



Brotherhood
of St Laurence

Working for an Australia free of poverty

Property conditions and the regulation of rental property

A response to the
Residential Tenancies Act Review

Brotherhood of St Laurence

August 2016

The Brotherhood of St Laurence (BSL) is an independent non-government organisation with strong community links that has been working to reduce poverty in Australia since the 1930s. Based in Melbourne, but with a national profile, the BSL continues to fight for an Australia free of poverty. We undertake research, service development and delivery, and advocacy with the objective of addressing unmet needs and translating the understandings gained into new policies, new programs and practices for implementation by government and others.

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Summary

The Brotherhood of St Laurence welcomes the opportunity to respond to the Issues Paper on property standards and conditions as part of the broader review of the Residential Tenancies Act. This short submission provides practical recommendations about property standards, modifications and repairs to inform the development of residential rental regime that helps to meet the current and emerging social and economic challenges of Victoria's housing market. It sits side by side with a further submission dedicated to the introduction of energy efficiency and rental property.

The Brotherhood recommends that the Residential Tenancies Act be reformed in the following ways:

Recommendation 1

Establish minimum standards to support the health, safety, privacy and amenity of tenants.

Recommendation 2

Require landlords to act reasonably when considering requests for property modifications that support ageing or health conditions.

Recommendation 3

Enable a person with disability to make reasonable modifications to a property to meet their medical needs, so as to give practical effect to the existing right provided in section 55 of the *Equal Opportunities Act 2010 (Vic.)*.

Recommendation 4

Abolish the requirement for tenants to rectify modifications at the end of the tenancy if these add utility to the property or do not detract from its value, or if the landlord consents to the modifications remaining in place.

Recommendation 5

Revamp the repair provisions by:

- broadening the urgent repair provisions to encompass situations such as significant mould outbreaks, roof leaks, air-conditioner breakdowns and telephone line faults
- defining reasonable timeframes for urgent repairs
- increasing tenants' capacity to effect urgent repairs without incurring financial stress by increasing the financial limit for self-funding urgent repairs and providing monetary advances for this purpose—perhaps from the Residential Tenancies Bond Authority
- strengthening the effect of an order for repair by Consumer Affairs Victoria by making it an offence for a landlord to fail to comply with such an order and enabling tenants to pay future rent into the Rent Special Account until such time as the repairs have been carried out
- clarifying responsibilities for areas that are currently ambiguous such as pest and mould infestations and the provision of telecommunication infrastructure.

Basic minimum standards are needed to protect vulnerable tenants

Recommendation 1

Establish minimum standards to support the health, safety, privacy and amenity of tenants

The absence of basic standards covering the amenity of rental properties exposes tenants to living in unacceptable conditions with little opportunity for recourse. Tenants with low incomes have few options and may have to accept conditions that fall well short of minimum community expectations.

Research confirms that renters have the highest likelihood of living in poor-quality dwellings, with vulnerable groups being particularly at risk. Older renters for example, have been found to be almost nine times more likely to live in poor quality dwellings.¹ In its submission to this review, the Housing for the Aged Action Group provided photographic evidence of the parlous state of some rental properties and highlighted how the implications of poor quality housing are magnified for older people who are experiencing physical frailty, reduced mobility and social isolation.² Recent research commissioned by Consumer Affairs Victoria reveals that low income tenants are the most likely to report their property is in poor condition. Concerning, a small proportion of the tenants surveyed reported their properties did not have access to very basic facilities such as a toilet, water or electricity.³

In the absence of basic standards being prescribed, vulnerable and low income tenants can be left with little choice but to rent housing that falls well short of community expectations.

The Brotherhood recommends the establishment of minimum rental housing standards to support the health, wellbeing, safety and amenity of tenants. While the identification of standards would best happen collaboratively, if the concept of establishing standards is endorsed by the Victorian Government, some of the initial areas we believe could be covered include: adequate weatherproofing; hot and cold running water; provision for waste disposal; and gas, electrical and fire safety measures.

Standards for private and public rentals would sit side by side with existing standards for rooming house standards and the caravan parks and moveable dwelling standards. There is a strong case for locating all standards in a delegated instrument that is capable of being intermittently reviewed to reflect community expectations.

¹ Mallett, S, Bentley, R, Baker, E, Mason, K, Keys, D, Kolar, V & Krnjacki, L 2011, *Precarious housing and health inequalities: what are the links? Summary report*, Hanover Welfare Services, University of Melbourne, University of Adelaide & Melbourne Citymission, Australia, p. 6

² HAGG 2016, *Submission to the Residential Tenancies Act Review – Regulation of property conditions in the rental market Issues Paper*, 2016, p. 3, viewed at http://www.olderrenters.org.au/sites/default/files/haag_submission_regulation_of_property_conditions_in_the_rental_market.pdf

³ Consumer Affairs Victoria 2016, *Rental experiences of tenants, landlords, property managers and park residents in Victoria*, Final Report, EY Sweeney

The introduction of standards would need to be accompanied appropriate timelines and supports to enable landlords to meet future requirements. Landlords ought to have a duty to comply with future standards, with an offence for non-compliance.

Older tenants often require property modifications to enable them to age in place

Recommendation 2

Require landlords to act reasonably when considering requests for property modifications that support ageing or health conditions.

Age often brings changes to mobility and consequently changes required within and around the home.⁴ As Australia's population ages, the number of people experiencing age related mobility and disability in older age is anticipated to increase.⁵ At the same time, the number of older people reliant on the rental market is projected to increase markedly.

Advice from the Brotherhood's community aged care staff is that clients often require modifications to their homes to enable them to remain living at home. Common modifications range from the installation of grab rails, sensor lighting and slip proof flooring in wet areas to the installation of level entry showers, hoists above the toilet and ramps.

Those living in rental properties face numerous distinct hurdles to having modifications made to their homes:

- they need to seek their landlord's consent, even for minor modifications
- there is no requirement for landlords to act reasonably or speedily in their consideration of requests for age-related modifications
- insecure tenure can discourage requests for modifications (for fear of termination without cause)
- uncertainty about tenancy length is a barrier to tenants investing in modifications
- tenants have a duty to restore the property to its original condition when vacating the property.

These barriers can adversely impact on a tenant's wellbeing and restrict their ability to move around their home. We heard for example about residents reducing the frequency of washing or toileting, and residents who minimise leaving their home because of difficulties entering or exiting. Failure to have the necessary home modifications can also result in unplanned moves or premature entry into residential care.

Australia's approach to supporting older adults to age in place is changing. At the core of the reform is individualised funding, with aged care clients having individual choice and control of their government-subsidised Home Care Packages. The framework for service model is Consumer Directed Care (CDC), which is defined as:

⁴ loc.cit.

⁵ Australian Bureau of Statistics 2012, Disability, ageing and carers, Australia: summary of findings, Cat. no. 4430.0, cited in A place to call home: A housing issues paper for people with disability supported by Disability Network (QDN), National Shelter and Griffith University, August 2016

... a way of delivering services that allows consumers to have greater control over their own lives by allowing them to make choices about the types of care and services they access and the delivery of those services, including who will deliver the services and when⁶

Support available through Home Care Packages includes financial assistance to make home modifications. There is a need to ensure this financial assistance can benefit older people living in rental accommodation.

Reforms to the Act are needed to ensure that requests for age and illness related modifications are met with reasonable and timely consideration. Given that a tenant may need to move out if modifications to support their ageing or condition cannot be agreed, recourse to accessible dispute resolution procedures ought to be available. To protect the landlord's interests, the Act could require that modifications are of sufficient quality and that installation is undertaken by appropriately qualified persons (e.g. a registered tradesperson) or a person that the landlord authorises.

Increasing numbers of people with disability rely on the rental market

Recommendation 3

Enable a person with disability to make reasonable modifications to a property to meet their medical needs to give practical effect to the existing right provided in section 55 of the *Equal Opportunities Act 2010 (Vic.)*.

It is critical that Victoria's rental market can respond effectively to the increasing numbers of people with disability who rely on it.

While over 40% of social housing residents (nationally) have a disability⁷, the substantial waiting lists for accessible and affordable public and community housing coupled with the levels of stock falling behind population growth is pushing many low-income people with disability into the private rental market.

The National Disability Insurance Scheme (NDIS) is expected to substantially boost the numbers of people with disability seeking rental housing. Of 460,000 NDIS participants (nationally), around 110,000 are expected to seek to move from their current housing.⁸ According to People with Disability Australia:

the NDIS has the potential to have a dramatic effect on the issue of institutionalisation of people with disability, including those forced into aged care facilities due to inadequate supports in the community. With individual support funded, people with disability will be able to make choices about housing which are not constrained by being obliged to live in

⁶ Department of Social Services 2014, *Home Care Packages Programme Guidelines*, Australian Government, Canberra, p. 7.

⁷ Australian Institute of Health and Welfare (AIHW) 2014, *Housing assistance in Australia 2014*, Commonwealth of Australia, Canberra.

⁸ Data from M Allen, Disability Housing Futures Working Group, 2016 cited in *A place to call home: a housing issues paper for people with disability*, Disability Network (QDN), National Shelter and Griffith University, August 2016

‘supported accommodation’. Some may even have the means to take up private rentals, given the funding of in-home supports.⁹

The National Disability Strategy and the NDIS represent a substantial shift in disability policy to a more rights-based approach that enables people with disability to live in the community and access mainstream services.¹⁰ However, for the potential of the NDIS to be realised, other reforms are needed—including changes to residential tenancies law to encourage an increase in accessible properties and ensure that people with disability can access them. Without such changes, people will largely be restricted to living in specialist disability accommodation.

We consulted with a number of disability agencies to inform this submission. While we heard about some positive rental experiences, we also heard that it is common for landlords to resist requests for modifications – even minor ones. A recent paper from National Shelter and Griffith University reported:

The ability of people with disabilities to install fixtures is an issue of great importance. And this is a barrier to tenants with disabilities access private rental properties. It can be difficult for people with disabilities to gain permission from landlords.¹¹

We also heard that negotiating modifications can be easier in public housing than in private rentals.

Section 55 of the *Equal Opportunity Act 2010 (Vic.)* requires landlords to allow a tenant with disability to make reasonable modifications to the property to meet their special needs provided the modifications are not at the landlord’s expense, that restoration is reasonably practicable and that the tenant agrees to pay for the restoration. Despite this explicit right, it is difficult for tenants with disability to operationalise. Provisions dealing with requests for property modifications in the Residential Tenancies Act effectively undermine protections in the Equal Opportunities Act: the former do not impose any requirements on the landlord to act reasonably and do not provide an enforceable remedy that would protect the tenancy.

Furthermore, the same barriers to property modifications for older adults (insecurity of tenure, uncertainty of tenancy duration and the requirement to restore the property) relate equally to tenants with disability.

We recommend that reforms support people with disability to have modifications made to their rental properties made, which are reasonable in the circumstances.

As noted in the above discussion about the needs of aging tenants, this would need to be accompanied by reforms to require timely responses to requests, access to dispute resolution, and requirements about quality of works and who can install modifications.

⁹ People with Disability Australia 2015, *Submission to the Senate Inquiry into the adequacy of existing residential care arrangements available for young people with severe physical, mental or intellectual disabilities in Australia*.

¹⁰ Gibbs, E 2016, *Why the problem on housing for people with disability is a one for everyone*, CripCroakey, February, <https://croakey.org/crpicroakey-why-the-problem-of-housing-for-people-with-disability-is-one-for-everyone/>

¹¹ *A place to call home: a housing issues paper for people with disability*, Disability Network (QDN), National Shelter and Griffith University, August 2016

Modifications may enhance a property's value or its utility for future tenants

Recommendation 4

Abolish the requirement for tenants to rectify modifications at the end of the tenancy if they add utility to the property, do not detract from its value or if the landlord consents to the modifications remaining in place.

Many modifications may add value to the house or benefit others who may live there in the future. For example, slip-resistant flooring, step-free showers and accessible bathrooms may benefit older people, people with disability or health conditions and families with small children. Future reforms ought to recognise that such modifications may add utility or value to the property and landlord may wish to keep them installed. The Act could also provide landlords with the option to agree to modifications remaining in place at the end of the tenancy at the time they consent to installation.

More effective repair provisions are critical

Recommendation 5

Revamp the repair provisions by:

- **broadening the urgent repair provisions to encompass situations such as significant mould outbreaks, roof leaks, air-conditioner breakdowns and telephone line faults**
- **defining reasonable timeframes for urgent repairs**
- **increasing tenants' capacity to effect urgent repairs without incurring financial stress by increasing the financial limit for self-funding urgent repairs and providing monetary advances for this purpose—perhaps from the Residential Tenancies Bond Authority**
- **strengthening the effect of an order for repair by Consumer Affairs Victoria by making it an offence for a landlord to fail to comply with such an order and enabling tenants to pay future rent into the Rent Special Account until such time as the repairs have been carried out**
- **clarifying responsibilities for areas that are currently ambiguous such as pest and mould infestations and the provision of telecommunication infrastructure.**

The Act's repair and maintenance provisions need to be revamped. It is the Brotherhood's view that the current provisions fail to redress the inherent power imbalance in the landlord-tenant relationship. When entering a lease tenants have no information about the landlord's previous conduct and willingness to effect repairs and maintenance. The capacity of landlords to terminate a tenancy with 'no reason' can discourage tenants from seeking repairs or from following up where repair requests are not reasonably responded to.

A 2013 Footscray Community Legal Centre (FCLC) survey of 100 tenants recorded 240 repair needs in 71% of their dwellings.¹² Grievances were sometimes long-lasting: an Iranian refugee family was forced to use a bucket for bathing while waiting five months for a broken shower to be repaired; a Burmese family of seven was told to boil water on the stove as the landlord was unwilling to repair the broken hot water service.¹³ While the urgent repair provisions are intended to cover faults such as these, tenants face considerable barriers to exercising their rights.

Our research has demonstrated that tenants are reluctant to approach their landlords, or do anything that could be perceived as causing trouble. Low-income and vulnerable tenants in particular are unwilling to raise complaints out of fear that they might be evicted or their tenancy might not be renewed. For those who do choose to take action, it can take weeks or even months for a tenant to satisfy the requirement to report the defect to the landlord and then demonstrate that they are unable to get the landlord or agent to carry out the repairs, since there is no prescribed period for landlord action. Where a landlord refuses or fails to take action, a tenant may arrange and self-fund urgent repairs under \$1000, and is then entitled to seek reimbursement from the landlord. The provisions fail to recognise the financial stress that would prevent many renters finding the money to self-fund urgent repairs, which they might then struggle to recover from the landlord. In addition, the \$1000 claim limit fails to reflect the costs of critical repairs. A new hot water system, for example, costs more than \$2500. While recourse to VCAT is available, tenants rarely take this avenue.

¹² Berry, J 2013, *Home sweet home: act for the house not just the tenant*, Footscray Community Legal Centre.

¹³ Footscray Community Legal Centre 2012, *Making it home: refugees housing in Melbourne's west*, viewed 13 August 2015, <http://www.footscrayclc.org.au/~footscra/images/stories/Tenancy_Report.pdf>