Tenants Union of Victoria
response to
Alternate forms of tenure: parks, rooming houses and other shared living rental arrangements Issues Paper of the Residential Tenancies Act Review
September 2016
About Us

The Tenants Union of Victoria (TUV) was established in 1975 as an advocacy organisation and specialist community legal centre, providing information and advice to residential tenants, rooming house and caravan park residents across the state.

Our aim is to promote and protect the rights and interests of residential tenants in Victoria.

We operate an integrated service model that combines our three main areas of activity:

> client services (advice and advocacy),
> community education, and
> social change

**1. Client Services (advice & advocacy)**

The purpose of our client service is to provide accessible and effective assistance to residential tenants across Victoria. Advice is provided by telephone, in person, by email and through secondary consultations with other services.

During 2014/15, the TUV handled more than 19,200 enquiries. The TUV provided advocacy on behalf of tenants in almost 880 matters, represented tenants in over 225 hearings at VCAT or other Courts, and attended 350 outreach visits to 250 rooming house, caravan parks and services.

**2. Community Education**

The TUV produces a wide range of publications and practical resources for tenants, rooming house and caravan park residents, and community service workers to assist tenants to understand their rights and responsibilities and to resolve their own tenancy problems. We have about 150,000 unique users accessing resources through our website each year.

The TUV also runs a training program for community sector workers to provide basic training in tenancy rights and responsibilities. During 2014/15 we did 29 training sessions and other community education presentations.

**3. Social Change**

The TUV undertakes a broad range of social change activities to represent the interests of tenants and to highlight the impact of living in the rental sector. This work includes research, policy formulation, lobbying and media liaison.

Across these three areas of activity our strategic goals can be summarised as:

> Better tenants’ rights
> Better tenant resources
> Betters tenant services
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Summary of Recommendations

Caravan parks [Part 4]

R1. The Act should be amended to repeal the 60 day exemption for caravan park residents to be covered by the Act. This should be done by removing section (b)(ii) under the definition of ‘resident’ in the Act.

R2. The Act should be amended to state that a person is presumed to be a resident, and the Act applies, unless there is a written agreement stating otherwise.

R3. The Act should be amended to provide greater clarity to the terms used under Part 4 and Part 4A.

R4. The Act should be amended to abolish no reason notices to vacate in caravan parks.

R5. Section 317 (2) of the Act should be amended so that the mortgagee notice to vacate for a caravan be 6 month regardless of whether the mortgage precedes the residency.

Residential parks [Part 4A]

R6. Section 317ZI (2) (c) of the Act should be amended so that the mortgagee notice to vacate for site tenancy be 365 days regardless of whether the site agreement is inconsistent with the mortgage.

R7. The Act should be amended to provide that deferred management fees are prohibited (given the payment of site rent) or strictly regulated.

R8. The Act should be amended to provide mandatory fixed-term agreements of at least 5 years or more for all new site agreements.

R9. The Act should be amended to cap or control sales commissions or to enable VCAT to determine commissions commensurate with chattel sale, and not land sale.

R10. The Act should be amended to require the disclosure of an independent valuation certificate valuing the dwelling with and without a site agreement, and an estimation of the costs associated with relocations and re-assembly.

R11. Section 206ZZH (4) of the Act should be amended to state that a Part 4A operator must not unreasonably withhold consent to assign a site tenancy.

R12. Section 206JA of the Act should be amended to prohibit a part 4A dwelling owner from selling the dwelling unless the site owner has provided a new site lease, or consent to assign the tenancy agreement to the purchaser has been obtained.

R13. Section 206JA of the Act should be amended to prohibit a site owner from unreasonably refusing to provide a new site tenancy to a prospective
purchaser, or unreasonably refusing consent to an assignment by the tenant or their estate.

R14. The Act should be amended to clarify that the site owner is responsible for maintenance of the site including any structures that have become attached to the site.

R15. The Act should be amended to include urgent and non-urgent repair processes that mirror the provisions in the Act in relation to tenancies.

R16. Section 206ZA of the Act should be amended to state that a site tenant may have visitors stay on the Part 4A site, without charge, for an initial period of time and that if the stay exceeds this period, the park operator can apply to VCAT.

R17. Section 206ZB of the Act should be amended to state that a binding decision on rent reduction can be made by CAV Officer and that park operator must apply to VCAT if they wish to vary this decision.

R18. The Act should be amended to establish a set of model rules for caravan parks and part 4A parks.

R19. The Act should be amended to require a park operator to seek approval from VCAT for the addition of any rules that vary from the model rules.

Common issues across Part 4 and Part 4A

R20. Section 143 of the Act should be amended to state that a resident has a right to exclusive possession of the site which he or she occupies; and a right to exclusive possession of the caravan on that site.

R21. Section 195 of the Act should be amended to state that a residency right can be transferred in the event that death occurs.

R22. Section 206ZZH (4) of the Act should be amended to state that a site tenancy does not terminate upon death unless the family of the deceased gives notice with ‘x’ days from the date of death.

R23. The Act should be amended to state that the caravan park residents who own their own dwellings and site tenants must keep the site reasonably clean and in good repair.

R24. Section 161 (and section 206ZD) of the Act should be amended to state that the site owner is liable to provide resident with first copy of key/swipe card but tenant is responsible for any subsequent keys/swipe cards.

R25. The Act should be amended to state that a park operator cannot unreasonably withhold consent for the installation of additional fixtures or dwelling modifications.

Rooming houses

R26. Community housing policies on affordability of rents and the regulation of these policies through the Housing Registrar should be reviewed.

R27. The definition of a rooming house needs to be modernised to properly capture contemporary rooming houses.

R28. The CAV inspectors should broaden their inspections to include repair breaches to the Residential Tenancies Act 1997, and breaches to the Public
Health and Wellbeing Act 2008 and the Building Act 1993. CAV should make referrals to the relevant council based on their findings.

R29. The CAV inspectors should investigate where possible whether the Rights and Responsibilities handbook was provided to residents and take disciplinary action where a breach has occurred. The inspector should deliver the handbook to residents who have not received a copy.

R30. The Residential Tenancies Regulations should be amended to include an additional minimum standard outlining a minimum litre capacity or rate per person in terms of hot water for bathing and laundering.

R31. There should be an enhanced role for Local Government Victoria in the coordination of compliance activity between councils. This role would include the provision of advice on best practice compliance measures.

R32. The Residential Tenancies Regulations should be amended to include an additional minimum standard outlining a minimum litre capacity or rate per person in terms of hot water for bathing and laundering.

R33. The Act should be amended to provide mandatory use of a prescribed standard rooming house agreement.

R34. Section 126 of the Act should be amended to include standard model rules that every rooming house must adopt. If additional rules are to be added or amended, they must be approved by the Director.

R35. Section 137(3) of the Act should be amended to state that room inspections should be conducted no more than once every three months.

R36. The Act should be amended to state that a rooming house owner must not unreasonably withhold consent to a pet.

R37. Section 112 of the Act should be repealed.

R38. The Act should be amended to state that a resident or his or her visitor must not cause damage to the room or rooming house. A resident must report to the rooming house owner any damage to or breakdown of facilities, fixtures, furniture or equipment provided by the rooming house owner of which the resident has knowledge.

R39. Section 113(1) of the Act should be amended to state that a resident must not unreasonably do anything in their room or on the premises of the rooming house, or allow his or her visitors to unreasonably interfere with the privacy and peace and quiet of the other residents or their proper use and enjoyment of the rooming house.

R40. The Act should be amended to prohibit rooming house operators charging for water usage where not separately metered.

R41. The Act should be amended to make it an offence for an unregistered rooming house to serve a notice to leave.

R42. Section 368(1)(b) and section 368(2)(b) of the Act should be amended to say “serious and imminent danger of harm”.

R43. The Act should be amended to state that the notice to leave must include sufficient details to describe the nature and reason for the notice.

R44. The regulations should be amended so that Notices to Leave include adequate plain English information.
R45. The Act should be amended to require that a person serving a notice to leave must attach a statutory declaration outlining the grounds, events, and reasons for the notice to leave being given.

R46. The Act should be amended to state that the Tribunal may adjourn an application under Section 374 for a period of not more than 5 business days at which time the matter must be determined at that hearing unless parties consent to a further adjournment.
Part 4 caravan park residency rights

Caravan park definitions
Definition of ‘resident’

R1. The Act should be amended to repeal the 60 day exemption for caravan park residents to be covered by the Act. This should be done by removing section (b)(ii) under the definition of ‘resident’ in the Act.

R2. The Act should be amended to state that a person is presumed to be a resident, and the Act applies, unless there is a written agreement stating otherwise.

TUV remains concerned about the definition of resident in relation to caravan parks. The definition provides less security to those living in caravan parks than people living in other tenure types. The Act currently defines a caravan park resident as the following:

“resident” means—

(b) in relation to a caravan park, a person (other than a site tenant) who occupies a site in the caravan park as his or her only or main residence and—

(i) who has obtained the prior written agreement of the caravan park owner to do so (whether that agreement was given in respect of that site or another site in the caravan park); or

(ii) who has so occupied any site in the caravan park for at least 60 consecutive days;

A person living in a caravan park is not covered by the RTA until they have occupied a site for longer than two months. This leaves people using the park as their home exposed with no legislative protection over their housing situations for this lengthy period.

The purpose of providing a definition is to bring clarity and certainty to the legislation and to ensure that its coverage is appropriate. It is our understanding that the definition of a caravan park resident no longer adequately protects the rights of those permanently living in caravan parks. Whilst it is understood that the diversity of accommodation provided in caravan parks brings some complexity to the situation, the 60 day exemption is not the right test for distinguishing between short-term visitors and those residing in the park as permanent residents.

Caravan park residents are more likely to be on lower incomes and have barriers to the private rental market by way of a poor rental history or other complexities. Due to this residents are more vulnerable and have less bargaining power as they have fewer housing options. The 60 day exemption adds to this vulnerability and creates additional uncertainty to their housing situation.

An alternative process could be used whereby caravan park owners could provide a simple written agreement to short stay occupiers which state that they are not covered by the RTA. If no written agreement is provided the RTA would be presumed to apply.
Given the requirement in the first part of this provision that a resident must be occupying the site as their only or main residence we believe that subsection (ii) is an unnecessary restriction on the protections that should be afforded to a resident from their first day of occupation.

Other definitions

R3. The Act should be amended to provide greater clarity to the terms used under Part 4 and Part 4A.

The definitions of caravans, movable dwellings and caravan parks in the Act require clarification as there remains considerable confusion when attempting to determine coverage of the different legislative parts.

There is considerable overlap between a movable dwelling, which is designed to be movable, and a Part 4A dwelling, which is ‘designed, built or manufactured to be transported from one place to another for use as a residence’. Although a Part 4A dwelling is one that is fully or partially owned by a site tenant, rather than one that is rented as part of the site, it has all the other characteristics of a movable dwelling as defined in the Act.

Under its definition a movable dwelling means a dwelling that is designed to be movable, but does not include a dwelling that cannot be situated at and removed from a place within 24 hours. The test seems arbitrary and is unclear on what basis the 24 hour period is calculated – does it include setting up time, packing up time and transportation time, for instance?

Security of tenure in caravan parks

R4. The Act should be amended to abolish no reason notices to vacate in caravan parks.

Abolishing no reason notices to vacate would provide greater security of tenure to residents, and help fortify a greater sense of control of their housing circumstances and confidence to access their rights. Caravan park operators would maintain access to the relevant notices to adequately manage resident breaches of the Act.

Closure or sale of caravan parks and part 4A parks

R5. Section 317 (2) of the Act should be amended so that the mortgagee notice to vacate for a caravan be 6 month regardless of whether the mortgage precedes the residency.

R6. Section 317ZI (2) (c) of the Act should be amended so that the mortgagee notice to vacate for site tenancy be 365 days regardless of whether the site agreement is inconsistent with the mortgage.

The Act currently states that a park owner must give 6 months’ notice to vacate, although can’t require a caravan park resident to vacate before the end of the fixed term, when the caravan park is to be sold and the land is to be used for another purpose.

However, in the case of mortgagee becoming entitled to possession of a caravan, the mortgagee must give the resident a notice of 6 months if the mortgage was given after the resident obtained a residency right, yet is only required to give 30 days’ notice to vacate if the mortgage is given before the resident obtained a residency right. The latter notice is inadequate and the resident is unfairly disadvantaged for no fault of their own.

Similarly, in the case of a Part 4A dwelling, a mortgagee becoming entitled to the possession of the caravan park is required to give a notice to vacate of 365 days if the
site agreement is consistent with the mortgage. Yet, the mortgagee is only required to 90 days’ notice in the case that the site agreement is inconsistent with the mortgage.

The Act needs to be amended to provide parity between residents in these different circumstances.

Importantly, in addition to these changes, it should be imperative that information on the sale, change of use, or possession by a mortgagee be disclosed at the time of lease.
Part 4A site agreements

Regulation of residential parks

In a broad sense, the advantage of standalone legislation for residential parks is that it could be simplified and given clearer language and process. The benefit of separate legislation is redrafting without relying on the framework of the RTA, which could deal with Part 4A issues more explicitly. It would also be far less cumbersome for consumers to navigate through the parts of the Act.

More specifically, there is potential for more readily accessible, standardised agreements and sale documents. For example, there should be a prescribed Part 4A agreement similar to Section 26 of Part 2 of the Act. In addition, disclosure obligations in relation to leased caravan parks could provide for clearer disclosure statements and powers of the Director. Further, standalone legislation would be able to deal with unique issues, more clearly and in adequate detail, within the sector, such as standards, slabs, maintenance duties and embedded networks.

The disadvantages lie in the complexities surrounding mixed parks, which include Part 4 and Part 4A dwellings. There would still need to be an ability to distinguish between caravans and Part 4A – that is, would they both be dealt with in one new piece of legislation – and they may both be situated in the same park. The presence of ‘annuals’ and holiday sites only exacerbate such complexities. Finally, there might also be issues relating to dwellings which are substantially modified to be Part 4A.

Central register of residential parks and villages

Having a central register of residential parks and villages would have a number of benefits for residents and operators. The registration of residential parks would provide registration dates enabling parties to ascertain the obligations of new parks, for instance.

A central register could make publicly available other useful information, such as whether or not the business operator is also the owner, the number of dwellings that are retained and the energy supplier.

Such a data set would be far more independent than a reliance on data provided by the industry body. To this effect, it would help facilitate better complaints registration.

Form of site agreements and signing requirements

Given the site agreement is a complex contract, TUV believes that the current consideration period of 20 days (minimum) is an appropriate time frame as it provides a vital allowance of time for the potential site tenant to gain legal and financial advice.

Rent, fees and charges

Fee disclosures and exit fees

R7. The Act should be amended to provide that deferred management fees are prohibited (given the payment of site rent) or strictly regulated.

Deferred management fees are now commonplace in the sector. Whilst this is a practice carried over from the retirement villages sector there has never been any
rationale for the application of these fees in parks where the site rent and other charges are ostensibly for the same purposes.

TUV believes that the best response to deferred management fees is to ban them outright.

Alternatively, the site owner should be prohibited from taking trust money from the sale of the dwelling – because this is where the automatic deductions typically occur – making it incumbent on the site tenant to reclaim their own money.

If a deferred management fee is present, it should not be a complex formula. It should simply be calculated as a percentage of each day of rent. For example, rent is discounted by 20 per cent with the balance paid upon the termination or assignment of the Part 4A dwelling. Further, this amount should be legislatively capped.

If deferred management fees are not to be prohibited, then this alternative represents an adequate compromise and would make a prescribed tenancy form very accessible and easy to understand.

Security of tenure

R8. The Act should be amended to provide mandatory fixed-term agreements of at least 5 years or more for all new site agreements.

Unlike security of tenure for caravan park residents discussed above, for Part 4A parks long-term leases are a more significant issue due to the investment in the dwelling and difficulty in finding alternate sites.

The removal of no reason notices to vacate would also aid in the protection of Part 4A tenants’ security of tenure.

Case study

The site tenant was served a no reason notice to vacate. There had previously been some personal disputes between the site tenant and the site owner. The site owner indicated that they wanted to construct a new dwelling on the site and would therefore not offer any purchaser of the dwelling a site tenancy agreement. The site tenant tried to sell the dwelling, but no one wanted to purchase it because of the moving costs. The site owner then made an offer which appeared to be significantly below the sale price of other dwellings, the site tenant felt they had few alternatives.

Sale of dwellings

R9. The Act should be amended to cap or control sales commissions or to enable VCAT to determine commissions commensurate with chattel sale, and not land sale.

R10. The Act should be amended to require the disclosure of an independent valuation certificate valuing the dwelling with and without a site agreement, and an estimation of the costs associated with relocations and re-assembly.

R11. Section 206ZZH (4) of the Act should be amended to state that a Part 4A operator must not unreasonably withhold consent to assign a site tenancy.

R12. Section 206JA of the Act should be amended to prohibit a part 4A dwelling owner from selling the dwelling unless the site owner has provided a new site lease, or consent to assign the tenancy agreement to the purchaser has been obtained.
R13. Section 206JA of the Act should be amended to prohibit a site owner from unreasonably refusing to provide a new site tenancy to a prospective purchaser, or unreasonably refusing consent to the assignment by the tenant or their estate.

The advantage of regulating the commission that a site owner can receive from the sale of a site tenant’s dwelling is that it protects a vulnerable cohort from financial exploitation, from harassment from the site owner to sell, or from having lock-in contracts which force a site tenant to sell their dwelling through the site owner.

Indeed, at the back end of many agreements, sales commissions are being required with little relationship to the underlying value of the dwelling.

A disadvantage with regulating the commission received by a site owner from the sale of a Part 4A dwelling is that while a site owner cannot make as much money by applying undue pressure in this way and instead just retain trust money, which a site owner is in a strong position of influence over.

To reiterate part of our discussion above on deferred management fees, it is important that the site owner be prohibited from taking trust money from the sale of the dwelling – because this is where the automatic deductions typically occur – and making it incumbent on the site tenant to reclaim their own money.

Case study

The site tenant took occupation of a dwelling in 2011 and signed a site tenancy agreement. The agreement provided for a home resale agreement at the commencement of the tenancy as part of the terms of the lease. The terms of the agreement stated that the consent to act as an agent was irrevocable, and that they were entitled to approximately 2% of the sale price as commission (approximately $3500). The home resale agreement also provided for the site owner to have a reserved right to buy back the dwelling. The site tenant died in 2014. The executors of the estate then sought to sell the dwelling via the site owner in accordance with the terms of the agreement. The dwelling did not sell for over a year, and during this period the dwelling remained on site, and the estate remained liable for rent, and it is unclear if genuine efforts were being made to sell the dwelling.

In spite of protections in the Act – such as those prohibiting a park owner hindering the sale of a dwelling, or requiring that consent to an assignment or transfer not being unreasonable withheld by a park owner – site tenants and residents still have difficulties from park owners.

There are issues with selling a Part 4A dwelling or caravan after the owner has passed away. In a caravan park, the residency right will be extinguished on death. In a Part 4A park, however, it is not clear. The value of caravans or Part 4A dwellings is significantly reduced if the residency right or site agreement isn’t transferred with the sale. Furthermore, it can also cost to transport the caravan or Part 4A dwelling.

As was pointed out in TUV’s response to the Laying the Groundwork consultation paper, there remains a very significant challenge at the heart of the regulation for (Part 4A) moveable dwellings in (Part 4) caravan parks.

The value of the dwelling is inextricably linked to the site occupation including the terms and conditions of the site agreement. In law, however, the value of the dwelling is entirely separate and independent of the interest in the site. It is only upon severance of the dwelling from a site tenancy that the economic reality of the transaction becomes clear.
For example, when a dwelling is purchased for $150,000 on site, and it may be resold with a site tenancy agreement at $150,000 or more, the dwelling appears to maintain value. However, if for any reason, the dwelling must be removed from the site, and sold at auction as a chattel independent of the site, it will only sell for a fraction of its value on the site.

Essentially, sale of a Part 4A dwelling should be conditional upon the new site agreement being granted, and this should not be unreasonably withheld by the park owner unless there is a change of use for the caravan park as a whole.

In addition, the vendor should be required to provide independent – that is, offsite – valuations of dwellings and moving costs upon purchase. At the point of contracting the proposed resident should be able to obtain a genuine and true valuation of the dwelling prior to entering into any agreement.

As part of the contract disclosure, it should be required that the dwelling which is being purchased has an independent valuation certificate as if it were sold as a mere chattel (i.e. with no onsite value). This valuation should include comparison to how much such a structure would fetch at market if it were sold from a yard and an estimate of the cost of relocation and re-assembly if required.

Unless the law requires this valuation, the dwellings worth will continue to be deceptively inflated with the site and park in which it is located. If it is not, then there is significant potential for economic harm to the individuals concerned.

**Case study**

The prospective site tenant purchased a Part 4A dwelling directly from previous dwelling owner. The purchase took place prior to the purchaser being granted a site tenancy agreement by the site owner. The site tenant had paid approximately $90,000 of the dwelling, and completed the sale of the Part 4A dwelling located on site. The site owner provided the prospective site tenant with the agreement. The site tenant was not happy with some of the terms in the agreement, but felt they had no choice, as the site owner said that if they didn’t sign the agreement, she would have to take her dwelling out of the park on the back of a truck or sell the dwelling again. The site tenant reluctantly signed the agreement, and was advised to challenge the terms under the ACLFTA and s206F and 206G. Because the dwelling was purchased prior to site agreement and there was no condition precedent for the site tenancy to be granted, sections 206J and 206ZZH failed to provide adequate protection.

And, finally, legislation preventing caravan park owners or Part 4A park operators from stopping people advertising the sale of a dwelling, or placing independent sales campaign information on the site needs to be strengthened.

**Closure or sale of residential parks**

In the circumstance where a residential park closes, or is to be sold and the land used for another purpose, there should be a formal notice and wind down for 2.5 years, or compensation.

The circumstances surrounding the closure or sale are important: liquidation and bankruptcy, selling the park for profit or if the owner is seeking to regain possession against the landlord. In this context, the disclosure of the lease for a caravan park lease is crucial to understand the tenure that is secured.

**Maintenance and repairs**

R14. The Act should be amended to clarify that the site owner is responsible for maintenance of the site including any structures that have become attached to the site.
R15. The Act should be amended to include urgent and non-urgent repair processes that mirror the provisions in the Act in relation to tenancies.

The Act is unclear about the specific responsibility for site maintenance and the ownership or responsibility for fixtures that have become attached to the site. An appropriate balance of responsibilities for maintenance and repairs in Part 4A parks would be as follows:

> The site tenant has responsibility for the maintenance of his or her own dwelling.

> The site owner has responsibility to maintain the site in a state of good repair unless they can prove the tenant has caused the damage.

> The site owner has responsibility to maintain the slab.

**Case study**

The site tenant had purchased the dwelling in 2011. The dwelling had been constructed and purchased on site. The dwelling had been constructed on top of a concrete slab laid by a third party. Several years later, the slab had shown some minor cracking. Further, there appeared to be movement in either the slab or the dwelling, causing cracks in walls to appear, doors to jar and the floors to become un-level. The site tenant believed that it was the movement in the ground beneath the slab. The site owner alleged that it was an issue with the Part 4A dwelling. It was unclear as to whether the cause was in relation to the dwelling, the concrete slab or the earth that made up the site. The site tenant discovered there was no repair mechanisms or obligations specific to the site, save for the section 61 of the Australian Consumer Law, in relation to the site being fit for purpose. It was further unclear as to the nature and responsibility of the concrete slab. That is to say, was the concrete slab a fixture of the land, and whose responsibility it would be to repair the slab if there was a defect, or if the dwelling had to be relocated who would be responsible for laying a new slab or removing the old slab if a new dwelling was required to be placed onto the site. The dwellings also contained additional fixtures such as a veranda and carport.

**Use of site**

R16. Section 206ZA of the Act should be amended to state that a site tenant may have visitors stay on the Part 4A site, without charge, for an initial period of time and that if the stay exceeds this period, the park operator can apply to VCAT.

R17. Section 206ZB of the Act should be amended to state that a binding decision on rent reduction can be made by CAV Officer and that park operator must apply to VCAT if they wish to vary this decision.

There are a number of issues arising in relation to a site tenant’s use of the site and park facilities.

Issues arise from a failure to maintain common facilities, as well as often unclear- or a lack of acknowledgement of- rent reduction when those common facilities are not maintained. For example, it is unclear which component of the rent is attributed to the facilities and services.

Section 206ZB ostensibly has a provision for such a situation; however, it appears to be ineffective for the demographic residing in Part 4A parks who are generally unwilling to raise issues in this manner. Instead the provision should include a similar binding decision by CAV officer, unless park operator applies to VCAT.
Another issue concerns the site tenant receiving visitors. For example, Section 206ZA (1), giving a site owner the ability to place additional charges for any visitor who stays. The scope of this provision means a site owner may interfere with the resident’s enjoyment of family members coming and staying, by charging the site tenant for this extra use of embedded networks or of common facilities.

Such a situation provides substantial interference with older persons engaging and maintaining family and other relationships. Of course, the site tenant can challenge; however, that provides for arbitrary assessment.

**Park rules**

**R18.** The Act should be amended to establish a set of model rules for caravan parks and part 4A parks.

**R19.** The Act should be amended to require a park operator to seek approval from VCAT for the addition of any rules that vary from the model rules.

In order to strengthen the existing provisions in the Act in relation to the application and enforcement of park rules, a Part 4A and/or caravan park operator should be required to seek approval from VCAT for parks rules which vary from a set of model rules.
Other issues common to caravan parks and residential parks

Non-transferability of residency rights

R20. Section 143 of the Act should be amended to state that a resident has a right to exclusive possession of the site which he or she occupies; and a right to exclusive possession of the caravan on that site.

As discussed above, there remain issues with selling a caravan or Part 4A dwelling with regards to the non-transferability of residency rights. This is importance because the value of caravans or Part 4A dwellings is significantly reduced if the residency right or site agreement isn't transferred with the sale.

TUV believes a caravan park resident should be given exclusive possession – of the site and the caravan that is hired – rather than a ‘right to occupy’, as the latter is a less secure form of tenure. Indeed, the nature of a residency right in a caravan park creates similar problems to those in a rooming house.

A right to occupy is inferior to exclusive possession. Section 94 shows that this makes nominal difference with respect to the practical use of a site. Caravans are not shared between residents in any other context other than joint tenancy or a similar covenant. There is no reason not to grant exclusive possession of the site and the caravan that is hired.

Upon death of resident

R21. Section 195 of the Act should be amended to state that a residency right can be transferred in the event that death occurs.

In a caravan park, the residency right will be extinguished once death occurs and the residency right and site interest cannot be transferred. Yet Section 195 of the Act permits the owner of a caravan to transfer his or her residency right to the purchaser of the caravan, and the Act prohibits a park owner from unreasonably withholding consent. If Section 195 permits an owner to pass on a residency right, it should be the same upon death.

Death of site tenant

R22. Section 206ZZH (4) of the Act should be amended to state that a site tenancy does not terminate upon death unless the family of the deceased gives notice with ‘x’ days from the date of death.

It appears in Part 4A, the dwelling being capable of being occupied is enough for the site tenancy to survive death by virtue of the chattel continuing to occupy the land however it is unclear as the legislation remains silent in this area.

Given this fact, the tenancy agreement should survive the death of the sole site tenant and may either be terminated or assigned.
Case study

Our client had been living in a Part 4A dwelling with her mother for five years, however the site agreement and dwelling were both in her mother’s name only.

Our client’s mother passed away, and bequeathed the Part 4A dwelling to our client. The Site Owner attempted to evict our client on the basis that they do not have a site agreement with her, and therefore she needs to move herself and her Part 4A dwelling off the site.

There are no provisions in Part 4A that deal with death of a sole tenant, and therefore it was unclear where our client stands legally. She was unable to afford to move the dwelling off the site, and doing so would mean the dwelling would decrease in value significantly.

Community living issues in parks

Park management and community considerations

There are adequate provisions provided in the Act to assist park operators with the management of park residents. This includes specific duty provisions, breach of duty and compliance pathways, and notices to vacate for fault of the tenant.

Section 170 (Quiet enjoyment – resident’s duty) is broad, covering all behaviour of the resident or their visitor that interferes in the privacy and peace and quiet of other occupants of the caravan park. It is unclear what conduct an individual resident could engage in that negatively affects other residents but does not constitute a breach of this duty.

The Act would better assist park operators in promoting a harmonious park community by requiring a standardised agreement, standardised park rules and training of park operators.

Condition of dwellings

R23. The Act should be amended to state that the caravan park residents who own their own dwellings and site tenants must keep the dwelling reasonably clean and in good repair.

For caravan park residents who own their dwelling and Part 4A site tenants, there should be some obligation regarding the appearance or condition of the dwelling. At present, however, there is too much arbitrary power given to park owners to introduce park rules which may unfairly impact a resident’s right to sell their dwelling.

For example, s206ZM of the Act requires tenants to keep the site and Part 4A dwelling in a “manner and condition that do not detract from the general standard of the Part 4A park as set by the site owner from time to time”. The standard here is unclear and could be arbitrarily changed by the site owner without consultation, compensation or support. Further, this could potentially result in eviction as it is a duty provision.

The requirement for caravan park residents who own their own dwellings should be to keep the dwelling reasonably clean and in good repair.

Utilities in parks

Embedded networks

TUV completed a submission to the Review of the General Exemption Order Issues Paper to their review of the General Exemption Order.

The recommendations were as follows:
Provide embedded network consumers access to dispute resolution mechanisms: Make it a requirement under the GEO that the exempted party must be a member of the Energy and Water Ombudsman (EWOV) scheme or establish an alternative mechanism (such as a small scale license) to allow EWOV jurisdiction of exempted networks.

Provide embedded network consumers access to consumer protections under the Energy Retailers Code: Clarify the terms of the Energy Retailers Code that apply to on-sellers under the Exemption to ensure that consumers are entitled to adequate billing and contract information.

**Keys**

**R24.** Section 161 (and section 206ZD) of the Act should be amended to state that the site owner is liable to provide resident with first copy of key/swipe card but tenant is responsible for any subsequent keys/swipe cards.

Residents have to pay for the first key/swipe card but presumably they have to return them when they leave. This is inconsistent with other parts of the legislation.

**Modifications and accessibility**

**R25.** The Act should be amended to state that a park operator cannot unreasonably withhold consent for the installation of additional fixtures or dwelling modifications.

To best address the needs of park residents in relation to modifications to the park and to dwellings, the Act should provide that a park operator cannot unreasonably withhold consent to modifications of fixtures. There should be clear incorporation of antidiscrimination or reasonable adjustments for independent aged care living.
Rooming houses

Rooming houses are largely an accommodation stopgap, an option available to those who have no others. Rooming house accommodation is intended to be short-term and transitory while people wait to be housed in social housing, or for those temporarily living and studying in a foreign city. Those living in rooming houses are classed as homeless because of its precarious nature.

The shift from larger rooming houses to the suburban small-scale houses, which are now common, has arisen largely due to the severe lack of affordable rental housing in the private market and the decline of investment in public housing. Rooming house residents have little control over their housing situation; they are not able to access more suitable housing and have no say in whom and how many others they share their house with.

The Rooming House Standards Taskforce in 2009 identified that the business model in these smaller rooming houses is of concern as it is built from an opportunistic targeting of vulnerable individuals with a deliberate strategy of increasing profits by operating on the fringe of legality.¹

**Affordability in rooming houses**

R26. Community housing policies on affordability of rents and the regulation of these policies through the Housing Registrar should be reviewed.

Affordability of rents in rooming houses is an increasing issue. Whilst often touted as an affordable housing option this is generally not the reality. The median rent paid for a room in a rooming house is $195 per week.² In comparison, to share a two bedroom apartment in metropolitan Melbourne in the private rental market the average rent would be $193 per week³.

Many rooming house residents are locked out of the private rental market due to poor rental histories and database listings. This means they are forced to live in substandard housing provided through rooming houses. Due to insufficient social and affordable housing, homelessness services have little option but to refer residents to rooming houses. Individuals are often referred to properties that are unregistered, non-compliant and highly unaffordable.

Data collected from TUV Outreach visits over the last six months found only two (out of 56) rooming houses, both private and community run, were offering affordable rent (below 30% of income). Over half (54 per cent) of residents were in severe housing stress, paying more than 50 per cent of their income in rent. Rents were so high for some that they were paying 85 per cent of their income just on rent. The cost of housing ranged from $120 to $235 per week⁴.

² TUV Outreach data Jan – June 2016.
³ TUV Private Rental Affordability Bulletin Capital Cities (March Quarter 2016).
⁴ Ibid.
From this data it appears that many rooming house operators are profiteering off vulnerable residents. A four bedroom rooming house charging the median rent would receive $780 per week in rent. If the property were operating as a residential tenancy charging an average rent it would bring in $440 per week. Many operators add makeshift rooms or house multiple residents in each room to increase profits. Whilst the rooming house operator is required to undertake certain obligations such as cleaning under the *Public Health and Wellbeing Act 2008* it is our experience that this seldom occurs. It is our experience that rooming house properties are frequently at a lower standard in terms of cleanliness and repair than properties in the private rental market. Rooming house operators are able to make a higher margin by providing substandard accommodation to our most vulnerable population.

**Definition of rooming house**

R27. The definition of a rooming house needs to be modernised to properly capture contemporary rooming houses.

Under the RTA a rooming house is defined as “a building in which there is one or more rooms available for occupancy on payment of rent –

(a) in which the total number of people who may occupy those rooms is not less than 4; or

(b) in respect of which a declaration under section 19(2) or (3) is in force”

This definition was developed at a time when the nature of the rooming house industry was vastly different, with predominantly large purpose built properties used. The definition does not reflect the current rooming house market, which is increasingly tending towards smaller properties. At the current time, properties operating as rooming houses, but with less than four rooms, are not covered by the Act, a situation that disadvantages both residents and owners. Changing the definition of a rooming house to include these smaller properties will provide a clear and transparent regulatory and dispute resolution process for all parties.

The TUV Outreach team encounters properties that are run as if they are rooming houses, often by operators who have other registered rooming houses. These unregistered properties house up to three people who are on separate rooming house or tenancy agreements who have often been referred by homelessness agencies. Because they do not reach the four person threshold local councils are unable to enforce registration even if the property operates as a rooming house in every other respect. This allows operators to dodge rooming house regulations such as minimum standards and compliance with the *Public Health and Wellbeing Act 2008*.

Our Outreach team have seen operators house four or more residents, only to force out the fourth or fifth resident when Council have requested to inspect the property. Due to the resource intensive and lengthy process involved in prosecution Councils are unlikely to take matters further unless they can be absolutely certain that a property meets the definition of a rooming house.

See our detailed case study in Attachment 1.

The definition of a rooming house should incorporate the way in which the property is run and the occupancy right rather than the number of occupants. No other state or territory limits a rooming or boarding house to four or more residents. See other jurisdictions below.

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5 Department of Health and Human Services, Rent Report, March quarter 2016.
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>NSW</td>
<td>Boarding premises means premises (or a complex of premises) that: (a) are wholly or partly a boarding house, rooming or common lodgings house, hostel or let in lodgings, and (b) provide boarders or lodgers with a principal place of residence, and (c) may have shared facilities (such as a communal living room, bathroom, kitchen or laundry) or services that are provided to boarders or lodgers by or on behalf of the proprietor, or both, and (d) have rooms (some or all of which may have private kitchen and bathroom facilities) that accommodate one or more boarders or lodgers.</td>
</tr>
<tr>
<td>QLD</td>
<td>Rooming accommodation is accommodation occupied or available for occupation by residents, in return for the payment of rent, if each of the residents— (a) has a right to occupy 1 or more rooms; and (b) does not have a right to occupy the whole of the premises in which the rooms are situated; and (c) does not occupy a self-contained unit; and (d) shares other rooms, or facilities outside of the resident’s room, with 1 or more of the other residents.</td>
</tr>
<tr>
<td>Tasmania</td>
<td>Boarding premises means a room and any other facilities provided with the room where (a) the room is occupied as a principal place of residence; and (b) any of the bathroom, toilet or kitchen facilities are shared with other persons – but does not include premises located in a building occupied predominately by (c) tertiary students; or (d) TasTAFE students within the meaning of the Training and Workforce Development Act 2013;</td>
</tr>
<tr>
<td>South Australia</td>
<td>Rooming house means residential premises in which— (a) rooms are available, on a commercial basis, for residential occupation; and (b) accommodation is available for at least three persons on a commercial basis;</td>
</tr>
</tbody>
</table>

**Unregistered rooming houses**

Whilst there are 1,152\(^6\) registered rooming houses in Victoria the number of unregistered properties is unknown. It is thought that the number of unregistered rooming houses is high. Out of 103 rooming houses visited by our Outreach team in the last six months 32 were unregistered.\(^7\)

The licencing scheme for rooming house operators will be highly beneficial to improving compliance in the rooming house industry however this measure will not have jurisdiction over unregistered properties.

Modernising the definition to adequately cover all rooming houses, as recommended above, will make it possible for local councils to enforce registration and will ensure a greater level of compliance in the sector.

The process for councils to prosecute a non-compliant operator is highly resource intensive and time consuming. It is often not possible for councils to undertake this pathway due to limited capacity.

\(^6\) CAV, Alternate forms of tenure: parks, rooming houses and other shared living rental arrangements, 2016.

\(^7\) TUV Outreach data Jan – June 2016.
Regulation and enforcement of rooming houses
Consumer Affairs Victoria

R28. The CAV inspectors should broaden their inspections to include repair breaches to the Residential Tenancies Act 1997, and breaches to the Public Health and Wellbeing Act 2008 and the Building Act 1993. CAV should make referrals to the relevant council based on their findings.

R29. The CAV inspectors should investigate where possible whether the Rights and Responsibilities handbook was provided to residents and take disciplinary action where a breach has occurred. The inspector should deliver the handbook to residents who have not received a copy.

It is reported that there is a high degree of compliance with the current prescribed minimum standards in registered rooming houses. Despite this it is our experience that there are a high proportion of rooming houses both registered and unregistered that have ongoing problems with breaches to the RTA and the Public Health and Wellbeing Act 2008. 54 per cent of registered rooming houses visited by the TUV Outreach team in 2016 had issues with repairs and maintenance, cleaning, or fire and electrical safety.

See our detailed case study in attachment 2.

Rooming house residents are amongst the state’s most vulnerable population, making it difficult for residents to uphold their rights. This issue was recognised in 2010 with the introduction of s131A Director may investigate rooming house without application by resident to the RTA. Under this provision the Director has the power to inspect a property in relation to breaches such as repairs. This work should be conducted at the time of inspection for minimum standards, this would provide greater compliance opportunities with no further strain on resources.

Minimum standards

R30. The Residential Tenancies Regulations should be amended to include an additional minimum standard outlining a minimum litre capacity or rate per person in terms of hot water for bathing and laundering.

Local Council

R31. There should be an enhanced role for Local Government Victoria in the coordination of compliance activity between councils. This role would include the provision of advice on best practice compliance measures.

Through our Outreach service and policy function, we have worked across a wide cross section of local government areas in metropolitan Melbourne. We rely on ongoing dialogue to continue to provide outreach and advocacy services for our clients. In this work we have experienced a considerable diversity of local government policy and practice in relation to rooming house matters.

The development of consistent, if not uniform practices across the local government sector has become a vital component of the regulatory environment in which rooming houses operate.

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CAV Alternate forms of tenure: parks, rooming houses and other shared living rental arrangements 2016.
In order for the private rooming house sector to be regulated adequately, compliance activity conducted by the local government sector must achieve best practice standards. However, we have experienced a considerable diversity of local government compliance practice, including divergent interpretations of legislation and regulation, investigation and data gathering practices, liaison with state regulatory agencies, decision making and consultative processes and information management.

**Residency rights and agreements to live in rooming houses**

**Tenancy agreements in rooming houses**

**R32.** The Act should be amended to repeal tenancy agreements and prohibit fixed-term agreements in rooming houses.

As discussed in our initial submission there is considerable confusion around residential tenancy agreements in rooming houses. Although counterintuitive the presence of tenancy agreements is not beneficial to residents in rooming houses. Tenancy agreements and particularly fixed-term agreements are generally not appropriate for this form of accommodation.

Tenancy agreements, particularly with fixed-terms, can trap tenants in unfavourable living arrangements that the tenant has little control over. Unlike other forms of tenure a resident in a rooming house has less autonomy over their living space. Residents do not have control over who they live with or how many people they share their accommodation with. Rooming house residents often have complex needs and may have conflict with other residents. If the resident is under a tenancy agreement it can be more difficult to leave an undesirable situation or find more suitable housing because notice periods are longer and there may be lease-breaking costs.

In rooming houses a fixed-term tenancy agreement offers very limited security due to the high level of unaffordability in the sector. The overwhelming majority of residents are in severe rental stress and are at a high risk of falling into rent arrears.

**Case Study**

A resident rented a room in a registered rooming house. The agreement was called a ‘house rules and license agreement’ and referred to the residents variously as occupants, licensees and residents.

The agreement contained many clauses that were inconsistent with both the tenancy and rooming house residency provisions of the Residential Tenancies Act 1997 (RTA). For example, the agreement required the residents to give 14 days’ notice if they intended to vacate. A rooming house resident must give 2 days’ notice of their intention to vacate under the RTA. A tenant must give 28 days’ notice of their intention to vacate.

The agreement also provided that the resident could be required to vacate on 24 hours written notice for any breach of the agreement. The agreement was for a fixed term and contained an early termination clause that provided that the resident must pay 2 weeks rent (for advertising and re-letting fees) and 28 days rent if they moved out before the end of the lease. However, lease-breaking costs would only be payable if the agreement was a tenancy agreement instead of a rooming house residency agreement.

Uncertainty about whether an agreement is a tenancy agreement or a residency agreement means that the resident rights and obligations are unclear without a determination from VCAT as to what the agreement is. The rooming house operator also required the resident to enter an agreement with a company to provide furniture to the room. The furniture leasing agreement and the rooming house rental agreement required the resident to pay a ‘furniture deposit’ in addition to the bond that was not lodged with the Residential Tenancies Bond Authority. The terms of both agreements provide that the furniture deposit was to be used to secure
breach of either the furniture leasing agreement or the rooming house rental agreement.

Agreements in rooming houses

R33. The Act should be amended to provide mandatory use of a prescribed standard rooming house agreement.

Rooming house operators often develop agreements that take parts from tenancy agreements and parts from residency agreements to create the best possible outcome for themselves whilst leaving the tenant with little protection. The inclusion of additional and often unlawful terms are commonplace. Rooming house residents have very little bargaining power, often having nowhere else to go for accommodation. Greater protection is needed to ensure rooming house residents have access to fair contract conditions that reduce opportunity for exploitation and uphold the rights provided to them in the RTA.

Case Study

A resident was newly arrived in Australia and entered into an agreement to lease a room with his partner for a fixed term. The property had 9 available rooms for rent. Our client was asked to pay a bond (which was lodged at the RTBA) as well as a separate furniture deposit. The agreement purported to be a license agreement, but also incorporated elements of the RTA. It also contained a variety of invalid and arbitrary charges which would be imposed on the resident. As well as a term that the rooming house operator could move the residents out of their room at any time if they needed use of the room for another reason.

The property was in a state of poor repair and the resident was met with hostility when he approached the rooming house operator about these issues. He was told to leave if he didn’t like it.

Rooming house rights and responsibilities

House rules

R34. Section 126 of the Act should be amended to include standard model rules that every rooming house must adopt. If additional rules are to be added or amended, they must be approved by the Director.

There are currently no standard house rules and this is being taken advantage of by many operators. Rules are frequently used to regulate the use of heaters to limit gas or electricity bills where premises are not separately metered. Rules are also often used to pass cleaning responsibilities on to residents where the Public Health and Wellbeing Act provides that this is rooming house operator’s responsibility. Rules can also be used as a source of retaliation. Standardised rules would help limit abuse of rules and inappropriate delegation to vulnerable residents.

Entry to a resident’s room

R35. Section 137(3) of the Act should be amended to state that room inspections should be conducted no more than once every three months.

Room inspections are permitted every month under the RTA. This is an unnecessary breach of quiet enjoyment and should be amended.

Pets in rooming houses

R36. The Act should be amended to state that a rooming house owner must not unreasonably withhold consent to a pet.
Rooming houses provide more complex social environments than other forms of tenure under the Act given their communal nature. As a result there are more considerations to take into account when determining whether a pet should be permitted in a property. The comfort and safety of other residents is one such consideration. This does not mean that an outright ban is always appropriate. A recent VCAT decision found that a blanket ban on pets in Owners Corporation rules was unlawful. We would argue that similarly, pets in rooming houses should be considered on a case by case basis. There are many arguments for the therapeutic benefits of pets. Additionally many pet owners have significant difficulty finding accommodation in the rental market, this need not be exacerbated by disallowing pets in rooming houses. By allowing the rooming house operator to refuse consent for a pet in reasonable circumstances gives adequate protections for situations where a pet would not be appropriate.

**Security**

What should a rooming house operator’s obligations be under the Act in relation to the security of a resident’s person, and the security of a resident’s mail?

**Bonds**

The failure to lodge bonds is an ongoing issue in the rooming house sector. Roughly 30 per cent of rooming houses visited by TUV Outreach required the payment of a bond. Of these, 33 per cent failed to lodge the bond with the Residential Tenancies Bond Authority (RTBA). Of the operators who failed to lodge bonds more than half were running registered rooming houses.

This level of non-compliance is concerning as it is our experience that many residents in these premises struggle to obtain a bond refund. While residents are encouraged to request that rooming house operators lodge their rental bonds with the RTBA, many residents express an unwillingness to do so for fear of retaliation. In some instances where the bond was not lodged, the rooming house operator has also requested bond payments in excess of the two week legal requirement.

**Duty to pay rent**

R37. **Section 112 of the Act should be repealed.**

Rent payment should not be a duty as it exposes residents to an unnecessary risk to their tenure. If rent is not paid then a notice to vacate can be served. There is no need for this additional provision. Section 112(2)(a) and 112(2)(b) in relation to shared rooms is unnecessary as exclusive occupancy should already prohibit cohabitation of residents unless they consent.

**Repairs**

In our experience there is a high degree of non-compliance with the duty to maintain rooming houses. This is true of both registered and non-registered properties. Over one third of registered rooming houses visited by the TUV Outreach team in 2016 reported issues with repairs and maintenance.

Residents frequently report that they do not feel secure enough to serve official notices on the rooming house owner. This is often justified as we have assisted residents who received retaliatory notices or were victims of intimidation and violence in response to attempting to assert their rights.

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* Owners Corporation SP24474 v Watkins
Case study

A resident living in a registered rooming house with multiple and significant repair issues served a notice to the rooming house operator. The following day he received a 120 day notice to vacate for no reason. The resident was intimidated by the operator and subject to an assault to which other residents were witnesses. The resident obtained an urgent restraining order from VCAT however he also received a notice of rent increase and a second notice to vacate. The resident no longer feels safe in the property and despite the likelihood of the notices being struck out by VCAT he is no longer able to stay at the property due to safety concerns.

Duty to compensate for damage

R38. The Act should be amended to state that a resident or his or her visitor must not cause damage to the room or rooming house. A resident must report to the rooming house owner any damage to or breakdown of facilities, fixtures, furniture or equipment provided by the rooming house owner of which the resident has knowledge.

This section is inconsistent with the equivalent provision for residential tenancies. It has a harsher requirement of the tenant and could place unfair financial burden on people who are already financially strained. Further, the compensation amount is likely to be the subject of a dispute, and compliance is impossible to determine.

Quiet enjoyment of other residents

R39. Section 113(1) of the Act should be amended to state that a resident must not unreasonably do anything in their room or on the premises of the rooming house, or allow his or her visitors to unreasonably interfere with the privacy and peace and quiet of the other residents or their proper use and enjoyment of the rooming house.

It is understandable that rooming house residents The quiet enjoyment of rooming house residents is complicated Section 113 places an overly burdensome responsibility on the resident by using the phrase “anything” rather than “unreasonably.”

It is also unreasonable for a resident to be expected to control the behaviour of a guest when they are not only in the rooming house but near it. It puts responsibility on the resident for behaviour of another in what potentially could be a public space. The rules around guests and relationships should be better addressed in the context of house rules.

Utilities

R40. The Act should be amended to prohibit rooming house operators charging for water usage where not separately metered.

The Act prohibits rooming house operators charging for electricity and gas if the room is not separately metered, however it does not mention water. This is inconsistent with the residential tenancy and caravan park provisions, which state that charges can only be made for water and sewerage disposal if it is separately metered.

Notices to leave

R41. The Act should be amended to make it an offence for an unregistered rooming house to serve a notice to leave.
R42. Section 368(1)(b) and section 368(2)(b) of the Act should be amended to say "serious and imminent danger of harm".

R43. The Act should be amended to state that the notice to leave must include sufficient details to describe the nature and reason for the notice.

R44. The regulations should be amended so that Notices to Leave include adequate plain English information.

R45. The Act should be amended to require that a person serving a notice to leave must attach a statutory declaration outlining the grounds, events, and reasons for the notice to leave being given.

R46. The Act should be amended to state that the Tribunal may adjourn an application under Section 374 for a period of not more than 5 business days at which time the matter must be determined at that hearing unless parties consent to a further adjournment.

Provisions in the Act provide very little protection from the misuse of notices to leave, leaving residents vulnerable to immediate expulsion from their home. For many residents' the notice to leave, renders them homeless and living rough until the matter is determined.

In some instances, VCAT adjournments have been given and the matter has not been resolved for almost 2 weeks, during which the resident has no access to their home or belongings. This can cause issues with medication or medical needs, security of personal goods, and relapsing for some clients. During this time the tenant is also without an address to receive their notice to attend VCAT.

Section 373 provides that the operator or manager who issues a notice to leave must inform the principal registrar of the notice no later than the end of the following business day. The intention of this provision is to create accountability however it is our belief that this is simply not occurring.

Delays caused by adjournments once the matter is contested have severe consequences for residents who have been served a notice to leave. The resident is effectively rendered homeless and in most cases will be living rough during this time.
References


Department of Health and Human Services, Rent Report, March quarter 2016.


Tenants Union of Victoria, Outreach data, Jan – June 2016.

Attachment 1

Case study: Unregistered “rooming house”

The TUV Outreach team visited a property in March 2016. The property was unregistered and was owned and run by a rooming house operator who has multiple registered rooming houses. The property was managed in a rooming house-like manner but was unable to be classed as a rooming house because it only housed three occupants.

The property was a four bedroom dwelling with three rooms available for rent. A smaller fourth room at the rear of the property was filled with rubbish.

All tenants came to the property independently, referred by housing agencies and were on separate agreements. The tenants had signed acceptance letters stating the property was a rooming house. Bond lodgement forms declared the property type as a rooming house. Each room had a lock on the door with an individual key. House rules were included as additional terms in each tenancy agreement and were displayed throughout the property.

**Tenant 1:** Paying $200 per week rent. Payed a bond of $640.
The tenant was referred to the rooming house operator by an employment agency after living in his car for three months. The ‘rooming house operator’ supported the tenant to a homelessness service and helped him complete the referral paperwork.

**Tenant 2:** Paying $230 per week rent. Payed a bond of $640.
The tenant had to move out of his previous residence quickly due to violence in the home. He was referred to the property by the Office of Housing.

**Tenant 3:** Details unknown.

If the property had significant maintenance and repair issues, and were it classed as a rooming house would have been in breach of the Public Health and Wellbeing Regulations 18 and 19, and breaches to the Rooming House Minimum Standards and RTA. The property contained:

- Significant filth and mess throughout the communal areas in the property.
- Heater not working in front room.
- Oven and stove filthy and not working.
- Rotten bench tops in the kitchen.
- Significant mould in bathroom on walls and ceiling. Rotting walls around bath.
- Ventilation issues in the bathroom.
- Problems with the provision of hot water.
- Holes in the front security door.
- Front glass panelled door smashed with broken shards of glass remaining in the door for months.
- Toilet door not able to close properly.
- Rear security door not able to close.
- Ceiling in laundry collapsing.
- Large gaps between wall and floor allowing vermin to enter the property.
RE: ACCEPTANCE INTO ROOMING HOUSE

I confirm that I have accepted (tenants names) as residents of the rooming house at (address) as of (Date of tenancy) Tenancy is for 1 year Months. Lease is for one room. Rent costs $300 pw (plus $20 pw for bills)

Two weeks rent in advance is required or Advance rent to first payday. This can be a direct debit as follows:

Bank:
Name:
BSB:
Account:

If you require further information please call me on .

Kind Regards
# BOND RECEIPT

**Residential Tenancies Act 1997**

This is to confirm that a payment has been received by the Residential Tenancies Bond Authority (RTBA), for a residential tenancy bond. The bond details are:

<table>
<thead>
<tr>
<th>Bond Number</th>
<th>Bond Type</th>
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</thead>
<tbody>
<tr>
<td>[Redacted]</td>
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<table>
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<tr>
<th>Bond Amount Received</th>
<th>Date Received by RTBA</th>
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<tr>
<td>$640.00</td>
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<table>
<thead>
<tr>
<th>Name(s) of Tenant(s)</th>
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<table>
<thead>
<tr>
<th>Name of Agent/Landlord</th>
<th>Address of Agent/Landlord</th>
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<tbody>
<tr>
<td>[Redacted]</td>
<td>[Redacted]</td>
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<table>
<thead>
<tr>
<th>Type of Tenure/Premises</th>
<th>Director of Housing Loan Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>ROOMING HOUSE</td>
<td>[Redacted]</td>
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</tbody>
</table>

Subject to payment clearance, the above bond details have been registered with the RTBA. If the payment is dishonored, you will be advised immediately and this bond shall be cancelled.

If any of the above details are incorrect, please advise the RTBA immediately.

When contacting the RTBA, please quote **Bond Number [Redacted]**.

**Turn the page for more information.**

Check your bond details online at [rentalbondsvic.gov.au](http://rentalbondsvic.gov.au)
Schedule A - Items which may be provided to you in the bedroom:
Bed / Linen / Chair / Desk / Table / Chest of Drawers / Wardrobe / TV / 100 litre storage container

Schedule B - Additional Terms

The following additional terms form part of the lease agreement.

1.0 House Rules
The following House Rules are in force at all times:
1.1 Treat neighbours & housemates with respect
1.2 Keep up after yourself
1.3 No loud noise between 8pm and 9am
1.4 No smoking inside
1.5 No pets unless agreed on the lease
1.6 Do the house duties as set by the landlord/house leader and as per cleaning roster
1.7 No unaccompanied visitors. No visitors to stay overnight. All visitors must leave by 10pm
1.8 No asking for loans or donations of money, goods or favours once asked to stop
1.9 All past tenants are banned from the property and must not be invited in or allowed to stay.
1.10 No one is allowed to be taking or affected by drugs or alcohol in the common areas
1.11 No fires. In no lighting, fueling, attending, or failing to report fires.
1.12 Obey all conditions of the occupancy permit.
1.13 Notify landlord immediately in writing any damage, danger, violence or breach of house rules.

Exclusive Occupancy
A tenant exceeding the room capacity will be given a Notice to Vacate, and will be charged an extra 50% rent per person.

Communication and giving notice
Tenants must contact the landlord if they have called an emergency service and if an emergency service has been called for them. Failing to do so may indicate the tenant’s behaviour is “disturbing the peace”.

Tenants must contact the landlord in the event they are “late with rent” taking a “holiday”, “leaving for good”, or when their actions have “caused damage” or they have become “aware of damage”. Failing to do so may cause the landlord to mistakenly think you have “missed a payment”, “left for good”, “still need the room”, “deliberately concealing damage” or “deliberately failed to report damage” respectively.

Lockouts
In the event of an emergency bedroom or house lockout tenants can pay a locksmith to open the lock and let them in at their expense, otherwise just tell the landlord and either make arrangements to pick up the landlords spare key or establish when the landlord is next visiting and wait.

Cleaning Expectations for tenants leaving for good
The landlord will not claim the bond due to a breach of room cleanliness if the tenant does the following:
1. Wash and wipe clean all surfaces including: Ceiling, lights, fan, walls, switches, outlets, windows, window sills, beds, furniture, tvs, wardrobes, doors, architraves, skirting boards.
2. Sweep then bleach and mop hard floors and vacuum soft floors.
3. Remove all rubbish, without overfilling bins.
4. Return the keys.
5. Contact the landlord.
Mould on the outside of the property

Mould inside on the ceiling
Broken flooring and filth
Oven filthy and broken
Filthy kitchen cupboards
Mouldy bathroom ceiling
Wall cracks and unsafe wiring
Case study: Registered rooming house

The TUV Outreach team visited a property in September 2016. The property was registered and housed 12 residents in the 14 bedroom premises.

Health and safety concerns
The residents reported a major electrical fault which was being caused by multiple roof leaks. Allegedly the leaks resulted in rain water permeating the ceiling and dripping on residents’ possessions and causing the electricity in the property to disconnect every time it rained.

The TUV Outreach team witnessed damp and mould throughout the property. One of the vacant rooms had blackened carpet from water damage and the room had an overwhelming smell of mould.

The TUV Outreach team was informed by a resident that an ambulance had responded to an emergency call at the premises in August to attend to a resident who had ceased breathing whilst in the room he shared with his wife. When the paramedics arrived the resident was unable to be treated in his room because of its size. Whilst the room met the minimum standards by total area, the room was very long and was too narrow for the paramedics to properly attend to the resident.

The resident was moved into the hallway where ambulance paramedics attempted to resuscitate him. Medical attention was made more difficult because the electricity supply to premises had been disrupted due to heavy rain that evening. As a result there was inadequate lighting for the administration of proper medical care. The paramedic staff had to set up spot lights in order to administer care to the resident.

Time that could have been spent providing medical assistance was instead spent in setting up lighting. The resident sadly died in the premises hallway.

Repair issues
Electrical fault as described above.
Roof leaks causing damp, mould and damage to residents’ possessions.
The properties only oven sits directly on the kitchen floor; the stovetop has a number of broken burners and faulty wiring in the oven.
Light at the front door needs repair, inadequate lighting at the side of the house which is uneven and unsafe.

Unlawful notice to vacate
A resident was issued a 120 no reason notice in response to requesting repairs in the property.

Unaffordable rent
Rents are $200 per week.
Roof leaks
Oven at unsafe height
Damp mouldy carpet