



Mick Gentleman
Chair

The ACT Legislative Assembly Select Committee on Working Families in the
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Re: Impact of the Workplace Relations Amendment Act 2005 on people working in the ACT and the impact on their families.

Dear Mr Gentleman

Thank you for the opportunity to provide comments on this issue.

I would like to note at the outset that the Tenants' Union is not in the position to comment at length on issues directly relating to people's employment. We are however able to make some broad observations relating to the flow on effect of these changes on people's homes and housing, as well as making some recommendations with regard to some steps the ACT Government can take to alleviate some of the negative effects of these amendments.

The submission is attached.

I am happy to discuss these issues further and would like to express the Tenants' Union's ongoing commitment to participation in any ongoing consultation process in relation to changes relating to housing and tenancy matters.

Yours sincerely

Deborah Phippen
Executive Officer

For advice on
residential
tenancy
problems call
the

Tenants' Advice
Service

Ph: 6247 2011

Mon - Fri 9:30am
- 1pm

**Tenancy In
tenants'
hands**

Submission by Tenants' Union (ACT)

1. Introduction

- 1.1. The Tenants' Union (TU) is one of the primary providers of information, advice and education to tenants in the ACT.
- 1.2. The Tenants' Union membership consists of private, public and community housing tenants, occupants of other forms of accommodation as well as individuals interested in tenancy issues. The TU represents people renting in the ACT (private, public, community), works to promote the rights and interests of tenants and undertakes housing and tenancy-related projects.
- 1.3. The TU is a community legal centre providing tenancy advice, information and referral through the paralegal Tenants' Advice Service (TAS), casework is referred to Welfare Rights and Legal Centre. The TAS provides information, advice and referral through its advice workers and also undertakes community legal education, producing information, conducting workshops and presentations, promoting tenant participation. The TAS is funded through the Department of Justice and Community Safety, by a proportion of the interest earned from bonds lodged with the Office of Rental Bonds.
- 1.4. In the last year (2005/06) our service reported 3,292 phone contacts with ACT tenants on tenancy/housing issues (33,791 over TAS existence since 1994). In addition to this we had direct contact with people renting through a variety of other forums including presentations, workshops, information stalls, and community meetings. Furthermore we participate in a range of networks and forums with community service workers and providers who have contact with people renting.
- 1.5. The consequence of this experience and range of services, and close links with related organisations, is extensive knowledge of tenancy and housing issues in the ACT. Accordingly the TU is providing a submission responding to issues and items identified as being of particular relevance to tenants in the ACT, and therefore the organisation.
- 1.6. We acknowledge and support the submissions by our peak housing organisation, ACT Shelter, and the ACT peak community group ACTCOSS.

2. Tenancy in the ACT

- 2.1. Tenancy and housing figures vary in how up-to-date they are because different information is gathered at different times. Data is sourced from several Australian Bureau of Statistics ('ABS') publications as well as the Real Estate Institute of Australia. In 2004 the 342,300 usual residents of the ACT occupied more than 123,000 private dwellings (2001 figures only). Of these, 29% (35,670) were rented properties; the national average was 26%. In 2004 the average household size in the ACT was 2.5 people. Using this figure we can estimate that there are approximately 89,000 people in rental accommodation in the ACT. And these are figures from 2 years ago.
- 2.2. The comparatively high proportion of rented dwellings reflects the ACT's relatively mobile population, with more renters and hence a greater reliance

on rental accommodation than other areas. This is supported by earlier data from the ABS 1999 Australian Housing Survey, which indicated that 31% of ACT residents were renters in that year compared with a national average of 27.3%.

- 2.3. Recent media coverage and reports have highlighted issues for tenants in the ACT – affordability, lack of supply, access problems, lack of security of tenure. Many of these issues are linked. Of particular interest in general reporting have been affordability problems across the private rental market. In September last year the Tenants’ Union of Victoria’s Affordability Bulletin found:

Concurrent with increases in the cost of rent, there is an acute shortage of low to moderate cost rental dwellings in Australia’s capital cities. In particular, Sydney, Melbourne and Canberra are identified as cities where there is an insufficient supply of affordable housing available to meet increasing demand. This is amply demonstrated by current vacancy rates in our capital cities. The vacancy rate measures of the amount of unoccupied rental property in a given area. It indicates the availability of property in the market - a higher percentage indicates that greater supply of homes to rent, and a lower figure connotes a tighter supply. Historically, vacancy rates approaching 2% are associated with higher rents and a greater incidence of rent increases. As increased demand outstrips supply, landlords are encouraged to seek higher rents to offset perceived poor yields and weakening capital gains prospects. Currently, vacancy rates are 2% or less in Adelaide, Melbourne, Perth and Canberra; Sydney, Brisbane and Hobart have all recorded rates under 2.3%.

Exacerbating this shortage is the tendency of higher income households to ‘trade down’ and occupy dwellings at the low-to-moderately priced end of the rental market in an effort to minimise their housing costs. This may assist more prosperous households to save for a deposit on their own home, but increased competition for a diminishing number of properties makes it even more difficult for low-income households to secure affordable housing.¹

In fact, the report found that Canberra was the only jurisdiction where there wasn’t a level of affordability for people on a minimum wage, let alone people on government benefits. This situation is only going to worsen with the next report since we have seen that advertised rent levels in the ACT have grown significantly even since the end of 2006.

- 2.4. Tenancy issues that flow on from initial affordability and difficulty in accessing insufficient stock are serious for the many for tenants in existing accommodation. Often these problems are covered by some extent by legalisation, however many tenants are unaware of their rights and will accept actions contrary to the legislation and sometimes suffer quite significantly because of it. Current tenants are facing excessive rent increases as landlords seek to profit from the increases in the market for vacant premises. Additionally tenants are being issued with termination notices as lessors seek to remove them in order that they can have new

¹ Tenants Union of Victoria, Rental Housing Affordability Bulletin - A National Perspective, September 2006

tenants at higher rents. The fear of eviction will lead many tenants to be very reluctant to assert their rights in relation to their existing tenancy. This fear is very real and is being exacerbated by media stories highlighting the problems in finding new properties.

3. Impact of workplace changes

3.1. Although we do collect statistical information through our advice line, information relating to employment is limited to current income source. However, given that there are only 3 people giving advice it is a simple matter to obtain feedback based on information gained through the advice sessions. This anecdotal evidence is useful in determining trends and upcoming issues, and is often relied on to assist with organisational planning relating to projects and campaigns.

3.2. Advice workers have reported an increasing amount of tenants calling with issues such as rent arrears and termination due to job loss or the loss of income from penalty rates. Tenants highlight a range of issues:

- The pressure of lack of income security being added to the general lack of security in their tenure in their homes.
- Concerns about being able to afford any increases in rent, this is especially being felt and anticipated at the moment as we see continual media coverage of low vacancy rates and reports of the likelihood of significant rent increases.
- Fear of having lessors terminate leases in order to acquire higher rents because the tenants cannot afford the increases proposed.
- Also many more examples of tenants taking on tenancies they cannot afford to sustain because that is all that is out there – this is particular problem with the growth of the practices of “rent bidding” and “rent auctions”.

3.3. Some of these are pressures and threats not being experienced by people purchasing their own homes. While home purchasers are at the mercy of interest and mortgage rate changes as a direct threat to their tenure in their homes, this is generally the only threat to them staying in their homes. Tenants face the possibility of losing their home with no grounds; eviction because a landlord wants to sell; eviction because a landlord wants to renovate or a landlord (or a family member, or someone accommodated by them) wants to move in to the premises. These are all reasons for termination resulting through no fault of the tenant and over which the tenant has no control. This causes additional stress for tenants that people in other tenures do not experience to the same extent. The sixteenth Australian Unity Wellbeing Index has found that worry about making rental payments has a significant effect on Australians well-being. In his media release on the report Professor Bob Cummins found that “... worry about rental payments has an even greater impact on the wellbeing of renters than the worry home-owners experience in relation to meeting mortgage

commitments”.² The case study from the Tenants’ Advice Service phone line below indicates some of those pressures.

3.4. Case study 1:

Young tenant lost previous tenancy because of rent arrears after the loss of casual employment. Facing difficulties in finding an affordable new home her family take on another tenancy that they know they will have difficulties sustaining because they have no time to choose something more appropriate. Caller is unable to work because she is recovering from caesarean birth of third child and partner loses his job. They get into arrears and contact their lessor to advise of the problem immediately. They assure lessor that he will find new work and make up the arrears. He finds new work but the new employee advises that pay is monthly and he has missed the pay date and will effectively not receive money until the notice period is over. Tenants are issued with a Notice to Vacate. Once more they have nowhere else to go and are fearful of being out in the market seeking a home again.

- 3.5. This matter highlights problems with lack of job security combining with the lack of affordable housing. Tenants are taking on properties that they really can’t afford because there is no other option (not eligible for Housing ACT assistance) and as soon as there is an increase in costs, a drop in income or a crisis they find themselves in arrears. This problem compounds when considering that the majority of tenants will face a rent increase once they have managed to sustain the tenancy for 12 months – the rent they can barely afford increases and there is no link to any other factor such as increase in wages.
- 3.6. Rent increases are becoming a more and more serious matter for the TAS line as landlords with existing tenancies respond to reports of the tight market and high rents and try to reap an extra benefit, and they can rely on tenants’ general lack of awareness of protections for people in existing tenancies. People are increasingly ringing the TAS line with distressing stories of notices of extreme increases that see them facing very difficult dilemmas – pay an increase they can’t afford to sustain, or try and find something in a market that does not have adequate supply and possibly find nothing (and bear the quite substantial costs of moving and setting up a new home), or take on something barely affordable that will increase again in 12 months.
- 3.7. One of the most disturbing elements of examples we see through our advice service is that we are only seeing a small portion of the problem since many tenants are unaware that they have any rights in relation to rent increases or any other matter; are unaware of our service; or they cannot access our very limited service for assistance. The tenants we have spoken to paint a very bleak picture for all of those renting in the ACT. Especially those without the resources to assert what rights they do have. The table below provides some figures from calls to the TAS since the start of January 2007.

² Cummins, Robert A. “*The Wellbeing of Australians –Mortgage Payments and Home Ownership*”, School of Psychology, Deakin University
http://www.deakin.edu.au/research/acqol/index_wellbeing/index.htm

\$ Increase weekly (annual)	% increase	Corresponding RTA formula increase	Comments
30 (1,560)		\$ 17	
20 (1,040)			Increase after 6 months, breaching RTA
45 (2,340)	16	\$12	
30 (1,560)	13	\$10.65	
70 (3,692)	29	\$10.65	
40 (2,080)	17	\$10.65	Increase after 9mnths, breaching RTA
100 (5,200)	40	\$11.10	
30 (1,560)	9	\$6.34	
50 (2,600)	18	\$11	
15 (780)			Increase after tenant sought rent decrease
30 (1,560)			
20 (1,040)			
40 (2,080)	14	\$15	
25 (1,300)	6	20	
20 (1,040)			REA said market rents only basis for increase
30 (1,560)			After \$30 increase 4 months ago
40 (2,080)	13	\$5.72	

3.8. When considering the effect of these increases it is essential to consider that the increase for the CPI for dwelling rents from December 2005 is 3.7%, the general CPI increase was 3.1%. This difference in CPI figures shows that the calculation used as a basis for determining whether an increase is excessive or not does produce a figure greater than the general CPI increase. When looking at the effect of the increase it is also very important to consider that we are looking at quite substantial increases being borne at a time when the minimum wage increase was \$27.36/week (\$1,423). This increase in income does not equal many of the rent increases proposed, and does not provide people with the ability to cover other costs. The official interest rate increase by the Reserve Bank for the period March 05 to November 06 was 0.75%³.

3.9. The basis for allowing rent increases is to ensure the landlord does not suffer a loss because of increased costs. When initially advertising the premises the landlord sets the rent at a rate that reflects both its value and costs to maintain it. When entering into the contract (lease) it is on the basis of this agreed value. Tenants enter into leases on the basis that the rent is affordable, significant increases in rents can cause quite substantial hardship.

Case study 2:

Tenant administrative worker at ANU, salary \$43,000. Tenant has to share house in order to be able to afford to live near work, and save travel costs. Sharing with two others has allowed them to rent an ex-government 3-

³A.2 RESERVE BANK OF AUSTRALIA - MONETARY POLICY CHANGES
<http://www.rba.gov.au/Statistics/Bulletin/A02hist.xls>

bedroom house in O'Connor for \$300 per week. The house is in original condition, no shed in yard. Tenants have some difficulties in getting landlord to do basic maintenance including some plumbing. Tenant asks for (and receives) permission to erect a small shed. The house is in street where there has been extensive redevelopment and older houses are being demolished and new substantial properties built. Tenants receive notification of \$40 per week (\$2,080 annual) increase. This equates to a 13% increase. On application of the CPI figure, a fair increase would be \$5.72. The tenants asked the landlord why he was asking so much, he said it reflected the market increase and the fact that he had work done; the only work that has been done is necessary repairs/maintenance.

The tenant is not very confident or articulate. One housemate is moving out and another is applying for work in Sydney. On contact with the TU he has been advised of the RTA formula and encouraged to negotiate a fair increase with his landlord. It is unlikely that he will ever make an application to the Residential Tenancies Tribunal. He is very anxious about his future. He does not want to face the rental market at the moment. He had to move from his previous place because the property was sold and the new owners wanted to move in, he had to move from the tenancy before that because the owners wanted to demolish the premises. He has not moved of his own accord for several years.

- 3.10. This matter clearly illustrates the problems many tenants are facing, issues the TU believes are very substantial since many tenants are unaware of tenancy legislation let alone the existence of a service to give them advice about their ability to negotiate and take the matter to the RTT. As already noted, we are seeing only the "tip of the iceberg". In general, tenants are not in a position to negotiate with a landlord. The landlord can easily say "accept the increase or move out and I can get higher rent again from someone else with nowhere to live". This is not a palatable option for many people. This is an outcome that was foreshadowed by the Community Law Reform Committee of the ACT in its Report on Residential Tenancy Law in the ACT. It concluded that:

... excessive rent increases are an unwarranted burden on those tenants affected. The Committee also considers that the ability to impose excessive rent increases undermines legislative protections which restrict the manner and circumstances in which a lessor can terminate a tenancy. These two problems will not resolve themselves without intervention. The rental market will not prevent an excessive increase where the lessor believes the higher rent is obtainable or the lessor desires the departure of the tenant.⁴

We can see through the many examples in the ACT that excessive rent increases are occurring, and the provisions that currently exist in relation to reviews of increases are not being effective in providing affordability or security for ACT tenants, thereby causing significant stress and hardship.

- 3.11. As can be seen by talking with the tenant in the case study he is not comfortable with the prospect of going to the RTT. This is reflected in numbers of tenants accessing the RTT, as illustrated in the table below. There are many reasons tenants don't access the RTT, among them is the fear of retaliatory action by the landlord or their agent in the form of

⁴ ACT Attorney-General's Department, *The Community Law Reform Committee of the ACT, Report No. 8 – Private Residential Tenancy Law*, 1994. p78

eviction. While there is provision in the RTA for disallowing retaliatory evictions, this is not something many tenants are aware of, and sometimes it is difficult for the RTT to determine.

- 3.12. Tenants are also fearful of retaliatory action in the form of listing on tenancy databases and not having favourable references in the future. These are strong arguments in favour of taking no action.

	2005/2006	2004/2005
Total Applications	3712	2764
Apps – Endorsement	2896 (78%)	2018 (73%)
Apps – resolution of dispute	816	660
Endorsement granted	2885	2070
* Apps – tenant	140	149
* Apps – landlord	618	597
* Apps – Housing ACT	208	168

- 3.13. The extent of tenants’ apprehension in approaching the RTT and ignorance of the protections in the RTA can be demonstrated by the number of increase notices that are being issues in clear contravention of the RTA – increases within the first 12 months of the tenancy, even in the first 3 months of the tenancy, as shown in the TAS calls table.

- 3.14. When considering a rent increase to determine whether it is excessive or not the Residential Tenancies Tribunal member must consider a list of matters that are provided in S68 RTA:

(3) If a tenant or lessor proposes that a rental rate increase is or is not excessive, the tribunal, in considering whether it is satisfied about the proposal, must consider the following matters:

- (a) the rental rate before the proposed increase;*
- (b) if the lessor previously increased the rental rate while the relevant tenant was tenant—*
 - (i) the amount of the last increase before the proposed increase;*
 - and*
 - (ii) the period since that increase;*
- (c) outgoings or costs of the lessor in relation to the premises;*
- (d) services provided by the lessor to the tenant;*
- (e) the value of fixtures and goods supplied by the lessor as part of the tenancy;*
- (f) the state of repair of the premises;*
- (g) rental rates for comparable premises;*
- (h) the value of any work performed or improvements carried out by the tenant with the lessor’s consent;*
- (i) any other matter the tribunal considers relevant.*

- 3.15. The problem with this list is the inclusion of “(g) rental rates for comparable properties”. This problem has been articulated by many community members as well as tenants themselves. When a rental market is experiencing the extraordinary rates that we have been witnessing in the ACT this comparison with “comparable premises” places an unfair burden on

tenants in existing leases with rents that were set at amounts that both parties established as fair and affordable. While it can be argued that the definition of “comparable premises” is narrower than a mere reference to markets rates, this is not yet been tested in the RTT and unlikely to be an argument the tenant would feel able to run. As noted already, in a market such as that we now experience, the tenant is not in the position to negotiate or challenge an increase, except by way of a review by the RTT. When the RTT reviews the increase it has to date considered the current market with no clear reference for the need to balance this by considering affordability issues for the tenant. The RTT can consider any other matter in its determination, yet it is essential to clarify the importance of affordability when dealing with matters of housing and accommodation. In general, at the most basic level rental spending is not a discretionary cost/purchase. The existence of specific tenancy legislation demonstrates the special nature of the transaction that is rental housing. The current problems in the market highlight the need for significant changes to the legalisation.

4. Recommendations

- 4.1. As noted out the outset, the Tenants’ Union acknowledges and supports the submissions and recommendations of ACTCOSS and ACT Shelter. The TU recognises that there is an urgent need to address the over-arching issues of supply of secure affordable housing for all ACT residents. We await with interest Government responses to those submissions, and the content of the upcoming affordable housing strategy. When combined with labour market and income issues, these affordability problems intensify hardship and insecurity and have increasingly detrimental effects across the community.
- 4.2. The supply issues are complex and not able to be solved in the immediate short-term. They must be addressed in the longer term and steps must be taken now to ensure the crisis does not worsen. However, the ACT Government is in the position to make some legislative changes that will drastically improve the position of people now anticipating significant hardship. These changes would present minimal cost to Government and be a significant first step to demonstrating commitment to ensuring accessibility to affordable secure housing and thereby lessen the burden on families and individuals already feeling the pressure of workplace/income changes.
- 4.3. While it is tempting and appropriate for the TU to call for a control on rents in order to improve the disturbing situation people are finding themselves in when seeking new tenancies, we do anticipate resistance from real estate and lessor bodies claiming that this will stymie investment in private tenancy. Although, in response to such calls we would question the existence any research or evidence supporting these claims, we hope that other measures expanding supply will address this issue in the more long term and concentrate our concerns on people already in tenancies facing excessive and unfair rent increases that they cannot afford and should not be facing.
- 4.4. We recommend that the ACT Government make immediate amendments to the Residential Tenancies Act 1997 to place limitations on rent increases, linking them to affordability measures or even the CPI. This allows

landlords to continue to cover the costs of their investment and at the same time recognises that there was initially an agreed value of the property relating to rent, and that any increases are to cover unforeseen events only.

- 4.5. We also recommend that there be an amendment to the list of issues in S68 RTA that the RTT must consider when reviewing an increase with the deletion of the requirement to consider rent on comparable properties and add another issue, being affordability.
- 4.6. The prohibition of the practices of “rent bidding” and “rent auctions” must be clearly articulated within tenancy legalisation as well general consumer legislation. These practices distort the market, place unfair burdens on tenants and can lead tenants to taking on tenancies they cannot afford. The practices are not regulated by any existing legislation and they are very different from the auctioning of premises relating to purchase. Rents are set on the basis of cost and value. The choice of one tenant from a large list of applicants is the role of a property manager or a landlord, and should not be left for tenants to fight it out amongst themselves.
- 4.7. These amendments would recognise and address the obvious current imbalance in the tenancy sector. They strengthen the legislation without imposing additional burdens on landlords. There are landlords in the ACT who are content to not exploit the current crisis by increasing the rent and, or increase it only to reflect their costs and we support and encourage these landlords. The changes could create some balance in a situation affecting people’s homes and their security in their homes. They can provide a sound basis for improving the situation for people exerting other pressures and stresses in their lives.