



3rd July 2009

Committee Secretariat
Social Services
Parliament Buildings
Wellington

Submission on Residential Tenancies Amendment Bill 2009

Background

- 1 The New Zealand Association of Citizens Advice Bureaux (the Association) – Ngā Pokapū Whakahoki Pātai mai i te Iwi Whānui welcomes the opportunity to comment on the Residential Tenancies Amendment Bill 2009.
- 2 We would value the opportunity to appear before the committee to speak to our submission and can be contacted through:

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- 3 The purpose of our organisation is to promote knowledge and understanding in our society. To achieve this purpose our organisation aims to:
 - 4 Ensure that individuals do not suffer through ignorance of their rights and responsibilities or of the services available; or through an inability to express their needs effectively — Me noho matāra kia kua te tangata e mate i tōna kore mōhio ki ngā āhuatanga e āhei atu ana ia, ki ngā mahi rānei e tika ana kia mahia e ia, ki ngā ratonga rānei e āhei atu ana ia; i te kore rānei ōna e āhei ki te whakaputu i ōna hiahia kia mārama mai ai te tangata.
 - 5 Exert a responsible influence on the development of social policies and services, both locally and nationally — Kia tino whawāhi atu ki te auahatanga o ngā kaupapa-ā-iwi me ngā ratonga-ā-rohe, puta noa hoki i te motu.
 - 6 To support the principle of partnership reflected in the Treaty of Waitangi. E tautoko ana Ngā Pokapū Whakahoki Pātai mai i te Iwi Whānui, i te mātāpono nohotahi (hononga), e whakaatahia ana i roto i te Tiriti o Waitangi.
- 7 We work to empower individuals to resolve their problems and to strengthen communities by identifying and raising local and national issues. The person to person service provided by over 2,700 Citizens Advice Bureau (CAB) volunteers is unique in New Zealand.

- 8 From our 91 locations around New Zealand the CAB provides a free, impartial and confidential service of information, advice, advocacy and referral to individuals, and we use our experience with clients to seek socially just policies and services in Aotearoa New Zealand. In the 2007/08 financial year, the CAB assisted with 639,775 client enquiries across the range of issues that affect people in their daily lives.
- 9 In the 2007/08 financial year we responded to around 17,000 enquiries directly related to tenancy and boarding issues. These involved enquiries from both landlords and tenants. We receive a wide range of enquiries, many of which are a direct result of inadequate knowledge of the current rights and obligations of landlords and tenants.
- 10 These enquiries consisted of:
- 1,600 enquiries about the rights of flatmates and boarders
 - 1,600 enquiries about emergency accommodation
 - 4,000 general enquiries about rental accommodation and boarding
 - 10,500 enquiries about tenancy agreements, disputes and bonds

Introduction

- 11 The Association welcomes the Bill as an overdue step to clarify and update the law surrounding residential tenancy.
- 12 We support many aspects of the Bill. In particular we are pleased to see the inclusion of specific rights and obligations for landlords and tenants of boarding houses.
- 13 In this submission we focus primarily on four key areas which we consider need greater consideration. These are:
- The development of mechanisms to increase knowledge of the rights and responsibilities of tenants and landlords.
 - The rights and obligations of boarders.
 - The extension of tenancy rights to a wider variety of forms of accommodation.
 - The ability to use advocates in the tenancy tribunal.

Encouraging increased knowledge of landlords' and tenants' rights and obligations

- 14 The vision of the Association is a socially responsible New Zealand where every person has the information and ability to make sound personal decisions. In our experience it is lack of knowledge of the rights and obligations of tenants and landlords which cause many of the tenancy related enquiries dealt with by bureaux. This lack of awareness of these rights and obligations is a persisting problem.
- 15 The lack of knowledge about landlords' and tenants' rights and obligations was one of the five key issues identified by the 2004/05 review of the Residential Tenancies Act.
- 16 While we recognise that legislative change cannot be a total solution to a lack of awareness of rights and obligations, they can be an important push towards emphasising the importance of these rights and obligations.

- 17 **We recommend** that it is made compulsory for a ‘plain English’ summary of rights and obligations to accompany all tenancy agreements (by amending clause 13(a) of the principal Act). This summary of rights and obligations should a summary prepared by the Department of Building and Housing.
- 18 **We recommend** that it is made compulsory for a ‘plain English’ summary of rights and obligations of tenants and landlords to be prominently displayed in boarding houses (amending clause 66l(g)). This summary of rights and obligations should a summary prepared by the Department of Building and Housing.
- 19 **We recommend** that Schedule 1A is amended to include fines for failing to provide these ‘plain English’ summaries of rights and obligations.

Boarders

- 20 The Association strongly welcomes moves to introduce statutory rights and obligations to boarding house tenancies. This is a move we have long advocated for, as we deal with a significant number of boarding related enquiries every year. Boarding house tenancies and general residential tenancies are not vastly different, yet the rights and protections afforded to each have been.
- 21 Unfortunately despite the positive changes encompassed in this legislation bureaux will continue to be in the position of describing much more limited rights to boarding house tenants than residential tenants.
- 22 While we recognise that there are some differences between boarding and other residential tenancies which require different legislative approaches we are concerned that the rights given to boarding tenants are too limited.
- 23 The definition of ‘boarding house’ is too restrictive in requiring that a boarding house must be meant for 6 or more tenants. We recognise that the definition is meant to provide protection for people who have one or two boarders in their own home from onerous requirements. However we consider that requiring 6 tenants in order to be defined as a boarding house will effectively deny the protections of this bill from many boarders and landlords. Many of the enquiries that we receive in relation to boarding problems are in relation to smaller scale boarding houses.
- 24 **We recommend** that clause 66B(b) is amended to define boarding houses as those ‘occupied, or intended by the landlord to be occupied, by at least 3 tenants at any one time.’
- 25 We are particularly concerned that the clauses (66U) relating to termination of boarding tenancy are too harsh.
- 26 The clauses allowing immediate termination of tenancy are potentially open to serious abuse, as they provide very subjective grounds for immediate cessation of the tenancy. In particular clause 66U1(a)(iii) which allows the a tenancy to be terminated immediately if a tenant ‘threatened to cause’ serious disruption to other tenants’ is open for abuse.
- 27 **We recommend** that the phrase ‘threatened to cause’ is removed from clause 66U1(a)(iii).
- 28 In addition clause 66U1(b)(i) which allows for a tenancy to be terminated on 48 hours notice if the tenant is more than 7 days in arrears in paying the rent is too harsh. The experience of bureaux is that many people who reside in boarding houses are vulnerable and have financial difficulties. As the clause currently stands it does not recognise that often these financial difficulties maybe out of the boarders’ control. Bureaux regularly deal with clients who are having difficulties

paying their rent because of problems with Work and Income. The proposed clause does not provide sufficient time for boarders to deal with problems that may be out of their control.

- 29 **We recommend** that clause 66U1(b)(i) is moved to become a subclause of section 66U19(c), thus requiring 14 days notice before terminating a tenancy on the basis of rent arrears.

Other forms of accommodation

- 30 The introduction of clear rights and obligations of boarders and landlords is a positive step. However the Bill does not extend similar rights to those who are using other forms of accommodation, such as camping grounds, as permanent residences.
- 31 Case studies and feedback from our bureaux on emergency housing reveal that there is a shortage of dedicated emergency and low cost housing in many parts of the country and that our clients are therefore frequently being referred to other types of accommodation including hotels and camping grounds, which subsequently becomes a form of permanent residence.
- 32 People living in and providing these types of accommodation experience tenancy issues similar to other private tenants and landlords, yet there is no clear legislative outline of rights and obligations. The lack of specific legislative protection for these forms of permanent residence means that the rights that people do have can easily be abused, as these examples from three bureaux illustrate:

A student who needed accommodation approached a local caravan park who offered the student a caravan for \$150 per week. The student was instructed that he had to sign paperwork and pay a 'bond' of \$300 before he could have a key. When he opened the caravan it was filthy, infested with cockroaches and the fridge was mouldy. The manager of the park refused to refund the 'bond'. The only redress the student had was under the Consumer Guarantee Act.

A resident was a little behind in his rent and the hotel owner locked him out of his room and confiscated some of his belongings to cover the back rent.

Two young women with small children were offered accommodation in a backpackers. They were told to pay a week in advance, which they did. The next week they were told to pay two weeks in advance, which they did. They were then told that they would have to pay two weeks bond if they wanted to stay in the accommodation. They were concerned that the bond would not be lodged with the tenancy tribunal, and they would not get it back. They were only able to pay bond with the help of Work and Income and were concerned that if they got Work and Income to pay this bond they would have difficulty getting more assistance if they manage to find new accommodation where bond was payable.

- 33 Protections for other forms of permanent residence exist in many other comparable jurisdictions, including England and Wales as well as most Australian States. For example in England and Wales basic tenancy rights are provided for those living permanently in caravan parks through specific legislation, *The Mobile Homes Act 1983*, relating to caravan parks.
- 34 In the case of the State of Victoria, Australia, rights for those residing in caravan parks are enshrined within a section of the *Residential Tenancies Act 1997*.

- 35 **We recommend** that the Bill defines the rights and obligations of users and providers of temporary accommodation, such as backpackers, camping grounds, motor parks and hotels, in situations where the accommodation is being used as a permanent residence, i.e. for more than 28 days.

Advocates at the Tenancy Tribunal

- 36 The experience of Citizens Advice Bureaux around New Zealand suggests that advocacy services for tenants are needed. Bureaux regularly work with clients who, regardless of the level of awareness they might have about their legal rights and their landlords' obligations, find themselves in need of some active intervention to ensure their rights are upheld.
- 37 The way that the Tenancy Tribunal currently operates is inequitable, in that landlords are effectively allowed to utilise experienced advocates in the form of property managers, while tenants are denied this privilege.
- 38 **We recommend** that clause 93 of the Act is amended to remove the current restriction on the use of lay representatives. Tenants should be able to utilise independent and professional advocacy services.

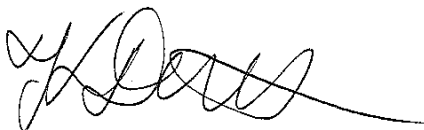
Other Issues

- 39 We strongly support the requirement for landlords to appoint an agent if they are leaving New Zealand for more than 21 days (Clause 13).

Conclusion

Please contact the Association if you have any questions or seek points of clarification on our submission.

Yours sincerely



Kerry Dalton
Chief Executive