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11 October 2013

Dear Sir or Madam:

Submission on review of the Aboriginal Land Rights Act 1983

The Tenants' Union of NSW (TU) is the peak body representing the interests of tenants in NSW, and a Community Legal Centre with expertise in residential tenancy law. A substantial portion of our practice is dedicated to assisting Aboriginal tenants. We have a dedicated Aboriginal Legal Officer who provides back-up legal and policy advice to the four Aboriginal Tenants' Advice and Advocacy Services (who provide direct advice and advocacy to Aboriginal tenants across NSW in its entirety), and conducts strategic litigation on behalf of Aboriginal tenants directly, on matters that are in the public interest.

Through these activities, and our ongoing relationships with the four Aboriginal Tenants Advice and Advocacy Services, we are well placed to comment on matters concerning the administration of housing schemes by Local Aboriginal Land Councils. This will be reflected in our remarks concerning the review of the Aboriginal Land Rights Act 1983 (hereafter 'the Act').

General comments

Proposed changes to the legislation proposed are aimed at reducing bureaucratic burdens on Local Aboriginal Land Council's (LALC) and the NSW Aboriginal Land Council (NSWALC). The TU is apprehensive about changes that would reduce LALC accountability to members. The 1998 ICAC investigation into corruption in Land Councils in NSW called for transparency, as a measure to limit and restrict the occurrence of indiscretions in the administration of Land Councils. Care should be taken to ensure that gains in transparency are not inadvertently eroded by reforms aimed at the expedition of business procedures. Any perceived difficulties associated with Land Council activity, such as procedures around dealings in land, are in fact important transparency measures that enhance the accountability of decision makers.

The discussion paper refers to LALCs as non-government entities administering non-public funds. The TU submits that although LALCs do not form part of Australian government, they do represent a form of Aboriginal self-governance, which should be properly reflected in the Act. LALC members do not buy into their LALC with shares. Membership is associated with community acceptance. The regulatory system surrounding Land Council's should be more like that of government and less like those governing private companies.

LALC boards are elected representatives. If steps are taken to allow decisions to be made without the express involvement or approval of voting members, individuals in decision making capacities should be required to make such decisions through transparent processes. Mechanisms must be in place that would allow members to appeal against decisions not made in conjunction with LALC rules.

The TU believe that LALC boards should be accountable to their members and that enforcing such accountability should be a just, quick and accessible process.

Issues not addressed in the proposed amendments

There are a number of issues that we believe should be addressed during this review and are discussed below.

1. Termination of tenancies without grounds

The *Residential Tenancies Act 2010* contains a provision (s.85) that allows landlords to end tenancy agreements without reference to any reason, by providing the tenant with a 90-day notice period. The NSW Land and Housing Corporation, Aboriginal Housing Office and the Community & Private Market Housing Directorate of HNSW do not allow the use of this provision, as it is contrary to the principles under which of social housing is provided. Social housing exists to provide people who cannot access housing through the private market with the security of a home to live in as long as they remain eligible to receive such housing. The Tenants' Union believes that social housing tenants should not be evicted from their premises without reference to a reason.

Use of section 85 is contrary to the principles of procedural fairness because it does not provide tenants with a reason for the decision to end their tenancy, or a right of reply to any of the underlying reasons that are inevitably present. It also removes the feeling of security that tenants living on land council premises should have.

Allowing the use of 90-day notices also risks boards and their delegates using the provision to evict tenants when they do not want to disclose their reasoning, and this is counter to transparency principles. There are a number of clear grounds upon which tenancies can be brought to an end under the Residential Tenancies Act 2010. If a LALC has a valid reason for ending a tenancy, the corresponding section of the Act should be used. The Land Rights Act should be amended to make this a clear requirement for LALCs operating a social housing scheme.

2. Alternative Dispute Resolution

The relationship between land councils and their tenants is unique. Unlike other landlords, LALCs have a relationship with their tenants outside of their contractual obligations. These include, personal relationships as family, friends and community members; but also professional though the relationship between a LALC board and its members. In our opinion, some disputes between LALC boards and executive and voting members would be better dealt with through alternative forms of dispute resolution such as mandatory mediation, conciliation or arbitration and through the courts.

Recommendations and Proposals

1. Housing recommendations

The TU welcomes Working Group Recommendation 40.

2. Regulatory reform proposals

Proposal 3 – The Tenants' Union are strongly opposed to proposal 3 which amends s.248 of the Aboriginal Land Rights Act so that LALCs are not subject to the requirements of the *Government Information Public Access Act 2009 (NSW)* (GIPA). In circumstances where individuals need access to documents of a LALC, there should be no reason why such documentation should not be made available.

The Tenants' Union have encountered circumstances where tenants have requested access to LALC documents under the appropriate ALRA provisions, and while they have not been denied access, months pass before staff make the documents available. In circumstances where a tenant is in conflict (legal or otherwise) with the LALC, one can understand that the ALRA access process (which requires cooperation from the parties) is not ideal. The Administrative Decisions Tribunal (ADT) can deal with LALC non-compliance with GIPA requests. The ADT provides an impartial decision maker to consider each parties arguments. It is our submission that GIPA should remain available for circumstances such as this.

Documents can be redacted where appropriate to secure the commercial information of the LALC. Use of GIPA is not only useful to non-members who might have an interest LALC processes. Members who struggle to gain cooperation from their LALC can use GIPA to gain access to documents that they are entitled to but have not been given access to by LALC executive. LALCs should operate in a transparent fashion to reduce the possibility of corruption. GIPA is a way in which such transparency is complimented with accountability.

Thank you for the opportunity to comment on the reforms proposed. As the provision of social housing is a significant part of the functions of a LALC, we believe it is important that the needs of LALC tenants are considered when conducting law reform.

The Tenants' Union of NSW is available to make comment from such a perspective whenever required.

Yours faithfully,
TENANTS' UNION OF NSW CO-OP LIMITED



Gemma McKinnon
Aboriginal Legal Officer