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tenant **NEWS**

No. 56 NSW MARCH 1996

PINK ISSUE



I N S I D E

INTERNET MAY BE USEFUL

OUR HISTORY

NO LANDLORDS PROSECUTED

FEDERAL POLICIES

PROVING DISCRIMINATION

WORLD NEWS

About the Tenants Union

The Tenants Union of NSW promotes the interests of tenants, including boarders and caravan park residents.

Since 1976 we have fought for fairer laws and have worked to let tenants know about their rights.

Tenant News is our regular publication. We welcome articles and feedback.

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Front cover: Jane Russell 1959

Printed by Breakout Press

ISSN-1030-1054

Internet might even be useful

It looks like this internet thing and computers might actually be useful. There's lots of information in books - including law - including tenancy law. Books are expensive and your library might not have what you need.

Now computers and modems are expensive too, but once you've got them its relatively cheap to look up lots of information.

For example, the Australian Legal Information Institute (Aust LII) is a university-based organisation that is trying to make legal information available on the internet. Their idea is that "the maximum amount" of law related material should be publicly available.

This will be useful to Community Legal Centres and Tenants Advice Services that need this information.

Its also a new way to get information to the general public. Before too long we hope to put on the internet sections of the Tenants Rights Manual or Tenancy Factsheets, plus contact numbers if people need advice.

Also there is already a "CLC Bulletin Board Site" being trialed by Community Legal Centres around Australia. This allows Centres to send each other documents and "e-mail" messages through their computers' modems and normal phone lines. This is an easy way to send documents and brings things a lot closer for regional services.

The internet is also a very handy way of contacting people. For example, we are trying to contact tenant groups and other organisations in Atlanta, who are dealing with the effects of the Olympics there. We've left an e-mail note at a "web-site" (a computer that's left on where you can get information and leave messages) in New York, and hope that they can put us in contact.

This particular web-site is called TenantNet, and is run by "Tenant Watch" who describe themselves as "... an informal network of tenants and tenant leaders who, for the most part, are actively involved in tenant associations and/or community groups". They have connections with New York State's Tenant Advisory Committee.

If anyone is interested, the internet contact for TenantNet is
<http://tenant.blythe.org/TenantNet>

Jimmy died

Source: NCOSS News March 1996

In February the Society of St Vincent de Paul launched a major social justice statement on residential aged care, entitled "Growing old, who cares?" Especially disadvantaged are those older people who are forced to exist in often poor quality accommodation in boarding houses, private hotels or bed-sits.

One case presented in the Social Justice Statement highlights is the following:

"Jimmy, aged 80, died in his boarding house room through a lack of medical care. A disability support worker who had previously visited him asked Jimmy if she could examine his feet as he was having difficulty walking. When he removed his boot it was revealed his big toe was gangrenous.

"An ambulance was called and he was immediately taken to hospital. An operation was required as soon as possible.

"The boarding house owner, fearing bad publicity, went to the hospital and managed to take Jimmy back to his room before the operation could be conducted. Jimmy was found dead the next day. The cause of his death was an ingrown toenail."



New Federal Government policies

With the Coalition in government in Canberra people are taking an even closer look at the policies they announced during the election campaign - of greatest interest to us are their policies on housing and law.

Note that NSW residential tenancy laws and the Tenants Advice and Advocacy Program are both the responsibility of the NSW State Government and so are not affected by the change of government in Canberra.

The Federal Coalition's policy on Law and Justice says in its section on Legal Aid that it will "...maintain current levels of legal aid funding as well as funding to community legal centres."

People involved with Community Legal Centres had talks with Senator Amanda Vanstone, then Shadow Attorney General, before the election and are confident that Legal Centres' funding is not threatened. Part of the Tenants Union's funding is as a Community Legal Centre. The new Attorney General and Minister for Justice is Daryl Williams MP.

Many people will be interested in the Liberal and National Parties' Housing Policy. It says that they will maintain current levels of rent assistance to tenants. It also commits them to maintaining Aboriginal Housing, the Community Housing Program and the Supported Accommodation Assistance Program. Their policy does not mention funding levels for these programs.

Their policies on public housing could lead to significant changes. They will "encourage private sector integration in public housing" and they're looking at shared equity schemes, where public tenants are encouraged to buy part-ownership of their home. They will renegotiate the Commonwealth-State Housing Agreement and "ensure greater flexibility" within it, which probably means that the States will have a bigger say about how they spend Commonwealth housing money.

They "commit to the principle that new public housing tenants are not charged more than 25% of their income as rent" and "commit to the principle that existing tenants are not disadvantaged." There is a lot of flexibility in those last two commitments.

There is no longer a distinct Federal Minister for Housing: housing is now the responsibility of the new Minister for Social Security, Senator Jocelyn Newman. We do not yet know the implications of this change.

Contact the Tenants Union office if you want copies of the Federal Coalition's Law or Housing policies.

West Australia: bad news

Based on information in an ABC Radio "Background Briefing" program, and further information information supplied by Pauline Logan, Tenants Advice Service WA

It looks like Homewest in Western Australia has been evicting an increasing number of public tenants, and many of the victims are Aboriginal. Homewest is Western Australia's public housing authority. The NSW Supreme Court stopped the NSW Department of Housing from doing "no cause" evictions, but it looks like this hasn't totally sunk in yet in WA under Court's conservative State Government.

While Homewest has retreated from evicting tenants without stating a reason, the matter has not been determined by the WA Supreme Court. Homewest still reserves the right to evict without stating a reason in cases of "anti-social behaviour." The "Anti-Section 64 Coalition" (named after the section of their law that allows 60 days notice for no reason) formed initially to stop this practice. As the use of Section 64 reduced it has worked to reduce public housing evictions generally.

The WA Government say tenants are being evicted for "anti-social behaviour" or rent arrears. The Anti-Section 64 Coalition says that tenants have been evicted for being as little as \$70 behind in rent, or because neighbours complain. In one case a woman was evicted for rent arrears just two weeks after having open heart surgery and had to move to an area away from appropriate medical care.

In another case, an Aboriginal woman was evicted after neighbours' complaints. She was subject to severe domestic violence by her ex-de facto who regularly forced his way in and attacked her. Non-Aboriginal neighbours complained of noise - Homewest gave her a "no cause" termination notice for what they considered to be anti social behaviour. She had just recently given birth to a new baby. She is now homeless, staying at different friends' places, and her children are staying with her mother. There is concern that there may have been a racial element to the neighbours' complaints. A complaint has been lodged with the Federal Race Discrimination Commissioner.

The Anti-Section 64 Coalition says that last year Homewest issued 3,700 termination orders, about 10% of its tenancies - a figure the Minister for Housing doesn't dispute. The Minister says he can't say how many of these have been against Aboriginal tenants, although he does have figures for the number of Aborigines they house. The Coalition says "no cause" evictions seem to be easing off a bit due to pressure by community organisations, but they are still concerned at the overall rate of evictions.

Our glorious history - part 2

The last Tenant News looked at the early history of the Tenants Union of NSW in the late '70s. This article continues with the organisation's history in the first half of the 1980s. Thanks to Harvey Volke for providing information.

The Tenants Union received its first funding under Malcolm Fraser's Coalition Government. The Commonwealth Legal Aid Commission gave funds for a one-worker "resource unit" to develop the network of volunteer Tenants Advice Services and the Tenants Advice "Hotline". The NSW Department of Youth and Community Services chipped in soon after. The first paid worker, Reyna Dight, started work in January 1980.

The development of Tenants Advice Services in community organisations was a major priority in the early 1980s. A Tenants Rights Manual for advisers was produced in 1980. By 1983 there were 36 tenants advice services, including 14 outside of Sydney. They were staffed by over 100 volunteers putting in about 3 hours a week, and helping nearly 12,000 tenants a year.

A second worker, Harvey Volke, was employed part-time in 1981 to work on law reform. This was the organisation's second main concern throughout the '80s but the going was hard and progress painfully slow. NSW Labor Ministers seemed reluctant to move quickly or came up with proposals that gave little to tenants. The Tenants Union wanted some major improvements, included a Residential Tenancies Tribunal, security of tenure and rent control. They dealt with a succession of Ministers for Consumer Affairs: Sid Einfeld, George Paciullo and Dierdre Grusovin. There was early success in stopping a report's proposals which would have actually made tenants worse off.

This article won't name the other people who made major contributions at the time, for fear of leaving someone out (except Robert Mowbray and Mary Perkins). Throughout this period the Tenants Union was interested in publicising tenants' issues and helping local tenant groups. The Tenant News in 1981 declared that tenant militancy was increasing and many had "discovered the advantages of organisation and solidarity." It was a time of political activism for the organisation, and it supported a number of campaigns.

These included some successful rent strikes in blocks of flats, the occupation of the Ningana Migrant Hostel and setting up the Ningana Housing Co-operative, a tent city in Hyde Park, and squatters support groups. When Royal Prince Alfred Hospital wanted to evict hundreds of long-term tenants the Tenants Union supported the residents and eventually the Department of Housing bought the properties and kept on many of them.

There was interest in general housing issues: the public housing waiting list of 40,000 was condemned and there was alarm over rising rents. The Tenants Union helped in setting up the Community Tenancy Scheme but was concerned about how some of the services were being managed. It identified a tenant blacklist, the "Tenant Referral Service." The "Youth Issues Collective" convinced the Housing Commission to house young people for the first time. The Movable Dwellings Residents Committee was formed to get caravan residents some tenants' rights. The organisation backed the Combined Pensioners' Nursing Homes Collective.

The Union's workers and Board members were highly committed and seriously over-stretched. In 1984 the office moved from South Sydney Community Aid to larger premises in what had been a ward of Redfern's Racheal Foster Hospital. A year later a fire cut the working space in half and left it damp. It's no wonder everyone started to feel their age. In 1985 it was admitted that "The Tenants Union Board is aging close to the 30 years mark" and an appeal was made for younger people to get involved.

It became obvious that there had to be a better way. It was a huge problem to train and support all the volunteers in community organisations, especially as there was a big turn-over. There were often gaps in the roster for the "Hotline" phone service and case work was taking up huge amounts of staff time. In 1982 the idea was raised of getting funds for a network of Tenants Advice Services, to be resourced by the Tenants Union, and funded through the Rental Bond Board. Related to this would be the development of local tenant groups as branches of the Tenants Union.

Applications were submitted and Ministers were met. The then NSW Minister for Housing, Frank Walker, finally agreed to fund 11 Tenants Advice and Housing Referral Services in 1986 and 10 more in 1987. Which meant a whole new ball game and the Tenants Union had to look at how it would organise itself and make it all happen.

By 1986 a new Residential Tenancies Bill was being prepared by Dierdre Grusovin, then Minister for Consumer Affairs, and a Residential Tenancies Tribunal was being planned. The Tenants Union organised the Campaign Around Rental Reform to put on pressure for a better law for tenants. It took 3 more years for the Residential Tenancies Act to be passed by State Parliament.

History project

The Law Foundation of NSW has given the Tenants Union of NSW some funding to write a short history of our organisation. We want to complete this for our 20th anniversary in August this year.

We would like to hear from everyone who has ever had anything to do with us - as employees, members, Board members, volunteers, activists, supporters or whatever. You may be able to give us information about what we've done over the years, and how we went about it.

Please contact the office on (02) 247 3813 if you can help.

Community Housing changes

Community Housing in NSW will now be administered by a new Office of Community Housing (OCH), in the Department of Urban Affairs and Planning.

The NSW Minister concerned, Craig Knowles, announced this at the NSW Community Housing Conference. He committed the State Government to more community housing. Staff at the Office of Housing Policy expect it to grow by 7,000 extra properties above the existing 5,000.

A Community Housing Advisory Board will deal with strategy, resource allocation and policy development.



Tenants Advice and Advocacy Program (TAAP): update

The last three regional Tenants' Advice and Advocacy Services are now being established and should be open for business soon. These are the Southern Sydney, Central Coast and North Coast Services - see the contact list on the last page of this Tenants News. They have all employed their workers and received training from the Tenants Union.

At the same time the Parks Occupants Information Service (POIS) is being set up on the Central Coast, as a specialist service for caravan and mobile home tenants' issues. The only services still to be funded under the Program are the Aboriginal Resourcing Service and the Northern NSW Aboriginal Service.

There are now 41 workers employed by the Program. Some of these are part-time. Meanwhile, the set of 17 Tenants Rights Factsheets has been updated in English and translated in 9 other languages with 15 more languages to be translated by mid-year.

The first nine regional Tenants Services to be funded are now well established and are assisting an increasing number of tenants in their regions. A large number of referrals are coming from "The Renting Guide," a booklet which should be given to all new tenants in NSW.

For details of Services see contact list on Page 17



Tenants rights - and roses too

*Summary of a paper given by Paul Mortimer, Tenants Union of NSW,
to the 1995 NSW Community Housing Conference*

Community Tenancy Schemes were first set up in NSW in 1983-1984. They were to be a new form of rental housing - secure, "tenant - friendly" and with tenants having a real say in management.

Community Housing was seen by many as an attractive alternative and a good role model for private landlords and public housing. CTS's could show how landlords should deal with tenants, and tenants would be better off in this housing. Much has been achieved along these lines.

When Joe Schipp was NSW Minister for Housing these objectives were undermined. While many people have worked hard to keep standards high, some organisations have adopted a more "property management" philosophy, like private estate agents. Training and resources were also inadequate. The result has often been harsher treatment of tenants.

The political climate has now changed for the better. It is time to recapture the initiative and prove community housing as the best alternative for tenants.

For this organisations need to respect tenants' legal rights, and then establish their own "best practices" that are better than the legal minimum. Do what the law says you must and give your tenants roses too.

To meet these standards services need training, resource materials, codes of practice, and proper funding. The NSW Federation of Housing Associations (NSW FHA) and Association to Resource Community Housing (ARCH) are to be commended for the work they are doing to get these for their members. We encourage services to work with them and get the full benefit.

Community Housing organisations are both landlords and tenants. Here we are looking at their role as landlords. Minimum standards - tenants legal rights - are set out in the Residential Tenancies Act. They are explained in the Tenants Rights Manual, which is produced by the Tenants Union.

Here are some examples of tenants' rights and landlord's obligations, stated in plain English.

a) The landlord must provide the premises in reasonable condition and carry out repairs that are needed. "Urgent repairs" must be done as soon as possible. Under-funding is not a legal excuse for renting out sub-standard housing; the proper option is to provide as much decent housing as your funding will cover.

b) Tenants have the right to privacy and "quiet enjoyment" of their home. For example, tenants cannot be made to attend training or meetings as part of their Residential Tenancies Agreement. (With Co-operative housing this can perhaps be agreed to outside the tenancy agreement)

c) To evict a tenant landlords must go through the proper process or face a fine of up to \$20,000.

It is up to Community Housing Organisations to set their own standards for how they deal with tenants. The Tenants Union recommends fair tenant selection processes, dispute/rent arrears procedures and that services use evictions only as a last resort. It's also good practice to have ways of dealing with conflicts of interest in management - that could be looked at in another article.

Services may also be interested to know that a Tenants Advice and Advocacy Program (TAAP) has started in NSW. There will be 12 regional and 3 Aboriginal services giving tenants information and help if they have a dispute with their landlord. Community Housing tenants are one of their target groups. These services are being resourced by the Tenants Union.

So the opportunities are all there for Community Housing in the 90's. If you do the best for your tenants they might give you roses back - and community housing will definitely be the very best rented housing around.

Postscript: Largely as a result of this paper the NSW Federation of Housing Associations included a good article in its February 1996 "Federation Newsletter," entitled "Bad management reflects on us all."

No prosecutions of landlords

The NSW Office of Real Estate Services has a Compliance Unit - one of its jobs is to make sure that landlords and estate agents comply with the Residential Tenancies Act.

If they learn that a landlord or estate agent is breaking the Act, they can contact that individual to inform them of their responsibilities, and ultimately they can prosecute the person involved and have them fined.

This is a very important role. The more unscrupulous agents are less likely to obey the law if they know nothing will happen if they break it.

So we were very concerned to find that the Compliance Unit wasn't paying too much attention to the Residential Tenancies Act, concerning themselves more with other areas of skullduggery by some Real Estate Agents. Such as trust account fraud.

In the last financial year there was not one prosecution of anyone breaking the Residential Tenancies Act. To be fair, the Compliance Unit did investigate 165 matters, but preferred education rather than prosecution.

The Tenants Union feels that a few well deserved and highly publicised prosecutions would be a very effective form of community education for the more "colourful" estate agents. At present it seems that unlawful behaviour brings only a cautionary word.

The Tenants Union has written to Faye Lo Po, NSW Minister for Fair Trading, about this matter. She has said the Compliance Unit has been concentrating on "dishonest practitioners" in the real estate industry, and said she was "concerned about suggestions of real estate agents openly indicating they are immune from prosecution"

She has invited us to give her details of any landlord or estate agent breaching the Act, so they can be investigated by the Compliance Unit. So we are currently on the lookout for deserving cases.

Landlords using local courts

Many landlords and estate agents are using local courts instead of the Residential Tenancies Tribunal to settle tenancy disputes. This is happening most in rural areas, but also in the cities. It is legal for them to do this except for eviction cases, which have to go to the Tribunal.

The problem is that courts charge court costs, and local courts are not as familiar with tenancy laws and issues as is the Tribunal. If a landlord takes a case to the local court instead of the Residential Tenancies Tribunal, in theory the court should make the landlord pay for court costs. But usually they don't know this, so in practice tenants are paying an extra cost.

While this is against the spirit of the Residential Tenancies Act it is not against the letter of the law. So landlords may often find it quicker and easier to take a dispute to their local court - but the tenant is paying for this convenience.

In a recent case a caravan park tenant owed \$120 in rent. The park owner claimed this through his local court instead of the Tribunal, which sits in a nearby town every four weeks.

The court fees were \$77, which the tenant had to pay unless they wanted to fight the case and ask for the landlord to pay costs. The extra problem is that to fight the case means more costs, and there's a chance the tenant could be up for an even greater amount.

The Tenancy Legal Working Party (a Tenants Union and Legal Centre Committee) is looking at this problem and will raise the matter with Mr Ian Pitre, the Chief Magistrate of Local Courts (Administration).

Apparently Ben Slade of the Legal Aid Commission has already written to Mr Pitre. Ultimately it may need law reform so that local courts can no longer hear tenancy matters.

How to prove discrimination - a test case

Many people in Australia are discriminated against when trying to rent accommodation. While there are Anti-Discrimination laws, it can be very hard to prove.

In November 1995 the Equal Opportunity Tribunal decided that an estate agent had discriminated on the ground of race in the case of Lambe vs Samuels Real Estate (Case No. 24 of 1995). This is probably a text book case for proving discrimination and getting compensation.

An Aboriginal woman applied to a Dubbo estate agency for a two bedroom flat for herself and her two sons. She asked three times, filled out an application and supplied references.

One day she phoned the agent's office without identifying herself and was told there were four flats available. She asked her friends to come down with her in the car. She left her friends in the car and went alone to the office.

A woman in the office told her there were no flats available. The Aboriginal woman returned to the car and her Caucasian woman friend went to the office and asked for a flat in the same price range for herself and two children. She was told there were flats available and could look at them after dinner.

The Caucasian woman left and returned with the Aboriginal woman who confronted the staff and then went to the Aboriginal Legal Service, who made a formal complaint.

The estate agency offered the Aboriginal woman a flat the next day, but she eventually rejected this because she was still angry and upset with their treatment of her. It took her a further month to find accommodation and during that time she had to stay in crowded conditions.

In the Equal Opportunity Tribunal hearing the estate agency argued they had a verbal policy of non-discrimination. The Aboriginal woman could not positively identify the staff member she spoke to.

The Tribunal ruled that the Aboriginal woman was unlawfully discriminated against on the ground of race, when the estate agency deferred her Application for Tenancy. It also ruled that the estate agency was responsible for the actions of its employees.

Damages of \$6,000 were awarded.

Postscript: A Sydney newspaper has recently reported that Samuels Real Estate Pty Ltd of Dubbo is appealing this decision in the NSW Supreme Court. They claim that evidence was wrongly rejected by the Equal Opportunity Tribunal.

Telstra and Telephone Typewriters

The Human Rights and Equal Opportunity Commission has made a very interesting decision. In *Scott vs Telstra* it ruled that Telstra (formerly Telecom) had to provide a deaf person with a telephone typewriter (TTY) in the same way it provides a standard handset to other customers.

This means that Telstra must now provide telephone typewriters to all customers with a hearing disability. Disabled Peoples' International (Australia) took up this case and were joined by the Australian Association of the Deaf.

Public tenant participation program

*Source of information: "Around the house" No 22
publication of Shelter NSW*

In December 1995 the NSW Minister for Housing announced that a new tenant participation program for public tenants would be established in July 1996, called the "Tenant and Community Initiatives Program." There is concern about the future funding of the Regional Public Tenant Councils - their staff have informally been advised that they will not have a job with the Councils after June.

The stated principles of the program are: self management, building stronger communities, access to a broad range of services, having a say and customer satisfaction. A tenant participation pilot in the Southern Sydney region placed several part time tenant workers with a number of community organisations rather than with a regional tenants council. They did not provide advocacy for tenants and focused on developing tenants groups. This is believed to be the model favoured by the Office of Housing Policy and Department of Housing.

The Office of Housing Policy has set up a Steering Committee to look at the design of the new program. The Steering Committee is carrying out regional consultations. It has representatives from Public Tenant Councils, Office of Housing Policy, Department of Housing, Shelter, Community Housing, plus Tony Vincent from the University of NSW.

Further information from TAAP Network meeting:

The Office of Housing Policy discussed the new Program at the last network meeting of Tenants Advice and Advocacy Services. Their representative said that the new program could reinstate a state body on tenant participation (there used to be a NSW Public Tenants Council) and is attempting to include alternate housing providers such as community housing.

The officer also said the program would have an impact on the Tenants Advice and Advocacy Program (TAAP) as there is an overlap, and clear relationships must be established so there is no duplication. The Tenants Union would be concerned if the TAAP services were expected to pick up extra work previously done by the Public Tenants Councils.

The Public Tenants Councils have many years experience in appealing against Department of Housing decisions on applications for housing, transfers or other procedural matters. These appeals are dealt with by the Housing Appeals Committee, whereas the Tenants Union and the TAAP Network focus on tenants rights determined by the Residential Tenancies Tribunal under the Residential Tenancies Act.

The TAAP Network has written to the Office of Housing Policy, asking to be represented on the new program's steering committee.

"Get tough" move

Another development is that the NSW Minister for Housing, Craig Knowles, has decided to get tough on public tenants who don't pay the amount of rent they should.

The Director of Housing has declared an amnesty during March for tenants who haven't declared their full household income, which is used to work out their rent rebate and the amount of rent they pay. If they come forward now they won't have to pay back-rent, or be prosecuted or evicted.

A letter has been sent to all public tenants. This letter also encourages people to do b in their neighbours. After March the Department of Housing will chase people it suspects of fraud - it has a new team to do this - and says it will consider evictions and prosecutions for deliberate fraud.

The Tenants Union has received calls from distressed public housing tenants concerned about the new measures. They are concerned, for example, that if they regularly have relatives stay over the weekend that they may be charged with rent fraud.

People should be aware that this should not be a problem. When working out household income and rent rebates you should not include the income of visiting relatives.

Profile of new Tribunal Chair

Source: "Update" No 3, published by Office of Rental Estate Services

Sally Chopping, the former Manager of the Policy, Legal and Conciliation Service at WorkCover was appointed as Chairperson of the Residential Tenancies Tribunal in January 1996.

Her previous job included responsibility for prosecutions concerning occupational health and safety and workers compensation offences, legal aid, civil litigation, legislative development, regulation review, liaison with key stakeholder groups and the WorkCover Conciliation Service.

She has worked in courts and legal areas in the NSW Public Service for almost 20 years.

Originally from Tamworth, and later Newcastle, she studied law part-time while working in the Local Courts and workers' compensation jurisdictions.

Having completed the College of Law Practical Training Course and the Trust and Ethics examination of the Barristers Admission Board, she was admitted as a barrister in 1982.

Following several years with the Premier's and Attorney General's Departments she joined the State Compensation Board and acted as Deputy General Manager, Operations, before taking up her position at WorkCover.

New Tribunal appointments

The following people have been appointed as members of the Residential Tenancies Tribunal-

Full time: Dennis Nolan, Philip Cheesman and Graham Cochrane

Part time: Gareth Keenan, Carol McCaskie, Rex Butler, Graeme Innes, Thomas Kelly, Hans Heilpern, Fiona Toose and Janice Connelly.

They join chairperson Sally Chopping and existing full-time members Geoffrey Hopkins and H (Ted) Moore and part-time members William Gilbert, Totti Cohen and John Keogh.

What the Tenancy Commissioner does

Source: Tenancy Commissioner's Office and Annual Report of NSW Tenancy Commissioner

The Tenancy Commissioner reports to the Minister for Fair Trading and has several functions:

- to investigate and research the relationship between landlords and tenants, and matters relating to retirement villages
- to assist with complaints by landlords, tenants, residents and management of retirement villages (and, if necessary, prosecute for offences)
- to distribute information about the Acts and the services provided by the Commissioner and the Residential Tenancies Tribunal
- to promote awareness of the rights and responsibilities of residents and persons involved in the retirement village industry
- to investigate and report on matters referred by the Minister or the Tribunal
- to co-operate with government departments and others who advise landlords and tenants about residential tenancy agreements
- to represent a tenant or a resident and take part in proceedings before the Tribunal in the public interest

These functions used to be carried out by four units within the Office of Real Estate Services, but the Office of Real Estate Services is no more and these units will soon be placed in other sections of the Department of Fair Trading.

The Tenancy Commissioner is currently Dr Elizabeth Coomb, who is also Director-General of the Department of Fair Trading.

Tenancy Services, Rental Bond Services and Strata Services will be in the Business Services Division of the Department. "Investigation Services" will look at complaints and prosecutions. Education will be carried out by "Community/Industry Information Programs." Policy will be handled by "Policy Development and Co-ordination."

The Tenancy Service assisted 75,000 people from July 1994 to June 1995 and 74% of these were tenants. This figure is up from 52,000 the year before. The previous "Compliance Unit" investigated 165 breaches of the law, issued 122 warning letters and made no prosecutions in 94 - 95.

Legal stuff

Representation in Tribunal

A member of the Residential Tenancies Tribunal spoke to the network meeting of Tenants Advice and Advocacy Services. He provided the following information about getting permission to represent tenants at the Tribunal.

The Tribunal is receptive to people representing tenants in appropriate cases ("seeking leave to appear"), especially tenant workers, but less receptive to solicitors. The member may make a decision about a decision about this immediately after seeing who is present at the hearing, or wait until after you have had discussions with the landlord. "Leave to appear" cannot usually be granted before the hearing date.

The Tribunal can grant leave to appear under Section 94(3) of the Residential Tenancies Act 1987. The act specifies the following criteria:

- is it necessary?
- would the tenant be disadvantaged if not represented?
- would the other party be unfairly disadvantaged if representation is approved?

The Tribunal member determines the application for leave on the evidence presented by both parties. Reasons to grant leave could include:

- tenant is disabled/young/frail
- landlord/agent causing threats/duress to tenant
- tenant worker may have already been negotiating with landlord/agent
- formal hearing
- tenant's education compared to landlord's/agent's
- landlord's/agent's competency before Tribunal in comparison with tenant's
- complexity of case
- geographical isolation

If the tenant is granted leave for representation at one hearing, this cannot be withdrawn later.

When you are talking to the landlord agent, ask if he/she has any objection to representation, and if the only reason is that the landlord/agent just does not want the tenant represented, tell the Tribunal member this.

If the landlord is not represented by an agent you are much less likely to get leave than if an agent is representing. An agent must have a current managing agency agreement to represent the landlord.

Tenant workers should not be shy in asking for "leave to appear." You may get knocked back but you are likely to get permission in appropriate cases. Some agents see the benefit of a tenant being represented and don't object. The tenant advocate will need to produce an authority from the tenant authorising the advocate to appear.

Termination Notices - 4 Working days to Post

Section 76(b) of the Interpretation Act 1987 (NSW) has been amended to the effect that service by post is now taken to have been effected on the fourth working day after the letter was posted - excluding weekends, public holidays and bank holidays.

Landlords, their agents and also tenants must be aware of these provisions. If allowance is not made for service when calculating notice periods the Tribunal can rule that the notice is invalid.



Legal stuff

No cause evictions in Community Housing - continued

In the November 1995 edition of Tenant News we printed an article "No cause evictions in Community Housing" which had not been checked by our solicitor. Our solicitor has now examined this and the correct legal position is as follows:

Even in situations where there is a valid Notice of Termination and the landlord has established the breach (if one is alleged) there is a discretion vested in the Residential Tenancies Tribunal to refuse to make an Order of Termination. The Tribunal can refuse to make the order pursuant to Section 64(2)(c) of the Residential Tenancies Act 1987, if "having considered the circumstances of the case, it is appropriate to do so."

In practical terms what this means for a Community Tenancy Scheme (CTS) is that as a landlord they are quite entitled to issue a "no grounds" Notice of Termination pursuant to Section 58 of the Residential Tenancies Act. The tenant can put any hardship considerations to the Tribunal. Relevant factors might include the fact that they are receiving a rebated rent, the cost of suitable alternative accommodation, capacity to pay higher rent, illness, proximity to services and any other relevant consideration.

The Tribunal, however, would need to consider very carefully whether it was "appropriate in the circumstances" to make an Order of Termination against a CTS tenant in the absence of any breach of the Residential Tenancy Agreement.

The reason for this is that the fundamental aim of the CTS program is to provide "secure rental accommodation to low to moderate income earners who are most in need of accommodation." This principle is incorporated in the Deed of Agreement between all CTS's and their funding body, the Department of Urban Affairs and Planning.

Yet another concern for a CTS that makes a practice of issuing "no grounds" notices is that they are in breach of their funding Deed of Agreement. If the Department of Urban Affairs and Planning is notified of such a practice on behalf of a CTS they can investigate and warn the organisation. If such practices continue despite a warning the Department could ultimately demand the organisation be wound up.

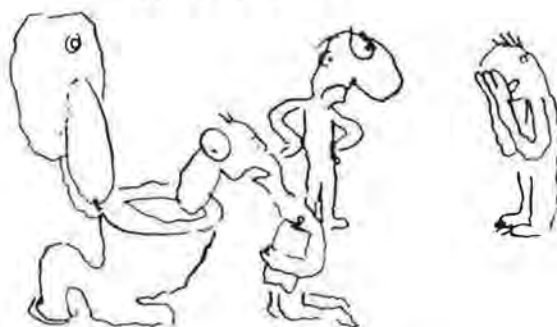
Condition Reports to be returned in 7 days

The landlord has to provide the tenant with 2 copies of a condition report. The tenant has to fill in their comments and return a copy of the condition report to the landlord no later than 7 days after receiving it.

The tenant could run into real problems if the tenant tries to return it more than 7 days after receiving the Condition Report and there is a dispute later about the condition of the premises. The Tribunal might not accept their updated Condition Report if its been returned late.

Recently a landlord actually refused to accept a condition report from a tenant who tried to return it late - and there is nothing to say that they have to accept it after 7 days.

By Jove you're right!
There is a dent
on the "S" bend.



Go WESTS

A profile of Western Sydney Tenants' Service by Harvey Volke

Western Sydney Tenants' Service (WESTS) began in 1990. I came back from Alice Springs and Robert Mowbray came back from his boarders' rights (or lack of) study for the Combined Pensioners' Association to begin our very own version of Fight Back: to get back the tenants' advice services we had lost the previous year. We still have a cartoon of Joe Schipp on our notice board and a particularly juicy rave of his aimed at us.

The bread was put up by the Uniting Church's Board for Social Responsibility, whose community services director, John Nicolades, had pushed for it. John had previously worked at Shelter NSW — one of the services who had lost their funding under the same Housing Information and Tenancy Services Program. The Board, through its Secretary, Harry Herbert, had been active in the campaign to stop the program closing down.

WESTS was never set up just to do case work, although we set ourselves a target of doing around 100 cases a month. After we'd got properly set up, it was normally well in excess of that.

The problem was always — and still is — the usual juggling trick of balancing case work, community development, training, community education, resourcing, and back-up, program initiation, policy work, campaigning and general shit stirring.

Of course it's even more complex now that the bulk of our funding comes from TAAP, with its emphasis on case work and fairly narrowly-defined advocacy tasks, with some of the above activities a very big no-no (no prizes for guessing which). We're currently dealing with well over 200 cases a month. And as you know that ranges from a two-minute quickie to a case consuming months. (The landlord ones, they're the easiest — "Ooooh, you mean you haven't heard of the Tenancy Service? ... "You can't get through? Oh well, just keep trying.")

We recognise our good fortune in being the wing of an agency with a fair degree of political clout, and which also provides a separate funding stream to undertake activities it considers worthwhile outside the parameters of the TAAP program. Nevertheless, probably like every other service, the deluge of case work is a formidable obstacle to taking on other activities.

Probably the issue of finding an appropriate balance and also the time to do everything it involves is the major problem we face.

The other problem is the sheer size — geographical and numerical combined — of the area we work with. We cover an area bounded by Auburn, Parramatta, Penrith, Blacktown, Katoomba, Richmond and Baulkham Hills. The Western Sydney region also comes up very high on a broad range of needs indicators.

In particular, the outer regions — Blue Mountains and Hawkesbury — have always suffered from lack of service provision. Because both areas are at the extreme fringe of most governmental regional boundaries, and because they do not have the sheer weight of numbers of densely-populated areas, they tend to be overlooked when it comes to locating services.

So far as we can, we have tried to address those problems, but we will be the first to admit that this does not deal with the level of need. Unfortunately, the problem we face is that we also can't deal with the levels of need in the rest of the area we service. We provide outreach services one day a week in both Katoomba and Richmond, and also an 1800 phone number to cover those areas. We have dedicated a three-day week staff position to resourcing the outreach service. We know it is not really enough. And it gives us — and our long-suffering worker — a problem with travel, travel time, and travel cost. And, of course, exhaustion.

If we were to go all out on the publicity trail, we would generate a demand we have no means of servicing. But if we don't go all out on the publicity trail, the people who don't find their way to us may very well be the people who most need us. Any answers?

Yet another problem we face is the sheer diversity and range of tenancy problems we have to deal with. In some ways that's good, because it keeps us on our toes, and we're always learning new things.

Issues we deal with could range from those faced by newly-arrived migrants with the sort of cockroach landlords who either have never heard of the Residential Tenancies Act or don't give a shit about it, to those faced by tenants when raging horses crash through fences on agistment blocks in rural areas (or like the bloke yesterday who found his demented neighbour on the property with a knife and a molotov cocktail at 3 in the morning. Now he wants to get out of the lease, would you believe) and the endlessly exhausting and complex problems of residents (and don't forget there are different categories of those) of caravan parks and mobile home villages.

And so it goes on ... and on ... and on ...



Tanzania

Source: "Global Tenant No3/1995"
International Union of Tenants

The Tanzanian Tenants Association had its tenth birthday recently. They had a recent High Court win against the National Housing Corporation's net increases. Also, they've convinced the government to sell public housing to tenants where they have failed to maintain it properly. The Tenants Association doesn't see this as ideal, but better than the housing going to ruin.

Fundi Nduwambo, their Publicity and Public Relations Secretary in Dares Salgam, reports that they are still trying to get the Tanzanian government to consult with them on housing issues.

He says that there is an increased flow of people into the towns in search of work, and this is seriously affecting housing. Rents are rising quickly and there are often ten people living in a room. Mr Nduwambo fears the return of the shanty dwellings that Tanzania got rid of in the 1960's.

Their staff are mainly part-time and voluntary, and desperately need funds. Despite this they are looking to set up branches in country towns and to provide information to tenant organisations in other African countries.

Mr Nduwambo concludes: "Whatever way we look at it, it is a hard way to go. Please wish us success." We do.

Global urban trends

Source: "Global Tenant No3/1995"
International Union of Tenants

By 2005 half of the earth's population will live in a town or city. But urbanisation rates vary around the world: in industrialised countries and Latin America three quarters of people live in urban areas, but only about one third in Africa and Asia.

300 million urban dwellers in developing countries live in absolute poverty, without basic nutrition or shelter. It appears that an increasing number of people are living in inadequate shelter, as cities and towns fail to cope with their rapid population growth.

Australian tenants international

Australia's National Association of Tenant Organisations (NATO) has become a member of the International Union of Tenants (IUT), which is based in Stockholm. The IUT now has 34 members in 28 countries.

Smoke detectors

Source: "The Home Maintenance and Security Handbook,"
Office of Housing Policy

Single point smoke detectors are now freely available from retail outlets. They are easy to install and can cost less than \$20. Hard wired connectors are connected to household electrical supply and need a back up battery.

Smoke detectors need batteries which should be replaced once a year. Most detectors have a device that will emit a regular beep when the battery is low and should be replaced, but it's a good idea to choose a day of the year when all smoke detector batteries are replaced. For example, on an anniversary or holiday such as New Year's day.

Placing Detectors: Detectors should be placed between kitchen/living sleeping areas. Preferably not in kitchens unless specifically designed and definitely not in bathrooms or laundries. For additional advice on location of detectors contact your local fire brigade.

What happens? When there is smoke in a room, the smoke detector will emit a loud piercing sound. People with hearing problems may not hear such a sound and should consider installing a special alarm with a strobe alarm.

Testing: All detectors should be regularly tested. Consult the literature supplied by the manufacturer.

Footnote: The Tenants Union has supported the move to fit all rental homes with smoke alarms and electricity safety switches. We did this through the Residential Tenancies Act Consultative Committee and we await government action.



Tribunal application forms

If a tenant wants to apply to the Residential Tenancies Tribunal for an order they must fill in a form called (oddly enough) "Residential Tenancies Tribunal - application for and order." This form and a fee must be lodged with the Registrar of the Tribunal.

At the moment the only government body you can get these forms from is the Tenancy Service of the Department of Fair Trading. Their office is in Sydney, and their phone number, (02) 377 9100 or (1800) 451 301, can be very busy and hard to get through to. Right now neither Department of Housing or Department of Fair Trading regional offices have the forms. Housing used to supply the forms when it was responsible for the Tribunal's administration.

This means it can be difficult for tenants to get an application form, especially those living outside of Sydney. Estate agents use these forms regularly and maintain a supply, but they are not always going to give one to a tenant - especially if the application will be against them.

The Tenants Union has written to the Tenancy Commissioner's Office asking for the situation to be corrected. We suggest that Tribunal forms should be available from branches of the State Bank, as are Rental Bond forms. At the very least you should be able to pick them up from regional offices of the Department of Fair Trading.

New fax numbers for bond claims

Rental bond claims can now be faxed to Rental Board Services.

Fax: (02) 283 1490

Freecall Fax: (1800) 803 655

Incidentally, it is estimated that in 1995/96 there will be 270,000 new bonds lodged, and approximately 445,000 held in total.

NSW Tenants Advice and Advocacy Services

Regional Services

Inner Sydney

Redfern Legal Centre

73 Pitt St Redfern 2016

Fax: (02) 310 3586

Phone advice: Mon-Fri 9.30-1, 2-5

Ph: (02) 698 5975

Western NSW

Western Region TAAS

PO Box 140 Orange 2800

Fax: (063) 62 2933 (1800) 642 609

Phone advice: Mon-Fri 9-5

Ph: (063) 62 6555

Inner Western Sydney

Marrickville Legal Centre

338 Illawarra Rd Marrickville 2204

Fax: (02) 558 5213

Phone advice: Mon-Fri 2-5

Ph: (02) 559 2899

Aboriginal Services

Western NSW

Gunya Aboriginal Tenants Service

PO Box 435 Dubbo 2830

Fax: (068) 84 8218 (1800) 810 233

Phone advice: Mon-Fri 9-5

Ph: (068) 84 8211

Southern Sydney TAAS

139 Beamish St Campsie 2194

Fax: (02) 718 0236

Phone advice: Mon-Fri 10-1, Mon-Wed 2-5

Ph: (02) 787 4679

Southern NSW Aboriginal TAAS

PO Box 1138 Batemans Bay 2536

Fax: (044) 72 6487 (1800) 672 185

Phone advice: Mon-Fri 9-1, 2-4.30

Ph: (044) 72 6543

South West Sydney

South West Tenants Advice

PO Box 1042 Liverpool 2170

Fax: (02) 822 4076 (1800) 631 993

Phone advice: Mon-Fri 9.30-12.30

Ph: (02) 601 6577

Northern NSW Aboriginal TAAS

Not yet operating

Eastern Suburbs Tenants Service

27 Spring St Bondi Junction 2022

Fax: (02) 386 9146

Phone advice: Mon-Fri 10-12.30, Mon-Wed 2-4

Ph: (02) 386 9147

Resourcing Services

TAAP Resourcing Body

Tenants Union of NSW

68 Bettington St Millers Point 2000

Fax: (02) 252 1648

Ph: (02) 247 3813

Western Sydney Tenants' Service

PO Box H86 Harris Park 2150

Fax: (02) 635 8548 (1800) 625 956

Phone advice: Mon-Thu 10-1, 2-4

Ph: (02) 891 6377

Caravan Parks Resource Service

Ph: (043) 96 5658

Parks Occupants Information Service

Shop 8 Victoria Arcade

Victoria Street Toukley 2263

Fax: (043) 96 3690

Northern Sydney

Northern Area Tenants Service

16 - 18 Fitzroy St Kirribilli 2061

Fax: (02) 9959 4453

Phone advice: Mon-Fri 9.30-1

Ph: (02) 9964 9654

Aboriginal TAAP Resourcing Service

Not yet operating

Central Coast TAAS

PO Box 293 Wyong 2259 NSW

Fax: (043) 53 5525

Phone advice: Available soon

Ph: (043) 53 5515

Associated services

Aged Tenants Service

Ph: (02) 262 6722

Combined Pensioners and

Superannuants Association

Level 11/35 York St Sydney 2000

Fax: (02) 262 6120 (1800) 451 488

Phone advice: Mon-Fri 9-5

Hunter TAAS

PO Box 84 Newcastle 2300

Fax: (049) 29 7996 (1800) 654 504

Phone advice: Mon-Fri 9.30-4.30

Ph: (049) 29 6888

Tenants Union Hotline

Ph: (02) 251 6590

Phone advice: Mon-Fri 2-5, Tue and Thu 9.30-1

North Coast TAAS

PO Box 525 Lismore 2480

Fax: (066) 22 3141 (1800) 649 135

Phone advice: Available soon

Ph: (066) 22 3317

Illawarra/South Coast

Illawarra Legal Centre

PO Box 139 Warrawong 2502

Fax: (042) 74 3491 (1800) 807 225

Phone advice: Mon-Fri 9.30-5

Ph: (042) 74 3475



Penalties - Residential Tenancies Act

Offence	Section	Maximum Penalty
Starting the Tenancy		
Not giving the tenants a written statement of the costs for preparing the agreement and other costs associated with it, before entering the agreement.	12(2)	\$200
Not giving the tenant a copy of the agreement.	17(2)	\$500
Not giving the tenant the landlord and agent's name and address of the landlord and/or agent or failure to notify the tenant within 14 days of any changes or to provide name and/or address of any new landlord.	32(1), (2), (3)	\$200
Demanding or receiving a reservation fee except in the manner prescribed.	36	\$500
Rent		
Demanding more rent in advance than the prescribed limits.	38	\$500
Demanding post-dated cheques.	39	\$500
Failure of the landlord to keep rent records for 12 months or making false entries in rent records.	41	\$500
Not issuing prescribed rent receipts when tenant pays in person or not making them available for collection.	40	\$500
Failing to give 60 days notice of a rent increase or increasing the rent during fixed term agreement or contrary to terms set out in agreement.	45	\$500
Demanding or receiving money other than rent, bond, and prescribed amounts from the tenant for residential premises.	52	\$500

Privacy and Access		
Unlawful entry to premises by landlord/agent with landlord's written consent.	24(5)	\$500
Interruption of the tenants quiet enjoyment of premises by landlord/agent or person on the premises with landlord's written consent, or interference with tenant's reasonable peace, comfort and privacy in using the premises.	22(2)	\$500
Altering, removing or adding locks or security devices without consent or reasonable excuse.	29	\$200
Eviction		
Entering premises to take possession without a Court/Tribunal order.	72(1)	\$20,000
Hindering a Sheriff enforcing an order for possession.	73(5)	\$500
Tribunal		
Demanding or receiving an amount above maximum rent set by the Tribunal	52(1), (2)	\$5,000
Wilful contravention of any decision or order other than an order to pay money or an order setting the rent.	115	\$5,000 or 12 months goal or both.
Insulting the Tribunal, misbehaving or interrupting proceedings or refusing to comply with a direction.	116(1)	\$500 or 6 months goal or both.
Refusing a direction to leave the Tribunal.	116(2)	\$500
Other		
Failure to comply with a notice to provide information, documents or evidence to an investigator.	119b(3)	\$500
Contacting out of the Act.	120(2)	\$2,000
Wrongful disclosure of information	121	\$500

YES I want to join the Tenants' Union of NSW

Name _____

Address _____

Postcode _____

Telephone (h) _____ (w) _____

First language _____

Please tick

☐ New membership ☐ Renewal

Are you a: ☐ Tenant ☐ Home Owner

☐ Other (specify) _____

FEES

Membership runs from 1 January to 31 December. New members can pay half fees after 30 June. New membership fee includes cost of share(s).

YEARLY FEE

Tick the fee that applies

No (or low) wage/pension/benefit \$8

Waged worker \$15

Organisations \$30

Donation \$ _____

I enclose \$ _____

Signature _____

Date _____

Return to: Tenants Union, 68 Bettington Street
Millers Point 2000

OFFICE USE ONLY

Service Fee _____ Shares _____

Donation _____

Receipt No _____ Membership No _____

IF UNDELIVERABLE PLEASE RETURN TO

TENANTS UNION OF NSW
68 BETTINGTON STREET
MILLERS POINT 2000

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PP 239 337 / 00010

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