

The background of the cover features a series of overlapping, abstract blue lines that resemble a stylized map or a series of connected paths. These lines are rendered in various shades of blue, creating a sense of depth and movement. The lines are most prominent in the upper and lower portions of the cover, framing the central text area.

# The Property Owners' Association of NSW

Quarterly Journal | July 2011

# THE PROPERTY OWNERS' ASSOCIATION OF NSW



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# PRESIDENT'S MESSAGE

## THE ANNUAL GENERAL MEETING

The meeting held at the Hughenden Hotel Sydney on 4th May 2011 was a pleasant evening. We welcomed 41 new members last year & new activities were discussed, new challenges identified for the committee to act on this year.

This was followed by a cocktail party put on by the POANSW for its members.

My sincere thanks are again extended to all last year's committee members for their time and support , I note all sitting committee members have returned in the same positions and I look forward to work with them on upcoming issues including NSW Government shake up of Boarding House operations and continued lobbying with the new minister of The Office of Fair Trading on the 2010 Residential Tenancy reforms.

A big welcome to John Owens who has joined the committee this year we will be looking forward to her about issues that are on his agenda.

## THE HUGHENDEN

The past year has seen the Hughenden Hotel play host to the POANSW for meetings and seminars in a most professional way its office staff and management provide a vital link for bookings and function arrangements for the POA and again I thank Susanne Gervay and her staff for a great job done.

# WELCOME NEW MEMBERS

Thomas Costa	Roland Colinard	Antony Camanos
Ian Rowley	Lei Wang	Pauline Bondy
Thomasina Fransen	Mamerta Hubbard	River Chu
Steven Murabito	Charles Laurenz	Paul Singh
David Briscoe	George Caldwell	Kate Botting
Ronald Langham	Henry Leung	

## MARKET CHANGES

Since January 2011 each month has seen a fall in residential property prices of about 1.5 % per month as reported by several monitoring agencies as well as this new home starts are significantly down + renovations and upgrading of existing property also fell.

## NEW GOVERNMENT

The new NSW Government has a enormous job of trying to address 14 years of very little positive direction and investment in this state's future by past outgoing government.

In regards to property, POANSW will meet to drive change in areas of land tax, stamp duty, tenancy laws, planning and local government with the new administration. In several of these areas the current situations are so out of touch with commercial reality that if change does not happen a further decline in investors into property will continue.

## NEW DATA BASE

We have finally been able to strike a deal with a national data base service, this be in the form of POANSW members only having access via the web site to apply to have a new tenants rent history checked for a reasonable fee of around \$14.00 per search .The service should be operational shortly.

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## SEMINARS

Our next seminar is around contractual agreements, an issue ALL property owners should be aware of. It will be presented by Turks Lawyers. Seminar details are in this journal. Hope to see you there.

Regards

**Chris Young**

# CONTRACTS ESSENTIALS SEMINAR

FOR PROPERTY INVESTORS AND BOARDING  
HOUSE OPERATORS

Understand the rules that govern contracts, so that  
you will be able to avoid legal problems.

Practical tips to help you protect your interests, assist  
the negotiation process, avoid disputes, and ensure  
successful contracts and commercial relationships.

Presented by  
MADELEINE PERRIGNON  
Partner, Turks Legal

7.30PM WEDNESDAY 20 JULY 2011  
at  
The Hughenden Hotel  
14 Queen St, Woollahra

An optional dinner for Members, speakers, & guests is  
scheduled before hand at

The Hughenden Hotel Cafe at 6.00pm for 6.15pm  
sharp start.

Cost of optional dinner not inclusive of seminar.

Please RSVP directly on 02-9363-4863 or  
reservations@thehughenden.com.au

Non-members are welcome. \$15.00 entry fee.

**SEATS ARE LIMITED!**

Madeleine Perrignon is a property and business law  
partner at TurksLegal. She advises in relation to  
contracts and how to avoid contractual disputes.  
Madeleine will be presenting a seminar entitled  
"Contracts Essentials for Non-Lawyers."

Who should attend? Any business owner who  
ever negotiates contracts. It is really important to  
understand the rules that govern contracts so that  
you can avoid legal problems. These practical tips will  
help you protect your interests, assist the negotiation  
process, avoid disputes, and ensure successful  
contracts and commercial relationships.

In this seminar we will discuss:

- The basic rules of offer and acceptance
- How you can draft your contracts to minimise your  
company's risk, and what to be aware of when  
negotiating an indemnity clause
- When you should use Memorandums of  
Understanding and Heads of Agreement
- Whether you must proceed to contract if you  
include the words, "Subject to contract" in a Heads  
of Agreement
- How to avoid misleading and deceptive conduct  
claims
- How to protect yourself if you and your supplier  
have conflicting terms of trade
- How you can still get paid when you are  
performing pursuant to a contract which the other  
party refuses to sign
- When and how you can prematurely terminate a  
contract
- Whether or not you can include a term in a  
written contract that was agreed in pre-contract  
negotiations, but not included in the written  
contract

There will be plenty of time for you to ask your  
particular questions.

If there are any specific questions you would like to  
ask beforehand, please email them to **madeleine.  
perrignon@turkslegal.com.au**, or call **02 8257 5710**.

**Congratulations** to our committee member Susanne Gervay who on this year's Queens Birthday long weekend was awarded the Order of Australia Medal (O.A.M), for her tireless contribution to Children's literature and professional organisations.

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Level 1, 283 Old Geelong Road  
Hoppers Crossing VIC 3029



**REAL ESTATE COLLECTIONS**  
www.realestatecollections.com Ph: 1300 366 536

We are the only Debt Collection Company dedicated to the Real Estate Industry. No other company has a better understanding of the typical debts a real estate agent comes across.

We have many existing relationships in the Real Estate Industry from Multi Nationals to Medium and Small Businesses in the industry, locally and Australia wide.

Collecting your money is not an easy thing to do, especially when you have debtors that constantly find excuses to pay you. At Real Estate Collections we make the process of collecting your debts as simple as possible - without damaging your reputation or destroying your profit margin and we pay it back to you quickly. Our great customer service is second to none, giving you up to date information whenever you need it.

Typical debts collected include:

- Tenant related debts
- Advertising Expenses
- Commissions
- Commercial and Retail Leases

There are **NO JOINING FEES, NO CONTRACTS** and **NO HIDDEN FEES**

Our debt collection processes involve:

- Telephone demands
- Demand letters
- Solicitors demands letters
- Payment arrangements
- SMS messaging
- Legal action - on your instructions

Our fees for debt recovery is a flat 12% commission plus GST, payable only on what is recovered. If we don't then there is no commission payable... remember, **NO MONIES RECOVERED, NO COMMISSION PAYABLE.** Commission will only be payable on actual monies recovered.

Also, we **DO NOT CHARGE** for: \*Demand Letters \*Solicitors Letters \*Phone Calls \*Faxes \*SMS or \*Postage.

We have multiple payment methods we accept on your behalf to ensure your debtor find no excuse for not paying; these are BPAY, automated Credit Card Facilities, coupled with the usual methods of cheques, cash or money orders.

Get started **TODAY** with your debt recovery. Call us on **1300 366 536**

For your convenience we have in house lawyers that can provide the following services specific to the real estate industry. These include Commercial and Residential Conveyancing, Commercial Leases & Mortgage. Other services provided are Credit Applications, Searches, Equipment Finance. Training Courses, including: Leadership Skills, Debt Recovery and Customer Service.

MELBOURNE

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CANBERRA

BRISBANE

ADELAIDE

PERTH

DARWIN

## AFFORDABLE HOUSING POLICY – BACK TO THE PAST?

ON 31ST JULY 2009, the NSW government introduced The State Environmental Planning Policy (Affordable Rental Housing) (AHSEPP). It provided various development concessions to a wide range of affordable housing alternatives, from granny flats to boarding houses.

This policy would facilitate the supply and diversity of affordable housing construction, so as to help alleviate the chronic affordable housing crisis in NSW.

In particular these incentives provided greater certainty to private developers, faced by local council development control processes.

A scheduled review of the AFSEPP was initiated in late 2010. The POA NSW compiled a number of submissions supporting the need for development concessions and incentives to be extended, while also proposing various exemptions be removed.

The Department of Planning and Infrastructure recently wrote to The POA NSW, outlining the results of this review. They inform us that a number of changes to the AHSEPP have now been made by the NSW government, which became effective on 20 May 2011. They

are listed in detail on Department of Planning and Infrastructure's website at [www.planning.nsw.gov.au](http://www.planning.nsw.gov.au)

Many of the changes move away from encouraging the development of affordable housing and move towards reintroducing more influence to individual local councils.

These changes weaken the effectiveness of the AHSEPP.

Some of the changes include:

- Tougher public transport access and parking standards will be applied to new generation boarding houses in low-rise residential areas.
- Measures to prevent private developers building townhouses and villas in low density areas, where the development is not compatible with the design of the locality and not well served by public transport.
- Provisions applying to granny flats have not been changed.

But these are only the first stage of the new direction envisaged.

The second stage will involve the formation of an "Affordable Housing Taskforce". This Taskforce will include social housing experts, community housing providers, key

local government and Department of Planning and Infrastructure representatives, and other relevant government agencies.

It is this Affordable Housing taskforce which will develop another new SEPP, the "Housing Choice SEPP". But, it appears that it will then be possible for individual local councils to adopt "Local Affordable Housing Choice Strategies" and seek exemption from all or part of the provisions in the Affordable Housing Choice SEPP.

So it appears that in less than 2 years, we have just about gone full circle with affordable housing policies. Starting with policies designed to provide incentives and greater certainty to encourage affordable housing development, we have now seen many of these development incentives curtailed, and soon we may see local councils establishing their own affordable housing strategies.

So we may be back to where we started from, a chronic affordable housing crisis.

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## DISCRIMINATION IN THE RENTAL MARKET- INFORMATION FOR LANDLORDS

Everybody should be given a 'Fair Go' when renting or trying to rent a property. The view that 'it's my property so I can choose who I like' only goes so far. You have the right to choose the most suitable tenant provided no unfair discrimination occurs.

### ANTI-DISCRIMINATION LAWS

The law states that you, or your agent, must not discriminate against anyone, or harass them, because of their:

- race (colour, nationality or descent)

- sex (male or female)
- pregnancy
- marital status (e.g. singles or unmarried mothers)
- disability (physical, intellectual or psychiatric disability)
- homosexuality (gay men and

lesbians)

- age (both young or old)
- transgender (transsexual).

It is also against the law to discriminate against a person because of the race, sex, pregnancy, marital status, disability, homosexuality, age or transgender of their relatives, friends or associates.

As long as you are not discriminating on one of the above listed grounds you may rent to whoever you like. If you do not want smokers in your premises or tenants with pets, or if you reject an application because of a poor tenancy history or do not think the tenant can pay the rent there is no law to stop you from declining an application for that reason.

You should be aware that you may be liable for discriminatory acts by your agent. For example, if you tell the agent not to rent the property to 'foreigners' and the agent carries out those instructions. In that case both you and the agent may be liable. It is no defence for the agent to say she or he was simply carrying out your instructions.

#### **DIRECT AND INDIRECT DISCRIMINATION**

Direct discrimination is when a person is treated less favourably than another person because of their race, sex, marital status etc. One example of direct discrimination would be refusing to rent to people with children.

Indirect discrimination is where there is a requirement (a rule, policy, practice or procedure) that is the same for everyone, but which has an unequal effect on particular groups (for example, women, people of certain races, young people). Unless this requirement is 'reasonable having regard to the circumstances of the case' (Anti-Discrimination Act) it is likely to be indirect discrimination.

These are examples of possible

indirect discrimination:

- setting more restrictive standards, such as a higher than necessary income
- requiring all younger tenants to have one of their parents sign the lease as a co-tenant when you know that they do not intend to live in the premises
- having an across the board 'no pets' policy which also excludes the needs of disabled tenants, such as those with a guide dog
- requiring all applicants to have a proven rental history for a minimum number of years, which, for example, could exclude young people trying to rent their first home
- placing unrealistic restrictions on the number of occupants permitted which, for example, could exclude those who are pregnant, or
- having a complicated and long application form which may, for example, deter recently arrived migrants from applying.

One fair selection process is to rank people in order of when they lodge their application and then assess each application in turn for their capacity to pay the rent and maintain the property.

#### **FAIR TRADING LAWS**

Fair trading laws state that you must not engage in conduct that is, in the circumstances, misleading in connection with the supply of goods and services to a customer.

The following is an example that may be both discrimination and misleading conduct.

An Aboriginal person rings the real estate agent about a rental property. On the phone the agent tells the caller that the property is available. When the Aboriginal person goes to the office to lodge an application, the agent informs them that it is no longer available.

Then a non-Aboriginal person asks the same agent and is told that the property is still available.

In an actual case like this, the Administrative Decisions Tribunal ruled that the real estate agent was liable under anti-discrimination law and awarded \$6,000 damages against the agent.

Promote your good practices

It's good practice to tell tenants why they were unsuccessful with a tenancy application. If you don't give a legitimate reason, people may assume discrimination occurred. Giving reasons may help people to better understand your decision-making process.

If you are an agent it's also a good idea to develop a letting policy for your office. It should explain that your agency will not discriminate. Display the policy to show your clients and prospective clients that you will provide a fair and equal service. The Real Estate Institute of NSW Letting Policy (produced in association with the Anti-Discrimination Board) is one example you may wish to use.

You should also make sure that everybody who works in your business is aware of the law and does not themselves discriminate in their dealings with tenants or prospective tenants. If they do, you may be legally liable for their unlawful actions unless you can show you took all reasonable steps to prevent them doing so.

At a glance

There are no changes in this area of the law between the old Act and the tenancy laws that began on 31 January 2011.

#### **MORE INFORMATION**

NSW Anti-Discrimination Board

Tel: 9268 5555 or 1800 670 812

[www.lawlink.nsw.gov.au/adb](http://www.lawlink.nsw.gov.au/adb)

## LOCKING IN LANDLORDS ON SAFETY

LANDLORDS WILL BE RESPONSIBLE for ensuring all windows have locks or safety devices under proposals aimed at stopping children falling from windows. Just days after the eighth child this year fell from a window, The Children's Hospital at Westmead called on the State Government to legislate to make apartments and buildings secure.

Doctors want to make landlords responsible for fitting locks and other security devices to stop children opening windows and falling out.

Trauma surgeon Professor Danny Cass said community and government inaction was a form of "child neglect". "I don't want to have to sit next to a new set of parents

and tell them they have to turn off their child's life support," Professor Cass said.

"I hope the next premier makes this a priority and change legislation because, as a citizen and a clinician, I believe education alone won't fix this."

The hospital's report found recentlyarrived migrants were more vulnerable to the risk, with many renting and unable to speak English.

The Children's Hospital at Westmead treated 169 children between 1998 and 2008 after falls from a window or balcony, including two reported deaths. At least a quarter fell on concrete, causing 40 serious head injuries.

Leah Ranapia, 4, is in hospital after falling from her family's top-floor window in Warwick Farm on Tuesday. The committee also wants the Strata Schemes Management Act amended to force body corporates of apartment buildings to have all common windows fitted with devices so they cannot open more than 10cm.

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## ANSWERS TO COMMON QUESTIONS ABOUT THE NEW TENANCY LAWS

WHENEVER a new piece of legislation comes into effect, there are usually some issues that raise more questions than others. Sometimes it is a question of whether or not the new laws apply under certain circumstances. Now that the Residential Tenancies Act 2010 has commenced, tenants, landlords and agents are asking about the details that affect them most. Below are some of the questions that have already been raised with Fair Trading.

### DO I HAVE TO SIGN A NEW LEASE NOW THE LAWS HAVE CHANGED?

There is no need to sign a new lease agreement now the laws have changed. Even though some of the terms in your current lease may no longer be correct, there is no requirement to enter into a new tenancy agreement; the existing one is still valid. Just bear in mind

that if a term in the agreement conflicts with the requirements under the new Act, then the new laws will apply.

### AS I AM A SELF-MANAGING LANDLORD NOT AN AGENT, CAN I ASK THE TENANT TO PAY COSTS FOR PREPARING THE LEASE?

No, the laws now state that the tenant cannot be asked to pay anything towards the preparation of the lease, and this applies to both agents and self-managing landlords.

If a tenant has already paid a lease preparation fee, does this mean they are entitled to a refund?

If the fee was paid before 31 January 2011, the tenant is not entitled to a refund, as the new laws are not retrospective on this issue.

However, if the tenant has been asked to pay a fee since the new laws commenced, this would be a

breach of the Residential Tenancies Act 2010. It would be reasonable for a tenant in this situation to approach their agent or landlord to seek a refund of any fee they had paid.

### DO I HAVE MORE TIME TO LODGE ANY BONDS I COLLECT?

Under the new laws there are longer time frames for lodging rental bonds, but please note the time frames are different for self-managing landlords and agents. Landlords who have collected money for a bond have 10 working days to lodge the bond with Fair Trading. Agents must lodge all the bonds they have collected during the month within 10 working days from the end of that month.

### IS IT NECESSARY TO REFUND BONDS OF MORE THAN 4 WEEKS RENT?

Under the new laws the maximum

# IMPORTANT CHANGES FOR LANDLORDS WHO COLLECT WATER USAGE FROM TENANTS

AS WE PREVIOUSLY MADE YOU AWARE there are significant changes effecting water usage charges being passed onto your tenant. Any landlord who wishes to collect water usage or continue collecting water usage MUST make their property "WATER EFFICIENT" under the recent new legislation that came into effect on 31st January 2011. Your property must also be separately metered to do so as was the case with the previous 1987 legislation.

The requirement for sink and basin taps to have a maximum flow rate of nine litres per minute does not apply to other taps in the premises such as bathtub taps, laundry taps, outside taps for the garden, or taps which supply washing machines and dishwashers. However any leaking taps internally or externally at your property must be repaired.

Tenants now have 21 days to pay water usage from the date that they are invoiced. These invoices cannot be more than 3 months old otherwise tenant does not have to pay. So for those owners who pass their invoices to us for payment must get these to us soon after they receive them.

There are 3 main points to consider:

Water efficiency devices	Minimum standard required
Internal cold water taps and single mixer taps for kitchen sinks and bathroom hand basins	A maximum flow rate of 9 litres per minute
Showerheads	A maximum flow rate of 9 litres per minute
No leaking taps	No leaking taps anywhere on the premises at the start of the tenancy or when the other water efficiency measures are installed

1. If you do not wish to collect water usage from your tenant or participate in making your property compliant with the new requirements you will need to stop billing your tenant the water usage charges. Previous 1987 Tenancy Act leases have 12 months to comply with this programme. New 2010 Tenancy Act leases must comply immediately & also this also applies if you have a change of tenancy and re-sign a new lease before 31/1/12.
2. Your property may already have water efficiency devices installed and as such you do not need to do anything. If you have proof by way of a plumber's invoice, receipts of purchase of devices or the previous WATERFIX programme by

Sydney Water, you will need you produce such proof if requested by your tenant as evidence that your property complies.

3. Failing to do so may mean that a tenant is entitled to a full refund of water usage charges they have already paid to you.

Majority of licensed plumbers in NSW are aware of the requirements to comply and have worked out competitive price's for you to consider. These can range from \$100.00 up to \$175.00 depending on works required. An initial inspection of the property and breakdown of possible works which may be required to comply with the new legislation can be included in a quote to you by the plumber if need be.

amount of rental bond that can be collected is 4 weeks rent, regardless of whether the premises are furnished or unfurnished. However, it is important to understand that this took effect on 31 January 2011 and is not retrospective.

This means that rental bonds taken under the old laws are not affected by the new Act. Any amount of bond over 4 weeks rent on furnished premises that was collected before 31 January does not have to be refunded.

The full bond should remain lodged with Fair Trading as usual and can be claimed back at the end of the tenancy.

#### NEW STANDARD FORMS AVAILABLE

New versions of the standard residential tenancy agreement and condition report have been produced to meet the requirements of the new Act. Both forms are FREE and available to view or download on the Fair Trading website.

The tenancy agreement is available in a format that enables you to complete it on-screen. However, please note you will not be able to save the completed form on your computer, so once you have filled it in, you will need to print a copy.

To access these forms, go to the Forms page on the Fair Trading website.....

[www.fairtrading.nsw.gov.au/About\\_us/News\\_and\\_events/Tenancy\\_reforms.htmlw](http://www.fairtrading.nsw.gov.au/About_us/News_and_events/Tenancy_reforms.htmlw)

# SO YOUR TRIBUNAL MATTER DIDN'T GO WELL?

## THE REHEARING PROCESS

A rehearing is a provision under section 68 of the Consumer, Trader and Tenancy Tribunal Act 2001 that allows a decision, or parts of a decision to be reheard by a Tribunal Member as if it were a new application.

The grounds for a rehearing application are very limited. A rehearing will only be granted if the Chairperson decides that you may have suffered a substantial injustice in specific circumstances. Dissatisfaction with the decision is not a sufficient reason for a rehearing.

A rehearing is not an appeal.

## APPLYING FOR A REHEARING

Parties may only apply for a rehearing after the proceedings are completed and finalised.

To apply for a rehearing, an application form must be completed and lodged within 14 days after the date of notification of the order, or within 14 days after receipt of the written statement of reasons.

A fee is payable with a rehearing application, being the same amount as the original application.

## WHAT DO I NEED TO PUT IN MY REHEARING APPLICATION?

You must state how you may have suffered a substantial injustice and explain how you think a rehearing would lead to a different result. Attach all your evidence and documents in support of your application with form.

Rehearing applications are decided 'on the papers'. This means that the Chairperson's decision is based on the information you provide in your application and any written submissions provided by the other party. There is no face-to-face hearing.

Carefully read the application form

and provide as much information and documentation as possible.

## REQUESTING A STAY OF PROCEEDINGS

You can also request a 'stay of proceedings' on the application form. A stay of proceedings stop any action, such as the issuing of a warrant, until the determination of the rehearing application is finalised.

## SUBSTANTIAL INJUSTICE

To be granted a rehearing you must prove that you may have suffered a 'substantial injustice'. A substantial injustice must be established on one or more of the following grounds:

- The decision was not fair and equitable
- The decision was against the weight of evidence
- Significant evidence is now available that was not reasonably available at the time of hearing.

## NOT FAIR AND EQUITABLE

It is not enough to simply say that the decision was not fair and equitable. You must describe in detail how the decision is not fair and equitable, and how you think a different decision would have been made if you were present at the hearing.

- If you were unable to attend the hearing due to illness, you should provide a medical certificate.
- If you did not receive the notice of hearing, you will need to complete the affidavit on the rehearing application form.

## AGAINST THE WEIGHT OF EVIDENCE

Dissatisfaction with the Tribunal Member's findings does not amount to substantial injustice. You need to provide details about how you think the Tribunal

Member should have made their decision, based on the evidence and documents presented at the original hearing.

## SIGNIFICANT NEW EVIDENCE NOW AVAILABLE

It is not sufficient to state that you did not have the evidence, or you were unaware of the evidence at the time of the hearing. It must be shown that the new evidence could not have been obtained with reasonable diligence for use at the hearing, and that the new evidence is significant.

## MATTERS THAT CANNOT BE REHEARD

There are specific legislative provisions about the types of matters that cannot be reheard. These include matters where:

- The amount in dispute is more than \$30,000. Note: This limit does not apply in the Tenancy, Social Housing, Residential Parks or Retirement Villages Divisions.
- A warrant for possession has already been executed regarding an order for termination and possession of a tenancy or residency (where the landlord has already taken back possession of the property).
- Strata and community schemes matters (these matters have separate appeal processes and forms)
- The matter has previously been reheard.

## DETERMINATION OF REHEARING APPLICATIONS

Rehearing applications are decided 'on the papers' by the Chairperson or a delegate of the Chairperson. There is no face to face hearing.

Before a rehearing can be granted, the Chairperson must obtain written comments from the other party about the application. A copy of your rehearing application will be

sent to the other party when their written comments are sought.

The Chairperson or delegate will either grant a rehearing or refuse the application after taking into account your application and any submissions from the other party. Brief reasons will be provided with the Chairperson's decision to grant or refuse the application for rehearing.

#### SUCCESSFUL APPLICATIONS

If your rehearing application is successful, you will be advised in writing and new notices of hearing

will be issued.

A successful rehearing application does not necessarily mean that you will be successful at the next hearing. The original application will be dealt with as if it were a new application. You will need to bring all the evidence necessary to present at your hearing to prove your case.

#### REFUSED APPLICATIONS

If your application for rehearing is refused, the original orders will remain in full force and effect. If you were granted a stay with your

application for rehearing, that stay will be lifted and the previous orders will become effective immediately.

In limited circumstances a further rehearing application may be possible - see section 68(9A) of the Act.

For more information Contact:

The Consumer, Trader & Tenancy Tribunal

Information and enquiries – Ph.1300 135 399

Email enquiries: [ctttenquire@cttt.nsw.gov.au](mailto:ctttenquire@cttt.nsw.gov.au)

## TAX AVOIDANCE ON PROPERTY SALES – DON'T RISK IT

PROPERTY DEVELOPERS who try and avoid declaring tax on the sale of property are more likely than ever to be contacted by the ATO.

Specific funding received in the 2010 -2011 Budget will be used to look closely at GST compliance as part of a dedicated program over the next four years.

As part of this program, the ATO is increasing its use of data matching to ensure property developers are reporting all tax obligations on property sales, to promote a level playing field and to make it fairer for all Australians.

Deputy Commissioner Shane Reardon said the ATO is matching information provided on Business Activity Statements (BAS) and income tax returns with information from the Office of State Revenue and Land Titles Office to ensure property developers are correctly reporting GST and income tax

(including capital gains tax) on property sales.

"We have found some property developers deliberately avoiding their obligations by collecting the GST from the purchaser and then failing to pass this on to the ATO either by not lodging their BAS, de-registering from the GST system or not reporting sales within their BAS.

"We are also looking at property developers who intentionally remain outside the GST system or claim credits during construction, but then fail to lodge their business activity statement and individual income tax return." These developers are cheating the community and breaking the law.

In a recent case, a taxpayer was identified as a developer of subdivisions and purchased rural farmland, subdividing it into residential lots for the purpose of sale. Through data matching activities the ATO identified over 100 sales made by the same taxpayer.

The main issues in this case were:

- Omitted GST of approximately

\$1 million

- Non lodgement/default assessments of \$5 million (GST)
- Overstated Input Tax Credits of \$200k

The taxpayer had not reported the property sales and was charged the highest penalty applicable – amounting to approximately \$4.5 million.

"Where we find people who deliberately avoid their tax obligations we will deal with them firmly with appropriate penalties, interest or even prosecution," Mr Reardon said.

Every property transaction you make may have a tax consequence you need to report. If you think you have undeclared tax relating to a property sale, contact your tax agent or the ATO to make a voluntary disclosure.

More information on GST and property is available from [www.ato.gov.au/gstpropertyguide](http://www.ato.gov.au/gstpropertyguide)

More information on CGT and property is available from [www.ato.gov.au/cgt](http://www.ato.gov.au/cgt)

# CONSUMER, TRADER & TENANCY TRIBUNAL

## CHAIRPERSON'S DIRECTION

Procedures applying to applications for termination for non-payment of rent under the Residential Tenancies Act 2010. These directions have effect from 15 March 2011.

### 1.0 Introduction

1.1 These directions are issued pursuant to section 12 of the Consumer, Trader and Tenancy Tribunal Act 2001 and are intended to give some guidance to the parties as to the management of applications for termination of residential tenancy agreements where the landlord gives the tenant a non-payment termination notice under s 88 of the Residential Tenancies Act 2010 (RTA 2010).

1.2 Termination applications will usually be listed in a group list along with a number of other applications. It is intended that a majority of matters will be heard and determined on the first listing. Circumstances where a matter may not be heard on the first listing include:

- one or both parties have requested and been granted an adjournment;
- one or both parties request an adjournment to bring witnesses; and/or
- the likely time to determine the matter exceeds the time available.

1.3 It is assumed for the purposes of this Direction that the landlord has complied with the RTA 2010 requirements in respect of the notice of termination and service.

### 2.0 Application for termination, non-payment of rent, no reference in application to s 89(5) ground

2.1 At the hearing the Member will determine whether the grounds

have been established before making a termination order or specific performance order. Under the RTA 2010 the Tribunal cannot make a termination order in the following circumstances:

- If the tenant has paid all the rent owing as at the date of the hearing; or
- if the tenant has entered into and fully complied with a repayment plan agreed with the landlord as at the date of the hearing.

2.2 Any application for a termination order in these circumstances will be dismissed. The Tribunal may, if requested, make specific performance orders. No right to re-list the application in order to determine whether the tenancy should be terminated can be given.

2.3 Where an application for a termination order is made and:

- the tenant is still in arrears at the date of the hearing; and
- the tenant has failed to comply with an agreed repayment plan the Tribunal may make the following orders as appropriate:
  - a termination order;
  - an order for specific performance; and/or
  - a money order.

2.4 If a specific performance order is made, the Tribunal may also grant the landlord the right to have the matter re-listed if the tenant fails to comply with that order in order to determine whether the tenancy should be terminated. A re-listing will only be granted where it appears on the evidence presented that the Tribunal could make a termination order at the next hearing.

2.5 If a re-listing is granted, at the next hearing the Tribunal cannot

make a termination order:

- if the tenant has paid all the rent owing as at the date of the hearing; or
- if the tenant has entered into and fully complied with a repayment plan agreed with the landlord as at the date of the hearing.

### 3.0 Application for termination, non-payment of rent, including ground that tenant has frequently failed to pay rent owing for the residential premises, s 89(5) ground.

3.1 Where an application to the Tribunal is made based on a non-payment termination notice and on the grounds that the tenant has frequently failed to pay rent owing for the residential premises on or before the date set out in the residential tenancy agreement, the Tribunal may make the following orders as appropriate:

- a termination order;
- an order for specific performance; and/or
- a money order.

3.2 If a specific performance order is made, the Tribunal may also grant the landlord the right to have the matter re-listed if the tenant fails to comply with that order in order to determine whether the tenancy should be terminated. A re-listing will only be granted where it appears on the evidence presented that the Tribunal could make a termination order at the next hearing.

Tax avoidance on property sales – don't risk it

Property developers who try and avoid declaring tax on the sale of property are more likely than ever to be contacted by the ATO.

Specific funding received in the 2010 -2011 Budget will be used to

look closely at GST compliance as part of a dedicated program over the next four years.

As part of this program, the ATO is increasing its use of data matching to ensure property developers are reporting all tax obligations on property sales, to promote a level playing field and to make it fairer for all Australians.

Deputy Commissioner Shane Reardon said the ATO is matching information provided on Business Activity Statements (BAS) and income tax returns with information from the Office of State Revenue and Land Titles Office to ensure property developers are correctly reporting GST and income tax (including capital gains tax) on property sales.

“We have found some property developers deliberately avoiding their obligations by collecting the GST from the purchaser and then failing to pass this on to the ATO

either by not lodging their BAS, de-registering from the GST system or not reporting sales within their BAS.

“We are also looking at property developers who intentionally remain outside the GST system or claim credits during construction, but then fail to lodge their business activity statement and individual income tax return.” These developers are cheating the community and breaking the law.

In a recent case, a taxpayer was identified as a developer of subdivisions and purchased rural farmland, subdividing it into residential lots for the purpose of sale. Through data matching activities the ATO identified over 100 sales made by the same taxpayer.

The main issues in this case were:

- Omitted GST of approximately \$1 million
- Non lodgement/default assessments of \$5 million (GST)

- Overstated Input Tax Credits of \$200k

The taxpayer had not reported the property sales and was charged the highest penalty applicable – amounting to approximately \$4.5 million.

“Where we find people who deliberately avoid their tax obligations we will deal with them firmly with appropriate penalties, interest or even prosecution,” Mr Reardon said.

Every property transaction you make may have a tax consequence you need to report. If you think you

have undeclared tax relating to a property sale, contact your tax agent or the ATO to make a voluntary disclosure.

More information on GST and property is available from [www.ato.gov.au/gstpropertyguide](http://www.ato.gov.au/gstpropertyguide)

More information on CGT and property is available from [www.ato.gov.au/cgt](http://www.ato.gov.au/cgt)

## 3 HOT TIPS FOR END OF FINANCIAL YEAR DEDUCTIONS

AS THE YEAR IS FLYING BY, now is the perfect time to get your year-end tax planning in order to maximise your deductions. Three key issues are:

1. Payments in advance. You can borrow deductions from next year to claim this year. Investors can pay a maximum of 12 months in advance. With interest payments, you could get one year ahead and stay that way, but it is best to save this for when you need it most because it can only be used effectively once. And if you don't continue paying interest in

advance you will have a year with no interest deduction. It is really a tool for evening out fluctuating incomes. Check if your bank will let you do this and that they accept it as an interest payment, not a reduction in the loan balance. If you have recently bought a property, consider organising your quantity surveyor's depreciation schedule before the end of the year.

2. Repairs and maintenance need to be incurred before the end of this financial year. This means organising for the work to be done even if you have not yet paid for it. This is particularly important if your tenants have moved out and you do not intend to re-let the property. In this case, if you don't incur the repairs now you will not be entitled to a tax deduction next year because the property will not have

earned a rental income that year.

3. Buying plant and equipment will not give you much of a deduction if it is going to be depreciated under normal circumstances as the depreciation will be apportioned over the number of days left in the financial year. Items costing less than \$300 can be written off immediately. The same items must be added together when applying the \$300 test so it may be better to buy one set of curtains this year and the next in July. Items costing less than \$1000 will qualify for depreciation of 18.75% in the first year, regardless of when they were bought. Both these thresholds are per owner so a \$1900 hot water service for a property owned by two people would qualify as under \$1000.

# UPDATE ON SMOKE ALARMS

WITH MORE AND MORE MEDIA ATTENTION this winter on house fire's and/or faulty or no installation of smoke alarms in residential premises it is important that landlords understand their obligation under the Residential Tenancy Act 2010 to "install and maintain" smoke alarms at their investment properties.

## LANDLORDS AND TENANTS

Under the Residential Tenancies Act 2010:

- Landlords are responsible for the installation of smoke alarms in rented premises.
- Landlords have the right of access to rented premises to fit or maintain smoke alarms after giving the tenant at least 2 days notice.
- Neither the landlord nor the tenant are, except with reasonable excuse, permitted to remove or interfere with the operation of a smoke alarm fitted in the rented premises.
- Where a smoke alarm is of the type that has a replaceable battery, it is recommended that the landlord put a new battery in at the commencement of a tenancy.
- After the tenancy begins, the tenant is responsible for replacing the battery if needed. Fire and Rescue NSW can assist elderly tenants or those physically unable to change a smoke detector battery.
- The condition report includes a specific reference to smoke alarms so that tenants and landlords are able to note and comment on the presence of smoke alarms at the beginning and end of the tenancy.

IMPORTANT - Owners of residential property who rent out their premises as holiday

accommodation are responsible for installing smoke alarms and replacing batteries.

## OWNERS AND RESIDENTS OF RESIDENTIAL PARKS

Under the Residential Parks Regulation:

- Park owners who rent out on-site accommodation under tenancy agreements are responsible for installing smoke alarms in rented premises.
- Park owners have the right of access to rented premises to fit smoke alarms after giving the tenant at least 2 days notice.
- Neither the park owner nor the resident is, except with reasonable excuse, permitted to remove or interfere with the operation of a smoke alarm fitted in the rented premises.
- Where a smoke alarm is of the type that has a replaceable battery, the park owner must put a new battery in at the commencement of a tenancy.
- After the tenancy begins, the resident is responsible for replacing the battery if needed. However, if the resident is physically unable to change the battery the resident should notify the park owner as soon as practicable after becoming aware of the need for it to be replaced.
- The resident is not responsible for the replacement of batteries in 'hard-wired' smoke alarm systems that have battery back-up. This is the responsibility of the park owner.
- The condition report section of the tenancy agreement must include a specific reference to smoke alarms so that residents and park owners are able to note and comment on the presence of smoke alarms at the beginning and end of the tenancy.

The above obligations on park owners equally apply to residents

who sub-let their moveable dwellings.

## STRATA SCHEME LOT OWNERS

In a strata scheme:

- Owners of lots can install smoke alarms in their lots without having to obtain approval of the owners corporation.
- There is an obligation on lot owners to repair any damage to common property caused by the installation of a smoke alarm.

Lot owners who rent out their strata scheme residential property should note their responsibilities as landlords in relation to smoke alarms under the Residential Tenancies Act 2010.

## OPERATORS AND RESIDENTS OF RETIREMENT VILLAGES

Under the Retirement Villages Regulation:

- Operators are responsible for the installation of smoke alarms and the replacement of all required batteries in premises occupied by residents.
- Operators, or persons authorised by operators, have the right of access to premises occupied by residents to install smoke alarms and to replace batteries after giving the resident at least 2 days notice.
- The condition report section of the occupancy agreement must include a specific reference to smoke alarms so that residents and operators will be able to note the presence of smoke alarms at the beginning of the occupancy.

## AT A GLANCE

There are no changes in this area of the law between the old Act and the tenancy laws that began on 31 January 2011.

The POANSW advises its members that should they wish to reduce their risk and any liability in relation to maintaining (e.g. yearly inspections or inspections after

every tenancy)smoke alarms than they should appoint a licensed electrician to carry out such work. There are also third party companies that are licensed to maintain smoke alarms and provide compliance certificates at a low

annual cost of around \$70.00-\$100.00.

**MORE INFORMATION**

For more information about the type, location and number of smoke alarms that are required to be fitted

to the various classes of residential premises, contact:

**FIRE AND RESCUE NSW**  
www.fire.nsw.gov.au or call  
02 9265-2999

## RENTS JUMP BY UP TO 15 PERCENT

RENTS HAVE INCREASED by up to 15 per cent in the past year, according to a survey by Australia’s largest metropolitan property manager.

RUN Property, which manages 18,000 properties throughout Melbourne, Sydney and Brisbane, said rents have jumped up to \$70 a week in the nation’s hottest rental suburbs.

RUN Property CEO Rob Farmer said the rental market was on fire in many suburbs and demand for properties was the strongest it had been for years.

“Competition is over the top for

rental properties which has pushed the vacancy rate to less than 1 per cent in many areas,” Mr Farmer said.

“In many suburbs, every single property which comes up for a new lease is re-let at an increased rent,” Mr Farmer said.

“Most properties in prime inner suburbs are being rented again during the notice period of vacating tenants, meaning they never actually become vacant.”

Demand was always strong for new properties and tenants were keen to move into newer apartments to gain access to a pool or gym, even if the rent was higher, Mr Farmer said.

But some tenants who wanted to relocate were not moving because

they feared missing out on another property, which only reduced the number of properties for rent, he said.

The strongest performing suburb in Australia was Kogarah in NSW where rents for new leases increased by 14.8 per cent in the past year.

Second was Glebe in NSW where new leases increased by 13.9 per cent, followed by NSW’s Chippendale at 11.9 per cent.

The average rent increase for new leases in Sydney over the past year was 7.6 per cent, or \$37 a week to an average of \$532. The average rise in Melbourne was 6.5 per cent or \$23 to \$375 a week and in Brisbane the average increase was 2.8 per cent or \$9 a week to an average of \$331

	March 2010 Weekly Rent Average \$	March 2011 Weekly Rent Average \$	Average of Weekly Rent Difference	Average of Weekly Rent Difference %
NSW	\$494.47	\$531.89	\$37.41	7.6%
KOGARAH	\$329.94	\$378.63	\$48.69	14.8%
GLEBE	\$502.64	\$572.36	\$69.72	13.9%
CHIPPENDALE	\$460.40	\$514.96	\$54.56	11.9%
RANDWICK	\$509.47	\$568.00	\$58.53	11.5%
CARLTON	\$317.22	\$350.66	\$33.44	10.5%
NEUTRAL BAY	\$434.27	\$479.29	\$45.02	10.4%
BONDI	\$502.16	\$551.18	\$49.02	9.8%
PYRMONT	\$582.79	\$639.66	\$56.87	9.8%
PADDINGTON	\$620.77	\$678.86	\$58.09	9.4%
SURRY HILLS	\$494.86	\$541.10	\$46.23	9.3%
BRONTE	\$467.16	\$509.98	\$42.82	9.2%
NORTH BONDI	\$525.81	\$571.56	\$45.75	8.7%
RYDE	\$370.20	\$401.52	\$31.33	8.5%
DARLINGHURST	\$467.74	\$506.50	\$38.76	8.3%
LANE COVE	\$381.51	\$413.10	\$31.60	8.3%
LEICHHARDT	\$537.25	\$578.46	\$41.21	7.7%
ELIZABETH BAY	\$536.47	\$576.42	\$39.95	7.4%

COOGEE	\$551.56	\$592.43	\$40.87	7.4%
ST LEONARDS	\$476.77	\$511.82	\$35.05	7.4%
HURSTVILLE	\$368.57	\$393.87	\$25.30	6.9%
WOLLSTONECRAFT	\$443.54	\$473.16	\$29.62	6.7%
CREMORNE	\$473.22	\$504.57	\$31.35	6.6%
NEWTOWN	\$464.01	\$493.97	\$29.96	6.5%
ROSE BAY	\$479.47	\$509.98	\$30.51	6.4%
BONDI JUNCTION	\$575.72	\$611.95	\$36.24	6.3%
BONDI BEACH	\$501.93	\$533.30	\$31.37	6.2%
WOOLLOOMOOLOO	\$538.16	\$569.90	\$31.74	5.9%
NORTH SYDNEY	\$469.25	\$496.78	\$27.53	5.9%
SYDNEY	\$609.95	\$643.63	\$33.68	5.5%
POTTS POINT	\$394.36	\$415.40	\$21.04	5.3%
WOOLLAHRA	\$625.33	\$658.45	\$33.12	5.3%
CHATSWOOD	\$591.24	\$622.30	\$31.06	5.3%
ARTARMON	\$487.71	\$512.51	\$24.80	5.1%
EDGECLIFF	\$457.68	\$478.57	\$20.89	4.6%
MOSMAN	\$511.99	\$535.24	\$23.25	4.5%
BELLEVUE HILL	\$561.42	\$586.45	\$25.03	4.5%
CROWS NEST	\$401.16	\$418.08	\$16.92	4.2%



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