

Reducing Young People's Vulnerability to Homelessness Through Tenancy Reform

Yfoundations Submission to the Review of the
Residential Tenancies Act 2010 (NSW)

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Summary

Our comments in this submission are, where possible, arranged under the relevant headings and questions from the discussion paper. In brief, our comments under the relevant headings are:

The current regulatory framework:

Young people, and other groups, often face discrimination when applying for tenancies. In the area of employment, good recruiting practice involves avoiding questions that could be seen as indicating discrimination in the recruitment process. We would like to see similar practices in rental application processes, with direction provided around the information to be requested in a tenancy application.

Interest on bonds:

Yfoundations is a strong supporter of Tenants Advice and Advocacy Services as a source of independent, specialist advice and advocacy for tenants. We believe that this service is essential for tenants, especially young people, in order to allow them to interact on an 'even playing field' with landlords, who are more often than not represented by real estate agents.

Disputes about rent increases:

The frequency of rent increases should be restricted to annually. We would also like to see rent increases capped at Consumer Price Index unless the landlord can justify an increase above this amount.

Shared Tenancies:

The introduction of s 10 does not appear to have resolved the problem of head tenants leasing out rooms to people without the consent of the landlord via oral agreements. Instead young people are vulnerable to sudden unjustified loss of their accommodation and bond because of the operation of s 10. This section should be removed so as to allow marginal renters to regain the ability to apply for orders that a residential tenancy is in existence.

'No grounds' notice:

At the moment, a landlord does not need to justify ending the tenancy and tight rental markets mean it may not be possible to secure alternative accommodation within 90 days. We would like to see greater security afforded to those who are in periodic leases and where landlords can only terminate with significant reason to do so, and with a reasonable time frame for the tenants to move.

Breaking a lease early:

We would submit that s 100 needs another subsection to cover circumstances where a co-tenant victim wants to leave due to domestic violence and they have an interim apprehended violence order (AVO). This is to account for the length of time and complexity of obtaining a final AVO. If a co-tenant has been able to obtain an interim AVO this should be sufficient to activate s 100.

Social Housing Tenancy Agreements:

We are disappointed that pt 7 of the act was excluded from this review. We have concerns regarding the changes introduced by the *Residential Tenancies and Housing Legislation Amendment (Public Housing - Antisocial Behaviour) Bill 2015*. These concerns are around the removal of Tribunal Member discretion, the cumulative strike notice system, the evidential certificates and the neighbourhood impact statements. We have attached a short paper that outlines our concerns. A review of this part of the act is needed.

Summary of Recommendations:

1. That pt 3, div 1 be expanded to include direction on the type of information that can be requested by landlords or their agents at the application process with a specific provision stating that landlords or agents cannot seek information that is irrelevant to the applicant's capacity to rent and/or could be construed as discriminatory in nature.
2. That funding to Tenants' Advice and Advocacy Services should also be increased proportionate to the increased numbers of renters.
3. That s 41 be amended to include a provision that rents are only to be increased annually in accordance with CPI increases, unless the landlord makes an application to the NSW Civil and Administrative Tribunal (NCAT) to apply for additional increases or an additional amount.
4. That s 10 be removed entirely to allow for all renters renting from a head tenant to access rights under the act.
5. That the reviewers remove the option of no grounds termination notices for landlords under s 85, and provide grounds under which a landlord can end a periodic agreement with a 'catch all clause' for any circumstance that falls outside those grounds requiring an application to NCAT.
6. That s 100 include an additional provision allowing for termination without compensation to the landlord in instances where a co-tenant is seeking to leave a domestic violence situation and has obtained an interim AVO.
7. That pt 7 be subjected to the same review process as the rest of the act.

About Yfoundations

Yfoundations' mission is to create a future without youth homelessness. We represent young people at risk of, or experiencing, homelessness; and the services who provide direct support to them. Yfoundations provides advocacy and policy responses on issues relevant to young people affected by homelessness, and issues relevant to service providers. Our vision is to ensure that all young people have access to appropriate and permanent housing options that reflects their individual need.

Since its formation in 1979 this organisation has called for reform and improvement to broader systemic responses to youth homelessness and young people at risk of homelessness, to promote, protect and build on existing good practice and excellence and to ensure that youth homelessness remains a priority in public policy on homelessness, youth affairs, youth justice, education, child protection, employment, health/wellbeing and housing. In accordance with the United Nations convention on the rights of the child¹ we advocate that every child has the right to appropriate care and protection.

In pursuit of these goals, we have identified five 'foundations' for the positive growth and development of a young person and the process of ending youth homelessness:

- Home & Place
- Safety & Stability
- Health & Wellness
- Connections & Participation
- Education & Employment

These foundations place youth homelessness in a broader context, recognising that it interrelates with a range of issues, and the ending youth homelessness will require coordination across silos. They provide a framework for reaching out to other service areas to explore collaborative and integrated solutions. We believe it is vital that each young person has the opportunity within each domain to thrive. More information about these foundations is available on the Yfoundations' website.²

¹ Joint Standing Committee on Treaties, The Parliament of the Commonwealth of Australia, (1998), United Nations Convention in the rights of the Child, 17th Report

² <http://yfoundations.org.au/explore-and-learn/publications/the-foundations/>

Introduction

Having a home, whether you rent or own, is a necessity. Homes provide safety and security, they connect you with your community, allow you to access employment and education and facilitate overall health and wellbeing.

It is not a good time to be renting in NSW, particularly not if you are young. Last year saw the steepest jump in Sydney rental prices in 5 years, which capped off overall rent increases of no less than 16% since 2010.³ Areas such as the City and the Eastern Suburbs experienced a 25% rent increase over the 5-year period.⁴

At the same time demand is high, in 2014 31.4% of the NSW population lived in rental accommodation.⁵ In March 2015, average fortnightly rents for 1-bedroom apartments in most areas of NSW equated to almost 75% of net youth allowance payments even with the maximum rent assistance.

Rent vs Net Income (Youth Allowance & Rent Assistance) in a sample of urban and regional areas in NSW as of March 2015

Suburb	Median weekly rent*	Net fortnightly Income after rent**
Sydney	\$960	-\$397.40
Bankstown	\$464	\$98.00
Campbelltown	\$500	\$62.60
Hurstville	\$660	-\$97.4
Penrith	\$420	\$142.60
Gosford	\$440	\$122.60
Wollongong	\$440	\$122.60
Goulburn/Yass	\$460	\$102.60
Albury	\$420	\$142.60
Armidale	\$480	\$82.60
Dubbo	\$420	\$142.60
Orange	\$480	\$82.60

* Median weekly rents for new bonds for one bedroom apartments – March Quarter 2015

** Percentage of net income is based on the total of Youth allowance payment based on someone 18 year old or older, with no children, who is living outside the family home (\$433.20 per fortnight); and Rent Assistance assumed to be at the maximum rate of \$129.40 per fortnight. This means the total net income per fortnight is \$562.60 before rent.

Whilst we cannot determine statistically how many young people face discrimination at the point of applying for rental properties, we know anecdotally that young people find it difficult to access the market and that they are disproportionately represented in the 'share housing'

³ <http://qz.com/167887/germany-has-one-of-the-worlds-lowest-homeownership-rates/>

⁴ Ibid.

⁵ Australian Bureau of Statistics, 4130.0 Housing Occupancy and Costs, 2013-14, Table 17 – NSW Households – selected household characteristics, accessed on 7/1/16 at <

<http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4130.02013-14?OpenDocument>>

demographic, either through choice or through necessity. We also know that young people can experience exploitation by unscrupulous landlords and that they often feel unwilling to assert their rights because they perceive their housing situation as precarious. Yfoundations submits that, although the *Residential Tenancies Act 2010* (NSW) is quite accessible and fairly comprehensive in terms of the rights afforded to tenants, there are a number of sections of the Act that require reform, as detailed below.

The current regulatory framework

Question 2: How can the regulation of residential tenancies in NSW adapt to effectively support the changing profile of the rental market into the future?

We know anecdotally that young people are often at a disadvantage when they submit applications for properties, regardless of their capacity to pay rent. (We note that other groups can also face discrimination and many of the points raised here would be similarly applicable.)

Rebecca,⁶ 18 years old, was in foster care during her early teenage years. When her placement broke down she moved into social housing supported by a Specialist Homelessness Service. Her caseworkers describe her as extremely well organised and independent. She had a strong desire to move out of social housing and into the private rental market. With their support she applied for 75 different rental properties in the Coffs Harbour area. All were rejected; her social housing tenancy history was not seen as relevant by Real Estate Agents. She currently still resides in social housing.

Rahul and Jane⁷ are a young couple (aged 23 and 22) with a one-month-old baby. They moved to Port Macquarie to stay with Jane's family for family reasons, but were forced to move out when relations with Jane's family broke down. They have applied for 50 rental properties without success. Although have had a private rental tenancy with no problems, they are told their application is not strong enough. Some Real Estate Agents in the area have stated that they will not lease to young people under the age of 25 years. Rahul and Jane are currently dependant on a Specialist Homelessness Service for accommodation.

Those young people who do obtain accommodation often can only find it in sub-standard properties (e.g. in high crime areas, in property that is badly maintained, etc.). This discrimination can be because of their age, their sexual preference or gender (young people may be more likely to identify as transgender or intersex), or other factors in combination with their youth (for example, Aboriginal young people face very significant discrimination barriers). Lack of affordable housing can also create a catch-22 situation where a young person applying on their own will be rejected on the basis that they are unlikely to be able to

⁶ Not her real name.

⁷ Not their real names.

maintain the rent, but if young people apply jointly to share a property they will be regarded as a 'gang' of young people and rejected. Community agencies attempting to support young people will often have limited success since their support can be detrimental; some Real Estate Agents see it as positive, but others see it as evidence the young person is not desirable due to personal issues.

State and federal laws theoretically protect applicants from being discriminated against in the application process. However, it is often very difficult to establish that an applicant has been discriminated against, particularly as real estate agents as a rule generally will not explain why an applicant was not successful.

In the area of employment, good recruiting practice involves avoiding questions that could be seen as indicating discrimination in the recruitment process. For example, employers are advised to avoid asking about age or marital status. We would like to see similar practices in rental application processes. The *Residential Tenancies Act 2010* (NSW) could provide direction around the information to be requested in a tenancy application. This could be as simple as prohibiting questions that are of a discriminatory nature as defined under state and federal anti-discrimination law or specific prohibition of certain types of questions including the following:

- Age or Date of Birth
- Gender
- Relationship status to other applicants
- Whether the applicant has ever been to NCAT

We are also deeply uncomfortable with other questions, including those requiring bank statements and copies of bankcards, phone bills or passport details. We submit that there needs to be a balance between the landlord's desire (or agent's responsibility) to find the best possible tenant for the property, and the privacy of the applicant. We feel that presently applicants are expected, and feel obliged to, provide an excessive amount of information and we challenge the necessity of this.

We also have concerns that applicants with no rental history are at a disadvantage, as the application process requires previous rental ledgers and a detailed rental history. Assurance that applicants with no previous rental history will be able to provide alternative evidence of their capacity to rent, and will not be discriminated against, would be a significant improvement to the current situation.

Recommendation 1:

That pt 3, div 1 be expanded to include direction on the type of information that can be requested by landlords or their agents at the application process with a specific provision stating that landlords or agents cannot seek information that is irrelevant to the applicant's capacity to rent and/or could be construed as discriminatory in nature.

Interest on bonds

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?

The current state of the NSW rental market is such that tenants are more vulnerable than ever, particularly those tenants who are looking to rent cheaply. Increasingly we are observing tenants making trade-offs for the sake of affordability, in many instances compromising their comfort and safety. Tenants are renting for longer and investing more in their 'homes'. We are seeing classes of people who would previously have held mortgages now negotiating the rental market, for example, families and the elderly. In this environment organisations that provide education to tenants and advocate for their interests are of increased importance.

Yfoundations is a strong supporter of Tenants Advice and Advocacy Services as a source of independent, specialist advice and advocacy for tenants. We believe that this service is essential for tenants in order to allow them to interact on an 'even playing field' with landlords, who are more often than not represented by real estate agents.

The Tenants' Advice and Advocacy Services go beyond the renting information service provided by NSW Fair Trading in that they provide specific advice to a tenant in their specific situation. Feedback we have received from tenants who have utilised NSW Fair Trading's service is that the information they received was of a much more generic nature and as such less useful. They were also unable to receive casework assistance, for example, help to prepare NCAT applications or advocacy at NCAT proceedings.

We understand that the Tenants' Advice and Advocacy Services have not received additional funding despite a 25% increase in renters since 2002. We strongly urge the NSW Government to increase the funding proportionally with increases in the numbers of renters. We believe that the channelling of a proportion of interest from tenants' bonds to the Tenants Advice and Advocacy Services is an appropriate use of this money.

Recommendation 2:

That funding to Tenants' Advice and Advocacy Services should also be increased proportionate to the increased numbers of renters.

Disputes about rent increases

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?

As an organisation with an aim of preventing youth homelessness, housing affordability is a strong concern. High house prices are forcing would-be first homebuyers to remain in the rental market.⁸ Housing NSW's Rent and Sales Report for the March 2015 Quarter showed rent increases for all rental dwellings over the past year of 2.6% in the Sydney Inner Ring up to \$595 per week, 4.2% in the middle ring to \$500 per week, 2.4% in the outer ring to \$430 per week and 2.0% up to \$500 in the Greater Sydney Region.⁹ These increases were not confined to the Sydney area, with the rest of NSW experiencing a median rent increase of 3.6% to a median rent of \$430.¹⁰

Currently a landlord can increase rent in a continuing agreement with 60 days of notice. There is no cap on the amount by which a landlord can increase the rent, although tenants can contest what is considered to be an 'excessive rent increase' if the rent increase is unreasonable in view of the market rent. It is not unusual for tenants to experience rent increases of \$20 or more per week, and this can have a significant impact on their available income for food and other essentials. It is our experience that many young people experiencing rental stress go without meals, or skimp on other essentials such as medication, in order to pay their rent. An additional \$40 per fortnight for someone who is economically disadvantaged can represent a significant proportion of their income.

We would like to see the frequency of rent increases reduced to annually. We would also like to see rent increases capped at Consumer Price Index unless the landlord can justify an increase above this amount. Instances where the landlord wishes to increase the rent above this amount, they should be required to apply to NCAT, where they would bear the onus for demonstrating why the increase is required.

Recommendation 3:

That s 41 be amended to include a provision that rents are only to be increased annually in accordance with CPI increases, unless the landlord makes an application to NCAT to apply for additional increases/an additional amount.

⁸ <http://www.domain.com.au/news/biggest-jump-in-sydney-rents-in-five-years-domain-group-20150708-gi7q92/>

⁹ Housing NSW, Rent and Sales Report -

http://www.housing.nsw.gov.au/_data/assets/pdf_file/0004/326416/1Rent_SaleReport111.pdf

¹⁰ Ibid.

Shared tenancies

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

Young people, particularly those with low income or disadvantaged backgrounds, will often need to rent as part of a share house in order to live within a reasonable distance of employment and study opportunities. Where the agreement is unwritten, which is usually the case, young people are vulnerable to sudden unjustified loss of their accommodation and bond because of the operation of s 10. This is the sort of crisis that can precipitate homelessness for a young person.

Prior to the introduction of s 10, it was possible to argue, on the basis of the circumstances of the case, that a residential tenancy agreement was in force between a head tenant and someone renting from them, even where there was not a written residential tenancy agreement. It was possible to argue that a person was a tenant if they exercised exclusive possession of at least part of the premises, and could demonstrate the existence of oral terms of agreement, such as an agreed term for residing in the premises and an agreed rent.

The introduction of s 10 has removed all flexibility by stating outright that there can be no residential tenancy agreement between a head tenant on a residential tenancy agreement and someone who rents from them without a written agreement. This has been enforced at NCAT in a number of instances and has resulted in vulnerable renters being denied access to rights under the Act.

The reality of renting at the lower end of the rental market is that there is a limited supply of affordable share houses, particularly in high demand areas like Sydney. Young people make up a significant proportion of people who seek out accommodation in lower cost share houses and we have been told by a number of young renters who have experienced share house problems that they did not ask for an agreement when they moved in because they were concerned that they would not be accepted into the share-house.

These renters are vulnerable to lose substantial bonds, despite having receipts, because they cannot access the NSW Civil and Administrative Tribunal to enforce repayment. They are also more likely to be living in substandard/unsafe environments, for example, living in properties that have inadequate security or overcrowding, because they are unable to access the rights provided to renters around these issues in the *Residential Tenancies Act 2010* (NSW).

In some instances, where 5 or more renters live at the premises, it may be possible for a renter to be identified as a 'border/lodger', which provides them with rights under the *Boarding Houses Act 2012* (NSW), but many of these share houses sit outside the 'registrable boarding house' category.

Currently, the only option available to renters in share houses is to apply to NCAT under the consumer division or to apply for debt recovery through the Small Claims Division of the

Local Court in the case where the head tenant refuses to repay bond and/or overpaid rent. Both of these methods are complex, often long, and do not necessarily provide appropriate remedies in the context of renting a room. There is no appropriate 'fit' for these types of cases.

The introduction of s 10 does not appear to have resolved, as was intended, the problem of head tenants leasing out rooms to people without the consent of the landlord via oral agreements. This is despite a strong campaign by the Tenants Union of NSW to try to encourage the signing of share housing agreements. We would of course, like to see all renters with written agreements as a preference, but submit that it is necessary to look at the reality of the renting situation and to ensure that all who rent have access to basic rights. Considering the fact that the *Residential Tenancies Act 2010* (NSW) already provides that a landlord can terminate a tenant for breach of the agreement (including sub-letting without consent), it is submitted that the review panel should look to removing s 10, so as to allow marginal renters to regain the ability to apply for orders that a residential tenancy is in existence.

Recommendation 4:

That s 10 be removed entirely to allow for all renters renting from a head tenant to access rights under the act.

'No grounds' notice

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

A stable home is critical to health and wellbeing. Currently landlords can terminate continuing tenancies, with 90 days notice, without grounds under s 85 unless the tenant has been in occupation for more than 20 years. This places tenants in a position where they only have 3 months security of tenure at any given time once their fixed term agreement expires. The *Residential Tenancies Act 2010* (NSW) acknowledges that s 85 can be exploited; the Act contains a specific clause prohibiting retaliatory evictions (s 115). However, it is often difficult to prove a landlord's motivations.

At the moment, a landlord does not need to justify ending the tenancy despite the significant upheaval involved in the tenant (and possibly their family) having to move. Tight rental markets make finding tenancies a highly competitive process and it may not be possible to secure alternative accommodation within 90 days.

For a young family, a move may involve: having to organise or change arrangements around childcare; moving away from support persons who can assist with the children's care; longer commutes for parents or adjustments to their working hours or work status; plus the outlay of paying to move belongings, paying a new bond, losing wages or holiday leave to inspect properties and to physically move. For young people without families, there is still the risks of social isolation, loss of job, loss of support networks and community, extended commutes to

work, and significant financial outlay, as well as the loss of wages again, for time spent inspecting properties and physically moving.

The Holmes and Rahe Stress Scale lists 43 stressful events that can result in illness. Change of residence, change in schools and change in living conditions were all on this list as life events that can contribute to illness. There were also a number of other events that could result as a consequence of a move, for example, change in social activities which were also considered stressors.¹¹

It is time that an approach was taken that allows for greater security of tenure for those who want it, more in alignment with the rental situation in countries like Germany, which has one of the lowest rates of home ownership in the world.¹²

In Germany, tenancy contracts are usually unlimited at the onset. If the landlord wants to terminate the tenancy and there is no breach of an important term by the tenant, the landlord can issue an 'ordinary notice' to vacate with a minimum 3 month time limit to vacate only if the following apply:

- 1) The landlord needs the property to live in themselves, or
- 2) The tenant is manifestly in breach of the contract, or
- 3) The lease contract prevents the landlord from making an 'economically justifiable use' of the property.¹³

Termination notice periods are based on how long the tenant has resided in the property, with notice periods of up to nine months not unusual. Tenants can also contest termination on the basis of hardship.¹⁴ Tenants are able to terminate generally with three months of notice and do not have to provide a reason.¹⁵

Our current system in NSW of offering fixed term tenancies as the norm, usually for 6 months to a year and then transferring automatically to a continuing agreement which is less stable is a relic of the days where renting was a temporary stepping stone to home ownership. We would like to see the NSW Government implement changes to the *Residential Tenancies Act 2010* (NSW) whereby there is greater security afforded to those who are in periodic leases and where landlords can only terminate with significant reason to do so, and with a reasonable time frame for the tenants to move.

We understand that the Tenants' Union of NSW has proposed that beyond the provisions already provided in the *Residential Tenancies Act 2010* (NSW), landlords might be able to justify termination if:

- 1) The landlord needs the property to live in themselves, or
- 2) There are major renovations being done to the property such that the place will be unliveable during the time that the work is being done,

¹¹ Holmes and Rahe Stress Scale, Wikipedia, Accessed 26/1/16

<https://en.wikipedia.org/wiki/Holmes_and_Rahe_stress_scale>

¹² <http://qz.com/167887/germany-has-one-of-the-worlds-lowest-homeownership-rates/>

¹³ <http://www.globalpropertyguide.com/Europe/germany/Landlord-and-Tenant>

¹⁴ *ibid*

¹⁵ *ibid*

- 3) Where the landlord requires the property for any purpose that is sufficient to displace an occupying household¹⁶

We agree with these potential reasons, but would submit that in the case where the landlord requires the property for a purpose that they feel is sufficient to terminate the tenancy, they should have to apply to NCAT to do so.

We would also like to see a sliding scale for notice periods with 90 days as the minimum notice period that can be given and the capacity for tenants to apply to NCAT for an extension to the notice period on the basis of hardship.

Recommendation 5:

That the reviewers remove the option of no grounds termination notices for landlords under s 85, and provide grounds under which a landlord can end a periodic agreement with a 'catch all clause' for any circumstance that falls outside those grounds requiring an application to NCAT.

Breaking a lease early

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

We would submit that s 100 needs another subsection to cover circumstances where a co-tenant victim wants to leave due to domestic violence and they have an interim AVO. This is to account for the length of time and complexity of obtaining a final AVO.

We feel that this is a necessary inclusion as it allows those who are at risk of violence to vacate the property without being financially bound to pay rent until the tenancy ends. It is different to s 100(1)(d) which appears to be aimed at allowing a victim of domestic violence to avoid financial liability for the entire property when a perpetrator co-tenant is prohibited from remaining in the premises. The new addition we are proposing would be aimed at specifically aiding people to escape violence when the co-tenant has not been excluded by a final order AVO. We feel that this is a critical inclusion as we are aware of situations where a victim of domestic violence feels compelled to remain in the property or ends up paying double rent because they cannot remain in the property but are financially still required to pay. Such a situation places a victim at risk of homelessness.

We submit that the requirement for a final order AVO is overly onerous, especially when in other situations, such as illegal use, for instance, the standard that is applied is whether the illegal act was committed at the premises on the balance of probabilities.

If a co-tenant has been able to obtain an interim AVO this should be sufficient to activate s 100. The current alternative is for the co-tenant to apply to NCAT on the basis of hardship or to try to assign the tenancy to the perpetrator. In requiring the Final Order AVO, the Act

¹⁶ Tenants Union of NSW Paper, *NSW renting laws are under review.* ,

makes it that much harder for victims to flee domestic violence situations and forcing a victim to apply to NCAT to terminate opens up a real possibility for the perpetrator (who can appear as an interested party to the proceedings) to further inflict harm on the victim, for example:

Angela¹⁷ obtained an interim AVO against her partner, Rob, after he assaulted her. Angela wanted to leave their tenancy because she was scared for her wellbeing. She was living elsewhere temporarily and was paying double rent, which she couldn't continue to sustain.

Angela tried to break the agreement with her agent and was told that she would only be able to remove her interest if Rob took over responsibility for the entire lease. Rob refused, although he wanted to remain in the property.

Angela applied to NCAT to terminate her interest in the tenancy on the basis of financial hardship. Rob joined proceedings as an interested party and drew out the process, seeking vast amounts of documents and applying for adjournments. The AVO hearing was similarly sabotaged.

After months, Angela still did not have a final order AVO. She finally reached an agreement with Rob where she would continue to pay rent for a set time until he could find a place and move out. The landlord agreed to release them from the agreement. Rob was able to have full use of the property at half rent effectively for two months.

Angela stated that she had felt let down and re-victimised by the process of trying to leave the tenancy. She felt that she had had to endure an invasive process (she was cross examined by Rob) despite having evidence on the balance of probabilities that she was at risk.

Recommendation 6:

That s 100 include an additional provision allowing for termination without compensation to the landlord in instances where a co-tenant is seeking to leave a domestic violence situation and has obtained an interim AVO.

¹⁷ Not her real name.

Social housing tenancy agreements

We are disappointed that pt 7 of the act was excluded from this review. The discussion paper refers to reforms in this area being addressed by 'other review processes'. However this risks reviews of this area of the act, catering to some of the most vulnerable in our society, being less extensive and transparent. This has been the case in regards to changes made by the *Residential Tenancies and Housing Legislation Amendment (Public Housing - Antisocial Behaviour) Bill 2015*. For this reason we attach a brief report outlining Yfoundations concerns with the changes made under this Bill. In summary our concerns are:

The removal of Tribunal Member discretion with regards to s 90 applications for termination is concerning. The *Residential Tenancies Act 2010* (NSW) should remain unchanged in terms of Member discretion, in order to account for various mitigating circumstances such as contrition, entry into rehabilitation programs, and mental health issues.

Also of concern is legislatively compelling Members, in regards to s 87, to look at previous breaches of agreement. It is unnecessary and raises privacy issues, particularly in relations to previous tenancies with other providers. Currently Members exercise common sense in determining what should be taken into account in decisions to terminate tenancies.

The introduction of a cumulative notice strike system may result in terminations for a series of minor breaches. The system will likely not reflect the complexity of issues faced by many tenants in social housing. Termination of tenancy agreements is a very serious act with major consequences on the tenant and their family. This is particularly the case in a social housing context where there are little to no other options for the tenant and their family, including children. Termination should only be ordered for serious breaches, not as consequence for series of minor offences.

The changes provide for the introduction of an evidentiary certificate for use in the tribunal. The use of an evidentiary certification in tribunal proceeding as evidence of an alleged incident and the actions of the housing provider to try to resolve the issues is not in itself problematic. However, there is a possibility that such a certificate would be, in effect, considered as conclusive proof of a breach raising doubts the natural justice of such a change.

Neighbours will be able to provide the tribunal with anonymous neighbourhood impact statements. This involves no accountability of the authors; the statements could be made vexatiously or the authors may not be reliable witnesses due to a variety of medical reasons. Neighbours can already be called as witnesses and a tenant can challenge accusations made by a neighbour through cross-examination, which accords with natural justice.

Recommendation 7:

That pt 7 be subjected to the same review process as the rest of the act.