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Chris Humphreys
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By e-mail: eliza.poulton@justice.vic.gov.au

14th July 2006

Dear Mr Humphreys,

**RE: EQUAL OPPORTUNITY (MISCELLANEOUS AMENDMENTS) BILL
ISSUES PAPER**

The Tenants Union of Victoria welcomes the opportunity to respond to the Equal Opportunity (Miscellaneous Amendments) Bill Issues Paper.

This submission focuses on amendments that will enhance the rights and opportunities of tenants. On the broader amendments proposed in the Issues Paper, we endorse the submission made to you by the Federation of Community Legal Centres.

We support the Victorian Government's commitment to addressing institutional and systemic discrimination by amending the *Equal Opportunity Act* 1995 ('the Act'). In its current incarnation, the Act provides an important mechanism for resolving complaints and providing relief on an individual or 'case by case' basis. However, the Act cannot adequately tackle the institutional structures, policies, practices and attitudes that give rise to discriminatory conduct.

The Tenants Union is also mindful that the law has only a limited impact on addressing the causes and effects of disadvantage in the community. Improving the accessibility of the discrimination complaints mechanism does not directly alleviate issues such as poverty, insecure housing and homelessness, ill health, and unemployment. Unfortunately, experiencing these problems may make people more vulnerable to discrimination, and also less likely to utilise the complaints mechanism to assert their rights. We contend that to comprehensively address barriers to opportunity in Victoria, more resources must be directed at ameliorating these issues, in addition to enhancing legal processes designed to provide relief from unlawful discrimination. We support the significant policy and funding initiatives that have been delivered as a result of A Fairer Victoria but believe that, especially in the area of housing, more needs to be done. We certainly welcome the announcement last month in A Fairer Victoria: Progress and Next Steps that the State Government will develop a broad housing framework. We believe

that matters associated with discrimination and housing should also be examined and addressed as part of that framework.

Tenants Union of Victoria

The Tenants Union of Victoria (TUV) was established in 1975 as an advocacy organisation and specialist community legal centre, providing information and advice to residential tenants, rooming house and caravan park residents across the state. We assist about 25,000 private and public renters in Victoria every year. Our commitment is to improving the status, rights and conditions of all tenants in Victoria. We represent the interests of tenants in law and policy making by lobbying government and businesses to achieve better outcomes for tenants, and by promoting realistic and equitable alternatives to the present forms of rental housing and financial assistance provided to low-income households.

Discrimination in the private rental market

Gathering data about the extent of discrimination in the provision of rental property is difficult because market conditions tend to mask instances of discrimination. There has been a shortage of rental housing for many years with the problem now especially acute, particularly at the low cost end of the market. The vacancy rate, which indicates the amount of rental property unoccupied in Victoria, is currently at an extremely low level of 2.1%, and is actually lower in some metropolitan and regional areas.

Because of this shortage, there is increased competition for the housing available. Landlords and real estate agents are consequently receiving larger numbers of applications, which permits them a greater opportunity, if they do at all, to cite reasons other than discrimination as a reason for deciding or refusing to grant a lease to a particular applicant. However, workers in the housing sector are aware that, despite the difficulties caused by current market conditions, prejudice and discrimination are endemic problems in the private rental market. In particular:

- single parents;
- larger families;
- indigenous Australians;
- recently arrived refugees and migrants;
- people moving out of crisis and public housing into the private rental market;
- people recently released from prison;
- people experiencing mental illness
- young people;
- people listed on unregulated tenancy databases
- disabled Victorians; and
- people in receipt of Centrelink incomes, especially the unemployed

are identified as some of the population cohorts that are likely to be discriminated against by landlords and real estate agents. This is demonstrated by the excessive numbers of applications for housing made and the rejections received by people in these groups. Furthermore, the personal experience of housing workers and tenants also suggests that

some property managers and landlords hold biased and unfair beliefs about the suitability of people in these groups as tenants.

Currently, tenants are unlikely to avail themselves of the complaints mechanism administered by the Equal Opportunity Commission of Victoria (EOCV) if they believe they have been discriminated against in the provision of housing. There are many possible reasons for this. In the first instance landlords and agents are not required to tell applicants the reason why their applications have been unsuccessful so many will simply have no idea that the landlord or agent has made a specific point of not allocating the property to them for a prohibited and discriminatory reason. Further, tenants may not be aware of the complaints mechanism and how it operates; may be hesitant to make a complaint for fear of being 'blacklisted' on unregulated residential tenancy databases for future tenancies; or may be discouraged because of perceived difficulty proving their claim.

However we believe that the most significant reason why prospective tenants don't make a complaint to the EOCV is that the complaints process, even at its most speedy, is simply too long for someone desperately in need of rental accommodation. By the time a complaint has been through the process at the EOCV the property is likely to have been tenanted and the redress that the complainant is after- a successful application for that property- is unable to be delivered. While we always encourage tenants who believe they have been discriminated against to complain to the EOCV it is understandable that they are reluctant to complain when they don't believe, even if they have a strong claim, that their complaint will result in the fulfilment of their housing need. We believe that consideration should be given to the relationship between the *Residential Tenancies Act 1997* and the *Equal Opportunity Act 1995* to ensure that tenants have a legitimate opportunity for their complaint to be heard and for some redress to be available to them within a reasonable period of time.

Representative complaints

The Tenants Union supports the proposal to amend the Act to permit representative complaints to be made. Representative complaints will increase the accessibility of the complaints procedure for disadvantaged and marginalised groups who may be apprehensive about initiating proceedings. This would be particularly useful for tenants who are concerned about making a complaint in their own name because of fear of being blacklisted and the difficulties this would cause them in securing rental housing in the future.

For this reason, we do not support the proposal that the representative complaints mechanism contained in *Racial and Religious Tolerance Act 2001* (Vic) ('RRTA') should be used as the model for the new provisions to be included in the Act. Because the RRTA model requires complainants to be named in the claim, it does not ameliorate the fear of stigmatisation that potentially discourages tenants from making complaints. We therefore endorse the view of the FCLC that the representative complaints mechanism contained in the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) provides a superior model.

VCAT remedies

We support the proposed amendments to s 136 of the Act that will permit VCAT, if discrimination has been proven, to make orders that affect a broader group of individuals

than merely the complainant. This would permit VCAT to play a more effective role in addressing systemic discrimination.

Indirect discrimination

The Tenants Union supports the removal of the proportionality test, but is concerned that replacing it with the proposed detriment criterion may impose an unworkable evidentiary burden on the complainant. Some of the effects of discrimination - for example, humiliation, shame and distress - are difficult to measure or quantify. We await the draft amendments before making any further comment on this point.

We also support transferring the onus of proof to show that a requirement or condition found to be discriminatory is reasonable in the circumstances from the complainant to the respondent.

Exemption applications

The Tenants Union supports the proposal to formalise the current VCAT practice of notifying EOCV of any unusual applications for an exemption in new provisions. The Issues Paper indicates that this will be achieved by amending the Act so that a Presidential Member of VCAT may notify EOCV of an exemption application if s/he thinks it appropriate to do so. However, the utility of this proposal depends on a sufficiently inclusive definition of "appropriate," and on VCAT members having sufficient training and knowledge of both the Act and the occurrence of discrimination in the community and the direct and the more subtle forms discrimination can take. For this proposed amendment to have a positive effect, we suggest that it be beneficial for VCAT members to receive appropriate training about discrimination and its effects in the community. We await the draft amendment before making further comment.

We also support the proposal to grant EOCV standing to make submissions in exemption application proceedings, and to permit EOCV to apply for the granting, renewal or revocation of an exemption.

Objectives of the Act

The Tenants Union supports the proposed amendments to the Objectives of the Act, so that institutional and systemic discrimination are recognised within the ambit of the legislation.

EOCV's educative and research functions

The Tenants Union supports the proposed expansion of the educative and research capacity of EOCV, particularly in regard to the promotion of attitudinal, structural and institutional change to address systemic discrimination. However, this must be accompanied by sufficient funding to ensure that EOCV is resourced to fulfil these additional functions.

Intervention power

The Tenants Union supports the proposal to allow EOCV to intervene in VCAT proceedings without leave. We agree that this would have a positive impact on both decision-making (as Members would benefit from the expertise provided by EOCV) and the development of a consistent body of equal opportunity jurisprudence.

Lodgement by authorised agent

We support the proposal to permit the lodgement of complaints by the authorised agent of a complainant. However, for the reasons outlined in regard to representative complaints (see discussion above), we suggest that complainants entitled to utilise agents to act on their behalf should not be required to be identified, if they believe that they may be subject to adverse consequences because of initiating proceedings.

Extension of time for investigation

The Tenants Union supports the proposal to grant EOCV the power to extend the period of time within which EOCV must notify parties of its decision to decline to entertain a complaint to 180 days in circumstances defined in the Issues Paper.

We also support the inclusion of a process that enables either party to a complaint to apply to VCAT for a review of EOCV's decision to decline to hear a complaint within 7 days of the EOCV's decision, and for VCAT to hold review proceedings within 14 days of this date.

Delegation of complaints functions

The Tenants Union supports the proposal to permit EOCV Members to delegate certain administrative functions to EOCV officers in principle. We await the draft amendments before making any further comment.

Inquiry meetings

The Tenants Union agrees that formalising the current procedure of inquiry meetings may be counterproductive to the expeditious resolution of complaints.

Welfare measures and special needs

The Tenants Union supports the proposed amendments to s82, which we believe will maintain appropriate protections for providers of services to disadvantaged groups or groups with special needs without offering them a blanket exemption from the requirements of the Act.

Discrimination by refusing to allow alterations

Section 51 of the Act currently provides that accommodation providers must permit tenants with impairments to make reasonable alterations to the property to meet their particular needs. These alterations must be made at the expense of the tenant, who must also undertake to restore the property to its original condition upon the termination of the tenancy. Alterations are only allowed if they do not require concomitant alterations to the residence of another person, and if restoration of the property to its original condition is reasonably practicable in the circumstances.

This provision only applies to accommodation providers - ie property owners. Bodies corporate are not required to comply with this section, meaning that tenants and owner occupiers cannot make alterations to common areas governed by the body corporate in order to effect access to that property.

The Issues Paper proposes to recast section 51 to include bodies corporate. TUV supports this proposal in principle, as it will contribute to enhancing the accessibility of residential

property in Victoria. Accessibility and the capacity to make necessary alterations to rental properties will become increasingly important in the future, given Victoria's aging population. Clearly, amending the ambit of s51 to include bodies corporate will not of itself result in widespread increased accessibility for those with disabilities, but we believe that it is important to articulate the social responsibility of landlords and bodies corporate in relation to the services they provide. We await the draft amendment to s51 before making any further comment.

A further issue in relation to this section is the concern we hold about the lack of security of tenure somewhat undermining the intention of this provision. Most tenants are offered 6 or 12-month leases to properties with no guarantee that they will be in the property for any period after the lease has ended. Even though many tenants remain in the property, as periodic tenants, after the expiration of their lease they are liable to receive a notice to vacate at any time for a variety of reasons, including one for no reason. For a tenant who is disabled and requires alterations and wishes to rely on this section cost may be a significant issue. However for those that are able to afford the alterations and the "make good" at the conclusion of the tenancy there remains the issue of the limited length of time that they may actually be able to rent that property and hence derive a sufficient benefit from the alterations to justify the expense and effort. We therefore contend that the lack of security of tenure actually serves to undermine the effectiveness of this section and further consideration should be given to security of tenure in residential tenancies prior to the Bill proceeding into Parliament.

Secrecy

The Tenants Union supports the proposal to amend the secrecy provisions of the Act to allow for EOCV Members, staff or the EOCV's authorised agents to make reasonable or necessary disclosure for the purposes of, or in connection with, the discharge of its functions and duties. The capacity to publish outcomes and comment on complaints that raise public policy issues - while ensuring the complete anonymity of parties - will be necessary if the EOCV's research and educative role is expanded in the manner envisaged by the Issues Paper.

Please do not hesitate to contact me at the Tenants Union of Victoria on (03) 9411 1410 if you wish to discuss any of the matters raised in this submission further.

Yours sincerely,

Rebecca Harrison
Research & Policy Worker
Tenants Union of Victoria