



Response to
*Proposed Rental Deposit Authority for
Tasmania*

A Regulatory Impact Statement by the Office of
Consumer Affairs and Fair Trading

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Submission from

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Introduction

This submission is Anglicare Tasmania's response to the Regulatory Impact Statement **Proposed Rental Deposit Authority for Tasmania** released by the Office of Consumer Affairs and Fair Trading in April 2005. Anglicare supports the recommendation of the Office of Consumer Affairs and Fair Trading that a Rental Deposit Authority be established in Tasmania.

Anglicare Tasmania is a state-wide community organisation that has been working for the Tasmanian community for the past 20 years. Since its establishment it has grown into a multi-faceted service responding to issues faced by Tasmanians such as financial crisis, homelessness, unemployment, the adverse health, social and economic consequences of alcohol and other drug use, and the challenges faced by people with physical and intellectual disabilities or mental health problems.

Part of Anglicare's mission is to speak out against poverty and injustice and to offer alternatives to decision-makers to help build a more just society. Anglicare practices this advocacy through its Social Action and Research Centre (SARC) established in 1995 to work with low income earners to identify the issues that affect them and then carry these concerns to Government.

Anglicare has a long standing concern about the housing issues which impact on low income and disadvantaged people. It runs a range of emergency accommodation services and tenancy support services across the state. Specifically, Anglicare's housing and accommodation services include:

- The Private Rental Support Service assists low income earners to gain and maintain tenure in the private rental market through the provision of bonds, removal assistance, rent arrears/advance assistance and advice.
- ACCESS works with individuals and families who are homeless or at risk of homelessness by offering early intervention, crisis support, information and referral, access to non-shelter based accommodation, sustainable long-term accommodation options and long term case planning
- The Emergency Accommodation Service is an after hours accommodation support service for homeless people which provides emergency accommodation options for clients in private accommodation (pubs, caravan parks, community tenancies) or emergency shelters.
- Family Matters provides practical assistance and support to families who are at risk of homelessness.

- The King Island Temporary Care and Support Service provides safe, temporary accommodation to young people aged 13 – 18 living on King Island who may be homeless or in need of a safe place to stay.
- The Placement and Support Service works with young people aged 13 – 18 who need somewhere safe to live.
- Staying Put works with young people to maintain their own tenancies, in either public or private housing.
- Youthcare is a shelter providing crisis accommodation for young men aged 13 – 19 who are homeless or need a safe place to stay.
- The Burnie Supported Residential Facility provides long term supported accommodation.
- The Anglicare Tasmania Acquired Injury Support Service, the Shared Homes Program, the TAMOSCH (Towards A Model of Supported Community Housing) Service and the Independent Living Program support people with disabilities and acquired injuries in a range of housing options across a variety of tenure types.

This submission will begin with an examination of the situation of low income earners in the private rental market in Tasmania and the response of Government to this problem. It will then examine the problems with the current system of security deposits, the advantages of a central repository of security deposits and comment on the model and legislation proposed in the Regulatory Impact Statement.

The private rental market: low income tenants and housing stress

The critical shortage in affordable housing in Tasmania, and the impact of the housing boom on vacancy rates across the state has been well documented (see for example Cameron, 2002; Wilson, 2005). At the same time, the impact of changing Federal and State housing policies over the past decade has seen most low income families' access to public housing dramatically constrained. Low income people therefore, are forced into the private rental market where they face significant disadvantages in gaining and maintaining tenancies.

This is a particular concern in Tasmania, which has the highest proportion of people on low incomes of any state, with 38.9 per cent of households dependent on Commonwealth pensions and benefits as their main source of income. Tasmanians also have the lowest average weekly household income in Australia (ABS, 2001).

The issues faced by low income tenants are of wider concern in the private rental market as research suggests that approximately 47 per cent of all private renter households in Tasmania are in the two lowest income quintiles, with a further 25 per cent in the third income quintile (DHHS, 1999).

Significant numbers of Tasmanian households in the private rental market are experiencing 'housing stress' (Cameron, 2002). This is the concept developed to determine housing affordability, the critical threshold at which households lose the capacity to purchase the other essentials of life because of housing costs. The National Centre for Social and Economic Modelling defines a household as experiencing housing stress when it is both in the bottom 40% of the income distribution and spending more than 30 per cent of its disposable income on housing costs (NATSEM, 2004).

Analysis of the data of the Private Rental Support (PRS) Scheme provides a snapshot of how many low income earners are faring in the private rental market in Tasmania. This scheme is provided by Anglicare and Colony 47 to assist low income earners to gain and maintain tenure in the private housing market. The scheme provides financial and non-financial assistance including financial assistance with bonds; removal assistance, rent arrears/advance assistance and advice. It is funded through the Commonwealth State Housing Agreement and supervised by the Department of Health and Human Services through Housing Tasmania.

The overwhelming majority of clients using the PRS services are dependent on Centrelink benefits and allowances as their main source of income and most of them are dependent on the following benefits: Parenting Payment Single ("Sole Parents Pension"), Newstart Allowance, Youth Allowance and the Disability Support Pension.

Analysis of Anglicare's PRS Service data for the second half of 2004 suggests widespread housing stress among all household types. On average, the clients of that service were spending 39 per cent of their household's income on rent. For some groups in particular, Anglicare's data shows that the burden of housing stress is acute. For example, in the second half of 2004, those households accessing the PRS Service where Youth Allowance was the main source of income spent an average of 60 per cent of their income on rent (Wilson, 2005).

When the cost of a security deposit is the equivalent of 40 to 60 per cent of a household's income over a 4 week period, it can be seen that the relative value of security deposits is enormous to low income households. Households under this level of financial pressure face huge difficulty in both raising this money and replacing it if it is lost or eroded. While the Private Rental Support Scheme has been established to assist people in crisis to raise bond monies, incidences of discrimination against low income tenants using the Private Rental Support Services have been identified (Cameron,

2002; Jacobs, 2002) and low income tenants may be driven to take loans from personal finance companies at high rates of interest (Cameron, 2002). The ability to retain a bond can therefore become a critical factor in low income households finding suitable accommodation.

A second critical issue for low income households in the current housing market is insecurity of tenure. Participants in Anglicare's research into the private rental market had on average moved every 11 months in the 5 years prior to the interview. Moves were often because of financial problems, such as high rent prices, cost of transport, the poor standard of rental properties, or the need to be more closely situated to schools or services. This finding was consistent with the national data, which shows that 20 per cent of private rental households have moved five times or more in the previous five years (ABS, 2000). This insecurity of tenure means that the prompt return of bonds is critical for low income households to enable their transition between tenancies.

The Affordable Housing Strategy

In response to the critical issues affecting low income Tasmanians in the housing system, the Affordable Housing Strategy was launched by the Tasmanian Government in December 2003. Phase One of this strategy saw an extra \$45 million committed to capital expenditure and assistance programmes with a focus on low income Tasmanians across all tenure types. A critical part of the Strategy was an increase in funding to the Private Rental Assistance Scheme, making more households eligible for support through these services and those households using it eligible for greater sums of bond assistance.

From the outset of the Affordable Housing Strategy, it was acknowledged by Government that some reform of the current system of bond collection and dispersal was required. A key objective outlined in the Affordable Housing Strategy papers was to "ensure the delivery of opportunities for low income Tasmanians to access an effective and responsive private rental market" and the strategy to achieve this was "to determine a method of increasing the level of security and appropriate return of tenant money held by private landlords, as well as capturing data about the private rental market for future planning" (Department of Health and Human Services, 2003; 12).

Subsequent work by the Affordable Housing Strategy Rental Bond Board Working Group, which included representatives of Housing Tasmania, the Real Estate Institute of Tasmania, the Tasmanian Council of Social Services, the Tenants Union, Shelter Tasmania, Anglicare Tasmania and the Office of Consumer Affairs and Fair Trading saw widespread support for the establishment of a central repository of security deposits.

Problems with the current system

Drawing on its own consultations and research into the situation of low income tenants, Anglicare has been urging the Tasmanian Government to establish a central repository for bonds since 1999.

The need for a bond repository was established through research into low income earners' experiences of the private rental market, undertaken by Anglicare in 1999 and 2002. The findings of the report **Condition Report: Low Income Earners in the Tasmanian Private Rental Market** indicated that a significant number of tenants experience difficulties having their bond money returned. The research indicated that for some low income earners it had become an accepted aspect of renting in the private market that regardless of the condition of the property at the end of the tenancy, the landlord would retain some money to cover professional cleaning of items such as curtains or carpets, which the tenants felt were left in clean and good condition, or to cover routine maintenance costs. In the worst cases, the tenants reported that they had lost their entire bond regardless of the condition of the property.

Given that a dispute resolution process does exist, the reasons for this acceptance of a relative position of powerlessness appear complex. Anglicare's research found that in many cases people were unaware of the provisions of the Residential Tenancies Act 1997 and believed that there was no mechanism for dispute resolution. Other people were aware of the complaints procedures but did not use them; the reasons given for this were a sense of powerlessness and a lack of faith in the system. A further important finding was that the dispute emerged in the context of the tenants looking for new accommodation, an extremely difficult task for people looking for low cost rental properties in the current market, or when tenants had moved into transient accommodation or were actively moving house. These were situations of great personal and financial stress for the research participants and they were unwilling to take on further stress or cost or jeopardise their chance of finding new accommodation.

Certainly while it is the landlord who holds their money the current system places the tenant in a position of unfair disadvantage should a dispute occur. For tenants from low income and disadvantaged backgrounds the market relationship between the consumer and the supplier is not a conventional one. Housing is a necessity of life. Achieving safe, secure and affordable housing is enormously difficult in the current market. Given this, the relationship between the landlord and the low income tenant is inherently unequal. It does not parallel conventional commercial arrangements, where the consumer has a choice about purchasing the product and which supplier to choose. Many tenants simply cannot assert their rights without undermining their chances of achieving some housing stability. In some parts of Tasmania the bulk of the rental properties may be owned, or

managed, by one person or agency. Participants in Anglicare's research expressed great anxiety that a dispute would endanger their chance of getting a new tenancy. Many of the participants stated that they simply 'gave up'.

A significant problem with the current system is that although the money held by a landlord as a security deposit belongs to the tenant, the onus is on the tenant to prove that the money should be returned to them. Currently, where a dispute arises, the tenant must lodge an application with the Residential Tenancies Commissioner and provide evidence to support their claim to the money. This costs \$15. The process of dispute investigation and resolution then commences, entailing equivalent costs for the landlord. Anglicare does not have an issue with the judgements or deliberations of the Commissioner; the issue for the community sector is that the current system places the burden of cost, time and confidence to put together a case onto the tenants. This is particularly difficult for tenants as they are likely to be living on the lowest incomes in the community (47 per cent of private renters), likely to be facing enormous difficulties in finding and retaining housing, and certainly are facing the financial burden of finding the money to cover moving costs, rent in advance and replacement bond money. The current system also undermines the Government's strategies to assist low income tenants in the rental market.

The issue of who pays to start the dispute resolution/investigation process and the issue that tenants are being asked, as a first step in the process, to justify their claim on the money are not simply issues with administrative fairness. The current system reinforces to tenants the belief that landlords are entitled to bond money rather than a recognition that it belongs to the tenant and the landlord must justify their claim to it. There is no doubt that this is a common misconception in the community. Anglicare Private Rental Support Service workers report that at times landlords indicate that they wish to have the bond money to put towards repairs to the property or personal expenses prior to the expiry of the lease (Bieser, pers.com., 2005).

While the Residential Tenancy Act requires that a condition report be completed wherever a bond is sought, it is service providers' experience that condition reports are still not always being completed. This omission appears to be more common with private landlords. The Commissioner has interpreted the Act to mean that the requirement to ensure a condition report is done rests with both parties. Anglicare has had experience of tenants being active in establishing the state of a rental property when they enter a lease agreement. Some Anglicare clients have asked the landlord for a condition report, others have given the condition report to the landlord when one has not been provided and other tenants have taken photos to document the condition of the property. There have been occasions when the landlord has refused a condition report or photos. The tenant has then been forced to get an independent person to witness the document/photos as being genuine (Bieser,

pers.com., 2005). In these instances the responsibility for the condition report has rested solely with the tenant. In other instances the relative powerlessness and in some cases housing desperation of tenants makes it unrealistic to expect them to demand a condition report before signing a lease.

Such disputes can only be efficiently and fairly judged through mutually completed condition reports. Tenants and owners need to be informed of their importance, but the responsibility to have them done clearly lies with property owners. Ensuring the implementation of this system is not possible while landlords control the bond money as there is little incentive for landlords to comply.

Even where bonds are not disputed, the current unregulated system creates significant problems for low income tenants. Landlords may be slow to return bonds. Anglicare services report instances of where landlords have told tenants they have spent bond monies and cannot return the money. Currently one of the main issues confronting the Private Rental Support Service is attempting to recover bonds paid to landlords who have disappeared (Jones, pers.com., 2005).

That the current bond system does not work effectively for all applicants is acknowledged in the Regulatory Impact Statement (RIS) which identifies similar issues, such as slow return of security deposits, absentee landlords, mortgagee sales, real estate agents spending the bonds on repairs at the direction of the owner and the general low take-up of the dispute resolution system. This reinforces earlier statements by the Office of the Residential Tenancies Commissioner.

“This year three cases highlighted the frustrations experienced by the office when property owners refused to, or were unable to provide the amount of security deposit in dispute to the Commissioner’s Office. Two property owners relocated to New South Wales and one declared himself bankrupt. Another refused to answer correspondence and even his solicitor could not obtain instructions.”
(Department of Justice and Industrial Relations Annual Report, 2001-2002: 80)

The advantages of a Rental Deposit Authority

The advantages of a Rental Deposit Authority (RDA) for the whole community are significant. It provides a neutral, independent and regulated repository for bond monies. Such a system recognizes that the bond monies belong to the tenant and not the landlord, a fundamental cultural shift in community perceptions of the private rental market. It also enforces the consistent application of rules for depositing and returning bonds, making for a more efficient and transparent system.

The establishment of an RDA also provides the opportunity to provide experienced staff to assist all stakeholders: tenants, property owners, and real estate agents with the process of collecting and

returning bond monies and the process of dispute resolution. This is a potential channel for information to the community generally and tenants and landlords in particular about their rights and obligations under the Residential Tenancies Act.

In a difficult market in which many people experience enormous financial stress and disadvantage, a system which enforces principles of consistency and fairness will inevitably have the benefit of increasing confidence in, and awareness of, the dispute resolution process when deposits are in dispute.

An additional important advantage is the contribution an RDA can make to housing policy development by providing data on the private rental market. At present the Commonwealth Government invests heavily in supporting low income people in the private rental market through the Commonwealth Rent Assistance Programme and the State Government has also made a substantial investment into the development of affordable housing for low income and disadvantaged Tasmanians through the Affordable Housing Strategy, which has included specific strategies to support tenants in the private rental market. Yet these investments of public money have been done with little or no direct data on the private rental market to direct the development of policy in these areas. At best, Tasmanian policy makers are left to extrapolate from Australian Bureau of Statistics data, data from the Commonwealth Department of Family and Community Services, Real Estate Institute of Tasmania or the Private Rental Support Scheme (all of which capture only a proportion of the market) or general community surveys such as the Healthy Communities Survey. The development of a mechanism to systematically capture data on the private rental market supports the development of a cohesive and integrated housing system and will best inform the development of Government budgetary priorities.

The legislation proposed in the Regulatory Impact Statement

Anglicare supports the bulk of the legislation proposed as described in outline in the Regulatory Impact Statement. Specifically, it is appropriate that the proposed legislation:

- Establish a Rental Deposit Authority, under the authority of the Director of the Consumer Affairs and Fair Trading to receive all security deposits on behalf of owners;
- Prohibit the direct payment of security deposits to owners and agents in connection with residential tenancy agreements;
- Create a statutory obligation for the Rental Deposit Authority to educate the public about the obligations of the Residential Tenancies Act;
- Maintain the Residential Tenancy Commissioner to determine disputes between parties to residential tenancy arrangements;

- Create relevant statutory offences where owners fail to comply with the Rental Deposit Authority requirements or receive security deposits;
- Provide for all monies held by the Rental Deposit Authority to be placed in an interest bearing account in the Special Deposits and Trust Fund, with all surplus funds to be invested with the Tasmanian Public Finance Corporation (Tascorp).

However, one proposal is of concern. The Regulatory Impact Statement proposes that the legislation require that any funds surplus to operating requirements be returned to the Consolidated Fund. Anglicare submits that any surplus funds generated by the RDA be dedicated to the provision of affordable housing for low income and disadvantaged Tasmanians, specifically through strategies to support their participation in the private rental market. Low income tenants constitute the bulk of the tenants whose money has generated the surplus, giving some right to a consideration of their particular needs in the dispersal of these funds. Given the State's continued need to commit to funding strategies to provide affordable housing for this same group, it is appropriate that surplus funds generated by tenant's security deposits be directed to Housing Tasmania to be additional funds for the Affordable Housing Strategy.

Composition and Functions of the Rental Deposit Authority

Anglicare supports the proposal that the RDA rest under the authority of the Director of Consumer Affairs who would be authorised to undertake the statutory functions assigned to the RDA. The maintenance of separateness of the RDA from the general functions of Consumer Affairs and Fair Trading, and the communication of its existence as a separate authority, will be an important task of the RDA.

Anglicare supports the delineation of functions of the RDA as described in the Regulatory Impact Statement, specifically, that it

- Receive security deposit funds from tenants;
- Store operational information about current tenancies and lodgements to facilitate payment at the end of a tenancy;
- Provide for the return of deposits in accordance with the wishes of the parties to an agreement;
- Provide on-line access to support call centre functions;
- Conduct public awareness campaigns to increase awareness of obligations of parties to agreements;
- Prosecute persons who fail to comply with relevant statutory obligations;
- Collect data to evaluate the effectiveness of the operation;

- Capture data on the private rental market; and
- Provide data to external agents.

However, public awareness campaigns are by their nature targeted and time-limited. Therefore, further to its obligation to conduct these, it is important that the RDA take on a responsibility for routine information dispersal at the time of the lodgement of each bond. This is discussed in the RIS, but only as a possible additional function. Anglicare would submit that this information dissemination, while marginally increasing the costs of the RDA, is critical to achieve the objectives of the proposed legislation, specifically to “increase tenant and owner awareness of existing dispute resolution processes for residential tenancy security deposits” (RIS; 25).

The following should therefore be included as a core function.

- On the lodgement of each security deposit, information about the obligations of landlords and tenants to agreements, the role of the Rental Deposit Authority, and the dispute resolution process, is automatically disseminated to both parties.

Alternative options

The options available to the Government, as outlined in the Regulatory Impact Statement, are to do nothing, to prohibit security deposits, to strengthen the current system or establish a Rental Deposit Authority.

To do nothing is not an acceptable option to the majority of stakeholders and would even undermine the Government’s attempts through the Affordable Housing Strategy to ‘increase the level of security and appropriate return of tenant money held by private landlords, as well as capturing data about the private rental market for future planning’.

Similarly Anglicare is opposed to the option of prohibiting security deposits as it potentially would encourage landlords to insure themselves against the risk of loss by increasing rentals or passing on the cost of insurance to the tenant. With the bulk of the households Anglicare assists already existing in chronic housing stress, such an option is detrimental.

The current system is widely acknowledged to be inadequate. The option of ‘strengthening’ the current system through community education campaigns, making legislative amendments to restrict the expenditure of security deposits by real estate agents and expanding the powers of the Commissioner are incomplete reforms. Namely they do not address the entrenched problems of the current system: the tardy return of bonds, the undisputed culture of ‘ownership’ of bonds by

landlords, the fear of aggravating landlords by instigating disputes, the absence of condition reports, the low level of usage and awareness of the current mechanism of dispute resolution.

Conclusion

Anglicare supports the conclusion of the Department of Consumer Affairs and Fair Trading, that the establishment of a Rental Deposit Authority is the only option to resolve the current problems with the system and that further, it offers opportunities for considerable public benefit through the development of a planned and cohesive housing system in Tasmania.

Anglicare supports the model outlined in the Regulatory Impact Statement with the modifications suggested in this paper, and would urge Government to adopt this recommendation.

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