

Submission to the NT Department of Housing

Tenancy Participation Program – Interim Operational Policy 2013

1 Executive Summary

The **Central Australian Women’s Legal Service (CAWLS)** is a not for profit organisation funded by the Commonwealth Attorney-General’s Department and the Northern Territory Government. CAWLS provides free legal advice and assistance to all Central Australian women in the areas of domestic and family violence, family Law and children, family Law and property, discrimination, victims of crime, child protection and housing. Our purpose and commitment is to be an accessible, proactive and responsive legal service for all Central Australian women with priority given to those in greatest need.

This submission is in response to the Northern Territory Department of Housing Tenancy Participation Program Policy. The submission is endorsed by the **Central Australian Aboriginal Legal Aid Service (CAALAS)**.

We wish to raise several concerns with the Tenancy Participation Program Policy (‘the Policy’) as it currently stands. Our submission highlights several specific sections of the Policy and offers correlating recommendations.

We have an overarching concern over the unreliability of the Policy, and the lack of permitted stakeholder feedback and review. Consultations between the NT Department of Housing (‘the Department’) and relevant stakeholders and service providers were not held until after the Policy had already been rolled out on 3 March 2014. Furthermore, stakeholders have been given one week to provide feedback following consultations, which is an inadequate timeframe for the preparation of submissions.

A serious concern is that the Policy itself remains incomplete and in need of further clarity. At the Tenancy Support Program Review stakeholder consultation we attended on Wednesday 5 March 2014, several inconsistencies were raised by the Department in regards to what is written in the physical document and what service providers are being directed to implement.

While stakeholders have been advised that the Policy is a ‘living document’ that can and will evolve as more is added to it, at present it is not complete to a level that is satisfactory for its implementation. The Policy proposes significant repercussions for tenants, who may be compromised in their ability to comply with the Policy due to confusion as to what is actually required of them. In particular, at the Department consultation we were advised that several sections are in need of immediate revision, including section 3.4 and the section regarding Interpreters. We have specifically addressed both these sections below.

Further, stakeholders were informed that the second more detailed assessment tool for identifying tenants requiring TPP has not yet been completed. A later roll-out of a secondary assessment tool

may lead to confusion amongst public housing tenants as to who is eligible for access to TPP and who is compulsorily required to complete TPP, and does not allow time for public review of the tool before its implementation. Similarly, stakeholders at the consultation of 5 March were advised that the database system to be used by service providers to record file notes that will be accessed by the Department is not yet up and running. It is unclear to external stakeholders as to what means the Department are currently adopting to collect data and 'track' tenants.

Initial Recommendation

- That the Department clarify inconsistencies in the Policy, and publicly release any revisions made to the Policy.
- That the Department seeks stakeholder feedback and review of the Policy as each significant revision is made and offers adequate timeframes for review.
- That the Department ensure that all applicants/tenants are made aware of their right to seek legal advice in relation to any matter to do with the Department or TPP.

2 Issues raised in the stakeholder consultation process

Part 3: Referral and Assessment

3.4 Household members assessed as requiring TPP

Section 3.4 of the Policy currently reads that the section applies to children 16 years and over.

At the consultation meeting of Wednesday 5 March, stakeholders were advised that this section has been revised to now read children over the age of 10 years. Given that the secondary more detailed assessment tool has not yet been released, it is unclear as to what means will be used to assess children to determine their referral to TPP. It is highly unlikely that a child under the age of sixteen will meet the criteria that constitute an at risk tenancy for public housing and trigger compulsory referral to TPP as per section 3.5 of the policy.

Many of the Life Skills Program Modules are designed to address tenant management of 'anti-social behaviour'. Children under the age of sixteen should not be considered as responsible for managing 'anti-social behaviour' within their family household. The Money and Resource Management and Visitor and Crowding Management modules are unlikely to have relevance to younger children and teenagers. While it is the responsibility of all tenants including children to abide lawfully within their homes, the conduct of children within the home is the responsibility of parents, other family members and guardians. Children sixteen years and older have growing family and social responsibilities and it is appropriate that as their mental and emotional capacity increases they may be referred to TPP if they meet the assessment criteria.

Recommendation

- That children under the age of 16 years should not be assessed for TPP, given the limited relevance of many of the Case Management and Life Skills Program modules to children. Families should be supported through a range of holistic measures to support their children to contribute to the household and manage their behaviour.

- That the Policy should clearly state how children under the age of sixteen will be assessed to determine their referral to TPP.
- That the Policy at all times reflects the directions of the Department that are in fact being given to service providers implementing the Policy and external stakeholders with an interest in its operation.

3.5 At Risk Tenancies Tool

We raise concerns about the criteria that constitute an at risk tenancy for public housing and trigger compulsory referral to TPP. Primarily, we are concerned that the criteria are so broad that they would capture a high proportion number of public housing clients already in the public housing system.

Recommendation

- That the Policy be revised so that the bar for compulsory referral to TPP be raised to reduce catchment, and to ensure that service providers are not overwhelmed with clients.
- That the Department increase funding to current service providers to ensure that they are able to meet the needs of clients undertaking TPP, and to avoid a backlog in the system of those awaiting referral to TPP.
- That the Department demonstrate how it plans to undertake increased assessments of tenants, and how it will assist service providers in accommodating what will be an immediate increase in tenants being referred to TPP.

3.6 Client refusal to undertake TPP

Per Section 3.6, where an applicant or a previous tenant is determined at risk by the Department of Housing under the 'At Risk Tenancies Tool' and refuses to undertake TPP they will be refused public housing.

The Policy does not indicate what is deemed to be failure to engage with the TPP, or a refusal to undertake TPP. At the recent stakeholder consultations of 5 March 2014, we were informed that determining whether an applicant/tenant has refused to undertake TPP will be made on a 'case by case' basis. This creates uncertainty for applicants/tenants as well as for legal or other service providers who may potentially assist an applicant/tenant in appealing a decision to refuse public housing.

Recommendation

- That the Department ensures that applicants/tenants are given appropriate opportunity to engage with Department officers and service providers before determining an applicant's/tenant's refusal to engage.
- That the means for attempting contact with and engaging at risk tenants or applicants are made clear and prescribed into the Policy.

- That the Policy makes specific provision for on what grounds review or appeal may be made where there is a refusal of public housing to an applicant/tenant on the grounds of refusal to undertake TPP.
- That any applicant/tenant who is refused public housing should be provided with mandatory referral to an appropriate legal service for advice.

Part 4: Aboriginal and Torres Strait Islander People

Section 4.3 Interpreters and Translators

Section 4.3 pertains to the use of Interpreters and Translators.

We are concerned that the policy prescribes the use of interpreters and translators only where *requested*. We strongly urge the Department to *offer* the use of interpreters and translators to any Aboriginal or Torres Strait Islander tenant or tenant from another culturally and linguistically diverse (CALD) background. A person who speaks English as a second or third language may not be able to self-identify their need for an interpreter, yet may be unable to comprehend complex or technical questions, phrases or words. Applicants and tenants may also not be aware that an Interpreter or Translator is something that they have a legal right to access and so may not have the knowledge to request one.

For a person who speaks English as a second or third language, effective communication may be compromised by stress, the use of technical language, and power imbalance.¹ An applicant/tenant may appear to be able to speak English but may have restricted understanding of what they are being told in English, but not ask for an interpreter for fear that this will disadvantage them or their application in some way.

Recommendation

- That the Department and service providers under the Policy be required to offer the use of interpreters and translations to any applicant or tenant from an Aboriginal, Torres Strait Islander or other CALD background where English is not a first language. This offer should be made to applicants/tenants prior to any interview and where requested, documentation should be provided where possible in the applicant's/tenant's first language. Where a written translation is not possible, verbal translation should be offered with any written documentation given to a client under the Policy.

Part 5: Case Management

5.14 Tenant Damage and severe anti-social behaviour – client refusal to undertake TPP

As a women's legal service that encounters many clients who face eviction and debt due to property damage by violent partners we have significant concern with Section 5.14. The section does not state what is meant by prima facie tenant damage or severe anti-social behaviour. Further, the

¹http://www.ais.nt.gov.au/__data/assets/pdf_file/0019/152470/How_to_decide_interpreter_use_health_Nov_13.pdf

section imposes the obligation to undertake TPP on the primary tenant or another household member. The primary tenant may in fact be a victim of domestic or family violence who is being held accountable for damage that is not their fault and over which they had no control.

Recommendation

- That section 5.14 be amended to clarify what will be considered prima facie tenant damage and severe anti-social behaviour.
- That where a tenant is compulsorily referred to TPP under this provision they are offered referral to legal advice and means of appeal or review on the basis that the damage was the result of an incident of domestic or family violence.

5.3 Service provider role as an advocate in TPP

Service providers will now be in breach of both the Policy and their service level agreement with the Department in particular instances where advocacy is provided to a client. This raises concerns that in the case where a client wishes to make a complaint in regards to TPP or seek review of a decision made by the Department, they will now have to seek external assistance or advice. In lieu of the service provider being able to provide this assistance or advocacy there is serious concern that applicants/tenants will not receive support to be able to justly access their rights of review and appeal.

Recommendation

- That service providers in some instances be able to continue to advocate for their applicant/tenant clients in terms of complaints or appeal to minimise passing clients from one service to another.
- That all applicants/tenants who are compulsorily required to undertake TPP are given the option of referral to an appropriate legal service for advice.

Additional Concerns

Right to Privacy

Stakeholders have been advised that the TPP client database being designed by the Department will be mutually accessible by both service providers and the Department. We are concerned that all details of confidential client files will be accessible by the Department, who have advised stakeholders that they will be looking to 'track' tenants. It is unclear how both the Department or service providers intend to obtain informed consent from applicants/tenant for their sensitive personal information to be shared.

Additionally, as clients become aware of this information sharing they may be dissuaded from engaging in open discussion about sensitive matters for which support is needed. Trust is essential to an effective client/support service relationship, and this aspect of the Policy may damage rapport or constitute a barrier for newer clients seeking to engage.

Recommendation

- That the Department and its relevant housing policies including this Policy clarify its processes for obtaining consent to share sensitive information, and how the Department intends to protect any sensitive information shared between applicants/tenants and their service provider.
- That the Department provides clear information to service providers, clients and stakeholders as to how their information will be stored and protected.

Where an applicant/tenant has already completed TPP

There is currently no provision in the Policy for the process when an applicant/tenant has previously completed TPP, but then takes an action that meets the criteria for compulsory referral to TPP.

Recommendation

- That the Policy make clear provision for how the Department handles applicants/tenants who have previously completed TPP who again fall under the criteria for compulsory referral to TPP.
- That in respect of this the Policy clarify the process of appeal or complaint for applicants/tenants who have previously completed TPP in the instance that they face penalties or are compulsorily referred to TPP again.

Conclusion

We commend the Government on seeking review of this provisional Policy. However, given the limited timeframe for response, and the fact that review was sought following the roll out of the Policy, we are concerned about the transparency of this review process.

We encourage the Department to make the Policy publicly available on its website and through circulation to service providers and stakeholders. We also urge the Department to ensure the Policy is consistent and reliable so that service providers and applicants/tenants are fully aware of their rights and obligations. Finally, we reiterate the importance of the Department ensuring applicants/tenants are made aware of their rights to and the utility of seeking legal advice in relation to any housing or tenancy issues they may be experiencing.