

Making rental housing secure

Submission to the issues paper for the
Residential Tenancies Act 1997 Review

December 2015

About VCOSS

The Victorian Council of Social Service (VCOSS) is the peak body of the social and community sector in Victoria. VCOSS members reflect the diversity of the sector and include large charities, peak organisations, small community services, advocacy groups, and individuals interested in social policy. In addition to supporting the sector, VCOSS represents the interests of vulnerable and disadvantaged Victorians in policy debates and advocates for the development of a sustainable, fair and equitable society.

This submission was prepared by VCOSS policy staff Brooke McKail and Llewellyn Reynders, with input from VCOSS members.

Authorised by:

Emma King, Chief Executive Officer

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Victorian Council of Social Service

Victorian Council of Social Service

Level 8, 128 Exhibition Street

Melbourne, Victoria, 3000

+61 3 9235 1000

For enquiries:

Llewellyn Reynders, Policy and Programs Manager

llewellyn.reynders@vcoss.org.au

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Acronyms

ACT	Australian Capital Territory
CPI	Consumer Price Index
NDIS	National Disability Insurance Scheme
NSW	New South Wales
RTA	<i>Residential Tenancies Act 1997</i>
TUV	Tenants Union of Victoria
VCAT	Victorian Civil and Administrative Tribunal
VCOSS	Victorian Council of Social Service
VEOHRC	Victorian Equal Opportunity and Human Rights Commission

Executive Summary

VCOSS welcomes the Victorian government's review of the *Residential Tenancies Act 1997* (RTA) and the opportunity to respond to the Security of Tenure Issues Paper (the Issues Paper) about strengthening security of tenure for Victoria's renters.

A secure, affordable and appropriate home is the foundation of a good life. A home is not only a building or shelter, but is imbued with social meaning, emotional connection and forms part of a person's identity. It provides a base for participation in employment, continuity in education, maintaining family relationships, raising children and taking part in the life of a community.

Housing is an important determinant of health.¹ Good quality housing protects against heat and cold extremes, and other effects of weather including fire, flood and storms.² It enables people to maintain good hygiene, prepare and cook nutritious food, and access essential services such as energy, water and telecommunications. It protects people against exposure to disease, mould and vermin that can cause ill health. Housing is also important for people's mental health, including their ability to experience stability, security and privacy. Housing has important relationships to the rights protected by the *Charter of Human Rights and Responsibilities Act 2006*, and those in other human rights instruments to which Australia is a party.

An increasing number of Victorians are living in private rental for longer periods of their lives. Private rental is no longer a transitional housing option for many people, and the shortage of social housing means many low-income and vulnerable people and families are increasingly living in private rental properties. There are now more than half a million rental households, 35 per cent more than in 1996.³ Of these, more than 275,000 are low-income Victorian households, more than three times the number of households in social housing.⁴

This large group of people need to have confidence they can make a home for themselves and their families, without the constant threat of disruption, financial upheaval and homelessness that can accompany eviction. Many tenants are living with uncertainty and are often forced to move more than they would like. For example, in 2010, 83 per cent of renters surveyed had moved at least once in the last five years, compared to 23 per cent of

¹ Victorian Council of Social Service, *A Future Focussed Housing Standard*, 2009, p. 4.

² Victorian Council of Social Service, *Disaster and Disadvantage: Social Vulnerability in Emergency Management*, 2014, p. 18.

³ Victorian Government, *Residential Tenancies Act Review: Laying the Groundwork - Consultation Paper*, p.16

⁴ Australian Bureau of Statistics, *Housing occupancy and costs 2013-14: Additional tables – low income rental households*, Cat. No 4130, 2015.

home owners.⁵ Over 40 per cent of tenants surveyed by the Tenants Union of Victoria (TUV) reported their stay in their previous dwelling was shorter than intended.⁶

The rental housing market in Victoria is already unaffordable for many people. Average rent in Victoria has increased by 40 per cent since 2007,⁷ compared to inflation of 21 per cent over the same period.⁸ Nearly 42 per cent of low income rental households in Victoria are in housing stress, up from 32 per cent in 2007-08, meaning they pay more than 30 per cent of their income on housing.⁹ A 2015 TUV report took a snapshot of all advertised rental properties on 23 June 2015 and found the only affordable properties available to a renter on Austudy or Newstart in Melbourne were three inner-city car parks and a storage shed in Seaford.¹⁰

Insufficient protections for security of tenure can contribute to social disadvantage, particularly those people on low incomes or with other vulnerabilities, such as:

- reluctance to assert tenancy rights, including for repairs and maintenance, contesting unaffordable rent increases, or challenging unfair evictions
- the ease of lease termination means people may become homeless, incur high financial costs, or have insufficient time to find alternative accommodation
- where tenants are 'locked' into a fixed term lease, they may be unable to move to respond to changed financial or personal circumstances, or relocate to access valuable life opportunities elsewhere
- the inability to modify their home may affect exacerbate an impairment or health condition, or force people to relocate to a more suitable property
- frequent relocation may disrupt employment, education or medical treatment, cause anxiety and stress, sever family and community connections, and reduce people's ability to make a permanent home.

The current RTA current gives a great deal of attention to the ways in which tenants can be removed from their home, and virtually none to where the person will live next, or how that will be achieved. Every Victorian must live somewhere, and the Victorian Government must necessarily consider this broader context when legislating for the private rental market. The provisions of agreements between landlords and tenants have significant social externalities which affect people outside of the agreement. This includes the Victorian Government which funds services providing financial, housing, homelessness, healthcare, family violence, legal and other assistance which are affected by the nature of agreements in the private rental market. While tenancy agreements may be a private contract, they have very public consequences for community wellbeing. It is legitimate for the Victorian government to

⁵ Australian Bureau of Statistics, *General Social Survey*, Cat. No 4159, 2010,

⁶ Tenants Union of Victoria, *Online survey of Victorian private renters market: 2015*, 2015, p. 6.

⁷ Department of Health and Human Services, *Rental Report June 2015 and Rental Report September 2007*, accessed online 7 December 2015.

⁸ Reserve Bank of Australia, *Inflation Calculator*, <http://www.rba.gov.au/calculator/annualDecimal.html>

⁹ Australian Bureau of Statistics, *Housing occupancy and costs 2013-14: Additional table – low income rental households*, Cat. No 4130, 2015.

¹⁰ Tenants Union Victoria, *Pushed to the edge: Private rental (un)affordability in Melbourne*, 2015.

regulate the nature of the tenancy agreements not only in the private interest of the parties involved, but for the public interest of all Victorians.

Residential tenancy legislation can do more to encourage longer tenancies, protect against unnecessary and unreasonable evictions, and where no alternative is found, provide enough time for people to find new homes. However, tenancy legislation across Australia is heavily weighted in favour of the landlord. Victoria's private rental market has weak security of tenure compared to similar international jurisdictions, including weaker protections in lease terms, notice periods and reasons for lease termination.

Reforming the residential tenancy system should support changes in community attitudes towards and understanding of tenancy. A tenant is not merely a revenue stream providing yield for a financial asset, but a real person who needs a secure, appropriate home. Building a strong legislative framework that protects tenants' rights and attempts to redress the power imbalance between tenants and landlords would help support changing cultural attitudes to renting.

This submission makes recommendations to improve the protections for the large and growing number of people in Victoria living in rental homes, with specific focus on recommendations that help reduce poverty and disadvantage among tenants.

Recommendations

Longer lease terms

- Move towards a private rental system where leases are open-ended and can only be terminated for a good reason.

Protection against termination

- The RTA should prevent unnecessary and unreasonable evictions, including:
 - Removing 'no cause' eviction provisions
 - Introducing a 'reasonable in the circumstances' requirement in evictions
 - Removing sale or repossession of a property as grounds for eviction
 - Considering how best to manage challenging behaviours,

Notice periods

- Amend the RTA to provide for minimum notice periods of:
 - 120 days where the termination is landlord initiated and through no fault of the tenant
 - 28 days where the termination is landlord initiated as a result of tenant breach
 - 14 days where the termination is tenant initiated, or where the tenant has already been issued a notice to vacate
 - Additional notification periods on a sliding scale for very long tenancies.

VCAT processes and decision-making

- Increase the capacity of VCAT to hear more cases, reduce waiting times and ensure a meaningful, low-cost, fast method of dispute resolution.
- Increase consistency of VCAT decision making, including by developing a comprehensive and sustained training and professional development program for VCAT members, that adopts a tenants rights perspective, and providing an internal appeal process
- Clarify VCAT's jurisdiction to hear matters related to the *Charter of Human Rights and Responsibilities*.

Rent increases

- Adopt a maximum annual rental increase cap, such as being linked to the Consumer Price Index.
- Landlords should bear the onus of showing proposed rent increases are reasonable and not excessive.
- Restrict rent increases to no more than once per year.

Repairs, modifications and maintenance

- Landlords may not unreasonably refuse permission to modify properties to support ageing, disability or health conditions.
- Ensure tenants are not required to remedy modifications at the end of a lease if they are minor, non-structural or do not detract from the property's value.

Family violence

- Amend the RTA to better apportion liability between co-tenants in situations of family violence.
- Extend the application of section 223A to cover situations where a final family violence intervention order has not yet been issued.

Disputes between tenants

- Expand the role of VCAT to cover disputes between co-tenants, including by apportioning liability between them and making changes to tenancy agreements.

Tenants not protected by the Residential Tenancies Act

- Amend the RTA to cover any person who pays rent and lives somewhere as their primary place of residence, regardless of the nature of the agreement.

Role of social housing providers

- Consider how best to accommodate the different roles of social housing and community services providers in the RTA.

Discrimination by landlords

- Implement VEOHRC's recommendations on reducing discrimination in Victoria's private rental market.

Promote longer lease terms

Recommendation

- Move towards a private rental system where leases are open-ended and can only be terminated for a good reason.

VCOSS supports increasing security of tenure by encouraging longer, more secure tenancy agreements that still provide tenants flexibility to leave where necessary without punitive financial penalties. Longer leases can also benefit landlords through more certainty of rental income and less expenditure on advertising and agency costs. A 2008 Senate inquiry found:

Leases with longer and more secure tenure can help generate social benefits attributable to home ownership.¹¹

The Issues Paper asks what role long (five or ten year) leases could play in strengthening security of tenure. Longer fixed term leases may be appropriate in some cases, and for some tenants. In particular, VCOSS consultation participants observed that older people who are less likely to experience changes in circumstances or income may welcome a longer fixed term lease. However, VCOSS is not convinced that longer fixed term leases are the best way to increase security of tenure for the majority of tenants.

Introducing the option of longer fixed term leases in the RTA is unlikely to result in significant change. The RTA already allows for leases up to five years, but in reality they are rare and most tenants on fixed term arrangements are on twelve month leases. VCOSS members report that most tenants do not attempt to negotiate their lease terms. Reasons suggested vary, including that tenants do not wish to have tenancy refused by asking for an unusual lease term, because they are unaware of their rights or feel at a disadvantage in bargaining with a landlord, or because they want to maximise their flexibility in being able to vacate the property should their circumstances change. The low vacancy rates and high demand for available properties provide landlords with a high degree of bargaining power and give little incentive for landlords to negotiate longer leases with tenants.

The TUV survey found that only one in five tenants with a fixed term lease tried to negotiate its terms.¹² More than half of the people who didn't try to negotiate indicated they would have liked to. Tenants may fear losing the property if they are seen as 'difficult' or likely to cause

¹¹ Senate Select Committee on Housing Affordability in Australia, *A good house is hard to find: Housing affordability in Australia*, 2008.

¹² Tenants Union of Victoria, *Online survey of Victorian private renters market: 2015*, 2015, p. 6.

future problems. Without significant culture change, this power imbalance is unlikely to shift even if longer fixed term leases were an option available to tenants.

Fixed term leases often contain significant 'break costs' if a tenant has to terminate early. Therefore, VCOSS does not support locking vulnerable tenants into longer term leases that may result in significant costs if their situation changes and they need to leave. There are important reasons why a tenant may need to leave a property. They may find a new job that will provide a better income and more security for their family. They may have to care for an ageing parent or a family member with illness or disability. Family violence or a relationship breakdown may require a change in living situation. The financial costs can be a significant burden on a tenant ending a fixed term lease early, in one of these circumstances.

Instead, VCOSS recommends adopting a system that encourages long term leases without a specified end date, similar to some European countries. The default arrangement in many of these countries is no fixed term, an indefinite lease period, strong protection against evictions and regulation of rent increases.

For example, in Germany, landlords are unable to evict tenants without a reasonable cause. Security of tenure remains when a property is sold or inherited.

“Security of tenure is not seen as a bad thing but rather as an attractive way of keeping down voids and management costs, which in turn ensures the long-term secure returns.”¹³

Under an indefinite lease arrangement, tenancies could be terminated by the landlord on reasonable grounds: an issue explored in the next section of this submission. The tenant can maintain flexibility to end the tenancy at any time, with relatively short notice and minimal financial costs. This arrangement would not only increase security of tenure, it would help shift community attitudes toward renting from being regarded as a transitional tenure to a permanent housing arrangement for many Victorians.

VCOSS members noted that if longer leases become the norm, we will need to revisit and develop shared understandings of common terms like 'fair wear and tear.' The condition of a property after being lived in for many years without major refurbishment is likely to look different to that after a one year fixed term lease. Tenants should not be financially punished for reasonably using and living in a property over a longer period.

Some consultation participants suggested that in a lease maintained for longer periods, the tenant could assume responsibility for some minor repairs and maintenance. This could act as an incentive to the landlord to encourage retaining tenants for longer periods. However, this needs to be balanced against the risk of tenants, in a position of less bargaining power, assuming additional duties without a fair compromise by the landlord.

¹³ Jonathan Fitzsimons, *The German Private Rented Sector – A Holistic Approach*, The Knowledge Centre for Housing Economics, March 2014, p.88

Protect people against unnecessary and unreasonable termination

Recommendation

The RTA should prevent unnecessary and unreasonable evictions, including:

- Removing 'no cause' eviction provisions
- Introducing a 'reasonable in the circumstances' requirement in evictions
- Removing sale or repossession of a property as grounds for eviction
- Considering how best to manage challenging behaviours.

VCOSS believes eviction should be a last resort. Tenants should be allowed to remain in a property for as long as they uphold reasonable responsibilities in their circumstances, enabling them to create a safe, secure and stable home.

Unplanned moves can force tenants to relocate to other areas, risking their existing social connections and local relationships, including with nearby friends, family, service providers, health professionals, community organisations and social groups. Insecure tenure can also lead to anxiety and uncertainty for tenants, affecting their employment choices and capabilities, their education and their access to services. It can also disrupt children's schooling or adults' education and training, and make finding or maintaining employment more difficult.

The costs involved with moving, especially where it is unnecessary or at short notice, can place tenants in significant financial stress, forcing them to go without other necessities, like food, healthcare or education. An unplanned move, especially under financial constraints, may also mean a household or family cannot find accommodation appropriate to their needs. It may be of substandard quality, of insufficient size or have inadequate access or facilities.

At worst, eviction from a rental property can lead to homelessness, which profoundly affects people's health, social and wellbeing, but also increases the need for other public services, including healthcare, justice and community services.

VCOSS supports strengthening the RTA to provide greater protections for tenants against avoidable or unreasonable evictions.

Currently, our rental culture reinforces the view that a landlord's ownership of a property ultimately entitles them to use it as they wish, regardless of the reasonableness of that desire, or its detrimental effects on other people's lives and liberty. By leasing a rental home, a landlord makes a significant social agreement, and not merely a financial one. VCOSS

believes that a more sensible approach should be adopted, that understands and prioritises the basic economic and emotional requirement for people to have a safe, secure home.

A common argument against strengthening protections for tenants is that it may act as a disincentive to landlords investing in property, and reduce the number of rental properties available. However, research suggests that overall investment in the private rental sector is not necessarily affected by tenancy legislation. Many landlords are primarily motivated by capital gains.¹⁴ Investors perceive property as a long-term, safe and stable investment that will produce guaranteed returns. The vast majority of investors do not consider tenants' rights affect their investment decisions; indeed it has been found that "tenancy law simply did not rate a mention as the main influence on investment decisions."¹⁵

In 2004, Ireland moved from arrangements similar to Australia's, towards improving security of tenure for renters. There is little evidence of any adverse impact on the supply of private rental housing since the reforms were introduced in 2004. In fact, the Irish private rental sector has grown substantially, and remains dominated by small individual investors.¹⁶

VCOSS recommends that the review consider options for strengthening security of tenure by reducing the risk of unnecessary evictions.

Removing 'no cause evictions'

VCOSS recommends the existing right of a landlord to evict a tenant without providing a reason or grounds should be removed from the RTA. The threat of 'no cause' evictions significantly undermines tenants' security of tenure.

The risk of hardship among tenants means evictions should only occur where it is reasonable in the circumstances and there is no other alternative. However, the current RTA allows landlords to evict a tenant with no reason and only 120 days' notice. This provision is unnecessary; there are already many provisions for eviction where the landlord has valid reason.

The threat of 'no cause' evictions can deter tenants from seeking to enforce their rights or reporting problems with maintenance or repairs. Community legal centres report examples of tenants who have reported problems with their property and soon after have been served with a notice to vacate. There are limited opportunities for challenging these evictions, and cases are often difficult to prove.

While most responsible landlords only use 'no cause' evictions as a last resort, where no other options are available, some may use this provision to evict tenants for otherwise unlawful reasons, such as discrimination or retaliation, or to avoid the normal due process where a breach may have occurred. It is an unnecessary provision, open to misuse.

¹⁴ Civitas, *The future of private renting*, p.44.

¹⁵ T Seelig, A Thompson, T Burke, S Pinnegar, S McNelis and A Morris, *Understanding what motivates households to become and remain investors in the private rental market*, Australian Housing and Urban Research Institute, March 2009, p.32.

¹⁶ Grattan Institute, *Renovating housing policy*, October 2013, p. 20.

Introducing a ‘reasonable in the circumstances’ requirement in evictions

The current RTA does not require an eviction to be reasonable in the circumstances. This means when considering a possession order, VCAT members have little discretion to consider whether it is unreasonable or inappropriate, whether the hardship likely to be experienced by the tenant as a result of the eviction and what other action could be taken to preserve the tenancy. The RTA should be amended to allow VCAT to consider the reasonableness of the eviction, and the hardship likely to be experienced by the parties as a result.

Residential tenancy legislation in Scotland includes a requirement that granting a possession order must be reasonable in the circumstances. The Scottish reasonableness test incorporates consideration of the nature, frequency and duration of action by the tenant leading to the application to evict, the degree to which the tenant is responsible for the eviction proceedings, the effect of the tenant’s conduct on others and whether the landlord has considered other possible courses of conduct.¹⁷

In addition, VCOSS members support enhanced protection against eviction into homelessness. Shortages of affordable housing and long public housing waiting lists mean that for vulnerable Victorians, eviction from an affordable private tenancy puts them at high risk of homelessness. This risk is likely to be higher among rooming house and caravan park residents who may have even fewer options. Additional mechanisms should be in place to support tenants where there is significant risk of homelessness.

One possible way to address this would be to require that risk of homelessness is considered as part of deciding whether an eviction is reasonable in the circumstances.

Where there is a risk of homelessness, the review should also consider ways to alert agencies and provide landlords and tenants with advice and support to prevent evictions into homelessness, such as programs to address rent arrears and information about rights.

Removing sale or repossession of a property as grounds for eviction

VCOSS believes a reason for eviction should be of sufficient gravity that it is a proportionate response to deprive a person of their home. There is a long list of reasons for eviction in the RTA, and many have a complicated legal structure, while others are rarely used. This makes the RTA unnecessarily complex and difficult to understand. The review should consider deleting a number of these grounds from the Act to increase protection from unreasonable lease terminations, and to simplify the RTA so people can more easily understand their rights.

Selling a property should be removed from the list of ‘reasonable grounds’ for eviction.

Selling a property does not require vacant possession. There are many examples where a tenant is evicted prior to the property being sold, only for it to be advertised for lease soon

¹⁷ *Housing (Scotland) Act 2001*, s16(3).

afterward by the new owner. If the new owners wish to occupy the property, this is a reasonable ground for eviction, and the tenants can be served with notice. If there are exceptional circumstances, the landlord can apply to VCAT for a determination.

We are aware this is as much a cultural problem as a legal one. Changing this culture may require ongoing conversations with landlords, real estate agents and financial institutions, who in many cases assume vacant possession is the best or only way to secure a successful sale.

A similar scenario is where a landlord defaults on their mortgage repayments and the bank or financial institution repossesses the property. In most cases, the financial institution moves to sell the property immediately, which can be done with a tenant in possession. VCOSS does not believe there is need for separate grounds to evict on the basis of repossession by a financial institution.

Consider how best to manage challenging behaviours

VCOSS members include a diverse range of community organisations, including both tenant advocacy organisations and social landlords. Some VCOSS members provide housing to people experiencing disadvantage, who are often dealing with a complex difficulties in their lives, including displaying confronting and challenging behaviours.

One of the challenges of managing housing is ensuring all tenants can feel safe, enjoy their homes, and participate in a respectful and thriving community. Challenging behaviours increase the complexity of this task, including for private, community and public housing providers. Challenging behaviours can have real consequences, including for the person displaying them, who may need additional support, access to services, and understanding. Other people, including other tenants living nearby, who may have personal difficulties, can also be affected. VCOSS members report that the effects on other tenants can be harmful, with people being fearful and feeling unsafe, and even becoming at risk of homelessness to escape a perceived dangerous living situation. Some VCOSS members report that these tenants may report these circumstances to housing providers anonymously, but be unwilling to make reports to police or courts for fear of reprisal. Housing providers also have a duty of care to their staff and contractors, and must comply with occupational health and safety legislation, including minimising risk to employees.

Good management practice, well-trained organisational staff and real estate agents, access to well-resourced social support services, including tenant advocacy services, mental health services, and alcohol and drug services, assist in mitigating challenging behaviours. Well-structured allocation and transfer policies can also be helpful.

Some VCOSS members report that there are instances where management practice has not been able to resolve these problems, services that could help have been unavailable, or the tenant has been unwilling to engage with the landlord or other service providers to help resolve the issue. Some VCOSS members report that in these circumstances, the landlord

may have to terminate the lease as a last resort, but there is no specific mechanism in the Act to do so, other than making a 'no cause eviction'.

VCOSS members also report divergent accounts of VCAT's ability to understand the complexity of tenant needs and management challenges when confronted with eviction cases for vulnerable tenants, including that decision-making is often not well informed and can be unpredictable.

The review should consider the best way for the RTA to help resolve difficulties when tenancies are affected by challenging behaviours.

Provide fairer notice periods

Recommendation

Amend the RTA to provide for minimum notice periods of:

- 120 days where the termination is landlord initiated and through no fault of the tenant
- 28 days where the termination is landlord initiated as a result of tenant breach
- 14 days where the termination is tenant initiated, or where the tenant has already been issued a notice to vacate
- Additional notification periods on a sliding scale for very long tenancies.

Landlord initiated and through no fault of the tenant

Where a tenant is being evicted through no fault of their own, they should be provided with sufficient notice to enable them to find alternative accommodation and to reduce financial hardship as much as possible. Low income tenants facing eviction from affordable properties often struggle to find new accommodation. The shortage of affordable private rental properties and long waiting lists for social housing mean they have few options. Longer notice periods would increase the likelihood of finding suitable accommodation.

Currently the RTA provides for different notice periods depending on the reason for the eviction, despite the reason making little difference to the tenant facing an often unexpected move. For example, the notice period where the landlord wants to sell or move into the property is 60 days, but where there is no reason, the notice period is 120 days. VCOSS recommends that notice periods for all landlord initiated evictions where the tenant has not breached the lease agreement should be a minimum of 120 days to allow time for vulnerable tenants to find alternative accommodation and reduce the risk of eviction into homelessness.

After a landlord has issued a valid notice to vacate it is important that the tenant has flexibility about leaving within the notice period. Under section 237 of the RTA, after a valid notice to vacate has been issued by the landlord, tenants may give 14 days' notice of their leaving. However, this does not apply when a tenant is asked to leave at the end of a fixed term tenancy. This means the tenant is unable to use the full notice period to locate alternative accommodation. If they find a suitable property early in the notice period, they either need to break the lease or pay rent on two properties. At a minimum, section 237 should be expanded to include where a landlord issues a notice to vacate under a fixed term lease.

Landlord initiated as a result of tenant breach

Tenants can be evicted for breaches of the lease agreement, including rent arrears. The current notice period varies, with 14 days' notice for non-payment of rent (14 days arrears) or sub-letting without consent, and there are provisions for immediate termination for malicious damage or danger to neighbours. Notice periods are even shorter for some

evictions from rooming houses and caravan parks compared with ordinary residential tenancies.

Evicting a tenant for breaching a term of the lease agreement should be a last resort. VCOSS members report landlords and real estate agents often do not seek to resolve issues before issuing a notice to vacate, or a tenant is evicted for a small breach, disproportionate to the hardship that could be experienced as a result of the eviction. For example, VCOSS members report that tenants are sometimes evicted for rental arrears, even though the tenants have paid the arrears prior to the repossession order hearing or are in a position to pay via a repayment plan. As suggested above, before a notice to vacate is issued, VCOSS believes all reasonable steps should have been taken to resolve the issue by other means, and that the eviction should be a proportionate response.

We recognise that not all tenancies can be sustained and evictions will sometimes be necessary. However, avoiding evictions into homelessness must be a priority. This is particularly the case for residents in rooming houses and other marginal rental situations, who are likely to be especially vulnerable. In these situations, tenants should be provided with an opportunity to secure safe alternative accommodation.

Short notice periods for the termination of a lease are likely to increase the financial and emotional hardship on tenants, and significantly increase their risk of homelessness. Securing an alternative rental home is impossible to achieve immediately, and immediate notices to vacate virtually guarantee homelessness for an initial period. It is extremely difficult to secure an alternative tenancy and arrange for possessions to be transferred within 14 days, especially if the tenant has been evicted for a breach. This timeframe also means that a large number of re-location costs need to be met in a very short space of time, often from a single fortnightly wage cycle or Centrelink payment.

For this reason, VCOSS recommends all landlord initiated terminations which result from tenant breach of lease agreements must provide 28 days' notice. We regard this as a minimum period where a person may be able to secure, finance and relocate to an alternative tenancy, although even this may be too short for many people.

Where there are exceptional circumstances that put people or property at significant and immediate risk, the landlord could have the ability to seek a shorter time period from an independent decision-maker, and the tenant be provided with assistance to secure an alternate home.

Some VCOSS members report that notices to vacate are often followed by a lengthy process at VCAT, which may further extend the period which, for example, a tenant is accruing rent arrears. The ability for VCAT to address issues efficiently and promptly may reduce concerns for landlords with providing longer notice periods, along with the ability to shorten time periods in exceptional circumstances, such as where there is immediate danger or extensive damage to property.

Tenant initiated

A tenant may need to leave a property for many reasons, including financial, employment or education reasons, acquiring a health or disability condition, changed relationship status, a pregnancy or additional child, family or household conflict or violence, or the need to care for a relative or other person. They may also wish to move to pursue valuable life opportunities or improve their standard of living. These circumstances may be unexpected, and may already pose significant financial costs and emotional stress.

Locking a tenant into a lease can have detrimental effects. It may prevent them from responding to their personal circumstances or pursuing valuable life opportunities. If breaking a lease has severe financial consequence for tenants, it may place a further financial and emotional burden on a tenant who is already emotionally or financially stressed.

Where the lease termination is initiated by the tenant, VCOSS supports reducing the notice required to 14 days. This is in line with notice periods in other Australian jurisdictions including New South Wales, Northern Territory and Tasmania. Tenants are unlikely to give notice until they have secured an alternative home, and may already have paid for a bond and begun paying rent on their new home at the time they give notice.

A 14 day notice period reduces the likelihood of a tenant unnecessarily forced to pay rent on two properties at once for an extended period, putting them at increased risk of financial hardship.

Given the low vacancy rates in Victoria, and high demand for rental properties, landlords are unlikely to have difficulty finding alternative tenants quickly for their property, if it is priced appropriately.

Longer term tenants

Moving can be more difficult for tenants who have lived in the property for a long time. Community legal centres report they sometimes see tenants who have lived in the same house for 20 years or more and are being unexpectedly evicted for no fault of their own.

These long-term tenants have lived a significant period of their life in the same house, neighbourhood and community. They may have made modifications or repairs to the property, and have often accumulated more possessions in the property than other tenants, who have moved more frequently. In addition, tenants who have not moved in a long time may be unfamiliar with the current rental market, and feel bewildered by the process of finding a new property.

For tenants in these circumstances, VCOSS supports a system of longer notice periods. Some VCOSS members suggested a system where notice periods scales with the length of the tenure; for example for every additional decade, tenants receive additional notice.

Longer notice periods, however, should not be justification for landlords demanding larger bonds, or to terminate leases just before a 'threshold' period when additional protections

may fall. VCOSS believes the maximum bond allowed to be held against a lease should be regulated by the RTA, and notes that the Victorian Government has announced it will produce a separate issues paper on affordability, bonds and rent, where further attention can be given to this issue.

Improve VCAT processes and decision-making

Recommendations

- Increase the capacity of VCAT to hear more cases, reduce waiting times and ensure a meaningful, low-cost, fast method of dispute resolution.
- Increase consistency of VCAT decision making, including by developing a comprehensive and sustained training and professional development program for VCAT members, that adopts a tenants rights perspective, and providing an internal appeal process.
- Clarify VCAT's jurisdiction to hear matters related to the *Charter of Human Rights and Responsibilities*.

The Victorian Civil and Administrative Appeal Tribunal (Residential Tenancies List) hears disputes between landlords and tenants. VCAT is intended to be a less formal and cheaper way to resolve disputes quickly, compared with traditional court processes.

However, VCAT has limited capacity and is already struggling to keep up. It received more than 59,000 applications in 2014-15, with the average length of time from initiation to finalisation being three weeks.¹⁸ This leaves many tenants (and landlords) waiting too long for their dispute to be resolved. If VCAT is to play a stronger role, its capacity must be increased to enable swift resolution of disputes.

Only six per cent of VCAT applications are brought by tenants or residents. The vast majority are by landlords or the Director of Housing. One reason for this may be that tenants making an application to VCAT are required to pay an application fee. This is presently \$59.80,¹⁹ and a person living on NewStart allowance only receives \$37 a day. The fee is a barrier for low income tenants seeking to enforce their rights and can act as a disincentive to tenants in challenging a decision. Some VCROSS members also reported that the application process is complex and confusing, especially for tenants from non-English speaking backgrounds.

VCROSS members report they perceive VCAT may make arbitrary and unpredictable decisions. This can reduce the willingness of people to take their concerns to VCAT. Aboriginal organisations report that VCAT is particularly intimidating for their clients. Consideration should be given to creating a more culturally safe environment. A number of other courts in Victoria have Aboriginal lists, staffed by duty lawyers from Aboriginal services and supported by other culturally safe organisations.

This could be partly addressed by a combination of a comprehensive and sustained training and professional development program for VCAT members, and improved communication with the community about the role of VCAT and its ability to support tenants in enforcing their

¹⁸ Victorian Civil and Administrative Tribunal, *Annual Report 2014-15*, 2015, p. 39.

¹⁹ Victorian Civil and Administrative Tribunal, *VCAT Fees effective from 1 July 2015*, p.8.

rights. This may also increase the proportion of tenants who attend VCAT hearings, which is very low. Attendance can help increase the likelihood of a favourable outcome for tenants.

The perception of unpredictable decisions can also make it difficult for legal advisors, such as community lawyers, to advise people of expectations when applying to VCAT, or to prioritise cases with clear merit. Some VCROSS members suggested reviewing rules of evidence and procedure. Organisations also reported that VCAT only schedules ten minutes for each hearing, leading to decision making that is often rushed and does not allow tenants and their representatives to put forward meaningful submissions.

There is no process for internal reviews of decisions made in the Residential Tenancies List. This means that where a tenant or their lawyer feels a decision should be reviewed, their only option is to seek leave to appeal to the Supreme Court. An internal appeals system would be a more accessible and affordable option, and contribute to increased consistency and predictability of VCAT decisions. Internal appeals are available in similar tribunals in other Australian jurisdictions, including Queensland and NSW.

VCAT has limited jurisdiction to consider the compatibility of decisions to evict tenants from public housing with the human rights contained in the *Victorian Charter of Human Rights and Responsibilities*. This means vulnerable tenants challenging a decision to evict them from their public housing properties must go to the Supreme Court; a more lengthy, complex, intimidating and expensive option. The VCROSS submission to the 2015 review of the Charter recommended VCAT's jurisdiction to hear Charter related matters be clarified.²⁰

²⁰ Victorian Council of Social Service, *2015 Review of the Charter of Human Rights*, June 2015, p.23

Protect consumers from unreasonable rent increases

Recommendations

- Adopt a maximum annual rental increase cap, such as being linked to the Consumer Price Index.
- Landlords should bear the onus of showing proposed rent increases are reasonable and not excessive.
- Restrict rent increases to no more than once per year.

The rental housing market in Victoria is already unaffordable for many people. Average rent in Victoria has increased by 40 per cent since 2007,²¹ compared to inflation of 21 per cent over the same period.²² Nearly 42 per cent of low income rental households in Victoria are in housing stress, up from 32 per cent in 2007-08, meaning they pay more than 30 per cent of their income on housing.²³ A 2015 TUV report took a snapshot of all advertised rental properties on 23 June 2015 and found the only affordable properties available to a renter on Austudy or Newstart in Melbourne were three inner-city car parks and a storage shed in Seaford.²⁴

Unexpected or excessive rent increases can push low income tenants beyond already stretched budgets, forcing them into rental arrears, to move, or to reduce their spending on other essential goods and services, such as healthcare or education costs. At worst, an excessive rent increase may result in homelessness. Excessive rent increases can also be used to force tenants to move out without going through a lawful eviction process.

The Victorian system does not adequately protect renters from excessive rent increases. In Victoria, the onus remains on the tenant to show the increase is excessive. Tenants can challenge a rent increase they believe to be excessive through VCAT, but rarely do. They may not know they have the right to challenge, may be intimidated by the process, or fear retaliatory action from the landlord, including being evicted 'without cause.' The assessment of whether an increase is excessive is not always straightforward, as there is no reliable measure of market rent. The current process involves VCAT ringing local real estate agents

²¹ Department of Health and Human Services, *Rental Report June 2015 and Rental Report September 2007*, accessed online 7 December 2015.

²² Reserve Bank of Australia, *Inflation Calculator*, <http://www.rba.gov.au/calculator/annualDecimal.html>

²³ Australian Bureau of Statistics, *Housing occupancy and costs 2013-14: Additional table – low income rental households*, Cat. No 4130, 2015.

²⁴ Tenants Union Victoria, *Pushed to the edge: Private rental (un)affordability in Melbourne*, 2015.

to make an assessment, which may not always take into account the age of the property, its state of repair, or other relevant variables.

Some international jurisdictions have adopted mechanisms for protecting tenants from arbitrary, retaliatory or excessive rent increases. For example, in Germany, initial rents are based on a local average and must not be increased by more than 20 per cent in a three year period. In France, rent increases require six months' notice and are only allowed if the existing rent is considered undervalued. The ACT also requires that for all increases above a certain threshold, the landlord must justify that the rent increase is not excessive.

Victoria should also consider adopting a mechanism to limit the amount rent can be increased. One proposal suggested by VCOSS members is that maximum rental increases be linked to the Consumer Price Index (CPI), unless there are fair and reasonable grounds for higher increases. At the same time as adequately protecting against excessive rent increases, it is important that landlords are not prevented from increasing rent where it is fair and reasonable to do so, as this could encourage landlords to evict tenants so they can reset the rent with a new tenancy arrangement. An option could be that if a landlord wished to increase rent by a greater amount than a specified threshold, they could apply to an independent decision-maker to do so, with the onus on the landlord to show the increase is reasonable and not excessive.

VCOSS notes that community housing providers have different rent structures, based on income, below-market rent or other factors. As a result of the different models, applying a mechanism linked to CPI to community housing across the board may be more difficult than market-based rents in the private markets. We suggest the review continue working with community housing providers and tenants to identify strategies for ensuring rent increases are appropriate and do not place tenants at increased risk of financial hardship.

Under the RTA, rent can be increased up to twice each year, which is more often than other Australian states and territories. For example, New South Wales limits rent increases to only once per year, as do Tasmania and South Australia. VCOSS proposes that rent increases should be restricted to once per year, in line with other jurisdictions.

Encourage repairs, modifications and maintenance

Recommendations

- Landlords may not unreasonably refuse permission to modify properties to support ageing, disability or health conditions.
- Ensure tenants are not required to remedy modifications at the end of a lease if they are minor, non-structural or do not detract from the property's value.

At different points in their lives, many Victorians will require modifications to comfortably enjoy their home. Security of tenure is particularly important for people who require modifications to their property. Many tenants pay for modifications themselves, at significant cost. They should have some certainty that they will not face eviction, and be forced to modify a new property. They should also be confident they will not be prevented from making reasonable modifications.

There is likely to be increasing demand for modifications to rental properties as the National Disability Insurance Scheme (NDIS) rolls out across Victoria. Individual support packages under the NDIS can include funding to modify homes where it is necessary. At the same time Commonwealth Aged Care reforms are similarly increasing the use of individualised funding to assist people to age in their own homes, also including funding for home modification. As a result, VCOSS advocates the RTA should be amended to prevent landlords from refusing tenants permission to modify properties where these are reasonably required to support a person's ageing, disability or health condition.

There is often a lack of clarity for whether modifications must be remedied or removed when a tenancy ends. Many modifications will actually add value to the house and benefit others who may live there in the future. For example, slip-resistant flooring, step-free showers and accessible bathrooms might benefit older people, people with disability or health conditions and families with small children, among others. This extends to other minor changes, such as creating a garden.

VCOSS members suggested that where structural changes are made, an independent valuer should be appointed to advise whether the changes have reduced the value of the property. If they have added value, they should not have to be remedied by the tenant at the end of the tenancy. Where changes are not structural, provide added utility to the property,

and are within community standards (such as handrails or identifiable light switches) they should not need to be remedied.

VCOSS members report that consent to modifications is not always provided promptly. For example, an older tenant received medical advice that he needed grab rails installed in his property. Six weeks after his community worker submitted a request for permission to install the rails, the worker had received no response from the real estate agent. This delay affected the tenant's wellbeing and restricted his ability to move around his home.

Other issues

Family violence

Recommendations

- Amend the RTA to better apportion liability between co-tenants in situations of family violence.
- Extend the application of section 223A to cover situations where a final family violence intervention order has not yet been issued.

The links between family violence and homelessness are well known. Family violence accounts for about one third of all people receiving assistance from specialist homelessness services.²⁵ The housing crisis is making it increasingly difficult for women experiencing, or at risk of, family violence to find secure, stable homes.

VCOSS members report relatively minor changes to the RTA could significantly increase safety and security for women and families experiencing family violence, and help hold perpetrators to account for their violence.

Where a woman experiencing family violence has co-signed a lease with a violent perpetrator, she can be liable for rental arrears or damage to the property, even if she has left the property for her own safety. The RTA can be amended to better apportion liability between co-tenants in situations where there is violence. The victim of violence should not be held liable for debts or damage made by violent perpetrators.

Section 223A was introduced into the RTA in 2008 to provide for the termination of a tenancy agreement where a final family violence intervention order is made. It requires a landlord to enter into a new tenancy agreement with the victim of violence protected by the intervention order. However, this section is underutilised.

According to information provided by VCAT on Homeless Law's request, in 2013–14, a total of 22 section 233A creation applications were lodged, only 13 of which proceeded to a final hearing and determination. Given that in the same period, 35,135 family violence intervention orders were finalised by the Magistrates' Court, the VCAT figures represent a concerning low level of uptake.²⁶

Homeless Law reported to the Royal Commission into Family Violence that the underutilisation is because:

²⁵ AIHW, *Specialist Homelessness Services data cubes*, <http://www.aihw.gov.au/shs/data-cubes>

²⁶ Homeless Law, *Submission to the Royal Commission into Family Violence*, 2015.

- Section 223A requires a final intervention order, which can take months. In this time, the tenancy has often been terminated for other reasons, like rent arrears.
- Delays within the Magistrates Court in obtaining final intervention orders.
- A lack of awareness among victims of family violence, community workers and police about the provision and how it works.

As well as improving awareness of this provision, some VCOSS members recommended the provision be expanded to include termination where an interim family violence intervention order is made. If additional evidence is required, statements from police, medical staff or family violence services could be sought.

Disputes between tenants

Recommendation

- Expand the role of VCAT to cover disputes between co-tenants, including by apportioning liability between them and making changes to tenancy agreements.

The cost of rental housing means shared housing is increasingly common. The *Laying the Groundwork* paper stated that group households make up nearly 12 per cent of the rental market.²⁷

Many tenants will enter into shared housing arrangements with roommates they have met through online advertisements. They often have no existing relationships, little knowledge about each other, and limited understanding of the legal nature of their arrangement. Problems can arise where relationships breakdown, where one co-tenant wants to leave the property, or is unable to pay their rent.

Under the RTA, all legal co-tenants are jointly and severally liable for the rent and property. As a result, when one co-tenant is unable to pay their rent, or causes damage to the property, it is often the other co-tenants who bear the cost. VCAT can only apportion liability between co-tenants in limited circumstances, where there is family violence.

A single co-tenant is also unable to end a tenancy by advising of their intention to vacate, if the other co-tenants do not want to move out. This can lock vulnerable co-tenants into unaffordable, unpleasant or even dangerous situations. If a tenant wishes to evict an abusive or aggressive co-tenant from the property, their only real option is to seek police assistance, obtain an intervention order and commence a lengthy VCAT process.

The role of VCAT could be expanded to cover disputes between co-tenants, including more appropriately apportioning compensation for damage or rental claims and making changes

²⁷ Victorian Government,

to tenancy agreements. This could also assist in situations where one co-tenant is violent or aggressive, forcing the other co-tenants to live in constant fear, but where the definition of family violence is not met.

Tenants not protected by the Residential Tenancies Act

Recommendations

- Amend the RTA to cover any person who pays rent and lives somewhere as their primary place of residence, regardless of the nature of the agreement.

Under the current system there is significant uncertainty for some people, known as marginal renters, not covered by the RTA. This group can include some people living in share housing, boarding arrangements, sub-tenancies or rooming housing arrangements. It may be because they are in informal arrangements with family or friends, or are unable to secure a formal tenancy because of poor rental history, low income or limited English.

These people are often licensees, not tenants. Licensees include people who are not named on the lease and do not have exclusive possession of the property. A license can be revoked at will, and is not subject to the RTA and its protections.

However, in many cases the property is the person's home, and primary place of residence. They may have few options if they are evicted, and be at heightened risk of homelessness. Without the protection of the RTA, they can be evicted with no warning, no right to challenge and no way to collect their possessions. Their only protection is likely to be consumer and contract law.

Unscrupulous landlords can use license arrangements to avoid their obligations under the RTA. For example, this allows them to side-step laws for the protection of bonds, fair evictions, and the right to quiet enjoyment. A VCOSS member reports it is becoming alarmingly common among some landlords, in at least one region, to attempt to enter into license arrangements with prospective tenants, instead of lease arrangements, even though the tenant has exclusive use of the property.

Where a person pays rent and lives somewhere as their primary place of residence, they should be considered a tenant and covered by the RTA.

Another way to address the risks for people not covered by the RTA is to introduce a system of occupancy agreements, similar to that in the ACT. Occupancy agreements create a scheme of enforceable agreements for marginal renters not covered by the RTA and a set of specific standard principles to protect tenants' basic rights. These principles could include:

- the premises should be reasonably clean and in a reasonable state of repair

- the landlord is entitled to enter the premises at a reasonable time and on reasonable grounds
- an occupant is entitled to know the rules of the premises before moving in
- the occupant is entitled to know how an agreement may be terminated, and to 'reasonable notice' of the termination.

VCOSS suggests protection for marginal renters should be a focus of the issues paper on alternative forms of tenure.

Role of social housing providers

Recommendation

- Consider how best to accommodate the different roles of social housing and community services providers in the RTA.

Social housing providers play a distinct role in the rental market, providing a source of affordable rental accommodation targeted at people experiencing disadvantage. Social housing is generally targeted and rents are often below market rates, for instance, by specifying eligibility criteria and setting rents according to tenants' incomes. Social housing providers also have different financial incentives, as they are generally not seeking profits from capital gains from their portfolios. Some social housing providers also operate medium-term housing, often accompanied by therapeutic or specialist support programs.

These additional features of social housing interact with the residential tenancy law creating further complexities. Monitoring eligibility and calculating rents requires more intrusive information requirements from tenants, and may be affected by changes in household composition. The review should consider whether these features of social housing have implications for the provisions of the RTA.

The RTA currently has additional provisions that apply to the Director of Housing to help manage some of these circumstances in public housing. They are rarely extended to other social housing providers, and the review should consider the appropriateness of these provisions and whether they should apply to social housing more generally.

VCOSS consultation participants also raised concerns about the application of the RTA to crisis accommodation services, residential treatment facilities and other community sector accommodation services. The issues paper on alternative forms of tenure should consider the relevance of tenancy law reform and the protections provided to people living in these accommodation services, as well as in social housing generally.

Discrimination by landlords

Recommendation

- Implement VEOHRC's recommendations on reducing discrimination in Victoria's private rental market.

A number of VCROSS members highlighted people's ability to access and maintain housing without discrimination as an issue of concern. Prospective tenants often suspect their continual failure to secure appropriate rental housing may be related to their age, race or living arrangements.

Aboriginal and Torres Strait Islander people, people with disability, and refugees and asylum seekers were highlighted as being at particular risk of discrimination. Young people are often turned away because they lack a comprehensive rental history. Parents (especially women) with young children and people escaping family violence also report being discriminated against.

I was simply unable to find properties that we could make accessible. Work is needed, and you could see the look on the agents' faces... the "oh yes, I'll ask the owner"²⁸

I was continuously refused properties and was forced to stay with friends for nearly a year which caused a lot of stress and led me to have to see a psychiatrist due to depression²⁹.

Proving discrimination can be difficult as most landlords or real estate agents either will not give reasons for refusing an application, or give other reasons such as the capacity to pay the rent or the large number of applicants. Requiring landlords and tenants to collect data about applications and to maintain records of decisions made is one way to increase accountability and reduce the likelihood of discrimination.

The Victorian Equal Opportunity and Human Rights Commission (VEOHRC) made a number of recommendations in their report, *Locked out: discrimination in the private rental market*, about working with the real estate industry and Consumer Affairs Victoria to improve knowledge and provide training about discrimination, which could be implemented.

²⁸ VEOHRC, *Locked out: discrimination in the private rental market*, 2012, p. 13.

²⁹ VEOHRC, *Locked out: discrimination in the private rental market*, 2012, p. 15.

Victorian Council of Social Service

Level 8, 128 Exhibition Street,
Melbourne, Victoria, 3000
e vcoss@vcoss.org.au
t 03 9235 1000
www.vcoss.org.au

