

## HOUSING UPDATE

### Incorporation for Housing Co-operatives

There are now three new Co-op projects well on the way and a couple more in the wings. The next step is to incorporate as not-for-profit associations.

To assist the groups, CHCWA is holding a two part workshop on developing a Constitution and Incorporation.

The workshops will be very practical. I have invited an advisor from the Dept of Consumer Protection. By the end of the two workshops, each group should have a rough/final draft of their Constitution ready for fine-tuning, ratification and then submission.

The Incorporation process is often challenging for new groups. In an attempt to create a sincere and all-encompassing Constitution, groups can over legislate which may create complexity while not necessarily safe-guarding the organisation. The workshops are planned to facilitate Incorporation by addressing the principles of creating a Constitution, compliance with the Associations Incorporated Act 1987 and issues that are relevant to housing co-operatives. The date and content for a second workshop will also be discussed.

Members from established Co-ops may be interested in attending, to either learn or share information. Your input would be invaluable to the new Co-op groups.

**The first workshop is:**

**Tuesday, 26th February**

**9.30am - 2.00pm**

**Claisebrook Lotteries House**

**33 Moore St, East Perth  
(near McIver Station)**

*Morning tea and a light lunch will be provided so please confirm your attendance by Thursday 21st Feb.*

**Robyn Williams**

### Skills Recognition for Community Housing Staff in Peel

CHCWA is currently providing training and assessment to a number of people working in some community housing agencies in the Peel region. The aims of this project are to

**1 Recognise** the skills of experienced staff by assessing their existing competencies

**2 Provide training** where gaps have been identified in the assessment process

**3 Acknowledge** the skills of these staff by either a qualification in Certificate III or a qualification in Certificate IV in Community Services (Community Housing Work) or a Statement of Attainment in partial completion of one of these qualifications.

Most of the skills recognition part of the project has occurred in the workplace, where staff demonstrate their skills and knowledge and are assessed "on the job". They have also provided other evidence of their knowledge and skills. For example, by explaining to the workplace assessor what they are doing and why and by providing references and resumes of previous experience. In this way gaps in knowledge and skills have been identified and training offered. Training has included Communication Skills, Conflict Resolution, Cross Cultural Awareness, Legal Issues and Working with Aboriginal People. It has been offered in a range of different ways: through formal workshops, discussion groups, workbooks, activities, research well as in groups.

As part of this project CHCWA is running a one day workshop in Peel on **Working with Aboriginal People**. If you are interested in attending, check out the details in Coming Events.

### Policy Advisory Committee Meeting in Sydney

Sheila Shenton of South City Housing, and Hans Gerritsen of City Housing, went to the Policy Advisory Committee of the Community Housing Standing Committee meeting on the 13<sup>th</sup> and 14<sup>th</sup> December, 2001. Hans was elected Deputy Chair.

- The two day meeting covered:
- Government commitment to CSHA
- Viability within Community Housing – growth, financial and political
- Regulatory options for Community Housing in Australia
- Promoting Community Housing generally

If you would like to know more about their impressions, contact Sheila at South City 9459 4966, or Hans at City Housing 9227 7709.

The next meeting is on 21<sup>st</sup> and 22<sup>nd</sup> March 2002 and the suggested agenda topics are:

- Look at rent structures – overview-affordability
- Follow up promoting Community Housing
- Follow up CSHA review
- Tax changes – Charitable status  
Affordable housing  
Benefits for and against tax changes

If you would like to see a full transcript of the minutes of that meeting, visit our website@ [www.communityhousing.com.au](http://www.communityhousing.com.au)

In regards to the promotion of Community Housing, it was decided that a draft working paper be prepared for the next meeting. The questions asked were – Who needs to know? Why? What are the messages and how can the information be best delivered?

Sheila was saying that they even discussed having a '**Community Housing Day**'. This could all tie in nicely with our efforts to assemble positive stories and imagery of Community Housing.

# S64 - LEGALLY IT'S OKAY

In the December issue of the Shelter WA Newsletter, the Tenants Advice Service Lawyer, Ian Macfarlane<sup>1</sup> asserted that “s 64 cannot be used to terminate a periodical tenancy by a housing organisation which is funded with public funds if natural justice has not been afforded to the tenant.”

The paper was also submitted to the Local Court in relation to a s64 termination notice issued by a housing co-operative in WA. Section 64 of the Residential Tenancies Act (1987) allows landlords to give 60 days notice terminating a periodic tenancy without specifying any grounds.

Macfarlane argued that as a result of a series of NSW cases (known as ‘*Nicholson*’, ‘*Nicholls*’ and ‘*Swain*’) “any body which operated with a grant of government monies to provide low cost and subsidised housing is judicially estopped from using s64 to terminate tenancies, unless natural justice has been afforded to the tenant.”

At the end of the day using s64 to terminate a tenancy in any housing tenure is undesirable. As pointed out in the December CHCWA “Housing Update” its use by community housing providers is due to a lack of currently available alternative paths to achieve resolution. I would be surprised if any community housing provider did not believe that tenants should receive procedural fairness in all matters relating to their tenancy.

Initially it is important to clarify some of the terms being used. ‘Natural justice’ and ‘procedural fairness’ have different legal meanings - natural justice requires a hearing by an impartial decision maker before a decision is finalised while the requirements of procedural fairness will vary depending on the circumstances of the particular case. ‘Administrative law’ is a field of law that applies only to decision making by public officials expressly empowered under a statute to make decisions that may have an adverse

or detrimental impact on an individual or entity.

The TAS paper argues that the administrative law principles of *Nicholson* are extended in *Nicholls* “to bodies which are not government bodies, but have the use of government monies to provide low cost and subsidised housing.”

In her response to Macfarlane’s paper, Lou Kyle<sup>2</sup> the advocate for the co-op in the Local Court, reported on the *Nicholls* case as follows:

This case involved an application by a non-government corporation for a termination order following the tenant’s failure to vacate pursuant to a termination notice for non-payment of rent.

Under s64(2)(c) of the RTA (NSW), the Tribunal is required to “consider the circumstances of the case.” *Swain* was referred to as authority for the applicability of that section to all termination orders and clarification of the types of things that should be considered as “circumstances”.

The RTT [Residential Tenancies Tribunal] member, Cochrane G.R., went on to say that “Badgery-Parker J touched on matters which I believe would be relevant to public tenants and tenants of organisations such as an Aboriginal Housing Company.”

Quoting two specific passages from *Nicholson*, Cochrane expressed the view that a tenant’s reasonable expectation of security of tenure and the potential loss of the benefits of subsidised rent, in circumstances where the tenant is incapable of competing in the private market, would be relevant as part of “all of the landlord’s circumstances and all of the tenant’s circumstances” as

required under s64(2)(c).

Nowhere in the *Nicholls* decision does Cochrane say anything that could reasonably be construed as extending “the administrative law principles of *Nicholson* to bodies which are not government bodies, but have use of government monies to provide low cost and subsidised housing.”

In considering Macfarlane’s submission to the Court, the magistrate pointed to the clear differences between the WA and NSW RTA. He pointed out that there is no provision for a magistrate in WA to consider “all the circumstances of the case” as required under s64(2)(c) of the NSW Act. He said he only had to be satisfied that the notice had been issued in compliance with the WA Act.

As the peak for community housing providers in WA, CHCWA would prefer to enter into a positive dialogue around the review of the WA Residential Tenancies Act to ensure the needs of community housing tenants and providers can be met in the best possible way.

## Mike Newbigin

(A full copy of Lou Kyle’s “A Response to “S 64 of the Residential Tenancies Act: Can it be used by publicly funded housing providers to evict tenants?” can be found on the CHCWA web site at [www.communityhousing.com.au](http://www.communityhousing.com.au) by following the prompts.)

## Footnotes

<sup>1</sup> “S 64 of the Residential Tenancies Act: Can It Be Used By Publicly Funded Housing Providers To Evict Tenants?” (Shelter WA newsletter, December 2001, pp4-5),

<sup>2</sup> A RESPONSE to “S 64 of the Residential Tenancies Act: Can it be used by publicly funded housing providers to evict tenants?”. This article can be accessed at ([www.communityhousing.com.au](http://www.communityhousing.com.au))