



Fairer Safer Housing: August 2015

Submission to the consultation paper on the Review of the Residential Tenancies Act





Introduction

CHP welcomes the review of the Residential Tenancies Act. We hope that this review will provide an opportunity to improve the protections that will assist low income households to secure and sustain a home in the private rental market.

Renting traditionally been seen as a tenure of transition, between moving out of the family home and in to home ownership. However, as noted in the consultation paper, 'housing careers' are no longer a linear progression, from family home to a period of renting, to the final destination of outright home ownership. People now move in and out of home purchasing, ownership and the rental sector, and indeed remain in the rental sector for longer periods (Beer & Faulkner 2009).

Since the 1980s there has been a consistent increase in the proportion of households in Australia accommodated in the private rental market, and in those living in the rental market for long periods (Hulse et al. 2012). For many households, in fact a third of private renters, rental housing is no longer a tenure of transition but a permanent home (Stone et al. 2013).

While there is no 'typical' rental household, renters are more likely to have lower incomes, and be younger than those with mortgages and those who own their home outright (Hulse et al 2012). Renters also experience high rates of housing stress. The regulation of the private rental market must take into account the fact that many renters are on a low income and may be renting for life.

Unfortunately, for many low income renters, their housing is characterised by instability, lack of safety and privacy, and a lack of both belonging and physical comfort (Hulse & Saugeres, 2008).

Low income households in the private rental market and the risk of homelessness

For every low income household in social housing, there are two in the private rental market (Hulse et al 2012). In 2014, more than 300,000 tenants in the private rental market in Victoria received Commonwealth Rent Assistance (SCRGSP, table GA.20, 2015). Of these, 113,763 were spending more than 30 per cent of their income on rent, and a further 36,986 were paying more than half of their income in rent.

In a recent analysis of housing affordability in the private rental market Hulse et al (2013) found that 78 per cent of households in the lowest income quintile in Victoria are paying rents that are unaffordable to severely unaffordable. This increases to 88 per cent in Melbourne. It is these households that are most at risk of homelessness in the private rental market. For households with incomes increasing by CPI, any increases in rent can turn a

financial situation from manageable to unmanageable. In ‘hot’ housing markets where landlords are increasing rents every six to twelve months, these tenants are left with very little choice but to leave in search of a cheaper alternative, and this can result in homelessness.

The same research estimates an absolute shortage of 43,200 homes in Melbourne that are affordable to those in the lowest income quintile, rising to 51,800 when those dwellings are occupied by higher income households are taken into account. This shortage means that within the private rental market those on very low incomes have little capacity to “shop around” or exercise their rights as consumers. Often the choice consumers face is between sub-standard or unaffordable housing, or no housing at all.

In 2013-14 30,900 people in the private rental market sought help from homelessness services in Victoria (AIHW 2014). This may have been for help with rent arrears, or in finding a more affordable rental property.

While there are many legislative issues faced by people in the private rental market, affordability and allocation are the greatest challenges for people at risk of or experiencing homelessness. It is unlikely that the Residential Tenancies Reform alone will overcome these barriers and greater investment is needed in non-market social housing options for these households.

This submission gives a brief overview of the changes required to make rental housing fairer and safer for low income Victorians.

Fairer housing

Objectives of the Residential Tenancies Act (RTA)

While the current Residential Tenancies Act “seeks to balance the rights of tenants and landlords”, this is rarely a relationship of equals. Particularly for low income renters, stronger regulation is needed to redress the power imbalance where one party has the capacity to render the other homeless.

CHP believes that the objectives of the RTA should be amended to have a greater emphasis on housing security for tenants,

Security of tenure

The current legal rights afforded to renters make their tenure inherently insecure. They have little control over the physical amenity of their property, and no certainty about how long they can live there beyond the average 12 month lease (Hulse et al 2011). CHP welcomes the consultation paper’s focus on options for increasing security for renters.

In our experience, it is rent increases more often than the end of a lease, that triggers the need for low income households to move. As such we believe that the reforms should focus on measures that improve the security of occupancy for rental households, beyond longer term leases. This would include reforms that provide certainty and predictability of rent increases within a tenancy.

Rent increases

As noted above, over 100,000 low income renters are paying more than a third of their income in rent. Under these circumstances, any increase in rent above CPI, pushes households further into housing stress and places them at greater risk of homelessness. The RTA currently allows landlords to increase the rent every six months outside a lease agreement (that is for households on periodic tenancies), with little limitation on the rate of increase beyond the requirement that it not be 'excessive'. This can result in a tenant falling in to arrears, or as is often the case with older renters, using any additional savings to pay increased rent, that places them in a far more precarious housing situation when the next rent increase comes.

To improve security of tenure for renters this review should consider limitations on rent increases within a tenancy. There are a number of ways in which this can be done, either by limiting rent increases to CPI or as in Germany, to no more than a certain amount within a three year period.

Long term leases

The RTA currently allows for tenancy agreements of up to five years, yet the standard tenancy agreement in Victoria is 12 months. The barrier to longer term leases is not the five year limit, but the associated protections for tenants and landlords.

Long term leases are a feature of many other private rental systems around the world. Often these longer leases are coupled with strong protections around eviction and regulation of rent increases within the tenancy. Some jurisdictions have no fixed term leases but clear limits on eviction and the parameters for rent increases.

Longer term leases may be more attractive for tenants if they are able to break the lease without significant penalty, or if the penalties for lease break by either a tenant or landlord were commensurate with the impact on each party. For example, Belgium, with a similar sized private rental market to Australia, has nine year leases as a standard lease agreement. Under this agreement tenant penalties for breaking a lease within the agreement amount to three months' rent in the first year, 2 months' rent in the second year and one months' rent in the third year. The ability for a landlord to break the lease is much more restricted and significant compensation is payable, with compensation of 18 months' rent payable if the lease is broken in the first three year period.

In Ireland, both periodic and fixed term tenancies default to a four year agreement after six months. The tenant can break the lease with between 4 and 8 weeks' notice depending on

the length of tenancy. CHP believes this should be coupled with limitations on rent increases within a tenancy, or the ability for tenants to break a lease with no penalty where the rent increase is over a certain pre-defined limit.

No reason notices to vacate

The ability of the landlord to require a tenant to vacate a property, through no fault of their own, is one of the features that contribute to insecure tenancies for renters. In particular the ability of a landlord to require a tenant to vacate for no reason contributes to tenants feeling insecure. It also but actively discourages tenants from exercising their rights to repairs and quiet enjoyment, as many tenants fear being evicted if they complain. While retaliatory evictions are not allowed, they are difficult to prove.

In any event, the possibility of being evicted for no reason is enough to deter tenants from exercising their rights, particularly at the lower cost end of the rental market.

Alarming the concept of retaliatory eviction only applies where a tenant *has* attempted to enforce their rights. A 120 day notice to vacate can be serviced to a tenant, simply because a landlord dislikes them, and a tenant has no recourse but to move. These notices should be abolished to provide greater security of tenure to renters.

Eviction processes

There are a number of reasons a tenants can be required to vacate a property, either through their own actions, such as non-payment of rent or those of the landlord, such as a desire to move back in. The period of notice for a tenant can range from 14 to 120 days (or immediate notice in the case of a tenant causing damage or danger to other residents). In many cases notice periods are too short to allow tenants to secure adequate alternative accommodation. The length of notice periods should be subject to review.

Given the shortage of social housing, eviction from private rental for many low income households can result in a long period of housing instability including homelessness. In particular eviction for rent arrears often places people in a precarious housing situation. However homelessness services have found that with a small amount of financial assistance eviction can often be avoided. Unfortunately, homelessness services have also found that many households don't know where to seek help, or only do so after being served with a notice to vacate, and having moved out as a result.

Rent arrears can arise for a range of reasons including: a sudden loss of income, due to illness or unemployment; hospitalization; unexpected expenses and ongoing affordability issues. Currently these issues often result in homelessness.

CHP proposes that new procedures be introduced for eviction due to rent arrears. This would include changing the Notice to Vacate for rent arrears to a Notice of Rent Arrears. This notice should contain information about steps needed to address the rent arrears, assistance available and instruction to contact the landlord.

To proceed to eviction where a tenant has not responded to the notice of arrears, landlords should be required to make at least two attempts to contact them.

Similar procedures are in place to prevent disconnection of electricity and gas due to financial hardship. The Energy Retail Code places an obligation on the energy retailer to identify households in financial hardship, offer payment plans and have dedicated financial hardship policies. In addition it sets out the procedures required prior to disconnecting a household (ESC 2015).

In public housing, tenants can accrue substantial arrears before being issued with a Notice to Vacate. This makes it extremely difficult to address the arrears via a payment plan at the time a household seeks assistance. The Notice of Arrears could also be used to place a positive obligation on the landlord to notify the tenant of arrears and put forward ways in which to resolve the issue before any eviction procedure can be taken.

Shifting the balance in favour of home: Property modifications and pets

In many instances, the Residential Tenancies Act requires the consent of the landlord before a tenant can undertake certain activities. If the landlord refuses, the tenant is only able to challenge this decision in VCAT. CHP believes that in some cases consent should be implied and the onus should be on the landlord to withdraw consent through VCAT, rather than placing this responsibility on the tenant.

Many people make minor alterations to their house to make it a home, including installing curtains, hanging pictures and painting walls. Tenants in rental housing cannot undertake any of these things without the consent of the landlord. And if they do, they must make good at the end of the tenancy, or pay the landlord the cost of so doing. Minor property modifications of this kind should be allowed as of right for tenants.

Tenants who acquire a disability while renting, through accident or ageing, should be allowed to make non-structural modifications to their property to allow them to remain living in the home, such as the installation of grab rails, or ramps. CHP is aware of instances where tenants have required minor home modifications, such as the removal of a shower step, and have been refused by the landlord. This has resulted in the tenant moving in to an aged care facility earlier than necessary, because in-home care could not be provided. While the landlord should be notified prior to any proposed change, the onus should be on the Landlord to withdraw consent to the modification.

Similarly many households wish to keep pets. While the landlord should be notified of a pet on the premises, the onus should be on the landlord to withdraw consent via VCAT. Tenants would be responsible for remedying any damage caused by the pets.

Tenancy databases

Recent reforms to tenancy database legislation have improved the operation of these services, however tenants still face difficulties in accessing their information, being notified of listings and contesting these listings.

The operation of tenancy databases should be further reviewed. In particular, tenants should be able to access their information on tenancy databases free of charge. While CHP acknowledges that there is a cost to maintaining these databases, they are primarily a service to real estate businesses and thus the cost to access information should be borne by the Real Estate Agent or Landlord, not listed tenants.

CHP has also been made aware that one major database conducts credit checks simultaneously with a database search, and if tenants do not opt out of this service they can be contacted by credit management agencies. Careful consideration should be given to the ways in which these databases can use the personal information of those listed.

Discrimination in property allocation

Low income tenants find it extremely difficult to access the private rental market. A lack of rental history also confronts young people renting for the first time. Without parental guarantee it can be difficult for a young person to secure rental housing.

Unfortunately protected criteria for discrimination often go hand in hand with low incomes, and it is difficult to determine whether discrimination or landlord decision making processes regarding income are at play. The Victorian Equal Opportunity and Human Rights Commission (2012) has made a number of recommendations regarding training and education for estate agents which should be pursued.

Safer housing

Minimum standards

While there are now minimum standards for health and safety in place for rooming house accommodation these do not apply to the wider rental market. This means that properties can be let without hot water or heating and without window coverings. This lack of standards particularly affects low income renters, as it is these households that have fewer options and less market power, that are left with poorer quality housing. In a 2010 survey of low cost rental properties in Melbourne, VCOSS found that 10 per cent did not have fixed heating, 19 per cent had extensive mold and 10 per cent had a visible lack of weather proofing (holes in roof/walls, wide gaps) (VCOSS,2010). This poor quality of housing is closely related to poor physical and mental health (Mallett et.al., 2011).

CHP supports the minimum standards outlined in the VCOSS paper *A Future Focused Housing Standard (2009)*. These standards are basic requirements for decent housing and include:

- A dwelling that is weatherproof
- Fixed heating,
- Window coverings
- Hard wired smoke detectors
- Locks on doors and windows
- Openable windows fitted with flyscreens
- Fixed cooking appliances

The review of the RTA should consider codifying the basic housing standards required to support health and wellbeing.

Rooming houses and other marginal forms of tenure

Rooming houses and other marginal forms of tenure such as caravan parks, offer residents fewer protections than those in the general private rental market. This situation is somewhat perverse as tenants in marginal housing are far more vulnerable, as they have fewer housing options and substantially less market power than other tenants. In rooming houses, tenants are able to be evicted more quickly, with shorter notice periods and worse conditions. Conversely tenants are also able to leave more quickly with fewer penalties and shorter notice periods.

In CHP's experience, even the limited rights that tenants currently have are regularly breached by rooming house operators, and these actions are rarely challenged. Due to the vulnerability and ongoing exploitation of tenants in the rooming house sector, CHP believes the regulatory regime for rooming houses should be strengthened. This should include a licensing regime for rooming house operators and changes to the RTA to allow third-party action to be taken in relation to rooming house issues, where a representative body can establish standing before VCAT.

Conclusion

Low income households that fall out of private rental housing have few, if any immediate housing options. With 40 per cent of renters in Victoria in the lowest two income quintiles, a significant minority of households face the rental market with little bargaining power and fewer choices.

The review of the RTA should redress the balance in favour of housing quality and security for tenants.

References

Beer A & Falukner D, 2009, *21st century housing careers and Australia's housing future*, AHURI final report. 128, Australian Housing and Urban Research Institute, Melbourne

ESC (Essential Services Commission) 2014, *Energy Retail Code*, accessed at <http://www.esc.vic.gov.au/getattachment/bd6bae17-f639-4c68-a5dc-a4de803a48ae/Energy-Retail-Code-Version-11-January-2015.pdf> >

Hulse, K, Burke T, Ralston L, & Stone W, 2012, *The Australian private rental sector: changes and challenges*, AHURI positioning paper no. 149, Australian Housing and Urban Research Institute, Melbourne

Hulse K, Milligan V and Easthorpe H, 2011, *Secure occupancy in rental housing: conceptual foundations and comparative perspectives*, AHURI final report No.170, Australian Housing and Urban Research Institute, Melbourne

Hulse, K., Reynolds, M., Stone, W. and Yates, J., 2015, *Supply shortages and affordability outcomes in the private rental sector: short and longer term trends*, AHURI Final Report No.241. Melbourne: Australian Housing and Urban Research Institute.

Hulse K & Saugeres L, 2008, *Housing insecurity and precarious living: an Australian exploration* AHURI Final Report No.124. Melbourne: Australian Housing and Urban Research Institute.

Mallett S, Bentley R, Baker E, Mason K, Keys D, Kolar V & Krnjacki L, 2011, *Precarious housing and health inequalities: What are the links?*, Hanover Welfare Services, University of Melbourne, University of Adelaide, Melbourne Citymission, Australia. Accessed at < <https://www.vichealth.vic.gov.au/media-and-resources/publications/precarious-housing-and-health-inequalities>>

SCRGSP (Steering Committee for the Review of Government Service Provision) 2015, *Report on Government Services 2015*, Productivity Commission, Canberra.

Stone, W., Burke, T., Hulse, K. and Ralston, L. , 2013, *Long-term private rental in a changing Australian private rental sector*, AHURI Final Report No.209. Melbourne: Australian Housing and Urban Research Institute.

VCOSS (Victorian Council of Social Service), 2009, *A Future Focused Housing Standard*, VCOSS, Melbourne 2009
<http://www.vcooss.org.au/documents/VCOSS%20docs/Housing/VCOSS%20minimum%20housing%20standards%20Oct%2009.pdf>

VCOSS (Victorian Council of Social Service), 2010, *Decent not dodgy*, accessed at <http://vcoss.org.au/documents/VCOSS%20docs/Housing/VCOSS%20DND%20Final%2028_6.pdf>

VEOHRC (Victorian Equal Opportunity and Human Rights Commission), 2012, *locked out: Discrimination in Victoria's private rental market - Aug 2012*, accessed at <<http://www.humanrightscommission.vic.gov.au/index.php/our-resources-and-publications/reports/item/150-locked-out-discrimination-in-victorias-private-rental-market-aug-2012>>