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Introduction

The Council to Homeless Persons (CHP) welcomes the opportunity to provide a submission to the Regulation of property conditions in the rental market Issues Paper (the Issues Paper) as part of the Residential Tenancies Act Review.

Property conditions in residential housing

While many rental properties across Victoria are well maintained and in relatively good condition, a significant minority fail to meet basic community standards. Often, these substandard properties place residents at risk of health problems or injury, result in them incurring unreasonably high energy costs for heating or cooling, fail to provide a secure living space, and/or fail to provide basic amenities for living, such as cooking facilities (VCOSS, 2009 and Mallett et al, 2011).

Fierce competition for access to rental properties, particularly at the cheaper end of the market, means that vulnerable tenants are effectively forced to accept substandard conditions that compromise their health and welfare.

It is telling that substandard properties tend to rent at prices equivalent to modest properties that do meet basic standards (VCOSS, 2009). However, they tend to be rented to more vulnerable tenants, who are outcompeted for more attractive options. This indicates that market forces are inadequate to deliver acceptable standards in the rental market, and regulation is needed.

It is an anachronism that robust standards are not in place for rental housing, given the role of standards in protecting consumers of other products with arguably less impact on people's health and wellbeing. Housing plays a fundamental and critical role in enabling individuals and families to live safe and healthy lives, and must provide a basic level of safety and amenity to all housing consumers. It is time for reform to recognize the importance of rental housing standards in the overall health and welfare of our community.

Property conditions at the beginning of a tenancy

Cleanliness

In a residential tenancy agreement, tenants gain access to a property the day their lease commences. If a tenant arrives at the property and it is not clean, they have little recourse to have this addressed as the term used in the Act of 'reasonably clean' is nonspecific and unclear, and, as noted in the Issues paper is subjective.

By contrast, when a tenant leaves a property the agent or landlord typically provides vacating information that includes a checklist outlining the condition in which the property must be left in order to claim their bond in full. This usually includes requirements such as ensuring: surfaces are cleaned, oven is cleaned, carpets are steam cleaned, tiles mopped or wiped, and rubbish or possessions are removed. In the case that an agent or landlord deems the tenant has not left the property in a 'reasonably clean' condition, they are able to withhold a portion of the bond to bring the property up to standard.

CHP recommends that CAV remedy this imbalance by developing a checklist, similar to those used by real estate agents, clarifying the meaning of 'reasonably clean' in the Act, and outlining the condition the property must be in when a tenant moves in.

A landlord or agent should provide this checklist to the tenant on the day the person collects their keys, and, if a property does not meet these standards, the tenant should be entitled to compensation, or able to insist the landlord or agent remedy the problem using professional cleaning services.

Security

Housing security is important for people's personal safety, as well as for their perception of their safety – an issue that particularly contributes to the mental health and wellbeing of women escaping family violence. Housing security is also important for the security of people's possessions, and for their ability to insure their housing contents.

Currently the Act specifies that the landlord must provide locks to all external doors and windows, but makes no specification as to the quality of locks provided. By contrast insurers tend to require doors and windows to be fitted with deadlocks, and either refuse insurance if these are not fitted, or significantly increase the cost of coverage.

Tenants also face security risks as a consequence of previous tenants having copies of keys to locks. When a tenancy ends, agents and landlords collect the keys that were given out at the start of the tenancy. There is no legislation that requires agents or landlords to change the locks to a property, meaning that unless there was a 'master key', any number of additional keys may have been cut during the tenancy.

CHP recommends that locks should be changed between tenancies to provide additional security to tenants (unless a master key is provided). We also recommend that the Act be updated to provide the same safety measures that are included in the Rooming house provisions in relation to the type of security features for external doors and windows. This would see all external doors having single action deadlocks and secure locks on all windows.

Measures of suitability

CHP has long advocated for the introduction of minimum standards in residential tenancies. Low income households in particular have been shown to be particularly vulnerable to having little choice but to rent substandard rental housing.

The CAV report cited in the Issues paper indicates that a significant proportion of existing tenancies are in housing that fails to meet standards that are sufficient for tenants' health or safety to be preserved. As noted in the introduction, this is clear indication of the need for regulation of standards to protect tenants.

While some of the percentages of properties with faults are small, it should be noted that the 2011 Census recorded that 515,585 properties were rented in Victoria. The table below indicates the numbers of properties being tenanted without basic features, assuming the CAV review is representative.

Basic feature missing	Proportion of properties without this feature in working order	Number of properties
Access to electricity	2%	10,312
Access to water supply	3%	15,486
Access to toilet	5%	25,779
Access to shower	8%	41,247
Access to laundry taps	9%	46,403
Access to a stove or oven	10%	56,714
Locks on all external doors	16%	82,494
Heating	18%	92,805

The absence of the features listed in the table above make it difficult to maintain personal hygiene, and to cook. Not listed, but also critical to safety and health, is the importance of properties having adequate fire safety provisions, safety switches and safe wiring, proper ventilation, being free from issues with damp or mould, being free of vermin, and being appropriately weatherproof and insulated.

Given the importance of each of these issues for safety and health, or for people's ability to maintain comfort within reasonable cost, CHP endorses the minimum standards outlined in the Tenants Union of Victoria Submission to the Review (2015) as an absolute minimum criteria for suitability of rental housing:

Health	Safety	Efficiency
- Building must be weatherproof	- Building must not be a fire hazard	- A minimum level of thermal insulation
- Building must be maintained without risk of damp	- Approved gas (if available and connected) and electricity connection	- Access to at least one form of in built heating (in the main living area) with a minimum energy efficiency standard
- Building must be vermin proof (no structural defects enabling infestation)	- Appliances maintained in accordance with relevant standards	- Efficient and properly installed cooking appliance
- Fly screens on all opening windows	- Single action deadlocks installed on all external doors and window locks on windows	- Efficient and properly installed hot water system
- Adequate lighting (preferably by natural light)	- Adequate electrical outlets	- Dual flush toilet
- Adequate ventilation	- Electrical safety switches	- Water efficient shower heads
- Running hot and cold potable water	- Hard wired smoke detectors	- A basic level of window covering
- Adequate waste provision (such as rubbish bins)		

As with the introduction of minimum standards in rooming houses, CHP understands that there will need to be adequate time provided for landlords to upgrade properties. We suspect that many properties across the State will already meet minimum standards, or be very close to meeting standards.

Property conditions during the tenancy

The Condition Report

Currently tenants have only three business days to sign the condition report from the time they move in, and to return it to the landlord or agent. This is not an adequate space of time to discover pre-existing issues with the property, amend the report, and return it, given that moving house involves so many other time consuming and often stressful tasks.

CHP recommends that the Act be amended to allow five business days in which to return the condition report to the agent, thus providing a more appropriate opportunity for tenants to properly document issues.

The Issues Paper has acknowledged that tenants are often reluctant to report issues with a new rental property for fear of beginning things on the wrong foot with a new agent. In our experience, people who have experienced disrupted housing histories and/or

homelessness are often unaware of their rights and responsibilities and/or fearful of executing them. In practice this means that those who have struggled to access the private rental market are both less likely to report poor conditions for fear of eviction and further displacement, and more likely to be unaware of how to complete condition reports when they disagree with an agent's assessment of the property's features being clean and/or in good repair. This means that reform is needed to create more accurate condition reports that are not so reliant on tenants asserting their rights in a context in which they feel insecure.

Given the importance of condition reports in establishing the baseline state of the property, and the emergence of digital photography making the processes of documenting the condition of the property using images easier and cheaper, CHP recommends that the Act specify that condition reports include dated photographs taken by the agent or landlord of rooms and features at the beginning of the tenancy

Reporting and repairing damage to the property

CHP agrees with the Tenants Union of Victoria (TUV) that the language relating to reporting damage that has occurred to a property and the common areas should be consistent. We agree that "Section 61(1) of the Act should be amended to include the word 'reasonable' – A tenant must ensure that reasonable care is taken to avoid damaging the rented premises" (2015).

Attribution of damage in cases of family violence

CHP was pleased to see the recently released Royal Commission into Family Violence Report (2014-16) recommendations addressing tenancy issues arising as a consequence of family violence.

As part of Recommendation 116, the Report has recommended that:

"... the Residential Tenancies Act 2006 (Vic) consider amending the Act to:

- *provide a clear mechanism for apportionment of liability arising out of the tenancy in situations of family violence, to ensure that victims of family violence are not held liable for rent (or other tenancy-related debts) that are properly attributable to perpetrators of family violence*
- *enable victims of family violence to prevent their personal details from being listed on residential tenancy databases, and to remove existing listings, where the breach of the Act or the tenancy agreement occurred in the context of family violence*
- *enable victims of family violence wishing to leave a tenancy to apply to the Victorian Civil and Administrative Tribunal for an order terminating a co-tenancy if the co-tenant is the perpetrator of that violence—including, where relevant, an order dealing with apportionment of liability for rent (or other tenancy-related debts)".*

These principles were put forward as part of the Tenants Union of Victoria (TUV) Submission to the Family Violence Royal Commission (2015) in relation to bond and compensation claims. In its submission, TUV highlights that bonds lodged in multiple names can leave the victims of violence in a position where they are forced to pay for arrears or damage that occur after they leave a property. Victims of family violence can also be left to cover arrears and damage they did not cause in the event that they stay in the property.

As such we support the following recommendations (R.9-11) of the TUV:

“Apportionment of Liability by VCAT

9. *We recommend that the Tribunal be given a specific power to apportion liability between tenants when:*
 - *a notice of intention to vacate has been given by a tenant with a final intervention order; or*
 - *the Tribunal has made an order to terminate the lease because the tenant has an intervention order under the FVPA or has been affected by family violence.*
10. *We recommend that the power to apportion liability be the same as that provided to the Tribunal by section 233C, in the case of a creation of tenancy. This would mean that the Tribunal could apportion any existing liabilities under the tenancy and the RTA, including the bond and outstanding utility bills. This would enable the Tribunal to apportion liability for damage to the rental property, rent and any compensation payable to the landlord for the lease ending early.*
11. *We also recommend that the Tribunal be given a general power to apportion liability between tenants when there has been family violence to deal with situations where family violence is a factor but the provisions of the Act do not specifically allow for that to be taken into account”.*

Property modifications

Modifications in rental properties can be classified into two broad themes. Minor modifications (usually cosmetic) which enhance a tenant’s ability to feel at home in a rental property, and modifications required for health, wellbeing and safety.

Minor modifications such as minor decoration or hanging picture hooks allow tenants to make a rental property feel like home. Under the current Act tenants are often unwilling to make these requests. If a request is refused by a landlord or agent, they are unlikely to request a modification again.

CHP believes that minor modifications such as securing picture hooks, establishing a garden (so long as the garden does not replace an established garden), should not require consent from the landlord. For more substantial modifications or additions, we propose that the Act should expressly state that a landlord cannot unreasonably withhold consent,

with the onus being on the landlord to prove that the modification or addition will adversely affect the property.

Tenants with a disability can face significant discrimination in the private rental market, both in terms of availability and accessibility of properties, and in terms of finding properties that are able to be, or that a landlord will allow to be retrofitted. This can result in tenants with disabilities living in properties that are unsuitable for them. CHP believes that fixtures and additions required for an individual's health, wellbeing and safety should not be able to be reasonably refused by the landlord. We agree with various submissions to the review that the Act should be amended to include a reference to the Equal Opportunity Act (2010).

Maintenance, cleaning and repairs

During a tenancy, households are required to keep a property 'reasonably clean'. In our experience, there can be differing understandings between tenants and landlords about what is meant by 'reasonably clean'. As such, tenants can face successive breaches by agents and landlords, which place their tenancies at risk. CHP proposes that the Act be amended to include a definition of 'reasonably clean'. We believe a reasonable definition would reflect the VCAT Guidance on the Act referred to in the Issues paper, and contain information that protects the safety and wellbeing of tenants and neighbors.

Beyond a tenant's responsibility to keep a property 'reasonably clean' landlords are required to maintain a property in good repair. From our experience, people in low-income households are less likely to report issues with the property for fear of retaliatory eviction or rent increases. CHP believes that the definition of urgent and non-urgent repairs is helpful for both tenants and landlords. We note, however, that the list should be reviewed and modified. CHP believes that an urgent repair should apply to anything which negatively and seriously impacts on a person's health and wellbeing. This includes the existence of significant mould as both a health hazard for household members, and as a condition that is likely to cause significant damage to tenants' possessions. We also agree with the TUV that break downs in appliances, such as air conditioners should be included in the list of urgent repairs.

We recommend that the list of urgent and non-urgent repairs should be reviewed in line with considerations of minimum standards in properties, and urgent repairs should cover anything which contravenes or breaches prescribed minimum standards.

Condition of property at the end of a tenancy

While the Act does not explicitly outline that the property must be vacated in a certain condition, agents and landlords usually provide tenants with vacating checklists. How the

condition report was initially completed, damage that occurred throughout the tenancy and landlord's interpretation of reasonable wear and tear, can risk consumers losing sections of their bond. CHP believes that the Act should provide clarification around the condition the property must be vacated in, taking into account the original condition report, and repairs and maintenance issues that have been reported during the tenancy.

References

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