

**TENANTS ADVICE SERVICE (Inc.)  
AND SHELTER WA (Inc.)**

**SUBMISSION TO ECONOMIC IMPACT  
ASSESSMENT  
OF LETTING FEES IN THE WESTERN AUSTRALIAN  
RESIDENTIAL TENANCY MARKET**

**AUGUST 1997**

## **LIST OF CONTENTS**

<b>1. EXECUTIVE SUMMARY .....</b>	<b>3</b>
<b>2. INTRODUCTION .....</b>	<b>5</b>
<b>3. HISTORY CONSISTENTLY REPEATS THAT LETTING FEES SHOULD NOT BE CHARGED TO TENANTS .....</b>	<b>5</b>
3.1 Working Party Report on Residential Tenancy Law Reform.....	5
3.2 Residential Tenancies Bill 1987.....	6
3.3 Residential Tenancies Act 1987 and the 1991 Review .....	7
3.4 1995 Amendments to the Residential Tenancies Act.....	7
3.5 Letting Fee Amendment Revoked - Reasons Given.....	8
3.6 Other Real Estate Sector Reasons for Retaining Fee.....	9
<b>4. INTERSTATE INFORMATION.....</b>	<b>9</b>
4.1 ACT Law Reform Committee Examination of Fees.....	9
<b>5. DEMAND TRENDS IN THE DEMOGRAPHIC AND ECONOMIC CONTEXT .....</b>	<b>10</b>
5.1 Factors Contributing to Increasing Demand.....	10
5.2 Need for Appropriate Supply-Side Incentives.....	11
<b>6. A RANGE OF FACTORS AFFECT INVESTMENT DECISIONS .....</b>	<b>11</b>
6.1 Investment Decisions Not Always Rational.....	12
6.2 Reasons for Investment.....	12
Table 1: Rental Investors By Reason Became Landlord By Age, 1993.....	12
6.3 Rates of Return.....	13
6.4 Negligible Impact of Tenancy Law Reform and Taxation Policy on Investment – Parallels with Letting Fee Reform .....	14
6.5 Key Considerations for Investors.....	15
<b>7. RENT LEVELS ARE NOT ISOLATED TO SINGLE FACTORS.....</b>	<b>16</b>
7.1 Factors Impacting on Rent Paid.....	16
7.2 Continuing to Charge Tenants Letting Fees Won't Stop Rents Increasing.....	17
<b>8. IS THE LETTING FEE TENANTS' CONTRIBUTION FOR SERVICES PROVIDED? .....</b>	<b>18</b>
8.1 Agents Do Not Provide Tenants Special Services For The Letting Fee .....	18
8.2 Real Estate and Business Agents Supervisory Board Advice.....	19

<b>9. POSITIVE EFFECTS FOR TENANTS IF NOT REQUIRED TO PAY</b>	
<b>THE LETTING FEE .....</b>	<b>20</b>
9.1 Greater Equity .....	20
9.2 Improved Affordability.....	21
9.3 Improved Housing Assistance Effectiveness.....	21
9.4 Greater Choice .....	22
9.5 Greater Security of Tenure.....	22
<b>10. NOT CHARGING LETTING FEES TO TENANTS FITS WITH</b>	
<b>PLANS TO DE-REGULATE REAL ESTATE FEES .....</b>	<b>22</b>
10.1 Proposed Commercial Tenancy Changes.....	24
10.2 Consumer Protection in a De-Regulated Climate.....	24
<b>11. CONCLUSION.....</b>	<b>24</b>
<b>12. CONTACT DETAILS.....</b>	<b>25</b>
<b>13. QUESTIONNAIRE RESPONSES .....</b>	<b>26</b>

## **1. EXECUTIVE SUMMARY**

This submission is a joint Tenants Advice Service (TAS) and Shelter WA response to the *Western Australia Residential Tenancy Questionnaire* in view of the mutual work both organisations have done in the past on this issue.

TAS and Shelter maintain that the issue of letting fees being charged to tenants must be considered in their full context; it is not purely an economic matter. A major point is that it is too simplistic to hold a single factor such as a letting fee being no longer passed on to tenants as causing disinvestment and/or rent increases. Private rental investment is an incredibly complex area with a range of reasons affecting supply and demand. Also, letting fees are a charge incurred by owners for choosing to have their investment managed by a professional. This charge does not belong with tenants.

TAS and Shelter WA maintain that the law prohibiting letting fees from being passed on to tenants should be reclaimed. It is our view that issues relating to the private rental sector and its ability to deal with demand and supply issues should be dealt with as broader policy issues, involving the range of players and portfolios concerned.

Definitive answers to the economic impact questions are not provided, as they are unknown. It is our understanding that this is the purpose of the independent modeling exercise that has yet to be done. In any event, we believe that a modeling exercise must be contained within the broader context to supplement the limitations of any model, as well as to take account of other relevant factors.

On this basis our submission focuses on major issues of concern and concludes with a brief response to the specific questions asked in the Consultant's Questionnaire.

In summary our position is as follows:

### **Historical Context**

The recent opposition by the real estate sector to the abolition of letting fees is not new. The issue of letting fees being charged to tenants has been an issue in Western Australia for many years. All formal reviews involving letting fees have recommended the abolition of letting fees to tenants.

### **Interstate Comparison**

No other State in Australia charges letting fees to tenants. This position has been consistently affirmed with each review or development of tenancy legislation in these States.

### **Increasing Demand**

Demand for private rental has been increasing in recent years and requires appropriate supply-side responses. The retention of letting fees charged to tenants is not a supply-side response.

### **Investment**

The real estate sector claim that proscribing letting fees charged to tenants will lead to disinvestment in the private rental market. Factors affecting investment decisions are many and varied and not always rational or based on pure market principles.

### **Rent Levels**

Similarly, the real estate sector claim that rent increases will result from proscribing the letting fee charge. Factors affecting rent levels are varied and complex and can't be isolated to the single factor of letting fees charged, or not charged, to tenants.

### **Payment for Services Argument**

Agents have claimed tenants should pay the letting fee as a contribution to services provided by the agent. Tenants pay a letting fee as part of a provision allowing part of the owner's fee for choosing to let premises through an agent to be passed on to the tenant. The payment of the fee is a condition precedent to the tenancy and does not establish a contract or any obligation by the agent to the tenant. It is fallacious to argue that letting fees are justified as payment for service reasons.

### **Benefits to tenants if letting fee charge abolished**

There are many positive effects for tenants if they are no longer charged a letting fee when renting through an agent. These include; greater equity, improved affordability, greater choice, improved security of tenure and more effective Housing Assistance.

### **De-regulation**

Continuing to regulate letting fees while all other fees relating to real estate agent fees and charges does not make sense. The argument to retain letting fees but to de-regulate all other areas appears to be based on self-interest not public interest and is anti-competitive.

Tenants Advice Service (TAS) and Shelter WA were asked to submit a response to the *Western Australia Residential Tenancy Questionnaire*. A joint submission was agreed upon in view of the mutual work both organisations have done in the past on this issue. The joint submission was also seen as a way of maximising the agencies' scarce resources.

## 2. INTRODUCTION

TAS and Shelter maintain that the issue of letting fees being charged to tenants must be considered in their full context; it is not purely an economic matter. A major point is that it is too simplistic to hold a single factor such as a letting fee being no longer passed on to tenants as causing disinvestment and/or rent increases. Private rental investment is an incredibly complex area with a range of reasons affecting supply and demand. Also, letting fees are a charge incurred by owners for choosing to have their investment managed by a professional. This charge does not belong with tenants.

For these reasons TAS and Shelter WA maintain that the law prohibiting letting fees from being passed on to tenants should be reproclaimed. It is our view that issues relating to the private rental sector and its ability to deal with demand and supply issues should be dealt with as broader policy issues, involving the range of players and portfolios concerned.

Definitive answers to the economic impact questions are not provided, as they are unknown. It is our understanding that this is the purpose of the independent modeling exercise that has yet to be done. In any event, we believe that a modeling exercise must be contained within the broader context to supplement the limitations of any model, as well as to take account of other relevant factors.

On this basis we therefore provide a submission focussing on major issues of concern and conclude with a brief response to the specific questions asked in the Consultant's Questionnaire.

## 3. HISTORY CONSISTENTLY REPEATS THAT LETTING FEES SHOULD NOT BE CHARGED TO TENANTS

It is important to place letting fees and debates about whether they should be charged to tenants within an historical context to understand that the debate, and arguments used, are not new. The charging of letting fees to tenants has been an issue in Western Australia for several years with all Government reviews recommending the prohibition of letting fees charged to tenants.

### 3.1 Working Party Report on Residential Tenancy Law Reform

The 1984 *Report of the Working Party on Residential Tenancy Law Reform*<sup>1</sup> noted that:

*It is believed letting fees may be more properly recovered over a period of time via the landlord's rental. Abolition of letting fees would bring Western Australia into line with common practice in other States by amending the Real Estate and*

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<sup>1</sup> *Report of the Working Party on Residential Tenancy Law Reform*, August 1984 (report presented to then Minister for Housing Hon. K.J. Wilson and then Minister for Consumer Affairs Hon. P. Dowding by PR Glanville), p9.

*Business Agents Act to allow fees incurred by agents to be recovered from owners. The ingoing costs on tenants moving into new properties will be reduced.*

With the working party represented by a number of organisations including TAS and REIWA, the Working party report was represented as the consensus industry position.

The working party position encapsulates the views that have continued to be held by Tenants Advice Service and Shelter WA.

### **3.2 Residential Tenancies Bill 1987**

However, further lobbying by the real estate sector led to changes from the original working party report. By the time the Residential Tenancies Bill was drafted, letting fees to tenants were not abolished but 90 days was proposed for tenants to pay the fee. There was also discussion of a scale of fees.

TAS continued to oppose letting fees being charged to tenants. TAS' *Response to the Draft Residential Tenancies Bill 1987*<sup>2</sup> set out TAS' reasons for opposing the fee and seeking its abolition. These were:

- 1. They are an economic barrier to obtaining accommodation. The proposed time payment proposal will only add further burden to the weekly rental of low income tenants. Furthermore, discrimination in favour of those able to pay the letting fee at time of application may occur.*
- 2. Although initially rents may rise if letting fees were abolished, this is only a possibility. Furthermore, such a trend would be short term only as incoming investors in time would absorb the cost as one attributed to the employment of an agent.*
- 3. The time payment proposal will provide an added basis for notice of breach and possible termination should the fee not be paid at the expiration of 90 days.*
- 4. The charging of a letting fee to the tenant is unjustifiable as it is the choice of the owner to appoint an agent, and it should therefore be considered as one of the owner's costs. In no other consumer area is the consumer charged a fee for the effort made by the salesperson to sell the item.*

These views concur with TAS and Shelter's views 10 years later. It is important to note that each time letting fees have been scrutinsed by a formal review or working party process the recommendation has been for the prohibition of fees being charged to tenants. It is our perception that the retention of letting fees is primarily due to political lobbying outside of formal processes.

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<sup>2</sup> Tenants Advice Service (Inc.), *Response to Draft Residential Tenancies Bill 1987*, May 1987, p6.

### **3.3 Residential Tenancies Act 1987 and the 1991 Review**

The *Residential Tenancies Act (1987)* came into effect in October 1989 with provision for agents to charge tenants a letting fee equivalent to one week's rent and proscribing the charging of re-letting fees.

A review of the Act in 1991 resulted in a *Report to the Hon. Minister for Consumer Affairs on the Operation of the Residential Tenancies Act 1987*<sup>3</sup>. The report discussed letting and re-letting fees. It noted that; "REIWA and some individual agents argued that the letting fee provision should be omitted from the Act and that the Agent should be permitted to charge letting and re-letting fees in accordance with the provisions of the *Real Estate and Business Agents Act* "(p88). The report also noted that submissions were received arguing the owner should be liable and others that the tenant should pay letting and re-letting fees.

The report's recommendation was that the charging of letting fees be clearly restricted to dealings between owners and agents and that owners be prohibited from recovering any such fees from tenants. It was proposed that letting fees should be treated in the same way as outgoings in respect of the premises (p89).

### **3.4 1995 Amendments to the Residential Tenancies Act**

Amendments to the Residential Tenancies Act were proposed in June 1995, with many stemming from the 1992 report. One of the proposed amendments was for the recovery of any portion of letting or re-letting fees from tenants to be prohibited<sup>4</sup>. TAS and Shelter supported this proposal as congruent with its enduring stance on this issue<sup>5</sup>.

On 7 December 1995, the *Real Estate Legislation Amendment Bill 1995* was passed through Parliament. This Bill amended several Acts including the Residential Tenancies Act. The changes included the prohibition of agents charging tenants letting fees but provided that agents could charge owners' reletting fees. In the second reading of the Bill Mrs. Cheryl Edwardes, Minister for Fair Trading, noted that:

*"... agents involved in property management were concerned that this change would impact on their income and rent roll values. To take account of agents concerns the abolition of letting fees forms part of a package that provides in excess of 12 months for agents to prepare for the change and links the removal of letting fees to the deregulation of property management fees"*<sup>6</sup>.

Thus the change concerning letting fees was proclaimed to take effect on January 1, 1997 while other changes took effect earlier on July 1, 1996. TAS welcomed this long awaited amendment.

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<sup>3</sup> Ministry of Consumer Affairs, *Report to the Hon. Minister for Consumer Affairs on the Operation of the Residential Tenancies Act 1987*, March 1992, pp. 88 - 89.

<sup>4</sup> Ministry of Fair Trading letter to Tenants Advice Service, 19 June 1995.

<sup>5</sup> Pauline Logan, Tenants Advice Service (Inc.) *Report on Amendments to the Residential Tenancies Act (1987)*, June 1995, p16.

<sup>6</sup> Hansard, Western Australian Legislative Assembly, Tuesday, 3 September 1996 pp5072 – 5073.

### **3.5 Letting Fee Amendment Revoked - Reasons Given**

In an unprecedented move the Government in Executive Council on August 23, 1996 revoked the sections relating to letting fee changes. The then Minister for Fair Trading, Cheryl Edwardes', advice to Parliament on August 30, 1996 explaining the deproclamation was that it was done following concerns raised by real estate agents that they could not absorb the letting fee and it would have to be passed on to landlords. Also, that landlords were concerned that, given the depressed market, they could not afford the fee and would be passing it on to tenants. The Minister also expressed concerns about the impact on housing stock in other geographical areas. Therefore it was proposed to carry out an independent economic impact assessment on the basis of the proposed changes to letting fees so the Government could be in a position to understand what the full economic impact would be.

As a further explanation about motivation for revoking the law the Minister advised Parliament that "... (Executive) wanted to ensure that tenants were paying no more than a fair rental". Also, that indications were that the prohibition of the letting fee would affect the real estate industry through a shortage of housing stock and tenants would pay a higher rent than they now pay.<sup>7</sup>

TAS and Shelter applauds the discussion about ensuring that tenants pay no more than a fair rental. However, we do not see fair rentals resting on the retention of letting fees being charged to tenants, nor do we consider that letting fees charged to tenants are of themselves a rent determinant. Also, this assumes that tenants are currently paying a fair rental, which may not be the case.

Questions of whether tenants pay a fair rental rests on a number of issues including the standard of property provided for the level of rent paid and are compounded by the fact that there is a lack of regulation for minimum housing conditions. Another factor relates to the mechanisms in place to protect tenants against unfair rent increases. The law in Western Australia is limited to whether the rent is excessive due to a significant reduction in the property or facilities provided as part of the tenancy, or that the tenant can show that the owner applied an excessive rent increase in an attempt to force them out.<sup>8</sup>

This a complicated area of the Residential Tenancies Act for tenants to enforce, requiring tenants to show a range of information to the court on factors such as: The general level of rent in the area, estimated property value, general state of repair and condition of the property and chattels, outgoings to be paid by the owner and the estimated cost of services provided by the tenant or owner under the agreement. The major flaw is also that there is no consideration of whether the rent was fair in the first place.

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<sup>7</sup> Ibid.

<sup>8</sup> Residential Tenancies Act 1987, Section 32.

### **3.6 Other Reasons to Retain Letting Fee Presented by Real Estate Sector**

Other arguments put by the real estate sector for the retention of letting fees charged to tenants include that:

- It is payment toward accommodation letting services to tenants which should not be subsidised by the private sector (owners and agents), therefore why shouldn't tenants pay for services provided, given that tenants need to formally agree to the payment and have the option of not using professional management services.
- The proscription of agents charging a letting fee to tenants will impact on the viability of agency practice, the level of employment in the real estate industry, and the quality of services provided by agents.<sup>9</sup>

These various arguments are discussed further below.

## **4. INTERSTATE INFORMATION**

TAS wrote to tenancy services in other States to seek information on agents' fees charged to tenants. The responses received confirmed that Western Australia is the only State in Australia where agents' fees for managing residential premises for the owner are charged to tenants. A number of States tenancy legislation has been reviewed or developed in the last decade. It is significant to note that none of these processes has resulted in the introduction of letting fees charged to tenants. Also, that many States have de-regulated, or are in the process of de-regulating real estate agent's fees and have not introduced letting fee charges to tenants.

### **4.1 ACT Law Reform Committee Examination of Fees**

It is useful to note the most recent law reform committee examination of fees and charges other than bond in the Australian Capital Territory. The Committee held that "the law should continue to prohibit all fees for a tenancy agreement.. other than rent or bond"<sup>10</sup>. The working party went on to note that the requirement exists in the ACT and other jurisdictions to keep the initial cost of obtaining rental accommodation at a reasonable level and to remove hidden costs, such as key money.

The Committee also considered a proposal by the Real Estate Institute for tenants to pay the cost of processing an application and found that "it is common and proper practice for business enterprises of all kinds to assist potential customers before any agreement is reached, or any sale is made. This assistance is a necessary part of securing a sale"<sup>11</sup>.

The Committee's recommendation was to continue to restrict tenants costs to rent and bond.

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<sup>9</sup> *REIWA News*, "Economic Impact Study", October 1996, p6.

<sup>10</sup> ACT Community Law Reform Committee, *Report on Private Residential Tenancy Law*, 1994, Canberra, p39.

<sup>11</sup> *Ibid.*, p40.

## 5. DEMAND TRENDS IN THE DEMOGRAPHIC AND ECONOMIC CONTEXT

### 5.1 Factors Contributing to Increasing Demand

It is important to consider any policy change within its broad context. Recent indications are that demand for rental housing is increasing as home ownership levels are in decline. With declines in public housing assistance and increased reliance on the private rental market this demand for low-income housing is likely to continue.

The Victorian Ministry of Housing commissioned a review of the private rental housing market in Victoria and implications for tenancy law reform several years ago. The Consultant's argued there was a "need to review the demand for private rental accommodation in view of the arguably excessive focus and concern with the supply side of the rental market". In this context the Consultant's made some key predictions and observations about the changing demographic and economic context affecting demand in the private rental market. These are:

- Changing demographic factors including the rate of household formation which have led to increased demand for private rental due to the groups growing the fastest being those traditionally using private rental (single parent households, single person households and young childless couples).
- Changing economic factors such as the cost of housing and availability of 'substitute' housing tenures to private rental (home ownership and public rental).
- Changing political factors in public policy such as the provision of rent assistance schemes.<sup>12</sup>

This research is dated but the factors hold true today. Recent Australian Housing and Urban Institute research indicated that more people are moving into rented accommodation than purchasing their home. Economic insecurity, high mobility and marriage break ups were cited as reasons. The Institute reported falling ownership levels to 69%, with predictions for falls to as low as 60% in the coming decade. The most recent Australian Bureau of Statistics (ABS) figures that show that ownership levels have declined even further (to 66.4%) supports this<sup>13</sup>. Yates presentation to the 1996 REIA Conference, *Housing Directions*, that a growing number of households have been priced out of the home ownership market also concurs with earlier research<sup>14</sup>.

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<sup>12</sup> Core Consultant's et al for the Ministry of Housing Victoria, *A Review of the Private Rental Housing Market in Victoria and Implications for Tenancy Law Reform*, Volume 1: Summary Report, October 1983.

<sup>13</sup> ABS, 1996 *Census of Population and Housing: Selected Social and Housing Characteristics*, Australia, Canberra, 1997 pp. 29 – 31.

<sup>14</sup> Yates, Judith (1996) 'Federal Housing Strategies' paper presented to the 1996 REIA Conference Housing Directions, Canberra, July 10.

ABS figures show that trends for Western Australia vary slightly from national trends. Home ownership and purchase levels have remained constant at 37% for ownership and 29.5% for purchase in 1991 and 29.8% in 1996. The rented tenure showed the biggest increase from 27.8% of occupied private dwellings in 1991 to 28.4% in 1996. This is higher than the 1996 national average of 27.3%.<sup>15</sup>

## **5.2 Need for Appropriate Supply-Side Incentives**

These facts combined with recent directions in Commonwealth Housing Assistance towards rent assistance subsidies and away from increasing supply of public housing indicate growing demand for low income rental accommodation and the need for appropriate policies to meet this demand.

Other factors are the growing attractiveness of other forms of investment with recent developments in finance markets.

Significant subsidies (and incentives) are provided to private rental investors in the form of negative gearing provisions, depreciation allowance and capital gains provisions. However, research has noted the ineffectiveness of these measures in directing supply to areas of need. The need for encouraging investment in not just the private rental market, but the lower end of the market is emphasised by Maher and Dalton.<sup>16</sup>

TAS and Shelter's position concur with AHURI, that supply-side incentives which will encourage private investors into the private market are required. Further, that measures should be developed which ensure an adequate supply of rental housing for low income tenants. To this end we support National Shelter in their proposal for targeted measures through negative gearing and taxation incentives.<sup>17</sup> The retention of letting fees charged to tenants is not a supply-side measure and is not justified in this context.

## **6. A RANGE OF FACTORS AFFECT INVESTMENT DECISIONS**

It seems one of the major concerns for continuing to charge letting fees to tenants is that landlords will not absorb additional costs and that it will lead to rent increases for tenants and/or disinvestment in the private rental market. This has been a common argument from real estate agents and landlords when there is the threat of tenancy regulation or changes to tax laws<sup>18</sup>.

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<sup>15</sup> ABS, *1996 Census of Population and Housing: Selected Social and Housing Characteristics*, Australia, Canberra, 1997 pp29 –31.

<sup>16</sup> Maher, C. & Dalton, T. Australian Housing and Urban Research Institute, *Private Renting: Changing Context and Policy Directions*, Paper presented to the 2nd. Residential Tenancies Conference, Melbourne, October, 1995.

<sup>17</sup> National Shelter, *Low Income Households and the Private Rental Market*, June 1997.

<sup>18</sup> 18 Hayward, D. and Burke, T. 'Gearing up for Inflation', *Australian Society*, March 1989 and Badcock, B. and Browett, M. 'The Responsiveness of the Private Rental Sector in Australia to Changes in Commonwealth Taxation Policy', *Housing Studies* Vol. 6 No 3 pp. 182 –192.

It is spurious to imply that the rental market is sustained by single factors such as tenants being charged a letting fee. If this is the case why haven't investors rushed to WA and disinvested in other states where a letting fee may not be passed on to the tenant!

### **6.1 Investment Decisions Not Always Rational**

Claims about the impact on investment levels assume that investment in residential property is always a rational decision based on maximising profit. Research shows that while this is a significant factor it is not always the primary determinant. Burke in a paper on the private rental sector refutes the notion of the 'rational economic man' (sic). He asserts that many landlords invest in the private rental sector because of a cultural belief in the security and economics of 'bricks and mortar'. He also notes that other landlords inherited their properties and keep them for "symbolic or family reasons".<sup>19</sup>

Burke goes on to say that because the motivation for investment extends beyond profit maximising for some groups, that these groups "may not only be less sensitive to the competing attractions of other investment sectors but may also be insensitive to other changes or processes which are believed to affect the economics of renting..... the diversity and heterogeneity of the private rental sector dictate that simplistic explanations of problems and causes must be treated with skepticism..."<sup>20</sup>.

### **6.2 Reasons for Investment**

The ABS report, *Investors in Rental Dwellings Australia*, providing data on the reasons behind rental investment, supports Burke's claim that there are varying motivations affecting reasons people became landlords. Table 1 below is a repeat of the data shown in Table 2.1 of the ABS report. The table shows that the most common reason for rental investment was for secure long-term investment, followed by income from rent, then to reduce taxable income by negative gearing.

This data indicates that the economic impact assessment must isolate letting fees from other factors that affect investment/disinvestment and evaluate letting fees against these other determinants. Otherwise the assessment will be more about investment factors per se than the letting fee.

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<sup>19</sup> 19 T.W. Burke, "The Private Rental Sector: Problems, Prospects and Policy", *Urban Policy and Research* Vol. 1 No. 4, 1983, p3..

<sup>20</sup> Ibid., p3.

**Table 1: Rental Investors By Reason Became Landlord By Age, 1993.**

Reason became landlord (a)	18 to 34	35 to 44	Age in years			All investors
			45 to 54	55 to 64	65 and over	
			Per cent			
• Secure long term investment	57.6	55.1	51.5	47.8	37.2	52.1
• Income from rent	14.4	14.2	16.9	16.9	25.6	15.7
• Reduce taxable income by negative gearing	20.4	18.2	5.1	5.1	2.1	14.3
• Plan to return to live in dwelling at a later date	7.8	8.5	3.4	3.4	1.9	6.0
• Possible future home	13.7	8.2	12.1	12.1	8.5	10.2
• Potential for capital gain	10.3	12.2	5.4	5.4	7.1	9.7
• Investing for retirement	5.9	14.0	12.7	12.7	10.1	11.9
• Other (b)	10.9	16.0	19.4	19.4	25.7	16.0
			'000's			
Number of investors	170.2	201.2	205.5	111.8	63.4	752.1

Source: ABS Catalogue No. 8711.0 (a) Proportions will not add to 100% due to request for multiple response to factors. (b) Only covers first six months of 1993.

### 6.3 Rates of Return

Burke also discusses rates of return and that whether rates are too low is a point for debate. Burke outlines reasons the commonly used measure of return, the initial yield (current rental return as a proportion of property value), is problematic as it makes no allowance for the level of equity and other expenditure items or the time value of money. Burke suggests an alternative measure that takes into account the cash flow of investment measured by the internal rate of return. He also notes that levels of return will vary for different localities, for different levels of gearing, and will be modified by the investors specific tax position<sup>21</sup>.

A recent paper produced on the private rental market by the Department of Social Security supports this.<sup>22</sup> The paper compares returns measured by a number of sources including the Real Estate Institute of Australia, the Victorian Office of Housing and the HIA/Commonwealth Bank. Variations in findings are noted and attributed to the different methodologies and scope of collections, as well as leads and lags in the different series used. It is posited that the data represents only part of the cycle and that there is potential for greater returns over different time-scales. The other interpretation which is noted to be supported by the Rental Investors Survey is the dominance of small investors in the private rental market and that these investors may accept lower rates of return than that which is acceptable to the 'managed funds' sector<sup>23</sup>.

Factors attributed to this assessment included:

- Investment in rental property provides for 'hands on' management and control over the investment,

<sup>21</sup> Ibid., p4.

<sup>22</sup> Housing Access Branch, 1996, *Overview of the Australian Rental Market*, Prepublication Copy, Department of Social Security, Canberra.

<sup>23</sup> Ibid., p19.

- ‘Bricks and mortar’ investments are assessed as secure by investors,
- The view that (at least over time) the capital component of the investment is relatively secure,
- There is flexibility in determining the timing and level of cash outgoings on the investment (via the ability to self maintain and manage the property),
- Tax minimisation goals,
- Low barriers to entry compared to higher information and capital needs often required with alternative investments.

These factors are said to explain “the establishment of a market where rent levels may be below those required to generate returns to other investors<sup>24</sup>. Other aspects of the Rental Investors Survey support this view. The survey found that the majority of investors (72.2%) invested in the same city or region they lived in and that more than a third (36.6%) (a quarter of all investors) had the property in the same postcode that they lived in.<sup>25</sup>

The common finding seems to be that variations in estimates of rate of return depend upon the assumptions used in calculations. Interestingly, the Investors in Rental Dwellings Survey found that just fewer than 10% of investors gave the reason for selling their investment property as inadequate return on their investment. The major reason given for disposal of an investment was finance purchase elsewhere.<sup>26</sup> Thus various indications lead to the conclusion that isolating one factor (letting fees) to determine impact on rates of return and making assumptions about how it will affect investment is complex and spurious.

#### **6.4 Negligible Impact of Tenancy Law Reform and Taxation Policy on Investment – Parallels with Letting Fee Reform**

Burke also discusses the blame that has been attributed to tenancy law reform in causing contractions in supply and refutes these arguments as “at best well-intentioned and at worst willful distortions of reality”<sup>27</sup>. It is argued that the lack of evaluation makes it difficult to draw conclusions about the effects of legislation on the social and economic aspects of the private rental sector. Burke states that any study would need to control the effect of other variables and that outcomes popularly blamed on tenancy legislation may be more appropriately explained by other factors.

One can draw parallels with this discussion to the reform of letting fees charged to tenants. It is therefore relevant to incorporate Burke’s suggestion that among the factors affecting local and national private rental industry are:

- Changes in the cost and availability of finance,
- Tax provisions,
- The degree to which states have a specialised flat building industry,

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<sup>24</sup> Ibid. p20.

<sup>25</sup> ABS, 1993, *Investors in Rental Dwellings Australia*, Commonwealth Government Printer, Canberra, p21..

<sup>26</sup> Ibid., p15.

<sup>27</sup> T.W. Burke, “The Private Rental Sector: Problems, Prospects and Policy”, *Urban Policy and Research* Vol. 1 No. 4, 1983. (p9).

- Planning legislation,
- Variations in the cost and availability of multiple occupancy dwellings (largely rental accommodation),
- Variations in the level of economic activity, and
- The form and rate of economic growth.<sup>28</sup>

The 1983 review of the private rental market in Victoria similarly emphasised that the problems of the private rental sector can't be explained by a single factor (in the review's instance, landlord tenant legislation). It found that the private rental sector would remain problematic without consideration of broader policy responses to the requirements of the private rental sector.

Further that both demand and supply pressures need to be taken into account and are likely to pose different issues and require distinct policy responses.<sup>29</sup> This holds true for current conditions; it is inappropriate to claim that the viability of the rental market rests on the retention of tenants being charged letting fees.

A similar point is made in a paper about shifts in Commonwealth taxation policy and the extent that changes in the private rental sector can be traced to a single tax measure as opposed to other developments in the economy. The research by Badcock and Browett found that:

*While it was clearly in the interests of the real estate industry to exaggerate the effects of the tax reforms, the federal government was misguided in its acceptance of the pervasiveness of the 'rent crisis' in mid-1987. There has been a readiness by Canberra to view the housing sector as a unitary system and overlook the significant regional and cyclical variations that are ever-present.*<sup>30</sup>

### **6.5 Key Considerations for Investors**

This is further borne out by the ABS survey data on factors considered for investing by rental investors. The key factors cited by investors were negative gearing (44.3%), capital gains (41.7%), alternative investments (32.4%) and interest rates (30.9%). Rental vacancies represented 18.7% of considerations and tenants' rights the least considered factor at 6.4%.

The data also showed that the time of investment also affected investment considerations and that capital gains was more significant in the early eighties, with investors who first became landlords in the late eighties more likely to consider a range of factors.<sup>31</sup> With low interest rates and inflation and less likelihood of capital gains it is reasonable to assume that it is a range of factors that continue to influence investment decisions.

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<sup>28</sup> 28 Core Consultant's et al for the Ministry of Housing Victoria, A Review of the Private Rental Housing Market in Victoria and Implications for Tenancy Law Reform, Volume 1: Summary Report, October 1983.

<sup>29</sup> Ibid.

<sup>30</sup> Badcock, B. and Browett, M. 'The Responsiveness of the Private Rental Sector in Australia to Changes in Commonwealth Taxation Policy', *Housing Studies* Vol. 6 No 3 pp. 190 –191..

<sup>31</sup> ABS, 1993, *Investors in Rental Dwellings Australia*, Commonwealth Government Printer, Canberra.

## **7. RENT LEVELS ARE NOT ISOLATED TO SINGLE FACTORS**

As mentioned earlier, agents expressed concerns to Government that they could not absorb the letting fee and that it would have to be passed on to landlords<sup>32</sup>. The follow on argument was that this would result in rent increases for tenants.

TAS and Shelter never assumed that agents would necessarily absorb the letting fee. With the change prohibiting the charge of letting fees to tenants we assumed that the owner and agent would re-negotiate fees payable for the management of the residential premises. Based on tenants paying the equivalent of a week's rent towards the owner's charge we presume that the potential effect for the owner would be payment of a week's rent equivalent each time the property was let to new tenants; but that this may vary with the effect of de-regulation according to the services being contracted.

### **7.1 Factors Impacting on Rent Paid**

In any event we do not accept that owner's being required to pay the full cost of having an agent manage their property would automatically lead to rent increases. Nor that if letting fees are to remain that rents will therefore not increase.

Based on the 1994 Australian Housing Survey, the Housing Access Branch of the Department of Social Security noted a number of factors, which impacted on the rent paid. These included:

- The number of bedrooms,
- The nature of the dwelling (age, construction and condition),
- The nature of the tenancy (whether rented from an agent and duration of tenancy), and
- The socio-economic status of the area.<sup>33</sup>

The Department noted that management of the property by a real estate agent increased the estimated rent by \$9 pw, and that a tenancy of 3 years or more was reflected in a \$16 pw rent reduction<sup>34</sup>.

The additional rent charged where an agent manages the rented premises is borne out by a brief examination by TAS of differences in rent costs of agent managed and privately managed premises. TAS examined the "To Let" sections of the weekend newspapers over two weekends in July 1997 and found that rents charged by agents for similar dwelling types were consistently higher than privately managed properties.

Tenant services in other States advised that there did not appear to be significant rent differences between private rentals and real estate managed rentals.

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<sup>32</sup> Hansard, Western Australian Legislative Assembly, Tuesday, 3 September 1996 pp5072 – 5073).

<sup>33</sup> Housing Access Branch, 1996, Overview of the Australian Rental Market, Prepublication Copy, Department of Social Security, Canberra.

<sup>34</sup> Ibid., p26.

Therefore, the fact that the lessor is liable for letting fee charges does not necessarily affect rent levels.

The ability of landlords to pass on further costs through increased rent charges to cover the cost of the letting fee previously paid by tenants will largely depend on the rent being charged, how it relates to comparable rentals in the area and whether a rent increase can be sustained. Landlords will be faced with taking into account these factors and deciding whether to bear this cost (and for many, negative gear it), renegotiate the management of the premises through an agent or self-manage the premises.

Commonsense says that if the market (or aspects of it) will absorb a rent increase then rents may increase. However, as has been discussed earlier, a rent increase is not automatic even if the market will bear it. Increases relate not only to supply and demand factors but other investor motivations. For example, some investors may prefer to increase their operating loss for negative gearing purposes<sup>35</sup>, others may choose to absorb the cost and keep rents stable as incentive to attract long-term tenants.

If supply is the issue leading to rent increases then the answer is not to continue to require tenants to pay a letting fee but to address the issue through supply incentives. Letting fees are not a supply incentive. The converse argument is that if you increase the cost of the letting fee then this will reduce rent, which is nonsense. Also, as noted above, supply issues can occur for a number of reasons including increased household formation as well as the cyclical boom/bust nature of the building industry and its failure respond immediately or appropriately to demand.

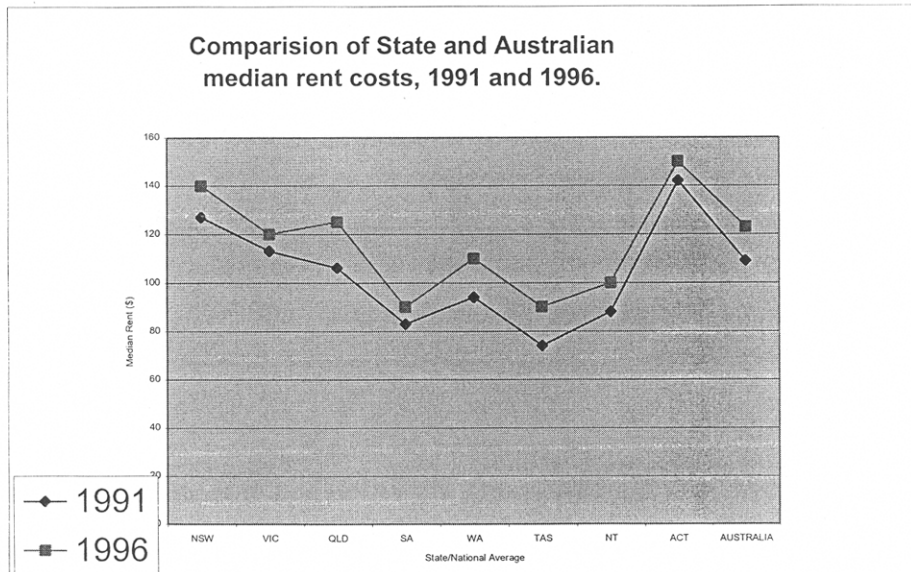
## **7.2 Continuing to Charge Tenants Letting Fees Won't Stop Rents Increasing**

In any event, the retention of tenants' being charged letting fees will not ensure rents do not increase in the long term and should not be used as justification for retention of the fee being charged to tenants. This is borne out by the most recent ABS figures which show median weekly rental in Western Australia increased 17% over five years from \$94 in 1991 to \$110 in 1996. This increase was 5.1% above the national average and third only to Queensland and Tasmania. As none of these States charge tenants letting fees these rent increases are clearly linked to other factors and it is spurious to argue otherwise. It is similarly deceptive to argue that it is the charging of a letting fee to tenants that have caused rents levels to be as they are.

TAS and Shelter conclude that that there are too many variables to produce definitive results about the economic effect on rent levels of letting fees being charged or not charged to tenants.

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<sup>35</sup> Ibid., p.16.



Source: ABS Census of Population and Housing: Selected Social and Housing Characteristics, Australia, 2015.0, 1996.

## 8. IS THE LETTING FEE TENANTS' CONTRIBUTION FOR SERVICES PROVIDED?

### 8.1 Agents Do Not Provide Tenants Special Services For The Letting Fee

Arguments have been presented that tenants should pay a letting fee in recognition of the service provided to tenants by agents (accommodation letting services). TAS and Shelter are not aware of any special service provided to tenants by agents. The services provided are those which naturally flow from managing a property on behalf of an owner, and complying with residential tenancies legislation.

For example, agents advise tenants about properties on their rent roll and accept and assess applications in relation to these properties; services which one would reasonably expect of any person marketing a product on behalf of another party.

By way of another example, agents do not provide a special service of matching tenants with properties by exploring available properties within a particular area the tenant is seeking to live irrespective of whether they are part of that agent's rent roll. There are services such as these offered in the market place which charge prospective a fee for service. Also, agents do not represent tenants who apply to Court to resolve a dispute with the owner; where the agent appears their role is to represent their principal (the owner).

TAS and Shelter maintain that the real estate agent doesn't do more for tenant than required by law or their contract with their principal and that this is about good business practice.

Tenants are not provided any choice about the level of fee paid or what services are offered in exchange for payment of the letting fee. Given that the same fee is

charged irrespective of the service provided it would appear that the fee is not reflective of cost differences and therefore of competition in the real estate industry. Alternatively, it may be that there are cost differences but that the owner, not the tenant, benefits from these.

## **8.2 Real Estate and Business Agents Supervisory Board Advice**

A letter to TAS from the Real Estate & Business Agents Supervisory Board expands on this issue. The letter explains that the letting fee charged to tenants does not create a legal or binding relationship between the tenant and real estate agent<sup>36</sup>. By virtue of this, the tenant does not have any rights to redress under real estate laws to ensure the quality or nature of their dealings with the agent.

The letter followed a request to the Board to respond to a tenant's complaint about the handling of their tenancy by an agent. The letter explains why the Board could not hear the tenant's complaint and that it can only hear matters arising from the contract of management between the agent and his principal (the property owner).

In explaining this the Board's representative sets out the role of the letting fee charged to tenants and that it is a payment on behalf of the landlord and in no way creates an obligation to the tenant by the agent. In the Board's own words:

*The tenant, upon taking tenancy, pays the (letting) fee not to establish a contract with the agent, but as a condition precedent to the contract of tenancy. By the very fact that there is no contract between the agent and the tenant, there is no contractual obligation to the tenant. The agent manages the property for the landlord and this management of the property includes the collection of rent and ensuring the tenancy is conducted in accordance with the landlords wishes as expressed in the contract (the lease) between the landlord and tenant.*

*There is a fallacious concept in the market place which implies the agent acts as some sort of mediator and that he/she must represent both parties. This notion is totally without foundation. It is true that agents sometimes inform landlords that their position viz. the tenancy might be contrary to the Residential Tenancies Act, and will often assist tenants. This, quite simply, is due to the fact that agents must inform their principals (i.e. their landlord whose property they manage) of material facts; they must act in accordance with their contract of management and they must act in accordance with the Code of Conduct under the Real Estate & Business Agents Act. Having dealt with landlords and tenants and real estate agents for 15 years I can safely say there are agents who also go beyond expectation and assist tenants who are faced with obstinate landlords. This usually results in the principal removing management from that agent.<sup>37</sup>*

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<sup>36</sup> Sharkey, C. Inspector, Real Estate & Business Agents Supervisory Board, Ministry of Fair Trading – Letter to Tenants Advice Service dated 18 August, 1995.

<sup>37</sup> Ibid.

The letting fee currently charged to tenants is clearly payment towards the owner's cost for choosing to manage their investment property through an agent. It should not be held to be charged for any purpose related to the tenant.

Charging the owner the full cost of the letting fee is legitimate fee as part of the owner's costs for engaging professional services to help manage their business investment. In many instances the owner is able to use the taxation incentives offered through negative gearing to write off this cost which, as has been noted previously, is a major investment incentive for many investors.

## **9. POSITIVE EFFECTS FOR TENANTS IF NOT REQUIRED TO PAY A LETTING FEE**

It is important to remember that private renters, particularly those on low incomes, are among the most disadvantaged groups for all tenures. Recent research has noted that renting is no longer a transitional tenure for a growing number of households. Private renters end up paying more for housing over a lifetime than home purchasers pay but do not acquire an asset in the process.<sup>38</sup>

Current AHURI figures note that the housing cost burden for private renters is greater compared to home purchasers, and that the gap is getting bigger. AHURI figures show that more than 70% of low income renters pay are in housing cost burden (pay in excess of 30% of their income on rent), with only 42% of home purchasers in housing cost burden.<sup>39</sup>

It is important to consider the positive effects of prohibiting the letting fee being charged to tenants. Tenants would benefit if the letting fee charge were prohibited; it would result in greater equity, greater choice, improved affordability, more effective Housing Assistance measures and probable security of tenure effects.

### **9.1 Greater Equity**

All tenants renting a property managed by an agent are required to pay the same letting fee (the equivalent of one week's rent) irrespective of the length of the tenancy. Therefore a tenant who, possibly through no choice of their own, is given only a short term tenancy pays more overall than a tenant provided a long term tenancy. This has the effect of creating an artificial penalty to tenants who (through no fault of their own) are provided short-term leases. Removal of the fee would help have a "leveling" effect with the cost for the tenancy being contained in the rent and not overly inflated if the tenant is highly mobile (whether through choice or force).

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<sup>38</sup> National Housing Strategy, *Housing Choice: Reducing the Barriers*, Issues Paper 6, Commonwealth of Australia, 1992.

<sup>39</sup> The Australian Housing and Urban Research Institute, *Quarterly Housing Monitor*, Volume 2 Number 3, May 1997.

Also it is the owner, not the tenant, who decides whether to let the premises through an agent and negotiates the services provided and fees charged. As has been outlined above, the tenant is required to pay a “flat fee” but has no control or redress over the tenancy management arrangements or services provided.

### **9.2 Removal of Major Access Barrier – Improved Affordability**

The equivalent of a week's rent is a prohibitive entry cost for many tenants. In Western Australia all tenants can be required to pay a minimum of six week's rent equivalent to enter into a tenancy; four-week's rent as security bond and two week's rent in advance. The addition of another one week's rent equivalent, for payment of the letting fee if the property is managed by a real estate agent, presents a significant cost barrier to many tenants, particularly those on a low income.

The National Housing Strategy found that affordability problems are a major barrier to housing access, particularly for renters. Access and transaction costs were seen to be a major factor in this barrier. A major recommendation of the Strategy was for the social housing sector to be expanded, although current directions in Housing Assistance indicate that an expansion of the social housing sector will not be undertaken. The Strategy also noted processes with the potential for addressing access barriers including legislative reform to landlord and tenancy laws to improve security of tenure and reduce access barriers.<sup>40</sup> The letting fee represents a major access barrier to tenants in Western Australia that if removed would greatly improve affordability.

### **9.3 Improved Housing Assistance Effectiveness**

For private renters the major form of Commonwealth housing assistance is rent assistance and bond assistance the major form of State based assistance. Residential tenancy legislation is another form of assistance by regulating fees that may be charged and how often rents may be increased.

Affordability issues are of particular relevance in light of current changes in direction in the provision of housing assistance to people on low incomes (through the Commonwealth State Housing Agreement). The directions for change are leading to increased reliance on the private sector to meet the supply needs of low income housing consumers, and increased rent assistance to low income renters to help address affordability issues.

Rent assistance was provided to 66 000 renters in Western Australia at the beginning of 1995<sup>41</sup>. With growing unemployment and improved eligibility this is likely to have increased since then. Rent assistance, however, does not extend to costs such as letting fees. It would therefore be better for Rent Assistance recipients to have all costs associated with renting reflected in their rent charge so they may be appropriately subsidised for these costs.

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<sup>40</sup> National Housing Strategy, *Housing Choice: Reducing the Barriers*, Issues Paper 6, Commonwealth of Australia, 1992.

<sup>41</sup> Department of Social Security letter to National Association of Tenant Organisations, March 1995.

Bond Assistance provided through Homeswest also does not provide any relief to tenants for the letting fee charge. Bond Assistance is a loan of up to 4 weeks median rent equivalent (based on old median rent figures) payable to eligible applicants toward the security bond. The requirement to pay a letting fee for managing through an agent reduces the effectiveness of this assistance in addressing access costs and affordability issues.

#### **9.4 Greater Choice**

Linked to the affordability benefit is the improved choice to tenants if the letting fee charge is prohibited for tenants. A significant number (54%) of investment properties are managed by real estate agents.<sup>42</sup> The removal of the letting fee would mean all tenants would be able to choose among all properties on the market and not be forced to “reject” agent managed properties because they could not afford the additional week’s rent cost of the letting fee.

The Australian Housing and Urban Research Institute noted that “in periods where vacancy rates are low and rents are rising, as at present, the less well off have difficulty finding suitable and affordable housing”<sup>43</sup>. This is irrespective of the letting fee being charged but at least if it wasn’t charged a major access barrier would be removed and greater choice provided of available stock provided.

#### **9.5 Greater Security of Tenure**

Prohibition of the fee would help remove any incentive to restrict tenancies to short term contracts due to the income that can be generated from charging tenants a week’s rent as a letting fee at the commencement of the tenancy. Thus the abolition of this fee for tenants would not only reduce moving in costs but lead to greater security of tenure. Any factor, which contributes to longer term security for tenants, is significant in the face of the private rental market no longer being the tenure of transition that it has been previously<sup>44</sup>.

## **10. NOT CHARGING LETTING FEES TO TENANTS FITS WITH PLANS TO DE-REGULATE REAL ESTATE FEES**

We believe the arguments presented above are sufficient to justify the prohibition of letting fees charged to tenants. However, it would be inappropriate to ignore de-regulation as it relates to real estate and business agents’ fees.

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<sup>42</sup> ABS, 1993, *Investors in Rental Dwellings Australia*, Commonwealth Government Printer, Canberra, p22.

<sup>43</sup> The Australian Housing and Urban Research Institute, *Quarterly Housing Monitor*, Volume 2 Number 3, May 1997.

<sup>44</sup> Maher, C. & Dalton, T. Australian Housing and Urban Research Institute, *Private Renting: Changing Context and Policy Directions*, Paper presented to the 2nd. Residential Tenancies Conference, Melbourne, October, 1995.

It is our understanding that the prohibition of letting fees being charged to tenants was to occur at the same time Government planned to introduce de-regulation of Real Estate and Business Agents Fees. Whilst TAS and Shelter are not

proponents of de-regulation per se we do believe that the rationale to prohibit letting fees being charged to tenants makes sense within the context of deregulation.

It does not make sense that all other Real Estate and Business Agents charges would be de-regulated and the fee that is least competitive or open to negotiation continues to be regulated. REIWA have stated that their policies advocated:

*...the de-regulation of professional fees in the commercial, residential, and business broking sectors, but have consistently contended that the public interest is better served by maintaining a regulatory structure in the residential sector of agency practice. In discussions on the matter however, and after monitoring the position in other parts of Australia where residential fees have been de-regulated, it is becoming increasingly evident that REIWA's perceived difficulties with vulnerable elements of the community being expected to negotiate appropriate fees with real estate practitioners is unfounded.....*<sup>45</sup>

However, in an article on the same page REIWA held that the proscription of tenants' contributions to letting fees is an "anomalous inconsistency with Government's policy on competition and deregulation"<sup>46</sup> and that their resolve was for that part of legislation not to be proclaimed. We do not understand these apparent inconsistencies in REIWA's presentation of the issues.

As we have already discussed, the decision about letting through an agent and the fees and services payable is decided between the owner (principal) and agent and the tenant does not have any say on the fee paid, services provided, or redress for unfair practices by the agent.

It would seem that the real estate sector's concern about the abolition of letting fees charged to tenants is one of self-interest, that it may affect the survival of some agents in the open market. This is borne out by press reports at the time the letting fee change was revoked. For example, *The West Australian* reported that a memo to REIWA members stated:

*It was agreed to immediately implement a concerted political action exercise aimed at reversing a Government initiative which is considered iniquitous and gravely detrimental to the real estate sector*<sup>47</sup>.

This memo was said to coincide with a letter to the Premier from the REIWA president warning of a fighting fund (said to be \$1 million) to ensure deregulation of the industry was done "properly". With the amount of money the Institute

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<sup>45</sup> REIWA News, March 1996 articles on "Fee Regulation" and "Property Management Fees".

<sup>46</sup> Ibid.

<sup>47</sup> *The West Australian*, "Governor kills Parliament law" September 4, 1996, p6.

seemed prepared to pay to pursue this issue, “properly” seems to imply the protection of real estate self interests.

It also seems that this was not a unified position within the real estate sector with an unnamed agent reported in *The West Australian* as saying:

*...the letting fee was a “rip-off for tenants and many agents simply kept the money<sup>48</sup>.*

Our understanding of life in a de-regulated market is that it is incumbent on real estate agents to market their services to owners in a competitive climate. If deregulation is to occur it should be done wholesale, not selectively to the benefit of particular players in the market and detriment of others. In this case the party with the least bargaining position, the tenant.

### **10.1 Proposed Commercial Tenancy Changes**

It is interesting to note that the recent Green Bill proposes relevant amendments to the Commercial Tenancies (Retail Shops) Agreements Act 1985. When enacted the Bill will restrict owner’s charges (contribution to landlord expenses) that may be passed on to tenants to operating expenses. This will effectively remove the ability for commercial landlords to pass on letting fee charges to commercial tenants. Our understanding is that the planned de-regulation of real estate agents fees is a primary rationale for this change. On this basis the same should hold for residential tenancies.

### **10.2 Consumer Protection in a De-Regulated Climate**

It is our understanding that the de-regulation of real estate fees would involve the removal of the “cap” that currently exists for fees and charges set out in the Real Estate and Business Agents Act schedule of fees. The de-regulation proposal will replace this consumer protection with the prohibition of unjust fees and offences for the charging of unjust fees. These matters are to be determined by the Real Estate Agents Supervisory Board. TAS and Shelter support consumer protections and adequate avenues of redress being provided. In this context we believe further research is warranted to inform the setting and charging of fees (including letting fees) to inform what constitutes an unjust charge, as well as further definition of this via regulation.

## **11. CONCLUSION**

TAS and Shelter WA do not believe the economic impact of a single factor, letting fees charged to tenants can be isolated and shown to cause disinvestment and/or rent increases. Any assessment and economic modeling should take into account the broader context. It is our view that the letting fee charged to tenants is an unfair impost and should be prohibited as a matter of priority.

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<sup>48</sup> *The West Australian*, “Groups play the political game: MPs” September 5, 1996, p4.

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## **WESTERN AUSTRALIA RESIDENTIAL TENANCY** **QUESTIONNAIRE**

**1. What do you consider are the major functions of letting fees as they are currently applied in Western Australia?**

The letting fee paid by tenants is a fee paid precedent to the tenancy. The fee charged is for services rendered to the owner in connection with a letting. Payment of the fee by the tenant has the function of subsidising the owner's costs for letting the premises. The payment of the fee is not a contribution by the tenant for services provided by the agent.

Refer to main body of submission sections 3, 4, 8, 9 and 10 for related discussion.

**2. What is your assessment of the operation and effectiveness of the current letting fee arrangements?**

It is TAS and Shelter's view that the letting fee charged to tenants is an unfair and inappropriate impost and should be prohibited as a matter of priority.

Please refer to the whole of our submission for reasons for supporting this view.

**3. If the proposed changes to letting and re-letting fee arrangements are introduced, do you believe that the letting fee currently borne by residential tenants will be passed on to property owners? If so, in your estimation by how much and in what form?**

It is our contention that it is not possible to isolate a single factor such as the letting fee sufficient to provide definitive answers to this question. The answers lie in what the market (or aspects of it) will bear, the scale of fees currently being charged to owners and tenants, and what they represent.

Sections our submission 5, 6 and 7 provide further discussion related to this issue.

**4. If the proposed changes to letting and re-letting fee arrangements are introduced, do you anticipate that residential property owners (or real estate agents acting on behalf of residential property owners) will attempt to pass on to tenants any additional cost burden faced? If so, in your estimation by how much and in what form?**

More than likely, for many investors, if it is believed the market (or aspects of it) will bear a rent increase, although not necessarily (for example, if negative gearing is a major investment component). Again we maintain that it is not possible to provide definitive answers, as it is not possible to isolate the impact of single factors such as letting fees to determine changes in the private rental market.

In any event, we do not believe that retaining letting being charged to tenants will of itself prevent rent increases from occurring.

Refer to sections 3.5, 5, 6, 7, 9 and 10 of the submission for further discussion related to this question.

**5. What impact do you think the removal of the right of real estate agents to charge tenants letting fees and to allow agents to charge property owners re-letting fees will have on each of the following:**

**a) the supply of residential rental properties**

Again we maintain that the single factor of the letting fee can not be isolated sufficiently to determine supply or lack of supply. We note that in other States the fact of not charging a letting fee to tenants has not been said to affect supply, nor has there been a rush of investors to WA to benefit from being able to charge tenants letting fees!

See our submission sections 5, 6 and 7 for further discussion.

**b) the demand for residential rental properties**

As for supply, there are a number of factors affecting demand for residential properties.

Refer to sections 5, 6, 7 and 9 for further discussion related to this question.

**c) dwelling type and price mix of residential rental properties**

It is important to note that dwelling type and price mix of residential properties are affected by factors such as planning and building regulations and the factors motivating investors. For example, capital gains as the primary motivator encourages higher priced dwellings and do not encourage a mix of properties in the lower end of the market. We contend that letting fees are not a sufficient supply incentive to have a significant affect on the type or nature of supply.

See our submission, especially sections 5 and 6.

**d) access to residential rental properties by different socio-economic groups**

The letting fee represents a significant barrier to access to properties rented through an agent for people on low incomes. The removal of the letting fee will greatly enhance access to residential properties for low-income renters.

There is no subsidy currently available to lessen the effect of the letting fee charge. If rent increases do result from removal of the fee charged to

tenants (which we are not convinced will automatically be the result) tenants eligible for rent assistance will be able to receive a subsidy for this increased cost.

See our submission, especially sections 5, 6 and 9.

**e) the balance sheet position of residential property owners**

See (f) below and our submission, especially section 6 and 7.

**f) the number of residential property owners utilising real estate agents to let and manage properties on their behalf**

With negative gearing as an option for a significant number of investors and the ability to claim property management charges we do not see the cost of the letting fee as a significant impost for investors. Also, as with any investment it is reasonable to expect to pay for the professional management of the investment if the investor does not have sufficient time, skills and/or inclination to do it themselves. It will be incumbent on agents to market their services and benefits to investors as part of the shift to de-regulation.

See above, especially sections 6, 7 and 10.

**g) the number of real estate agents wishing to own and manage their own residential rental properties**

This information is not known, nor is it considered relevant.

**h) the balance sheet position of real estate agents**

Again, we are not privy to this commercial information.

**i) employment opportunities in the real estate industry**

See above.

**j) the average duration of residential rental contracts (leases)**

We do not have definitive data on this question. Although, from observations of the circumstances of tenants contacting TAS, we would say that a 6- month fixed term lease is the common length of tenancy offered through real estate agents. This often “rolls” into a periodic tenancy at the end of the term although there are significant numbers of tenants asked to sign another six-month contract. There seems to be more variation among private landlord offered tenancies, i.e. a mix of fixed term and periodic tenancies.

**k) residential tenant turnover**

See the submission section 9. We believe that tenant turnover may be reduced if the letting fee is removed. There is currently an incentive to turn tenancies over to collect the letting fee from new tenants. If this ability were removed there would be more incentive to offer longer-term tenancies and greater security of tenure for tenants.

**l) the extent of competition in the real estate industry**

We assume that competition would increase if the letting fee were removed as agents would have to be more transparent about services provided and fees charged and may also provide a different range of services according to the owner's wishes. Under the current arrangement the ability to charge 1 week's rent as the standard letting fee to tenants no matter what the service is anti-competitive.

See our submission section 10.

**6. Do you believe that the proposed changes will have differential regional impacts in Western Australia?**

Again it depends on what is happening within different regional markets and the reasons for variations within and among regions. It may also depend on the general level of supply and demand within a region and factors affecting supply and demand, whether investors are living within the same region as the investment property, the reason for investing (intentional or not), whether an agent is being used at present, the proposed scale of charges if the letting fee is not charged to tenants. We do not believe the letting fee can be isolated from the impact of these factors.

**7. What implications do the proposed changes have for the public (government owned) housing market?**

Homeswest are not able to charge a letting fee to tenants in Homeswest managed properties, the majority of their current 38,000 stock. Homeswest will be affected with properties that are contracted out to private management and will no doubt need to re-negotiate the terms of the contracting out agreement.

The public housing market however is more affected by broader shifts in Housing Assistance measures. The trend is to move away from the supply of public housing to cash assistance (rent assistance) to meet the growing needs of lowincome renters. In this sense the abolition of the letting fee charged to tenants is a positive move and will ensure Homeswest's Bond Assistance is more effective as it will meet a greater proportion of moving in costs.

See section of our submission 9 for more discussion on this issue.

**8. How might developments in the public housing market influence the nature of the impact of the proposed changes in the private residential tenancy market?**

The developments (retraction) in public housing supply will lead to greater demand for private rental by people on low incomes. The letting fee represents a

major access barrier to people on low incomes. Given the significant number of properties managed by agents, the letting fee in effect restricts people on low income access to these properties. People on low incomes rely on rent assistance to reduce affordability issues in the private market, the cost of letting fees are not counted for rent assistance purposes nor assisted via bond assistance schemes. Abolition of the letting fee charged to tenants will produce greater equity, affordability and choice for tenants.

See section 9 of our submission for further discussion.

**9. What is your overall assessment of the impact of the proposed changes on residential property investor confidence?**

Again, there are a number of factors affecting investor confidence and it is inappropriate to isolate one factor. In any event we do not consider the letting fee of itself is significant enough to deter investor confidence. If investor confidence is deterred it is due to other compounding reasons. The solution is to respond to the broader issues. It is spurious to claim that retention of the letting fee will of itself bolster investor confidence, this has been claimed previously by the real estate sector and found to be untrue.

See sections 3,4 5, 6, 7, 9 and 10 of the submission for further discussion of this issue.

**10. What is your overall assessment of the equity impacts of the proposed changes to the residential tenancy market? Without restricting your response, you may wish to consider issues such as access to the private rental market, housing need and affordability effects, and the impact of the proposed changes on disadvantaged groups in the community.**

TAS and Shelter's submission is largely concerned with equity considerations surrounding the letting fee. It is our view that the letting fee charged to tenants is an unfair impost and that it should be prohibited as a matter of priority. Also, that the claims raised by the real estate sector for the retention of the fee are spurious and unable to be attributed solely to the letting fee. Refer to our submission for the basis of our arguments.

**11. What is your overall assessment of the likely economic impacts of the proposed legislative changes to the residential tenancy market? In answering this open-ended question, you may wish to draw together responses made to previous questions in the survey or address additional points not touched on in the questionnaire.**

Again, refer to our submission for our discussion on this question.

**Further Comments**

**Please provide any further comments you have with regard to the proposed legislative changes in the space below.** Our further comments have already been provided above in the form of the main submission.