

# Submission on the draft Residential Tenancies Amendment Regulations



18 December 2019

Dear Commissioners,

The Council of Single Mothers and their Children Inc. (CSMC) is a non-profit organisation founded in 1969 by single mothers to secure a better life for themselves and their children. We achieve change by championing the voices and needs of single mother families and providing specialist support services.

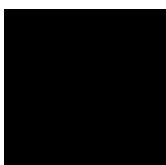
CSMC provides:

- Information, support, referral and advocacy services for single mothers, including a support phone line open 9.30am-3.00pm weekdays.
- Accurate information and resources to single mothers including email bulletins and via our website.
- Representation of the needs and issues of single mothers and their children through working with government and community organisations, the media and research partners.
- Advocacy to improve the social, economic and legal position of single mothers and their children.

Records at the Council of Single Mothers and their Children show housing concerns have been in the top three presenting issues to the Support Line for a decade. Issues raised with the Support Line include rental and mortgage costs; finding safe and suitable housing near children's schools; dealing with rising rents; and landowner inaction on things such as mould, unsafe wiring and other hazards. Our recent survey of over 1000 single mother's show 50% are living in private rental housing. We are thus enormously pleased to see the changes to the Act and the proposed changes to Regulations.

Our thoughts are outlined below.

Regards



**Jenny Davidson**

Chief Executive Officer

**CSMC**



**Administration**



**Support Line**



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## 1. Do you agree that the proposed Regulations will achieve their stated objectives?

The proposed regulations are a good start as are the improvements to the Act. The regulations make a visible effort to push landowners to better practice whilst taking into account some of the headline issues raised by tenants.

Is this far enough? Not in our view. The Act itself only seeks to define the rights and duties of landowners and tenants in a variety of premises<sup>1</sup> and the “objective of the Regulations is to prescribe matters authorised or required to be prescribed under the Residential Tenancies Act 1997.” These form a closed loop that does not include any movement toward an ideal situation.

We believe a meaningful objective for the Act would be to:

- Provide the guidelines and requirements that support adequate long-term rental accommodation that enables those renting to feel secure and comfortable in their affordable home; and those owning the properties to enjoy a fair income in return for providing energy efficient homes in a fair condition as part of a valuable community service.

Regulations could then specify the minimum standards required to achieve such an objective. In fact, as we suggest below, regulations don't go far enough and where details are not specific, we foresee no change to current practices

We note that the Regulatory Impact statement on Objectives goes some way to providing the kind of purpose statement we consider necessary.<sup>2</sup> That is:

‘The RTA supports a residential tenancies sector where informed rental providers and renters enter into mutually beneficial rental agreements. The RTA’s objectives are to:

- promote a well-functioning rental market;
- ensure a fair balance between the rights and responsibilities of rental providers and renters; and
- provide for an effective and efficient dispute resolution process.’

Unfortunately, as this statement is not written into the Act the objectives remain transactional.

**Our answer here is thus that while the regulations may achieve their objective, these are too limited for such an important issue as the provision of one third of all household accommodation in Victoria.**

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<sup>1</sup> Residential Tenancies Act 1997 Act No. 109/1997, Division 1, Purposes. Available at: <https://bit.ly/36FJ4pb>

<sup>2</sup> Residential Tenancies Regulations 2020: Regulatory Impact Statement Available at: [https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/8615/7343/6424/Regulatory\\_Impact\\_Statement.DOCX](https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/8615/7343/6424/Regulatory_Impact_Statement.DOCX)

2. Where the proposed Regulations articulate rights and responsibilities between renters and rental providers, are these allocated reasonably between the parties?

**Not entirely.**

We appreciate some of the initiatives including prohibiting:

- Any requirement for renters to take out insurance
- Exempting agents and landlords from liability for their actions
- Financial penalties for breaching lease agreements
- Requiring rent to be paid via methods that incur fees
- Implying renters are liable for rental provider's VCAT fees.

We recognise also that there are many kinds of rental providers covered under these regulations including the State government, small family investors, those with a few properties and so on right through to universities and large multinational corporations. While we recognise the need to accommodate the providers at the lower income of the spectrum, we consider some of the phasing is too generous overall. We discuss and recommend further under this question, that:

**Where a provider can make a case that they are not able to do meet the requirement in a timely fashion, we recommend an extension of time and reduced rental and explicit variations of the lease that properly compensate the tenants for continuing to accept an unreasonable standard.**

We consider these regulations miss an opportunity to look at the balance of renters and rental providers in order to fairly and reasonably allocate responsibilities.

With private ownership becoming increasingly unaffordable in Australia, rental properties are heavily sought, with little that is affordable for people on low incomes. The overall picture of rental providers versus tenants is, we argue, already tilted against a substantial proportion of the renting public and conversely, in favour of those owning properties.

- In a recent national survey of 1112 single mothers (43% Victorian residents), 50% live with their children in private rental and 53% have an annual income of \$40,000 or less.<sup>3</sup> We contend these figures illustrate that without requirements for rental providers to ensure such things as ventilation and insulation, energy-efficiency throughout including hot water services, and draught-proofing, energy bills will remain high. This in turn affects people on the lowest incomes because they get the biggest bills but cannot afford to pay them. This not only becomes a financial cost but also causes negative impacts on mental and physical health both in the strategies some renters take to avoid such costs (for example not using heating and cooling in extreme weather) and the stress occasioned by bills that cannot be paid.
- The significant delays on the following items will, on a constant basis, negatively affect low-income tenants (including those on Newstart and many elderly people):

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<sup>3</sup> Andi Sebastian and Irit Ziv: *One in eight families: Australian single mothers' lives revealed*. Report of a national survey undertaken in 2018 by the Council of Single Mothers and their Children, November 2019. Available at: <https://www.csmc.org.au/publications>

- Electrical safety (currently delayed until 2022)
  - Window coverings (currently delayed until 2021)
  - Bathroom and toilet window coverings
  - Basic cooling, airflow and air-conditioning
  - Energy efficiency including adequate insulation
  - Ventilation and insulation.
- A report released May 2019 by the National Association of Tenant Organisations, National Shelter and Choice,<sup>4</sup> found that one in seven renters fear rent hikes, eviction or being blacklisted by real estate agents for something as simple as asking for repairs. The report also found 83% of renters have either a no-fixed-term lease or a lease of less than 12 months. It also found that 62% feel they are not in a position to ask for longer leases. Half say they have faced discrimination from property owners, with an equal percentage saying they are anxious about being blacklisted.
- Additional concerns for us are that:
- There is no requirement for owners to tell prospective renters that a property does not meet the minimum standards. This will be a particular disadvantage to the most vulnerable tenants including those with lower literacy levels. It also means the State is supporting providers to deceive tenants through offering a property that does not meet minimum standards at market cost.
  - Minimum standards do not apply to tenancies commenced prior to 1 July 2020
  - The phase out of LPG heaters could adversely impact regional renters.
- We contend the points above suggest an existing disadvantage for tenants and add that elderly people and those with a disability or mobility issues are still bearing an unreasonable burden, as they have to prove necessity before having the right to make modifications.

**We recommend:**

- **Mandating quickly any regulation** that affects the liveability for tenants in the property and the safety of the accommodation for which they pay, rather than allowing so much to be phased in over a long period. Where the provider can make a case that they are not able to do this in a timely fashion, we recommend reduced rental and explicit variations of the lease that properly compensate the tenants for continuing to accept an unreasonable standard.
- **Requiring owners to inform tenants if a property does not meet minimum standards** and offer the property at a proportionately discounted rent.
- **Removing any blanket terms** levying extra fees for such things as lease breaking.
- **Banning any provision of renter details** to third parties without consent.
- Removing any other terms that unfairly diminish or alter a renter's rights or liabilities during a lease.

3. The assessment of costs and benefits has relied on various data sources, combined with necessary assumptions to estimate likely impacts where data is not readily available.

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<sup>4</sup> Available from: <https://shelter.org.au/national-renters-survey-with-choice-and-nato/>

Are these assumptions reasonable?

As we understand it, the assumptions are largely based on the numbers of rental properties coming onto the market in various years, the costs to providers of undertaking reforms, the savings of such reforms, and consideration of basic safety and very basic energy efficiency.

These assumptions are based on available data and take a cautious approach to anticipated trends, provider responses and compliance. Within this transactional framework and given an almost exclusive focus on the rental provider perspective, these are reasonable but limited and insufficient.

Given the Regulatory Impact statement on objectives and the recognition that: 'the Review (of the RTA) represents a once-in-a-generation opportunity to revisit the regulatory settings that have been in place since 1997, and to ensure they meet the needs of participants in today's rental housing market,' it is disappointing that a range of more aspirational assumptions have not been tested.

**Additional assumptions might test such propositions as that:**

- **Energy efficient properties have inherent value to the State (including and not limited to helping meet carbon reduction targets), the tenants and the climate.**
- **The economy will be improved by tenants' wellbeing, including through reduced disputes and increased engagement in work and other social benefits.**
- **Improved tenancy conditions will contribute to better physical and mental health for tenants resulting in reduced costs to the State health system.**

Is other data available that could assist in understanding the impacts?

**Data and modelling testing the assumptions above might include:**

- Possibilities for State and investor involvement in increasing energy efficiency across the entire Victorian rental stock.
- Data drawing on tenant behaviours in countries that have better provisioned tenancies that are more like long-term homes
- Health data relating to the adverse impacts of unsatisfactory housing on health. This includes, and is not limited to, research from VicHealth.<sup>5</sup>

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<sup>5</sup> Vic Health: Housing and Health, Research Summary Available at: [https://www.vichealth.vic.gov.au/-/media/ResourceCentre/PublicationsandResources/Health-Inequalities/Housing\\_and-Health\\_Research-Summary\\_web.pdf?la=en&hash=42ABE51F99703B698663E4368306FA4B34652DA8](https://www.vichealth.vic.gov.au/-/media/ResourceCentre/PublicationsandResources/Health-Inequalities/Housing_and-Health_Research-Summary_web.pdf?la=en&hash=42ABE51F99703B698663E4368306FA4B34652DA8)

4. Are there likely to be any unintended consequences of the proposed Regulations that are not recognised in the RIS?

Yes.

On 24 June 2015, as part of its *Plan for Fairer, Safer Housing*, the Victorian Government launched a comprehensive review of the RTA (the Review). The Review represented a once-in-a-generation opportunity to revisit the regulatory settings that have been in place since 1997, and to ensure they meet the needs of participants in today's rental housing market.

Reading the regulations, we see the hopes of many tenants being dashed, particularly those with low incomes, uncertain health or disabilities, raising children, and socially vulnerable. Limitations capping long-term rentals at 5 years for example knock out of the park any hope of a lease long enough to raise children, as do the long wait times for some cost saving and safety changes. Proposed regulations that lack specificity are likely to be ineffective and not lead to any change.

Will this matter and what evidence is there of these?

We suggest the evidence lies in lost opportunity. It is beyond our scope to quantify these but if the assumptions we suggest in 3 above were tested and supporting data sought, the opportunities of acting more decisively in line with clear strategic goals could be estimated.

5. The proposed Regulations include transitional arrangements and phasing for the heating, window coverings and electrical safety minimum standards.

We have largely addressed our views on this in 2 above.

We add however our concern about old properties that have mould that has been growing over many years. Will these be covered or will tenants in these properties be entitled to compensation in lowered rent?

6. Do these timelines provide adequate time for rental providers to adjust?

Yes.

We strongly contend that the impact to quiet enjoyment, privacy and safety of tenants outweighs any issues for rental providers. We also assert as we have above, that many of the providers are corporations with the capacity to make the changes instantly and bear the costs. For providers who genuinely face financial or other impediments to making changes, we recommend negotiated accommodations that include:

- A documented timeframe for improvements
- Reduced rent or other improved conditions to compensate the tenants.

## Additional comments

### 7. Dollar amounts

#### Compensation for sales inspections

In relation to compensation for sales inspections, we contend the amount offered is insufficient. Tenants are required to clean premises and move furniture and vacate for inspections two and sometimes more times per week during a sales campaign that has no time limit.

#### **We recommend compensation be set at:**

- **half a day's rent for each occasion the tenant/s are required to vacate for the first two weeks**
- **one day's rent for each occasion they are required to vacate the premise for the next weeks**
- **a time limit be set for sales/renting campaigns**
- **a strategy to negotiate campaigns lasting more than 4 weeks, and**
- **a time limit by which compensation must be paid.**

### 8. Family violence

The proposed Regulations prescribe other matters that the Victorian Civil and Administrative Tribunal (VCAT) must take into account when determining an application to terminate a rental agreement because of family or personal violence. Are there other matters that should also be considered for prescription in the proposed Regulations?

We strongly recommend that there is further consultation with the family violence sector before these regulations are finalised.

### 9. Definition of temporary crisis accommodation (TCA)

Is 'less than 6 months' an appropriate prescribed period?

We contend that 'not more than 12 months' is a more appropriate prescribed period. While in many cases 3-6 months may be sufficient, we argue it needs to be extendable to 12 months particularly where there are children in school, and the family is recovering from trauma such as from family or other forms of violence.

In the current climate of unaffordable rentals, many tenants are unable to secure a lease of longer than six months and single mothers with children are finding this profoundly disruptive to their children's schooling, social adjustment and general wellbeing.

## Schedule 1-Forms

### Form 1 Agreement to rent limited to 5 years

We strongly oppose this limitation of five years. Long-term agreements, whilst not ideal for everyone, are a highly desirable strategy for people coming to terms with the unattainability of property ownership in Australia. Public housing has for many years in much of Australia demonstrated the benefits of long-term and secure housing for many people, particularly families.

Bev has lived for many years in a small social housing rental property. She says that without this, her life would have been much harder for her and her children, who are now nearly finished school and doing well. Bev says; "Affordable secure housing has given me the ability to save, educate myself and provide a stable base for my kids. I am in a much better situation than many of my single mother friends and believe it is due to my accommodation status."

#### *Part B*

##### **11. Professional cleaning**

This regulation should specify conditions under which tenant must pay for professional cleaning. Our members find over-zealous agents frequently require tenants to obtain a professional cleaner, often with companies with which they have financial arrangements. In general terms we contend that cleaners are no more skilled than tenants and if there are specific items that need addressing, these should be based on the condition report and itemised so the tenant has the opportunity to address them.

#### *Part E - Rights and Obligations*

##### **23. Use of the premises**

In principle, we have no difficulties with a clause prohibiting the use of premises for an illegal purpose. We are however concerned that even when the premises are not damaged by the illegal purpose, it is possible to use this as a reason to evict someone. While there may be a case to be made, equally we contend it should not be a blanket clause as if used as a form of moral judgement it may lead to greater poverty and homelessness. We particularly raise the concern that while the responsible tenant may be evicted, they might not be the offending party. This may occur for example, where a teen or early adult child is hiding stolen goods on the premise.

##### **25. Modification** (see item 28 page 13)

We are delighted to see the category of 'reasonable modifications' introduced. This is something that will assist tenants feel more at home and is something that has long been an issue for families with children.

Unfortunately, we find the implementation of this change clumsy. We believe these will make it difficult for renters to access these 'reasonable modifications' and changes to the process are needed for the new system to work as promised and to provide the reasonable balance between providers and tenants.

The difficulty with lists such as the items considered reasonable modifications is that they do not always translate into reality. For example, 26 (b) (ii) permits 'installation of adhesive child safety locks on drawers and doors'. However, it does not mention child safety locks on gates or child safety doors at the top of stairs. We suggest it would be better to have some



overarching intent such as ‘Reasonable modifications are allowed internally and externally in all premises to ensure the safety of children. These include adhesive and removable child safety locks on drawers, doors, gates and stairs.’”

While overall, we are pleased to see the allowable modifications, many of these still require owner consent. Without any requirement for owners to respond in a timely manner, this requirement continues the unequal power balance that finds renters afraid to ask anything, unsure of what they can do and in some cases, with a health or safety issue they cannot address.

**We recommend the Act be amended to include provision for a time frame for owner consent, which should be 24-72 hours from request, depending on whether it is a safety or standard request. Consent should be implied if the request has been made in a manner agreed (e.g. through an agent or via email or website) and no response has been received after this time frame.**

#### **26. Locks**

We add that the rental provider should not provide a key to any person other than the renter.

#### **27. Repairs**

We prefer this be worded as: Only a suitably qualified person or one who can demonstrate competence in the particular issue may do repairs – both urgent and non-urgent.

We suggest this addition because qualified handy people and trades people charge money. A highly competent handyperson should be able to assist free, on the basis that they can demonstrate their confidence in the matter and that this not be applicable to legally limited repairs such as electrical or plumbing.

#### **28. Urgent repairs**

We are concerned that all the burden falls to the renter here, with no proposed penalty for a provider that does not respond to renter initiated requests for repairs or for reimbursement. As it stands, there is only the threat that the renter will go to VCAT. Our members often advise that the VCAT process is clumsy and takes time. A further issue is that VCAT may be dealing with an urgent repair matter that seems to have reached resolution but when the resolution falls through and the renter returns, there is no option to re-open the matter and the waiting begins again.

For cases where repairs are urgent, we suggest this clause needs rethinking and revising.

#### **32. Access and entry**

This section provides too many reasons to enter which destroys the tenant’s right of ‘quiet enjoyment’. The provisions are vague and broad and can be used to bluff tenants into allowing entry where they need not. E.g. “if they believe renter has failed to follow their duties under the act”. This is very broad and as currently written, doesn’t require the provider to show reasonable grounds for such a belief or even proof that the Act says this.

**We urgently require changes to this section.** We are aware that many tenants are targeted by real estate agents and owners who want to keep an eye on the property based on stereotyped views.

## Form 3 Rental applications

### *Information for applicants*

#### **6. Refusing or not accepting your application because you have children, unless the premises is unsuitable for occupation by children due to its design or location**

This advice and all it implies is of great concern to us. By what measure is the provider deeming the property unsuitable for children? Some, for example, would say stairs are prohibitive but that simply reduces the numbers of properties available for lease to families. We have been unable to find in the regulations an evidence-based methodology by which providers can make a blanket prohibition that discriminates against children.

**We strongly recommend further advice be sought on this clause including from parent groups such as ours, and from the Victorian Equal Opportunity and Human Rights Commission.**

### Privacy

We believe that questions about personal characteristics and history and that seek consent for actions that go beyond the rental application process must be banned. This includes:

- Asking if an applicant is using a bond loan
- Asking an applicant why they left their last property
- Asking any information that could be used to discriminate against an applicant (these are listed in the Statement on Discrimination – see Regulations 14, 40, 55, 75.)
- Asking an applicant to pay rent or bond before getting a residency/tenancy agreement
- Asking questions that would allow personal information to be given to third parties
- Asking questions that could affect an applicant's legal rights (such as agreeing to be listed on a tenancy database)
- Asking if an applicant smokes
- Asking intrusive financial questions over and above what is needed to assess if you an applicant can pay the rent.

We specifically note that digital applications that demand irrelevant information and prevent submission of application without these fields being filled out should also be banned and those providers using such applications face penalty.

## Form 5 Rental increases

**We commend the position that: “The rent cannot be increased more than once every 12 months.”**

We are concerned however about the proviso that seems to enable a continuation of rent increased in “a fixed term agreement... [where] the agreement provides for an increase by specifying the amount of increase or the method of calculating the rent increase.”

Our concern is that rent rises that occur more than annually are extremely difficult for many tenants to accommodate. We would like to see the limit of not more than once in 12 months made absolute, and including where shorter leases (e.g. 6 month leases) are renewed with the same tenant, that those leases be maintained at the same level for twelve month periods.

## Schedule 4- Rental minimum standards

Ideally, this “once in a generation opportunity” rental minimum standards should meet or at least aspire to the current Australian Building Code for new builds including energy efficiency, and the basics required should be fully listed. Minimum standards should provide or aim to provide an adequate standard of liveability equal to the requirements of new builds. It is disappointing that minimum standards are not going to apply to tenancies commenced before 1 July 2020. We accept this is an enormous package of work but urge further consideration of moving to minimum standards for all housing stock and current tenancies.

### 4. Bathroom facilities

Regulations should include adequate ventilation and free from mould including mouldy silicone sealant and damp (Australian Building Code recognises negative health effects). Towel rails and toilet roll holder are often absent from rental properties but should be included as otherwise the tenant incurs the financial cost to install without damaging walls and sometimes having to repair walls back to state when let.

### 5. Kitchen facilities

Regulations should include free from mould and accumulated grease.

### 7. Structural soundness

We agree premises should be structurally sound and weather proof. We suggest however that structurally sound is a broad concept that might benefit from reference to an easily understood description.

### 8. Mould and dampness

In addition to our comments in 4 above, we are perturbed that:

- This will only apply to tenancies commenced after 1 July 2020
- Lack of requirement to disclose previous mould/damp issues
- Lack of adequate ventilation required for rental homes. In older premises, windows often are painted shut or nailed shut because they need replacing and in any situation lacking adequate ventilation, mould and dampness may occur. **The health effects of living with mould are well documented, so every step must be taken to ensure mould and dampness are prevented.**

### 10. Window coverings

All windows (not just bedrooms and living rooms) should have adequate window coverings from July 1 2020 including bathrooms, kitchens and any room or hallway where there is viewing access from outside.

### 11. Windows

We do not accept the provision of “external windows which are capable of opening”. We believe all windows must be made capable of being opened and locked as a first order provision in adequate ventilation. Likewise, we contend every premise should have a lockable security door that enables the main door to open for ventilation.

### 12. Heating

We acknowledge the minimum of a 2 star heating system but this seems an example of lacking ambition and broader thinking about the opportunities for greater energy efficiency in homes across Victoria.

