

Launch
HOUSING

IT'S TIME TO END
HOMELESSNESS

Submission to Review of Residential Tenancies Act

A merger between



1. Crisis Accommodation under the Residential Tenancies Act

There has been confusion for many years regarding the application of the RTA with funded crisis accommodations services. Whenever the issue of providing a legislative solution to resolve this uncertainty has been raised, the response has been that this should be deferred until a review of the legislation takes place.

Sec 22 of the Act provides that “temporary refuge accommodation” is exempt from the RTA. Temporary refuge accommodation is defined in the Act as accommodation provided on a not for profit basis for a period of less than 14 days. This has led to two sources of confusion:

- 1) It had been unclear as to whether this section referred to DHHS funded crisis accommodation services.
- 2) If it did, then what part of the RTA would apply to crisis accommodation services – it was assumed that it would be the rooming house provisions

In 2014, VCAT determined that *it has no jurisdiction under the Residential Tenancies Act* over the Southbank crisis accommodation facility and specifically found that it is not a rooming house under the rooming house provisions of the RTA.

The review provides an opportunity to consider the following:

- What is the purpose of Sec 22 and who is temporary refuge accommodation meant to cover?
- If it was intended to cover crisis accommodation services this is inconsistent with terms under the DHHS funding and service agreements (which specific an ‘average’ period of 6 weeks)
- If, as VCAT found, crisis accommodation services are not covered by the RTA, what is the appropriate means of protecting the rights of services users at these facilities and should this be through the RTA, Consumer Protection or other legislation.

2. Adult and Youth Residential Rehabilitation Services

Many clients of Launch Housing are (or have been) residents within adult or youth residential rehabilitation services within the community mental health system or the alcohol and other drug system.

Most of these services provide supported accommodation for months and, in many cases, years. These facilities are not included in the residential tenancies act and, consequently, the rights and responsibilities of both the resident and leaseholder are undefined. This leaves a number of vulnerable residents without any protection of their tenancy rights.

Launch Housing manages a number of supported accommodation facilities (Common Ground Elizabeth Street and transitional housing) which are subject to the RTA and where tenant’s rights are defined and protected under the Act. It may be appropriate to include adult and youth residential rehabilitation services under the RTA.

Launch Housing recommends that:

- The Review consider how the rights of residents within youth and adult residential rehabilitation services within the community mental health and drug and alcohol sectors should be protected.
- Legislative options be developed for defining the rights and responsibilities of residents and leaseholders of adult and youth residential rehabilitation services including mechanisms for enforcement and review.

3. Longer term leases and notice to vacate

As the consultation paper identifies, more Victorians are living in rental accommodation for longer periods of time. For some groups of tenants for example, families with school age children and older people, longer tenure and security of tenure is very important.

The need for length of tenure is particularly important for people at risk of homelessness because of the dire shortage in the supply of affordable housing in Melbourne in particular, but also across the state (Hulse et al 2015, ABS 2011). At the end of a lease period many people struggle to find and maintain accommodation in appropriate affordable housing. At best this is an unwelcome disruption in the lives of people on low incomes and, at worst, can result in homelessness.

Longer term leases would be very helpful in terms of securing affordable housing for people at risk of homelessness.

A related issue is notice to vacate periods where tenants are given notice because the landlord wants to renovate, sell or move into the property (60 days) or for no reason at all (120 days). Frequently, tenants who lose tenure from their affordable housing are unable to find new accommodation within the notice period and many consequently request assistance from homelessness providers. Again, this situation is exacerbated by the dire shortage of affordable housing. Longer notice periods would increase the likelihood of finding suitable affordable accommodation in a very tight market.

While the existing legislation does not prevent longer leases, the prevailing system for managing the rental market focusses much more on short term leases. In fact longer term leases might be beneficial for both tenants and landlords.

Encouraging longer term leases and longer notice to vacate periods is probably largely a matter of engaging the real estate industry in a process of education and training to achieve cultural change amongst property managers. There are currently financial incentives for real estate agents in the form of reletting fees and fees for establishing new tenancies which might encourage some agents to offer shorter term leases. These incentives should be considered in the overall review of the administration of the RTA.

However the legislation could be used to signal an expectation that a ‘standard’ lease is longer than 12 months. For example, within the commercial sector ‘standard’ leases are regularly for longer periods of time. For example, under Section 21 (5) of the Retail Leases Act 2003

tenants have the right to a five year term but can waive this right and sign a lease for a shorter period of time.

There are a number of options the Government should encourage longer term leases and changes to the notice to vacate periods in order to better protect people at risk of homelessness. Options for reform include:

- Consider including a definition of a longer ‘standard’ lease within the Act. Tenants would have a right to a ‘standard’ lease of five years, but could waive this right and sign a lease for a shorter period of time. Longer leases could also be linked with longer notice to vacate periods where both the tenant and the landlord/agent would give longer notice to vacate periods.
- A program of training and cultural change within the real estate industry to encourage longer leases and longer notice to vacate periods.

4. Regulation of rooming houses

Rooming houses can be an affordable housing option for people on low incomes and currently provide housing for around 12,000 Victorians, many of them vulnerable. While the introduction of Minimum Standards appears to have had some success in removing some of the most disreputable operators from the system, a recent report (Dalton, Pawson and Hulse 2015) has highlighted that there are still a range of problems that require a new regulatory response.

This new report had a number of conclusions that are relevant to the RTA review, specifically:

- There has been growth in the numbers of rooming houses over the last three years, probably driven by the paucity of other affordable rental options, particularly for sole person households.
- There are a range of different regulatory systems and legislative frameworks that may impact upon the operating environment of rooming houses. Some may have the unintended consequence of reducing incentives for rooming houses to become registered (the example given in the report relates to the Australian Government’s anti-discrimination legislation which required that owners of short term accommodation comply with requirements to make their properties accessible to people with disabilities. An unintended consequence is that rooming houses are consequently less likely to become registered.)
- Many rooming houses are not registered.
- The current system is ineffective in picking up the number of unregistered rooming houses, local councils in particular lack the resources and capacity to detect unregistered rooming houses.
- There are different segments within the rooming house market for example, residents may be international students, professionals or very vulnerable people with mental health issues. These segments of the market require a different regulatory response.
- A significant number of very vulnerable people with mental health issues and/or drug and alcohol issues are reliant on rooming houses to provide accommodation. They frequently do not have the skills and capacities to look after themselves, to advocate

for their rights as residents and consumers and, sometimes, to live harmoniously with others.

- Failures in the regulatory system means that many rooming houses are unsafe for the most vulnerable Victorians and can mean that other service providers, eg mental health services, material aid providers are less likely to provide services in an environment that they deem to be unsafe.

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Launch Housing would recommend that:

- Regulation that protects the interests of the most vulnerable Victorians within the rooming house system should be given priority.
- The regulation of rooming houses should be conducted in conjunction with the regulations of other types of housing for disadvantaged and marginalised people.
- It may be that legislative or policy frameworks to protect vulnerable residents be considered separately from the Residential Tenancies Act.

In addition Launch Housing supports the proposal that a fit and proper person test be introduced for the proprietors of rooming houses. This regulation was recommended by the Coroner following the death of a young couple in a fire in 2006, where they were trapped in a fire. The 'fit and proper person test' is also used in the UK and in Queensland.

Further, many residents of rooming houses may be reluctant to complain, given that they face the risk of eviction. Given this, Launch Housing would recommend that provision in the Act be made for third parties to complain about the conditions of rooming houses. This would need to be drafted carefully as it is also possible that local residents, who are opposed to having rooming houses in their local area, could use the provision to raise complaints.

Launch Housing would also note that local Councils are responsible for the appropriate enforcement of regulations in relation to rooming houses and that there can be inconsistencies in how the regulations are enforced. Launch Housing would recommend that, as part of the review, and the implementation of any new legislative provisions, that CAV conduct a broad education campaign for local Councils to inform them of the new provisions and their responsibilities under the Act.

In short, Launch Housing recommends that:

- A fit and proper person test be introduced for the proprietors of rooming houses.
- That the CAV consider new provisions to allow third parties to complain about the conditions in rooming houses.
- That CAV educates local councils about their enforcement responsibilities under the RTA, particularly in relation to any new provisions.

5. Minimum Standards within private rental properties

While there are minimum standards for rooming houses, no minimum standards exist for rental property. Launch Housing services assists clients to find suitable affordable rental accommodation and we are aware that frequently, the standard of housing available to people

on low incomes can be very poor. Tenants must contend with a range of problems with their rental accommodation. This may include:

- A lack of basic amenities such as a heater, a working oven or stove and running hot water.
- The house is not insulated or weather proof making it difficult, and very expensive, to heat and cool
- Inadequate locks on external doors and windows, leaving the home insecure and vulnerable to theft and break-ins.
- Structural defects (eg mould growing on the wall because of damp, holes in the floor or roof) that may lead to health problems.

Footscray Community Legal Centre interviewed a range of tenants in the inner west of Melbourne as part of a [report](#) examining the standard of accommodation in affordable rental properties. They found tenants were living with severe defects within their properties, one single parent family with 3 children had no functioning shower or bath for a period of 5 months for example, and another family had holes in the roof that made the property impossible to heat in winter. Houses that are not properly insulated or weather proof are a significant problem in the affordable rental market.

However, most tenants were reluctant to report problems with their property. This was due to ignorance of the VCAT process (ie they were unaware that they even had a right to request repairs) and also to a fear of eviction should the landlord not want to undertake the repairs. It also seems likely that the shortage of available affordable housing in the rental market is likely to contribute to tenant's reluctance to pursue landlords for repairs. In a market where supply of affordable housing is so tight, tenants may perceive that they have little choice and no power. Arguably, there is market failure, and further regulation is justified.

It may be that the introduction of minimum standards would mean that the state government would face significant liabilities in bringing public housing stock up to meet minimum standards. It should also be recognised that while meeting standards might incur costs, the government (and tenants) are already incurring significant costs because of the poor standard of some public housing.

Costs to the government might include:

- Deteriorating housing stock that will become more expensive to repair over time.
- Substandard housing that cannot house tenants but cannot be used for other purposes (ie sold) and remains unutilised.

This is separate from the costs that are borne by tenants or prospective tenants of public housing including:

- Longer waiting lists for public housing because some existing housing stock has not been maintained and is in such a state of disrepair that people cannot be housed in it.
- Excessively high energy costs.
- Lack of amenity.
- Potential health costs of unsafe living environments.

Internationally, the need to respond to EU targets on energy performance has driven policy to improve energy efficiency across all housing stock. In the UK for example, [new regulations set to come into effect by April 2018](#) require a minimum standard of energy efficiency across all housing sectors including the private rental market. In order to support the transition to more energy efficient buildings rental landlords will be eligible for funding to cover upgrades and retrofits. If landlords do not meet the minimum benchmarks by 2018 they will face a ban on renting out properties that do not meet the new guidelines.

In summary Launch Housing recommends that:

- That the CAV commission an economic analysis examining the costs associated with substandard housing in both the private and public sectors.
- As part of the review of the RTA, CAV develop minimum standards for rental property.
- That an appropriate enforcement body be identified. This could be either CAV or local councils.
- That the UK model of minimum benchmarks for energy efficiency could provide a useful framework for the introduction of minimum standards in rental properties.
- That CAV conduct an education campaign to inform tenants and landlords of their rights and responsibilities under the new minimum standards. This should be accessible to a range of different cultural and language groups. (The work conducted by Footscray Legal Centre found that many of the tenants in substandard housing were newly arrived immigrants or refugees.)

6. Coverage for shared tenancies

It is increasingly common for rental households to comprise of housemates who do not form the usual family unit nor occupy the premises as a rooming house. The RTA needs to consider better mechanisms for the resolution of disputes between housemates in matters relating to their tenancy such as payment of rent and bonds, damage, nuisance and quiet enjoyment.

References

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- Buildings in the UK that fail to satisfy minimum energy performance benchmarks will soon be prohibited from leasing to tenants.** <https://sourceable.net/british-landlords-banned-from-leasing-energy-inefficient-buildings/>

Hulse,K, Reynolds, M, Stone, W and Yates, J (2015) **Supply shortages and affordability outcomes in the private rental sector:short and longer term trends.** AHURI Final Report No. 241.