

Rent, bonds and other charges

Issues Paper

Residential Tenancies Act Review

FAIRER
SAFER
HOUSING

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The Review of the *Residential Tenancies Act 1997*

Since the *Residential Tenancies Act 1997* (the Act) was introduced, the rental market has changed. More Victorians are renting for longer, the renting population has become more diverse, and the numbers of property managers and landlords have increased.

The government is reviewing Victoria's rental laws to ensure a modern and dynamic rental market, in which tenants are safe and secure, and which will meet the current and future needs and expectations of tenants and landlords.

This paper is one of a series of issues papers, which will encompass a broad range of issues relating to the operation of the Act. The papers will focus on the following themes:

- security of tenure (released in November 2015)
- rights and responsibilities of landlords and tenants
- alternative forms of tenure
- property conditions and standards, and
- dispute resolution.

Consultation with stakeholders and members of the public will capture a wide range of views and experiences that will enhance the government's understanding of the Victorian rental market.

In mid-2016, an Options Paper will outline proposals for both legislative and non-legislative reforms drawing on the findings of the Review and public consultation.

You can access this issues paper, along with further information about the Review, from the Fairer Safer Housing website at fairersaferhousing.vic.gov.au.

Getting involved and having your say

We invite your views and comments, as well as your responses to the series of preliminary questions posed throughout each issues paper as a guide for writing your submission.

We also welcome your suggestions for other questions or issues that should be considered leading up to the release of the Options Paper.

Until **6 April** you can make a submission:

Online, by registering at:

fairersaferhousing.vic.gov.au/renting

By email:

yoursay@fairersaferhousing.vic.gov.au

Or by mail:

Residential Tenancies Act Review
Consumer Affairs Victoria
GPO Box 123
MELBOURNE VIC 3001

Note: Unless you label your submission as confidential, your submission or its contents will be made publicly available in this and any subsequent review process. Submissions may be subject to Freedom of Information and other laws. Consumer Affairs Victoria reserves the right to not publish information that could be seen to be defamatory or discriminatory.

The stages of the Review

Material will be released in three stages in the course of the Review, to which you will be invited to respond. All papers will be available via the Fairer Safer Housing website at fairersaferhousing.vic.gov.au/renting.

Stage 1	<i>Laying the Groundwork</i> Consultation Paper identifying the changing characteristics and trends in the Victorian rental market.	June to August 2015 (complete)
Stage 2	Issues Papers	Late 2015 to early 2016 (underway)
Stage 3	Public Options Paper setting out legislative and non-legislative proposals for reforming the <i>Residential Tenancies Act 1997</i>	Mid 2016

Glossary

ABS	Australian Bureau of Statistics
AHURI	Australian Housing and Urban Research Institute
CAV	Consumer Affairs Victoria
DHHS	Department of Health and Human Services
RTBA	Residential Tenancies Bond Authority
TUV	Tenants Union Victoria
VCAT	Victorian Civil and Administrative Tribunal

Acknowledgments

This paper has been drafted in consultation with:

- Consumer Affairs Victoria
- Department of Environment, Land, Water and Planning (Forward Policy and Business Strategy Planning)
- Department of Health and Human Services
- Department of Premier and Cabinet, and
- Department of Treasury and Finance

Submissions made to the Review during Stage 1 have been taken into consideration in the drafting of this issues paper.

Questions for consideration

Bonds (refer to Section 2)

How the Act regulates bonds

- 1 What issues arise from the way in which provisions for bonds in the Act currently balance the interests of tenants and landlords?
- 2 What features of the regulation of bonds in other jurisdictions should be considered in Victoria?

Commencing and maintaining a tenancy agreement

- 3 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)?
- 4 How important is it to limit the amount a landlord can charge as a bond?
- 5 What is the rationale for continuing to provide an exemption from the maximum allowable bond amount?
- 6 How does the availability of landlords' insurance affect the need for current exemptions from maximum bond amounts?
- 7 What are the advantages and disadvantages of allowing landlords to review the bond amount for some tenancies every time a new tenancy agreement arises, or when there is a rent increase?
- 8 Are there issues with taking a variable approach to bonds, for example in the context of rooming houses, caravan parks and residential parks?

Ending a tenancy agreement

- 9 What are your views about the current arrangements for claiming and paying amounts from bonds at the end of a tenancy?
- 10 What scope is there for the Act to:
 - specify a timeframe for lodging completed bond claim forms?
 - allow immediate repayment to a tenant of any bond amount that is not contested?
- 11 As a tenant, have you been pursued for insurance costs that you have already paid out of your bond or through a compensation order issued by VCAT?

General

- 12 What other requirements for bonds should be considered for family violence situations?
- 13 What are other critical issues (if any) relating to bonds that have not been captured?

Rent (refer to section 3)

How the Act regulates rent and other charges

- 14 What issues arise from the way in which provisions for rent and other charges in the Act balance the interests of tenants and landlords?
- 15 What features of the regulation of rent payment processes, other payments, and arrears in other jurisdictions should be considered in Victoria?

Commencing a tenancy agreement

- 16 What issues are raised by the current provisions in the Act limiting the ability to charge more than one month's rent in advance, and is it still relevant in a contemporary rental market?
- 17 Why might it be important to limit to how much rent can be charged in advance?
- 18 What is the rationale for providing any exemptions from the maximum amount of rent in advance?
- 19 What is your experience in either participating in or conducting a rental auction or rental bid process?
- 20 How well is industry self-regulation (such as the REIV practitioner guidelines) addressing rental auctions and is there a need for any regulation?

During a tenancy agreement

- 21 Have you experienced an excessive rent increase that did not reflect market rents in your area and, if so, what was your response?
- 22 How effective is CAV's rent assessment process in resolving concerns about a rent increase?
- 23 What is an appropriate notice period for a rent increase?
- 24 What is an appropriate frequency for rent increases? Does this change for longer term tenancies?
- 25 If you have experienced a tenant repeatedly paying their rent late, what is the average period of time they are in arrears?
- 26 If you are a tenant who has paid their rent late, what is the reason for your late payment, and how late has your payment been?
- 27 What issues might arise from the fact that the late payment of rent (i.e. late by less than 14 days) is not currently a reason to allow a landlord to issue a breach of duty notice?
- 28 What are the arguments for or against allowing a landlord to claim compensation for incurring financial losses because rent has been paid late?

Other charges

- 29 How common are holding deposits? In what way do they uphold the rights of either landlords or tenants?
- 30 What are your views about a possible requirement that at least one fee-free method of paying rent be provided?
- 31 Why are tenants currently required to pay the transaction costs of using third-party rent collectors?

General

- 32 What critical issues are there (if any) relating to rent and other payments that have not been discussed?

Executive Summary

On 26 November 2014, the Victorian Government announced its *Plan for Fairer, Safer Housing*, which envisages safe, affordable and secure housing for all Victorians. As part of this Plan, the Government has committed to reviewing the *Residential Tenancies Act 1997* (the Act) to examine the feasibility of long term leases (of up to ten years) and annualised rent increases. In addition, the government noted that there was scope to provide greater protection to residents of caravan parks and moveable dwellings.¹

The Review of the Act, launched in June 2015, will examine how these and other policies and reforms can support a well-functioning rental market in Victoria, with enhanced outcomes for all market participants, especially low income and disadvantaged tenants, while also meeting the Fairer Safer Housing goals.

The legislation is more relevant today than ever before given that more Victorians are renting, and for longer periods. Housing costs in Victoria have increased significantly, particularly in Melbourne and regional centres, and household incomes have not kept pace with house price growth, contributing to declining housing affordability for both buyers and tenants.

While the Act does not regulate the amount of rent that a person can be charged, and therefore does not directly affect affordability, it does regulate particular expenses associated with renting, such as maximum amounts for bonds and rent in advance, the frequency of rental increases, and the parties' responsibilities for certain fees and the ongoing costs of a tenancy – for example, utilities charges. These expenses can determine whether a person can afford the up-front costs of entering a tenancy, staying in that tenancy, or moving and entering into a new arrangement, particularly in the case of low-income and disadvantaged tenants.

This paper focuses on the operation of the Act relating to:

- maximum bond amounts and bond increases
- reclaiming bonds at the end of a tenancy
- maximum amounts of rent payable in advance
- rental bidding and auctions
- late payment of rent, and
- other payments and charges.

Many of the issues discussed in this paper were raised by stakeholders during preliminary consultation, and in response to the consultation paper, *Laying the Groundwork*, which marked the commencement of the Review.

The purpose of this paper is to seek input from stakeholders about the existing issues, in particular, to draw out evidence and commentary regarding their nature, extent and impacts. This input will ensure that options proposed for reform take account of affordability. In addition, these options will complement the outcomes of the Victorian Government's broader review of housing affordability.

¹ *Labor's Plan for fairer, safer housing*, accessed at www.danielandrews.com.au/policy/labors-plan-for-fairer-safer-housing, 26 November 2015.

1 Rental affordability

Rental affordability is a component of the broader issue of housing affordability in Victoria.

A large number of the submissions to the *Laying the Groundwork* consultation paper raised the issue of declining housing affordability in Victoria, particularly a shortage of affordable rental properties.² This section examines rental affordability, including its impacts on Victorian households and how the Act interacts with affordability.

1.1 Rent as a proportion of income

The proportion of household income paid towards rent by low-income households is one measure of housing affordability, although other factors are equally relevant, such as a household’s ability to service rental payments and the upfront costs of renting.

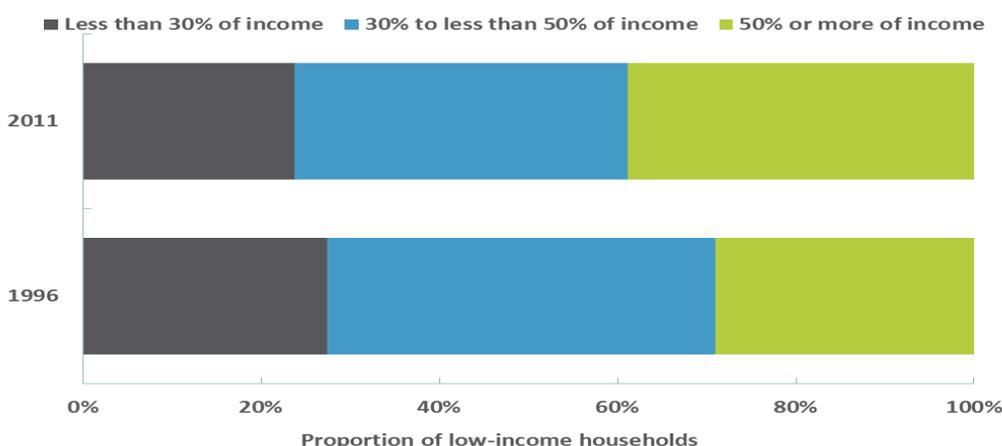
As rental costs rise relative to people’s incomes, efforts to maintain rental affordability are seen through trade-offs in terms of location, access to amenities, and property size and type. Tenants may choose to pay more towards rent as a trade-off for obtaining their desired location or access to amenities. Some higher-income households may be able to afford to pay a substantial proportion of their income towards rent without placing the household under financial stress.

This option is not available to everyone, however. While an increasing proportion of Victorian households renting privately are paying more of their income towards rent, low income households (that is, whose incomes are in the bottom 40 per cent) are experiencing the most acute impacts of the current shortages of affordable housing, and this is not improving with time.

The proportion of all Victorian private rental households experiencing ‘rental stress’ – that is, paying more than 30 per cent of their income as rent – increased from around 35 per cent in 1996 to 38 per cent in 2011.³ Of these households, around 76 per cent were low income in 2011, up from 73 per cent in 1996 (see Figure 1.1).

Between 1996 and 2011, the proportion of low-income households experiencing severe rental stress (that is, paying more than 50 per cent of their income as rent) also increased, from 29 per cent to 39 per cent.⁴

Figure 1.1: Rent as a proportion of household income for low-income private rental households, 1996 and 2011



Source: ABS, Customised 2011 Census report, 2015.

² Including the Brotherhood of St Laurence, City of Boroondara, Council to Homeless Persons, Housing for the Aged Action Group, South East Housing Cooperative, Tenants Union of Victoria, VCOSS, Victorian Multicultural Commission.

³ ABS, Customised 2011 Census report, 2015.

⁴ Low-income households spending more than 30 per cent of their income on housing are said to be experiencing ‘housing stress’, and those spending more than 50 per cent of their income on housing are said to be experiencing ‘severe housing stress’. This same measure applies to define ‘rental stress’ and ‘severe rental stress’.

In the March quarter of 2015, almost 59,000 new tenancies became available in Victoria, of which 17.9 per cent (or only 10,561) were affordable for low-income⁵ households.

For low-income households, there is a limited supply of affordable rental properties in Melbourne. The most recent Rental Affordability Snapshot by Anglicare Australia indicated that the vast majority of rental properties considered to be affordable and appropriate for households living on low incomes in the Melbourne metropolitan area were located in the outer suburban growth corridors, fringe areas, and semi-rural locations. In contrast, there were few affordable and appropriate rentals located in the inner metropolitan areas of Melbourne.⁶

1.1.1 Supply of rental housing

The majority of rental properties in Victoria (over 500,000) are provided by the private rental market. There are over 85,000 social housing properties (public housing and community housing) in Victoria.⁷

In 1995-96, there were an estimated 184,600 residential landlords in Victoria, amounting to just over 5 per cent of Victorians aged 15 years and over. By 2011-12, the estimated number of landlords almost doubled to 358,900. In 2011-12, almost 12 per cent of Victorian households owned one or more residential rental properties. Of these households, the majority (73 per cent) owned only one rental property.

1.1.2 Demand for rental housing

Participants on the demand side of the housing market are households or individuals seeking to rent housing.

In 2011, 26 per cent of Victorian households rented their homes, up from 24 per cent in 1996.⁸

Between 1996 and 2011, the number of households renting in the private rental sector increased by 50 per cent to over 435,000 households. In percentage terms, the proportion of households renting privately increased from almost 75 per cent of the overall rental sector in 1996, to almost 83 per cent in 2011.

Households' renting decisions involve a range of trade-offs between price, preferred tenure (renting or buying), location, and both the type and quality of available housing. For example, a family may choose to rent a smaller home than desired in order to live closer to schools and work.

1.2 The impacts of a lack of affordable housing

A shortage of affordable housing in Victoria is contributing to a range of outcomes for Victorians, including:

- more people living further away from work or living in housing types that may not be suitable to their needs (for example, property that is smaller than adequate)
- a concentration of housing growth in locations that may not be well connected to employment and social infrastructure
- a decline in home ownership rates (largely concentrated in younger age groups) and an increase in rental households⁹
- more limited choices for moderate income first home buyers than in the past so even when they can afford to buy, they usually can no longer afford well-serviced locations with good access to jobs¹⁰
- fewer lower income households entering home ownership than in the past¹¹

⁵ Department of Health and Human Services 2015, Rent Report. Low income is defined as the level of income provided by Centrelink payments.

⁶ '2015 Rental Affordability Snapshot', Anglicare Australia, page 91.

⁷ Additional data 2014-15 Social Housing Human Service Delivery Data, Department of Human Services, page 8 accessed at dhhs.vic.gov.au/publications/annual-report-2014-15-additional/ in October 2015.

⁸ ABS customised 2011 census report, 2015.

⁹ ABS catalogue number 4130.0.

¹⁰ Plan Melbourne Refresh Discussion Paper (2015), page 46.

¹¹ Plan Melbourne Refresh Discussion Paper (2015), page 46.

- more households taking on higher levels of debt
- less security of tenure associated with renting versus home ownership, and with mortgage stress for home owners, and
- increased homelessness.

1.2.1 Implications for renters

Given the ongoing shortage of low cost housing,¹² households with limited financial resources have relatively less choice about moving to a home they can afford, and often need to move to a different location, with flow-on effects for finding schooling (where relevant), employment and other services.

Low-income households with the following characteristics encounter particular difficulty finding affordable rental housing that meets their specific needs:

- families with school aged children (especially single-parent families), who need accommodation in a particular location to ensure educational participation
- older people or people with physical disabilities who need an affordable property with accessible design
- people with mental illness
- people with another chronic illness who need a living environment that allows them to be cared for on site
- Aboriginals and Torres Strait Islanders, who often seek rental properties capable of supporting communal or extended familial living
- recent immigrants, who need to be centrally located to support services
- young people, who are likely to have limited income, and
- women fleeing domestic violence, who may need to leave their homes in a very short period of time.

Accurate data on the sizes of these respective groups is not readily available. However, based on ABS household income data for Victoria, approximately 38 per cent of households in the private rental market can be considered low income, and of those, 76 per cent are likely to be experiencing rental stress.¹³

1.2.2 Implications for landlords and agents

High housing prices in the recent past mean that an emerging segment of landlords have purchased housing at high prices and are highly geared (that is, the rental income they receive does not cover the costs of maintaining and financing the property). Therefore, landlords may not have sufficient income to service the costs of their rental investment and their current housing (either owner-occupied or rental) if they experience unexpected costs, a change in circumstances, an illness or loss of rental income.

¹² This is widely reported in housing market commentary and literature. For example, *Rental Affordability Snapshot*, Anglicare Australia, April 2015 accessed via www.anglicare.asn.au.

¹³ *Customised 2011 Census Report*, Australian Bureau of Statistics, 2015. Households with income that falls within the first two income quintiles for Victorian households are considered 'low income'. Rental stress means the household spends more than 30 per cent of income on rent.

1.3 Reviewing affordability levers

Many of the policy levers affecting affordability are outside the Victorian Government’s direct control (Figure 1.3). While the Victorian Government has some scope to influence affordability, the impact of its policies may be influenced or moderated by Australian Government policy decisions.

Figure 1.3: Jurisdictional responsibility for housing policy levers

Victorian Government	Australian Government
<ul style="list-style-type: none"> • Land use planning (e.g. zoning) in partnership with local governments • State tax settings (e.g stamp duty and land tax) • Social and community housing policies and management • Residential tenancies policy • Private renter assistance (for example bond loans) 	<ul style="list-style-type: none"> • Federal tax settings (e.g income tax, including capital gains tax and negative gearing) • Social security (e.g. Commonwealth Rent Assistance) • Building standards (joint responsibility with the states)

While the outcomes of this Review will not directly affect rental affordability, a number of other government reviews are underway that will consider housing affordability more broadly, including rental affordability. In particular, the Victorian Government is reviewing its policies across the tax, planning, and social housing portfolios to determine the extent to which these impact on affordability within the local housing market (Figure 1.4).

Figure 1.4: Current Victorian Government reviews affecting housing policy

Housing Affordability Review	Plan Melbourne Refresh	Social housing and homelessness reform	Residential Tenancies Act 1997 Review
<ul style="list-style-type: none"> • 2015 Budget papers committed to a broad review of tax incentives and concessions available to property purchasers. 	<p>Outlines options to:</p> <ul style="list-style-type: none"> • establish new housing development goals • facilitate housing supply in Melbourne’s established areas, and • develop comprehensive strategies to better guide planning of new housing in Melbourne. 	<ul style="list-style-type: none"> • A shift to provide support that reflects need. • Emphasis on growing supply and improving the sustainability of the social housing system. 	<ul style="list-style-type: none"> • Determining if the balance of rights and responsibilities of landlords and tenants is appropriate • A focus on long-term leases and increased protections for emerging tenancy types

These reviews are in addition to the national reform agenda being pursued by the Australian Government through the Reform of the Federation White Paper and the Tax White Paper, and by the Council on Federal Financial Relations to which the Victorian Government is contributing through its Departments of Premier and Cabinet, and Treasury and Finance.

1.4 Rental affordability and the Act

A large number of submissions to the *Laying the Groundwork* consultation paper raised the issue of rental affordability and suggested limiting how much landlords can increase rents.¹⁴

In Victoria, rent levels in the private rental sector reflect market conditions, with no direct government intervention. Low levels of demand or excess levels of housing supply in the rental market will reduce pressure on rents, while high demand or tight supply will result in higher rents. If a landlord or agent lists a property at a price higher than prospective tenants are willing to pay, it will remain on the market until the price is reduced to the market rate or until the market rate increases.

¹⁴ Including Eastern Community Legal Centre, VCOSS, Housing for the Aged Action Group.

While the Act outlines rights and responsibilities for rental payments, including bonds, rents and other costs, it does not regulate the amount of rent that can be charged. There is considerable evidence of how rent price controls (such as limiting rent increases to an inflation index such as the Consumer Price Index) affect the supply of rental properties and median rents, and lead to a decline in the private rental sector.¹⁵ Additionally, authorities often exempt new or substantially renovated housing stock from the controls in an effort to boost housing supply, leading to a two speed rental market. For example, rent controls in places like New York City and San Francisco have led to constrained supply of private rentals, substantial increases in non-controlled rents and increased barriers to housing for low-income households.¹⁶

The effects of rent price controls can include a reduction in:

- supply of established dwellings used as private rental stock, as investors seek unrestrained income in other asset classes and less housing is built
- quality of private rental stock, as investors in rent controlled properties have fewer incentives to maintain their investments
- property and income tax receipts for government, combined with increased administrative costs to implement and maintain rent controls, and
- mobility for tenants who are discouraged from relocating, even if their needs have changed.

In this light, far from being a simple mechanism perceived as sustaining tenancies, rent price controls actually represent a significant economic lever with far-reaching consequences for both stock quality and supply. Because of this, they cannot be viewed purely in the context of the Review of the Act, and instead properly form part of the broader debate on affordability and government future directions in housing policy. Examples of where rent control has not resulted in a tighter rental market tend to occur where there is a significant level of concurrent government investment and subsidies to boost housing supply, as is the case in Austria.¹⁷

While the Act has only a limited impact on housing affordability, it does regulate maximum bonds, rent in advance, how often rent can be increased, and which parties are responsible for fees, charges and the ongoing costs of a tenancy, such as utilities expenses.

As such, the Act influences the up-front costs of entering, maintaining, and leaving a tenancy agreement. While these transactional costs are part of the inherent costs of rental housing, they can nevertheless be prohibitive for low-income and disadvantaged tenants. Therefore, it is important that the balance of rights and responsibilities under the Act does not inadvertently place further pressure on tenants' financial circumstances. Accordingly, the remainder of the issues paper focuses on these provisions.

¹⁵ For example, Haffner, M, Elsinga, M & Hoekstra, J 2008, 'Rent regulation: The balance between private landlords and tenants in six European countries', *European Journal of Housing Policy*, vol. 8, no. 2, pages 217-233 and www.econlib.org/library/Enc/RentControl.html.

¹⁶ Krugman, P 2000, Reckonings: a rent affair, *New York Times*, accessed at www.nytimes.com/2000/06/07/opinion/reckonings-a-rent-affair.html.

¹⁷ Hulse, K. et al. (2011) *Secure occupancy in rental housing: conceptual foundations and comparative perspectives*, AHURI Final Report No.170. Melbourne: Australian Housing and Urban Research Institute, pages 210-211.

2 Bonds

A rental bond is an amount of money paid by a tenant that is set aside as security should they fail to meet their obligations under a tenancy agreement.

2.1 Existing regulation of bonds

Bonds provide assurance to landlords that they can recover their costs at the end of a tenancy if a tenant damages the property (other than reasonable wear and tear) or does not pay rent as agreed. A bond is a financial incentive to tenants to treat their rental property with care. Therefore as a security, a bond is an important incentive for landlords to entrust their properties to tenants.

Bonds are not compulsory under the Act, although the common industry practice is that tenants usually pay a bond equivalent to one month's rent.

A landlord must lodge a bond with the Residential Tenancies Bond Authority (RTBA) within 10 business days of receiving it from a tenant and the RTBA must then give the landlord and the tenant a receipt for the bond within seven business days.¹⁸ All bonds in Victoria are held in trust by the RTBA and returned to tenants at the end of tenancies, except where the landlord has agreed with the tenants or made a successful claim to keep all or part of the bond.

2.1.1 Maximum bonds and guarantees

The Act sets specific limits on the maximum amount of a bond or guarantee that landlords can request from tenants (Box 2.1).

The maximum amount of a bond varies for different types of tenancies and is lower for rooming houses.

In some cases, a landlord may accept a guarantee or undertaking from a third party to indemnify the landlord. Guarantees are only allowed under general tenancies and for Part 4A tenants.¹⁹

If a tenant has paid, or is required to pay a bond, the landlord cannot also require them to provide a guarantee, unless the weekly rent is \$350 or more.

Guarantees are subject to the same constraints as bonds.

Box 2.1: Maximum residential bonds and guarantees

- The maximum bond amount generally cannot exceed one month's rent under the tenancy agreement (28 days of rent for caravan park residents, 14 days for rooming house residents and one month for site tenants in residential parks) unless determined by the Victorian Civil and Administrative Tribunal (VCAT),
- A landlord can ask for a bond amount in excess of one month's rent, or a guarantee in addition to a bond, where:²⁰
 - the weekly rent is more than \$350 (for general tenancies and Part 4A residents), or
 - the tenancy agreement states that the premises are the landlord's principal residence and the landlord intends to live there at the end of the tenancy (general tenancies only).

¹⁸ Section 406 and 407 of the Act.

¹⁹ Part 2 of the Act applies to general residential tenancies, such as renting an entire apartment or house.

Part 3 of the Act applies to rooming house tenancies, where one or more rooms are available to rent, and four or more people in total can occupy those rooms.

Part 4A of the Act applies to residential parks or caravan parks where a resident owns or partially owns a movable dwelling (excluding caravans) that is placed on a site rented under a site agreement.

²⁰ There are no exceptions to the maximum bond amount for rooming house residents or caravan park residents.

2.1.2 Management of bonds

The Act sets out how bonds are to be handled during, and at the conclusion of, a tenancy (Box 2.2).

If the weekly rent is less than \$350, a bond amount cannot be increased during a tenancy, or for subsequent tenancy agreements (i.e. a periodic lease or renewed lease) where the tenant has already paid a bond.

If a tenant pays a bond, a landlord must provide a condition report to the tenant stating the condition of the property before a tenant moves into the property. The tenant must complete the condition report with any comments based on their inspection of the property and return a completed copy of the report to the landlord or agent within three business days of receiving the report. The condition report can be used as evidence if a landlord makes a claim on the bond at the conclusion of a tenancy.

A tenant cannot draw on their bond to pay any overdue rent.

Box 2.2: Process for bond claims at the end of a tenancy

If the landlord and tenant agree on the allocation of the bond

- Both the landlord and the tenant must sign a completed bond claim form stating the amount to be paid to each party.²¹
- Where any part of the bond is to be paid to the landlord, the bond claim form cannot be signed more than seven days before the end of the tenancy.²²
- The RTBA then pays the bond to the bank accounts nominated on the claim form.

If the landlord and the tenant do not agree on the allocation of the bond

- Either the landlord or the tenant may apply to VCAT for a hearing to resolve the disagreement.
- The landlord must apply to VCAT within 10 business days of the tenant vacating the property.²³
- The tenant has the option of applying to VCAT at any time following the conclusion of a tenancy. There is no fee for making a VCAT application for a bond refund.

Questions for Consideration

- 1 What issues arise from the way in which provisions for bonds in the Act currently balance the interests of tenants and landlords?

2.2 Approaches to bonds in other jurisdictions

While bonds are regulated in a relatively similar way in other Australian jurisdictions (Table 2.1), different approaches are taken in some overseas jurisdictions.

²¹ If a landlord is claiming any amount of a bond paid by the Director of Housing they must apply to VCAT.

²² Section 412 of the Act.

²³ Section 417 of the Act. Note: As per section 126 of the VCAT Act, VCAT may extend the time limit for applications.

Table 2.1 Inter-jurisdictional bond practices

Jurisdiction	Maximum bond	Bond increases	Bond claim process
New South Wales	Four weeks' rent with no exceptions	No bond increases allowed during the tenancy	When tenants and landlords disagree or do not communicate about the bond refund amount either party can submit a claim to the bond authority, which will then notify the other party that they have 14 days to dispute the claim at the NSW Civil and Administrative Tribunal otherwise the claimed amount will be paid.
Queensland	Four weeks' rent unless weekly rent is more than \$700 per week (two weeks for residential parks or three if electricity is connected in the landlord's name).	Bonds can be increased when rent increases, if it has been 11 months since the last bond increase or the start of a tenancy.	When tenants and landlords disagree on the bond refund amount either party can submit a claim to the Residential Tenancies Authority, which will then release any non-disputed amounts and hold disputed amounts. The other party has 14 days to dispute the claim otherwise the disputed amount is paid out to the claimant. If the other party disputes the claim there is a two-tiered dispute resolution process, involving the Residential Tenancies Authority then the Queensland Civil and Administrative Tribunal.
Western Australia	Four weeks' rent unless weekly rent is more than \$1200 per week An additional maximum pet bond of \$260 can be charged (with same high value exception to maximum)	Bonds can be increased if rent increases	When tenants and landlords or agents do not agree on the amount of bond to be refunded, the bond will not be paid out to either party without a court order from a magistrate for a residential tenancy agreement (or the State Administrative Tribunal for a residential parks long-stay tenancy agreement)
South Australia	Four weeks' rent unless weekly rent is more than \$250, when a maximum of six weeks' rent applies	Bonds can be increased after two years to reflect increased rent	When tenants and landlords disagree on the bond refund amount either party can submit a claim to Consumer and Business Services, which then will notify the other party of the bond claim with details of the claim and a due date for a response. If no response is made by the date the bond will then be refunded for a tenant claim. Landlord must provide Consumer and Business Services with evidence of their claim, which will then be paid if it is substantiated. If not landlords have access to recourse through the South Australian Civil and Administrative Tribunal.
Tasmania	Four weeks' rent with no exceptions	No bond increases allowed during the tenancy	When tenants and landlords disagree on the bond refund amount either party can submit a claim to Residential Deposits Authority which will then notify the other party/s that there has been a claim made. If no agreement is reached within 10 days, the matter is referred to the Residential Tenancy Commission, which will determine the distribution of the bond based on evidence provided by both parties.

International Examples

- In the United States, maximum deposits vary from state to state, but around half of all states have a maximum of one to two months of rent, while around half have no maximum deposit.²⁴
- There is no maximum security deposit in the United Kingdom or Ireland.
- Some provinces in Canada have a maximum security deposit of one month's rent (Alberta) or a half month's rent (British Columbia), while some do not allow a security deposit at all (Ontario).²⁵

Questions for Consideration

- 2 What features of the regulation of bonds in other jurisdictions should be considered in Victoria?

2.3 Issues with the current regulation of bonds

2.3.1 Maximum bonds

Stakeholders have raised issues around bonds exceeding one month's rent, because of the exemption that applies when weekly rent exceeds \$350.²⁶ This exemption was originally intended to apply to high value properties (at the time, the top 20 per cent of properties in Melbourne).²⁷ When the Act was introduced, \$350 was more than twice the median weekly rent for Melbourne and three times the weekly rent for Victoria.²⁸ In the June quarter 2015, 50 per cent of new tenancy agreements in Victoria had a weekly rent higher than \$350.²⁹ Therefore this nominal value is no longer relevant in today's prices.

Additionally, since the Act was introduced in 1997, an increasing proportion of landlords have been taking out landlords' insurance to provide cover for damage caused by tenants or for rent arrears. Such insurance can cover landlords for accidental or malicious damage to their properties that exceeds the bond amount. While landlords' insurance was an emerging product in 1997, now over 70 per cent of landlords take out landlords' insurance.³⁰

The availability of suitable insurance products raises the question of whether bonds that are higher than one month of rent are needed to protect landlords with higher value properties, or properties with special characteristics (for example, a swimming pool or high value garden).

2.3.2 Landlord bonds

Some stakeholders have suggested that a similar mechanism to a bond for landlords³¹ at the start of a tenancy may provide incentives for landlords to meet their obligations under the tenancy agreement, such as carrying out repairs, or complying with compensation orders from VCAT.³²

Current provisions only provide tenants with recourse through VCAT to obtain orders for urgent repairs, recover the cost of having urgent repairs undertaken, or to provide compensation for when landlords do not meet their obligations. No other jurisdictions appear to have adopted a requirement for landlord bonds.

²⁴ Chart: Security Deposit Limits, State by State, accessed at www.nolo.com, October 2015.

²⁵ Provincial and territorial fact sheets, accessed at www.cmhc-schl.gc.ca/en/co/reho/yogureho/fash/, October 2015

²⁶ Eastern Community Legal Centre, VCOSS, Housing for the Aged Action Group.

²⁷ The Residential Tenancies Legislation Review Committee 1995, Report to the Minister for Housing and the Minister for Fair Trading, 30 June.

²⁸ ABS catalogue number 2016.2, 1996.

²⁹ The Department of Health and Human Services 2015, Rental Report – September 2015.

³⁰ GfK Australia 2015, *Barometer 2015 - An annual study of the mortgage market and associated insurance in Australia* accessed at <http://www.qbelmi.com/Uploads/Documents/dd0bfeb0-e718-41f0-85eb-91d5cd8a50f2.pdf>

³¹ A landlord bond has been suggested to provide tenants with security that landlords would meet their obligations under a tenancy agreement.

³² Western Community Legal Centre, submission in response to the 'Laying the Groundwork' Consultation Paper, page 9.

2.3.3 Bond increases

The Tenants Union of Victoria (TUV) has raised the issue of landlords increasing bonds for subsequent tenancies where a tenant continues to lease a property. Under the Act, an increase after the initial bond is paid is allowed for tenancies where rent is higher than \$350.

Questions for Consideration

- 3 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)?
- 4 How important is it to limit the amount a landlord can charge as a bond?
- 5 What is the rationale for continuing to provide an exemption from the maximum allowable bond amount?
- 6 How does the availability of landlords' insurance affect the need for current exemptions from maximum bond amounts?
- 7 What are the advantages and disadvantages of allowing landlords to review the bond amount for some tenancies every time a new tenancy agreement arises, or when there is a rent increase?
- 8 Are there issues with taking a variable approach to bonds, for example in the context of rooming houses, caravan parks and residential parks?

2.3.4 Bond claims

When there is agreement between parties

When the landlord and tenant agree on the amount of the bond to refund (and to whom) at the end of a tenancy, both parties must sign a completed bond claim form stating the amount to be paid to either party. As tenants are often not present at final inspections, the landlord or their agent must lodge the claim with the RTBA.

The Act does not specify how quickly landlords and agents must lodge the claim form in this situation and, in some cases, considerable delays can occur – for example, if agents only lodge claim forms monthly as part of their business practice. In this instance, the TUV noted that tenants, particularly low-income tenants, face financial difficulties when moving from one rental property to another, as they must pay a new bond when approved for a new tenancy while their current bond is held for a substantial period of time.³³

When there is no agreement between parties

At the end of a tenancy, tenants may be unclear whether their landlord or agent is going to claim against the bond. In practice, agents and landlords generally conduct the final inspection after the tenant has vacated and there is often limited discussion about the bond.

The TUV is concerned that landlords and agents often do not take reasonable steps to notify former tenants that they wish to make a claim against the bond - for example, they may send a letter to the property once the tenant has vacated.³⁴

In the event of a claim against the tenant, the TUV has also noted that VCAT commonly grants landlords extensions beyond the ten business days allowed to claim against the bond.³⁵

In cases where only part of the bond is in dispute, there is no process for the part of the bond which is not in dispute to be paid out to the tenant.

Delays to distributing a disputed bond at the conclusion of a tenancy can cause undue uncertainty about financial obligations for both tenants and landlords, and also make it difficult for tenants experiencing financial hardship to cover the bond for a subsequent rental agreement.

³³The Tenants Union of Victoria 2015, Response to Laying the Groundwork, pages 44-46.

³⁴ *Ibid.*

³⁵ *Ibid.*

Interaction with insurance claims

The TUV and Western Community Legal Centre have cited concerns about cases where landlords claim against both the bond and insurance, resulting in the insurer pursuing the tenant for the same costs they have already paid.³⁶ CAV is similarly aware of cases where insurers have pursued tenants for costs that the landlord would not have been entitled to claim from the tenant at VCAT, such as reletting costs after a tenant had vacated following a notice period at the end of the lease.

Questions for Consideration

- 9 What are your views about the current arrangements for claiming and paying amounts from bonds at the end of a tenancy?
- 10 What scope is there for the Act to:
 - specify a timeframe for lodging completed bond claim forms?
 - allow immediate repayment to a tenant of any bond amount that is not contested?
- 11 As a tenant, have you been pursued for insurance costs that you have already paid out of your bond or through a compensation order issued by VCAT?

2.3.5 Bonds and family violence

In situations where a co-tenant leaves because they are the victim of family violence, or if the perpetrator of family violence leaves the tenancy, it raises the question of whether the tenancy agreement can continue and, relevantly, what to do with the bond.

Family violence can create housing debts due to rental arrears being incurred by a perpetrator. Low income victims of family violence are particularly vulnerable to the impacts of debt incurred by a violent partner or family member, especially if only the victim's name is on the tenancy agreement and the bond is insufficient to compensate the landlord.

An inability to repay these debts exposes victims to the risks of a poor credit history, being blacklisted by agents, and homelessness.

The Act currently allows victims of family violence to apply to VCAT for assistance with ending or taking over a tenancy subject to obtaining a final intervention order. VCAT may also make orders apportioning the bond between the parties and the RTBA can only pay it out in accordance with VCAT's instructions in such instances.

A detailed discussion of the implications of family violence for a tenancy – and the issues raised by stakeholders – is outlined in a subsequent issues paper on the parties' rights and responsibilities. The findings and recommendations of the Royal Commission into Family Violence, which is due to deliver its final report on 29 March 2016, will also be relevant to this discussion, particularly when considering future directions for the bond provisions in the Act.

Questions for Consideration

- 12 What other requirements for bonds should be considered for family violence situations?
- 13 What are the other critical issues (if any) relating to bonds that have not been captured?

³⁶ Duke, J (2015), *Tenants chased by double dipping landlords*, accessed at www.domain.com.au/news and Western Community Legal Centre, submission in response to the 'Laying the Groundwork' Consultation Paper, page 27.

3 Rent and other payments

Rent is the amount of money paid by a tenant to lease a property. The Act sets out the responsibilities of tenants to pay rent for a general residential tenancy, a rooming house, caravan park and Part 4A residential park.

The Act also sets out the responsibilities of tenants and landlords for other payments, such as utilities.

3.1.1 Rent in advance

The Act anticipates that both landlords and tenants have met their core obligations: the landlord provides the premises for the tenant’s exclusive enjoyment, while the tenant ensures that their stay is paid for at all times, all the more since rent accrues daily.

As such, at the beginning of a tenancy, landlords or agents generally request rent in advance from tenants at the same time as a bond, and this usually continues during the tenancy. As with bonds, the Act sets out rules for the maximum amount of rent in advance a landlord can require a tenant to pay (Table 3.1).

In general, rent in advance cannot exceed one month’s rent, except where the weekly rent exceeds \$350. As with the provisions for maximum bonds, this exception was intended to apply to high value properties. Given that 50 per cent of new tenancy agreements in Victoria over the past quarter were for amounts higher than \$350 per week, this limit on rent payable in advance is covering a smaller proportion of properties.

Rooming house residents cannot be charged more than 14 days’ rent in advance. Caravan park residents cannot be charged more than 14 days’ rent in advance for renting the site and 28 days’ rent in advance for caravan hire. For residential parks, a site owner cannot charge a site tenant more than one month’s rent in advance.

Table 3.1: Rent in advance for residential accommodation

<i>Amount of rent in advance</i>	<i>Frequency and amount of rent payable</i>
The landlord cannot ask for more than 14 days’ rent at the beginning of a tenancy.	Rent is required to be paid weekly (no monetary cap).
The landlord cannot ask for more than one months’ rent in advance.	Rent is required to be paid other than weekly (i.e. fortnightly or monthly), and is \$350 per week or less.
The landlord can charge rent in advance for up to the full term of the agreement.	Rent is higher than \$350 per week, or where the tenancy agreement states that the premises are the landlord's principal residence and the landlord intends to live there at the end of the tenancy (general tenancies only), or The landlord or agent gets an order from the Victorian Civil and Administrative Tribunal (VCAT) permitting an increase to the bond (for general tenancies and part 4A Residents). ³⁷

³⁷ Division 3 of Parts 2, 3, 4 and 4a of the Act.

3.1.2 Rent increases

The Act restricts a landlord's ability to increase rent to once every six months, but does not restrict the amount by which rent can be increased.

While the Act does not explicitly limit the amount by which rent is increased, it provides grounds for challenging a rent increase on the basis that the effect of the increase causes the rent to be unreasonably in excess of market rents.³⁸ The underlying rationale of this requirement is that rent should be fair, and not excessive or extortionate so as to cause hardship to tenants and undermine security of tenure.

Tenants who feel that a rent increase is excessive may ask CAV to perform a rent assessment, which is based on a comparison of market rents for comparable properties. If the rent assessment finds the increased rent is excessive, a tenant or resident can use the assessment report, if they wish, to seek a ruling on their rent at VCAT. The tenant or resident has 30 days from receiving the rent assessment report to apply to VCAT for a hearing.

Generally, landlords have a disincentive to increase rents excessively for current tenants as it can result in a loss of income if a tenant leaves.³⁹ However, when vacancy rates are low, landlords may raise rents in line with the market, causing some tenants to be unable to continue a tenancy.

Box 3.1: Regulation of rent increases for residential accommodation

- Rent increases cannot occur more than once every six months.
- The landlord must give 60 days' notice of the increase.
- The rent cannot be increased during a fixed term tenancy unless provision is made for a rent review in the agreement. If such a provision exists, 60 days' notice of the rent increase must be given.
- Notice of a proposed rent increase must include a statement informing the tenant of their right to apply to CAV to investigate and report on the proposed rent.
- If a tenant believes a rent increase to be excessive after considering market rent they can request a rent assessment from CAV.
- A tenant can apply to VCAT for an order declaring a proposed rent increase is excessive, and VCAT can make an order about the maximum rent payable.

3.1.3 Timely payment of rent

Tenants must pay rent in accordance with the terms of their tenancy agreement.⁴⁰ Tenants must not stop paying rent, even if the landlord refuses to do repairs or meet any other obligations under the Act. The importance of paying rent is highlighted by the fact that if the tenant is in arrears by 14 days or more, the Act allows landlords to issue a 14-day notice to vacate and, following the notice period, apply for an order to repossess the property.⁴¹ Tenants who subsequently pay the outstanding rent amount still face eviction if the landlord does not withdraw their application.

While late payment of rent is a breach of a tenant's obligations under a tenancy agreement, it is not currently a reason to issue a breach of duty notice to a tenant in a general tenancy, even where a tenant repeatedly pays rent late by up to 13 days.⁴²

³⁸ Section 45 of the Act.

³⁹ AHURI 2011, Secure occupancy in rental housing: conceptual foundations and comparative perspectives, p66.

⁴⁰ Section 42 of the Act.

⁴¹ Section 246 of the Act.

⁴² However, late payment of rent is a breach of duty for other tenure types regulated by the Act. This means that if a resident in a rooming house, caravan park or residential park pays rent late on three or more occasions, an operator can issue a notice to vacate at short notice. Breaches of duty will be explored in more detail in the issues paper on the rights and responsibilities of landlords and tenants.

During a tenancy, a landlord can claim compensation from a tenant for late payment of rent if the tenant is in arrears by 14 days or more. Where the tenant has paid rent at least 14 days late on at least two previous occasions, a landlord may immediately apply to VCAT for compensation and does not have to wait for 14 days to pass.⁴³ Compensation is any amount of unpaid rent owing; a landlord cannot charge additional fees from tenants for paying their rent late.⁴⁴

If a possession order has been granted and there are outstanding arrears, compensation is similarly payable out of the bond, or if this is insufficient, by way of a compensation order.⁴⁵

3.1.4 Other payments and charges

The Act sets out what a landlord cannot charge a tenant for, the rules for holding deposits and the parties' responsibilities for the ongoing costs of a tenancy – for example, utilities charges (Box 3.2). Notably, a landlord cannot charge for:

- showing a prospective tenant the premises
- issuing a rent payment card
- establishing or using direct debit facilities, and
- making, continuing or renewing a tenancy agreement (this may also be referred to as a premium, bonus, commission or key money).

The Act does not otherwise specify whether landlords or tenants are responsible for paying line installation or connection fees for a telephone, internet or cable television. This is not an oversight, instead it reflects demand for particular services at the time the Act was drafted. The growth in popularity of online and digital technology in the intervening period highlights the need to clarify the parties' liability for ensuring access to contemporary amenities. Recent data commissioned by Optus indicates that 31 per cent of renters surveyed identified access to cable internet as one of the features they desire most in a rental property.⁴⁶

Box 3.2 Other payments and charges

- A landlord or agent may ask a tenant for a holding deposit before a tenancy agreement is signed, and must refund it once both parties sign the tenancy agreement or if there is no tenancy agreement within 14 days, the money must be refunded by the next business day.
- Landlords are responsible for water service charges, and when a property does not have a separate water meter (for example, bulk metered apartments) landlords are responsible for water consumption charges and the sewage disposal charge.
- If the property has its own water meter, the tenant is responsible for paying for water consumption charges and the sewage disposal charge.
- The landlord must pay all installation and initial connection costs for electricity, gas and oil supply. If there is a separate meter, the tenant is responsible for paying for all other charges. If there is no separate meter, the landlord must pay.⁴⁷

Questions for Consideration

14 What issues arise from the way in which provisions for rent and other charges in the Act balance the interests of tenants and landlords?

⁴³ Section 213 of the Act.

⁴⁴ Section 505 of the Act.

⁴⁵ Sections 213A and 213B of the Act.

⁴⁶ McCrindle, *The Renter of the Future*, published 11 January 2016.

⁴⁷ Division 4 of Parts 2, 3, 4 and 4a of the Act.

3.2 Approaches to rent in other jurisdictions

Provisions for rent and other charges vary considerably across Australian jurisdictions (Table 3.2).

Table 3.2 Inter-jurisdictional practices for rent and other payments

Jurisdiction	Rent in advance	Rental bidding	Rent increases	Late payment of rent	Rent payment charges
New South Wales	No more than two weeks' rent in advance.	Not prohibited	Landlords must provide 60 days' notice of rent increases, rent can only be increased during a fixed term if it is specifically stated (unless a fixed term of more than 2 years), tenants can apply to the Tribunal for an order that a rent increase is excessive.	Tenants may be issued a 14-day notice to vacate if rent is 14 days or more in arrears	Tenants must be offered a fee free way of paying rent (excluding charges from tenants' banks).
Queensland	No more than one months' rent in advance.	Agents and landlords cannot seek rental bids	Landlords must provide 2 months' notice of rent increases (4 weeks for rooming houses) and can only increase rent once every 6 months, rent can only be increased during a fixed term if it is specifically stated and 2 months' notice is provided, tenants can apply to the Tribunal for an order that a rent increase is excessive.	If rent is 7 days overdue, the landlord can serve a Notice to remedy breach and the tenant then has 7 days to pay the outstanding rent for a general dwelling (house or unit) or 5 days for a moveable dwelling.	The Act does not list rent cards as an approved method of paying rent and tenants must agree to use rent cards.
Western Australia	No more than two weeks' rent in advance.	Not prohibited	Landlords must provide 60 days' notice of rent increases and can only increase rent once every 6 months, rent can only be increased during a fixed term if it is specifically stated and 60 days' notice is provided, tenants can apply to the court for an order that a rent increase is excessive.	Tenants may be issued a 14-day notice to vacate if rent is 14 days or more in arrears.	Allows payment of rent by cash, cheque, authorised deposit taking institution, or as specified in agreement. Rent administration charges are prohibited.
South Australia	No more than two weeks' rent in advance.	Not prohibited	Landlords must provide 60 days' notice of rent increases and can only increase rent once every 6 months, rent can only be increased during a fixed term if it is specifically stated, tenants can apply to the tribunal for an order that a rent increase is excessive.	If a tenant is 14 days or more behind in rent landlords can give them written notice to remedy the breach at least seven days to pay the arrears in full. If the rent is not paid within the timeframe, the tenant must be given at least one further day to leave the property.	Tenants must have at least one means to pay rent that does not involve the payment of cash or the collection of rent by a third-party who charges a fee payable by the tenant.
Tasmania	No more than four weeks' rent in advance	Agents and landlords cannot seek rental bids	Rent can only be increased if the tenancy agreement allows for rent increases, and the increase occurs 60 days after written notice is provided and 12 months after the commencement of the tenancy or the last rent increase.	Tenants may be issued a 14-day notice to vacate if rent has not been paid by the due date. They will then have 14 clear days to remedy the breach and continue the tenancy	Rent payment charges are prohibited

Questions for Consideration

15 What features of the regulation of rent payment processes, other payments, and arrears in other jurisdictions should be considered in Victoria?

3.3 Issues with the current regulation of rent and other payments

3.3.1 Rent in advance

Stakeholders have raised the issue of the rent in advance being allowed to exceed one month's rent for a greater proportion of tenancies than was intended when the \$350 exception was legislated.⁴⁸

It is unclear how often, and to what extent, landlords request more than one month's rent in advance and whether it is now an established practice.

Questions for Consideration

16 What issues are raised by the current provisions in the Act limiting the ability to charge more than one month's rent in advance, and is it still relevant in a contemporary rental market?

17 Why might it be important to limit to how much rent can be charged in advance?

18 What is the rationale for providing any exemptions from the maximum amount of rent in advance?

3.3.2 Rental bidding and auctions

Rental bids occur when applicants for a rental property offer more than the advertised rent for a property (or more rent in advance than would be requested by the landlord) in order to secure a lease. A rental auction is when the agent or landlord encourages applicants to bid higher amounts for a property and informs applicants of higher bids so they can make a counteroffer.

The Act does not prohibit rental bids or auctions, although advertising a rental property at a price that is lower than a landlord will accept may contravene the prohibition on misleading or deceptive conduct in the Australian Consumer Law.

An argument in favour of allowing rental bids and auctions is that it establishes the true market rent, or the maximum people are willing to pay in a competitive rental market. However, the lack of transparency in the bidding process, which is controlled by the landlord or agent, creates an information asymmetry between the parties that could allow agents or landlords to falsely 'bid-up' prices. This could have a disproportionate impact on disadvantaged tenants.

In response to evidence of rental auctions in 2007, the REIV implemented guidelines for its members to prevent misleading and deceptive conduct by agents. These guidelines require agents to:

- ensure the initial advertised price is realistic
- refuse any counter-offer once a tenant has been told their application is successful
- use a range of prices when advertising
- ensure the initial advertised price is realistic, and
- not initiate a bidding process for a rental property.

The effectiveness of the REIV guidelines in preventing misleading conduct by agents and landlords is currently unclear. However, the TUV has campaigned for the Act to go further by prohibiting rental bidding and auctions to ensure applicants can rely on the advertised price when seeking a rental property.⁴⁹

⁴⁸ Submissions to Laying the groundwork from Eastern Community Legal Centre, VCOSS, Housing for the Aged Action Group.

⁴⁹ The Tenants Union of Victoria 2015, Response to Laying the Groundwork, page 20.

Questions for Consideration

- 19 What is your experience in either participating in or conducting a rental auction or rental bid process?
- 20 How well is industry self-regulation (such as the REIV practitioner guidelines) addressing rental auctions, and is there a need for any regulation?

3.3.3 Rent increases

A large number of submissions to the *Laying the Groundwork* consultation paper suggested limiting how often landlords can increase rent.⁵⁰

As discussed in the Victorian Government’s issues paper on *Security of tenure*, the frequency of allowable rent increases is particularly critical to the question of how to make tenancies sustainable.⁵¹

The amount and frequency of rent increases can impact on a tenant’s ability to meet the ongoing costs of their accommodation. Rent increases can leave tenants vulnerable to rental stress, especially low-income tenants, or tenants who experience changed financial circumstances or an increase to non-housing living costs.

It is important to balance the interests of landlords and tenants in regulating how rent can be increased. If regulation limits landlords’ ability to seek to make a return on their investment, this may discourage supply of rental properties.

Questions for Consideration

- 21 Have you experienced an excessive rent increase that did not reflect market rents in your area and, if so what was your response?
- 22 How effective is CAV’s rent assessment process in resolving concerns about a rent increase?
- 23 What is an appropriate notice period for a rent increase?
- 24 What is an appropriate frequency for rent increases? Does this change for longer term tenancies?

3.3.4 Late payment of rent

Stakeholders have argued that the 14-day notice period, combined with an absence of penalties for failing to pay rent on time, discourages some tenants from paying rent on time, leading to financial loss for landlords in some instances - for example, as a result of late mortgage payments or dishonoured direct debits and fees. The REIV’s submission to the *Laying the Groundwork* consultation paper proposed that landlords should be able to issue a notice to vacate at seven days and be able to lodge a claim in VCAT for costs such as interest and bank fees and charges.

Conversely, tenants can be in rental arrears because they are experiencing severe financial hardship, and being evicted for rent arrears could lead to homelessness. Allowing these tenants more time to seek financial counselling and access assistance could allow them to retain the tenancy.

Questions for Consideration

- 25 If you have experienced a tenant repeatedly paying their rent late, what is the typical period of time they are in arrears?
- 26 If you are a tenant who has paid their rent late, what is the reason for your late payment, and how late has your payment been?
- 27 What issues might arise from the fact that the late payment of rent (i.e. late by less than 14 days) is not currently a reason to allow a landlord to issue a breach of duty notice?
- 28 What are the arguments for or against allowing a landlord to claim compensation for incurring financial losses because rent has been paid late?

⁵⁰ Including Eastern Community Legal Centre, VCOSS, Housing for the Aged Action Group.

⁵¹ Security of tenure Issues Paper (2015), pages 17-18.

3.3.5 Issues with other payments and charges

Holding deposits

Holding deposits are intended as a payment (usually as one month's rent in advance) from a tenant to a landlord to secure a property that a prospective tenant has applied for and been approved for, but for which the tenant has not yet signed a rental agreement. If the tenant does not sign an agreement within 14 days, the deposit must be refunded.

The TUV has raised concerns that the Act is unclear about the purpose and operation of holding deposits.

In contrast, stakeholders in the property management industry have suggested holding deposits should be used as an application deposit to discourage insincere applications (where tenants have applied for many properties). However, in a tight rental market tenants may need to apply for multiple properties to increase their chance of securing a rental. Furthermore, application deposits could increase barriers for low-income tenants to secure rental housing.

Payment fees

Developments in modern banking and payment processing mean that rent is mostly paid by electronic funds transfers, direct debits or rent payment cards, whereas cheques and cash were more common in 1997.

Agents, like other businesses, are increasingly using external (third-party) service providers to access administrative systems that, due to cost, are normally only available to larger organisations. The large volume of residential rent payments that must be received, processed and banked each month, has created a market for businesses that specialise in rent payment services. These are sometimes called third-party rent collectors, rent payment facilities, rent payment systems, and rent payment schemes, for example.

Some third-party rent collectors are associated with financial institutions, while others appear to be independent.

The experience in Victoria has been that third-party rent collectors commonly enter into contractual arrangements with a real estate agent or property manager to forward funds to their trust accounts. Additionally, they contract with individual tenants to obtain consent for payments to be made.

Table 1: Examples of third-party ‘rent collectors’

Type	Examples	Comments
Associated with a financial institution	<ul style="list-style-type: none"> DEFT (Macquarie Bank) NAB RentCard (National Australia Bank) 	These banks offer rent payment facilities for real estate agencies that are their customers. Tenants are required to register to authorise direct debts, regardless of which financial institution they use. ⁵²
Other	<ul style="list-style-type: none"> RentMate, ‘powered by StrataPay’ (office address in QLD) RentPay (office address in NSW) Rental Rewards, ‘powered by PropertyPay’ (office address in NSW) iPayRent, ‘powered by IP Payments’ 	<p>Note that StrataPay Pty Ltd holds an Australian Financial Services Licence, permitting it to:</p> <ul style="list-style-type: none"> deal in the financial services business of non-cash payment products provide general financial product advice for deposit or payment products limited to non-cash payment products, and apply for, acquire, vary or dispose of a financial product on behalf of another person in respect of deposit and payment products, limited to non-cash payment products, to retail clients.⁵³

Benefits and cost savings for agents, which are typically small and medium-sized businesses, may include:

- administrative and staffing efficiencies
- reduced account-keeping and transaction fees
- the potential for reduced rental arrears (for example, through the use of SMS/email alerts to tenants, automatic payments and access to credit payment options), and
- improved cash flow, reporting, and information systems (Rental Rewards also claims enhanced security as a result of agents not releasing their trust account bank details to all tenants on their rent-roll).

There are also reported benefits for tenants, including:

- increased payment options (internet, phone, automatic debits and credits)
- rental alerts to avoid late payment (which may also improve an individual’s credit rating)
- the opportunity to earn frequent flyer or credit card reward points, and
- some costs savings arising from tenants not being required to pay for bank cheques, bank dishonour fees for credit card payments, or to attend an agent’s office to pay rent.

The voluntary ‘Centrepay’ service operated by the Commonwealth Department of Human Services (DHS) similarly helps tenants by automatically deducting bills, including private rent, from their Centrelink payments.

⁵² For example, the DEFT Payment Systems Registration / Amendment Form, accessed at: www.macquarie.com.au/dafiles/Internet/mgl/au/business/documents/forms/J7135_DEFT_DDR_form_12_04_26_final.pdf
⁵³ www.rentmate.com.au/plugins/p13_download_manager/getfile4750.pdf?p13_fileid=2&p13_versionid=2&in_admin=1.

As third-party rent collectors use automated payment systems to generate efficiencies, rent is rarely paid by cheque or in cash. While the Act does not allow tenants to be charged for the establishment or use of a direct debit facility to pay rent (section 51), third-party rent collectors (excluding Centrepay) often charge tenants for the use of their service to pay rent on a monthly basis, as well as for dishonouring a direct debit.

The Act does not require tenants to use a third-party service to pay rent, and the terms and conditions of some collectors accordingly do not 'oblige the tenant to use the account to pay rent or any other amount'.⁵⁴

The Act provides that rent under a tenancy agreement is payable in the manner (if any) specified in the agreement. In practice, tenants may not have a choice about whether to use a third-party collector if that is how their landlord or agent chooses to manage rental payments, particularly as there is no requirement for tenants to be offered particular options for rent payment, such as phone, BPay and POSTbillpay. This has been noted by the TUV, which has previously advocated for at least one fee free method of paying rent to be prescribed.

Legal precedent appears to be at odds with current industry practice. In several cases⁵⁵, VCAT has upheld the position that fees charged by a third-party rent collector for the direct debit of rent are prohibited and ordered that the tenant be refunded any fees charged.

Questions for Consideration

- 29 How common are holding deposits? In what way do they uphold the rights of either landlords or tenants?
- 30 What are your views about a possible requirement that at least one fee-free method of paying rent be provided?
- 31 Why are tenants currently required to pay the transaction costs of using third-party rent collectors?
- 32 What critical issues are there (if any) relating to rent and other payments that have not been discussed?

⁵⁴ For example, clause 2.2 of the Tenant Terms and Conditions with Rental Rewards, accessed at www.rentalrewards.com.au/public/info.html?d=nr_au&name=terms_conditions.

⁵⁵ Palmer v Hutchinson (Residential Tenancies) [2013] VCAT 873 (29 May 2013).

4 Conclusion

Stakeholder submissions to this issues paper will inform the development of options in 2016 to modernise the Act with respect to the administration of bonds, rent and other payments in residential tenancy settings.

The aims of this Review are to design a contemporary regulatory framework that effectively balances the needs of the parties to a residential tenancy, and also complements broader Victorian Government initiatives to improve access to safe and secure housing.

While the outcomes of this Review may not directly affect rental affordability, a number of other government reviews are underway that will affect housing affordability more broadly, including rental affordability.

However, the Act regulates maximum bonds, rent in advance, how often rent can be increased, and sets out which parties are responsible for fees, charges and the ongoing costs of a tenancy, such as utilities expenses. As such, the Act influences the up-front costs of entering a tenancy agreement and the costs of maintaining and ending a tenancy agreement, which influences affordability.

In considering options for responding to any issues identified with the relevant provisions of the Act, the challenge will be to ensure that these options do not have unintended consequences or negative impacts on the rental market and affordability.