

Tenancy Bonds

Terms of Reference

In 1973 the Commission was asked to inquire into the law and practice relating to bonds between landlord and tenant.

Background of Reference

At the time of the reference, there were no statutory provisions regulating the use of tenancy bonds in Western Australia. Issues such as how much bond money was payable, where the bond money was to be held, whether interest was payable to the tenant and whether the bond reflected a genuine pre-estimate of damage, were governed only by the terms of the agreement between the landlord and tenant. Few actions relating to tenancy bonds were commenced because of the perceived difficulties with the court process, particularly since the amounts involved were usually small, and the tenants tended to be of limited means.

The Government received a number of proposals for reform from the Council of Social Services of WA (Inc), the Land Agents Supervisory Committee of Western Australia, a State Housing Commission study committee, a sub-committee of the Consumer Affairs Council, and the Australian Labor Party.

In June 1974 the Commission issued a working paper which examined the law and practice in Western Australia and other Australian states, as well as New Zealand, England, South Africa, Canada and the United States. The paper discussed issues involved in the regulation of tenancy bonds and the methods for dealing with disputes.

Nature and Extent of Consultation

Following distribution of the working paper the Commission had the benefit of further consultation and advice from a number of organisations including the Land Agents Supervisory Committee of Western Australia, the Consumer Protection Bureau, the Citizens' Advice Bureau, the Real Estate Institute of Western Australia and the Council of Social Services of WA (Inc). The final report containing the Commission's recommendations was delivered in January 1975.¹

Recommendations

After careful consideration of the issues involved, the Commission recommended that:

- The *Small Claims Tribunals Act 1974 (WA)* be amended to:
 - (a) clarify the procedure by which a tenant may bring a tenancy bond claim before a Small Claims Tribunal; and
 - (b) expressly prohibit a tenant from contracting out of his right of access to a Small Claims Tribunal.

Legislative or Other Action Undertaken

The Commission's recommendations were implemented in full by the subsequent enactment of the *Small Claims Tribunals Amendment Act 1975 (WA)*.

¹ Law Reform Commission of Western Australia, *Tenancy Bonds*, Project No 41 (1975).