



Response to

***Residential Tenancy Act Review
Final Report and Consultation Paper
December 2011***

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1. Executive Summary

Anglicare acknowledges the good work already undertaken by the Tasmanian Government in the preparation of this Final Report and Consultation Paper (December 2011). Based on our recognition that this is a process is 'nearing completion' (but still requiring work), and on our hope that Tasmanian parliamentarians will legislate a new Residential Tenancy Act in the near future, Anglicare responds to the Office of Consumer Affairs and Fair Trading's proposed recommendations directly, and provides additional recommendations.

Anglicare recognises that the people most affected by the current Residential Tenancy Act are amongst the most vulnerable people in the Tasmanian community – those who live on low incomes, and who are completely reliant on opportunities for secure, affordable tenancy of adequate standard to avoid homelessness. As in previous submissions, our predominant focus is on ensuring that the rights and needs of tenants on low incomes are met.

This submission is based on Anglicare's service delivery experience and research evidence, including previous research undertaken by Anglicare's Social Action and Research Centre. Our aim is to contribute to the development of an effective Tasmanian housing system – one that ensures people's rights and needs are safeguarded, and prevents homelessness. The following recommendations are central to that aim:

Anglicare recommendation 1.

That even after the end of a fixed-term agreement, tenancies can only be terminated by the owner or agent where justifiable grounds exist, and therefore that section 42(1)b and 42(1)d be deleted altogether.

Anglicare recommendation 2.

That the Act extend the minimum notice period that applies at the end of a fixed-term agreement from 14 days to 90 days (rather than 42 days) for justifiable grounds only.

Anglicare recommendation 3.

That all periods of notice under section 43 should be extended from 14-28 days to 90 days, and that section 43 be amended to reflect deletion of sections 42(1)b and 42(1)d.

Anglicare recommendation 4.

Anglicare agrees that the Act should allow notice to be given up to 60 days before the expiry of the agreement, and recommends that section 10(2) be amended to reflect this change.

Anglicare recommendation 5.

Anglicare agrees that the Act should provide that fixed term agreements automatically convert to an agreement of no fixed term on the expiry of the agreement.

Anglicare recommendation 6.

Anglicare agrees that the Act should require tenants to give at least 14 days notice of their intention to vacate at the end of a fixed-term agreement.

Anglicare recommendation 7.

That written lease agreements be standardised to include a requirement that tenants must give at least 14 days' notice of their intention to vacate at the end of a fixed-term agreement, and that owners must remind tenants of the above requirement between 60 and 30 days before the end of a fixed-term agreement.

Anglicare recommendation 8.

That the Act extend the minimum notice period from 28 days to 90 days where vacant possession is required due to foreclosure or mortgagee sale, and also provide that tenants be granted a 30 day rent-free grace period if issued with 90 days notice to vacate based on foreclosure or mortgagee sale.

Anglicare recommendation 9.

That the Act define 'renovated' as major changes that a) will interfere with the structural integrity of the property or interrupt essential services to the property for 14 days or longer and b) cannot be carried out while the tenant is residing in the property.

Anglicare recommendation 10.

That within section 42(1)c, 'another purpose' be replaced by 'a non-residential purpose'.

Anglicare recommendation 11.

That where section 42(1)c is invoked, that the minimum notice period should be extended to 90 days .

Anglicare recommendation 12.

That the Act allow termination of an agreement in order to let the property to family members after 90 days notice based on a) receipt of a signed family contract stipulating that the lessee agrees to lease the property from the lessor for 1 year or more, and b) that tenants be granted a 30 day rent-free grace period if issued with 90 days notice based on a family contract.

Anglicare recommendation 13.

That a signed contract of sale be required in order to give notice based on sale of the property, and that tenants must be granted a 30 day rent-free grace period if issued with 90 days notice based on contract of sale.

Anglicare recommendation 14.

That the level of rent for a property be advertised or offered and accepted based on a fixed price; and that the Act does not include mention that the level of rent is negotiated by owner and tenant.

Anglicare recommendation 15.

That rent increases and decreases be limited to one change per property in a 12 month period, i.e. that rental increases are tied to the property rather than to lease agreements.

Anglicare recommendation 16.

That applications to investigate 'reasonableness of rent' may be submitted at any time by either owner or tenant, and that an assessment of 'reasonableness' be based on a comparison of consumer price index with the property's rent rate and capital works history.

Anglicare recommendation 17.

Anglicare agrees that applications relating to unreasonable rent increases should be transferred from the courts to the Residential Tenancy Commissioner.

Anglicare recommendation 18.

That applications to the Commissioner to investigate 'reasonableness of rent' be made within 90 days after the change in rent is notified.

Anglicare recommendation 19.

Anglicare agrees that all rental properties should be advertised or offered for rent at a fixed price.

Anglicare recommendation 20.

That the Residential Tenancy Act should stipulate penalties for owners and agents who let a property for more than the fixed price, and that adherence should be proactively enforced via audits undertaken at regular intervals by the Commissioner.

Anglicare recommendation 21.

Anglicare agrees that owners should be required to ensure that premises are reasonably clean at the start of each tenancy, and that the premises are maintained and provided in good repair throughout the tenancy.

Anglicare recommendation 22.

Anglicare agrees that owners should be required to ensure that the premises have hot and cold running water, toilet facilities, a bath or shower, and cooking facilities; and further recommends that the Act stipulate that these essential services must be provided to a safe quality, be affordable to use, and of such design that they are able to be maintained to hygienic standards.

Anglicare recommendation 23.

To the above list of requirements, Anglicare recommends that owners must also ensure that tenants have access to a regular and safe power supply, including access to affordable residential tariffs (rather than commercial or industry tariffs).

Anglicare recommendation 24.

Anglicare agrees that owners should be required to ensure that the premises are free of roof leakages, free of substantial drafts, and adequately ventilated; and in order to prevent mould, recommends further that the Act stipulates owners must ensure the provision of exhaust fans in bathrooms and kitchens where required to achieve adequate ventilation.

Anglicare recommendation 25.

That the Act include that owners be required to ensure exterior doors and windows are easily opened and closed, and are lockable.

Anglicare recommendation 26.

Anglicare agrees that owners should ensure that premises contain adequate heating in the main living area, and recommends adding the stipulation that owners must ensure that heating is 'cost-efficient'.

Anglicare recommendation 27.

From service delivery experience, Anglicare agrees that the development of a comprehensive set of minimum standards of accommodation is of such import that a working party should be established to develop minimum standards as a matter of urgency, with active involvement by non-government organisations including Shelter Tasmania and the Tenants' Union of Tasmania.

Anglicare recommendation 28.

That this minimal standards working group be required to report back within 12 months of the enactment of the legislation to ensure issues relating to minimum standards are being adequately addressed.

Anglicare recommendation 29.

Anglicare agrees that a residential tenancy agreement be terminated where premises are subject to a closure order that forbids human occupation under section 87 of the Public Health Act 1997.

Anglicare recommendation 30.

Anglicare agrees there is a need to clarify the meaning of 'function' in section 33(1) of the Act, and recommends that the term 'ceases to function' be replaced by 'ceases to function efficiently and effectively, as designed for the intended purpose'.

Anglicare recommendation 31.

Anglicare agrees with transferring jurisdiction to make orders under section 36A of the Act to the Residential Tenancy Commissioner; and that for people receiving Government pensions and allowances, fees associated with orders under section 36A are covered by MyBond interest funds.

Anglicare recommendation 32.

Anglicare disagrees with the recommendation that tenants be disallowed from undertaking maintenance. Our recommendation is that tenants be permitted to undertake or approve essential maintenance if it is in the interests of a) safety, b) prevention of serious and rapid property deterioration, or c) continued access to essential services.

Anglicare recommendation 33.

Anglicare agrees that tap washers are an essential service, and therefore the responsibility of owners.

Anglicare recommendation 34.

Anglicare agrees that tenants can be expected to replace light globes; and we recommend further, that tenants can be expected to replace heat globes, and heat pump filters, where these items are stipulated within a written lease agreement.

Anglicare recommendation 35.

To the above recommendation, we state the following exceptions: a) where a property's condition is so poor at the beginning of the lease that all light globes or heat globes must be replaced by a tenant within the first six months of their lease, b) where access to essential power, water and waterproofness is compromised to the extent that light globes and heat globes are affected, and c) where the obligation to replace heat globes and heat pump filters are not included within written lease agreements, these obligations remain the owner's responsibility.

Anglicare recommendation 36.

Anglicare agrees that an owner's obligation to 'repair' an item should include an obligation to 'replace' that item, such that it may be returned to a state of functioning efficiently and effectively, as designed for the intended purpose.

Anglicare recommendation 37.

Anglicare agrees that an owner's right to charge a tenant for water usage should be conditional on the owner's installation of water efficient taps, shower heads and dual flush toilets; in addition, we recommend that charge for water usage be conditional upon assessment that property water systems are free of leaks, and that where provided, garden water systems are assessed as efficient.

Anglicare recommendation 38.

That the Act provide for cases where the tenant receives water usage charges directly from the water supplier, and in such cases, that an owner may not charge tenants for water usage.

Anglicare recommendation 39.

From service delivery experience, Anglicare agrees that more work needs to be done to ensure the Residential Tenancy Act applies to residential tenants not yet covered by the Act, including residents of caravans, mobile homes, share-houses, student accommodation and emergency accommodation facilities (including boarding houses). Anglicare encourages continued work on these important tasks.

Anglicare recommendation 40.

From service delivery experience, Anglicare agrees that the development of standardised residential tenancy agreement forms and condition report forms will help ensure that tenants' and owners' rights and obligations are consistent and clearly articulated. Anglicare encourages further development and implementation of standardised rental tenancy forms.

Anglicare recommendation 41.

That the Act specify to whom the Act relates, including owners and agents responsible for administering and maintaining properties leased to private individuals, couples or families, including private owners, community housing owners, and Housing Tasmania (as owners of public housing in Tasmania).

Anglicare recommendation 42.

That Section 43 be amended to provide that, as long as a tenant pays the amount due within 14 days of the notice being issued, that a notice to vacate is rendered void, even if repeated, and even if it relates to rental arrears.

Anglicare recommendation 43.

That the Tasmanian Government fund the Office of Consumer Affairs and Fair Trading to establish methods for proactive enforcement of the Residential Tenancy Act, including undertaking regular checks in areas of known non-compliance identified by advocacy groups, and supporting community education on the rights and obligations of tenants and owners.

Anglicare recommendation 44.

Anglicare recommends that the Office of Consumer Affairs and Fair Trading investigate the level of maximum penalties within the current Act, and amend them to better reflect the negative consequences suffered by the other party.

2. Introduction

Anglicare wishes to acknowledge the constructive efforts made in the development of recommendations within this Final Report and Consultation Paper (December 2011). Based on our recognition that this is a process 'nearing completion' (but still requiring work), and on our hope that Tasmanian parliamentarians will legislate a new Residential Tenancy Act in the near future, this submission responds directly to the Office of Consumer Affairs and Fair Trading's (CAFT) proposed recommendations, and provides additional recommendations.

Anglicare wishes to first acknowledge the high numbers of households that are affected by details contained within the current and proposed amended Tasmanian Residential Tenancy Act, including both private and social housing tenants. Some 46,488 dwellings are rented in Tasmania¹ including 11,672 dwellings that are publicly owned and rented to low income tenants by Housing Tasmania². Thirty-three per cent of Tasmanian renters (18,000 households) are experiencing housing stress³. All of these dwellings come under the Residential Tenancy Act, ultimately affecting 19.3% of all Tasmanian households (ABS Census 2006). Of note is that due to high house purchase prices, rental accommodation is the only option for thousands of Tasmanians; many Tasmanians will be reliant on the Residential Tenancy Act as a key personal safeguard for their entire life.

Anglicare Tasmania is the largest community service organisation in Tasmania, with offices in Hobart, Glenorchy, Launceston, St Helens, Devonport and Burnie, and a range of outreach programs in rural areas. Anglicare's services include emergency relief and crisis services, accommodation support, employment services, mental health services, acquired injury, disability and aged care services and alcohol and other drug services. In addition, Anglicare's Social Action and Research Centre (SARC) conducts research, policy and advocacy work with a focus on the needs and concerns of Tasmanians on low incomes.

Anglicare has a range of services that specifically support people in need of housing, including: ACCESS (assisting people who are homeless or at risk of homelessness, and frequently supporting clients who are either struggling to sustain a private rental tenancy or are seeking to move out of homelessness into the private rental market); Staying Put (assisting young people to maintain their tenancies); and the Private Rental Support Service, which delivers

¹ Australian Bureau of Statistics 2006, *2006 Census QuickStats: Tasmania: person characteristics*, Australian Government.

² Australian Bureau of Statistics June 2008, *1307.6 Tasmanian State and Regional Indicators: Housing and construction*, Australian Government

³ Australians for Affordable Housing 2011, *Housing costs through the roof: Australia's housing stress*, viewed February 2012 at <http://housingstressed.org.au/wp-content/uploads/2011/10/Housing-costs-through-the-roof-Final-Report.pdf>

Government-funded financial assistance with bond, rent in arrears, rent in advance and moving costs to low income households in the north and north-west. This submission is based predominantly on Anglicare's service delivery experience and research evidence, including previous research undertaken by the Social Action and Research Centre ⁴.

As noted in CAFT's previous Discussion Paper⁵, 'almost exclusively, the people calling for change are doing so from a tenant perspective'. Anglicare recognises that the people most affected by the current Residential Tenancy Act are amongst the most vulnerable people in the Tasmanian community – those who live on low incomes and who are wholly reliant on opportunities for secure affordable tenancy, of adequate standard, to avoid homelessness. As might be expected, many of our recommendations relate to ensuring the rights and needs of tenants are met.

Of special note, is that approximately 3000 Tasmanians are currently on the public housing waiting list⁶, meaning this number are currently forced to live in often expensive and insecure private rental, or may even be homeless and reliant upon emergency or transitional housing. Combined with the reality that government pensions and allowances are the main source of income for 34% of Tasmanian households⁷, these statistics illuminate the reality that many thousands of low-income Tasmanians are housed within private rental properties and are significantly affected by issues such as affordability, security of tenure, standards of accommodation and leasing practices. From this basis, our recommendations seek to ensure that tens of thousands of Tasmania's most socially and economically disadvantaged people have adequate access to affordable, appropriate, secure housing, of adequate standard.

As a backdrop to this submission, and with an aim of providing transparency, we offer two fundamental positions Anglicare holds, that are particularly relevant in the task of revising the current Residential Tenancy Act:

⁴ Examples include: Cameron P, 2004, *Condition Report: Low income earners in the Tasmanian private rental market*, Anglicare Tasmania, Hobart; Flanagan, K 2007, *Housing: building a better Tasmania – the bigger picture*, Anglicare Tasmania, Shelter Tasmania & Tasmanian Council of Social Service, Hobart; and Flanagan, K 2009, *Hard times: Tasmanians in financial crisis*, Anglicare Tasmania, Hobart.

⁵ Office of Consumer Affairs and Fair Trading 2010, *The Residential Tenancy Act 1997 and current issues in the residential tenancy market discussion Paper*, Tasmanian Government.

⁶ Department of Health and Human Services Tasmania, 2011, *Your Health and Human Services Progress Chart: September 2011*, Tasmanian Government. Cited in Department of Premier and Cabinet 2011, *Estimated social exclusion risk factors in Tasmania*, Tasmanian Government.

⁷ Australian Bureau of Statistics Dec 2010, *1307.6 Tasmanian State and Regional Indicators: Household economic resources*, Australian Government.

- 1) To Anglicare, housing is a basic and fundamental human requirement⁸ and right⁹. We believe that the residential market should not be utilised as a mechanism for capital gain for some at the cost of housing becoming insecure, unaffordable, or of inadequate standard for others. From this basis, we believe that investment in private residential property solely for capital gain does not serve fundamental human rights, and therefore is not socially ethical. From our perspective, Commonwealth and State Governments currently provide incentives for residential investment without adequate safeguarding of tenants. In our view, investment in the private residential market should not face the same policy enablers as other forms of investment. Instead, incentives should encourage investment in the development of affordable, secure, appropriate social housing options for people on prohibitively low incomes (including those receiving Government allowances and pensions).

- 2) The majority of low income earners in Tasmania are forced into the private rental market, with literally no chance that they will gain social housing tenancy (including public housing) or home ownership. Because of current unmet demand for social housing in Tasmania¹⁰, and the poor condition of our limited public housing stock (both in quantity and quality)¹¹, extra pressure is placed on private rental housing stock in this State. As a result, many tenants in the private rental market cannot afford the rent being asked of them¹². Because of the compounding nature of these issues, it is paramount that Tasmania's private rental market be supported by a strong, clear, compassionate and well-regulated Residential Tenancy Act.

From Anglicare's perspective, until Commonwealth and State Governments cease to provide incentives for residential investment, and until Tasmania's social housing stock is increased and improved (including via the provision of more public housing), Tasmania's low income earners will continue to rely on the Residential Tenancy Act to safeguard their opportunities for gaining secure affordable tenancy of adequate standard. From this backdrop, we believe basic changes to the current Residential Tenancy Act are long overdue.

⁸ The World Health Organisation states: *The daily conditions in which people live have a strong influence on health equity. Access to quality housing and shelter and clean water and sanitation are human rights and basic needs for healthy living* (Commission on Social Determinants of Health, WHO, 2008, p.4).

⁹ From the perspective of the United Nations: *Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control* (Article 25(a) of the United Nations Universal Declaration on Human Rights, UN, 1948).

¹⁰ See the Department of Health and Human Services Tasmania, 2011, *Your Health and Human Services Progress Chart: September 2011*, Tasmanian Government. Cited in Department of Premier and Cabinet 2011, *Estimated social exclusion risk factors in Tasmania*, Tasmanian Government.

¹¹ See Flanagan, K 2007, *Housing: building a better Tasmania – the bigger picture*, Anglicare Tasmania, Shelter Tasmania & Tasmanian Council of Social Service, Hobart.

¹² See Flanagan, J and Flanagan K 2011, *The high cost of poverty*, Anglicare Tasmania.

3. Response to each recommendation

Part 1 – Certainty of tenure

Based on research evidence and service delivery experience, Anglicare has made the following recommendations in previous submissions relating to certainty of tenure:

- Tenants should be able to elect to extend their residential tenancy agreement if the owner intends to continue renting the property for a further period.
- That section 43 should be amended to provide that, as long as a tenant pays the amount due within 14 days of the notice being issued, a notice to vacate is rendered void, even if it relates to rental arrears.
- That periods of notice under section 43 should be extended from 14-28 days to 90 days.
- That further consideration should be given to the option of introducing 'notices to remedy' in the event of either party failing to abide by the conditions of the residential tenancy agreement.
- That if a tenant elects to vacate the property early, the landlord should only be permitted to continue to charge them rent for four weeks following their departure.
- That tenants who are vacating early should have the right to propose a replacement tenant for the property, whom the landlord may not unreasonably refuse.
- That tenants who have had a rent-contributing partner excluded from the property under the Family Violence Act should be permitted to terminate a fixed-term agreement without penalty.

In relation to CAFT's proposed recommendations on certainty of tenure, Anglicare recommends that amendments provide for consistent time-frames. Our view is that clear, simple and consistent timeframes will assist both tenants and owners to meet their obligations.

Anglicare understands the need to favour family members as tenants in some cases, but believes notices to vacate premises on such grounds require adequate notice and adequate recompense to ensure tenants are not overly disadvantaged as a result of family decisions.

Due to Tasmania's housing shortage and related high rents, Anglicare believes that where tenants are disadvantaged through no fault of their own, that they be given longer notice to vacate on justifiable grounds, and a rent-free grace period.

CAFT proposed recommendation 1

- *Extend the minimum notice period that applies at the end of a fixed-term agreement from 14 days to 42 days; and*
- *Allow notice to be given up to 60 days before the expiry of the agreement.*

Anglicare recommendation 1.

That even after the end of a fixed-term agreement, tenancies can only be terminated by the owner or agent where justifiable grounds exist, and therefore that section 42(1)b and 42(1)d be deleted altogether.

Anglicare recommendation 2.

That the Act extend the minimum notice period that applies at the end of a fixed-term agreement from 14 days to 90 days (rather than 42 days) for justifiable grounds only.

Anglicare recommendation 3.

That all periods of notice under section 43 should be extended from 14-28 days to 90 days, and that section 43 be amended to reflect deletion of sections 42(1)b and 42(1)d.

Anglicare recommendation 4.

Anglicare agrees that the Act should allow notice to be given up to 60 days before the expiry of the agreement, and recommends that section 10(2) be amended to reflect this change.

CAFT proposed recommendation 2

- *Provide that fixed term agreements automatically convert to an agreement of no fixed term on the expiry of the agreement.*

Anglicare recommendation 5.

Anglicare agrees that the Act should provide that fixed term agreements automatically convert to an agreement of no fixed term on the expiry of the agreement.

CAFT proposed recommendation 3

- *Require tenants to give at least 14 days' notice of their intention to vacate at the end of a fixed-term agreement.*

Anglicare recommendation 6.

Anglicare agrees that the Act should require tenants to give at least 14 days notice of their intention to vacate at the end of a fixed-term agreement.

Anglicare recommendation 7.

That written lease agreements be standardised to include a requirement that tenants must give at least 14 days notice of their intention to vacate at the end of a fixed-term agreement, and that owners must remind tenants of the above requirement between 60 and 30 days before the end of a fixed-term agreement.

CAFT proposed recommendation 4

- *Extend the minimum notice period from 28 days to 60 days where vacant possession is required due to foreclosure or mortgagee sale.*

Anglicare recommendation 8.

That the Act extend the minimum notice period from 28 days to 90 days where vacant possession is required due to foreclosure or mortgagee sale, and also provide that tenants be granted a 30 day rent-free grace period if issued with 90 days notice to vacate based on foreclosure or mortgagee sale.

CAFT proposed recommendation 5

- *Clarify the meaning of 'renovated' and 'another purpose' in section 42(1)(c) of the Act;*
- *Allow termination to let properties to family members after 90 days' notice; and*
- *Require evidence of an agency agreement before giving notice on the grounds of sale.*

Anglicare recommendation 9.

That the Act define 'renovated' as major changes that a) will interfere with the structural integrity of the property or interrupt essential services to the property for 14 days or longer and b) cannot be carried out while the tenant is residing in the property.

Anglicare recommendation 10.

That within section 42(1)c, 'another purpose' be replaced by 'a non-residential purpose'.

Anglicare recommendation 11.

That where section 42(1)c is invoked, that the minimum notice period should be extended to 90 days .

Anglicare recommendation 12.

That the Act allow termination of an agreement to let the property to family members after 90 days notice based on a) receipt of a signed family contract stipulating that the lessee agrees to lease the property from the lessor for 1 year or more, and b) that tenants be granted a 30 day rent-free grace period if issued with 90 days notice based on a family contract.

Anglicare recommendation 13.

That a signed contract of sale be required in order to give notice based on sale of the property, and that tenants must be granted a 30 day rent-free grace period if issued with 90 days notice based on contract of sale.

Part 2 - Rent increases

Based on research evidence and service delivery experience, Anglicare has previously made the following recommendations in relation to unreasonable rent increases:

- Rent increases should be limited to one per property per year.
- Rent increases should be regulated according to the model put forward by the Tenants' Union of Tasmania in 2006 in their law reform issues paper *Through the roof: unreasonable rent increases in Tasmania*.
- The Residential Tenancy Act should require all properties to be advertised at a fixed price, and make it an offence for a property to be leased at a price that is above the advertised price.

In response to CAFT's proposed recommendations on rent increases, Anglicare recommends that rent increases be constrained. Based on the principle that access to affordable appropriate secure housing is a basic human right, our view is that rent increases should more closely align with the consumer price index rather than the discretion of individual owners. The consumer price index provides a general measure of price inflation for the household sector as a whole and is used by the Reserve Bank of Australia as the official measure of inflation for evaluating monetary policy¹³. Rental increases that are more closely tied to the consumer price index will enable a dual purpose of a) minimising rental increases for tenants on low incomes, and b) act as a constraining variable for unsustainable debt growth in the housing investment sector.

CAFT proposed recommendation 6

- *Allow for the level of rent for a property to be negotiated between the owner and the tenant at the beginning of a tenancy;*

¹³ Australian Bureau of Statistics July 2010, *Consumer Price Index*, Australian Government.

- *Limit rent increases during a tenancy to once in every 12 months; and Allow for a review of the reasonableness of increases in rent on the renewal or extension of an agreement.*

Anglicare recommendation 14.

That the level of rent for a property be advertised or offered and accepted based on a fixed price; and that the Act does not include mention that the level of rent is negotiated by owner and tenant.

Anglicare recommendation 15.

That rent increases and decreases be limited to one change per property in a 12 month period, i.e. that rental increases are tied to the property rather than to lease agreements.

Anglicare recommendation 16.

That applications to investigate 'reasonableness of rent' may be submitted at any time by either owner or tenant, and that an assessment of 'reasonableness' be based on a comparison of consumer price index with the property's rent rate and capital works history.

CAFT proposed recommendation 7

- *Transfer the current provision for making an order about unreasonable rent increases from the courts to the Residential Tenancy Commissioner; and*
- *Require applications to be made within 60 days after the increase is notified.*

Anglicare recommendation 17.

Anglicare agrees that applications relating to unreasonable rent increases should be transferred from the courts to the Residential Tenancy Commissioner.

Anglicare recommendation 18.

That applications to the Commissioner to investigate 'reasonableness of rent' be made within 90 days after the change in rent is notified.

Part 3 - Rent bidding

As mentioned in a previous submission, Anglicare acknowledges that 'rent bidding' can be initiated by tenants as well as by owners – although we would also point out that no owner is compelled by necessity to accept any sort of bidding, while a tenant desperate for housing and placed in a bidding situation initiated by the owner is in a much more compromised position¹⁴.

Anglicare recognises that unless legislation is proactively enforced, legislative attempts to prevent rent bidding will have limited effect. We also recognise that, required to advertise one fixed price, an owner or agent may advertise a high fixed price, then drop that price incrementally until a tenant can afford the price asked (or is in such desperate need of housing that they agree to pay the higher fixed price). Anglicare's service delivery experience demonstrates that the competition is usually at the lower end of the rental housing market.

Based on research evidence and service delivery experience, Anglicare has previously made the following recommendation in relation to rent bidding:

- As well as requiring all properties to be advertised at a fixed price, the Tasmanian Residential Tenancy Act should also make it an offence for an owner to let the property at a price that is above the advertised price.

CAFT proposed recommendation 8

- *Require that all rental properties be advertised or offered for rent at a fixed price.*

Anglicare recommendation 19.

Anglicare agrees that all rental properties should be advertised or offered for rent at a fixed price.

Anglicare recommendation 20.

That the Residential Tenancy Act should stipulate penalties for owners and agents who let a property for more than the fixed price, and that adherence should be proactively enforced by audits undertaken at regular intervals by the Commissioner.

¹⁴ See page 12, Anglicare Tasmania 2010, *Response to Consumer Affairs and Fair Trading discussion paper The Residential Tenancy Act 1997 and current issues in the residential tenancy market February 2010*, Anglicare Tasmania.

Part 4 - Minimum standards of accommodation

Since Tasmania's Substandard Housing Control (Standards of Habitation) Regulations 1974 were rescinded in January 2001¹⁵, no Tasmanian legislation has adequately defined basic standards for housing. According to the Tenants' Union of Tasmania, Tasmania's minimum standards are currently the lowest in Australia¹⁶. Whereas the previous Housing Control Regulations stipulated standards in relation to drainage, sanitation, ventilation, lighting, cleanliness, repair, construction, situation (i.e. location), damp, water supply, bathing, laundry and cooking facilities, cooking stoves and vermin infestation, the current Residential Tenancy Act falls short of requiring owners to provide minimum standards of accommodation. As articulated in previous consultations, Anglicare defines 'minimum standards of accommodation', as those very basic requirements essential for safe and comfortable habitation. In their service delivery role, Anglicare staff continue to report that these basic requirements are not always met. In a high demand rental market, low income tenants are forced to accept substandard properties.

In Tasmania, the quality and operating costs of heating provided by an owner have a direct bearing on the health and financial stress a tenant experiences. We believe that both heating systems and heating costs should be given special attention in the development of minimum standards.

Based on research and service delivery experience, Anglicare has made the following recommendations in previous submissions relating to minimum standards of accommodation:

- The Residential Tenancy Act should specify minimum standards for private rental properties.
- Minimum standards should outline requirements in relation to weatherproofing, thermal efficiency, safety, health of the occupants, ventilation, water supply, pest control and heating.
- Consideration should be given to the option of allowing a tenant to deduct reimbursement payments from their rent in the event of a landlord disputing their liability to reimburse the tenant for the cost of essential repairs, but refusing to take court action to have the liability determined.
- Consumer Affairs and Fair Trading should prioritise the introduction of Regulations governing the use of infringement notices.
- Infringement notices should include substantial penalties for failure to comply.

¹⁵ See Anglicare Tasmania 2010, Response to Consumer Affairs and Fair Trading discussion paper The Residential Tenancy Act 1997 and current issues in the residential tenancy market February 2010, Anglicare Tasmania.

¹⁶ See Tenant's Union of Tasmania current submission, 2012.

CAFT proposed recommendation 9

a) Require owners to:

- *Ensure that the premises are reasonably clean at the start of a tenancy; and*
- *Provide and maintain the premises in good repair throughout the period of the tenancy; and*
- *Ensure that the premises have:*
 - *hot and cold running water;*
 - *toilet facilities;*
 - *a bath or shower; and*
 - *cooking facilities; and*
- *Ensure that premises are:*
 - *free of roof leakages;*
 - *free of substantial drafts; and*
 - *adequately ventilated; and*
- *Ensure that premises contain adequate heating in the main living area.*

b) Establish a working party to develop comprehensive minimum standards.

Anglicare recommendation 21.

Anglicare agrees that owners should be required to ensure that premises are reasonably clean at the start of each tenancy, and that the premises are maintained and provided in good repair throughout the tenancy.

Anglicare recommendation 22.

Anglicare agrees that owners should be required to ensure that the premises have hot and cold running water, toilet facilities, a bath or shower, and cooking facilities; and further recommends that the Act stipulate that these essential services must be provided to a safe quality, be affordable to use, and of such design that they are able to be maintained to hygienic standards.

Anglicare recommendation 23.

To the above list of requirements, Anglicare recommends that owners must also ensure that tenants have access to a regular and safe power supply, including access to affordable residential tariffs (rather than commercial or industry tariffs).

Anglicare recommendation 24.

Anglicare agrees that owners should be required to ensure that the premises are free of roof leakages, free of substantial drafts, and adequately ventilated; and in order to prevent mould, recommends further that the Act stipulates owners must ensure the provision of exhaust fans in bathrooms and kitchens where required to achieve adequate ventilation.

Anglicare recommendation 25.

That the Act include that owners are required to ensure exterior doors and windows are easily opened and closed, and are lockable.

Anglicare recommendation 26.

Anglicare agrees that owners should ensure that premises contain adequate heating in the main living area, and recommends adding the stipulation that owners must ensure that heating is 'cost-efficient'.

Anglicare recommendation 27.

From service delivery experience, Anglicare agrees that the development of a comprehensive set of minimum standards of accommodation is of such import that a working party should be established to develop minimum standards as a matter of urgency, with active involvement by non-government organisations including Shelter Tasmania and the Tenants' Union of Tasmania.

Anglicare recommendation 28.

That this minimum standards working group be required to report back within 12 months of the enactment of the legislation to ensure issues relating to minimum standards are being adequately addressed.

CAFT proposed recommendation 10

- *Provide that a residential tenancy agreement is terminated where the premises are subject to a closure order that forbids human occupation under section 87 of the Public Health Act 1997.*

Anglicare recommendation 29.

Anglicare agrees that a residential tenancy agreement be terminated where premises are subject to a closure order that forbids human occupation under section 87 of the Public Health Act 1997.

Part 5 - Maintenance and repair obligations

Anglicare staff continue to report how difficult it is to ensure owners conduct essential repairs and maintenance, many owners refusing to rectify problems, both general and urgent.

Based on research evidence and service delivery experience, Anglicare has made the following recommendations in previous submissions relating to maintenance and repair obligations:

- Consideration should be given to the option of allowing a tenant to deduct reimbursement payments from their rent in the event of a landlord disputing their liability to reimburse the tenant for the cost of essential repairs, but refusing to take court action to have the liability determined.
- Consumer Affairs and Fair Trading should prioritise the introduction of Regulations governing the use of infringement notices.
- Infringement notices should include substantial penalties for failure to comply.
- The Act should provide greater clarity regarding the distinction between 'fair wear and tear' and 'maintenance'.
- The term 'ceases to function' in s. 33 should be amended to read 'ceases to function as designed'.
- The Act should provide greater clarity regarding the distinction between 'fair wear and tear' and 'maintenance'.

CAFT proposed recommendation 11

- *Clarify the meaning of 'function' in section 33 of the Act to make clear the owner's obligation for the maintenance of essential services.*

Anglicare recommendation 30.

Anglicare agrees there is a need to clarify the meaning of 'function' in section 33(1) of the Act, and recommends that the term 'ceases to function' be replaced by 'ceases to function efficiently and effectively, as designed for the intended purpose'.

CAFT proposed recommendation 12

- *Transfer jurisdiction to make orders under section 36A of the Act to the Residential Tenancy Commissioner.*

Anglicare recommendation 31.

Anglicare agrees with transferring jurisdiction to make orders under section 36A of the Act to the Residential Tenancy Commissioner; and that for people receiving Government pensions and allowances, fees associated with orders under section 36A are covered by MyBond interest funds.

CAFT proposed recommendation 13

- *Remove provisions that allow tenants to undertake maintenance.*

Anglicare recommendation 32.

Anglicare disagrees with the recommendation that tenants be disallowed from undertaking maintenance. Our recommendation is that tenants be permitted to undertake or approve essential maintenance if it is in the interests of a) safety, b) prevention of serious rapid property deterioration, or c) continued access to essential services.

CAFT proposed recommendation 14

- *Clarify that owners are responsible for replacing tap washers during a tenancy; and*
- *Clarify the tenant's obligation to replace light globes.*

Anglicare recommendation 33.

Anglicare agrees that tap washers are an essential service, and therefore the responsibility of owners.

Anglicare recommendation 34.

Anglicare agrees that tenants can be expected to replace light globes; and we recommend further, that tenants can be expected to replace heat globes, and heat pump filters, where these items are stipulated within a written lease agreement.

Anglicare recommendation 35.

To the above recommendation, we state the following exceptions: a) where a property's condition is so poor at the beginning of the lease that all light globes or heat globes must be replaced by a tenant within the first six months of their lease, b) where access to essential power, water and waterproofness is compromised to the extent that light globes and heat globes are affected, c) where the obligation to replace heat globes and heat pump filters are not included within written lease agreements, these obligations remain the owner's responsibility.

CAFT proposed recommendation 15

- *Clarify the obligation to 'repair' in Part 3, Division 4 of the Act to ensure that it also includes the obligation to 'replace'.*

Anglicare recommendation 36.

Anglicare agrees that an owner's obligation to 'repair' an item should include an obligation to 'replace' that item, such that it may be returned to a state of functioning efficiently and effectively, as designed for the intended purpose.

Part 6 – Encouraging water efficiency

With the imminent extension of water and sewerage usage charges to all private renters, it is timely to require that as part of the minimum standards, owners are required to ensure that water efficient appliances are provided.

Based on research evidence and service delivery experience, Anglicare has previously recommended that water efficiency should be included in a list of essential services, alongside minimum standards in relation to weatherproofing, thermal efficiency, safety, health of the occupants, ventilation, pest control and heating.

CAFT proposed recommendation 16

- *Make an owner's right to recover water usage charges for the premises conditional on the installation of water efficient taps, shower heads and dual flush toilets.*

Anglicare recommendation 37.

Anglicare agrees that an owner's right to charge a tenant for water usage should be conditional on the owner's installation of water efficient taps, shower heads and dual flush toilets; in addition, we recommend that charge for water usage be conditional upon assessment that property water systems are free of leaks, and that where provided, garden water systems are assessed as efficient.

Anglicare recommendation 38.

That the Act provide for cases where the tenant receives water usage charges directly from the water supplier, and in such cases, that an owner may not charge tenants for water usage.

Part 7 - Miscellaneous amendments

In previous submissions, Anglicare has made the following recommendations relating to the miscellaneous items listed in Part 7 of CAFT's Final Report and recommendations:

- Funding should be allocated for further consultation with temporary accommodation providers and their clients regarding the exemption of crisis accommodation from the Act.
- The application of the Act to permanent-stay residents of caravan parks should be clarified.
- The Act should provide greater clarity in relation to the application of the provisions relating to boarding houses and tertiary students.
- Consumer Affairs and Fair Trading should investigate the practice of leasing share houses by room with a particular focus on whether these arrangements constitute breaches of the boarding house provisions of the Act.

- The Act should be clarified to specifically require that any variations to a residential tenancy agreement have the agreement of all parties to the agreement, including any co-tenants.

CAFT proposed recommendation 17

- *Consult further on a range of miscellaneous issues.*

Anglicare recommendation 39.

From service delivery experience, Anglicare agrees that more work needs to be done to ensure the Residential Tenancy Act applies to residential tenants not yet covered by the Act, including residents of caravans, mobile homes, share-houses, student accommodation and emergency accommodation facilities (including boarding houses). Anglicare encourages continued work on these important tasks.

Anglicare recommendation 40.

From service delivery experience, Anglicare agrees that the development of standardised residential tenancy agreement forms and condition report forms will help ensure that tenants' and owners' rights and obligations are consistent and clearly articulated. Anglicare encourages further development and implementation of standardised rental tenancy forms.

4. Additional Anglicare recommendations

Anglicare acknowledges that Housing Tasmania's 11,000-plus properties also come under the provisions of the Residential Tenancy Act, with equal obligations for compliance as owner. Based on service delivery experience, including supporting public housing tenants, we recommend that Housing Tasmania's obligations be made clear within an amended Act.

Anglicare recommendation 41.

That the Act specify to whom the Act relates, including owners and agents responsible for administering and maintaining properties leased to private individuals, couples or families, including private owners, community housing owners and Housing Tasmania (as owners of public housing in Tasmania).

As noted in previous submissions, Anglicare believes the current Act needs amendment relating to when a 'notice to vacate' is issued for failure to comply with the residential tenancy agreement. In the current Act, where the tenant rectifies the breach within 14 days of the notice being issued, the notice is void - up until the third notice. In the current Act, where the reason for eviction is rental arrears and a third notice is issued within 12 months, compliance

by the tenant has no effect. Based on the circumstances of those to whom this section most commonly applies –tenants on low incomes, Anglicare recommends that the discrepancy in section 43(2) be removed to ensure that when a tenant pays the amount due within 14 days of a notice being issued, the notice is always rendered void, even if repeated, and even if it relates to rental arrears.

Anglicare recommendation 42.

That Section 43 be amended to provide that, as long as a tenant pays the amount due within 14 days of the notice being issued, a notice to vacate is rendered void, even if repeated, and even if it relates to rental arrears.

Anglicare has long advocated for more 'proactive' enforcement of the Residential Tenancy Act¹⁷, including ensuring that rent-bidding is prevented, minimum standards of accommodation are maintained and owners' obligations are met. Where cost has been identified as an issue, solutions have been offered, including for example area-based inspections of rental properties in older areas where housing is likely to be substandard, and complaint-based inspection programs operating in other areas¹⁸. In line with Shelter Tasmania's 2012-2013 budget recommendation, Anglicare considers CAFT to be the right body to provide more proactive monitoring and enforcement of the Act.

In addition, to proactive enforcement, Anglicare believes that enforcement of the Act will be assisted if targeted consumer education is provided for tenants regarding their rights under the legislation, including information on the actions tenants can undertake to assert those rights.

Anglicare recommendation 43.

That the Tasmanian Government fund the Office of Consumer Affairs and Fair Trading to establish methods for proactive enforcement of the Residential Tenancy Act, including undertaking regular checks in areas of known non-compliance identified by advocacy groups, and supporting community education on the rights and obligations of tenants and owners.

In addition to successful enforcement activity, Anglicare proposes that consideration be given to levels of disincentive within the current Act. We believe that a review of current penalties and enforcement would likely highlight the relatively 'soft' penalties for owners who do not meet their obligations to provide safe and habitable accommodation for tenants. Currently, only some breaches incur a monetary penalty, and these penalties tend to be small. Penalties should be proportional to the negative consequences of the breach for the other party, and should carry an appropriate deterrent value.

¹⁷ Including or example, Anglicare Tasmania 2008, pp. 8-10, Anglicare Tasmania 2010, p.22.

¹⁸ See Bradbrook, AJ 1977, *Methods of improving the effectiveness of substandard housing control legislation in Australia*, University of Tasmania Law Review, vol.5, pp. 185-6.

Anglicare recommendation 44.

Anglicare recommends that the Office of Consumer Affairs and Fair Trading investigate the level of maximum penalties within the current Act, and amend them to better reflect the negative consequences suffered by the other party.

5. Conclusions

Anglicare recognises that the people most affected by the current Residential Tenancy Act are amongst the most vulnerable people in the Tasmanian community – those who live on low incomes, and who are completely reliant on opportunities for secure, affordable tenancy of adequate standard to avoid homelessness. As in previous submissions, our predominant focus is to ensure the rights and needs of tenants on low incomes are met. We believe basic changes to the current Residential Tenancy Act are long overdue. In a pragmatic attempt to ensure critical changes are enacted in the near future, this submission and our recommendations are intended to support the speedy achievement of essential changes.

We congratulate CAFT on efforts to amend the current Act, and consider the proposed changes to be nearing completion. With minor refinement, our hope is that agreed amendments will be concluded, and that an amended Act will be legislated in the near future. We wish the Tasmanian Government success in this endeavour.

Our ultimate aim in this submission is to contribute to the development of a highly effective Tasmanian housing system – one that ensures people’s rights and needs are safeguarded, and prevents homelessness.