Redfern Legal Centre

Statutory Review of Residential Tenancies Act 2010
Policy and Legislation
NSW Fair Trading
PO Box 972
PARRAMATTA NSW 2124

Via email: policy@finance.nsw.gov.au

12 February 2016

To the Policy and Legislation Department,

Please find attached our submission in response to the Department of Fair Trading's Discussion Paper: Statutory Review of the *Residential Tenancies Act 2010*.

We would welcome the opportunity to meet with you to further discuss our submission.

Yours faithfully,
REDFERN LEGAL CENTRE

Joanna Shulman
Chief Executive Officer

Jacqui Swinburne
Tenancy Coordinator | Chief Operations Officer

73 Pitt Street Redfern NSW 2016 *ACN:* 31 001 442 039 *ph:* (02) 9698 7277 *fax:* (02) 9310 3586 *web:* www.rlc.org.au
General enquiries: Monday to Thursday 9am – 9pm, Friday 9am – 6pm
Interviews by appointment: Monday to Thursday 6.30pm – 8pm

1. Introduction: Redfern Legal Centre 2
2. RLC's work in Tenancy 2
3. RLC's view in summary 3
4. The *Residential Tenancies Act* review and social housing 4
5. Responses to specific issues in the Discussion Paper 5
6. Responses to other questions 18
7. Other issues 20
8. Conclusion and Recommendations 22

1. Introduction: Redfern Legal Centre

Redfern Legal Centre (RLC) is an independent, non-profit, community-based legal organisation. Founded in 1977, we provide advice and advocacy in the areas of domestic violence, tenancy, credit and debt, employment, discrimination and complaints about police and other governmental agencies. By working collaboratively with key partners, RLC specialist lawyers and advocates provide free legal advice, conduct case work, deliver community legal education and write publications and submissions. RLC works towards reforming our legal system for the benefit of the community.

2. RLC's work in Tenancy

RLC has a long history of providing advice, assistance and advocacy to the local community, with a key focus on the provision of information and advice services to tenants and strong emphasis on the prevention of homelessness. Since RLC was founded tenancy has been one of our core areas of advice. Since 1995, RLC has been funded by NSW Fair Trading to run the Inner Sydney Tenants' Advice and Advocacy Service (ISTAAS). ISTAAS assists tenants living in City of Sydney, Leichhardt and Botany local government areas through advice, advocacy and representation.

The Inner Sydney area has a significant number of people living in public housing and there are now over 9,000 public housing dwellings in this area.

As well as assisting a large number of public housing tenants in our catchment area, RLC also advises those not protected by the *Residential Tenancies Act 2010 (the RTA)* – including sub-tenants in share accommodation and boarding house residents in disputes with head-tenants and proprietors. RLC has advocated for stronger protections for tenants who may have fewer options in the private rental market.

In the 2014-2015 financial year we advised nearly 1,400 tenants and occupants about their rights. Of those, nearly 20% were homeless or at risk of homelessness. The majority of tenants we assist seek advice about the termination of their tenancies, and a large proportion of callers need advice about their renting status – whether they are classified as a tenant or a boarder. As well as providing advice, we also advocate with landlords and represent tenants in the Tribunal. More than 90% of the tenants we assist at the Tribunal are facing eviction. Our submission is informed by our experience of using the current law to protect tenants from eviction.

RLC runs a statewide international student service, which provides advice and assistance to students in a wide range of areas of law, including tenancy and housing law. We also have solicitors at TAFE and at Sydney University Post Graduate Association (SUPRA). Students often seek assistance from RLC because they have been evicted from their homes or are having trouble recouping bonds or security deposits. Unfamiliarity with the law and language barriers expose students to the risk of exploitation in the rental market and as a result they often end up in housing situations that are excluded by the *Residential Tenancies Act* or the *Boarding Houses Act* which leaves them with few rights or options to enforce them.

RLC also auspices the Sydney Women's Domestic Violence Court Advocacy Service (SWDVCAS). The aim of the SWDVCAS is to assist women and children experiencing domestic violence to obtain protective orders and to support them with their other legal and social needs, including providing family law and financial advice, referrals to housing and counselling, and other support. RLC and Sydney WDVCAS have been actively involved in domestic and family violence law and policy reform for many years, and have advocated for changes to legislation and processes in these areas. Our recommendations on provisions relating to domestic violence have been developed in consultation with staff from this service.

Within tenancy law we have a long history of particular expertise in the areas of share housing, boarders & lodgers, domestic violence and public housing. We have produced information and publications including the *Share Housing Survival Guide*, the *Boarders Legal Kit*, *Safe as Houses*, the *Tenants Guide to Going to the Tribunal*, the *Repairs Kit for Public Tenants* and *How to Appeal Decisions in Public Housing*.

Our experience and direct work with tenants for nearly 40 years gives us a unique ability to provide input into the current review of the *RTA*.

3. RLC's view in summary

RLC's view is that key changes to the *RTA* are required to protect the rights of tenants.

Since the RTA was introduced, the number of renters in New South Wales has grown substantially, as has the number of people who struggle with rental affordability and are eligible for social housing assistance. The number of clients we assist who risk homelessness if their issue is not resolved has increased since the Act's introduction. We also speak to a growing number of tenants and residents in insecure forms of housing, such as lodging arrangements, student accommodation and in share houses without written agreements.

The key changes that should be made to balance the rights of tenants and landlords are:

1. The *RTA* should be more inclusive: sub-tenants without written agreements should not be excluded from the *RTA* and occupancy principles should be expended to protect other groups excluded from the *RTA*.

2. There should be stronger protections in the *RTA* for people who experience domestic violence.

3. Security of tenure is key to balancing the rights of landlords and tenants. There should be better, clearer provisions about termination for rent arrears and retaliatory eviction. It should not be possible for a landlord to end an agreement for no reason.

4. Tenants' Advice and Advocacy Services should receive increased funding to meet the increased demand of tenants for advice. Tenants should also receive an increase in interest from the bonds they pay.

In order to strike the correct balance between the rights of tenants and landlords, tenants need greater protection. For a tenant, the consequence for the breakdown of their relationship with the landlord is the loss of their home. For a landlord, the consequence is a financial loss. The *Residential Tenancies Act* must take this imbalance into account if it is to achieve its aims.

As part of our submission we have surveyed tenants who use our service, and over 60 community organisations, most of which deal with issues relating to tenancies on a daily basis. Their comments and responses are detailed throughout the submission.

We will address what we consider to be the key reform issues in Part 5 of this submission and other issues in Part 6 of the submission.

4. The *Residential Tenancies Act* review and social housing

RLC is disappointed that the social housing provisions of the *RTA* have been excluded from the review. We, along with a coalition of Community Legal Centres (CLCs) expressed our concerns about amendments to the *RTA* in 2015 which removed discretion from the Tribunal to decline to terminate a tenancy when it is satisfied that illegal activity has occurred in the home. We argued that these provisions went too far, and had the potential to expose innocent tenants to eviction.[1]

There are 290,000 people in social housing in New South Wales,[2] and in 2015 social housing matters made up 27%[3] of the caseload at the NSW Civil and Administrative Tribunal Consumer and Commercial Division. Social housing tenants face significant consequences if their tenancies are terminated, not only do social housing tenants face affordability barriers in the private market, an adverse application of the law can also mean that a tenant is disallowed from applying for social housing in the future and face being made homeless. It is essential to evaluating the effectiveness of the *RTA* to consider how well it protects the most vulnerable tenants. The specific provisions relating to social housing tenancies should not be excluded from the review, nor should consideration of how provisions applying to all tenants might disproportionately impact on social housing tenants.

Our submission to the Inquiry into Public, Social and Affordable Housing[4] and the Social Housing Discussion Paper[5] cover many issues specific to social housing tenants and our submission to this Discussion Paper includes, where relevant, reference to impacts of provisions of the *RTA* on social housing tenants.

---

[1] http://rlc.org.au/publication/briefing-paper-residential-tenancies-and-housing-legislation-amendment-public-housing

[2] Department of Family and Community Services, *Social Housing in NSW: A discussion paper for input and comment*, November 2014 http://www.facs.nsw.gov.au/__data/assets/file/0009/303030/Social-Housing-in-NSW_Discussion-Paper.pdf

[3] http://www.ncat.nsw.gov.au/Documents/ncat_annual_report_2014_2015.pdf

[4] http://rlc.org.au/publication/submission-submission-select-committee-social-public-and-affordable-housing

[5] http://rlc.org.au/publication/submission-response-department-family-and-community-services-discussion-paper-social

5. Responses to specific issues in the Discussion Paper

Question 3 - Are there any types of occupancy arrangements which should be included or excluded from the Act?

Question 28 - Does the Act adequately protect the interests of sub-tenants/co-tenants and landlords in shared tenancy arrangements?

The Act does not adequately protect sub-tenants

Currently, section 10 of the *RTA* excludes sub-tenants from the operation of the Act if they do not have a written Residential Tenancy Agreement with a resident head-tenant. This provision should be repealed, because it is significantly and inequitably affecting a large and growing number of occupants who are left without a viable way to exercise their rights.

Our experience is that arrangements that meet the definition of section 10, and that are therefore excluded from the *RTA*, are quite common. It is not unusual for a tenant to move into a room of an already tenanted share-house, pay a bond to a current or outgoing tenant, and only realise that they do not have the protections of the *RTA* when a dispute arises.

Section 10 can cause serious problems for sub-tenants. The section makes it easy for a head-tenant to take away the basic rights of occupancy: to evict a sub-tenant without notice; to withhold from them money that they are owed; to infringe on their quiet enjoyment and privacy; to disable swipe keys; to push sub-tenants to share rooms that were originally offered to them as sole occupants; and to deny them basic repairs.

Sub-tenants, who often enter into less secure housing arrangements for affordability reasons are also denied access to the Tribunal, the quickest and most affordable form of resolving their disputes. While some sub-tenants can access the Tribunal using the *Boarding Houses Act (BHA)* this does not cover most people in common share-housing arrangements.

Case study: Living in Share Housing

Dimitra (not her real name) was an international student living in Sydney. She lived in a share house for over two years with three other people. She paid her rent to one of the other occupants in the house, Elise, and also paid her a $750 bond when she moved in. Dimitra didn't get a written agreement when she moved in, everything was negotiated over the phone, but she did get a receipt for her bond. One evening Elise sent Dimitra a text message, telling her she needed to get out of the property by the weekend. She was not given a reason but suspected the problem was about some recent damage to the property that was not done by her.

Elise told Dimitra that if she didn't leave by the weekend, they would remove her things from the house. Dimitra moved out because she was worried that Elise would harass her if she didn't. She moved out and stayed in a hostel. She called Elise to get the bond back. After ignoring her calls, Elise sent Dimitra a text message saying she had transferred the money, but Dimitra found that she had only transferred her $500.

Dimitra was not covered by the *RTA* and was not able to dispute the eviction. Her only option to reclaim the money owed was to make an application to the Local Court. Dimitra was worried about going to court because of the costs, and the impact on her study. She was worried that she wouldn't be able to prove that Elise owed her the money. In the end, she decided not to pursue the money, even though Elise had done the wrong thing.

In the case study above, if the tenant had had a written agreement, she would be able to assert her rights to correct notice, to access her goods and to full repayment of her bond under the *RTA*. She would have been able to resolve her dispute in the Tribunal. This shows the inequity and difficulties faced by residents who fall outside of the *RTA* and the *BHA*.

In the last 12 months the tenancy service at RLC advised more than 150 people who were seeking advice about their rights and status in share-housing (in addition to people advised through the International Students Service, TAFE and SUPRA). Of those, more than 50 were excluded from the operation of the *RTA* because they did not have a written agreement with a resident head-tenant. Our service has to advise more than one caller a week that there is no easy, cost-effective way for them to resolve disputes with a head-tenant. For this group of people, there are only more limited, more complicated and more expensive ways for them to regain access to their properties if they are locked out, to reclaim money, to get repairs, and to protect their privacy. This unfairly places a higher onus on sub-tenants than tenants to ensure that they are covered under the *RTA* as tenants who have oral agreements are automatically covered by the *RTA*. The only thing that separates them from those who have access to the *RTA* and to the remedies in the Tribunal is a piece of paper.

While the purpose of section 10 was to provide certainty and clarity and to decrease jurisdictional disputes in the Tribunal, it has not had this effect. Determining whether someone is exempt from the *RTA* is rarely easy, as often tenants have parts of their agreement in different forms of writing. Often a tenant has some of the details in writing, and they have to assert their tenancy status through the Tribunal and risk being unsuccessful. Nor is it always clear whether an occupant is paying their rent to a named tenant on an agreement or the landlord. In some situations our service will have to advise an occupant to lodge three different types of application – a tenancy claim, a *BHA* claim and a consumer claim – all in the attempt to get a bond returned.

Case study: Left out of the *Residential Tenancies Act*

Karen responded to a listing on Gumtree for a room in a three-bedroom house in Sydney's Inner West. During her inspection of the house, Karen saw a large hole in the wall and ceiling of the dining room. The head-tenant said the renovations would be done before she moved in. He showed her parts of the house which he said were shared. Karen agreed to take the room and paid him $1840 as a bond and two weeks' rent in advance.

Karen came back a few days before she moved in and saw that the repairs weren't done. She also found out that parts of the house she thought she could share were already rented out to other tenants for their exclusive use.

Karen tried to renegotiate the rent on her bedroom but the head-tenant refused. Karen asked the head-tenant for her advanced rent and bond back. He refused to return any money and Karen had to stay in backpacker accommodation and put her furniture into storage until she found a new place to live.

After trying for weeks to get her money returned, Karen lodged an application with the Tribunal (NCAT) to get her money back. The Tribunal found that because she didn't have a written agreement she was excluded from the RTA due to section 10 and her application was dismissed.

Karen had few options to get back the money she had paid. The property didn't have enough beds to be covered by the *BHA,* so she couldn't lodge an application about an occupancy principles dispute. RLC assisted Karen to bring a consumer claim against the head-tenant. Under

this claim, Karen faced the difficult task of showing that the head-tenant was running a business of renting out rooms.

Karen was successful in her claim and, 8 months and a garnishee order later, all of her money was returned to her. Karen was fortunate that consumer laws covered her situation, but these laws don't cover all renters in situations like this.

The *RTA* is designed to cover disputes like the above, to balance the rights of the landlord and tenant and to recognise that a tenancy is both a consumer contract and an ongoing relationship between parties. Neither sub-tenants nor landlords should have to find alternative ways to exercise their rights when they have disputes about rented accommodation just because of the form their agreement takes. It is not in the interests of either party or in the interests of the Tribunal, which is tasked with justly and quickly resolving disputes, to exclude sub-tenants without written agreements with their resident head-tenants.

Section 10 is an unfair departure from the general principles of the RTA, which do not require agreements to be in writing (s 13). The protections of the RTA should extend to anyone who can establish the existence of a landlord-tenant relationship and this should apply equally in share houses.

Recommendation: shared households

The current section 10 of the RTA should be repealed. It should be replaced with a section that expressly deems occupants of shared households into the operation of the Act:

10 Application of Act to occupants in shared households

(1) A person who occupies residential premises that are subject to a residential tenancy agreement (whether express or implied, oral or in writing or partly oral and partly in writing) and who is not named as a tenant under the agreement, is a tenant for the purposes of the Act.

(2) This section overrides s 8(1)(c).

The exclusion of boarders and lodgers from the Act leaves occupants unprotected

Section 8(1)(c) excludes those who board or lodge from the RTA.

In 2012 the *Boarding Houses Act (BHA)* extended some protections to residents of registrable boarding houses, premises where beds are provided for five or more people for a fee. This was a significant step in addressing an under-protected group of residents and providing minimum standards in a subset of properties not covered by the *RTA*. But these changes do not entirely resolve the problem, because there is still a large group of occupants who are not covered by the *RTA,* the *BHA* or consumer legislation, leaving them unable to take a dispute to the Tribunal.

In order to address the gap that the section 8(1)(c) exclusion coupled with the restricted application of the *BHA* creates, we would support the expansion of occupancy principles to other boarding/lodging situations not covered by the *BHA*. Boarders and lodgers should be protected by a set of minimum standards about rent, notice of termination, repairs and privacy.

Recommendation: boarders and lodgers

Occupancy principles should apply to any person whose agreement is excluded from the

operation of the RTA by section 8(1)(c).

RLC agrees with the Tenants' Union of NSW's view that all occupants who pay money for accommodation should have legal protection and access to the Tribunal to resolve disputes.

Exclusion: residential colleges and halls of residence in educational institutions

Currently clause 20 of the *Residential Tenancies Regulation*, by virtue of section 12 of the *RTA*, excludes from the operation of the Act residential colleges and halls of residence in educational institutions. A college or hall can be exempted if:

> (a) they are located within the institution, or
> (b) they are owned by the institution, or
> (c) they are provided for that use by a person or body that provides the premises under a written agreement with the institution to provide accommodation to students of the institution.

Since the section was introduced there has been an increase in off-campus private accommodation providers who rent accommodation for students of multiple educational institutions. RLC's tenancy service and international student service frequently advise residents of student accommodation facilities who are unsure of their tenancy status. There is often no way for a student to know if their agreement is caught by clause 20(1)(c), it requires them to know whether there is a written agreement between the accommodation provider and the university. The existence of an agreement between a university and an accommodation provider should not so substantially affect the rights of an occupant. Instead, whether the agreement between an accommodation provider and student is a tenancy or a boarding arrangement should be determined by its substance.

All student agreements that are exempted from the operation of the Act should be covered by occupancy principles.

Recommendation: Residential colleges and halls of residence in educational institutions

Clause 20(1)(c) of the *Residential Tenancies Regulation* should be repealed.

Occupancy principles should always apply to residents excluded from the operation of the *RTA* by clause 20.

Question 35 - Should there be any additional grounds on which a tenant can terminate a residential tenancy agreement without compensation?

The amendments in 2010 altered the provision about ending a tenancy without compensation to include situations where there is domestic violence. It also added a provision that deals with ending the tenancy of a co-tenant or occupant perpetrator and changing the tenancy where there has been domestic violence.

These provisions were a welcome addition, however in the five years since they were introduced it has become clear that they do not achieve their intended purpose of protecting the victims of domestic violence. In the survey conducted by ISTAAS of Community workers and other organisations 37 out of the 62 organisations surveyed agreed that the current provisions on

domestic violence are not appropriate and need to be amended. Of the other 25, 6 organisations did not answer this question, 6 said the current provisions were appropriate while the rest stated that they were unable to provide an opinion.

This section considers not only how the provision on termination without compensation can be improved but also how other provisions relating to domestic violence should be improved. Our recommendations were developed in consultation with caseworkers and solicitors at the Sydney Women's Domestic Violence Court Advocacy Service and the Waverley Local Coordination Point.

Termination

Section 79 of the *RTA* states that if a final Apprehended Domestic Violence Order (ADVO) with an exclusion order is made against a tenant or co-tenant the tenancy of that tenant or co-tenant is automatically terminated. Section 100(1) allows a tenant to end a fixed term tenancy where they have a final ADVO with an exclusion order against a co-tenant or other occupant or a former co-tenant or other occupant.

These provisions do not recognise how difficult it is to obtain a *final* ADVO, particularly where it is contested, as compared to a *provisional* or *interim* ADVO. The process to get a final order can take up to one year and can be extremely traumatic for the victim. It is also well documented that there are many people who don't go down this path because they don't have the support or resources necessary. This leads to a situation where women who are victims of domestic violence remain in the home and continue to be exposed to violence, as they have nowhere else to go.

Exclusion orders are also not easy to obtain, particularly where the offender lives in the property. This is because the court also has to consider the accommodation needs of the alleged perpetrator and may be reluctant to exclude them from their own home.

Survey responses on domestic violence provisions

"Due to the complex nature of DV *(domestic violence)*, not all cases result in a final ADVO. Not all women feel safe enough to report the DV to Police and not all reports result in an ADVO…"

– Domestic Violence Service

"For women it *(the law)* is a barrier. We should be making it as easy as possible for people to leave without penalty. Often times if the abuse is not physical there is no AVO and we know there are many types of abuse."

- Homelessness Community Organisation

These provisions also do not go far enough in recognising the financial hardship that is experienced by many victims of domestic violence. Even where they are able to obtain an ADVO with an exclusion order they are seldom able to afford the rent on their own. If the tenant experiencing domestic violence is looking to end the tenancy it is likely the abusive relationship is coming to an end. This can be the most dangerous time in a domestic violence relationship, living under one roof due to fear of a financial penalty can be very risky at this point in time.

Further, where the perpetrator is the head-tenant and the victim is the sub-tenant and there is no final ADVO the victim may end up in a legal dispute over the bond or break fee with the perpetrator.

Case study: Housing and Domestic Violence

Katrina (not her real name) moved into a property with her husband and two children aged one and six. Katrina and her husband both signed a six month lease.

Katrina's husband had a problem with alcohol dependence and a month after moving into the property he lost his job. He began drinking a lot and started acting in a verbally and physically abusive way toward Katrina.

This had happened before but Katrina had been too frightened to report it to the police. This time, with the support of a friend, Katrina reported the incidents to the police. She left the property with her two children because she was afraid of her husband and didn't feel safe. The police applied for an ADVO on her behalf and a provisional ADVO was granted excluding her husband from coming near the property. The police then removed her husband from the property and Katrina went back there with her children.

Although Katrina felt safer, she now had to worry about how she could afford to keep living in the property.

Katrina was worried that if she stayed in the property this would mean she would have to stop work because she didn't have anyone to care for the children. If she stopped work this would mean that she wouldn't be able to afford the rent.

The prospect of ending the tenancy was also extremely daunting for Katrina. The fact that the ADVO was provisional and not final meant that the domestic violence provisions would not apply and Katrina would have to pay a break fee or ask the NCAT to order that in the special circumstances of her case her tenancy was terminated and no break fee should be paid. There was no guarantee that NCAT would make this order.

Locks and security devices

In cases where the victim of domestic violence does want to stay in the property, or needs to remain there until they can find a suitable alternative solution, the next concern is securing the premises from the perpetrator.

Section 71 of the *RTA* states that a tenant can change the locks or alter security devices with the agreement of the landlord or without this agreement if there is a reasonable excuse. A reasonable excuse in relation to domestic violence is where a tenant or occupant has been prohibited from having access to the property by an ADVO.

This provision also does not recognise the difficulty and length of time needed to get a final ADVO with an exclusion order.

Damage to property

Section 54 of the *RTA* states that a tenant is responsible for the actions of anyone who is lawfully allowed on the property where that action would be a breach of their tenancy agreement.

It is not uncommon for a perpetrator of domestic violence to cause damage to the premises and for the victim to then be charged for the cost of repair. This provision can lead to significant debts and again does not recognise the financial hardship that is experienced by victims of domestic violence.

Recommendations: Domestic Violence

RLC endorses and agrees with recommendations made in the Women's Legal Service submission to this review. RLC recommends amendments proposed by Women's Legal Services be adopted in their entirety.

Question 33 - Should landlords be required to provide a reason for terminating a tenancy? If so, what types of reasons should be considered?

Landlords should always be required to provide a reason for terminating a tenancy.

In a fundamental sense, 'no grounds' termination notices undermine the balancing of the rights between tenants and landlords that the *RTA* seeks to maintain. As long as tenants can be evicted for no reason, landlords will always have the upper hand when issues or disputes arise during the course of a tenancy.

No grounds termination notices undermine all rights afforded to tenants including the right to have repairs done, the right to challenge rent increases and the right to resist landlords entering their homes unlawfully.

Our service sees tenants routinely forgo enforcing their rights because they fear the eventual outcome will be that they will be forced out of their homes. Under the current laws, this is a legitimate fear for most tenants we talk to and it colours the advice we give them. Although many tenants' rights are spelled out clearly enough in statutory provisions and factsheets, in practice they are very uncertain when weighed against the risk of eviction.

In our survey, more than 65% of tenants said they had decided not to exercise their rights as a tenant out of concerns about retaliation. Tenants were worried about eviction, rent increases, being listed on a tenants' database and having their bond withheld.

Current provisions that allow the Tribunal to set aside termination notices issued to tenants in retaliation to them enforcing their rights are failing to substantively protect tenants. Under these provisions, tenants must prove to the Tribunal that their landlord decided to evict them because they were enforcing their tenancy rights. Rarely is a tenant able to obtain evidence to show what the *real* intentions of their landlord were for ending the tenancy. Landlords, however, are often able to suddenly produce evidence to undermine a tenant's case, such as a letter from a relative who wants to move into the property or a quote for new flooring in the property.

Even if tenants win their case, the Tribunal can still decide to allow the eviction.

Also, the setting aside of one termination notice by the Tribunal offers a tenant no protection from future notices. If a landlord issues another termination notice, tenants have to start the Tribunal process from scratch. We have seen tenants in our catchment area forced out of their homes because they felt too exhausted to recommence Tribunal proceedings.

When successfully challenging a retaliatory eviction is as difficult and uncertain as it is under the current protective provisions, it is unsurprising that so few tenants appear to make use of them.

Case study: Forced out by rent increases and retaliatory evictions

Louise and Michael lived in a large complex owned and run by Meriton Apartments with their young daughter. The rent on their apartment would go up every 6 months but when their landlord refused to budge on the most recent increase of $35 per week, they decided to challenge the excessive rent increase in the Tribunal.

Part way through the Tribunal proceedings, Meriton Apartments told Louise and Michael not to worry about the rent increase and instead issued them with a "no grounds" notice to vacate their apartment. Louise and Michael asked the Tribunal to find that Meriton was evicting them in retaliation to their challenge of the rent increase.

After three hearings and the involvement of RLC, the Tribunal eventually agreed with Louise and Michael that the eviction was retaliatory and found that parts of Meriton's evidence "did not tell the whole truth" and "to an appreciable extent… [were] deliberately tailored and at least partially manufactured to support the landlord's case".

Louise and Michael were relieved that they won their case and would be able to stay in their apartment but just 3 weeks later, Meriton Apartments issued them with a new "no grounds" notice to vacate.

Daunted by the prospect of having to again challenge the notice in the Tribunal, Louise and Michael decided to move out.

Apart from undermining tenants' rights, no grounds termination notices also act to deny tenants natural justice when they are faced with eviction from their home.

Tenants are almost always issued a termination notice *for a reason*. No grounds termination notices enable landlords to evict tenants based on speculation, rumour or suspicion of wrongdoing- with no supporting evidence required or opportunity given to the tenant to respond.

Survey responses about no grounds notices

"This is the biggest hurdle in tenant protection. If this clause was removed it would stabilise the rental market."

- Government Department

"So often evictions predicated on behaviours are about disability that has been left unsupported and untreated therefore evicting someone would lead in these circumstances to periods of homelessness and deterioration of health and wellbeing. No grounds causes disruption to someone with disability because of the localised nature of personal care services and the difficulty of transferring these services to another location."

- Disability Service

"90 day termination notice without reason is being used too often when tenants stand up for their rights. This termination should have some regulations around it to stop unreasonable termination."

- Youth Service

"It contributes to a power imbalance between Landlords and tenants and gives the Landlord an opportunity to end a tenancy without giving the tenant an opportunity to respond to the reason they are ending it."

- Tenant, Inner Sydney

No grounds notices and community housing providers

RLC is particularly concerned with the increasing use of no grounds termination notices by social housing providers in our catchment area. We are increasingly seeing very vulnerable and disadvantaged tenants being evicted for no 'official' reason from government-supported housing.

Generally, a single adult applicant will only be eligible for social housing if their income is less than $585 per week which is $71.90 less than the current national minimum wage.[6] In 2014 the Australian Council of Social Service reported that the poverty line for a single adult is where they have a disposable income of between $400 to $480 per week, after costs associated with housing.[7] These figures illustrate that tenants in social housing are among the most socio-economically disadvantaged members of our community and the least able to afford secure housing in the private market.

The National Regulatory Code for the National Regulatory System for Community Housing obliges registered community housing providers to be "fair, transparent and responsive in delivering housing assistance to tenants, residents and other clients particularly in relation to the… termination of housing assistance".[8]

The provision of reasons to a community housing tenant facing eviction is a fundamental element of fairness and transparency. There is no fairness or transparency where reasons for eviction are not provided and in these circumstances tenants are left powerless to protect themselves against being made homeless.

The National Community Housing Standards Manual says that "community housing providers should not evict without a just cause and organisations should take reasonable steps to ensure tenants are not evicted into homelessness".[9] Where a no grounds termination notice is issued, no just cause is identified and there is no opportunity for tenants to defend their tenancy or respond to allegations in the Tribunal within a system of procedural fairness.

In our experience, some community housing providers pursue terminations without providing reasons, denying their tenants procedural fairness. There is almost always a reasons for these terminations, and a procedure for the provider to follow. This indicates that requirements set out in the National Regulatory Code and the Standards Manual are not sufficient to protect community housing tenants, and that legislative intervention is required.

The fact that section 85 of the *RTA* does not allow the tribunal any discretion in determining whether a tenancy should be terminated, means that the most vulnerable tenants in our community are denied the opportunity to put forward a case as to why they should not be evicted.

---

[6] https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/minimum-workplace-entitlements/minimum-wages

[7] Poverty in Australia, Australian Council of Social Service, 2014, p 7 and p 12.

[8] http://www.nrsch.gov.au/__data/assets/file/0007/284650/National_Regulatory_Code.pdf

[9] http://www.hpw.qld.gov.au/SiteCollectionDocuments/CHStandardsManual.pdf Standard 1.4.1

Case study: No grounds notices in community housing

Jessica was living in community housing and experiencing extreme domestic violence at the hands of her ex-partner which often resulted in noise and police attending the property. She had requested a transfer number of times, hoping to move so that her ex-partner would not know where she was living. The housing provider declined to transfer her because they believed she was allowing her ex-partner to visit the property. After she had been living at the property for around 8 years, the housing provider issued her with a 'no grounds' termination notice. When Jessica asked the housing provider why she was being evicted, they told her that it was because her ex-partner was causing problems for the other residents in the building. Although Jessica had obtained an ADVO that excluded her ex-partner from the premises, the housing provider maintained that they believed Jessica had been letting him in and went ahead to pursue termination of the tenancy.

If a social housing provider believes that a tenant is causing or permitting noise or nuisance, they can issue a notice for breach of an agreement. This would require them to prove that the breach had occurred and that the breach was sufficient to justify the termination. They would also have to consider a number of factors, including impact on neighbours and the history of the tenancy. Social housing providers have additional grounds on which they can terminate a tenancy which relate to housing needs and eligibility. Social housing providers, which are committed to providing long term, secure housing, should be able to terminate a tenancy only for grounds set out in the Act in sections 87-92 or Part 7.

Recommendations: No grounds terminations

Section 85 of the RTA should be repealed.

If section 85 is not repealed, an additional subsection should be inserted:

(5) This section does not apply if the agreement is a social housing tenancy agreement, as defined in s 136.

Recommendations: Retaliatory evictions

Section 115 of the RTA should be amended such that:

1. the landlord bears the onus of proof in establishing that a termination notice was *not* retaliatory.

2. the Tribunal *must* set aside a termination notice if it is found to be retaliatory.

3. The Tribunal is able to order a preclusion period during which a landlord is prevented from issuing further termination notices (other than termination notices under s 87) following the setting aside of a retaliatory notice.

Question 16 - Do the Act's provisions governing termination for rental arrears strike the right balance between the interests of landlord and tenant?

RLC supports the provisions introduced in the 2010 Act that put limits on rent arrears termination orders and the enforceability of those termination orders when a tenant has paid the

amount owing. These provisions recognise that it is not in the interests of the parties that an agreement be ended if a breach of the obligation to pay rent is remedied. They strike the correct balance between landlords and tenants and are in keeping with the aims of the *RTA*.

RTA section 89(5), however, which allows the Tribunal to make an order if it is satisfied that the tenant has frequently failed to pay rent, jeopardises the effectiveness of the 'pay to stay' provisions.

Case study: Frequent failure to pay rent

Alisha (not her real name) lived in a social housing property with her 2 children for more than 15 years. For the last few years of her tenancy she had fallen behind in her rent at Christmas and in the New Year with school costs for her children. In January 2015 she was taken to the Tribunal for termination for rent arrears. Her landlord said that they would try to get a finding that she had frequently failed to pay rent. Instead, Alisha agreed to enter into a repayment plan that she couldn't maintain, which put her rent payments at more than 50% of her income. When she missed two arrears payments the landlord applied to relist the matter. The landlord claimed that not keeping up with the repayment plan was evidence that Alisha had frequently failed to pay rent.

In the second reading speech to the Bill, the rationale behind the provision was explained. It was designed as a limit on subsections 89(1)-(4), giving "the tribunal the power to overrule the continuation guarantee where tenants show a flagrant or habitual disregard for their obligation to pay rent on time."[10]

In practice, the provision does not have this effect, and it is relied upon to terminate tenancies where the tenant has not shown a disregard for their obligation to pay rent. As outlined in the case study above, it can be used as a coercive tool in negotiations in a way that makes it less likely that the tenancy will be sustained, not more. It is also problematic in the context of social housing tenancies, where retrospective adjustments in subsidised rent can give the impression that a tenant who has paid what they owed has an inconsistent payment record. "Frequent" does not have the same meaning as flagrant or habitual. The subsection as it currently stands undercuts the effectiveness of the other provisions of subsections 89(1)-(4). It is our submission that subsection 89(5) should be removed, or if it is to remain, that its wording be changed so that it is only available in the limited situations outlined in the second reading speech, that is, where a tenant's flagrant disregard for their payment obligations has been substantiated by the landlord.

Recommendations: Rent arrears

Section 89(5) should be repealed.

In the alternative, the section should be amended so that the Tribunal must be satisfied that the tenant has 'vexatiously failed to pay rent'.

[10] Residential Tenancies Bill 2010 Legislative Council Second Reading Speech, https://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/0/d94dda4801c2408bca257735001b1bff/$FILE/LC%204210.pdf

Question 12 - Should a portion of the interest on rental bonds continue to be paid to tenants, or should this portion also be used to fund services for tenants?

Question 39 - Do the current information, advice and dispute resolution services operate effectively?

Question 40 - Do you have any other suggestions to encourage the early resolution of tenancy disputes and reduce the number of tenancy disputes?

Currently more than $1.2 billion worth of tenants' bond money is lodged with the Rental Bond Board, and in the last financial year this generated approximately $58 million in interest.[11] Of this, the majority is provided to government agencies such as the NSW Department of Finance and Services and the NSW Civil and Administrative Tribunal. Around 8% is used to fund Tenants' Advice and Advocacy Services (TAASs), and less than 0.5% is paid out to individual tenants when they obtain a bond refund at the end of a tenancy.

10% of the interest earned on tenants' bonds is paid into a growing surplus, which currently sits at more than $65 million.[12] Without drawing too heavily on this money, we could return a greater portion of interest to tenants, and increase funding to Tenants Advice and Advocacy Services.

We endorse the recommendations made in the Tenants' Union submission that tenants should continue to receive a proportion of the interest earned when they claim a refund of their bond. Clause 25 of the *Residential Tenancies Regulation 2010* should be amended so that a higher proportion of the interest is paid to them than the current rate. Funding to Tenants' Advice and Advocacy Services should also be increased.

Due to the current and ongoing surplus both of these options can be realised without any impact on other services to which this money is currently directed.

RLC Survey

In the recent survey of 39 tenants, 72% agreed that both tenants and TAASs should receive an increased amount of interest made on tenants' bonds. 10% said only tenants' should receive an increase and 13% said only TAASs should receive an increase. 85% of respondents agreed that TAASs require an increase in funding from the interest made on tenants' bonds.

Of 63 community organisations surveyed, 67% agreed that both tenants and TAASs should receive an increased amount of interest made on tenants' bonds. 14% said only tenants' should receive an increase and 8% said only TAASs should receive an increase. 75% of respondents agreed that TAASs require an increase in funding from the interest made on tenants' bonds.

Unmet need and need for both Fair Trading and TAAS services for tenants

Total funding to TAASs has not increased in real terms for over 12 years while the number of tenants has grown by 25% over that time.[13] Increasingly, tenants are missing out on the services they need and are falling through the cracks.

In the financial year of 2014-15 RLC and ISTAAS was contacted by 2,123 people for assistance (this number may be under reported due to competing demands on front desk staff and

[11] Rental Bond Board *Annual Report 2015-15*
[12] Ibid
[13] http://www.tenantsunion.org.au/policy/tenants-money

volunteers). Advice and assistance was provided by the service to 1,375 people. After allowing for referrals to people outside of the catchment area (112 people), this leaves 748 people that the service was not able to assist.

689 of those people were referred to NSW Fair Trading as a first port of call for non complex matters in line with TAASs service funding agreements that work towards providing different and complementary services to tenants. While Fair Trading provides an efficient advice service, TAASs provide specialist advice in complex matters as well as advocacy and representation to vulnerable people. In addition, TAASs housed within community legal centres have an advantage of being within a 'one-stop shop' that can provide holistic and expert advice in areas of law that interact with housing such as credit & debt, domestic violence and discrimination.

367 of people provided with assistance from our service had already spoken to Fair Trading, and had been referred to us by Fair Trading. These were predominantly matters that required complex advice (such as share housing) or were vulnerable people who required advocacy and representation (such as people experiencing domestic violence or social housing tenants facing eviction).

Our tenancy service is finding that as complex matters and vulnerable tenants are referred to us our assistance has become more time intensive and we are able to assist fewer people. Of the people we provide advice to we are only able to provide advocacy and representation to a very small proportion of those matters (around 8% were provided with advocacy and 6% representation). This is due to available resources and not a true response to need. Every week, in file intake meetings, we are faced with having to tell people we cannot assist them beyond providing advice. While we try to address this by working closely with other community support workers, providing community legal education programs to community workers and producing publications, there is a high unmet demand for our services to people who need complex advice or who are vulnerable.

Particular needs of inner city area

The following information is taken from the City of Sydney website at http://profile.id.com.au/sydney and shows the particular increasing demand for services in the area.

The population of the City of Sydney is expected to grow from 211,695 in 2016 to 280,964 in 2036 (32.7% increase). The number of dwellings in the City of Sydney is forecast to grow from 95,260 in 2011 to 132,061 in 2026, with the average household size rising from 1.97 to 1.99 by 2026

Population density has in the City of Sydney increased from 63.43 persons per hectare in 2011 to 74.22 persons per hectare in 2014 and is projected to increase to 95.86 persons per hectare in 2026 and 105 persons per hectare in 2036.

Locally, the 2011 The ABS census show population increases in Redfern of 4.8% over the previous 5 years and an increase of 24.2% for Waterloo. Over the previous 10 years the population of Redfern increased 12.5% and Waterloo a huge 206%.

Redfern Waterloo is a high-density area with a growing and diverse population. Nearly 60% of the residents live in public housing, one of the highest proportions of tenants in the City of

Sydney and the nation.[14] 40% of tenants come from a non- English speaking background and many are older people living alone.[15]

The type of population in the inner city leads to higher proportions of vulnerable people including international students in illegal accommodation and increased numbers of people in Boarding Houses and share housing. These types of matters require specialist advice and advocacy and place great demand on our service.

In addition over the past 2 years our tenancy service has been assisting residents being relocated from Millers Point (150 people) by FACS and will be providing assistance to people being moved as part of the new large scale redevelopment at Waterloo. In addition to huge new private developments throughout Waterloo, Alexandria, Harold Park and Greensquare, there will be greater and greater need for tenancy advice and advocacy services.

These proposals to increase interest paid to tenants and funding to TAAS services are affordable and would ordinarily leave the Rental Bonds Interest Account in surplus.

Recommendations: Tenants' Advice and Advocacy Services Funding

Returns to tenants from interest on their bonds should be increased. The interest rate should be tied to the Commonwealth Bank's Everyday Account rate for a deposit of $100,000 (currently 0.2 per cent per annum) rather than $1,000 (0.01 per cent – the lowest rate offered). This would return $2.9 million per annum to tenants individually (instead of $132,000 currently).

Restore the real value of funding to TAASs (based on 2002 levels) and increase funding in line with demand and the growth in the number of tenants.

Fair Trading services and TAASs should continue to work together to provide complementary and holistic services to tenants.

6. Responses to other questions

Question	Our comments and recommendations
Question 8 - Should any other information be required to be disclosed by landlords at the time of entering into an agreement?	RLC supports the recommendation of the TU that there be an appropriate mechanism for tenants to terminate an agreement if the landlord has failed to disclose the material facts as set out in the Act. We also support the expanded list of material facts as listed in the submission of the Tenants' Union.
Question 13 - Does the process for refunding bonds and resolving bond disputes work well? What could be	Issues with the return of bonds, and particularly what constitutes 'fair wear and tear' are common. Problems often arise because tenants are not aware of their rights when it comes to both incoming and outgoing condition reports, and what expenses are

[14] Inner South, Local Area Plan, City of Sydney 2007

[15] *Partners in Learning and Community Enterprise (PLACE)*, a partnership between TAFE Outreach at the Sydney Institute and state, local government, community agencies http://www.placespace.org.au/index.php/about/place-sites/redfern-waterloo

improved?	reasonable. Even with a straightforward process, tenants will generally be at a disadvantage disputing a contested claim in the Tribunal against an agent. It is also a common complaint that many landlords do not lodge the bond with Fair Trading NSW as required by the Act. Where the bond has not been lodged the *RTA* the does not provide a timeline by which tenants must initiate a claim to reclaim their bond. This leads to confusion for tenants. Regulation 22(8) should be changed so that a claim can be made on the bond "six months after the end of the tenancy, or six months after the bond has been paid out, whichever is the later". This will cover situations both where a bond is lodged and where a bond is not lodged. RLC supports TU recommendation for an education campaign around rights and responsibilities in bond disputes.
Question 15 - Do the existing provisions governing excessive rent increases strike the right balance between the interests of landlords and tenants? If not, how could they be improved?	Rent increases are a significant issue for private tenants who seek advice from our service. The majority of survey participants thought that there should be limits on the frequency and amount of rent increases in a year. Of those participants 83% thought that the consumer price index was the appropriate limit. Section 41(10) should also be repealed. Tenants should not be precluded from recouping money that they were not obligated to pay merely because they fall outside a time limit. RLC supports Marrickville Legal Centre's recommendation that section 115 be amended to allow a tenant to seek an order from the Tribunal that a rent increase notice is retaliatory.
Question 17 - Should the introduction of late fees for rent owing be considered? Please give reasons.	Late fees should not be introduced. Late fees would only make it more difficult for tenants to sustain their tenancies and make use of the provisions of section 89(1)-(4).
Question 21 - Is further guidance required in relation to whose responsibility it is to repair the premises and when the repairs must be carried out?	RLC supports the TU recommendation that the 'reasonable diligence' defence be removed from section 65 of the *RTA*.
Question 27 - Should there be specific provisions in the Act that deal with the use of photographs or videos	Yes, consent of a tenant should be required before taking photographs.

showing a tenant's personal property to advertise premises for sale or lease?	
Question 31 - Are the provisions applying to long-term tenancies appropriate?	RLC supports the recommendations of the TU that the time period for long term tenancies should be reduced from 20 years to 10 years or more and that Section 154G should be amended so as not to apply to long terms tenancies. The Tribunal should continue to suspend possession orders for at least 90 days when termination of a long-term tenancy occurs.
Question 33 - Are the current termination notice periods appropriate?	RLC supports the recommendation of the TU that the notice period required for sale of premises be increased from 30 days to 60 days. Further, the notice period when tenants end a periodic tenancy should be reduced from 21 days to 14 days.
Question 34 - Should the Act require all residential tenancy agreements to have provisions imposing break fees?	The current state of law whereby there is no obligation to include a break fee leads to uncertainty for tenants. We frequently advise tenants who have been told that they must pay a break fee and other costs such as reletting fees and advertising costs. The uncertainty negatively impacts on tenants, but in many cases, the current break fee limits are RLC supports the recommendations of the TU that for certainty a break fee of three weeks should be applied to all fixed-term tenancy agreements.
Question 42 - Should email or SMS be accepted as methods of giving written notice? What safeguards would be needed to reduce any potential disputes?	RLC supports the recommendation of the TU regarding service of notices.

7. Other issues

Discrimination in renting

A further issue that should be addressed in the review of the laws and practices governing renting is that of discrimination in the rental process.

RLC has a specialist practice in discrimination law and offers advice on a range of discrimination related matters arising under the various pieces of anti-discrimination law legislation.

RLC has seen many clients who experience discrimination in the rental process. The issues range from refusal to make reasonable adjustments to the premises to accommodate disability to discrimination against international students. RLC has also seen discrimination in the application process for private rentals.

Recent studies have highlighted the problem, including a study conducted by the University of Technology Sydney on Ethnic Discrimination in private rental housing markets.[16] The study noted that there is strong anecdotal evidence that ethnic minority groups experience discrimination when seeking accommodation. The results of the study suggest that this discrimination occurs during the early stages of the rental process such as the property viewing and application stage. The study found that participants of different ethnic appearances were treated differently during the rental inspection process.

> "…subtle differences in treatment (for instance, in the provision of information about documents to bring to an inspection) may nevertheless have significant impacts, resulting in some prospective renters being able to submit applications earlier than others, thus having the chance to be offered the dwelling before others…"[17]

A common discriminatory practice at this stage of the rental process is the use of the discriminatory application questions. RLC has seen questions relating to the types of disabilities or special needs prospective tenants might have or a person's religion or ethnicity.

Community organisations in the survey conducted by RLC have also observed these practices and they strongly advocate for the need for stronger protections, particularly for tenants with disabilities.

> "People from Culturally and Linguistically Diverse (CALD) backgrounds and people with disability often face a range of additional barriers to defending their rights under tenancy law. The law should mandate that tenants are treated equitably and that landlords, including Housing NSW and community housing providers, make all reasonable efforts to communicate with tenants in ways which are accessible to the tenant. Tenants should be offered referral to specialist advocacy services to assist them when disputes arise."
>
> - Community services organisation

RLC recommends that application processes be standardised to reduce discrimination in renting – that landlords and agents must disclose to prospective tenants the application process to be undertaken, when applications are due, whether there are any special conditions of the lease, and any relevant factors in how tenants will be selected.

Time limits for appeals and set asides

Time limits to apply to the NSW Civil and Administrative Tribunal (NCAT) for appeals and set asides are an immense issue for tenants. The time limits are not in line with other divisions of NCAT and are extremely short.

An application to set aside a decision is available if the person applying was not at the hearing. For social housing tenants this is usually because they did not know about the hearing due to issues with their mail. By the time they find out about orders (usually to terminate the tenancy) and manage to make contact with an advice service (who are often unable to respond on the same day as a call), there is often only a day or two to submit an application to set aside the matter. This is vastly different to time allowed to prepare Tribunal or Court proceedings for

[16] https://opus.lib.uts.edu.au/bitstream/10453/37684/3/Chapter%204%20Accepted%20version.pdf
[17] https://opus.lib.uts.edu.au/bitstream/10453/37684/3/Chapter%204%20Accepted%20version.pdf, page 17.

other types of matters and places a great strain on the limited resources of a TAAS to assist. This often leads to unjust outcomes and a lack of procedural fairness for the most vulnerable people who face extreme hardships if they lose their right to social housing.

An appeal to the NCAT Appeal Panel must be made within 14 days of receiving reasons for a decision. An appeal on a question of law can be complex and often requires a TAAS service gaining an opinion from Counsel. The time limit is not adequate for a TAAS service to assist a vulnerable tenant or for a tenant to decide whether to take the risk of lodging an appeal without an advice as to merits.

Our service is finding that the 7-day time limit placed on applications to have Tribunal orders set aside is causing severe hardship to tenants. For many tenants, 7 days is simply not sufficient time to obtain appropriate advice and prepare an application.

We are also concerned that the short time limit may be signalling to the Tribunal that it should take a narrower view on extension of time applications than would normally be the case. In a recent Tribunal decision declining a tenant's set-aside application made 21 days after the original decision, the Tribunal observed:

> *Here the delay between the date of the decision and the filing of the second set aside application was 21 days, which is 3 times the time required under reg 9. This period of 21 days may not seem a lengthy period but in the context where Parliament has sought fit to impose a short period of 7 days a delay of 21 days is excessive.*[18]

Recommendations: Time Limits
Time limits to lodge a set aside in residential tenancy matters be increased to 14 days.

Time limits to lodge an appeal to the NCAT appeal panel in residential tenancy matters be increased to 28 days.

8. Conclusion and Recommendations

1. Shared households

   The current section 10 should be repealed. It should be replaced with a section that expressly incorporates occupants of shared households into the operation of the *RTA*:

   10 Application of Act to occupants in shared households

   (1) A person who occupies residential premises that are subject to a residential tenancy agreement (whether express or implied, oral or in writing or partly oral and partly in writing) and who is not named as a tenant under the agreement, is a tenant for the purposes of the Act.
   (2) This section overrides s 8(1)(c).

[18] S Westgarth in *Lewis v NSW Land and Housing Corporation*, 3 October 2014, [2014] NSWCAT, SH 14/39416

2. Boarders and lodgers

   Occupancy principles should apply to any person whose agreement is excluded from the operation of the RTA by section 8(1)(c).

3. Residential colleges and halls of residence in educational institutions

   Clause 20(1)(c) of the *Residential Tenancies Regulation* should be repealed.

   Occupancy principles should always apply to residents excluded from the operation of the RTA by clause 20.

4. Domestic violence

   RLC endorses and agrees with recommendations made in the Women's Legal Service submission to this review. RLC recommends amendments proposed by Women's Legal Services be adopted in their entirety.

5. No grounds terminations

   Section 85 of the *RTA* should be repealed.

   If section 85 is not repealed, an additional subsection should be inserted:

   (5) This section does not apply if the agreement is a social housing tenancy agreement, as defined in s 136.

6. Retaliatory eviction

   Section 115 of the *RTA* should be amended such that:

   a) the landlord bears the onus of proof in establishing that a termination notice was *not* retaliatory.
   b) the Tribunal *must* set aside a termination notice if it is found to be retaliatory.

   The Tribunal should be able to order a preclusion period during which a landlord is prevented from issuing further termination notices (other than termination notices under s 87) following the setting aside of a retaliatory notice.

7. Rent Arrears

   Section 89(5) should be repealed.

   In the alternative, the section should be amended so that the Tribunal must be satisfied that the tenant has 'vexatiously failed to pay rent'.

8. Tenants' Advice and Advocacy Services Funding

   Returns to tenants from interest on their bonds should be increased. The interest rate should be tied to the Commonwealth Bank's Everyday Account rate for a deposit of $100,000 (currently 0.2 per cent per annum) rather than $1,000 (0.01 per cent – the lowest rate offered).

This would return $2.9 million per annum to tenants individually (instead of $132,000 currently).

Restore the real value of funding to TAASs (based on 2002 levels) and increase funding in line with demand and the growth in the number of tenants.

Fair Trading services and TAASs should continue to work together to provide complementary and holistic services to tenants.

9. Time limits

Time limits to lodge a set aside in residential tenancy matters be increased to 14 days.

Time limits to lodge an appeal to the NCAT appeal panel in residential tenancy matters be increased to 28 days.