



Community Housing
FEDERATION OF VICTORIA

Fairer, Safer Housing:

Residential Tenancies Act Review

Regulation of property conditions in the rental market

Issues Paper

A Submission from the Community Housing Federation of Victoria

The Community Housing Federation of Victoria (CHFV) welcomes this opportunity to make a submission in response to the *Regulation of property conditions in the rental market* Issues Paper, released by the Victorian Government as a part of its review of the Residential Tenancies Act 1997 (Vic) (RTA).

CHFV is the peak body that represents the not-for-profit community housing sector in Victoria. CHFV's member community housing organisations (CHOs) are committed to providing secure, affordable and decent housing for people on low to middle incomes. Members include the CHOs registered as housing associations or housing providers under the Victorian regulatory framework for non-profit housing providers plus other organisations and individuals interested in housing.

Executive Summary

In this response to the Issues Paper on security of tenure, CHFV builds upon its earlier submission to the Consultation Paper published in August 2015. In this submission we argued that:

- the RTA should establish minimum standards for rental housing; and
- tenants could also be given more flexibility with regard to minor modifications to rental housing.

Given the increasing proportion of households that rely on the private rental market, we think it is timely to review the obligations of landlords under the RTA in respect of the condition of rental housing.

Our CHO members are by and large registered under the Victorian regulatory framework for community housing that requires CHOs to manage their assets in a manner that ensures suitable properties are available now and into the future. Compliance with these standards is monitored by

a statutory regulator. CHOs are required to provide for a complaints mechanism for tenants, which is also subject to appeal to the regulator.

We think therefore that changes to the RTA that would lift the standard of rental housing in the private market would help lift standards generally and reduce the pressure on the social housing system.

In most cases, for newly-built housing in particular, CHFV members would not face significant barriers in complying with property standards under the RTA. Depending on the property standard applied, there may be some difficulties for CHOs to meet standards for older housing stock or housing managed on behalf of government. It is also important to avoid regulatory duplication. Accordingly, some level of exemption for regulated CHOs may be appropriate in this instance, depending on the nature of the property standards.

We think that there is some scope to improve the RTA with respect to flexibility for tenants to undertake modifications to properties that are:

- minor;
- required to make a property accessible for a person with a disability; or
- required to make a property safe for persons affected by family violence.

Such provisions need to be carefully balanced against the legitimate needs of landlords (including social landlords) to ensure that rental properties remain appropriate for a range of people. This is therefore a complex area where much will turn on the language of the specific RTA provisions proposed.

Broadly, CHOs are comfortable with the existing provisions of the RTA relating to the obligations of tenants with respect to care for the rented premises.

Property conditions at the beginning of the tenancy

Application to community housing: The existing regulatory framework

Part 3.3.5 of the Issues Paper (“Conditions in Social Housing”) noted the application of DHHS guidelines to public and community housing properties leased or re-let by the Director of Housing.

However, this is only part of the picture when it comes to asset management of social housing in Victoria. In Victoria, CHOs registered under the regulatory framework under the Housing Act 1983 (Vic) – known as “registered agencies” - must comply with prescribed performance standards. The Registrar of Housing Agencies, an independent regulator (based in the Department of Treasury and Finance) under the Housing Act, has broad powers to ensure that registered agencies comply with these performance standards.

In respect of property conditions, the performance standards state that a registered agency should:

... manage its assets in a manner that ensures suitable properties are available now and into the future, particularly in relation to the following.

- a. *Determining changing housing needs and planning asset acquisitions, disposals and reconfiguration to respond (strategic asset management).*
- b. *Setting and meeting relevant property condition standards.*
- c. *Planning and undertaking responsive, cyclical and life-cycle maintenance to maintain property conditions (asset maintenance).*
- d. *Planning and delivering its housing development program (asset development).*

A registered agency is required to develop an asset management plan and submit it to the Registrar of Housing Agencies to demonstrate compliance with this standard, as well as develop policies and procedures around responsive, planned and life cycle maintenance. Active asset management requires not just maintenance of the existing housing portfolio. Agencies also take a portfolio-wide approach, ensuring that it is put to its highest and best social purpose and delivering maximum return on public investment.

If a tenant of community housing is not satisfied with the quality of their property or the maintenance service provided by their CHO landlord, then a tenant can escalate a complaint to the agency. If they are not satisfied with the response, the Registrar of Housing Agencies can review the matter.¹

The CHO portfolio is not just housing managed on behalf of the Director of Housing. Over 9,000 of the 19,000 units under CHO management are also owned by the CHO.² In addition, the Director of Housing has moved most managed properties on to a form of lease where the CHO takes primary responsibility for asset management.

Therefore we would argue that in the case of community housing, there is a real risk of regulatory overlap and duplication between property standards in the RTA and Housing Act regulation. Onerous standards for landlords may have significant financial implications for CHOs, given that CHOs are largely required to meet the long-term asset management costs of their portfolio (including property upgrades) via rental income received and through active asset management (e.g. sale of obsolete stock or stock which is no longer suited to use as affordable rental housing).

In this context, the Rooming house regulations provide a precedent in that registered agencies were exempted from the requirement to be licensed.³ However, the existing obligations on landlords in the RTA with respect to the condition of the property apply to community housing. Accordingly, the application of any proposed property standards in the RTA to community housing needs careful consideration in order to prevent regulatory overlap.

¹ For more on the complaints process, see the Housing Registrar information sheet, *The Housing Registrar's role with complaints by tenants or prospective tenants*

² Housing Registrar, Service delivery dashboard for 2014-2015

³ See section 7(1)(b) of the Rooming House Operators Act 2016 (Vic)

Proposals for minimum standards

In principle, CHFV supports the inclusion of compulsory minimum standards for rental properties in the RTA. The proposed list in part 3.3.3 of the Issues Paper is a good starting point. In general, we would say that:

- standards should be specific rather than broad – a requirement that a property be “safe” is perhaps too broad, but a requirement that all doors be fitted with deadlocks and windows be fitted with locks is appropriately specific;
- standards should be considered reasonable in light of the economic burden that they might place on landlords, for example the requirement that a rental property be “energy efficient” is potentially very wide;
- standards should not be too subjective, such as a requirement that there be “adequate ventilation” where adequacy depends in part on the needs of the particular tenant.

It is also important that the RTA is updated to reflect modern conditions. The omission of telecommunications and internet connections in the RTA means tenants may be liable for fees and charges over and above normal connection fees. Telephone and internet connections should be treated consistently with other utilities.

However, given that the Issues Paper has identified that few tenants take action to enforce existing landlord duties under the RTA in respect of the condition of the property, we have our reservations that inclusion of compulsory minimum standards in the RTA would materially improve property conditions. As the Issues Paper correctly notes, disadvantaged tenants are placed in a dilemma about whether to complain to a landlord or managing agent about property conditions given the lack of suitable, affordable homes in the private rental market or available in public or community housing.

What is also required therefore is:

- renewed investment in affordable housing to alleviate rental stress for low and moderate income earners in the private rental market; and
- appropriate improvements to security of tenure to give tenants the confidence to take action against landlords without fear of losing their housing or facing rent increases as a result.

Property conditions during the tenancy

Property modifications

We previously argued in our response to the Consultation Paper that tenants could be given more flexibility with regard to minor modifications to rental housing, such as being able to attach picture hooks and picture rails, or to improve gardens without having to restore the premises to its previous condition.

CHFV is supportive of changes to the RTA to make it easier for tenants to modify a property:

- to support a household member with a disability;

- to make a property more energy efficient; and
- to make it more secure following an incidence of family violence.

Making these changes to the RTA in meaningful way will admittedly be a challenge.

- It may be problematic to define what constitutes a “minor modification” or a “disability modification”. A definition that is too broad may mean there is no increase in certainty. A definition that is too specific may not meet the needs of diverse Victorian households.
- Defining circumstances in which the landlord’s consent is not required, or the circumstances in which it can be withheld, is complex.
- Where a landlord’s consent is not required (or subject to strict parameters) then we think it is reasonable that a landlord retains the ability to ask that a tenant restore the modification at the end of the tenancy. Many of the additional modifications will be specific to an individual tenant (e.g. disability modifications) or will require ongoing maintenance and upkeep (e.g. airconditioning or CCTV systems).
- Similar to our comments in relation to property standards, a lack of tenure security in the private market will restrict the effectiveness of these provisions.

Modifications for people with a disability raise an additional challenge as they are intended to provide a benefit for many years of occupation. The NDIS Operational Guidelines on modifications state that before funding home modifications, the NDIA will consider whether the home is suitable to be modified, in particular:

“...[w]here applicable, the owner of a rental property gives permission for modifications to take place and in the case of complex and extensive modifications gives a lease with a length commensurate to the cost of the modifications...”⁴

Other matters relevant to property conditions during the tenancy

From the perspective of community housing, CHFV makes the following comments in relation to property conditions during the tenancy:

Condition reports	These provisions generally are working well to establish the condition of the property at the start of a community housing tenancy
Reporting and repairing damage to the property	<p>These provisions are generally sufficient to enable community housing landlords to seek remedies in VCAT for damage (beyond reasonable wear and tear) caused by tenants. As CHOs aim to sustain tenancies, the purpose of most VCAT actions is compliance and not eviction.</p> <p>We think that describing tenants’ duties in general terms is preferable to describing the duties in greater detail. These are meant to be of a general nature and left to interpretation and application by VCAT in each instance.</p>

⁴ National Disability Insurance Agency, Operational Guideline – Planning and Assessment - Supports in the Plan – Home Modifications (16 January 2014)

Malicious damage	<p>We would be supportive of amendments to the RTA flagged in the Issues Paper to clarify that:</p> <ul style="list-style-type: none"> malicious damage is not confined to urgent, current and imminently threatening situations concerning damage to a property; or that the conduct must be continuing at the time the notice to vacate is given. <p>We are supportive of amendments to the RTA to give those affected by family violence additional relief against liability for malicious damage to rental properties on the terms suggested in the Issues Paper. However these matters should also be covered by the policy of CHOs.</p>
Maintenance, cleaning and repairs	<p>We do not think that the tenant’s duty to keep the property reasonably clean needs further elaboration in the RTA. This is meant to be a duty of a general nature and left to interpretation and application by VCAT in each instance.</p> <p>We support the current distinction in the RTA between urgent and non-urgent repairs. Indeed, it is reflected in the current key performance measures applicable to registered agencies under the Housing Act.⁵</p>
Disputes about repairs	<p>From the perspective of community housing these provisions are workable, however tenants of a registered agency are more likely to use the complaints resolution process under the Housing Act if they are unhappy with the condition of a property or the quality or timeliness of maintenance carried out.</p> <p>We acknowledge however that the process for obtaining an inspection report appears to be under-utilised and other options for the private rental market should be considered.</p>

Condition of the property at the end of the tenancy

The existing RTA provisions allow landlords to recover costs associated with a tenant’s failure to comply with their obligations at the end of the lease. These are adequate from the perspective of CHFV members. A duty to leave the property in a condition consistent with the tenant’s obligations under the lease would add little to the RTA, since a tenant would already have vacated by that point, so no Breach of Duty notice could be served.

In our members’ experience, the process in the RTA to deal with abandoned goods is acceptable, but slow turnaround times from CAV inspectors are a concern. The CAV service may well be in need of additional funding, however this is probably outside the scope of this review.

Accordingly, we do not think any amendment to the RTA is necessary in this respect.

⁵ Housing Registrar publication, *Our Regulatory Framework*, Appendix 2 (Key Performance Measures)