



newsletter

April 2002

EDITORIAL: REVIEW OF THE RESIDENTIAL TENANCIES ACT

Karel Eringa

The Residential Tenancies Act 1987 (RTA) regulates residential tenancies in Western Australia. The Act aims to “establish the principle of fair dealing between landlords and tenants and to provide a cheap, speedy mechanism for resolving disputes”. In order to achieve this aim, the Act specifies the rights and responsibilities of tenants and owners and details processes for settling disputes around tenancies. It also contains regulations about terminating tenancy agreements and provisions about who is responsible for the administration of the Act. The RTA can be viewed at www.slp.wa.gov.au.

The RTA was up for review “as soon as practicable” after 30 June 2001. A discussion paper has been released through the Department of Consumer and Employment Protection, with submissions due by 26 April. This discussion paper contains 183 issues divided into 12 sections. The issues raised in the paper include who is covered by the Act, fees and charges, bonds, rent setting, terminations and tenancy

disputes. Copies of the Discussion Paper are available from www.docep.wa.gov.au or by contacting DOCEP on 08 9282 0850.

In order to inform its submission to the RTA Review, Shelter WA co-hosted a forum with the Community Housing Coalition of WA in June last year and will co-host a second forum on Friday 5 April (further details elsewhere in this newsletter), this time with the Tenants Advice Service of WA. Key issues affecting low income housing consumers include:

- evictions without cause
- letting fees: WA is the only State that still allows letting fees
- boarders and lodgers: there is currently no legislation regarding this group
- exemption 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: rather than the Local Court
- 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.

These issues have become pertinent, as there have been many changes since the Act came into force in 1987. Not the least of these is that the private rental sector has changed from a transitional sector (between leaving home and home ownership) to a sector where many people choose to live permanently. With an increasing number of people choosing renting as their preferred housing option and another group who have no other choice, adequate legislative protection of vulnerable tenants has become increasingly important.

This newsletter covers the concerns of a number of particularly vulnerable groups including boarders and lodgers, caravan parkhome owners,

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THE RESIDENTIAL TENANCIES ACT: REGIONAL ISSUES

By Zabia Chmeilewski, Pilbara Community Legal Service

Pilbara Community Legal Service located in South Hedland is situated some 2000kms north of Perth and 600 kms south west of Broome. The service also has two remote offices, one 400kms inland in Newman and the other 200kms southwest along the coast in Roebourne. These are vast regions covering a diverse population.

Mining towns are known for fluctuating populations and incomes and along with this is a wide range of rental variation. Add to this a harsh and arid but often spectacular landscape that is home to numerous groups of indigenous communities speaking some 24 to 25 different languages. The languages live by an oral tradition and have only recently been documented in written form.

PCLS tenant advocates deal with a range of clients including migrant women, but mainly indigenous families and sole women families. Most of our clients have tenancy issues relating to housing with Department of Housing and Works.

Some clients come in with Homeswest letters and statements that they need read because they can not understand the language or need assistance in reconciling rental accounts or querying where/how debits are arrived at on the statement. For some people coming in from remote communities a house in South Hedland, Newman or Roebourne may be the first house they have lived in. I will qualify this by adding that there are degrees of housing and shelter, with over-crowding a common factor.

In short, regional issues focus on the physical distances and barriers to services and information. Being able to access face to face information in an easy format.



This means being able to explain concepts simply and with clarity. On entering into a tenancy agreement many people do not know what they are signing; do not understand the long property condition report and are just "happy" and anxious to be getting into the property.

Given the above outline, I will highlight some issues in relation to Department of Housing and Works and the Residential Tenancies Act.

Some of the problems arise due to the fact that Homeswest is exempt from the following RTA

For some people coming in from remote communities a house in South Hedland, Newman or Roebourne may be first house they have lived in.

clauses:
Section 29 - allowing Homeswest to hold the bond and not register it with the bond administrator;

Section 30 (1) which absolves Homeswest the right to give 60 days notice for rent increases and not to increase rent for six months;

Section 33 requires the issue of a receipt for payment of rent within three days, and;

Section 43 that relates to urgent repairs to the property as Homeswest provide an after hours emergency service (!!!).

How does this affect (Homeswest) clients in regard to the RTA? With the abnegation of section 33, the responsibility comes back on the client to keep track of rental payments and forces the client into a direct debit contract with Centrelink as options are (and becoming increasingly) limited. Add to this the nature of electronic payments with little access to a pass-book, people have lost the concept of "cash".

There is ample scope to miss the schedule of rental payments given:

- the distances involved;
- lack of access to, and knowledge of modern technology;
- low numeracy and literacy skills;
- the local banks being located 20 kms away in Port Hedland and 35 kms to Karratha from Roebourne; and
- ATMs not always working.

The direct debit system has also created it's share of rental arrears, as people who have signed up believe that the money has been deducted accordingly when in numerous cases it has not. The towns of Marble Bar, Roebourne and Newman do not

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FINAL REPORT OF THE HOMELESSNESS TASKFORCE

The State Homelessness Taskforce released its final report on 31 January 2002. Shelter WA previously expressed some concerns about the community consultation process on which the report was based. For instance, there was no consumer representation on the Taskforce and the initial Issues Paper did not acknowledge housing as impacting on homelessness. However, after much lobbying the Final Report recognises the link between the low level of and decline in public housing and homelessness. It also contains a

number of useful recommendations regarding increasing access to affordable housing and support measures.

The main shortcoming of the Final Report is that the recommended increases in funding are in all probability too small to have a significant impact on homelessness. For instance, Shelter WA projections indicate that the recommended increase is insufficient to prevent WA's public housing stock, already the second lowest in the country in proportionate terms, from falling below its present 4.6% of total

stock. Moreover, much of the additional funding is to be supplied by the Commonwealth Government under the CSHA, and given the uncertain future of this agreement is unlikely to be sustainable in the longer term.

Shelter WA plans to monitor the impact of any policy changes and funding increases on homeless people. This includes conducting a series of surveys on homelessness, the first of which was conducted in June last year. The second survey has recently been sent to a targeted mailing list. Results will be available on www.shelterwa.org.au.

HOMESWEST NEWS

POLICY CHANGES

There has been a name change of the Housing Assistance Loan (Bond Scheme) to Bond Assistance Loan (Private Rental Housing Assistance). The name change was due to the public being confused in what the Housing Assistance Loan was and in response to clients suggestions the Department has changed the name.

The Bond Assistance Loan Policy has been taken out of the Rental Policy and is now a stand-alone policy in its own right. This has been in response to community comments and requests from community groups. The policy is available on the Departments website.

The Department has increased the Bond limit amounts from 1 March 2002. Please contact your nearest Department of Housing and Works office for further information on Bond Assistance limits.

LATE MAIL OUTS

Homeswest is seeking the assistance of tenants who experience delays in receiving their mail on time from the Department.

The Department of Housing and Works require you to respond to these letters within a certain time. However, it recognises that this is difficult if the mail is delayed.

The Department is endeavoring to resolve any problems with late mail delivery. It is necessary to determine where the delay occurred. To do this we need tenants/applicants to keep both letter and envelope as proof of the date it was mailed.

The Department is requesting you get in touch with your Accommodation Manager or nearest Homeswest office if your mail has been delayed.

PAYING YOUR BILLS

The Department has a number of ways you can pay your rent and other debts.

The easiest way by far if you are in receipt of Centrelink benefits is to have the rent deducted before receiving the pension or benefit.

If you have access to a computer, rent or bond loans can be paid on line by accessing the State Government's site: Onlinewa, click on wafastpay and follow the easy prompts from then. You will need a credit card to pay by this method.

Payments can be made at any Australia Post Office by producing your Homeswest card and paying by cash or by efpos.

Another way of ensuring your rent is paid regularly is through your bank, building society or credit union by direct debit and forms are available for this from any Department of Housing and Works office.

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I have their own Homeswest offices.

Homeswest has two offices located within the region, head office in South Headland and a branch in Karratha. The culture of administration is 'drive by'. In Roebourne for example, an accommodation manager cruising past a property constitutes an inspection. If the accommodation manager approaches a tenant for an inspection the tenant is loath to send them away.

At the same time the accommodation manager has not explained to the tenant that they can come back at a more convenient time or with more notice. This contravenes section 46 of the RTA for the required issue

The culture of administration is 'drive by'. In Roebourne for example, an accommodation manager cruising past a property constitutes an inspection.

of a minimum 7 day notice for the purpose of an inspection. It also impacts on a tenants right for quite enjoyment and privacy to the property as they never know when the accommodation manager is about to 'pop'up.

Contracting out of Section 30 and then calculating their own rental variation as per income and property value, Homeswest has in effect sidelined any responsibility for recourse if this

is to be challenged. Homeswest can back date a rental increase which will show as a compounded rental arrears and not as a debt separate to the rental account. This means that there is no provision for the amount to be paid back over a period of time. As rent arrears can not be dealt with as a Homeswest Appeal, it is then taken as a breach etc to termination of tenancy.

The contracting out of maintenance contributes to poor quality housing stock. There are no checks as to the quality of work carried out, quality of materials used and is also aggravated by the lack of maintenance reporting mechanisms. Annual property inspections if done are not followed up with the application of funds to implement the work. There also seems to be no initiative to have established a proactive routine maintenance program which would see a preventative attitude developing and not a reactive one. Being in a remote area adds to less competitive tendering/contracting and little choice in service provision ie building inspectors. The attitude to maintenance is exclusive as there is no mechanism for tenants to participate in the maintenance of their homes as there is no mechanism for tenants to participate in the maintenance of their homes because the maintenance, if it happens, becomes an emergency.

This raises another issue of what is emergency maintenance as I have had clients without hot water, for Homeswest to respond that it was not an emergency! There was a case recently of a client who had reported a faulty lock to a bathroom door. On the second case of being locked in the bathroom, they had to break out of the window, causing themselves, in the process, severe injury and

being flown to Perth for emergency surgery.

Homeswest is a significant rate payer, not only in the whole of the state, but particularly Roebourne as an example of predominantly public housing in a small town. Proportionally, the Shire of Roebourne has failed to contribute to the overall maintenance, enhancement or environmental conditions of the township. Local government has also failed to take any initiative in working towards mutually beneficial environmental health and safety standards. For anyone reading through their local government by-laws on this subject, they will soon become lost in a maze of broad and loosely defined references which no one will take responsibility for. Together local and state planning authorities become lost in a maze of broad and loosely defined references for which no one will take responsibility.

Together local and state planning authorities have been responsible for the creation of unhealthy, untenable and run down housing areas. There are some very basic security issues, contributing to a climate of insecurity in particular for women leaving domestic violence or conflicted households.

I have had examples of clients leaving a tenancy because there was no way to secure the house properly and it was safer to move out. The same issue has also lead prospective tenants to refuse offers of accommodation with Homeswest. Window catches (pictured over the page) were simply not appropriate for the job intended and were no barrier to unwanted intruders. In view of

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these issues there needs to be some thought applied to the application of a Minimum Standard of housing.

Under section 45 of the Residential Tenancies Act: Locks 1 (a) it is the term of every agreement that the owner shall provide and maintain such locks etc as are necessary to ensure that the premises are reasonably secure. 'Reasonable' implies too much latitude and interpretation in having sound judgement". This is now under consideration as the Stamfords Statutory Review of the Residential Tenancies Act discussion paper identifies (point 10.3) this very issue and also that of property and building standards.



Section 42 also currently applies reasonable to a state of cleanliness and repair to the property.

Another issue is in regard to Section 27 of the RTA – restriction and consideration for tenancy agreement: in short that a person shall not receive from the tenant/prospective tenant any monetary consideration for entering into or renewing, etc a tenancy agreement other than bond and rent in

advance.

Homeswest continually raise old debts in contravention of this section in a very effective barrier to house prospective tenants. While they do have discretionary powers to uphold decisions, they are never called on to qualify how the decision has been arrived at. Adding to this is that some debts past the statute of limitations are used as barriers and that unknowingly tenants may have signed into old debt repayments with the promise of housing.

In very general terms, in my experience, the RTA has been a fair vehicle for the administration of tenancy disputes, and in most cases has been applied with due fairness and respect.

NEW LIBRARY RESOURCES AND PUBLICATIONS

- Hancock,L. ed. et al, 2001. *Future Directions in Australian Social Policy: New Ways of Preventing Risk*. Committee for Economic Development of Australia.
- Lucks,D. & S. Durack 2001. *Peel away the Mask: A Study of the social condition of the Peel Region*. Peel Development Commission
- Western Australian Planning Commission, 2001. *Urban Land Release Plan 2001-2006*.
- Tenants Advice Service Inc. WA, 2002. *Residential Tenancies Act Review 2001: Recommendations of the Tenancy Network WA*.
- ABS, 1998. *Census of Population and Housing: Aboriginal and Torres Strait Islander People, WA*.
- Department of Consumer and Employment Protection, 2002. *Statutory Review of the Residential Tenancies Act 1987: Discussion Paper*
- Valuer General's Office 2001 - *Metropolitan Rental Values Summary June 2001*
 - *Metropolitan Land Values Summary June 2001*
 - *Metropolitan Market Values Summary June 2001*

HAVE YOUR SAY ON THE RTA!

The Department of Consumer and Employment Protection are running the following Perth public meetings to receive community input on the review of the Residential Tenancies Act:

- 9/4/02 6-8pm Midland Town Hall, Great Eastern Hwy (Cnr Spring Park Rd) Midland
- 15/4/02 5:30-7:30pm State Library Theatre, Alexander Library Bld, Francis St, Northbridge
- 19/4/02 6-8pm, Fremantle Town Hall, 8 William St, Fremantle.

Call Fiona Liu on 9282 0477 to register, and 92820911 for a free copy of the Discussion Paper or download it at: www.fairtrading.wa.gov.au/about/discussions.shtml

PARK HOME OWNERS AND THE REVIEW OF THE RESIDENTIAL TENANCIES ACT

By Jerry Dearlove, Parkhome Owners Association of WA

The following key issues regarding the Review of the RTA are of particular concern to parkhome owners:

- At present there is no legislation that recognises, let alone protects, the interests of permanent parkhome owners. This group has no security of tenure as no leases are issued to parkhome owners.
- Parkhome owners are unable to assign or sublet parkhomes, nor to even have the premises "house-sat".
- Rent surcharges apply to staying over guests and any pets
- Parkhome owners are subject to termination without just cause (Section 64)
- A variety of fees in addition to rent apply to parkhome owners; up to \$10,000 can be charged just to come on site, with no avenue for recourse.
- In the absence of any form of disputes tribunal, park owners have total discretion in dealing with temporary and permanent residents. Similarly there is no conflict resolution mechanism for disputes between parkhome owners. There is a need for liaison committees between parkowners and permanent residents.
- Parkhome owners pay GST on their rents yet are ineligible for concessions for utilities eg water, electricity.
- The position of parkhome owners on crown land sites needs clarification as does the legal definition of "park".
- There is currently no compensation for parkhome owners re-location costs where a park is closed or moved.
- Permanent residents have no private mail facilities; all mail goes to the park office.

THE WA GREENS POSITION ON THE NEW RESIDENTIAL TENANCIES ACT

Giz Watson MLC, Member for North Metropolitan Region

As a Greens (WA) member for of the Legislative Council with portfolio responsibilities for Housing and Social Services, I have been approached by many individuals and groups, who have drawn my attention to the issues faced by boarders, lodgers and caravan park home owners.

I would like to see the new Residential Tenancies Act be redefined to cover any person renting accommodation, including boarders, lodgers and caravan park home owners and residents. I believe that, among other things, the Act should be amended so there is no provision

for eviction without cause, that boarders and lodgers are not required to pay more than one week's bond, that letting fees paid by tenants to real estate agents be abolished and that residents of boarding and lodging houses are not charged at a higher rate for electricity, water and gas than other tenants.

I am particularly concerned about the difficulties faced by special groups identified at risk of homelessness such as young people, indigenous people, gay and lesbians, those leaving

institutional care, and those with mental illness.

I welcome the Government's review of the *Residential Tenancies Act 1987* and their Draft Report on Homelessness and hope that the Government will introduce changes which will bring about equity and justice in the housing market and reduce the incidence of homelessness in WA. I encourage community groups to get involved in the debate and invite you to contact my office if I can assist you in any way.

AFFORDABLE RENTAL HOUSING STOCK IN WA

By Karel Eringa, Shelter WA

The Realities

While the WA housing industry has been booming on the back of a non-targeted \$14000 artificial stimulus, the amount of affordable rental housing continues to decrease. Private rent increases are outpacing income increases for the poorest forty percent of Western Australians, while public housing stock is declining as a result of falling Commonwealth funding. Although the community housing sector is growing it is still too small to provide an alternative for a significant number of people.

In summary:

- Between 1986 and 1996, low cost rental stock fell by 19.8% in Perth and by 62.5% in non-metro areas.
- In the same period, the number of low income private renter households grew by 79.4% in Perth and by 88.8% in the rest of the state. (M.Wulff, J.Yates & T.Burke, *Low Rent Housing in Australia 1986 to 1996, 2001*, pp.25 and 29).

As this graph demonstrates,

whereas in 1996 there were 3.1 dwellings for every household on the waitlist, this ratio fell to 2.3 dwellings per household in 2001. Despite some methodological problems with using such a ratio, what it does show is Homeswest's decreasing capacity to meet the rising demand for public housing assistance in WA.

Some Strategies

There are two ways of making private renting more affordable. The first is to create more affordable housing in the private rental sector. This can be achieved in a number of ways, for instance through ceilings on annual rent increases, more generous Centrelink benefits and tax incentives. Another approach is to redesign the

current system of Commonwealth Rent Assistance in such a way that the funds are redirected to those in greatest need, eg. by abolishing the threshold. This can be done without increasing the overall outlay of Commonwealth funds, for instance by tightening eligibility criteria or by reducing the rate and maximum amount paid.

However, all of these measures are problematic. Ceilings on annual rent increases appear unattractive and unlikely in the current political climate, with its emphasis on the free market. The effect of tax incentives on low income housing stock has not been tested, and will have budgetary implications. Increasing Centrelink ben-

maintained, public housing stock must be expanded by 828 properties per year, at an estimated total annual cost of \$66.2M, plus land costs, on top of current CSHA funding. Further, in order to raise the proportion of public housing stock in WA to the national average of 6% by 2005, public housing stock needs to grow by 3105 dwellings per year at a cost of \$993.6M over four years. This is nearly double, and in addition to, the current four year CSHA allocation of \$532M.

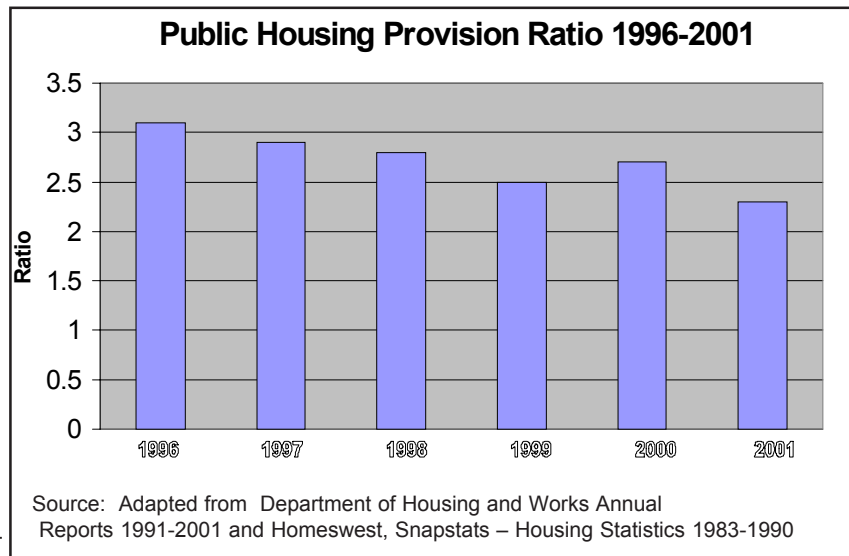
Where to Now?

Increased capital funding for public housing is the only way to reverse the contracting availability of affordable housing for people on low incomes.

Clearly, increasing public housing stock will not be cheap and requires a rethink of both the state and Commonwealth commitments under the CSHA.

Although state governments are not obliged under the CSHA to cut matching funding in line with Commonwealth CSHA reductions, past and current WA governments have chosen to do

so. It is now incumbent on the Gallop government to follow the lead of the NSW and Victorian governments and adequately fund public housing in spite of reductions in Commonwealth funding. An initial step would be for the State Government to provide its CSHA Matching funds from consolidated revenue. Other solutions that should be considered include working together with local government and community housing providers, as well as ensuring that any profits generated by initiatives partly funded by Government, such as the Subiaco and East Perth Redevelopment Authorities, contribute to increasing the stock of affordable housing.



efits or rent assistance will also require significant expenditure. In addition, the increased emphasis on rent assistance over capital funding for housing since the early 1990s has, arguably, been one of the causes of rising rents in the lower segments of the private rental market.

While there may be some potential to free up the private rental market, the only way to increase stock quickly is by significantly increasing Commonwealth and/or State government capital funding for public housing. Currently, public housing constitutes around 4.7% of total dwellings in Western Australia (722,000 in 2000). However, as the latter number is projected to increase by around 17,000 annually, for this proportion to be

Role of Shelter WA

Shelter WA is a peak community managed housing organisation established in 1979, which seeks to represent the views of consumers and community groups on major housing issues. Shelter WA aims to ensure that every person has access to affordable, appropriate, secure and safe housing that is free from discrimination.

We do this through:

- co-ordinating and representing community sector views to government;
- developing and responding to policy;
- providing education and information; and
- promoting alternative housing models.

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