



Re-leased: improving standards for tenants

**Submission in response to the NSW Government's review of
the *New South Wales Residential Tenancies Act 2010***

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and

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1. Introduction

1.1 The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights;
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the (then) Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from NSW Trade and Investment for its work on energy and water, and from Allens for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

1.2 Homeless Persons' Legal Service (HPLS)

Through HPLS, PIAC has significant experience with people who are homeless or in housing crisis, and who are seeking to access rental accommodation or have had difficulties sustaining their rental accommodation.

HPLS provides free legal advice and representation to people who are homeless or at risk of homelessness through its 14 free legal advice clinics that operate throughout metropolitan Sydney, outer western Sydney and the Hunter. Since it commenced in 2004, HPLS has responded to requests for legal assistance from homeless people or people at risk of homelessness on over 10,000 occasions, and provided legal assistance to more than 5,400 people. In 2015, HPLS helped over 700 people with a range of civil and criminal law matters. Of these, 22 per cent displayed some form of mental illness or self-identified as having a mental illness.

1.3 Energy + Water Consumer's Advocacy Program (EWCAP)

EWCAP was established at PIAC as the Utilities Consumer's Advocacy Program in 1998 with NSW Government funding. The aim of the program is to develop policy and advocate in the interests of low-income and other residential consumers in the NSW energy and water markets. PIAC receives policy input to the program from a community-based reference group whose members include:

- Council of Social Service of NSW (NCOSS);
- Combined Pensioners and Superannuants Association of NSW;
- Tenants Union of NSW;
- Ethnic Communities Council of NSW;
- Physical Disability Council of NSW;
- St Vincent de Paul Society of NSW; and
- The Salvation Army Eastern Australia Conference.

2. Review of the *Residential Tenancies Act 2010*

PIAC thanks NSW Fair Trading for the opportunity to provide comment on the review of the *New South Wales Residential Tenancies Act 2010* (the Act). PIAC's recommendations are based on its experience with clients affected by the operation of the Act, particularly in two program areas, the Homeless Persons' Legal Service (HPLS) and the Energy and Water Consumer Advocacy Program (EWCAP).

There are approximately 2 million people residing in rental occupancies in NSW.¹ PIAC acknowledges that Section 7 (Social Housing Tenancy Agreements) of the *Residential Tenancies Act 2010* (the RT Act) is not a part of the current review.² PIAC responded to the discussion paper released by the NSW Department of Family and Community Services in November 2014, which addressed this part of the Act.³

In the present submission, PIAC endorses certain aspects of the report by the Tenants' Union of New South Wales, and has identified amendments to the Act that address the way in which its clients have been affected by the Act's current operation.

PIAC considers that housing affordability extends beyond rental and buying costs, and should include consideration of secondary costs such as the cost of essential services.

2.1 Endorsement of the Tenants' Union of New South Wales

PIAC endorses the recommendations made by the Tenants' Union of New South Wales in its report *5 Years of the Residential Tenancies Act 2010 in New South Wales*, released in July

¹ Tenants' Union of New South Wales, *NSW renting laws are under review! (2015)*

² http://intranet.tenants.org.au/print/policy-papers/FTdiscussion_talkingpoints.pdf, Accessed on 7 January 2016. NSW Department of Fair Trading, *Statutory Review of the Residential Tenancies Act 2010: Discussion Paper* October 6 2015.

³ PIAC, *Social Housing in NSW – More than just a roof over our heads*, February 2015. Available at <http://www.piac.asn.au/publication/2015/02/social-housing-nsw>

2015.⁴ In particular, PIAC supports the proposal to amend sections 84 and 85 of the Act to remove the option to end tenancies without grounds, and instead provide an expanded list of grounds for termination (which could include circumstances where the landlord requires the property for another legitimate purpose, or where the property is to be renovated such that vacant possession is required). PIAC shares the following concerns expressed by the Tenants' Union:

- That tenants may be forced into housing crisis or homelessness after receiving a notice of rent increase together with a no-grounds notice of termination, forcing them to choose which they would prefer;
- That tenants who take their landlord to the Tribunal for issues relating to repairs, maintenance, or other performance issues, may be issued with a no-grounds termination at a subsequent point in time.⁵

PIAC also agrees with the Tenants' Union that sections 79 and 102(2) should be amended, regarding termination of a co-tenancy where a co-tenant is prohibited from accessing a rented property by an apprehended violence order. PIAC submits that the Tribunal should be directed to make orders 'on the papers' where an application to end a co-tenancy has arisen from an interim apprehended violence order that prohibits a co-tenant from accessing the residential premises, but where a final apprehended violence order has not yet been made.⁶

It is the experience of HPLS that women seeking legal advice through HPLS clinics are three times more likely than men to present with a family law or domestic violence problem, and three times more likely than men to present with a tenancy problem. In addition, women are twice as likely as men to present with multiple legal problems. It is the experience of HPLS that women will often present to its legal clinics with a combination of tenancy, family law and domestic violence related legal problems, which are often intersected and interrelated. PIAC, therefore, supports the Tenants Union proposal that would provide greater protection to the tenancy of women who have been subjected to domestic violence, and are at risk of losing their tenancy.

3. Energy and water utilities

Residential tenants can be particularly exposed to price changes in utilities, as they do not have control over capital improvements to the properties in which they reside, and do not benefit from many of the schemes and other protections available to owner-occupiers.

In 2014/15, the Energy and Water Ombudsman NSW (EWON) received 8,512 complaints regarding affordability, disconnection and credit concerns.⁷ In that period, 31,979 households in NSW were disconnected from their electricity, and 7,555 were disconnected from gas⁸. Past studies show that a large proportion of disconnections are of tenants living in private and social

⁴ Tenants' Union of New South Wales, *5 Years of the Residential Tenancies Act 2010 in New South Wales*, July 2015.

⁵ Abid 4, 7-8.

⁶ Abid 4, 18.

⁷ EWON, *Annual Report*, (2015) <http://www.ewon.com.au/index.cfm/publications/annual-reports/annual-report-2014-2015/ombudsmans-report-2014-2015/> Accessed on 5 January 2016.

⁸ AER, *NSW – residential customer disconnection*, (2016) <https://www.aer.gov.au/retail-markets/retail-statistics/nsw-residential-customer-disconnections>, Accessed on 5 January 2016.

rental accommodation, indicating an area where socio-economic disadvantage might be present and where assistance may be needed.⁹

PIAC recognises that energy efficiency is a multifaceted issue over which the Act does not have sole influence, but it is an issue that requires further attention from governments, and a coordinated approach across all relevant legislation and policy. In this vein, amendments to the Act can be an important part of bringing in consistency that reaches all consumers.

It is in this context that PIAC provides its comment on the particular questions posed by the Department, below.

3.1 Response to questions 18 and 19

Question 18. How can the ‘split incentive’ issue be addressed in the residential tenancy market?

PIAC recognises that residential tenants in NSW have little influence over the quality of fixed appliances, or the energy and water efficiency standards of the property they reside in. Renting requires tenants to live in conditions as stipulated in the lease by the owner that are usually limited by the existing infrastructure, unless both the landlord and tenant agree to changes.

Particularly with regards to energy efficiency, there is little incentive for the landlord to make the property energy efficient and there is often little incentive for tenants to make improvements to a property when they do not have secure tenure. Amendments to sections 84 and 85 of the Act, as mentioned above, which remove the option to end tenancies without grounds could assist with this issue.

PIAC recognises that many tenants on low incomes or who are vulnerable in other ways may not be able to afford to invest in property improvements. Over a six-year period, the housing costs (including utilities) for private renters rose from \$338 per week in 2008/09 to \$420 per week in 2013/14.¹⁰ Specifically, average household electricity bills in NSW have risen steeply, placing additional strain on household budgets. Studies show that those living on a low income tend to already spend up to 10% of a household’s disposable income on electricity alone.¹¹

PIAC recommends that there is consultation between departments to identify schemes and subsidies available to people who are not able to invest in improvements that reduce long-term costs due to their financial circumstances. More generally, PIAC recommends that the potential for a minimum efficiency standard for residential properties to be incorporated in the Act should be investigated. A minimum standard may help address the issue of the split incentive.

Question 19. What incentives might encourage landlords or tenants to improve energy and water efficiency?

Section 39 of the Act stipulates that tenants do not need to pay for water charges if the premises are considered to be water inefficient. PIAC is pleased to see that the section encourages water

⁹ PIAC, *Cut Off III*, 2012, 16.

¹⁰ Australian Bureau of Statistics, *State and territory Tables*, 16 October 2015.

¹¹ NCOSS, *Cost of living: are concessions doing their job?* December 2014, 6.

efficient measures in residential tenancies, by shifting the associated costs away from tenants if the premises are not deemed to be water efficient.

PIAC recognises that these provisions are not as easily applicable to energy efficiency. This is because tenants contract directly with electricity retailers for their electricity supply and landlords are not involved in that transaction. There is also a variety of infrastructure and appliances that play a role in the energy efficiency in a household.

However, considering that the heating and cooling of a home can account for roughly a quarter of a household's electricity bill,¹² PIAC submits that consideration should be given to minimum standards for energy efficient fixed structures and appliances in residential tenancies. PIAC sees this as important because energy efficiency measures such as insulation, efficient air-conditioning, and window glazing or awnings can make a difference to regulating the temperature in a property and contribute to lower utility costs.

PIAC acknowledges that the implementation of minimum standards of energy efficiency could lead to higher rents and would therefore recommend a considered approach in the rollout of such a standard. In this context, PIAC sees an opportunity to amend section 63 of the Act in relation to repairs, which could provide that replacement appliances or structural repairs must meet minimum standard of energy efficiency.

For example, this could include the requirement that, when replacing an air conditioner, the replacement meets a minimum star rating – which is the combined heating and cooling efficiency rating.¹³ Such amendments would need to take into consideration the varied climate across NSW, which can be accounted for through application of the Zoned Energy rating label.¹⁴ In addition, the mandated provision of certain structural replacements that provide insulation, such ceiling insulation or the glazing of windows, would assist tenants in reducing their energy costs.

The Office of Environment and Heritage (OEH) has several energy efficiency programs, including residential programs, such as the Home Power Savings Program (HPSP) and the Home Savings Rebate Program (HSRP). The HSRP supported modification of certain structural elements and appliances that could assist in the reduction of high running costs such as climate-friendly hot water systems, ceiling insulation, dual flush toilets, rainwater tanks, water efficient washing machines or hot water circulators. Building on such existing initiatives, PIAC recommends that consideration be given to incorporating minimum energy efficiency standards into the Act that allow tenants to benefit from the efficiencies.

PIAC believes that such provisions will lead to reduced energy use and a lowering of tenants' energy bills, and provide comfortable living standards that promote health benefits to tenants. Benefits would also include a potential reduction in greenhouse gas emissions.

¹² Department of Industry, Resources and Energy (2015) Available at: www.resourcesandenergy.nsw.gov.au/energy-consumers/save-energy-and-reduce-your-bills/reducing-energy-costs

¹³ E3 Committee, *Labelling overview* (2016) <http://www.energyrating.gov.au/products/space-heating-and-cooling/air-conditioners>, Accessed on 28 January 2016.

¹⁴ E3 Committee, *Zoned Energy Rating Label* (2016) <http://www.energyrating.gov.au/about/what-we-do/labelling#zoned-energy-rating-label>, Accessed on 28 January 2016.

3.2 Implementing a minimum efficiency standard: compliance considerations

PIAC suggests that in any implementation of minimum energy efficiency standards, compliance measures will need to be flexible and take into account costs, property types and the variety of tenant/owner circumstances including the challenges of older properties that may be more difficult to modify. Depending on an expert assessment, exemptions may be appropriate under certain circumstances. PIAC suggests that any requirement would need to be phased in gradually would need to be implemented, and/or a roll out in stages or regions across NSW with support to owners. The requirement could be triggered, or triggered in part, each time a property comes up for rental, for example.

There are other schemes in place that could assist with the costs of implementing a minimum standard, such as funds allocated under *the Electricity Supply Act (1995)*, Part 9 Energy Savings scheme, and the *Energy and Utilities Administration Act 1987* Part 2 of the Climate Change Fund.

PIAC understands that monitoring the implementation of energy efficiency measures could be difficult and sees a role for further amendments to the Act. For example, amendment to section 26 could include the requirement to provide information about a property's efficiency rating.

PIAC is also aware that placing ratings on premises has the potential to affect rental prices. PIAC recommends that the Act make clear that the costs of compliance should not be passed on to tenants through a rental price increase. It would not be desirable to cause an effect where lower rated properties are cheaper to rent than those that are more efficient, making them more likely to be inhabited by lower income or vulnerable tenants, who would then face the higher utility costs that minimum standards would aim to reduce. In this vein, PIAC endorses the Tenants' Union of NSW proposed amendment of section 41 regarding rent increases; that they correlate with the Consumer Price Index (CPI) as a maximum charge, unless justification is provided to the tribunal or tenant.

PIAC is of the view that there needs to be consistency and general applicability in energy efficiency standards, to the benefit of all consumers. PIAC sees the opportunity within this review to support the integration of standards within relevant legislation, in order to bridge the gaps that are currently resulting in inequalities and inefficiencies.

PIAC welcomes further consultation about best practice and possible ways forward in bringing the Act in line with energy efficiency developments, and allowing tenants to benefit from those developments.

4. Recommendations

PIAC makes the following recommendations:

Recommendation 1

PIAC recommends amending sections 84 and 85 of the Act to remove the option to end tenancies without grounds, and instead provide an expanded list of grounds for termination.

Recommendation 2

PIAC recommends sections 79 and 102(2) be amended, regarding termination of a co-tenancy where a co-tenant is prohibited from accessing a rented premise by an apprehended violence order.

Recommendation 3

PIAC recommends providing greater protection to the tenancy of women who have been subjected to domestic violence, and are at risk of losing their tenancy.

Recommendation 4

PIAC recommends that the Government consider introducing a minimum energy efficiency standard for rental properties in order to promote consistency in energy efficiency initiatives and to bring the benefits of energy efficiency to tenants.

Recommendation 5

PIAC recommends that the Government investigate the potential basis for a workable minimum efficiency standard in the Act, taking into account the experience and potential support from current Government initiatives, as well as industry, community and consumer expertise.