

Submission to Consumer Affairs Victoria

Residential Tenancies Act Review –
Fairer Safer Housing

5 August 2015



Peninsula Community
Legal Centre INC

Introduction

Peninsula Community Legal Centre (PCLC) is pleased to be given the opportunity to contribute to the review by the Victorian Government of the Residential Tenancies Act 1997 (*the Act*).

About Peninsula Community Legal Centre

PCLC is an independent, not-for-profit organisation that has been providing free legal services to Melbourne's south-eastern communities since 1977. Our centre is one of the largest community legal centres in Australia, spanning a catchment of over 2,600 square kilometres, six local government areas and almost one million people.

In addition to its general services and programs, the Centre has operated a Specialist Tenancy and Consumer Program since 1998. The Centre currently receives funding from Consumer Affairs Victoria to deliver the Tenant Advice and Advocacy Program across ten local government areas, which enables the Centre's advocates to provide advice, casework, negotiation and representation at the Victorian Civil and Administrative Tribunal, including duty advocate services at the Dandenong and Frankston Magistrates Courts. We also operate a rooming house outreach program.

In 2014-15, the Centre provided 7,655 advices and opened 2,988 cases. Our clients overwhelmingly experience disadvantage, with around three-quarters reporting no or low income (less than \$26,000 per annum). Tenancy issues were in the top 10 problem types addressed by our Centre in the last year. We commonly help with a wide range of matters including possession, rent arrears, repairs, compensation, bond claims, lease breaks, tenancy agreements and rent increases.

Summary

We welcome the Victorian Government's approach to consult with the Victorian community on the important issues in this review. The scope of the review appears to be broad-based and encompasses wide-ranging themes. Of these, security of tenure and affordability issues are of great concern to our Centre given that a large portion of our client base are seniors, people with low income, people with disabilities and people who live in social housing, rooming houses and residential parks.

We note the Consultation Paper '*Laying the Groundwork*' comprehensively describes the changing housing context and market trends in Victoria, and details how the demands on the private rental sector have increased substantially since 1996. We note people rent for various reasons, from being unable to afford to purchase a home to students needing short term accommodation and households choosing to rent by choice. An efficient private rental sector is therefore an integral part of any economy. Statistics however also indicate alarming escalations in rent prices in recent years and an inadequate supply of housing at affordable rentals. The statistics relevant to parts of our catchment provided by the Department of Health & Human Services' Rental Report¹ for example show that in the first quarter of 2015, 0% of rental housing was affordable in Casey, Cardinia, Kingston and the Mornington Peninsula, only 4.3% was affordable in Frankston and 0.2% in Glen Eira. This demonstrates that the private rental market is unable to meet the housing needs of Victorians on low incomes.

¹ <http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/research,-data-and-statistics/current-rental-report>

Anecdotally, we have noted this shortage of supply means that tenants are at a disadvantage and feel compelled to “take what they can get”. In order to pay for housing, many people compromise on the quality of the house they rent, its location or size, and are forced to accept less than favourable rental conditions. The cost of rentals forces many to try to find alternative accommodation such as caravan parks and rooming houses.

We would like to highlight what we perceive to be a big gap in available subsidised rental housing and community housing. It is our submission that there is an acute shortage of social housing which may worsen if the enquiry by the Royal Commission into Family Violence results in more perpetrators being removed and more women leaving their abusive partners without other housing options being available to them. Family violence housing services are already struggling to find appropriate accommodation for women and children fleeing violence, and for perpetrators excluded from the family home. Our experience confirms the assertion in the Consultation Paper that there is also an ever increasing number of young people, families and older people seeking accommodation and support. Despite the establishment of services such as youth and other refuges, the demand for crisis and long term accommodation still outweighs the available supply.

It is our opinion that a review of the rental market as a whole is required, particularly the regulatory framework. This submission does not address all questions in the consultation paper, however we will be sharing our views of the key issues we believe require consideration, especially those relating to length of rental periods, rental costs, notice periods and minimum housing standards and we will provide some case studies. This submission also seeks to propose options and initiatives (drawn partly from overseas jurisdictions), which we believe may appropriately address and improve the inequality of bargaining power experienced by tenants in the current rental market.

The Issues

The Housing Context/Market

In our opinion, the Act does not adequately encourage a rental market that provides sustainable, secure and safe housing, particularly for those most vulnerable. We have already mentioned the shortage in low income private rental and social housing in our summary above. The combination of market forces plus the provisions in the Act create a structural imbalance in favour of the landlord. To address this, we believe that the following areas require review:

1. Long term leases

The security of tenure for tenants is an ongoing issue. Many landlords lean towards a short term lease of six or twelve months and securing a longer term lease is a difficult negotiation process for the tenant. For low income tenants, six month agreements have become mainstream. The current Act provides little in the way of security for tenants with provisions allowing for the following:

- a) the use of no reason notices to vacate where there is a periodical lease
- b) short notice periods such as 60 days notices when a landlord wants to move in or sell where no tenancy agreement is in place, which gives landlords the maximum flexibility to sell or increase rent.

Landlords have no obligation to outline the intent of the tenure at the start of the tenancy. This is in stark contrast with commercial leases which generally provide for longer terms and often provide options to renew. Commercial premises are generally sold to investors with tenancies underway, whereas tenants with residential tenancies are often served with Notices to Vacate when the premises is sold. PCLC has seen a number of cases where a tenant has moved into a rental premises and within a very short timeframe, the tenant has been advised that the premises is up for sale. The tenant is then required to support the open for inspection process which ultimately could see them served with an eviction notice. During this time, tenants are required to make sure they have the necessary funds to relocate if the premises is not sold to an investor.

The no reason notice provisions allow for a landlord to serve a notice requiring the tenant to vacate without specifying the reason for the giving of the notice. The notice is for a period of 120 days. While the Act provides a provision that the tenant can challenge the notice if they believe it was served in response to the tenant exercising their rights, this places the onus on the tenant to lodge an application at VCAT and carry the burden to prove their claim in the Tribunal as is illustrated by the case study below:

Amy was a single parent mother with two children. She had been residing in her premises for over two years and was paying market rent on the property. After putting in a request for repairs, Amy was issued with a 120 day no reason notice to vacate. PCLC assisted her to challenge the notice, notwithstanding that she was outside the 60 day period allowed for challenges in the Act. The Tribunal found that the notice was retaliatory and therefore invalid.

However, even if the tenant is successful in proving the matter was in response to exercising their rights and the notice is declared invalid, there is no restriction on the landlord to simply serve another notice.

We propose that the following changes to the legislation be considered:

- a) The removal of the no reason notice provisions from the Act;**
- b) An introduction of a fixed minimum term lease;**
- c) An introduction of a mandatory regulation which requires the landlord to make their intention clear at the outset. This could be achieved, for example, by introducing leases containing renewal options similar to commercial leases.**

There is sufficient international evidence in support of security of tenure, rent stability and certainty. Corresponding legislation in countries such as The Netherlands, France, Germany, Denmark and Ireland provide for longer minimum lease terms, cost controls, defined reasons to end the tenancy and longer notice periods. PCLC is seeking that the review examine the private rental market in these countries which we have discussed in the section relating regulatory and policy framework below.

2. Rent Increases

The Act currently allows landlords to increase rent every six months with the provision of a 60 day notice, except if there is a fixed term tenancy agreement. The Act provides no restrictions on the quantum of rent increases. It allows for a rent increase to be challenged, however this assessment conducted by Residential Tenancies Inspectors is based on factors such as the condition of the premises, comparable rents for the region and market value. The high demand for properties, low vacancy rates, and the mainstream use of six to twelve months tenancy agreements provide landlords with opportunities to increase rent far beyond indicators such as the Consumer Price Index. Owing to

the shortage of good rental properties, many renters are accepting sometimes poor yet pricey living conditions.

We recommend an examination of rent increase provisions and the applicability of market rent as being the basis for assessing rent increases. It is often rent increases that can lead to a tenant being priced out of their property and required to relocate – particularly if an area becomes gentrified and there is a steep jump in house prices and market rents as a result. Rent increases and the competing demands of landlords' investments should be balanced with affordability for tenants. In our opinion, regulating rent hikes to stay in line with CPI may curb the trend in the rental market of outpricing a long term tenant. Australia could learn from other jurisdictions where rent control measures have been put in place and increases are limited by government regulation or are subject to a 'rent index' which cannot be exceeded. We are of the opinion that for leases with 12 months recurring duration, the rental payments should be adjusted in line with CPI once in a calendar year. A shorter period between rental increases, which is often a term of the lease, should not be allowed.

PCLC proposes that the Act be amended to limit the frequency and quantum of rent increases.

Easy terminations and large rent increases may also result in the vulnerable, such as the elderly, those on a disability pension, who may be living alone, often with no savings, being discriminated against when their lease ends.

Anecdotally we have been made aware that some people receive no reasons why their applications for a new lease have been refused, which we believe primarily to be because of the vast numbers of people competing for a rental property. Not knowing from one year to the next whether they will be able to stay the next year is unsettling and stressful for vulnerable members of the community as is illustrated by one of our clients' experience below:

George is an elderly gentlemen living in private rental on an aged pension. He has been residing in the property for over 20 years and little maintenance has been conducted by the landlord during the term of the tenancy. The rent has however been increased twice over a three year period, initially by 20% and then a further 16% in the second increase, causing severe financial hardship for George. He is now spending the majority of his income on rent but is reluctant to challenge the rent increase notice as he is worried about repercussions because he is not on a fixed term tenancy agreement.

Security of tenure and a limit to the amount of the rent increase would no doubt be beneficial to someone like George and give him some control over his future.

Likewise, the lack of certainty can be especially stressful for families with school aged children, particularly single parent families. Short term leases remove renting as a reasonable long term option for these people despite the fact that they may not be able to afford to purchase a property.

3. Minimum Housing Standards

Access to affordable, appropriate and secure housing is important to the health and wellbeing of tenants and their families renting in the private rental market.

Currently there are no minimum standards for private rental properties. This can mean that a landlord is able to rent out premises with structural defects, which may be unsafe or insecure, provide no heating, hot water or decent / working cooking facilities. With the shortage of affordable properties many tenants have little choice but to rent properties that lack the basic amenities. In PCLC's experience these issues are often not evident at the time of inspection. One example is painting over moisture/mould rather than

repairing the structural issue. Other examples we have come across include hot water systems and heaters not being adequate/efficient for the size of the premises or to accommodate the number of tenants residing in the premises, and doors/windows being nailed shut rather than adequate locks being supplied. Real estate agents are required to inspect premises for the Condition Report purposes. However, it is our experience that some such inspections are superficial, for example failing to check that heating and cooking facilities are in proper working order.

PCLC proposes that minimum standards be included in the Act.

4. Notice Periods

The Act allows for landlords to issue notices terminating the tenancy giving only 60 days notice when the landlord wishes to sell the property, to move in, to commence repairs/renovation, to demolish the premises and/or to use it for business purposes. The end of a fixed term notice given to tenants by the landlord allows for a 60 day notice if the tenancy agreement was for a fixed term of less than 6 months and 90 days for a tenancy agreement with a fixed term of more than 6 months. PCLC believes that these notice periods should be consistent and increased to 90 days. Low vacancy rates, the shortage of affordable housing and the financial cost to relocate compounds the difficulty for tenants who are often unable to secure accommodation within a this timeframe and who have possession orders granted against them. The existence of a possession order can have a negative impact on their rental history, with many rental application forms requiring tenants to tick a box stating whether they have ever been to VCAT.

The above issues have been highlighted recently in an article in the Frankston Standard Leader newspaper² which illustrated how spiraling rents and lack of security of tenure were key factors in the homelessness experienced by an elderly person who has had to move almost every year since 2007 as landlords sold the rental properties she lived in. Homeless services finally secured her permanent public housing despite long waiting lists, however she was one of 4683 people who sought assistance in Frankston in 2014-15.

5. Other

Provisions exist which allow for reduction of a fixed term agreement if unexpected circumstances arise. However, tenants can be required to continue paying rental until the agent or landlord finds a new tenant or the fixed term ends. They can be held liable for maintenance and the rental agent's advertising costs. While we believe that this also requires review, we are most concerned with the current provisions which require a victim of family violence to apply to VCAT for a reduction in the fixed term tenancy agreement where a landlord is not willing to agree to this. We are of the opinion that the termination of a fixed term lease provisions in family violence situations should be reviewed when there is an intervention order (IVO) in place. While VCAT may ultimately give them the order they are seeking, this is another application and proceeding the protected person has to deal with in the process. Additionally, these matters are often heard in Melbourne and require service on the perpetrator, both of which are further hurdles for a person affected by family violence. We therefore suggest that the processes for people affected by family violence be reviewed.

² *Help for the Homeless*, Frankston Standard Leader, 3rd August, 2015

It may also be beneficial for agents and landlords to receive education or training about the dynamics and impact of family violence, which could lead to a greater likelihood of agreement being reached without the necessity of VCAT proceedings.

Regulatory and Policy Framework

1. International Jurisdictions

We would like to comment in our response to the questions relating to the regulatory and policy framework on the approach to regulation of residential tenancies in various international jurisdictions. Regulation is typically concerned in these jurisdictions with the three main issues mentioned above: security of tenure, rent control and quality of accommodation.

The Grattan Institute in Melbourne provided a report in 2013³ which concluded that the housing policy in Australia was overdue for a major overhaul. Mention was made in this report of the common regulations in relation to residential tenancies in certain European countries which only permit leases with longer and more secure tenure and provide narrowly defined reasons for eviction and longer notice periods. It was noted that this can occur without 'undue disruption for landlords or the housing market'⁴. This report specifically refers to the housing market in Ireland where residential tenancy provisions were similar to the current Australian provisions before the move in Ireland towards improving security of tenure. The overriding concern in Ireland was that regulation could potentially reduce the supply and quality of rented accommodation and distort the market. This was documented subsequently in an extensive study that produced two reports in 2014 which explored the policy options required to ensure a sustainable private rental sector into the future in Ireland⁵. The Grattan report notes that there appeared to be no adverse impact on the supply of private rental housing since the reforms were introduced in 2004.

The current Review would need to be mindful that the housing system is influenced in different countries by a number of factors including demographics, financing conditions, funding and availability of social housing. It would be necessary to compare Australia to a country with a similar structure. Much research of different jurisdictions has been done in the two reports mentioned above and we would encourage the Review to consider the studies in their entirety. The reports note that the findings are based on a comprehensive analysis of rent regulation in jurisdictions with a developed private rental sector and further by a full examination of the pros and cons of the different systems and their impacts.

To summarise briefly the position in Australia compared to jurisdictions known for their regulatory framework which favours the tenant, we refer the Review to the following diagram:

³ Jane-Frances Kelly, *Renovating Housing Policy*, Grattan Institute Report No. 2013-12, October 2013

⁴ *Ibid*, pg 20

⁵ *Rent Stability in the Private Rented Sector Final Report*, prepared for The Housing Agency on behalf of the Private Residential Tenancies Board by DKM Economic Consultants, September 2014 and *Future of Private Rented Sector*, prepared for The Housing Agency on behalf of the Private Residential Tenancies Board by DKM Economic Consultants, October 2014

How does Australia stack up?

| | Australia | Netherlands | Germany | Denmark | Ireland | France |
|----------------------------|--------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|-----------------------------------------------------------------|---------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|
| Minimum fixed lease | Generally six months or a year, but leases can be shorter | Renters can stay indefinitely, even if the property is sold | Renters can stay indefinitely, even if the property is sold | In most cases renters can stay indefinitely | Four years | Three years |
| Cost controls | None for private housing. Landlords can charge as much as they like | Rents and rent increases are limited by government regulation | Rents and rent increases are limited by government regulation | Rent controls apply to most of the rental housing stock | None for private housing. Landlords can charge as much as they like | Rent increases cannot exceed the 'reference rent index' |
| Eviction | No reason required. Regulations allow 'no-grounds' evictions for tenants on periodical leases (except in Tasmania) | Only permitted in certain circumstances listed in the Dutch civil code | Not permitted unless the tenant violates the terms of the lease | Only permitted under a limited range of circumstances | Only permitted during the first six months unless the tenant violates the lease, or use of the dwelling changes | Not permitted unless the tenant violates the lease, the property is sold or the landlord intends to move in |

Source: Andy Kollmorgan, *A Raw Deal for Aussie Renters*, August 2014
<https://www.choice.com.au/money/property/renting/articles/rental-rights>

Note that the Irish reports make mention of the fact that it is a standard requirement across all the jurisdictions considered that rental accommodation must be fit for the purpose and all facilities must be in working order. It is the responsibility of local authorities to inspect rented properties and enforce standards regulations to ensure they are in compliance with housing regulations.

2. Provisions relating to Rooming Houses

Individuals and families often seek accommodation in the rooming house sector as they have no other housing options. Despite stricter regulation of operators in recent years, homelessness services continue to report sub standards and exploitative behaviour by landlords of rooming houses. Our outreach service sees on a regular basis that recommended minimum standards are not being adhered to. Forty per cent of residents approached by our service in the last 6 months have indicated a lack of knowledge of their rights and the operator's duties, never having been provided with a 'Rights and Duties' booklet by the operator.

This may in part be attributed to the fact that there is widespread confusion about the roles of different regulatory bodies. Although there are regulatory requirements within local councils and CAV, the multiple agencies who administer the statutory obligations of residents, operators and real estate agents have overlapping roles. In addition, planning rules, internal procedures and policies relating to compliance appear to differ from council to council and between CAV and councils.

Also, an increasing number of registered rooming houses are part of multi unit developments that include use of common property. This places additional obligations on operators and residents in

addition to adding an additional layer of complexity in dealing with disputes arising between unit owners and occupiers.

Residential Tenancies Disputes

We believe that it is easier for landlords and operators to access redress in terms of the Act than a tenant or resident of a rooming house. Fear of retaliation through either rent increases or notice to vacate (this is particularly so in terms of tenants not pursuing repair issues) stop tenants from seeking a remedy. Tenants and residents of rooming houses are often reluctant to seek a remedy due to the threat of homelessness or other retaliatory action by a landlord, an operator, head tenant or other residents.

Whilst landlords are frequently assisted by real estate agents, tenants are frequently at the disadvantage of not knowing or understanding their rights and lacking the skills and confidence to pursue them. These disadvantages are magnified for vulnerable and disadvantaged tenants. PCLC continues to experience a high demand for tenant advice and advocacy services, but is only funded to assist the most disadvantaged and vulnerable tenants. PCLC is frequently able to negotiate and reach agreements without recourse to VCAT, which not only saves tribunal resources, but avoids much stress and uncertainty for vulnerable tenants. However, PCLC is stretched to meet the demand for services and constrained by strict guidelines. We suggest an expansion of our services, and other such services, would greatly improve outcomes for many tenants.

PCLC has operated successful “duty advocate” pilots at Dandenong and Frankston VCAT Residential Tenancies Lists. Having a duty advocate available for tenants in all jurisdictions could greatly enhance tenant experiences of VCAT and encourage improved participation rates, not to mention fairer and more workable outcomes in many cases.

PCLC also has experience in delivering proactive, community legal education for prospective tenants to help them secure and maintain rental accommodation. The Centre was previously funded by CAV to provide a Young Renters Program, which involved extensive liaison with local real estate agents and youth services to develop a training program that gave young people the necessary knowledge and practical skills to become successful tenants, such as how to complete application forms, budgeting and rights and responsibilities. Participants were provided with a Certificate of Completion which was recognised by local real estate agents and helped them secure rental properties, even without prior rental history. Follow-up evaluation of the program showed that many young people secured rental properties for the first time after having undertaken this program. Unfortunately the program was discontinued after funding was withdrawn.

We believe it is important to consider expanded support and education for tenants as part of a proactive campaign to help prevent renting-related problems from arising or escalating in the future.

Conclusion

PCLC would welcome the opportunity to address any queries or provide further information about this submission, and looks forward to participating in the later stages of this review.