

May 2014

REAL ESTATE

NEWS

A newsletter from the Consumer Protection
Division of the Department of Commerce

Important reminder: curtain and blind cords

The recent deaths of two toddlers in Sydney after they become entangled in blind cords highlights the dangers blind and curtain cords can present to children. According to the Australian Competition and Consumer Commission (the ACCC), between one and two Australian children die each year after becoming entangled in blind cords. Since 1999, 17 children have died in this way.

The ACCC has issued mandatory standards known as The Trade Practices (Consumer Product Safety Standard – Corded Internal Window Coverings) Regulations 2010 (the mandatory standard) which address the risk of strangulation from blind cords.

All suppliers must comply with the mandatory standard in relation to the supply of any corded internal window covering. The standard requires that corded internal window coverings supplied after 30 December 2010 must be provided with warning labels, include installation instructions and include certain components required for the installation of corded internal window coverings.

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RCDs – what you need to know

According to **EnergySafety**, 23 of the 29 people who have died in Western Australia as a result of electrocution in the past 17 years could have been saved if Residual Current Devices (RCDs) had been fitted to power and lighting circuits.

In 2009 the State Government enacted legislation requiring a minimum of two RCDs to protect all power point and

[Read more on page 3](#)

Geraldton landlord fined for failing to lodge bonds

A private landlord has been fined a total of \$2,500 by the Geraldton Magistrates Court for failing to deposit two of his tenants’ security bonds and failing to lodge the bond of a third tenant with

[Read more on page 6](#)

Important reminder: curtain and blind cords

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From 1 January 2015, commercial installers must follow the safe installation instructions and install blinds so that dangerous loops cannot be formed. The ACCC will work with businesses and peak bodies this year to help them to understand and comply with the new requirements.

Hefty fines may be issued if blinds are not supplied in accordance with the mandatory standard. A contravention of the mandatory standard carries penalties of up to \$220,000 for individuals and \$1.1m for companies.

Lessors have a duty of care to tenants as well as anyone the tenant invites into the property, and must ensure the property is safe to live in.

While it is not essential to replace all existing blinds, to avoid the serious risk of

strangulation that corded window coverings pose to children, lessors should minimise the hazards posed by older blinds before they are replaced. This includes checking blind and curtain cords are out of reach of children and securing loose cords out of reach by using cleats or tensioning devices from a hardware or curtain and blind shop. The bottom of any blind or curtain cord should be at least 160cm above the floor.

Real estate agents, representatives and property managers are strongly encouraged to alert residents and home owners of the dangers associated with blind cords. Even if the occupants have no children, it is reasonably foreseeable that they may have children visit the home from time to time.

As a matter of best practice when inspecting properties, you should check that all internal window coverings in a rental property are as safe as possible for children. Where a hazard exists, the occupants or owners should be advised to secure loose cords so they are out of reach of children.

For more information, download a copy of the **Safety alert: blind and curtain cords** publication or visit the **Product Safety Australia website**. The mandatory standards for corded internal window coverings can also be found **here**.

Anyone with specific blind cord safety concerns can call the Consumer Protection Advice Line on **1300 30 40 54** (for the cost of a local call state-wide) 8.30am—5.00pm weekdays.

Reminder about issuing notice to terminate a fixed- term lease

The Department has recently been contacted by tenants who did not realise there was a requirement to issue 30 days' notice to terminate the end of a fixed-term agreement, even if the lease was signed prior to 1 July 2013. Tenants have expressed concern that they were unaware of this as it was not listed in their lease, and their property manager had not informed them of this requirement nor issued the notice themselves.

Issuing 30 days' notice towards the end of a fixed-term tenancy was introduced to minimise confusion about whether a tenancy was continuing or not, as prior discussion did not always take place.

To help minimise disputes the Department believes that it is wise for property managers to notify owners and tenants of the new notice requirements sometime prior to 30 days before the due expiry of an agreement. By letting both parties know that at least 30 days' notice must be provided to terminate the agreement on the listed date the chance of oversight or a dispute should be minimised.

The Department appreciates your assistance in this regard. For more information about the ending of a fixed-term tenancy, please see the Department's **e-Bulletin**.

RCDs – what you need to know

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lighting final sub-circuits whenever a home is sold or offered for rent.

The EnergySafety Division of the Department of Commerce (the Department) is the agency responsible for investigating and enforcing the mandatory requirement to fit RCDs under the Electricity Regulations 1947.

Penalties apply if the seller or landlord does not comply with the requirements to install the required RCDs. Failure to install RCDs risks exposing the seller or landlord of a property to penalties of up to \$15,000 for individuals and \$100,000 for a body corporate.

Agent's responsibilities

Real Estate Agents should inform potential sellers that RCDs must be installed prior to the transfer of ownership of the property.

When establishing property details from the seller, it is recommended that the real estate agent include the following questions on the seller's disclosure statement:

1. Are there at least two RCDs?
2. Do the RCDs protect all socket outlet (power point) and lighting final subcircuits?
3. If the property is a strata lot, then are all the Common Property socket outlet and lighting final subcircuits protected by at least one RCD?

It should be noted that ancillary buildings (ie granny flats) are deemed residential properties by EnergySafety and therefore still require a minimum of two RCDs fitted to power and lighting circuits.

Testing RCDs

RCDs should be tested every six months. All RCDs have a test button that, when pressed, simulates an earth leakage fault and indicates whether or not the RCD is operating correctly. Electric clocks and timers may require resetting after each test. For rental properties, it is recommended that the tenant be reminded to test RCDs and notify the property manager if the RCD does not operate.

Further information

The EnergySafety website provides further guidance about RCDs for real estate agents, including RCD laws, testing and fact sheets. Visit www.commerce.wa.gov.au/EnergySafety/RCD/agents.htm

Updated bond information for agents

It appears some agents are not aware that a receipt must be issued for a residential tenancy bond payment, including a bond instalment, even if the payment was made electronically by the tenant. The confusion may have arisen because the *Real Estate and Business Agents Act 1978* (the REBA Act) and the *Residential Tenancies Act 1987* (the RT Act) have differing requirements.

The REBA Act generally does not require an agent to issue a receipt for money received by electronic transfer. However, as the RT Act specifically requires a receipt to be issued for all moneys received as bond (whether electronically or not), the agent must comply with the RT Act by issuing a receipt for any money received for the purposes of bond, including an instalment of a bond.

In order to assist agents with their obligations under the REBA Act, the RT Act and the *Residential Parks (Long-Stay Tenants) Act 2006*, the Department has created a handy table that lists the receipt and record requirements for residential bond payments.

The table can be accessed from the 'Lodging a Bond' page on the Department's website, at www.commerce.wa.gov.au/bondlodgement

New Australians' interpreting service



Licensed real estate agencies operating in eligible areas of new settlement are now able to register with the Translating and Interpreting Service (TIS National) to access free phone interpreting services until 30 June 2015.

The service may be used to communicate with Australian citizens and permanent residents on any private residential property matter such as residential tenancies and purchases.

The expanded **Real Estate Agencies Pilot** allows eligible real estate agencies to register to access TIS National phone interpreting services free of charge when communicating with non-English speaking Australian citizens and permanent residents.

The Pilot is designed to assist non-English speaking humanitarian entrants and newly arrived permanent residents to independently navigate the private residential property market.

An evaluation of the initial extended pilot indicated that it had successfully met its objective of assisting non-English speaking, newly arrived permanent residents and humanitarian entrants independently engage with real estate agencies.

As a result, free telephone interpreting services through TIS National have now been expanded to more licensed real estate agencies operating in areas of new settlement throughout Australia.

A list of eligible postcodes under the Pilot can be found on the **TIS website**.

Reclassification of 'guide dog' in Dog Act 1976

Under the *Residential Tenancies Act 1987* (the RTA), section 29(1A) provides that the definition of a pet in relation to a security bond does not include a guide dog as per the definition under the *Dog Act 1976* (the Dog Act).

The Dog Act has recently been amended to reclassify the term 'guide dog' as an 'assistance dog'. A supplementary amendment was made at the same time to the RTA such that section 29(1A) now provides that the definition of a pet does not include an 'assistance dog' as defined in the Dog Act.

Alternative providers of criminal history checks

The Commissioner is trialling new arrangements to make it easier for industry participants to obtain their police checks. There are now several provider options available, with varying costs and ordering choices, so real estate agents and sales representatives can find the most appropriate one.

For a list of acceptable providers during the trial please visit www.commerce.wa.gov.au/CP/policechecks

Breaking tenancy law costs two landlords \$3,000

A pair of private landlords who broke tenancy law by making their tenant pay too much bond money, not giving a receipt and not lodging the money with the Bond Administrator, have been ordered to pay \$3,000 in fines and costs.

Steven and Nava Meyer pleaded guilty to three offences under the Residential Tenancies Act during a hearing in the Perth Magistrates Court on 2 December 2013. They were fined \$1,000 and must pay costs of \$2,000.

Commissioner for Consumer Protection Anne Driscoll says legal action was necessary.

“In 2011, the Meyers took \$8,500 in bond money for a rental property in Yokine – ten times the weekly rent – when under tenancy law no more than four weeks rent should be taken as a security bond,” she said.

“As well as failing to give the tenant a receipt, meaning there was no proper record of the transaction, the agents did not lodge the money with the Bond Administrator for nearly 500 days – legally it must be lodged within 14 days. At the time, tenancy law also gave an option for them to put the money in a dedicated bond account at the bank and they did not do this either.

“The landlords who had been agents before should have been aware of their obligations.”

The Commissioner hopes this and other recent cases deter private landlords from ignoring their responsibilities under the Residential Tenancies Act.

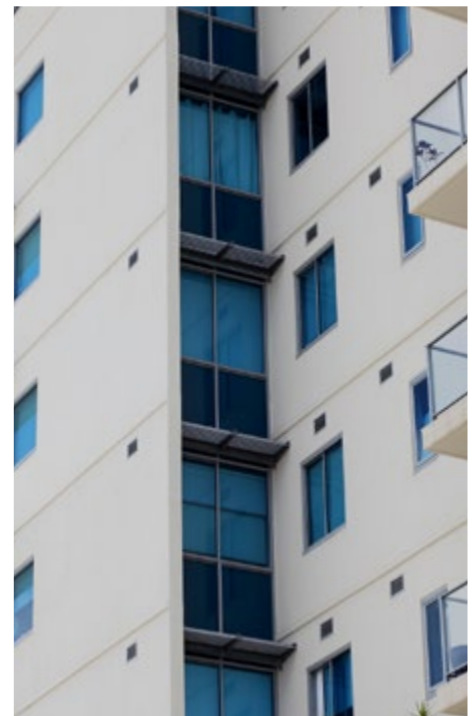
“The law ensures that a tenant’s bond money will not be misused and is held securely, so whether it is a private landlord or a real estate agent, funds must be lodged with the Bond Administrator as soon as practicable and no later than 14 days after receipt.

“Failure to lodge, or seriously delayed lodgement, may result in prosecution by Consumer Protection and subsequent damage to a person’s reputation.

Bonds deposited in trust accounts prior to the new tenancy laws coming into effect on 1 July 2013 must be transferred to the Bond Administrator by 31 December 2014.

There is more information on bonds, for landlords, property managers and real estate agents, on the Consumer Protection website: www.commerce.wa.gov.au/tenancy

Queries can be emailed to consumer@commerce.wa.gov.au or phoned through on **1300 30 40 54**.



Geraldton landlord fined for failing to lodge bonds

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the Bond Administrator within 14 days of receipt.

John Lewis Donohoe of Geraldton, a former real estate agent, had received a \$2,100 bond from a tenant in January 2011 and a \$2,000 bond from another tenant in May 2012 but failed to deposit the money into a trust account in the name of the owner and tenant, or with the Bond Administrator, as required by the Residential Tenancies Act at the time. He was fined \$1,000 for each of these two offences.

In June 2012, Mr Donohoe collected \$2,200 in bond money from a third tenant but took 42 days to lodge it with the Bond Administrator, which was outside the time allowed for bond lodgement under the Act at the time. He was fined \$500 for this offence, and was also ordered to pay \$486 in costs.

Magistrate Lawrence, in handing down the penalty, took into consideration that Mr Donohoe was a former real estate agent and should have been well aware of the requirements of the Act.

All new bonds must now be lodged with the Bond Administrator within 14 days of collection. Bonds deposited in trust accounts prior to the new tenancy laws coming into effect on 1 July 2013 must be transferred to the Bond Administrator by 31 December 2014.

For more information on bonds, please visit www.commerce.wa.gov.au/tenancy or email consumer@commerce.wa.gov.au or call **1300 30 40 54**.

Reminder to maintain current contact details

Agents and sales representatives are reminded that it is their responsibility to keep the Commissioner up-to-date with any changes to their address and contact information.

Section 36 of the Real Estate and Business Agents Act 1978 (the Act) requires an agent to have, at all times, a physical office in Western Australia. Similarly, section 51(2) of the Act requires a registered sales representative to give the Commissioner notice in writing of any change to their address.

Renewal reminders are sent to a person's postal address. If no postal address has been provided the information is sent to the licensee's principal place of business or residential address and in the case of registration holders, their residential address.

Agents or sales representatives who submit late renewal applications because they failed to update their contact details and did not receive a reminder notice, may find their triennial certificate, licence or registration has expired and cannot be backdated. Any regulated

work undertaken during the period that a person is unregistered is an offence under the Act.

An individual who is currently the qualifying director/partner or the person in *bona fide* control of an agency may also put the trading agency's licence at risk if they allow their licence to lapse.

You are reminded that renewal reminders are issued as a courtesy to assist industry participants. It is your responsibility to ensure that you are suitably licensed or registered at all times while operating in your industry.



‘No Junk Mail’

In November last year, the Department created a **Do Not Knock sticker** after a **Federal Court ruling in South Australia confirmed consumers do not need to meet a door-to-door salesperson face-to-face to ask them to leave their house.**

The case, which was instigated by the Australian Competition and Consumer Commission following multiple consumer complaints, shows that a Do Not Knock sign conveys a clear and unambiguous request for the salesperson to leave without knocking on the consumer’s door.

The Court’s decision is a reminder to agencies in Western Australia that they need to respect people’s wishes at their homes and that the same courtesy should be applied to No Junk Mail stickers.

It may be viewed by some in the real estate industry that dropping real estate flyers into letterboxes displaying a No Junk Mail sticker is acceptable or even the norm.

However, these No Junk Mail stickers work on the same principle as it conveys a clear and unambiguous message that the consumer does not want unsolicited mail.

The Federal Court ruling has shown that consumers are not afraid to complain when companies ignore Do Not Knock signs.

Agencies are therefore strongly encouraged to respect consumers’ requests for no junk mail when conducting letter drops.



The residential tenancy guides are nearing completion

They include responses to matters that have been raised since the Residential Tenancies Act was amended last July. Physical copies will be available, however, where possible, readers should check the online version, as that will have the most updated information.

Boarders and lodgers

The Department has recently updated its *Boarders and lodgers – a guide to your rights and responsibilities* publication. The publication aims to help boarders and lodgers understand their rights and responsibilities under common law.

This may also be useful for industry as there have been cases where a Court has found a person with an agreement titled 'lodging agreement,' to be a tenant with rights under the RTA. While a tenant is generally more likely to have exclusive possession than a boarder or lodger, it is possible to have room by room tenancy agreements.

Under common law, the determinant of whether a person is a tenant or a boarder/lodger is not the title of the agreement, which the parties have signed, but rather the nature of the rights of the parties. As such, it is not always easy to determine whether a person is a boarder or lodger, or a tenant or sub-tenant. This will depend on the documents that make up the agreement and the circumstances of the situation.

In some circumstances it may be necessary for a court to make a binding decision about whether an occupant is a tenant or not. The publication outlines some of the factors which may contribute to a decision that a person is more likely to be a boarder or lodger rather than tenant or sub-tenant.

Generally, a boarder or a lodger can be distinguished from a tenant as someone who pays rent and:

- is entitled to live in the premises but cannot call the place their own ie the lessor exerts control and authority over the whole premises;
- attendance or services (e.g. cleaning, linen or meals) are provided by the lessor, which require the lessor or their servants to exercise unrestricted access to and use of the premises;
- house rules are enforced;
- the lessor/representative lives on site;
- the duration of the agreement/ permitted length of stay is only for a short time; and
- only a very short period of notice to leave needs to be given by the lessor or boarder/lodger.

Boarders and lodgers a guide to your rights and responsibilities is available to download from the Commerce website.



Removing the property management condition on your registration

Property managers who wish to upgrade to a full registration but are subject to a condition that limits the scope of their activities to property management do not need to submit a new application to the Department to have this condition removed. As they already hold a registration, they simply need to request the property management condition be removed in writing and demonstrate that they meet the prescribed qualification requirements outlined in regulations 6A and 6B of the *Real Estate and Business Agents Regulations 1979*.

Contact details

Since the department's restructure on 1 July 2011, various functions previously performed by Board staff have been split to different directorates of Consumer Protection. In order for your enquiry to be handled efficiently, please note the following:

- If your enquiry relates to your licence or registration, license or registration application or the structure of your business, please contact Licensing on **1300 30 40 64, Option 2**.
- If you need to inform the Commissioner of a change to your details, please email **licensingenquiries@commerce.wa.gov.au**. Please include your licence/ registration number.
- If you have an enquiry, including any relating to a proactive visit, please contact Proactive Compliance on **(08) 9282-0874** or email **proactivecompliance@commerce.wa.gov.au**
- If you have a trust account or auditing enquiry, please call **(08) 9282-0926** or email **audits@commerce.wa.gov.au**
- If your enquiry relates to CPD (contact trainers directly for bookings) please call **(08) 6364-3120** or email **cpd@commerce.wa.gov.au**
- For newsletter or e-Bulletin subscription enquiries, email **pinews@commerce.wa.gov.au**
- Consumer Protection's general contacts should be used for all other issues. You can telephone **1300 30 40 54** or email **consumer@commerce.wa.gov.au**

E-Bulletins

The Department regularly publishes Real Estate e-Bulletins which provide agents and other interested parties with industry related news and up-to-date information on the Department's policy developments.

Recent e-Bulletins have included articles relating to Landgate's property interest reports, fake testimonials and another attempted property scam involving a fraudulent cheque from Nigeria.

Our e-Bulletin archive can be found on the **Department's website**.

If you would like to subscribe to our e-Bulletins, update your email address or if you have any queries, please email **pinews@commerce.wa.gov.au**

Website

Consumer Protection's website is an integral tool in providing education and advisory services to industry participants and the public.

The website has a dedicated section for real estate agents, which covers a range of subjects including Compulsory Professional Development, proactive compliance and licensing information. The website also contains a wide range of application forms.

Consumer Protection is committed to the continuing development and improvement of the website and welcomes feedback from the industry. Comments can be sent to **pinews@commerce.wa.gov.au**

The website is located at **www.commerce.wa.gov.au/ConsumerProtection**