TENANTS' UNION OF NEW SOUTH WALES

SUBMISSION

Response to 'Justice for everyday problems: Civil Justice in NSW' consultation paper.

February 2017

Introduction

The Tenants' Union of NSW is the peak body representing the interests of tenants in New South Wales. We are a Community Legal Centre specialising in residential tenancy law and policy, and the main resourcing body for the state-wide network of Tenants Advice and Advocacy Services (TAASs) in New South Wales. Thus our focus in this submission will be on 'every day' problems of tenants and how the civil justice system can better serve them.

We have long-standing expertise in renting law, policy and practice. We train tenants' advocates, lawyers and community workers in the use of its provisions, we consult with government and industry peaks on related matters, and we conduct litigation in the public interest on specific questions arising from the legislation itself.

Now in our 41st year, the Tenants' Union is pleased to provide this response to the Department of Justice consultation paper on Civil Justice in NSW. This contribution forms part of our continuing work towards greater stability, liveability and affordability for the one in three people who live in rented homes across New South Wales.

In the course of our everyday work we consult with tenants, tenants advocates, community workers, lawyers and a range of non-government

organisations, including other housing peaks. In particular, we have drawn on the work of the state-wide network of Tenants' Advice and Advocacy Services (TAASs), whom we resource. TAASs collectively handle 25,000-30,000 questions and requests for assistance from tenants each year. These conversations include discussions about resolving disputes and navigating dispute processes. The TAASs' considerable experience informs and complements our own, and provides a significant body of knowledge to draw upon when attempting to understand how we can better avoid and resolve disputes.

Background to dispute resolution in tenancy

The number of tenants is increasing

Between 2009-10 and 2013-14 almost 85,000 properties were added to the private rental market in New South Wales.[1] It is likely that many more have been added in the last 2.5 years, as landlords borrowed almost $70 billion to fund their investments in 2014-15. This was up from $51 billion the previous year and $35 billion the year before that.[2] By comparison, the number of renter households in New South Wales grew by 43,000 between the 2006 and 2011 Census counts.

As a result of all this investment, only a comparatively low level of new housing has been brought into the rental market. About 90% of residential property investment is in established dwellings, not new construction.[3] This means homes are being transferred from the owner-occupier market, where first homeowner activity is in decline.[4]

At the other end of the income spectrum, renters are becoming less likely to secure a tenancy with a social housing landlord. Tightening of eligibility and rationing of stock means many low-income households who might be seen as candidates for social housing are being redirected to the private rental market. But with vacancy rates for Sydney hovering at around 1.6%, there is already no shortage of households taking up residence in the private rental market.

The proportion of tenants in New South Wales is growing faster than the general population. Today more than one in every three residents of New South Wales lives in a rented home. People are spending longer in the rental market, and families with children have become the predominant

[1] Australian Taxation Office statistics from rental property schedules
[2] Australian Bureau of Statistics *Lending Finance Data* (series 5671 tables 8 & 19)
[3] Ibid
[4] Ibid

renter household.[5] Our civil justice system must take this into account when attempting to avoid and resolve disputes.

Balancing the interests of landlords and tenants

The interests of landlords and tenants are not the same. Landlords participate in the rental market voluntarily. They pay for an asset – usually with borrowed funds – that they hope will grow in value to generate additional wealth. They enter into tenancy agreements to help cover their significant holding costs, and/or to replace other sources of income. Tenants, on the other hand, participate as occupants, residents, homemakers and neighbours.
These interests cannot be readily balanced without acknowledging the different positions of power that landlords and tenants hold, relative to one another. Even without taking account of market conditions, landlords generally offer a tenancy on a take-it-or-leave-it basis. Once a tenancy is established they face little competition from other landlords, because tenants are not in a position to look around for a better agreement from week to week. When tenants do relocate it is almost always at a high cost – both financially and emotionally – so the landlord's relative position of strength remains for the duration of a tenancy.

Thus, there is a structurally unequal bargain between landlords and tenants. The loss of the bargain may cause inconvenience and a period of diminished return for one party, while it will cause a significant change of circumstances and disruption for the other. Were either party to threaten to bring a tenancy agreement to an end for want of adherence with its terms, only the landlord would be in a strong position to follow through.

If avoiding and managing disputes between landlord and tenants is to have a genuine concern for the 'balancing of competing interests', it must first work to place these interests on a more equal footing. In doing this, it need not seek to diminish or weaken the position of the stronger party, but to enhance the position of the more vulnerable.

The civil law system must manage the impact of accidental, reckless or deliberate manifestation of landlords' unequal power against tenants. At the same time, it should ensure either party can obtain an appropriate and accessible remedy for any detriment caused directly by the other.

[5] Stone, Burke, Hulse & Ralton, *Long term private rental in a changing Australian private rental sector,* AHURI final report No. 209, July 2013

1. AVOIDING COMMON PROBLEMS

Information and education

The website tenants.org.au hosted by the Tenants Union is the 'go to' portal for tenants and others on information regarding tenants' rights and responsibilities. The website has been tested and enhanced since its development in 2001. It contains 30 comprehensive factsheets plus sample letters. It is reviewed at least annually for legal accuracy and informed by the experiences of tenants and their advocates. There were over 738,000 sessions on the website in 2015-16. Given there are approximately 800,000 tenancies in NSW, this is significant coverage. This website should be prominently presented on state government websites providing information to tenants.

Increased resources for education of tenants and community workers are needed. The Tenants Union and TAASs have expertise in providing training and community education programs to vulnerable tenant cohorts and those who assist them. The TU would welcome the opportunity to expand and/or partner with others in delivering information on tenants' rights and responsibilities at appropriate points in time. Targeted groups could include international students, recent arrivals and emerging communities, neighbourhood centre users and social housing tenants. Bi-lingual educators utilising peer education is a known successful model that should be adequately funded.

Our recommendation

- Tenants.org.au be prominently presented on state government websites providing information to tenants.
- Additional resources are provided to appropriate community organisations such as CLCs and TAASs for community education programs for vulnerable tenant cohorts including bi-lingual educators.
- A legal bi-lingual educators program is funded

2. DEALING WITH PROBLEMS EARLY

The consultation paper discusses the need to get the right information to solve a problem early and easily. The services and information portals mentioned on page 11 are indeed useful and important for tenants and other consumers. However, there are structural constraints to dealing with problems early.

Unfortunately, the TAASs continue to turn away 1 in 3 people requesting assistance to resolve a problem. They are forced to prioritise who they assist. This is usually tenants who are at risk of termination, or who have been terminated. An important part of the early resolution system is unable to function as effectively as it should because of resource constraints increasing the number of matters that escalate.

In addition, the inherent power imbalance between tenants and landlords is a disincentive for tenants to raise issues early. Tenants can be made to move without a reason, at considerable personal and financial cost. Or, as is more likely, for a bad reason, because there is always a reason to end a tenancy. This becomes a landlord's trump card, and tenants are acutely aware of this. In our 2014 Affordable Housing Survey, 77 per cent of respondents said they had put up with a problem, or declined to assert their tenancy rights, for fear of an adverse consequence.[6]

The most frequent areas of dispute or problems are bonds, repairs and terminations.

Bonds

Bond matters represents more than 16 per cent of the Tribunal's tenancy related workload.[7]. Fair Trading in its 2015 discussion paper on the Review of Residential Tenancies legislation notes that parties agreed to 73.9 per cent of refunds, while claims were raised but not disputed in 22.7 per cent of cases.

It is tempting to view these figures as a sign the process for refunding bonds and resolving bond disputes is working well. However, it should not be assumed that a refund by agreement, or even an undisputed claim, is an indication that all parties are happy with the outcome. Tenants will often relinquish part of their bond – albeit begrudgingly – as a trade-off for staying away from the Tribunal and to avoid being considered a 'trouble-maker'. This is understandable, since many real estate agents ask about bond refunds and Tribunal attendances as part of a tenancy application process.

Feedback we receive from tenants is that the process could be better – or at least clearer. A common complaint is that landlords "refuse to release the bond" and are thus holding up a refund, indicating that tenants are generally unaware of their option to lodge a claim unilaterally if no agreement can be reached. This may simply be a matter of providing clearer information about the bond refund process. The Tenants' Union would support this.

[6] Tenants Union of NSW *Affordable Housing Survey Report* April 2014
[7] NSW Civil and Administrative Tribunal *Annual Report 2014-15*

We note and welcome the recent move by Fair Trading NSW to Rental Bonds Online to make use by real estate agents mandatory. The strength of this approach is the impact it will have on the lodgement process. The TU will monitor this new development to see what if any impact it has on the bond refund process.

It may also be that the refund process needs reform, so that tenants may obtain a greater sense of control over the disbursement of their bond money at the end of a tenancy. This could be easily achieved by altering the 'claim of refund' process so that only tenants may apply to the Rental Bond Board for a refund. In the event that a landlord does not agree with a tenant's proposed disbursement of the bond, or the tenant does not apply for a refund within a reasonable time, landlords could apply to the Tribunal for damages, and orders to disburse the bond accordingly. This would encourage all parties to reach an agreement before seeking a refund or making a claim for a rental bond.

Our recommendation

- There should be a targeted information and education campaign to improve both tenants' and landlords' understanding and expectation of the bond refund and dispute resolution processes..

Repairs

One of the most common complaints raised by tenants is that the landlord will not carry out necessary repairs, even after they have been brought to their attention. Providing a third party report at the time of letting which outlines the condition of the property would reduce disputes between tenants and landlords in regard to the condition of the property and would give both parties at the start of a tenancy access to the same information. Landlords should be required to commission a report, at least once every five years, outlining the condition of the property, its ongoing maintenance needs, and its energy efficiency rating. A copy should be provided to tenants at the commencement of a new tenancy, and when subsequent reports are compiled. The TU is currently in discussion with the Real Estate Institute regarding this.

In 2016 Department of Justice engaged 'Future Gov' to develop a prototype of an online repair dispute request tool. The TU and TAASs were consulted as part of this process. The TU understood that the tool would record the notification of repairs, provide useful information and refer users to appropriate assistance. The intended outcome was to resolve disputes regarding repairs before they are taken to NCAT. A prototype is not a fully-fledged system but an interface that users would see and use if the system was then built. The TU's participation in the prototype project gave us confidence that the system could assist in dealing with problems

early. The TU recommend that further consultation and development of the project be undertaken.

However if a solution can't be reached between parties, the online tool would not only need to connect parties with a 'virtual' NCAT, it would need to assist vulnerable tenants locate and access advice from a tenancy advocate. This would be similar to how a physical duty advocacy scheme currently works for tenants at the 'real' NCAT.

Our recommendation

- Landlords should be required to commission a report, at least once every five years, outlining the condition of the property, its ongoing maintenance needs, and its energy efficiency rating. A copy should be provided to tenants at the commencement of a new tenancy, and when subsequent reports are compiled.

- That further consultation and development be undertaken on the Department of Justice online repair dispute request tool.

3. GETTING HELP TO SOLVE A PROBLEM

RESOLVING DISPUTES

Do the current information, advice and dispute resolution services operate effectively?

There are three key components to the information, advice and dispute resolution services that currently operate within New South Wales. These are Fair Trading's information, referral and tenancy complaints services, Tenants' Advice and Advocacy Services, and the NSW Civil and Administrative Tribunal. Each of these components plays a significant role in ensuring tenants have access to information, advice, advocacy and dispute resolution services. However, the overall impact of these services could be enhanced with better consideration of how each type of service might operate with respect to the others.

Fair Trading NSW

Fair Trading provides an information and referral service to landlords, real estate agents and tenants. Recently Fair Trading has also established a tenancy complaints service that seeks to engage parties on a voluntary basis to assist in the resolution of simple disputes. In publicising its tenancy complaint service, Fair Trading says they will give impartial advice to parties to a complaint, and will not take sides or represent either party.

They will also not give legal advice. This means that simple disputes can be resolved in an informal way without having regard to complicated process such as a Tribunal hearing.

It also means that a tenancy complaint may be resolved in a way that does not adequately account for both parties' legal rights. With renting laws that fail to acknowledge the structural imbalance of bargaining power between landlords and tenants, tenants are entering into a complaints process from a position of relative weakness.

Even so, Fair Trading's increased interest and activity in tenancy complaint handling is a welcome development. But it is difficult to measure the service's impact because of the nature what Fair Trading considers resolved. A recent exchange in parliament between the Minister responsible for the Fair Trading portfolio and the Member for Newtown revealed that 95 per cent of complaints raised by tenants over a three-month period, relating to repairs and maintenance, are considered resolved.[8] Given the difficulties we know tenants have in achieving satisfactory outcomes when disputes about repairs and maintenance arise, this raises a question – what does it mean to have a complaint resolved through Fair Trading's tenancy complaint service?

There are no published guidelines as to what Fair Trading means when it says a complaint is resolved. The TU has received feedback from tenants who have engaged with Fair Trading's tenancy complaint service, indicating that Fair Trading considers a matter resolved if it has been referred to another service, or where no subsequent inquiries are made by the tenant to Fair Trading. While referral to another service may help resolve a complaint, it cannot be assumed that every tenant who disengages from the service does so because their complaint is resolved.

Fair Trading's tenancy complaints service is not available for certain types of complaints. It does not assist tenants in relation to:

- Social housing tenancies
- Urgent health and safety issues
- Apprehended Violence orders or matters concerning violence
- Lockout and evictions
- Termination
- Illegal activity
- Serious damage to property
- Rental arrears in excess of 14 days
- Rental bond matters

[8] Available at http://www.parliament.nsw.gov.au/prod/la/qala.nsf/18101dc36b638302ca257146007ee41a/200de6d6a5061647ca257eed001d1bca?

Such matters may instead be referred to the NCAT. Tenants should be encouraged to contact a Tenants' Advice and Advocacy Service (TAASs) for independent advice and support prior to attending NCAT. TAASs are able to provide useful advice to assist a tenant to decide whether to take a matter to NCAT and if so, how to best present the matter which facilitates a more effective and efficient NCAT process.

Tenants Advice and Advocacy Services

Tenants Advice and Advocacy Services (TAASs) are community organisations that work entirely for tenants. There are 15 local TAASs that operate across New South Wales, and four local Aboriginal TAASs. They provide phone advice (around 25,000 per annum), advocate on behalf of tenants in resolving problems with landlords or agents (more than 4,800 cases), represent tenants in Tribunal proceedings (more than 2,000 cases), and conduct community education about tenancy rights and responsibilities.

There are also two resourcing TAASs – the Tenants' Union of NSW and Dtarawarra (Aboriginal Resource Unit), that provide the local TAASs with legal back-up, training and other support. They provide tenants with factsheets and sample letters (almost 740,000 downloaded in 2015-16) and a voice in tenancy policy and law reform.

TAASs' provide one-on-one support and assistance to tenants in a way that no other services can. They do this in tenants' interests alone, and are the only services that assist tenants and renters exclusively in hearings at the NCAT.

Because of this, they are unique in their understanding of dispute resolution processes. This is important when giving information or advice to tenants about the various ways a dispute could be resolved, because well-advised tenants' make well-considered Tribunal applications. They are also aware of when matters can be better resolved outside of the Tribunal, which saves everyone time, money and angst. The TU and TAASs regularly receive informal feedback from NCAT members that they welcome and encourage assistance by TAASs for tenants.

But TAASs really come into their own when helping tenants through the processes of dispute resolution, in whatever form it takes. In a recent example, two tenants received assistance after they had complained to their landlord about some noisy construction work that was taking place within their unit block. These tenants had lived in the property for many years, but the landlord's response was to issue a notice of termination without grounds, while attempting to increase the rent by a substantial margin. The TAAS helped convince the landlord to withdraw the notice of termination, but not the rent increase notice. The tenants applied to the Tribunal to contest the rent increase, and with assistance from the TAAS

were able to summons the residential tenancy agreements of other properties within the unit block, with the same landlord. As rents were not being increased for these other agreements, and notices of termination had not been issued, the tenants could demonstrate they were being singled out for an excessive increase due to the complaint they had made.

TAASs could also put their considerable skills and experience to good use in referring and assisting tenants through Fair Trading's tenancy complaints service, if adequately resourced. They have not had a genuine increase in funding since 2002. Since then, the number of tenants in New South Wales has increased by at least 45 per cent, and TAASs estimate they are currently unable to assist 1 in 3 people who come to them for help.

No matter how efficient or effective a civil law system is, access to justice demands that inherent power imbalances require individual support and advocacy for vulnerable users.

NSW Civil and Administrative Tribunal (NCAT)

NCAT is the primary forum for tenancy dispute resolution in NSW, which includes alternative dispute resolution process. Where parties are unable to resolve disputes through conciliation, Tribunal Members with specialist skills and knowledge make orders subject to the *Residential Tenancies Act 2010.* These orders are binding on disputing parties, and can generally be enforced inexpensively and easily. It is common for landlords to be represented by real estate agents in matters before the Tribunal, and it is appropriate that tenants have access to similarly qualified and experienced advocates.

How to encourage the early resolution of tenancy disputes and reduce the number of tenancy disputes

Access to advice and advocacy services

We have discussed above the need for properly funded Tenants' Advice and Advocacy Services and better integration of all dispute resolution services across New South Wales.

Non-economic loss

Before the *Residential Tenancies Act 2010* became law the Tribunal would sometimes make orders for non-economic loss, to compensate tenants on account of inconvenience, disappointment and embarrassment arising from a breach of a residential tenancy agreement. While the Tribunal generally took a conservative approach to such compensation, the prospect of these orders made a positive contribution to landlords'

compliance with the *Residential Tenancies Act 1987,* and the avoidance of protracted disputes. But in 2010 the New South Wales Court of Appeal found, in a decision not related to tenancy laws, that a claim for damages for non-economic loss is subject to the *Civil Liability Act 2002*.[9] This decision makes it practically impossible to obtain orders for non-economic loss in the Tribunal, to the detriment of tenant's confidence in their ability to enforce their rights.

Penalty notices

The *Residential Tenancies Act 2010* introduced penalty notices for non-compliance. Section 203 of the Act allows an authorised officer to issue a penalty notice if it appears a person has committed certain prescribed offenses against the Act or its regulations. Where issued, a person may simply pay the amount required by the penalty notice – in all cases substantially lower than the maximum penalty – and avoid having the matter considered for prosecution. The penalty notice provisions were intended to make it easier to resolve issues of non-compliance.

With the non-economic loss developments from *Insight Vacations* it has been open to Fair Trading NSW to make more active use of these penalty notice and enforcement provisions. But Fair Trading's "Year in Review" reports indicate that there have been only 28 penalty notices issued under the *Residential Tenancies Act 2010*, up to the end of the 2015-16 financial year. Given they handle thousands of tenancy related contacts each year, it is extremely unlikely that they have not had more matters for compliance brought to their attention.

Our recommendation

- Funding for the TAASs must be increased so that they can meet the demand for their services.

- Fair Trading's information, referral and tenancy complaints services, TAASs and NCAT should work towards better integration of services and purpose. In particular, the role that independent advice and advocacy services can play in assisting tenants through a simple tenancy complaint as well as a more complex hearing in the Tribunal, while acknowledging that not all tenants require advocacy, needs to be recognised.

- Tenants' confidence in the law could be boosted by a more proactive approach to compliance and enforcement, and confidence could be better achieved by restoring non-economic loss claims to tenants in the Tribunal. This would require an

[9] *Insight Vacations v Young* (2010) NSWCA 137 (11 June 2010); cited with approval in *Flight Centre v Janice Louw* [2011] NSWSC 132

amendment to the *Civil Liability Act 2002* to exclude claims made under the *Residential Tenancies Act 2010* from Part 2 of the *Civil Liability Act*.

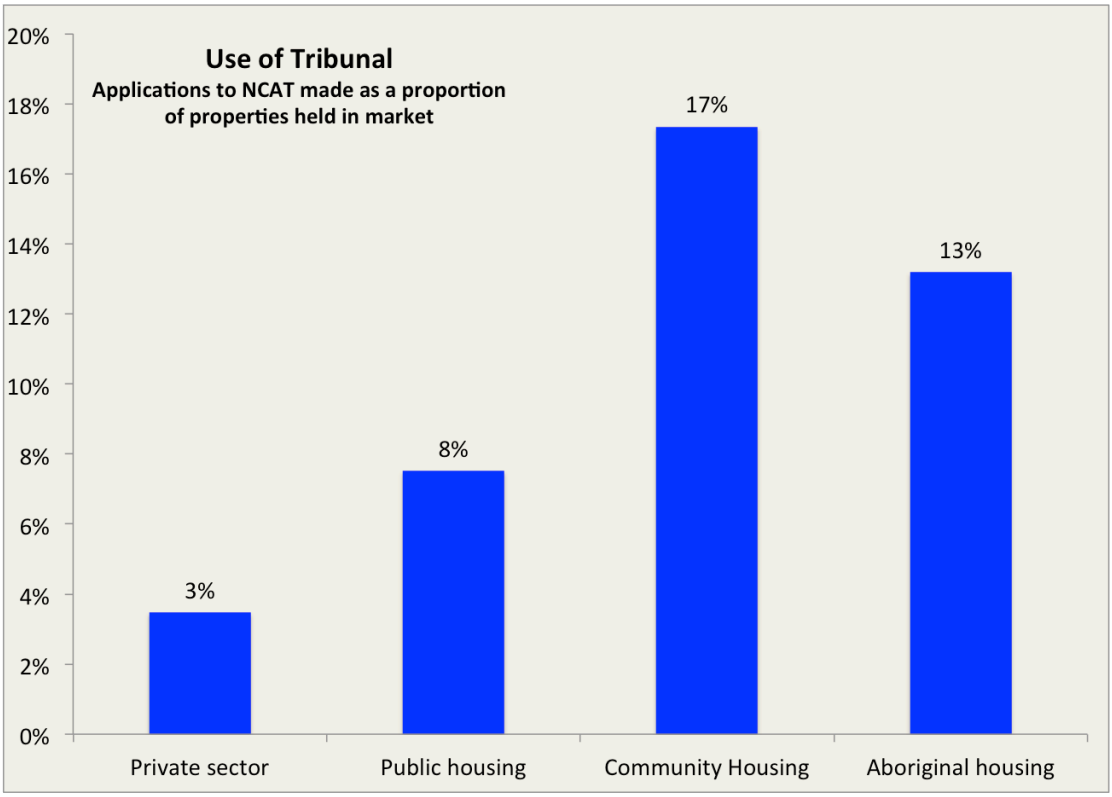
- Fair Trading should review its infrequent use of penalty notices in compliance and enforcement related activities.

Misuse of NCAT by social housing providers

Social housing landlords currently use NCAT as an internal management tool rather than as a last resort dispute management tool. The following table and graph demonstrates this.

Applications for termination made to the residential tenancies division of NCAT [source: NCAT Quarterly Management Report for quarter 3 2014-15, latest available]

Landlord type	Applications for termination	Bonds held/number of tenancies	Applications as % tenancies
Private	6,474	744,779	3
Public	2,017	110,214	8
Community	1,223	28,214	17
Aboriginal	309	9,371	13



Public, community and Aboriginal landlords are between 2.5 and 5 times more likely to take a tenant to NCAT. TAAS advice to social housing tenants re NCAT is overwhelming related to evictions and yet very few tenants are actually evicted.

Given that social housing landlords are supporting vulnerable tenants with complex needs, this reflects a very heavy-handed approach. It appears social housing providers are more likely to use NCAT to 'persuade' tenants into a specific course of action than require an order for vacant position. It does not reflect policy, procedure or practice based on principles of early intervention and best practice. Nor does it operate within the spirit of the model litigant policy.

Such applications consume considerable staff resources of NCAT, FACS Legal and TAASs. Application fees to NCAT are $48 (standard fee) or $96 (corporation fee). Using these figures the public housing landlord (Land and Housing Corporation) spend approximately $193,632 each year on applications. The combined staffing and application costs could be better spent in resolving problems early outside of NCAT.

By the way social housing tenants are the least likely of all to make applications to NCAT 2% of applications were made by social housing tenants in 2015 calendar year [compared to 22% of applications in the general tenancy list][10].

Barrier to access to NCAT for residents of land lease communities

Home owners in residential land lease communities can make applications to NCAT online or by using the 'residential communities application' form. The form requires the home owner to provide details of the operator including the business or company name, ABN or ACN and the postal address. All of this information is easily accessed and freely available.

An access issue has arisen because NCAT now requires home owners to undertake an ASIC search and provide a copy. This is an extract from the NCAT website:

'If your application is against a business or company, you must provide the name of the individual or company that owns the business, the registered name and address, and their ABN or ACN. You will also need to provide NCAT with a business name or company extract.'

This search must be done online and costs more than $40. The majority of home owners in land lease communities do not own a computer and would not have the skills or knowledge to enable them to undertake an

[10] Law and Justice Foundation, Data Insights in Civil Justice 2016

ASIC search. Further, the majority of home owners are pensioners and the requirement for the search will have a significant financial impact. This requirement is a barrier to home owners accessing what is supposed to be a quick, cheap and informal dispute resolution process.

NCAT unable to resolve disputes about social housing decisions.

Access to justice would be improved in the civil law system if NCAT Administrative Division were allowed to resolve disputes about social housing decisions.

These are decisions, for example, about whether a person is eligible for social housing; or what sort of property they might be offered; or whether they are entitled to a rent rebate, and how much; or whether a rent rebate will be cancelled or varied.

These decisions can be a very big deal for people – a rent rebate cancellation, applied retrospectively, can result in an instant debt of tens of thousands of dollars and a termination notice.

They are also decisions that are not dealt with under the *Residential Tenancies Act 2010*, and so cannot currently be deal with as tenancy disputes by NCAT's Consumer and Commercial Division – even though they may be the underlying problem in a tenancy dispute. So, for example, if a public housing tenant's rent rebate is cancelled, NCAT can hear Housing NSW's application for termination of the tenancy and payment of the arrears, but it cannot hear the tenant's objection to the rent rebate being cancelled in the first place.

Currently, social housing decisions can be reviewed by the social housing landlord that made the decision and, if the tenant is not satisfied with the review, by the NSW Housing Appeals Committee. The HAC has done some good work over the years, but it has significant shortcomings: it has no legislative basis; it cannot make binding orders (only recommendations); and its own decision-making is not always as rigorous or fair as it could be.

It is perverse that a decision whether or not to grant a fishing license can be reviewed at a tribunal but a decision by a social housing provider that may lead to losing your home can not!

The lack of appropriate review of social housing decisions is an access to justice problem – and NCAT should be made available to address it.

Our recommendation

- Social housing providers review their policy and procedures regarding overuse of NCAT.

- Disincentives are put in place to dissuade social housing providers from using NCAT.
- Immediately remove the requirement for home owners in residential land lease communities to accompany their application with the results of an ASIC search.
- NCAT should be able to review disputes about social housing decisions.

4. ENFORCING JUDGMENTS AND ORDERS

TAASs regularly report examples of when the NSW Land and Housing Corporation do not comply with orders that have been made by NCAT in relation to undertaking repairs. Advocates are often forced to escalate matters with the Corporation in order to gain compliance. Escalation pathways are not always clear and change with little notice. Sometimes advocates are successful in gaining compliance, sometimes they are not.

This situation is the result of the available enforcement, which favours the landlord over a tenant. This is reflected in the fact that enforcement for landlords seeking eviction is easier than for tenants seeking repairs or performance of other orders. A further disincentive is that a tenant may not wish to risk the cost or have the skills to enforce the order.

A quick survey of Community Legal Centres, Legal Aid and TAASs in the week beginning 6 February 2017 found that 8 organisations had multiple matters relating to the NSW Land and Housing Corporation not complying with NCAT Tribunal orders for repairs. Some of these matters have also been back to NCAT a second time because the order has not been complied with.

Requiring government corporations to report on the number of court and tribunal orders and compliance in their annual report would go some way to discouraging this practice.

The action of the Land and Housing Corporation would appear to not comply with the NSW Model Litigant Policy. The following is taken from justice.gov.au.

> "The Model Litigant Policy is designed to provide guidelines for best practice for government agencies in civil litigation matters. It is founded upon the concepts of behaving ethically, fairly and honestly to model best practice in litigation. Under the policy, government agencies are required to:
>
> - Deal with claims promptly
> - Not take advantage of a claimant who lacks the resources to litigate a legitimate claim

- Pay legitimate claims
- Avoid litigation
- Keep costs to a minimum, and
- Apologise where the State has acted inappropriately.

The Model Litigant Policy was approved for adoption by all government agencies on 8 July 2008. The revised Policy was released on 1 July 2016 under Premier's Memorandum 2016-03."

Evaluating government agencies or requiring reporting, against the model litigant policy would be another safeguard.

Our recommendation

- Government corporations to report on the number of court and tribunal orders and compliance in their annual report.

- Government agencies evaluated against or required to report on, compliance with the model litigant policy.

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