, the private rental sector is the part of the wider housing system most proximate to the social housing sector. However, its operation and outcomes, particularly in terms of affordability and security, are very different from those of the social housing sector.

The 2011 Census counted 219 202 low-income householdsin private rental housing in New South Wales. In terms of affordability, the sector fails them badly. Of these households:

* 78 per cent – 171 563 households – were paying more than 30 per cent of their income in rent; that is, they were in 'housing stress';
* 43 per cent – 94 959 households – were paying more than 50 per cent of their income in rent; that is, they were in 'housing crisis'.[[2]](#footnote-2)

The lived experience of low-income households in the private rental sector is indicated in research by Burke and Pinnegar.[[3]](#footnote-3) Their survey of low-income private tenants found:

* 86 per cent 'worry constantly about [their] financial situation'
* 84 per cent 'don't have enough money set aside to meet unexpected expenses'
* 75 per cent experience a 'constant struggle to pay regular bills'
* 61 per cent say 'costs put stress on household relationships'
* 42 per cent say that their 'children have missed out on school activities such as excursions'
* 26 per cent say that their 'family has sometimes gone without meals'.

Focusing on those in housing stress, they report these additional effects:

* 35 per cent say that their 'children have had to go without adequate health and/or dental care'
* 32 per cent 'sold or pawned personal possessions'
* 28 per cent 'approached a welfare/community/counselling agency for assistance'

These rates are between 50 per cent and 100 per cent higher than the rates for households not in housing stress.

Private rental housing is also insecure, both because of the structure of the market and the state of residential tenancies law. It is structurally insecure because of the predominance of landlords with small-holdings (73 per cent of landlords have an interest in only one property) owned for speculative purposes (67 per cent of landlords operate at a loss).[[4]](#footnote-4) In one study, 26 per cent of landlords sold up and exited within 12 months entering the market; of negatively geared landlords, 50 per cent exited within 12 months.[[5]](#footnote-5) The tenure is legally insecure because residential tenancies law allows landlords to give termination notices without grounds.[[6]](#footnote-6) This gives cover to terminations for bad reasons (for example, retaliation and discrimination), and undermines the willingness of tenants to assert their other legal rights. In our own survey of tenants, 79 per cent of private tenants reported that they had put up with a problem, rather than assert their rights, because they feared adverse consequences.[[7]](#footnote-7)

### Current factors and policy settings shaping the wider housing system

The principal cause of the unaffordability and insecurity of housing in the private sector is rampant speculation in housing, which itself is largely the result of the treatment of housing in the Australian tax system. At both Federal and State level, our tax settings encourage speculation.

Owner-occupied housing is exempt from Federal capital gains tax and from State land tax. This encourages people with money to spare to spend – or borrow and spend – it on their own housing.

The special treatment of owner-occupied housing encourages people to borrow and spend to become landlords too. This is because landlords, while not exempt from capital gains tax or land tax, can sell their rental properties in the inflated owner-occupier market.

The tax treatment of rental housing gives even more encouragement to speculation. First, capital gains are taxed at half the rate of tax on income from rent and work. This encourages landlords to gear up big in pursuit of large capital gains. Most landlords do so to the extent that the cost of their borrowing is more than the rent they receive (negative gearing). Secondly, our tax system allows landlords to deduct the costs of negative gearing from their non-rental income – which means landlords can wear larger losses, push their gearing harder, and spend more.

Over the last fifteen years, the amount of money borrowed and spent on housing has increased hugely – but the amount spent on new housing supply has hardly changed. Instead, all this speculative spending has inflated house prices and priced out many would-be owner-occupiers – so they are renting longer. It has also distorted the shape of the rental market, with more high-value, high-rent stock being brought into the rental sector, and low-cost, low-rent properties dropping out and becoming scarcer – and less cheap.

### Towards a policy for affordable, secure housing

We support generally the proposals of Shelter NSW for a whole-of-government housing policy that gets all sectors of the housing system working towards to provision of affordable, secure housing.

We place particular emphasis on the need for a wider housing policy to address the following areas:

#### Tax reform for affordable housing

Speculation in housing has frustrated would-be owner-occupiers, and been a disaster for low-income households. We should turn our tax settings against housing speculation, to make housing more affordable, and put money to more productive uses.

At the Federal level, the discount on the rate of capital gains tax should be reduced, and the treatment of negative gearing reformed – preferably by allowing rental losses to be deducted only from rental income and capital gains. Consideration should also be given to making very high-value owner-occupied housing subject to capital gains tax.

At the State level, land tax should be reformed. Land tax has many potential advantages – it discourages speculation in land and housing, encourages productive development, is simple to administer and difficult to avoid, and cannot be passed onto tenants – but our present system does not realize all these advantages, because too much land is excluded from the tax base (in particular, land used for primary place of residence, and primary industry), and the rates structure discourages large-scale institutional ownership. Land tax should be reformed to broaden the base, and restructure the rates so that land tax applies progressively according to value per square metre.

#### Tenancy law reform

Residential tenancies law is important consumer protection, but current legislation does not go far enough to properly address the special disadvantage that tenants face as consumers.

New South Wales residential tenancies legislation should be reformed to provide:

* A fairer process where landlords seek termination, so that landlords may give termination notices on reasonable grounds only, and the Tribunal has discretion to decline termination if appropriate in the circumstances of the case.
* A fairer process for determining excessive rent increases, so that landlords bear the onus of proof where an increase is above the CPI.
* Greater freedom of choice, so that tenancy agreements cannot unreasonably restrict tenants keeping pets, making minor alterations and adding members to their households.
* Occupancy agreements for all renters not otherwise covered by residential tenancies legislation.

#### Better funding for tenants services

The TAASs perform a vital service in our housing system: they inform tenants as to their legal rights and responsibilities, help tenants assert their rights, save tenancies at risk and prevent homelessness. TAASs are funded from interest on tenants’ money – primarily bonds lodged with the Rental Bond Board.

Total funding to TAASs has not increased in real terms for over 12 years – despite the number of tenants growing by 25 per cent over that time. This has left TAASs stretched thin. Increasingly, tenants are missing out on the services they need and deserve.

Funding to TAASs should be increased now by $5.2 million per annum. This would restore the real value of funding to the TAASs, and properly provide for an additional Aboriginal TAAS, duty advocates at the Tribunal, and support for older tenants and residential park residents. Going forward, funding for TAASs should grow in line with the number of tenants.

#### A stronger social housing sector

The role of social housing in housing policy should be to provide affordable, secure rental housing for every person not adequately served by the private market, and challenge the private market to better provide for low- and moderate-income households.

Our proposals for strengthening the social housing sector’s performance in this role – in terms of the opportunities it affords tenants; the fairness of its operations; and its sustainability – are made throughout the rest of the present submission. The most fundamental requirement is that the social housing sector must grow everywhere, with new stock built and existing stock maintained – and where there is a question old stock being redeveloped or sold, there must be transparency and consideration of the views of tenants and local communities.

We support the proposal by Shelter NSW that the NSW State Government provide additional funding sufficient to grow the sector by 2 000 dwellings per year for the next 10 years. We also support the proposal by National Shelter that Australian governments establish a national social housing growth fund for the delivery of an additional 200 000 dwellings in social housing and affordable housing programs over 10 years.

Pillar 1: a social housing system that provides opportunity and pathways for client independence

The TU knows many persons who have used their social housing tenancy as an ‘opportunity’: an opportunity to get back into education and training and the labour force; to volunteer in their community; to get children settled in school; to get well. They have been enabled to achieve these things by the relative security and affordability of social housing. Many of them say that they would not have so achieved if they were in private rental housing, and doubt if they could sustain their achievement if they had to rent privately now.

The discussion paper assumes that the ‘opportunities and pathways’ provided the social housing system ought to lead to ‘independence’, which can only be realised in the private sector. This implies that as long as a tenant remains in social housing, she is ‘reliant’ or ‘dependent’ and her achievements are incomplete. We think this disparages both the personal achievements of social housing tenants and the contributions they make to their neighbourhoods and the social housing system, and wrongly attributes to individuals failings of the housing system.

It also misconceives the condition of tenants in the private rental market: as indicated in our introductory discussion of the private rental sector, the prevalent mindset here is stress and worry, not ‘independence’. Despite its emphasis on transitioning tenants out of the social housing sector, the discussion paper does not give sufficient consideration to the private rental sector; in fact, it mentions conditions in the private rental sector only once, when it describes ‘private rental affordability’ as ‘a challenge’ for social housing tenants. We submit that this is to seriously underestimate the failings of the private rental sector.

The discussion paper also does not sufficiently reflect on the fact that policies for effecting ‘transition’ already operate in public housing in New South Wales – that is, the policies for higher rent rates for moderate-income tenants, and reviews of tenancies for continuing eligibility at two, five or ten year periods – and have done for almost 10 years. The experience of these policies has been disastrous for tenants, applicants and the public housing system. Although the policies were intended to encourage moderate-income tenants to exit their tenancies and make room for applicants from the waiting list, these policies have not increased transitions; in fact, they have generated strong work disincentives, resulting both in fewer tenants working, and in fewer exits.

We discuss these policies and their work disincentive effect in detail below. The policies should be repealed, and the mistake not repeated in other policies for effecting transition.

We acknowledge, without discussing in detail, that there are other factors that operate to discourage or frustrate tenants from achieving their potential. Outside social housing policy, there is the problem in sufficient employment opportunities throughout the economy – one in eight New South Wales workers is either unemployed or underemployed – made worse by the Federal Government’s badly mismatched fiscal policy, which seeks to withdraw money from the economy while so much labour is underutilised for want of a wage.[[8]](#footnote-8) The solution to this problem lies in the Federal Government adopting a ‘job guarantee’, whereby it funds local agencies to offer jobseekers employment in socially useful tasks for a living wage, backed by the Federal Government’s power as the issuer of the Australian currency. Within social housing policy, there is the problem of the spatial concentration of poverty in social housing estates, and the consequent lack of local economic opportunities and stigma. The solution to this problem lies in growing the social housing sector to enable an expansion of eligibility, and resourcing community development, training and employment programs in estates. These solutions could be effected together, with job guarantee agencies employing social housing tenants and other persons in the production of services that improve conditions on estates.

### Public housing work disincentives

#### Higher rent rates for moderate-income tenants

FACS Housing introduced its policy of higher rent rates for tenants on so-called ‘moderate incomes’ in 2005. The policy revised the system of income-related rents, which provides rebates to eligible tenants so that the rent the tenant pays is about 25 per cent of the tenant’s household income. Under the revised system, tenants whose household income is above the ‘moderate income threshold’ pay, on a sliding scale, 25-30 per cent of their household income. Tenants whose household income is above a second threshold (the ’30 per cent threshold’, at the top of the sliding scale) pay 30 per cent.

It is important to note that the 25-30 per cent sliding rate applies not just to income in the moderate income range (nor does the 30 per cent rate apply only to income above the 30 per cent threshold). These rates are not marginal rates; they apply to that part of a tenant’s household income below the range too.

This means that earning additional amounts of income in the moderate income range comes at a large cost in terms of additional rent due. If the 25-30 per cent sliding rate was expressed as a marginal rate, it would range from 45 per cent to 55 per cent over the moderate income range (for an average average marginal rate of 50 per cent); in other words, on average 50 cents in every additional dollar earned by a tenant in the moderate income range would go to FACS Housing in rent. When it is considered that each additional dollar will also be subject to income tax and other costs associated with work (for example, childcare), a tenant could easily end up with little reward, or even a loss of income, from working.

For example, a single person earning $800 per week will be in the middle of the moderate income range and the 32.5 per cent income tax bracket, and therefore face an effective marginal tax rate of 82.5 per cent (from rent and income tax alone). Such a high effective marginal tax rate is a powerful work disincentive.

The moderate income thresholds are set higher than the income thresholds at which most Centrelink payments are reduced to zero, so the effective marginal tax rates generated by Centrelink payment reduction mostly do not stack with those generated by the moderate income rent rates. However, while they do not stack, they do sit side-by-side, so the effect is that public housing tenants face very high effective marginal tax rates for an extended range of incomes – longer than other persons. Many part-time jobs pay incomes in this range, and may present opportunities for earning additional amounts; however, public housing tenants would receive little reward from doing this work.

In terms of its stated objective of effecting transitions out of public housing, this policy operated on the assumption that public housing tenants with work opportunities would move out of public housing in order to enjoy a lower effective marginal tax rate. This assumption is completely unrealistic, as takes no account of the higher cost of private rental and the relative security of public housing. More realistic is that a public housing tenant will – reluctantly – decline to take up those work opportunities. That this has been the result is indicated by the results of the policy of reviews as to eligibility, discussed below.

#### Reviews as to continuing eligibility

In 2005, when it introduced higher rents for tenants on moderate incomes, FACS Housing also introduced a policy of signing up new public housing tenants to fixed term agreements subject to review towards the end of their fixed terms. Each review considers the tenant’s household income and their continuing eligibility to remain in public housing. Where a tenant’s household income is above the relevant income threshold (the 30 per cent threshold under the moderate income rents policy, with additional adjustments made for people with disability), FACS Housing will proceed to terminate the tenancy.

In fact, very few public housing tenants are found to be ineligible at review. The Auditor-General cites FACS Housing as saying that two per cent of tenants reviewed are ineligible; previously, FACS Housing had advised us that just 0.2 per cent of tenants reviewed were found to be ineligible.

This is not because the thresholds are set too high. On the contrary, the incomes at which tenants become ineligible are insufficient to afford the median rent for appropriately sized dwellings in New South Wales overall. Unaffordability at the thresholds is especially acute in inner and middle Sydney.

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | **One bedroom dwelling** | | | **Two bedroom dwelling** | | | **Three bedroom dwelling** | | |
|  | Single | Single (disab) | Couple | Single + child | Single + two children | Couple + child | Single + two children | Couple + two children | Couple + two adults (disab) |
| **Sydney** |  |  |  |  |  |  |  |  |  |
| Inner |  |  |  |  |  |  |  |  |  |
| Middle |  |  |  |  |  |  |  |  |  |
| Outer |  |  |  |  |  |  |  |  |  |
| **NSW** |  |  |  |  |  |  |  |  |  |

###### Unaffordability of private rental dwellings at thresholds for loss of eligibility for various households.

###### Key

|  |  |
| --- | --- |
| Median rent ≤ 30 per cent of threshold (affordable) |  |
| Median rent > 30 per cent of threshold (housing stress) |  |
| Median rent > 50 per cent of threshold (housing crisis) |  |

This at least partly explains why so few tenants are found to be ineligible: faced with the prospect of losing their homes and renting unaffordably and insecurely in the private market, tenants who might otherwise have increased their income through work have not done so, and have stayed poor in order to stay housed.

We have spoken with public housing tenants who have declined – in all cases, reluctantly – opportunities of work because of this prospect. We have also spoken with public housing tenants who have had to contemplate other undesired courses of action – such as asking a child who has commenced paid work to move out – so that they will pass the review and remain housed.

We expect that other policies to ‘transition’ tenants will be met by similar responses. This includes where the transition is not effected upon a review of the tenancy but instead by a limit as to the period of the tenancy, established prior to commencement. This approach is indicated by the discussion paper and its proposal that certain groups or cohorts of tenants (‘people of working age, children and young people’) should expect to be transitioned, while other cohorts may not.

We submit that such an approach does not avoid work disincentives or other perverse outcomes; rather, it tends to shift them to an earlier point – in particular, the point at which a housing officer determines whether the tenancy offered will be a transitional one or not. A person may be a member of more than one cohort, and may apply as a member of the cohort that gets better treatment ­– even if that involves other negative consequences. For example, a ‘person of working age’ who fears for their prospects of finding, at the end of a transitional tenancy, alternative housing that is affordable and secure, may seek to convince the housing officer that they have an illness or disability that makes them incapable of transitioning and qualifies them instead for an enduring social housing tenancy. Ultimately, they may or may not convince the housing officer, but in the process they may convince themselves.

Instead, we submit that a liberal approach to ‘transition’ should be taken, whereby tenants have nothing to lose from achieving and working. More tenants might then get into work, and become secure and successful in work – and make the transition for themselves.

## Pillar 2: a social housing system that is fair

Questions of fairness in relation to social housing must be considered in light of the wider housing system, and the particular way in which the social housing sector works within that system.

Our housing system as a whole operates unfairly, particularly for low-income households. Some are in owner-occupation – almost all of them older persons, including many who were previously low-moderate income workers who acquired their housing before the inflation that has priced out the present generation. Of those not in owner-occupation, a minority of low-income households get affordable and secure housing in the social housing sector. A larger number get private rental housing, which in most cases is unaffordable and almost always insecure.

The inequity of outcomes as to affordability and security is frequently referred to in talk about social housing and underlies the oft-made assertion that social housing is a ‘privilege’. We reject that assertion, because it wrongly implies that affordability and security are privileges, where they are in fact aspects of the right to adequate housing. The current inequity should be addressed by making private rental housing more affordable and secure, not making social housing more conditional and qualified.

While it delivers affordability and security, the way in which social housing operates generates other, less discussed inequities for social housing applicants and tenants. In particular social housing operates as an intense administration of entitlements. As noted in the discussion paper, it affords applicants and tenants with little choice as to where they may be offered a dwelling, or its size and other conditions (though we would note that because of the scarcity of private rental dwellings affordable for low-income households, the degree of choice offered by the private market is more apparent than real).

The administration of social housing, however, goes much further than restrictions on choice as to dwellings. Applicants and tenants are required to provide information as to their health, disability, family relations and other circumstances; and the amount, type and source of their income, and the incomes of each person in their household. Social housing landlords also purport to require that tenants seek the landlord’s ‘authorisation’ for another person to join their household; and to seek permission to be absent from the property, including for holidays, and set limits at to the amount of time a tenant may be away.

This administration is further intensified by social housing’s characteristic spatial form – the social housing estate – and the way in which this form effects a concentration of contractual relations. All tenants have residential tenancy agreements, but nowhere else in our housing system are some many people linked by these contracts with one other party – and, because terms of the agreements impose obligations relating to neighbours, with each other – as in social housing estates. This concentrated web of contractual relations overlies the common administrative relations between social housing tenants and their landlord.

As a result, no adults in our community, other than those in institutions, are subject to so much scrutiny and regulation as social housing tenants. Considered in this light, ‘fairer social housing’ means exploring possibility of reforms that may reduce interference with tenants, particularly in connection with rents, and afford them more choice in relation to their homes; preventing oppressive exercises of power, particularly in relation to concerns about crime and disorder; identifying and changing policies that operate harshly, such as the succession/recognition as a tenant (RAAT) policy; and establishing a better system for the review of social housing decisions.

### Rents, dwelling amenity and choice

We would welcome further discussion between FACS, social housing tenants and representative organisations about the connected issues of rents, dwelling amenity and choice.

The social housing system delivers affordability through a system of rental rebates that produce income-related rents. The system produces affordability outcomes that are very finely calibrated – down to the last dollar of assessable income received by a tenant. By the same token, it also has the effect of a marginal tax on tenants’ incomes (in most cases, 25 per cent), and stacks with other effective marginal taxes, which may create work disincentives. The system also entails a close surveillance of tenants’ incomes and household arrangements. Its rules are complex (for example, what income is assessable; at what rate; when changes in income must be reported; how irregular incomes are assessed; etc) and the potential for incorrect assessment – whether by error or fraud – is large.[[9]](#footnote-9) It also means like households pay alike for dwellings of different amenity, including where this difference results in real costs being incurred by a household (for example, where a dwelling is not served by public transport, the cost of running a car).

We believe that it should be possible to reform the system so that it delivers affordability without such close scrutiny of tenants’ circumstances, and with some regard to differences in amenity. We do not put forward a preferred model, but options might include:

* rental rebate rates that differ according to location or other factor of dwelling amenity (for example, 25 per cent for inner-city dwellings, and 20 per cent for dwellings in the outer suburbs);
* a combination of an income-related rent with additional nominal charges (for example, 20 per cent of income, plus $10 per week for a bedroom additional to entitlements);
* a combination of household-based rent (along the lines of the Aboriginal Housing Office’s rent policy under the Build and Grow Strategy) with additional nominal charges.

We note that the second and third of these alternatives resemble the Vacant Bedroom Charge policy in public housing. This policy was introduced without consultation with tenants or representative organisations, and we are concerned that it may detract from the larger discussion that should take place about rents, amenity and choice. We submit that the Vacant Bedroom Charge policy should be suspended pending that larger discussion.

Rent reforms that admit considerations of amenity factors must be complemented by reforms that afford greater choice to applicants and tenants: if tenants are to receive price signals through the rents they pay, they must be allowed to respond to those price signals. The social housing sector currently allocates dwellings administratively, according to household entitlements, and affords applicants little choice in the location of their prospective dwelling, or its size, condition and other aspects of its amenity. We note that one result of this is that social housing is very efficiently allocated in terms of utilisation of bedrooms: the proportion of households with vacant bedrooms is higher in private rental, and much higher in owner-occupation, than in social housing.[[10]](#footnote-10) Nonetheless, we would be pleased to participate in further discussions about opening up the degree of choice afforded to social housing tenants and applicants.

#### Amnesties

The discussion paper refers to two recent amnesties for the disclosure of information in relation to rental rebates. We generally support the use of amnesties as a way of encouraging compliance with the requirements of the present rental rebate system. We are concerned, however, that the recent amnesties have no legislative basis[[11]](#footnote-11)[[12]](#footnote-12): instead, their basis is merely the word of the Minister that no adverse proceedings will be taken against tenants. In our experience, some tenants are reluctant to make otherwise self-incriminatory disclosures on this basis; it has also prevented us from giving unqualified support to the amnesties.

We also note that each of the recent amnesties related to different conduct, and the amnesty documents were not in all respects clear as to what disclosures were protected and what were not.

We submit that a legislative basis for occasional amnesties should be incorporated in the *Housing Act 2001* (NSW) and the *Community Housing (Adoption of National Law) Act 2013* (NSW). This should provide for the declaration in a single document of the period of the amnesty and what disclosures will be protected.

### Concerns about crime and disorder

The discussion paper refers to a research paper by the NSW Department of Attorney General and Justice (AGJ) that finds that the crime rate for public housing estates is 2.5 times higher than the rate for all New South Wales, and that rates for different types of crime on estates ‘increased, stabilised or experienced slower decline’, while declining significantly for all New South Wales. Despite making this reference in the discussion paper, and relying on it to make proposals for change, both FACS and AGJ have, disappointingly, so far declined our request for a copy of the research paper.

We agree that, generally speaking, social housing neighbourhoods experience more than their share of crime and disorder. As to why this is, we refer, in the absence of the AGJ paper, to the research of Weatherburn, Lind and Ku.[[13]](#footnote-13) From their analysis of rates of participation in crime, they conclude that ‘the public housing allocation process is largely, if not entirely, responsible for the association between public housing and crime’. This is because the allocation process targets factors of disadvantage that are established predictors of participation in crime.

It is therefore wrong to suggest, as the discussion paper does, that the incidence of crime and disorderly behaviour in social housing is attributable to ‘the social housing system [having] relatively few expectations of tenants’. On the contrary, social housing subjects persons to a higher degree of expectation and obligation than other sectors of the housing system, particularly in the form of the terms of residential tenancy agreements; the arrangement of these agreements in concentrated webs of contract on the estates; the requirements of the administration of social housing; and the moralising discourse about the ‘privilege’ of social housing and whether it is deserved.

We submit that social housing, as a sector that systemically targets factors of disadvantage that are predictive of offending, should concentrate on addressing potential problems of crime and disorder through preventative and ameliorative strategies. A ‘three strikes’ policy, as suggested in the discussion paper, or legislative changes to make eviction mandatory where premises are used for ‘illegal purposes’, as the NSW State Government has suggested recently in the media, would detract from the pursuit of genuinely preventative strategies.

Social housing providers already respond to concerns about crime and disorder in diverse ways.[[14]](#footnote-14) Their responses broadly reflect contemporary developments in the government of crime and disorder more widely and, in particular, a cleavage in strategies: on one hand, an adaptive strategy that tries to responsibilise individuals, communities and agencies in new ways to ameliorate and prevent crime and disorder; and on the other, a strategy of reaction that denies and reacts against the apparent limits of government through punitive, exclusionary displays. In the practices of social housing providers – particularly those of FACS Housing – these strategies are confused, and housing officers are apt to switch quickly and arbitrarily from the first to the second. We submit that the challenge for the pending social housing policy is to navigate this confusion, strengthen the commitment to ameliorative and preventative approaches, and identify the practical hazards that divert efforts into punitive reaction.

To that end, we briefly map here the confusion in strategies. The crucial point on which the confusion turns is the subject of the public housing – the ‘client’ – as known through all of the information elicited and generated by social housing’s complex administration. Social housing providers are generally committed to an ethos of ‘client service’ and ‘working with the client’ on support needs, in a way that affords the individual some qualified agency; however, because the administration of entitlements emphasises clients’ incapacity and affords little scope for personal preferences, all too often client agency is seen by officers in a dim light, and they respond to the challenge of working with clients in a pessimistic, cynical way. Better training and mentoring of housing officers in ‘working with the client’ would help; so too, in a more fundamental way, would reforms that reduce targeting and expand eligibility. Even reforms that validate client choice may contribute to less cynical engagements with clients.

The pattern of confusion is evident in neighbourhood-level practices, too. Occasionally social housing landlords undertake ‘renewal’ of the built form of social housing estates, generally with regard to principles of situational crime prevention. According to these principles, tenants are engaged as the ‘capable guardians’ of their neighbourhoods; however, they can be taken too far, so that every discrepant sign (or ‘broken window’, to use the famous metaphor) may be magnified into a sign of crime and disorder and become cause for concern and complaint. Other social housing renewal projects focus on the renewal or fabrication of community relations, such as through tenant participation projects and partnerships with other agencies to improve services and build up community trust, tolerance and resilience. This can be hard work, especially where resources are too few or withdrawn too soon, and social housing providers may instead fabricate community relation by invoking that web of tenants’ contractual obligations under their residential tenancy agreements – a less tolerant scheme that induces expectations of strict liability and enforcement by eviction.

FACs is an especially heavy user of tenancy proceedings in relation to all manner of complaints and disputes, and this presents particular risks for its ‘working with the client’ approach. It responds to some complaints of breach – particularly nuisance and annoyance – with an investigation of the client’s support needs that is simultaneously a preparation for proceedings, and housing officers’ efforts often end up going in that direction. We expect that a ‘three strikes’ policy would gear neighbours’ complaints and housing officers’ responses even more towards termination proceedings. This is worrying, because the quality of judgement currently displayed by housing officers in many cases is, with respect, very questionable. In particular, we are aware of FACS taking termination proceedings where the alleged ‘nuisance and annoyance’ is a one-off argument between neighbours about garbage bins;[[15]](#footnote-15) instances of a tenant ‘glaring’ at a neighbor;[[16]](#footnote-16)and mysterious ‘banging noises’ emanating from a tenant’s unit.[[17]](#footnote-17) In *NSW Department of Housing v Giddings* [1991] NSWRT 188, one amongst several incidents referred to by FACS Housing was the tenant’s own attempt at suicide; in *NSW Land and Housing Corporation v Peters* [2007] NSWCTTT 681, the conduct included the tenant’s sometime partner yelling at and assaulting the tenant.

In relation ‘illegal use of premises’ breaches – particularly where drug offences are involved – FACS Housing almost always seeks nothing less than termination and eviction. The quality of judgement exercised by officers in relation to many of these matters is, we submit, even more questionable. For example, in *Aboriginal Housing Office v Corrie* (Social Housing) [2013] NSWCTTT 650, FACS Housing took termination proceedings on the basis of several small sales of marijuana at the premises made by the tenant’s casual boyfriend – offences in which the tenant was not involved, and over which she ended her relationship with the man. The tenant co-operated with police, had never been involved in drugs, and had not previously had any problems in her tenancy; she was also an Aboriginal single mother of four school-aged children and a survivor of domestic violence. Her tenancy was terminated. In *NSW Land and Housing Corporation v Robertson* (Tenancy) [2008] NSWCTTT 1197, proceedings where brought against a tenant on the basis of stolen goods offences committed by her teenage sons, of which the tenant had no knowledge. In *NSW Land and Housing Corporation v Scherle* [2015] NCAT, FACS Housing took termination proceedings on the basis of offences under the *Copyright Act 1966* (Cth), arguing that the tenant had adversely affected ‘the subscription television industry’ (the tenant had already served a prison sentence for the offences, which related to unauthorised decoding of Foxtel transmissions). We are aware of numerous cases where the criminal justice proceedings have resulted the offender remaining in their home and participating in rehabilitation programs (for example, *Department of Housing v Reed* [1998] NSWRT 180; *NSW Land and Housing Corporation v Moffat* (Tenancy) [2006] NSWCTTT 80) – relatively sophisticated correctional responses that would be derailed by termination of the tenancy.

The facts of cases about use of premises for an illegal purpose vary greatly, and a single invariable response – termination – does not do justice in all cases. There should be no reduction or limitation of the ability of the Tribunal to determine different outcomes for different cases, according to their facts.

### Harsh and unfair changes to succession (recognition as a tenant)

In 2013 FACS Housing changed its Succession Policy to more tightly restrict the circumstances in which a member of a tenant’s household may remain in the dwelling with a tenancy in their own name, following the tenant’s death or departure (in particular, to prison or aged care). Previously, a household member could be recognised as a tenant if they were themselves eligible for social housing (and had been an approved additional occupant); under the changed policy, the household member has to satisfy the additional criteria for Priority Assistance. There are exceptions, such as spouses aged 55 years and over and Aboriginal persons; these household members are treated according to the previous policy. Spouses aged less than 55 years, and adult children and other members of any age, are subject to the changed policy. If they apply for recognition as a tenant, they are entitled to a six-month interim agreement, but if they do not satisfy the Priority Assistance criteria, they will be evicted at the end of the interim agreement – even if at that point they are eligible for Priority Assistance.

The discussion paper claims that the changed policy ‘improves the fairness of the system by preventing people with a lesser housing need taking on a tenancy ahead of priority applicants on the waiting list.’ On the contrary, we submit that the 2013 changes are unfair, and have led to harsh outcomes.

The changed policy, like the defence of it given in the discussion paper, mistakes the essential purpose of a succession application: it is not primarily about a change to a person’s legal status (‘taking on a tenancy’), but instead about maintaining the status quo as regards their housing.

From this perspective, the changed policy operates like an ad hoc review of eligibility to remain in social housing, according to the tight criteria for Priority Assistance, conducted on the occasion of a family member’s death or removal to a nursing home or prison.

There are also operational problems in the changed policy that add to its unfairness. The Priority criteria are conceptually a poor fit for the circumstances of an application for recognition as a tenant: these criteria are designed to identify a person in a bad housing situation and get them out of it, whereas an application for succession or recognition as a tenant is for the purpose of staying in one’s current housing.

There is a particular difficulty with the use of these criteria where the policy also provides for the provision of a six-month interim agreement. It appears to create a Catch 22: a person who has a six-month fixed term tenancy ahead of them cannot have an ‘urgent housing need’, per the Priority criteria, and so cannot be eligible to be recognised as a tenant. We are aware of one case where an application for recognition as a tenant was declined expressly on this basis; the decision was upheld on both first and second tier reviews. We have discussed this case and the Catch 22 with FACS Housing, which advises that officers are now guided not to refuse eligibility solely on this basis, but the policy itself has not changed and the apparent Catch 22 remains.

We are aware of a number of cases where, under the changed policy, vulnerable persons who are eligible for social housing have been directed to move out of their homes of many years: in one case, a 57-year old man in very low-paid work who had lived in the dwelling his whole life. On the other hand, we are concerned that in other cases the changed policy may have had a different, but still damaging effect: that is, where household members, faced with the prospect of losing their homes, do their hardest to satisfy the criteria, and convince FACS Housing – and themselves – that they are too poor and too sick to cope in the private market.

The previous policy was simpler and fairer, and contained appropriate safeguards against sharp practice. It should be restored, with provision made for a six-month interim tenancy for household members who are ineligible for social housing.

### Review of social housing decisions

A recurring theme in our comments on the discussion paper’s ‘fairness’ pillar is the intensive administration of entitlements in social housing, and the extraordinary scrutiny and regulation of social housing tenants. Social housing providers make a wide range of decisions – including as to whether an applicant is eligible for housing or other assistance; or as to the calculation of a rental rebate; or whether proceedings to terminate a tenancy will be commenced – and these decisions can have very significant impacts on the lives of individual applicants and tenants: for example, a decision to cancel a rental rebate, with retrospective effect, can place a tenant in debt of tens of thousands of dollars. This means that a rigorous regime for the independent review of social housing decisions is crucial to ensuring fairness.

Decisions as to social housing entitlements are governed by social housing providers’ policies and administrative law, rather than the *Residential Tenancies Act 2010*. This means disputes about these decisions cannot be reviewed or dealt with as tenancy disputes by the NSW Civil and Administrative Tribunal.[[18]](#footnote-18) Under the current system for the review of social housing decisions, social housing providers will, at the request of an applicant or tenant, internally review a social housing decision about that person (‘first tier review’). After conducting an internal review, most social housing providers will also submit to a request by the applicant or tenant for external review (or ‘second tier review’) by the Housing Appeals Committee (HAC). An applicant or tenant can also seek review (‘judicial review’) by the Supreme Court of NSW.

#### HAC reviews

HAC reviews a social housing decision by conducting an interview with the applicant or tenant, and examining the file provided by the social housing provider. HAC will then either recommend that the social housing provider change its decision, or decline to make the recommendation.

We acknowledge that HAC reviews have lead to the correction of many bad decisions, and that it has contributed to improvements in social housing decision-making generally. There are, however, problems with HAC and its processes:

* **HAC lacks a legislative basis.** HAC is established as a ministerial advisory body, without a basis in legislation. This limits the power of HAC’s decisions, which are recommendations only (discussed below). It also means HAC can be abolished or changed by the State Executive without reference to Parliament, which detracts from HAC’s independence.
* **HAC makes recommendations only** – not binding determinations. HAC claims a strong record of compliance with its recommendations (92 per cent of recommendations to FACS Housing, and 100 per cent of recommendations to community housing providers, are complied with), but there are problems with this record. First, it remains a problem that FACS Housing does not comply with recommendations in relation to even a minority of tenants and applicants (in 2012, about 32 tenants and applicants). Secondly, the merely recommendatory nature of HAC review may discourage some tenants and applicants from even applying to HAC. Thirdly, HAC’s practice of using compliance with recommendations as a measure of its performance may lead to HAC making recommendations that are more easily complied with. This detracts from HAC’s independence.
* **HAC’s processes are not always fair or rigorous.** HAC deliberately conducts its hearings in an informal, non-adversarial manner, so as to be more accessible to applicants and tenants. This informality, however, may result in insufficiently rigorous scrutiny of all the matters in issue, and to processes that are procedurally unfair. For example, we are aware of cases in which HAC has made a decision on the basis of information, contained in a tenant’s file, that was not put to the tenant in the hearing, and that would have been refuted by the tenant had it been put.

#### Judicial review

The Supreme Court of NSW may, in the exercise of its inherent jurisdiction, review the administrative decisions of NSW State Government agencies. This means public housing applicants and tenants may apply to the Supreme Court for judicial review of decisions by FACS Housing. It is not clear whether the decisions of community housing organisations are subject to judicial review: the question has yet to be tested in litigation.

In practice, few applicants and tenants apply for judicial review, because they find prohibitive the complexity and cost usually associated with proceedings in the Supreme Court. Where judicial review is undertaken, FACS Housing is also exposed the complexity and cost of proceedings.

#### A better system – Tribunal review of social housing decisions

We submit that applicants and tenants should be able to apply to NCAT for review of social housing decisions, either as a third tier of review (after HAC) or as the second tier of review (replacing HAC).

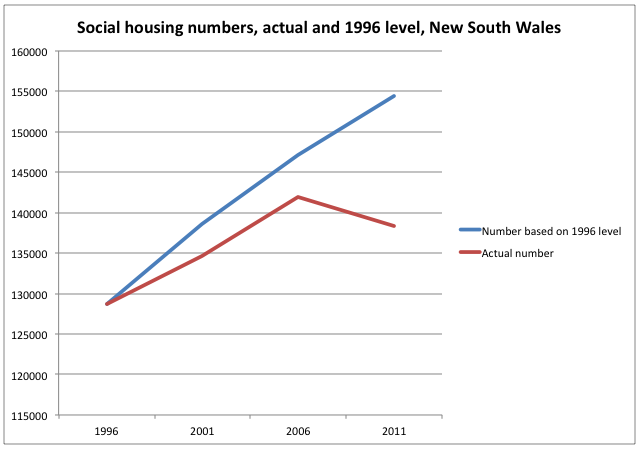
NCAT is well-placed to review social housing decisions. NCAT’s Administrative Division inherits the functions and powers of the Administrative Decisions Tribunal (ADT) – as well as many of the ADT’s Members and their expertise in review of administrative decisions. NCAT also has Members who are familiar with social housing from their experience in its Consumer and Commercial Division, which deals with tenancy matters.

We recommend that both the *Housing Act 2001* (NSW) and the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW) be amended to provide that NCAT may, on the application of a social housing applicant or tenant, review an administrative decision of a social housing provider.

## Pillar 3: a social housing system that is sustainable.

The discussion paper envisages a sustainable social housing system, funded ‘within the existing envelope’. We submit that this is impossible. The existing funding envelope is a starvation ration. It has, over the past two decades, caused the social housing system to decline relatively (that is, as a share of the housing system) and, more recently, absolutely. At the 2011, there were 16 000 fewer social housing properties in New South Wales than there would have been had its 1996 level, relative to households, been maintained.

##### The relative decline of social housing, 1996-2011, New South Wales.



Source: ABS, Census, 1996-2011.

Fewer properties means fewer allocations of tenancies to other than the poorest and most crisis-afflicted applicants; this in turn means lower rent revenues and higher costs; this in turn means fewer repairs, more stock sales, and fewer again allocations to other than the poorest applicants. This is an unsustainable spiral of decline.

To be sustainable, the social housing sector must grow again, so that it can meet currently unmet and future need and expand eligibility to tenants capable of generating higher rent revenues and less cost. To grow again, the sector needs a substantial boost in funding.

We support the proposal by Shelter NSW that the NSW State Government provide additional funding sufficient to grow the sector by 2 000 dwellings per year for the next 10 years.

As well as a commitment to building new stock, there should also be a presumption in favour of retaining existing stock – and where there is a question of old stock being redeveloped or sold, there must be transparency and consideration of the views of tenants and local communities in deciding whether or not to proceed.

As well as being retained, the existing stock must be better maintained and repaired. To this end we recommend:

* That the NSW Land and Housing Corporation regard tenants as being of central importance in the repairs and maintenance process. Tenants are well placed to identify and report any maintenance requirements, and to provide feedback on the quality of contractors’ work.
* That the Corporation be prepared to shift focus away from scheduled maintenance so that repairs can be addressed as and when they are needed. Maintain a schedule of planned works, but not at the expense of responsive repairs.
* That questions of maintenance and repairs, being landlord obligations, be reintegrated into the day-to-day work of tenancy managers. Client Service Officers should be able to raise work orders and liaise with contractors where required, in consultation with the Corporation.

### Financing growth

In addition to making its own commitment to boosting social housing supply, the NSW State Government should work with other Australian governments to establish an enhanced National Affordable Housing Agreement that more clearly commits governments to growing the social housing sector. In particular, we support the recommendation of National Shelter that Australian governments establish a national social housing growth fund for the delivery of an additional 200 000 dwellings in social housing and affordable housing programs over 10 years. The amount of the growth fund would be $2.5 billion per year above existing funding arrangements, and allocated to States and Territories on a per capita basis. There should also be a reformed operating subsidy for existing social housing, allocated to States and Territories on a ‘per dwelling’ basis.

The financing of social housing growth may be done as intricately (‘tax smart’ bonds, housing bonds, social benefit bonds, et al) or straightforwardly (grants of money) as governments choose. The Federal Government could choose to grant funds without issuing debt (as the issuer of the Australian currency, it does not need to get money from elsewhere). The NSW State Government could choose to grant State housing authorities additional funds, and if necessary borrow for that purpose. Its ability to raise funds for debt repayment by taxation makes it inherently more credit-worthy and eligible for cheaper debt than non-state entities.

With those facts in mind, we think it is important to be clear that community housing providers are not better placed than governments to finance additional supply – except to the extent that governments impose upon themselves constraints as to the financing of State housing authorities.

Community housing providers do not have access to income or tax advantages that the NSW Land and Housing Corporation does not – except to the extent that governments impose the differential treatment. Community housing organisations’ access to Commonwealth Rent Assistance is really an operating subsidy that the Federal Government has chosen to grant to those providers and not to the State housing authorities (and to deliver it via the scenic route of Centrelink payments and individual tenants’ bank accounts).

The real strength of community housing providers is in the way that they contribute to the diversity to the social housing sector, and foster innovation and improvement in service delivery, and for those reasons we support their growth.

## Summary of recommendations

### The wider housing system

* That the NSW State Government complement its pending social housing policy with a policy for the wider housing system.

* That the NSW State Government and other Australian governments commit to restraining speculation in housing, particularly by:
  + reforming the tax treatment of negative gearing, to reduce the deductability of losses (either by limiting losses to income from the same asset class, or by a discount applied to all non-business asset incomes);
  + reforming capital gains tax, to remove or reduce the discount applied to capital gains, and to apply capital gains tax to high-value owner-occupied property.
  + reforming State land tax, to broaden the base to include owner-occupied housing and restructure the rates.
* That New South Wales residential tenancies legislation be reformed to provide:
  + a fairer process where landlords seek termination, so that landlords may give termination notices on reasonable grounds only, and the Tribunal has a discretion to decline termination if appropriate in the circumstances of the case;
  + a fairer process for determining excessive rent increases, so that landlords bear the onus of proof where an increase is above the CPI;
  + greater freedom of choice, so that tenancy agreements cannot unreasonably restrict tenants keeping pets, making minor alterations and adding members to their households;
  + occupancy agreements for all renters not otherwise covered by residential tenancies legislation.
* That funding to TAASs increase by $5.2 million now, and going forward increase in line with the number of tenants.

### Client opportunities

* That tenants be encouraged to achieve their potential, and have nothing to lose from achieving or working.
* That FACS Housing abolish its policies for higher rent rates for moderate-income tenants and reviews as to continuing eligibility.

### Fairness

* That the NSW State Government engage in discussion with social housing tenants and representative organisations on options to reform rent-setting and improve client choice, and that FACS Housing suspend the Vacant Bedrooms Charge pending the outcome of the discussion.
* That both the *Housing Act 2001* (NSW) and the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW) be amended to provide for occasional amnesties.
* That social housing providers commit to ameliorative, preventative strategies in relation to concerns about crime and disorder, and avoid punitive, exclusionary reaction.
* That a ‘three strikes’ policy not be adopted; and that NCAT retain its discretion in relation to termination proceedings for use of premises for illegal purposes.
* That FACS Housing restore the previous Succession Policy, and make provision for six-month interim tenancies for occupants who are not eligible.
* That a better system be established for review of social housing decision, by amending both the *Housing Act 2001* (NSW) and the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW) to provide that NCAT may, on the application of a social housing applicant or tenant, review an administrative decision of a social housing provider.

### Sustainability

* That the NSW State Government boost social housing funding to provide an additional 2 000 dwellings each year for 10 years.

* That the NSW State Government and other Australian governments commit, under the National Affordable Housing Agreement, to the establishment of:
  + a social housing growth fund, in the amount $2.5 billion per year above existing funding arrangements, for the delivery of an additional   
    200 000 dwellings in social housing and affordable housing programs over 10 years, to be allocated to States and Territories on a per capita basis;
  + a reformed operating subsidy for existing social housing, allocated to States and Territories on a ‘per dwelling’ basis.
* That there should be a presumption in favour of retaining existing stock, and where there is a question of old stock being redeveloped or sold, there must be transparency and consideration of the views of tenants and local communities in deciding whether or not to proceed.
* That the NSW Land and Housing Corporation improve its conduct of maintenance and repairs, by:
  + regarding tenants as being of central importance in the repairs and maintenance process. Tenants are well placed to identify and report any maintenance requirements, and to provide feedback on the quality of contractors’ work.
  + being prepared to shift focus away from scheduled maintenance so that repairs can be addressed as and when they are needed. Maintain a schedule of planned works, but not at the expense of responsive repairs.
  + reintegrate questions of maintenance and repairs, being landlord obligations, into the day-to-day work of tenancy managers. Client Service Officers should be able to raise work orders and liaise with contractors where required, in consultation with the Corporation.

1. Centre for Affordable Housing, ‘Local Government Housing Kit Database’, at http://www.housing.nsw.gov.au/Centre+For+Affordable+Housing/NSW+Local+Government+Housing+Kit/Local+Government+Housing+Kit+Database/ [↑](#footnote-ref-1)
2. Census 2011 data provided on special request to the TU. [↑](#footnote-ref-2)
3. Burke, T and Pinnegar, S (2007) ‘Experiencing the housing affordability problem: blocked aspirations, trade-offs and financial hardship’, AHURI: 74. [↑](#footnote-ref-3)
4. Australian Tax Office (2013) ‘Taxation Statistics 2010-11’. Figures are for all Australia. [↑](#footnote-ref-4)
5. Wood, G and Ong, R (2010) ‘Factors Shaping the Decision to Become a Landlord and Retain Rental Investments’, AHURI: 28. Figures are for all Australia. [↑](#footnote-ref-5)
6. Social housing landlords are also allowed, as a matter of residential tenancies law, to give termination notices without grounds; however, as a matter of administrative law, they are also required to afford procedural fairness – which includes giving reasons of a pending decision and an opportunity for the person affected to put their case – where they propose to terminate a tenancy. These requirements of administrative law do not apply to private landlords. [↑](#footnote-ref-6)
7. TU (2014) ‘Affordable Housing and the New South Wales Rental Market: 2014 survey report’, at < http://www.tenantsunion.org.au/publications/papers-submissions/129-2014-survey-report-affordable-housing-and-the-new-south-wales-rental-market> [↑](#footnote-ref-7)
8. See TU (2014) ‘Real Waste’, Brown Couch blog post, at http://tunswblog.blogspot.com.au/2014/10/real-waste.html [↑](#footnote-ref-8)
9. It is ironic that the perspectives of situational crime prevention, which have been applied extensively to the built environments of social housing neighbourhoods, have not been applied to social housing’s criminogenic rental rebate system. [↑](#footnote-ref-9)
10. See TU (2012) ‘Bad Piggies? Underoccupancy in public housing’, Brown Couch blog post:, at <http://tunswblog.blogspot.com.au/2012/10/bad-piggies-underoccupancy-in-public.html> [↑](#footnote-ref-10)
11. The Housing Act 2001 (NSW) contains, at Schedule 3 cluase 18, a provision relating to an amnesty, but because it is defined by date (October 2008), the provision cannot serve as a legislative basis for other amnesties. [↑](#footnote-ref-11)
12. [↑](#footnote-ref-12)
13. Weatherburn, D, Lind, B and Ku, S (1999) ‘”Hotbeds of Crime?” Crime and Public Housing in Urban Sydney’, Crime and Delinquency, vol 45 no 2: 256-271. [↑](#footnote-ref-13)
14. Here the submission adapts the analysis in Martin, C (2010) ‘Government-Housing: governing crime and disorder in public housing in New South Wales, PhD thesis, Faculty of Law, University of Sydney. [↑](#footnote-ref-14)
15. NSW Land and Housing Corporation v Layton [2008] NSWCTTT 1080. [↑](#footnote-ref-15)
16. NSW Land and Housing Corporation v MacDonald [2009] NSWCTTT 524. [↑](#footnote-ref-16)
17. Department of Housing v Maher [2001] NSWRT 295. [↑](#footnote-ref-17)
18. There is an exception in the case of a decision to terminate a tenancy, because termination proceedings do go to NCAT; however, in some termination proceedings NCAT is expressly prohibited from reviewing the merits of the decision, and must terminate (in particular, termination without grounds (Residential Tenancies Act 2010, sections 84 and 85), and termination relating to ineligibility (section 147), offer of alternative premises (section 151), and acceptable behaviour agreements (section 154)). [↑](#footnote-ref-18)