

Good Neighbours?

The Minister for Housing the Hon. Fran Logan's recent announcement of a Good Neighbour Policy may have met with a reasonably positive response from the mainstream community, but TAS has some serious concerns about the potential implications of such a problematic Policy. By TAS Executive Officer Rob Spinks.

Integration or division?

In announcing that all future Homeswest tenants would be required to sign an Acceptable Behaviour Agreement, Minister Logan stated that, "... the policy supported the Government's aim to achieve greater integration of public housing into the general community by creating harmonious, stable tenancies with neighbourhood involvement".

While the stated intentions of this policy are about promoting harmony between neighbours, there appears to be an underlying assumption that if there isn't harmony it will be the fault of the public housing tenant. In 2004, only 15 families were actually evicted for anti-social behaviour. TAS knows only too well through its advice line work that home-owners and private tenants can also make bad neighbours. If Reasonable Behaviour Agreements are to be introduced, to be equitable they should apply to residents of *all* properties – including home owners and private tenants! As it currently stands, this policy actually adds to the social division between Homeswest tenants and other residents.

More powers or no change?

Despite a perception that this new policy will amalgamate existing policies and procedures into a much more accessible format, the proposed Reasonable Behaviour Agreements will not increase the tenants' responsibilities in this regard nor do they extend the powers of Homeswest to evict tenants. Public housing tenants, like all other residential tenants, are required to comply with the *Residential Tenancies Act (1987)*. The legislation already allows both landlords and managing agents – including Homeswest – to take immediate action if a tenant is creating a nuisance, damaging the premises or allowing the premises to be used for illegal purposes.

In fact, Homeswest tenants are already subject to further clauses in their tenancy agreements regarding behaviour,



undertaking not to cause or allow anti-social behaviour in and around the premises. In addition, Homeswest policy already provides very specific guidelines for the management of anti-social behaviour in their Rental Operations – Legal Recovery Procedures Manual. With these guidelines and undertakings already in place, the Good Neighbour policy and the Reasonable Behaviour Agreements provide no real change to the current powers or responsibilities – they just appear to.

Social supports – or not?

The third problematic aspect of this policy is the potential impact on disadvantaged tenants – people with mental health issues, indigenous families and other people with special needs. There can be many circumstances where failure to meet these reasonable standards can be linked directly to the very reasons that the tenant has been allocated public housing. The Minister states that, "despite these efforts [of support programs], we recognise that, in some cases, there is still a role for the Department to provide assistance in home skills, parental education and support in order to build strong families," yet the Good

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Good Neighbours?

Neighbour Policy does not appear to be accompanied by increases in funding for SHAP workers, Financial Counselling Services or other related family support services which would assist greatly in addressing the underlying causes of "anti-social behaviour".

Subjective judgements

Finally there is the issue of determining whether these Reasonable Behaviour standards are being breached. This relies on interpretation and judgements by Accommodation Managers and there is much room for subjectivity. Homeswest's own policy states that defining anti-social behaviour is both problematic and subjective:

Often the most difficult issue about anti-social behaviour is how to determine the nature of a complaint. Even after investigation it requires a judgement on whether an incident should be defined as anti-social. (Rental Operations – Legal Recovery Procedures Manual, 6.2.1)

When do loud noises become anti-social? Does physical aggression include playing football in the street? Does foul language mean language that is more

or less foul than that heard on many television programs or at a football match?

And of course there is the issue of Homeswest tenants being a potential target for some members of society. In a recent case in the Midland Court, Homeswest applied to have a tenant evicted on the grounds of anti-social behaviour causing a nuisance. This allegation was supported by a number of neighbours. The tenant who was to be evicted had her tenancy reinstated by the court which found that the complaints made by neighbours had no basis and had evolved from issues between the neighbours' and tenant's children. This case highlights the danger of concluding that neighbourhood complaints are proof of anti-social behaviour.

Behaviour Agreements, like the one proposed by Minister Logan, have already been enshrined in legislation in NSW, yet they have not been implemented at an operational level. The NSW Housing Authority is unsure how to proceed. Clearly, this is because on closer examination these agreements do not provide the intended benefits, but do discriminate unfairly against vulnerable people.

It is TAS' view that a proper examination of the potential effects of this policy should lead to its abandonment.

International Tenancy Day

This is a day usually planned for the first Monday of each October (this year is a Tuesday due to a public holiday on the first October Monday) to raise awareness of the specific housing issues surrounding tenancy. It came out of the United Nations General Assembly's 1985 decision to encourage the world to reflect on the basic human rights of shelter and settlement resulting in World Habitat Day. In 1986, in order to highlight the specific and unique issues of tenants, the International Tenant's Union (ITU) decided to declare an International Tenants Day (ITD) to coincide with World Habitat Day.

In Australia, especially Western Australia, the International Tenants Day has had little or quite sporadic attention. However, such a declared day is a great opportunity to raise awareness of tenancy rights and issues and, to this end, TAS has decided to make it a yearly event in our calendar.

The vision of the day is to create a high impact and dynamic campaign that community groups and citizens can take part in, and which gets reasonable attention from decision makers through media coverage. Since this is the first year we may not achieve this fully, but the thought is that we begin with small but impactful successes which can be built on the following year.

The way International Tenancy Day would work is to encourage community groups, resident groups, agencies and individuals to do something locally to highlight tenancy issues and rights coinciding with International Tenancy Day. An International Tenants Day Campaign Committee would assist these groups by providing a range of resources and suggested activities, as well as organise one or two centralised events themselves.

If you or your group are interested in planning something for ITD, register your idea with TAS so we can support you. Alternatively, if you are passionate about tenancy issues, and would like to be involved in a dynamic campaign and some great people, come and join the ITD Campaign Committee. For more information or to register your interest call Michelle Burgermeister on 9221 9499 or email michelle@taswa.org

Building for Diversity

The fourth National Housing Conference 2005: Building for Diversity will be held at the Perth Convention and Exhibition Centre on 27 and 28 October 2005. Organised by the Department of Housing and Works and the Australian Housing and Urban Research Institute, the Conference "will address the many dimensions of Australian diversity; consider the housing market and policy implications of this diversity and attempt to formulate considered and well-researched responses."

A registration and information brochure for the conference is now available. The brochure includes:

- information on sponsorship and exhibition opportunities,
- information on pre-conference tours on 26 October,
- details of key speakers, including Bernard Salt, Marcus Spiller, Brian Howe, Helena Herklots, Adam Sampson (Shelter UK), Avi Friedman and Judy Yates,
- an overview of the issues that will be addressed at the Conference,
- details of registration and accommodation.

Early Bird registrations close on 29 July. The brochure, including a registration form, can be downloaded from www.nationalhousingconference.org.au

New Landscapes

The Australasian Residential Tenancies Conference is a conference for residential tenancy professionals involved in dispute resolution, and the management or administration of tribunals and residential tenancies legislation throughout Australasia. The conference, which is held every two years, was first held in Sydney in 1990 and since then has been held in Melbourne, Maroochydore, Adelaide and Christchurch New Zealand. The conference is hosted by the leading residential tenancies authority in the jurisdiction and is attended by adjudicators, mediators, administrators, policy makers, and industry and community groups. The major theme is developments in residential tenancy issues. The 6th conference is being hosted by the New South Wales Consumer, Trader and Tenancy Tribunal (CTTT) in Sydney, 20-21 October, 2005: <http://www.restenconf.com>

Young Tenants

TAS, in partnership with YACWA (Youth Affairs Council of WA), will have young people as its focus for the next 6 to 12 months, with the employment of a worker to assist in the second phase of the "Roofs for Youth" project. This was made possible with a recent win of a grant from Commonwealth Family & Children's Services with additional funds possibly coming from another source to top up the project. The Roofs for Youth project was a YACWA initiative supported by TAS which involved the development of an education program for young people having difficulty getting into the private tenancy market or achieving success in keeping the tenancy. TAS approached YACWA to initiate the second phase and for them to consider a partnership for the project because of TAS's extensive experience in education and training and its expertise in tenancy law. The new funds provided will allow, amongst other activities, to train youth and community workers to deliver the program in the most effective way and to liaise with the real estate industry to get their support for the program. The TAS and YACWA partnership is being highly regarded due to the different strengths both agencies will bring to the development of the project.

The new Magistrates Court

By TAS Solicitor Ann-Margaret Walsh

On 1st May 2005, several new pieces of legislation came into effect. At this stage, of this legislation, the following have implications for tenants and those who work with tenants:

- The *Magistrates Court Act 2004* establishes the new Magistrates Court of Western Australia and contains the constitutional, administrative and jurisdictional provisions that are necessary for the Court to function.
- The *Magistrates Court (Civil Proceedings) Act 2004* contains the procedural provisions that are necessary for the civil jurisdiction of the Magistrates Court to function.
- The *Magistrates Court (Civil Proceedings) Rules 2005*
- The *Magistrates Court (Minor Case Procedure) Rules 2005*
- The *Magistrates Court (General Rules) 2005*
- The *Magistrates Court (Fees) Regulations 2005*
- The *Residential Tenancies (Amended) Regulations 2005*
- The *Courts Legislation Amendment and Repeal Act 2004 (CLARA)* amends over 180 acts, including the *Residential Tenancies Act 1987 (RTA)*, affected by the commencement of the new Magistrates Court.

The above Acts and Rules affect applications brought in the Magistrates Courts and will take a party as far as obtaining a judgment. The *Civil Judgments Enforcement Act 2004* and the *Civil Judgments Enforcement Regulations 2005* provide the process to enforce a judgment.

Implications to the *Residential Tenancies Act 1987*

Apart from specific changes made to the *RTA* described below, the potential disputes between the parties and the remedies available will not change.

What happens to matters commenced but not determined prior to 1 May 2005?

Any matters pending as at 1 May 2005 will be taken to be a case pending in the new Magistrates Court (s.7 *CLARA*). The rules and procedures to be used in the new Magistrates Court will therefore apply to the existing matter.

Name

The legislation provides a new Magistrates Court in which both civil and criminal matters can be heard, thereby abolishing the Local Court and the Court of Petty Sessions. Like the Small Disputes Division of the Local Court, the Magistrates Court provides a venue where all residential tenancies applications can be brought. The civil arm of the Magistrates Court is divided into general procedure and minor case procedure. It is within the minor case procedure that all residential tenancy matters will be heard (s.12A *RTA*).

Prescribed amount

The *Magistrates Court (Civil Proceedings) Act 2004* provides that all minor cases will have a jurisdictional limit of \$7,500. However, section 120 of *CLARA* repeals the existing sections 12, 12A and 13 of the *RTA* and replaces sections 12, 12A and 13A. These changes include defining the prescribed amount as \$10,000 or such other amount as may be prescribed.

Notwithstanding the jurisdictional limit of \$7,500 set by the *Magistrates Court (Civil Proceedings) Act 2004*, it is clear that all residential tenancies up to a limit of \$10,000 fall within this jurisdiction.

Prescribed dispute

A prescribed dispute means any matter that may be the subject of an application under the *RTA* that doesn't involve an application for an amount greater than the prescribed amount of \$10,000. As with the present legislation, any application for bond disposal may be made irrespective of the amount claimed (s.12 *RTA*).

The new Magistrates Court

Disputes in excess of the prescribed amount

There has been no change in the provisions for disputes in excess of the prescribed amount (s.13 RTA). Like the existing legislation where a party is claiming in excess of the prescribed amount, any Court that is competent to determine a claim founded on contract for the amount of that claim has jurisdiction to hear and determine the application.

If a party brings an application and recovers no more than the prescribed amount, that party shall not be awarded any costs unless the Court is satisfied that at the time of making the application there were reasonable grounds for the party to believe that he had a claim worth in excess of the prescribed amount.

Who presides?

As a general rule a Magistrate presides in the Magistrates Court. A Registrar (formerly known as a Clerk of Courts) may preside over any application dealt with in the minor cases procedure if:

- (a) the application is within a prescribed class (described above); and,
- (b) either,
 - i. the application is not disputed; or,
 - ii. a party to the application does not appear.

Where a Registrar presides over a matter they are subject to the directions of a Magistrate.

Prescribed class

Regulation 7 of the *Residential Tenancies (Amended) Regulations 2005* determines a prescribed class. Essentially there has been no change to the prescribed classes outlined in the *Residential Tenancies Regulations 1989*. These are:

- a) Termination of agreement where tenant causing serious damage or injury (s.73(1));
- b) Order that premises are abandoned (s.77(1));
- c) Payment to the court of balance of proceeds of sale of abandoned goods (s.79(10));
- d) Claim by a party to any part of the balance of proceeds of sale of abandoned goods (s.79(12));
- e) Referee may determine disposal of bond (Schedule 1, Clause 8 (1));
- f) Any other application under the Act where a party does not object to the Registrar presiding.

Appeals

To the Supreme Court

Section 36 of the *Magistrates Court Act 2004* provides that an aggrieved person in certain circumstances may apply to the Supreme Court for a review order. Section 121 of CLARA amends section 26(2) of the RTA by repealing it and providing that the avenue of appeal provided for under section 36 of the *Magistrates Court Act 2004* is only allowable under the RTA where the Supreme Court is satisfied that the Magistrate had, or has had, no jurisdiction, or that a party to the proceedings had been denied natural justice.

Magistrate may review Registrar's decision

As a general rule, Section 29 of the *Magistrates Court Act 2004* provides that a person dissatisfied by a decision of a Registrar may appeal to a Magistrate. The appeal must be commenced within 21 days after the date of the Registrar's decision and conducted in accordance to the rules.

Previously, Regulation 8 of the *Residential Tenancies Regulations 1989* allowed for a Magistrate to review a decision made by a Clerk of Court (now a Registrar) as long as the appeal was commenced within 14 days of the order being made. REGULATION 8 WAS REPEALED ON 29 April 2005.

Forms

Residential Tenancies Forms have been amended to reflect the new Magistrates Court. Although minor cases procedure requires applications to be filed with an Affidavit, residential tenancy applications will not need to comply with this requirement as the RTA has not been amended to include it.

Tenancy Services Research Project

Since March 2005, DoCEP Policy Officer Dee da Silva has been working at TAS on the first of a number of research projects for the Tenancy Network. The first project is to research the demand, both met and unmet, for tenancy services in Western Australia (see next page). TAS' Publications Officer Gillian Carter interviewed Dee to find out what both Dee and the project are about.

Where do you think your commitment to consumer rights began?

I have always had a strong belief in fairness and the right of all people to access shelter, education and health care. While completing a degree in economics, I found myself enjoying the more human aspects – such as labour economics and economic history – rather than the more popular money market units. For me, “consumers” are more than just components of “aggregate demand” or one of the factors of production.

When I finished my degree, I had many different jobs, including selling hardware and clerical duties at the Fremantle Court. I joined DoCEP (which was still known as the Ministry of Fair Trading), as part of a graduate program in 1997.

While working in the Housing Branch (now the Building and Tenancy Branch) at DoCEP, I was fortunate enough to meet Pauline Logan, the then Coordinator of TAS. Her energy and her commitment to tenants rights were inspirational. Pauline gave me my first insight into the grass-roots workings of the non-government community sector.

I understand the secondment is a fairly new undertaking for DoCEP. What was it about the initiative that appealed to you?

Yes, the placement of a DoCEP officer within a non-government organisation for up to a year is a reasonably new initiative. My secondment builds upon the successful placement of a DOCEP officer at WACOSS for a year and all parties were pleased with the outcome of the experience.

Basically, the secondment is designed to build closer relationships between DoCEP and agencies in the community sector. It is also an opportunity for DoCEP staff to gain valuable experience by exposing them to new ways of seeing and doing things, and a chance for non government organisations to undertake projects that otherwise may not be possible due to lack of funding.

I was assisting in the development of the *Residential Parks (Long-Stay Tenants) Bill 2004* when the opportunity was advertised. I applied for the secondment because I am interested in broadening my awareness of issues in the community and seeing law in action. I was particularly pleased to find out that TAS was the hosting agency because of my established interest in the area of tenancy and housing.

What do you think you will take back to DoCEP from your experience of the community sector so far?

One of the main things that I have learned is that the NGO sector deals with a client as a whole person. While a person may present with a particular issue, such as an eviction notice, this life issue may be compounded by other factors such as financial issues, domestic violence and problems with drugs and alcohol. Overall, I have noticed that the NGO sector works from a philosophy which encourages empowerment of the individual and, through the provision of information, support and advocacy, assists people to take control of their own lives.

The biggest difference, however, lies in the nature of the networks. Here, outside of – and even within – the formally defined networks, there are other more loose-knit networks which somehow combine information, skills and trust. What I mean is that like the approach to tenancy and tenancy issues itself, it is a more holistic way of doing things, a preparedness to not only do your bit, but help others do theirs through knowledge and skill-sharing, and support.

My experience of the community sector so far validates the aims of the initiative. In the few short months I have been at TAS, I have been welcomed into the sector by everyone I have encountered and people have willingly shared their knowledge and experience. I am hoping that the outcome of this report can help make a tangible difference to both the workers who provide the tenancy services, and, of course, the tenants themselves.

Tenancy Services Research Project

If you're part of the Tenancy Network providing advice and education services to tenants, are you feeling stressed and overworked?

If you're a member of the community, are you hearing stories about tenants who are having a hard time accessing or maintaining a tenancy?

Are you concerned that the services to tenants in your community are being pushed to the limit?

TAS is aware that everyone who works with tenants is providing great assistance to the community, and is doing so with the increasing demands of a growing population, a legislative system that is changing very slowly and a marketplace that is not inherently geared to protect the most vulnerable.

Dee da Silva, Policy Officer from the Department of Consumer and Employment Protection (DOCEP), is currently being funded to work at TAS to produce a report to consider the degree to which tenants' needs for advice and education are being met. It is expected that the report can be used by government and the non-government sector and will lead to the broadening of the tenancy network.

Although funded by DOCEP, the project is guided by a reference group of representatives from organisations that currently receive funding to provide tenancy advice and education. The reference group is comprised of both metropolitan and regional representatives:

- Ann Mills, Chief Executive Officer, Agencies for South West Accommodation Inc;
- Zane D'Mello, Co-ordinator, Geraldton Community Legal Centre;
- Myles Kunzli, Manager, Gosnells Community Legal Centre;
- Rose Van Keppel, Co-ordinator, Kimberley Community Legal Services Inc;
- Karen Merrin, Co-ordinator, Northern Suburbs Community Legal Centre;
- Rob Spinks, Executive Officer, Tenants Advice Service (Inc) WA.

To date, a number of community legal centres have provided valuable input regarding initiatives undertaken, geographical coverage, resources available and major tenancy issues. The feedback obtained indicates that the network is very dynamic, client-focussed and solution oriented. Special thanks to the staff from the following



centres who have so willingly given of their time and expertise to assist with the project::

- CLAC (Community Legal and Advocacy Centre) Fremantle;
- Geraldton Resource Centre;
- Gosnells Community Legal Centre;
- MIDLAS (Midland Information, Debt and Legal Advice Service);
- Northern Suburbs Community Legal Centre;
- Peel Community Legal Service;
- SCALES Rockingham;
- Sussex Street Community Law Service.

It is hoped that the project will include travel to some of the regional and remote areas of the state to obtain a first-hand appreciation of the work being done and local challenges faced.

Part of the project will also include a survey of providers about the nature of unmet demand in Western Australia, community education needs and strategies to meet these needs. It is expected that the survey will be distributed in September 2005.

TAS needs your help!!

If you would like to be included on the mailing list for the survey, or you have any ideas or thoughts about the project, please phone Dee at TAS on 9221 9499 or email dee@taswa.org

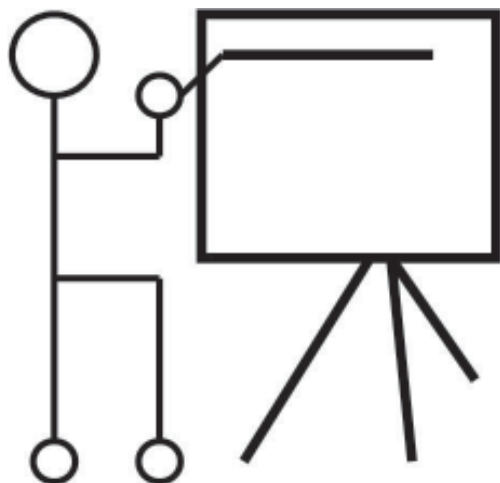
Please pass this information to your networks!

The project is scheduled for completion towards the end of 2005.

TAS Training and Events

POPULAR CORE TRAINING COURSES

Learn about tenancy law and develop skills in utilising legislation, advocacy and representing clients.



Tenancy Law for Community Workers

Thur & Fri, 8-9 Aug 2005

Tenancy Law – Homeswest Issues

Mon & Tue, 5-6 Sept 2005

Court Advocacy (Tenancy)

Fri, Mon & Tue 22, 25-26 July

NEW!! — TAS TALKS!

Information, Forum and Seminar Series to keep you updated on issues and developments.

Forum: Tenancy Issues & Residential Parks

Three guest speakers and discussion on:

current legislation, proposed new Residential Parks (long stay tenants) Bill and issues for tenants.

Mon 19 Sept 2005, 9:30–12:00
(includes morning tea)

Lunch time lecture: Changes to the Court Hearings on Tenancy Matters.

Overview of the new *Magistrates Court (Civil Proceedings) Act 2004* and its effect on the *Residential Tenancies Act 1987*, *Residential Tenancies Regulations 1989*, and court hearings.

Thur 14 July 2005, 12:00–12:45
(bring lunch)

All courses and seminars come to you at no cost!

All events will be at Claisebrook Lotteries House, 33 Moore Street, East Perth.

Booking is essential. Call TAS on 92219499 to register or go to www.taswa.org

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