

Simon Cohen  
Deputy Secretary, Regulation  
Department of Justice and Community Safety  
121 Exhibition Street  
MELBOURNE VIC 3000

1 November 2019

Dear Mr Cohen

## **REGULATORY IMPACT STATEMENT FOR RESIDENTIAL TENANCIES REGULATIONS 2020**

I would like to thank your staff at the Department of Justice and Community Safety (DJCS) for working with my team on the preparation of the Regulatory Impact Statement (RIS) for the proposed Residential Tenancies Regulations 2020 (the Regulations). These regulations are proposed to be made under the *Residential Tenancies Act 1997* (the Act).

As you know, under section 10 of the *Subordinate Legislation Act 1994* (the SLA), the Commissioner for Better Regulation is required to provide independent advice on the adequacy of the analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and be proportionate to the proposal's expected effects. The RIS also needs to be clearly written so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 31 October 2019 meets the adequacy requirements of the SLA.

### **Background**

In June 2015, as part of its *Plan for Fairer, Safer Housing*, the Victorian Government launched a Review of the Act (the Review). A consultation paper, *Laying the Groundwork*, was released followed by a series of six issues papers covering various areas of the rental market. In January 2017, the Government released an options paper drawing on the outcomes of this public consultation, *Heading for Home*.

The *Residential Tenancies Amendment Act 2018* (the Amendment Act) was passed in September 2018, making 139 reforms to the Act in response to the outcomes of the Review across six key areas:

- security of tenure;
- property conditions, health and safety;
- rights and responsibilities of rental providers and renters;
- affordability and the upfront and ongoing costs of tenancies;
- alternate forms of tenure; and
- vulnerable and disadvantaged renters, and renters experiencing family violence.

The proposed Regulations have been designed to implement the outcomes of the Review and to support the operation of the Act. While some of the Amendment Act's reforms are already in effect, others will not commence until 1 July 2020 and will require these supporting regulations to have operational effect.

## **Feasible Options**

In the RIS, the Department groups the proposed Regulations into four themes:

1. ensuring renters are provided with safe and habitable living arrangements;
2. enhancing the functioning of the rental market by improving clarity and certainty of rights and responsibilities between rental providers and renters;
3. ensuring the regulated elements of residential tenancies reflect current community expectations; and
4. other minor proposals.

DJCS explains that, for many elements of the proposed Regulations discussed in the RIS, the range of feasible options is limited for several reasons, including, as the Department notes:

- that some of the proposed Regulations are needed to give full operational effect to reforms. These reforms were subject to extensive consultation during the Review and alternative options were considered;
- that in many cases (such as the prescribing of information to be required), prescribing information in the way proposed is the only mechanism available to address the problem because the Act was amended so that certain types of information could be prescribed under quite specific heads of power; and
- while some heads of power allow a broader range of matters to be considered, some alternatives suggested through consultations, although legally feasible, are beyond the scope of the problems that the Amendment Act was intended to address.

Therefore, and because of the number and complexity of the proposals, DJCS explains that it has taken a proportionate approach in the RIS and focused on the proposed Regulations and their expected impacts, rather than on the impact of alternatives. Where several options were considered, the alternatives are described qualitatively. Taken together, these reasons provide a reasonable justification for the approach taken.

The RIS invites stakeholders to comment on the proposals, including on several specific questions about the costs and benefits of alternative approaches.

## **Proposed Regulations and Expected Impacts**

DJCS groups and summarises the significant impacts of the proposed Regulations in the RIS.

### *Safety-related Obligations*

Under the proposed Regulations, rental providers would be responsible for ensuring electrical and gas safety checks are conducted every two years, such as testing and replacing batteries for smoke alarms. Rental providers must keep records of electrical and gas safety checks. Renters must not remove, deactivate or interfere with the operation of prescribed safety devices, and repeated breaches of this requirement may lead to an eviction.

DJCS estimates in the RIS that the costs over ten years will be \$235 million for private rental providers and \$30 million for the Director of Housing (DoH). DJCS estimates that there will be benefits of \$201 million in avoided deaths and injury and avoided property damage and other benefits through reduced insurance costs.

### Energy-efficient Heating

The proposed Regulations introduce heating standards that will be phased in over three years from 1 July 2020. A fixed heater in the main living area will be required for all Class 1 properties (attached and detached houses) and Class 2 properties (multi-unit residential buildings where people live above or below others). There will also be a minimum energy efficiency standard (2-star rating) for heaters in Class 1 rental properties. LPG-fuelled gas heaters in the main living area of all Class 1 rental properties will be phased out from 1 July 2023.

DJCS estimates in the RIS that the costs over ten years will be \$109 million for private rental providers and \$24 million for the DoH. DJCS estimates that renters will save \$321 million over ten years, mostly through lower energy costs, and renters will be more comfortable and have health benefits.

### Rental Minimum Standards

The proposed Regulations introduce various minimum standards for rental properties, including required appliances and fittings (such as a kitchen with an oven, stove and a working sink with hot and cold water) and minimum comfort levels (through requiring the property to be structurally sound and weatherproof, free from mould and damp and to have natural and artificial light in all habitable rooms).

DJCS explains in the RIS that it has estimated the total costs to be \$143 million over ten years for both private rental providers and public housing costs. It states that it was advised by the DoH that public and private costs were similar. The benefits are not quantified but are expected to include improved amenity and positive health impacts.

### Energy Efficiency for End of Life Appliances

Minimum energy efficiency ratings will apply to the replacement of appliances at the end of their life under the proposed Regulations, triggered by the 'urgent repairs' process. Replacement heaters will have to meet the minimum energy efficient standard for Class 1 rental properties (discussed above) and replacement dishwashers will have to meet the 3-star energy rating under the Greenhouse and Energy Minimum Standards (Dishwashers) Determination and 3-star water rating. Replacement water appliances will continue to have to meet the three-star standard.

In the RIS, DJCS estimates that the cost to replace heaters over ten years is \$4 million for private rental providers and \$12 million for public housing. DJCS explains that this is expected to result in savings from reduced energy costs of \$19 million for private renters and \$28 million for public renters.

### Compensation for Sales Inspections

The proposed Regulations require rental providers to compensate renters each time the property is made available for a sales inspection. Compensation is prescribed at half a day's rent.

DJCS estimates in the RIS that \$6 million per year will be paid in compensation to renters to offset the inconvenience of sales inspections. It notes that this is a transfer from rental provider to renter. DJCS also notes that prescribing compensation is expected to reduce the cost (for both parties) of applying to VCAT to resolve a dispute over sales inspections impacts.

### Mandatory Disclosure

The proposed Regulations include mandatory disclosure requirements for rental providers, including:

- whether certain activities have occurred in the property, such as cultivation or storage of drugs;
- whether the property has been assessed as having friable or non-friable asbestos;
- whether there are any current building work disputes or owners' corporation disputes; and
- whether caravan and residential parks are prone to flooding.

DJCS explains in the RIS that the costs of these requirements have not been not quantified and a small compliance burden is expected. DJCS states that these requirements will mean renters, residents and site tenants are better informed.

Under the proposed Regulations, rental providers must disclose information about embedded electricity networks if present. The costs have been estimated in the RIS at about \$20,000 per year across all rental properties. The Department states that the benefits have not been quantified but are expected to outweigh this impact.

Park operators who charge an exit fee will also be required to provide prospective site tenants with additional information about exit fees. The Department estimates that there will be a one-off cost of \$8,700 across the sector including:

- \$5,000 to the Department to develop a disclosure statement and provide guidance to the sector;
- \$2,000 for the Victorian Caravan Parks Association to develop an exit fee calculator; and
- \$1,700 for site owners (who charge fees) to become familiar with disclosure requirements.

DJCS explains qualitatively that site tenants will benefit by having a clearer understanding of their financial obligations under site agreements.

### Maximum Bond Amount

Under the proposed Regulations, rental providers would need to apply to VCAT for permission to charge a bond of more than one month's rent, unless the weekly rent is more than \$900 (increased from \$350, or \$760 in the case of long-term tenancy agreements, under the current Act).

DJCS expects this change would have no costs or impacts on the rental market, but would help renters avoid paying \$4.7 million in bonds each year, providing them with opportunity cost savings of around \$101,000 per annum.

### Condition Reporting

The proposed Regulations prescribe standard form condition reports for rental premises based on the existing non-mandatory DJCS condition report form. The condition report includes information about how to fill in the report, a checklist to ensure compliance with cleanliness, repair and fitness for habitation requirements, information about telecommunications connections, the condition of all structures, fixtures, fittings and appliances, as well as information about the recent service history for gas and electrical appliances and safety devices.

The cost of the Regulations is estimated at \$196,000 per year in additional compliance burden but are expected to reduce the number of disputes over property damage and the condition of a property during and at the end of tenancies.

### **Implementation and Evaluation**

In the RIS, DJCS notes that the proposed Regulations are intended to commence on 1 July 2020 to coincide with the default commencement of the Amendment Act. DJCS states that it believes there is adequate time to communicate the relevant changes and for people to understand them.

DJCS explains in the RIS that it plans to undertake an extensive communication campaign in the lead-up to, and after, the implementation of the proposed Regulations, to ensure renters and rental providers are adequately informed. The campaign will also target specific groups such as disadvantaged renters and groups from culturally and linguistically diverse (CALD) backgrounds.

DJCS will take a staged approach to implementation to ensure that renters and rental providers who entered into a rental agreement prior to 1 July 2020 are not disadvantaged by the proposed changes. Existing arrangements under the Act will continue to apply until a rental agreement ends and a new agreement is entered into on or after 1 July 2020. DJCS is also proposing to gradually phase-in rental minimum standards for heating, window coverings and electrical safety after 1 July 2020, given the significant implementation costs associated with these proposed standards.

The RIS outlines a range of data sources and Key Performance Indicators that will be monitored to evaluate the reforms in the proposed Regulations and the Amendment Act. Given the high impact of the proposal, DJCS commits to undertake a mid-term evaluation of the operation and impacts of the proposed Regulations within three to five years after their commencement. This evaluation will occur in conjunction with the evaluation of the implementation of the Amendment Act, given their close interaction.

The Amendment Act includes a range of measures to strengthen enforcement, including increasing existing criminal penalties for non-compliance and introducing a civil penalty regime for certain offences. The RIS explains that DJCS is reviewing all existing infringement penalties and all new offences introduced by the Amendment Act, which may be made infringeable. DJCS notes that a separate set of Residential Tenancies (Infringements) Regulations is proposed to be made for commencement on 1 July 2020.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on (03) 9092 5800.

Yours sincerely



**Anna Cronin**  
Commissioner for Better Regulation  
Red Tape Commissioner