



**Shelter WA and Tenants Advice Service
Community Forum: Review of the RTA – A Tenant Perspective
Friday 5 April 2002
Report**

Introduction

Shelter WA and the Tenants Advice Service jointly hosted a forum around the review on Friday 5 April 2002, in response to the review of the WA Residential Tenancies Act (RTA) of 1987. This forum was not part of the series of public meetings around the RTA Review organised by the Department of Consumer and Employment Protection, but aimed to allow housing consumers and their representatives to voice their issues about the RTA in general and the discussion paper in particular.

Presentations

Irma Lachmund, Tenants Advice Service

Irma thanked people for coming and reiterated the purpose of the forum, to identify community issues around the Residential Tenancies Act. She then introduced the speakers, Karel Eringa from Shelter WA and Joanne Walsh from the Tenants Advice Service.

Karel Eringa, Shelter WA

Karel compared residential tenancies legislation in WA and the Netherlands, focusing on the issue of evictions. The main difference is that the Dutch legislation emphasises tenants' rights to security of tenure, whereas the WA legislation emphasises landlords' rights to protect their investment.

This difference in emphasis came about through historical accident: in the Netherlands, renting has been viewed as a long term housing option since the end of World War II, when there was a severe shortage of housing. Legislation was intended to protect tenants from inequitable evictions and rent increases.

In WA, on the other hand, renting has traditionally been viewed as a transitional tenure, allowing people to save up a deposit to purchase a home. Legislation was intended to stimulate private investment in rental housing, mainly by small investors.

However, since the RTA was written in 1987 there have been some structural changes in the WA housing sector:

- affordable housing in the private rental sector has fallen substantially due to rising rents and a lack of investment at the lower end of the market,
- homeownership rates have fallen due to reduced affordability,

- some people now prefer renting to home ownership as a more flexible option in a world with much less job security, and
- more and more tenants are staying in rental housing for long periods of time.

These changes mean that renting can no longer be seen as transitional, but as a long term housing option. In addition, the emphasis on landlords' rights in the RTA is no longer resulting in significant investment in affordable housing for people with low incomes. The RTA should be changed to reflect these changes and its emphasis should shift from landlord to tenant.

Shelter WA, as a community organisation that promotes affordable, accessible, appropriate and secure housing for people on low incomes, has identified some key changes to the RTA that will allow it to reflect these changes:

- abolish letting fees: WA is the only State that still allows letting fees
- section 64 (evictions without cause): should be abolished
- boarders and lodgers: there is currently no legislation regarding this group
- remove exemptions of certain institutions: including total exemptions for hotels, educational institutions and caravan parks and partial exemptions for the State Housing Authority
- establishment of a Tribunal to settle tenancy disputes
- limits to rent increases: currently rent increases are limited to twice per year with no maximum rate of increase specified
- contracting out of certain obligations under the Act: should not be permitted
- minimum housing standards: should be defined

Joanne Walsh, Tenants Advice Service

Joanne highlighted the fact that TAS is the only community legal centre in WA which specialises in residential tenancy matters. TAS has been a source of information and a voice for tenants for almost 22 years now. It had extensive input into the development of the original RTA back in the late 1980's, and into its first review in the 1990's. Still TAS is not satisfied that tenants rights are adequately protected.

The world has changed since the Act was introduced. For example, renting is no longer something people do until they can buy their own house. Many West Australians will never own their own home, but will always rely on the rental market to meet their basic housing needs.

Working with the RTA every day, TAS is well positioned to identify its strengths and weaknesses. TAS will be making a comprehensive submission to the current review. Given the brief amount of time available and the large number of issues, Joanne then highlighted some key issues identified by TAS:

- "No just cause" evictions: TAS believes that this arbitrary process, which gives no consideration to the circumstances of a case, is a fundamental breach of human rights.
- Termination on grounds of hardship: Owners can ask the Court to consider their circumstances and order termination. But tenants can't. This is especially problematic for victims of domestic violence who find themselves trapped in tenancies with the perpetrator. TAS believes the lack of hardship provisions for tenants is fundamentally inequitable.

- The right to representation in tenancy disputes: Owners routinely have experienced Real Estate Agents represent them in Court. Homeswest is represented by very experienced Regional Recoveries Officers. But, in many Hearings throughout WA, tenants are routinely refused their request to be represented. Again TAS believes this is fundamentally unjust.
- Letting fees: Why should tenants pay for a service that the owner chooses to purchase. Real Estate Agents act for owners - they have no contractual obligation to tenants. This fee was abolished following the last RTA review. Both houses of parliament agreed to abolish it. It was subsequently, curiously, “deproclaimed”. What is that? A subsequent independent economic impact statement confirmed that letting fees should be abolished. But they are still in place in WA, which is the only State to levy such a charge on its residential tenants.
- Contracting out: Although the Act provides basic requirements by which landlords and tenants must abide, section 82 of the current Act allows landlords to “exclude, modify or restrict” the operation of the Act. Many tenants agree to tenancy agreements, which effectively sign away their rights, without even realising it. TAS thinks this situation should not be allowed to continue.

Joanne finished by calling for attendees to bring up their own issue, stressing the importance of making submissions and reminding people to attend the public meetings around the RTA Review organised by the Department of Consumer and Employment Protection.

Brainstorm and Discussion

Irma asked the forum to identify which parts of the RTA they would like to see changed. The following issues were identified:

- Tenancy Agreements are biased towards the landlord
- there should be a Standard Tenancy Agreement in plain English
- contracting out should not be allowed
- should there need to be any Tenancy Agreements – ie. the RTA should override any agreements
- professionalism of service – knowledge of clerks and magistrates, information provided by government departments
- recognise ‘spoken’ rental agreements in the RTA, ie. better define the current term ‘implied’
- definition and procedures for abandoned goods and premises:
 - include personal documents
 - include items of sentimental value
 - include animals
- abolish letting fees
- any claims for compensation should be supported by evidence of actual costs, eg.
 - break-of-lease fee

- tenant liability
 - replacement of lost keys
- owners should be required to have a key to the premises to be used only in case of emergencies
- penalties should be enforced for breach of privacy and quiet enjoyment
- penalties should be enforced for other breaches (eg. lack of maintenance) by the magistrate rather than a Government Department
- compensation should be paid to the relevant party where either party incurs any losses
- orders should be made if the landlord does not show up at court – ie. equal treatment of tenant and landlord
- a Residential Tenancies Tribunal should be established
- policies and procedures of landlords (including Homeswest) should be taken into account in court
- boarders and lodgers should be included under the RTA
- there should be no police evictions – ie. no evictions without court orders. However, there should be a provision for urgent application of evictions (eg. violence in boarding houses)
- protection for park home owners, including:
 - right to sell
 - regulation of fees and charges
 - regulation of park rules
 - regulations re change of park ownership and park rules
 - breaches of owners
- there should be a hardship clause for tenants
- there should be defined limits to rent increases (eg. linked to CPI or a percentage ceiling)
- minimum standards for management and maintenance should be defined and enforced
- section 64 should be abolished
- fixed term contract should automatically revert to periodic tenancies when they expire; reasonable grounds and notice must be taken into account where tenants are to be evicted at the end of their fixed term lease
- tenants should have a right to representation in court (landlords are routinely allowed to be represented by Real Estate agents)
- better forms and procedures regarding breach notices
- more tenant and landlord education regarding the RTA
- the Act needs to have a Preamble section stating its purpose. This should mention human rights, protection of tenants and recognition of international agreements signed by Australia
- tenant databases should be regulated

- property condition reports should be conducted at beginning and end of all tenancies

Recommendations

Finally, the forum was asked to prioritise the issues raised into a set of recommendations. Five recommendations were regarded as extremely urgent:

- 1) That a Preamble be written to the Act stating its purpose, recognising human rights, tenants rights and international agreements to which Australia is a signatory.
- 2) That a Residential Tenancies Tribunal be established to hear all matters related to residential tenancies.
- 3) That section 64 be removed of the Act.
- 4) That well-considered legislation regarding boarders and lodgers be developed as part of the Act.
- 5) That the Act stresses the importance of security of tenure for tenants.

In addition, the following recommendations were considered urgent:

- 6) That a set of minimum standards regarding management and maintenance be developed as part of the Act or the Regulations.
- 7) That letting fees be abolished.
- 8) That magistrates enforce any penalties and compensation imposed under the Act.
- 9) That neither party be allowed to contract out of any section of the Act.
- 10) That a hardship clause for tenants be introduced allowing tenants to terminate a tenancy agreement.
- 11) That public accountability of the courts be increased by publishing all decisions on the Internet.
- 12) That tenants be allowed the same rights to representation in court as landlords currently enjoy.
- 13) That standard tenancy agreements in plain English be included with the Act.
- 14) That rent increases be limited to a percentage linked to CPI increases.
- 15) That tenant databases be regulated.
- 16) That a requirement be included under the Act that Property Condition Reports should be conducted at the beginning and termination of all tenancy agreements.

Attendance

Alyson Szigligeti	Tenants Advice Service
Ann-Marie Paulsen	CLAC
Colin Penter	Matrix Consulting Group / Tenant
Diane Niyati	CHCWA
Glenda Williams	Changes Now
Ian Hafekost	Office of Policy and Planning
Irma Lachmund	Tenants Advice Service
JD Roussety	Sussex Street Community Law Service
Joanne Walsh	Tenants Advice Service
Karel Eringa	Shelter WA
Kerri Powell	Tenant Advocacy (South West)
KT Macri	Aboriginal Tenant Support Service
Linda Jurevic	Murdoch University School of Law
Pam Murray	Giz Watson (MLC)'s office
Paul Pendergast	Shelter WA
Sue Chadwick	Independent