



Position Paper

Improving Access to the Private Rental Market:
addressing discrimination and other barriers for
low-income and disadvantaged households

Tenants Union of Victoria
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Position Paper

Improving access to the Private Rental Market: addressing discrimination and other barriers for low-income and disadvantaged households

1 Purpose

This position paper is intended to propose a number of measures to address the multiple and systemic barriers faced by low-income and disadvantaged households in the current private rental market in Victoria.

It responds to a range of issues identified in the 2008 research project commissioned by the Tenants Union of Victoria (TUV) from the Wallis Consulting Group Pty Ltd, entitled 'Access to the Private Rental Market: Industry Practices and Perceptions' and subsequent matters raised by the reference group overseeing this project.

2 Background

In February 2008 the Tenants Union of Victoria commissioned the Wallis Group to undertake a research project with the following aims:

To improve access to the private rental market for low-income and vulnerable Victorians through greater understanding of rental application assessment processes and improved dialogue between the real estate industry and community sector organisations.

The consultants developed a research program consisting of a literature survey, 20 personal in-depth interviews with estate agents and a case study interview with staff from the Real Estate Institute of Victoria. Findings from this research were presented to the Tenants Union and members of the Project Reference Group in June 2008, and included the following:

- > That there is a desperate need for increased supply of private rental accommodation, particularly at the lower end of the market, and for increased supply of government funded social housing.
- > In a tight rental market, when it is even more likely that low-income and disadvantaged households will experience higher than normal competition for rental properties, it is critical that they are given access to tools and appropriate support to improve their access to private rental. Such tools and support could include:
 - Better understanding of the tenancy application and selection process, and how to increase their chances of success;
 - Assistance with completing and lodging application forms (particularly for people from non-English speaking backgrounds or with medium-high support needs);
 - Assistance with asserting their rights under residential tenancy laws, including the right to request repairs and complaints against a landlord, without jeopardising their tenancy.

Both real estate agents (acting on behalf of landlords) and private landlords manage their own properties, play a central role as gatekeepers to the private rental market through the tenancy application and selection process. There is a demonstrated need for improving the awareness and understanding of both agents and private landlords of their responsibilities towards tenants, including: their legal responsibilities towards tenants under *Residential Tenancies Act*, equal opportunity and privacy legislation.

It is particularly important to frame the findings of this research in the context of the current state of the private rental market, as this has introduced a number of additional barriers and challenges for low-income and disadvantaged tenants.

3 The current private rental market in Victoria

Traditionally in Australia the private rental market has been considered a transitional tenure, either as the tenure for households waiting to enter home ownership or for households waiting for social housing. However, in recent years the demand for private rental has increased significantly as pathways into home ownership and social housing have become blocked for many low-middle income households, and high levels of immigration have contributed to population growth. Therefore, the private rental market is flooded with potential applicants who are seeking long-term tenure. This increased pressure on the private rental market is reflected in the vacancy rate which, at 1.3 per cent in Victoria and less than 1 per cent in inner-urban Melbourne, is at historically low levels.¹

Growing numbers of middle to high-income earners are opting to occupy low-cost rental housing to finance future homeownership.² Only 39 per cent of low-cost dwellings were occupied by low-income households in 2001 and a relatively large proportion of this housing was occupied by moderate/high-income households.³ Low-income households are increasingly being squeezed out of the market as they try to compete with higher wage earners for the remaining affordable properties. These households often have no choice but to occupy more expensive properties they cannot afford, or poorer quality dwellings that no-one else will rent.

It is estimated that there is a shortfall of approximately 32,000 affordable rental properties in the Victorian housing market and 134,000 nationally. Unsurprisingly, low-income households are more likely than any other group to be experiencing housing stress.⁴ Specifically, it is estimated that approximately 114,000 Victorians are experiencing rental stress.⁵

¹ Department of Human Services (2008) *Rental Report: December Quarter 2007*. State Government of Victoria; Melbourne, pp. 1, retrieved June 6th, from http://www.housing.vic.gov.au/__data/assets/pdf_file/0015/204630/rental_report_dec-Q-07.pdf

² Yates, J. 1996. 4 'Towards a reassessment of the private rental market', *Housing Studies*, 11 (1): 35-50.

³ Yates J, Wulff M and Reynolds M (2004) '*Changes in the supply of and need for low rent dwellings in the private rental market*' [Final Report] *Australian Housing and Urban Research Institute*, Report Number 60190.

⁴ Housing stress occurs when households in the bottom two quintiles of income distribution are forced to spend 30 per cent or more of their weekly income on rent. In this scenario the cost of rent alone becomes the direct cause of poverty since once the rent is paid, there is insufficient income remaining for the other essential costs of living, such as food, utilities, transport or health care.

⁵ Khadem, N (2007) Housing Stress rising across Melbourne. *The Age* August 25th. Retrieved June 6th 2008 from <http://www.theage.com.au/articles/2007/08/24/1187462524586.html>

4 Factors contributing to access barriers

Competition for rental properties

While this tight rental market may be good for landlords, it is clearly creating additional competition amongst residential tenants. Through the Wallis Report, it was made clear that those applicants with higher incomes, good rental references and better personal presentation are likely to be viewed by agents and landlords as preferable tenants due to the fact that they are seen as posing less 'risk' from both an asset management and tenancy management perspective.

It was also identified that there are specific factors common to low-income and disadvantaged households that can impact on the decision-making processes of agents and landlords in processing tenancy applications. These include:

- > making a poor first impression (at Open for Inspections or in initial contact with the agent) which may be based on physical presentation/dress standards, behaviour, treatment of property, attitude to agency staff, etc.
- > poor English language skills (impacts on communication with agency staff)
- > poor literacy skills (impacts on ability to complete application form)
- > poor rental history (including any database listings, lack of references from real estate agents, incomplete or unstable rental history)
- > no rental history (for example, never having lived out of home or only renting through private landlords/friends, etc)
- > poor work history (indicating instability of income)
- > history of public housing tenancy (related to perception of property maintenance standards being lower in OoH managed properties)
- > reliance on Bond Loans or other financial assistance (can indicate reduced financial capacity, and result in delayed approval process waiting for OoH processing of application)
- > tenants seeking 'group' or shared housing (considered less stable, less responsible, more time intensive to manage, potential problems with neighbours, etc)
- > people with physical disabilities (where modifications are required to the property, landlord is often reluctant to pay)
- > tenants using Centrepay (perceived additional administrative burden/costs to agents, and limited flexibility in payment dates/options).

Application assessment procedures

While the Wallis Report identified that there is a common set of information required on application forms (often based on the REIV standard application form), it was also apparent that there are a range of both objective and subjective factors at work when applications are being assessed. These can often disadvantage, as opposed to discriminate against, low-income and disadvantaged tenants.

Recently, research from Short et al at the Australian Housing and Urban Research Institute analysed risk assessment procedures real estate agents undertake when matching tenants to rental properties in Queensland, New South Wales and South Australia.⁶ There was a particular focus on the impact of assessment practices on low-income renters. 'Ability to pay' and 'ability to care' for the rented property are the main factors in assessing risk among applicants of rental housing. Tenants who can be conceptualised as 'resourceful, reputable, competent, strategic and presentable'⁷ are viewed most favourable by agents and landlords.

Given their tenant preferences, 'low-income' was the principal and overarching characteristic that estate agents expressed concern about. On top of this, the AHURI researchers found that specific low-income or marginalised groups face additional scrutiny. Estate agents judge these groups as particularly unable to properly manage their income and/or 'care for' the rental property.

Where they are already facing barriers to private rental, providing additional assistance and support to these groups could assist in improving their chances. There have been a number of important programs in Victoria which have sought to assist specific socially disadvantaged groups to access private rental housing, but which have suffered from a lack of ongoing funding. A recent example is the joint pilot initiative between the Migrant Information Centre, South Central Region Migrant Resource Centre and Consumer Affairs Victoria to undertake the 'Migrant and Refugee Rental Housing Assistance project' to assist newly arrived migrants and refugees secure private rental housing in the Southern and Eastern Regions of Melbourne.⁸ The project used a casework service to enable successful navigation of the rental application processes, educational programs to boost understanding of how to access and maintain housing in Victoria and the development of networks and workshops with local real estate agents to increase their knowledge and understanding of the housing sector and its impact on migrant and refugee families. Unfortunately it appears that ongoing funding was not provided to continue this service. However, similar models could be developed and tailored to the needs of other disadvantaged household populations.

Discriminatory practices

Responses from agents in the Wallis Report identify a lack of clarity from within the industry about their responsibility and liability for ensuring that their application and selection practices are not discriminatory or unlawful. Although there are no precise statistics available regarding the extent of discrimination in rental accommodation,

⁶ Short, P., Seelig, T., Warren, C., Susilawati, C., & A. Thompson. (2008) *Risk Assessment practices in the private rental sector: implications for low income renters*. Queensland; Australian Housing and Urban Research Institute

⁷ *ibid*

⁸ Migrant Information Centre & South Central Regional Migrant Resource Centre. (2007) *Finding a Home A Research Report on Supporting Newly Arrived Migrants and Refugees to Secure Housing*. Retrieved 13th June 2008, <http://www.miceastmelb.com.au/documents/FinalFinalResearchReport.doc>

research and anecdotal evidence indicate that prejudice and discrimination is endemic.⁹ In 2007 the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) received only 29 complaints in relation to accommodation.¹⁰ The reason for this low reporting is the time taken and complexity involved in resolving complaints.

However it is clear from the Victorian *Equal Opportunity Act 1995* that discrimination, whether undertaken by a private landlord or by an agent, is unlawful. While responses from agents in the Wallis Report seem to indicate that property managers believe their responsibility is diminished or removed by handing over final responsibility to the landlord for making a decision, Part 6 of the EO Act stipulates that not only the individual employee but also the Principal of the agency can be held vicariously liable if they are found to have knowingly authorised or assisted in any form of discrimination.

While there are exceptions for employers and principals having taken reasonable steps and precautions to ensure their property managers do not contravene the EO Act, it is clear that taking instruction from a landlord not to accept an application from a tenant because of any of the discriminatory grounds in the Act is unlawful. These provisions are also made clear in fact sheets for landlords and agents available on the VEOHRC website¹¹.

⁹ Slatter, M., Adkins, J., & Baulderstone, J. 2005. 7 'A glimpse of the invisible; Sex discrimination in housing', *Alternative Law Journal*, 30 (1): 15-18, 46

¹⁰ Victorian Equal Opportunity Commission & Human Rights Commission (2007) *Annual General Report 2006/2007*. Retrieved June 13th 2008: <http://www.humanrightscommission.vic.gov.au/pdf/veohrcannualreport2007.pdf>

¹¹ <http://www.humanrightscommission.vic.gov.au/publications/>

However, when a person is discriminated against during a tenancy application process, the jurisdiction of the Victorian Civil and Administrative Tribunal (VCAT) is unclear. It is doubtful whether VCAT can hear an application from a prospective tenant who has been denied housing when the applicant does not have a tenancy agreement with the accommodation provider. The person whose application has been rejected can lodge a complaint to the VEOHRC but the time taken to resolve a dispute will generally be more than a month. In a tight rental market, it is difficult to secure a home which has a suitable price, location, size and amenities. Given the fierce competition for existing rental properties, the window of opportunity to secure the right home can close within a matter of days. The time taken to lodge and deliberate a complaint may result in monetary damages and/or enforceable undertakings, but not necessarily the opportunity to be considered for the home the tenant was originally after. This is a significant reason why many tenants do not lodge complaints with the Commission, because it does not provide the complainant any useful redress.

The Department of Justice is currently completing a comprehensive review of the Equal Opportunity Act 1995, and it is likely that the complaints process will be significantly expedited as a result. In a submission to the review committee the TUV recommended that if discrimination in the private rental market was to be properly dealt with, VCAT would need to have clarified power to make orders in relation to breaches of the EOA and disputes relating to the tenancy application process.

Discrimination against prospective tenants is also often subtle and difficult to prove. Many renters are unlikely to seek assistance when they have been discriminated against due to a lack of awareness of their rights and the services offered by government institutions such as the VEOHRC.¹² A report by the New South Wales Council of Social Services (NCOSS) pointed out that because of the tenant's inferior bargaining position, the private rental market has developed a 'culture of non-complaint'.¹³

While the VEOHRC made amendments to the EO Act in 2006 to allow representatives to make complaints on behalf of individuals or groups of people experiencing discrimination, this provision relies on individuals contacting an organisation that is able to pursue a complaint on their behalf.

Currently there are no Victorian state-wide programs which seek more awareness of discrimination in the private rental market and how to tackle it.

5 Improving Real Estate Agent Practice

Increasing estate agent knowledge and capacity to deal with prospective tenants with high housing needs is essential given the increased importance of the housing market. With little or no training in dealing with tenants in need of additional support or with challenging behaviours, the real estate industry is poorly positioned to provide a supportive service. As a result agencies may be wary of assisting tenants who pose a perceived 'risk'.

¹² San Pedro, N. (2000) Discrimination in Private Rental. *Parity*, 13:5:10-11

¹³ Johnston, C. (1999) *Cash and Cowboys, Barriers for Entry to Private Rental Housing by Disadvantaged Consumers*. New South Wales; New South Wales Council of Social Services.

Importantly, feedback from property managers in the Wallis Report suggest that inadvertent discriminatory practices often reflect a lack of knowledge of how best to respond to or prevent problems from escalating, as much as any underlying prejudice.

Approximately 68 per cent of dwellings in the private rental market are managed by real estate agents. Estate agents and agent's representatives are required to be licensed to operate and a condition of this license is to demonstrate a professional understanding of the relevant laws regulating the industry, including the *Equal Opportunity Act 1995*. The *Estate Agents (Education) Regulations 2004*, however, do not make provisions for ongoing training and professional development in this area.

The Real Estate Institute of Victoria (REIV), the peak industry association representing Victorian real estate agents, does require annual Continued Professional Development (CPD) training of its members as a condition of membership, however this does not cover all employees dealing with property management within each agency. The REIV boasts more than 5000 members, but this membership is voluntary and according to recent ABS data the total number of practising agents employed in Victoria is near 15,000.¹⁴ This means that only a third of agents have regular access to CPD training.

Persistent poor estate agent practices are cultivated by the lack of observable consequences for breach of obligations. Mismanagement of residential property by estate agents is among the most common complaints received by Consumer Affairs Estate Agent Resolution Service (EARS), which conciliates disputes between consumers and estate agents.¹⁵ In 2004, EARS received 10, 524 calls and 871 written complaints. Over a quarter of these written complaints referred to mismanagement of residential property.¹⁶ The *Estate Agents (Professional Conduct) Regulations 1997* prescribe standards of probity in the provision of real estate agent services for estate agents and agents representatives. Breach of these professional standards can affect an agency's eligibility to obtain and retain a license. The TUV notes that actions against misconduct are rarely taken despite particularly flagrant breaches of the law, mediation and conciliation being the preferred method of dispute resolution. The TUV appreciates that these methods may create stable working relationships between government and the real estate sector, but they do not properly impart intolerance for breaches of the law.

From findings in the Wallis Report, the extent of real estate agents' knowledge of anti-discrimination law appears patchy. Despite the CPD training offered by the REIV, their 'Rules of Practice' do not include any guidelines for estate agents on meeting legal provisions regarding discrimination.¹⁷ By contrast the Real Estate Institute of Queensland Rules of Practice outline in article 38 that tenants' rights must be respected and that

¹⁴ Australian Bureau of Statistics. (2004). 9 Real Estate Services, Australia, 2002-200, 8663.0 , *Australian Bureau of Statistics*, retrieved 13th June 2008, [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/80BD73A1F2AC1578CA256E7E0005945D/\\$File/86630_2002-03.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/80BD73A1F2AC1578CA256E7E0005945D/$File/86630_2002-03.pdf)

¹⁵ See CAV. (2004) Estate Agents Complaints Rise [Media Release, Thursday 27th May] *Consumer Affairs Victoria*, retrieved February 1st 2008, <http://www.consumer.vic.gov.au/CA256F2B00231FE5/page/2004-May-Estate+Agent+Complaints+Rise?OpenDocument&1=75-2004~&2=17-May~&3=0-Estate+Agent+Complaints+Rise~>

¹⁶ Ibid.

¹⁷ Real Estate Institute of Victoria. (2006) Rules of Practice. Melbourne; REIV

'members shall, consistent with the law and the terms and conditions of their property management agreement, competently manage the property of clients with due regard for the rights, safety and health of tenants and others lawfully on the premises'.¹⁸

6 New responses required

Despite the recent injection of significant funding into Victoria's social housing sector, increasing Government expectation is that the private sector will continue to play a central role in providing long term housing for low-income households.

Long-term supply initiatives and private rental support programs may address some of the problems, but the overwhelming disparity in demand/supply means that low-income social groups are likely to remain locked out of the mainstream housing market and into long cycles of homelessness for many years to come.

Therefore, what is required in the short to medium term are more interventionist responses that directly counter the identified barriers for low-income and disadvantaged households seeking to access the private rental market. Some of these require legislative and/or regulatory changes, others are focused on improving education and awareness of prospective tenants as well as agents and landlords.

Finally, while the proposals identified below are specifically targeted at addressing the needs of disadvantaged tenants in the current tight rental market, they would be equally valid in the event that the demand/supply equilibrium shifts and vacancy rates improve.

7 Issues raised by the Wallis report and proposed responses

As discussed above, a range of issues were raised by the Wallis Report in relation to barriers in the private rental market. While it is widely agreed that affordable housing supply factors underpin and exacerbate many of these access issues, this paper will not specifically canvas new responses to supply side measures, but focus on seven practical measures which could assist in the short-medium term to improve access for disadvantaged households within tight private rental market conditions:

- 7.1 Improving applicants' understanding of selection processes
- 7.2 Improving understanding of tenancy selection practices among community organisations
- 7.3 Implementing a standardised application form
- 7.4 Removing the potential for discriminatory practices
- 7.5 Resourcing agents and landlords to better assist high need applicants/tenants
- 7.6 Improving legal protections for tenants
- 7.7 Ensuring private landlords are aware of their responsibilities

¹⁸ Cited in Short, P., Seelig, T., Warren, C., Susilawati, C., & A. Thompson. (2008) *Risk Assessment practices in the private rental sector: implications for low income renters*. Queensland; Australian Housing and Urban Research Institute, p.9

7.1 Improving applicants' understanding of selection processes

The Wallis Report provides a critical 'insiders guide' to the way in which real estate agents process tenancy applications and manage the tenant selection process on behalf of their clients, the landlord. It highlights, from an agent/landlord perspective, the central importance of the application form in collecting key objective information, typically supplemented by their personal impression of each applicant in the process of shortlisting and selecting tenants.

The key factors which prospective tenants need to understand in relation to this process are the importance of:

- > their initial presentation and behaviour, when inspecting a property or attending the agent's office to complete an application form, and the impression they leave;
- > a complete and accurate application form, provided in a timely manner;
- > providing additional information (if requested) in a timely manner;
- > the 'risk management' approach taken by Agents in the culling and selection process, whereby they are looking for a 'preferred' tenant from amongst those applying, typified by:
 - couples and 'stable' family units
 - strong capacity to pay
 - good rental history
 - unlikely to cause problems or hassles during the tenancy
- > the fact that the landlord is usually given the final decision-making power, with their criteria for 'most suitable tenants' being:
 - most likely to pay the rent on time
 - least likely to fall into arrears
 - most likely to keep the property in a good condition
- > commercial imperatives driving both landlord (rental income) and agent (fee for management service).

Agents were clear that they use a combination of objective and subjective factors when assessing potential tenants and matching their suitability to particular rental properties, typically including:

- > *objective factors*: weight is given to work and rental references, showing good rental history and capacity to pay (may be supplemented by the use of **tenancy database** checks)
- > *subjective factors*: largely based on agent's previous experience of tenant 'characteristics' – may include household type, age, presence of additional needs (such as poor language skills, mental health problems, behavioural issues, etc).

Understanding this process and criteria used can help prospective tenants to optimise their chances of success in the selection process. Additional information about the requirements on agents/landlords to adhere to anti-discrimination and privacy laws (see Proposal 7.4 below), could also help applicants better understand their rights in the application process and appropriate avenues for pursuing complaints if they feel they are being discriminated against.

Proposed response

Development of written materials about the tenancy application and selection process, aimed specifically at low-income and vulnerable tenants:

- > Distribution through Transitional Housing Managers (THMs), homelessness support services and other community agencies supporting this client group;
- > Organise information & education forums for applicants based on these materials (to be run through a range of community-based organisations including Migrant Resource Centres, Neighbourhood Houses, tenancy advice services, etc)

7.2 Improving understanding of tenancy selection practices among community organisations

In addition to improving the understanding and awareness by tenants and potential tenants about the practices used by real estate agents, it is important that community organisations providing services to disadvantaged and vulnerable clients also have a good understanding of how these processes and practices work. This will enable workers in community organisations to better assist their clients in gaining access to private rental and/or maintaining their tenancy once it has been established.

By providing information about the specific application of anti-discrimination legislation to the issue of accessing private rental accommodation, community organisations will also be better placed to assist clients in pursuing complaints (either formally or informally), particularly under the 2006 amendments to the EO Act whereby they can make a complaint to the VEOHRC on behalf of an individual or group of people.

Proposed response

Development of written materials about the tenancy application and selection process, aimed specifically at community organisations assisting disadvantaged households:

- > Distribution through the VEOHRC, the Tenants Union of Victoria, the Victorian Council of Social Services and other key peak organisations;
- > Information & education forums for workers in community organisations based on these materials;
- > Provision of a 'secondary consultation' service through the Tenants Union to assist workers with pursuing tenancy-based discrimination complaints.

7.3 Implementing a standardised application form

The Wallis Report identifies that while application forms used by real estate agents across the industry ask for similar information (usually based on the REIV model application form), there is no regulated industry-wide standard format. Further, there is most certainly no standard form or format used by private landlords. This allows for agents (and private landlords) to modify application forms to solicit information which may be used to effectively discriminate against certain applicants. This is particularly evident in the additional information required of students, but anecdotal evidence suggests that this may also be the case particularly amongst private landlords when dealing with recently arrived migrants/refugees, single parents, those with physical or mental disabilities, young people and even older people.

The Tenants Union believes that designing and implementing the use of a standardised application form would focus decision-making on the objective factors, and reduce reliance on the ability to use more subjective factors to make decisions. It would also assist in eliminating the potential for any such discrimination to occur as part of the application process, ensuring that only information relevant to the tenancy was collected and held by agents and/or landlords.

Using such a standard application form would also make it easier for tenants with literacy problems, or for whom English was not a first language, to more accurately and fully complete application forms without the need for assistance each time from a third party or support organisation.

Proposed response

Development of a standardised application form for use by all Victorian Real Estate Agents and private landlords:

- > To be developed in conjunction with the REIV, VEOHRC and Consumer Affairs Victoria;
- > Use of the standardised form to be regulated as part of the *Residential Tenancies Act 1997* and the *Estate Agents (Professional Conduct) Regulations 1997*;
- > To be supported by adequate enforcement and compliance mechanisms through Consumer Affairs Victoria.

7.4 Removing the potential for discriminatory practices

As acknowledged in the current review of the *Equal Opportunity Act* by the Department of Justice, the main enforcement mechanism currently available for anti-discrimination provisions under the Act is the threat of a complaint being made¹⁹. However it is also acknowledged that only a small percentage of people facing discrimination ever formally report it or pursue their complaint through to resolution. Under consideration are a range

¹⁹ Department of Justice, *Equal Opportunity Review Options Paper, March 2008*, accessed 24 July 2008 from www.justice.vic.gov.au

of mechanisms for requiring more active compliance with anti-discrimination, including the requirement that 'steps are taken to more actively identify, quantify and address barriers to equality'²⁰. Such reforms have significant potential for addressing both direct and indirect discrimination faced by disadvantaged households in the private rental market.

It is clear from the Wallis Report that in the process of tenancy application and selection processes there is significant potential for both direct and indirect discrimination (or systemic discrimination) of applicants, particularly through the practice of 'stereotyping' people according to characteristics they may share with others.

Agents commonly reported making judgements about the suitability of potential tenants based on personal characteristics, such as their age group, ethnic background or income type – this was often based on their experience of 'bad tenants' who shared some of these similar characteristics. It was also reported that landlords commonly make it known that there are certain 'types' or groups of people that they don't wish to consider as potential tenants. Groups mentioned included:

- > Young people in 'group' or 'shared' accommodation;
- > Students;
- > Recently arrived migrants and refugees;
- > Aboriginal and Torres Strait Islanders;
- > People with physical disabilities and/or mental illness;
- > Single parents;
- > People on government benefits;
- > Ex-public housing tenants.

Practices and judgements that exclude potential tenants from each of these groups would most certainly constitute discrimination under the Equal Opportunity Act if it could be proven that they are the basis for decisions being made during the selection process – the difficulty is in actually proving that to be the case when agents and landlords can claim that other factors were used to make final decisions. As highlighted earlier, the EO Act is clear that agents cannot knowingly authorise or assist discriminatory practices or intentions initiated by the landlord.

The following proposals include a range of measures to improve the understanding of both agents and private landlords of their responsibilities to NOT discriminate, and ways of ensuring that these responsibilities are both enforced and complied with more fully.

²⁰ Ibid.

Proposed responses

- > Identify potential for reform within private rental based on the final recommendations of the Department of Justice review of the Equal Opportunity Act (due for release late 2008);
- > Build on existing education and awareness raising materials about discrimination provisions related to accommodation (such as those developed by the VEOHRC and the Department of Justice through the 'Equal Access' project) aimed at agents and private landlords – highlighting the vicarious liability provisions;
- > Amend the REIV 'Rules of Practice' to include guidelines for estate agents on meeting all legal provisions regarding discrimination;
- > Amend the *Estate Agents (Education) Regulations 2004* to make provisions for mandatory ongoing training and professional development in this area;
- > TUV and other community based organisations to develop appropriate presentations to be delivered as part of REIV training and professional development seminars to highlight the impact of discrimination and stereotyping of particular tenant groups;
- > Government to consider development of a broader based media/information campaign (in conjunction with the industry and consumer groups, and the VEOHRC) promoting 'equal access guidelines' and consequences of non-compliance;
- > Identify ways of targeting this material specifically at private landlords;
- > Develop materials aimed at agents and landlords highlighting the benefits of approving tenancy applications from different backgrounds;
- > Work with the REIV and Office of Housing to develop strategies to improve the perception by agents of public housing management practices and ex-public housing tenants.

7.5 Resourcing agents and landlords to better assist high need applicants/tenants

While real estate agents are working on behalf of landlords, and within a commercial environment, it is clear from the Wallis Report that in many cases agents are interested in better assisting applicants who are struggling to successfully gain access to private rental properties. This may be from an agency-generated sense of corporate-social responsibility or purely from a personal interest in providing more support to disadvantaged and homeless members of the community.

Agents expressed the following difficulties in dealing with disadvantaged tenants:

- > they feel poorly equipped to assist people with complex needs/severe disadvantage;
- > a lack of knowledge about local support services available and their roles (including their contact details); and
- > a limited understanding of appropriate referral processes.

There are various ways that the industry as a whole, and individual agents and/or landlords can be better resourced to provide additional support and information to identified clients. However this must in turn be supported by additional resources (either from Government, the philanthropic, business or community sectors) to make sure that the information provided to agents is accurate, up to date, easily accessible and user friendly.

Proposed response

- > Develop targeted materials about housing and support services available for low income and disadvantaged households in Victoria (both Statewide and at the local/regional level), and appropriate processes for referring people in need to those services.
- > In addition to direct mailing by local community agencies, materials could be distributed through REIV communication channels, REIV training, other industry training channels.
- > Encourage local community organisations providing housing and support services to send materials about their own services (and referral processes) to local agents.
- > Develop a series of locally based information forums aimed specifically at private landlords (possibly in conjunction with Local Councils).
- > Encourage Real Estate Agents to develop partnerships with local housing and support services (such as sponsoring activities, fundraising, corporate volunteering opportunities, etc) to help develop better understanding and relationships between the industry and community agencies.

7.6 Improving legal protections for tenants

Legal protection for tenants is critical at all times, however in the current environment of low vacancy rates, high rental prices, and high demand for rental properties it is even more important that tenants are provided with adequate protection to ensure their security of tenure and tenancy rights. A number of factors are currently putting these rights at further risk, including:

- > fierce competition between applicants can lead to some applicants offering higher rent or other inducements to agents to approve their application;
- > unsatisfactory regulation of Residential Tenancy Databases (RTDs) can lead to people being effectively excluded from the rental market, either due to inaccurate listings, inability to effectively appeal or have unjustified listings removed, or the malicious listing of tenants by aggrieved landlords;
- > concern by tenants that any attempt to pursue their tenancy rights (such as for repairs, maintenance, or complaints against landlord or agent practice) may not only result in an unfair eviction, but limit their ability to secure a subsequent rental property;
- > gentrification of some areas has seen an increasing trend in the issuing of 'no cause' notices to remove long term (often low income) tenants and enable landlords to significantly increase rental returns.

Effectively addressing these issues requires a commitment by Governments at Federal and State level to undertake tenancy reform in a number of different areas. Given the significant financial investment by the Federal Government in private rental through the Commonwealth Rental Assistance (CRA) scheme and tax benefits offered through negative gearing provisions, and the increasing reliance by State Government on the private rental market as a supplier of affordable housing, there are strong arguments for them taking an active interest in this area.

Proposed response

- > Legislate against rental bidding practices for residential properties;
- > Remove provisions allowing 'no cause' evictions, ensuring that a landlord is required to give a valid reason for any termination notice issued;
- > Improve compliance and enforcement of tenancy rights in relation to repairs and maintenance, and the pursuit of other tenancy complaints, through Consumer Affairs Victoria;
- > Improve tenancy protection for tenants in marginal forms of accommodation such as rooming houses and caravan parks (most commonly managed by private landlords);
- > Introduce national regulation of Residential Tenancy Databases (RTDs) to address inconsistency across jurisdictional boundaries, unfair and malicious use by aggrieved landlords, and improve the right of listed persons to appeal and have unfair listings removed in a more timely manner.

7.7 Ensuring private landlords are aware of their responsibilities

The Wallis research was primarily focused on better understanding the practices and attitudes of real estate agents working on behalf of landlords. However it is clear (both from the research and from the experience of community agencies) that private landlords who don't engage the services of agents are another increasingly important source of private rental accommodation, particularly at the lower-cost end of the rental market. Currently around one third of all rental dwellings are managed by private landlords, most of whom would be much less aware of their legal responsibilities toward tenants than accredited agents.

Agents report that in times of low rental vacancy, they also tend to be more discriminating about the quality of properties they will manage and therefore it is more likely that properties managed by private landlords are of poorer quality – leading to increased potential conflict between landlords and tenants in these properties over repairs and maintenance. For tenants who are desperate to secure and maintain rental accommodation, it is also more likely that they will not pursue their rights (or complaints) against landlords of such properties for fear of receiving a 'no-cause' eviction notice, or other fears about their security of tenure.

Some of the proposals identified above have elements that could usefully be directed at private landlords, however it is important that specific strategies are developed aimed at reaching these individuals most of whom have little or no links with industry or regulatory bodies.

Proposed response

That a reference group consisting of key stakeholders be established to develop a strategic framework for engaging and communicating with private landlords, as a distinct sub-set of the private rental market, for the purposes of:

- > Ensuring a better understanding of, and compliance with, existing legislation;
- > Improving access for disadvantaged tenants;
- > Identifying particular barriers and discrimination in the provision of accommodation.