

information sheet

LETTING FEES IN WA Parliamentary Democracy in Action?

Western Australia is the only state in which tenants contribute to fees for services provided by real estate agents to landlords. Currently, tenants contribute the equivalent of one week's rent to the letting fee which results from landlords choosing to engage the services of a real estate agent to manage their property. The agent is contracted by the owner, acts on behalf of the owner and on accession acts against the tenant - and yet the tenant pays for the privilege.

There have been numerous reviews conducted in relation to this issue, most recently it was the subject of a Bill that prohibits agents from recovering any portion of letting fees from the tenant. This Bill was passed in both houses of Parliament and proclaimed to take effect as of 1 January 1997 to allow a period of 12 months to prepare for the change.

The real estate sector was strongly opposed to the legislation fearing negative impacts on the industry, including a perception that property owners would leave the real estate managed sector to operate as owner-landlords. The sector made representations to the then Minister for Fair Trading, Cheryl Edwards, with an alleged \$1 million fighting fund. In an unprecedented move, the legislation was subsequently de-proclaimed in August 1996 without being further debated in Parliament. Soon after, the Government announced that it would be commissioning an independent economic impact assessment to allow the Government to fully understand the economic implications of the legislation. This action begs the question as to why these issues were not debated in

accordance with Parliamentary process when the Bill was presented in both houses.

At an alleged cost of \$58,000.00, the Economic Impact Assessment (EIA) findings included:

- ⇒ that efficiency and equity in the market would be enhanced through improved access to private rental accommodation, greater equity due to the improvement in private rental affordability and the removal of an artificial impediment to tenant mobility;
- ⇒ in the medium to long term, there will not be any major impact on the number of properties let nor on employment in the real estate business industry;
- ⇒ that any resistance from owner-investors will recede as market participants become better informed as to the nature of the change involved;
- ⇒ that the budgetary effects of the proposed changes will be largely neutral;
- ⇒ that there would be no major differential regional effects; and
- ⇒ that the effect on HomeSw est would be minor with respect to repercussions for its Bond Assistance Program and the value of expenditures undertaken by HomeSw est under its Public Rental Subsidy Program through a predicted small rise in private market sector rents.

Based on these findings, the Economic Impact Assessment made the following recommendations:

- ⇒ that tenant letting fees be abolished; and
- ⇒ that the abolition of tenant letting fees be carried out over a period of 12 months.

The Minister for Fair Trading's response to the EIA was provided in a letter to stakeholders dated 31 July 1998. Minister Shave advised of his decision to repeal the legislation on the basis of lack of consensus; that there are likely to be administrative impacts on the real estate industry for no real gain; and that on balance it will produce the best outcomes for all market participants. These claims contradict the findings and recommendations of the EIA and have not been substantiated in any way.

The ability for the Government to de-proclaim a piece of legislation that has been duly debated, passed and proclaimed according to Parliamentary process is of grave concern. In particular, it raises concerns about the ability of powerful lobby groups to influence Government to overturn and flout the democratic process of Parliament.

Given the Government paid \$58,000.00 for the EIA in order *to fully understand the economic impact of the legislation*, it is incumbent on the Minister to respond and/or refute the findings and recommendations of the report. The lack of response raises concerns about the purpose of commissioning a report unless there is an intention to be guided by its findings.

Finally, the Minister has indicated that while it is his intention to repeal the legislation, he is not in a position to introduce it onto the legislative agenda at this time. Indeed there is no incentive for the Minister to reintroduce and debate it given that the legislation is de-proclaimed and will therefore not come into effect. Why run the risk of Parliament upholding the original legislation when it can sit on the legislative agenda in its de-proclaimed state indefinitely? However, due to the unusual and unprecedented events that have led to this situation, there is a moral obligation for Government to list this matter on the legislative agenda as a matter of priority.

There has been an enormous waste of public money through: wasted time debating an issue in Parliament only to ignore the outcome; the payment of \$58,000.00 for a report which has been ignored, and the time spent by a number of agencies and individuals preparing submissions on this matter.

The core issue at stake is that the tenant should not be required to contribute to a fee charged by the agent for services provided to the landlord. In practical terms, the removal of the letting fee would have a number of benefits for low income earners and would have little or no impact on other market participants. Benefits resulting from the abolition of this fee include:

- greater equity through the 'levelling' effect of the cost being contained in the rent and mobile tenants not being required to pay letting fees more frequently than others;
- removal of a major access barrier and increased affordability through the removal of a prohibitive entry cost for many tenants;
- increased housing affordability through increased Commonwealth rent subsidies if the letting fee is absorbed into rents;
- greater choice through access to a wider range of properties rather than being forced to reject properties managed by agents due to an inability to pay the letting fee; and
- greater security of tenure by removing any incentive to restrict tenancies to short term contracts due to the income that can be generated from charging letting fees.

Express your dissatisfaction with the process by writing to Minister Shave, your local member and/or your local newspaper. In order to gauge the level of support for this issue, we would appreciate it if you could provide a copy of any correspondence sent.

For further information, contact Erin Gauntlett at Shelter WA on Tel: 9325 6660, Fax: 9325 8113 or at the address below.