



Tasmanian Council of Social Service
PO Box 1126 Sandy Bay Tas 7006
Ph 03 6231 0755 Fax 03 6223 6136
www.tascoss.org.au

The Residential Tenancy Review 2009
GPO Box 1244
Hobart TAS 7001
consumer.affairs@justice.tas.gov.au

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Dear Sir/Madam

The Tasmanian Council of Social Service (TasCOSS) welcomes the opportunity to comment on the Residential Tenancy Review 2009.

TasCOSS is the peak body for the Tasmanian community services sector. Its membership comprises individuals and organisations active in the provision of community services to low income, vulnerable and disadvantaged Tasmanians. TasCOSS represents the interests of its members and their clients to government, regulators, the media, and the public.

A significant portion of the residential tenants in Tasmania live on a low income, are vulnerable and/or disadvantaged and we are of the opinion that consumer protections and rights for these and all residential tenants are presently inadequate.

As you may be aware, the availability of affordable, safe, clean and sound accommodation is crucial to enabling social inclusion, employment opportunities as well as general physical and mental health and wellbeing. Unfortunately, there are many in our community who are excluded from accessing affordable and acceptable accommodation.

The difficulties faced by tenants in Tasmania include unaffordable rents and a shortage of social housing, the lack of or failure to enforce adequate minimum standards, and tenants' vulnerability to the abuse of power by landlords. Although the establishment of the Rental Deposit Authority has been a positive initiative by the Government, there are many issues that remain to be addressed before tenants receive the full range of consumer rights and protections they are due.

Although addressing these issues as we suggest below will impose costs on tax payers and landlords, investments in the quality, availability and security of housing will result in compounding benefits to society, including social, health and employment outcomes, at a scale that will outweigh the moderate costs.

Please find below our responses to the questions raised in the consultation paper, 'The Residential Tenancy Act 1997 and current issues in the residential tenancy market', and further suggestions on residential tenancy reform.¹

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

TasCOSS is of the opinion that while a whole-of-Government approach to issues in the rental market might appear desirable, due to the nature of Tasmanian Government agencies and their strong tendency for 'silo' policy development and operation and poor communication such an approach would be unlikely to deliver real improvements for tenants in the rental market, and be more likely to result in a continuation of the status quo.

Presently, matters directly affecting tenants are dealt with under a number of different pieces of legislation, and by a number of different bodies including: the Magistrates Court, the Rental Deposit Authority, the Commissioner for Residential Tenancies within the Office of Consumer Affairs and Fair Trading (CAFT), and local Government Environmental Health Officers; and legislation including the *Residential Tenancies Act 1997* (RTA), the *Substandard Housing Control Act 1973* and the *Public Health Act 1997*. The involvement of these numerous bodies and laws means that the rights and obligations of tenants and landlords are not easily understood by or readily accessible to the often vulnerable people who need them (and as is the case with minimum standards, that they are lacking and or haphazardly investigated and enforced).

TasCOSS suggests that it may be desirable to centralise as many matters dealing with residential tenancies as possible under the one piece of legislation and the one operating body. As will be discussed in more detail below, we believe the RTA is the appropriate vehicle to house the majority of issues impacting on residential tenancies.

We are also of the opinion that a revised RTA could provide the umbrella legislation under which a new Residential Tenancy Tribunal could operate, such as those already functioning in Victoria, New South Wales, ACT and South Australia, or a similar body such as the Residential Tenancies Authority in Queensland which interacts with a wider Civil and Administrative Tribunal. Such a Tribunal, attached perhaps as a body to the Magistrates Court or as part of a wider civil tribunal, could be responsible for hearing

¹ We would like to note that a reference to TasCOSS on Page 3 of the discussion paper is incorrect. TasCOSS is not involved in administering financial assistance to tenants. We suggest this may be Colony 47.

complaints, resolving disputes, making orders and ordering investigations in relation to residential tenancy matters.

CAFT could remain as the policy making body, responsible for reviewing legislation and monitoring the operation of the residential tenancy market. Thus a Tribunal model would allow for the appropriate separation of policy making and regulatory application which has occurred creditably in the Tasmanian electricity and water and sewerage markets.

Such a model would also remove the apparent lack of transparency and consistency from decisions by the Commissioner for Residential Tenancies that TasCOSS has been made aware of in discussions with our member organisations.

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 is not a suitable vehicle by which to address shortages of supply in the rental market. Such shortages are due to a combination of factors including Australia's tax regime, building regulations, planning laws and monetary policy. These issues cannot be resolved or addressed by the RTA. TasCOSS is of the opinion that housing shortage is a distinct, larger issue that should be considered separately to this review.

There are other market failures, however, that are appropriately addressed by the RTA. These include a lack of: enforced minimum standards; dispute resolution facilities; and a range of tenant and landlord rights and obligations which are discussed in greater detail below.

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

TasCOSS is of the opinion that tenants should have the right to extend an agreement, so long as they have complied with their obligations under the agreement and the owner intends to continue renting the property. As raised in the discussion paper, an owner may wish to vacate the property in order to raise the rent by an amount that is unscrutinised by the Magistrates Court. Owners may also use this ability to evict those tenants that they simply do not 'like' or 'trust', such as refugees, students, or families with children.

TasCOSS feels that these are not reasonable rights that should be held or exercised by owners, and that the rights of tenants would be best served by closing this loophole in the law. Owners would still retain appropriate rights to be able to terminate a tenancy if they intended to alter the property's use or sell.

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

Yes, TasCOSS agrees that rent should only be increased every 12 months.

Should all rent increases be subject to a reasonableness test?

No, TasCOSS is not of the opinion that all rent increases should be subject to a reasonableness test. The administrative burden and cost placed on Government and hence tax payers to determine the relatively few cases likely to be found unreasonable would outweigh the public benefit.

Rather, TasCOSS feels that a formula could be developed, under Regulations, which could allow owners to increase rents annually within a certain range. Such a formula could be based on annual increases in housing CPI in different areas of Tasmania. Such a formula should be simple and published on the web, allowing landlords and tenants to determine if rent increases are lawful. Any increase beyond that allowed under the formula would either be unlawful, or need to be justified before a Tribunal.

The existence of a Tribunal would also make it more accessible for tenants to make complaints regarding rent rises. A tribunal could be staffed with officers who could assist tenants in making a complaint. In some cases it could be appropriate for a Registrar of a Tribunal, discussed further below, to make determinations regarding unreasonable rent rises.

Around fifty percent of adult Tasmanians lack the literacy and numeracy skills to get through everyday life², hence it is unsurprising that so few tenants access their present right to complain about rent rises to the Magistrates Court, the operation of which is confusing and unclear to the lay person and designed to be intimidating. Any Tribunal, or alteration of the Commissioner's powers, would need to keep this in mind, ensuring that any changes were designed to significantly increase the accessibility of dispute resolution.

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

TasCOSS is of the opinion that rent banding and bidding are problems and expose tenants to unfair stress and confusion. We feel that the RTA should be amended to ensure that a property is advertised for rent at a fixed price and that an owner is obliged to rent at that advertised price. This will ensure that a tenant faces no uncertainty or confusion about the price of a property when making an application, and is not exposed to unfair and possibly duplicitous behaviour by landlords claiming to have received a higher offer and attempting to push up the price once they know a tenant is interested. As stated previously many prospective tenants are on a low income, disadvantaged and/or have limited literacy and numeracy skills.

² Australian Productivity Commission, *Report on Government Services 2009*, Part A, p. B.27.

Although rent bidding and banding occur relatively infrequently in Tasmania, this is not sufficient reason to fail to address the issue, particularly as there is a possibility that the rental market could follow trends in Melbourne and Canberra where rent bidding is common.

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

Yes, as stated above, TasCOSS is of the opinion that the existing dispute resolution process is inadequate and could be improved greatly by the establishment of a Residential Tenancy Tribunal. Although the discussion paper argues that such a tribunal would be costly to establish and run, especially considering the lack of economies of scale for a population the size of Tasmania, TasCOSS feels that a Tasmanian Tribunal could operate efficiently as an attachment to the Magistrates Court, or as part of a wider civil tribunal, at limited cost to the tax payer. Furthermore, the ACT, with a smaller population than Tasmania, has had a Residential Tenancy Tribunal in operation for some time, and does not find it too great a burden on tax payers.

Such an arrangement would allow one or two Magistrates to specialise in residential tenancy issues, while not requiring them to preside exclusively over such matters. The Tribunal could operate quite separately and distinctly to the Magistrates Court, however, with a consumer friendly focus and have a small number of dedicated staff with responsibility for administration, taking and assisting applications to the Tribunal, investigating complaints, and providing assistance to tenants, and in some cases landlords, when appearing before the tribunal. For example, a Registrar to the Tribunal could have jurisdiction over certain cases that could be specified in the RTA, such as rent increases, perform initial examination of some issues, make simple orders for investigation and the like, and refer cases to the Tribunal. The Tribunal could also provide a mediation facility.

Such a Tribunal will enable greater transparency and scrutiny of decisions, clearer rights of appeal and a 'one stop shop' for tenants and landlords seeking redress.

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

No, TasCOSS does not support the expansion of the scope of the Residential Tenancy Commissioner to include other orders under the Act, rather we argue for the establishment of a Residential Tenancy Tribunal.

As the discussion paper acknowledges, the Residential Tenancy Commissioner does not have the capacity to preside over matters of law, hence the need to split disputes under the RTA between the Commissioner and the Magistrates Court. Although expanding the role of the Commissioner may remove some of the burden from the Magistrates Court,

there will be many matters that would remain with the Court, hence efficiency gains would be limited.

It is also doubtful, considering the limited resources available to the Commissioner, whether matters would be heard any more expeditiously. Furthermore, the same problems of an apparent lack of consistency and transparency in decisions will remain with the expansion of the Commissioners' powers. TasCOSS also has concerns about mediation existing within a Government department under officers of limited experience in such matters and with limited capacity to preside over legal matters.

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

Yes, TasCOSS agrees that the RTA should contain requirements for standards of accommodation and we strongly feel that these standards should cover health, safety, energy efficiency and broader minimum 'standard of living' concerns.

The discussion paper acknowledges that the matter of minimum standards has been considered previously by an interdepartmental working group, HICUP. The paper also admits that there were no outcomes from HICUP's work and that although problems with enforcement were acknowledged, HICUP found that standards in current legislation were adequate. TasCOSS strongly disagrees with this position. There have been no improvements in the standards of rental accommodation and we feel that further discussions by HICUP would be unlikely to yield improvements for Tasmanian tenants.

Although matters relating to health, building standards and safety are addressed in other pieces of legislation, their coverage is too narrow, there are significant gaps, and enforcement is haphazard: in the case of health standards depending on the resources available to local government and in all cases on tenants' awareness of their rights, which is very limited. Furthermore, as acknowledged in the discussion paper, building standards only apply to new dwellings and the vast majority of rental dwellings are older.

It has also been reported to us by member organisations that poor conditions in a property are often blamed on the tenant's failure to keep the abode cleaned or heated adequately, and not the landlord for failing to provide adequate ventilation, affordable heating devices, insulation or pest control. Relying on inspections by under-resourced local government Environmental Health Officers, many of whom would be reluctant to declare an abode uninhabitable and thus likely evicting a tenant, means that the situation is not addressed at an industry or societal level, merely addressed on an ad hoc, property by property basis. There can also be many faults with a property that will contribute to long term health problems, such as inadequate heating and ventilation but which may not be immediately significant enough to cause a public health order.

Furthermore, the very existence of the *Substandard Housing Control Act 1973* undermines the concept that all people deserve the right to safe, adequate housing, and is inappropriate for our present cultural context. As the paper acknowledges, there is a “fundamental problem with the view inherent in this Act, that it is acceptable for premises to be substandard as long as the price of rental is low.” In a market facing supply constraints like Tasmania, even a very low market rent is likely to be a significant cost for someone living on a low income, nor do those on a low income have the capacity to find and pay for accommodation in better condition when facing supply constraints. TasCOSS calls for the immediate repeal of this Act.

TasCOSS strongly argues for the RTA to be revised to include minimum standards. We understand that the RTA should not duplicate other legislation. There is nothing to prevent the RTA, however, when listing those minimum standards acceptable to provide in rental accommodation, from stating that accommodation must comply with health, safety and/or building standards contained in other legislation. This would allow the RTA to have robust minimum standards for rental accommodation without duplication, and significantly, and most importantly, allow for the enforcement of those standards under the RTA by authorised officers. Such officers could be attached to a Residential Tenancy Tribunal, CAFT, Workplace Standards or other appropriate body.

What should be minimum standards for rental accommodation?

Aside from obvious health and safety standards, TasCOSS calls for the inclusion and implementation of a range of minimum standards that address quality of life, cost of living and climate change issues for low income and disadvantaged Tasmanians.

TasCOSS feels that the following minimum standards are appropriate to address these issues.³

Structural elements and thermal efficiency

- Property must be draught-proof and weatherproof
- Property must be free from damp
- Property must have heating provided to a minimum four star energy efficiency rating in the main living area and inhabited bedrooms
- All external windows must be fitted with curtains or blinds which are clean and in good working order
- All properties must have roof insulation to a minimum rating of 3.5R

Health & Standard of Living

³ These standards borrow heavily from the Victorian Council of Social Service’s paper ‘A Future Focused Housing Standard, The case for rental housing standards to help vulnerable households adapt to climate change’, October 2009.

- Property upon possession by the tenant is clean and free from vermin and mould
- Any carpet must be cleaned prior to tenant possession of the premises
- Property must have a working toilet and bath or shower
- Property must have hot and cold running water connected to the bathroom and/or shower and to the sinks in the bathroom and kitchen
- Property must have a sink in the kitchen and the bathroom
- Property must have a working stove with a minimum of two burners
- Where there is no appropriate outside area for drying clothes, property must provide a dryer
- Property must have an adequate container suitable for storing garbage and refuse externally prior to final disposal.

Safety

- The property must be structurally sound. Interior and exterior building materials that are damaged or rotting must be repaired or replaced
- Each external door and window must be fitted with a secure lock
- Smoke detectors must be installed and hardwired

Electricity and gas

- Each room must have at least one electric light fixture with energy efficient bulbs
- Each room must have at least one electrical outlet besides those needed for any heating, cooking and refrigeration devices
- The property must have an electrical safety switch
- Any appliances provided by landlords for tenant use such as washing machines, fridges, heaters and/or dryers must meet a minimum 4 star energy efficiency rating by 2020
- Property must have a solar hot water system installed by 2020

Natural and mechanical ventilation

- Property must have a minimum of one window or door in every room capable of being opened to admit fresh air
- Every bath, toilet or shower room is to be ventilated by direct access with external air by either a window or extractor fan

Although the application of these minimum standards will impose a compliance cost on landlords, many will already be providing accommodation that meets these standards, and hence will incur very little cost. For some standards, such as solar hot water systems and appliances that meet minimum 4 star energy ratings by 2020, it is appropriate to allow longer adaptation times. Other standards, such as opening windows, and working showers and toilets, are minimums that should already be in place, and it is appropriate to expect landlords to meet these standards quickly. TasCOSS is not calling for standards that impose unfair compliance costs on owners.

Industry groups may claim that minimum standards will drive the price of rents up, particularly in the low rent bracket, because of the increased costs to owners. TasCOSS disagrees. We and our member organisations are of the opinion that the driving force behind rental prices presently is the shortage of supply. Furthermore, the incentive to obtain investment property is being driven by the apparent low-risk, high capital growth in property, and not the prospect of the modest returns provided by rent.⁴ TasCOSS is of the opinion that the imposition of minimum standards will ensure that standards in the entire rental market will rise, but clear differences in size, location and quality of properties will remain. Thus rent prices will continue to be dictated by shortages in the market, and stratification in rent prices will remain. Furthermore, compliance by landlords will significantly increase the capital value of their investment properties.

TasCOSS is of the opinion that it is imperative to include energy efficiency and climate change adaptation standards within the RTA because of the limited capacity of low income tenants to adapt to climate change and increasing energy costs, and significant barriers preventing tenants from accessing government funding designed to assist low income people to take adaptation and efficiency measures. Such minimum standards surely support State and Federal Government statements about the importance of climate change mitigation and adaptation and the acknowledgement that low income households do not have the financial capacity or flexibility to adapt without assistance. With increasing standards being imposed in many areas across the economy to cope with climate change, not least building standards, it is important to ensure that the most vulnerable in our society, those who do not own property or have the capacity to take individual action are protected, and the RTA is a convenient and appropriate vehicle to achieve this protection.

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

Yes, TasCOSS agrees that there should be better redress for maintenance under the RTA. TasCOSS would like to suggest the possibility of introducing 'authorised officers' under the RTA, with the power to issue infringement notices and repair orders to landlords. Such officers would be able to issue notices for a range of contraventions of the RTA that are simple and require no interpretation of the law. If a Residential Tenancy Tribunal were established, such Officers would have the capacity to prevent small or avoidable matters appearing before such a Tribunal and incurring significant costs to government and time inconvenience costs to tenants. Such Officers could also be responsible for investigation of breaches of minimum standards.

⁴Tim Seelig, Alice Thompson, Terry Burke, Simon Pinnegar, Sean McNelis and Alan Morris, 'Understanding what motivates households to become and remain investors in the private rental market', Australian Housing and Urban Research Institute, 2009.

We are also of the opinion that stricter and more defined time limits should be placed in the RTA to ensure that tenants are able to have essential services repaired as soon as possible. We recognise that there are sometimes problems with parts, or labour shortages, but the RTA can be amended to take account of such circumstances.

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

Yes, TasCOSS agrees that the difference between fair wear and tear and maintenance should be clearer under the RTA. We are of the opinion that the meaning of fair wear and tear should be narrowed to ensure that long term tenants can be guaranteed that a property will be maintained in the standard under which the property was originally rented. Tenants face rising rents in line with market conditions and it is reasonable to expect that landlords maintain their property as time passes. If not, rent should not increase and even decreases should occur.

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

Yes we support a clarification of the meaning of 'functioning' under the RTA. TasCOSS is of the opinion that this meaning should be altered so that owners have an obligation to keep appliances 'fully functioning', or if something was not functioning completely at the time of the residential tenancy agreement, that a note is made on the agreement itself and the tenant fully informed.

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

Yes, TasCOSS agrees that owners be required to provide a no-cost option for rent payment.

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

TasCOSS agrees with the discussion paper that communication between CAFT and the public and CAFT and community organisations can be greatly improved. Tenants need to be made aware of their rights and the avenues for redress if these rights are infringed. Such communication should take the form of radio, television and newspaper campaigns and mandatory information provision upon possession, as discussed below. As mentioned previously, many Tasmanians face significant literacy limitations.

We are also of the opinion that enforcement of the RTA would be improved by the establishment of a Residential Tenancy Tribunal with support staff possibly including a Registrar, and the establishment of infringement notices and Authorised Officers under the Act (who could be attached to the tribunal or CAFT, or be local Council employees).

As part of this review process, TasCOSS would like to see CAFT examine the RTA, and any revised version, to identify any contraventions where infringement notices may be appropriate to introduce.

Are there gaps in the coverage of the Residential Tenancy Act?

Are there current exemptions that should be removed?

Yes, we agree with the discussion paper that there are gaps in the coverage of the RTA. We are of the opinion that there may be a case for including certain types of accommodation presently excluded from the RTA under a revised Act. Although alternative accommodation types are different from standard residential tenancies, there is no reason why the RTA should not include these types of accommodation but treat them differently under separate provisions. Individuals in caravan parks, in accommodation provided by the University of Tasmania, and privately operated social housing for example, also have consumer rights that need to be protected. We agree with the paper that a general review of the scope of the Act should be conducted.

Please find following further comments TasCOSS has in relation to the review of the RTA.

14 day notice to vacate

During the 28 day period after the expiry of a fixed term tenancy agreement, the RTA allows for a landlord to serve a tenant with a 14 day notice to vacate. 14 days is insufficient time to allow a tenant to find appropriate alternative accommodation, submit a rental application and make arrangements to move and clean the vacated property. This is the case even in markets that do not have supply constraints and for tenants not facing financial constraints or with no special needs. The service of an unexpected 14 day notice to vacate (which could easily occur if the tenant has failed to keep track of their lease expiry date) will cause unnecessary and unfair stress and hardship.

We call for a minimum of 60 days in any notice to vacate served on a tenant except in emergencies, both for the 28 day period after the expiry of a fixed term agreement, and any notice to vacate served at an appropriate time in an agreement of no fixed term.

In comparison to other Australian states, Tasmania's protections for tenants in this area are sorely inadequate. Landlords in Queensland are required to give two months notice at the end of a fixed term agreement, in New South Wales it is two months where a tenant has not breached an agreement, one month if the property is to be sold and in South Australia it is at least two months for change of use, or three months on no grounds outside a fixed term agreement.

Provision of Information and standardised forms

TasCOSS is of the opinion that it should be mandatory under the RTA for all landlords, upon entering into a residential tenancy agreement, to provide tenants with information regarding tenants' rights and obligations, and the nature and function of any body involved in matters relating to residential tenancies, including the existence of the Tenants Union and Tenants' capacity to take complaints to the Magistrates Court (or a Tribunal) and the costs associated with doing so. Such information should be provided in a pamphlet or other such format, in plain English which includes information on access to interpreters for non-English speaking people, or assistance for people with literacy problems. This information should be published by CAFT. A failure to provide this information by the landlord should result in a penalty under the RTA.

Although section 14 of the RTA provides that the Commissioner may direct an owner to provide information to tenants, this has not occurred to our knowledge. We are of the opinion that this section should be amended to make information provision mandatory.

TasCOSS is also of the opinion that CAFT should publish standardised forms for all matters relating to residential tenancies, and that both agents and landlords should be obliged under the RTA to use them. Standardised forms should include residential tenancy application forms, leases or agreements, condition reports and notices to vacate. Standardised forms will assist in protecting the rights of tenants and owners, ensuring that all formal documentation complies with the law, that tenants are not required to provide inappropriate information when applying for tenancy and that appropriate reason and notice is given in notices to vacate.

Disputing liability to reimburse

Section 36 of the RTA allows the owner to apply to the Court to determine liability for repairs carried out under section 33 or 34. If a tenant, however, has been billed for repairs, and the owner refuses to pay, then the tenant should also have the right to apply to the Court to determine liability. We are of the opinion that this section should be clarified.

Tenants' Right to Quiet Enjoyment

Although the RTA allows Tenants the right to quiet enjoyment under section 55, this right is limited only to actions by the landlord, and does not include other tenants of the landlord in adjacent property. We would like to suggest the revision of section 55 to provide greater protection for tenants from unreasonable behaviour by other tenants of the landlord or agents of the landlord. Please see the section below from the South Australian *Residential Tenancies Act 1995* as an example.

65—Quiet enjoyment

(1) It is a term of a residential tenancy agreement that—

(a) the tenant is entitled to quiet enjoyment of the premises without interruption by the landlord or a person claiming under the landlord or with superior title to the landlord's title; and

(b) the landlord will not cause or permit an interference with the reasonable peace, comfort or privacy of the tenant in the tenant's use of the premises; and

(c) the landlord will take reasonable steps to prevent other tenants of the landlord in occupation of adjacent premises from causing or permitting interference with the reasonable peace, comfort or privacy of the tenant in the tenant's use of the premises.

(2) If the landlord causes or permits interference with the reasonable peace, comfort or privacy of the tenant in the tenant's use of the premises in circumstances that amount to harassment of the tenant, the landlord is guilty of an offence.

Thank you for the opportunity to participate in this Review and we hope our contribution has been helpful. Please contact Miranda Kellett on 6231 0755 or by email at miranda@tascoss.org.au, if you would like to discuss the content of this submission. We look forward to the outcome of this Review process.

Yours sincerely



Tom Muller
Chief Executive Officer
tom@tascoss.org.au