TENANT NEWS
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New tenancy law ticks some of the right boxes

Ned Cutcher, Policy Officer

If the *Residential Tenancies Act 2010* commences later this year, as is expected, it will be a moment of great significance for tenants, the Tenants' Union, and Tenants Advice and Advocacy (TAA) Services.

Not only will it be the first major revamp of NSW's renting laws in more than 20 years, it will see the implementation of some key reforms that advocates have been working towards for many years.

Some are big-ticket items, like the proper regulation of tenant databases, recognising the complexity of legal relationships within a share-house, and new provisions that will help to end cycles of violence and tenancy-related debt for victims of domestic violence. Many other reforms are small and simple, rectifying omissions and clarifying ambiguities in the current law.

But it's not all good news. Despite some focused lobbying by tenants and tenant advocates across the state, the new Act will leave tenants worse off in one very important respect. Rather than initiating a scheme of reasonable grounds for terminations, the new Act will further erode security of tenure.

Under the current law, a 'no grounds' notice of termination is always subject to the discretionary consideration by the Consumer, Trader and Tenancy Tribunal (CTTT) of circumstances of the case. The new law will remove this discretion, meaning that a notice of termination will become the ultimate trump card for landlords.

From exposure draft to Act of Parliament – an intervention

When the exposure draft Residential Tenancies Bill 2009 was released for public comment in November 2009, the TU said it was "mostly good" and that it would make "numerous sensible improvements to the current law".

In more detailed submissions and extensive lobbying, the TU and TAA Services outlined four areas of the draft Bill that fell well short of the mark.

- The proposed tenant database provisions would not solve the problems they were intended to.
- In the event of sale, landlords and agents would be allowed unrestricted access, with only 24 hours notice, to show rented premises to prospective purchasers (with a $2,200 fine

New residential tenancies legislation has hatched

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The new Act contains a statutory five-year review clause, so tenants won't have to spend another 20 years trying to get renting laws back on the government's agenda

for tenants who would prefer not to let them through).

- Landlords would be given broad powers to remove and dispose of goods left behind at the end of a tenancy, with no incentive for goods to be sold at fair value.

- The CTTT's discretion to consider circumstances of the case in 'no grounds' termination matters would be removed, making renting in New South Wales unnecessarily insecure.

When the final Residential Tenancies Bill 2010 was introduced early in June 2010, it was substantially similar to the exposure draft. However, some provisions had received more attention than others.

- The tenant database provisions were tightened up, to ensure they would achieve their intended goals.

- The required notice for accessing premises in the event of sale was increased to 48 hours, and a limit of two visits per week was introduced. The $2,200 fine was dropped.

- Minor changes were made to encourage landlords to sell goods left behind rather than throw them away, but the potential for goods to be lawfully sold for less than fair value remains.

- The CTTT's discretion to consider the circumstances of the case in 'no grounds' terminations was not retained. (This was the single most disappointing aspect of the Bill, and one into which advocates were unable to make inroads. The Bill was passed without further amendment.)

Well, what's so good about this new law?

Despite unnecessarily strengthening the ability of landlords to end tenancies with no good reason, the new Act will make a number of important changes that will benefit tenants.

'No grounds' notice periods will be increased to 30 days at the end of a fixed-term agreement (up from 14 days), and 90 days during a continuing agreement (up from 60 days). Tenants will also have clearer opportunities to have a notice of termination declared "retaliatory" and revoked by the CTTT.

The new Act will allow tenants to move out of a property before the date specified in a landlord's notice of termination. It will provide tenants with the option of applying to the CTTT for a refund of overpaid rent – something that can only be dealt with in the local court under the current law.

Real estate agents will not be able to insist on using rent collection companies that charge tenants a fee each time they pay their rent. Tenants will be entitled to a copy of their rent ledger – if they ask for one.

These are all small reforms that will have a big impact for tenants, as they will reduce the potential for disputes. But along with the raft of minor changes, there are five significant reforms that will dramatically improve the law.

- Tenants will have better access to information held about them by tenant databases. Databases will be prevented from keeping listings that are inaccurate, incorrect, out of date, ambiguous, or unjust. The CTTT will be able to hear and determine disputes about database listings.

- Share-houses will be recognised. It will be possible to change the names on a residential tenancy agreement as a household's composition

changes. Tenants who move out will not be responsible for rent arrears or damage caused by remaining occupants, provided they give the proper notice.

- A residential tenancy agreement will no longer be an obstacle to escaping domestic violence.

and end their rental liability if they can't afford to stay.

- Tenants who fall into arrears will have some assurance that if they pay their arrears the tenancy will not be terminated, even by the CTTT (as long as they have not "frequently failed to pay the rent owing").

There are small reforms that will have a big impact for tenants as they will reduce the potential for disputes

A final apprehended violence order that excludes a person from their rented premises will automatically end the violent person's tenancy. Any remaining occupants will be able to take over the tenancy, or move out

- Tenants will be able to move out during a fixed-term tenancy, without having to compensate the landlord, if they have been offered a social housing tenancy or are required to move into an aged-care facility. ■

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Where to now for tenancy law reform?

Almost all of these reforms have come after years of lobbying and campaigning by advocacy groups such as the TU and TAA Services.

Importantly, the new Act contains a statutory five-year review clause, so tenants won't have to spend another 20 years trying to get renting laws back on the government's reform agenda... and it's true that there are still some major issues outstanding.

We will continue to press the case for reasonable grounds for termination of tenancies. Landlords should be required to discuss their reasons for wanting to end a tenancy. Tenancies should not end, and tenants should not be required to suffer the trauma and expense of moving house, without a good reason.

We will continue to argue for legal protection for boarders, lodgers and other marginal renters not covered by the current law. These renters will continue to be excluded by the new Act.

We will monitor the operation of the new Act through casework and litigation, and raise new issues for reform as they arise.

Public housing redevelopments: ensuring a fair deal for tenants

Gregor Macfie, Executive Officer

This is an extract of a paper presented at the Shelter NSW conference, 'Estates in the Balance', June 2010.

'De-concentrating' disadvantage and creating a so-called 'better social mix' are explicit aims of current public housing estate redevelopments in New South Wales. In general, this involves dispersing social housing through redeveloped areas featuring higher densities of privately owned housing.

This agenda is being driven at the highest level through the Council of Australian Governments (COAG), with the states required to reduce concentrations of disadvantage in estates and improve social inclusion.

Such redevelopments can be positive for public housing tenants – if done properly and with the lessons of the past in mind. But there are also significant risks. It is crucial that these are identified and managed so that tenants are not further disadvantaged.

There are five important issues for low-income and disadvantaged tenants affected by social-mix redevelopment that I would like to focus on today.

Clarity of purpose and roles

It is unclear what the stated aims of social-mix redevelopment mean. For the Commonwealth Minister for Housing it is about "having a social mix, where people are also going to work each day, builds stronger communities."

COAG agreed that "the States would work to reduce concentrations of disadvantage through redevelopment to create mixed communities that improve social inclusion."

However, there are limits to what social-mix redevelopment can achieve in terms of better social outcomes for disadvantaged people. The evidence that mixing income and tenure types alone leads to better social outcomes is equivocal.

Social-mix redevelopment that focuses on local-level issues can push the structural causes of disadvantage into the background. The causes of disadvantage are only in limited instances genuinely local and are instead related to wider economic and social factors.

We should question the thinking behind policies based on the belief that people of higher incomes have positive effects on low-income or dysfunctional neighbourhoods. We should also ask how success will be measured and how any findings will be turned into improvements in policy and program design.

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Income

Whereas most public housing tenants are on Centrelink payments (a single pension of about $320 per week or a single job-seeker allowance of about

$231 per week) average weekly earnings for Australian employees is $970. This is three times the single pension and four times the single allowance.

This differential in incomes would likely affect the opportunities for making connections with others from different socio-economic backgrounds. Tenants on low incomes will not have discretionary income to spend in the shops, cafes and pubs their better-off neighbours might frequent.

This may lead to social isolation where socialising and recreation costs have increased in response to higher land values and overall income levels. The costs of doing business, and thus of goods and services, also tend to increase in areas that become better off.

We need to ensure that tenants are located near services, affordable transport is available, income-support payments are supplemented or increased, and those who can work are able to secure employment.

Schools and preschools

Free, universally accessible local schools and preschools are the places where mixed communities can come together. There is concrete evidence that social mixing can deliver better outcomes for disadvantaged children.

Regardless of their own backgrounds, students attending schools with others from a variety of socio-economic backgrounds tend to perform better than they would have otherwise. It is therefore critical to the success of social-mix redevelopment to avoid segregation of schools by socio-economic status.

Schools in redeveloped areas need to be free and universally accessible. They need to provide opportunities and supports to cater for the diversity of student needs making them attractive to families of both high and low socio-economic status.

The evidence that mixing income and tenure types alone leads to better social outcomes is equivocal

The same arguments apply to preschools and child-care and it is unclear whether the currently fragmented and largely market-based system can deliver what is needed.

Employment

One of the most familiar arguments for socially mixed communities is that lower-income and jobless residents will emulate the work habits of their higher-income neighbours. However, in a competitive, open economy, those who have the least competitive attributes will find it most difficult to gain access to jobs.

Many unemployed people do not have the skills and education that employers are looking for and this will not change simply by creating socially mixed communities. The Australian Industry Group estimates that 86 percent of occupations require a post-secondary qualification. Only 25 percent of the overall workforce has a Year 10 education or less, for public housing tenants this figure is estimated to be between 60 and 75 percent.

There are significant employment opportunities that come with social-mix redevelopment, but increased demand for labour in past redevelopments has not generally been met by drawing on the pool of unemployed labour in the area but rather by attracting more workers from outside the area.

If jobless public housing tenants are to take up employment opportunities, they will need to be provided with individually tailored skill development, training and work experience, and links to the real world of work.

Health and community services

Dismantling established communities or engineering new ones can upset social networks that provide informal care for elderly people or people with disability, unpaid childcare and supervision of young people. Weakening these networks will increase the demand for formal care. Governments generally meet some of the costs of formal care, and we can expect these costs to become higher if existing care networks are dismantled.

Health problems that disproportionately affect public housing tenants may also be hidden in mixed-income communities. Health services must be accessible and appropriate for low-income and disadvantaged people living in mixed communities and intensive support services must be available for people with severe and complex problems. Bulk-billing doctors, targeted illness-prevention and health-promotion programs need to be in place and free dental care and allied health services more widely available.

Conclusions

At the very least we need to try and ensure that no damage results from social-mix redevelopment and to attend to the particular risks for disadvantaged people in these new communities.

The current 'Living Communities' approach used by Housing NSW in selected areas could be adopted across all redevelopments. It focuses on working in a holistic way with people affected by redevelopment to ensure that, as far as possible, their needs and aspirations are met.

If governments are serious about improving outcomes for disadvantaged tenants, there needs to be much greater commitment to the redevelopment agenda in New South Wales from a range of Commonwealth and NSW government departments, the non-government sector and private industry. ■

TENANCY Q&A

Inherited debt?

Q **My great-uncle died last month. He was renting a flat. The family got together and cleared out his stuff. We cleaned the flat and gave the keys to the real estate agent. His rent was up to date.**

The real estate agent says that we have to keep paying his rent because he had just signed a six-month fixed-term tenancy agreement. The rent until the end of his agreement is about $6,000. What can we do?

A You do not have to pay anyone else's rent. If there are any debts from your great-uncle's tenancy, they are owed by his estate. (Relatives of deceased persons have not inherited debts like that for over a hundred years.)

If his estate owes money from the tenancy, it will be for the landlord's losses since the keys were returned – for example: real estate agent's fees and rent until a new tenant starts paying rent. The landlord must ensure that they do not suffer any loss that they can avoid through normal action. They must try to find a new tenant. ■

Later this year the law on this issue will change

New residential tenancies legislation for New South Wales is expected to commence before the end of 2010.

The new legislation allows a deceased person's executor (appointed under the will of the deceased) to give a termination notice during the fixed term of the tenancy and not be liable to pay compensation to the landlord.

Grant Arbuthnot

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Updated legal framework for government information access

Carl Freer, Aboriginal Legal Officer

The NSW *Government Information (Public Access) Act 2009* (GIPA Act) came into force on 1 July 2010. It repeals the *Freedom of Information Act 1989* and sets out an updated legal framework for access to information held by NSW government agencies.

The GIPA Act simplifies procedures for access to government information and more powerfully promotes the disclosure of information by government agencies.

New test for disclosure

All government agencies must disclose or release information unless there is an overriding public interest against disclosure. When deciding whether to release information, staff must apply the public interest test. This means they must weigh the factors in favour of disclosure against the public interest factors against disclosure. The public interests against disclosure are a finite list set out in the GIPA Act, whereas the possible public interests in favour of disclosure are unlimited.

New ways to access information

The GIPA Act also creates new and different ways in which agencies are to provide access to information. Government agencies are encouraged (and in some cases required) to proactively release more information than ever before. Most of this information has to do with policies and practices for dealing with members of the public.

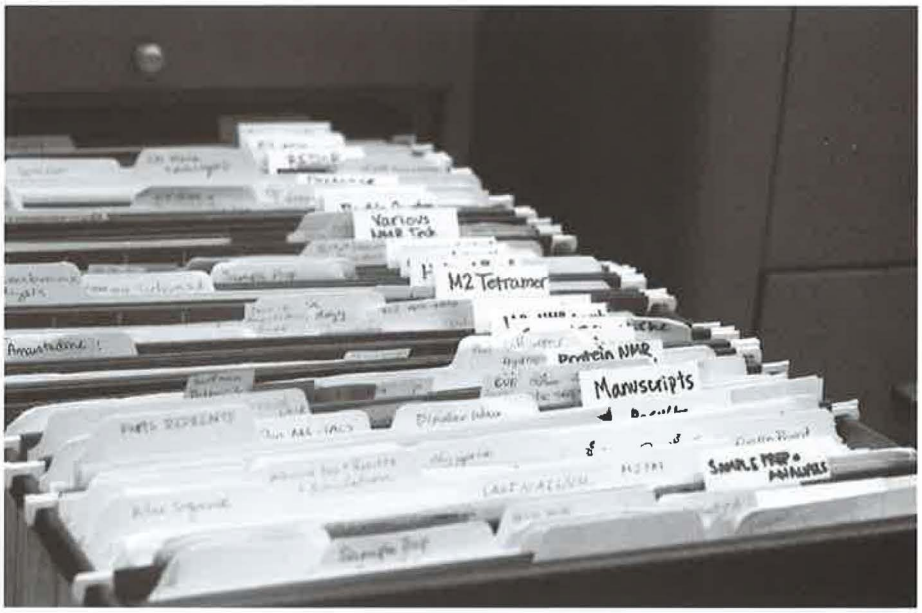
A person may informally request government information. While this does not create an enforceable right to the information, applicants should be told less often that they need to put in a formal request just to look at a particular document.

As with the old legislation, a person can formally request access to government records. It costs $30 to submit a formal application (though this may be waived in certain circumstances). The benefit of a formal application is that, subject to the public interest test, you have a legally enforceable right to access government information.

Important points for tenants

In the tenancy context, the GIPA Act will most often be used to obtain information from Housing NSW and other government housing providers. Unfortunately, community housing providers are not subject to the GIPA Act and this may be an area for future law reform.

The TU encourages tenants and their advocates to use the GIPA Act to obtain information from government. Having a copy of all the information an agency holds about a tenant not only helps advocacy, it empowers the tenant. This is because they know what information the agency is using to make decisions about them and their tenancy. ■



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

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)

First name

Last name

Organisation*

Position*

E-mail

Postal address

Suburb

State Postcode

Phone (W)

Phone (H)

**If applicable*

Membership type

☐ tenant ☐ tenant organisation

☐ non-tenant ☐ non-tenant organisation

Fees (all include GST)

- unwaged $ 8.00
- waged $16.00
- organisation $32.00

Annual fee runs 1 January–31 December.
New members can pay half fees after 30 June.

Payment

Please enclose a cheque/money order made out to the Tenants' Union of NSW for:

$

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

Signed Date

Return with payment to Tenants' Union of NSW
Suite 201, 55 Holt St, Surry Hills NSW 2010

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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	1300 363 967	
Central Coast		4353 5515
Hunter	1800 654 504	4969 7666
Illawarra and 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	

Specialist services

Greater Sydney Aboriginal		9569 0222
Western NSW Aboriginal	1800 810 233	
Southern NSW Aboriginal	1800 672 185	4472 9363
Northern NSW Aboriginal	1800 248 913	6643 4426
Older persons (statewide)	1800 131 310	9566 2122

Tenants NSW website www.tenants.org.au

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Views expressed by contributors are not necessarily those held by the Tenants' Union.

Disclaimer: Legal information in this newsletter is intended as guide to the law and should not be used as a substitute for legal advice. It applies to people who live in, or are affected by, the law as it applies in New South Wales, Australia.

Tenants' Union of NSW

The Tenants' Union of NSW is a specialist community legal centre that has been active in promoting the rights of over 1.5 million tenants in New South Wales since 1976.

The Tenants' Union is also the peak resourcing body for the NSW Tenants Advice and Advocacy Program.

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