

## **VPTA Policy Position Statement – Tenant Behaviour**

**Topic: Creating cohesive communities by improving the living qualities and tenancy outcomes for people living in public housing. The responsibility of tenants, tenant behaviour, tenants in breach and a 3 strikes policy and providing long term solutions for problem tenants.**

### **VPTA Position Summary**

The VPTA believes more should be done under the current system to address the rights of tenants to “quiet enjoyment” in that the landlord must consider the suitability of accommodation being offered and the impact on other tenants when placing those with a history of failed tenancy due to serious antisocial behaviour.

The Victorian Law Handbook explains “quiet enjoyment” as follows:-

*The landlord must take all reasonable steps to ensure that the tenant has quiet enjoyment of the rented premises during the tenancy agreement (s.67). This means that the tenant is entitled to enjoy the undisturbed occupation and possession of the premises without interference from the landlord or from things that are in the landlord's power to prevent.*

We believe the Department of Human Services, as landlord, has the power and the ability to prevent any such placements likely to have an adverse impact on the living quality of other tenants. The Department has a responsibility (duty of care) towards the mental and physical well-being of its tenants.

The VPTA asserts that the current system does little to assist problem tenants to be integrated and live successfully in the community.

Public housing should be a safe and harmonious place to live. Living in public housing comes with responsibilities; it is a privilege and not a right.

Public housing is not an appropriate institution or option for housing people requiring high levels of intervention or support with serious long term behavioural issues, drug and alcohol issues affecting others, mental health problems, violent or threatening behaviours or requiring close management and intensive treatment. Proper support and accommodation solutions need to be provided outside the public housing system.

Effective Case Management and early intervention should be used as a tool to help reduce the instances of tenant breaches by identifying tenants with a history of problems before determining what offer of housing should be made to them, and the likely impacts this will have on other tenants.

Public housing system providers must strive to create the best living environment possible and to ensure that tenants who are innocent victims are not forced out of their tenancy due to the inappropriate behaviour and actions of other tenants.

The VPTA believes the image of public housing tenants is being tarnished by the actions of a few badly behaved tenants and that more needs to be done to promote the good news stories in public housing.

### **DHS Breach Policy**

For the purposes of this policy position statement the VPTA defines a breach as:-

“The failure of one party to meet their duties under the Residential Tenancies Act. In this case the other party may serve them with a breach of duty notice.”

The policy and procedures related to Tenancy Breaches are detailed in Department Human Services Tenancy Management Manual Chapter 9 Tenancy Breaches

Under the Department of Human Services Tenancy manual section 9.21

“The broad policy aims of the Tenancy Breaches policy are to:

- ensure that public housing tenants meet their obligations contained in the Residential Tenancy Agreement and the RTA
- ensure that the Department meets its obligations as both landlord and public authority
- effectively manage and resolve tenancy breaches and disputes between Departmental tenants and neighbouring occupants
- take steps available to the Department to avoid the escalation of the problem
- ensure that persons involved in a dispute or breach are referred to relevant support services to resolve or remedy the dispute, and assist with any causal issues or needs which have contributed to the behaviour
- Outline the processes that housing staff follow to investigate and take appropriate action in accordance with the **RTA**, and consistent with the **Charter of Human Rights and Responsibilities Act 2006 (Charter)**, and other applicable law.”

The VPTA believes that more needs to be done to investigate breaches, to prosecute serious breaches and criminal offences to the full extent of the law. It is important that under individual case management, difficult tenants are referred to the appropriate agencies for counselling and support to change their behaviours, in order to be successful in any ongoing public housing tenancy - should this be offered.

The Department has a clear duty of care to provide a safe living environment for all its tenants.

The VPTA strongly recommends that the Department seek compensation or restitution in **all** cases where property damage occurs or to return the property to the requisite standard. It is important that tenants in breach are treated fairly, firmly and consistently, so that a clear message is sent out that serious and sustained inappropriate behaviour, particularly that which impacts badly on other tenants, will not be tolerated.

### **Eviction Policy**

The VPTA supports an in principle 3 strikes eviction policy in serious breach cases including:-

- threats or violence to other tenants,
- carrying on criminal activity
- wilful property damage
- sustained anti-social behaviour

The 3 strikes would apply in any 12 month period and any eviction would be subject to appeal under the usual provisions.

As a further safeguard all aspects of the tenancy must be considered before the 3 strikes policy is applied, including other family members who may be affected by any proposed eviction. The VPTA would want to ensure that suitable arrangements are made to house other family members and protect innocent parties not responsible for the breach, or who will suffer hardship as a result of the eviction. A 3 strikes policy must consider all the consequences of the eviction and what better alternatives there may be.

Once an eviction occurs the person would be precluded from being accepted back into public housing for 3 months and would be required to reapply and be reassessed for priority under the segmented waiting list provisions.

All tenancy agreements should be amended to highlight the 3 strikes policy and tenants would be required to acknowledge and accept this as a condition of tenancy.

### **The 3 Strikes Process**

#### **Strike 1**

In the first instance tenants would be issued with a written warning clearly indicating the behaviour in breach and the expectation for it to cease immediately. Appropriate counselling support should be offered at this stage to assist the tenant to modify their behaviours so that they can live successfully in Public housing and fully understand the consequences of their action.

Complainants and other tenants who may have been affected by the behaviour should also be offered counselling and support at this stage.

#### **Strike 2**

In the second instance offenders would be required to sign an agreement to undertake intensive counselling, and to demonstrate they understand why their behaviour is unacceptable and a genuine desire to change. Other immediate affected family members should be engaged to ensure their understanding of the gravity of the situation, that they provide the required support and change their behaviours where this is a contributing factor.

#### **Strike 3**

On the third instance an interview should be conducted to inform the tenant of the action proposed and to see if there are any factors that should be considered that should prevent an eviction from occurring. Is this the best course of action for all concerned? The case would be reviewed by a Senior Officer and if the decision was to evict – notices sent with appeal rights attached.

In serious situations involving criminal acts or where the protection of persons or prevention of widespread property damage is paramount, offending tenants should be evicted immediately without a 3 strikes policy being applied. The unintended consequences of such an eviction including the impact on family members and broader community must be considered as part of the process.

### **Investigating Complaints**

In all cases where a complaint is investigated the Department should assure the person making the complaint that the matter will be investigated and at the conclusion of the investigation that the matter has been finalised and provide a general indication of the outcome subject to the constraints of the Privacy Act.

### **Other Considerations**

The VPTA 3 Strikes policy should be extended to criminal offences. In some instances blacklisting may be warranted.

Being afforded priority on the waiting list should not be seen as a reward for bad behaviour. There must be compelling reasons why an ex prisoner or recidivist tenant in breach would be given priority. This should be a feature of case management.

The alternatives that are available outside the public housing system need to be explored including what support and roots a person has in the Community.

The decision to evict should not be seen as providing a long term or cost effective solution for those with a history of behaviour in breach. It is at best a stop gap measure that may solve an immediate problem for some but may well transfer the problem elsewhere to other providers. It is highly likely that an evicted person and their family will

require ongoing counselling and support and will require the services of numerous welfare agencies including perhaps encounters with the police and the justice system. More sustainable long term solutions need to be found.

### **More Suitable Accommodation and Live in Treatment Centres Needed**

The VPTA believes that more appropriate specialist facilities should be built to house those with long term tenancy problems so that their issues may be addressed in a safe and protected environment, where appropriate treatment, education and skills development can take place. Some of these may be facilities separated from the mainstream community. The aim of these facilities would be to get residents to the stage when they could live successfully in mainstream society including public housing.

Some people will require higher levels of security and supervision and may be placed voluntarily or by Court order.

These facilities would provide cost effective solutions toward breaking the failed tenancy cycle.

It may be desirable to look at the availability of support services in order to determine the optimal location for such facilities, if sited in the Metropolitan area. Rural and Regional locations may be more suitable for facilities requiring higher levels of security.

The VPTA would support further investigation and broader Community Consultation being conducted on the viability of temporary supportive accommodation being built for those with particular long term issues such as drug addiction or anti-social behaviour resulting in numerous failed tenancies.

### **Tenant Contracts and Induction Kits**

Tenants should be provided with full details about the responsibilities they have when living in public housing, including information about breaches and this should form part of the tenancy agreement.

### **Bonds and Debt Repayment**

In some instances a significant bond may be required for tenants with a history of damage to property or requiring significant intervention from the Department to maintain the property in a habitable condition.

The VPTA believes that tenants, where appropriate, should have additional deductions made from their rent in order to make restitution for damage or other recoverable expenses incurred by the Department. Ideally, this type of arrangement would be entered into voluntarily by the tenant as a sign of good faith that they are making an effort to change their behaviour.

It is understood that the Department may soon have the power to request compulsory deductions to be made from Centrelink payments for significant rent arrears and debt repayment purposes under proposed Federal Government Social Security legislation. The VPTA would want to see a hardship test developed and applied to any such deductions to ensure that effected individuals and families can survive and have a successful tenancy with the reduction in income proposed.

### **Incentives towards Successful Tenancy**

Another approach that is worth considering is to provide incentives to those tenants with a previous poor history to behave in an appropriate manner. Prima facie, there may be some merit in the notion of rewards for good behaviour rather than punishing bad behaviour. One example of how this might work would be that debt could be waived or systematically reduced as recognition that the tenant is behaving acceptably over an extended period.

The VPTA believes that this aspect of incentives is worth exploring further by the Department and that it would likely be more successful in the long term and may overall be more cost effective than continuing the cycle of failed tenancy and eviction.

### **Regular Inspection Visits**

Anecdotally, we have had reports of property inspections not occurring for many years in some residences.

The VPTA believes that lack of regular attention and appropriate and timely intervention may be a contributing factor to reinforcing the bad behaviour. More frequent property inspections for identified problem tenants may be warranted, so that early interventions can be made along with meaningful case management, before the problem gets out of hand.

### **Community Based Solutions**

The VPTA plans to conduct a series of forums to consider the question of anti-social behaviour and would welcome the opportunity to participate in a broader discussion with PEAK welfare agencies and the Department with on long term strategies to address the problem in context with the Department's case management initiatives. We see effective case management as an important element in the successful implementation of the housing framework.

### **Offenders Register**

The VPTA believes consideration should be given to creating and maintaining a public housing offender's register to record serious breaches, similar to that of a credit rating register, accessible only to DHS staff for the purpose of determining what would be suitable accommodation for the client based on their history, and that an offer, if made, would create minimal risk to neighbouring tenants. Being listed on the register could also reduce the priority afforded to the person under the segmented waiting list. This may have a positive influence on the future behaviour of the tenant.

It is envisaged that after 3 years of a satisfactory tenancy history that the particular offender's details would be removed from the register – providing further incentive to behave appropriately as a public housing tenant.