

First Nations movement finds support in Australia

Gemma McKinnon
Aboriginal Legal Officer

Peaceful demonstrations have been held in Sydney in support of the international Idle No More movement started by First Nations people in Canada. The purpose of the movement is "education and to revitalize Indigenous peoples through awareness and empowerment."

The Sydney demonstrations are a reminder that the Indigenous peoples of Australia, like their international counterparts, will not stand by idly as they continue to be denied sovereignty.

At the World Indigenous Housing Conference in 2012, it was suggested that an effective way of reducing rent arrears in Indigenous communities (particularly on reserves) was to charge a maintenance fee rather than rent. This idea has been dismissed by both Indigenous and non-Indigenous people as a mere token gesture that carries no real meaning. However, outside of the social housing sphere, leasing a property is almost always done to generate income.

Where housing is provided by a not-for-profit organisation,



Idle No More in Sydney. Photo: Kaleesha Morris

tenants are paying to maintain the housing service, rather than for the gain of their landlords. It could therefore be considered that a 'maintenance fee' is a more accurate description of the payment made by social housing tenants.

Confusing a symbolic gesture with a token gesture should be avoided in this scenario. Even if 'rent' came instead to be called a 'maintenance fee', this name change in itself would acknowledge that Indigenous people have custodianship of the land that they live on.

Creative and innovative ways of solving or preventing disputes between landlords and tenants can be used to reach

more amicable resolutions between parties and to nurture relationship for the future.

This approach, which might be described as alternative dispute resolution, is particularly beneficial for Aboriginal tenants and landlords.

There are often underlying or systemic factors that contribute to such disputes and services such as Tenants Advice and Advocacy Services or Community Justice Centres can help the parties to achieve a satisfactory outcome.

Disputes involving Aboriginal landlords and tenants carry with them a complexity not found elsewhere.

The Idle No More movement and the recent five-year anniversary of the Australian Government's Apology to the Stolen Generations remind us

that the history of Aboriginal people is not forgotten, and that the fight for sovereignty and recognition continues. A step toward reconciliation,

however small, is definitely a step in the right direction.

Website: idlenomore.ca

'Red tape' review may end protected tenancies

Chris Martin, Senior Policy Officer

Hundreds of tenants – most of them elderly pensioners – would lose their homes if the NSW Government proceeds with its proposal to repeal the *Landlord and Tenant (Amendment) Act 1948* (the 1948 Act).

The proposal was made as part of a review of obsolete legislation and so-called 'red tape', with NSW Fair Trading claiming that it was not clear if any tenancies under the 1948 Act – sometimes called 'protected tenancies' – still existed.

On the contrary, there remains a significant number of 1948 Act tenancies in existence. In 2012, a total of 19 tenants known to be under the 1948 Act contacted Tenants Advice and Advocacy Services and NSW Legal Aid. The Older Persons Tenants Service has another six 1948 Act tenants currently on its books, and estimates that there would be 450–900 tenancies throughout the state under the 1948 Act.

No new tenancies under the 1948 Act have been created since 1985, so all those remaining are longstanding

tenancies. Some 1948 Act tenants have lived in their properties for over 70 years.

The 1948 Act provides strong controls on rents and terminations. Because of these controls, properties subject to the 1948 Act are bought and sold at a discount. If the 1948 Act is repealed, these controls would be lifted, and landlords would stand to make a windfall gain – so there is no question that the existing tenancies would end.

In a submission to the NSW Government, the TU has strongly opposed the proposed repeal of the 1948 Act. We noted the concern of advocates that elderly persons forced to move from their homes often die shortly after

the move, and observed that this concern is supported by international research.

We also objected to alternative proposals made by the NSW Government to redraft 'key provisions' 1948 Act and insert them in a schedule to the *Residential Tenancies Act 2010*. This would make the 2010 Act necessarily complicated, and invite the relitigation of settled interpretations of the 1948 Act – the opposite of the NSW Government's stated intention of reducing regulatory burden.

See the TU's submission:

www.tenantsunion.org.au/review-regulatory-burden-submission



Gosford, 1948 © Gostalgia (flickr.com/gostalgia)

Boarding Houses Register open

Chris Martin, Senior Policy Officer

The new Boarding Houses Register is maintained by NSW Fair Trading under the Boarding Houses Act 2012. Provisions of the Act dealing with the register commenced 1 January this year. The rest of the Act is expected to commence in the next few months.

So far only a handful of boarding houses are on the register – mostly assisted boarding houses, previously known as ‘licensed residential centres’. Proprietors of all registrable boarding houses have until 30 June 2013 to get registered; thereafter, new proprietors and new boarding houses will have to register within 28 days of starting operations.

Parts of the register are accessible to the public: you can view the register online to find out the name, class

and location of a registered boarding house, and the name of the proprietor.

Boarding Houses Regulation

As this issue of Tenant News is being written, the NSW Government is drafting a Boarding Houses Regulation. The Regulation will set out the details of the additional standards imposed by the Act on assisted boarding houses.

Alongside the Regulation, we expect NSW Fair Trading will also publish a standard form of occupancy agreement. We understand that the NSW Government intends that use of the standard form will not be mandatory.

The TU will make a submission on the draft Regulation and standard form of occupancy agreement. We expect that when the Regulation is finalised, the whole of the

Boarding Houses Act will commence.

Model occupancy agreement for general boarding houses

In preparation for the commencement of the whole of the Act, particularly the provisions regarding occupancy principles and occupancy agreements, the TU has produced a model occupancy agreement for general boarding houses.

The model occupancy agreement was drafted by counsel on the instructions of the TU and with input from other boarding house stakeholders on the Model Occupancy Agreement Working Party. The model occupancy agreement is consistent with the Act’s occupancy principles, and is designed to be a fair and practical agreement for both proprietors and residents of general boarding houses.

The TU intends to produce another model occupancy agreement – for assisted boarding houses – when the draft Regulation is circulated. Contact the TU for a copy of the model agreement.

The Boarding Houses Register is on the NSW Fair Trading website:

www.fairtrading.nsw.gov.au >
Tenants and home owners
> Boarding houses



© Niall Kennedy (flickr.com/niallkennedy)

Single parents take action against social security cuts

Single parents and their supporters held rallies in cities across Australia on 5 February to protest changes to social security entitlements that have cut their incomes and put them and their children at increased risk of homelessness.

Under the changes, single parents lose their entitlement to Parenting Payment when their youngest child turns eight, and are shifted instead to the unemployment payment, Newstart Allowance.

Newstart is a smaller payment that has been criticised by the Australian Council of Social Service (ACOSS), the Australian Council of Trade Unions, and the Australian Business Council for impoverishing recipients and making them less ready for work. Newstart also reduces at a faster rate than Parenting

Payment when the recipient earns an income through work, so many working single parents will lose their social security payment and related benefits altogether.

About 46 percent of single parent families in New South Wales live in rental housing and more than 30 percent live in private rental housing. The TU supports the campaign of the Single Parents Action Group and ACOSS to restore Parenting Payment to single parents with children over eight. We also support the campaigns to increase the rate of Newstart and to increase the maximum rates of Rent Assistance.

See ACOSS's website for more on these campaigns: www.acoss.org.au/take_action/allowances_statement_2012-02

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TENANCY Q&A

"Notice to Vacate" from mortgagee's solicitors

Q I received a letter and a "Notice to Vacate" from some solicitors saying that they are entitled to kick me out of the house because my landlord has not paid her mortgage. Do I have to go? What happens if I don't?

A You don't have to go. Only the Sheriff can put you out. The Sheriff will not do so without a court order. If the Sheriff has a court order, you will get 30 days written notice and the 30-day notice period will be rent-free.

The "Notice to Vacate" is made up. It is not a formal or legal notice. They are bluffing.

It is a mistake to leave according to such a notice. You will have abandoned the premises and be liable to pay the landlord compensation for her losses or a break fee.

This is a likely prospect if the landlord and the mortgagee/lender sort out their problems.

If the mortgagee takes court action against the landlord, you should receive documents called "Notice to Occupier" and "Statement of Claim". If you do get these, contact your local Tenants Advice and Advocacy Service to discuss the matter further.

See *Tenants Rights Factsheet 22: Mortgagee repossession* on www.tenants.org.au or from your local Tenants Advice and Advocacy Service.

My 3 cents: TAAS at work

These three stories demonstrate the value of TAAS – Tenants Advice and Advocacy Services – in supporting tenants who have complex tenancy problems and associated life challenges. For just three cents a day, each renter household in New South Wales has access to a local TAAS, which is funded from the Rental Bond Board Interest Account and the Property Services Statutory Interest Account.

1 A tenant in his early twenties with basic literacy skills received a Local Court statement of claim lodged by his landlord for \$5,000 rent arrears.

The arrangement with the landlord was that, in return for cattle mustering and branding on the landlord's property, the tenant's rent would be reduced. However, the landlord hadn't credited this work by the tenant to the rent ledger.

The premises were in a poor state of repair – they needed plumbing and electrical work and there was raw sewage leaking into the backyard. The tenant was concerned about safety as he had young children and so he went on a 'rent strike' when the landlord failed to do repairs.

Role of the TAAS

After meeting with the tenant and his mother, the service drafted papers to have the matter transferred from the Local Court to the Consumer,

Trader and Tenancy Tribunal with the landlord's consent. The service sent the papers to the tenant for lodgement at the court. The service advised the tenant to restart paying rent and gave him comprehensive advice about the tribunal process.

The tenant attended the first tribunal hearing, at which directions were made for the exchange of evidence. The service provided extensive support to the tenant and his mother during the evidence-gathering process and prepared an application to the tribunal for repairs and a rent reduction.

A tenant advocate from the service represented the tenant at the second hearing. The hearing was adjourned to allow the landlord to do the necessary repairs and provide a more accurate rent ledger.

No repairs were done by the landlord and as the final hearing date approached, the tenant gave notice to end

the tenancy as he and his family were still living with raw sewage in the yard. However, the issue of the unpaid rent still needed to be addressed at the tribunal.

At the final hearing, a tenant advocate again represented the tenant and asked for:

- a rent reduction – given the landlord's failure to comply with the tribunal's order to repair
- the tenant's labour to be credited to the rent ledger
- a repayment schedule to be drawn up for any outstanding rent arrears – so as not to severely disadvantage the tenant.

Outcome

The tribunal found that the tenant owed \$5,000 in rent arrears but awarded the tenant \$2,500 compensation for the landlord's failure to repair. The tenant was to pay the rent arrears at \$50 per fortnight.

After reviewing all the evidence, the tribunal was critical of the landlord's inaction and abusive treatment of the tenant when he gave notice. The tenant moved to new premises.



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(flickr.com/ladymagic)

2 A tenant approached her local TAAS for help when Housing NSW cancelled her rent subsidy. The tenant was a woman who had been physically and sexually abused by her former partner. She also had cancer and a heart condition.

Housing NSW had cancelled her subsidy because she had failed to disclose that her name was on the title of her former marital home. She had fled the home five years earlier to escape the violence.

Housing NSW sought repayment of many thousands of dollars in rent arrears on the basis that the tenant had not been entitled to the rent subsidy.

Role of the TAAS

The service assisted the woman to appeal the application of Housing NSW's policy on tenants who have a viable alternative to social housing. It argued that a home that was the scene of horrific domestic violence was not 'a viable alternative'.

Outcome

The Consumer, Trader and Tenancy Tribunal ordered that the tenancy be terminated. The tenant was given six months from the date of the hearing to vacate the premises. However, the termination would not be enforced if the tenant could have the former marital home sold and pay the rent arrears



© Keith Williamson
(flickr.com/elwillo)

from her share of the proceeds before the six-month deadline.

3 A tenant contacted her local TAAS about ongoing and extreme mould growth in her Housing NSW premises.

She had supporting correspondence from treating doctors as to the impact of the mould on her children's health. One child had been admitted to hospital with respiratory problems as a result of the mould in the bedrooms. At times, the family slept in the lounge room to avoid the mould. Some of the tenant's furniture had needed replacing because it was damaged by mould.

Housing NSW did attempt to address the mould problem in the property, but the attempts were mostly superficial (e.g. painting over the mould) and did not include the remedial work necessary to rid the premises of mould spores. Ultimately the mould always returned.

Role of the TAAS

Over an eight-month period, tenant advocates gathered evidence and negotiated with Housing NSW staff about the condition of the premises.

Tenant advocates visited the premises numerous times, sometimes accompanied by the maintenance team leader and technical officer from Housing NSW. Photographs were taken over the course of the dispute as evidence of the mould's continued growth.

The service prepared a case for presentation at the Consumer, Trader and Tenancy Tribunal and attended an initial conciliation between the tenant and Housing NSW. However, because the Housing NSW representative had no authority to enter into an agreement, the tenant requested that the matter be listed for formal hearing.

At the formal hearing, the service requested an adjournment to gather documents in support of their client's case.

Outcome

There was no second hearing because the tenant advocate encouraged the tenant to negotiate with Housing NSW. As a result of the negotiations, the tenant received monetary compensation for the damage caused by the mould and was offered alternative accommodation. ■

A new housing discourse for NSW?

Last month, NSW Labor leader John Robertson convened a housing summit. The TU was there and we presented on what we call the real housing supply problem: the lack of affordable rental housing for lower income households. One of the questions of the summit was: do we need a new housing discourse?

According to many summit participants, the main theme of the new discourse has got to be 'density': denser development – particularly in already built-up areas – will produce more housing, and make it more affordable.

We're ambivalent about density. There are some nice parts of Sydney where flats and terrace houses predominate. But many tenants of even newly built flats can hear their neighbour's every movement. For higher-income residents who can access the public spaces of the city and their increasingly commercialised entertainments this may not be such a problem. But it looms large for those who must look for their recreation at home.

But is density really good for affordability? Getting more of something (housing) out of a given resource (land) seems consistent with getting it cheaper... but you get less in each unit of housing which is a bit of a cheat on affordability. Density has been a 'new' discourse for at least 20 years, and over that time, affordability problems have worsened. If greater density is to be achieved by restricting development on greenfield sites, and allowing some sites with single units of housing to be redeveloped with a multiple of units, that could push up the price of established land and housing.

And that's the thing: the decisions that push up the price of land and housing. Consider the current ICAC inquiry into the allegedly corrupt decisions of a former minister to allow certain land to be used for coal mining – land owned by another Member of Parliament, who stood to reap a windfall of many millions of dollars from the increase in its value.

Naturally, the focus has been on the allegation of corruption in the decision about what the land could be used for. But really, even if the decision was squeaky

clean, the delivery of a windfall to an individual property owner – who has done nothing to earn the increase in value – stinks.

Such windfalls are delivered not just by government decisions but by community 'decisions'. Where a community grows and develops and changes the way it arranges its various activities, such that some locations become more sought after and their values increase, those increases come from the growth and development of the community, not the work, effort or skill of the property owner.

Increases in established house prices are unearned wealth. But so many property owners seem to think that they are justified in keeping – or that they have even earned – all the gains. The most that can be said for them is that they were smart to choose to be born at an earlier point in time when they could better afford to buy the land in question.

Here's where we really need a new discourse: a discourse against individual accumulation of unearned wealth from housing; a discourse for returning a larger portion of unearned wealth, via tax, to the community.

Chris Martin

Living Together survey

Never
Stand Still

Built
Environment



UNSW
AUSTRALIA

Do you have adult children living at home?

Do you live at home with your parents?

Do you have adult children and elderly parents living with you?

Our research team at City Futures (University of NSW) is conducting a research project on why there has been an increase in the number of multi-generation households in Australian cities.

If you live in one of these multi-generation households, tell us what it's like (why do you live together, how do you share your home, how do you get along with your family) **and you could win one of 3 \$100**

Coles Myer gift cards! Your opinions will inform governments and the housing industry about the changing needs of Australian families.

Who should participate? **If your household has more than one generation of related adults living together, we would like to hear from you.**

You can find a copy of our survey at: www.cityfutures.net.au

This survey is open until 30 June 2013. UNSW ethics approval no. HC12322



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Support us in our work for safe, secure and affordable rental housing for people in New South Wales

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(Tax invoice ABN 88 984 223 164)

I apply for membership of the Tenants' Union of NSW Cooperative Limited as:

- ☐ individual tenant ☐ individual (non-tenant)
☐ tenant organisation ☐ organisation (non-tenant)

Name

Address

Suburb

State Postcode

Phone

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Fees (GST included)

Annual fee covers 1 January–31 December

- individual low wage / pension / benefit \$ 8.00
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TOTAL \$

Signed Date

Payment method: Please tick

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Account name Tenants' Union of NSW
BSB 062-004 Account No. 802624

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Please post this form to:

Tenants' Union of NSW
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Surry Hills NSW 2010

NSW Tenants Advice and Advocacy Services



Inner Sydney	9698 5975
Inner Western Sydney	9559 2899
Southern Sydney	9787 4679
South Western Sydney	1800 631 993 4628 1678
Eastern Sydney	9386 9147
Western Sydney	8833 0911
Northern Sydney	9884 9605
North Western Sydney	1800 625 956 9413 2677
Blue Mountains	4782 4155
Central Coast	4353 5515
Hunter	1800 654 504 4969 7666
Illawarra South Coast	1800 807 225 4274 3475
Mid North Coast	1800 777 722 6583 9866
Northern Rivers	1800 649 135 6621 1022
North Western NSW	1800 836 268 6772 4698
South Western NSW	1800 642 609
Older persons (statewide)	1800 131 310 9566 1120

Aboriginal services

Greater Sydney	9569 0222
Western NSW	1800 810 233
Southern NSW	1800 672 185 4472 9363
Northern NSW	1800 248 913 6643 4426



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It applies to people who live in, or are affected by, the law as it applies in New South Wales, Australia.

We invite contributions:

Contact the Publications Officer – see below for contact details.

Tenants' Union of NSW

- A community legal centre specialising in NSW residential tenancies law.

- Peak resourcing body for the NSW Tenants Advice and Advocacy Program.

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