



tenant news

Free newspaper of the Tenants' Union of NSW

Issue 75 April 2004

Australia contributes to United Nations Report on Women and Housing

By Polly Porteous

It's not often that Australians find themselves involved in the processes of the United Nations. To many of us, the UN is a body that operates in places far away and deals with business far removed from our everyday lives, such as whether or not certain countries have weapons of mass destruction. However there is more to the UN than that. The UN also has institutions, individuals and processes that monitor the implementation of human rights on the ground, all over the world. One of these monitoring processes is the United Nations Special Rapporteur on Adequate Housing. This Special Rapporteur is currently collecting information from all around the world to inform a Special Report on Women's Rights to Housing, and Australian groups are hoping to provide a major contribution.

Who is the Special Rapporteur?

A UN Special Rapporteur is an expert, appointed by the UN Commission on Human Rights to report on the status of the realisation of rights on a particular issues, or in relation to a specific country.

The mandate of the Special Rapporteur on Adequate Housing is to "focus on adequate housing as a component of the right to an adequate standard of living, as reflected in international instruments".

In 2000, Mr Miloon Kothari from India was appointed as the Special Rapporteur on Adequate Housing. He has the responsibility of reporting to the UN Commission on Human Rights on the status of the realisation of the right to adequate housing around the world. The Special Rapporteur collects information for his report through dialogue with States (eg Australia), UN bodies, civil society groups (eg the Tenants' Union of NSW) and country missions (where a country invites him to visit and examine the housing situation).

What is the right to adequate housing?

The right to adequate housing contained in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) is:

The right of everyone to an adequate standard of living for himself [sic] and his family including adequate food, clothing and housing, and to the continuous improvement of living conditions.

This right is also contained in other human rights instruments such as the Convention on the Rights of the Child.

Over the past few years, the UN Committee on Economic, Social and Cultural Rights has made several comments (known as General Comments) on the details of what is meant by the right to adequate housing. Seven elements have been formally identified by the Committee, all of which are required to be fulfilled for housing to

be deemed 'adequate'. An international housing NGO, Habitat International Coalition-Housing and Land Rights Network, has identified a further six elements, which are extremely useful in understanding what the right to adequate housing actually could mean in any given case. See box insert for a list of these elements.

Why is the Special Rapporteur writing a report on women and housing?

Women experience violations of housing rights alongside other members of their family and community.

However, women also face violations of housing rights because of situations which predominantly affect women. For example, women are much more likely than men to be the victims of domestic violence, and this often threatens their housing rights as they are forced to flee the violent home. Women may also suffer different impacts as a result of the housing right violation. For example, the great majority of single parents are women. If a single mother is made homeless, she also has to find resources to care for her children. Also women may not have the same access to redress in law as other members of the family or the community. Any pre-existing discrimination women may be facing because of their sex/gender and because of their class, ethnicity, race, disability or other status, may have a further impact on preventing women from asserting their right to adequate housing. For these reasons, it is important to develop an understanding of the violations of women's right to adequate housing and establish appropriate legal, policy and programme responses.

So what can we do to feed into the report?

The Rapporteur is currently collecting information for this report from national governments and community organisations from all over the world. In Australia, a group of community organisations are working on a combined NGO report on women and housing. The consultation process was kick-started on 10 March 2004 by a forum in Melbourne where a Research Associate to the Special Rapporteur, Alison Aggarwal, provided training on the elements of the right to adequate housing. The forum participants then identified information relevant to women's experiences of housing in Australia.

The consultation process aims to collate case studies, testimonies and best practices to illustrate the current national situation of women's housing rights in Australia. Particular emphasis is being given to:

- the situation of Indigenous women
- rising homelessness of young women
- the situation of women with disabilities

... continued page 2

Entitlements under the Right to Adequate Housing

- 1. Legal security of tenure**
including laws and policies to ensure people cannot be evicted without good reason
- 2. Availability of services, materials, facilities, infrastructure**
eg right to be on public housing list, affordable access to good drinking water and fuel
- 3. Affordability**
- 4. Habitability**
home must be dry, sanitary, have sufficient space
- 5. Accessibility**
it must be easy to access your home
- 6. Location**
must be close to schools, churches, health care, transport, employment etc
- 7. Cultural adequacy**
Must be appropriate for the individual/community
- 8. Freedom from dispossession**
eg Indigenous peoples shouldn't be threatened with loss of land or community
- 9. Right to information**
- 10. Right to participation & self-expression**
residents should have a say in their own housing
- 11. Resettlement**
where eviction is unavoidable, there must be proper consultation with residents and compensation regarding resettlement
- 12. Safe environment**
not polluted or at risk of disaster
- 13. Security (physical) and privacy**
residents are protected from physical threats inside and outside the home; no invasion of privacy

Notes: Elements 1-7 were identified as elements of the right to adequate housing by the Committee on Economic Social and Cultural Rights in General Comment 4. Elements 8-13 have been added by HIC-HLRN.

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*Views expressed by the contributors to
Tenant News are not necessarily those
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Tenant News is printed by mpd - 'printing the news every day'

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ISSN-1030-1054

Aims of the Tenants' Union

The Tenants Union aims to represent the
interests of tenants in NSW, both private
and public, including boarders and lodgers
and residential parks by:

- raising awareness about tenants'
problems and rights
- providing high quality advocacy and
advice to tenants
- lobbying for improvements in residential
tenancy laws
- promoting secure and appropriate
housing solutions
- supporting, training and resourcing
local, independent statewide tenants
advice services.

The Tenants' Union of NSW is a community
legal centre that has been active in promoting
the rights of more than 1.5 million tenants
in NSW since 1976.

Over this time we have advocated on behalf
of tenants to State and Federal governments,
and we have developed numerous resources
providing information for tenants and tenants'
advocates regarding the rights of tenants
in NSW.

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Editorial

A right to housing sounds great



By Harvey Volke

When we're putting this paper together we don't
usually look for themes, but it's surprising how often
they emerge unawares.

And the theme of this issue is depressingly obvious:
Housing might be a right, but don't hold your breath
waiting for it.

The front page article points to the gap between our
international obligations on housing and what is happening
to women - whether they're suffering from domestic
violence, whether they're single parents, and whether
they're facing discrimination.

An article on page 3 points to a key problem with tenancy
databases: get behind in your rent, get listed on a database,
and get excluded from private rental housing.

Page four points out that while housing might be a right, in
fact boarders and lodgers have no rights. And increasingly,
they have no housing, either, because boarding houses are a
dying breed. That'd be great because some boarding houses
are worse than Dickensian, except there's nothing appearing
as an alternative, and plenty of these people were shoved out
of institutions, and promises to put the money saved into
alternative provision never happened.

The article on page 3 tells us what did happen: lots of people
wound up on the streets, like lots of the 100,000 listed as
homeless in the last two censuses.

And it makes the telling point that housing may be a right,
but in the face of unaffordable rents, weak tenancy laws, and
insufficient social housing, any "right" is purely theoretical
- housing has become nothing more than a privilege.

In fact, a newspaper snippet on page 4 tells us the story is
even worse than that: public housing in NSW is in the red,
and the worst case scenario on current expectations is it's

hard to imagine any being left in 10 years' time.

The article we don't have is the one pointing out that
Australia-wide there is a shortage of 150,000 units of low-
cost private rental housing, which has declined by over 18
percent in the last decade; and that low-income earners
have been priced out of the market right across Sydney
and increasingly on the central coast, not to speak of some
regional centres as well. But we don't want all the bad news
at once, do we.

Currently, the feds are pouring money into health and
education on their favourite projects (and that doesn't mean
that's in the best interests of low-income earners) to shore up
the vote in the coming federal election. But on the housing
front all they're interested in is the affordability of home
ownership for middle-income earners. In fact, they're in the
process of slashing funds for public housing via the meanest
Commonwealth State Housing Agreement in memory.

Similarly on the state front, the state government is pouring
money into community services, health and transport
because of the massive problems these areas face. But even
here, low-income housing is barely a blip on the horizon,
with public housing going to hell in a handcart.

It just doesn't add up. Housing rights? Give me a break.

There's a federal election coming up. Maybe that should
give us some food for thought?

And why shouldn't some of those windfall gains from
state stamp duty on housing sales be used to help house
the people who can't afford to buy or sell homes, or even
to live in them?

Housing isn't a consumer item, it's a necessity, and a right.
Well, theoretically, at least. But theory doesn't keep you
warm in winter or dry in the rain. ♦

from page 1

- lack of domestic violence refuges
- inadequate tenancy legislation dealing with
domestic violence
- decreases in public housing
- refugee women and women living on TPVs
- the situation of women in prison or
who have left prison.

A small working group of workers from housing, legal
and women's groups are now collating all this information
into an Australian community report. They aim to give the
report to the Special Rapporteur by June 2004.

The Special Rapporteur hopes to submit the global
report on Women and Housing to the United Nations
Commission on Human Rights in April 2005.

Why bother with this UN process?

Australia ratified the ICESCR in 1972. Therefore the
Australian Government has committed to the international
community that it will respect, promote and fulfil the right
to adequate housing. However somewhere along the way
we stopped holding the Government accountable for
upholding the detail in the articles of the international
covenants.

Engaging with the Special Rapporteur on Adequate
Housing is a step toward advocating for housing from

a human rights perspective. Framing housing rights
violations in terms of the 13 elements (see box on page 1)
is a new way of looking at what we know, instinctively,
to be housing violations. We know that young single mums
should not be homeless. We know that women fleeing
domestic violence should have access to refuges and
assistance in gaining permanent safe housing.

In submitting a report to the Special Rapporteur on the
Right to Adequate Housing, Australian groups can raise
the profile of these issues in Australia nationally and
internationally. Which brings us back to the relevance
of the UN. It's not just a body which makes decisions (or
not!) about weapons of mass destruction. The UN Human
Rights Commission continues to work on encouraging
countries and civil society organisations to monitor the
implementation of human rights at the grass roots level.
It's up to Australian organisations to make this process
work for us. ♦

For information about the Special Rapporteur on the
Right to Housing, see www.unhcr.ch/housing. For more
information on the Australian Community Report to the
Special Rapporteur, contact Hazel Blunden at Shelter
NSW, ph 9267 5733, hazel@shelternsw.org.au; or Polly
Porteous at Combined Community Legal
Centres Group NSW, ph 9318 2355,
Polly.Porteous@fcl.fl.asn.au.



Can I stop paying my rent if the landlord doesn't do repairs?

No. If you stop paying your rent you run the risk of having your residential tenancy agreement terminated for because you are behind in your rent. If the landlord won't do the repairs there are a couple of things you can do. Firstly, if it is an urgent repair you may be able to pay for the repairs yourself and get the

landlord to reimburse you. If the repairs are not urgent or you cannot afford to pay for them, then you can apply to the Consumer, Trader and Tenancy Tribunal for an order that the repairs be done. You can also apply for a rent reduction or compensation if your "enjoyment" of the property has been reduced by the problem, or if you have suffered loss as a result of the problem. It may even be possible to get these results without going to the Tribunal if you can negotiate successfully with your landlord. ♦

Thanks to Sri Ogden, locum TU Legal Officer, for legal advice. You should seek advice from your local Tenants Advice and Advocacy Service if you have specific questions.



The Tenants Union Hotline operates between 9.30 am–1 pm, and 2 pm–5 pm on weekdays. A tenants adviser can provide information over the phone, or may refer you to your local tenancy service. Freecall 1800 251 101

From the Hotline



Tenants' Union continues campaign against Tenancy Databases

By Chris Martin

"Rule of Conduct" for real estate agents no substitute for real legislation

In December 2003 the New South Wales State Government released a draft Regulation that would make real estate agents' use of tenant databases the subject of a "Rule of Conduct" under the Property, Stock and Business Agents Act 2002.

The Tenants' Union, while welcoming the Government's acknowledgment of the problems caused by tenant databases, has criticised the Government's approach, saying that the Rule of Conduct will be ineffective and is no alternative to proper legislation on databases.

According to the draft Rule of Conduct, agents would be allowed to list tenants only in certain circumstances, and for certain reasons. Agents would also be allowed to list tenants only with database companies that comply with standards set by the Rule of Conduct. These standards cover tenants' access to listings and time-frames for the removal of listings.

The most crucial shortcoming of the draft rule is the lack of an effective enforcement mechanism or dispute resolution process. Tenants who have a complaint about a breach of the rule will not be able to go the Consumer, Trader and Tenancy Tribunal. Instead they have to lodge a complaint with the Office of Fair Trading, like any other complaint against an agent. Fair Trading investigates complaints 'strategically' – that is, on a selective basis – so tenants have no guarantee that their problem will be dealt with.

Another problem with the draft Rule of Conduct is that it will not cover all users of tenant databases. Only real estate agents are subject to the rules of conduct, so private landlords, residential park owners, community housing associations and boarding house operators who use tenant databases will remain unregulated.

Also, most of the Rule of Conduct provisions are not retrospective: ie they will not apply to tenants who are already listed on a tenant database.

The Tenants' Union's response to the draft Rule of Conduct is available on the website, www.tenants.org.au

National inquiry into tenant databases

The Tenants' Union of NSW and tenancy groups from other states and territories have made submissions to a national inquiry into tenant databases. In 2003, the Federal Government (via the Ministerial Council on Consumer Affairs and the Standing Committee of Attorneys-General) set up a joint Residential Tenancy Database

Working Party, the first time representatives of all Australian governments have looked at the problem of tenant databases.

The Tenants' Union's submission to the Residential Tenancy Database Working Party is available on the website, www.tenants.org.au. The Working Party is expected to report in July 2004.

Federal Privacy Commissioner soon to decide on complaint against TICA

In April, the Federal Privacy Commissioner is due to decide a representative complaint against tenant database operator TICA Pty Ltd. The next edition of Tenant News will update readers on the decisions. Alternatively, contact the Tenants' Union on 02 9247 3813 if you would like more information. ♦



23 June 2004 Seminar on Housing Australians

The next Shelter NSW one-day seminar is "Housing Australians: challenges for the next federal government". The seminar will discuss key issues in ensuring housing affordability for Australians with low-moderate incomes. With a federal election expected in the next year, this topic is... topical. The seminar will be held at the Wilkinson Building at Sydney University in Darlington. It is partnered by the IB Fell Research Centre at the University of Sydney. program and registration information will be posted in the Shelter website www.sheltersnsw.org.au



Boarders and Lodgers Action Group update

By Jesse Booth

Since the campaign launch in October 2003, the campaign to achieve Boarders and Lodgers rights in NSW has been racing along.

Parliamentary discussion of BLAG and the campaign

Just before the launch of the campaign, on 19 September 2003, two Labor MPs spoke in the NSW Legislative Assembly in support of BLAG. Here is an edited extract from Hansard:

Mr PEARCE (Coogee) [11.45 a.m.]: On 7 October, International Tenants Day, a poster and campaign kit will be launched by the Boarders and Lodgers Action Group. This group is convened by the New South Wales Tenants Union. I am indebted to the excellent Tenants Union web site for much of the commentary on the need for legislative protection of boarders and lodgers. The objective of the campaign is to achieve statutory legal rights for boarders and lodgers. Currently they are denied the rights available to other classes of tenants. Boarders and lodgers cannot defend eviction proceedings except in the Supreme Court, which is both expensive and difficult to access. Boarders only have those rights available at common law.

House rules, payment of bonds, advance rents and the like, as determined by owners, are generally without restriction or regulation. Whilst it is true that licensed boarding houses are subject to more conditions of operation than unlicensed boarding houses, these conditions do not cover tenancy rights or access to remedies. Lack of legal protection means that boarders and lodgers live with insecurity and may tolerate unsafe housing conditions out of fear of eviction. If boarders and lodgers have disputes with the owners, they can be evicted or locked out at short notice and left without affordable accommodation. It must be borne in mind that we are talking about some of the most vulnerable people in our community....

... Such persons if evicted or locked out tend to end up homeless, living on the street or in overcrowded and insecure informal arrangements. In a civilised society this is unacceptable. Waverley Council, of which I am mayor, has endorsed this campaign. The endorsement is consistent with Waverley's commitment to social justice and equity and its policy of retaining affordable accommodation in the Waverley area.

Boarding house stock in Waverley ...is gradually declining.... I particularly mention the impact of budget tourism, especially backpacking, on available boarding house stock. Many of the boarding houses in Waverley were originally established as guesthouses or private hotels in the tourism boom days of Bondi in the early decades of the last century. With the passing of that demand, many were converted to boarding houses, and remained so for many years. However, in recent years speculators have seen a quick dollar to be made from young backpackers and have not hesitated to convert accommodation to a tourism use, to the detriment of many low-income and vulnerable people. Regrettably, council has been unsuccessful in preventing this change of use, due to technicalities in the planning laws that recognise an often artificial existing use right.

People who face homelessness due to rent increases or boarding house closures require protection from arbitrary eviction and unfair rent increases. In addition, there is the need for access to an independent dispute resolution mechanism. Despite claims by boarding house owners that regulation will accelerate the depletion of boarding house stock by discouraging investment and forcing existing owners out of business, there is little evidence to substantiate these claims. On the other hand, research based on figures in 1997 from the Australian Bureau of Statistics has shown that the taxation treatment of property and the potential for capital gains are the major factors affecting decisions about whether to invest in housing. Waverley Council supports the call for the introduction of legislation protecting the rights of boarders and lodgers. In addition, the legislation should ensure that this type of accommodation is maintained at a standard that is fit for habitation. The exploitation of these vulnerable people due to the current lack of legislative and regulatory protection permits must be ended.

Mr GAUDRY (Newcastle—Parliamentary Secretary) [11.50 a.m.]: I thank the honourable member for Coogee for bringing this matter to the attention of the House. The Newcastle electorate has similar issues in relation to the gentrification of the inner city and the loss of boarding house accommodation. Vulnerable people who are compelled to seek that form of accommodation have no statutory legal rights and are subject to eviction with an unclear right of tenancy. It is time that our compassionate society looked at legislation on behalf of those who, apart from the homeless, are the most disadvantaged group of people. As the honourable member said, many of those people move from being a resident of a boarding house upon eviction to becoming homeless. We must provide legislative rights in relation to tenancy and accommodation standards for those people.

Sleepout

BLAG held its sleepout for boarders and lodgers rights in front of Newtown Neighbourhood Centre on 13 December 2003. We were joined by Greens MP Sylvia Hale, who slept out with us. It was a difficult time of year to have the event, but the Sleepout attracted much discussion in local newspapers, and in January 2004 the issue of the lack of legislative protection for people living in boarding houses was raised in letters to the editor of the Sydney Morning Herald.

Minister visits boarding houses

In February 2004, the Minister for Fair Trading, Reba Meagher, along with the member for Bligh, Clover Moore, visited a range of boarding houses in Sydney's inner city. They spoke to boarding house owners as well as residents and agencies that provide services to people who live in boarding houses. Apparently the visit went very well, with Ms Meagher and Ms Moore getting a better idea of the vulnerability of NSW boarders and lodgers.

Legislative options to achieve rights for Boarders and Lodgers

A subcommittee of the Boarders and Lodgers Action group has developed a range of legislative options to circulate to political parties. ♦

For copies of the legislative options or a BLAG campaign kit, contact the Tenants' Union of NSW on 02 9247 3813.

Tenants rate a mention

Here are a few tenancy stories which made it into NSW media in the last few months. Please feel free to send the TU your media stories, specially from radio, TV or regional newspapers.

Homelessness crisis in Orange

Accommodation agencies in Orange have reported a large increase in homelessness in the region. Whole families were seeking housing from emergency housing organisations, and of particular concern was the increase in homeless young pregnant women. Causes include family breakdown and rising housing costs.

Central Western Daily, February 2004

No public housing in 10 years time

A study commissioned by the Australian Housing and Urban Research Institute found that public housing authorities around Australia are in the red and that at its current rate of loss, in ten years time the NSW public housing system will be defunct.

"Either additional funding will need to be provided or NSW Housing will have to progressively cannibalise or sell off its assets in order to fund its operating shortfalls," the report says.

In Sydney, with rising house prices excluding the majority of renters from buying their own home on the one hand and less public housing on the other, demand on the private rental market would continue to rise.

The report suggests that the situation could be reversed if governments fund the difference between market rent on public houses and the subsidised rent paid by public tenants.

Sydney Morning Herald (SMH), 15/03/04

Albury tenants service gets a plug

The Albury office of the South West Tenants Advice Service recently received a big plug in the Riverina Herald, with photos of two advocates Fiona Van Nouhuys and Kate Martin. Ms Martin noted that one of the most noticeable trends for their tenancy service was the lack of affordable rental housing in the region.

Riverina Herald, 14/01/04, p.4

A new type of tenant: the balcony-dweller

Jimmy Jung is a 24 year old Korean student who lives in a glass-enclosed balcony, 26 floors up, in Castlereagh St in the city. He pays around \$120 per week, and is part of a growing market of international students and backpackers seeking accommodation in the CBD. Balcony-dwellers in Meritons pay up to \$180 per week, and a share of a master bedroom in another plush apartment building goes for around \$140 a week.

SMH 31/01/04 - 01/02/04 p. 9

Rich could fund the poor

The Brotherhood of St Laurence and the Committee of Economic Development commissioned a report by Allens Consulting on the financing of affordable housing. The report "Better Housing Futures" concluded that big private investors, such as super funds, could be encouraged to invest in affordable housing if the federal government offered subsidies to offset the risks of the large institutions.

SMH 23/03/04 p. 4

Tenants advice regularly featured in SMH 'Radar' section

The Tenants Union and Redfern Legal Centre Tenants Advice Service have become regular contributors to the SMH's regular lift-out Radar. Keep your eyes peeled for advice on such issues as getting your bond back, keeping records when in dispute with the landlord, and sharehousing. ♦



The erosion of housing in Australia – from a right to a privilege

Article written by Amy Richardson, Redfern Legal Centre

Original version published in the Council to Homeless Person's publication Parity, "Homelessness, Human Rights and the Law" edition February 2004. Reproduced with kind permission of Parity, www.parity.infoexchange.net.au

Housing is not a privilege; it is a fundamental human right. The right to secure and affordable housing is enshrined within international legal instruments that have been ratified by the Australian government. Yet on the Census night in 2001, 99,900 people were homeless.¹ Clearly the government of the day has failed to fulfil their obligations to those who were 'sleeping rough' on that night...and every night since. But the question is how?

Unaffordable rents

One of the most common pathways to homelessness is eviction from rental housing,² and rental arrears is one of the most frequent specific incidents that results in the issuing of termination notices.³ Whilst low income and household debt often cause rental arrears, an analysis of the current rental market demonstrates that no amount of financial counselling will aid those who are attempting to compete in the current market on a minimum wage or benefits.

The Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 set out that:

Adequate shelter means...adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities – all at a reasonable cost⁴

In order to define 'reasonable cost', the National Housing Strategy has proposed that housing is 'affordable' when it constitutes no more than 30% of household income.⁵ Currently 943,877 of the poorest Australians receive Rent Assistance from the Australian government. 35% spend more than 30% of their income on rent and 9% spend more than 50% of their income on rent.⁶ Rent Assistance is limited in its capacity to provide housing affordability due to rising rents and an inadequate supply of low cost private rental. With almost 85,000 Rent Assistance recipients spending more than 50% of their income on rent, the government is clearly breaching its own definition of affordability.

Weak tenancy laws

In conjunction with its failure to contain escalating rents the government has failed to amend two fundamental gaps in current tenancy legislation. This failure has perpetuated the unaffordability of rental housing, particularly in cities such as Sydney.

At present NSW does not provide any framework for rent capping, and tenants are disadvantaged in challenging rent increases. Tenants bear the onus of proving that a proposed increase is excessive, compared to the 'general market level'. In the current real estate market, proving anything is disproportionate to market values is difficult. The demand for comparison leaves much of the required information in the hands of the landlord and enforces their superior position. Other relevant factors such as the value of the premises, the landlord's outgoings, the value of any fittings, appliances or services that come with the premises, the premises' amenity and general repair and any work or improvements done by the tenant are given only secondary consideration.

The difficulty of this provision is proved by a comparison between the very few number of rent increase cases that ever go to the Tribunal, and the extraordinary inflation of market rents (aided by the catalyst of the Sydney Olympics 2000) since the

rent increase provision was enacted in 1987.

Secondly, in NSW, landlords can seek to evict tenants who are on a continuing agreement, with 60 days notice and without giving any reason. This removes any feeling of security of tenure in rented premises and can be used to evict tenants for minor, inequitable or retaliatory reasons. No cause evictions give landlords the opportunity to enforce an unbalanced relationship by manipulating tenants by the threat of a looming eviction or to chase a higher profit from richer tenants.

Insufficient social housing

As a result, the supply of private rental housing affordable to low-income households is declining across Australia and there has been no increase in the supply of social housing to compensate. The total number of applicants on the New South Wales Department of Housing's waiting list at 30 June 2003 was 84,954. In comparison, the total number of new households assisted for the year ending 30 June 2003 was 10,129, of which 52.4 per cent were allocated to those with 'special needs'.⁷

Clearly the demand outweighs the supply, yet despite that base grant funding has decreased by 54% over the last 10 years.⁸ There has been a recent focus by the Department of Housing to maintain the significant backlog in social housing stock,⁹ with very little increase in the number of tenable dwellings. It is interesting to consider whether the Department feels pressure to evict current tenants in order to offer tenancies to some of the people currently on the public housing waiting list. Of 45,306 applications made to the Consumer, Trader and Tenancy Tribunal (CTTT) in 2002-2003, 38,465 were made by the landlord - 29,449 for termination of the tenancy. The Department of Housing made 8,020 applications of which it may be assumed were in majority, eviction proceedings.¹⁰ Coincidentally 10,129 new tenancies were 'created' during the same period. These statistics can be expressed as efficient property and financial management as distinct from effective tenancy management.

Responsibility of public housing authorities regarding the international right to adequate housing

Public housing authorities have responsibilities that go beyond their legal duties and responsibilities as landlords. The Supreme Court held in *Nicholson*¹¹ that the Department of Housing, as an administrative decision maker and by virtue of the public nature of the department's obligations, is under a duty to afford procedural fairness (or natural justice) to its tenants before issuing of a notice of termination.

"Natural justice" means there is a duty to act fairly in the making of administrative decisions which affect rights, interests and "legitimate expectations".¹² The concept of a legitimate expectation, first articulated by Britain's Lord Denning,¹³ was developed in the High Court's decision in *Teoh*.¹⁴ This case established that the ratification of a law, convention, treaty or policy is an adequate foundation (so long as there are no contrary statutory or executive indications), for an interest of individuals that administrative decision makers will act in conformity with that convention when making decisions which affect rights or freedoms of the individual which would have been protected by the convention.¹⁵

Australia as party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) has accepted that in accordance with Article 2(1) it will take all necessary steps to the maximum of its available resources

to progressively achieve the full realisation of ICESCR rights, including Article 11.1 which states in part:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

By ratification of the ICESCR the Australian government has become accountable to its citizens, and the decision of *Teoh* allows advocates to argue that administrative decision makers must act in conformity with the 'legitimate expectation' that citizens have a right to adequate housing.

Despite these international obligations on public housing authorities, the current system of administrative review is inadequate. Applications for review of decisions are referred to the Housing Appeals Committee (HAC) which has recommendatory powers only. Whilst the Committee provides a detailed analysis and makes recommendations to the housing provider, it is up to the housing provider to make the final decision.¹⁶ In addition, the CTTT does not provide adjournments pending HAC decisions. This has resulted in termination orders being given without any assessment of administrative issues, for example where the Department have cancelled a rental subsidy and backdated the cancellations creating thousands of dollars of rent arrears.

Termination of a tenancy requires careful consideration. The exponential growth of unregulated market rents and the enforcement of the unbalanced relationship between landlord and tenant through the 60-day no-cause termination notice, has created a market where the price is so high to secure a tenancy that arrears are often unavoidable. This has led to low-income earners being pushed out of private housing but with no refuge provided by public housing.

What can tenant advocates do?

Advocates should seek the reform of legislation to regulate the private market, and enforcement of international law to provide natural justice to those in public housing. Through the maintenance of affordable housing, cases of rental arrears will deplete and the leading breach of tenancy agreements reduced. By providing a private market for low-income earners the waiting list for public housing will decrease.

Effective tenancy management must take a higher priority than efficient property and financial management. Evictions cases are not statistics for an annual report and advocates should enforce natural justice in each and every eviction case where procedural fairness has not been afforded.

Housing in Australia has eroded from a right to a privilege. Advocates must challenge the current situation and demand change. ♦

1 ABS, *Counting the Homeless 2001*, Cat. No. 2050.0

2 AIHW, *More Australians use services for the Homeless*, 16 December 2003

3 Jones, A. *Sustaining Tenancies in Public Housing: Understanding and Supporting*

Tenancies at Risk, forthcoming

4 CESCR General Comment 4: *The Right to Adequate Housing*, UN Doc E/1992/23

5 Dianne Otto and Phillip Lynch (eds), "UN Special Rapporteur on Adequate Housing: Questionnaire on Women and Adequate Housing – An Australian Submission" 2002, 8

6 ACOSS, *Homes for All: A blueprint for Australia*, December 2003

7 New South Wales Department of Housing, *Annual Report 2002 – 2003*

8 ACOSS, *ibid*

9 NSW Department of Housing, *Corporate Directions 2002 – 2004*

10 Consumer, Trader and Tenancy Tribunal, *Annual report 2002-2003*

11 *Nicholson v NSW Land & Housing Corporation*, unreported, Supreme Court, NSW, 24

December 1991, Badgery-Parker J

12 *Kioa v West* (1985) 159 CLR 550, Mason J at 31

13 *Schmidt v Secretary of State for Home Affairs* [1969] 2 Ch 149

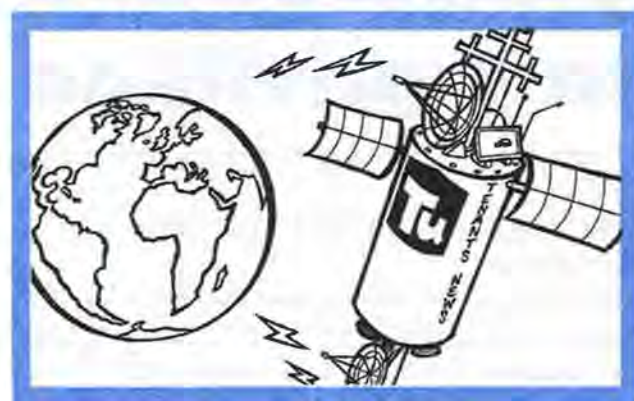
14 *Minister of State for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273

15 Allars M, "One small step for legal doctrine, one giant step towards integrity in government" (1995) 17 *Sydney Law Review*

16 Housing Appeals Committee, *Annual Update 2002-2003*



Tenancy News Across the Globe...



New Zealand

A new private database company has commenced operations in NZ. The company, Personal Reference, gathers information about people from media reports of court appearances. The information can be purchased by anyone for any purpose - including landlords wanting to check information about prospective tenants or their referees.

This comes at a time when the NZ Privacy Commissioner is currently considering a proposal that would stop landlords being able to do credit checks on prospective tenants.

Under the proposed Code for Consultation, Credit Information Privacy Code the Commissioner is saying that only credit providers will be able to access information on the creditworthiness of individuals.

Predictably the New Zealand Property Investors Federation is opposed to the new Credit Code.

[Sources: Otago Daily Times, Dunedin NA, 29/03/04 and Scoop, 23/03/04 www.scoop.co.nz/mason/stories/BU0403/S00257.htm]

United Kingdom

In the UK, a National Certificate in Tenant Participation is being run by the Kirkless Federation of Tenants and Residents. Tenants and workers will study together and look at things such as the history of tenant participation and how tenants influence policy today. The main aim of the 1-year course is to equip participants with the skills, knowledge and concepts necessary to promote effective tenant participation. It aims to provide an essentially practice-driven course and qualification designed to meet the immediate needs of housing workers and tenant activists, and the needs of the tenant movement for skilled workers, advisors, trainers, promoters. The certificate was initiated by the UK Chartered Institute of Housing.

[www.cih.org/distancelearning/natten.htm]

Guatemala

A World Bank dam reconstruction project in Guatemala has been linked to the forced eviction of entire villages. The Centre of Housing Rights and Evictions (COHRE) reports that displacement of local people around the Chixoy area started way back in 1981. Objections were met with violent suppression by the Guatemalan military. In 1982, four separate mass-killing incidents by the military left hundreds of displaced villagers dead. The survivors were resettled in a "Model Village" situated behind a military base. COHRE

and the Guatemalan human rights organisation Rights Action visited the village in mid-2003 and found that people were living in an urban slum with inadequate shelter, water, food, or healthcare. The World Bank has a supervisory role in the dam project but according to COHRE they have no interest in holding the Guatemalan military or government responsible for the past atrocities.

[COHRE Housing Rights Bulletin December 2003 www.cohre.org]

Indonesia

In the last 6 months, many Australian housing and human rights organisations will have received an email alert regarding mass evictions in Indonesia. Between August and October 2003, over 20,000 people were forcibly evicted by local governments in Jakarta, living under the highway and around the Canal Project in North Jakarta.

[COHRE Housing Rights Bulletin December 2003 www.cohre.org]

United Nations

The UN Committee on Human Settlements is examining the role of social housing in Europe, and the International Union of Tenants are on the reference group looking into this. For further information contact info@iut.nu.

The UN Special Rapporteur on the Right to Adequate Housing is compiling information regarding women and housing - see cover story.

... and around Australia

National Policy Statement on the Role of Residential Parks in the Australian Housing system

The last two years has seen growing momentum to campaigns for better protection of caravan park residents. During 2003, residential parks advocates and residents prepared a National Statement on the importance of residential parks to the Australian housing system. The Statement is a call to action on all levels of government throughout Australia. The Statement was originally published in Insite newsletter, Volume 25, December 2003, produced by the National Dissemination Program, Family Action Centre, The University of Newcastle. The Parks and Village Service has been given permission to provide the Statement to Tenant News. Please note that this Statement has been edited for space.

INTRODUCTION

Residential parks* play an important role in maintaining diversity and choice within the Australian Housing System. Residential parks must be retained and significant improvements made in security of tenure and standards of park living. All park/village residents must be treated as Australian citizens with full rights.

* Residential parks include caravan parks, mobile home villages, manufactured home villages

ACTIONS NEEDED

1. Secure Tenure

1.1. Legislative reform of tenancy and planning law is required which ensures increased security of tenure for residents. Action in this area is to be undertaken by:

- The Commonwealth Office of Local Government
- The Planning Ministers Secretariat and Planning Officials Working Group (located in the Office of Local Government)

1.2 Ensure that owner occupiers on residential parks have rights commensurate with other home owners. Principles to guide action in this area include:

- A right to fairness and accountability in site rental agreements including the promotion of alternative forms of land tenure
- Improved access to housing and personal finance
- Greater use of social impact assessment measures to mitigate the consequences of redevelopment and to ensure compensation for residents in the event of residential park closure

1.3 Federal, state and local governments actively demonstrate commitment to retain and increase the number of permanent accommodation sites on parks owned by statutory authorities.

1.4 That any State or Federal Government assistance to industry be linked to the achievement of National Standards. Any such National Standards should be benchmarked against securing improvements in the quality of life for residents.

1.5 The development of planning instruments which ensure that developers/park owners share responsibility for the social costs which result from their profit making activities when a park closes.

Action to be undertaken by Commonwealth Office of Local Government

1.6 A national response be formulated on use of tenancy databases from the Federal Office of Fair Trading and the Privacy Commissioner using the Queensland legislative response as a starting point.

2. Standards

2.1 Park/village residents must have equitable access to all services and outreach must be provided in the jurisdictions of Centrelink, Home and Community Care (HACC) and Health Services

2.2 National standards developed and applicable to all caravan parks/residential parks

Action to be taken by the Commonwealth through the Federal Office of Local Government and implemented by states/territories.

3. Research and Consultation

3.1 The Australian Bureau of Statistics (ABS) undertake a comprehensive review of the methodology used by the ABS in collecting Census data of caravan/residential parks

3.2 Increased resources are provided to Australian Housing and Urban Research Institute (AHURI)

for comprehensive research into residential park living. One important area of research to be undertaken is alternative residential park ownership and management arrangements.

3.3 Developing a national consultation framework for residential parks issues.

4. Other

4.1 Government at all levels needs to recognize the importance of the integral role of residential parks in the Australian housing system in all policy, planning and practice.

Each of the following government initiatives should take leadership in this area and include references to residential parks in all appropriate policies. (List of Commonwealth initiatives - edited for space.)

4.2 Appropriate alternative accommodation must be developed for crisis housing for families with children, people with mental illnesses and young people with high needs

4.3 A response to the issues around residential park closures needs to be addressed as part of a national response to lack of affordable housing options.

4.4 Funds injected to increase resources for affordable housing options through GST compensation and stamp duty funds.

4.5 Through the bilateral Commonwealth/State Housing Agreements, the Commonwealth minister requires all states and territories to develop co-ordinated responses (state, regional and local) to loss of long term accommodation from residential parks. ♦



Drug tests for tenants?

Tenants' Union opposes addiction amendments to Disability Discrimination Act

By Chris Martin

Applicants for tenancies could be faced with drug tests, and tenants could be evicted on the basis of a recognised disability, under changes to the Disability Discrimination Act 1992 proposed by the Federal Government.

A Senate Committee is currently conducting an inquiry into the proposed changes and is due to report to Federal Parliament in early April 2004.

The Tenants' Union has made written submissions and appeared before the Senate Committee to oppose the proposed changes to the Disability Discrimination Act. In their submission, the Tenants' Union described the proposed changes as 'dangerous' and 'offensive'. The changes proposed by the Federal Government would make it lawful for people to be discriminated against on the grounds that they are addicted to an illicit drug. Because the Disability Discrimination Act covers the provision of

housing, the proposed changes would permit landlords to discriminate against prospective or current tenants, if the applicant or tenant are "addicted" to illicit drugs.

In its submission, the Tenants' Union noted that under New South Wales tenancy legislation, landlords can give notices of termination without grounds. In these circumstances, the only protection that tenants have against discriminatory termination notices is that provided by anti-discrimination legislation, such as the Disability Discrimination Act. It is crucial that anti-discrimination laws be maintained.

The Tenants' Union also noted that if a tenant falls into rent arrears or causes some other breach of their tenancy agreement, the Residential Tenancies Act 1987 allows their landlord to take action, regardless of whether the tenant has an addiction to drugs. There is nothing in the current

Disability Discrimination Act that prevents a landlord from taking action in such cases.

Instead, the proposed changes would open up the threat of terminations based only on prejudice, and make rental housing more unstable. And, considering that research into housing and drug use shows that people are more likely to use drugs when their housing is insecure or when they are homeless, the proposed changes would be more likely to exacerbate drug use and addiction than help to deal with the problem.

The Tenants' Union's submission to the inquiry by the Senate Committee is available on the website www.tenants.org.au. The details and final report of the Senate Inquiry will be available at www.aph.gov.au/Senate/committee/legcon_ctte/disability/index.htm. ♦

Tenant News Showcases:

Our mystery cartoonist strikes again



Tenants Have Rights!

How to avoid problems

- ✓ Start by reading your residential tenancy agreement. Get some help if you can't understand it.
- ✓ Tell your landlord, or the landlord's agent, about any problems and tell them what you want. You should confirm anything you agree to in writing and send your landlord a copy.
- ✓ Remember that the agent works for the landlord.
- ✓ Keep a written record of what happens between you and your landlord or agent, including what each of you said and when.
- ✓ Keep copies of your:
 - Residential Tenancy Agreement
 - Condition Report
 - Receipts for rent and bond money, all letters and written records.
- ✓ Never sign a blank form or any papers you don't understand.
- ✓ If you receive notice of a Tribunal hearing you should always attend.
- ✓ If you stop paying rent you can be asked to leave. Rent strikes do not work.

Remember: your landlord can't evict you - only the Tribunal can.

For more help

Contact your local Tenants' Advice and Advocacy Service.

Sydney Metro

Inner Sydney	9698 5975
Inner Western Sydney	9559 2899
Southern Sydney	9787 4679
South West Sydney	4628 1678 or 1800 631 993
Eastern Suburbs	9386 9147
Western Sydney	9891 6377 or 1800 625 956
Northern Sydney	9884 9605

Coastal

Illawarra/ South Coast	4274 3475 or 1800 807 225
Central Coast	4353 5515
Hunter	4929 6888 or 1800 654 504
Mid Coast	6583 9866 or 1800 777 722
Northern Rivers	6621 1022 or 1800 649 135

Greater Western NSW

North West	6772 8100 or 1800 836 268
South West	6361 5307 or 1800 642 609

Specialist

Older Persons Tenants' Service	9281 9804
Parks and Village Service	9281 7967

Aboriginal Services

Western NSW	6882 3611 or 1800 810 233
Southern NSW	4472 9363 or 1800 672 185
Northern NSW	6643 4426 or 1800 248 913
Greater Sydney	9564 5367 or 1800 772 721

Tenants' Union Hotline

Mon-Fri 9.30am-1 & 2-5pm 1800 251 101

www.tenants.org.au

For fact-sheets and for further information about the Tenants' Advice and Advocacy Program



Get a new lease on life... join the Tenants' Union!

Membership Application

TAX INVOICE

I would like to apply for membership of the Tenants' Union of NSW Co-operative Limited ABN: 88 984 223 164

Name / Organisation: _____

Address: _____

Phone: (home) _____

Phone: (work) _____

This is a: (please ✓ one)

☐ new membership ☐ renewal (Membership Number) _____

I am a: (please ✓ one)

☐ tenant ☐ tenant organisation
☐ non-tenant ☐ non-tenant organisation
☐ other (please specify) _____

Annual fee runs from 1 January to 31 December.
 New members can pay half fees after 30 June.
 First membership fee paid covers cost of share.

unwaged \$8.00 waged \$16.00 organisation \$32.00
 (all include GST component)

Please find enclosed cheque / money order to the Tenants' Union for:

Membership: _____

Donation: _____

Total: _____

I am over 18 years of age. I support the objectives of the Tenants Union of NSW.

Signed: _____

Date: _____

return to: Tenants Union of NSW, 68 Bettington Street, Millers Point 2000