

Security of tenure Issues Paper

Residential Tenancies Act Review

FAIRER
SAFER
HOUSING

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The Review of the Residential Tenancies Act

Since the *Residential Tenancies Act 1997* (the Act) was introduced, the rental market has changed. More Victorians are renting for longer, the renting population has become more diverse, and the numbers of property managers and landlords have increased.

The government is reviewing Victoria's rental laws to ensure a modern and dynamic rental market, in which tenants are safe and secure, and which will meet the current and future needs and expectations of tenants and landlords.

This paper is the first of a series of issues papers, which will encompass a broad range of issues relating to the operation of the Act. The papers will focus on the following themes:

- security of tenure
- rights and responsibilities of landlords and tenants
- alternative forms of tenure
- property conditions and standards
- affordability, bonds and rent, and
- Dispute resolution.

Consultation with stakeholders and members of the public will capture a wide range of views and experiences that will enhance the government's understanding of the Victorian rental market.

In mid-2016, an Options Paper will outline proposals for both legislative and non-legislative reforms drawing on the findings of the Review and public consultation.

You can access this issues paper, along with further information about the Review, from the Fairer Safer Housing website at fairersaferhousing.vic.gov.au.

Getting involved and having your say

We invite your views and comments, as well as your responses to the series of preliminary questions posed throughout each issues paper as a guide for writing your submission.

We also welcome your suggestions for other questions or issues that should be considered leading up to the release of the Options Paper.

Until **21 December 2015** you can make a submission:

Online, by registering at:

fairersaferhousing.vic.gov.au/renting

By email:

yoursay@fairersaferhousing.vic.gov.au

Or by mail:

Residential Tenancies Act Review
Consumer Affairs Victoria
GPO Box 123
MELBOURNE VIC 3001

Note: Unless you label your submission as confidential, your submission or its contents will be made publicly available in this and any subsequent review process. Submissions may be subject to Freedom of Information and other laws. Consumer Affairs Victoria reserves the right to not publish information that could be seen to be defamatory or discriminatory.

The stages of the Review

Material will be released in three stages in the course of the Review, to which you will be invited to respond. All papers will be available via the Fairer Safer Housing website at fairersaferhousing.vic.gov.au/renting.

Note that Stage 1 is complete and the Review is now in Stage 2.

Stage 1	<i>Laying the Groundwork</i> Consultation Paper identifying the changing characteristics and trends in the Victorian rental market	June to August 2015 (complete)
Stage 2	Issues Papers	Late 2015 to early 2016
Stage 3	Public Options Paper setting out legislative and non-legislative proposals for reforming the <i>Residential Tenancies Act 1997</i>	Mid 2016

Glossary

ABS	Australian Bureau of Statistics
AHURI	Australian Housing and Urban Research Institute
CAV	Consumer Affairs Victoria
TUV	Tenants Union Victoria
VCAT	Victorian Civil and Administrative Tribunal

Acknowledgments

This paper has been drafted in consultation with:

- Consumer Affairs Victoria
- Department of Environment, Land, Water and Planning (Forward Policy and Business Strategy Planning)
- Department of Health and Human Services
- Department of Premier and Cabinet
- Department of Treasury and Finance
- Department of the Environment, Community and Local Government (Republic of Ireland)

Submissions made to the Review during Stage 1 have been taken into consideration in the drafting of this issues paper.

Questions for consideration

What are the needs and preferences of tenants and landlords for security of tenure?

(refer to Section 2)

Tenants

- 1 Why is security of tenure important for Victorian tenants?
- 2 What factors influence tenants' preferences for stability and flexibility in rental accommodation?

Landlords

- 3 What factors influence the preferences of landlords when deciding the period of a tenancy?
- 4 How important is it for landlords to establish stable tenancies in their rental properties?
- 5 How important is it for landlords to be able to regain possession of a rental property?

Matching tenant and landlord preferences

- 6 What are the main reasons that tenancies end, from both landlords' and tenants' perspectives?
- 7 What are the obstacles in the rental market for tenants who prefer longer tenure from achieving this?

How does the Residential Tenancies Act provide for security of tenure in general residencies?

(refer to Section 3)

Lease terms

- 8 What are the obstacles (including any provisions in the Act) to tenants and landlords entering long leases?
- 9 How do industry practices influence lease terms and the duration of tenancies more generally?
- 10 What role would long (five to ten year) leases play in strengthening security of tenure?
- 11 What factors or circumstances would make longer leases attractive to tenants and landlords?
- 12 If long term leases were provided for in the Act, what protections (if any) would be required for tenants who are seeking only short term leases?

Tenancy Terminations

- 13 What issues are there regarding the way in which terminations provisions in the Act affect security of tenure?
- 14 How much notice would be appropriate for the tenant to give to the landlord when providing a notice of intention to vacate?
- 15 How much notice would be appropriate for the landlord to give to the tenant when issuing a notice to vacate?
- 16 What are the reasons why landlords use the 'no specified reason' notice to vacate?
- 17 Rather than relying on a notice to vacate for 'no specified reason', how could the Act cater for landlords with legitimate grounds for terminating a tenancy for reasons that are not otherwise prescribed?
- 18 What options or initiatives could be used to encourage landlords to choose to maintain tenancies rather than issuing a notice to vacate?
- 19 What would be the impact of removing the notice to vacate for 'no specified reason' from the Act?

Rent increases

- 20 What issues are there regarding the way in which provisions for rent increases in the Act affect security of tenure?
- 21 What would be an appropriate alternative to the current frequency of allowable rent increases of no more than one every six months?
- 22 What would be an appropriate alternative notice period for rent increases to the current 60 days?
- 23 What would be an appropriate arrangement for rent increases during fixed term agreements to provide both tenants and landlords with certainty and choice?

Repairs, maintenance and modifications

- 24 What issues are there regarding the way provisions for repairs, maintenance and modifications in the Act affect security of tenure?

How does the Residential Tenancies Act provide for security of tenure in rooming houses, caravan parks and residential parks (refer to Section 4)**Rooming Houses**

- 25 What issues are there regarding the way in which security of tenure is provided for rooming house residents under the Act?
- 26 How can the needs for security of tenure for residents be appropriately balanced with the need to protect other residents' rights to peaceful enjoyment of shared spaces in rooming houses?
- 27 Do the currently prescribed reasons and notice periods to terminate a rooming house resident's residency rights strike the right balance for security of tenure, and if not what alternatives are appropriate?

Caravan Parks

- 28 What issues are there regarding the way in which security of tenure is provided for caravan park residents under the Act?
- 29 Is 60 days an appropriate period for a resident's arrangement to be automatically covered by the Act in the absence of a written agreement?
- 30 How can the needs for security of tenure for residents be appropriately balanced with the need to protect other residents' rights to peaceful enjoyment of shared spaces in caravan parks?
- 31 Do the currently prescribed reasons and notice periods to terminate a caravan park resident's residency rights strike the right balance for security of tenure, and if not what alternatives are appropriate?

Residential Parks

- 32 What issues are there regarding the way in which security of tenure is provided for residents of residential parks under the Act?
- 33 What is an appropriate level of security of tenure for residents of residential parks, and how could the regulation provide for this?
- 34 What are the reasons residential park operators use the 365-day 'no specified reason' notice to vacate?
- 35 What would be the impact of removing the option for residential park operators to issue a 'no specified reason' notice to vacate to site tenants?
- 36 Rather than relying on a notice to vacate for 'no specified reason', how could the Act cater for residential park operators with legitimate grounds for terminating a site agreement for reasons that are not otherwise prescribed?
- 37 What are the impediments to site tenants moving from residential parks once they have committed to a fixed term agreement?

Executive Summary

On 26 November 2014, the Victorian Government announced its *Plan for Fairer, Safer Housing*, which envisages safe, affordable and secure housing for all Victorians. As part of this Plan, the government has committed to review the *Residential Tenancies Act 1997* (the Act) to examine the feasibility of long term leases (of up to ten years) and annual rent increases. In addition, the government noted that there was scope to provide greater protection to residents of caravan parks and moveable dwellings.¹

The Review of the Act was launched in June 2015, and will examine how these and other policies and reforms can be most effectively implemented to support a well-functioning rental market in Victoria, and to also meet the goals of the *Plan for Fairer, Safer Housing*, notably for vulnerable or disadvantaged tenants.

The Act, which sets out the rules that govern the tenant-landlord relationship, can influence the level of security of tenure provided in the residential rental market. The purpose of this issues paper is to seek stakeholder input as to how well these rules cater to the current needs and preferences of the Victorian community.

Security of tenure refers to the degree of certainty a person has about their residential accommodation: the choice to stay or leave; the legal protections they have over their tenancy; and the sustainability of their tenancy in terms of cost and amenity. (Section 1)

Security of tenure has been identified as an issue for the Review given the importance of stable housing. With a growing population, access to rental housing is increasingly relevant for more Victorians than ever before. It is particularly important for low income tenants and those with additional needs. The government has committed to reviewing the provision for security of tenure in the Act. (Section 1)

Tenants have varying needs and preferences for stability versus flexibility in their housing arrangements, in the same way that landlords have varying needs and preferences for the level of security of tenure they are willing to provide. An understanding of these, and the trade-offs that the parties make both when entering and during a tenancy, can provide insight into where reforms may be most effective. (Section 2)

The overall effectiveness of the Act is important for successful tenancies. More specifically, provisions relating to lease terms, tenancy terminations, rent increases, and repairs, maintenance and modifications can directly influence security of tenure outcomes. (Section 3)

Rooming houses, caravan parks and residential parks are increasingly becoming long term accommodation options for many Victorians, and these are covered by separate parts of the Act. (Section 4)

Approaches taken by other jurisdictions can provide an interesting source of ideas and experience, which can inform future options for reform in Victoria. Although the Act is consistent with those of its counterparts in other Australian jurisdictions, there is some variation in the way international jurisdictions approach security of tenure. (Section 5, and Appendices 1 and 2)

There are several reasons why, unassisted, the market may not meet the needs for tenure security of all tenants. These include that: there are costs and risks to private landlords of committing to long term agreements; there are uncertainties for tenants when they enter into a tenancy agreement; tenants who most need tenure security are not always able to pay the price at which landlords are willing to provide it; and power imbalances between tenants and landlords may pose obstacles for some tenants in maintaining stable tenancies. (Section 6)

Consultation with stakeholders will provide insight into the issues facing tenants and landlords with regard to security of tenure, and subsequently inform options for responding effectively to the issues identified.

¹ *Labor's Plan for fairer, safer housing*, <http://www.danielandrews.com.au/policy/labors-plan-for-fairer-safer-housing>, 26 November 2014.

1 Security of tenure: background

1.1 What is security of tenure?

Security of tenure refers to the degree of certainty a person has about their residential circumstances. Someone with a high degree of security of tenure in rental accommodation is likely to:

- have a choice to stay or leave
- have legal protections regarding their tenancy
- pay a sustainable rent, and
- have certainty that the property will be maintained appropriately.

1.2 Why is security of tenure important?

Security of tenure is important today for a greater proportion of Victorians than ever before, given that more Victorians are renting, and for longer.

Security of tenure is important for the community. It provides people with the stability needed to meaningfully engage in education and employment, and to build social and support networks within their local community.

Stable residential accommodation can support better social, economic and health outcomes. Tenants with low incomes and those with additional needs, such as people with a disability or older tenants, are likely to be impacted disproportionately by frequent moves and uncertainty about the length of their tenancies.²

Residential mobility, or a tenant's choice to move to locations and homes that better suit their needs is also important. Social, economic and health outcomes are enhanced when people have this choice. Security to stay should be balanced with the flexibility to leave.

1.3 What are the policy goals?

Tenants in Victoria currently benefit from a range of legal protections over the security of their tenancies. These protections are set out in the Act, and discussed in Sections 3 and 4 of this paper. They include rules governing:

- lease terms
- terminations
- rent increases, and
- repairs, maintenance and modifications.

On 26 November 2014, the government announced its *Plan for Fairer, Safer Housing*, which envisages safe, affordable and secure housing for all Victorians. As part of this Plan, the government committed to examining the feasibility of long term leases (of up to ten years) and annual rent increases. In addition, the government noted that there was scope in the Act to provide greater protection to residents of caravan parks and moveable dwellings.³

The Review will examine how these and other policies and reforms can be most effectively implemented to support a well-functioning rental market in Victoria.

² *Secure Occupancy in rental housing: conceptual foundations and comparative perspectives*, Kath Hulse, Vivienne Milligan and Hazel Easthope for the Australian Housing and Urban Research Institute, Swinburne-Monash Research and Centre UNSW-UWS Research Centre, July 2011, AHURI Final Report No. 170.

³ *Labor's plan for fairer, safer housing*, <http://www.danielandrews.com.au/policy/labors-plan-for-fairer-safer-housing>, 26 November 2014.

2 What are the needs and preferences for security of tenure in the Victorian rental market?

An understanding of the needs and preferences of tenants and landlords for security of tenure will help to identify where issues may exist in the operation of the Act, and where there are opportunities for reform. Consideration of the way in which the parties' expectations are currently served by and interact with the legislation, can assist stakeholders to formulate responses to the issues identified regarding the application of the Act (Sections 3 and 4).

This Section explores the needs and preferences of tenants and landlords for security of tenure, and the relevant trade-offs they make both when entering, and during a tenancy. It raises for consideration, the way in which their expectations can best be met given the features and characteristics of the rental market in Victoria.

2.1 What are the preferences of tenants for security of tenure?

It is commonly understood that there are a range of reasons why households and individuals rent their accommodation, including the high cost of purchasing a home, as well as lifestyle and employment reasons. While some households have a preference for security and wish to stay in their homes over the long term, other households have a preference for the flexibility and mobility that renting allows.

The Consultation Paper, *Laying the Groundwork* provided a snapshot of Victoria's rental market and showed that renting is becoming a long term housing option for many Victorians.⁴ The level of residential mobility and the reasons why people move are particularly relevant to security of tenure.

Tenants in private rental accommodation appear to be moving less than they were twenty years ago. The proportion of households that moved over the course of a year fell from 78 per cent in 1996 to 31 per cent in 2011 (Table 2.1).

Table 2.1: Private rental sector mobility – households in which all residents moved within the last year, 1996 and 2011 (Victoria)

	1996 (%)	2011 (%)
Proportion of households renting privately	77.6	31.1
Proportion of non-renter households	26.5	6.1

Source: ABS, Customised 2011 Census Report, 2015.

There is a trend towards greater stability for both renting and non-renting households. While Victorians appear to have more residential stability now than in the past, it is important to determine whether tenants consider this level of stability to be adequate, and whether there are impediments to achieving security of tenure for those tenants who want and need more stability. In particular, the Review will consider the feasibility of longer fixed term leases.

According to a recent survey by the Tenants Union of Victoria (TUV), the majority of tenant moves were tenant-initiated.⁵ The survey further reported that most tenants (65 per cent) preferred short term leases so that they had the flexibility to move for work, study or family; because they were planning to purchase a home; or simply because they wanted to keep their options open.⁶ This indicates that many tenants take advantage of the flexibility that renting offers.

⁴ Accessed at www.fairersaferhousing.vic.gov.au in June 2015.

⁵ *Online Survey of Victorian Private Market Renters: 2015 Full Report*, Tenants Union of Victoria, p. 28. Accessed via www.tuv.org.au | Research | Tenure Security for Private Tenants in Victoria [survey report] in August 2015.

⁶ *Ibid.*

Of those respondents who indicated that their moves had been for reasons not of their own choosing, the following reasons were given:

- landlord moved in or sold property (18 per cent)
- unable to afford rent (4 per cent)
- dispute with landlord (2 per cent), and
- eviction (2 per cent).⁷

Ending a tenancy could also be the outcome of balancing the preference for a long tenancy against the suitability of the arrangement. It could be that in many cases, tenants have not had complete information about the property, the landlord's intentions, or the way it would be managed. Uncertainties that tenants face at the outset could contribute to them ending the tenancy if it becomes evident that the arrangement is not suitable to them.

Insights into the factors that influence tenants' decisions to stay or leave, and the circumstances leading to unplanned moves, will help to clarify where reforms to the Act could enhance security of tenure.

Questions for Consideration

- 1 Why is security of tenure important for Victorian tenants?
- 2 What factors influence tenants' preferences for stability and flexibility in rental accommodation?

2.2 What are the preferences of landlords and prospective property investors?

As noted in the Consultation Paper, *Laying the Groundwork*,⁸ the majority of landlords in the private rental sector in Victoria are individual, small-scale property owners. They are in the rental market for reasons including investment, to eventually live in the property, or because the property was previously their place of residence. The majority of these landlords (73 per cent) rent out only one property.⁹ Private institutional investment in residential property in Australia is negligible.¹⁰

It is expected that landlords and prospective investors would consider a range of factors when determining what level of security of tenure to provide in a tenancy agreement. It is understood that landlords generally benefit from long term stable tenancies through an uninterrupted income stream, less wear and tear on the property, as well as lower letting costs over time.

That said, longer agreements limit the ability for landlords to regain possession of their properties, and this could present a source of risk and uncertainty. These risks and uncertainties may be more relevant to landlords who are unable to predict their future personal financial circumstances and who may prefer the flexibility to terminate a tenancy. It is expected that the risk of a tenancy being problematic, disruptive or resulting in damage to the property is another relevant consideration landlords make when deciding what level of commitment is acceptable to them. Some landlords might also view an ongoing tenancy as an obstacle to increasing rent on the property.

In principle, the extent to which an investor tolerates risk and uncertainty depends on the expected return on their investment. Relevant considerations for a property investor in this regard would include their obligations under the Act, their rental returns, expected capital gain, interest rates, comparative

⁷ *Ibid.* Percentages refer to the percentage of respondents who nominated those reasons.

⁸ Accessed via www.fairersaferhousing.vic.gov.au in June 2015.

⁹ Customised Survey of Income and Housing Report, Australian Bureau of Statistics, 2015.

¹⁰ *Secure Occupancy in rental housing: conceptual foundations and comparative perspectives*, Kath Hulse, Vivienne Milligan and Hazel Easthope for the Australian Housing and Urban Research Institute, Swinburne-Monash Research and Centre UNSW-UWS Research Centre, July 2011, AHURI Final Report No. 170, page 91.

performance of other investments, costs of maintaining the property, taxation arrangements and any other financial incentives or penalties. Regulation that restricts landlords and property investors from managing their risk and uncertainty will alter the balance of these factors. It may influence their decisions about whether to offer a property on the rental market and the conditions under which they do so.

Stakeholders' views about what landlords and property investors consider to be an appropriate balance of protections and obligations will help determine the best way to provide for security of tenure in the longer term.

Questions for Consideration

- 3 What factors influence the preferences of landlords when deciding the period of a tenancy?
- 4 How important is it for landlords to establish stable tenancies in their rental properties?
- 5 How important is it for landlords to be able to regain possession of a rental property?

2.3 What is offered in the Victorian rental market?

Most of the rental accommodation in Victoria is provided by the private sector, with the public and community sectors providing housing to a smaller percentage of tenants. The public housing system is provided by the Director of Housing to eligible low income and disadvantaged households. At 30 June 2015 there were 73,721 Director of Housing-owned units.¹¹

Community housing consists of properties with a high degree of tenure security provided at subsidised rents to applicants from the public housing waiting list or to those who meet the eligibility criteria for public housing. It also provides affordable housing to low income households. At 30 June 2015, there were 11,665 community-owned units in Victoria.¹²

Public and community housing together form the social housing sector. The experiences of social housing tenants are relevant to the Review insofar as the tenancy arrangements in this sector are subject to the Act. However tenants' eligibility to enter and remain in social housing is set according to policy and guidelines within the Government's Housing portfolio. These do not fall under the Act, and therefore will not be examined as part of this Review.

The remainder of rental properties in Victoria (over 500,000) are provided by the private rental sector. Housing provided by the private sector caters, to varying degrees, to tenants seeking low, medium and higher cost housing. Many people who qualify for public housing rent accommodation in the private rental sector, because the supply of public housing has not kept pace with demand.

Rooming houses, caravan parks and residential parks are also home to long term residents. The tenancy arrangements for these accommodation types are each governed by specific provisions in the Act and are therefore subject to the Review.

2.4 Matching tenant and landlord preferences for security of tenure

The rental market must cater for many different needs and preferences. As noted above, the majority of tenants in Victoria rent their accommodation in the private rental market, with smaller percentages of rental properties being provided by the social housing sector. Within the private rental market, landlords are predominantly individual, small scale property owners.

In many cases, tenants and landlords will agree on and engage in mutually beneficial arrangements, which could include long tenancies. In some cases, however, the parties' preferences for commitment and length of tenure may not match, and tenants who want greater security of tenure may have difficulty obtaining it.

¹¹ Additional data 2014-15 Social Housing Human Service Delivery Data, Department of Human Services, p.8. Accessed via <http://dhhs.vic.gov.au/publications/annual-report-2014-15-additional/> in October 2015.

¹² *Ibid.*

In those cases, households with restricted financial resources can suffer disproportionately from a lack of security of tenure. Given the ongoing shortage of low cost housing,¹³ these households have relatively less bargaining power to negotiate the outcomes they want at the outset, and during the tenancy. The end of a tenancy can mean finding alternative schooling, employment and other service providers in a new location. It can present obstacles to maintaining family and social connections. Unexpected moving costs can create considerable financial hardship. Tenants in these households may be the most vulnerable, particularly where the household includes or is composed of:

- families with school aged children (especially single-parent families)
- older people
- people with physical disabilities
- people with mental illness
- Aboriginals and Torres Strait Islanders
- recent immigrants
- young people, and
- women fleeing domestic violence.

Accurate data on the sizes of these respective groups is not readily available. However, based on ABS household income data for Victoria, approximately 41 per cent of households renting in the private rental market can be considered low income, and of those, 85 per cent are likely to be experiencing rental stress.¹⁴

Security of tenure can be particularly important for disadvantaged people as insecure and unstable housing can contribute to social exclusion, and entrench disadvantage. People in low income and disadvantaged groups can face barriers to achieving their desired level of security of tenure in the private rental market. The reasons for this might include that:

- people experiencing disadvantage may be forced to seek accommodation in areas with lower rents, which tend to lack access to services and employment, and this can make an ongoing tenancy unviable
- they can have difficulty keeping up with rent payments, causing instability of tenure, and
- they may only be able to access low cost properties, which may be unsuitable for ongoing occupation due to age and condition.¹⁵

Stakeholder views about the extent to which needs and preferences for security of tenure across the rental market are being met, and the reasons for this, will provide insights into the areas for reform.

Questions for Consideration

- 6 What are the main reasons that tenancies end, from both landlords' and tenants' perspectives?
- 7 What are the obstacles in the rental market for tenants who prefer longer tenure from achieving this?

¹³ This is widely reported in housing market commentary and literature. For example, *Rental Affordability Snapshot*, Anglicare Australia, April 2015 accessed via www.anglicare.asn.au.

¹⁴ *Customised 2011 Census Report*, Australian Bureau of Statistics, 2015. Households with income that falls within the first two income quintiles for Victorian households are considered 'low income'. Rental stress means the household spends more than 30 per cent of income on rent.

¹⁵ *Secure Occupancy in rental housing: conceptual foundations and comparative perspectives*, Kath Hulse, Vivienne Milligan and Hazel Easthope for the Australian Housing and Urban Research Institute, Swinburne-Monash Research and Centre UNSW-UWS Research Centre, July 2011, AHURI Final Report No. 170.

3 How does the Residential Tenancies Act provide for security of tenure in general residential tenancies?

This section identifies aspects of the Act that directly influence security of tenure. It also identifies a number of issues that can arise in the application of the Act, and initial considerations for reform.

As outlined above, someone with a high degree of security of tenure is likely to: have a choice to stay or leave; have legal protections regarding their tenancy; pay a sustainable rent; and have certainty that the property will be maintained appropriately.

The aspects of the Act, therefore, that are most relevant to security of tenure are those which relate to:

1. lease terms
2. terminations of tenancies
3. rent increases, and
4. repairs, maintenance and modifications.

It is also worth noting that the effectiveness of the Act as a whole can have an impact on the success of tenancy arrangements via the way in which it affects the functioning of the rental market more generally.

The discussion below refers to general residential tenancies (Part 2 of the Act). Provisions for rooming houses, caravan parks and residential parks are discussed in Section 4 of this paper.

3.1 Lease terms

‘Lease term’ refers to the period of a tenancy agreement. A lease is generally in the form of a fixed term tenancy agreement, which specifies a start and end date. Fixed term agreements give both tenants and landlords certainty regarding the length of the tenancy. Both parties trade flexibility for stability under a fixed term agreement.

A periodic tenancy agreement, instead, has no fixed end date. Under a periodic agreement, the tenant has greater flexibility to end the tenancy in that they can do so by giving 28 days’ notice, without financial penalty. However a periodic agreement provides less security as the landlord can also give the tenant a notice to vacate for reasons unrelated to tenant conduct.

Parties are free to negotiate any length of tenancy that is suitable to them. According to Consumer Affairs Victoria (CAV), which administers sections of the Act, it is common practice for parties to enter an initial six or twelve month fixed term agreement. To continue the tenancy, parties either sign a new fixed term agreement, or allow a periodic agreement to be automatically created.

The Act does not prescribe a minimum duration for lease terms for general tenancies, but it does set out rules applying to leases. The key features relating to lease terms are summarised in Box 3.1.

Box 3.1: Lease terms for general residential tenancies

- The Act does not apply to fixed term tenancy agreements exceeding five years (section 6).
- The Act prescribes circumstances in which either party can terminate a fixed term agreement before the fixed term expires. These are generally restricted to conduct of either of the parties (subdivision 3 (Notice or abandonment by tenant) and subdivision 4 (Notice by landlord, owner or mortgagee) of Division 1 of Part 6).
- If a tenant wishes to break a fixed term agreement, they can be liable to continue paying rent until the end of the term (or until a new tenant is found) and for other reletting costs (section 210).
- On expiry of a fixed term agreement, if neither party gives notice to terminate, or if a new fixed term agreement is not signed, a periodic agreement is automatically created (typically month-to-month). Periodic agreements can roll over indefinitely (section 230).

3.1.1 Issues for security of tenure under the current lease term arrangements

Some of the issues that have been brought to CAV’s attention relating to lease term arrangements that are also relevant to security of tenure include that:

- tenants who seek long term stable housing are unable to secure or sustain long term tenancies
- the financial commitment for tenants who enter into long fixed term agreements limits their residential mobility and exposes them to too much risk, as they are technically liable for rent payments covering the period of the agreement
- industry practices of offering short (six to twelve month) leases reinforce a culture of renting as a transitional and short-term housing option, and
- more flexible arrangements for tenants who wish to break a lease could compromise the level of certainty landlords have about the period of the tenancy.

Questions for Consideration

- 8 What are the obstacles (including any provisions of the Act) to tenants and landlords entering long leases?
- 9 How do industry practices influence lease terms and the duration of tenancies more generally?

Considerations for reform to lease term arrangements

The government has committed to examining how long term leasing can be accommodated in the Act, as noted in section 1.3 of this paper.

According to research undertaken by the TUV, 40 per cent of respondents said their preference, if they were to sign a new fixed term lease, would be for a lease of 12 months or less where the tenant had the option to extend.¹⁶

¹⁶ *Online Survey of Victorian Private Market Renters: 2015 Full Report*, Tenants Union of Victoria, p. 31. Accessed via www.tuv.org.au | Research | Tenure Security for Private Tenants in Victoria [survey report] in August 2015.

A subgroup of respondents who indicated a preference for a longer term lease, expressed a range of views when asked about their preferred length of the lease (Table 3.1). Of this group 68 per cent indicated they would be willing to take on some responsibility for minor repairs or maintenance in return for a longer term lease.¹⁷

Table 3.1: Preferred lease length of tenants who expressed a preference for long term leases

Lease length	% (n=367)
2 years	42
3 years	18
5 years	15
10 years	3
Indefinite	19
Other	2

Source: Tenants Union of Victoria Online Survey of Victorian Private Market Renters: 2015 Full Report, p.38.

Longer lease terms can provide certainty for vulnerable tenants, including older people and people with disabilities, who might otherwise encounter difficulties in finding safe, affordable and secure housing.¹⁸ In the event that premises might be suited to the needs of these particular tenant groups, enhanced security of tenure can enable them to establish stable, accessible and comfortable surroundings.

When thinking about ways to accommodate both tenants and landlords seeking long leases, it is important to consider how this would meet the needs, and alter the risks and incentives for both parties, as discussed in Section 2 above.

Consideration should be given to the way in which regulation can be designed to:

- apply to long term leases
- accommodate tenants' and landlords' needs for flexibility
- incentivise landlords to offer long leases to tenants who want them, and
- address the risks for both tenants and landlords in entering into long term agreements.

In particular, mandatory lease terms are unlikely to accommodate tenants' and landlords' needs for flexibility, and optional long term leases would require appropriate incentives for both parties for them to be effective. In addition, optional long term leases would need to be designed in a way such that tenants who do not want them were not coerced into entering such arrangements.

Questions for Consideration

- 10 What role would long (five to ten year) leases play in strengthening security of tenure?
- 11 What factors or circumstances would make longer leases attractive to tenants and landlords?
- 12 If long term leases were provided for in the Act, what protections (if any) would be required for tenants who are seeking only short term leases?

¹⁷ *Online Survey of Victorian Private Market Renters: 2015 Full Report*, Tenants Union of Victoria, p. 39. Accessed via www.tuv.org.au | Research | Tenure Security for Private Tenants in Victoria [survey report] in August 2015.

¹⁸ www.fairersaferhousing.vic.gov.au accessed in October 2015.

3.2 Terminations

Provisions for terminating a lease or tenancy arrangement are central to security of tenure in that they determine the level of certainty and choice tenants have about whether to stay in their homes, and the level of flexibility landlords have to regain possession of their properties.

If terminations provisions allow too much flexibility for landlords, there is a risk that the private rental market would not meet expectations for residential accommodation. Conversely, if the provisions do not adequately provide for landlords to regain possession of their properties, then their incentives to offer property in the rental market could be affected. The added costs of risk management for landlords could be reflected in higher rents and conservative decision making. This could take the form of more intensive screening of tenants, and avoidance of tenants who they perceive to be ‘higher risk’.

Ideally, provisions for termination should be balanced with appropriate and effective mechanisms for eviction where tenants do not comply with the terms of the tenancy agreement.

The key features of the terminations provisions in the Act are summarised in Box 3.2.

Box 3.2: Terminations provisions for general residential tenancies

- Termination provisions are in Part 6 of the Act. Tenancy agreements cannot be terminated by either tenant or landlord except in accordance with these provisions.
- A fixed term agreement can be terminated at any time by agreement of both parties (section 217). Otherwise there is restricted scope to terminate the agreement, which is generally confined to the conduct of either of the parties (subdivision 3 (Notice or abandonment by tenant) and subdivision 4 (Notice by landlord, owner or mortgagee) of Division 1 of Part 6).
- A tenancy may be terminated by either party to coincide with the end of the fixed term agreement, and during a periodic agreement, by giving the prescribed period of notice to vacate (subdivisions 3 and 4 of Division 1 of Part 6).
- The Act prescribes different notice periods for landlords depending on the reason. Longer periods are required for specific-purpose reasons (such as sale, renovation, own use, ‘no specified reason’) than for notices related to tenant conduct (subdivisions 3 and 4 of Division 1 of Part 6).
- Notice periods for specific-purpose notices to vacate range from 14 to 120 days, although for most of the prescribed reasons they are 60 days. A landlord is required to give 90 days’ notice for the end of a fixed term agreement of more than six months, and 120 days’ notice if they are terminating the agreement for ‘no specified reason’ (subdivisions 3 and 4 of Division 1 of Part 6).
- The Act deems notices to vacate as invalid under certain circumstances (section 266) and also allows tenants to challenge a notice in VCAT (section 321B).

3.2.1 Issues for security of tenure under the current terminations provisions

Some of the issues that have been brought to CAV’s attention relating to terminations that are relevant to security of tenure include that:

- the provisions that enable landlords to terminate a tenancy for ‘no specified reason’ create uncertainty and stress for tenants, and can deter them from exercising their rights to request repairs, or make legitimate complaints¹⁹
- landlords choose to terminate tenancies for ‘no specified reason’ because the Act does not sufficiently accommodate all legitimate grounds for termination, and
- notice periods are not long enough to enable tenants to find alternative accommodation.²⁰

¹⁹ During a periodic tenancy arrangement the landlord can give notice for ‘no specified reason’ under section 263, and to coincide with the end of a fixed term agreement under section 261.

Questions for Consideration

- 13 What issues are there regarding the way in which terminations provisions in the Act affect security of tenure?
- 14 How much notice would be appropriate for the tenant to give to the landlord when providing a notice of intention to vacate?
- 15 How much notice would be appropriate for the landlord to give to the tenant when issuing a notice to vacate?

Considerations for reform to notices to vacate for ‘no specified reason’

In 2002, amendments to the Act increased the notice period of the ‘no specified reason’ notice to vacate from 90 days to 120 days, to deter property owners from using them inappropriately, but without limiting their proprietary rights.²¹

The Act prohibits use of the ‘no specified reason’ notice to vacate in a retaliatory manner (that is, in response to tenants seeking to exercise their rights). The tenant can challenge a notice at VCAT if they believe it was issued for such reasons. However, it can be difficult to demonstrate that a notice has been issued in a retaliatory manner, and there are difficulties in enforcing this protection.

Changes to the existing provisions for the ‘no specified reason’ notice to vacate should take account of any potential adverse consequences for security of tenure as landlords attempt to manage risk. For example, landlords may choose to avoid periodic agreements and offer only short fixed term agreements in an attempt to manage risks associated with a tenancy, or to retain flexibility to regain possession of the property.

Questions for Consideration

- 16 What are the reasons why landlords use the ‘no specified reason’ notice to vacate?
- 17 Rather than relying on a notice to vacate for ‘no specified reason’, how could the Act cater for landlords with legitimate grounds for terminating a tenancy for reasons that are not otherwise prescribed?
- 18 What options or initiatives could be used to encourage landlords to choose to maintain tenancies rather than issuing a notice to vacate?
- 19 What would be the impact of removing the notice to vacate for ‘no specified reason’ from the Act?

3.3 Rent increases

Rent levels are related and reactive to vacancy rates, which reflect demand and supply in the market. High vacancy rates will constrain rent levels as landlords compete for tenants. Conversely, low vacancy rates signal greater demand for housing and provide landlords with scope to charge higher rents.

Both rent levels and the frequency of rent increases during a tenancy can pose barriers to long term tenancies because they can affect a tenant’s certainty of their future housing costs and influence the ongoing affordability of a property. This is particularly relevant for tenants who have low or fixed incomes, including older people and other vulnerable tenants as identified in Section 2.4 above.

²⁰ Details of notice periods are available via www.consumer.vic.gov.au | Renting | Ending a lease or tenancy.

²¹ Second Reading Speech, Residential Tenancies Bill, Legislative Assembly 14 May 2002.

The key provisions for rent increases in the Act are in Box 3.3.

Box 3.3: Rent increase provisions for general residential tenancies

- The provisions for rent increases for general residential tenancies are in Division 3 of Part 2 of the Act.
- Rent increases cannot occur more than once every six months (section 44 (4A)).
- The landlord must give 60 days’ notice of the increase (section 44 (1)).
- The rent cannot be increased during a fixed term tenancy unless provision is made for a rent review in the agreement (section 44 (4)). If such a provision exists, 60 days’ notice of the rent increase must be given.
- If a tenant believes a rent increase to be excessive after considering market rents they can request a rent assessment from CAV. After receiving CAV’s assessment the tenant can escalate the matter to VCAT (section 45).
- Notice of a proposed rent increase must include a statement informing the tenant of their right to apply to CAV to investigate and report on the proposed rent (section 44 (3)).

3.3.1 Issues for security of tenure under the current rent increase provisions

Some of the issues that have been brought to CAV’s attention relating to provisions for rent increases that are also relevant to security of tenure include that:

- rent increases can be used as a *de facto* means of terminating a tenancy
- tenants are reluctant to request maintenance and repairs, or make complaints for fear of incurring a rent increase
- landlords end tenancies for the purpose of increasing rents for a new tenant to a level that may otherwise be challenged by an existing tenant
- allowable rent increases are too frequent, and
- provision for rent increases during a fixed term agreement can be made without specifying the amount of the increase at the outset, and the associated uncertainty and risk may deter tenants from entering into longer term agreements.

Considerations for reform to rent increase provisions

Limits on the frequency of rent increases were initially omitted from the Act in 1997. When the Act was amended in 2002, the frequency of rent increases was limited to no more than one in a six month period. This amendment was to provide tenants with greater certainty or predictability as to rents; as without this limitation, the provisions detracted from security of tenure.²²

As part of its Plan for Fairer Safer Housing, the government has committed to reviewing the provisions for rent increases in the Act.²³

Regulation that prevents rents from increasing with market movements risks creating distortions in the market. That said, the provisions in the Act for rent increases should provide adequate protection for the tenant against opportunistic behaviour by the landlord, and sufficient certainty for tenants about their costs and ability to maintain the tenancy over time.

²² *Ibid.*

²³ *Labor’s Plan for fairer, safer housing*, <http://www.danielandrews.com.au/policy/labors-plan-for-fairer-safer-housing>, 26 November 2014.

Questions for Consideration

- 20 What issues are there regarding the way in which provisions for rent increases in the Act affect security of tenure?
- 21 What would be an appropriate alternative to the current frequency of allowable rent increases of no more than one every six months?
- 22 What would be an appropriate alternative notice period for rent increases to the current 60 days?
- 23 What would be an appropriate arrangement for rent increases during fixed term agreements to provide both tenants and landlords with certainty and choice?

3.4 Repairs, maintenance and modifications

The standard and maintenance of a property, and the ability for tenants to make modifications, are relevant to security of tenure because they can affect the suitability of the dwelling for the tenant's needs over time. For those tenants who make modifications to adapt a property to meet their physical requirements, certainty about the length of tenancy is important, particularly where the financial outlays are significant.

The key features of the Act are in Box 3.4.

Box 3.4: Repairs, maintenance and modifications provisions for general residential tenancies

- Repairs and maintenance are the landlord's responsibility, except where the tenant has caused the damage (Division 6 of Part 2).
- There are general duties for landlords to provide premises that are reasonably clean and maintained in good repair, with locks on all external doors and windows (Division 5 of Part 2).
- The Act distinguishes between urgent and non-urgent repairs, with avenues for escalation and dispute resolution available to tenants (or landlords) depending on the nature of the problem. Tenants can apply to VCAT to withhold rent until repairs are undertaken (section 77).
- The tenant has duties to keep the property in a clean condition, avoid damage and notify the landlord of any damage to the premises (Division 5 of Part 2).
- There are rules about the modifications a tenant can make to a property, including their obligations to restore the premises to its original condition at the end of the tenancy (section 64).

3.4.1 Issues for security of tenure under the current repairs, maintenance and modifications provisions

Some of the issues that have been brought to CAV's attention relating to repairs, maintenance and modifications that are also relevant to security of tenure include that:

- tenants and landlords can have different standards and expectations of maintenance and repairs, and this can lead to properties becoming unsuitable to tenants over time, and to the deterioration of tenant-landlord relationships
- tenants can be reluctant to request repairs for fear of a rent increase or having their tenancy terminated, particularly at the low cost end of the market
- dispute resolution mechanisms for repairs and maintenance issues are inadequate or not well utilised by tenants
- more freedom for tenants to make modifications would better enable them to make a rented property a home

- people who require modifications to properties are not well catered for in the private rental market, and this can create obstacles for obtaining suitable long term accommodation , and
- tenants who invest in extensive modifications to improve the amenity of their dwellings require certainty about the period of time they are able to stay in the property.

Considerations for reform to repairs, maintenance and modifications provisions

The ways in which repairs, maintenance and modifications issues impact tenants’ ability to achieve secure housing are of particular interest. A subsequent issues paper on property conditions and standards will also invite stakeholders to provide their views in relation to these issues as they apply under the Act more broadly.

Older people and people with disabilities face additional challenges in the private rental market if their accommodation requires modifications to meet their accessibility needs. In the first instance, it may be difficult to secure a property to which a landlord will permit modifications. For tenants on low incomes, doing so in an already constrained low cost rental market adds another layer of difficulty in establishing a home.

Once in a property, certainty about how long the tenant can stay is important given that installing modifications (and removing them at the end of a tenancy if required) can involve a considerable outlay by them. Ideally for these tenants, the costs could be spread over a long period of time.

Changes to provisions should be considered in light of risks of discrimination to groups who may be more likely to require modifications, including people with disabilities and older people.

Questions for Consideration

24 What issues are there regarding the way provisions for repairs, maintenance and modifications in the Act affect security of tenure?

4 How does the Residential Tenancies Act provide for security of tenure in rooming houses, caravan parks and residential parks?

The government has committed to amending the Act to provide better protections to residents of rooming houses, caravan parks and residential parks.²⁴

Tenancy arrangements in rooming houses, caravan parks and residential parks are governed by separate parts of the Act, namely:

- Part 3 (Rooming houses)
- Part 4 (Caravan parks), and
- Part 4A (Residential parks).

In addition, the terminations provisions for all tenure types are in Part 6 of the Act.

It is relevant to consider whether the provisions in the Act adequately address the current and emerging needs of residents in these accommodation types. With fewer public housing places available and the difficulties of accessing affordable properties in the private rental market, these accommodation types are increasingly relied upon to serve the long-term housing needs of more Victorians over time.

Estimates of the resident populations of each vary dramatically due to a lack of reliable data. The ABS 2011 Census recorded 4,397 rooming house residents in Victoria, while there are unofficial estimates of over 12,000 residents in Melbourne alone.²⁵ The Census counted 3,800 residents of caravan parks and marinas in Victoria. However in August 2012, Housing for the Aged Action Group estimated that 16,725 Victorians lived in caravan parks and residential parks.²⁶

Residential parks for moveable dwellings tend to be a relatively low cost, long term housing option. Residents are typically older people on low or fixed incomes, and due to the nature of their accommodation and the difficulties of relocating, security of tenure for them is particularly important.

4.1 Rooming houses

Rooming house residents have traditionally had a higher level of mobility than residents of other accommodation types. Landlords of rooming houses manage a diverse tenant group, some of which are at risk of homelessness and who have complex health and social needs.

A 2009 Rooming House Standards Taskforce made 32 recommendations to improve the standard of rooming house accommodation in Victoria, most of which have now been implemented. These included the introduction of a suite of privacy, safety, security and amenity standards for registered rooming houses. The government has committed to introducing a 'Fit and Proper Person' Test for registered rooming house operators.

Rooming house residents enjoy residency rights from the time they occupy their room, and must be given a notice by the rooming house operator in the form prescribed by the Director of CAV. Alternatively, a rooming house operator and a resident may enter into a tenancy agreement under Part 2 of the Act, although it is noted that the living arrangements must be conducive to the broader rights of quiet enjoyment that a Part 2 tenancy agreement confers.

²⁴ *Labor's Plan for fairer, safer housing*, <http://www.danielandrews.com.au/policy/labors-plan-for-fairer-safer-housing>, 26 November 2014.

²⁵ Chamberlain estimated there were over 12,000 residents in Melbourne rooming houses in 2012. This figure includes residents of unregistered rooming houses. (*Are Boarding Houses Disappearing?* Chamberlain, C., Canberra: Department of Families, Housing, Community Services and Indigenous Affairs, 2012).

²⁶ *Residents Committees in Caravan and Residential Parks and Villages Report*, Housing for the Aged Action Group, August 2012, p. 9.

Under section 94 of the Act, if any other type of agreement is entered into regarding the resident’s use of the rooming house, it must not be inconsistent with the provisions of the Act.

Rooming house owners must provide 60 days’ notice of a rent increase, and are responsible for repairs and maintenance of the property.

There are prescribed notice periods for residents to vacate a rooming house, which are generally shorter than for other private residential premises. As little as two days’ notice can be given for reasons relating to a resident’s conduct, and their residency right can be terminated on the same day if the conduct is dangerous or causes serious damage or disturbance.

The minimum notice period (‘specific-purpose’ notice)²⁷ is 28 days and the maximum is 120 days, for a ‘no specified reason’ notice.²⁸

The rationale for shorter notice periods relates to the unique circumstances of rooming houses. In particular, the existence of shared spaces and facilities in rooming houses means that residents’ rights to stay in the property must be balanced against the rights of other residents to peaceful enjoyment of those spaces and facilities.

Recognising that rooming houses are a long term housing option for some tenants, stakeholders’ views regarding the level of security of tenure provided in rooming house accommodation will help inform options for reform to existing regulation.

Questions for Consideration

25 What issues are there regarding the way in which security of tenure is provided for rooming house residents under the Act?

26 How can the needs for security of tenure for residents be appropriately balanced with the need to protect other residents’ rights to peaceful enjoyment of shared spaces in rooming houses?

27 Do the currently prescribed reasons and notice periods to terminate a rooming house resident’s residency rights strike the right balance for security of tenure, and if not, what alternatives are appropriate?

4.2 Caravan Parks

Caravan park residents include people who rent caravans, as well as caravan owners who rent the site on which their caravan is situated.

Caravan parks can be home to both short and long term residents. They are often used as emergency and transitional accommodation for tenants at risk of homelessness. Caravan park residents have traditionally had a higher degree of mobility than that of tenants of general residential accommodation.

Caravan park residents are automatically covered by the Act once they have resided in the park as their main place of residence for 60 days, or otherwise from the date of their written agreement with the caravan park operator. The waiting period for automatic coverage was reduced from 90 days by the 2002 amendments to the Act.

The rules relating to fixed and periodic agreements, rent increases and repairs and maintenance are similar to those for general residential tenancies (Section 3 of this paper).

The provisions for the termination of residency rights in a caravan park are in Division 3 of Part 6 of the Act. The reasons why a caravan park resident may receive a notice to vacate are similar to those for general residential tenancies, but also reflect the use of shared spaces by park residents. They can be asked to vacate on the same day if their conduct is dangerous or causing disruption or damage. Residents can be given seven days’ notice to vacate for reasons of conduct, including non-payment of rent for seven days.

²⁷ Specific-purpose reasons include reasons such as the rooming house is being sold, repossessed or renovated.

²⁸ Increased from 90 days by the 2002 amendments to the Act (see Second Reading Speech, Residential Tenancies Bill, Legislative Assembly 13 May 2002).

A caravan owner can end a fixed term agreement with a tenant of the caravan with 14 days' notice if they, or a member of their family, wish to move in. If the caravan owner has sold the caravan they must provide 60 days' notice to the tenant.

Either the owner of the caravan or caravan park can issue a notice to vacate for 'no specified reason' with 120 days' notice, and a caravan park operator can issue a notice to vacate if they are closing or repurposing the land with 6 months' notice to residents.

Questions for Consideration

- 28 Is 60 days an appropriate period for a resident's arrangement to be automatically covered by the Act in the absence of a written agreement?
- 29 What issues are there regarding the way in which security of tenure is provided for caravan park residents under the Act?
- 30 How can the needs for security of tenure for residents be appropriately balanced with the need to protect other residents' rights to peaceful enjoyment of shared spaces in caravan parks?
- 31 Do the currently prescribed reasons and notice periods to terminate a caravan park resident's residency rights strike the right balance for security of tenure, and if not, what alternatives are appropriate?

4.3 Residential Parks

Part 4A was inserted into the Act in 2011 to regulate owner-renter arrangements in residential parks. Typically, site tenants are owners of semi-permanent (moveable) dwellings that are fixed to an underlying site, which they rent from a park operator.

Under the Act, any new or renewed site agreements for moveable dwellings located in 'new' parks must be for a minimum of five years. A 'new' park is one that was registered on or after 1 September 2011. Site tenants in parks registered prior to this date are not covered by this minimum term requirement, and negotiate the terms of their site agreements with park operators.

Like residents in caravan parks, site tenants can be given a notice to vacate if the park is to be sold or redeveloped. There can be extended periods of uncertainty for them after they are informed about the park operator's intentions and before they are issued with a formal notice to vacate. If the park is to continue operation, the terms of their previous site agreement are not binding on the new owner.

Site tenants can be given a notice to vacate for reasons relating to conduct, in the same manner as such a notice can be given to residents of caravan parks. They can also be given a notice to vacate for 'no specified reason' to coincide with the end of a fixed term site agreement, or during a periodic site agreement, with 365 days' notice.

The rationale for the lengthy notice period is that, although dwellings are technically moveable, they are not easily moved in the same way as caravans. Given the costs (which can be considerable) of relocating a Part 4A dwelling, the potential difficulties of finding a new location, and the characteristics of site tenants (often low income and older people on fixed incomes), an unanticipated move can create considerable hardship.

That said, the options available to a site tenant to end a fixed term agreement with a park owner are important for residential mobility, in the same way as they are for tenants of general residential accommodation. The implications of ending an agreement impact the level of flexibility they have to choose alternatives that better suit their needs.

Questions for Consideration

- 32 What issues are there regarding the way in which security of tenure is provided for residents of residential parks under the Act?
- 33 What is an appropriate level of security of tenure for residents of residential parks, and how could the regulation provide for this?
- 34 What are the reasons residential park operators use the 365-day 'no specified reason' notice to vacate?
- 35 What would be the impact of removing the option for residential park operators to issue a 'no specified reason' notice to vacate to site tenants?
- 36 Rather than relying on a notice to vacate for 'no specified reason', how could the Act cater for residential park operators with legitimate grounds for terminating a site agreement for reasons that are not otherwise prescribed?
- 37 What are the impediments to site tenants moving from residential parks once they have committed to a fixed term agreement?

5 How do other jurisdictions provide for security of tenure?

Approaches taken by other jurisdictions to security of tenure can offer useful ideas and experiences of alternative models.

5.1 Other Australian jurisdictions

The general principles in the Act relating to lease terms, terminations, rent increases, and repairs, maintenance and modifications are generally consistent with their counterparts in other Australian jurisdictions. For example, there are similar rules regarding tenant and landlord commitments during fixed term and periodic agreements, and the processes for creating and ending these.

The Acts use similar frameworks for the rights and duties of tenants and landlords, and prescribe reasons and required notice periods for terminating tenancies. There are some exceptions however, and differences in notice periods. Details of these as they relate to the ‘no specified reason’ notice are in **Appendix 1**.

All jurisdictions provide limitations on the frequency of rent increases and specify corresponding notice periods.

The principles regarding responsibilities for repairs and maintenance are consistent across the Acts, as are the entitlements and responsibilities for tenants making modifications to a property.

Many of the protections against eviction, and avenues for challenging a notice to vacate, or to issue a breach of duty notice are also similar.

5.2 International approaches

The approaches to security of tenure as reflected in the residential tenancies legislation of international jurisdictions vary. Generally, many Western European jurisdictions provide for strong security of tenure through the use of indefinite and long leases, and rules around termination of tenancies that strongly favour tenants. Rent controls are not uncommon, and the frequency and magnitude of rent increases are often prescribed both during a tenancy and at the start of new tenancies.

A brief comparison of provisions for lease terms, terminations, rent increases and repairs, maintenance and modifications for a number of international jurisdictions is in **Appendix 2**.

5.2.1 Germany

Germany is frequently referred to as a case study because of the level of security of tenure available in its rental market.

There is a strong culture of renting in Germany. Much of its housing stock was built post World War II, when there were many refugees, and it was state controlled until the 1960s. A subsequent wave of private and social construction was then subsidised by the government. Most landlords are individuals, but more than 10 per cent of them each own more than 30 dwellings, and almost 50 per cent of rented dwellings have been inherited by their owners.²⁹ Some notable features of the German system include:

- lease terms are indefinite, with terminations allowable only for specified reasons
- property owners do not have automatic rights to regain possession of their properties, and in some cases must demonstrate detriment should they be unable to do so
- rents are controlled during a tenancy (they cannot increase by more than 20 per cent in a three year period) and for new tenancies (maximum rents are set according to local benchmarks)

²⁹ *Ireland’s Rental Sector: Pathways to secure occupancy and Affordable Supply*, National Economic & Social Council, No. 141, May 2015, p.57.

- tenants have freedom to make modifications to their rented homes, and
- many buildings and properties have fixed legal tenure as rental properties.³⁰

The environment for tenants

Some notable features for tenants include that:³¹

- tenants are responsible for repairs and maintenance on their rented property, and it is common for landlords to require exiting tenants to repaint the interior of the premises
- tenants are required to pay a ‘second rent’ to cover property related expenses including street cleaning, waste collection, building cleaning, insurance, council rates and some taxes, and
- rent controls can create a ‘lock-in’ effect for sitting tenants who, in order to retain a low rent, do not move from their current property even if it no longer meets their needs. As a consequence they can also ‘lock-out’ tenants wishing to enter the market in a particular location or city.

5.2.2 Republic of Ireland

In 2004, the Republic of Ireland introduced new residential tenancies legislation that aimed to strengthen security of tenure in the rental market.

These laws approach tenancies in four-year cycles. There is an initial trial period of six months, where either the tenant or landlord can terminate the tenancy without penalty. After six months, the tenant automatically has three and half years of secure tenure. There is scope for both parties (landlords for specified reasons only) to end the tenancy during this time with notice periods increasing with the length of the tenancy. After four years, there is another six month window during which the tenancy can be terminated, and the cycle then repeats itself.

Despite the increase in security of tenure under the Irish laws, most tenancies are less than two years in duration,³² indicating that tenants still choose to move with relative frequency. It is difficult to judge the extent to which low income tenants have benefited from the enhancements, and a lack of investment in low cost housing persists.³³

5.3 Investment incentives and mechanisms

It is commonplace for incentives and supply side mechanisms to be offered to property owners and investors in international jurisdictions to support investment. Some notable supply side mechanisms and compensatory features include tax free treatment of rental properties held for certain periods, and the ability to deduct capital costs (like refurbishment) from rental income. Negative gearing is not uncommon in Europe.³⁴

Information reviewed by CAV suggests that many jurisdictions continue to face challenges in maintaining an adequate supply of rental housing.

³⁰ *Ibid.*

³¹ *Secure occupancy in rental housing: conceptual foundations and comparative perspectives*, Kath Hulse, Vivienne Milligan and Hazel Easthope for the Australian Housing and Urban Research Institute, Swinburne-Monash Research and Centre UNSW-UWS Research Centre, July 2011, AHURI Final Report No. 170.

³² *Private Rented Sector Survey Findings: Tenants, Landlords and Estate Agents*, The Housing Agency/PRTB (Republic of Ireland), 2014, p.10.

³³ Personal communication with Department of the Environment, Community and Local Government (Republic of Ireland) on 6 July 2015.

³⁴ Including in Germany, France, Denmark, Finland, Switzerland, Spain and Norway (with limitations in some cases). Negative gearing refers to the ability for investors to deduct the costs of their investment for tax purposes from all sources of income, not just from the income generated by the investment.

6 Conclusion

Responses to this issues paper will provide the basis for considering reforms to existing Victorian Government policy and regulation to support appropriate security of tenure for Victorian tenants.

Understanding the reasons why not all tenants are able to obtain the level of security of tenure they desire is important in designing effective regulatory and non-regulatory responses. Some of the reasons why the market does not always deliver the desired outcomes are:

- there are costs and risks to small-scale private landlords of entering into long term commitments
- there are also costs and risks to tenants when entering a tenancy, as they must make decisions without complete information about the property and the way in which it will be managed
- there are insufficient incentives for small-scale private investors to supply social or ‘merit’ goods³⁵ such as security of tenure, and
- there are power imbalances between tenants and landlords, which can present obstacles for tenants in maintaining stable tenancies in suitable, affordable, accommodation.

It is important that the residential rental market delivers a level of security of tenure that is acceptable to the community, given the individual and social benefits of secure and stable housing. Regulation is most effective when it can assist markets to deliver desired outcomes where they fail to do so independently.

Stakeholders’ insights into the current issues and challenges for security of tenure in the residential rental market, and their underlying causes, will help to identify areas for reform and ways in which the regulation can best respond to the needs and preferences of the Victorian community.

³⁵ A social (or merit) good has both private and social benefits, but these are difficult to measure and there may be a time lag in realising them. While the community considers it desirable for everyone to have access to merit goods, people on low incomes are often unlikely to be able to pay the price at which providers are willing to provide them. Some common examples of merit goods are health care and education.

Appendix 1 – Residential tenancies legislation (terminations provisions) in other Australian jurisdictions

There is limited scope to end a fixed term tenancy agreement in any Australian jurisdiction until the end of the fixed term, other than for reasons related to conduct of one of the parties. Notice can be given before the end of the fixed term to terminate the agreement on the date the fixed term expires, with varying notice periods applying across jurisdictions and to the reasons prescribed in the respective Acts. Among the prescribed reasons, all Australian jurisdictions include provisions to give notice for ‘no specified reason’.

This is also the case for periodic agreements, with the exception of Tasmania. In New South Wales, where a tenant has had continual possession of a property for 20 years, the landlord must apply to the tribunal for a termination order to terminate the tenancy for ‘no specified reason’ during a periodic agreement. Notice periods range from 182 days (in the Australian Capital Territory) to 42 days in the Northern Territory.

In the Australian Capital Territory and New South Wales, the tenant has the option to terminate the agreement in response to a rent increase.

In Section 3.2 of this paper, the provisions for terminating a tenancy for ‘no specified reason’ in Victoria were highlighted for discussion. Table A.1 shows how the notice periods in Victoria’s Act compare with those of the other jurisdictions.

Table A.1: Notice periods to vacate a residence for no specified reason during a periodic agreement, Australian jurisdictions

Jurisdiction	Landlord	Tenant (notice of intention to vacate)
Victoria	120 days	28 days
Australian Capital Territory	26 weeks (182 days)	3 weeks (21 days)
New South Wales	90 days Special provisions apply for long term tenancies (20 years or more)	14 days
Northern Territory	42 days	14 days
Queensland	2 months (61 days)	2 months (61 days)
South Australia	90 days	28 days
Tasmania	N/A (Only for specified reasons during a periodic agreement) *Owner can give notice to vacate for end of fixed term for ‘no specified reason’ with 42 days’ notice.	14 days *Tenant can vacate at the end of fixed term with no notice.
Western Australia	60 days	30 days

Source: Jurisdictions’ residential tenancies legislation

Note: Notice periods are expressed as they are in the Acts, and expressed in number of days in brackets where applicable for ease of comparison.

Appendix 2 – Security of tenure provisions in international jurisdictions

Jurisdiction	Lease terms	Terminations	Rent increases	Repairs, maintenance and modifications
Western Europe	<ul style="list-style-type: none"> In France, the minimum lease term is three years where the landlord is an individual, and six years where the landlord is a company. In Germany, lease agreements are typically unlimited and fixed term contracts can only be created under exceptional circumstances. In Geneva, parties are permitted freedom of contract, however rely on a ‘good faith’ principle, and terminations of tenancies occur only under certain circumstances. 	<ul style="list-style-type: none"> In France, Germany and many other jurisdictions, landlords can terminate tenancies only for defined ‘legitimate’ reasons. Documentation is required to support the reasons. In Germany, a landlord’s desire to move back into the property is not sufficient to terminate a tenancy – the circumstances must be demonstrated to be justifiable. In France, if a landlord wishes to sell, the tenant must have first right of refusal to purchase the property. If the tenant later finds that the property has been offered to a third party on more favourable terms, they may substitute themselves for that third party and purchase the property. In France, a notice to vacate where the tenant is aged over 70 and has a low income is void unless the landlord offers alternative housing for the tenant. In France, the notice period for evicting someone for non-payment of rent is rarely less than 18 months. 	<ul style="list-style-type: none"> Several European and Scandinavian jurisdictions impose controls on the frequency and magnitude of rent increases. Some European jurisdictions have been moving to deregulate rents since the 1980s, for example, with deregulated rent controls on new buildings. In Germany, initial rents are set based on a local average, and the rent must not increase by more than 20 per cent in any three year period. In France, a rent increase can only occur if the rent is considered undervalued. Even then an increase can only be effected with six months’ notice. In these circumstances the increase must be tied to comparable properties in the area, using a sample of at least three properties. 	<ul style="list-style-type: none"> In Austria, landlords providing a specific category of affordable housing charge a monthly maintenance and improvement fee on top of the rent. Renovation works can be funded by limited rent increases and low cost loans are available to landlords. In Germany, tenants pay a ‘second rent’ on top of their standard rent to cover street cleaning, waste collection, water and sewerage, land taxes, insurance and maintenance. Tenants can arrange to update the property with scope for recouping the costs they incur at the end of the tenancy, or trading off rent for maintenance tasks. In the Netherlands, a quality points system exists, where rents are tied to property quality and landlords cannot request rent increases if the property is poorly maintained.
Canada, New Zealand and United Kingdom	<ul style="list-style-type: none"> The length of fixed term agreements is agreed by the parties, and can be extended or renewed if both parties agree. Fixed term tenancies automatically roll over to create periodic agreements if they are not renewed or terminated. 	<ul style="list-style-type: none"> Fixed term agreements can be terminated either by negotiation between the parties or for reasons restricted to tenant or landlord conduct, or habitability of the property. Tenancies can generally be terminated at the end of the fixed term following a prescribed notice period (in some Canadian provinces only for prescribed reasons). The relevant tribunal can prolong a notice period for hardship reasons. 	<ul style="list-style-type: none"> In some provinces in Canada, rents can increase once per year by a maximum allowable amount as published by the Ministry of Housing. Rent controls were imposed in the UK during last century. These are commonly identified as a key factor in the contraction of the rental sector there, as landlords failed to make economic returns. Rents are no longer controlled. Rules in the UK and New Zealand are similar to those in Australian jurisdictions. 	<ul style="list-style-type: none"> In Canada, government financial assistance is offered to landlords of affordable housing to pay for repairs (if occupied by low income tenants). Rent increases are limited.
Republic of Ireland	<ul style="list-style-type: none"> Fixed term tenancies exist, in which both parties are committed for the period of the agreement. In the absence of a fixed term agreement, there is an initial six-month trial period during which either party may end the tenancy. After the first six-month period the tenant acquires security of tenure for an additional three and a half years. At the end of the period the four-year cycle starts again, with another 6 month window to end the tenancy. Despite the longer periods of assured tenancy available to them, tenants appear to have continued moving relatively frequently, with the average length of tenancy remaining constant at 18 months. 	<ul style="list-style-type: none"> Landlords can only end a tenancy for prescribed reasons. A sliding scale is used for notice periods for both parties, with notice periods increasing relative to the length of the tenancy. 		<ul style="list-style-type: none"> Rental properties are subject to mandatory minimum standards. However, there is currently no effective enforcement mechanism in place.