

# tenant NEWS

Newsletter of the Tenants Union of NSW

Issue #66 May 2000

## Black cloud over



## Green Square

**Eighty affordable housing units are to be axed from plans for the Green Square super-development in Zetland, following a Land and Environment Court decision last month. The court outcome leaves a cloud of doubt over all councils' plans for low-cost housing. Written by Fiona Britton.**

Multi-millionaire developer Harry Triguboff, through his company Meriton, has successfully challenged the Local Environment Plan (LEP) for Green Square, resulting in the loss of all affordable housing from the 2300-unit development.

In a decision which has sent shock waves through local governments and state planning authorities, Justice Cowdrey found that the affordable housing components of the LEP did not comply with the Environmental Assessment and Planning Act. Justice Cowdrey's comments cast doubt upon the validity of other Local Environment Plans, and leave other councils open to similar court challenges.

The result is a major loss for tenants on low-incomes and a blow for councils who recognise the social impact of developments and who strive to create affordable housing. It is also an insult to members of the communities surrounding the Green Square site, who battled to have some of the development benefit shared with bordering lower-income neighbourhoods.

Low-income tenants are being forced from Sydney's inner-city as new developments drive up property and rental values. In an attempt to balance housing supply, local councils have used

Local Environment Plans to demand that developers provide or contribute to new low-cost housing. The Housing Industry Association has campaigned heavily against this practice, claiming it is not the responsibility of developers to provide social housing.

South Sydney Council states that compliance with council plans for the Green Square development generated substantial windfall gains for Meriton. Accordingly, Meriton was permitted a generous increase in the number of units they could build - from 1380 to 2300 - as a bonus for the provision of affordable housing. The affordable housing units were said to add around \$10 m to Meriton's cost - a fraction of their estimated \$350m profit.

The court outcome has an ironic twist, however. Now that the whole Green Square LEP has been found invalid, the site reverts to its original zoning - as an industrial site. A new LEP for the area will be needed to allow Meriton to continue its development.

### Pages 6 & 7:

- State Government appeals decision
- Inside the 'walled city' of Green Square
- Community responses

### What's inside Affordable housing edition

- Rent increases and no-cause evictions
- Focus on Green Square
- Boarding houses given new protection
- A Swedish perspective on housing
- Protected tenants battle for their homes
- GST affects caravan park tenants
- Class action success by caravan park tenants

# FREE!



## Welcome from the Board

There is an acute affordable housing crisis in New South Wales. Private tenants across the state are experiencing the impact of housing shortages, high rents and investment that destroys low cost housing. At the same time, the public and community housing sectors are shrinking, leading to increasing homelessness.

We are not seeing effective government action to ensure access to affordable housing and rights for renters. In particular, legislative protection for boarders and lodgers is urgently needed and long overdue. Changes to tenancy laws to remove evictions without a reason and to provide some limit on rent increases are also desperately required.

These are some of the ongoing campaigns of the Tenants Union to address the issues outlined in this Affordable Housing edition of Tenants News.

If you would like to participate in these campaigns all tenants are welcome to join the Union and get involved. There is a membership form at the back of this newsletter.

*Louise Buchanan, Chair*

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## About the Tenants Union

### Aims

The Tenants Union aims to represent the interests of tenants in NSW, both private and public, including boarders and lodgers and caravan parks by:

- raising awareness about tenants' problems and rights
- providing high quality advocacy and advice to tenants
- lobbying for improvements in residential tenancy laws
- promoting secure and appropriate housing solutions
- supporting, training and resourcing local, independent statewide tenants advice services

### History

The Tenants Union has been active in promoting the rights of more than 1.5 million tenants in NSW since its formation in 1976.

Over this time we have advocated to government, developed policies for law reform and campaigned for more just and equitable laws to cover renting in NSW. We have also produced numerous resources that provide information to tenants about their rights and tenancy law in NSW.

Over the last 22 years the Tenants Union has played a significant role in advancing the rights of tenants. Achievements for tenants rights during this time include:

- the founding of the Rental Bond Board (1977)
- the Residential Tenancies Act 1989
- the formation of the Residential Tenancies Tribunal in 1987
- funding for community based tenants advice services

### Current Activities

Core work for the Tenants Union includes:

- test case litigation which clarifies and extends the law in favour of tenants
- law reform and policy development
- operating a statewide 'Tenants Hotline', a telephone advice service available 5 days a week from 9.30 - 5 pm, operated by a network of volunteer services

• resources and publications, for example the Tenants News, a newsletter, produced 3 times a year which is circulated to over 5000 tenants across the state; the Tenants Rights Manual, now in its second edition; The Tenants Have Rights Factsheets (19 information sheets, available in 27 community languages) and a website for tenants in NSW

• resourcing the Tenants Advice and Advocacy Program, an innovative network of 20 tenants advice and advocacy services across NSW, funded by monies from the Rental Bond Board, administered through the Department of Fair Trading.



## About the Tenants Advice and Advocacy Program

Tenants Advice and Advocacy Services are independent services based in community organisations throughout NSW. Since 1994 they have provided casework services and legal advice to tenants with:

- disputes with landlords
- problems with real estate agents
- problems with the Department of Housing
- Residential Tribunal Hearings

Tenants Advice Services also provide community education for tenants, particularly targeting tenants from non-English speaking backgrounds. They provide input to Government policy and systemic advocacy for disadvantaged tenants throughout NSW.

See the back page for the contact details of your local Tenants Advice Service.



# Eviction with just cause: not 'just because'

By Nick Warren

Every day, 120 termination-related applications go to the Tribunal. This is just a small number of the evictions happening in NSW and points to the extent of our housing crisis.

Tenants are disadvantaged by two important rules in current tenancy laws. The Tenants' Union believes that outcomes of these failures are now seen in the unaffordability of rental housing in Sydney and in the ease with which landlords displace communities that stand in the way of a developer's profit.

In NSW, landlords can seek to evict tenants on 60 days

notice, without giving any reason, under section 58 of the Residential Tenancies Act, 1987. This removes any feeling of security of tenure in rented premises and can be used to evict tenants for insubstantial, inequitable or retaliatory reasons.

Each relocation costs tenants well over \$1,000 (up to several thousand dollars for a larger family), not including the non-economic costs in time and stress. It also sends a clear message that the landlord has the upper hand in negotiations about our housing. All too often, a landlord's response to notifying a need for repairs, or raising any tenancy issue, is to say "Well if you don't like it you can go." No cause evictions just give landlords the opportunity to enforce this unfair solution or to chase a higher profit from redevelopment or

richer tenants. The threat of no cause eviction puts tenants in an inferior position when negotiating issues about their home.

Tenants are also disadvantaged in challenging rent increases. Tenants bear the onus of proof that a

Evidence of the failure of this provision of the Act is clear from the very few number of rent increase cases that ever go to the Tribunal and the extraordinary inflation of Sydney's rents since this provision was enacted in 1987.

**The threat of 'no cause' eviction puts tenants in an inferior position when negotiating issues about our homes.**

proposed increase is excessive, compared to the 'general market level' under section 48 of the Act. Other relevant factors are given only secondary consideration. These factors include the value of the premises, the landlord's outgoings, the value of any fittings, appliances or services that come with the premises, the premises' amenity and general repair, any work or improvements done by the tenant and any other relevant matter

In a market such as Sydney where rapid rent increases are commonplace, tenants are in a difficult enough situation. The fact that landlords control access to much of the relevant information justifying a proposed rent and that they have no obligation to show it, adds farce to the current provisions.

We have been urging governments of both political parties, to take note of the damage this does to our community. We can only endorse the words of the current Government's Affordable Housing Report, which concluded that

"Failure to address this issue as a matter of high priority will not only cause serious personal hardship but will damage the economic and social strength of the entire New South Wales community, including its ability to compete within Australia and the region".

The Tenants Union has presented simple reform proposals to Government, to achieve some measure of justice in these areas. So far, no government action is proposed.

## Government impersonates ostrich

In the lead up to the Sydney Olympics, every detail has been anticipated and planned for. Oops! We forgot renters and the homeless. By Jacki Easter

Sydney's bid for the 2000 Olympics included a government "Social Impact Assessment" that identified future potential impacts. For housing, the report found the following concerns:

- excess demand for accommodation
- arbitrary evictions and the need for tenant protection
- rent increases and the need for tenant protection
- availability of public housing before, during and after the games
- meeting the accommodation needs of low income and homeless people
- protection for long term caravan park residents

These concerns were couched in the form of "trigger questions" for the government to monitor.

Since Sydney became the Olympic host city, numerous reports have echoed these concerns. Assessments include an Olympic Housing Reference Group Report (1994), Keys Young Consultants Social Impact Assessment (1994), a NSW government Green Paper on Housing Policy in 1995, Department of Fair Trading Impact Assessment (1998) Olympic Rental Market Monitoring Project (reporting quarterly), Shelter NSW Impact Assessment and Progress Report (1999)

While some minor recommendations have been acted on, there has been more 'monitoring' and inter-departmental committees than action. We are now just months from the Games, rents skyrocket, tenants are being displaced, boarders can still be arbitrarily evicted in Sydney and property speculation is enjoying a dream run to gold.

Even where the Government has acted, positive outcomes for tenants have been unclear:

- A Fair Trading campaign to discourage speculation in the rental market (direct mail to property owners and Real Estate Agents) has been run, with no obvious result.
- A Fair Trading campaign to inform tenants (and landlords) of tenants rights through newspaper and billboard advertisements has also come and gone.
- A database has been established to monitor the use of crisis and emergency accommodation. Widely reported figures from the Sydney Homeless Persons Centre now clearly show that Sydney's accommodation services can't cope with current demand.
- In early 2000 positive amendments to SEPP 10 were finally gazetted. (See story page 4) While at the same time, powerful developers such as Meriton are successfully challenging Local Governments' ability to implement the planning policy.
- A plan for the rapid response to consumer protection needs "has been finalised" (but not necessarily implemented).
- The Partnership Against Homelessness Committee and Homelessness Action Team have been set up and the Departments of Housing, Community Service and Fair Trading all assure us they have plans, even if they won't release them.

The important option of legislative reform has not been acted on by the government, even though the Department of Fair Trading's own report agreed with other researchers and Fair Trading recommended legislative reform, in 1998.

The main weaknesses in NSW tenancy legislation are:

- no limits on rent increases and no effective way for tenants to challenge unaffordable rents
- landlords can serve eviction notices without giving the real (or any) reasons
- no legal protections for boarders and lodgers

Below are the 'trigger questions' designed as a part of the government's own framework for assessment in Sydney's bid for the Olympic Games:

- What protection will there be for tenants to ensure that they are not subject to arbitrary evictions or price rises as a consequence of the Games?
- What protection, if any, will be necessary to prevent unproductive land speculation in the lead up to the Games?
- What impacts will the Games have on the availability of public housing before during and after the Games?
- How will the accommodation needs of homeless and low income people be effected by the Games?
- What protection, if any, will be necessary for permanent caravan park residents to ensure that they are not adversely effected in the period leading up to the Games?

So far, Olympic impact monitoring consistently indicates an acceleration of gentrification, conversion of boarding house stock to tourist accommodation, displacement of tenants in key metropolitan areas, accelerated loss of affordable accommodation, record rent increases, an increase in homelessness and an increasing stress on homelessness services.

Now a few short months before the Games start and the government cannot reassure us on its own Olympic bid benchmark questions.



# Better protection for boarding houses

The NSW Labor Government has announced changes to the State Environment Planning Policy 10 (SEPP 10), which aims to preserve affordable housing. Perhaps the most important aspect to the revised SEPP 10 is that at last we are witnessing the emergence of substantial policy to match the government rhetoric about its commitment to affordable housing.

The revision of SEPP 10 offers a beacon of hope in the struggle to keep low-cost housing part of our inner-city landscape. As the guide to the revised SEPP 10 states it "is about ensuring people on low incomes have affordable places to rent".

The lack of affordable housing has reached crisis point as Sydney strives to become an international city and host for the 2000 Olympics. High rents

make private rental prohibitive for people on low and medium incomes. Vacancy rates below 3% make affordable housing impossible to find.

Using the local council building development approval process, SEPP 10 provides a mechanism to retain low-cost rental accommodation. SEPP 10 provides councils with the capacity to reject development applications for boarding houses, hostels and low residential flat buildings if the development will result in a net loss of low-cost rental accommodation in the area.

The State Government released its new SEPP 10 with the statements:

"We are continually working to provide, retain and protect low-cost accommodation for low-income families and residents.

"These changes take us further in meeting that commitment, by ensuring that some additional 200 boarding houses in the greater metropolitan will be covered by the policy."

SEPP 10 has been strengthened by applying it to all local government areas in the Greater Metropolitan Region, tightening the definitions of low-cost rental accommodation, and by setting rent levels according to the median rent data published in the Rental Bond Board and Department of Housing's *Rent and Sales Report*.

A benchmark will assess the availability of comparable accommodation in the locality, and planning will be deemed to have failed if the vacancy rate is below 3%.

## NSW boarders: no rights means cold nights

**Planning policy is no substitute for legal protection of boarders' rights. We enact legislation to protect boarders rights or doom boarders to homeless nights, writes Peter Mott.**

While we welcome the improvements to SEPP 10, the policy intentions are meaningless without corresponding boarders rights legislation. Planning policy is no substitute for a regime of legislated boarder's rights. Only legislation can protect boarders from arbitrary eviction and homelessness.

Boarders and lodgers are excluded from the protection of the Residential Tenancies Act 1987 (RTA) and have no protection against arbitrary eviction, rent increases, unfair house rules nor affordable access to an independent dispute resolution mechanism such as the Residential Tribunal.

When disputes arise in boarding houses owners and caretakers frequently use the lack of legal protection to lock boarders out with little or no notice. Eviction looms as an ever-present threat meaning many boarders simply 'toe the line' for fear of being branded a troublemaker and turfed out on to the streets.

Despite years of campaigning by community groups, such as the Boarders and Lodgers Action Group (BLAG) and the Coalition for Appropriate Accommodation (CASA), numerous reports recommending changes and an ALP promise to enact basic legal protection, law reform for boarders and lodgers has not eventuated.

As we approach the Olympics, the temptation for boarding house owners to remove residents for short-term profit has been too tantalising to resist. The situation confronting our community is clear. We either enact legislation to protect boarders rights or doom boarders to homeless nights.

### NSW lags behind

The lack of legislative protection for boarders is even more outrageous given that Victorian boarders have had legislative rights since the early 1980's and South Australian boarders gained such rights at the beginning of this year. NSW is in the shameful position of having the largest population of boarders and no rights.

The Department of Fair Trading convened a working party in 1998 to investigate the need to provide basic protections for boarders and lodgers. Public consultations and submissions concluded almost 6 months ago and a draft report has only just been released.

Recent surveys of boarding house residents have confirmed boarding houses remain a major source of affordable accommodation for many people. Surveys conducted in the Inner Sydney region highlight the changing profile of boarding house residents. Increasingly, women and young people aged between 20-29 years are reliant on boarding houses for affordable accommodation.

The new Olympic stadium could be filled to overflowing by the 100,000 households on the public housing waiting list. It is in this environment that boarders who are kicked out of their home must struggle to find alternative accommodation. You would have better odds for finding the needle in the haystack.

## 'We Can't Share the Spirit If We Can't Afford the Rent!'

As Olympic hype goes into overdrive, tenants advocates and active tenants who form Rentwatchers have been trying to apply the brakes to accelerating rent increases and eviction notices.

### Tenancy Advice Session and Public Forum

On the night of Wednesday March 29th Rentwatchers and the Newtown Neighbourhood Centre held a very popular tenancy advice session and public forum. Many residents from the local area took this opportunity to obtain advice from the expert representatives of a number of tenancy service providers.

Those attending also heard three short talks. Gary Moore, Director of the New South Wales Council of Social Services, spoke about the social impact of the Olympics. He questioned the legacy that the Olympics may leave Sydney residents and called for a parliamentary inquiry into the costs of the Games.

Nick Warren from the Tenants Union painted a stark picture of the experiences of many of Sydney

## Rentwatchers News

tenants and Michelle Burrell presented a number of case studies highlighting the Olympic effect on housing.

Michael Caton, famous for his Aussie battler role in the successful local film *The Castle*, was on hand to launch the Rentwatchers kit and close the forum.

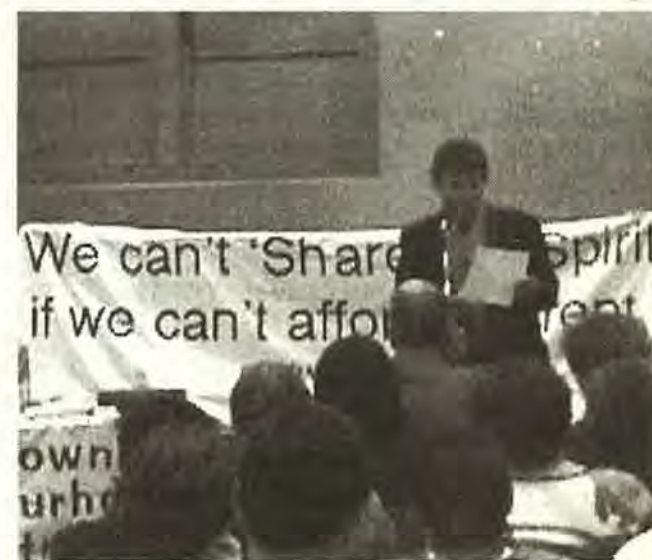
The housing forum proved successful in addressing both the specific problems that residents are experiencing and in raising awareness about the adverse impacts of Sydney's Olympics. Rentwatchers will be looking to organise other similar events.

### Rentwatchers Kit

The Rentwatchers kit combines statistics, case studies and analysis. It demonstrates the

difficulties faced by tenants in inner Sydney areas and points to the Olympics as the principle cause.

Copies of the kit are available from Rentwatchers. Call 96987277 or email [beth@rlc.apana.org.au](mailto:beth@rlc.apana.org.au).



**Gary Moore, Director of NCOSS, addressing the meeting of tenants on March 29.**



# Sweden vs Australia

Australia's good living standards have always been a matter of national pride. We compare ourselves to other Western developed countries in favourable terms, and we believe that we look after peoples' basic needs. In such a fair and equitable society, access to good quality, secure, affordable housing should be a basic right, shouldn't it?

## • What would you say are the major achievements in Sweden's housing policy?

I would say that one of the biggest achievements for the Swedish tenants movement is that tenants have got strong legal rights. A landlord can't evict a tenant unless there's very strong reasons. If you once are late with the rent, that's NOT a strong reason. Another big achievement is that almost every local community in Sweden has got non-profit housing companies, and that their rents are legal role models for private landlords

It has taken over 90 years of struggle from the tenants union to get here.

## • Do tenants have access to housing which is secure, affordable and good quality?

We have a very schizophrenic housing situation in Sweden. In the major part of the country it's easy to get a good home in a non-profit housing company. But in the areas of the big cities, like Stockholm and Gothenburg, the situation is opposite. There's a great lack of rental flats, and it's hard to get somewhere to live if you move to these cities.

Of course this has created new demands from the private landlords for free (market) rents. They see a way to increase their profit, but market rents are still against the rules here in Sweden. But the landlords are lobbying with strong power. We are writing a lot about this.

## • Can you explain how rents are set according to tenants 'utility value'?

Rents are set by negotiations between the Tenants Union and the local non-profit house company, usually owned by the local community. Private landlords must then follow these rents. A comparable flat owned by a private landlord are not allowed to be more than 5 % over the non-profit rents. The union also negotiates for non-members. Rents are mainly set according to the standard of the house.

A visit from Jonas Nordling, journalist from the Swedish version of Tenant News, gave us the opportunity to make some comparisons between Australia and Sweden. Sweden is famous for good public policy. They have had rent controls since the 1940s and when a housing crisis occurred in the 1960s, the government embarked on a project to build a million homes to relieve the housing stress. These days, half of all tenants live in public or non-profit rental housing.

Rents in Sweden are determined according to the 'utility value' to the occupant, not calculated according to landlords' costs. In Australia, soaring private property values and high demand push private rental rates through the roof, and an enormous difference between rent levels in public and private rental housing results. In contrast, the cost of public and non-profit rental determines rent standards in Sweden. If tenants

## • Are public/non-profit and private rental accommodation seen to offer equivalent security of tenure and affordability in Sweden?

We have a very high lowest-standard. There's no big difference between public and private landlords. Historically the authorities have had strong control over house-building, which has led to high quality.

## • Are there any perceived differences between the two types of rental housing?

The biggest difference I would say is the fact that the non-profit companies are led by politicians who change during election polls. Since many communities in Sweden nowadays seems to change from right to left every election, the public housing companies tend to change their policies regularly, which of course isn't always good. On the other hand it's possible to change your public landlord with the help of democracy... As to private landlords; they are not offering homes primarily, they are making profit. But of course there are private landlords who does this very well, even from a tenants point of view.



Jonas Nordling, roving reporter

and landlords find themselves in dispute over rent levels, they can apply to be heard by a special rent tribunal.

Below, we ask Jonas whether Australia deserves it's 'fair' reputation when it comes to housing and tenancy.

## • What were your impressions of the situation for tenants in Australia?

It seems like your situation is rather more complex than ours here in Sweden. Private landlords in Sweden are often companies. The sharing house system you got, with private persons buying a house for rental, isn't hardly existing up here. I would also like to add that the fact that tenants in NSW can get evicted with any reason, that the rents are free to be set by the landlord, and that tenants don't bring representatives to the tribunal, all this makes me concerned. It seems to me you got a lot of things to work for in the future.

## • How could we improve the provision of secure, affordable rental housing in Australia?

You seem to do a very good job already, but I would say that your main problem is the way tenants are organised. To be a strong power in society I think you have to be independent. With 500 000 tenants you have good opportunity to build a strong organisation, a real union. And when you have become this, I assume it'll be easier to improve tenants situation in NSW.

**Hazel Blunden examines falling housing assistance in Australia. Are landlords the new beneficiaries of housing dollars, at the expense of tenants on low incomes?**

The Tenants Union sees a consistent theme in reports on housing assistance. The story is the same in government, community sector or academic documents: the Commonwealth and States have reduced expenditure on public housing and community programs since 1986, while housing in the private market has become more expensive to rent or buy.

During the last decade, the cost of a median price house in Sydney rose by 200%, and by 140% in the rest of NSW. Meanwhile the Consumer Price Index rose by a smaller 60% (1) and wages & benefits grew by less.

From figures supplied in the report *Australia's Welfare 1999: Services and Assistance*, it is clear that expenditure is decreasing per capita. In 1996-97 Commonwealth, State and Territory governments spent \$71.51 per head on housing assistance, which was \$1,353.4 (\$m). In 1997-98 it was \$63.45 per head, which was \$1207.4 (\$m). You might think that \$4 billion dollars promised for 1999-2003 sounds like a lot of money, but

when this figure is divided by 4 years, it results in a total of \$52.57 per head spent on housing assistance, which is yet less again. That means Australian governments will spend \$18.94 less per head on housing assistance of all kinds compared to 1997 (2).

The Australian Bureau of Statistics tells us a similar story about the Commonwealth Government's Housing contributions (see table below).

1992-1993	1993-1994	1994-1995	1995-1996	1996-1997	1997-1998
\$1,374,000	\$1,139,000	\$1,111,000	1,072,000	822,000	821,000

Source: Australian Bureau of Statistics, Commonwealth Government Consolidated Public Sector Outlays on Housing and Community Development, Catalogue 5512.0 1997-1998.

Given that a substantial amount of "housing assistance" now takes the form of rental subsidies, the \$29 that the average tenant receives as rental assistance goes straight into landlord's pockets.

Rental assistance is in effect a subsidy to the landlord. This is because as rents increase, more tenants receive rental assistance. The Affordable Housing Taskforce noted rent subsidies are too low, and they should "not be delivered in ways which effectively drive up rents". Further, rental subsidies should not be promoted "at the expense of maintaining the overall level of capital grants for public and community housing which are the only realistic ways of providing affordable housing for most very low-income households in need" (3).

Direct provision of housing from government should continue, and increase. There are other

Continued page 10



# BLACK CLOUD OVER GREEN SQUARE



From page 1

## Decision creates legal uncertainty

The effect of Justice Cowdrey's decision in the Green Square case is that all affordable housing provisions in Local Environment Plans (LEPs) set in place before December 1999 are invalid.

The NSW Government amended the law in December in response to the Green Square challenge. The amendments clearly state that "the provision and maintenance of affordable housing" is an object of the Environmental Planning and Assessment (EPA) Act. Pre-existing LEPs were not covered by these amendments. There is a danger that Meriton's win could encourage developers to challenge plans which were not covered by the December amendments - and more new affordable housing will be lost.

It appears that Councils will have to argue for affordable housing levies through Section 94 of the EPA Act - which allows the "exclusive power of a council to impose contributions as a condition of development consent". These contributions are used to build or upgrade public and community facilities, based on the fact that development will bring a greater number of people needing such facilities to the area.

To argue for these contributions, councils will have to build stronger arguments linking the impact of particular developments on local communities and the subsequent need for new affordable housing. In the case of Green Square, this could be argued by showing how development had displaced existing tenants; and by demonstrating how low-income tenants would effectively be barred from renting in the area as rents are driven up by increased property values flowing from the development. According to Residex property market analysts, the median price of units in Alexandria rose nearly 12% last year.

However, Justice Cowdrey's comments create some ambiguity about council's ability to create these arguments under law. He stated that assisting "in the provision of housing for low-income families.... is a purpose not contemplated by Section 94." Peak housing and community interest organisations are seeking independent legal advice on the decision.

## Government appeals to save low-cost housing

The State government has lodged an appeal against the Land and Environment Court decision in the Green Square case. This is a strong sign of support for affordable housing programs from the Minister's office, at a time when low-income tenants face a desperate housing shortage.

In Sydney, 75% of tenants live in housing which is considered to be unaffordable (that is, they pay more than 30% of their income in rent). The Real Estate Institute of NSW vacancy rate measures the availability of housing at any time and in Sydney, this measure has been below the crisis level of

As the development boom cuts a swathe through the inner-city, there are real social costs.

The NSW Ministerial Task Force on Affordable Housing found in 1998 that over the last decade, the proportion of lower income households living in unaffordable housing in NSW has increased from 15% to 22%. The Task Force reported:

"Failure to address this issue as a matter of high priority will not only cause serious personal hardship but will damage the economic and social strength of the entire NSW community".

**Sydney vacancy rates have been below 3% for five years. To put this in perspective, in New York a housing emergency is declared when the vacancy rate drops below 5%.**

3% for a continuous five and a half years. To put this in perspective, in New York a housing emergency is declared when availability falls below 5%, and councils are then granted powers to effect rent controls.

All Sydney tenants are disadvantaged by short housing supply, but none more so than those looking for housing at the cheaper end of the market. Demand is so extreme in parts of Sydney that reports are now being heard of "rent auctions" - where a real estate gets as many prospective tenants as possible to the premises for an inspection, then asks for competing bids on the rent. Those tenants prepared to pay highest rents will be housed; those who cannot pay will have to choose between poor housing options and some may face homelessness.

In many parts of Sydney, communities of low-income housing have been destroyed and old neighbourhoods fragmented to make way for a new class of executive tenants and home-owners.

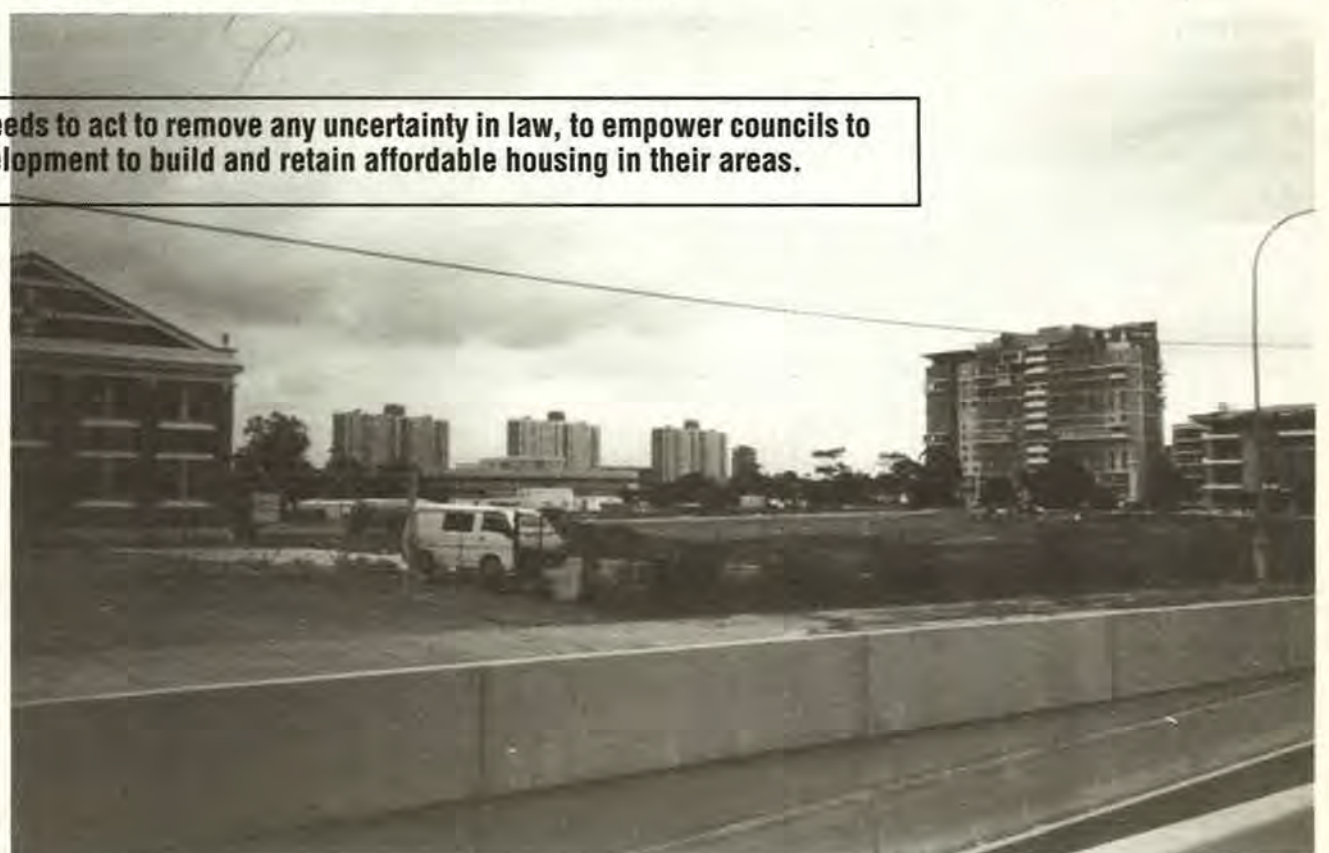
Developers contributions to affordable housing may go part of the way to restoring equity. Yet it is clear from the Green Square example that when the private sector is asked to share responsibility for maintaining low-cost housing, tenants may lose out.

We can hope that the government's appeal will remove any uncertainty in law, to empower councils to use links with private development to build and retain affordable housing in their areas.

Meanwhile, the provision of affordable housing must be considered central to the business of government. State-funded building and management programs still provide the best guarantee for tenants needing low-cost housing. A government commitment to extend and strengthen the public housing sector would provide the best possible assurance to the 75% of tenant households living in housing stress.

**Top left: the Green Square train station on a privately-owned line to Mascot airport. Below: Meriton's Green Square site and neighbouring public housing high-rise units. Top right: the old glass factory, a feature of the Meriton Green Square development.**

**Clearly, the government needs to act to remove any uncertainty in law, to empower councils to use links with private development to build and retain affordable housing in their areas.**





# BLACK CLOUD OVER GREEN SQUARE

## Inside the 'walled city'



- Green Square will be a new suburb constituted by major residential and commercial developments, some of which are now underway. The largest of these are the Town Centre development (2250 units), Meriton's residential site (2300 dwellings) and the Victoria Park development (2500 dwellings).

- Most development occurs between South Dowling St and Botany Rd in Alexandria, Zetland, Waterloo, Beaconsfield and Rosebery.

- The development is mainly on large, old industrial sites. The urban redevelopment area covers the space of 275 football fields; the industrial development takes up another 212 fields of space.

- The area will house around 20 000 people and create employment for 20 000 more.

- The train station will connect the Green Square town centre to Cityrail on the Mascot line. This is a privatised rail line.

- The development cost is \$2 billion: 90% of the cost of the Olympics.

- Meriton's development is said to be worth \$350 million in profit after sale of the units. Affordable housing on the site, now lost (see story page 1) was said to cost \$10 million.

## What the locals say

Green Square is promoted in rapt superlatives; the biggest, the first, the cleanest, the cleverest. The image-makers of 'Australia's most ambitious urban redevelopment' have portrayed Green Square as a planned and progressive new 'community'. But can the social planners avoid alienating the neighbours next door?

"above average numbers of single and double income households without children". With a new town of cashed-up professionals landing in their midst, the social exclusion of bordering public housing neighbourhoods is inevitable, says the *Community Plan*:

**To the people who live in relative poverty next door, Green Square could become a 'walled city' of unattainable privilege. Meriton's court win heightens the sense that Green Square's benefits may be enjoyed by 'members' only.**

The artificial suburb will exist within a larger community encompassing neighbouring Redfern, Waterloo, Kingsford and Rosebery. These suburbs contain large public housing estates and significant amounts of people on low-incomes. To the people who live in relative poverty and difficulty next door, Green Square will be a 'walled city' of unattainable privilege. Meriton's court win heightens the sense that Green Square's benefits will be enjoyed by 'members' only.

The South Sydney Development Corporation's *Green Square Community Plan* states that dwellings "will be pitched at middle income, second or third home buyers" and there will be

"The boundaries of Green Square are, and will be, strongly marked by physical and social divisions. The physical markers will only serve to emphasise social ones. Viewed from the outside, Green Square will appear as an enclave ..."

The report claims "the amount of development about to happen on the doorstep of these public housing estates is potentially a wealth of opportunity for estate residents."

Maximising this opportunity is now the priority for community representatives. With affordable housing on the site now lost, locals are taking up the fight to have the development benefit shared

in other ways - through job schemes, mentoring and locating public building projects outside the 'enclave'. One community concern is that all community infrastructure will be built inside Green Square, not located in the general community where locals could get access.

Freda Backes attended community meetings to discuss the Community Plan, representing the Inner Sydney Regional Council for Social Development (ISRCSD), located at

Waterloo. She said that the key will be to create links now between the development and the people affected by it:

"We need to plan for ten years' time. People simply won't go there unless they feel welcome to use the facilities."

South Sydney Council is taking the community concerns seriously and have appointed a social planner to take up the issue of community development for surrounding areas. ISRCSD hopes that this will mean that some public facilities - libraries, galleries and education facilities - can be placed outside Green Square, generating real benefits for neighbouring suburbs.

## What Council says

South Sydney used to be a place where tenants on lower-incomes could find housing. Recent development and gentrification have removed much of this affordable housing and the area's unique social mix is threatened.

According to Jill Leahy, South Sydney Council's Deputy Mayor, social diversity creates South Sydney's strength, vibrancy and attractiveness. The council is committed to preserving this diversity.

The current Council recognises that in order to do this, affordable housing must be retained.

But the Green Square decision shows that Councils are only as strong as the laws which support them. Jill Leahy points out that South Sydney Council has been doing all they can within current laws to create new affordable housing.

Aside from Meriton, the developers involved in the Green Square project have happily honoured their affordable housing requirements. Clearly,

there is benefit to these companies in being perceived as cooperative partners. Landcom, who is building the other large apartment complex, is prepared to deliver more than the Council's baseline of 3% affordable housing.

South Sydney Council hopes that Green Square will not exist behind 'glass walls' of social exclusion. The Council has worked to ensure that the physical environment has been planned with good pedestrian access, cycleways and continued access to shared public space and roads.



# Protected tenants

**Many of them fought for their country. Now they're fighting for their homes**

by Viviana Villamar

Two men in their sixties living in a boarding house in coastal New South Wales have recently discovered that they are protected tenants. This is good news for Peter who is a war veteran and who has lived in his present home for over 25 years, and for John who has lived in his home for over 20 years.

It means that their interests as tenants are protected under special legislation. They qualify as protected tenants because they have been renting in the same place since before current tenancy legislation was enacted in 1986, and in a building built before the 1950s. They fall under The Landlord and Tenant (Amendment) Act 1948, which came into effect during the war-time housing crisis and was designed to give tenants added protection from evictions and rent increases.

Today, protected tenants have unique rights: security of tenure in their homes and the right to be charged a fair rental, reflective of the landlord's costs. They also have unique difficulties: the Combined Pensioners and Superannuants Association of NSW (CPSA) has found that protected tenants are typically over the age of 60, living alone, are widowed, and on low fixed incomes such as a disability or war veteran pension. A large proportion are women.

In today's hostile tenancy market, this source of affordable housing is even more important than ever. Using protected tenancies law, tenancy workers have managed to keep a number of pensioner tenants in their homes. With comparable affordable housing increasingly difficult to find, these tenants would face great hardship if evicted.

John has terminal cancer. Not surprisingly, he was distressed to hear that the landlord wanted him and his neighbour out so as to redevelop the premises for back-packer accommodation. Both men have no income except for their pensions and would have been forced to look for alternative low-cost rental accommodation.

Peter and John came to live in the boarding house because it was cheap, and suited their lifestyle. Neither could have expected that renting would become so unaffordable, or that they would be pressured to move on after so long. Peter still shines his veteran medals and army boots and recalls the way Australia in the 50s and 60s was still a young nation in which people were more concerned with living day to day, and not an opportunistic future.

"Rents were always cheap, and we thought we would never need to buy, besides buying a home

was too hard in those days".

Peter and John explain that the boarding house is home, having been local residents and tenants of this boarding house for most of their lives. There are many more long-term tenants like Peter and John, who may have no idea that they qualify for special protection.

## A snapshot of social history

The Landlord and Tenant (Amendment) Act 1948 applies almost exclusively to an unknown number of aged pensioners, many of them women, living in old housing primarily in the inner suburbs of

**Today, protected tenants have unique rights: security of tenure in their homes and the right to be charged a fair rental, reflective of the landlord's costs.**

Sydney and in country areas.

A state-wide housing survey conducted in August 1939 concluded that there was a shortage of housing and that some rents had become excessive. There was an obvious need for legislation to control rents and to address the housing shortage. A new Commonwealth Government imposed uniform Australia-wide regulations in November 1941.

The Landlord and Tenant (Amendment) Act 1948, initially applied to all privately rented premises in New South Wales, including commercial premises. The Act replaced Commonwealth legislation introduced as part of a general policy of rents and prices control during World War 2.

Once the wartime regulations were repealed, the Landlord and Tenant Act 1948 came into effect. The postwar shortage of housing was acute and there were high eviction rates in Sydney, Newcastle and Wollongong. The newly created Housing Commission could not meet the demand for housing. So, under the 1948 Act, rents were based on 1939 values and could only be increased with Fair Rent Board approval. Landlords had to prove a "prescribed ground" in court before a tenant could be evicted.

In 1961 the Government established a Royal Commission to investigate the legislation. The Commission found that there was a housing shortage, mainly for people on low incomes. It particularly emphasised the hardship of pensioner tenants of whom there was an estimated 54,000 in New South Wales in 1960.

## New developments reveal protected tenancies

As economic change occurred, the 1948 legislation

was watered down as governments conceded to increasing demands from property owners and developers. All tenancies commencing after 1986 were no longer covered under the 1948 legislation. However, there are an unknown number of tenants in New South Wales who are still covered by the 1948 Act, but many do not know they are protected tenants.

Many protected tenants only discover that they have unique rights when their housing is threatened and they seek tenancy advice. Houses which hold protected tenants can be bought at a discount price because the buyer will be prevented from moving in or developing immediately. Nevertheless, developers who snap these properties up still take action to evict the tenants. When legal eviction is prevented by law, some developers have resorted to subjecting the tenant to harassment and pressure so they move on 'voluntarily'.

Eviction attempts sometimes follow the death of the original home owner and the inheritance of property by family members. In one such case, an elderly couple in their 70s and 80s, had lived in a self-contained apartment of a 4 bedroom Stanmore terrace for fifty years. They only discovered they were protected tenants when a new landlord tried to evict them in order to sell their home.

When the couple moved into the unit in the 1940s, there were no kitchen facilities, cupboards or storage space available. All the handy-work and craftsmanship was done by the husband, who was a carpenter and handyman during the second world war. The couple had met shortly after the end of the war, and moved into their Stanmore home, during a time of housing shortage in Sydney. The relationship between the tenants and landlord had been one of mutual understanding and respect. This all changed when the landlord died, and their home was left to relatives of the deceased. The new landlords wanted to sell their home, in order to cash-in on Sydney's boom housing market. The tenants felt betrayed:

"We thought we could stay forever. When we were young, homes were too expensive to buy and rents were cheap, and besides, we had put so much into making this our home, having paid for a sink and stove and cupboards to be added in the kitchen. Our children grew up here, it was also their home. Leaving was not an option."

Regular pressure from the developer lobby, to remove the remaining protections, are a real threat to the well-being of those vulnerable tenants that can still rely on some level of security of tenure and affordability. While the number of tenants affected may be small, the public interest in maintaining protected tenancies is no less today than when the protections were first enacted.

**Combined Pensioners and Superannuants Association**

CPSA housing unit can be contacted on: (02) 9281 9804



**There are hard times ahead for caravan park tenants if the government doesn't back down on GST fees for long-term park tenancies. Not surprisingly, park tenants are mobilising forces to show their local politicians that community issues count. Written by Harvey Volke.**

It's no exaggeration to say most people are upset about the effect the goods and services tax will have on their costs.

It's also true to say that for most private renters, while it is a relief that they won't have the GST charged directly against their rent, they're still going to face rent increases because of GST on good and services like repair and maintenance costs and services.

Which is why residential park residents are doubly irate: Not only will they get all those indirect increases loaded into their rent calculation with consequent rent hikes, but they will also be charged GST directly on to their rents as well. It must be said also that this is no less the case with boarding house residents, for whom nobody seems to be taking up the cudgels.

Insult is added to injury: Not only do they pay more, but they're discriminated against as well.

It's true, that for long-term residents - and for residents of parks where more than 70 percent of sites are long-term, people who have been there for more than 27 days (God only knows why that meaningless cutoff point was chosen) won't get charged GST on their full rent: they'll get charged GST on 50 percent of their rent.

But it's still discriminatory, and still apparently based on a belief that residential park - and boarding house - tenancies are "commercial" in some way that other tenancies are not. Presumably it's based on a rationale that they get "services" that other tenancies do not. It has to be said that service provision is pretty minimal in most parks, and what's more the residents pay for it as well - like water and electricity supply. And water isn't even included in the GST.

#### Community's poorest are hardest hit

Most residents who own their own homes are pensioners who've put their savings or their retirement income into buying a mobile or manufactured home and put it on site in a beautiful location. Any extra costs bite.

It's even worse for the lower income people who could never even contemplate such a purchase. These are people like single parents, unemployed people, people on disability benefit and so on. They gravitate to parks because while the rents are still expensive, mostly at least the access costs (e.g., bond, etc.) are not as unaffordable.

An unknown number are also referred by government departments like Community Services and Housing.

These people don't have legislative coverage at all for the first 30 days of occupation, and up to another 60 days. And some park owners have developed the cute habit of shifting them from site to site to keep them on the understanding they have no security. That's probably wrong, because it looks like a sham contract, but these cases almost by definition are hard to identify and get into the Tribunal.

This iniquitous 30/30 rule was originally conceived to deal with holiday lettings which subsequently become long-stay lettings. It's doubtful if the legislation was ever used that way. Instead, it's a way of setting up trial tenancies and of keeping people under the thumb.

So far as the GST is concerned, these people - the

offsider who was present got on the mobile and Larry hotfooted it over, knowing that he had well over 6000 constituents living in parks sitting on a margin of only 0.8 percent.

It so happens also that Anthony was one of the people we caught red-handed telling people they wouldn't be affected by the GST at all. When we wrote to him pointing out the error of his ways, he didn't admit error, but just sent a copy of the Treasurer's letter we'd had for months anyway, and which said they had to pay it only if the park owner chose to apply it (part of the government's trade off compromise was that owners could choose whether to charge it, depending on whether they wanted tax credits or not).

Anyway, Anthony made very soothing noises, and



lowest income of the lot - pay GST on their full rent for 27 days. And what if they get shifted after 27 days? Is the ATO or the ACCC likely to be interested in their plight?

Unfortunately, this group isn't really getting a look in at the countless meetings currently being held around the countryside, because the issue has really been swamped by understandably-irate manufactured home owners who are properly intent on getting the government to change its policy.

And you had better believe they are properly hyped up about it - both about the GST itself, and by the fact that they're being picked on.

#### Community information program draws crowds

Currently the Park and Village Service is doing a joint community information program on parks legislation with the Affiliated Park Residents' Association around the countryside. We've been to meetings up and down the coast, and now we're moving further west.

And the hot issue of the moment is the GST. At question time, it usually dominates everything else. Not only how to cope with it, but how to stop it.

Some of the meetings have been very big - more than 250 at Tweed Heads (APRA says 450), and meetings of more than 100 are not uncommon.

And, of course, some of these meetings are in marginal National Party or Liberal Party seats: which also just happen to have lots of residential park residents in them.

Which is why when some people got very heated at the Tweed Heads meeting, Larry Anthony's

told residents how he was on their side, and was trying to persuade the government to change its tack. Trouble is somebody at the meeting taped his comments (not us, wish I'd thought of it) and fed them back to the Labor Party. And here, in all its pristine beauty, is some of what Anthony said:

"It's an issue that I'm taking extremely seriously, because I do believe, I do believe that in some of the drafting of legislation there is not an appreciation that caravan parks, you know if you look across the country, are not what is here, or some other parts of Australia when you've got people who are permanent residents, where they have equity in their own home or in your home, which is no different to a home ... I know a lot of you personally, and this is a big issue. And I hope I can come back to you shortly, and I will through your representatives and hopefully there can be a change. Thank you."

From the mood of the meeting, it's unlikely Anthony garnered many votes. Especially when the day after Cabinet decided to stand firm and make no concessions, Labor used the tape to devastating effect in Parliament.

Little wonder marginal Coalition MPs are worried. A week or so later, after some further such meetings on the south coast, the Liberal MP for Gilmore, Joanna Gash admitted the Government had committed a "stuff up" on the GST on parks.

Little wonder, also, that a number of park residents did a demo at Parliament House, recently, and got some coverage. This won't be the end of it.

Meantime, the Government is standing firm, and sounding increasingly shrill as it does so. Was that, "there'll be no change in the government's position, ever ...?"

## Park and Village Service

Park and Village Service can be contacted on:  
(02) 9281 7967



# Mind your language

**Finding a house or flat to rent is often the first activity for new arrivals to this country. Yet many people from non-English speaking backgrounds sign a tenancy agreement without understanding their rights and responsibilities - because they receive information only in English.**

Migrant tenants are not receiving critical tenancy information in their own language, despite the Department of Fair Trading printing the *Renting Guide* in 17 community languages. Two new reports support research done by the Tenants Advice and Advocacy Program which found that only 7% of non-English speaking tenants had received the *Renting Guide* in their own language.

Craig Johnston, in the report *'Cash or Cowboys: Barriers for entry to private rental by disadvantaged consumers'* noted that "Tenants from non-English-speaking backgrounds are less likely to access 'official' information about tenancies than other tenants ... Among the overseas-born respondents who mostly spoke a language other than English at home, only 8% reported they had received a *Renting Guide* in the relevant language."

Pearl Hui, researcher for a recent project auspiced by Immigrant Women's Speakout and Sydney University, gave interviews with NESB tenants and

with real estate agents in the Western Sydney area. Her draft report revealed that "... none of the participants have ever seen one in their native language. Some of them were given the English version by their real estate agents but never bothered to read it because they could not understand it. When the Guide in their own languages was produced in the discussion groups, it created great interest within the groups" (pp 36-37)

TAAP Services have been advocating (now with support from these two reports) that giving tenants the *Renting Guide* in their preferred language should be law.

## A role for the Department of Immigration

Many new arrivals have little access to information until they become aware of and connected to relevant community supports. One potential answer is being tried in Western Australia, where new arrivals receive an 'on-shore' information

package ('Welcome Pack') from the Commonwealth Department of Immigration and Multicultural Affairs (DIMA) which includes a booklet called *A guide for tenants in Western Australia*.

Johnson recommends that DIMA distribute a similar booklet for new migrants to New South Wales as part of an 'on shore' information strategy, including information on the rental tenancy system, tenants' rights, anti-discrimination, and sources of assistance in how to establish tenancies.

Sources:

'Barriers to market entry for disadvantaged consumers: private rental housing in New South Wales' - Craig Johnston for NSW Council of Social Services 1999.

Draft report 'Barriers to Access to the Private Rental Market for Non-English Speaking Background Women' - Pearl Hui for Immigrant Women's Speakout 1999.

## Dollar values From page 5

options available to government to expand public housing stock, such as utilising Landcom controlled areas for affordable housing provision.

Of those who rent in the private market, 46.3 % pay between 31-50% of their income in rent and 24.6% pay over 50% of their income to their landlord (4).

In NSW, Government efforts to provide affordable housing rely heavily on planning instruments. Local Government can oblige private developers to set aside a number of their units in each new complex for low-cost accommodation. In return, the government allows developers more room to build or tax concessions. However some developers are challenging even these mild measures. The mega-developer Meriton's successful challenge to South Sydney Council (see pages 1, 6 & 7) is just the latest example.

Unfortunately, while SEPP 10 is reasonably good policy, it is not a law and it is not fully enforced. In the case of a boarding house in Potts Point, the Department of Housing meekly suggested that 5 out of the 18 rooms be preserved for low-income

residents (5). The developers finally agreed, but they only have to provide these 5 units for a seven-year period. The rest of the rooms became part of the 'boutique hotel' planned by the developers and most of the residents left.

An alternative to the current system is to offer private tenants long-term leases or to control rents. Long-term leases are available to many tenants in some European countries such as Sweden. This ensures security of tenure, unlike NSW, where private tenants never know if they are going to receive a 60-day 'no cause' termination notice. Even in New York, rent control legislation has been enacted, and although recently watered down, the law still ensures rent stabilisation (6). Rentwatchers, the Tenants Union and many other groups have suggested rent stabilisation to the NSW government.

The Greens listened to tenants and tried to amend the law last year. Part of the proposed legislation would have meant that rent increases would be limited to the increase in the consumer price index. The ALP Carr government rejected the bill, and risk being seen as a party for landlords and business. While Sydney's rents skyrocket Minister Watkins 'monitors' for an impact; his Department

of Fair Trading's official line is that 'there is no Olympics impact' in Sydney. The message here is that if tenants want something done, they might just have to start resisting evictions collectively again.

Tenants' groups feel as if they have been banging their heads against a wall when it comes to persuading governments to be more serious about housing assistance. The time for writing reports and monitoring is well and truly past. The report by Minister Knowles' own taskforce, 'Affordable Housing in NSW: the Need for Action' outlines a complete strategy to ensure that people in NSW have access to adequate and affordable shelter. The recommendations should be taken up as soon as possible.

1 The Report of a Ministerial Taskforce on Affordable Housing, 1998: 10.

2 Australian Institute of Health and Welfare, 1999: 141

3 The Report of a Ministerial Taskforce on Affordable Housing, 1998: 30.

4 Australian Institute of Health and Welfare, 1999: 142.

5 See Polly Porteous/Redfern Legal Centre's paper on boarding houses and SEPP 10.

6 See the U.S. based website <http://www.tenantnet>

## Class action gets results for caravan park tenants By Jenny Watson

Residents of one residential park on the NSW Central Coast had a significant win in the Residential Tribunal recently, in a case about rent increases within the fixed term of a tenancy agreement.

The Park Owner/manager had asked for a rent increase of \$8 per week within the fixed term of the residents agreements. Under the Residential Parks Act 1998, the Park Owner can raise the rent within the fixed term only if there is a term in the agreement which specifies details of the rent increase and specifically the method by which the Park Owner calculates that increase. Section 53, Subsection (6) of the Residential Parks Act 1998 states:

"The rent payable by a resident under a residential tenancy agreement that creates a tenancy for a fixed term must not be increased during the currency of the fixed term unless the amount of the increase, or a method for calculating the amount of the increase, is set out in the agreement."

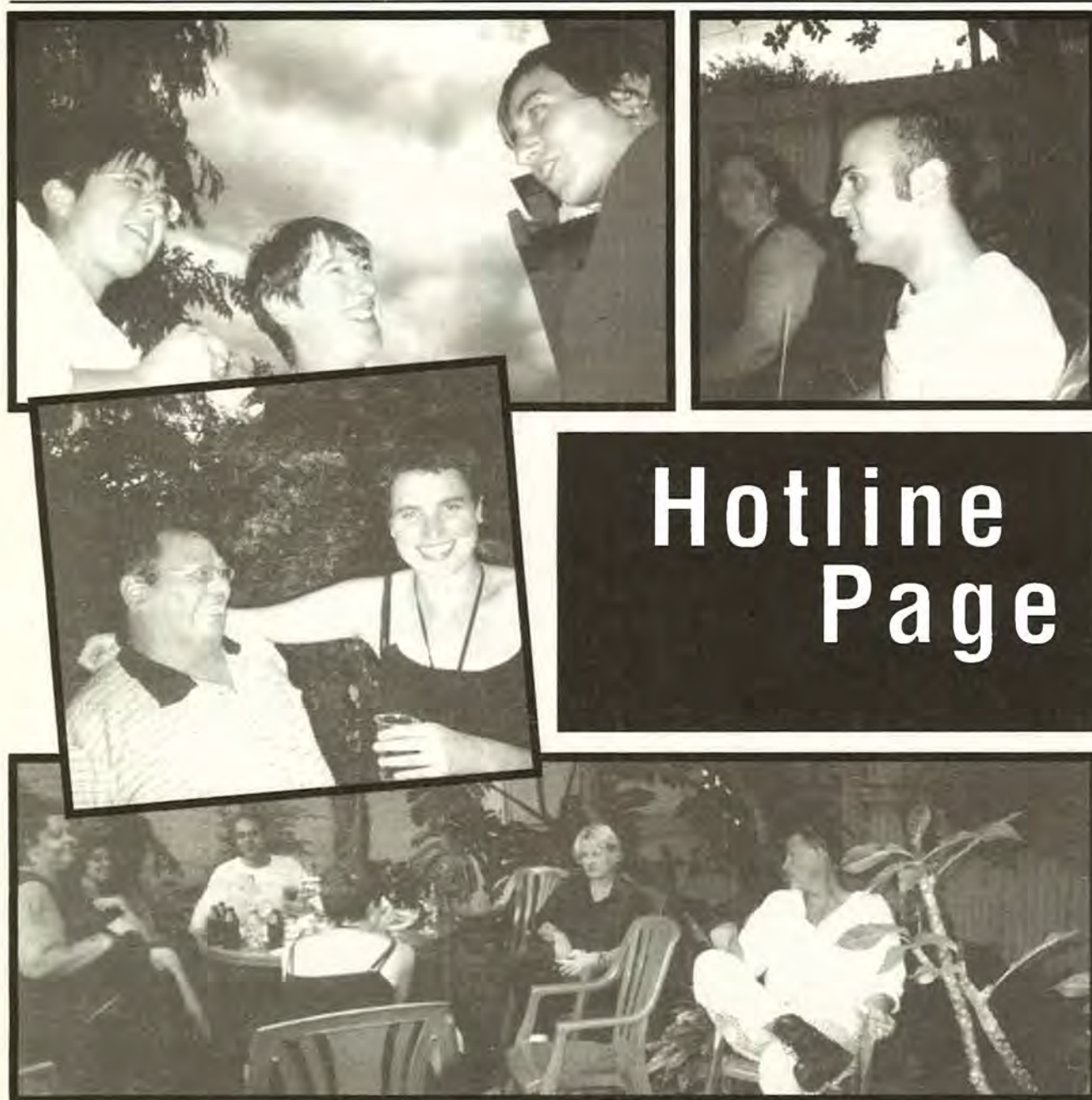
The Park Owner had this term in the agreement:

"The rent in this agreement and any subsequent agreement hereto, shall be reviewed annually on the first day of July. The revised rent will be not less than the current rent being paid prior to the review and may, at the Landlords discretion, be adjusted upwards to an amount commensurate to prevailing Market Value."

The Residential Tribunal ruled that the rent increase of \$8.00 per week was invalid because the words "be adjusted upwards to an amount commensurate to prevailing Market Value" do not constitute a method of calculation.

The Park Owner appealed to the Supreme Court, saying that the Tribunal Member was wrong in law. The Supreme Court ruled that the Tribunal had not erred in law, because: "An amount commensurate with prevailing market value" is a statement of outcome in distinction from a method of calculation.' The matter was dismissed and we are unsure as to whether or not the Park Owner will appeal to a higher court. This decision is now a precedent which can be referred to in future tribunal matters regarding such rent increases inside the fixed term.





## Hotline Page

## Volunteer

The **Tenants Union Hotline** is a volunteer service that has been giving free advice to tenants in NSW for over 20 years.

Volunteering is one important way that tenants assist other tenants.

It's easy to become a volunteer. All you have to do is attend two days of free training where you'll learn about tenancy law, how to give phone advice and the obligations you have when giving advice. After that, you can volunteer for one session (3 hours) a fortnight at a number of community organisations throughout NSW.

Training is held three or four times a year. The next New Worker Training is being offered on August 7 & 8.

If you want to become a volunteer contact Nadya Haddad at the Tenants' Union on 9247 3813 or [Nadya\\_Haddad@fcl.fl.asn.au](mailto:Nadya_Haddad@fcl.fl.asn.au).

**Pictures are from the Hotline volunteers Christmas Party at the Tenants Union.**

**Left: Sharon, Nadya, Nassim, Polly, Annette and Luke.**

**Above: Cecil and Polly.**

**Top left: Carmen, Gael and Mary.**

**Top right: Sharon and Nassim.**

# Q

Dear Tenant News

I have just moved house to take up a job. I will be using one room of my new house as a home office for work. The house is really good. The agent offered the rental agreement on a 'take it or leave it' basis. I needed the house and signed the agreement.

Now I have found that there is a strange term in the agreement about GST. It says that if I use the premises for non residential purposes and as a consequence GST is payable on goods or services provided by the landlord, then I have to pay the GST amount to the landlord. What does this mean.

Alison  
Corrimal

# A

Dear Alison

Tenant News cannot claim to be expert in taxation matters. If there is a demand for GST amounts by your landlord, you should take advice from an expert accountant or lawyer, or both.

We have called the Tax Office and discussed GST in relation to residential tenancy and non residential use. There are a few general comments we can make.

First, there is no GST payable by landlords or tenants for residential rents of flats and houses.

Second, there can be GST payable on commercial rents. It depends on whether the landlord is in the business of letting commercial premises or not. If the landlord has only one (commercial) property and rents it out, it can be treated as an investment, not a business, and so no GST on the rent.

Third, where there is a minor commercial use of residential premises, the rent is not treated as partly commercial and partly residential. The rent is treated as residential and so no GST is payable on it. Your tax return may include a claim for expenses of your home office for next year in the same way it will for this year (talk to your accountant or tax agent). The Tax Office says there will be no accounting by them for GST regarding such an expense claim. Remember, this discussion is based on the commercial use being a minor use of the premises.

Tenant News can claim to know something about residential tenancy. Your question raises a number of aspects of NSW tenancy law.

## From the Hotline

First, in every Residential Tenancy Agreement, the landlord agrees to pay rates, taxes and charges in connection with the premises other than prescribed charges and charges for utilities. GST is not a prescribed charge.

Second, it is illegal for the landlord (or agent) to demand or receive, from a tenant or prospective tenant, any money other than rent, bond and prescribed charges.

Third, the tenancy legislation is effective despite arrangements or agreements that appear to defeat it. Making agreements that appear to defeat or avoid the effect of the legislation is called "contracting out" and it is illegal.

Fourth, the landlord has obligations to maintain the premises in reasonable condition and reasonable security.

Fifth, agreements between landlords and tenants are exempted from the operation of the Residential Tenancies Act 1987 if the predominant use of the premises is for trade, profession, business or agriculture.

What on earth can your landlord mean by the agreement term you mention? It is difficult to say. GST will be payable on goods and services that are applied to maintenance of the premises. This will be collected by tradespeople who do the work and supply the goods. It will be paid by the landlord. A minor non residential use of the premises appears to be of no relevance.

The Tenants Union is collecting renting and GST stories, myths and ripoffs. Please send them to the Policy Officer, Nick Warren.

## Need advice?

The Tenants Union Hotline can give you tenancy advice or refer you to your nearest Tenants Advice and Advocacy Service. Call

**(02)9251 6590**





# Tenants Have Rights!

## How to avoid problems

- ☒ Start by reading your residential tenancy agreement. Get some help if you can't understand it.
- ☒ Tell your landlord, or the landlord's agent, about any problems and tell them what you want. You should confirm anything you agree to in writing and to send your landlord a copy.
- ☒ Remember that the agent works for the landlord.
- ☒ Keep a written record of what happens between you and your landlord or agent, including what each of you said and when.
- ☒ Keep copies of your:
  - Residential Tenancy Agreement
  - Condition Report
  - receipts for rent and bond money
  - all letters and written records.
- ☒ Never sign a blank form or any papers you don't understand.
- ☒ If you receive notice of a Tribunal hearing you should always attend.
- ☒ Remember that if you stop paying rent you can be asked to leave. Rent strikes do not work.

## For more help

Contact your local Tenants Advice and Advocacy Service. Workers will be happy to call you back if you live out of the area.

## Inner Sydney

02 9698 5975

## Inner Western Sydney

02 9559 2899

## Southern Sydney TAAS

02 9787 4679

## South West Sydney

02 9601 6577

## Eastern Suburbs Tenants Service

02 9386 9147

## Western Sydney Tenants service

02 9891 6377

## Northern Sydney

02 9964 9654

## Central Coast TAAS

02 4353 5515

## Hunter TAAS

02 4929 6888

## Illawarra/South coast

02 4274 3475

## Mid Coast TAAS

1800 777 722

## North Coast TAAS

1800 649 135

## North Western NSW

1800 642 609

## South Western NSW

1800 642 609

## Aged Tenants Service

1800 451 488

## Aboriginal Services:

## Western NSW

1800 810 233

## Southern NSW

1800 672 185

## Northern NSW

1800 248 913

## Greater Sydney

02 9690 0020

**Your landlord can't evict you—only the Residential Tenancies Tribunal can do this.**

## Tenants' Union Hotline

Ph: (02) 9251 6590

Phone advice:  
Mon-Fri 9.30am-1pm and 2-5pm

# Get a new lease on life... join the Tenants' Union!

## 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 one co-op share. All fees include GST.

Yearly Fee: Tick the fee that applies

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

Waged worker \$16

Organisations \$32

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 .....

