



Breaking Housing and  
Affordability Barriers

## FAIRFIELD HOUSING TASK FORCE



**FMRC**  
FAIRFIELD MIGRANT RESOURCE CENTRE

Principal Policy Officer  
Residential Tenancies Bill 2009  
Fair Trading Policy Division  
NSW Fair Trading  
PO Box 972  
Parramatta NSW 2142

7 December 2009

Dear Sir/Madam,

### **AMMENDMENT: Comments to the Draft Tenancy Bill 2009**

Thankyou for your invitations to comment on the Draft Tenancy Bill 2009, we hope that you will consider, modify, strengthen and finalise the final Draft Tenancy Bill 2009 with regards to our comments below. We begin with a list of some of the proposed provisions that we consider to be positive changes, followed by proposed provisions needing further change, and additions and changes in relation to issues that have not been addressed in the Draft Bill.

#### Abbreviations:

T – tenants

LL – landlords

CTTT – Consumer, Trader and Tenancy Tribunal

#### Some of the positive changes of the draft that the Taskforce would like to comment on are:

- **The holding fee** – ensuring that prior to the tenancy, only the chosen approved tenant-to-be can be requested to pay this fee
- **No grounds termination notice from LL to T** increase from 60 to 90 days is good
- **Non payment termination notices** – that Ts who have paid all rent owing or have complied with negotiated payment plan before the premises have been repossessed have the right to remain and LL has the responsibility to advise CTTT and if the Sherriff has been called, then the Sherriff, to cancel termination and possession proceedings. This is good as it gives struggling Ts a better chance to maintain their tenancy and avoid eviction.
- **Break fee instead of compensation and possible responsibility for rent until the term completes** – This is fairer and allows for Ts not to be stuck with responsibility for whether and how quickly the LL finds another T which is often a problem on the part of lack of will by the LL. It is unclear however, whether for example in the case of a 6 weeks break fee, can it be like giving 6 weeks' notice, or is it a case of Ts have to pay for each day they have stayed and on top of that regardless of notice given or

not they have to pay the break fee on top of that? In some cases Ts would be worse off if this is the case.

- **Rent payment method.** That Ts must be given at least one option of rent payment which does not incur any fees, and that is reasonably available to T. This is very good and important with the movement towards fee-incurring rental rewards cards and a recognition of the hardship it costs the T to have a cost to paying rent as well as accessibility problems.
- **Alterations.** That LLs remedy for compensation by T is limited to rectifying the work done by or on behalf of the T only when this work was done to an unsatisfactory standard or non-rectification would impact on LLs ability to re-let the premises, is good, because it avoids penalising improvements to the premises.

Here are some instances where we acknowledge there are improvements on the existing legislation but propose that the legislation needs to go further with the goal of bettering tenants' right to accessing housing.

- **End of fixed term termination notice from LL to T** increase from 2 weeks to 4 weeks. We are pleased with the recognition that 2 weeks' is too short a time to find a place. 4 weeks is an improvement but realistically to find alternative rental accommodation under current market forces is still very difficult. We suggest a notice period from the landlord of 60 days under these circumstances.
- **Tenancy Database regulations** – we are pleased with the much simpler access for Ts, the automatic obligation of prospective LL/REAs and listing LL/REA to give information, and of LL/REA/Databases that have received a request for this information. We are also pleased with CTTT having jurisdiction over disputes regarding database listings rather than having only the Real Estate Institute as a monitoring body. The three years limit is excessive and punitive, and we propose that this limit be reduced to 12 months for arrears and minor damages, and 2 years for significant damages. We are also concerned about the fee Ts have to pay to access database, there needs to be a specification of what is excessive. In our opinion LLs and REAs should bear all costs for this system whose existences has no benefits to Ts.
- **Retaliatory terminations** – We are pleased about the change allowing Ts to apply to the CTTT to have the termination declared retaliatory and void before the expiry of their termination notice. However, we want to emphasise that the wording is still 'the tribunal "may" ...' declare a termination void if they find it to be retaliatory. It should be the tribunal *will*.... . This will help reinforce tenancy rights much better knowing there is definite recourse for retaliatory terminations.
- **Encouragement of long term tenancies** – We are pleased with the legislation for long term tenancies offering greater stability and security of tenure for Ts for whom such leases are suitable. We propose in addition that there would be added provisions for medium term tenancies of 3-10 years where the conditions during the fixed term are the same as long term tenancies, but when it moves into a periodic arrangement and no new fixed terms are negotiated it becomes under normal periodic conditions.

Here are some major issues that have been left unaddressed by the draft bill

- **Rent increases** - We are disappointed to note the lack of improvement and continued insufficiency of the tenancy regulation to truly protect tenants from excessive rent increases. Lack of control on rent rises is a major issue for Ts in Fairfield and across the state. With about 3700 applicants on public housing waiting lists being approximately 16 years long, there are a lot of vulnerable tenants on the private market and it is important to ensure there are strong tenancy laws to give some protection for tenants from the market and ensure greater sustainability of tenancies by having rent controls. There are practically no differences between the old and the draft, in both cases T can appeal to CTTT about excessive rent and hope that CTTT will take into account all relevant factors. CTTT is at liberty to determine or not the relevant factors so for T it means the thorough consideration of their case will depend on which member they are assigned to.

We propose:

1. That the wording 'The Tribunal may have regard to the following..' be changed to 'The Tribunal *will* take into account the following evidence when presented or sought by the tribunal'
  2. That rent increases be limited to one every 12 months period  
To have a rent control mechanism put in place, limiting permissible rises to a maximum of 2 times CPI plus an increment to take account of improvements (noting the Indian Government is considering a loading of 10% of the value of the improvement to be met by the increment per annum)
- **Rent auctions** – We note the lack of regulation against rent auctions and would like to draw your attention to this widespread problem for Ts especially in the Fairfield LGA and have attached some case studies in the appendix. Under the reality of rent auctions, we propose that **new regulations be introduced** binding rent price to advertised price (or lower).
  - **Community education** – with the law reform we recommend that substantial funds be allocated for community education about the new tenancy laws so that communities, especially marginalised communities, are aware of their new rights and responsibilities.

We faithfully hope you will use this opportunity to substantially strengthen the tenancy law and implement our recommendations, which would improve housing outcomes greatly for many marginalised and less marginalised tenants in Fairfield and across the state. Please do not hesitate to contact us if you would like to clarify anything or conduct further consultations.

Yours Sincerely,

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Other organisations supporting Fairfield Housing Taskforce include:  
SLASA, St George Community Housing, Hume Community Housing, Bonnyrigg Partnerships,  
Housing NSW, Vietnamese Women's Association of NSW, Cambodian-Australia Welfare  
Council of NSW Inc, Timorese Australian Council and Resolve FM.

## Appendix 1:

### Case study: tenants database

T and Ts partner from New Zealand have been made homeless because T is a casual worker and does not have social security entitlements in Australia. When LL was unwilling to negotiate a repayment plan T got angry at their impending eviction and damaged the premises. Although he had since obtained permanent work his lack of access to social services and lack of family in Australia meant they had to sleep in the car until they find somewhere else to live. T made lots of applications without any luck. His partner approached us with concerns that they may have been blacklisted. With easier and better access to this information they would have been able to resolve their situation sooner and had improved access to housing which is a human right. They should be given a chance to resolve the issue to have access to some place to live.

### Case studies: rent auctions (from Fairfield Migrant Resource Centre)

One Congolese community member who took a year to find a rental property despite having a good rental history in Darwin with rent ledger to prove:

Other problems are when you go and see the place you have people offering to pay more, or in one case someone offered to pay 4 months in advance. I don't have the money and cannot compete with these people so I could not find somewhere to live.

'I go and fill out the forms, but the agents say since I am the only one filling out the form, they say we cannot give you because you don't have work.'

One settlement worker said that some frequent problems she comes across are that many tenants agree to and continue to do things that are not allowed in the tenancy law in order to obtain and keep their tenancies. Many people agree to pay 3-6 months in advance for example.

Another settlement worker also mentioned rent auctions, and when asked how many times she had heard it reported she said 'constantly'.

A casual housing worker also at the same community centre said that 'money talks' and it doesn't matter what the advertised prices say because someone who can pay more for the same place will get it.

### Case study: retaliatory termination (from Fairfield Migrant Resource Centre)

There is one refugee she knows about who has a tenancy agreement and pays expensive rent and the landlord puts it up by \$50 a week and supposedly in order to not have problems with the 60 day notice required by tenancy law they are asked to pay \$50 cash extra a week separate to the normal rent they already pay, and this is not in the books, no receipt, not on the rental ledger, like it has never happened except it happens every week. The tenant does it because they want to stay in this place, don't want to lose tenancy. For the same reason this and other tenants when asked if they want a referral to tenancy advocacy have refused saying if they did anything about it they would be evicted.

### Issues that the Fairfield Housing Taskforce Forum (2008) identified and reported on in relation to Tenancy laws and services

- Clients often become homeless because they are not aware of their rights and responsibilities.
- Totally inadequate tenant advocacy services. At present, residents need to travel to Campbelltown. Access becomes a critical issue, particularly when people don't speak English.

- Many workers stated tenants will never complain about the problems with their housing because they fear if they speak up, they will be evicted. In any case, it is so hard to find anything cheap, that they tolerate sub standard and dangerous premises. The few cases that workers were aware of where tenants complained to real estate agents, they found that the issues were not acted upon and for the few that were dealt with, it took over 12 months to fix the problem.
- Challenges for people who are on the TICA list. Often people don't know for sure, or agents tell them are but they don't know why. No one knows how to get themselves off the TICA list.
- Few workers referred clients to tenant advocate services, as people can't afford to travel to the nearest service at Campbelltown, or the assistance received previously was not positive.
- Working with young people can be challenging, particularly when dealing with issues like rights and responsibilities and financial management. Young people often fail to understand the dire consequences of not meeting their tenant responsibilities and thus often find themselves homeless and in debt.
- More tenant advocacy and financial advice needed

What do caseworkers at Fairfield Migrant Resource say are problems where stronger tenancy laws and programs can be part of the solution?

Caseworker A - 12 October 2009

Fairfield has huge rent increases, is one of 5 areas with growth/worst rent increases, but people want to be here because of their families being here, the food is cheaper, more convenient. Usually newly arrived try to stay in Fairfield, and then later on they branch out, look for some place in Wakeley or Horseley Park

Caseworker B

Real Estate Agents' exploitation of tenants who don't speak English and don't know how to protect themselves or demand their rights, or don't are scared to.

Ts sign things in desperation.

Rent increases are frequent and big and tenants cannot afford.

The worker is aware of rent auctions taking place constantly.

Repairs – high rent, poor conditions, but landlords tell tenants to pay for own repairs if they don't want rent increases or eviction.

Fairfield high housing demand low availability, prices rise, and high refugee and language issues.

Caseworker C – 8 October 2009

Some big problems

A lot of demand and very little availability of public housing, everyone fighting over what is available.

The Real estate agents and landlords also exploit people's desperation to stay in Fairfield there are not enough properties available for people who want to stay in Fairfield, especially new arrivals, refugees who have sold their homes and left their countries only to have it all absorbed by exploitative landlords.

Some frequent problems this worker comes across are that many tenants agree to and continue to do things that are not allowed in the tenancy law in order to obtain and keep their tenancies.

Many people agree to pay 6 months in advance for example.

Housing issues (mostly related to tenancy law) identified by a consultation of communities in Fairfield; mostly Arabic speaking, from Sudan, Lebanon and Iraq

Wednesday 2/9/09 and Thursday 3/9/09 Cabramatta Premises, 15 person each session, total of 30, 26 written, 4 verbal.

What are the issues/obstacles you're facing when it comes to accommodation/rental property etc?): High rent (70%), very hard to find a rental property (80%), Real estate agents are not fair (70%), regular and ongoing increase in rent and having to put up with it as not to get evicted (80%), and DOH long waiting list (50%)

The majority agreed that the rental increases is becoming 'ridiculous' and 'unbearable' as they face on-going increases with their rent, after the contract expires they find themselves without one and at the 'mercy' of either the real estate agent or the owner, as they increase the rent every month, they also said that this process is getting out of control as they (real estate/owner) know how hard it is to find other premises to rent with the tenants not wanting to leave the accommodation for fear of living on the street or not finding any suitable accommodation soon /fast enough. Most of the time clients find themselves taking a property that doesn't suit their needs (ie live in top level when someone has a disability and isn't allowed to go up and down the stairs for health risk, have to live in a small apartment with a large family, having to pay more than 6 weeks at a time to secure the premises which puts clients out of pockets and results in a financial needs which impacts on the whole household etc..)

Clients stated they feel as if they are at the 'mercy' of these parties.

There isn't enough rental properties to rent, and the chances of getting accepted in one is scarce.

Sometimes they have to pay 3 or 6 months in advance to secure the rental property.

DOH have a very long waiting list.

**Appendix 2:**

**Annual percentage increase in median market rent in selected suburbs of Fairfield to June 2009**

Supplied by St George Community Housing

| <b>Suburb</b>                | <b>% Change in Market Rent</b> |
|------------------------------|--------------------------------|
| ST JOHNS PARK<br>Average     | 15.25%                         |
| SMITHFIELD Average           | 18.71%                         |
| FAIRFIELD Average            | 19.75%                         |
| EDENSOR PARK<br>Average      | 18.58%                         |
| CABRAMATTA Average           | 24.82%                         |
| BOSSLEY PARK Average         | 21.22%                         |
| CANLEY VALE Average          | 26.83%                         |
| FAIRFIELD WEST<br>Average    | 20.90%                         |
| CANLEY HEIGHTS<br>Average    | 22.24%                         |
| FAIRFIELD HEIGHTS<br>Average | 25.13%                         |
| WAKELEY Average              | 23.74%                         |
| FAIRFIELD EAST<br>Average    | 25.06%                         |
| BONNYRIGG Average            | 34.73%                         |
| GREENFIELD PARK<br>Average   | 21.00%                         |
| BONNYRIGG HEIGHTS<br>Average | 30.04%                         |
| Bonnyrigg                    | 29.00%                         |