



8 August 2014

Legislative Assembly  
Public Accounts Committee  
Parliament of NSW  
Macquarie St  
Sydney NSW 2000

**By facsimile 02 9230 3052**

KINGSFORD  
LEGAL CENTRE

Dear Committee Manager,

### **Inquiry into tenancy management in social housing**

Kingsford Legal Centre (**KLC**) thanks you for the opportunity to provide a submission to the inquiry into tenancy management in social housing. All case studies used have been de-identified to protect our clients' confidentiality.

#### **Kingsford Legal Centre**

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KLC is a community legal centre which has been providing legal advice and advocacy to people in need of legal assistance in the Randwick and Botany Local Government areas since 1981. KLC provides general advice on a wide range of legal issues, including housing matters, and undertakes casework for clients, many of whom live in public housing, are homeless or are at risk of becoming homeless.

KLC also has a specialist employment law service, a specialist discrimination law service (NSW wide) and an Aboriginal Access Program. In addition to this work, KLC also undertakes law reform and policy work in areas where the operation and effectiveness of the law could be improved.

There are almost 2,000 public housing tenants living in the Randwick and Botany Local Government areas. In 2013 KLC provided 199 advices in relation to tenancy law, which was almost 11% of all advice provided (1804 advices). Of the advice provided in 2013, almost 39% of people advised rented in the private market, 18% lived in public housing, 3% boarded and 11 people identified as homeless.

#### **Housing as a human right**

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The right to safe, secure and affordable housing is a human right. In KLC's experience housing affordability is the key to people being able to deal with the issues they face in their lives.

Article 25(1) of the *Universal Declaration of Human Rights* states that:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.'

In 1991, the Committee that has the responsibility of monitoring and implementing the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* elaborated on what defines a right to housing with the passing of *General Comment No. 4*.

The right to adequate housing, which is derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights.<sup>1</sup> Adequacy has a number of components:

‘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 cost.’<sup>2</sup>

Drawing on *General Comment 15* of the Committee on Economic, Social and Cultural Rights it has been argued that if a State is unwilling to use the maximum of its available resources for the realisation of the right, they are in violation of their obligations.<sup>3</sup>

## **Unaffordable housing crisis**

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While ‘housing affordability’ dominates national headlines around the difficulties faced by first home owners to buy their own home, in reality housing affordability for a growing number of Australians is the narrow and marginal manner in which they must try to maintain some form of secure housing through renting in the private market or public or community housing.

Between 1960 and 2006 average household incomes increased by 1.9% annually, whereas house prices increased by an average of 2.6% annually.<sup>4</sup> Between 2001 and 2006 gross income grew by 31.2%, whereas housing costs grew by 62%.<sup>5</sup> The growing gap between household income and housing costs has increased the demand for affordable housing.

Tax concessions available to home owners and investors are driving investment in, and demand for, housing.<sup>6</sup> Demand for housing is not being met by supply of housing stock, causing the cost of housing to increase at a rate that has exceeded the growth of household incomes.<sup>7</sup>

With the cost of buying homes increasing at an exponential rate, would-be first home buyers are renting for longer periods, increasing the demand and cost of private rental accommodation. Commonwealth Rent Assistance (**CRA**) has not increased proportionately to the increase in renting costs. Between 2000 and 2005, rents in the private rental market increased by an average of \$64 per fortnight compared with an average increase in CRA by \$18.<sup>8</sup> Furthermore, the CRA does not account for the differences in rental costs in different locations. For example, private renters in Sydney, an area with high rental costs, are eligible for the same maximum CRA as renters in areas where the average rent is much lower.

Competition for property is intense and anyone on a Centrelink income, such as older people, young unemployed people, single parents, people exiting prisons and people with disabilities, face extreme difficulty obtaining private rental accommodation. In KLC’s

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<sup>1</sup> United Nations (1991) *The Right to Adequate Housing, Article 11 (1): CESCR General Comment 4*. Geneva: United Nations, Office of the High Commissioner for Human Rights.

<sup>2</sup> Ibid.

<sup>3</sup> McRae, R. and Nicholson, D. (2004) ‘No Place like Home: Homelessness in Australia and the Right to Adequate Housing’, *Australian Journal of Human Rights*, Vol. 10, No. 2, p 36-37.

<sup>4</sup> Yates, J. and Milligan, V. with Berry, M., Gabriel, M., Phibbs, P. Pinnegar, S. and Randolph, B. (2007) *Housing Affordability: A 21st Century Problem: National Research Venture 3: Housing Affordability for Lower Income Australians*, Melbourne: Australian Housing and Urban Research Institute.

<sup>5</sup> Ngu, Q., Harding, A., Tanton, R., Nepal, B. and Yogi, V. (2008) *Advance Australia Fair?* Canberra: National Centre for Social and Economic Modelling (NATSEM) and AMP.

<sup>6</sup> Yates, Judith for the Brotherhood of St Laurence, ‘Tax expenditure and housing’ Australian Housing and Urban Research Institute’ (2009) and Hodgson, Helen, ‘Explainer: why negative gearing is bad policy’ *The conversation* 4 February 2014 at <https://theconversation.com/explainer-why-negative-gearing-is-bad-policy-21882> viewed on 24 March 2014.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

catchment area, there is also fierce competition with many well-resourced domestic and international students who are seeking accommodation near UNSW.

The housing affordability crisis in NSW is also felt acutely by a wide range of other groups, including less well-resourced students, community workers, low paid and casual workers and people with a less than perfect renting record. In our experience there is a hidden group of people who are moving constantly from insecure accommodation, to insecure accommodation and in some cases into hospitals or prison and back into insecure accommodation.

Despite this growing and well documented need for affordable housing, there has been decreasing investment in building new public housing stock. The current public housing stock is decaying and being inadequately maintained. At the same time, the criterion to be eligible for public housing has become much more stringent.<sup>9</sup>

In our experience public housing is now only available to people with severe and multiple disabilities and disadvantage. These extremely disadvantaged tenants face poor administration of public housing and inadequate accountability and oversight mechanisms regarding Housing NSW decision making.

### **Poor administration of public housing**

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The high needs of public housing tenants, in conjunction with the under resourcing of Housing NSW, has fundamentally affected the manner in which public housing is administered.

### **Support for vulnerable tenants to maintain their tenancies**

A key feature of the recent administration of public housing in NSW is penalising people who are extremely vulnerable and disadvantaged, by evicting them or increasing their rent to unaffordable levels. This strategy appears to be used as a tool to reduce public housing waiting lists; however it is failing to do so and arguably will continue to fail to do so.<sup>10</sup>

KLC often works with extremely vulnerable clients who have no support from any services and who are facing the real threat of eviction as well as clients who are already homeless. In our experience, people with significant disabilities, who live in public housing, often struggle to maintain their tenancies and are not provided with any additional support from Housing NSW or referral to appropriate services.

#### Sen

*Sen is 30 years old. His mother was an alcoholic and was murdered when he was 18 years old. He suffers from anxiety, panic attacks and other psychiatric disorders. He engages in sex work to fund his drug and alcohol addiction.*

*Neighbours assaulted him in his public housing complex. People began staying in his public housing unit without his permission. Fearful of them he left his unit for a period of time. When he returned his unit was trashed.*

*Housing NSW evicted him from his property and he is now homeless and ineligible for public housing because he breached his residential tenancy agreement.*

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<sup>9</sup> Morris, Alan (2010) 'The lack of a right to housing and its implication in Australia' *Journal of Australian Political Economy* No 65.

<sup>10</sup> Audit Office of New South Wales, New South Wales Auditor-General's Report Performance Audit Making the best use of public housing: Housing NSW Land and Housing Corporation (July 2013) Figure 4, p 45.

The Housing NSW policy, which determines that former Housing NSW tenants are ineligible for public housing, does not adequately take into account the tenant's circumstances. In our experience, it serves to entrench discrimination and disadvantage against people with extremely complex needs who should not be excluded from public housing.

In our experience, public housing is not administered in collaboration with other government services, and public housing tenants, by and large do not receive the necessary social, medical and mental health support they require to maintain successful tenancies and necessary to create positive communities. It has been well documented that while public housing is now only available to people with more complex needs, there has been no associated service strategy to assist in the provision of housing to this group. Likewise, Housing NSW does not administer and service this group with any real expertise in dealing with the complex issues faced by their tenants, and instead often takes a punitive rather than a health approach to issues such as mental illness.

### **Enforcing landlord's rights without taking into account vulnerable tenants' needs**

#### Liliana

*Liliana is in her late sixties and in receipt of Age Pension. Her spoken English is basic, and she cannot read or write English. She had been living in a social housing flat for over 8 years when she came to us. The lease was in her husband's name only. Her relationship with her husband was a difficult one, characterised by verbal abuse, intimidation and physical assaults, none of which she reported to the police at the time. After the last physical assault her husband left the flat, and Liliana was unsure if he was going to return. A few months later he told her he would not return, and that he would ask Housing NSW to transfer the lease to her, not realising that this was not in accordance with Housing NSW's policy. Liliana was told by Housing NSW she had a "provisional lease" to stay in the flat, and did not realise that Housing NSW would not be finding another place for her to move to at the end of the lease. She was eventually sent letters advising her that she needed to move out of the premises, and that she had no right to social housing in her own name as she had not put in a separate application. Liliana was suffering acute depression and anxiety at this time, including suicidal ideation. Housing NSW eventually applied to the Tribunal for possession of the flat.*

*KLC assisted Liliana in lodging an application for social housing in her own name, advocating on her behalf to secure accommodation through the Rental Subsidy Scheme and advocating on her behalf in relation to the Tribunal proceedings. We also linked her with counselling, medical and other support services.*

This situation in this case study could have been avoided entirely if Housing NSW had acted earlier to address the client's need for long-term housing assistance. Her case is an example of the lack of support provided to vulnerable tenants and a deficit in the administration of public housing. It should have been clear to Housing NSW when they were advised that her husband had moved out that she was still in need of social housing. She should have been assisted to apply for social housing in her own right at that point, rather than being served with an eviction notice several months later. Instead, she was placed in a situation of extreme stress over the eviction proceedings that had a deleterious and long-term effect on her mental health.

### Sebastian

*Sebastian is over 80 years old and lives with a vision impairment and significant mental illness. His English is limited. He lived in a Housing NSW flat with his partner, who was also his primary carer. The lease for the flat was in his partner's name. While in hospital for treatment his partner took out an interim AVO against him which meant that he could not return to the flat. He did not have any family he could stay with. The Hospital's Social Worker became aware of the housing situation, but could not extend his stay at the Hospital. The Social Worker and KLC assisted Sebastian to apply for social housing in his own right, but Housing NSW advised that it could be over a year before he was found a place to live. Sebastian was offered limited emergency housing in motels, but this eventually ran out. He began to sleep in parks or on friends' couches.*

*KLC advocated on Sebastian's behalf with Housing NSW, and co-ordinated support letters from medical professionals and social workers. Because of his age, disability and basic English he was unable to do this himself. After daily contact from KLC for over three weeks Housing NSW eventually offered him the lease to a unit. In the mean time he experienced more than a month of homelessness sleeping in parks, friends' couches or hospital, a truly appalling situation for an elderly blind man.*

Community services have often become the services of last resort for public housing tenants who are facing significant difficulties in their lives, and are often inadequately resourced to deal with the complexity of the issues these clients face.

### **Repairs and maintenance**

We are also concerned about Housing NSW's failure to maintain the quality and quantity of their housing stock. **Tenants with disabilities and health problems** suffer extreme hardship living in decaying, dangerous and inappropriate public housing.

Housing NSW is regularly not complying with their obligation under the *Residential Tenancies Act 2010 (NSW) (RTA)* to maintain their housing stock in a reasonable state of cleanliness and fit for habitation.<sup>11</sup> The shortage of public housing stock has also meant that many people live in unsafe and inappropriate housing because they have nowhere else to go.

The failure of Housing NSW to be a 'best practice' landlord is especially problematic when the vulnerable and disadvantaged nature of the tenant group is considered. Taking action to enforce their tenancy rights is particularly challenging for public housing tenants. Even when they do so, it is our experience that there is routine non-compliance with Tribunal ordered repairs, often due to more significant and problematic structural issues than cannot be resolved easily.

The value of public housing stock depreciates the longer it remains in disrepair, getting to a point when it more beneficial to sell the property than repair it. The underinvestment in public housing has meant that when housing stock is sold, it is rarely replaced with the same amount of housing stock, which again puts more pressure on the public housing system, people needing to access to public housing and people living in public housing.

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<sup>11</sup> Section 52(1).

David

*David is 67 years old and has lived in public housing for the past 8 years. His home is covered in mould. Housing NSW painted his property four times in the last year to try to cover the mould but nothing has worked. He won't have friends and family over because the mould is unsightly and smells.*

*Social workers from the hospital are concerned about his health and have been trying to help him to get Housing NSW to transfer him to another property. He is on the transfer list but has been advised it may take some time to find him a property to move in to.*

**Modifications for people with disabilities**

Housing NSW has a policy of providing home modifications for people with disabilities, or transferring them to a more suitable property if modification is not financially viable. Housing NSW also has obligations under the *Disability Discrimination Act 1992 (Cth)* to make reasonable adjustments for tenants with disabilities. However achieving necessary modifications can be a long and challenging process for tenants who are already struggling to live with their disability on a low income.

George

*George is a 50 year old man who has had a progressive decline in his mobility due to a degenerative condition. He can no longer work and needs to use a motorised wheelchair. His only income is the disability support pension. He lives alone in a Housing NSW unit and wants to continue to be independent for as long as possible.*

*Following a report from an Occupational Therapist, modifications were made to the bathroom in George's unit so that he could safely transfer to the shower from his wheelchair. As part of the modifications the contractors tiled the bathroom in such a way that water pooled on the floor, making it hazardous for George to use the bathroom. After months of complaints to Housing NSW, and after the intervention of a disability advocate, the bathroom floor was retiled. However, several new problems were created by the poor workmanship. An Occupational Therapist made over 10 recommendations for changes, but these were not done for more than a year.*

*Further problems arose that impacted on George's ability to even enter his home because of a faulty automatic door. The remote controlled automatic door opener was installed by a contractor who had never fitted such a device before and it did not work reliably. Other short-cuts were taken in relation to the Occupational Therapist's recommendations with resulted in George not being able to access his backyard. George's disability advocate made constant requests for these matters to be rectified.*

*Several years after the problems first arose George instructed a community legal centre lawyer to lodge a Disability Discrimination complaint with the Australian Human Rights Commission. It was only after the complaint was settled that Housing NSW agreed to widen the front door, replace the faulty door opening mechanism, create level access to the whole backyard, and make other modifications. Although Housing NSW estimated that the agreed work would be completed in 6 weeks, four months after the agreement was signed the works are not yet completed.*

*George has experienced great distress and frustration in his dealings with Housing NSW – constantly having to repeat his story to different staff, having poor quality work done and then having to struggle for months or years to have it rectified, and having to live with the danger and inconvenience while waiting for problems to be fixed.*

## Communication

In requesting repairs, maintenance or modifications for disability Housing NSW tenants have to deal with a long chain of people and organisations. A tenant will first speak to a Housing NSW Customer Service Officer. They may then deal with a staff member from NSW Land and Housing Corporation as the Asset Manager. NSW Land and Housing Corporation will request work to be done by a principal contractor. The principal contractor will then sub-contract the work. The sub-contractor will attend the tenant's home. If the tenant perceives any problems with the work, or if the sub-contractor does not attend as arranged, or attends without arrangement, the tenant has to make their way along the chain of parties to try and sort out the problem.

## Inadequate accountability and oversight mechanisms

We are concerned that people applying for public housing and living in public housing do not have adequate means to seek to review decisions made by Housing NSW.

Currently, people applying for public housing and living in public housing have rights to apply for an internal review of some Housing NSW decisions. If they are not satisfied with the outcome of the internal review, they may be able to appeal to the Housing Appeals Committee (**HAC**).

HAC can review some Housing NSW decision but does not have the power to make binding orders, it only has recommendatory powers. Housing NSW is not obliged to implement their recommendations.

As appropriate and stable housing is an essential part of life, people should have the opportunity to have decisions made by Housing NSW about their housing reviewed by a low cost, user-friendly independent body that has the power to make binding decisions.

## Recommendations

We make the following recommendations:

- any response to tenancy management in social housing be grounded in a human rights framework;
- Housing NSW and community housing staff are provided with regular and adequate training in service provision for vulnerable tenants and tenants with disabilities, particularly tenants with a mental illness;
- Housing NSW refers tenants who are struggling to maintain their tenancies to community and health services, and the NSW government provides resources to community and health services for this work;
- Housing NSW and community housing staff attend regular training on discrimination law and in particular, the duty not to discriminate in their decision making in relation to people with a disability;
- Housing NSW respond more quickly to requests for modifications from tenants with disabilities;
- the NSW Government and/or the Commonwealth Government fund the repair of public housing stock to ensure compliance with their obligation under the *Residential*

*Tenancies Act 2010* (NSW) to maintain properties in a reasonable state of cleanliness and fit for habitation;

- establish a low cost, user-friendly independent body that has the power to review decisions made by Housing NSW and community housing providers and make binding decisions; and

We also support the following proposals developed by NCOSS set out in their 2014-2015 pre-budget submission.<sup>12</sup> NCOSS recommends that NSW Department of Family and Community Services (**FACS**) and the NSW Department of Planning (as appropriate):

- develop a formal plan, with numerical targets, to increase the supply of social and affordable housing over the next four years. The plan should be developed on a cross-portfolio basis within the NSW Government, and in partnership with the Federal Government;
- progressively fund 200 Housing and Mental Health Support Packages for existing public and community housing tenants with an identified serious mental health condition over three years, commencing with an initial 60 support packages for 2014-15;
- provide capital funding for a Community Housing Social Investment Fund to develop additional social and affordable housing in agreed high need areas;
- provide additional funding to ensure that flexible brokerage assistance for the purchase of goods and services can be accessed through a sufficient number of Specialist Homelessness Services in each Local FACS District; and
- continue funding for the *Going Home Staying Home* Industry Development Partnership beyond 2013-14.

Please do not hesitate to call us on (02) 9385 9566 if you would like to discuss the content of our submission further.

Yours faithfully,  
**KINGSFORD LEGAL CENTRE**

Natalie Ross  
Solicitor

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<sup>12</sup> NCOSS, above n 12.