

Pathways home: Informing the pathway to fair and sustainable public housing through the lived experiences of vulnerable Victorians

**A submission by the Federation of Community Legal Centres Tenancy
Working Group**

The Tenancy Working Group

The Federation of Community Legal Centres Tenancy Working Group ('Tenancy Working Group') is comprised of community and Victoria Legal Aid lawyers who assist some of our most vulnerable community members with housing related legal issues. The Tenancy Working Group meets every two months to discuss law reform opportunities, new developments in tenancy case work and to exchange knowledge. Each member of this group has played a central role in seeking to assist their clients' avoid homelessness, and therefore avoid other cyclical sources of hardship often arising from the instability created by homelessness.

Representing the voices and interests of Victorians experiencing significant disadvantage

Community legal centres ("CLCs") work to improve the lives of our clients and potential clients, who are among the most vulnerable members of our community. Our client base includes people facing multiple sources of disadvantage such as homelessness, mental illness, disability and financial hardship. The most recent government review of CLCs noted that 58% of community legal sector clients received some form of income support, 82% of clients earned less than \$26,000 per annum, and almost 9% of clients had some form of disability.

The Tenancy Working Group aims to empower our client base to understand their legal rights and voice their concerns directly to law and policy makers. However, where an individual has to focus on finding a place to sleep each night, has a mental illness, or is under significant financial pressure, little time or energy is left to participate in important democratic processes of direct relevance to their interests, such as the this review into sustainable social housing. The Federation's submission seeks to represent the voices of our client base and to make their interests known to the Inquiry.

We have had the opportunity to review a draft submission prepared by the Tenants Union of Victoria and support the views and recommendations put forward in that submission.

Summary of our concerns

The Tenancy Working Group agrees with the Victorian Auditor General that public housing in Victoria has reached a “critical” stage and that a new direction for public housing needs to be explored.¹ We also agree with the Minister for Housing’s comments in the public consultation discussion paper *Pathways to a Fair and Sustainable Social Housing System* (“the Discussion Paper”) that “[r]eform is required if public housing is to be sustained ... Housing stock has not been well maintained, nor matched to need”.²

In the view of the Tenancy Working Group, the following “options” raised in the Discussion Paper to improve the public housing system are of concern:

- i. Increasing rents and introducing public housing bonds:** Increasing the percentage of a tenant’s income that is paid towards rent and/or introducing bonds into public housing to encourage good tenant behaviour;
- ii. Reviewing eligibility for public housing and introducing fixed term leases:** Reviewing a tenant’s eligibility for public housing, except for those with profound disabilities or mental health issues and aged pensioners, so that they can “transition” into the private rental market; and
- iii. Increasing the supply of community housing properties:** Growing the community housing sector as an alternative to public housing.

Each of these options will be discussed in more detail below.

¹ Victorian Auditor-General’s Report, *Access to Public Housing* (Victorian Government Printer, March 2012) pp vii – viii.

² Department of Human Services, *Pathways to a Fair and Sustainable Social Housing System*, Public Consultation Discussion Paper, April 2012, p 2.

1. Increasing rents and introducing public housing bonds

Consideration must be given to the impact any increase in rent will have on the living conditions of public housing tenants. Many of the public housing tenants who seek out the assistance of community legal centres are already on an incredibly tight budget and any rise in their rent would have a direct and detrimental impact on their day-to-day lives, including by reducing their capacity to pay for other life essentials like food and utility bills. It is also of concern that the Discussion Paper appears to suggest that public housing rents should be increased because there is an inequity in the proportion of income that a public vs. private tenant pays in rent. The State Government needs to take action to make the private rental market an affordable and appropriate alternative to public housing by providing greater subsidies to tenants and creating incentives to landlords to rent properties to low income tenants. Increasing rents in public housing will do nothing to improve the housing affordability crisis in Victoria.

2. Reviewing eligibility for public housing and introducing fixed term leases

The Discussion Paper makes a number of assumptions in relation to the ability of social housing tenants to “transition” out of social housing and into the private rental market. This is a complex issue which requires careful consideration.

2.1 Shortage of affordable housing

Low-income and disadvantaged tenants have great difficulty both entering the private rental market and sustaining private tenancies. The shortage of affordable housing in Victoria is well documented. Vacancy rates in the private market are at critical levels. Persons seeking rental accommodation who are on a low-income, particularly those dependent on Centrelink benefits, are at enormous disadvantage in competing for private rental properties. Other factors, including physical and mental health, race, age and social background can negatively impact a person's chances of entering the private rental market. Marginalised tenants will often have poor rental histories that place them at further disadvantage. In Victoria there are few incentives for landlords to lease properties to disadvantaged tenants. The State Government will need to consider strategies for improving access to the private market if there is an expectation that public tenants will be on a limited tenure.³

³ See, eg Laura Berta, *Making it Home: Refugee Housing in Melbourne's West* (Footscray Community Legal Centre, March 2012) 22.

2.2 Vulnerable community members experience enhanced difficulty in entering the private rental market and sustaining private tenancies

Tenants who are “transitioned” out of public housing must be adequately assisted to secure affordable, appropriate and sustainable housing. If this is not possible, then the “transition” will ultimately result in homelessness. Homelessness comes at a great social and economic cost to the community and welfare system. Accordingly, government policy must recognise the current realities of the private rental market in its strategies for creating a sustainable social housing system.

The Discussion Paper does foresee that tenants should be given long term tenure because “a pathway out of public housing is not feasible”.⁴ Examples envisaged include “those with severe or profound disabilities or mental health issues and aged pensioners”.⁵ These categories are too narrow given the current state of the private rental market. It is likely that successful transitions into the private market will be not feasible for a far broader cross-section of tenants. Many families who are in long term financial hardship will find it extremely difficult to transition into the private market.

Footscray Community Legal Centre’s (“Footscray CLC”) recent report, *Making It Home: Refugee Housing in Melbourne’s West* (March 2012) (“Making it Home”), highlights the housing issues facing new and emerging communities in Melbourne’s western suburbs. Although the report was specifically focussed on refugee communities, much of the report is of broader significance to disadvantaged low-income tenants. *Making it Home* found that tenants of refugee background experience many problems in the private rental market, and that existing government funded housing support services are often not able to adequately assist high needs clients to avoid homelessness.

The following case study demonstrates some of these issues faced by disadvantaged tenants in accessing housing:

⁴ The Discussion paper, p 38.

⁵ The Discussion paper, p 37.

Awal's Story

“Awal”⁶ is a single mother of four dependent children who arrived in Australia from Sudan five years ago. Awal needed help to break her lease because her 16-year-old daughter was being verbally and physically abused by her ex-boyfriend and Awal feared for her family's safety.

Footscray CLC assisted Awal to break her lease with a month's notice, but referred her to her local housing service for help finding another house. A housing worker advised Awal that she would need to find private rental accommodation on her own. Awal spoke little English, was highly distressed, in severe financial hardship and had no capacity to secure private rental accommodation without assistance.

At the end of the notice period, Awal had nowhere to go. The housing agency paid \$1,000 to accommodate Awal and her 4 children in a one-bedroom motel room as emergency housing for a week and continued to refer her to private rental. Awal was forced to pay for the second week at the motel from her Centrelink income and went into deficit. On the third week, the housing agency paid the motel again, although Awal had great difficulty arranging it. On the fourth week, a different housing service intervened. They nominated Awal for a transitional housing property and she moved in several weeks later.⁷

Housing support services have a limited ability to assist marginalised tenants to secure private rental properties. This is both a consequence of their limited resources and reflective of the dire shortage of affordable housing that people can be assisted to access.

2.3 Lack of access to secure, tenured housing causes distress and compounds disadvantage

Rental arrears is the main grounds of eviction of disadvantaged tenants, which is unsurprising considering the level of financial hardship experienced by our client base. Housing services can assist clients with limited emergency grants from the Housing Establishment Fund. They will only allocate emergency funds if they assess that the tenancy can be sustained. Emergency funds are extremely limited, and often tenants are forced to borrow money from friends or access “pay-day” loans in times of crisis, which place them in further financial hardship.

⁶ Names and some minor details have been changed in the case studies included in this submission in order to protect client confidentiality.

⁷ Adapted from Laura Berta, *Making it Home: Refugee Housing in Melbourne's West* (Footscray Community Legal Centre, March 2012) 15.

There is little a tenant can do to prevent an eviction on the grounds of rental arrears unless they are able to demonstrate that they have the capacity to repay the arrears and that the tenancy is sustainable. In many cases, this simply is not possible.

For example, Footscray CLC assisted a single mother of Ethiopian background with a 1-year-old child who had been placed in a rooming house following an eviction on the grounds of rental arrears. The mother was extremely distressed by the unclean and insecure state of the premises, as well as her infant son’s exposure to co-residents with drug and alcohol problems. She was desperate to get out of the accommodation, but had nowhere to go and little hope of re-entering the private rental market. She was advised by her local housing service that they could do nothing further to assist.

Housing services often refer people to seek accommodation in private rooming houses. Rooming houses are a marginal form of accommodation in which residents have exclusive or shared occupation of a room and commonly share other facilities, such as the bathroom, kitchen, laundry and common areas. Rooming house residents are generally extremely disadvantaged and unable to secure other types of rental accommodation. Rooming house accommodation is considered to be within the definition of “tertiary homelessness”.

The rooming house clients Footscray CLC assisted were highly distressed by the impact of their accommodation on their welfare. In a further example, Footscray CLC assisted a single father with two young children who was evicted from his property on the grounds of rental arrears. He owed a large amount of money to a pay-day lender and was suffering a gambling addiction. There was little Footscray CLC could do to assist this client as he could not afford the rent for the two bedroom house on his income. The client was referred to a local housing service, which placed the client and the children in a rooming house. The client returned to Footscray CLC in distress because he could not bear to remain in the rooming house, and he and the children had been sleeping in the car instead. He reported that other residents were yelling at night and abusing substances and he did not want the children to be exposed to this. Footscray CLC talked to the housing service on his behalf, however they advised that they would only be able to assist him to relocate to a different rooming house.

2.4 Important questions for the review on the issue of tenure

The Discussion Paper correctly states that:

[A]ny review of eligibility or tenure would have to be sensitive to the potential impact on a person’s future housing circumstances and take into account any characteristics such as age, support needed or potential to engage in the economy or in community activities.⁸

As a component of these factors, any review of tenure must take into account the likelihood of the tenant being able to secure private rental accommodation, what ongoing assistance will be provided and to what extent they will be supported to sustain a private tenancy. It is vital that any review of public housing tenure arrangements takes into account the existing support services and the extent to which they are meeting current needs, let alone the needs of tenants with high needs exiting the public system.

Low-income and disadvantaged tenants are vulnerable to exploitation in the private rental market. *Making it Home* outlines a range of legal and non-legal issues experienced by refugee background tenants in the private market. The report found that these tenants are likely to be taken advantage of in dealing with repairs issues, bond disputes and evictions, and are vulnerable to general misconduct by real estate agents and private landlords. For example, a single mother Footscray CLC saw was living in a run-down property with her six children. She had reported a range of urgent repairs to the real estate agent, including black smoke billowing from the heater, a roof leak and ticks in the carpet. The landlord refused to do the repairs and told the client that if she was not happy she was free to leave. The client moved out due to her concerns for the health of her children. However, she was unable to find another property and was left homeless. A housing service placed her and the children in a one bedroom motel, where she remained for six weeks. Eventually, she was assisted to secure a private rental property.

Making it Home lists a number of reforms that are necessary to address the gross power imbalances between landlords and disadvantaged tenants. If a large number of public tenants are going to be “transitioned” into the private market, it is even more important that tenancy laws be reviewed to ensure that vulnerable tenants are offered the highest possible level of protection.

⁸ The Discussion Paper, p 34.

3. Increasing the supply of community housing properties

The Tenancy Working Group is also concerned that the Discussion Paper appears to view the increased role of community housing agencies in managing public housing stock as an apparent fait accompli.

The Discussion Paper lists what it views as the “advantages” of community housing, however it fails to explore the disadvantages of such a model. The Discussion Paper states that community housing stock is “generally newer and more appropriate to tenants’ needs” and that it “provides a better and more tailored support to tenants”.⁹ Unfortunately, the Discussion Paper provides no evidence to support these statements. Therefore, the Tenancy Working Group believes that careful consideration needs to be given to whether community housing actually provides more secure and appropriate housing to low income tenants.

3.1 Lack of transparency and accountability for community housing agencies

West Heidelberg Community Legal Service (“WHCLS”) and Victoria Legal Aid (“VLA”) have represented many community housing tenants who have run into difficulties with their community housing agency and who do not have the protection of the Office of Housing policies, procedures and internal complaints mechanism. The following case study highlights the different treatment a community housing tenant may have from their landlord as opposed to a public housing tenant.

Maryam’s story

“Maryam” lived in an apartment with her three-year-old daughter that was managed by a community housing association. Maryam had a history of substance abuse and the apartment was the first time she had been in secure housing in over five years. Maryam had been in the property for two years when she received a 120 day no-reason Notice to Vacate. Maryam was greatly distressed by the Notice to Vacate and sought the assistance of WHCLS. Maryam claimed that one month before she received the notice, she had written to the housing association requesting that her rent be reviewed.

Maryam challenged the validity of the Notice to Vacate at a VCAT hearing, arguing that it was in retaliation to her questioning the amount

⁹ The Discussion Paper, p 10.

of rent she was paying. In this hearing, the community housing association disclosed that the reason for the Notice to Vacate was that Maryam had too many guests, who would “buzz” other residents to be let in the front security entrance if they could not contact Maryam. On hearing this reason in the VCAT hearing, Maryam became very upset. The Tribunal Member briefly adjourned the hearing so that the parties could attempt to negotiate. When the Tribunal Member left the hearing room, the community housing association advised that there was no possibility of negotiation and that they would continue to seek a possession order. VCAT decided that there was no evidence that the Notice to Vacate was retaliatory and dismissed Maryam’s application.

Maryam was successful in getting a 30 day stay of the warrant at the possession order hearing in order for her to find alternative accommodation. Prior to the warrant being purchased Maryam was referred by WHCLS to VLA for assistance with filing a writ in the Supreme Court seeking judicial review of the decision by the community housing association to issue the 120 day no-reason Notice to Vacate. During settlement discussions the community housing association offered to discontinue the eviction proceedings and to undertake not to issue any further 120 day no-reason notice to vacate. Maryam accepted this offer and discontinued the complex judicial review proceedings..

Two months later the community housing association issued Maryam with a 14-day Notice to Vacate for rental arrears. Maryam was less than \$500 behind in her rent. WHCLS again represented Maryam at VCAT for the possession order hearing and VCAT ordered a payment plan.

The next month Maryam became ill and missed a rent payment because she was unable to visit the post office to make the payment. The community housing association sought and was granted a possession order, purchased a warrant and changed the locks on Maryam’s property. Maryam and her child were unable to secure alternative housing and are now couch surfing. Maryam is greatly concerned that the Department of Human Services will remove her child from her because she is effectively homeless.

Maryam’s experience would most likely have been very different if she had been living in a public housing property. The Office of Housing has a policy of not using 120-day no reason Notices to Vacate. As such, in a similar situation the Office of Housing would follow a procedure with Maryam that included:

- i. Speaking with the other tenants that had complained about the tenant;
- ii. Conducting an interview with the tenant that is the subject of the complaints;
- iii. Investigating how the problem could be resolved without resorting to legal means;
- iv. If the situation is not resolved, issuing a Breach of Duty Notice under s 208 of the *Residential Tenancies Act 1997* (Vic) (“the RTA”) giving the tenant 14 days to remedy the breach. Office of Housing policy requires that the Breach of Duty Notice must state the dates and times that each breach occurred, and describe the nature of each breach in full;
- v. If the circumstances warrant it, for example if it is a less serious breach, issue a second Breach of Duty Notice;
- vi. If the breach still continues, apply to VCAT for a Compliance Order under s 209 of the RTA; and
- vii. If the Compliance Order is breached, issue a 14 day Notice to Vacate. This Notice to Vacate would contain a statement of the further breach that has occurred, including date, time and details of the incident/behaviour.

It is differences like this in how the Office of Housing and community housing agencies operate that need to be considered before any decision is made about the future of public housing. In order for the Victorian Government to fulfil its objects under the *Housing Act 1983* (Vic) through the increased provision of community housing, it must ensure that it protects the vulnerable and disadvantaged by making sure that social housing operates in a manner similar to the public housing policies and procedures. The next case study again concerns the use of 120 day no-reason Notices to Vacate and a community housing agency.

Helen's story

“Helen” had been a tenant with a community housing provider since 1998. The community housing provider managed around 70 units that it leased from the Director of Housing. Helen's property had only about 15 people living in it. Over the years Helen had been involved in a few disagreements with neighbours but nothing serious. Helen had also witnessed a number of housing managers come and go, and unfortunately the most recent manager and Helen did not get along.

Over a two year period from 2009 to 2011 the Manager issued Helen with two breach of duty notices, stating that Helen had unreasonably interfered with neighbours as she had complained to her neighbours about their excessive noise and constant visitors. Helen became fearful of her neighbour's visitors, and, on the recommendation of the Police, she began keeping a diary and video recording potential instances of conflict. On one occasion Helen was confronted by the Manager and she began video recording him. The Manager became angry with Helen, who fled to her room.

Helen reported the Manager's conduct to the Housing Registrar as she felt it was extremely unprofessional. Shortly after that complaint Helen received a 'no reason' 120 day Notice to Vacate. Helen felt this was an extreme abuse of power by the Manager who was removing her from her home of 13 years. Helen had always felt that she had secure tenure at her property which she felt was akin to public housing. Helen challenged the no reason notice as retaliation for her asserting her rights under the RTA, however that challenge was unsuccessful. The Housing Registrar responded to the complaint by saying that it did not see any lack of professionalism that warranted its intervention. Ultimately the community housing provider applied to VCAT for a possession order, which was granted, and Helen was evicted from her home.

This case study highlights the potential for inappropriate management by a community housing agency, and the extreme impact that can have on an individual's otherwise secure tenure. If community housing agencies are to accept the State's responsibility to “ensure that every Victorian has adequate and appropriate housing at a price within his or her means” (*Housing Act 1983 (Vic)*, s 6) then they must take up that responsibility in a transparent and accountable manner.

3.2 Less support for tenants in community housing

It can not be assumed, as the Discussion Paper does, that “community housing agencies provide better and more tailored support to tenants and promote greater integration with social and economic networks”.¹⁰ The following case study illustrates the difficulties that tenants can face in community housing.

Karen's story

“Karen” lives in a new seven story residential building managed by a community housing provider. The building is mostly a mix of mothers with young children and people with mental health and substance abuse issues. At night there is often screaming and fighting in the hallways, loud music and people playing soccer in the surrounding apartments and hallways. There is only one lift in the building that often breaks down, meaning Karen has to carry her pram and her shopping up several flights of stairs to get to her flat. Karen often has to share the lift or the stair well with men who were either drunk or on drugs and she is afraid for her and her child's safety. In addition, the rubbish chute for the building has been closed on a permanent basis because some tenants were misusing it, meaning tenants have to carry their rubbish to the basement to dispose of it. Karen is afraid to take her rubbish into the basement at night. Many tenants have resorted to leaving rubbish in the hallways.

Karen feels isolated because she has moved from another area of Melbourne to secure housing and is unaware of the local support services available to her. Despite being very happy with the quality of the flat itself, she wishes to move elsewhere because of the behavioural problems in the building.

Several other women in the building have similar feelings to Karen and are very upset with how the building was being run. They complained that originally the building was meant to have a “community room” where meetings and activities for tenants were to be held, but that they had never been shown this room.

When these issues were raised with the community housing provider by WHCLS they explained that when the building was first tenanted the financial needs of the association meant that they were unable to take the time to think about which tenants should be allocated to each floor, meaning that tenants were randomly assigned a flat. This random

¹⁰ The Discussion Paper, p 10.

assignment had caused behavioural problems and the association conceded that in future it would try to take more time in assigning tenants to a particular flat. They also explained that because of financial need, the space that was intended to be a “community room” had been rented out to a private business. They also advised that because of financial constraints, they were unable to afford any leniency to tenants who fell behind in their rent. They conceded that this meant that they had to take tenants to VCAT on a more regular basis because they were so reliant on rental income for their survival. The community housing provider also confirmed that as the building was their first for the area, they were unaware of the local support services and agencies that were available to its tenants. They have refused to reopen the rubbish chute.

Karen’s experience highlights that community housing providers are not always able to provide the same level of support to tenants that the Office of Housing can.

3.3 Greater financial constraints on community housing agencies

As Karen’s story demonstrates, community housing agencies are often constrained by limited resources and smaller staff numbers than the Office of Housing. A community housing agency can not run as a loss, meaning that there is limited leeway for tenants who fall behind in their rent. The following case study from the Public Interest Law Clearing House’s Homeless Persons Legal Clinic highlights how this can make community housing insecure.

Rachel’s story

“Rachel” moved into her social housing property after exiting prison. She had spent over half her life incarcerated.

She struggled with institutionalisation, substance dependence and mental illness. She struggled to keep up with her rent because of these factors and she was about \$2000 in arrears.

Despite Rachel’s obvious difficulty maintaining her tenancy, at no stage did the community housing provider offer to link her with a housing support service.

The community housing provider was on notice that the consequences of eviction for Rachel would be homelessness and, more than likely, deterioration of mental health, relapse and / or re-offending.

Rachel’s offer to pay \$400 up front and enter into a payment plan was rejected and the community housing provider refused to withdraw the application for possession.

The community housing provider refused to negotiate alternatives to eviction and successfully obtained a possession order on the basis of Rachel’s arrears.

When the warrant was executed, Rachel re-entered homelessness.

Rachael’s story also highlights that the State Government will inevitably incur greater costs than those represented by the arrears due to Rachel’s use of health services, emergency accommodation and probably the justice system once she re-enters homelessness.

Conclusion

The Tenancy Working Group is of the view that the Discussion Paper does not enter into enough critical discussion of the proposed changes. We request that the concerns raised in this document are properly addressed and that any future changes to the public housing system still fulfil the responsibility placed on the State Government by the *Housing Act* to “ensure that every Victorian has adequate and appropriate housing at a price within his or her mean’s”.¹¹

Sincerely,

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¹¹ *Housing Act 1983 (Vic)*, s 6.