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3rd May 2006

Dear Ms Daly,

Estate Agents (Professional Conduct) Regulations 1997

The Tenants Union of Victoria welcomes the opportunity to make a submission to Consumer Affairs Victoria (CAV) about the *Estate Agents (Professional Conduct) Regulations 1997* (the Regulations), and in particular:

1. whether there are any matters not covered by the Regulations that should be;
2. whether there are any difficulties with the expressions used in the Regulations or the language generally; and
3. whether there have been any problems generally identified with their content.

Who we are

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.

The Private Rental Market in Victoria

Australian Bureaus of Statistics (ABS) data shows that there are approximately 329,000 private tenant households in Victoria. Around 18% of all Victorian households reside in the private rental market. ABS data also indicates that real estate agents manage about 60% of all residential tenancies in the private market. Thus, a significant proportion of all Victorians are likely to have regular contact with a real estate agent property manager at some time during their lives.

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Furthermore, the vast majority of low-income and financial disadvantaged households are accommodated in the private rental market. Single parents, recently arrived migrants, young adults, and recipients of government income support are overwhelmingly likely to be housed in the private rental market. These groups face significant difficulties in securing housing, because their limited incomes constrain their accommodation choices and there is undersupply of low cost accommodation. Anecdotal evidence collected by ourselves, the Equal Opportunity Commission of Victoria (EOCV) and housing support workers from community organisations and migrant resources centres suggests that tenants from these disadvantaged groups find it more difficult to secure housing than other classes of tenant, and their difficulties are exacerbated by unfair prejudices held by landlords and property managers about their ability to pay rent, to sustain tenancies in the long term and to maintain the property to a reasonable standard.

TUV is currently undertaking a number of projects investigating the extent of discrimination against classes of vulnerable tenant in the private rental market, with a view to developing strategies to combat discrimination and ease the squeeze on these already disadvantaged groups.

Poor Real Estate Agent practice

Through our telephone advice and tenant advocacy services, we receive a significant number of complaints about poor real estate agent practice in regard to property management.

This evidence is supported by Consumer Affairs Victoria (CAV) data. According to the CAV Annual Report 2004/05, rental property management by estate agents on behalf of landlords attracted a high level of complaints. 323 cases (30.4% of total matters) were referred to the Estate Agents Resolution Service.

In a submission made earlier this year to the Estate Agents Council (EAC) pursuant to the Estate Agents Licensing Consultation, we identified the poor agent practice in the provision of property management services. Our files show some egregious examples of poor agent practice, including:

- Agents entering rental properties without providing the tenant with the form of notice required by the *Residential Tenancies Act 1997*;
- Agents breaking into tenants' property to gain access;
- Agents pressuring tenants to make properties available for inspection an unreasonable number of times per week, and not informing them of their right to receive compensation for inconvenience caused;
- Agents charging illegal fees
- Evidence of systemic discrimination in the provision of rental property on the basis of race, age, parental status and source of income that may constitute breaches of anti-discrimination statutes such as the *Equal Opportunity Act 1995*, the *Sex Discrimination Act 1984* (Cth) and the *Racial Discrimination Act 1975* (Cth).

We would be very happy to discuss and elaborate on our evidence of poor and unlawful agent practice if you would like further detail on this point.

The extent of poor practice may be partly due to insufficient education about property managers' responsibilities under the *Residential Tenancies Act 1997*, anti-discrimination statutes and, in the cases of acts constituting trespass and/or breaking and entering, under the criminal law. Poor agent practice may also be promoted by insufficiently rigorous enforcement of breaches of legal obligations. We appreciate that a policy of mediation and conciliation creates stable and productive relationships between government regulatory agencies and the real estate sector, but we also believe that appropriate disciplinary action must be taken against agents who are in breach of their obligations to make it clear to all that unlawful and unprofessional behaviour will not be tolerated.

The Estate Agents (Professional Conduct) Regulations 1997

1. *Are any matters not covered by the Estate Agents (Professional Conduct) Regulations 1997 that should be?*

The *Estate Agents (Professional Conduct) Regulations 1997* prescribe standards of probity in the provision of real estate services, requiring agents and agent's representatives to, for example, act fairly and honestly; to have a 'working knowledge' of laws and regulations relevant to the profession; and to exercise appropriate skill, care and diligence in the conduct of the profession. Breach of these professional standards affects a person's eligibility to obtain and retain a licence. Licensed real estate agents are responsible for the acts and omissions of the agent's representatives in their employ, and misconduct on the part of representatives affects the ultimate licence holder.

The most obvious deficiency of the current Regulations is the absence of specific reference to good conduct in the provision of property management services. While many of the obligations apply to both sales and property management functions, we contend that a lack of targeted provisions likely contributes to poor agent practice. This is compounded by the widely held perception that renting is a transitional and somehow less legitimate form of tenure, by comparison with home ownership, and that property management is consequently viewed as less important than property sales.

We believe that consumers (including both owners and tenants) would benefit from more explicit regulation. Targeted regulation could take a number of forms:

- current regulations could be amended to include specific reference to property management; and/or
- new regulations could be inserted that described existing probity regulations in terms of property management; and/or
- Enhanced regulation of property managers could be included in a new set of regulations made pursuant to the *Estate Agents Act 1980*, or the *Residential Tenancies Act 1997*.

2. *Are there any difficulties with the expressions used in the Regulations or the language generally;*

While the Regulations are expressed in clear and straightforward language, there is insufficient guidance about how professional obligations are to be appropriately discharged. For example, while an agent must act "fairly" and "honestly" (r 6), there are no definitions or standards of fairness and honesty by which conduct can be objectively measured.

While we concede that expressions such as “fairly,” “honestly” and similar have defined legal meanings, we believe that better practice would be encouraged – and disciplinary proceedings avoided - if the content of agent obligations was more comprehensively described. Instead of broad statements about probity, it would be more useful to detail prohibited forms of conduct, so that the actions that will be prosecuted and punished is clear and inadvertent misconduct can be avoided. Thus, regulations pertaining to the conduct of property managers should explicitly state that agents must not:

- (a) engage in conduct that would result in breach of the *Residential Tenancies Act 1997*;
- (b) engage in conduct that would discriminate against a tenant or potential tenant on any grounds prohibited under the *Equal Opportunity Act 1995*, the *Sex Discrimination Act 1984*, the *Racial Discrimination Act 1975*, or that would contravene the *Racial and Religious Tolerance Act 2001*;
- (c) Fail to inform a tenant or potential tenant of their rights under the Residential Tenancies Act and any other
- (d) Fail to act to promote/protect the legal rights of tenants and potential tenants
- (e) engage in any conduct intended to pressure or intimidate a tenant into taking a course of action or refraining from taking a course of action;
- (f) enter or otherwise deal with rented premises in a manner that contravenes the *Residential Tenancies Act 1997* or other relevant statute.

While many of these provisions are already stated in other statutes, we contend that that the number of complaints made in regard to poor property management practice indicates that better targeted regulation is needed, and that agents must be made more cognisant of their professional obligations and the serious disciplinary consequences of any breach. Making express reference to standards of probity in relation to property management will have the effect of both heightening awareness of expected standards of conduct and encouraging better practice as breach of the regulations goes to the capacity to maintain a licence.

3. *Whether there have been any problems generally identified with their content.*

As discussed previously in this submission, the most obvious problem with the regulations in their current form is that there are no specific regulations pertaining to property management. Our considered response to this deficiency has been detailed above.

However, we must emphasise that more prescriptive regulation of agent conduct will not result in enhanced consumer protection without an effective compliance and enforcement regime. Complaints directed to CAV must be investigated thoroughly; instances of breach reported to the Estate Agents Council (EAC) for adjudication; and appropriate penalties must be imposed for misconduct. These penalties should be directed at the agent’s ability to provide real estate services, and should involve suspension from practice; conditions imposed on capacity to practice (whether permanent or for a shorter fixed period); or revocation of licence and consequently the ability to provide real estate services.

If you wish to discuss any matters raised by this submission further, please contact me on (03) 9411-1410.

Yours Sincerely,

Rebecca Harrison
Research & Policy Worker
Tenants Union of Victoria