



## **TENANT PARTICIPATION COMPACT**

### **COMMENTS BY SHELTER NSW**

## Shelter NSW

Shelter NSW is a community-based, Statewide, peak housing body, which aims to advance the housing interests of low-income and disadvantaged people in NSW. It is also part of a national network of Shelter organisations in each State and Territory, and is a constituent member of National Shelter.

Shelter NSW was established in 1975, and was involved in advocacy and campaigning in support of public housing and in the development of community-based alternatives like housing co-operatives (not lending agencies, but groups of people interested in co-operative housing living and management).

Shelter's vision is to work for a just and equitable housing system, where housing for all is a right, not a privilege.

Shelter's role is to:

- Promote a co-ordinated response within the community sector to housing issues affecting housing low-income and disadvantaged people;
- Work with and influence government and relevant community sector organisations so that they develop housing policies and programs which meet the needs of low-income and disadvantaged people;
- Increase public awareness of housing issues and support for adequate and sustainable responses;
- Research and develop responses to housing issues;
- Provide quality information, assistance and support to the community sector, members and other stakeholders.

Shelter has 119 organisational members and 46 individual members. Organisational membership includes specific-interest peak groups (e.g., tenants, youth, community housing, etc.), a wide range of housing providers, public and private tenant groups, local government councils, regional housing bodies, and community services agencies.

## **What is the compact for?**

There is a lack of clarity as to the purpose of the document.

Is it a policy statement about what the department believes “tenant participation” should be?

Is it meant as a policy framework guiding departmental staff in how they should enter discussions with tenants?

Is it meant to be an agreement with tenants as to what both parties can expect from the process of tenant participation? This is implied in the use of the term “compact”.

According to the Macquarie Dictionary, a compact is “an agreement between parties; a covenant; a contract”. Is the Department in fact wanting to develop an agreement on tenant participation with its tenants, or is it seeking to develop protocols that will guide its own staff in their relations with tenants on an organised basis, or is it trying to develop something between the two?

The answer to this question is important, because it determines to what uses the compact will be put, and, perhaps, the degree of its usefulness. If, however, the Department is unclear about the intention of the document, it may simply be a vague amalgam of all three, and its vagueness of intent may militate against its serving any useful function.

This would be regrettable, because the good intentions in producing such a compact are clear. It would be useful to have a clear policy on tenant participation; on what the department means by the term and what it can deliver; that such a policy would be effective at all levels of the Department, with staff required to embody it into their practices and reporting procedures; and that its effectiveness in staff operations can be consistently monitored. This would also require some procedures for planning and setting goals for developing tenant participation practices and for ensuring that these goals are met.

## **Background**

The good intentions of departmental staff in seeking to formalise tenant participation policy are unquestioned. It comes as something of a jolt to realise that after nearly two decades of tenant participation programs, nothing is formally enshrined in departmental policy. Having said that, it is also the case that the department has invested substantial amounts of finance, staffing and managerial effort in encouraging tenant participation since the mid-1980s.

It was not always so. Until the mid-1980s there was no such thing as tenant participation, although for quite some years previously there had been agitation within the community sector and among some public tenants for development of such a program. For many years the then Housing Commission of NSW simply denied that tenants had any right to

participation or to being heard in any collective sense: Basically, they were to be seen and not heard, and they were expected to be grateful for their housing. When groups like Shelter NSW, Inner Sydney Regional Council for Social Development, and the Housing Information and Referral Service asked for recognition of tenant groups and their right to participate in decisions affecting them, they were regularly told the Commission did not recognise such groups. A later development was when the Commission's senior management indicated that it would recognise a public tenants' union once it had 100 percent membership of all public tenants. It is unlikely this was meant seriously, but it reflects official views of the time.

The mid-1980s saw the introduction of a new era of consultation on housing issues with the community sector generally, and it was within this context that the importance of tenant participation was recognised. In 1995 in an inquiry report John Mant noted:

The existing Tenant Participation Program in 1985 was imposed on the Department (when it was still the Housing Commission) with the impetus largely coming from the then Minister's office. It is understood that the model for the design of the Program, so far as its representative structure was concerned, was the constitution of the Australian Labor Party.

Instead of fundamentally reforming the operation of the Department, it was hoped that the behaviour of the Department would be modified from outside by the empowering of tenants through the setting up of eight Regional Public Tenant's [sic] Advisory Councils and the employment of permanent workers to form and support tenant groups at the estate level.

The program was intended to work at two levels; at the estate level as a means of improving conditions and encouraging communal relationships amongst tenants and, at the organisational level, by creating a countervailing force to the imperatives of the Department which were not necessarily focused on the welfare of the tenants . . .

A hierarchical structure were [sic] established to enable ministerial discussions with a Council which was 'representative of tenants as a whole'.<sup>1</sup>

Substantial interim funding was provided for a tenant group, the Public Tenants' Development Project, operating out of Redfern. In addition the first Statewide tenants' conference was held and called for the introduction of representative tenant bodies, and for a broad-ranging program of tenant participation. Over time, a number of projects were put into place, which were resourced and administered through a departmental unit created for the program, the Tenant and Neighbourhood Resources Unit. This provided funding for employment of community estates workers; for the development of regional tenant councils in each of the department's then eight regions; for employment of regional tenant workers by the councils; for seeding grants to

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<sup>1</sup> John Mant, *Inquiry into Central Sydney Region Tenants Council*, 24 February, 1995.

encourage the development of tenant groups; and for a State Tenants' Council meeting on a regular basis.

In 1988 a government with a different philosophy on the role of the community sector and of tenant participation was elected, and the tenant participation program went through a number of changes. The new government disbanded the Tenant and Neighbourhood Resources Unit (along with a range of other community-based programs); withdrew funding from the State Tenants' Council; and after a considerable battle it also withdrew funding for the community estates workers' program; the regional tenant councils were allowed to stay in operation, although with reduced funding.

Over the years, following changes in ministry and/or government, and also after several reviews of tenant participation programs, the following changes have also taken place:

- Introduction of the Housing Communities Assistance Program of placing community workers on at-risk housing estates (this was effectively a revamped and scaled-down version of the community estates workers program);
- Introduction of the Tenant and Community Initiatives Program (TCIP). As with the earlier program, this was initiated from outside the Department itself, via the Office of Housing Policy within the Department of Urban Affairs and Planning, and which reported to the Minister separately from the Department. Indeed, at one point the Department contemplated setting up its own separate tenant participation program, although it cooperated actively with TCIP). Later on, housing policy and programs like TCIP transferred across to the Department of Housing;
- Introduction of a ministerial State Advisory Committee of appointed tenant and community advocacy body members. This was basically set up to advise the Minister on tenant participation matters; broadly to oversee development of TCIP; and approve funding for the community estates resourcing grants program;
- A key element of TCIP was a change in direction for tenant participation, from one of funding representative bodies, to one of funding service agencies, regional tenant resource services. In some cases funding for these was won by the pre-existing regional tenant councils, in others the funding went to community agencies and services. A reduced level of basic funding was maintained for those regional tenant councils able to remain in operation, although they had to do so without staff (at least, those not funded as RTRSs);
- Further consultation and review led to the replacement of the State Advisory Committee by a Public Housing Customer Council accountable to the Department of Housing. This was established as a body that could advise the Department on tenant views of customer-related issues, and tenant members were appointed by the Department.
- At different stages throughout these processes, a number of other developments and consultation processes also took place, like the introduction of estate advisory boards, community housing forums, customer advisory councils and so on. Some of these were driven by tenant participation processes, and some by external requirements like, for example, consultations on housing assistance plans required by previous Commonwealth State Housing Agreements. Indeed, it was made clear at the time

that while there would not be a discrete program for tenant participation, the intention was to establish a broad tenant participation framework, with tenant participation embedded into the department's operations – indeed, it is within this context that the compact is aimed at helping to ensure this happens.

This *melange* of programs indicates a number of things. They include:

Some confusion and differences of viewpoint as to what tenant participation is for. It would also be true to say that tenants themselves – at least, that small minority who engaged with the process – were no less confused about it.

At the most basic level, for its part the Department wanted a sounding-board against which it could test what have come to be known in private enterprise terms as “new products”; in similar terms, it wanted to increase levels of “customer satisfaction”; it wanted to create greater understanding between itself and its tenants; it wanted ways to identify emerging issues and problems.

For their part, at the most basic level tenants wanted better housing conditions; they wanted to be treated as responsible adults capable of independent decision-making; they wanted a say – or at least to be heard – in decisions affecting their housing and their estates.

Other than the provision of funding – and that in itself is both substantial and important – implementation of tenant participation has been patchy at best, and largely reliant on the goodwill of those engaging in it. In addition, as is often the case, what is discussed and understood at senior levels of the department does not always filter down effectively to the shopfloor. At the least this raises questions about the effectiveness of intradepartmental consultation and information provision. Even now it is not so unusual to come across DOH staff whose understanding of tenant participation is sketchy at best.

There have also been problems with tenant participation on the tenant side. It is undoubtedly true that the vast majority of tenants have either never heard of tenant participation, or have no interest in tenant participation. Indeed, the proposed compact explicitly recognises this by emphasising the right of tenants to choose whether or not to participate, and at what level to participate, if any: well, of course, if it is not a condition of their tenancy agreement – as it certainly should not be – a right not to participate is in any case a *sine qua non*. However, it is at least worth looking at the reasons why this is the case. They may not all be to do with poverty, alienation, exclusion, dislike of existing participation structures or personnel, or a wish simply to have a roof over tenants' heads: They may also have to do with a perception of tenant participation as ineffective, or irrelevant, or not offering a genuine stake in a worthwhile process. Insofar as this is true, it needs to be addressed.

There have, of course, been other well-known problems – like the difficulties of setting up and maintaining tenant-run organisations with inexperienced or untrained personnel; or the capture of the process by a handful of activists and/or dominant personalities. But

even here, further things need to be said: Sometimes with the best intentions in the world, organisations have been set up to fail; because somebody is an activist or keen to play a part does not disqualify them from recognition of having a significant role to play; and sometimes departmental perspectives on tenant organisations as troublesome or incompetent may be tainted by self-interest, bureaucratic priorities and practices, discomfort in dealing with sometimes stroppy individuals, or debatable ideologies. It is certainly the case that some tenant organisations have fallen over or been badly managed. Perhaps further thought might have been given to developing ways this could be averted or dealt with before it developed into a major problem.

At the same time it would be regrettable if this became the dominant perspective on specifically tenant organisation, as it is also the case that incompetence, inefficiency and misuse of resources are not entirely unknown in the public sector. It is no less the case that a lot of hard and effective work has been undertaken by highly-committed individuals and organisations in seeking to enlarge tenants' rights and ensure that tenant participation becomes a reality. Tenant groups, associations and councils have been supported by very substantial levels of volunteer commitment. And for all the questions that have been asked by departmental staff about the representative level of tenant organisations, the fact is that some hundreds of tenant groups have been resourced by tenant councils and services, and that reflects a degree of representation not often recognised by the department.

## **Comments on the draft compact**

1. In our introductory remarks we have drawn attention to the lack of clarity and the lack of clear goals about the purpose of the document, and the potential confusion this can represent. "Tenant participation" is presented as a social good, but it is a contentless term aside from the introductory comment that "tenant participation is about tenants influencing the broader issues that affect the wider tenant community". Quite properly, this is drawn in contrast with "consultation with individual tenants about their individual circumstances", and of course, it is precisely at this point that tenants themselves often have to learn this distinction when they first become engaged in the tenant participation process. Nevertheless it is difficult to derive any precise meaning from the sentence – indeed, it does not necessarily imply direct relations with the Department at all. For example, it could include agitation with the Roads and Traffic Authority for more bus stops in an estate, or with the Department of Community Services over neighbourhood centres funding. Such things may, of course, be a byproduct – and a desirable one at that – of tenant participation. What they suggest is that tenant participation programs may also be an important element in community strengthening and the growth of social capital.
2. It is difficult to come to a firm conclusion; however, from such literature as we have been able to survey, definitions of what "tenant participation" is or should be appear thin on the ground. There are, perhaps, some advantages in leaving it undefined, e.g., definition may become too rigid and limiting, but the disadvantages include confused goals and lack of an agreed understanding of what tenant participation is supposed to

be about. For its part, the Department has been characteristically concerned about delivery of services, about getting feedback, about getting tenant support for departmental initiatives, about providing some avenue for consultation, and about improving the estates. Many of these are combined in a 1999 comment by the then DOH Regional Director for Southern Sydney, Mr. Neil Sandall:

For me, tenant participation is one of many different ways the Department uses to achieve a more open and accountable client or . . . customer focused housing services delivery approach. If you like, it provides a formal structure through which customers as a group . . . can interact with the Department . . . TCIP provides the mechanism for groups of tenants to raise community as opposed to individual tenancy concerns. I like the way TCIP brings together tenant groups and Department officers together to work as partners on a range of important customer and service delivery issues. Also, I receive feedback on how local projects have succeeded and otherwise, and feedback on Departmental initiatives. It is, if you like, what I call a reality check on what we are doing to help solve specific community issues. TCIP also has a positive community development spin-off as it helps neighbours work together for common purposes and in so doing helps develop a sense of community and belonging among those neighbours.<sup>2</sup>

3. For their part, tenants' organisations have been fairly consistently concerned about questions of tenants' rights, representation in consultation with the department on a basis of relative equality, and opportunities to participate in decision-making processes. While they will often be in accord, these goals are not intrinsically compatible with those of the Department. One of the earliest statements comes from the Public Tenants' Development Project in 1985:

Tenant participation is about involving any tenant who wishes to have a say about changing policies and decisions made by the Housing Commission that affect their housing. It also gives tenants the opportunity of being involved in a consultation process to change and develop new policies.<sup>3</sup>

Even though this is fairly general, it reflects a consistent viewpoint, both historically and geographically. Thus, in 1987/88 the Newcastle Regional Public Tenants' Council spoke of tenant participation in these terms:

Tenant participation gives Department of Housing Tenants in NSW a greater say in the planning and management of their homes and communities.

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<sup>2</sup> Neil Sandall interviewed in *Southern Voices*, Newsletter of the Southern Sydney Regional Tenant Resource Service, Issue 2, Winter 1999, p.2.

<sup>3</sup> Public Tenants' Development Project, *Public Tenants' Rights Manual*, 1985, p.28.

Tenant participation is for tenants to know about their rights and for them to have a say in the policies which affect their tenancy.<sup>4</sup>

In 1990, the Sydney and Central Coast Region Public Tenants Council wrote that

Tenant Participation provides all Department of Housing tenants the opportunity to work together to achieve real changes of mutual benefit.

And said tenant participation meant

- having a say;
- knowing your rights;
- improving your living environment
- taking part in policy making;
- being part of a united voice;
- working for other tenants;
- initiating changes.<sup>5</sup>

And finally, in 1995/96, the Hunter-Central Coast Tenants' Advisory Council wrote of tenant participation as meaning

- knowing your rights as a Tenant,
- having input into Policies that affect your Tenancy,
- having a say in how your living environment could be provided,
- knowing how to identify the category your maintenance falls into and how to get it done,
- become involved in your community – working together with and for other Tenants.<sup>6</sup>

For all the differences of emphasis here and there (note the service-delivery influence as distinct from advocacy in the last statement), there is an impressive unity in tenant organisation publications about the general goal of tenant participation, even if it does not contain a lot of detail. The question is to what degree the Department can accommodate this in a compact aimed both at its own staff and at tenants; and whether a compact is what it is seeking to develop.

For its part, Shelter NSW has been similarly imprecise about definitions of tenant participation, although it has been a regular participant in debates and consultations and processes involved with tenant participation since long before it became a program. It can safely be said that along with its tenant members Shelter was actively involved in initiating tenant participation programs and their maintenance, development and

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<sup>4</sup> Newcastle Regional Public Tenants' Council newsletter, *Newcastle Region Tenants News*, December 1987/January 1988, p.2.

<sup>5</sup> Sydney and Central Coast Region Public Tenants Council newsletter, *Keyhole*, September 1990, Issue 5.

<sup>6</sup> Hunter-Central Coast Tenants' Advisory Council, *Hunter-Central Coast Tenants News*, December 1995/January 1996, p.5.

oversight ever since. Shelter's most recent statement came in its submission to an evaluation of the Tenant and Community Initiatives Program. In this submission, after pointing out the implications of international covenants relating to housing, it said such covenants suggested governments had obligations to

- a. provide tenants with information about decisions the [*sic*: that] affect the adequacy, affordability and security of their housing;
- b. consult tenants about these decisions;
- c. allow tenants to participate in making these decisions;
- d. enable tenants to organise action on housing issues independently of landlords; and
- e. facilitate the participation of tenants in the delivery of housing services.<sup>7</sup>

What this overall range of definitions suggests is that at the least, the different parties have different expectations for what they want to get out of tenant participation. To give it due credit, the Department has been willing to substantially subsidise the process even though it does not entirely satisfy what the Department might wish, and even though it reflects some goals with which the Department may not be entirely comfortable. It is also the case that particularly since the introduction of TCIP, the balance has swung increasingly away from funding representative processes and towards funding service delivery (RTRSSs), consumer feedback (PHCC) and community development. These latter are certainly necessary and useful, and perhaps they largely fulfil what the Department expects of tenant participation; perhaps, too, down the track, they will enrich tenant participants – but they cannot nevertheless be confused with tenant participation as tenants perceive it.

The Department is, perhaps, entitled to say, well, if the tenants want to get their act together and debate departmental policy, then let them do so, nobody's stopping them, and there are avenues for doing so. But does the Department have a responsibility here? The Shelter submission noted above suggests that it does, consistent with international covenant obligations. It would be possible to add to that the obligations of a social landlord with considerable (if very constrained) command of resources and community service obligations, and of a Government that proclaims social justice as one of its goals. In some ways the question is a rhetorical one, because the Department has in fact put treasure into facilitating such processes: But it becomes a question once the Department wants to establish a tenant participation compact. If a compact is what the Department has in mind, then in the nature of things it must embrace tenant priorities, and as it stands at present, it does so only partially (it should be noted that some of those priorities gain at least some recognition in the text of the compact). It may be that what we are talking about is a staff tenant participation protocol, rather than a compact.

4. If this is meant to be a tenant participation compact, then, with respect, it has not been adequately consulted, so far as we can tell. A draft was provided for comment to the NITPIC, and subsequently sent to the regional tenant resource services for comment;

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<sup>7</sup> Shelter NSW *Submission to the Evaluation of the Tenant and Community Initiatives Program*, October, 1999, p.4.

and a not-very-well attended workshop group at last year's State Tenants' Conference discussed the compact in very general terms. No doubt the compact has been widely circulated, and certainly a generous amount of time was allowed for responses to be provided: But this provision of information and gathering of responses is no substitute for the sort of consultation that alone would provide any sort of representative basis for a compact between the department and its tenants. To the best of our knowledge it has not, for example, been discussed in tenant-based forums like the Public Housing Customer Council (perhaps, indeed, specifically on account of the limited role this is perceived as having). Having said that, we also feel it necessary to emphasise that we are supportive both of the idea of a compact between the Department and its tenants, **and also** of a protocol committing the Department to tenant participation and requiring this to be taken into account in the everyday activities of its staff. Indeed, such a protocol could include safeguards such as those that have previously been proposed by Shelter:

- Contractual obligations – having tenant participation written into contracts at local, regional and senior levels, so that performance is assessed against tenant participation criteria;
  - Consultation agreements and protocols, covering ongoing and one-off consultation and requiring feedback mechanisms;
  - Evaluation – contracts and agreements should be regularly monitored and assessed, and tenants should be involved in the evaluation process – after all, they are the ones being consulted and invited to participate;
  - Adequate reporting processes, for example, in the Department's reports to the Minister, and in the annual report tabled in parliament.
5. The very structure of the proposed compact militates against its being a two-way agreement. Apart from the small final section (“Tenants’ obligations”) it is essentially a statement of intent by the Department, and it is entirely praiseworthy simply in those terms. Section by section it indicates that the Department will do thus and so. There is no problem at all in this, but that no less clearly indicates that the document is a unilateral departmental production: It is effectively the Department saying to its own staff, and to its tenants, “this is what we mean by tenant participation and this is what we will do about it.” A joint agreement between the parties may say many of the same things, but those things would be quite differently framed, and a joint agreement may also say some other things as well. The very fact of such a unilateral statement – well-intentioned as it is – being referred to as a compact suggests that joint ownership of tenant participation as equal negotiating partners still has some distance to go.
6. In addition, if we are to have a compact between the Department and tenants, Shelter NSW would urge that it should include adequate resourcing to ensure that representative processes and structures are encouraged; that consultation takes place with formally representative tenants (not just appointees); that in addition, consultation with tenants generally should be experimented with – in years past, we have noted that when public consultations are called on matters of concern,

surprisingly large numbers of tenants, **including tenants not normally engaged in formal structures**, have attended. This is important, because as the compact correctly notes, there are tenants who may want to be involved, but not necessarily through existing representative structures. In addition it is still the case that tenant groups and services need backup with policy expertise and training, and this may well involve what has previously been suggested, some independent and professional capacity for policy development and resourcing, and for advocacy and negotiating skills-based training.

7. There is yet a further problem if we are talking about the Department and its tenants. Quite properly, the draft Compact also seeks to encourage tenant participation with Aboriginal housing tenants and community housing tenants: But these are not tenants of the Department of Housing, so the Department can encourage this only indirectly, i.e., through the Aboriginal Housing Office, and through the Office of Community Housing. What consultation has there been with Aboriginal and community housing tenants? This of course also raises the knotty question of how is tenant participation best organised for public tenants, for Aboriginal housing tenants, and for community housing tenants. An adequate response to this question has not yet been developed. For all the goodwill in the world, tenant participation **as a Department of Housing project** has not made a substantial impact on Aboriginal housing tenants or on community housing tenants. Attempts to bring Aboriginal tenants and community tenants under the same umbrella with public tenants– and there have been serious efforts to do so – have not been particularly effective. This suggests other strategies need to be developed, and probably that these will have to involve working specifically and directly with Aboriginal and community housing providers and with their tenants.
8. While we feel we have addressed our major concerns in the material above, it may be useful for us to make some brief comments *seriatim* on the specific content of the proposed compact:
  - **To promote tenant participation.** Consistent with what we have said above, we believe it would be appropriate for this section to include a reference to provision of adequate resourcing to enable participation, e.g., by saying “provide tenants with the information **and resources** they need to enable them to participate effectively”. And why be restrictive in the statement “treat tenants as equal partners in tenant participation matters”? What are specifically tenant participation matters? Or is this intended to draw a distinction from individual tenant matters like requests for maintenance, negotiations over lease renewals, etc.? If so, it is not necessary, because the whole section is introduced by “To promote tenant participation . . .” This said, it is probably sufficient, and a good deal clearer, simply to say “treat tenants as equal partners”. An additional statement would also be useful, along the lines “the Department will undertake to take tenant views into account in its policy, planning, deliberative and decision-making processes”.

- **Principles of participation.** We have indicated above that in any event there is no contractual obligation on tenants to participate, so in some ways the disclaimers embodied in this section are not really necessary. They are framed in such a way as to suggest that tenant participation at all is a debatable and perhaps controversial proposition. As further indicated in our general statements above, not all the reasons for unwillingness to participate are necessarily good, but may be constrained by external circumstances. Perhaps the statement should also, therefore include a reference to “The Department commits itself to removing so far as it can all barriers – structural and otherwise – to tenant participation”.
- **Accountability.** While we understand the reasoning behind the reference here to complaints and appeals mechanisms, we are not sure that structural processes for dealing with individual tenant complaints are a matter for tenant participation in the way it is being discussed in this document. Certainly the Department should accept the obligation to have fair and transparent complaints and appeals mechanisms, as it should also have a broad range of accountability requirements (including reporting to parliament) generally. But is a compact on tenant participation the arena for discussion of this particular form of accountability? What this section **should** include is some reference to staff and departmental performance measures and monitoring for tenant participation, and to reporting against these to the Minister and to Parliament.
- **Representative structures.** The Department is to be commended for specifically expressing its willingness to support these, as distinct from issues of service delivery and community development. Given the complexity of the issue, it may also be worthwhile having a statement to the effect that “The Department recognises that the development of broad-based representative and democratic structures is a slow and complex process, but one that is worth pursuing, and will do all it can to facilitate this process.”
- **Tenants’ obligations.** Given the mind-boggling possibilities of a section like this, the Department is to be commended for its courtesy and restraint in limiting it to two very broad statements!