

Better Regulation Division, Regulatory Policy
Department of Customer Service

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Dear Better Regulation Division

Regulatory Impact Statement (RIS) for the Residential Tenancies Regulation 2019

Shelter NSW welcomes the publication of the Regulatory Impact Statement into the Residential Tenancies Regulation 2019 and the opportunity to make a submission.

Ensuring that the renting sector meets the needs of the customers it serves is more crucial than ever as home ownership declines and the proportion of households renting rises. AHURI'sⁱ *Inquiry into the future of the private rental sector*, found that between 2006 and 2016 the private rental sector grew at twice the rate of growth of all household growth. The latest ABS housing occupancy and costs data shows that the number of households renting continues to rise; in 2017-18 almost one third of households rented, up by 30% from 2015-16ⁱⁱ.

Who we are

Shelter NSW has been operating since 1975 as the State's peak housing advocacy and policy body. Our vision is "A Secure Home for All". We are independent and represent broad interests across the housing system. We provide systemic advocacy and advice on policy, planning and legislation to resolve housing inequality for the whole NSW housing system and we seek to ensure that the voices of housing consumers are included in our policy responses and review.

Renting is more than just a consumer transaction – it's someone's home

The cost of renting is the single biggest cost for most households but unlike many other consumer relationships in the market place, renting a home isn't a discretionary item. A home is a basic human need, fundamental to the health and well-being of individuals and families.

Many Shelter NSW members are renters – both in the private rental sector and in social or affordable housing. Their experiences show that regardless of whether they rent privately or live in social housing, they face many common issues including;

- Poor quality housing and repairs and maintenance not being done;
- Insecure tenancies – this is also an issue for social housing tenants who have told us that more restrictive tenancy management policies place them in fear of breaching increasingly harsh and prescriptive rules;
- the lack of affordable rental properties means many renters live in fear of eviction especially for private renters who are particularly concerned about no-grounds evictions.

Shelter NSW's position is that tenancy laws need to recognise that a rental property is more than a good or service – it's a home. Therefore the legal protections that the regulations give tenants should rebalance the inherently unequal market position of renters. The consequences for a renter if a dispute arises in relation to their rental property can be severe – ultimately, they could become homeless.

Social housing tenants should have access to the same rights as tenants in the private rental sector

We note and support the recommendations in the Tenant's Union of NSW comprehensive submission.

In addition Shelter NSW would like to highlight our strong concerns about certain provisions and exemptions proposed for social housing tenants that would create inequalities in the rights available to renters. Shelter NSW recognises that there may be some circumstances where the legal protections for social housing tenants may differ to tenants in the private rental sector but this should only apply if it results in better protections and improved outcomes for social housing tenants. This is particularly relevant under the current access and eligibility policy settings for social housing, given it is available only to those in greatest need. Many social housing tenants are some of the most vulnerable people in our communities.

Shelter NSW supports the concerns raised by the Tenants Unions of NSW in relation to proposed provisions which will lead to the loss of rights for social housing tenants or impose additional obligations on social housing tenants.

We would like to specifically highlight:

Proposed clause 16 (1) – smoke alarm batteries

Shelter NSW does not believe a compelling reason has been provided as to why social housing tenants should not be able to replace a battery in a smoke alarm if the smoke alarm is not hardwired and does not have a non-removable or non-replaceable battery; if this is proposed to be available to tenants in the private rental sector. Through engagement with our members and stakeholders who live in social housing we are often informed of unreasonable delays when maintenance and repairs are requested, including when requests are made for urgent repairs.

The RIS notes that there are “systems in place” to carry out repairs to smoke alarms. Shelter NSW surmises that this refers to processes for responsive repairs and maintenance requests and the planned program of regular smoke alarm checks. However, based on the limited information and reasoning available we are not persuaded that these “systems” warrant treating social housing tenants differently from tenants who rent privately.

We recommend that this exemption not be included until details are provided of the systems referred to and further consultation with tenant advocates and peak housing organisations to assess if an exemption for social housing tenants is warranted. Given that an operating smoke alarm is a basic element of a safe and habitable home, we can't see an argument for proposing one rule for tenants renting privately and another for tenants in social housing.

Question 15 - Are clauses 9, 10 & 11 still appropriate (charges payable by social housing tenants)?

Shelter NSW is in agreement with the Tenants Union of NSW on these matters. In relation to charging for communal kitchens and facilities, our position is that there would need to be a fair and transparent method available to apportion these fees before such charges are considered. We recommend that this not proceed until details are provided on the proposed method of calculating the fees and further consultation is undertaken with tenants, tenant advocates and peak housing organisations.

Question 34 - Is the exemption provided by clause 31 appropriate (social housing tenants excluded from seeking rectification orders)?

Shelter NSW does not see this exemption as appropriate. Social housing landlords may have processes for repairs and maintenance disputes but the key point here is that these are not independent processes. If a social housing tenant can't obtain a satisfactory remedy under these

processes, the only option available would be to have the dispute heard by the NSW Civil and Administrative Tribunal (NCAT), whereas renters in the private rental sector will have access to rectification orders in addition to the NCAT process.

We also believe that from the perspective of the social housing landlord, having an independent process for repairs and maintenance disputes prior to the dispute progressing to NCAT could be beneficial in terms of potential savings in time and resources if matters are resolved prior to going to NCAT.

Shelter NSW is not clear on the barriers that prevent NSW Fair Trading from performing its legislated function to act in the interests of consumers and to receive complaints and investigate matters in relation to the supply of goods and services in the circumstance of a social housing tenant and a social housing dwelling. The role of NSW Fair Trading as an independent regulator is fundamentally important in ensuring that disputes that arise between consumers and those who supply goods and services have a fair outcome, especially as the consumer is in an inherently weaker market position than the supplier.

If NSW Fair Trading intervening in disputes in the private rental sector is appropriate we are unclear as to why it would be inappropriate for the social housing sector. In addition to the inherent inequality of denying social housing tenants access to dispute resolution processes that are available to renters in the private market, Shelter NSW can't see a compelling reason why landlords in the private rental sector should be subject to higher standards and additional regulatory oversight than social housing landlords. The 2018 amendments to the Act that enabled a scheme of rectification orders was a good reform that can have a positive impact on improving the standards of rental housing. Exempting social housing tenants would undermine the potential benefits that would arise from these legislative reforms.

There are other regulations proposed that lead to a loss of rights for social housing tenants that are available for renters in the private market or impose additional obligations on social housing tenants that are not required of renters in the private rental sector. While Shelter NSW has not commented on all these, we support the Tenants Unions comments and recommendations on these matters. To depart from the general principle that tenancy laws should be applied equally to all tenants requires compelling reasons. No detailed or compelling reasons for treating tenants in social housing differently to those renting privately are provided. We recommend that these provisions and exemptions not be implemented until further information is provided and consultation is undertaken with social housing tenants, tenant advocates and peak housing organisations.

Thank you for the opportunity to provide a submission to the Regulatory Impact Statement into the Residential Tenancies Regulation 2019. If you need further information, please don't hesitate to contact me on karen@sheltersnsw.org.au or call 0413 432 718.

Yours sincerely



Karen Walsh
Chief Executive Officer

ⁱ AHURI: Australian Housing and Urban Research Institute

ⁱⁱ <https://www.abs.gov.au/ausstats/abs@.nsf/mf/4130.0?OpenDocument>

Statistics
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