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6<sup>th</sup> March 2006

Dear Chairperson,

**RE: Estate Agents Act 1980 - Estate Agents' Licence Consultation**

The Tenants Union of Victoria welcomes the opportunity to contribute to your report to the Minister for Consumer Affairs on the scope of the licensing regime prescribed by the *Estate Agents Act 1980* and associated regulations.

**Who we are**

The Tenants Union of Victoria 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 Inquiry**

The Terms of Reference of this Inquiry call for an assessment of the costs and benefits of broadening the existing licensing regime for real estate agents, to allow certain professional groups (lawyers, accountants and similar) to provide real estate agent services. Currently, in order to practice as a real estate agent in Victoria, a person must obtain a licence. Section 14 of the *Estate Agents Act 1980* ('the Act') prescribes the licensing conditions:

A person must -

- be at least 18 years old;
- complete any courses of instruction prescribed in regulations;

continued...

- have been employed as an agent's representative for prescribed period of time or have held a licence in the preceding five years; and
- satisfy any other requirements that may be set out in the regulations.

The *Estate Agents (Education) Regulations 2004* stipulates that Certificate IV in Property (Real Estate Agency Practice) must be successfully completed before a licence can be granted. This course covers a range of competencies in regard to both the sale and leasing of real property.

The Minister for Consumer Affairs is particularly interested in whether the present licence requirements should be relaxed or waived in favour of lawyers, accountants and other suitably qualified professionals. The capacity for exemptions exists pursuant to s5(2)(h) of the Act, and that the *Estate Agents (Exemption) Regulations 1997* exempts certain corporations and bank employees carrying out prescribed transactions from compliance with these educational requirements.

### Comments

Australian Bureau 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. 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.

The Tenants Union does not believe that expanding the range of people who can offer real estate services is problematic per se, if it increases competition and results in better outcomes for consumers. However, we are concerned that exempting certain applicants from all or part of the licensing requirements may have a deleterious effect on industry standards, and is therefore not in the best interests of consumers.

Through our legal and advice services, we receive a significant number of inquiries and complaints about poor agent practice in regard to rental property management every year. Consumer Affairs Victoria (CAV) reports a similar experience; according to their Annual Report 2003/04, "[m]anagement of rental properties by estate agents on behalf of landlords continued to attract a high level of written complaints. Some 291 cases (28.25% of total matters) were referred to [the Estate Agents Resolution Service] for conciliation" (p. 52).

Our files show some heinous examples of poor agent practice, including:

- Agents entering rental properties without the permission of the tenant;
- Agents breaking into tenants' property to gain access (when permission to enter has not been granted);
- 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;
- 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 our evidence of poor and unlawful agent practice if you would like further detail on this point

Poor practice may be due in part to insufficient continuing education about property managers' responsibilities under the *Residential Tenancies Act 1997*, anti-discrimination statutes and, in the egregious cases of acts constituting trespass and breaking and entering, under the criminal law. We do not foresee that instances of poor practice will be prevented by merely increasing the numbers of people providing real estate agent services, in the absence of effective and continuing training and education.

Poor agent practice may also be promoted by the lack of observable consequences for breach of obligations. While we appreciate that a policy of mediation and conciliation creates stable working relationships between government and the sector, we believe that all breaches of agents' obligations under the *Residential Tenancies Act 1997* and the Rules of Professional Conduct should be vigorously prosecuted to make it clear to all that unlawful and unprofessional behaviour will not be tolerated.

### **Conclusion**

Clearly, the number and types of complaints made about poor property agent practice indicates that any relaxation of the current licensing and training requirements would be inappropriate, regardless of the professional background of the applicant. Expanding the range of persons that can offer real estate services will not enhance consumer protection; it will merely make it easier for the professional groups identified to conduct their businesses. Given the incidence of deficient and unlawful agent practice in the market today, we question why exempting lawyers and accountants from the current licensing regime would take priority over better protecting tenants from the consequences of poor practice. The Tenants Union contends the interests of consumers would be better served by improved training and education programs for real estate agents; by the enforcement of relevant laws and standards; and the prosecution of unlawful conduct.

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