



Peninsula
Community
Legal Centre

PCLC RESPONSE TO THE DRAFT RESIDENTIAL TENANCIES REGULATIONS 2020

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1. INTRODUCTION

Peninsula Community Legal Centre (PCLC) welcomes the introduction of the Residential Tenancies Act 2018 and the Residential Tenancies Regulations 2020 (Regulations). We are pleased to have the opportunity to comment on the proposed Residential Tenancies Regulations 2020 (proposed regulations).

2. ABOUT PENINSULA COMMUNITY LEGAL CENTRE

PCLC is an independent, not-for-profit organisation that has been providing free legal services to Melbourne's South-Eastern communities since 1977. We are one of the largest community legal centres in Australia, spanning a catchment of over 2,600 square kilometres, six local government areas and almost one million people.

In addition to our general services and programs, we operate the Tenancy Assistance and Advocacy Program (TAAP) and the Rooming Housing Outreach Program (RHOP). We currently receive funding from Consumer Affairs Victoria to deliver advice and advocacy assistance across ten local government areas, which enables the Centre's advocates to provide advice, casework, negotiation, representation at the Victorian Civil and Administrative Tribunal, including duty advocate services at the Dandenong, Frankston, Dromana and Moorabbin Magistrates Courts and undertakes community legal education.

PCLC's Rooming House Outreach Program conducts a visiting outreach service to residents and tenants of private rooming houses across a vast catchment in the south east region consisting of 17 local government areas (LGA's) and over 800 registered rooming houses.

The Program provides tenancy advice and support services. The program aims to identify and actively connect single people living in private rooming houses who are inappropriately housed to support services who will assist them to secure long term housing appropriate to their needs and reduce their risk of homelessness. The Program also aims to identify non registered rooming houses and those rooming houses that are operating outside of the *Minimum standards in rooming houses*.

Our clients overwhelmingly experience disadvantage, with around three-quarters reporting no or low income (less than \$26,000 per annum). Tenancy issues were in the top 10 problem types addressed by our Centre in the last year. We commonly help with a wide range of matters including possession, rent arrears, repairs, compensation, bond claims, lease breaks, tenancy agreements, and rent increases.

3. SCOPE AND SUMMARY OF RESPONSE

We note, the Department of Health and Human Services Quarterly September 2019 Rental Market Affordability Report¹ states that only 14 per cent of all new letting across the state were affordable to lower income households. Furthermore, only 7.2 per cent in metropolitan Melbourne were affordable to lower income households. This is a general decline from a high in the September quarter 2005 (30.2% of dwellings). In regional Victoria 46.2 per cent were affordable to lower income households. Similarly, a general decline from a high of 88.2 per cent in September quarter 2001.

The estimated cost to rental providers in meeting the standards is around \$8,000 (per property). While PCLC supports the implementation of the Regulations, and raise a number of recommended changes, we are concerned with the cost impacts on low-income renters. As highlighted above, the private rental market is increasingly unaffordable to lower income households, especially in metropolitan areas.

This is not to say the private rental market doesn't play an important role in providing accommodation or that minimum standards should not be mandated. Rather, PCLC believes there is a need for a whole of Government approach to ensure lower income households have the same basic human rights we all share. Specifically, the right to adequate housing in accordance with the Universal Declaration of Human Rights 1948, Article 25.² It is impractical and unrealistic to continue relying on the private rental market to house these lower income Victorians without further assistance from the Government.

We make the following recommendations to the proposed Regulations:

3.1 Minimum Standards & Modifications

PCLC welcomes the Victorian Government's commitment to ensuring renters throughout the state are given the opportunity to make their rental accommodation a safe and liveable environment. Enabling renters to make 'homes' out of dwellings in which they reside can have positive effects on an individuals' sense of belonging and in turn create better and longer-lasting connections to their community.

PCLC also applauds the Government's initiative to raise the quality of rental accommodation to meet community expectations by placing reasonable requirements on rental providers to ensure their properties meet minimum standards. More work is needed, however, to strengthen the correlation between a rental provider's obligations to ensure a property is liveable and a renter's right to improve that liveability.

¹ <https://www.dhhs.vic.gov.au/publications/rental-report>

² <https://www.un.org/en/universal-declaration-human-rights/>

A number of proposed Regulations, are likely to provide renters with moderate improvement to their living conditions. In that regard, PCLC does not have any targeted comments on:

1. Locks
2. Vermin proof bins
3. Laundry facilities
4. Window coverings
5. Electrical Safety & Lighting

As stated above, it is likely costs associated with the implementation of any minimum standards would be passed onto renters without regulation. It is inappropriate to suggest that “a significant proportion of these costs for private rental providers could be offset through negative gearing” as recommendations for structuring investments for private rental providers such as this may not be a feasible option for all rental providers.

It is also likely that the proposed Regulations, as currently drafted for implementation, would create a disparity between those renters on new agreements from 1 July 2020 and those remaining on existing arrangements. Thus, a single set of minimum standards for the rental market is not achieved. Large concerns remain predominant with respect to rental properties at the lower end of market rents as it is likely that these properties would require the rental provider to outlay more funds to ensure compliance as it is typically these properties that have remained in poor standard, thus typically attracting lower rent on the market.

3.1.1 Thermal efficiency

The RIS looks specifically at the importance of thermal comfort for the health and well-being of individuals noting that *“a lack of thermal comfort can cause physical and emotional stress among building or dwelling occupants.”* The RIS further states that *“there is strong evidence that living in a cold home has significant, direct and indirect health impacts.”* The RIS notes that many renters incur higher energy costs due to inefficient heating and identifies that many rental properties are *“older, in poorer repair and more likely to be thermally inefficient”*.

Despite this, the proposed Regulations appear to put the onus of improving a property's thermal efficiency on the renter through the modification provisions. The proposed minimum standards require the rental provider to provide a property that is *“structurally sound and weatherproof”*. It is therefore unclear why the proposed Regulations would invite a renter to cover the costs of improving the thermal efficiency when the rental provider has an obligation to ensure the property is weatherproofed.

PCLC believes the minimum standards should be tightened to clearly place the onus of weatherproofing and draft proofing the property on the rental provider. Any failure to do so can be dealt with by a renter through the usual Breach of Duty process.

3.1.2 Minimum standard – heating/cooling

The RIS outlines a proposed requirement for a fixed heater in the main living area with a minimum energy efficiency standard for all Class 1 and 2 rental properties. The proposed Regulation does not adequately provide for renters who either continue with their current tenancy on a periodic basis or who **do not** enter into rental agreements on or after 1 July 2020. There is a high degree of concern for renters in these circumstances as a potential unintended consequence may be that rental providers simply opt not to engage renters in rental agreements from the 1 July 2020.

Similarly, should rental providers implement this minimum standard, or any or all of the minimum standards it is foreseeable that rental providers would seek to pass on the associated costs of compliance. This may result in increasing rental prices in the private rental market, adversely affecting lower income or otherwise vulnerable renters by pricing them out of inner city suburbs.

The RIS outlines that the current proposed regulations do not provide a *“fully effective response to thermal comfort”* and requires *“additional measures to ensure that rental properties have ceiling insulation and draught sealing”*. In view of this, it is likely that the intended impact of this heating minimum standard will not result in the desired outcome as intended by the RIS.

In contrast, whilst the RIS addresses the issue of ‘cooling’ we note that there are no pending inclusions in the regulations. We are concerned that the delay in implementing prescribed standards for cooling will have detrimental impacts on vulnerable renters such as the elderly, young children and those suffering with physical and mental health conditions.

3.1.3 Minimum standard – mould and dampness

The RIS outlines a proposed requirement that each room in the rented premises must be free from mould and damp caused by or related to the building structure. As noted above in respect to the minimum standard for structural soundness, assessing and regulating this to achieve a single minimum standard across the rental market should be required. Again this proposed regulation only relates to new rental agreements entered into after 1 July 2020 providing a disparity in standards across the rental market for those renters not subject to new agreements from that date.

PCLC has seen an increase in mould related repairs required at properties over the last 12-18 months and for that matter mould is also an increasing claim item on rental provider bond applications at VCAT. Clarification is required to determine the scope of “*caused by or related to the building structure*”. What is this wording intended to encapsulate in respect of mould and dampness at properties? Would it include properties where there is little, inadequate or no ventilation; or properties which have been subject to water damage etc? Further clarification would result in greater understanding for rental providers of their duties in respect of this proposed regulation.

3.1.4 Minimum standard – structural soundness

The rented premises are to be structurally sound and weatherproof. Of concern regarding this minimum standard is how this standard is to be assessed and regulated. Again this proposed regulation only relates to new rental agreements entered into after 1 July 2020 providing a disparity in standards across the rental market for those renters not subject to new agreements from that date. All renters would greatly benefit from one standard and a requirement for compliance from rental providers. Compliance in the form of a register managed or regulated by Consumer Affairs would assist to achieve this. Rental providers should be required to provide confirmation of the properties compliance with the standard to Consumer Affairs whereby rental providers must provide a checklist form and signature of compliance.

3.1.5 Minimum standard – windows

The RIS outlines a proposed requirement for rented premises’ external windows that are capable of opening to be able to be set in a closed or open position and have functioning latches to secure against external entry.

Clarification is required to determine definition of “*capable of opening*”. Does this definition mean a non-fixed window and could therefore include an otherwise openable window which, has due to various reasons been rendered un-openable (for example weathering of property over time, painting/nailing of window shut etc.)? Further clarification would result in greater understanding for rental providers of their duties in respect of this proposed regulation.

Additionally, this proposed minimum standard does not apply to renters in ongoing tenancies prior to 1 July 2020 who do not enter new agreements. It is therefore likely that disparity of the standard will occur resulting in a failure of this proposed requirement to meet its objective. Implementation of any minimum standard should ensure that standards are set across the whole of the rental market. To achieve this, a compliance register can be implemented, regulated by Consumer Affairs to ensure compliance.

3.1.6 *Minimum standard – toilets*

The proposed requirement for a rented premises to contain a toilet in good working order, connected to a sewer/septic tank or any other local council approved system. The proposed Regulation does not adequately provide for renters who either continue with their current tenancy on a periodic basis or who do not enter into rental agreements on or after 1 July 2020.

Compliance is based on general duties of a rental provider to provide premises in good repair. This creates an inequity between renters on new agreements and those remaining on existing agreements or periodic tenancies. In order to achieve a minimum standard across the rental market, a requirement for service septic tanks should be mandated under the compliance arm of Consumer Affairs regulatory administration powers. This could be managed simply with a compliance register maintained by Consumer Affairs whereby rental providers must provide a checklist form and signature of compliance.

Additionally, whilst the current rooming house regulations state rooming houses are to have one toilet per 10 residents, it is the view of this Centre that all rooming houses and highly occupied rental premises should provide more adequate toileting facilities based on the number of residents/renters. It is proposed that there should be a minimum of one toilet per 5 residents/adult renters to promote improved health and wellbeing of the residents.

3.2 **Safety-related activities**

The proposed Regulations would make rental providers responsible for certain safety-related activities including but not limited to the following safety activities in relation to electricity and gas, and smoke and carbon monoxide alarms (as applicable at a rented premises). Safety checks would be required for electrical and gas every two years, ensuring smoke alarms and carbon monoxide alarms are in working condition in addition to testing and replacing batteries. Additionally, rental providers must keep records of electrical and gas safety checks.

The proposed Regulation does not adequately provide for renters who either continue with their current tenancy on a periodic basis or who **do not** enter into rental agreements on or after 1 July 2020. There is a high degree of concern for renters in these circumstances as a potential unintended consequence may be that rental providers simply opt not to engage renters in rental agreements from the 1 July 2020. Were that the case, ensuring the minimum standard is complied with throughout the whole of the private rental market will not be achievable.

Furthermore, the Amendment Act inserts a new section 27C(2) into the RTA to provide that a standard form rental agreement **may** include prescribed safety-related activities. These are to be completed by the rental provider and the renter during the term of the agreement. However, this does not mandate that this standard in an agreement be used by all rental providers.

Moreover, to ensure a rental market wide standard is achievable regarding compliance with safety-related activities, given their significant importance to the health and well-being of renters, some form of compliance register or form requiring rental provider's signature and provision of relevant certificates to certify safety should be implemented. This may be best achieved through Consumer Affairs Victoria's (CAV's) regulatory and compliance functions.

3.3 Compensation for sales inspections

PCLC supports the implementation of a prescribed Compensation amount for sales inspections. The proposed amount, however, is inadequate and likely represents a retreat from current amounts of Compensation provided by VCAT. In addition, it creates the impression among renters that the time and disruption to those individuals living in higher priced rentals is more valuable than those living in lower priced accommodation. It creates a multi-tiered system, which favours those in higher income brackets. In practice, it is often those in higher income brackets, who have the means and ability to adjust their schedules to accommodate inspections without ramifications from employers, school, and childcare needs.

PCLC favours the alternative proposal of 1 days rent with a higher minimum amount of \$75. A higher minimum standard alleviates the discrepancies between lower and higher rental properties. It creates a sense that all renters are treated equal under the system. It further represents the actual cost to the disruption and loss of quite enjoyment that the Renter has suffered.

Our clients tell a consistent narrative as to the amount of stress and disruption which inspections impose. Renters often feel their grievances are ignored. An imposed higher minimum amount is consistent with balancing the power of the renter and rental provider.

3.4 Mandating Regulations

In an effort to ensure all rental providers meet their obligations under the new Regulations, PCLC suggests that it is the responsibility of the rental provider not the renter. There should be mandatory compliance required within a specific timeframe overseen by CAV Inspectors who can investigate any failure to comply and enforce penalties where necessary.

Additionally, we suggest that CAV may be assisted in this process by obtaining access to tenancy records held by the Residential Tenancies Bond Authority (RTBA). These records, which will contain full details of all relevant information pertaining to the tenancy, will enable CAV to pursue rental providers in ensuring compliance. An example of how this may be achieved is that the rental provider or their agent provide a Certificate of Compliance within a specific timeframe or upon request for each minimum standard.

3.5 Mandatory Disclosure

PCLC welcomes the proposed mandatory disclosure items prior to parties entering into a rental agreement. PCLC submits, however, that these provisions be extended to include a history of flooding or water damage and mould/dampness.

PCLC often supports clients where mould and dampness becomes evident during the tenancy, often causing significant health issues for renters and their families. Remediation works by rental providers frequently only provide a band aid solution, ie painting over mould and not identifying the cause and long term resolution to the dampness.

Additionally PCLC recommends that the provisions include a requirement that Rooming House Operators provide confirmation that rooming house managers/owners are fit and proper persons and confirmation that a rooming house is registered and registration information.

3.6 Terminology

PCLC is concerned that the use of the word “modification” may cause confusion amongst renters regarding what is permissible. The proposed Regulations allow renters to *install picture hooks, low-flow showerheads, wall anchors, window film, and security systems*.

The term “modification” may suggest works that are more major in nature, for example, repainting, erecting a pergola, adding/removing walls. Alternatively, the word “installation” is a more accurate description of what will be permitted under the new Act.

Thus, PCLC recommends that the word “*modifications*” is replaced with the word “*installations*”.

3.7 Timeframes

PCLC recommends an imposed timeframe for rental providers to respond to a request for modifications without which renters could be left in limbo not knowing whether they can proceed with the modifications.

PCLC submits that a provision is implemented, similar to the one for pets, whereby a renter seeks consent for a modification and if the landlord fails to apply to VCAT within 14 days it is deemed to be approved.

Alternately, the Regulations could provide that a rental provider's failure to respond in a specified timeframe (14 days) is deemed refusal, giving rise to a renters' right to seek orders in VCAT. We note, however, that this approach is likely to impact on VCAT's resources.

3.8 Rent control scheme

The current system favours the rental provider's return on investment to the detriment of the renter, which is neither fair nor sustainable in the long term.

PCLC is of the view that the implementation of a Rent Control Scheme is required to bring about meaningful change to rental prices. The current system, even with the recent introduction of yearly increases, is heavily favoured towards the rental provider who hold the balance of power in the rental market. Renters are likely to accept a rental increase due to the high costs associated with moving. A form of rent control will assist in balancing the power of the parties in a tenancy.

The residential tenancy market in Victoria operates with an inbuilt imperfection, as a renter will always incur significant costs when they relocate. As a result, the rental provider is free to impose a higher rent than that of the market rent.³ PCLC often hears complaints from clients who, having tired of rental increases, move properties to later discover the previous property is advertised at a lower rent. Rental providers are aware of this and exploit it on a regular basis. Rent control mechanisms could contribute to the reducing the potential for a rental provider to charge above market rents.

The following principles can guide Victoria in achieving a proper Rent Control Scheme: (1) ensure maximum coverage of homes, (2) pair with strong housing standards, (3) increase long-term affordability, and (4) increase renter's participation.⁴ The costs of implementing a Rent Control Scheme are low and could potentially alleviate the financial strain on government housing providers with renters ideally remaining in properties longer.

These benefits are not one-sided as the potential to reduce Renter turnover may provide consistent returns for the rental provider.⁵ Rent control should be seen as balancing the Renter's security of tenure with that of the rental provider's investment.

³ See, Marietta Haffner, Marja Elsinga, Joris Hoekstra, *Balance between landlord and tenant? A comparison of the rent regulation in the private rental sector in five countries*, ENHR 2007 International Conference on 'Sustainable Urban Areas,' June 2007.

⁴ See, *Our Homes, Our Future: "How Rent Control can Build Healthy, Stable Communities,"* by Ameer Chew, and Sarah Treuhaft (Policy Link, 2019).v

3.9 Wording on forms

3.9.1 Notice to Vacate

PCLC notes that at the base of the sample Notice to Vacate there is a section headed 'Seeking advice' which suggests that renters need only consider seeking advice should they wish to 'challenge a notice to vacate'. PCLC asserts that this sentence does not clearly reflect the importance of seeking advice whether there are grounds to challenge or not. It cannot be expected that a renter would have the knowledge or understanding about challenging a notice, therefore we propose the following alternative wording on the form which provides more clarity for renters:

Seeking advice (existing paragraph)

If you think you have grounds to challenge a notice to vacate you should seek advice immediately by contacting one of the community legal organisations listed on the Consumer Affairs website. For further information visit the Renting section of the Consumer Affairs website at consumer.vic.gov.au/renting or call 1300 55 81 81.

Seeking advice (suggested amendment):

If you wish to seek advice about this Notice you should immediately contact one of the community legal organisations listed on the Consumer Affairs website. For further information visit the Renting section of the Consumer Affairs website at consumer.vic.gov.au/renting or call 1300 55 81 81.

Or

It is highly recommended that you seek advice about this Notice by contacting one of the community legal organisations listed on the Consumer Affairs website. For further information visit the Renting section of the Consumer Affairs website at consumer.vic.gov.au/renting or call 1300 55 81 81.

3.9.2 Residential rental agreement

PCLC notes that the language in Section 2 of Part A – Basic terms is not consistent with the language in Section 1 of Part B of the Notice to Vacate. We suggest that, wherever possible, the language is consistent and that "Premises let by the rental provider – Address of premises" in Section 2 of Part A should be amended to just read "Address of rented premises".

4 CONCLUSION

PCLC's response is based on the Centre's practical experience in the sector. We support the introduction of the Residential Tenancies Act 2018 and the Residential Tenancies Regulations 2020 to restore balance within the tenancy jurisdiction. We anticipate there will be better protections for renters with the provision of adequate, stable and affordable housing whilst simultaneously ensuring that rental providers can still effectively manage properties with appropriate accountability.