



Brotherhood  
of St Laurence

Working for an Australia free of poverty

24 February 2017

Residential Tenancies Act Review  
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Dear Review Team

**Review of the Residential Tenancies Act: Options Discussion Paper**

The Brotherhood of St Laurence acknowledges the significant work that has gone into the review of the *Residential Tenancies Act* to date. We have appreciated the chance to participate in the review, including through membership of the Stakeholder Reference Group, written submissions and engagement with you, your office and your department.

We are investing considerable efforts in rental law reform because of the urgent need to improve housing security, stability and affordability for the increasing numbers of people and families in Victoria reliant on rental accommodation for the long term. Our particular focus is on the intersection of rental laws with more vulnerable Victorians: those on low incomes; people with disability; older adults; newly arrived communities and survivors of family violence.

Residential tenancies reform is a key element of the bigger challenge of housing security and affordability. It is critical that the next iteration of the RTA recognises and protects the public good associated with stable housing and respects rental properties as people's homes. The Act needs to be updated to reflect the reality that a large and increasing proportion of households – particularly those with vulnerabilities and on lower incomes – will be reliant on renting throughout their lives. Reforms need to squarely address the insecurity faced by tenants: the risk of arbitrary terminations; substandard properties; problematic repair provisions; inefficient properties causing inflated energy bills; poor access to advice, advocacy and dispute resolution procedures; discrimination; and limited protection against excessive rent increases.

Our contribution is focused on the broad social policy outcomes that we hope to see advanced by changes to the RTA, rather than the technical and legal detail of the Act's operation. These social outcomes include:

- that unplanned moves (and the associated costs to individuals, families, communities and state productivity) are minimised
- that rents and housing-related costs (e.g. bonds, rents and energy bills) are reasonably contained
- that rental dwellings meet basic standards to support the health and wellbeing of tenants
- that tenants with particular needs – such as those with mobility limitations, those with disability or those fleeing family violence – are able to make reasonable adaptations to a rental dwelling
- that vulnerable tenants have access to appropriate protections and support services to help sustain their tenancies, exercise their rights and meet their responsibilities under the Act.

We seek to highlight the options that advance or detract from these aims, and point to areas that we do not believe have been sufficiently addressed by the options. Where possible, we have followed the order of the Options Discussion paper.

Please feel free to have your staff contact me to discuss this letter further. The Brotherhood is committed to improving the housing circumstances of low-income and disadvantaged households, and we stand ready to assist you in driving much-needed reforms to the Residential Tenancies Act.

Yours sincerely

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## Response to Residential Tenancies Act Review Options Paper February 2017

### Unlawful discrimination against applicants and tenants

#### **Support Option 4.2 to strengthen linkages between the RTA and the Equal Opportunity Act.**

The Brotherhood works closely with the communities that Victoria's anti-discrimination laws are there to protect: new migrant, refugee and asylum seeker communities; people with disability; Aboriginal and Torres Strait Islander peoples; older and younger people with vulnerabilities; and households (often sole parent) on the lowest incomes. The challenge of securing housing is a constant theme that runs through our work. For example, staff from our Multicultural Communities Team have experienced real estate agents shredding applications from people of African background – apparently because of the landlord's views; landlords who refuse applications from particular communities on the basis their food 'stinks'; and agents or landlords using English (when communicating with people with limited English ) rather than using telephone interpreting services. For refugees using Humanitarian Settlement Services, agencies the Brotherhood partners with secure housing by directly leasing properties. For others, we work to develop close relationships with agents to support rental applications and act as guarantor for clients who don't have rental history.

A recent report published by CHOICE and National Shelter, *Unsettled: life in Australia's private rental market*, stated that over half of all renters surveyed reported having experienced some form of discrimination when looking for a rental property in the last five years. Over 60% of households with annual incomes below \$50,000 reported experiencing discrimination on the basis of receiving a government payment (33%), being a single parent (17%), needing to use a bond loan (10%), or having a disability (9%).

Operationalising existing rights to non-discrimination in rental laws is a must. VCAT already hear matters about discrimination in its Human Right List; it ought to be able to also consider such matters in its Residential Tenancies List. We support the establishment of penalty provisions for landlords who discriminate, and suggest extending penalties to agents who engage in discriminatory behaviour. We recognise the limitations in potential remedies (such as where a property has already been let to another applicant), but findings by VCAT which could affect reputations should help to discourage discriminatory practices.

The proposal to include information about unlawful discrimination in application forms (Option 4.1) would be a welcome advance, but needs to be buttressed by explicitly entrenching anti-discrimination protections into tenancy law to effect any meaningful change. The information would need to be available in a wide range of languages.

To complement these reforms, education for landlords and real estate agents and information and advice for tenants about their rights to non-discrimination are needed.

## Disclosures and representations prior to entering a tenancy

**Support Option 4.5 to require disclosure of certain information**  
**Support Option 4.7 to prohibit false, misleading or deceptive representations**

Reforms that assist prospective tenants to know more about circumstances surrounding a future tenancy, such as whether the property is likely to go on the market in the short term, would be a welcome improvement.

Consideration ought to be given to introducing disclosure requirements about issues additional to those flagged in the Options Paper that could impact the duration and quality of the tenancy arrangement such as:

- whether any previous requests for modifications to the property have been refused or not acted upon
- whether there are any outstanding requests from previous tenants for repairs or maintenance. (We recognise that outstanding requests may be also be dealt with through modifications to the property condition report, but note that this report is typically revealed after a tenancy has been entered into).

## Maximum bond amounts and rents in advance

**Support Option 7.1C to adjust maximum bond and rent in advance amounts, removing all exemptions except those allowed by VCAT**

We endorse the Review's findings that the up-front cost of bonds and advance rent is prohibitive for low-income households. While the Act provides that the bond generally should not exceed one month's rent, the 'high value' exemption to this cap (the value of which is frozen at just \$350 per week) means tenants in relatively low-cost properties can be faced with a bond greater than the monthly rent. Proposals in the Options Paper to recalibrate the maximum amount of bonds and rents in advance to ensure they are limited to one-month's rent will help to improve housing affordability.

## Health, safety and amenity standards

The Brotherhood supports the introduction of a minimum health, safety, amenity and energy standard. In the first instance, the Act should be amended to provide the Minister with a broad power to regulate for minimum standards. The detail of the standards would

not be prescribed in the Act but in accompanying regulations so as to facilitate future improvements.

Our comments below are focused on energy efficiency, an area where the BSL has specific expertise.

Minimum standards are the only effective means to improve the energy efficiency of the worst performing dwellings. The Brotherhood believes standards can be introduced in a way that minimises costs to landlords and maximises the benefits for tenants.

The case for minimum standards is as follows:

1. Rental households are over-represented in energy stress.
2. There is a gap in efficiency between rental and owner-occupied properties.
3. Poor housing energy efficiency negatively impacts on health and wellbeing.
4. There are major barriers to improving the efficiency of rental properties.
5. Voluntary programs are insufficient to improve the worst performing stock.
6. A regulated minimum standard is the only effective way to ensure the efficiency of the worst performing dwellings is improved.

We welcome the inclusion of energy efficiency in the options paper and endorse the **energy efficiency standard being developed through a DELWP led consultation (Options paper, p. 101)**.

<b>Support Option 8.13D – Minimum health, safety, amenity standards for vacant premises</b>
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Of those presented, this option provides the best foundation for development of a minimum standard. Strengths of this option include that it specifies a requirement for the property to be weatherproof and structurally sound and that electrical and gas services be checked in accordance with Energy Safe Victoria recommendations. The proposed basic levels of security and safety; adequate cooking, cleaning and sanitary facilities; and functioning heating provide for health, safety and amenity.

This option could be strengthened by providing specific guidance on the interpretation of ‘weatherproof’, ‘structurally sound’, ‘good repair’, ‘significantly damp’ and ‘not liable to collapse’ in order to minimise the likelihood of disputes.

Where relevant, prescribed requirements will assist in clarifying the standard – for example the time periods recommended by Energy Safe Victoria for the servicing of gas and electrical appliances and the National Construction Code (NCC) requirements for ventilation.

If Option 8.13B is not adopted, **Option 8.13D – Adapt minimum standards for rooming houses for general tenancies** also includes some positive features such as NCC compliant ventilation, regular safety checks on electrical and gas services and food preparation and storage facilities.

This option would be strengthened if it included aspects of the structural soundness of the building, in addition to the features within the property.

In response to consultation **Q.88 about compliance with minimum standards**, we anticipate the number of properties requiring upgrades to meet an energy efficiency standard that includes the features proposed for consideration in the DELWP work stream would be relatively low. Available evidence is that:

- according to the Victorian Utility Consumption Household Survey 2015, only 15% of private and 17% of public tenants report their home does not have ceiling insulation; and not all of these will be able to be insulated due to limited access to the roof cavity
- according to the Australian Household Energy Consumption Survey 2012, only 15.3% of Victorian rental homes have 4 or more halogen lights
- the Brotherhood's research, *The power to save* (2012), showed there has been high uptake of low-flow shower roses through VEET and many of these occurred in areas with a high proportion of households with low incomes and in cheaper rental accommodation
- the original CAV issues paper for this Review indicates Director of Housing properties have already 'been the subject of significant energy efficiency retrofitting activities' (p.22). This will have decreased the number of properties requiring upgrades.

Further we believe steps that can be taken to minimise compliance burdens include:

- allowing exemptions in some cases (for example where ceiling insulation is impractical to install due to the size of the access hole or type of roof)
- signalling the new standard well in advance of its implementation deadline
- making funding available to low-income landlords to support implementation
- making compliance simple.

In response to consultation **Q. 90 about whether the features listed go beyond basic standards, we believe** the energy efficiency features proposed for consideration in the DELWP work stream –low-flow showerheads, energy efficient lighting, draught proofing, insulation and energy efficient heating – do not go beyond basic standards.

**We would not support measures in the standard that place a prohibitively high cost on landlords, for example retrofitting double glazed windows.**

<b>Support option 8.14A – a staggered implementation for landlords to meet standard.</b>
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It is reasonable to introduce standards at the start of new leases sooner than for existing leases. Equally, there are some smaller energy efficiency measures, such as lighting and showerhead replacements that could be implemented sooner than larger upgrades such as energy efficient heating. Consideration should be given in the energy efficiency standard to

upgrades that have an ‘at time of replacement’ component, for example hot water and heating.

Depending on the level of the standard and how rapidly CAV is able to adequately engage the sector and promote changes, there may be a need for a longer transition than the one and two years proposed.

The ability to access funding for energy efficiency upgrades through the VEET scheme should be considered in deciding timeframes for the transition.

## Modifications

<p><b>Support Option 8.20A – landlord cannot unreasonably refuse consent for certain modifications</b> <b>Support Option 8.20B – no requirements to approve certain modifications</b> <b>Support Option 8.21 – liability for removing fixtures and restoring property</b></p>
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We are pleased that the Options Paper contains a strong set of proposals to enable reasonable modifications to rental properties. These proposals, if enacted, will have significant social impact in advancing the choices and wellbeing of people with disability and older adults.

The Paper rightly points out that the NDIS will fuel demand for accessible and affordable rental accommodation among people with disability. As Local Area Co-ordinator for the NDIS in Melbourne’s Metro North-East region, we can see that lack of accessible rental housing limits the options of people living with disability and places additional strain on social, supported and specialist disability housing. Our experience has been echoed by specialist disability organisations we have consulted. The Summer Foundation (specialists in housing and disability) in its submission on the Options Paper reported that too many young Victorians with disability (over 500 a year) end up in aged care because of the lack of accessible and affordable housing, the discrimination they encounter when applying for rental housing, and the unnecessary restrictions and reluctance of landlords to consent to home modifications.

Recent reforms to community aged care services – under which Home Care Packages can be used to fund home modifications – will similarly increase demand for modifications of rental properties by older adults to support them to age in place.

The Options Paper provides examples of disability-related modifications that a landlord ought not to be able to unreasonably withhold consent for – addressing trip hazards, installing grab rails and updating smoke detection alarms for tenants with a hearing impediment. To this list we would add: anti-slip proof flooring in wet areas, sensor lighting, and installation of hoists, door widening and ramps where reasonable.

We applaud the idea that energy efficiency measures be included in the types of modifications that cannot be unreasonably refused.

The Options Paper currently presents Options 8.20A (landlord not to unreasonably withhold consent) and 8.20B (no approval needed for minor modifications) as alternatives. We believe these could work as complementary, rather than alternative provisions.

The suggested requirement to use a suitably qualified person for modifications that require skill or technical ability is sensible, as is the proposal to remove the current requirement to restore the modification (in some circumstances) given that health, disability, ageing, energy efficiency and security modifications often improve the utility of a property.

## Resolving disputes about repairs

The results of the recent Choice/National Shelter report (referred to above) underscore the urgency of overhauling these provisions, with many renters surveyed reporting the need for repairs (10% needing urgent repairs, 30% non-urgent), delayed responses to repair requests, high levels of non-responsiveness to repair requests, and reluctance to seek repairs or complain about inaction through fear of adverse consequences (rent increase, eviction, blacklisting).

**We support all of the options put forward to improve the repair provisions** and commend the review team for capturing the shortcomings in the existing repair provisions. In particular, we support proposals to

- expand the list of urgent repairs
- clarify the time frames for responding to repair requests
- support faster resolution of repair disputes
- increase the authorised repair amount
- establish a landlord repairs and maintenance bond
- improve access to the Rent Special Account
- expand the range of remedies for breach of repairs duty
- make special provision for excessive charges incurred by tenants caused by leaks, intermittent faults or hidden problems.

## Independent resolution of disputes

Access to advice and advocacy services is essential for tenants to effectively exercise their rights under the RTA. Enhancing CAV's information and advice services (**Option 10.1**) is a welcome step. We would ask that particular attention be given to:

- outreach to culturally and linguistically diverse communities, production of multilingual materials and access to translation support
- outreach to other vulnerable groups, including the aged and people with disability
- maintaining telephone and face-to-face support, as well as printed information, for people whose access to or capacity to engage with on-line information is limited.

**We remain concerned that key advocacy and support services for tenants are unable to meet the demand.** In previous submissions we have reported on advice from the Tenants Union of Victoria about the huge number of people they are turning away (a 45% call



abandonment rate on account of the long waiting times on telephone advice, around half of the email inquiries received each day blocked by the email gateway because there is no capacity to respond, an oversubscribed drop-in service). This is unacceptable. To enable the effective operation of the RTA, access to tenancy advice, support and advocacy services for low-income and vulnerable tenants must be improved.

The proposal to extend CAV's frontline resolution and conciliation services to landlords (**Option 10.2**) seems at odds with the focus on consumer protection by CAV.

**An omission seems to be support for the resolution of disputes between tenants, including co-tenants and those living in communal settings.** Extension of CAV's dispute resolution services to these groups ought to be considered.

We note **Option 10.3** to establish a specialist administrative dispute resolution service that makes binding orders. While mindful that we have little detail about its design, we have reservations that it may fail to overcome the existing barriers to justice faced by tenants, particularly low-income and vulnerable groups. We do however like the concept that it be free, and used as the first port of call (before VCAT) for some disputes.

The Options Paper concludes that an **Ombudsman model** may not be suitable for the private rental sector because many landlords are individuals with one or few rental properties, rather than institutional investors. However we think an instructive comparison can be drawn with the Fair Work Ombudsman, who is dealing with very small (as well as large) employers. Similarly, the new Victorian Health Complaints Commissioner (replacing the Health Services Commissioner) can deal with complaints about individual health practitioners – registered and unregistered (e.g. GPs, pharmacists, masseurs and counsellors) as well as large health providers.

We are mindful that Victorians are already familiar with and have confidence in Ombudsman models. An Ombudsman also has the independence to identify systematic issues in tenancy law and practices that could inform future policy and regulatory responses.

## Security of tenure

### Support Security of Tenure Model 1

#### Security of Tenure Model 1

Notices to vacate during periodic agreement and for end of fixed term	Change of use notices to vacate (Landlord use, renovation or repair, sale, demolition, business use, public purpose)	At fault terminations
<p>Remove provisions for:</p> <ul style="list-style-type: none"> <li>landlords to give a notice to vacate for the end of a fixed term agreement (<b>option 11.25A</b>)</li> <li>landlords to give a notice to vacate without specifying a reason (<b>option 11.27D</b>).</li> </ul>	<ul style="list-style-type: none"> <li>Retain remaining change of use provisions.</li> <li>Require notices to vacate to be accompanied by relevant documentation demonstrating intended use (<b>option 11.28</b>)</li> <li>Greater VCAT discretion in decision-making regarding change of use notices (<b>option 11.29</b>).</li> <li>Increase notice periods from 60 to 90 days (<b>option 11.30A</b>).</li> <li>Retain and enforce prohibition on reletting for prescribed periods subsequent to change of use termination.</li> </ul>	<ul style="list-style-type: none"> <li>Retain current arrears and notice period requirements.</li> <li>Reform rent arrears process and require the landlord to negotiate repayment plan with tenant (<b>option 11.15</b>)</li> <li>Additional safeguards, including requirements for landlord to seek termination orders instead of giving notices to vacate (as outlined for each of the provisions in chapter 11.1 above)</li> <li>Time-limit compliance orders to 6 months (<b>option 11.19</b>).</li> <li>Retain current provisions for anti-social behaviour as described in table 11.2.</li> </ul>

Source: Part of Table 11.3 from Options paper

Strengthening security of tenure is pivotal to the Victoria Government's objective of fairer, safer housing. Security of tenure underpins the efficacy of so many other provisions in the Act, such as the confidence of tenants to request repairs, experience quiet enjoyment, or invoke dispute resolution procedures.

Security of Tenure Model 1 offers the best approach to supporting tenants to sustain their tenancies, while also enabling landlords to terminate a tenancy in reasonable circumstances. Models 2 and 3 include some modest measures to improve security of tenure; however, as a total package they appear to be a retrograde step. Key reforms needed to strengthen security of tenure include:

**Reducing the incidence of unnecessary evictions.** VCAT should ensure that evictions are a reasonable and proportionate response. This would include VCAT having the discretion to not make an order for possession where they are satisfied a breach was trivial or has been largely remedied. VCAT ought to also have the capacity to support the parties to take steps to preserve a tenancy where practicable – such as where a payment plan for rental payments has been entered, or the tenant is engaged with support services to address personal issues affecting their tenancy – before an order for possession is able to be made. **We support Option 11.2 to require VCAT consideration of reasonableness in making possession orders.**

**Prohibiting terminations without reasonable grounds.** While acknowledging that CAV commissioned research reports a relatively low level of use of ‘no reason’ notices to terminate mid-lease, our research (confirmed by the recent CHOICE/National Shelter study) indicates these provisions create a sense of insecurity and vulnerability among tenants. For example, tenants are reluctant to make or pursue requests for maintenance or repairs, or to make complaints about a property, out of concern that landlords may retaliate by termination. This insecurity is exacerbated by the capacity of landlords to act without cause to terminate month-to-month tenancies, or not renew a lease at its expiry.

The Brotherhood recommends introducing a prescribed list of circumstances in which a notice to vacate can be given, such as when the landlord is moving in; when the property is sold and the new owner requires vacant possession; when the property is to undergo major structural repairs or renovation; or when there are significant breaches by the tenant. This would enable tenants to remain in a property so long as it is on the rental market, unless they elected to leave or there were legitimate reasons for the landlord to require them to vacate. **We support Option 11.27D to remove the notice to vacate for no specified reason, Option 11.25A to remove the notice to vacate for the end of a fixed term agreement and Option 11.28 to require a notice to vacate for change of use to be accompanied by evidence of change of use.**

**Fair processes for breaches of duty.** In relation to Models 2 and 3, we are particularly concerned about the proposals to broaden the three strikes system of breaches of duty to cover any breaches, regardless of how trivial (**we oppose Option 5.2**), and enabling non-payment of rent to be grounds for termination, even in circumstances where all the rent has been repaid (**we oppose Option 11.17**). If these reforms were proceeded with, they would significantly undermine security of tenure.

## Severe hardship and lease breaking in special circumstances

**Support Option 6.3 to consider severe hardship when awarding compensation where a lease is broken**

**Support Option 6.4 to cap compensation at 2 weeks rent**

**Support Option 6.5 to exempt tenants in special circumstances from lease break fees**

We are pleased with the proposed options to strengthen current approaches to hardship and special circumstances where a lease needs to be broken prematurely.

The concept of special circumstances ought to be extended beyond the definition in the current Act (tenants requiring crisis accommodation or special care, or offered public housing) to include:

- tenants who accept an offer of any form of social housing
- tenants whose landlord has refused to make reasonable modifications to a property to meet their special needs related to disability, chronic illness or ageing
- where the property is being sold (and the tenant was not made aware of this prior to entering a lease) given the impact on quiet enjoyment and amenity.

## Family violence

We draw your attention to the **Family Violence Royal Commission's call to fast track particular reforms** (easier process for safety modifications in rental properties and lowering the evidence threshold for altering tenancy arrangements because of family violence) ahead of the RTA Review process, given that it will not be concluded until 2018.

With respect to property modifications, we believe **Option 12.5A** (that landlords not unreasonably withhold consent) **and Option 12.5B** (that non-structural adjustments can be made without consent) **can operate together as complementary, rather than alternative options**. We also note that agencies delivering programs such as Safe at Home are likely to be the ones negotiating with agents and landlords on behalf of family violence survivors.