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Consumer Property Law Review  
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## **Consumer Property Law Review: Options for reform of the Estate Agents and Conveyancers**

The Tenants Union of Victoria was established in 1975 as an advocacy organisation and specialist community legal centre, providing information, advice and advocacy to residential tenants, rooming house and caravan park residents across the state. Our aim is to promote and protect the rights and interests of private and social residential tenants in Victoria.

The Tenants Union of Victoria contributed to the first stage of the Consumer Property Law Review and welcomes the opportunity to provide our input to the Options Paper.

### **Training and work experience**

#### *Option 4A – Increase training standards for agents’ representatives*

The Tenants Union supports Option 4A. This option is the most practical and reasonable option to address the issues that have been outlined about agents’ representatives. Increasing the requirement from three units to seven would raise the standard of entry knowledge and would bring Victoria’s education requirements in-line with Queensland. Enforcement of the regulations is also important to ensure that there is compliance.

A number of case studies highlighting property managers’ lack of understanding of the law have been included on page 3.

Option 4B is the least favoured option as it would result in no change to the level of training for property managers. The lack of adequate training of property managers has significant implications on tenants’ lives. When a property manager misrepresents the rights and obligations outlined in the *Residential Tenancies Act 1997* (RTA) it can result in a number of serious consequences. These include a tenant losing their home and potentially facing homelessness, a tenant living in unsafe conditions lacking essential services, or a tenant facing large costs that may not be necessary. This has a particularly negative impact on tenants who have experienced family violence, and unfortunately Estate Agents frequently misunderstand the family violence provisions outlined in the RTA.

It is thought that any additional training would be far less costly to industry than it is to tenants who regularly experience difficulties due to the chronic undertraining that agent's representatives receive before entering into employment.

Below are some suggestions for areas of training for Agents and their representatives:

- Family Violence provisions in the RTA including a tenant's right to apply for a reduction of a fixed-term tenancy agreement, and the Tribunal's ability to apportion liability for damage.
- Tenancy Database requirements, and especially under what circumstances a tenant can lawfully be listed.
- Entry provisions under the RTA, including the need to gain consent before conducting an open house inspection.
- Compensation and bond claims and requirements to provide evidence, to incorporate fair wear and tear and depreciation to claims, and the implications of bringing frivolous and vexatious claims to VCAT.
- Repairs and maintenance and the requirements under the RTA.
- How to manage difficult clients so that the agent is able to act within the law even if the landlord is requesting otherwise.
- Their obligations to comply with the law and the consequences for non-compliance.
- Some level of customer service training.

## **Continuing Professional Development**

*Option 6A – Mandate continuing professional development for estate agents, agents' representatives and conveyancers*

The Tenants Union supports option 6A. This is the only way to ensure that agents and agents' representatives maintain an active understanding of the law and their obligations to it. Non-compliant agencies are unlikely to engage with non-compulsory training or information as put forward in option 6B.

According to the Real Estate Institute of Australia after the introduction of CPD in Western Australia in 2009 there was a 70% reduction in complaints from the previous year, and an average reduction of 61% over the following three years.<sup>1</sup>

A number of case studies highlighting issues of property managers' lack of understanding of the law have been included on page 3. These demonstrate the need for compulsory CPD.

## **Conduct in property management**

*Option 14 – Amend professional conduct rules to include specific rules relating to property management*

The Tenants Union strongly supports option 14. Rules similar to those contained in NSW's *Property, Stock and Agents Regulations 2008* would be beneficial to tenants who are regularly suffering under

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<sup>1</sup> Real Estate Institute of South Australia, Mandatory CPD Benefits Agents and Consumers, August 2013, <http://www.reisa.com.au/news/mandatory-cpd-benefits-agents-and-consumers#.Vueaj319670>

the poor conduct of property managers. In addition to the rules outlined in the NSW Regulations we suggest including the following:

- An agent or their representative must not provide information to a tenant that is false or a fraudulent misrepresentation of their rights (similar to what is contained in sections 501 – 504 of the RTA).
- An agent or their representative must not delay responding to a tenant’s request for a lease transfer.

The Tenants Union would also welcome the inclusion of obligations of the Agent in the RTA, as this would provide a pathway to resolve issues through the Residential Tenancies List at VCAT.

The Professional Conduct Regulations, as they stand, are failing to ensure professional practice in the real estate industry. The current Regulations outline that an agent and agent’s representative must have a working knowledge of the law (regulation 6) and that an agent and an agent’s representative must act fairly and honestly (regulation 19), despite these breaches to these regulations are rife.

The introduction of additional professional conduct rules must also include penalties for non-compliance and a pathway for consumers to raise non-compliance, as well as a regulator willing to issue penalties. Without these aspects the professional conduct rules will continue to be regularly breached.

Below are a number of case studies demonstrating where agents have breached the Professional Conduct Regulations:

### **Misrepresentation of the law**

#### *Case study 1*

*A tenant contacted our legal service after their oven had not been working for 7 weeks. The tenant reported the problem to the Estate Agent promptly after the oven stopped working. The agent had informed the tenant that the landlord was aware of the issue and was making arrangements to resolve the issue. The Agent said that because the landlord was already aware of the issue there was nothing that could be done to speed up the process. The Agent said that the tenants would have previously had a right to put in a 14 day urgent repair request, but because the landlord was aware of the problem the tenant no longer had a right to put in this application. The tenant was also told that they had no right to compensation. This was a misrepresentation of the rights and duties under the RTA.*

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#### *Case study 2*

*A tenant presented to our service with a standard lease break form that they had been given by their Estate Agent. The form included a misrepresentation of Part 10A of the Residential Tenancies Act, claiming that the tenant would be listed on a tenancy database if they did not leave the property in good repair or had an outstanding debt at the end of the tenancy agreement. The form said: **“We understand that should we break our lease, we will be responsible to pay rent until the new tenant is found or to***

the end of the fixed term agreement, whichever is soonest. We are aware that our names will be recorded with the NTD (National Tenancy Database), if we fail to leave the property in good repair or vacate with an outstanding debt to the agent or landlord.” *The information contained in this form appears to be an attempt to intimidate or bully the tenant.*

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### Case study 3

*A tenant presented at our service with a standard form about rent arrears that they had received from their Estate Agent. The form includes information that is incorrect, misleading and intimidating in nature. This included claims that the tenant’s work place would be called if they were 3 days in arrears, that a breach of duty notice would be sent if rent was 7 days in arrears, that the tenant would receive a poor credit record if they were in arrears at the time of vacating and that they would have their name lodged on a tenancy database. The form said:*

**“If we are notified that your rent will be late, our policy is:**

**1 day late – We will send you a reminder SMS, email and phone call**

**2 days late – A phone call, SMS, and email will be sent**

**3 days late – A phone call to your work, your mobile, your references, SMS and email will be sent**

**4 days late - An agent will be at your property to conduct a site visit**

**7 days late – A Breach letter will be sent as you are in breach of your lease agreement**

**14 days late – A Notice to Vacate will be issued and you will be asked to vacate the property**

**14+ days late – VCAT proceedings will be actioned and permanent court and credit records will be lodged.**

**Arrears POST Vacating Date:**

- **VCAT bond and Compensation Court Hearing**
  - **Permanent Court Record and Credit Record lodgements that will stay active for 7 years – making rented and borrowing in future very difficult.**
  - **Tenancy lodged with National Tenancy Database and we will be unable to give you a rental reference.**
  - **Outstanding Debt will be lodged with a Debt Collector”**
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### Case study 4

*A tenant who was a victim of family violence sought assistance from the Tenants Union. The tenant applied to reduce her lease under section 234 of the RTA. The Estate Agent was not happy with the application and tried to get the tenant to withdraw the application seeking that the tenant go through the normal lease breaking process. The Estate Agent clearly did not understand the law, and at the VCAT hearing the Estate Agent asked for \$2000 from the tenant for lost rent. The Agent then filed an excessive bond claim, asking for over \$900 from the bond. At the hearing this claim was reduced to just over \$100. If the tenant had not contacted the Tenants Union for assistance she*

would have had to pay almost \$3000 to the landlord because of the Agents misrepresentation of, or lack of understanding of, the law.

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#### Case study 5

A tenant was under a fixed-term tenancy agreement and received a notice to vacate under section 258 of the RTA, for landlord to occupy. The notice was given with an end date before the end of the fixed-term tenancy agreement, even though this is not permitted under the RTA. The tenant had been contacted by the Estate Agent and was advised that he needed to leave the property as the landlord wanted to move back in. The tenant objected however was told that it was the landlord's right to issue a notice to vacate under section 258, even though this is incorrect. The tenant was a student from a non-English speaking background and did not realise that this type of notice was invalid.

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### **Rude and/or unprofessional conduct**

#### Case study 6

A tenant's hot water service broke and was reported immediately to the Estate Agent. After three days of not hearing from the Agent the tenant was told that it would take another 14 days to fix. The tenant called the Agent about this to ask for something to be done to give her and her family access to water during this time, such as getting vouchers to the local gym so they could shower there. The agent told the tenant there was nothing she could do and told the tenant not to complain as homeless people don't have hot water. The Agent then hung up on the tenant.

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#### Case study 7

A tenant received a notice to vacate for sale. The selling agent sought to conduct open house inspections, the tenant objected as they had a family and was finding them very disruptive. The Agent informed the tenant that they had no say in when the open house inspections would take place. The tenant sought a restraining order from VCAT to stop the open house inspections as the Agent would not negotiate. Due to this the Agent had to cancel a number of open house inspections. After the tenant moved out the Agent attempted to sue the tenant in the VCAT Civil List for over \$7000, alleging the tenant's conduct caused the landlord a loss. This is despite the fact that the tenant was acting within their rights under the RTA, and it was the Agents responsibility to negotiate consent from the tenant to hold open house inspections.

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### **Other case studies of poor conduct**

#### Case study 8

A tenant inspected a property that was in a very messy condition with major defects and stained smelly carpets. The Estate Agent told the tenant that before the tenancy

*commenced the property would be fixed, that new carpets would be installed and the walls were to be painted. The tenants signed the lease on this basis.*

*The tenant commenced the lease, no condition report was provided, and the premises was in the same terrible condition that it was when it was inspected.*

*The tenant terminated the tenancy agreement on the basis that the property had not been provided in a reasonably clean condition. The Estate Agent attempted to go after the tenant for a lease break, despite the fact that it is the tenant's right to break terminate the lease under section 65 of the RTA.*

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#### **Case study 9**

*A tenant had overpaid their rent by \$45. The tenant moved out of the property and made a request to the Estate Agent to repay the \$45. The Estate Agent refused to repay the money saying that the landlord was entitled to the money because they hadn't put the rent up during the two years the tenant was living in the property.*

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#### **Case study 10**

*A tenant was around 4-6 weeks in advance in their rent. They had just moved out of the property and asked the Estate Agent to be reimbursed. The tenant had not broken their lease; they had given the correct notice and moved out accordingly. The Estate Agent told the tenant that they wouldn't be able to reimburse them until another tenant moved in and paid rent.*

*The tenant knew the landlord (small town) and had spoken to them about the rent – the overpaid rent hadn't been passed on to the landlord.*

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## **Compliance measures**

The Tenants Union supports additional disciplinary action being undertaken to address non-compliance by Estate Agents and Agent's Representatives. There needs to be strict consequences for misrepresentation of the law by Agents and their representatives.

Most importantly, there needs to be an accessible pathway for making complaints and meaningful outcomes to complaints when they are made. The Tenants Union would support reforms that require CAV to investigate all complaints that are made. Under the current process tenants are often told that they are not able to make a complaint and there is rarely any follow up from complaints that are accepted.

## **Penalties**

*Option 26 – Undertake a full review of the penalties under the Estate Agents Act*

The Tenants Union supports increasing penalties under the Estate Agents Act, however compliance with the Act and Regulations would be better addressed through active and regular enforcement. Any benefits of increasing penalty amounts will not be realised if they are seldom enforced.