

12th May 2008

Equal Opportunity Review
c/ - Department of Justice
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Dear Julian Gardner,

RE: Equal Opportunity Review Options Paper.

The Tenants Union of Victoria welcomes the opportunity to respond to the Equal Opportunity Options Paper.

We endorse the preferred options of the Review for the future of the *Equal Opportunity Act 1995*. However, we feel that these preferred options need to be made more relevant to tenants and residents of all forms of housing, whether public or private. This can be achieved by allowing independent parties to lodge complaints of discriminatory practice and by forging links between the *Equal Opportunity Act 1995* and the *Residential Tenancies Act 1997*.

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

Comments on the Options Paper

We support the Victorian Government's commitment to broaden the objectives of the *Equal Opportunity Act 1995* (EOA) and better address systemic discrimination.

The Options Paper rightly critiques the EOA predominantly reactive approach to discrimination. The detection and prosecution of unlawful acts of discrimination depends mainly on complaints being brought to the Victorian Equal Opportunity Commission (the Commission) for investigation and conciliation. The Commission is therefore better placed to resolve specific acts of discrimination for individual complainants than to tackle the discriminatory "systems" which affect groups of people. Further, there is significant underreporting of discrimination to the Commission and so much discrimination is persisting unnoticed.

The TUV supports proposal's in the Options paper to enhance "the facilitator role" of the Commission and enable it to more actively identify, prevent and enforce

compliance with the EOA. Specifically, we see great merit in amending section 156 to allow the Commission to initiate investigations into possible breaches of the EOA and conduct inquiries of systemic discrimination of its own motion. This greater investigative role combined with powers to apply to Victorian Civil and Administrative Tribunal (the Tribunal) to issue and enforce an unlawful act notice where discriminatory practices are discovered would better address systemic discrimination.

An improved focus on investigation and enforcement would receive further benefit if independent parties, or people who identify but are not directly affected by discrimination, were also able to lodge complaints against discriminatory practices. A nominated representative can lodge a complaint on behalf of a victim of discrimination. Making complaints, however, can be a considerable emotional, financial, legal or practical burden for victims of discrimination, even for those with a representative. Many tenants and residents, in particular, experience poverty, insecure housing and homelessness, ill health and unemployment. This not only makes them more vulnerable to discrimination, but also less likely to utilise the complaints mechanism to assert their rights. Independent parties can have the necessary detachment to pursue incidents of discrimination. This in turn would enable discrimination to be investigated and policed on a large scale.

The TUV often comes across discriminatory practices by estate agents. We are currently undertaking a project, *Access to the Private Rental Market - Industry practices & perspectives*. An independent research company, Wallis Consulting Group, have been recruited to carry out in depth interviews with real estate agents to reveal their practices and perspectives when assessing rental applications. The research has already revealed that discrimination through stereotyping is common.¹ For example, application forms are not simply being used to determine a prospective tenant's financial viability and their capacity to maintain premises. Irrelevant and prejudicial questions such as "country of birth?" are also being asked. Chronically low vacancy rates for affordable housing inhibit tenants from contesting these practices in case this should further impede their efforts to secure housing.

By virtue of our constant contact with estate agents and landlords the TUV is in an ideal position to scan for and act upon irregular and illegal practices. We have the expertise, resources and support networks to engage with a complaints process against discriminatory practices. Resources disadvantaged and vulnerable consumers do not have.

At present, independent parties may get opportunities to informally raise issues with the Commission about discriminatory practices it encounters through letters, consultations, reviews etc. Reforms to the EOA will enable the Commission to further investigate these issues if it sees fit. But, by enabling independent parties to formally lodge complaints greater chains of accountability are created. Independent parties can be assured that the matters they raise will be investigated and resolved. The TUV also supports proposals for a new model of dispute resolution, which will allow complaints to be made direct to the Tribunal. For the Tribunal to make orders

¹ We expect the *Access to the Private Rental Market - Industry practices & perspectives* to be completed by the end of July, 2008. We would be happy to provide you with the results of this research and our policy paper once they become available.

that are relevant for tenants, however, links between the RTA and the EOA need to be made.

The procedure for complaints at the Tribunal or the Commission is not appropriate for people who fear their tenancy applications are not being processed for discriminatory reasons. In a tight rental market, it is difficult to secure a home which has a suitable price, location, size and amenities. Given the fierce competition for existing stock the window of opportunity to secure the right home can close within a matter of days. In contrast, the Options paper proposes that dispute resolution at the commission will be completed within a month. The time taken to lodge and deliberate a complaint may result in monetary damages and/or enforceable undertakings, but not necessarily the opportunity to be considered for the home the tenant was originally after. We believe this is a significant reason why many tenants do not lodge complaints with the Commission, because it does not provide the complainant any useful redress.

Prospective tenants who have been discriminated against should be able to apply to the Tribunal for an injunction requiring an estate agent to refrain from letting the property. This injunction would lift once the agent demonstrated they have accepted the complainant's tenancy application and reviewed it based on its merits. This is a necessary dispute resolution mechanism that works within tight time frames of the housing market and provides a useful outcome for the complainant.

Under the RTA the Tribunal already has the jurisdiction to hear matters about a proposed tenancy agreement (see s.446a and s.452(5)). They also have a general power to make determinations, like injunctions, where it thinks fit (see s. 472). The Tribunal would, however, need to have clarified power to make orders in relation to breaches of the EOA and disputes relating to the tenancy application process

Combined with the increased educative and liaison function envisioned by the Options paper for the Commission, the potential of an injunction will send a powerful message to estate agents to carefully review all applications. Agents would not wish to risk the costs associated with delays in renting the property.

Finally, we believe that all complainants should have the choice to seek support in making complaints, whether this is from legal advice or direct advocacy assistance.

If you wish to discuss any matter raised by this submission further, please contact the Tenants Union of Victoria on (03) 9411-1444.

Yours sincerely,

Vanessa Simpson
Research & Policy Worker
Tenants Union of Victoria