



VincentCare  
Victoria

*Submission in Response to:*

Residential Tenancies Act Review  
Laying the Groundwork - Consultation  
Paper.

August 2015



## SUMMARY OF RECOMMENDATIONS.

### The changing housing context

**Recommendation 1.** The purpose of the Residential Tenancies Act is extended to regulate the residential tenancy market to address market failure in delivering sustainable, secure and safe housing for all Victorians.

**Recommendation 2.** Minimum conditions and amenity standards are established for all residential tenancy properties that would be monitored and enforced through the instigation of independent property condition reports undertaken prior to properties being put to market for leasing.

**Recommendation 3.** Rental legislation codifies into regulation the right for a tenant to modify a property for a person with a disability for all residential leases of two years or longer.

**Recommendation 4.** The Building Code of Australia (BCA) is adjusted to require basic disability design features to be able to be installed on a universal basis into all tenanted residential properties.

**Recommendation 5.** The Residential Tenancies Act is adjusted so that non-application of the Residential Tenancies Act to Crisis Accommodation requires the property to be designated as a Crisis Accommodation property through a rigorous application process..

### Regulatory and policy framework

**Recommendation 6.** Rooming house regulation is fully delivered as a function of a State Government department including all compliance monitoring and enforcement for the registration of properties, landlords, rooming house operators/ managers and their agents. Minimum compliance and mandatory quality standards are established for properties and operations and are also to be monitored and enforced by a State Government department..

**Recommendation 7.** A share house registration scheme is established to help positively identify share houses and to reduce the growth of illegal unregistered rooming houses.

**Recommendation 8.** Rooming Houses are regulated through a separate legislative regime including an entire state government framework for registration, monitoring and enforcement that models the regulatory approach used in Victoria for Supported Residential Services.

### Tenants

**Recommendation 9.** Tenancy regulation is repositioned to adapt to the longer term future of increasing numbers of life long renters in a manner that both regulates the landlord-tenant relationship and positively influences the market to deliver safe, secure and stable accommodation at all price points in the market.

**Recommendation 10.** New parameters are established around the remedies and tenant protections when a tenant breaks a lease. Specific protections need to be established for people escaping family violence.

**Recommendation 11.** The period for a Notice to Vacate (no specified reason or sale with vacant possession) is reviewed to establish timeframes that can be varied annually according to rental vacancies in a given region and published in the government gazette.

**Recommendation 12.** Specific regimes of remedies are established as standing orders by the Victorian Civil and Administrative Tribunal so that possession orders are used as remedies of last resort.

**Recommendation 13.** A default lease is established with a two years' minimum lease period with a "special class" of short term lease of less than two years which has limited application and is closely monitored to prevent inappropriate use. Transitional Housing Management (THM) property leases are to be established within the short term class and terms are able to be included in THM leases that set tenancy conditions linked to support program participation.

**Recommendation 14.** Stringent penalties are introduced for landlords who prematurely break lease agreements. Residential tenancy lease agreements are aligned more closely to commercial business and contractual obligations and long term leases form a caveat to property titles so that lessors are encumbered by the leases they establish.

**Recommendation 15.** Long term residential tenancy leases are established that enable the tenant/lessee to undertake a range of property improvements

#### Residential tenancies disputes

**Recommendation 16.** A specialised panel of members is established by VCAT for its tenancy list hearings to achieve greater consistency in decision making or a separate Residential Tenancy Tribunal is re/established as part of the new regulatory framework.

**Recommendation 17.** A victim of family violence does not lose her bond where a perpetrator of family violence has committed property damage. The Residential Tenancies Act is provided with powers for a damages recovery order to be made against a perpetrator of family violence where there is a substantiated police report and a safety notice or intervention order.

**Recommendation 18.** Landlords are required to complete a short course to attain a Landlord's certificate of competency prior to being able to rent out a property. The competency training is to cover discrimination issues.

**Recommendation 19.** A single statewide tenancy database is established and/or overseen by the State government with strict controls and standards on informing persons of their name being registered on the database, the accuracy of information and the updating, expiry and amending of held information. The use of unauthorised tenancy databases that are shared between landlords or landlords agents is to be heavily penalised.

## INTRODUCTION

### **About VincentCare Victoria.**

VincentCare Victoria (ACN 094 807 280) is a charitable entity and a Company Limited by Guarantee. VincentCare was established in 2003 by its sole shareholder the St. Vincent de Paul Society in Victoria. VincentCare Victoria was commissioned with managing and strategically developing a diverse platform of homelessness, welfare and aged care services, which had evolved since the early 1950s.

Today, VincentCare has grown to become a major provider in Melbourne and regional Victoria of accommodation and social services with an annual revenue base of \$43 million through funding agreements with the Victorian State, Commonwealth and Local Governments.

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### ***VincentCare's Purpose is to:***

- > Create opportunities and lasting change for the most marginalised;*
  - > Support individuals and their families so that their basic needs are met in terms of food, shelter, safety and security;*
  - > Provide access to programs and pathways that strengthen an individual's resilience and support them in accessing opportunities within their communities and;*
  - > Advocate and build capacity in order to redress the structural inequalities in the community that create disadvantage.*
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VincentCare's Aspiration is to be the leader in providing care, hope and advocacy for those facing disadvantage.

VincentCare's accommodation and services are built around homelessness, family violence, social and financial disadvantage, housing, drug and alcohol treatment, disability employment, and community and residential aged care. VincentCare targets these responses to four cohorts spanning:

- single adults;
- older adults;
- families with children (including women and their children confronted by family violence); and
- youth

VincentCare's scope of response includes:

- early intervention and prevention and crisis programs,
- recovery programs working with people who have complex needs and delivered through medium to longer term case management programs, and
- long term accommodation and social care.

VincentCare Victoria also operates a wholly controlled subsidiary, VincentCare Community Housing. VincentCare Community Housing (VCCH) is the Housing Provider arm of VincentCare, registered with the Housing Registrar in Victoria, managing over 230 accommodation units on behalf the Victorian Department of Health and Human Services and a further 60 dwellings of its own portfolio stock. VincentCare Community Housing manages properties targeted towards all cohorts. It has a large emphasis on housing for adults and older adults. VincentCare Community Housing's property portfolio includes:

- Crisis and transitional housing comprising 195 dwellings in the Hume and Moreland local government areas specialising in adults and older adults;
- Dedicated young adults housing in the Southern region of Melbourne and Melton;
- Sunbury Gardens Community Rooming House for people 55 years and above, linked with a community capacity building program, and local partner organisations;
- A stock of 63 Independent Living Units (ILUs) for people 55 years and older, located across regional Victoria which are owned by VincentCare and managed through VCCH's tenancy and property team within the Northern Community Hub;
- 59 Crisis Accommodation places at Ozanam House located in North Melbourne and;
- An 11 place residential Alcohol and Drug and Crisis Accommodation unit located in Fitzroy.

### **The scope and intention of our response.**

VincentCare has two major strategic interests in the current consultation process to review Victoria's Residential Tenancy Act. Firstly, that of an interested party aligned to the needs of tenants. The other strategic interest is that of landlord in its own right and as a "franchised" landlord for the Housing Director and of our own managed properties.

As a landlord, VincentCare is not heavily penalised or risk exposed by the current Act even though operations risk is a constant issue for landlords in this sector. Preventive solutions to risks such as property damage or inappropriate behaviour

require rely upon effective service responses and supports for people who have complex needs. This includes mental health, alcohol and other drugs, family violence and family breakdown.

VincentCare's highest priority with regard to its strategic interest in this submission is to represent the welfare and interests of our clients. We are deeply interested in achieving a better regulatory environment because:

- The lack of housing is a severe detriment to the lives of too many Victorians. The inability to gain and maintain safe, stable and secure accommodation is a severe impediment for anyone to achieve a productive life and experience human dignity.
- Most of our clients are challenged to achieve safe, stable and secure accommodation, as they have life-long experiences of deep intergenerational disadvantage, interpersonal violence and trauma, relationship breakdown, mental illness, substance abuse and social and economic exclusion.
- Most of our clients' only chances of housing "success" will be as tenants, not as purchasers or owners of their dwellings. Therefore, the regulatory environment needs to ensure that all forms of tenancy – public, community housing and private rental include a sufficiently wide safety net to stop people from being homeless and prevent people from becoming homeless.

### ***Input to this submission.***

This submission has received input from VincentCare staff who possess extensive working knowledge of the Residential Tenancies Act having administered its provisions or advocated for our clients over many years in housing and homelessness roles.

It has also received important input from clients with whom we have consulted. Specifically, this has included clients from of our long term community rooming house in Sunbury. The 23 tenants at this rooming house comprise single and older adults who have experienced or have been at risk of homelessness. Their experience in rental accommodation has included private and social housing, as well as rooming houses and caravan parks.

Consultation was also undertaken with clients of Quin House, a post-withdrawal alcohol and drug recovery for men who have a history of homelessness.

## **RESPONSES TO SELECTED CONSULTATION PAPER QUESTIONS.**

### **The changing housing context**

**Q. 1 Does the current Act enable and encourage a rental market that provides sustainable, secure and safe housing to Victorians? Why or why not?**

The current act does not enable sustainable, secure and safe housing to Victorians because it is principally focussed on regulating the relationship between the landlord and a tenant. Its major shortcoming is that it does not purposefully regulate the market itself in any substantial way.

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*1. Purposes*

*The main purposes of this Act are—*

- (a) to define the rights and duties of landlords and tenants of rented premises; ...*

*Victorian Residential Tenancies Act 1997*

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Our evidence for this is based on the fundamental observation that the rental market does not perform adequately to deliver sustainable, secure and safe housing for *all* Victorians, with an increasing number of groups challenged to gain or maintain their position in the market. This can taken to be a sign of market failure. Our response to this question can also be taken as our response for Q. 3 (a) *Are the principles and objectives underpinning the current Act relevant today? Why or why not?*

**Recommendation 1. The purpose of the Residential Tenancies Act broadens its scope to regulate the residential tenancy market so that it is better able to deliver sustainable, secure and safe housing for all Victorians.**

**Q.2 (a) What issues would you like examined in the Review of the current Act?**

VincentCare Victoria would like the review to examine:

*Minimum condition and amenity standards:* There continues to be a lack of minimum property standards in the Act for ordinary residential tenancies (as distinct from Rooming House Minimum Standards). It is the experience of VincentCare staff and clients that those rental properties that become available for vulnerable and marginalised groups of people do not meet community expectations of safe, secure and well maintained basic housing. Many properties come to market in a state of marked disrepair, and poor cleanliness. Poorly maintained with minimum upgrading, these properties are also costly for tenants, in terms of energy and water usage. This



is in the absence of any type of mainstream long term residential lease provisions whereby the tenant could give effect to repairs and improvements if they wanted to.

VincentCare Victoria advocates for minimum conditions and amenity standards to be established for residential tenancy properties. We propose that this would be achieved through the instigation of *independent* property condition reports as a regulated requirement prior to bringing residential properties to market for leasing and then every two years thereafter. This would address issues of structural and fabric integrity, functioning amenity, insulation, water use, heating /cooling, security, safety hazards, disability access. Further below we have recommended longer term leases (e.g 10 years). Under these conditions we recommend that the property would either be required to meet minimum standards, or the lease contract would be required to permit the tenant to execute improvement works.

**Recommendation 2. Minimum conditions and amenity standards are established for all residential tenancy properties that would be monitored and enforced through the instigation of independent property condition reports undertaken prior to properties being put to market for leasing.**

Regulation of universal design principles into the rental market. People with disabilities on fixed incomes who are not working and who require property modifications to live independently are further disadvantaged in the rental market and particularly in the private rental sector. Universal design principles have existed for several years. In 2008 the Victorian Council of Social Services released a paper with six recommendations including nine approaches to design standards for Governments to implement universal design principles into the general housing stock<sup>1</sup>.

Rental regulation should both codify into regulation the right for a tenant to modify a property for a person with a disability. Our position on this initiative is that all residential leases over two years must permit such modifications. The modifications would be undertaken at the tenant's cost, with schemes such as the Statewide Equipment Program subsidising these costs as per their guidelines for *home modifications*.

**Recommendation 3. Rental legislation codifies into regulation the right for a tenant to modify a property for a person with a disability for all residential leases of two years or longer.**

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<sup>1</sup> : Nissim, R. (2008). Universal Housing Universal Benefits A VCOSS discussion paper on universal housing regulation in Victoria. Victorian Council of Social Service. Melbourne.



Fundamental features should also be present in properties that will be rented for more than 2 years. The Building Code of Australia (BCA) should be adjusted to reflect these required features. This would require that all properties being rented for more than two years to have at least one accessible bathroom and toilet that must have standardised structural attachment points accessible for basic grab rails etc to permit reversible modifications. It would assist Victoria to adapt general housing in the social housing and private sector to adopt universal design principles over the longer term. This is not dissimilar to the regulatory approaches taken over the last 20 years towards the retro-fitting of smoke detectors, electrical earth leakage safety switches, insulation and water tanks. While this runs the risk that properties might not be rented for more than two years, landlords would run a serious risk of regulatory non-compliance of either re-letting to the tenant on a short term rental (see our Recommendation No. 13 regarding a default minimum 2 year lease) or of disability discrimination. This would be an area of the changed regulatory environment for residential tenancies that State government could ask the Victorian Human Rights and Equal Opportunity Commission to closely monitor.

**Recommendation 4. The Building Code of Australia (BCA) is adjusted to require basic disability design features to be able to be installed on a universal basis into all tenanted residential properties.**

Both of these above two initiatives should help address the community's expectations of what comprises a present-day minimum acceptable standard of housing. It will also enable our community to better adapt to the needs of an ageing population, climate change, and enhancing social inclusion for people with disabilities.

These changes may have the consequence of 'setting the bar higher' for property owners intending to rent out a property and therefore deterring landlords from renting out extremely low standard housing stock. The resulting impact may send a signal through the market that ultimately frees up properties for purchaser-occupiers on the lowest rungs. This would potentially take some demand pressure out of the rental market.

***Q.2 (b) What are your preferred outcomes, and what evidence base is there to support them?***

Our preferred outcomes in response to this question reflect our strategic interests as a landlord and provider of homelessness support, crisis accommodation and transitional housing.

"Temporary crisis accommodation" is already defined under Section 4 of the Residential Tenancies Act as accommodation provided on a non-profit basis for a period of less than 14 days. Under Section 22 of the Act, the Act itself is deemed as

to not apply to a tenancy agreement or room if the rented premises or room are provided as temporary crisis accommodation.

Evidence that the 14 day definition alone does not match the length of crisis accommodation that clients requires are length VincentCare's clients crisis accommodation stays. In 2014-2015, of 540 client crisis accommodation stays at VincentCare's Ozanam House, the average length of stay was more than four weeks (29.7 days). Just under a quarter (24.6%) of all stays were for 6 or more weeks, and just over one sixth (16.9%) for 60 days or more. The longest stay was for more than 40 weeks and more than 1 in 15 clients (7.0%) had stays of 90 days or longer. This would further prevent any likelihood of unregistered rooming house operators using such a definition to completely side step regulation.

At VincentCare's Quin House in 2014-15 there were 66 crisis accommodation stays for single men who were undergoing post-withdrawal recovery from alcohol and drug use. The mean length of stay was 9.4 weeks and 15.2% of clients had a stay of 12 or more weeks.

VincentCare, instead, wishes to remove the time based definition altogether and have Crisis Accommodation properties designated on application to the Housing Registrar. The criteria for designation would include the nature of the landlord (eg homelessness, family violence, youth, mental health or accredited alcohol and drug service), as well as verified evidence of a support program linked to the crisis stay<sup>2</sup>. The notice of a property becoming designated, or having its designation revoked would be published in the Government Gazette.

**Recommendation 5. The Residential Tenancies Act is adjusted so that non-application of the Residential Tenancies Act to Crisis Accommodation requires the property to be designated as a Crisis Accommodation property through a rigorous application process.**

## Regulatory and policy framework

### ***Q.7 What considerations need to be given to the regulation of rooming houses, caravan parks and residential parks?***

<sup>2</sup> This would need to be a very carefully executed vetting as the notorious case of Mr. Brian Cox who privately ran a groups of alcohol and drug recovery houses has shown.  
<http://www.heraldsun.com.au/leader/north/reservoir-counsellor-gets-nine-years-for-multiple-sex-offences/story-fnglenug-1226833798279>

Rooming houses require more comprehensive regulation and resulting monitoring and enforcement than afforded by the current regime governed by the current Act and the Public Health and Wellbeing Act 2008. Our concern is that Rooming Houses form part of a residual housing market providing accommodation of “last resort” to the market segment of people with the least ability to pay.

Some rooming houses may be occupied by overseas student or “backpackers” and travellers on working holidays. VincentCare homelessness outreach staff, regularly provide support to other people who live in rooming houses, and who have generally experienced long term or repeated homelessness intermingled with long life histories spent in institutions spanning out of home care, corrections, mental health and drug and alcohol treatment . They observe the largely poor conditions experienced by our clients who live in private rooming houses and who have little knowledge of the minimum standards in rooming houses. They generally do not have the means to ensure their rights are respected.

Often, the very obscure nature of the tenant and landlord relationship, includes a rooming house manager or lead tenant. This means that our clients have their efforts obstructed if they attempt to seek redress for poor conditions or disputes regarding their tenancy. Moreover, they are fearful of losing their accommodation or even experiencing some form of retribution.

An alternative regulatory approach is to centralise rooming house regulation, compliance monitoring and enforcement to be fully delivered by State Government as Local Government regulation has been inconsistently achieved and therefore can be judged to have largely failed. This is evidenced by the continued existence of unregistered rooming houses.

Residential Tenancies legislation and regulation should prescribe a new framework for Rooming Houses that addresses:

- registration of properties,
- registration for landlords and their agents including a “fit and proper persons” test, and
- both mandatory minimum compliance standards and mandatory quality standards for properties and rooming house operations.

The scope of monitoring should include scheduled and spot inspections. Enforcement should be strengthened through both statutory and criminal offences with penalties to include fines, as well as jail terms and sequestration of property in more extreme cases (taking the model used by the Proceeds of Crime Authority). The potential application of “owner’s onus” in this framework could achieve a further

powerful dissuasive effect to the overall operation of illegal and grossly below-standard accommodation.

**Recommendation 6. Rooming house regulation is fully delivered as a function of a State Government department including all compliance monitoring and enforcement for the registration of properties, landlords, rooming house operators/ managers and their agents. Minimum compliance and mandatory quality standards are established for properties and operations and are also to be monitored and enforced by a State Government department.**

To further strengthen the framework a registration scheme would also apply to share housing to protect landlords/ owners of share houses from inadvertently and unintentional entering into rooming house operation. Most importantly it would require the landlord to demonstrate through the lease agreement, setting of rent and recruiting of “sharing occupants” that the house is truly a share house and not a rooming house.

***Example 1:** Rachael, Elena, and Van, who are friends studying at the same university all share a 3 bedroom house at a total cost of \$390 per week. They are all registered as tenants and sign onto a “share house scheme”. Van’s partner, Michael moves in with Van with the agreement of the Rachael and Elena. The rent stays the same, but they split the utilities bill four ways to reflect consumption. As a couple, Van still remains as a tenant, but Michael, his partner, is not required to register. Michael and Van decide to get a single bed room flat together. Van is removed from the lease and Rachael and Elena set about to recruit a replacement tenant to share the rent.*

***Example 2:** On the other hand Sue, Mohammed, Jay and Brophy who do not know each other very well having responded to an advertisement in the local paper for a house to share. It was advertised by the house owner who is charging them \$180 per week with electricity, gas and water included. Part of the lounge dining room in the once three bedroom house has been converted into a bedroom. Mohammed completes his course and moves interstate for an employment opportunity. The owner organises a replacement tenant, Simon, who is going to pay \$200 per week. Simon parks a very large truck which he drives to and from work each day out the front of the house and displaces the others’ use of two parking spots. Sue complains to the landlord but is told there are plenty of others who are willing to pay \$200 per week, so if she does not like it, she can leave. Sue goes to see a Tenants Union worker who explains that the landlord is running an unregistered rooming house. Sue is supported to take the matter further and the landlord is now running a serious risk of penalties.*

**Recommendation 7. A share house registration scheme is established to help positively identify share houses and to reduce the growth of illegal unregistered rooming houses.**

A possible regulatory approach for Rooming Houses could be modelled upon that used by the Victorian State Government for Supported Residential Services. It should be noted that Supported Residential Services were an outgrowth of Boarding Houses in the 1970's. Therefore, Supported Residential Service, remain principally as an accommodation type.

The regulatory approach pursuant to the Supported Residential Services (Private Proprietors) Act 2010 and the Supported Residential Services (Private Proprietors) Regulations 2012) includes Regional Department of Health and Human Services Authorised Officers who inspect premises, (under the monitoring and enforcement section of the legislation) and proprietor registration. Proposed Managers, for example, must make an application providing prescribed documents including proof of identity, 2 referee statements, a criminal record check issued within the 6 months preceding the date of the application, a health statement and a charges and convictions statement. Many of the legislation provisions that govern the tenancy relationship in the legislation such as fees, charges, prohibited transactions and notices to vacate could also be applied to rooming houses.

While Supported Residential Services also provide support for Activities of Daily Living, and "hotel services" it is the terms of the accommodation that would provide greater protections for vulnerable rooming house populations. It is also interesting to note that SRSs as a staffed accommodation environment providing daily living support (including medication assistance) and hotel services, including meals, at very similar prices to that paid by many of our clients to reside in a rooming house. This of course might suggest that there could be a much stronger regulatory role in relation to price setting for rooming houses.

**Recommendation 8. Rooming Houses are regulated through a separate legislative regime including an entire state government framework for registration, monitoring and enforcement that models the regulatory approach used in Victoria for Supported Residential Services.**

## Tenants

**Q. 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?**

A consistent theme that underpins the adverse experiences of our clients in various forms of residential tenancies in recent years is the fundamental change in the rental housing market. This change has resulted from the overall changes in the asset price of properties and the resulting decrease in housing affordability for an increasing proportion of the community.

Renting a house was once a precursor to purchasing a home. Renting is now becoming, for many, the long term pathway to meet their housing needs. This would appear to be a least preferred choice driven by limited options. It is not the intention of this submission to analyse the factors at play in overall purchasing affordability.

However, on the assumption that this is the longer term trend, tenancy regulation needs to be repositioned to adapt to these altered circumstances. The outcome should be residential tenancy regulation that both regulates the landlord-tenant relationship and positively influences the market to deliver safe, secure and stable accommodation at all price points in the market. The market needs to be sufficiently regulated to correct the apparent current failures.

**Recommendation 9. Tenancy regulation is repositioned to adapt to the longer term future of increasing numbers of life long renters in a manner that both regulates the landlord-tenant relationship and positively influences the market to deliver safe, secure and stable accommodation at all price points in the market.**

The lack of market regulation is delivering a race to the bottom in terms of quality. The market at the lowest end appears to deliver substandard housing that does not generally meet our community expectations. To repeat a point that cannot be under-emphasised, nowhere is this worse than in private, and often illegal rooming houses. This market segment has abjectly failed and VincentCare Victoria has recently adopted a formal position that it will no longer refer nor subsidise people to obtain rental accommodation in unregistered rooming houses.

**Q. 8 (b) *How should residential tenancies regulation take into account these trends in the private rental sector?***

If the long term outlook is that fewer people might own or purchase their housing and more people might rent, then regulation needs to allow leases that function more like those in commercial property leasing and allowing for even 20-30 years contracts, property modifications and sub-letting.

Whereas the current Act does provide scope to apply to residential tenancies up to 5 years (and even greater under certain provisions of Section 6 of the Act), it seems that few people, at least at the lower ends of the market are offered such leases.



This change to the fundamental landscape may prompt supply side exits – but this may improve affordability for owner/purchaser occupiers.

Nonetheless, longer term leases with more flexible conditions would enable families, whom the data is suggesting are increasing as a proportion of the market, to choose private rental as a true long term “home” option.

**Q. 9 How do changes in tenant mobility impact on the current balance of rights and responsibilities between landlords and tenants?**

Regulation should more heavily penalise unplanned discontinuations to tenancies by both landlords and tenants.

Protections for Landlords.

Breaking of leases by tenants currently requires any tenant to make compensation to the landlord until such time that the property is re-let. While this is a reasonable provision, we believe that certain caveats should apply.

Tenants should be afforded the opportunity under some situations, where the evidence is provided, to break a lease without penalty. One such circumstance would be family violence, where a woman has obtained an intervention order or safety notice, and decides to break the lease to relocate for her and her children’s safety.

Other situations might include extreme genuine hardship where a bone fide household member has been beset with an accident or disabling health condition and can no longer practically occupy the property (e.g an upstairs flat). Again, evidence such as a medical certificate would need to be provided.

**Recommendation 10. New parameters are established around the remedies and tenant protections when a tenant breaks a lease. Specific protections need to be established for people escaping family violence.**

Protections for Tenants.

The current lease arrangements provide considerable flexibility and control for landlords to such an extent that very limited security overall is available or guaranteed to tenants who meet the terms of their lease agreement. At the lower end of the market we frequently observe clients on very short term leases such as three, six or twelve months’ duration. Many of our clients often find themselves on a month to month lease.



### *Notices to Vacate.*

Notices to Vacate provide landlords with flexibility, but at the cost of insecurity for the tenant. Tenants may need to uproot themselves at very short notice with consequent stresses, especially for families with children, and at a substantial financial cost. A shortage of affordable properties, the direct result of an unrelentingly 'tight' rental market, creates the further risk for low income families of needing to relocate to another locality away from children's schooling, social supports and employment.

The current provisions pertaining to the notice to vacate regime provide landlords with considerable scope to evict tenants on a highly discretionary basis. The one hundred and twenty days *Notice to Vacate* for no specified reason, has become an inadequate notice period for tenants to relocate another property with overall shortage of rental properties and limited affordability in the Melbourne metropolitan area.

Under these same residential tenancy market conditions the sixty days Notice to Vacate, issued when a landlord is seeking to sell a property under the condition of vacant possession, similarly, can no longer be considered a reasonable mechanism in many parts of the state and, in particular, in the Melbourne metropolitan area.

**Recommendation 11. The period for a Notice to Vacate (no specified reason or sale with vacant possession) is reviewed to establish timeframes that can be varied annually according to rental vacancies in a given region and published in the government gazette.**

### *Rent in arrears.*

A tenant's security of tenure is severely under threat when the tenant is in arrears with rent payments. In such instances where there is a case before Victorian Civil and Administrative Tribunal (VCAT), the VCAT will usually not grant possession of the property to the landlord where an agreement has been made and is generally being abided by the tenant.

Nonetheless the option does exist for possession to be granted to the landlord if there are considerable arrears or there is a history of arrears. Other remedies should be made, such as repayment orders, and directing a client to a service that can assist with the arrears as a first step before issuing a Notices to Vacate. We note that New South Wales has undertaken reform to their legislation so that a rental agreement nullifies the opportunity to seek possession of the property.

**Recommendation 12. Specific regimes of remedies are established as standing orders by the Victorian Civil and Administrative Tribunal so that possession orders are used as remedies of last resort.**

### *Creating conditions for longer term leases and housing stability.*

Landlords should be obliged to offer minimum 24 months tenancy unless agreed by the tenant. A special short term class of lease could apply to 'landlords' who are normally owner-occupiers and may need to relocate temporarily for employment, or an owner who has the property scoped for redevelopment. Short term tenancies can also suit tenants for reasons such as relocation employment opportunities, study, or any myriad of personal circumstances.

If successive short term tenancies accumulated to an overall time that the property was being let to two or more years, then a long term lease would require to be offered, unless mutually agreed with the tenant. This would be monitored closely by the regulator to prevent market abuses. The short term class of lease (up to 24 months) would also be able to be used as of right by Registered Housing Providers who manage tenancies for Transitional Housing Management Properties. THM leases would also be able to include terms linked to program participation tied directly to homelessness and housing support.

Regulatory rules to support these arrangements would need to be implemented around length of proposed tenancy and repeated short term leases of the same property in this subclass with evidence required to be lodged (eg landlord providing an employer letter or statutory declaration if living elsewhere to care for sick relative etc). Ownership of multiple properties by a landlord would automatically trigger the obligation for the landlord to offer a minimum two year lease.

**Recommendation 13. A default lease is established with a two years' minimum lease period with a "special class" of short term lease of less than two years which has limited application and is closely monitored to prevent inappropriate use. Transitional Housing Management (THM) property leases are to be established within the short term class and terms are able to be included in THM leases that set tenancy conditions linked to support program participation.**

Landlords, who break contracts should be obliged to pay statutorily imposed compensation to tenants with the exceptions of extreme hardship or death being experienced by the property owner where only a single property was being leased. These exceptions would, however, exclude company wind-ups or transfer of business.

Longer term leases should become caveats to the title of the property, so that tenants cannot simply be vacated because the property changes title. In essence investors renting properties should have the property regarded as a business, with the same encumbrances and continuity that any other business would have, regardless of the state of the owner, until contracts are settled in the actual winding up of the business.

The RTA could require that a landlord tenanted more than one property (eg more than the principle place of residence) is required to register a business as a sole trader, partnership, company or trust. Exceptions could be made for holiday homes (eg with 26 years per week maximum tenancy). This would help place greater obligations on landlords to operate properly established business entities and with the same obligations that are placed upon proprietors or directors of other forms of business.

**Recommendation 14. Stringent penalties are introduced for landlords who prematurely break lease agreements. Residential tenancy lease agreements are aligned more closely to commercial business and contractual obligations and long term leases form a caveat to property titles so that lessors are encumbered by the leases they establish.**

*From house to home.*

If the emerging trend is one where fewer people will own their own home in their life time, then long term renting should provide greater flexibility and options for tenants to undertake maintenance, modifications and cosmetic changes to properties. Improvements and modifications undertaken by the tenant would enable the essence of the property to change from a 'rental property' to a 'home'. This approach would reflect practices in other jurisdictions.

A true long term rental market needs to be created where supply reflects the appetite of the demand. If more people are seeking very long term tenancies, then more landlords need to adjust the way they operate in the market to help provide the type of long term rental product that is being sought.

**Recommendation 15. Long term residential tenancy leases are established that enable the tenant/lessee to undertake a range of property improvements.**

## Residential tenancies disputes

***Q. 16 Are the current arrangements for resolving disputes and providing access to redress for both landlords and tenants sufficient, or are other mechanisms needed?***

VCAT provides robust formal administrative processes for all parties to resolve disputes in instances where solutions have not been attained between the landlord and tenant. However, it is the experience of VincentCare that VCAT provides considerable scope for individual members of the tribunal to make decisions, that

suggest inconsistent outcomes for cases that are similar in circumstance and context.

It could be concluded that either the current legislation and regulations contain insufficient prescriptive detail, or that the role of VCAT in making its decisions provides for a broader interpretation that gives rise to the apparent inconsistencies. This opens the question as to whether a more specific residential tenancies tribunal is required or an alternative approach of a dedicated panel of VCAT members list to hear all cases before the VCAT Residential Tenancies List.

**Recommendation 16. A specialised panel of members is established by VCAT for its tenancy list hearings to achieve greater consistency in decision making or a separate Residential Tenancy Tribunal is re/established as part of the new regulatory framework.**

In our response to Question 9 we recommended to not penalise women who break a tenancy prematurely due to family violence. We further recommend that a woman does not lose her bond where a perpetrator of family violence has committed property damage and that the Residential Tenancies Act is provided with powers for a damages recovery order to be made against a perpetrator of family violence where there is a substantiated police report and a safety notice or intervention order.

**Recommendation 17. A victim of family violence does not lose her bond where a perpetrator of family violence has committed property damage. The Residential Tenancies Act is provided with powers for a damages recovery order to be made against a perpetrator of family violence where there is a substantiated police report and a safety notice or intervention order.**

***Q.17 What factors contribute to tenants exercising, or not exercising, their rights?***

*Reducing discrimination.*

People from some Culturally and Linguistically Diverse (CALD) communities, may experience diminished rental opportunities as a result of race and cultural discrimination. We are concerned that language and prior cultural experiences may create challenges for renting in the Victorian jurisdiction. Discrimination may also extend to other groups such as youth who have been homeless, or people with mental illness.

Advocacy services and education programs continue to be needed to address these issues. We suggest that all landlords should be required to complete a short course to attain a Landlord's certificate of competency prior to being able to rent out a property, and this training should cover discrimination issues. This would be similar

to people who undertake owner-builder short courses prior to undertaking works on their property as a owner-builder.

**Recommendation 18 Landlords are required to complete a short course to attain a Landlord’s certificate of competency prior to being able to rent out a property. The competency training is to cover discrimination issues.**

*Fairer rental histories.*

New South Wales has introduced stipulations concerning the residential tenancy database utilised by landlords to ascertain if applicants have an adverse tenancy history. There is no such system in place in Victoria, providing no safeguards for the tenant with regard to accuracy and therefore, fairness. VincentCare suggests that one statewide tenancy database is established or overseen by the State government with strict controls and standards on informing persons of their name being registered on the database, the accuracy of information and the updating, expiry and amending of held information. The establishment of unauthorised tenancy databases that are shared between landlords or landlords agents should be heavily penalised.

**Recommendation 19. A single statewide tenancy database is established and/or overseen by the State government with strict controls and standards on informing persons of their name being registered on the database, the accuracy of information and the updating, expiry and amending of held information. The use of unauthorised tenancy databases that are shared between landlords or landlords agents is to be heavily penalised.**