

**tenant****NEWS**

Free newspaper of the Tenants Union of NSW

**Spring Edition**

Issue 69 September 2001

**on-line info for nsw tenants****tenants.org.au**  
**new tenants website**

**Tenancy services across the state now have an online tool to help protect the rights of tenants in NSW.**

After a steep learning curve for the Tenants Union and the network of tenancy services, tenants.org.au is now available to all tenants and tenant advocates who are able access the Internet.

Minister for Fair Trading John Watkins launched the new site **tenants.org.au** at a function held at the Pacific International Hotel Sydney. Addressing a large audience of tenants, tenancy workers, legal and community representatives as well as officials from the Department of Fair Trading and the Law & Justice Foundation, the

occasion was a cause for celebration – a project over 2 years in the making was ready to go 'live'.

In his speech Minister Watkins said of the new website "This site will make vital information easily accessible to all. Fact sheets in English as well as community languages, sample letters, contact details for tenancy services, articles on tenancy & housing issues and the Tenants Rights Manual will provide a wide range of useful information for tenants - including information for residential park tenants and boarders & lodgers, who we all know are some of the most vulnerable tenants in our community".

The minister went on to say the **tenants.org.au** website would provide tenants and community

workers with a range of resources designed to educate and inform, in order that tenants may exercise their rights in NSW.

**tenants.org.au** is also well supported by the Law & Justice Foundation of NSW. Director Geoff Mulherin was enthusiastic about the new site's potential. "(We are) particularly pleased to be a supporter of this project, both in the form of financial support for the development of the website, but also on an ongoing basis as host for the web site. This project ensures the online availability of plain language information on tenancy issues, produced and updated by community organisations - the Tenants Union and the Network of Tenants Advice Services - that really understand the legal information needs of their clients. It is easy to navigate, easy to understand, timely and empowering. Without doubt it will strengthen the tenancy network in NSW" he said.

In its first three months of being online there have been over 60,000 hits per month to the **tenants.org.au** and as its URL begins to appear on the major search engines these figures are sure to increase.

While new technology is exciting, the Tenants' Union and the Tenancy services do not intend to rely on the website exclusively at the expense of direct contact with tenants. As Chairperson of the Tenants Union, David Vaile said in his launch speech 'nothing will replace the personal assistance of a skilled, sensible and well resourced human being' such as those found in the Tenants Advice & Advocacy network in NSW. It is hoped that **tenants.org.au** will be a tool that will assist in enhancing this exchange between a tenant and their advocate.

(For the full text of the TU Chairperson's speech see page 2)



left to right: Law and Justice Foundation Director, Geoff Mulherin; Central Coast Tenants' Advocate, Jenny Watson; Chairperson Tenants Union Board, David Vaile; NSW Minister for Fair Trading, John Watkins at the tenants website launch.

**prisoners and public housing - the double whammy**  
**Pottery Estate - a great injustice**



## Union Board

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The views expressed herein do not necessarily reflect those of the Production Team or the Tenants' Union of NSW.

## Aims of the Tenants Union

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

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.



## Address at the launch of tenants.org.au Tenants' Union Chairperson, David Vaile

tenants.org.au home page



a tech nerd bloke's fetish. The Tenants Union was meanwhile adopting the cheap and practical First Class Law Bulletin Board System established by the community legal centres with the help of the Law Foundation and the big end of the legal IT world. We were also working on a distributed database system for casework, planning and stats which, in what must be

Minister Watkins, distinguished guests, our friends who've come from far afield, exhausted web workers, ladies and gentlemen, thank you all for coming to this launch today.

We've heard a lot about Internet Time, the feverish speed of the spectacular rise and fall of the Internet. Before we invite the Minister to open the new tenants web site, I'd like to take you back into real time.

25 years ago, I was in Queanbeyan finishing school, and the Tenants Union was being formed. There were few if any dedicated tenants advocacy services in NSW. The first real personal computer, the Apple II, was still a twinkle in Steve Jobs' eye, Bill Gates was yet to form Microsoft, and the Internet was only just creeping out of the American military labs.

10 years ago, a scientist in Switzerland, Tim Berners-Lee, had just invented the World Wide Web to help him find his desk under all the papers. But it was a dark hour for services for tenants in NSW. The Tenants Union was regrouping then after the Greiner government cuts closed almost all the 20 original tenancy services, and nearly closed the TU itself. The worst was averted with the help of the Legal Aid Commission, the Law Foundation, the Uniting Church and countless volunteers and supporters.

### tenants.org.au

A brave new TU board came out fighting and put together the concept for what is now the state wide Tenants Advice and Advocacy Program, and campaigned shamelessly for it in every even remotely suitable conference, inquiry and venue. I don't know what they said or whose ears they bent, but it seemed to work. Governments of both persuasions enthusiastically come to the party.

5 years ago the TAAP program was under way and the TU was pushing innovative tenant services like the hotline, the Tenants Rights Manual, expert advice from independent dedicated well-trained professional advocates, multilingual information, local community education, widespread services in the regions and for groups with special needs such as the Aboriginal community and park dwellers. Even legal advice and the odd Supreme Court test case.

The Internet World Wide Web was just taking off then, but it was still seen as a bit of a wank,

a fairly unusual event in the IT industry, came in on budget, on time, and even did roughly what the users wanted.

Coming up to the present day, the Web has come of age. Many government, community and educational organisations now accept it as a useful, if not essential, communication medium, (especially to break the tyranny of distance and isolation felt in places away from the main urban centres). We can see this new web site today as the latest in the line of innovative services developed for tenants by the Tenants Union and the Tenants Advice and Advocacy Program, with the essential encouragement and support of the Department of Fair Trading and the Law Foundation.

That's not to say that the Web is a panacea, the answer to every tenant's needs. Speaking as a former practising Luddite, a techno sceptic, it's obvious that every technology has its down side. In the case of community services, there's always the risk that new Internet tools will be seen to be much more effective in helping the economically disadvantaged, people who can't read, the homeless or itinerant, people with disabilities and others already marginalised than they can ever be. Nothing will ever replace the personal assistance of a skilled, sensible and well resourced human being, and we have to be careful to remember that.

That being said, I think there's some wonderful material on the new site for those tenants who can get online, for their advocates and helpers, for intermediaries from all sorts of public and private agencies, for students and the media.

The Tenants Rights Manual is a great resource, the TAAP service locator will help find your nearest adviser, the multilingual advice sheets now become much more accessible, and the sample letters will no doubt be greeted with pleasure by all who receive them.

Speaking of time, I think mine is up. I'd like to quickly thank Minister Watkins again for coming today, and for the support of his Department over the years, I thank Social Change Online for their great work on the site and in particular for whipping up a portable web server for the demo in Internet time, the Law Foundation for their contribution, the Rental Bond Board for safeguarding tenants money and enabling the TAAP to use some of the interest on it for tenant services and translations, and all those who worked on the site, particularly Carol Hannaford, Ben Eagleton and Gael Kennedy.

Thanks to you all.





# Pottery Estate, Lithgow: a great injustice is being perpetrated

*In the last issue of Tenants' News (Issue 68) Robert Mowbray from Western Sydney Tenants Service reported on the battle between a developer, the local council and a group of long term tenants at the historic 'Pottery Estate' in Lithgow. Here is his update on their situation.*

In November 2000 Lithgow City Council approved an amendment to its Local Environment Plan rezoning some land within the Pottery Estate to business. This amendment was recently gazetted.

In March 2001 Council approved a Development Application for an Aldi supermarket with a number of conditions attached to the development application. Owners of three of the houses effected by the Aldi development have settled with the developer 'Ceedive', with two of these as a result of an unsatisfactory form of mediation organised by Lithgow Council. (see Issue # 68 April 2001)

*Four houses adjacent to the development were subsequently demolished, meaning a total of five houses demolished so far.*

Four houses adjacent to the development were subsequently demolished, meaning a total of five houses demolished so far.

Western Sydney Tenants' Service provided two tenants - John and Simon (not their real names) with a "top-of-the-range" Porta-Potti using environmentally safe chemicals as an interim measure, following cessation of the pan service by the Lithgow Council. In April 2001 the council served orders on John and Simon to cease using their dwellings immediately because of the use of chemical commodes.

Council's action is extraordinary given that, Council itself ceased provision of a pan service to both John and Simon in February 2001 and, secondly, that both residents are prepared to consider alternatives for an effluent disposal system - but only when they have certainty about their future on the Pottery Estate.

Council is aware that John and Simon are locked in a dispute with Ceedive, the owner of the land, and that they may be throwing away good money by putting in alternatives for an effluent disposal system before they have any certainty of their position.

Council's action suggests an attempt to expedite the eviction of those residents who have lost the pan service, resulting in a benefit for the developer. These matters are currently before the Land and Environment Court. In addition, the developer appears to be withholding consent for the residents applying to Council for installation of septic tanks.

In May 2001 Council re-issued the demolition order on the house owned by John. (See story in the previous issue of *Tenant News*, #68, April 2001.) This matter is also before the Land and Environment Court.

Part of the Pottery Estate is listed on the Estate Heritage Register. Lithgow City Council

engaged consultants to undertake a heritage study in 1997-98. The results of this study have never been released. It is believed that the authors of this report did not have the opportunity to look at all of the houses on the Pottery Estate, including those occupied by the residents who now face possible eviction. As a result, in early April 2001 the solicitor for the residents and WESTS wrote to the NSW Heritage Office asking that an Interim Heritage Order be placed on the Pottery Estate. A decision on this request is still pending.

In April WESTS wrote to Council about possible breaches of the development consent conditions by Ceedive, including "services to residents ... to be maintained to the level as at the date of consent".

WESTS advised that in early April 2001, one of the trucks owned by Ceedive apparently broke the water pipe leading to one of the resident's house. Both Ceedive and Council were immediately notified. Council was asked to direct Ceedive to reconnect the water supply to the house. The Council's response when notified that the developer was refusing to repair the water pipe was to serve orders on the resident to cease occupying the dwelling immediately.

Although this resident has had to find temporary, alternative accommodation following discontinuation of the pan service and orders served by Council, his family is maintaining the house and its surroundings. They waited over two months before water was finally restored to the house.

Other possible breaches by the developer include dumping building materials from the demolished houses, tree trunks and other refuse and creating a large quarry on the part of the estate known as "Chinaman's Gully".

In June 2001 Council advised that "breaches of the consent have not occurred provided approved plans are submitted". In early August 2001 Council advised that the plans "have not yet been submitted pending return of the development consultant ... overseeing the project". It seems apparent that Council extends considerable flexibility to the developer, but little to the tenants.

On behalf of the residents WESTS has lodged a complaint with the NSW Ombudsman about Council's failure to act reasonably, consistently, impartially and fairly in its dealings with the residents.

*Council is aware that the residents' legal situation is complex and that they have an arguable case to remain on the land.*

Council is aware that the residents' legal situation is complex and that they have an arguable case to remain on the land.

The actions of Council can be interpreted as an attempt to assist the owner of the land in evicting the residents. As such, their actions appear to be both outrageous and a denial of justice.

Residents who remain on the estate watch in fear, uncertain as to what their future holds. All they want is justice: to be able to stay or receive reasonable compensation if they must leave.

They have been thwarted in this by the actions of Lithgow City Council.

**Meanwhile the battle continues ...**





## Shelter Gains Harvey Volke

Harvey Volke (also known as Michael Weir\*) continues his third decade in the community housing sector with his move to Shelter NSW. All those who worked with him at the Tenants' Union, Housing Information and Referral Service, Department of Housing, Western Sydney Tenants' Service and Park and Village Service have plenty of anecdotes to share. Robert Mowbray a long time colleague has a couple...

Lock outs became illegal in 1978, so I fed a story to the editor of the local suburban newspaper, one Harvey Volke. A real estate agent in Leichhardt had pinned his letterhead to the front door of a tenant's flat saying "Things are going to get rough for you", threatening a lock-out. Harvey blew the letter up on the front page of the newspaper. Harvey was sued for \$20,000. Redfern Legal Centre organised for Murdock's libel solicitor to defend Harvey at no cost. The agent dropped the matter. But not before we discovered some other ruses of this particular real estate agent: an attempt to circumvent the provision banning "lock-outs" by removing the front door from a tenant's flat; and a tenant who went to the Rental Bond Board to claim her rental bond — only to discover that the agent had beaten her to it. The agents claim was countersigned by her husband ... However, her husband had died six months before the tenancy had ended! It wasn't long before Harvey was working with the Tenants' Union.

... Then, in the late 1980s Harvey and I spent a number of years working in Department of Housing where we administered the Housing Information and Tenancy Services (HITS) Program, the predecessor of the Tenants' Advice and Advocacy Services ... all those in the Tenants Advice and Advocacy Services Network

are acutely aware that both Harvey and I represent one part of the disability sector ... deaf people who have a tendency to shout! Well, other staff in the Department of Housing complained about the level of noise in our section. Harvey responded by sticking up the following notice: "Unfortunately it is characteristic of audial disability that people find it difficult to hear what is being said without an increase in the level of sound. This condition is only partially relieved by the use of hearing aids. It is further a characteristic of audial disability that sufferers tend to speak and laugh more loudly as they are unable to hear themselves ... Given the above situation, the end result of efforts to reduce noise levels may well prove to be effective floccinaucinihililification. \*\*!

During the 1990s we teamed up again at Western Sydney Tenants Service. But I saw less and less of Harvey - Not that he wasn't around. It was his horizontal filing system that grew and grew and grew and obscured all vision of what was behind. His filing system is legionary, his desk resembling an archeological dig. Harvey could instantly pin point the date of a document by the distance from the top of the pile. This filing system apparently replicates itself at all his work places just ask Di at South Wests Sydney Tenants Advice, or Sean & Joy at Park and Village Service.

Like a phoenix the Tenants Advice and Advocacy Program arose out of HITS, and Harvey played a key role in the political process that led to its establishment in November 1994. Harvey was one of many housing activists who kept the need for tenancy services alive during those lean years following the axing of the HITS Program in 1989 by the Joe Schipp, NSW Coalition Housing Minister.



Harvey Volke

His political nous has been relied upon by many over the years. Harvey's legacy is his colourful language (befitting of one who worked in the shoes of the Fisherman), his ability to knock up a good article, and a love of literature (meaning he is a great person to edit a document or even proof read your thesis). Perhaps more than anything, we owe him much for the wider perspective on housing issues that he gave the Tenants' Advice and Advocacy Services Network and that he will continue to contribute at Shelter NSW.

**Robert Mowbray**  
Western Sydney Tenants Service

\* See "Courage and Intrigue in Sydney", Australian Society, March 1989 pp.37-39 ... Relations between lobby groups and governments are always prickly. Michael Weir looks at the ups and downs of rent reform in NSW.

\*\* See The Shorter Oxford Dictionary, p.770

## History and Background to NSW Tenants Services

### Tenants resist evictions

Tenant activism has a long history in New South Wales. The NSW Rent Payers' Association provided a telephone advice line for tenants as early as 1910 and resisting evictions was a vital part of defending tenants' rights during the depression years of the '30's. It was the focus on housing-related poverty uncovered by a government Inquiry into poverty in the 1970's, which provided the impetus for renewed activism to protect the interests of renters.

### Tenants' Union formed

People concerned with unfair housing conditions began to articulate a new agenda for housing justice which led to campaigns for fairer laws, the foundation of the Tenants' Union and the development of funded services to advise and assist tenants.

From 1980 NSW tenancy services funding was provided by the Australian Legal Aid Office, then by the NSW Department of Youth and Community Services. Volunteers and staff from community organisations sympathetic to the aims of the Tenants' Union operated these tenancy services.

### Networking begins

In 1986 and 1987 the Tenants' Union set up twenty independent, and staffed services called the Tenants' Advice and Housing Referral Services.

At this time the Union and Services were funded under the Housing Information and Tenancy Services Program of the NSW Department of Housing. Unfortunately, a change of government in 1988 saw the axing of this program.

A number of local government councils provided funds for part-time services to continue in their areas. In 1990 the Uniting Church Board for Social Responsibility established a full-time tenants' service in Western Sydney and several community legal centres also took on the task of giving specialist advice to tenants

### Today's Tenants Advice & Advocacy Services

In 1993 after a long campaign, the State Coalition Government agreed to re-establish tenants' services across New South Wales. The new network was called the Tenants' Advice and Advocacy Program (TAAP) - and so became the TAAP Services.

Today the TAAP service network is made up of 14 generalist services plus 5 dedicated to Aboriginal and Torres Strait Islander tenants. The network also includes resource bodies for residential parks and aged tenants, with the Tenants Union being the peak Tenants organisation and resource body for the entire TAAP network.

## Unfinished business



The story of the Tenants' Union of NSW 1976-1996

Paul Mortimer

Funding for TAAP, is provided by the Rental Bond Board Interest Account and the Property Services Statutory Interest Account (formerly the Real Estate Agents Trust Account), through the Department of Fair Trading.

Unfinished Business by Paul Mortimer provides a comprehensive history of the fight for tenants rights. Available from the Tenants' Union or via [tenants.org.au](http://tenants.org.au).

This information is from the 'About Us' section of [tenants.org.au](http://tenants.org.au)



## Worker Profile - Deidre Dowsett Northern Rivers Tenancy Service

**"I have a reputation as the tenancy worker with the weirdest cases – I'm probably the first to have two cases where the tenants were locked in instead of being locked out. One Landlord thought his tenants wouldn't pay the rent so he locked the tenants in their house by chaining the gates with padlocks, the other Landlord didn't like the tenants so he ploughed up the access road so the tenants couldn't get the car out"**

Deidre Dowsett laughs as she relates story after story about the travails of the North Coast Tenants she has assisted from the Lismore based Northern Rivers Tenancy Advice & Advocacy Service (NORTAAS) which operates from the Lismore Community Legal Centre.

Along with Co-workers – Christie and Lois, Deidre covers more than 1000 kilometres per month in a region with the highest unemployment and one of the highest growth statistics in NSW.

"This creates huge housing shortages and high rents, long Department of Housing and community housing lists and lots of homeless people who are not as visible as in Sydney" she says.

Deidre moved to the North Coast with a background in community education and discovered she loved the job of being a tenant advocate. "The job is never boring or static – I can't imagine anyone ever knowing everything about tenancy as it is constantly evolving, and the whole social justice approach means I'm literally helping in a practical way"

Deidre is known as a multi-skilled advocate among fellow tenancy workers and the many tenants she has assisted. She can help all types of tenants, including Public Housing tenants, caravan or residential park tenants. Private rental tenants in towns as well as those who

may be renting rural properties in a region that stretches from Tweed to south of Grafton and west to the mountains.

Deidre finds her casework often finds her appearing with a tenant at the Residential Tribunal held in a number of locations on the North Coast.

While at the tribunal for a scheduled matter she is often called on to provide assistance to a tenant on the spot. "You're almost a duty advocate – if you've driven 2 hours to Tweed on one matter and there are other tenants there that need assistance, then you have to help them."

Deidre says that like everywhere else, the North Coast region has both private landlords and Real Estate Agents who 'think they do not have to follow the rules'. "Even though the Residential Tribunal is set up as part of consumer protection you still get tenants having to appear against say, a Real Estate Agent who should know what they are doing. A lot of Real Estate Agents often believe the tenant will 'roll-over' – especially vulnerable tenants. It evens the scales when I can help."

According to Deidre, being part of the network of tenancy services in NSW helps the 3 North Coast tenancy workers keep going. She considers it 'one of the few networks that actually does work.' "The range of experience is really



Deidre Dowsett

interesting, a mix of urban and rural with the sharing of information and expertise being really valuable. Tenancy issues are so diverse – for example we don't get any 'Protected Tenancies', but I'm relieved to know that there are those in the network that are experts on it."

Despite the frustration of advocating for caravan park tenants who are constantly disadvantaged by the lack of tenancy protection – this being her pet area for immediate reform, Deidre is happy with her job and the North Coast lifestyle. "It would have to be a fairly incredible job offer for me to make a change. I'm happy to continue, as I haven't got too jaded and cynical yet! Did I tell you about the case where the tenants were evicted due to having sex too loudly on the trampoline in the backyard?" Deidre is right she does get some weird cases and we are glad she is there to handle them!

**By Carol Hannaford**  
Information Officer, Tenants' Union.

## Introducing the Energy & Water Ombudsman

Every day, the Energy and Water Ombudsman (EWON) is contacted by people living in rented accommodation, particularly those on low incomes. Sadly many of these people are facing disconnection of their electricity or gas or have already been disconnected.

For example, Roger started to receive very high bills after first moving in to his new rented accommodation. Despite making regular payments, he was unable to pay off the entire account and his power was disconnected six months after moving in. Both he and his financial counsellor had attempted to negotiate an acceptable payment arrangement with the provider, without success.

When Roger contacted EWON, he had been living without electricity for almost eight months. EWON contacted the provider and they agreed to waive the outstanding bond if the customer agreed to have payments deducted fortnightly from his bank account. Roger was reconnected immediately after paying the remaining \$100 outstanding. Since making this direct debit arrangement, the provider reports that Roger has always

been ahead in his bills and has maintained the direct debit payments. Consumers or advocates can contact EWON if they are dissatisfied with any decision or action of their electricity or gas providers or our member water providers. Generally, customers should attempt to sort out the problem first with their provider. Matters that EWON can investigate include; disputed accounts; disconnection or restriction of supply; actions of a service provider that affect property; delays in connection, quality of supply.

The Ombudsman is independent and able to make decisions without interference based on what is fair and reasonable in the circumstances of each case. EWON's service is free to consumers.

EWON can be contacted on  
**Freecall 1800 246 545**  
from anywhere in New South Wales. Other information about the Energy & Water Ombudsman NSW is available at our website,  
**www.ewon.com.au.**

**Having problems with electricity, gas or water?**

The Energy & Water Ombudsman NSW (EWON) provides an independent way of resolving complaints for customers of electricity & gas providers, & the larger water providers in NSW.

You can contact EWON if you are dissatisfied with any decision or action of your provider, that you have been unable to resolve with the company, including:

- disputed accounts
- disconnection or restriction of supply
- quality of supply.

The Ombudsman is independent and can make decisions based on what is fair and reasonable. EWON's service is free.

FREECALL: 1800 246 545      FREEFAX: 1800 812 291  
EMAIL: omb@ewon.com.au      WEBSITE: www.ewon.com.au

**ewon** Energy & Water Ombudsman NSW



# PUBLIC HOUSING RENT HIKE

**By Rita Wilkinson, South Sydney Tenants Advice & Advocacy Service**

The NSW Department of Housing has recently increased the market rent on many of its properties – in some areas by up to 80 per cent. While tenants cry foul at the Department's calculations, a loophole in the law allows the Department to get away with it without challenge.

In April this year, tenants of the NSW Department of Housing received a painful reminder of the high price of rental housing when they were issued notices of changes to the market rent of public housing properties. Though the 'market rent' applies to all public housing properties, most tenants of the Department of Housing pay a rebated rent based in their level of income. However, a significant number of tenants do not qualify for the rebate and pay what the Department figures to be the 'market rent' – and many of them have now been hit with big increases.

*In many cases those increases were excessive.*

In many cases those increases were excessive. It is understood that increases were generally capped at \$60 per week but one Tenants Advice Service reports a case where the rent on a bedsitter was increased from \$85 per week to \$155 per week – an increase of over 80 per cent. In many cases across the inner west, eastern suburbs and southern Sydney, the Department did increase the rent by \$60 per week even though it could not be justified because the Department had not maintained its dwellings.

Because of the Department's neglect, many of its properties are not comparable to the local private rental market. Jean has lived in her western suburbs cottage for over forty years and raised her family there. Recently her adult son returned to care for her and the rent was increased to market rent. The Department is now seeking an increased market rent even though it is Jean who has maintained the premises over the last forty years. Until now the Department has made no offer to compensate Jean for her costs but are still arguing that she should pay the increased market rent.

*Many tenants on market rents have lodged excessive rent increase applications with the Tribunal.*

Many tenants on market rents have lodged excessive rent increase applications with the Tribunal. And surprisingly many of those cases exhibit similar trends. When the Department issued the rent increase they did not obtain valuations. Instead it appears that the Department averaged increases in the private rental market for each suburb and then

applied that average to each of their properties in each suburb.

Valuations were only sought when a tenant complained to the Department. And it is from those valuations that the trap of using averages is highlighted. John and Kim lease a two bedroom cottage in Sydney's southwest. The Department's valuation compared their property with three bedroom houses with features (such as lock-up garage, front fencing, and landscaped gardens) non-existent on the tenant's cottage. In another example from northern Sydney the Department's valuation stated that the increase could not be justified as the premises were in original condition, there had been no improvements and the area had a relatively high incidence of crime.

In one case that has been finalised at the Tribunal the Department could not support the increase. Fred, the tenant of a bedsitter in Dee Why, was notified by the Department that the rent would increase from \$85 to \$155 per week. In their evidence the Department relied on valuations that compared that property to one bedroom units and garages. Fred was able to produce evidence of a much larger bedsitter with views over Manly Wharf that was rented for \$155 per week, and was successful in arguing that the increase for his home should be limited to \$110 per week. In the decision the Tribunal referred to the Department's Rent and Sales Report as a reliable guide to market rents and that that report identified \$120 as a market rent for the northern beaches.

But not all tenants are able to challenge the increases in the Residential Tribunal.\* When Francesca, a Department of Housing tenant from the South Coast, received her notice, she was paying a rebated rent. 'But I'm doing a training course, and expect to be working again in the next few months' says Francesca. 'When I do, I'll have to pay the market rent.' However, when Francesca applied to the Tribunal, she was informed of a loophole in the law. Under clause 22 of the Residential Tenancies Regulation, a tenant of the Department of Housing, while in receipt of a rental rebate, is exempted from the excessive rent increase provisions of the Residential Tenancies Act. On the other hand, applications to the Tribunal must be made within 30 days of receiving the rent increase. Tenants who, like Francesca, wanted to challenge the increased

rent they will have to pay in the future are trapped between a rock and a hard place – they cannot challenge the Department now, and they cannot challenge the Department later.

*These rent increases have had a significant impact on tenants paying market rents.*



These rent increases have had a significant impact on tenants paying market rents. The rent increases put an enormous strain on already tight household budgets. Because the premises often have fewer features or are in poorer conditions than comparable private rental properties some tenants have considered moving out of public housing. Their loss of secure affordable housing is a great personal cost. But it is also a loss to the public housing system that so desperately requires a diversity of tenants on a range of incomes.

In other cases some tenants are considering transfers within the public housing system to cheaper locations. These moves could see the loss of family and support networks, and in some cases the loss of employment. Such options undermine the purpose of public housing and instead reinforce poverty traps. For Nellie from the inner city this is one option she has canvassed. Nellie is disabled and without her local supports she cannot maintain her job. She cannot afford the new rent and is considering giving up her work and reapplying for the disability support pension.

But most tenants in public housing are on rental rebates. According to the Department's Corporate Plan 200 to 2003 some 76% of tenants currently receive a rent rebate. And it is anticipated that by 2003 this will increase to 96%. For these tenants

they have been denied natural justice because they cannot challenge the size of the increase. As in the above examples what the Department thinks is a market rent is not necessarily a true reflection of the market value of the property.

The Department of Housing recently increased rental rebates for new tenants from 20% to 25%

of gross income. For existing tenants they face an increase of 1% each year until their rebate is assessed at 25% of income. The Department justified this increase on the grounds that they needed to increase their rental income to improve maintenance on their properties.

The effect of now increasing market rents will only force from the system the limited number of working tenants. They will either leave or return to Centrelink payments. Hence the Department's source of rental income will increasingly rely on Centrelink recipients only. It is difficult to imagine that a public housing system based almost solely on statutory incomes is sustainable. Instead the Department should consider increasing the number of working tenants, and return to providing stable secure housing for those who cannot afford home ownership. As in the past, working tenants could pay cost rents and in return receive secure and affordable housing. In return the Department would increase its rental income, have more stable communities and endure.

\* The Tenants' Union is looking for a test case to argue that the rent increase notice is effective when the rebate is reduced. Contact the Tenants' Union if you think this situation might apply to you.

**For a Fact Sheet about Rent Increases see page 11.**



# Prisoners and Public Housing - the double whammy

To lose your freedom by being incarcerated is the punishment society inflicts upon those who have been convicted of breaking the law. But to also find, upon release, that you have lost all of your assets, are now jobless and homeless seems to be a dual punishment. Public tenants who spend a short time in prison very often find themselves in just this position and for these tenants such a situation should not occur.

In Australia the majority of prisoners are in jail for less than three months, with mental illness a significant feature of a proportion of short term prisoners. It is estimated that about 15% of the NSW prison population are made up of people with an intellectual disability. Low literacy also presents barriers to a sizeable proportion of the prison population.

Many people who find themselves in prison go straight from the street to the watch-house so there is little time available to make arrangements about goods and securing property. This is even more difficult if the prisoner has mental health problems or low literacy.

*Support networks often break down when people find themselves incarcerated.*

Support networks often break down when people find themselves incarcerated. For instance, some prisoners experience marriage break-up whilst incarcerated, and some experience separation from their children even after their release.

Indeed many simply do not have family and friends in a position to provide the necessary assistance and to ensure rights are upheld: including making the necessary arrangements to retain their Department of Housing property whilst they are in prison.

*The loss of housing may mean that partners and children of prisoners are forced to move around seeking accommodation with family and friends.*

The loss of housing may mean that partners and children of prisoners are forced to move around seeking accommodation with family and friends.

The NSW Department of Housing do have policies in place that could secure the housing of public tenants who, for whatever reason, are required to spend a period of time (up to three months) away from their rental property.

Tenants are required to formally notify the Department if they are not going to be in residence for a considerable period. Yet the Department fails to adequately communicate such processes to tenants.

Many tenants are simply not aware of their rights and entitlements. Even those tenants who are aware that they have to 'notify' are often unable to do so during the initial period spent in jail.

Difficulties abound in making phone calls, writing letters, getting support from welfare or social workers or friends to notify. Many prisoners during short term imprisonment lose their entitlements and their jobs – incur debts – lose assets and lose housing.

The DoH has a policy for approving nominal rents of \$5 pw for up to three months for people who need to spend time away from their property. Tenants who experience periodical 'non occupancy' include the elderly taken into nursing homes, people with disabilities going into supported care and NESB people going overseas for a short period for family reasons. These people can on a case by case basis, have approval granted for an extension of up to, and sometimes beyond, 6 months and at nominal rent.

Consideration for nominal rents can also be approved for prisoners however; prisoners seem to be treated in a less favourable manner when it comes to application of policy.

Even when application is made, it may well be knocked back or rarely gets approval. There seems to be no routine mechanisms in place for prisoners between the Department of Corrective Services and the Department of Housing.

Notifications take place and applications for nominal rent are handled as a matter of routine between the Department of Housing and the Office of Protective Commissioner and/or the Department of Community Services. Whether these be formal or informal mechanisms they do seem to occur for aged tenants and people with disabilities taken into nursing and group homes and nothing of the kind appears to be in place to assist prisoners.

There seems to be a very obvious void on the part of the Department of Housing when it comes to formal processes with respect to 'notifications and applications'. For instance, there are no 'Notification' or 'Application Forms' for people to obtain and fill in details.

At the moment a prisoner has to first know that entitlements exist, and then know how to access these and then attempt to write a letter and hope this contains everything necessary to give them a good chance to gain approval. This amounts to a denial of social justice for many prisoners, some of whom have low literacy skills, intellectual and other disabilities.

The ABC Program Four Corners raised some of these issues in a program resulting in questions asked in Parliament. However, to date, nothing seems to have happened to improve conditions.

*There is at present no requirement in NSW to provide accommodation on release or for the Department of Housing to safeguard the property of the prisoner whilst incarcerated.*

Prisoners who wish to retain their DoH property have to comply with often impossible conditions – ie to find someone willing to routinely maintain the property, pay the rent, keep it secure from vandals and squatters and so on. Upon release, some prisoners have been known to have been charged for repairs for damage to property incurred whilst they were incarcerated. Prisoners' Aid provides small amounts of cash relief and some clothing on release but this is very little if there is no home to go to.

Formal protocols urgently need to be put in place by relevant government bodies to support and assist prisoners. Some prisoners are often so ill equipped, because of lack of assistance and support for starting life again in society after release from a short term imprisonment that they may be likely to immediately re-offend; steal food, break into empty houses to squat, shop lift and so on.

Loss of secure housing is thought to be a contributing factor to why former prisoners re-offend. Prisoners are often on a treadmill, a cycle of arrest, release, homelessness, re-offending, back in prison. This is an untenable existence for ex-prisoners and places a high burden of cost on society. Mechanisms need to be put in place to assist ex-prisoners with basic needs including secure accommodation so that they do not need to re-offend.

There have been some ongoing attempts to get the Inspector General of Corrective Services to take an interest in such issues. However, it appears that the Inspector General may have limited powers to make the necessary changes.

Anne Stringer, Manager of the Prison & Debt Project of the CRC Justice Support is conducting primary research, interviewing new inmates at Mulawa prison. Anne has previously undertaken research in Queensland that included interviews with prisoners and the production of a detailed report, one of the firsts of its type.

From her initial research in NSW, some of the changes she would like to see would be the implementation of an 'Induction System' for prisoners that would ensure that systems are in place, when the prisoner first enters the system.

This system would ensure that support and assistance is provided to avoid a situation where a prisoner (and perhaps their family) lose everything, including their housing, especially after only a short prison sentence.

Another recommendation would be a post release support system, including post release accommodation and assistance to get back into the workforce and the rental market.

There has been much speculation with little evidence to date about why people find themselves in a cycle of returning to prison. It is thought that insecurity in housing, lack of access to secure and affordable housing options, and high rents are contributing factors, not only to homelessness but to re-offending and returning to prison.

Perhaps Anne Stringers research will provide some of the evidence needed that will precipitate the necessary changes to improve conditions for prisoners. The already identified changes to the policies and procedures of the Department of Housing would be an excellent place to begin.

By Zanne Landles,  
TU Access Officer





# Internet community information... a viable conduit – or government cop out?

Throughout the community sector there is some concern about the direction in which many government departments both state and federal seem to be heading with the increasing focus of provision of community information via the internet.

The value of the Internet as an information resource for people that are computer literate and have ready access to adequate equipment is undeniable. However, it also needs to be clearly acknowledged that the Internet is not a panacea for all things.

The community sector has clearly recognised the importance of the Internet over the last few years, by, in increasing numbers, developing their own web-sites.

The Tenants Union and the Tenants Advice & Advocacy Services in NSW have recently developed and launched their own web-site and strongly believe that this will assist many tenant advocates and tenants to access information to meet their needs and be in a position to self advocate. It is hoped this would allow community based services such as ours more time and resources to concentrate more fully on people with higher resource needs and who are not in a position to access the Internet.

Unfortunately Government departments, as they enthusiastically embrace the Internet, seem to at the same time, be moving away from the provision of hard-copy printed information, especially printed information in community languages. They are instead pointing people seeking this information to their web-site, which is a worrying trend when one considers how few people really do access the Internet, and how few sites provide information in languages other than English.

In recent times federal government departments such as the Department of Immigration and Multicultural Affairs (DIMA) have indicated a preference for their web-site to be the major source of community information.

DIMA's approach would see new settlers from NESB\* who are seeking tenancy information referred to the DIMA Web-site to follow the links until desired information is located. Such a singular information strategy assumes that people, newly arrived in Australia from a NESB, will have ready access to Internet services and are practiced Internet users.

Whilst it is true that increasing numbers of people are accessing the web, many marginalised communities, including people from culturally and linguistically diverse communities, especially those settlers from less economically

advantaged backgrounds, often simply cannot afford the telephone, let alone internet services.

Many of these people are not computer literate and have no experience of the Internet, and many would not know where to start to find tenancy, or any other community information, via the net. Our experience has been that there is no single information strategy that works for all people. This is clearly and Access & Equity issue and needs to be approached as such with viable strategies.

The Tenants Advice and Advocacy Services of NSW have been campaigning for some time to have DIMA provide the language versions of the Renting Guide, (published by the Department of Fair Trading) as part of their on-shore 'Welcome' package to new arrivals from a non English speaking background. This happens now quite successfully in Western Australia. The reluctance of DIMA to do so and to opt instead for the Internet is at the very least frustrating and ineffective.

DIMA is not the only government department to go down this road. Increasingly government

departments declare that their web-sites are now more 'user friendly' and this may well be the case for the more experienced 'users'. Government departments, including DIMA, tend to suggest that they are aware of some of the drawbacks to accessing the internet by many members of the community and see as an answer to this community based organisations as the ideal conduit.

From the lofty towers of a government department this may seem a viable remedy. In reality many community based organisations do not have adequate computer and software technology for this task or the wherewithal or funding that would enable fast, easy access to the internet in a manner that would meet the needs of the community. In this context a choice of both print and online resources should be provided.

Even if language information is provided on a site, recent feedback has revealed that many printers located in community based organisations are not of a quality that will allow the printing out of scripts such as Arabic and Chinese. It is also cheeky for government

departments to attempt to pass on to hard pressed, over worked community based organisations the cost of printing via their internet download strategy – rather than bearing such costs themselves by providing information in hard copy.

Equity target groups such as people from a non-English speaking backgrounds, with low English literacy skills have been identified by government departments and community based services as groups that are amongst 'the most in need'. It would therefore seem a very irresponsible strategy for government departments to simply point such high need groups in the direction of their web-sites when information is sought.

As useful as the Internet is in today's society it would seem that the information super highway has a long way to go if it is to be the purveyor of all information to all people. In the meantime government departments need to maintain strategies for the provision of important information that is applicable to all people who make up our community.

\* Non English Speaking Background

By Zanne Landles,  
TU Access Officer

## NESB Women's Access to the Private Rental Market.

July saw the launch of the Immigrant Women's Speakout report, '**NESB Women's Access to the Private Rental Market**'. This housing Report examines the difficulties confronted by migrant and refugee women of non-English speaking background accessing the private rental market and puts forward recommendations to remedy the problems identified.

The Report provides valuable insights into difficulties faced by NESB tenants in the volatile rental market in Western Sydney.

Key issues contained in the Report and identified by NESB women in the private rental market as barriers to the private rental market include:

- Limited financial ability to afford rent and access costs
- Language barriers
- Availability of housing information (options, tenure type)
- Access to tenancy services
- Legal barriers
- Discrimination
- Housing availability in the market (housing designs and sizes)
- Security of tenure
- The non regulation and inappropriate use of (Bad) Tenant Databases

The outcome of the project was to make a range of recommendations for possible remedies to overcome such barriers. Key recommendations that relate to tenancy services included the need to:

- Retain and expand the employment of multilingual staff in tenancy services;
- update and expand the community language tenancy 'Faxsheet' information and other language resources; and continue and expand
- outreach and community education to women from NESB.

Information about obtaining a copy of the report can be obtained from  
Zanne Landles, the Tenants Union Access Officer: Ph: 02 9247 3813



# The housing crisis: priorities for action

Article courtesy of Brotherhood of St Laurence Victoria

It will be well understood by many readers of *Brotherhood Comment*\* that the housing crisis in Australia is worsening. While this crisis is apparent to many, housing rarely makes it onto the national agenda. Media interest in housing matters is usually confined to interest rate movements or planning issues. In terms of policy this silence is even more apparent. The fact that housing was barely mentioned in the McClure Report on welfare reform is both surprising and disappointing, given that large proportions of income support recipients and the working poor must pay for often inadequate and insecure housing. Secure and affordable housing plays a central role in providing a basis for full participation in society.

The actual extent of the housing crisis is surprisingly difficult to measure. This is in part due to the fact that there is no coordinated collection or agreed methodologies and few reliable data sources to measure housing problems (SCARC 1997). Estimates of the number of homeless people, for example, varies between 50,000 and 150,000. According to an analysis of 1996 census data, there were an estimated 105,000 homeless people in Australia last census night (ABS 1999). Recent national figures show that in 1999:

- 39 per cent of all households in private rental accommodation were paying more than 25 per cent of their income on rent;
- the poorest fifth of private rental households were paying an average of 64 per cent of their incomes on rent; and
- 20 per cent of private rental households had moved five times or more in the previous five years (ABS 2000).

## Housing assistance

Housing assistance is mainly provided through two systems:

- The Commonwealth State Housing Agreement (CSHA); and
- Rent Assistance.

The Commonwealth State Housing Agreement is a joint Commonwealth-State agreement through which Commonwealth funds are provided to States through tied grants for housing assistance. There have been a series of agreements since 1945. It principally provides funds for

public and community housing but, despite increasing demand for public housing, funding for new construction has declined by nearly 50 per cent since the mid-1980s. Current total annual expenditure on the agreement is around \$1.2 billion (FaCS 2001).

The decline in funds for public housing has been accompanied by a vastly increased expenditure on Rent Assistance. Rent Assistance is provided by the Commonwealth Department of Family and Community Services to eligible Centrelink beneficiaries living in the private rental market. About one million people now receive rent assistance and expenditure on this program now far outstrips direct expenditure on public housing at about \$1.6 billion a year.

*About one million people now receive rent assistance and expenditure on this program now far outstrips direct expenditure on public housing at about \$1.6 billion a year.*

Apart from these programmes, it should also be noted that all housing consumers receive housing subsidies, including those households with relatively high incomes. These subsidies are paid through a range of indirect expenditures, including the exemption of the principal place of residence from capital gains tax, depreciation allowance for newly constructed private dwellings, negative gearing provisions for private landlords, and most recently, the first homeowner grants. In 1997, before the introduction of first homeowner grants, it was estimated that annual indirect subsidies to home ownership amounted to more than \$5 billion (National Shelter 1997).

Given the dimensions of the housing crisis and the structure of housing assistance in Australia, a number of priorities for action stand out, such as reforming the allocation of housing assistance and retaining and increasing the stock of public housing either through the CSHA or another mechanism. These are however long-term goals. In the meantime it is important to recognise that the private rental market is increasingly important in the housing system.

## The private rental market and the failure of Rent Assistance

While the proportion of households in home ownership (that is either outright owners or purchasers with a mortgage) has remained relatively stable for the last 40 years there is now an appreciable decline in the number of households entering the home purchase market (ABS 1994; Badcock & Beer 2000).

There are many reasons for this decline but, combined with an increasing shortage of public

housing, the upshot has been a corresponding increase in the proportion of households who rent in the private market. The latest figures indicate that there are about as many households in the private rental market as are purchasing and that the proportion of households renting is likely to exceed purchasing households in the near future (ABS 1997a). Furthermore it is becoming apparent that rather than being a largely transitional tenure, many more households in the private rental market are long-term renters. Around 40 per cent of tenant households have lived in private rental housing for 10 years or more (Wulff 1997).

While some households who could afford to purchase are apparently choosing to rent, it is clear that most households rent because they have no other housing options. Low-income households are effectively locked out of home ownership and are unable to access public housing due to long waiting lists. For an increasing number of these households private rental is becoming steadily more unaffordable.

*Low-income households are effectively locked out of home ownership and are unable to access public housing due to long waiting lists. For an increasing number of these households private rental is becoming steadily more unaffordable.*

Investment in the private rental market is largely confined to small household investors rather than corporations or institutions (Berry 2000). Individual landlords who own one or two properties own the majority of private rental housing (ABS 1997b). This diversity of investors and their motivations makes it extremely difficult to frame policy to influence investment decisions. Furthermore institutional investors face a number of barriers to invest in private rental housing. Among those identified by Berry (2000) are the relatively low returns and perceived high risks of this type of investment. These issues will need to be addressed if there is any hope of increasing institutional investment.

The nature of the ownership of private rental housing in Australia has also had an impact on housing quality and security of tenure. While most residential tenants have a degree of security of tenure provided by state-based legislation this varies widely across the country. Attempts by state governments to improve security of tenure through reforms of residential tenancies legislation have been checked by fears that any strengthening of tenants' rights may result in decreased investment by small and marginal investors,

which may further exacerbate the scarcity of lower-cost private rental housing. The result is that many tenants can still be evicted without reason and so lack basic rights to security of tenure.

A similar problem faces tenants in terms of standards of accommodation. No state residential tenancy legislation prescribes basic standards of accommodation, as this is usually considered to be covered by building and health codes. However, it is clear that private rental accommodation is generally of much lower quality. Nineteen per cent of tenants in the private rental market live in dwellings that require repairs compared to 9 per cent of purchasers (AIHW 1999).

Poor standards of accommodation, lack of security of tenure and unaffordable rents characterise the lower end of the private rental market in Australia. If current trends continue it could be expected that this situation will worsen. One of the ironies of the current situation is that while much of the market is supported by the Commonwealth through rent assistance payments, it remains regulated by the States. At the very least this should give the Commonwealth some leverage in pushing for national tenancy legislation to improve tenants' security of tenure and the introduction of national housing codes to ensure that poor households are not forced to live in substandard accommodation.

\* Publication of Brotherhood of St. Laurence

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## References

- Australian Bureau of Statistics (ABS) 1994, *First Home Buyers*, Cat. No. 4137.0, ABS, Canberra.
- 1997a, *Basic Community Profile*, Cat. No. 2020.0, ABS, Canberra.
- 1997b, *Household Investors in Rental Dwellings*, Cat. No. 8711.0, ABS, Canberra.
- 1999, *Occasional Paper: Counting the Homeless*, Cat. No. 2041.0, ABS, Canberra.
- 2000, *Australian Housing Survey*, Cat. No. 4182.0, ABS, Canberra.
- Australian Institute for Health and Welfare (AIHW) 1999, *Australia's welfare 1999: services and assistance*, AIHW, Canberra.
- Badcock, B & Beer, A 2000, *Home truths: property ownership and housing wealth in Australia*, Melbourne University Press, Carlton South, Vic.
- Berry, M 2000, 'Investment in rental housing in Australia: small landlords and institutional investors', *Housing Studies*, Vol.15, No.5, pp.661-681.
- Department of Family & Community Services (FaCS) 2001, *Portfolio Budget Statements 2001-02*, FaCS, Canberra.
- National Shelter 1996, *Submissions to Senate Community Affairs References Committee: Inquiry into Housing Assistance*, National Shelter Inc., Hackett, ACT.
- Senate Community Affairs References Committee 1997, *Report on housing assistance*, Senate Printing Unit, Parliament House, Canberra.
- Wulff, M 1997, 'Private renter households: who are the long-term renters?', *Urban Policy and Research*, Vol.15, No.3, pp.203-210.



# Tribunals to amalgamate

Plans by the NSW State Government to amalgamate the Fair Trading Tribunal and Residential Tribunal through the Consumer, Trader and Tenancy Tribunal (CTTT) Bill 2001, has prompted a response<sup>1</sup> from the both the Tenants Union and the network of tenancy services (TAAP).

## The Consumer, Trader and Tenancy Bill 2001.

The provisions of the new bill are very similar to the current Residential Tribunal Act 1998. There will be a Tenancy Division and Residential Parks Division. Practically, we believe the new Consumer, Trader and Tenancy Tribunal would function similarly to the current Residential Tribunal. For tenants and tenant advocates using the new Tribunal there will be little noticeable change to the way the Tribunal works presently.

## Competing interests of tenants and landlords.

The private rental market is not a level playing field. It is a market in which the competing interests of tenants and landlords are often diametrically opposed:

- Tenants seek affordable, secure housing that is in a reasonable state of repair and appropriate to their needs.
- Landlords seek to minimise their costs and to obtain a reasonable rate of return on a solid low maintenance bricks and mortar investment.

Property and investment interests are protected in legislation and government policy in preference to the rights of consumers; hence the lesser legal and social standing for tenants.

This dynamic means a formal dispute resolution process is a critical component in establishing meaningful tenancy rights. Without the capacity to enforce legislative rights tenants are prevented from turning a house into a home.

## Why do tenants need a specialist tribunal?

Specialist residential tenancies tribunals have long been regarded as the best prospect for considered and fair resolution of residential tenancy disputes, providing they:

- actively promote access to the Tribunal to all parties to the tenancy relationship,
- establish the Tribunal with persons having a substantial and non-partisan knowledge of the tenancy relationship,
- respond to applications fairly, quickly and with a minimum of technicalities,
- promote accountability to the parties and to the wider community for the quality and efficiency of its operations.

The Tenants' Union(TU) supports these aims and observe that this amalgamation may have the potential to improve on the existing structures. The Tenants' Union believes the tribunal can meet tenants' needs by:

- ensuring procedural fairness and natural justice in relation to the re-hearing and appeal provisions,
- supporting tenants who represent themselves,
- equating tenants advocates with real estate agent by providing an automatic right to representation,
- increasing accessibility by minimising costs,

improving access for people with disabilities and introducing child care facilities,

- enhancing consistency and quality of the decision making by maintaining tenancy expertise,
- providing written reasons,
- issuing guideline decisions similar to the former Tenancy Commissioner Policies,
- maintaining regular updates on AustLII\*
- resourcing an effective Tribunal user group (Operations Committee) and
- distribution of a regular Tribunal bulletin/newsletter.

In welcoming some of the reforms we note that the Tribunal remains largely a cheap and easy method of eviction for landlords. Statistics on applications highlight the extent to which landlords exceed tenants as Tribunal users. It is important to note that tenants face the highest barriers to accessing justice. It is tenants who stand to lose the most in these processes – their home.

## Who will be funding this new Tribunal?

The present arrangement under the *Landlord and Tenant (Rental Bonds) Act 1977* allows the rental bond interest account to pay for half the cost of administering the *Residential Tribunal Act 1998*. **This is tenant's money.** We have always considered it inappropriate that tenants should have to fund their own justice.

This is something no other tenure is required to do. Other housing tenures (eg home owners) are able to exercise rights through tribunals and courts funded by general government revenue (eg Local Court). As tenants also contribute to government revenue it is a case of tenants being taxed twice.

Given that tenants money is being used in this way, it is important that we should not be funding other consumers' justice as well.

## Tenant money should only fund the residential components of the amalgamated Tribunal.

The Tenants' Union and Tenancy Advice & Advocacy Program (TAAP) Services argue that tenant money should only be used to fund the Residential Parks and Tenancy Divisions of components of the amalgamated Tribunal and separate financial reports be prepared for each Division of the Tribunal.

## The Tenants' Union submission.

There are clauses contained in the bill that the TU and TAAP feel compelled to comment on. We are concerned about the impact these clauses would have on tenants and the implications for tenant rights.

In our submission, we also took the opportunity to put forward some proposals we believe will benefit NSW tenants. The Tenants' Union submission listed twenty-two recommendations that would ensure the rights of tenants are recognised. Some of those twenty-two are highlighted below:

The bill provides for "performance review" of Members. Whilst this may provide a framework for assessment and accountability we do not believe this should result in a pursuit of productivity. Compromising integrity and fairness. Member performance reviews should actively involve tenants and tenant advocates.

We recommend that all members in the Tenancy division have training in the circumstances tenants face in securing and maintaining appropriate, affordable and secure housing. This is a particularly significant issue given the importance of housing as a basic human right and that the New South Wales housing market, especially the greater Sydney region, is the most expensive in the country.

The Bill aims to change the current rehearing procedures. Provisions on rehearings are especially important to tenants given three quarters of rehearing applications are lodged by tenants<sup>2</sup>. Clearly rehearings are used by tenants to achieve more just outcomes.

We support the amendment enabling parties to limit an application for a rehearing to matters specified in the application. However we have grave concerns about other amendments to the rehearings process, such as, the Chairperson's decision to grant a rehearing being final and not subject to review; and the Chairperson being not required to inform the other party of the rehearing application.

The TU believes it is an essential part of justice that all:

- decisions are open to a meritorious review, and
- parties to proceedings are made aware of and participate in the request for a review, and
- each party must be given the opportunity to adequately state their case.

A new procedural power unique to this jurisdiction will centre on 'proceedings causing disadvantage'. This clause will allow the tribunal to dismiss or strike out proceedings if the applicant unnecessarily disadvantages the other party; or determine the proceedings in favour of the applicant or make other appropriate orders if the other party unnecessarily disadvantages the applicant.

Our experience of the Tribunal involves many occasions when we believe the landlord/agent is engaging in conduct that seeks to unnecessarily disadvantage the tenant.

Examples of this include:

- landlords who do not comply with interim orders in relation to supplying copies of documents,
- landlords who do not provide particulars to enable tenants to respond to claims,
- landlords engaging solicitors and then leaving the hearing without providing proper instructions resulting in unnecessary adjournments.

continued next page



## Tenant Fact Sheet

# 4. Rent Increases

As a tenant, you have rights under the Residential Tenancies Act 1987. This factsheet explains the law in NSW about how rent can be increased.

### How much notice?

If you're on a continuing agreement, you must receive at least 60 days written notice of a rent increase. The written notice must include:

- the amount of the increase
- the date from which you have to pay the increase.

If your agreement is for a fixed term (e.g. 12 months) then the rent can't be increased during the fixed term of the agreement, unless it says so in your agreement. Even then, a separate 60 days written notice must be given.

If you sign a new agreement at an increased rent, the new rent can't be enforced unless you have been given 60 days written notice of the increase. The rest of the new agreement will remain valid.

### If your landlord doesn't give you 60 days notice

You don't have to pay the increase. The landlord must start again and give you the correct notice. If you're not given the correct notice, write a letter to the landlord.

The landlord can face a fine if s/he forces you to pay an increased rent without proper notice. See the next page for a sample letter about an incorrect rent increase.

If you think the rent increase is too much

- ask your landlord to reduce or withdraw the increase.
- apply to the Residential Tribunal for a dismissal or a reduction of the rent increase. You have to apply within 30 days of receiving notice of a rent increase.

### Residential Tribunal

The Residential Tribunal is an independent body where tenants and landlords can take their disputes. The Tribunal is not a formal court, but its decisions are legally binding.

### What will the Tribunal consider?

The Tribunal will take into account:

- rents for similar premises in a similar area (market rent)
- the value of the premises
- the landlord's expenses
- the cost of any services provided by the landlord or the tenant under the agreement
- the value and nature of any fittings, appliances or other goods and services provided with the premises
- the state of repair and general condition of the premises
- any work done by the tenant with the consent of the landlord
- any other relevant matter.

You'll need to prepare a thorough case to stop or reduce a rent increase. The general market rent for similar premises in your area is a key consideration. Collect evidence about as many similar premises in your area as possible.

The Tribunal does not accept examples of rents advertised in newspapers as satisfactory evidence. Seek advice from your local Tenants Advice and Advocacy Service (TAAS).

### If you're a public tenant

The Department of Housing doesn't have to give 60 days notice of a rent increase, but written notice must still be given.

Department of Housing tenants who receive a rent rebate can't apply to the Residential Tribunal against a rent increase.

### Further Help

**Tenants' Hotline** (02) 9251 6590

### Tenants' Advice & Advocacy Services

Look in 'White Pages' under 'tenancy'. These services offer **free** advice to residential tenants in NSW.

### Renting Services

(NSW Department of Fair Trading)

**General** - (02) 9377 9100

or FREECALL 1800 451 301

**Bonds** - (02) 9377 9000

or FREECALL 1800 422 021

### Translating

**& Interpreting Service** 131450

This information is from a series of fact sheets issued by the Tenants Advice and Advocacy Services and the Tenants Union - they are available from your local Service (see back page) or at

**tenants.org.au**

Tenant Fact sheets are also available in several community languages

### from page 10 - Tribunals to amalgamate...

While we may cautiously welcome procedural power to deal with such behaviour we seek to engage in further discussion on the intent and meaning of this clause.

Our experience as tenant's advocates indicates that many tenants are adversely affected by Tribunal proceedings and may respond accordingly. Fear, intimidation, confusion and/or the triggering of symptoms of a mental illness could all be misinterpreted as being conduct causing disadvantage.

An appropriate safeguard for tenants would be recognising that for conduct to be considered 'unnecessarily disadvantaging' it would need to include an element of intent. Therefore we recommend that the concept of intention be added to the clause as a safeguard for the above.

Generally, the Tenants' Union supports the concept that parties should be encouraged to have carriage of their own case. This increases the likelihood that the Tribunal will retain its informality and accessibility.

We cannot see the fairness or merit in landlords enjoying an automatic right to be represented by an agent, while tenants do not.

Representation is granted as a basic right to landlords without any assessment of need. Individual landlords will often use the professional services of a real estate agent and large-scale landlords, such as the Department of Housing and community housing organisations, have access to paid staff.

Agents have access to professional training, gain experience in Tribunal procedure, develop skills in the provision of evidence and gain considerable knowledge of legislation and case law. For many tenants the Tribunal is their first legal experience.

The fact that agents are detached professionals comfortable with the process whereas tenants are fighting for their home exacerbates this imbalance. Therefore the manner of self-representation in the Tribunal disadvantages tenants and is clearly against the spirit and the objectives of the Act.

We recommend that the regulations grant Tenancy Advice and Advocacy Program (TAAP) workers the same right of representation currently enjoyed by agents.

Other recommendations include ensuring that tenancy expertise and specialisation is maintained, that the Tribunal establish a Charter

of Consumer Rights and that the existing fee exemptions be maintained in the new Regulations.

### Conclusion

A specialist residential tribunal is an essential facility for tenants seeking to enforce their rights. Therefore the Tenants' Union and TAAP Services have requested further consultations with the government in regards to the regulations that will accompany the bill. The State government is hoping that the new tribunal will be operational by early 2002.

\* AustLII is a website providing current Australian legislation and decisions. [www.austlii.edu.au](http://www.austlii.edu.au)

1 M.Drayton & P.Mott, Tenants' Union of NSW; Submission to Dept. Fair Trading, Justice For All Tenants: Proposal for a Consumer, Trader and Tenancy Tribunal (August 2001).

2 Residential Tribunal, June 2001 Management report.

3 Kennedy R et al, Minimum Legislative Standards Report (1995), p.41

**By Melanie Drayton,**

Legal Officer Tenants' Union







# 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 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.**

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

## 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. Or try [tenants.org.au](http://tenants.org.au)**

### Sydney Metro

|                      |                           |
|----------------------|---------------------------|
| Inner Sydney         | 9698 5975                 |
| Inner Western Sydney | 9559 2899                 |
| Southern Sydney      | 9787 4679                 |
| South West Sydney    | 9601 6577                 |
| Eastern Suburbs      | 9386 9147                 |
| Western Sydney       | 9891 6377 or 1800 625 956 |
| Northern Sydney      | 9884 9605                 |

### Eastcoast

|                       |                           |
|-----------------------|---------------------------|
| Central Coast         | 4353 5515                 |
| Hunter                | 4929 6888                 |
| Illawarra/South Coast | 4274 3475 or 1800 807 255 |

|             |                           |
|-------------|---------------------------|
| Mid Coast   | 6583 9866 or 1800 777 722 |
| North Coast | 6622 3317 or 1800 649 135 |

### Western

|                     |                           |
|---------------------|---------------------------|
| Nth West Region NSW | 6362 6555 or 1800 642 609 |
| Sth West Region NSW | 6361 3122 or 1800 642 609 |

### Specialist

|                      |           |
|----------------------|-----------|
| Aged Tenants Service | 9281 9804 |
|----------------------|-----------|

### Aboriginal Services

|                |                           |
|----------------|---------------------------|
| Western NSW    | 6884 8211 or 1800 810 233 |
| Southern NSW   | 4472 9363 or 1800 672 185 |
| Northern NSW   | 6643 4426 or 1800 248 913 |
| Greater Sydney | 9569 3847 or 1800 686 587 |

### Tenants' Union Hotline

Mon-Fri 9.30am-1pm & 2-5pm 9251 6590



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

### Membership Application

#### TAX INVOICE

I would like to apply for membership of the Tenants' Union of NSW Co-operative Limited ABN: 88 984 223 164

Name / Organisation: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: (home) \_\_\_\_\_

Phone: (work) \_\_\_\_\_

This is a: (please ✓ one)

☐ new membership ☐ renewal \_\_\_\_\_  
(Membership Number)

I am a: (please ✓ one)

☐ tenant ☐ tenant organisation  
☐ non-tenant ☐ non-tenant organisation  
☐ other (please specify) \_\_\_\_\_

Annual fee runs from 1 January to 31 December.  
New members can pay half fees after 30 June.  
First membership fee paid covers cost of share.

**unwaged \$8.00 waged \$16.00 organisation \$32.00**  
(all include GST component)

Please find enclosed cheque / money order to the Tenants' Union for:

Membership: \_\_\_\_\_

Donation: \_\_\_\_\_

Total: \_\_\_\_\_

I am over 18 years of age. I support the objectives of the Tenants Union of NSW.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

return to: Tenants Union of NSW, 68 Bettington Street, Millers Point 2000