



Security of Tenure Forum

held on April 1 2010
at the First Fremantle Housing Collective
by the Federation of Housing Collectives WA

Presenters

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| Eddy Bourke | - Community Housing Federation Australia, Policy Officer |
| Bronwyn Kitching | - ShelterWA, Executive Officer |
| Tina Merry | - Foundation Housing, Policy and Strategic Planning Manager |
| Daniel Guise | - Community Housing Coalition of WA, Best Practice Unit Manager |
| Michelle Burgermeister | - Tenants Advisory Service, Community Legal Education Coordinator |
| Mick O'Loghlen | - FOHCOL Convenor, facilitator for Forum |

First Speaker

Bronwyn Kitching
- ShelterWA, Executive Officer



Security of Tenure is such an important issue

Definition – “guaranteed occupation of home as long as wish, for life or when the tenant chooses to leave.”

Australia has the most secure home ownership, subject to payment of mortgage (if there is one), payment of government taxes, and the only threats are land resumption by the government or an Act of God (flood/fire/earthquake etc).

Tenure

67% of homes are either owned outright or mortgaged and lived in by the owner occupier (45% owned outright);

4.2% are Social Housing dwellings (Public and Community Housing);

27% private rental (and this has been growing as the rate of home-ownership decreases);

A small number of people own more than one home.

(Data based on 2006 census released in 2008.)

Western Australia

2006 – WA had 1.8 million people;

2010 – WA is estimated to grow to 2.2 million.

Largest factors in population increase are internal and international migration.

There are 860,000 dwellings in WA - at any one time

about 10% (86,000) are unoccupied (these can be abandoned homes on farms, derelict homes, or properties unused by Australian or foreign owners);

350,000 are fully owned;

510,000 are under mortgage.

80,000 people are receiving Commonwealth Rent Assistance in WA (ie they rent in private rental or community housing at a rate eligible to receive a subsidy in addition to a Centrelink benefit).

42,000 people are in social housing (public rental or community).

Approximately 13,000 people are homeless on any given night in WA. Of these homeless

1500 are sleeping rough (primary homeless)

7000 are staying with friends and relatives (secondary homeless)

3500 are in caravans / boarding houses (tertiary homeless)

1200 in Crisis or Emergency Accommodation SAAP (secondary homeless)

Housing Cooperatives are a very secure forms of housing, the only threat of tenant losing rights to occupy are subject to them not complying with Residential Tenancy Act or Dept of Housing requirements

Public Housing is also very secure. Criteria to enter public housing is on income eligibility and/or disability basis. Priority allocation needs to be evidenced by urgent or high or complex issues not able to be met in mainstream rental housing market including homelessness, however priority allocations still have a long delay (now up to 18 months – depending on household region or special design/building features required (wheelchair accessible etc).

DOH has limited scope to evict if tenant household becomes no longer income eligible, although this is now under scrutiny, particularly in the context of high wait lists.

DOH is looking at ways to encourage or force ineligible tenants to move out to create more vacancies to address these wait lists.

Private Rental

Residential Tenancy Acts in each State were initially quite consistent across Australia.

In WA tenants are secure for the length of their lease agreement (usually 6 months to 1 year) then move onto 'periodic' tenancy if no further lease agreement is signed. Periodic tenancy is guaranteed for the period that rent is paid (eg if rent is paid fortnightly then tenancy is guaranteed fortnight to fortnight, and tenant can be given a fortnight's notice; or if rent paid monthly then it's a month's notice).

On fixed term lease or periodic following expiration of the initial agreement, tenant can be asked to leave by owner for no reason if owner follows correct process under RTA, usually 60 days' notice by either party to break a fixed term lease, and notice equal to or more than the rental period if lease has expired and further lease not negotiated. RTA Section 64 is a clause that enables a landlord to ask tenant to leave for no reason.

WA and the rest of Australia are different from other places. Internationally it is not uncommon to have 5-15 year leases and up to 99 year leases

Primary Homeless . This includes rough sleepers and secondary homeless 'couch surfers' and crisis accommodation facility residents – these are the least secure, and can be moved on at moment's notice. Crisis accommodation residents can have immediate eviction or 1 hour's notice if behaviour causes concern to others.

Public Housing have reinstated no cause eviction (s64) as a result of the long waitlist.

Applicants can wait 5-7 years depending on preferred region and the waitlist is 23,000 and growing at 80 new applicants a week.

Tenants now stay in public housing longer - nearly 50% are on Aged or Disability pensions, therefore less movement into other tenures (private rental or home ownership) and this contributes to less vacancies, and waitlist backlog

China – has extreme lack of security in housing, even in private owner occupied – the Chinese government frequently resumes land and housing for development or construction

**Thank you Bronwyn Kitching –
ShelterWA have an excellent website <http://www.shelterwa.org.au/>
and also very informative regular newsletters.**

Second Speaker

Eddy Bourke

- Community Housing Federation Australia Senior Policy Officer

(a national perspective).

SoT is a passionate issue for EB.

Does not seem to be on public policy radar, and not on FaHCSIA's radar.

AHURI are doing some research on related concept of Housing Insecurity.



Introduction of fixed term leases for some social housing is a new development.

Ontological security – used by Peter Saunders 1990, can be achieved via other ways than private home ownership. If individual stays in the same area can still have ontological security. Rental vacancies are very but OS can be retained if stay in same area.

Wikipedia – *'Ontological security is a stable mental state derived from a sense of continuity in regard to the events in one's life. Giddens (1991) refers to ontological security as a sense of order and continuity in regard to an individual's experiences. He argues that this is reliant on people's ability to give meaning to their lives. Meaning is found in experiencing positive and stable emotions, and by avoiding chaos and anxiety (ibid; Elias, 1985). If an event occurs that is not consistent with the meaning of an individual's life, this will threaten that individual's ontological security. Ontological security also involves having a positive view of self, the world and the future.'*

High levels of movement is linked to low education outcomes.

Secure housing is linked to development of community ties, engagement - SoT builds strong communities, developers now including community resources such as libraries and child care centres into green fields sites. This builds community, but not for renters.

Public Housing should learn from research about housing and build it into developments.

Public housing can do this, even though private sector developers don't have to bother with it.

It is important to do it differently in PH, because PH can control the levers, have the capacity to do it, therefore should do it.

Housing and Social Cohesion

Social cohesion creates a sense of belonging, staying in one place, and it can easily be done with social housing and PH.

Strong focus coming through in the research to support notion of SoT.

Evidence based policy required, as we know SoT offers better outcomes.

No evidence demonstrates that moving people on increase vacancies or leads to good outcomes.

Possible solution – increase rents of tenants whose income increases. Use this income to cross subsidise development of new PH.

In 1990 – 30% of PH tenants were on market rents and the surplus went into subsidizing rents of PH tenants on low incomes. This is a strong economic argument to support house people even though their rents have increased.

Problems with SoT

Can lead to workforce disincentive.

Social housing – current argument should not be derailed by current public focus on homelessness

CHFA – don't want policy that puts people out of social housing.
The concept of 'assistance for duration of need' has become more prevalent in public policy discourse.

Commonwealth – no work currently being done in this area, although it should because A\$1billion per year going into PH.
SoT should be part of the Commonwealth's social inclusion agenda.

Where to from here

Academic arguments and research do not carry much weight.
Economic argument is the strongest argument – if tenants with increasing incomes are forced to leave, can't use their increasing rents to cross subsidize lower income tenants.

Treasury is becoming more involved in housing issues and should be receptive to such an economic argument.

Thanks so much Eddy Bourke, coming from Canberra.
CHFA also have a great website –
<http://www.chfa.com.au/>

Third Speaker

Michelle Burgermeister - Tenants Advisor Service, Community Legal Education Coordinator



Providing a technical perspective on the issue,
TAS – is a community legal centre, an NGO involved in social justice, human rights and tenancy law.
TAS has website with comprehensive info sheets, provides telephone advice; provides lots of training and community education sessions – free. (See website for calendar and details.)
TAS has a mandate to protect tenants' rights.

Community Housing – in effect represents the 'owner' and landlord.
Housing cooperatives – in effect have the dual role of representing tenant and landlord.

Residential Tenancy Act (RTA) – provides provision that protects against arbitrary eviction of a tenant from housing.

At any one time in the world, 1 billion people are homeless or have no rights to housing, (such as China and USA).

Australia – does not suffer from forced evictions to the same level that other countries have; but Australia certainly has problems with affordable housing, legislation issues and provision of housing as a basic human right.

Does Australian legislation protect tenants sufficiently?

United Nations , Section 21, Social and Cultural and Economic Covenant – a second generation treaty of the Human Rights Declaration. Australia is a signatory, but the States (ie Government) have the responsibility to protect human rights.

Western Australia did discuss/consult on a possible Human Rights Charter (like Victoria), but it did not happen, was not successful. Federal Government consulted widely looking at creating a Human Rights Charter - the Decision by the ALP is to not create one.

Victoria has HR charter, and this has provided greater protection for tenants.

Without a HR charter, the legal options for enforcing HR in this country is much more limited.

Each State has their own version of a Residential Tenancy Act. WA's RTA is from 1987

One purpose of the RTA is to protect tenants; also to codify principles of tenancy, and this provides some limited SoT. Tenants have more SoT than Boarders and Lodgers.

Boarders and Lodgers are not covered by the RTA and so have no SoT.

RTA includes the tenancy principle of 'exclusive occupancy' which means the tenant has the right to live in the premise (that they don't own) as if it is their own whilst the tenancy agreement is in place. That is, tenants are allowed to have "peace, quiet and enjoyment", which means limited interruption from the owner/real estate agent. The RTA therefore has many provisions about how and when the owner/has access to the rental property.

Limited SoT in lease - Australian leases in the private rental market are generally short being either 3, 6, or 12 months. This is quite different to other countries, where security of tenure by way of fixed term lease may go for 10 or more years. In community housing and public housing, leases are periodic, but there is the expectation of security of tenure for life. Social housing (ie community and public housing) must follow the RTA.

Under the RTA a tenant can only be removed if there is a valid termination (as outlined in the RTA) or there is a breach to the agreement that is serious enough to warrant an eviction.

Landlord or tenant can initiate breach process. However, this must follow the process precisely as outlined in the RTA. There are different procedures for breaches of rent arrears to that of other types of breaches.

Only the magistrate (in the minor civil courts) can order tenant to leave (eviction order). The owner must apply to court for this. The tenant may be ordered to leave that day or in a couple of weeks, depending on circumstances and only if the owner has followed process correctly. If the tenant does not leave on the order outlined in the court order, then the owner applies for property seizure delivery order for the bailiff to remove the tenant. Bad press about owners complaining that tenants can not be removed from the property (eg Today Tonight TV programmes) is almost always as a result of the landlord not following correct process for tenants to vacate under the Act

Department of Housing introduced public housing in 1940s for low income tenants including tenancy for life (ie SoT), periodic agreement, rents based under the 'fair rent' legislation. Now, however, role and legislation does not exist, though the expectation of SoT seems to have carried over from the past.

DoH – how to cope with an ever expanding waitlist? With increased pressure on social housing demands, this idea that social housing tenants will have tenancy for life may well change for some tenants. Some

tenancy may be limited or for certain periods. There are a number of forums in which this idea is being discussed.

Tension

Currently tenants in community or public housing have a right to expect housing for life, subject to them fitting the eligibility criteria. Unfortunately, DoH will sometimes use RTA Section 64 to terminate a tenancy (ie termination for no reason such as a breach). Whilst technically DoH can do this under the RTA, it can be argued that DoH has a responsibility to provide housing – as for many it is the last resort. For instance, if tenant is evicted from DoH where would they go considering their disadvantage?

DoH are now seeing themselves having responsibilities to assist tenants to sustain their tenancy. This is a recent shift in policy, where public housing was viewed as only having a responsibility to provide a subsidised house. Sustained tenancy recognizes that some tenants, due to a range of reasons, have difficulty succeeding in tenancy. The sustained tenancy models means that DoH now see themselves as having a role in assisting tenants who are failing due to barriers, limited skills or cultural or education issues. This should provide increase security of tenure. DoH say their eviction rate has decreased as a result. However, more recently we are aware of a growing number of evictions based on claims of anti-social behaviour. So DoH still use Section 64 and section 15 (disruptive behaviour) often.

Community Housing –

96% of social housing is public housing managed by DoH. Community housing is relative small at present, but is a growing sector .

Community housing – are kind of benevolent landlords but TAS sees evidence of them becoming bad landlords – sometimes because of ignorance of the law, other times due to poor policy and procedures. TAS has had cases where it represents the tenant against Community Housing as the landlord. So Security of Tenure is not solid in the community housing sector either.

Fixed term lease offers security for tenant for specific time in the lease. This is used in the private rental sector more than in social housing (though it is used on occasions). Social housing sector uses periodic lease and ironically this is now becoming less secure. End result is that fixed term lease in private sector may offer better SoT than periodic leases.

Department of Commerce is considering creating legislation changes to the RTA which will prohibit DOH using section 64 (based on their responsibility to provide housing of the last resort discussed previously).

Left with a question – what legal mechanisms should be put in place – both in agency policy and in the RTA to ensure SoT in the community housing sector?

Thank you Michelle.
TASWA's website is very informative – check it out on
<http://www.taswa.org/>

Speaker 4

Daniel Guise – CHCWA Best Policy Practice Unit Manager



CHCWA offers training for community sector to fulfill its role as benevolent landlord.
CHCWA does not support use of section 64, it supports the concept of SoT.

2009 Social Housing Taskforce Report introduced concept of continuum of housing careers.
Is the concept appropriate or possible for social housing clients? The gap between social housing and the private rental or ownership market is so large that it is not feasible to move from one to the other.
How does a tenant transition from social housing to private housing?

The report argues that Social housing is not a house for life
How does the impact of fixed income on tenants enable them to graduate to the private market – eg pensioners, disability income? Therefore there has to be a concept of social housing for life for some sectors of the community.

CHCWA Vision – moving a house, not the tenant, through the continuum with tenant in situ.
DOH may be doing some policy work on this in 2010, perhaps under DOH affordable housing strategy.

DOH –tension arising from not enough houses in the pool.
CHCWA – have a mix of tenants on different incomes, some on market rates because have higher income, to cross subsidise tenants on low incomes.

Major improvement in September 2009 with introduction of rent setting policy based on NRAS (National Rental Affordability Scheme) figures. Tenants still need to enter public housing on DOH income levels but can exit on higher NRAS levels. However, these higher exit NRAS levels are only available for DOH registered providers.

Higher NRAS levels is a market improvement, tenants can be motivated to upgrade their skills and education without fear of eviction, the new levels can change focus away from deliberately being under employed to stay eligible for social housing.

CHCWA – if tenant over DOH level but under NRAS level, the tenant and house should be transferred to community housing sector. Most tenant lease agreements do not particularly state requirement for ongoing DOH eligibility, therefore cannot evict if income goes over DoH limits.

CHCWA – encourages community housing sector to apply for DOH registration

Thanks Daniel,

CHCWA's website
<http://www.communityhousing.com.au/>

Speaker 5

Tina Merry - Foundation Housing Policy and Strategic Planning Manager



SoT – does it stifle aspiration?

Why do people move house? Mostly because of no choice and affordability issues?

Income-related rents become a disincentive to change to smaller accommodation, leading to under occupancy

Tenant Mobility through the system – not necessarily in same house, but get people to move under the best circumstances for them

Market triggers do not work in public housing system.

DOH evicts tenants yet it could easily move these tenants and houses to the community sector.

DOH needs higher rent payers to cross subsidise lower income tenants

Waitlist – DOH has eligibility checks at application and at allocation. The joint waitlist a huge problem

SoT provides sense of identity, autonomy and control, demonstrated by tenants undertaking self-improvements of their home

Community doesn't want public housing. (NIMBY.) Community development is needed to remove the stigma of public housing.

SoT – is it a right?

Queensland has introduced fixed term leases for its tenants, accompanied by a concept of 'according to need'. Can DOH do that in WA? Need good fit of tenant to house. There's no evidence of what happens if reduce SoT and evict people

NRAS is a positive move – enables providers to cross subsidise and grow the amount of housing. Also enables better mix of tenants and develop community

Foundation's vision – change house and tenure to meet changing life circumstances

Thankyou Tina

Foundation's website

<http://www.foundationhousing.org.au>

Q&A

Shared equity – good progression as income increases.

Tension for community providers – push for growth while housing those on lowest incomes – how do you make enough money from this sector to fund more houses?

Sell houses to pay for most disadvantaged – but this then makes it difficult to grow.

Housing Trust Model in USA .

Community Land Trust in Victoria.

Cooperative sector needs to be strong advocate for housing cooperatives.

Addendum – meaning of abbreviations

SoT	Security of Tenure
RTA	Residential Tenancy Act
AHURI	Australian Housing and Urban Research Institute http://www.ahuri.edu.au/
CHFA	Community Housing Federation of Australia
FASCIA (FaHCSIA)	Department of Families, Housing, Community Services and Indigenous Affairs http://www.fahcsia.gov.au
HR	Human Rights
PH	Public housing
NIMBY	Not in my backyard
NGO	non-government organisation
NRAS	National Rental Affordability Scheme
UN	United Nations
High wait list	-lots of people waiting for public housing
Long wait list	-long time to wait for public housing

[Thanks for initial notes by Elizabeth Cheong, April, 2010]