



VincentCare
Victoria

Submission in Response to:

Residential Tenancies Act Review
Stage 2 Issues Paper – *Rents, bonds
and other charges.*

April 2016



INTRODUCTION

VincentCare Victoria in brief summary

VincentCare Victoria (ACN 094 807 280) is a charitable entity established in 2003 by the St. Vincent de Paul Society in Victoria. VincentCare Victoria was commissioned with managing and strategically developing a diverse platform of homelessness, welfare and aged care services.

VincentCare has grown to become a major provider in Melbourne and regional Victoria of accommodation and social services with an annual revenue base of \$23 million through funding agreements with the Victorian State, Commonwealth and Local Governments. VincentCare Victoria is a leading homelessness services provider and also operates as Registered Housing Provider through its wholly controlled entity, VincentCare Community Housing.

A more detailed profile about VincentCare's services is contained in the submission made in response to the Stage 1 Consultation Paper of the Review of the Residential Tenancies Act 1997¹.

The scope and intention of our responses to this Issues Paper - *Rents, bonds and other charges*.

VincentCare is making specific responses to the *Rents bonds and other charges* Issues Paper, in relation to the questions of Landlord Bonds (Question 3) and Family Violence (Questions 12 and 13).

OUR RESPONSE

Landlord bonds

Question 3 asks:

What are the benefits of requiring landlords to provide greater assurance to tenants that they will meet their obligations under a tenancy agreement (for example, a landlord bond)?

The benefits have already been stated in the issues paper that such a bond would provide an incentive for a landlord to carrying out repairs, or comply with compensation orders from VCAT.

Our view is that a bond further provides this assurance in two ways.

Firstly, a landlord bond would provide timely access emergency repairs with the assurance of the funds being available to cover the actual costs

¹ Please note that since the Stage 1 submission, VincentCare Victoria has essentially ceased its operation of Commonwealth funded Residential Aged Care as part of its long term strategic direction to focus upon its specialised homelessness and housing services and other closely related support programs.

There are many reasons why repairs to properties might be delayed in emergencies that require urgent repairs. One example is the increase in overseas investors in Australian residential properties over the past several years. With a non-resident landlord, there is an increased risk that a landlord may not as able to be easily contacted to authorise expenditures for urgent repairs.

Similar to a tenant's bond being accessed to cover expenses associated with properties that have not been adequately cleaned upon *termination* of a tenancy agreement, a landlord's bond could, also be used, with appropriate regulatory mechanisms, to ensure the proper condition of a property at the commencement of a tenancy agreement. We propose that it would be accessible, if upon commencing occupancy, the tenant discovers some form of property defect which could create a health or safety hazard, inconvenience or loss of amenity, or security risk for the occupants or the general public. Examples of such defects would include:

- soiling in cupboards or rooms not initially seen at inspection,
- water ingress from weather events not apparent while the property has been vacant,
- dangerous or burdensome garden overgrowth (including animal wastes),
- blocked gutters or drains,
- broken windows,
- gas appliances that will not easily re-start after a period of non-use,
- leaking taps,
- partially operating appliances (e.g. stove works, but not the oven), or
- faulty house door and window or garage door locks (including missing keys)

Secondly, a landlord bond could have a much more *preventive* impact by creating an incentive for landlords to ensure the satisfactory condition of the property prior to re/letting and actual occupancy. This is because; in an emergency the landlord has less control over who they can obtain at short notice to give effect to remedies.

However, a further important reason to consider landlord bonds is to avoid creating disadvantage for the tenant, especially people who are already on low incomes and experiencing financial hardship.

While the current provisions of the Act allow recourse through the Victorian Civil and Administrative Tribunal (VCAT) to make orders for urgent repairs or to recover the cost of having urgent repairs undertaken, this comes at great inconvenience to the tenant. Moreover, as tenants may already be experiencing financial hardship, it is a clearly an unfair set of circumstances if a tenant has to pay to remedy a liability of the landlord with a chance of not being reimbursed, as well as potentially placing at risk their ability to meet other financial obligations and meet other necessary household and personal expenditures.

However, we believe that in the terms put forward in Question 3 of providing greater assurance, that in some landlord-tenant relationships a landlord bond would provide no

greater benefit as adequate assurances can already be demonstrated. Under particular conditions the landlord, we propose, would be exempt from paying a bond.

Examples of situations where such an exemption would apply include:

- Registered Housing Providers and Registered Housing Associations.
- Other Not for Profit Organisations renting out properties such as Independent Living Units or Student, Refugee Accommodation and where the rent is less than market rent (e.g. 75% or less) and the landlord can demonstrate they have regularised arrangements for emergency maintenance including maintaining records of response times for emergency maintenance requests. This accrediting would provide a passport for landlord bond exemption.

A further consideration is that where there are landlords with multiple residential tenancy agreements, whether the landlord bond might be reverse-proportionally scaled on the rationale that not all properties would have such defects, and that the landlord can demonstrate the presence of an adequate funds pool on the overall risk that the landlord bond might need to be accessed.

In its operation the landlord bond might become the first avenue of remedy under certain emergencies and/or if a VCAT hearing or decision cannot be achieved within a given schedule of timeframes for particular emergencies or property defects. Clearly the time frames for anything that creates a hazard for health, safety or security would be very short.

Family Violence

Questions 12 and 13 ask:

What other requirements for bonds should be considered for family violence situations?

What are the other critical issues (if any) relating to bonds that have not been captured?

VincentCare Victoria has already made two recommendations specifically pertaining to Family Violence in response to the *Laying the Groundwork* Consultation Paper. These were:

New parameters are established around the remedies and tenant protections when a tenant breaks a lease. Specific protections need to be established for people escaping family violence. (Recommendation 10)

A victim of family violence does not lose her bond where a perpetrator of family violence has committed property damage. The Residential Tenancies Act is provided with powers for a damages recovery order to be made against a perpetrator of family violence where there is a substantiated police report and a safety notice or intervention order. (Recommendation 18)

In reviewing the recommendation of the Victorian Royal Commission into Family Violence that were released in its *Report and Recommendations* on Tuesday March 29th 2016, we note Recommendations 116 -120 (see Appendix I). As part of these recommendations hinge upon Section 233 of the current Act, this is appended in Appendix II for reader reference.

VincentCare Victoria supports the Royal Commission's recommendations and seeks from the government an efficient regulatory approach. We note, for example, that Recommendation 119 would potentially mean that Residential Tenancy matters otherwise normally heard at the VCAT could be concurrently heard, instead, at the Magistrates Court as part of Family Violence proceedings. This would reduce the burden and trauma for Family Violence victims and help ensure more timely responses to the risk of homelessness that is otherwise frequently created for women and their children who are experiencing family violence.

We also note, that while not strictly within the terms of the Regulatory Review of the Act itself, that there are reciprocal recommendations made (Recommendations 117 and 120) for:

- education to better inform the Victoria Police, Family Violence workers and other relevant support staff about the operation of the provisions of the Residential Tenancies Act (notably Section 233A); and
- to strength for Victorian Civil and Administrative Tribunal members expertise in the Family Violence Protection Act 2008 (Vic) and family violence matters.

These recommendations are important practical enablers that the State Government can undertake to ensure that a wholistic response can be made to the complexity that surrounds family violence, underscoring the need to reduce the overall trauma, collateral impacts and associated disadvantage that family violence experience.

Appendix I

Recommendations 116-120 of the Report and Recommendations of the Victorian Royal Commission into Family Violence

(March 2016)

Recommendation 116

The Department of Justice and Regulation's review of the Residential Tenancies Act 2006 (Vic) consider amending the Act to:

- empower Victorian Civil and Administrative Tribunal members to make an order under section 233A of the Act if a member is satisfied that family violence has occurred after considering certain criteria—but without requiring a final family violence intervention order containing an exclusionary condition
- provide a clear mechanism for apportionment of liability arising out of the tenancy in situations of family violence, to ensure that victims of family violence are not held liable for rent (or other tenancy-related debts) that are properly attributable to perpetrators of family violence
- enable victims of family violence to prevent their personal details from being listed on residential tenancy databases, and to remove existing listings, where the breach of the Act or the tenancy agreement occurred in the context of family violence
- enable victims of family violence wishing to leave a tenancy to apply to the Victorian Civil and Administrative Tribunal for an order terminating a co-tenancy if the co-tenant is the perpetrator of that violence—including, where relevant, an order dealing with apportionment of liability for rent (or other tenancy-related debts) between the co-tenants
- prevent a landlord from unreasonably withholding consent to a request from a tenant who is a victim of family violence for approval to reasonably modify the rental property in order to improve the security of that property.

Recommendation 117

The Victorian Government encourage the use of applications under section 233A of the Residential Tenancies Act 2006 (Vic) [within 12 months], including means of training and education for family violence support workers, Victoria Police and other relevant support staff in relation to the existence and operation of the provision.

Recommendation 118

The Magistrates' Court of Victoria consider issuing a practice direction to encourage magistrates hearing family violence intervention order applications to inquire as early as possible about whether the applicant and respondent are in shared rental accommodation and, if so, ensure that the protected person is notified of the right to apply for a new tenancy agreement and receives information about how to do so [within 12 months].

Recommendation 119

The Victorian Government consider any legislative reform that would limit as far as possible the necessity for individuals affected by family violence with proceedings in the Magistrates'

Court of Victoria to bring separate proceedings in the Victorian Civil and Administrative Tribunal in connection with any tenancy related to the family violence [within two years].

Recommendation 120

The Victorian Government ensure that Victorian Civil and Administrative Tribunal members receive training and education to ensure that they have adequate expertise in the Family Violence Protection Act 2008 (Vic) and family violence matters [within 12 months].

Appendix II

Extract of the Victorian Residential Tenancies Act 1997. Sections 233A – 233D

233A Application for new tenancy agreement because of final family violence intervention order

(1) In this section—

final order means—

- (a) a final order within the meaning of the **Family Violence Protection Act 2008**; or
- (b) a final order within the meaning of the **Personal Safety Intervention Orders Act 2010**.

(2) This section applies if—

- (a) a tenant is excluded from rented premises under an exclusion condition included in a final order; and
- (b) a protected person under the final order—
 - (i) is also a party to the tenancy agreement for the rented premises; or
 - (ii) has been residing in the rented premises as the protected person's principal place of residence but is not a party to the tenancy agreement.

(3) The protected person may apply to the Tribunal for an order—

- (a) terminating the existing tenancy agreement; and
- (b) requiring the landlord of the premises to enter into a tenancy agreement with the protected person and other persons (if any) specified in the application.

(4) For the purposes of proceedings in relation to an application for an order under subsection (3), each of the following persons is a party to the proceeding—

- (a) the protected person;
- (b) the landlord;
- (c) the excluded tenant;
- (d) any other existing tenants.

233B Tribunal orders for application made under section 233A(3)

(1) On receipt of an application under section 233A(3), the Tribunal may make an order terminating the existing tenancy agreement and requiring the landlord to enter into a new tenancy agreement with the protected person and other persons (if any) specified in the application if the Tribunal is satisfied that—

S. 233A(1)
substituted by
No. 53/2010
s. 221(Sch. item
9.5).

S. 233B
inserted by No.
52/2008 s. 262.



- (a) the protected person and other persons (if any) could reasonably be expected to comply with the duties of a tenant under a tenancy agreement to which this Act applies; and
 - (b) the protected person or the protected person's dependent children would be likely to suffer severe hardship if the protected person were compelled to leave the premises; and
 - (c) the hardship suffered by the protected person would be greater than any hardship the landlord would suffer if the order were made; and
 - (d) it is reasonable to do so given the length of the exclusion under the final order and the length of the existing tenancy agreement; and
 - (e) it is reasonable to do so given the interests of any other tenants (other than the excluded tenant) under the existing tenancy agreement and, in particular, whether the other tenants support the protected person's application.
- (2) If the Tribunal makes an order under subsection (1) the new tenancy agreement must—
- (a) be subject to the same rent and frequency of rent payments as the existing tenancy agreement; and
 - (b) if the existing tenancy agreement is a fixed term agreement, run for a term not longer than the remainder of that fixed term; and
 - (c) otherwise, be on the same terms and conditions as the existing tenancy agreement, subject to any changes the Tribunal determines.
- (3) If the Tribunal makes an order under subsection (1) the existing tenancy agreement is terminated on the signing of the new tenancy agreement.

S. 233C
inserted by No.
52/2008 s. 262.

233C Tribunal may determine parties' liability under terminated tenancy agreement

- (1) If the Tribunal decides to make an order under section 233B, the Tribunal may determine the liabilities of the excluded tenant, the protected person or any other tenants under the existing tenancy agreement in relation to a bond paid for the rented premises and any other existing liabilities under the existing tenancy agreement, including, for example—
- (a) liabilities relating to damage caused to the rented premises; and
 - (b) liabilities relating to outstanding utility charges.
- (2) To remove doubt, the termination of a tenancy agreement under section 233B does not give rise to a right to claim compensation on the part of any party to the agreement for early termination of the agreement.

- (3) For the purpose of making a determination under subsection (1), the Tribunal may adjourn the hearing to allow an inspection of the rented premises in accordance with section 86(1)(g).

233D Cross-examination in proceedings for a new tenancy agreement

S. 233D
inserted by No.
52/2008 s. 262.

- (1) In a hearing for proceedings arising out of, or relating to, an application under section 233A(3) by a protected person under a final family violence intervention order an excluded tenant must not personally cross-examine a protected person without leave of the Tribunal.
- (2) The Tribunal may grant leave under subsection (1) with or without conditions.
- (3) If leave is granted under subsection (1), the excluded tenant may only cross-examine the protected person—
 - (a) as to those matters set out in section 233(1) and 233B(1); and
 - (b) in accordance with any conditions to which the leave granted is subject.

S. 233D(1)
amended by
No. 53/2010
s. 221(Sch. item
9.6).