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Consumer Affairs Victoria
Level 17, 121 Exhibition Street
MELBOURNE VIC 3000
By email only: rentalreforms@justice.vic.gov.au

Proposed Residential Tenancies Regulations 2020

The Law Institute of Victoria ('LIV') express thanks to Consumer Affairs Victoria ('CAV') for the opportunity to provide feedback to the Review of the proposed Residential Tenancies Regulations 2020 ('the Regulations').

The LIV is generally supportive of the proposed Regulations. However, with this said, the LIV respectfully recommends that amendments be made to ensure that the Regulations operate effectively and reasonably for both rental providers and renters.

The LIV makes the following observations and recommendations in relation to the Regulations:

Regulation 11: Prohibited terms

The LIV acknowledges that the inclusion of additional prohibited terms is intended to reduce the risk of ownership costs being unfairly passed from rental providers to renters.

Although the LIV generally supports this policy position, the LIV is concerned that the proposed prohibition will essentially place onerous and unfair obligations on rental providers. Specifically, the LIV believes that that Regulations 11(a) and 11(b) require further amendment to ensure that rental providers are not burdened by costs which are beyond the scope of their duties and obligations to the renter.

Regulation 11(a)

- (a) *a term which purports to unreasonably limit the renter's activities for the purposes of ensuring that—*
- (i) *an insurance policy of the residential rental provider is not invalidated or subjected to increased premiums; or*
 - (ii) *any benefits that may be paid under an insurance policy of the residential rental provider are not reduced;*

The LIV is extremely concerned where there may be circumstances where a rental provider is required to amend their insurance policies and possibly increase the value of the insurance to accommodate the activities of a renter. For example, if a renter intends to use the rental

property to conduct a home-based business which is permitted under the planning scheme, in this instance rental provider may require a business or commercial insurance policy. It would be unwarranted and inappropriate for a rental provider to bear the increased associated costs and additional premiums of non-residential insurance policies. The LIV contends that in such circumstances, a rental provider should either have the option to limit a renter's activities or pass on the additional costs to the renter.

The LIV notes that whether a term, which purports to unreasonably limit the renter's activities is captured by Regulation 11(a), will ultimately depend on the Victorian Civil and Administrative Tribunal ('VCAT') Member's interpretation of unreasonableness in the circumstances.

Until this occurs, the LIV anticipates there may be significant uncertainty regarding the application and scope of Regulation 11(a).

Regulation 11(b)

(b) a term that requires the renter to indemnify the residential rental provider for any injury or damage arising from any conduct of the renter or visitor of the renter;

The LIV believes that there are circumstances in which it may be appropriate and reasonable for a renter to indemnify a rental provider for injury or damage caused as a result of the renter's (or their visitor's) conduct. Including but not limited to injury and damage caused as a result of illegal, dangerous or reckless conduct. The LIV notes the proposed prohibition in Regulation 11(b) is expressed without qualification.

For example, if a renter engages in conduct which is in breach of the relevant Owners Corporations rules, resulting in the rental provider being required to make a payment to the Owners Corporation by way of a special levy for capital repairs to the common property, the renter should be required to indemnify the rental provider for those potential costs. A common example would be where a renter smokes in common property, setting off the fire alarm, resulting in the Owners Corporation receiving an account from the fire authority which they then pass on to the relevant lot owner/rental provider.

Recommendation 1: Regulation 11(a) and (b) be amended to ensure that rental providers are not burdened by unfair and unnecessary costs.

Regulation 12: Professional cleaning requirements

The LIV is generally supportive of Regulation 12.

However, the LIV notes that the standard form Residential Rental Agreement outlined in Schedule 1 of the Regulations specify that "*the need for professional cleaning will be considered at the end of the tenancy*".

The LIV notes there are certain circumstances under which professional cleaning will be required during the term of the lease, such as to prevent irreparable damage to the fittings and fixtures of a rental property.

If upon inspection, it is evident that the renter has significantly failed to meet their obligations pursuant to the *Residential Tenancies Act 1997* ('**the Act**'), to keep the rented premises clean and free from damage. The LIV supposes that it would be fair and reasonable for the rental provider to request professional cleaning to restore the rented premises to the condition it was in at the start of the tenancy, allowing for fair wear and tear. By way of example, the failure to maintain the cleanliness of a property may attract vermin or cause damage to fixtures and/or appliances which are beyond the reasonable assessment of fair wear and tear.

Recommendation 2: The standard form residential rental agreements outlined in Schedule 1 of the Regulations be amended to remove any confusion regarding when a rental provider may request professional cleaning.

Regulation 16: Information which residential rental provider must disclose to rental applicant

The LIV makes the following recommendations regarding the below specific requirements imposed under Regulation 16:

Regulation 16(1)

- (1) For the purposes of section 30D(d) of the Act, the prescribed details are—
- (a) the ABN and trading name of the embedded network operator; and
 - (b) the phone number of the embedded network operator; and
 - (c) the electricity tariffs and all associated fees and charges that may apply to the customer in relation to the sale of electricity, or where that information can be accessed.

Recommendation 3: The LIV suggests Regulation 16(1)(a) be amended to read '*the ABN and trading name of the embedded network operator, if relevant*', noting that not all residential rental properties will be subject to this requirement.

Recommendation 4: The LIV suggests Regulation 16(1)(c) be amended to read '*the contact details of the embedded network operator*', noting that often organisations will not have a direct phone number for customers to contact.

Regulation 16(2)

- (2) For the purposes of section 30D(e) of the Act, the following information is prescribed—
- (a) if the rented premises or common property is known by the residential rental provider to have been the location of a homicide in the last 5 years;
 - (b) if the rented premises is known by the residential rental provider to—
 - (i) have been used for the use, trafficking or cultivation of a drug of dependence; or
 - (ii) have been used for the storage of a drug of dependence; or
 - (iii) have previously been assessed to have friable or non-friable asbestos on the rented premises; or

- (iv) *be affected by a building or planning application that has been lodged with the relevant authority;*
- (c) *any notice, order, declaration, report or recommendation issued by a relevant building surveyor, public authority or government department that applies to the rented premises or common property at the time of disclosure;*

The LIV is of the opinion that the information to be provided by the rental provider, pursuant to Regulation 16(2)(c) may be unnecessary to provide to renters. The rental provider may either not be aware of, or there is no information to provide to the renter in relation to matters which directly affect the premises.

For example, there may be many recommendations issued pursuant to sub-section 2(c) which the rental provider may be unaware of, it is common practice for local and municipal government authorities to not consult or inform property owners of matters affecting their property, such as planning provisions, planning overlays and rezoning.

The LIV notes that this information is unlikely to be relevant for renters, particularly those in short fixed-term rental agreements.

In the event a renter is interested in the information outlined in Regulation 16(2), they are able to conduct an online search of the rental property through Land Use Victoria's website.

Recommendation 5: The information to be provided pursuant to Regulation 16(2)(b)(i) and 16(2)(b)(ii) be limited to a 5-year period, as required under Regulation 16(2)(a).

Recommendation 6: Regulation 16(2)(b)(iv) be amended to read '*be the subject of a building or planning application that has been lodged with the relevant authority*'.

Recommendation 7: Regulation 16(2)(c) be amended to limit the information to provide to the renter, to that which is outlined in the example provided in the Regulations being:

Example

Any building notices or orders, reports or recommendations issued by the Victorian Building Authority, local councils, relevant building surveyors, or municipal building surveyors that relate to any building defects or safety concerns such as the presence of combustible cladding, water leaks or structural issues affecting the rented premises or common property.

Regulation 28: Modifications for which residential rental provider must not unreasonably refuse consent

The LIV notes that Regulation 28 does not specify who will be required to pay for the relevant prescribed modifications. The LIV believes this may lead to unnecessary disputes between rental providers and renters.

Recommendation 8: Regulation 28 be amended to clearly specify which party bears the costs of the prescribed modifications.

Regulation 29: Rental minimum standards (Schedule 4)

The LIV notes that Schedule 4 prescribes that a rented premise be structurally sound and weatherproof. LIV members have expressed concern that this requirement is unclear in practice.

Recommendation 9: Regulation 29 be amended to provide greater clarity regarding what is considered structurally sound and weatherproof.

Regulation 30: Requirements for gas and electrical safety check record keeping

The LIV notes that Regulation 30 requires that a record of electrical and gas safety checks must be kept until a record of the next electrical safety check is created.

The LIV sees no reason why a rental provider should not be required to keep a record of all gas safety checks completed for a fixed period of time.

Recommendation 10: Regulation 30(1)(b) and 30(2)(b) be amended to require that a record of all gas safety checks be kept for a prescribed period of at least 3 years.

Regulation 35: Compensation – sales inspection

The LIV generally agrees that a renter should be compensated for any open inspections arranged by a rental provider and/or their sales agent when re-letting the premises. The LIV supports the prescribed amount in the Regulations for renters to be compensated and accepts that this is reflective of the burden experienced by a renter.

However, the LIV believes that where a renter is compensated for this time, there should be a reciprocal obligation that the rental property be in a reasonable condition for the open inspection and be presented in a suitable manner.

Recommendation 11: Regulation 35 be amended to include an obligation that the renter present the rental property in a reasonable condition.

Conclusion

The above comments also relate to the equivalent provisions in the Regulations in respect to rooming houses and caravan parks. Again, the LIV thanks CAV for the opportunity to provide feedback on the proposed Regulations.

We welcome the opportunity to meet with you to discuss the above issues. In the interim, please do not hesitate to contact me, or Senior Lawyer of the Property and Environmental Law Section, [REDACTED] at [REDACTED] and [REDACTED] if you wish to discuss this further.

Yours sincerely

A large black rectangular redaction box covering the signature of Stuart Webb.

Stuart Webb
President
Law Institute of Victoria