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CANBERRA ACT 2601

Re: Review of the Residential Tenancies Act

Thank you for the opportunity to provide comments on the Discussion Papers.

The submission attached is while comprehensive in terms of the first discussion paper is unfortunately not as detailed as we would like particularly as we do not have the resources to address the issues in the Discussion Paper on Social Housing.

I would like take the opportunity in relation to social housing matters to note that on the whole the issues raised in the Social Housing Paper are tenancy management and operational matters for Housing ACT that should be addressed in HACT policies, the Housing Assistance Act and related programs. In relation to these matters we refer to the wealth of experience and knowledge behind the submission of Welfare Rights and Legal Centre. That said, we look forward to any opportunity to participate further in work relating to this Paper.

I am happy to discuss the issues we raise further and would like to express the Tenants' Union's ongoing commitment to participation in any ongoing consultation process in relation to the review of the RTA and housing in the ACT.

Yours sincerely

Deborah Pippen

Executive Officer

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Introduction

The Tenants' Union (TU) is one of the primary providers of information, advice and education to people renting in the ACT.

The Tenants' Union membership consists of private, public and community housing tenants, occupants of other forms of accommodation as well as individuals interested in tenancy issues. The TU represents people renting in the ACT (private, public, community), works to promote the rights and interests of tenants and undertakes housing and tenancy-related projects.

The TU is a community legal centre providing tenancy advice, information and referral through the paralegal Tenants' Advice Service (TAS), casework including Tribunal representation is conducted by our Principal Solicitor. The TAS provides information, advice and referral through its two advice workers and also undertakes community legal education: producing information, conducting workshops and presentations, and promoting tenant participation. The TU is funded through the Justice and Community Safety Directorate, by a proportion of the interest earned from bonds lodged with the Office of Rental Bonds.

In the last year (2013/14) our service provided advice on 2,445 matters to 1,084 clients. In addition to this we had direct contact with people renting through a variety of other forums including presentations, workshops, information stalls, and community meetings. Furthermore we participate in a range of networks and forums with community service workers and providers who have contact with people renting.

The consequence of this experience and range of services, and close links with related organisations, is extensive knowledge of tenancy and housing issues in the ACT. In preparing this submission we have directly consulted with the following organisations:

- Legal Aid ACT
- Youth Law Centre of the ACT
- Women's Legal Centre (ACT and Region)
- Welfare Rights and Legal Centre
- Supportive Tenancy Service
- ACT Disability, Aged and Carer Advocacy Service
- Domestic Violence Crisis Service
- Tenants Union of NSW
- a number of community housing providers

Accordingly the TU is providing a submission responding to issues and items identified as being of particular relevance to tenants and others renting in the ACT.

The following principles have informed our approach to this review:

- Housing as a human right
  It should be emphasised that Human Rights are not only required to be realised by the government, but also by companies and private individuals. The progressive realisation of rights necessitates improvements to all minimum standards in relation to rental housing (amenities, access, privacy, and security) as general housing and community standards develop. It follows that all landlords should be legally required to meet those rights;

- Housing is not just a general consumer good, it is an essential service;

- The importance of security of tenure to the wellbeing of individuals and their ability to access their rights;
- The need for legislation which is clear, consistent and protects tenants and is accessible
    - There is a difference between the existence of legal rights, and the knowledge of those rights, and then in turn the ability to realise those rights through practical enforcement.
    - Tenants need to be able to realistically access the legal safeguards provided by Tribunals and Courts.

Key issues

- Security of tenure
    - Not just about evictions, also about remedies for breaches,
    - The practical result of lack of security of tenure is uncertainty
    - Terms which foster the existence and maintenance safe, secure, appropriate tenancies
- Occupancy agreements
    - This is a growing area given the housing affordability crisis in Canberra
    - Very limited awareness of rights/obligations in this area for all parties
    - The most vulnerable have the least protection
- Domestic violence
    - A vitally important issue, which currently is inadequately addressed in the legislation putting women at risk of abuse, financial stress
- Share-housing
    - Links with DV provisions
    - Lack of clarity creates confusion, uncertainty and gives rise to disputes
- End of tenancy issues
    - Lack of clarity creates confusion, uncertainty and gives rise to disputes
    - Has impacts on ability for tenants to move within the market

It is the intention of this submission to respond to the discussion papers developing awareness of the extent problems and the way the market and legislation impacts on renters in the ACT but also suggest possibilities for better outcomes to be achieved for both renters and lessors.

At the outset it is important to consider that there have been many and significant changes in the ACT and broader communities since 1997, and these must be addressed when reviewing the legislation. These changes range from developments in technology (digital cameras, smart phones, internet banking and communication, as well as developments in building and housing technologies) to changing demographics with greater numbers of people from culturally and linguistic diverse backgrounds, students and transient workers and contractors.

The private rental market in the ACT

Q 2-1 Are the above comments about the state of the ACT rental market consistent with your experience of or your views on the state of the ACT rental market. What do you think of the state of the local rental market?

The private rental market (PRM) has changed significantly since 1997 when the Act was introduced. Research from the Australian Housing and Urban Research Institute[1] shows that more people renting for longer. The PRM is increasingly becoming the long term default choice for many who are locked out of the home purchase market and for those who are not eligible for increasingly limited social housing (indeed housing providers routinely assert that people can just access the PRM without recognising the limits of this market). The research also indicates that there is an emerging issue of aging in the PRM due to the market being the only longer term option for many, particularly those on low incomes.

Government and society need to radically alter their understanding of the PRM. The PRM is no longer a transient short term option and must now be considered as on par with home ownership as a legitimate form of tenure. Tenure protected and improved through a range of policy and legislative measures.

As noted in the consultation paper housing in the ACT is unaffordable. Higher average incomes in the Territory push the prices in the housing market up. Only high income households are able to enter the home purchase market, which results in those properties being unavailable to low income earners. This has the flow on effect of reducing the supply of affordable properties for purchase and leaving people to rely on the PRM. The ACT Government has implemented some positive measures in this area though the Affordable Housing Action Plans however more work needs to be done.

Over the last 12-18 months vacancy rates in the Territory have increased in part due to cuts to the public service. However we note that vacancy rates are only a broad aggregate measure and are not indicative of the availability of properties that are affordable or appropriate. While higher vacancy rates have pushed prices down slightly, rents are still high overall and the mix of properties available does not match the needs of the population. Anglicare Australia's "Rental Affordability Snapshot" demonstrates that the PRM in the ACT is not affordable for those on low incomes. Even including Queanbeyan in the catchment area the Snapshot showed there were few or no options for most household types, with the majority of accommodation options being shared housing.[2]

Effect of the State of the Market

With vacancy rates low and affordable properties in short supply, low income earners also face the barrier of competition with higher income earners. Risk assessment practices used by agents and lessors mean that people with disabilities, low income families, large families, single parent families, those on statutory or irregular incomes struggle to find accommodation that is affordable and appropriate to their needs.[3] This indicates the entry into the market is not just about affordability but also about how the market operates to exclude those who are seen to be "risky" choices or who require specific accessibility facilities.

[1] http://www.ahuri.edu.au/publications/projects/p50683 pgs 1-2
[2] Pg 24-25
[3] See generally http://www.ahuri.edu.au/publications/projects/p20346

This type of competition pushes low income renters towards properties which are at the cheaper end of the market. This end of the market often correlates with lower quality properties, further from services, education, employment and transport. Lower rent properties and accommodation options such as shared housing may also be properties with the least secure tenure. Shared housing, in particular boarding house style accommodation, is not sufficiently regulated nor residents protected in the current ACT legislation. The group of renters in this situation includes some of our most vulnerable groups including people with disabilities, people with experiences of mental health, single parent families, students, newly arrived migrants and refugees. People in these groups often require a specific type of housing and are less likely to have references or the kinds of personal traits that agents and lessors look for like a stable regular income, experience in the rental market and other indicators of reliability. For this reason those seeking to use the PRM as an exit point from homelessness or social housing the market will face extreme difficulty securing affordable, appropriate, safe and secure housing. This reality is especially concerning because of documented policies of social housing providers expecting that the PRM will provide accommodation to people on their waiting lists, those who fall outside eligibility requirements and even those evicted from that tenure.

The impact of living in low quality housing is well documented and housing stress is on the rise. Low income earners in the PRM will generally spend more on other essential costs such as bills and transport, due to housing being of poor quality and often being located in outer suburban areas which are further from transport, employment and educational opportunities. Renting in the outer suburbs can result in functional immobility and social exclusion particularly for older persons and people with disabilities. The absence of minimum standards in tenancy legislation threatens the right to housing and has meant that many properties are often not safe or secure. The lack of standards can have multiple intersecting negative effects on renters.

The current market is not affordable, hard to break into and puts people into housing stress. The lack of security of tenure in current tenancy legislation means that the negative effects of the market are exacerbated. Tenants are aware that the market is not an easy place to find accommodation and so are generally unwilling to enforce their rights for fear of losing their housing. This is particularly so for renters who are vulnerable and marginalised and often taken advantage of, such as newly arrived refugees and migrants and people with disabilities. This attitude is a combination of lack of awareness of protections available to them and the inadequacy of those protections.

Where the balance created by legislation is made ineffectual by the operation of the market a foundation principle of tenancy law must be to recognise housing as a human right and to reinforce the importance of security of tenure.

Q 2-2 Do you have any suggestions for how access to the private rental market could be improved for low income earners?

Any attempts to improve the PRM need to be based on the foundational principle that housing is a human right and an essential service relied on by 30% of our population. A focus on the protection of the right to housing offers many possibilities to improve access to the private rental market.

The motivation for lessors to enter the private rental market is usually financial gain, however there is often little attention paid to the fact that these lessors then become providers of essential services. Improving access to the private rental market means considering a broader approach to the

responsibility to ensure the right to housing and a more equitable balance between the rights of renters and lessors. Most importantly recognising and addressing the inherent inequity between the parties.

Legislative measures

Legislative measures that make it easier for renters to enter the PRM include the standardisation of application forms to ensure equal treatment of potential tenants across the market, reducing the likelihood of direct and indirect discrimination. Standard application forms covering basic allowable risk assessment questions provide consistency across the market and clarity for both renters and housing providers. As with standard rental agreements they make the application process simpler for housing providers. Standard forms would also address a long standing problem with application processes and practices. Over the years the TU has seen many examples of inappropriate, intrusive and unnecessary information requirements including all bank details, vehicle registrations, passport details, visa details, details of all children, details of previous jobs. While applicants are of course able to refuse to provide these details the forms often say that they will not be considered if they are incomplete, so there is a choice of not providing details and missing out on the accommodation. With these practices curtailed there should be greater access for people currently facing discrimination.

Stronger requirements for provision of information about renting rights and where renters can seek advice would also contribute to improving awareness amongst tenants and their capacity to seek assistance. The ability of a renter to access assistance sooner will facilitate early intervention to sustain tenancies and resolve other problems arising from or caused by housing stress.

Recommendation:
Standard application forms and stronger requirements for provision of information

Maintaining and sustaining tenancies

While access to the PRM is problematic, a related and essential issue that must be addressed in conjunction with it is sustaining tenancies and security of tenure. The impact of insecure housing is far reaching and the emotional and financial costs associated with moving house are well recognised and form one of the most stressful life events.

Security of tenure needs to be re-characterised as a measure which has positive outcomes for both renter and lessor and does not artificially restrict a lessor's right to deal with their property. Just grounds terminations are already available to a lessor in cases of rent arrears, serious breaches and other situations where a lessor may need to take back possession of the property such as sale or for personal use. Furthermore, lessors are more likely to have positive outcomes in terms of rental income and capital gains if legislation encourages them to offer tenants security in their properties. Further strengthening the protections available to tenants from wrongful and retaliatory evictions will also improve tenant confidence in enforcing their rights and prevent lessors from seeking termination on unjust grounds.

One of the key causes of renters falling out of the PRM into homelessness is rental arrears and other breaches of tenancy agreements. A more comprehensive and consistently applied legislative framework in relation to how rental arrears and breaches of agreements are dealt with has the potential to sustain tenancies while also providing certainty and options to the lessor. Later in this

submission we make more detailed comments about particular measures that could be implemented to support tenants in rental arrears or who are having difficulty sustaining their tenancy for other reasons.

A further improvement to the provisions around increases in rent could also assist in supporting tenants to remain in the PRM. At present there is no limit on the amount that a lessor may increase the rent by and the onus is on the tenant to challenge any proposed rent increase before that increase takes effect. As we have noted above, tenants are often hesitant to enforce their legal rights due to their perception that it could result in loss of their housing. This is particularly so at the time when most rent increases are imposed and when tenants perceive that they are most vulnerable, at the end of a fixed term agreement. In order to maintain their housing, to avoid the high costs of moving and other negative effects of transience many tenants are unlikely to challenge rent increases. The TU recommends that the provisions regarding rent increases are amended to require that a rent increase cannot be more than the increase provided by the formula in the legislation, and where a lessor wishes to increase the rent beyond the formula amount they can apply to the Tribunal for a determination. The considerations the Tribunal must take into account when considering rent increases could remain to allow a proper consideration of the reasonableness of the rent increase, with the addition of affordability for the tenant, whether an increase would create financial hardship.

Recommendation:
Provisions regarding rent increases are amended to require that a rent increase cannot be more than the increase provided by the formula in the legislation, and where a lessor wishes to increase the rent beyond the formula amount they can apply to the Tribunal for a determination.

That considerations in relation to rent increases include whether an increase will create financial hardship for the tenant.

Measures which make sustaining private rental possible in a safe, secure environment will create more long term certainty for tenants and lessors and prevent needless exits from the market. The introduction of minimum standards for rental properties will have positive outcomes for lessors in terms of increased value of their properties as well as multiple benefits for tenants in terms of health, wellbeing and other indicators affected by household conditions. *(for details see Minimum Standards,p28)*

Finally, the TU recommends that the ACT Government needs to conduct comprehensive public consultation on the development of the shared and multi-occupancy housing market. The particularly vulnerable market is growing nationally, in part due to the housing affordability crisis and yet legislation and policy measures to regulate this market have not kept up. There is a great deal of research on this matter from the Australian Housing and Urban Research Institute including: http://www.ahuri.edu.au/publications/projects/p30699 and also an investigative panel conducting research: http://www.ahuri.edu.au/publications/projects/p53033

Recommendation:
Public consultation of the development of (and response to) the shared and multi-occupancy housing market.

Policy measures

There are also a range of policy measures that would assist renters in accessing and maintaining housing in the PRM. Any policies developed need to be responsive to the real expressed needs of renters, and should be targeted towards low income earners and renters who find it hard to access the market due to their particular vulnerability for example speaking English as a second language or disability. Policies aimed at assisting people to secure accommodation need to be clear, well publicised and offer both short and long term support to those who need it. Entry and maintenance of private rental is a challenge for many of the vulnerable and marginalised groups in our community and as such policy measures should be responsive to their specific needs and offer a range of support.

Overall the TU supports the recommendations made by Shelter ACT in their research report "Improving Access to the Private Rental Market" (http://www.actshelter.net.au/_literature_89184/Improving_access_to_private_rental_2012). In particular we recommend the extension of the bond loan assistance scheme. On our advice line we constantly hear from tenants who struggle to break into and move within the market due to the cost of bond, rent in advance and moving.

In addition we recommend the consideration of the following measures to support tenants:

- Continuation and extension of funding for the Supportive Tenancy Service (STS) including funding for flexible brokerage. The TU works closely with STS in supporting renters to address their housing issues as well as other issues caused by or arising from their housing situation. STS fills an importance space between legal advice and social support. Flexible brokerage funds would allow STS to assist renters to remain in the private market by targeting the funds to the area where the individual needs them most, for example assisting with moving costs.
- Continuation and extension of funding for STS's Tenancy Options officer. We fully support the submission of STS regarding this recommendation. The position of Tenancy Options officer fills a clear gap in the provision of tenancy support services.
- Implementation of incentive programs to improve the provision of housing for people with disabilities. One example of a successful program is the Home Ground Real Estate Agency in Melbourne.
- A scheme whereby tenants who pay utilities to the lessor (usually water) could have their pensioner discounts applied to those bills. This would mean an equitable application of pensioner discounts to renters who would otherwise not have the benefit of those discounts merely due to the fact that they rent.
- Continuation and extension of funding for the Tenants Advice Service to provide information, advice and casework services to renters.
- Extension and continuation of Outreach Energy and Water Efficiency programs which have been shown to have huge benefits in terms of increasing star rating and comfort for residents. Programs such as these have multiple benefits including improving the conditions in rental properties, reducing energy bills, improved health and wellbeing for the residents.
- Programs that facilitate access to the PRM where they would otherwise be precluded due to lack of experience. Such programs may take the format of tenancy literacy training to improve knowledge around tenancy options, tenancy rights and obligations and more

general skills useful to maintaining a tenancy. In collaboration with real estate agents the program could result in certification which can be considered when a tenant applies for a rental property.

The following measures could be implemented to encourage and support lessors to provide affordable appropriate housing to low income renters:

- Land tax concessions for lessors who agree to make secure, appropriate rental properties available to low/moderate income earners
- Incentives targeted at making rental properties disability accessible so that lessors may take advantage of the rising demand for disability housing due to the NDIS
- Promoting more professional tenancy management among smaller private landlords through the introduction of landlord registration and accreditation systems - See more at: http://www.ahuri.edu.au/housing_information/review/evrev015#sthash.aa2iDilW.dpuf
- Programs designed to assist lessors to improve the quality of their rental properties including properties being used as shared or multi-occupancy accommodation. See particularly on this point the Tenants Union of NSW policy paper on reforming marginal renting. http://www.tenantsunion.org.au/reforming-marginal-renting-policy-paper

To assist with work on these matters there is great deal of AHURI research on this point:

- AHURI The role of private rental support programs in the housing outcomes of vulnerable Australians (in progress)
    - http://www.ahuri.edu.au/publications/projects/p31036
- Also see A Review of Private Rental Support Programs
    - http://www.ahuri.edu.au/publications/projects/p40194
- Bridging the divide: the experiences of low-income households excluded from the private rental sector in Australia
    - http://www.ahuri.edu.au/publications/projects/p20610

Standard terms

Q3-1 Do the standard terms adequately provide for the rights and obligations of the parties? If not, what additional terms should be included or what terms should be omitted from the standard terms to strike an appropriate balance between the rights of tenants and landlords?

Our key recommendation with regards to standard terms is that the majority of the current standard terms be included in the main Act as well as the standard terms. At present the standard terms are subject to amendment, deletion or supplement through the inclusion of additional terms. We receive hundreds of calls a year from tenants who have inconsistent and un-endorsed terms in their agreements. As such we do not believe that the process for endorsement of standard terms works or is fair to tenants. This is not the case in NSW where the standard terms are drawn from the rights and obligations set out in entirety in the *Residential Tenancies Act 2010* (NSW). This is the preferred model as it prevents the inclusion of additional terms which are detrimental to both tenants and lessors; particularly the tenant who is often has little bargaining power. Such an amendment would also avoid situations where a lessor or agent is able to circumvent the protections that the legislature intends to confer on the parties though the use of additional terms.

Recommendation:
That the majority of the current standard terms be included in the main Act as well as the standard terms.

Adequate provision for the rights and obligations of parties means that the terms are broad enough to cover a wide range of situations where they will be applicable but also specific in situations where clarity is required. The terms must also take into account the foundational principle that housing is a human right and the protection of that right should be foremost. The terms also need to predict and respond to situations which arise in most tenancies which may not yet be covered in the standard terms. This is not currently the case with regard to many aspects of the standard terms.

In general there is limited awareness amongst tenants, agents and lessors of the rights and obligations found in the standard terms and more specifically how those rights and obligations should be interpreted. This lack of awareness and difficulty in interpretation in part arises from the language in which the terms are expressed. There is a need for a balance between specificity and accessibility given that this document will be used by people who have no legal training and in some cases will not have a strong command of literacy or of the English language. We refer specifically to the submission of the Australian National University Student Association for a more detailed discussion of the benefits of plain English drafting of legal documents.

Recommendation:
That the standard terms be redrafted in plain English

Further, some rights and obligations are not found in the standard terms, but only in the Act. Many lessors and tenants will not know that there is an Act, where to find it, or that it may contain supplementary information they need to have in serious circumstances such as ending a tenancy.

Those provisions of the Act which should be clearly references in the standards terms are:

- The grounds for termination on which a tenant or a lessor may rely in making an application to the Tribunal
- Reference to the provisions in the Act regarding retaliatory and wrongful eviction

- That where a tenant does not vacate in accordance with a notice to vacate then only the Tribunal may order termination and make orders for a warrant.
- Clear indication of what compensation may be payable by a tenant to the lessor in the case that the tenant ends their tenancy agreement without relying on any of the available grounds in the Act, commonly referred to as “breaking a lease”
- Reference to the types of costs that may constitute legitimate deductions from bonds by the lessor

Recommendation: That key elements of the RTA be incorporated into the standard terms

In general some improvements could be made to the form and knowledge of the standard terms and the RTA, see the table on the following page.

Issue	Problem or gap	Proposal	Positive outcomes
No standard form contract.	While there are standard terms for tenancy agreements there is no standard form contract document with a covering page providing for the relevant details such as the names of the parties and rent payable. This results in a number of different styles of contract, some of which are problematic in that they include additional terms which are not necessarily consistent with the standard terms. These contracts are provided by a range of organisations including law societies, real estate agents and the TU itself.	Provision of a standard form tenancy agreement by Office of Regulatory Services. This standard form tenancy agreement contract could draw on the NSW standard contract published by NSW Fair Trading and the QLD Standard contract published by the Residential Tenancies Authority of QLD. This standard form contract should also clearly provide a space for a lessor to notify a tenant of any additional terms with a statement referring to the rules around additional terms.	A standard form contract document would make signing a tenancy agreement easier. Providing a standard agreement takes the burden off lessors and agents. Creates consistency for support services, advice services and the Tribunal in interpreting the terms of the agreement.
Translated standard terms	The standard terms are not currently accessible to people who speak languages other than English or do not have a high level of written literacy in English. This group includes migrants and newly arrived migrants but also long term residents. Many renters sign agreements that they do not understand because they cannot read it or do not understand the language used.	That the ACT Government provide translated versions of the standard terms in common community languages and promote the existence of the translated agreements to those communities	This has possibly significant impacts on the legal validity of formation of the contract as well as the tenants' and lessors' ability to understand their rights and obligations.
The requirement to provide the Renting Book	The Renting Book is not in practice provided in hard copy to tenants. The book is also outdated. This results in tenants having no access to information about the document they are signing and where they can obtain assistance. This is particularly relevant for first time renters.	**Clause 13** of the terms is amended to create a new requirement for a standard single page information sheet to be provided with relevant information about the tenancy agreement, commencement issues, common tenancy problems. This standard information sheet could be developed by ORS and based on the NSW model	The provision of important information is simplified, requiring only a single sheet to be printed and provided to the tenant. The information is clearer and more concise, drawing a tenant's attention to their key rights and obligations on commencement.
General information provision to lessors	There is currently no point at which a lessor will obtain information about their rights and obligations	To provide an information pack on tenancy and occupancy law to lessors when they pay land tax.	That there is clear consistent information for lessors

Below we canvas a number of recommendations for what should be included, amended and omitted from the standard terms. These recommendations are based on the principles noted above: clarity, comprehensiveness, flexibility and fairness.

Current term or gap in terms	Problem with that term	Proposal	Outcome
Dictionary	Tenants calling our advice line are often able to read their agreement but find the language used hard to interpret. There are some terms in the agreement with special legal meaning. Examples of those terms include "calendar month", "joint tenants" and "fair wear and tear".	That a dictionary be created in the standard terms which explains the meaning of special terms and where appropriate provides examples of practical situations where that term may be relevant.	Improved understanding of the parties legal obligations. Avoidance of disputes over interpretation of special or broadly framed terms.
Definition of periodic tenancies	There is no clear statement that periodic tenancy commences automatically on expiry of the fixed term unless relevant notices have been served and tenant vacates in accordance. The TU receives a significant number of calls from tenants reporting that lessors and agents tell them that the tenancy terminates at the end of the fixed term and that the tenant must sign a new agreement (or renew the agreement) as no periodic tenancy arises.	Amend clause 5 to make it clear that a periodic tenancy is a tenancy with no end date and that it commences automatically on expiry of a fixed term contract unless relevant notices have been served. Include in the Act a reference to this definition as it is a fundamental term of the agreement and should not be able to be excluded by an additional term See for example section 18 of the NSW Residential Tenancies Act http://bit.ly/1ohbpFs	Improves clarity of the term and what is intended to convey. Avoids situations where tenants and lessors mistakenly assume that the whole tenancy ends when a fixed term expires.
Provision of copies of the tenancy agreement	Currently the tenancy agreement needs to be provided to the tenant within 3 weeks of them having signed the agreement. It is unreasonable for a tenant to have to wait 3 weeks to obtain a copy of a document they are legally bound by. There is already very limited awareness of tenancy rights amongst tenants so provision of their agreement should be a priority.	Amend s 19 of the Act and clause 11 of the terms to require that a copy of the signed agreement is provided to the tenant at the time of signing or if not reasonable practicable then a copy of the standard terms is provided to the tenant. In the case where the tenancy agreement is not provided at the time of signature, the signed tenancy agreement must be provided to the tenant within 2 weeks.	This will improve the awareness tenants have of their rights and obligations at the commencement of the tenancy and enable them to raise any issues with their agreement as early as possible.

Current term or gap in terms	Problem with that term	Proposal	Outcome
Provision of condition report	While it is an obligation for the lessor to provide the condition report no later than 1 day after the tenant takes possession of the property the TU hears regularly about situations where private lessors in particular do not provide condition reports at all.	Amend clause 21 (and section 29 of the Act) to require that the condition report is provided on the day the tenant takes possession of the property. Include a statement on the proposed information sheet to this effect. It would not be onerous for a condition report to be provided on the day the tenant takes possession.	The condition report is a vitally important document for a tenancy and its proper use can result in disputes being avoided or quickly resolved.
Standard form condition reports	There is no standard form condition report although one is referred to in the legislation.	That a standard form condition report be developed which is based on the condition report published by the TU and includes a clear recommendation that photographs may accompany condition reports.	Development of a standard form would create consistency across the sector, improving clarity and comparisons between reports.
Rent in advance	The tenancy agreement provides that rent in advance cannot be more than 1 calendar month. However this section does not prevent 1 calendar month rent being payable before the previous period for which rent has been paid expires. The TU has in the past had to advocate on behalf of tenants who were being asked to pay 1 month in advance and then another 1 month a week after the first payment was made.	Include new subsection in clause 28, providing that no rent in advance payable before period that T has already paid for expires This is consistent with the NSW standard term 4.2	This would improve clarity around the obligations with regards to rent and prevent situations where a loophole can be exploited to get tenants to pay more than 1 month in advance.
Allocation of rent payments	At present there is no requirement that agents allocate rent payments towards the rent owing on the property. The TU has heard from tenants who report that where they have made payments	Include new sub-section in clause 26 to require that payments made to rent must be allocated to rent. Any additional payments to rent cannot be allocated to	This would provide certainty to tenants that the money they pay towards their rent is credited to rent and that if they are in rent arrears no confusion will arise as to

Current term or gap in terms	Problem with that term	Proposal	Outcome
Allocation of rent payments (cont'd)	towards rent in excess of their usual regular payment that additional money is credited to water bills for the property. This can be problematic if a tenant is in rental arrears and makes additional payments to cover the arrears. As the consequences of not paying rent are different to those of not paying water bills this practice could result in confusion for both tenant and lessor.	any other costs the lessor has arising from the property	the amount of the arrears and the consequences the tenant may face where those arrears are not met.
Provision of rent ledgers	The Supportive Tenancy Service has reported to the TU that they sometimes have difficulty obtaining rent ledgers from agents and private lessors. This can be problematic if a tenant is in rental arrears and there is uncertainty around the amount of the arrears. Inability to obtain a record of rent paid can prevent early resolution of the problems leading to the rental arrears.	Include new sub-section in clause 33 to require that that a copy of rent ledger must be provided within 7 days of request being made	Speedy provision of the rental ledger can result in improved transparency, leading to problems causing and arising from the payment of rent being resolved at the earliest opportunity before parties need to proceed to the Tribunal for resolution of the issue.
Keys	At present there is no requirement that the agent or lessor provide all parties on the tenancy agreement with a copy of the keys to the property. The TU has had reports from tenants that they have only been provided with 1 set of keys in a co-tenancy involving 4 co-tenants. This necessitated the tenants having to have keys cut at their own expense.	Insert new clause in the standard agreement that provides that all persons named on the tenancy agreement are to be given a copy of all keys for premises. It is reasonable to ensure access.	Insertion of this section would create clarity and guidance on the obligations of the lessor, reducing the possibility of conflict arising.
Rent increases	See above in Q 1.1 for our recommendation for adjusting the requirements for rent increases in the Act itself. There is already a widely held belief that rent increases are in line with the formula	Make any necessary changes terms 38-41 to reflect any amendments to the provisions in the Act relevant to rent increases	This provides clarity for all parties. removes the onus on tenants to
Notice to vacate in response to a rent increase	At present the standard terms provide that if a tenant does not wish to pay the rent increase they may vacate with 3 weeks notice. It is unclear whether this notice is available to a tenant who is currently in a fixed term and if so whether the	Clarify clause 41 to make it clear that if the tenant relies on this ground to terminate the tenancy the lessor cannot seek compensation.	This would improve clarity

Current term or gap in terms	Problem with that term	Proposal	Outcome
Notice to vacate in response to a rent increase (cont'd)	tenant would be required to pay compensation to the lessor for ending the agreement early. The possibility of such an argument being made by the lessor is a disincentive for a tenant to move if they cannot afford the rent which can potentially lead to the tenant accepting the rent increase despite not being able to afford it.		
Lessors costs	The TU frequently comes across situations where the costs which the lessor should be paying according to clause 42 of the terms are being passed onto the tenant. This is particularly the case where there are several tenants at one property all on separate tenancy agreements, or where there is a dual occupancy on the block and there is no separate metering. The terms are worded in a broad manner which is beneficial to both tenants and lessors but can result in confusion regarding their interpretation.	Include an example in clause 42 to indicate what types of situations sub-clause (c) may refer to.	Clarity
Cost of initial connection of a telephone line	The TU has assisted tenants living in newer suburban areas of Canberra who have been forced to pay a one off "connection fee" for a telephone line on first connection. This fee is not payable by any subsequent tenant and practically relates to the physical connection of services. It is not reasonable for a tenant to have to pay this charge when no other subsequent tenant would be responsible.	Insert new sub-clause in clause 43 to remove any doubt that any fees associated with providing a functional telephone line to the premises at the first occupation of the property must be paid by the lessor.	This would make it clear that the lessor is responsible for one off fees payable to have a line or service connected for the first time. It would also reduce semantic confusion arising from the terms used by phone companies.
Responsibility for utilities charges	There is currently no clear indication given to the tenant of what costs they are liable for at commencement. This can create uncertainty between lessor and tenant as to what utilities will be provided in the tenants name or the lessors' name, and what costs the tenant is actually legally responsible for. The TU has had reports from tenants	That standard tenancy agreement contract proposed above include a section which allows the parties to make clear whose name the bills will be in for each utility, based on a consideration of who is legally responsible. See for example the QLD standard agreement at Item 12:	Inclusion of this section on the standard tenancy agreement contract would improve the clarity of obligations of both parties. It would also assist in avoiding situations where a lessor or tenant mistakenly

Current term or gap in terms	Problem with that term	Proposal	Outcome
Responsibility for utilities charges (cont'd)	that at commencement the lessor tells them that the lessor is responsible for water; however this is not in writing. However after the tenant requests repairs the lessor then seeks that the tenant pay water bills, reneging on their prior verbal agreement. The tenant has difficulty proving that the lessor had agreed as there is nothing in writing.	http://bit.ly/1mrkY9h	believes the other party is responsible for certain costs.
Water charges	Currently in the ACT there is no incentive or mandated requirement for the lessor to install water efficiency measures at the property. This slows the pace of improvement to the sustainability of rental properties which the ACT Government has indicated is a priority.	Remove reference to water from clause 46. Include new clause 46A - Cannot charge for water unless water saving devices installed (1 year suspension to allow this to be done as was allowed in NSW) See specifically the NSW provision in section 39 of the Residential Tenancies Act: http://bit.ly/1r0MB9a	Such a reform would support the ACT Government's commitment to sustainability. It would also bring the ACT into line with reforms in other jurisdictions such as NSW and QLD. It is not an onerous reform if sufficient lead time is allowed and could be facilitated through the existing programs offered by ACTEW Water. For tenants the benefits are clear, reduced water usage means reduced water bills, particularly important for tenants on low incomes who often struggle to meet essential housing costs.
Provision of water bills to tenants	At present there is no timeframe in which the lessor must provide a water bill to the tenants. This means that tenants rely on the lessor or agent to provide the bills in a timely manner. Where this is not done, tenants have no way of monitoring water usage and costs on a regular basis. The TU has seen a number of cases in which tenants have been given water bills for the preceding 2 or even 5 years at one time. The TU has also spoken to tenants who felt that water bills were handed over in bulk after a tenant reported repairs or followed up on outstanding repairs. This could be considered a	That a new clause be inserted in the standard terms to require that the lessor provides a copy of the water bill from the provider to the tenant within 3 months of receipt of the bill from the provider.	This would fill a gap in the standard terms and provide clearer guidance to both tenants and lessors regarding their obligations. Timely provision of water bills also allows a tenant to monitor their usage and identify any issues with excessive usage such as leaks within a reasonable timeframe. Such a reform is consistent with provisions in NSW.

Current term or gap in terms	Problem with that term	Proposal	Outcome
	retaliatory action.		
Passing on costs of utilities	At present there is no clear requirement that the lessor only pass on the actual cost of the utilities provided to a property. While the Utilities Act 200 0 ACT prohibits a person from profiting from the provision of utilities to another 3rd party there is no clear reference to this in the tenancy agreement.	Insert a reference to section 100 of the Utilities Act 2000 ACT to make it clear that the lessor may not pass on costs more than the cost charged by the utilities provider.	Further clarity around the lessor's obligations.
Solar energy	There is no clear indication in the terms regarding the payment of electricity bills when solar panels are installed. The TU has assisted tenants who have been asked to pay the full electricity bill. These tenants indicated that they had thought they would have the benefit of solar power and it was a reason they entered into the agreement for that specific property. While the tenancy agreement indicates that a tenant is responsible for the consumption of electricity, the tenant is also entitled to benefit from the appliances installed at the property.	That the ACT Government investigates the way that lessors pass on the costs of electricity to tenants where solar energy is installed. It is important that a balance between the incentive to the lessor to install panels and the right of the tenant to benefit from the appliances at the property. Consideration should also be given to notification requirements at commencement.	A clear statement on the responsibility of the tenant and a requirement for the lessor to be upfront at commencement about the costs would improve clarity and certainty for all parties
Exclusions	There is currently a requirement that any exclusions from the property are indicated to the tenant in writing in clause 54(2). However there is no guidance as to where that written statement must be or how it must be provided to the tenant. This can create confusion between lessor and tenant as to what parts of the property are being leased under the tenancy agreement. The TU has assisted tenants to deal with disputes about what part of the property the tenant has the legal right to occupy due to lack of clarity from the lessor on the written tenancy agreement as to the extent of the premises leased.	New sub-clause 53 (moved from clause 54(2)) that any exclusion of a part of the property or service at the property must be in writing. That a section is created in standard form tenancy agreement contract recommended above to clearly indicate what exclusions (if any) there are from the premises. For example a shed on the premises that the lessor wishes to retain for their business purposes.	This would improve the clarity of the tenants' rights at the commencement of the tenancy with the potential to have disputes avoided or resolved at the earliest stages.
Repairs	The TU believes that many tenants and lessors are not aware of the additional public health provisions that may be applicable to rental properties. In	Include new subsection in clause 54 and 55 "the lessor is not in breach of a law dealing with issues about the health or	Improvement of the provision of information to tenant and lessor. Comprehensive provision of information

Current term or gap in terms	Problem with that term	Proposal	Outcome
	situations where legitimate public health issues arise, a tenant can often be left in the dark as to their possible remedies and the lessor unaware of the implications of allowing a property to remain in an unsanitary condition.	safety of persons using or entering the premises" (QLD Standard terms)	has the potential to have disputes resolved earlier and for tenants to have an awareness of the dispute resolution procedures available to them.
Repairs notifications	At present the tenant is required to notify the lessor of any repairs necessary at their property. However there is no corresponding obligation on the lessor to respond to that request for repairs to indicate the request has been received. This can leave tenants in a position where they are not able to determine if the lessor has received their request. This can be more problematic in the case of urgent repairs where a tenant needs to be able to act with certainty in using the urgent repairs provisions in clauses 61 and 62 of the standard terms.	Include new sub-clause in both repairs clauses cl 55 and 59 such that lessor must respond to a request for repairs within 48 hours (or other reasonable time frame) indicating what steps they will take/have taken unless not reasonably practicable to do so.	This will improve the process for repairs by clarifying the process in such a way to ensure the tenant has all relevant information about what is being done to remedy the issue and can act with certainty on urgent repairs if required. It may also have the effect of improving the responses of lessors to repairs requests, particularly if there is a dispute about the responsibility for repairs.
Nuisance	The standard terms currently place an obligation on the tenant not to cause nuisance to neighbouring properties. This term is a reiteration of the laws already applicable to nuisance in the ACT. Residents in other forms of tenure are not subject to additional requirements regarding nuisance and as such this provision is fundamentally discriminatory against tenants. The TU as seen this provision be used in an inappropriate or retaliatory manner by lessors or agents and there is often little to no evidence of the nuisance being caused by the tenant.	That the clause 70(b) and (c) are removed from the standard tenancy agreement.	A person should not be able to potentially lose their housing due to nuisance behaviour. This type of approach puts tenants at risk of homelessness and does not address the underlying causes of any nuisance. This issue is better dealt with by other legislative provisions.
Subletting	See below in the Share Housing section for a detailed comment on the issues with the current provisions relevant to subletting.		
Reasonable access	At present the terms do not sufficiently outline the requirements of a notice given by the lessor to the	That a new clause be inserted clarifying that a notice requiring access to the	This would create further clarity around the notice requirements. In requesting to

Current term or gap in terms	Problem with that term	Proposal	Outcome
Reasonable access (cont'd)	tenant so that the lessor may inspect the property. The TU has seen notices from agents requiring access for inspections that give the tenant a timeframe of between 9am and 5pm in which the property manager will arrive. The TU does not believe it is reasonable for such unfettered access to the property to be required. In some cases the tenant may ring the agent in response to a notice and negotiate a time. However we have heard of instances where the agent has not arrived at the appointed time, the tenant has left the property and the agent has arrived later and done the inspection anyway.	property must specify a time that the lessor/agent will arrive at the property which cannot be a range of more than 1 hour. And that the lessor/agent may not access the property if they do not arrive at the notified time without consent of the tenant.	access someone's home it is reasonable to provide them with an appointed time as would be required in any other professional situation.
Access	At present clause 80 of the standard terms does not require that notice to access to the property is given in writing. This may be a result of the legislation being drafted over 14 years ago when use of mobile phones and email may not have been as prevalent as it is today, thus preventing speedy communication. Where notice is not required in writing tenants may have difficulty responding to and remaining aware of potential access by the lessor. It can for example result in situations where an agent leaves a voicemail message for the tenant but the tenant does not have sufficient credit to listen to that voicemail and so is not able to determine that notice has been given. Where disputes arise, the lack of written evidence can make determination of whether notice was given or not very difficult.	Amend clause 80 to require that notice under that clause is required writing unless not reasonably practicable. Not reasonably practicable may include circumstances where the tenant or lessor does not have a mobile phone or use email communication.	Clarity
Reasonable access for prospective purchasers	At present the tenant must permit reasonable access to the premises on the lessor giving 24 hours notice to allow inspection by prospective purchasers. In some cases this can result in lessors requesting	Insert a new sub-clause in clause 81 which provides that a lessor must not request access to the property for inspection by prospective purchasers on more than 1	This would give some further clarity to the lessor in terms of determining what reasonable access is. It would also allow the tenant a reprieve from continued

Current term or gap in terms	Problem with that term	Proposal	Outcome
	access every week for months, particularly if the interest in the property is not high. This can create a significant burden on the tenant and unreasonable interference with their peace, comfort and privacy. Tenants often have difficulty negotiating with lessors and agent, particularly sales agents (who may have a limited understanding of tenancy law) on access to the property.	occasion per week for than 3 consecutive weeks. A tenant and a lessor may enter into a written agreement about the times and dates of access to the property.	access and serious interference with their peace, comfort and privacy.
Open home inspections	At present a common request to tenants by lessors willing to sell is that open homes be conducted. In some circumstances the lessor simply demands open home inspections. This can cause difficulties and significant risk for a tenant where their contents insurance may not provide coverage against theft where the person was on the premises with implied permission from the tenant.	That clause 81 be amended to require that a lessor obtain specific permission for an open home from the tenant. OR That clause 81 be amended to require that if a lessor wishes to conduct open home inspections they must ensure that they collect the names and contact details of all persons entering the property.	This amendment would allow a tenant to better preserve their right to peace, comfort and privacy while still allowing a lessor to show the property to prospective purchasers in reasonable circumstances.
Photography during inspections	Currently there is no specific restriction on a lessor taking photographs of a property while the tenant is in possession of the property. The TU has heard from several concerned tenants who have been told photographs will be taken during routine inspections or for the purposes of advertising the property for sale. Understandably these tenants are concerned about their privacy as well as the safety of their property if photographs of their property with valuable possessions are placed on the internet. The TU firmly believes that this conduct is in contravention of the requirement by the lessor not to interfere with the tenants' privacy.	Insert new sub-clause in clause 79 which prohibits the photography of the property which shows a tenant's personal possessions, personal photographs or could reasonably identify the tenant. See particularly the outcomes of the Victorian Law Reform Commission inquiry into photograph of tenants possessions: http://bit.ly/1ohb9Xg	This would prevent serious breaches of the tenant's privacy which can put them and their possessions at risk. This may be vitally important if the tenant has experienced domestic violence in the past and has escaped from the perpetrator. Such a provision would not prevent the lessor from taking photographs of repairs or general photographs of the property condition where necessary for insurance purposes.
Contact details of tradespersons	Currently there is no requirement that the lessor to provide the tenant with the names and contact details of their personal agents or of any other	Include new sub-clause in clause 82 that requires the lessor to give the tenant the names and contact details of any person	This would enable a tenant to have clear information provided to them about the people entering their property. Such an

Current term or gap in terms	Problem with that term	Proposal	Outcome
	person needing to enter the property for the lessor, such as tradespersons. This can have serious impacts on the tenant's ability to make claims on their contents insurance if such claims arise. It is unreasonable that a tenant not have a right to know who is entering their property, particularly when they are not able to be present.	entering the tenant's property on behalf of the lessor.	amendment may also avoiding any issues that the tenant may experience making claims on their contents insurance if the name of the person entering the property was not known.
Sale of property	At present there is no requirement that a lessor advise a tenant of the lessor's intention to sell prior to the tenancy agreement being signed. This means that a tenant is not fully aware of possible major disruption to their tenancy due to the lessor's action. Particularly given the possibility of a lessor requesting open home inspections on a regular basis, a tenant should be able to make an informed decision about whether they are prepared to accept such disruption.	Include a new term that requires the lessor to notify a prospective tenant if contract for sale has been prepared. See for example the provision in the NSW Residential Tenancies Act: http://bit.ly/1ohbqJH	
New lessor details upon sale of property	At present there is no requirement for a lessor to provide to the tenant the names or details for rent payment of the new lessor upon sale of the property. It is not reasonable that a tenant should have to wait for this information to be provided or have to seek it themselves.	Insert a new clause requiring the lessor to provide to the tenant the contact details and rent payments details for the new lessor upon settlement of the sale	This is a reasonable obligation on the lessor to ensure that a tenant has the relevant information they will need to pay their rent and report any relevant issues with the property to the new lessor.
Service of notices	In the current standard terms a lessor is required to provide an address for service. The TU has assisted tenants who have had their lessor provide an address for service that is the same as the rented property. In one circumstance the lessor also used the address of the rented property for his business purposes and members of the public arrived at the tenant's door seeking information about the lessors business. This section needs clarification.	Amend clause 98 to require that the lessors address for service must not be the address of the rented premises	Clarity

Current term or gap in terms	Problem with that term	Proposal	Outcome
Pets	It is currently possibly for a lessor to deny permission for pets to be kept at the property due to a blanket endorsement created by the Tribunal through a direction to tenants and lessors published in 2009. The TU strongly believes that it is not the role of the Tribunal to create such blanket endorsements and that each endorsement must be considered on its merits. Further the TU believes that it is unreasonable for tenants to be prevented by an endorsement from keeping pets. For many tenants a pet is a vital and loved member of their family and to be discriminated against on this basis is unreasonable and can have negative outcomes for the tenant, particularly if that pet is a companion animal for a tenant experiencing mental illness. The concerns that may be held around pets are often based on unrealistic assumptions about pets. If a tenant is acceptable as a tenant then this should indicate that they would also have a responsible attitude towards keeping and caring for their pet. The lessor is protected from any damage caused to the property by the pet by virtue of the Act and the provision for compensation claims for damage.	That a clause be inserted into the standard terms that a lessor may not unreasonably refuse permission for a tenant to keep a pet. This would reflect the recent changes to the Unit Titles Act which requires that pets cannot be unreasonably refused in a unit title.	The positive benefits of pets have been widely documented, particularly for people with experiences of trauma or mental health. Inclusion of this clause would prevent discrimination against tenants on the basis of them keeping a pet which may in turn improve the accessibility of the rental market. Tenants who are allowed to keep pets may also be willing to stay at a property longer and this can have positive financial benefits for a lessor.

Q3-2. Are there any particular terms that should be added to section 8 (such as the fair clause for posted people) which would allow tenants and landlords to include in their tenancy agreements without the need for endorsement?
If so, what terms should not require endorsement? In other words, what sorts of matters should landlords and tenants be free to negotiate about without the need for ACAT endorsement?

As a starting point the TU maintains concern with the endorsement process in light of the previously stated lack of bargaining power of tenants. The endorsement process has become time consuming and problematic for ACAT and severely diminishes the benefits of standard terms. The disadvantages of contracting out of the standard terms clearly outweigh any benefits of the process. At a minimum it is timely to review the use of this process to determine whether it should remain in the RTA.

The TU hears from tenants on a regular basis with concerns regarding additional terms in their tenancy agreements. It is our experience that lessor and agents routinely include additional terms in agreements without proper regard to whether or not those matters are already covered in the standard terms, or whether the term is inconsistent with the standard terms or the Act. We have seen examples of terms exceeding 20-30 in number which purport to require a tenant to perform cleaning tasks on a regular basis such as cleaning the exhaust fan or replacing light globes. These terms are already covered by the general obligation of the tenant to take reasonable care of the property and keep it reasonably clean. We have also seen examples of more problematic terms which are clearly inconsistent with the standard terms as well as the Act. For example, terms which purport to exclude the commencement of a periodic tenancy on the expiry of a fixed term contract, or terms which purport to require the tenant to continue paying rent in advance even after they have vacated the property and returned the keys in accordance with a notice to vacate (usually called breaking a lease).

Further the TU is concerned that the Tribunal has created blanket exceptions for additional terms relating to smoking and the keeping of pets in rental properties. This allows lessors and agents to include such terms without the need for endorsement. We do not feel that it is appropriate or reasonable for the Tribunal to create such blanket provisions, effectively barring a tenant from requesting consideration of the reasonableness of keeping pets in particular. Such blanket endorsements make it easier for lessors and agents to discriminate against tenants on the basis of owing a pet, which is not in the opinion of the TU reasonable in light of the right to housing and the status of housing as an essential service, and a tenant's right to exclusive possession.

It is this experience that informs our position that the endorsements system does not work and that the standard terms should be incorporated into the Act. We also recommend that there should be no terms included in section 8 for which endorsements are not required. As noted in our comments on the current state of the ACT rental market, tenants have little bargaining power in an increasingly difficult market and are often prepared to accept conditions or situations due to the need to find accommodation or to avoid threats of eviction. Allowing further bargaining in an unequal environment is likely to result in tenants being subject to onerous and unreasonable additional terms which they have not been able to reasonably negotiate on. Further, the standard terms as drafted, and with the amendments proposed above are designed to comprehensively over all relevant situations. It is not unreasonable for a lessor to be required to apply to the Tribunal to have

additional terms endorsed as these terms can sometimes make real fundamental differences to the relationship between the tenant and the lessor.

The TU notes that there is provision in the legislation for the Minster to create criteria that the Tribunal must have regard to when considering applications for endorsements of terms. There are currently no criteria. If the above recommendation to insert the standard terms into the Act is not accepted and the ability to have additional terms is maintained we support the recommendations of the Welfare Rights and Legal Centre on this issue.

There is one exception to our general disagreement with the proposal to allow section 8 to be used to allow negotiation on additional terms. Currently in the ACT the Act allows a lessor to seek compensation of up to 25 weeks of the rent for a property when a tenant abandons the property or ends a fixed term contract early (breaking a lease). Depending on market conditions this compensation can amount to tens of thousands of dollars for the tenant. While the TU accepts that the lessor is entitled to seek compensation for loss of expected rent, we propose that the tenant and lessor have more freedom to negotiate on the amount of compensation sought. As such the TU recommends that the NSW opt in provision for compensation in a break lease situation be adopted. Such a term could provide more certainty to the tenant and lessor in the case of breaking a lease, which is the most common area that the TU advises tenants on and the area in which the majority of major disputes arise. That clause is extracted below:

> *41. The tenant agrees that, if the tenant ends the residential tenancy agreement before the end of the fixed term of the agreement, the tenant must pay a break fee of the following amount:*
>
> *41.1 if the fixed term is for 3 years or less, 6 weeks rent if less than half of the term has expired or 4 weeks rent in any other case, or*
>
> *41.2 if the fixed term is for more than 3 years, [specify amount]:_____*
> *This clause does not apply if the tenant terminates the residential tenancy agreement early for a reason that is permitted under the Residential Tenancies Act 2010.*

Recommendations:
That there be a thorough review of the endorsement process to determine its usefulness and fairness;
If the process is to continue, there is no provision for "blanket" endorsement as it removes fairness and the opportunity for consideration of an individual's circumstances. That there be a specific requirement for an application for a term to be endorsed;
Support for recommendations of the Welfare Rights and Legal Centre;
Opt in term in relation to compensation and breaking a lease.

Q3-3. Are tenants made properly aware of provisions applicable to their leases, especially in new residential developments?
If not, should disclosure requirements be broadened so that the landlord is required to inform tenants about any other restrictions which may affect the tenant?

We note that the meaning of this question is unclear. Why new residential developments in particular have been referenced is unknown as there should be no difference in the provisions of tenancy agreements between any properties, in new residential areas or otherwise. We have addressed this question on the basis that it refers to general awareness by tenants of the rights and obligations in their tenancy agreements.

In our experience tenants and lessors are generally not aware of the meaning and effect of the standard terms. This situation is further confused when lessors add in additional terms which may not have been endorsed and are inconsistent with the standard terms and the Act. We have also heard from tenants to find that body corporates attempt to regulate a tenant's use of the property through application of body corporate rules. Tenants have informed us that in some situations the body corporate seeks to impose fines on the tenant for failure to comply with body corporate rules. In some cases the body corporate rules are inconsistent with the tenants' rights and obligations under the tenancy agreement and as such the tenant is not required to comply with those rules.

The TU recommends the following amendments to improve the situation:

- Our recommendations in relation to information provided to a tenant before and on commencement of the tenancy noted above be adopted
- That body corporates are given information and training around the rights of tenants in unit titled properties to avoid such situations occurring.
- That a reference to the Act within the Unit Titles Legislation and related documentation published by the ACT Government would also be beneficial.

Minimum standards

The introduction of minimum standards for rental properties in the ACT would make a significant difference to the lives, health and wellbeing of approximately 30% of Canberra's population. The TU strongly supports the introduction of standards. In a climate like Canberra's with four clear seasons, low temperatures in winter and relatively high temperatures in summer sustainable and comfortable living conditions can be a challenge for many tenants. There are properties in Canberra with between zero and 1½ stars. These are often older houses which are more likely to be rental properties. Residents of the ACT are also among the greatest users of energy on a per capita basis in Australia (from Pitt and Sherry consultation paper).

It is pertinent to point out that we currently have more standards for children's toys than for rental housing and the lack of standards can have significantly detrimental effects on tenants and their children.

The introduction of minimum standards which should include a requirement for minimum energy efficiency standards (e.g. adequate insulation) could have a significant impact. Such reform is

generally supported within the community sector.[4] Key benefits of this type of reform could be an overall improvement in the standard of the private rental stock in the ACT, with flow on benefits for tenants in the form of improvement in tenant bargaining power, better quality of life, enhanced health and wellbeing, reduced utilities costs, and reduction in rental stress which has flow on effects for educational and employment participation. Such reforms may also improve the clarity of a lessor's obligations in relation to repairs and maintenance and increases a tenants' bargaining power. This increase in bargaining power can be a powerful mechanism with which to effect change in lessor behavior and attitudes. In turn lessors will benefit from increased value of their properties, potentially longer term tenancies and fewer repairs/maintenance issues.

We note that the introduction of minimum housing standards is a priority, with the introduction of minimum energy efficiency standards a longer term goal.

Q4-1 Is the Residential Tenancies Act 1997 an appropriate place to set minimum housing standards for rental properties? If yes, what types of standards should be introduced?

The Act is the appropriate place for minimum rental property standards. Where such standards are included in the Act they cannot be avoided or amended through the use of additional terms. Inclusion in the Act would also allow for remedies for non-compliance to be created and enforced. Reference to the minimum standards should also be included in the standard terms so that tenants are aware of the standards and able to hold lessors to account in ensuring those standards both at the commencement of a tenancy and during the tenant's occupation. It is also necessary to ensure that all renters, including occupants are able to benefit from the introduction of minimum standards. Occupants are more likely to live in poor quality and overcrowded properties and as such will require the protection of minimum standards. Please see our comments below in the Occupancy section about a restructuring of the Act that would allow for occupants to have the benefit of the provisions in the Act.

Q 4- What do you consider to be appropriate minimum housing standards

There is already a basic minimum standard present in the Act, requiring that a property is habitable. However the definition of habitability does not set out the specific requirements of ensuring property is habitable which can create uncertainty. Further delineation of minimum standards (similar to the list of urgent repairs) would assist in more clearly defining the lessors' obligation and improve the standards of properties across the ACT.

We refer to the recently introduced minimum standards for rental properties in Tasmania as well as the NSW boarding house minimum standards for guidance on what minimum standards may be introduced. Any minimum standards must include the following:

- Weather proof and structurally sound
- Ventilation, including extractor fans in bathroom and kitchen
- Adequate insulation
- Secure, lockable doors and windows including deadlocks on all external doors

4 http://www.ahuri.edu.au/downloads/publications/EvRevReports/AHURI_Final_Report_No159_The_environmental_sustainability_of_Australia_s_private_rental_housing_stock.pdf#page=59 and http://acoss.org.au/images/uploads/ACOSS_ENERGY_EFFICIENCY_PAPER_FINAL.pdf

- Adequate lighting from natural and artificial sources
- Hot and cold running water
- A reliable supply of electricity and/or gas
- Heating that is adequate to heat the property
- Window coverings on all windows for privacy and insulation
- Efficient and properly installed (hard wired) stove top, oven and sink
- Equipped with a bathroom (with hot and cold running water) and working toilet in a separate room from other rooms in the house.
- Hard wired smoke detectors
- to be maintained in such a way as to avoid damp
- be free of vermin and vermin proof (including e.g. possum proof)

Standards for energy efficiency should also be considered on a progressive basis and in combination with adequate support to lessors both in terms of incentive and education.

Q4-3 Other jurisdictions currently require homes that are advertised for rent (in some States all residential homes) to have smoke alarms installed.
Should smoke alarms be mandated in all ACT rental homes or homes that are advertised for rent?
If yes, should there also be a requirement to maintain alarms or replace batteries?
Who should be required to maintain alarms or replace batteries?

There is no question that smoke alarms should be mandated in rental properties and the ACT lags behind other jurisdictions in not having this requirement. Given the seriousness with which the Australian community takes fires it is vital that smoke alarms be mandated in all rental properties for the safety of our community. Smoke alarms can also be vital for people who experience issues with squalor and hoarding and who can be at greater risk of fire in their properties. The benefit to property owners in taking minimal steps to avoid fire and smoke damage is obvious.

Responsibility

To ensure a consistent approach is taken to the obligations of a lessor and tenant in terms of maintain a property there should be a requirement to maintain smoke alarms. Consistent with the tenants' responsibility to replace consumables at a rental property such as light globes, if a smoke alarm is battery operated it should be the responsibility of the tenant to change the battery as required during their tenancy. Consistent with the obligations of a lessor at commencement of a tenancy the lessor should be required to ensure that the batteries in a smoke alarm are working at the commencement of the tenancy. Further if the smoke alarm is hardwired the lessor should be responsible for ensuring the alarm works at commencement of the tenancy and remain responsible for any maintenance that arises.

Q4-4 Are there ways in which the standard of tenanted properties can be improved which will not deter investment in the rental market? If so, should these be in the form of mandated requirements or incentives?

The introduction of minimum housing standards should be seen as basic remedial work that a lessor should undertake to make the properties they rent to members of the public safe and habitable. Again, as with smoke alarms this has the benefit to property owners of sound risk management to avoid possible liability for damage and injury.

As noted above, incentive programs are not always successful in attracting lessors to make improvements to the standard of rental properties. The TU believes while the maintenance of investment in the rental market is important, the foundational motivation for tenancy law must be the right to housing. The right encompasses aspects of housing provision such as accessibility, appropriateness, safety and security.

Mandatory minimum housing standards, supported by financial support and incentives for lessors are most likely to result in increases in the standard of rental properties. (see AHURI report for comments on low update by LLs of incentives programs even where they are significant financially). Trying to incentivize investment in minimum standards solely through market intervention such as incentives programs or energy efficiency ratings requirements relies too heavily on favourable market conditions, the lessor's attitude to the incentive programs, a tenant's ability to choose, and that choice having an impact on lessor spending decisions. The same argument applies to the introduction of minimum energy efficiency standards.

The TU believes that there are many assumptions made about the motivations of lessors in relation to entering and remaining in the private rental market which may not be supported by evidence. The question in the consultation paper purports to assume a direct link between introduction of minimum standards (both for housing and energy efficiency) and a disincentive to lessors to invest. This assumption must be challenged. The introduction of minimum standards of any kind would not necessarily deter investment in the market and where the introduction of such standards was supported by support programs the outcomes investment could be even further stimulated. Research from the Australian Housing and Urban Research Institute (AHURI) suggests that investment in the market would likely continue with or without the introduction of standards because the property market is seen as a safe secure investment.[5] It is also unlikely that costs would rise significantly as the lessors are not the only factor which influences the price of rent. There are of course controls on rent increases in the Act and lessors will commonly only be able to charge what the market will bear.

Many lessors are not sophisticated, well informed and economically rational investors. AHURI research shows that investors are not driven by economics alone and will often make decisions based on multiple interrelating factors and intuition.[6] Most are investing for capital gain, not the rental income and accept that there will be costs that outweigh returns in the short term. Further research also indicates that investors do not consider tenancy issues when investing and it is not a dominant motivator amongst most lessors in deciding to enter or leave the market.

There is potential here for clear, concise and evidence based education to the provided to lessors on the benefits of minimum standards. Support should also be provided to agents to work with lessors to ensure their properties are meeting the relevant standards.

Introduction of minimum energy efficiency standards (as a separate issue to minimum housing standards) may be staggered at supported by government assistance to lessors. Programs such as the Outreach Energy and Water Efficiency Program could be extended.

[5] **http://www.ahuri.edu.au/housing_information/review/evrev045**
[6] http://www.ahuri.edu.au/housing_information/review/evrev045

Q4-5 Are there any impediments in the Residential Tenancies Act 1997 to the inclusion of sustainability measures in rented premises?

As with many elements of the RTA a major impediment is lack of knowledge about the actual provisions contained in the legislation. This leads to incorrect assumptions and scare campaigns about responsibilities, limitations and implications. Any information/education campaign about the RTA (and information sheets etc) should include details about sustainability measures.

Within the RTA there are two possible impediments to the inclusion of sustainability measures in the Act:

At present the lessor is only required to maintain property with regards to **condition at commencement.** If minimum energy efficiency standards were introduced there may be a need to consider how such a provision may conflict with a lessor possible obligation to improve the energy efficiency standards at the property. For example instead of a like for like replacement which may be required under the current obligation, a new obligation could be included to ensure that if a replacement is required that it is of greater energy efficiency than the old appliance.

Secondly, at present a tenant has to request to make alterations to the property and the lessor may not unreasonably refuse. This can deter tenants from requesting permission to make adjustments to the property to improve energy efficiency and sustainability. The installation of draught stoppers for example. Allowing a tenant to make alterations to a property with the aim of improving energy efficiency or sustainability without needing to get the consent of the lessor may improve the tenant's willingness to take up such improvements.

Share housing

Share housing is a popular form of accommodation in the ACT. Share housing can be both an active choice to live in a communal environment or a necessity born of financial restrictions, lack of references or experience. Share housing is in part a necessity because of the unaffordable and for some inaccessible rental market in Canberra.

As in other jurisdictions share houses are popular amongst students and younger employed people as well as people on lower incomes including people from CALD backgrounds and refugees. These groups may be more vulnerable in the market due to language difficulties, lack of experience or knowledge of the law and differing cultural expectations and ways of responding to problems.

The TU can confirm a general lack of awareness amongst many tenants we speak to who are living in share house arrangements, particularly regarding their possible liabilities for the property. We also frequently observe that tenants in share houses are not always willing to enforce their rights due to fear of eviction or bad references, which is particularly problematic for those in renting in the market for the first time, or for those who already experience barriers to finding accommodation due to income, language or other indicator of vulnerability.

The TU also notes apparent discrimination against groups of people seeking to live in a shared house, with many properties for rent stating that groups will not be accepted. This can mean that some share houses are found in the low cost end of the market where properties are more likely to be of poorer quality and in disrepair, the colloquial "student dive". Due to financial pressure on people who rely on share housing as their only real accommodation option, overcrowding can also be a significant health and safety issue.

The TU is responding to this question on the basis that many share house arrangements are tenancies, where they may initially appear to be occupancies including boarding house style arrangements. The TU notes that it is the circumstances in which the person lives that determine the type of agreement they have, not just the written document they may have signed. We note that there can be the following types of share house arrangement:

- Co-tenancy with 2 or more people on the tenancy agreement;
- Sole or co-tenancy with authorised sub-tenants or occupants (where the sole or co-tenant may actually lease more than 1 property);
- Sole or co-tenancy with unauthorised sub-tenants or occupants with unclear legal status; or
- Property where all tenants are on separate tenancy agreements each for a room (may include co-tenancies for a room e.g. where a couple rents a room).

Persons who are occupants also live in shared accommodation and we have addressed their specific situation in a later section of this submission (p50).

The TU also comes across share houses existing in a range of properties including:

- A whole house or apartment;
- A section of a property (granny flat, garage, downstairs); and
- A room of a house or apartment.

These properties include those which have been modified to create more rooms/spaces for additional tenants. This can range from large properties where there are already 5-6 bedrooms with

appropriate amenities (such as additional bathrooms etc) to 2 – 3 bedrooms with rooms and living spaces are closed off to make additional bedrooms. It is usually unclear if any relevant building regulations have been complied with or if properties as amended would be granted occupancy certificates. This further complicates the person's tenancy rights. However the tenants who live in those properties often understand their arrangements to be tenancies, particularly where they rent a lockable room at the property and the lessor does not reside at the property.

Q5-1 Does the Residential Tenancies Act 1997 provide an appropriate legislative framework for share house tenancies?

Q5-2 If not, what alternatives are there to the standard residential tenancies agreement which would provide adequate protection of share house tenants' rights but will also provide a flexible framework for both tenants and landlords?

The TU is the only tenancy service in the country that provides advice in relation to co-tenancy disputes, and accordingly has developed significant understanding of these issues. At present the Act does not provide an appropriate framework for share house tenancies. There are also some provisions of the Act that are unreasonably restrictive and detrimental to tenants such as the lessor's ultimate unconstrained discretion as to whether to accept sub-tenancy arrangements or transfers of tenants.

Issues relating to changes to tenancy agreements and sub-letting

Unreasonable refusal for changes during a fixed term - There is currently no obligation on the lessor to reasonably consider tenancy transfers during a fixed term co-tenancy. This can result in co-tenants being unable to adjust tenancy agreements during the fixed term. This can be especially problematic in situations where the relationship between the co-tenants has broken down. Due to the lack of awareness of many co-tenants around their ongoing responsibility for a fixed term tenancy some outgoing tenant may not continue to contribute their share of the rent. This can then result in the remaining co-tenants being subject to possible risk of termination due to rent arrears. In such situations, to recover any money owing by the outgoing co-tenant the remaining co-tenants must take separate civil action against the outgoing co-tenant on the base of breach of implied contract. Where the co-tenant has disappeared or only receives statutory income this can be a fruitless process.

- *Case study: Co-tenants are three students, one leaves without notice and forwarding details. They find a replacement tenant however the landlord refuses to consider giving permission for them to move in and the remaining tenants are stuck with paying out the fixed term agreement with little chance of recovery as there is no address for service and the tenant was only receiving Centrelink payments. This causes significant financial hardship for the tenants and they fall into rent arrears.*

An unrealistic and unfair process in relation to changes - The Act does not clearly delineate the process that should be followed in the case of a tenancy transfer during a fixed term. The TU has heard from numerous tenants who have been told that if they wish to complete a tenancy transfer during a fixed term that they must reapply for the property (with no guarantee of acceptance) and vacate the property entirely to allow for a final inspection. This effectively bars a tenant from completing a tenancy transfer process because of the significant cost involved in vacating a property for 1-2 days only to allow for a final inspection. Such a process is not necessary or reasonable.

- *Case study of documented real estate agency practice. Tenants advise the agent that one of them is vacating during fixed term. They are told that if the landlord agrees and the tenants want a change, they are required to reapply for property, vacate (storing all belongings elsewhere) and prepare for a final inspection. Tenants cannot reasonably afford to move from the property and pay for storage so tenants are practically prevented from transfer. They face the financial burden of covering rent until the end of the tenancy agreement.*

Bond transfer, final inspections and condition reports - The TU has also observed that there is limited awareness from tenants, lessors and agents about the process of bond transfer, final inspections, and the preparation of new condition reports during a tenancy transfer process. As noted in the consultation paper many tenants do not appreciate that the bond and obligations under the tenancy agreement are relatively separate and that signing a bond transfer form does not release them from their obligations under a tenancy agreement. The TU has also heard of situations where condition reports are not completed at the time of a change in tenant and agents then attempting to pursue the current tenants for damage that occurred under a previous tenancy where the identity of some of the tenants may have been the same. This points to the need for clarification of the law and education around the legal implications of a tenancy transfer and the practical ways in which this process can be managed.

Sub-letting - There is also no obligation on the lessor to reasonably consider granting permission for a tenant to sub-let. This creates a number of difficulties for tenants, particularly in situations where a tenant may need assistance in paying the rent due to financial hardship, or where they begin a relationship and wish for their partner to live with them. Unfortunately some tenants become desperate in this situation will sub-let without the lessor's consent, which can put both their housing and the housing of the unauthorised sub-tenant in jeopardy. Problems can also arise where the new head-tenant is not fully aware of their obligations towards the sub-tenant and as such may not realise that if a sub-tenant pays a bond that it must be lodged.

The requirement for permission to sub-let to be in writing can also create problems, especially where the common law might indicate that implied consent has been granted. The TU often hears from tenants who have obtained verbal permission from a lessor and would otherwise fall into breach of the agreement simply because they have not obtained permission in writing even where the individual lessor does not require it.

Unauthorised residents - The position of the unauthorised resident is of great concern to the TU. At present clause 72(3) provides that no rights to the premises can be created in any third party if consent is not obtained from the lessor. This may means that the unauthorised resident has no legal status in relation to the property, not even that of an occupant. It is more likely for these residents to have limited awareness of the tenants' obligations to seek consent for the lessor, or be able to assert themselves due to language barriers, cultural factors or the need to secure accommodation urgently. They may be couch-surfing (a form of homelessness) and currently the operation of the law may put them in extremely difficult circumstances – this is not the appropriate response. It is unclear what rights this person would have if a dispute arose with the actual tenant or lessor of the property.

Termination of co-tenancies

End of fixed term, or periodic co-tenancy - At present, the outcome of a co-tenant terminating a co-tenancy at or after the end of a fixed term is regulated only by the common law. As such a co-tenant terminating the tenancy at or after the end of the fixed term results in the entire tenancy being terminated with the remaining co-tenants having to rely on the lessors' good will or the creation of a new implied tenancy through the acceptance of rent by the lessor. It can result in co-tenants being advised by a lessor that a co-tenant has vacated, and the lessor not agreeing to a new periodic tenancy and they must vacate immediately.

In the case of breakdown of the co-tenancy relationship there is no clear basis on which a co-tenant may apply to the Tribunal for termination of the tenancy. This can create a situation where tenants are caught between the lessors refusal to allow a tenancy transfer and the uncertainty of applying to the Tribunal.

- *Case study – Three co-tenants, one has a mental breakdown. He is unable to return to the property and is hospitalised. He was working casually and has no savings. He is unable to apply to have co-tenancy terminated but allow all other co-tenants to remain if they wish.*

Proposed amendments:

- Amend clause 72 so that a lessor may not unreasonably refuse permission for sub-letting part of the property. See for example clause 32 of the NSW standard terms: http://bit.ly/Zcsyui
- Amend clause 72 so that permission to sub-let need not be in writing;
- Include a note that makes it clear that if a tenant has a sub-tenant they assume the obligations of a lessor in relation to that sub-tenant;
- Create a new clause that requires the lessor may not unreasonably refuse to a transfer of tenancy during a fixed term;
- In cases of tenancy transfer when a lessor agrees to a transfer of tenancy then the lessor must
    - prepare a new tenancy agreement for the new parties to the agreement;
    - prepare a new condition report;
    - take reasonable steps to ensure all current tenants including the outgoing tenants are present at the property for the inspection;
    - where the lessor agrees to a transfer of tenancy the lessor must not require the remaining tenants to vacate the property before the new agreement is signed; and
    - Must not prevent signing of new tenancy agreement for remaining tenants on the basis that there is a bond dispute in relation to the former tenancy.
- Include a new section which allows a co-tenant to apply to the Tribunal for termination of their part of the co-tenancy;
- Include new section which provides that if a co-tenant terminates a periodic co-tenancy then the remaining tenants may elect to also vacate or to remain on a periodic co-tenancy with the same terms. *See further the Welfare Rights and Legal Centre submission on this point;*
- Consider ways that a framework can be created to deal with disputes between co-tenants about their co-tenancy agreement. For example where a co-tenant ceases to pay rent. A standard form agreement to be made between co-tenants may be considered as a way of providing co-tenants with a resource to clarify their obligations; and

- Remove clause 72(3) and create a new clause which states that where no written permission is obtained then the resident may be a sub-tenant but on a periodic basis only. This would mean that the resident has protection and rights, without placing an unreasonable burden on lessors.

Breakdowns in tenant relationships

Q6-1 Should the Act be amended to automatically remove a person from the tenancy agreement if the person has been removed from the rented premises by a final court order (or undertaking to the court), such as in NSW?
If so, how might such an amendment have an effect on protection order proceedings in the ACT Magistrates Court?
Would such an amendment have a detrimental effect on the remaining tenant(s) or on the landlord?

The TU assists tenants who have experiences of domestic violence with issues arising from their tenancy. In preparing this section of the submission we have consulted with the Domestic Violence Crisis Service. In many cases our experience of working with tenants experiencing domestic violence mirrors what we heard from DVCS about the experiences of the women they work with. It must be acknowledged that domestic violence is an incredibly complex area, and one in which the legal framework is also complicated with its own problems. People experiencing domestic violence are overwhelmingly women. The complex realities of being in a relationship where domestic violence is present cannot be underestimated and a careful approach must be taken to any aspects of tenancy law which seeks to support people leaving the violent relationships. Consideration also needs to be given to the right to housing of both person using the violence and the person experiencing the violence. This is particularly necessary where for the safety of the person experiencing the violence the person using the violence is evicted from a rental property, potentially into homelessness.

The DVCS tells us that a very small proportion of women go through to the final order stage. Even for these women, further decisions about other matters such as family law disputes, children and employment can take precedence over consideration of their tenancy. The cycle of domestic violence which includes aspects of control and domination can also mean that a woman's capacity to make decisions for herself is greatly reduced. For many women the decision to leave is the time at which they are the highest risk and as such some women stay in violent relationships to ensure their safety or that of their children as well as hold other aspects of their lives together. In further consultation with ADACAS we are also aware that older persons and people with disabilities may need to obtain personal protection orders in situations where they are being abused or threatened. What this means is that provisions in tenancy legislation that address situations of domestic violence and other forms of violence need to be flexible and responsive to the needs of people experiencing the violence with awareness that decisions are made in the context of a range of other issues.

At present the provisions in the ACT related to termination or alteration of a tenancy in situations where the residents of a rental property may be experiencing domestic violence are incomplete and inadequate. The current provisions are only applicable where an "occupant" of the property obtains a final order with an exclusion provision and then wishes to remain at the property as a tenant or co-

tenant.[7] For all other situations, the person who has obtained a final order wishes to stay at the property they must rely on the significant hardship provision (s 44 or 50) or in the case of head-tenants seeking to terminate a sub-tenancy, the provision regarding damage, injury or intention to damage or injure (s 51). This is also the case if the aggrieved person has not obtained a final order against the perpetrator, the person must rely on the broader general termination provisions. This can be a common situation as obtaining a final order can be a long and traumatic process.

Furthermore, persons who have occupancy agreements have limited protection in the case of wishing to leave the property as there are no clear grounds on which they could apply to the Tribunal in the current Act. The TU believes that the provisions relating to termination due to breakdown in tenant relationships should be primarily focused on protecting the safety and wellbeing of the person experiencing violence and their families. Such provisions should also be broad enough to ensure the safety of a person experiencing violence in a non-domestic relationship. For example, ACACAS reports that people with disabilities can often be taken advantage of by people providing accommodation to them with whom they will not be in a domestic relationship.

In response to the question posed in the consultation paper we do not believe that there should be a provision to allow automatic removal of the person removed from a property by a final order. Such a provision could actually put the remaining person who is protected by the order at risk of financial difficulty if they cannot meet the rent or other obligations for the property. This is particularly the case as the majority of protected persons are women, who are statistically less likely to be in paid employment and may have fewer financial resources. Such a situation may also place the lessor at risk of financial difficulty. Any such termination of the tenancy should allow for the protected person sufficient time to make an informed choice about any changes to the tenancy agreement.

Q6-2 Alternatively, should the Act allow a person removed from the rented premises because of a final court order or undertaking to the Court to apply to the ACAT to be removed as a tenant or co-tenant from the tenancy agreement, without the tenancy being terminated?

Q6-3 Should the Act allow the person(s) who remains at the rented premises (where a co-tenant or tenant is prohibited from being at the rented premises because of a final court order or undertaking to the Court) to seek termination of the residential tenancy agreement from the ACAT?
Would such an amendment be unfair to landlords who may suffer a loss of rent that they otherwise would have received had the tenancy agreement remained on foot?
If such an amendment were made, should the amendment include an award of compensation to be payable to the landlord where a termination and possession order is made by the ACAT in these circumstances?
What would be an appropriate level of compensation of loss of future rent for an affected landlord in these circumstances?

Our response to this section encompasses comments and recommendations on a range of provisions that are necessary to adequately ensure the safety of people experiencing violence with the underpinning value of the right to housing. Our comments go beyond the situation of co-tenants to encompass the situation of sole tenants, sub-tenants, head-tenants and occupants.

[7] The use of the term occupant is confusing as there is now a clear definition of an occupant in the Act which is restricted.

Where a final order (DVO, PPO) with an exclusion order has been obtained and the protected person wishes to leave the property

We propose that where final orders (with exclusion provisions) are obtained that the person protected (who has an interest in the property as a sole tenant, co-tenant, sub-tenant or occupant) may give notice to the lessor/grantor of not less than 14 days. When giving a notice under this section the tenant/occupant would not be liable to pay compensation to the lessor/grantor for ending the agreement before the end of the fixed term.

This is comparable with section 100 of the NSW *Residential Tenancies Act 2010* and is an appropriate amendment to ensure the safety of the person protected.

Where a final order (DVO, PPO) with an exclusion order has been obtained and the protected person wishes to remain at the property

In the alternative, if the person protected (who has an interest in the property as a sole tenant, co-tenant, sub-tenant or occupant or resident who uses the premises as their principle place of residence) wishes to remain at the property may apply to the Tribunal to have the existing tenancy terminated and for orders that the lessor enter into a new tenancy agreement with that person. The Tribunal would be empowered to determine whether this is reasonable based on a defined set of criteria. Such criteria would include the ability of the person to comply with the amended agreement, the presence and effect on any dependent children, the hardship that could be suffered by the protected person if an order were not made, the interests of any other tenants (apart from the person removed), the appropriateness of such an order in the circumstances, the lessors consent (or satisfaction that failure to consent is unreasonable) and the consent of the protected person (or satisfaction that failure to consent is unreasonable).

The lessor and the person removed would have a right to be heard in any such application. Such an amendment would be similar in substance to section 233A and section 233B of the Victorian *Residential Tenancies Act 1997* (Vic) and also section 23 of the Northern Territory *Domestic and Family Violence Act*

The Tribunal would also need the power to make orders amending or terminating a tenancy or other interest in the property as well as any ancillary orders regarding the bond and any liabilities of the parties. Orders relating to the liabilities may extend to orders regarding the liability of the person removed, person protected and any other persons with an interest in the property. Orders relating to bond may include orders for the bond to be released to the tenants/occupants, for the bond to be transferred into the name of the party remaining in the property or for a new bond to be lodged through a bond loan process if necessary. Ancillary orders may include orders about the changing of locks.

There may also be restrictions around the type of agreement that the Tribunal create, for example that the new agreement be of the same rent and term as the original agreement, and with the same terms. Such an amendment would avoid the possible negative outcomes of immediate termination of a tenancy, which could result in homelessness and would provide more certainty and security by way of creation of a new tenancy to both tenant and lessor. It would also mean that persons who are protected would no longer need to rely on the broader general provisions for which outcomes may be uncertain.

Where an interim order with an exclusion order is obtained and the person wishes to leave the property

At present there is no specific provision providing options for termination or amendment to the tenancy for a protected person who has interim orders only. In such circumstances the person seeking protection may face a significant wait before final orders can be obtained and some people will not go through with that process due to the complexity of the relationship where the violence is present. Such delay in the person protected being able to deal with their accommodation situation can have significant negative outcomes for both the person seeking protection and the lessor where rental arrears arise. At present if the persons seeking protection is a tenant they would need to rely on the significant hardship provision available in s 44 or s 51 of the Act. The outcome of relying on this provision is uncertain. Reliance on such a provision is currently not available to occupants – though see our comments below on a major restructure of the Act that would bring occupants within the purview of such provisions.

Our recommendation is that the significant hardship provision is amended to indicate that significant hardship may include a situation where a tenant or occupant has obtained an interim order with an exclusion clause. Such a provision would provide the person seeking protection with more certainty in reliance on such a provision and would also provide the Tribunal with a clearer mandate in terms of using the provision to terminate a person's tenancy/occupancy in order to ensure their safety. This amendment would still allow the Tribunal flexibility to consider other aspects of the situation that may be causing the person seeking protection some hardship such as any financial, physical or mental health issues and the wellbeing and safety of any children. The continued use of the significant hardship provision would also allow the Tribunal to consider any hardship that may be faced by the lessor/grantor in making orders, ensuring appropriate balance.

Where an interim order with an exclusion order is obtained and the person wishes to remain at the property

We recommend that in the case where a person has obtained an interim order with an exclusion clause a new provision be introduced to allow them to seek alteration of the tenancy based on the special circumstances of the case. This would reflect a similar provision in the NSW *Residential Tenancies Act 2010* which allows a tribunal to make orders to terminate the co-tenancy of a co-tenant to a tenancy agreement. If implemented in the ACT such a provision could be slightly altered to include the provision for a tenant, sub-tenants or occupant of a property to apply under the provision for termination of the respondent's tenancy or occupancy at the same property.

The lessor would have a right to be heard in the proceedings. Giving the Tribunal the discretion to make such a decision in the special circumstances of the case allows broad consideration of the rights and obligations of all parties as well as their particular circumstances such as the opinion of the respondent and the lessor regarding the application, the ability of the applicant to maintain a tenancy, safety concerns for the applicant and any other matter which may be relevant.

Compensation to the lessor

In any of the above situations the issue of whether a lessor should be able to seek any compensation should be carefully considered in light of the fact that often termination of the tenancy is necessary to protect the life and safety of the person subject to violence and their children. They should not be further penalised by imposition of compensation in situations where that would be unjust or cause

undue hardship to the tenant. Any compensation should also be considered in light of the personal circumstances of the person subject to the violence including the effect any order for compensation might have on their ability to maintain any future accommodation, any other debts or liabilities they might have and any ongoing family law matters. The compensation should be limited at a maximum to the compensation payable to the lessor in a case where a tenant terminates a tenancy without grounds and ideally less than that amount.

End of tenancy issues

Q7-1 Does the Act strike an appropriate balance between the rights of landlords and tenants when it comes to the resolution of end-of-tenancy issues?
If not, how can a more appropriate balance between the rights of landlords and tenants be attained?

Q7-2 Are there any end-of-tenancy issues that the Act could better address? If so, what are they and how would you suggest they be addressed?

Security of tenure

The current Act does not protect the right to housing in a meaningful way with regards to end of tenancy issues and fails to acknowledge the status of housing as an essential service. The lack of security of tenure in the current Act creates a significant imbalance in the rights of lessors and tenants.

No cause Termination - The Act contains a no cause termination provision which causes a fundamental imbalance in the rights of tenants and lessors. The possibility of being served a no cause notice to terminate hangs over the tenant at any stage they may seek to take action against the lessor for breaches of their agreement or the Act. This affects the tenants feeling of security in their home and can result in costly forced moves.

The TU has supported tenants through Tribunal processes in which on successfully claiming compensation from the lessor, the lessor immediately serve the tenant with a 26 week notice to vacate. Even with the limited protections available to a tenant where a retaliatory notice is served, these protections cannot exist long term. Additionally the practice of serving 26 weeks notice effective the day after the end of the fixed term can cause significant stress and hardship to a tenant because they have no option but to wait until three weeks before the end of the fixed term to look for alternative accommodation, or face liability for early termination of the agreement.

The TU recommends that:

- The no cause eviction provision is removed from the Act.

- In the case that the recommendation to remove no cause notices is not accepted then an alternative amendment is that clause 95 should allow a tenant who is served with a no cause notice to terminate at any time after the service of the notice by giving 3 weeks notice to the lessor, and retaliatory eviction process are strengthened.

Just cause termination and notice periods - At present the provisions in the Act allow for a lessor to give notice to terminate the tenancy on a number of grounds including breach of the agreement, inhabitability or the lessor requiring the property for their own occupation. These provisions provide the lessor with options, based on reasonable grounds to terminate a tenancy where actually necessary.

While just cause termination is generally reasonable in light of the lessor's right to deal with their property as necessary, the notice periods provided are manifestly inadequate. For example a tenant can be given as little as 4 weeks to organise their affairs and move on. For example if a lessor wishes to move into the property they may give the tenant as little as 4 weeks notice. In some market conditions a tenant may be looking for a new rental property for more than double that period and as such can be placed in an extremely difficult situation.

If a lessor needs immediate access to the property they do have the option of seeking termination under the significant hardship provisions, a process which allows a Tribunal to consider the lessor real need to have the property available on a shorter timeframe. As such the TU recommends that the all notice periods available to a lessor in circumstances where there is no breach by the tenant are extended to 12 weeks. This would improve the ability of the tenant to react to the notice as create more consistency.

Termination by the lessor – Breach of Tenancy

At present there are several grounds available to a lessor to terminate a tenancy agreement. One of the most significant and serious grounds is breach of tenancy. This ground is most often relied upon in the circumstance where a tenant has failed to pay rent on time. The TU works with tenants who are dealing with rent arrears and has also consulted the Supportive Tenancy Service who also assists a number of clients facing rental arrears. Rental arrears can arise for a wide range of reasons including unemployment, underemployment, lack of job security, unexpected medical or other essential costs, other debts becoming due and domestic violence.

In many cases where rental arrears are identified and dealt with early it can be possible to assist tenants to sustain their tenancy or where that tenancy is no longer sustainable, facilitate a process that is fair to all parties, reduce stress and secures alterative accommodation for the tenant. Where rent arrears are not addressed or identified early there can be multiple negative outcomes including the tenant being unable to service the rental arrears, accruing a high amount of debt, facing eviction into homelessness. This can have a further and complex impact on the tenant's wellbeing, housing situation and participation in education and employment. In many cases the TU observes that tenants facing rental arrears were not aware of their rights or available support at any early stage and often do not understand how the rent arrears arose. The STS also reports that they often have difficulty in obtaining records of rent paid from lessors and agents, speedy provision of which could result in a more timely response to the problems.

Where a lessor service a notice to vacate on any grounds and the tenant does not vacate the lessor must apply to the Tribunal for a termination and possession order to terminate the tenancy. However if the lessor does not apply to the Tribunal for termination of the tenancy the notice to vacate may continue to hang over the tenants head as there is currently no clear expiry deadline for such notices.

The TU recommends:

- Clause 92 of the standard terms is amended to require that when a lessor serves a notice to remedy or notice to vacate on a tenant due to rental arrears they must include a reasonable explanation of when and how the rent arrears have arisen;
- A new clause be included to require that if a lessor provides a record of rent received within 7 days of request by the tenant;
- Development and promotion of a standard form notice to remedy and notice to vacate and which provides information about support and advice services available to a tenant; and
- A new section which requires a lessor to take action within 8 weeks of the notice to vacate expiring otherwise the notice expires and the lessor must recommence the process of service the relevant notices with the required timeframes.

The TU also endorses the submissions made by the Welfare Rights and Legal Centre on the process for serving Notices to Remedy, particularly in cases where a tenant has received 2 prior Notices to Remedy in the same tenancy.

Termination by the tenant on grounds available in the Act

At present the grounds available to a tenant to terminate include significant hardship, breach by the lessor and end of the fixed term. As noted in our submissions on the standard terms above, some of the grounds available to a tenant to terminate the agreement are not included in the standard terms which means a tenant may not be aware of those grounds. One significant example is the significant hardship provisions. This can be particularly important where in absence of any other option that a tenant can see in their tenancy agreement they may terminate the tenancy without grounds and face the possibility of a significant compensation claim from the lessor. Where a tenant has already terminated a tenancy agreement is it unclear if the Tribunal can then go back and "re-terminate" a tenancy to allow the tenant to have the benefit of the significant hardship provision. The provision itself also requires that when the Tribunal makes a decision to terminate the tenancy they must be satisfied that the hardship to the tenant is greater than the hardship to the tenant in order to determine a day, less than 8 weeks after making the decision when the termination is to occur. This period is often too lengthy for a tenant who is experiencing significant hardship, particularly where that hardship is financial.

There are also situations in which a tenant may necessarily need to vacate the property but at present there are no grounds open to them to do so. Examples include where a tenant is offered a social housing property or where the tenant will be moving into aged care. Such reasons for needing to vacate a property are reasonable and relevant to a tenant being able to maintain safe, secure and appropriate accommodation. A tenant should not be penalised for needing to rely on these reasons for terminating the tenancy. Giving tenants the ability to terminate on these grounds would bring the ACT Act into line with the NSW Act.

- Amend the provision in the Act which allows a tenant to seek terminate on the basis of significant hardship to require that upon being satisfied that the hardship to the tenant is greater than the hardship to the lessor if the tenancy was not terminated within 4 weeks of the decision, the Tribunal must specify a period of less than 4 weeks after making the decision when the tenancy is to terminate.

- Create a new section which provides for further grounds on which a tenant may terminate a tenancy without compensation to the lessor based on section 100 of the NSW Act: http://bit.ly/1n5p5bD. The grounds should include that a tenant has accepted accommodation in a social housing premise, that the tenant has accepted a place in, or requires care in an aged care facility.

Termination without grounds or "breaking a lease"

As noted throughout this submission the TU often hears from tenants who have little to no awareness of their rights and obligations. A pertinent example of this is where a tenant is seeking to terminate a fixed term tenancy without grounds ("breaking a lease"). Confusion around the process that should be followed in this process is exacerbated by lack of clear guidance in the tenancy agreement and conflicting, often misleading information provided by lessors and agents to tenants.

One of the most common enquiries the TU takes from tenants is around the process to be followed when breaking a lease. These tenants commonly report that lessors and agents demand that the tenant continue paying the rent in advance even though a tenant has returned the keys and vacated the property, validly terminating the agreement in accordance with clause 84 of the standard terms.

The TU expends considerable time explaining to tenants the difference between rent (owed and payable in advance) and compensation (payable after loss arises and on agreement or order by the Tribunal) pursuant to section 84 of the Act. Many tenants feel pressured by agents and lessors to continue paying rent in advance anyway, even where this may not be prudent where for example a lessor delays in advertising the property or a new tenant is found before the period for which the tenant has paid "rent" expires. It appears that some of this confusion arises from the fact that clause 84 of the tenancy agreement provides that if a tenant serves a notice to vacate the lessor may "accept" the notice, or seek compensation and reinstatement of the tenancy. When read in total this clause also specifies that the tenancy terminates on the date the tenant vacates the property. It appears that the use of the term "accept" in regards to the lessor's response to the notice gives the impression that a lessor may reject the notice and that such a rejection results in continuation of the tenancy, no matter what the tenants subsequent actions are. The provisions of clause 84 also allows a lessor to apply to the Tribunal for confirmation of the tenancy. This is not a reasonable order for a Tribunal to be able to make as it may effectively prevent a tenant from terminating their tenancy.

The TU also frequently hears from tenants who advise that agents have charged them a "break lease fee" usually of 1 week of the rent payable for the property. It appears that some agents will only advertise the property once that fee has been paid. However the legislation only allows a lessor to claim compensation for **up to** one week of the rent for the property to cover advertising and re-letting expenses. We note again that compensation is not payable in advance unless by agreement. Further if the matter was to be decided by a Tribunal, the remaining length of the tenancy and when the lessor would have incurred the costs must be taken into account. It is also potentially contrary to consumer law provisions to charge a fee where none is legislated for. For many tenants a lack of understanding about the process, and fear of not being able to obtain a good reference means they will follow the process set out by the agent, a process which commonly significantly undermines the process envisaged by the legislation and which is fair in practice to the tenant.

The TU also observes situations where tenancy agreements purport to include clauses which require the tenant to pay a "break lease fee", continue paying rent and continue caring for the property

even after they have vacated the property. Such terms are clearly inconsistent with the Act and are therefore unenforceable.

It is important for the provisions of the standard terms and Act relevant to breaking a lease to be properly clarified so that tenants, lessors and agents can have more certainty about their rights and obligations. The TU recommends:

- Amend clause 84 to make it clear that there is no minimum notice period;
- Amend clause 84 to make it clear that if a tenant gives notice under that provision and vacates in accordance then the tenancy terminates along with all obligations under the tenancy agreement. This may include redrafting the clause to ensure that the word "accept" is not taken to mean that the lessor may accept or reject the tenants notice;
- Amend clause 84 to remove the option for the lessor to apply to have the tenancy "confirmed";
- Include the provisions of section 84 of the Act in the standard terms so that a tenant can be fully aware of the possible implications of ending a fixed term tenancy without grounds; and
- Redraft clause 89 of the Act to make it clear that this provision can only be used 3 weeks or less from the end of the fixed term agreement

Q7-3 Is the process for refunds of bonds and the resolution of bond disputes working in practice? If not, how could the Act be amended to expedite the refund of the bond in a way which would be fair and equitable to tenants and landlords?

Q7-4 Should the Act require an outgoing inspection and condition report to be carried out and a provision drafted, similar to section 29(4) and (5) of the NSW Act?

Section 29(4) refers to the completion of the outgoing condition report at or after the end of the termination of the tenancy. Is this appropriate, or should the outgoing condition report be completed at or shortly before the end of the tenancy? In practice the tenancy ends when the tenant gives vacant possession and hands over the keys. Should it be at or shortly before this time that the inspection is carried out to minimize the likelihood of later disputes about the condition of the premises?

The bond paid in a tenancy is the tenant's money. This must be the foremost consideration in developing an accessible and effective framework for the process of bond refunds and disputes.

Tenants often report to the TU that they feel powerless in cases where there are disputes on their bond. Tenants report that lessors and agents frequently make claims that are not adequately supported by evidence or do not take into account the provisions of the Act such as the fair wear and tear exception. Tenant is often left feeling as though they have little ability to defend these claims. At present there is not sufficient guidance to the parties about the return of the bond or the provision of information about claims which could result in disputes being resolved at an earlier stage.

The broad language used in the provisions relating to bond disputes and the complexity involved in applying the law to individual situations creates a situation where neither party is able to adequately determine what their potential liability might be. In some situations tenants have reported to us that they feel the decisions are all in the hands of the lessor. The standard of proof required for claims on the bond is also unclear and often means that even though the claim is being made by the lessor, the burden falls on the tenant to explain why they are not responsible for the claims. We refer specifically to the ***Australian National University Students Association submission*** on this point.

Timeliness - The length of time taken to resolve bond disputes can also be a deterrent to tenants who may just give up all or part of their bond so that the situation is resolved. If no claim is made on the bond by either party the bond stays deposited indefinitely. The TU also frequently sees the use of additional terms in agreements which purport to hold the tenant to a higher standard than that in the legislation particularly in terms of the condition of the property. Unendorsed inconsistent additional terms related to professional cleaning are also commonly used.

Breaking a Lease - In situations where a tenant ends a tenancy without grounds (breaking a lease) it is common that a lessor will refuse to return the bond, even in the absence of any claims under section 31 of the Act which provides what legitimate deductions from the bond may be. It is acknowledged that the lessor may be refusing to return the bond so that they have some security for compensation that may be payable by the tenant under section 84 of the Act. However it is not reasonable for the tenant's money to be withheld in this way as at the time when the tenants vacates there has been no final order made for compensation.

Final Inspection - There is no specific provision for the final inspection in the standard terms or the Act. This can mean that apart from the requirements in the Agents Rules of conduct, a tenant has no provision on which they can rely to ensure that a final inspection is done and done in their presence if required. The TU often hears from tenants who have had final inspections completed for their properties without their knowledge or consent. In some cases this has prevented those tenants from being able to discuss any issued raised by the lessor at the time of the inspection – which can result in speedier resolution of any problems. There is also no requirement that a lessor provide a tenant with a list of the claims or any time in which to address the claims made. Provisions for this type of information to be given and for a tenant to act on it has potential to speed up the bond dispute process with claims being identified and address at an early stage.

It is not uncommon to hear from tenants that after the initial final inspection the agent has returned to the property with the lessor and the lessor has additional issues with the property that were not picked up by the agent. It is not reasonable for a tenant to have to respond to multiple final inspections and there must be a degree of certainty for the tenant as to the claims being made. At present the Act or standard terms do not specifically prevent further claims from being made, rather some decisions from the Tribunal provide minimal guidance as to the situations in which a tenant may be liable for claims raised on subsequent inspection, namely that they were not visible at the time of the final inspection.

In some cases where an agent raises issues with the condition of the property on behalf of the lessor and requests that the tenant address those issues the TU has seen the agent attempt to charge a "reinspection" fee.

The TU recommends:

- That a new clause is inserted to require that a final inspection is done as soon as reasonably possible after termination of the tenancy at a time agreed by the tenant and the lessor and in any case not less than 7 days after the tenant vacates;
- That a new clause is inserted to make it clear that an agent may not charge a tenant a fee for completing an inspection;

- Amend section 31 and include a new clause in the standard terms to make it clear that the lessor must not refuse to return bond in situations where the lessor will be seeking compensation under s 84 and there are no other claims being made on the bond;
- Create a new requirement that if the lessor is seeking to make a claim from the bond they must provide a written list of issues and costs to the tenant within 24 hours of the final inspection or as soon as reasonably practicable;
- Create a new requirement that a lessor must, where reasonably practicable allow a tenant a period of 48 hours for the tenant to return to property to address any issues raised by the lessor. The tenant must not necessarily address the issues if they do not agree with the claims;
- That a new clause is inserted to require that all reasonable efforts are made to determine the condition of the property at the final inspection and that after the final inspection no further issues may be raised unless they would not have been visible at the final inspection;
- Create a provision that as far as reasonably practicable photographs to be taken of all claims for damage;
- Amend the Act to allow that 3 months after the termination of the tenancy, the bond may be refunded in full to the tenant if no application for the bond has been received from the lessor; and
- Amend the Act to allow a transfer of bond between properties with the consent of the tenant, the outgoing and incoming lessor, along with provision for the tenant to receive a refund or make a top up of the bond as required.

Other issues- Uncollected goods

At present where a tenant leaves goods at the property after vacating the property there is no clear guidance as to how the lessor may deal with those goods or how the tenant may collect those goods. The current Uncollected Goods Act may not be applicable to situations where goods are left at rental properties. See further the submission of the Welfare Rights and Legal Centre on this point. Provisions relation to uncollected goods should acknowledge that there are many reasons why a tenant may leave goods behind at premises and that they should not be at an unreasonable disadvantage because they have been unable to remove all their possessions from a property.

The NSW *Residential Tenancies Act 2010* takes a comprehensive and fair approach to how goods left on residential premises are to be dealt with. The provisions provide a framework for storage, collection and disposal of goods in different categories including personal documents (passports personal photos), perishable goods and non-perishable goods. The separate provisions for personal documents acknowledge the sometimes invaluable nature of those goods and their importance to a tenant for identification purposes. The provisions also allow a lessor to seek direction from the Tribunal as to how the goods should be dealt with, a good option which can allow a lessor to have more certainty around their dealing and disposal of the goods.

Remedies for breaches of the Act

Q8-1 Does the Act currently provide sufficient remedies against non-compliance with the Act and breaches of the standard terms by landlords or tenants?
If not, how could the Act better protect the rights and interests of landlords and tenants?

Remedies for breaches of the Act are vital for tenants to be able to ensure compliance by the lessor with the tenancy agreement. Remedies for breaches of the Act can have an impact on a tenant's right to housing where those remedies lead to eviction. Remedies available to the tenant are not in themselves inadequate; rather it is the context in which tenants may seek to rely on those remedies that can cause the remedies to be less useful.

As noted in this submission, tenants are often unwilling to take action to enforce their rights under a tenancy agreement for fear of retaliation by way of a notice to vacate or a bad reference. In an unaffordable rental market these concerns go directly to a tenant's ability to maintain a safe, secure and appropriate rental property. The TU hears from tenants who are often unaware of the limits of the lessor's ability to terminate a tenancy and as such a mythology builds up around the role of the lessor which can prevent a tenant from taking action.

Impact of remedies available to lessors - In relation to remedies that a lessor may use against a tenant they can be unfairly applied. For example the TU has heard from tenants of being served notices to remedy based on complaints from neighbours about noise. Such complaints cannot be objectively verified and therefore it is inappropriate for a lessor to allege a breach has occurred. Further, it is our experience that tenants in private rental are usually not able to obtain conditional termination and possession orders, unlike public housing tenants who are more likely to be able to obtain those types of orders. This results in the majority of private tenants with rental arrears being evicted instead of a reasonable consideration being made of their capacity to maintain the tenancy with payments towards the rental arrears.

ACAT experiences - In some circumstances tenants have reported to the TU that their experiences at the Tribunal have been overwhelmingly negative. Beyond simple feelings of unfairness, we have had tenants report to us that Tribunal members have openly favoured the lessors' claims without considering the tenant's evidence or allowing the tenant to speak in support of that evidence. In some cases tenants have reported to us their perception that the Member or Registrar gave advice to the lessor beyond basic procedural matters to indicate what the lessor may claim from the tenant. These issue points to the need for the Tribunal to be clearer with parties about the roles of Members and Registrars. It also suggests that accessible complaints mechanisms must be available to tenants.

Costs - Tenants also report that the ACAT application fee is a barrier to applying to the Tribunal for resolution of a tenancy dispute. As the Tribunal is funded through interest on tenant bond money it would be reasonable for tenants to have free access to the Tribunal. Such a policy may be incrementally implemented with low income earners exempted as a priority until full exemption can occur.

Penalties - Penalty provisions in the Act which can be imposed in a very limited number of circumstances are almost never applied or enforced. In over a decade of experience advising tenants though our advice service not one has reported that a lessor was successfully fined for not lodging the tenant's bond. This effectively relegates penalties to having status as mere threats. As

tenants are often unwilling to assert their rights there needs to be an external body that holds lessors who act in contravention of the legislation to be held to account.

Conduct of Agents - The TU frequently hears stories from tenants about conduct of real estate agents which may be in conflict with the Agents Act and the Agents Rules of Conduct. In many circumstances the conduct of complained of occurs during phone conversations or inspections/access to the property by the agent. Sometimes this conduct involves pressuring a tenant to take a specific course of action, or giving a tenant misleading information about their rights and obligations under the Act. This can make proof of the allegations of misconduct difficult. When tenants do have evidence of misconduct they are often unwilling to report it to the Office of Regulatory Services, Fair Trading for fear of obtaining a negative reference from that agent in relation to future properties the tenant may apply for.

Recommendations:

- Developing a framework for enforcement of penalties in the Act;
- Allow fee free applications for tenants to the Tribunal;
- Develop a framework to encourage more use of conditional orders in private tenancy rental arrears situations;
- Include references to the Public Health Act in the Act and standard terms, along with the penalties/orders that may be sought under that Act;
- Consider improvements in Tribunal processes and policies to improve accessibility and awareness amongst Tribunal members including:
    - A review of all Tribunal documentation and correspondence to ensure it considers principles of plain English drafting
    - Ensuring that relevant correspondence has referrals information, map/directions, and translation information attached; and
    - Providing training to Members to increase their awareness of issues surrounding housing, cultural and other diversity, mental health, disability and drug and alcohol issues.
- Development of documentation about the role of the Registrar or Member at various stages of proceedings at the Tribunal;
- Changes to the *Agents Act 2003* to prohibit real estate agents from:
    - conduct intended to pressure or intimidate a tenant into taking a course of action or refraining from taking a course of action; and
    - failure to inform a tenant or potential tenant of their rights under the Act and any other relevant statutes;
- Improvements in the system of dealing with complaints about real estate agents. For example ability for the Tribunal to order that the agent provide the tenant with a written reference which is limited to relevant objective criteria such as payment of rent and absence of damage to the property;
- Improvements to system dealing with complaints against Members, including where necessary the possibility of complaints being escalated to appropriate independent body for investigation and action.

Q8-2 Does the Act adequately protect tenants against wrongful or retaliatory evictions?

Q8-3 Should there be a specific remedy for a tenant affected by a wrongful eviction or a retaliatory eviction notice? What would be an appropriate remedy for an affected tenant (or former tenant)?

Wrongful eviction

As noted in the consultation paper there is no specific remedy available to a tenant where they are wrongfully evicted apart from that available in s 58 of the Act. There is also no specific provision which prohibits the use of self-help eviction. While section 36 of the Act limits the circumstances in which a tenancy may be ended it does not specifically refer to the fact that a lessor may not evict a tenant without a termination and possession order and a warrant from the Tribunal. There is also no reference in the standard terms of the necessary process required if a lessor wishes a tenant to provide vacant possession of the property.

In addition, the present provision of the Act relevant to defective notices to vacate only allows a tenant to raise the issue of defective notice as a defence once a lessor has applied to the property for a termination and possession order.

The TU has assisted tenants who have been served with notices to vacate which purport to be based on the grounds available to a lessor in the standard terms clauses 92-96 of the Act. In some cases these notices have been found to be invalid where the lessor did not have the necessary genuine intention to deal with the property in the manner such a notice would require. For example in *Osuchowski & Scouller v Radojevic* [2008] ACTRTT 13 (26 September 2008)[8] a lessor served a notice on the tenants indicating that the lessors son was intending to move into the property. Evidence presented to the Tribunal indicated that such an intention was not present and in fact what had motivated the lessor was the apparent opportunity to obtain a higher rent for the property if it was placed on the market. There is only a general right to seek compensation in this situation in section 58.

The operation of the current provision creates uncertainty for the tenant and may result in a tenant having very limited time to move if the notice served by the lessor is found to be valid. A significant improvement to this provision would be to amend it so that disputes arising from the allegedly defective notices to be resolved at an earlier stage in the proceedings providing greater clarity and certainty to all parties.

Recommendations

- Create a new section that allows a tenant to apply to the Tribunal for determination of the validity of a notice to vacate before the end of the notice period;
- Amend section 58 or create a new section to provide that the Tribunal may make an order that the notice is defective if the ground the notice is based on is proven not to exist;
- Amend the standard terms to include a reference to clause 83 at clauses 92-96 to emphasise that the lessor must include in the notice sufficient particulars to identify the circumstances giving rise to the notice;
- Create a new section making self-help eviction an offence and giving the Tribunal the power to order compensation to the wrongfully evicted person – see section 120 of the NSW

[8] http://www.austlii.edu.au/au/cases/act/ACTRTT/2008/13.html

Residential Tenancies Act 2010: http://bit.ly/1rnBveO. Such compensation may include moving costs, loss of leave from work to move, utilities connection/disconnection fees etc.

Retaliatory eviction

The current provisions in the Act relevant to retaliatory eviction require that a tenant must wait until the lessor has applied for a termination and possession order before they can raise retaliatory eviction as a defence. In such a circumstance the tenant may face extreme uncertainty up until the date of the notice. If a notice was then found to not be retaliatory then the tenant would have only 3 weeks to vacate. More certainty would create better clarity for both lessors and tenants.

The TU recommends:

- Amend the current provision to allow a tenant to make a direct and immediate application to the Tribunal for a determination of the validity of a notice to vacate in circumstances where the tenant alleges that the notice is retaliatory; and
- A tenant may also apply for compensation for any losses arising from defending the notice to vacate including for stress and inconvenience.

Occupancy agreements

Q9-1 Do the occupancy principles strike a fair balance between the rights of occupants and grantors? If not, why not? How could a more fair balance be achieved?

The occupancy principles were a very significant step forward when they were introduced in 2006. Their development and inclusion in the Act has meant that thousands of people who paid rent for their accommodation now had some, albeit limited recognition and protection from the law. However the introduction of the framework for occupancies was only meant to be the start of creating greater protections for occupants.

In this section we refer to occupants as having marginal tenure or being accommodated in marginal housing. This reflects the definitions provided for marginal tenure in recent research from AHURI which emphasises the fact persons renting marginal housing still overwhelmingly have access to fewer rights and are likely to live in situations where more control is exerted over them and their living arrangements.

Definitions - It is important to note that not all situations which may commonly be regarded as occupancies will in fact fulfil the definition of an occupancy. For example it can be possible to live in boarding house style arrangement and still be a tenant. The lack of clarity in the legislation as to how an occupancy or a tenancy is to be determined is the cause of much of this uncertainty. We refer specifically to the submission of the Welfare Rights and Legal Centre on the point of further articulation in the legislation of the delineation between a tenancy and occupancy. We note that the definition of an occupant should not be broadened to exclude those people who would usually be tenants. Rather the occupancy category should exist to ensure protection for those who by choice or circumstances could not be reasonably seen to be tenants.

Due in part to the housing affordability crisis and the lack of appropriate properties in areas where the demand is greatest there has been a growth in people turning to marginal housing where they are most likely to have occupancy agreements. In the ACT marginal housing where people will have

occupancy agreements can include homestay arrangements, caravans, caravan sites, boarding house style accommodation and other types of shared and multi-occupancy living which does not meet the definition of a tenancy. In the ACT the commonly imagined "boarding house", being a large inner city hostel type building is not seen, rather smaller residential homes are the primary place where boarding house style accommodation will be located. As the marginal housing market in Canberra is relatively un-regulated and often serviced by small inexperienced operators the quality and conditions in these properties can be low, or in some cases entirely unacceptable. This was seen in the ACT with the 2010 "slum landlord" case.

Marginal renters - It is also important to view any amendments to the occupancy framework in the Act on the basis of who occupants are as well as their needs and the fundamental right to housing. There has been considerable research done into the area of marginal tenures, particularly to find out who lives in marginal tenures and how they might best be best classified and approached from a policy perspective. Research has shown that the types of people residing in marginal housing tend to be on low incomes, single parents, older people, people on statutory incomes, people with disabilities, people with mental health issues as well as broader groups such as students and people from CALD backgrounds. People in these groups are the most likely to be disenfranchised in terms of their access to the private rental market, due to a range of factors including affordability, lack of references or experience, discrimination, lack of appropriate properties. People living in marginal housing are less likely to know or understand their rights, or be able to enforce them due to a fundamental power imbalance with the accommodation provider. As such people in marginal housing who have occupancy agreements are often in need of greater protection that is currently provided under the current framework. The intention for the occupancy framework to offer flexibility to parties in determining the terms of their agreement will only be effective where there is equal bargaining power between the parties. This is manifestly not the case for most people entering into occupancy agreements. As such the legislation must be used to redress the balance and provide adequate protection to the most vulnerable renters in our community.

At present people with occupancy agreements do not have the protection afforded to tenants with regards to termination and eviction, bonds and condition reports and rent increase among others. This means that occupants can be subject to self-help eviction by grantors, unreasonable rent increases and do not have the protection of having their bond lodged with a 3rd party. T**he TU strongly supports the recommendations from Peter Sutherland at the ANU College of Law to make the provisions of the Act generally applicable to occupants.** This would create much needed certainty amongst grantors and occupants as to the rights and remedies available to them and redress the current imbalance.

A fairer balance will also be achieved where all parties are aware of their rights and obligations under the law. A key suggestion is for the ACT Government to provide information to potential grantors at the point where the grantor has contact with the Government for the purpose of paying land tax.

Q9-2 Are the occupancy principles sufficient to protect the interests of parties to an occupancy agreement?

As noted above the occupancy principles were a strong start in creating protection for those people who cannot be defined as tenants. Now that a start has been made, there is significant potential for

improvement on the occupancy framework to deal with issues that have arisen in implementation and bolster the protections available to occupants. In the intervening period until the recommendation to make the provisions of the Act generally applicable to occupants there are a range of issues that must be addressed as a priority.

Speaking to occupants the overwhelming impression of the TU is that there is currently very limited knowledge or understanding of the occupancy principles within the ACT community. This extends to the provisions of other legislation that may be relevant which is cited in the consultation report such as the *Emergencies Act 2004* and the *Public Health Act 1997*. Many occupants think they have no rights at all, or that their rights depend entirely on what is included in their occupancy agreement. This situation is in part due to a lack of guidance to both occupants and grantors as to what type of information to include in occupancy agreements and also arises from the significant power imbalance which can result in unfair contracts. There is a need for a more comprehensive approach to the occupancy principles.

A number of omissions from the occupancy principles can possibly subject occupants to:

- Self-help eviction by the grantor;
- Uncertainty about the terms of the agreement due to no written agreement being required;
- Unreasonable claims on their bond or inability to obtain a refund of the bond;
- Unreasonable and excessive rent increases;
- Penalty fees for breaches of the agreement;
- Excessive compensation where the occupant ends the agreement early;
- Unreasonable house rules which unnecessarily restrict an occupant; and
- Unreasonable determination of the proportion of utilities an occupant must pay.

In our work with occupants we come across a range of different occupancy agreements including those for on campus university accommodation to handwritten one page documents with only the barest of information. In some cases there is no written document despite the fact that it is not an onerous process.

University accommodation - In the case of on campus university accommodation many of the agreements we see are long involved contracts which use legal language which is difficult for the ordinary person to understand. This is particularly problematic for students who will often be experiencing living out of home for the first time, or will be from other countries and as such may have limited ability to read and comprehend in English. These contracts also often include a number of terms which could be reasonably described as harsh and excessive including terms which impose fees on occupants for certain requests or requirement. We refer specifically to the submissions of the Australian National University Students Association and the Youth Coalition of the ACT for a more detailed discussion of the position of students with occupancy agreements. Other occupancy agreements purport to control the occupant or reduce their rights in significant ways. This can result in the more vulnerable being taken advantage of, including young people, older persons, people with disabilities and people with mental illness.

Community Housing - For occupants living in community housing or supported accommodation similar issues can arise. Where there is limited guidance provided as to the types of agreements and terms of agreements that are fair and reasonable in the circumstances, occupants can find

themselves with little choice but to accept unfair terms or terms which control their use of the accommodation in unreasonable ways. Improvement of the framework for occupancies would have significant benefits for the community housing sector as clarity around legal regulation can assist a business to plan financially and improve governance and service provision.

Bonds - In most situations the TU comes across the occupant will pay a bond, often between 2-6 weeks rent sometimes totalling $1000 or more. This is a significant amount of money and allowing it to remain with the grantor can create difficulties for the tenant in obtaining a refund and for the grantor in managing and securing that money. Where large bonds are required it can also create a barrier to entering an occupancy agreement. We have unfortunately seen a number of cases where occupants find it incredibly difficult to get their bond back due to disputes about money owing or claim for damage at the end of the occupancy.

In many cases occupants are unwilling to make applications to the Tribunal or the Tribunal process would be too difficult to engage in where a student is returning to their home country after finishing study. The benefits of requiring the lodgement of bonds in occupancies are clear; greater certainty to both grantor and occupant, greater protection for the occupant, reasonable access to dispute resolution. The lodgement of bonds in occupancies would also in increase in amount of interest earned by the Government, which could be directed towards further supporting advice and support services who work with occupants.

The TU recommends that the occupancy principles should be amended and supplemented as follows:

- Agreement should be in writing and a copy provided no later than 2 weeks after commencement. The fact that a written agreement does not exist does not preclude a person from being an occupant;
- Bond lodgement should be required and the bond limited to no more than 2 weeks rent;
- Penalty fees for breaches of the agreement should be prohibited;
- House rules should be subject to a reasonableness requirement;
- A tenant must return a property to a reasonable condition with fair wear and tear being excepted;
- Any compensation payable by the occupant to the grantor for ending the agreement early should not exceed the compensation available to a lessor under a tenancy agreement;
- Access to the property should only be for routine inspection, repairs, urgent repairs, for safety or some other emergency;
- A method for determination of the amount and payment of utilities should be set out in the agreement. The costs claimed are limited to actual cost to grantor in providing utility and reasonable measure of occupants use;
- Receipts for payment of any moneys are provided unless payments made via electronic transfer;
- 6 weeks notice of rent increase. Could be reasonable period of notice, if the agreement is less than 6 weeks; and
- References to the grantors obligations under other relevant legislation as the *Emergencies Act 2004*, *Public Health Act 1997* and *the Building Act.*

Q9-3 Should standard terms be prescribed for occupancy agreements or certain types or classes of occupancy agreements?
If yes, what types of occupancy agreements should be covered by standard terms and what should be the content of the standard terms?

As noted above many occupants and grantors could benefit from having access to standard form occupancy agreements and terms. Standard terms would assist in translating the principles into practical rights and obligations for occupants and grantors, offer greater certainty to both parties and assist in cases of disputes arising. The creation of a standard agreement may also prevent the inclusion in occupancy agreements of terms which are inconsistent with the occupancy principles.

There is also a particular and pressing need for a standard agreement for caravan park residents given the special nature of their accommodation. We have recently raised with the ACT Government our concerns for caravan park residents who appear to be subject to license agreements which provide very limited notice for termination. For many park residents termination of their agreements would result in incredibly difficult circumstances as many "mobile" homes cannot in reality be easily moved and removals can be prohibitively costly.

Depending on the comprehensiveness of a standard occupancy agreement there may be a need for different classes of occupancy agreements, or in the alternative for specific annexures to the agreement to be created for use in certain types of properties. Examples may include on campus student accommodation, supported accommodation and caravan parks. We are aware that some draft standard agreements already exist and that there are some relatively comprehensive agreements in use in the community housing sector which may be useful starting points. Any standard agreement should include provisions relating to:

- Pre-commencement obligations
- Bonds
- Condition reports
- Rent payable
- Rent increases
- The tenants costs and the lessors costs
- Repairs and maintenance
- Tenants responsibility for the property
- Access to the premises
- How the agreement may be terminated

We recommend that a subsequent consultation is held on the development of occupancy agreements to sure the views of those who will be affected by and using them can be taken into consideration.

Q9-4 Should commercially-operated boarding houses be subject to specific requirements under the Act, such as the minimum standards for boarding houses in the Victorian Residential Tenancies Act?
If yes, what would be an appropriate content of these requirements which would provide appropriate protection of boarders' rights?

We believe that the issues raised in this question should be subject to its own broad review and consultation on the regulation of marginal housing. Currently there is no well-known or clear definition of what a boarding house or a commercial boarding house is or what requirements those

properties are subject to. It is very likely that there are a number of unregistered boarding houses in the ACT because of this. With the rise of marginal accommodation in the ACT and the lack of protection afforded to occupants in unique situations such as caravan park residents there is a need for a comprehensive framework for the management of marginal tenures to be created. The fact that there are only a limited number of commercial boarding houses in the ACT and a larger number of more informal privately run boarding house style accommodation means the review will need to look beyond "commercial" boarding houses as a starting point or key definition.

It is important to avoid the categorisation of boarding houses and boarding house residents as a separate and distinct category from the categories of tenancy and occupancy already developed. The current framework for the different types of tenure should be preserved to avoid creating different classes of renter which has the potential to be discriminatory. Any definition of boarding houses (and other marginal housing) should consider a definition that focuses on the number of people residing at the property, whether they are on joint or separate agreements, the type of property that it is. Careful consideration should also be given to the nature of any exclusions from the definition such as broadly excluding motels, even where there may be long term residents residing there. Consideration should be given to models used in NSW and Victoria.

Any consultation should further consider:

- How houses should be defined (including what constitutes a "commercial" boarding house and whether caravan parks and other forms of marginal housing should be covered)
- what minimum housing and safety standards should apply to them,
- how such properties are regulated,
- whether the properties and operators should be registered and
- how any framework is to be enforced
- the interaction of any changes with the existing provisions in the Public Health Act, planning and building legislation and other government policy

Appendix 1: Overview of Recommendations

Access to (and sustaining position in) the Private Market

1. Standard application forms and stronger requirements for provision of information (p6 and)
2. Provisions regarding rent increases are amended to require that a rent increase cannot be more than the increase provided by the formula in the legislation, and where a lessor wishes to increase the rent beyond the formula amount they can apply to the Tribunal for a determination.
   That considerations in relation to rent increases include whether an increase will create financial hardship for the tenant (p7).
3. Public consultation of the development of (and response to) the shared and multi-occupancy housing market (p7)
4. Support recommendations from ACT Shelter report, in particular extension of the bond loan scheme http://www.actshelter.net.au/_literature_89184/Improving_access_to_private_rental_2012
5. A range of policy measures to assist tenants (p8)
6. A range of policy measures to encourage and support lessors (p9)

Standard Terms

7. That the majority of the current standard terms be included in the main Act as well as the standard terms (p10)
8. Plain English terms (p10)
9. The standard terms should include reference to a range of provisions currently only in the ACT (p10)
10. Changes to the form of the standard terms as well as information provided about the RTA (p12)
11. Range of changes to the standard terms (p13 - 23)
12. That there be a thorough review of the endorsement process to determine its usefulness and fairness;

    If the process is to continue, there is no provision for "blanket" endorsement as it removes fairness and the opportunity for consideration of an individual's circumstances. That there be a specific requirement for an application for a term to be endorsed;
    Support for recommendations of the Welfare Rights and Legal Centre;
    Opt in term in relation to compensation and breaking a lease. (p24)
13. That body corporates are given information and training around the rights of tenants in unit titled properties to avoid such situations occurring.
    That a reference to the Act within the Unit Titles Legislation and related documentation published by the ACT Government would also be beneficial. (p26)

Minimum Standards

14. While minimum standards already exist through requiring a property to be habitable further delineation of minimum standards (similar to the list of urgent repairs) would assist in more clearly defining the lessors' obligation and improve the standards of properties across the ACT (p28)
15. Smoke alarms should be mandated in rental properties with clarity in relation to maintenance in line with existing provisions regarding tenant and lessor responsibility (cl55)(p29)
16. Many assumptions made about the motivations of lessors in relation to entering and remaining in the private rental market which may not be supported by evidence. Mandatory minimum

housing standards, supported by financial support and incentives for lessors are most likely to result in increases in the standard of rental properties (p29)

17. Introduction of minimum energy efficiency standards (as a separate issue to minimum housing standards) may be staggered at supported by government assistance to lessors. Programs such as the Outreach Energy and Water Efficiency Program could be extended (p30)
18. Changes to address impediments, initially provision of clear information and education to address misapprehension and misunderstandings, and specifically:
    a. A new obligation could be included to ensure that if a replacement appliance is required that it is of greater energy efficiency than the old appliance;
    b. Allowing a tenant to make alterations to a property with the aim of improving energy efficiency or sustainability without needing to get the consent of the lessor may improve the tenant's willingness to take up such improvements (p30)

Share Housing

19. Range of proposed amendments relating to share housing relating to sub-letting, granting permission, process for transfers and co-tenancy disputes (p34)

Breakdowns in tenant relationships

20. We do not support a provision to allow automatic removal of the person removed from a property by a final order (p36)
21. A range of amendments are needed to encompass the range of circumstances and different housing and tenancy types to adequately ensure the safety of people experiencing violence with the underpinning value of the right to housing (p36)

End of tenancy issues

22. That no cause termination is the antithesis of security of tenure and has a detrimental effect on renters. The far reaching effects of this must be acknowledged and the provision removed from the RTA. As a matter of balance the RTA must adequately provide for fair just cause termination only, clarifying appropriate grounds

    In the case that the recommendation to remove no cause notices is not accepted then an alternative amendment is that clause 95 should allow a tenant who is served with a no cause notice to terminate at any time after the service of the notice by giving 3 weeks notice to the lessor, and retaliatory eviction process are strengthened. (p39)

23. Just cause termination – all notice periods available to a lessor in circumstances where there is no breach by the tenant are extended to 12 weeks (p40)
24. Several amendments in relation to termination by the lessor for breach of tenancy – relating to provision of information, standard forms and acting on NTV (p40)
25. Endorses submissions made by the Welfare Rights and Legal Centre on the process for serving Notices to Remedy
26. Amend the provision in the Act which allows a tenant to seek terminate on the basis of significant hardship to require that upon being satisfied that the hardship to the tenant is greater than the hardship to the lessor if the tenancy was not terminated within 4 weeks of the decision, the Tribunal must specify a period of less than 4 weeks after making the decision when the tenancy is to terminate (p41)

27. Create a new section which provides for further grounds on which a tenant may terminate a tenancy without compensation to the lessor based on section 100 of the NSW Act: http://bit.ly/1n5p5bD. The grounds should include that a tenant has accepted accommodation in a social housing premise, that the tenant has accepted a place in, or requires care in an aged care facility (p41)
28. In "break lease" matters –
    - Amend clause 84 to make it clear that there is no minimum notice period;
    - Amend clause 84 to make it clear that if a tenant gives notice under that provision and vacates in accordance then the tenancy terminates along with all obligations under the tenancy agreement. This may include redrafting the clause to ensure that the word "accept" is not taken to mean that the lessor may accept or reject the tenants notice;
    - Amend clause 84 to remove the option for the lessor to apply to have the tenancy "confirmed";
    - Include the provisions of section 84 of the Act in the standard terms so that a tenant can be fully aware of the possible implications of ending a fixed term tenancy without grounds; and
    - Redraft clause 89 of the Act to make it clear that this provision can only be used 3 weeks or less from the end of the fixed term agreement (p43)
29. Refund of Bond – a range of amendments in relation to timeliness, charging fees, providing information; photographs; return of bond and transfers of bond (p45)
30. Referral to WRLC submission in relation to Uncollected Goods

Remedies for breaches of the Act

31. Range of amendments relating to disincentives for seeking remedies, impact of lessor's remedies, ACAT experiences, costs, penalties and conduct of Agents (p46)
32. Wrongful eviction – amendments relating to determining validity of notices, including references to the standard terms and a self-help evictions (p48)
33. Retaliatory eviction (p49)
    - Amend the current provision to allow a tenant to make a direct and immediate application to the Tribunal for a determination of the validity of a notice to vacate in circumstances where the tenant alleges that the notice is retaliatory; and
    - A tenant may also apply for compensation for any losses arising from defending the notice to vacate including for stress and inconvenience.

Occupancy agreements

34. Definitions – support for WRLC on the point of further articulation in the legislation of the delineation between a tenancy and occupancy (p49)
35. The TU strongly supports the recommendations from Peter Sutherland at the ANU College of Law to make the provisions of the Act generally applicable to occupants (p50)
36. Provision of information to potential grantors at the point where the grantor has contact with the Government for the purpose of paying land tax. (p50)
37. Amendments to the occupancy principles (p52)
38. The development of standard terms possibility for different classes of occupants, such as caravan park residents.
    Such development must involve extensive consultation (p53)
39. Commercially-operated boarding houses – further extensive consultation is required (p54)