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Submission to Review of Social and Affordable Housing Rent Models

Kingsford Legal Centre ('KLC') welcomes the opportunity to provide a submission to the Independent Pricing and Regulatory Tribunal (IPART) review of rent models for social and affordable housing. Our submission draws on the experiences of our clients and solicitors in advising and representing clients in social housing. All case studies have been de-identified to protect our clients' confidentiality. Quotes from local public housing tenants are drawn from a consultation process we conducted in 2015.

Central to the review is a perception of inflexibility and inefficiency in the existing model that creates inequities between social housing tenants, and between social housing tenants and those on the wait list. We note that the right to safe, secure and affordable housing is a fundamental human right, as guaranteed in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights¹. In our experience, the current model fails to ensure vulnerable people are able to access this right.

The Issues Paper states that "housing providers do not have the flexibility to allocate the available social housing stock in a way that maximises the value all tenants derive from this stock."² The Issues Paper acknowledges that social housing tenants and applicants have complex and multi-faceted needs beyond the basic need for housing. However, most of the proposed changes in the Issues Paper to the eligibility criteria and rent pricing models will likely exacerbate these housing needs rather than eliminate them. In our view, the proposals do not take into account that the reasons for the improved circumstances of a social housing tenant are likely the direct result of housing affordability and security, participation in the community,

¹ Universal Declaration of Human Rights, Article 25(1); International Covenant on Economic, Social and Cultural Rights, Article 11.

² IPART Issues Paper, 41.

and social networks. While the interests of the existing tenant of a social housing dwelling inevitably need to be balanced against the interests of other tenants or wait list clients for whom that dwelling might be more suitable, any future social housing model needs to consider the social costs that existing tenants incur when being moved out of social housing, including homelessness.

About Kingsford Legal Centre

KLC is a community legal centre that has been providing legal advice and advocacy to people in need of legal assistance in the Randwick and Botany Local Government areas in Sydney NSW since 1981. KLC provides general advice on a wide range of legal issues, including housing matters, and undertakes casework for clients, many of whom live in public housing, are homeless or are at risk of becoming homeless.

KLC also has a specialist employment law service, a specialist discrimination law service (NSW wide) and an Aboriginal Access Program. In addition to this work, KLC also undertakes law reform and policy work in areas where the operation and effectiveness of the law could be improved.

There are almost 2,000 public housing tenants living in the Randwick and Botany Local Government areas. In 2015 KLC provided 177 advices on tenancy law, which was over 10% of all advice provided (1710 advices). Of the advice provided in 2015, over 33% of people advised rented in the private market, 25% lived in public housing, 5% boarded and 9 people identified as homeless.

We work closely with Kooloora Community Centre and provide an outreach legal advice service at Kooloora. In 2015 we provided 29 advices at the Kooloora outreach, of which 59% were for public housing tenants. 69% of clients at the outreach reported low or no income. 31% of clients identified as Aboriginal and/or Torres Strait Islander. Tenancy was the largest single area of advice at this outreach at 32% of all advices.

Recommendations

1. The eligibility criteria for social housing should not be restricted to include only those currently eligible for the priority wait list;
2. The Government should provide more social housing in order to offer greater housing affordability and security, and in turn provide tenants with greater independence and opportunities;
3. The Government should make social housing more accessible to victims of family and domestic violence;
4. The Government should not reduce the income threshold for renewing social housing leases;

5. The income threshold should take into account a tenant's capacity to afford private rent in his or her local area. One possible solution is to set the threshold at the point where the private market rent is equal to 30% of the tenant's income;
6. Alternatively, the Government should increase funding and provision of affordable housing and rent subsidies to help transition tenants who surpass the threshold;
7. An income-based framework be used to set rental prices, only up to 30% of income;
8. The rent-setting framework should not take into account amenities, location, quality, or the costs of providing social housing; and
9. The Government should not classify tenants into the 'opportunity' and safety net' groups based on generalised criteria. Assessing whether it is appropriate to transition a tenant to the private market should involve an individualised assessment, taking into account the individual circumstances of the tenant.

Restricting eligibility criteria for social housing

"I really can't afford it, can't afford to go if you move me."

Alby, public housing tenant

"I'm still on Centrelink disability I still can't afford to access the market rent out their especially in this area from paying \$98 a week you have to pay something like \$500 a week for a place like mine in this area and that's just not affordable for anyone in my circumstance."

Elsie, public housing tenant

In our view, the proposal to restrict eligibility for social housing to applicants who would currently meet the criteria for the priority wait-list is not appropriate. Making 60,000 vulnerable people ineligible for social housing is not a solution. Complementary housing assistance may be appropriate for the period of time applicants spend on the wait-list, but it is no substitute for the security and stability that social housing provides. Efforts to reduce the time people spend on the priority waiting list are indeed worthy and necessary. However, those on the general waiting list are also vulnerable and in need of housing security. The priority list reflects only the extreme sample of a class of people living below the poverty line.

IPART states it recognises the importance that housing security plays in making people more productive and engaged in the community and in the workforce.³ KLC's experience supports this conclusion.

³ Issues Paper, 24.

Case study: Kalli

Kalli is an Aboriginal woman living with a disability. She and her son were homeless before moving into public housing in Malabar in 2000. She is on the disability support pension and cannot afford market rent. With a permanent home and local supports, Kalli and her son are able to contribute valuably to their wider community.

Kalli's son finished school at a local high school, and works full-time while also caring for Kalli. Kalli has continued to work in the community helping children with homework help, teaching scripture at the local school, working for a community group and supporting young families. She drives people to doctor and hospital appointments. She was on the management committee of her local community centre and continues to assist them with their newsletter.

Kalli says that her local networks and support systems are very important and that life would be very difficult for her and her neighbours if they were moved. They look out for one another. When her son is away, her neighbours support her and care for her.

Promoting housing security should be a key economic priority for the Government. The Government can increase housing security by providing more public housing to those who would struggle to find secure housing in the private market. Restricting access to secure and affordable housing will increase the number of people experiencing housing stress in the private market, force people to live in unstable housing arrangements and drive more people into homelessness. The Government should not wait until someone's circumstances are so severe as to qualify them for the priority waiting list to intervene and provide them with housing. It should intervene at the earliest possible opportunity to promote the productivity and well-being of those who meet the income threshold.

Social housing is the most effective assistance for those who meet the income threshold but do not have a priority need for housing. In our view, there is no better alternative. Those currently on the waiting list are already receiving financial support, which is not enough to ease the significant burden of private rental prices on vulnerable and low-income people. Increasing subsidies for privately rented dwellings will only exacerbate the already rising costs of rent prices. Financial support alone does very little to guarantee housing security as vulnerable and low-income tenants are still at the mercy of private landlords and rent increases. The Government should look at alternative ways to construct affordable and more accessible housing in order to increase its stock of social housing dwellings rather than limiting vulnerable people's access to the fundamental human right to housing.

In our experience, eligibility restrictions based on findings that applicants can resolve their need in the private rental market are unfair and unrealistic, and put people at

increased risk of homelessness. Under current Housing NSW policy, applicants are considered to be able to afford private rental accommodation if there are private properties that would cost 50% of their income in rent. This is despite all recognised housing affordability measures placing housing affordability at 30% of a person's income. The policy also fails to consider the real financial circumstances of applicants by excluding factors such as debt, and whether an applicant is actually able to secure a private property, which for many people on low income is extremely difficult. This is especially the case for people with specific housing needs, including people with disabilities and people who require housing in a particular locality (for proximity to medical services, support services and community groups) or for people with poor private rental histories.

We also see women clients who are escaping domestic and family violence and are urgently looking for a safe home for them and their children. Even women who rely solely on a Centrelink income are unlikely to be eligible for priority housing, unless they or their children have multiple disabilities. Domestic and family violence is one of the leading causes of homelessness in Australia, and among women. It is essential that women escaping domestic violence can access affordable and safe housing, and that the barriers towards doing this are removed.

One such barrier is the excessive documentary evidence of domestic violence that Housing NSW often requires of victims seeking to access priority housing. For example, Housing NSW has required our clients to provide evidence that the perpetrator has been charged with a domestic violence offence before approving priority housing, even though their policy, which sets out the evidence requirements for priority housing, does not require evidence of charges or convictions. These evidentiary expectations are inconsistent with the common understanding that victims of domestic violence are often reluctant to report violence to the police because they fear the violence will escalate.

We have also advised victims of domestic violence who have difficulty sustaining their public housing tenancies due to Housing NSW policies that do not allow them to apply to be recognised as a tenant.

Case study: Martha

Martha is 66 years old and had been living in public housing for the past 25 years with her abusive husband. Her husband was the tenant and she was an authorised occupant.

After Martha's husband left her, she found out that he was running several businesses. Martha doesn't have any access to profits from the businesses. Her sole source of income is the aged pension.

Martha applied to remain living in the property, however her request was denied because Housing NSW 'recognition as a tenant' policy does not apply in circumstances of family breakdowns.

Martha was not eligible to be housed elsewhere either because her husband ran a business, even though she did not have access to any of the profits of the business and could not afford to rent in the private market.

KLC recommends that:

1. The eligibility criteria for social housing should not be restricted to include only those currently eligible for the priority wait list;
2. The Government should provide more social housing in order to offer greater housing affordability and security, and in turn provide tenants with greater independence and opportunities; and
3. The Government should make social housing more accessible to victims of domestic violence.

Reducing the income threshold for renewing public housing leases

"The rents should be based on income of course. If someone gets less, pays less and if gets more, then they must pay more! As it is now! ...The rate of rent is fair at the moment, so the way it is going, if becomes more, it will hurt many people financially and mentally."

Ahmad, public housing tenant

KLC does not support the blanket reduction of the income threshold for renewing public housing leases. As the Issues Paper itself notes, the increased threshold exists to address the disincentive to obtain employment. A reduction in the threshold would be counter to the Government's economic interests in having a productive workforce and lifting social housing tenants out of poverty. While a higher threshold might allow people to remain in social housing for longer periods, this is preferable to evicting tenants who cannot afford private rental prices and whose progress will be undermined by increased housing stress and a return to housing insecurity. By reducing the threshold, the Government might achieve a higher turnover rate of tenants that move from social housing back into private housing, but this statistic is meaningless, because those who become ineligible for a lease renewal still might not earn enough to afford private rental dwellings. A very small change in circumstances might reduce their earnings once again and return them to social housing or cause them to become homeless.

“You can’t put a dollar value on [people], so you write them off, but they have great value. ... They contribute to their neighbours in so many ways. There’s a perception that you live on public housing and everybody’s crime ridden and it’s horrible but that’s not my reality of it. I know my mum has great neighbours who she looks after, who look after her, you know there’s a great community so, and that’s something we will fight to hold on to, and they will fight to hold on to. ... Just value these people.”

Denise, KLC worker and former public housing tenant

Moving people out of social housing should not be an end in itself. The contribution made by social housing tenants in areas other than employment, such as volunteering and community work, should be noted. Rather, the end should be allowing social housing tenants who are able (the Issues Paper calls this group the ‘opportunity group’) to raise themselves out of poverty to a point where they can afford the private rental market. To this end, the threshold should not be a fixed dollar amount that applies in all circumstances and in all regions of NSW. Rather it should take into account the local private market rent and the tenant’s ability to afford it. Our preferred solution is to have the income threshold set at the point where the private market rent for the area a tenant currently lives in is equivalent to up to 30% of that tenant’s income. Alternatively, an increase in affordable housing or rent assistance might help transition those who pass the income threshold but do not earn enough to afford private rent in their area.

It is important to note that social housing tenants often have difficulty obtaining employment, particularly full-time employment, not for lack of motivation, but due to factors beyond their control. The Issues Paper acknowledges that the ‘higher unemployment rate may be explained by the tenant profile of social housing in general, which has changed substantially over the past several decades reflecting the rationed allocation to high needs applicants.’⁴ Disability, age, carer’s responsibilities and a lack of job opportunities inhibit many social housing tenants from finding secure employment. It is not appropriate to try to transition these tenants out of social housing. Considering that social housing tenants have increasingly tended to fall into this category due to the prioritisation of ‘high needs applicants,’ it is necessary to reconceptualise social housing from a temporary and transitional measure to a safety net that aims to improve the well-being and agency of those with complex needs.

KLC recommends that:

4. The Government should not reduce the income threshold for renewing social housing leases;
5. The income threshold should take into account a tenant’s capacity to afford private rent in his or her local area. One possible solution is to set

⁴ Issues Paper 24.

the threshold at the point where the private market rent is equal to 30% of the tenant's income; and

6. Alternatively, the Government should increase funding and provision of affordable housing and rent subsidies to help transition tenants who surpass the threshold.

Changing the rent-setting framework

“I’ve been living here now for 14 years I wouldn’t like to be moved from this area because of the network that I have and the support systems that I’ve made since I’ve been here.”

Meena, public housing tenant

“If you put it on a base where you, a suburb base, or an area base, and you pay rent according to that suburb, I think that would be totally unfair and not workable. It would discriminate against people that have lived in the eastern suburbs for 30 years and then we’d have to pay double the rent. That is unacceptable, you could not do that, it would not work. It would create more poverty than we already have.”

Sandra, public housing tenant

KLC is of the opinion that an income based rent-setting framework is the best option. This framework is personalised to a tenant's individual circumstances and capacity to earn income and pay rent. It ensures social housing remains affordable, and in doing so, increases tenants' independence and opportunities to engage in the community and workforce. Increasing rent according to property quality, location or amenities risks making social housing unaffordable and undermining the stated aims of improving the circumstances of social housing tenants and transitioning the 'opportunity group' out of social housing.

The Issues Paper suggests that this framework suffers several weaknesses. The first weakness is that it can create disincentives to work. However, earlier in the Issues Paper, it is acknowledged that employment rates tended to increase following a move into social housing. The motivation to work clearly exists and efforts to seek and secure employment should be encouraged by keeping rent affordable.

Charging rents based on amenities, location or quality of a dwelling will exacerbate the inequities between tenants. For example, despite earning the same income, a tenant in Kingsford will be paying more than a tenant in Dubbo. This model will force tenants out of expensive locations and create concentrated public housing areas in cheaper locations. The move will also likely have adverse impacts on tenants' well-being, as they will be forced to leave their communities, social networks and infrastructure, like schools, doctors, and counsellors. Commuting to work will be

more difficult and opportunities to find new work will be scarce. Both the 'safety net' and 'opportunity' groups will be disadvantaged and this will undermine efforts to transition people out of social housing.

KLC recommends that:

7. An income-based framework be used to set rental prices, only up to 30% of income; and
8. The rent-setting framework should not take into account amenities, location, quality, or the costs of providing social housing.

Distinguishing between the 'safety-net' and 'opportunity' groups

KLC does not believe that it is appropriate to distinguish between 'opportunity' and 'safety-net' groups and to classify tenants into one of these two categories based on generalised criteria. The labelling of 'opportunity group' risks worsening the misconception that the majority of social housing tenants suffer only from poverty and lack of opportunities. The reality is that most social housing tenants have complex needs and vulnerabilities. Assessing whether it is appropriate to transition a tenant to the private rent market, and designing strategies to assist that transition should be tailored to the circumstances of individual tenants. In addition, the Government should ensure greater support and opportunities for social housing tenants to address their complex needs and, if appropriate, to secure employment. Instrumental to this is the need to promote tenants' independence by keeping rent affordable.

KLC recommends that:

9. The Government should not classify tenants into the 'opportunity' and 'safety net' groups based on generalised criteria. Assessing whether it is appropriate to transition a tenant to the private market should involve an individualised assessment, taking into account the individual circumstances of the tenant.

Please contact us on (02)9385 9566 should you wish to discuss our submission.

Yours faithfully,
Kingsford Legal Centre

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