

2008 - Residential Tenancy Act Changes Coming

CHANGES To Residential Tenancy Act MUST be FAIR

Private property owners provide 85% of the residential rental accommodation services in NSW, housing 615,000 households and they are leaving the marketplace.

In the main:-

Residential property owners are small investors – ‘mums and dads’.

Tenants are independent Australians who enter a contract for accommodation.

Where tenants face ‘hardship’, the responsibility must be a Government one and not directed to property owners who have neither the financial strength or expertise to deal with it.

PROPOSED RTA CHANGES include but are not limited to:-

tenant can sublet

tenant making alterations to the property

oral ‘agreements’ to become tenancies

increase in delays for no ground evictions

Only a FAIR & BALANCED residential tenancy can encourage property owners to stay and increase their holdings, to the benefit the people of NSW.

See article below.

Residential Tenancy Law Changes Must Be FAIR

Private property owners provide 85% of the residential rental accommodation services in NSW, housing 615,000 households. The NSW Government and NFP organisation provide welfare housing services to approximately 15% of rental housing market. These are two separate and distinct housing providers with different roles and skills providing invaluable housing services to NSW.

Boarding houses are a third, but very small, distinct housing provider. They provide a privately managed 'community' style housing service. Studies into boarding houses have revealed that introduction of legislation of this fragile and unique housing for low to moderate housing, will lead to the demise of boarding houses. Victoria introduced the Rooming Houses Act 1990. The result has been that private providers of this affordable and flexible style of housing have all but disappeared. This has been replaced by costly Government funded community housing projects and quasi welfare housing, student and welfare hostels.

There has been a flight of corporate, institutional and large private residential property owners over the past 30 years as property owners struggle with tenancy laws, the Residential Tenancies Act 1987 with its significant rate of Tribunal hearings and disputes; SEPP 10 and its escalating restrictions; increasing delays, charges, compliances and processes by local councils; punitive land taxes; the increasing bias towards transferring welfare responsibility of housing tenants to individual property owners through 'hardship' considerations; loss of control of owners' property, management difficulties, adversarial funded tenancy organisations and the many other variables of property ownership. These challenges coupled with low to negative returns have led to the loss of major dedicated residential rental providers. This vacuum has been filled by small, individual property owners. These small owners generally are employed, often allocating their income to assist with their residential rental mortgages and represent grass roots, 'middle' Australia. They have one or two properties that form part of their investment strategy for retirement, superannuation, security and personal goals.

The reliance on small residential rental landlords creates a precarious situation for tenants as these property owners are not the dedicated, experienced industry suppliers of major residential rental stock as in the past. When small property owners are faced with adversarial decisions and loss of control of their property, it is at a significant human cost to them and often the result is withdrawal from the market. The impact has been a substantial factor in the .08% residential rental accommodation vacancy rate which is at crisis point; reduction in affordable rental housing; and the lack of growth in supply of residential rental property. Today there is a developing trend to transfer existing rental property to owner occupiers or redevelop it into alternative usages. Traditionally property, due to its high capital base and associated costs for acquisition, take a long time to reflect trends. It has taken 30 years for the 'New Direction' Reform report to recognise that the change of property owners from major rental suppliers to small investors.

A fair and equitable private residential housing rental market for both tenants and property owners exists where there is an adequate supply of rental accommodation. It is also where property owners do not feel disempowered. It is where there is a non-adversarial ethos in which tenants and property owners are partners in this housing service. When this breaks down, there are serious consequences in the provision of rental housing for the Government, tenants, property owners and the community.

Tenants have representation through government funded tenancy organisations such as 'The Tenants Advice & Advocacy (TAAP) Services and the Tenants' Union of NSW whose roles are to 'campaign for policy change and law reform to improve the rights of all tenants.' (www.tenants.org.au)

There is no funding for property owners' advocacy to ensure that property owners remain as providers of residential rental accommodation and to assist them in complex legislation.

The Residential Tenancy Act seeks to balance the tenants' right to housing with the property owners' right to control of his/her property and achieve a return on the investment. The issues of 'hardship' and the right to shelter, have slanted the legislation to favour tenants in areas as diverse as penalties for breaches in the RTA, where breaches are heavily weighted against property owners including up to 1 year

imprisonment and \$21,000 fine; notice to vacate a premises which requires a tenant to give 21 days' notice while a landlord must give 60 days notice; maximum of 4 weeks bond with a procedural process for recovery of rental arrears that ensures the bond will not cover the rental arrears.

Tenants' right to shelter and hardship are important responsibilities and should be dealt with by the Government, not property owners. Where tenants face serious hardship, the Tribunal should have the discretion to seek rental assistance, rehousing assistance, bond assistance from the Department of Fair Trading. Where legislation is too slanted against a major stake holder, the stake holder leaves as has occurred with the Rooming House legislation in Victoria.

While there are some valuable provisions within 'The New Direction' proposals which deal with streamlining processes and bringing the administration of the Act into modern practice, 'The New Direction' further undermines property owners' rights. Critical proposals include the areas of sub letting, repossession of the property, tenants' right to change the property. A major concern in the "New Direction" is the substantial increase in Tribunals hearings, adversarial conflicts and disputes that are inevitable if the proposals become law. There are too many damaging areas in 'the 'New Directions' ranging from tenants alterations to the property, oral agreements that can become tenancies, increase in delays for no ground evictions, increased delays and processes in 'rental arrears'.

If there is a lack of equity in representation and an increased bias against property owners in the 'reforms' in the RTA and the Tribunal process, the barrier to re-entry of major providers of residential rental housing into the market is strengthened. It deters small investors entering or remaining in rental accommodation. This is a critical time to introduce the proposals in the 'New Directions' on a fragile residential rental housing market in NSW and any changes need to be FAIR and equitable to all stake holders.

POA Residential Tenancies Committee