



# Better Tenancies Policy Platform

November 2009

Tenants Union of Victoria  
Prepared by TUV Policy Team



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# Contents

<b>Introduction</b>	<b>5</b>
<b>1. Improving national housing policy</b>	<b>7</b>
1.1.1 Developing coordinated housing plans	7
<b>2. Improving access to rental housing</b>	<b>8</b>
<b>2.1 Improving access to private rental housing</b>	<b>8</b>
2.1.1 Reducing discrimination	8
2.1.2 Regulating residential tenant databases (RTDs)	9
<b>2.2 Improving access to social housing</b>	<b>10</b>
2.2.1 Improving social housing eligibility	10
2.2.2 Improving social housing allocations	10
<b>2.3 Improving physical accessibility</b>	<b>11</b>
<b>3. Improving the affordability of rental housing</b>	<b>12</b>
<b>3.1 Improving income support</b>	<b>13</b>
3.1.1 Improving Commonwealth Rent Assistance (CRA)	13
3.1.2 Improving minimum wages	13
<b>3.2 Better regulation of rents</b>	<b>14</b>
3.2.1 Regulating social housing rents	14
3.2.2 Regulating private sector rent increases	14
<b>3.3 Increasing the supply of affordable housing</b>	<b>15</b>
3.3.1 Increasing private sector rental housing supply	15
3.3.2 Increasing social housing supply	16
3.3.3 Using statutory planning to aid supply	16
<b>4. Making rental housing more appropriate</b>	<b>17</b>
<b>4.1 Improving rental housing outcomes</b>	<b>17</b>
4.1.1 Better housing standards	17
4.1.2 Better located rental housing	19
4.1.3 Better security of occupancy	19
4.1.4 Better access to essential services	20

<b>4.2 Improving consumer protection</b>	<b>21</b>
4.2.2 Improving the Residential Tenancies Act (RTA)	21
4.2.3 Better regulation of the real estate industry	22
4.2.4 Better alternative dispute resolution	23
4.2.5 Better social housing regulation	23
4.2.6 Better regulation of rooming houses	23
4.2.7 Better regulation of caravan parks	24
4.2.8 Improving other regulation that affects tenants	25
<b>4.3 Improving the management of tenancies</b>	<b>26</b>
4.3.1 Better private sector management	26
4.3.2 Better social housing management	26
4.3.3 Improving public housing policy and procedures	27
<b>4.4 Improving the Victorian Civil &amp; Administrative Tribunal (VCAT)</b>	<b>28</b>
4.4.1 Improving VCAT accessibility for tenants	28
4.4.2 Improving VCAT practice	29
<b>Bibliography</b>	<b>30</b>

## Introduction

In housing policy, the rental sector is the 'poor relation' of home ownership. However, the private rental market accommodates approximately 1.7 million households across Australia, and is the primary source of housing for the vast majority of non-aged low-income households (ABS, 2007). Almost 307,000 households reside in social housing (Australian Bureau of Statistics [ABS], 2007).

The disregard of policymakers to housing issues has been attributed to a history of decent housing outcomes in Australia. In the post World War II years, housing, labour and financial markets operated to ensure that the majority of Australians were adequately housed by historical and international standards, and that most people would own a home at some stage in their lifetime. This meant that housing assistance was directed at a comparatively small remaining group of the overall population (Berry, 2004). But very different economic and social experiences affect the housing market of today, and factors such as the increasing casualisation of the workforce, delays in family formation and inflated housing prices (rental and purchase) are changing the traditional pattern of housing for more and more Australians.

The ability of the private rental market to affordably house low-income Australians is central to current housing policy. However, an accumulation of research demonstrates that the private rental market is failing to provide this accommodation. Commonwealth Rent Assistance (CRA), the principal type of housing support, does contribute to making housing more affordable for recipients but does not make it affordable as such, and has no demonstrable effect on supply activity that might reduce the acute shortage of affordable rental housing.

CRA is a subsidy aimed at improving affordability on the demand side of the housing equation. But the shortage of affordable housing in the private rental market in Australia is not simply a function of inadequate income; there is also a measurable scarcity of low rent housing available. Growth in the private rental market as a whole generally masks the fact that there has been a sizeable decline in the number of low rent properties available over the past 20 years – a shortage that is particularly acute in Australia's capital cities (Australian Housing and Urban Research Institute [AHURI], 2009). The difficulty in obtaining affordable accommodation for low-income earners is also made worse by the tendency of higher income households to 'trade down' and occupy low cost rent accommodation in order to reduce their housing costs (AHURI, 2009).

Recent social and demographic phenomena also affect the housing and tenure choices of Australian households. In the future, it is likely that the private rental market will accommodate more households long-term and/or permanently, as increasing housing prices and delays in family formation may make the transition to home ownership more difficult (if not impossible). Increases in the numbers of households seeking private rental tenure will place more pressure on a market where already almost 600,000 households are in financial difficulty due to their housing costs.

The alternate source of tenure for disadvantaged households is public housing, which provides substantially fewer Australians with housing opportunities: only around 342,467 households (62, 645 Victorian households – Office of Housing [OoH], 2004) are tenured in public housing, and the amount of available stock is diminishing (Australian Institute of Health and Welfare [AIHW], 2005). While the Commonwealth Government National Building Economic Stimulus Package investment in social housing represents a significant single investment, real spending on public housing has been declining for some time now (Productivity Commission, 2007), despite the obvious benefits that public housing can give to vulnerable tenants, such as controlling the potential for discrimination in the provision of housing; increased security of tenure (in comparison with the private rental market); increased support in maintaining that tenancy (AIHW, 2005); as well as enhanced health, wellbeing and other non-shelter outcomes (AHURI, 2005).

Furthermore, successive governments have not invested in maintenance, and the increasingly targeted allocation of public housing to tenants with complex needs has led to increasing costs and diminishing returns. The financial position of all state housing providers is precarious at best, and it is generally understood that the sector will not be sustainable long-term (Berry, 2004). The community housing sector is not yet sufficiently well-established to accommodate the many thousands of low-income Australian households struggling with their housing costs in the private rental market: currently, community housing makes up only 6% of Australian housing stock. It is hoped that this sector will expand in the future to meet the increasing need for long-term, affordable accommodation options.

The Commonwealth Government has commenced a number of initiatives to improve the supply of social housing and the supply of non-market private rental housing. These initiatives reverse the negative supply trend of the last decade but are unlikely to reduce the long-term reliance on the private rental market for many low income households. Disappointingly these initiatives have not included any review of CRA.

If the private rental market is to continue to accommodate the overwhelming majority of low-income households, policies must be developed to ensure that that the market can provide these households with affordable housing. Accordingly, the Tenants Union of Victoria calls on commonwealth, state and local governments to work together to develop and implement an integrated plan for Australia's housing sector to ensure the long-term supply of affordable, appropriate and accessible housing options.

This policy platform has been produced to provide a summary overview of the Tenants Union of Victoria's position on the key issues affecting renters (including residents of rooming houses and caravan parks) and the rental housing sector. The principal role of the policy platform is to inform and encourage discussion and action, and to summarise the extensive policy analysis we have undertaken.

We are always ready to engage in policy debate and welcome your comments.

Mark O'Brien  
CEO  
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# 1. Improving national housing policy

**Policy objective:** To ensure that housing policy implemented by government properly addresses the role and performance of the rental sector.

The housing system in Australia is critical both for broad economic prosperity and for the need of each individual household. Our current housing system is subject to a number of interventions from government at all levels. These interventions are often poorly coordinated, in some instances contradictory, and suffer from the lack of clear objectives. In particular we believe that there must be national leadership to ensure that the housing system and housing policy are directed to resolving the long standing difficulties experienced by low income households.

## 1.1.1 Developing coordinated housing plans

- 1.1.1.1 A national housing plan should be developed by the Commonwealth Government in consultation with key stakeholders in the housing and community sector. This plan should address all tenures and life stages with a particular focus on the delivery of affordable and appropriate housing for low income and other marginalised groups.
- 1.1.1.2 A state housing plan, consistent with the direction of the national housing plan, should be developed by the Victorian Government in consultation with key stakeholders in the housing and community sector. This plan should address all tenures and life stages with a particular focus on delivery of affordable and appropriate housing for low income and other marginalised groups.
- 1.1.1.3 An independent housing ombudsman should be established to regulate and monitor the provision of public, social and private rental housing in Victoria. The Office of Housing, real estate agents, community housing providers and private landlords should be accountable to this body.

## 2. Improving access to rental housing

**Policy objective:** To reduce access barriers to rental housing.

Access to housing is a key issue for renters in an environment where demand for housing outstrips supply.

A balance between supply and demand in the market is generally considered to be a 3% vacancy rate but the vacancy rate has been below 3% since 2005. In June 2009, the vacancy rate for private rental housing in metropolitan Victoria was 1.3% (OoH, 2009).

The minimum indicator of demand for public or social housing is the public housing waiting list which stood at 39,000 in 2009.

### 2.1 Improving access to private rental housing

**Policy objective:** To enhance accessibility to private rental housing by reducing discrimination based on personal attributes or rental history.

#### 2.1.1 Reducing discrimination

One of the more insidious factors restricting tenants' capacity to secure homes in the private rental market is discrimination. It is also one of the more difficult issues to demonstrate, as discriminatory conduct is not always overt. However, housing sector workers have a body of anecdotal evidence suggesting that certain marginalised groups, including young people, single parents, recently arrived migrants, large families and Indigenous Victorians, are likely to experience discrimination in the provision of rental housing. As a consequence, these people are more likely to live in inappropriate housing (such as overcrowded housing or housing that does not suit their needs); be more reliant on government and community services and crisis accommodation; and are at greater risk of homelessness.

- 2.1.1.1 The Victorian Government should ensure that the training provided to landlords, real estate agents, property managers and other persons involved in the provision of rental housing has required units of education about obligations under the *Equal Opportunity Act 1995* and the *Racial and Religious Tolerance Act 2001*.

- 2.1.1.2 The Victorian Government should fund continuing community education to inform tenants of their rights under the *Equal Opportunity Act 1995* and the *Racial and Religious Tolerance Act 2001*.
- 2.1.1.3 The *Equal Opportunity Act 1995* and the *Residential Tenancies Act 1997* should be amended to expedite access to dispute resolution processes for tenants who have experienced discrimination in accessing rental housing.

## 2.1.2 Regulating residential tenant databases (RTDs)

Being listed on a residential tenancy database (RTD) can also restrict a tenant's access to private rental housing. RTDs are electronic databases containing personal information about tenants and their rental histories. They are operated by private businesses that collect, maintain and make money from providing this information to real estate agents and, indirectly, to landlords. The information is purportedly used to assess the 'business risk' posed by a potential tenant. For example, the likelihood that a particular tenant will damage the property, fall behind on rent or abscond on the lease. RTDs have national coverage and contain a broad range of information about tenants, including adverse comment about their suitability.

- 2.1.2.1 The Commonwealth Government should establish comprehensive national regulation of RTDs.
- 2.1.2.2 In the absence of appropriate national regulation, the Victorian Government should legislate as soon as possible for regulation of RTDs in Victoria.
- 2.1.2.3 Any regulation of RTDs should prescribe:
  - a. who may be listed
  - b. the matters that may be listed
  - c. the length of time a listing may be kept.
- 2.1.2.4 RTD regulation should prescribe that an adverse listing can only be made after an order from the appropriate court or tribunal has been made, and the tenant has not complied with the order within the timeframe specified.
- 2.1.2.5 RTD regulation should ban listings where the tenant can show that the breach was beyond their control and presents no genuine current or future risk to prospective agents/landlords.

## 2.2 Improving access to social housing

**Policy objective:** To improve accessibility to the social housing sector for those tenants whom the private rental market cannot provide affordable and appropriate housing.

For tenants seeking public housing, policies relating to eligibility and allocation often exclude households in need of this form of government assistance. While targeting those households in 'greatest need' is a laudable and necessary objective, it has contributed to the degradation of the sector's income base and has jeopardised its long-term viability and potential for expansion. This means that, with significantly more investment, many households in need will miss out of this form of housing.

### 2.2.1 Improving social housing eligibility

- 2.2.1.1 The Victorian Government should simplify the eligibility criteria for social housing to ensure that:
- a. Householders earning average weekly earnings and less are eligible for social housing. Applicants should not be eligible if they own or have an interest in property that can be used or sold.
  - b. Applicants should not be rendered ineligible because they have received a lump sum payment intended to support that person for the rest of their life (for example, a Workcover or Transport Accident Commission payment).

### 2.2.2 Improving social housing allocations

- 2.2.2.1 The Victorian Government should ensure that social housing targeting policies should work with a wide range of other strategies to promote positive, functioning communities, particularly in areas of high-density public housing.
- 2.2.2.2 Social housing providers should allow applicants greater choice in regard to the location of their housing if the location is relevant to proximity to family and other support, or to maintain a child at a particular school.
- 2.2.2.3 Social housing providers should determine broad areas for allocations according to the proximity of public transport links, job opportunities and other services. New broadband areas should be introduced after consultation with local service providers to determine the location and accessibility of key services.
- 2.2.2.4 Social housing providers should not allocate applicants, who require mobility aids, housing in multi-level developments unless expressly requested by the applicant.

- 2.2.2.5 The Office of Housing debt repayment requirements for allocation should be reviewed to reduce access barriers, especially in cases where a debt derives from a bond loan.
- 2.2.2.6 The Office of Housing should abolish the policy of refusing to house applicants who have debts incurred outside the general statute of limitations (6 years).

## 2.3 Improving physical accessibility

**Policy objective:** To improve the physical accessibility of rental housing for people with disabilities, impairment or frailty.

Finally, the physical accessibility of rental housing should be improved to ensure that it is reasonably accessible by those with disabilities.

- 2.3.1.1 The Victorian Government should legislate to require all properties in the private rental market to be reasonably accessible to those with disabilities.
- 2.3.1.2 In the absence of regulated minimum standards for disability access for rental housing, the Victorian Government should amend the *Residential Tenancies Act 1997* to specifically permit reasonable disability modifications to be undertaken by a tenant.
- 2.3.1.3 The Victorian Government should amend the *Residential Tenancies Act 1997* to remove the requirement to restore a property, to which reasonable modifications have been made, to its original condition.

### 3. Improving the affordability of rental housing

**Policy objective:** To ensure that rental housing is affordable for all low-income tenants.

Housing affordability measures the financial position of a tenant renting their dwelling. This can be expressed as the percentage of household income required to obtain a rental property, or the amount of income remaining after housing costs have been paid.

For Australian households in the lowest 40% of income earners, spending 30% or more of household income on rent is generally accepted to indicate 'housing stress'. Housing stress means that the cost of rent is such a significant proportion of income that a household may not have enough money left to purchase the other necessities of life (AHURI, 2003).

An alternative measure is the Henderson Poverty Line (HPL) After Housing Income measure. The Henderson Commission of Inquiry into Poverty (1975) established the poverty line, based on a benchmark income of \$62.70 for a family of two adults and two dependant children in the September quarter of 1973.

Since then, the Melbourne Institute of Applied Economic and Social Research has updated the HPL using an index of per capita household disposable income, calculated using estimates provided by the Australian Bureau of Statistics (Melbourne Institute, 2007).

Two poverty lines are calculated: the HPL including housing costs; and the After Housing HPL, or HPL from which the estimated cost of housing has been removed.

But no matter which way affordability is calculated, too many low-income households are paying so much for their rental housing that there is not enough money left to buy the other necessities of life. An estimated 590,000 private tenant households across Australia are experiencing housing stress (NATSEM, 2001).

Median real weekly rent across Australian all capital cities has risen from \$164 in March quarter 1995 to \$214 in December quarter 2007, representing a rise of 30 per cent. This means that the cost of rental housing has increased by 30 per cent more than the general cost of living. However, the maximum rates of CRA remained relatively constant in real terms over the same period (RMIT, 2008).

Affordability is a function of a number of factors: household income, the cost of rents, and a supply of housing sufficient to meet demand. Because of this, policy responses directed at improving affordability should address both demand aspects (such as the level of financial support for low-income renters) and supply mechanisms (such as the development and retention of affordable housing options).

## 3.1 Improving income support

**Policy objective:** To ensure that income and income support programs contribute to housing affordability for low-income households.

### 3.1.1 Improving Commonwealth Rent Assistance (CRA)

- 3.1.1.1 The Commonwealth Government should reform CRA so that no recipient experiences poverty after paying their housing costs based on a minimum standard for particular household types.
- 3.1.1.2 The Commonwealth Government should provide CRA to all renter households in the lowest 40% of income distribution, regardless of their source of income (statutory or wages) or employment status (employed, unemployed or studying).
- 3.1.1.3 In the short term, the Commonwealth Government should improve the effectiveness of CRA by a combination of options including:
  - a. increasing the maximum payment
  - b. indexing the maximum payment to median rent movements
  - c. increasing the rate of CRA per dollar of rent paid
  - d. introducing an additional payment for regions with significant employment opportunities
  - e. abolishing the sharers' discount
  - f. reviewing eligibility for higher income households.
- 3.1.1.4 The Commonwealth Government should establish an independent review process to determine the best mix of the short-term CRA reform options.

### 3.1.2 Improving minimum wages

- 3.1.2.1 The Fair Work Australia (FWA) should recognise that the cost of housing represents a significant proportion of income earned by most Australia households, and should consider housing costs, particularly private rent levels, when setting the minimum wage.
- 3.1.2.2 The FWA should ensure minimum wages are sufficient to rent appropriate housing and to maintain a decent standard of living for low-income households.

## 3.2 Better regulation of rents

**Policy objective:** To ensure that rent setting approaches contribute to housing affordability for low-income households.

### 3.2.1 Regulating social housing rents

- 3.2.1.1 The Victorian Government should set or regulate social housing rents to ensure that no tenant experiences poverty because of their housing costs, regardless of public or community sector management of the housing.

### 3.2.2 Regulating private sector rent increases

- 3.2.2.1 The Victorian Government should legislate to ban bidding for rental housing. It should be an offence to request or receive a bid above the advertised price.
- 3.2.2.2 The Victorian Government should legislate to restrict rent increases to one increase every 12 months.
- 3.2.2.3 The Victorian Government should legislate to ensure that tenants are provided with at least 90 days notice of any proposed rent increase.
- 3.2.2.4 The Victorian Government should legislate to restrict the level of any rent increase to 120% of CPI for the previous 12 months.
- 3.2.2.5 The Victorian Government should legislate so that landlords are required to apply to VCAT for permission to increase the rent beyond this specified level.
- 3.2.2.6 The Victorian Government should permit tenants who believe that a rent increase is excessive (even if it is below 120% CPI) to apply to VCAT for review of the increase.
- 3.2.2.7 The Victorian Government should legislate to empower VCAT to consider the following matters (in addition to the factors already enumerated in legislation) when determining whether a proposed rent increase is excessive:
- a. the hardship that the tenant will suffer as a consequence of any increase relative to the landlord
  - b. the length of the tenancy
  - c. any other matter VCAT considers relevant.

- 3.2.2.8 The Victorian Government should monitor rents, rent increases and associated charges in non-mainstream forms of accommodation (such as caravan parks, rooming houses etc) to capture accurate data about rent levels in these sub-markets.
- 3.2.2.9 The Victorian Government should legislate to empower VCAT to consider available sub-market data, in addition to matters already enumerated in legislation and outlined above, where the applicant for a review of a proposed rent increase resides in a caravan park, rooming house or similar accommodation.

## 3.3 Increasing the supply of affordable housing

**Policy objective:** To ensure that the supply of affordable rental housing is increased.

### 3.3.1 Increasing private sector rental housing supply

- 3.3.1.1 All levels of government should implement coordinated policies to encourage private investment in the development and administration of affordable rental housing.
- 3.3.1.2 The Commonwealth Government should link the availability of tax concessions and/or subsidisation of investment in affordable rental housing to occupation by a low-income household.
- 3.3.1.3 The Commonwealth Government should grandfather existing taxation arrangements for negative gearing and capital gains tax exemption to minimise any adverse transitional consequences.
- 3.3.1.4 The Victorian Government should allocate additional subsidies to private rental housing currently subsidised by the Commonwealth to improve affordability outcomes for tenants occupying that housing.

### 3.3.2 Increasing social housing supply

- 3.3.2.1 The Commonwealth and Victorian governments should increase financing for social housing so that the sector can meet the real demand in Victoria.
- 3.3.2.2 As an interim measure, Commonwealth and Victorian governments should increase the supply of social housing in Victoria to match the national average by 2030.
- 3.3.2.3 All levels of government should implement policies encouraging private investment in the development and administration of social housing.
- 3.3.2.4 All levels of government should encourage appropriate partnerships with the private sector to provide social housing.
- 3.3.2.5 The Commonwealth and Victorian governments should undertake more research and analysis of current and future demand for public and social housing, so that investment in the creation, maintenance and conversion of stock can be better targeted to need.
- 3.3.2.6 The Victorian Government should invest in more one-bedroom stock, given that it is likely that there will be increased demand for housing assistance by single person households in the future.
- 3.3.2.7 The Victorian Government should address the lack of appropriately sized stock for large families (often recently arrived migrant families) to reduce inappropriate allocations and subsequent transfer activity.

### 3.3.3 Using statutory planning to aid supply

- 3.3.3.1 The Victorian Government should amend the planning system to provide for the creation AND retention of low-cost housing as a guiding principle. Such amendment should include both the individual and the cumulative effect of development on affordable housing supply.
- 3.3.3.2 The Victorian Government should amend the planning system to establish Inclusionary Zoning for affordable housing to be implemented by all local government authorities.
- 3.3.3.3 All local governments should have the option of imposing development levies to be used for the construction or purchase of affordable housing for all residential developments and any other development that results in a loss of low-cost housing.

## 4. Making rental housing more appropriate

**Policy objective:** To ensure that all rental housing is appropriate to the needs of low-income households and meets basic community standards.

In addition to being affordable, housing should also be appropriate to the needs of its occupants. This means that housing should be of a sufficient standard to enhance the health and wellbeing of residents. Appropriate housing is that in which people can feel secure, settled and connected to their community.

### 4.1 Improving rental housing outcomes

#### 4.1.1 Better housing standards

**Policy objective:** To ensure that the structure and fittings supplied in all rental housing meet current community standards.

Research shows that poor quality housing or an overcrowded living environment is associated with poor health, and familial and relationship education (AIHW, 2005), and can contribute to social dislocation (AHURI, 2003).

- 4.1.1.1 The Victorian Government should legislate minimum standards for new and existing rental dwellings regulating:
  - a. health and safety
  - b. security and privacy
  - c. energy efficiency and environmental impact.
- 4.1.1.2 To ensure that tenants enjoy a basic level of health and safety, legislated minimum standards should provide that all rental housing:
  - a. be weatherproof
  - b. be maintained to avoid damp
  - c. be vermin proof
  - d. have an adequate number of electrical outlets for the size of the dwelling
  - e. have flyscreens on all windows that open
  - f. have adequate lighting from both natural and artificial sources
  - g. be adequately ventilated
  - h. have running hot and cold potable water

- i. have adequate waste provision (such as bins provided at start of tenancy)
  - j. be maintained so that it does not pose a fire risk
  - k. have electricity and gas (if available) connections that are installed and maintained by qualified tradespeople
  - l. be equipped with electrical safety switches
  - m. be equipped with hard-wired smoke detectors
  - n. be equipped with an efficient and properly installed oven and cook top in the kitchen area.
- 4.1.1.3 To ensure that tenants enjoy a basic level of security and privacy, legislated minimum standards should provide that all rental housing:
- a. has deadlocks installed on all external doors and window locks on windows
  - b. has curtains or blinds on all windows
  - c. has a separate and secure letterbox Australia Post standards on mail box size, numbering and location.
- 4.1.1.4 To ensure that rental housing conforms to a basic level of energy efficiency and to minimise any adverse environmental impact, legislated minimum standards should provide that it:
- a. be equipped with an adequate level of insulation
  - b. be equipped with a least one heater in the main living area that conforms to minimum energy efficiency standards
  - c. be furnished with sufficient window coverings to ensure privacy and provide some level of insulation.
- 4.1.1.5 To ensure compliance with these standards, the Victorian Government should make it an offence to lease, or assist in the leasing of, property that does not meet the minimum standards outlined in the legislation.
- 4.1.1.6 The Victorian Government should legislate to require that all new and existing public and private rental housing have a minimum energy efficiency rating.
- 4.1.1.7 The Victorian Government should fund a loan-based scheme for the retrofitting of existing housing stock to meet these minimum standards for landlords with no other means to pay for retrofitting.

## 4.1.2 Better located rental housing

**Policy objective:** To ensure that affordable rental housing is well located for access to public transport, employment and services.

Location is an important aspect of appropriateness. Usually, affordable rental housing is located on the urban fringe of capital cities, well away from business districts that offer greater employment opportunities (ACOSS, 2003). In seeking to reduce their housing costs by moving out of the city, many families are forced to spend more on transport. They also spend more time commuting, meaning they have reduced leisure and family time.

- 4.1.2.1 Commonwealth and State governments should direct public and private investment in affordable housing to ensure adequate supply in areas of social and economic opportunity.
- 4.1.2.2 The Commonwealth Government should ensure CRA and other forms of financial assistance are sufficient or enhanced to permit recipients to reside in areas of social and economic opportunity.
- 4.1.2.3 Social housing allocations process should allow people greater choice about the location of housing to ensure they are able to maintain links to schools, support services, family, and community.
- 4.1.2.4 All levels of government should take into account the location of rental housing in infrastructure planning to ensure that households located in outlying metropolitan suburbs and regional areas have access to public transport, schools, health care services, and shopping facilities.

## 4.1.3 Better security of occupancy

**Policy objective:** To ensure that tenants are provided with increased security of occupancy.

Security of occupancy is also significant for many tenants: long-term tenure in affordable and appropriate dwellings enables tenants to become connected to their local communities, resulting in better outcomes both on an individual and communal level, and increased levels of social cohesion. All tenants should be able to assert their rights without fear of reprisal.

- 4.1.3.1 The Victorian Government should enshrine security of tenure in the Residential Tenancies Act 1997 as a fundamental principle of tenancy law.
- 4.1.3.2 The Victorian Government should abolish 'no reason' notices to vacate. If a landlord seeks to terminate a tenancy, it should be for one of the reasons contained in legislation.
- 4.1.3.3 The Victorian Government should investigate the potential benefits to both renters and investors of longer-term leases.
- 4.1.3.4 The Victorian Government should amend the Residential Tenancies Act 1997 to improve the protection against retaliatory eviction and victimisation.

## 4.1.4 Better access to essential services

**Policy objective:** To ensure that tenants have equitable and appropriate access to essential services.

Tenants should be ensured that they will have access to all essential services including water, gas, electricity and telecommunications, through both utility markets and the standard of rental housing.

- 4.1.4.1 The Victorian Government and its authorities should maintain a strong regulatory presence in the market to ensure:
  - a. all consumers can rely on an adequate supply of essential services
  - b. low-income consumers in financial hardship are properly supported so that they can pay their utilities bills.
- 4.1.4.2 The Victorian Government should legislate to ensure that all consumers, including tenants, have equal access to essential services and the benefits of competition in the market for essential services.
- 4.1.4.3 The Victorian Government should require providers to supply a minimum quantity of service, sufficient to ensure the health and safety of consumers.
- 4.1.4.4 The Victorian Government should legislate to strictly regulate any punitive restrictions of supply or disconnection. Restriction or disconnection should only occur in the most extreme instances of refusal to pay bills; disconnection should not occur where failure to pay is because of financial hardship.
- 4.1.4.5 The Victorian Government should maintain concessions, which should be indexed to movements in pricing so that they deliver affordable utilities to those in need.
- 4.1.4.6 The Victorian Government should provide tenants spending 30% or more of household income on rent with enhanced concessions to assist with payment of their utilities bills.

## 4.2 Improving consumer protection

**Policy objective:** To ensure the legal framework governing the rental sector provides appropriate consumer protection.

- 4.2.1.1 Commonwealth and State governments should enshrine the human right to housing that is adequate to preserve health and wellbeing pursuant to Article 25 of the Universal Declaration of Human Rights in appropriate legislation.

### 4.2.2 Improving the Residential Tenancies Act (RTA)

- 4.2.2.1 The RTA should be comprehensively overhauled to improve outcomes for all Victorians who rent their principal place of residence and to remove existing anomalies in protections given to tenants and residents.
- 4.2.2.2 The RTA and associated laws and regulations should protect all persons who pay rent for their principal place of residence, regardless of the type of accommodation.
- 4.2.2.3 The RTA should be reviewed and redrafted to promote affordability, security of tenure, and appropriate standards.
- 4.2.2.4 The Victorian Government should prescribe a statement, equivalent to the 'section 32' statement required by the Sale of Land Act, for rental property. This statement should detail the amenity aspects of the property and any matter that would affect the tenants' comfort, privacy and enjoyment of the property for the duration of the lease.
- 4.2.2.5 The Victorian Government should amend the RTA to require that this statement be completed and provided to potential tenants prior to their application for a property, and to make it an offence to fail to provide potential tenants with this statement.
- 4.2.2.6 The Victorian Government should develop and distribute bilingual versions of the standard lease terms in all major community languages.
- 4.2.2.7 The Victorian Government should introduce a mandatory cooling off period for residential leases to enable tenants to seek advice about the terms and conditions of their lease.
- 4.2.2.8 The Victorian Government should amend the RTA to clarify that tenants are permitted to keep pets, unless it would be unreasonable to do so. The onus of proof should be on the landlord to demonstrate that keeping pets is unreasonable in the circumstances.
- 4.2.2.9 The Victorian Government should amend the RTA to extend the period of notice required before a landlord or his/her agent can enter tenanted property to 7 days.

- 4.2.2.10 The Victorian Government should amend the RTA to require consent or a VCAT order for the purpose of entry other than for urgent responsibilities.
- 4.2.2.11 In recognition of the difficulty pursuing costs against defaulting landlords, the Victorian Government should amend the RTA to provide a “rent holiday” in the period following the service of a notice to vacate by a mortgagee.

### 4.2.3 Better regulation of the real estate industry

- 4.2.3.1 The Victorian Government should legislate to require that any person who manages a rental property, whether a real estate professional or private landlord, must be licensed by the appropriate government authority.
- 4.2.3.2 The Victorian Government should prescribe in legislation the terms and conditions that must be met before a licence to manage property will be granted. These terms and conditions should include successful completion of educational components about the obligations of landlords and their agents under the Residential Tenancies Act 1997 and other relevant legislation, and about conducting the business of property management professionally and respectfully.
- 4.2.3.3 The Victorian Government should legislate to make it an offence to offer any property for lease, or to otherwise manage a rental property, without a licence.
- 4.2.3.4 The Victorian Government should legislate to make proscribed conduct an offence punishable by suspension or loss of a licence to manage property. Proscribed conduct would include:
  - a. conduct in breach of the *Residential Tenancies Act 1997*;
  - b. conduct that would discriminate against a tenant or potential tenant on any grounds prohibited under any relevant State or Commonwealth discrimination legislation;
  - c. failure to inform a tenant or potential tenant of their rights under the *Residential Tenancies Act 1997* and any other relevant statutes
  - d. failure to promote and protect the legal rights of tenants and potential tenants
  - e. conduct intended to pressure or intimidate a tenant into taking a course of action or refraining from taking a course of action
  - f. entering or otherwise dealing with rented premises in a manner that contravenes the *Residential Tenancies Act 1997* or other relevant statute.
- 4.2.3.5 The Victorian Government should legislate to require landlords, real estate agents, property managers and any other employees who deal with tenants to undertake comprehensive and continuing education about their responsibilities and obligations in the management of rental property under the RTA and other relevant legislation.

## 4.2.4 Better alternative dispute resolution

- 4.2.4.1 Consumer Affairs Victoria (CAV) and VCAT should make their dispute resolution procedures more easily accessible, and maintain fee-free services for tenants.

## 4.2.5 Better social housing regulation

- 4.2.5.1 Social housing providers should regularly monitor and report on tenant satisfaction with their housing and any associated services provided.
- 4.2.5.2 The Victorian Government should establish independent and transparent dispute resolution processes for non-legislative complaints made by social housing tenants.
- 4.2.5.3 Tenants of housing association properties should have the right to refer matters and complaints to the Housing Registrar or the proposed Housing Ombudsman.
- 4.2.5.4 The Housing Registrar, or the proposed Housing Ombudsman, should hold the 'best interests of tenants' as the most important principle in the decision making process.
- 4.2.5.5 The Victorian Government should amend the Housing Act 1983 to provide tenants with the right to apply for review of the Housing Registrar's decision.
- 4.2.5.6 The Victorian Government should amend the Housing Act 1983 to subject housing associations that do not comply with s. 95 of that Act to a process of enforced compliance and to significant financial penalties.
- 4.2.5.7 The Victorian Government should amend the Housing Act 1983 to expressly permit tenant advocates to represent tenants unable or afraid to act on their own.

## 4.2.6 Better regulation of rooming houses

- 4.2.6.1 The Victorian Government should establish no-fee licensing scheme for private rooming house operators and increase penalties for operating unregistered premises and consumer protection breaches.
- 4.2.6.2 The Victorian Government should enhance registration conditions for private rooming houses under the Public Health and Wellbeing Act including requirements for building/fire safety certification and clarify the public status of registration.
- 4.2.6.3 The Victorian Government should clarify the CAV Director power to initiate breach or compliance action in own right and establish clear right for representative actions by third parties, including the TUV and similar consumer advocacy organisations.

- 4.2.6.4 The Victorian Government and Local Government compliance practice should be improved by:
- a. enhancing information exchange mechanisms between government agencies
  - b. enhancing the role of the Local Government Victoria to provide coordination and advice on best practice compliance measures
  - c. Implementing cross departmental protocols in local government and develop appropriate referral processes for first contact enquiries
  - d. Establishing local government protocols with community services for rooming house compliance activity.
- 4.2.6.5 The Victorian Government should legislate to require estate agents to notify regulatory agencies of properties let to rooming house operators.
- 4.2.6.6 The Victorian Government should establish program rules to proscribe Housing Establishment Fund payments to operators of unregistered premises.

## 4.2.7 Better regulation of caravan parks

- 4.2.7.1 The Victorian Government should immediately remove the 60-day rule and no reason notices to vacate.
- 4.2.7.2 The Victorian Government should amend the existing RTA caravan park provisions can create a fairer environment for all permanent caravan park residents, including owner/renters in residential park environments and renter/renters. Amendments include:
- a. amend the definition of movable dwelling to limit its application only to dwellings genuinely designed to be movable
  - b. stronger protection against retaliatory eviction
  - c. establish model contract for sale of dwelling and proscribe exclusive dealing by caravan park operators
  - d. prescribe rental agreements for site and dwelling including a mandatory cooling off period
  - e. ban deferred management fees.
- 4.2.7.3 Establish right of representative action by third parties and establish model park rules.
- 4.2.7.4 The Victorian Government should establish a fund dedicated to defraying the costs of securing new accommodation for needy residents because of park closure.

## 4.2.8 Improving other regulation that affects tenants

### Fair Trading Act

- 4.2.8.1 CAV and other bodies should use the Fair Trading Act 1999 to prosecute landlords and real estate agents who engage in unconscionable, misleading or deceptive conduct, or make false representations, or engage in any other conduct proscribed by this Act in relation to the provision of accommodation for lease.
- 4.2.8.2 CAV should publish comprehensive guidelines concerning the use of unfair terms in Residential Tenancy Agreements. CAV should effectively enforce both the unfair terms provisions of the Fair Trading Act 1999 and the proposed guidelines.
- 4.2.8.3 The Victorian Government should prescribe as unfair terms all terms commonly used by the real estate industry which are *prima facie* unfair terms or are otherwise inconsistent with the Residential Tenancies Act 1997, these include many terms used in the REIV standard form lease.

### Owners Corporations Act

- 4.2.8.4 The Victorian Government should amend the Owners Corporations Act 2006 to state that any owners' corporation rule that purports to restrict, exclude or modify any provision of the Residential Tenancies Act 1997 is invalid and unenforceable.
- 4.2.8.5 The Victorian Government should amend the Owners Corporations Act 2006 to state that any term in a lease purporting to bind a tenant to any body corporate rule is invalid if a copy of those rules is not provided with the lease to the tenant.
- 4.2.8.6 The Victorian Government should amend the Owners Corporations Act 2006 to require owner-investor landlords to attend at least one owner' corporation meeting per year.
- 4.2.8.7 The Victorian Government should amend the Owners Corporations Act 2006 to permit tenants to request a general meeting with the owners' corporation to discuss matters that affect their place of residence.

## 4.3 Improving the management of tenancies

**Policy objective:** To ensure that property management practices are increasingly consumer focussed.

### 4.3.1 Better private sector management

- 4.3.1.1 The Victorian Government should undertake its regulatory functions in the private rental market by more actively enforcing laws and professional standards pertaining to landlords and property managers.
- 4.3.1.2 The Victorian Government should vigorously prosecute breaches of the rules of professional conduct by property managers.
- 4.3.1.3 CAV should publish details of complaints received about real estate agents and property managers and the manner of their resolution.
- 4.3.1.4 CAV should publish details and justify the number of prosecutions undertaken each year in a statement of compliance or other formal declaration in its annual report.

### 4.3.2 Better social housing management

**Policy objective:** To ensure that policies and procedures in the social housing sector provide appropriate consumer protection.

- 4.3.2.1 Social housing providers should forge stronger links with other support agencies, including Department of Health and Safety agencies such as Child Protection and Disability Services through the establishment of formal referral protocols.
- 4.3.2.2 Social housing providers should establish formal referral protocols for the management of the ongoing support needs of particular tenants.
- 4.3.2.3 Social housing providers should permit and encourage residents to be involved and represented in decision-making processes relating to provision, maintenance and management of their housing. These bodies should provide appropriate support to tenants to enable them participate meaningfully in these processes.
- 4.3.2.4 Social housing providers should undertake cross-cultural awareness training to ensure that particularly vulnerable classes of tenant are treated respectfully and are not subject to discrimination.
- 4.3.2.5 Social housing providers should undertake comprehensive and continuing training, particularly in regard to the management high-needs tenants who are now the target of allocations policies.

### 4.3.3 Improving public housing policy and procedures

- 4.3.3.1 The Office of Housing should enshrine the long-term maintenance of tenancies for low-income or otherwise disadvantaged households as the guiding principle of social housing policy and procedure.
- 4.3.3.2 The Office of Housing policies and procedures should be comprehensively reviewed to improve tenant outcomes.
- 4.3.3.3 The Commonwealth and Victorian governments should review rent-setting structures in public housing to ensure that they do not function to trap people in poverty by removing any financial gain from income earned from employment.
- 4.3.3.4 The Office of Housing dispute resolution policies and procedures should be improved to ensure equity and consistency in decision-making.
- 4.3.3.5 The Office of Housing should ensure that its policies and procedures in regard to arrears and evictions operate equitably and be consistent with the overriding principle of sustaining tenancies.
- 4.3.3.6 The Office of Housing policy and procedure should make it clear that eviction should only occur in certain defined circumstances, and that it should not be used as a threat by housing services officers.
- 4.3.3.7 The Office of Housing should maintain social housing stock to ensure the health and safety of current tenants and the long-term viability of the stock.
- 4.3.3.8 The Office of Housing should ensure that eligibility reviews do not function as a disincentive for people to seek employment.
- 4.3.3.9 The Office of Housing should abolish any lump sum repayments requirements for all segments.

## 4.4 Improving the Victorian Civil & Administrative Tribunal (VCAT)

**Policy objective:** To ensure that VCAT practice provides accessible, effective and appropriate dispute resolution for residential tenancies.

Through the interest on their bond money, tenants fund the operation of the Residential Tenancies List of VCAT. Despite this, 95% of applications made to VCAT are by landlords and real estate agents. Tenants only attend 22% of applications initiated by landlords.

### 4.4.1 Improving VCAT accessibility for tenants

- 4.4.1.1 Given that VCAT is funded by the interest earned from tenants' bonds, all tenants should be exempted from its application fees. Until this is achieved express grounds for exemption should be prescribed, for example all health care or pension card holders should be exempted. Community Legal Centres and pro bono providers should also be able to certify in favour of a fee waiver. Steps should be taken to ensure applicants are aware of their right to apply for a waiver of the application fee.
- 4.4.1.2 The VCAT Act should be amended to provide a party to a tenancy dispute with the right of a rehearing *de novo* to be heard and determined by a senior or presidential member of the tribunal. In addition, existing procedures for appeals to the Supreme Court of Victoria should to be simplified and relaxed. The Supreme Court of Victoria in processing and hearing appeals should do so from the VCAT building rather than the Supreme Court building.
- 4.4.1.3 VCAT's notice of hearing should be redesigned in accordance with principles of accessibility. Notices should be sent in an ordinary envelope together with a tribunal customer service charter, a map, directions and referral information. Application forms are in need of a comprehensive update and redesign.
- 4.4.1.4 VCAT should employ case managers to arrange hearings flexibly with tenants and link them in with appropriate services. This is particularly important in cases where a possession application is founded upon an allegation of tenant default. Flexible arrangement of hearings includes permitting other modes of tenant attendance (eg by telephone) and introducing evening hearings.

## 4.4.2 Improving VCAT practice

- 4.4.2.1 The Victorian Property Fund should make a continuing contribution to the costs of providing dispute resolution services provided by the Residential Tenancies List of VCAT.
- 4.4.2.2 A mandatory training program should be developed for tribunal members to increase awareness of issues surrounding housing, cultural and other diversity, mental health, disability and drug and alcohol issues.
- 4.4.2.3 The Victorian Government should establish an independent commission to investigate judicial misconduct and complaints with the mandate to investigate VCAT member behaviour. VCAT should publicise its internal complaints process and publish in its annual report details of the number and types of complaints received and outcomes.
- 4.4.2.4 All hearings including those in metropolitan and regional courts should be recorded to allow for access to recordings and transcription. The cost of access to recordings and transcripts should be reduced ultimately to nil.

## Bibliography

Affordable Housing National Research Consortium (2001), *Affordable Housing in Australia: Pressing Need, Effective Solution*.

Australian Bureau of Statistics (2007), '2006 Census QuickStats' at <<http://www.censusdata.abs.gov.au/ABSNavigation/prenav/ProductSelect?newproducttype=QuickStats&btnSelectProduct=View+QuickStats+%3E&collection=Census&period=2006&areacode=0&geography=&method=&productlabel=&producttype=&topic=&navmapdisplayed=true&javascript=true&breadcrumb=LP&topholder=0&leftholder=0&currentaction=201&action=401&textversion=false>> [accessed 27 October 2009]

Australian Housing and Urban Research Institute (2009), *Australia's private rental market: Changes (2001-2006) in the supply of and demand for, low rent dwellings*.

Australian Housing and Urban Research Institute (2005), *Trends in home ownership rates in Australia: the relative importance of affordability trends and changes in population composition*.

Australian Housing and Urban Research Institute (2005a), *Why is the rate of home ownership falling in Australia?*

Australian Housing and Urban Research Unit (2005b), *Why low-income households move: the search for affordable housing and employment*.

Australian Housing and Urban Research Institute (2003), *Increasing the supply of affordable private rental housing*.

Australian Housing and Urban Research Institute (2003a), *Housing assistance and non-shelter outcomes*.

Australian Housing and Urban Research Institute (2002), *Expanding the Supply of Affordable Housing in Australia*.

Australian Housing and Urban Research Institute (2001), *Do housing conditions impact on health inequalities between Australia's rich and poor?*

Australian Institute of Health and Welfare (2005), *Australia's Welfare 2005*.

Berry, Mike (2004), 'Show Me the Money: Financing More Affordable Housing', Paper for VCOSS Annual Congress 4-6 August, Melbourne.

Melbourne Institute of Applied Economic and Social Research (2007), 'Poverty Lines: Australia' at <<http://www.melbourneinstitute.com/labour/inequality/poverty/default.html>> [accessed 19 June 2007].

National Centre for Social and Economic Modelling (2004), *Trends in Housing Stress*.

National Shelter and ACOSS (2003), *Rent Assistance: does it deliver affordability?*

National Summit on Housing Affordability (2004), *Improving Housing Affordability – A Call to Action*.

[OoH] Office of Housing (2009), *Rental Report June Quarter 2009*.

Productivity Commission (2007), *Report on Government Services 2007 Steering Committee Report*.

Real Estate Institute of Australia (2007), *Real Estate Market Facts March Quarter 2007*.

RMIT University AHURI/NATSEM Research Centre (2009) *Commonwealth Rent Assistance in the context of rising housing costs since 1995*. Prepared for the Tenants Union of Victoria.

