

# Review of Residential Tenancies Bill

The last Commercial Lawyers Committee Meeting was held on 23 June 1999 at the offices of Clayton Utz and was attended by David Winter (David de L Winter), Alison Cassells (Clayton Utz), Alastair Shields (Attorney Generals Department), Peer Schroter (Povey & Stirk by telephone) and Kevin Stephens (Ward Keller).

Unfortunately Mr Dominic McCormack (De Silva Hebron) has resigned the committee due to his departure from Darwin. The Committee wishes Dominic all the best in his future pursuits. Mr Bill Parish (Morgan Buckley) will be joining the Committee to replace Mr McCormack. If any member of the profession wishes to raise matters they think suitable please contact any one of the Commercial Lawyers Committee.

## Solicitors Certificates

You may recall that in the May edition of *Balance* it was reported that the Committee was considering ways to address the issue of Solicitors Certificates. A meeting was held between the Chief Executive Officer of the Law Society and our professional indemnity insurers at the end of June 1999 and we are expecting to receive from our professional indemnity insurers a statement by them as to their position in relation to Solicitors Certificates.

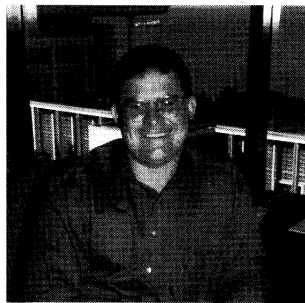
## Residential Tenancies - Draft Discussion Bill

Consumer Affairs (as part of the Department of Industries and Business) has released the *Residential Tenancies Draft Discussion Bill* (the "Bill") for comment. It is proposed to replace the existing *Tenancy Act* with the enacted Bill.

The Bill only applies to residential tenancies and is almost a codification of the landlord and tenant relationship which will arise as a result of any residential tenancy. Some of the more notable aspects of the bill include the more active role to be assumed by the Commissioner of Tenancies, bonds remain limited to four (4) weeks rent (though they may be held by the landlord), condition reports become essential in relation to any residential tenancy, the definition of landlord is expansive and includes an agent, the

codification of many of the major responsibilities of landlords and tenants including the obligation of the landlord to repair, the termination of tenancies and the new time limits which will apply and the inability of the landlord to charge for insurance, rates or body corporate charges.

What the Commercial Lawyers Committee has objected to is section 155 of the Bill (Limits on Lawyers etc Representing Parties) which provides that a



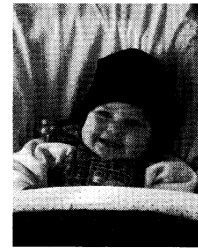
President, Kevin Stephens.

person is not to be represented before the Commissioner by a legal practitioner within the meaning of the *Legal Practitioners Act*, an articulated clerk or a person who holds or has held legal qualifications under the law of the Territory or another place, except:

- (a) with the agreement of the other party to the tenancy agreement to which the proceedings relates; and
- (b) if the Commissioner is of the opinion that neither party will be disadvantaged by permitting such representation.

Section 155(2) goes on to provide that a party to a tenancy dispute may be represented by a person who is not a legal practitioner which within the meaning of the *Legal Practitioners Act* if:

- (a) the party is a body corporate and the representative is an officer or employee of the body corporate;
- (b) the party is a landlord and the representative is an agent appointed by the landlord to manage the premises on the landlord's behalf and the Commissioner is satisfied that it will not unfairly disadvantage an unrepresented party; and



Spot the family resemblance? Baby Anaïs Stephens sure looks cute.

- (c) all parties to the proceedings agree to the representation and the Commissioner is satisfied that:
- (d) it will not unfairly disadvantage an unrepresented party; or
- (e) if the appropriate information or assistance or both were to be provided by the Commissioner to the unrepresented party, that party, would not be unfairly disadvantaged; or
- (f) the Commissioner is satisfied that the party is unable to present the party's case properly without assistance.

The Committee is objecting to section 155 of the Bill on the following basis:

- (a) there is no valid reason for limiting a person's right to be legally represented in residential tenancy matters. Not all landlords will feel comfortable or able to articulate their position and therefore (b) they should be able to freely engage the services of a person whose function and expertise is to represent the interests of a party;
- (c) if section 155(1) is based upon the view that all landlords are wealthy and use lawyers as an instrument of oppression then section 155(1) is simply misguided and misconceived;
- (d) the provision does not accord with national competition policy, and in particular appears to favour agents over lawyers at a time when agents and lawyers may come into a greater level of competition; and
- (e) sufficient protection exists with the Commissioner controlling proceedings.

## Stamp Duty - Self Assessment

The Northern Territory Commissioner of Taxes is considering a proposal to allow certain law firms and conveyancing agents to self assess standard residential conveyances with a monthly remittance of the stamp duty payable. An information seminar is being held on 21 July 1999.

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