



A BALANCED ACT

**Submission to the
Statutory Review of the
WA Residential Tenancies Act 1987**

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Prepared by Karel Eringa

Introduction

Shelter WA is a community organisation that promotes affordable, accessible, appropriate and secure housing for people on low incomes. It has operated since 1979 as a peak housing body for community and welfare groups and low income housing consumers.

Shelter WA welcomes the opportunity to provide input into Statutory Review of the Residential Tenancies Act 1987. This submission raises a number of points Shelter WA feels strongly about. However, due to a lack of resources Shelter WA was unable to address all 183 issues raised in the Discussion Paper.

Finally, a community forum co-hosted by Shelter WA and the Tenants Advice Service (TAS) on Friday 5 April 2002 informs parts of this submission. A Report of this forum has been attached to this submission.

Background

In Western Australia, renting has traditionally been viewed as a transitional tenure, allowing people to save up a deposit to purchase a home. Legislation was intended to stimulate private investment in rental housing, mainly by small investors. However, since the Residential Tenancies Act came into being in 1987 there have been some structural changes in the WA housing sector:

- affordable housing in the private rental sector has fallen substantially due to rising rents and a lack of investment at the lower end of the market. For instance, recent research by the Department of Housing and Works indicates that the “stock of low-cost rental dwellings in Western Australia declined by an estimated 39% between 1986 and 1996.”¹
- 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.²
- public housing stock has fallen from 36,602 in 1996 to 35,111 in 2001.³
- home ownership rates are declining due to reduced affordability
- some people now prefer renting to home ownership as a more flexible option in a world with much less job security, and
- 40% of private renters should be regarded as ‘long-term renters’, as they have rented for more than 10 years.⁴

These changes mean that renting can no longer be seen as a stepping-stone to home ownership, but as a long term housing option in its own right. The RTA should be rebalanced towards tenants to reflect this change.

At the same time, the emphasis on landlords’ rights in the RTA is no longer resulting in significant investment in affordable housing for people with low incomes. However, Shelter WA believes that it is not possible to stimulate such investment through

¹ I.Hafekost, *Supply of Low Cost Rental Housing in Western Australia*, Department of Housing and Works, August 2001

² M.Wulff, J.Yates & T.Burke, *Low Rent Housing in Australia 1986 to 1996*, 2001, p.25 and 29

³ Karel Eringa, *Increasing Affordable Rental Housing Stock in WA*, Shelter WA Occasional Paper 2001-2, November 2001

⁴ M.Wulff & C.Maher, Long term private renters in the Australian housing market, *Housing Studies*, Vol. 13, No. 1, pp. 97- 112, 1998.

legislative change. Instead, this issue needs to be addressed through supply side incentives such as increased capital expenditure on housing by government.

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

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

Overarching Principle

Shelter WA believes that residential tenancy legislation should protect tenants as much as landlords. The Residential Tenancies Act 1987 is inherently biased towards protecting the landlord. Since 1987 there have been significant structural changes in the way West Australians live, changing the legislative requirements of both tenants and landlords. The current Review provides an opportunity to redress the balance between the needs of landlords and tenants in the Act.

Issue 1 Is the current application of the Act suitable?

Shelter WA believes that, apart from the recommendations that follow, the current application of the Act is suitable.

Issue 2 Are the exemptions for certain parties and/or agreements from all or part of the Act justifiable?

Issue 3 Are there other situations where the tenancy agreements should either be exempt from the application of the Act or certain sections of the Act?

Housing is a basic human need and human right. Shelter WA believes that the Residential Tenancies Act should protect tenants regardless of whether their principal place of residence happens to be a house, unit, room in a lodging house, hotel room, caravan park home or student flat, and irrespective of whether their accommodation is owned or managed by a private investor, institutional investor, the State Housing Authority or a community housing provider.

Exempting certain parties from the Act effectively weakens this protection. The benefits of exempting any parties from the Act should therefore be well weighed against their detrimental effect on tenants.

For many tenants, their principal place of residence is in boarding and lodging houses, hotels and motels, educational institutions, holiday accommodation, nursing homes, homes for the aged and disabled and housing provided by the State Housing Authority (Homeswest). In addition, many of these tenants include people from severely disadvantaged groups who have little knowledge of their rights and difficulty advocating on their own behalf.

Shelter WA acknowledges that in the cases of hotels, motels and other holiday accommodation there is a need to exempt occupancy for a holiday from the Act. However, the present across the board exemption of these institutions mean that long term residents do not have any legal protection. Instead, the Act should exempt these institutions only in cases where they provide accommodation specifically for holiday purposes.

Finally, the exemption of Homeswest from a number of the provisions should be removed. Many of Homeswest's tenants are from disadvantaged groups and have severe difficulties renting or purchasing housing in the private sector. In addition, as the State's public housing provider Homeswest has a duty to engage in best practice. This should include adhering to the provisions of the Residential Tenancies Act.

Issue 4 Should the Act define what a boarder and/or lodger is? If so, what are the essential characteristics of such tenants?

As highlighted below, Shelter WA believes that legislation should be created regarding boarders and lodgers. This legislation could either be separate from the Residential Tenancies Act or the Act could be amended to include specific provisions regarding boarders and lodgers (see below). In both cases, the Act should include a definition of boarders.

Any definition regarding boarders and lodgers should be broad enough to cover all boarders and lodgers in boarding, rooming and lodging houses in the private, public and community sectors. At the same time, the definition should be narrow enough to exclude people who use boarding house style accommodation for short term purposes, eg. holiday makers.

The Commonwealth Department of Housing and Regional Development *Boarding House Reform Discussion Paper* provides one definition:

“Boarding House” describes a form of accommodation where rent is collected for the use of a single room, where other facilities such as kitchen, toilet and living areas may be shared. The single room may be provided on a single or shared basis. Meals and other services such as laundry may not be included...⁵

An alternative definition is found in *Street v Mountford*:

An occupier of residential accommodation at a rent for a term is either a lodger or a tenant. The occupier is a lodger if the landlord provides attendance or services which require the landlord or his servants to exercise unrestricted access to and use of premises. A lodger is entitled to live in the premises but cannot call the place his own.

If on the other hand residential accommodation is granted for a term at a rent with exclusive possession, the landlord providing neither attendance or services, the grant is a tenancy.⁶

Both of these definitions have their problems. Shelter WA recommends that a definition of boarders and lodgers should be developed with thorough consultation with all stakeholders.

Issue 5 Should the Act apply to boarders and lodgers? If so, under what conditions should the Act apply?

Issue 6 Should there be separate legislative provision protecting the rights of boarders and lodgers? If so, what should this contain?

Well-considered legislation for boarders and lodgers was one of the five most urgent issues identified by a community forum on the Review of the Residential Tenancies Act organised by Shelter WA and TAS on Friday 5 April 2002 (report attached).

Boarding and lodging houses are an important source of low cost housing in inner city areas.⁷ In contrast to the traditional target group of single working men, boarding and lodging houses now provide accommodation to “a wider spread of age groups, men and women and people on very low incomes. A significant and increasing number of people with disabilities (physical, psychiatric and intellectual) reside in the boarding and rooming house sector following the implementation of de-institutionalisation policies”.⁸

The myth that boarding and lodging houses cater for a transient population has been shattered by all available research. Instead, it appears that a significant proportion of boarders and lodgers live in the sector for long periods of time. For instance, ABS surveys indicate that over 50% of boarding and lodging house residents in Melbourne, Sydney and Adelaide had resided in their current boarding house for one

⁵ Commonwealth Department of Housing and Regional Development, *Boarding House Reform Discussion Paper*, 1994

⁶ 1985 2 WLR 877

⁷ Due to inconsistent definitions and a lack of data it is not possible to provide an accurate estimate of the number of boarding and lodging houses operating in Western Australia. However, a 1996 ABS paper estimates that 16% of 12,252 homeless people in WA (ie. some 1960 persons) live in boarding houses. Australian Bureau of Statistics, *Counting the Homeless – Implications for Policy Development*, Occasional Paper 2041.0, 1996.

⁸ National Shelter, *National Overview of Boarding Houses in Australia*, November 2000

year or more; this proportion was 43% in Brisbane.⁹ A significant proportion of boarders and lodgers had been in their current accommodation for over 5 years.

There are a number of problems relating to boarding and lodging houses:

- Security of tenure: boarding and lodging houses generally do not provide security of tenure to their residents: no notice and no cause is legally required for eviction.
- Appropriateness: physical conditions and standards of boarding and lodging houses are notoriously inadequate. For instance, the 1993 Report of the National Inquiry into the Human Rights of People with a Mental Illness highlighted extremely inappropriate residency conditions, lack of privacy and “malpractices with food, money, forced dependency, overcrowding, theft and cleanliness”. The Report goes on to call the conditions in many boarding houses a ‘national disgrace’.¹⁰
- Affordability: while boarding houses do not have the same up-front costs as rental accommodation (eg. bond and utility connection fees), the 1995 ABS Boarding House Survey recorded median board levels in excess of 35% of disposable income in Melbourne and almost 50% of disposable income in Sydney.¹¹ The commonly agreed definition of housing stress is where housing costs exceed 25-30% of income. While the ABS survey data does not differentiate between pure housing costs and other services, it seems likely that many boarders and lodgers suffer housing stress.

The boarding and lodging house sector houses some of the most marginalised people in the community, in effect providing a housing option of last resort for very disadvantaged people on low incomes in inner city areas. These people are particularly vulnerable to exploitation, substandard living conditions and inadequate accommodation.

The misfit between the actual role provided by boarding and lodging houses and the amount of regulation available exacerbates the poor conditions highlighted above. “The framework within which boarding houses operate is premised on residents having short stays and minimal security. This contradiction with the real situation can contribute to a range of problems including unclear or coercive relationships between boarding house managers and residents, lack of residential rights and services, inadequate housing conditions and insecure housing arrangements”.¹²

It will be clear from the discussion above that Shelter WA advocates some form of legislation to protect boarders and lodgers. At the same time, however, any legislation needs to be implemented with caution, as the boarding house sector has specific needs differing from other forms of rental accommodation:

- Available data indicates that the number of boarding houses has declined steadily over the last 50 years. For instance, in 1955 there were 531 boarding houses in the Perth City Council area, compared to 55 in 1996.¹³ Any

⁹ Australian Bureau of Statistics, *Boarding House Survey*, 1995

¹⁰ Human Rights and Equal Opportunities Commission, *Report on Human Rights of People with Mental Illness*, 1993, p.388

¹¹ Australian Bureau of Statistics, *Boarding House Survey*, 1995

¹² National Shelter, *National Overview of Boarding Houses in Australia*, November 2000, p.11

¹³ 1996 data includes the Towns of Vincent and Victoria Park, which were created after the split of the City of Perth Council.

legislation regarding boarders and lodgers would need to be designed to prevent further losses to stock.

- The nature of boarding and lodging houses is that people live in close proximity to each other. In some cases it may be necessary for boarding house managers to intervene immediately, particularly where violence is involved. Any legislation regarding boarders and lodgers would need to be designed to allow sufficient flexibility to guarantee the safety of all residents.
- One of the great advantages of boarding houses is their low up front costs, including very low bonds relative to the remainder of the rental market. Any legislation regarding boarders and lodgers would need to be designed to maintain these costs at a low level, for instance by specifying a maximum bond of one rather than four weeks' rent.

Shelter WA recommends that the most efficient way to provide legal protection to boarders and lodgers is to include them under the Residential Tenancies Act, as was done in South Australia and Victoria. Doing so would have the additional advantage of avoiding any definitional gaps between different Acts regarding what constitutes a boarder, lodger or residential tenant.

In order to best guarantee the needs of both residents and managers, Shelter WA recommends that an additional section be added to the Act with provisions specific to boarders and lodgers. However, any legislation regarding boarders and lodgers should be implemented only after thorough consultation with all stakeholders and should specify:

- a copy of house rules to be provided to residents at the start of their occupancy
- regulations regarding rent increases (a percentage linked to the CPI increases no more than twice yearly)
- where and how often rent is to be paid
- amount of bond not to exceed one week's rent
- a termination period of at least one week, with:
 - the length of notice increasing with the length of residence, and
 - special provisions for cases where actual or threats of violence exist
- period of time for which goods will be held after vacating
- circumstances warranting early termination

Finally, the recent experience in South Australia highlights that legislation covering boarders and lodgers can only be effective if tenants are aware of their rights. Shelter WA therefore recommends that a community education campaign be conducted among boarders and lodgers once new legislation comes into force.

Issue 7 Should education institutions, or certain types of education institution accommodation, retain their exemption under the Act?

Issue 8 Should the Act make provision for people who have decided to make hotels and motels their permanent residence?

As stated above, housing is a basic human need and human right. Shelter WA believes that the Residential Tenancies Act should protect tenants regardless of whether their principal place of residence happens to be a house, unit, room in a lodging house, hotel room, caravan park home or student flat. In general terms,

Shelter WA believes that the exemptions currently provided under the Act to education institutions, hotels and motels are unreasonable and recommends that these exemptions be removed from the Act.

With regard to accommodation provided by educational institutions, Shelter WA is aware of arbitrary evictions of residents, without recourse to fair procedure. In addition, TAS's submission to the Review states that students' academic results may be withheld for reasons related to accommodation, which have no bearing on academic achievement.

Shelter WA supports TAS's recommendation that the exemption for educational institutions be removed and "that limited protections be extended to on campus residents of educational institutions, similar to those recommended for boarders and lodgers. In addition, where educational institutions can make out a special case, the Court should retain discretion to allow exemption, but only after considering the interests of residents. However, in cases where the educational institution merely facilitates access to rental accommodation, which is otherwise in the private domain (for example, through a real estate agent), such tenancies should be considered the same as any other private tenancy."

With regard to hotels and motels, this type of accommodation is often the principal place of residence of a group of highly vulnerable tenants. This is particularly the case in areas where no boarding and lodging style accommodation exists, such as country areas. Shelter WA supports TAS's recommendation that "exempting bona fide agreements conferring a right of occupancy for a holiday, and the recommended reduced protections available to those who fall within the definition of boarder or lodger (issue 5), no additional exemption of hotels and motels is warranted."

Issue 12 Should the relevant exemption [regarding Indigenous Tenants in Community Housing] be removed, or should there be specifications that the relevant exemption does not apply to such situations?

As stated above, housing is a basic human need and human right. Shelter WA believes that the Residential Tenancies Act should protect tenants regardless of whether their principal place of residence happens to be owned or managed by a private investor, institutional investor, the State Housing Authority or a community housing provider.

Shelter WA is aware of a number of tenancy disputes in Indigenous communities that could, arguably, have been prevented by removing the exemption of Indigenous corporations.¹⁴ In general terms, Shelter WA believes that the exemptions currently provided under the Act to Indigenous communities are unnecessary and may further disadvantage their residents who, in many cases, have very limited options to reside elsewhere.

However, Shelter WA is aware of the difficulties faced by Indigenous community housing providers and supports TAS's recommendation that that Indigenous people and communities be consulted directly in relation to their needs.

¹⁴ For instance, see Shelter WA, *The State of Housing in the West Kimberley*, December 2001.

Issue 13 Does the Act adequately protect the rights of tenants in public rental housing?

Issue 14 Are the current exemptions specified in the Act sufficiently flexible enough to accommodate the differences between public housing and the private rental market?

Issue 15 Should public housing continue to be bound by the Act, or be not bound by this Act, but with separate regulations prescribed?

As stated above, housing is a basic human need and human right. Shelter WA believes that the Residential Tenancies Act should protect tenants regardless of whether their principal place of residence happens to be owned or managed by a private investor, institutional investor, the State Housing Authority or a community housing provider. In addition, public housing has become increasingly targeted to the most disadvantaged people in our community over the last decade. For a number of reasons, public housing tenants often have no alternative housing options and are likely to suffer poor health, unemployment and low literacy levels.

Shelter WA believes that more than any other form of housing, the public housing provider, Homeswest, should engage in best practice. In general terms, this should include meeting the requirements specified in the Residential Tenancies Act. Public housing is bound by tenancy legislation in all other states. However, currently Homeswest is exempt from three provisions:

1. Section 29: bond lodgement requirements.

Shelter WA supports TAS's recommendation that Homeswest's exemption be abolished and that its tenant bonds be "lodged in accordance with the Act. This would allow an increase in funding available for the administration of the Act and would be fair and reasonable given that DHW tenancies are the subject of a significant proportion of both Court applications under the Act and the casework of tenancy advice and education services."

2. Section 30: rent increases.

Most social housing providers (ie. Homeswest and community housing providers) charge their tenants market rent minus a rebate based on their income and family situation. When a tenant's income changes the subsidy is adjusted, usually with immediate effect. Its exemption from Section 30 means that this is not a problem for Homeswest. However, community housing providers have expressed concern about whether or not the court will interpret reducing the level of subsidy as an increase in rent.

In addition, Homeswest's exemption from Section 30 means that it is able to raise rents with immediate effect. In some cases, rents have increased substantially at very short notice, causing tenants financial hardship and distress. In view of the fact that Homeswest houses some of the most disadvantaged people in the community, this can place tenants at risk of eviction and, ultimately, homelessness. Shelter WA therefore recommends that Homeswest's exemption from Section 30 be removed.

In order to clarify the situation for community housing providers and create some certainty for tenants, Shelter WA recommends that Section 30 be amended in similar terms to NSW legislation. Section 3 (c) of the NSW Residential Tenancies Act defines a rent rebate as "an amount waived or remitted, in accordance with a scheme established under any Act, from rent payable to a social housing provider".¹⁵ Section 44 (2) provides that "An increase in the amount payable by a

¹⁵ Social housing providers include both public housing and community housing providers.

tenant because of the cancellation or reduction of a rent rebate is not a rent increase for the purposes of this Division, and such a cancellation or reduction does not constitute a withdrawal of goods, services or facilities".

In addition, Shelter WA recommends that a new sub-section be inserted into Section 30 requiring social housing providers to specify in writing the amount of the increase in rent and the day at which it becomes payable. A notice period of no less than 30 days should be given before the increase in rent applies. This subsection should be subject to a proviso that it not apply to any current tenancy agreement to the detriment of the tenant."

3. Section 33: duty to provide receipts.

Shelter WA recommends that Homeswest's exemption from Section 33 be abolished. As stated in TAS's submission to the Review, the exemption is obsolete since Homeswest now requires all tenants to pay rent by direct debit and issues quarterly statements.

Issue 16 Should the Act include provision for resolving disputes between co-tenants?

As stated above, housing is a basic human need and human right. Shelter WA believes that the Residential Tenancies Act should protect tenants regardless of whether they rent their principal place of residence individually or as part of a group. Shelter WA therefore supports TAS's recommendation that "Section 15 of the Act be amended to allow co-tenants claiming a breach of the agreement or who are in dispute over the tenancy agreement to apply for relief. If accepted, a definition of co-tenant would also need to be included in section 3 of the Act. The term should be defined to cover those tenants who are joint signatories on the lease document, or who would be jointly and severally liable to the owner."

Issue 17 Should the Act prescribe a standard written tenancy agreement that contains all the rights and obligations that should apply in every relationship between an owner and a tenant?

Issue 18 Is the owner's duty under the Regulations to inform the tenant of their rights and obligations under the agreement adequate?

A community forum on the Review of the Residential Tenancies Act organised by Shelter WA and TAS on Friday 5 April 2002 (report attached) recommended that a standard written tenancy agreement in plain English be included with the Act.

Shelter WA believes that this would be beneficial, as at a minimum it would allow tenants to determine more readily if and how a specific contract deviates from the standard agreement. This is of particular importance to certain vulnerable groups of tenants, such as those with low English literacy skills and first time renters in WA.

Shelter WA therefore recommends that the Act prescribe a standard written tenancy agreement written in plain English. In addition, Shelter WA recommends that owners provide to tenants a plain English copy of tenants' rights and obligations under the Act, and any specific terms set out in the tenancy agreement be included with the standard form.¹⁶

¹⁶ This information could be provided either along with, or instead of the information contained in Schedule 2 of the Regulations currently provided by landlords to tenants.

Issue 22 Should Property Condition Reports be compulsory in Western Australia?

Issue 23 Should a standard Property Condition Report be included in the Act or the Regulations?

Issue 24 If the Property Condition Report is made compulsory, should the owner or the agent have an obligation to provide the tenant with a signed copy of the report within a specified time period?

Issue 91 Should the Act provide for mandatory initial and final inspections with prescribed Property Condition Report forms to minimise conflict?

Shelter WA is aware of a number of conflicts between tenants and landlords regarding tenant liability that could have been prevented if a Property Condition Report had been completed at the beginning and the end of the tenancy. For instance, in many cases it is impossible for both the landlord and the tenant to prove or disprove that the damage occurred during the tenancy. The benefits of Property Condition Reports would be increased further by:

- Requiring the Reports to be completed on a standard form included in the Act or the Regulations.
- Requiring landlords to provide their tenant with a copy of the Report - this would prevent any disputes regarding the Property Condition Report itself, and

Shelter WA therefore recommends that in the interests of all parties:

- Property Condition Reports be made compulsory,
- a standard Property Condition Report be included in the Act or the Regulations, and
- the owner or agent be obliged to provide the tenant with a signed copy of the Property Condition Report within a period of 14 days.

In addition, Shelter WA supports TAS's recommendation that "tenants be provided 14 days to amend/notate the property condition report and return to the landlord. In turn the landlord should be provided 14 days to return a signed copy to the tenant. This would also allow time for notice to inspect and discuss the report and any maintenance and repair issues."

Issue 25 Should the Act make clear an age above which a tenancy agreement with a person is able to be made? If so, what should this age be?

As stated above, housing is a basic human need and human right. Shelter WA believes that the Residential Tenancies Act should protect tenants regardless of the age of the person. Discrimination on the grounds of age is prohibited under Equal Opportunity legislation.

In addition, young people are entitled to enter into tenancy agreements because they are a necessity of life under contract law. However, a recent Shelter WA survey found that a lack of education among landlords means that a significant number of

young people are told they cannot sign tenancy agreements.¹⁷ This is one of the factors that cause young people to be over-represented among homeless people.¹⁸

In order to rectify the lack of awareness among landlords that young people are legally able to sign tenancy agreements, Shelter WA recommends that the Act clarifies that young people, including those under the age of 18, are able to sign legally binding tenancy agreements.

Issue 26 Should the current ability for parties to contract out of certain provisions of the Act continue to exist? If so, should parties be able to contract out of any other provisions?

Issue 27 Should parties be prevented from contracting out of any of the current provisions?

As stated elsewhere in this submission, housing is a basic human need and human right. Allowing parties to contract out of certain provisions of the Act effectively weakens the protection the Act provides them. Shelter WA believes that the Residential Tenancies Act should define certain minimum standards to which all tenants and landlords must adhere. Any additional provisions made in tenancy agreements should not restrict, modify or exclude any provisions made under the Act.

Shelter WA supports TAS's recommendation that contracting out provisions be removed from the Act. This recommendation was also supported at a recent community forum on the Review of the Residential Tenancies Act organised by Shelter WA and TAS (report attached).

Issue 28 Should the Act clarify the status of oral agreements in regards to residential tenancies? If so, should the Act state that a residential tenancy agreement made orally is valid?

Issue 29 Should all residential tenancy agreements be required to be in writing?

Shelter WA is aware that many tenants and landlords are not aware that an oral agreement can be legally binding. In order to clarify the status of oral agreements, Shelter WA supports TAS's recommendation that "the definition of 'residential tenancy agreement' in section 3 of the current RTA, should be amended to include the term 'written or oral' after 'express or implied'. The recommended change would assist in the education of owners, agents and tenants. Tenancy legislation in NSW, ACT, Tasmania and Queensland include 'oral' in the definition of a tenancy agreement."

Shelter WA also supports TAS's submission that "It is not necessary that all residential tenancy agreements be in writing, particularly if a standard residential tenancy agreement is introduced (see issue 17) and is deemed to apply to oral agreements."

¹⁷ Shelter WA, *Youth Housing and Social Exclusion in WA – Forum Discussion Paper*, April 2002

¹⁸ Shelter WA, *A Profile of Households Experiencing Homelessness in Western Australia*, July 2001: 67% of homeless people surveyed were under 25 years of age.

Issue 30 Since the residential address of the tenant is known (address of the rental premises), is the requirement for the tenant to notify the owner of change of work address necessary?

Issue 31 Should a change in employment, rather than a change in work address, be required to be declared to the owner instead?

The tenant's work address and type of employment may be relevant for the owner to verify a tenant's ability to pay the rent before a lease is signed. Subsequent changes to these details during the term of the lease are only relevant if they result in the tenant breaching the lease, in which case the owner can deal with them as such. Tenants should be free to change their place of work or their occupation without being at risk of incurring a fine for not advising their landlord.

Shelter WA therefore recommends that the requirement for the tenant to notify the owner of change of work address be deleted. In addition, Shelter WA does not endorse the provision of any information related to employment to owner during the term of the lease.

Issue 34 Where Stamp Duty is incurred, should the Act require the tenant to forward a stamped copy of the agreement to the owner within a certain time period? If so, how long should this period be?

Shelter WA supports TAS's submission, which states that "it is common practice for agents or owners to collect the duty and have the document stamped. This arrangement can be convenient for all parties concerned, however it is problematic when agents or owners do not provide an authorised copy of the stamped lease to the tenants (which is arguably in breach of section 27 of the Act).

Tenancy Agreements must be stamped to be adduced into evidence in Court, and if a tenant has paid stamp duty but does not have an authorised copy of the stamped document s/he may be required by the Court to have the document stamped before proceedings can continue."

Shelter WA endorses TAS's recommendation, "that section 54 of the Act be amended to include the following:

- (3) Notwithstanding the tenant's liability to pay stamp duty on an agreement under the Stamp Act, should an owner or agent for the owner collect the stamp duty payable on the agreement from the tenant:
 - (i) the owner or agent must provide an authorised copy of the stamped agreement to the tenant. Should the owner or agent wish to retain a copy of the stamped agreement, any additional charge is the liability of the owner.
 - (ii) A Magistrate has an incidental power to determine that a real estate agent or owner is liable to pay the stamp duty on the agreement. A determination that the agent or owner is liable will entitle the tenant to take advantage of s27(3) of the Stamp Act. The Magistrate's determination must be in writing and a copy of the determination must be provided by the Court to the Commissioner of State Taxation."

Issue 35 Should it remain compulsory for the owner to provide the tenant with the summary of owners' and tenant' rights and responsibilities in a tenancy agreement? Or would this be better handled by some other entity (such as the Bond Administrator, if bond administration were centralised)?

Issue 36 If the Act is amended to prescribe a standard written tenancy agreement, could the information required to be given to the tenant by the owner be incorporated in the standard written tenancy agreement documents?

As detailed under Issue 17/18, Shelter WA has concerns about the accessibility and value of the information prescribed in Schedule 2. Shelter WA is aware that many tenants misunderstand that Schedule 2 explains their tenancy agreement, which is not necessarily the case. As stated previously, Shelter WA recommends that a standard tenancy agreement be included in the Act or the Regulations, and that owners be obliged to provide to tenants a plain English copy of tenants' rights and obligations under the Act. Any specific terms set out in the tenancy agreement should be included with this information.

Issue 37 Should the amount of rent required in advance by an owner be limited? If so, what should the limit be?

Issue 38 Should the limit on the amount of rent required in advance apply only to premises with weekly rent below a certain amount? If so, what should the amount be?

Shelter WA agrees with the Discussion Paper that the two weeks rent in advance currently allowed under the Act can act as one of many financial barriers to private rental accommodation for low income earners. In addition, Shelter WA is aware that some landlords have demanded many weeks rent in advance after the initial two weeks of a tenancy had passed. However, a balance needs to be found between the needs of (low income) tenants and the needs of landlords.

Shelter WA therefore supports TAS's recommendation that:

- no more than one week's rent be charged in advance at the commencement of a tenancy,
- no more than two weeks' rent be charged in advance during the course of the tenancy, and
- no minimum limit be placed on the amount of rent at which these restrictions apply in order not to discourage investment in the low cost end of the rental market.

Issue 39 Who should be liable for the cost of the agreement between the parties? Should the cost be shared?

Issue 40 Should the tenant be able to be charged any other fees by the owner or agent, such as maintenance or agent's inspection fees?

In view of the financial barriers to housing faced by tenants discussed above, Shelter WA recommends that tenants should not be charged any additional fees or charges. Owners should remain solely liable for the cost of the agreement.

Issue 41 Should there be any rules governing this [option] fee and how many such fees the owner can hold (ie. how many potential tenancy applications they can consider) at any one time?

Option fees represent a financial barrier to housing for low income tenants. In addition, option fees limit tenants' housing choices where they cannot afford to pay more than one option fee. At the same time there are no regulations as to how many option fees owners can hold, putting tenants at a disadvantage relative to owners.

Shelter WA therefore recommends that option fees be abolished as an unnecessary barrier to access. If option fees are retained, Shelter WA recommends that owners should be able to charge only one such fee for a property at any given time.

Issue 42 Should the owner be able to include a waiver of the tenant's right to a refund of the option fee as a condition of application (as currently occurs)?

Shelter WA supports TAS's recommendation that it should remain compulsory for a landlord to do anything else but refund the option fee to the tenant if a tenancy agreement is not entered into.

Issue 43 If a new service account has to be established in the name of the tenant, or if a reconnection fee arises from the tenant's failure to pay for the services or other faults by the tenant, should these costs be borne by the tenant?

In view of the financial barriers to housing faced by tenants discussed above, Shelter WA recommends that tenants should not be charged any additional fees or charges. Shelter WA recommends that the cost of establishing or reconnecting utilities always be the responsibility of the owner. Shelter WA supports TAS's submission that tenants should only be held responsible for paying such utility costs as can be directly attributed to consumption by the tenant.

Issue 44 Should the process of dealing with letting fees be amended or abolished?

Shelter WA has advocated abolishing letting fees for several years. For instance, in 1998 Shelter WA stated that:

Western Australia is the only state in which tenants contribute to fees for services provided by real estate agents to landlords. Currently, tenants contribute the equivalent of one weeks rent to the letting fee, which results from landlords choosing to engage the services of a real estate agent to manage their property. The agent is contracted by the owner, acts on behalf of the owner and on accession acts against the tenant - and yet the tenant pays for the privilege.¹⁹

A joint TAS and Shelter WA submission to the 1997 WA Residential Tenancy Questionnaire identified that abolishing letting fees would have a range of benefits to tenants, including:

¹⁹ Shelter WA, *Letting Fees in WA – Parliamentary Democracy in Action?*, Information Sheet 4, 1998.

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 "levelling" 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).

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 week's rent equivalent, for payment of the letting fee if a real estate agent manages the property, presents a significant cost barrier to many tenants, particularly those on a low income.

Improved Housing Assistance Effectiveness

For private renters the major form of State based assistance is rent assistance. Bond Assistance provided through Homeswest does not provide any relief to tenants for the letting fee charge. Removing the letting fee would enhance the effectiveness of Bond Assistance.

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 of investment properties are managed by real estate agents. 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.

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.²⁰

This submission also identified that in spite of arguments presented by agents, no services are provided to tenants in return for the letting fee. "The services provided are those which naturally flow from managing a property on behalf of an owner, and complying with residential tenancies legislation."²¹ Furthermore, "the letting fee charged to tenants does not create a legal or binding relationship between the tenant and real estate agent. By virtue of this, the tenant does not have any rights to redress

²⁰ Summary of issues identified in Shelter WA and TAS, *Submission to Economic Impact Assessment of Letting Fees in the Western Australian Residential Tenancy Market*, 1997

²¹ *ibid.*

under real estate laws to ensure the quality or nature of their dealings with the agent.²²

Finally, it stated that “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 modelling 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.”²³

Shelter WA continues to have the same concerns regarding letting fees it expressed in 1997 and 1998. Shelter WA therefore recommends that letting fees be abolished.

Issue 45 Should a reletting fee be introduced? If so, what costs (such as advertising) should this fee comprise?

Contract law allows a party to claim compensation where a breach of contract occurs; this includes the breach of a tenancy agreement. Since the actual costs of a breach of a tenancy agreement to the landlord will vary from case to case, the actual loss to the owner should be verified and compensation determined accordingly. Contrary to the description in the Discussion Paper, reletting fees may constitute fees over and above these costs.

Shelter WA recommends that no reletting fee be introduced. In addition, Shelter WA supports TAS’s recommendation that any claim for compensation be supported by substantiating evidence of actual loss.

Issue 46 Is the establishment of a compulsory centralised bond authority necessary or justifiable in Western Australia? Or would the current system be improved by a more detailed and equitable regulatory regime being imposed on the various bond holding organisations?

Establishing a compulsory centralised bond authority would have a number of advantages to both landlords and tenants. First, it would create clarity regarding where bonds are lodged. This would allow landlords and tenants to become familiar with a single process, enabling both parties to check easily whether bond monies were lodged fairly and equitably.

Secondly, establishing a central bond authority would make it more straightforward to improve receipting and documentation requirements. Shelter WA is aware of some problems with receipting and documentation of bond deposits.

Finally, experience in other states suggests that research into housing trends, particularly in the private rental market, is much facilitated with data provided by a central bond authority exists. Better knowledge of trends and processes in the housing market would allow for better targeting of government policies.

Shelter WA therefore recommends that a central bond authority be established.

²² *ibid.*

²³ *ibid.*

Issue 48 Should the current Act make provision for the depositing of bonds paid in instalments?

Allowing bonds to be paid by instalment would have advantages for tenants and some landlords. Tenants would benefit, as doing so would mitigate their housing establishment costs, as discussed above. This could have broader social advantages; for instance, the Homeless Taskforce Report found that establishment costs are a significant barrier to securing housing.²⁴

Shelter WA is aware that many community housing providers would like to reduce the upfront costs to their tenants, who usually have low incomes, by making it possible for them to pay their bond by instalments. However, this causes legal problems as the Act currently does not allow for this.

Shelter WA therefore:

- recommends that the Act make provisions for bonds to be paid by instalment,
- supports the Community Housing Coalition of WA (CHCWA)'s recommendation that "an allowance be made in the Act for Community Housing Providers to accrue rental bond instalments",
- supports CHCWA's recommendation that bond monies be remitted to the Bond Administrator no less than 14 days after the full amount has been collected, and
- supports CHCWA's recommendation that if "the full amount is not collected and the tenancy ends, the bond amount collected is remitted to the Bond Administrator within 14 days, unless the bond can be returned to the tenant without dispute".

Issue 50 What alternatives to bonds should be considered?

Issue 51 Should an insurance based system be investigated as an alternative to the deposit of bonds?

Issue 52 Should a surety based system be investigated as an alternative to the deposit of bonds?

Shelter WA agrees with TAS's submission that introducing a surety based system would lead to increased discrimination, particularly against vulnerable groups such as young people, Indigenous people and people on low income. Such groups have limited housing options and are unlikely to have anyone suitable to act as guarantor.

Similarly, an insurance based system would require tenants to make payments over a long time, presumably for the duration of their tenancy. Again, this would work against people on low income.

The major disadvantage to the bond system is that it increases upfront establishment costs for housing. However, this disadvantage may be overcome, at least in part, through assistance via the Department of Housing and Works' Bond Assistance program.

Shelter WA therefore supports TAS's recommendation that the bond system be retained and that no alternative system be introduced.

²⁴ State Homelessness Taskforce, *Addressing Homelessness in Western Australia*, 2002

Issue 57 Is the interest earned on bond monies currently used and apportioned fairly? Are there any alternative uses for these funds?

Shelter WA supports TAS's submission that the interest earned on bond monies should be used to benefit tenants. Shelter WA therefore supports the current use of these monies to fund tenant advice services, but objects to their use to fund the Small Disputes Division of the Local Court and landlord education services. The latter should be funded from the interest earned on owner's bond monies (see Issue 65), while the former - like all other jurisdictions - should be funded from consolidated revenue.

Likewise, while Shelter WA acknowledges the current severe shortage of public housing stock and the lack of tenant support services, Shelter WA does not support using these monies to fund increased public housing or increased tenant support services. Shelter WA believes that these services should be funded from consolidated revenue.

However, Shelter WA does support extending the use of the interest earned on bond monies to fund increased information provision to, representation of and training services for low income tenants.

Issue 60 Should the Act contain a provision that states damages caused by fair wear and tear are not deductible from the bond? If so, should the Act clarify the definition of 'fair wear and tear'.

While tenants are not liable for any damage caused by fair wear and tear, this is not stated in the Act. As a result, many landlords and some tenants appear to be unaware that tenants are not liable for such damage. Shelter WA is aware of a large number of disputes around tenant liability resulting from this lack of awareness. In addition, the recent Rental Sector Standing Committee's Final Report on Homeswest's Debt Policy Review identifies the lack of a definition of fair wear and tear as a major issue regarding tenant liability with the public housing provider.²⁵

Shelter WA therefore recommends that the Act make specific reference to fair wear and tear. In order to avoid confusion, Shelter WA also recommends that the Act include a definition of this concept. While fair wear and tear is difficult to define, any definition should make reference to the day to day use of the premises by the tenant as well as the ordinary operation of natural forces such as wind, rain and sun.

Issue 65 Should a system of owner's bonds be introduced, or does it place an unnecessary barrier to entry on owners from entering into the private market?

Shelter WA is aware that low income tenants can face great hardship in paying for emergency repairs where landlords are unavailable to make such repairs. This situation could be redressed if owner's bond monies were available. An owner's bond would also redress the current inequity where tenants pay bond but landlords have no such requirement. It would also allow for a sister fund to the Rental Accommodation Fund to be established, providing services to landlords.

In general terms, Shelter WA does not believe that an owner's bond would be a significant barrier for owners to make their properties available for the private rental

²⁵ Shelter WA, *Final Report on Homeswest's Debt Policy - Review by the Rental Sector Standing Committee*, March 2002

market. However, Shelter WA recognises that an owner's bond might be problematic for some landlords, such as Homeswest and community housing providers.

Shelter WA therefore recommends that an owner's bond be established, and that consultations be undertaken to identify and resolve any problems that social housing providers might face.

Issue 68 Is the exemption of employment linked tenancy agreements fair and reasonable? If not how should the Act address the issue of rent increases in employment-linked tenancies?

As stated above, housing is a basic human need and human right. Shelter WA believes that the Residential Tenancies Act should protect tenants regardless of whether their principal place of residence happens to be owned by their employer or by a person unrelated to them. Shelter WA therefore recommends that the exemption of employment linked tenancy agreements be abolished.

Issue 71 Should the Act contain provision to regulate the level of rent increases? If so, how should the allowable level of rent increase be calculated?

Issue 72 Should a general yardstick (such as a certain percentage above the standard rental rate for comparable premises in the area) be used? If so, how would this be measured?

Shelter WA believes that the current provisions regarding rent increases in the Act are inadequate as they fail to ensure that rent increases are fair. The only provision in the Act that provides grounds to review proposed rent increases applies in cases where the increase is to force eviction.

Rent increases be limited to a percentage linked to CPI increases was one of the issues identified by a community forum on the Review of the Residential Tenancies Act organised by Shelter WA and TAS on Friday 5 April 2002 (report attached). However, Shelter WA believes there are practical difficulties associated with such a prescriptive approach.

Shelter WA therefore supports TAS's recommendation that section 32 of the Act be amended to remove restriction of the grounds for application for an order in relation to the level of rent. Shelter WA understands that there are no such restrictions in other Australian States.

Issue 73 Should a Court be given guidance in determining an application on the level of rent (such as the current "excessive" provision), or should it be left to a court to decide whether the current rent is valid on the facts presented before it?

Issue 74 If legislative guidance is appropriate, is the current threshold for rent payable (the "excessive" provision) acceptable?

Issue 75 What factors should the court take into account in determining whether the threshold prescribed has been exceeded? Are the current factors appropriate? Should any other factors (including factors that are readily quantifiable, such as percentage limits on increases) be introduced?

Shelter WA supports TAS's recommendation that the phrase 'not being earlier than the date of the application by the tenant' be removed from the Act. This will allow the

Court to backdate reduction of excessive rent to the date the excessive rent was charged, rather than the date of application. There is no reason why the Court, after having regard to the justice and merits of the facts presented, should be restricted in granting a reduction.

Shelter WA also supports TAS's recommendation that the Act allow for reduction in rent where there is a loss of amenity, chattel, facility or service, which the tenant was entitled to expect would be available at the premises, but is not.

Finally, Shelter WA recommends that ACT legislation be used as a model to assess whether rent is excessive or not. The ACT Residential Tenancies Act provides that unless the tenant satisfies the Tribunal otherwise, a rent increase is not excessive if it is less than 20% greater than any increase in the Index over the period since the last rent increase or since the beginning of the tenancy (whichever is later). Similarly, unless the landlord satisfies the Tribunal otherwise, a rent increase is excessive if it is more than 20% greater than the increase in the Index over the period since the last rent increase or since the beginning of the tenancy (whichever is later).

Issue 76 Should the Act clarify further the definition of abandonment, and the steps an owner must take before assuming the premises have been abandoned? If so, what steps should the Act require of the owner?

Issue 77 Does the Act sufficiently address the rights and obligations of both the owner and the tenant with regards to abandonment of premises? If not, how may the current provisions be improved?

In order to avoid confusion over the interpretation of abandonment, Shelter WA supports TAS's submission that the Act should refer to all "goods left on the premises" rather than "abandoned" goods. Shelter WA also recommends that the Act clarify the steps an owner must take before assuming the premises have been abandoned. Shelter WA is aware of several cases in which tenants have returned from an absence for medical treatment to find themselves without a home.

Shelter WA therefore supports TAS's recommendation that the Act be amended to require owners to apply for a Court decision on whether their belief that the premises are abandoned is justified. Provisions should include whether the owner has made reasonable use of information available to them to investigate the whereabouts of the tenant. Such investigation should include:

- The status of the rental account
- Whether utilities are still connected
- Whether the tenant's goods remain on the premises
- The steps the owner has taken to contact the tenant
- Whether the owner has contacted the tenant's next of kin
- Whether the owner has contacted the tenant's employer
- Whether there has been a history of absence from the premises (for example for employment purposes or medical treatment)
- Whether there is evidence of uncollected mail, newspapers or other material.
- Any other relevant matter as determined by the Court.

Issue 78 Should the Act require that the non-economic value of personal items be taken into account when determining whether the cost of removal, storage and sale of the goods exceeds their total value? If so, how should this be measured? Or, should separate provisions be made for the storage of items?

Shelter WA is aware of a number of cases in which abandoned goods that were of great personal value to tenants were disposed of because their removal storage and sale costs exceeded their monetary value. However, the emotional and sentimental value of irreplaceable personal documents and photographs cannot be quantified in monetary terms. Shelter WA therefore recommends that the Act include provisions regarding personal items of non economic value that have been left at the premises.

These provisions should specify that the owner take reasonable care of such items, and is responsible for safe storage for a specified amount of time. In addition, owners should be required to take reasonable steps to notify the tenant.

Issue 80 Are the current provisions regarding the recovery of rent owed following the abandonment of the premises appropriate?

Issue 81 Should the Act allow the owner to require, during the 60 day period, a tenant to pay the owner all the money owed by the tenant to the owner (in addition to costs for removal and storage) before the owner is compelled to release the goods?

While the current provisions appropriately allow an owner to recover the costs for removal and storage, they do not make explicit that rent arrears are not recoverable. However, these arrears are regarded as a debt linked to a former breach of the tenancy agreement, a remedy is already provided under section 15 of the Act. It is therefore not necessary to link rent arrears to the recovery of personal property after abandonment. Conversely, to require payment of rent in addition to storage costs may be prohibitive to resolving the issue in question.

Shelter WA therefore supports TAS's recommendation that the Act be amended to make clear that the owner cannot withhold goods in lieu of rent or any other debt except storage and removal costs.

In addition, in order to facilitate low income tenants recovering their property, Shelter WA supports TAS's submission that the Act provide for tenants to be able to recover their personal property and pay any monies for removal and storage, in instalments to the owner.

Issue 85 Does the Act currently provide adequate protection for the tenant’s right to quiet enjoyment? Or should the Act be amended to explicitly prohibit harassment, intimidation or breach of privacy?

Issue 86 Does the right of access of the owner (under certain circumstances as set out in the Act) intrude into the tenant’s privacy and quiet enjoyment? If so, how should the Act best accommodate both the tenant’s right to quiet enjoyment and the owner’s right of access to the premises?

Issue 90 Should the Act provide an opportunity for the tenant to negotiate a reasonable time for the inspection to take place if the tenant wishes to be present during the inspection, rather than at any time convenient to the owner, so long as the period of notice is met.

Issue 92 What constitutes “reasonable notice” and “reasonable hour”? Should the definitions be specified explicitly in the Act?

Shelter WA recommends that the Act be amended as follows:

- that owners be required to make reasonable efforts to negotiate an inspection time at which the tenant can be present. At present, many landlords let themselves in with their own key if the tenant is unable to be present during the time specified in the notice. It is important for tenants to be present during inspections in order to avoid any potential for misunderstanding or subsequent disagreements.
- that section 46 (1) (b) be rephrased to replace the phrase “reasonable hour” with the phrase “within a specified one hour period”. The current wording often requires tenants who wish to be present for inspections to miss a half or full day’s work in order to ensure they are present for a half hour inspection.
- that sections 46 (1) (c) and (d) be deleted from the Act. These sections allow the owner to enter and inspect when collecting rent. There is no reason why tenants who have their rent collected by the owner should have their quiet enjoyment of the premises infringed upon by being subjected to more frequent inspections than other tenants.

Issue 94 Should specific standards be developed for all rental accommodation?

Issue 95 Should the Act state explicitly that it is the owner’s responsibility to ensure the premises meet other minimum building standards, or is this general requirement sufficient?

Issue 97 Is the current requirement that the owner provide and maintain all locks and security devices fair, or should some of the costs associated with this requirement be borne by the tenant? If so, which costs should be borne by the owner and which by the tenant?

Shelter WA strongly supports codification of specific minimum standards regarding both tenancy management and the physical condition of rental properties. Since the lack of minimum standards poses a real risk to the health and safety of low income tenants in particular, Shelter WA recommends:

- that all residential rental properties be required to meet a set of specific minimum standards regarding tenancy management and the physical condition of rental properties, and
- that it be the owner’s responsibility that these standards be met.

Furthermore, minimum standards should not be limited to the physical condition of the building only. For instance, such standards should include, but not be limited to, provisions for:

- factors impacting on the ability of the tenant to maintain his / her tenancy; eg. the tenant should be able to contact the owner or his / her representative within a reasonable timeframe when urgent repairs are needed
- factors impacting on the safety of the tenant; eg. requirement for smoke alarms, general state of repair of the building
- factors impacting on the health of the tenant; eg. requirement for rising damp problems to be repaired within a reasonable timeframe.
- factors impacting on the security of the tenant; eg. external doors to be solid core, appropriate door and window locks to be provided

Shelter WA is aware that implementing such standards may present difficulties for some landlords, potentially causing a further decline in affordable rental housing in the state. In order to avoid this from occurring, Shelter WA recommends:

- that community consultation on the development of minimum standards is undertaken as part of the Review,
- that these minimum standards come into effect immediately for new rental properties, and
- that minimum standards for existing rental properties be implemented after a period of grace of no longer than one year.

Issue 110 Should a summary of decisions made by Courts in residential tenancy disputes (and the reasons for those decisions) be published in order to provide a guide for consumers on the court's interpretation of the Act?

Shelter WA is aware of a number of problems tenants face in ascertaining their legal situation in tenancy disputes because of a lack of consistency in decision making between Magistrates and Clerks of Local Courts. Shelter WA therefore supports that a summary of decisions made by Courts in residential tenancy disputes be published and made easily and cheaply accessible, for instance on the Internet.

Issue 122 Does the current Act make adequate provision for park home residents? If not, should there be a separate division or an entirely different Act catering specifically for their needs?

Issue 123 In any event, should there be a distinction in the treatment of residents who own park homes and those who rent them?

As stated above, housing is a basic human need and human right. Shelter WA believes that the Residential Tenancies Act should protect tenants regardless of whether their principal place of residence happens to be a house, unit, room in a lodging house, hotel room, caravan park home or student flat. Shelter WA believes that the Act does not make adequate provision for caravan park home residents, whether they rent or own their home as well as the site it is located on.

This issue is particularly pertinent as, similar to boarders and lodgers, caravan park residents include people from severely disadvantaged groups who have little knowledge of their rights and difficulty advocating on their own behalf. Shelter WA is aware that in some regional areas, such as the West Kimberley, few other options

exist for low income people to obtain accommodation.²⁶ In these areas, tenants are subject to seasonal rent rises and evictions.

However, Shelter WA does recognise that there are a number of unique factors that impinge upon caravan park residents, such as park rules, sale of park homes, etc. Shelter WA therefore supports TAS's recommendation that a separate section, specifically addressing the rights and obligations of Caravan Park tenants and landlords, be incorporated in the Act. This section should include specific provisions for residents who own their park home, such as regulations about the sale of these homes.

Issue 124 If a new legislative regime was to exist for park homes, should a standard tenancy agreement exist to cover the key rights and obligations of park home owners and residents?

Issue 125 Should all tenancy agreements relating to park home residents be in writing in order to minimise disputes and to ensure adequate disclosure?

Issue 130 Should all tenancy agreements relating to park home residents be in writing in order to minimise disputes and to ensure adequate disclosure?

Shelter WA believes that caravan park residents should have the same rights as other tenants. Shelter WA therefore repeats the recommendations made under Issues 17 and 29 that a standard tenancy agreement for caravan park residents as for all other tenants be incorporated under the Act. This standard agreement should be written in plain English and should be deemed to apply to oral agreements. It is therefore not necessary for all tenancy agreements to be in writing.

Issue 126 Given the difficulty and higher costs involved with such a relocation, should park home residents be subject to different tenancy termination conditions (such as longer period of notice)? Or should park home residents be exempt from the 'no reason' termination clause altogether, making it compulsory for the termination notice to specify a reason?

Shelter WA strongly recommends that section 64 be abolished (see Issue 145). However, should a 'no just cause' provision be retained in the Act, the provisions should be amended to extend the notice period to six months (see Issue 147), with the Court having the power to consider whether the circumstances of the case justify eviction (see Issue 149).

²⁶ Shelter WA, *The State of Housing in the West Kimberley*, December 2001.

Issue 145 Is the current provision allowing an owner to terminate a tenancy agreement without reason after giving 60 days notice appropriate?

Issue 146 Alternatively, should the Act contain an exhaustive list of non-discriminatory and non-retaliatory grounds (that are currently covered under the no reasons termination notice) in which termination can occur?

Issue 149 If the provision for termination without reason is retained under the Act, can the process for application to a court by a tenant against this termination be improved?

Issue 150 Should tenants be allowed to challenge a no reason termination where they believe the notice was given on a discriminatory basis?

As stated above, housing is a basic human need and human right. While it is acknowledged that owners should be able to exercise control over their property, Shelter WA strongly believes that the current “no just cause” provisions (Section 64) are unjust and unreasonable as they impinge on tenants’ human right to secure housing. Shelter WA believes that Section 64 should be regarded as a relic from the time when renting was regarded as a transitional tenure, rather than the long term tenure it has become.

Whilst impinging on the human rights of tenants, Section 64 does little to protect the rights of owners. The Act contains several other provisions that allow owners to protect their interests while complying with due process. For example, section 74 potentially allows owners to apply for the termination of any tenancy on the basis of undue hardship to the owner and the Court has a wide discretion to order such termination on appropriate terms.

Since owners and agents do not terminate tenancies for no reason, Section 64 is used to terminate tenancies without allowing for a Court to assess whether the circumstances warrant termination, as is the case under other provisions that deal with eviction. This means that Section 64 fails to give due weight to the often severe consequences of eviction for tenants. The only qualification to the operation of Section 64 applies if the tenant is able to prove retaliatory termination.

Finally, Shelter WA believes that most valid reasons for termination by the owner are already covered by the Act. The only exception to this is the case of Housing Cooperatives, who require their tenants to be members of the Cooperative. Shelter WA understands that many Housing Cooperatives issue eviction notices under Section 64 because of uncertainty as to the legislative status of Section 62 (1).

Under this Section an “owner may give notice of termination of an agreement to the tenant upon the ground that the tenant has breached a term of the agreement and the breach has not been remedied.” However, it is unclear whether Housing Cooperatives can terminate the agreement under this Section where a tenant’s membership of the Cooperative ceases because remedying such a breach is not possible.

Shelter WA recommends:

- that Section 64 be abolished,²⁷

²⁷ The removal of “no just cause” evictions from the Act was one of the five most urgent issues identified by a community forum on the Review of the Residential Tenancies Act organised by Shelter WA and TAS on Friday 5 April 2002 (report attached).

- that Section 62 (1) be amended to specifically allow Housing Cooperatives to terminate tenancy agreements where tenants cease to be a member of the Cooperative, and
- that the minimum period of notice for such terminations be 6 months.

However, in the case a “no just cause” eviction provision is maintained, Shelter WA believes that 60 days is not a reasonable time frame to make the unexpected but necessary practical and financial arrangements for alternative housing. In addition, Shelter WA believes that in this case, allowance be made for a Court to consider all circumstances of the case if the termination is challenged by the tenant on any grounds, including discrimination.

This could be achieved by inserting an additional clause under Section 71 (2) similar to the NSW Residential Tenancies Act Section 64 (2) (c), which states that “[the Tribunal shall, on application by the landlord under this section, make an order terminating the agreement if it is satisfied ...] (c) that, having considered all of the circumstances of the case, it is appropriate to do so.”

Should Section 64 be retained, Shelter WA recommends:

- that a clause be inserted into the Act requiring a Court to consider all the circumstances of “no just cause” evictions, and
- that a minimum period of 6 months notice of termination be given to tenants under Section 64.

Issue 154 Should it be assumed that, unless a termination notice is served, the tenancy will automatically roll over into a periodic tenancy with the same terms (except for the fixed time period of the lease)?

Since the Act is unclear on this point, Shelter WA supports TAS’s recommendation that the Act be amended to provide that reasonable notice be given, by either party, of their intentions to continue the tenancy, prior to the end date of a fixed term. Shelter WA also supports TAS’s recommendation that at least 3 weeks notice would be appropriate.

Issue 156 Should a Court order be essential before any eviction is to take place?

Shelter WA believes that the prohibition on eviction without a Court order should be retained. Since housing is a basic human need and a human right, tenants must be able to assert their right to natural justice and procedural fairness. Shelter WA believes that this can only be ensured by a Court or Tribunal.

Shelter WA therefore recommends that the requirement to secure a Court order before eviction, in all cases, be retained.

Issue 157 Should the Act provide that the Magistrate shall allow a party to be represented by an agent if the other party has been permitted to be represented?

Issue 158 Is the current provision for legal representation appropriate?

Shelter WA is aware that real estate agents are often granted the right to represent owners when matters go to Court as a matter of course, while advocates assisting tenants are required to satisfy the Magistrate in accordance with section 22(2) of the

Act. This can be extremely disadvantageous to tenants, who may be appearing in court for the first time, and have little knowledge of either the parameters of the legislation or the procedures involved. In contrast, real estate agents are experienced professionals with a good working knowledge of the law and a familiarity with the dispute resolution mechanism.

Shelter WA therefore supports TAS's recommendation that Section 22 of the Act be amended so that if an owner is represented by a professional agent, the magistrate has no discretion to exclude a tenant's representative.

Issue 159. Should the Act allow for methods of alternative dispute resolution prior to the formal court dispute resolution process? If so, what form should this alternative dispute resolution take?

Issue 160 Should it be mandatory for certain types of disputes? If so, which disputes?

Alternative dispute resolution methods such as conciliation and mediation are generally cheaper and more efficient ways of settling disputes than the formal legal process. Shelter WA believes that it is in the best interests of all parties to resolve disputes without resorting to the formal judicial processes.

Shelter WA understands that tenancy workers have welcomed the limited mediation services currently offered by the Department of Consumer and Employment Protection in relation to the RTA. Shelter WA also understands that the success rate of South Australia's mediation system with regard to residential tenancies is very high. Expanding the mediation services offered by DoCEP could provide a relatively efficient and low-cost means of dispute resolution with status under the Act.

Shelter WA therefore supports TAS's recommendation that Section 8 be amended by adding "(f) conducting mediation in relation to parties in dispute under the terms of this Act", as a function of the Department.

Where mediation fails, Shelter WA believes that conciliation should occur as an alternative method of dispute resolution. Conciliation differs to mediation in that a conciliator may have input to the discussion, whereas a mediator simply facilitates negotiation without involvement. Shelter WA recommends that conciliation be made optionally available in all tenancy disputes. However, Shelter WA emphasises that conciliation should remain a function of the Court, whereas mediation should become a formalised function of the DoCEP.

In general terms, mediation and conciliation are only appropriate if both parties agree and if a properly skilled mediator or conciliator is present. In the particular case of tenancy disputes, consideration must also be given to the power imbalance between landlords and tenants. Shelter WA therefore:

- recommends that mediation and conciliation not be mandatory, and
- supports the Community Housing Coalition of WA's recommendation that mediation "take place before a suitably qualified person with a clear knowledge of the operation of relevant legislation and alternative dispute resolution processes".

Issue 162 Should the disputes process for residential tenancies be transferred to the Residential Tenancies Tribunal? If so, what rules should govern its operation and who should be responsible for its administration?

The establishment of an independent Residential Tenancies Tribunal was one of the five most urgent issues identified by a community forum on the Review of the Residential Tenancies Act organised by Shelter WA and TAS on Friday 5 April 2002 (report attached). Such a Tribunal could be part of the Civil and Administrative Tribunal that has been recommended by the Law Reform Commission in its Review of the Criminal and Civil Justice System.

Shelter WA believes that transferring disputes around residential tenancies from the Small Disputes Division of the Local Court to an independent Residential Tenancies Tribunal would have two distinct advantages.

First, as noted in the Discussion Paper, Tribunals are able to hear matters in a less formal and adversarial setting. Shelter WA is aware that these factors form a major impediment to some tenants accessing the Small Disputes Division of the Local Court. This is particularly true for certain disadvantaged groups, such as Indigenous people. Shelter WA hopes that a Tribunal setting will be more accessible for these tenants.

Secondly, the use of a Tribunal would increase efficiency and effectiveness, as it would allow for expertise in residential tenancies to be hired and developed. In addition, this would make it easier to make decisions of public interest publicly available, for instance on the Internet. Shelter WA believes that this would be of great public benefit, particularly given the fact that many tenants and landlords represent themselves in residential tenancy disputes.

However, the main limitation of a Tribunal would be its accessibility outside of the Metropolitan area. In order to ensure access in regional areas of the State, a Residential Tenancies Tribunal would need to be adequately resourced.

Shelter WA recommends:

- that a Residential Tenancies Tribunal be established, if practicable as part of a Civil and Administrative Tribunal,
- that the proposed Tribunal be adequately resourced to meet the needs of tenants and landlords in regional areas, and
- that all reasons for decision in the residential tenancies jurisdiction, of public interest, are published and made available on the Internet.

Issue 164 Should the Act make provision for urgent hearings?

Shelter WA agrees with the Discussion Paper's points in relation to the potential disadvantage without access to urgent hearing, for instance where urgent repairs are required. While a provision for urgent hearings is already available under section 20(f) of the Act, Shelter WA believes this is not widely recognised. Shelter WA therefore supports TAS's recommendation that the Act provide for urgent hearings, with specifics reflecting those of section 73 of the Victorian Residential Tenancies Act.

Issue 165 Should the Act give a Magistrate the discretion to order that the dispute be heard in another Local court if they believe it is fair to do so?

Shelter WA is aware of a number of instances where one of the parties in a dispute had moved a considerable distance from the location where the dispute arose. In some of these instances, it would have been more convenient for both parties if the hearing had been held in another Local Court. Shelter WA is also aware of some instances where attending hearings near their previous has caused tenants financial hardship.

Shelter WA therefore recommends that Magistrates be given the discretion to order that the dispute be heard in another Local Court, if it is fair to do so.

Issue 167 Are the current provisions for compensation appropriate?

Shelter WA supports TAS's recommendation that Section 15(2)(c) of the Act be amended to require that in all claims for compensation, the applicant be required to provide adequate evidence to substantiate their claims. Under the present situation, if the respondent to an application for compensation is not present at the hearing, the matter may be considered to be undefended and the applicant may be successful without having to provide evidence to support their claim.

In addition, Shelter WA supports TAS's submission that the current provisions of section 15(4) of the Act, which allow only tenant breaches to be taken into account, are inequitable. Shelter WA supports TAS's recommendation that section 15(4) of the Act be amended so that in any application in respect of a breach of agreement, any previous breaches by the owner shall also be taken into account.

Issue 178 Do any of the current forms prescribed in the Regulations require updating or amending to make them easier to complete?

Shelter WA supports TAS's submission that the wording of termination notices needs to be changed urgently. The forms currently state "I hereby give you notice of termination of your residential tenancy agreement and require you to deliver up vacant possession of the premises at – ". They also state "If you do not vacate the premises, the owner may apply to court for an order terminating your residential tenancy agreement and requiring you to vacate the premises".

Shelter WA believes that such statements mislead tenants into believing that the notice itself terminates the tenancy and if they ignore it they will be sued. A great many tenants vacate premises on receipt of the notices, not realising they may contest an owners application. Tenant Advocates, Welfare Workers and Government workers (such as Centrelink Social Workers and Department of Community Development officers) frequently encounter distressed tenants who believe they have only 7 days before they will physically be evicted.

Shelter WA therefore supports TAS's recommendation that the wording of the forms be urgently reviewed. This would not require waiting for an amendment to the Act and should take place as soon as possible

Issue 183 Are there any other aspects of the Act, not mentioned in this discussion paper, which should be considered as part of the review?

Shelter WA has identified two issues not mentioned in the Discussion Paper: hardship for tenants and tenant databases.

a) Hardship for tenants

Currently, owners can apply to the Court to terminate a tenancy agreement on the grounds of undue hardship under section 74 of the Act. The Court gives full consideration to the circumstances in making its determination and may, if appropriate, may also order compensation for any loss to the tenant.

However, there is no such provision for hardship to tenants. This can mean victims of Domestic Violence are trapped in unsafe tenancies; or have to leave a property for which they can be held responsible, in the hands of the perpetrator and at risk of damage and/or accumulating rent arrears.

Shelter WA submits that the current situation in WA is inequitable and believes that there is wide support for this recommendation. For instance:

- The Rental Sector Standing Committee (RSSC) of the Housing Advisory Committee, which provides advice to the Government on housing issues, passed a unanimous recommendation at its March 2002 meeting for such a clause. The RSSC includes tenant representatives for Youth, Aged, Aboriginal, Regional, CaLD, Disabled, Women's Refuge Group, DoCEP, REIWA, the Department of Housing and Works, Shelter WA and TAS.
- TAS has advocated such a clause for some time.
- Such a clause was one of the issues identified by a community forum on the Review of the Residential Tenancies Act organised by Shelter WA and TAS on Friday 5 April 2002 (report attached).

In addition, there are circumstances in which a tenant may wish to vary a tenancy agreement. For example, in terms of domestic violence situations, a tenant may not be able to obtain the agreement of an owner and co-tenant to have either the tenant's own name or the co-tenant's name removed from the lease, even if the co-tenant is the perpetrator of the violence. Shelter WA believes that there should be a wide discretion for the Court to order such variations to a tenancy agreement (subject to any appropriate orders), for example for a perpetrator to pay the owner for any previous damage to the property.

Shelter WA recommends:

- that the provisions of Section 74 be extended to provide the same grounds and terms for tenants as owners, and
- that a new clause be added to Section 74 allowing for variation of the tenancy agreement due to undue hardship.

b) Tenant Databases

Shelter WA recommends that the Act set out provisions for tenant databases (also known as blacklists). Currently landlords can list tenants on such databases, which enable exchange of personal information across Australia, without notifying the tenant. The tenant has no right to know what information is contained on the database, and has no right to correct wrong information. Neither is there an onus on landlords to ensure that the information contained on databases is correct.

It is unclear whether such databases are covered by the recently introduced Federal privacy legislation. However, such databases have the potential to cause significant and long term detriment to tenants. In addition, Shelter WA is aware of cases where landlords have used the threat of listing to force compliance with unreasonable demands.

Shelter WA recommends that a new sub clause 44 (1) (d) be added to the Act:

- allowing tenants to apply to the Court for removal or amendment to a database listing
- requiring the landlord to ensure that any information provided to database services is correct and up to date
- requiring the landlord to notify the tenant of any listing

ATTACHMENT

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



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Introduction

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

Presentations

Irma Lachmund, Tenants Advice Service

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

Karel Eringa, Shelter WA

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

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

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

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

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

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

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

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

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

Joanne Walsh, Tenants Advice Service

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

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

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

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

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

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

Brainstorm and Discussion

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

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

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

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

Recommendations

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

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

In addition, the following recommendations were considered urgent:

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

Attendance

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