

Submission to Consumer Affairs Victoria

Security of Tenure Issues Paper –
Residential Tenancies Act Review

14 December 2015



Peninsula Community
Legal Centre INC

Introduction

Peninsula Community Legal Centre (PCLC) is pleased to be given the opportunity to comment on the second stage of the Victorian Government's Review of the Residential Tenancies Act 1997 (*the Act*), namely the Security of Tenure Issues Paper (*the paper*).

PCLC is an independent, not-for-profit organisation that has been providing free legal services to Melbourne's south-eastern communities since 1977. Our centre is 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 its general services and programs, the Centre has operated a Specialist Tenancy and Consumer Program since 1998. The Centre currently receives funding from Consumer Affairs Victoria to deliver the Tenant Advice and Advocacy Program across ten local government areas, which enables the Centre's advocates to provide advice, casework, negotiation and representation at the Victorian Civil and Administrative Tribunal, including duty advocate services at the Dandenong and Frankston Magistrates' Courts. We also operate a Rooming House Outreach Program.

In 2014-15, the Centre provided 7,655 advices and opened 2,988 cases. 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.

Summary of our Submission to the first stage of the Review

We noted in our first submission to this Review that security of tenure and affordability issues are of great concern to our Centre, given that a large portion of our client base are seniors, people with low income, people with disabilities and people who live in social housing, rooming houses and residential parks.

In our submission, we discussed the shortage in low income private rental and social housing. We also referred to local statistics provided by the Department of Health & Human Services' Rental Report¹ which indicate alarming escalations in rent prices in recent years and an inadequate supply of housing at affordable rentals. We concluded that the private rental market is unable to meet the housing needs of Victorians on low incomes. In our opinion, where large segments of society are denied more equitable access to land and to the benefits of secure land tenure, this can be a major contributing factor to poverty. An efficient and affordable private rental sector is an integral part of any economy. To achieve this, we submitted that a review of the rental market as a whole is required, particularly the regulatory framework. The Act currently does not adequately encourage a rental market that provides sustainable, secure and safe housing, particularly for those most vulnerable.

Our submission highlighted what we perceive to be the key obstacles to secure, safe and sustainable housing, being the lack of security of tenure and the inequality of bargaining power experienced by tenants. We briefly proposed options and initiatives (drawn partly from overseas jurisdictions), which may

¹ <http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/research,-data-and-statistics/current-rental-report>

appropriately address and improve the inequality of bargaining power in the current rental market, including considering leases with options to ensure security of tenure is achieved.

Scope of this Submission

We are pleased to see that this Review seeks to examine the needs and preferences of both tenants and landlords and has considered looking at how international jurisdictions provide for security of tenure. We are particularly pleased that the Review has requested comment on the aspects most relevant to security of tenure, being lease terms, termination of tenancies, rent increases and repairs, maintenance and modification which we noted in our previous submission are the provisions in the Act requiring review.

It is our intention throughout this submission to focus on the broader industry practices and current culture of the rental market and highlight how these have an impact on security of tenure. In our opinion, whilst some provisions of the Act require reform, the requisite industry change will not come from legislative amendments alone (see the section on underlying issues below). We will also address some of the questions in the Issues Paper in the second part of this submission, and will elaborate on the proposals from our first submission to amend provisions in the Act where we believe the amendments will address the shortcomings relating to security of tenure.

Underlying Issues

In our view, there are four primary issues which have an impact on security of tenure in the current rental market:

1. Culture of the current rental market

We would like to draw the Review's attention to what we believe is the biggest obstacle in securing long term tenancies for tenants, namely the culture and practices of the current rental market which does not support long term leases, nor respond to the diversity of needs of both tenant and landlord. In this respect, we note that:

- a) Industry practice prevents longer leases from being offered.
- b) Landlords are frequently assisted by real estate agents who manage most tenancies. Real estate agents' standard practice does not encourage alternatives to short term leases, for example, that the landlord could offer a 2 year lease with the option to review the rent after the first year.
- c) It would be unfair to say that the reason agents do not offer this information is for personal interests alone. In our experience, most agents rely on standard forms and lease agreements and do not have the necessary knowledge, skills and / or confidence to make changes to, or redraft, these documents to include provisions for longer term leases, rental reviews and the like.
- d) As regards rent increase provisions, industry practice also encourages estate agents and landlords to see 'where the market is at' on an annual basis and so adjust the rental accordingly. Increases are therefore based on market fluctuations rather than for example, the Consumer Price Index (see section on Rent Increase below). This makes it difficult for a tenant to plan when rents rise dramatically and they are unable to afford to continue with the lease. We compare later in this submission the advantages of a commercial lease which include standard provisions for rental increases thereby offering greater security for a tenant.

Our recommendation towards promoting industry change is for the Real Estate Institute of Victoria, in collaboration with Consumer Affairs Victoria and / or other stakeholders, to develop standard variable lease agreements offering different rental terms and provide estate agents and property managers updated training on these documents so as to obtain a better understanding of the alternatives and offer all parties equal negotiation powers. It is our view that this could make estate agents and property managers less reluctant to discuss longer term options with the landlords.

Ultimately we would like to see the culture in the real estate / rental industry move towards flexible and longer term lease agreements and a change in the way real estate agents and property managers view long term leases, but this cannot be achieved without changes to the standard documentation and proper educational initiatives to help improve knowledge and understanding of the different options available.

The current system does not encourage landlords to show commitment to the rental sector – landlords are able to ask for high rents but do not offer security of tenure in return. Striking a balance between landlords and tenants in our opinion therefore requires a complete review of legal rights of and protections for tenants, as well as a cultural shift.

2. Lack of social housing

There is little doubt that current rental costs have outstripped income growth. The consultation paper *Laying the Groundwork* and the current issues paper on *Security of Tenure* both refer to the acute shortage of social housing which we believe may worsen if the enquiry by the Royal Commission into Family Violence results in more perpetrators being removed and more women leaving their abusive partners without other housing options being available to them. Family violence housing services are already struggling to find appropriate accommodation for women and children fleeing violence, and for perpetrators excluded from the family home.

With the high competition in the private rental market and the shortage of public housing, many people experience longer periods of homelessness and longer stays in emergency accommodation. Our experience confirms the assertion in the first consultation paper that there is also an ever increasing number of young people, families and older people seeking accommodation and support. Despite the establishment of services such as youth and other refuges, the demand for crisis and long term accommodation still outweighs the available supply.

3. Five year jurisdictional limit

The Act does not apply to fixed term tenancies exceeding 5 years (section 6 of the Act). In our view, this restriction does not promote security of tenure and does not cover the vast array of tenancy agreements in residential parks, including tenancy agreements which allow residents to enter into 30 year or 99 year leases. In our experience, the current Part 4A provisions in the Act are often in conflict with the long term leases in operation in residential parks and residents are not able to rely on the provisions of the Act to assist them should a dispute with the landlord/park owner arise where the leases are longer than 5 years.

It is our opinion that there is no need for this jurisdictional limit to be entrenched in law and we would like to see the Act amended to incorporate appropriate provisions to cover all disputes relating to rental agreements no matter the term of the tenancy.

It is our intention to provide further comment on this during the next stage of the enquiry.

4. Housing Establishment Fund

PCLC regularly assists tenants with rent arrears and we are often successful in obtaining an endorsement from VCAT for payment plans which enable tenants to sustain their tenancies. We believe that the Housing Establishment Fund (HEF) grant program provided by the Victorian Government effectively assists eligible clients experiencing financial hardship to access and /or to maintain private rental housing. We refer to the case study below as an example of how our advocates successfully obtained an HEF grant to help a mother experiencing housing related hardship to maintain her tenancy.

PCLC was contacted by a local service provider seeking assistance for a client with mental health issues who had a number of children in her care. The tenant was in rental arrears and struggled to understand the repercussions of not paying rent and potentially being evicted from the property. The landlord had lodged a possession application with VCAT.

The tenant's sole income was Centrelink benefits and she was paying off a number of debts. If she was evicted from the property, the children would have to be removed from her care. The landlord's agent was not prepared to negotiate a payment plan and proceeded to VCAT.

PCLC was able to source a HEF grant from a local agency and put forward a proposal of a payment plan in addition to HEF monies at the VCAT hearing. Despite the landlord's agent opposing the proposal, the agent was unable to provide evidence to the Tribunal regarding the landlord's financial situation including current mortgage obligations for the rental property.

The tenant was fortunate that the Tribunal accepted her payment plan proposal and adjourned the matter for 6 months to allow her to pay off the arrears. VCAT indicated that, had the agent been able to produce evidence about the landlord's mortgage obligations, the outcome may have been different.

In our opinion, the above case study is an example of the current rental market culture which encourages landlords/agents to attempt to regain possession without taking into consideration the potential for a tenant becoming homeless.

The reality with HEF grants is that the high demand and long waiting lists for emergency short term accommodation results in less HEF money remaining for private rental assistance. The provision of HEF assistance to save tenancies is far more cost effective than the provision of crisis accommodation if the tenant becomes homeless. We are concerned that the provision of HEF grants for the South East metropolitan region is insufficient to meet demand and we seek a review by the Victorian Government of the current level of funding in this region.

The Issues Paper

What are the needs and preferences of tenants and landlords for security of tenure?

Tenants

1. Why is security of tenure important for Victorian tenants?

A shortage of supply and the lack of choice in negotiating the terms of a lease place's a tenant at a distinct disadvantage in the current rental market. Currently, landlords have no obligation to outline the intent of the tenure at the start of the tenancy.

As mentioned in our previous submission, many landlords lean towards short term leases so securing a longer term lease is a difficult negotiation process for the tenant. The combination of market forces and the provisions in the Act appear to create a structural imbalance in favour of the landlord. Anecdotally, we have noted that this imbalance means that tenants have little choice and are often faced with the decision to take what is on offer or have nowhere to live.

A landlord's ability to terminate a lease without grounds is, in our opinion, one of the most fundamental problems with the Act. As a result of the landlord's ability to provide a 'no specified reason' notice to vacate, tenants are generally forced to consider the prospect of exercising their legal rights with absolute caution which makes achieving a genuine balance between landlords and tenants impossible.

Security of tenure is important to ensure that tenants are on equal footing with the landlord and that they have a choice in the size, quality and location of accommodation on offer to suit their lifestyle needs.

There is also little doubt that having security of tenure would contribute positively to the alleviation of poverty.

2. What factors influence tenants' preferences for stability and flexibility in rental accommodation?

The ability to negotiate the terms of a lease, within set parameters provided by legislation, will create improved certainty for tenants if they are made aware of the landlords' intentions at the outset.

In our experience, some tenants want flexibility (for example if they are in the market to buy a house or have bought a house and are looking for a short term lease until settlement), others are on a low income and are uncertain as to whether they can afford the lease. In both situations, a short term lease gives the tenant the flexibility to vacate if needed without breaking the lease. As mentioned previously, there are also tenants who simply prefer to move around more frequently depending on their stage of life, for example, students or young professionals may prefer a short term lease due to travel or employment opportunities.

Conversely, there are tenants who look for stability, for example, those who cannot afford to move, who want security for their children or who are active members of a community. Fear of homelessness, (often faced by vulnerable tenants such as the elderly, disabled and those escaping family violence) is another major factor influencing the preference for stability.

By offering genuine alternatives and choices, tenants will be able to enter into arrangements more suitable and favourable for their circumstances.

Matching tenant and landlord preferences

6. What are the main reasons that tenancies end, from both landlords' and tenants' perspectives?

Anecdotally, we have noted that tenants terminate a lease before the end of the term for the following reasons:

- a) A change in the tenant's circumstances as a result of family violence, family relationship breakdown and co-tenant relationship breakdown;

- b) A change in the tenant's circumstances as a result of financial difficulties;
- c) The property is unsafe or requires repair.

As regards the landlord, common reasons to terminate before the end of a lease period include the following:

- a) The tenant is in arrears with the rent;
- b) The tenant has damaged the property;
- c) The landlord seeks a reduction of a fixed term at VCAT where there is an unforeseen change in their circumstances (most commonly financial).

7. What are the obstacles in the rental market for tenants who prefer longer tenure from achieving this?

It is our opinion that at the outset, when entering into a residential tenancy agreement, the landlord and tenant do not communicate as equals. This is a major obstacle for the tenant, which is hard to overcome in the current market. As previously mentioned, it is our view that the rental market requires a paradigm shift, starting with a change in practice at the initial stages of negotiation.

The points below summarise what, in our experience, represent the current market obstacles:

- a) Landlords are simply not offering longer tenure. The rental industry works on short term lease as discussed above;
- b) There is an acute shortage of affordable rental housing available;
- c) As a result of unequal bargaining power, landlords are able offer tenancies on a 'take it or leave it' basis. They are within their rights to check up on a prospective tenant's credentials before offering a tenancy. By contrast, it is not easy for a tenant to look into the background of a potential new landlord and, should they do so, most tenants would not be in a position to use the information they have gathered to bargain with the landlord anyway;
- d) Once a tenancy is established, moving is almost always both costly and disruptive, which may make most tenants reluctant to 'take their business elsewhere'. In contrast, the shortage in rental supply means that landlords in the current market do not fear competition with other landlords and may threaten to end a tenancy if it suits them;
- e) The market encourages property investment and development as a means to build wealth. Many landlords usually have received financial advice regarding building a property portfolio and the landlords' intention is to make as much gain as possible on the property/ies they own, without consideration of social and humanitarian factors;
- f) Whilst landlords are frequently assisted by real estate agents, tenants are frequently at the disadvantage of not knowing or understanding their rights and lacking the skills and confidence to pursue them. These disadvantages are magnified for vulnerable and disadvantaged tenants.

From a regulatory framework point of view:

- a) As highlighted in our first submission, landlords have no obligation to outline the intent of the tenure at the start of the tenancy. This is in stark contrast with commercial leases which generally provide for longer terms and often provide options to renew. In our submission, we highlighted the difference between commercial and residential tenancies and noted that commercial

premises are generally sold to investors with tenancies underway, whereas tenants with residential tenancies are often served with Notices to Vacate when the premises is sold;

- b) Once a fixed lease ends, it becomes periodic and the landlord is again not obligated to outline intent;
- c) As mentioned before, PCLC has seen a number of cases where a tenant has moved into a rental premises and, within a very short timeframe, the tenant has been advised that the premises is for sale. The tenant is then required to support the open for inspection process which ultimately could see them served with an eviction notice. During this time, tenants are required to make sure they have the necessary funds to relocate if the premises is not sold to an investor who will keep them on.

How does the Residential Tenancies Act provide for security of tenure in general residencies?

Lease terms

8. What are the obstacles (including any provisions in the Act) to tenants and landlords entering long leases?

We have already stated that the lack of choice for the tenant in negotiating the terms is a major obstacle. There appears to be a reluctance to change existing practices or to commit too far into the future.

9. How do industry practices influence lease terms and the duration of tenancies more generally?

We refer to the comments made above about industry practices and how they potentially influence lease terms and duration of tenancies.

In our opinion, giving the tenant choices relating to the type of lease and term of the tenancy is paramount to obtaining security of tenure for a tenant and helps ensure the tenants' expectations match those of the landlord. Being able to exercise a genuine choice will similarly provide protection for tenants requiring short term leases.

As we have noted, the Act currently does not require the landlord to disclose their intention at the outset. It is therefore our recommendation that the Act be amended to include new provisions which will ensure that the tenant is made aware of the landlord's future intentions in respect of the property. We would like to reiterate what we have previously submitted and propose that the Act include the following provisions:

- a) That before signing a lease, the landlord or agent has the responsibility to make the tenant aware of what the landlord intends to do with the property in the short and long term by introducing a mandatory regulation which requires the landlord to disclose their intention.
- b) That lease terms are introduced containing renewal options exercisable by the tenant, similar to commercial leases.
- c) That the method of exercise of the renewal options should be as simple and clear as possible to protect both landlord and tenant.

- d) That the option clause clearly specifies the terms and conditions which will apply to the new lease, including the new lease term and rent, as well as rent review mechanisms.
- e) That the landlord or agent be required to obtain acknowledgement from the tenant that they understand the terms.

12. If long term leases were provided for in the Act, what protections (if any) would be required for tenants who are seeking only short term leases?

Whilst longer term leases are desirable for many tenants, we do not propound a 'one size fits all' approach. Tenants seeking shorter term leases would need to be able to negotiate and exercise a genuine choice in this regard. Both parties should be able to communicate their intentions and expectations and negotiate a fair and suitable agreement.

Tenancy Terminations

13. What issues are there regarding the way in which terminations provisions in the Act affect security of tenure?

The answer to this question is covered in the section below.

15. How much notice would be appropriate for the landlord to give when providing a notice of intention to vacate?

In our first submission, we referred to the provisions in the Act that allow for landlords to issue notices terminating the tenancy giving only 60 days notice in certain instances (if the tenancy agreement was for a fixed term of less than 6 months) and 90 days for a tenancy agreement with a fixed term of more than 6 months. We recommended that these notice periods be consistent and that a 90 day notice period is appropriate.

We noted in our first submission that low vacancy rates, the shortage of affordable housing and the financial cost to relocate compounds the difficulty for tenants who have been served with a notice to vacate and who are often unable to secure accommodation within a shorter timeframe. They might also have possession orders granted against them.

The Act allows for postponement of a section 352 Warrant where a possession order is granted. This is crucial for tenants who may have tried their best to find alternative accommodation and so comply with the notice to vacate, however, have been unable to do so for a variety of legitimate reasons. Although the maximum timeframe for the postponement is 30 days, in our experience the full 30 days is not always granted, being at the discretion of VCAT. As such, where the tenant has not done anything wrong, yet received a Notice to Vacate, they may end up homeless. This creates further hardship for those who do not have friends or relatives to fall back on for accommodation. A provision in the Act allowing a tenant to remain in the property until they secure alternative accommodation would benefit tenants in this position. Naturally this would need to be balanced with the landlord's right to have possession of the property, however it seems unreasonable that a blameless tenant could end up homeless.

16. What are the reasons why landlords use the 'no specified reason' notice to vacate?

We commented in our first submission on the 120 day 'no reason' notice to vacate provisions in section 263 of the Act which allow for a landlord to serve a notice requiring the tenant to vacate

without specifying the reason for the giving of the notice. While some landlords would use this for legitimate purposes, it also gives landlords a “get out of jail free card” if they simply want the tenant to vacate. Although the provisions in section 266 of the Act provide for the tenant to challenge the notice if they believe it was served in response to the tenant exercising their rights under the Act, it doesn’t necessarily protect the tenant from further notices to vacate. This places the onus on the tenant to lodge an application at VCAT and carry the burden to prove their claim in the Tribunal.

In our experience, even if the tenant is successful in proving the matter was in response to exercising their rights and the notice is declared invalid, there is no restriction on the landlord to simply serve another notice and ‘bully’ the defendant into submission. Anecdotally we note that the fact that landlords are able to rely on this alternative option, and often immediately choose the alternative notice, creates unfair stress for tenants and reduces their sense of security in the property as seen from the facts in the case study below.

Sue signed a 6 month fixed term lease at commencement of the tenancy. At the time of application Sue attached a letter stating she was hoping for a long term tenancy. Shortly after moving in she requested repairs and these were undertaken over a period of months. When Sue paid a shortfall of \$400 for monthly rent, she immediately contacted the agent to provide reasons and paid the balance before the end of the relevant month. Despite contacting the agent, Sue received a 60 day notice to vacate for the end of the fixed term prior to the above payment being made. The notice was withdrawn as it was invalid. However, the next day she received a 120 day notice to vacate for no specified reason.

Sue believes the notice was issued in response to repairs request and late payment of rent. She has decided to proceed with a challenge to VCAT and has indicated that she is doing so as she will suffer extreme financial hardship if forced to vacate the property.

In our opinion, there are certain difficulties Sue will encounter when challenging this notice as late payment of rent does not fall within the ‘exercise of a right’, however a request for repairs does. When making their decision VCAT will need to consider what repairs were requested and the timing of the notice in response to the request. There is no guidance in the Act on which a tenant can rely to predict the outcome.

Furthermore, it is our opinion that landlords use the no reason notices as they are the hardest to challenge. If a tenant challenges a 60 or 90 day notice at a possession order hearing, the landlord is required to establish that the notice is valid. Often landlords or agents are unable to do this. For a no reason notice to vacate, the only time they are required to provide any evidence as to the reason is if a tenant challenges the notice, which they often do not do or unable to do.

It is therefore our recommendation that landlords be obligated to provide termination notices with reasonable grounds only. As a first step towards this, we propose that no reason termination notices should be repealed altogether. We propose further that the Act be amended to include provisions that protect the tenant from further notices once a tenant successfully challenged a notice to vacate under the Act.

19. What would be the impact of removing the notice to vacate for ‘no specified reason’ from the Act?

This would place the tenant on more equal footing with the landlord. In our experience, without grounds termination notices seem to be used more widely now than ever before and that the longer notice period has not deterred landlords from using this form of termination notice.

Rent Increases

20. What issues are there regarding the way in which provisions for rent increases in the Act affect security of tenure?

We have previously proposed that the Act be amended to limit the frequency and quantum of rent increases given that the Act provides no restrictions on this. Although a rent increase can be challenged, an assessment conducted by residential tenancies inspectors is based on factors such as the condition of the premises, comparable rents for the region and market value. In the current market, the high demand for properties, low vacancy rates, and the mainstream use of six to twelve months tenancy agreements provide landlords with opportunities to increase rent far beyond indicators such as the Consumer Price Index. Owing to the shortage of good rental properties, many tenants are accepting sometimes poor yet pricey living conditions.

As regards the questions in the paper relating to what ‘appropriate alternatives’ should be, we note as follows:

- a) In our previous submission we proposed that a regulation of rent hikes to stay in line with CPI may curb the trend in the rental market of outpricing a long term tenant.
- b) We also referred to international jurisdictions where rent control measures have been put in place and increases are limited by government regulation or are subject to a ‘rent index’ which cannot be exceeded. We note that this has been discussed in the paper and we support this international approach.
- c) We refer to our earlier proposals which included a recommendation that for leases with 12 months recurring duration, the rental payments should be adjusted in line with CPI once in a calendar year. A shorter period between rental increases, which is often a term of the lease, should not be allowed.

Repairs, maintenance and modifications

24. What issues are there regarding the way provisions for repairs, maintenance and modifications in the Act affect security of tenure?

We have previously proposed that minimum standards be explicitly included in the Act.

Currently there are no minimum standards for private rental properties. This can mean that a landlord is able to rent out premises with structural defects, which may be unsafe or insecure, provide no heating, hot water or decent / working cooking facilities. We noted that in our experience these issues are often not evident at the time of inspection and examples of this include painting over moisture/mould rather than repairing the structural issue, hot water systems and heaters not being adequate/efficient for the size of the premises and doors/windows being nailed shut rather than adequate locks being supplied.

Although real estate agents are required to inspect premises for the Condition Report purposes, it is our experience that some such inspections are superficial.

How does the Residential Tenancies Act provide for security of tenure in rooming houses, caravan parks and residential parks

Rooming Houses

25. What issues are there regarding the way in which security of tenure is provided for rooming house residents under the Act?

We would like to reiterate some of the issues raised in our previous submission which affect security of tenure for tenants of rooming houses, namely:

- a) the tenants' lack of knowledge regarding their rights and the operator's duties;
- b) the sub-standard condition of many properties;
- c) the exploitative behaviour by some landlords and the widespread confusion about the roles of different regulatory bodies;
- d) the differing planning rules, internal procedures and policies relating to compliance from council to council and between CAV and councils.

These issues regarding the lack of choice in negotiating the terms of a lease places a resident at a distinct disadvantage in the current rooming house market. Anecdotally, some rooming house residents have indicated that they have felt trapped by the lack of affordability of private rental, seeing rooming houses as their only option.

The roles of the multiple agencies who administer statutory obligations in relation to residents, operators and real estate agents appear to overlap and this makes understanding their rights and seeking recourse confusing for residents.

While the opportunity for rooming house residents to enter into a fixed term tenancy agreement can be beneficial to provide security of tenure, in our experience this is not always the case. Some operators appear to be taking advantage of this provision as it allows them to request more rent in advance and a higher bond, and lock a resident into a fixed term agreement. If the resident "lease breaks", which may be more likely to occur, given their vulnerabilities, this can lead to them incurring further costs or losing their bond as a result. Naturally, there are a variety of rooming house residents and types of rooming houses, so the potential to be placed on a fixed term tenancy agreement is beneficial to some. However, such an agreement is open to being inappropriately implemented and the more vulnerable residents may not always understand the impact of what they are entering into at the time – particularly if they are desperate for a roof over their head.

26. How can the needs for security of tenure for residents be appropriately balanced with the need to protect other residents' rights to peaceful enjoyment of shared spaces in rooming houses?

In our opinion, more responsibility needs to be placed on the rooming house operator to enforce the house rules, and not simply distance themselves from issues between residents. Operators should

ensure that the premises is suitable to be let and not subject to overcrowding, that there are adequate communal spaces for residents, that the facilities are provided and maintained adequately to minimise the possibility of issues arising and that proper locks are placed on doors to ensure they are secure.

27. Do the currently prescribed reasons and notice periods to terminate a rooming house resident's residency rights strike the right balance for security of tenure, and if not what alternatives are appropriate?

It is easier for landlords and operators to access redress in terms of the Act than a resident. We note that the fear of retaliation through rent increases or notice to vacate, the threat of homelessness or other retaliatory action by a landlord, an operator, head tenant or other residents often stop residents from seeking a remedy. Because of the vulnerabilities of the resident profile, residents are often reluctant to pursue issues with rooming house operators for fear of retaliation and eviction.

The overriding issue from PCLC's point of view is finding a way to better protect the tenure of those who are more vulnerable in the community. We would like to therefore suggest that the review consider whether a client in a rooming house should have a cooling off period after signing the lease agreement.

Caravans and Residential Parks

We note that the issues relating to Part 4A provisions in the Act and security of tenure in respect of caravans and residential parks will be the subject of a further stage of the review of the Act and we look forward to participating in this. In light of this, we will limit our comments in relation to caravans and residential parks to the points below.

29. Is 60 days an appropriate period for a resident's arrangement to be automatically covered by the Act in the absence of a written agreement?

Our experience is that some of the most vulnerable in the community live in caravan parks and intend the caravan to be their primary residence. This period is often used as a probationary period by park owners, leaving the prospective resident with no protection under the Act for the 60 day period. We propose that the Act should include provisions affording residency rights, consistent with rooming house provisions, to a prospective resident who intends the caravan to be their primary dwelling.

32. What issues are there regarding the way in which security of tenure is provided for residents of residential parks under the Act?

In our experience, agreements to rent a residential park site have proven to be confusing for the majority of residents relying on them. Further, the current Part 4A provisions are often in conflict with the provisions of the long term leases in operation in residential parks.

It is often the elderly who enter into Part 4A site agreements, paying large sums of money to secure the dwelling as their primary residence. It is also commonly their only significant asset. This makes security of tenure paramount. It is common practice for such people to purchase the dwelling they live in but enter into a Part 4A site agreement to lease the site on which the dwelling stands. In its current form, Part 4A provides protections for dwelling owners with regard to signing the site

agreement on which their dwelling is located, however the same protections are not afforded to owners in the purchase of the dwelling itself as is illustrated in the case study below.

For any new site agreement, the Act requires a minimum 5 year term. However some residents have 99 year leases, which they entered into prior to the commencement of the current Part 4A provisions. In our opinion, this is confusing and the interaction between the legislation and the type of agreement a site tenant has entered into is unclear.

34. What are the reasons residential park operators use the 365-day ‘no specified reason’ notice to vacate?

Similar issues to those outlined earlier arise in residential parks in relation to notices to vacate for no specific reason and challenges of these notices.

There are provisions in the Act which enable a site tenant to rescind a dwelling purchase agreement within 20 days after being provided with a proposed site agreement, or if the site tenant rescinds their site agreement. The purpose of this provision is to provide time for tenants to seek advice about the agreement. In the following case study, before the opportunity to execute a 5 year site agreement had arisen, the park management issued a 365 days notice to vacate. As such, the protection that would have been afforded by the 5 year site agreement was lost. This illustrates that the currently prescribed reasons and notice periods to terminate a residential park resident’s residency rights do not strike the right balance for security of tenure.

John was originally a resident who rented a van at the park. He later purchased an unregistered moveable dwelling for a large sum and was offered a 5 year site agreement when he moved into the dwelling. Prior to signing and returning the agreement a dispute arose between John and the park management. He was issued with a 365 day notice to vacate for no specified reason and therefore he did not sign the agreement.

John had the option of challenging the notice within 60 days of the date of the notice, however he was not aware of this and challenged the notice at the later stage when the park owner applied for possession. In our opinion, there were issues around how the notice was served on him which may have deemed that service was invalid under the Act. The hearing was adjourned twice for parties to provide written submissions and although the matter was to be relisted, prior to the final hearing John sold the dwelling at a substantial loss. John had expected to stay in the park for the long term after purchasing the dwelling with the offer of a 5 year site agreement, however, after a stressful 12 months, remaining in the park was an untenable option for him.

Conclusion

PCLC would welcome the opportunity to address any queries or provide further information about this submission. We look forward to participating in the final stage of the review.