



# The RentCover Report

Industry News and Views from EBM

June 2010

## RentCover Report – we’ve got you covered

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Welcome to the June edition of *RentCover Report*.

From controversial tax reforms to interest rates and minimum wage hikes, there are many hot issues generating widespread coverage and heated debate around the country.

It’s a particularly interesting time for landlords, with the NSW Government proposing contentious changes to the rights and responsibilities of tenants.

And a very expensive case of negligence on Queensland’s Fraser Island reminds all landowners regularly reviewing your insurance policy is wise.

Also in this issue of *RentCover Report*, we take a look at rising rents and the other economic factors creating tensions between landlords and leaseholders, and how they’re altering the look and feel of retail precincts around the country.



I hope you enjoy this edition of *RentCover Report* and look forward to updating you again next month!

### Sharon Fox-Slater

General Manager, RentCover

## What’s making news around the country...

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In **Western Australia**, the State Budget pleased the Property Council of Australia by delivering no increase in key property taxes.

Sydney’s second biggest business hub is on its way with the **NSW** Government granting approval for a \$145 million development in the North Sydney CBD. Planning Minister Tony Kelly said the new development would provide an additional 36,000 square metres of commercial floor space, with the capacity for around 2,700 new jobs.



The **Queensland** Government has announced a major shake-up in infrastructure planning to anticipate and manage population growth across the entire state. The new plan will mean the Government’s entire state-wide capital works program will have a renewed focus on managing population growth.

In **Victoria**, Melbourne’s outer fringe has been given the green light for expansion with the Growth Areas Infrastructure Contribution passing through both houses of Parliament. The tax, which will apply to those selling more than 10 hectares or subdividing smaller properties, is expected to net \$2.4 billion. Landholders could be charged up to \$95,000 a hectare with obvious implications for homebuyers.

## Premiums could rise alongside tenant rights

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Landlords in NSW could be hit by higher insurance premiums if proposed changes to the laws regarding residential tenancies receive the green light.

The public consultation period for the draft *Residential Tenancies Bill 2009*, which outlines a range of proposed amendments to the laws governing tenants' rights and responsibilities, closed in December last year.<sup>1</sup>

The NSW State Parliament is expected to deliberate on the controversial reforms in the coming months.<sup>2</sup>

Perhaps one of the most contentious of the proposed changes relates to a tenant's right to make small or aesthetic modifications to their home – a move that could put landlords at the mercy of the whims of leaseholders and spur a surge in insurance premiums to offset the associated risks.



Presently, tenants must seek the property owner's permission before altering their premises in any way.<sup>3</sup>

Should the planned reforms become law, tenants will have the legal right to make “minor” or “cosmetic” modifications to residential properties and landlords “must not unreasonably withhold consent” to any renovations or fixtures that fall into this category.<sup>4</sup>

Furthermore, the NSW Consumer Trader Tenancy Tribunal would be an available avenue for tenants wanting recourse against landlords who arbitrarily object to cosmetic changes.

The Tenants' Union of NSW has welcomed the proposed legislation with open arms, even suggesting that the provisions are not far reaching enough. It recommends that allowable alterations by tenants should extend to energy improvements as well as aesthetic modifications.<sup>5</sup>

However the potentially imminent new law could mean a rise in disputes between landlords and tenants over what constitutes minor or cosmetic changes.

The Real Estate Institute of NSW is particularly outraged over the changes and has written to NSW Premier Kristina Keneally requesting an urgent meeting about what it sees as a “serious threat to property owners and investors.”<sup>6</sup>

EBM Insurance Brokers RentCover General Manager Sharon Fox Slater said many landlords were nervous about the potential changes to tenancy regulations and concerned about the possible impacts they might have on premiums.

For more information about EBM's RentCover options, including Landlord Insurance, visit [www.rentcover.com.au](http://www.rentcover.com.au).

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<sup>1</sup> Office of Fair Trading, *Minister launches public consultation on tenancy law reform*, 4 Nov 2009

<sup>2</sup> NSW Parliamentary Library Research Service, *Residential tenancy law reforms*, Feb 2010

<sup>3</sup> NSW Government, *Residential Tenancies Act 1987*

<sup>4</sup> NSW Government, *Draft Residential Tenancies Bill 2009*

<sup>5</sup> Tenants Union of NSW, *Tenants' Union welcomes new renting laws*, 9 Nov 2009

<sup>6</sup> REINSW, *REINSW seeking answers from NSW Premier*, 28 May 2010

## Payout proves it pays to be covered

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In the middle of a tropical oasis, surrounded by luxury and decadence, the owners of an exclusive Fraser Island resort have found themselves in a less than glamorous situation.

A massive \$900,000 is the amount King Fisher Bay Resort has been ordered to pay a guest after he injured himself while holidaying at the hotel in 2002.

The claimant, a NSW geological consultant, was in the throes of 50<sup>th</sup> birthday celebrations on the Island when he slipped and fell down some wet stairs. Following a week in hospital and two months away from work, he was unable to undertake job-related field work and still suffered from some of his injuries.

The law regarding the liability of proprietors is outlined in Chapter 2 of the Queensland *Civil Liability Act 2003*. Under the Act,

*“a person does not breach a duty to take precautions against a risk of harm unless (a) the risk was foreseeable (b) the risk was not insignificant; and (c) in the circumstances, a reasonable person in the position of the person would have taken the precautions.”*<sup>7</sup>

On 18 May 2010, the Brisbane Supreme Court awarded the damages after finding Kingfisher Bay Resort negligent in making sure the stairs were safe for use.

EBM Insurance Brokers Managing Director Jeff Adams said that while insurance cover couldn't prevent costly accidents from occurring, it could help to alleviate some of the resulting financial burdens.

“Expensive liability cases like this remind business owners how important it is to be vigilant about maintaining a proper duty of care to their customers,” Mr Adams said.

“However, realistically, accidents are bound to happen from time to time.

“In the unfortunate event of a liability claim against yourself or your company, EBM insurance brokers are qualified to help you through what can be a stressful and costly process and to ensure that the claim is reconciled in a timely manner.”

Here are some helpful tips for handling liability claims:

- Immediately report all details to your EBM account manager;
- Record the names and addresses of as many witnesses as possible;
- Do not admit liability or enter into discussions regarding the negligence of any party involved;
- Take photos of the area in question; and
- Be sure to carefully record all details and circumstances whilst they are fresh in your mind.



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<sup>7</sup> Queensland Parliamentary Counsel, *Civil Liability Act 2003*, last updated 17 March 2010

## Rising rents to spike compensation claims

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As market forces drive overheads up and business confidence down, tensions between commercial landlords and tenants are beginning to boil over.

The effects of spiralling interest rates and subsequent rising mortgage costs are being felt in the rental market as landlords struggle to offset the escalating pressures.

It's been estimated by one national real estate company, that the next two years will see landlords squeeze an additional \$5 billion or more from tenants to cover their growing mortgages.<sup>8</sup>



At the same time, many of the operating costs associated with running a retail business are also mounting, such as technology, marketing, and other overheads. Even the cost of employing people is on the rise.

Fair Work Australia recently announced a \$26 increase to minimum award wages, on the grounds that “such an increase could be awarded without threatening business viability, employment growth or adding to inflation.”<sup>9</sup>

While the validity of this justification is being widely debated in the media, many retail managers will undoubtedly feel the added pinch.

Adding to the pressures on retail renters is falling business and consumer confidence.

ABS Retail Trade figures released this month showed a disappointing 0.6 percent rise in April sales, compared with March's 0.8% growth.<sup>10</sup>

The Reserve Bank of Australia's latest decision to hold interest rates, following a string of consecutive hikes, will bring some relief to retailers, many of whom have launched early stocktake sales in a bid to generate much needed sales.<sup>11</sup>

So what do all these factors mean for leaseholder-landlord relations?

To begin with, retailers may begin to strictly scrutinise all lease costs before committing to new shop spaces. And retail leasing data providers, like Leaseinfo.com.au, will provide a range of registered leasing data, designed to settle disputes between the two parties.

Director of property advice group Lease Matters, Sharon Johnston, told SmartCompany that retailers would also start to hit back against landlords who altered more than rents - in the form of compensation claims.

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<sup>8</sup> Ray White News, *Rising interest rates to hit renters hard*, 27 April 2010

<sup>9</sup> Fair Work Australia, *Annual Wage Review*, 3 June 2010

<sup>10</sup> ABS, *ABS retail sales up 0.6% in April 2010*, 1 June 2010

<sup>11</sup> Australian Retailers' Association, *Relieved retailers say RBA's steady hand well overdue*, 1 June 2010

“Tenants have a right to compensation where the landlord does or doesn't do something that materially impacts on foot traffic or access to premises,” she said.<sup>12</sup>

EBM Insurance Brokers Managing Director Jeff Adams said the current climate provided an ideal time for investment property owners, real estate agents and property managers to review their current insurance policies, and EBM brokers can assist with relevant products.

Call 1300 INSURE to contact your nearest broker.

## Three trends changing the retail face

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To combat higher rents and operating costs, Australian retailers are becoming savvier and more creative when it comes to targeting particular demographics and choosing locations.

Trend 1: Boutiques and independent brands are moving back to trendy outdoor retail strips like the Queen Street Mall in Brisbane and Oxford Street in Perth.<sup>13</sup>

These retailers often attract a more upmarket clientele. Their main aim is to provide an overall shopping experience as opposed to drawing lots of people.



Trend 2: Prominent chains and brands are multiplying in major shopping centres like Chadstone Shopping Centre in Melbourne and MidCity in Sydney.<sup>14</sup>

These big names can often afford the higher occupancy rates and aim to attract significant foot traffic.

Trend 3: The number of mobile companies, rent-free franchises and online traders has exploded in recent times.

Less impacted by rising rental costs, these retailers are not location-bound and instead enjoy the ability to follow the market – to the next suburb, state or country!



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<sup>12</sup> SmartCompany, *Retailers fight rent hikes*, 10 March 2010

<sup>13</sup> Leaseinfo, *Retail development*, 9 April 2010

<sup>14</sup> Leaseinfo, *Retail development*, 9 April 2010