

AUDITOR GENERAL EXAMINES HOMESWEST PRACTICES

Following information provided by TAS, a performance examination of Homeswest's maintenance and repair practices was carried out by the Office of the Auditor General of WA.

The resulting report, *A Roof Over Our Heads: Maintenance of Public Housing*, was tabled in state Parliament on 29th October. The report can be obtained from www.audit.wa.gov.au/reports

Maintenance and Repairs

The report vindicates the long held position taken by TAS that Homeswest's maintenance and repair process lacks consistency, transparency and accountability. For example, property inspections are not used effectively and property 'standards' and descriptions lack objectivity. Also of note is the report's finding that Homeswest had the lowest expenditure on maintenance per property out of all the public housing authorities in Australia.

The Auditor General also confirmed the need for changes to the Homeswest Appeals Mechanism, stating that: "*The Homeswest Appeals Mechanism (HAM) lacks transparency and due process and is not consistently applied*".

In particular, the report raises concerns in relation to:

- **Maintenance Planning and Budgeting** (report found that 11 per cent of properties consume 50 per cent of maintenance expenditure);

- **Maintenance Management** (approximately one third of Job Orders are not completed within the timeframe as set out in Homeswest's customer service charter);

- **Tenant Liability** (tenants are charged the estimated, rather than the actual, cost of repairs if maintenance work has not been completed before Homeswest advises the tenant of the charge).

Recommendations

The report makes a number of recommendations, such as Homeswest should:

- ⇒ Improve the consistent application, transparency, and due process of the Homeswest Appeals Mechanism;
- ⇒ Better integrate annual property inspections into maintenance planning;
- ⇒ Develop and communicate to Accommodation Managers and tenants an objective definition of fair wear and tear;
- ⇒ Expand current property condition descriptions into objective, measureable property condition standards for public housing and use these to:
 - monitor and report the condition of public housing across the sector;
 - plan and prioritise maintenance, including short and long term maintenance needs, and
 - identify current and future maintenance liability;
- ⇒ More rigorously monitor Job Order responses, so that:
 - all tenant requests for maintenance are logged,
 - the elapsed time between the tenant request and the issuing of a Job Order is known, and
 - the percentage of tenant requests that do not result in Job Orders is known;
- ⇒ Monitor and improve compliance with Maintenance Circular 2/2002 prohibiting the conduct of maintenance works in the absence of a Job Order, and enforce the recording of maintenance completion dates on Job Orders.

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by Joanne Walsh (TAS policy officer)

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AUDITOR GENERAL EXAMINES HOMESWEST PRACTICES

Audit Evidence

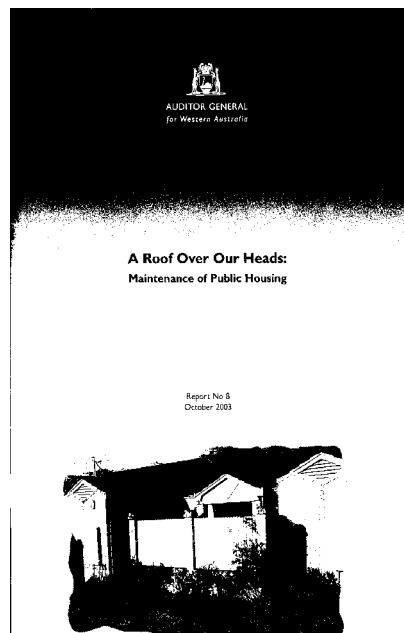
Representatives from TAS, Deaths in Custody Watch Committee, and the Equal Opportunity Commission were consulted during the examination. However, TAS is disappointed that all audit evidence cited in the report was derived only from Homeswest records and advice from Homeswest staff. The Auditor General does warn in the report that due to insufficient and discrepant data on some issues, compliance with some Homeswest policies was difficult to determine. The report's examination encompassed operations in three of Homeswest's nine regional areas: North Metropolitan, Pilbara, and Southern.

Media Reporting

It is unfortunate that media attention on the report focused on alleged damage by Homeswest tenants, when in fact tenant liability formed a very small part of the Auditor General's review of practices (only ten tenant liability accounts were examined in the report).

TAS hopes that the report will lead to improvements in: Homeswest's maintenance and repair process; Homeswest response time; and in a reduction in the wrongful charging of tenant liability.

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TENANT ADVOCACY UPDATE

FEDERAL INQUIRY INTO TENANT DATABASES



Tenancy databases, also known as tenant 'blacklists', have been the subject of concern to tenant advocates for a long while. Following on from the December 2002 amendments to the *Privacy Act* (1988), the Privacy Commissioner has

also been concerned about the practices of tenancy databases and their operators.

In light of this, the Standing Committee of Attorneys-General and the Ministerial Council on Consumer Affairs (MCCA) recently announced that they will be holding an Inquiry into Residential Tenancy Databases (RTDs). An Issues Paper relating to the role, operation and extent of RTD use in Australia is now available for public comment and can be downloaded from www.consumer.gov.au/ (click on 'news' for information about the review).

Key issues raised in the paper include:

- Unfair listings (includes inaccurate listings; trivial, vexatious and discriminatory listings; listings being made or retained indefinitely; intimidation of tenant by threat of listings; listings not including default reasons)
- Non-disclosure of listings (tenant not aware of listing)
- Accessing a listing (difficulties and costs involved)
- Dispute resolution issues (onus on tenant to investigate reasons for listing; difficulties in removing listing even when found to be incorrect; RTD operators' lack of impartiality)
- Listing duration (varies considerably depending on RTD operator and/or nature of breach).

Formal submissions in response to the issues raised (and/or not raised) in the paper, are now being called for and can be lodged electronically (preferred) to RTD@treasury.gov.au. Hard copies can be mailed to:

Residential Tenancy Database Working Party
Consumer Policy Framework Unit
Competition and Consumer Policy Division
Department of the Treasury
Langton Crescent
CANBERRA ACT 2600
(Ph: (02) 6263 3874; Fax: (02) 6263 3964).

The closing date for submissions is **December 24, 2003**. All submissions will be published on the MCCA website (www.consumer.gov.au) subject to claims of confidentiality.

TENANTS BEING CHARGED ILLEGAL FEES

Both TAS and DoCEP (Department of Consumer and Employment Protection) have been dealing with an increase in tenant queries about real estate agents charging fees for property inspections.

Fees for property inspections and/or bond inspections are not sanctioned by the *Residential Tenancies Act* and as such, are illegal. This includes any property "re-inspections" carried out because a tenant vacated the property. Other illegal fees include the charging of fees for the issuing of breach notices, and the charging of administration fees for the provision of utilities (such as gas, water, electricity accounts). For example, real estate agents charging a \$2.50 "management fee" for each utility bill they send to tenants.

All such fees are illegal regardless of whether or not they have been included as "special conditions" in the tenancy agreement. For example, some agents are including as a standard condition in the tenancy agreement, that \$30 will be deducted from the bond to replace property condition photographs that are not returned. Such deductions are unlawful.

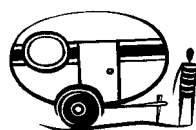
DoCEP would very much like to hear from anyone who believes that are being charged any of these illegal fees. Contact DoCEP on **1300 304 054** (TTY: 9282 0800).

EOC INVESTIGATION

The Equal Opportunity Commission (EOC) continues to conduct consultations for its investigation into the provision of housing to Aboriginal people in WA. TAS understands that a large amount of evidence has been collected and that an interim report will be published in the New Year. People wanting to have a say on the issues under investigation can call the Commission on **(08) 9216 3900**. The terms of reference for the investigation are published on the Commission's website at www.equalopportunity.wa.gov.au.

TAS' submissions to the EOC investigation, and also submissions by volunteer housing advocate Betsy Buchanan and former TAS coordinator Jeannine Purdy can be obtained via TAS' website (www.taswa.org). Homeswest's submission can be obtained from www.dhw.wa.gov.au

CARAVAN PARK TENANCIES



The State Government will be introducing legislation to better regulate caravan park tenancies. Norm Marlborough MLA has been appointed to oversee the process. Community consultation will be taking place with metropolitan and regional caravan park tenants, and interested community workers.

TAS RESEARCH

TAS is planning to conduct an analysis of the current legal dispute resolution process for tenants (i.e. The Small Disputes Division of the Local Court). Such an analysis should help to inform the ongoing review of the *Residential Tenancies Act*.

The research project is intended to provide information on who is applying to court and on what grounds; who is appearing in court; the process of court hearings; the average length of hearings; accessibility, consistency and accountability of the court process. For further information, contact TAS' policy and law reform officer Joanne Walsh.

LEAKING ROOFS REPORT

Leaking Roofs, a comprehensive state-by state rental report compiled by the National Association of Tenant Organisations, is soon to be published. The report is a review of the original *Leaking Roofs* published in 1991.

TAS had considerable input into the report's review and considers the final product to be a valuable source of information as it provides a picture of the rental housing sector within the Australian housing system; acts as a guide to the main legislative provisions in each State while identifying key deficiencies; and presents a number of recommendations for reform. When published, *Leaking Roofs* will be available for download via TAS' website (www.taswa.org).

REVIEW OF THE RESIDENTIAL TENANCIES ACT

The Minister for Consumer and Employment Protection, Mr Kobelke, has put the review of the *Residential Tenancies Act* on hold until after the next election. In the meantime, TAS will be pursuing improvements which do not require legislative amendments such as changes to the (currently problematic) RTA prescribed termination forms. This will involve negotiating with the Department of Consumer and Employment Protection.

ROOFS FOR YOUTH TRAINING MANUAL

"Roofs for Youth", a new tenancy training manual designed specifically for youth workers by the Youth Affairs Council of WA, is due to be published in early 2004. The manual consists of community legal education session outlines, information and resources. Topics covered include finding and applying for private rental accommodation; tenancy rights and responsibilities; and skills in surviving shared housing.

The manual was funded by the Commonwealth Department for Family and Community Services. TAS' Community and Legal Education Worker Camille Inifer assisted in the development of the manual. You can obtain a copy of "Roofs for Youth" by phoning the Youth Affairs Council of WA on **(08)9388 0640**. The manual is free of charge (not including postage).

TAS on air !

TAS' policy and law reform officer Joanne Walsh has been busy in the media over the past few months. In March, Joanne was interviewed by Liam Bartlett on ABC's Perth radio station 6WF. The interview was sparked by the then Minister for Housing, Tom Stephens' claims of a "blow-out" in debt owed by Homeswest tenants. Liam also interviewed Greg Joyce, Director General of the Department of Housing and Works. This is some of what Joanne had to say in response to Mr Joyce:

"Some of the problems that were identified with the debt relating to tenant liability were clearly linked to the deterioration of stock generally because of reduced budgets for maintenance. Homeswest has a minimal maintenance policy, so often when work is not carried out further deterioration occurs, but then what happens is when the repairs need to be done, the onus of proof is put onto the tenants to prove that they're not responsible for that maintenance and repairs....."

"Tenants Advice Service have never helped with a review of a tenant liability account that we haven't been able to reduce, but that's because we're experts at it. Your average tenant can't track the documents and make the arguments in accordance with policy..."

Joanne was also interviewed about Homeswest matters by Geraldine Doogue on ABC's Radio National program "Life Matters" in September, again with Greg Joyce. The interest in Homeswest was sparked by the eviction facing an Aboriginal family who had recently lost a teenage son in a car chase accident.

WELCOME TO NEW COORDINATOR & SOLICITOR

Sally MacKay, former chairperson of TAS Executive Committee, was appointed as TAS' new coordinator in October. Sally is currently completing her Masters in Community Development and has worked as tenancy/welfare advocate for Welfare Rights and Advocacy Service. She also recently worked as Project Officer for the Youth Affairs Council of WA's "Roofs for Youth" project. Acting Coordinator Penny Tucker has returned to her position as TAS administrator while continuing with her studies in Social Work.



Sally Mackay

Andrew Mackey is TAS' new, part-time solicitor. Andrew was admitted to practice in WA in 1995 and in NSW in 2001. Following admission he has worked in a number of Community Legal Centres and was formerly the Senior Solicitor of the Youth Legal Service (WA) and Principal Solicitor of the Inner City Legal Centre, Darlinghurst, NSW. Andrew has a background in criminal, employment and discrimination law and has extensive experience in advocacy and community legal education. Chairperson of TAS' Executive Committee for 2003-04 is Fiona Callan. Fiona has worked for Community Housing Coalition of WA and was recently appointed Executive Officer of Northside Housing Association.

2003 NATIONAL CLC CONFERENCE RESOLUTIONS

The 2003 National Community Legal Centre conference - Peace, Justice, Community - was held in Hobart in September. The resolutions ratified at the conference will form the basis of the National Association of Community Legal Centres and relevant network workplans for the next twelve months. Conference resolutions for the national tenancy network were:

- 1) That all States and Territories ban the operation of tenant databases, based on the overwhelming evidence that their use compromises Australians' right to housing.
- 2) We call upon all State and Territory governments to give a commitment to ensuring security of tenure in caravan parks and support caravan parks as an affordable housing option.
- 3) That Australian governments, through the Standing Committee of Attorneys-General, develop and implement a national model for best practice laws and housing standards for all renters, as part of their stated commitment to a 'national, strategic, integrated and long term vision for affordable housing in Australia' (Commonwealth State Housing Agreement, 2003).

TAS' 2003 - 05 STRATEGIC PLAN

The new TAS strategic plan details TAS' future for the next two financial years until July 2005. TAS identified the following objectives:

1. To provide timely, quality and accessible advice and information services on tenancy
2. To provide timely, quality and accessible community education and training services.
3. To take a lead role in policy and law reform on tenancy issues.
4. To operate responsively, effectively and efficiently as a viable non government organisation.
5. To provide leadership in best practice service delivery, development, resourcing and support.

Mission: TAS is a non government organisation, providing quality information and education for the benefit of tenants.

Vision: A society where the rights of tenants are respected, protected and encouraged.

Values: TAS is acting within a human rights and community development framework.

The 2003-05 strategic plan is also committed to facilitating members of TAS to have more say in the future direction of the organisation. TAS has planned for direct consultation with all members through a questionnaire in 2003-04.

STATE CLC CONFERENCE

The inaugural state conference of Western Australian Community Legal Centres was held in Perth on 14 -16 May 2003. In addition to the state conference, a special Tenancy Network meeting was held at the offices of the Department of Consumer and Employment Protection (DoCEP). Metro and regional tenant advocates, TAS staff, DoCEP representatives Paul Chorley (Business Development Officer) and Ben O'Rourke (acting Coordinator, Building and Tenancy), as well as Coordinators from some of the CLCs were at the meeting.



Tenant Advocates gathered at the 2003 WA State Community Legal Centre Conference. (L-R): Alyson Szigligeti (TAS), Greg Cross (Geraldton Resource Centre), Elisabeth Purser (Kimberley CLC), Kerri Powell (South West), Don Montefiore (Goldfields CLC), Sue Chadwick (Northern Suburbs CLC), Dylan Desaubin (Midland Information, Debt and Legal Advice Service).

BOARDERS AND LODGERS

The Department of Consumer and Employment Protection's Adrian Bettella (Manager, Building and Tenancy) explains what the difference is between boarders, lodgers and tenants.

There are two main differences between a tenant and a boarder, or lodger. A tenant has:

- a right to "exclusive possession" of the place in which he or she is staying; and
- a term of tenancy, ie: the length of time agreed to by both parties to stay in the house.

"Exclusive possession" means the right to exclude anyone, including the landlord, from the premises. However, if the room has a lock (which physically stops the landlord from entering), this does not automatically mean that there is exclusive possession of the room. The "house rules" may state that the manager or landlord is allowed to come into the room without permission. If for example, you receive any services such as cleaning, linen or meals, these would require the landlord to have unrestricted access to the premises or room and so you would not have exclusive possession.

A boarder is generally someone who pays rent for the permission to stay at another person's house, and has meals provided. Whereas a lodger is generally someone who pays rent for permission to stay at another person's house, but is not supplied with meals.

While boarders and lodgers are not covered by the *Residential Tenancies Act*, they still have certain rights. Boarders and lodgers have a right to:

- Expect the house to be clean and in a reasonable state of repair when you move in, including all the rooms, facilities, furniture and equipment supplied by the landlord;
- Privacy, peace and quiet and to use the room and facilities without interference by the landlord;
- Access to their room, toilets and bathrooms;
- Access to common areas and facilities such as the laundry and the kitchen;
- Security for the room and personal belongings;
- Have the room, common areas and facilities kept clean and tidy and in reasonable repair; and

- Be made aware of the house rules.

- However, these rights may be changed or added to by agreement between the boarder/lodger and the landlord. Check the written agreement to see if this is the case.

Along with rights there are also responsibilities. A boarder or lodger is responsible for:

- Keeping their room clean and tidy;
- Paying their rent when it is due and in the agreed way;
- Following the house rules;
- Asking the landlord before keeping any pets;
- Letting the landlord know about any damage they or their visitors may have caused and pay for that damage;
- Letting the landlord know if any of the furniture, fixtures, facilities or equipment needs to be fixed; and
- Making sure they don't disturb the privacy or peace and quiet of other residents.

Boarders and lodgers also need to be aware that the landlord can ask them to leave, without any reasons, at any time. However, the landlord must give '**reasonable notice**' to leave the premises and take personal belongings. "Reasonable notice" will depend on the circumstances of each situation. For example whether or not arrangements need to be made in order to move furniture. There should be an agreement with the landlord about what constitutes a reasonable time, but nonetheless, boarders and lodgers may have to move out at short notice.

When boarders/lodgers want to move out, they should as a matter of courtesy, let the landlord know about a week in advance. This may have been agreed to before they moved in - check any written agreement they may have. They should give the landlord time to do a check of their room and arrange for the return of any security bond they may have paid.

BOARDERS AND LODGERS

Legislation protecting boarders and lodgers is urgently needed, says TAS' Tenant

Advocate Alyson Sziglieti.

TAS receives many calls on boarder/lodger issues from both tenants and community workers. Frequently people who contact TAS have been led to believe by the owner/agent that they are a boarder or lodger and therefore have no protection under the current Act. However, it is not always straight forward what their status is for the purposes of the Residential Tenancies Act.

Some Useful Questions

In attempting to determine whether or not a person is a lodger or a boarder, there are some useful questions which can be asked:

- Does the person have a key to the front door?
- Can the tenant come and go as they please?
- Is the tenant subject to any rules while at the premises?
- Does the agreement provide for a daily rate of charge, rather than weekly or fortnightly amounts?
- Is the term of the agreement for a fixed term? periodic? or purely at the will of the owner?
- Are other parts of the agreement of the kind typically found in a tenancy agreement (for example, obligation of the occupier to insure the premises, or a term which grants quiet enjoyment to the occupier)?
- Does the occupier have exclusive use of a bathroom and toilet?
- Does the agreement refer to a "tenancy", "rent", "board" etc?
- Is the tenant provided any linen, food or other services by the owner?
- What is the character of the premises, and the purpose/s for which occupation is made available (for example, is it a women's refuge, a hostel?)
- Are the premises registered as a boarding house with the Local Council?
- Is the person expected to pay the same amount of bond as a tenant?

This list is not comprehensive and the answer to any of them will not necessarily mean that a person is or is not a boarder or a lodger!! In some situations, it may be more effective to apply to the Small Disputes Division of the Local Court and have a Magistrate determine the status for the purposes of the RTA.

Recent Cases

TAS recently assisted four international students in their application to the Small Disputes Division. The students had a lodging agreement which included lots of penalty clauses which were proved to be unjust. In this case the Magistrate determined that the students were in fact tenants and that a residential tenancy existed.

Vulnerable to Exploitation

Social research indicators show that boarders and lodgers are, as a group, at a greater risk of exploitation by landlords, experience greater insecurity of accommodation, and as such, fall under definitions of homelessness (*State Homelessness Taskforce: Addressing Homelessness in Western Australia*, January 2002).

In its submission to the review of the *Residential Tenancies Act (RTA)*, TAS argued against the current exemption of boarders and lodgers from WA's Residential Tenancies Act (1987), and proposed that legislative protection be extended to this vulnerable group of people. A full copy of TAS' submission to the RTA Review can be downloaded from TAS' website: www.taswa.org

State-by-State Legislation

Residential Tenancies Acts for each state can be accessed via the Australian Legal Information Institute's website: www.austlii.edu.au

Queensland's Residential Services (Accommodation) Act 2002 protects people living in boarding houses, hostels and aged rental complexes. However, many boarders and lodgers fall outside the application of this Act as it only extends to situations where four or more residents reside in the same premises.

Both **Victoria and South Australia** have provisions in their respective Residential Tenancies Acts regarding boarders and lodgers (whom are referred to in both state acts as 'rooming house residents').

The **Northern Territory's** Residential Tenancies legislation only applies to boarders and lodgers where three or more residents reside in the same premises.

Tasmania is currently in the process of amending their Residential Tenancies legislation around boarding and rooming houses. The changes have passed both houses of Parliament and are due to be implemented. The changes can be accessed (which need to be read in conjunction with Tasmania's *Residential Tenancies Act*) at www.justice.tas.gov.au/ca/tenancy

ACT's Residential Tenancies legislation currently offers no protection to boarders and lodgers who are, as in WA, exempted from the RTA. The ACT Government has drafted a report proposing that RTA coverage be extended to boarders and lodgers, though this has yet to be implemented.

THRILLS AND SKILLS OF A LOBBYIST

What are the ingredients of successful lobbying? *TAS Talk* editor Nikki Ward interviews TAS' law reform and policy officer Joanne Walsh to find out what makes her lobbying tick and kick.

Why is lobbying important to your position as law and reform officer for Tenants Advice Service?

You can't effect change on a case to case basis. You need to work on a broader, higher level. Individual cases can illustrate the need for change but the need is not recognised, say by Ministers and Commissioners, until you can show a pattern, until a trend emerges, and the need for change becomes systemic.

How do you normally present your case for change?

First I research the issue as it arises either from casework (TAS' own as well as from other community agencies), TAS' tenants' telephone advice line, community worker training and community education.

I pitch my writing to the level of my target audience, using a mix of case studies/individual narratives and quantitative data. I use a 'triangulation' strategy whereby the qualitative data is used to illustrate the impact of the quantitative stuff which acts to highlight the systemic nature of problems. Unfortunately, not a lot of value is placed on qualitative stuff unlike Aboriginal modes of "storytelling" or discourse, which is why it's important to also be able to show 'numbers'.

What aids you in your efforts of lobbying for reform?

Preparation, you have to know your subject backwards. Knowing the position and style of the person or committee that you are lobbying so that you can anticipate their response and not get sucked into arguments of detail.

Also, having the research information/issues papers publicly available. In this way, you can garner support from other community organisations and representative groups. TAS, as a resourcer of WA's Tenancy Network, also shares its information and consults with tenancy workers throughout WA.

Knowing about how the *Freedom of Information Act* operates is also a useful tool for lobbying. The thing though with FOI is you must know about the documents' existence before you can request them. And even when you do request them, you can simply get a reply that that file is missing, though you can then lodge a complaint with the FOI Commissioner and wait for the red tape to finally yield to your advantage.

Are there any key skills that a good lobbyist needs?

Documenting everything, including telephone conversations, minutes of formal and informal meetings. Keeping old documents accessible so that when a recurring issue is brought to attention by new players, you don't have to reinvent the wheel.

A critical skill is to always post a solution when raising criticism. An outright display of passion for an issue can also be a useful strategy for influencing some people.



Do you need to possess a particular attitude when lobbying?

Be persistent. Maintain the rage/ energy, as any gains that have been won are at risk if that energy dissipates before the goal is met. When challenging the status quo, expect a defensive reaction.

What is the most challenging aspect of lobbying, in your opinion?

The slow time scales, mainly due to the lack of resourcing of the people/institutions you are trying to lobby for change. For example, there is only one person appointed by the Government to manage the RTA review; and only one person is responsible for all the policies of Homeswest and their review.

And the most frustrating?

Seeing the same issue come up, again and again, as people move in and out of the sector and want to reinvent the wheel, not knowing all that has already gone on in the issue analysis. The issue always being up for discussion. The absence of action taken on an issue.

Why did you choose to do this job?

I believe in the possibility of effecting a change. I am a realist, I know it will take a long time, but you gotta start somewhere, and take a long term, historical view.

Meeting with Ministers

TAS and two members of the WA Tenancy Network (Kerri Powell and Sue Chadwick) met with the new Housing Minister, Nick Griffiths, in September. A number of public housing issues were raised including the shortage of large family accommodation, waiting list management, decision making in relation to applicants/tenants with medical needs, and limitations of “support” services. The Minister has provided TAS with a copy Homeswest’s response to the issues raised and TAS will be making a further submission to correct the record and make formal recommendations.

TAS also raised concerns with the Minister for Community Development, Sheila McHale, in relation to the inter-departmental protocol between the Department of Community Development (DCD) and Department of Housing and Works (DHW). The protocol is currently a one-way process (DHW to DCD) and referral for assistance is not made until a court order for eviction is obtained.

Ms McHale advised that the protocol had been amended to improve the referral process and invited us to meet with Lex McCulloch, Director of DCD. TAS and a member of the WA Tenancy Network then met with Mr McCulloch who agreed to revisit the protocol and arrange a meeting with TAS and DHW senior management for early December.

Homeswest Appeals Mechanism

TAS continues to advocate for changes to the public housing (Homeswest) decision review mechanism. Over 12 months ago, TAS achieved an agreement from the Department of Housing and Works (DHW) to review its Homeswest Appeals Mechanism (HAM) and for Homeswest to meet with community representatives. Some positive achievements have been gained as a result of this community consultation process such as: promotion of the HAM through a poster campaign; some tightening up of procedures (for example, tenants not being routinely notified of adverse decisions at the time they are made); and improvements to the recruitment and training of HAM representatives.

However, parts of the HAM process are still in need of significant reform. For example, HAM independence from DHW; accountability of decisions made; and transparency of the decision making process. Homeswest has been reluctant to hold discussions about these issues, despite repeated requests from TAS and recommendations made in the Auditor General for Western Australia’s report on Homeswest.

Finally after seven months a meeting was recently granted and was attended by TAS’ policy officer

Joanne Walsh, Paul Pendergast from Shelter WA, Lyndsey Fitzgerald from Jacaranda Community Centre, and tenant advocate Dylan Desaubin from Midland Information, Debt and Legal Advice. Some of the outcomes of the meeting included:

- In future, during hearings, tenants will be asked if it’s OK to send a copy of the decision to their advocates (advocates were previously not being routinely notified of the outcome);
- An explanation of “procedural fairness” will be included in the HAM policy;
- Clause 15.4 of the HAM policy (re feedback to Homeswest) will include the incidence of recurring issues and not just the identification of ambiguous or deficient policies;
- Copies of all policies will be available in the hearing room during appeals;
- “Factors taken into consideration” such as medical support letters, etc, will be included in the reasons for decision.

The meeting was informed that the HAM manual has been amended but is not yet available to the public (the internet version remains outdated). Apparently the changes reflect the changes made to the HAM policy in the Rental Policy Manual.

Priority Application Assessment

TAS, as a member of the Homeswest Operational Standing Committee, had an opportunity to provide extensive input into the trialling of Homeswest’s priority application assessment form. The form is currently being trialled in Bunbury, Kalgoorlie, Karratha and Fremantle. TAS believes that some of the questions are inappropriately worded and the substantiation required is onerous. This may result in further barriers to accessing priority transfer, as is already evident in the regions where the form is being trialled. For more information, contact TAS policy officer Joanne Walsh.

Tenant Participation Scheme

TAS worked with the Council on the Aging to progress a proposal for a trial tenant participation scheme. Homeswest has approved the trial but to date has been unable to identify a suitable block of units to implement the trial.

Heating Charge Unlawful

TAS successfully pursued the issue of Homeswest charging its tenants to provide heating to their homes. The Department for Consumer and Employment Protection confirmed that the charge is in breach of section 27 of the *Residential Tenancies Act*. Changes have now been implemented to ensure compliance with the Act. Any additional charges raised by Homeswest must now be separately itemised on tenants’ accounts.

PUBLICATIONS UPDATE

TAS' *Tenants Rights Manual* is under review and due to be published soon.....

The review will result in a third edition of the Manual being released and launched in February 2004. The Manual will continue to be photocopiable, as a resource to be used by both community workers and tenants. TAS uses the Manual as training resource as well as information sheets sent out on the tenants' advice lines.

Reviewed and updated chapters of the Tenants' Rights Manual are in the process of being listed on TAS' website table of updates (www.taswa.org - see below). These chapters can be printed off directly from the website.

Chapter 1.4 : Homeswest Tenants
Chapter 1.10: Shared Tenancies
Chapter 1.12: Community Contacts

Chapter 2.2: Abbreviations used in 'To Let' Ads
Chapter 2.7: The Option Fee
Chapter 2.10: The Property Condition Report

Chapter 3.1: Rent, Rent Increases and Rent Reduction
Chapter 3.2: Rent Arrears
Chapter 3.4: Locks and Security
Chapter 3.5: Maintenance and Repairs
Chapter 3.7: Vermin/Pest Control
Chapter 3.8: When the Tenant is in Breach of the Agreement
Chapter 3.9: When the Owner is in Breach of the Agreement
Chapter 3.10: Requesting that the Owner Remedy a Breach of the Agreement
Chapter 3.13: Writing a Letter to the Owner/Agent

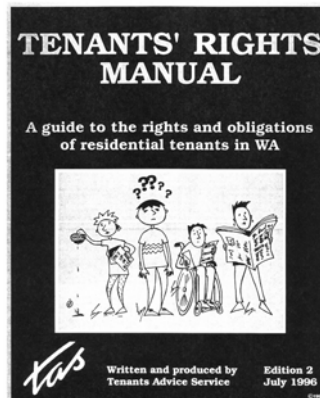
Chapter 4.1: Ending a Periodic Tenancy
Chapter 4.2: Ending a Fixed Term Tenancy
Chapter 4.3: Ending the Tenancy when the Tenant Breaches the Agreement
Chapter 4.4: Ending the Tenancy when the Owner Breaches the Agreement
Chapter 4.7: Evictions
Chapter 4.8: A "Superior Title" Claim - Takeover of the Property

Chapter 5.1: Getting the Bond Money Back
Chapter 5.2: Fair Wear and Tear
Chapter 5.3: Applying to the Local Court for a Bond Disposal Order

Chapter 6.2: Preparing for Court
Chapter 6.3: Going to Court

TRM sections have NOT changed from the original layout as follows:

Chapter 1: Introduction/General Information
Chapter 2: Entering Into A Tenancy
Chapter 3: During The Tenancy
Chapter 4: Ways A Tenancy May Be Ended
Chapter 5: Bond Recovery
Chapter 6: Going To Court



However, PLEASE NOTE - the chapter numbering system for some of the Tenants' Rights Manual sections has changed as follows:

Chapter 1.5A, now Chapter 1.6: Income and Expenditure Statement
Chapter 1.6, now Chapter 1.7: Penalties/ Fines for Breaching the Residential Tenancies Act
Chapter 1.7, now Chapter 1.8: Discrimination
Chapter 1.8, now Chapter 1.9: Boarders

and Lodgers

Chapter 1.9, now Chapter 1.10: Shared Tenancies
Chapter 1.10, now Chapter 1.12: Community Contacts

Chapter 3.1A, now Chapter 3.2: Rent Arrears
Chapter 3.2, now Chapter 3.3: Privacy and Quiet Enjoyment
Chapter 3.3, now Chapter 3.4: Locks and Security
Chapter 3.4, now Chapter 3.5: Maintenance and Repairs
Chapter 3.5, now Chapter 3.6: Altering or Adding to the Premises
Chapter 3.6, now Chapter 3.7: Vermin/Pest Control
Chapter 3.7, now Chapter 3.8: When the Tenant is in Breach of the Agreement
Chapter 3.8, now Chapter 3.9: When the Owner is in Breach of the Agreement
Chapter 3.9, now Chapter 3.10: Requesting that the Owner Remedy a Breach of Agreement
Chapter 3.10, now Chapter 3.12: Compensation for Loss Incurred due to a Breach by the Owner
Chapter 3.11, now Chapter 3.13: Writing a Letter to the Owner/Agent
Chapter 3.12, now Chapter 3.11: The Duty to Mitigate Loss

Chapter 5.1A, now Chapter 5.2: Fair Wear and Tear
Chapter 5.2, now Chapter 5.3: Applying to the Local Court for a Bond Disposal Order

Chapter 6.3, now Chapter 6.2: Preparing for Court
Chapter 6.2, now Chapter 6.3: Going to Court

- Nikki Ward
Publications Officer,
Tenants Advice Service.

COMMUNITY LEGAL EDUCATION

CATS IN THE HATS: Community Legal Education for Housing Co-operatives.

Long weekend in September, the *Thank Your Lucky Stars* Coop (Housing Co-operatives) WA Conference was happening amidst the tall timbers of the Tone River forest, Manjimup, a magical place to be. Especially for coopers (pronounced *co-oppers*; meaning people who live in housing co-operatives).

The Federation of Housing Collectives (FOHCOL) were hosting this annual event which revolved around the principle of 'sustainable communities where social justice, environmental responsibility and economic opportunity come together in a journey of living simply'.

Tenants Advice Service had been invited to provide a community legal education (CLE) workshop on the *Residential Tenancies Act* (RTA). This required flexibility and creativity. It was after all a coop conference where the place and the law were to some extent at odds.

In the workshop most of the interest in the RTA was from a business perspective, that is managing the tenants, the tenancies and the dollars. Whilst the informal chats triggered queries from a tenant perspective. Landlord/tenant 'hats' in coops seem to be an anathema.

As can happen with a combination of being in the forest with good healthy food and the 'coopers', the CLE evolved outside of the workshop into chats whilst walking or sitting, telling tenancy yarns.

Some of the yarns were the stuff of right to privacy whilst living in a community; or juggling the affordable rent criteria with costs of providing quality maintenance; and the big one! – the balancing act of managing the properties and being a tenant.

And yes there are disputes in coops as there are in all tenancies. I learned that the disputes are very similar to those tenant advocates work on a daily basis. And the solutions are the same too, it's about knowing what your rights are and what your responsibilities are as a tenant or landlord under the RTA.

- Camille Inifer,
Community and Legal Education Worker,
Tenants Advice Service.

Wearing both tenant and landlord hats is a challenge for members of rental housing coops.

Rental coops develop from people on low or insecure incomes, without the means to join the great Australian dream, taking charge of their own shelter needs. The coop dream provides secure, affordable housing that is driven by, and meets the needs of the tenants who collectively and voluntarily manage the properties.

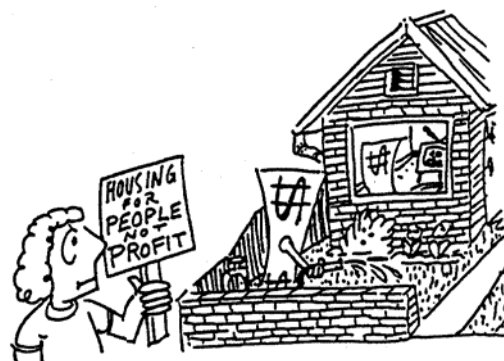
The cooperative experience is one of building the group, houses and management systems. Coop members acquire and hone skills, improve interpersonal communication and often discover latent talents.

As much as members look forward to donning their tenant 'bonnets', the responsibilities of the collective landlord 'beanie' is met with some trepidation. Public funding demands accountability in financial tenancy and property management. The hot air whipped up from the flurry of hat changing in a coop meeting can cause thunderstorms! However good governance, clear agreements and solid training can reduce the tension of bi-polar hat wearing.

Participants of TAS' CLE session at the *Thank Your Lucky Stars* conference left feeling reassured with a greater understanding of rights and responsibilities, and with resource materials to share with coop neighbours. Now that's cool for cats.

- Robyn Williams

On behalf of Federation of Housing Collectives.





"Dude, Where's my Tenancy?"

Housing policy in WA

Seems to be causing some dismay
The chance for a home just keeps decreasing
While numbers of homeless continue increasing

To get private rental you must have a job
If you're unemployed you're considered a slob
The charges for access are hard to scrape up
Without a good paycheck things can get rough

Only "good" tenants - lady or gent
If you're different to that - you can live in a tent
No one wants boisterous kids in their house
When they can rent to those who're quiet as a mouse

If you're not on a blacklist you might get in
Check the paperwork, report the condition it's in
Let's get this straight there's lots of win/wins
Most tenants and landlords get along with no sins

Some houses for rent are simply gorgeous
There are others we've seen would make you furious
The places are simply in such poor repair
It's no wonder some tenants experience despair

The law says the landlord must keep things fixed
Leases are written, obligations are mixed
If the damage wasn't deliberate, or negligent say
It's really unfair that tenants should pay

The laws for tenancy have been under review
But the time it's taking would make you spew!
It's a year now and we can see no sign of change
Protect tenants from injustice? They think we're deranged

Daily expenses make it hard to pay rent
On clothes or medicine the money gets spent
Electricity and gas, water, phone and debt
So often public housing is the only choice left

But "poor tenancy history" the policy states
No chance of assistance, money's what rates
Never mind nanna, never mind the kid
Never mind the wheelchair, and don't flip your lid

Community workers can write a letter
Explain how the problems can be made better
Like put forward a plan to pay the bill
But to negotiate an outcome can take quite a skill
To swallow your outrage when you could just kill
A family's future can be held in cold hands
You watch it slipping through like grains of sand

We ask just 3 things, Homeswest will say

Pay up, keep it clean, please your neighbour
anyway
Does he know what it's like with 10 kids in the
house? With bills to your ears and the neighbour a
louse?

The pipes at the house can be leaking and rusted
When the water bill comes it's the tenant who is
busted
The tenant needs to prove they rang for the
plumber
Don't rely on Homeswest records - they're a
bummer

I saw one place with a cracked plastic sink
Poor quality crap anyone would think
But not Homeswest, their policy's clear
No police report means the tenant pays dear

It can be really hard trying to explain
With the threat of Court action stated plain
All ears seem closed to the circumstances
To Homeswest's tune everyone dances

Once the notice is served you can't go to HAM
Decision review mechanism? What a Sham!
Jumping through hoops is part of their plan
Whether you do or don't your probably damned

**The States claim more dollars must come from the
Feds**
While the Feds blame the States that there aren't
enough beds
They both claim they meet "essential" need
But essential to who or what is the question to
heed

For all you workers around the state
Here's a tip for you and your mates
You can help a family one by one
But policy change is the work to be done

We urge you - speak out with all your might
Send letters to pollies, to council and the like
Write down the stories and put photos together
Get their attention - tell them when not whether

The EOC has started an investigation
Into whether Homeswest meets expectation
It's important to tell them of any discrimination
If the outcome is to reach the right destination



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