



## Submission of the Welfare Rights and Legal Centre (ACT) and the Tenants Union ACT to the House of Representatives Standing Committee on Family, Community, Housing and Youth in response to the parliamentary inquiry into the principles and service standards for new homelessness legislation

The Welfare Rights and Legal Centre (WRLC) and the Tenants Union ACT (TUACT) are Community Legal Centres providing free legal advice to people on low incomes or facing disadvantage in the Australian Capital Territory.

The WRLC provides advice in the areas of public housing, community housing, general tenancy law, social security law and disability discrimination. The TUACT provides advice regarding general residential tenancy law to tenants in the private rental market. Both Centres also conduct law reform activities in their respective areas of practice.

### *Ensuring basic rights for the residents of SAAP accommodation*

Between 1997 and 2004, various community organizations in the ACT expressed concern that a large number of individuals in accommodation of various kinds were not covered by the rights afforded to tenants under the *Residential Tenancies Act 1997 (ACT)* (RTA). In particular, people accommodated on a short term basis by SAAP services, boarders and lodgers, students in student accommodation and caravan park residents did not have any guarantee of basic living standards under the RTA. In the rare cases where formal contracts were used for these short term arrangements, the provisions of the agreement could only be enforced through the Magistrates Court or the Supreme Court of the ACT. Unsurprisingly, the WRLC and the TUACT found that very few individuals were able to negotiate protections against eviction, rent increase or basic living conditions when entering into non-tenancies and none in our experience pursued the few rights they had through the Courts.

During this period when the WRLC or TUACT received a request for advice from a non-tenant facing eviction, fighting a rent increase or attempting to get repairs completed the usual advice given was 'you are not protected by the law.'

In response to this concern, the ACT enacted amendments to the RTA which, among other things, established the concept of 'occupancy agreements;' a system of protections for those people in short term accommodation who do not fit the definition of 'tenant' in the RTA. Under the amendments, if one person gives another person a right of occupation to a home for value, that arrangement is deemed an occupancy agreement. The RTA gives the ACT Civil and Administrative Tribunal the power to hear disputes and make orders relating to occupancy agreements and sets out a number of 'occupancy principles' which must be considered by the Tribunal when determining occupancy disputes. The occupancy principles covers basic issues

such as the need for reasonably clean and secure premises in good repair, reasonable periods for eviction, quiet enjoyment and notice of rules and conditions at the commencement of the agreement. The amendments also provided for the creation of standard occupancy terms to suit different accommodation types through regulation (although we note that this has not occurred in the ACT). Part 5A and the relevant sections of Part 6 of the RTA are attached for the Committee's information.

Following the enactment of the amendments, representatives of the ACT SAAP sector formed a working group to formulate an industry standard occupancy agreement. The standard agreement provides SAAP residents with basic entitlements which mirror those available to tenants but deviates from the standard tenancy agreement where the providers considered it necessary to accommodate the operational requirements of SAAP services. Whilst improvements are still required to the ACT occupancy system, at least it represents a positive step towards providing some basic minimal standards for accommodation.

The WRLC and the TUACTION are concerned that many residents in SAAP programs across Australia have no guarantee of basic conditions in their accommodation. While it is likely that residential tenancy law will be unsuitable for many of the accommodation options offered by SAAP services, the inclusion of an occupancy agreement system in future SAAP agreements would provide basic protections to residents while still providing sufficient flexibility to address the different circumstances of each separate provider.

### *Recommendation*

The WRLC and the TUACTION recommend that future SAAP agreements include a requirement that SAAP services which provide accommodation must provide clients with a written agreement which specifies a right to:

- a minimum standard of repair and cleanliness of the premises;
- a measure of security of tenure for the agreed period of the accommodation, such that termination and eviction by the accommodation provider may only take place in accordance with agreed periods of notice and procedures so that arbitrary eviction is not possible;
- clearly defined rights of privacy subject to access for inspections and other appropriate purposes;
- clear information concerning the rules of the premises and the rights of residents;

and

- access to appropriate in-house and external dispute resolution processes.