



Submission to the *Review of the Residential Tenancies Act*
1997

October 2014

www.youthcoalition.net

The Youth Coalition of the ACT acknowledges the Ngunnawal people as the traditional owners and continuing custodians of the lands of the ACT and we pay our respects to the Elders, families and ancestors.

We acknowledge that the effect of forced removal of Indigenous children from their families as well as past racist policies and actions continues today.

We acknowledge that the Indigenous people hold distinctive rights as the original people of modern day Australia including the right to a distinct status and culture, self-determination and land. The Youth Coalition of the ACT celebrates Indigenous cultures and the invaluable contribution they make to our community.

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October 2014

The Youth Coalition would like to acknowledge the contribution of previous staff members William Mudford and Natalie Oliver to the writing of this submission.

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1. INTRODUCTION

Section 1 of this submission provides contextual information about the Youth Coalition of the ACT, young people in the ACT, and the process for developing this submission.

In this submission the *Residential Tenancies Act 1997* (ACT) is referred to as ‘the RTA’ and ‘renter’ is used as a collective term for ‘tenants’ and ‘occupants’.

1.1 Youth Coalition of the ACT

The Youth Coalition is the peak youth affairs body in the ACT. Comprised of 100 members, programs, and individuals the Youth Coalition is responsible for representing and promoting the interests and wellbeing of young people aged 12 to 25 years and those who work with them.

The Youth Coalition is represented on many ACT Government advisory structures and provides advice to the ACT Government on youth issues, along with providing information to youth services about policy and program matters.

A key role of the Youth Coalition is the development and analysis of ACT social policy and program decisions that affect young people and youth services. The Youth Coalition facilitates the development of strong linkages and promotes collaboration between the community, government and private sectors to achieve better outcomes for young people in the ACT.

1.2 Process for Developing This Submission

The Youth Coalition welcomes the opportunity to provide input into the review of the *Residential Tenancies Act 1997* (ACT) being conducted by the Justice and Community Safety Directorate of the ACT Government. This submission is based on the following:

- The priority areas highlighted in the *Youth Coalition Strategic Plan 2011-14*;
- The policy positions outlined in the *Youth Coalition Policy Platforms*;
- The issues raised at consultations on the 2014-15 ACT Government Budget;
- The issues raised at consultation on the 2009-14 Young People’s Plan, and the ACT Government’s Commitment for Children and Young People;
- The views of participants in the Youth Coalition’s Forums and Networks, such as the Youth Housing and Homelessness Forum;
- The views of participants in the Joint Pathways Group, a collaboration of all services supporting people who are homeless or at risk of homelessness;
- Engagement with student housing representatives;
- Engagement with legal services and peaks, including the Tenants Union ACT Inc, the Welfare Rights Legal Centre (ACT) and ACT Shelter;
- Previous Youth Coalition submissions to the ACT Government; and,
- Current and topical research on youth affairs.

1.3 Young People in the ACT

Young people are a distinct, and often discrete, population group aged between 12 and 25 years. As a population group, young people frequently experience systemic disadvantage, discrimination and unequal access to resources.

Canberra has one of the youngest populations of any Australian State or Territory, with approximately 78,000 people aged between 10-24 years residing in the ACT,

representing more than 20% of Canberra's population.¹ With over one fifth of Canberra's population comprised of young people, it is important that the residential tenancy and housing assistance needs of young people be specifically considered as part of the review of the RTA.

It is important that the review of the RTA takes into account the needs of the variety of young people within the ACT rental market. Various groups of young people have particular problems accessing housing including: tertiary students, apprentices, Aboriginal and Torres Strait Islander people, and young women. In general, young people have particular requirement for housing that is located close to transport, educational institutions, employment, and universal services. Young people have less access to private transportation as compared with the general population. They also require a range of different accommodation models and choices to ensure their needs can be met to the highest possible standard.

1.4 General Background on Rental and Housing for Young People in the ACT

Housing is a fundamental determinant of the wellbeing of young people. Housing provision should be given extremely high importance in any government policy development. Safe and stable housing is also a basic human right. These human rights are protected by a number of international human rights treaties, in particular the International Covenant on Civil and Political Rights,² the International Covenant on Economic, Social and Cultural Rights,³ and the Convention on the Rights of the Child.⁴ Having ratified these treaties, Australia and all its governments (federal, state, territory and local government) are under legal and moral obligations to promote, protect and realise the human rights of all people within their territory or under their control. However, despite these treaties many young people still experience housing stress or homelessness. It is important that the review of the RTA considers the interaction of International Human Rights, the *Human Rights Act* (ACT) and the protections of the right to housing contained within the RTA. To this end, the Youth Coalition is strongly supportive of the ACT Government's decision to undertake its review of the RTA within a human rights framework.

Many young people in the ACT experience severe financial hardship associated with the high cost of living.⁵ As young people are often working casually or still completing training, they struggle to compete in the private rental market. Casual employment makes workers more vulnerable to dismissal, and prevents them accessing entitlements such as sick leave or holiday pay, thereby jeopardising their ability to maintain a tenancy. Compounding this further, young people in Australia can be paid less in many industries, such as the hospitality and retail industries, simply due to their age.⁶ This is age-based discrimination, and incorrectly presumes that young people do not have the same financial commitments as other workers, such as family, loans, rent, and food.

In March 2014 median weekly house rentals in the ACT were \$455 per week and median weekly unit rentals were \$430 per week.⁷ While these figures represent a recent decline in asking rents in the ACT, these prices are still out of reach for many young people.

¹ Australian Bureau of Statistics, 2013, *Population by Age and Sex, Regions of Australia*.

² *International Covenant on Civil and Political Rights*, Article 17.

³ *International Covenant on Economic, Social and Cultural Rights*, Article 11(1).

⁴ *Convention on the Rights of the Child*, Article 27(3).

⁵ The Salvation Army (2010) *Perceptions of Poverty: An Insight into the Nature and Impact of Poverty in Australia*.

⁶ *Fair Work Act 2009* (Cth), s153(3)(a), s195(3)(a), s294(3)(a).

⁷ Australian Property Monitors, 2014, *Rental Report: March Quarter 2014*, <http://apm.com.au/MarketReports.aspx>, accessed July 2014.

Consultations with young people indicated it is difficult to access affordable housing in Canberra given the expensive rental market and high student population. In the 2012 *Rate Canberra* survey conducted by the Youth Coalition, 12% of respondents indicated 'paying rent, board, or mortgage repayments' was worrying them.⁸ Vulnerable young people also report they may have forgone proper nutritional meals, struggled to pay utility bills, especially in winter, and had difficulties paying rent due to the amount of income support being inadequate for their needs.⁹ Even for students receiving Rent Assistance, 43% of recipients experience housing stress because they are paying more than 30% of their income in rent. Housing stress for a young person means having to forego living close to shops, schools and public transport. It could also mean forgoing other items such as food.¹⁰

It is important to note that until housing affordability is addressed, young people will continue to enter into living situations that do not comply with the RTA due to their financial situation. Unfortunately, the youth sector's experience is that financial hardship and instability of employment can push young people into living situations where they are more vulnerable, and are unwilling or unable to assert their rights under the RTA. The ACT government must continue to address housing availability and affordability. Until these other pressures are reduced, the RTA will have limited relevance to the lives of vulnerable young people. A legislative instrument, such as the RTA, is a necessary element to ensure that young peoples' right to housing is realised, but it needs to sit within the context of other public policy measures aimed at addressing housing needs.

⁸ Youth Coalition of the ACT, 2012, *Rate Canberra 2012: Findings from the survey of Young People aged 12-25 in the ACT*.

⁹ The Salvation Army, 2010, *Perceptions of Poverty: An Insight into the Nature and Impact of Poverty in Australia*.

¹⁰ Australian Youth Affairs Coalition, 2012, *Submission in response to: The adequacy of the allowance payment system*.

2. YOUNG PEOPLE AS TENANTS AND OCCUPANTS IN THE ACT PRIVATE RENTAL MARKET

Section 2 of this submission seeks to outline the views and experiences of young people as tenants and occupants in the ACT private rental market.

2.1 Barriers to Entering and Maintaining Participation in the Private Rental Market

The private rental market in the ACT is amongst the highest in Australia. Many young people report difficulty in gaining entry to private rental properties due to cost, availability, and discrimination. The cost of renting in the ACT is at a very high level due to a variety of factors including a low vacancy rate, high property prices and high average incomes. In addition to high cost there is a shortage of rental accommodation in Canberra. This is particularly so at the beginning of each academic and working year when there is a large influx of people seeking accommodation when taking up a course in an educational institution or starting work in the public service. While there has been significant property development in Canberra, and prices have eased slightly, young people are yet to reap the rewards of these changes in the property market.

Due to age and inexperience, young people may be vulnerable to discrimination and being taken advantage of in the private rental market. For many young people, living out of home for the first time can be an extremely difficult, as they may still be developing their living skills, experience isolation, and feel disconnected from their peers. Young people are frequently on lower incomes due to their participation in lower paid industries such as hospitality and retail, as well having their hourly rate scaled down because they are junior employees. Young people may also experience discrimination when seeking rental accommodation, with landlords frequently stating that they will not accept applications from students or groups.

An additional barrier to maintaining participation in the private rental market is the limited understanding of renters' rights and responsibilities under the RTA. A variety of stakeholders have reported to the Youth Coalition that renters (both tenants and occupants) have had a limited understanding of their rights and obligations under the RTA. It is important to recognise that renters are at a significant disadvantage in the power relation between them and their landlord. Structurally the tenant needs somewhere to live, while the landlord can pick and choose who will rent their property.

For young people who have accessed support through the youth housing and homelessness sector, the challenge of transitions (such as from experiencing homelessness to crisis accommodation, and from supported medium term housing to independent living) can serve as an additional barrier to participation in the private rental market. Innovative, responsive and evidence-based models of supporting young people through various transitions are needed to ensure these transitions are successful. It is also important to understand that for many young people, a linear move from homelessness to independent living is not possible. The Youth Coalition supports the concept of a spectrum of support that recognises this.¹¹ Again it is important that the RTA is adaptable to the needs of these young people.

2.2 Share/Group Houses

Many young people in the private rental market live in a share house with multiple co-renters. Stakeholders reported to the Youth Coalition that there is quite a lot of uncertainty regarding the legal arrangement between the landlord and renters within

¹¹ Coffey, M (2010) 'Out of Sight, Young People, the Hidden Homeless', *Parity*, Vol. 23, Issue 3.

share/group houses. This leads to uncertainty about the rights that flow from these legal arrangements. For example the particular renters within a particular property may vary during the life of the lease. There will be no altering of the legal document but landlords will accept rent from different renters that have come into the property. This may create a periodic tenancy between the occupants but the exact terms of that agreement may be uncertain. Sometimes only some of the people who live in the house are on a lease.

Recommendation: The legal position of renters in share/group houses needs to be clarified within the RTA.

2.3 Occupancy

The existence of occupancy agreements in the private rental market exposes young people to particular vulnerabilities and uncertainty about their rights. Those taking up occupancy in private rental may be more vulnerable to exploitation as the set of minimum housing conditions are less outlined in the RTA.

Recommendation: Strengthen the occupancy principles contained within s71E of the RTA to better protect the rights of occupants.

2.4 Notice Periods and Grounds for Evictions

Stakeholders have expressed the view that there should be a requirement of grounds for all evictions. This would involve the removal of no grounds evictions from the RTA, which are contained within clause 94 of the Standard Tenancy Terms.

With the existence of no grounds evictions private renters have experienced a variety of problems. Despite the renters having fully complied with the original rental agreement anecdotally landlords are using no grounds evictions:

- In retaliation to renters asserting their rights under their agreement and the RTA; and against renters requesting maintenance or reasonable improvement of the property.
- To threaten the eviction of tenants in order to get them to sign onto new fixed term agreements with increased rent, thereby avoiding the requirement of reasonable rental increases contained within the RTA.

A particular problem with the reality of no grounds evictions is that tenants are not allowed to terminate the tenancy until they are within 2 weeks of the end of the agreement.¹² This means in practice that evicted renter can only start looking for a new property to rent within a short window at the end of the agreement because they are required to continue to pay rent until the end of the original agreement, preventing them taking up another tenancy before then.

Notice periods are supposed to allow a tenant time to prepare their accommodation arrangements for a forthcoming move. They are supposed to provide stability and predictability to renters. In practice clause 95(1) of the Standard Tenancy Terms removes the benefit of any 'protection' to renters provided by a 26 week notice period by stopping them from being able to secure alternative accommodation without penalty until the end of the notice period. In practice no grounds evictions allow landlords to evict people so as to charge more rent to other tenants, rather than in response to renters breaking the terms of the lease agreement.

Recommendation: Require just grounds for all evictions.

¹² *Standard Tenancy Terms* cl 95(1).

2.5 Need for Loss of Employment as a Grounds for Termination

As outlined in section 2.1 of this submission, young people face significant difficulties in the private rental market due to unemployment, under-employment, and increasing casualization of work. In the ACT, youth unemployment has risen by 13% in the last two years, reaching 10.8% in the year to February 2014. At these rates of increase, youth unemployment is forecast to hit 12.4% in the ACT by 2016.¹³

In light of the growing unemployment rate among young people and the general population, the Youth Coalition recommends the addition of loss of employment as a ground for termination within the standard tenancy terms. This could parallel the option for a fair clause for posted people as contained in s8 of the RTA.

Recommendation: Consider amending the RTA to reflect loss of employment as a ground for termination.

2.6 Lodgement of Bonds

There are provisions within the RTA about the collection and submission of bonds with the rental bonds section of the Office of Regulatory Services. However, renters are largely unaware of their rights in respect of bond submission and return of bond at the end of a rental agreement. Renters do not know when bond is supposed to be lodged, with whom, and how to get it returned. For example most renters do not know that they are entitled to directly submit a form for their bond to be returned rather than having to wait on a landlord or rental agency to do it (which can take unreasonable amounts of time). This suggests a need for the method of information dissemination to be reviewed along with the review of the RTA itself.

Recommendation: Review the processes of information dissemination about lodgement of bonds.

¹³ Brotherhood of St Laurence, 2014, *Youth Unemployment Monitor: March edition*, <http://createsend.com/t/r-C00FBEEAD9543CDB2540EF23F30FEDED>, accessed June 2014.

3. PUBLIC AND COMMUNITY HOUSING

Section 3 of this submission seeks to provide some of the views and requirements of young people who are renting in public or community housing in the ACT, and the providers of community housing. Public and Community housing providers are a landlord of last resort for those who are unable to access the private market for a variety of reasons including their income or particular support requirements. This brings particular responsibilities on the landlord to provide for the needs of those who are living in their properties. It also raises particular issues about the proximity and interaction of tenants with complex needs.

3.1 ACAT

Tenant advocates and service providers have reported that there is a lack of consistency in decision-making across the different tribunal members within ACAT. This makes it difficult to predict the outcomes for their clients and advise them of the actions that they need to undertake to protect their legal interests when in public or community housing.

Stakeholders observed that the ACAT members treat public and community housing providers differently to private landlords. In order to better reflect the special status of public and community housing tenants, the different standards to be applied and discretion to be exercised should be more clearly articulated.

Recommendation: Better articulate the parameters of ACAT members' decision making and discretion.

Recommendation: Better articulate the different standards to be applied to public and community housing providers, as opposed to private landlords.

3.2 Evictions

Public and community housing providers may go before ACAT to seek an eviction notice in order to enforce payment of arrears. Where the agreement reached at ACAT is breached, tribunal practice is that the only order available to ACAT is for an eviction of the renter from the accommodation. However, the Youth Coalition asserts that ACAT should have more discretion to consider the circumstances of the renter in this situation. Giving ACAT explicit discretion to vary the requirements and responses available to breach of an arrears arrangement or other similar orders of ACAT, rather than requiring eviction, may achieve this.

Recommendation: Provide ACAT members with the discretion to consider the circumstances of the renter when considering an eviction notice.

3.3 Occupancy Agreements

Providers of community housing have expressed issue with the way that occupancy agreements interact with the RTA. Some community housing providers enter tenancy agreements with renters, while others use occupancy agreements. This leads to confusion around which rights and responsibilities flow from each form of agreement.

Insufficient clarity of the legal arrangement between community housing providers and renters can cause difficulty when moving tenants voluntarily between different properties and rooms within community housing. This is also an issue for providers of supported accommodation, and will be outlined in greater detail below.

Recommendation: In consultation with Community Services Directorate and community housing providers, consider the creation of a special class of occupancy agreements for use in public and community housing.

4. PROVIDERS OF SUPPORTED ACCOMMODATION TO YOUNG PEOPLE

Section 4 of this submission seeks to provide the perspective of the range of providers of supported accommodation for young people in the ACT regarding their experiences of current and future requirements for the RTA.

There are nine specialist providers of supported accommodation (both accommodation and outreach) to young people experiencing homelessness or insecure accommodation in the ACT. These provide a range of different forms of support, from emergency accommodation through to longer term support to maintain a tenancy. In the ACT in 2010-2011, 59% of all people seeking immediate accommodation were turned away.¹⁴ Young people identified that if an initial request for housing support is unmet, this may negatively influence their decision to seek assistance in the future.¹⁵

4.2. Clarity of the RTA for Providers

During consultations, youth housing and homelessness service providers reported that they and their clients have difficulty understanding the RTA and what it requires of them. The providers reported that the language and structure of the RTA is vague, awkward, and difficult to understand. This leads to a lack of clarity for both services and young people around their legal responsibilities and rights, as well as acting as a significant barrier to providers working with young people to develop their skills and understanding of the RTA. Clarity, simplicity and appropriate flexibility would be beneficial for both providers and young people.

Recommendation: Justice and Community Safety Directorate should work with Community Services Directorate (in consultation with supported accommodation providers) to develop a chapter of the RTA that deals with providers of supported accommodation to clarify providers' role within the RTA.

Recommendation: Simplify and clarify the language within the RTA to make it more user friendly.

4.3. Moving of Clients within Service

There are issues and uncertainty around moving clients between different properties within a service. Presently there is uncertainty among providers about whether they have to end a legal agreement with a client and start a new one in order to allow such moves to occur. There are a number of potential ways to streamline the process:

- Having standard agreements so that changing is as easy as signing a new agreement on the same terms but with a different place mentioned.
- Including a clause allowing providers to vary the specific room within the existing agreement.
- Having clients enter an agreement with the provider to provide accommodation to them without a specific right to a particular room.

A further complexity to moving clients within a service is the collection and return of bonds. Services have reported that if they move a client to another property or room within their service they are currently bound to return the bond and then take it again, even though it is the same amount of money. This could be streamlined by allowing the transfer of bond to another place by consent of both the provider and the client, or by

¹⁴ Australian Institute of Health and Welfare, (2011) *People turned away from government-funded specialist homelessness accommodation 2010-11*, Australian Government, Canberra.

¹⁵ Youth Coalition of the ACT (2004) *Telling it How it Is*, Canberra.

allowing service providers to lodge a bond between them and a client, rather than for a specific place.

Recommendation: Justice and Community Safety Directorate should work with Community Services Directorate (in consultation with supported accommodation providers) to develop a chapter of the RTA that deals with providers of supported accommodation to clarify providers' role within the RTA.

Recommendation: Provide guidance to supported accommodation providers about their rights and responsibilities when moving clients.

4.4. Use of Occupancy Agreements for Supported Accommodation

Housing and homelessness service providers frequently use occupancy agreements when providing supported accommodation to clients. There are a number of different provider arrangements for occupancy agreements, and supported accommodation providers report that more explicit guidance on the use of occupancy agreements in the context of social service delivery could be provided as part of the RTA.

Services have reported that they have found it difficult to fit occupancy agreements within the more general framework of the RTA. There is uncertainty for them about which rights and responsibilities flow to them and their clients through the RTA when using occupancy agreements.

Recommendation: In consultation with Community Services Directorate and supported accommodation providers, consider the creation of a special class of occupancy agreements for use by service providers.

4.5. Support for Engagement Activities

Youth housing and homelessness service providers conduct activities with their clients other than the basic provision of accommodation. Many of the services are targeted at engaging vulnerable young people in employment or education, with contractual requirements around engagement. This means that it is vital for services that they have the structural support of the whole set of legal frameworks around them, including the RTA, to ensure clients engage in the required activities associated with the service. Services have reported that they need the ability to move clients from their service where the clients are not meeting the engagement requirements of the service. The RTA needs to provide the flexibility for services in order to meet their funding requirements. This also allows service providers to target their limited resources to clients that are willing to engage and receive the full benefit of the service.

Recommendation: Consider the creation of a class of occupancy agreement for the provision of housing and homelessness support services, ensuring that renters' needs are protected and accommodation is acknowledged within the context of other engagement activities.

4.6. Protection of Other Clients

As service providers have a duty of care to each of the vulnerable young people in their care it is vitally important that they can ensure the safety of all their clients. Young people accessing services experience particular intensity and volatility in their emotions and relationships. This can involve difficulty where they are sharing accommodation with others in a similar position. In some cases this means that they need to remove young people who are posing a risk to other clients. Presently services have found it difficult to decide how to appropriately undertake this within the RTA. This has meant

that there is limited consistency of practice across the youth homelessness sector in the use of eviction. Service providers need clarity and support for dealing with these matters.

Recommendation: Provide services with clarity and support for understanding and dealing with the tension between ensuring that clients' right to housing is protected and that all clients are safe in services.

4.7. Bonds

There is uncertainty in some services of how to fairly collect and return bonds from the young people who are accessing supported accommodation. Many services do not require a bond from their clients, others take \$10 installments out of income support payments per fortnight until the total bond is collected and then lodge the bond once it is fully paid. Services use the money collected to cover rent in arrears at the end of the occupancy and the cost of repairs to the property. Some services allow occupants to have \$5 a week taken out of their payments in case they need to pay for damage above the amount of bond collected. These services do not lodge this amount. They give it back to the young person within a week of moving out after taking out any damages owing. It is unclear what the legal implications are for these various practices.

Recommendation: Provide guidance to supported accommodation providers as to how to collect and return bonds.

4.8. 'Crisis Accommodation' Status

Section 126 of the RTA allows for an entity to be declared a crisis accommodation provider by the Minister. Crisis accommodation services provide accommodation to clients for a short period of time, and being declared a crisis accommodation provider grants greater flexibility in meeting the legal requirements under the RTA.

Accommodation providers report uncertainty about the applicability of this greater flexibility. This is because the RTA provisions for the obligations on crisis accommodation providers are within Part 2 of the RTA, which is on tenancy agreements. However, most accommodation providers use occupancy agreements with their clients. Providers of homelessness services have expressed the need for flexibility to prioritise their clients based on need.

Providers are currently finding the process of being declared a crisis accommodation provider difficult. Some have suggested that it may be better that supported accommodation providers all get the benefit of the flexibility of such a status.

Recommendation: Justice and Community Safety Directorate should work with Community Services Directorate (in consultation with supported accommodation providers) to develop a chapter of the RTA that deals with providers of supported accommodation to clarify providers' role within the RTA.

Recommendation: Within the context of a new chapter of the RTA about supported accommodation, the intention and requirements of declared crisis accommodation provider should be clarified. The RTA should be amended to ensure that all supported accommodation providers have the flexibility and discretion necessary to support the full range of their clients.