



EXECUTIVE SUMMARY

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

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Integrated housing support for vulnerable families

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AUTHORED BY

Chris Martin

University of New South Wales

Daphne Habibis

University of Tasmania

Lucinda Burns

University of New South Wales

Hal Pawson

University of New South Wales

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Authors	Chris Martin	University of New South Wales			
	Daphne Habibis	University of Tasmania			
	Lucinda Burns	University of New South Wales			
	Hal Pawson	University of New South Wales			
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Executive summary

Key points

- Housing policy in Australia has enlarged the role of social landlords in relation to crime and non-criminal anti-social behaviour ('misconduct'). Recent developments include 'three strikes' policies and legislative amendments intended to facilitate termination proceedings and evictions.
 - This research focused on social housing legal responses and termination proceedings in relation to four types of vulnerable persons and families:
 - women, particularly as affected by domestic violence and other male misconduct
 - children
 - Indigenous persons and families
 - persons who problematically use alcohol and other drugs.
 - We reviewed residential tenancies law and social housing policies in five jurisdictions—New South Wales, Tasmania, Victoria, Western Australia and the Northern Territory—and national policy principles and frameworks relating to the four vulnerable types.
 - We also reviewed 95 cases of social housing legal responses to misconduct, and interviewed stakeholders in social housing landlord and tenant organisations.
 - We 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
 - alcohol and drug treatment disrupted by punitive termination proceedings.
 - Policy development options include moving offers of support out of the shadow of termination, tenancy law reform and closer integration of social housing policy with leading frameworks in other policy areas.
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Key findings

Residential tenancies law in all Australian jurisdictions affords legal means for landlords to respond to crime and non-criminal anti-social behaviour ('misconduct') by tenants, other occupiers and visitors. The quantitative data, while patchy, indicate that social housing landlords are heavy users of termination proceedings, including in relation to misconduct.

Australian social housing landlords have developed distinctive policies and practices for responding to misconduct. For example, the public housing landlords in almost all Australian states and territories have adopted, at least for a time, 'three strikes' policies to guide their use

of termination proceedings. 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.

At the same time, social housing policy has consolidated its longer-term trend towards targeting assistance to households with low incomes and complex support needs.

Responding to misconduct in social housing is plainly a very challenging area of practice. Many of the cases we reviewed, and discussed in interviews with stakeholders, 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.

It appears that 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 ameliorative and preventative ways of addressing misconduct and related support needs, and result in the eviction and homelessness of vulnerable persons and families.

In particular, there are aspects of law, policy and practice that do not appropriately address vulnerable persons and families: women who have experienced domestic and family violence, children, Indigenous persons and families, and persons and families with members who problematically use alcohol or other drugs. These aspects of social housing law, policy and practice insufficiently reflect, or are contrary to, leading policy principles and frameworks regarding those vulnerable types of persons and families.

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, some women are evicted because of violence against them.

Children

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

Persons who problematically use alcohol and other drugs

Responses to misconduct relating to alcohol and other drug use are not expressly guided by harm minimisation. Criminal offences, especially, elicit punitive termination proceedings, with

social housing landlords, police, and sometimes courts and tribunals, operating in a condemnatory, exclusionary mode. Even where overt condemnation or punitiveness is absent, termination proceedings may be taken that disrupt treatment and rehabilitation, including where this has been sanctioned by the criminal justice system.

Policy development options

Policy development options to better integrate social housing policy with support for vulnerable persons and families include:

- moving support out of the shadow of tenancy termination
- 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
- reforming the law regarding tenants' extended and vicarious liability for other persons.

More specific policy development options for each of our 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
- adopting harm minimisation as the guiding principle for responses to alcohol and other drug use, including where there is criminal offending.

The study

The study comprises a number of elements:

- a review of available quantitative data about social housing termination proceedings
- a review of high-level policy principles and frameworks regarding women affected by domestic violence, children, Indigenous persons and families, and alcohol and other drug users
- a review of residential tenancies law and social housing policies regarding misconduct by tenants and occupiers
- analysis of 95 cases of social housing legal proceedings in response to misconduct
- analysis of interviews with representatives of 11 stakeholder organisations.

The research makes a new contribution through the breadth of its review of Australian legal and policy settings regarding social housing terminations for misconduct, the depth of its examination of social housing termination practice, and its focus on problematic outcomes for specific categories of vulnerable persons and families living at the intersection of social housing and other areas of governmental practice.

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Australian Housing and Urban Research Institute

Level 1

114 Flinders Street

Melbourne Victoria 3000

T +61 3 9660 2300

E information@ahuri.edu.au

ahuri.edu.au

ACN 090 448 918



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