

Tenancy Law and Homelessness: A Queensland Perspective on a National Issue

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This article explores the interconnection between tenancy law and homelessness and discusses ways that tenancy law reform can contribute to alleviating homelessness caused from lack of protection.

Homelessness in Australia has increased dramatically over the past 10 years. Many more people are finding shelter in marginalised parts of the housing rental sector living in insecure tenancies without the legal protection available to other renters.

Some of the groups at greater disadvantage include: Aboriginal and Torres Strait Islander peoples; migrants, refugees and asylum seekers; young people; people who have been in state care during their childhood;

seniors; people with a disability, and people with health issues.

Supported accommodation is not keeping up with the demand and social housing stocks are too low (only three percent in Queensland) to make a significant difference.

Households with the least resources and capacity to compete in the market are currently facing the worst impacts. Over 400,000 or just over a third of Queensland households are renters. These people do not have adequate protection under the law.

Many of these households are also in 'housing stress' (around 66%) having inadequate income, once they have paid the rent, to pay for food, medicine, schooling, transport and other essentials.

Whilst tenancy law reform is obviously not the sole answer to the problem of homelessness, given the massive undersupply of housing and lack of affordability, it does have a role to play in

mitigating homelessness through greater protection of tenant rights. Deficiencies in the protections offered by tenancy law put people at greater risk of homelessness.

Six National Concerns

A recent study undertaken by National Association of Tenancy Organisations (NATO) for National Shelter, *A Better Lease on Life: Improving Australian Tenancy Law* (2010) highlights some key issues faced by renters in regard to the quality of their tenure in the rental market and how these issues are interconnected with homelessness.

The study was funded by the Australian Government driven by concerns about lack of legal protection for boarders and lodgers and that 'without grounds' terminations of a tenancy agreement may be a law used to unreasonably force tenants to leave their home and become homeless (FAHCSIA, 2008).



The report compares key aspects of tenancy law across all Australian states and territories and includes the quality of tenancy protections such as: the legislation and its application; rents and costs; tenancy terms and conditions; security of tenure, terminations and evictions; dispute resolution; and access to housing.

It identifies six national concerns which, if redressed, would have the potential to mitigate homelessness or alleviate a major deficiency in the quality of tenancy protections.

1. 'Without cause' evictions — The single most important issue identified across all jurisdictions is the lessor's ability to evict a tenant with no cause; also evictions resulting from:
 - a. Inconsistent and inadequate notice periods for terminations;
 - b. Inadequate opportunity to redress a termination notice for rent arrears;
 - c. Mortgagees possession;
2. Lack of legislative coverage — of marginal groups including boarders and lodgers and inconsistent and irregular coverage of renters in caravans;
3. Lack of minimum housing standards;
4. Unjust and unreasonable operation of tenancy databases;
5. Excessive rent increases and inadequate notice periods, and
6. Limited ability of disadvantaged and vulnerable tenants to access information, advocacy and early intervention and support.

A Queensland Perspective: Recent Reforms

The Queensland Government in partnership with the National Government and the community are working to address homelessness.

From a tenancy protection perspective, the Queensland Government recently introduced tenancy law reforms namely, additional protections under the new legislation providing for fairer timeframes on notices to leave to tenants at the end of a fixed term agreement and the regulation of tenancy databases (RTD). Both measures will assist in mitigating homelessness.

Regulation of Residential Tenancy Databases

The Queensland Government recognised, some years ago, that a listing on a RTD contributes to preventing access to housing. Queensland renters now have a reasonable level of protection from tenancy database abuses — they have a mechanism for disputing a listing. However, there is still lack of control over the length of listings on a RTD.

Case 1: 'Beryl'

'Beryl' is an older renter with medical conditions moving between insecure accommodations.

Beryl a single pensioner in her late 60s has multiple medical conditions. The most relevant are severe food allergies and a condition affecting her mobility that if not managed carefully could result in the amputation of her legs. A number of required medications are not on the PBS and Beryl's financial situation places her in housing stress

Beryl's home was a room in a residential service in a regional centre outside Brisbane for five years. Previously she had lived in public housing from where she moved when she could not manage the stairs because of undiagnosed emphysema (now treated). For a number of years, Beryl also lived with and cared for her mother in law with dementia and her sons' children.

The TUQ became involved with Beryl after she and others received a letter informing them of a rent increase of 59%. This letter was not a correct notice and was missing key details like when the increase would apply. It also stated the rent would now be a flat rate and cover food, linen and electricity. This was simply impossible for Beryl: due to her severe food allergies she would be unable to partake of the food offered and she was unable to afford food she could not eat as she would not be able to afford critical medications.

Upon investigation it was discovered that no resident had received a written agreement as required under the

legislation and that the provider was not accredited under the Residential Services (Accreditation) Act 2002. This supported Beryl's view the provider would not be able to deliver the specialised diet she needed. Beryl later reported that one of the owners had tried to convince the onsite manager/cook to provide special diet meals but had been unable to do so.

As the resident was fearful of eviction "onto the street" we advocated anonymously, talking to an owner of the premises to explain how intimidated the residents had been when told they had to pay the increase or be evicted. The owner admitted that the onsite manager was "a bit aggressive".

During the advocacy process, Beryl decided to move out as the owners would not negotiate regarding the uptake of meals. At least one other resident also left.

At the time of moving to her new home (a private sector rental 2 bedroom unit in poor condition, with stairs), Beryl had still not received a correct notice to increase the rent and reported that another resident had paid the increase, purely out of fear of losing her accommodation.

Beryl is on the social housing register again but has been advised of a long wait time for housing in her community. Beryl is unwilling to consider a home outside her community. It is where her sister (who cooks her special meals) is located along with the charities that assist with medication and the mobility scooter as well as social visits and cleaning. Beryl literally "can't afford to leave here."

New legislation

The Residential Tenancies and Rooming Accommodation Act 2008 (RTRAA) which replaced the Residential Tenancies Act 1994 (Queensland) and the Residential Services (Accommodation) Act 2002 makes some new provisions.

- People who rent a room (termed 'Residents' in legislation) are now covered under the Act (albeit with more limited rights than 'Tenants'). The only exception is when a provider lives on site then coverage applies only if there are at least four rooms available for occupation;
- Lessors must now provide Tenants with two months (previously only two weeks) notice to leave at the end of a fixed term lease;
- An Agent or Provider must provide a copy of the tenancy/residency agreement;
- There is more opportunity for tenants to dispute terms of agreements;
- New dispute options if breaches are not remedied by the lessor;
- Premises must be advertised for a fixed amount of rent otherwise the Tenant must not be required to pay a bond;

- Rent cannot be increased for Tenants any more often than every six months. It remains at four weeks for Residents;
- New provisions prohibit open houses and the use of photos including Tenants' goods for advertising without Tenant's written consent;
- In specified circumstances, Tenants now have the right to terminate early in a new fixed term agreement if the premises are advertised for sale without prior notice, and
- Notice periods for mortgagee possessions have increased from one month to two months and the Tenant on a fixed term agreement is not liable for any rent if they move out. Residents now have 30 days.

Unfinished business

The Act still excludes renters, including boarders and lodgers residing in premises with the provider on site and less than four rooms available for occupation. Marginal renters, who are often more vulnerable in the current market are worst affected by this exclusion which also applies to Aboriginal hostels and supported accommodation for less than 13 weeks. All renters require legal protection.

Distortion

The increased notice period for ‘without grounds’ termination at the end of a fixed term is intended to give tenants time to find an appropriate property and move. However, some agents and lessors are using this provision of two months notice to leave at the end of a fixed term lease to threaten a notice to terminate their agreement two to three months out from the end date of their current fixed term agreement if a tenant does not renew a tenancy agreement.

This distorts the purpose of the reform. Moreover, if the provision to evict tenants ‘without grounds’ continues (see below), restrictions should be placed on how long out from the end of a fixed term agreement one can be issued so tenants do not have to decide to renew their lease a long time prior to the end of their current agreement.

Recent indications are that agents and lessors who are not satisfied with the increased notice period have been lobbying to have it watered down. Any changes in favour of the desire to shorten notice periods will once again leave tenants inadequate time to find a new home and potentially lead to homelessness — through no fault of their own.

But the Single Most Important Issue... Eliminating the use of ‘without ground’ evictions

Private rental housing in the Australian housing market is fundamentally insecure because properties move between owner-occupier and rental tenures.

Evictions without a just cause add to this insecurity and contribute to a power differential between tenants and lessors by virtue of the ever present threat of eviction.

Tenants moving into a property are virtually at the mercy of a lessor’s monopoly given the cost of ‘taking their business elsewhere’. Tenants find themselves trading off their rights against the fear of eviction. This is particularly true for those who perceive or know they have limited alternative options. In this way, ‘without ground’ evictions and the failure or inability to challenge excessive rent increases, the pursuit of repairs and tenants’ acceptance of substandard properties are interconnected (National Shelter 2010, TUQ 2007).

Notices to leave without grounds provide a readymade provision for agents and lessors to evict for retaliatory or discriminatory reasons. Whilst a tenant can challenge eviction on the basis of retaliation, proving a link between the tenants enforcing their rights and the actions of the terminations notice can be difficult. (NATO/National Shelter, 2010, p24).

Overall, tenancy laws should seek to allow eviction only as a last resort.

Law reform that provides reasonable grounds for termination would neither require nor entail a change to the structure of the rental market or the investment strategies of lessors.

Lessors could still pursue remedies for the greatest risks i.e. unpaid rent and damage to property. They could still sell their property to owner-occupiers, redevelop their property, or move into the housing themselves.

Insights: The Lack of Consumer Protection Places People at Risk of Homelessness in Queensland

These case studies from tenant advocates (in Brisbane and North Queensland) highlight the impacts of tenancy law deficiencies like the ever present threat of ‘no grounds evictions’ and the interconnection between a range of issues including the needs of ageing people, discrimination and housing management practices.

‘Beryl’s’ case study shows just how vulnerable older renters are in the housing market. It demonstrates the power imbalance between providers or lessors and residents or tenants and how rights are often traded off against the fear of eviction. Also significant is the role that ‘support linked to housing’ plays in sustaining health and home (Bridge et al, 2003) and the important role social housing can play. The tenant aspires to be rehoused in public housing,

but housing alone will not sustain her life. She cannot take the public housing property on offer outside her community. Her housing needs to be where her family and community support organisations are located. Housing insecurity and a sense of lack of control over one’s housing is significant in compounding other issues and can lead directly to social exclusion (Hulse and Saugeres, 2009, Hulse, 2007).

The upheaval leading to the tenant’s loss of her home may have been avoided if there was adequate protection for renters — if marginal tenures were better regulated and protected and if they could not be evicted from the homes on the whim of the provider (no grounds). Negotiating a solution with the provider was not possible as both Beryl and other the residents were all too fearful of being summarily evicted ‘in retaliation’ should the new conditions be questioned.

Case Study 2, ‘Nancy’, demonstrates how difficult renting can be for people from non-mainstream cultures and in particular for Indigenous Australians.

Discrimination is endemic in some communities. More than 60% of Indigenous households rent and many experience disadvantage in the market they are also at greater risk of homelessness. They are also heavily represented as clients of homelessness services (National Shelter 2009, p.15) with over a quarter (28%) of all

Case 2: ‘Nancy’

‘Nancy’ is an Indigenous woman fighting to keep her home.

In 2009, Nancy a single Indigenous mother, who had been a public housing tenant of 11 years standing, was threatened with termination of her tenancy on the grounds that her household repeatedly ‘interfered with the reasonable peace, comfort or privacy’ of her neighbours (s184(c), RTRA Act 2008).

Nancy was incredibly upset that she might lose her home and about two other things in particular.

First was the ongoing punitive and often racist treatment of her household, by her neighbours. Second were her failed efforts to get the Department to listen to her side of the story in relation to this so-called breach.

Above all, Nancy was resolute that she had not in fact caused any breach of this section of the Act and was therefore at a loss as to how she could remedy it.

People did come and go from her home — after all she was from a nearby Indigenous Community. However, she was always at pains to make sure guests kept their noise down especially after hours, and she was quick to kick them out if they did not comply.

Nancy was assisted on a range of fronts: we wrote to the Department and asked for the breach notice to be withdrawn because it was based on unsubstantiated

uncorroborated evidence (to no avail).

We made application for RTA Dispute Resolution services (and did not achieve success). We made formal complaints about Nancy’s treatment by Departmental Officers dealing with the issue — first to the Department’s internal ‘Appeals and Review Unit’ and then to its ‘Ethical Standards Unit’.

Our complaints centred on the Department’s unwillingness to record her side of the story, and on the rude behaviour displayed towards her by the officers concerned. We also FOI’d the Queensland Police records which the Department were relying on for key evidence of the alleged breach. In our view these records did not substantiate much more than the fact that the neighbours made complaints about the tenants’ household. Together we met with the Area Manager and were informed that the Department was unlikely to be able to resolve the issues.

Finally an offer was made to assist in a Departmental initiated housing transfer to another location — which in the end seemed like the best solution available. Although Nancy and her children (including foster children) would have preferred to continue living at her current address, at all turns it seemed her neighbours’ views were considered credible and worth taking action on, while hers were not. No efforts were ever made to test any the views of either tenant or neighbours.

people with a valid unmet request for new and immediate accommodation being Aboriginal and Torres Strait Islander peoples (AIHW, 2010).

Regardless of the fact that the tenant, in the case study, had 11 years rental history in public housing, her housing was under threat and without the additional support and advocacy provided by the tenant advocate her family would now be homeless.

As it stands, they will be paying the price of a forced move which will come at a financial cost and disruption to their lives. It highlights the importance of the social housing provider's role, as housing provider of last resort, to sustain housing for groups at risk of homelessness due to discrimination — the threat that their 'difference' poses to mainstream community. Best practice in social housing management must be focussed on mitigating the risks that can lead into homelessness.

Tenancy Law Reform: A National Framework Law reform

Queensland leads the nation in reforming regulation of tenancy data bases and now coordinates the development of nationally consistent tenancy database regulation.

In recognition of the success of this model, NATO has argued for a coordinated cross-jurisdictional approach through the established mechanisms aimed at coordination of work between the States, Territories and the Australian Government (e.g. the National Affordable Housing Agreement, National Partnership on Homelessness Agreement and Ministerial Council).

A coordinated cross-jurisdictional approach will provide a consistent and harmonised basis for the reform of key tenancy laws, in line with national standards to achieve sustainable housing and social inclusion for the homeless and those at risk of homelessness.

Creating minimum requirements or standards for the operation of legal principles will eliminate major differences of the laws across jurisdictions.

The recommendations for national tenancy law reform to mitigate homelessness include:

- Preventing arbitrary and unreasonable evictions by removing the ability to evict tenants without any grounds;
- Ensuring adequate and relative notice periods for evictions to allow tenants the chance to find alternative premises before they are evicted;
- Maximising the chances for tenants to rectify rent arrears prior to eviction and restore the income stream of their lessor;
- Providing tenancy law protections, relative to the tenure type, to all Australian renters; and
- Providing timely access to tenancy advice and advocacy to prevent



evictions. (National Shelter, 2010, p40).

These reforms will improve tenancy laws for tenants and their families left unprotected or disadvantaged by unjust laws and practices that can lead to homelessness and marginalisation in Queensland and across the nation.

Access to housing, advice and support

Access to housing is not just about securing a residence, it also means maintaining that housing and ensuring it continues to be provided on fair and legal terms. Knowledge about and availability of advice and advocacy services for tenants is vital.

Tenancy advice, advocacy and support services are not always readily available to tenants at risk. Groups who are discriminated against, those with special or complex needs require coordinated support and assistance including tenancy advice and advocacy.

This applies especially to the areas of: tenant representation at court/tribunal hearings; better integration with social support services and specialist services or advocates for Indigenous tenants. Tenant advice services need to extend their capacity to:

- Provide a duty advocate at the relevant Tribunal;
- Provide advocacy services, linked to case management, to enable tenant advice services to bring their knowledge and skills to the table, under a case management model, to provide holistic support to people who are at risk of homelessness; and
- Provide specialist tenants advice services, including for Indigenous renters, where a greater emphasis

should be placed on community education with both tenants and. Where appropriate, housing providers.

The Queensland Government leads the nation in reforming regulation of tenancy data bases... the reform process has started. The opportunity now exists to address other tenancy laws and practices that deny basic consumer protection or place people at risk of homelessness. ■

References

- Australian Institute of Health and Welfare (2010) *Demand for government-funded specialist homelessness accommodation 2008–09*, Summary, July 2010. Australian Institute of Health and Welfare Canberra Cat. no. HOU. 231. <http://www.aihw.gov.au/publications/index.cfm/title/11237>
- Bridge, C., Flatau, P., Whelan, S., Wood, G. & Yates, J. (2003) *Housing assistance and non-shelter outcomes*, AHURI.
- Department of Families, Housing, Community Services and Indigenous Affairs (2008) *The Road Home: A National Approach to Reducing Homelessness*, Commonwealth of Australia.
- Hulse, K. & Saugeres, L. (2007) *Housing insecurity and precarious living: an Australian exploration*, AHURI.
- Hulse, K. (2009) *Submission to the Tasmanian State Government Budget process: Understanding the importance of home and place as the foundation stone for social inclusion*, Shelter Tasmania.
- National Shelter (2009) *Fact Sheet, Housing Australia Fact Sheet: a quick guide to housing facts and figure*, New South Wales Shelter.
- National Shelter (2010) *A Better Lease on Life — Improving Australian Tenancy Law: A National Shelter Report prepared by National Association of Tenant Organisations and Penny Carr and Maria Tennant*, National Shelter.
- Tenants' Union of Queensland (2007) *The Views of Tenants on Rental Conditions and Tenancy Law in Queensland: A Report on Tenancy Law Reform. Focus Group Discussions*, Prepared by Tim Seelig for Tenants' Union of Queensland Inc.