

Less Room to Move: Better Room to Move In

**Submission to Consumer Affairs Victoria
regarding the Residential Accommodation
Issues Paper**

August 2007

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A comment on the Residential Accommodation Issues Paper

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Acknowledgements

The Clinic gratefully acknowledges the very significant contribution of **Minter Ellison** lawyers Noelia Boscana, Molina Asthana, Andrew Brookes and Georgie Coleman to this submission. The Clinic is also indebted to the excellent contribution of **Samuel Hopper** of Counsel.

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1. Executive Summary

1.1 Introduction

This submission is made by the PILCH Homeless Persons' Legal Clinic (the *Clinic*) to Consumer Affairs Victoria (*CAV*) in response to its Residential Accommodation Issues Paper (the *Issues Paper*). The Clinic welcomes the opportunity to make a submission to CAV and to have input into the reform of those parts of the *Residential Tenancies Act 1997* (the *Act*) which administer rooming houses and caravan parks.

Set out below is a summary of the Clinic's concerns and recommendations in respect of rooming houses, caravan parks and the general regulatory framework that applies to tenants of private rental accommodation.

1.2 Rooming Houses

The current regulatory framework operates to enable proprietors of certain rooming houses to evade regulation. The Clinic is concerned about the manifestly inadequate standard of living conditions and safety that exists in unregulated rooming houses. The Clinic therefore strongly recommends law reform to address the loopholes in the current regulatory framework.

To the extent that proprietors are subject to regulation, the Clinic considers that the regulatory regime is not rigorously enforced and that penalties are not sufficiently severe to create an incentive for proprietors to comply with rooming house regulations. The Clinic is particularly concerned about proprietors demanding excessively high rent for rooming house accommodation. Accordingly, the Clinic strongly recommends greater enforcement of the regulatory regime through systematic inspection of rooming houses and prosecution of defaulting proprietors and an increase in penalties for defaulting proprietors. The Clinic also recommends that an enforcement body is create to oversee compliance with the regulatory regime.

- **Recommendation 1:** That section 5 of the Health Regulations be amended to exclude from the definition of 'prescribed accommodation' only those premises that accommodate three residents or less. This would mean that all those premises defined as rooming houses under the Act would be subject to the regulatory and registration requirements imposed by the Health Regulations.
- **Recommendation 2:** That section 102 of the Act be amended to include a general right to apply for an investigation of and report on, claims of excessive rent, regardless of whether the rent or the capacity of the room has been increased.
- **Recommendation 3:** That rental charges be part of the information proprietors of rooming houses are required to provide to authorities and should be included on the rooming house register.
- **Recommendation 4:** That the enforcement of regulations affecting tenancies, rooming houses and caravan parks be significantly strengthened. Complaints need to be more adequately pursued, and rooming houses

should be subject to regular and random inspections to ensure that proprietors are complying with their regulatory obligations.

- **Recommendation 5:** That penalties for increasing the Health Regulations be significantly increased so that they provide a genuine deterrent against operating unsafe, unhygienic and unsatisfactory rooming houses. The penalty for breaching the registration requirements under section 211 of the Health Act also needs to be significantly increased to ensure that rooming house proprietors have a strong incentive to register rooming houses and be subject to regulation.
- **Recommendation 6:** That the penalties for failing to provide residents of rooming houses with information about their rights and duties be increased.
- **Recommendation 7:** That rooming house proprietors be required to provide a statement to outgoing residents who have resided in the rooming house for at least 3 months, indicating the period of time in which they have been resident in the rooming house and, where the resident has complied with his/her responsibilities as a resident, attesting to that fact.
- **Recommendation 8:** That a single Rooming House Authority or Standing Rooming House Committee be established within CAV, with responsibility for coordinating the regulation of rooming house, including coordination of inspections, maintaining the register and handling complaints and investigations. The Authority or Committee might also prepare periodic reports on the state of the rooming house system in Victoria and recommendations on how to improve make improvements or overcome systemic failures.

1.3 Caravan Parks

The Clinic is concerned about the detrimental impact of the short notice period that caravan park owner's are currently permitted to provide a resident to vacate a caravan park. The Clinic is also concerned about the inadequacy of current dispute resolution procedures between caravan park owners/operators and caravan park residents. This submission considers the impact of these issues on persons that use caravan parks as a form of emergency or temporary accommodation and recommends reforms that improve the rights of caravan park residents.

- **Recommendation 9:** That the definition of 'resident' be amended to delete the requirement that a resident must occupy a caravan park for at least 60 days so that residents who occupy caravan parks as their only or main residence (to avoid applicability of the Act to holiday makers) are protected by the Act regardless of the period of time during which they occupy the caravan.
- **Recommendation 10:** That the Act be amended to remove a caravan park owner's right to vacate a resident for no reason or, alternatively, to increase the notice period to 6 months during the first twelve months of residency and a notice of period 120 days thereafter where a caravan park owner requires a resident to vacate the park for no reason

- **Recommendation 11:** That the requirement to pay additional rent where a caravan park resident vacates and does not provide the requisite notice or vacates earlier than the date notified to the caravan park owner, should not apply to persons who have been referred by a welfare agency or housing service.
- **Recommendation 12:** That a formal internal dispute resolution procedure be developed to deal with disputes between caravan park owners and residents.
- **Recommendation 13:** That there be legally sanctioned residents' committees to participate in the management decisions of caravan park owners.
- **Recommendation 14:** That caravan park owners be subject to the same regime that applies to rooming house proprietors if they interfere with a resident's privacy, peace and quiet or proper use of the caravan park.
- **Recommendation 15:** That caravan park residents only be required to provide two business days' notice of their intention to vacate a caravan.

1.4 Regulatory Framework

The Clinic is concerned about a number of issues concerning the general regulatory framework that applies to tenants of private rental accommodation. In particular, this submission outlines the impact of a landlord's ability to provide notice to vacate for no specified reason, the need to protect tenants against discrimination on the grounds of social status which includes homelessness and being in receipt of social security payments, and the lack of a tenant's awareness of their rights. The Clinic strongly recommends an increase in the notice period to vacate a premises, the introduction of a prohibition against discrimination on the basis of social status and measures to improve awareness by tenants of their rights and responsibilities.

- **Recommendation 16:** That section 263 of the Act be repealed so that a landlord is unable to require a person to vacate a residence without reason. Alternatively, that a new section be inserted that places a prohibition of landlords re-letting the premises at a rent rate that is excessively higher than the rent at the time of notice. Alternatively, that a section be added to the Act in similar terms to s 264 preventing the landlord from re-letting a premises as a residence for a period of six months after the expiry of notice given under s 264 and that a substantial penalty be imposed for breaching that provision. Further, that the penalties under s 264 be increased.
- **Recommendation 17:** That where a single bond is lodged in the name of two or more tenants, only the registered tenants with whom the RTBA is able to make contact are required to agree to the distribution of any amount to be repaid.
- **Recommendation 18:** That Division 5 of the Act be amended to include a prohibition on discrimination on the grounds of 'periods of homelessness' as well as to include a prohibition on discrimination on the basis of 'source of income'. The Clinic also recommends that an avenue for redress for breach

of such discrimination be included in the Act, such as conciliation and – where conciliation is unsuccessful - recourse to VCAT.

- **Recommendation 19:** That penalties be increased throughout the Residential Tenancies Regulations to improve compliance with the Act by businesses and organisations.
- **Recommendation 20:** That common minimum standards apply across the Act. These common provisions should include obligations on the tenant/resident to pay rent and to keep the premises clean, standard notice to vacate provisions that apply to any tenant/resident, and standard procedures for dispute resolution and review of the decision.
- **Recommendation 21:** That CAV establish a Tenancy Consumer Advisory Group that meets regularly with law and policy makers and representatives from real estate groups and rooming house operators to provide feedback, guidance and to promote a collaborative approach to improved consumer protection.

2. PILCH Homeless Persons' Legal Clinic

2.1 Overview of the Clinic

The Clinic is a project of the Public Interest Law Clearing House (Vic) Inc (**PILCH**) and was established in 2001 in response to the great unmet need for targeted legal services for people experiencing homelessness.¹ The Clinic is funded on a recurrent basis by the Victorian Department of Justice through the Community Legal Sector Project Fund administered by Victoria Legal Aid. This funding is supplemented by fundraising and donations.

Free legal services are offered on a weekly basis at 12 outreach locations that are already accessed by homeless people for basic needs (such as soup kitchens and crisis accommodation facilities) and social and family services.²

Since its establishment in 2001, the Clinic has assisted over 2700 people at risk of, or experiencing, homelessness in Victoria alone. The Clinic also undertakes significant community education, public policy advocacy and law reform work to promote and protect the right to housing and other fundamental human rights.

2.2 Aims and Objectives of the Clinic

The Clinic has the following aims and objectives:

- To provide free legal services to people who are homeless or at risk of homelessness in a professional, timely, respectful and accessible manner that has regard to their human rights and human dignity.

¹ See <http://www.pilch.org.au> <at 28 August 2007>.

² The legal services are provided by volunteer lawyers from Allens Arthur Robinson, Baker & McKenzie, Blake Dawson Waldron, Clayton Utz, Mallesons Stephen Jaques, Minter Ellison, DLA Phillips Fox, Corrs Chambers Westgarth and the legal departments of Goldman Sachs JBWere and the National Australia Bank.

- To use the law to promote, protect and realise the human rights of people experiencing homelessness.
- To use the law to redress unfair and unjust treatment of people experiencing homelessness.
- To reduce the degree and extent to which homeless people are disadvantaged or marginalised by the law.
- To use the law to construct viable and sustainable pathways out of homelessness.

The Clinic undertakes the following activities to achieve its aims and objectives:

- Provides free legal assistance, advice, casework and advocacy in the areas of civil and administrative law.
- Identifies and seeks to redress gaps in the delivery of legal services to homeless people.
- Collaborates with homelessness service providers to ensure that homeless people can access legal services.
- In consultation with homeless people, identifies and advocates in relation to relevant law and policy reform issues.
- Conducts community legal education in relation to homelessness, human rights and the law.

2.3 Areas of Law

The Clinic focuses on the provision of services in civil and administrative law matters. The principle areas of civil and administrative law in which the Clinic practises are housing and tenancy, social security, including Centrelink breaches and debt, guardianship and administration and issues with State Trustees, victim of crime compensation, discrimination and bankruptcy.

Despite this civil and administrative law focus, the Clinic also does some summary criminal law work, mainly in the area of fines and infringement notices in the Magistrates' Court of Victoria.

3. The Issues Paper and Homelessness

3.1 Definition and the Extent of Homelessness

For the purpose of identifying the extent of homelessness and assisting governments to appropriately develop and deliver services, the Australian Bureau of Statistics has adopted the definition of homelessness proposed by Chamberlain and MacKenzie.³ Chamberlain and MacKenzie argue that homelessness is best defined in relation to common community standards regarding the minimum accommodation necessary to

³ Chris Chamberlain and David McKenzie, 'Understanding Contemporary Homelessness: Issues of Definition and Meaning' (1992) 27 *Australian Journal of Social Issues* 274; Chris Chamberlain, *Counting the Homeless: Implications for Policy Development* (1999).

live according to the 'conventions of community life'.⁴ In Australia, the accepted minimum community standard is said to be a small, rented flat with basic amenities such as a bedroom, bathroom and kitchen.⁵ Having regard to this standard, Chamberlain and MacKenzie identify three categories of homelessness:

Primary homelessness

People without conventional accommodation, such as people living on the streets, sleeping in parks, squatting in derelict buildings, or using cars or railway carriages for temporary shelter.

Secondary homelessness

People who move frequently from one form of temporary shelter to another. Secondary homelessness covers people using emergency accommodation (such as hostels for the homeless or night shelters); teenagers staying in youth refuges; women and children escaping domestic violence (staying in women's refuges); people residing temporarily with other families and those using boarding houses on an occasional or intermittent basis.

Tertiary homelessness

People who live in boarding houses on a medium to long-term basis. Residents of boarding houses do not have a separate bedroom and living room; they do not have kitchen and bathroom facilities of their own; their accommodation is not self-contained; they do not have security of tenure provided by a lease.⁶

Using the definition proposed by Chamberlain and McKenzie, the Australian Bureau of Statistics enumerated that, on Census night in 2001, there were almost 100,000 people experiencing homelessness across Australia.⁷ This figure includes over 14,000 people sleeping rough or in squats, over 14,000 in crisis accommodation or refuges, approximately 23,000 in boarding houses, and 23,000 people living temporarily in caravan parks.⁸

3.2 Transition out of homelessness

People attempting to make the transition from homelessness face a vast array of challenges in obtaining safe, secure and affordable housing. Public housing stocks are insufficient to meet demand. The 2006 Homelessness Consumer Forum in Melbourne revealed that 75 per cent of those surveyed had spent over 2 years on public housing waiting lists.⁹ At the same time, private rental opportunities are limited

⁴ Chris Chamberlain, *Counting the Homeless: Implications for Policy Development* (1999) 9-11, 49.

⁵ Chris Chamberlain, *Counting the Homeless: Implications for Policy Development* (1999) 9-11, 49. The Clinic recognises that notions such as 'conventions of community life' and 'minimum community standards' are culturally contingent and that any definition derived from such notions does not necessarily reflect whether persons the subject of the definition self-identify as 'homeless'. To the extent that definitions are used to assess need and eligibility for services, *and to appropriately target and deliver such services*, it is important that they account for subjective understandings of homelessness.

⁶ Chris Chamberlain, *Counting the Homeless: Implications for Policy Development* (1999) 1, 9-11, 13, 49.

⁷ Chris Chamberlain and David MacKenzie, *Counting the Homeless 2001* (2003).

⁸ Chris Chamberlain and David MacKenzie, *Counting the Homeless 2001* (2003) at 2.

⁹ Questionnaires undertaken at Melbourne Homelessness Consumer Forum, Melbourne Town Hall, August 2006.

and beyond the reach of many people who have experienced homelessness or who are social security recipients. This problem has been exacerbated in the context of the current housing boom. The few who do enter the private rental market often suffer significant housing stress.

In the absence of public housing or private rental opportunities, many people are forced to move between various temporary and transitional forms of accommodation, including crisis accommodation, rooming houses and caravan parks. These forms of accommodation are variable in quality and provide little security for residents. In many cases, residents have few rights and face discrimination, poor health and safety conditions, threats of violence and lack of adequate basic services. Recent news coverage of the conditions in many of Victoria's rooming houses is demonstrative of these endemic problems.

Reform of the housing system is urgently needed to improve the circumstances experienced by some of the state's most disadvantaged residents. In particular, the availability of public housing is desperately inadequate and requires substantial investment just to meet basic needs.

Alongside this, given the large number of people who currently rely on temporary and transitional forms of accommodation, it is essential that reform be undertaken to overcome some of the obvious inadequacies in these types of accommodation. A greater response is needed to overcome discrimination and disadvantage faced by residents of these forms of accommodation and to bolster their rights and increase their awareness of those rights. A stronger and more effective system of regulation is also crucial to ensure that basic standards of health and safety are met.

3.3 The Clinic's special position

The Clinic regularly undertakes civil work involving access by homeless persons to residential accommodation. To date, the Clinic has provided free legal assistance to over 1000 clients with housing or tenancy issues, of which over 200 resided in rooming houses, 800 were living in emergency accommodation or transitional housing and approximately 20 lived in caravan parks.

Accordingly, the Clinic believes that it is well placed to comment on those aspects of the Issues Paper that may directly impact on homeless persons' experiences in rooming houses, caravan parks, private rentals and fulfilment of their fundamental human rights.

4. Rooming Houses

4.1 Introduction

Rooming houses are frequently used as a form of emergency or transitional accommodation by people who are experiencing homelessness. Clients of the Clinic who reside in crisis accommodation centres or refuges are often referred to rooming houses by those accommodation centres or other welfare agencies due to their own service shortages. Rooming house residents are often struggling with mental illness and/or drug and alcohol dependency, and surviving on Centrelink benefits, which are often inadequate to ensure an adequate standard of living.

The conditions of rooming house accommodation in Victoria are cause for considerable concern. In the Clinic's experience, a significant number of rooming house residents are subject to substandard living conditions, with poor hygiene, lack of suitable shared facilities such as toilets and showers, and at times, the threat of physical violence. Often, residents are paying large sums of rent for a bed in this type of environment. This disturbing picture of rooming houses has been supported by news reports following a fire in a Brunswick rooming house in October 2006 in which two residents died. News reports revealed that a small number of proprietors are operating a large number of rooming houses across Melbourne that essentially operate free from regulation.¹⁰

The regulation of rooming house accommodation requires systemic reform. Existing regulations are not sufficiently broad enough in their application, allowing proprietors to escape regulation through legal loopholes. Even where rooming houses are subject to regulation, the enforcement regime and penalties that apply are too low to provide any real incentive for proprietors to comply with their regulatory obligations.

4.2 Regulation of rooming houses

The *Health (Prescribed Accommodation) Regulations 2001 (Health Regulations)* imposes health and safety obligations on 'prescribed accommodation' which, according to the definition, would include rooming houses. However, 'prescribed accommodation' excludes any premises in which there are five or less persons accommodated (other than the family of the proprietor).¹¹ As a result, rooming houses that accommodate five or less persons are not covered by the *Health Regulations (Small Rooming Houses)*.

Accordingly, Small Rooming Houses are not subject to regulations regarding overcrowding,¹² maintenance and cleanliness¹³ and supply of basic services¹⁴ that

¹⁰ See, Dan Oakes and Dan Silkstone, 'Inside Melbourne's Seedy Boarding House World', *The Age*, 14 October 2006.

¹¹ *Health Regulations*, r 5(h).

¹² *Health Regulations*, r 6.

¹³ *Health Regulations*, rr 7-8.

apply to rooming houses containing six or more residents. This has significant consequences for the health and safety of residents of Small Rooming Houses.

Proprietors of Small Rooming Houses are also free from the requirement to register the rooming house with the local council under the *Health Act 1958 (Health Act)*.¹⁵ Indeed, by virtue of their absence from a council's register, a council will often be unaware of the existence of these rooming houses, and they can effectively operate free from regulation. The proprietors of Small Rooming Houses are also not required to allow access to the rooming house by authorised officers under the Health Act.¹⁶

Due to the vastly different regulatory consequences that apply to Small Rooming Houses compared to those with six or more residents, this provides a significant incentive for rooming house proprietors to understate the number of residents living on their premises.

The potentially dramatic impact of this practice was demonstrated by the fire at a rooming house in Sydney Road, Brunswick on 1 October 2006, in which two residents died. It was subsequently revealed that a complaint about the rooming house had been made to Moreland City Council in 2004, but that the Council was unable to take any action because the proprietors claimed that the premises had only five residents.¹⁷ In fact, there were seven people residing at the premises at the time of the fire. Further reports indicated that a small group of proprietors were operating up to 150 unregulated rooming houses across northern Melbourne.¹⁸

Newspaper reports and client testimonials have revealed the deplorable conditions in some Melbourne rooming houses, which lack basic sanitation and essential services such as electricity and hot water, and in which residents are subject to violence by other residents.¹⁹ In one case, two men reported that they were paying \$50 per week to rent a driveway and sleep in their car.

These reports are consistent with anecdotal evidence received by the Clinic. Our clients have reported broken locks, residences with no heating, maintenance requests that are routinely ignored, poor hygienic conditions and violence from other residents.

The exclusion of Small Rooming Houses from the Health Regulations is inconsistent with the definition of a rooming house under the *Residential Tenancies Act 1997* (the **Act**). The Act defines a 'rooming house' as being a building in which there is one or more rooms available for occupancy on payment of rent in which the total number of people who may occupy those rooms is four or more.²⁰

The Clinic suggests consideration by the review of two approaches. Firstly, it may be appropriate to amend the Health Act and the Health Regulations so that rooming houses under the Act are regulated by that system. This approach has the advantage of using existing infrastructure to inspect premises and regulate unscrupulous rooming house operators without incurring prohibitive costs.

¹⁴ *Health Regulations*, rr 9-14.

¹⁵ *Health Act*, s 210; *Health Regulations*, rr 15-20.

¹⁶ *Health Act*, s 212.

¹⁷ Dan Oakes, 'Brunswick Fire Exposes Lax Boarding House Rules', *The Age*, 3 October 2006.

¹⁸ Dan Silkstone, 'Nightmare Boarding House Firm Thrown Out', *The Age*, 17 October 2006.

¹⁹ See, eg, Dan Silkstone, 'Tenants Booted Out From Horrid Brunswick Slum', *The Age*, 19 October 2006.

²⁰ *Act*, s 3.

However, there are two further problems with this approach that the Clinic sees:

- (a) the amended system will not address residential accommodation in which a room is leased and the total number of people who may occupy the room or rooms is less than four. The Clinic expects unscrupulous operators to move to smaller operations and avoid the operation of the Act; and
- (b) there is not an adequate mechanism to police registration of rooming houses, even when the number of residents exceeds five. Newspaper reports state that the premises in the Brunswick fire was ordinarily occupied by seven people yet it still escaped inspection.

It is beyond the scope of this review to address the second problem. The Clinic expects that to be a matter for the department with responsibility for the Health Act and Regulations.

One way to address the first problem is to expand the definition of 'rooming house' under the Act to include premises with one or more rooms available for occupancy where the number of people who may occupy the room is not less than two and making appropriate amendments to the Health Act and Health Regulations. This has the advantage of extending the protections offered by the rooming house provisions of the Act to a wider range of residents.

However, the Clinic is concerned that such a broad definition of rooming house might expand the operation of the Act too far by including share house accommodation where one of the occupants is named on the lease and sub-lets rooms to friends. It is not suggested that those properties should be subject to inspections under the Health Act and Health Regulations.

Recommendation 1

That section 5 of the Health Regulations be amended to exclude from the definition of 'prescribed accommodation' only those premises that accommodate three residents or less. This would mean that all those premises defined as rooming houses under the Act would be subject to the regulatory and registration requirements imposed by the Health Regulations.

Consideration should also be given to changing the definition of 'rooming house' under the Act to include premises that can be occupied by less than four residents and making similar amendments to the Health Regulations.

4.3 Excessive rent

The Clinic's experience is that residents of rooming houses routinely pay in excess of \$150 per week for rooming house accommodation, often for beds in shared rooms. Anecdotal evidence from a 2006 consumer forum in Melbourne similarly indicated that residents are paying up to \$180 per week for basic rooming house accommodation.²¹

²¹ Homelessness Consumer Forum, Melbourne Town Hall, August 2006.

Newspaper reports have detailed instances where residents pay relatively large sums in rent for a bed in shared accommodation that is essentially uninhabitable. For example, one resident was paying \$160 each per week for 'a fetid bedroom with a door and a broken lock' in a house he shared with 10 other people.²²

Many residents have rent automatically deducted from their Centrelink payments, usually after referral by welfare agencies and initial payments through the Housing Establishment Fund. This leaves residents with a limited amount of their Centrelink benefits for daily living expenses, which often includes costs for medical treatment, pharmaceuticals or rehabilitation programs.

Rooming house proprietors can charge excessive rent due to:

- (a) rooming house residents often being vulnerable to exploitation as a result of mental illness, drug and alcohol dependency and illiteracy;
- (b) the shortage of rooming houses or other emergency or transitional housing; and
- (c) the practice of requiring residents to have rent deducted from Centrelink payments which provides proprietors with a secure source of income.

The Act allows rooming house residents to apply to the Director of CAV (**Director**) to investigate and report on claims of excessive rent where:

- (a) a resident has received a notice of rent increase that the resident considers to be excessive;²³ or
- (b) a resident's rent has been reduced due to an increase in the room capacity of the resident's room and the resident considers the reduction is insufficient.²⁴

However, there is no general right for residents to apply to the Director to investigate claims of excessive rent where there has been no increase or decrease in rent.

Anecdotal evidence received by the Clinic also indicates that rent is often not reduced for an increase in the number of residents occupying a resident's room or for a reduction of shared services provided to the resident. Residents are often unaware of, or unable to assert, their rights in these situations.

One suggested solution has been to amend s 102 of the Act to allow residents to complain to the Director about excessive rooming house charges. However, the remedy provided for the tenant under s 103 of the Act is to apply to the VCAT for an order varying the rent. The likely result of any application will be the service on the resident of a notice to vacate for the shortest possible time and the rooming house owner finding another tenant who is willing to pay. Some protection is offered by the prohibition in the Act against a notice to vacate being given in response to VCAT proceedings.

However, the Clinic is concerned that giving residents a right may result in abuse by some residents who will agree to occupy a room at one rate, then apply immediately

²² Dan Silkstone, 'Tenants Booted Out From Horrid Brunswick Slum', *The Age*, 19 October 2006.

²³ The Act, s 102(1).

²⁴ The Act, s 102(1A).

for an order varying that rate. This may, in turn, cause a reduction in the small number of *bona fide* operators providing accommodation in this sector.

While we support an amendment to s102, the real problem is one of supply. A better solution may be found by extracting government commitment to provide further funding for public housing and transitional and crisis accommodation.

Further, one of the difficulties in this area is monitoring rents that are charged, particularly in the smaller rooming houses. While it does not prevent abuse from occurring, monitoring of rooming house charges at least informs the legislature of the state of the rooming house market. If recommendation 1 is adopted, the same register could be used to monitor rooming house charges.

Recommendation 2

That section 102 of the Act be amended to include a general right to apply for an investigation of, and report on, claims of excessive rent, regardless of whether the rent or the capacity of the room has been increased.

Recommendation 3

That rental charges be part of the information proprietors of rooming houses are required to provide to authorities and should be included on the rooming house register.

4.4 Enforcement and Penalties

The lack of safety and cleanliness and poor standard of facilities and services afforded to rooming house residents in rooming houses that are subject to the Health Regulations is attributable to a weak enforcement regime.

Proprietors of rooming houses that are registered under the Health Act are required to allow access to authorised officers (currently, those with more than five residents).²⁵ However, current investigations or inspections are not adequate to ensure a rigorous level of enforcement of the health and safety obligations under the *Health Regulations*.

The penalties for non-compliance under the Health Act and Regulations, and the Act, are very low which gives proprietors of rooming houses little incentive to comply with their obligations. For example, the regulatory requirements imposed by the *Health Regulations*, which relate to overcrowding, maintenance and cleanliness, and provision of basic services, attract a penalty of 20 units, which at current rates equates to a fine of \$2200. For proprietors who operate a large number of rooming houses across the metropolitan area, this provides an insignificant deterrent, particularly when compared with the financial benefits that might be obtained by crowding large numbers of residents into small rooms. This can be compared with a maximum penalty of up to 9,000 penalty units (currently around \$990,000) for failing to provide a safe worksite.

²⁵ *Health Act*, s 213.

There is similarly little incentive for proprietors to comply with their registration requirements. The *Health Act* makes it an offence for a proprietor of prescribed accommodation to fail to register their accommodation. However, the penalty is 50 units, which currently means a fine of \$5,500. This is a relatively insignificant amount given how crucial registration is to the effectiveness of the regulatory system for rooming houses. Indeed, the consequences for proprietors who fail to comply with their registration requirement will usually be to avoid the regulatory system altogether.

One concern may be that an inadvertent failure to comply might attract a very large penalty. However, the penalties are presently so low that they are insufficient to deter an unscrupulous repeat offender.

Recommendation 4

That the enforcement of regulations affecting tenancies, rooming houses and caravan parks be significantly strengthened. Complaints need to be more adequately pursued, and rooming houses should be subject to regular and random inspections to ensure that proprietors are complying with their regulatory obligations.

Recommendation 5

That penalties for breaching the Health Regulations be significantly increased so that they provide a genuine deterrent against operating unsafe, unhygienic and unsatisfactory rooming houses. The penalty for breaching the registration requirements under section 211 of the Health Act also needs to be significantly increased to ensure that rooming house proprietors have a strong incentive to register rooming houses and be subject to regulation. Consideration should be given to a prescribed penalty for a first offence and then increased penalties for subsequent offences. Alternatively, consideration should be given to higher penalties for corporate offenders.

4.5 Information about residents' rights

The enforcement of the obligations on rooming house proprietors would be more effective, and the quality of rooming house accommodation more satisfactory, if residents were better informed about their rights and responsibilities. Better informed residents are more likely to complain about regulatory breaches which would make it easier for councils and other authorities to monitor and enforce compliance.

The Act requires rooming house proprietors to provide residents with a written statement approved by the Director setting out in summary form the resident's rights and duties under the Act.²⁶ A document, titled '*Rooming Houses: A Guide for Residents, Owners and Managers*' is published by CAV for this purpose.²⁷

However, the Clinic's experience is that residents are rarely given this document or any other information sufficient to inform them about their rights and responsibilities.

²⁶ *Act*, s 124.

²⁷ Consumer Affairs Victoria, '*Rooming Houses: A Guide for Residents, Owners and Managers*', June 2006.

The penalty for failing to provide residents with the required information about their rights and responsibilities is 5 penalty units, which is about \$550 at current penalty rates. This is an inadequate penalty and unlikely to provide any incentive to comply with the Act.

A related problem is that many rooming house residents experience mental illness, drug and alcohol addiction, or are illiterate. Accordingly, even where information is provided, residents may not understand or comprehend the content. This problem highlights why the enforcement of the regulatory obligations of proprietors must be proactive, and cannot simply rely on residents asserting their rights.

Recommendation 6
That the penalties for failing to provide residents of rooming houses with information about their rights and duties be increased.

4.6 Transition to tenancy

The Clinic's experience is that many residents of rooming houses have difficulty making the transition from rooming houses to tenancy in the private rental market, even where they have spent a period of time in stable rooming house accommodation as a responsible resident.

Residents of rooming houses and other temporary or transitional accommodation often do not have access to statements from rooming house proprietors attesting to their history of responsible residency in rooming house accommodation. Prospective tenants who are unable to provide a statement to lessors in the private rental market are disadvantaged when they attempt to obtain rental accommodation.

Recommendation 7
That rooming house proprietors be required to provide a statement to outgoing residents who have resided in the rooming house for at least 3 months, indicating the period of time in which they have been resident in the rooming house and, where the resident has complied with his/her responsibilities as a resident, attesting to that fact.

4.7 Establishment of a Rooming House Authority

Currently, local councils are responsible for monitoring and enforcing compliance with the health and safety regulations and the registration requirements contained in the Health Regulations. However, complaints by residents under the Act for such things as excessive rent or maintenance and repairs, must be made to the Director.

Many of the problems of enforcement and compliance with the legislative and regulatory obligations on rooming house proprietors may be improved if there was a single body established for maintaining the register of rooming houses (referred to in section 4.2 of this submission), monitoring and enforcing regulatory requirements through a systematic inspection process, and handling and investigating complaints made by residents and/or rooming house proprietors.

Such a body would have the advantage of developing expertise and promoting a holistic view of the operation of rooming houses across the state. Given the systemic nature of many of the problems associated with rooming house accommodation, such

a body might also be in a position to advise and report on the state of rooming house accommodation and the effectiveness of the regulatory system.

Recommendation 8

That a single Rooming House Authority or Standing Rooming House Committee be established within CAV, with responsibility for coordinating the regulation of rooming house accommodation, including coordination of inspections, maintaining the register and handling complaints and investigations. The Authority or Committee might also prepare periodic reports on the state of the rooming house system in Victoria and recommendations on how to improve, make improvements or overcome systemic failures.

5. Caravan Parks

5.1 Introduction

As with rooming houses, caravan parks are often used as a form of emergency or transitional accommodation by people who are experiencing homelessness, particularly in regional and rural areas. Caravan parks may also serve as a form of permanent accommodation for people who are unable to afford private rentals or are on public housing waiting lists. Accordingly, the Clinic is concerned that the current regulatory regime does not provide security of tenure for residents at caravan parks and that residents are not provided with adequate information about their rights and responsibilities, particularly where they do not fall within the definition of 'resident' under the Act. The Clinic is also concerned about the requirement that caravan park residents continue to pay rent after they have vacated a caravan.

The Clinic recommends the development of an internal dispute resolution procedure, resident committees and replication of provisions that apply to rooming house residents, as caravan parks and rooming houses are becoming similar forms of tenancies. This is particularly the case in rural and regional areas where caravan parks are used in place of emergency and temporary accommodation.

5.2 Application of the Act to caravan park residents

Under section 3 of the Act, a person is regarded as a resident of a caravan park only if the caravan park is his or her only or main place of residence and:

- (a) he or she has a written agreement of the caravan park owner; or
- (b) he or she has occupied the caravan or site for at least 60 consecutive days.

Residents who use caravan parks as emergency or temporary accommodation do not fall within this definition and are not afforded the protection given to caravan park residents under the Act.

Generally, a person experiencing homelessness who seeks emergency accommodation in a caravan park is unlikely to enter into a written agreement with the caravan park owner. Therefore, for the first 60 days of their occupancy, such an individual will have no legal right to privacy, they can be evicted without reason, notice or recourse, they cannot legally insist that the caravan park owner or manager

carry out necessary repairs to the caravan or site nor are they entitled to any notice of rent or hiring charge increases.

The caravan park owner is required under s 145 of the Act to give notice to a person who proposes to occupy a site as his or her main residence stating that he or she may enter a written agreement with the caravan park owner and that he or she will become a resident after occupying the site for 60 days. The maximum penalty for non-compliance is 5 penalty units (around \$550). That penalty does not provide sufficient incentive to comply.

The prescribed form (form 2 of schedule 1 of the Regulations) does not attempt to explain the rights and duties of a resident other than to refer the reader to the Act. This provides little useful information to a prospective resident, many of whom have limited education.

Additionally, since a homeless person does not qualify as a 'resident', caravan park owners are not required to provide a statement of rights, park rules or a statement of fees and charges when the person moves into the caravan park.

Recommendation 9

That the definition of 'resident' be amended to delete the requirement that a resident must occupy a caravan park for at least 60 days so that residents who occupy caravan parks as their only or main residence (to avoid applicability of the Act to holiday makers) are protected by the Act regardless of the period of time during which they occupy the caravan. Consequential amendments should be made to s 145 and Form 2 of Schedule 1 to the Regulations.

Amendments to s 145 and Form 2 of Schedule 1 to the Regulations should be made to provide further information to prospective residents, including the provision of a statement of rights, park rules and a statement of fees and charges.

5.3 Caravan park closures and eviction of residents

In recent years there has been a reduction in the number of caravan parks across Australia as a result of increasing land values and tourism in coastal areas leading to the development of expensive holiday units. This has been particularly detrimental to people experiencing homelessness and housing stress, particularly in rural areas. Many people have been forced back into homelessness due to a lack of alternative housing options.

Due to the difficulties that caravan park residents, who are at risk of homelessness, experience in locating alternative housing, the Act should provide an adequate notice period, particularly where a resident faces eviction despite complying with its obligations. Under the Act, caravan park owners are required to give 'residents' 120 days notice prior to evicting a resident for no reason. In the Tenants Union of Victoria's earlier submission to a review of the Act, it referred to anecdotal evidence suggesting that some caravan park owners and managers require residents to vacate the park before the end of the requisite notice period, only to re-admit the resident to the caravan park a short time later.

Recommendation 10

That the Act be amended to remove a caravan park owner's right to vacate a resident for no reason or, alternatively, to increase the notice period to 6 months during the first twelve months of residency and a notice of period 120 days thereafter where a caravan park owner requires a resident to vacate the park for no reason.

5.4 Payment of rent on vacating caravan

Under the Act, a resident who vacates a caravan or moveable dwelling without giving notice must pay the caravan park owner rent for 7 days after vacating the caravan or moveable dwelling or until another resident takes up occupancy of the caravan or moveable dwelling, whichever is the lesser period.

Similarly, if a resident specifies a date on which they will vacate a caravan or moveable dwelling and the resident leaves on an earlier day, the Act requires the resident to pay for rent and hiring charges for the period commencing on the day the resident vacated the caravan and ending on the date specified in the notice.

These requirements cause hardship to persons at risk of homelessness as they are unlikely to have the means to pay the additional rent. This is particularly concerning, given that homeless persons are less likely to have knowledge or an understanding of their obligation to pay additional rent in these circumstances.

Recommendation 11

That the requirements to pay additional rent where a caravan park resident vacates and does not provide the requisite notice or vacates earlier than the date notified to the caravan park owner, should not apply to persons who have been referred by a housing agency or welfare service.

The Clinic is, however, concerned that this recommendation, if accepted, may act as a deterrent to providers of housing service to those referred people. This recommendation is in the alternative to recommendation 18 which the Clinic believes, if accepted, will address the underlying issue.

5.5 Dispute resolution

The Clinic welcomes the CAV's recommendation that a formal internal dispute resolution procedure should be developed for caravan parks.

Currently, disputes between caravan park owners and residents over changes to park rules must be resolved by the Victorian Civil and Administrative Tribunal (**VCAT**). This may not be the most appropriate or accessible remedy for residents at risk of homelessness who may be struggling with mental illness, drug and alcohol dependency and may lack the necessary communication skills to represent themselves at VCAT.

Internal dispute resolution mechanisms would provide speedy decisions on disputes such as rent increases, repairs and unfair eviction. This would go far towards tenant empowerment, especially for tenants at risk of homelessness.

Recommendation 12

That a formal internal dispute resolution procedure be developed to deal with disputes between caravan park owners and residents.

5.6 Residents' ability to participate in management decisions

The Clinic agrees with CAV's suggestion that the best approach to improve residents' ability to participate in management decisions of caravan park owners is through legally sanctioned residents' committees. Such committees should have a say in the management of the caravan parks and issues affecting their tenancy so that decisions against their interests are not made by park owners and caravan owners without consultation. Such committees should also undertake the responsibility to educate all the residents, especially new residents, of their rights and obligations under the law.

Recommendation 13

That there be legally sanctioned residents' committees to participate in the management decisions of caravan park owners.

5.7 Rights of rooming house residents that should apply to caravan park residents

The Clinic's experience indicates that caravan parks and rooming houses are increasingly being used as low cost and emergency accommodation. As a result, the issues arising out of such tenancies are also similar. This requires that to some extent the rights and obligations of caravan park residents and owners are aligned with those of rooming house residents and owners.

Although many of the provisions of the Act are similar for both forms of tenancies, the Clinic strongly recommends that certain provisions of the Act applicable to rooming houses should also apply to caravan park residents. These provisions are the following:

- (a) rooming house owners can be given a 'Notice of Breach of Duty' if they breach any of their duties under the Act. These duties include interfering with residents' privacy, peace and quiet or proper use of the room and facilities. If the breach is not rectified within 3 days, an application can be made to VCAT requiring the rooming house owner to comply with their duties and/or to pay compensation. No such regime exists in relation to caravan park owners; and
- (b) the resident of a rooming house is permitted to vacate on giving the rooming house owner at least 2 business days notice. Caravan park residents are required to give 7 days notice.

Recommendation 14

That caravan park owners be subject to the same regime that applies to rooming house proprietors if they interfere with a resident's privacy, peace and quiet or proper use of the caravan park.

Recommendation 15

That caravan park residents only be required to provide two business days' notice of their intention to vacate a caravan.

6. Regulatory Framework

6.1 Introduction

The current booming property market in Victoria is having an adverse effect on disadvantaged and marginalised people in our community. In particular, the availability of cheap private rental properties is diminishing, reducing the access to the private market by the disadvantaged. Yet crisis accommodation is unable to meet this increasing demand, and rooming houses and caravan parks are unsuitable alternatives.

Certain provisions relating to the private rental market have a disproportionate effect on the marginalised and disadvantaged, in particular the provision for notice to vacate for no specified reason and the inability for bond monies to be redistributed to tenants if one registered tenant is not contactable. Across the entire Act, residents should be specifically protected against discrimination on the grounds of homelessness or receipt of social security payments. Further, there are general improvements that could be made to improve compliance and awareness by all residents, landlords and proprietors of their rights and responsibilities.

6.2 Notice to vacate for no specified reason in private rentals

Under section 263 of the Act, a landlord can give notice to a tenant to vacate the premises, without reason, provided that the notice period is at least 120 days. Given the current crisis in availability and affordability of rental accommodation, the Clinic is concerned that section 263 is disproportionately impacting the marginalised and disadvantaged and further excluding them from the rental market.

The Clinic has received reports that landlords are improperly using their power to evict tenants for no specified reason so that they can increase rent without being subject to the Act when the property is re-let to another tenant.

Australia's current housing boom had adverse consequences for the marginalised and disadvantaged. During the last decade:

- (a) average house prices relative to income have almost doubled;
- (b) the proportion of low-rent homes has fallen by at least 15%; and

(c) opportunities to rent public housing have decreased by over 30%.²⁸

Considering these market conditions, a disadvantaged person may not be able to find suitable and affordable accommodation within 120 days. Such an evictee must turn to alternatives outside the rental market, such as crisis and transitional accommodation, rooming houses, or family and friends. Yet, as discussed above, the current state of many rooming houses renders them an unsuitable alternative. Crisis and transitional accommodation, however, is unable to meet demand: 46% of people surveyed at the Melbourne Consumer Forum had been refused crisis or transitional accommodation at least once in the past, and 57% of those refused gave the reason as lack of beds.²⁹

The Clinic has received reports that landlords are improperly using their power to evict tenants for no specified reason so that they can increase rent when the property is re-let to another tenant. This circumvents the prohibition in section 44(4) on a rent increase under a fixed term tenancy agreement before the term ends (unless otherwise provided for under the agreement), as well as a tenant's right under section 45 to apply to the Director to investigate and report on the proposed rent increase. The Clinic is also concerned that landlords and tenants who discriminate against homeless persons or social security recipients exploit this provision, particularly in Victoria's current tight rental market, where landlords have a greater choice of available tenants for each property.

The Act provides landlords with a plethora of options to evict a tenant. A landlord can give notice to vacate, for example, by reason of damage to,³⁰ or the poor condition of, the premises,³¹ failure to pay rent³² or the risk of danger imposed to neighbours.³³ More importantly, section 258 permits eviction of a tenant so that the landlord and/or his or her family or other dependants can reside at the property, and section 259 allows a notice to vacate to be given if the premises is to be sold. Given that the Act allows a notice to vacate to be given for numerous reasons, the Clinic believes that, if the section were to be repealed, it would balance the rights of tenants and the interests of landlords, and would still provide an efficient market outcome.

In addition, the landlord is prohibited by s 264 of the Act from re-letting a premises as a residence for a period of six months after giving notice under ss 256 to 259. However, there is no equivalent provision prohibiting the landlord from evicting a tenant under s 263 and re-letting the premises to another tenant immediately. Given the volatility of the property market in Victoria and the very real prospect of substantial rent increases, the period of prohibition should be more than six months from giving the notice to vacate (which would leave the property unoccupied for only two months).

²⁸ National Affordable Housing Forum, *Achieving a National Affordable Housing Agreement – Background Paper*, July 2006.

²⁹ Statistics derived from questionnaires undertaken at the Melbourne Consumer Forum, Melbourne Town Hall, August 2006.

³⁰ Act, s 243.

³¹ Act, s 245.

³² Act, s 246.

³³ Act, s 244.

In addition, the penalty attached to a breach of s 163 is a maximum of 20 penalty units (currently around \$2,200). In light of the rapidly changing property market in Victoria, that penalty may not be sufficient to deter unscrupulous operators, particularly those with numerous properties.

Recommendation 16

That section 263 of the Act be repealed so that a landlord is unable to require a person to vacate a residence without reason.

Alternatively, that a new section be inserted that places a prohibition on landlords re-letting the premises at a rent rate that is excessively higher than the rent at the time of notice.

Alternatively, that a section be added to the Act in similar terms to s 264 preventing the landlord from re-letting a premises as a residence for a period of six months after the expiry of notice given under s 264 and that a substantial penalty be imposed for breaching that provision.

Further, the penalties for breach of s 264 be increased.

6.3 Residential Tenancies Bond Authority Reform

The Residential Tenancies Bond Authority (the **RTBA**) currently presumes equal contribution of rent by tenants where a single bond is lodged in the name of two or more tenants. Under this system, the registered tenants must also agree to the redistribution of the bond monies by the RTBA.

If a registered tenant is unable to be contacted following eviction or dissolution of the lease, for example, the RTBA cannot repay the bond to any of the registered tenants. In the Clinic's experience, certain tenants become homeless after eviction, making them extremely difficult to locate. Most disturbingly, the current arrangement is affecting victims of family violence. When one tenant has left the premises due to domestic violence, none of the registered persons are able to be repaid. The Clinic considers that reform is required to ensure that remaining tenants are not disadvantaged.

Recommendation 17

That where a single bond is lodged in the name of two or more tenants, only the registered tenants with whom the RTBA is able to make contact are required to agree to the distribution of any amount to be repaid.

6.4 Prohibition on discrimination on the grounds of homelessness or social security payments

The *Equal Opportunity Act 1995* (Vic) (the **EO Act**) fails to provide protection from discriminatory treatment on the ground of social status, making this form of discrimination lawful.³⁴ The absence of this protection is particularly pertinent in relation to accommodation, as the majority of homeless people, or people at risk of

³⁴ Phillip Lynch and Bella Stagoll, 'Promoting Equality: Homelessness and Discrimination' (2002) 15 *Deakin Law Review*.

homelessness, routinely experience discrimination at the hands of accommodation providers.³⁵

In January 2007, the Victorian Department of Justice engaged the Clinic to conduct a series of consumer consultations aimed at gathering qualitative and quantitative data regarding the nature and extent of discrimination that occurs in Victoria on the grounds of homelessness or social status. In total, 69% (127) of respondents reported experiencing discrimination in relation to accommodation services. The discrimination was most often experienced from private rental or real estate agents (41%, or 75 respondents), followed by boarding houses (24%, or 44 respondents), transitional or crisis accommodation (20%, or 36 respondents), hotels and public housing (each 19%, or 35 respondents) and caravan parks and backpackers (each 17%, or 32 respondents).³⁶

A significant issue for homeless persons seeking accommodation is the lack of references, or gaps in rental history due to periods of homelessness. Examples of the discrimination experienced by Victorian homeless persons include the following:

'I had no references, and even though I had the money to move in they were reluctant to take a chance' (Anonymous, Hanover Southbank)

'Private rental/Real Estate Agents - went to E.Melbourne realtors to find accommodation. I had recently began in C.P.S and had a weekly free day out - not much in the way of "respectable" clothing yet EVERY reference ph no was contacted, realtor staff were rude, dismissive and frankly incredulous as to my employment.' (L Kane, The Big Issue)

'With the problems I have [indicated] I felt the only way to get a roof over my head was to go back to jail or a mental institution' (R Doyle, HomeGround).

Discrimination on the grounds of receiving social security is also rife. Negative stereotypes about the ability of social security recipients to meet rent or loan repayments are often relied on to deny people the opportunity to secure a home. For example:

Real estate agents demand higher bonds from social security recipients. No real estate agents accept a full Office of Housing bond – tenants must put in at least one week's cash themselves. (Jan Kenny, Hamilton Accommodation Program)

Jodie, a 16 year old woman who is pregnant with twins, cannot live with her mother any longer as the situation at home is extremely difficult with many complex issues which need to be addressed. Our organisation found a very small bedsit for Jodie while she was waiting for her priority housing application to be assessed. She applied for an Office of Housing Bond Loan for the bedsit but was advised that she was ineligible for the Bond Loan as she was on Youth Allowance and her rent (\$110 per week) must not be more than 55 per cent of her income. This ineligibility for bond

³⁵ PILCH Homeless Persons' Legal Clinic, *Discrimination on the Grounds of Homelessness or Social Status: Report to the Department of Justice* (March 2007).

³⁶ *ibid.*

assistance applies generally to any woman on Youth Allowance or Newstart. (Case Worker, Emergency Accommodation Support Enterprise, Loddon Campaspe Region)

Fiona, a 44 year old woman, became homeless after fleeing domestic violence. She applied for a one bedroom unit, but was refused on the basis that the real estate agent did not believe she could pay the rent of \$100 per week on a Newstart Allowance. (Case Worker, Emergency Accommodation Support Enterprise, Loddon Campaspe Region)

Throughout its consultations, the Clinic found that the most frequent consequence of discrimination in accommodation is prolonged homelessness (48%, or 87 respondents). The Clinic believes that the Act should include a prohibition on discriminating against homeless people, notably in relation to gaps in rental history due to homelessness, as well as a prohibition on discriminating against a person based on the source of their income.

It is important to differentiate between a valid justification for the rejection of a tenancy application and a decision based on stereotypes about the homeless or unemployed. People or businesses providing accommodation have a right to differentiate between customers in order to ensure the continued viability of their business. A landlord, for example, can legitimately require a prospective tenant to pay a bond before entering into a lease. However, decisions appear to rarely be based on relevant financial information, but on preconceived or imputed notions about the ability to pay, and general trustworthiness, of people in receipt of social security payments. In relation to homelessness, recent research by Hanover Welfare Services indicates that community perceptions of homelessness are still very much rooted in the idea that homelessness is a choice and represents some form of moral dysfunction.³⁷

The proposed amendments would not inhibit the right of Victorian businesses to make legitimate decisions on the basis of objective, unbiased information about a person's financial situation. The provisions are intended to ensure that all persons are subject to the equal protection of the law and that homeless persons, unemployed persons and recipients of social security payments can compete on a rational basis in the market for accommodation.

If these two prohibitions were incorporated into the Act, it would be the first Victorian Act, apart from the EO Act, to include an express prohibition on a form of discrimination. However, as discussed above, making discrimination on the grounds of homelessness or source of income unlawful is particularly pressing in the accommodation sector, where the majority of such discrimination is experienced.

Further, such a provision would be consistent with both public policy and recent legislation in Victoria. The Victorian Government will this year introduce guidelines on discrimination on the grounds of homelessness or social status (the **Guidelines**). The Guidelines will apply to businesses and other entities that provide accommodation or goods and services. The aim is to protect, educate and reduce the extent of this form of discrimination. While it does not presently extend to provide protection for economic, cultural and social rights, the *Charter on Human Rights and*

³⁷ Hanover Welfare Services, 'Quantitative Research Report', October 2006.

Responsibilities Act (2006) (the **Charter**) has enshrined certain civil and political rights in domestic legislation. Introducing a prohibition on discrimination on the grounds of homelessness and source of income in providing accommodation services is therefore clearly within the spirit of these Guidelines and the Victorian Charter.

Recommendation 18

That Division 5 of the Act be amended to include a prohibition on discrimination on the grounds of 'periods of homelessness' as well as to include a prohibition on discrimination on the basis of 'source of income'.

The Clinic also recommends that an avenue for redress for breach of such discrimination also be included in the Act, such as a conciliation and – where conciliation is unsuccessful – recourse to VCAT.

6.5 Encouraging compliance and increasing awareness of rights

The Clinic believes that the lack of understanding of the legislative regime needs to be addressed and that compliance with the regime needs to be encouraged.

The case of *Smith v Director of Housing*³⁸ exemplifies the deficiency of knowledge by both tenants and landlords (in this case, the Office of Public Housing) as to how the regime operates. The plaintiff had been a good tenant in a public housing unit for almost ten years. Having never lived at the property, the plaintiff's grandson, while visiting, threatened two housing support workers from the Office of Public Housing. The Director of Housing subsequently sought to evict the plaintiff under section 244 of the Act on the grounds of danger to occupiers of neighbouring premises, and sought an order from VCAT to enforce the notice to vacate. The Supreme Court found that the resulting order by VCAT to enforce the notice was unlawful as the notice was defective, namely, the notice did not specify the reason for the notice being given and thus did not satisfy the requirement in section 319(d). Within the first 12 months after this decision was made, the Tenants Union of Victoria used the case as a precedent in more than ten cases, further exemplifying the lack of understanding of the regime by both landlords and tenants.

The Clinic has already recommended in section 4 of this submission that the penalties contained in the *Health Regulations* be increased. The Clinic submitted that increasing penalties provides an incentive for rooming house proprietors to be aware of their obligations under the Act and to comply with such obligations. This rationale equally applies to increasing penalties imposed across the Act. For example, a person must not make, in relation to a tenancy agreement, a misrepresentation as to a provision of the Act, or a term in the tenancy agreement.³⁹ The penalty is 10 units or \$1100 under current rates. If the penalty amount is increased, it will help to ensure that businesses in particular are aware of the Act's obligations.

The difficulty with large fines in the Act may be the perception that 'mum and dad' landlords who inadvertently breach the act may expose themselves to substantial penalties. However, the court imposing the penalty must take account of the fact of a

³⁸ [2005] VSC 46

³⁹ Act, section 501.

first offence when imposing a penalty. An approach that may be considered is the imposition of a different maximum penalty for a corporate offender as opposed to a natural person (eg offences under the *Occupational Health and Safety Act 2004* (Vic)).

Awareness of rights and responsibilities of both tenants and landlords under the Act could be enhanced through greater involvement by community members that understand the regulatory system.

The ability to participate in policies and decisions that affect you is a fundamental human right. Regular feedback and insight from individuals and groups that have experienced periods of homelessness and fragile tenancies would assist in creating and implementing a regime that was more targeted to the needs of community and was therefore more effective.

That CAV establish a Tenancy Consumer Advisory Group that met regularly with law and policy makers and representative from the real estate groups and rooming hosue operators to provide feedback, guidance and to promote a collaborative approach to improved consumer protection.

In its experience, the Clinic has found that its clients are often ill-informed tenants who, for example, seek in vain for repairs to be made by their landlords, and then out of frustration stop paying rent, hoping to increase their bargaining power with a non-compliant landlord. Instead, the tenant's action in trying to address an issue with the landlord results in a reason for a landlord to give notice to vacate. The Clinic believes that accessible, less formal dispute resolution procedures will help parties to effectively enforce their rights under the Act.

Recommendation 19

That penalties be increased throughout the Act and Regulations to improve compliance with the Act by businesses and consideration given to increased maximum penalties for corporate offenders.

Recommendation 20

That common minimum standards apply across the Act. These common provisions should include obligations on the tenant/resident to pay rent and to keep the premises clean, standard notice to vacate provisions that apply to any tenant/resident, and standard procedures for dispute resolution and review of the decision.

Recommendation 21

That CAV establish a Tenancy Consumer Advisory Group that meets regularly with law and policy makers and representative from real estate groups and rooming house operators to provide feedback, guidance and to promote a collaborative approach to improved consumer protection.

7. Conclusion

Victoria's current housing boom has had an adverse effect on the marginalised and disadvantaged; in particular, disadvantaged persons are increasingly being excluded from the private rental market as rent prices rise. However, crisis and transitional accommodation has not been able met this demand, meaning that those excluded from private rental have to turn to alternative arrangements such as rooming houses and caravan parks.

Given the large number of people who currently rely on rooming houses and caravan parks as temporary and transitional forms of accommodation, it is essential that reform be undertaken to overcome some of the inadequacies in these types of accommodation. A stronger and more effective system of regulation is also crucial to ensure that basic standards of health and safety are met.

In relation to private rental, the Act should aim to prevent the further exclusion of the marginalised and disadvantaged from the private rent market. Across the Act, a greater response is needed to overcome discrimination and disadvantage faced by the marginalised members of our community and to bolster their rights.