



SUBMISSION BY EASTERN COMMUNITY LEGAL CENTRE

Residential Tenancies Act 1997 (Vic) Review

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Background

Eastern Community Legal Centre (ECLC) is located in the Eastern region of Melbourne and serves the Cities of Whitehorse, Boroondara, Manningham, Maroondah, Knox and the Shire of Yarra Ranges. ECLC Tenancy program serves an additional municipality namely, the City of Monash. ECLC offers free legal advice from its offices in Box Hill, Boronia and Healesville during the day, at night and also through various outreach locations across the East, with a priority being given to those who are disadvantaged.

The Eastern Region has a number of areas of significant disadvantage. Healesville, in the Shire of Yarra Ranges, is home to the second most populous indigenous population in Victoria. The cities of Whitehorse, Maroondah and Knox host large communities of new arrivals to Australia.

In addition to direct legal services, ECLC also focuses on community development and education activities that empower clients, workers and the general community. It raises awareness of its service, new legal developments and human rights through various projects.

The ECLC Tenancy Advice and Advocacy Program (“TAAP”) has been operating since 2012, and is funded by Consumer Affairs Victoria (CAV) to protect vulnerable and disadvantaged tenants. In providing funding, CAV ‘recognises that some of the most v[ulnerable] and d[isadvantaged] Victorians often experience tenancy problems. These can lead to adverse outcomes, including homelessness, if they remain unaddressed.’¹

The ECLC TAAP has assisted in more than 812 separate tenancy matters since it opened in late 2012, and its advocates assist clients via advice, advocacy, negotiation and representation at the Victorian Civil and Administrative Tribunal (‘VCAT’). The tenant advocates at ECLC have over twenty years tenancy experience between them. All of the ECLC TAAP clients have limited financial resources and receive Centrelink allowances.

Additionally, ECLC has been funded by Deakin University since April 2012 to provide on-site legal information, casework and support to all currently enrolled Deakin University students at the Burwood campus. Tenancy matters make up about 20% of this work, and the service has provided assistance on 109 tenancy matters to date. The majority of students are either receiving a Centrelink benefit and/or are being fully or partially supported by their families and/or working only nominal casual hours. Many clients are also international students for whom English is not their first language, are unfamiliar with Australian culture and the legal system, and are first-time renters.

¹ Department of Justice, Consumer Affairs Victoria., *Guidance on TAAP- Operational guidelines on the Tenancy Advice and Advocacy Program*, p 6

This submission is informed by the experiences of our clients from TAAP and the Deakin University program. We have utilised case studies in this submission which are based on the real-life experiences of our clients.

ECLC supports the recommendations of the Tenants' Union of Victoria (TUV) into this review, and note that their submissions echo our own experiences with tenancy matters in the Eastern region. In addition to the recommendations by the TUV, we also take the opportunity to make submissions in the areas where we believe our Centre's and clients' experiences will add value in considering reforms to the Residential Tenancies Act 1997 (Vic) (the 'Act').

As such, we refer to the following questions posed by the consultation paper:

1. Does the current Act enable and encourage a rental market that provides sustainable, secure and safe housing to Victorians? Why or why not?
2. (a) What issues would you like examined in the Review of the current Act?
(b) What are your preferred outcomes, and what evidence base is there to support them?
3. (a) Are the principles and objectives underpinning the current Act relevant today? Why or why not?
(b) Given current trends, what principles and objectives do you think will be important in regulating the rental sector in the future?
4. What is working well about the current Act and what needs to be improved?
5. What can Victoria learn from the approach to the regulation of residential tenancies in other Australian jurisdictions and internationally?
6. What are the challenges and barriers to reform of the rental sector?
7. What considerations need to be given to the regulation of rooming houses, caravan parks and residential parks?
8. (a) What are the key issues for regulating the private rental sector that arise from the:
 - i. growing number of families and proportion of older tenants
 - ii. tenants renting for longer periods, and
 - iii. decreasing proportion of tenants renting in multi-unit properties (flats, units or apartments), especially given the increasing proportion of households living in multi-unit properties more generally?(b) How should residential tenancies regulation take into account these trends in the private rental sector?

9. How do changes in tenant mobility impact on the current balance of rights and responsibilities between landlords and tenants?
10. What situations trigger issues of affordability in the rental housing sector, and how do these affect tenants and the choices they make?
11. From a tenant's perspective, what role does residential tenancies regulation play in enabling access to rental housing?

Better Protection for Renters

Purpose of the Act

Currently, the purpose of the Act is to “define the rights and duties of landlords and tenants of rented premises”, applied similarly to rooming houses and caravan parks. However, that the Act purports to define the rights and duties of parties to tenancies is self-evident, and the purpose of the RTA would be better suited to assist in its interpretation. With reference to the reasons of this review, the purpose of the legislation could incorporate the same concerns raised in the consultation paper: the importance of stable and secure long-term housing, and especially sufficient safeguards for tenants in the industry.

While we accept that landlords have made an investment into the rental property, in reality landlords are providing a service primarily for personal financial profit, and are operating in a commercialised marketplace. On the other hand, tenants are in a situation where they often face homelessness and threats to personal safety where their primary place of residence is at stake. There is therefore a fundamental imbalance of power where landlords and tenants are concerned. We propose that this imbalance should be acknowledged and addressed through the purposes of the legislation. We refer to legislation such as the Family Violence Protection Act 2008 (Vic) which acknowledges the highly gendered nature of family violence – that violence is primarily committed by men against women and children – in its preamble, and suggest that the Act could have a similar provision that acknowledged the disparity of power between landlords and tenants.

We also reference other consumer acts such as the Australian Consumer Law and Fair Trading Act 2012 (Vic), Competition and Consumer Act 2010 (Cth) and the Motor Car Traders’ Act 1986 (Vic) that explicitly name consumer protection as one of their objects. These Acts acknowledge that vulnerable people may be at risk of exploitation where traders have an incentive to sell goods and services at detriment to the consumer. The Act should therefore also be read to protect tenants from real estate agents and landlords who seek to rent properties that are dangerous, substandard or from any bullying or harassment that arise from the ongoing tenancy.

We propose that the purpose of the Act should be changed to a provision that expressly protects tenants as consumers of a service provided by the landlord, and acknowledges the imbalance of power between landlords and tenants.

Shared Housing

With the rise of rental prices, the existence of shared households has become more common – whether they be through housemates or rooming houses. Renters will often enter into sharehouse arrangements through online advertisements with little or no knowledge about their housemates beforehand, and often with little understanding about the legal differences between different sharehouse arrangements. In fact, each renter within a sharehouse may have different legal standing depending on whether or not they have exclusive possession of part of the property.

Licensees

Under current Victorian legislation, there is significant legal uncertainty with respect to shared housing arrangements, specifically around licensees, subtenants and rooming house residents. Licensees who are not named on the lease and do not have exclusive possession are not covered under the RTA. However, it is often difficult for advocates to give advice about whether a renter has exclusive possession of a room in specific cases, and the renter's legal standing will be significantly different if the Act does not apply to them. Where trained advocates and lawyers find this area of law extremely difficult, it can be almost impossible for the layperson renter to understand.

Although licensees are not named on leases, the large majority are still nonetheless living in the rental property as their primary place of residence, and in our experience, are often some of the most vulnerable renters in the system. Licensees are often not named on leases because they do not have a rental history or do not have enough income to be accepted on a lease. Some licensees have recently arrived in Australia, do not understand much English or come from a country with significantly different approaches to renting. As a result, they enter into informal and often unenforceable agreements with landlords from the same cultural community. If they are evicted, many of these renters do not have access to a safety net of family or friends for housing.

We note that many of these licensee disputes are eligible to be heard at VCAT anyway under the Australian Consumer Law and Fair Trading Act 2012 (Vic) ('ACLFTA') and by extension, the Australian Consumer Law ('ACL') under Schedule 2 of the Competition and Consumer Act 2010 (Cth). However, the ACLFTA and ACL are general Acts and do not provide specific protections for bonds, a fair process for eviction, right to quiet enjoyment, rights of entry, rights to good repair, etc. For many licensees, their head tenant/landlord may change the locks on the doors without warning and they may have little to no redress in to regain access to the property.

It is proposed that where a renter pays rent and lives somewhere as their primary place of residence, they should be covered under the Act regardless of whether they have exclusive possession of all or part of the property.

Case Study

- *Tenant A lives in a self-contained granny flat at the back of the property. Tenant B lives in the main house with another tenant, who is the only person on the lease and the “head tenant” that everyone pays rent to. Both Tenant A and Tenant B approached the tenant advocate for advice about the head tenant’s aggressive manner, repairs in the house and his attempt to personally evict them from the property without a VCAT order. Tenant A is in a clear sub-tenancy because of his exclusive possession of the granny flat, however, it’s unclear whether Tenant B would fall under the Act because he may be a licensee, even though they are experiencing exactly the same problems with the same landlord in the same property. Both Tenant A and Tenant B consider the property their primary address, and are at risk of homelessness if they are evicted from the property.*

Both matters are brought to the Tribunal. Tenant B’s application makes reference to the Australian Consumer Law in the alternative. The matters are heard together, and the VCAT member makes the same order for both tenants because the landlord does not rebut the presumption under section 507 of the Act.

Cotenant Disputes

Under the RTA, it is assumed that tenants will always act in concert or as one entity when in reality this is often far from the case. Sometimes shared houses will contain 3-5 people contributing to the total rent, and where one of those people does not meet their obligations under the Act, it is the other tenants, not the landlord, who must bear the cost. Furthermore, cotenant disputes rarely meet the criteria under the ACLFTA, so cotenants must make a claim through the Magistrates’ Court to determine any disputes, and accrue the costs, risks and complexities in dealing with a higher jurisdiction. Many tenants wrongly assume that their debt and property damage matters can be heard at VCAT, and feel a sense of injustice where their landlords has cheaper and better access to the legal process than they do. We note that VCAT may currently determine liability between cotenants in very limited situations of family violence under section 233C, and would urge for an expansion of this existing power.

While we understand in most cases it is appropriate for tenants to be jointly and severally liable for the rent and property, it is proposed that Members should have discretion in being

able to apportion compensation and rent claims amongst tenants in situations that require it. In some cases, individual tenants may admit to damage or debts owed in evidence such as email or text messages. This would also assist in family violence matters that do not fit under the strict criteria under section 233C and also assist in matters where there is no intervention order, but there is evidence of an aggressive, abusive tenant in a property. In these situations, the tenants living inside the property are the victims of abuse, violence and often live in constant fear of their cotenant, but may not have the means or the ability to move out.

This difficulty is compounded where a single tenant is not able to give a valid Notice of Intention to Vacate as an individual if their cotenants do not wish to move out. Single tenants cannot remove their names from the tenancy without their cotenants' and landlord's consent unless they commence a complex and lengthy VCAT process. Nor do cotenants have any power to evict abusive tenants from the property. Most do not wish to escalate this situation by calling the Police or getting an intervention order.

We propose that these co-tenancy matters should be decided in VCAT's jurisdiction, and specifically under a reformed Act with provisions for co-tenancy disputes.

VCAT is quicker and cheaper than the current alternatives, and in many cases, the cotenants do not take issue with the landlord but are required to name the landlord as a respondent to have their matter heard. We also note that many landlords have insurance where tenants owe compensation for rent arrears or damage; however, tenants are not able to take out similar insurance for the failures of their cotenants.

Case Study

- *Tenant A and B are a couple studying at university, and placed an advertisement for a new housemate to share the rent because they were having financial hardships. Tenant C was officially placed onto the tenancy agreement and bond, and the household ran smoothly for the first 2 months. However, then Tenant C started drinking more frequently, and became aggressive towards the other tenants; picking fights, and yelling racial slurs at Tenant A and B. On one occasion, they were forced to call the Police because of his abusive behaviour, and they believed he may have caused damage by punching the walls of his room.*

Tenant A and B began to feel fearful about staying in the house, and only returned to the property to sleep, frequently staying with friends and eating at restaurants to avoid conflicts with Tenant C. They contacted the real estate agent about Tenant C's behaviour, and the real estate agent told them Tenant C was not their problem, but

they would still be legally liable for the house for as long as their name was on the lease.

Tenant A and B sought advice about their dispute with Tenant C. They would prefer to stay in the property because it was close to their university, but were also willing to sign over the tenancy to Tenant C to resolve the dispute. But Tenant C refused to leave or sign any paperwork that would let the other tenants leave as he could not afford the rent himself.

Tenant A and B felt trapped. Even if they applied to VCAT to have their names removed, they do not have the money to pay double rent to live in another property in the meantime. They are also afraid that Tenant C would cause more damage to the house if they moved out while still being named on the lease. They cannot evict Tenant C themselves. Their only option is to negotiate with Tenant C directly who can be extremely volatile.

Disclosure of Landlord's Details

Where a real estate agent is used, a landlord is not required to disclose any additional personal contact details. However some real estate agents have taken to only providing the last name and first initial of the landlord, with others refusing to disclose the landlord's name at all. Not only does this affect the validity of the contract's intention to create legal relationships, but it makes it much more difficult for the tenant to assert their rights. Where landlords discontinue using a real estate agent and move to another, it may be very difficult for the tenant to enforce rights against the landlord if they cannot be contacted or found, and they may need to pursue the extra step of having VCAT order the personal details of the landlord be provided, as real estate agents rarely provide the information voluntarily.

Furthermore, as a Community Legal Centre that has been operating for more than 40 years, it is often difficult to undertake a comprehensive conflict check without the landlord's full name, and tenants must be referred to other services where there is a possible conflict of interest, which occurs with common surnames.

We propose that the landlord should be required to disclose their details in all circumstances, including their full name and a postal address for service of any documents. We note that where privacy issues are raised, that the landlords (obviously) know the residential address for tenants, and disclosure of the landlord's postal address will assist in balancing the differences of power between the two parties.

Service of Documents

While the majority of agents and landlords will behave in accordance with the spirit of the Victorian Civil and Administrative Tribunal Act 1998 (Vic) ('VCATA') and notify the tenants of upcoming VCAT hearings, we have also experienced real estate agents who merely post out notices to the property address where they know the tenants have vacated. In many of these cases, the landlord or agents have primarily communicated with the tenants through text message or email, but have remained conspicuously silent through the other avenues of communication. Where tenants are unfamiliar with the procedure for bonds and compensation claims, it is sometimes not until months later that they discover there has already been a hearing, at which point, they only have 14 days to apply for a review at VCAT.

Many tenants may be transient – they may relocate to different states, countries, or they may be affected by adverse life events like family violence and will need to move to emergency accommodation. In these cases, a tenant's mobile number and email address may be more fixed than their postal address, and email/SMS contact falls in line with current industry and community practice.

We therefore propose that any attempt to serve Notices or Applications for the purposes of the RTA or VCATA should not be limited to service by post. We propose that the Act should contain a provision that requires the real estate agent or landlord to make all reasonable attempts to notify or contact the tenant, as well as serving the tenant by post.

Case Study

- *The tenants moved out of a property after receiving a notice to vacate, and sought advice about their bond. After checking their bond number, the advocate found out there had been a hearing and the entirety of the bond had been paid out to the real estate agent, and an order had also been made for additional compensation.*

The tenants were not made aware of the bond and compensation hearing because the real estate agent had used the property address they'd moved from, even though they obviously knew the tenants had vacated. The real estate agent made no attempt to obtain the tenants' new address, to notify the tenants of the VCAT application in any other way although they had the tenants' emails and phone numbers, and had been consistently emailing the tenants about their move, carpet cleaning, etc.

There is no further obligation under the Act for the agent to do more than serve notices and applications via post. Consequently, the VCAT member made an order in favour of the landlord because the tenants were not present at the hearing.

The tenants disputed a number of the items on the order applied for a review at VCAT within 14 days. At the review hearing, the landlord's claim was reduced to one fifth of the amount on the original order.

Due to the failure of the real estate agents to adequately notify the tenants of the claim, this matter took significantly more time and work to resolve from the tenants, VCAT and the advocate. The tenants indicated that they had been open to negotiating on the bond, but were never given an opportunity to do so from the real estate agents.

Enhance Landlord and Real Estate Agent Accountability

The current system requires tenants to be proactive consumers in asserting their rights, but does not provide any real incentives for landlords to adhere to the Act. Given that only a small percentage of tenants are willing to bring VCAT applications for their matters, landlords and real estate agents will often repeatedly and knowingly breach the Act relying on the knowledge that majority of tenants will not complain because of ignorance of the law, fear of eviction or a reluctance to damage the landlord-tenant relationship.

While there are penalties available to Consumer Affairs, the penalties rely on tenants making a complaint, and in many cases fines are not issued until the landlord has amassed a large number of these complaints. Additionally, many breaches of the Act (such as ongoing repairs) do not have a civil penalty component, and so multiple breaches can only be treated as individual instances rather than a continued pattern of behaviour.

Our proposals in this area therefore address the issue of landlord and property information being more transparent and publicly available for tenants, and also ways in which landlords and agents can come to the attention of Consumer Affairs without placing the burden on the tenant to make a complaint.

Landlord Transparency

While repeat problem tenants may be listed on a tenancy database under certain circumstances, there is no equivalent database for landlords.

ECLC has spoken with many tenants who have vacated properties due to ongoing repair issues or harassment from the landlord or agents, with the knowledge that the same issues will continue to the next tenant who rents the property. In a handful of cases, the subsequent tenants of the same real estate agent or landlord have attended ECLC for advice, but the service is unable to take action in a systematic way due to our legislative confidentiality and privacy requirements.

Similarly, real estate agencies or particular property managers will engage in repeated breaches of the Act (for example, with respect to rights of entry) across a number of properties and landlords.

It is proposed that VCAT should keep a searchable, public list of orders made against landlords and real estate agents.

Where multiple, similar orders have been made against the one landlord, the details should be forwarded to Consumer Affairs Victoria or another independent body to investigate. After a landlord has attended VCAT on multiple occasions for the same breaches there can be no question that they are aware of their responsibilities under the Act, and have chosen not to abide by them.

It is proposed that real estate agents should also be investigated or audited by Consumer Affairs Victoria where there are instances of multiple breaches at VCAT that show a lack of knowledge, understanding or respect for the Act.

Given the systematic nature of the problem, we would also propose that Consumer Affairs keep a register of landlords, much in the same way as a current register exists for Rooming House Operators. This would give Consumer Affairs the ability to suspend a landlord's registration where there are repeated breaches to be reinstated once problems have been fixed, and then issue civil penalties for renting out unregistered properties.

Case Study

- *Tenant A seeks advice about his high water bills at his property over the last five years and finds out that his property is not separately metered. If the property is not separately metered, the landlord is wholly responsible for paying for the utility usage costs; however, the real estate agents had been passing these costs to the tenant. The advocate assists the tenant in successfully making a compensation claim of several thousand dollars against the landlord, and real estate agents also attend VCAT.*

Four months later, Tenant B seeks advice about a similar matter where his property is not separately metered. While Tenant B has a different landlord, that landlord is being represented by the same real estate agent who have continued to pass on water charges to Tenant B although, having attended a VCAT hearing about a similar matter, they are now undoubtedly aware this is a contravention of the Act.

At the same time, Tenant C also seeks advice about their water bill. Tenant C has moved into Tenant A's old property, and the landlord has retained a new real estate agent. That property is still not separately metered, but the bills are passed on to Tenant C by the new real estate agents.

Real Estate Agent Regulation

Tenants often never have direct contact with a landlord where real estate agents are involved, even though they have entered a legally binding contract with the landlord. Tenants therefore tend to establish ongoing interpersonal relationships with their individual property managers. While many real estate agents do assist landlords with complying with the Act and provide fair advice, there is no standard code of conduct. Unprofessional conduct from real estate agents can cause major problems for tenants, and complaints to the REIV have not resulted in any action being taken.

Unprofessional conduct can range from rare or poor file noting, lack of response to emails or calls, to more concerning behaviours such as bullying, yelling, use of inappropriate language, and attendances at the property with little or no notice to tenants. While there is a range of behaviours, they can all have a significant impact on tenants – for example, where property managers change, if the file is not comprehensive then tenants will often have to reinform the agent of ongoing repair issues. The new agent is often ignorant of other matters that were negotiated at the start of the tenancy, such as one instance where the previous agents promised a gardener that would regularly attend to the lawns and yards.

We therefore propose that the regulation for real estate agents need to be more comprehensive, that as a professional body they should be subject to ongoing and continuous training in the law, which includes the RTA, as well as other laws that would apply such as the Australian Consumer Law and Fair Trading Act 2012 (Vic).

We also propose for complaints about agents to be investigated by an independent body such as Consumer Affairs, and for agencies to have their files regularly audited to ensure compliance with the RTA in addition to their trust accounting obligations.

Use of the Rent Special Account

Landlords do not have an incentive to make repairs in a timely manner, especially when those repairs are expensive to make. The Rent Special Account currently exists under section 485 of the Act to address this issue, but is rarely used because of length of time it is required to bring a repair matter to VCAT, and because VCAT Members will rarely make orders to withhold rent.

For example, the process for non-urgent repairs requires 14 days under the breach notice, another couple of weeks for a CAV Inspector to attend and complete a report, then a VCAT application and a time for the application to be heard. It may be 2 months before tenants are able to request VCAT make the order, by which time the repairs may have been carried out. However, even if repairs have not commenced by the time of the VCAT hearing, Members often allow the landlord extra time to complete repairs at the first hearing and will not necessarily make an order for the Rent Special Account.

We propose that an order for payment into the Rent Special Account must be automatically made where it is found that the landlord was notified of a breach of duty, and failed to attend to the repair, with limited exceptions for a VCAT member to dispense with the requirement.

Given the length of time required to bring repair issues to VCAT, we also propose that VCAT be able to order compensation to the tenants from the Rent Special Account for any inconvenience and loss of amenities that they may have suffered during the repair period.

Additionally, we see merit in Consumer Affairs inspectors having discretionary power to allow the rent to be paid into the Rent Special Account, and for amounts to be refunded to the landlord once repairs have been completed. The Inspector is an independent third party to the dispute, an expert in their field, and can assess the repairs on-site. Where there is a clear failure of the landlord's to maintain the property in good repair, such a power may be able to avoid the time and money spent on attending VCAT proceedings, and other, less clear-cut cases would still be able to be heard in front of a Member.

Termination of Tenancies

In the current rental market, it is much easier for landlords to find tenants for properties than vice versa, although the extent of which will depend on each property and location. The Act should therefore acknowledge that a landlord who initiates the termination of a tenancy puts tenants in a much more difficult position than where tenants initiate the termination.

Reduced NITV by Tenant – Section 237

Under section 237, tenants may give a reduced notice of intention to vacate (14 days rather than 28 days) where they have been issued with a notice to vacate by the landlord.

However, this section specifically does not apply to a NTV under section 261 for fixed term tenancies, and only applies to a fixed term tenancy where the termination date is on or after the end of the fixed term.

In practice, most fixed term tenancies continue on to periodic tenancies after the fixed term expires. There is therefore often an expectation from tenants that a fixed term tenancy will generally continue beyond the initial fixed period of time (usually of 12 months), and most tenants do not expect to be asked to leave at the end of the fixed term period. Tenants may sign several 12-month fixed term contracts over the period of their tenancy, or may live in a property for many years on a periodic term.

Therefore, when a landlord gives the tenant a 60 day or 90 day notice to vacate under a fixed term tenancy it is often unexpected. Furthermore, tenants cannot make full use of the notice period to search for a new property: if the tenant finds a suitable property early into the notice period, then they will either need to break the lease or pay rent on two properties. This means that tenants are only able to search for properties limited to availability around the end of the fixed term tenancy without the flexibility of a reduced notice of intention to vacate.

We propose that section 237 to be modified to include where landlords issue a Notice to Vacate under a fixed term lease, and to allow tenants to issue a reduced notice of intention to vacate that specifies a termination date before the end of the fixed term. Where the landlord requests that the tenants vacate the property through no fault of their own, it is reasonable for the landlord to make allowances for the tenant to find a suitable property.

We also propose that section 237(1)(c) apply broadly not just to public housing, but to all offers of non-profit, rent-subsidised housing, especially given the move towards a social housing model in Australia. Tenants who are eligible for social housing must broadly meet the same requirements as those who are eligible for public housing, and suffering from significant financial hardship. Often it is a matter of luck of which provider makes the offer of housing, and tenants should not suffer a disadvantage under the law just because the landlord happens to be a non-profit organisation rather than the Director of Housing.

Extended NTV for Long-Term Tenants

ECLC occasionally sees long-term tenants who have been living in a house for decades, sometimes more than 20 years. They have had a long history of friendly relations with their landlord, but usually seek advice because the landlord or the management of the property has changed – either through a change of real estate agents or landlords – and often they are asked to leave because the property is to be sold.

For these tenants, they have lived a significant portion of the lives within the same house and same community. Many of them have made repairs or valuable additions to the property at their own cost, and treated it the house as if it were their own. They have usually also accumulated a large amount of personal property at the house. The tenants are not familiar with dealing with the current rental market, and sometimes are not financially prepared for rent and bond at a new property, as the rate at their old property may not have kept up to date with the market rate.

For these reasons, finding a new rental property and moving out of the existing property are much more difficult and laborious for these tenants. Furthermore, many of them had intended to live at the house for much longer, and do not usually expect to receive a notice to vacate. In many cases they seek further advice because they have attempted to negotiate with the new landlord or agent and been unsuccessful in obtaining an extension of time.

We propose that given the particulars of long term tenancies, that these tenants ought to be afforded an extended notice period in order to find a new property, and to move their belongings from the old property.

Case Study

- *The tenant had been living in the property for 25 years, and due to the long tenancy, had become friends with the landlord. Unfortunately, the landlord passed away, and her daughter inherited the property. As the land was worth a significant amount of money, the daughter decided to sell, and issued the tenant with a 60 day Notice to Vacate under section 259 as the lease was periodic.*

The tenant and advocate tried to negotiate for an extended period of time to move out, however, this request was refused by the real estate agent and the new landlord. Due to difficulties in finding a new property to accommodate for his disability and personal property, the tenant became homeless. The only possible redress under the current laws was under section 354, which grants a maximum of 30 days to delay in executing a warrant of possession, and only at the VCAT member's discretion. In this case, the tenant needed more time to find a suitable property.

Challenging NTV on Retaliation

Under section 266(2), a notice to vacate is not valid if it is given as a response to tenants exercising their rights under the Act, for example, where it is used as a form of retaliation by the landlord to avoid making repairs. However, this subsection to challenge only applies to sections 261 and 263 – where there is an end of a fixed term tenancy and where there is no reason given on the notice to vacate.

However, in many cases the landlord will simply use other notice reasons as a form of retaliation such as repairs (section 255), landlord or family to occupy premises (section 258) or selling property (section 259). It is common for notices to vacate to be issued immediately after the tenant has taken action about the property, such as sending a breach of duty to the landlord or getting a successful VCAT order. A notice under section 258 will not have a particular evidentiary proof of the reason, merely a statement of evidence from the landlord.

We note that there are penalty provisions associated with reletting a property within 6 months of issuing such notice under section 264. However, such penalties require a tenant to proactively monitor advertisements about the property over 6 months, make a complaint to Consumer Affairs Victoria, for Consumer Affairs to take action, and then to make their own claim for compensation. Tenants also may not necessarily keep receipts or evidence of their losses up to 6 months after moving out of a property. This is a huge burden for tenants when the injustice has been entirely perpetrated by the landlord, often after the landlord has refused to address significant repairs in the property.

We propose that expanding section 266(2) to encompass all notices to vacate where there is no alleged fault from the tenant would be more equitable than relying on the current system. This would prevent the inconvenience and financial loss to the tenant from vacating the property in the first place, rather than seeking to address the loss through compensation up to 6 months after the fact.

Specific Issues and Client Groups

Bond Requirements – Section 31

Under section 31, a landlord can request any amount of bond as long as the rent exceeds \$350 per week. While this figure may have been substantial when it first applied, the figure has not increased with increases in rental prices and the median rent for a rental property in metropolitan Melbourne is currently \$370.00 per week². When combined with the increase of shared households, vulnerable tenants are sometimes asked to provide more than three times the amount of the monthly rent.

We propose that every bond should be capped at one month's worth of rent, and see no reason why it is necessary for landlords to request more without the oversight of VCAT.

Modifications to the Property

Often older tenants or tenants with disabilities will need to make modifications to a rental property, such as having assistance bars installed in a bathroom. These modifications are being made with the consent of the landlord, and are paid by the tenant. However, upon vacating the property, landlords will ask the vacating tenant to pay for the modifications to be removed – often costing thousands of dollars.

Given that the modifications are purely cosmetic and provide added utility to the property, we propose that tenants should not be required to rectify modifications where they are required for use in the case of disability.

Better Protection for Tenants Experiencing Family Violence

There is currently very limited protection under the Act for people experiencing family violence. There is an assumption in the Act that protected people or affected family members of an intervention order will want to stay in the property when most move out early due to safety concerns as well as due to the financial burdens of paying the rent as a single renter. Many of the legal remedies (such as the determination of liability between

² <http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/research,-data-and-statistics/current-rental-report>

cotenants) can only be sought where a tenant has retained possession of the property, and this does not reflect our experiences assisting with family violence victims.

We note that our colleagues at the Tenants' Union of Victoria have provided a comprehensive written submission to the Family Violence Royal Commission about reform of tenancy law in this area, and support their recommendations in this area.

Summary of Recommendations

Better Protection for Renters

Purpose of the Act

1. The purpose of the Act should be changed to a provision that expressly protects tenants as consumers of a service provided by the landlord, and acknowledges the imbalance of power between landlords and tenants.

Shared Housing

2. Where a renter pays rent and lives somewhere as their primary place of residence, they should be covered by the Act regardless of whether they have exclusive possession of all or part of the property.
3. Cotenancy matters should be decided in VCAT's jurisdiction, and specifically under a reformed Act with provisions for cotenancy disputes.

Disclosure of landlord's details

4. The landlord should be required to disclose their details in all circumstances, including their full name and a postal address for service of any documents.

Service of Documents

5. The Act should contain a provision that requires the real estate agent or landlord to make all reasonable attempts to notify or contact the tenant about all notices and applications under the Act, as well as serving the tenant by post.

Enhance Landlord and Real Estate Agent Accountability

Landlord transparency

6. VCAT should keep a searchable, public list of orders made against landlords and real estate agents.
7. Where multiple, similar orders have been made against the one landlord, the details should be forwarded to Consumer Affairs Victoria or another independent body to investigate.

8. Real estate agents should also be investigated or audited by Consumer Affairs Victoria where there are instances of multiple breaches at VCAT that show a lack of knowledge, understanding or respect for the Act.
9. That Consumer Affairs Victoria keeps a register of landlords, in the same way as a current register exists for Rooming House Operators.

Real Estate Agent Regulation

10. For the regulation for real estate agents to be more comprehensive; that as a professional body they should be subject to ongoing and continuous training in the law.
11. For complaints about real estate agents to be investigated by an independent body such as Consumer Affairs Victoria, and for agencies to have their files regularly audited to ensure compliance with the RTA in addition to their trust accounting obligations.

Use of the Rent Special Account

12. An order for payment into the Rent Special Account must be automatically made where it is found that the landlord was notified of a breach of duty, and failed to attend to the repair, with limited exceptions for a VCAT member to dispense with the requirement.
13. VCAT to be able to order compensation to the tenants from the Rent Special Account for any inconvenience and loss of amenities that they may have suffered during the repair period.
14. Consumer Affairs Victoria inspectors to have discretionary power to allow the rent to be paid into the Rent Special Account, and for amounts to be refunded to the landlord once repairs have been completed.

Termination of tenancies

Reduced NITV by Tenant – Section 237

15. Section 237 to be modified to include instances where landlords issue a Notice to Vacate under a fixed term lease, and to allow tenants to issue a reduced notice of intention to vacate that specifies a termination date before the end of the fixed term.

16. Section 237(1)(c) to apply broadly not just to public housing, but to all offers of non-profit, rent-subsidised housing.

Extended NTV for long-term tenants

17. In long term tenancies, tenants ought to be afforded an extended notice period.

Challenging NTV on retaliation

18. Expand section 266(2) to allow notices to vacate where there is no alleged fault from the tenant to be challenged on the basis that the notice is retaliatory.

Specific Issues and Client Groups

Bond Requirements - Section 31

19. Every bond should be capped at one month's worth of rent.

Modifications to the Property

20. Tenants should not be required to rectify modifications where they have been consented to by the landlord, and are required for use in the case of disability.

Better Protection for Tenants Experiencing Family Violence

21. We support our colleagues at the Tenants' Union of Victoria in their written submission to the Family Violence Royal Commission about reform of tenancy law in this area.