

OUTCOMES FROM THE SHELTER WA / TAS FORUM ON THE REVIEW OF THE RESIDENTIAL TENANCIES ACT 30 October 2002

Background

After limited consultation with tenants and tenant representatives, the Stamford Report on the Review of the Residential Tenancies Act ultimately made a significant number of recommendations that would impact both positively and negatively on tenants. The Government has made it clear that at this point none of the recommendations tabled in the report have been accepted. Stakeholders have until 12 December 2002 to make submissions. No further consultations will be conducted by the Department for Consumer and Employment Protection until after 12 December 2002.

In order to facilitate community concerns being heard, the Tenants Advice Service (TAS) and Shelter WA jointly held a Community forum on 30 October 2002 on the Review. 20 priority issues were identified for discussion, which are set out in brief below (numbered according to the recommendation of the Stamfords' report). The response of forum participants to the recommendations are in italics.

Priority Issues

Recommendation 3 **That the Act contain a definition of "boarder and lodger".**

It was agreed that boarders and lodgers should be afforded protection under the Act and that this may best be addressed with a separate section, and that conditions for borders and lodgers should be in accordance with minimum Commonwealth standards

Recommendation 12 **That the Regulations be amended to remove Homeswest's exemption from the restrictions of varying rent.**

Recommendation 13 **That the Act be amended to provide an appropriate definition of "rental subsidy".**

Recommendation 14 **That the Act be amended to state that an increase in the amount payable by a tenant as a result of the cancellation or reduction of a rental subsidy does not constitute a rent increase, and is therefore not restricted by section 30 of the Act.**

Recommendation 15 **That the Regulations be amended to remove Homeswest's exemption from section 33 of the Act, which requires owners to issue receipts for rent.**

These recommendations, which would remove the DHW exemption in relation to varying rent without notice, were supported except for Rec.14, where participants supported the need for a reasonable notice period to be included in the Act in relation to rent rebates changes that would not be retrospective .

Recommendation 18 **That the Act continue to imply standard terms and conditions into every tenancy agreement, and not be amended to prescribe a standard written tenancy agreement.**

Recommendation 20 **That parties continue to be able to negotiate additional terms that do not conflict with the provisions of the Act.**

Agreement that there should be no terms in addition to a standard lease, except in the case of supported accommodation services which should be able to apply for additional terms in their tenancy agreements to meet program imperatives.

Recommendation 28 **That the Act be amended to remove the ability for parties to contract out of the sections of the Act currently stated in section 82(3).**

Participants supported this recommendation which would greatly improve the protection of rental housing consumers.

Recommendation 42 **That the current provision for option fees (section 27(2)(a) of the Act) be amended to require an owner/agent who is holding an option fee (or fees) to disclose to a prospective tenant the number of option fees they are holding, before accepting an option fee from the prospective tenant.**

Under this recommendation, tenants searching for accommodation may still have to pay several option fees (amounting to hundreds of dollars), without any certainty of recovery unless a tenancy is entered into. This illogical recommendation was not supported as it provides no service to potential tenants and leaves too much responsibility in the hands of real estate agents.

Recommendation 45 **That the Act be amended to require that, where any action or non-action of a tenant results in the disconnection of a service, the tenant is responsible for any fee charged for the reconnection of this service.**

Participants urged that a distinction be made between a phone connection fee that should be the tenant's responsibility, and phone line fee, that should be the landlord's responsibility. It was noted that currently landlords have the ability to recover a loss under section 15 of the Act.

Recommendation 48 **That the Act be amended to prohibit agents from charging a letting fee to tenants.**

Participants reiterated a call to abolish letting fees.

Recommendation 51 **That the Act not be amended to specifically require evidence of actual loss in a claim for compensation for loss or injury caused by breach of the agreement.**

It was agreed that in claims for loss, evidence should be required and section 15 should be amended to ensure that the court gives consideration to the facts and merit of the claim. It was also suggested that Section 19.1b of the RTA be reworded to require magistrates to inspect evidence of claimed loss [i.e. change "may inspect" to "shall inspect"].

Recommendation 52 **That the Act be amended to require all bond monies to be lodged with a centralised bond administrator (including bond monies collected from Homeswest tenants).**

Participants strongly supported this recommendation

Recommendation 68 **That the Act be amended to remove the ability of the Treasurer to direct surplus income from the Rental Accommodation Fund to public housing.**

Participants supported this recommendation, suggesting that it be referred to the Social Policy Cabinet Sub-Committee.

Recommendation 71 **That, following the implementation of Recommendation 70, the Act be amended to allow a Magistrate (or Clerk) to make an order on any liquidated amount as well as on any pecuniary damages up to the amount of \$500.**

Opposed on the grounds that allowing the owner to be awarded a liquidated amount and pecuniary damages in relation to bond recovery could lead to injustice. It also appears to conflict with section 57 RTA which prohibits penalties and liquidated damages.

Recommendation 79 **That the Act not be amended to prescribe a maximum allowable rent increase, either directly (by way of a stated maximum percentage increase) or indirectly (by link to the CPI or other index).**

It was noted that the absence of protection against excessive rent increases is particularly relevant to regional tenancies for whom the government has a social obligation to protect vulnerable low income citizens. Participants endorsed arguments for a cap on rent increases linked to CPI increases.

Recommendation 90 **That DOCEP investigate further the effect of the recent amendments to the Privacy Act 1988 (Cth) on the operation of tenant databases. This investigation should determine the adequacy of the recent amendments to the Privacy Act 1988 (Cth) in protecting the privacy of tenants, and make recommendation regarding any appropriate amendments to the Residential Tenancies Act in order to address any shortcomings identified.**

Given the potential for significant detriment to tenants it is appropriate that the issue not be left to upcoming changes to Federal privacy provisions and that the RTA address this issue. Participants agreed that the references in Section 44 of the RTA to tenant privacy could be extended to include tenant access to database information.

Recommendation 119 **That the current provisions in the Act allowing parties to terminate a tenancy agreement without stating any ground be retained.**

Recommendation 120 **That the current 60 day notice period required for 'no ground' termination be retained.**

It was agreed that if there is no reason to evict a tenant, the tenant's fundamental human right to housing should not be violated (as per the security of tenure rhetoric in the Commonwealth, State and Territory Housing Agreement). Participants endorsed the TAS recommendation to abolish no just cause evictions. However in the event that the provision remains, it was agreed that :

- 1 the period of notice should be extended to 6 months;*
- 2 the circumstances of cases to be heard; and*
- 3 the use of S64 be limited to private rentals only.*

Recommendation 124 **That the Act not be amended to require a court to consider, in the case where a 'no ground' termination notice has been given, "all the circumstances" such as to justify termination.**

It was agreed that, if "no grounds" terminations remain, at the very least the right to procedural fairness should apply and hence the circumstances of any termination case should be able to be raised.

Recommendation 134 **That the Act be amended to make adequate provision for documents left on premises after the termination of an agreement (in the case of abandonment or otherwise).**

Protection of documents left on premises was strongly supported. Concern was expressed at the inadequate protection of other personal belongings left at premises.

Recommendation 140 **That the current dispute resolution process be transferred to an independent residential tenancies tribunal, or to the proposed State Administrative Tribunal.**

Participants endorsed this recommendation because it is a less formal and less adversarial dispute resolution mechanism than the Court. It was stressed that any such tribunal would need to be adequately resourced and trained. It was proposed that a Residential Administrative Appeals Tribunal, covering Homeswest, could form one of the panels under the proposed Civil and Administrative review Tribunal (CART).

Recommendation 142 **That the Act be amended to require that reasons for decisions of the tribunal (or the court, if the current process is retained) be provided in cases that the tribunal (or the court) considers to be of legal or social significance.**

Participants endorsed this recommendation, which also has educative value and would lead to a reduction in disputes.

Recommendation 148 **That the Act be amended to provide a separate Part in the Act for caravan park and park home tenancies.**

Participants agreed that the unique situation of park home owners requires separate legislation to the RTA given they lease land but no buildings. It was also agreed that caravan park tenants (renting both the home and the site) need specific protections under the RTA, for example in relation to park rules, extra fees for visitors, rent increases and security of tenure. It was agreed that a separate section within the Act (similar to boarders and lodgers) would be appropriate

Recommendation 174 **That section 15(2)(c) of the Act be amended to clearly state that a court may not make an order of compensation for non-economic loss.**

Participants did not support this recommendation as tenants are far more likely to suffer non-economic loss as a result of the owner's breach than vice versa.