

# **Submission to the Review of NSW Tenancy Law**

**2007**



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To Whom It May Concern:

Regarding: Residential Tenancy Law Reforms

We would like to thank the Office of Fair Trading for providing the NSW Consumer Advisory Group – Mental Health Inc (NSW CAG) with the opportunity to comment on the proposed changes to NSW tenancy law.

Please find in the following pages our submission in relation to the changes proposed.

NSW CAG is the independent, statewide organisation representing the views of mental health consumers and carers at a policy level, working to achieve and support systemic change. Our vision is empowered mental health consumers and carers who experience their rights to respect, dignity and self-determination every day.

In our view, the revisions to the law demonstrate clear improvements for mental health consumers, carers and for the mental health sector. Our submission aims to build further on the foundation laid in the recommendations proposed.

Yours sincerely

Dr Gillian Malins  
Executive Officer

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## **Response & Recommendations regarding the changes to NSW Tenancy Law**

People living with mental illness live diverse lives and are positive contributors to the communities in which they live. However, there is also an unfortunate reality that many people living with mental illness are faced with the constant barrier of stigma and discrimination.

When laws are being amended that impact on people's lives, consideration needs to be given to people living with mental illness who may have particular needs related to levels of their illness or health. Financial difficulties are common amongst people living with mental illness due to the challenges they often face. NSW CAG therefore urges flexibility when considering how the law will further impact on peoples lives. The importance of this is enhanced with the knowledge that one in five people at one point in their life suffer from mental illness.

Security of tenancy is of utmost importance to the mental health of everyone. Those who live with mental illness are especially vulnerable when it comes to the private rental market. We have consulted our networks and it is clearly evident that security of tenancy can impact on the mental health of individuals as much as mental health can impact on the security of tenancy.

### **Sale of Rented Property**

NSW CAG supports the suggested Tenancy Law changes in relation to the sale of rented property. It is important that tenants are given an adequate amount of time to get used to the idea of future changes and make preparations. For people living with mental illness this can be an especially vulnerable time. NSW CAG proposes that written information in relation to the tenant's rights during this period is legally required to be included with their notification letter.

The importance of specifying a 24 hour minimum notice for one-off inspections is also essential. Having people come through an individual's home can be especially distressing for someone who lives with mental health issues including anxiety or depression related illness. NSW CAG recommends that visits are also limited to a specified number such as twice a week within a time agreed upon between the tenant and agent. This makes visits much more predictable and manageable for tenants for whom having unknown visitors coming through their home can be highly stressful.

### **Share Housing**

NSW CAG is supportive of more recognition being given to the existence of co-tenancies and supports the suggested changes.

### **Alterations by Tenants**

NSW CAG supports the proposed changes.

### **Dealing with Rent Arrears**

People who live with mental illness often are not financially well resourced. This makes it especially difficult if people experience a crisis that leads to financial disadvantage. NSW CAG strongly encourages flexibility when it comes to options for paying rent in arrears. There needs to be sensitivity involved in addressing issues of rent in arrears. Receiving a termination notice can be especially distressing for a person living with mental illness.

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Adequate notice of termination also needs to be given to ensure that the individual can explore other options.

### **Long Term Leases**

NSW CAG supports the move for further consideration to be made into the development of more flexible arrangements for long term leases. It is of utmost importance for people living with mental illness to have security in their living arrangements and for adequate time to be provided for any changes. When people have lived in a residence for a long time it is much harder to leave a property that has become a home. Tenants who have been in the same property for a long period of time deserve the right to have a longer notice period. This will enable more time to prepare physically and emotionally for the disruption of having to move.

### **'No Grounds' Evictions**

NSW CAG supports the changes proposed for 'no ground' eviction. It is important for people to be given adequate notice when it comes to such a life changing disruption such as having to move house. This is of particular importance with the current challenging rental market where it is difficult to obtain new premises.

Issues that have been raised through consultations with our networks also related to putting in applications for leases. This has grown into a time consuming and stressful process whereby real estate agents are asking people for information such as referee contacts, bank accounts etc. NSW CAG believes it to be discriminatory to ask people for their bank account balance as a proof of finance as people living with mental illness often do not have a large pool of funds. It can also provoke anxiety when privacy is being encroached upon. This is especially a challenge when people are still able to meet the requirements of their rent payments, yet are not in a position to save a lot of money. NSW CAG proposes that such requests are unnecessary and disadvantage lower socioeconomic groups. Proof of previous rental payments should prove adequate for such an assessment.

NSW CAG supports the proposal that 'tenants who think they have been given a 'no grounds' notice as a way of getting back at them for something they did' have four weeks to apply to the Tribunal. However, NSW CAG proposes that in addition notification of and information on the tribunal's existence be a part of the formal eviction process. It is essential that consumers are reminded or made aware of their rights in this situation.

Other suggestions that were made by our network members were that more support and sensitivity needs to be provided for people living with mental illness. It was suggested that the Consumer, Trader and Tenancy Tribunal build into its structure support and flexibility for people living with mental illness. Sometimes people that are unwell due to their mental illness, especially during a time of high stress, are unable to vocalise and advocate for their own needs. We recommend that advocacy support be made available within the system.

### **Breaking a Lease Early**

People who live with mental illness can sometimes suffer from anxiety disorders which in some cases can lead to them finding it difficult to return to a residence after being unwell. Other issues such as hospitalisation may also lead to a tenant needing to break a lease early. NSW CAG strongly encourages flexibility when it comes to individuals breaking a lease early, especially if unpredictable circumstances arise. Due to the low socioeconomic status of many people who live with mental illness, NSW CAG also

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strongly supports the notion of 'a fixed amount of rent being paid to the landlord as compensation, on a sliding scale, depending how much of the lease is left'. However, NSW CAG urges a special provision to be made for people who are unlikely to afford a large upfront payment. NSW CAG seeks further clarification as to the rates involved with the sliding scale system and seeks flexibility in relation to paying amounts due. For example, low income individuals should have the flexibility of organising a payment plan.

### **Evictions by Lenders**

NSW CAG proposes that more notice be given to tenants who are evicted by a lender. We recommend at least 42 days should be given to allow for people to make alternative arrangements. When the rental market is tight it is extremely difficult for people living with mental illness to find alternative accommodation within 30 days. Often people living with mental illness are not as competitive in the market due to their often limited access to finances or reliance on a disability pension. Stigma and discrimination can also play a role at this time. NSW CAG supports the move to provide financial compensation of two weeks rent to evictees.

### **Tenant Databases**

NSW CAG supports all recommended changes to the tenancy law in relation to tenant databases. People living with mental illness already experience many barriers in accessing the private rental market. Tenant databases only provide further barriers to a disadvantaged population.

NSW CAG supports the move to regulating owners of tenancy databases. Our network members have advised us that more regulation needs to be provided to protect tenants in relation to the databases. Some members of our network have had reports of statements being included on tenant databases such as 'you don't want this person'. We are aware that in some circumstances symptoms of mental illness may result in some people being perceived as difficult tenants. We believe, however, that greater understanding and knowledge of mental illness by real estate agents and landlords is required in order to reduce barriers to people accessing the private rental market. It is discriminatory to have a database that can be used as another barrier to people living with mental illness from accessing private rental properties. Regulations need to be put in place to enable reassessment of such comments and potential/eventual removal.

NSW CAG supports the proposal that tenants have easier access to their records on databases so steps can be made towards rectifying the situation. Database owners who charge a fee prevent many people with mental illness (who often don't have large incomes) from accessing their personal right to access information.

Our network members have also recommended that special provisions be made for people living with mental illness. Access to advocacy and support should be made available for people who are accessing The Consumer, Trader and Tenancy Tribunal. People living with mental illness often find accessing tribunals particularly stressful and the option for support needs to be made available.

### **Other recommendations by NSW CAG**

Through our consultations NSW CAG was made aware of the often slow response from real estate agents to tenant requests such as getting tradespeople to attend to plumbing and electrical issues. NSW CAG recommends that regulations are put in place to ensure there is a specified response time from real-estate agents. Communication channels need to be clear about what is happening in relation to organising tradespeople. For

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people living with mental illness it can be especially distressing if there are issues such as dripping taps and electrical issues that are not attended to in a timely fashion.

NSW CAG also recommends that bills for water are passed on in a timely fashion. Often tenants may receive water bills with limited time to pay them off due to the time taken by the landlord/real-estate to pass on the bill. This makes payments difficult for lower income groups.