

## EDITORIAL

JOHN PERRETT - EXECUTIVE OFFICER

Welcome to the latest edition of TAS Talk. The current reforms of the Federal and State Governments are making a significant impact on the housing industry and that will eventually affect all tenants. We hope you find the information helpful.



## TENANCY TALK

### LEGISLATIVE REFORM & TENANCY DATABASES

#### EOC Inquiry into Discrimination

In June 2008 the Equal Opportunity Commission commenced an investigation into whether people from culturally and linguistically diverse backgrounds and Aboriginal people face discrimination in the WA private rental market. The Commission released the results of this inquiry in a paper entitled "Accommodating Everyone" and the publication can be found here: <http://www.equalopportunity.wa.gov.au/pdf/FINAL%20Accommodating%20Everyone.pdf>

#### Increased Bond Assistance Repayments

As of 1st July 2009 the minimum fortnightly repayments for Bond Assistance loans has been increased from \$15 to \$25. Bond Assistance is an interest-free loan offered by the Department of Housing to eligible applicants to help them gain housing in the private rental market. Further information about Bond Assistance and how to apply for the loan is available at: [http://www.housing.wa.gov.au/404\\_446.asp](http://www.housing.wa.gov.au/404_446.asp)

#### Public Housing Appeals

The issue of public housing appeals was recently in the news. This is the mechanism that allows tenants and potential tenants in public housing to appeal against adverse decisions that impact on their tenancy. The Department of Housing has made a decision to handle all appeals in-house on an interim basis until a new appeal model is approved.

#### Residential Tenancies Act Update

TAS met with the Department of Commerce late July to discuss 5 proposed changes to drafting instructions for the amended Residential Tenancies Act 1987 (WA). The issues are: receipt requirements for electronic payment of rent; requirement of a Court Order to declare premises abandoned; termination of a lease by mortgagee repossession; tenancy agreements arising under a contract of sale; permission to allow increased bond every six months; owner to bear outgoing costs in relation to strata properties. Also discussed was the issue of anti-social behaviour in and on public housing premises and TAS' comments were sought on the implications of proposed action by the Department. The proposals raised more questions than answers and TAS has asked for more detail and more time in which to consult the tenancy network. Commerce also informed TAS that it was close to distributing model provisions for legislation of residential tenancy databases (end of August). Once available, these provisions will be distributed to stakeholders seeking their feedback. From the discussions with Commerce it appears that the proposed legislative model will provide tenants with greater consumer protection from these databases than at present. TAS will continue to keep stakeholders informed of progress with this matter.

## NETWORK NEWS

### TENANTS ADVICE SERVICE FAREWELLS TWO STAFF & WELCOMES ANOTHER

In early July our Solicitor, Ms Ann-Margaret Walsh, left to pursue a new chapter in her legal career by taking up a position in the legal department with the Department of Commerce. Ann-Margaret made a significant contribution to the work at TAS during her 5 years as the Solicitor. The team at TAS wish her continued success and are already missing her unique sense of humour.

Joanne Scott, known as Scotty, has come aboard as locum Solicitor until such time as a replacement is appointed. Scotty is well known within the sector having previously worked as a supervising solicitor and Acting Director of SCALES, as well as having had a prior stint at TAS in 2004.

In August TAS lost the services of Heidi Guldbaek, CLE worker. Heidi, who had been at TAS for nearly eighteen months, worked part-time in community education and has elected to devote more time working at Women's Law Centre. Heidi is a keen and dedicated young woman and contributed to the CLE side of our operations in a very positive and refreshing manner.



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## COMMUNITY LEGAL EDUCATION CORNER

### ALL THE LATEST COURSE, SEMINAR & EVENT INFORMATION

TAS offers a range of training courses focusing on tenancy law and advocacy skill development. For full curriculum details check out the current TAS Training Calendar at the online location: [www.taswa.org/trainingcalendar/](http://www.taswa.org/trainingcalendar/). The next round of courses is listed below, but places are limited so it is recommended you book soon and avoid missing out.

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|---------------------------|-----------------|
| ➤ Public Housing Advocacy | 2 & 3 September |
| ➤ Tenancy Week Launch     | 30 September    |

## TENANCY TIPS

### ENDING A FIXED TERM LEASE EARLY

There are many benefits for both tenant and owner if a rental property is leased for a fixed term.

As the name suggests, a fixed term lease is for an agreed period and as such always includes a set start and end date. With a fixed term arrangement, the tenant has the security of renting a home for a pre-defined period of time, and the owner can be secure in knowing they have a guaranteed rental income for their investment property over this period. Generally fixed term tenancy agreements will also have the rent fixed for the duration of the tenancy, however this is not always the case as a term of the agreement may provide that rent can be increased.

Should circumstances change unexpectedly and the tenant needs to break a fixed term lease early, what steps must be taken?

A fixed term lease can be ended prior to this end date if one party breaches the agreement and the Court allows it to be terminated; or if both parties agree to end the tenancy. Whatever the case, an agreement to end a fixed term tenancy early must be in writing. If seeking to end the agreement early as a tenant, you will need to negotiate with the real estate agent or owner. Be aware that such arrangements can prove costly, so choosing to end a fixed term lease early should always be a well considered decision.

In agreeing to end a fixed term lease early, the owner can require you to meet any reasonable financial loss they suffer as a result of the tenancy agreement being broken. Such costs may include, but are not limited to:

- Continuing to pay rent until a new tenant moves in or your lease expires;
- The cost of advertising the property to secure new tenants;
- The cost of maintaining the property until it is rented out again.
- The cost of the unexpired portion of letting fee.

When considering these losses the owner is required to take reasonable steps in ensuring they are minimised under the Residential Tenancies Act 1987 (WA (RTA)). In legal terms this is known as mitigation of loss. Be aware that many factors can impact on how quickly a rental might be re-let as the amount of rent, market demand, and the position, size and condition of the property will all impact on this timeframe. Should the market have fallen and the owner is only able to rent the property at an amount less than in your agreement you will be liable for the difference over the remaining period of the agreement.

It is important to ask the agent or owner to itemise any losses they are claiming in writing. You may then be able to come to a negotiated agreement as to what costs you will need to pay. Any agreement reached should be confirmed in writing.

When you do leave the property, ensure you are aware of the arrangements regarding a final inspection and disposal of the bond money. It is also essential to provide a forwarding address when you leave as this is also a requirement of the RTA.

## DISCLAIMER

While making every attempt to present general legal information accurately in this publication, TAS claims no liability for any loss or damage arising from its use. This publication should not be relied upon as a substitute for legal or other professional advice.



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