

SUBMISSION

RESIDENTIAL TENANCIES ACT REVIEW

Laying the Groundwork - Consultation Paper

August 2015

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ABOUT REIV

The Real Estate Institute of Victoria has been the peak professional association for the Victorian real estate industry since 1936.

Over 2,000 real estate agencies in Victoria are Members of the REIV. These Members are located in city, rural and regional areas.

The businesses employ more than 10,000 people in Victoria in a market which handles over \$70 billion of transactions totalling 22 per cent of GSP.

Members specialise in all facets of real estate, including: residential sales, commercial and industrial sales, auctions, business broking, buyers agency, property management, owners' corporations management and valuations.

Introduction

The REIV is the peak body for licensed real estate agents - representing the majority of property managers (PMs) in Victoria. The REIV's members represent a significant number of residential landlords across the state with members operating in city and regional centres.

The area that this review covers, the Residential Tenancies Act and the associated legislation, is of significant importance to our members. The REIV has a chapter dedicated to management of residential rental premises. We have conducted a long and exhaustive survey of those members to enable input for this submission.

The REIV has also sought input from its members about the consultation process and what they believe is important. We have sought feedback on what should be changed or could be improved about the rental market and the associated legislation.

The REIV believe this review should also be broadened to cover legislation that impacts on the Residential Tenancies Act, such as the Building Act, and importantly the VCAT Act and regulations.

The review of the Residential Tenancies Act was last conducted in 1996 and the REIV believes this is long overdue.

REIV Response

The following outcomes were gained from the Member consultation process.

The changing housing context

1. Does the current Act enable and encourage a rental market that provides sustainable, secure and safe housing to Victorians? Why or why not?

In terms of 'safe housing', particular consideration should be given to the importance of working smoke alarms.

Regarding safety and security, the REIV believes Victoria should follow Western Australian legislation and have 'deadlocks on all outside doors', which are unlockable from the inside. A grandfather clause, effective from 31 December 2020, would apply.

Concerning swimming pool and spa safety, the REIV believes that there should be a certificate of compliance from the Local Council. This certificate should only be valid for three years and be attached to the tenancy agreement.

Another aspect that falls under 'safe housing' is the issue of rooming houses in Melbourne. The REIV's views on this are outlined in a separate submission, provided to the Victorian Government earlier this year.

The REIV would support the amendment of S244 (violence or threatening behaviour) to include protections for landlords and landlords' representatives or agents. Under the current Act only neighbours and visitors are covered.

In terms of sustainability there has been some muted discussion around environmentally sustainable aspects of tenancies in recent weeks. The REIV believes this is not an aspect that requires consideration as part of this review.

2a) What issues would you like examined in the review of the current Act?

The REIV strongly supports the establishment of separate Acts - so that residential tenancies are set apart from other tenancies such as boarding houses and caravan parks.

A range of other issues are also worthy of consideration as part of the RTA review. These include:

- Condition reports should be in the regulations and also made electronically available

- Tenancy agreements should be electronic and tenants agree to accept service under Electronic Transactions (Victoria) Act
- Rent in arrears notice - this needs to be seven days (currently 14 days)
- Urgent repairs area of the Act needs a review; inclusive of air conditioners, pools, spas and smoke alarms
- Pets in rental homes by agreement between parties
- Establish pet bonds to cover additional damage to the property
- Phone and other communication lines in rental homes needs consideration regarding who should pay for connections
- There should be two levels within VCAT - allowing an appeals process, known as a 'hearing de novo'. Costs follow the event on appeal. If you lose an internal appeal then the unsuccessful party is responsible for costs (amend S109 VCAT Act)
- Need for flexibility in tenancy agreements, so that tenants and landlords can agree on terms, which aren't specifically excluded by the Act
- Under the current Act, a rental property can be rented for any use. This should be reviewed so that rental properties are solely used for residential purposes

b) What are your preferred outcomes, and what evidence base is there to support them?

The REIV believes the current Act should be split to make it more user-friendly for all involved - agents, landlords, tenants, the general public and also VCAT members.

There is also a genuine need for a standard regulated condition report.

The REIV would also support the implementation of a basic tenancy agreement which would cover all the terms of the agreement.

Regulatory & policy framework

3a) Are the principles and objectives underpinning the current Act relevant today? Why or why not?

The REIV is of the opinion that the principles and objectives

underpinning the Act have not entirely changed, however the environment has evolved, making a review necessary. A separate mediation process before the VCAT hearings is not well used in compensation matters.

The REIV also believes failure to pay the rent on time, or failure to pay the rent, should be a specific breach under the Act.

The Civil Procedure Act should apply at VCAT and override the VCAT Act for all cases. This will provide greater consistency in the conduct of proceedings at VCAT, and greater alignment with Victoria's courts.

b) Given current trends, what principles and objectives do you think will be important in regulating the rental sector in the future?

The current Act allows for fixed-term tenancies of up to five years. Periodic tenancies which go beyond five years are still covered by the Act. The REIV is of the view that the current legislation meets the needs of the market and is adequate. REIV survey respondents have indicated that there is little, or no, demand for tenancies in excess of three years.

Other areas of concern:

- There should be one standard tenancy agreement form for all tenancies
- The REIV believes the phrase 'use the property for any purpose' should be removed from the Act
- The Act requires vigorous revision to overcome inconsistencies and the changing demographic of renters

4. What is working well about the current Act and what needs to be improved?

The following areas are working well within the current Act:

- 60 days notices
- Photographing tenant's possessions - the REIV supports the VLRC recommendations

The following needs to be addressed in the current Act:

- More flexibility is required in showing prospective tenants and purchasers through a property after the tenant has given notice. Currently, the norm to undertake open for inspections is 14 days prior to date of termination
- The REIV would like to see consistency between residential and commercial tenancies in relation to

tenants paying for outgoings such as taxes, rates and insurances.

- 120 days notice for no specific reason should be shortened to 90 days
- Currently, when a tenant falls behind in their rent by 14 days, the REIV believes the tenant should be financially responsible for the advertising and re-letting fee for the property
- The '14 days in arrears' needs to be amended to 'seven days in arrears' as hearings are taking too long and landlords are being hit with penalties
- The ATO Guidelines (re: depreciation) need to be followed when determinations are made by VCAT members

The REIV would support the establishment of two levels within VCAT. Appeals of the determination should be de novo and may have to be made within 14 days of the order. Members must have regard to all appealed decisions made within two-tier systems.

In regards to VCAT applications, the parties should consent to receive all communications electronically, unless one party specifically opts out.

The REIV believes that VCAT needs to provide full reasons, in writing, for every decision made rather than a determination.

The REIV would like to see members serve only two terms on VCAT, regardless of whether the term is full-time or part-time. This would allow for rotation.

As the industry body for the real estate profession, the REIV has significant concerns regarding waiting times for hearings. In some instances, this could be up to 13 weeks, placing a substantial financial burden on landlords.

The REIV believes all parties should be able to agree on terms in a tenancy agreement, provided the terms are not specifically contrary to the RTA.

Under the existing Act, renewals of proceedings are not working well in possession applications. The REIV believe when there's a renewal, a mandatory possession order should be made if the tenant breaches the agreement.

Also of concern for property management professionals is the ability for tenants to review hearings too easily. The REIV would support the removal of second reviews. This would also not allow discretion to VCAT members, and remove the ability for leave to be granted to tenants to seek a second

review. The result would be significant improvements in regards to effective use of VCAT time.

5. What can Victoria learn from the approach to the regulation of residential tenancies in other Australian jurisdictions and internationally?

There are some aspects of the NSW Act which are worthy of consideration:

- Bonds - if a tenant does not apply within 10 business days a landlord can lodge a claim with the RTBA without a hearing (as per S163-176 NSW RTA)
- Swimming pools/spas - NSW has implemented a certificate of compliance issued by relevant Local Councils and attached to the tenancy agreement
- NSW tenancy agreement contains clauses relating to ending a fixed term tenancy (S107 (4) RTA NSW) - this sets clear compensation guidelines for both parties

New Zealand legislation has mediations as the first step in the dispute process between parties. In Victoria, the REIV would like to see this process implemented - especially in cases where the compensation amount is greater than the bond. The Disputes Settlement Centre, with 15 locations across the state, should be used as it is independent and easily accessible to all parties

6. What are the challenges and barriers to reform of the rental sector?

The REIV believes the existing Act does not need to be any more substantive than it currently is. Being over prescriptive in a range of areas will create statutory barriers which will impact on freedom of choice for landlords and tenants. In this instance too much red tape will not help.

The Act needs to encourage greater rental accommodation, not make it harder for landlords to invest. At present, a third of all new dwelling construction is financed by property investors, this is increasing housing supply and helping to meet rental market demands. Greater landlord protection, and certainty, would encourage more property investors. The NSW Act is a good example of this as it provides certainty when a tenancy is terminated (S163-176 NSW Act).

There is already substantial protection in place for tenants, through the landlords consumer guarantee arrangements.

7. What considerations need to be given to the regulation of rooming houses, caravan parks and residential parks?

The REIV's views on rooming houses are contained in a separate submission to the Victorian Government (a copy can be provided on request).

Importantly, all of these need to be separated from the current Act (refer to 2(b) above).

Tenants

8a) What are the key issues for regulating the private rental sector that arise from the:

- **growing number of families and proportion of older tenants?**

More properties, and a broader range of properties, are needed. It's important to provide more certainty for landlords to invest in properties which are suitable for older tenants.

- **tenants renting for longer periods, and**

There is substantial industry concern that if longer term tenancies become the norm, properties may fall into greater disrepair. At present, when a tenancy ends (generally every 12-24 months), the property is fully inspected, and maintenance and repairs takes place between tenancies.

- **decreasing proportion of tenants renting in multi-unit properties (flats, units or apartments), especially given the increasing proportion of households living in multi-unit properties more generally?**

This discussion should be left for the Better Apartments review which is currently being undertaken by the Victorian Government.

b) How should residential tenancies regulation take into account these trends in the private rental sector?

As above.

9. How do changes in tenant mobility impact on the current balance of rights and responsibilities between landlords and tenants?

Tenant mobility impacts greatly on landlords. In cases where a tenant breaks an agreement (breach of a contract), there should be some compensation - as set out in current NSW legislation. Specific terms within tenancy agreements are required to address this issue (as per S163-176 of the NSW Act).

10. What situations trigger issues of affordability in the rental housing sector, and how do these affect tenants and the choices they make?

Tenants will often be impacted by the broader economy and the current state of the rental market. Conversely, this can work in tenants' favour. Currently, with more rental accommodation available, rents are being squeezed. In this way, market conditions can drive rents down.

Broadly, as outlined in Question 6 above, regulation needs to be simplified and generally minimised, so that it does not add to the cost of rental housing at any particular time.

11. From a tenant's perspective, what role does residential tenancies regulation play in enabling access to rental housing?

The current Act requires that rental accommodation is maintained in a good state of repair, appropriately looked after and clean and tidy. There are other elements within – and outside the Act – which are equally important for tenants, such as a regulated condition report and comprehensive tenancy agreements covering all terms between the parties.

Landlords

12. How do investor trends affect the current and future management of tenancies and the availability of rental housing?

Investor trends impact substantially on rental affordability, as outlined in Questions 6 and 10 above. It's important to encourage investment – from single premise-type landlords, through to the 'big players' in the market (including large corporations).

From an investor perspective, regulation can be an impediment, as can a low yield (the REIV gathers information on rents and rental yields). Both are important to ensure that there is an ongoing supply of housing well into the future.

13. From a landlord's perspective, how does residential tenancies regulation influence the ongoing supply of rental housing?

The current legislation is overly prescriptive and does not encourage investment in residential real estate.

Redress at VCAT is too uncertain in determinations and too

difficult for the average person to use.

Currently the only option at VCAT is an appeal to the Supreme Court, which is cost prohibitive.

14. How do estate agents influence the relationship between landlord and tenant, and what implication does the increasing use of agents as property managers have for residential tenancies regulation?

Housing is emotional and stressful; the law is complex so it is vital that landlords are able to – and are encouraged to – appoint an independent person who can act on their behalf.

Property managers also protect the tenant – providing advice and assistance when repairs are required; in choosing an appropriate property; in transferring tenancies; and in generally ensuring the tenants transition into a new home is as smooth as possible. Property managers can guide a tenant and assist in negotiating the most appropriate rental agreement for them.

Property managers also ensure a safe environment is available for tenants. This includes:

- Smoke and fire alarms
- Gas appliances
- Pool and spa safety
- Building security
- Resolving disputes (often without going to VCAT)

Property managers provide a good barrier between landlord and tenant in tough situations and their importance and work is often underestimated. Property managers add value to the tenancy relationship, with a high percentage of rental properties in Victoria handled by a property manager due to the important role that is fulfilled.

In these instances, property managers are vital, especially in an increasingly complex environment.

Residential tenancies disputes

15. What more could be done, or what could be done differently, to enable landlords and tenants to effectively manage their tenancy relationship?

It's important to simplify VCAT for property managers, landlords and tenants. A reduction in waiting times is also essential.

As outlined previously, property managers are an important part of the landlord-tenant relationship providing advice and assistance as required.

16. Are the current arrangements for resolving disputes and providing access to redress for both landlords and tenants sufficient, or are other mechanisms needed?

The REIV believes it is essential for Alternative Dispute Resolution (ADR) to be used as a first step in the dispute process. Simple disputes (eg. non-payment of rent) could then proceed to the Victorian Disputes Centre or the Magistrates Court. It is best to have a completely independent ADR, separate from VCAT, which will ensure parties feel more at ease and confident in the ADR process.

In addition, the provisions of the Civil Procedure Act should be extended to VCAT. ADR could then be made available here as well.

Also, an internal appeals process at VCAT would help to enable aggrieved parties to have better redress within the tribunal (VCAT) system. Full reasons for VCAT decisions would assist all parties with this.

The REIV strongly supports the ability of parties to claim costs as well as disbursements - including taxis, time and out of pocket expenses - when they appear at VCAT.

When VCAT makes a decision for rent in arrears, in addition to the amount awarded, the REIV believes the tribunal should make an order for the payment of interest plus bank fees and charges.

Prior to the introduction of the current Residential Tenancies Bond Authority (RTBA), property managers were able to specify the dollar amount of the bond that they (the property managers) wished to contest and the rest was repaid to the tenants. The RTBA is not allowing this facility and the REIV believes tenants are being significantly disadvantaged. In cases where there is any amount in dispute, the remainder of the bond should be released to the

appropriate party, leaving the disputed amount in the RTBA.

The RTBA should also utilise the Electronic Transactions Act so that all transactions can be undertaken electronically, which will streamline and ensure payments are made swiftly - to tenants and landlords/property managers.

The REIV would like to see VCAT transfer orders to the RTBA, which would allow parties to have their monies paid out electronically without the need to lodge an application.

17. What factors contribute to tenants exercising, or not exercising, their rights?

The REIV would support the implementation of an online VCAT single page form for all parties rather than the cumbersome application form which VCAT presently has.

There is strong support in place for tenants through the Tenants Union and Legal Aid as well as funded community groups, such as Peninsula Legal Services in Frankston. These government-funded groups are established and presently cover all tenant needs.

Summary

As a long-term advocate of real estate agents in Victoria, the REIV believes that:

- Long-term tenancies are well covered under the current legislation. The REIV believes the current Act allows for all forms of tenancies and is adequate in providing choice to all parties
- Photographing tenants possessions is well covered in the VLRC recommendations
- Residential rental properties should only be used for residential use and no other purpose
- Swimming pool and spa safety is important and the establishment of a three-year certificate of compliance is required
- Electronic Transactions (Vic) 2000 needs to be utilised by VCAT for all residential tenancy matters
- The form of reports (eg condition reports and tenancy agreements) should be prescribed by regulation
- A comprehensive tenancy agreement is needed to cover all terms where parties can agree if they are not contrary to the Act
- Independent ADR process is needed for tenancy disputes
- A two-tier level of VCAT with internal appeals is required
- Seven days for arrears of rental, rather than 14 days
- There is a need for shorter hearing times within VCAT
- Partial payment of bond to one party where that amount is not in dispute is required

- Give some certainty in termination of tenancies (eg as in NSW Act)
- The Civil Procedure Act should apply at VCAT
- All parties should be able to lodge online at VCAT using a very simple form, similar to landlord applications
- Property managers are underestimated and provide an effective and vital role in an often emotional and complex area.

The REIV appreciates the opportunity to provide this submission to the Victorian Government. We look forward to liaising with the Government throughout the ongoing review of the Residential Tenancies Act.

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