

SUBMISSION TO THE SOCIAL SERVICES SELECT COMMITTEE ON THE RESIDENTIAL TENANCIES AMENDMENT BILL 2009

1.0 Introduction

- 1.1 The New Zealand Council of Christian Social Services (NZCCSS) has six foundation members; the Anglican Care Network, Baptist Churches of New Zealand, Catholic Social Services, Presbyterian Support New Zealand Inc and the Methodist and Salvation Army Churches. Through their networks and approximately five hundred social service delivery sites NZCCSS members make a significant contribution to New Zealand's social wellbeing.
- 1.2 Collectively, our six members are responsible for around 500 social service delivery sites in their networks throughout New Zealand. Our members deliver a wide range of services that cover such areas as child and family services, services for older people, food bank and emergency services, housing, budgeting, disability, addictions, community development and employment services. (Further information on NZCCSS can be found in Appendix 1.)
- 1.3 NZCCSS welcomes the opportunity to make a submission on the Residential Tenancies Amendment Bill, and would like to request that a representative of the Council appear before the Select Committee to speak to this submission. NZCCSS would be represented by Karen Morrison Hume and Trevor McGlinchey (Executive Officer), both of whom can be contacted through the NZCCSS Secretariat on 04 473 2627 or via admin@nzccss.org.nz.

Summary of Submission

NZCCSS supports the intent of this Bill and believes that it represents a significant improvement on the current legislation.

The residential housing market must undergo significant change if it is to deliver better quality and more secure homes for those who rent. This Bill does not provide a sufficient mechanism to assist in the transition to a simple and transparent legal framework for secure housing tenure for renters.

The rental housing market is failing the most vulnerable in our communities and this Bill does not do enough to ensure that people who provide rental housing do so fairly and provide housing of a reasonable standard.

Being a landlord is a relationship and service provision and not simply an investment. The Bill does not do enough to ensure that people who provide rental housing do so fairly and provide housing of a reasonable quality.

Part 1 Clause 6 amending Section 5 of the Act to repeal Section 5(l): There is an urgent need to clarify the status of tenants renting in retirement villages but NZCCSS supports the position that this must be addressed in conjunction with a review of the Retirement Villages Act 2003

Part 1 Clause 16 repealing Section 22 of the Act: The estimated half a million dollars in interest income on bond money should be applied as grants to tenants' community organisations.

Part 1 Clause 24, amending Section 40 of the Act: NZCCSS recommends that there be provision for an upper limit set on tenants' liability for damage

Part 1 Clause 28 amending section 48 of the Act: NZCCSS does not support this amendment as current rights of access are sufficient.

Part 1 Clause 31 amending Section 51 of the Act: Vacant possession on sale as grounds for reducing the notice period should be deleted from the Act through a further amendment to Section 51

Part 1 Clause 35 amending Section 55 of the Act: The wording of this clause on threats of assault as a ground for termination could be open to misuse and NZCCSS does not support this wording.

Part 1 Clause 47 inserting a new Part 2A into the Act, new Clause 66U: NZCCSS recommends that the Bill be amended to give boarding house tenants rights in relation to termination that are closer to those of other tenancies covered by the Bill.

Part 1 Clause 66 amending section 93 of the Act: Representation before the Disputes Tribunal should be enabled for any claim above \$500 where there is a demonstrable imbalance of power between landlord and tenant.

2.0 General Comments on the Bill

- 2.1 NZCCSS welcomes the Government's interest in updating and improving legislation for the rental housing market. Our members work with some of the most vulnerable tenants forced to rent on the private market because of the lack of state and community housing. Our members are also landlords in their roles as community housing providers in many communities around the country. Our overriding interest is to ensure that people can live in secure and affordable housing that is the base from which their lives can be stabilised.
- 2.2 In our submission on the Affordable Housing: Enabling Territorial Authorities Bill from 2007 we advocated for a major housing renovation programme retrofitting houses with insulation. It is pleasing to see that the advocacy of our and other organisations has been recognised by this government in the new home insulation scheme and the accelerated refits of state housing.
- 2.3 We also raised the Residential Tenancies Amendment Bill in our ***Briefing to the Incoming Government*** in November (excerpt attached App. 1) and in our 2008 ***Aroha tetahi ki tetahi Let Us Look After Each Other*** programme in the leaflet entitled "*The REAL housing affordability problem*" (copy attached) where we said that tenants need better legal protection and landlords more help to do their job well.
- 2.4 NZCCSS supports the intention of this Bill to encourage the development of a rental market that provides stable, quality housing to those who rent their homes, to enable landlords to manage their properties better and balance the rights of tenants and landlords.
- 2.5 NZCCSS believes that the Bill in its current form is a significant improvement on the existing legislation but is not sufficient to achieve the Bill's stated purpose. As part of this submission we will be proposing amendments that better protect tenants' rights.

3.0 Increase in importance of the private rental market since 1986

- 3.1 People who are renting need to experience the security of having a "home". It is the quality and stability of a housing arrangement that is most important, rather than whether a house is owned or not. The home ownership rate is dropping and expected to continue to drop in the future which means providing more secure tenancy arrangements is becoming even more important.
- 3.2 Around **one third of NZ's 1.5 million households** are renting their home and most of them must do this through the private rental market. A central issue in the housing affordability problem is that the private rental market is not working for renters or the owners of the properties - yet the overwhelming majority of those who are renting do

this on the private market (**Getting the Balance Right**, Department of Building & Housing, 2004).

- 3.3 Increasing numbers of older people will be needing rental accommodation as the effect of the dropping home ownership rate carries over into retirement. Older people have particular needs for good quality housing and robust legislation to protect their rights.
- 3.4 **The rental housing market in New Zealand must undergo significant change if it is to deliver better quality and more secure homes for those who rent. The Bill does not provide a sufficient mechanism to assist in this transition to a simple and transparent legal framework for secure and predictable housing tenure for the hundreds of thousands of NZ households renting in the private market.**

4.0 Rental Housing Market is Failing the Most Vulnerable

- 4.1 The ***rental housing market is failing the most disadvantaged*** in our community. There are not enough state houses and current Housing NZ plan to add a net 1,000 homes over the next three years is not sufficient. The Salvation Army has calculated that we will need 50,000 affordable houses over the next 15 years (Rebuilding the Kiwi Dream, Salvation Army, June 2007). Therefore most low-income New Zealanders are forced to rent in the private market. That market is characterised by poor quality houses and the experience of clients of our members' services is that the current rental market framework does not provide sufficient incentive to landlords to provide a good quality service. This Bill clarifies landlords responsibilities and increases the sanctions for not complying with those responsibilities and NZCCSS supports those changes.
- 4.2 The ***transient and short-term nature of the NZ rental housing*** market is demonstrated by the fact that the average tenancy lasts around 15 months. The 90-day notice option for landlords hangs over every renter's head. The desire to maintain social and community networks often means accepting sub-standard housing. Changing personal circumstances (separation, becoming a sole-parent, growing families, disability or illness) can suddenly threaten the ability to stay in your chosen home. This fundamental aspect of tenancy law is not altered in the provisions of the Bill and as a result tenants can expect no improvement in the security of tenure.
- 4.3 **More than half of all Maori households** are renters (55%) and because their incomes are on average lower than European incomes, they make up a disproportionately large part of the low income renters who are most vulnerable to the effects of poor quality housing and poor service by landlords (Maori Housing Trends, HNZC 2008). The current rental market fails Maori in several ways: size, location,

availability and quality of housing. The provisions of this Bill will not do enough to ensure that housing quality for Maori will improve.

- 4.4 ***Being a landlord is a relationship and service provision and not simply an investment.*** The fact that so many New Zealanders consider housing to be their primary retirement investment does not remove the fact that as landlords they are providing a housing service and must meet certain standards. The National Landlords Survey (Kaye Saville Smith, CRESA 2004) showed that most (82%) of rental property owners own four or less properties and 70% of rental properties are managed by the owner. Owning one or two houses as investments and/or eventual retirement fund, they often struggle with all the challenges of selecting and managing tenants and property maintenance.
- 4.5 When asked as part of the Landlords Survey about their experience as landlords, the aspects they disliked the most around being a landlord were ***tenants and property management!*** The motivations for many landlords are around seeking capital gains and owning a property for retirement. This means that many landlords, often with the best of intentions, still need support and encouragement to understand being a landlord as providing a service and that they need help to learn the skills necessary to fulfil this role well.
- 4.6 This weakness in the quality of housing service by landlords to their tenants plays out in the experience of those on the margins of the housing market, who face exploitation and insecurity in their rental housing situations.
- 4.7 The Bill does not achieve an appropriate balance of rights between landlords and tenants. It errs on the side of protecting “Mum & Dad” investors “nest eggs” and does not do enough to ensure that people who provide rental housing do so fairly and provide housing of a reasonable quality.

5.0 Specific Clauses of the Bill

- 5.1 Part 1 Clause 6 amending Section 5 of the Act to repeal Section 5(l): The removal of the exclusion of tenancies with a significant service component (more than 20% of the rent is for meals, cleaning or other services) is intended to mean that the Act will now clearly apply to residents in retirement villages who are renting and whose occupation agreements are therefore not covered by the provisions of the Retirement Villages Act 2003. NZCCSS members are operators of retirement villages and most of them include some rental units. The need to provide affordable rental options for older people will grow rapidly in the future and our members to committing to help meeting that need. **There is an urgent need to clarify the status of tenants renting in retirement villages but NZCCSS supports the position that this must be**

addressed in conjunction with a review of the Retirement Villages Act 2003.

There are several conflicts between the provisions of the RV Act and those in this Bill and it is a significant legislative task to ensure that that the two pieces of legislation are aligned that would be best achieved through a review of the RV Act.

- 5.2 Part 1 Clause 9 amending Section 13A of the Act: We welcome the extra information required to be disclosed and particularly information around “cleansing” of homes under statutory order (e.g. because of “P” manufacture). **This is very important health and safety information for future tenants and NZCCSS supports this amendment.**
- 5.3 Part 1 Clause 16 repealing Section 22 of the Act: NZCCSS supports the call of tenants’ groups calling for the interest on bond money held by the Government to be made available to fund the work of tenants’ support organisations. **The estimated half a million dollars in interest income on bond money should be applied as grants to tenants’ community organisations.**
- 5.4 Part 1 Clause 24, amending Section 40 of the Act: NZCCSS welcomes the change to specifically exclude “fair wear and tear” from the tenant’s liability for damage. There is no provision to limit tenants’ liability for damage which could result in severe hardship for low income tenants where damage has occurred in circumstances beyond their control (e.g. guest, visitors or relatives causing damage). **NZCCSS recommends that there be provision for an upper limit.**
- 5.5 Part 1 Clause 28 amending section 48 of the Act: Extending the types of persons who can access a rented property to include appraisal experts and real estate agents when a property is being sold seems to be too intrusive on the rights of tenants to quiet enjoyment of their tenancy. **NZCCSS does not support this amendment, as the current rights of access are sufficient.**
- 5.6 Part 1 Clause 31 amending Section 51 of the Act: It is good that landlord is now required to stipulate reasons for reducing the 90 day notice period. NZCCSS does not believe that it is just and fair that tenants can be forced to leave their home earlier because a new buyer requires “vacant possession”. **This clause should be deleted from the Act through a further amendment to Section 51.**
- 5.7 Part 1 Clause 35 amending Section 55 of the Act: Some of the member agencies NZCCSS work with tenants with difficult histories (such as release from prison) and who require considerable support. Because of the gross shortage of state and community housing, these people must rent on the private market and have very few options. Increasing the ability to act against people who intimidate others must be balanced by provisions to ensure that other options are pursued with difficult tenants. This clause is may be open to abuse by landlords and other tenants who may claim

that threats have been made. The wording of this clause is very broad and it appears the Tenancy Tribunal is being asked to take on the role of a Court and NZCCSS does not support this clause in this form.

- 5.6 Part 1 Clause 47 inserting a new Part 2A into the Act, new Clause 66U: Boarding House provisions are a significant improvement but not sufficient. They give less protection to boarding house residents than to other tenants. It is not clear why boarding house tenants should have fewer rights than other tenants. Tenancy can be terminated with 28 days notice for boarding house residents instead of the 90 day notice that applies to other tenancies. Similarly 48-hours termination of a tenancy if the resident is seven days in arrears is unduly harsh, when other tenancies have three weeks in arrears as the threshold. The ability to immediately evict boarding house tenants who merely threaten violence is open to abuse and does not recognise that boarding houses are a lodge of last resort for many very vulnerable people such as the mentally unwell. **NZCCSS recommends that the Bill be amended to give boarding house tenants rights in relation to termination that are closer to those of other tenancies covered by the Bill.**
- 5.7 Part 1 Clause 66 amending section 93 of the Act: Access to fair process for disputes – hurdle has been raised for ability to access legal representation from \$3,000 to \$6,000. Corporate landlords are likely to be represented at Tribunal hearings by a tenancy manager advocate who knows the legislation well and is a trained professional, while tenants with no knowledge of the law, and who often have language or literacy difficulties, have to represent themselves. **Representation should therefore be enabled for any claim above \$500 where there is a demonstrable imbalance of power between landlord and tenant.**

Appendix I – Overview of NZCCSS

NZCCSS Mission and Role

NZCCSS works for a just and compassionate society in Aotearoa New Zealand. We see this as a continuation of the mission of Jesus Christ. In seeking to fulfil this mission, we are committed to:

- giving priority to poor and vulnerable members of our society
- Te Tiriti O Waitangi

The key roles of NZCCSS are to represent the common interests and vision of our members at the national level; to supply information and networking opportunities to support members provide quality services; and to develop, critique and advocate for policies that will assist poor, vulnerable and disadvantaged members of society.

A national Council, made up of two representatives from each denomination, governs NZCCSS.

A small Secretariat team carries out the day-to-day work of the Council. This includes gathering and distributing information, research on social policy issues, and building relationships with government officials and others working in the community sector.

A Policy Group oversees the policy and research work that NZCCSS does in three key areas: child and family, housing and poverty and services for older people. Each Policy Group is made up of at least two council representatives plus social services managers, academics or others with particular expertise in that area. This means that the work that NZCCSS does is well informed by what is happening in our members' communities.

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