

Submission

No 44

INTERNATIONAL STUDENT ACCOMMODATION IN NEW SOUTH WALES

Organisation: Redfern Legal Centre
Name: Ms Joanna Shulman
Position: Chief Executive Officer
Date Received: 10/10/2011

Redfern Legal Centre



The Committee Manager
Social Policy Committee
Parliament House
Macquarie St
Sydney NSW 2000

5 October 2011

Attention: The Committee Manager of the Social Policy Committee

Please find attached our policy submission to the NSW Parliament's Inquiry into International Student Accommodation in New South Wales.

We would welcome the opportunity to appear before the Social Policy Committee to discuss this issue further.

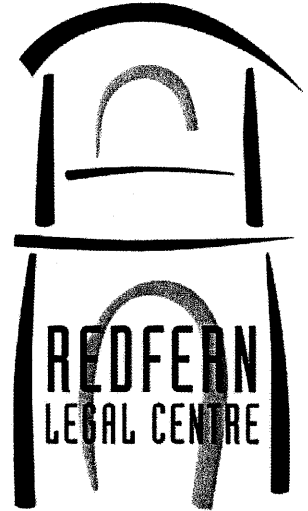
Yours faithfully,

Redfern Legal Centre

A handwritten signature in blue ink, appearing to be 'JS' or 'Joanna Shulman', is written over the printed name.

Joanna Shulman
Chief Executive Officer

Redfern Legal Centre



*SUBMISSION TO THE NSW PARLIAMENT'S LEGISLATIVE ASSEMBLY
SOCIAL POLICY COMMITTEE*

INQUIRY INTO INTERNATIONAL STUDENT ACCOMODATION IN NSW

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Redfern Legal Centre*

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6 October 2011

1. Background: Redfern Legal Centre and International Students

Established in 1977, Redfern Legal Centre (“RLC”) is an independent, non-profit, community-based legal organisation. We provide free legal information and legal advice to people in the Botany, Leichhardt and Sydney local government areas who cannot afford a private solicitor and do not qualify for legal aid. RLC has a particular focus on human rights and social justice.

RLC has a long history of providing advice to tenants, students (both local and international), people living in share housing and residents of boarding houses. We have assisted, advised and advocated on behalf of tenants, boarders and lodges since 1977. In 1988, we established the Eastern Area Tenants’ Advice and Advocacy Service. Since 1995, we have been funded to provide the Inner Sydney Tenants’ Advice and Advocacy Service, which is funded by Fair Trading NSW. We provide telephone advice, appointments, education and advocacy to the Consumer, Trader and Tenancy Tribunal to public and private tenants residing in our catchment area.

In our extensive experience, we have identified that international students are vulnerable in their housing as unscrupulous landlords and head-tenants specifically target them. Additionally, international students do not have the same support networks that other students may have available to them. These reasons have contributed towards the decision of RLC to establish a state-wide International Students’ Clinic.

The international student advice clinic commenced on 5 October 2011 and will operate every Wednesday night by appointment.

2. Our View in Summary

RLC recommends the introduction of laws to cover people that fall outside of the *Residential Tenancy Act 2010* (NSW) (“the Act”). While benefiting many residents of NSW such laws would also be of great advantage to international students and would have a significant impact on the housing sector they usually fall within.

This submission will address Terms of Reference 3 and 4 of the discussion paper.

3. Term of Reference (3): The appropriateness of existing standards for affordable student and other accommodation used by students.

At RLC, we are contacted by international students living in appalling conditions, almost on a daily basis. International students often face arbitrary and immediate rent increases or evictions. Very often international students are not protected by tenancy legislation due to exemptions in the *Residential Tenancies Act 2010* (NSW).

These exemptions are, in brief:

1. Student accommodation - Clause 20, *Residential Tenancies Regulation 2010* (NSW). Premises are exempt from the *Act* if they are within, owned by, or contracted to provide accommodation for an educational institution.
2. Boarders and lodgers – Section 8(1)(b), *Residential Tenancies Act 2010* (NSW). The *Act* does not apply to an agreement under which a person boards or lodges with another person
3. Occupants in shared households – Section 10, *Residential Tenancies Act 2010* (NSW). In a shared household where one tenant has a written tenancy agreement with the landlord, anyone not named on that agreement is not covered by the *Act*, unless they have a written residential tenancy agreement with the tenant they live with.

New South Wales, unlike most other States, does not have specific legislation to cover residents that fall outside of the *Act*. Individuals that fall outside of the *Act* must resort to a complex web of consumer and common law, which is often inappropriate to housing issues such as immediate evictions.

For a more detailed report on remedies available to boarders and lodgers see the *Legal Information Kit for Boarders and Lodgers* at <http://www.rlc.org.au/publications.html>. Our position paper on this issue is also attached.

Case Studies:

In one example seen by our service, a young female student was evicted from a CBD unit at 11pm on a Sunday night for not being able to pay an on-the-spot rent increase. Having no money she was forced to walk all night to a friends place in the suburbs, arriving at 6am the next day. As she was not covered by the *Act* we could not assist her to move back into the property or to apply to the Consumer, Trader & Tenancy Tribunal for compensation for the arbitrary eviction. While we were able to negotiate to have some bond returned, if the head-tenants had refused then our client would have had to apply to the NSW Local Court to have this returned. The cost and complexity involved in this would have meant she would not have pursued it further.

In another example, a student was told she would be sharing a room with one female. She returned from work that evening to move in and found out she had paid to reside in a basement with six males. She felt intimidated and unable to dispute this situation. She instead decided to leave, but was unable to get her bond or rent back. Not having any tenancy law or the jurisdiction of the Consumer, Trader & Tenancy Tribunal meant she was unable to get her bond back.

In another example, a resident was told another person was moving in and because there were no beds left she would have to share her bed.

As many landlords and head-tenants are aware that certain housing situations fall outside of the *Act* they target vulnerable people to move in and pay bond and rent in

advance. For the student to leave and be unable to get their bond back is a strong incentive for landlords to evade the Act.

4. Term of Reference (4): Appropriate or minimum standards for student accommodation, and the adequacy of current legislation in ensuring that such standards are achieved.

Introduction of housing laws to cover people that fall outside of the *Act*, while benefiting many residents of NSW, would be of advantage to international students.

While there are different legislative frameworks in different States and Territories, the model in the ACT is preferred as it has wide coverage, meaning that it covers everyone who falls outside of the *Act*. The ACT model of Occupancy Agreements is contained within Part 5A of the *Residential Tenancies Act 1997* (ACT).

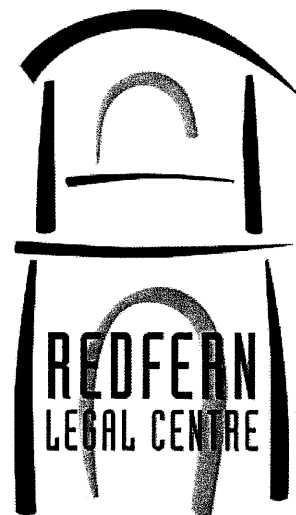
Unfortunately, Regulations have not been implemented in the ACT model, which leaves it without minimum standards for notice periods for evictions. RLC recommends that NSW implement the ACT model with some changes to strengthen notice provisions within the model.

Any model needs to include provisions to ensure some security of tenure, even if it does not provide the same security as tenants. The provisions should cover minimum notice periods for evictions and rent increases (as rent increases can be used as a way around eviction notice periods). The model also should address general rights around:

- Repairs;
- Peace, privacy and quiet enjoyment of the premises;
- Reasonable notice periods for access to the premises by the landlord;
- Maximum amounts of bonds that can be charged and compulsory lodging of bonds with Renting Services (NSW Fair Trading);
- Set procedures around storage and disposal of uncollected goods;
- Dispute resolution through the Tenancy Division of the Consumer, Trader & Tenancy Tribunal.

5. Conclusion

Introducing legislation for occupants who fall outside of the *Act* would greatly benefit international students. Not only would it assist occupants to enforce their rights, such as to have notice periods before evictions or to get repairs done, it would reduce the incentive for landlords or head-tenants to create housing situations which evade the *Act*.



Legislative Protection for Boarders and Lodgers

Executive Summary

Redfern Legal Centre, formed in 1977, has a long history of providing advice to tenants, students, people living in share housing and residents of boarding houses. Since 1995 Redfern Legal Centre has been funded by the NSW Office of Fair Trading to run the Inner Sydney Tenants' Advice and Advocacy Service.

Additional categories of residents and occupants are excluded from the new Tenancy Act - More people than before are without protection

Many people that pay rent (including boarders, lodgers and residents of student accommodation) were already excluded from the *Residential Tenancies Act 1987* (NSW) and, as a result, had no legislated rights in relation to their housing and no means of dispute resolution through the tenancy division of the Consumer, Trader and Tenancy Tribunal (CTTT). This has not changed with the new *Residential Tenancies Act 2010*, and in addition sub-tenants that do not have a written agreement with their head tenant are also excluded from any tenancy rights. This means that the number of residents falling outside of tenancy legislation has increased. These people include the most vulnerable - people with mental illness, people at risk of homelessness and international students.

NSW needs Specific Legislative Protection which provides for basic minimum standards and certainty for both residents and landlords

NSW and WA are the only states in Australia without legislative protection for boarders and lodgers. In March 2005, occupancy agreements were introduced into the ACT. The advantage of this model is the broad coverage it provides. However, it lacks provision of some basic standards that are needed to ensure fairness for people that are in unequal bargaining positions.

RLC advocates for the ACT occupancy model with these basic minimum standards:

- At least one weeks notice of termination (where no breach of the agreement has occurred);
- Four weeks notice of a rent increase;
- A maximum bond of two weeks;
- Bond to be lodged at the Rental Bond Board;
- A procedure to deal with uncollected goods;
- Disputes to be heard at the Tenancy Division of the Consumer, Trader & Tenancy Tribunal.

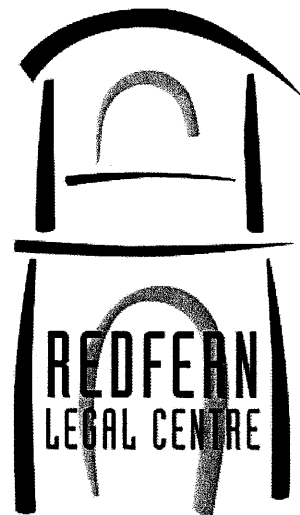
It is noted that certain groups can still be excluded (for example holiday accommodation). The Regulations could prescribe higher standards for certain groups of people (for example student accommodation). Individuals can also negotiate their own terms as long as they are *at least* the minimum set standard. Having a minimum standard will also help where a written agreement has not been given.

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July 2011



Legislative Protection for Boarders and Lodgers

Introduction

Redfern Legal Centre, formed in 1977, has a long history of providing advice to tenants, students, people living in share housing and residents of boarding houses. Since 1995 Redfern Legal Centre has been funded by the NSW Office of Fair Trading to run the Inner Sydney Tenants' Advice and Advocacy Service.

We are often presented with stories of boarding house residents being evicted with no notice and for no apparent reason. This is also steadily increasing for international students who end up in overcrowded flats, live in appalling conditions and are given arbitrary and immediate rent increases or evictions. As their bonds are not lodged with the Rental Bond Board and they often do not fall under the tenancy laws they find it very difficult to get their money back. The new *Residential Tenancies Act 2010* (NSW) has increased the number of people cut out of tenancy legislation by explicitly excluding people in shared accommodation that do not have a written Residential Tenancy Agreement with their head tenant.

NSW is one of the Few States with no Legislated Protections for Boarders and Lodgers

Many people that pay rent (including boarders, lodgers and residents of student accommodation) are not covered by the *Residential Tenancies Act 2010* (NSW) and, as a result, have no legislated rights in relation to their housing and no means of dispute resolution through the tenancy division of the Consumer, Trader and Tenancy Tribunal (CTTT).

Instead, marginal renters must navigate a complicated legal system to work out the right jurisdiction to take their matter to. If their tenancy status is unclear they can apply to the Tenancy Division of the CTTT and make complicated arguments about jurisdiction. If their landlord is 'in trade or business' they may be able to apply to the Consumer Division of the CTTT, but only for a limited range of remedies. If neither of these apply they must rely on the common law and the Courts for dispute resolution. This can make it impossible to have basic issues resolved. For example, to have your hot water fixed you would need to apply for a Specific Performance Order in the equity division of the Supreme Court of NSW. Even then, you would be unlikely to get this order as you would need to convince the court why the usual remedy of damages is not adequate. With fees and the risks of adverse costs orders it is clear why this is not an adequate avenue for boarders and lodgers.

In one example seen by our service, a young female was evicted from a CBD unit at 11pm for not being able to pay an on the spot rent increase. Having no money she was forced to walk all night to a friends place in the suburbs, arriving at 6am. In another example, a student was told she would be sharing a room with one female. She returned from work that evening to move in and found out she had paid to reside in a basement with 6 males. In another example, a resident was told another person was moving in and because there were no beds left she would have to share her bed. Each of these students were left without recourse.

Facts and Figures - The Occupancy Sector

It is difficult to estimate how many people live in accommodation that is excluded from the *Residential Tenancies Act 2010* (NSW).

On Census Night 2006, 104,676 people were homeless, including at least 16,375 people 'sleeping rough'. These include people staying in shelters and refuges; people staying temporarily with family and friends to deal with a housing crisis; and some of those people renting in caravan parks and boarding houses. 21,600 people living in boarding houses were included in the homeless count.

Homeless people are among the most marginalised people in Australia and their profile has been changing in recent years from predominantly older, lone men to include more women, youth, and families. There were 7,483 homeless families with children on census night 2006 with 26,790 people (10,608 parents and 16,182 children). Families were 10% of all homeless households, but they included one-quarter (26%) of the homeless population. Factors ranging from increased family breakdown to changes in the labour market have been identified as influencing these changes¹ as well as current pressures on housing affordability.

More People are Cut Out of Tenancy Legislation Following the Introduction of the Residential Tenancies Act 2010 (NSW).

The new *Residential Tenancies Act 2010* (NSW) has increased the number of people that are cut out of tenancy legislation by explicitly excluding people in shared accommodation that do not have a written Residential Tenancy Agreement with their head tenant.²

At the time of the 2001 Census approximately 195,000 people lived in share accommodation. Around 42% of people between 15 and 24 years old living independently live in share accommodation.³ While it is difficult to get more current statistics, it is thought that this number has been steadily increasing over time as housing affordability declines.

RLC Supports a Model of Occupancy Agreements which Contain Some Minimum Terms

In March 2005, occupancy agreements were introduced into the ACT. The law means that the majority of people who pay for their accommodation but are not tenants, have occupancy agreements instead. Those who have occupancy agreements have some rights, as well as access to the ACT Civil and Administrative Tribunal (ACAT) to resolve disputes.

This includes people renting in caravan or mobile home parks, hotels, and the many halls and colleges that are a part of student accommodation.

¹ More information on the demographics of homeless people can be found in the ABS papers 4102.0 - Australian Social Trends, 2004 and 2050.0 - Counting The Homeless, 2006.

² Section 10 of the *Residential Tenancies Act 2010* (NSW)

³ Finding a Place, by National Youth Housing Strategy 1995

While anything can be included in the terms and conditions of an occupancy agreement and its house rules, all occupancy agreements should be consistent with nine “Occupancy Principles”.

These nine principles create certain legal rights for occupants. The Occupancy Principles are set out in section 71E of the *Residential Tenancies Act 1997* (ACT).

Redfern Legal Centre’s comments on the ACT principles:

- (a) *an occupant is entitled to live in premises that are—*
 (i) *reasonably clean; and*
 (ii) *in a reasonable state of repair; and*
 (iii) *reasonably secure;*

While the use of the term ‘reasonable’ creates difficulties in the current tenancy legislation (for both tenants and landlords, advisors and the Tribunal), RLC agrees that this is appropriate in this instance for boarders and lodgers.

- (b) *an occupant is entitled to know the rules of the premises before moving in;*

RLC agrees with this principle.

- (c) *an occupant is entitled to the certainty of having the occupancy agreement in writing if the occupancy continues for longer than 6 weeks;*

Anyone who falls outside of the *Residential Tenancies Act* should be immediately covered by the Occupancy Agreements model. As many of the principles are based on occupants knowing the terms of their contract when they move in, it is not appropriate for the requirements to kick in after the occupants have lived in the premises for 6 weeks. Having this principle would also encourage short term lodging and sub-leasing where occupants, who do not fall within this regulation, would find it difficult to get their bonds back without recourse to the low cost Tribunal. This is already the case for many international students and should not be encouraged or allowed.

- (d) *an occupant is entitled to quiet enjoyment of the premises;*

RLC agrees with this principle.

- (e) *a grantor is entitled to enter the premises at a reasonable time on reasonable grounds to carry out inspections or repairs and for other reasonable purposes;*

Again, while the use of the term ‘reasonable’ can be problematic, RLC is in agreement with this principle.

- (f) *an occupant is entitled to 8 weeks notice before the grantor increases the amount to be paid for the right to occupy the premises;*

It is appropriate in some areas to have minimum standards set. While parties can contract for longer periods, we believe that a minimum period should be set. The specified period itself is a point of debate that still needs to happen. It should be evaluated in light of the *Residential Tenancies Act* and not be the same period of time as it is for tenants. However some minimum standards should be set for people of unequal bargaining and negotiating power. A need for a rent increase is a factor that can be easily foreseen by a property

owner. While we do not have a fixed position on what the period of notice should be, it would not be unreasonable to expect a minimum of 4 weeks notice before the rent is increased.

- (g) *an occupant is entitled to know why and how the occupancy may be terminated, including how much notice will be given before eviction; and*
- (h) *an occupant must not be evicted without reasonable notice;*

As in (f) above, RLC believes that minimum standards should be set. The use of the term 'reasonable' always causes uncertainty and difficulty. Again, parties can always contract for longer periods, and some groups (such as student accommodation that falls outside the *Residential Tenancies Act*) may have longer periods set in the Regulations. But it must be noted that people living in boarding houses or lodging in private houses are generally the most disadvantaged group of people in our society. It is imperative that some minimum standards are set in an area where occupants have little or no bargaining power in setting the terms of their contract.

Currently boarders and lodgers must rely on the common law in termination matters. Where an occupant has paid one weeks rent they have formed a contract for one week and it is reasonable to expect one weeks notice of termination (where there is no breach of the agreement). As such, it is reasonable to set a minimum standard of at least 1 weeks notice period that must be specified in the occupancy agreement. Again, the period of 1 week is not a position RLC is set on and it may be that 2 weeks is felt to be more appropriate. However, to set no minimum standard is to leave the most vulnerable in our society with little or no protection from near to immediate eviction.

If the principle is left at 'reasonable notice', because it is argued that this would mean at least 1 week, this would lead to more matters being taken to the Tribunal to determine whether a period set in the contract is reasonable in the circumstances. This would inundate the Tribunal with having to decide this question over and over again. It is also not an adequate solution as it would often be retrospective, as in the Tribunal would be deciding the question after the eviction has already taken place (as most people would not dispute the terms of the contract until they have a need to).

In the long experience of tenancy advice that has been given at Redfern Legal Centre, terminations are the most common and the most distressing issue for boarders and lodgers. Usually boarders and lodgers really only want at least a weeks notice to have to vacate the premises. The last thing they want to do is have to apply to the Tribunal or Court for compensation after an eviction has happened. Prevention is much more important to them.

- (i) *a grantor and occupant should try to resolve disputes using reasonable dispute resolution processes.*

This principle is reasonable as long as occupants have the right to apply to the Tenancy Division of the Consumer, Trader and Tenancy Tribunal to determine disputes arising under the occupancy agreement.

Additional Comments

Rental Bonds

In addition to the above principles the model should provide a maximum amount of bond that can be charged, the landlord should lodge the bond at the Rental Bond Board and the CTTT should have jurisdiction over bond disputes.

As argued above, people in boarding and lodging arrangements have little or no bargaining power in setting the terms of their contracts. As such some minimum standards must be set.

Currently most occupants in Boarding Houses are charged 1-2 weeks bond. This appears to be the industry standard and is reasonable since it is usually the bond which prevents people from entering the mainstream rental market. This should be set as the maximum allowable bond charged.

After evictions, bond disputes are the next largest area of concern for our clients at Redfern Legal Centre. It is important that bonds are lodged at the Rental Bond Board and the CTTT has jurisdiction over bond disputes. To fail to set these requirements leaves occupants having to resort to more expensive jurisdictions over small money matters.

Failing to set this minimum standard would do nothing to prevent the type of targeting of international students in lodging and sub-letting which is often simply a money making exercise in evicting people and withholding their bonds.

Uncollected Goods

Another of the largest areas of concern for boarders and lodgers is trying to recover their goods after they are evicted or move out. Any legislative model should include a procedure that landlords must follow and penalties and compensation when they don't. This procedure could be modelled on the provisions in the *Residential Tenancies Act 2010* (NSW) or the *Uncollected Goods Act 1995* (NSW).

Regulations

One of the concerns of Redfern Legal Centre is that in the ACT model the regulations, which were to set minimum standards for different groups of occupants (such as refugees, students, large boarding houses etc), never eventuated. We believe that even if different standards are set in the regulations for different groups these should be formulated and included at the outset.

While not all groups might be addressed at the outset it is important that it is part of the policy formulation from the outset for at least some groups. These would set higher standards where appropriate (for example in student accommodation which falls outside the *Residential Tenancies Act*).

In addition, very basic minimum standards, being the least that can be contracted for (such as 1 weeks notice for eviction), should still be part of the overall model from the outset. Given that the majority of occupants in the sector are vulnerable and disadvantaged, it is important that the occupancy principles contain minimum standards, notwithstanding the fact that those standards may be inappropriate for some small areas of the sector. The appropriate way of dealing with the few exceptions is to exempt them in the regulations of those principles that are not appropriate, or regulate different standards for those groups. For example emergency accommodation that is intended to be for less than one week might be regulated for differently.

Summary

As there are an increasing number of people without basic housing rights, Redfern Legal Centre argues that is time for NSW to join other Australian states and introduce legislative protection for Boarders and Lodgers.

Occupancy agreements are a model that NSW could look to and which has the benefit of having broad coverage. However, for the reasons outlined above, we do not agree that all terms should

be left to the individual parties to negotiate. It is the experience of Redfern Legal Centre that most boarding house owners already provide written agreement to their residents. What is needed in law reform is for some minimum basic standards to be set, while leaving the flexibility for parties to contract for higher standards if they wish or can.

It would also be detrimental to individuals and the CTTT to set all terms as 'reasonable' as it creates too much uncertainty and would lead to too many unnecessary applications to the Tribunal to have this question decided.

For further information please contact:

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July 2011

Boarders & Lodgers Comparison of Legislation across States & Territories
Redfern Legal Centre, June 2011

ISSUES	CURRENT NSW STATUTORY RIGHTS	VICTORIA <i>Residential Tenancies Act 1997</i>	QUEENSLAND <i>Residential Tenancies and Rooming Accommodation Act 2008</i>	SOUTH AUSTRALIA <i>Residential Tenancies (Rooming Houses) Regulations 1999</i>	TASMANIA <i>Residential Tenancies Act 1997</i>	ACT <i>Residential Tenancies Act 1997</i>
COVERAGE	×	A person who occupies a room where 4 or more people rent a room or bed in the premises. Or the Minister for Housing has declared it a rooming house.	Person who pays rent to occupy one or more rooms. If the person renting out the rooms also lives in the premises then the Act will apply if there are four or more rooms available for rent.	Where a premises is used on a commercial bases (in the business of providing accomm), in which accomm. is available for at least 3 persons.	Person renting a room as principal place of residence. Doesn't apply: where there are less than 3 boarding rooms and the owner occupies same building, where the tenant occupies the building and subleases out rooms as boarding premises or if the premises are occupied predominantly by tertiary students.	All renters not covered by the Residential Tenancy agreements are covered as "occupants". Question about occupants in share housing where no consent of landlord (as Act says they have 'no rights in property').
STANDARD FORM AGREEMENT?	×	×	✓ (Rooming Accommodation Agreement)	✓ (Rooming House Agreement)	✓ (Statement of Key Terms)	✓ (Occupancy agreement in accordance with occupancy principles)
RIGHT TO QUIET ENJOYMENT?	×	✓	✓	✓	✓	✓
LIMIT ON RENT IN ADVANCE?	×	✓	✓	✓	✓	×

	(14 days)	(14 days)	(7 days)	(2 weeks)	
NOTICE FOR RENT INCREASES?	✓ (60 days)	✓ (4 weeks)	✓ (4 weeks)	✓ (60 days)	✓ (8 weeks)
LIMIT ON AMOUNT OF BOND?	✓ (No more than 2 week's rent)	✓ (Usually 4 week's rent maximum)	✓ (No more than 2 week's rent)	✓ (No more than 4 weeks' rent)	×
RIGHT TO DEMAND REPAIRS ARE DONE?	✓	✓	✓	✓	✓
NOTICE PERIOD PRIOR TO EVICTION? (Not including Immediate Termination for acts of violence etc)	✓ (No-grounds =120 days, or 7 days for rent arrears)	✓ (No-grounds =14-30 days, or 0-4 days for rent arrears)	✓ (No-grounds= 4 weeks, or 2 days for rent arrears)	✓ (At least 2 days)	✓ (Reasonable notice in accordance with occupancy agreement)
APPEALS TO LOW-COST, INDEPENDENT, DISPUTE RESOLUTION BODY?	✓ (Victorian Civil and Administrative Tribunal)	✓ Residential Tenancies Authority (non urgent) or Queensland Civil and Administrative Tribunal	✓ (Residential Tenancies Tribunal)	✓ (Magistrates Court of Tasmania)	✓ (ACT Civil and Administrative Tribunal)