



Response to the Residential Tenancies Act Review – Family Violence – 17 February 2017

Introduction

A consultation process was undertaken jointly by Bayside Peninsula and Southern Melbourne Integrated Family Violence Partnerships to inform the development of amendments to the Residential Tenancies Act (RTA) in relation to access to family violence protections in rental housing.

This document sets out the Southern Metropolitan Region Integrated Family Violence Executive Committee (SMR IFV Executive) response to the Heading for Home Residential Tenancies Act Review Options Discussion Paper Part C: Dispute resolution and ending a tenancy, Chapter 12: Family Violence.

Background

The SMR IFV Executive undertook a consultation process to develop Southern Metropolitan Region's response to inform the development of amendments to the RTA in relation to access to family violence protections.

A facilitated workshop was held on Friday 17 February 2017 with 16 participants representing a broad range of organisations. Jackie Moden, external consultant, facilitated the focus group and prepared this submission.

Introductory Comments

We welcome these important amendments and, once enacted, will improve much needed protections for victims/survivors of family violence in rental housing.

Focus group members were keen to add three key points as an overlay to their combined response – firstly, recognising that any changes in tenancy laws to increase protections for victim/survivors is implemented in the context of the broader specialist family violence service system. These services play an important role in supporting victim/survivors to navigate tenancy issues which can involve complex legal processes and require informed decision making. The role of these services is seen to provide the necessary information on options and empowering victim/survivors through supporting their choices.

Secondly, the importance of applying a cultural lens in the implementation of the proposed legislative changes that acknowledges and respects victim/survivors culture and their human rights. All proposed protections will require cultural interpretation to ensure that victim/survivors are not further disadvantaged by new tenancy laws. For example, the larger Orthodox Jewish community is encouraged to participate in supporting an Orthodox woman by making their synagogues into places of safety and tolerance; excluding or not recognising the importance of the Orthodox community will further disadvantage a victim/survivor. For indigenous communities, family violence cannot be examined in isolation from the devastating effects of colonisation on Aboriginal people in Australia and the failure of successive governments to address the loss of land and culture that have impacted so greatly on Aboriginal communities.

Thirdly, victims/survivors may also include women with a disability or children with a disability, and as tenants can be further disadvantaged in the rental market due to the additional modifications required to their premise e.g. ramps, or behaviours of their child with a disability leading to property damage.

In section 12.1 Access to family violence protections in the RTA, we note that Option 12.3 refers to an applicant as a parent or guardian of a child who is a victim of family violence. We wish to comment on this and applaud this inclusion as it provides an additional avenue for Child Protection to access through the RTA and would serve to protect the mother and child to remain in their home and possibly circumvent the removal of the child.

The Executive's response to the 10 questions in the Options Discussion Paper is set out below.

12.1 Access to family violence protections in the RTA

Q1. Which alternative option do you support and why (Consultation question 216)?

We support Option 12.1B that would allow VCAT to also consider other evidence of family violence.

We do not believe that VCAT should only act if there is a family violence safety notice or family violence intervention order in place and also whether or not an order is final. Considering other evidence such as a statutory declaration or letters from a GP or the specialist family violence service supporting the victim/survivor would expedite the process and reduce the stress of the victim/survivor. We think this option will ensure that critical evidence is provided from a range of sources that will enable efficient and timely decisions.

We acknowledge the current lengthy process for VCAT (requiring a final intervention order with an exclusion condition) prior to making an order under section 233A of the RTA. Our experience is that Option 12.1 A requiring a family violence safety notice, interim intervention order, or final intervention order being made is too long a process for many victim/survivors to go through.

Adopting Option 12/1A would be dependent upon the skill and experience of the VCAT member to determine that family violence had occurred based on the information presented. It would also require consistency and standardisation of determinations across VCAT.

One issue we raised in our discussion for not supporting Option 12.1A is the sometimes inaccurate recording in police records of who the primary aggressor is i.e. victim/survivor or perpetrator when police are attending and recording an incident of family violence. This may be when a victim has responded to the violence. The importance of other evidence is critical, hence our view that 12.1B is preferred.

One of our concerns is the length of the interim period between the provision of information to VCAT and the determination; this can be a difficult and dangerous time for a victim/survivor and needs to be an efficient process.

We did not support Option 12.1C enabling VCAT to consider the broadest scope of criteria. Our concern related to the pressure on VCAT members in making determinations on the broadest of criteria; our preference is that some restrictions in criteria are needed.

Q2. What would be a reasonable time within which VCAT should hear a family-violence related application (Consultation question 217)?

Participants agreed about the importance of setting time lines for VCAT to hear matters. Most participants agreed that 3 days is an efficient turnaround for VCAT to hear family violence related applications. There may be special circumstances which require extension to the time lines and that where a victim requests such an extension, reasonable consideration of such a request should be given.

Some participants present indicated that this may be too soon for the victim/survivor due to trauma; hospitalisation; level of access to supports, and efficiency of services to provide information.

How the information is collected and collated and the efficiency with which this is completed was of concern to participants, for example the efficiency with which an L17 process can be undertaken by police who attend a family violence incident. Also a participant raised the issue of how 'grey' areas or complexities would be handled, for example what if there was conflicting evidence provided?

12.2 Terminating a tenancy

Q3. Which option best addresses the needs of victims of family violence while providing for any potential impacts on landlords and other co-tenants? Why (Consultation question 218)?

We support Option 12.4A that enables a victim/survivor who is a co-tenant and wishes to leave a fixed term or periodic tenancy, to apply to VCAT for an order to terminate a tenancy.

We believe this would provide additional protection for the victim/survivor as VCAT would become the 'interim issuer' of the order, creating distance or a buffer between the perpetrator and victim/survivor and depersonalise the process. It enables the victim/survivors voice to be heard through VCAT and increases their safety; it would be less stressful and more efficient.

We had a comment regarding the application itself, being 'an addresses all' family violence VCAT application document with provision to address or make application for several items/issues to be heard.

We acknowledge the potential impact on landlords and other co-tenants in relation to gaps in rent due to early termination of the tenancy by a victim/survivor and therefore support VCAT action to make an order to terminate the tenancy agreement and/or create a new tenancy agreement with one or more of the remaining co-tenants.

We think that it is important for the rental reputation of the victim/survivor that the reason for terminating the tenancy is recorded on file, that is, that the co-tenant is seeking to break the tenancy in order to protect their own or their children's safety (this would be important for future tenancy agreements). We also agreed that the perpetrator of family violence needs to be recorded on file along with any property damaged so that responsibility and accountability is clearly identified with the perpetrator and not the victim.

One idea we had was the creation of automatic processes i.e. a tick box indicating to order the removal of affected family members name from black ledgers when VCAT has ruled damages the responsibility of the perpetrator?

We support the six provisions under this option and welcome an order that requires the landlord to give access to the victim/survivor of the rented premise to remove belongings. In our experience, many victim/survivors flee without access or timely access to their belongings or recovery of personal property. This financially disadvantages victim/survivors further and may contribute to emotional loss and trauma.

We did not support Option 12.4B that enables a victim/survivor as co-tenant to terminate a tenancy by notice to vacate for two reasons:

- it may place them at risk of retaliation by the perpetrator who may see this as a threat
- it could lead to a poor record of tenancy in the rental market

We recognise that some victim/survivors might prefer this option, particularly if they have a support network in place; our experience indicates that Option 12.4A offers more protection to victim/survivors.

We also believe that a standard booklet for victim/survivors on their rights would need to be updated once the proposed amendments have been endorsed. As specialist family violence services, we would provide input and support the wide distribution of these to ensure victim/survivors have access to their options.

Finally we discussed the issue when a victim/survivor wishes to stay on in the property but may not be able to afford the rent on her own.

12.3 Modifications to rented premises

Q 4. If 'reasonable modifications' were to be defined under option 12.5A, what would be an appropriate definition (Consultation question 219)?

We support Sub-option B that defines reasonable modifications as 'all other security-related modifications except locks' and lists examples (but not limited to) security cameras, alarm system, security lighting and window coverings.

Q5. If non-structural modifications were prescribed under option 12.5B, what should it include (Consultation question 220)?

We believe non-structural modifications should include any modification that does not involve hard wiring. For example any wiring required for electronic devices that can be easily dismantling and less cost to the tenant in dismantling the devices post tenancy.

12.4 Residential tenancy databases

Q6. Do these options adequately address the issue of victims of family violence being listed on residential tenancy databases? If not, how can they be improved (Consultation question 221)?

We support the 3 stand-alone options that will serve to protect the victim/survivors privacy and reputation as a reliable tenant.

Under Option 12.6 we were concerned about the level of supporting evidence that would be accepted by the landlord from the victim/survivor in objecting to a proposed listing. Whilst examples have been given in this option, a landlord may still require multiple sources of evidence that may elongate this process and unfairly burden the victim/survivor.

We note under Option 12.7 that the actions available to VCAT to make an order to remove an existing listing or not make a listing, does not include any monitoring mechanism or auditing of landlords tenancy database to ensure compliance.

Our experience is that some real estate agents carry an informal list of breached tenants and that without providing VCAT with a mechanism for compliance and consequences to landlords in the order, such lists will continue in circulation, discriminating against the victim/survivor in accessing future rental properties. We would support a monitoring mechanism for this option.

12.5 Challenging notices to vacate

Q7. Does this option strike an appropriate balance between protecting a victim of family violence and managing risks to landlords and other co-tenants?

We agree with this option will protect a victim/survivor from being unfairly treated from the actions by a perpetrator.

We were concerned by one area of this option - VCAT is required to consider any steps that have been taken to remove the perpetrator from the rented premises as part of determining whether the notice to vacate is invalid. It is our experience that many victim/survivors do not report instances of family violence or take any action in fear of retaliation from the perpetrator. We are concerned that this discriminates against the victim/survivor; it is possible that there will not be a record of steps taken by the victim/survivor.

Q8. If not, how can this option be improved (Consultation question 222)?

In our view, specialist family violence services play a significant role in supporting and advocating on behalf of the victim/survivors where evidence is required to invalidate a notice to vacate. We note that often the victim/survivor chooses not to report previous family violence to authorities and therefore does not have documented evidence other than support provided by specialist family violence services. We support the critical role of specialist family violence services being recognised as part of the integrated family violence service system.

We agree that there is a potential financial impact on the landlord if the notice to vacate is challenged due to the result of property damage by the perpetrator. We suggest that the landlord's insurer consider a policy clause that provides compensation (rather than higher premiums) for any financial loss experienced by the landlord as a result of this option, rather than the landlord making a claim against the bond.

12.6 Compensation orders and claims against the bond

Q9. What are the risks, if any, of unintended consequences arising from the options proposed (Consultation question 223)?

The risks might include:

- the cost of damages being attributed to the victim/survivor if the perpetrator is a minor
- the cost of damages being attributed to the victim/survivor if the perpetrator is a carer
- burden of proof sits with the victim/survivor and may take time to gather sufficient evidence to satisfy VCAT
- the process might be lengthy and therefore impact on the victim/survivor
- the skill and experience of the VCAT member to conduct a level of enquiry sufficient to apportion liability

Examples of acceptable evidence should be listed in a booklet for victim/survivors on their rights (referenced in our response under 12.2). Examples might include copies of utility bills, rent receipts and bank statements. We suggest that victim/survivor be encouraged to take photographs where there is an issue concerning damage to the premises caused by the excluded tenant.

12.7 Serving notices and documents

Q10. Are there any other factors that should be considered in the serving of notices or documents as part of family violence-related residential tenancies applications (Consultation question 224)?

In our experience, the victim/survivor may be put at further psychological and physical risk by the current laws in serving a notice directly to the perpetrator of family violence. We support both options as it enables a choice for the victim/survivor to nominate a third party to serve the notice or do so themselves; whichever feels safer for the victim/survivor.

Four factors might be considered:

- we wish to note is the variance in preparedness of the two parties in attending VCAT hearings; in our experience the perpetrator comes more prepared compared with a victim/survivor who may feel threatened and fear further psychological abuse in seeing the perpetrator even with the option of screens and CCTV. We wish to emphasise the importance of the support and advocacy provided to the victim/survivor in preparing for the hearing and physical support at the hearing.
- Could there be another option than VCAT or the victims/survivor serving the notice, such as police or the agencies/ processes that law firms utilise? It may place social workers in an unsafe situation and be out of the scope of their role.

- It is our understanding the VCAT records the victim/survivors current address in its documentation – can this not be disclosed in the interest of safety?
- If a timeline is specified for VCAT to serve a notice; is there flexibility for the serving of a notice by the victim/survivor without unduly impacting on the process or decision? Can a victim survivor undertake this process if there is an intervention order in place?