

# **Inquiry into the rental and housing affordability crisis in Victoria**

**Submission by:**  
**Real Estate Institute of Victoria**



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## Introduction

Established in 1936, the Real Estate Institute of Victoria Ltd (**REIV**) is the peak representative body for real estate professionals across metropolitan and regional Victoria.

This submission to the Legislative Council Legal and Social Issues Committee's Inquiry into the rental and housing affordability crisis in Victoria (**Inquiry**) outlines the REIV's position on this important issue.

There are a large number of factors contributing to the low availability and high cost of rental properties in Victoria, and they all ultimately relate to supply and demand.

The single best solution for the state's current so-called 'rental crisis' is to increase housing supply. Now.

**The ecosystem that the Victorian rental market currently operates in, has led to a shortage of available rental properties and increased competition. To address this, there is a need to encourage more investment and increase the supply of available rental homes to meet rising rental demand.**

The REIV understands that a fundamental error being made in efforts to resolve this issue is, the disproportionate focus on just one rental market stakeholder, the renter. Whereas, the entire rental ecosystem must be considered if a solution is to be identified for now and future generations.

While it's essential to ensure that tenants are not unfairly burdened with rising rental costs, it's equally important to provide a fair return on investment for the owners who play a critical role in providing much-needed rental properties. By providing incentives to invest in rental properties in Victoria, the Victorian Government can help address the current rental shortage by stimulating supply.

This submission demonstrates the complexity of the residential accommodation system, and that a seemingly positive action in one part of the system can have a negative impact on other parts of the system.

If the right to adequate shelter is a human right, then governments at all levels need to consider the impact of all their decisions on the supply of, and access to, adequate residential accommodation.

## About the REIV

REIV members specialise in a range of real estate areas, including residential, rural, commercial and industrial leasing and sales, auctions, business broking, buyers' agency, property management, owners' corporations, and valuations. The REIV represents more than 80 per cent of real estate agencies in Victoria.

Real estate businesses employ more than 15,000 people in Victoria in a market that handles around \$76 billion in transactions annually, totalling 20 per cent of Gross State Product.

More than 72 per cent of all rental properties are rented through a real estate agent\*.

The property industry's contribution to the Victorian economy is significant; larger than the mining, agriculture, and manufacturing sectors combined.

Property owners and their tenants directly contribute billions of dollars in stamp duty, land tax and other State Government charges, accounting for more than 40 per cent of Victorian Government revenue.

The REIV strives to work with policy makers collaboratively, to ensure that informed regulatory policy is developed so that the sector has certainty and fairness. This enables a level playing field for buyers and sellers, renters and rental providers, agents, property managers and valuers, and marketing and media.

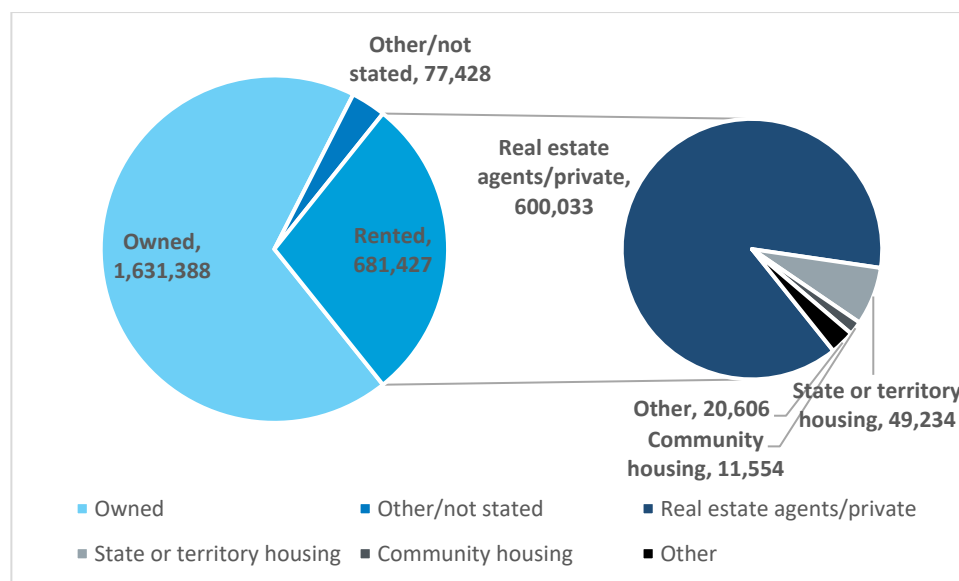
\* Source: ABS Census 2021

## A SNAPSHOT OF THE VICTORIAN RENTAL MARKET

681,419 occupied private dwellings in Victoria were rented in 2021 accounting for 28.5 per cent of all dwellings – which is a 55.2 per cent increase from 439,000 rental homes in 2006, almost double the growth rate of owner-occupied dwellings during the same period.

	2021	2016	2011	2006	15 Years Change
Owned	1,631,388	1,429,187	1,362,949	1,276,449	27.8%
Rented	681,419	607,354	515,585	439,028	55.2%

	2021	2016	2011	2006
<b>Owned</b>	<b>68.3%</b>	<b>67.6%</b>	<b>70.1%</b>	<b>71.6%</b>
<b>Rented</b>	<b>28.5%</b>	<b>28.7%</b>	<b>26.5%</b>	<b>24.6%</b>
<b>Real estate agent or private</b>	<b>88.1%</b>	<b>85.5%</b>	<b>82.3%</b>	<b>79.7%</b>
State of territory housing	7.2%	8.5%	10.6%	12.4%
Community housing	1.7%	1.6%	1.7%	1.7%
Other	3.0%	4.3%	5.4%	6.2%
<b>Other/not stated</b>	<b>3.2%</b>	<b>3.6%</b>	<b>3.4%</b>	<b>3.7%</b>



Source: ABS Census 2006-2021

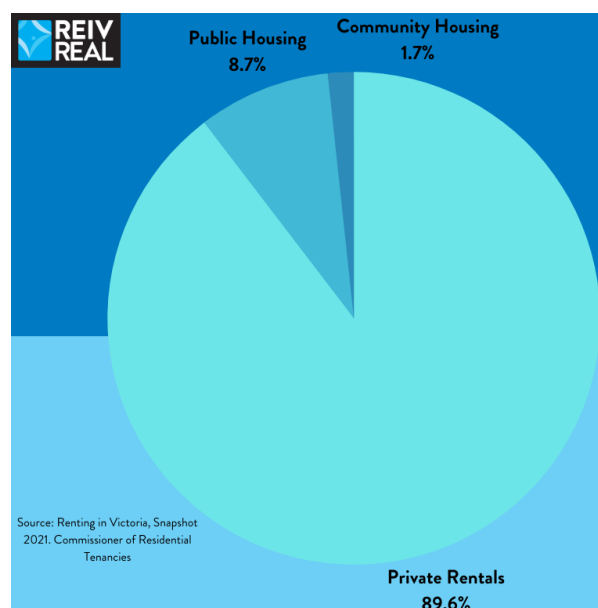
## Rental supply

Over 88 per cent of renters rent from private rental providers\*.

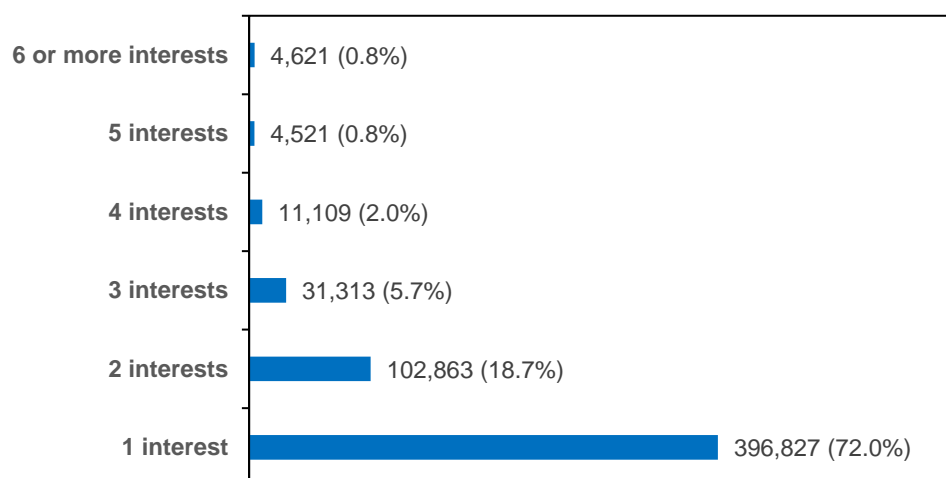
72.6 per cent of rental properties were rented through a real estate agent\*.

According to the Australian Tax Office (ATO) 72 per cent of private rental providers in Victoria only had one investment property. #

Across Australia 68.6 per cent of single-property landlords earn an annual income below \$100,001. #



## Landlords by number of rental property interests - Victoria



#Source: ATO Taxation statistics 2020–21

\*Source: ABS Census 2006-2021

## New Lettings

The number of new lettings provides an indicator of the overall availability of rental housing for a specific period. A new letting can result from two main sources: turnover in existing rental housing or new additions to the stock of rental housing.

Across the state in the 2023 March quarter, the total number of new lettings was 61,150, a decrease of 14.7 per cent on the same quarter of 2022. In Metropolitan Melbourne, new lettings decreased by 16.7 per cent on the same quarter of last year and, in regional Victoria, they decreased by 1.8 per cent. Metropolitan Melbourne accounted for 85.1 per cent of all new lettings in Victoria.

	Mar-23	Mar-22	Change
Metropolitan Melbourne	52,011	62,402	-16.7%
Regional Victoria	9,139	9,302	-1.8%
Victoria	61,150	71,704	-14.7%

Source: Homes Victoria Rental Report – March quarter 2023

## Who is renting?

It should not be assumed there is a progression from renting to first home ownership and that people never rent again once they have made their first home purchase. People often rent prior to home ownership, but they also rent in other periods of their lives, including due to:

- employment relocation;
- relationship breakdown;
- natural disasters; and
- home renovation or construction.

Some people may choose to first purchase an investment property prior to purchasing their first home.

## State of the Market – Rental

Source: REA Group, realestate.com.au

### ▪ Rental Listings

Over recent years there has been a significant decline in the number of properties available for rent. Over the 12-month period ending May 2023, there was a 4.7 per cent fall in new rental listings and a 17.9 per cent fall in total rental listings. In May 2023, the number of new listings of properties to rent in Victoria was 14.4 per cent less than in March 2020 at the start of the pandemic. The total number of properties available for rent across Victoria in May 2023 was 21.8 per cent less than March 2020, with a 24.1 per cent falls in Melbourne and a 10.6 fall in in regional Victoria.

The reduction in stock available for rent reflects the tight rental market conditions and is making it harder for renters to find somewhere to live.

### ▪ Enquiry per listing

REA Group defines enquiry as any of these four actions, phoning an agent, emailing an agent, SMSing an agent or saving an inspection time via the platform.

In May 2023, the number of enquiries per rental listing in Melbourne was 41.2 per cent higher than in May 2022 and 140 per cent higher when compared to March 2020.

The uplift in enquiry per listing reflects the shrinking supply of rental stock as well as the uplift in demand for rentals.

### ▪ Days on site

As at May 2023, the typical property for rent in Melbourne was staying on realestate.com.au for 20 days, down from 23 days a year ago. It is also evident that inner city areas are where rental pressures are greatest with these markets seeing the shortest rental days on site and the largest declines in days on site over the past year.

### ▪ Investor activity

Realestate.com.au is recording a historically high number of new listings being advertised for sale that have been identified as likely to be rental properties.

In May 2023, 51.8 per cent of new listings in Melbourne were for rental properties, up from 37.9 per cent a year earlier and in regional Victoria the share has risen from 29.2 per cent a year ago to 49.7 per cent currently.

Melbourne-Inner, the largest rental market in the country in terms of listings, is seeing the greatest share of new for sale listings of rental properties, rising significantly from a year ago. In May 2023, the share of sales of rental properties in Melbourne was 30.4 per cent vs 25.2 per cent a year earlier and in regional Victoria it was 20.2 per cent vs 16.1 per cent a year earlier.

### What does this mean for Victorian renters?

Almost 90 per cent of renters are renting from private residential providers.

Data and feedback demonstrates that mum and dad property investors are re-assessing the value of investing in rental property. This is highly likely to lead to an unprecedented shortage of supply in the rental market.

The REIV submission will focus on supporting and understanding the issues impacting the supply of housing to 90 per cent of the Victorian renting population.



## UNDERSTANDING THE PRIVATE RENTAL MARKET

No amount of rental regulations and enforcements will move the needle, in fact they will only drive the mum and dad investors who currently offer housing (rental providers) out of the market and dissuade new investors from considering property as an investment option.

### The need for a reasonable reward for the provision of a service

Residential rental providers are service providers, providing an accommodation service for financial gain in the same way as other people provide goods or services both essential and discretionary. If a reasonable return is not made for the investment in the form of capital, expenses, time, and stress involved in providing such a service the actions of rental providers will include one or more of the following:

- Increasing rent
- Selling existing rental stock
- Using the properties for other purposes such as short-stay accommodation
- Leaving properties vacant
- Lack of further investment stagnating supply

If the provision of rental accommodation is no longer a viable enterprise, current and potential rental providers will find other options to obtain income. These types of decisions are not peculiar to the provision of accommodation services, they occur in all parts of the economy. In the case of rental accommodation, they will lead to a reduction in supply and an increase in cost.

### Increasing cost of maintenance and diminishing rental yield

The expenses incurred by rental providers in the provision of services has increased dramatically, thereby necessitating rent increases to avoid the provision of rental accommodation becoming an unviable proposition. Significant among these expenses are:

- Modification of premises required as part of the raft of changes to the *Residential Tenancies Act 1997* (Vic) (**RTA**) in recent years. Some of these requirements go beyond what is required in owner-occupied residential properties and properties that are being sold.
- Inspection regimes required under the RTA and prescribed rental agreement. As with the previous point, these inspection regimes go beyond what is required in owner-occupied properties.
- The cost of materials and services for the maintenance of premises has risen significantly because of labour shortages, supply chain challenges and other costs businesses incur.

- Increased fees negotiated by real estate agents to cover the additional expenses they are incurring due to the additional ongoing property management workload created by the raft of changes to the RTA.
- Increased interest payments for those rental providers who still have borrowings in order to provide a service.

These expenses come out of current cashflow and cannot be met by capital gain which may not be realised for decades. They reduce the viability of providing residential rental accommodation. Decisions by rental providers in response to the reduced net return reduce availability of rental properties and increase the rent being offered and sought for those remaining.

While the concept of minimum rental standards and inspection regimes is reasonable, it is not reasonable that these standards are higher than those applicable and enforceable in owner occupied homes. The descriptions of some standards are unnecessarily vague, ambiguous, or complex.

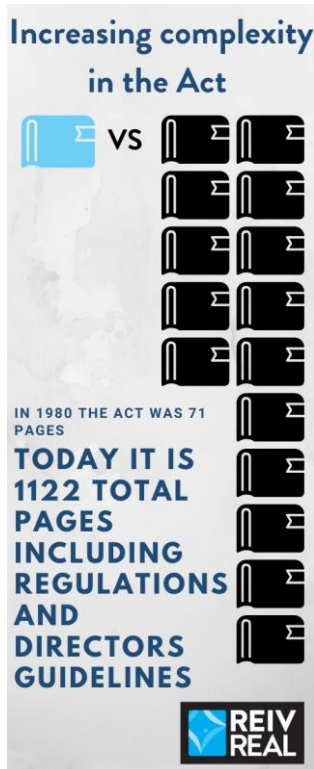
The rental system has become excessively complex and uncertain. The RTA is enormous, and in addition there are copious regulations, Director's guidelines, and standards, much of which has only been in effect since 29 March 2021.

### **Regulatory complexity has increased the cost of property management**

A vast number of changes to residential tenancies came into effect because of amendments to the RTA in 2018. The bulk of these changes were effective from 29 March 2021 and the details of many were contained in Regulations released almost on the eve of the effective date. It has become apparent that the changes are not operating efficiently and perhaps not as intended.

The complexity and inefficiency of the changes has become a significant contributing factor to:

- A reduction in the supply of rental premises as rental providers sell properties or withdraw them from the longer-term rental market, due to increased costs, complexity and lack of control over their investment
- A huge backlog of residential tenancy cases at the Victorian Civil and Administrative Tribunal (**VCAT**)
- An exodus of property managers and major difficulty in finding and training people to take up residential property management roles.



The RTA has become enormous and complex. In 1980, it was 71 pages and now it is 816 pages and in addition there are 267 pages of Regulations and 39 pages of Director's Guidelines. In just the last five years the RTA has almost doubled in size and in the same period Regulations have increased to be almost nine times their size.

Consequences include rental providers who previously managed their own property now having to incur the expense of engaging an agent, property managers unable to manage the same number of properties as previously, property managers leaving the industry, a longer period for property managers to acquire competency, difficulty recruiting property managers, and a contribution to the delay at VCAT. Many agents are having to negotiate new fee structures with clients, this is another addition to their workload as they cannot simply notify rental providers of the new fees, the *Estate Agents Act 1980* (Vic) requires that fee changes be negotiated.

The REIV prepared a paper to demonstrate opportunities for enhancement and suggests how the enhancements might be achieved. The recommendations listed aim to simplify the RTA, remove ambiguity and reinstate some balance between rental provider and renter obligations. Refer Appendix 1.

### Impact on self-funded retirees

Investors often choose rental property as an investment option in order to generate an income in retirement. A reduction in the net return means a reduction in retirement income for those who in good faith planned for the future, avoiding dependence on government to fund their retirement. These people have made the prudent decision to self-fund their retirement by saving during their working lives and planning for a secure and independent retirement.

When cost of living increases, they also increase for people earning income by providing residential rental accommodation. When the cost of maintaining the asset increases and the return on the investment falls, these retirees will be forced to dispose of rental properties, and given the increasing unattractiveness of being a rental provider it is likely the properties will no longer be available for renters.

## Over reliance on property taxes

The property sector taxation regime in Victoria provides almost half of the State Government's revenue. This has created an over reliance on one sector to fund the lion's share of all state spending.

Property taxes touch all Victorians – renters, first home buyers, investors, retirees, families – everyone who needs a place to live and/or work. Listed below are the specific situations impacting rental supply.

- **The myth of “negative gearing”**

“Negative gearing” is trotted out on a regular basis by the media, renter advocates and some politicians, as though it is financial gift to rental providers. Rather than being a gift, it is just the case that if a person loses money in one enterprise, they can deduct that loss from income they have from another source. Their net after tax income will still be lower than if they did not make the loss.

**For example:**

With no ownership of a rental property

Taxable income from salary	\$100,000
No income or loss from elsewhere	-
Net taxable income	\$100,000
Less tax on net taxable income	\$22,967
Net income	\$77,033

With loss from a rental property

Taxable income from salary	\$100,000
Less loss from rental property	\$1,000
Net taxable income	\$99,000
Less tax on net taxable income	\$22,642
Net income	\$76,358

With loss from rental property not deducted from other taxable income

Taxable income from salary	\$100,000
Net taxable income	\$100,000
Less tax in net taxable income	\$22,967
After tax income before accounting for loss	\$77,033
Less loss from rental	\$1,000
Net income	\$76,033

Hence by owning a rental property which makes a loss of \$1,000 the rental provider is \$675 worse off. If the loss from the rental property could not be deducted from other income, they would be \$1,000 worse off. Either way a loss is a loss, it is not a

gain as suggested by many. The same would apply if the person had income from a wage or profitable business but had another business running at a loss.

Running a residential rental business or any other form of business at a loss on a continuing basis makes no financial sense. Rental providers may be able to cope with some loss in early ownership, but soon need to move out of that state by either making a profit or selling the property. The elimination of the ability to deduct a loss from other income when determining a tax liability will make the provision of residential rental accommodation a less viable option and will reduce supply of rental accommodation.

- **Proposed tax increase will result in further reduction in net return**

The State Government's proposed increase in Land Tax will further reduce the net return from a rental property, making it less viable to be a residential rental provider. The supply of residential rental stock will reduce and rents increase.

According to Australian Tax Office data 2020/21, more than 70 per cent of Victorian property investors owned only one rental property, with 43 per cent of that group earning under \$100,000 p.a.

This announcement will ultimately drive mum and dad investors out of the market as the cost of maintaining a rental property outweighs futureproofing family finances. The biggest impact will be felt by people with smaller holdings as the tax-free threshold drops from \$300,000 to just \$50,000, disproportionately impacting everyday Victorians investing to secure their future.

A recent REIV Member survey conducted in June 2023 found that nearly 90 per cent of real estate agents in Victoria have had an increase in contact from landlords (residential rental providers) who are looking to recover increased costs as a result of the Victorian Government's new and increased land tax on investment properties.

Seven in 10 agents reported an increase in contact from rental providers looking to sell their properties, suggesting the state will see an imminent reduction of rental properties as investors leave the sector.

Larger land taxes are a disincentive for investors which will ultimately drive rental prices upwards as supply fails to catch up to demand.

- **High cost of becoming a rental provider**

In order to become a residential rental provider, high cost is incurred in the form of stamp duty. This combined with low net return from rent and the deferred benefit from any capital gain lessen the appeal of residential rental properties relative to other investment options such as shares. The outcome is a lower supply of rental properties.

House price bracket creep has created an excessive burden upon buyers. Stamp duty for the median priced house, currently sits at approximately 48.9 per cent of average income.

Another little-known housing fact is that liquidity has fallen while stamp duties as a proportion of median house prices and average earning has risen. Liquidity is defined as the proportion of houses that are on the market as a proportion of housing stock. SQM Research (2021) found in 2012, 3.2 per cent of Melbourne's detached housing stock was available for sale. In 2021, this proportion fell to 1.5 per cent. When considering all housing stock, liquidity fell from 3.4 per cent in 2012 to 2.1 per cent in 2021. This has a direct impact on house prices because of supply and demand influences. Over the period 2011-2021, stamp duty as a proportion of median house price rose from 3.2 per cent to 4.2 per cent. As a proportion of annual average earning in Melbourne, stamp duty currently sits at 48.9 per cent. This is up from around 30 per cent some nine years ago. The impact of stamp duty on households at a time of financial vulnerability is obvious.

### Planning limitations impeding supply

- **Barriers to “Granny Flats”**

Planning laws in Victoria impose severe limitations on the development of “Granny Flats” by deeming them “Dependent Person Units” which can only be occupied by a relative of the owner and can only be occupied by one person. They cannot be built for the purposes of renting to non-relatives and once they are no longer needed by the dependent relative, they must be removed. This reduces accommodation options for renters in two ways.

Firstly, by “Granny Flats” not being available for renting and secondly, a family with a “granny” to be accommodated on the same site as the home they are renting cannot find properties with these facilities. This a waste of the resources in the form of under-utilised backyards and the removal of those units that have been constructed but are no longer in use by a dependent relative.

#### Granny flats built in 2018

State	Number built
NSW	6065
Queensland	2365
South Australia	910
Western Australia	638
Victoria	166

*Source: Housing Industry Association*

- **Section 173 agreements on student housing development**

These agreements, imposed as a condition for the granting of a planning application, increase the costs associated with this type of residential accommodation and severely limit alternative uses. The outcome is higher cost accommodation and less supply than might otherwise be the case.

### Inadequate protections and support for rental providers

Some rental properties have been rendered uninhabitable due to damage caused by renters. Damage resulting from drug manufacture or consumption is all too common. The chances of a rental provider recovering any more than the bond from the offending renter is slim and they are likely to dispose of the property as they are disillusioned with the residential rental provider experience. The result of this type of damage is that rental properties are removed from the market either temporarily or permanently.

Government agencies supporting and regulating the rental market are all mandated to support renter rights which results in rental providers often having to take matters to court rather than resolving them at Tribunal levels. This results in a much higher time and money cost to the rental provider. Some of the major renter support sources available are listed below. No such resource is available to rental providers.

- <https://www.rentingcommissioner.vic.gov.au/the-commissioner>
- <https://www.housing.vic.gov.au/help-renting>
- <https://www.vic.gov.au/renting-victoria>

Between the 2020-21 and 2021-22 reporting periods from the VCAT Residential Tenancies Division, the number of pending cases increased by 37 per cent despite an overall drop of 11 per cent in initiated cases for the year. Residential Tenancies remains an area with a very high caseload, representing 58 per cent of VCAT's volume of applications for the year. Median duration for cases grew by 40 per cent to 7 weeks, largely attributable to finalising cases that were delayed by the backlog.

Caseflow	2018-19	2019-20	2020-21	2021-22	Variance
Initiations	52,412	49,022	44,685	39,587	-11%
Finalisations	52,171	47,650	34,132	33,711	-1%
Pending	2,467	5,199	16,419	22,462	37%
Clearance rate	100%	97%	76%	85%	11%

Timeliness of finalised cases (weeks)	2018-19	2019-20	2020-21	2021-22	Variance
Median	3	4	5	7	40%

Source: VCAT Annual Report 2021-22



## Government policy and messaging

Residential, commercial and industrial property owners and their tenants directly contribute billions of dollars in stamp duty, land tax and other state government charges, accounting for more than 40 per cent of government revenue.

As evident in the latest State budget, governments repeatedly turn to property owners to fund any revenue gaps. This has a significant bearing on property ownership.

- **Threat of rent caps or freezes**

Residential rental providers have been threatened in recent times with rent freezes or rent caps. It has been proven internationally that rent caps have an enormous impact on rental supply, diminishing it substantially. The current legislation already details a process for any proposed rent increase.

### **Background on existing legislation concerning rent increases**

RTA - section 44 – Rent increases

The RTA sets out timelines available for residential rent increases:

- fixed term tenancies and/or periodic tenancies that started before 19 June 2019, the rent can be increased every six months.
- fixed term tenancies and/or periodic tenancies that started on or after 19 June 2019, the rent can be increased every 12 months.

A renter has four options upon receipt of a rent increase proposal notice:

- accept the rent increase.
- negotiate a lower rental amount with the rental provider.
- request a rent assessment from Consumer Affairs Victoria
- opt to terminate the tenancy and vacate the premises by issuing a relevant notice.

Rental providers must inform renters of a proposed rent increase 60 days in advance with the following information needed to be communicated to the renter:

- The current rent (per week, or fortnight, or month)
- The new rent (per week, or fortnight, or month).
- The amount of the rent increase (per week, or fortnight, or month).
- The commencement date of the new rent.
- How the new rent amount was calculated/determined: CPI, a fixed % amount, comparable market analysis, Melbourne Rent Index (MRI), Regional Rent Index (RRI), fixed dollar amount.
- Process available to seek a rent assessment if they think new rent is excessive.



A standard/prescribed form commonly known as "Notice of proposed rent increase to renter of rented premises" is most often used via CAV and VCAT Online platform.

### Evidence and studies from international experiences

- [NATIONAL BUREAU OF ECONOMIC RESEARCH, Cambridge](#): "rent control reduced rental housing supply by 15% ,causing a 5.1 % city-wide rent increase" in San Francisco.
- [BBC Stockholm](#): "... in Stockholm, the average waiting time for a rent-controlled property is now nine years, says the city's housing agency Bostadsförmedlingen, up from around five years a decade ago.

This wait-time doubles in Stockholm's most attractive inner-city neighbourhoods."

- An extract from research published by UNSW Sydney on 22 June 2023

*"While the rent freeze policy is designed to alleviate financial stress on renters, crucial questions remain about the impact on landlords.*

*With interest rates on the rise and mortgage repayments increasing, the policy could have serious implications for homeowners.*

*Dr Peter Swan, a Professor in the School of Banking & Finance at UNSW Business School, said the rental crisis would become "far worse for tenants and landlords" if the policy came into force.*

*"While it is true that tenants who are not evicted may gain temporarily, tenants as a whole lose as rental accommodation is withdrawn, fewer new places are provided, and maintenance of rent-controlled housing deteriorates.*

*"Rental rates rise due to restricted supply, while landlords with sitting tenants suffer. Eventually, a black market evolves with 'protected' tenants unable to move and with the rampant use of sizeable 'key money' paid by prospective new tenants.*

*"The latest version of the Residential Tenancies Act 1997 in the ACT reveals that pre-existing rent control in Canberra has doubled in its severity in 2019. It now limits rent increases to no more than 10 per cent above the increase in the rent component of the ACT Consumer Price Index (CPI). It was previously 20 per cent.*

*“As a result, it has left some landlords no option but to sell their properties, leaving evicted tenants back on a tighter rental market.”*

- Rent caps work against the rhythm and spirit of market dynamics.
- Rent caps deal with the “symptom” not the problem of housing supply.
- Rent caps will see rental providers exit from the property investment sector.
- Rent caps will make short stay rental options more attractive to existing rental providers.
- Rent caps will make alternative asset classes such as, cash, share market & commercial property a more attractive alternative.
- Rent caps will provide no offset for rental providers in rising costs of mortgages, maintenance and service provider fees, or regulatory service fees (smoke alarm, gas & electric compliance) etc.

- **Negative messaging**

Change the language, rental providers are portrayed as “greedy landlords” rather than an essential service provider in the housing market.

Cease perpetuating the myth that “negative gearing” is a gift for rental providers, rather that the truth that as with other taxpayer’s costs incurred generating income are deducted from gross income, including from other sources when determining taxable income.

Supportive and inclusive terminology will assist all stakeholders.

### **Impact of short -stay accommodation**

There is consumer demand for short-stay self-contained accommodation. The demand may be for a range of reasons:

- holidays
- short term interstate or international job placements
- a gap between the settlement on a sale and settlement on a purchase
- renovation of regular rental or owner-occupied accommodation
- people from regional areas with family undergoing medical treatment in Melbourne

All these are legitimate reasons for seeking this type of accommodation and they are not able to be satisfied under the RTA.

In some cases, property owners may decide to use the short-stay accommodation market to avoid the financial burden of complying with the RTA and achieve a higher net financial return.

It is important to consider ways of attracting these properties back into the long term rental market as opposed to finding ways of under cutting new markets.

## OPTIONS TO ADDRESS INSECURITY, AVAILABILITY AND AFFORDABILITY ISSUES FACING VICTORIAN RENTERS

### “Safety-net” housing

Private rental providers do not have the financial resources to provide the “safety net” housing options that should be funded through government initiatives. The lack of social housing is well documented with ongoing policy decisions repeatedly putting the onus on mum & dad investors to fill the gap with low rent accommodation.

There is no incentive for residential rental providers to be the providers of a safety net, and if there is any government action to compel them to provide a safety net the supply of rental properties will decline further relative to demand. Just as the safety net for income security comes from taxation revenue via government the same needs to happen in the case of a rental safety net.

If private rental providers must play a role in this, there must be adequate support measures in place to ensure that there is a reasonable return on investment. Government needs to provide and maintain a diverse range of accommodation as a safety net for those unlikely to obtain accommodation in the private market. This should include houses, units, apartments, rooming house and caravan and mobile home parks.

### Property tax incentives

1. Short stay accommodation has been widely discussed as one of the reasons for declining rental stock. The REIV recommends using land tax rebates to incentivize owners to return their properties to the long-term rental market.

For example, where a property is continually available for the long-term rental market for a period of say, 5 years, the property owner could claim a land tax rebate retrospectively. Short stay accommodation can often be an attractive alternative due to the return on investment and lower maintenance costs. Land tax rebates could help bridge the gap.

2. Incentivise “new property investors” into the market – this could be in the form of a stamp duty concession conditional on maintaining the property in the rental pool for a definitive number of years.
3. Incentivise existing residential rental providers to remain in the market with a land tax off-set/exemption to owners on the basis that a commitment to maintain the property in the rental pool for a definitive number of years.

4. Increase resources to VCAT to clear the backlog of tenancy disputes which may facilitate return of stranded properties back into the rental pool.

### Supporting first home buyers

Independent data suggests only 18.5 per cent of properties for sale in Melbourne fall under the \$600,000 threshold for stamp duty exemption for first home buyers. Additionally, the current median house price in Melbourne is \$975,000, this is \$275,000 above the threshold for stamp duty exemption. The prevailing stamp duty thresholds are not in line with market reality.

First home buyer stamp duty concessions must take into account current market conditions if they are to truly support new purchasers.

### Simplify the Residential Tenancies Act

Make the provision and management of residential rental accommodation less daunting by dividing the RTA into four standalone Acts with associated Regulations:

- Rental Houses, Units and Apartments Act
- Rooming House and Boarding Act
- Caravan Parks and Moveable Dwelling Act
- Specialist Disability Accommodation Act

Remove uncertain terminology and the habit of referring the reader to another part of the document which may in turn refer to another document.

Encourage the provision of rental accommodation by reducing uncertainty created by the RTA. As well as benefitting from increased supply, renters will also suffer less uncertainty and VCAT decision making will be simpler and hopefully less variable. A series of recommendations have been included in Appendix 1.

### Remove limitations on “Granny Flats”

Remove the planning restrictions which prevent “granny flats” being occupied by someone other than a family member and which require their removal once no longer occupied by a family member. Allow granny flats to be let with or separately from the principal residence on the site.

### Increase housing diversity

Changing planning restrictions to increase the diversity of housing types across a greater area in each municipality.

[The Productivity Commission has supported such planning reform](#) . *"The next Agreement should explicitly recognise the importance of housing supply as a solution to housing affordability and include a requirement for States and Territories to*

*commit to targets for new housing supply in major urban areas. State and Territory Governments should work with local Governments to meet these targets." Pg 23*

### Remove pension penalties

Encourage multigenerational occupancy, or the move to more appropriate accommodation, by removing the pension penalties from pensioners who liberate capital from homeownership to make such a move. This will increase the supply of stock by increasing the number of people per property and freeing some properties for redevelopment.

## CONCLUSION

Residential accommodation is a very complex system where a well-intended action in one part of the system may have a negative consequence in another part of the system.

- Renters experience a shortage of accommodation as demand exceeds supply.
- Renters finding rent consuming a greater portion of their income.
- Rental providers experience increased costs in the provision of residential rental accommodation.
- Property owners, including residential rental providers, experience increased costs in acquiring, owning and transacting property.
- Property owners experience increased capital growth in some types of properties.

There is no quick simple solution to overcome the crisis in residential accommodation, instead a multitude of changes are needed. Many of the suggested changes are long term, systemic and cultural, but that is not a reason to reject them. The need for residential accommodation will always exist so needs to remain in focus for government, business, and the community.

Governments at local, state, and federal levels all have significant roles to play, and on an ongoing basis need to consider the impact on housing of many of their policy decisions.

Advocates, the media, business owners, property owners, and renters are also part of the solution. Their actions and the messages they convey impact other parts of the system and whether the housing crisis is seen as insurmountable or as a challenge which can be overcome, just as housing crises have been overcome in the past through widespread community creativity, flexibility, effort, and ingenuity.



# APPENDIX 1

## Residential Tenancies Act

130 Reforms came into effect on 29 March 2021. A series of issues have since impeded efficient functioning of the Victorian residential rental market.

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### OPPORTUNITIES TO IMPROVE THE LEGISLATION

REIV proposes changes aimed to simplify the Act, remove ambiguity and reinstate some balance between rental provider and renter obligations.

AUTHOR: Real Estate Institute of Victoria

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REIV

## Introduction

A vast number of changes to residential tenancies came into effect because of amendments to the Act in 2018. The bulk were effective from 29<sup>th</sup> March 2021 and the details of many was contained in Regulations released almost on the eve of the effective date.

It has become apparent that the changes are not operating efficiently and perhaps not as intended. The complexity and inefficiency of the changes has become a significant contributing factor to:

- A reduction in the supply of rental premises as rental providers sell properties or withdraw them from the longer term rental market, due to increased costs, complexity and lack of control over their investment\*.
- A huge backlog of residential tenancy cases at VCAT<sup>#</sup>
- An exodus of property managers and major difficulty in finding and training people to take up residential property management roles\*.

While still respecting the government's intent and recognising that some opportunities for improvement were not addressed, this paper has been prepared to demonstrate opportunities for enhancement and suggests how the enhancements might be achieved.

[The recommendations listed here aim to simplify the Act, remove ambiguity and reinstate some balance between rental provider and renter obligations.](#)

This document is not presented as a comprehensive list of the issues the REIV has identified. The Act is a vast document and more effort and engagement is required to identify and make enhancements. At this stage the key identified opportunities are:

1. [Making the legislation more useable, or 'user friendly', by dividing the Act into four Acts each dealing with a specific type of residential accommodation.](#)
  - Rental Houses, Units and Apartments Act
  - Rooming House and Boarding Act
  - Caravan Parks and Moveable Dwellings Act
  - Specialist Disability Accommodation Act
2. [Reducing ambiguity and simplifying the legislation by:](#)
  - removing the Director's ability to issue guidelines from "time to time"

- removing the requirement that VCAT consider Director's Guidelines
  - removing the use of standards that can change from "time to time"
  - Removing uncertain terminology and referring the reader to another part of the document which may in turn refer to another document.
3. [Reducing uncertainty for the](#) rental providers and renters by removing the director's right to issue guidelines and the requirement for VCAT to consider those guidelines and the requirement under s330A(j) that it have regard to "any other matter the Tribunal considers relevant".
  4. Removing the requirement to "give reasons" in [notices to vacate, in addition](#) to the reason allowed for under the Act, by removing the requirement that VCAT consider what is 'reasonable and proportionate'.
  5. Reducing complexity by aligning the descriptions of [perpetrators and victims in s91ZJ Danger and 91ZK Threats and Intimidation](#).
  6. Reducing complexity by [deleting s88\(c\)](#), the service of documents process specific to access.
  7. Reducing uncertainty by [replacing the definition of an 'occasion'](#) of non-payment of rent.
  8. Simplifying the timing requirements for an application for a [possession order](#).
  9. Simplifying the process for [challenging a notice to vacate](#).
  10. Amending the Act, Regulations and CAV website to reflect the presumed intent of the [minimum standard for locks on external doors](#).
  11. Amending the Act, Regulations and CAV website to be consistent in respect of [locks for windows](#).
  12. [s.322\(3\)](#) is referred to in the Act but it **does not exist**, so correct or delete the reference.
  13. Addressing deficiencies in the [safety related activities for gas](#) by:
    - applying a standard consistent with owner occupied properties,



- improving enforceability by requiring the rental provider to supply a copy of the gas safety inspection report to the renter,
  - improving enforceability by making explicit in the Act penalties on the rental provider for failing to carry out safety related inspections and/or for failing to carry out the identified rectification,
  - specifying in the Act that agents are excluded from liability in cases where the rental provider fails to comply with the gas safety related activities.
14. Addressing deficiencies in the [safety related activities for electrical](#) by:
- applying a standard consistent with owner occupied properties,
  - deciding whether appliances are to be checked and if so, impose the same inspection requirements in respect of the renter's appliances as is imposed on rental providers in respect of the appliances they supply,
  - improving enforceability by requiring the rental provider to supply a copy of the electrical safety inspection report to the renter,
  - improving enforceability by making it explicit in the Act the penalties on the rental provider for failing to carry out safety related inspections and/or for failing to carry out the identified rectification.
  - by requiring renters, if required to have their electrical appliances checked, to supply a copy of the electrical safety inspection report to the rental provider,
  - making explicit in the Act penalties on the renter for failing to carry out safety related inspections and/or for failing to carry out the identified rectification.
  - specifying in the Act that agents are excluded from liability in cases where the rental provider fails to comply with the gas safety related activities.
15. Reducing the potential workload on VCAT by amending s411A to reduce the opportunity for frivolous [bond claims](#).
16. Reducing uncertainty when the rental provider or a family member wants to occupy the property by making the [documentary evidence requirements more practical](#) and reducing the degree of discretion available to VCAT.
17. Reducing uncertainty where a [notice to vacate](#) is given on the basis of the first fixed term coming to an end by removing the requirement for

VCAT to consider what is reasonable and proportionate and have regard for “any other matter the Tribunal considers relevant”. Also removing the contradictory information between s91ZZI(5) and 91ZZS.

18. Simplifying the Act by removing the provisions specific to notices to vacate where the property was the [rental provider’s principal place of residence](#).
19. Reducing uncertainty and complexity by [removing the Director’s right to issue guidelines](#) which must be considered by VCAT. For example:
  - Director’s guidelines on cleanliness include contradictions and faulty assumptions.
    - The guideline on damage and fair wear and tear should be removed as it makes no useful contribution to Tribunal deliberations because the annotated version of the Act already contains extensive commentary about the assessment of damage under s.210.
    - The guideline on endanger should be removed as it makes no useful contribution to Tribunal deliberations because the annotated version of the Act already contains extensive commentary on the subject.
  - The quality of the maintenance guideline needs to be enhanced to remove contradictions and faulty assumptions.
24. Reducing complexity by changing s72(1) to address the [timeliness of urgent and non-urgent repairs](#) rather than attempting to deal with it through Director’s guidelines
25. Reducing the unbalanced nature of the Act by making rental providers responsible for [pest infestations only where they are caused by or related to an unreasonable deficiency in the property](#).

## **Different types of residential accommodation**

The Act attempts to deal with many different types of residential accommodation, it is cumbersome, the risk of error is heightened, and it deters use.

### **Suggested Improvement**

Divide the RTA into the following standalone Acts with associated Regulations:

- Rental Houses, Units and Apartments Act
- Rooming House and Boarding Act
- Caravan Parks and Moveable Dwellings Act
- Specialist Disability Accommodation Act

## **Complex structure**

To compliantly carry out an action or fulfil a responsibility it is necessary to access too many documents and in some cases several parts of the one document.

### **Example 1**

For example, if there is a proposal for the premises to be occupied by the rental provider or the providers family the relevant information and compliance requirements are spread across the following:

- S.91ZB After receiving notice the renter may give a 14-day notice
- S.91ZZA Premises to be occupied by residential rental provider or provider's family
- S.91ZZH VCAT may approve reletting
- S.91ZZI(1)(b) Termination date cannot be before the end of a fixed term
- S.91ZZI(2) Notice of no effect if it would constitute discrimination
- S.91ZZO Form of notice to vacate.
- S91ZZS(1) Renter may challenge notice at VCAT
- S.322(1) Application for possession order
- S.326(1) Time of application for possession order
- S.329 Application for possession order cannot be heard before termination date
- S330(f) VCAT must consider what is reasonable and proportionate
- S.330A What is reasonable and proportionate
- S.486A Director may approve documentary evidence
- Gov Gazette For documentary evidence approved from time to time by Director
- CAV website For documentary evidence approved from time to time by Director

### **Example 2**

The rental provider and the renter have responsibilities for safety related to gas. To understand these responsibilities it is necessary to access the following:

- 27C Prescribed terms – professional cleaning, maintenance and related obligations
- 30D Information that residential rental providers must disclose before entering residential rental agreement
- 63A Renter's safety-related duties
- S68A Provider's duty to comply with safety related repairs and maintenance requirements

68B Provider must keep and produce records of gas safety checks

Part 5 Breach of duty

Reg 5 Definition of gas safety check

Reg 13 Safety related activities

Reg 16 Information provider must disclose to applicant

Sch 1 Safety related activities

Sch 3 Safety related activities

AS/NZS 5601.1 "Gas installations", as published from time to time;

S3 Gas Safety Act for definition of Type A appliance

S68 Gas Safety Act for definition of Type A appliance

S69 Gas Safety Act for definition of Type A appliance

S72 Gas Safety Act for requirements for work on gas installation

Reg 12(4) Gas safety (Gas Installation) Regulations 2018

Energy Safety Victoria for approved Type A appliances

### Suggested Improvement

- Remove the ability for the Director to issue guidelines from time to time which must be considered by VCAT.
- Remove the use of standards that can change from "time to time".
- Remove uncertain terminology and the habit of referring the reader to another part of the document which may in turn refer to another document.

For example:

**S. 68A Residential rental provider's duty to comply with safety related repairs and maintenance requirements**

- (1) Subject to subsection (2), a residential rental provider must undertake any safety-related repairs and maintenance activities set out in the residential rental agreement if that agreement contains a term prescribed under section 27C(2).

This could instead have been written as follows:

- (1) Subject to subsection (2), a residential rental provider must undertake the safety related repairs and maintenance activities set out in the prescribed residential agreement.

## **Uncertainty**

The Act increases the level of uncertainty for both rental provider and renter in two ways:

### **1. Director's Guidelines**

The Director is granted the power to “issue guidelines” and “approved documentary evidence”. The guidelines and approved documentary evidence can be changed by the Director at any time without giving prior notice.

Finding the “guidelines” is not easy, on the CAV site it is necessary to search under “changes to renting laws”, which implies the person doing the search knows they relate to recent changes.

On the other hand, the “approved documentary evidence” is more logically found under “notice to vacate”. However, these requirements have changed since first published but the history of the change is not apparent on the site. The change is not found under “changes to renting laws” even though the change is more recent than the changes under that heading.

Apart from the challenges associated with finding this information and the fact that it may change at any time it seems that the Director is being give a role in interpreting legislation rather than the role resting with VCAT and the courts. It given to a bureaucrat the role of influencing the judiciary. It is an unnecessary layer to be considered by VCAT and it can be argued that some of the guidelines conflict with the Act.

### **2. VCAT is required to consider what is reasonable and proportionate**

In deciding an application for a possession order VCAT must be satisfied that it is “reasonable and proportionate” to make an order. It is required to consider the impact on a wide range of people [s.330(f)] and have regard to s.330A which seems to assume possession order applications are always related a breach. However, under s330A(j) it is also required to have regard to “any other matter the Tribunal considers relevant”.

Clearly these requirements, particularly the requirement to have regard to “any other matter the Tribunal considers relevant”, add to uncertainty and encourage the use of VACT as a lucky dip.

### Suggested Improvement

In relation to item 1 above delete s.486A to remove the Director's right under the Act to issue guidelines which must be considered by VCAT.

In relation to item 2 above at a minimum remove s.330A(j) so that VCAT is no longer required to have regard to any other matter it considers relevant.

Ideally, also remove s.330(f) and s.330A so that VCAT is no longer required to consider what is reasonable and proportionate.

## **Notice to vacate requiring reasons other than the reason**

The prescribed form for giving a notice to vacate states the following under the heading “Reason for notice”.

- The rental provider must select the relevant reason section number and the minimum required notice under the Act from the attached information sheet and write it in the box below.
- The rental provider must also explain why the notice has been given. It is not enough to quote just from the Act or the reasons on the information sheet; this must be accompanied by specific details.
- VCAT may find a notice invalid where it does not provide enough details or is not accompanied by the required documentary evidence.

No explanation is given as to why VCAT requires so much detail, but it is presumed it is because if the matter comes before it as an application for a possession order it must consider what is reasonable and proportionate, not just the permitted reasons for a notice to vacate as stated in the Act.

This requirement creates the ridiculous situation of demanding a reason other than the reason available under the Act. For example, 91ZZD permits a notice to vacate at the end of the first fixed term of not more than 5 years, yet the form demands additional reasons. There is no knowing what additional reasons might be deemed adequate, so this becomes another example of the Act creating uncertainty and encouraging the use of VCAT as a lucky dip.

### **Suggested Improvement**

Remove s.330(f) and s.330A so that VCAT is no longer required to consider what is reasonable and proportionate.

Remove the additional details requirements on the prescribed notice to vacate.



## **Disparity between reasons for notice to vacate**

Sections 91ZJ and 91ZK provided for the issue of a notice to vacate for similar reasons, namely danger (91ZJ) and threats and intimidation yet inexplicably there are significant differences between the descriptions of the perpetrators and the victims.

<b>91ZJ Danger</b>	<b>91Z Threats and intimidation</b>
<b>Perpetrators</b>	
The renter	The renter
The renter's visitor	Any other person occupying or jointly occupying the rented premises
<b>Victims</b>	
Occupiers of neighbouring premises	The rental provider or their agent
The rental provider or their agent	A contractor or employee of the rental provider or their agent
A contractor or employee of the rental provider or their agent	

## **Suggested Improvement**

For these two sections align the description of the perpetrators and victims to the following:

### **Perpetrators**

- (a) The renter
- (b) Any other person occupying or jointly occupying the rented premises
- (c) The visitor of any of the people listed at (a) and (b) above

### **Victims**

- (a) The rental provider or their agent
- (b) A contractor or employee of the rental provider or their agent
- (c) Occupiers of neighbouring premises

### **Disparity in processes for the service of notices on a renter**

The service of documents is dealt with in s.506 and in the prescribed rental agreement, yet inexplicably s.88 which relates to access requires different forms of service. The sections do not reference each other, and the prescribed lease reflects s.506 with no mention of s.88.

#### **Suggested Improvement**

Delete from s88 the specified ways by which a notice may be served, namely s88(c).

## **An occasion of non-payment of rent**

### **91ZM Non-payment of rent**

This section relates to trying to obtain a possession order due to rent arrears and deals with what can be done on an occasion of non-payment of rent. What can be done on the fifth occasion in a 12-month period differs from what can be done first to fourth occasions.

If the renter is given a notice to vacate due to arrears but pays the unpaid rent on or before the termination date in the notice, the notice is of no effect.

s.91ZM(1)(b)

On the fifth such occasion in a 12-month period the notice remains in effect even if the rent is paid, so a possession application can be heard by VCAT.

The section defines an occasion of non-payment of rent as follows:

**“occasion of non-payment of rent** means an occasion where the renter owes at least 14 days rent within a 12 month period of the residential rental agreement, but does not include any amount owing under a payment plan ordered by the Tribunal;”

A reasonable person might take this to mean that once the termination date in a notice to vacate has passed another notice to vacate may be given once the renter is again in arrears by at least 14 days, as it would fit the definition of an “occasion of non-payment of rent” assuming that no payment plan had been ordered by VCAT.

Member K Campana commented in reasons for decision in the case *Jackson v Field (Residential Tenancies)*[2022] VCAT 859 that the definition “..has not been the subject of consideration, or interpretation, in any written decision of the Tribunal or the Supreme Court of Victoria.” The Member went on give the following definition:

“For an entitlement to arise to give a subsequent notice to vacate, each *occasion* must also be a new occasion of non-payment of rent. That is, rent owed under the first occasion, cannot be caught up, or included in, a subsequent “occasion”. There must be a new period of time, a new occasion, where a renter has fallen into arrears of at least 14 days rent. In practical terms, this subsequent occasion cannot commence any earlier than the date that a prior valid notice to vacate was given to a renter.”

Assuming the interpretation by Member Campana was what was intended when the definition was written the definition needs to be made more explicit to reduce the likelihood of futile possession order applications.

## Suggested Improvement

Replace the definition of an occasion of non-payment of rent with the following:

**“occasion of non-payment of rent** means an occasion where the renter owes at least 14days rent within a 12 month period of the residential rental agreement, but does not include unpaid rent in respect of which the renter has previously been given a notice to vacate or rent owing under a payment plan ordered by the Tribunal;”

## **Contradictions re timing an application for a possession order**

### **Where notice to vacate has been given by the rental provider [322(1)]**

s.322(1) states:

“A residential rental provider may apply to the Tribunal for a possession order for the rented premises if the residential provider has given a notice to vacate the rented premises.”

No mention is made of a need to satisfy any other section, yet s.326(1) states:

“An application under section 322(1) may be made at any time after the notice to vacate has been given but not later than 30 days after the termination date specified in the notice.”

S91ZM(1)(a) states:

“(1) On the first, second, third and fourth occasion of non-payment of rent –

(a) the residential rental provider may give a notice to vacate under this section to the renter;”

s.91ZM(1)(c) states:

“If the renter does not pay the unpaid rent on or before the termination date in the notice under paragraph (a), the residential rental provider may apply to the Tribunal for a possession order;”

s.329 “Hearing of application for possession order” states:

“The Tribunal must not determine an application for a possession order under this Division earlier than the termination date specified in the notice to vacate or notice of intention to vacate accompanying the application.”

As s.322(1) makes no reference to the other restrictions on the lodgment of a possession order application it has the potential to lead applications that are doomed to fail on a procedural issue.

Delaying the lodgment of an application until after the failure to vacate reduces the likelihood of withdrawn VCAT applications, but it lengthens the time for the resolution of the matter, perhaps facilitating the renter to slip further into debt. Given that s.329 prevents a possession order application being heard before a failure to vacate the other restriction seems pointless and unreasonable.

## **Suggested Improvement**

Amend s322 to the following:

### **322 Possession order application and hearing**

(a) A residential rental provider may at any time after a notice to vacate has been given but not later than 30 days after the termination date

specified in the notice apply to the Tribunal for a possession order for the rented premises.

- (b) A residential rental provider may at any time after a notice of intention to vacate has been given but not later than 30 days after the termination date specified in the notice apply to the Tribunal for a possession order of the rented premises.
- (c) An application made under 322(a) or 322(b) cannot be heard by the Tribunal until after the termination date stated in the notice to vacate or the notice of intention to vacate.

Delete s.329 as its content is incorporated in the proposed amended s.322.

Amend s.91ZM(1)(c) to the following:

“the rental provider may after giving a notice to vacate in accordance with subsection (a) apply to the Tribunal for a possession order in accordance with s.322”

## **Challenging a notice to vacate is unnecessarily complicated**

The Act includes the following:

### **Subdivision 7 - Can a notice to vacate be challenged?**

#### **91ZZR Application of this Subdivision**

Nothing in this Subdivision affects any right a renter may have to challenge the validity of any other notice to vacate under this Act.

#### **91ZZS Renter may apply to Tribunal**

- (1) On or before the hearing of an application for a possession order in respect of a notice to vacate given under section 91ZX, 91ZY, 91ZZ, 91ZZA, 91ZZB or 91ZZC, a renter who has received the notice to vacate may apply to the tribunal challenging the validity of the notice to vacate.
- (2) An application under subsection (1) must be made within 30 days after the notice to vacate is given.

91ZZS overlooks the fact that the Tribunal cannot hear a possession order application before the termination date in the notice to vacate. Also, despite 91ZZS the matter is also dealt with in 91ZZI(5) as follows:

#### **91ZZI Notice to have no effect in certain circumstances**

- (5) A person is not entitled to apply to the Tribunal challenging the validity of a notice –
  - (a) in the case of a notice under section 91ZZD or 91ZZDA relating to a fixed term residential rental agreement for a fixed term of 6 months or more, after the end of the 28 days after the date on which the notice is given; or
  - (b) in the case of a notice under section 91ZZD or 91ZZDA relating to a fixed term of less than 6 months, after the end of 21 days after the date on which the notice is given.

91ZZI(5) overlooks the fact that 91ZZDA only relates to leases for a fixed term of more than 5 years and in addition the subsection seems unnecessary given what is in Subdivision 7.

## **Suggested Improvement**

Delete 91ZZI(5)

Delete 91ZZR

Amend 91ZZS to the following:

#### **91ZZS Renter may apply to Tribunal**

- (1) A renter may apply to the Tribunal challenging the validity of a notice to vacate.
- (2) An application under subsection (1) must be made within 30 days after the notice to vacate is given.



## **Locks for external doors – rental minimum standards**

The Act includes the following:

### **s.70 Locks**

- (1) A residential rental provider must ensure that all external doors able to be secured with a functioning deadlock at the rented premises, other than any screen door attached to an external door, are secured with a functioning deadlock.
- (1A) It is reasonable for a residential rental provider not to ensure an external door at rented premises is secured with a functioning deadlock if-
  - (a) another act or law provides for a different type of lock or device for the premises; or
  - (b) the external door cannot be accessed because of another security barrier at the premises.
- (2) A party to a residential rental agreement who changes any external door or window lock must as soon as practicable give a key to the lock to the other party.
- .....
- (5) In this section and sections 70A, 70B and 71 –  
**key** of a lock means a device or information normally used to operate the lock;  
**lock** means a device for securing a door or window or other parts of the premises;

**s.3 deadlock** means a deadlatch with at least one cylinder;

The Regulations include the following:

### **Schedule 4 – Rental minimum standards**

#### **1 Locks**

- (1) All external entry doors to the rented premises which are not able to be secured with a functioning deadlock, other than any screen door attached to an external door, must at least be fitted with locking device that –
  - (a) is operated by a key from the outside; and
  - (b) may be unlocked from the inside with or without a key.
- (2) Subclause (1) does not apply –
  - (a) to a public lobby door that opens to common property (e.g. an entrance from outside to a lobby in an apartment building); or
  - (b) if the rented premises is a registered place and a request for a permit to alter the relevant features of the premises to comply

with the standard has been refused in accordance with Part 5 of the **Heritage Act 2017**.

### **Consumer Affairs Victoria**

On 10<sup>th</sup> May 2021 the Consumer Affairs Victoria site contained the following statement:

“A rental provider must make sure that each external door of the rental property has a working deadlock (a deadlock is a deadlatch with at least one cylinder).

A deadlock is not necessarily a lock that always needs a key to be opened from the inside. In fact, these types of locks are not recommended.”

On 17<sup>th</sup> October 2022 the Consumer Affairs Victoria site contained the following statement:

The property’s external entry doors must have functioning deadlatches or be fitted with locks that can be unlocked with a key from the outside but can unlocked without one from the inside.

The only cases where a deadlatch doesn’t have to be fitted to a door are when:

- a door cannot be secured with a deadlatch – for example, because of its position
- it is a screen door in the same door frame as an external door
- a different type of lock or device is required under another Act or law
- the door is not directly accessible because there is another type of security barrier, such as a locked door to an apartment building or a locked gate
- the property is registered under the Heritage Act 2017 and has an approved exemption from the standard.

### **Anomalies**

The Act and Regulations require that a deadlock be fitted unless certain exceptions apply, but CAV in one iteration said that one of the forms of a deadlock commonly available is not recommended.

A deadlock is defined in the Act as being a deadlatch with at least one cylinder but there is not definition of a deadlatch or cylinder

A deadlock which can only be operated with a key including from the inside can be dangerous when urgent escape from the property is needed due to fire, family violence or some other reason.

A renter is permitted to change a lock but the Act does not specify that in doing so they must not cause the rental premises to not meet the rental minimum standards.

### **Scenario 1**

The rental property has three external doors – standard front and back doors each fitted with a deadlock and an aluminium framed sliding glass door opening a terrace. The design of the aluminium framed sliding door does not permit the installation of a deadlock. Currently, it has a rod inserted in the door track so it can only be unlocked from the inside only. The premises is not affected by any heritage classification.

Access from outside via doorways is prevented and two of the three ways of exiting the premises allow for the premises to be locked on the way out.

The premises do not meet the rental minimum standards.

### **Scenario 2**

The premises is an apartment with a door accessed from a foyer shared by three other apartments. Access to the foyer from outside the apartment building is via a security door requiring a security card or remote opening by any of the occupants of the apartments. The rental provider will not have a deadlock installed because the door “cannot be accessed because of another security barrier at the rented premises”.

The Act and Regulations do not contain a definition of “another security barrier” to assist in resolving the dispute with the rental provider.

### **Scenario 3**

The premises is a single storey standalone unit with the only external doors being a front door and a back door. Each of these doors is capable of being fitted with a deadlock.

The rear door opens to a courtyard surrounded by a 1.8 metre high fence and the only other access to the courtyard is via a garage roller door at the front and a door at the rear capable of being fitted with a dead lock.

The rental provider refuses to authorise the installation of deadlocks to any of the external doors (the front and back doors and the two doors to the garage). She argues that the front and back doors “cannot be accessed because of another security barrier at the premises”. Namely the security screen door at the front and the fence and garage at the rear. Additionally, she argues that the rear door is not an “external entrance door” because the design of the premises is such this it was only designed for occupants to access the rear courtyard, and the doors to the garage are not external entrance doors because they only provide access to the garage.

It is not possible to say whether the rental provider is correct because, definitions of “another security barrier” and “external entry door” have not been provided in the Act or Regulations.

#### **Scenario 4**

The premises has front and back doors each fitted with a deadlock. There is also a door opening from the garage into the entrance hall, it is not fitted with a deadlock although it could be.

Is the door between the garage and the entrance hall an “external entry door” or instead a door for getting from one part of the premises to another? Is the door from the garage to the exterior is an “external entry door”?

Alternatively, if the door between the garage and the entrance hall is deemed to be an external entry door, is it excused from the deadlock requirement because it cannot be accessed due to another security barrier, namely the garage and its other door or doors.

There doesn't appear to be a clear answer for the rental provider in this circumstance.

#### **How has this confusion and uncertainty arisen?**

Possibly the current situation has arisen because the intent of the minimum standard has been lost by being too specific about types of locks.

Presumably the intent of the minimum standard is that the rental provider supply to the renter a means of preventing unwanted external access to the property via doorways.

### **Suggested Improvement**

#### **s.70 Locks**

Amend s70(1) to the following:

- (1) A residential rental provider must ensure that all external doors able to be secured with a locking device at the rented premises, other than any screen door in the same doorway as an external door, are fitted with a functioning locking device.

Delete s.70(1A)

Change s.70(2) to the following:

- (2) A party to a residential rental agreement who changes any external door or window locking device must as soon as practicable give a key to the locking device to the other party.

Add s.70.(2A)

- (2A) A renter who changes any external door or window locking device must not by doing so cause the rented premises to not meet rental minimum standards.

Change s.70(5) to the following:

In this section and sections 70A, 70B and 71-

**key** of a locking device means a device or information used to operate a locking device;

**locking device** means a device which can be engaged from inside, or inside and outside, of the rented premises to prevent unwanted access to the premises via a doorway or window;

**master key system** means a set of locks in which-

- (a) each lock or sub-set of locks has a unique key; and
- (b) one single key or master key can operate all the locks in

the set.

If a Rental Houses, Units and Apartments Act is created the definitions could be placed with other definitions in s.3.

Delete the definition of “deadlock” from s.3.

Change the minimum standard in Schedule 4 of the Regulations to the following:

#### **1 Locks**

- (1) All external entry doors to fully enclosed parts of the rented premises must include a functioning locking device that:
  - (a) can be locked from inside, or inside and outside of the premises to prevent unwanted access via the doorway; and
  - (b) is able to be unlocked, or set so that it can be unlocked, from the inside the premises without the use of a key.
- (2) Subclause (1) does not apply to –
  - (a) a screen door set in the same doorway as a door required to have a locking device; or
  - (b) a door from the outside to common property; or
  - (c) a door between two parts of common property; or
  - (d) the rented premises if it is a registered place and a request for a permit to alter the relevant features of the premises to comply with the standard has been refused in accordance with Part 5 of the **Heritage Act 2017**.

Change information on the CAV site to reflect the above.

## **Locks for windows – rental minimum standards**

The Act includes the following:

### **s.70 Locks**

- (1B) A residential rental provider must provide locks to secure all windows of the rented premises that are capable of having a lock.

- .....  
(5) In this section and sections 70A, 70B and 71-  
.....

**lock** means a device for securing a door or window or other part of the premises;

The Regulations include the following:

### **Schedule 4 – Rental minimum standards**

#### **11 Windows**

- (1) All external windows in the rented premises that are capable of opening must be able to be set in a closed or open position.
- (2) All external windows in the rented premises which are capable of opening must have a functioning latch to secure the windows against external entry.

#### **Note**

A window lock or bolt will meet the minimum standard referred to in subclause(2).

## **Consumer Affairs Victoria**

On 18<sup>th</sup> October 2022 the CAV site included the following under the heading: Rental Properties – minimum standards”.

### **Windows**

All external windows in a rental property that can be opened must be lockable. They must also be able to be left open or closed. If the window can't have a lock fitted, it must have a functioning latch to keep it closed.

## **The confusion**

The terminology used across the Act, Regulations and CAV site to described how a window must be secured is not consistent:

- |             |  |
|-------------|--|
| Act         | - lock                                   |
| Regulations | - functioning latch, window lock or bolt |
| CAV site    | - lock, latch                            |

All of this misses the fact one of the most effective ways of preventing access to a premises with horizontally sliding windows is to place a rod in the track of the window. So as with locks for external doors the confusion arises from attempts to be too specific about what must be used to secure the window against external entry.

Also, the terminology used across the Act, Regulations and CAV site to describe the type of window to be secured is not consistent:

- |             |                      |
|-------------|----------------------|
| Act         | - all windows        |
| Regulations | - capable of opening |
| CAV         | - that can be opened |

s.60 requires the rental provider to maintain the rental premises in good repair, which presumably means that if a window has been designed to be opened it must be possible to open it. “Capable of opening” or “that can be opened” suggests it is acceptable for a window to be painted or nailed shut in contradiction of s.60.

### Suggested Improvement

Amend s.70(1B) to the following:

#### **s.70 Locks**

Replace (1B) with the following:

- (1B) A residential rental provider must provide a locking device to secure in a closed position all windows of the rented premises that have been designed to be opened.

Change s.70(5) to the following:

In this section and sections 70A, 70B and 71-

**key** of a locking device means a device or information used to operate a locking device;

**locking device** means a device which can be engaged from inside, or inside and outside, of the rented premises to prevent unwanted access to the premises via a doorway or window;

**master key system** means a set of locks in which-

- (a) each lock or sub-set of locks has a unique key; and
- (b) one single key or master key can operate all the locks in

the set.

If a Rental Houses, Units and Apartments Act is created the definitions could be placed with other definitions in s.3.

Change the minimum standard in Schedule 4 to the Regulations to the following:

#### **11 Windows**



- (1) All external windows in the rented premises that have been designed to be opened must be able to be set in a closed or open position.
- (2) All external windows in the rented premises which have been designed to be opened must have a functioning locking device to secure the windows in a closed position against external entry. Delete the "Note" at the end of item 11 in Schedule of the regulations.

### **Consumer Affairs Victoria**

Change the windows information on the CAV site under the heading: Rental Properties – minimum standards".

#### **Windows**

All external windows in a rental property that have been designed to be opened must be able to be left in an open or closed position. These windows must also have a functioning locking device to prevent external access when the window is closed.

## **The mystery sub-section**

### **s.330 Order of Tribunal**

s.330(2) refers to an application made under 322(3).  
Subsection 322(3) does not exist.

### **Suggested Improvement**

Find subsection 322(3),  
or  
delete from s.330(2) the reference to 322(3).

## **Safety related activities – gas**

The following is a list of the sections of the Act and Regulations which specifically refer to gas safety related activities. They are in the order in which they appear in those documents.

### **Residential Tenancies Act 1997**

- S.27C Prescribed terms - professional cleaning, maintenance and related obligations
- s.30D Information the residential rental provider must disclose before entering residential rental agreement.
- S.63A Renter's safety related duties
- S.68B Residential rental provider's duty to comply with safety related repairs and maintenance requirements
- S.68B Residential rental provider must keep and produce records of gas and electrical safety checks

### **Gas Safety Act 1997**

- s.3 Definition of gas installation
- s.72(1) Compliance with prescribed standards

### **Gas Safety (Gas Installation) Regulations 2018**

- R.12(4) Prescribed standard for Type A appliance servicing work

### **Residential Tenancies Regulations 2021**

- R.5 Gas installation has the same meaning as the **Gas Safety Act 1997**
- R.5 Gas safety check means
- R.13 Safety related activities
- R.16 Information which residential rental provider must disclose to rental applicant
- R.30 Requirements for gas and electrical safety check record keeping
- Sch 1 SAFETY RELATED ACTIVITIES (the prescribed lease)
- Sch 3 Safety related activities

### **The Detail**

The spread of this subject across the Act and Regulations contributes to the compliance challenge but for the purpose of this paper the focus will be on a key element of unreasonableness.

**The Act**

The Act does not specify what safety related activities must be carried out, instead saying that the prescribed rental agreement may impose requirements regarding safety related activities on both the rental provider and the renter. The gas safety activities are specified in the prescribed rental agreement [Schedule 1 Residential Tenancies Regulations] as follows:

**15. Gas safety activities**

This safety-related activity only applies if the rented premises contains any appliances, fixture or fittings which use or supply gas.

- (a) The rental provider must ensure that a gas safety check of all gas installations and fittings in the rented premises is conducted every 2 years by a licensed or registered gasfitter and must provide the renter with the date of the most recent safety check, in writing, on request of the renter.

If a gas safety check has not been conducted within the last 2 years at the time the renter occupies the premises, the rental provider must arrange a gas safety check as soon as practicable

**Sch 3 Safety related activities****2 Gas safety activities**

- (1) The safety-related activities in subclauses (2) and (3) only apply if the rented premises contain any appliances, fixtures or fittings which use or supply gas.
- (2) The residential rental provider must ensure that a gas safety check of all gas installations and fittings in the rented premises is conducted every 2 years by a licensed or registered gasfitter and must provide the renter with the date of the most recent safety check, in writing, on request by the renter.
- (b) If a gas safety check has not been conducted within the last 2 years at the time the renter occupies the premises, the residential rental provider must arrange and a gas safety check as soon as practicable.

**Reg 5 gas safety check means**

- (a) the following gas installation checks-
  - (i) that LPG cylinders and associated gas components are installed correctly;
  - (ii) that appliance gas isolation valves are installed where required by AS/NZS 5601.1 “Gas installations”, as published or amended from time to time;

- (iii) that gas appliances and their components are accessible for servicing and adjustment;
- (iv) that the gas installation is electrically safe;
- (v) that the clearances from appliances to combustible surfaces are in accordance with installation instructions and AS/NZS5601.1 “Gas installations”, as published or amended from times to time;
- (vi) that there is adequate ventilation for appliances to operate safely;
- (vii) that gas appliances (including cookers) are adequately restrained from tipping over;
- (viii) checking the condition of gas appliance flue systems including chimneys;
- (ix) checking gas appliances for evidence of certification; and
- (b) testing the installation for leakage; and
- (c) for a standard gas installation servicing all Type A gas appliances that are part of that installation;

#### Note

See regulation 12(4) of the gas Safety (Gas Installation) Regulations 2018, which prescribes a standard under section 72 of the Gas Safety Act 1997 for servicing work carried out on a Type A gas appliance that is part of a standard gas installation. Section 72 of the Gas Safety Act 1997 requires that a person carrying out gasfitting work ensure that the work complies with the standards under that act in relation to that work.

## Endnotes

### Title of applied, adopted or incorporated document

#### Regulation 5 definition of **gas safety check**

The whole of Australian/New Zealand Standard AS/NZS 5601.1, “Gas Installations”, as published by Standards Australian and Standards New Zealand on 16 September 2013.

Appendix F of Australia Standard AS4575 “Gas appliances—Servicing of Type A appliances”, as published by Standards Australia on 9 August 2019.

## Gas Safety Act 1997

### Part 1 – Preliminary

#### 1 Purpose

The main purpose of this Act is to make provision for the safe conveyance, sale, supply measurement, control and use of gas and to generally regulate gas safety.

#### 3 Definitions

**gas installation** means, in respect of the use or intended use of gas, a combination of -

- (a) any pipe or system of pipes for or incidental to the conveyance of gas and components or fittings associated with the pipe or pipes which are downstream of the gas supply point; and
- (b) any one or more of the following –
  - (i) any liquefied petroleum gas storage vessels with an aggregate capacity not exceeding 500 litres
  - (ii) any appliance and associated components of fittings which are downstream of the gas supply point;
  - (iii) any meter which is downstream of the gas supply point;
  - (iv) any means of ventilation or system for the removal of combustion products which is downstream of the gas supply point;

### **The problems**

The key problem is in the standard which inspectors are required to apply. It is a standard “as published or amended from time to time”. In other words, it is a standard applicable to an installation being carried out at the time of the inspection. This standard may differ from the standard applicable when the item being inspected was installed and there is no requirement to change old installations to be redone in the way now required of a new installation. Owner occupiers are not required to change old installations to be the same as a new installation each time there is a change to installation standards yet rental providers do have such a requirement imposed on them via the Residential Tenancies Act.

For example:

One of the surprises hidden in the complexity is Reg 5(a)(v):

- “that the clearances from appliances to combustible surfaces are in accordance with installation instructions and AS/NZS5601.1 “Gas installations”, as published or amended from time to time;”
- This means the assessment is against the installation standards that exist at the time of the inspection which may be different from those existing at the time of the installation. At the time of the installation a rangehood may be compliant at 600mm above the cooktop, but installation standard may change to 650mm for new installations. In the case of a residential rental property a rectification would be required but not in the case of an owner-occupied property.

Other problems include:

- The complexity which is obvious to anybody who tries to find an answer in the Act and Regulations.
- The processes only allow for the renter to become aware that rectification has not been completed when provided with a prescribed disclosure prior to entering into a new agreement. Therefore, a long-term continuing renter may never discover the non-compliance.
- If the need for rectification is so unimportant that the information can be withheld from the renter until the current renter or a new renter is about to enter into a new agreement, or the renter makes a written request, then perhaps the inspection standard which generated the rectification requirement is the wrong standard. Alternatively, given that it is a safety related item the requirement should be for immediate notification so that the renter can make an informed decision about whether to stay in the property, or if they do stay, so that they can monitor that the rectification has been done.
- The penalty appears to be for not disclosing the non-compliance rather than for the non-compliance.
- Many agents fear that a rental provider's refusal to have the inspections done will expose the agent to a liability. The Act does not deal with this explicitly.

## Suggested Improvement

Adopt or if necessary, create a standard which focuses on whether the installation was done in accordance with the standard applicable at the time, whether any upgrades prescribed for all residential properties (rented and owner occupied) have been carried out and whether there has been any deterioration jeopardising the safety of occupants of the property.

Replace the definition of gas safety check contained in Reg 5 to reflect the new standard adopted or created as suggested above.

Change Reg. 13 to refer to Schedule 1 rather than Schedule 3.

Delete Schedule 3 as its content is contained in Schedule 1.

Require the rental provider to supply a copy of the gas safety inspection report to the renter immediately if there is a need for rectification and otherwise within seven days of receiving it.

Make explicit in the Act penalties on the rental provider for failing to carry out safety related inspections and for failing to carry out the identified rectification.

Add to the Act a section worded along the following lines:

**Agent indemnity**

In any instance where an agent for the rental provider informs the rental provider of a compliance requirement to be met by the rental provider, the agent cannot be held liable for the non-compliance or any consequences arising unless the rental provider has supplied the agent with adequate instructions and funds to achieve the compliance.



## **Safety related activities – electrical**

The following is a list of the sections of the Act and Regulations which specifically refer to electrical safety related activities. They are in the order in which they appear in those documents.

### **Residential Tenancies Act 1997**

S.27C Prescribed terms - professional cleaning, maintenance and related obligations

s.30D Information the residential rental provider must disclose before entering residential rental agreement.

S.63A Renter's safety-related duties

S.68B Residential rental provider's duty to comply with safety related repairs and maintenance requirements

S.68B Residential rental provider must keep and produce records of gas and electrical safety checks

### **Residential Tenancies Regulations 2021**

Reg 5 Electrical safety check means

Reg 13 Safety related activities

Reg 16 Information which residential rental provider must disclose to rental applicant

Reg 30 Requirements for gas and electrical safety check record keeping

Sch 1 SAFETY RELATED ACTIVITIES (the prescribed lease)

Sch 3 Safety related activities

### **The Detail**

The spread of this subject across the Act and Regulations contributes to the compliance challenge but the purpose of this paper the focus will be on a key element of unreasonableness.

### **The Act**

The Act does not specify what safety related activities must be carried out, instead saying that the prescribed rental agreement may impose requirements regarding safety related activities on both the rental provider and the renter. The electrical safety activities are specified in the prescribed rental agreement [Schedule 1 Residential Tenancies Regulations] as follows:

#### **14. Electrical safety checks**

- (a) The rental provider must ensure an electrical safety check of all electrical installations, appliances and fittings provided by a rental provider in the rented premises is conducted every 2

years by a licensed or registered electrician and must provide the renter with the date of the most recent safety check, in writing, on request of the renter.

- (b) If an electrical safety check of the rented premises has not been conducted within the last 2 years at the time the renter occupies the premises, the rental provider must arrange an electrical safety check as soon as practicable

### **Sch 3 Safety related activities**

#### **1 Electrical safety activities**

The residential rental provider must ensure that an electrical safety check of all electrical installations, appliances and fittings provided by the residential in the rented premises is conducted every 2 years by a licensed or registered electrician and must provide the renter with the date of the most recent safety check, in writing, on request by the renter.

If an electrical safety check of the premises has not been conducted within the last 2 years at the time the renter occupies the premises, the residential rental provider must arrange an electrical safety check as soon as practicable.

**Reg 5 electrical safety check** means a check of all electrical installations, fixtures and fittings carried out in accordance with section 4 of AS/NZS 3019 “Electrical installations – Periodic verification”, as published or amended from time to time;

#### **Endnotes**

##### **Title of applied, adopted or incorporated document**

##### **Regulation 5 definition of *Electrical safety check***

Section 4 of Australian/New Zealand Standard AS/NZS 3019, “Electrical installations - periodic verification” as published by Standards Australian and Standards New Zealand on 5 November 2007.

#### **The problems**

The key problem is in the standard which inspectors are required to apply, the standard is as “published or amended from time to time” [see Reg 5 definition of electrical safety check]. This standard may differ from the standard applicable when the item being inspected was installed and there is no requirement to change old installations to be redone in the way now required of a new installation. Owner occupiers are not required to change old installations to be the same as a new installation each time there is a change to installation standards yet rental providers do have such a requirement imposed on them via the Residential Tenancies Act.

Schedule 3 requires an electrical safety check of all electrical installations, appliances and fittings provided by the residential in the rented premises.

However, the definition of electrical safety check in Reg 5 refers to electrical installations, fixtures and fittings and omits appliances. Therefore, the inspection standard applicable to appliances is unknown.

There is no requirement on renters to have the electrical safety of their appliances checked every two years. So, a washing machine supplied by a rental provider must be checked but one supplied by the renter does not have to be checked. The Grenfell Tower fire in London was caused by an electrical fault in a refrigerator, an item usually supplied by the renter.

Other problems include:

- The complexity which is obvious to anybody who tries to find and answer in the Act and Regulations.
- The processes only allow for the renter to become aware that rectification has not been completed when provided with a prescribed disclosure prior entering into a new agreement. Therefore, a long-term continuing renter may never discover the non-compliance.
- If the need for rectification is so unimportant that the information can be withheld from the renter until the current renter or a new renter is about to enter into a new agreement, or the renter makes a written request, then perhaps the inspection standard which generated the rectification requirement is the wrong standard. Alternatively, given that it is a safety related item the requirement should be for immediate notification so that the renter can make an informed decision about whether to stay in the property, or if they do stay, so that they can monitor that the rectification has been done.
- The penalty appears to be for not disclosing the non-compliance rather than for the non-compliance.
- Many agents fear that a rental provider's refusal to have the inspections done will expose the agent to a liability. The Act does not deal with this explicitly.

## Suggested Improvement

Adopt or if necessary, create a standard which focuses on whether the installation was done in accordance with the standard applicable at the time, whether any upgrades prescribed for all residential properties (rented and owner occupied) have been carried out and whether there has been any deterioration jeopardising the safety of occupants of the property.

Decide whether appliances are to be checked and if so impose the same inspection requirements in respect of the renter's appliances as is imposed on rental providers in respect of the appliances they supply.

Replace the definition of electrical safety check contained in Reg 5 to reflect the new standard adopted or created as suggested above.

Change Reg. 13 to refer to Schedule 1 rather than Schedule 3.

Delete Schedule 3 as its content is contained in Schedule 1.

Require the rental provider to supply a copy of the electrical safety inspection report to the renter immediately if there is a need for rectification and otherwise within seven days of receiving it.

Make explicit in the Act penalties on the rental provider for failing to carry out safety related inspections and for failing to carry out the identified rectification.

If renters are required to have their electrical appliances checked, they must be required to supply a copy of the electrical safety inspection report to the rental provider immediately if there is a need for rectification and otherwise within seven days of receiving it.

Make explicit in the Act penalties on the renter for failing to carry out safety related inspections and for failing to carry out the identified rectification.

Add to the Act a section worded along the following lines:

### **Agent indemnity**

In any instance where an agent for the rental provider informs the rental provider of a compliance requirement to be met by the rental provider, the agent cannot be held liable for the non-compliance or any consequences arising unless the rental provider has supplied the agent with adequate instructions and funds to achieve the compliance.

## **Frivolous bond claims compelling VCAT applications**

### **S.411 Claims for rental bonds**

- (3) A claim must not be made before the termination of a residential rental agreement unless –
  - (a) it is made jointly by or on behalf of the residential provider and all of the renters; or
  - (b) it is made by or on behalf of the residential rental provider and directs the bond to be paid to all of the renters; or
  - (c) it is made by or on behalf of all of the renters and directs that the bond be paid to the residential rental provider.

### **S411A Notice or claim to be given to other parties**

- (2) The Authority must give written notice of a claim referred to in subsection (1) to all the other parties to the residential rental agreement known to the Authority.
- (3) The notice given by the Authority –
  - (a) may be addressed to one or more of the parties to the residential rental agreement; and
  - (b) must be given to the Director of Housing if the whole or part of the bond was paid by the Director of Housing; and
  - (c) must state that the Authority will pay the claim unless within 14 days after receiving the notice under subsection (2) the party to the residential rental agreement gives written notice to the Authority that the claim is subject to an application to the Tribunal.

### **411AC Repayment of bond where no dispute**

The Authority must repay the amount of bond if –

- (d) one or more of the following apply –
  - (i) the claim is made by the renter or the agent of the renter;
  - (ii) the claim is for payment to the party who made the claim or on whose behalf the claim was made;
  - (iii) no party to the residential rental agreement has notified the Authority of an application within 14 days after notice is given under section 411A(2).

### **The problems**

The authority “may” address to one or more of the parties to the rental agreement a notice that a bond claim has been made, yet the only way of

stopping the Authority paying the bond to the applicant is if a party to the rental agreement notifies the Authority “of an application within 14 days”, presumably this means an application to the Tribunal. A different standard applies if the bond or part of it has been paid by the Director of Housing, it “must” be given a notice. There is a contradiction within s.411A, on one hand it says in subsection (2) the Authority must give notice of an application to all the other parties to the rental agreement but on the other hand in subsection (3) it says the notice “may be addressed to one or more parties to the residential rental agreement”.

If a renter makes an application for the bond at any time during the life of the tenancy the only way the pay out of the bond can be stopped is by making an application to VCAT, it is not sufficient for the Authority to reject the application on the basis that the agent for the rental provider advises that the tenancy has not ended. This seems to be an unnecessary waste of VCAT time, the agents time and the rental providers money in having to fund representation at VCAT.

### Suggested Improvement

In section 411A change subsection (3) to the following:

#### **S411A Notice of claim to be given to other parties**

- (3) The notice by the Authority –
  - (a) must be addressed to all other parties to the residential rental agreement; and
  - (b) must be given to the Director of Housing if the whole or part of the bond was paid by the Director of Housing; and
  - (c) must state that the Authority will pay the claim unless within 14 days after receiving the notice under subsection (2) the party to the residential rental agreement gives written notice to the Authority that the claim is subject to an application to the Tribunal or that the claim has been made before the termination of the residential rental agreement and does not comply with s.411(3).

## **Premises to be occupied by rental provider or provider's family**

### **Residential Tenancies Act 1997**

- S.91ZB After receiving notice the renter may give a 14-day notice
- S.91ZZA Premises to be occupied by residential rental provider or provider's family
- S.91ZZH VCAT may approve reletting
- S.91ZZI(1)(b) Termination date cannot be before the end of a fixed term
- S.91ZZI(2) Notice of no effect if it would constitute discrimination
- S.91ZZO Form of notice to vacate.
- S.91ZZS(1) Renter may challenge notice at VCAT
- S.322(1) Application for possession order
- S.326(1) Time of application for possession order
- S.329 Application for possession order cannot be heard before termination date
- S.330(f) VCAT must consider what is reasonable and proportionate
- S.330A What is reasonable and proportionate
- S.486A Director may approve documentary evidence

### **Government Gazette and CAV website**

Documentary evidence approved from time to time by the Director

### **The Detail**

#### **S.91ZZA**

- if immediately after the termination date the premises are to be occupied by:
  - the rental provider; or
  - if the rental provider is an individual:
    - by the rental provider's partner, child, parent, or partner's parent; or
    - another person who normally lives with the rental provider and is wholly or substantially dependent on them.
- termination not less than 60 days after the notice is given.

Note:

Documentary evidence supporting the reason must accompany the notice (see section 91ZZO)

The documentary evidence which is specified by the Director must include a witnessed, statutory declaration signed by the rental provider, stating either:

- they intend to reside in the rented premises, or
- the name of the person who will occupy the rented premises, their relationship to rental provider, and declaring whether the person is a dependant, and
- that the rental provider understands that they must not re-let the premises to any person (other than the person named to be moving into the rented premises in the statutory declaration) for use primarily as a residence before the end of 6 months after the date on which notice was given, unless approved by VCAT.

The premises cannot be relet as a residence within 6 months after the notice is given; unless:

- they are to be occupied by another of the rental provider's family under this section, or
- VCAT determines they may be let. (see section 91ZZH)

The termination date cannot be before the end of a fixed term. [see section 91ZZI(1)(b)]

The notice is of no effect if it would constitute discrimination under the Equal Employment Opportunity Act 2010. [see section 91ZZI(2)]

The renter may apply to VCAT to challenge the notice. [see section 91ZZS(1)]

After receiving the notice to vacate the renter may give a 14 day notice of intention to vacate even if their intended vacate date is before the end of a fixed term if there is one. [see section 91ZB]

An application for a possession order may be made at any time after the notice to vacate is deemed to have been given (ie allow for postage time) but not more than 30 days after the termination date in the notice. [see sections 322(1) and 326(1)]

If the renter does not vacate and it is necessary to proceed with a possession application VCAT must consider whether it is reasonable and proportion to grant the possession order. [see sections 330 and 330A]

## **The problems**

Some of the problems are:

- The required documentary evidence to be included with a notice to vacate is determined by the Director and could change at any time with the only evidence to the change being in the Government Gazette and the CAV website if it is kept up to date. To be sure the notice is compliant, it would be necessary to check these sources on each occasion a notice is given.



- Currently the documentary evidence required includes a statutory declaration about what the rental provider understands as the limitation on reletting the property. This is overly prescriptive, a slight failure to duplicate the wording will render a subsequent application for a possession order unsuccessful. The right to give a notice to vacate available to rental providers under s.91ZZA does not state that exercise of the right requires the rental provider to demonstrate an understanding of some other part of the Act, yet the Director has seen fit to impose this requirement.
- In deciding what is “reasonable and proportionate” VCAT “must have regard to” among other things “any other matter the Tribunal considers relevant”. [section 330A(j)] This adds a massive amount of uncertainty to an attempt to the exercise of a right gain possession of a property under section 91ZZA “Premises to be occupied by rental provider or provider’s family”.

### Suggested Improvement

Replace s.91ZZO(e) and the reference to s486A with the following:

- (e) it specifies they intend to reside in the rented premises, or the name of the person who will occupy the rented premises, their relationship to rental provider, and declaring whether the person is a dependant,

Regarding what VCAT must consider:

- at a minimum remove s.330A(j) so that VCAT is no longer required to have regard to any other matter it considers relevant.
- ideally also remove s.330(f) and s.330A so that VCAT is no longer required to consider what is reasonable and proportionate.

Change the notice to vacate form to reflect the above.

## **End of fixed term residential rental agreement of not more than 5 years**

### **Residential Tenancies Act 1997**

S.30	Cannot refuse to let premises because renter has a child
S.30A	Cannot unlawfully discriminate against renter
S.91ZB	Renter may give a 14 day notice of intention to vacate
S.91ZZD	End of fixed term residential rental agreement of not more than 5 years
S.91ZZI(1)(b)	The termination date cannot be before the end of a fixed term
91ZZI(2)	Notice of no effect if it would constitute discrimination
91ZZI(4)(a)	Notice of no effect if in response to the renter exercising or proposing to exercise a right under the Act
91ZZI(4)(b)	Notice of no effect if in response renter making a report under section 72AA
91ZZI(5)	Renter can challenge a notice to vacate provided they do so within the prescribed time after receiving the notice
S.91ZZO	Form of notice to vacate.
S91ZZS(1)	Renter does not have the right to challenge notice at VCAT
S.322(1)	Application for possession order
S.326(1)	Time of application for possession order
S.329	Application for possession order cannot be heard before termination date
S330(f)	VCAT must consider what is reasonable and proportionate
S.330A	What is reasonable and proportionate

### **The Detail**

#### **Section 91ZZD**

- if it is the initial fixed term a notice may be given before the end of the term.
- the termination date may be on or after the end of the fixed term.
- the notice must be given not less than 90 days before the end of the initial fixed term if the fixed term is for 6 months or more; or
- the notice must be given not less than 60 days before the end of the initial fixed term if the fixed term is for less than 6 months.

#### **Note:**

If the fixed term agreement is the second or subsequent fixed term agreement with this renter, this section cannot be used.

The termination date cannot be before the end of a fixed term. [see section 91ZZI(1)(b)]

The notice is of no effect if it would constitute discrimination under the Equal Employment Opportunity Act 2010. [see section 91ZZI(2)]

The notice is of on effect if it was in response to the renter:

- exercising or proposing to exercise a right under the Act; or
- making a report under section 72AA, i.e. a report of damage or breakdown of facilities. [see section 91ZZI(4)]

After receiving the notice to vacate the renter may give a 14 day notice of intention to vacate even if their intended vacate date is before the end of a fixed term if there is one. [see section 91ZB]

91ZZI(5) indicates the renter can challenge a notice to vacate provided they do so within the prescribed time after receiving this notice to vacate. This is in conflict with 91ZZS which does not give the renter a right to challenge the notice.

S.91ZZO Form of notice to vacate.

The prescribed form for giving a notice to vacate states that in addition to including the “relevant reason, section number and minimum notice period required under the Act” the rental provider “must also explain why the notice has been given” and that “it is not enough to quote just from the Act or from the reasons on the information sheet; this must be accompanied by specific details”. There is no requirement for the inclusion of prescribed documentary evidence.

The requirement for additional explanation is problematic and strange given that the reason for the notice seems to be contained in the heading of section 91ZZD. The justification may be in what VCAT is required to consider in deciding whether to grant a possession order. It must firstly determine if the notice to vacate is valid and then whether it is reasonable and proportionate to make a possession order. Section 330A deals with what is reasonable and proportionate and seems to assume notices to vacate are in response to a breach, however it also says VCAT must have regards to “any other matter the Tribunal considers relevant”. [330A(j)]

An application for a possession order may be made at any time after the notice to vacate is deemed to have been given (ie allow for postage time) but not more than 30 days after the termination date in the notice. [see sections 322(1) and 326(1)]

## The problems

Some of the problems are:

- Section 91ZZD allows for a notice to vacate at the end of the first fixed term. This seems fairly simple but if the tenant does not vacate and an application is made for a possession order VCAT is required to consider what is reasonable and proportionate, including any other matter the Tribunal considers relevant". Presumably for this reason the prescribed notice to vacate requires the inclusion of a reason apart from the reason that the first fixed term has come to an end. In other words, it is demanding a reason other than the reason.
- 91ZZI(5) contradicts 91ZZS, one indicates the renter can challenge a notice to vacate and the other indicates they cannot.

### Suggested Improvement

Regarding what VCAT must consider:

- at a minimum remove s.330A(j) so that VCAT is no longer required to have regard to any other matter it considers relevant.
- ideally also remove s.330(f) and s.330A so that VCAT is no longer required to consider what is reasonable and proportionate.

Change s.91ZZS to include a notice under 91ZZD as one of the circumstances where a renter can challenge a notice to vacate.

### **91ZW Residential rental provider's principal place of residence (fixed term residential rental agreement)**

This section allows the rental provider, provided several criteria are fulfilled, to give as little as 14 days notice to the renter to vacate the premises. In other similar instances where the rental provider is giving the renter a notice to vacate on or after the end of a fixed term 60 or 90 days notice is required. For example:

- Premises to be occupied by residential rental provider or provider's family (60 days)
- End of fixed term rental agreement of not more than 5 years. (60 days if the term was less than 6 months or 90 days if the term was six months or more)

Given the other options for terminating a rental agreement there is no apparent justification for this section and the short notice period.

#### **The Problems**

This is an unnecessary complication in an excessively lengthy and complicated Act.

The criteria which must be satisfied mean that it is probably rarely used.

There is no apparent justification for the short notice period.

Some rental providers choose to interpret the provision in a way which suits them, by just focusing on "principal place of residence" and "14 days notice" while overlooking the other criteria which must be satisfied.

The prescribed lease does not invite inclusion of whether the premises was the rental providers principal place of residence. It is not prescribed as information to be disclosed under s.30D and Reg 16.

The possible consequence of a statement on the rental agreement that immediately prior to the tenancy the premises was the rental providers principal place of residence is unlikely to be known to the renter entering into the agreement.

#### **Suggested Improvement**

Delete s.91ZW

Include a savings provision for agreements already entered into.

## **Director's Guidelines**

### **s.486 Functions of Director**

The functions of the Director under this Act are-

...

(fa) to issue guidelines;

...

### **s.452 General application to the Tribunal**

...

(9) Without limiting the matters which the Tribunal may consider, the Tribunal must consider the Director's guidelines in determining an application under this section.

### **S.211B Director's guidelines to be considered by Tribunal**

The Tribunal, must consider the Director's guidelines when hearing an application under section 209, 209AAB, 210, 210AA, 210A or 210B.

## **The Problems**

Directors Guidelines are an unnecessary added complication to an already complicated Act:

- Section 211 specifies matters which the Tribunal **may** take into account when hearing an application under section 209, 209AAB, 210AA, 210, 210A or 210B.
- Section 211A specifies **further matters to be considered** by the Tribunal but does not specify the same set of sections as specified in s.211. The content of the section indicates it relates to the calculation of compensation.
- Section 211B specifies that Director's guidelines **must** be considered when hearing an application under section 209, 209 AAB, 210, 210AA, 210A or 210B.

It appears the Act only requires the Tribunal to consider the guidelines, so in the settlement of any matters outside of the Tribunal it seems there is no need to consider the guidelines. Most matters are settled without the assistance of the Tribunal.

The ability to write guidelines which the Tribunal must consider gives the Director the ability to influence the Tribunal to interpret legislation in the way preferred by the Director. It seems very strange that a bureaucrat is given the power to influence the judiciary in this way.

There is no limitation on the subjects about which the Director may issue guidelines, only a specification of the types of hearings in which the Tribunal must consider them.

The guidelines may change or be added to at any time.

The guidelines are difficult to locate on the CAV site.

The Act only specifies that guidelines must be considered by the Tribunal, it does not require the renter or the rental provider to adhere to them.

The Magistrates Court is required to determine matters where one of the parties to the rental agreement resides in another state of Australia, it is not a Tribunal, so is it excused from having to consider the guidelines?

VCAT's annotated version of the Act contains commentary on its interpretation. Will this now be adapted to include an interpretation of the Director's interpretation?

Section 211B, despite the heading "Director's guidelines to be considered by Tribunal" and stating they must be considered when hearing applications under a specified list of sections fails to mention they must also be considered when hearing an application under s.452.

As just mentioned, s.211B, has the heading "Director's guidelines to be considered by Tribunal" and specifies that they must be considered in hearings under a specified list of sections of the Act, however further reading reveals s.330(3) which contains another list of instances where "the Tribunal must have regard to any guidelines issued by the Director".

Section 73(3) also requires the Tribunal to consider the Director's guidelines. Section 211B lists the same sections as s.211 but in a different order and a different way they appear in the Act.

### **Suggested Improvement**

Delete sections 486, 452(9), 330(3), 211B, 73(3) and any other similar section or subsection to remove the Director's authorisation to issue guidelines and the requirement that the Tribunal must consider them in the case of some types of hearings.

## **Director's Guideline – Cleanliness**

As stated under Director's Guidelines on previous pages the ideal improvement would be that there no provisions allowing the Director to issue guidelines and requiring the Tribunal to consider them when hearing certain matters. However, deficiencies in the content cannot go without mention.

### **The Problems**

The guidelines when referring to case law mentions that VCAT has referred to the following examples as a demonstration of a lack of cleanliness:

- Visible accumulation of unregistered vehicles on the premises.
- Presence of rats or mice in the property.
- Storage of salvaged material and goods.

Despite this the Director's Guidelines do not include these items in a list of examples of cleanliness that would be expected in premises which are reasonably clean. Does this mean the Director disagrees with the Tribunal's interpretation?

This guideline overlooks the fact that the guideline on maintenance states that the management of pest infestations is a rental provider responsibility yet states the presence of rats and mice in the property as evidence of a lack of cleanliness. If the rats or mice are there at the beginning of a tenancy it may be a rental provider responsibility but if they are there during the tenancy, they may be evidence of the renter's lack of cleanliness.

In the list of what is expected of a reasonably clean premises the Director states:

“Heating ducts and exhaust fans to be clean and free of dust. Note, cleaning at heights may often be considered maintenance which is the responsibility of the RRP. Renters are not expected to access ceiling fans where access may be dangerous.”

In support of this statement the Director cites two VCAT decisions. VCAT decisions might be persuasive but as stated by the Director they not binding. Citing them in the Director's inappropriately elevates their status.

The Act requires the renter to keep the premises reasonably clean and the rental provider to present the property in a reasonably clean condition, it does not excuse either of them from this if they cannot personally perform the cleaning task. It requires the renter to keep the premises reasonably clean, it does not specify how this standard of reasonably cleanliness is to be achieved. Both the rental provider and the renter are free to engage the



services of somebody else to carry out the cleaning task if they cannot or don't want to do it themselves.

### **Suggested Improvement**

Delete sections 486, 452(9), 330(3), 211B, 73(3) and any other similar section or subsection to remove the Director's authorisation to issue guidelines and the requirement that the Tribunal must consider them in the case of some types of hearings.

## **Director's Guideline – Damage and fair wear and tear**

As stated under Director's Guidelines on previous pages the ideal improvement would be that there are no provisions allowing the Director to issue guidelines and requiring the Tribunal to consider them when hearing certain matters. However, deficiencies in the content cannot go without mention.

### **The Problems**

In this instance the Director's Guidelines make no useful contribution to Tribunal deliberations as the annotated version of the Act already contains extensive commentary about the assessment of damage under s.210.

### **Suggested Improvement**

Delete sections 486, 452(9), 330(3), 211B, 73(3) and any other similar section or subsection to remove the Director's authorisation to issue guidelines and the requirement that the Tribunal must consider them in the case of some types of hearings.

## **Director's Guideline – Endanger**

As stated under Director's Guidelines on previous pages the ideal improvement would be that there no provisions allowing the Director to issue guidelines and requiring the Tribunal to consider them when hearing certain matters. However, deficiencies in the content cannot go without mention.

### **The Problems**

In this instance the Director's Guidelines make no useful contribution to Tribunal deliberations as the annotated version of the Act already contains extensive commentary on the subject.

### **Suggested Improvement**

Delete sections 486, 452(9), 330(3), 211B, 73(3) and any other similar section or subsection to remove the Director's authorisation to issue guidelines and the requirement that the Tribunal must consider them in the case of some types of hearings.

## **Director's guideline – Maintenance**

As stated under Director's Guidelines on previous pages the ideal improvement would be that there no provisions allowing the Director to issue guidelines and requiring the Tribunal to consider them when hearing certain matters. However, deficiencies in the content cannot go without mention.

### **The Problems**

This Guideline states that the management of pest infestations is the responsibility of the rental provider. This contrasts with the Cleanliness Guideline which cites the Tribunal's interpretation that the presence of rats or mice in the property can be a sign of a lack of cleanliness. Clearly if the presence of rats or mice comes about during the tenancy it may be the result of a lack of cleanliness. Keeping the premises reasonably clean during the tenancy is the responsibility of the renter so always requiring the rental provider to manage pest infestations is contrary to the Act.

Other pest infestations occurring during the tenancy which would be attributable to renter could be:

- Cockroaches – due to a lack of cleanliness

- Fleas – due to pet ownership

- Flies – due to a lack of cleanliness

Some pest infestations are simply an act of nature and are not attributable to either a deficiency in the premises or the way in which the renter uses the premises, for example a snake in the garden or a native beehive. Wind is an act of nature so if it blows the renters clothes off the clothesline it is simply a part of daily living and there would be no logic in requiring the rental provider to rewash the clothes or replace missing items.

Some pest infestations may not be immediately obvious, for example termites. Some pest infestations may damage the premises, for example termites, borers, wet rot fungus.

These complexities are not dealt with in the Guideline, instead it is suggested all pest infestation management is the responsibility of the rental provider. The Guideline contradicts itself, in 5.2.1 it states the renter has a duty to keep and leave the premises in a reasonably clean condition but 5.1.3 it exempts the renter from cleaning gutters and washing the outside of windows that are not easily accessible to the renter. The Act does not say the renter is only responsible for the cleaning they can personally do themselves, just as it doesn't require the rental provider to only do the maintenance they can personally do themselves. The Guideline ignores the fact that both the renter and the rental provider can engage the services of somebody else to assist them to fulfill their duties under the Act.

Another contradiction is that 5.2.3 suggests the renter should replace light globes that do not require a new light fitting but in the Cleanliness Guideline the renter is exempted (without a basis in the Act) from high cleaning.

### **Suggested Improvement**

Delete sections 486, 452(9), 330(3), 211B, 73(3) and any other similar section or subsection to remove the Director's authorisation to issue guidelines and the requirement that the Tribunal must consider them in the case of some types of hearings.

## **Director's guideline – Urgent Repairs**

As stated under Director's Guidelines on previous pages the ideal improvement would be that there no provisions allowing the Director to issue guidelines and requiring the Tribunal to consider them when hearing certain matters. However, deficiencies in the content cannot go without mention.

### **The Problems**

This Guideline includes a lot of commentary about the interpretation of “immediately” and acknowledges that there is no significant case law on the subject. The problem is that the Act does not acknowledge the complexity surrounding attending to urgent repairs, instead it makes the impractical demand they be undertaken immediately.

### **Suggested Improvement**

Rather than try to address this via Director's guidelines which are only required be considered by the Tribunal the problem could be addressed by relatively simple changes to the Act along the following lines:

Change s72(1) to the following:

(1) A renter may arrange for urgent repairs to be carried out to the rented premises if-

- (a) the renter has taken reasonable steps to arrange for the residential rental provider or that person's agent to promptly carry out the repairs, having regard to personal safety, the habitability of the premises, the risk of further damage to the premises, the time at which the request was made and the availability of appropriate repair services; and
- (b) the renter is unable to get the residential rental provider or that person's agent to carry out the repairs.

Add the following subsections to section 68:

The residential rental provider must ensure that urgent repairs are carried out promptly, having regard to the renter's personal safety, the habitability of the premises, the risk of further damage to the premises, the time at which the repair request was made and the availability of appropriate repair services. The residential rental provider must ensure that non-urgent repairs, having regard to the availability of appropriate repair services, are carried out within 14 days of being given a written notice requesting a repair by the renter.

Also delete sections 486, 452(9), 330(3), 211B, 73(3) and any other similar section or subsection to remove the Director's authorisation to issue guidelines and the requirement that the Tribunal must consider them in the case of some types of hearings.

## **Pest infestations defined as urgent repairs**

Section 3 includes in the definition of urgent repairs a pest infestation that makes premises unsafe or insecure. Therefore, the rental provider is required to immediately eliminate the pest infestation once informed of it. If the renter has taken reasonable steps to have the rental provider eliminate the infestation and the rental provider has not done so the renter can have the work carried out and claim reimbursement from the rental provider up to the prescribed limit.

Attributing responsibility for dealing with pest infestation to the rental provider implies the rental provider has some control over whether the infestation occurs in the first place. The Director's guideline on maintenance states that the management of pest infestations is the responsibility of the rental provider. This contrasts with the Guideline on cleanliness which cites the Tribunal's interpretation that the presence of rats or mice in the property can be a sign of a lack of cleanliness.

Some pest infestations, including those that may affect safety are simply an act of nature and are not attributable to either a deficiency in the premises or the way in which the renter uses the premises, for example a snake in the garden, native beehive moving to the garden, mosquitoes when mosquito borne diseases are prevalent. A renter could step outside the boundary of the rented premises and be confronted with same type of pest and risk to their safety. It is unreasonable to impose on the rental provider a liability once such a pest enters the boundary of the rented premises.

It may also be the case that the pest infestation is due to the renter's action or inaction, for example leaving rubbish around the property providing a food source and habitat for pests some of which may pose risk to safety.

In the case of mould or damp the same section of the Act only attributes an urgent repair responsibility to the rental provider if it is caused by or related to the building structure, but the same type of liability limitation is not extended to pest infestation affecting safety or security.

## **Suggested Improvement**

Change s.3(k)(i) to the following:

- (i) a pest infestation caused by or related to an unreasonable deficiency in the rented premises, or .....



## Summary

**An urgent review is required to attract more homeowners, investors, and property managers to participate in the Victorian rental market. There has been a mass loss of property managers and rental providers across Victoria exacerbating the rental supply crisis.**

The REIV urges government to initiate a review of the RTA and the Regulations. The Government must consult on the review of the changes to the Act and present a timeline to gather the sector's feedback and consider the impact it has had on the availability of rental properties in Victoria and on the management of tenancies and properties.

The REIV advocates for a better RTA, that creates a sustainable rental market while protecting renters' rights and the investment made by average Victorians.

# Understanding the impact of the state budget announcements

**112 Respondents**

Published on 19 June 2023

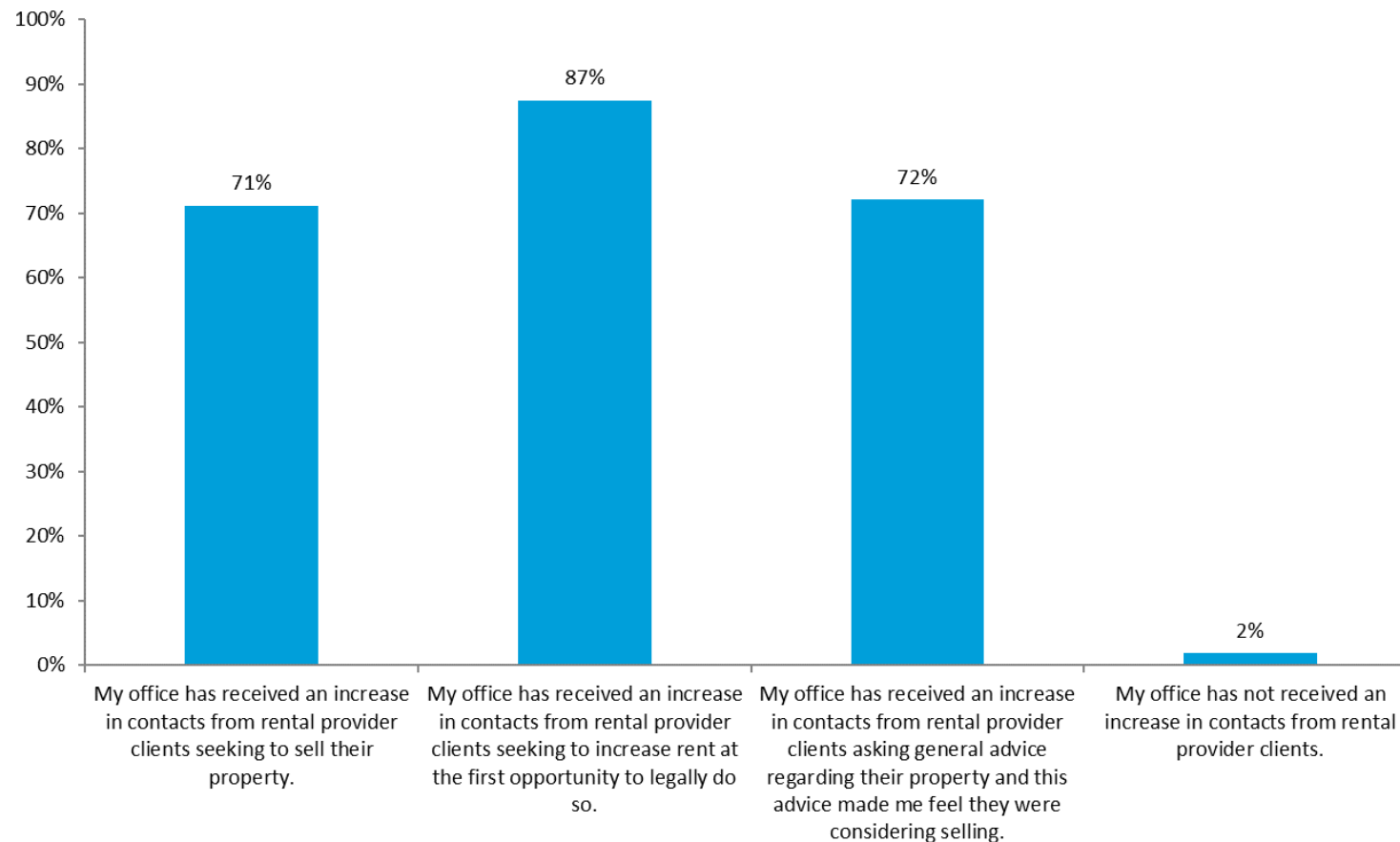


# Key feedback

- Over 70 per cent of real estate agencies saw a surge in enquiries from landlords
- Most landlords have raised their concerns regarding land tax increases and further regulation in the market
- Renters are mostly concerned about further increase on their rents and the difficulty of finding a property in current market with low vacancy rates.
- A rapid shift in enquiry level, investors looking to potentially sell is almost 5 times those looking to buy
- More than 80 per cent of responses points to decreasing number of enquiries to purchase an investment property

More than 70 per cent of real estate agencies saw a surge in enquiries from landlords since the government's budget announcement.

The most common enquiry is to increase rents, with nearly 90 per cent of respondents reporting an increase in contacts.

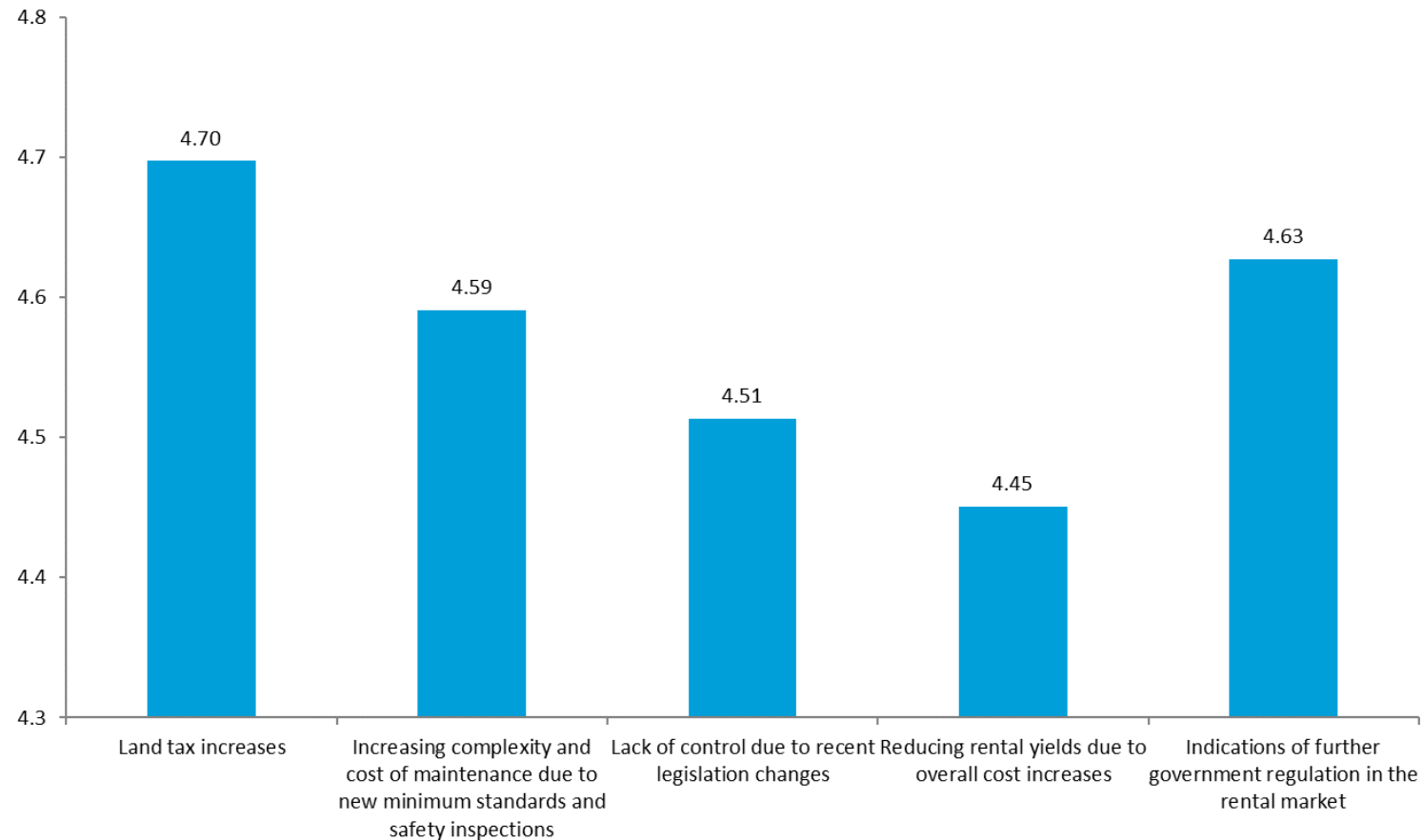


## Comments related to recent announcements on the state budget

- “Rental providers are very anxious regarding the investment & own home mortgage stress, new tenancy regulations reducing their control on their own property and the added financial cost on minimum standards and current building act safety compliance. I have multiple calls every day absorbing the rental providers stress in addition to the tenant stress of both my clients.”
- “Some buyers advocacy clients that were already engaged, finance ready and actively seeking property to buy as an investment in Victoria and not currently owning investment property in VIC that we manage, have actually paused services as they are considering buying property interstate due to the uncertainty post the VIC State Budget.”
- “With gas and electrical safety checks, increased interest rates and costs and now land tax, landlords are needing substantial rental increases as compensation and to make ownership commercially viable.”
- “3 owners have signed sale authorities to sell since budget announcement and enquiries from at least 15 others considering selling.”

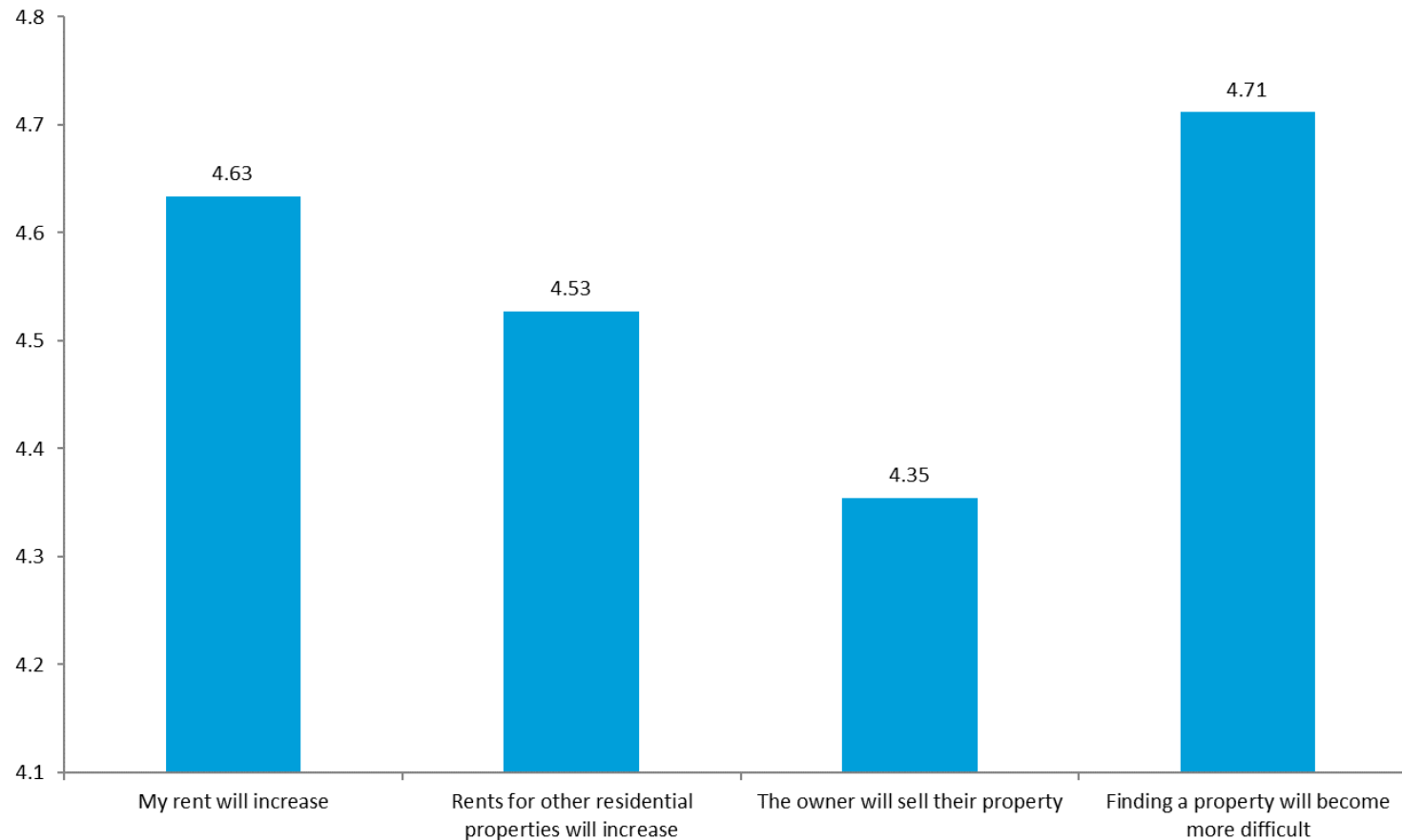
## Following the state budget announcements, most landlords have raised their concerns regarding land tax increases and further regulation in the market.

Which ones are the major concerns your rental provider clients are experiencing?  
(1 = not at all concerned, 5 = extremely concerned)



## Renters are mostly concerned about further increase on their rents and the difficulty of finding a property in current market with low vacancy rates.

Which ones are the major concerns your renter clients are experiencing?  
(1 = not at all concerned, 5 = extremely concerned)



## Comments related to supply of rental stock

- “20 to 40 applications per property results in homelessness being a high risk, takes much longer to process applications and get approvals.”
- “We are experiencing record number inspections at rental opens and people are getting desperate to find a property.”
- “We have had a sub 1% rental vacancy rate now for several years. It is extremely difficult for some renters to find a home and suspect many will never find a home unless the market drastically changes.”
- “There is limited supply of new rental business - our BDM typically lists 10-15 new businesses per month. Month of May she listed 4! “
- “It is already evident since the budget that some RP's have had enough and decided to sell. It has not been met by an increase in investors, meaning the rental stock will start reducing further.”
- “Rental stock has fluctuated however April was our lowest vacancy ever experienced in 20 years.”
- “We require more stock as the vacancies are filling with in 1-2 weeks.”

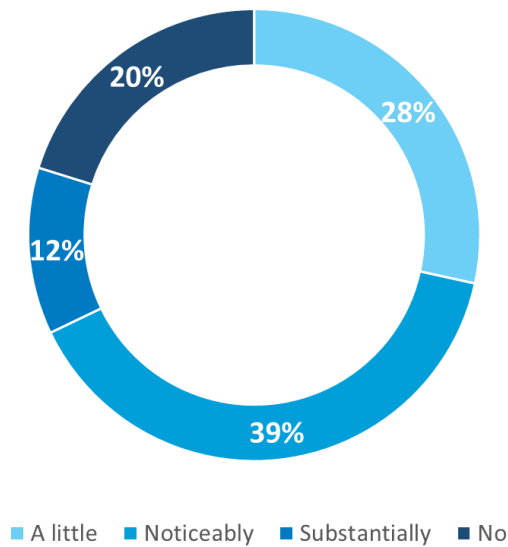


## The impact of interest rate hikes, state budget announcements on investors.

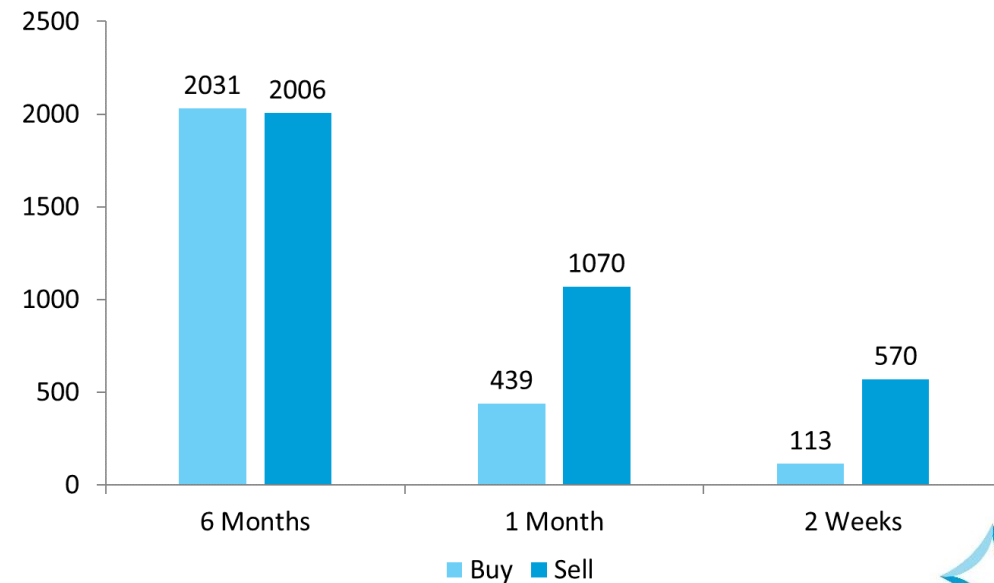
**80 per cent of respondents experienced an increase in listing enquiries.**

**Since the budget announcements in mid-May the number of people enquiring to sell their investment properties is significantly higher than those who are looking to invest – 5:1**

Has the level of listing enquiries increased since the announcement of land tax increases?

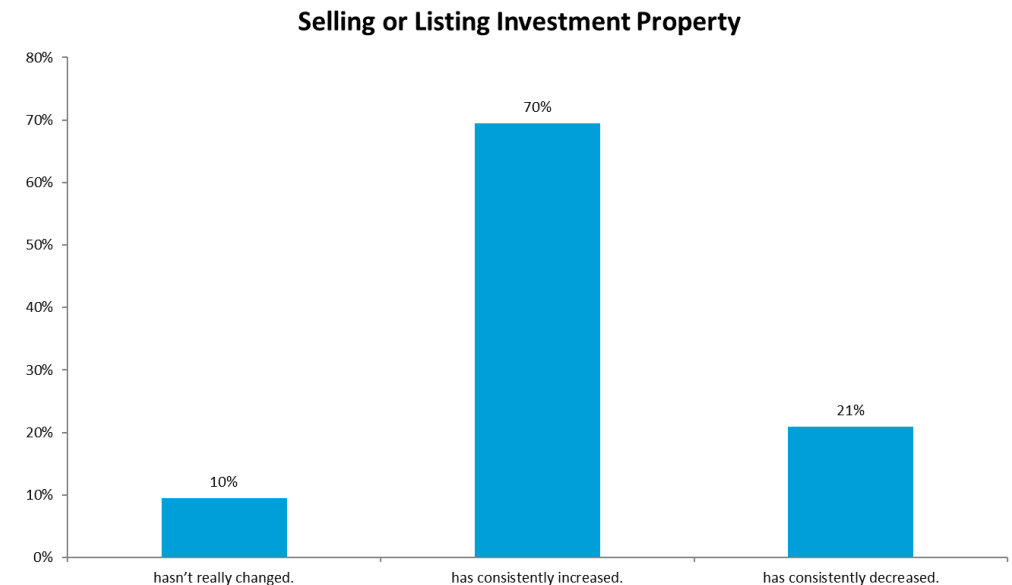
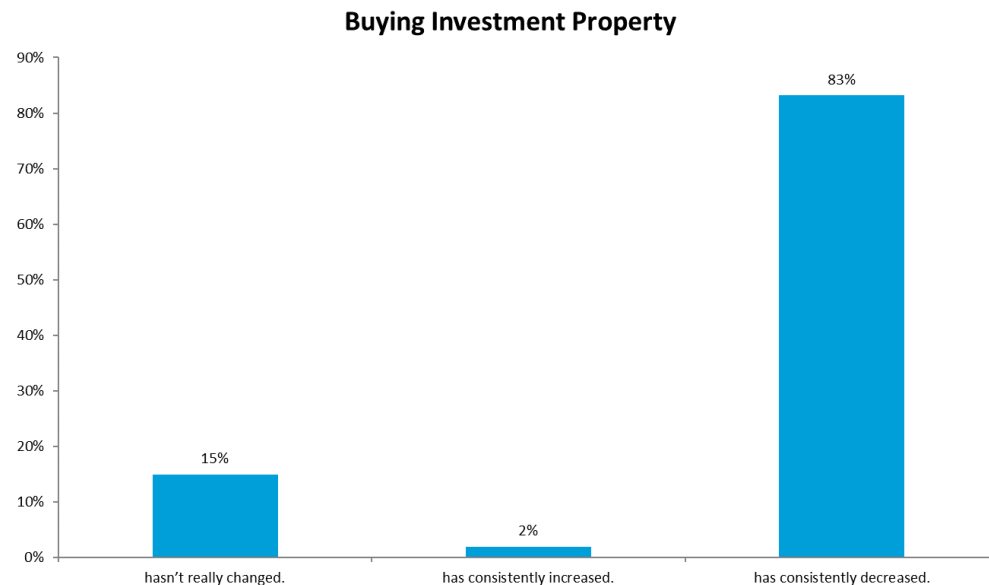


How many enquiries from people looking to buy or sell investment properties over the past...



## Since the introduction of the RTA Amendments in 2021, real estate agencies have already witnessed a shift in level of enquiries related to investment

More than 80 per cent of responses point to decreasing number of enquiries to purchase an investment property while 70 per cent of them also saw noticeable increase in landlord enquiries to sell or list their property.



## Comments related to agency administration costs to manage changes to the RTA

- “The extra costs to our office in purely administrating the demands of the new RTA changes are considerate - we have employed a staff member to manage it and also taken other staff away from their regular tasks to assist in not only RRP's as to their new obligations and responsibilities getting the compliance but to also advise and educate RRP's on how / what / when to do it.”
- “Huge administrative task since the changes, has placed enormous pressure on department and business and has led to resignations and staff shortages. Huge challenge with Bureaucrats not understanding real life impact on Rent providers, renters and agencies.”
- “The administration of the new compliance requirements has been immense on the business. We estimate that our admin department spends around 30% of their total time just on compliance.”
- “Has added about 30% more work to our property managers workload. They now have to manage less properties to provide effective service.”

## Comments related to sourcing and retaining property management staff

- “As a regionally based agency, sourcing staff is a major issue for us. We were forced to restructure our PM department following a resignation as it was impossible to find a property manager. We have increased the wages of remaining staff, but with the declining numbers of the portfolio due to owners selling, the profitability of the PM department has been seriously eroded.”
- “Staff for any agency is a challenge with increased licencing requirements making it difficult to attract new staff to the industry.”
- “We have redesigned our whole business around staff by trying to remove them from the front line of client face communications and pushing them to concentrate on more backend administration works. It appears the vast amount of changes that the government has handed down has directly impacted staff on a mental and physical level, It appears this is common across the industry especially since Covid Lockdown, timing was appalling to implement new legislation at such a time.”

## Comments related to issues regarding PM staff leaving

- “Thankfully we haven’t had a lot leave compared to other agencies.... however those that have cite burn out from dealing with all the extra admin re compliance coupled with rental providers not wanting to comply with legislation.”
- “Burn out of Pty Mgt staff is an issue we deal with weekly - the extra demands on them to the point of them almost needing to be lawyers at the moment is ridiculous.”
- “Changes to legislation that required our property managers to enforce new requirements/compliances to both tenants and landlords has resulted in our staff being abused more than ever before.”
- “PM staff leaving because they can find a better paying job elsewhere with less conflict and less regulatory complexity.”

## Comments related to changes on VCAT dispute resolution processes

- “Still waiting on VCAT hearings for bonds close to 2 years now. When followed up same answer there is backlog. These hearings could be dealt within 10-minute hearings. Very frustrating for all.”
- “Rent providers having to suffer huge wait times for hearings. EG through covid one tenant did not pay rent and owes over \$30,000 with the hearing still not heard. That property had to be sold once the renter vacated as the owner could not keep their investment.”
- “2 year VCAT wait. Still waiting on a hearing lodged in 2020. Disputes have increased, pre-covid I hadn't been to VCAT in over 3 years, then all of a sudden, a spike in claims.”