

Submission in Response to
**Residential Accommodation
Issues Paper,
Consumer Affairs Victoria**

September 2007

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Executive Summary

The Residential Accommodation Issues Paper provides a valuable opportunity to reconsider the broad regulatory framework that applies to residential tenancies and for the Government to fulfil a number of commitments it made prior to the last election.

In refining the regulatory framework we think it is vital that Government takes into account the contemporary reality of the residential tenancies sector and in particular the significant problems confronted by low income and vulnerable tenants and residents. The private rental sector is no longer the short transitional tenure it was when the first residential tenancies legislation was established in the late 1970's.

The basic principle underpinning our response is that the current regulatory framework fails to provide sufficient protection to enable tenants and residents to feel confident and empowered to exercise their rights. Tenants and residents remain fearful of retaliatory eviction in one form or another and of prejudicing future access to housing by listing on a tenancy database. Without significant improvements in consumer protections an individual complaint driven process will remain hopelessly inadequate for rental housing.

Without standards to guarantee a minimum quality of rental housing, the chronic undersupply of low cost housing will continue to force low income and vulnerable households to sub standard rental properties and marginal forms of housing.

Once the appropriate level of consumer protection is established, we can develop an information, monitoring and compliance regime with a greater chance of success.

The range of recommendations contained in our submission is intended to both enhance the regulatory framework and to establish a more effective approach to information and compliance.

Introduction

The Tenants Union of Victoria welcomes the opportunity to respond to the Residential Accommodation Issues Paper.

Established in 1975, the Tenants Union of Victoria is an advocacy organisation and specialist community legal centre representing the interests of residential tenants individually and collectively.

We advocate for improvements in the status, rights and conditions of all residential tenants, including caravan park and rooming house residents. We represent the interests of residential tenants to government, non-government organisations and businesses. We also provide information, advice and advocacy for residential tenants, promote community awareness of tenancy law and issues, and provide accredited training for tenancy and housing workers.

The development of the Residential Accommodation Strategy is an important opportunity for the government to restore the balance of regulation of residential tenancies and to implement some overdue reforms addressing housing standards and security of tenure. We urge the government to fulfil the election commitments made in the statements on Housing Affordability and Addressing Disadvantage and to implement the actions outlined in Towards an Integrated Victorian Housing Strategy.

The Rental Sector Context

It is important to understand the residential tenancies legislation and practices in the context of changes in the residential rental market.

The residential rental market has undergone some fundamental shifts in the last couple of decades. What was once viewed as a very transitional tenure is now becoming a long-term or lifetime tenure for low and middle-income households. Around 40 per cent of Australian tenants have lived in rental housing for more than 10 years.

Middle-income households are spending longer in the private rental market, as the increasing cost of home ownership means it takes longer to save a sufficient

deposit. This group often ‘trade down’ in the rental market, occupying inexpensive properties to maximise their capacity to save for ownership.

Trading down increases competition at the low-cost end of the market, reducing the number of properties that are affordable for low-income households. These households are forced to occupy more expensive properties than they can afford and spend a greater proportion of their income on rent.

Low-income renter households are more likely to experience housing stress than any other group.¹ Housing stress, or housing related poverty, 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 their rent. What this means is that the cost of rent alone is a direct cause of financial hardship and poverty for this group – that once rent is paid, there is insufficient income remaining for the other essential costs of living, such as food, utilities, transport or health care.

Access to public and community housing, the affordable alternative to private rental, is now highly restricted for low income households. In recent years, access to public housing has been targeted according to “greatest need.” The average waiting time for allocation of wait-turn public housing is approximately 12 years.

As low-income households struggle to compete for mainstream private rental housing, many of the most financially disadvantaged and vulnerable are forced into marginal rental housing options such as caravan parks and rooming houses.

These long-term structural changes in the housing market are placing increased pressure on the private rental sector. Residential tenancies legislation that may have been appropriate in the early 1980’s now fails to provide an adequate legislative framework and an appropriate level of consumer protection.

In particular, it is becoming increasingly apparent that improvements in tenure certainty are vital to ensure stable and sustainable communities and to improve the opportunities of all Victorians in these communities.

In developing the Residential Accommodation Strategy, it should be acknowledged:

- Most low-income Victorians under 60 years of age reside in private rental accommodation. Approximately 86,000 households in the private rental market earn less than \$500 week.²
- Affordable rental housing is becoming increasingly hard to find – it is estimated that there is a shortfall of approximately 32,000 affordable rental properties in the Victorian housing market and 134,000 nationally.³

¹ Ann Harding, Ben Phillips and Simon Kelly, *Trends in Housing Stress* (NATSEM, 2004).

² Australian Bureau of Statistics, *Census 2006*

- The current market conditions are resulting in further significant increases to rent levels. Median rents have risen five times faster than inflation over the past year.⁴
- Affordable rental housing options are now generally located on the fringes of Victoria's cities, and are not well situated in relation to job opportunities and access to social amenity and community services.⁵
- The quality of low-cost rental housing stock is often poor. Generally, dwellings in the private rental market are older, have more structural defects and require more significant repairs than dwellings in the owner occupied sector. Legislation prescribing dwelling standards, such as the Building Code and regulations, apply only to new construction.
- Due to the difficulty of accessing affordable and appropriate housing, many tenants are reticent to complain about conditions or treatment, in case it affects the security of their current tenancy or access to subsequent tenancies.
- Residents of marginal accommodation types such as rooming houses and caravan parks are especially reluctant to make complaints or assert their rights for fear of retaliatory eviction or other adverse consequences.

The most detailed information available on investors in the private rental market in Australia indicates that landlords are mostly small investors who rely on rental income for only a small proportion of their income.

The major motivation identified for investment in rental housing is long-term capital gain. There is **no** evidence that consumer regulation has any significant effect on investment decisions in rental housing. In fact, most studies indicate that tenancy regulation rates fairly low on the list of factors taken into account by landlords. Investment in rental housing is overwhelmingly driven by increasing land and property values and taxation concessions that enhance investment in property over other classes of investment.⁶

According to the latest census data, almost 60% of private rental market housing is managed on behalf of owners by real estate agents.⁷ Property management duties are generally handled by less experienced employees, who do not always have specific educational qualifications and knowledge of the RTA.

Furthermore, they are often inadequately supervised by their principals. This can lead to poor management practices and breaches of the legislation.

³ Judith Yates, Maryann Wulff and Margaret Reynolds, *Changes in the supply of and need for low rent dwellings in the private rental market* (AHURI, 2004)

⁴ Real Estate Institute *Market Facts* (March Quarter 2007),

⁵ Office of Housing, *Rental Report* (March quarter 2007)

⁶ Berry, M. 2000 Investment in Rental Housing in Australia: Small Landlords and Institutional Investors *Housing Studies* 15 (5): 661-681

⁷ Australian Bureau of Statistics, *Census 2006*.

Investors and rental housing managers should be able to conduct their business and generate a reasonable return on their investment but not at the expense of consumers. Tenants, as consumers, should be protected from poor practices and the provision of unsafe or inadequate housing.

Regulatory Framework

Policy Context

The regulatory framework for residential tenancies in Victoria is expressed in the *Residential Tenancies Act 1997* ('RTA'). This Act defines the rights and duties of landlords and tenants; rooming house owners and residents; caravan park owners and residents; and provides mechanisms for the resolution of disputes relating to the tenancy or residency.

Despite the recommendations of the Sackville Report and the original recommendations of the Community Committee on Tenancy Law reform the regulatory framework does not adequately protect tenants and residents in a number of significant areas.

In particular the effectiveness of the consumer protections is fundamentally undermined by the ability of landlords to terminate tenancies without reason and to significantly increase rents within the broad market parameters. These shortcomings have been exacerbated by the common industry practice of excluding tenants and residents from future housing through informal blacklisting and the use of tenancy databases. Estate agents now routinely threaten tenants with listing for the most minor of breaches and disagreements. **These shortcomings and market practices have led to a strong and abiding perception by tenants and residents that the exercise of any consumer protections will prejudice both their current and any future tenancy.**

In addition, a key component of the current regulatory framework is that the consumer protections are exercised through individual complaints and disputes. This approach is emphasised through the preference in the framework for self representation where parties proceed to adjudication of disputes. In practice, most private landlords are represented by professional real estate agents and social landlords are represented by public and community property managers. **In practice, the emphasis on individual disputes and self representation puts every unrepresented tenant or resident at a significant disadvantage both in resolving disputes initially and in seeking redress through the Tribunal system.**

Currently, the main focus of regulatory activity in the rental accommodation sector is education and information provision. While knowledge of rights and duties may be empowering, it does not adequately protect tenants from poor standards of accommodation and from unacceptable management practices. It should be acknowledged that when consumers know that their rights have limited effect or potentially adverse consequences, information and education will have the opposite effect and be disempowering.

Education and information are also of limited benefit to the most disadvantaged and vulnerable tenants, whose poverty means that they exercise very little (if any) choice in the housing market. There are a significant proportion of disadvantaged tenants and residents who cannot adequately comprehend their rights and responsibilities, because of cognitive impairments, mental illness, illiteracy or other personal difficulty. This group needs targeted assistance and ongoing support from housing and support services to utilise the consumer protections in any meaningful way.

Strong legislative protections, accompanied by significant penalties for breach, and actively enforced by regulatory agencies, will better protect tenants from adverse housing outcomes. The current regulatory framework needs to be revised to promote housing rights as a key objective, with emphasis on security of tenure, minimum standards of accommodation, and appropriate penalties for breaches.

An effective compliance regime is based on information provision and education. For many in the sector, this will be sufficient to encourage acceptable practice. However, for a significant proportion, information and education do not deter unlawful conduct. For this group, regulatory authorities must take a more proactive approach, monitoring the sector, identifying instances of unlawful conduct, and prosecuting breaches of relevant legislation.

Questions

- 1a. Should there be common minimum standards of conduct by tenants and landlords across all types and sectors, rather than the existing tenancy specific regimes for tenancies rooming houses and caravan parks?**

As a general principle, there should a common standard of consumer protection for all tenants and residents across all long-term tenancy types. All Victorians who rent their principal place of residence deserve the highest standard of protection.

It is a common misconception that rooming house residents and caravan parks residents are significantly more transitory and need or desire less security than

mainstream residential tenants. In our experience, significant numbers of residents are forced to move due to eviction, poor management practices or the closure of the premises. The current regulatory framework encourages some of the transitory and insecure housing outcomes. Furthermore, these residents tend to move to new premises within the caravan park or rooming house sector, rather than into more mainstream accommodation.

We recommend that the provisions for caravan park and rooming house residents are amended to match those afforded to tenants in Part 2 of the Act.

The extent to which the common standards of consumer protection should be extended to all long-term residential accommodation is a more complex issue which we have examined in detail in a different paper.

1b. Are members of the community aware of their rights and responsibilities?

It is our experience that many tenants and residents are not aware of their specific rights and responsibilities, despite current levels of information provision and education.

There are approximately 420,000 tenant households in Victoria.⁸ Enquiries and complaints to CAV and the Tenants Union of Victoria total more than 240,000 tenancy enquiries annually. This high number of enquiries is a clear indication that many renters and landlords are uncertain about their rights and responsibilities and that the current approach is not informing tenants and residents to a level enabling them to resolve their own problems.

The primary means by which renters are informed about their rights is through the Statement of Rights and Duties. Landlords/property managers or owners/managers of rooming houses and caravan parks are required to provide tenants and residents with this document at the commencement of their tenancy or residence.

However, CAV should be aware that this document may not actually be provided to tenants and residents, particularly if they rent their accommodation from a private landlord, rooming house or caravan park operator. As a prescribed statement that affects both parties understanding of the rights and obligations the penalty for non-compliance should be considerably higher and the period in which a prosecution can be undertaken should be extended to at least two years.

Furthermore, some tenants and residents may have difficulties understanding the document because of poor literacy skills or language difficulties. We understand, and have some concern that the Rooming House and Caravan Park statements are only produced in English language versions.

⁸ *ibid.*

Simplification of the Statement of Rights and Duties to make it shorter and easier to understand may assist tenants and residents to better understand their rights and responsibilities and so reduce disputes.

The development of specific resources for estate agents, landlords, rooming house owners/managers and caravan park owners/managers would also assist in giving providers a better understanding of their specific rights and obligations.

2. Should there be a clear distinction between the standard prescribed tenancy and residency terms, and terms added by landlords and rooming house and caravan park operators?

The provisions of the Act that purport to prescribe standard tenancy agreements are ambiguous. Whilst the limitations of non-standard or additional terms are prescribed by the RTA, the effect and enforceability of any specific term is generally unclear.

Common industry practice is to separate standard terms from additional terms, but all terms are presented to prospective tenants and residents as part of the agreement. Most tenants and residents will not distinguish the standard terms from any additions. We contend that the insertion of a significant number of additional terms creates confusion for consumers about the meaning and enforceability of each individual term.

In addition, many of the common additional or non-standard terms would contravene Part 2B of the *Fair Trading Act 1999*. We have provided a number of examples of the problems created by common additional terms in lease agreements in a previous paper, *Unfair Terms in Residential Tenancies* (prepared at your request).

The extent to which the *Fair Trading Act 1999* applies to some residential tenancies and residencies is unclear⁹. In addition, the process for redress against unfair terms is also unclear. We are not aware of any standard terms that have been proscribed. Advice previously given by CAV is that the onus of disputing unfair terms is on the individual tenant, rooming house or caravan park resident and that the tenant or resident will have to wait until an attempt is made to enforce such a term before seeking a declaration that the term is unfair. The practical effect of this is to leave the tenant or resident at a disadvantage if it is perceived they have “sat” on their entitlements.

We recommend that landlords/property managers and rooming house and caravan park operators should be discouraged from unilaterally adding terms to the standard accommodation lease agreement.

⁹ Specifically the limitation imposed by the definition of “trade or commerce”.

Additional terms may be included if it is reasonably necessary to do so, but in this circumstance, the landlord/property manager or rooming house or caravan park operator should disclose these terms and the reason for their inclusion.

If additional terms are included, prospective tenants or resident should be granted a “cooling off” period, in which they can seek specialist advice about the legality and effect of the term/s.

During the cooling off period, the landlord/property manager or rooming house or caravan park owner should not be able to let the accommodation to another tenant or resident.

This would have the effect of creating greater certainty about the effect of any additional term.

3a. Does the RTA provide sufficient tools to allow effective compliance and enforcement?

The Act does not provide sufficient tools for compliance and enforcement because the penalties prescribed are not sufficient to deter opportunistic or criminal conduct by landlords and property managers. Furthermore, CAV does not take a proactive approach to monitoring and compliance of the residential tenancies sector.

Low penalties demonstrate that an offence is not considered particularly serious. Furthermore, they diminish the incentive for complainants to consider and persist with the prosecution process and for regulators to initiate prosecutions.

The Act does not adequately protect tenants and residents who lodge complaints from the consequences of opportunistic and criminal conduct. In particular, the Act does not sufficiently protect residents against retaliatory conduct broadly defined. Whilst s.266 of the RTA invalidates some notices deemed to have been given in retaliation, these provisions are generally interpreted by VCAT to be limited to the exercise of a right as defined by Div 5 of Part 2. This does not protect tenants or residents who make other complaints or protect them from other retaliatory conduct, such as listing on a tenant database.

Given these circumstances, a compliance and enforcement process driven by individual consumer complaints does not work and will never work.

We recommend the following that all the penalties under the Residential Tenancies Act be increased to a level consistent with other consumer legislation.

3b. What, if any, changes should be made to inspection and investigative powers, the burden of proof required to sustain an enforcement action, the level of penalties and the range of remedies available?

Inspection and investigative powers

A serious deficiency of the current compliance and enforcement regime is that it is complaint driven, requiring tenants or residents to lodge formal complaints to initiate inspection and investigation.

Many tenants and residents are reticent to lodge complaints about their accommodation for fear of retaliatory eviction or other adverse consequence. This is particularly true of residents of rooming houses and caravan parks, and will be discussed in greater detail in the relevant sections of our submission.

There is also anecdotal evidence that many tenants and residents may also be unaware of their rights and the existence of compliance and enforcement mechanisms, or may be unsure about how to access these processes.

Housing advocates and support workers also note that where complaints have been made about rental accommodation, CAV inspectors have claimed that they do not have sufficient authority, despite the introduction last year of increased discretionary powers under the *Fair Trading Act 1999* indicating that a complaint made by a tenant, resident or housing advocate should be considered “reasonable grounds” for the purposes of an inspection.

If there remains any uncertainty about the capacity or authority of residential tenancies inspectors to enter premises we recommend a legislative amendment be made to resolve the uncertainty and to ensure that the CAV inspectorate is properly empowered to inspect rented residential premises and investigate complaints.

Penalties

Currently, the penalties for breaches of the Act by landlords, property managers and caravan park and rooming house operators are not severe enough to deter unscrupulous and criminal behaviours. Increasing penalties should discourage poor conduct and thereby reduce the number of tenancy and residency disputes.

Enhanced compliance with the Act could also be encouraged by augmenting the range of penalties available include non-pecuniary penalties, such as the publication of the names of serious and/or recidivist offenders in statewide and local newspapers.

If a registration and licensing system of all providers of rented accommodation was to be introduced, the responsible authority should also be empowered to suspend or terminate the registration or licence of providers who breach the Act.

4. What, if any, further measures are required to deal with non-compliance with VCAT orders?

Non-compliance with VCAT orders is a significant problem, leaving many tenants and residents both out of pocket and disappointed with the regulatory system that is designed to protect them.

To ensure compliance, it should be made clear in the *Victorian Civil and Administrative Tribunal Act 1998* that wilful non-compliance with a VCAT order constitutes contempt or at least an offence with penalties equivalent to contempt.

This would empower VCAT to issue a warrant for the arrest of the offending provider, who would be brought before the Tribunal and tried. The offence is punishable by a prison term of not more than five years, a fine of not more than \$A100 000 or both.

These severe penalties should function as an incentive to comply with VCAT orders.

We would support shifting the burden of proof for these matters to “beyond reasonable doubt” if required.

Rooming Houses

Policy Context

Rooming house residents in Victoria are a particularly disadvantaged group at specific risk of homelessness. Rooming house residents are more likely to be reliant on government income support and to have complex needs (for example, mental health or substance abuse issues) than any other renter group.

Generally, rooming houses are their only accommodation choice, as limited income and/or personal difficulties make accessing or maintaining a tenancy in the mainstream market unlikely or impossible. Many residents are also listed on tenancy databases and are effectively locked out of the mainstream market.

Despite widespread acknowledgement of the particular vulnerabilities of residents, the rooming house sector is substantially unregulated. Legal requirements targeting the amenity and management of rooming house premises do not sufficiently protect residents from poor standards of accommodation and from exploitation by unscrupulous owners and managers. In the very worst cases, the parlous standard of some rooming houses adversely impacts on the health and wellbeing of residents.

Through our advisory and outreach services we have assisted residents living in appalling conditions, such as:

- A family of four living in the basement of a rooming house. The windows had been boarded up, meaning that there was no natural light or ventilation. This also meant that it was impossible to escape in case of fire or other emergency if the door could not be used. The basement was also subject to flooding during rain;
- A single person living in shed at the back of a rooming house. Electricity was provided to the shed by a number of extension leads connected to a power point in the main premises;
- A single person living in a converted linen press, just large enough to contain a single bed. No other furniture would fit in this space, and the door could not be opened completely;

- Up to seven residents of a rooming house living without a refrigerator for more than six months without a reduction in rent to compensate for this loss of service.

The old style rooming house sector is in definite decline. The gentrification of Melbourne's inner suburbs over the last 20-odd years has seen a significant number of larger rooming houses close down, as increases in land values makes sale and subsequent development of rooming houses sites into family homes or executive units a more profitable enterprise. The remaining stock is more often in a poor state of repair.

However, there is also growth in rooming houses through the conversion of existing properties into a number of individual spaces. Such conversions can be either formal or informal.

Informal subleasing arrangements have become more evident and are primarily used by opportunistic providers with the intention of exploiting legislative loopholes to maximise returns to the providers at the expense of security for the resident.

We have dealt with a number of cases where a professional provider rented a house in order to provide rooming house accommodation, thereby becoming the head tenant for the purposes of the RTA. Rooms in the house were sublet to residents, who paid rent directly to the head tenant. When the head tenant failed to pay rent due to the landlord, the landlord obtained a possession order from VCAT because of rent arrears. This meant that the residents were evicted through no fault of their own. The rooming house provisions do not allow for the continuation or creation of a residency similarly to residential tenancies.

More formal conversion has been evident through renovation or redevelopment of existing dwellings. Renovations to existing stock are often for the purpose of increasing the amount of available accommodation, rather than substantially improving the original premises. Such renovations may or may not require building or planning permission and such permission may or may not be obtained. We have certainly encountered illegal subdivision of residential premises with highly dubious safety and building standards. Unfortunately redress for residents in these premises often means eviction by local government, safety or health authorities.

Because rooming house premises tend to be older stock, they are prone to significant structural defects, ranging from an insufficient number of power outlets in rooms, to cracks and propensity to rising damp.

The high demand for accommodation also means that rooming house owners have very little incentive to invest in improving their properties.

This inertia is compounded by the unwillingness of rooming house residents to complain to owners/managers or regulatory bodies such as CAV about poor standard accommodation. Residents are often fearful that complaints or simple requests for repairs will result in a retaliatory notice to vacate or in the closure of the property. For most residents, such a response would mean homelessness, at least in the short-term.

Furthermore, many rooming house residents also report unlawful and inappropriate management practices that infringe on their quality of life. Some examples are:

- Breach of privacy: owners/managers enter residents' rooms without giving the appropriate notice. Interestingly, many of these same operators are conspicuously absent when requested to enter for the purpose of doing repairs;
- Threatening behaviour: owner/managers have responded to complaints or requests for repairs by threatening to evict residents, or have acted in an intimidating manner towards residents. In the case of a group of international students, the operator threatened to contact the Department of Immigration and Citizenship and have the residents' student visas cancelled;
- Charging illegal fees: some rooming houses are charging residents to change light bulbs that have burnt out; for keys; for professional cleaning of the common areas that is not effected; for repairs to fittings and fixtures on the property; and to have the premises fumigated;
- Misinforming residents about their legal rights and obligations, including refusing to provide the statement of rights and duties
- Issuing vexatious notices to vacate as a means of "encouraging" residents to leave of their own accord.

It is also important to recognise that the bulk of rooming house accommodation in Victoria is provided by private operators, who are in the business of letting rooms for profit. Community rooming houses – operated by the not-for-profit sector - make up a very small proportion of overall rooming house stock and access is strictly limited.

Private rooming houses are of particular concern, as many are currently operating under the regulatory radar, as they are either not registered with their local council or provide accommodation for fewer than five residents and therefore do not have to be registered. These opportunistic operators are not providing long term affordable or appropriate accommodation and should be effectively regulated and encouraged to exit the market if they cannot comply.

Questions

1a. Do we need further regulation for rooming houses to ensure protection for residents?

From our work providing outreach services and specialist tenancy advice in the rooming house sector, it is clear that there is a definite need for improved regulation, to ensure that residents are adequately protected from poor management practices and substandard accommodation.

It should also be noted that **enhancing** protections for residents of rooming houses is an explicit election commitment of the current State Government¹⁰ (see *Addressing Disadvantage – Investing in a Fairer Victoria*, p. 3)

1b. If so, in what areas and to achieve what objectives?

The current legislative regime for rooming houses fails to adequately protect residents because:

- Residents of rooming houses have less rights than other residential tenants
- Residents are less likely to exercise the rights they do have and are more likely to be concerned about adverse consequences
- There are no comprehensive minimum standards of accommodation and residents are often too vulnerable to make and pursue complaints.
- Residents who sub-lease from a provider (or head tenant) have no residency rights, and cannot establish residency rights if the head tenant is evicted through no fault of theirs.

The Notice to Leave affects the most vulnerable and disadvantaged of all renters- those who live in rooming houses. While expressed as a suspension this notice leaves the resident in an extremely prejudicial state of limbo- essentially a legislated homelessness. Unlike notices to vacate this notice is effectively an eviction at will as there is no decision by the Tribunal unless and until a challenge to the notice is mounted by the resident.

In practical terms the notice to leave often causes complete hardship for the period of the suspension. From the moment a notice is given the resident must leave the premises. They cannot go back to their room to retrieve their wallet, or even a jacket, for to do so would be to commit an offence. They are rendered homeless from that instant. If given late on a Friday afternoon- as has often occurred- residents are not able to access any form of tenancy information and

¹⁰ *Addressing Disadvantage – Investing in a Fairer Victoria*, p. 3

advocacy until Monday morning. They are also unable to access VCAT over the weekend.

Adding to the lack of protections for residents who have been told to leave is the lack of practical redress for those residents who have successfully challenged the notice. The TUV have successfully had notices to leave dismissed by the Tribunal however have struggled to gain compensation for residents. Despite s. 376(3)(b) mandating the award of compensation for rent and other reasonable expenses incurred during the suspension many residents have lacked the financial means to be able to expend any amounts during this time. If, for example, a tenant has not even been able to take their wallet, or hasn't been able to secure receipts then they will lack the evidence necessary to secure compensation at VCAT. This situation leaves a vindicated resident with no compensation despite having suffered enforced homelessness.

While this notice is expressed as allowing a manager to deal with violence there are grossly ineffective checks and balances on its use. If violence is so significant that a resident needs to be removed immediately then the police should be called. There is also a notice to vacate which can be issued. The checks and balances of having a police presence and of issuing a notice which requires an independent decision before possession is granted provides residents and the community with a far stronger fairness test than the notice to leave.

We believe to redress the balance between rooming house managers and vulnerable residents this notice should be repealed.

If the notice is retained we are recommending the establishment of a civil penalty to be applied where a rooming house manager is found to have served a Notice to Leave without reasonable grounds.

2. What changes, if any, are required in registration and supervision for rooming houses? What agency would have responsibility for this?

Significant changes are required in the registration and supervision of rooming houses to ensure that the residents are appropriately protected:

Accordingly, State Government should:

1. Align the definitions of rooming house in all relevant legislation. The definition should be based on accommodation for 4 or more people within a single dwelling. All ambiguous legislative exclusions should be clarified.
2. Clarify and improve the registration conditions for rooming houses. This should include annual inspections for health and safety and a compliance regime with penalties for more significant breaches. Inspection reports

should be provided to both the Office of Housing and CAV. The register of rooming houses should be publicly available on the Internet, and should include the date of the most recent inspection and a summary of the inspection report.

3. Introduce a licensing scheme for rooming house managers. This should include a “fit and proper person” test, mandatory training and penalties for unlicensed management.
4. Simplify the rooming houses statement of rights and duties to make the basic information on consumer rights more accessible for residents. There should also be an increased penalty for non-compliance with the requirement to provide the statement to a resident.
5. Undertake periodic sweeps of rooming houses for residential tenancies compliance. There should be a particular focus on bond lodgement, statement of rights and duties and extra charges.
6. Provide advocacy to ensure that residents can exercise statutory rights. This should include increased outreach activity to rooming houses.
7. Adopt mandatory minimum standards for the use of Housing Establishment Fund and Bond Loan Scheme money in particular limiting its use to registered premises and licensed managers.

Whilst local government currently has responsibility for registration of rooming houses under the Health (Prescribed Accommodation) Regulations 2001. However there is ample evidence that local government authorities do not see monitoring and compliance with these regulations as a high priority. There are a number of options for the agency that could be responsible for the registration of rooming houses or the licensing of rooming house managers or both:

- Local government
- State government through the Public Health Branch of DHS
- State Government through CAV.

Whichever agency is granted responsibility over any part or the whole of the registration and licensing regime, they should be adequately resourced and have a sufficient number of inspectors available to undertake a proactive, continuous approach to monitoring and compliance.

It is also important to emphasise that the consumer protections already in the RTA should remain with CAV. The registration and supervision regime described above is intended to supplement existing regulation, not replace it.

3. How should the definitions of rooming houses used in the RTA and Health Regulation be harmonised? What is the likely impact?

As stated previously, the two definitions of “rooming house” in Victorian law should be aligned. The preferable definition of rooming house is currently contained in the Act: the provision of accommodation for four or more people within a single dwelling. This is the preferred definition, because it will capture many of the private and unregistered rooming houses currently operating under the radar of the Health Regulation because of size.

The likely impact of aligning the definitions is for the registration process to apply to a greater number of dwellings. This will provide a more accurate picture of the actual supply of rooming house accommodation and enable more effective monitoring of the standard of rooming house accommodation. It should be noted that this accommodation has shared facilities by definition and substandard provision therefore has significant public health implications.

It is possible that increased scrutiny through the registration process will make some opportunistic operators withdraw substandard rooming houses from the market. This is unlikely to have any significant effect on the overall supply of rooming house accommodation while demand remains high. Furthermore, the removal of substandard accommodation is a desirable outcome in itself.

4. What kind of tools can be employed by CAV to inform and empower rooming house residents? How can current information provision be improved?

Given the social profile of rooming house residents we should be realistic about the extent to which information alone will empower residents. Currently, the empowerment of rooming house residents focuses on information and education, mainly through the Statement of Rights and Duties.

Genuine empowerment of residents requires enhanced consumer protection to provide a real sense of security when exercising residency rights. Rooming house residents are less likely to assert their rights because of concerns about retaliatory eviction or other adverse consequences. Knowledge of their rights alone is not empowering if residents are unwilling or unable to exercise them (even with the assistance of specialist housing or support workers).

While it is very important that residents be provided with up-to-date information detailing their rights, responsibilities and avenues for redress, the usefulness of a detailed written document is questionable. Many rooming house residents are illiterate, or have cognitive impairments or mental health issues that mean that the Statement may not be read or understood.

We note that many residents of rooming houses are not provided with the Statement of Rights and Duties upon the commencement of their occupancy, and that they are not aware that a rooming housing manager is legally required to furnish them with a copy.

Improving information provision will also involve more direct action. Outreach services provided to the sector by community groups are a key means of directly contacting residents and of providing them with information and advice that can be tailored to their specific needs. Furthermore, support services provided to residents by other government agencies could be another useful means of providing residents with information about their housing rights.

5. Is the complaints and dispute resolution process accessible and easily understood?

The main failing of the current complaints and dispute resolution process is that it is only activated when a resident makes a complaint. We have regularly made complaints on behalf of residents but there almost invariably appears to be some difficulty in progressing these complaints to prosecution.

As a group, rooming house residents are reluctant to complain because of their (sadly, too often genuine) fears of retaliatory eviction or other adverse consequences.

Furthermore, because many rooming house residents live with cognitive impairments or mental health issues, they may have greater difficulty understanding established processes (even with the assistance of tenancy or support workers), and/or be too intimidated by the formality of the processes to engage with them.

The optimum means of protecting rooming house residents should involve improving the standard and management of housing in the market to reduce the potential for problems and thus diminish the need for complaints and dispute resolution processes.

6. Given the diverse segments and needs in the rooming house sector, is a generic or segmented approach to policy and administration appropriate?

As a group, rooming house residents are marginalised and vulnerable. The reasons for this disadvantage will vary across individual residents, but rooming house residents are generally dependent on government income support and are more likely to live with cognitive or other disabilities, mental health and/or substance abuse issues than the general population. Because all rooming house residents experience severe disadvantage, and are at risk of homeless and exploitation, it is preferable that a generic approach to regulation of the

sector be taken to ensure that all residents enjoy the same rights and protections.

Caravan Parks

Policy Context

A common characteristic of caravan park residents is financial hardship. Residents are generally low-income households who find it impossible to afford housing in the mainstream housing market.

For some residents, a park is the only option available because of a poor rental history, eviction from public housing, or because they are unable to afford the bond required to secure housing in the private rental sector.

Despite apparent growth in numbers of residents who choose parks for lifestyle reasons, this choice is most often motivated by financial considerations, not the freedom provided by a moveable dwelling. In our experience, most long-term caravan park residents establish their homes in a particular park and remain there, choosing park living over other forms of accommodation because it is the most affordable option.

While the issues paper gives some emphasis to residential parks we believe that the situation for “renter/renter” residents is more dire and they are more in need of stronger consumer protections. Whilst we support improvements in consumer protection for “owner/renter” residents it would be scandalous if the more vulnerable and disadvantaged “renter/renter” residents in caravan parks did not secure equivalent or better improvements also.

A particular concern is the loss of caravan park sites over recent years. Increases in land values across the state have meant that sale of sites for redevelopment into units or holiday resorts are an attractive option for owners. Permanent residents are consequently forced to seek accommodation in other parks or in other accommodation tenures. This can prove a costly endeavour, as well as causing significant social dislocation for those obliged to move significant distances to find affordable housing.

Questions

1. What tools can be employed and where should responsibility lie to minimise the detriment to residents following caravan park closures?

Ultimately, the detriment experienced by caravan park residents upon the closure of a park is symptomatic of the lack of affordable rental housing in the mainstream housing market. The Issues Paper correctly identifies that most residents of caravan parks, regardless of age or ownership of their caravan, are there because it is the only housing option they can afford.

The detriment experienced by residents of caravan parks upon park closure has a financial and a personal component:

Financial detriment

Because caravan park residents are generally financially disadvantaged, they may not be able to afford the costs associated with finding new housing and moving. Because residents are generally very low-income households, finding housing that they can afford will be particularly difficult. It is possible they may experience homelessness for a period after the closure of the park, as it will take some time to find new accommodation, particularly in rural areas where there are fewer housing options.

Residents who own their own vans or dwellings may face the additional problem of being unable to move their property from the site, either through cost or practicality. Residents who cannot move their dwelling may also be unable to sell at the time of any park closure.

Personal detriment

Because long-term caravan park residents are not a mobile population group, the closure of a park also breaks up a community. Friendships and supportive relationships established during long tenures are fractured, and residents are forced to move away from a suburb or town in which they have created important and satisfying connections with support, community and health care services that enhance their quality of life.

Clearly, residents displaced by park closure need financial and other support to assist them with the costs of moving.

We recommend that the State Government establish a fund dedicated to defraying the costs of securing new accommodation for needy residents because of park closure.

We also recommend that a strong protocol between State and Local government and the community service sector be established to guide the interaction with park residents in the event of a caravan park closure. We have provided separately a checklist on caravan park closures, prepared at your request.

2. Should there be internal dispute resolution provisions for disputes in caravan parks, or are the current arrangements requiring (for example) disputes over changes to park rules to be resolved by VCAT appropriate?

We do not object to the development of internal dispute resolution (IDR) processes for disputes in caravan parks, but it should be made clear by inclusion in the Act that these processes are:

- Not a replacement for independent, statutory processes such as adjudication by VCAT.
- Voluntary, and that no resident can be required to utilise IDR prior to accessing VCAT

A related issue is the establishment of residents groups and committees, who attempt (among other things) to advocate on behalf of residents with management and to oversee internal dispute resolution processes. Whilst we support such committees or groups in principle, they should not be able to make decisions that bind or adversely effect non-members. The RTA should be amended to make this explicit if required.

3. Are changes to the RTA required to create a fairer environment for security of tenure in parks?

There are two main inequities in the Act reducing security of tenure for caravan park residents:

The 60-day Rule

Residents are not afforded the protections of the Act until they have occupied the park for 60 consecutive days.

No compelling reason has ever been offered for this 60-day waiting period. We note that some unscrupulous operators are in the habit of evicting residents just prior to the expiry of the 60 days, and then readmitting them for another period just shy of 60 days, as means of avoiding the operation of the Act.

This is unfair because tenants or residents of other tenure types are protected from the commencement of their occupancy.

No Reason Notices to Vacate

Any resident can be evicted for no reason.

'No reason' notices to vacate are unfair because they can be used to force residents to seek alternative accommodation by unscrupulous operators acting out a personal vendetta or seeking to exploit the vulnerability of their residents by threatening to evict them.

Twelve other reasons for evicting tenants and residents are already prescribed by the Act. Express reasons give residents certainty about the behaviour that is to be expected if they wish to maintain their occupancy, and do not unduly restrict the capacity of operators to conduct their businesses.

Abolishing no reason notices to vacate would provide residents with greater security of tenure while respecting the right of operators to deal with their property in a reasonable manner.

We recommend that all other notices are aligned with the termination requirements for the mainstream residential tenancies provisions in recognition that caravan park residents are occupying as their main or principal place of residence.

4. What kind of measures can be employed to better empower caravan park residents?

Currently, the empowerment of caravan park residents focuses on information and education, mainly through the Statement of Rights and Duties.

Genuine empowerment of residents requires enhanced consumer protection to provide a real sense of security when exercising residency rights. Caravan park residents are less likely to assert their rights because of concerns about retaliatory eviction or other adverse consequences. Knowledge of their rights alone is not empowering if residents are unwilling or unable to exercise them (even with the assistance of tenancy or support workers).

We note that many caravan park residents are not provided with the Statement of Rights and Duties upon the commencement of their occupancy, and that they are not aware that a park manager is legally required to furnish them with a copy.

Improving information provision will also involve more direct action. Outreach services provided to the sector by community groups are a key means of directly contacting residents, and of providing them with information and advice that can be tailored to their specific needs. Furthermore, support services provided to residents by other government agencies could be another useful means of providing residents with information about their housing rights.

Whilst we have recommended a more standardised approach to residential tenancies agreements, “owner/renter” residents would benefit from a more standardised approach to sales contracts and the application of “unfair terms” regulation to their content. Many of the sales contracts we have seen are legally complex and refer to associated instruments. It is unlikely that many residents fully understand the basis of such contracts.

5. How should CAV respond to the emergence of residential parks?

The emergence of residential parks, as more households find that long-term accommodation in a park is their only affordable option, demonstrates the urgent need for stronger legislative protection of residents’ housing rights.

We note that it is not uncommon that site lease and van purchase agreements in residential parks are unnecessarily complex. Some agreements include deferred management fees, and restrict the right to sell vans in the future.

While obtaining independent legal advice about these agreements would be desirable, the cost is prohibitive for many potential residents. Residents’ interests would be advanced if they could access free legal advice.

We recommend that CAV should provide additional funding to specialist community legal centres to provide this service.

The development of standard form agreements for the purchase of vans and rental of sites should also be developed. Deviation from the standard agreement should be discouraged, and the onus should be on the operator to justify the inclusion of any additional terms. A “cooling off” period should also be built into the contractual process to enable residents to avail themselves of independent, free legal advice before the agreement becomes binding. During this cooling off period, a park operator should be restrained from offering the van and site to other potential residents.

6. Is the RTA the most appropriate legislation for residential parks? If so, are changes to the Act required? If not, what alternative is required?

There appears to be some confusion about where residential parks fit in the current scheme of housing regulation. The Issues Paper considers that residential parks are similar to retirement villages, largely because of the age and employment status of residents of both accommodation types.

In our experience, residential parks provide accommodation only. Retirement villages, as a general rule, provide accommodation and additional services suitable to their resident population, such as health care, meals and security.

Despite the complexity of residency agreements (see above), residential parks are caravan parks for the purposes of the Act. They are clearly not retirement villages, as they do not meet the definition of retirement village in the *Retirement Villages Act 1986*. That definition requires (among other matters determining the age and employment status of residents) the payment of an “incoming contribution fee.” Such a fee is not a condition precedent of residency in a caravan park.

For the purposes of regulation, it is very important that the distinction between caravan parks and retirement villages be maintained. Consumers need to know the source of their rights and obligations, and what protections apply to them. Drawing a distinction between residential and caravan parks, and comparing residential parks to retirement villages, only confuses residents about their tenure and housing rights. This confusion is the likely source of the undercounting of caravan park residents in the 2006 Census. Residents of caravan parks for the purposes of Victorian law may not have nominated a caravan park as their principal place of residence, as they erroneously believe themselves to be residing in a residential park, village, or retirement home.

The changes to the RTA that identified in our submission will benefit all caravan park residents, regardless of age and/or whether they own their van. All residents should enjoy the same high level of protection as a matter of equity. One consistent set of regulations applying to long-term accommodation in caravan parks will also reduce the potential for definitional disputes and make regulation of the sector more straightforward.

7. What are the best approaches to improve residents’ ability to participate in management decisions?

Residents’ ability to participate in management decisions will be best enhanced by amending RTA to improve the security of their tenure. Abolishing the anomalous 60-day rule and no reasons notices to leave will make residents feel more connected to their park and more confident about approaching management about issues affecting their residency, as they have less reason to fear retaliatory eviction or other adverse consequence.

8. What are the key issues relating to park management? How can these best be handled?

For residents, poor and unlawful practices are the key issues relating to park management.

Management of caravan parks would be improved if operators (owners and managers) were required to register their parks and be licensed to conduct the business of providing long-term accommodation.

This will involve:

1. Develop a registration scheme for caravan parks. Include annual inspection for health and safety and a compliance continuum with penalties for more significant breaches. Inspection reports should be provided to both the Office of Housing and CAV. The register of caravan parks should be publicly available on the Internet, and should include the date of most recent inspection and a summary of the inspection report.
2. Introduce a licensing scheme for caravan park managers. Include a “fit and proper person” test, mandatory training and penalties for unregistered management.
3. Undertake periodic inspections of caravan parks for residential tenancies compliance. Particularly focus on bond lodgement, statement of rights and duties and extra charges.
4. Adopt mandatory minimum standards for the use of Government Financial Assistance. Housing Establishment Fund and Bond Loan Scheme money in particular should only be applied to registered premises and managers.
9. **To what extent should the rights and obligations of caravan park residents and owners align with those of rooming house residents and owners, given similar demographics and issues?**

There is no compelling justification for different regimes of rights and obligations across rental accommodation types. All tenants and residents should be able to enjoy a minimum standard of amenity in their homes, free from undue interference and interruption, and be safe from unfair eviction.

The rights and obligations of all tenants and residents should be aligned so they all enjoy the same standard of legislative protection. The appropriate standard is that afforded to tenants in Part 2, Div 5 of the RTA.

10. **To what extent will changes in the proposed for the regulation of caravan parks (and residential parks) affect the long-term supply of such accommodation for various resident segments?**

There is no evidence that increased consumer protection will have an adverse impact on the supply of caravan park accommodation. Demand for long-term caravan park accommodation is likely to remain strong because of the lack of affordability housing the mainstream accommodation market. Further reduction in the amount of accommodation provided by the park sector will be because increased land values make the development or sale of sites a more financially advantageous option than continuing operation as a caravan park.

In addition, the suggestion that improving regulation of the standard of accommodation and management in the sector should not be made because operators may close down substandard parks is unacceptable. Accommodation should meet community expectations of health, safety and privacy, and should not compromise the health and well-being of residents.

11. Does the current regulatory framework satisfactorily protect the security of residence for residents of ‘rental villages’? If not, what consumer protections are necessary at these villages?

We contend that rental villages are covered by the general tenancy provisions of the Act, as they are clearly not “caravan parks” for the purposes of the Act, or “retirement villages” for the purposes of the *Retirement Village Act 1986*.

The Act defines a “caravan park” as an “area of land on which movable dwellings are situated for occupation on payment of consideration, whether or not immovable dwellings are also situated there.” Therefore, if there are no movable dwellings (defined as “a dwelling that is designed to be movable,” not including dwellings that cannot be situated at and removed from a place within 24 hours), a site is not a caravan park for the purposes of the Act.

The *Retirement Villages Act 1986* defines a “retirement village” as a community in which the majority of residents are retired persons who are provided with accommodation and services, and at least one of whom pays or is required to pay an “incoming contribution” upon joining the community. The obvious difference between a rental village and a retirement village is the payment of an “incoming contribution fee.” Prima facie, residents at a site that do not and are not required to pay this fee do not reside in a retirement village (regardless of their age and employment status) for the purposes of the *Retirement Villages Act 1986*.

Residents of rental villages pay rent for their accommodation. Consequently, they are covered by Part 2 of the Act. Unfortunately, some of the confusion in this area is the product of ill-informed advocates and providers. This problem would be mitigated by better informed residents and service providers. We should not be further complicating the consumer protection regime simply because some participants don’t understand the effect of the current consumer protections.

Student Accommodation

Policy context

The Federal Department of Education, Science and Training (DEST) statistics for 2006 demonstrate student enrollments in Australia increased by 51% since 1996. Domestic students have increased by 24% and the proportion of overseas students attending Australian universities has increased from 8% in 1996 to 25% in 2005. Victoria has recorded the second largest number of student enrolments at 242,951.¹¹

As enrolments rise, so too does the demand for housing. No longer contained to university colleges and dormitories, private investors have rushed to capitalise on this demand and student accommodation can now refer to many diverse forms, including self-contained apartments, hostels, Homestay and shared housing in the private rental market. These options also have varying characteristics in relation to their built form, provision of meals, length of stay, tenure, fees/costs and forms of management. Whilst this market was initially concentrated in the CBD and North CBD Fringe (primarily Carlton and North Melbourne) significant growth has been witnessed in the suburbs around major university campuses.¹²

Not all student accommodation types are covered by residential tenancies law. The RTA specifically excludes accommodation affiliated with educational institutions. This is despite many universities having little direct role in the management of affiliated housing and the persistence of conditions which would be considered unlawful under the RTA. Further, universities do not guarantee the appropriateness of accommodation nor do they have adequate dispute resolution processes in place to deal with problems when they arise.

Homestay accommodation, like affiliated accommodation, is a preferred housing option for many international students. The majority of Homestay placements do not meet the definition of a rooming house and are therefore excluded from the operation of the RTA. There is no alternative method for regulating Homestay

¹¹ Department of Education, Science and Training (2007) Higher Education Sector in Australia in 2005 in *Higher Education Report 2005*, DEST; Canberra.

¹² Emmerton, S. (2006) Student Accommodation” or Self Contained Student Apartments? In *Research Insights*, July, Charter Keck Cramer; Richmond, Melbourne.

placements and providers. We note that we have received a number of enquiries and complaints from Homestay students about inappropriate housing conditions and intrusive and culturally insensitive conduct by providers.

International, rural and interstate students face particular difficulties arising from limited knowledge of their new place of study. These students have reported instances of exploitation, non-compliance with the RTA and threats of harassment and intimidation.

All students, many by virtue of their youth and inexperience, face difficulties navigating the housing market for the first time. Many do not have the skills to assess the standard and amenity of properties in order to select an affordable and appropriate dwelling. Furthermore, young people may be unaware of their rights and responsibilities in relation to their housing, and are more likely to enter into agreements binding them with unfair terms.

Questions

1. What types of student accommodation are available?

Students live in a variety of accommodation types, including:

- colleges, halls of residence and dormitories affiliated with their educational institution;
- private rental housing;
- rooming houses
- Homestay arrangements.

In our experience, students primarily reside in private rental accommodation. Therefore, any of the problems in this sector noted throughout this submission will also impact on student renters.

2. What types of student accommodation are outside the RTA?

Not all accommodation types are subject to tenancy legislation.

Students living in accommodation formally affiliated with an educational institution have no rights or avenues for dispute resolution under the RTA. The *Fair Trading Act 1999* will apply in these instances, but it offers less targeted protection.

The RTA also does not apply to students residing in what are effectively rooming houses, unless there are four or more renters at the property.

The RTA also does not apply to the majority of Homestay placements and the application of the Fair Trading Act to such placements is uncertain.¹³

3. Is there evidence that the exemption from the RTA of affiliated organisation needs to be reviewed? How can the rights and obligations of students be protected under the commercial student housing models?

We are unaware of any compelling policy reason for excluding accommodation provided by education institutions or affiliated organisations from the RTA. Universities usually have nothing to do with the management of affiliated accommodation, permitting private companies to be wholly responsible for the setting of rental rates, bonds and conditions of stay. Such rates are usually higher than what is allowed under tenancy legislation and students are often required to pay a variety of charges that would not be permitted under the RTA. Students are also subject to summary eviction from such accommodation; students have little recourse to the student if they wish to dispute the eviction.

We note that many accommodation providers claim to be affiliated with educational institutions are in fact not affiliated. There is no onus to produce affiliation agreements for inspections and they are often claimed to be protected by “commercial-in-confidence”. This claim is made to avoid complying with the RTA. We believe that this prima facie constitutes misleading and deceptive conduct for the purposes of State and Federal consumer protection laws, and that providers that make false claims should be vigorously prosecuted.

4. What obligations do universities have to monitor (vet) accommodation providers?

Within the educational institutions, student housing services provide lists of accommodation options for students on their website and on notice boards. This information is also sent out to students with course information. Universities, however, take no responsibilities for the operating practices or standard of accommodation listed. Accommodation information provided generally includes a disclaimer to this effect.

It is also doubtful that educational institutions adequately monitor affiliated accommodation. Internal dispute resolution (IDR) processes do not replace independent monitoring and dispute resolution mechanisms. A recent review of complaint handling in Victorian Universities from Ombudsman Victoria revealed that University complaints are amongst the most difficult and resource intensive, in part because they are not initially handled well by the University and by the time they reach the Ombudsman, may be protracted and entrenched. Universities often fail to recognise the value of complaints to management as

¹³ ibid

part of a system of improvement. They do not have effective and accessible complaint systems and procedures in place and lack comprehensive centralised record keeping.¹⁴ The Ombudsman notes a strong possibility that protracted grievance procedures are resulting in student withdrawing complaints because of fatigue, frustration or stress.¹⁵

5. Are current arrangement for Homestay students and service providers adequate?

Current arrangements for Homestay students are not adequate. As noted above, the clear majority of Homestay accommodation is not covered by the RTA, and there is no alternative regulation in place to protect Homestay students. There is very little information outlining the rights and responsibilities for students considering or residing in Homestay, and there is also no industry regulator and no code of practice for providers and agents.

We have received a number of complaints from Homestay students, including:

- Homestay providers failing to issue receipts for rent paid, and then accusing students of falling behind in their payments;
- Housing in which students are asked to pay hourly rate to use heating and air conditioning appliances;
- Unreasonable curfews being imposed on students;
- Insufficient provision of food, or food that is of very poor quality or culturally inappropriate for students;
- Students having to asking permission to use household appliance such as washing machines and the television;
- Providers who become guardians of minor Homestay students and abuse their control of students finances;
- Providers not respecting the students' privacy.

Affiliated and Homestay accommodation is sometimes preferred by international students as there is a perception that they provide a safer, more regulated environment for young people. International students contribute more than \$4.2 billion to the Australian economy annually, representing our eighth largest export sector. The global demand for higher education is forecast to increase nine fold by 2025. If Australia wants to capitalise on this opportunity then accommodation should ensure that it is regulated in a way that protects the welfare of students.

¹⁴ Review of Complaint Handling in Victorian Universities, Ombudsman Victoria, 2005, Victorian Government; Melbourne, p 2.

¹⁵ *ibid.*

When a course of study is endorsed by the Victorian Government to overseas students, educational institutions are required by s. 6 of the *Tertiary Education Act 1993* to outline the accommodation options that are available to prospective students and the manner in which this information will be conveyed to students. Currently, these provisions are not being applied adequately and students are not being properly informed of appropriate accommodation options or their rights as tenants. We understand that student housing officers are often aware of these problems but may have some difficulty, given their employment by the institutions, in raising such issues publicly.

The state government should develop performance benchmarks for the industry and develop a code of practice to which Homestay providers should comply. CAV should also work with education institutions and invest some of the profits generated by the international student market into better resourcing advocacy services for international students to ensure that information provided is complete and accommodation options are appropriate.

6. To what extent are issues relating to student accommodation limited to international students?

Student accommodation issues affect all students who live away from home for the duration of their studies, regardless of their place of origin. However, international, interstate and rural students may be more vulnerable because they are not familiar with Victoria, the state housing markets, laws and regulations, and support services available.

As a group, students report being discriminated against in the provision of rental housing. This may be because of false stereotypes about young students as irresponsible tenants combined with a lack of rental history can make them unattractive to landlords and agents.

Often, students will have limited or no experience negotiating the accommodation market and have little idea of what to expect. Inexperienced renters need to be particularly clear about what must be provided by law and how much rent is appropriate. Any student with limited independent housing experience will not know what appropriate housing is, what questions to ask landlords and property managers to fully assess the suitability of a property.

Other Issues

Questions

1. **Do the existing provisions relating to termination of tenancy agreements appropriately balance landlords' and tenants' rights in the current rental environment?**

For a significant period of time the provisions relating to termination have failed to recognise the increasing impact of tenure insecurity for residential tenants. We have specific concerns about two notices - the Notice to Vacate for no specified reason (s.263) and the Notice to Leave (s.368) - and are recommending that these notices be repealed.

Residential tenants and residents, especially those who are unlikely to ever be home purchasers, are more likely to have lower incomes, lower levels of education, lower levels of social connectedness, and as a result, lesser life chances than those who own their own home. These are the very group in the community who would most benefit from long-term secure and affordable rental accommodation. However with the standard residential lease being 12 months and minimal, and in some cases declining, public and community housing options private renters have low levels of tenure security. With the average length of bond being 18 months (according to Residential Tenancies Bond Authority) the likelihood of tenants experiencing at least 6 months of tenure insecurity is common.

Outside of their lease, along with a range of legitimate, albeit reasonably short periods of notice, tenants are always at risk of receiving a notice to vacate for no specified reason with only 120 days notice. We have never supported the existence of a notice that has so little checks and balances surrounding it that it lacks even a meaningful descriptor to indicate for which reason it has been issued. It is accepted by the TUV that landlords have a legitimate right to deal with their property and to decide when and whether, within reasonable legal grounds, to lease their property to others and to seek its return to their possession. There have, ever since the first RTA, been limits on this right, especially in relation to termination. These limits have been introduced to stop arbitrary and capricious seizure of property from tenants.

While the current housing affordability crisis and record low vacancy rates may appear to be cyclical, for many low income earners it's been a long cycle. In 1975 the Henderson Inquiry into poverty made special mention of the poverty experienced by those at the low end of the private rental market. For decades there has been research indicating that this group has experienced tenure insecurity, if they have been able to access rental property at all.

We also receive regular reports from a range of housing professionals that the notice to vacate for no specified reason has been used for a variety of unlawful purposes. For example, despite the fact that retaliatory evictions are supposed to be unlawful, we have continued to hear and see of evictions of tenants who have been complaining about the lack of repairs or have had other disputes with their agents or landlords. VCAT has not always accepted the retaliation argument when put to it and have therefore often allowed the notice to vacate to stand. Likewise discrimination in the rental market can be hard to prove yet the TUV continue to hear of clients who have received 120 day notices where they believe that discrimination is a cause.

The 120-day notice is another barrier to all tenants enjoying the most basic level of tenure security and should therefore be repealed.

2. Are there other major issues affecting all sectors in the residential accommodation market?

We believe that there are a range of issues affecting all sectors of the residential tenancies market. Those cover accessibility, affordability and appropriateness. The following are a sample of the key issues in each of those areas.

Accessibility

The lack of regulation surrounding the operation of residential tenancy databases means that all those listed on them, whether there was ever a valid reason for their listing or not, are essentially barred from entry to most real estate agent managed residential tenancies. We are particularly concerned that it's been almost 18 months since the handing down of a report by the VLRC in 2006 calling for State regulation should national regulation not have occurred.

Whilst we understand that the Queensland Government is working on model legislation, we recommend that the State Government follow the recommendations of the VLRC report when considering the model legislation for Victoria.

There remains evidence of discriminatory behaviour by landlords and real estate agents, especially for vulnerable and disadvantaged groups. We are pleased to be a participant in a project on indigenous renters however we note that other vulnerable and disadvantaged groups could also benefit from a specific focus.

Even where discrimination is evident, the lack of integration between the RTA and the *Equal Opportunity Act 1985*, means that tenants who believe they have been discriminated against are less likely to make a formal complaint as the property they were seeking to rent has almost certainly been let by the time their complaint has been heard.

We recommend that the Equal Opportunity Act and the RT Act be amended to empower the Residential Tenancies List to hear complaints about discrimination relating to the provision of residential tenancies. In order to provide certainty, it may be necessary to amend the sections of the RT Act relating to creation of tenancies to explicitly apply to situation where discrimination is proved.

Affordability

As noted earlier, a significant proportion of residential tenants have low incomes. These tenants and residents have been hit hard by a combination of increasing rents and a chronic undersupply of low cost housing, particularly in close proximity to economic opportunity and social infrastructure. Rents across Victoria have risen at five times the rate of inflation over the past year and the undersupply of affordable housing in the private rental market is estimated at approximately 32,000 dwellings.

Rising home purchase prices mean that higher income households are taking longer to transition to home ownership, remaining in the private rental market for longer periods as they attempt to save for house deposits. These households tend to trade down and occupy lower cost dwellings in order to minimise their housing costs and assist saving. However, trading down also increase competition at the lower cost end of the market, forcing low-income households into higher costs properties and subsequent financial stress or into sub-standard or poorly located properties.

More than $\frac{2}{3}$ of the households in housing stress in Australia are tenants renting in the private market. Their financial pressures are evident in the market with a high level of dispute and applications for possession based on rent arrears.

Solutions to rental housing affordability are complex. We support the work anticipated in the State Government document, *Towards an Integrated Victorian Housing Strategy*, launched by Premier Bracks in 2006, which in part includes a focus on reducing housing stress for tenant in the private rental market.

Given the combination of tight supply and rising costs, vulnerable and disadvantaged tenants and resident should be protected form predatory practices such as rental bidding. We are again calling on the Sate Government to ban this practice. The current REIV guidelines are ineffective at preventing this practice which invariably disadvantages low income and marginal renters and encourages price spirals. It would be relatively simple for the RT Act to be

amended to make it unlawful to request or accept an offer of rental above the advertised price. This would essentially mirror the current provision that applies to guarantees. Contrary to the hysteria often invoked, this does not represent rent control and is similar to basic consumer protections that exist elsewhere.

Appropriateness

Housing should enhance the health and wellbeing of occupants. Available evidence suggests that most of the dwellings in the private rental market are older and in a poor state of repair, particularly at the lower cost end of the market and in the rooming house sector. Legislation prescribing for minimum standards of rental housing, sufficient to promote the health, safety and security of occupants, and the environmental efficiency of dwellings, should be passed. Furthermore, it should be made an offence to make available housing for rent that does not conform to the prescribed standards.

Tenancies and residencies should be made more secure, by abolishing 'no reason' notices to vacate. If landlords, managers or operators wish to evict a tenant, it should be for one of the many prescribed grounds already in the RTA.

The location of housing also has an impact on the quality of life for renters. Unfortunately, the most affordable housing available at the moment tends to be concentrated on the outskirts of major cities. Securing housing on the urban fringes can increase transport costs for these households (a major concern for low-income households given the high price of petrol). Furthermore, the accessibility of job opportunities and support services that tend to be concentrated closer to the central business district is reduced by distance.

A very significant issue is the poor quality of property management by real estate agents. Of particular concern is the evidence that many agents representatives undertaking property management are inexperienced, poorly trained and do not understand the basic requirements of the law. This low level of expertise is often the cause of disputes both between landlords and tenants and between landlords and their agents.

We are recommending a number of initiatives to encourage more professional property management practices in Victoria. If nothing else CAV must take a stronger and less tolerant approach to poor real estate agent practice particularly breaches of legislative requirements.

One of the significant practices that creates disputes is the "take it or leave it" approach adopted by real estate agents to contracting and lease periods. We have noted above the issues relating to additional terms in leases. Tenants are routinely offered a 12 month fixed term agreement irrespective of the needs and circumstances of the individual tenant and whatever information a tenant provides to the agent. This is usually presented to tenants as the condition under

which the landlord insists the premises be let but is mostly a question of habit and a product of the demand exceeding supply. Most tenants will simply agree even if they are unlikely to be able to complete the fixed term period. This then generates disputes when tenants attempt to vacate, sub let or assign their lease.

At the other end of expectations it is virtually impossible, for a tenant to secure a lease period in excess of 12 months. Longer term leases where the consequences are clearly understood and properly negotiated would have benefits for both tenants and landlords. This would be particularly beneficial for low income households and families. However, current real estate agent practice actively frustrates this process.

To enable longer term leasing we are recommending that the current exemption for leases of 5 years or more be repealed.

3. Do the areas of enquiries received by CAV reflect the issues of concern in the marketplace? Are there specific issues where consumer detriment is particularly great?

The areas of enquiries received by CAV do not represent the range and diversity of issues affecting residential tenants and indeed those in other forms of long-term rented accommodation.

That is due to a combination of factors largely the result of, to date, CAV's internal decisions to limit their activity in the residential accommodation "marketplace". More broadly however it reflects the fact that the underlying issues affecting those who rent are more complex than those envisaged in the purely transactional "trader- consumer" relationship that CAV has come to promote.

Indeed, rather than seek to assist vulnerable and disadvantaged consumers in relation to accommodation by seeking to fill out or even stretch the ambit of consumer protection, CAV has seemingly sought to become ever more limited in its role while it prioritises other consumer issues. Given the significance of residential tenancies in terms of enquiries and complaints and in terms of its impact on vulnerable Victorians, we find this inexplicable.

The key issues affecting tenants are broad and include a range of social, economic and cultural factors. As these often overlap or are outside a consumer protection framework we believe that a whole of Government approach is the best way to ensure those who rent have their rights, interests and aspirations enhanced. As noted above, we are strong supporters of the Integrated Housing Strategy statement and believe that CAV should work with the Office of Housing, other State and local government agencies and the community sector to progress that plan.

4. Are the inspection and dispute resolution processes in the RTA Act (Vic) accessible and effective? What changes could be made to ensure they are more effective?

The high level of inquiries to CAV, by both landlords and tenants, at a time when there has not been any significant changes to the legislative or regulatory framework for over 5 years, indicates a “market” high in ignorance of their rights and obligations. Basic information without advice also fuels a system with an equally high level of dispute as the parties are not often guided through the process with a practical plan of action to solve the problem they have.

There is also little evidence that the conciliation function of CAV works to the benefit of vulnerable and disadvantaged tenants and residents. While the TUV always attempts to resolve disputes in an informal way there are times when an independent arbiter is required. There are also issues, such as lease breaking, where no mediation is going to “resolve” the dispute and clear advice and assistance is better to both parties than the quasi formal process of mediation. The TUV would support an open review of the effectiveness of the residential tenancies aspects of the conciliation service at CAV.

The TUV believes that the best way to reduce the level of disputation is to increase both the level, but also the quality, of the information, education and assistance provided to all parties in the residential tenancies sector.

Tenants and residents require easy-to-understand material, in their community language, but they also require an assurance that their rights are actually being protected. No amount of information material is going to replace the certainty of programs and action. In the same way as community safety is enhanced by having a visible police presence the TUV is convinced that a significantly enhanced public profile by CAV, and other branches of Government, would promote the view among tenants that their rights are in fact being protected.

Tenants also need and demonstrably benefit from advocacy services provided by the community sector and these should be enhanced as part of this review. Tenancy services were reduced following the implementation of “The Way Forward” and many quality advocates were made redundant. The TUV believes that while it is not possible to “unscramble the egg” consideration should be given to increasing the advocacy services undertaken by professional tenant and resident advocates.

5. Are there more effective ways to achieve the abandoned goods objectives of the Act?

The abandoned goods provisions exist primarily to protect tenants, especially those who may have left goods behind as a result of a termination of their tenancy or residency. We support the current time limits around abandoned

goods. However we believe that the onus of ensuring that tenants' goods are not disposed of or destroyed before the statutory limits should always remain with the landlord.

Currently CAV inspectors perform a de facto indemnity role by assessing the value of the goods on behalf of the landlord. While this may provide some evidence of the value of goods for a tenant the reality is that the system has faults. Many TUV clients have had CAV inspections that have substantially undervalued their possessions.

We recommend that the Act be amended to remove the role of CAV inspectors in this area except for exceptional circumstances, at times of dispute or when ordered by VCAT. As the purpose of the inspection is to indemnify the landlord against a claim then such inspections should be done on a fee for service basis.

6. Is the overwhelming incidence of landlord-initiated applications to VCAT reflective of the nature of disputes in the residential accommodation market?

The overwhelming incidence of landlord-initiated applications to VCAT reflects the relative power of landlords; the ease in which VCAT has provided for landlord applications; the endemic poverty of many tenants and residents; and the nature of the protections and provisions available under the RTA.

The RTA should foster greater equity between landlords and tenants. Despite the fact that the RTA enumerates the rights and responsibilities of landlords and tenants, it is clear that landlords are in a better position to exercise their rights. The reasons for this include-

- the majority of landlords have their properties managed by real estate agents, providing a (varying) level of professionalism to the property management. That professionalism includes a familiarity with, and level of ease in accessing, redress at VCAT.
- the application fee (currently \$34.20) is unlikely to be a barrier to landlords while it often is to tenants and residents
- landlords do not risk their principal place of residence when they make application to VCAT while tenants and residents do

It also should be said that the use of VCAT by landlords is increased simply by virtue of the fact that landlords are unable to seek possession following a notice to vacate without an order from VCAT. In an environment where the overwhelming reason for hearings is possession as a result of rent arrears the imbalance in initiating matters is not likely to be easily resolved. The underlying issues of poverty and lack of alternative accommodation require broader structural changes which are beyond the scope of this paper.

In relation to VCAT itself - despite its relative informality when compared to superior courts, it is still a daunting place for most tenants. It is likely to be alien from their daily experience yet is the place in which their principal place of residence will often be decided and in the majority of cases will be taken away from them (65% of cases at VCAT are for possession). VCAT has made no effort to make their processes easier for tenants. Indeed VCAT Online is an example of a way in which they have made it harder.

At every opportunity, VCAT celebrates the increases in applications by VCAT Online. VCAT Online is a computerised applications program designed for use by repeat users, but as fails it to allow users like ourselves who process many applications requiring concessions, it is essentially a mechanism for landlords and their agents to access VCAT. We are not aware of any tenants or tenant representatives who are registered for VCAT Online, or of any VCAT program for tenants that balances the role of VCAT Online.

While there are a number of other barriers to tenants accessing justice at VCAT, we contend that stronger legal protections combined with increased advocacy and assistance to tenants and residents are the best methods to ensure there is some balance in this area.

7. What evidence is there of inadequate standards of residential tenancy dwelling accommodation? What are the appropriate ways to address this issue?

The State Government- including CAV and the Office of Housing- are already aware and have evidence of the lack of minimum standards for rental properties.

The Minimum Standards Working Group engaged consultants Ernst and Young who found that there were numerous areas where community standards were not to be found in any Victorian piece of legislation. In particular the report stated explicitly (on page 5) in relation to the RTA:

“The Act does not contain a direct reference to minimum standards for rented premises or rooming houses”

More broadly across the full range of legislation and regulation that was researched the report concluded (on page 18):

“Based on our discussion with the Management Committee and our review of the legislation and codes, it appears that there is an absence of standards covering the amenity of private rental properties and rooming houses. The current framework in Victoria provides extensive guidance in relation to the rights and responsibilities of Tenants and Landlords and standards for new building work. However, our research indicated that legislation fails

to provide definitive guidelines in relation to a minimum standard for residential accommodation.”

Their report can therefore be considered one important source of the lack of minimum community standards of dwelling accommodation.

Generally, dwellings in the private rental market are older, have more structural defects and require more significant repairs than dwellings in the owner occupied sector. Rental property is more likely to suffer from cracks in the walls and floors, sinking foundations, rising damp and walls and windows being out of alignment.¹⁶

The evidence of substandard housing is also regularly seen by the outreach work we undertake in rooming houses and low cost private rental.

In terms of addressing the issue the TUV continues to support a move to legislated minimum standards as no other policy, procedure, information or education will deliver to all tenants the protections required in this area. The TUV recognises that such a step may require appropriate phase in and transitional arrangements and is willing to present further evidence on the mechanics of achieving such regulation on request.

¹⁶ Australian Bureau of Statistics, *Australian Housing Survey 1999* Cat No. 4182.0

Summary of Recommendations

Regulatory Framework

1. The State Government should amend the RTA to establish a common standard of consumer protection for all tenants and residents across all long-term tenancy types.
2. The State Government should amend the provisions of the RTA for caravan park and rooming house residents to match those afforded to tenants in Part 2 of the RTA:
3. The Statement of Rights and Duties should be simplified for all residential tenancies to make it shorter and easier for tenants and residents to understand the basic rights and responsibilities.
4. Additional terms may only be included in a tenancy or residency agreement if reasonably necessary. The onus is on the landlord/property manager or rooming house or caravan park operator justify any additional terms and to disclose these terms to potential tenants.
5. If additional terms are included, prospective tenants or residents should be granted a “cooling off” period, in which they can seek specialist advice about the legality and effect of the term/s.
6. During the cooling off period, the landlord/property manager or rooming house or caravan park owner should not let the accommodation to another tenant or resident.
7. The State Government should develop a statement, equivalent to the s 32 statement required by the Sale of Land Act, for rental property. This statement should detail the amenity aspects of the property and any matter that would affect the tenant’s comfort, privacy and enjoyment of the property for the duration of the lease agreement.
8. The State Government should legislate to make proscribed conduct an offence punishable by suspension or loss of a licence to manage property. Proscribed conduct would include:

- a. conduct in breach of the RTA;
 - b. 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. failure to inform a tenant or potential tenant of their rights under the RTA and any other relevant statutes;
 - d. failure to promote and protect the legal rights of tenants and potential tenants
 - e. conduct intended to pressure or intimidate a tenant into taking a course of action or refraining from taking a course of action;
 - f. entering or otherwise dealing with rented premises in a manner that contravenes the Residential Tenancies Act 1997 or other relevant statute.
9. The State Government should maintain a current register of licensees and of those licensees who have lost their licence because of misconduct, to ensure that only fit and proper persons are involved in the management of rental property.
 10. The State Government should amend the RTA to increase penalties for breaches to demonstrate the seriousness of the offences and to deter illegal conduct.
 11. The State Government should amend the Residential Tenancies Act to increase all penalties to a level consistent with other consumer legislation.
 12. The State Government should amend the Act to clarify that issuing a notice to vacate or leave in response to the exercise of any statutory right or the making of any complaint is an offence and will invalidate the notice.
 13. The State Government should amend the RTA to explicitly authorise CAV inspectors to enter and inspect residential premises upon the making of a complaint by a tenant, tenant advocate or other person.
 14. The State Government should amend the *Victorian Civil and Administrative Tribunal Act 1998* to clarify that wilful non-compliance with a VCAT order constitutes contempt or an offence with penalties equivalent to contempt.
 15. The State Government should abolish no reasons notices to vacate which constitute a significant impediment to the effectiveness of the consumer protection framework.

Rooming Houses

16. The State Government should amend the RTA to abolish notices to leave for rooming house residents
17. The State Government should align the definitions of rooming house across all relevant legislation. The definition should be based on accommodation for 4 or more people within a single dwelling.
18. The State Government should develop and administer a registration scheme for rooming houses. This registration scheme should include:
 - a. annual inspection for health and safety;
 - b. a compliance continuum with penalties for more significant breaches;
 - c. the provision of inspection reports to relevant government departments, including the Office of Housing and CAV.
19. The register of rooming houses parks should be publicly available on the Internet, and should include the date of most recent inspection and a summary of the inspection report.
20. The State Government should develop and administer a licensing scheme for rooming house managers that includes
 - a. a “fit and proper person” test;
 - b. mandatory training; and
 - c. penalties for undertaking management duties without a licence.
21. The State Government should undertake periodic inspections of rooming houses for residential tenancies compliance. There should be a particular focus on bond lodgement, statement of rights and duties and extra charges.
22. The State Government should provide additional resources for advocacy services to ensure that vulnerable residents are better able to exercise statutory rights. This should include increased outreach activity to rooming houses.
23. The State Government should adopt mandatory minimum standards for the use of Housing Establishment Fund and Bond Loan Scheme money. The use of government assistance should be limited to registered premises and licensed managers.

24. The State Government should grant one of the following agencies authority over the registration of rooming houses, the licensing of rooming house managers or both:
 - a. Local government
 - b. State government through the Public Health Branch of DHS
 - c. State Government through CAV.
25. Whichever agency is granted responsibility over any part or the whole of the registration and licensing regime should be adequately resourced and have a sufficient number of inspectors available to undertake a proactive, continuous approach to monitoring and compliance.

Caravan Parks

26. The State Government should amend the RTA to abolish notices to leave for caravan park residents.
27. The State Government should establish a fund dedicated to defraying the costs of securing new accommodation for needy residents because of park closure.
28. State and local governments and the community service sector should establish strong protocols to guide assistance for park residents in the event of a caravan park closure.
29. The State Government should amend the RTA to clarify that any internal dispute resolution (IDR) processes for caravan parks are:
 - a. Not a replacement for independent, statutory processes such as adjudication by VCAT; and
 - b. Voluntary, and that no resident can be required to utilise IDR prior to accessing VCAT.
30. The State Government should amend the RTA to clarify that residents' groups and committees cannot make decisions or take action that binds or adversely effect non-members.
31. The State Government should abolish the '60 day rule' so that caravan park residents are afforded the protections of the RTA at the commencement of their occupancy.

32. The State Government should develop and administer a registration scheme for caravan parks. This registration scheme should include:
 - a. annual inspection for health and safety;
 - b. a compliance continuum with penalties for more significant breaches;
 - c. the provision of inspection reports to relevant government departments, including the Office of Housing and CAV.
33. The register of caravan parks should be publicly available on the Internet, and should include the date of most recent inspection and a summary of the inspection report.
34. The register of caravan parks should be publicly available on the Internet, and should include the date of most recent inspection and a summary of the inspection report.
35. The State Government should develop and administer a licensing scheme for caravan park managers that includes:
 - a. a “fit and proper person” test;
 - b. mandatory training; and
 - c. penalties for undertaking management duties without a licence.
36. The State Government should undertake periodic inspections of caravan parks for residential tenancies compliance, with a specific focus on bond lodgement, provision of the statement of rights and duties and extra charges.
37. The State Government should provide additional resources for advocacy services to ensure that vulnerable residents are better able to exercise statutory rights. This should include increased outreach activity to caravan parks.
38. The State Government should adopt mandatory minimum standards of caravan park accommodation and operation as conditions on the provision of government financial assistance. Housing Establishment Fund and Bond Loan Scheme monies should only be applied to registered premises with licensed managers.
39. The State Government should amend the definition for “movable dwelling” in s.3 of the RTA to remove the reference to “not including dwellings that cannot be moved within 24 hours.

40. The State Government should develop prescribed or model contract for the sale of moveable dwellings with strict regulation of any fees, charges and conditions of sale and/or re-sale.

Student Accommodation

41. The State Government should amend the RTA to include accommodation provided by organisations that are:
- a. not colleges, halls of residence or dormitories on campus or part of the university or educational institution;
 - b. operating commercially but affiliated organisations within the current meaning of the RTA.

Other Issues

42. The State Government should amend the RTA to prevent CAV inspectors from assessing the value of tenants' property for the purposes of the abandoned goods provisions.
43. The State Government should amend the RTA to ban the practice of rental bidding irrespective of whether it is initiated by a tenant, resident, landlord or real estate agent.
44. CAV should take a zero tolerance approach to real estate agents and breaches of the residential tenancies legislation.
45. The State Government should amend the Act to repeal the current exemption from regulation for lease periods of 5 years or more.
46. The State Government should require VCAT to demonstrate that it is implementing practical strategies to assist access to justice for vulnerable and disadvantaged tenant and residents.
47. The State Government should amend the RTA to include minimum standards of accommodation to which rental dwellings (including rooming houses and caravan parks) should conform.
48. The State Government should legislate minimum standards for new and existing rental dwellings covering:
- a. health and safety;
 - b. security and privacy;

- c. energy efficiency and environmental impact.

49. The minimum rental housing standards should include:

Health

- a. Building must be weatherproof
- b. Building must be maintained without risk of damp
- c. Building must be vermin proof (no structural defects enabling infestation)
- d. Flyscreens on all opening windows
- e. Adequate lighting (preferably by natural light)
- f. Adequate ventilation
- g. Running hot and cold potable water
- h. Adequate waste provision (such as rubbish bins)

Safety

- i. Building must not be a fire hazard
- j. Approved gas (if available and connected) and electricity connection
- k. Deadlocks installed on all external doors and window locks on windows
- l. Adequate electrical outlets
- m. Electrical safety switches
- n. Hard wired smoke detectors

Energy Efficiency

- o. A minimum level of thermal insulation.
- p. Access to at least one form of in built heating (in the main living area) with a minimum energy efficiency standard
- q. Efficient and properly installed cooking appliance
- r. Efficient and properly installed hot water system
- s. Dual flush toilet
- t. AAA rated shower heads
- u. A basic level of window covering

50. To ensure compliance with these standards, the State Government should make it an offence to lease, or assist in the leasing of, property that does not meet the minimum standards enumerated in the legislation.

51. The State Government should legislate to require that all new and existing public and private rental housing have a minimum five star energy efficiency rating.
52. The State Government should fund a loan-based scheme for the retrofitting of existing housing stock to meet these minimum standards for landlords with no other means to pay for retrofitting.
53. The State Government should amend the RTA to make it an offence to make available for rent dwellings that do not conform to the prescribed minimum standards.

References

Australian Bureau of Statistics, *Census 2006*

Australian Bureau of Statistics, *Australian Housing Survey 1999* Cat No. 4182.0

Berry, M. 2000 *Investment in Rental Housing in Australia: Small Landlords and Institutional Investors* Housing Studies 15 (5)

Harding, Ann, Ben Phillips and Simon Kelly, *Trends in Housing Stress* (NATSEM, 2004)

Office of Housing, *Rental Report* (March quarter 2007)

Real Estate Institute *Market Facts* (March Quarter 2007)

Yates, Judith, Maryann Wulff and Margaret Reynolds, *Changes in the supply of and need for low rent dwellings in the private rental market* (AHURI, 2004)

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