

## **Inquest into the death of Isabella Wren Diefenbach**

Isabella Diefenbach, a seven week old baby, died on 29 May 2010 from head injuries after falling from her father's arms earlier that day as he stood on the verandah of their rented home. Mr Diefenbach lost his balance and subsequently lost hold of Isabella when his foot fell through a decking board on the verandah that had become significantly decayed.

Coroner Annette Hennessy delivered her findings on 19 September 2012.

The Queensland Government responds to recommendations directed to government agencies at inquests by informing the community if a recommendation will be implemented or the reason why a recommendation is not supported.

The departments named in this response will provide implementation updates until the recommendation is delivered. Further information relating the implementation of recommendations can be obtained from the responsible minister named in the response.

### **Recommendation 2**

That the Office of Fair Trading and relevant residential rental industry stakeholders conduct an awareness campaign across the industry about the agreed minimum standards of inspection of decks, verandah and stairs for property management purposes and the need to actively consider potential structural compromise due to the effects of wood rot and termite activity as an emergency repair issue.

Response and action: the recommendation is implemented.

Responsible agency: Department of Housing and Public Works.

On 5 August 2015, the Minister for Housing and Public Works and Minister for Science and Innovation responded:

The role of the Department of Justice and Attorney General in implementing this recommendation was delivered in January 2014 when the Office of Fair Trading led an awareness/education campaign in conjunction with the Building Services Authority, Residential Tenancies Authority and Building Codes Queensland.

The Department of Housing and Public Work's continuing role relates to review processes of department-managed social housing properties. This includes an ongoing inspection regime where properties are inspected at regular intervals or at time of vacancy. The department trains in-house staff to conduct property inspections. The training includes an introduction to property management and identifying and managing health and safety risks or signs of risk. The department's in-house online training manual has been undergoing a major review since November 2014 and is due for roll-out July 2015. The department continually reviews its training materials and the online format will facilitate updates, ensuring that training can be kept up to date with industry requirements.

### **Recommendation 4**

That the department responsible for administering the *Property Agents and Motor Dealers Act 2000* and the *Residential Tenancies and Rooming Accommodation Act 2008* amend the relevant legislation to introduce a system of mandatory inspections by an independent licensed builder of

the structural integrity of a residential rental property with a deck, verandah or balcony that is greater than 10 years old immediately prior to the property being placed on the rental market and thereafter at a minimum three year interval during its continued use as a rental property.

Response and action: the recommendation was not implemented.

Responsible agency: Department of Housing and Public Works.

On 5 August 2015, the Minister for Housing and Public Works and Minister for Science and Innovation responded:

The *Property Agents and Motor Dealers Act 2000* was replaced from 1 December 2014 by four pieces of legislation including the *Property Occupations Act 2014*. The *Property Occupations Act 2014* does not regulate tenancy or rental property matters, and not all rental properties are managed by real estate agents. Furthermore, it does not govern the conduct of owners of tenanted residential property. The *Property Occupations Act 2014* is therefore not considered to be the appropriate Act within which to make any of the recommended changes.

The Residential Tenancies Authority administers the *Residential Tenancies and Rooming Accommodation Act 2008* (the Act) and is responsible to the Minister for Housing and Public Works and Minister for Science and Innovation. If amendments were to be considered the appropriate Act would be the *Residential Tenancies and Rooming Accommodation Act 2008*.

The government notes that currently, the *Residential Tenancies and Rooming Accommodation Act 2008* requires that at the start of the tenancy, the lessor must ensure:

- a) the premises and inclusions are clean
- b) the premises are fit for the tenant to live in
- c) the premises and inclusions are in good repair
- d) the lessor is not in breach of a law dealing with issues about the health or safety of persons using or entering the premises.

That Act also requires that while the tenancy continues, the lessor:

- e) must maintain the premises in a way that the premises remain fit for the tenant to live in
- f) must maintain the premises and inclusions in good repair
- g) must ensure any law dealing with issues about the health or safety of persons using or entering the premises is complied with
- h) if the premises include a common area – must keep the area clean.

Further, while mandatory inspections may provide prospective tenants with information about the property, there are similarities with the existing inspection process under the *Residential Tenancies and Rooming Accommodation Act 2008* which requires an entry condition report to be completed by the landlord/agent and checked by the tenant at the start of every tenancy. Tenants (and agents) can request further inspection reports if required. All properties, regardless of tenure, must comply with building standards which are enforced through local councils.

Government needs to consider the benefits and disadvantages of introducing a mandatory inspection requirement specifically for rental premises.

The Residential Tenancies Authority is currently seeking endorsement to consult with the sector in 2015 on a range of options to amend the *Residential Tenancies and Rooming Accommodation Act 2008* to better ensure that rental accommodation is provided at a sufficient standard and that repairs are carried out in a timely manner.

**On 25 July 2016 the Minister for Housing and Public Works responded:**

The Queensland Government considered the benefits and disadvantages of introducing a mandatory inspection requirement specifically for rental premises, and whether this would duplicate existing provisions in the *Residential Tenancies and Rooming Accommodation Act 2008*. An important consideration is balancing the assumed benefit of mandatory inspections with the potential costs and practicability of the proposal.

Anticipated issues if the recommended mandatory inspections were required by legislation include:

- definition of the required standard for certification
- defining requirements (for example, some verandahs may be less than half a metre off the ground and pose little or no risk)
- significant cost of inspections with the risk of those costs being passed on to tenants through increased rents
- enforceability of inspections – both how to monitor and encourage compliance as well as to ensure any repairs or maintenance are carried out
- poor access to inspectors, particularly in regional and remote areas
- impact on the rental market in terms of properties available for rent, particularly in regional areas.

As noted in the response provided on 5 August 2015, the *Residential Tenancies and Rooming Accommodation Act 2008* already contains obligations for the lessor to maintain the premises. It also requires an entry condition report to be prepared at the start of every tenancy.

It is also noted that the recommended legislative change may not prevent the type of unfortunate situation encountered in this inquest where the tenant had reported wood rot in a rental property to a real estate agent, an inspection had been conducted and a report prepared, but proper repairs were not carried out.

Having regard to the above, it is considered that the proposed coronial recommendation is unlikely to achieve sufficient benefits for tenants given the costs involved for the sector. A compulsory inspection service would be costly and difficult to implement and would potentially affect the supply of rental properties, with costs most likely passed on to tenants.

It should be noted, that there is a government priority outlined in the Minister's Portfolio Priorities Statement to amend the *Residential Tenancies and Rooming Accommodation Act 2008* to allow the minister to prescribe minimum standards for private rental accommodation, for both standard housing and rooming accommodation, by regulation.

Community consultation is being undertaken throughout May and June 2016 as part of the Queensland Housing Strategy, which includes seeking feedback on ways to better ensure that rental accommodation is provided at a sufficient standard and that repairs are carried out in a timely manner. The outcome of this process is yet to be determined.

### **Recommendation 10**

That the department responsible for administering the *Property Agents and Motor Dealers Act 2000* and the *Residential Tenancies and Rooming Accommodation Act 2008* amend the relevant legislation to require real estate agencies to adopt a clear and uniform system of recording complaints received by the real estate agent from the tenant, passing those complaints on in the same terms to the landlord and making it clear that instructions are being sought by a certain date that approval is either given for those repairs and conducted or that the landlord will attend to those issues within a specified period; and that feedback be provided to the tenant as to the result of the complaint.

Response and action: the recommendation was not implemented.

Responsible agency: Department of Housing and Public Works.

On 5 August 2015, the Minister for Housing and Public Works and Minister for Science and Innovation responded:

The *Property Agents and Motor Dealers Act 2000* was replaced from 1 December 2014 by four pieces of legislation including the *Property Occupations Act 2014*. The *Property Occupations Act 2014* does not regulate tenancy or rental property matters, and not all rental properties are managed by real estate agents. Furthermore, it does not govern the conduct of owners of tenanted residential property. The *Property Occupations Act 2014* is therefore not considered to be the appropriate Act within which to make any of the recommended changes.

Some landlords use real estate agents to manage rental properties and the Real Estate Institute of Queensland (REIQ) has a procedure for consumers to complain about real estate agents who are REIQ members. This is separate to any legislative requirements.

The Residential Tenancies Authority administers the *Residential Tenancies and Rooming Accommodation Act 2008* (the Act) and is responsible to the Minister for Housing and Public Works and Minister for Science and Innovation. If amendments were to be considered, the appropriate Act would be the *Residential Tenancies and Rooming Accommodation Act 2008*.

The Residential Tenancies Authority is currently seeking endorsement to consult with the sector in 2015 on a range of options to amend the *Residential Tenancies and Rooming Accommodation Act 2008* to better ensure that rental accommodation is provided at a sufficient standard and that repairs are carried out in a timely manner.

#### **On 25 July 2016 the Minister for Housing and Public Works responded:**

Amending the *Residential Tenancies and Rooming Accommodation Act 2008* to require real estate agencies to have a uniform system of recording tenants' complaints about properties and noting instructions from landlords would add to the regulatory burden and is unlikely to produce benefits which would justify this change.

The recommendation only applies to real estate agents, the majority of which already maintain a system for recording tenant complaints and requests about the property. The issue in this unfortunate case, and in many tenancy disputes about repairs, is that the landlord is aware of the defect, but does not take action. Agents can only act on the direction of the landlord.

The *Residential Tenancies and Rooming Accommodation Act 2008* has clear and simple processes for tenants to follow if landlords/agents do not carry out reported repairs, providing a way for tenants

to lodge requests for repairs and maintenance, or other complaints, through the Notice to Remedy Breach process and dispute resolution process. These processes use approved forms which provide appropriate documentation and set timeframes within which action must occur. A landlord's/agent's failure to address the breach in the required time allows tenants to seek conciliation and if unsuccessful, apply to the Queensland Civil and Administrative Tribunal (QCAT) for an order requiring the repairs be completed. QCAT can also make other appropriate orders which may include, for example, a rent reduction, compensation to the tenant due to loss of amenity, or an order ending the tenancy agreement.

#### **Recommendation 11**

That the departments responsible for administering the *Property Agents and Motor Dealers Act 2000* and the *Residential Tenancies and Rooming Accommodation Act 2008* amend the relevant legislation to require tenanted properties to be subject to a mandatory building and pest inspection before a property is rented and at subsequent regular intervals.

Response and action: the recommendation was not implemented.

Responsible agency: Department of Housing and Public Works.

On 5 August 2015, the Minister for Housing and Public Works and Minister for Science and Innovation responded:

The *Property Agents and Motor Dealers Act 2000* was replaced from 1 December 2014 by four pieces of legislation including the *Property Occupations Act 2014*. The *Property Occupations Act 2014* does not regulate tenancy or rental property matters, and not all rental properties are managed by real estate agents. Furthermore, it does not govern the conduct of owners of tenanted residential property. The *Property Occupations Act 2014* is therefore not considered to be the appropriate Act within which to make any of the recommended changes.

The Residential Tenancies Authority administers the *Residential Tenancies and Rooming Accommodation Act 2008* (the act) and is responsible to the Minister for Housing and Public Works and Minister for Science and Innovation. If amendments were to be considered the appropriate Act would be the *Residential Tenancies and Rooming Accommodation Act 2008*.

The Residential Tenancies Authority is currently seeking endorsement to consult with the sector in 2015 on a range of options to amend the *Residential Tenancies and Rooming Accommodation Act 2008* to better ensure that rental accommodation is provided at a sufficient standard and that repairs are carried out in a timely manner.

#### **On 25 July 2016 the Minister for Housing and Public Works responded:**

Recommendation 11 has been interpreted to mean a requirement for vacant or vacated properties to be subject to a mandatory building and pest inspection by licensed industry professionals before a property is tenanted or re-tenanted and at regular intervals during a tenancy.

Recommendation 11 will not be implemented for the following reasons:

- The *Residential Tenancies and Rooming Accommodation Act 2008* encourages landlords/agents to conduct regular inspections of properties.

- The average length of a tenancy is 13 months, with some tenancies only up to six months. Costs of potentially annual inspections would invariably be passed on to tenants which would increase the cost of rental housing.
- There is no established building and inspection service that could cover the whole of Queensland to the proposed schedule, particularly in regional and rural areas with restricted access to building and pest inspectors, without significant investment by either the Government or through a third party supplier.
- Overall, there would be increased costs and regulatory burden to the sector.

Recommendation 11 was canvassed during the 2012 review of the *Residential Tenancies and Rooming Accommodation Act 2008*. It was supported by tenant advocates and the Real Estate Institute of Queensland, but these submissions did not address implementation costs or impacts on the sector. Recommendation 11 was not generally supported by property owners because of increased regulatory burden, higher costs associated with maintaining rental properties and concerns about tenants inappropriately using or misinterpreting building reports.

Requirements for additional inspections and reports will not necessarily result in action to repair or maintain rental properties. Therefore, it is considered that the coroner's recommended amendments may not achieve the intended outcome of preventing unfortunate situations such as the one encountered in this inquest where the tenant had reported wood rot in a rental property to a real estate agent, an inspection had been conducted and a report prepared, but proper repairs were not carried out.

Section 185 of the *Residential Tenancies and Rooming Accommodation Act 2008* requires lessors to ensure that any law dealing with issues about the health and safety of persons using or entering the premises is complied with. The specific details and requirements of such laws, as they pertain to residential premises (for example, building codes; local laws; laws about swimming pool inspections), are contained in various pieces of legislation, not in tenancy law.

The *Residential Tenancies and Rooming Accommodation Act 2008* requires lessors to maintain rental premises and also allows tenants to issue a breach notice where repairs are required. If the repairs are not completed in the required time the tenant can seek conciliation and if unsuccessful, apply to the Queensland Civil and Administrative Tribunal (QCAT) for an order requiring the repairs to be completed. QCAT can also make other appropriate orders which may include a rent reduction, compensation to the tenant due to loss of amenity, or an order ending the tenancy agreement altogether.

It should be noted that there is a government priority outlined in the Minister's Portfolio Priorities Statement to amend the *Residential Tenancies and Rooming Accommodation Act 2008* to allow the minister to prescribe minimum standards for private rental accommodation, for both standard housing and rooming accommodation, by regulation.

Community consultation is being undertaken throughout May and June 2016 as part of the Queensland Housing Strategy, which includes seeking feedback on ways to better ensure that rental accommodation is provided at a sufficient standard and that repairs are carried out in a timely manner. The outcome of this process is yet to be determined.