



Tenants' Union of Tasmania



**Submission to
'The Residential Tenancy
Review 2009'**

February 2010

Outline of the Role of the Tenants' Union of Tasmania

The Tenants' Union of Tasmania Inc. (Tenants' Union) is a body that represents residential tenants in Tasmania. We work to protect the interests and rights of tenants and:

- Seek to improve conditions in rental housing in Tasmania so that accommodation meets acceptable community standards;
- Raise awareness within the community about tenancy issues; and
- Promote legislative change to improve conditions for residential tenants.

We have extensive contact with tenants through our Telephone Advice Line, Drop-In Service, legal representation and community legal education and therefore have intimate knowledge of the situations confronting residential tenants in Tasmania every day.

The Tenants' Union is a Community Legal Centre largely funded by the Tasmanian Department of Health and Human Services and the Commonwealth Attorney-General's Department.

Introduction

The Tenants' Union of Tasmania welcomes the opportunity to comment on the discussion paper and provide input into the review of the *Residential Tenancy Act 1997* (Tas).

In the wake of most other Australian jurisdictions, Tasmania enacted the new approach to tenancy regulation in 1998, with the *Residential Tenancy Act 1997* (the *RTA*). While broadly similar in social policy position to the other States and Territories, the Tasmanian government opted for minimalist legislation, leaving many aspects of the landlord and tenant relationship to be regulated by Common Law, and even to the *Landlord and Tenant Act 1935*.

The legislation reflects an approach common to consumer protection law, in acknowledging the power disparity between landlord and tenant, and as a last resort in a dispute a tenant may terminate the agreement and leave the premises. A decade later finds Tasmanian tenants in a different economic environment: the housing boom has increased rents significantly above increases in income; increases in population and other factors have led to a considerable reduction in vacancy rates for rental housing; government policy has favoured private investment in rental housing over public investment. The balance has shifted further in favour of the landlord as a result.

While other more populated states, such as Victoria, NSW and Queensland have opted for more complex legislation, and have instituted specialist tribunals, Tasmania has left most tenancy disputes to be resolved in the Magistrates Court, which is expensive, procedurally complex, and very time consuming. The Tenants' Union advocates for a more centralised specialised, accessible and transparent dispute resolution system than currently established.

The Tenants' Union, in response to the issues paper, particularly make recommendations in relation to security of tenure, rent increases, and condition and maintenance of tenanted properties.

Is there a need to develop an integrated or whole of Government approach to issues in the rental market?

The Tenants' Union would like to see a 'whole of government' approach adopted with vast resources for an overarching body to coordinate policy and action in the long-term, but we recommend reform of the *RTA* as a short to medium term priority. The *RTA* should continue to be the primary piece of legislation governing residential tenancies, providing a hub from which other pieces of legislation associated with residential tenancy connect. In other words, the integration is provided directly through the *RTA*, administered by Consumer Affairs and Fair Trading (CAFT). Advantages are that it is less costly and less burdensome for CAFT because specialisation stays with other departments and relevant legislation can be integrated immediately.

What is the role of the *RTA* in responding to marketplace issues such as shortages in the supply of housing?

The current *RTA* was framed in the 1990s when population levels were stable or falling, housing was less expensive (in nominal and real terms) and vacancy rates were at such a level as to give some bargaining power to tenants. These factors disguised the substandard condition of many houses. With high vacancy rates and low rental prices, the worst of Tasmania's housing stock was not let. The parliament of the day had faith in the contractual process and the market system to encourage owners to maintain their property in good condition at a reasonable price. Yet many tenants lived in inadequate housing, often to the detriment of their health and safety. It seemed the 'invisible hand' was not shepherding the market in beneficent ways, even when advantage was supposedly tilted toward the tenants.

Since the turn of the millennium market conditions have deteriorated for tenants with rental prices dramatically outstripping inflation¹ and public housing stock falling despite population increases. In addition, vacancy rates for rental properties have fallen from 6% to around 2% in Hobart², and are presently around 3% in Launceston, 2% in Burnie and under 1% on the East Coast. The West Coast is the only locality to have a vacancy rate over 4%, a recent rise due to lowering population as a result of significant workplace redundancies³.

High rent and low supply has resulted in many Tasmanians permanently living in substandard conditions. The *RTA* must be reformed in response to the structural change in Tasmania's housing situation. The legislation must move from a contractual, market based model, to a regulatory regime that enforces a tenant's right to safe, affordable and adequate housing. To do this the Tenants' Union recommends codification, integration and enforcement of minimum standards of accommodation, improvements to the certainty of a tenant's tenure and limits to rental increases and other charges.

The *RTA* will never be all that is required to address the ills associated with the housing affordability crisis, but it is an effective tool in ameliorating the worst consequences.

¹ TasCOSS, *An Unfair State? Poverty, Disadvantage and Exclusion in Tasmania*, October 2007, p.9

² *ibid*

³ SQM Research, *Residential Vacancy Rates*, found at <http://www.sqmresearch.com.au/graphs/vacancy.php?t=1>, accessed 12 February 2010.

Should tenants be able to extend an agreement where the owner intends to rent a property for a further period?

Adequate housing provides the base from which people can participate effectively in their community. As such, tenancy should be viewed as the provision of a basic need rather than a simple contractual arrangement for goods and services. Stability and certainty in a housing situation are generally as important to tenants as most other people for wellbeing. Tenants need to be able to assert their rights without fear of eviction. For these two reasons we oppose arbitrary evictions and evictions with short notice periods.

Instead principles of natural justice should inform the *RTA*. If there is to be no change to the use of the property, tenants should be able to maintain their tenure unless there has been a proven breach of their residential tenancy agreement by an appropriate dispute resolution process. This concept is not unusual and underpins employment law. The Tenants' Union recommends the principle of 'just cause' be applied to all residential tenants. This requires the repeal of Section 42(1)(b) and 42(1)(d) of the *RTA*. The effect of the repeal is that at the end of a fixed-term lease tenants would roll over to a non-fixed lease.

Of course there are many situations at the end of the fixed term lease where owners no longer wish to use the premises as a rental property. We therefore recommend an amendment to Section 42 (1)(c) to allow for vacant possession at the end of a fixed term lease or during a non-fixed term lease because the premises are to be sold, *substantially* renovated or used for another purpose. To avoid, retaliatory or frivolous evictions we further recommend that the following definitions be included in the *RTA*:

“to be sold” means a contract of sale exists on the property

“used for another purpose” means for a purpose other than a residential rental property.

The notice period for a Section 42(1)(c) eviction should be extended from 28 to 60 days, to allow enough time for a tenant to find a new residence. This is especially important in remote, regional and rural areas where there may be few rental properties of a suitable type in close proximity to the vacated premises.

The Tenants' Union recommends that, similar to Victorian provisions, if a tenant wishes to terminate the lease within this notice period that they should be able to give 14 days notice, to enable them to take up new housing opportunities as they arise.

**Do you agree that rent should only be increased every twelve months?
Should all rent increases be subject to a reasonableness test?**

It is clear that market mechanisms are not working efficiently in the Tasmanian and Australian housing markets. High prices and low supplies are supposed to signal a bottleneck and encourage suppliers to enter the market. Yet, as stated earlier, since 2000 Tasmania's rental market has experienced continuing rent increases in real terms and inadequate supply. Tasmania needs some form of regulation of rents thus the Tenants' Union proposes that the reasonableness test covers **all** rents: both existing rents and rents from proposed increases.

In addition, rent increases occurring during a lease should be subject to controls. Adopting the spirit of the ACT's *Residential Tenancies Act 1997 (ACT)* legislation the Tenants' Union submits that mid lease rent increases be limited to a rate based on inflation⁴. The onus on contesting the rent increase would depend upon the quantum. If above the proscribed rate the owner must demonstrate reasonable grounds for such an increase, and if below, the tenant must demonstrate that the increase is excessive. An example of the factors that could be incorporated into Tasmania's *RTA* is Section 68(3) of the *Residential Tenancies Act 1997 (ACT)*:

- (3) If a tenant or lessor proposes that a rental rate increase is or is not excessive, the ACAT, in considering whether it is satisfied about the proposal, must consider the following matters:
 - (a) the rental rate before the proposed increase;
 - (b) if the lessor previously increased the rental rate while the relevant tenant was tenant—
 - (i) the amount of the last increase before the proposed increase; and
 - (ii) the period since that increase;
 - (c) outgoings or costs of the lessor in relation to the premises;
 - (d) services provided by the lessor to the tenant;
 - (e) the value of fixtures and goods supplied by the lessor as part of the tenancy;
 - (f) the state of repair of the premises;
 - (g) rental rates for comparable premises;

4 If an acceptable CPI rate cannot be found, then a panel could decide the figure based on a prescribed set of factors

- (h) the value of any work performed or improvements carried out by the tenant with the lessor's consent;
- (i) any other matter the ACAT considers relevant.⁵

To prevent a constant ratchet up of rental prices and to make it easier to determine if a rent increase is excessive, the Tenants' Union recommends that Section 20(3)(b), Section 20(3)(c) and Section 20(3)(d) of the *RTA* be amended to only allow rent increases every twelve months rather than the present six months.

⁵ Section 68(3) of the Residential Tenancies Act (1997) (ACT)

Is rent bidding a problem and if so, is there a legislative solution to rent bidding?

Interestingly, the Tenants' Union receives more complaints about 'rent banding' (bracket price advertising) than 'rent bidding' because to some extent bidding is a hidden phenomenon. Tenants engaging in rent bidding are unlikely to complain, particularly if successful, and the unsuccessful are unlikely to find out. Nonetheless, both practices have been of concern to the Tenants' Union for some time. We have found that the number of complaints increases at times when the vacancy rate is very low due to high demand such as January and February when students are looking for accommodation. Rent bidding can have the effect of locking potentially vulnerable and desperate tenants into unaffordable rents, increasing general rent levels in the short-term and possibly the long-term as new rent levels are set.

Do you agree that there can be improvements to the existing dispute resolution process?

Do you support expanding the scope of the Residential Tenancy Commissioner to include other orders under the RTA?

The combination of Magistrates Court and Residential Tenancy Commissioner is inadequate in dealing with the complex and varied array of residential tenancy disputes. The CAFT discussion paper mentioned that court was intimidating, expensive and time consuming and the Tenants' Union adds that it is excessively formal and unduly complex. Significantly, the magistrates do not specialise in tenancy matters, leading to seemingly arbitrary and inconsistent decision making.

While the Commissioner is a specialist, we have concerns about the current bond dispute resolution process. The process lacks the transparency of a hearing, and may be left open to allegations of lack of procedural fairness. It is not clear to those outside the Office of the Commissioner the opportunities that each party has to tender evidence, or the level of correspondence that will be entered during the investigative process. The written application procedure can be disadvantageous to tenants without proficiency in written English.

The Tenants' Union proposes instead that the "principal residential tenancy jurisdiction be with a Residential Tenancies Tribunal or some similar body", as recommended by the *Minimum Legislative Standards for Residential Tenancies in Australia* report, written in 1995 for the then Commonwealth Department of Housing and Regional Development⁶. Most other Australian states and territories have a tribunal as a major component in their tenancy dispute resolution system. Both South Australia and NSW have specialist tenancy tribunals, while Queensland, Victoria and the ACT hear tenancy matters in a more generalist tribunal (Western Australia is predominantly court based, while the Northern Territory, like Tasmania, uses both court and commissioner).

A Tasmanian Residential Tenancies Tribunal would combine mediation, conciliation and formal hearings, as well as house investigation officers with power to issue infringement notices for breaches of the RTA. Advantages include informality, transparency, flexibility and less expense than the court system. In addition, a tribunal would develop expertise in tenancy legislation and could use people with experience in tenancy related matters to adjudicate on disputes.

In fact, the Tenants' Union recommends the creation of an overarching body that combines

⁶ Kennedy, R., See, P. and P. Sutherland, *Minimum Legislative Standards for Residential Tenancies in Australia*, AGPS, Canberra, 1995, p.84

functions of a tribunal, including investigations, the holding and investment of security deposits and tenancy related community education and publicity: in other words, a body combining tribunal, Rental Deposit Authority and Residential Tenancy Commissioner. A body like this would be costly in comparison to today's expenditure on tenancy related dispute mechanisms but could be partially funded by interest accrued on tenants' security deposits (tenants should not have to fund the whole dispute resolution process), especially if invested in accounts with competitive interest rates. The present interest rate on tenants' security deposits is 2.75% per annum⁷, far below the 4.75% per annum available on deposits with the 'big four' banks⁸. The Tenants' Union recommends a Treasury investigation into alternative low risk investments with an eye to improving the returns on tenants' security deposits.

⁷ Letter from Lisa Singh MP, Minister for Corrections and Consumer Protection, 29 January 2010, p.2

⁸ The Tenants' Union of Tasmania Internet Banking Account with Westpac accrues interest of 4.75% pa as at 31 January 2010.

Do you agree that the *Residential Tenancy Act* should contain a requirement for accommodation of a suitable standard?

In the absence of residential tenancy accommodation standards, the only way a government can expect that every household lives in a manner acceptable to health and safety standards is to hope that the amount of rental dwellings of a suitable standard is equal to or exceeds the number of households renting. If there is one household in excess of the number of suitable dwellings then the government is in breach of its duty of care. It is hard to estimate what vacancy rate is required for there to be a safe dwelling for each Tasmanian household but there is little doubt that the mark has been breached since 2000. The time of allowing the most vulnerable to contractually 'trade off' health and safety has ended. The Tenants' Union demands codification of standards in the *RTA*. Tasmania has the lowest residential tenancy habitability standards in Australia:

Table 1. Legislated Residential Tenancy Standards in Australian States and Territories

Jurisdiction	Legislated Standard
Queensland	the lessor must ensure—the premises and inclusions are in good repair ⁹
Victoria	A landlord must ensure that the rented premises are maintained in good repair. ¹⁰
Australian Capital Territory	the lessor must ensure that the premises [are] ... in a reasonable state of repair ¹¹
New South Wales	the landlord shall provide and maintain the residential premises in a reasonable state of repair, having regard to the age of, rent payable for and prospective life of the premises. ¹²
South Australia	the landlord— will ensure that the premises, and ancillary property, are in a reasonable state of repair at the beginning of the tenancy and will keep them in a reasonable state of repair having regard to their age, character and prospective life ¹³
Western Australia	the owner—shall provide and maintain the premises in a reasonable state of repair having regard to their age, character and prospective life; ¹⁴
Northern Territory	The landlord must maintain the premises and ancillary property in a reasonable state of repair, having regard to their age, character and prospective life. ¹⁵

⁹ Section 185(2)(c) of the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld.)

¹⁰ Section 68(1) of the *Residential Tenancies Act 1997* (Vic.)

¹¹ Clause 54(1)(c), Schedule 1 of the *Residential Tenancies Act 1997* (ACT)

¹² Section 25(1)(b) of the *Residential Tenancies Act 1987* (NSW)

¹³ Section 68(1)(a) of the *Residential Tenancies Act 1995* (SA)

¹⁴ Section 42(1)(a) of the *Residential Tenancies Act 1987* (WA)

¹⁵ Section 57(1)(b) of the *Residential Tenancies Act 1999* (NT)

Tasmania

The owner...is to maintain the premises as nearly as possible in the condition, apart from wear and tear, that existed on the day on which the residential tenancy agreement was entered into.¹⁶

To bring Tasmania up to an acceptable Australian standard the Tenants' Union recommends amendment of Section 32(1) of the *RTA* to read:

(1) At the start of the tenancy, the lessor must ensure—

- (a) the premises and inclusions are clean; and
- (b) the premises are a fit place for the tenant to live; and
- (c) the premises and inclusions are in good repair; and
- (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.

(2) While the tenancy continues, the lessor—

- (a) must maintain the premises in a way that the premises remain a fit place for the tenant to live; and
- (b) must maintain the premises and inclusions in good repair; and
- (c) must ensure any law dealing with issues about the health or safety of persons using or entering the premises is complied with; and
- (d) if the premises include a common area—must keep the area clean.

¹⁶ Section 32(1) of the *Residential Tenancy Act 1997* (Tas.)

What should be minimum standards for rental accommodation?

In addition to the general principle of 'good repair' recommended as an amendment to Section 32(1) of the *RTA*, the Tenants' Union seeks codified minimum housing standards for residential tenancy properties in Tasmania that could be included in the *RTA* or be enacted through another piece of legislation and referenced through the *RTA*.

Many other Anglo-American jurisdictions with similar economic ideology (broadly speaking, market capitalism with government safety net) have minimum standards for rental housing. In the United Kingdom the *Housing Act 1985* establishes minimum standards necessary for habitation with an emphasis on a safe and healthy environment for occupants and visitors. A new Irish act, the *Housing (Standards for Rental Homes) Regulations 2008*, also sets down minimum standards. These regulations require that a landlord:

- ensure that the house is essentially sound with roof, floors, ceilings and walls and stairs in good repair and the property does not have severe dampness or rotting.
- must provide a sink with hot and cold water, provide a separate ventilated room with a bath or shower and toilet, providing heating appliances for every room lived in,
- must provide facilities for cooking (including 4 ring hob with oven and grill, fridge and freezer, and microwave oven) and facilities for hygienic storage of food,
- provide clothes washing facilities and clothes drying facilities if the property does not have a garden or yard.
- must also ensure that the electricity or gas supplies are in good repair and safe and ensure that each room has adequate ventilation and have both natural and artificial lighting.
- must also provide a fire blanket and fire alarms.
- provide a permanently fixed appliance or appliances capable of providing effective heating for each habitable room.¹⁷

Failure to comply with the standards can result in the imposition of penalties and prosecution.

In Alberta, Canada, the *Minimum Housing and Health Standards* is a comprehensive list of minimum standards that rental properties must achieve. Although there is extra emphasis on weatherproofing because of the climate (Edmonton, the capital, has an

¹⁷ *Housing (Standards for Rental Homes) Regulations (2008)*

average winter maximum of 9 degrees Celsius) we believe they are relevant and applicable for Tasmania. Below is a list of Alberta's main minimum standards with some Tenants' Union additions in italics:

1. Housing premises are structurally sound, in a safe condition, in good repair, and maintained in waterproof, windproof and weatherproof condition.

- Property must be free from damp, mould
- The housing premises must be structurally sound
- The roof and exterior cladding of walls shall be maintained in good repair, free of cracks and weatherproof
- All windows and exterior doors shall be in good repair, free of cracks and be weatherproof.
- Exterior windows and doors shall be fitted with locking devices
- Inside or outside stairs or porches including all treads, risers, supporting structural members, rails guards and balconies shall be maintained in good repair
- All rooms shall be provided with adequate ventilation
- All walls, windows, ceilings, floors and floor coverings shall be maintained in good repair, free of cracks, holes, loose or lifting coverings and in condition that is easy to clean

2. Equipment and Furnishings – Occupants of housing premises must be supplied with adequate; sanitary facilities, heat, potable water, utilities and space for sleeping.

- Housing premises must be connected to the public sewerage system or to an approved private sewerage disposal system
- The plumbing system and drainage system must be maintained in proper operating condition
- Every housing premise must be provided with plumbing fixtures consisting of a toilet, a washbasin and a bath or shower.
- Properties to be supplied with *energy efficient* heating facilities – all heating facilities to be properly installed and maintained in good working condition
- Every house to be supplied with an *adequate, consistent* potable water supply
- Every house to be supplied with *energy efficient* electrical service – outlets,

switches and fixtures to be properly maintained in good and safe working condition

- Property to be fitted with an electrical safety switches.
- Smoke alarms should be hard wired and operational at all times
- Public hallways or stairways to be adequately lit at all times
- Every house must be fitted with food preparation facilities including – kitchen sink, supplied with potable hot and cold water, *a fridge and freezer*, and a stove that is fully functioning
- Every house must have adequate number of containers suitable for storage of garbage and refuse awaiting disposal.

3. The owner shall ensure that all rooms and other areas are maintained in a clean and sanitary condition

- Property to be free of insect and rodent infestation

The Tenants' Union recommends the codification of minimum rental standards for Tasmanian rental properties. This could occur directly in the *RTA* or via separate legislation integrated into the *RTA*.

The Tenants' Union submits that the above set of criteria is a good basis for minimum standards but recommends community consultation to set the level of minimum standards required in Tasmania.

Do you agree that there should be better redress for maintenance under the *RTA*?

Do you agree that the difference between fair wear and tear and maintenance should be clearer?

Do you support a clarification of the meaning of functioning under Section 33 of the *RTA*?

Presently the remedies available to a tenant for the failure of an owner to repair are a) application to Court, b) terminating the lease, and c) for urgent repairs, paying for the repair in the expectation of reimbursement by the owner. These options are, in varying degrees, costly, time consuming, stressful, uncertain and inconvenient. To decrease the level of difficulty in seeking redress for maintenance and repairs, the Tenants' Union recommends the expansion of the role of CAFT investigation officers, allowing them to compel owners to rectify problems and issue infringement notices where appropriate. Owners could rectify the problem or challenge it in a tribunal or Court. This method of repair and maintenance enforcement would be even more effective if objective minimum standards are added to or through the *RTA*. Under the present system, officers would have to ascertain the state of the property at the beginning of the tenancy to determine whether maintenance was required ("Did you forgo your health and safety before you moved into the property?"). With minimum standards, investigators can measure a house against universal criteria.

For complex cases, the replacement of the Court with a tribunal would make dispute resolution easier, less time-consuming and intimidating for both parties.

To allow more effective redress of urgent problems, the Tenants' Union recommends a more comprehensive definition of essential services and urgent repairs. Section 28(2) of the NSW *Residential Tenancies Act 1987* has a comprehensive definition that could be adopted by Tasmania:

urgent repairs means any work needed to repair any one or more of the following:

- (a) a burst water service,
- (b) a blocked or broken lavatory system,
- (c) a serious roof leak,
- (d) a gas leak,
- (e) a dangerous electrical fault,
- (f) flooding or serious flood damage,
- (g) serious storm or fire damage,

- (h) a failure or breakdown of the gas, electricity or water supply to the residential premises,
- (I) a failure or breakdown of any essential service on the residential premises for hot water, cooking, heating or laundering,
- (j) any fault or damage that causes the residential premises to be unsafe or insecure,
- (k) any other prescribed damage¹⁸

Clear definition of urgent and general repairs would help prioritise cases going to Court or tribunal.

As recommended earlier, owners should be compelled to keep premises in good repair. In addition we submit that an owner should be expected to keep their property and goods functioning as designed. This would mean that if wear and tear made an item no longer function as it was designed then it would need to be replaced.

Two case studies may help clarify the reason why “fair wear and tear” should be deleted:

‘Chris’ moved into a property with carpet with 8 years of wear. It is worn but still functions as a floor covering. After 3 years, the carpet became threadbare in thoroughfare areas. The Tenants’ Union advised that the landlord had no obligation to replace the carpet as it would be considered ‘fair wear and tear’.

‘Peter’ rented a house with an electric stove. The stove had 4 hobs, but 2 stopped working. The Tenants’ Union advised that this would be an ‘urgent repair’ under the *RTA*, but the landlord argued that the stove still functioned. ‘Peter’ did not want to make an application to Court, he did not have the money to call an electrician to repair it, and he did not want to terminate the lease, so he simply put up with partially functioning cooking facilities.

The “fair wear and tear” definition in Section 53(b) of the *RTA* needs to be maintained for tenants leaving a tenancy, as it cannot be reasonably expected that tenants keep the premises either in the same condition as at the start of the tenancy, or replace items ceasing to function as designed, especially ones with expected working lives exceeding the length of the tenancy.

¹⁸ Section 28(2) of the *Residential Tenancies Act 1987* (NSW)

Should owners be required to provide a no-cost option for rent payment?

During the past three years several rental payment cards have been launched by chains of agents and/or third parties. These cards often levy charges on tenants for their use with a periodic fee or transaction charge. They often replaced payment methods that were free of charge to the tenant.

The Tenants' Union understands that agents wish to move away from over the counter cash payments to reduce administration costs and improve security, but to then charge the tenant is unfair, and in our opinion contrary to Section 17 of the *RTA* that purports to prohibit persons seeking money other than rent, bond and a holding fee.

To make it explicit the Tenants' Union recommends provision that during the period of a tenancy there must be at least one suitable payment option that incurs no charge to the tenant. Suitable means reasonably convenient, easy, accessible and quick. This option applies to rent, a security deposit (where applicable) and a holding fee.

What improvements can be made to enforcement of the *Residential Tenancy Act*?

The Tenants' Union is hopeful that that CAFT will soon be able to issue infringement notices in relation to the *RTA*. This type of notice will allow breaches of the *RTA* to be dealt with by a payment of a fine rather than court proceedings. It will allow offences against the *RTA* to be penalised without tenants being required to give evidence in court. In addition, fewer resources are required to issue infringement notices in comparison to court or tribunal appearances, there is scope to punish first-time breaches with lower financial penalties, and because more investigations can take place, government is seen to be policing tenancies.

One attractive feature is the potential for otherwise difficult or unenforceable breaches to be punished. In Victoria, failing to provide a signed copy of a written lease within 14 days attracts a 1.25 penalty point fine (\$146)¹⁹ whereas in Tasmania this same breach requires a tenant to go to Court to recover the lease. If upheld, the owner receives no penalty and simply hands over the lease.

The Tenants' Union is particularly keen to see infringement notices implemented for access and privacy offences, and for failure of a property owner to maintain premises.

To improve enforcement further, courts or tribunals should be able to impose penalties for breaches discovered during proceedings.

The Tenants' Union recommends that in conjunction with the introduction of infringement notices, extra resources are given to policing the *RTA* and educating the Tasmanian community about the penalties for breaching the *RTA*. We also would like to see more education and liaison conducted between CAFT and the Tasmanian Police. Each year we receive numerous complaints from tenants alerting us to the inadequate knowledge of the *RTA* by some police officers, in particular their inability to recognise trespass by the owner, instead viewing unregulated access to a tenant's home as an owner's property right. As CAFT infringement and investigation officers gain expertise in tenancy law and forge links with Tasmania Police, we expect knowledge and enforcement of the *RTA* to improve.

¹⁹ Section 29(2) of the *Residential Tenancies Act 1997 (Vic.)*

Are there gaps in the coverage of the *Residential Tenancy Act*?

At present there is ambiguity as to the inclusion of caravan parks and relocatable homes in the *RTA*, where these are occupied as a principal place of residence. Section 6 of the *RTA* states that the *RTA* does not apply to premises ‘ordinarily used for holiday purposes’. There are tenants who occupy caravan parks for substantial periods, and some community organisations use these forms of accommodation as emergency accommodation. According to *Counting the Homeless*, approximately 160 Tasmanians were residing in caravan parks in 2006.

Residents of these accommodation types are particularly vulnerable in contractual agreements with property owners because they may invest in ‘fixtures’ to the land; costs of locating a relocatable home may be substantial; they may live in close proximity to, and share facilities with many others; there may be fees and charges associated with quiet enjoyment of the home, including having visitors.

CAFT has previously indicated that the *RTA* does not apply to Caravan Parks. The Post Implementation Review of the *RTA* undertaken in 1999 stated that there is no reason as to why the legislation could not and should not apply to tenants who rent caravans, relocatable homes or sites, however CAFT instead released a Code of Conduct, outlining the rights and responsibilities of parties to an agreement relating to renting a caravan. The Tenants’ Union supports the recommendations contained in *Minimum Legislative Standards for Residential Tenancies in Australia* that caravan parks should be covered by residential tenancy legislation²⁰, as in other Australian jurisdictions.

²⁰ See page 49.

Are there any current exemptions that should be removed?

Educational Institutions

In most Australian jurisdictions educational institutions are excluded from coverage under residential tenancies legislation. In Tasmania this exclusion extends to any boarding premises occupied by tertiary or TAFE students.²¹ The Tenants' Union submits that the needs of students and other boarding house residents are not sufficiently diverse as to justify exclusion of students from the protections of the *RTA*. While educational institutions may have different relationships with students justifying special arrangements, such as occupancy during term periods only, we submit that the contractual terms of these relationships should nonetheless be regulated.

The Tenants' Union recommends the following:

- Reform of the *RTA*'s definition of "boarding premises" to remove subsections (c) and (d).
- Consultations with stakeholders and community organisations with a view of including coverage of educational institutions in our residential tenancies legislation.
- Consultations to develop appropriate exemptions where it is deemed inappropriate for the legislation to apply, particularly where the accommodation does not resemble a landlord and tenant relationship, for example, boarding schools.

Emergency and Temporary or Transitional Accommodation

Most jurisdictions exclude homeless persons accommodation from protections contained in residential tenancies legislation, with the exception of the ACT. In Tasmania the exclusion operates where the accommodation is for a period of three months or less and relates to homeless persons or persons experiencing family violence.²² Therefore, SAAP accommodation may fall within the application of the *RTA*, except if it is less than 13 weeks. In New South Wales and Western Australia there is no specific exclusion of emergency accommodation, but most service providers operate on the basis that residents are boarders and lodgers, and boarders and lodgers are excluded from their legislation.²³ South Australia is similar to this. The ACT is the only jurisdiction with an Act that

²¹ *Residential Tenancy Act 1997* sections 3 and 6 (2) (d).

²² *Residential Tenancy Regulations 2005* (Tas.) section 5.

²³ *Residential Tenancies Act 1987 (NSW)* section 6(1)(d), *Residential Tenancies Act 1987 (WA)* section 5(1)(d).

regulates emergency accommodation. Under that legislation it is considered an ‘occupancy agreement’ if a person gives someone else a right to occupy the stated premises, and the premises are for the occupant to use as a home.

Emergency housing poses particular problems for regulation, such as when a tenancy extends further than 3 months, due to a danger of homelessness. For other supported housing organisations the concern may relate to the form of housing provided and relationship between the resident and accommodation provider. For example in SAAP accommodation there is a level of support provided that goes hand in hand with the tenancy agreement and there is then concern that SAAP workers may become landlords were the *RTA* to apply.

There is provision under Queensland’s Act to serve a notice to leave if a tenant’s entitlement to supported accommodation ends. In Victoria there are grounds to serve a notice to vacate if a tenant refuses other accommodation while the tenant is a resident in transitional accommodation. This shows that it is indeed possible to broaden the scope of the legislation by creating specific grounds of termination depending on the form of accommodation. However, issues of time at the property need to be resolved. The best way to do this is with consultation with key stakeholders in this industry.

The Tenants’ Union submits that that all persons who rent housing, including persons in homeless person accommodation, should be protected by residential tenancies legislation.²⁴ It is important to state that while SAAP providers are accountable to the government via reporting requirements they should also be accountable to their individual clients through effective agreements and dispute resolution mechanisms provided in residential tenancies legislation.²⁵

24 National Association of Tenant Organisations submission in response to the Green Paper “Which Way Home”, June 2008.

25 *ibid.*

Other issues considered to be important to the Tenants' Union of Tasmania.

Foreclosure or forced sale by mortgagee

Currently the *RTA* allows financial institutions to evict tenants from properties owned by defaulting mortgagees, whether tenants are in fixed term or non-fixed term leases. NSW has amended legislation in partial recognition of the difficulties faced by tenants forced to vacate by providing for a rent-free period following action by financial institutions, however, the Tenants' Union submits that there are not compelling reasons for financial institutions to have superior rights to evict tenants than the property owners. Further, the Tenants' Union submits that the existing rights are unjust and unfair to tenants on fixed term leases. To improve the certainty of tenure of tenants, the Tenants' Union recommends the repeal of Section 42(1)(e) and 42(1)(f) of the *RTA*.

Notice to Remedy

There is much confusion around notices to vacate and notices to terminate. Often one or both parties do not understand that in many situations an alleged breach of the *RTA* or lease agreement may be remedied within the notice period. For this reason, the Tenants' Union recommends the introduction of 'notices to remedy' where a breach can be remedied (eg Section 42(1)(a) and Section 38(1)(b)). These notices will be served with 14 days to remedy the breach. If the breach has not been fixed then a notice to terminate or vacate may be served.

Rent Arrears

The Tenants' Union recommends that a notice to remedy be part of the notification regime when a tenant falls into rent arrears. After seven days of being in arrears, the owner may serve a 14 day notice to remedy. In this time the tenant may pay the arrears or be offered a negotiated payment plan. If after 14 days the tenant does not pay the arrears or breaches the plan at a later stage, then a notice to vacate may be served. The Court or Tribunal should then have a discretion not to grant vacant possession if the notice or the payment plan are unfair or unjust.

Vacant Possession and Court or Tribunal Discretion

The Tenants' Union recommends that if a Court or tribunal decides to grant vacant possession to an owner, the court can suspend the order for up to 60 days if there is a risk of homelessness or distress to the tenant.

Hardship

The Tenants' Union recommends that either party may apply to the Court or tribunal for a termination of the agreement because of hardship, including financial and medical hardship.

Right of Entry

Section 56(3)(ea) and Section 56(3)(f) of the *RTA* regulate routine inspections. The Tenants' Union seeks the notice period for inspection be extended from 24 hours to five working days.

Owners entering the property under Section 56(3) and Section 56(4) must notify the tenant of a time they will arrive and must arrive within one hour after that time.

If a property owner wishes to take photographs of the inside of the premises for purposes such as advertising written permission must be sought from the tenant, particularly if the tenants' possessions are to be included.

Name and Address of the Owner

Amendment to Section 62 of the *RTA* to require the owner to give their name and contact details to the tenant, and the creation of an offence for non-compliance with Section 62.

Copy of a Written Lease

Amendment to Section 13(2) of the *RTA* to compel the owner to provide a copy of the written agreement within 3 days of the agreement taking effect rather than the present 14 days.

Pets

Amendment of Section 64B of the *RTA* to allow pets on the property, unless there are reasonable grounds for exclusion.

Domestic Violence

Presently, a person affected by a Family Violence Order can apply to establish a new tenancy agreement but not terminate one. A new tenancy agreement may not be suitable if the person seeks anonymity or cannot afford the rent due to the lost income of the other tenants. The Tenants' Union recommends reform of the *RTA* to allow termination of the lease by the remaining tenant.

Rental Deposit Authority (RDA)

The Tenants' Union recommends a) review of the *RTA* and practices of the RDA to allow the collection of incremental security deposits, and b) amendment of Section 30(2) of the *RTA* to allow 28 days to appeal a decision of the Commissioner rather than the current 7 day period.

Insurance

Tenants cannot insure themselves against damage to their home caused by the tenant because they do not own the real property. Because tenants have no way of minimising their liability, the Tenants' Union recommends that all owners must have building insurance on the property and it must extend to cover against tenant liability.

Application Forms

To ensure that rental applications do not breach legislation including the Privacy Act and the Anti-Discrimination Act, the Tenants' Union recommends the creation of standardised application forms by CAFT that must be used by owners with penalties for non-compliance.

Tenant Databases

Last year the Tenants' Union forwarded a submission on the Model Legislative Provisions for Residential Tenancy Databases. The submission is attached as Appendix A.

Payment Period

To decrease discrimination against low income tenants, the Tenants' Union recommends the amendment of Section 19(2) of the *RTA* to make a payment period not exceed 2 weeks for all tenancies covered by the *RTA*, rather than the current 4 weeks for tenancies other than boarding premises.

Death of a Tenant

The Tenants' Union seeks amendment to the *RTA* to end the liability of the deceased co-tenant and allowing the remaining co-tenants the option of giving a notice of termination.

Water and Sewerage

The Tenants' Union recommends that water be charged to tenants at a flat rate, with only

excess water charged at a rate per unit of consumption. We also submit that where mains water is not available, that adequate water storage is available to avoid unreasonable filling of water tanks throughout the tenancy.

Fixtures and Consent

The Tenants' Union recommends that section 54 be amended to state "That the owner shall not withhold consent unreasonably" to allow the tenant to install fixtures, and to allow the tenant to make an application to the Tribunal/Court seeking an order that the landlord's consent not be required where consent has been unreasonably withheld.

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