



Submission to the public consultation on the Housing Improvement Bill 2012

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Introduction

Shelter SA (Shelter) would like to thank Minister Ian Hunter for the opportunity to contribute to the public consultation on the Housing Improvement Bill 2012 (the Bill). Shelter is very supportive of the broad aims of the Bill as follows:

- Continuation of minimum standards for all South Australians to ensure existing houses remain safe and suitable;
- A General Duty that owners and occupants have to ensure that residential premises are safe and suitable for people to live in; and
- Continuation of rent control to ensure people are not charged unfair rent for poor quality housing.

Shelter is the peak body for housing in South Australia funded through the State Government's Housing Minister's Advisory Fund. Shelter is a member organisation and members consist of a diverse range of stakeholders including Government and non-government agencies, private industry and interested individuals. Shelter's brief is to advocate for policies and services that address housing affordability, especially for people on low incomes who may also be living with disadvantage, including people who are older, younger, Aboriginal, from culturally and linguistically diverse backgrounds and with physical or mental health issues. The Shelter membership includes community housing organisations who are not-for-profit landlords and recognises the tensions inherent in advocating for tenants when landlords are our members, monitoring government policies and outcomes and participating in the public realm to raise awareness about housing issues, in a way that is fair and reasonable to all of our stakeholders, including Government.

The power relationship between landlord and tenant is however, unequal, especially when tenants are living with disadvantage. While there are strong private landlord lobby groups who have adequate resources to participate in the review of legislation and policy, there are much greater barriers for tenants generally and disadvantaged tenants specifically, to participate in this way. An environment where housing is unaffordable, combined with a low rental vacancy rate and increased costs of living, creates a situation where the free market does not provide housing equitably for all South Australians. There has been a steady decrease in public housing over the last decade, in 1990-91 there were 62,027 occupied dwellings and in 2009-10 the number had reduced to 43,856 (McCann, 2011). Public housing policy now targets people with high and complex needs and this brings increased pressure on the lower end of the private rental market - the result is the "poorest and most vulnerable individuals and families in our community being funnelled into the bottom end of this private rental market" (Pennycock, 2011:2). The current situation results in a steady flow of large numbers of people seeking homelessness services.

This submission provides a discussion of issues relevant to housing improvement legislation and relies on published research articles, government reports and statistics, to support specific comments on the review of the Bill, with a particular focus on empowering vulnerable tenants. There is very little literature specific to South Australia or Australia that has been recently published, but some of the main points brought forward years ago, continue to be relevant to the Bill.

Discussion

Since the Housing Improvement Act 1940 (the Act) was enacted, social and sanitary conditions have improved significantly in South Australia in terms of overcrowding, poor sewerage and low amenity. Legislation, including planning and building codes, ensures that there are minimum standards for building dwellings that prevent some of the problems that occurred when building and safety issues were not regulated.

Statistics relevant to the Act appear in the 2011 SAHT Annual Report and in 2010-11 there were 310 complaints initiated by occupiers, an increase of 58 over the previous financial year. Housing SA hypothesise that the increase may be due to increased public awareness of tenant protections under the Act, as they provided brochures to tenants receiving private rental bond assistance. **Housing SA is to be commended for the provision of information to their customers.** During 2010-11, 146 Notices of Intention were issued as a result of properties considered to be substandard. During the same year 96 Declarations were made when owners did not advise Housing SA why properties should not be declared substandard or request an extension to complete repairs, and 94 maximum rents were fixed by Housing SA. Clearly, past problems around a high numbers of actions have reduced to a level where this type of regulation is not onerous to the administrator of the Act.

Legislation has been demonstrably effective and large, positive improvements since the Act was introduced are noted however, at present, the only way for substandard properties to come to the attention of the administrator of the Act, are through complaints initiated by tenants. Vulnerable people are those who are least likely to have the information or the confidence they require to take action against their landlord. The existence of “pro-tenant laws does not guarantee against any effect on the power relationship” and landlords renting at the lower end of the private rental market have little or no motivation to please or appease their tenants but conversely, tenants are highly motivated to please and appease their landlords in this situation (Keller, 1987:1667, 1670). Keller concludes that private landlords are able to intimidate tenants into paying rent increases and that residences deteriorate due to landlord negligence more often than they are destroyed by tenants (1987:1671). The Tenants Union of Victoria (2012) has recently told a State Government Inquiry through their submission to the social housing review that the rental affordability crisis and its effect on poorly maintained private rental properties is causing tenants to suffer respiratory infections, scabies, headaches and depression. The Union blames unaffordable housing for pushing renters into unsafe and unhealthy accommodation and that people with few choices are then exploited by slum landlords and unscrupulous estate agents who are not complying with their duties to maintain properties. The seriousness of this issue in South Australia is not known and further investigation is required to uncover how many households may be in this situation. A proactive solution to potential problems caused by a tenant complaint-driven process is for housing improvement administrators and authorised officers to issue certificates of compliance *before* premises are let to a new tenant (Bradbrook, 1976:179) and this should be considered by State Government.

The Bill continues to offer protection to tenants who have initiated a Housing Improvement complaint through assessing termination of lease agreements and variations to lease agreements. Anecdotally, landlords simply do not renew the leases of tenants who initiate complaints, and it is recommended that non-renewal of leases is included in this section of the Bill. The way that some

tenants approach this situation is to wait until they wish to end the tenancy and then make the complaint which can result in living in unsafe housing for the duration of their tenancy.

All tenants require access to information about the Housing Improvement Bill, and it is recommended that it is mandatory for all landlords and agents to provide the Housing SA brochure similar to the “Do you rent privately owned accommodation in poor condition?” to all new tenants, amended to reflect the inclusion of all rented housing under the Bill.

Anecdotally, private rental tenants, especially those paying low rents, do not always request maintenance because they fear that rent increases will result, making their housing less affordable or unaffordable. During the 2011 Shelter consumer consultation, participants on a low income who were also living with disadvantage, alluded to this situation and discussed their relationships with private landlords and their actions as this extract illustrates:

Overall, participants highlighted that the most important aspect to them about where they live was health. The second most important aspect about where they live was choice about where they live, who they live with and the type of housing they live in. The third most important aspect about where participants live was quality and maintenance of housing. The most significant issue that participants discussed in relation to this aspect of housing was problems with getting things fixed in public and private rental properties. There were often lengthy delays in getting maintenance done and hesitancy in requesting maintenance for fear of rents being increased. Several participants talked about their experiences of requesting maintenance in private rentals and said that often it was carried out by landlords or the relatives of landlords and that work was not of a professional or adequate standard – even though they did not expect things to be perfect, leaking water and blocked drains were of concern. Two participants said that fixing one problem, such as hot water “hammering” from the pipes, would result in a leaky tap, and a further need to contact the landlord. Another participant talked about their past housing as being infested with redback spiders and despite repeated requests for the spider problem to be addressed nothing was done by the landlord.

Bradbrook (1976:170) writes specifically about Australian housing improvement regulation and stresses that time delays in effecting repairs are a major problem and then outlines another issue as follows:

Even more significant than the problem of delays is the fact that many owners are prepared to tolerate the imposition of rent control because of the ever-increasing land values. Thus, rent control by itself without the effective power to make a repair order appears to be an inadequate sanction.

The administration of the Bill will be transferred from the South Australian Housing Trust (SAHT) to the Minister for Social Housing (the Minister). Under the Act, the principle focus was to enable to provision of new affordable housing as well as addressing minimum housing standards and regulation of the rent of substandard housing. It is stated in the South Australian Government Briefing Paper for Preliminary Consultation (2010) that it is timely to repeal the sections of the Act that cover the activities of the SAHT as the South Australian Housing Trust Act 1995 now provides relevant powers to the SAHT to provide public housing.

Local government officers have been authorised officers under the Act. However, according to several senior officers of the Housing Trust¹ whom Bradbrook (1976:169) interviewed this arrangement can render housing improvement legislation ineffective:

There are 104 local government authorities in South Australia; each one has its own policies and philosophies on imposing repair orders, and many are unwilling for political reasons to impose such orders. The Trust is extremely reluctant to order the local board to make an order against its will, as it is dependent on the goodwill of the local boards for the successful performance of its various duties. It would therefore seem that the power of the Housing Trust to impose a repair or demolition order is unworkable, and that any future legislation designed to share the control of substandard housing between local municipalities and a State government agency would be foredoomed to failure.

Yeates describes the environment at the time the Act was developed, “there was no public housing in South Australia, so these conditions existed in houses that were privately owned, and were either occupied by the owner or rented” (2003:7). Today there are approximately 40,000 public housing dwellings owned by Housing SA and approximately 5,000 managed by community housing organisations. Yeates, in the role of Manager of the SAHT Housing Improvement Branch at the time (2003:14) discusses this issue:

This large reduction in funding for public housing has created two particular challenges for administration of the Housing Improvement Act:

Houses that were previously owned and properly maintained by the South Australian Housing Trust are now, in response to tenant complaints, sometimes being assessed substandard by the same organisation that sold them to private owners. While the South Australian Housing Trust should not be responsible for lack of maintenance or care by subsequent owners, as an administrator I receive criticism about a perceived conflict of interest.

Until this time, the Housing Improvement Act has not been applied to the state’s social housing, because that housing has been built and maintained to comply with the minimum regulated standards. For fifty years the condition of the state’s social housing has kept pace with, and even established benchmarks for private sector houses. However, the funding crisis of the past ten years has resulted in the large estates of public housing, falling behind the rest of the community. These estates are now the worst housing. Therefore, I am asked ‘why aren’t I doing something about Housing Trust houses?’ and ‘why am I picking on private landlords when Housing Trust houses are so bad?’

Public housing that targets people with high and complex needs, offers tenants rent based on 25% of their income, ensuring that housing is affordable. This rent model however, impacts on the capacity of government and community housing organisations to finance maintenance or grow their housing

¹ Mr. A. M. Ramsay, General Manager; Mr. M. L. O’Reilly, Officer-in-Charge, Housing Improvement Section; Mr. J. Crichton, Secretary; and Mr. W. James, Officer-in-Charge, Letting Section. Interview: 19 April 1974.

portfolios. Housing SA spent \$102.5 million on maintenance during 2009-10 (McCann, 2011). Community housing organisations and Housing SA have clear tenant complaint policies and processes including internal contacts (Housing Improvement Branch) *and* external bodies: the Housing Appeal Panel, Tenancy Information and Advocacy Service, the Residential Tenancy Tribunal and the Ombudsman. Onus should continue to be on housing providers to ensure that their tenants are provided with this information and that tenant initiation of complaints does not result in punitive actions towards tenants. The AIHW National social housing survey: state and territory results 2010 show that “The majority of public housing (59%) and community housing (73%) respondents were satisfied or very satisfied with the physical condition of their home. Among community housing tenants, respondents in Tasmania (83%) and Queensland (79%) were most satisfied, while among public housing tenants, those in Queensland (69%) and South Australia (68%) were the most satisfied.” Public and community housing organisations should be commended for these results.

The Commonwealth Ombudsman (2009:1) discusses effective complaint handling as follows:

The office of the Commonwealth Ombudsman published its Good Practice Guide for Effective Complaint Handling in 1997. The purpose of that initial guide was to address the failure of most Australian government agencies to establish an effective internal complaint handling mechanism.

Substantial change has occurred since then. Agencies now accept that complaint handling is a predictable and necessary part of program and service delivery. Errors, misunderstandings, client dissatisfaction and unexpected problems occur in all administrative systems. Complaint handling can be effective in resolving a problem before it becomes worse, providing a remedy to a client who has suffered disadvantage, and nurturing good relations between government agencies and the public.

Complaints also provide agencies with information about program weaknesses and service delivery faults. Good administration involves regular review of existing programs, and the lessons learnt from complaints can feed into that process.

The Ombudsman’s Better Practice Guide also refers to the Australian Standard ‘Customer Satisfaction—guidelines for complaints handling in organisations’. Impartial investigation is vital to the credibility and success of a complaint handling system (Commonwealth Ombudsman, 2009:9). When complainants are dissatisfied with the outcome of their complaint, mediation may be one option to reach solutions that both parties can agree to, but external review options must also be available. Sound internal processes reduce the likelihood of a complaint to an external body (Commonwealth Ombudsman, 2009:26).

For Aboriginal people, accommodating family is a cultural imperative and large numbers of people can be found residing in Eurocentric style homes that are meant to house small, nuclear families. There are particular maintenance considerations for these homes including domestic fit-out of kitchens and bathrooms and toilets that are not built to be used by large numbers of people. This issue relates to the ‘general duty’ of tenants and owners to ensure the premises are safe and suitable for human habitation. Industrial rather than domestic arrangements may suit some

Aboriginal public housing tenants. In rural and remote areas, the problems appear to be worse as it is even more difficult to get contractors to attend to maintenance when long distances need to be travelled. Material and transport costs are higher. Infrastructure can also be an issue in rural and remote housing and this is an issue that requires further investigation.

The following information comes from a Review of the Operational Performance of Housing SA (McCann, 2011):

... all upgrades and new construction in remote Indigenous communities must comply with the Minister's Specification for Housing on Designated Aboriginal Lands. As such all upgrades and new constructions meet these requirements, the Livable Homes Standard and public housing standards, and the 9 healthy living principles identified under the National Indigenous Housing Guide. All remote communities receive a minimum level of essential service infrastructure in the form of water, electricity and waste removal. Furthermore all new refurbished dwellings in 2009-10 were connected to water, electricity and waste removal. In addition, the cyclical maintenance program ensures that all houses managed by Housing SA within the remote Indigenous communities on the APY lands are visited on a rolling two year basis. Under this program any incidence of water, sewerage or power failure is identified and remedial action taken to ensure houses are provided with these services. However, there are concerns regarding the capacity of the current infrastructure to meet the increased demand associated with the new properties and upgrades. In addition, only minor upgrade work in Indigenous communities outside the APY lands has commenced, with new house construction scheduled to start at the far West Coast in 2011-12.

A full time maintenance coordinator has been appointed to provide onsite coordination of maintenance requests and contractors on the lands. The cyclical maintenance program in place for all major APY land communities accounted for approximately 64% of all APY maintenance expenditure in 2009-10. These works included gas safety checks, electrical safety checks, hot water service checks, pest control, air conditioner service, washing machine service and window and door lock checks. The program delivered 6576 property visits/inspections on the APY land during the 2009-10 financial year. Emergency repairs and maintenance was delivered in communities and to homelands in 2009-10 and totalled approximately 36% of all maintenance expenditure. In July 2011, a new form of Multi-Trade contract will be implemented to develop training opportunities for Indigenous people and expand the role and responsibilities of the contractor to provide a seamless maintenance delivery model in remote areas. The contractor will undertake the delivery of emergency, routine, planned and vacancy maintenance services in the APY Lands. The contractor's workforce is to achieve a target of 20% local Indigenous employment, and an effective Indigenous workforce located in the APY Lands.

Work completed to date on maintenance in the APY lands is a good start but concerns regarding the capacity of the current infrastructure to meet the increased demand associated with the new properties and upgrades must be addressed as an urgent priority to ensure that rural and remote Aboriginal housing complies with the Bill. Industrial options should be made available to replace domestic-grade facilities where practicable.

Specific Comments

1. A major proportion of Part 2 – Administration and Financial Provisions in the Act does not appear in the Bill. It is unclear how authorised officers will report to the Minister and the public about the administration of the Bill, the delegation of authority, auditing, triennial investigation or annual reports and it is recommended that these arrangements appear within the Bill.
2. Any sections of the Bill that mention entry of residential premises should be clarified to clearly state that the powers and entry are only applicable **after** a housing improvement complaint has been made by an occupier to ensure that tenant quiet enjoyment and rights to privacy are not disturbed. This rule should also apply to the powers of authorised officers during inspections.
3. All references to the powers of authorised officers to “inspect any article or substance found on the premises”, “take and remove samples of any substance or other thing found in the premises” should only apply if the article, substance or other thing presents an immediate threat to life.
4. The term “reasonable grounds” must be defined to include levels of danger that warrant immediate action.
5. Authorised officers should be employed by State Government rather than Local Government to address potential political tensions between the State and Local Governments in relation to the administration of the Bill.
6. **Efforts by the State Government to introduce and encourage mediation between landlords and tenants is commended.** Shelter generally supports the procedures of mediation, but asks that the Bill clearly sets out the use of interpreters and advocates for people who do not speak English and who are living with disadvantage. Orders, notices or other documents related to the Bill should also contain instructions for occupiers to access interpreters and translators.
7. It is stated in the Bill that the Residential Tenancy Tribunal must provide reasons for their decisions and orders, only if asked. Reasons should be provided to tenants and landlords as a routine part of the Tribunal’s activities.
8. Housing improvement administrators and authorised officers to issue certificates of compliance *before* premises are let to a new tenant.
9. State Government to continue to publicise the Bill through providing information to Housing SA customers who apply for bond and private rental assistance.
10. State Government and community housing organisations to continue with their tenant complaint policies and procedures, outlining recourse to the Housing Improvement Branch and the Ombudsman and take responsibility for tenant education.
11. Private landlords and agents should be required to provide the same information to new tenants at the commencement of their tenancies and have sound complaint policies and procedures.
12. The definition of ‘General Duty’ must accurately reflect Aboriginal cultural obligations to accommodate family which may result in unusual wear and tear and a temporary or permanent inability to meet the general duty.

Conclusion

Housing improvement laws are designed to protect tenants in view of their “unequal bargaining power” [with landlords] and it is acknowledged that power issues affect “mainly poor tenants and in particular minority groups” (Hirsch, 1999:929). It appears that the Bill has addressed the challenges identified by Yeates (2003:15):

- Ensure that any changes recommended are not too narrowly focussed on the private rental market and risk losing a good model for future state intervention in all housing;
- Determine whether the original purpose is still relevant and be responsive to changes needed; and
- Establish what the current housing issues are and make the Act useful in support of contemporary housing policies.

Shelter looks forward to participating in the review of the Bill on behalf of all stakeholders and members and awaits its outcomes with great interest.

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