

REAL ESTATE

# VOICE



**THEY'RE  
HERE ...**

Changes to the Residential  
Tenancies Act

**AN OPAL IN  
THE ROUGH**

Impact of the Opal Tower  
calamity in the ACT

**UNI STUDENTS  
COMPETE FOR RENTALS**

Canberra uni students compete  
in sparse rental market



**REI ACT**

REAL ESTATE INSTITUTE  
OF THE AUSTRALIAN CAPITAL TERRITORY



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## COMMITTEE STRUCTURE 2018-19

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Craig Bright

### Professional Practices

Craig Bright / Michelle Tynan / Benjamin Grady

### Awards

Stan Platis

### Training

Michelle Tynan

### Auction

Peter Walker

### Finance

John Faulks

### Corporate Governance

Michael Kumm

### Commercial

Guy Randell

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**From the President**

The REIACT RTA submission was successful in ensuring that “no cause” evictions would remain unchanged and will not form any part of any foreseeable amendments.

**From the CEO**

ACT shone in the national spotlight taking out four REIA National Awards for Excellence.

**5 Negative Gearing and the 2019 Election**

The current taxation arrangements provide many Australians with the opportunity to invest in property and augment their savings in particular their retirement savings and at the same time improve rental affordability through an increase supply of rental housing.

**6 They’re Here ... Changes to the Residential Tenancies Act**

With a default date of 5 March 2020 (and unless an earlier commencement date is fixed by noticed) agents have plenty of time to educate themselves and seek guidance on the changes.

**10 3 Home loan tips from St George**

Whether you’re buying a new home, refinancing from another bank or investing in property, the team at St George understand that your home loan is likely the biggest investment you will make in your life.

**LMW Data Breach – Is your business next? 21**

Cyber crime is now the leading cause of data breaches for Australian businesses, according to the latest statistics.



**HomeGround – Real Estate with a philanthropic twist 22**

When ACT Government announced funding available under the Housing Innovation Fund last year, we know this was what we wanted to do.

**An Opal in the Rough 26**

Where a defect is revealed after the end of the defect liability period, often the only recourse available for defective building work is for breach of a statutory warranty.

**It's all about trust 33**

A failure to comply with these requirements can leave an agent liable for penalties, loss or suspension of license and even jail time.

**Canberra University students compete in sparse rental market 37**

The University of Canberra has sent offers to more than 6600 new students. Of those, 54 percent are from the ACT and 46 per cent are interstate.

**ASBFEO: In the business of looking out for small business 44**

The ASBFEO Assistance Team helps resolve business disputes across a range of issues, such as franchising, leasing arrangements, advertising contracts and payment of invoices.

**The Enquiry into Commercial Rates by ACT Government 47**

The REIACT Commercial Committee has received numerous requests for information from landowners and tenants as to how the current rate valuations and increases are affecting them or flow on effects to their tenants.





**PRESIDENT REIACT** Michael Kumm

## Welcome to our Autumn edition of the REIACT Newsletter.

A bit of intensity has returned to the sales market despite the forthcoming Federal election. Interestingly the ACT's Auction success rate is now improving, partly due to the fact that most auctions are reverting back to four or five week campaigns rather than the shorter campaigns which ostracized buyers who didn't have bank financed approved.

Housing affordability declined marginally in the ACT in the December quarter, but not really enough to deter buyers and in fact the number of home loans in the quarter increased by 2.5%. Along with both Tasmania and the Northern Territory the ACT had a relatively large increase in loan applications for first home buyers!

As mentioned above, the forthcoming Federal election poses some interesting questions for our industry. Of course a Labor victory is good for Canberra, they tend to spend a bit more money in the ACT than the Liberals; but at what cost! It still leaves us with the unanswered

questions on both negative gearing and the changes to Capital Gains Tax. In fact, it may be prudent to ask your local Labor member, "Is it even remotely likely that labor may be thinking of applying Capital Gains Tax on the sale of the family home?" As we have all experienced, our local Labor party has been applying costs, charges and taxes on investment properties that have made investing in the ACT unprofitable and even if you take the option of leaving your investment property or family home vacant for too long you find yourself liable for the payment of land tax!

Our in-house Property Management specialists, Craig Bright and Hannah Gill ably assisted by CEO Michelle Tynan have been valiantly fighting a losing battle on the changes to the RTA. Despite a lot of time and effort put in on a correct and logical submission to the suggested changes, the response as expected, and the changes went through unaltered along party lines. The REIACT submission was successful in ensuring that "no cause" evictions would remain unchanged and will not form part of any foreseeable amendments.

As stated in my last column, we are now entering unknown territory (excuse the pun) in regard to the already severe shortage of rental properties across the ACT with changes to the legislation that may deter future property investors from remaining active in the ACT. Rents can only go one way and this just means that it's going to be harder to rent. Maybe when rents get high enough investors may be encouraged back into the market but in the meantime the main purpose for the changes to the RTA will be negated by tenants not being able to find a property! The Institute has expressed our genuine concerns to the ACT Government that this spiraling effect will see many renters in Canberra facing rental stress.

Unfortunately, we have lost the services of Leigh Watson. Leigh has accepted an executive role with the Master Plumbers Association here in Canberra and we wish her all the best in her new position.

Good listing and selling

**Michael Kumm**  
**President REIACT**

## On the 21st March the REIA National Awards for Excellence were held in Perth with the REIACT represented by our 11 Territory winners



**CEO REIACT** Michelle Tynan

**2019 has already seen a number of changes to the landscape of our industry with the passing of the amendments to the Residential Tenancies Act, the hearing into Commercial rates and the approval of the new National Training Package.**

The REIACT has been very much a part of these changes, representing our membership in all of the major changes. We are continuing to work with government to ensure that your voice is heard and influence fair outcomes for all stakeholders.

The Justice and Community Services Directorate is working with the REIACT to develop a Fact Sheet for Industry which will explain, for both tenant and landlords, when the RTA legislation changes will come into effect. The REIACT will distribute to all members as soon as it is to hand.

On the 21st March the REIA National Awards for Excellence were held in Perth with the REIACT represented by our 11 Territory winners. The ACT shone in the national spot light taking out four REIA National Awards for Excellence:

**2019 REIA National Awards for Excellence – Innovation Award**  
Independent Property Group Tuggeranong

**2019 REIA National Awards for Excellence – Commercial Agency of the Year**  
Colliers International (ACT)

**2019 REIA National Awards for Excellence – Commercial Property Manager of the Year**  
Rupert Cullen – Colliers International (ACT)

**2019 REIA National Awards for Excellence – Community Service Award**  
Peter Blackshaw Real Estate

I would also like to acknowledge and congratulate our finalists who proudly represented the ACT in the following categories:

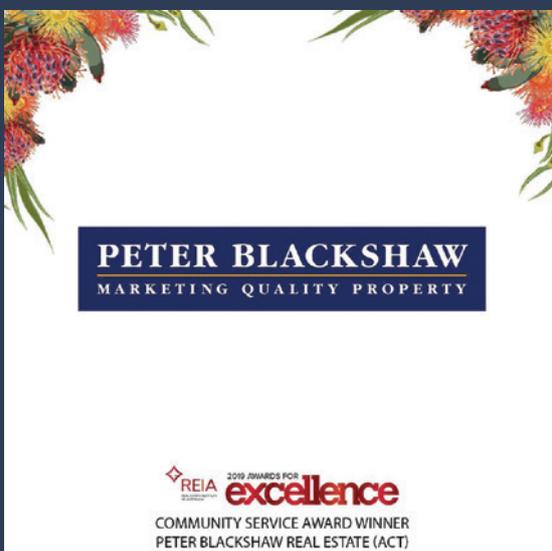
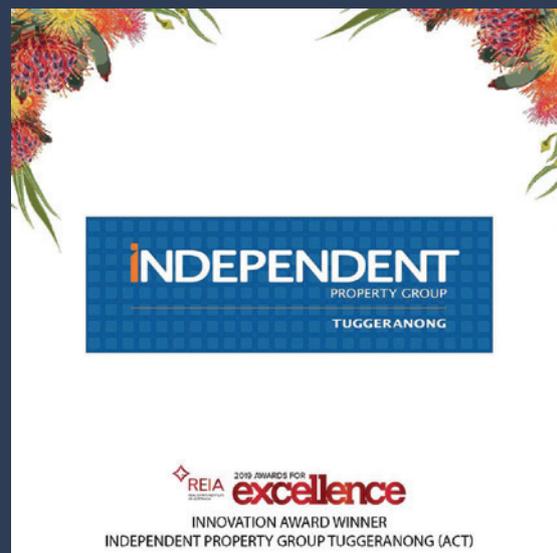
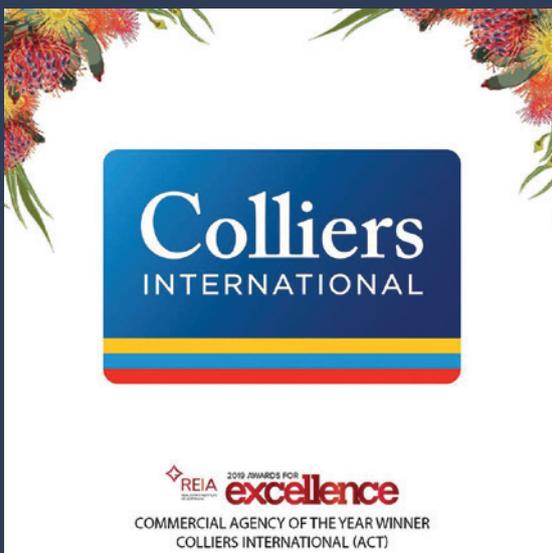
- Large Residential Agency of the Year – Independent Property Group Inner North & City
- Medium Residential Agency of the Year – McGrath Dickson
- Small Residential Agency of the Year – En Vogue Property Management
- Residential Salesperson of the Year – Mario Sanfrancesco – Peter Blackshaw Manuka
- Residential Property Manager of the Year – Renee Bink, Independent Property Management
- Communications Award – Peter Blackshaw Real Estate
- Corporate Support Person of the Year – Caroline Phengrasmy, Independent Property Management

**Finally, the REIACT Annual General Meeting** will be held on Wednesday 10th April, 2019 at the office of the Institute, 16 Thesiger Court Deakin at 5–30pm. As per the REIACT Constitution, seven (7) positions on the REIACT's Board are to be filled at this year's Annual General Meeting (AGM). Nominations need to be returned to REIACT by 5.00pm on Wednesday 3rd April 2019.

Please give consideration to nominating for the Board – be a part of the exciting changes our Institute will face in the coming year.

# ACT SHINES AT THE REIA NATIONAL AWARDS FOR EXCELLENCE

the winners are:





# NEW MEMBERS

## New Institute Members

### NIBLO PROPERTIES P/L

**Navdeep Singh Bandesha**  
**0421 545 648**  
7 Niblo Place, Chapman ACT 2611



SALES | RENTALS | FINANCE | CONVEYANCING

**James Taylor**  
**1300 299 377**  
Level 11, 50 Cavill Avenue  
Surfers Paradise QLD 4217  
[www.atrealty.com.au](http://www.atrealty.com.au)



**Megan Ward**  
**6248 7716**  
PO Box 6239, O'Connor ACT 2602  
[chcaustralia.com.au](http://chcaustralia.com.au)



**Christine Shaw**  
**0405 135 009**  
23 Furneaux Street, Manuka ACT 2603  
[christineshawproperties.com.au](http://christineshawproperties.com.au)

### ENTEL REAL ESTATE

**Entel Dajsmaili**  
**0499 073 598**  
7 Stride Lane, Gungahlin ACT 2912

### CARTER & CO AGENTS

**James Carter**  
**1300 255 466**  
Level 1B, 15 Torrens Street  
Braddon ACT 2612



**Adam Heading**  
**0405 760 939**  
12 Rusten Street, Karabar NSW 2620  
[www.headinghomeproperties.com.au](http://www.headinghomeproperties.com.au)



**Derek Whitcombe**  
**0432 109 538**  
G01, 64 Northbourne Avenue  
Canberra ACT 2601



**Samantha Morrissey**  
**0431 846 866**  
Suite 5, 243 Northbourne Avenue  
Turner ACT 2612

## New Associate Member

### PRIVY PTY LTD

**Susie Lourens**  
**0419 511 555**  
1-65 Tennant Street  
Fyshwick ACT 2609

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# NEGATIVE GEARING

## and the 2019 Election

Adrian Kelly, President of the REIA



Even at this stage of the electoral cycle it is clear that housing affordability and taxation arrangements for housing are going to be key issues in the upcoming Federal election campaign and REIA hopes the debate will be based on rationale thinking and not perpetuating myths that simply do not hold up to analysis.

The first thing to note is that negative gearing is not a special concession for property. It is a legitimate deduction of expenses in the course of earning income from investments in all asset classes (including shares, other investments and business ventures) until the investment generates a positive income stream in the future. The ability of investors to gear and use debt is a crucial part of investing and fostering economic growth. The ability to deduct the cost of debt and losses against income is necessary to ensure that investments are not taxed punitively.

Similarly the 50 per cent discount on capital gains replaces the previous indexation of capital gains which was put in place to ensure that only real capital gains are taxed – the change being made for administrative ease – and is also applicable to all asset classes.

The current tax arrangements, in treating property no differently to other forms of investment, provides an incentive for private investment which increases supply for our growing population, keep rents affordable and eases the burden on social housing.



**Adrian Kelly**  
President, REIA





With large increases in house prices in Australia's two largest capital cities during 2016 to 2018, there have been many claims that the current tax treatment of negative gearing and capital gains of residential property is exacerbating housing affordability issues. This is simply not the case. Indeed the public interest is being served and advanced through the current taxation arrangements.

The current taxation arrangements provide many Australians with the opportunity to invest in property and augment their savings in particular their retirement savings and at the same time improve rental affordability through an increased supply of rental housing.

There is ample research that shows that negative gearing and the CGT discount are not driving excessive, unproductive and speculative investment in housing but instead they are adding to housing supply with currently \$7 billion a year invested in new dwellings.

One of these, the Henry Review, initiated by the current Opposition when they were in Government and released in 2010, recognised that the current tax arrangements placed downward pressure on rents.

It is supply that is the critical factor in resolving the affordability problem. Changes to current taxation arrangements will do nothing to address affordability. If anything it will exacerbate the problem.

**If there is a change of Government and the Opposition's policy, of restricting negative gearing to newly constructed and halving the capital gains tax discount whilst grandfathering arrangements for current investors, is implemented there will be many losers.**

**These will be:**

1. **Mum and dad investors** who want to buy an existing investment property to supplement their retirement savings will no longer be able to claim a modest taxation deduction.
2. **Renters** who will see their rents rise just as they did under the Hawke/Keating experiment in the 1980's. Contrast this to the current situation where we have the lowest annual increase in rents for two decades.
3. **Builders** and their 'tradies' who will build less houses as shown by independent research undertaken for the Master Builders Association and the Property Council of Australia.
4. **State governments** and their constituents who will receive less stamp duty to spend on much needed infrastructure.
5. **Lower economic growth** when the economy is showing signs of stalling.



At the 2016 Election REIA employed digital methodologies including daily Facebook messaging and Tweets which started the week after the election was called, and ended the day before the election. As well as utilising REIA's contact base the posts were targeted at customised audiences including marginal seats.

Throughout the campaign we reached an average audience of 120k per week through the REIA Facebook page.

The campaign became viral in the final two weeks, achieving a total reach of almost 1 million people.

Whilst it is impossible to be definitive on the impact of the campaign, there was a clear correlation between electorates with high numbers of investment property owners and a lower than average swing against the Government and in some cases gains.

**During the upcoming Election REIA will be taking a similar approach to dispel the myths surrounding negative gearing and pointing out the potential economic impacts of changes to negative gearing arrangements.**





## THEY'RE HERE ... CHANGES TO THE RESIDENTIAL TENANCIES ACT

Benjamin Grady & Riley Berry BAL Lawyers

**On 21 February 2019, the *Residential Tenancies Amendment Bill 2018 (No 2)* (ACT) passed in nearly identical form as was originally presented in the Legislative Assembly on 1 November 2018.**

With a default commencement date of 5 March 2020 (and unless an earlier commencement date is fixed by notice) agents have plenty of time to educate themselves and seek guidance on the changes. Though these changes appear to be a conscious push to move the ACT to a more tenant friendly jurisdiction, it does also bring with it the risk of an increase in disputes and other applications before the ACAT. It is important that agents recognise this risk and integrate procedures to properly accommodate the changes to ensure both their business and the rights of the landlord remain adequately protected and (as far as is possible) uninterrupted.



**Benjamin Grady**  
BAL Lawyer



**Riley Berry**  
BAL Lawyer

## MODIFICATIONS

One of the major changes introduced by the Bill is the restriction on a landlord's right to refuse a tenant's application to renovate or modify the premises. The grounds for refusal depend on the type of modification requested:

- for special modifications, a landlord may only refuse the tenant's request if the landlord first obtains the ACAT's prior approval. These types of modifications include:
  - minor modifications, which are those alterations that can be removed so that the premises are restored to substantially the same condition as at the commencement of the agreement; or
  - alterations undertaken:
    - for the safety of the tenant (e.g. furniture anchors, child safety gates or fittings);
    - on written recommendation of a health practitioner (e.g. safety ramps or safety rails);
    - to improve the energy efficiency of the premises;
    - for the security of the premises (e.g. deadlocks, security doors and alarms); or
    - to allow access to telecommunication services,
  - for any other alterations or modifications, a landlord must not unreasonably refuse the tenant's application.

For a request to undertake a special modification, the landlord's consent will be taken to have been granted if the landlord fails to make an application to the ACAT (for an order to refuse the modification) **within 14 days of the tenant making the request**. It is imperative then that an agent, upon receiving a modification application from a tenant, passes the tenant's request onto the landlord as soon as possible.

The modification, whether special or otherwise, is not at the complete discretion of the tenant, however,

as a landlord may impose reasonable conditions on the tenant's modifications. Such conditions might include that the tenant:

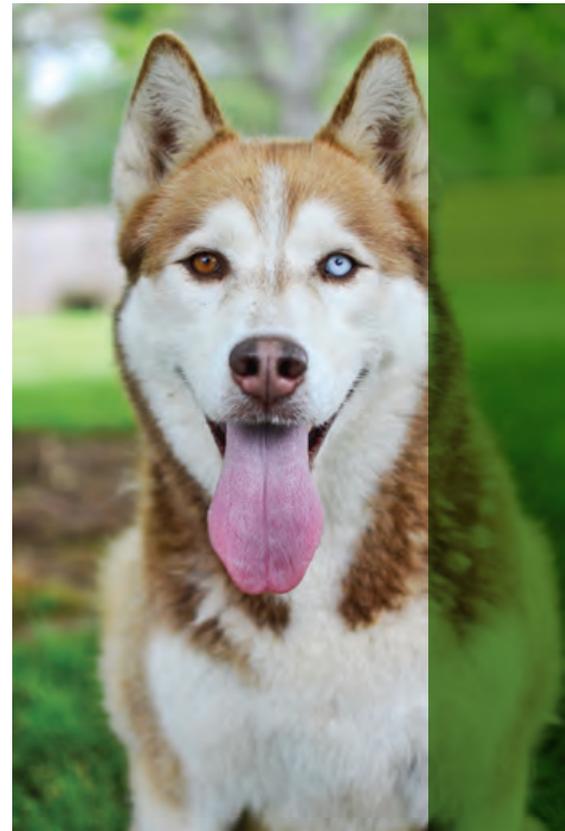
- provide the landlord with a copy of the plans and specifications before works are carried out;
- undertake the modifications in accordance with all laws, regulations and the requirements of any relevant authority;
- uses suitably qualified tradespersons;
- takes out policies of insurance (noting the interest of the landlord) relevant for the type of works; or
- obtains and provides copies of all approvals and certificates evidencing proper completion of the works.

If the modifications improve the premises, landlords should also consider including a condition that the modifications are to remain in the premises on expiry of the agreement, though in such circumstances the tenant is likely to expect reasonable compensation or a contribution from the landlord.

## PETS

Another change introduced by the Bill is the restriction on a landlord's right to decline a tenant's application for the keeping of pets on the premises **where there is provision in the tenancy agreement allowing the landlord to do so**. Like modifications, a landlord may impose conditions, but these conditions may only relate to the number of animals or the cleaning or maintenance of the premises. For any other conditions or for a landlord to validly refuse the tenant's request, the landlord must apply to the ACAT for approval.

Where an agent receives such a request from a tenant the agent should carefully consider the conditions to be imposed so as to provide the landlord with appropriate options. These might include that the carpet is professionally cleaned (perhaps even on a number of occasions) during the term of the tenant's occupation or that the premises is fumigated on expiry of the tenant's occupation.



## BREAK LEASE CLAUSE

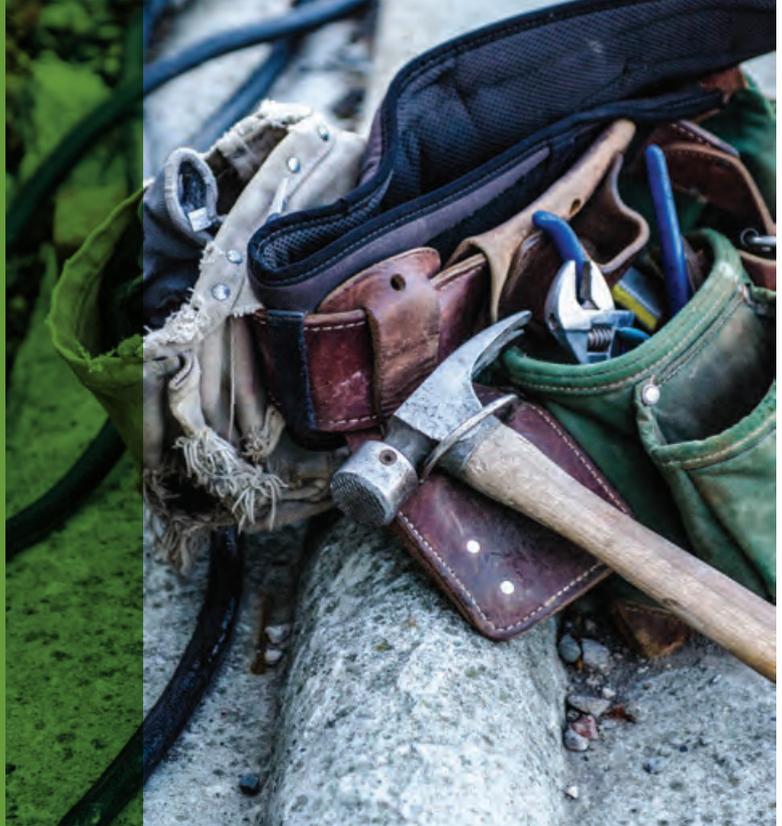
Another major change introduced by the Bill is the limitation on the fee payable by the tenant under a 'break lease clause'.

Though a break lease clause is optional, under the new changes, if the tenant terminates the tenancy under a break lease clause during the first half of the fixed term (subject to the fixed term being 3 years or less), the tenant will be liable for:

- where less than half the fixed term has expired, 6 weeks rent; or
- where half the fixed term has expired, 4 weeks rent,

but where the landlord enters into a new tenancy agreement for the premises prior to the expiry of the above periods (6 weeks or 4 weeks) the liability of the tenant will be reduced by an amount equal to the rent paid by the new tenant during that period. Essentially,

Though these changes appear to be a conscious push to move the ACT to a more tenant friendly jurisdiction, it does also bring with it the risk of an increase in disputes and other applications before the ACAT.



the liability of the tenant is capped to the actual loss (in terms of rent at least) suffered by the landlord.

In relation to the tenant's potential liability to the landlord, other than for rent, under the Bill this is now limited to:

- where half or more of the fixed term has expired, an amount equivalent to 2/3 of 1 weeks' rent; or
- where less than half of the fixed term has expired, an amount equivalent to 1 weeks' rent,

but only where the tenant vacates the premises more than 4 weeks before the end of the fixed term.

It should be noted, however, that these limitations only apply where the landlord enters into a new tenancy agreement within the defined period.

By capping the landlord's right to recover from the tenant the **actual** loss suffered, particularly in relation to having to advertise and re-let the premises,

this change is likely to lead landlords to refuse to include a break lease clause in the agreement and to instead rely on the provisions of the Act and their rights under contract law.

Though the changes introduced by the Bill do bring with them an inherent risk of encouraging the parties, whether in dispute or simply seeking clarification or approval, to seek an order from the ACAT and thereby overburden the services of the ACAT, the managing agent remains in a unique position to guide the parties to a mutual and commercial resolution within the framework of the Act and the prescribed tenancy terms. Agents then, should take the opportunity now to consider the repercussions of the changes and to start the education process with their landlord clients before the changes take effect.

If you need advice or further clarification on the changes, please do not hesitate to contact the BAL Real Estate Team.

# A smokin' hot cashback offer

Move your home loan to St.George and you could get a cashback of up to 0.3% on your loan amount.\*



## Check out these smokin' hot home loan offers we have for REIACT Members

As a REIACT member, when you take out a new loan or refinance your home loan from another bank to St.George before 30 June 2019, you could receive a cashback of up to 0.3% of the value of your loan amount.\* That could be a cashback of up to \$1,500 on a \$500,000 home loan.

Excludes refinances from St.George Banking Group.

### Why choose a St.George home loan?

- At St.George, we are committed to giving you the edge with fast turnaround times, competitive rates, niche solutions and innovative technology.
- Receive support from a specialist Lending Manager, committed to helping you through your home buying journey.
- Access a range of banking solutions including interest offset facilities on eligible loans to help you pay off your home loan sooner plus insurance options, savings accounts and more.

### Join the St.George Home Loan Referral Program and you could secure benefits for your business

- Diversify your business revenue – access a competitive commission structure.
- Access dedicated support – from your St.George representative and a team of local lending managers.
- The process is simple – all you need to do is send us your client's name and number through the online referral form and we'll give them a call.



#### Ask me how

If you're interested in taking advantage of these offers, please contact Amanda Vella on the details below.

**Amanda Vella**

Relationship Manager

 0466 398 357

 [Amanda.Vella@stgeorge.com.au](mailto:Amanda.Vella@stgeorge.com.au)

 [stgeorge.com.au/homeloans](https://stgeorge.com.au/homeloans)

**Things you should know:** Conditions, fees and charges, apply. Credit criteria apply to approval of loans. \*Each eligible member whose new St.George home loan is approved after 28 February 2019 will receive a cash benefit amount equal to 0.30% of the loan balance (less any amounts in any offset account linked to the loan) calculated on the 3rd business day after settlement (Alliance Benefit). For home loans with a construction or progress payment option, the Alliance Benefit amount will be equal to 0.30% of the credit limit. The Alliance Benefit will be paid within 60 days of settlement into the eligible member's St.George transaction account. The transaction account must be linked to the eligible member's home loan account and all home loan repayments are to be direct debited from that transaction account. The Alliance Benefit is only available to applicants who have a REIACT membership. Eligible members are entitled to one Alliance Benefit payment during the term of the Alliance Program Offer irrespective of the number of new home loans approved by St.George for that eligible member. The Alliance Benefit will only be paid on home loans utilised for residential purposes. The Alliance Benefit excludes refinances from St.George, Bank of Melbourne and BankSA except where the eligible member borrows an additional amount; the Alliance benefit will only be paid on the additional amount. The Alliance Benefit excludes home loans financed through a mortgage broker. The Alliance Benefit excludes Portfolio and Interest Only Relocation Loans. The Alliance Benefit offer commences 28 February 2019 and is available until 30 June 2019 and may be varied or withdrawn at any time. Credit provided by St.George Bank – A Division of Westpac Banking Corporation ABN 33 007 457 141 AFSL and Australian credit licence 233714. 126/0219

# 3 home loan tips from St. George

Whether you're buying a new home, refinancing from another bank or investing in property, the team at St. George understand that your home loan is most likely the biggest investment you will make in your life. Paul Gray, St. George Regional Executive in the ACT has some helpful tips for REIACT members to get the most out of your home loans.



## Tip 1: Utilise an interest offset account

Interest offset facilities can make your savings work harder, by 'offsetting' them against your home loan. This will give you the flexibility of accessing your money when you need to, with the benefit of paying off your home loan sooner. With an interest offset facility you pay interest only on the net amount (your loan balance less your transaction account balance for that day).

For example if your home loan balance is \$350,000 on a particular day and your linked savings account balance is \$50,000 on that day, as interest is calculated daily you only pay interest on \$300,000 for the day. You will not earn interest on the \$50,000 in your offset account; instead the \$50,000 is offsetting the interest charged on your home loan. As your offset account is reducing the interest charged on your home loan, but your standard repayments remain the same (reflecting the loan balance of \$350,000), more money will be attributed to the principle and will in affect help you own your home sooner.



## Tip 2: Make additional repayments

Making additional repayments above your minimum required repayment is a direct reduction in the balance of the loan. This will not only reduce the interest payable but also reduce the remaining term of your mortgage. For example making an additional repayment of \$100 per fortnight on a \$350,000 mortgage over 25 years could save you approximately \$40,087.83 in interest and reduce the loan term by up to 6 years. Any additional repayments will have a benefit even lump sum payments, like a tax refund or windfall, will assist in reducing the loan term.



## Tip 3: Ask questions and take advantage

There are other opportunities to save money which can be put towards your mortgage. In conjunction with a good household budget you could save money by taking advantage of other products that the bank offers, as these products may include a discount as part of holding a St. George home loan. You should regularly review the amount you pay on household costs such as home and contents insurance, car insurance, life insurance etc. If taking advantage of the banks products could save you money and the products are right for you, any savings could be allocated to the mortgage, in turn reducing the balance.

### Paul Gray

St. George Regional Executive in the ACT

Note: While these 3 tips are intended as a guide only, your individual circumstances should naturally be taken into consideration. This is why we also recommend you obtain independent professional advice relevant to your financial circumstances.



In a serious data breach incident, personal information for more than 130,000 Landmark White clients was stolen and made available on the dark web for a period of 10 days. An exposed API (system interface) was cited as the cause of the breach.

## LMW DATA BREACH – IS YOUR BUSINESS NEXT?

**In a serious data breach incident, personal information for more than 130,000 Landmark White clients was stolen and made available on the dark web for a period of 10 days. An exposed API (system interface) was cited as the cause of the breach.**

On February 5, Landmark White (LMW) released a statement announcing that a “dataset containing property valuation and some personal contact information has been disclosed”.

The disclosed data contained basic personal information for each borrower including names, residential and/or business addresses, phone numbers and email addresses.

In the most recent update from LMW on February 15, the company maintains there has yet to be any evidence of misuse of the leaked personal information. Those affected were still advised to remain vigilant to potential threats such as phishing scams and to consider discussing additional security options with their banks.

Despite being labelled as a “benign” breach with no “sensitive” data being leaked, the incident had an immediate and severe impact on the company itself.

Many major clients including CBA and ANZ temporarily suspended the firm from their valuation panels and shares fell 10.6 per cent to a four-year-low.

While Landmark Whites’ proactive and transparent response has undoubtedly put them in a good position to recover commercially, there is a long road ahead to resolve issues.

### COULD YOUR BUSINESS BE NEXT?

Cyber Crime is now the leading cause of data breaches for Australian businesses. According to the latest statistics from the Office of the Australian Information Commissioner (OAIC), 64% of all notifiable data breaches occurring in October to December 2018 were the result of a malicious or criminal attack, 33% due to human error and 3% system faults.

If your business holds client data, it is important to be aware of your obligations to protect the privacy of that data at all times. This includes ensuring adequate Cyber Security measures are in place.

The reputational damage caused by a data breach can have severe financial impacts for a business and may even lead to collapse. However, losing clients and partners is not the only risk to consider. Under the *Privacy Act 1988* (Cth) – the Commissioner has the power

to fine companies for breaches and to take personal culpability actions against company directors for the breach.

Boards and Directors must ensure they have proper Cyber Security processes, reporting, protection and insurances in place to protect both their companies and themselves.

### MINIMISE YOUR LOSS

There is a wealth of information available to assist your business to understand your privacy obligations, to help prevent data breaches and to respond effectively following a breach.

A great place to start for reliable guides and information is [www.oaic.gov.au](http://www.oaic.gov.au). While on the OAIC site, be sure to download the **Data Breach Preparation and Response Guide**. The guide contains comprehensive and practical information to assist businesses in developing and implementing an effective data breach response.

The right insurance cover may also help to minimise your loss in the event of a Privacy Breach. A **Cyber Liability and Privacy Protection Insurance policy** might be suitable for your business. Contact an experienced insurance broker for expert advice today.

# HOMEGROUND REAL ESTATE CANBERRA – REAL ESTATE WITH A PHILANTHROPIC TWIST

Andrew Hannan CEO CHC

**It's fair to say that most agents setting up a new business feel they are bringing something different in their offerings to the real estate market. Sometimes it may be a marketing focus, or a way they provide service to customers or perhaps in how they have branded themselves.**

But Community Housing Canberra (CHC), the largest not-for-profit community housing provider in the ACT, who will officially launch HomeGround Real Estate Canberra (HomeGround) in May, can truly say they have a different focus from any existing agents currently operating

in the ACT. Based on a model currently operating in Melbourne and Sydney, HomeGround will have a mission to grow the supply of affordable rental housing in the ACT, and thus ease housing stress for eligible lower income Canberrans.

CHC's CEO, Andrew Hannan, said their new HomeGround agency will be appealing directly to investor owners who have a desire to be philanthropic and directly help lower income Canberrans, and who would be willing to "take a cut" beyond the normal rental intake.

It was an obvious next step for CHC, whose mission (and core business) is to deliver affordable housing for lower income Canberrans. CHC's traditional business model has been based on

developing properties, retaining as many as possible to rent out at below market rates that CHC itself directly subsidises, and selling the balance to pay back development costs and to fund such subsidies. CHC has directly funded subsidies of \$3.1m in the last financial year for the almost 450 tenancies and over 1300 Canberrans it provides a home for, and over the last 20 years has directly funded over \$25m of subsidies.

"When the ACT Government announced funding available under the Housing Innovation Fund last year, we knew that this was what we wanted to do – we saw it as another channel to grow affordable rental supply and achieve our mission and deliver greater impact. Winning the



... HomeGround agency will be appealing directly to investor owners who have a desire to be philanthropic and directly help lower income Canberrans ...



grant of \$230,000 has provided us with essential start-up funding to get the new business up and running,” he said.

Andrew wants to reassure agents already operating in the ACT that he does not foresee HomeGround having a dramatic impact on the current real estate landscape.

“Yes, we are going to be operating in competition with existing agents, but we expect the scale will be very small. If we can add 100 affordable rental properties over the next few years, we will consider that to be an outstanding success.”

While Andrew says that landlords who become involved with HomeGround will definitely need to be philanthropically minded, work is underway to lessen the hip pocket impact for such landlords.

“Amendments to the Land Tax Act were recently passed, and take effect on 1 April this year, that provide for a land tax exemption for owners of residential investment properties that are managed through a registered community housing provider for affordable rental. This will clearly be a key success factor for HomeGround.”\*

“We are also in the process of securing an ATO Tax Ruling, similar to that obtained for HomeGround in both Melbourne and Sydney, which would see charitable donation treatment of the subsidy that landlords would effectively be providing.”

“Another strategy will be to approach landlords who own more than one property who may be happy to provide one or more for affordable rental, which could be ‘cross-subsidised’ by their other properties being let at market rent also through HomeGround.”

CHC is already a member of REIACT and has been an Associate Member for 15 years. Given the impending start-up of HomeGround Real Estate Canberra, Andrew explained that it “it made sense to tap into the knowledge and networking provided by the peak and other professional real estate agents that are also REIACT members”.



**Andrew Hannan**  
CEO, Community  
Housing Canberra

## HOW TO TAKE PART?

Landlords interested in learning more are encouraged to email: [enquiries@homegroundcanberra.com.au](mailto:enquiries@homegroundcanberra.com.au)

*\*affordable rental is deemed to be 74.9% of market rent.*



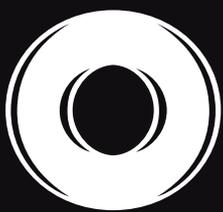
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A close-up photograph of a cracked asphalt surface. A prominent crack runs diagonally from the top right towards the bottom left. The area below the crack is painted with a vibrant teal color. In the top right corner, there is a solid teal rectangular block. The overall image has a gritty, textured appearance.

**AN OPAL IN THE**

Residents of Opal Tower were recently given a rude shock when forced to vacate their apartments on Christmas Eve. Cracks appeared on several levels of the 36 storey mixed use building in Sydney only completed in August 2018. The ongoing saga involving residents, builder Icon and developer Australia Avenue Developments Pty Ltd is a cautionary tale for anyone buying an off-the-plan unit or involved in the construction process. However, what steps can you take to avoid a similar situation and remedy structural defects if you are a buyer and conversely, what should you consider if a buyer subsequently claims that the building or renovation you have constructed is defective?



# ROUGH

## The impact of the Opal Tower calamity in the ACT

Julian Pozza BAL Lawyers



**Julian Pozza**  
BAL Lawyers

### DEFECT LIABILITY PERIOD

Most contracts in the ACT for the purchase of an off-the-plan unit or construction of a single dwelling contain a defect liability period. This permits the buyer to submit a list of defects to the builder (or developer) which the builder will be required to repair. Defects are generally considered to be flaws in construction due to improper materials or faulty workmanship. However, it is important to be aware of the particular defects liability provisions as these can be drafted to limit the defects required to be repaired. Often this is reasonable, for example by excluding defects covered by manufacturer's warranties. However, these provisions can also include unreasonable exemptions, for example, 'settlement cracks'. The defect liability period will also set a defined period for the buyer to submit the defect list. A builder will not be required to rectify any defect notified outside of this period.



## STATUTORY BUILDING WARRANTIES

Where a defect is revealed after the end of the defect liability period, often the only recourse available for defective building work is for breach of a statutory warranty (found in the Building Act 2004 (the Act)). The Act implies important warranties into contracts with respect to carrying out residential building work or for the sale of a residential building, that provides the work will be carried out in accordance with the Act and the approved plans, in a proper and skilful manner and good and proper materials were used.

These warranties exist for a period of 6 years in respect of structural defects and 2 years in respect of non-structural defects. Although considering the case *Koundouris v The Owners – Units Plan No 1917* (2017) ACTCA 36 a buyer may be able to make a claim after the end of the six year period if the builder was in breach of the warranty at the end of the warranty period or if further building work is undertaken.

## CONCLUSION

While the ACT has not experienced its own Opal Tower yet, issues with defect building work nonetheless remains topical and the ACT courts have generally adopted a pro-buyer approach. Regardless, those buying off-the-plan should conduct due diligence to ensure that the contract protects their interest and that they seek legal advice on options available if a defect is revealed after the end of the defect liability period. Builders and developers should ensure their contracts are adequately drafted so that only reasonable defects are required to be repaired and seek legal advice if a buyer claims breach of a statutory warranty.

A close-up photograph of a concrete wall. A vertical crack runs down the left side. In the center, there is a circular hole with a rough, irregular edge. The concrete surface is textured and shows signs of wear and discoloration. A teal-colored rectangular overlay is positioned on the right side of the image, containing white text.

Cracks appeared on several levels of the 36 storey mixed use building in Sydney only completed in August 2018.



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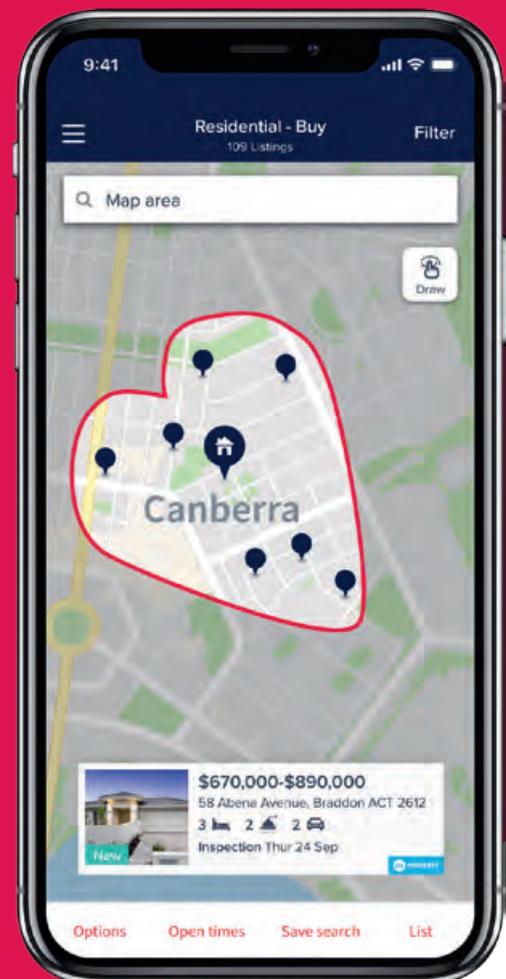
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## IT'S ALL ABOUT TRUST

Benjamin Grady & Riley Berry BAL Lawyers

There has been a string of convictions against real estate agents in Western Australia, Victoria and New South Wales over the last 12 months, with many of those convictions resulting from the misuse of trust money. Given the trust and faith placed in a real estate agent to hold monies on behalf of another party, it is no surprise that the use of trust monies continues to be heavily regulated.

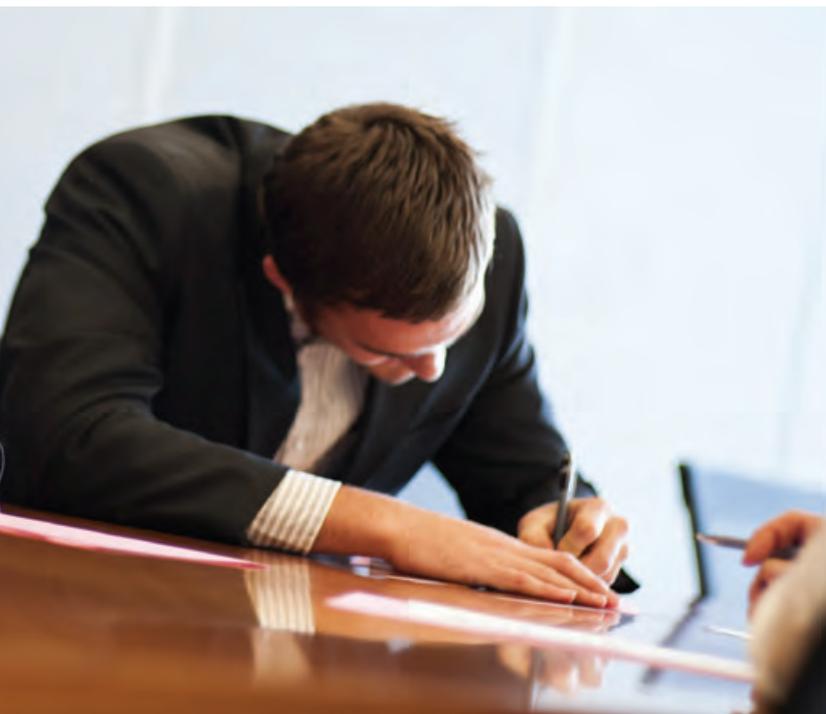
The *Agents Act 2003* (ACT) defines 'trust money' as money that is received by a licensed agent (in the course of conducting business) on behalf of someone else and on the basis that the money is to be paid to the other person or as the other person directs. The definition is broad and will include the deposit paid in relation to the sale of a property, rental bonds and monies withheld from the sale of a property (for instance, where the parties have agreed for some obligation to be satisfied after settlement and the monies are held as security for performance of that obligation).



**Benjamin Grady**  
BAL Lawyer



**Riley Berry**  
BAL Lawyer



There are various other requirements under Part 7 regulating the use of trust money, the opening and closing of the trust account and the auditing of trust accounts.



Part 7 of the *Agents Act 2003* (ACT) sets out the regulatory framework surrounding trust accounting and requires that a licensed agent:

- upon receiving trust money, ensures that the money is paid into the agents trust account (which must be an account of an Authorised Deposit Taking Institution) by the next business day;
- only deals with trust money as directed by the person for whom the money is held on trust;
- (though it may seem obvious) does not use trust money to pay any debts or other expenses of the agent's business; and
- upon becoming aware that the trust account has become overdrawn, notifies the Commissioner (within 5 business days) and provides the Commissioner with details of the account, the amount by which the account was overdrawn and the reason for the account being overdrawn.

There are various other requirements under Part 7 regulating the use of trust money, the opening and closing of the trust account and the auditing of trust accounts. A failure to comply with these requirements can lead an agent liable for penalties, loss or suspension of license and even jail time. For a license holder, these liabilities may even arise for failing to properly supervise the proper accounting procedures of the business.

Due to the requirement for a licensed agent to record the material details of every transaction and to keep those records for 5 years, agents should be particularly mindful that any audit of the agent's records by the Commissioner will likely identify any discrepancy or misuse of trust monies, including a failure to keep proper records.

If you have any questions regarding trust account procedures, please do not hesitate to contact the BAL Real Estate Team.





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# CANBERRA UNIVERSITY STUDENTS COMPETE IN sparse rental market

Lucy Bladen

**Thousands of new students are starting their 2019 studies at Canberra universities over the coming weeks, as the nation's capital contends with its busiest rental period of the year.**

Based on the number of offers across the two major tertiary institutions in Canberra, more than half of students will be coming from interstate.

During the Australian National University's first round of enrolment offers in December, it offered places to almost 3000 students. From those figures, approximately 32 per cent are from the ACT.

But this number does not take into account international students and those from the Northern Territory and Tasmania.

The University of Canberra has sent offers to more than 6600 new students. Of those, 54 per cent are from the ACT and 46 per cent are interstate.

The number of total students at both universities for the year is not yet known, but an ANU spokesperson said the number remains steady year-to-year. In the *ANU Annual Report 2017*, there were about 25,000 students enrolled at the university.

At the University of Canberra, in 2018 there were 11,359 domestic students. According to figures, about 57 per cent of those enrolled last year were from the ACT.

A close-up photograph of a person wearing a light blue denim jacket and a grey backpack. They are holding a stack of three books in their hands. The top book is white, the middle one is light purple, and the bottom one is red. The person is also wearing a white top and a gold necklace with a white stone. The background is a bright, outdoor setting.

When I was going to inspections I was taking my bike ... and I noticed during the inspections I felt I was competing with public servants and people working full time.

At both institutions, university accommodation is guaranteed for first-year undergraduate students and all international students are guaranteed a bed at the University of Canberra.

At ANU, there are about 6000 beds available for students in university accommodation and the University of Canberra can collectively house about 2700 students.

“The University of Canberra is committed to providing safe and affordable living on campus, with many new students choosing to live in one of our four campus accommodation facilities,” said University of Canberra vice-president of university relations and strategy Belinda Robinson.

“On-campus living is very popular, especially among our first-year interstate students who make up nearly half of those in campus accommodation.

A spokesperson from the ANU said during the next week 1300 new beds will open across three new residential halls. New postgraduate accommodation is also set to open – the old Fenner building on Northbourne Avenue will be reopened as “Gowrie Hall”.

With on-campus accommodation guaranteed for first-year undergraduate students, some returning students and those beginning postgraduate degrees are left to compete in Canberra’s sparse rental market.

According to the latest SQM research, Canberra’s vacancy rate is the second lowest in the country at 1.3 per cent. These figures are based on December 2018 – historically the last month of the year has the highest vacancy rate in the nation’s capital, coinciding with students finishing their degrees.

Over the past three years, for the most part, the vacancy rate has remained below one per cent in Canberra.

An analysis of Allhomes listings from January 2019 show there were 1491 residential rental listings during the month.

ANU PhD student Chris Cabuay is all too familiar with Canberra’s tight rental market.

The economics student moved from the Philippines in 2017.

He applied for a bed on-campus and temporary accommodation for one month was organised. But when the month finished on-campus accommodation was not yet available.

Mr Cabuay was left in a state of limbo and was forced to stay with his friend for three weeks before he secured university accommodation.

After staying in ANU accommodation for more than half a year, Mr Cabuay moved off-campus as his wife and daughter were joining him from the Philippines. He said the experience of looking in the rental market was “distressing”.

“I think I must have inspected 20 properties in a month. Every weekend I would go to three or four open homes and then come home and fill out applications,” he said.

“When I was going to inspections I was taking my bike ... and I noticed during the inspections I felt I was competing with public servants and people working full time.

“I was worried because I am a student, I live off a stipend which isn’t even minimum wage.”

Mr Cabuay secured a two-bedroom rental in Belconnen and said comparatively he was “quite lucky” as his landlord agreed to extend the lease for an additional two years with “reasonable” increases.





ANU Postgraduate and Research Student's Association president Zyl Hovenga-Wauchope said more support was needed for post-graduate international or interstate students who were not guaranteed accommodation.

"Not many people come from cities, countries or economies where the rental market is as restrictive as it is in Canberra, so they don't necessarily know how hard it will be and they operate on the assumption they are coming to a city with a more healthy rental market," he said.

"The other issue is they are not necessarily made aware the responsibility will be solely on them and there is actually very little support in finding accommodation that is not on-campus.

"ANU is working hard in this area and it's something we are working quite closely on with them."

This comes as the latest **Productivity Commission's report on housing found the ACT to have the highest proportion of young residents claiming rent assistance in the nation.**

**Weekly asking rents in Canberra are the highest in Australia for houses at \$560, and units are not far behind at \$465, according to the latest Domain Rental Report over the December quarter.**

**However, median rents are even higher in the Inner North – where many ANU students reside – at \$620 per week for houses and \$480 for units.**

In Belconnen – where the University of Canberra is located – the cost is lower at \$510 for houses and \$410 for units.

Not only is the nation's capital experiencing an influx of new students but public service graduates have also descended on Canberra.

According to the Australian Public Service Commission, there were 810 graduates from across the nation starting new employment in the ACT last year. The APS is expecting similar numbers in 2019.



Lucy Bladen



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## ASBFEO: IN THE BUSINESS OF LOOKING OUT FOR SMALL BUSINESS

Kate Carnell



**Kate Carnell**

Australian Small Business and Family Enterprise Ombudsman (ASBFEO)

**This week, over 100 small businesses across Australia are receiving support from the Australian Small Business and Family Enterprise Ombudsman (ASBFEO), including in the ACT and surrounding region.**

The ASBFEO Assistance team helps resolve business disputes across a range of issues, such as franchising, leasing agreements, advertising contracts and payment of invoices.

Since the office opened in March 2016, the Assistance team has resolved more than 2,700 cases.

Ombudsman Kate Carnell says the assistance aspect of her office is extremely important.

“We want to keep small businesses out of the courts. It’s not worth your time or money to let a dispute lead you to court, and we have seen too many small businesses wind up in court and bled dry,” Ms Carnell said.

Each case is triaged by a dedicated case manager to determine if they can help to resolve the dispute. If they are unable to help, they refer the business to the most appropriate agency that can help or provide access to alternative dispute resolution such as mediation.

And the best part? This is a free service.

The case managers love making a difference and small business owners are grateful for the support:

*"I want to thank you for considering my case and the support you offered during our call – just that one call has had a great impact. I have until then felt so small and unlikely to make an impression against such a large and powerful corporation, your call gave me renewed energy. The emotional strain of this whole situation has been immense, so the impact you have had just in this one step has very much been felt and appreciated. Thank you."*

If you need help to resolve a dispute, there is a free online tool called *Dispute Support* available at [asbfeo.gov.au/disputesupport](http://asbfeo.gov.au/disputesupport) to help businesses find the right service to resolve their dispute.

You can also visit [asbfeo.gov.au/assistance](http://asbfeo.gov.au/assistance) or call the Assistance Information Line on 1300 650 460.

## CASE STUDY

A real estate agent arranged for a photographer to take photos of a property and the seller was invoiced for the shoot.

The seller decided to change agents and believed the new agent could use the photos because he had paid for them. The new agent published the photos on a number of websites. When the photographer found his photos were being used without his permission, he contacted the new agent and asked to be paid for their use.

The new agent told the photographer that his client had paid for the photos and gave permission for the agency to use them.

The photographer contacted the ASBFEO Assistance team for help.

The ASBFEO case manager found that under copyright protections and intellectual property (IP) rights, when a photographer is contracted to take photos of a listed house, unless there is a contract that states the ownership is transferred to the seller or the agent, the IP rights remain with the photographer.

The case manager contacted the new agent and explained that the photographer had a single use agreement with the first agency and retained the rights for the pictures. The new agent agreed to pay the photographer to use the photos.





We have several issues that have created a perfect storm that is seriously impacting our members and the wider commercial community.

## THE ENQUIRY INTO COMMERCIAL RATES BY ACT GOVERNMENT

Guy Randell - Chair, REIACT Commercial Committee



**Guy Randell**  
Chair, REIACT  
Commercial Committee

**The REIACT Commercial Committee has received numerous requests for information from landowners and tenants as to how the current rates valuations and increases are affecting them or flow on effects to their tenants.**

We have several issues that have created a perfect storm that is seriously impacting our members and the wider commercial community. These are identified as the following;

- Increased land valuations with no methodology to support this
- Deemed Values
- ACT Government Strategic land release policy
- Back dated rates charges with interest
- Valuations based on possible use not actual use
- 100% usage valuation being apportioned across residential and commercial
- Weighted rating of commercial rates
- Costs and disproportionate rulings of challenges at ACAT
- Rates charges on uses not being enacted

We are seeing these compounding issues greatly affect the industry, investment and financial viability of projects. The biggest areas immediately affected are our IZ1, IZ2s, CZ3s and especially your CZ6s. These are typically Fyshwick, Hume, Phillip Mitchell and Beard. We have seen rents with no discernible increase for the past 10 years plus (especially as these zones are typically gross rent zones), however, rates and charges have increased over 300% since 2013. I have then looked at the Territory plan objectives for these zones which directly contradict the governments behaviour. Let's take IZ2 zone for example, the Territory Plan objective states that IZ2 *"is to meet the need for a mix of lower rent, bulky goods retailing and specialised industrial, commercial and services activities, alongside general industry"*.

So what does this mean for our clients? Well this means they own, have bought or operate a business that doesn't have the ability to pay high cost rents (tyre service, mechanics, pet supplies, low IT industries, low service industries, car yards, etc), they either own the business and building or are trying to push the costs onto tenants who have long term leases in place and can't do so, or have vacant premises and can't rent them because their costs are too



This equates on average to rates and charges now accounting for 5.1% of the total value of a building being applied each year.

expensive, and to top it off they can't sell their premise because it is a diminishing asset. Rents have not been changing and they don't have any ability to change in these regions. Tenants simply cannot afford it, because they have to provide low cost services—but what we are seeing is more business shutdowns, staff being laid off and pricing increases to just maintain associated tax on costs.

This leads onto points 1 & 3.

The government has strategically released land that is then revaluing whole or significant parts of suburbs. The land is given a valuation as residential in situations (highest use) and then hit with a commercial rate ratio which is 9.5 times higher than residential so we see compounding effects that are simply driven to ensure maximum tax benefits from any block of land. One of our members who has had a 305% increase in rates has challenged the rating and sought information as to the methodology used to calculate the increased valuation, especially where the land is effectively an easement and has no other applicable use entitlement than storage. The subsequent responses where all redacted and only

after pursuing through the Freedom of Information, found that there was no methodology applied.

We are seeing valuations applying a deemed value to buildings in Phillip from a recent sale for example and then the residual value applied to the land. The deemed value hasn't even come close to sufficient to build a building on it let alone replace it or the true value of the building. However, because of this valuation in Phillip a subsequent clients value has gone up from 4.325M land value to 13.27M value in a nearby block, even though nothing has changed on their block at all. The group has challenged that decision and removed 50% of the GFA entitlement on the crown lease and also possible higher uses on the crown lease, even though those uses have never been applied as the buildings have substantial long-term leases with long term options, the valuation was only reduced by a nominal 5%.

The cost to a challenge at ACAT is averaging between \$80,000–\$100,000 which is taking this option off the table for majority of owners especially when any reduction achieved will only be reinstated the following year in increases.

We have collated a large amount of data which is showing that on average outgoings across all regions are accounting for approximately 50% of the gross rent. This is without taking into account mortgage/finance costs, compound this on a gross lease with no certainty on each years rates increases and your asset is quickly diminishing. This equates on average to rates and charges now accounting for 5.1% of the total value of a building being applied each year. Take a minute to understand this. This means that we are paying higher than stamp duty each year just to own the property. The governments agenda on reduction of stamp duty was to have a zero cost affect to taxes. However only those properties whose value is below \$1.5m have had a stamp duty reduction. There has been no reduction in stamp duty for properties above this threshold however a 300% increase in the rates is being seen. Also, not to be missed is Residential rates have increased from 0.27% in 2012 to 0.57% in 2019 more than doubling this impost. The reason to state this is that the effects are being seen throughout the whole of the community and touching every resident and landowner. So, from home to work there are impacts being seen.



At my recent appearance, representing the REIACT Commercial Committee, at the Commercial Rates Inquiry, I called for two separate independent bodies. The first was that valuations be removed from Treasury as this is a conflict of interest with direction coming directly from the ACT Government which then is extremely costly to challenge. An independent Office of the Valuer General would ensure transparency and that there is a published methodology of valuations and that there is not a large difference between government and private valuations. This would give certainty to consumers and also allow a less costly mediation process to challenge a ruling prior to a costly ACAT exercise. This would remove any semblance of conflict of interest and ensure a long-term viable outcome for consumers both residential and commercial. Secondly, I requested an Independent authority similar to IPART in NSW and other jurisdictions that sets rates and charges for the government with rate pegs that ensure certainty of business and values into the future. This, however, would be a longer term solution and one that would be harder to implement but no less valid.

One of the biggest issues our clients are facing is the complete uncertainty of a valuation and the increase in charges each year (plus the significant back dating of those charges (up to 5 years) which has crippled some owners coupled with interest applied). Any new government sale such as the upcoming Griffith, Narrabundah, Lyons reuse sites this week will ultimately see a significant increase in land valuations across these suburbs. This will have a long term and irreversible impact on land valuation and subsequent rate charges.

I am also seeking, on behalf of our members and clients, that an immediate taskforce be established of representatives from government and industry to undertake a thorough review of the commercial rate settings and current tax reform process. And in doing so have a regard to the broader investment and economic impacts. In calling for this action I believe a freeze on rates and charges should be imposed till mutually agreeable and sustainable outcomes are proposed that can ensure our industry is not decimated in the years to come.

We need to remain competitive and attractive as an option for business and investment. The uncertainty of the taxation system is being felt through various avenues, with Queanbeyan now coming into play as a viable and very attractive option for businesses to setup and move across the border, with rates at up to 3 times higher in the ACT than NSW. With the release of significant industrial and business land being released over this year in South Jerrabomberra we are seeing a extremely strong interest in these precincts from international and local clients.

There are numerous examples and clients under stress that has significant impact for any of our agencies and I believe our position should be to challenge the way the rates and charges are applied and provide a certain and sustainable future for our members and clients.

This is an emerging and changing landscape and I will update further in other pieces in future issues. For any enquiries or conversations on this topic I am available to discuss.



# Celebrating WIRE



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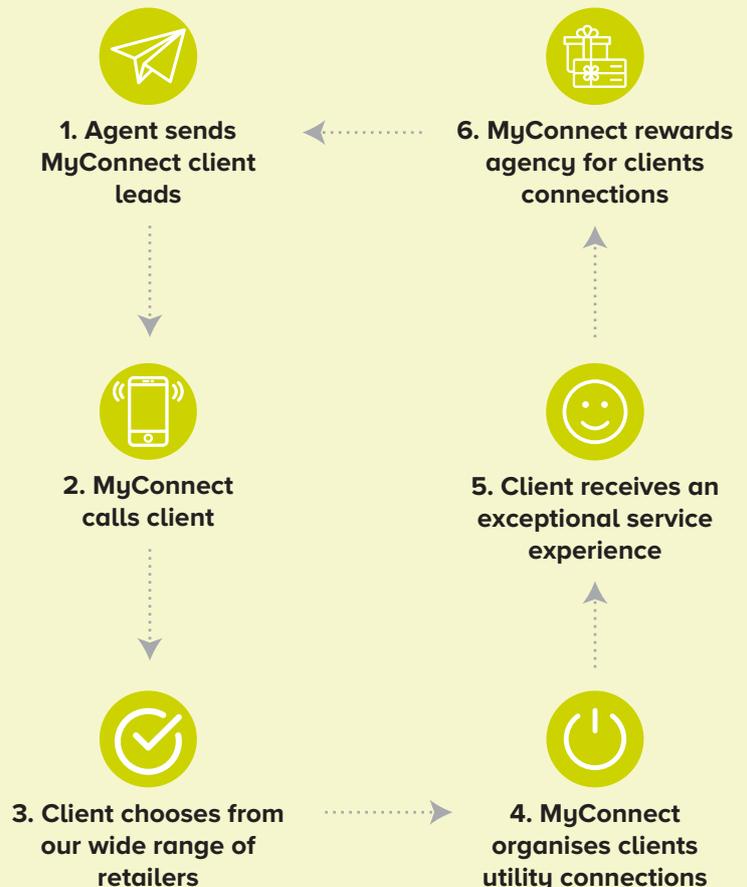
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4. Applicants complete their details, attach relevant documentation and hit Submit. Apply Now will notify you when an application has been received (via your inbox and REI Forms Live).
5. Choose the best applicant. (Okay, so you still have to do that... Apply Now isn't that clever).
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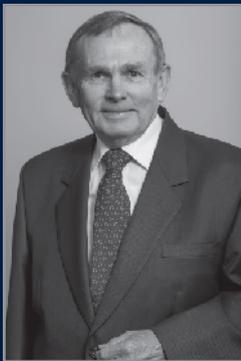


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