

# Examining landlord responses to crime and anti-social behaviour in social housing



Australian Housing  
and Urban Research Institute

## Based on AHURI Final Report No. 314:

Social housing legal responses to crime and anti-social behaviour: impacts on vulnerable families

### What this research is about

**This research examined social housing landlords' legal responses to crime and anti-social behaviour by tenants, household members and visitors. The research reviewed residential tenancies law and social housing policies in five Australian jurisdictions and national policy principles and frameworks relating to the four types of vulnerable persons and families: women, particularly as affected by domestic violence and other male misconduct; children; Indigenous persons and families; and people who problematically use alcohol and other drugs.**

### The context of this research

Social housing in Australia is targeted to households with low incomes and complex support needs. Lately, social housing policy has sought to give social landlords (i.e. government housing authorities, community and Indigenous housing providers) a larger role in relation to crime and non-criminal anti-social behaviour ('misconduct').

In some jurisdictions, special legislative provisions have been introduced to facilitate termination proceedings for misconduct. Drug offences are a particular target of these provisions, but a wide range of types of misconduct are also within the scope of the provisions and social landlords' legal proceedings. Recent developments include 'three strikes' policies and legislative amendments intended to facilitate termination proceedings and evictions.

There are tensions between terminating tenancies and social housing policy objectives relating to individuals and

family wellbeing. Termination proceedings may be brought in response to the misconduct of an individual person, but the outcome may affect a household, including partners, children and other persons not involved in the misconduct. Indeed, it may be that the tenant is not the instigator of the misconduct but is made liable for the misconduct of an occupier or visitor.

### The key findings

The research found cases of: women held to be in breach and evicted because of violence against them; children being evicted, and insufficient safeguards as to their interests; complicated circumstances and barriers to support for Indigenous tenants, and alcohol and drug treatment disrupted by punitive termination proceedings.

#### Tenancy laws

The residential tenancies legislation of each state and territory prescribes certain rights and obligations as terms of every residential tenancy agreement.

Two terms are especially relevant to criminal offending and anti-social behaviour: the 'illegal use' term, which prohibits a tenant from using the premises for an illegal purpose, and the 'nuisance' term, which prohibits a tenant from causing a nuisance. Both the terms encompass wide classes of misconduct.

Published decisions on the illegal use term are dominated by cases involving drug offences, although offences relating to possession of stolen property, proceeds of crime and prohibited weapons also appear fairly frequently. Published decisions on the nuisance term disclose an even wider range of matters, from acts of serious criminal violence, to loud noises and personal disputes between neighbours.

Most jurisdictions have a provision that makes tenants vicariously liable for the acts and omissions of other occupiers and visitors to the premises, as if the tenant themselves had done the act or omission. Depending on the circumstances, a tenant may be liable even if they have no knowledge or control of the other person's act or omission.

Most jurisdictions also prescribe a term prohibiting the tenant from 'interfering with the reasonable peace, comfort and privacy' of neighbours. All provide for landlords to apply directly for termination, without prior notice, in certain circumstances, such as violence or intimidation. They also provide for termination without grounds (at the end of the fixed term of a tenancy, or during a periodic tenancy).

Termination proceedings are conducted before tribunals or magistrates courts (Tasmania and Western Australia). Depending on the jurisdiction and the type of proceedings, the tribunal or court may have discretion to decline termination considering the circumstances of the case, or termination may be mandatory.

### Responding to misconduct

Responding to misconduct in social housing is plainly a very challenging area of practice. Many of the cases reviewed involve highly conflictual, destructive and distressing behaviour. However, termination proceedings are not always taken as a matter of urgency, nor as a last resort when all other approaches to sustain the tenancy have failed.

In most cases a single substantial contact between the social housing landlord and the tenant is sufficient to address a minor problem. However, where problematic behaviour continues, the usual course of action—a combination of escalating threats to the tenancy and pushing the tenant to 'engage' with the landlord and support services—does not work for many. Escalating threats often drive 'engagement' that is last-minute and short-lived, and sometimes so unsatisfactory that it can drive an escalation in threats. In many cases, social housing landlords' legal responses frustrate other more improving and preventative ways of addressing misconduct and related support needs, and result in the eviction and homelessness of vulnerable persons and families.

### Numbers of evictions

Data about tenancy legal proceedings, terminations and evictions in Australia,

**Table 1: Applications for termination orders, New South Wales and Victoria, 2017–18**

	NSW			Victoria	
	Public housing	Other social housing (e.g. CHPs)	Other private landlords	Public housing	Other landlords (including CHPs)
No grounds	9	33	531	64	497
No grounds—end of fixed term	33	91	272	142	358
Breach—rent arrears	4,639	2,504	13,112	3,809	13,708
Breach—other	521	193	783	37	92
Use for illegal purpose	48	7	50	12	51
Serious damage or injury (NSW)	28	6	84	-	-
Damage (Vic)	-	-	-	17	137
Danger (Vic)	-	-	-	26	137
Threat, abuse (NSW)	25	20	93	-	-
Other	166	190	1,406	765	3,266
<b>Total</b>	<b>5,469</b>	<b>3,044</b>	<b>16,331</b>	<b>4,872</b>	<b>18,246</b>

Source: New South Wales Civil and Administrative Tribunal (NCAT) special data request and Victorian Civil and Administrative Tribunal (VCAT) special data request

including in relation to social housing, are patchy. Only the New South Wales Civil and Administrative Tribunal (NCAT) and Victorian Civil and Administrative Tribunal (VCAT) were able to provide data about social housing landlord applications for termination (with neither being comprehensive), and a rationalisation of the diverse fields used by the tribunal to characterise types of termination proceedings.

Social housing landlords in both NSW and Victoria apply to terminate thousands of tenancies each year, with proceedings for rent arrears the largest category of termination. However, termination applications in other categories are still numerous (see Table 1).

In New South Wales the public housing landlord applies for termination at twice the rate, and other social housing landlords apply at four times the rate, of non-social housing landlords in that state; the Victorian public housing landlord applies at 2.7 times the rate of other landlords (See Table 2). More significantly, rates for 'breach—other' and 'use for illegal purpose',

particularly in New South Wales, are much higher: The NSW Department of Family and Community Services seeks 'use for illegal purpose' terminations at 7.7 times the rate of non-social housing landlords, with other social landlords applying at almost six times the rate.

"In most cases a single substantial contact between the social housing landlord and the tenant is sufficient to address a minor problem."

### Case studies

In two jurisdictions (New South Wales and Victoria), researchers collected cases from the published decisions of each jurisdiction's Civil and Administrative Tribunal (NCAT and

**Table 2: Average rate of termination applications per tenancy, relative to other landlords, New South Wales and Victoria**

	NSW public housing (%)	NSW other social housing (%)	Vic public housing (%)
No grounds	0.06	1.92	1.39
No grounds—end of fixed term	0.65	9.69	3.03
Breach—rent arrears	2.18	4.11	2.84
Breach—other	3.37	4.81	2.78
Use for illegal purpose	7.70	5.96	2.51
Serious damage or injury (NSW)	2.31	2.41	-
Damage (Vic)	-	-	1.40
The threat, abuse (NSW)	1.21	3.47	
Danger (Vic)	-	-	3.25
Other	0.78	2.83	2.44
<b>Total</b>	<b>2.03</b>	<b>4.05</b>	<b>2.73</b>

Source: NCAT and VCAT special data requests; AIHW 2016, 2018; ABS 2018.

VCAT, respectively); and in all five jurisdictions, stakeholder organisations provided case studies from their own files. Researchers collected a total of 95 cases of social housing legal proceedings against tenants, of which 77 fit one or more of our four types of vulnerable persons and households.

The cases show the variation in social housing landlords' responses. Some misconduct may be met initially with only the logging of a complaint or other information. Where it is more pressing, or repeated, this may be followed by attempts by housing officers to 'modify' the behaviour, through a combination of referrals to support and threats that the tenancy may be at risk—backed by warning letters, strikes, and applications for orders to comply with the agreement, and for termination orders. This may be a protracted process, or may escalate rapidly through threats to formal proceedings.

In a few of the cases, termination was sought, but with the offer of another tenancy in prospect. Other misconduct—in particular, use of premises for an illegal purpose, but also some cases of threats, injury, damage and nuisance—is responded to with termination proceedings, with no objective other than the termination of the tenancy and the exclusion of the tenant and their household from social housing.

“Tenancy obligations and extended liability—and social housing landlords' use of them—impose hard expectations that women will control the misconduct of male partners and children”

### Impacts on vulnerable groups

#### Women

The evidence shows a significant gender dimension to social housing legal responses to misconduct. Social housing landlords are generally strongly committed to assisting women affected by domestic violence into safe housing, but this commitment may falter during a social housing tenancy. Tenancy obligations and extended liability—and social housing landlords' use of them—impose hard expectations that women will control the misconduct of male partners and children. Even violence becomes framed as a 'nuisance' in tenancy legal proceedings, and some women are evicted because of violence against them.

A larger number of case studies involve misconduct (not specifically domestic violence) arising wholly or partly from the actions of a male occupier—mostly partners, but in a few cases adult male children. To a significant extent, the misconduct and domestic violence cases overlap: 16 of the 34 cases involving male misconduct are also cases where the woman has experienced domestic violence.

#### Children

Children are sometimes the instigators of misconduct, but more often are innocent bystanders to misconduct by others.

In Australia's national policy document for child protection, *Protecting children is everyone's business: National Framework for Protecting Australia's Children 2009–2020*, housing is one of the universal needs that forms the primary line of prevention of abuse and neglect. Social housing landlords are generally committed to this role, but where problems arise, responding as a landlord can impose hard expectations as to what tenants can do to control children, or to adequately provide for them when evicted as a consequence of their own misconduct.

Where termination proceedings would affect children, social housing landlords typically make additional efforts at alternatives, but the interests of children are a marginal consideration in the determination of proceedings.

#### Indigenous persons and families

There is strong Indigenous representation in the cases involving women and children. More specifically, Indigenous persons and families often present complex personal histories, institutional contacts and interpersonal relationships, shaped by past and present institutional racism and colonialism. This makes 'engagement' even more problematic.

One misconduct factor can be the larger number of visitors and temporary occupiers at a social housing premises due to cultural obligations to extended family. Social housing landlords highlighted it as the most distinguishing feature of their tenancy management work with Indigenous tenants.

A strong theme is the role of Indigenous organisations, housing officers and advocates in sustaining Indigenous tenancies—precisely because they can negotiate the complex circumstances and barriers to engagement that Indigenous tenants experience.

### Persons who problematically use alcohol and other drugs

Of the 95 case studies, almost half (44) involve a person—the tenant, an occupier or visitor—who is disclosed to problematically use alcohol and other drugs.

When tenants have been charged for drug cultivation or dealing, illegal use termination proceedings may run ahead of the criminal proceedings. Social housing landlords will usually press for termination ahead of sentencing or, for that matter, a verdict. Where the criminal proceedings have been completed, social housing landlords will also generally press for termination, even if a non-custodial penalty has been imposed and, in some cases, where charges have been dropped or dismissed, or where the criminal justice system has seen fit to allow the tenant or occupier to remain in their home.

In ‘nuisance’ and other cases where tenants exhibit difficult and alarming behaviour due to drug dependency, responses to misconduct are not expressly guided by harm minimisation. However, unlike the illegal use cases, these cases do not reveal social housing landlords taking termination proceedings as a moralising, condemnatory intervention. When eviction does occur it ‘transfers a difficult problem elsewhere’, to circumstances more adverse to treatment than a tenancy.

### What this research means for policy makers

Policy development options include:

- separating offers of support from threats of tenancy termination, with referrals made earlier in a tenancy and support delivered by services at arm’s length from the landlord;
- giving tenants more certainty through commitments that no-one will be evicted into homelessness;
- ensuring proper scrutiny is applied to termination decisions and proceedings, and to sector practice; and
- reforming the law regarding tenants’ extended and vicarious liability for other persons.

Specific policy development options covering each of the four types of vulnerable persons and families include:

- reviewing social housing policies and practice for gender impacts, and sponsoring the cultivation of respectful relationships;
- adopting ‘the best interests of the child’ as the paramount factor in decisions about termination affecting children;
- establishing specific Indigenous housing organisations, officers and advocates; and
- adopting harm minimisation as the guiding principle for responses to alcohol and other drug use, including where there is criminal offending.

### Methodology

This research assessed residential tenancies law and social housing policies in five jurisdictions (New South Wales, Tasmania, Victoria, Western Australia, and the Northern Territory); reviewed legal cases of social housing responses to misconduct; and interviewed stakeholders in social housing landlord and tenant organisations.

## Further information

### TO CITE THE AHURI RESEARCH, PLEASE REFER TO:

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