

Shelter Tasmania

Response to the Discussion Paper
on The Tasmanian Residential Tenancy Act 1997
& Current Issues in The Residential Tenancy Market

February 2010.



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Introduction

Shelter Tasmania welcomes the review of the *Residential Tenancy Act 1997* (RTA) and is pleased to present this response to the Discussion Paper on 'the Residential Tenancy Act 1997 and current issues in the residential tenancy market'.

Shelter looks forward to working with Consumer Affairs and Fair Trading (CAFT) on the review of the RTA and to further consultation noted in the discussion paper (Consumer Affairs and Fair Trading 2009) due to the important impact the RTA has on tenant's rights and well being. The Review has the potential to bring about reforms that will improve protection for tenants and reduce homelessness, a key concern of both the Federal and State Governments.

In Tasmania, the majority of low to moderate income Tasmanians live in the private rental market and are staying there for longer periods, in many cases permanently (Yates, J 2002). With the decline in public housing stock, and an increasing reliance by Governments on the private rental market to house those on low incomes, this trend is likely to continue. Yet tenants in the private rental sector receive lower level of public subsidy than tenants in various forms of social housing, and have fewer protections against rent increase, poor standard of housing or evictions. For instance, The RTA does not regulate sub-tenancies; it does not provide minimum standards; it does not compel landlords to maintain premises; it does not effectively limit rent increases; and it does not provide security of tenure for tenants.

Shelter Tasmania is the recognised non-government peak body for low income housing consumers, housing providers, homelessness services and people experiencing homelessness across Tasmania. Shelter Tasmania aims to realise a housing system which ensures that:

- Every person in Tasmania has access to affordable, appropriate, safe and secure housing;
- Housing provision is free from discrimination; and
- Housing provision enhances people's health, dignity and life opportunities.

Shelter's membership consists of a wide range of organisations across Tasmania, such as: tenants groups, community housing providers, homelessness and crisis accommodation services, local government, research organisations and a range of individuals and services interested in housing and homelessness issues. Shelter is an affiliated member of National Shelter and is part of a network of organisations representing consumer issues in relation to housing and human rights. The Council of Homeless Persons (Tasmania) is a subcommittee of Shelter. The Shelter Management Committee is made up of 12 elected members from across Tasmania. The Management Committee members represent a range of agencies and individuals with a broad knowledge and experience of issues facing low income housing consumers and housing provision.

Since the Act came into force in 1998 there have been substantial changes to the private and public rental market (National Shelter 2007). Public housing stock numbers have decreased as a percentage of rental housing in Tasmania, with long waiting list for those wanting to access it. Vacancy rates in the private market had remained historically tight, leading to increased rents, and very competitive especially for the lower cost rental properties.

Shelter members report that tenants are increasingly unlikely to enforce rights that do exist under the Act because they are afraid that they will be subject to retaliatory eviction, and will be unable to find anywhere else to live. Shelter

recommends that review of the legislation be substantial, with significant input from all stakeholders.

This submission represents the key issues that the Shelter members have identified based on substantive work undertaken by Shelter, including a range of strategies to consult with members, consumers and other key stakeholders. The submission responds directly to the issues raised in the discussion paper, and in addition provides further recommendations to improve the Residential Tenancy Act to enable equity for all stakeholders.

The submission has been endorsed by the Shelter Management Committee.

SHELTER'S RESPONSE to ISSUES RAISED IN THE DISCUSSION PAPER

Is there a need to develop an integrated or whole of Government approach to issues in the rental market?

Although the long term goal for Government to address ways to create an integrated whole of government approach across the housing market is a supportable aspiration, Shelter and its members recommend that rather than delay the potential to improve outcomes for tenants with a whole of government response, (which to date has not been achieved), it would be best to focus attention on including the full range of issues that affect residential tenancy under the one Act. As noted in the discussion paper, the monitoring of the standard of properties is currently under both the Public Health Act 1997 and the Substandard Housing Act 1973. This fragmented system means that CAFT has no jurisdiction over these two acts, and it is difficult for tenants to access appropriate services through them. More than just better linkages are needed between departments to share responsibility for providing responses for tenants who seek advice under the two acts. Previous attempts to do this under the Unhealthy Premise working group identified the issues but did not improve linkages or co-ordinate responsibility across government departments.

Shelter recommends starting the process of improving outcomes for tenants by repealing the Substandard Housing Control Act 1973, with minimal housing standards to be established under the RTA. These issues will be addressed further on in this submission.

What is the role of the Residential Tenancy Act 1997 in responding to marketplace issues such as shortages in the supply of housing?

The RTA, as such, is not the appropriate area for increasing the supply of housing which lies more in the realm of the National and State Governments across a range of portfolios. Yet there is an important role for the RTA to address issues around: tenant's rights, contractual fairness between owners and tenants, and the quality and maintenance of the rental properties.

Should tenants be able to extend an agreement where the owner intends to rent a property for a further period?

Yes. At present under section 42 of the Act a tenant can receive a notice to vacate on the basis of lease expiry. This means that a tenant can receive a notice

to vacate, even if they are not in breach of the agreement, if the owner still intends to rent the premises but to another tenant.

Shelter supports the proposition put forward by the Tenants Union of Tasmania (TUT) which proposes the removal of two provisions under section 42 of the Act, relating to notification within the final 28 days of lease expiry and 28 days after lease expiry. The result of this would not be inhibiting the owner's use of the property, but rather provide protections for tenants to ensure that they are not evicted from the premises without legal cause. We then propose to broaden section 42 to include three further grounds for an owner to serve a notice to vacate upon lease expiry, where the owner requires vacant possession, including sale of the property, renovations to the property or to use the property for another purpose; for example, the owner no longer intends to rent the premises. These provisions already exist in relation to non-fixed leases, so we are proposing to also apply these as grounds for requiring vacant possession upon lease expiry, obviously with extended notification periods for the protection of tenants. Following on from this we propose to bolster security of tenure for tenants, as the removal of the 28 days notification periods from section 42 would mean that a tenant immediately rolls onto a non-fixed lease the day after the lease expires, as opposed to that lingering 28 day period where a tenant does not know if they will be required to vacate or not.

The result of these changes would be not to necessarily limit or inhibit the owner, but rather require that an owner has just cause in evicting a tenant from a property. It removes irrelevant factors from serving notice that could only be discriminatory in nature, such as age, sex, lifestyle or personal dislike of the tenant. This proposal does not remove or limit the ability of an owner to serve notice on the basis of breach of the tenancy agreement.

Do you agree that rent should only be increased every 12 months?

Yes. Shelter members have reported large increases as well as systematic increase in rent every 6 months imposed on tenants during current leases; leading to financial hardship (Shelter has a number of case studies available). Tenants are surprised to discover that rent is increased after 6 months, even though they have signed a 12 month lease. At present, there is a provision for a rent increase in the lease agreement (in a standard REITA lease) allowing the landlord to increase rents every 6 months during the tenancy period if they wish. A tenant may challenge a rent increase that is excessive. The application fee to the Magistrates Court is \$42.35. The only issue the court is specifically directed to consider is the 'general level of rents' in the locality. A professional valuation to provide evidence of the market rent for the premises in question may cost a tenant from \$300-\$500, which is not recoverable even in the event of a successful application.

In effect, any rent increase may be granted, and housing affordability or standard is not taken into consideration when determining rent increases. Therefore, a household could move from a manageable level of rent, through the 'housing stress' level into 'housing crisis' during a tenancy, without changes in their income yet with the possibility of eviction leading to homelessness.

Property owners are in the advantageous position of knowing that the costs and inconveniences associated with uprooting a household are high, and many tenants will not challenge rental rises through the court process. Tenants do not have a right to break the lease as a result of the rent increase unless they are willing to face costs of finding new tenants and paying rent until new tenants are found.

It is reasonable for a tenant to know the approximate cost of rent throughout the tenancy when signing a lease agreement. We submit therefore that a maximum rent increase of Housing CPI increase is fair for both Tenant and Landlord. If there are considerable changes in circumstances there may still be the option of seeking a rent increase through an impartial body. Landlords have a relative position of power against tenants due to the relative scarcity of housing and the essential nature of shelter, and therefore it is logical to place the onus of justification upon the landlord. The fact that most commercial leases cap rent increases at an agreed rate provides evidence of the type of contract reached when there is an equivalent power relationship between the parties.

A list of factors will help all parties, including arbiters, to determine fair rent increases (and decreases) and give greater certainty to the process. This includes broadening the matters that the court can take into consideration when deciding if an increase is excessive. In Tasmania, at present this is based on market rents in comparable areas. These need to be broadened to include the condition and state of the property, any work the tenant has undertaken and the individual circumstances of the tenant and whether hardship would result.

To conclude, Shelter recommends that:

- Rents may only be increased in line with the Housing CPI during the tenancy.
- Increases may only take place every twelve months, and only if stated in the lease agreement.
- If a landlord requires an increase in excess of the Housing CPI, then the onus is placed on the landlord to justify the excessive increase. A list of prescribed factors would be taken into consideration for rent increases (and rent decreases) in excess of the Housing CPI.
- The standard lease issued by the Real Estate Institute of Tasmania be changed to remove the current clause to allow 6 monthly increase in rent on longer term leases.

Should all rent increases be subject to a reasonableness test?

Please see previous.

Is rent bidding a problem and if so, is there a legislative solution to rent bidding?

Yes. Shelter continues to receive input from members that rent bidding and rent banding continues to be practiced. In September 2006 Shelter provided a written submission to CAFT documenting these practices by both private landlords and real estate agents and the practice continues today and beyond just those rents advertised.

Shelter agrees with the Tenants Union that these practices act to cause extreme hardship for tenants, and contribute to housing affordability issues among those members of our community who are already most vulnerable. These practices distort the market and force tenants into a situation whereby they take on tenancies at the very top of their affordability range, particularly when faced with the fear of homelessness. This exacerbates their vulnerability and perpetuates disadvantage, particularly where rent can be increased during the term of the tenancy agreement.

The practice of playing tenants off against each other should not be tolerated in the rental market; it acts to increase the profitability of the owner and decrease housing affordability for the tenant. In consumer protection law in general this

kind of practice is not tolerated. Under the *Trade Practices Act 1975* a corporation must not engage in conduct that is misleading or deceptive in trade or commerce. When a purchaser buys a product they are entitled to purchase that product at the advertised price. If a particular good or service is advertised at a price and upon further enquiries a higher price is requested, this is bait advertising under the *Trade Practices Act 1975*. If a purchaser is entitled to these protections through the prohibition of certain conduct, then tenants in the rental market should also be entitled to the same protections.

Section 57 of the Queensland legislation clearly states that a lessor or lessor's agent must not advertise or otherwise offer a residential tenancy for premises unless a fixed amount is stated in the advertisement or offer. This provision closely resembles the provisions in section 56 of the *Trade Practices Act* in relation to bait advertising. This is an important protection for tenants, as it requires an owner or an agent to advertise the rental property at a set price and then offer the tenancy based on this set price. Breaches of these provisions by an owner or an agent then attract penalties. The Tenants' Union supports the imposition of penalties, particularly in relation to the practice of rent bidding, as they can render the Act enforceable and can act as a deterrent from breach by owners and their agents.

Shelter Recommends that:

- Rent bidding and rent banding be prohibited by the Act, requiring all properties to be advertised at a fixed price, and to make it an offence for a property to be leased at a price that is above the advertising price.

Do you agree that there can be improvements to the existing dispute resolution process?

Yes. Shelter recommends that a single tribunal is established to hear all disputes arising from tenancies, be it for public or private rentals. This would be in line with other Australian jurisdictions and comply with the Minimal Legislative Standards for Australia, released in 1996.

At present tenancy disputes are considered by the Residential Tenancy Commissioner, the Minor Civil Claims Division of the Magistrates Court and, for public housing tenants, the internal appeals structures of Housing Tasmania. This system is confusing for tenants and, in matters involving concurrent jurisdiction, duplicates many services. A single tribunal would provide a streamlined approach to dispute resolution that would improve understanding, knowledge and handling of tenancy issues for tenants, landlords, government bodies and legal practitioners.

The interest collected from the lodging of security deposits (bonds) with the Residential Deposit Authority (RDA) could be used to help fund this single tribunal. If so, the source of the funding should be reflected in a reduced application fee for tenants.

Shelter Recommends:

- That a Residential Tenancies Tribunal be established in Tasmania.
- The legislative framework of the Rental Deposit Authority be reviewed to ensure surplus funds generated (in excess of running costs) are used to fund the tribunal.

Do you support expanding the scope of the Residential Tenancy Commissioner to include other orders under the Act?

Rather than expanding the scope to the Residential Tenancy Commissioner Shelter supports the establishment of a Residential Tenancy Tribunal (see previous reference).

Do you agree that the Residential Tenancy Act should contain a requirement for accommodation of a suitable standard?

Shelter agrees that there should be minimal standards and has submitted this in the Shelter budget submission to the State government for the past 5 years (Shelter 2009).

What should be the minimum standards for rental accommodation?

Shelter Tasmania believes that specific minimum standards regarding both tenancy management and the physical condition of rental properties should be developed to protect tenants. Uniform provisions would help to enable a stricter enforcement of standards, and would contribute towards improved living conditions for tenants. The basic right of tenants to appropriate living standards must not be ignored.

Tasmania is the only State or Territory without any minimum standards required for a rental property in the tenancy legislation. Tasmania is also the only jurisdiction with no requirement for routine maintenance of rental premises. The absence of minimum standards in the private rental sector poses a real risk to the health and safety of a significant number of tenants, particularly those on lower incomes. Many tenants live in premises that are in a state of disrepair, and tenant workers around the state commonly deal with premises that are substandard (Blunden 2004). Too often "cheap" rent and substandard conditions go hand in hand, and it is unacceptable that the already inadequate supply of accommodation at the lower end of the market should be particularly subject to such conditions.

Shelter concurs with the Tenant's Union of Tasmania that the RTA 1997 does not adequately address the issue of substandard housing (Tenants Union Tasmania).¹ Under section 32.1 of the Act, it is stated that 'the owner of residential premises is to maintain as nearly as possible in the condition, apart from reasonable wear and tear, that existed on the day on which the residential tenancy agreement was entered into' (RTA 1997 – Division 4 – Repairs). This clause does not require that the owner of the properties ensures that properties are in good repair prior to the commencement of the rental agreement.

With an increase in the demand for rental properties this is of concern, since substandard properties may be the only available rental properties to some people, particularly those who are financially disadvantaged. The following case study was submitted by a support service.

Case Study - Substandard Housing

'Daniel & Jane'

Daniel and Jane are a young couple in receipt of Centrelink benefits. They have an infant child who is being adversely affected by the situation. Sometime prior they

swapped tenancies with a single man of their acquaintance as they were expecting this child and thought that the property would be more suitable as it had a second bedroom. Rent is \$160 per week. They were unaware at the time of the serious structural issues that beset this property. They are living in a converted, double sized garden shed. While the walls are lined, the roof is not, and the property is either unbearably hot or cold, dependant on the weather.

As this is little more than a garden shed located at the rear of a suburban (possibly 3 bedroom) house, the pitch of the roof means that the ceiling is lower than regulations would allow (somewhere between 5-6' on the side that contains the sink). An inadequate number of power outlets means that these are piggybacked onto each other and are trailing into what passes for walk space.

The minimal amount of furniture that this couple owns, though barely adequate for their needs, further limits the amount of clear floor space available to not much more than the average sized dinner table. This means that there is no safe space for the child to play. (Floor time is essential for proper child development.) What is untenable now can only become worse as the child learns to crawl.

Not surprisingly, the unit is untidy due mainly to inadequate storage space and the fact that the kitchen area is dominated by the washing machine - there being no room for it in the 'bathroom' which is located at the end of the dwelling. There is barely room for a toilet, shower and vanity. The property is serviced by an impossibly small hot water cylinder, but does not have its own cold water. This means that supply is affected when members of the large, intergenerational family who occupy the house turn on their taps or flush their toilet. (The property does have its own power meter, but both families are expected to share the clothes line and yard space)

Other issues include the type and lack of windows and the fact that not all can open - it is impossible to get any cross-flow of air through the property in order to cool it. The property is heated by two wall-mounted radiant heaters which are inadequate in winter and are expensive to run. To add to all this, the wall cavity has been occupied by hornets which have now been found in the unit itself. The nest is probably quite sizeable as if disturbed the sound of their buzzing approximates that of an air conditioning unit. The landlord when told of this dealt with the problem by removing a light switch and spraying 'Chickenfeed' fly spray into the cavity. This, of course, did not fix the problem.

Although the family has been resident for more than a year they do not have a lease. They are unaware of their rights, and would be incapable of standing their ground even if they were. They feel that the high price of accommodation means that they would be unable to secure another property, particularly in an area that is close to public transport, and are therefore reluctant to make a fuss. The length of public housing waiting lists means that this is not a realistic option, and until such time as viable alternative accommodation is found they are extremely vulnerable to being tipped out into the street (the provisions of the Residential Tenancy Act and Substandard Housing Act notwithstanding). Agencies are working with this family to assist them to be rehoused but, as we know, this is not a 'quick fix'.

Shelter can supply further information on minimal standards once the National Shelter Project is completed (see additional information).

Shelter makes the following recommendations:

- That a state-wide housing standards code be developed in consultation with building industry bodies, local government and non-government tenant organisations, and that these standards be incorporated into Tasmanian legislation.
- That it be an offence for a landlord to lease a sub-standard dwelling.

- That the standards code covers heating, fixtures, power, water, fire regulations, plumbing, security, mould and other concerns essential to habitable living standards.
- That minimum standards for a rental accommodation comply with the principle that every person has the right to housing of a quality which enhances people's health, well-being, dignity and life opportunities.

Do you agree that there should be better redress for maintenance under the Act?

Shelter, as the peak body, has consulted with members and has agreed to support the recommendations on maintenance and repairs developed by the Tenants Union of Tasmania.

The discussion of minimum standards of rental housing also raises questions of the Tasmanian provisions in relation to maintenance of a property. Tasmania's Act provides a very low threshold for maintenance requirements on an owner, and is significantly disparate to other Australian jurisdictions. Most other Australian jurisdictions contain the requirement that a property has to be fit for habitation. Tasmania does not have this requirement. This means that when a tenant moves into a property they accept it in such condition and the owner is only required to maintain the premises in the same condition that existed at the beginning of the tenancy, apart from reasonable wear and tear. Conversely, when the tenant vacates the property they are to leave it in the same condition, apart from reasonable wear and tear. This raises several issues. Firstly, the task of ascertaining the difference between damage and wear and tear may be protracted. Secondly, and most importantly, it means that an owner is not required to maintain the premises when the deterioration is attributed to reasonable wear and tear. This means that properties in Tasmania will simply deteriorate.

By comparison, section 185 of the Queensland legislation sets out the standard of the premises at the beginning of the agreement. At the start of the tenancy the lessor must ensure that the premises and inclusions are clean, and the premises are fit for the tenant to live in, and the premises and inclusions are in good repair, and the lessor is not in breach of a law dealing with issues about health or safety of persons using or entering the premises. This obligation is a continuing obligation. While the lease continues the lessor must maintain the premises in such a way that they remain fit for the tenant to live in, must maintain the premises and inclusions in good repair, must ensure compliance with health and safety laws and must keep common areas clean. There is no equivalent to these ongoing requirements in the Tasmanian Act, and consequently tenants are at a severe disadvantage, living in properties that are deteriorating.

A comparison with the Queensland legislation highlights the fundamental deficiencies in the Tasmanian Act. There are no requirements governing the lease of premises at the beginning of a tenancy, and compounding the situation is the lack of any continuing requirement to maintain the premises. In this regard, it is submitted that the Act does not need to provide further clarification of what constitutes wear and tear, but rather the removal of the wear and tear in relation to the property owner. This is particularly anomalous and no other Australian jurisdiction applies the wear and tear rule in relation to maintenance requirements of the property owner.

Repairs

Members also have concerns with the operation of the 'repairs provisions' under the Act, particularly in relation to 'urgent repairs'. In most other Australian jurisdictions the legislation actually defines what constitutes 'urgent repairs', stating comprehensively those repairs that constitute 'urgent repairs'. Instead,

Tasmania has opted for the approach of using the test of an essential service ceasing to function. This raises serious implications for tenants. Indeed, some property owners exploit this section arguing that if items such as stoves were not functioning at the beginning of the tenancy then there is no obligation on the owner to undertake repairs. The words "ceased to function" may imply that an owner is not legally required to provide certain basic amenities at the beginning of the tenancy. This is exacerbated by the deficient maintenance requirements contained in the legislation.

It was the recommendation of the consultants drafting the *Minimum Legislative Standards for Residential Tenancies in Australia* that urgent repairs be defined in the Act (Kennedy 1993 p72). The New South Wales legislation provides a good example of this. The Act defines urgent repairs as a burst water service; a blocked or broken lavatory system; a serious roof leak; a gas leak; a dangerous electrical fault; flooding or serious flood damage; serious storm or fire damage; a failure or breakdown of the gas, electricity or water supply to the residential premises; a failure or breakdown of any essential service on the residential premises for hot water, cooking, heating or laundering; or any fault or damage that causes the premises to be unsafe or insecure and any other prescribed damage. The Tenants' Union supports this approach contained in the NSW legislation as it is more far reaching than the 'urgent repairs' provision in the Tasmanian legislation. The uncertainty of our legislation operates to the benefit of property owners and does not provide any clear and consistent guidelines.

This uncertainty under Tasmanian legislation is compounded by the use of the term "ceases to function." We outlined above our concerns with the use of the word "ceases", but the word "function" is extremely problematic. It denotes a certain ambiguity. If, for example, one hotplate ceases to function and the other three hotplates are functioning it may raise difficulties in purporting to require repairs. In our opinion the word "functioning" should be defined as "functioning as designed," or "fully functioning."

Repairs and maintenance issues also act to highlight the lack of enforceability of our legislation. This will be discussed at a later point in this submission, but it is worth noting here that our legislation needs to provide greater redress for tenants in order to facilitate the carrying out of repairs by the property owner. In our opinion the first stage in the process is an amendment to the Act to clearly define 'urgent repairs'. The clear enunciation of which repairs constitutes 'urgent repairs' removes such uncertainty. Secondly, there needs to be legal recourse when such repairs are not carried out. For example, withholding of rent until such time as the repairs are carried out is something that is permitted in other jurisdictions upon application to the court. Perhaps also we could remove the distinction between 'nominated repairers' and 'suitable repairs', as an owner may not list a 'nominated repairer' in order to evade operation of the Act. We submit that a tenant should have the ability to engage the services of a "repairer" to carry out repairs that are deemed urgent and the owner should be liable for this. The removal of this distinction between two classes of repairer will then provide greater incentive for the owner to carry out the repairs, otherwise liability will ensue upon the tenant arranging the repairs.

Shelter recommends that:

- Amendment to section 32 (1) (a) of the Act to remove the words "apart from reasonable wear and tear" in relation to property owners obligations for maintenance.
- Amendment to section 32 to stipulate basic requirements relating to a property before a lease begins including that the property is clean and fit for habitation and in good repair.

- The creation of an ongoing obligation on the part of the owner to comply with the requirements of habitability, cleanliness and good state of repairs.

Do you agree that the difference between fair wear and tear and maintenance should be clearer?

Yes. Shelter agrees that the difference between fair wear and tear and maintenance should be clearer under the RTA.

Do you support a clarification of the meaning of 'functioning' under section 33 of the Act?

Yes. Shelter supports a rewording from 'functioning' to 'fully functioning as designed'.

Should owners be required to provide a no-cost option for rent payment?

Yes. It is important that additional costs are not passed on to the tenant. It is worth noting that Centrelink provide clients with a free bill paying service called Centrepay, because direct debiting from a bank account can incur costs if insufficient funds are available in an account.

Members have also noted additional costs imposed on tenants when they apply for rentals due to requirements in some Application Forms, with tenants often required to submit numerous applications while seeking a home. Shelter has forwarded information on the CAFT regarding these practises, including copies of the application forms. Shelter questions the need for such excessive details, including the requirement for police checks and credit checks no older than 24 hrs.

Shelter suggests a way to resolve this is to standardise the application form. As other member organisations have noted, this could be extended to other forms associated with the Act, such as condition reports and lease agreements.

Shelter recommends that:

- That the RTA be amended to include the provision that tenancy agreements include at least one option of rent payment free from cost for the tenant.
- To promote best practise and fairness standardised application forms, lease agreements and conditions reports be required and approved by CAFT.

What improvements can be made to enforcement of the Residential Tenancy Act?

Enforceability is important in two respects. Firstly, a tenant needs to be able to enforce their legal rights arising under the Act. Secondly, the legislation needs to be enforceable in dealing with breaches of provisions of the Act. At present there are issues with enforceability of particular provisions - for example, repairs and maintenance. The court needs to have certain powers to enforce tenant's rights; for example, if repairs and maintenance are not carried out by the owner, the option to pay the rent into a special trust account until such time as repairs are carried out. Therefore, the Act needs to be enforceable to render other provisions operable.

Additionally, if an owner breaches certain provisions of the legislation there needs to be enforcement mechanisms in place to ensure compliance and deter owners from breaching. Once again, if these are not in place the operation of the Act is

rendered futile. Developments have occurred recently in Victoria and Queensland to issue infringement notices, which would carry a fine. If the owner does not accept the infringement notice then prosecution will follow.

Additionally, the TU proposes to argue for an increase in provisions that have penalties attached to breaches therein. This is fundamental in strengthening enforceability.

Exemptions and Inclusions

Are there current exemptions that should be removed?

Shelter supports that the exemptions of the Act should be reviewed in line with changes in service delivery while also broadening the Act across a number of areas.

Exemption to Act

Crisis Accommodation

The current exemptions sit under not the act but the Residential Tenancy Regulation 2005.

Non-application of the Act to certain residential tenancy agreement relating to; homeless persons and persons seeking escape from domestic violence for a period of 3 months or less.

There have been changes to the delivery of emergency and transitional housing since the act was introduced in 1998. In 2001, the continuum of support model was introduced across the Supported Accommodation Support System. This has led to a range of accommodation types. A recent property audit (unpublished) of the Immediate Emergency Accommodation (IEA) and Transitional Support properties came to a total of 248.

Shelter, as the peak body for housing and homelessness services, has consulted with members and is aware of the issues regarding the exemptions and is well placed to advise CAFT on this matter. Shelter has raised these issues with CAFT and Housing Tasmania regarding confusion and complexity around the current exemptions for providers and consumers alike.

In addition, further reform to housing and the homelessness sector is flagged under the National Affordable Housing Agreement. It is worth noting that the definition of 'homelessness' is currently under review by the Australian Bureau of Statistics and that the SAA Act that covers the Speciality Homelessness Services is under review (with changes proposed).

In consultation with members it was agreed that rather than Shelter making a recommendation that attempts to link accommodation type with length of exemptions now, that a consultation process takes place with the Specialist Homelessness Services, client and advocacy groups. It was recommended that Shelter is the best body to undertake this consultation. This would enable a fully informed response around the appropriate practise for service and consumer protection.

Shelter recommends:

- That funding should be allocated to enable Shelter Tas to undertake a further consultation with Speciality Homelessness Services and Clients and Advocacy Organisations regarding the exemptions from the Act.

Additions to the Act

Caravan Parks

Shelter proposes in line with recommendations from Shelter's Response to the Caravan Parks - Issues Paper submitted to CAFT in May 2006 (Shelter 2006)

Shelter recommends that:

- Amendments be made to the RTA 1997 to explicitly cover the unique circumstances of renters in caravan parks for both short and long term tenancies, including its own dedicated dispute resolution mechanisms.

Residential Tenancy Databases

Shelter has submitted to the current national consultation. Our submission can be sent to CAFT if required or downloaded from www.shelertas.org.au

Real Estate Agent - exclusion of bonds

Shelter members are concerned by the practice by some Real Estate Agencies who refuse to accept applications from people receiving bond assistance from Anglicare and Colony 47 (who provide a range of private rental assistance services). In line with State government policy to prevent homelessness, Shelter recommends that CAFT look into the practice of exclusion and ways to prevent such practices under the act.

Other Issues

Residential Deposit Authority

The RDA was implemented on the 1st July 2010, making it illegal for property owners to receive a bond. Property agents can receive a bond but must forward this to the RDA within three business days. These changes raised the problem of non-for-profit housing providers who collect an incremental bond over a period of time to enable low income tenants, who do not have the full bond, to access properties up front.

Shelter raised these issues prior to the introduction of the RDA with the RDA staff, including meetings with service providers to outline the issues. This resulted in the RDA producing an Information Sheet for Not-for-Profit Housing Providers (see www.shelertas.org.au) with a list of solutions. Shelter has since been advised that the solution provide for longer term housing (over 4 months) - that services sign an agreement to become a Registered Agent - is no longer valid.

Shelter recommends that:

- Changes be made to the RDA legislation, in consultation with Shelter and Providers, to enable Not-for-Profit housing providers to collect bond in increments for tenant for deposit in RDA.

End of fixed term lease

Currently the *Residential Tenancy Act 1997* protects all agreements to lease residential property as either a fixed term lease or, where there is no agreed term, as a non-fixed term lease – except for a crucial period of 28 days following the expiration of a fixed term lease. There are reasons under the *Act* for which a landlord can evict a tenant of no fixed term, such as for the purposes of selling or renovating the premises, in addition to any breach of the lease agreement. Following the expiration of a fixed term lease for a period of 28 days a landlord can evict a tenant without just cause. Shelter recommends that an eviction should only ever take place for reasons that are just and genuine, and that the *Act* should be amended accordingly. Such a measure would be in keeping with the laws of natural justice, and ensure compliance with the *Anti-Discrimination*

Act 1998 by landlords.

Shelter recommends that:

- The *Residential Tenancy Act 1997* be amended to create non-fixed term lease immediately following the expiration of a fixed term lease, to stop evictions without justification.

Addition Information

National Shelter Project

National Shelter has recently been contracted by FACHSIA to undertake a Tenancy Policy Project, due to report at the end of February 2010. The activities for this project compliment the RTA Review in Tasmania and Shelter recommends that a meeting be arranged with CAFT to discuss the findings. The project will report back on the following activities:

Tenancy Legislation and Protection

- Compare and report on Australian legislative models and the extent they provide protection for all tenure types and identify good practice with Australian and international examples that improve protection for tenants and reduce the risk of homelessness;
- Examine and report on specific aspects of tenancy law, including: without ground evictions, effect of privacy law on databases, lessor behaviour, the supply of affordable housing, head lease/tenancy succession;
- Identify and report on specific issues relating to specific population groups: people who are homeless or at risk of homelessness, Indigenous, newly arrived refugees and migrants, people with disabilities, women; and
- Propose options in writing to reform tenancy legislation and policies Nationally and in States and Territories, with regard to existing legislation current reform and government processes at Federal and State levels.

Another project on tenancy reform in relation to the National Partnership on Homelessness and consumer focused input is commissioned for reporting in 2011.

In conclusion, Shelter would like to thank CAFT for the opportunity to contribute to this review and looks forward to working with CAFT and other stakeholders on the issues raised in the submission. Please contact Shelter if you require any further information.

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