



# Tenant News

Newsletter of the Tenants' Advice Service, ACT

Spring/Summer 2006

## TWISTING THE KNIFE

*Not content with an already imbalanced state of affairs, where demand for rental accommodation far exceeds supply; affordability is the lowest in the country; rent can be legitimately increased on the basis of nothing more than "market forces"; and discrimination against low-income earners is rife, some ACT agents and landlords want to take their unfair advantage to the next level.*

### Rent bidding and auctions

Recent figures from the Real Estate Institute of Australia (see page 14) show that the trend of higher rents and ever decreasing vacancy rates continues. Once again Canberra has the very dubious "honour" of having the highest rents for several types of housing.

A disturbing flow on effect of this situation is the development of some dodgy practices; the first one to be reported was **rent bidding** where real estate agents are encouraging or requiring tenancy applicants to bid an amount higher than the advertised rent in order to secure a tenancy over other applicants.

This practice is questionable in the least and likely to constitute misleading and deceptive conduct (and therefore a breach of the Agents Act) since the agents are seeking rents above those advertised. It is unfair and not regulated in any way. An applicant has no idea whether there are, in reality, any other bids and there is always the likelihood that they can only afford the advertised rent and would not have made queries or applied for anything at a higher rate. In addition, where a person feels pressured to offer a higher amount they can only just afford to sustain, they must also factor in that they are likely to face a rent increase once they have been in the tenancy for over 12 months.

Rents are set and advertised to reflect their value, if the property is really worth more it should be advertised at that rate - this means that tenants are competing on an even playing field. Rent bidding preys on people's fears of missing out on a home and relies on them making spontaneous and often unwise decisions.

**If you come across an agent requiring or accepting bids higher than the advertised price, make a**

### complaint to the Office of Fair Trading.

Meanwhile, if you are tempted to offer an agent a higher bid in an effort to secure a tenancy: please don't! This will hurt all tenants in the long term (especially those on low incomes), not only by encouraging the artificial inflation of market rents, but also by keeping the practice 'under the radar' as it will be less likely to expose and clamp down on if it is tenants, not agents, instigating it.

The other practice was announced by a real estate agent following media coverage of rent bidding. The agent announced that he will be introducing **rent auctions** to the ACT. He outlined the model as involving tenants applying for a property and once accepted, being able to participate in an auction. The practice is being promoted as formalising something that already happens (i.e. bidding) and it is claimed that it will be regulated by existing laws regulating auctions.

*(Continued on page 4)*

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Many thanks to contributors: Liz O'Brien (WRLC turns 20); Amy Kilpatrick (Electricity Meters) and Deborah Phippen (Rent Bidding and Auctions); thanks to the IUT for the International Tenants' Day statement.

The views of contributors to Tenant News are not necessarily those of the TAS or the Tenants' Union ACT and the service does not accept responsibility for the views and opinions expressed by contributors in this newsletter.

### CORRECTION!

On page 1 of our last issue of Tenant News (Winter 2006) we said that **Water Abstraction Charges** were classified as a consumption fee that could be passed on to tenants. This was on the basis of information previously provided to us by ACTEW.

However, we are now enlightened by a ruling of the RTT that has made it clear that this fee is not part of consumption charges but is in fact a government-imposed tax which, by virtue of standard term 42(a), **is the landlord's responsibility.**

## CONTRIBUTE!

We welcome and encourage all contributions, great and small, to **Tenant News**

This is a newsletter for tenancy issues, stories, thoughts, letters, cartoons...

If you are interested in contributing, call the office for details

02 6247 1026

Or post your contribution to:

PO Box 8, Civic Square ACT 2608.

Or email your contribution to:

TUACT@bigpond.net.au

Remember to include your contact details!

## EDITORIAL

Welcome to our final Tenant News for 2006! We are closing off this year with a somewhat bitter-sweet issue.

On the bitter side, there are the countless bad news stories. The sinister practice of rent bidding, coupled with the unashamedly exploitative idea of rent auctions, have oozed their way into our consciousness (pages 1 and 4). And the same old story of the nationwide affordable housing shortage just seems to be getting worse (page 7). Embarrassingly, a UN human rights commission rapporteur on adequate housing has characterised the situation as a "serious hidden national housing crisis" (pages 9 and 10). And all along, the figures confirm that the ACT continues to lead the charge in terms of a lack of affordable housing (page 14).

On the sweet side, is the inspiration we get from organisations – like the International Union of Tenants (pages 8 and 10) who work passionately for the aims that we share: the right to adequate, secure and affordable housing for all, and a better deal for tenants worldwide. We celebrate with our comrades at the Tenants' Union of QLD (page 11) and Welfare Rights and Legal Centre ACT (page 3) who have reached 20-year milestones, and are taking the opportunity to reflect on their achievements as long-serving advocates for tenants' rights, and dream about progressive reform in the future. And we mark annual awareness-raising events both large and modest: International Tenants' Day (page 8) and ACT Tenancy Week (page 6).

The happy, together with the sad, remind us that even if we wanted to, we can't give up.

So, as summer kicks into gear, all of us at the TU wish everyone a safe, secure and happy holiday season, and here's hoping that 2007 will see more positive changes for tenants in the ACT.





## WELFARE RIGHTS & LEGAL CENTRE TURNS 20!



On 30 November 2006 workers and supporters past and present joined together to celebrate Welfare Rights and Legal Centre's 20 years of service to the community

Welfare Rights and Legal Centre is a free community legal service specialising in Social Security, Public Housing and Tenancy Law. The Centre also runs the Disability Discrimination Legal Service.

### A very brief history

In 1983 Canberra Social Security Advocacy and the Tenants Advice Service established a Community Legal Resources Centre to address the previously unmet legal needs of the ACT community. Canberra Social Security Advocacy began training courses for workers all over Australia with youth, welfare agency workers and law students on Social Security and administrative law.

In March 1986 The Welfare Rights and Legal Centre was officially opened in the Griffin Centre by the Minister for Social Security, Mr Brian Howe.

In 1993 the Centre moved to Havelock House, Turner. The Tenants' Union moved in and jointly established a new Tenants Advice Service with WRLC. The Disability Discrimination Legal Service was opened at the same time. In July 1996 the Women's Legal Centre opened in adjoining premises and the three centres began to share resources, colleagues, clients, biscuits, tea and sympathy.

The Tenants' Union and WRLC jointly ran the Tenants Advice Service for 11 years, before the TU officially took over management in 2005. The Centre also runs the Night Time Legal Advice Service each Tuesday night from 6pm to

8pm. Staffed by a supervising solicitor and volunteer solicitors and law students from both Canberra's universities. NTLAS offers one off advice and referral on all areas of law.

WRLC is active in pursuing issues that arise from its community, conducting research and making submissions for the reform of laws or government policies and legislation affecting disadvantaged people in our community. The Centre provides workshops and community education programs for community groups, in areas such as social security, public housing, tenancy and disability discrimination. The Centre also produces publications and information kits on specific topics of concern to our client community.

The Centre is a founding member of the National Association of Community Legal Centres and the National Welfare Rights Network and the Disability Rights network.

2006 marks 20 years of service to the community, and 20 years of working for justice.

### The birthday bash

The MC for the night was Richard Refshauge, the Director of Public Prosecutions in the ACT. An active member of the Canberra community for 25 years, he has served on the Board of Management of Welfare Rights and Legal Centre since 1986.

Speakers for the night included Anne Yuille, a caseworker at the centre since 1989 who discussed 'working and surviving at WRLC' and Liz O'Brien, the centre's administrator, who spoke around the theme 'Community, Compassion, Justice'.

The Hon. Bob McMullan MP, Member for Fraser proposed the toast for the night. Following an account by Liz of recent struggles over funding, and attempts by the Federal government to interfere with the agenda of community legal centres, McMullan extended congratulations, and wished for more money, and less trouble for the centre in the future.



## HOT TENANCY ISSUES



(Continued from page 1)

The problem with these claims is firstly that as already noted bidding is unfair and unacceptable and not something that should be given credence by being formalised. And

very importantly, there is no regulation of such a practice since the existing regulations only cover sale by auction and not rent.

Reactions to this announcement have been almost uniformly negative, even those from other agents. The Housing Minister, Mr. Hargreaves condemned the practice in no uncertain terms and the TU wholly supports his declaration that it be "outlawed" or prohibited. As the Minister rightly pointed out tenancy is not a discretionary commodity in the same way as other articles of trade, and it should be regulated to reflect that. This is why specific tenancy legislation exists and we do not rely on other general contract or trading laws.

If you have concerns about this practice contact the Minister and voice those concerns, or go to the Attorney General and urge protection of tenants.

So far, since a spate of media coverage on the issue in October, things have gone suddenly quiet. The TU has not heard of any reported cases of formal rent auctions.

Meanwhile, the issue of rent bidding has also received coverage in other states and territories, developing as an apparently national issue in light of a widespread shortage of rental accommodation. Amongst the gloom, we welcome news from Tasmania that Attorney-General Steve Kons has agreed to conduct an inquiry into the practice, following a request from the Greens ("Tenants Raising Roof On Bidding For Rentals" by Sophie Fowler, *The Examiner*, 26/11/06).

The TU will be monitoring this matter, liaising with our interstate counterparts, and including updates on the notice board on our website. If you hear of any promoted rent auctions in the ACT, please contact the TU.

### Christmas period opening hours

**Tenants' Advice Service** - The TAS phone advice line will be closed from 1pm Fri 22 Dec 2006, re-opening 9.30am Mon 8 Jan 2007. If you need tenancy advice first check the advice page of the TU website ([www.tenantsact.org.au](http://www.tenantsact.org.au)). For specific advice call the Legal Aid Advice line on 1300 654 314.

**Residential Tenancies Tribunal** - The Tribunal will be closed between Mon 25 Dec 2006 and Fri 5 Jan 2007. The first 2007 sitting will be in the week commencing 8 Jan. Note that this means that no orders will be made during this time. However, the courts will be opened throughout the period and the registry will be accepting applications on all days apart from public holidays (Mon 25, Tues 26 Dec 2006; Mon 1 Jan 2007). For further information about the RTT go to [www.courts.act.gov.au](http://www.courts.act.gov.au)

**Welfare Rights and Legal Centre** - WRLC will be closed from Mon 25 Dec 2006, re-opening Mon 8 Jan 2007.

**Office of Rental Bonds** - ORB will be closed from Mon 25 Dec, re-opening Tues 2 Jan 2007. Note that ORB are also closed for relocation on 15 Dec 2006.

**South West Tenants' Advice** - For NSW tenants only. The phone advice line (1800 642 609) will be closed from Mon 25 Dec, re-opening Tues 2 Jan 2007. NSW tenants requiring urgent advice can contact the NSW TU Hotline (9251 6590) which will operate throughout the Christmas period, apart from public holidays (Mon 25, Tues 26 Dec 2006; Mon 1 Jan 2007).



## Introduction of Pre-paid Electricity Meters

*Amy Kilpatrick*

A change in the world of electricity provision is about to occur which is likely to affect the price and how tenants pay. Care Inc Financial Counselling Service and the Consumer Law Centre want to draw tenants' attention to these issues.

ActewAGL announced last month that it is investigating the introduction of pre-paid electricity meters in the ACT following the Independent Competition and Regulatory Commission's (ICRC) decision to approve their use. This type of meter is already available in Tasmania and South Australia through Tasmanian Government owned electricity company Aurora.

**People struggling to make ends meet who cannot find the funds to pay in advance may be left out in the cold, literally.**

Prepaid electricity will involve the installation of a meter unit by ActewAGL (or perhaps Aurora) inside of homes. Consumers will be required to purchase electricity in advance using a type of "smart card" or perhaps by obtaining a payment code on a docket which will be inserted into the unit.

A potential benefit of the prepaid meter includes being able to monitor information on electricity consumption and not go into debt. While it may sound like an interesting new option for consumers, there are some serious catches. People struggling to make ends meet who can not find the funds to pay in advance may be left out in the cold, literally.

While it is envisaged that the meters will allow consumers access to emergency credit, this will be limited to around \$20 and that debt will need to be paid the next time the meter is topped up. It is also envisaged

that the meters will not be turned off on public holidays, even if the emergency credit expires. However, on the next working day, the lights and possibly, the stove, heating and hot water will be off unless the unit is topped up. There is no obligation for ActewAGL (or Aurora) to notify the Essential Services Consumer Council (ESCC) of the power being off until the 3<sup>rd</sup> time it occurs. This is a very different regime to the protections currently available under the ESCC.

Worst of all, the cost of electricity will actually BE MORE than electricity purchased through the current accumulation meters. Also, tenants may not have a real choice about whether to accept installation of pre-payment meters. Care and the Consumer Law Centre are concerned that when new tenants move into a residence they may "inherit" the units or have the units imposed upon them by

landlords (or Housing ACT). In order to get rid of the units tenants may find they are confronted with financial inducements to keep them or costs if they refuse to. Or the landlord may actually have the only decision making power!

Users of the meters will have rights however! For example, consumers should not be coerced into using them and the provider of the meter should engage with consumers in financial hardship to make sure access to an essential service like electricity is not denied. Referrals to the ESCC should still occur.

Care and the Consumer Law Centre advise tenants to beware of pre-payment electricity meters and to bring any problems with their use to our services, or the ESCC on 6207 7740 or [esc@act.gov.au](mailto:esc@act.gov.au).

*Amy Kilpatrick is Principal Solicitor with the Consumer Law Centre ACT [www.carefcs.org](http://www.carefcs.org)*

## Water Restrictions and Tenant Responsibility

As of 1 November 2006 Canberra is in the midst of *Stage 2 Water Restrictions*, to be upgraded to Stage 3 from 16 December 2006.

The restrictions mean that, in terms of garden watering, only hand watering and drippers may be used between 7-10am and 7-10pm as per the odds and evens system (if your street number ends in an odd number, you can use water as per restrictions when the date also ends in an odd number, and so on for even numbers). Watering of lawns is not permitted.

There is a general exemption for limited use of sprinklers on weekends to water lawns and plants: even

numbered houses on Saturdays and odd numbered houses on Sundays, and only between 7-10pm. This exemption is effective until 28 Jan 2007.

This is not an exhaustive list of the restrictions, which also affect topping up swimming pools and ponds, and car washing. For more information visit [www.actew.com.au](http://www.actew.com.au).

The restrictions are mandatory and enforceable, with penalties for contravention starting at \$200 for individuals and \$1,000 for corporations.

Tenants who maintain a garden as part of their tenancy need to be aware of these rules. If you are required to water your landlord's garden to a level that may be in excess of the restrictions, contact TAS for advice.



# TENANCY WEEK 2006: 2 - 8 OCTOBER

Each year the TU collaborates with several ACT housing organisations (ACT Shelter, Coalition of Community Housing Organisations ACT (CCHOACT) and Housing ACT) to coordinate Tenancy Week.

This weeks ties in with International Tenants Day, which falls on the first Monday of October every year (see page 8). Tenancy week is an opportunity to raise awareness of tenancy issues as well as services available for people renting in the ACT. For the TU in particular it is an opportunity to promote tenants' and the wider community's awareness of tenancy and renting rights and responsibilities, and how to affect change in regards to tenancy and housing issues. Tenancy Week this year featured a range of events.

On Tuesday 3 October Tenancy Week was officially launched by the Housing Minister John Hargreaves at Canberra Multicultural Centre. The launch featured tenancy speakers, a singing performance around the theme of "home" by *Inannarama Singing*

*Group* (Inanna is a crisis support service for women and children) and an exhibition of artwork by tenants from Northside Community Centre.

The TU, in collaboration with the Women's Legal Centre and Welfare Rights and Legal Centre delivered "There's no Place Like Home" a workshop on Domestic Violence and Tenancy for community workers. This popular workshop is now run annually.

The long-awaited update of "The Renting Book" was also launched by Mr Simon Corbell, ACT Attorney-General during tenancy week. This guidebook to renting rights and responsibilities is produced by the ACT Office of Fair Trading and must be made available to all tenants commencing new tenancies.

The Tenants' Advice Service also held information stalls at Belconnen and Woden shopping centres during Tenancy Week.

Tenancy Week 2006 Launch



Jessie Mitchell (Shelter), Deborah Pippen (TU), Faye Brocklesby (CCHOACT) and Marion Reilly (Shelter board)

Inannarama Singing Group

Jill Basic, Michelle Worthington, John Hargreaves MLA and Eddy Bourke

## Community Linkages Program

The Community Linkages Program works with public and community housing tenants in the ACT. Community Linkages is about finding ways to come together, get to know your neighbours and enjoy life within your community!!

Some of the many programs and activities that the Community Linkages Program have run with tenants and other organisations over the past few months includes community lunches/BBQs, social groups, playgroups, gardening projects and community workshops, such as *Speaking Up and Advocacy* and *CALM/Living - skills for dealing with conflict*.

*The Community Linkages Program is funded through the Department of Disability, Housing and Community Services*

Contact the Community Linkages Program in your area:

**Central Canberra**  
Emma at Northside Community Service on 6162 2901

**Woden/Weston Creek**  
Emma at Woden Community Service on 6282 2644

**Southside Sustaining Tenancy Program**  
Clare at Woden Community Service on 6282 2644

**Tuggeranong**  
Eve at the YWCA of Canberra on 6294 4633

**Belconnen/Gungahlin**  
Denise or Devin at Belconnen Community Service on 6278 4600

*The Community Linkages Program also works with people in public and community housing who are at risk of eviction. If you are in this situation and would like some assistance, please*

**Northside Sustaining Tenancy Outreach Program**  
Simone at Anglicare Housing Program on 6230 1486



## AROUND AUSTRALIA

### Rental housing still not affordable

Rental housing affordability has not improved and in many cities has declined in the last 12 months, according to the second National Affordability Bulletin released by the Tenants Union of Victoria (TUV).

“This bulletin highlights the shortage of affordable rentals and the failure of the Commonwealth Government to ensure affordability for low income Australians. In particular it highlights that even those who receive Commonwealth Rent Assistance are unlikely to be able to find affordable rentals in our capital cities,” David Imber, Policy and Liaison Worker said.

The bulletin - which measures the availability of private rental housing for a range of household and income types, including a young person on New Start, a Sole Parent with one child and a couple with two dependent children and singles in all Australian capitals (except for Darwin) - shows that for hundreds of thousands of Australians, particularly those on certain Centrelink payments, there is nowhere for them to live without experiencing poverty.

The bulletin shows once again that Canberra has the lowest level of affordability with singles finding it harder to rent affordably than couples or those with children, and finding no currently available affordable housing for some income levels.

“We have always believed that it’s vital to have the debate on housing affordability based on sound evidence rather than sound bites on land supply. Having presented a snapshot of outcomes for 5 different income types we call on the Federal Government, as the providers of income support and rent assistance, to commit to a national housing plan that includes providing genuine housing affordability” David Imber said.

State and Territory Governments should also strengthen rights for tenants in the light of many renters being unlikely to ever be able to afford to leave the rental market.

For a copy of the bulletin go the Tenants Union Victoria website: [www.tuv.org.au](http://www.tuv.org.au)

### VIC

Big news in Victoria has been the despicable and exploitative practices of some (unregulated) boarding house operators. Reports have described the conditions in which many vulnerable and marginalized people are living in variously as “squalid”, “filthy”, “dangerous” and “subhuman”. On top of this, tenants find themselves booted out when the operators fail to pass on their rent to the property owners. TUV has issued numerous complaints to Consumer Affairs that have gone largely ignored, at best the shonky operators have been sent warning letters rather than face prosecution. Hopefully the recent exposure in the media and the VCAT, will prompt the Victorian government to take immediate action to regulate the sector, and prosecute illegal activities.

### NSW

Despite a passionate and well-supported campaign by TU NSW, on 10 Nov Liverpool City Council gave planning consent to a proposal to redevelop Casa Paloma Caravan Park west of Sydney. This decision will mean the eviction of the park’s permanent residents, affecting 50 low-income households. The decision is made under the condition that displaced residents be paid between \$1000 to \$2000 compensation. Residents wishing to return to the park after the redevelopment will have to pay between \$100,000 and \$150,000 to buy a new home. The TU NSW is assisting the residents to explore their legal and alternative housing options.

### WA/ QLD

The much-celebrated mining booms in WA and central QLD have led to a serious housing crisis in these states. The boom has brought extra trade and extra people, leading to a housing shortage and drastically inflated rents, as towns are flooded with mining companies and their workers, and property owners cash in on the increased competition. Stories have come thick and fast of over-crowding in rental properties. The desperation of the situation has inspired an idea to convert old sea containers into homes in Geraldton, WA. TASWA used Tenancy Week to draw attention to the issue, and ran the campaign “No Room in the Boom”.

**NO ROOM IN THE BOOM**  
Addressing the Rental Crisis in WA's Economic Boom

Whilst WA is experiencing an unprecedented economic boom, many renters are suffering and are in severe hardship due to shortages of rental properties, huge rental increases, unnecessary evictions and discrimination.

Be part of the campaign during Tenancy Week.

Help draw attention to rental issues and public housing become a priority issue to be addressed.

Join in the numerous events across the State. Sign a petition for change. Why not organise something in your local community?

For more information and assistance visit [www.taswa.org/ten](http://www.taswa.org/ten) Email [cas@taswa.org](mailto:cas@taswa.org) For a list, call (08) 9221 9499

TEHANCY WEEK 2-8 OCTOBER 2006



## WORLDLY NEWS

International Tenants' Day, the UN Rapporteur on adequate housing, and Australia's first visit from the Secretary-General of the International Union of Tenants...

### International Tenants' Day

On May 22, 1986, the Council of the International Union of Tenants (IUT) met in Paris and a decision was made to designate the first Monday in October as "International Tenants' Day."

The date chosen by the IUT Council coincides with the resolution taken by the UN General Assembly in December 1985, designating the first day of October every year as World Habitat Day. World Habitat day was first celebrated in October 1986.

The IUT promotes, together with the UN, the theme "Secure Tenure" and the "Right to Affordable Housing".

**International Tenants' Day 2006 Theme:  
Stop Illegal Evictions!**

*Each year the IUT releases a Statement for International Tenants Day. Below is an abridged version of this year's statement.*

### October 2, 2006 International Tenants' Day STOP Unfair EVICTIONS! STOP Inhuman REMOVALS!

Imagine being around 75 years old, having lived in your flat for maybe 40 years and having experienced communism, Stalinism, Nazism and now capitalism at its most extreme form. You have a small state pension that just covers the rent and the most necessary expenses to keep you afloat. The old run-down house you live in has been restituted and the new owner wants to raise the rents by 200 %. "To market rents" she says. And there is nothing available on the market for the cost that you could absolutely afford. The new landlord sends you notices and threatening letters, thugs come by and threaten you, electricity wires gets cut of, and heating is kept at a minimum in the wintertime. Town Hall Officials shrug their shoulders and just look at you.

**How would you feel?**

- 800,000 people may have been rendered homeless in Nigeria through evictions in 49 settlements from 2003-2006
- In New York, the marshals complete about 25,000 evictions each year, about one for every five eviction warrants.
- 700,000 Zimbabweans from last years' evictions are still struggling to find shelter.
- In Italy more than 200,000 families have been threatened with eviction, 80% for rent arrears. 15,000 families were evicted in the first six months in 2005.
- In Prague, tenants who have been told, by the landlord, to evict their flats must themselves show proof to the Court that the order is without a valid reason – the landlord does not need to show proof in the first instance.
- In Poland, effective ways of getting rid of "troublesome" tenants are: dismantling of railings, disconnecting electricity and cutting of the water supply and heating.
- In Pakistan, the construction of the Lyari Expressway in Karachi, will have rendered over 250,000 people homeless.

Of course, the circumstances under which these evictions occur are not comparable, but behind the figures, behind every one and each of them, lay a personal tragedy, irrespective of country and political doctrine. Also, all available figures give evidence that evictions are increasing worldwide, which completely contradicts the UN Millennium Development Goal, Target 11: *Improve the lives of at least 100 million slum dwellers by 2020.*

Despotic laws, not recognising international treaties and which make inhuman evictions possible should be abolished. Such evictions violate human and housing rights and should be executed only in rare circumstances, and should not be executed at all before alternative and acceptable accommodation has been found.

**The Members of the International Union of Tenants together with the International Alliance of Inhabitants call for the ending of unfair removals and of despotic evictions!**



## UN Expert on Adequate Housing Identifies Hidden National Housing Crisis

The United Nations Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari, concluded his visit to Australia on 15 August 2006.

During his visit, which started on 31 July, Mr. Kothari visited various urban and rural locations around the country to examine the status of realization of the right to adequate housing in Australia.

On the last day of his mission, Mr. Kothari shared his preliminary observations with the Australian authorities. Whilst he took note of some positive initiatives and programs on the part of the Government (such as the Supported Accommodation Assistance Program (SAAP) or the "fixing houses for better health" initiative), Mr. Kothari noted the lack of recognition of economic, social and cultural human rights in policy, legislation and planning at federal and state government levels.

Throughout his visit Mr. Kothari identified a serious hidden national housing crisis in Australia. Mr. Kothari pointed out the widespread problem of homelessness, the lack of affordable housing, dwindling public housing stock, long waiting periods for access to public housing, and inadequate government provisions for long term safe housing, particularly in rural areas.

Mr. Kothari identified a number of vulnerable groups for which there is an urgent need to address the situation. These include homeless people, Indigenous peoples, children, people with disabilities, people with low income, refugees and asylum-seekers, migrants, persons released from detention, elderly, persons with complex needs (e.g. HIV/AIDS, sexual minorities), single parents and individuals and communities in rural and remote areas. Mr. Kothari also noted the particular negative impact of the housing situation on women.

According to Mr. Kothari, the problem of affordability and the home-ownership model has left aside all those sections of society who do not have the means to purchase their homes and those who face

serious discrimination, especially in the private rental housing market.

Mr. Kothari expressed his concerns on the poor housing conditions in the Indigenous communities he visited. In this regard, he noted that legislation affecting Indigenous peoples land rights, including the recently adopted amendments to the Aboriginal Land Rights Act (Northern Territory) 1976 may have negative impacts on the right to adequate housing of the concerned communities.

Mr. Kothari was equally troubled by information that some civil society organizations having raised criticisms toward the state policy or engaged in advocacy on housing issues have been or may be de-funded in the future.

**The Special Rapporteur noted the lack of recognition of economic, social and cultural human rights in policy, legislation and planning at federal and state government levels.**

In his preliminary observations, Mr. Kothari issued several recommendations, including:

- A human right to adequate housing approach with the primary task of meeting the needs of the most vulnerable should be adopted. The principles of non-discrimination, gender

equality and indivisibility of human rights need to be rigorously applied.

- A national housing policy based on human rights should be put into place. Given the critical importance of housing in the lives of Australians, the Government at the Federal level may wish to consider having a Ministry with a portfolio solely on housing,
- Addressing Homelessness and its causes should be listed as a priority for the Government,
- Indigenous Peoples should be given a genuine participatory role in their affairs, through an independent, well-resourced, national body or an organ representing all communities.
- Australian Government to urgently address what can be considered as a humanitarian tragedy of the lack of housing and civic services in areas belonging to Indigenous Peoples.

The final report on this visit will be presented to the Human Rights Council.

*The Special Rapporteur preliminary observations, and more information on the mandate and work of the Special Rapporteur on adequate housing can be found at [www.ohchr.org](http://www.ohchr.org)*



### Federal Government Responds to UN Critique on Australian Housing

After concluding his tour, the Special Rapporteur on Adequate Housing (see previous page) spoke at a news conference. With particular reference to the state of Aborigines' housing, Mr. Kothari said:

"I think that some of the conditions that I've seen are amongst the worst in the world both in terms of overcrowding, severe overcrowding, and in terms of lack of access to civic services."

"We visited one community in the Alice Springs camps where people were living in tin shacks for the last 30 years and with no rights to their land and, of course, no services," he said.

Mr Kothari was highly critical of plans in Northern Territory to scrap a 30-year-old scheme of communal land ownership.

"I'm quite sure that it's not going to work... and we are hoping that it will be reconsidered," he said. Mr Kothari said the Northern Territory changes had been "pushed through too hurriedly".

He said Australia had a "serious hidden national housing crisis" and needed to appoint a federal housing minister to tackle it.

In response to these comments, Federal Government Minister for the Arts and Sport, Rod Kemp, said:

**The United Nations is not the "font of all wisdom": Rod Kemp**

"The mere fact you have the UN [make] some comment doesn't make it right" and that the UN was not the "font of all wisdom".

"Sometimes the UN gets it right and sometimes it gets it wrong," he said.

"We just don't dip our lid to anybody, you see. We're an independent country and an independent government."

It would be nice if the recommendations by the Rapporteur—who was actually here at the invite of the Federal Government—could provide an incentive for positive reform in housing policy from the federal level down. But following these comments by a member of the Federal Government, we won't be holding our breath...

### The International Union of Tenants "on tour"

In November Australia had the pleasure of a special 'international guest', Magnus Hammar, the Secretary-General of the International Union of Tenants (IUT).

Magnus' 'east-coast tour' consisted of visits to all but one of the Australian state/territory tenancy organisations who are members of the IUT. The tour began with a visit to TU Vic, followed by the TU ACT, TU NSW and finally TU QLD. The trip was originally inspired by, and arranged to coincide with TUQ's 20th birthday celebrations and tenancy symposium where Magnus was invited to speak.

Here in the ACT Magnus was taken on a guided tour in and around Canberra, getting an idea of the different types and standards of rental

accommodation in the area, and our unique context as 'the Bush Capital'. He also took in the Housing Hubbub exhibition (storyboard art by local public housing tenants) on display at the Legislative Assembly.



IUT Secretary-General, Magnus Hammar with TU ACT President, Shae McCrystal

The TU also hosted an afternoon tea event on Friday 3 Nov where Magnus gave a presentation about the work of the IUT, and tenancy issues in the international context.

Currently the work of the IUT is mostly focused around the situation in Eastern Europe, where tenants who once enjoyed security of tenure are now facing the nasty effects of the radical shift from communism to capitalism.

Magnus' visit was a great exercise in solidarity and a reminder that our aims and ideals as tenants' unions are universal.



## TU Update

### TU Management Committee

|                  |                                |
|------------------|--------------------------------|
| President:       | Shae McCrystal                 |
| Treasurer:       | Anne Macduff                   |
| Secretary:       | Genevieve Bolton               |
| General members: | Viren Jackson<br>Maribeth Cole |

*There are several general member positions still open. If you are interested in becoming involved please contact the TU office.*

### TU Staff

Deborah Phippen - Executive Officer  
Sandra Alonso - Advice Worker  
Elizabeth Policarpio - Administrative Officer  
Helen Sexton - Advice Worker and Project Officer

### Events

In early September the TU had a staff contingent (Deb and Helen) attend the **National Association of Community Legal Centres (NACLC) Annual Conference** in Wollongong. We also attended a network meeting with the **National Association of Tenancy Organisations (NATO)** arranged to coincide with the conference. The conference and meetings were a great chance to get together with like-minded organisations, catch up on issues from around Australia, and learn and share ideas and strategies for affecting positive change in our communities. Since the conference, Deb Phippen has been appointed the ACT rep for the managing body of NACLC. This will be a great opportunity for tenancy issues to receive greater attention within the community legal sector.

Once again, **Tenancy Week** kept us busy between 2-8 October. See page 6 for all the details of our activities this year including the **Domestic Violence & Tenancy** training, and page 8 for information about **International Tenants' Day** 2 October.

On 30 October the TU **Annual General Meeting** (2005-06) was held. Elections went well, and we are pleased to have Shae, Anne, Genevieve, Viren and Maribeth returning on

our management committee for 2006-07.

On Wednesday 8 November the **Tenants' Union of QLD** marked their **20th birthday** with a Tenancy Symposium on 'The role of Tenancy Law in the Housing System' followed by a celebratory dinner/birthday bash. Deb went along to support and congratulate TUQ on behalf of TU ACT.

### Submissions and Policy Work

TU made a submission to the review of the **Unit Titles Act**. This review is a good opportunity to push for legislative consideration of the interest of tenants living in strata title apartment buildings.

Deb also attended the stakeholders meeting of the **Essential Services Consumer Council (ESCC)** in November. This is a very useful organisation that tenants should be aware of. The ESCC protects the rights of utilities consumers, resolves complaints and ensures that utility services continue to be provided to people suffering financial hardship.

### Publications

In September we released a new Tenancy Tips Leaflet on **Tenancy Databases**. This leaflet covers the new legislative changes protecting tenants threatened with blacklisting.

Work is well under way on our **Share Housing Survival Guide**. We expect to see the first real life printed version some time in early 2007.

Our **Occupancy Project** is also underway, with the "Occupancy Tips" publications expected to be released in early 2007.

IF YOU WANT TO FIND OUT MORE ABOUT  
ANY OF THE ISSUES DISCUSSED HERE,  
PHONE: 6247 1026

or

E-mail us at: [TUACT@bigpond.net.au](mailto:TUACT@bigpond.net.au)

THE TENANTS' UNION  
WELCOMES NEW MEMBERS.



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## HANGIN' ON THE LINE

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The Tenants' Advice Service (TAS) offers free advice to all ACT tenants (public, private, community and others).

You can access the TAS line by calling 6247 2011 from 9:30am to 1pm Monday to Friday

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### Different types of share house arrangements

Here at TAS we receive our fair share of calls from tenants in some kind of share house situation. Compared with other renting situations, share housing has two problems. The first is a legal one: tenancy law fails to deal adequately with modern share housing arrangements. The second problem is the nature of share-households: mixed needs, priorities and egos mean that share houses are generally less stable than other tenancies. When you put these two problems together, you have a recipe for a sticky mess.

But before we can even think about advising re: the sticky mess at hand, we first need to unravel the caller's legal status within the tenancy, which is not always crystal clear. There are three different possibilities, and working out which one applies is crucial in determining the rights and responsibilities of the parties.

#### Possibility 1: It's a co-tenancy

The term "co-tenancy" (also known as 'joint tenancy') is used to describe a situation where two or more tenants accept a tenancy agreement together. Usually this means that they each sign a written tenancy agreement with the lessor, but the agreement can be express or implied, oral or written, or a combination of both. If there is no written agreement then it's a question of what was agreed to orally, and whether or not each tenant indicated their intention to be bound. In either case, the standard residential tenancy terms will always apply.

#### The good bit

One good thing about this type of share house arrangement is that it is big on equality. There is no room for a hierarchy in a co-tenancy, as each house mate is afforded exactly the same legal rights and responsibilities, and no single co-tenant can lord it over the others.

#### The bad bit

In fact, the principle of equality rules co-tenancies to such an extent that the law fails to recognize that co-tenants are actually individuals. The single most important thing to remember about co-tenancies is that co-

tenants share something called 'joint and several liability', meaning that the tenants undertake to comply with the agreement both individually and as a group. The main effect of this is that any one co-tenant can be held liable for any debt owed to the lessor, even one that results entirely from the actions of another tenant. It also means that one person not paying their rent puts everyone's tenancy at risk. It is entirely possible that as a co-tenant, you may find yourself having to put money towards solving a problem you personally did not create.

#### Possibility 2: It's a head-tenant / sub-tenant arrangement

In a nutshell, a sub-tenancy is a lease within a lease. Sound confusing? It is. A sub-tenancy is created when an existing tenant decides to create a "third party interest" in the premises by renting out part, or all of their rental property. This can only be done with the written consent of the lessor. If the lessor consents to the proposed sub-tenancy, then a second tenancy agreement is created between the existing tenant (now known as the "head-tenant"), and the person they select as their new house-mate (the "sub-tenant"). Again this agreement can either be written, oral, or a combination, but is most often purely oral, and the standard residential tenancy terms apply.

The funny thing about a sub-tenancy is that in creating this second tenancy agreement, the head-tenant actually becomes the lessor, and assumes all of the legal rights and responsibilities that apply to lessors, in relation to their sub-tenant.

It is important to remember that a sub-tenant enters into an agreement with the head-tenant only; there is no legal relationship between the sub-tenant and the lessor.

#### Head tenants: some words of caution

As a head-tenant, it may appear that you get all of the benefits of share house living (shared expenses, sparkling conversation, novice cookery) without the burden of 'joint and several liability'. But, it would be misleading to suggest that there are no drawbacks. In fact, being a head-tenant is actually all about responsibility!

Firstly (and this is a pretty major drawback), you become a lessor. This means responsibilities like collecting rent and issuing rent receipts, depositing bonds, the whole nine yards. It also means following *all* the rules that ap-



ply to lessors regarding, for example, eviction. It's not just a case of choosing who you want to live with you, dictating what they can do in the house, and when and on what terms they should leave, at your whim.

Secondly, although not jointly bound, you are essentially still responsible for the actions of your house mates. Given that you still have your own tenancy agreement, if your house mate does something naughty like not pay rent, ultimately you will have to take steps to avoid ramifications for your own tenancy (like cover their share). BUT the difference, as compared with joint tenancy, is that you have clear access to *remedies* against your sub-tenant. Remember: you are essentially the lessor. So, you can issue notices to remedy, and take the sub-tenant to the RTT if they fail to comply with their obligations. By the same token, if *you* fail to follow the rules, your sub-tenant could also take action against you in the RTT.

### Possibility 3: It's a Boarder/lodger/occupancy situation

If you live in a shared house, but either you are not party to a co-tenancy agreement; your head-tenant has not obtained permission to sub-let to you; or your house mate is actually the owner of the premises, it is possible that you are a boarder or a lodger. Boarders and lodgers are specifically excluded from recognition as tenants under the Act, meaning that they lack the full rights and protections that tenants get, including the standard terms. This is a fairly 'grey' area, and sadly our legislation gives us very little guidance as it fails to provide a definition of either 'boarder' or 'lodger'. But, here goes:

#### Lack of 'exclusive possession'

A lodger pays money for a room or rooms in someone else's house, while a boarder has the same arrangement but with meals or other services included. Traditionally, the crucial difference between being a tenant and being a boarder or lodger has been that in a tenancy you had 'exclusive possession', whereas boarders and lodgers don't. You have exclusive possession when you have the right to *exclude* anyone you like (even the lessor) from the premises that you rent.

#### Other indicators

Other elements that indicate that you are a boarder/lodger, and not a tenant, include:

- Whether the owner, proprietor, or head-tenant retains 'mastery' over the premises. For example they may keep a key to your room and enter at certain times or for certain purposes like cleaning. If the owner lives in the house with you, there is a greater chance they have retained 'mastery' over the premises.
- The nature of the accommodation: eg if it is a boarding house or guest house.

- Inclusion of services like linen, cooking, or cleaning

#### Others excluded from definition of tenancy

As well as excluding boarders and lodgers, the Act excludes residents of certain types of accommodation - namely hotels, motels, clubs, caravan and mobile-home parks, and on-campus educational institutions - from recognition as tenants.

#### Exception: written tenancy agreement

Now, if it sounds like you may be a boarder/lodger (or you are otherwise excluded because, eg you live on campus or in a caravan park), the next thing to look at is whether you have a written agreement, and if so what that agreement says. This is because there is an *exception* to these exclusions. If you have entered into a written agreement that gives you the right to occupy premises as

a home, in exchange for some kind of payment AND (this is the important bit)...*the agreement expressly states that it is a "residential tenancy agreement"*, you are actually recognised as a tenant; and the head-tenant/owner/proprietor will be your lessor.

#### Fall-back position: Occupancy

If you don't have a written residential tenancy agreement, but you still have some other kind of agreement (be it written, oral, express or implied) whereby someone gives you the right to occupy premises for use as a home in exchange for payment you will instead be recognised as an "occupant", and your agreement is known as an "occupancy agreement". Occupants have a limited range of rights prescribed in the Act as "occupancy principles", but these are neither as comprehensive nor as certain as the rights given to tenants. But, they are much better than nothing! Also very importantly, occupants have the right to have their disputes heard by the RTT.

If all of this is just all too hard, and enough to dissuade you from share housing altogether, then good. The less of you out there sharing, the easier our job will be! But no, seriously, remember that of course we only hear from people when something has gone wrong and they need help finding their way out of a mess.

But when things are going well, share house living can be a fantastic experience. At its best, it allows you to save money, make friends, and live the life you choose to, all while exposing you to a mind-expanding variety of lifestyles, musical tastes, and culinary experiences. And on a more pragmatic note, sharing a house will be the only choice that some people have, given the prohibitive cost of renting a place alone. So it looks as though share housing is here to stay.

There is no room for a hierarchy in a co-tenancy, no single co-tenant can lord it over the others.



## SOBERING STATS

The following figures are from *Market Facts*, the quarterly residential property report from the Real Estate Institute of Australia. Data relates to the private rental market for the June Quarter 2006.

### The National Picture

Several factors are conspiring to put considerable pressure on rental markets across the country. These include the WA mining boom, the NSW property slump, rising interest rates, and a widespread decline in housing affordability - across Australia, 33.2% of family income is required to meet average home loan repayments, a figure considered by researchers to indicate 'housing stress'.

Vacancy rates are continuing to decline around the country, ranging from 1.6% in Adelaide to 2.4% in Darwin. This is all well below the industry 'norm' of 3% (indicating a healthy balance between supply and demand). Median rent increases over the year to June have outpaced the 4% annual CPI increase in many areas. Notable increases were of course felt in Canberra. This pressure is expected to increase in the coming months, particularly if the number of first home buyers entering the market continues to decline.

### The Canberra Story

Median rents for 3 bedroom houses went up, whilst rents for 2 bedroom units stayed the same this quarter. Canberra has retained its dubious title of "equal-highest rent in the nation" in both categories.

| Median Weekly Rents, June Quarter | City      | 3 b/r house | 2 b/r unit |
|-----------------------------------|-----------|-------------|------------|
|                                   | Canberra  | 320         | 300        |
|                                   | Sydney    | 265         | 300        |
|                                   | Melbourne | 230         | 230        |
|                                   | Brisbane  | 280         | 260        |
|                                   | Adelaide  | 240         | 185        |
|                                   | Perth     | 250         | 230        |
|                                   | Hobart    | 320         | 300        |
|                                   | Darwin    | 300         | 220        |

Canberra recorded a slight easing in its vacancy rate, from 1.8% in March to 2.0% in the June quarter. However this is still a drop of 0.5% over the year, and of course is still well below the industry benchmark of 3%.

Note: on 11 Dec, as Tenant News goes to print, the REIA released their September quarter figures, revealing that Canberra's vacancy rate fell to an astonishing 1.1% from June to September. Full details will be provided in the next Tenant News issue.

| Canberra Rents, June Quarter 2006 | Houses         | Median \$ per week | Change over quarter % | Change over year % | Flats/ Units   | Median \$ per week | Change over quarter % | Change over year % |
|-----------------------------------|----------------|--------------------|-----------------------|--------------------|----------------|--------------------|-----------------------|--------------------|
|                                   | Inner Central  |                    |                       |                    | Inner Central  |                    |                       |                    |
|                                   | 2 b/r          | 372                | 16.3                  | 28.3               | 1 b/r          | 285                | 1.8                   | -1.7               |
|                                   | 3 b/r          | 350                | 0.0                   | 6.1                | 2 b/r          | 340                | 3.0                   | 6.3                |
|                                   | 4 b/r          | 465                | -1.1                  | 4.5                | 3 b/r          | 400                | -6.5                  | 2.6                |
|                                   | Inner South    |                    |                       |                    | Inner South    |                    |                       |                    |
|                                   | 2 b/r          | 325                | 16.1                  | 23.1               | 1 b/r          | 200                | 0.0                   | 14.2               |
|                                   | 3 b/r          | 330                | 4.8                   | 10.0               | 2 b/r          | 255                | 2.0                   | 2.0                |
|                                   | 4 b/r          | 420                | 1.2                   | 5.0                | 3 b/r          | 350                | 6.0                   | 9.4                |
|                                   | West and North |                    |                       |                    | West and North |                    |                       |                    |
| 2 b/r                             | 270            | 3.8                | 10.2                  | 1 b/r              | 200            | 5.3                | 2.6                   |                    |
| 3 b/r                             | 310            | 3.3                | 6.9                   | 2 b/r              | 265            | 0.0                | 6.0                   |                    |
| 4 b/r                             | 380            | 0.0                | 5.6                   | 3 b/r              | 300            | -1.0               | 3.4                   |                    |
| Outer South                       |                |                    |                       | Outer South        |                |                    |                       |                    |
| 2 b/r                             | 260            | -1.9               | NA                    | 1 b/r              | 200            | 22.6               | NA                    |                    |
| 3 b/r                             | 300            | 0.0                | 7.1                   | 2 b/r              | 260            | 0.0                | 4.0                   |                    |
| 4 b/r                             | 360            | -7.7               | 0.0                   | 3 b/r              | 280            | -5.1               | 3.7                   |                    |



## FROM THE ORB

The Office of Rental Bonds (ORB) is part of the Registrar-General's Office (RGO). The ORB is responsible for the receipt and management of Residential Tenancy Rental Bonds for the Australian Capital Territory.

**On 15 Dec 2006 the ORB is moving to 255 Canberra Ave Fyshwick. The office will be closed for relocation on the 15th, reopening in the new location on Monday 18 Dec.**

### Occupancy Agreements—new forms

As part of recent amendments to the legislation creating a category of renters known as Occupants, it is now possible for occupants or their accommodation-providers to lodge a bond with the

ORB. To this end, the ORB have developed two new forms which apply to the lodgement and refund of a bond relating to an occupancy agreement. The new forms can be located at [www.rgo.act.gov.au](http://www.rgo.act.gov.au)

### Condition of premises report

Tenants are reminded that it is no longer a requirement that a copy of the condition of premises report be lodged with the ORB.

It is important, however, that you retain your signed copy of the condition of premises report for your records in case of a dispute at the end of the tenancy.

|   | 2003-04    | 2004-05    | 2005-06    |
|---|------------|------------|------------|
| No of bonds lodged                      | 12,141     | 12,774     | 12,581     |
| No of bonds refunded                    | 12,181     | 12,611     | 12,675     |
| No of bonds transferred                 | 1,506      | 1,372      | 453        |
| Average value of bonds (\$)             | 1,088      | 1,108      | 1,226      |
| Value of bonds held in trust at 30 June | 23,492,291 | 26,218,658 | 28,790,458 |

### Office of Regulatory Services

The ACT Government has decided to bring together a range of regulatory functions (including RGO) into a combined Office of Regulatory Services within the Department of Justice and Community Safety (JACS). The aim is to collocate all of the services if possible. This will involve a relocation for the ORB (see above).

OFFICE OF RENTAL BONDS  
Ph: 6207 1178 [www.rgo.act.gov.au](http://www.rgo.act.gov.au)

**If you pay for your accommodation YOU HAVE RIGHTS!**

ACT law now protects more people than before  
CONTACT THE TENANTS UNION FOR MORE INFO  
**62471026**  
[www.tenantsact.org.au](http://www.tenantsact.org.au)

**Coming Soon...  
The Tenants' Union  
Occupancy Project.**

Keep an eye out in early 2007 for our postcards, posters and Occupancy Tips Leaflets.

## The Tenants' Union ACT

The Tenants' Union is a group of tenants, both public and private, who have come together to promote the rights and interests of tenants in the ACT.

The Tenants' Union provides a voice for tenants at all levels of decision-making.

The Tenants' Union provides information, advice, advocacy and education through the Tenants' Advice Service.

Join the Tenants' Union and have a say on issues that affect your housing and your home.

Name: \_\_\_\_\_

Ph: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Type of tenancy (circle): *private, public, community, student housing, occupant, share housing, not a tenant*

*NB: Only tenants can be full members*

**Annual subscription (GST incl):**

**\$11- Waged**

**\$2.20 - Unwaged,**

**\$11 - Share house (no. of tenants:\_\_\_)**

**\$55 - Organisation**

**ABN 99 664 903 582**

**TAX INVOICE**

Make cheques payable to the Tenants' Union ACT Inc. Please forward your subscription and this application form to:

Tenants' Union ACT,  
PO Box 8,  
Civic Square, ACT 2608

**JOIN NOW & STRENGTHEN THE UNION'S VOICE ON HOUSING ISSUES**

## The Tenants' Advice Service (TAS)

TAS is a free service for all ACT tenants. It is managed by the Tenants' Union ACT and funded by the interest earned from bonds lodged with the Office of Rental Bonds.

**What we offer:**

- Tenancy **advice** and **information** through our advice line (6247 2011, Mon - Fri, 9:30am - 1pm )
- **Workshops** and **presentations** on tenancy issues, rights and responsibilities. Free of charge to community groups and organisations, school groups etc. Targeted to tenants, people who will become tenants or those who work with tenants
- Leaflets and other **printed information** on common tenancy problems/issues
- Tenancy **website:**  
[www.tenantsact.org.au](http://www.tenantsact.org.au)
- Articles for newsletters, tenancy information stalls and displays

**For further information call  
6247 1026**

### Tenancy Tips Leaflets:

- Access and Privacy
- Bond
- Defending an Eviction
- Ending a Tenancy & Breaking a Lease
- Eviction in the ACT
- Evidence Checklist for the RTT
- Making a Complaint about a Real Estate Agent
- Rent Arrears
- Rent Increases and Reductions
- Rent Increases: Formula & Figures
- Repairs
- Sale of Premises
- Tenancy Databases
- Tenancy in the ACT: a General Guide