

Heading for Home
Residential Tenancies Act Review

Guide to the Options Discussion Paper

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HOUSING



About this guide

On 24 June 2015, as part of its *Plan for Fairer, Safer Housing*, the Victorian Government launched a comprehensive evidence-based review of the *Residential Tenancies Act 1997* (RTA).

Between late 2015 and 2016, a series of issues papers were released that sought to draw out evidence and commentary from stakeholders about the nature of issues and extent of any problems in residential tenancies.

The resulting options paper responds to issues that were of the most importance to individuals and organisations that made submissions to the review. The purpose of that paper is to outline for discussion potential legislative changes that could be made to the RTA, and to gather stakeholder views on those changes.

This document is intended as a roadmap to the options paper for the RTA review; it is not a complete summary of the options that have been released for discussion but, rather, an overview of the findings of public consultation to date, and some of the actions that have been proposed in response to those findings. Readers who are interested in learning more about the options can follow the chapter references to the full version of the options paper.

How to get involved?

We invite your views and comments on the options paper, as well as your responses to the series of questions posed throughout the paper.

Until **Friday 10 February 2017** you can make a submission:

By mail:

Residential Tenancies Act Review
Consumer Affairs Victoria
GPO Box 123
MELBOURNE VIC 3001

By email:

yoursay@fairersaferhousing.vic.gov.au

Online, by registering at:

[Review of the Residential Tenancies Act 1997 website <fairersaferhousing.vic.gov.au/renting>](http://www.fairersaferhousing.vic.gov.au/renting)

Publication of submissions

Unless you label your submission as confidential, your submission or its contents will be made publicly available in this and any subsequent review process. Submissions may be subject to Freedom of Information and other laws. CAV reserves the right not to publish information that could be seen to be defamatory or discriminatory.



Executive Summary

In November 2014, the Victorian Government announced a comprehensive evidence-based review of the RTA. The priorities for the review included strengthened security of tenure for tenants and provision for long term leasing, greater certainty about the frequency of rent increases, and greater protections for parks residents.

Since its launch on 24 June 2015, two stages of the review have been completed: Stage 1 involved the release of a public consultation paper, *Laying the Groundwork*, while Stage 2 involved consultation on a series of six papers examining a broad spectrum of issues raised by people's experience of the RTA.

Stage 3 of the review has focused on developing suggested reform options, informed not only by the results of the preceding stages of public consultation, but also by a major independent market study conducted by EY Sweeney on behalf of Consumer Affairs Victoria (CAV), which gathered primary data from tenants, parks residents and landlords about their views, preferences and behaviours in the rental sector¹. The options were further shaped and refined through targeted consultation with key public stakeholders, including the Tenants Union of Victoria and the Real Estate Institute of Victoria.

More broadly, the options have been designed to support the overarching policy aims of the Victorian Government's various housing related work streams, and to further any recommendations emerging from relevant processes, such as the Royal Commission into Family Violence, the government's 2015 Energy Efficiency and Productivity Statement, and the review of the current electricity licence exemptions framework.

Finally, it is noted that the options primarily target general residential tenancies and rooming houses, and apply equally to both the social housing and private rental sectors. Options responding to issues affecting people operating or living in caravan and residential parks have been deferred until after the release of the final report of the Parliamentary Inquiry into the Retirement Housing Sector (the Inquiry), which is due to conclude in March 2017. It is critical that this category of options is informed by any key findings or recommendations of the Inquiry, to ensure a comprehensive response to regulatory challenges in that sector.

Guide to the options

The options presented in the options paper do not in any way represent an approved government position on what the changes to the RTA should be. The options are for discussion and require the input of the Victorian public before a final reforms package can be compiled.

In some instances, although only one option may be proposed for discussion, this should not be interpreted as the preferred option, but as an indication of the limited range of options available in that particular case. Furthermore, all of the options discussed involve some form of departure from existing regulation. However, retaining the status quo may also be an option, even if this has not been included.

1 Consumer Affairs Victoria, *Rental experiences of tenants, landlords, property managers, and parks residents in Victoria*, Final Report, 17 May 2016, accessed via the [Review of the Residential Tenancies Act 1997 website](http://fairersaferhousing.vic.gov.au/renting) <fairersaferhousing.vic.gov.au/renting>.

For some issues, a set of ‘alternative options’ are presented for reform while for other issues a ‘stand-alone option’ is presented for consideration and feedback. Stand-alone options are presented for issues where only one approach is considered to be feasible. While feedback is sought on each of the options in the alternative sets of options and also on the stand-alone options, views are also sought on the potential cumulative effect of adopting certain options. If the status quo is preferred on any issue, views are sought on the rationale for that position.

The options do not necessarily address every issue raised by stakeholders, but focus on matters that, on balance, are supported by some form of evidence, whether this involves anecdotal reporting by stakeholders, data from statistically significant population studies conducted by the Australian Bureau of Statistics, or CAV’s independent market research.

In some instances, the options draw on approaches employed elsewhere in Australia or overseas. It is not the intention of the paper to provide a statement on the effectiveness of those approaches, but merely to highlight how other jurisdictions have responded to similar issues arising in their residential tenancy sectors.

In terms of thematic approach, the options are framed around the reality that a growing proportion of Victorians are priced out of home ownership, are likely to rent for longer periods of time and that there is, consequently, a need to rebalance the market through additional protections for tenants.

Structure of the options paper

The options paper is organised into three parts:

Part A (chapters 1 to 2) provides an overview of the process that has occurred to date, and how the remainder of the review will be conducted. This part describes the approach that has been taken to the review and to regulatory reform in the rental sector more generally.

Part B (chapters 3 to 9) contains options relevant to starting and maintaining a tenancy. This addresses long term leasing, in addition to the range of rights and responsibilities of both parties on entering, and during the life of a tenancy.

Part C (chapters 10 to 12) contains options relevant to dispute resolution, and to ending a tenancy. This includes options for improved dispute resolution services and mechanisms in the residential tenancies sector. In addition, this part outlines options for reforms of termination of a tenancy by both tenant and landlord, and options relating to family violence.

Focus on security of tenure

Security of tenure was identified as an important aspect of the review, given that more Victorians are renting their homes for longer. Security of tenure refers to the degree of certainty a person has about their residential circumstances. Someone with a high degree of security of tenure in rental accommodation is likely to:

- have a choice to stay or leave
- have legal protections regarding their tenancy
- pay a sustainable rent, and
- have certainty that the property will be maintained appropriately.



The degree of security of tenure that a person enjoys is cumulatively influenced by various aspects of a tenancy - the property, its management and the legislative framework that defines the rights and responsibilities of the parties to the agreement.

According to this definition, for example, security of tenure is influenced by lease terms, rules regarding when and how the agreement can be terminated by either party, when and how rents may be increased, and the standard to which the property must be maintained. In addition, the avenues through which legal protections can be invoked and enforced are also relevant to security of tenure.

Therefore, rather than confining discussion to a single chapter, security of tenure is an underlying consideration throughout this options paper. Three models are presented in Part C of the options paper considering how the terminations provisions interact with security of tenure.

Importantly, creating the conditions for a viable or robust rental sector is critical to promoting security of tenure. It is important that both parties feel confident to participate in the sector and contribute to a non-adversarial culture. An environment (the legislative framework and sector practices) that supports positive relationships between tenants and landlords, is one that will support strong security of tenure through enduring tenancies. This is also an underlying consideration that has been applied throughout the options paper.

Next steps

The options have been included for the purpose of public consultation. In particular, the review is seeking insights from stakeholders into the viability, or otherwise, of each of the options, which can be supported by evidence and/or analysis. Consultation questions have been included at the end of each section of the options paper as a guide, although any additional relevant information is welcomed.

When providing feedback on the review, it is important to note that each option cannot be considered in isolation, but will be viewed as part of a broader package of reforms that balances the rights and responsibilities of tenants and landlords, while ensuring a supply of rental housing that is sustainable, well-maintained and capable of catering for the needs of a variety of people from all walks of life for lengthy periods at a time.

Following consultation on the options, the Victorian Government will consider a comprehensive reform package and make decisions which will form the basis of the development of new legislation and regulations. Legislation is expected to be introduced into the Victorian Parliament in 2018.

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1 Approach to the review

Since the RTA was introduced, the rental market has changed significantly. More Victorians are renting for longer, the renting population has become more diverse, and the numbers of property managers and landlords have increased.

The Victorian Government is reviewing the RTA to ensure a modern and dynamic rental market, in which tenants are safe and secure, and which will meet the current and future needs and expectations of tenants and landlords.

The RTA regulates four types of residential tenancy arrangements: general tenancy agreements, residency rights for rooming house residents, residency rights for caravan park residents, and site agreements for park residents who own movable dwellings. The RTA covers both private rental and social housing tenancies (including public and community housing), but does not apply to holiday accommodation such as hotels, motels, and bed and breakfasts.

Consultation on issues

The review has been conducted in a staged approach, beginning with the release of a consultation paper, *Laying the Groundwork*, outlining the characteristics in the Victorian rental sector, and seeking public comment on the effects of different trends in that sector.

The next stage consisted of a series of six issues papers released for public consultation from late 2015 to mid-2016. These issues papers focused on understanding the nature and extent of any issues identified relating to the following themes:

- security of tenure
- bonds, rent and other charges
- rights and responsibilities of landlords and tenants
- dispute resolution
- property conditions and standards, and
- alternate forms of tenure.

Participants responded through different channels including social media posts, online forums, written submissions, and posting stories online. The issues papers had a total of 1,980 contributors and 232 written submissions.

Summaries of stakeholder views on each issues paper can be found at the [Review of the Residential Tenancies Act 1997 website](http://fairersaferhousing.vic.gov.au/renting) <fairersaferhousing.vic.gov.au/renting>.

Independent market research

As a supplement to public consultation, CAV commissioned separate market research through EY Sweeney. The purpose of this was to gather information that could provide an indication of the extent to which issues identified by stakeholders occurred across the entire Victorian rental market. To this end, primary data from tenants, landlords, and residents of moveable dwellings and caravan parks was collected and analysed in relation to their experiences in the rental market, the impact of those experiences, and their rental expectations and preferences.



The market research was a comprehensive quantitative study consisting of an online survey with tenants, telephone interviews with tenants, landlords, and property managers, and a hard copy survey with parks residents. The design of the quantitative research was informed by qualitative focus groups with tenants and landlords and in-depth interviews with parks residents. The themes explored in the research were aligned with those covered in the issues papers.

Developing the options

The options paper forms the third stage of the review process. It asks stakeholders to respond to a range of possible ways to address the issues that were raised during public consultation in Stages 1 and 2. Many of the options in the options paper reflect reform options that were put forward by stakeholders. The purpose of this round of public consultation is to obtain input and insights that will inform the development of reform proposals for introduction into the Victorian Parliament in 2018 (Stage 4 of the review).

To support the preparation of the options paper, a stakeholder reference group was established as a forum where key stakeholders representing different sectors of the rental market could meet with Victorian Government departments leading the review of the RTA to discuss options for reform.

The role of the reference group was to provide advice and feedback on framing the options and possible approaches from which the government will select its reform package.

Neither the reference group nor its members were asked to make a decision on, or to make recommendations with respect to options.

To complement the stakeholder reference group, CAV undertook additional consultation with groups representing culturally and linguistically diverse tenants, Koori tenants, victims of family violence, and vulnerable and disadvantaged tenants. For example, CAV met with Victoria Legal Aid, and the Department of Health and Human Services' Support Services Working Group to discuss options responding to family violence in residential tenancies.

2 Snapshot of current market issues

Extensive stakeholder consultation, to date, has yielded a vast amount of information on the operation of the current regulatory framework.

While both landlords and tenants are impacted by a range of issues, these issues reflect a stark dichotomy of interests.

For landlords, the outcomes of consultation generally indicate overall satisfaction with the framework, with suggestions for improvement concentrated in key systemic areas, such as the effectiveness of dispute resolution processes.

For most tenants, the private rental market also generally works well. They are able to rent a property in a location that suits them, for a price and duration that meet their expectations.

However, for some vulnerable or disadvantaged tenants, certain issues can affect them in a disproportionately greater way because the options available to them in the private rental market are more limited. This plays out particularly in the context of property conditions or rental affordability, where these tenants may not be able to access good properties, or maintain tenancies that meet their needs due to income constraints, language barriers, or discrimination they experience based on disability, gender or sexuality, cultural or linguistic background or family status. Individual small-scale landlords, who are the principal providers of rental accommodation in the private market, can often have a limited capacity to agree to requests to which an institutional landlord with greater resources would have more easily been able to accommodate.

A snapshot of the issues identified by stakeholder submissions and public engagement across the six thematic areas of the review is provided below. Further information regarding the extent of the issues and the ways in which various cohorts are affected by those issues can be found in CAV's market research report and other complementary data sources.²

Security of tenure

Extensive stakeholder input was provided in relation to security of tenure. In particular, although some tenants would like more certainty and stability in their rental arrangements, the private rental market does not cater well for tenants who want long term tenancies.

Concerns were expressed regarding the scope landlords have to end a tenancy, and the impact this can have on the level of certainty tenants have to stay in their rented property and to exercise their rights under the RTA.

Further common observations made about security of tenure included that:

- 'no fault' terminations provisions in the RTA provide scope for landlords to unfairly evict tenants
- tenants who have breached a residential tenancy agreement and triggered one of the grounds for termination may be evicted inappropriately because the Victorian Civil and Administrative Tribunal (VCAT) has limited scope to take into account the reasonableness of the termination, and

2 *Rental experiences of tenants, landlords, property managers, and parks residents in Victoria*, Final Report, 17 May 2016 accessed via the [Review of the Residential Tenancies Act 1997 website](http://fairersaferhousing.vic.gov.au/renting) <fairersaferhousing.vic.gov.au/renting> as well as, for example, customised ABS data available via the same website; and Tenants Union of Victoria, *Online survey of Victorian Private Market Renters: 2015* accessed via the [Tenants Union of Victoria website](http://tuv.org.au) <tuv.org.au>.

- landlords considered that the removal of the notice to vacate for 'no specified reason' would unduly limit their scope to manage their property, and would increase the risks of letting property as the RTA (and VCAT processes) do not adequately enable them to evict a problematic tenant.
- greater scope for tenants to make modifications to a property and have pets would make tenants feel more at home. Landlords, however, have concerns about the decline in the quality of the property associated with the freedom to make modifications and keep pets, and
- uncertainty about the frequency and amount of rent increases detracted from security of tenure for some tenants.

Current and future needs of the Victorian residential tenancies sector

The RTA must cater for a market with the specific characteristics of Victorian landlords and tenants at any given time. In particular, it is critical that the reformed RTA reflects the current rental market while being adaptable to future changes, including ensuring the balance of rights and responsibilities caters for:

- tenants with diverse characteristics and needs
- small and large scale investors who choose to enter and remain in the market
- significant life events (for example, family violence and sudden changes in health), and
- fluctuations in broader government policy impacting on supply and demand for residential housing.

Some of the overall indicators of the attitudes towards the rental market and the RTA produced by CAV's market research were as follows:

- 73 per cent of tenants reported being satisfied with their rental experience in Victoria, however this was higher for first time renters (81 per cent), and lower for those with a Health Care Card (64 per cent) and those with a disability or health condition (58 per cent)
- 86 per cent of landlords were satisfied with their experience of the rental market
- 50 per cent of tenants believed the rental laws were adequately balanced, and 6 per cent believed they favoured tenants, and
- 39 per cent of landlords believed that the laws were adequately balanced, and 58 per cent believed they favoured tenants.

Managing regulatory risk

Legislation that regulates a private commercial market must take into account the composition and characteristics of the suppliers in that market. In particular, proposed regulatory solutions need to take into account the ways in which market participants are likely to use and interact with that regulation, and the possible unintended consequences that could result.

This is relevant if reforms aim to bring about public benefits and greater social equity by introducing further regulation (that is, additional rights and protections for tenants). There are a range of factors that need to be balanced, as any corresponding increases in cost and risk for suppliers without increases in return will influence their decisions with regards to letting property, and these could impact adversely on the most vulnerable tenants.



It is important to acknowledge that some of the risks of regulating the market could affect its function and the provision of affordable, secure, rental housing:

- supply impacts and displacement of low-income tenants
- withdrawal of properties from the residential tenancies sector
- risk management behaviour that could remove access to rental accommodation for vulnerable and disadvantaged tenants
- charging higher rents where regulation increases the risks of investment
- circumventing or operating outside of regulation, and
- reduced overall functionality of the market.

Options for enabling a healthy rental sector

The package of reforms eventually put to government for approval will focus on building a healthy rental sector with the following characteristics:

- 1 balanced bargaining power between the parties
- 2 a positive and non-adversarial culture, which includes:
 - an appropriate balance of rights and responsibilities, and
 - effective dispute resolution functions that allows disputes to be resolved constructively.

The options presented in the options paper should therefore be assessed in terms of the extent to which they contribute to these outcomes.

The development of the government's reform package will consider the need for a flexible rental market, and one that can cater for diverse groups of tenants, including low income tenants, increasing numbers of older tenants, and increasing numbers of tenants with a disability, who will be entering the private rental market with the rollout of the National Disability Insurance Scheme.

The needs of the sector and the capacities and constraints of the market to address those needs will also inform the development of the reform package to ensure that the RTA:

- reflects current community expectations regarding what is a fair balance of rights and responsibilities of parties to residential tenancy agreements
- is relevant to the current and future market environment in Victoria, and
- is conducive to a well-functioning sector for the benefit of all participants (healthy rental sector principles).

Policy objectives for a modern framework

There is consensus among stakeholders that the policy objectives of the RTA need to be reset in response to the changing characteristics of the market. However, stakeholders have differing views of what the objectives should be for the contemporary market and into the future.

Stakeholders representing tenants considered that the RTA should have stronger consumer protection objectives that recognise the importance of housing as a necessity and the social significance of a home. They argued that as consumers of rental housing, tenants are entitled to protections to ensure the quality and fitness of purpose of the premises they rent. With tenants

increasingly renting for longer, principles that promote choice, security of tenure, fair practices, non-discrimination and privacy are seen as essential along with objectives aimed at preventing unnecessary evictions, hardship and homelessness. Stakeholders that represent vulnerable and disadvantaged tenants, consider that the special needs of those tenants should be recognised in the objectives for the RTA.

As the RTA regulates transactions in a predominantly commercial environment where housing is provided for the most part by private landlords to private tenants, both individuals and households, any review of its objectives must consider the mix of equity and public interest, and economic efficiency purposes it serves.

The following objectives are proposed for consideration and draw on objectives for residential tenancy legislation in place in New South Wales and the Northern Territory, and on stakeholder feedback. They also take into the changing needs of the Victorian rental market. The proposed objectives for the RTA are to establish a regulatory regime for residential tenancies in Victoria that:

- provides clarity and certainty about the rights and responsibilities of tenants and landlords
- promotes transparency and fair practice in the residential rental market by landlords, property managers and tenants
- promotes equity and efficiency and reduces unnecessary costs for both landlords and tenants
- ensures that tenants are provided with safe and habitable premises under tenancy agreements and enjoy appropriate security of tenure without frustrating a tenant's or landlord's ability to respond to changing circumstances
- facilitates landlords receiving a fair rent in return for providing safe and habitable accommodation to tenants
- encourages both landlords and tenants to take a responsible approach to their obligations to each other, to the people they share their home with and to their neighbours and the wider community, and
- ensures that landlords and tenants have access to effective mechanisms to resolve disputes early with fair outcomes and to enforce their rights under tenancy agreements and under the RTA.

Modern terminology for parties to a residential tenancy

The RTA uses terminology to describe the parties to a residential tenancy lease that is consistent with that included in residential tenancy legislation in New South Wales, South Australia and the Northern Territory. The terminology includes landlord and tenant for general tenancies where the landlord is defined as the person who lets or is to let premises, and the tenant as the person to whom the premises is let or is to be let.

Some stakeholders providing feedback to the review considered that the use of the terms landlord and tenant contribute to the sense of imbalance between the parties to a residential tenancy lease and can even be seen as being gender biased and derogatory.

While landlord and tenant are established terms with legal authority, alternative terminology is presented for consideration and feedback to replace references in the RTA to:

- landlord – property owner, owner or lessor, and
- tenant – property renter, renter or lessee.

3 Lease lengths and scope of the RTA

In its *Plan for Fairer Safer Housing*, the Government identified long-term leasing as an important consideration for the review. Chapter 3 of the options paper presents possible reforms to the RTA that aim to facilitate long term leasing.

While research indicates that shorter fixed term leases are generally preferred by both tenants and landlords, some tenants (such as those with school aged children, older tenants, and tenants with disabilities) indicated they value the certainty of a longer fixed term lease.

There are a number of ways in which reforms could remove obstacles for tenants and landlords entering into longer leases, while maintaining the flexibility offered by the rental sector.

Addressing limitations to coverage of the RTA

Currently, the RTA does not apply to fixed term leases longer than five years.

Expanding the RTA's scope would mean those who wish to enter such agreements would still be covered by its protections. It may also provide opportunities for some institutional landlords whose operations are based on long term agreements with property owners, and who would benefit from access to the protections of the RTA.

A proposed option is removing the current limitation so that the RTA applies to any agreement regardless of length.

Making provision for long-term leasing for general tenancies

Lease terms are not currently regulated by the RTA. Although tenants and landlords can enter into longer fixed term leases if they wish, current rental experiences indicate that 12 months is the most common length of a fixed term lease, with many agreements automatically rolling over to an ongoing periodic tenancy agreement once the 12 months ends.

There is an opportunity for the RTA to better accommodate tenants and landlords who wish to enter into longer fixed term agreements by making a separate tailored long term lease agreement available. Such an agreement would be based on the standard provisions of the RTA, and contain a subset of varied terms that appropriately reflect the long-term nature of the arrangement.

An alternative option proposed by some stakeholders was to incorporate an option for the tenant to extend a standard fixed term lease, as is the case for commercial leases under the *Retail Leases Act 2003*. Under these arrangements, a tenant can sign an initial fixed term agreement which includes an option to extend the lease for a further specified period.

It is necessary that the RTA retains the flexibility that both tenants and landlords expect. It is also relevant to consider the differences between landlords in the private residential tenancies sector and those who offer commercial properties for lease.

4 Rights and responsibilities at the start of a tenancy

To the extent that the RTA regulates the conduct of prospective tenants and landlords before a contract has been formed, the relevant provisions aim to balance giving the landlord the ability to select their preferred tenant with enabling prospective tenants to compete for tenancies on a level playing field. The RTA also imposes a framework for when a tenancy agreement is formed, ensuring that all tenancy agreements have the same basic features and meet the same minimum requirements, whether the agreement is written or verbal.

Chapter 4 of the options paper covers options that aim to improve the balance of rights and responsibilities of landlords and tenants during the tenancy application process, including the process of forming a tenancy agreement. In particular, the proposed options involve:

- addressing concerns about unlawful discrimination occurring in the rental sector, and the lack of redress for tenants under the RTA when unlawful discrimination occurs, by:
 - requiring an information statement about unlawful discrimination to be given with tenancy application forms, and
 - strengthening the links between the RTA and the *Equal Opportunity Act 2010*.
- ensuring landlords and agents who are not bound by the *Privacy Act 1988* only use personal information provided by tenants in a tenancy application for the purpose of assessing the application
- improving fairness around the use of tenancy database ‘blacklists’, by:
 - prohibiting charging tenants a fee to find out if they have been listed, or to receive a copy of their listing, and
 - enabling VCAT to make an order to have a database listing amended or removed if the listing is unjust in the circumstances.
- improving the disclosure of information that may impact the tenancy before tenants enter into an agreement with the landlord – for example, if the landlord is in the process of selling the rental property. The proposed options involve:
 - requiring the disclosure of certain information to a tenant before they enter into a tenancy agreement, and
 - prohibiting landlords and agents from encouraging a tenant to enter an agreement by making any representations the landlord or agent knows to be false, misleading or deceptive.
- removing obstacles that can affect a court or tribunal’s ability to make an enforceable order against the landlord, by requiring the name and address of the landlord to be disclosed for the purposes of legal proceedings, and

4 Rights and responsibilities at the start of a tenancy



- addressing concerns about the imbalance in bargaining power for tenants and landlords negotiating additional terms to a tenancy agreement, and the extent to which those terms are enforceable. Proposed options involve:
 - introducing a more comprehensive prescribed tenancy agreement
 - creating a ‘blacklist’ of terms and conditions that cannot be included in a tenancy agreement
 - making it an offence to include a term in a tenancy agreement that is prohibited under the blacklist or invalid under the RTA, and
 - either maintaining the status quo for enforcement of additional terms, or making additional terms enforceable at VCAT with only limited exceptions.

5 Rights and responsibilities during a tenancy

For the duration of a tenancy, the landlord's property becomes a home for the tenant and a source of rental income for the landlord, and each party is bound by their mutual obligations. The RTA sets out procedures that can be followed if obligations are not being met by the other party, and sets out rules that govern the key interactions between the parties that may arise during a tenancy.

Chapter 5 of the options paper covers options in relation to rights and responsibilities of landlords and tenants during a tenancy, while the tenancy agreement is ongoing. The proposed options involve:

- improving the processes for individual and successive breaches of duty, by:
 - ensuring the remedy for a breach of duty is appropriate to the nature of the duty, and any loss suffered as a result of the breach, and
 - amending the process for successive breaches of duty so that it is more practical, while ensuring that trivial breaches do not result in a termination of the lease.
- clarifying the extent to which a landlord can prohibit a tenant from keeping a pet, by:
 - introducing a mechanism for addressing pet-related costs and encouraging landlords to accept pets, either by way of a pet bond or by optional additional pet consent and cleaning clauses in the tenancy agreement, and
 - providing that a 'no pets' clause is unenforceable if it is unreasonable.
- balancing a landlord's rights of entry during a tenancy with the tenant's right to quiet enjoyment, particularly in circumstances where the premises is being sold or re-let. The proposed options would:
 - require a landlord to give seven days' notice before conducting a general inspection or a property valuation
 - ensure the landlord is liable for any loss or damage of the tenant's goods caused while the landlord is exercising a right of entry
 - permit landlords to conduct up to two inspections a week to show the premises to prospective buyers, with tenants entitled to reasonable compensation for each sales inspection that takes place
 - require a landlord to give 48 hours' notice before showing the premises to prospective tenants, within the last 21 days of the current tenancy, and
 - regulate the requirements around landlords entering to take advertising photos or videos of the premises.
- clarifying whether tenants using the premises to provide short-term accommodation constitutes a sub-let, and what fee can be charged in relation to assigning a tenancy agreement. The proposed options would:
 - require a tenant to get the landlord's consent before using the premises to provide accommodation on a commercial basis (through platforms such as Airbnb)
 - allow a tenant and landlord to negotiate a fee for the tenant to use the premises to provide commercial accommodation, and
 - give greater certainty about the expenses that a landlord can recoup from a tenant in relation to assigning the tenancy agreement.

6 Rights and responsibilities at the end of a tenancy

The RTA sets out rules about compensation that may be payable if a tenancy ends without the proper notice, and procedures landlords must follow if a tenant leaves goods behind at the rental property. Chapter 6 of the options paper covers options in relation to rights and responsibilities at the end of a tenancy. The proposed options involve:

- giving greater certainty about what should be the appropriate fee if a tenant breaks a lease by not giving the required notice, by:
 - amending the RTA to include the common law principles generally applied by VCAT when determining compensation for breaking the lease, to give greater guidance around reasonable lease break fees, and/or
 - allowing parties to agree to a lease break fee amount in an optional clause in the tenancy agreement, to provide the parties with certainty and administrative simplicity.
- extend the circumstances where VCAT is able to consider the severe hardship suffered by a tenant or landlord, because of an unforeseen change in their circumstances. The proposed options involve:
 - ensuring that if a tenant or landlord can demonstrate that their severe hardship outweighs the hardship suffered by the other party, VCAT can also take this into account in cases awarding compensation after a lease is broken, and
 - providing that if VCAT ends a lease early due to severe hardship suffered by a tenant, compensation to the landlord is capped at two weeks' rent.
- ensuring that tenants in extenuating circumstances are not required to pay lease break fees. The proposed options would provide that a tenant can end a tenancy with 14 days' notice without paying lease break fees, if:
 - the tenant requires temporary crisis accommodation or special or personal care
 - the tenant has accepted an offer of social housing
 - the landlord has refused reasonable property modifications to accommodate a disability, and
 - the landlord wishes to sell the property during a fixed term agreement but the proposed sale was not disclosed before the tenancy began.
- improving the procedures for goods left behind by a tenant at the end of a tenancy, by:
 - modernising the procedure for goods that must be stored by the landlord for a fixed period of time
 - requiring landlords to take reasonable steps to notify the former tenant that their stored goods can be collected, and
 - re-focusing and streamlining the processes for Consumer Affairs Victoria (CAV) to assist with assessing goods left behind.

7 Rent and bonds

Regulation of rental transactions, including bonds and rent, are a key element in supporting a non-adversarial rental market. Chapter 7 of the options paper covers issues raised during consultation which aim to improve how tenants and landlords transact bonds and rent.

Both sides of the rental sector were engaged in this consultation, resulting in marked insights into current experiences:

- landlords consistently noted that bonds often do not cover the costs of repairs and rent arrears when a tenancy goes wrong
- landlords overwhelmingly use yearly (rather than six-monthly) rent increases
- tenants identified high up-front and ongoing costs (such as bonds and rent) as the greatest obstacle to sustaining a tenancy
- tenant representatives criticised the current self-regulation of rental bidding, citing issues with compliance, transparency and disproportionate impacts on low-income tenants, and
- stakeholders on both sides raised issues with the speed and consistency of bond repayments and processes for resolving bond disputes.

The regulation of bonds and rent should support outcomes where:

- landlords are confident that a bond can be accessed to meet the cost of minor repairs or rent arrears
- tenants feel assured that a bond is held safely and can be accessed to help meet moving costs
- tenants and landlords have access to speedier bond repayments when they both agree on the claim, and evidence-based claims for landlords when there is a dispute. The proposed options involve:
 - encouraging faster bond repayments when all parties are in agreement, and
 - streamlining bond claims when all parties do not agree on the allocation of the bond.
- the up-front and ongoing costs of entering a tenancy (bonds and rent in advance) are not excessive and reflect its ongoing costs. The proposed options involve:
 - updating the current high-value exemption to maximum rent in advance and bond rules to reflect current market rents
 - encouraging fixed price advertising for rental properties and a ban on inviting rental bids
 - restricting rents increases to once per year and disclosing how rent will be increased during fixed term leases, and
 - ensuring tenants have at least one fee-free method of paying rent.

8 Property conditions

Regulation of property conditions is a critical element of a healthy rental sector. Property owners need to be able to feel confident that their asset will be adequately looked after, while renters are assured of a habitable, safe, sustainable and well-maintained environment.

Chapter 8 of the options paper presents suggested options informed by the following key themes:

- tenants' access to healthy, safe and sustainable rental properties
- that all parties agree and understand their role in upholding standards for cleanliness, safety, maintaining the property in good repair, and the processes for dealing with property damage
- allowing for property modifications that support tenants without adversely impacting the property's value
- creating stronger incentives for both parties to comply with their obligations, and
- reducing the risk and number of disputes through quicker dispute resolution processes and access to repairs.

Condition reporting – measuring changes in a property's condition

Stakeholders agree that condition reports are an important tool that allow both landlords and tenants to record the condition of the property and any changes that occur throughout the tenancy. The condition report is also treated as a source of evidence if disputes arise about whether the tenant has damaged the property since they moved in, or whether a repair that was identified in the report at the start of the tenancy has subsequently been performed. Proposed options involve:

- requiring more frequent reporting to ensure the condition of the property is kept up to date, so liability for any damage can be properly attributed
- including photographic evidence in the report to reduce the risk of inaccurate statements about the property's condition
- allowing longer timeframes for tenants to complete and return condition reports
- requiring both parties to be educated about their duties to maintain the property's condition, and
- introducing protections against false, misleading or deceptive condition reporting.

Condition of vacant property at the start and end of a tenancy

Stakeholders highlighted concerns about whether the landlord's existing obligations to provide a vacant property in a reasonably clean condition were both clear and adequate, in light of recent case law identifying that actual practice often fell short not only of this standard, but also of broader habitation and safety requirements. Similar concerns were raised about whether tenants understood what condition they needed to leave the property in when they moved out. Proposed options involve:

- clarifying key terms such as 'reasonable cleanliness' to reduce disputes about whether the parties have met the necessary standard, as well as the risk of any negative impacts – for example, the tenant's ability to move into the property on time and live there safely, and the landlord's ability to subsequently re-let the property once the tenant has moved out without first needing significant repairs



- expanding the scope of the landlord’s duty to ensure vacant properties are not only clean, but in good repair
- generating practical tools enabling the parties to assess the property’s compliance at the start and end of a tenancy – for example, a cleanliness and repairs checklist, and
- allowing tenants to return to premises within a limited time frame to address any lingering repair or cleanliness issues.

Locks and security devices

While evidence indicates that most properties have functioning locks, stakeholders suggested increased security requirements for enhanced tenant safety. Proposed options involve:

- introducing more specific requirements, namely deadlocks on external doors, or
- a broader duty requiring landlords to ensure that their property is reasonably secure.

Health, safety and amenity standards at point of lease

Stakeholders highlighted limitations in relying on existing requirements for properties to be clean and in good repair, noting that current market dynamics are not effective in eliminating rundown properties from the rental market. Proposed options involve:

- imposing mandatory minimum standards ensuring that rental properties satisfy basic levels of safety, amenity and sustainability before they are leased out
- a specific legal requirement that premises be fit for habitation, and
- outlining the consequences for both parties of leasing out premises that do not meet any specified standards.

Condition of premises during a residential tenancy

Landlords and tenants are responsible for looking after the property for the duration of a tenancy. Stakeholder consultation revealed a strong consensus for these duties to be clarified to avoid overlap, reduce confusion, and provide certainty about what can reasonably be expected from either party, particularly in cases involving safety devices such as smoke alarms and pool fences. Proposed options involve:

- clarifying and reinforcing the parties’ maintenance responsibilities, and
- specific guidance about safety related maintenance – for example, relating to smoke alarms, pool fences and appliance servicing.

Modifications

Stakeholder feedback indicates that the requirement for the landlord's written approval for any modifications to the property means that all requests (major or minor) can potentially be refused. This includes cases where the modification has no negative impact on the value of the property, or would be allowed under other legislation. Proposed options involve:

- varying (but not excluding) the landlord's right to refuse modifications to their property – for example, to ensure that health, safety or disability requirements are given due consideration and cannot unreasonably be refused, and
- clarifying who would be responsible for costs and any ongoing maintenance linked to the modification.

Liability for access to services

Disputes often arise when landlords and tenants disagree on who should pay for the installation versus usage of particular services connected to the property. Proposed options involve:

- aligning landlord and tenant liabilities with modern utility billing practices where access to a service can be characterised as a property improvement, and
- empowering community housing operators to encourage more sustainable use of utilities and other services available to their tenants.

Reporting and addressing damage

As with other undefined terms in the RTA, the concept of damage raises interpretational challenges for both landlords and tenants, particularly when distinguishing fair wear and tear or property defects from negligence or vandalism. Proposed options involve:

- clarifying and specifically excluding fair wear and tear from the scope of unlawful property damage, and
- addressing landlord difficulties in contacting former tenants who have not fixed damage they caused to the property.

Resolving disputes about repairs

Both stakeholder consultation and independent research identified obstacles for tenants in getting timely repairs, or reimbursement for the cost of repairs they did themselves because the landlord failed to do so. Delays may be caused by:

- the landlord's deliberate refusal to comply with the law
- genuine confusion about what constitutes a reasonable time-frame for responding to a repair request
- a reluctance or failure of tenants to request repairs for fear of being evicted
- the involvement of an owners' corporation, and
- damage caused by the tenant themselves.



Existing dispute resolution processes may not cater for the range of complex issues in a residential tenancy. Simple disputes may be more suitable to an express resolution process, while more complex issues may require a more involved resolution process. Proposed options involve:

- more effective, streamlined and timely processes for resolving disputes faster
- offering greater incentives to landlords to perform repairs in a timely manner – for example, by freezing rental payments, or imposing a repairs and maintenance bond
- increasing available remedies for a breach of the landlord’s repair duty – for example, a prohibition on charging market rent, or reletting non-compliant properties altogether
- updating the existing monetary threshold (\$1,800) within which a tenant can carry out a repair and seek reimbursement
- clarifying the landlord and tenant’s liability for excess water usage charges caused by unknown leaks, and
- giving tenants the confidence to assert their rights without fear of retribution – for example, protection against retaliatory eviction notices or excessive rent increases.

9 Rooming houses

The rooming house sector meets a critical need by accommodating some of Victoria's most vulnerable and disadvantaged individuals, many of whom have complex needs and no other viable housing options. Reflecting the evolution of this sector, many international students also rely on rooming houses as a source of affordable accommodation in close proximity to their place of study.

Chapter 9 of the options paper covers a range of issues arising under the current framework in relation to residency in rooming houses. In particular, the proposed options involve:

- enabling buildings owned or leased by a registered housing agency to be declared as rooming houses by the Minister for Housing
- clarifying that a building owner, or their agent, has an obligation to notify the local council if they know (or in the circumstances should have known) that the building is being used as an unregistered rooming house
- allowing rooming house residency agreements to have a specified occupancy period (if desired by the resident and operator), and stopping the use of tenancy agreements for occupancy of rooms in rooming houses
- addressing concerns about house rules in rooming houses, by:
 - requiring house rules to be displayed in common areas, as well as in each resident's room
 - developing a set of best practice model house rules, and guidance on rules that may not be appropriate, and
 - ensuring that a resident's failure to comply with a house rule cannot be used as grounds for termination, if that rule is declared invalid by VCAT, or was not made in accordance with the RTA.
- changing the frequency of general room inspections from once a month to once every two months, with 48 hours' written notice of entry
- permitting operators to charge residents for water consumption, if the room is separately metered
- updating the rooming house minimum standards to clarify the requirements around laundry facilities and the number of available power points in each resident's room
- requiring operators to provide one secure mail box for each room of the rooming house, and to ensure post is sorted into the mail boxes, and
- changing the section of the RTA relating to a resident's duty to ensure the quiet enjoyment of other residents, so that it only applies to conduct in the rooming house, not near the rooming house.

Stakeholder consultation suggested that the definition of a rooming house should be amended to better capture emerging accommodation models that should also be regulated as rooming houses, and to better distinguish accommodation that is not a rooming house.

Due to interdependencies with other legislation, the RTA's definition cannot be considered in isolation as part of this review, so this chapter proposes a future inter-governmental project to consider whether the rooming house definition requires amendment.

10 Dispute resolution

The dispute resolution chapter presents options to address the following issues about the processes and mechanisms for resolving residential tenancy disputes:

- tenants and landlords have low levels of awareness of their rights and responsibilities under the RTA
- there are limited options available to landlords and rooming house operators to resolve disputes early with the assistance of a third party, such as CAV or the Dispute Settlement Centre of Victoria
- a lack of mechanisms for tenants and landlords to resolve disputes quickly and in an informal and non-adversarial way, which guarantees a binding agreement or decision
- the reported lack of consistency of VCAT decisions on residential tenancy dispute cases, and
- limited compliance and enforcement activities in the residential tenancy space.

The options presented aim to achieve outcomes that are consistent with a healthy rental sector where:

- the system caters for the broad spectrum of disputes, in terms of the nature and stage of the dispute, and the outcomes sought by the parties involved
- problems are addressed early, preventing the escalation of disputes and negative experiences for both parties, preserving relationships and tenancies, and
- a positive, non-adversarial culture is promoted within the rental sector generally, such that parties feel confident to:
 - participate in the sector
 - respond appropriately when problems arise, and
 - achieve fair outcomes.

Dispute resolution is considered as a spectrum where various services and mechanisms may be appropriate for different disputes. The residential tenancies sector has a diverse population of participants and options available should cater to that diversity, and to the different types and stages of disputes that arise.

Options presented in the chapter include:

- enhancing CAV's information and advice services to encourage parties to try and resolve disputes themselves
- extending CAV's front line resolution and conciliation services to landlords
- creating an administrative (non-tribunal) dispute resolution service that can make binding decisions
- providing a merits review mechanism at VCAT, and
- strengthening CAV's compliance and enforcement activities.

11 Terminations and security of tenure

Chapter 11 considers the provisions for terminating a tenancy under the RTA. Termination provisions regulate the circumstances under which both parties can end a tenancy agreement. The RTA provides a range of protections in addition to contract law, in acknowledgement that housing is essential and the loss of a tenancy may mean a tenant is homeless, and that moving can be costly.

The chapter addressed the key issues that were raised by stakeholders:

- the current reasons for termination do not adequately protect tenants from unfair terminations of their tenancy
- the notice to vacate for ‘no specified reason’ undermines tenants’ security of tenure and their confidence to exercise their rights under the RTA, for fear of landlords issuing a notice in retaliation
- the grounds and processes for termination are insufficient when the tenant is at fault – this results in landlords using the notice to vacate for ‘no specified reason’ in order to address problems that are not covered
- tenants do not have enough flexibility to end a lease agreement early without being liable for lease break fees in response to receiving a notice to vacate from their landlord, and
- VCAT should have greater discretion in granting possession orders, so tenancies are not unfairly terminated.

Options to amend the terminations provisions address:

- the definitions and scope of the termination provisions
- checks and balances provided by VCAT when a landlord wants to end a tenancy
- processes for rent arrears and termination for non-payment of rent
- repeated breaches of the tenancy agreement
- termination provisions where the tenant is not at-fault, including the notice to vacate for ‘no specified reason’, and
- expanding the range of reasons why a tenant can terminate a tenancy agreement early, including in response to:
 - a notice to vacate
 - a rent increase, and
 - the property being advertised for sale.

Chapter 11 also provides alternative models for enhancing security of tenure through the terminations provisions. While security of tenure is influenced by many aspects of residential tenancies legislation and the rental sector, terminations provisions are critical because they affect:

- the length of the agreement
- the circumstances under which the agreement may be terminated, and
- protections against unfair termination.

12 Family violence

Chapter 12 of the options paper covers amendments to the RTA that aim to provide more appropriate responses to instances of family violence in the rental sector. In particular, the proposed options involve:

- improving access to family violence protections in the RTA, by:
 - enabling someone experiencing family violence in a tenancy to access family violence protections under the RTA, without a final intervention order with an exclusion condition – that is, a condition stating that the person committing the family violence cannot enter the premises
 - requiring VCAT to consider family violence-related applications within a specified time, and
 - enabling family violence-related applications to be made by a parent or guardian of an affected child.
- providing for the termination of a tenancy agreement due to family violence. The two options proposed are:
 - terminating the tenancy through VCAT, and
 - terminating the tenancy via a notice to vacate.
- enabling reasonable modifications to be made to a rented premises to improve security. The two options proposed are:
 - requiring that a landlord not unreasonably withhold consent for reasonable modifications, and
 - enabling non-structural modifications to be made without consent.
- ensuring that tenants experiencing family violence are not unfairly listed on residential tenancy databases. The proposed options involve:
 - prohibiting estate agents and landlords from making a listing on a tenancy database
 - enabling VCAT to make an order to remove and prevent listings in tenancy databases, and
 - enabling VCAT to remove or edit information from listings in tenancy databases.
- enabling tenants experiencing family violence to challenge notices to vacate, if the notice was given as a result of the conduct of the person committing family violence. The proposed option would enable notices to vacate to be challenged subject to certain factors that VCAT would consider.
- enabling liability to be fairly attributed in the context of family violence, whether the person committing family violence is a co-tenant or not, and
- making it easier for tenants experiencing family violence to serve notices and documents when making a family violence-related residential tenancy application at VCAT. The two options proposed are:
 - enabling the serving of notices and documents by VCAT as an option, and
 - requiring VCAT to serve notices and documents.