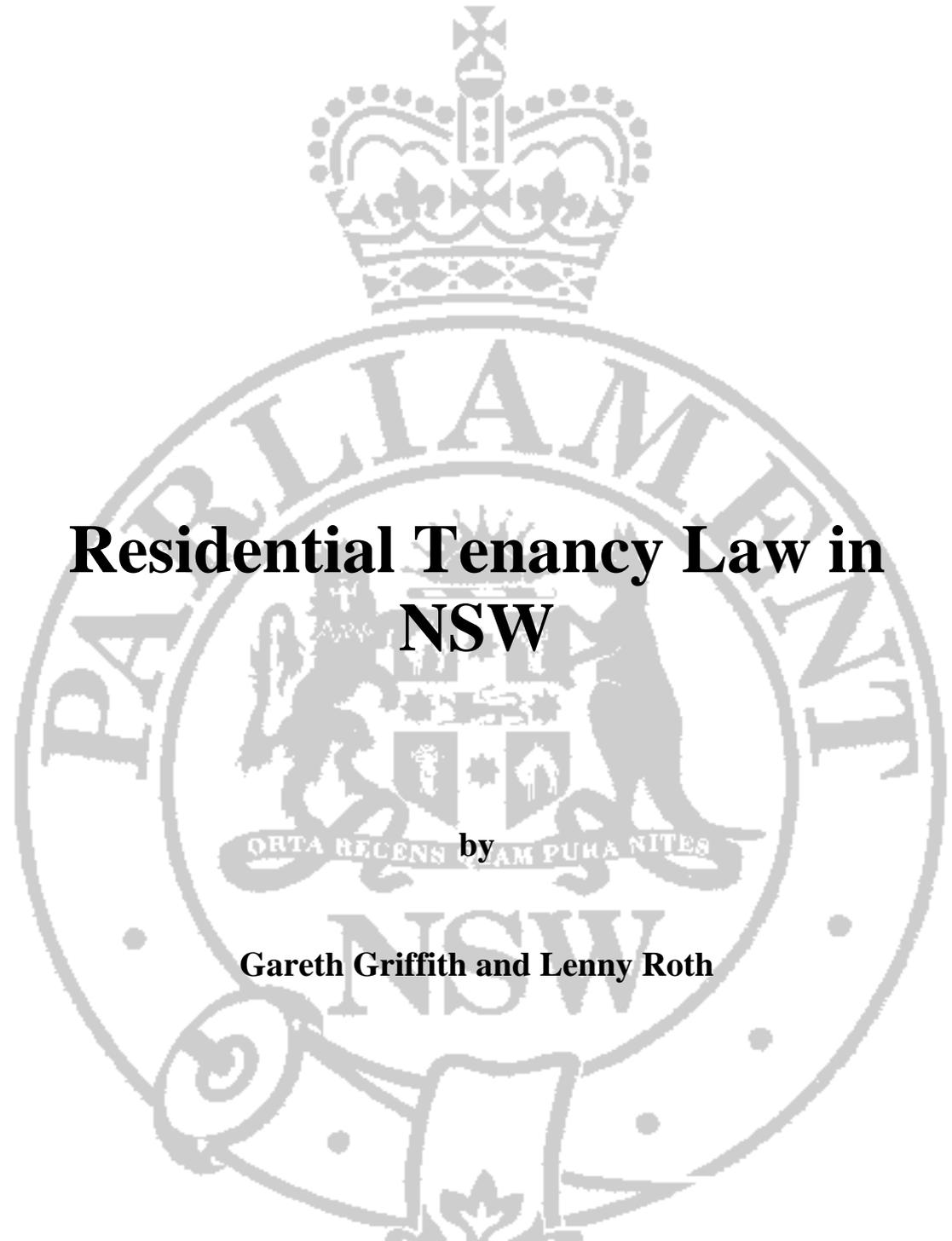


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**Residential Tenancy Law in  
NSW**

by  
**Gareth Griffith and Lenny Roth**

**Briefing Paper No 13/07**

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# **Residential Tenancy Law in NSW**

by

**Gareth Griffith and Lenny Roth**

## **NSW PARLIAMENTARY LIBRARY RESEARCH SERVICE**

David Clune (MA, PhD, Dip Lib), Manager ..... (02) 9230 2484

Gareth Griffith (BSc (Econ) (Hons), LLB (Hons), PhD),  
Senior Research Officer, Politics and Government / Law ..... (02) 9230 2356

Stephanie Baldwin (BSc (Hons), PhD), Research Officer, Environment .. (02) 9230 2798

Lenny Roth (BCom, LLB), Research Officer, Law ..... (02) 9230 3085

John Wilkinson (MA, PhD), Research Officer, Economics ..... (02) 9230 2006

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## EXECUTIVE SUMMARY

This paper updates a 1999 briefing paper entitled *Tenants Rights in NSW*. It does so against the background of the recent publication by the NSW Office of Fair Trading of a consultation paper entitled, *Residential Tenancy Law Reform: A New Direction*. These latest proposals follow the release in July 2005 by the NSW Office of Fair Trading of an options paper titled *Residential Tenancy Law Reform*.

***Statistical profile of residential tenancies in NSW:*** According to the 2006 Census, there were 700,654 rented dwellings in NSW, which represented 28.4% of total occupied dwellings in the State. Of the rented dwellings, 396,247 (56.6%) were rented from a real estate agent, 109,494 (15.6%) were rented from the NSW Department of Housing, and 175,026 (25.0%) were rented from other landlord types. [2.1]

In 2005/06, average housing costs for private renters in NSW were \$258 per week (\$223 pw nationally). These housing costs represented 21% of average gross income for private renters in NSW (19% nationally). In September 2007, rental vacancy rates in Sydney were 1.2%, compared to 1.6% in the Hunter region, 2.2% in the Illawarra region and 2.4% on the Central Coast. In 2005/06, average housing costs for public renters in NSW were \$105 per week (\$100pw nationally). These housing costs represented 18% of average gross income for public renters in NSW (17% nationally). As at 30 June 2006, there were over 53,000 approved applicants on the public housing register (waiting list). [2.2]-[2.3]

***Recent developments in residential tenancy law in NSW:*** Since 1999 there have been very few substantive reforms to the *Residential Tenancies Act 1987*. In relation to the private rental market, provision has been made for the repayment of overpaid rent in certain circumstances (s 45A) and for the installation of smoke alarms (s 29A) [3.1]-[3.2]. In relation to public housing, acceptable behaviour agreements were introduced in 2004 and other tenure and eligibility reforms were introduced in 2005. Social housing tenants must pay a water usage charge under these reforms, a requirement that is to be reviewed after two years (s 19A) [3.4]-[3.5].

***Overview of Residential Tenancy Act:*** The rights, obligations and powers of landlords and tenants under the Residential Tenancies Act, which are incorporated into any residential tenancy agreement are defined in Part III of the Act. Generally, the Act applies whenever a person grants to another person the right to occupy residential premises, in whole or part, either in writing or on an oral basis, in exchange for rent. [4.3]-[4.7] Certain types of premises and certain types of agreement are excluded, including boarders and lodgers, nursing homes, and tenancies covered by the *Residential Parks Act 1998*, the *Holiday Parks (Long-term Casual Occupation) Act 2002* and the *Retirement Villages Act 1999*. Rental bonds are provided for under separate legislation – the *Landlord and Tenant (Rental Bonds) Act 1977*. [4.3]

***Proposed reforms outlined in consultation paper:*** The NSW Government's September 2007 consultation paper contains 102 proposals for reforming residential tenancy laws in NSW. Some key proposals include:

- Tenants who have been issued with a notice to vacate for being in rent arrears

- would have the onus of applying to the Tribunal if they wish to contest the matter;
- Landlords could not unreasonably refuse consent for a tenant to make cosmetic improvements to the property or add fixtures at their own expense;
- Where a property is to be sold during the fixed term period of a tenancy, the tenant would be entitled to a rent reduction during the inspection period, and selling agents would be required to respond to problems raised by the tenant;
- Tenants would be entitled to be given at least 30 days notice if a mortgagee decides to obtain vacant possession after foreclosing on a mortgage;
- Tenants would be entitled to end a fixed term agreement by giving 21 days notice on certain grounds (eg if they accept an offer of public housing);
- The notice period for ‘no grounds’ evictions by a landlord after the expiry of the fixed term would be extended from 60 to 90 days although a landlord would be able to give 60 days notice on certain grounds (eg a need to move into the property);
- Co-tenants would be able to apply to the Tribunal for an order to terminate a fixed term or continual tenancy, or to remove one or more co-tenants from the premises;
- The regulation of tenancy databases would be strengthened.
- Landlords could request a bond ‘top-up’ payment with rent increases. [5.1]-[5.2]

At this stage the publicly available responses to these proposals are few in number. If the preliminary response of the Tenants’ Union of NSW is any guide, the proposals are likely to receive a mixed response from tenants’ organisations. While the Real Estate Institute of NSW is yet to make a concerted response to the consultation paper, at this stage it appears to be supportive of the main thrust of the proposals. [5.4]-[5.6] With respect to bond ‘top-up’ payments, the Real Estate Institute of NSW appears to support the proposal to clarify the law, while the Tenants’ Union of NSW is opposed to it. [5.6]-[5.7]

***Recent tenancy reforms in other States/Territories:*** Since 2000 the changes include:

- Coverage of boarders and lodgers (Qld, Vic, Tas, ACT);
- Coverage of renters in residential parks and caravan parks (WA, SA);
- Regulation of tenancy databases (Qld, ACT);
- Addressing anti-social behaviour by tenants (NT and proposed in SA);
- Requiring mortgagees to give tenants 28 days notice before eviction (Tas);
- Requiring owners/agents to obtain tenant’s consent to hold ‘open homes’ (Tas);
- Increasing notice period to 120 days for ending a tenancy without grounds (Vic);
- Limiting rent increases to two per year (Vic).

Following a review of tenancy laws in Queensland, the Government has recently announced that it will introduce significant reforms including preventing rental auctions, increasing the notice period to 60 days for ending a tenancy without grounds and providing for a minimum period of 6 months between rent increases. In Western Australia, a review of tenancy laws has also recently been completed but reforms have not yet been announced. [6.1]-[6.8]

## 1. INTRODUCTION

This paper begins by statistically describing the characteristics of residential tenants in NSW. Subsequently, it considers recent developments in this area of the law and examines the legal framework of landlord and tenants' rights under the *Residential Tenancies Act 1987* (NSW). As such, this paper updates an earlier briefing paper published in 1999.<sup>1</sup>

It does so against the background of the recent publication by the NSW Office of Fair Trading of a consultation paper entitled, *Residential Tenancy Law Reform: A New Direction*. In a media release dated 22 September 2007 the Minister for Fair Trading, Youth and Volunteering, Linda Burney, stated:

The report proposes 102 amendments to the legislation which aim to strike a balance between the rights and responsibilities of tenants and landlords... More than half the State's population owns or lives in one of 750,000 rental properties at any given time. I encourage tenants, landlords and real estate agents to let us know what they think so we can get this legislation right.

Ms Burney said the suggested amendments are designed to achieve clarity and certainty for landlords and tenants, minimise disputes and encourage respect and responsibility from all parties involved in the rental market. The closing date for submissions is 31 December 2007. According to the Minister:

This overhaul is about modernising our tenancy laws to ensure they are relevant now and into the future. Following a three month consultation period amended legislation will be introduced to Parliament in 2008. Changes will incorporate the views of tenants, landlords, agents and key interest groups.<sup>2</sup>

These latest proposals follow the release in July 2005 by the NSW Office of Fair Trading of an options paper titled *Residential Tenancy Law Reform*. Clearly, therefore, debate about reform in this area of the law is long-standing.

This debate also belongs to a broader context, related to the issues of housing availability and affordability and the consequent pressure this has placed on the private and public rental housing markets. This wider debate, which is complex and many-sided, has been canvassed on many occasions,<sup>3</sup> including in Briefing Paper No 14/2005. As well, the

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<sup>1</sup> R Simpson, *Tenants' Rights in NSW*, NSW Parliamentary Library Briefing Paper No 9/1999.

<sup>2</sup> Minister for Fair Trading, Youth and Volunteering, 'A fairer deal for NSW landlords and tenants', *Media Release*, 22 September 2007 - <http://www.fairtrading.nsw.gov.au/corporate/aboutus/2007/20070920landlordsandtenants.html>

<sup>3</sup> See for example, Shelter NSW, *Private rental: can it deliver affordable housing to low-income tenants*, Issues Paper, June 2006; T Burke, 'Experiencing the housing affordability problem: blocked aspirations, trade-offs and financial hardships', *Paper presented at the Financial Review Housing Congress 2007*. A number of papers have been published by the Australian Housing and Urban Research Institute (AHURI) in recent years including – J Yates and M Gabriel, *Housing Affordability in Australia*, 2006 and M Berry, *Housing*

availability of social housing in NSW was discussed by the Public Bodies Review Committee in its October 2006 *Report on the Inquiry into the Allocation of Social Housing*. These issues are not dealt with in the current paper, which is narrower in focus, taking as its main subject residential tenancy law and recent proposals for reform.

## 2. STATISTICAL PROFILE OF RESIDENTIAL TENANCIES IN NSW

### 2.1 General

**New South Wales:** According to the 2006 Census, there were 700,654 rented dwellings in NSW, which represented 28.4% of total occupied dwellings in the State.<sup>4</sup> Of the rented dwellings 396,247 (56.6%) were rented from a real estate agent, 109,494 (15.6%) were rented from the NSW Department of Housing, 175,026 (25.0%) were rented from other landlord types and 19,887 were not stated.<sup>5</sup> The types of rented dwellings were:<sup>6</sup>

Type of rented dwelling	Number of dwellings
Separate house	322,809
Flat, unit or apartment	255,843
Semi-detached, terrace house, townhouse	99,191
House or flat attached to a shop, office	4,599
Caravan, cabin, houseboat	4,160
Dwelling structure not stated	500
Improvised home, tent and sleepers	328
<b>Total</b>	<b>687,430</b>

**Sydney:** According to the 2006 Census, there were 452,395 rented dwellings in Sydney, which represented 29.7% of total occupied dwellings.<sup>7</sup> Of the rented dwellings, 280,119 (61.9%) were rented from a real estate agent, 69,090 (15.3%) were rented from the NSW Department of Housing, 93,439 (20.7%) were rented from other landlord types and 9,751 were not stated.<sup>8</sup> The types of rented dwelling are outlined below:<sup>9</sup>

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Affordability and the Economy: A Review of Labour Market Impacts and Policy Issues (2006)

<sup>4</sup> Australian Bureau of Statistics, *2006 Census QuickStats: New South Wales*, 27/6/07. Note that this figure includes rent-free accommodation.

<sup>5</sup> 2006 Census QuickStats - NSW, n 4. Other landlord types include: person not in the same household-parent/other relative/other person; residential park; employer-government; employer-other employer; and housing co-operative/community church group.

<sup>6</sup> Australian Bureau of Statistics, *2006 Census Tables – 2006 Census of Population and Housing – New South Wales – Tenure Type and Landlord Type by Dwelling Structure by Indigenous Status of Household*, Cat No. 2068.0. Note that the total number of rented dwellings in the Census Tables (687,430) is slightly lower than the total number of rented dwellings referred to in the 2006 Census Quickstats, referred to above.

<sup>7</sup> Australian Bureau of Statistics, *2006 Census QuickStats: Sydney (Statistical Division)*, 27/6/07. Note that Note that this figure includes rent-free accommodation.

<sup>8</sup> 2006 Census QuickStats-Sydney, n 7.

Type of rented dwelling	Number of dwellings
Flat, unit or apartment	206,201
Separate house	163,438
Semi-detached, terrace house, townhouse	70,654
House or flat attached to a shop, office	2,894
Caravan, cabin, houseboat	1,075
Dwelling structure not stated	325
Improvised home, tent and sleepers	103
<b>Total</b>	<b>445,690</b>

## 2.2 Private tenancies

As the above 2006 Census data shows, the majority of tenancies in NSW involve the rental of privately (rather than government or community) owned properties. Some statistics regarding private rental tenancies are presented below:

- **Number of tenancies:** As at 30 June 2006, the NSW Rental Bond Board held 614,833 rental bonds in trust.<sup>10</sup> This included 361,055 bonds for dwellings in the metropolitan area and 252,516 bonds for dwellings in outer metropolitan and regional areas.<sup>11</sup> According to figures published for the 2007 June quarter, the number of rental bonds in NSW had increased to 628,081.<sup>12</sup>
- **Property owners:** According to the NSW Office of Fair Trading 2007 discussion paper, ‘investment in rental properties is dominated by small, individual investors who rarely own more than one or two dwellings. There is an absence of large corporate or institutional investors in the NSW rental property market’.<sup>13</sup>
- **Tenants - life cycle groups:** As shown below, nationally in 2005/06, of all selected life cycle groups, couples with dependent children constituted the largest proportion of private renters, followed by single parents with dependent children, couples with a reference person aged under 35 and lone persons aged under 35.<sup>14</sup>

<sup>9</sup> Australian Bureau of Statistics, *2006 Census Tables – 2006 Census of Population and Housing – Sydney Statistical Division - NSW – Tenure Type and Landlord Type by Dwelling Structure by Indigenous Status of Household*, Cat No. 2068.0. Note that the total number of rented dwellings in the Census Tables (445,690) is slightly lower than the total number of rented dwellings referred to in the 2006 Census Quickstats, referred to above.

<sup>10</sup> NSW Office of Fair Trading, *Rental Bond Board Annual Report 2005-2006*, p7. Note that all landlords in NSW are required to lodge rental bonds with the Rental Bond Board.

<sup>11</sup> NSW Office of Fair Trading, *Rental Bond Board Annual Report 2005-2006*, p19.

<sup>12</sup> NSW Department of Housing, Trading, *Rent and Sales Report No. 80*, 2007, p 8.

<sup>13</sup> NSW Office of Fair Trading, *Residential Tenancy Law Reform: A New Direction*, September 2007, p3.

<sup>14</sup> These percentages were calculated from Australian Bureau of Statistics, *Housing*

<b>Life cycle group</b>	<b>Percentage</b>
Couple with dependent children	17.54
One parent with dependent children	12.36
Couple only, reference person aged under 35	11.15
Lone person aged under 35	10.99
Lone person aged 65 and over	3.63
Couple only, reference person aged 55 and over	3.18
Couple with dependent and non-dependent children or with non-dependent children only	2.92

- **Average weekly rental:** In 2005/06, average housing costs for private renters in NSW were \$258 per week (\$223 per week nationally).<sup>15</sup> These housing costs represented 21% of average gross income (19% nationally).<sup>16</sup>
- **Vacancy rates:** According to a survey by the Real Estate Institute of NSW for September 2007, vacancy rates in Sydney were 1.2%, compared to 1.6% in the Hunter region, 2.2% in the Illawarra region and 2.4% on the Central Coast.<sup>17</sup>
- **Rental assistance:** The NSW Government provides financial assistance for low-income renters in the private market. In 2005/06, the NSW Department of Housing provided assistance to 35,358 households.<sup>18</sup> The Federal Government also provides private rental assistance – in 2002, there were 305,804 recipients in NSW.<sup>19</sup>

---

*Occupancy and Costs, Australia, 2005-06*, 31/10/07, Table 15, p46-47. Note that these percentages were calculated by reference to the total number of private landlord households in Australia, not just those households in the selected life cycle groups. For this reason, the percentages shown in the Table above may not be comparable with the percentages shown in the Table on p6 of the 1999 Briefing Paper.

<sup>15</sup> ABS *Housing Occupancy and Costs, Australia, 2005-06*, n 14, p56.

<sup>16</sup> ABS *Housing Occupancy and Costs, Australia, 2005-06*, n 14, p56.

<sup>17</sup> Real Estate Institute of NSW, 'Miserable outlook for Sydney tenants', *Media Release*, 16/10/07.

<sup>18</sup> NSW Department of Housing, *Annual Report 2005-2006*, p 11. The main scheme is called 'Rentstart' which can assist tenants to pay the initial outlays involved in renting (bond, advance rent and service connection fees). Also available is a form of assistance called 'Tenancy Guarantee' which encourages landlords to rent property to people who have not rented before or who are considered risky tenants. A Tenancy Guarantee will provide up to \$1,000 (including GST) in compensation to landlords/agents over and above the rental bond for rent arrears and property damage, subject to certain conditions. A Tenancy Guarantee is valid for the fixed term of the lease, to a maximum of 12 months from the start of the tenancy or until the tenancy is terminated, whichever occurs sooner - NSW Department of Housing - <http://www.housing.nsw.gov.au/Office%2Bof%2BCommunity%2BHousing/Community%2BHousing%2BProviders/Products%2Band%2BServices/Tenancy%2BGuarantees.htm>

<sup>19</sup> Australian Institute of Health and Welfare, *Commonwealth Rent Assistance, June 2002, A Profile of Recipients*, May 2004, p4.

- **Set-up costs of renting:** In NSW the initial outlays for privately renting a three bedroom unfurnished house at \$400 a week are as follows<sup>20</sup>:

Two weeks rent in advance	\$800
Preparation of agreement	\$15
Bond (equivalent of four weeks rent)	\$1,600
Electricity security deposit	\$120
Telephone connection	\$ 59
Total	\$2,594

### 2.3 Public tenancies

The NSW Department of Housing provides rental housing to people living on low incomes. Some statistics regarding public tenancies are presented below:

- **Number of dwellings and tenants:** As at 30 June 2006, the NSW Department of Housing managed 127,627 public housing dwellings and 121,870 tenancies.<sup>21</sup> There were 53,328 approved applicants on the housing register (waiting list).<sup>22</sup>
- **Tenants- life cycle group:** According to national figures for 2005/06, of all selected life cycle groups, single parents with dependent children constituted the largest proportion of public renters, followed by lone persons aged 65 and over.<sup>23</sup>

Life cycle group	Percentage
One parent with dependent children	21.56
Lone person aged 65 and over	15.65
Couple with dependent children	8.87
Couple only, reference person aged 55 and over	6.32
Couple with dependent and non-dependent children or with non-dependent children only	5.59
Lone person aged under 35	4.08
Couple only, reference person aged under 35	1.14

<sup>20</sup> P Bellemore, *Tenants' Rights Manual – NSW: A Practical Guide to Renting*, 3<sup>rd</sup> ed, The Federation Press, 2007, p 19.

<sup>21</sup> NSW Department of Housing, *Annual Report 2005-2006*, p 11.

<sup>22</sup> NSW Department of Housing, *Annual Report 2005-2006*, p 11.

<sup>23</sup> These percentages were calculated from Australian Bureau of Statistics, *Housing Occupancy and Costs, Australia, 2005-06*, 31/10/07, Table 15, p46-47. Note that these percentages were calculated by reference to the total number of private landlord households in Australia, not just those households in the selected life cycle groups. For this reason, the percentages shown in the Table above may not be comparable with the percentages shown in the Table on p3 of the 1999 Briefing Paper.

- **Average weekly rent:** In 2005/06, the average housing costs for public renters in NSW were \$105 per week (\$100 pw nationally).<sup>24</sup> These housing costs represented 18% of average gross income for public renters in NSW (17% nationally).<sup>25</sup>
- **Tenants-source of income:** According to national figures for 2005/06, Government pensions and allowances contributed to over 90% of gross household income for over 63% of public renters.<sup>26</sup> Pensions and allowances contributed to less than 1% of gross household income for only 8% of public renters.

## 2.4 Aboriginal Housing Office tenancies

Aboriginals and Torres Strait Islanders are entitled to the same public housing as all other people in NSW. In addition, they may choose to be identified on the Housing Register as being eligible for properties that are owned by the Aboriginal Housing Office (AHO) and managed on their behalf by the NSW Department of Housing.<sup>27</sup> As at 30 June 2006, the Department managed 4,282 AHO dwellings and 4,112 AHO tenancies.<sup>28</sup>

## 2.5 Community tenancies

The not-for-profit sector provides rental housing for people on low to moderate incomes. The main community housing providers include housing associations, tenant-managed housing cooperatives, housing partnerships and supported accommodation and crisis accommodation providers.<sup>29</sup> Providers receive government funding. Some statistics regarding community tenancies are presented below:<sup>30</sup>

- **Proportion of social housing:** Community housing now accounts for around 10% of social housing in NSW (compared to 6.6% in 1999).
- **Number of dwellings and tenants:** Most community housing providers provided long-term housing as the primary type of assistance. In June 2006, these providers

<sup>24</sup> ABS *Housing Occupancy and Costs, Australia, 2005-06*, n 14, p56.

<sup>25</sup> ABS *Housing Occupancy and Costs, Australia, 2005-06*, n 14, p56.

<sup>26</sup> Australian Bureau of Statistics, *Household Income and Income Distribution – Australia*, Cat No. 6523.0, 2/8/07, p23.

<sup>27</sup> NSW Department of Housing, *Aboriginal People and Housing Assistance*, accessed at: <http://www.housing.nsw.gov.au/Policies+and+Fact+Sheets/Policies/Aboriginal+People+and+Housing+Assistance+-+ALL0030B.htm>

<sup>28</sup> NSW Department of Housing, *Annual Report 2005/06*, p11.

<sup>29</sup> NSW Office of Community Housing, *NSW Planning for the Future: Community Housing – Five Year Strategy for growth and sustainability: 2007-2012, Consultation Draft*, NSW Department of Housing, 2007, p20-23.

<sup>30</sup> Unless otherwise indicated, these figures were sourced from NSW Office of Community Housing, *Planning for the Future*, n 29, p20-23.

managed around 13,000 properties and provided housing for around 28,000 people. The Crisis Accommodation Program also assisted over 40,000 people.

- **Tenants- age and life cycle group:** A high proportion (37%) of household members were aged under 18. A further 11% were aged under 24 and 33% of tenants were aged 25-54. Single persons comprised the largest group of community housing tenants (39%) followed by single parents (32%).
- **Tenants-special needs:** Almost 75% of community housing tenants had special needs.<sup>31</sup> The three main categories of special need were non-English speaking needs, disability needs, and support needs.<sup>32</sup>

## 2.6 Comparison with profile of tenancies in 1999 briefing paper

A few comparisons can be made with the tenancies profile in the 1999 briefing paper:<sup>33</sup>

- There has been no change in the proportion of occupied dwellings in NSW that are rented (28.4% in 2006 compared to 28.5% in 1996);
- The average weekly rent for private tenants in NSW has increased from \$172 per week to \$258 per week but (at least at the national level) renting costs as a proportion of average income have remained stable since 1996;
- Vacancy rates in the private market in Sydney are even lower than reported in 1996 (1.2% in 2007, compared to 'less than 2%' in 1996);
- For public tenants, average rents in NSW have increased from \$61 to \$105 per week but, again, (at least at the national level) rental costs as a proportion of average income have remained stable;
- The public housing waiting list has fallen from 93,000 in 1996 to 53,000 in 2006.

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<sup>31</sup> NSW Department of Housing, *Annual Report 2005/06*, p14.

<sup>32</sup> NSW Office of Community Housing, *Planning for the Future*, n 29, p23.

<sup>33</sup> 1999 Briefing Paper, n 1, p1-7.

### 3. RECENT RESIDENTIAL TENANCY LAW REFORMS IN NSW

The 1999 briefing paper sets out in some detail the development of residential tenancy law since its inception in NSW in 1847. The current paper updates this account by noting the major developments in this area of the law since the year 2000. Very few of the substantive reforms affect the private rental market. Two of these are discussed first. Most amendments have only affected public housing tenants.

#### 3.1 Repayment of overpaid rent

In 2001<sup>34</sup> s 45A was inserted into the principal Act to enable a tenant under a residential tenancy agreement to apply to the Tribunal for a return of overpaid rent on the basis that a rent increase was not notified as required by s 45 of the *Residential Tenancies Act 1987*. By s 45 writing in notice to the tenant is required if rent is to be increased and a period of 60 days must elapse between the issuing of that notice and payment of the increased rent.

By the insertion of s 61(1A) into the Residential Tenancies Act the same amending legislation also provided for the Tribunal to determine the amount of rent reduction where the residential premises become partly or wholly uninhabitable but the tenancy is not terminated. As explained by the Second Reading speech, prior to the amendment the Act provided

for the abatement of rent and a right by either party to a residential tenancy agreement to terminate that agreement where the agreement is frustrated—for example, the premises the subject of the agreement, are destroyed or rendered partly or wholly uninhabitable. The proposed amendments will enable either party to apply to the...Tribunal for a determination of the reduced amount of rent payable if the agreement is not terminated.<sup>35</sup>

#### 3.2 Smoke alarms

Provision was made in 2005 for every residential agreement to include terms requiring landlords to install smoke alarms and preventing either landlords or tenants from removing or interfering with their operation, except with reasonable excuse (s 29A). Access rights are provided to the landlord for the purpose of installing a smoke alarm, provided that the tenant has been given not less than 2 days notice (s 24(1)(c1)).

#### 3.3 Consumer, Trader and Tenancy Tribunal

In the late 1990s the role and function of the body responsible for resolving disputes between landlords and tenants was the subject of reform. This followed an independent review of the Residential Tenancies Tribunal commissioned by the Department of Fair Trading in 1997. The review examined the jurisdiction and operation of all the tribunals in

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<sup>34</sup> *Statute Law (Miscellaneous Provisions) Act 2001*, Sch 1.16 [1].

<sup>35</sup> NSWPD, 20 June 2001, p 14933.

the fair trading portfolio and concluded that all the tribunals be amalgamated into a single Fair Trading Tribunal, with the exception of the Residential Tenancies Tribunal which had been established in 1987. It was recommended that the Residential Tenancies Tribunal be restructured and renamed the Residential Tribunal, partly to take into account the increased jurisdiction of the Residential Tenancies Tribunal. Since 1987 the jurisdiction of the Residential Tenancies Tribunal had expanded from dealing primarily with residential tenancy disputes to disputes in relation to retirement villages and caravan parks and relocatable homes. The Residential Tribunal came into existence on 1 March 1999.

These arrangements were again the subject of reform, this time by the *Consumer, Trader and Tenancy Act 2001*, which came into effect on 25 February 2002.<sup>36</sup> Under the Act, the Tribunal has eight divisions, including the Tenancy Division, the Residential Parks Division and the Retirement Villages Division. As regards residential tenancies, the role and jurisdiction of the new Tribunal is similar to that of the Residential Tribunal. Under s 43 of the Act parties can renew matters before the Tribunal where the other party has not complied with an order by the specified date.<sup>37</sup> Otherwise, the core elements of the Residential Tribunal remain in place, as follows

- The Consumer, Trader and Tenancy Tribunal is not bound by the rules of evidence (s 28(2)) and it may in fact determined its own procedure (s 28 (1)), with the proviso that it is to act as expeditiously as is practicable (s 28(5)(a)).
- It is bound generally to conduct a hearing in public (s 33).
- Parties to the proceedings are generally to represent themselves (s 36(1)). Only in exceptional circumstances can a representative be a lawyer if the amount in issue does not exceed \$10,000 (s 36(3)).
- Generally the parties are to bear their own costs, although there is a power to award them (s 53(2)).
- Interpreters are to be provided on request unless the Tribunal believes the person is sufficiently proficient in English to preclude the need for an interpreter (s 37(2)).
- The Tribunal has the power to call and examine witnesses on oath (s 39(1)).
- Evidence in any proceedings before the Tribunal may be received by telephone, audio visual link or any other means of communication (s 38).
- Provision is made for disputes to be settled by means of alternative dispute resolution (Part 5).
- There is power to order a rehearing on the ground that a party may have suffered a substantial miscarriage of justice because the decision of the Tribunal was not fair and equitable, or was against the weight of the evidence, or on the ground of fresh evidence (s 68(2)).
- There is power to refer a question of law to the Supreme Court (s 66).

Provision is made for dispute resolution under the Act, with the Tribunal directed to promote conciliation between the parties (s 54). Preliminary conferences are also available

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<sup>36</sup> For a more detailed discussion see R Johns, 'Consumer, Trader and Tenancy Tribunal', NSW Parliamentary Library, Briefing Paper No.11/03.

<sup>37</sup> P Bellemore, n 20, p 97.

to resolve disputes, either with a Tribunal member or the Registrar. Only where such methods fail to resolve a dispute will the matter proceed to a hearing (s 55).

### 3.4 Public Housing – acceptable behaviour agreements

By the *Residential Tenancies Amendment (Public Housing) Act 2004* the legislation was amended to provide the NSW Land and Housing Corporation with the power to control public housing tenants who engage in anti-social behaviour. The problem the Act was designed to counter was outlined in the Minister's Second Reading speech, where it was said:

The sort of behaviour we are concerned about includes dumping of cars, petty vandalism, graffiti, noise nuisance, throwing of firecrackers, rocks on the roof, and abuse. It also includes more serious criminal behaviour: assault and burglary. Antisocial behaviour does not include people going about their legitimate business. A child playing in the street, or adults using power tools at the proper times is not of itself antisocial behaviour...However, there is a small number of individuals who, for various reasons, are unable to get along with their neighbours, and who are unwilling to accept responsibility for their behaviour and its impacts on the surrounding community—impacts like tenants feeling imprisoned in their own homes due to the behaviour of their neighbour; impacts like children being unable to concentrate on studying for their Higher School Certificate because their parents are at war with a neighbour; impacts like families needing to move away from the problem behaviour, resulting in social support networks being disrupted and kids having to change schools; impacts like an increased risk of crime, and an increased fear of becoming a victim of crime. The cumulative effect of antisocial behaviour is that public housing becomes increasingly stigmatised, which in turn leads to more requests for rehousing and rejection of housing offers made in affected areas. Antisocial behaviour also means that the Department of Housing has to deal with the costs of vandalism and property damage, when it should be putting those resources into enhancing public housing. Antisocial behaviour also means frontline staff spend disproportionate amounts of time dealing with complaints about neighbours or arranging transfers for those people who can no longer continue to put up with the actions of their neighbours.<sup>38</sup>

The principal Act was amended to provide, by s 35A, that if the NSW Land and Housing Corporation is of the opinion, based on the history of the tenancy or any prior tenancy between it and the tenant, that the tenant is likely to engage in anti-social behaviour on the leased premises or property adjoining or adjacent to them, it may by notice in writing call on the tenant to give a written undertaking, referred to as an acceptable behaviour agreement, not to engage in anti-social behaviour. The undertaking binds both the tenant and other lawful occupants, whose conduct is deemed to be that of the tenant. There is a non-exclusive definition of anti-social behaviour which includes excessive noise, dumping cars, vandalism and defacing property.<sup>39</sup>

<sup>38</sup> NSWPD, 3 June 2004, p 9640.

<sup>39</sup> MJ Redfern and DI Cassidy, *Australian Tenancy Practice and Precedents* [3.205].

The 2004 reform also inserted a provision empowering the Corporation to terminate a public housing tenancy agreement where the tenant fails or refuses to enter into an acceptable behaviour agreement, or the tenant has seriously or persistently breached the terms of such an agreement. Termination on these grounds is subject to 14 days notice (s 63I).<sup>40</sup> The notice must satisfy the rules of natural justice by informing the tenant of the consequences of failure to give the undertaking and of breaching an agreement of this kind (s 35A (4) and (5)).

### 3.5 Social housing - tenure and eligibility reforms

‘Social housing’ is a term that includes: public housing, community housing, Aboriginal housing, and co-operative housing, which is managed by organizations of tenants.<sup>41</sup> The term ‘social housing provider’ is defined in the Act to include the NSW Land and Housing Corporation, the NSW Department of Housing, the Office of Community Housing of the Department of Housing and the Aboriginal Housing Office (s 3).<sup>42</sup>

The law relating to social housing was reformed in 2005 by the *Residential Tenancies Amendment (Social Housing) Act*, which followed the announcement by the Premier on 27 April 2005 of the Government’s Plan for Reshaping Public Housing. While the legislation was criticised by several stakeholder groups, including NCOSS, Shelter and the Tenants Union, it received bipartisan support in the Parliament.<sup>43</sup> As explained in the relevant Second Reading speech, the reforms were designed primarily to deal with problems of tenure in public housing:

Currently...if a person does not breach their tenancy agreement they can enjoy the benefits of public housing for life regardless of their housing need. The reshaping reforms change this. All new tenants from 1 July 2005 will be placed on a fixed-term lease that will commence some time after July 2006. The terms of the tenancy agreements will vary from two to ten years depending on the type of need. The ten-year leases will be aimed at households that are most in need and will remain in that state for some time to come. These may include elderly pensioners or those with ongoing disabilities. The five-year lease will be aimed at households such as families with children at school, and whose circumstances may change when their children's schooling is complete, or households in which the parents are undertaking training to move into the work force or change jobs. The two-year

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<sup>40</sup> Added as s 57A by the 2004 Act and renumbered by the *Residential Tenancies Amendment (Social Housing) Act 2005*.

<sup>41</sup> Bellemore, n 20, p 124.

<sup>42</sup> Section 3(1)(e) makes reference to ‘an organisation for the time being registered with the Office of Community Housing’. By the *Housing Amendment (Community Housing Providers) Act 2007* this is omitted and inserted instead is ‘a registered community housing provider within the meaning of the *Housing Act 2001*, or an organisation for the time being registered’. However, as at 8 November 2007 this amending Act is not in force.

<sup>43</sup> NSWPD, 18 October 2005, p 18759.

lease is aimed at households whose need for public housing is most likely to be of a passing nature. This may include young tenants with no family support or those experiencing homelessness and who are in need of time to address the issues they face. At the end of these agreements, tenants will have to demonstrate an ongoing need for public housing.<sup>44</sup>

The basic features of the reform package were as follows:

- Introduction of a system of fixed term renewable tenancies for new tenants (s 14A).
- Introduction of the power to terminate the tenancy of those considered ineligible for further assistance (s 63B).<sup>45</sup> The criteria for eligibility are established by guidelines approved by the Minister (s 63C).
- Requirement that social housing tenants pay outstanding debts (s 19B).
- Requirement that all social housing tenants pay a water usage charge, a requirement which is to be reviewed after two years (s 19A).
- Introduction of a standard form of tenancy agreement for both existing and new tenants (s 9A).
- Allowing for existing tenancy agreements to be terminated where a tenant refuses the offer of alternative social housing (s 63F).
- Allows a social housing tenant to apply to the Tribunal for an order that rent is excessive if the rent rebate of the tenant is cancelled (s 47A and s 49(3A)).
- Enabling rent increases to occur under a fixed term tenancy agreement (s 132(4) read with s 45(4)).

Further to this legislative change and other administrative reforms, the Department of Housing website outlines the key changes as follows:<sup>46</sup>

***Tenure*** - how long people can stay in public housing?

- Introduction of fixed term leases, according to housing need
- Since October 2006, new tenants have been offered short (2 years), medium (5 years) or long-term (10 years) leases to reflect the level and duration of their household's need
- This does not affect tenants living in public or Aboriginal housing before 1 July 2005.

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<sup>44</sup> NSWPD, 12 October 2005, p 18441.

<sup>45</sup> The landlord is required to assess the tenant's eligibility and to this end may require the provision of information. The sanction is that if the tenant refuses to provide the information the landlord may make the determination without further inquiry. Natural justice is provided by a provision that the tenant be given 30 days written notice of the landlord's decision with a right to make representations. A tenancy for a fixed term can only be terminated by this means within the last six months of the term – MJ Redfern and DI Cassidy, *Australian Tenancy Practice and Precedents* [3.205].

<sup>46</sup> NSW Department of Housing, *Reshaping Public Housing Overview* - <http://www.housing.nsw.gov.au/Changes+to+Public+Housing/Reshaping+Public+Housing/>

***Eligibility*** - who is eligible for public housing?

- Public housing will be provided to people on low incomes who need support services to help them live independently, such as the frail elderly, homeless people and people with a disability, as well as people who have problems accessing affordable and suitable housing in the private rental market.

***Rents*** - how much some people pay to live in public housing?

- There has been a small increase in rent for moderate income earners
- There has been an increase in the amount of Family Tax Benefit paid as rent.

***Water*** - who is responsible for meeting the costs of water usage?

- Since December 2005, public housing tenants have been responsible for paying for water usage, similar to many private tenants.

## 4. OVERVIEW OF RESIDENTIAL TENANCIES ACT 1987

This overview is based on Briefing Paper No 9/1999, which it seeks to update. Extensive reference is made to Redfern and Cassidy's *Australian Tenancy Practice and Precedents*.

### 4.1 Housing and tenancy legislation in NSW

The *Residential Tenancies Act 1987* is one among many pieces of legislation in NSW dealing with housing and tenancy related matters. Its scope and coverage is discussed below, as are the categories of tenancy agreements excluded from its reach. By way of introduction, brief note is made of the other major legislative instruments in this field.

- ***Landlord and Tenant (Amendment) Act 1948*** – of declining relevance is this Act which provided for protected tenancies. The *Landlord and Tenant (Protected Tenancies) Amendment Act 1985* excluded all new leases from 1 January 1986 from the protective tenancy provisions.<sup>47</sup>
- ***Housing Act 2001***– this establishes the NSW Land and Housing Corporation, setting out its functions and powers, including the power to acquire land and to assist individuals in purchasing homes, and in providing rental rebates to public housing tenants. Not yet in force, as at 8 November 2007, is the *Housing Amendment (Community Housing Providers) Act 2007* which provides for the registration of community housing providers and for the provision of funding and other assistance to them by the NSW Land and Housing Corporation.
- ***Landlord and Tenant (Rental Bonds) Act 1977*** – this established the Rental Bond Board and requires landlords to deposit a tenant's money with the Board within 7 days of receiving it.<sup>48</sup> The Act, which applies to all premises which are used solely for residential purpose, requires all bonds to be in money (s 9), and to be paid to the landlord or his or her agent 'to secure ... the landlord against failure by the tenant to comply with the terms or conditions of the lease irrespective of whether those terms are related to the payment of rent or not'.<sup>49</sup> The amount of bond that a tenant may be required to lodge has been prescribed by Regulation: in the case of furnished premises rented at up to \$250 per week, the maximum bond payable is six week's rent, and in the case of unfurnished premises, four week's rent. There is no limit in the case of furnished premises rented at more than \$250 per week.<sup>50</sup> By s 11A,

<sup>47</sup> The 2007 NSW Office of Fair Trading Consultation Paper commented that the older Landlord and Tenant Act 1899 be repealed, subject to any provisions which are not obsolete being incorporated into the *Landlord and Tenant (Amendment) Act 1948*.

<sup>48</sup> Failure to do so is an offence, subject to a penalty of \$2,200 (s 16(2)).

<sup>49</sup> *Landlord and Tenant (Rental Bonds) Act 1977*, s 4, definition of 'rental bond'.

<sup>50</sup> Landlord and Tenant (Rental Bonds) Regulations 2003, regulation 6. Briefing Paper No 9/1999 commented 'When this provision was made, in 1977, \$250 per week was a very high rent and only applied to luxury rental accommodation. However, the amount specified in the regulations has not increased with inflation since 1977 and so the number of

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which was added by an amendment in 1989, interest at the rate prescribed by the Regulations is added to the principal of any bond paid out after 1 January 1990.<sup>51</sup>

- ***Residential Parks Act 1998*** – the *Residential Tenancies Act 1989*, in its application to moveable dwellings, was replaced in 1998 by this latter specialised Act. It was thought that the special nature of the tenancies involved in caravan parks (ie that the resident generally owns the dwelling and only rents the land upon which it is placed) required a separate legislative scheme. Thus, while the *Residential Parks Act* follows a similar structure to the *Residential Tenancies Act*, setting out a standard form of tenancy agreement, the rights and obligations of landlords and tenants, provisions relating to rents, rent increases and excessive rents, and the termination of a residential tenancy agreement, it also contains provisions specific to park residents, relating to park rules for residential parks, payment of water and electricity charges, the community aspects of residential parks, mail facilities, and the sale of moveable dwellings and manufactured homes.<sup>52</sup>
- ***Retirement Villages Act 1999*** – before the passing of this Act retirement villages were regulated by the *Retirement Village Act 1989*, regulations under that Act and a mandatory code of practice under the *Fair Trading Act 1987*. The legislation currently in force was introduced following a review of these arrangements; the review recommended that the code of practice, the primary regulatory mechanism in this field, be replaced with a consolidated legislative package dealing with retirement villages.<sup>53</sup> The *Retirement Villages Act* was assented on 3 December 1999.
- ***Consumer Trader and Tenancy Tribunal Act 2001*** – the history and operation of this legislation was discussed in the previous section of this paper. It came into effect on 25 February 2002, with the Consumer Trader and Tenancy Tribunal replacing the more limited and specialized jurisdiction of the former Residential Tribunal. The reform involved no major substantive changes to the review and appeal mechanisms available to landlords and tenants.

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properties for which there is no maximum bond has increased'. However the same paper also reported that 98% of premises were rented unfurnished (page 18).

<sup>51</sup> Landlord and Tenant (Rental Bonds) Regulation 2003, cl 10.

<sup>52</sup> The relationship between the *Residential Parks Act* and the *Residential Tenancies Act* is set out in s 7 of the latter. It provides that this last Act does not apply to residential tenancy agreements to which the *Residential Parks Act* applies. However, by s 7(2) the *Residential Tenancies Act* does apply to any other residential tenancy agreements relating to moveable dwellings, but only to the extent and in the manner specified by the regulations (see Residential Tenancies Regulation 2006, cl 4).

<sup>53</sup> NSW Department of Fair Trading, *Review of Regulation of the NSW Retirement Village Industry – Final Report*, August 1998. This is discussed in Briefing Paper No 9/1999 at pages 28-29.

## 4.2 Key concepts under the Residential Tenancies Act 1987

Key concepts under the legislation include ‘residential premises’, ‘tenancy’ and ‘residential agreement’.

The term ‘*residential premises*’ is defined to mean any premises or part of premises, including land occupied with them, used or intended to be used as a place of residence (s 3). The Act does not apply generally therefore to vacant land.<sup>54</sup>

‘*Tenancy*’ is defined as the right to occupy residential premises under a residential tenancy agreement. A ‘tenant’ is the person who has that right, and the ‘landlord’ is the person who grants the right.

A ‘*residential tenancy agreement*’ is any agreement under which a person grants to another person, for a value, the right of occupation of residential premises for use as a residence. Both parties must intend that the premises will be occupied as a residence. Premises that will be used for both business and residence will be included, but not where the ‘predominant use’ is for the purposes of ‘a trade, profession, business or agriculture’.<sup>55</sup> Although the grant must be for a ‘value’ this does not necessarily mean rent as commonly understood: it could be sufficient that the tenant pay water and council rates for example. There must be an agreement (a squatter, for example, would not be covered by a residential tenancy agreement) but this agreement may be oral or in writing, or express or implied. The standard forms of residential tenancy agreements are set out at Schedules 1 and 2 of the Residential Tenancies Regulation 2006.<sup>56</sup>

## 4.3 Scope of the Residential Tenancies Act 1987

Generally, the Act applies whenever a person grants to another person the right to occupy residential premises, in whole or part, either in writing or on an oral basis, in exchange for rent.

The Act binds the Crown but with certain exceptions applying to the NSW Land and Housing Corporation and the Aboriginal Housing Office (s 4).<sup>57</sup>

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<sup>54</sup> One exception is that the Act does apply to moveable dwellings and the land upon which they are or are intended to be situated. But note that the same definition of residential premises is found in the *Residential Parks Act 1998* which is now the main legislation covering moveable dwellings. The term ‘moveable dwelling’ is defined in the *Residential Tenancies Act 1987* to have the same meaning as it has in the *Local Government Act 1993*.

<sup>55</sup> Residential Tenancies Regulation, cl 20.

<sup>56</sup> Schedule 1 relates to tenancy agreements not exceeding 3 years; Schedule 2 to tenancy agreements exceeding 3 years.

<sup>57</sup> These exceptions are set out in s 132 of the Act.

By s 6 of the Act and Part 5 of the Regulations other exclusions also apply, in respect to certain types of premises and certain types of agreement, including:

- Boarders and lodgers.
- Hotels, motels, premises ordinarily used for holidays and other homes let for holidays of less than 2 months.
- Any part of an educational institution.
- Any part of a hospital.
- Any part of a club.
- Nursing homes.
- Premises used to provide residential care under the *Aged Care Act 1997* (Cth).
- Tenancies covered by the *Residential Parks Act 1998*, the *Holiday Parks (Long-term Casual Occupation) Act 2002* and the *Retirement Villages Act 1999*.
- Agreements arising from the sale or mortgage of premises.
- Equity purchase agreements.
- Protected tenancies under the *Landlord and Tenant (Amendment) Act 1948*.
- Company title shareholders.
- Strata leasehold agreements.<sup>58</sup>
- Premises predominantly used for the purposes of a trade, profession, business or agriculture.

#### 4.4 Landlord obligations to the tenant

The rights, obligations and powers of landlords and tenants under the Residential Tenancies Act, which are incorporated into any residential tenancy agreement are defined in Part III of the Act:

- pay all rates, taxes and charges other than for electricity, gas, excess water usage,<sup>59</sup>

<sup>58</sup> Reference is to leasehold strata agreements under the *Strata (Leasehold Development) Act 1986*. A note to the legislation explains that 'The purpose of this Act is to allow land to be subdivided by means of a strata scheme in cases where the owner of the land does not wish, or is not able, to part with ownership of the land. Under a leasehold strata scheme, the owner of the land that is the subject of the scheme retains an estate in fee simple in the land. The purchaser of each lot that is created under the subdivision obtains a leasehold interest, rather than a freehold interest, in the lot'.

<sup>59</sup> By s 19 of the Act and clause 11 of the Residential Tenancies Regulation 2006 landlords can only require a tenant to pay for water usage if this was included as a term of the tenancy agreement and the premises are separately metered. Clause 11(1)(b) provides that tenants are liable to pay 'any charges for water used in connection with the residential premises (in addition to charges for excess water) for which the tenant has agreed to pay under the terms of the residential tenancy agreement, but only if the charge is calculated according to the metered amount of water consumed and there is no minimum rate chargeable'. The 2005 Options Paper commented in this respect that 'In practice this means that only tenants of houses pay directly for water usage. Even then, some tenants of houses do not pay because they are on old agreements which make no mention of water usage charges. Tenants of most flats, townhouses and other properties not separately metered pay for water indirectly as part of their rent' (page 15). By s 19B of the Act social housing tenants are required to pay water charges.

pumping a septic tank, and excess garbage or sanitary charges where applicable<sup>60</sup> (s 19);

- ensure tenant's entitlement to vacant possession on which date he or she is entitled, by the agreement, to occupation of the residence (s 21);
- ensure the tenant enjoys the quiet enjoyment of the residence without interruption by the landlord, and that neither the landlord or his agent will interfere with the reasonable peace, comfort or privacy of the tenant in using the residence (s 22). There are a number of exceptions to this rule, which enables the landlord to enter the premises for the following purposes:
  - to carry out emergency repairs (s 24(1)(a))
  - to carry out necessary repairs (on at least two days notice) (s 24(1)(c)) - but not between 8pm and 8am or on a Sunday or a public holiday
  - to inspect the premises, up to four times a year, on not less than seven days' notice (s 24(1)(b)) - but not between 8pm and 8am or on a Sunday or a public holiday
  - to install a smoke alarm (on at least two days notice) (s 24(1)(c1)) - but not between 8pm and 8am or on a Sunday or a public holiday
  - to show the premises to prospective purchasers on a reasonable number of occasions and with reasonable notice (s 24(1)(d)), or to prospective tenants on reasonable occasions during the last fortnight of the tenancy (s 24(1)(e))(with the same time restrictions as above)
  - where the landlord believes, on reasonable grounds, that the premises have been abandoned (s 24(1)(f)), or
  - with the tenant's consent at any time (s 24(1)(g)), or in accordance with an order from the Tribunal (s 24(1)(h)).
- provide the premises in a reasonable state of cleanliness and fit for habitation, and to maintain the premises in a reasonable state of repair having regard to their age, the rent and the prospective life of the premises (s 25);
- maintain the locks and security devices of the residence and must not, without reasonable cause or the tenant's consent, alter, remove or add to them. If any of these are done, a copy of the key must be given to the tenant (s 29); and
- install smoke alarms (s 29A). As noted, the landlord has a right of entry to install the alarm, subject to certain conditions.

Other obligations on the landlord include keeping rent records for at least 12 months (s 41),<sup>61</sup> and providing the tenant with a copy of *The Renting Guide; Your Rights and*

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<sup>60</sup> Clause 11(1)(c) of the Residential Tenancies Regulation 2006.

<sup>61</sup> The requirement does not apply to either the NSW Land and Housing Corporation or the

*Responsibilities as a Tenant or Landlord.*<sup>62</sup> A ‘condition report’ relating to the premises is also to be completed by the landlord at the start of the tenancy. This must be given in duplicate to the tenant who must then complete and return one copy to the landlord within 7 days.<sup>63</sup>

#### 4.5 Tenant obligations to the landlord

- pay the rent ‘on or before the day’ specified in the agreement (s 18);
- at the beginning of a tenancy tenants must pay: the rental bond; half the cost of purchasing and preparing the lease (\$15);<sup>64</sup> connection fees and two weeks rent in advance if the rent is less than \$300 per week and ‘more than 1 month’s rent’ if the rent is more than \$300 per week (s 38). This threshold has not been changed to take account of inflation since the Act was passed in 1987. The 2005 Options Paper commented in this respect that ‘Restrictions on the level of advance rent are necessary to keep entry costs low and to avoid the payment becoming a de-facto additional bond’. It suggested the option of limiting the maximum rent in advance that can be required for all tenancies to 2 weeks, a requirement that would be ‘consistent with provisions in most other States’.<sup>65</sup>
- to not use or cause or permit to be used, the premises for an illegal purpose (s 23(1)(a));
- not to cause or permit a nuisance (s 23(1)(b));
- not to interfere, or cause or permit interference, with the reasonable peace, comfort or privacy of any neighbour (s 23(1)(c));
- to keep the premises in a reasonable state of cleanliness having regard to their condition at the commencement of the lease (s 26(1)(a));
- to notify the landlord as soon as practicable, of any damage to the premises (s 26(1)(b) and to not intentionally or negligently cause or permit any damage to the premises (s 26(1)(c));

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Aboriginal Housing Office (s 132).

<sup>62</sup> Residential Tenancies Regulation 2006, cl 7.

<sup>63</sup> Residential Tenancies Regulation 2006, cl 8.

<sup>64</sup> See s 12 of the Act and cl 10 of the regulations. The Department of Housing does not charge its tenants for the preparation of agreements, so this charge falls only on private renters. Note that the consultation paper, *Residential Tenancy Law Reform: A New Direction, proposed that NSW*, should follow all other States and prohibit landlords and agents from charging tenants a fee for the preparation of a lease (page 32).

<sup>65</sup> NSW Office of Fair Trading, *Residential Tenancy Law Reform: Options Paper*, July 2005, pp 17-18.

- to have the premises, as nearly as possible, at the termination of the lease, in the condition set out in the condition report, fair wear and tear taken into consideration (s26(1)(d));
- not to affix any fixture or make any renovation, alteration or addition to the premises without the written consent of the landlord (s 27(1)(a));
- not to remove any fixture that has been affixed by the tenant without the landlord's consent (s 27(1)(b). Where a landlord refuses to consent to the removal of any fixture, he or she must compensate the tenant (s 27(1)(e));
- not remove or add to the locks or security devices. If the tenant does so, he or she must give the landlord a copy of the key (s (29(1) and (2));

#### **4.6 Tenant rights with respect to the property**

The Residential Tenancies Act also confers upon the tenant some specific rights, which may stem from the obligations of the landlord, but which also may be independent of any obligation imposed upon the landlord:

***Urgent repairs*** - The tenant has a right to have urgent repairs performed and recoup costs from the landlord in certain situations, where the tenant has given or attempted to give the landlord notice of the need for repairs. The tenant is to be reimbursed not later than 14 days after the landlord has received written notice of any reasonable costs, up to a limit of \$1,000.<sup>66</sup> 'Urgent repairs' include the following: a burst water service; a blocked or broken lavatory system; a serious roof leak; a gas leak or dangerous electrical fault; serious storm, fire or flood damage, or any essential service of the premises for hot water, cooking, heating or laundry. Provision is made for the tenant, with the consent of the landlord, to carry out repairs personally, and to be reimbursed by the landlord for the cost of those repairs.

***Sub-letting*** - The tenant has the right to sub-let the premises with the consent of the landlord. The landlord is not to make any charge for giving consent, 'other than for the landlord's reasonable expenses' in doing so (s 33(1)(a) and (c)).

***Rent increases*** - The tenant is given protection with regard to rent increases such that the rent payable under an agreement cannot be increased except by notice in writing and with not less than 60 days notice (s 45(1) and (2)). The Tribunal has jurisdiction to order a refund of rent paid without proper notice of the increase (s 45A(1)). The application must be made within 12 months of the tenant being notified of the increase (s 45A(3)). Within 30 days of receiving the notice of increase the tenant may apply for an order that the proposed rent is excessive (s 46). Upon the tenant's application the Tribunal has jurisdiction to set aside the increase in whole or part. The Tribunal has the power to 'make such order as it

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<sup>66</sup> Section 28(1) of the Act read with Clause 30 of the Regulations.

thinks fit' (s 49(2)). In the absence of such an application the rent will increase in accordance with the notice from the date specified in it.

Special provisions apply to social housing tenancies. By s 132(3) notice under s 45(1) of a rent increase is not required to be given to a tenant of premises of which the New South Wales Land and Housing Corporation is the landlord if the tenant receives a rent rebate from the Corporation in relation to those premises. Further, the rule in s 45(4) that the rent paid under a fixed term tenancy cannot be increased during the currency of the term, unless the amount of the increase or the method of calculating it is set out in the tenancy agreement, does not apply to social housing tenancy agreements (s 132(4)).

**Excessive rent** – The tenant can apply *at any time* to the Tribunal for a declaration that the rent payable is excessive but only 'having regard' to a 'reduction or withdrawal by the landlord of any goods, services or facilities provided with the premises' (s 47). According to Redfern and Cassidy 'This is the only circumstance in which the Tribunal has jurisdiction to reduce the contractual rent during the currency of a contractual term or periodical tenancy'.<sup>67</sup>

By s 47A a social housing tenant whose rent rebate has been cancelled may apply, within 30 days of the cancellation, to the Tribunal for an order declaring that the rent is excessive. The Tribunal may order that the rent is not to exceed a specified amount and may make such orders as it thinks fit (s 49(3A)).

#### 4.7 Termination of tenancy

Section 53 of the Residential Tenancies Act lists 10 methods of terminating a tenancy. These methods are generally available to both the landlord and the tenant. Several are technical in nature, based on common law principles such as abandonment, merger or disclaimer.

**Termination on notice:** Provision is also made for where either the landlord or tenant gives notice of termination under Part 5 of the Act (s 53 (a)). Giving notice of termination is the most common method of termination. If the landlord gives notice to the tenant, the tenant has the right to refuse to vacate. If the tenant does vacate, the tenancy is brought to an end. If the tenant refuses to vacate, the landlord must apply to the Tribunal for an order for possession. Notice is required to terminate both a fixed-term tenancy when it expires or during its duration, and also a periodic or continuing tenancy.

Sections 56-61 set out the grounds for the making of a notice to terminate, as follows:

- That either the tenant or the landlord has breached a term of the tenancy agreement (s 57). Bellemore comments 'The landlord can give 14 days notice if you breach the agreement. The breach, however, must be a serious breach or one that is persistent. Breaches include being 14 days or more behind in rent and sub-letting

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<sup>67</sup> Redfern and Cassidy, n 39 at [3.100].

without the landlord's permission'.<sup>68</sup>

- That the landlord has entered into a contract for sale with vacant possession (s 56). At least 30 days notice must be given.
- Without the landlord specifying a ground for the termination (s 58). Notices of this type are referred to as '60 day s 58 no grounds notices' and they only apply to *periodic or continuing tenancy agreements*, not to fixed term agreements.
- Without either the landlord or tenant specifying a ground for the termination of a *fixed term tenancy* (s 60). At least 14 days notice before the last day of the fixed term.
- Similarly, without the tenant specifying a ground for termination of a continuing agreement (s 59). This is the equivalent of the common law notice to quit or notice of intention to quit. The tenant must give at least 21 days notice.
- That the agreement is frustrated where the premises are destroyed, rendered wholly or partly uninhabitable, cease to be lawfully usable for the purpose of residence, or are appropriated or acquired by an authority by compulsory process (s 61). The landlord can terminate the tenancy on these grounds provided that 'how the premises became uninhabitable was not a breach of the agreement'.<sup>69</sup> Termination is immediate.

***Termination by Tribunal:*** In addition, the Tribunal has jurisdiction to terminate a tenancy agreement without the service of notice of termination in these cases:

- On the application of the landlord if the tenant has intentionally or recklessly caused or permitted, or is likely to cause or permit serious damage to the premises, or injury to the landlord, his or her agent, an adjoining occupier or any person on adjoining or adjacent premises (s 68).
- On the application of the landlord where they would, in the special circumstances of the case, suffer undue hardship if they were to take steps to terminate the tenancy under another provision of the Act (s 69). This may apply where a landlord needs to sell or move into a property urgently.
- Likewise, on the application of the tenant where they would, in the special circumstances of the case, suffer undue hardship if they were to take steps to terminate the tenancy under another provision of the Act (s 69A). This may apply where a tenant has a serious family illness, loses their job or suffers financial hardship.
- On the application of the tenant if the landlord has broken the agreement and the breach, in the special circumstances of the case, justifies termination (s 70).

***Termination and social housing tenancies:*** As discussed in an earlier section of this paper, special termination provisions apply to social housing tenancies, notably:

- Notice of termination may be given on the ground that the tenant is not eligible for social housing (s 63B).

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<sup>68</sup> Bellemore, n 20, p 70.

<sup>69</sup> Bellemore, n 20, p 70.

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- Notice of termination may be given on the ground that the tenant has been offered alternative social housing premises (s 63F).
  - Notice of termination may be given where the tenant fails or refuses to enter into an acceptable behaviour agreement, or the tenant has seriously or persistently breached the terms of such an agreement. Termination on these grounds is subject to 14 days notice (s 63I).
  - A public housing tenancy agreement may also be terminated by the Tribunal where it determines, on an application by the NSW Land and Housing Corporation, that the tenant has 'seriously or persistently threatened or abused' any member of the staff of the Department of Housing, or has intentionally engaged in conduct reasonably likely to intimidate or harass a staff member (s 68A).

## 5. PROPOSED REFORMS OUTLINED IN CONSULTATION PAPER

As outlined in the introduction, the NSW Office of Fair Trading recently released a consultation paper entitled *Residential Tenancy Law Reform: A New Direction*, which contains 102 proposals for reforming tenancy laws.<sup>70</sup> This section provides a summary of the reform proposals. It also outlines initial responses to the Consultation Paper, notably from the Tenants' Union of NSW, at this stage the only stakeholder to have issued a concerted and publicly available commentary on the proposals.

### 5.1 Key reform proposals

Ten key proposals in the consultation paper are outlined below:<sup>71</sup>

#### *Rent arrears*

Current position:<sup>72</sup> Currently, a tenant must be at least 14 days in arrears of rent before a landlord can issue a 14-day notice to vacate. If the tenant fails to comply with the notice an application can then be lodged with the Tribunal for a possession order. At the Tribunal hearing a date to end the tenancy is then set if another outcome cannot be conciliated.

Concerns: The consultation paper noted that:

This issue was seen as the most significant area of concern for landlords and agents. They claim that the current process for rental arrears evictions is too heavily weighted in favour of tenants and results in significant financial loss for landlords, causing hardship to those who rely on the rent to meet mortgage obligations. It was stated that it can take up to 2-3 months or longer from the time a tenant stops paying their rent until an eviction order is made and enforced. Many submissions highlighted the difficulty of recovering this money and the inadequacy of the bond, particularly if there was damage to the premises in addition to the arrears.<sup>73</sup>

Reform proposals: The proposals include:

- Termination notices issued to a tenant would need to stipulate the choices of paying the arrears in full, entering into an agreed repayment plan, applying to the Tribunal for a hearing or moving out, and sources of available help;
- Tenants who are unable to pay arrears, cannot agree with the landlord/agent upon a

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<sup>70</sup> NSW Office of Fair Trading, *Residential Tenancy Law Reform: A New Direction*, September 2007.

<sup>71</sup> The ten key proposals outlined here include the eight key proposals identified in Minister for Fair Trading, Youth and Volunteering, 'A fairer deal for NSW landlords and tenants', *Media Release*, 20/9/07 and two other proposals regarding termination of a tenancy.

<sup>72</sup> Consultation Paper, n 70, p10; and see s 57 *Residential Tenancies Act 1987* (NSW).

<sup>73</sup> Consultation paper, n 70, p10.

repayment schedule, or refuse to move out by the date given in the termination notice, would have the onus on them to apply to the Tribunal before the notice expires if they wish to have a hearing to contest the matter;

- Where a contested hearing is not requested, the Tribunal would have the power to issue a termination order administratively, without the need for a hearing – the tenant would be notified and would have a second opportunity to seek a hearing in the limited time before an order is made.

### *Alterations of premises*

Current position:<sup>74</sup> Unless the landlord consents, a tenant cannot affix any fixture or make any renovation, alteration or addition to the premises. In addition a tenant cannot, without the landlord's consent, remove any fixture that the tenant has affixed to the premises. However, if the landlord refuses consent to the removal of a fixture affixed by the tenant, the landlord must compensate the tenant for the value of the fixture. If the tenant removes a fixture affixed by the tenant and the tenant causes damage to the premises by doing so, the tenant must repair the damage or compensate the landlord.

Reform proposals: The consultation paper concluded:

NSW should follow most other States and provide a better balance between the rights of tenants and landlords in this area. It is only fair and reasonable to expect that tenants may want or need to make minor or cosmetic changes to a rented property for a variety of reasons.

If a tenant is willing to meet the costs and repair any damage when they leave the review can see no justification for a landlord having an absolute right of refusal, unless it involves alterations of a structural nature. Queensland, Western Australia and New Zealand all say a landlord cannot unreasonably refuse consent.<sup>75</sup>

The reform proposals include:<sup>76</sup>

- Landlords would not be entitled to unreasonably refuse consent for a tenant to make cosmetic improvements to the property or add fixtures at their own expense, unless it involves changes which are irreparable or of a structural nature;
- When consenting to alterations or improvements, a landlord would be able to impose reasonable conditions such as using a qualified tradesperson or removing the fixture and 'making good' when the tenancy ends;
- Tenants would be entitled to remove any fixtures they have added, for which they have not already been fairly compensated, without needing the landlord's consent, unless such removal would cause irreparable damage;

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<sup>74</sup> Section 27, *Residential Tenancies Act 1987* (NSW).

<sup>75</sup> Consultation paper, n 70, p30-31.

<sup>76</sup> Consultation paper, n 70, p31.

- If a tenant vacates leaving behind improvements or fixtures the tenant would have no right to compensation unless there was a prior written agreement between the parties for the tenant to be compensated;
- In Tribunal cases where it is alleged that a former tenant has damaged the premises any money they have spent on improvements or fixtures left behind should be offset against the claim unless the tenant has already been fairly compensated.

### *Disputes between co-tenants*

Current position: The Act does not deal specifically with disputes between co-tenants.<sup>77</sup>

Concerns: The consultation paper stated:

Tenant groups said that dealing with co-tenant disputes was one of the most significant areas of the tenancy law that needed to be addressed. They stated disputes currently exist in a legal vacuum with no appropriate avenues for resolution. It was claimed that shared households are on the rise.<sup>78</sup>

Reform proposals:<sup>79</sup> It is proposed that:

- Once the fixed term period of a lease has expired, a co-tenant would be able to give at least 21 days notice to their co-tenants and the landlord of their intention to vacate, after which time their liability would cease in respect to future events;
- A co-tenant would be able to apply to the Tribunal for an order to terminate a fixed term or continual tenancy, on terms imposed by the Tribunal, or remove one or more co-tenants from the premises. Landlords would be notified of such applications and have the option to be a part to the proceedings;
- If one co-tenant vacates and they are not refunded their share of the bond by the remaining co-tenant within 14 days they could apply to the Tribunal for an order that the co-tenant refund the money.

### *Sale of property: access to show potential buyers*

Current position: The landlord may show the premises to prospective purchasers on a reasonable number of occasions if the tenant is given reasonable notice on each occasion.<sup>80</sup>

Concerns: The consultation paper noted that:

Tenants groups said from their experience this was the one area of tenancy law that most frequently disappoints tenants' expectations of fairness. They argued that

<sup>77</sup> Consultation paper, n 70, p44.

<sup>78</sup> Consultation paper, n 70, p44.

<sup>79</sup> Consultation paper, n 70, p45.

<sup>80</sup> Section 24(1)(d), *Residential Tenancies Act 1987* (NSW).

tenants are significantly inconvenienced by the seemingly never ending round of inspections associated with the process of finding a buyer. A particular concern is when the property is put on the market while the tenant is bound by a fixed term agreement, when they have little choice but to put up with the inspections and often receive no compensation for their temporary loss of quiet enjoyment.<sup>81</sup>

Reform proposals:<sup>82</sup> The proposals include:

- The tenant would need to be notified of a landlord's intention to sell once a sale contract had been drawn up and a selling agent appointed;
- If the landlord decided to sell during the fixed term period of a tenancy, the tenant would be entitled, during the inspection period, to a rent reduction. The Act would set a minimum rent reduction but the actual reduction would be as agreed by the parties or as determined by the Tribunal.
- Selling agents would be required to respond in a reasonable way to any legitimate problems raised by a tenant or practical alternatives suggested to the days or times for inspections, with either party able to seek urgent orders from the Tribunal if they believe the other party is acting unreasonably regarding access;
- Tenants would be entitled to at least 24 hours notice for one-off buyer inspections.

### ***Grounds for tenant to end lease early***

Current position: Tenants with a fixed term lease do not have the right to end the tenancy before the expiry of the term unless the landlord has breached the agreement. However, the Tribunal may terminate a tenancy if satisfied that the tenant would, in the special circumstances of the case, suffer undue hardship if the tenancy were not terminated.<sup>83</sup> Tenants who are not entitled to break a lease early 'can be liable for substantial costs to cover lost rent and other expenses until another tenant is found or the lease expires'.<sup>84</sup>

Concerns: The consultation paper stated:

Each year there are around 200 applications to the Tribunal from tenants seeking to end their fixed term lease early on undue hardship grounds. There are many more than this number from landlords seeking compensation due to the tenant breaking a lease. The options paper raised the possibility of introducing statutory 'escape clauses' into leases to reduce the need for Tribunal applications and to better balance the rights of the parties.<sup>85</sup>

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<sup>81</sup> Consultation paper, n 70, p37.

<sup>82</sup> Consultation paper, n 70, p37-38.

<sup>83</sup> Section 69A, *Residential Tenancies Act 1987* (NSW).

<sup>84</sup> NSW Office of Fair Trading, *Residential Tenancy Law Reform: Options Paper*, July 2005, p7.

<sup>85</sup> Consultation paper, n 70, p47.

Reform proposals:<sup>86</sup> It is proposed that tenants be given new rights to end a fixed term agreement early upon giving 21 days notice if they accept an offer of public housing, need to move to an aged care facility or the landlord places the property on the market without proper pre-disclosure. In all other cases where a tenant breaks a lease early, it is proposed that the Act should fix the amount of rent payable as compensation, on a sliding scale depending on how much of the lease remains. Re-letting fees and advertising costs should only be recoverable if the tenant breaks the lease during the first third of the term.

### ***Eviction by lenders after foreclosure***

Current position:<sup>87</sup> If the owner of the premises defaults on a mortgage, the lender (mortgagee) may take action in the Supreme Court to foreclose on the mortgage. If the mortgagee obtains an order for possession of the premises, the tenancy automatically comes to an end (unless the mortgagee had notice of the tenancy before entering into the mortgage or the mortgagee had consented to the tenancy). How much notice is then given to the tenant to vacate is entirely up to the mortgagee.

Reform proposals:<sup>88</sup> The consultation paper concluded:

...the current system is unfairly weighted in favour of mortgagees over the interests of tenants who enter into leases in good faith. The outcome of Supreme Court action between the mortgagee and the landlord should not automatically end a tenancy, particularly given that the tenant is not usually involved and sometimes not even aware of these proceedings. A process which encourages mortgagees to more carefully consider continuing the tenancy until the property can be sold would be to the benefit of tenants and mortgagees in many situations.

It is proposed that tenants be entitled to at least 30 days notice if a mortgagee decides to obtain vacant possession, either during or after a fixed term tenancy. This was similar to the notice period that applied in Queensland and Victoria. In addition to the new notice period, it is proposed that where a mortgagee ends a fixed term tenancy early, the tenant would be able to withhold two weeks rent, or a higher amount as agreed, to offset relocation expenses; and a process would be put in place to allow the bond to be released.

### ***'No grounds' evictions following expiry of lease***

Current position:<sup>89</sup> Once a fixed term lease has expired a landlord may end the lease by giving the tenant at least 60 days notice to vacate. The landlord is not required to specify a reason for the termination. If the tenant does not move out, the landlord may seek an order from the Tribunal for possession. The Tribunal may make such an order if, 'having considered the circumstances of the case, it is appropriate to do so'.

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<sup>86</sup> Consultation paper, n 70, p47-48.

<sup>87</sup> Consultation paper, n 70, p21 and Options paper, n84, p10.

<sup>88</sup> Consultation paper, n 70, p 21.

<sup>89</sup> Sections 58, 64, *Residential Tenancies Act 1987* (NSW).

Reform proposals:<sup>90</sup> The proposal is to extend the minimum notice period for ‘no grounds’ evictions from 60 days to 90 days. The consultation paper noted that South Australia had a 90 day notice period while other States had longer notice periods such as 120 days in Victoria and 6 months in the ACT. Under the Government’s proposals, a landlord would still be able to give 60 days notice on certain grounds such as a need to move into the property themselves or an intention to do major renovations. Another proposed change is for the Act to specify factors for the Tribunal to consider when hearing an application to end a tenancy on the basis of a ‘no grounds’ notice.

Some submissions in response to the options paper had argued that landlords should be prevented from issuing a ‘no grounds’ eviction. They considered that the law should only recognise ‘just cause’ evictions, which would protect tenants from arbitrary evictions and encourage more long-term stable tenancies. The Office of Fair Trading did not find sufficient justification to introduce this measure. According to the consultation paper, ‘to do so would have serious implications on the rental housing market. In any event, trying to list all valid reasons would be a difficult or impossible task’.

### *Tenancy databases*

Tenancy databases:<sup>91</sup> Tenancy databases are privately owned electronic databases that hold information about individual tenancy histories. There are a number of commercially operated tenancy databases in Australia and they principally collect information from real estate agents or large scale property managers. Most agents and property managers, and some landlords, subscribe to one or more databases and use them to screen prospective tenants. Agents also provide information about tenants to include in databases. These listings usually consist of negative comments about past breaches of the tenancy agreement, or about other aspects of the tenant’s conduct.

Tenancy databases have caused a range of serious problems for tenants including:

- Prospective tenants often being unaware that they were listed on a database until they have had a tenancy application declined;
- Inaccurate, out-of-date or untested information, and an inability to challenge or remove that information;
- Listings remaining on a database for up to seven years, long after the original problem which led to listing was resolved or relevant;
- Difficulty in gaining access to information on databases and some database operators charging prohibitive amounts for access;
- Listings based on trivial reasons which did not constitute a breach of the tenancy.

As many agents will not rent to a tenant who is listed on a database, such matters can and do lead to some people being effectively locked out of the private rental market.

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<sup>90</sup> Consultation paper, n 70, p23-25.

<sup>91</sup> Consultation paper, n 70, p51.

Current position:<sup>92</sup> Tenancy databases are regulated under the *Property, Stock and Business Agents Amendment (Tenancy Databases) Regulation 2004*, which commenced on 15 September 2004. The regulation establishes rules for agents who use tenancy databases. Agents are required to inform tenants that they are to be listed on a database and give them an opportunity to comment; to only list tenants for four specified reasons, three of which are required to be verified by a Tribunal order; and to only use databases that provide tenants with free access to their information and an opportunity to amend it, and that delete listings within specified timeframes. The Commonwealth *Privacy Act* also applies to large tenancy databases and requires them to comply with privacy principles in the Act.

Concerns about current position: The consultation paper stated that there was growing evidence that the effectiveness of the NSW regulations ‘is hampered by its limited coverage; the lack of an accessible and efficient dispute resolution mechanism; and the lack of any direct regulation of tenancy database operators’.<sup>93</sup>

Reform proposals:<sup>94</sup> The reform proposals include:

- The current provisions be extended to cover anyone who lists a tenant on a tenancy database (including self-managing landlords, database operators and agents);
- Database operators would not be allowed to accept or retain listings for non-permissible reasons, and they would need to provide tenants with free and prompt access to listings, ensure the accuracy and completeness of listings and ensure that debts are listed as paid and listings are deleted within a specified timeframe;
- The Tribunal would be able to hear claims regarding any breaches of the tenancy database provisions and to order the amendment of past database listings.

### ***Water usage charges***

Current position: Landlords can only require a tenant to pay for water usage if this was included as a term of the tenancy agreement and the premises are separately metered.<sup>95</sup> According to the consultation paper:

In practice this means that only tenants of houses pay directly for water usage. Even then, some tenants of houses do not pay because they are on old agreements which make no mention of water usage charges. Tenants of most flats, townhouses and other properties not separately metered pay for water indirectly as part of their rent.<sup>96</sup>

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<sup>92</sup> Consultation paper, n 70, p51-52.

<sup>93</sup> Consultation paper, n 70, p52.

<sup>94</sup> Consultation paper, n 70, p54.

<sup>95</sup> Section 19, *Residential Tenancy Act 1987* (NSW); and clause 11, *Residential Tenancy Regulation 2006* (NSW).

<sup>96</sup> Consultation paper, n 70, p15.

Reform proposals: It is proposed that landlords of existing premises where a tenant is not currently paying for water usage would be able to pass on such charges, provided the premises are separately metered and the tenant is given adequate notice of the change.<sup>97</sup> If payment for water usage was sought, the landlord would be required to supply the tenant with a copy of the water rates notice and the tenant would be given 21 days to pay.

### *Interest on bonds*

Current position: Interest is payable on rental bonds at a nominal rate of 0.01%.

Reform proposal: The proposal is to cease paying interest on rental bonds. The consultation paper concluded:

The review finds that the current prescribed rate of interest of 0.01% is negligible. In the trade off between paying a higher rate of interest to individual tenants and funding a range of general services for tenants, landlords and agents, the better option is to try to revert to the original concept, when the Government of the day proposed that the pooling of so many individual bonds provided a capital sum which could be best put to use for the benefit of the community as a whole.<sup>98</sup>

## 5.2 Other significant reform proposals

Other reform proposals in the consultation paper included:

- ***Holding deposits:***<sup>99</sup> Landlords and agents could only request or receive a holding deposit from prospective tenants after a tenancy application had been approved. In cases where a holding deposit is paid, only the prospective tenant would have the option to pull out of the proposed agreement.
- ***Security of premises:***<sup>100</sup> Greater clarity in regard to the level of security of rented premises including adding a section in the condition report highlighting security issues and setting out a list of key factors for the Tribunal to consider when assessing if premises are ‘reasonably secure’. In addition, before awarding any compensation following a break in, the Tribunal would be required to consider the actions all parties took, or ought to have taken, to address any security concerns.
- ***Sub-letting:*** The landlord’s absolute discretion to refuse consent to sub-letting would be limited – the landlord would only be able to refuse a request for sub-letting on the same basis that they could refuse a tenancy application.<sup>101</sup>

<sup>97</sup> Consultation paper, n 70, p18.

<sup>98</sup> Consultation paper, n 70, p30.

<sup>99</sup> Consultation paper, n 70, p46.

<sup>100</sup> Consultation paper, n 70, p36.

<sup>101</sup> Consultation paper, n 70, p33.

- **Uncollected goods:**<sup>102</sup> Changes to the provisions relating to goods left behind by a former tenant including requiring a landlord/agent to give the former tenant 7 days to collect items that appear to have been accidentally left behind and requiring the landlord/agent to store personal documents (eg photos, official documents) for a period of 30 days. In addition, the Tribunal would have jurisdiction to hear claims for compensation in relation to the unlawful disposal of uncollected goods.
- **Bond ‘top-up’ payments:**<sup>103</sup> The law is to clarify that landlords and agents can request a bond ‘top-up’ payment when issuing rent increase notices, provided that overall bond does not exceed 4 times the increased or negotiated new rent.

### 5.3 Proposals for further consultation

In addition to reform proposals, the consultation paper proposed further examination of certain issues. One of these issues was more flexible arrangements for *long-term leases*. Currently, the Act does not limit the length of tenancy agreements. However, tenancy agreements are commonly for a fixed term of six or twelve months, after which the tenancy may continue indefinitely until ended by either party. The 2005 options paper noted that the short term nature of existing agreements caused insecurity for many tenants and that tenancy law did not provide sufficient flexibility to encourage long term leases.<sup>104</sup> It outlined two possible options for reform: (1) Introducing a minimum fixed term; (2) Providing greater flexibility under tenancy law to long term leases exceeding 10 years by allowing parties to vary specific provisions of the Act (eg those relating to rent increases), or providing partial or total exemptions from the Act for all leases over 10 years.

The 2007 consultation paper<sup>105</sup> noted that ‘the option of mandating a minimum fixed term period of tenancy drew little support’. Some submissions proposed another option, namely for tenants to have a statutory option to renew a tenancy for a period of up to twice as long as the previous fixed term, which a landlord could not unreasonably refuse. There was a mixed response to the option of allowing exemptions from the Act for long term leases. Many tenant groups opposed this because of ‘the potential for landlords, particularly at the lower end of the market, to offer leases which make the tenant liable to fix up a run down property with little or no reduction in rent’. They believed that ‘long term leases should be encouraged by supply side strategies rather than by reducing the rights of tenants’. Several submissions said that 10 year leases were incompatible with the current market and that encouragement should be given to more practical periods such as 2, 3 and 5 years. The consultation paper concluded that ‘the development of more flexible arrangements for long term leases be subject to further examination and consultation’.

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<sup>102</sup> Consultation paper, n 70, p15.

<sup>103</sup> Consultation paper, n 70, p42.

<sup>104</sup> Options paper, n 84, p7.

<sup>105</sup> Consultation paper, n 70, p26-27.

Other issues identified for further consultation include the option of giving third parties (eg neighbours) rights to take action in the Tribunal against tenants who are disturbing them, introducing a ‘notice to comply’ process in relation to alleged breaches of tenancy agreements, enabling the Commissioner for Fair Trading to exclude a landlord from the market for a period of time if they have committed persistent or serious offence, and determining which offences are appropriate under tenancy laws.<sup>106</sup>

The consultation paper did not deal with the issue of *boarders and lodgers* being exempt from the Act. In response to a question about this in Budget Estimates hearings, the Minister for Fair Trading, Linda Burney MP, stated, ‘I think it is accepted that boarders and lodgers have probably the least protection under legislation in [NSW]. Residents of boarding houses and similar premises have been given statutory rights in relation to residential agreements in all jurisdictions except [NSW], Western Australia and the Commonwealth’.<sup>107</sup> The Minister noted that in May 2007, the Rental Bond Board had completed a report on the economic viability of boarding house lodgers and she said:

I will be considering the findings of that report in conjunction with a number of related portfolios. I expect there to be a proper discussion about the protection of rights of boarding house lodgers.<sup>108</sup>

#### 5.4 Response of the Tenants’ Union of NSW

To date very few stakeholder commentaries on the 2007 Consultation Paper are publicly available. By way of exception, while stating it would later make a submission addressing each of the 102 reform proposals, in October 2007 the Tenants’ Union of NSW released a briefing paper discussing a ‘small number of what appear to be the most significant proposals – both good and bad’.<sup>109</sup>

The Tenants’ Union of NSW addressed five issues as follows, the first three as ‘good proposals’, the last two as ‘bad proposals’:

- ***Eviction by mortgagee*** – this is referred to as ‘Mortgagee taking possession’ and the proposal is said to address the problems in the Act when a landlord defaults on a mortgage and the mortgagee acts to take possession of the rented premises. The briefing paper comments that, at present, ‘Tenants have no rights in relation to the mortgagee, except in “special circumstances”, and asserting “special circumstances” is prohibitively risky for the tenant. If a tenant leaves the premises in response to notice by a mortgagee, the tenant may be liable in abandonment to

<sup>106</sup> Consultation paper, n 70, p49-50.

<sup>107</sup> General Purpose Standing Committee No. 2, *Examination of proposed expenditure for the portfolio area: Fair Trading, Youth and Volunteering*, Transcript, 15/10/07, p8.

<sup>108</sup> Budget Estimates, n 107, p9.

<sup>109</sup> The full text of the briefing paper is available at - [http://www.tenants.org.au/policy/campaigns/docs/OFTlawreform07\\_1bp.pdf](http://www.tenants.org.au/policy/campaigns/docs/OFTlawreform07_1bp.pdf)

the landlord'. The briefing paper went on to say that the Tenants' Union welcomed the acknowledgement of the problems in the Act and 'supports the direction indicated'. However, it went on to say 'more detail is required as to how the law will be reformed. The proposals specify a 30-day notice period, and some special provisions about rent payments and bonds, but do not specifically address other important aspects of the problem'.

- ***Disputes between co-tenants*** – The Tenants' Union welcomed those proposals that would 'provide a process for departing co-tenants to give notice and end their liability, and to settle disputes about shared bonds. The process is fair for all parties, including the landlord'.

Also welcomed was the 'direction indicated' in proposal 86, namely that a co-tenant would be able to apply to the Tribunal for an order to terminate a fixed term or continual tenancy, on terms imposed by the Tribunal, or remove one or more co-tenants from the premises. However, the Tenants' Union went on to note 'some problems in its details'. Specifically, it was said that the 'proposal does not address the problem of disputes between co-tenants as to the apportionment of liabilities'. The Tenants' Union suggested that the Tribunal should have the power to determine these disputes.

It was further noted that the proposal would allow co-tenants to seek an order removing other co-tenants from the premises, with the Tenants' Union commenting 'A more modest alternative would be to allow the Tribunal, on the application of a co-tenant, to terminate another co-tenant's rights and liabilities where that other co-tenant has ceased to occupy the premises'.

It was further suggested that the Local Court, when hearing applications for Apprehended Domestic Violence Orders, should also have powers relating to tenancies.<sup>110</sup>

- ***Tenant databases*** – the Tenants' Union welcomed the proposals which would address the deficiencies in the current regulatory scheme.<sup>111</sup>
- ***Rent arrears*** – the Tenants' Union was opposed to the 'streamlined' process proposed in the Consultation Paper, by which 'Landlords would be able to apply for termination orders without a hearing of the Tribunal. The onus would be on the tenant to apply for a hearing'. The concern of Tenants' Union was that this process

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<sup>110</sup> Reference was made to the Tenants' Union briefing paper 'Domestic violence and tenancy: a priority for law reform'. For further commentary on the issue see - <http://www.tenants.org.au/policy/campaigns/cotenancies.html>

<sup>111</sup> In its January 2007 submission to the ALRC Inquiry into Privacy the Tenants' Union supported a national uniform Residential Tenancy Database regulation along the lines recommended by the RTD Working Party of the Ministerial Council on Consumer Affairs and the Standing Committee of Attorneys General – 'Report on Residential Tenancy Databases' and 'Regulation Impact Statement', March 2006 - <http://www.tenants.org.au/policy/campaigns/databasesDocs/ALRCipsub.pdf>

would draw in and terminate tenancies that would ‘otherwise be sustainable’. It commented that the proposal would ‘especially disadvantage tenants with low literary skills, tenants with cognitive impairments, tenants from non-English speaking backgrounds, and tenants from groups that have had negative experiences of the justice system, such as Aboriginal tenants’.<sup>112</sup>

- ***Uncollected/abandoned goods*** – the proposed changes would discontinue the existing obligation on landlords to place public notices in newspapers about abandoned or uncollected goods. Instead landlords would have the right to immediately dispose of rubbish left behind by the tenant and, where goods have been accidentally left behind by a former tenant, the landlord/agent would be required to give the tenant 7 days notice to collect them.

Describing them as ‘terrible proposals’, the view taken by the Tenants’ Union was that these proposals were ‘draconian and would represent an extraordinary interference in tenants’ personal property rights’. According to the Tenants’ Union ‘The proposals would allow tenants’ personal property to be disposed of without due process. The range of circumstances in which goods may be immediately disposed of is too wide’. This refers to the fact that any items which do not appear to have been ‘accidentally left behind’ can be disposed of immediately. It was also argued that ‘The seven day time frame for disposal of goods left behind accidentally and goods left behind after eviction is too short’.

On the other hand, two proposals were supported by the Tenants’ Union. One was the proposal requiring the landlord/agent to store personal documents (eg photos, official documents) for a period of 30 days. The other was for the Tribunal to have jurisdiction to hear claims for compensation in relation to the unlawful disposal of uncollected goods.

The above briefing paper is of course only the last in a long line of comments on residential tenancy law issued by the Tenants’ Union. For example, in its submission in response to the 2005 Options Paper the Tenants’ Union argued for ***protections against excessive rent increases***, including limiting the frequency of rent increases to not more than once in 12 months. Further, where a landlord has given a notice to increase the rent, and the Tribunal is to determine whether the increase is excessive, the Tenants’ Union argued that it is the landlord who should bear the onus of proving that the increase is not excessive.<sup>113</sup> In another context the Tenants’ Union has argued that:

The provisions of the Residential Tenancies Act 1987 relating to excessive rent increases do not work well, and have no regard to whether a rent is affordable’.<sup>114</sup>

<sup>112</sup> See also Tenants’ Union of NSW, ‘Residential tenancy law reform’, *Media Release*, 24 September 2007.

<sup>113</sup> Tenants’ Union of NSW - <http://www.tenants.org.au/policy/campaigns/excessiveRentIncreases.html>

<sup>114</sup> Bellemore, n 20, p v.

Similarly, the Tenants' Union has campaigned for *evictions on just grounds only*, stating:

We believe that 'no grounds' termination notices should not have a place in New South Wales residential tenancy law. Under the current law, landlords may not have to give grounds for termination, but there is, of course, always a reason. 'No grounds' notices hide a multitude of bad reasons for termination. We believe that the law should require that a landlord be transparent as to their reasons for seeking termination of a tenancy. The law should also require and prescribe that while some reasons (such as rent arrears, or sale or redevelopment of the premises) constitute sound grounds for termination, others do not. The Tasmanian Residential Tenancies Act allows for evictions on prescribed grounds only. It is a measure of justice that is entirely appropriate to New South Wales rental housing too.<sup>115</sup>

### 5.5 Response of the Older Persons Tenants Service

Under the title, 'Another missed opportunity for tenancy law reform?' Robert Mowbray of the Older Persons Tenants Service made the following observations about the proposals set out in the 2007 Consultation Paper:<sup>116</sup>

On some issues, the report's recommendations would clearly benefit tenants. However, on the 'big ticket' issues such as excessive rent increases or evictions, the report is either silent or goes backwards in time... Should the Government accept the recommendations in the Residential Tenancy Law Reform report on these 'big ticket' issues, then it will become a missed opportunity for residential tenancy law reform. It would particularly miss the boat on improving security of tenure.

On issues relating to *eviction*, Mowbray observed:

The report rejects out-of-hand the concept of 'just-cause eviction' by making the totally unsubstantiated comment: 'To do so would have serious implications on the rental housing market'. The proposals recommend a streamlining of eviction procedures for a landlord who is seeking to evict a tenant who is more than 14 days in arrears. This represents a fundamental change in the law, by placing the onus on the tenant to apply to the Consumer Trader and Tenancy Tribunal (CTTT) for a hearing to defend the matter. If the tenant fails to do this, he or she may well face the very real prospect of the sheriff at the door without the landlord having established the facts before the Tribunal. Vulnerable groups in our community will be seriously disadvantaged by this proposal.

The article continued:

On other matters relating to evictions, the report recommends increasing the period

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<sup>115</sup> Tenants' Union of NSW - <http://www.tenants.org.au/policy/campaigns/justEvictions.html>

<sup>116</sup> R Mowbray, 'Another missed opportunity for tenancy law reform', *The Voice Online* (Combined Pensioners and Superannuants Association of NSW), 5 November 2007 - <http://www.cpsa.org.au/VOICE/article.php?id=150>

of notice by 30 days where the landlord gives no reason. But at the same time the report wants to remove the discretion given to the CTTT when balancing the relative hardship of the landlord and the tenant when deciding whether to make an order to evict the tenant.

On the issue of *excessive rent*, Mowbray commented:

The report fails to review the current excessive rent increase provisions. These are basically unworkable because the onus is on the tenant to collect information on rents for comparable premises. For many years tenant groups have argued that the onus of proof should lie with the landlord who should be required to prove that the rent increase is not excessive.

More positively, the article welcomed proposed reforms on what it considered to be ‘many of the small omissions or anomalies in the current legislation’. By way of example, it noted the recommendations that:

- tenants be entitled to at least 30 days notice and a free-rent period if a mortgagee decides to obtain vacant possession. ‘This will eliminate the appalling situation where a sheriff turns up to tell the tenant that they have to go, even though the tenant has only just signed a 12-month lease’;
- a list of key factors to consider when assessing if premises are ‘reasonably secure’;
- significant changes be introduced to the landlord’s access when the premises are for sale, including a provision for a rent reduction;
- the CTTT should be given clear jurisdiction to make orders on compensation resulting from unlawful disposal of tenant’s goods. However, the article goes on to say ‘But there is significant watering down of procedures a landlord must follow when disposing of goods left behind’;
- the legislation should deal with disputes between co-tenants and domestic violence issues; and
- a ceiling be placed on what tenants can be charged if they break a lease early.

## **5.6 Responses to the bond ‘top-up’ proposal**

The 2007 Consultation Paper proposed that the law should clarify that landlords and agents can request a bond ‘top-up’ payment when issuing rent increase notices, provided the overall bond does not exceed 4 times the increased or negotiated new rent. The Consultation Paper commented in this respect:

There is a level of uncertainty over whether additional bond payments (top-ups) can be requested or received during the course of a tenancy, in order to maintain the bond in line with increases in the rent. Some argue that such a practice is unlawful while others are of the view that top-ups are permissible.

The Consultation Paper continued:

A number of States have responded to this uncertainty by introducing specific

provisions to deal with this issue. Similar provisions in NSW would clear this matter up for all parties concerned.<sup>117</sup>

Various responses to this proposal were reported in the *Sydney Morning Herald* on 26 October 2007.<sup>118</sup> With no limit on the number of rent increases allowed each year, the Tenants' Union was said to be 'furious' about the recommendation:

'Tenants could expect to pay an additional \$100 if they receive a rent increase of \$25 per week', said Chris Martin, the policy officer of the Tenants Union of NSW. 'This proposal stinks. Lots of people are already paying as much as they can, and to get hit with another charge on top of the increase is a double whammy'.

A very different view was taken by the Real Estate Institute of NSW:

A spokesman for the Real Estate Institute of NSW, Geoff Hunter, said the current law was unclear on whether bond top-ups were allowed and some landlords already demanded them. 'This change would formalise it. It's a real benefit for the industry', he said. 'Currently, over a period of time the value of [a bond] is eroded by rent not keeping pace with the cost of doing repairs'.

## 5.7 Bond 'top-up' payments in other States

The 2007 Consultation Paper stated that a number of States expressly provide for bond 'top-up' payments. The reference is to the Queensland, South Australian and Western Australian residential tenancy laws.

Section 83 of the Queensland *Residential Tenancies Act 1994* provides that the rental bond must increase, where the tenant receives written notice to that effect, and where the rent under the tenancy agreement increases. However, this only applies either 11 months after the tenancy started, or, where the rental bond had been increased previously, on the day stated in the relevant notice, provided that the day is at least 1 month after the tenant was given the notice about the increase in rent.

Section 61(2) of the South Australian *Residential Tenancies Act 1995* provides that, with at least 60 days notice, a landlord may increase the amount of the 'security bond', but only 2 years after the tenancy commenced, or 2 years after the last increase in the amount of the bond. Further, a limit is set for the total amount of the bond, so that for premises rented at \$250 or less it cannot exceed 4 weeks rent; whereas for premises rented for more than \$250 a week the total bond cannot exceed 6 weeks rent.<sup>119</sup>

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<sup>117</sup> Consultation Paper, n 70, p 42.

<sup>118</sup> S Creagh, 'Tenants face rises in bond payments', *SMH*, 26 October 2007 - <http://www.smh.com.au/news/national/tenants-face-rises-in-bond-payments/2007/10/25/1192941243076.html>

<sup>119</sup> *Residential Tenancies Act 1995* (SA), s 61(3) read with Residential Tenancies (General) Regulations 1995, cl 9.

Similarly, s 31 of the Western Australian *Residential Tenancies Act 1987* provides that, with not less than 60 days notice, a landlord may increase the amount of the 'security bond', but only 12 months after the tenancy commenced, or 12 months after the last increase in the amount of the bond. Again, a limit is set, so that the total amount of the bond cannot exceed 4 weeks rent.

## 6. RECENT TENANCY LAW REFORMS IN OTHER STATES

This section provides a brief summary of significant reforms that have been enacted or proposed in other States and Territories since 2000. By way of background on residential tenancy laws in other Australian jurisdictions, Bradbrook states:

Residential tenancies legislation was...adopted in three 'waves'. The first Acts were introduced in South Australia in 1978 and in Victoria in 1980. New South Wales and Western Australia followed suit in 1987. The remaining jurisdictions did not introduce comprehensive reforms until the mid to late 1990s. South Australia repealed and replaced its legislation in 1995, although the changes effected by this process were few. A similar exercise occurred in Victoria in 1997.<sup>120</sup>

While there are many similarities between the laws in all Australian jurisdictions, as Bradbrook states, 'the legislation differs significantly between the jurisdictions in many ways, reflecting the political climate that existed at the time of the enactment of the legislation in each jurisdiction'.<sup>121</sup> A comparison of key areas of residential tenancy law in all Australian jurisdictions is presented in **Appendix 1**.

### 6.1 Queensland

In 2002, the Government introduced laws to regulate, for the first time, the private sector residential services industry including boarding houses, supported accommodation and aged rental complexes.<sup>122</sup> In 2003, the Government introduced into the *Residential Tenancies Act 1994* new safeguards for the listing of information on tenancy databases and about related disputes.<sup>123</sup> These measures were described as a 'national first' and they were seen as necessary because of concerns about 'the lack of any controls about the use of databases, such as unfair and inaccurate listings, the lack of any controls about what information is listed and the lack of any dispute resolution procedures'.<sup>124</sup>

On 14 November 2007, the Government announced that it would make significant changes to the *Residential Tenancies Act* following a review by the Residential Tenancies Authority (RTA).<sup>125</sup> It did not outline all of the proposed changes but noted some including:

- Requiring lessors and agents to advertise properties with a fixed price (which

<sup>120</sup> A Bradbrook, 'Rented Housing Law: Past, Present and Future', (2003) 7 *Flinders Journal of Law Reform* 1 at 5.

<sup>121</sup> Bradbrook, n 120, p5.

<sup>122</sup> *Residential Services (Accommodation) Act 2002* (Qld); and *Residential Services (Accreditation) Act 2002* (Qld).

<sup>123</sup> *Residential Tenancies and Other Legislation Amendment Act 2003* (Qld).

<sup>124</sup> Hon R Schwarten, *Queensland Parliamentary Debates*, 13/5/03, p1708.

<sup>125</sup> Hon R Schwarten, 'Renting laws to be overhauled', *Media Release*, 14/11/07.

- would preclude lessors and agents from holding de facto rent auctions);
- Providing for a minimum period of six months between rent increases;
  - Increasing the length of notice (from two weeks to two months) that the lessor is required to give the tenant when terminating a tenancy ‘without grounds’.

In April 2007, the RTA had released an 85-page policy review paper, which outlined the Government’s preferred position on the issues under review, and invited submissions.<sup>126</sup> The paper had recommended against the three reforms mentioned above and, indeed, on most issues raised in the review, the Government’s preferred view was that the Act should remain unchanged.<sup>127</sup> Some changes that *were* proposed in the review paper included:

- *Holding deposits*: Any money taken during the application process could only be a holding deposit with the option in the tenant’s favour with a 48 hour cooling off period, and a deposit could only be taken from one prospective tenant.<sup>128</sup>
- *Disputing changes to special terms*: Tenants who wish to enter into a new fixed term agreement after the expiry of a fixed term agreement would be able to dispute significant changes to special terms and excessive rent increases.<sup>129</sup>
- *Grounds for entry to premises*: Lessors would be able to enter premises to ensure a significant breach identified in a Notice to Remedy Breach has been rectified and to re-enter after maintenance or repairs within 14 days to check on the repairs.
- *Water usage*: Lessors would be allowed to seek full reimbursement of water consumption charges from tenants in individually metered properties where water efficient devices had been fitted.<sup>130</sup>
- *Sale of property*: Open houses and on-site auctions would not be allowed without the tenant’s consent.<sup>131</sup> In addition, if premises were offered for sale during the first two months of a tenancy and the tenant was not informed about a prospective sale at the time of entering the agreement, the tenant could end the tenancy.<sup>132</sup>

<sup>126</sup> Residential Tenancies Authority, *Tenancies Act Review: Policy Review Paper*, March 2007. See in particular, p30-31 (rent bidding), p31 (frequency of rent increases) and p52 (notice periods when ending tenancy without grounds).

<sup>127</sup> Note that some of these issues were similar to those discussed in the NSW consultation paper: eg long leases (see p23, policy review paper) and third party rights against disruptive tenants (see p42-44, policy review paper).

<sup>128</sup> Policy review paper, Recommendation 7, p20.

<sup>129</sup> Policy review paper, Recommendation 8, p23.

<sup>130</sup> Policy review paper, Recommendation 65, p63.

<sup>131</sup> Policy review paper, Recommendation 84, p76.

<sup>132</sup> Policy review paper, Recommendation 86, p77.

## 6.2 Western Australia

In 2006, the Government introduced legislation to provide greater certainty and protection for long-term residents of caravan parks.<sup>133</sup> In 2006/07, the Department of Consumer and Employment Protection completed a review of the *Residential Tenancies Act 1987*. The Government has not yet announced the outcome of the review process.

## 6.3 Victoria

In 2002, the Government made a number of changes to tenancy laws in response to a review of the Act by a working group.<sup>134</sup> The changes included:

- Increasing the length of the notice period that the landlord is required to give a tenant when ending a tenancy without giving a reason (from 90 to 120 days);
- Reintroducing the (pre-1997) limit of two rent increases per year and reducing the notice period for a rent increase from 90 days to 60 days; and
- Reforms to streamline the operation of the Act.

In 2003, reforms were enacted to improve the provision of private rental bond assistance to low-income earners.<sup>135</sup> In 2005, amendments were introduced to provide residency rights to residents of shared rooms in rooming houses.<sup>136</sup>

## 6.4 South Australia

In 2007, the Government enacted the *Residential Parks Act*, to increase the rights of people who rent in residential parks and caravan parks. The Government has also proposed changes to give the state housing authority (Housing SA) greater power to evict public housing tenants who damage property or assault a person.<sup>137</sup> The Government intends to amend the *Residential Tenancies Act 1995* to give the Tribunal the power to immediately terminate a tenancy and grant possession on behalf of Housing SA in certain circumstances. This amendment would complement Housing SA's proposal to change its Disruptive Tenants Policy by introducing a three-strike approach for tenants involved in disruption.

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<sup>133</sup> *Residential Parks (Long-stay Tenants) Act 2006* (WA).

<sup>134</sup> *Residential Tenancies (Amendment) Act 2002* (Vic).

<sup>135</sup> *Residential Tenancies (Amendment) Act 2003* (Vic).

<sup>136</sup> *Residential Tenancies (Further Amendment) Act 2005* (Vic).

<sup>137</sup> Hon Jay Weatherill MP, 'More strength to evict disruptive public housing tenants', *News Release*, 14/4/07. The following information is taken from this news release.

## 6.5 Tasmania

In 2003, the *Residential Tenancy Act 1997* was extended to apply to tenants of boarding and rooming accommodation.<sup>138</sup> The Government stated:

The introduction of this [amendment] will assist tenants and owners of boarding premises by clearly articulating the rights and obligations of the parties to a boarding premises agreement. It will provide guidelines with regard to the provision of a statement of key terms of the agreement and the formation of house rules and by providing an appropriate and accessible dispute resolution mechanism.<sup>139</sup>

In 2003, a number of changes to the Act were enacted following recommendations resulting from a review that began in 2000.<sup>140</sup> The changes included:

- Prohibiting real estate agents from charging a fee to a tenant or prospective tenant for assisting them to find a tenancy;
- Protecting tenants from summary eviction where a mortgagee takes possession, by providing that tenants are entitled to at least 28 days notice before eviction;
- Requiring an owner or agent to return a security deposit within 3 working days of the end of the tenancy agreement except in certain circumstances;
- Providing protection against future liability for co-tenants who leave;
- Prohibiting owners or agents from holding ‘open homes’ (to show the property to prospective buyers) without the prior permission of the tenant;
- Requiring an owner to mitigate loss by finding a new tenant as soon as possible after early termination or abandonment by the tenant.

In 2005, the Rental Deposit Authority (RDA) was established as a neutral repository of rental security deposits (previously property owners retained security deposits). The RDA is due to come into operation in 2008.<sup>141</sup>

## 6.6 Northern Territory

In 2006, the Government introduced changes to address antisocial behaviour by tenants of both public and private housing.<sup>142</sup> The changes allow Territory Housing to require a public housing tenant to enter into an Acceptable Behaviour Agreement, which requires the tenant not to engage in anti-social behaviour at a relevant property. If the tenant does not enter into the agreement, or seriously or repeatedly breaches the terms of the agreement,

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<sup>138</sup> *Residential Tenancy Amendment (Boarding Premises) Act 2003* (Tas).

<sup>139</sup> Mrs Jackson, *Tasmanian Parliamentary Debates*, 17/4/03.

<sup>140</sup> *Residential Tenancy Amendment Act 2003* (Tas).

<sup>141</sup> *Residential Tenancy Amendment Act 2005* (Tas).

<sup>142</sup> *Antisocial Behaviour (Miscellaneous Amendments) Act 2006* (NT).

Territory Housing can seek an eviction order from the court. In addition, the reforms allow applications by third parties (eg neighbours) to the court for the termination of any residential tenancy (public or private housing) on the grounds of unacceptable behaviour (previously such applications could only be made to the court by a landlord).

## **6.7 Australian Capital Territory**

In 2003, the *Residential Tenancies Act 1997* was extended to apply to a number of short-term occupancies, including boarder and lodger contracts.<sup>143</sup> The amendments established occupancy principles and they permitted the development of new sets of standard terms that would apply to short-term occupancies. The Residential Tenancies Tribunal was also given jurisdiction for determining disputes under short-term occupancies. In 2005, various reforms were enacted including provisions to regulate tenancy databases (based on the Queensland laws) and to allow the Tribunal to evict a tenant who is seriously or continuously interfering with a neighbour's quiet enjoyment of their property.<sup>144</sup>

## **6.8 Summary of reforms in other jurisdictions**

Since 2000, reforms in other States/Territories have included:

- Coverage of boarders and lodgers (Qld, Vic, Tas, ACT)
- Coverage of renters in residential parks and caravan parks (WA, SA)
- Regulation of tenancy databases (Qld, ACT)
- Addressing anti-social behaviour by tenants (NT and proposed in SA)
- Requiring mortgagees to give tenants 28 days notice before eviction (Tas)
- Requiring owners/agents to obtain tenant's consent to hold 'open homes' (Tas)
- Increasing notice period to 120 days for ending a tenancy without grounds (Vic)
- Limiting rent increases to two per year (Vic)

Following a review of tenancy laws in Queensland, the Government has recently announced that it will introduce significant reforms including preventing rental auctions, increasing the notice period to 60 days for ending a tenancy without grounds and providing for a minimum period of 6 months between rent increases. In Western Australia, a review of tenancy laws has also recently been completed but reforms have not yet been announced.

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<sup>143</sup> *Residential Tenancies Amendment Act 2004* (ACT).

<sup>144</sup> *Residential Tenancies Amendment Act 2005* (ACT).

## 7. CONCLUSION

The reform proposals set out in the 2007 Consultation Paper are part of a long term review of residential tenancy law in NSW, reaching at least as far back as the Options Paper of 2005. Responding to a question about the ‘current affordability crisis’ in housing, the thinking behind the current proposals was explained, in part at least, by the Minister for Fair Trading in terms of

not making it so difficult for landlords to be landlords, as that will encourage more people with rental properties back into the market. The feedback we have had from the Real Estate Institute and other such organisations is that they believe that will be the effect of the changes that we are making.

The Minister went on to say:

I would hasten to add that that I have sought to achieve in the proposed legislation a very good balance between the rights and responsibilities of landlords and the rights and responsibilities of tenants. Some additional measures will protect the rights of tenants. For example, I am keen to improve fairness where an owner wants to sell and, importantly, improve the transparency of the bad tenant database, the tick system. We are also talking about some changes to issues around water. But the most important thing is more flexibility for tenants to make cosmetic changes to property and what that can mean, changes to payment of interest on rental bonds, and so forth. So really we are seeking a more balanced approach. But you are correct in saying that one of the measures is streamlining the provisions to evict chronic non-payers of rent.<sup>145</sup>

At this stage the publicly available responses to these proposals are few in number. If the preliminary response of the Tenants’ Union of NSW is any guide, the proposals are likely to receive a mixed response from tenants’ organisations. While the Real Estate Institute of NSW is yet to make a concerted response to the consultation paper, as the Minister indicated, at this stage it appears to be supportive of the main thrust of the proposals.

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<sup>145</sup>

Budget Estimates, n 107, p 8.

## **APPENDIX 1**

### **Comparison of residential tenancy law in the States and Territories**

The following table is reproduced from Residential Tenancies Authority (Qld), *Tenancies Act Review: Policy Review Paper*, March 2007, p86-97. The table reflects the relevant legislation at 31 July 2006.

## Comparison of Key Tenancy Provisions in other Australian Jurisdictions\*

	QLD	NSW	VIC	WA	SA	TAS	NT	ACT
<b>Legislation</b>	<i>Residential Tenancies Act 1994</i> <i>Residential Tenancies Regulation 2005</i>	<i>Residential Tenancies Act 1987</i> <i>Residential Parks Act 1998</i> <i>Lessor and Tenant (Rental Bonds) Act 1977</i> <i>Residential Tenancies (Residential Premises) Regulation 1995</i>	<i>Residential Tenancies Act 1997</i> <i>Residential Tenancies Regulations 1998</i> <i>Residential Tenancies (Caravan Parks and Movable Dwellings) Registration and Standards) Regulations 1999</i>	<i>Residential Tenancies Act 1987</i> <i>Residential Tenancies Regulations 1989</i> <i>Caravan Parks and Camping Grounds Act 1995</i>	<i>Residential Tenancies Act 1995</i> <i>Residential Tenancies (General) Regulations 1995</i> <i>Residential Tenancies (Rooming Houses) Regulations 1999</i> <i>Residential Tenancies (Water Rates) Regulations 1995</i>	<i>Residential Tenancy Act 1997</i> <i>Residential Tenancy Regulations 2005</i>	<i>Residential Tenancies Act 1999</i> <i>Residential Tenancies Regulations 2000</i>	<i>Residential Tenancies Act 1997</i> <i>Residential Tenancies Regulation 1998</i>
<b>Administering Body</b>	<b>Residential Tenancies Authority</b> <ul style="list-style-type: none"> <li>Provides information</li> <li>Holds and manages bonds</li> <li>Provides conciliation in relation to tenancy disputes</li> <li>Compliance</li> </ul>	<b>NSW Office of Fair Trading</b> <ul style="list-style-type: none"> <li>Provides information</li> <li>Renting Services Branch of Office of Fair Trading holds bonds, for Rental Bond Board</li> <li>Compliance</li> </ul>	<b>Consumer Affairs Victoria, Department of Justice (administrators parts of Act)</b> <ul style="list-style-type: none"> <li>Gives advice and information</li> <li>Conciliates disputes between tenants and lessors</li> <li>Compliance</li> </ul> <b>Residential Tenancies Bond Authority</b> <ul style="list-style-type: none"> <li>Holds all residential tenancy bonds</li> </ul>	<b>Consumer Protection, Department of Consumer and Employment Protection</b> <ul style="list-style-type: none"> <li>Provides information</li> <li>Compliance</li> <li>Bond Administrator accepts bonds, but lodging with the Administrator is not compulsory</li> </ul>	<b>Office of Consumer and Business Affairs, Attorney-General's Department</b> <ul style="list-style-type: none"> <li>Provides advice</li> <li>Holds and administers bonds</li> <li>Mediates disputes on application</li> <li>Compliance</li> </ul>	<b>Consumer Affairs and Fair Trading, Department of Justice</b> <ul style="list-style-type: none"> <li>Provides advice</li> <li>Commissioner determines disputes about bonds and mediates/conciliates disputes about boarding premises</li> </ul>	<b>Consumer and Business Affairs, Department of Justice</b> <ul style="list-style-type: none"> <li>Provides information</li> <li>Commissioner can deal with some disputes under Act</li> <li>Compliance</li> </ul>	<b>ACT Office of Fair Trading</b> <ul style="list-style-type: none"> <li>Limited information service</li> <li>Compliance</li> </ul> <b>Office of Rental Bonds, Registrar General's Office</b> <ul style="list-style-type: none"> <li>Holds and manages bonds</li> </ul>
<b>Coverage of Act</b>	Covers: <ul style="list-style-type: none"> <li>residential tenancy agreements</li> <li>not boarders and lodgers</li> <li>applies to agreements involving moveable dwellings and/or site</li> </ul>	Covers: <ul style="list-style-type: none"> <li>residential tenancy agreements</li> <li>not boarders and lodgers</li> <li>applies to moveable dwellings except those covered under the <i>Residential Parks Act 1998</i></li> </ul>	Covers: <ul style="list-style-type: none"> <li>tenancy agreements</li> <li>rooming houses (capacity 4 or more)</li> <li>caravan parks and movable dwellings</li> </ul>	Covers: <ul style="list-style-type: none"> <li>residential tenancy agreements</li> <li>not boarders and lodgers</li> <li>applies to a site at a caravan park within the meaning of the <i>Caravan Parks and Camping Grounds Act 1995</i></li> </ul>	Covers: <ul style="list-style-type: none"> <li>residential tenancy agreements</li> <li>rooming house agreements (3 or more persons) via Regulation of boarders</li> <li>covers some caravan park tenants</li> </ul>	Covers: <ul style="list-style-type: none"> <li>residential tenancy agreements</li> <li>boarding premises (no limit on number of boarders)</li> <li>moveable dwellings but not site only agreements</li> </ul>	Covers: <ul style="list-style-type: none"> <li>tenancy agreement</li> <li>boarders and lodgers (3 or more persons)</li> <li>not moveable dwellings in a caravan park but does if on private property</li> </ul>	Covers: <ul style="list-style-type: none"> <li>residential tenancy agreement</li> <li>occupants (the Act regulates "occupancy agreements" which may include boarders and lodgers)</li> <li>not caravans or mobile homes in parks</li> </ul>
<b>Application Form</b>	<ul style="list-style-type: none"> <li>None provided</li> </ul>	<ul style="list-style-type: none"> <li>None provided</li> </ul>	<ul style="list-style-type: none"> <li>Standard form provided but use optional</li> </ul>	<ul style="list-style-type: none"> <li>Standard form provided but use optional</li> </ul>	<ul style="list-style-type: none"> <li>None provided</li> </ul>	<ul style="list-style-type: none"> <li>None provided</li> </ul>	<ul style="list-style-type: none"> <li>None provided</li> </ul>	<ul style="list-style-type: none"> <li>None provided</li> </ul>

\* Note: The information provided above is not an exhaustive account of the provisions relating to each topic for the jurisdiction. Furthermore, the information provided is exclusively concerned with the provisions relating to general tenancies, as opposed to tenancies involving moveable dwellings or rooming houses. This information is provided for reference only. The Acts and Regulations cited for each State should be used as the primary resource for the tenancy law applicable in each jurisdiction. The table reflects the legislation, as published on the relevant State government websites as at July 31 2006.

	QLD	NSW	VIC	WA	SA	TAS	NT	ACT
<b>Application Fees</b>	<ul style="list-style-type: none"> <li>• Lessor/agent can accept a "holding deposit"</li> <li>• Deposit forfeited to lessor if tenant does not either enter agreement or give notice within option period</li> <li>• Deposit forfeited if tenant exercises the option and fails to take steps to contract</li> <li>• Lessor must take all reasonable steps to enter agreement if tenant exercises option</li> </ul>	<ul style="list-style-type: none"> <li>• Lessor/agent can accept a "reservation fee" of maximum 1 week rent</li> <li>• Must be refunded if lessor does not contract</li> <li>• Lessor/agent may keep if tenant withdraws to cover rent</li> </ul>	<ul style="list-style-type: none"> <li>• Lessor/agent can accept an application or holding "deposit"</li> <li>• Must be refunded if agreement entered into or if no agreement is made within 14 days</li> </ul>	<ul style="list-style-type: none"> <li>• Lessor/agent may accept an "option fee"</li> <li>• Must refund if lessor does not contract or apply as rent if agreement formed</li> <li>• Lessor may claim if tenant withdraws</li> </ul>	<ul style="list-style-type: none"> <li>• Lessor can receive consideration for an option to enter an agreement</li> <li>• If agreement entered, must apply as rent</li> <li>• If tenant withdraws tenant, the lessor may retain the consideration</li> </ul>	<ul style="list-style-type: none"> <li>• "Holding fee" allowed under Act, where it is to hold premises for less than 7 days</li> <li>• Holding agreement can impose fee payable by the prospective tenant as a condition</li> </ul>	<ul style="list-style-type: none"> <li>• Lessor must not require or receive an amount paid as consideration for an option to enter an agreement for premises</li> </ul>	<ul style="list-style-type: none"> <li>• Lessors prohibited from requiring or accepting from tenants a "holding deposit", which is consideration for lessor not entering into agreement with third party for the premises</li> </ul>
<b>Agreements</b>	<ul style="list-style-type: none"> <li>• Written agreement required</li> </ul>	<ul style="list-style-type: none"> <li>• Written agreement required</li> </ul>	<ul style="list-style-type: none"> <li>• Written optional</li> </ul>	<ul style="list-style-type: none"> <li>• Written optional</li> <li>• Parties can contract out of many provisions</li> </ul>	<ul style="list-style-type: none"> <li>• Written optional</li> <li>• Lessor must give their full name and address at time of entering into the agreement</li> </ul>	<ul style="list-style-type: none"> <li>• Written optional</li> <li>• At time of agreement must give written details of owner/agent</li> </ul>	<ul style="list-style-type: none"> <li>• Written optional</li> </ul>	<ul style="list-style-type: none"> <li>• Written optional</li> </ul>
<b>Condition Reports</b>	<ul style="list-style-type: none"> <li>• Required</li> </ul>	<ul style="list-style-type: none"> <li>• Required</li> </ul>	<ul style="list-style-type: none"> <li>• Required where bond taken</li> </ul>	<ul style="list-style-type: none"> <li>• Required</li> </ul>	<ul style="list-style-type: none"> <li>• Lessors must give inspection sheets</li> </ul>	<ul style="list-style-type: none"> <li>• Required only if bond taken</li> </ul>	<ul style="list-style-type: none"> <li>• Required if lessor wants to claim on the bond in certain circumstances</li> </ul>	<ul style="list-style-type: none"> <li>• Required</li> </ul>
<b>Bond Custodian</b>	<ul style="list-style-type: none"> <li>• Residential Tenancies Authority</li> </ul>	<ul style="list-style-type: none"> <li>• Renting Services Branch, Office of Fair Trading for Rental Bond Board</li> </ul>	<ul style="list-style-type: none"> <li>• Residential Tenancies Bond Authority</li> </ul>	<ul style="list-style-type: none"> <li>• Bond must be placed in a tenancy bond account with either the Bond Administrator or other financial institution</li> </ul>	<ul style="list-style-type: none"> <li>• Tenancies Branch, Office of Consumer and Business Affairs</li> </ul>	<ul style="list-style-type: none"> <li>• Lessor/agent</li> <li>• Rental Deposit Authority to be established in mid 2007</li> </ul>	<ul style="list-style-type: none"> <li>• Lessor/agent</li> </ul>	<ul style="list-style-type: none"> <li>• Office of Rental Bonds</li> </ul>
<b>Bond</b>	<ul style="list-style-type: none"> <li>• If rent \$500 or less then <b>maximum 4 weeks</b>, if rent more than \$500 then unlimited</li> </ul>	<ul style="list-style-type: none"> <li>• If unfurnished, <b>maximum 4 weeks</b></li> <li>• If fully furnished and rent \$250 or less a week then maximum 6 weeks, if rent more than \$250 fully furnished then bond unlimited</li> </ul>	<ul style="list-style-type: none"> <li>• if rent \$350 or less then <b>maximum 1 month</b> rent except in certain circumstances</li> </ul>	<ul style="list-style-type: none"> <li>• if rent less than \$500 then <b>maximum 4 weeks</b> except in certain circumstances</li> <li>• \$100 pet bond allowed</li> </ul>	<ul style="list-style-type: none"> <li>• if rent less than \$250 then <b>maximum 4 weeks</b></li> <li>• if rent more than \$250 then maximum 6 weeks</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Maximum 4 weeks</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Maximum 4 weeks</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Maximum 4 weeks</b></li> </ul>
<b>Rent Increase</b>	<ul style="list-style-type: none"> <li>Permitted if: <ul style="list-style-type: none"> <li>• term in agreement for fixed term agreement</li> <li>• written notice of 1 month for fixed, or 2 months for periodic</li> </ul> </li> <li>Tenant can apply to the Tribunal for an order that a rent increase is excessive</li> </ul>	<ul style="list-style-type: none"> <li>Permitted if: <ul style="list-style-type: none"> <li>• term in agreement and</li> <li>• 60 days notice given</li> </ul> </li> <li>Tenant can apply to Tribunal for an order that rent increase is excessive (also that rent excessive if services withdrawn)</li> </ul>	<ul style="list-style-type: none"> <li>Permitted if: <ul style="list-style-type: none"> <li>• term in agreement and</li> <li>• 60 days notice given and</li> <li>• 6 months since last increase</li> </ul> </li> <li>Tenant can apply to Director of Consumer Affairs Victoria and then to the Tribunal for an order about excessive rent</li> </ul>	<ul style="list-style-type: none"> <li>Permitted if: <ul style="list-style-type: none"> <li>• term in agreement and</li> <li>• 60 days notice given and</li> <li>• 6 months since last increase</li> </ul> </li> <li>Tenant can apply to a court for order that rent excessive in limited circumstances</li> </ul>	<ul style="list-style-type: none"> <li>Permitted if: <ul style="list-style-type: none"> <li>• term in agreement and</li> <li>• 60 days notice and</li> <li>• 6 months since start/ last increase</li> </ul> </li> <li>(Note: above provisions apply to subsequent residential tenancy agreements unless separated by 6 months)</li> <li>Tenant can apply to Tribunal for declaration that rent is excessive</li> </ul>	<ul style="list-style-type: none"> <li>Permitted if: <ul style="list-style-type: none"> <li>• term in agreement (if written agreement) or no written agreement used and</li> <li>• 60 days notice and</li> <li>• 6 months since last increase</li> </ul> </li> <li>Tenant can apply to Magistrate for order that increase unreasonable</li> </ul>	<ul style="list-style-type: none"> <li>Permitted if: <ul style="list-style-type: none"> <li>• term in agreement and</li> <li>• 30 days notice and</li> <li>• 6 months since start/last increase</li> </ul> </li> <li>Tenant can apply to Commissioner for declaration that rent payable under the agreement is excessive</li> </ul>	<ul style="list-style-type: none"> <li>Permitted if: <ul style="list-style-type: none"> <li>• not first 12 months of tenancy and</li> <li>• only once per year except with endorsement of Tribunal and</li> <li>• 8 weeks notice required</li> </ul> </li> <li>Tenant can apply to Tribunal for review of rent increase</li> </ul>

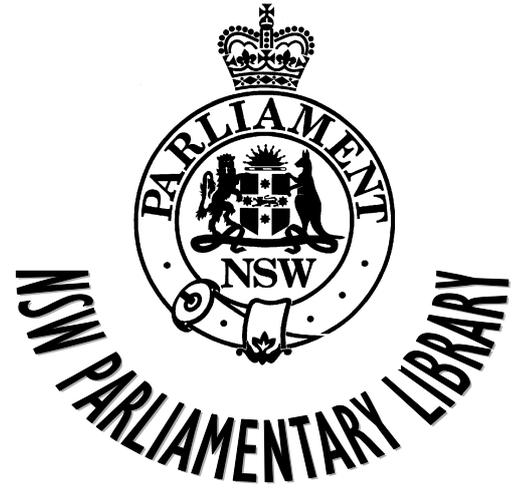
	QLD	NSW	VIC	WA	SA	TAS	NT	ACT
<b>Grounds for Entry (minimum notice periods)</b>	<ul style="list-style-type: none"> <li>Agreement</li> <li>Emergency</li> <li>Protect premises from imminent or further damage (no notice required)</li> <li>Routine repairs or maintenance</li> <li>Prospective purchaser or tenant if a reasonable time has elapsed since the last entry for this purpose</li> <li>Valuation</li> <li>Lessor/agent believes premises abandoned (24 hours for above)</li> <li>Inspect not sooner than 3 months since last inspection (7 days)</li> </ul> <p>Entry must be made at a "reasonable time"</p>	<ul style="list-style-type: none"> <li>Emergency</li> <li>Inspection of no more than 4 in 12 months (7 days)</li> <li>Repairs or maintenance or install smoke alarm (2 days)</li> <li>Prospective purchasers on reasonable number of occasions (reasonable notice)</li> <li>Prospective tenants on reasonable number of occasions in last 14 days of agreement (reasonable notice)</li> <li>Abandonment</li> <li>Consent</li> <li>Tribunal order</li> </ul> <p>Entry not allowed on Sunday, public holiday or outside 8a.m. to 8p.m.</p>	<ul style="list-style-type: none"> <li>Prospective tenant in last 14 days of tenancy</li> <li>Prospective buyer or lender</li> <li>To carry out a duty under the Act, the agreement or another Act</li> <li>Valuation</li> <li>Lessor has reasonable grounds to believe the tenant has failed to comply with duties under the Act or agreement</li> <li>Inspection but cannot enter in first 3 months and 6 months since last inspection (24 hours notice required in all cases)</li> </ul> <p>Entry limited to between 8a.m. and 6p.m. any day except public holiday</p>	<ul style="list-style-type: none"> <li>Emergency</li> <li>Inspect (7 days notice)</li> <li>Collecting rent</li> <li>Carrying out or inspecting necessary repairs to or maintenance of the premises (72 hours)</li> <li>Prospective tenants in last 21 days of the agreement</li> <li>Prospective purchasers on reasonable number of occasions (reasonable notice)</li> <li>As agreed</li> </ul> <p>Entry must occur at a "reasonable hour"</p>	<ul style="list-style-type: none"> <li>Emergency (no notice)</li> <li>Written notice for specific purpose (7–14 days)</li> <li>Inspection with not more than one every 4 weeks (previously arranged time)</li> <li>Repairs and maintenance (48 hours written notice)</li> <li>Prospective tenants at a reasonable time and on reasonable number of occasions in last 28 days of the agreement (reasonable notice)</li> <li>Prospective purchasers at reasonable time and on a reasonable number of occasions (reasonable notice)</li> <li>Consent</li> </ul>	<ul style="list-style-type: none"> <li>Tenant is ill or injured and unable to give permission</li> <li>Denial of access may result in damage to premises</li> <li>Risk to tenant or other person</li> <li>Damage has occurred to premises</li> <li>Property abandoned (no notice required for above)</li> <li>To meet commitments under the agreement</li> <li>Suspected that tenant failed to comply with the agreement</li> <li>Ensure repairs have been carried out</li> <li>Inspection (once in first month then once every 3 months)</li> <li>Prospective tenant in last 28 days of agreement or where notice to terminate has been given</li> <li>Prospective purchaser with maximum once per day and not more than 5 days in any week (48 hours notice, only between 8a.m. and 6p.m. without consent)</li> <li>Open house for sale or re-letting only allowed with written approval of tenant</li> </ul>	<ul style="list-style-type: none"> <li>Inspection with maximum 3 months after last inspection (7 days)</li> <li>Emergency or significant damage (no notice)</li> <li>Collection of rent (7 days)</li> <li>Carrying out or inspecting repairs and maintenance (24 hours notice)</li> <li>Complete condition report (24 hours)</li> <li>Prospective tenants in last 28 days of agreement on reasonable number of occasions (24 hours)</li> <li>Prospective purchasers on a reasonable number of occasions (24 hours)</li> <li>Consent</li> </ul> <p>Entry only allowed in presence of tenant except under certain circumstances</p> <p>Entry only allowed between 7a.m. and 9p.m.</p>	<ul style="list-style-type: none"> <li>Inspection with maximum of one in first month and last month of tenancy, then no more than twice in 12 months (1 week notice)</li> <li>Believe property abandoned</li> <li>Prospective tenants in last 3 weeks of agreement or prospective purchasers (24 hours notice)</li> <li>Making or inspecting repairs at a reasonable time (1 week)</li> </ul> <p>Lessor must not have access to the premises on Sundays, public holidays or before 8a.m. or after 6p.m. except in case of urgent repairs or with consent</p>
<b>Urgent Repairs</b>	<ul style="list-style-type: none"> <li>Tenant can arrange for emergency repairs up to the cost of 2 weeks rent in certain circumstances</li> </ul>	<ul style="list-style-type: none"> <li>Tenant can spend up to \$500 on urgent repairs in certain circumstances</li> </ul>	<ul style="list-style-type: none"> <li>Can authorise urgent repairs up to \$1000 in certain circumstances, over this tenant must apply to VCAT</li> </ul>	<ul style="list-style-type: none"> <li>Parties can specify in agreement if tenants can authorise</li> <li>If no agreement, owner to compensate tenant for repairs where tenant has paid in certain circumstances</li> </ul>	<ul style="list-style-type: none"> <li>Tenant can recover "reasonable costs" of having emergency repairs carried out in certain circumstances</li> </ul>	<ul style="list-style-type: none"> <li>Tenant can authorise urgent repairs in certain circumstances</li> </ul>	<ul style="list-style-type: none"> <li>Tenant may have repairs carried out in certain circumstances to a maximum of 2 weeks rent</li> </ul>	<ul style="list-style-type: none"> <li>Tenant can authorise urgent repairs up to 5% of rent of property over a year</li> </ul>

	QLD	NSW	VIC	WA	SA	TAS	NT	ACT
<b>Compliance</b>	<ul style="list-style-type: none"> <li>Penalties apply throughout Act</li> </ul>	<ul style="list-style-type: none"> <li>Act lists penalties that apply</li> </ul>	<ul style="list-style-type: none"> <li>Penalties apply throughout Act</li> <li>Infringement notices available</li> </ul>	<ul style="list-style-type: none"> <li>Penalties apply throughout Act</li> </ul>	<ul style="list-style-type: none"> <li>Penalties apply throughout Act</li> </ul>	<ul style="list-style-type: none"> <li>Penalties apply throughout Act</li> </ul>	<ul style="list-style-type: none"> <li>Penalties apply throughout Act</li> <li>Infringement notices available</li> </ul>	<ul style="list-style-type: none"> <li>Penalties apply throughout Act</li> </ul>
<b>Assignment/Subletting by Tenant</b>	Permitted if: <ul style="list-style-type: none"> <li>written consent of owner</li> <li>lessor must act reasonably in failing to agree to the transfer or subletting</li> <li>lessor can only charge tenant for reasonable expenses</li> </ul>	Permitted if: <ul style="list-style-type: none"> <li>consent of owner</li> <li>lessor <u>not</u> required to act reasonably in giving consent</li> <li>lessor can only charge reasonable expenses</li> </ul>	Permitted if: <ul style="list-style-type: none"> <li>consent of lessor</li> <li>lessor must not unreasonably withhold consent</li> <li>lessor can charge tenant for reasonable expenses</li> </ul>	<ul style="list-style-type: none"> <li>parties are free to agree</li> <li>if agreement allows transfer with consent, lessor must not agree unreasonably</li> </ul>	Permitted if: <ul style="list-style-type: none"> <li>written consent of lessor</li> <li>lessor not to unreasonably withhold consent</li> <li>can charge tenant for lessor's reasonable expenses</li> </ul>	Permitted if: <ul style="list-style-type: none"> <li>consent of owner</li> <li>lessor not to unreasonably withhold consent</li> <li>lessor can charge for reasonable expenses</li> </ul>	Permitted if: <ul style="list-style-type: none"> <li>written consent of owner or no reply from lessor in 28 days</li> <li>lessor not to unreasonably withhold consent</li> <li>lessor can charge for reasonable expenses</li> </ul>	Permitted if: <ul style="list-style-type: none"> <li>written consent of owner</li> <li>lessor can charge for reasonable legal expenses incurred in assignment or subletting</li> </ul>
<b>Water Charges</b>	<ul style="list-style-type: none"> <li>Lessor can charge tenant for part of consumption costs where premises are individually metered and term in agreement</li> <li>Lessor must pay for the amount of water for which the lessor should reasonably be liable</li> </ul>	<ul style="list-style-type: none"> <li>Lessor can charge tenant for all consumption where individually metered and term in agreement</li> </ul>	<ul style="list-style-type: none"> <li>Lessor can charge tenant for all consumption where individually metered</li> <li>Lessor to ensure replacement water appliances have A rating</li> </ul>	<ul style="list-style-type: none"> <li>Lessor can charge tenant for all consumption (does not require individual metering)</li> </ul>	<ul style="list-style-type: none"> <li>Water consumption to be paid as agreed between parties (does not require individual metering)</li> <li>136 kL per year to be paid for by lessor in absence of agreement</li> </ul>	<ul style="list-style-type: none"> <li>Lessor can only charge tenant for water consumption where premises individually metered</li> </ul>	<ul style="list-style-type: none"> <li>Tenant only required to pay for water consumption where term in agreement and individually metered or agreement states the method of determining the apportionment</li> </ul>	<ul style="list-style-type: none"> <li>Tenant responsible for all water consumption where individually metered</li> </ul>

	QLD	NSW	VIC	WA	SA	TAS	NT	ACT
<b>Grounds for Ending Agreements (minimum notice period)</b>	<p><b>Periodic</b></p> <ul style="list-style-type: none"> <li>Without ground (2 weeks tenant, 2 months lessor)</li> <li>Sale of premises (4 weeks)</li> </ul> <p><b>Fixed &amp; Periodic</b></p> <ul style="list-style-type: none"> <li>End of fixed term agreement (14 days)</li> <li>Parties agree in writing</li> <li>Breach of agreement (7 days failure to pay rent, 14 days other breach by tenant, 7 days breach by lessor/agent)</li> <li>Repeated breaches (via Tribunal)</li> <li>Non-ivability (none)</li> <li>Compulsory acquisition (2 months lessor, 2 weeks tenant)</li> <li>Hardship (via Tribunal)</li> <li>Damage or injury (via Tribunal) – can be brought by lessor, tenant, tenant's spouse, cotenant or occupant</li> <li>Objectionable behaviour (via Tribunal)</li> <li>Employment terminated (4 weeks)</li> <li>Ending of accommodation assistance (4 weeks)</li> <li>Ending of housing assistance (2 months)</li> <li>Abandoned premises (7 days or via Tribunal)</li> <li>Non-compliance with Tribunal order (7 days)</li> <li>Failure to leave as intended (via Tribunal)</li> </ul>	<p><b>Continuing Only</b></p> <ul style="list-style-type: none"> <li>No ground (60 days lessor, 21 days for tenant)</li> <li>Sale of premises (30 days)</li> </ul> <p><b>Fixed &amp; Continuing</b></p> <ul style="list-style-type: none"> <li>End of fixed agreement (14 days)</li> <li>Breach by tenant (14 days)</li> <li>Breach by lessor (via Tribunal)</li> <li>Frustration, including destroyed or acquired (immediate notice)</li> <li>Undue hardship (via Tribunal)</li> <li>Tenant causing injury or damage (via Tribunal)</li> <li>Abandonment</li> <li>Various grounds related to social housing</li> </ul>	<p><b>Periodic</b> (also apply to fixed where termination date not before end of agreement)</p> <ul style="list-style-type: none"> <li>Repair or renovate</li> <li>Demolition</li> <li>Premises to be used for business</li> <li>Premises to be occupied by lessor or lessor's family</li> <li>Premises to be sold</li> <li>Premises required for public purposes (60 days for above)</li> <li>Tenant no longer meets eligibility criteria (90 days)</li> <li>No reason (tenant 28 days, lessor 120 days)</li> </ul> <p><b>Fixed &amp; Periodic</b></p> <ul style="list-style-type: none"> <li>Agreement</li> <li>Damage to property by tenant or visitor</li> <li>Danger to occupiers of neighbouring premises</li> <li>Premises destroyed etc</li> <li>Premises not in good condition (immediate notice)</li> <li>Tenant owes rent or bond</li> <li>Tenant or lessor breached VCAT order</li> <li>Successive breaches by tenant or lessor</li> <li>Premises used for illegal purpose</li> <li>Assign or subletting without consent</li> <li>Child living at premises against agreement</li> <li>Misled public housing authority (14 days for above)</li> <li>End of fixed term agreement (60 or 90 days depending on length of tenancy)</li> </ul>	<p><b>Periodic Only</b></p> <ul style="list-style-type: none"> <li>Demolition</li> <li>Repairs or renovations</li> <li>Lessor requires possession for certain purposes</li> <li>Contract of sale (60 days notice for all above)</li> <li>Without ground (90 days lessor, 21 days tenant)</li> </ul> <p><b>Fixed &amp; Periodic</b></p> <ul style="list-style-type: none"> <li>End of agreement (no notice required)</li> <li>Death of sole tenant</li> <li>Agreement</li> <li>Breach of agreement (7 days after remedy period expires)</li> <li>Abandonment (via Tribunal)</li> <li>Damage or personal injury (via Tribunal)</li> <li>Undue hardship for lessor or tenant (via Tribunal)</li> <li>Tenant conduct unacceptable (via Tribunal min 28 days)</li> </ul>	<p><b>Periodic Only</b></p> <ul style="list-style-type: none"> <li>No reason (tenant 14 days)</li> <li>Sale, renovation or another purpose (28 days)</li> </ul> <p><b>Fixed &amp; Periodic</b></p> <ul style="list-style-type: none"> <li>Tenant – end of agreement (no notice required)</li> <li>Owner – within 28 days of the end of agreement (14 days)</li> <li>Owner - agreement has ended in last 28 days (14 days)</li> <li>Failure of lessor to carry out repairs (14 days)</li> <li>Breach of agreement (14 days)</li> <li>Damage or injury to persons (via Court)</li> <li>Foreclosure under <i>Land Titles Act 1980</i> (28 days)</li> <li>Sold pursuant to <i>Land Titles Act 1980</i> (28 days)</li> <li>Tenant caused nuisance (14 days)</li> <li>Abandonment (via Court)</li> </ul>	<p><b>Periodic Only</b></p> <ul style="list-style-type: none"> <li>No grounds (lessor 42 days, tenant 14 days)</li> </ul> <p><b>Fixed &amp; Periodic</b></p> <ul style="list-style-type: none"> <li>Abandonment</li> <li>Sole tenant dies</li> <li>Flooding, unsafe or uninhabitable (2 days for above)</li> <li>Lessor – drug premises (14 days)</li> <li>End of agreement (14 days)</li> <li>Termination of employment (2 days if breach of employment, otherwise 14 days)</li> <li>Offer of public housing in certain circumstances (14 days)</li> <li>Breach of agreement (7 days)</li> <li>Serious breach of agreement (via Court)</li> <li>Lessor – damage or personal injury (via Court)</li> <li>Undue hardship</li> <li>Failure by tenant relating to acceptable behaviour agreement under Housing Act (via Court)</li> <li>Conduct of tenant unacceptable (via Court)</li> </ul>	<p><b>Periodic Only</b></p> <ul style="list-style-type: none"> <li>Without cause (tenant 3 weeks, lessor 26 weeks)</li> <li>Lessor intends to live in premises, or relative or interested person (4 weeks)</li> <li>Sale of premises (8 weeks)</li> <li>Renovate or major repairs (12 weeks)</li> </ul> <p><b>Fixed &amp; Periodic</b></p> <ul style="list-style-type: none"> <li>Tenant – end of agreement (3 weeks)</li> <li>Lessor posted to Canberra or tenant posted away from Canberra (4 weeks)</li> <li>Abandonment</li> <li>Agree in writing to terminate</li> <li>Lessor – crisis accommodation (4 weeks)</li> <li>Breach of agreement (2 weeks or via Tribunal)</li> <li>Significant hardship (via Tribunal)</li> <li>Damage to property or personal injury (via Tribunal)</li> <li>False or misleading statement by party (via Tribunal)</li> <li>Employee ceases to be employed (via Tribunal)</li> <li>Lessor – tenant purported to assign or sublet not in accordance with Act (via Tribunal)</li> <li>Premises not fit for habitation or not available due to government action (lessor 1 week, tenant 2 days)</li> <li>Tenant can vacate the property because of rent increase (3 weeks)</li> <li>Previous breaches and then subsequent breach (1 week for rent, 2 weeks for other breach)</li> </ul>	

	QLD	NSW	VIC	WA	SA	TAS	NT	ACT
<b>Resolving Disputes</b>	<p><b>Dispute Resolution Service, Residential Tenancies Authority</b></p> <ul style="list-style-type: none"> <li>• Provide conciliation service</li> <li>• Participation in conciliation process is required for non-urgent matters before an application can be made to the Tribunal</li> </ul> <p><b>Small Claims Tribunal</b></p> <ul style="list-style-type: none"> <li>• Have jurisdiction to hear tenancy applications up to \$7,500</li> <li>• Appeal only available on grounds that Tribunal had no jurisdiction or a party was denied natural justice</li> </ul>	<p><b>Consumer, Trader and Tenancy Tribunal</b></p> <ul style="list-style-type: none"> <li>• Resolve disputes between tenants and lessors, can make order up to \$5,000</li> <li>• Tribunal also uses conciliation</li> <li>• Party can apply to Tribunal for re-hearing in limited circumstances</li> <li>• Party can appeal to Supreme Court of NSW on question of law</li> </ul>	<p><b>Victorian Civil &amp; Administrative Tribunal</b></p> <ul style="list-style-type: none"> <li>• Hears and determines applications made under the Act up to \$10,000</li> <li>• Can apply for review of order in limited circumstances</li> <li>• Can apply to Supreme Court of Victoria for leave to appeal</li> </ul> <p><b>Supreme Court, County Court and Magistrates Court</b></p> <ul style="list-style-type: none"> <li>• Have jurisdiction to hear matters under the Act where claim exceeds \$10,000</li> </ul>	<p><b>Magistrates Court of Western Australia (Minor Case hearings)</b></p> <ul style="list-style-type: none"> <li>• Exclusive jurisdiction to hear applications under \$10,000</li> </ul>	<p><b>Residential Tenancies Tribunal</b></p> <ul style="list-style-type: none"> <li>• Independent judicial body which has exclusive jurisdiction to hear disputes under the Act for both residential tenancy agreements and rooming houses up to \$10,000</li> <li>• Claims above \$10,000 to be heard in competent court</li> <li>• Tribunal may appoint a mediator with consent of the parties</li> <li>• Tribunal may reserve a question of law for determination by Supreme Ct</li> <li>• Appeal by parties to District Court</li> </ul>	<p><b>Office of Residential Tenancy Commissioner</b></p> <ul style="list-style-type: none"> <li>• Determines disputes relating to bonds or mediates or conciliates disputes relating to boarding houses</li> </ul> <p><b>Magistrates Court of Tasmania</b></p> <ul style="list-style-type: none"> <li>• Can apply for hearing for matters not involving bond or boarding houses</li> <li>• Can appeal decisions of Commissioner</li> </ul>	<p><b>Commissioner of Tenancies</b></p> <ul style="list-style-type: none"> <li>• Parties can apply to Commissioner as per Act (claims less than \$10,000)</li> <li>• Commissioner can use conciliation or hold an inquiry</li> <li>• Can appeal a decision or order to the Local Court</li> <li>• Commissioner can arbitrate or conciliate</li> </ul> <p><b>Local Court or Supreme Court</b></p> <ul style="list-style-type: none"> <li>• Parties can apply as per Act depending upon value of claim</li> </ul>	<p><b>Residential Tenancies Tribunal</b></p> <ul style="list-style-type: none"> <li>• an independent body, which has exclusive jurisdiction to hear and determine any matters that may be the subject of an application under the Act</li> <li>• monetary limit of \$10,000</li> <li>• can refer to mediation with consent of parties</li> <li>• can refer to a preliminary conference</li> <li>• Tribunal can refer question of law to Supreme Court</li> <li>• can appeal on question of law to the Supreme Court with leave</li> <li>• can request a review of a decision by the Tribunal</li> </ul> <p><b>Magistrates Court &amp; Supreme Court</b></p> <ul style="list-style-type: none"> <li>• hears claims exceeding \$10,000</li> </ul>

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