tenants' union of nsw

tenant news

Free newspaper of the Tenants' Union of NSW

Issue 76 September 2004

In this issue...

No place like home: AND IT'S *MINE*

Does your landlord pop over unexpectedly to enjoy the view from "their house", or to do a spot of pottering around in "their garden"? An open letter to his landlord from Denis Groves , about his unique bit of the planet.

Dear Landlord,

You will remember our phone conversation of a few weeks ago. At one stage during that conversation I made the point that a person who buys a house and puts a tenant in it is considered in the lease agreement and under the Act as having only a *financial* interest in the property during the currency of the lease, that he or she is a property investor, not a homemaker. A little later in the same conversation you referred me back to that statement in order to reply to it thus: "I don't buy a house just for *financial* reasons. *I love houses.* I enjoy working on them and doing things with them." Words to that effect.

I replied along these lines: If you are not content merely with enjoying the house you live in, you certainly have the right to buy other houses as an interest or hobby. If you place the property on the rental market as a means of helping you to buy it, or simply to enjoy the rental returns, you thereby sell to the tenant all your rights of enjoyment of the property. It virtually becomes the tenant's premises. Only if you keep a house unleased or live in it yourself can you enjoy it for yourself and play around with it.

And you replied, verbatim: "Or I can get a tenant who will let me do that!"

One could hear in your tone the "Touché!" that you thought you had scored, and the implied threat against me, if I continued to assert my rights.

Now, I hope to explain to you how unsupportable and unreasoned a statement that was, and what a misapprehension you are under in regard to our society's system of rental accommodation, the relevant laws, and the spirit and reasons behind those laws.

A landlord to whom the rented property means other than, or more than, a financial investment and source of income is every tenant's worst nightmare! The Act protects tenants from such owners.

When someone lets a place to another person, the former *gives up* certain rights *in return* for the *money* paid to them, and when estate agents refer to "rents currently being achieved by similar premises in the district" they mean rents being paid for full and exclusive use and enjoyment of those premises, as set down in the Residential Tenancies Act and in the standard lease agreement.

The owner's rights are limited to their financial interest as a property investor. Therefore the tenant is obliged to pay rent, to not damage the premises nor make other changes that might devalue the property or cause the owner unwarranted expenditure. The most important right the owner gives in return for the tenant's perfectly good money is the *use* and *enjoyment* of the premises in guaranteed *privacy*. That right belongs exclusively to the tenant. That is what they are paying for.

> **"Or I can get a tenant who will let me do that!"**

Privacy and quiet enjoyment are guaranteed under the lease. For the owner to attempt to circumvent those rights by duress, harassment, intimidation, or threat of eviction, no matter how subtle, is illegal and there are penalties provided.

I think perhaps you feel peeved and hard done by that you can't enjoy "your own place". Please don't be! It *isn't* "your own place" – the house you live in is. The house *anybody* legally lives in is their "own place".

We *need* to have a space of our own. Most of the creatures on the planet are like that. They have their nests and their burrows and their territories. Sadly for them, under the law of the jungle by which they live, they have to fight to keep their space. Marauders move in, the weak lose their place; the strong hold on.

In early times humans established and held territory by the same means as animals – stealth and power. Nowadays, we are all supposed to behave better. We live in a community where domestic laws are intended to be dedicated to peaceful, reasoned and fair management of the needs and wants of everyone.

Some of the laws of this enlightened system deal with the above-mentioned territorial instinct – the need and the love of a space of one's own. Two major methods are provided in our community for the individual to attain a "space of one's own". A house or flat can be *purchased* from another party, or they can be *leased*. In both cases the law naturally assumes that neither the vendor nor the lessor requires the premises to be their own "place of one's own" – why else would the vendor be selling it, or, equally, why would the lessor be letting it? Thus it is perfectly natural and fair that only one kind of motive is assumed by the law for either selling or letting a property – a financial one. Consequently the use and enjoyment of the property is assumed by the law to be a motive unique to buyers and lessees. Of course, if a buyer then leases the property s/he becomes the lessor and their rights of use and enjoyment are passed to the tenant.

When I enter my flat and shut the door and sit down with a cup of coffee and look out at the view of the mountains I am in my exclusive and secure space. I have legally attained by one of the means that the community of which I am a citizen has made available, namely leasehold, a bit of space on the face of this planet of six billion people and countless other creatures, a space to call my own. The lease is in force – there is a legal contract between myself and the owner. I pay him his money, and he leaves me alone. He has his "own space" elsewhere. This one he has sold to me, temporarily but indefinitely, for his financial gain.

> **"A landlord to whom the rented property means other than, or more than, a financial investment and source of income is every tenant's worst nightmare!"**

As I sit here with the door shut, with my coffee and my view, I am secure in the knowledge that I am legally in charge of this one small space on the whole planet- nowhere else but here do I have such rights- but here I do. No one may enter without my permission- not the prime minister, not the governor general, not the queen and not the dear, sweet landlord.

There are few and limited exceptions to this rule [see the "From the Hotline" column of this tenants news on when a landlord may enter your premises] and none of them relate to any desire the owner may have to come and enjoy the premises. While the lease is current the owner agrees to sell (in the exact sense of the word) the

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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 of NSW is a community legal centre that has been active in promoting the rights of more than 1.5 million tenants in NSW since 1976.

Over this time we have advocated on behalf of tenants to State and Federal governments, and we have developed numerous resources providing information for tenants and tenants' advocates regarding the rights of tenants in NSW.

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Editorial

There are Games, and there are games...

By Harvey Volke

The Olympic Games are one thing, and the federal election quite another – but you'd never think so from the way the male politicians are puffing up their testosterone and shaping up to each other.

As a matter of fact, for anybody engaged in the political process it's a thoroughly disenchanting experience to see the boys' games regularly played out on the floor of parliament.

While the pollies are intent on scoring points off each other, and enjoying the adrenaline rush of the wheeling and dealing in the lobbies, every fractional change in draft legislation as a result has the potential to affect the lives of millions.

And some of the key issues just don't get a run because they're not the flavour of the month, or because they're not backed by powerful lobbies.

Housing is a case in point. Life doesn't get much more basic than that. Not only is it an absolute essential to a decent life, but it's also by far the greatest single cost in our lives.

But we don't even have a national housing ministry. Or a national housing policy for that matter, although the Opposition and the minor parties are at least offering something in that direction.

All we hear about is home ownership and interest rates. But nobody seems to have noticed that while interest rates are at record lows, despite that, so is housing affordability.

And given that lots of people are priced out of the home purchase market, that means lots of people are stuck – and will stay stuck – in the private rental market. And what that means is increased competition for private rental housing, which in the best of economically rational terms, is forcing up rentals.

And the further irony is that while there is an over-supply of rental stock at the top end of the market, there has been an 18 percent drop in the supply of stock at the bottom end of the market. Not only that, but because more people are staying longer in the private market and looking for the best deals they can get, then they are occupying what lower-cost stock there is.

And that means? It means low-income people are being forced out of the private market in high cost areas: which includes, for instance, the entire Sydney metropolitan area. I kid you not. And more than 1.5 million low income Australians are paying more than 30 percent of their income in housing costs, and are in housing stress.

Well, maybe they can try public housing? Well, first, they have to be on pensions or their equivalent, and they have to have high and complex levels of need, otherwise, they've got two chances – theirs and buckley's. Apart from the fact there are already more than 80,000 households on the waiting list, most of whom will probably never be housed.

And of course, there has been a 25 percent reduction in funding through the Commonwealth State Housing Agreement over the past decade, and state housing authorities are cannibalising their own stock to survive.

What this adds up to is a housing crisis across the nation for low-income earners.

But you don't see that in the headlines.

So hey boys, can you quit the games and get serious? There is more at stake here than medals. ◆

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premises to the tenant on an ongoing, periodical basis, and receives money that seals that purchase. The owner retains for the time, only minimal rights to the property necessary to protect their investment.

Moreover, the owner cannot justly evict a tenant who is not in serious breach of the lease, if the owner intends to keep the property on the rental market, merely replacing the unjustly-evicted tenant with another. Owners sometimes attempt this when a tenant dares to assert their rights under the lease agreement, hoping to supplant such a tenant with one who may be unaware of their rights or timid in asserting them. By such means the owner illegally attempts to circumvent the Act.

House rental is no different in principle from any other kind of rental. Do you think it is? If so, you are labouring under a curious yet common misconception found only with real estate rental. You believe that, unlike all other expensive items beyond a person's financial capacity, real estate can be acquired by its innate capacity to self-generate income, that this income-generating capacity is called tenancy, that it is one with the house and that it need not stand in the way of one's enjoying the house immediately because the tenant is just part of the house and can be ignored or manipulated. The tenant is not part of the house. You buy a house, not a house-cum-tenant. The tenant is a fellow human being of equal status with yourself, to whom you agree by contract to sell most of your rights to the house for a definite or indefinite period of time.

The rental system works well for any owner who is in the game purely for the money. A rented property cannot be somebody's toy – adult human beings are about the serious business of contracting and paying money for the right to dwell in it as "their own space". It is a major and essential element of their lives. It is not viewed as the owner's doll house complete with pliant income-yielding tenant dolls.

Finally I ask you, if you were to come into vacant possession of our rented property and then went seeking "a tenant who will let you", would you tell prospective tenants what you want the deal to be, before they sign the lease, and in fairness lower the rent as a result? Would you tell them then and there you wish to strike out or rewrite relevant paragraphs in the lease? Or would you just dishonestly sign a standard lease agreement and let the poor sucker discover afterwards that you mean to use the magic chant "owner, owner" to get your way, however subtly and politely, in contravention of the lease?

Here I stand (indeed, live), I can do no other. You and I just can't share the same space at the same time.

Yours ever so faithfully,

Denis Groves ◆

From the Hotline

Q:Can the real estate agent come into the house when I am not there?

A:Yes, what is required to make the access lawful is proper notice of access for a proper purpose.

The proper purposes and notice are in every (residential tenancy) agreement. The Residential Tenancies Act 1987 requires that the landlord agree to enter the premises only in certain circumstances.

The most common access is for inspection of the premises. Inspections can be done up to four times a year. The notice required is seven days; but it does not have to be in writing.

Other access purposes and notices periods are listed below:

Purpose	Notice
Emergency including urgent repairs	None
Repairs	**2 days**
Inspection (only 4 in any 12 months)	7 days
To show prospective buyers/mortgagees	**Reasonable**
To show prospective tenants during last 14 days of the agreement	Reasonable
If it appears premises abandoned	**None**
Per Tribunal order	As specified in the order
With consent of tenant	**As agreed**

Understandably it is of concern to tenants that others are allowed to be in their home without them. Always try to negotiate times for access so that you are able to be there. Another way is to have a friend there if you cannot be home.

You should impress upon the landlord or agent that you will hold them responsible for any loss or damage caused by their acts or omissions (eg failing to lock up properly).

If you have contents insurance, it is a good idea to check with the insurer whether unsupervised access is going to affect your insurance coverage.

As always, deal with the landlord or agent in writing and make diary notes of conversations so that there is a record of what has happened. If it goes wrong, you will need evidence to recover any loss.

Contact you local Tenants Advice and Advocacy Service if you have problems or further questions. If you have access to the Internet you can see further information about access and privacy in the factsheets at www.tenants.org.au

Q:The landlord wants to sell the house. The real estate agent has put a video tour of my house up on the Internet. How is this legal? What can I do?

A: It is legal if you have consented to it.

If you have not consented, then it can be a breach of your (residential tenancy) agreement in two ways:

1. The landlord or agent may have access to the premises for the purpose of inspection if they give you seven days notice. The purpose of videotaping is not one for which they can have access without your consent.
2. Your agreement includes that the landlord or agent will not permit interference with your reasonable peace comfort and privacy. Publishing to the world your arrangements of living in the premises is clearly a breach of your privacy.

The first thing to do is write a letter of demand to the landlord (care of the agent) stating that it is a breach of the agreement to have taken the video tape and a further breach to have published it. You should demand that the tour be taken off the website and not otherwise published. Give a deadline for compliance.

If your deadline is not met, apply to the CTTT (Consumer, Trader and Tenancy Tribunal) for orders that the landlord shall cease breaching the access and privacy terms of the agreement. This application must be made within 30 days of your deadline.

For assistance with letters or a CTTT application contact your local Tenants Advice and Advocacy Service. If you have access to the Internet you can see further information about access and privacy in the factsheets at www.tenants.org.au

It is also possible that the publication is offensive to the National Privacy Principles under the Commonwealth Privacy Act 1988. Relevant consideration will include:

- Whether you can be identified from the publication and so whether it is personal information and
- Whether there was consent for the use of the personal information or a reasonable expectation of the use. ◆

For more information about privacy; contact the Privacy Commissioners Hotline on 1300 363 992 or have a look at the website at www.privacy.gov.au

The Tenants Union Hotline operates between 9.30 am–1 pm, and 2 pm–5 pm on weekdays. A tenants adviser can provide information over the phone, or may refer you to your local tenancy service.
Freecall 1800 251 101

Big response to law review

News from Park and Village Service

The Residential Parks Act is currently under review, and resident and resident park advocates have deluged the Office of Fair Trading with submissions demanding changes – at least 200 of the 250-odd submissions have been lodged by residents, resident groups and resident advocates and advocacy bodies. There is a growing determination to achieve just law reform by permanent residents of residential/caravan parks and their advocates. Recent mass evictions of park residents caused by closures of residential parks have illustrated the inadequacy of the current legislation and the desperate need for a strengthening of security of tenure and protection from intimidation and exploitation. The Residential Parks Act, like most other modern pieces of legislation has to be reviewed every five years.

Anyone walking into the PAVS office for weeks beforehand could have been forgiven for thinking they were in cloudsubmissionland,

or at least in the middle of a paper storm. It was the topic of just about every conversation and fried the brains of park residents and their advocates from near and far. A working party convened by PAVS with representatives of PAVS, Shelter NSW, Tenants' Advice and Advocacy Services, Tenants' Union, Newcastle University's Family Action Centre and resident representatives completed a giant submission which provides both background material and recommendations for legislative reform. Many groups such as the Tenancy Legal Working Party contributed to the submission compiled by PAVS and laboured over their own submissions as well. Sean Ferns and Amie Meers worked endlessly until the 142 page beast was complete.

The submission recommends a number of changes. The most important was one calling for better protection for residents if a park operator wants to close the park or change permanent sites into tourist sites, by providing them with up-front compensation for re-location, or compensation for the current value of homes if residents cannot relocate them.

Some of the other recommendations include;

- tenancy rights for all residents from day one,
- continuing coverage under the Act if residents have to leave the park and it is no longer their principal place of residence,
- limits on the frequency of rent increases, full disclosure of all terms and conditions by park operators before agreements are signed,
- plain English tenancy agreements supplied by the government,
- qualifications for park managers, and
- access by resident groups to community rooms for meetings.

The big question in the coming year is, how much will get up? ◆

'A slot machine approach to justice'

The reversal of the onus of proof has caught tenants' attention, and some have already noted that this legal change places public housing tenants in the same company as suspected terrorists. Less noticeable, but no less damaging to tenants' prospects for justice in ABA proceedings, is the removal of the Tribunal's discretion in making orders for evictions. The following examples illustrate the dangers:

- Tenant A has a mental illness that causes sleeplessness and delusions. The Department sends a notice requesting that A sign an ABA, but A fails to respond.
- Tenant B has signed an ABA stating that B's husband will not engage in loud or threatening behaviour. B is the victim of domestic violence perpetrated by her husband – in the course of which he breaches the ABA.
- Tenant C has five children under the age of 14. The eldest has been caught with friends writing graffiti on a fence, and C signs an ABA in relation to the child's graffiti and congregating with groups. Late one night the child sneaks out and is caught congregating with his friends again.

If each of these examples were to go to a hearing before the Tribunal, the tenancy would be terminated and the tenant and any other household members evicted – without consideration of any other circumstances, such as their age, medical conditions, the interests of their children, and the degree of their responsibility. As criminologist David Brown notes in relation to mandatory and grid sentencing, denying an adjudicator the discretion to consider such factors is to install 'a slot machine approach to justice... trashing of the traditions and processes of moral and legal judgement.' Now ◆

Making the Stigma official

New laws single out Public Tenants

Chris Martin, Policy Officer, Tenants Union of NSW

In June 2004, the NSW Government changed the Residential Tenancies Act 1987 to include provisions relating to 'anti-social behaviour' (ASB), which apply only to public housing tenants. These changes give extraordinary – and dangerous – new powers to the Department of Housing, and radically alter judicial processes relating to public housing tenancies – including the reversal of the onus of proof against tenants and the removal of discretion from the Consumer, Trader and Tenancy Tribunal.

Renewable tenancies (new section 14A).

Under the new law, if the fixed term of a tenancy agreement has expired and the tenant is now on a continuing agreement, the Department of Housing can declared that a new fixed term will apply. The Department will use this new power as part of its renewable tenancies policy.

The new power applies to all public housing tenancies, including tenancies that were already in existence when the renewable tenancies policy was introduced. The Department's existing renewable tenancies policy is to be revised to take into account the new laws.

Acceptable behaviour agreements (new sections 35A, 57A and 64(2A)).

These provisions create a new type of legal agreement called an 'acceptable behaviour agreement' (ABA). When a tenant signs an ABA, they agree not to engage in any of the kinds of anti-social behaviour set out in the ABA.

Under the changes, 'anti-social behaviour' is defined broadly as 'including the emission of excessive noise, littering, dumping of cars, vandalism and defacing of property'. It is unclear how far the meaning extends, but a sample ABA circulated by the Government includes the terms 'I will not congregate in groups in communal areas of [specify the area], ie stairways and walkways', and 'I will not act in a manner that causes or is likely to cause harassment, alarm or distress to other people', including 'swearing.'

The terms of an ABA will be determined by the Department according to the circumstances of each case, and will cover both the tenant and any other 'lawful occupant' of the premises.

The changes allow the Department to request an ABA if it believes, on the basis of the history of the tenancy (and any previous tenancies with the Department), that the tenant or another lawful occupant is likely to engage in anti-social behaviour. Failing or refusing to sign an ABA can effectively mean the end of your tenancy – if the Department applies to the Tribunal for orders terminating the tenancy on these grounds, the Tribunal must terminate your tenancy.

The consequences are similar if the Department alleges that you or another member of your household has breached the terms of an ABA: if the Department applies to the Tribunal for termination orders on this ground, and you cannot prove that you have not seriously or persistently breached the ABA, the Tribunal must terminate your tenancy.

Immediate terminations (new section 68A).

The Residential Tenancies Act already allows a landlord (including the Department of Housing) to apply to the Tribunal for immediate termination orders where a tenant has caused, or is likely to cause, serious damage to the property or injury to the landlord or other persons. The changes extend this and allow the Department of Housing to apply for immediate termination orders where a tenant has either:

- seriously or persistently threatened or abused a member of staff of the Department, or
- intentionally engaged in conduct that would be reasonably likely to cause a member of staff to be intimidated or harassed.

An explanatory note in the new laws states that 'harassment' may include repeated telephone calls to the staff member.

At the time of writing, the ASB changes have been made into law, but have yet to commence operation, and the Department has yet to formulate the various policies that will guide its use of the new provisions. The Tenants' Union is arguing for a range of safeguards, missing from the legislation, to be written into these policies. Many real and potential problems, however, can already be seen in the new ASB laws.

- *a blunt, exclusionary instrument.* In terms of regulating people's conduct, tenancy law is a blunt tool. It is essentially exclusionary. It relies, ultimately, on the threat and execution of evictions. The changes merely amplify this blunt, imprecise effect. ABAs widen the net of tenancy law, imposing additional conditions on tenants and increasing the prospect of breach. The changes to Tribunal procedure will mean that more proceedings for breach will result in evictions.
- *how a person is expected to behave will depend on the type of housing they live in.* The changes mean that there is to be one standard for the rest of the community, and another harsher standard for public housing tenants. It is difficult to imagine that a private tenant in NSW – let alone a homeowner – would ever be made the subject of a prohibition on congregating in common areas. This is fundamentally unjust – but more than that, it reinforces the stigma that is attached to public housing, and which in other respects the Department is committed to removing.
- *the perversion of contract principles.* The Act effectively allows one party to a contract to unilaterally alter the terms of the agreement – a dangerous power in any event, and especially where the party is the government landlord. The Government has called its ASB strategy an instance of 'mutual obligation', but the truth is that public housing tenants have always been subject to a regime of mutual obligation, as parties to contracts for housing that oblige them to pay rent, cause no damage and refrain from creating nuisances.

- *the reversal of the onus of proof.* This is straightforwardly a dangerous legislative precedent. The reversal of the onus of proof means that once a tenant has signed an ABA they are, for the purposes of any action by the Department, effectively presumed to have broken it. This legislative pall of suspicion reinforces the stigma of public housing.
- *the restriction of discretion and scrutiny.* In briefings with the Tenants' Union, the Minister for Housing has stated that he is 'anxious' that tenants whose behaviour is related to a mental illness, brain injury or other disability should not be caught up in the ABA regime. This intention is not, however, reflected in the new laws, which restrict the Tribunal's discretion and so removes a crucial safeguard for these tenants (see box article).

This failure of justice is compounded by the lack of other means of scrutinising and challenging decisions of the Department. Even the Housing Appeals Committee (HAC), the specialist independent administrative review panel for the Department of Housing, has no reference to hear appeals under the current renewable tenancies policy, and the Minister for Housing has indicated that he is disinclined to allow the HAC to review decisions relating to ABAs and renewable tenancies. If so, the only means of review of a decision in relation to an ABA or the renewal of a tenancy would be an appeal to the Supreme Court of NSW.

In any event, review under administrative law merely asks if the decision-maker took into account relevant considerations and not irrelevant ones, and whether the decision was not unreasonable – a lower standard than that of the balance of probabilities in civil proceedings, let alone the standard of beyond reasonable doubt in criminal proceedings.

- *the potential for increased tensions.* The Minister for Housing has described the intention of the changes as hanging 'the sword of Damocles' above the heads of tenants who fail to take 'responsibility' for themselves and their families. It is not clear that this approach will not inflame tensions and ASB rather than restrain them.

It may be that the additional stress of an ABA could result in conflict and violence within families, and a break down of family relations – 'parental responsibility' being manifested as clouting the child who misbehaves and places the family's housing in jeopardy.

Indeed, some reports from the UK suggest that where local authority landlords have introduced tough tenancy conditions, tenants whose children are in the care of authorities are reluctant to take their children back, for fear of the children breaching the tenancy conditions – the radical opposite of the intended result.

- *the potential for damage to trust-based initiatives and the delivery of support services.* The Specialist Response Teams (SRTs), the 'support service' side of the Government's ASB strategy, are to be funded out of existing budgets. The Department has already indicated that it is considering using funds from the 'Families First' strategy, which funds a variety of trust-based initiatives and support services that work co-operatively with parents and children to build up skills and support, to pay for the SRTs.

The SRTs might divert not just money from these services. If the SRTs are seen as part of the punitive regime of ABAs, renewable tenancies and fast evictions, tenants might avoid both the SRTs and the support services to and from whom referrals are made.

Ironically, in strengthening the Department's position in relation to its tenants, the changes may also weaken the Department's position in relation to other government agencies and service providers.

It is possible that in a context of scarce resources for the delivery of services across government – housing, health, community services, the police, local government – the Department of Housing's power to readily evict troublesome people will be a magnet for buck-passing by other government agencies.

Even within the multi-agency SRTs, conscientious housing officers may find that their efforts to negotiate with other agencies for the services and support their clients need undermined by the easy option of eviction.

- *the intimidation of witnesses in Tribunal proceedings.* The Government has stated that one of the motivations for the amendments, and particularly for the reversal of the onus of proof, was to avoid the situation of neighbours of a tenant having to giving evidence, as they were susceptible to intimidation. Witness intimidation is not a factor in all, or even most, proceedings against tenants in the Tribunal – in any event, the changes not actually address it, because reversing the onus means that instead of being called by the Department, neighbours will be called as witnesses by the tenant. Those tenants who are determined enough to intimidate the Department's witnesses will, presumably, not shrink from intimidating their own.
- *more complaints.* In widening the net for proceedings against breaches, and increasing the certainty that proceedings will result in evictions, the changes may also encourage a lower threshold of tolerance among neighbours in public housing and hence more complaints.

In particular, if evictions are easier to get, more complainants will expect their problems to be dealt with that way, when they would be more appropriately dealt with by the police, or a health service, or by conciliation between neighbours at a Community Justice Centre.

It may also encourage complaints of the worst kind: complaints motivated by racism, prejudice and simple intolerance of people of unusual appearance or behaviour. The Department already pursues evictions proceedings against too many vulnerable people, and the changes significantly increase the prospect of more.

Finally, each vacancy created by an eviction will be filled by another person from the waiting list who is no more or less likely to cause problems than someone already in public housing.

In its present state of funding, the Department will continue to house only people who are very poor and, increasingly, people who have some other crisis affecting their lives and who need housing as a result. This structural problem underlies the stress and grievance experienced in many public housing neighbourhoods, and harsh, exclusionary, ill-conceived, 'law and order'-style tenancy laws do nothing to help solve it. ◆

2 ASB in the UK

The NSW Government has described its approach to anti-social behaviour as 'UK-style', and the name given by the Department of Housing to its new strategy, 'Tackling Anti-Social Behaviour', is the same as that of the UK Home Office's ASB project. A comparison between the NSW and UK shows, however, that there are significant differences in the two approaches that have serious, negative implications for the fairness and effectiveness of the NSW measures.

Under the UK's *Crime and Disorder Act 1998*, social landlords (as well as local government authorities and the police) can apply for Anti-Social Behaviour Orders (ASBO) against any person who has behaved 'in a manner that caused or was likely to cause harassment, alarm or distress.' ASBOs may include prohibitions that are 'necessary for the purpose of protecting from further anti-social acts of the defendant,' and breach of an ASBO is a criminal offence.

Unlike NSW's ABAs, ASBOs do not apply only to public housing tenants, and in proceedings for ASBOs, the onus of proof is not reversed, and the ultimate decision as to whether to impose one rests with a court, not the landlord.

Also, the Home Office has been promoting the use of informal Acceptable Behaviour Contracts (ABCs), instead of applying immediately for an ASBO. ABCs are informal, negotiated and do not have a statutory basis – unlike ABAs, which cannot really be refused by tenants and which carry severe legal consequences.

The UK's *Housing Act 1996* provides for 'introductory tenancies' with 'trial periods' and, following amendments in the *Anti-Social Behaviour Act 2003*, orders for the 'demotion' of social housing tenancies to less secure forms of tenure – measures similar to NSW's renewable tenancies. In the UK, however, social landlords must apply to a court for orders demoting a tenancy; by contrast, the DoH may simply declare a new fixed term.

The *Housing Act 1996*, as amended by the *Anti-Social Behaviour Act 2003*, also allows social landlords to apply for 'anti-social behaviour injunctions' against tenants, covering conduct 'capable of causing nuisance or annoyance', unlawful use of premises and threats and violence. Again – and unlike in NSW – UK social landlords still have to prove their case for an injunction, and a court makes the final decision on whether to impose one. ◆

Tenant blacklists regulated at last ...by long chopsticks

Chris Martin, Policy Officer, Tenants' Union of NSW

Nearly 15 years after they first started blacklisting tenants and their families, real estate agents will finally have their use of tenant databases regulated by the NSW State Government. The Property, Stock and Business Agents Amendment (Tenant Databases) Regulation 2004 creates a new Rule of Conduct for the use of tenant databases, and will begin on 15 September 2004. Agents who breach of the Rule may be liable for fines and suspension of their licenses.

For the Tenants' Union, other non-government organisations and the thousands of individual tenants who know the frustration and misery caused by tenant databases like TICA, the new Rule of Conduct is a welcome development, but problems remain.

Broadly speaking, the new Rule of Conduct does two things: first, it sets out restrictions on listings by agents; and secondly, it attempts some indirect regulation of tenant databases themselves by setting out requirements that databases must meet so that agents can legitimately list on them.

However, in using a Rule of Conduct to regulate the use of databases, the Government has ensured a number of serious shortcomings in the restrictions. Most obviously, the new Rule of Conduct applies only to real estate agents, and not other users of tenant databases: residential park operators, boarding house owners, community housing associations and private landlords are not covered. Worse, the restrictions in the Rule do not apply to all people who are listed on databases – only listings made after 15 September 2004 are covered.

Finally, tenants cannot take action against breaches of the Rule in the Consumer, Trader and Tenancy Tribunal or a court: instead of a process of public hearings and orders made according to the law, it will be up to the Commissioner of Fair Trading to decide if and what action will be taken by the Commissioner against an agent.

The Tenants' Union has commended the Minister for Fair Trading, Reba Meagher, for acting on tenant databases, but says more needs to be done.

'The Regulation is no substitute for proper laws that comprehensively deal with tenant databases and that give tenants enforceable rights against listings,' says David Vaile, Chairperson of the Tenants' Union. 'Governments around Australia still need to pass legislation that restricts tenant databases, if not banning them outright.'

New restrictions on listings

Under the new Rule of Conduct, agents may list tenants only if all of the following circumstances are met:

- *the person to be listed was a tenant under a residential tenancy agreement.* In other words, an agent cannot list a person who is merely an occupant of premises (that is, their name is not on the tenancy agreement) or who is a boarder or lodger. This provision also appears to mean that a person cannot be listed by an agent just for making a tenancy application, as currently happens with the TICA Enquiry database.
- *the tenancy has been terminated.* An agent cannot list a person during their tenancy.
- *the agent has given written notice of their intention to list the person and the reason for doing so.* This requirement does not apply, however, if the agent cannot locate the person after making reasonable inquiries.
- *the person has been given a reasonable opportunity to respond.* This includes making submissions to the agent in respect of the proposed listing, and reviewing or correcting the proposed listing. Like the requirement for notice, this requirement does not apply if the agent cannot locate the person.
- *any objection by the person is noted on the database.* If the agent and the person disagree about the personal information to be listed, any objection by the person in relation to the information must be noted on the database.
- *the reason for listing is prescribed by the Rule.* Five prescribed reasons for listing are provided by the Rule, as discussed below.

The requirement for specific, limited reasons for listings is one of the stronger aspects of the Rule of Conduct. Under the Rule, a person may be listed only for one or more of the following reasons:

- *the landlord is owed money because of rent arrears.* The Rule also provides that to be listed for this reason, the person must owe more than the amount held as a rental bond.
- *the landlord is owed money because the tenant intentionally or recklessly caused damage to the premises.* The Rule also provides a number of additional circumstances that must be met before a person can be listed for this reason: the owed amount must be more than the amount held as a rental bond, and the agent must have completed a condition report and reported the damage to the police.
- *the person has not paid money as ordered by the Tribunal.*
- *the tenancy was terminated by the Tribunal for serious or persistent breach.*
- *the tenancy was terminated by the Tribunal because the tenant caused, or was likely to cause, serious damage to the premises or injury to the landlord or agent.*

These restrictions on listings should make some of the more outrageous practices of tenant databases and their members, such as the use of the notorious 'refer to lister' listings, a thing of the past.

It should be borne in mind, however, that for the thousands of people already listed on databases, the new restrictions will not help them escape past listings, no matter how seriously the listing would contravene the Rule if made post-15 September 2004.

New requirements for tenant database operators

Though the Rule applies only to real estate agents licensed in NSW, it also sets out a list of requirements that should have wider implications for the tenant database industry more generally.

'It's regulation by long chopsticks,' says Grant Arbuthnot, Legal Officer for the Tenants' Union. 'The Rule does not affect database operators directly, but they will have to meet the requirements if they are to keep their customers. It will be the agent who is in breach if they make listings on a database that does not comply with the requirements.'

For NSW agents to be able to list on them, tenant databases will have to meet the following requirements:

- *free access.* All persons listed on the tenant database must have free access to information held about them.
- *corrections and amendments.* If a listed person claims that information about them is inaccurate, out of date or incomplete, the information must be amended, without charge or, if the person's claim is disputed by the agent, the claim by the person must be noted on the database.
- *timeframes for listings.* If a person is listed for a debt and they pay the amount owed with three months, the listing must be removed from the database within seven days; if they pay the amount after three months, the listing must be changed to note that the debt has be repaid and the listing removed within three years. Listings for reasons other than debts must also be removed with three years.

The Tenants' Union will actively monitor the operation of the new Rule of Conduct, and wants to hear from tenants with database problems. If you want to make a complaint under the Rule – or if you have already done so and want to tell us about your experience – please contact the Tenants' Union or your local Tenants Advice and Advocacy Service. ◆

Tenancy News Across the Globe...

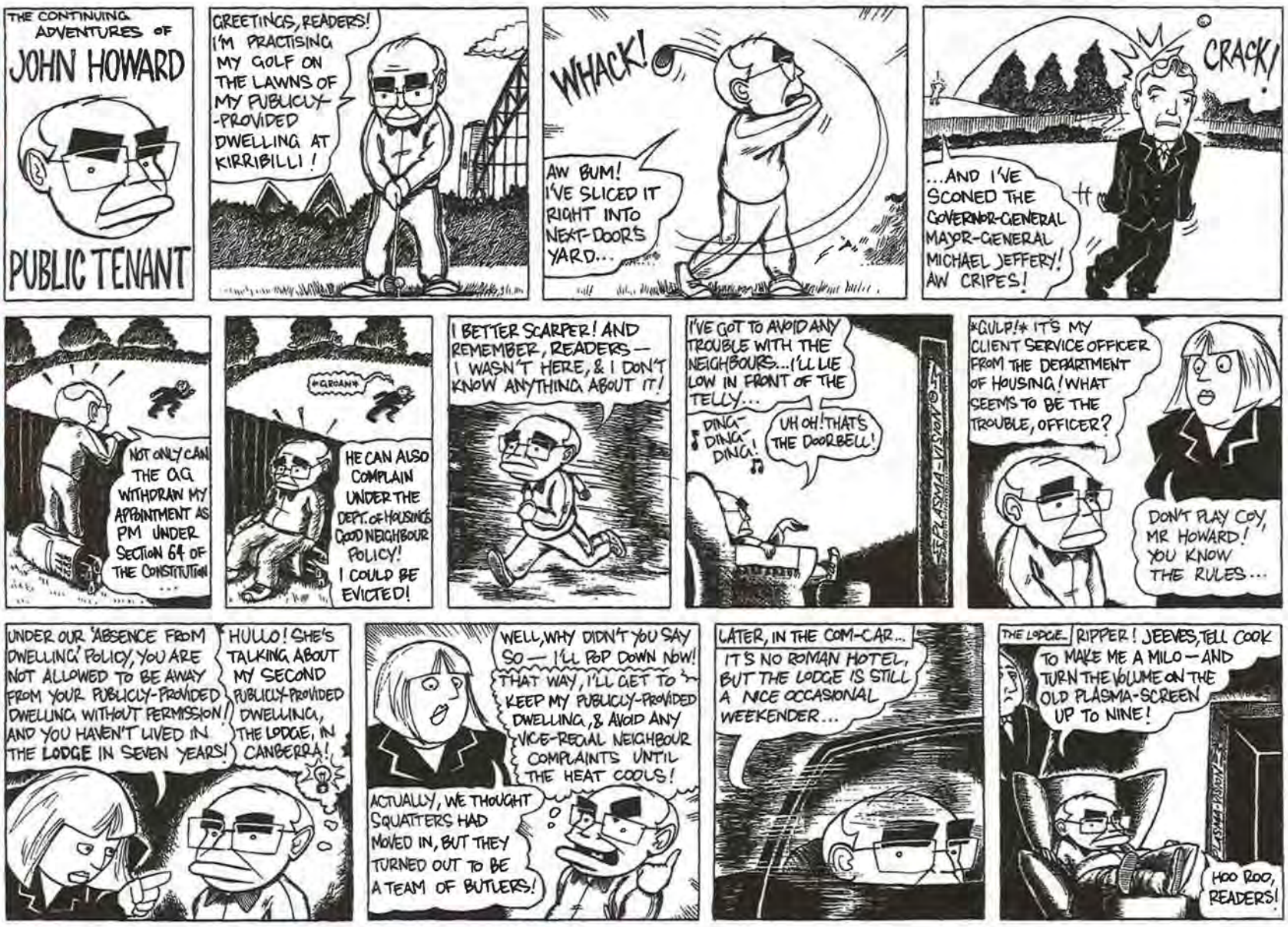
USA - Push out tenants for the New York Olympics...

The city's Economic Development Corp. wants to hire a consultant to help push out residents and businesses in the way of Mayor Bloomberg's ambitious development plans for NYC's West Side. Roughly 140 residents and 1,600 jobs will be relocated. One of the consultant's first tasks is to identify the number of residences and businesses to be moved. According to the New York City 2012 Olympic bid document the city wants the consultant to begin work in secrecy. "Consultant must obtain information without interfering with or directly notifying the in-place tenants," the document states. Bloomberg has consistently called the far West Side a wasteland. The neighbourhood group opposed to the stadium consider the hiring of a consultant an admission on the city's part that there will be substantial displacement.

[NY Daily News, April 25, 2004 www.tenant.net]

... continued page 7

Tenant News Showcases: Our mystery cartoonist strikes again



From page 6

...And push out tenants for the basketball

Tenants in Brooklyn are trying to get developer Bruce Ratner called for charging. The developer wants to take over seven blocks, a massive project that would include a new arena for the New Jersey Nets basketball team and 4,500 high-rise apartments, almost all at luxury rents. Residents in the area are crying foul, saying that Ratner is elbowing aside community concerns about scale, traffic, and displacement. The complex would cost $2.5 billion, much of it paid by public funds. The homes of almost 400 people and a shelter for the homeless with about 400 more are ear marked for demolition. It would also force out numerous small businesses. Secondary displacement is another fear. With 3,600 luxury apartments looming up across the street, even the people whose buildings weren't demolished might soon find themselves priced out by accelerating gentrification.

[www.tenant.net 02/06/2004]

East Timor - Land tangle means no security of tenure

Many communities in East Timor never received formal title to their land from the Portuguese or Indonesian colonial regimes, the UN or East Timor's post-independence government. A recent case points to some of the issues this has created. A family who lived in East Timor under Portuguese rule, and fled to Australia during the Indonesian occupation, returned at the end of 1999 and has claimed all of the land on which an entire community of over 200 people – the Fatureko community – lives . Although there are no laws to determine land disputes of this type, the Dili district court found against the Fatureko community. With nowhere else to go, the community has refused to move, have launched an appeal and are lobbying parliament to intervene. Lack of security of tenure is one of the many housing rights problems in East Timor, despite the right to housing being explicitly recognized in the constitution adopted in May 2000.

[COHRE Housing Right Bulletin April 2004 www.cohre.org]

Kenya - Tear down the slums – and their dwellers

More than 225,000 people living in the Kiberra slums in Nairobi are threatened with forced eviction by the Government. The Kenyan Government is expected to demolish more than 20,000 structures in the near future, despite calls from several international human rights organizations and donor governments to consider the impact of the demolition on the urban poor. The Kenyan Government has justified its brutal plans by claiming that the structures are situated on road reserves hampering construction of a bypass, or are too close to power lines and constitute a safety threat. Residents have not been offered resettlement or compensation.

[COHRE Housing Right Bulletin April 2004 www.cohre.org]

Norway - Asylum seekers: we lock them up, they throw them out

Norway's immigration agency is filing legal action against 46 would-be refugees who failed to win asylum in the country. They refuse to leave the Norwegian asylum centres where they've been living, even though they haven't been denied residence permission in Norway. State prosecutors are readying lawsuits seeking forced evictions from the asylum centres. The suits will target people who now are considered to be illegal aliens in Norway, but who can't be transported out of the country by police because they lack identification papers. The immigration agency (Utlendingsdirektoratet, UDI) contends it has a right to turn these people out on to the streets, in the same way others are evicted from their homes if they don't pay the rent. This marks the first time, however, that state officials are taking such measures. They've rejected the offers, and the state now believes it's unreasonable to allow them to stay in the centres at taxpayer expense when they are in Norway illegally.

[www.aftenposten.no/english/local/article828147.ece First published: 14 Jul 2004] ◆

... and around Australia

Victoria: Consumer Affairs review – the way backwards

Reforms recently announced by the Victorian State Government have the capacity to dramatically limit the access that tenants have to advocacy services. 'The Way Forward' report was released in early March 2004. The report recommended that a 12-month 'pilot' advocacy service be trialed in two regions, starting 1 July. The contract for the provision of advocacy services allowed for only a very small service and significantly less services than currently available. In the pilot regions, around four full-time staff in each region were to be replaced by a single advocate who may not even be full-time. In addition, the majority of tenants being assisted by the advocate had to be referred from Consumer Affairs. It was also not clear how many hoops a tenant might have to jump through before they got to the advocate. The Tenants Union Victoria are continuing their campaign for a review of the proposal and to ensure that there is a genuine evaluation of the services provided in the pilot regions.

[http://www.tuv.org.au/conreview.htm]

Illawarra: The Journey of Tenancy – or, how to avoid a bad trip

The Illawarra Tenants Service has developed a new community legal education workshop to use with newly arrived migrants in the Illawarra. The 'Journey of Tenancy' takes people through all of the steps from finding a rented home to termination. The 'Journey of Tenancy' was developed as a joint project between the Tenants Service, the Illawarra Migrant Resource Centre and the Wollongong Office of Fair Trading.

[www.illawarralegalcentre.org.au/] ◆

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.
- ☑ If you stop paying rent you can be asked to leave. Rent strikes do not work.

Remember: your landlord can't evict you - only the Tribunal can.

For more help

Contact your local Tenants' Advice and Advocacy Service.

Sydney Metro

Inner Sydney	9698 5975
Inner Western Sydney	9559 2899
Southern Sydney	9787 4679
South West Sydney	4628 1678 or 1800 631 993
Eastern Suburbs	9386 9147
Western Sydney	9891 6377 or 1800 625 956
Northern Sydney	9884 9605

Coastal

Illawarra/ South Coast	4274 3475 or 1800 807 225
Central Coast	4353 5515
Hunter	4929 6888 or 1800 654 504
Mid Coast	6583 9866 or 1800 777 722
Northern Rivers	6621 1022 or 1800 649 135

Greater Western NSW

North West	6772 8100 or 1800 836 268
South West	6361 5307 or 1800 642 609

Specialist

Older Persons Tenants' Service	9281 9804
Parks and Village Service	9281 7967

Aboriginal Services

Western NSW	6882 3611 or 1800 810 233
Southern NSW	4472 9363 or 1800 672 185
Northern NSW	6643 4426 or 1800 248 913
Greater Sydney	9564 5367 or 1800 772 721

Tenants' Union Hotline

Mon–Fri 9.30am–1 & 2–5pm 1800 251 101

www.tenants.org.au

For fact-sheets and for further information about the Tenants' Advice and Advocacy Program

NSW Tenants' Advice and Advocacy Services

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