

## **Comment on the NSW Government's Proposed Changes to the NSW Residential Tenancies Act 1987**

UnitingCare NSW.ACT is concerned about proposed changes to the NSW Residential Tenancies Act 1987, announced on 4<sup>th</sup> May 2004, to apply to public tenants. The proposals have already been approved by the cabinet, but have yet to pass through parliament.

UnitingCare has written to

- the Premier,
  - the Minister for Housing and
  - the Minister for Community Services, Disability Services and Youth
- expressing concern about the negative ramifications that they proposals will have for public tenants.

### ***What is proposed?***

The proposed changes concern the inclusion of Acceptable Behaviour Agreements in the Residential Tenancy Agreements of public tenants, with the stated intention of addressing 'anti-social behaviour' on the part of this group.

Although the Department of Housing indicates that these Agreements would only be used for tenants with a history of 'anti-social behaviour', there is potential that they could be extended to all tenants.

In the eviction of tenants said to have breached an Acceptable Behaviour Agreement it is proposed that the Act be amended to reverse the onus of proof from landlord to tenant. It is also proposed that the Act formally recognise the Department's Renewable Tenancy Policy and that it enable any existing tenant to be moved to a Renewable Tenancy.

### ***Why is UnitingCare NSW.ACT concerned?***

This range of proposals is of great concern to UnitingCare for a number of reasons. The amendments are likely to further disadvantage families and individuals who are already disadvantaged.

#### **1. It does not address the underlying problems**

While we regard the issue of quality of life and safety on public housing estates as very important, the current set of proposals are likely to be largely ineffective in addressing this problem.

Rather, they represent a punitive approach that further curtails the tenancy rights of public tenants, following on from the introduction of renewable tenancies for new tenants in 2002.

A more ethical and effective strategy to address problems associated with nuisance behaviour on estates is to acknowledge and address problems of poor amenity, lack of access to services and the other forms of multiple disadvantage experienced by public tenants, for whom the Department, as the NSW Minister for Housing has acknowledged in a recent statement, is often the 'landlord of last resort'.

## **2. The rights of tenants in public housing have already been eroded**

The introduction of renewable tenancies in 2002 was an erosion of the rights of public tenants, since it deprived new tenants of the expectation of security of tenure. The extension of renewable tenancies to all tenants would be a further retrograde step.

In the Minister for Housing's press release of May 4<sup>th</sup> he states that some public tenants "come to regard public housing as a permanent entitlement, rather than a month-to-month proposition a private sector tenant understands it to be". Such a statement is a matter for concern, since it implies that the Minister does not support the notion of security of tenure for public tenants and regards the private rental sector as a model for public housing.

One of the benefits of public housing, that has distinguished it from the insecurity of the private rental sector, has indeed been the expectation of permanency. Such permanency has given public tenants a base from which to move out of disadvantage, in part through creating linkages and networks within a locality and in this way building social capital, an espoused goal of the NSW Government.

UnitingCare supports the call of Shelter NSW for an independent review of renewable tenancy schemes prior to any move to recognise this policy in the Residential Tenancies Act 1987, and extend renewable tenancies to existing tenants.

## **3 The proposal further erodes the rights of tenants of public housing**

The proposal to introduce Acceptable Behaviour Agreements to address 'anti-social behaviour' on the part of public tenants is a further retrograde step.

Such proposals are unfair and discriminatory, since they would subject public tenants to a harsher standard than that which applies to private tenants, and one that certainly does not apply to home-owners.

Such proposals define public tenants as a lesser class of persons, reinforcing the unacceptable stigma that already applies to this group.

The proposals put forward by the Department as a response to the issue of 'anti-social behaviour' are out of proportion and not commensurate with the problem. The Department has indicated that only 19 evictions from public housing, representing 8%

of the total in 2003-03, were due to nuisance and annoyance. There is no justification for amending the Residential Tenancies Act on this basis.

#### **4 The proposals reverse the onus of proof**

For similar reasons there is no legitimate rationale for the proposal to reverse the onus of proof for tenants said to have breached an Acceptable Behaviour Agreement. This change would place an unfair burden on tenants whose housing is at risk, and who are unlikely to have access to the resources at the disposal of the Department.

It appears that this change would also deprive public tenants of a basic legal protection and set a dangerous legal precedent.

#### **5 The concepts involved are unclear and likely to lead to discrimination**

It is unclear how the Department of Housing proposes to define what constitutes 'acceptable behaviour' and 'anti-social behaviour'. These are vague concepts, and development of policy and legislation on this basis will be open to abuse.

Those most likely to be adversely affected are tenants who fall within the ambit of your portfolios, including tenants with mental health problems and intellectual disabilities.

By holding tenants individually responsible for 'anti-social behaviour', no account is taken of the difference between voluntary and involuntary behaviour, and the lack of a range of appropriate housing options for the above groups following deinstitutionalisation.

It is also likely that such proposals will result in the unfair targeting of young people in public space, particularly Aboriginal and Torres Strait Islander young people and youth from Culturally and Linguistically Diverse Communities.

#### **6 The danger of homelessness**

There also appears to be a lack of adequate consideration of the housing options available to tenants evicted from public housing for 'anti-social behaviour'.

In a 4<sup>th</sup> May article in *The Australian*, the Minister for Housing is quoted as stating that the government "would try to relocate problem tenants in the private sector". However, given the emphasis that real estate agents place on avoiding rental risk, it is unlikely that any agent would agree to rehouse a tenant evicted from public housing.

Rather than evicting tenants for 'anti-social behaviour' the Department, as the 'landlord of last resort', should make every effort to address whatever problems may exist with individual tenancies so as not to condemn disadvantaged people to the ranks of the homeless.

## **Conclusion**

On the basis of the above arguments UnitingCare is strongly of the view that the proposed amendments to the Residential Tenancies Act 1987 should be abandoned.

### ***Other amendments supported***

However there are some elements of the recent proposals that are worthy of support, if implemented in a way that attempts to address the social problems experienced by public tenants constructively rather than punitively.

The proposed Specialist Response Teams have potential to be a positive initiative. But the assumption that they will not require significant additional funding on the basis that relationships are likely to already exist between such agencies and ‘problem tenants’ is misplaced, as housing estate communities typically receive inadequate levels of service provision.

The proposal to expand safety audits to all public housing estates is also worthy of support, but should take a social development approach to crime prevention.

### ***Suggested Action***

Congregations and Church Members could write letters to

- the Premier,
- the Minister for Housing and
- the Minister for Community Services, Disability Services and Youth

expressing concern about the negative ramifications that they proposals will have for public tenants.