TENANTS' UNION OF NSW

SUBMISSION

Statutory Review of s154D and s154G of the Residential Tenanices Act 2010

November 2019

TENANTS' UNION OF NEW SOUTH WALES

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OF NEW SOUTH WALES

Tenants' Union of NSW
Suite 201
55 Holt Street
Surry Hills NSW 2010
ABN 88 984 223 164

P: 02 **8117 3700**
F: 02 8117 3777
E: contact@tenantsunion.org.
tenants.org.au

NACLC
National Association of
Community
Legal Centres

TENANTS' UNION OF NEW SOUTH WALES

We thank the Department of Communities and Justice for the opportunity to provide this written submission on the antisocial behaviour provisions of the *Residential Tenancies Act 2010*, in particular the operation and impact of sections 154D (mandatory termination) and 154G (order for possession) since their implementation.

The Tenants' Union of NSW is the peak body representing tenants' interests in NSW. We are a specialist community legal centre with recognised expertise in residential tenancy law and policy in NSW. We accredited by Community Legal Centres Australia and are a registered training organisation. We are the main resourcing body for the state-wide network of Tenants' Advice and Advocacy Services (TAASs). Collectively the TAASs and TUNSW provide information, advice and advocacy to tens of thousands of renters across New South Wales each year.

Our comments reflect the view and concerns of the Tenants' Union NSW. They have also been informed by feedback on the experiences of TAASs across NSW. TAASs provide assistance to social housing tenants impacted by the provisions and the broader Antisocial Behaviour Management Policy in practice, including a significant number who have faced eviction under s154D and/or had orders for possession impacted by s154G.

These services have front line experience working with social housing tenants and are familiar with the complex range of issues and challenges these tenants are often grappling with in their lives. We understand a number of them are making submissions to this process and draw your attention to their and their client's experiences.

For more information or to discuss this submission, please contact Leo Patterson Ross, Senior Policy Officer, on 02 8117 3700 or leo.patterson.ross@tenantsunion.org.au.

RECOMMENDATIONS

The antisocial behaviour provisions are an inappropriate, ineffective approach to creating safer social housing communities

- Repeal sections 154A - 154G.
- If section 154A - G is not repealed in full, repeal section 154D and G.
- Re-allocate current resources to funding for appropriate supports and programs in social housing neighborhoods aimed at building and strengthening community social cohesion and resilience.

We must address barriers to tenants' access to supports

- Facilitated and/or active referral to be made by the Department of Communities and Justice and/or the social housing landlords to external advice and supports (e.g. local TAAS) in all instance of social housing termination, and in particular termination under s90 and s91.
- Social housing landlords be required to share all relevant evidence including information provided by police relating to s90 and s91 terminations with tenant and/or their representative on request prior to or immediately at the point of application to Tribunal. This could be achieved by limiting applications to instances where documentation has been shared already, or by DCJ or other social housing landlord published policy.
- NCAT to review procedures regards the requirement for a solicitor to uplift summonsed documents.

We must ensure appropriate discretion in internal and Tribunal proceedings involving mandatory evictions (section 154D)

- Transparent and published DCJ policy regards use of discretion and alternative dispute resolution prior to application or hearing for termination on the basis of section 90 and section 91
- Amend sections 90 – 92 to require applications can only be brought with evidence of a conviction, or at least at the conclusion of the criminal case
- If section 90 – 92 not amended as above, introduce as standard practice at NCAT the adjournment of any terminations made under s154D until the criminal case has been concluded

- Section 154D is unnecessary and should be repealed. It is being used in a very small number of cases and where it is being used it is appropriate that NCAT should have the power to exercise discretion taking into account the circumstances of the case. Section 145D inappropriately limits NCAT's ability to provide external oversight of social housing landlords' ability to terminate, especially given the complex tenancies caught by the section.

- If not repealed section 154D should be simplified to ensure all tenants facing eviction as a result of severe illegal use (at section 90 and 91) by another person in their household or visitor has access to discretions set out at 154D(3).

- Change 'exceptional circumstances' at s154D(3)(c) to 'special circumstances'.

- Build in a requirement at section 154D for the applicant to demonstrate they have exhausted alternative dispute resolution and the tenant has not attempted to or cannot adequately address impacts on their community or remedy breach before they are able to make the application.

We need to ensure vulnerable tenants have adequate time to find alternate housing if evicted

- Repeal section 154G as it is unnecessary and harsh, causing problems where tenants legitimately need more time to secure alternative accommodation.

- If section 154G is not repealed limit its application only to 154D cases, and allow tenants facing eviction as a result of an illegal act by some other person in their household more time, for example up to 60 days.

- Change 'exceptional circumstances' at s154G to 'special circumstances'.

Overview: The antisocial behaviour provisions are an inappropriate, ineffective approach to creating safer social housing communities

In October 2015 NSW Parliament passed the *Residential Tenancies and Housing Legislation Amendments (Public Housing–Antisocial Behaviour) Act 2015 (*2015 Act*)*. The resulting changes, including section 154D (mandatory terminations) and 154G (orders for possession), have been in operation since February 2016.

Section 154D introduced mandatory eviction where a social housing landlord is evicting a tenant on the basis of illegal use of the property (section 91) or serious damage to property or injury to a neighbour or the landlord (section 90). Very limited exceptions to the mandatory eviction provision exist for especially vulnerable tenants, and tenants with children who face hardship if evicted.

The introduction of this provision effectively removed much of the discretion of the NSW Civil and Administrative Tribunal (NCAT) not to terminate a tenancy where to do so would result in an unjust outcome. Previously NCAT had been required to consider whether the breach was sufficient to justify termination, and had much wider discretion in all cases to consider hardship and other circumstances of the case before making an order for termination.

Section 154G requires that for any order evicting a social housing tenant, regardless of the reason, NCAT make orders for possession no longer than 28 days after the day the NCAT makes the termination order. The discussion paper appears to infer this provision applies to instances of antisocial behaviour, but this is not accurate. The only exception to this being where NCAT is satisfied there are exceptional circumstances. Previously NCAT had a wider discretion – one still available to them for private rental tenancies - to consider the circumstances of the case when setting a date for vacant possession.

When this legislation was first proposed we cautioned against the introduction of these provisions. We held significant concerns they would weaken NCAT's ability to act as an independent dispute resolution forum for social housing tenancies, and significantly limit NCAT's discretion to avoid unjust outcomes. Having now seen the provisions in operation, we feel our concerns were not misplaced. Stripping discretion from NCAT has undermined the Member's ability to apply proper scrutiny to termination decisions and weigh up the circumstances of the case to determine when orders for possession should be made. We are aware of a number of instances in which this has led to social housing tenants facing particularly vulnerable or precarious housing situations, including possible homelessness or avoidable incarceration. Previously these examples would likely have been avoided by way of NCAT discretion.

Section 154D and G were introduced alongside a number of other punitive measures aimed at addressing so called antisocial behaviour or misconduct in social housing. The social housing system in NSW plays an important role in providing a safety net for vulnerable people. Eviction should always be considered a last resort and all efforts made to sustain a tenancy. Yet the starting point in this approach is one of threatening tenancies and pursuing eviction.

There is no evidence this approach provides a genuine solution to criminal and antisocial behaviour in social housing. The discussion paper for the statutory review did not provide any internal data or point to any other published data or research to indicate a decrease in general criminal activity in public housing in NSW since the introduction of these provisions in 2016. Nor is there any data on the rates of application for termination and resulting evictions under section 90 and 91 for social housing tenancies prior to the introduction of s154D (making these mandatory), to allow comparison to after introduction to give some indication as to whether s154D serves as a deterrent. On the contrary, recent research undertaken by the Australian Housing and Urban Research Institute suggests that the heightened scale of escalation afforded by ASB provisions such as these in NSW may actually increase tenants' unsatisfactory engagement with social housing landlords around addressing antisocial behaviour matters and the likely risk of termination.[1]

The Auditor General's 2018 performance audit of the Antisocial Behaviour Management Policy in public housing found:
"*a majority of tenants and staff did not feel tenants' safety and security had improved since the introduction of the policy. Over a third (35%) felt it had worsened since implementation.*[2]"

We recognise the disproportionate impact of the broad range of antisocial behaviour policies for Aboriginal tenants of public housing. Almost a third of all ASB allegations made have been registered against Aboriginal tenants, while Aboriginal households make up only around 7.6% of public housing tenancies. In the experience of TAASs who have provided support for Aboriginal tenants' challenging allegations, there is often an element of racial discrimination or targeting involved with the allegations made. Many of these cases in which assistance has been provided have involved women and children. It is clear from the data provided on the use of s154D (mandatory evictions) in the discussion paper, that there is an overrepresentation of Aboriginal tenancies impacted – 17% of mandatory evictions for severe illegal ASB have been for Aboriginal tenants.

The practical impact of the mandatory eviction policy is to extend the punishment for a possible criminal act beyond the judicial system. It also allows for punishment to be extended, where no criminal act can be adequately established in the forum in which we have as a community established the most appropriate evidentiary requirements. The judicial system is set up to determine whether a criminal act has occurred, and if so whether incarceration or community rehabilitation is most appropriate. The NCAT process for mandatory evictions prior to criminal proceedings can limit the ability of the criminal justice system to determine this. It should be noted punishment via mandatory eviction holds particularly serious ongoing consequences for the tenant and their household, as Department of Communities and Justice (DCJ, formerly Department of Family and

[1] Martin, C., Habibis, D., Burns, L. and Pawson, H. (2019) *Social housing legal responses to crime and antisocial behaviour: impacts on vulnerable families*, AHURI Final Report No. 314, Australian Housing and Urban Research Institute Limited, Melbourne, https://www.ahuri.edu.au/research/final-reports/314, doi:10.18408/ahuri-7116301, p.66 accessed 26 November 2019
[2] NSW Auditor General, Report Managing antisocial behaviour in public housing, August 2018, p.10, accessed 26 November 2019

Community Services) policy negatively classifies tenants who have been evicted in these circumstances as ineligible for future social housing.

The NSW Premier's Priorities[3] include a commitment to reducing street homelessness by 50%, and reducing adult reoffending following release from prison by five per cent by 2023, amongst others. Neither of these priorities are made more likely by continuing the current course of punitive measures applied in a separate track to the criminal justice system. This mandatory eviction system, particularly where the system also removes access to future housing support and reduces likelihood of rehabilitation in community, means street homelessness is a far more likely outcome as is reoffending rather than engaging in rehabilitative programs.

Given the policy has had no influence on discouraging antisocial, illegal and fraudulent behavior and has demonstrably failed to improve social housing tenants' sense of security we recommend the repeal of section 154A – 154G, in particular section 154D and G.

In place of the broad range of punitive measures currently enabled via section 154 of the Act (and implemented by DCJ via their Antisocial Behaviour Management Policy) social housing landlords should proactively offer active referrals for support before and separate from commencement of any formal or legal response and/or threat of eviction arising from misconduct or antisocial behavior.

We recommend a shift in approach more aligned with a community based framework that would see a significant increase in the resourcing of alternative support services and programs in social housing neighborhoods, especially those aimed at building and strengthening community social cohesion and resilience.

Recommendations

- Repeal sections 154A - 154G.
- If section 154A - G is not repealed in full, repeal section 154D and G.
- Re-allocate current resources to funding for appropriate supports and programs in social housing neighborhoods aimed at building and strengthening community social cohesion and resilience.

We must address barriers to tenants' access to supports

Adequacy of support for those facing eviction, barriers to providing support and assistance

We are concerned with the relatively weak referral process in place to ensure social housing tenants are supported adequately by external assistance and advice when facing termination. In the period 22 February 2016 through 31 December 2018 TAASs provided advice or assistance to 100 social housing tenants around termination for illegal use. 60

[3]NSW Government, Premier's Priorities, accessed at https://www.nsw.gov.au/improving-nsw/premiers-priorities/

individuals received significant assistance (e.g. representation at Tribunal or during conciliation) from an advocate. When placed against the 347 severe illegal cases and 183 applications to NCAT (on basis of s90 an s91), even taking into account that tenants may have accessed alternate support (e.g. Legal Aid), it is clear a significant number of tenants are falling through the cracks. Terminations made under section 154D are especially complex and can often require more significant assistance and potentially more formal representation than other tenancy matters.

The possibilities and requirements of activating NCAT's ability to exercise discretion under s154D(3) is complicated for a tenant to navigate due to the complexity of the discretionary provisions. All tenants facing a mandatory termination under section 154 should be provided a facilitated and/or active referral to external independent advice or assistance. The current practice of DCJ to include a referral to a written address of the website of the Tenants' Union of NSW, Legal Aid, and the Aboriginal Tenants Advice and Advocacy Service is not adequate. We highlight the NSW Auditor General's recommendation that more needs to be done to advise tenants about legal and other tenant support services.[4]

We are also aware that many tenants are challenged by a lack of adequate funds and/or other resources that are required to obtain specialist documentation confirming disability. As an example, the cost of specialist testing and reports outlining clinical diagnoses of cognitive disability can be prohibitive.

As another example of the complexity involved, a tenant or their advocate (very often not a practising solicitor) requires a solicitor for document uplift of the summonsed police file or any other police evidence relating to the criminal investigation that DCJ or other social housing landlord will be relying on at NCAT. The ability to view and appropriately examine this evidence while preparing for NCAT proceedings is vital. While it is possible to request the NCAT Registry photocopy these documents, in practice the cost at $2 per sheet is prohibitive for social housing tenants.

While this is a structural or broader problem with the NCAT process that is to some extent outside of scope of this review, the impediments placed on tenants and their advocates in the interaction of uplift protocols in particular with mandatory terminations points to the need for reform. Removing the requirement in the NCAT – which is designed to be a more informal jurisdiction - for a solicitor for document uplift would ensure all applicants are provided fair access to all relevant evidence in order to prepare for their hearing.

It would be very useful for all parties involved if the social housing landlord were required to share all evidence relied on to establish illegal use with the tenant and/or their representative as soon as this becomes available. Allowing a tenant access to this information earlier would allow a quicker, more forthright discussion of the tenants' current circumstances and the context of the breach. This would better enable a social housing landlord to make a decision regards whether making an application to terminate is appropriate in the circumstances, or whether an alternate resolution in which the tenant is able to adequately address or remedy the breach can be made.

[4] NSW Auditor General, Report Managing antisocial behaviour in public housing, August 2018, p.18, accessed 26 November 2019

Recommendations

- Facilitated and/or active referral to be made by DCJ and/or the social housing landlords to external advice and supports (e.g. local TAAS) in all instance of social housing termination, and in particular termination under s90 and s91.

- Social housing landlords be required to share all relevant evidence including information provided by police relating to s90 and s91 terminations with tenant and/or their representative on request prior to or immediately at the point of application to Tribunal. This could be achieved by limiting applications to instances where documentation has been shared already, or by DCJ or other social housing landlord published policy.

- NCAT should review procedures regards requirement for solicitor for uplift of summonsed documents.

We must ensure appropriate discretion in internal and Tribunal proceedings involving mandatory evictions (section 154D)

Lack of transparency and consistency re social housing landlord's use of discretion

The discussion paper indicates there is some, though often limited, negotiation and/or conciliation taking place between tenant and/or their representative and the social housing landlord before an application is made for termination, or at some point prior to the NCAT hearing. We commend those instances in which DCJ and/or other social housing landlords have entered into discussions or negotiations with a tenant to address concerns around alleged severe illegal use and determine the broader circumstances of the case and have appropriately exercised their discretion to instead seek an SPO or otherwise resolve the issue. However we are aware this is not always the case, with some tenants experiencing an immediate escalation of their matter from the local office to DCJ legal or equivalent, with a seeming unwillingness to enter into discussion outside of the formal Tribunal hearing process once an application has been initiated.

The example provided in the NCAT decision on North Coast Community Housing Company v Whittick is illustrative of the failure of social housing landlords to adequately enter into alternative dispute resolution (ADR) and/or use their own discretion to consider the full circumstances of the case before initiating a termination under s154D.[5] Christina Whittick lived with her husband and five children in a house in Tweed Heads and had an excellent tenancy history prior to this incident. She faced an eviction on the basis of a breach under s91, as a result of a Police search at the property in which a quantity of cannabis leaf and two cannabis plants were found. It was apparent to the Tribunal Member that the tenant had no knowledge of the illegal use for which termination was being sought. The two cannabis plants grown were, in the opinion of the Tribunal Member, grown for personal use as pain relief due to a medical condition suffered by the tenant's husband. The tenant's

[5] *North Coast Community Housing Company v Whittick [2019) NSW CATCD 58*

husband had successfully completed a Merit program evidencing he had been free of drugs since being charged. Both the tenant and her husband had recognised disabilities, 3 of the five children were attending local schools, and evidence was provided the household faced homelessness if evicted. NCAT found there was no likelihood of adverse effects for the community if the tenancy continued. The application of the social housing landlord was dismissed with NCAT finding the termination could not be justified as it would result in undue hardship to the tenant and would be disproportionate to the seriousness of the breach.

While NCAT ultimately was able to activate their discretion via s154D(3) and appropriately save the tenancy, the process was traumatic for the Christina and her family. She was reliant on strong advocacy from Legal Aid representatives to present the full circumstances of the case, and we are aware this is not always made available to tenants facing evictions under s154D. This application for termination serves as a clear example of where a social housing landlord's discretion could have been used to enter into ADR and find an alternate resolution, rather than unnecessarily expending the NCAT's time and resources and causing undue trauma for the household.

We recommend the re-introduction of specialist CSOs or equivalent tenancy management workers in other social housing providers who can take on cases of serious illegal use as an intermediary point between the local team and the legal team (or others responsible for pursuing a formal legal response through NCAT). They can more appropriately and with the relevant level of required discretion explore the circumstances of the case and any other relevant issues to ensure there is an opportunity for ADR (e.g. SPO by consent) prior to initiating an application, or before hearing to ensure the best outcome for both parties.

Further consideration of tenants' liability for the action of others

The high incidence of women tenants facing termination on the basis of the violent or other criminal behaviour of male occupants (their partners or older male children residing in the premises) points to the need to consider and develop a more nuanced understanding of the gendered impact of current policy, and consider reforms to address this. The current provisions around discretion should be amended to ensure NCAT is able to appropriately consider whether it is just and reasonable to hold the tenant liable for the actions of other occupiers or visitors, considering all the circumstances, including the relative capacities and powers of the persons.

S154D disadvantaging, prejudicing tenants in their criminal proceedings

Mandatory evictions are currently being pursued before criminal proceedings are finalised or any conviction made. In some cases tenants may be put in the position where it is strategic for them to concede a breach under s90 or 91, because they are confident of their ability to secure NCAT's discretion under s154D(3) and demonstrate hardship such that NCAT is unlikely to order termination. We hold serious concerns about the possible prejudicing of criminal proceedings in these instances, or indeed where a challenge has been made to the application, because the tenant is often required to publicly set out their defense at NCAT prior to their criminal proceedings commencing.

We are also aware of terminations being sought by social housing landlords despite being aware that termination resulting in loss of a tenant's permanent residence may impact

sentencing in criminal proceedings still on hand. We are aware of at least 3 cases in which the criminal justice system has determined that an individual does not deserve incarceration and seeks to impose an Intensive Corrections Order (ICO) as an alternative to incarceration, but the social housing landlord has nonetheless pursued an illegal use mandatory eviction knowing this may result in the tenant being incarcerated. While this as a factor that can be taken into account by NCAT in instances where they have discretion under s154E as to whether to order a termination, NCAT in decisions so far has not considered this in itself to rise to the level of 'undue hardship' sufficient to trigger discretion under s154D(3).

Higher bar for discretion in less serious instances of illegal use, s90

In a number of instances in which support has been provided by TAASs, a tenant has faced eviction under s154D as a result of another occupant being charged with actual bodily harm and/or other less serious illegal use under section 90. This gives rise to an anomaly where these evictions for a less serious illegal use have a higher bar to rise to than incidents involving grievous bodily harm in order to activate NCAT's discretion provided at s154D(3).

Timing of application for termination in relation to criminal proceedings

The timing of the criminal case in terms of the charge, court attendance notice, conviction, and sentence should more appropriately be considered in both the practice of the social housing landlord, and NCAT. These could be more usefully drawn on as a guide to when the option of making an application for termination is made available to a social housing landlord. At the second reading speech for the amendment bill introducing the range of ASB changes in 2015 it was made clear the intention was the mandatory eviction provisions were to be used only for more serious crimes. If this is the intention, there needs to be an opportunity for relevant matters to be run in the criminal courts till their conclusion, so that the social housing landlord can better determine whether it is appropriate to pursue eviction. If mandatory eviction provisions remain, applications made under these provisions should occur only after conviction. If a social housing landlord wants termination before conviction, they could still initiate an application under section 87, likely referencing a breach of use (section 51).

We have already set out above a number of ways in which mandatory eviction proceedings are inappropriately interacting with criminal proceedings, for example where a tenant may self-incriminate due to a strategic decision to admit breach due to the lower standards of evidence at NCAT and/or reliance on NCAT's discretionary powers. It is worth considering that on the other side, the provision of possible evidence or information provided by police to tenants at eviction to allow due process may equally be of concern for the NSW police and the NSW Department of Public Prosecutions.

Exceptional circumstances

At law, the words 'exceptional circumstances' have a very high bar. This phrase occurs nowhere else in the *Residential Tenancies Act 2010* nor its Regulations. It occurs twice in the *NSW Civil and Administrative Tribunal Act 2013* at Schedule 5 Clauses 23 (1) and 26 (1) in the context of costs. We are concerned that the current interpretation of 'exceptional' in the NCAT makes the provision at s154D(3) and s154G meaningless.

Recommendations

- Transparent and published DCJ policy regards use of discretion and alternative dispute resolution prior to application or hearing for termination on the basis of section 90 and section 91

- Amend sections 90 – 92 to require applications can only be brought with evidence of a conviction, or at least at the conclusion of the criminal case.

- If section 90 – 92 not amended as above, introduce as standard practice at NCAT the adjournment of any terminations made under s154D until the criminal case has been concluded.

- Section 154D is unnecessary and should be repealed. It is being used in a very small number of cases and where it is being used it is appropriate that NCAT should have the power to exercise discretion taking into account the circumstances of the case. Section 145D inappropriately limits NCAT's ability to provide external oversight of social housing landlords' ability to terminate, especially given the complex tenancies caught by the section.

- If not repealed section 154D should be simplified to ensure all tenants facing eviction as a result of severe illegal use (at section 90 and 91) by another person in their household or visitor has access to discretions set out at 154D(3).

- Change 'exceptional circumstances' at s154D(3)(c) to 'special circumstances'.

- Build in a requirement at section 154D for the applicant to demonstrate they have exhausted alternative dispute resolution and the tenant has not attempted to or cannot adequately address impacts on their community or remedy breach before they are able to make the application.

We need to ensure vulnerable tenants have adequate time to find alternate housing if evicted (section 154G)

Section 154G requires that for any order evicting a social housing tenant, regardless of the reason, NCAT make orders for possession no longer than 28 days after the day the NCAT makes the termination order. The discussion paper gives as a reason for the reduced time and discretion from NCAT that "in cases of severe illegal behaviour, this meant that neighbours had to suffer the consequences of that behaviour for a prolonged period of time."

This, along with its introduction in the *Residential Tenancies and Housing Legislation Amendments (Public Housing-Antisocial Behaviour) Act 2015* infers that the provision was implemented because of, and leads a lay person to consider that the section applies to, instances of antisocial behaviour. This is not accurate. The provision applies to all applications terminating a social housing tenancy agreement, including instances of 'no-

fault' evictions such as management transfers or eligibility. There are approximately 10,000 such applications each year, with less than 0.1% being for the type of behaviour considered under 154D. The vast bulk of applications are for more minor breaches, primarily rent arrears, which result in no impact on the neighbours. We note that from the most recent statistics publicly available, public housing in NSW maintains a rent collection rate of over 99%. We would argue that forcing a person to vacate before they have found appropriate alternative accommodation can only have a negative impact on the collection of rent.

If the intention is that the provision only applies to severe antisocial behaviour, the legislation requires amendment.

The only exception to this rule currently is where NCAT is satisfied there are exceptional circumstances. Again, this is an extraordinarily high bar, with no real justification. It functionally removes discretion from the Member. Previously NCAT had a wider discretion – one still available to them for private rental tenancies - to consider the circumstances of the case when setting a date for vacant possession.

Long term social housing tenants – no notice periods for termination

Tenants who have lived in their premises have a specific pathway where tenancies end as a result of s84 and s85 of the *Residential Tenancies Act 2010*. This was implemented in recognition of the more difficult process of leaving a home of 20 years, and the likelihood that it is an older person. However Section 154G (1) of the *Residential Tenancies Act 2010* overrides Section 94 (4) by operation of section 137. For long term social housing tenants (i.e. tenants who have been in their social housing tenancy for over 20 years, usually older tenants) it requires the NCAT to reduce the period before a possession order is made from 'not less than 90 days' to 'no more than 28 days', unless there are 'exceptional circumstances justifying a later day'. What this means for long term tenants of social housing providers is:

(i) no reason has to be given when asked to leave,

(iii) no notice of termination is served, and

(iii) a possession order is to take effect in no more than 28 days, except for 'exceptional circumstances'.

This would also have the effect of acting as a deterrent against parties negotiating consent orders in any proceedings.

Long term tenancies have nothing to do with antisocial behaviour, but they have been caught by provisions relating to it. Indeed, this new provision defeats the purpose of the introduction of a novel provision focusing on long term tenants, usually older tenants, that came into force when the 2010 Act commenced with the intention of enhancing their rights.

This change will adversely impact on not just tenants in public housing, but also community housing which also is caught by this provision.

The overall effect of section 154G then is to drastically reduce a long term social housing tenant's rights, rather than enhance them.

It does not appear this is in line with the intention of government relating to either s94 or s154G and requires attention.

Max of 28 days for orders for possession - general

The reduction to a maximum of 28 days for orders of possession is unnecessary and harsh. Previously NCAT did not make excessive orders and only used discretion where appropriate. The introduction of this section has had a very broad impact as it applies to all social housing terminations, not just those under s154D.

The majority of social housing tenants, if not all, face hardship at eviction and are unlikely to find and/or secure appropriate and affordable accommodation in the short time frame provided by a maximum of 28 days. In our experience providing support and assistance to vulnerable social housing tenants 'exceptional circumstances' is overly restrictive, and sets too high a bar for the activation of discretion.

There are also issues arising in instances of termination where a tenant is incarcerated at the time of the hearing. There can be delays in their receiving the decision and then being able to access advice regards appeal, or being able to organise to vacate in the timeframe provided.

The impact of s154G as drafted does not appear to be aligned with the policy intentions and requires repeal or amendment.

Recommendation

- Repeal section 154G as it is unnecessary and harsh, causing problems where tenants legitimately need more time to secure alternative accommodation

- If section 154G is not repealed limit its application only to 154D cases, and allow tenants facing eviction as a result of an illegal act by some other person in their household more time, for example up to 60 days

- Change 'exceptional circumstances' at s154G to 'special circumstances'