



2012
End of Year
Issue

**The Property Owners'
Association of NSW**

Quarterly Journal | November 2012

— poa- nsw —

THE PROPERTY OWNERS' ASSOCIATION OF NSW



02 9363 3949



www.poansw.com.au



PO Box 329
Bondi Junction NSW 1355

PRESIDENT

Mr John Gilmovich

@john@poansw.com.au

0418 600 806

1st Vice President

Gordon McLean

@gordon@poansw.com.au

02 9363 3949

2nd Vice President

Mr Rick Banyard

02 9363 3949

Treasurer

Mr John Gilmovich

Secretary

Mr Peter Dormia

@peter@poansw.com.au

0417 065 798

Honorary Solicitor

Mr Paul Egisto

@egistosolicitors@bigpond.com

02 9713 2000

Honorary Accountant

Mr Alex Whitehead

02 9966 4499

Committee of Management

Rick Banyard

Don Davison

Paul Egisto

Susanne Gervay

Gabriel Keleny

John Owens

PRESIDENT'S REPORT AUGUST - NOVEMBER 2012

I welcome you to my first report as the president of The Property Owners Association of NSW and our final journal for 2012. What a year it has been for your committee with more challenges ahead of us. Such swift changes and reform occurring to the NSW property ownership industry and the consumer protection sector. Not all of it positive of course, with over 100 pieces of legislation currently under the microscope in NSW. Earlier this year it was announced that strata title was going to be reformed after 50 years of the same regime. This has come to fruition with a directions paper released last month asking for key stakeholder input. POANSW has had their say.

What massive controversial overhaul to the boarding house industry proposed with a draft Bill to legislate and register operators announced only a short while ago giving us less than one month to make comment on what is proposed to effect a small but crucial sector of the low cost accommodation industry. Our private hotel and boarding house sub-committee spent countless hours dissecting the bureaucrats draft Bill which was rushed and passed through Parliament on 17th October 2012. More information inside the journal on what this will mean for operators.

Changes to local LEP'S, keeping of pets in strata, home building/warranty reform to name a few, have been consulted by your committee.

Our biggest challenge remains land tax, at a local, state and federal level, still a divided issue, still in the "too hard" basket. We have not given up. An invitation has gone out to a key expert on the topic requesting to give our committee and members a talk in 2013.

We are looking for new ways to add more value to our current and future members. 2013 should bring more services and initiatives for our members including access to tenant data bases, key note speakers on hot topics and potentially an industry standard pro- forma occupancy agreement for boarding house operators which will now be required to be entered into by all occupants of and registered boarding house operators.

I welcome our new members and thank all present members for continuing their support for the only key group that represents the private landlord market in NSW and also to thank all our committee members for their efforts in 2012.

We look forward to seeing you all at our end of year social function on 4th Dec.

Wishing you and your families all a safe, healthy and prosperous 2013!

Kind Regards,

J. Gilmovich

IN THIS EDITION

President's Report	3
Land Tax Seminar Invite	4
Xmas Party Invite	4
Have Your Say - Review of Strata & Community Scheme Laws	5
Push to Enforce Building Codes in NSW	5
More Diligence Required When Inspecting Property Before Purchasing	6
Tenancy Matters	6
C.T.T.T 2010-2011 Annual Report - Tenancy Division Wrap Up	7
Using Electronic Evidence at CTTT Hearings	8
Amended Boarding House Bill 2012	8
Agent Impersonator Arrested	12
What Happened to the Markets in September?	12
Can I Bring a Legal Representative to a Tenancy Tribunal Hearing?	13
NSW Government Merges Tribunals in an Overhaul	14
Water... Your Shout?	14
For Sale - DA Approved Boarding House Site	15

WELCOME TO OUR NEW MEMBERS:

R. Manassa	E. Challenor
M. Garner	H. Metrofanous
J. Avenell	T. Cirom
R. Cotterall	J. Nix
K. Maloney	J. Flavaris
B. Kubica	T. Chen
N. Freeman	

PROPERTY OWNER'S ASSOCIATION OF NSW INC.

invites you to...

LAND TAX SEMINAR **For Property Investors**

- Land Tax Implications of different operating structures (e.g. Company V Trust V Individual)
- Exemptions for Boarding Houses / Low Cost Operators / PPR
 - Changes to Legislation

Speaker:

CHERYL CARE

Technical Education Officer
Office of State Revenue

Date & Time: 7:45pm Wednesday
7th November 2012

Venue: The Hughenden, 14
Queen Street Woollahra NSW

Tickets: FREE for members /
non-member \$15 entry fee

NOTE : The Hughenden Hotel Cafe restaurant is
scheduled to be closed
for renovations.

Optional drinks for Members & guests is
scheduled before hand at 6.45pm.
Cost of optional drinks not inclusive of seminar.

Seats are Limited!

ANNUAL END OF YEAR **MEMBERS XMAS** **PARTY 2012**

*Featuring multiple award winning violinist
Victoria Jacono who will be promoting her
debut CD Romance, Rags & Blues (All Original
Australian Compositions).*

Date & Time: 6:30pm - 9:30pm
Wednesday 5th December 2012

Venue: The Hughenden, 14 Queen
Street Woollahra NSW

Tickets: FREE for members /
non-member \$50.00 per head
RSVP by 31/11/2012 - Email or fax your

VISA or MASTERCARD to:
Name: Card Type:
Card No. Expiry date:

The Hughenden, 14 Queen Street
Woollahra NSW 2025
Email: reservations@thehughenden.com.au
Fax: 02 9362 0398 Ph: 02 9363 4863
or post cheque to The Hughenden Hotel

This event is catered. If you have any special
dietary requirements, please contact
The Hughenden Hotel.

Guests are welcome but must RSVP
and pre-pay in advance.

We look forward to seeing you!

HAVE YOUR SAY- REVIEW OF STRATA AND COMMUNITY SCHEME LAWS

COMMENTS CLOSE 15 NOVEMBER 2012

Some fifty years on since the commencement of
strata schemes, more than one quarter of the State's
population owns, lives or works in strata and
community schemes.

What's happening?

To assist stakeholders and interested parties in
making a submission, a discussion paper has been
publicly released which outlines a range of issues
and invites comment on possible options to reform
the laws.

How can I provide my comments?

The discussion paper can be downloaded from the
'Important documents' section of The Office of Fair
Trading website. It is 56 pages long! Link to the
document is below...

[http://www.fairtrading.nsw.gov.au/pdfs/About_us/
Have_your_say/Making_nsw_no_1_again_shaping
future_communities.pdf](http://www.fairtrading.nsw.gov.au/pdfs/About_us/Have_your_say/Making_nsw_no_1_again_shaping_future_communities.pdf)

Written submissions can be made using the form at
the back of the discussion paper, or you can respond
to any or all of the specific questions raised
throughout the paper. Written comments and
submissions should be sent to:

Email: policy@services.nsw.gov.au
Post: Review of strata and community title laws
Fair Trading Policy
PO Box 972
PARRAMATTA NSW 2124
Fax: 02 9338 8990

All submissions will be made publicly available in due
course. If you do not want your personal details or any
part of your submission published, please indicate
this clearly in your submission together with reasons.
Automatically generated confidentiality statements
in emails are not sufficient. You should also be aware
that even if you state that you do not wish certain
information to be published, there may be
circumstances in which the Government is required
by law to release that information, for example in
accordance with the requirements of the Government
Information (Public Access) Act 2009.

The Property Owners Association will be making their
own submission on behalf of members across or a
range of common strata issues, including dispute
resolution methods, most common areas of disputes,
powers and voting rights of executive committees,
sale of strata plans to developers and voting methods
and restrictions on keeping of animals.

PUSH TO ENFORCE BUILDING CODES IN NSW

Home unit owners will be pushing the NSW
government to enforce relevant building codes,
after concerns with the high numbers of defects in
strata buildings.

Stephen Goddard, lawyer and president for the
Owners Corporation Network, said that for some
people it can be "high rise hell".

"There are too many flawed buildings and an industry
culture of ignoring responsibility for the huge number
of new buildings with defects," he said.

"And this is happening in a context of government
permissiveness about how the industry behaves and
is monitored."

OCN will urge Government agreement to a Fairness
in Strata Charter to address the 85% rate of defects
in new strata buildings, three-quarters of which are
never fixed by developers.

Units are the fastest growing form of residential
property ownership with over half the dwellings built
in metropolitan areas now strata titled.

According to the OCN, there are many developers who
regard built-in defects as an acceptable and even a
convenient way of saving on construction costs.

"Then there are building certifiers who don't do their
job, warranties not worth the paper they're written
on, government that doesn't seem to care and owners
ending up with litigation and sky high remediation
costs that in many cases they can't afford," Mr
Goddard says.

Some of the case studies that demonstrate problems within the existing system include fire safety certificates issued to non-compliant buildings and builders failing to remedy documented defects.



MORE DILIGENCE REQUIRED WHEN INSPECTING PROPERTY BEFORE PURCHASING

While the average property buyer undergoes extensive overall research, just an hour is spent looking at the property they buy, a national survey has revealed.

The St. George Bank commissioned survey revealed that, despite viewing 12 properties, spending seven months searching and undergoing 90 hours of research, the average buyer spends just over an hour actually inspecting the property they finally purchase.

After spending 3.2 hours per week, for 28 weeks, including searching websites, planning, inspecting and visiting real estate agents, general manager of St. George Retail Banking, Andy Fell, said that the survey found that just 62.5 minutes was spent inspecting the final dwelling settled on.

“Most people will look at a new car for longer than they inspect the home they buy,” said Mr Fell.

Fifty-five per cent of those surveyed also reported finding ‘hidden problems’ with their properties once they’d purchased, despite the same proportion believing they had ‘completed all necessary pre-purchase checks’.

This is a result, said Mr Fell, of not doing their due diligence and spending enough time inspecting the dwelling.

Plumbing problems were by far the most reported “missed” problem discovered, with 28 per cent of buyers pointing to this problem.

Poor television reception and poor mobile coverage also weighed in as missed factors at 23 per cent and 20 per cent respectively.

Noisy neighbours, at 19 per cent, was also a commonly found problem that had slipped through the net, while eight per cent pointed to insufficient parking and future developments in the area as having been missed in the due diligence process.

The majority of the overall research is done online, with 71 per cent pointing to real estate agent’s websites and just 38 per cent of research undertaken through newspapers.

This survey, of 1,500 property buyers nationwide, was conducted in mid-July 2012 by Lonergan Research.



TENANCY MATTERS

Recently one of our executive committee members attended a workshop put on by the C.T.T.T. that was focused primarily on answering some of the hard questions that might come up as a concern to any landlord. Key areas of discussion was around presentation of evidence, mould cases, termination, depreciation and noneconomic loss. A summary of the points is outlined below;

Evidence

- Verbal evidence will hold more weight where the agency can demonstrate a paper trail of notes or a system for notes relating to the case
- Hearing Notes should always be completed for every hearing (template is downloadable from CTTT website)
- All evidence should be page numbered and tabbed for easy reference
- Corroborative evidence is best
- Video is not helpful, dated photographs are the easiest solution.

Mould Cases

- Tenants are required to mitigate their loss where mould occurs
- Landlords should show proof that the property is adequately ventilated
- It is unreasonable to expect a tenant to open windows for ventilation as an easy, quick solution. Action by the landlord to include dehumidifiers or more ventilation is helpful to the case
- Termination Applications where section 89 (5) for possession is granted should also ensure that this section is quoted in the Orders for Possession
- It is the applicant’s responsibility to ensure the orders that are made by the member include everything that the member has verbally granted
- An application for rent arrears and possession that does not include section 89 (5) will not be awarded a re-list of the matter if requested

- Where possession of the property is being sought, evidence should be provided by the agency as to the landlord’s financial circumstances. This evidence directly relates to the amount of time a tribunal member grants the tenant to vacate the property, despite the arrears.
- It is in the landlords/agents best interest to create an argument for the period of possession with this evidence.
- Examples;
 - » What outgoings does the landlord have to pay for the property?
 - » How large is the Land tax bill?
 - » Does the Landlord live off the rent paid?
 - » Is there a mortgage?
 - » How large is it?
 - » Is there a real threat for mortgagee in possession?

Depreciation

- Avoid looking ‘unprofessional’ by depreciating your claimed items prior to your application being lodged
- Use the Australian Taxation Office depreciation guidelines to calculate depreciation on items such as paint, carpet, whitegoods, blinds etc.
- Bond claims are for the landlord economic loss
- A landlord will not win compensation for items that have received a period of depreciation already. This is considered double dipping

Noneconomic Loss

- This only applies to the tenant
- Claims are very limited
- This area of the law is covered by the Civil Liabilities Act
- An applicant must show strong evidence for physical or psychological issues as a result
- Their incapacitation must be at least 15%

One final point regarding smoking. It is not considered Discriminatory to decline an application on the basis the tenant is a smoker. Further, clauses regarding this are acceptable in a tenancy agreement and enforceable although termination on grounds of breach if this clause was added as an additional term is questionable.



C.T.T.T 2010-2011 ANNUAL REPORT - TENANCY DIVISION WRAP UP

The Tenancy Division deals with disputes between landlords and tenants who have entered into a residential tenancy agreement.

The Tribunal has jurisdiction under the Residential Tenancies Act 2010 to hear and determine applications from landlords, tenants, co-tenants and occupants. The common types of issues that arise in this Division include breaching the residential tenancy agreement, termination of agreements for failing to pay rent and return of rental bonds.

The commencement of the Residential Tenancies Act 2010 has meant that the Tribunal can now make orders to deal with the following disputes:

- Resolving a dispute between co-tenants
- Sub-letting
- Disputes about information in tenancy databases
- Recognition of occupant as tenant after an apprehended violence order (AVO)

The new Residential Tenancies Act 2010 has to date not significantly impacted on the workload of the Division.

Application trends

2010-2011	31,039
2009-2010	30,490
2008-2009	34,223
2007-2008	51,080
2006-2007	49,466

The Residential Tenancies Act 2010 does not apply to hotels and motels, boarders and lodgers, protected tenancies, and commercial or retail tenancies.

KEY FACTS 2010-2011

APPLICATIONS

Number of applications received 31,039
 • 2% increase from 2009-2010

Number of online lodgements 13,222

Applications types:

• Pre-arrangement matters and agreements	66
• Rent and other payments	661
• Access to residential premises	162
• Repairs*	212
• Alterations and additions*	17
• Security and safety*	11
• Change of tenants	75
• Termination for non-payment of rent	13,695
• Termination by a co-tenant under Section 102*	42
• Termination for other reasons	4,121
• Mortgagee repossession	7
• Occupation fee*	6
• Vesting of tenancy*	3
• Abandonment of residential premises	110
• Goods left in residential premises	67
• Rental bonds	4,894
• General orders	5,901
• Residential tenancy databases*	11
• Renewal	44
• Rehearing	934

Applicants:	
Landlord	23,882
Tenant	6,951
Other person**	76
Co-tenant**	74
Occupant	35
Prospective tenant**	21

HEARINGS

Number of hearings 35,297

Number of adjournments 8,797

FINALISED MATTERS

Number of matters finalised 31,137

REHEARINGS AND APPEALS

Number of rehearings granted 426

Supreme Court / District Court appeals 24

** New 'Applicant' categories introduced from 31 January 2011 in line with new Tenancy legislation.

USING ELECTRONIC EVIDENCE AT CTTT HEARINGS

With the increasing personal use of mobile technologies, parties attending a Tribunal hearing may want to present evidence in an electronic format using their own laptop, tablet or smartphone.

The Acting Chairperson has issued a new Chairperson's Directions with detailed information about presenting evidence to the Tribunal using non-printed electronic formats.

Below is a list of the types of electronic devices that are accepted in Tribunal hearings.

Accepted

- Laptop
- Smartphone
- Tablet
- CD audio recording
- DVD or video cassette

Not accepted

- USB flash drive
- CD with documents or image files

If you are going to use a laptop, tablet or smartphone to present your evidence, please ensure your equipment is in good working order before attending the hearing.

If you are bringing a DVD, CD or video cassette to use as evidence, the disc or cassette must be clearly labelled with the Tribunal file number, your name and contact details, a list of the file names, and the duration of each audio/video recording.

Parties wishing to use electronic evidence should contact the CTTT Registry ahead of their hearing date to confirm equipment availability.

AMENDED BOARDING HOUSE BILL 2012

At the time of publication of this edition of POA NSW Journal, The Disability Minister Constance had just presented to NSW Parliament the fast tracked Boarding House Bill 2012.

It contains some amendments to the exposure draft Boarding House Bill 2012 released on 29 June 2012.

A full copy of the bill can be found at: <http://tinyurl.com/8qc3za8>

While the First and Second readings and debate on the Boarding House bill can be found at: <http://tinyurl.com/8jbx9cq>
<http://tinyurl.com/9dtrkijw>

In a nutshell, the act will provide for:

Registration of all registrable boarding houses which are defined in Clause 5 as:

Clause 5 defines the term **registrable boarding house** to mean any of the following:

- a) Boarding premises that provide beds, for a fee or reward, for use by 5 or more residents (not counting any residents who are proprietors or managers of the premises or relatives of the proprietors or managers), which are referred to in the proposed Act as a **general boarding house**,
- b) An assisted boarding house that is required to be authorised under Part 4 for it to be lawfully used as such under that Part, which is referred to in the proposed Act as a **regulated assisted boarding house**.

The proposed section also excludes certain kinds of premises from the definition of a **general boarding house**.

Severe penalties (up to \$11000) will apply for failure to register or false or misleading registration.

Local councils will be granted more and extensive powers, and will be required to inspect all boarding houses annually, so as to ensure that they are fully compliant.

Boarding houses with less than 12 beds will now have to meet tougher standards set in Local Government (General) Regulation 2005 (Part 1 Schedule 2).

Further local councils will be empowered to seek out and attend to any suspected illegal Boarding Houses.

Part 4 covers the newly named Assisted Boarding Houses (previously termed by regulators as Tier Two Licenced Residential Care facilities).

Clause 36 and 37 defines and then outlines their application:

Clause 36 defines a person to be a **person with additional needs** if:

- a) The person has any one or more of the following conditions:
 - i) An age related frailty,

- ii) A mental illness within the meaning of the Mental Health Act 2007,
- iii) A disability (however arising and whether or not of a chronic episodic nature) that is attributable to an intellectual, psychiatric, sensory, physical or like impairment or to a combination of such impairments, and

- b) The condition is permanent or likely to be permanent, and
- c) The condition results in the need for care or support services (whether or not of an ongoing nature) involving assistance with, or supervision of, daily tasks and personal care such as (but not limited to) showering or bathing, the preparation of meals and the management of medication.

Clause 37 defines an **assisted boarding house** to mean any of the following:

- a) Boarding premises that provide beds, for a fee or reward, for use by 2 or more residents who are persons with additional needs (not counting any persons with additional needs who reside there with their competent relatives),
- b) Boarding premises that are declared to be an assisted boarding house by a notice in force under proposed section 39.

The proposed section also excludes certain kinds of premises from the definition of an **assisted boarding house**.

Occupants of registrable boarding houses will be provided with principle based occupancy rights outlined in Schedule One. Operators will be required to provide written occupancy agreements that comply with the occupancy principles outlined in schedule one:

Schedule 1 Occupancy principles (Section 30 (1))

1. State of premises

A resident is entitled to live in premises that are:

- a) Reasonably clean, and
- b) In a reasonable state of repair, and
- c) Reasonably secure.

2. Rules of registrable boarding house

A resident is entitled to know the rules of the registrable boarding house before moving into the boarding house.

3. Penalties for breaches of agreement or house rules prohibited

A resident may not be required to pay a penalty for a breach of the occupancy agreement or the rules of the registrable boarding house.

4. Quiet enjoyment of premises

A resident is entitled to quiet enjoyment of the premises.

5. Inspections and repairs

A proprietor is entitled to enter the premises at a reasonable time on reasonable grounds to carry out inspections or repairs and for other reasonable purposes.

6. Notice of increase of occupancy fee

A resident is entitled to 4 weeks written notice before the proprietor increases the occupancy fee.

7. Utility charges

- (1) The proprietor is entitled to charge a resident an additional amount for the use of a utility if:
 - a) The resident has been notified before or at the time of entering the occupancy agreement of the use of utilities in respect of which the resident will be charged, and
 - b) The amount charged is based on the cost to the proprietor of providing the utility and a reasonable measure or estimate of the resident's use of that utility.
- (2) A utility for the purposes of this clause is each of the following:
 - a) The supply of electricity,
 - b) The supply of gas,
 - c) The supply of oil,
 - d) The supply of water,
 - e) The supply of any other service prescribed by the regulations.

8. Payment of security deposits

- (1) The proprietor may require and receive a security deposit from the resident or the resident's authorised representative only if:
 - a) The amount of the deposit does not exceed 2 weeks of occupancy fee under the occupancy agreement, and
 - b) The amount is payable on or after the day on which the resident (or the resident's authorised representative) enters the agreement.
- (2) Within 14 days after the end of the occupancy agreement, the proprietor must repay to the resident (or the resident's authorised representative) the amount of the security deposit less the amount necessary to cover the following:
 - a) The reasonable cost of repairs to, or the restoration of, the registrable boarding house or goods within the premises of the boarding house, as a result of damage (other than fair wear and tear) caused by the resident or an invitee of the resident,

- b) Any occupation fees or other charges owing and payable under the occupancy agreement or this Act,
 - c) The reasonable cost of cleaning any part of the premises occupied by the resident not left reasonably clean by the resident, having regard to the condition of that part of the premises at the commencement of the occupancy,
 - d) The reasonable cost of replacing locks or other security devices altered, removed or added by the resident without the consent of the proprietor,
 - e) Any other amounts prescribed by the regulations.
- (3) The proprietor may retain the whole of the security deposit after the end of the occupancy agreement if the costs, fees or charges referred to in sub-clause (2) (a)–(e) are equal to, or exceed, the amount of the security deposit.
 - (4) In this clause: **Security deposit** means an amount of money (however described) paid or payable by the resident of a registrable boarding house or another person as security against:
 - a) Any failure by the resident to comply with the terms of an occupancy agreement, or
 - b) Any damage to the boarding house caused by the resident or an invitee of the resident, or
 - c) Any other matter or thing prescribed by the regulations.

9. Information about occupancy termination

A resident is entitled to know why and how the occupancy may be terminated, including how much notice will be given before eviction.

10. Notice of eviction

- (1) A resident must not be evicted without reasonable written notice.
- (2) In determining what is reasonable notice, the proprietor may take into account the safety of other residents, the proprietor and the manager of the registrable boarding house.
- (3) Sub-clause (2) does not limit the circumstances that are relevant to the determination of what is reasonable notice.

11. Use of alternative dispute resolution

A proprietor and resident should try to resolve disputes using reasonable dispute resolution processes.

12. Provision of written receipts

A resident must be given a written receipt for any money paid to the proprietor or a person on behalf of the proprietor.

Of note, any dispute that can't be resolved can be brought before the CTTT tribunal, which may award costs, as outlined in clause 32:

32. Applications to Consumer, Trader and Tenancy Tribunal for dispute resolution

- (1) A relevant party may apply to the Consumer, Trader and Tenancy Tribunal for the resolution of an occupancy principles dispute.
- (2) A **relevant party** is:
 - a) A resident or former resident of a registrable boarding house (or an authorised representative of the resident or former resident), or
 - b) A proprietor or former proprietor of a registrable boarding house.
- (3) An **occupancy principles dispute** is a dispute between relevant parties about the application of the occupancy principles in relation to a resident or former resident of a registrable boarding house.
- (4) The Tribunal may, on application under this section, make one or more of the following orders:
 - a) An order that restrains any action in contravention of the occupancy principles,
 - b) An order that requires an action in performance of the occupancy principles,
 - c) An order for the payment of an amount of money (including an order for the refund or repayment of some or all of an amount paid as an occupancy fee or security deposit),
 - d) An order as to compensation,
 - e) An order that a party to the occupancy agreement perform such work or take such other steps as the order specifies to remedy a contravention of the occupancy principles,
 - f) An order that requires payment of part or all of an occupancy fee to the Tribunal until the whole or part of the occupancy agreement has been performed or any application for compensation has been determined,
 - g) An order that requires an occupancy fee paid to the Tribunal to be paid towards the cost of remedying a contravention of the occupancy principles or towards the amount of any compensation,
 - h) An order directing a proprietor, proprietor's agent or resident to comply with a requirement of this Part,
 - i) An order directing a proprietor or proprietor's agent to give a former resident or person authorised by a former resident access to a registrable boarding house for the purpose of recovering goods of the former resident or fixtures that the former resident is entitled to remove.

- a) The payment of an amount that exceeds the amount (if any) prescribed by the regulations for the purposes of this section, or
 - b) The performance of work or the taking of steps the cost of which is likely to or will exceed the amount (if any) prescribed by the regulations for the purposes of this section.
- (6) A reference in this section to the occupancy principles is a reference to those principles as they apply under this Part in relation to residents of registrable boarding houses under occupancy agreements.

33. Order for written occupancy agreement

- (1) A resident of a registrable boarding house may apply to the Consumer, Trader and Tenancy Tribunal for an order that the proprietor of the boarding house prepare and enter into a written occupancy agreement with the resident.
- (2) The order may:
 - a) Specify the terms of the agreement, and
 - b) Specify a commencement date for the agreement that occurred before the order was made.
- (3) The Tribunal may make an order under this section only if it is satisfied that the proprietor and resident are subject to an existing occupancy agreement that is not in writing or is only partly in writing.

The provisions in the Boarding House bill 2012 will be reviewed by the NSW parliament. It is understood that the opposition parties may propose amendments in the legislative council.

The Property Owners Association of NSW is concerned that the provisions will hamper the already marginal (non-assisted) Boarding House industry. Operators, especially those of less than 12 beds will face further compliance costs, and may affect their viability. This could have severe implications for the supply of affordable accommodation in NSW, and only fuel the illegal accommodation industry.

All boarding House operators will need to review and reconsider their operations in light of the proposed legislation. The regulations to the Boarding House Act have not been issued at this point and POANSW await these to review and make further submission on issues that concern us and our members.

The POANSW Private Hotel & Boarding House Sub-Committee.



AGENT IMPERSONATOR ARRESTED

Police have uncovered another property-related fraud case only weeks after the NSW government warned agents and consumers to be on guard for real estate scams.

According to a statement from NSW Police, a man has been charged for falsely acting as a real estate agent and defrauding \$730,000 from a 52-year-old man.

A Hinchinbrook man contacted Liverpool Detectives in May 2010 after he discovered he had allegedly been defrauded in relation to the purchase of a property at Edmondson Park, in Sydney's outer south west suburbs.

Between April 2007 and January 2010, the victim allegedly deposited a total of \$730,000 into an account belonging to a man claiming to be representing the owner of the property.

Following exhaustive inquiries, a 36-year-old man was arrested by Liverpool Detectives at Wagga Wagga Police Station yesterday.

He was charged with obtaining a benefit by deception and ordered to appear in Campbelltown Local Court on 14 November 2012.

Earlier this month, NSW Fair Trading minister Anthony Roberts said the new real estate fraud prevention guidelines were designed to combat an increase in identity fraud and scams.

The launch of the guidelines come after two, highly publicised incidents in 2010 and 2011 that resulted in properties being sold in Western Australia without the knowledge and consent of the lawful property owners.

"These sales were undertaken by real estate agents who were contacted by criminals masquerading as the true owners," Mr Roberts said.

"Financial institutions have stringent security measures in place to combat identity fraud and property agents need to be on high alert for potential fraudulent real estate transactions, particularly where there is no mortgagee and the property is wholly owned."



WHAT HAPPENED TO THE MARKETS IN SEPTEMBER?

October 2012 - Report by Brian White, chairman of Ray White Group.

We spoke of our excitement as the year turned to Spring with all of its promises. So there was high anticipation for our September results.

The best achievement in September was the big increase in listings, with the actual sales result being best described as "solid" - reflecting the time lag between new listings and the time it takes to convert those listings to sales.

Thus the Group achieved a similar result in September, compared to August, of \$2.4billion. Again, the pattern continued with New Zealand being up another 30% on the previous year, with the Australian markets remaining consistent with previous performances.

Loan Market (loans brokerage arm of Ray White Group) held its International Conference in Melbourne last month and it was a great success with nearly 300 delegates attending. Loan Market have had a great first quarter with each state showing year on year growth and are looking forward to the year ahead.

Loan Market settled in excess of \$1.8billion for first quarter of the new financial year, this is a 17% increase on this time last year. NZ had the highest growth. So when will Australia follow the lead from New Zealand? It is now at the six month mark since New Zealand began its renaissance - a period that, traditionally, was the lag time between our two countries in respect to market turn, both positive and negative. More theories on this next month.

Australia's Reserve Bank dropped interest rates by 25 basis points, reflecting a growing chorus of opinion that some of Australia's growth assumptions needed to be challenged, with an expected change in outlook in China.

But whatever, the run up to Christmas will be watched keenly.

Analysing the new stock offerings revealed some fabulous properties, not least the Arnott family absolute beach front at Wategos Beach in Byron Bay. That's become Ray White territory at the present time with the Rae's Guesthouse property, also located in an adjoining position being currently marketed.

However, overall, inspection numbers are particularly encouraging and there seems to be less fear on behalf of purchasers to now commit to properties that absolutely suit their requirements rather than early this year, purchasers just didn't have the confidence to commit even though their ideal property was now identified.

Increasing comment that the US housing market is "rebounding" is information one loves to hear. California was regarded as being the worst US market (with the highest rate of mortgagee in possession assets) but that state is now tipped to lead the recovery, not least because it was the worst impacted.



CAN I BRING A LEGAL REPRESENTATIVE TO A TENANCY TRIBUNAL HEARING?

The CTTT is designed for people to represent themselves at hearing. This provides an affordable, accessible and efficient means of resolving your dispute. Generally, parties can only be legally represented where the amount claimed is more than \$30,000 or if the matter is a strata or community schemes dispute.

The current jurisdiction for bond matters is \$30 000 and any other matter is \$15 000

Requests for representation

A request to be represented must be in writing and contain the following information:

- The file number and parties' names
- The reason why you are seeking to be represented
- The name and occupation of the proposed representative and whether or not that person is a lawyer/solicitor
- A statement that the proposed representative has your permission to make decisions in your absence that are binding on you.

You can apply to be represented in writing before the matter is heard or you can apply at a hearing. The Tribunal Member will decide on the day if you can be represented.

Your representative may be a lawyer, a real estate agent on behalf of a landlord, an advocate, friend or relative provided you authorise them to act on your behalf and allow them to make a decision at the hearing on your behalf.

Grounds for representation

Representation may be allowed in the following circumstances:

- In Home Building Division matters involving a claim or dispute for an amount over \$30,000
- Where the party to proceedings is:
 - » A landlord to be represented by the property managing agent
 - » A residential park owner to be represented by the park manager
 - » A retirement village operator to be represented by an employee or agent
 - » A retirement village resident to be represented by a nominated resident of the village or residents committee
 - » A corporation to be represented by one of its officers

- » An owners corporation (strata) to be represented by the strata managing agent
- » A community association to be represented by one of its members or the managing agent
- » A registered co-operative to be represented by one of its officers
- » A firm to be represented by one of its partners
- » An incorporated association to be represented by one of its officers
- » An unincorporated body to be represented by an elected member of the executive or management committee
- » An estate which is being managed by a trustee
- » A government agency to be represented by an officer

- If the other party is to be represented by a legal practitioner
- If the other party is a government agency
- If the CTTT is of the opinion that complex issues of law or fact will arise in the proceedings.

See clause 14 Consumer, Trader and Tenancy Tribunal Regulation 2009 for the full list of circumstances in which an application for representation can be made.

Legal representation

You can apply to be represented in writing before the matter is heard or you can apply at first hearing.

If you make your request in writing the CTTT will seek comments from the other party prior to making a decision. If the Tribunal Member decides you can be represented, the other party will also be able to be legally represented.

Strata and community schemes matters

A party to a strata scheme or community scheme dispute is automatically granted representation, and the CTTT's approval does not need to be sought.

Section 193 of the Strata Schemes Management Act 1996 states that a party in a strata scheme matter may be represented before the CTTT. Section 93 of the Community Lands Management Act 1989 allows the same for community schemes matters.

Disadvantaged persons

If a Tribunal Member finds that a party is disadvantaged or not sufficiently competent to conduct his or her case, they may make orders directing that they be represented - section 36(6) Consumer, Trader and Tenancy Tribunal Act 2001.

Under the Act, persons are at a disadvantage if they are minors or people who are incapable of representing themselves because of intellectual, physical, psychological or sensory disability, advanced age, mental incapacity or other disability.

Interpreters

The CTTT provides a free-of-charge interpreter service for hearings. Family members and friends are not permitted to interpret during proceedings. If you need an interpreter, contact the CTTT on 1300 135 399 as soon as possible before the hearing date.

A Tribunal Member may also request an interpreter if they find that a party is not sufficiently able to understand the proceedings.



NSW GOVERNMENT MERGES TRIBUNALS IN OVERHAUL

News has become available this week about the NSW Government's plan to unveil 23 separate tribunals to be headed by a Supreme Court judge, as the NSW Civil and Administrative Tribunal (NCAT).

A deputy president will head each of the tribunals and they will serve as the following specialist divisions: consumer, administrative and equal opportunity, occupational and regulatory, guardianship and victims.

President of the Administrative Decisions Tribunal, judge Kevin O'Connor, welcomed the changes.

NSW Attorney-General Greg Smith praised the new model, and described it's strengths in the involvement of local community and professional experts in panels, who would form the backbone of NCAT.

Mr Smith commented: "The NSW model will be structured to preserve existing specialities rather than taking a one-size-fits-all approach," and concluded that although the NSW Civil and Administrative Tribunal would be different from tribunals operating in other states - ACT, QLD, VIC and WA - NSW will be looking to learn from their actions and results.

Plans are being made for NCAT to begin its operations in January 2014, when the steering committee will be established. Tribunal members and users, and professional bodies will be drawn on for advice.

NSW Government plans will also work towards the development of an overall internal appeals panel, since each of the 23 tribunals will not have an individual appeals system.

It is yet to be decided as to whether the state's Industrial Relations Commission will become part of NCAT.



WATER... YOUR SHOUT?

Do you shout your tenants a bottle of Scotch each week? "Of course not" you reply. I can't afford that!!!! Well lots of landlords are giving the tenants the water and the value of the Scotch because of the way the Water Suppliers charge for the water.

Unlike gas, electricity, phone and pay TV the tenant is not permitted to hold a "customer contract" because the tenant does not own the land.

The Residential Tenancy Act does permit the landlord to reclaim the water use value from the tenant provided the water is individually metered.

The catch is the water authorities have made their bills heavily "fixed charges" and only have a minor "user charge".

Every couple of years the POA gets the chance to debate the issue with the Independent Price and Regulatory Tribunal. (IPART)

Currently underway is the process for setting the water, sewer and drainage charges for the Hunter Water Corporation and for the Central Coast water authority.

The Property Owners Association has lodged major submissions to both these price determinations. Rick Banyard, one of your associations Vice Presidents has prepared the submissions plus his personal submission. The submissions and the IPART documents can be easily viewed on the IPART web site. (www.ipart.nsw.gov.au) or you could contact Rick.

The thrust of the submission is to press for 100% user pays for the water sewer and drainage charge. This will allow landlords to pass on the water account to the tenants. Our request is based on the environmental benefits, water conservation and pensioner rebates.

The POA has been working with some other organisations to push the cause. Rick has asked to make a public verbal presentation at the hearings.

For those members with property connected to Sydney Water the POA will also make application to modify their prices when their next price determination is held.

FOR SALE \$1,990,000

DA APPROVED 38 STUDIO NEW AGE BOARDING HOUSE SITE

- **!! THE ULTIMATE CASH FLOW !!**
- Forecast up to **15% Rental Yield***
- **\$618,000 rental yield p.a.** (unfurnished)*
- **\$815,000 rental yield p.a.** (furnished)*
- Fully self-contained new age boarding house
- All units have their own bathroom kitchenette, balcony and laundry facilities
- Walking distance to all amenities (shopping centre, bus, train, education etc)
- Sydney Metropolitan Location
- A rare opportunity not to be missed
- **!! THE ULTIMATE CASH FLOW !!**

**Based on comparable rentals in the area*



GROUND FLOOR PLAN (UNITS 1 to 10 of 38) - Total 4 Levels

Contact:

Michael Obeid

0403 211 264

Michael@Williamsonproperty.com.au





The Property Owners' Association of NSW

02 9363 3949



PO Box 329
Bondi Junction NSW 1355



DISCLAIMER: Views expressed by the various authors are not necessarily the views of the Property Owners' Association of NSW and the association does not take any legal responsibility for any offending articles. All care is taken not to offend and to be accurate but this is not always possible.