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Submission to the Review of Disability Legislation in Victoria

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The Tenants Union of Victoria

The Tenants Union of Victoria Ltd (TUV) welcomes the opportunity to contribute to the Review of Disability Legislation in Victoria. The TUV is a specialist statewide advocacy organisation and community legal centre, established in 1975, that provides free information and advice to residential tenants, rooming house and caravan park residents across Victoria. In the year 2001/2002 the TUV assisted almost 34,000 private and public tenants and residents in Victoria.

The vision of the TUV is for genuine housing choice without social or economic disadvantage. Our mission is to promote and protect the rights and interests of all residential tenants in Victoria.

The TUV also promotes community awareness of tenancy laws and issues, lobbies for tenancy law reform and provides accredited training on a statewide basis for tenant and housing workers. The TUV produces a number of publications throughout the year including multilingual information in 11 community languages, a journal on tenancy issues entitled 'Tenancy Quarterly' and a broadsheet publication for tenants entitled 'Tenant News'. In previous years the TUV has been a member of a number of State Ministerial Advisory Committees related to housing and tenancy issues, and currently has a seat on the Victorian Ministerial Housing Council.

This submission is limited to commenting on section 2.3 of the 'Review of Disability Legislation in Victoria, Discussion Paper, May 2003', *Housing and Support*, in particular the discussion on tenancy rights for residents of CRU's.

Tenancy Rights for Residents of Community Residential Units

There are currently almost 5000 people with a disability living in long-term Community Residential Units (CRU's) in Victoria. Residents of CRU's pay rent, however unlike other residential tenants in Victoria, they are excluded from coverage under the Residential Tenancies Act 1997 (RTA). This means that residents have no clear mechanism by which they can ensure:

- that maintenance and repairs are carried out on the rented premises;
- a right to privacy and quiet enjoyment of their room and the rented premises;
- a mechanism by which to challenge a rent increase, as other residential tenants are able to do;
- a formal notice to vacate be served where a resident is required to move;
- a mechanism by which to formally challenge an eviction.

Granting residency rights under the RTA will ensure equity and consistency of service practice, across the CRU program. We are seeking to provide residents with a clearly articulated rights framework, which ensures that residents have an opportunity to be heard, and to actively participate in one of the most important areas of their life, their housing.

In the 1999 'Better Housing' policy, the Bracks' government committed to extending the coverage of the RTA to residents of CRU's. This commitment was repeated in the 'Government Response to the Residential Tenancies Legislation Working Group Report' of March 2002. We applaud the government's ongoing commitment to this issue, and look forward to working with them on implementation.

Summary of Recommendations

- *That the rooming house provisions of the Residential Tenancies Act 1997 be amended to include coverage for Community Residential Units.*
- *That in providing support services to residents, support workers are required to seek the permission of the resident to enter their room. The Residential Tenancies Act does not need to be amended to address this issue.*
- *Section 121 of the RTA does not apply where a court order ordering that a resident be restrained, is in place. This is for the duration of the order only.*
- *That a policy framework be developed, in conjunction with CRU providers, residents and advocacy groups, which stipulates that a resident will not be held liable, where a breach of quiet enjoyment could not be reasonably avoided, due to an individual's disability.*
- *Section 208 of the RTA is amended to stipulate that a breach of duty notice cannot be served for a breach resulting directly from a resident's disability.*
- *That a policy framework be developed, in conjunction with CRU providers, residents and advocacy groups, which stipulates that a resident will not be held liable for damage to the rented premises, where that damage could not be reasonably avoided, due to the individual's disability.*
- *Section 278 of the RTA is amended to stipulate that a notice cannot be served if the damage could not reasonably have been avoided, due to a resident's disability.*
- *Following further work on this issue, in conjunction with residents, advocates and CRU providers, consideration be given to amending the RTA to make provision for an authorised /nominated person to contract for or advocate on behalf of an individual who is not able to make decisions affecting their tenancy independently.*
- *That the policy framework set clear boundaries on when notices relating to disruption, danger and serious violence can be used. The unique need for security of tenure for residents must also be taken into account.*
- *That training is provided to VCAT Members from the Residential Tenancies List to ensure sensitivity and greater understanding of the issues relating to CRU's.*
- *That the policy framework improves security of tenure for residents through the following methods.*
 - *That clear mechanisms are established to ensure that residents' opinions, desires and needs drive any discussion about relocation.*
 - *That no reason notices to vacate are prohibited from use in the CRU program.*
 - *That independent grievance procedures and appeals mechanisms are established and enforceable where a CRU provider or support agency fails to comply with the policy framework.*
- *That funding is provided through DisAbility Services and Consumer Affairs Victoria for a tenancy advice and advocacy service specifically for CRU residents.*

Question 10: Do you think there should be provisions in legislation for disability or in other legislation to safeguard the tenancy rights of people with a disability?

The rooming house provisions of the RTA provide the most appropriate mechanism through which to ensure “residency” (as the RTA defines rooming house tenure) rights for residents of CRU’s. The rooming house provisions are applied to premises where people rent a room and share common areas, similar to CRU’s. While there are some clear differences between the way rooming houses operate and CRU’s, these differences can be accommodated through specific amendments to the RTA where appropriate, and through the development of a policy framework which sits above the legislation, and provides additional protections specific to the program. The provisions provide a useful model for extending the ambit of the RTA to people with a disability who live in CRU’s, for the following reasons:

- To provide certainty for residents and CRU operators on rights and responsibilities in relation to the rented premises.
- To provide a clear mechanism for residents to expect:
 - a suitable standard of, and timely attendance to, maintenance and repairs on the property;
 - privacy and quiet enjoyment;
 - greater security of tenure than residents currently experience;
 - formal notice of rent increases;
 - clarity and equity in relation to the types of costs and charges that can be charged to residents.
- House Rules to assist in managing common areas.
- Access to the Residential Tenancies List, at the Victorian Civil and Administrative Tribunal, when disputes between residents and operators cannot be resolved.
- Equity and consistency of service across the CRU program.

Recommendation

That the rooming house provisions of the Residential Tenancies Act 1997 be amended to include coverage for Community Residential Units.

Questions 11, 12 and 13

As these questions overlap, we have grouped them together and addressed the specific issues.

Question 11: How do you think people’s tenancy rights can be balanced with the need to ensure that people’s support needs can be met, and their safety protected?

Question 12: How do you think tenancy rights can be balanced with the need to ensure the safety of staff?

Question 13: How do you think people’s tenancy rights can be balanced with the need to ensure that support providers and property owners can meet their obligations?

Protecting the residency rights of residents of CRU's, and meeting the support needs and safety of residents of CRU's, are not mutually exclusive goals. The RTA ensures a clear delineation between the roles of residents, rooming house owners, and support workers. It is not appropriate for support workers to be acting in the role of rooming house owner, as this limits their capacity to appropriately advocate for their client. The application of the RTA will ensure that these roles are clearly defined without compromising the needs or safety of residents, staff or support providers.

Policy Framework

While the RTA sets out minimum requirements for tenants and residents in general, the development of an overarching policy framework specifically for the CRU program, will ensure that the application of the RTA will not adversely impact on the day to day realities of life for CRU residents and staff. In particular the policy framework should address issues such as:

- Ensuring that residents are not held liable for damage to the premises as a result of their disability;
- Ensuring that the particular needs of a specific client group continue to be met.

House Rules and Lease Agreements

House rules are a means by which rooming house owners can manage the common areas in a rooming house (or in this case CRU). House rules can be an extension of, but cannot contradict, the basic rights and obligations provided by the RTA. House rules can be incorporated into lease agreements, or provided separately to residents. A rooming house owner can change house rules by providing seven days written notice of the proposed change. If a resident believes that a house rule is unreasonable, they can apply to VCAT, who can declare a rule invalid.

Interagency agreements between the support provider and rooming house owner can also be an avenue to address particular needs of a specific client group.

The 'Review of Disability Legislation in Victoria, Discussion Paper, May 2003' identifies a number of key concerns that we believe will be adequately addressed through a combination of RTA, policy framework, and house rules. These include:

- Having to give notice to enter a resident's bedroom;
- Use of general areas;
- Right to quiet enjoyment;
- Damage to premises;
- Capacity to sign a lease agreement;
- Safety of other residents and staff;
- VCAT's ability to understand the complexity of supported accommodation and people's disabilities;
- Changing needs of residents and moving on from a property.

We address each of these issues below.

1. Access to rooms:

Section 136 of the RTA allows a rooming house owner or appointed person to enter a resident's room if:

- the resident agrees at the time that entry is sought;
- if there is an emergency and immediate entry is necessary to save life;
- if services are provided and it is necessary to enter to provide them, but only during the hours specified in the house rules.

In its current form, section 136 does not allow for the provision of support services as a reason to enter a resident's room. However seeking consent of the resident at the time entry to the room is required, will address this issue. The issue of whether a resident wishes to be in receipt of support services is not a residential tenancy issue, but a support issue. It is therefore not appropriate to address this through tenancy legislation.

Recommendation

That in providing support services to residents, support workers are required to seek the permission of the resident to enter their room. The Residential Tenancies Act does not need to be amended to address this issue.

2. Use of general areas

Section 121 of the RTA requires a rooming house owner to ensure that a resident has 24-hour access to their bedroom, toilet and bathroom and reasonable access to all other facilities. However some CRU residents are restrained from certain areas of the premises on occasion, as a result of their disability, in order to protect themselves and other residents. This action can only be undertaken where a court order has been obtained. However this type of restraint would present a clear breach of resident's right to 24-hour access of the premises. Therefore the RTA should be amended to allow that where a court order for restraint has been issued, that this over rides a resident's right to 24-hour access to the premises, for the duration of the court order only.

Recommendation:

Section 121 of the RTA does not apply where a court order ordering that a resident be restrained, is in place. This is for the duration of the order only.

3. Quiet enjoyment/disputes

A resident or a rooming house owner can issue a breach of duty notice on the other party, if they believe that a breach of quiet enjoyment has occurred on the rented premises.

However a situation may occur where:

- A rooming house owner could be breached for a failure to ensure quiet enjoyment due to challenging behaviours of another resident.
- A resident could be breached for a failure to ensure quiet enjoyment as a result of their disability.

A policy framework needs to be developed to ensure that a resident or a rooming house owner is not unfairly discriminated against due to a resident's disability, whilst also still ensuring the rights and responsibilities of both parties are protected under the RTA. For example the policy framework acknowledges that while a resident can be

served with a breach of duty notice for interfering with the quiet enjoyment of the rented premises, if the breach of quiet enjoyment is related to the persons disability, and it is deemed that the breach could not be reasonable avoided as a consequence of their disability, the resident will not be held liable.

Further, section 208 of the RTA, which sets out when, and in what manner a breach of duty notice can be served, should be amended to stipulate that a breach of duty notice cannot be served where a breach results directly from a resident's disability.

Recommendation:

That a policy framework be developed, in conjunction with CRU providers, residents and advocacy groups, which stipulates that a resident will not be held liable, where a breach of quiet enjoyment could not be reasonably avoided, due to an individuals disability.

Section 208 of the RTA is amended to stipulate that a breach of duty notice cannot be served for a breach resulting directly from a resident's disability.

4. Damage to premises

Section 116 of the RTA requires a tenant to repair or pay for any damage that they cause to the rented premises. However, where damage could not be reasonably avoided as a consequence of an individual's disability, the resident should not be held liable for the damage. This can be addressed through the policy framework.

Further, section 278 of the RTA should be amended to stipulate that a notice cannot be served if damage to the premises could not reasonably have been avoided, due to a resident's disability.

Recommendation:

That a policy framework be developed, in conjunction with CRU providers, residents and advocacy groups, which stipulates that a resident will not be held liable for damage to the rented premises, where that damage could not be reasonably avoided, due to the individuals disability.

Section 278 of the RTA is amended to stipulate that a notice cannot be served if the damage could not reasonably have been avoided, due to a resident's disability.

5. Capacity

Law requires a person entering into a tenancy agreement to have legal capacity. Whilst many CRU residents will not have the capacity to sign a lease agreement this should not deter these residents from being provided with the same rights others enjoy. However further work needs to be conducted in this area to determine the best method by which to ensure that the issue of capacity is addressed. Best practice would be that an order is obtained through the Guardianship and Administration Act, possibly a limited order of administration for tenancy agreements; however there may be other avenues. Further work would then need to consider whether an amendment to the RTA defining legal capacity should be considered. Either way, this issue needs to be resolved in order to ensure clarity of legal responsibility.

Recommendation:

Following further work on this issue, in conjunction with residents, advocates and CRU providers, consideration be given to amending the RTA to make provision for an authorised /nominated person to contract for or advocate on behalf of an individual who is not able to make decisions affecting their tenancy independently.

6. Safety of residents and staff

The rooming house provisions of the RTA contain significant sections specifically dealing with issues of disruption, danger and serious violence. These sections operate to protect residents, rooming house owners and managers, and staff of the rented premises. The policy framework should carefully consider these sections, and place limits on when these sections of the RTA can be used. Particular attention must be given to situations where an incident is the result of an individual's disability. The policy framework must also acknowledge the unique position of residents and the difficulty of finding appropriate alternative accommodation, where a relationship breaks down, and to provide for security of tenure for residents above the current provisions under the RTA.

Recommendation:

That the policy framework set clear boundaries on when notices relating to disruption, danger and serious violence can be used. The unique need for security of tenure for residents must also be taken into account.

7. VCAT's ability to understand the complexity of CRU management.

VCAT Members who sit on the Residential Tenancies List will need to be provided with training on the issues related to CRU's, their residents and operators to ensure sensitivity and greater understanding of the issues.

Recommendation:

That training is provided to VCAT Members from the Residential Tenancies List to ensure sensitivity and greater understanding of the issues relating to CRU's.

8. Moving residents from their home

Currently, residents of CRU's are able to be moved from their home, with little or no consultation with them, and no clear mechanism by which the resident can voice their opinion, desire or needs in the decision making process. Moving home is one of the top three most stressful situations in a person's life, whether they have a disability or not. It is imperative that residents are included as an active participant in any decisions relating to their home.

There are situations where the medical or support needs of a resident may have changed, and the CRU is unable to meet those needs, due to extra staffing requirements or other additional resourcing requirements. Where this is the case, a resident and/or their guardian should be party to the discussions, and where appropriate, be supported to make their own decision.

For example, a resident of a community run rooming house may discover that they have developed asthma. The resident will then decide whether they should look for alternative accommodation, that will better support their changing health needs, or whether they prefer to remain where they are, and try to accommodate the situation as

best they can. The landlord in this situation cannot tell the resident that they must leave. It is a support issue. The same principle should apply to residents of CRU's and their guardians.

The policy framework should address security of tenure issues, and should include three main points.

- That clear mechanisms are established to ensure that residents' opinions, desires and needs drive any discussion about relocation.
- That no reason notices to vacate are prohibited from use in the CRU program.
- That independent grievance procedures and appeals mechanisms are established and enforceable where a CRU provider or support agency fails to comply with the policy framework.

Recommendation:

That the policy framework improves security of tenure for residents through the following methods.

- *That clear mechanisms are established to ensure that residents' opinions, desires and needs drive any discussion about relocation.*
- *That no reason notices to vacate are prohibited from use in the CRU program.*
- *That independent grievance procedures and appeals mechanisms are established and enforceable where a CRU provider or support agency fails to comply with the policy framework.*

Further Issues

Advice and Advocacy Service

Residents of CRU's will require an independent advice and advocacy service that specialises in tenancy legislation to ensure that adequate and appropriate representation. Funding should be made available for this through both DisAbility Services and Consumer Affairs Victoria.

Recommendation

That funding is provided through DisAbility Services and Consumer Affairs Victoria for a tenancy advice and advocacy service specifically for CRU residents.