



Brotherhood
of St Laurence

Working for an Australia free of poverty

Rental properties are people's homes

Response to the
Consultation Paper of the
Review of the *Residential Tenancies Act (Vic.)*

Brotherhood of St Laurence

August 2015

The Brotherhood of St Laurence

The Brotherhood of St Laurence (BSL) is an independent non-government organisation with strong community links that has been working to reduce poverty in Australia since the 1930s. Based in Melbourne, but with a national profile, the BSL continues to fight for an Australia free of poverty. We undertake research, service development and delivery, and advocacy with the objective of addressing unmet needs and translating the understandings gained into new policies, new programs and practices for implementation by government and others.

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Summary of recommendations

The Brotherhood of St Laurence recommends that the following be included within the scope of the Review of the *Residential Tenancies Act*:

1. Develop a discrete Issues Paper to support the introduction of basic health, safety and energy efficiency standards for rental accommodation.
2. Investigate the ways to introduce energy efficiency requirements for rental homes over the medium term.
3. Examine the efficacy of the urgent repair provisions and develop reforms to enable tenants to have repairs attended to within a reasonable period and without financial stress.
4. In the Issues Paper dealing with security of tenure, consider specific reforms to:
 - require reasonable grounds for termination
 - prohibit excessive rent increases.
5. In the Issues Paper on vulnerable tenants, consider the rental market experiences of newly arrived migrants.
6. To support an arms-length assessment of the RTA, establish independent leadership or an external advisory group to oversee the Review process.
7. Enhance the expertise available to the Review by including representatives from the departments responsible for climate change and energy efficiency.
8. To enable the effective operation of the RTA, expand tenancy advice and advocacy services to support the exercise of tenants' rights.

Introduction

The Brotherhood of St Laurence welcomes the Review of the *Residential Tenancies Act (RTA)*. It is a core component of the Victorian Government's Plan for Fairer, Safer Housing. The Review provides a rare opportunity to improve rental standards, protections and affordability. It could have a real impact on the lives of some of Victoria's most vulnerable people and families who have inadequate accommodation or insecure tenure.

With house prices soaring across Melbourne and in parts of regional Victoria, it is not surprising that private rental is the fastest-growing form of tenure. The number of investor landlords, encouraged by tax and superannuation policies, has increased; and more low-income and vulnerable households are reliant on private rental. The RTA must recognise and respond to the major structural changes taking place in Victoria's rental market:¹

- More people are renting privately for longer: around a third rent for more than 10 years.
- Young people are deferring purchasing a home.
- The rate at which people are 'falling out' of home ownership is rising.
- More families are renting.
- A growing proportion of older Victorians are renting.
- Strong population growth has not been matched by increases to Victoria's social housing stock. Public housing waiting times are too long for all but those with the most complex needs, forcing more low-income and vulnerable people into private rental.
- More households are paying a higher proportion of their income on rent.
- High levels of rental stress are being experienced by low-income households.
- The dwindling supply of more affordable options results in intense competition for these properties. Those on better incomes are more successful at securing affordable stock.
- Low-income households are being pushed to the outskirts of town where jobs, infrastructure and support are limited. The housing market is effectively reinforcing labour market disadvantage.

The RTA is providing inadequate protection, particularly for low-income and vulnerable households. Short leases and insecure tenure force unplanned moves and weaken community connections; poor quality accommodation and neglect of repairs and maintenance compromise wellbeing; affordability issues are not adequately addressed and the impacts of climate change are unfairly shouldered by vulnerable renters. These legislative shortcomings translate into serious consequences for the households affected, the broader community and Victoria's productivity. If a balance between renters' and landlords' interests is not established, these trends will get worse.

This submission flags issues pertinent to low-income and vulnerable renters backed by practical recommendations for reform. It also highlights opportunities to strengthen the Review process and to support tenants to effectively exercise their rights. The Brotherhood looks forward to contributing further to the Review.

¹ On the structural changes, see presentations by Dr Ian Winter (AHURI) to the Ministerial Forum on Homelessness and Housing, Melbourne, 9 July 2015, <http://www.dhs.vic.gov.au/_data/assets/powerpoint_doc/0011/918371/Presentation_Ministerial-forum-on-Homelessness-and-social-housing_9-July-2015_Dr-Ian-Winter.ppt>. The Consultation Paper also highlighted some of these changes.

Recommendations

Minimum standards for rental accommodation are needed and should be explored in a future Issues Paper

The absence of basic standards covering the amenity of rental properties exposes tenants to living in unacceptable conditions with little opportunity for recourse. Disturbingly, rental properties are not required to have heating, adequate gas and electrical safety or a minimum level of thermal insulation. Tenants with low incomes have few options and may have to accept conditions that fall well short of minimum community expectations.

Despite detailing the rights and responsibilities of tenants and landlords, the RTA fails to set minimum standards for rental dwellings. The previous Housing (Standard of Habitation) Regulations 1985 provided some protections, but have long lapsed, leaving unfortunate gaps.

The Brotherhood recommends that the next stage of the Review include publication of an Issues Paper that supports minimum rental housing standards as part of the RTA reforms. We suggest the Issues Paper looks at:

- current requirements for the condition of rental premises and whether they are adequate
- the operation of standards in other jurisdictions
- the development of standards in the areas of health, safety and energy efficiency
- the costs and benefits of introducing standards
- appropriate timelines and supports to enable landlords to meet future standards.

Recommendation 1

Develop a discrete Issues Paper to support the introduction of basic health, safety and energy efficiency standards for rental accommodation.

Introducing energy efficiency requirements for rental properties would reduce costs for low-income households, improve wellbeing and reduce greenhouse gas emissions.

Through the work of our Energy, Equity and Climate Change team, the Brotherhood understands the way energy-related poverty and climate change impact on the lives of low-income and disadvantaged households, particularly renters.² We see the consequences of rental properties with no insulation, no heating, no window coverings and poor ventilation. The current legislation does not require it to be possible or affordable to keep a rental dwelling cool in summer or warm in winter. The RTA Review creates the opportunity to redress this, and to respond to the reality of climate change, through the introduction of energy efficiency requirements.

² See, for example, Azpitarte, F, Johnson, V & Sullivan, D 2015 (forthcoming), Fuel poverty, household income and energy spending: an empirical analysis for Australia using HILDA data, Brotherhood of St Laurence, Fitzroy, Vic.; and Johnson, V, Totty, J & Sullivan, D 2013, *Improving the energy efficiency of homes in Moreland: Warm Home Cool Home and Concession Assist social research final report*, Brotherhood of St Laurence, Fitzroy, Vic.

Reasons to introduce energy efficiency requirements in rental homes include:

- **Poor energy efficiency increases renters' financial stress.** Because many renters live in dwellings with poorer energy efficiency³, they often face higher energy bills; and they are more likely than homeowners to report difficulty paying these bills and heating their homes.⁴ High energy bills place unreasonable pressures on limited household budgets, forcing renters to make trade-offs between paying the rent, buying food or sending their child on a school excursion.⁵
- **Renters face major barriers to improving the energy efficiency of their homes.** The energy efficiency of household fixtures such as hot water, heating, cooling and insulation has a huge impact on energy bills. Renters have minimal ability to install more efficient fixtures; and landlords have little incentive to invest in them, given they do not directly benefit from the lower energy bills.

We know from experience in delivering an energy efficiency retrofit program for low-income households that being a renter is a major barrier to making energy efficiency upgrades. Many tenants approached by the program were unable to obtain their landlord's approval for upgrades or were reluctant to seek it.⁶

We didn't want to ask the landlord. We have very affordable rent because we don't hassle the landlord and he doesn't hassle us.

- **Energy-related poverty is linked to poor health outcomes.** Poor thermal efficiency combined with higher temperatures and more heatwaves (as predicted) can be fatal. Those most vulnerable to the health impacts of extreme heat include the elderly, those with a disability and those with chronic illness, many of whom are renters.

Poor quality housing is associated with poor physical and mental health and higher mortality rates.⁷ Damp or mouldy homes can increase the risk of respiratory illness and asthma in children.⁸ Improving the thermal performance of cold homes has been linked to improved physical health of infants and children and mental health improvements for adolescents and adults.⁹ The 374 deaths attributed to the Victorian heatwave of 2009¹⁰ highlight the need to examine the role of housing in excess heat-related mortality and morbidity.

³Owner households are more likely than renters to live in homes with insulation and other energy-efficient fixtures such as solar electricity and solar hot water. See Australian Bureau of Statistics 2012, *Household water and energy use, Victoria, October 2011*; ABS 2013, *Household energy consumption survey, Australia: summary of results, 2012*.

⁴The Victorian Utilities Consumption Survey 2007; Azpitarte, Johnson & Sullivan 2015.

⁵Chester, L 2013, *The impacts and consequences for low-income Australian households of rising energy prices*, University of Sydney, <http://www.householdenergyuse.com/resources/Impacts_Consequences_Low_Income_Households_Rising_Energy-Bills_Oct2013.pdf>.

⁶Johnson, Totty & Sullivan 2013.

⁷WHO 2011, *Environmental burden of disease associated with inadequate housing*, World Health Organization, Copenhagen.

⁸WHO 2011, *Environmental burden*.

⁹Liddell, C & Morris, C 2010, 'Fuel poverty and human health: A review of recent evidence', *Energy Policy*, vol.38, no. 6, pp. 2987-97.

¹⁰Department of Human Services 2009, *January 2009 Heatwave in Victoria: an Assessment of Health Impacts*, Melbourne, \.

- **Renters with a disability are hit hard by energy-related poverty.** Our research suggests that over half of Australia's energy-poor households include someone living with a disability.¹¹ Those with high energy needs in homes with poor energy efficiency face additional hardship.

Nicole has significant heat intolerance caused by multiple sclerosis. At temperatures above 20 degrees her physical mobility, breathing and cognitive function deteriorate. She has a medical need for refrigerative cooling, and although the Office of Housing installed air-conditioning in her home, it is not serviced regularly and the running costs are high. Her electricity bills triple during the summer months. This creates a terrible double-bind for Nicole. Worrying about the costs of air-conditioning can impact in a negative way, causing MS relapses; but the risks of not using it are obviously greater.¹²
- **Rents do not adequately reflect differences in energy performance between dwellings.** Prospective renters receive little information about the energy efficiency of properties. Tenants in poorer quality housing in particular may face high energy bills because of the poor energy efficiency of their home.
- **Improving the energy efficiency of rental properties can decrease greenhouse gas emissions.** Increasing numbers of Australians want action on climate change.¹³ Upgrading the energy efficiency of rental housing would significantly reduce greenhouse gas emissions.¹⁴

Minimum requirements are the most effective way to lift standards

The Brotherhood sees the introduction of minimum energy efficiency requirements for rental properties as pivotal to improving current conditions, particularly in cheaper dwellings. This would provide certainty for both landlords and tenants, and provide a basis for tenants to seek redress should they rent a property that does not meet the minimum requirements.

A voluntary approach would not be as effective or equitable as legal standards. It is unlikely that landlords would voluntarily invest in energy efficiency measures, since they receive no direct benefit. The lower incidence of energy efficiency fixtures in rented, compared with owner-occupied, dwellings¹⁵ is telling.

Alongside standards, consideration ought to be given to introducing requirements for disclosure of the energy performance of a property prior to signing of a lease.

Energy efficiency requirements could be introduced progressively over the medium term. Due consideration needs to be given to balancing the rights of landlords and tenants, the costs of implementing minimum standards and the timeframe for introduction to ensure that Victorians are informed and able to maximise benefits flowing from the new standards.

A staged approach could involve an initial standard that presents an easy entry point for the market, with well-signalled incremental increases over the longer term. The starting point might be a prescribed list of modest upgrades – such as draught sealing, insulation, low-flow shower heads

¹¹ Azpitarte, Johnson & Sullivan 2015; Johnson, Totty & Sullivan 2013.

¹² Johnson, Totty & Sullivan 2013.

¹³ The Climate Institute 2014, *Climate of the nation 2014 Australian attitudes on climate change: are Australians climate dinosaurs?* The Climate Institute, Sydney.

¹⁴ It is estimated that upgrading housing from 2.5 to 5 stars can deliver CO₂-e savings of up to 56%. See Newton, PW & Tucker, SN 2011, 'Pathways to decarbonizing the housing sector: a scenario analysis', *Building Research & Information*, vol. 39, no. 1, pp. 34–50.

¹⁵ ABS 2012; ABS 2013.

and replacement of halogen lighting with LED – to bring all properties up to a minimum standard. A minimum energy efficiency star rating requirement for replacement of larger measures such as heating, cooling and hot water services could be phased in over a longer period.

In the United Kingdom, modest energy efficiency standards¹⁶ are to be gradually implemented. They come into force for new tenancies from April 2018, and for all private properties from April 2020.

In New Zealand, ceiling and under-floor insulation (with exemptions where it is not possible) must be installed in all Housing New Zealand and Community Housing Provider tenancies by July 2016 and in all other tenancies by July 2019. This comes alongside strengthened retaliatory evictions protections to increase tenants' confidence in exercising their rights.¹⁷

Landlords could be supported to meet the minimum standards

A pool of funds could be made available to assist property owners (private, government and community housing) to meet the minimum standards, with priority given to lifting conditions in cheaper accommodation. Measures to guard against the risk of landlords receiving incentives and then removing the property from the rental market would need to be incorporated. There may be scope to leverage other state programs such as the Victorian Energy Efficiency Target (VEET) scheme, which could strengthen its focus on rental properties.

To assist the introduction of energy efficiency standards in the United Kingdom, support is available for landlords to make upgrades to private rental dwellings. Further, in Ontario, Canada, the Social Housing Renovation and Retrofit Program¹⁸ provided specific funding for social housing providers to increase energy efficiency.

Recommendation 2

Investigate the ways to introduce energy efficiency requirements for rental homes over the medium term.

The urgent repair provisions are inadequate and need to be examined.

In delivering a federally funded hot water efficiency improvement program, we have become aware of renters experiencing protracted interruptions to their water supply. We believe these point to a broader failure of the RTA's urgent repair provisions.

A 2013 Footscray Community Legal Centre (FCLC) survey of 100 tenants recorded 240 repair needs in 71% of their dwellings, with plumbing and water ranked as the third highest category.¹⁹ Grievances were sometimes long-lasting: an Iranian refugee family was forced to use a bucket for bathing while waiting five months for a broken shower to be repaired; a Burmese family of seven

¹⁶Department of Energy and Climate Change, *Private rented sector energy efficiency regulations (domestic) (England and Wales)*, London, viewed 13 August 2015, <<https://www.gov.uk/government/consultations/private-rented-sector-energy-efficiency-regulations-domestic>>.

¹⁷Ministry of Business, Innovation and Employment, *Changes to Residential Tenancies Act*, Wellington, NZ, viewed 13 August 2015, <<http://www.mbie.govt.nz/what-we-do/housing/changes-to-residential-tenancies-act>>.

¹⁸Canada–Ontario Affordable Housing Initiative 2009, *Social Housing Renovation and Retrofit Program program guidelines*, viewed 13 August 2015, <<http://www.mah.gov.on.ca/AssetFactory.aspx?did=6867>>.

¹⁹Berry, J 2013, *Home sweet home: act for the house not just the tenant*, Footscray Community Legal Centre.

was told to boil water on the stove as the landlord was unwilling to repair the broken hot water service.²⁰

While the urgent repair provisions cover many faults, including water service failures, tenants face barriers to exercising their rights. It can take weeks or even months for a tenant to satisfy the requirement to report the defect to the landlord *and* demonstrate that they are unable to get the landlord or agent to carry out the repairs, since there is no prescribed period for landlord action. Where a landlord refuses or fails to take action, a tenant may arrange and self-fund repairs under \$1000, and is then entitled to seek reimbursement from the landlord. Otherwise, they need to apply to VCAT for an urgent hearing.

The provisions fail to redress the inherent power imbalance in the landlord–tenant relationship. When entering a lease tenants have no information about the landlord’s previous conduct and willingness to effect repairs and maintenance. Our research has demonstrated that tenants are reluctant to approach their landlords, or do anything that could be perceived as causing trouble. Low-income and vulnerable tenants in particular are unwilling to raise complaints out of fear that they might be evicted or their tenancy might not be renewed. Instead they live with the consequences of the landlord’s failures to make repairs. Tenants are unlikely to turn to VCAT for redress. In his 2009 report, Justice Kevin Bell, then President of VCAT, stated:

In the residential tenancies jurisdiction the tribunal has been very successful in delivering access to justice to landlords but tenants are not exercising their rights to the same extent. About 95% of applications are initiated by landlords.

The urgent repair provisions also fail to recognise the financial stress that would prevent many renters finding the money to self-fund urgent repairs, which they might then struggle to recover from the landlord. In addition, the \$1000 claim limit fails to reflect the costs of critical repairs. A new hot water system, for example, costs more than \$2500.

The Brotherhood recommends that the urgent repair provisions be examined and redesigned to strengthen tenants’ ability to have repairs undertaken within a reasonable period and without creating financial stress. Defined timelines and monetary advances – perhaps from the Residential Tenancies Bond Authority – to pay for repairs, ought to be explored. Step-in rights to enable a third party (such as a water authority) to intervene on a tenant’s behalf where there is a strong public interest – such as the failure or interruption of water supply in the premises – could also be considered. Access to tenancy advice and advocacy support services, discussed further below, is also essential in supporting tenants to exercise their rights.

Recommendation 3

Examine the efficacy of the urgent repair provisions and develop reforms to enable tenants to have repairs attended to within a reasonable period and without financial stress.

²⁰Footscray Community Legal Centre 2012, *Making it home: refugees housing in Melbourne’s west*, viewed 13 August 2015, <http://www.footscrayclc.org.au/~footscra/images/stories/Tenancy_Report.pdf>

A balance needs to be achieved on security of tenure

We are pleased that an Issues Paper on security of tenure will be published to support the next stage of the Review. Both adults and children need the opportunity to settle in a place, and build stable connections with schools, their surrounding community and job market. Changes made to the RTA need to reflect the reality that more people and families are renting for longer periods – many for their entire lives. Reforms that could improve security of tenure include:

- **requiring reasonable grounds for terminations.** The capacity of landlords to act without reason to terminate month-to-month tenancies, or not renew a lease at its expiry, undermines security of tenure. The Brotherhood recommends introducing a prescribed list of circumstances in which notice can be given, such as when the landlord is moving in; when the property is sold and the new owner requires vacant possession; or when there is a significant breach by the tenant.
- **providing effective protection against excessive rent increases.** Tenants are protected from having their rent increased more than once every six months, but there is no restriction on the amount of each increase. While tenants in theory can have their rent assessed and seek recourse through VCAT for excessive rent increases, an explicit requirement that rents not be increased beyond an objective measure should be explored.

Recommendation 4

In the Issues Paper dealing with security of tenure, consider specific reforms to:

- **require reasonable grounds for termination**
- **prohibit excessive rent increases.**

Newly arrived communities may be vulnerable in the rental market

Victoria has seen increased migration of people from diverse cultural backgrounds, including people with limited English. Through our experience of working with newly arrived communities, including refugees, we know that it takes time to understand and adjust to the cultural norms and practices of Victoria's rental market. New arrivals may not understand their rights as tenants, particularly if their country of origin provided little effective tenant protection.

Understanding leases is a particular challenge for those with low English proficiency, especially if the lease includes additional terms that are not covered by available translations of standard leases. We have also been advised of circumstances where leases written in other languages contained exploitative terms that contravene the RTA.

On the other hand, newly arrived tenants may not fully appreciate their responsibilities: for example, customary practices, such as hanging washing from the balcony, may not be permitted in some properties.

Accordingly, the Brotherhood recommends that the Issues Paper on vulnerable tenants consider the rental experiences of newly arrived communities and explore options to reduce their vulnerability.

Recommendation 5

In the Issues Paper on vulnerable tenants, consider the rental market experiences of newly arrived migrants.

The Review process could be strengthened by independent leadership or an external advisory group

It is imperative that the Review produce a candid assessment of the operation, effectiveness and administration of the Act, enables a wide range of issues to be aired and options to be explored, and is bold in its ambitions for reform. Leadership that is separate from those administering the Act would strengthen the Review process. Current reviews of Victoria's Vocational Education and Training System, State Schools Funding and the Climate Change Act are being independently led.

If the Department retains responsibility for running the Review, robust governance arrangements should be put in place to build confidence in the process. For example, an external advisory group of key stakeholders (such as the Municipal Association of Victoria, the Tenants Union, the Property Council, VCOSS and the Real Estate Institute of Victoria) could be established to work with the Department at key stages of the Review process. Such a group could not only provide expertise but could help to identify common ground, in spite of the members' different interests and perspectives.

Recommendation 6

To support an arms-length assessment of the RTA, establish independent leadership or an external advisory group to oversee the Review process.

Broad portfolio involvement in the Review would support better outcomes

Given the intersection of residential tenancies law with other areas of state government, an Inter-Departmental Committee has been established to support the Review process. We understand that there is no representation of the Climate Change portfolio at this stage. This oversight could weaken the potential to explore energy efficiency standards for rental properties and to connect with the concurrent review of the Climate Change Act.

There are clear opportunities to advance the intent of the *Saving Energy, Growing Jobs: Victoria's Energy Efficiency and Productivity Statement*, released June 2015, through reforms in the RTA. To this end, the Energy Efficiency Branch of the Department of Economic Development, Jobs, Transport and Resources should also be engaged, since they develop policy and run programs (such as the Victorian Energy Efficiency Target scheme) directed at improving energy efficiency.

Recommendation 7

Enhance the expertise available to the Review by including representatives from the departments responsible for climate change and energy efficiency.

Vulnerable tenants need access to tenancy advice and advocacy services

Access to advice is critical for tenants to effectively exercise their rights under the RTA. Vulnerable groups may need support and representation of their interests in negotiations with landlords or in proceedings at VCAT.

The Tenants Union of Victoria offers personalised advice and support to low-income and vulnerable tenants, but with limited funding it is unable to meet the demand. The telephone advice

line has a 45% call abandonment rate on account of the long waiting times; around half of the email inquiries received each day are blocked by the email gateway because there is no capacity to respond. Hundreds of tenants are turned away from the drop-in advice service each year; others wait for hours or all day to receive advice.²¹

Recommendation 8

To enable the effective operation of the RTA, expand tenancy advice and advocacy services to support the exercise of tenants' rights.

²¹ Interview with Mark O'Brien from the Tenants Union of Victoria, 12 August 2015.