Through the Roof -

Unreasonable Rent Increases in Tasmania

Law Reform Issues Paper - September 2006

Submitted by the Tenants' Union of Tasmania

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About this Issues Paper

The aim of this issues paper is to examine the current law in Tasmania regarding rental increases, and propose areas of reform.

As house and mortgage costs have increased in Tasmania, rental prices have also increased. Because this has not been complimented by an associated increase in wage rises[1], housing stress[2] has also been growing exponentially.[3] This has ensured that the issue of unreasonable increase in rent has become of critical importance to Tenants. For those in existing tenancy arrangements, an increase in rent must be reasonable.

The Tenants' Charter, as drafted by the International Union of Tenants and based on United Nations documents, outlines that:

> As housing is a human right, with reference to the *Universal Declaration of Human Rights* (1948 Article 21.1) and the *UN International Covenant on Economic, Social and Cultural Rights* (1966 Article 11), rents have to be set at an affordable level.[4]

[1] Gabriel 2004, as cited by the *Affordable Housing Strategy Tasmania* at 3

[2] Housing stress is defined by the *Affordable Housing Strategy* as those households in the bottom two income quintiles (that is, less than $599 per week) who are paying more than 30% of their income towards housing costs: *Affordable Housing Strategy Tasmania* at 3

[3] The National Association of Tenant Organisations (NATO) has highlighted the problem of affordable housing in the following way:

> *The lack of affordable rental housing is a growing problem, for private renters generally and low income private renters especially. Research by the Affordable Housing National Research Consortium shows that in the 10 years from 1986 to 1996, the number of private renter households paying more than 30 per cent of their income in rent grew by 74 per cent across seven capital cities, from approximately 157 770 households to 274 520 households. Over the same period, the number of private renter households in housing stress… in the seven capitals grew by a total of 90 000 to 227 480 households, and in five of seven capital cities the rate of growth of stressed renter households outpaced that of renter households overall. Most private renters (54 per cent) are in housing stress; and many of those who, on account of their income, are not in stress still pay more than the benchmark for affordability.*

(NATO, *Leaking Roofs,* at 10).

[4] Emphasis added, NATO, *Leaking Roofs*, at 12

The current law in Tasmania regarding increases in rent is found in sections 20 and 23 of the *Residential Tenancy Act 1997 Tasmania (The Act)*. However, as this issues paper will demonstrate, this law is generally ineffective and does not fully protect the rights of Tenants. The Tenants' Union submits that in order to be more effective, the law in Tasmania must be amended to make provision to prescribe the amount by which rents may be increased.

About the Tenants' Union of Tasmania

The Tenants' Union of Tasmania Inc. is a Community Legal Centre, funded by the Tasmanian Department of Health and Human Services, and the Commonwealth Government through the Attorney Generals Department. The Tenants' Union works for the interests and rights of Tenants and

- seeks to improve conditions in rental housing in Tasmania so that they meet accepted minimum standards;
- raises awareness within the community about tenancy issues; and
- promotes legislative change where this is necessary to improve outcomes for tenants.

The Tenants' Union provides a free service via a Telephone Advice line and Drop-In advice sessions are available between 9.30 and 12.30 three days per week.

Current Tasmanian Law

The *Residential Tenancy Act 1997* (Tas) addresses the matter of rent increases in Section 20:

20. Increase in rent

(1) An owner, by written notice to the tenant, may increase the amount of the rent payable by the tenant in respect of residential premises if –

(a) the written residential tenancy agreement for those premises allows for an increase; or

(b) there is no written residential tenancy agreement for those premises.

2) A notice is to specify –

(a) the amount of the rent as increased; and

(b) the day from which the increase in the rent takes effect.

(3) An increase in the rent may only take effect from a day that is –

(a) more than 60 days after the day on which the notice is given; or

(b) if the residential tenancy agreement commenced less than 60 days before the day on which the notice was given, more than 6 months after that commencement; or

(c) if rent has been previously increased, more than 6 months after the last increase; or

(d) if the Court makes an order under section 23(3), more than 6 months after the date of that order.

(4) A notice operates to vary the residential tenancy agreement to the effect that the increased rent as specified in the notice is payable under the agreement from the day specified in the notice.

The matter of an unreasonable rent increase is dealt with in Section 23 of the Act:

23. Unreasonable increase

(1) A tenant may apply to the Court for an order declaring that an increase in the rent payable under a residential tenancy agreement is unreasonable.

(2) In determining whether an increase in the rent is unreasonable, the Court is to have regard to –

(a) the general level of rents for comparable residential premises in the locality or a similar locality; and

(b) any other relevant matter.

(3) If satisfied that the increase in the rent is unreasonable, the Court may order that the increase in the rent be changed to an amount that does not exceed a specified amount.

(4) An order remains in force until the day on which rent may be increased under section 20.

Dispute resolution

The effect of these provisions is to outline the process of validly increasing rent (s.20) and provide for a process of dispute resolution if the tenant believes the amount of increase is unreasonable (s.23). The method of dispute resolution is through the Magistrates Court (Civil Division) as a minor civil claim[5].

The Case for Reform

The Tenants' Union of Tasmania submits there is a genuine and urgent need for reform in *the Residential Tenancy Act 1997*. Tenants have been contacting the

[5] *Magistrates Court (Civil Division) (Minor Civil Claims) Regulations 2003* Regulation 4(b)

Telephone Advice Service with increased frequency to seek advice about the rent increases their property owners are proposing and their rights in these circumstances.

The Tenants' Union, with the National Association of Tenant Organisations (NATO), has identified the following deficiencies in the current Tasmanian provisions for rental increases:[6]

1. The only regulation provided by the Act is to seek a court order
1. The primary consideration which the court must have regard to, is limited to the general market level of rents
1. The onus falls on the Tenant to prove the rental increase is unreasonable.

Examining each of these factors in depth, it is clear why the law requires reform:

1. *That the only regulation provided by the Act is to seek a court order:*

   Seeking a court order is difficult, timely and expensive. When a Tenant's only recourse is through the court system, they may be discouraged from pursuing the matter, due to legal costs (both their own, and the potential to pay the other party's legal costs upon such an order); court filing fees; the need for expert evidence of market rent such as that provided by a registered property valuer which could cost hundreds of dollars; an aversion to, or fear of, the court process; and excessive time spent in preparation and hearing. This process also uses valuable court time. All of these issues could be resolved through alternative dispute resolution methods before the matter goes to hearing. For example in Victoria, an investigator visits the property and prepares a report on whether they believe the increase to be reasonable. The Tenant then has the option, upon receipt of this report, to take the matter to hearing. This process is useful as the merits of the case will have been largely determined before the matter enters the court system. This has the benefits of freeing up court time, and of making the determination process more accessible to Tenants.

1. *That the primary consideration which the court must have regard to, is limited to the general market level of rents:*

[6] NATO, *Leaking Roofs,* at 78

Tasmania is the only jurisdiction that limits the matters to which the court must have regard, to one specified matter. Other jurisdictions include up to ten different specifications.[7] Whilst it is acknowledged that the court is to have regard to "any other relevant matter",[8] the lack of express articulation in the legislation renders the provision quite arbitrary. Certain other matters, for example, the state of the premises, might be considered in some cases where Counsel raise the matter, but not in others. A more extensive list containing a greater number of specified factors to be considered by the court in determining the reasonableness of rent increases would ensure greater consistency in cases.

1. *That the onus falls on the Tenant to prove the rental increase is unreasonable:*

The Tenant will often be in a position of disadvantage in a rental situation: they will usually be less experienced with tenancy matters; many will be unaware of their legal rights; and they will often have fewer financial resources available to prepare and institute an unreasonable rental case. The current process is often beyond the competence of the Tenant.[9] Reversing the onus of proof to what is often the stronger party, the Owner, is desirable.

NATO concludes that these factors make it often impossible for Tenants to even prepare such a case.[10] Tasmania is the only jurisdiction that NATO has identified as being deficient in its provisions dealing with unreasonable rental increase.[11]

[7] See, for example, Victoria. The *Residential Tenancies Act 1997* (Vic) s.47(3)(a)-(i) specifies ten different factors the Tribunal must have regard to. The *Residential Tenancies Act 1997* (ACT) s.68(3)(a)-(j) specifies nine different factors to be taken into account.
[8] *Residential Tenancy Act 1997* (Tas) s.23(2)(b)
[9] See Adrian J. Bradbrook, *Residential Tenancies Law – The Second State of Reforms,* available: http://www.austlii.edu/au/au/journals/SydLRev/1998/17.html, date accessed:
[10] NATO, *Leaking Roofs,* at 78
[11] See NATO, *Leaking Roofs*

Case Studies

These Case Studies are based on real cases that the Tenants' Union has worked on. All names and some details have been changed to protect the client's confidentiality. They show the effect of the current legislation on Tenants in Tasmania.

Case #1

Jane is on a combined Disability and Carers pension, and has a weekly income of $358.50. She has sole guardianship of her 7-year-old Granddaughter. Recently, Jane was diagnosed with inoperable cancer and has significant medical costs associated with this. Jane is renting a three-bedroom house in Bridgewater and has been living there for several years. She is a model tenant, keeping the premises tidy and ensuring the state of the premises does not deteriorate. She thinks that the rent may have been increased a year ago, but is not sure of the dates.

Recently, the new landlords have demanded a rental increase from $125.00 per week to $150.00 per week. This represents a 20% increase in rent, and would mean that Jane is paying 40% of her weekly income on rent. Jane will have significant difficulty paying this increased rent amount. Under the Act s.23, the only matter the Court must have regard to are the prices for similar properties in a similar location. Market rent for Bridgewater is between $150.00 and $170.00 per week, so under this criterion the rental increase would probably be seen as reasonable. The Court may have regard to "any other relevant matter" and under this heading, it was argued that, as a percentage increase, the amount is too much; and that, with reference to other jurisdictions, the increase is too much.

In the event the Court decided that Jane's evidence of the previous increase was not contested. The Magistrate found that the Owners did not provide sufficient evidence of the rental value of the property to give him a clear picture of a reasonable rent. The Magistrate decided that the quantum of the rent increase in question, in addition to Jane's evidence of a previous increase, was sufficient to demonstrate that the increase was unreasonable in the circumstances. The Court awarded an increase of $12.50 per week to the Owners, rather than $25.00.

Case #2

Trevor is on a disability pension and has just been informed of a rental increase, from $100.00 per week, to $150.00 per week. This is a 50% increase in rent. Trevor called the Tenants' Union for advice, but upon hearing that the only dispute resolution mechanism was through the courts, has decided not to pursue the matter.

Case #3

David and Maggie have rented the same property for eighteen months on a verbal, non-fixed lease. The Owners have been to the bank for finance, and have been informed that it would be in their fiscal interest to have a written, fixed lease. The Owners take the opportunity to increase the rent from $250 to $350 a week. Maggie and David do not want to lose their rental home, so they sign the contract and then they contact the Tenants' Union. We advised them unless they made a claim in the Magistrates Court, that within days of failing to pay the increased rent, they may find that a Notice to Vacate would be issued, and that they could be evicted within fourteen days. Maggie and David weigh up the costs of moving, the difficulties of finding a home close to work and the potential legal difficulties in challenging the rent increase. They decide against contesting.

Other Jurisdictions

There are differences between the laws relating to unreasonable rental increases on residential tenancies throughout Australia and upon examination Tasmanian's laws in particular seem to be less comprehensive when compared to those existing in the other jurisdictions. It is therefore submitted that consideration, and to an extent adoption and expansion, of the laws in other Australian jurisdictions may help in addressing some of the deficiencies in the Tasmanian law regarding unreasonable rental increases as identified by NATO.

General Overview of other States and Territories:

In Australia, there is:

- One jurisdiction which allows for a mathematically calculated formula to determine if the increase is *prima facie* unreasonable (ACT);
- One jurisdiction with a shifting onus of proof, which rests on the Tenant until an objective fact is satisfied, and which then moves to the Landlord (ACT);
- One jurisdiction which allows for a Director to write a report on whether the increase is reasonable or not, before going through the Court system (Victoria);
- One jurisdiction which allows for an increase only if the method for determining the increase is enunciated in the actual lease (Northern Territory);
- One jurisdiction which deems that an increase is unreasonable only if the Landlord is motivated by a desire to have the Tenant leave the agreement and premises; or that since the lease was entered into, there has been a significant decrease in the chattels or services on the premises (Western Australia);
- Six jurisdictions which determine whether the increase was reasonable or not, on the basis of a wide range of factors which must be considered (ACT, Victoria, NSW, NT, South Australia, Western Australia).

The Australian Capital Territory[i]

The most progressive Australian jurisdiction on the issue of rental increase is the Australian Capital Territory. The *Residential Tenancies Act 1997* (ACT) s.68 provides

a comprehensive process of determining if a rental increase is reasonable. This process is as follows:

1. If the rental increase is less than 20% of the Consumer Price Index (CPI) for Canberra, the Tenant must prove why the increase is unreasonable.
1. If it is more than this amount, the Landlord must prove why the increase is reasonable.
1. To prove this, a series of determining factors are listed, which should be examined.

The effect of this is that the onus of proof is shifting, and once an objective fact[12] is established, the onus of proof is reversed to the Landlord. The benefit of this is that the burden is taken from the normally weaker party, i.e. the Tenant, and placed on the normally stronger party, the Landlord.

New South Wales: [ii]

The *Residential Tenancies Act 1987* (NSW) s.s. 46-49 provides for a similar process to that existing in Tasmania with regards to determining an unreasonable rental increase. There have been calls for reform in the unreasonable rental provisions of the equivalent law in New South Wales, the *Residential Tenancies Act 1987* (NSW) s.s. 46-49.[13] However, the New South Wales provisions allow a broader and more exhaustive list of the factors to be taken into consideration by the Court in determining the matter,[14] and in this regard, their law is more comprehensive than that currently in Tasmania.

Victoria:[iii]

Victoria has a sophisticated process for dealing with matters of allegedly unreasonable rental increase. The first part of the process is for the Tenant to apply to

[12] That is, the rental increase as a percentage of CPI

[13] See Adrian J. Bradbrook, *Residential Tenancies Law – The Second State of Reforms,* available: http://www.austlii.edu/au/au/journals/SydLRev/1998/17.html

[14] These include, at s.48, the general level of market rents of comparable prices in the locality; the value of the residential premises; the amount of any outgoings in respect of the residential premises required to be borne by the landlord under the residential tenancy agreement or proposed agreement; the estimated cost of any services provided by the landlord or the tenant under the residential tenancy agreement or proposed agreement; the value and nature of any fittings, appliances or other goods, services or facilities provided with the residential premises; the accommodation and amenities provided in the residential premises and the state of repair and general condition of the premises; any work done to the premises by or on behalf of the tenant, to which the landlord has consented; and any other relevant matter.

the Director to investigate and report on the matter. This report must consider ten factors.[15] Upon receiving this report, the Tenant may apply to a tribunal to decide the matter. The Tribunal must have regard to the Director's report, and the same matters the Director must have regard to. If, on the balance of these factors, the Tribunal believes the increase is unreasonable, they can direct that for a specified time of at least 12 months[16], the rent does not exceed an amount specified.[17]

The benefit of this process is that there is a method of dispute resolution before going through the court system. If the Director's report holds that the rent increase is reasonable, this may deter vexatious litigants. If the report holds that the increase is unreasonable, this may be persuasive to the court and therefore reduce court time and expense.

Northern Territory:[iv]

The Northern Territory only allows for a rental increase if both the right to increase the rent, and the amount or method of calculation of the increased rent is specified in the lease agreement. This means that the parties have ultimate control over the agreed amount the rent should be increased by: this is based upon a "freedom of contract" ideal. There is no provision for recourse to the courts except under common law contract provisions, such as unconscionability or misrepresentation; or other statutory provisions. This section is preferable due its clarity and in ensuring the parties are only bound by what they originally agree to. However, there is potential for this provision to be misused, with either party not fully understanding the provisions at the time of signing.

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[15] These are similar to the NSW provisions at s.48 (above); however, there are some discrepancies. The Victorian provisions, at s.47 (3), are as follows: the rent payable for comparable rented premises let under a tenancy agreement by a landlord, other than a public statutory authority, in the same locality; the state of repair and general condition of the rented premises; the cost of goods and services and facilities provided with the rented premises; any charges in respect of the rented premises for which the landlord is or may be liable under this Act or any other Act or the tenancy agreement; the cost of goods and services and facilities provided by the tenant under the tenancy agreement; any charges payable by the tenant under this Act or any other Act or the tenancy agreement; any work which the tenant has done with the landlord's consent or agreed with the landlord to do to the premises; any changes in the rent and the condition of the rented premises or facilities since the commencement of the tenancy agreement and since the last rent increase; the number of rent increases (if any) in the preceding 24 months, the amount of each rent increase in that period and the timing of those increases; and any valuation of the rented premises.

[16] s. 47(4)

[17] s. 47 (1)(a)(i)-(ii)

South Australia:[v]

The combined effect of s.s.55 and 56 of the *Residential Tenancies Act 1995* (SA) is similar to that of the New South Wales provision, particularly insofar as the broader express factors to be taken into consideration are concerned.[18] The result is that there are six specified factors to be considered by the courts, as well as any other relevant matter. Again, the result is that this provision is more comprehensive than Tasmania's comparable provision.

Queensland:[vi]

In Queensland, an alleged unreasonable rental increase is determined by a tribunal, which considers five factors plus any other relevant matter. This is broader than the Tasmanian provisions with regard to what the tribunal must consider. However, these provisions do not apply to public housing tenants.

West Australia:[vii]

The West Australian provisions provide a very narrow scope for arguments to be heard in relation to unreasonable increases.

The Western Australian system is more restrictive in relation to when a matter can be raised, however upon further review of their legislation it can be seen that once a matter is before the court there are a number of factors that the court will require consideration.[19] This again shows how the law in Tasmania is limited because it lacks the comprehensiveness of the other jurisdictions regarding what factors warrant consideration by a court.

Internationally

Internationally a slightly different approach has been taken which may also be worth considering if the Tasmanian law is to be successfully reformed. One example is the approach that is adopted in Quebec, Canada, where a Rental Board annually calculates how much a rent should be increased, based upon factors including how the building is heated, what if any renovations have been conducted, and how much local

[18] These matters are nearly identical to the NSW provisions in s.48.
[19] s32 (3) Residential Tenancies Act 1987

taxes have increased by.[20] If a landlord is asking for an increase that is substantially higher than this average rent increase released by the Board, the Board has ultimate jurisdiction to decide the matter.[21] This process is similar in Ontario, Canada.[22]

In San Francisco, USA, a property owner may impose annual rent increases of 8%, or the average Consumer Price Index (CPI) figure, whichever is less.[23] In this way, the amount of rental increase is mathematically specified.

Arguments Against Changing the Law:

Reversing the onus of proof is contrary to basic legal doctrine, which stipulates that the individual bringing the case should have the burden of proof.

The general rule that the onus of proof lies with the individual bringing the matter is already subject to many statutory reversals. However, arguably, placing the onus on the traditionally weaker party is also a matter of public policy. There is a further possibility that land owners will object as changes to the law could infringe upon their rights to use their land as they please.

Recommendations:

1. That the Act include provision for a mathematically calculated way of determining whether the increase is *prima facie* unreasonable, for example linked to the CPI.
2. That the Act reverses the onus of proof onto an Owner if the increase is found to be *prima facie* unreasonable pursuant to this mathematical calculation.
3. That the Act stipulates a more prescriptive list of considerations to which the court must have regard.
4. That the Act provide for alternative dispute resolution mechanisms prior to a Court hearing.

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[20] http://www.mcgill.ca/offcampus/faq/
[21] http://www.mcgill.ca/offcampus/faq/
[22] http://www.orht.gov.on.ca/userfiles/HTML/nts_3_11829_1.html
[23] http://www.beverlyhills.org/presence/connect/CoBH/Homepage/For+Residents/City+Services/Residential+Renters+Issues/RES-BS-COPY-Rent_Control_Chapter_5

5. That the Act allow provision to terminate a lease, through seeking an order for termination, if the increase is too large and demonstrably out of reach of the Tenant's income.
6. That the Act include a provision such that the rental agreement must contain a clause which allows the Owner to reasonably increase the rent. The rental agreement does not need to specify what the rent is to be increased to, but at least alert tenants that an increase may occur. If there is no such clause in the agreement then the Owner should not be allowed to increase the rent.
7. That the Act attempt to merge the ideas of mathematically calculated reasonable increases with alternative dispute resolution methods and an increased list of considerations. Under this approach if an Owner wished to dispute that an increase was unreasonable under the mathematic calculation they could apply to the Commissioner or another independent body to investigate a broad number of factors and make a finding as to the reasonableness of the increase. The process could work vice versa for Tenants so that they could apply to the commissioner to demonstrate that an increase, even though it has not met the threshold of the mathematic test, was still unreasonable. If either party was still not satisfied then the matter could proceed to court.

Conclusion

The case for a reform of the *Residential Tenancy Act 1997* to provide clearly defined parameters within which to increase rent is of utmost significance. The economic pressures facing many Tasmanians are manifold and it cannot be understated how much emotional and financial stress renters experience when they are notified of a rent increase, especially more vulnerable members of the community. There is a clear deficiency in the *Residential Tenancy Act* that creates uncertainty over the appropriate amount of rent increase, resulting in needless expenditure of court time. The Tenants' Union of Tasmania believe that these matters can be easily resolved by simple amendment to the Act that can result in a fairer and more satisfactory outcome for both tenants and property owners alike.

Endnotes

Provisions in other jurisdictions for Rental Increases

[i] Residential Tenancies Act 1997 - Australian Capital Territory

(1) The tribunal shall allow a rental rate increase that is in accordance with the standard residential tenancy terms unless the increase is excessive.

(2) For subsection (1)—

(a) unless the tenant satisfies the tribunal otherwise, a rental rate increase is not excessive if it is less than 20% greater than any increase in the index number over the period since the last rental rate increase or since the beginning of the lease (whichever is later); and

(b) unless the lessor satisfies the tribunal otherwise, a rental rate increase is excessive if it is more than 20% greater than any increase in the index number over the period since the last rental rate increase or since the beginning of the lease (whichever is later).

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

(a) the rental rate before the proposed increase;

(b) if the lessor previously increased the rental rate while the relevant tenant was tenant—

(i) the amount of the last increase before the proposed increase; and

(ii) the period since that increase;

(c) outgoings or costs of the lessor in relation to the premises;

(d) services provided by the lessor to the tenant;

(e) the value of fixtures and goods supplied by the lessor as part of the tenancy;

(f) the state of repair of the premises;

(g) rental rates for comparable premises;

(h) the value of any work performed or improvements carried out by the tenant with the lessor's consent;

(j) any other matter the tribunal considers relevant.

(4) Where the tribunal considers a proposed rental rate increase is excessive but a lesser increase would not be, it may disallow so much of the increase as is excessive.

(5) In subsection (2):

"index number" means the rents component of the housing group of the Consumer Price Index for Canberra published from time to time by the Australian statistician.

[ii] Residential Tenancies Act 1987 – New South Wales

45 Increase of rent

(1) The rent payable by a tenant under a residential tenancy agreement shall not be increased except by notice in writing given to the tenant specifying the amount of the increased rent and the day from which the increased rent is payable.

(2) A day specified as the day from which increased rent is payable shall not be earlier than 60 days after the day on which notice of the increase was given under this section.

(2a) A notice given under this section may be cancelled by a later notice or a later notice may provide for a lesser increase than that specified in the earlier notice.

(2b) A later notice has effect instead of the earlier notice and takes effect from the date on which the earlier notice was to take effect.

(3) A notice of increase of rent given in accordance with this section (and not cancelled by a later notice or affected by any order of the Tribunal) varies the residential tenancy agreement so that the increased rent specified in the notice is payable under the agreement from the day specified in the notice.

(4) The rent payable by a tenant under a residential tenancy agreement that creates a tenancy for a fixed term shall not be increased during the currency of the term unless the amount of the increase, or a method for calculating the amount of the increase, is set out in the agreement.

(5) A rent increase (including a rent increase permitted under subsection (4) or provided for in any other residential tenancy agreement) is not payable by a tenant under a residential tenancy agreement unless the rent is increased in accordance with this section or by an order of the Tribunal.

(6) A landlord shall not contravene or fail to comply with this section.

46 Tenant may apply for an order that a rent increase is excessive

A tenant under a residential tenancy agreement may apply to the Tribunal for an order declaring that a rent increase is excessive not later than 30 days:

(a) after being given notice of the rent increase, or

(b) after being given notice of a rent increase payable under a proposed residential tenancy agreement for residential premises already occupied by the tenant.

48 Matters to be considered in determining rent applications

The Tribunal may, in determining whether or not a rent increase or rent payable under a residential tenancy agreement or a proposed residential tenancy agreement for residential premises is excessive, have regard to the general market level of rents for comparable premises (other than premises let by a government department, administrative office or public authority) in the locality or a similar locality and may also have regard to:

(a) the value of the residential premises,

(b) the amount of any outgoings in respect of the residential premises required to be borne by the landlord under the residential tenancy agreement or proposed agreement,

(c) the estimated cost of any services provided by the landlord or the tenant under the residential tenancy agreement or proposed agreement,

(d) the value and nature of any fittings, appliances or other goods, services or facilities provided with the residential premises,

(e) the accommodation and amenities provided in the residential premises and the state of repair and general condition of the premises,

(f) any work done to the premises by or on behalf of the tenant, to which the landlord has consented, and

(g) any other relevant matter.

49 Orders as to excessive rent increases or rents

(1) The Tribunal may, on application by a tenant under section 46 or 47, and after considering any matters it considers appropriate under section 48, determine that a rent increase or rent is excessive.

(2) If the Tribunal determines that a rent increase is excessive, the Tribunal may order that from a day specified by the Tribunal, not being earlier than the day from which the increased rent was payable, the rent shall not exceed an amount specified by the Tribunal and may make such other orders as it thinks fit.

(3) If the Tribunal determines that a rent is excessive having regard to the reduction or withdrawal by the landlord of any goods, services or facilities provided with the premises, the Tribunal may order that from a day specified by the Tribunal, not being earlier than the date of that reduction or withdrawal, the rent shall not exceed an amount specified by the Tribunal and may make such other orders as it thinks fit.

(4) An order made by the Tribunal specifying a maximum amount of rent:

(a) has effect for such period, not exceeding 12 months, as is specified by the Tribunal in the order, and

(b) binds only the parties to the residential tenancy agreement or the proposed residential tenancy agreement under which the rent is payable.

[iii] Residential Tenancies Act 1997 - Victoria

45. Tenant may complain to Director about excessive rent

(1) A tenant may apply to the Director to investigate and report if the tenant-

(a) considers that the rent under a tenancy agreement is excessive having regard to the fact that the landlord has reduced or withdrawn services, facilities or other items provided with the rented premises; or

(b) has received a notice of a rent increase and the tenant considers that the proposed rent is excessive.

(2) An application under sub-section (1)(b) must be made in writing within 30 days after the notice of the rent increase is given.

(3) As soon as practicable after receiving an application, the Director must-

(a) carry out an investigation; and

(b) give a written report to the tenant and a copy of the report to the landlord.

(4) The report of the Director must-

(a) include a statement informing the tenant of the tenant's right under section 46 to apply to the Tribunal for an order in respect of the proposed rent; and

(b) take into account the matters referred to in section 47(3).

46. Application to Tribunal about excessive rent

(1) After receiving a report from the Director under section 45, the tenant may apply to the Tribunal for an order declaring the rent or proposed rent excessive.

(2) An application under sub-section (1) must-

(a) be made within 30 days after the tenant receives the Director's report;

(3) If a tenant has received a notice of a rent increase and the tenant considers that the proposed rent is excessive, the tenant may, with the leave of the Tribunal, apply to the Tribunal for an order declaring the proposed rent excessive without receiving a report from the Director under section 45.

(4) An application under sub-section (3) may only be made after the end of 30 days after the notice of the rent increase is given.

(5) The Tribunal may grant leave under sub-section (3) if it is satisfied that there are reasonable grounds for the tenant's failure to request the Director to investigate and report under section 45.

47. What can the Tribunal order?

(1) If an application is made under section 46, the Tribunal may-

(a) make an order-

(i) declaring the rent or proposed rent excessive; and

(ii) directing that for the period specified in the order the rent must not exceed the amount specified in the order; or

(b) dismiss the application.

(2) If the Director's report has been obtained under section 45, the Tribunal must have regard to that report in determining the application.

(3) The Tribunal must make an order declaring the rent or proposed rent excessive if it is satisfied that the rent or proposed rent is more than that which should reasonably be paid by a tenant having regard to-

(a) the rent payable for comparable rented premises let under a tenancy agreement by a landlord, other than a public statutory authority, in the same locality;

(b) the state of repair and general condition of the rented premises;

(c) the cost of goods and services and facilities provided with the rented premises;

(d) any charges in respect of the rented premises for which the landlord is or may be liable under this Act or any other Act or the tenancy agreement;

(e) the cost of goods and services and facilities provided by the tenant under the tenancy agreement;

(f) any charges payable by the tenant under this Act or any other Act or the tenancy agreement;

(g) any work which the tenant has done with the landlord's consent or agreed with the landlord to do to the premises;

(h) any changes in the rent and the condition of the rented premises or facilities since the commencement of the tenancy agreement and since the last rent increase;

(ha) the number of rent increases (if any) in the preceding 24 months, the amount of each rent increase in that period and the timing of those increases;

(i) any valuation of the rented premises.

(4) If the Tribunal makes an order under sub-section (1)(a) in relation to rented premises, the landlord cannot require the tenant to pay an amount of rent greater than that specified in the order for a period of 12 months after the day on which the order comes into operation.

[iv] Residential Tenancies Act 1995 - Northern Territory

41. Increases in rent

(1) A landlord may increase the rent payable under a tenancy agreement only if -

(a) the right to increase the rent; and

(b) the amount of the increase in rent or the method of calculation of the increase in rent,

is specified in the agreement.

(2) A proposal to increase the rent payable under a tenancy agreement is of no effect unless at least 30 days written notice is given to the tenant of -

(a) the amount of the increase; and

(b) the date from which the increase is to take effect.

(3) The date fixed for an increase in rent in relation to a tenancy must not be earlier than 6 months after -

(a) the day on which the tenancy agreement commences; or

(b) if there has been a previous increase of rent under this section in relation to one or more of the same tenants and the same premises - the last increase.

(4) If the rent payable under a tenancy agreement is increased under this section, the terms of the agreement are varied accordingly.

(5) Subsections (2), (3) and (4) do not apply in relation to -

(a) a provision of a tenancy agreement in relation to a tenancy under which the rent payable changes automatically at stated intervals on a basis set out in the agreement or by a determination under the *Housing Act* by the minister administering that Act; or

(b) an increase in the amount of rent payable by a tenant because of the cancellation or adjustment of a rent rebate.

[v] **Residential Tenancies Act 1995 – South Australia**

s.55 Variation of rent

(1) The landlord may increase the rent payable under a residential tenancy agreement by giving written notice to the tenant specifying the date as from which the increase takes effect.

A series of residential tenancy agreements between the same parties and relating to the same premises is treated as a single residential tenancy agreement for the purposes of this section unless at least six months have elapsed since rent for the premises was fixed or last increased.

(2) However -

(a) the right to increase the rent may be excluded or limited by the terms of the residential tenancy agreement; and

(b) if the tenancy is for a fixed term, the residential tenancy agreement is taken to exclude an increase in rent during the term unless it specifically allows for an increase in rent; and

(c) the date fixed for an increase of rent must be at least six months after the date of the agreement or, if there has been a previous increase of rent under this section, the last increase and at least 60 days after the notice is given but--

(i) if the maximum rent for the premises has been fixed by a housing improvement notice, and the notice is revoked, the landlord may, by notice given under this section within 60 days after revocation of the housing improvement notice, increase the rent for the premises from a date falling at least 14 days after the notice is given; and

(ii) if the landlord is a registered housing co-operative, and the residential tenancy agreement provides for variation of rent in accordance with the tenant's income, the landlord may increase the rent on the ground of a variation in the tenant's income from a date falling at least 14 days after the notice of the increased rent is given; and

(iii) if the landlord is a registered housing co-operative under a residential tenancy agreement that allows the landlord to change the basis of calculating the rent payable under the agreement, and the landlord gives the tenant written notice that there is to be a change in the basis of calculating rent as from a specified date (which must be at least 60 days after the notice is given and at least six months from the date of the agreement, or if there has been a previous change in the basis of rent calculation, at least six months from the date of the last such change), the rent may be increased to accord with the new basis of rent calculation as from the specified date without further notice under this section.

(3) The rent payable under a residential tenancy agreement may be reduced by mutual agreement between the landlord and the tenant.

(4) A reduction of rent may be made on a temporary basis so that the rent reverts to the level that would have been otherwise applicable at the end of a specified period.

(5) If the rent payable under a residential tenancy agreement is increased or reduced under this section, the terms of the agreement are varied accordingly.

(6) This section does not affect the operation of a provision of a residential tenancy agreement under which the rent payable under the agreement changes automatically at stated intervals on a basis set out in the agreement.

s.56. Excessive Rent

(1) The Tribunal may, on application by a tenant, declare that the rent payable under a residential tenancy agreement is excessive.

(2) In deciding whether the rent payable under a residential tenancy agreement is excessive, the Tribunal must have regard to--

(a) the general level of rents for comparable premises in the same or similar localities; and

(b) the estimated capital value of the premises at the date of the application; and

(c) the outgoings for which the landlord is liable under the agreement; and

(d) the estimated cost of services provided by the landlord and the tenant under the agreement; and

(e) the nature and value of furniture, equipment and other personal property provided by the landlord for the tenant's use; and

(f) the state of repair and general condition of the premises; and

(g) other relevant matters.

(3) If the Tribunal finds, on an application under this section, that the rent payable under a residential tenancy agreement is excessive, the Tribunal may, by order--

(a) fix the rent payable for the premises and vary the agreement by reducing the rent payable under the agreement accordingly; and

(b) fix a date (which cannot be before the date of the application) from which the variation takes effect; and

(c) fix a period (which cannot exceed one year) for which the order is to remain in force.

(4) The Tribunal may, on application by the landlord, vary or revoke an order under this section if satisfied that it is just to do so.

(5) If, while an order remains in force under this section, a landlord asks for or receives rent for the premises to which the order relates exceeding the amount fixed by the order, the landlord is guilty of an offence.

Maximum penalty: $1 000.

[vi] **Residential Tenancies Act 1994 - Queensland**

53 Rent increases

(1) If the lessor proposes to increase the rent, the lessor must give written notice of the proposal to the tenant.

(2) The notice must state--

(a) the amount of the increased rent; and

(b) the day from when the increased rent is payable.

(3) The day stated must not be earlier than--

(a) for a periodic agreement--2 months after the notice is given; or

(b) for a fixed term agreement--1 month after the notice is given.

(4) Subject to an order of a tribunal under section 53A, the increased rent is payable from the day stated in the notice, and the agreement is taken to be amended accordingly.

(5) However, if the agreement is a fixed term agreement, the rent may be increased before the term ends only if the agreement--

(a) provides for a rent increase; and

(b) states the amount of the increase or how the amount of the increase is to be worked out.

(6) A rent increase is payable by the tenant only if the rent is increased under this section.

(7) This section does not apply if the lessor is the chief executive of the department in which the Housing Act 2003 is administered, acting on behalf of the State.

53A Tenant's application to tribunal about rent increase

(1) If the lessor gives the tenant notice of a proposed rent increase under section 53 and the tenant considers the increase is excessive, the tenant may apply to a tribunal for an order under this section.

(2) The application must be made—

(a) within 30 days after the tenant receives the notice; and

(b) if the agreement is a fixed term agreement--before the term of the agreement ends.

(3) The tribunal may make either of the following orders on an application under this section—

(a) an order reducing the amount of the proposed increase of rent by a stated amount;

(b) an order setting aside the amount of the proposed increase of rent.

(4) In deciding the application, the tribunal must have regard to the following--

(a) the range of market rents usually charged for comparable premises;

(b) the proposed increased rent compared to the current rent;

(c) the state of repair of the premises;

(d) the term of the tenancy;

(e) the period since the last rent increase (if any);

(f) anything else the tribunal considers relevant.

(5) Without limiting the tribunal's powers, the tribunal may make an interim order about payment of the rent increase pending its final decision on the application.

(6) This section does not apply if the lessor is the State.

[vii] **Residential Tenancies Act 1987 – Western Australia**

32 . Limitation of excessive rents in certain circumstances

(1) A tenant under a residential tenancy agreement may apply to a magistrate sitting in the Small Disputes Division for an order declaring that the rent payable in respect of the premises is excessive.

(2) An application under subsection (1) may only be made on one or more of the following grounds —

(a) that since the tenancy was entered into, renewed or extended there has been, without any default on the part of the tenant, a significant reduction in the chattels provided with the premises or in the facilities provided, or both;

(b) that the owner was wholly or partly motivated in his approach to the level of rent by a desire that the tenancy be terminated,

but may be so made notwithstanding that the tenant has agreed to the rent to which the application relates.

(3) A magistrate shall, in determining whether or not the rent payable in respect of the premises is excessive, have regard to —

(a) the general level of rents for comparable premises in the locality or a similar locality;

(b) the estimated capital value of the premises at the date of the application;

(c) the amount of the outgoings in respect of the premises required to be borne by the owner under the agreement;

(d) the estimated cost of any services provided by the owner or tenant under the agreement;

(e) the value and nature of the chattels provided with the premises for use by the tenant;

(f) the accommodation and amenities provided in the premises and the state of repair and general condition thereof; and

(g) any other relevant matter.

(4) Where a magistrate determines on an application under this section that the rent payable in respect of the premises is excessive, he may, having regard to the justice and merits of the case, order that from a specified day, not being earlier than the date of the application by the tenant, the rent payable in respect of the premises under the residential tenancy agreement shall not exceed a specified amount.

(5) An order made by a magistrate under subsection (4) has effect until the expiration of the tenancy of the person who applied for the order or of such period not exceeding 6 months as is fixed by the magistrate commencing on the day on which the order is made, whichever is the earlier.

(6) A magistrate may, upon application by the owner of any premises in respect of which an order under this section has been made, if satisfied having regard to the matters set out in subsection (3) that it is just to do so, vary or revoke the order.

(7) A person shall not demand or receive any rent in respect of premises of an amount that exceeds the amount fixed by an order under this section in respect of the premises.

Penalty: $1 000.