

TRANSCRIPT

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into the Rental and Housing Affordability Crisis in Victoria

Melbourne – Tuesday 10 October 2023

MEMBERS

Trung Luu – Chair

Ryan Batchelor – Deputy Chair

Matthew Bach

Michael Galea

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Aiv Puglielli

Lee Tarlamis

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Moira Deeming

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WITNESS

Nicole Rich, Executive Director, Regulatory Services, and Director, Consumer Affairs Victoria.

The CHAIR: Welcome back to the seventh session of today's hearing. Joining us is Nicole Rich, Executive Director of Regulatory Services and Director, Consumer Affairs Victoria. Good afternoon, Nicole.

Nicole RICH: Thank you, Chair.

The CHAIR: My name is Trung Luu. I am the Chair of the committee. To my left is Deputy Chair Mr Ryan Batchelor, Mr Michael Galea, Mrs Moira Deeming, Aiv Puglielli, Dr Sarah Mansfield, Mr Joe McCracken, and Dr Renee Heath.

Before proceeding I would just like to read you this. All evidence taken is protected by parliamentary privilege as provided by the *Constitution Act 1975* and further subject to the provisions of the Legislative Council standing orders. Therefore the information provided during this hearing is protected by law. You are protected against any action for what you say during this hearing, but if you go elsewhere and repeat the same thing, those comments may not be protected by this privilege. Any deliberately false evidence or misleading of the committee may be considered a contempt of Parliament.

All evidence is being recorded, and you will be provided with a proof version of the transcript following the hearing. The transcript will ultimately be made public and posted on the committee website.

For the Hansard record can you please state your full name and the organisation you are appearing on behalf of.

Nicole RICH: My name is Nicole Rich. I am the Executive Director of Regulatory Services and the Director of Consumer Affairs Victoria in the Department of Government Services.

The CHAIR: Thank you. Would you like to make an opening statement?

Nicole RICH: I have not prepared one, because I thought the members might want to go straight into questions – I think I was told. I am happy to do that. That is fine, unless there is anything that you would like me to cover about my role and functions.

The CHAIR: There is time for you to make a statement if you like. You do not have to.

Nicole RICH: That is fine. I am happy to get into discussions.

The CHAIR: Okay. We have got plenty of time for you. I would like to invite my Deputy Chair to start off.

Ryan BATCHELOR: Thanks, Chair. Thanks, Ms Rich, for coming in and joining us today. I might start with something that has sort of just popped up in the social media Zeitgeist in the last little bit about photo editing on real estate agent websites. Is that a practice that could possibly fall foul of consumer law if it was found to be misleading and deceptive conduct?

Nicole RICH: Thanks for that question. I think I am aware of even a specific instance of that that was on social media recently. I mean, the short answer is yes, that is potentially a breach of the law. So I mean misleading and deceptive conduct is a breach of the Australian Consumer Law; that is fairly well understood. The consumer law also prohibits the making of false or misleading statements in a range of circumstances, including in relation to land, and there are also provisions in the *Residential Tenancies Act*. So I mean obviously everything is always subject to evidence and proof, but on the face of it, you know, if you just take as a fact – for example, if you proved that somebody had doctored a photo and it was misleading, then yes, that is potentially going to fall foul of the law.

Ryan BATCHELOR: What would someone do if they came across evidence of that practice occurring?

Nicole RICH: So there are probably two tracks of response to that, and that is true in the residential tenancies space more generally, which will probably be something that we will get into. There are the rights and responsibilities of the private parties that are involved, and then there are the conduct obligations and regulatory functions that as the Director of Consumer Affairs Victoria I and my officers are responsible for. So

it potentially triggers rights. Firstly, you have got responsibilities as an estate agent not to do that, and as a rental provider as well, and if you are a renter that was induced into signing a rental agreement or moving in on that basis, then that is potentially going to trigger some rights, which again we can talk about. But also, if it falls foul of the law in the sense that it is a breach of a conduct obligation, then that potentially triggers liability to a penalty et cetera if the regulator were to take action against it. So there are both of those tracks of response.

Ryan BATCHELOR: So agents in particular should tread carefully in this space, one would expect, if there is potential for people to be misled by what they are putting out online.

Nicole RICH: Yes. Absolutely. If that is shown to be true – that agents are doing that – it is clearly not acceptable conduct, and I would say that about any sorts of misleading conduct. It is just not okay; it is not acceptable. In the case of property managers and estate agents, as well as those sort of direct provisions around that conduct they also of course are a licensed profession, and along with that licensing regime comes a range of professional conduct obligations, and I would probably argue that that is going to fall foul of your professional conduct obligations as well. We have taken a number of disciplinary proceedings against agents for various matters over the years – including live actions now – that include matters where we make allegations that they have breached their professional conduct obligations. So we do take that sort of conduct pretty seriously, and I would always be encouraging people to raise those with us or to make a complaint if they are concerned about that sort of conduct.

Ryan BATCHELOR: That goes to the next point I have here, which is agent obligations, complaints and the nature thereof. Obviously, agents do have a responsibility to act in a professional manner and comply with conduct. We have heard evidence from tenants but also from some rental agents about conduct that we would not think is entirely appropriate. So what sorts of obligations and therefore penalties would apply to either real estate agents or rental providers for doing the wrong thing?

Nicole RICH: Yes, absolutely. It is a good question. Look, it depends on the nature of the conduct and even the legislation and whether it is the agent or the rental provider. I will not bore the committee with the blow-by-blow account of the different provisions and the penalty units and so on that attach, but look, suffice to say that, firstly, for estate agents or agents' representatives that are acting on their behalf there is the *Estate Agents Act* which applies. That is where their professional conduct obligations and so on are derived from. There is also the Australian Consumer Law, which actually probably has the most significant penalties attached to it. They were recently increased, and it is a national law. There are civil and criminal penalties that can attach, depending on the provisions. And then under the *Residential Tenancies Act* in Victoria itself there are also a range of provisions. Look, largely in the *Residential Tenancies Act* – and it is a very large piece of legislation, as I am sure you are aware – a lot of the provisions in that legislation essentially regulate the rights and responsibilities or the duties of the different parties, and they trigger private rights if something is not complied with. But there are a number of conduct obligations in there as well, which have penalties attached. The penalties vary, depending on the nature of the offence and I guess what Parliament has determined is the seriousness and therefore the penalty.

Ryan BATCHELOR: But if a tenant had concerns about the behaviour or conduct of their agent that they are dealing with, there are avenues for them to raise concerns and lodge complaints and potentially for action to be taken?

Nicole RICH: Oh, absolutely. At Consumer Affairs Victoria, we would take over 300,000 contacts a year, so that is primarily by phone or online. Some people write letters, but it is primarily phone or through the website. I would say a good third of those would be about renting, so it is a really large component of what we do. Not all of those are complaints. A lot of it is people ringing up with inquiries. They want to understand what their right is in the situation. Rental providers and agents call us – they are probably about a third of those, and two-thirds are renters – wanting a steer about their rights and obligations, so we have to tell them or confirm that something is their obligation. But a number of those will also be complaints, so it is a clear channel for people to make complaints. We record all of those, and then as a regulator we have a process to escalate and take action if we need to.

Ryan BATCHELOR: Is consumer affairs the government agency responsible for ensuring compliance with rental standards?

Nicole RICH: Yes, we are.

Ryan BATCHELOR: We heard some evidence from real estate agents and property investors that the impact of the new minimum standards means that there is a whole lot of stuff they have got to do to their properties which is cost prohibitive and that things like creaky floorboards could render the property unlettable under the minimum rental standards. Is that particular instance something that is likely to fall foul of the minimum rental standards?

Nicole RICH: I am pretty sure creaky floorboards are not covered by the 14 areas of the new rental minimum standards. This is an area that we are really committed to at the regulator. For me it is one of the most important of the rental reforms that passed in 2021. Look, I cannot say whether there are individual rental providers that have needed to invest to upgrade their properties and whether that is prohibitive, and if they make an individual decision about whether they want to stay in the market or not, I am not going to comment. I am sure there are individual cases where that might be happening, but ultimately our job as the regulator is not necessarily to judge whether that is the case or not or whether that is appropriate or not. Once the law has been made and the Parliament has passed it, it is up to us to implement it, and we are committed to that. The minimum standards are really clear. They are mandatory; you need to comply. I would also just point out that the minimum standards are not setting a luxury standard for properties. My view is that they are fairly basic, minimum, decent standards that probably anybody in this room would assume are something that the home you are going to live in would meet. I do not think that they are setting a really high standard. That said, I do appreciate that Melbourne and Victoria more broadly have a range of older properties. I would probably say most rental properties would comply with the minimum standards, given that they are basic minimum standards, but there will be a cohort of properties that did not at the time that the reforms came in. Rental providers were given time to comply. Some of them did not start until a bit later, like the electrical safety standard, to give a bit longer to comply. But ultimately it is really clear. The law says you have to. It is a non-negotiable obligation, so as a regulator that is our view. It is non-negotiable. You need to meet it or the property should not be rented.

Ryan BATCHELOR: Thanks, Chair.

The CHAIR: Thank you. Renee.

Renee HEATH: I do not have any questions at this stage.

The CHAIR: Okay, we can go back to you.

Aiv PUGLIELLI: Hi. Aiv. Thank you for coming in today. I understand there were some written questions that were sent through and that we have received a series of responses to, so thank you for doing that. With regard to those questions though, I note that there were some questions where you were unable to provide, as a department, responses to the committee and in those instances referred us rather to the Department of Premier and Cabinet to have those questions answered. Those questions in particular related to the government's new housing statement, which has obviously recently made quite a lot of stir in the news. Were you consulted on the changes to renting and the rental dispute resolution panel that were announced as part of that statement?

Nicole RICH: I must admit I am not sure about the responses, but I was asked a few questions ahead of time but just noted that obviously the housing statement has just been released and also as the regulator I am probably not the right officer to ask those sorts of questions. That said, for the rental dispute scheme that has been announced, CAV is not the dispute resolution body in the scheme. We have got really clear regulatory functions and a role under the legislation, and then obviously you have got the tribunal VCAT and of course the Magistrates' Court, which is the body that can make a binding decision if there is a dispute. I think we have a really important role to play in providing information and advice to people who need it to make sure that there is accurate information about what the law says and what your rights and responsibilities are and also to provide advice about your pathways to resolve a problem, if there is one. But ultimately, we are not a court or a tribunal, so we cannot be the arbiter. We cannot force a party to do something et cetera, et cetera. So our advice in those situations, if there is not able to be an agreed resolution, is to give people advice about their rights to take the matter further, and usually VCAT could be the court.

Aiv PUGLIELLI: I appreciate everything you are saying. In relation to the housing statement, were there any contributions or submissions made by consumer affairs that are now part of that statement?

Nicole RICH: Well, we sit within the Department of Government Services, so certainly the experience that we have on the ground is known and then contributes to, I guess, the knowledge base and work that our policy colleagues have that can inform the policy work of the government, essentially.

Aiv PUGLIELLI: So then when you speak about the conversations that were had before the release of the statement, was information provided in terms of input into what the statement that we now see is?

Nicole RICH: I guess in general terms, yes. I think it is important that any good regulator needs to be reporting publicly on what it sees in the market and providing advice to its government about what it sees and issues that are arising, and so we do that on a regular basis. As I say, I sit within the department. I am not an independent regulator where I have to publish a report every time I make an observation about something. I sit within the department, and I advise up in that way. So I am confident that our experiences and so on, on the ground and in practice, are informing the government's understanding, if that makes sense.

Aiv PUGLIELLI: No worries, all good. With the rest of my time, in terms of things that have been raised with this committee, how many findings in the past year are you aware of of instances of excessive rent increases that have taken place in this state?

Nicole RICH: This is a really important question, so thanks for raising it. One of the things that we have seen on the ground, and I think it is a responsibility for us to be noting, is what has been going on with rent increases. You are absolutely right, we have a particularly statutory function under the *Residential Tenancies Act* whereby if a renter receives a notice of rent increase and they believe it may be excessive, they can come to the Director of consumer affairs for an investigation into that. The issue that I have with giving you stats on an outcome is that it is this split between sort of our role and who can make a decision. Our role is to investigate and provide a report about the proposed rent in line with set statutory criteria, so it is a very clear and constrained role. And then if the two parties are not able to come to an agreement about what the new rent is going to be, the renter has the right to make an application to the tribunal and the tribunal has the power to make a decision about the rent.

Aiv PUGLIELLI: I can see the distinction you are making. I bring it up because a community member recently raised with me that they had had a finding by consumer affairs. They had had a rent rise of 22 per cent, and that was not seen to be excessive. So my question is: what factors does consumer affairs take into account to justify supporting rent increases well above inflation?

Nicole RICH: This is a really, really important point. Certainly I have seen some of these really large rent increases as well, but ultimately the legislation is actually really, really clear. We have tested this. We must take into account the statutory considerations under the Act, and you cannot take extraneous considerations into account. So there is a list of criteria that we take into account in all of our rent review investigations, and they do not include the actual size of the rent increase. I would say there are a range, some of which are not relevant in a lot of cases. The two key considerations that will generally be relevant in all cases are the rent for comparable rental properties in the same locality and the general sort of state of repair of the property. So they will guide a lot of our rent increase assessments. Unfortunately, that can mean that in a situation where the market is rising rapidly, the comparable rents might mean that that is a significant factor guiding the consideration that we need to take into account.

Aiv PUGLIELLI: Sure. I understand what you are saying, but I would put to you: are these criteria working if they would support a 20, 30, 40 per cent increase in rent?

Nicole RICH: Look, I think ultimately that is something I guess the committee would have to determine. What I would say is simply that I am confident that we perform our current statutory role in accordance with the law and properly, and we take the rent review role that we have very, very seriously. In fact we have seen a very large increase in demand, which again is, I guess, a reflection – it is a corroboration – of the issues you have been hearing about. We have prioritised our resources to meeting that demand, because we see it as a really, really high priority for the agency to do that work, but in the end we must be guided by the current statutory considerations in the way which we carry out that statutory function.

Aiv PUGLIELLI: Thank you, I appreciate that. I think that is my time, thank you.

The CHAIR: Mrs Deeming.

Moira DEEMING: Thank you. My question has to do with the short-term rental accommodation issues and adjacent property owners and owners corporations. I have had lots of feedback that since 2019 there have been about 50 cases at VCAT against short-term accommodation with disputes over them – they have been heard, but not a single one has been suspended or fined – and that body corporates do not have the power to limit short-term rentals within their own buildings. So these corporate bodies are finding that the law is not working for them, and I wanted to hear your comments on that.

Nicole RICH: I would probably say that what you have said is, I think, an accurate characterisation of what the laws around short stay that are embedded in the *Owners Corporations Act 2006* currently state. Those laws are relatively recent. There was a big review of short stay only a few years ago, and there was sort of a new section of provisions inserted into the Act. That is my understanding also – that there have not been a huge number of cases to VCAT. I am not aware of all of VCAT's decisions around the matters, but that would not necessarily surprise me. Probably the main thing I would note there is that through the course of the review, stakeholders raised their concerns that there needed to be a way to make sure that the provisions would actually work in practice, so ultimately what happened is that an additional provision was put into the law requiring that there be a post-implementation review of those provisions within a certain time period.

Moira DEEMING: Sorry, I misheard you then – a post?

Nicole RICH: There is a provision in the *Owners Corporation Act* that was inserted as part of the short-stay reforms that requires there to be a review of those very provisions within a certain time period, so that is coming around soon, I think. Sorry, I do not have it in front of me, but I think the window within which the review needs to occur is sort of in the next two years or so. So I would assume that that review will need to take place. The sorts of things that you are raising are precisely the reason why I think it is a good idea that there is going to be a review, and they are the sorts of things that the review would presumably need to look into further.

Moira DEEMING: Okay, fantastic. Thank you so much.

The CHAIR: Michael.

Michael GALEA: Thank you, Chair. Thank you for joining us today, Ms Rich. You mentioned earlier the 2020–21 minimum compliance standards. I am curious to know from your perspective as the regulator: are there any specific components of those minimum standards that you have seen a greater deal of compliance issues with?

Nicole RICH: This is also really good question, and obviously the minimum standards are dear to our heart. We have probably had a few thousand contacts in the last financial year about the minimum standards, and that is an increase. So we have only had the provisions in place for two-and-a-bit years; it is going up slowly. We get around 63,000 renting contacts a year, so it is a small but not insignificant component of what we are hearing about. Given the numbers it would probably be hard for me to give you a really accurate breakdown of, just from our contacts, what people are complaining about, but I would probably say we have called out the minimum standards as a regulatory priority for the agency. We do annual regulatory priorities, and for the year ahead this is a clear priority for us. One of the reasons we have called that out is, particularly we think in Victoria with its climate, mould issues are a really significant issue for people, and probably heating in winter as well is another really significant issue. The other area that we would probably call out would be anything that is safety related, so the electrical safety standard is also something that I am confident we would be prioritising. So they would be three areas that I would say really need to be priorities in Victoria. We do hear a lot anecdotally about mould. Mould and damp and heating are really pernicious issues, and obviously again in my view they are safety-related matters as well.

Michael GALEA: Obviously I agree that safety and those sorts of issues should be taken probably the most seriously. Are you saying that they are prioritised because they are the most serious or prioritised as well because they are the most frequent complaints?

Nicole RICH: I probably do not have the stats in front of me, sorry, to be able to confirm for you definitively that they are the most common. I know that people do call us about mould and about heating issues, but we have also taken into account that we think they are really, really important safety considerations. But also we are a regulator that tries to be alive to the different sources of intelligence or inputs. So one really

important source is people in the community calling us, another is what is in the public debate and another is what our stakeholders are telling us. A lot of our renting stakeholders have also spoken to us about their concerns about issues like mould, so that is another factor that we have taken into account in prioritising it.

Michael GALEA: That probably perfectly segues to my next question, which is around awareness of these reforms. Can I ask you in two parts about the awareness from the broader public and tenants and then the awareness from agents themselves and landlords?

Nicole RICH: In a nutshell, I would say we have done a lot to try and increase awareness of the reforms, but I also think there is always more that we could do. I say that because it is such a significant issue for the community; the fact that it is like the single number one thing that people in Victoria call us about shows that. Consumer Affairs Victoria is responsible for regulating over 30 pieces of legislation, so that is a lot of different areas. Yet renting is clearly the number one thing people call us about, so it is just really critical in people's everyday lives. But I still think there are a lot of people out there that you would think would know, and they do not. So if a third of the calls are coming from rental providers and estate agents, it shows you that people are still not totally clear. They are ringing us to get guidance about what the law now says. So we are really alive to that, and I think in the coming year you might see some more activities. We just continue to perform our ongoing function to ensure that the community is aware of the reforms and what the laws say. But we did do a big push obviously at the time of the reforms, so our website was totally overhauled with easier-to-understand information on renting. We get over a million page views a month on that renting content. Again, some of the renting pages are easily the most popular pages on the website. We did a large communications campaign at the time of the reforms, which ran for several months. Hopefully people saw it on bus shelters and online and so on. We also funded community groups to do further outreach into, for example, communities of culturally and linguistically diverse backgrounds and so on to try to get the message out there. But I think it is such a significant reform and it affects so many people in the community, so there is always more you can do to reach people.

Michael GALEA: On that note too, we know that a lot of renters often are new or relatively new migrants to Australia as well. How successful are we in actually reaching those new communities, particularly those ones in new communities like mine in the outer south-east suburbs? Are they aware? Are they responding to these campaigns?

Nicole RICH: I think I said to an earlier question I cannot tell you definitively because I do not have a really good way of measuring that at the moment. But it is on our minds. Again, I just think it is an excellent question. I mean, my gut feel would be there is probably more we could do to reach different communities in different parts of the state. I think we are really alive to that need. One of the commitments that Consumer Affairs Victoria has more generally is to measure and understand certain indicators that we are doing our job well or not and one of those would be renter awareness and more generally rental provider awareness of what the laws say, so we are going to start measuring that. I think that will help to give us a better guide of what is happening, and then we can track that and be accountable for improving that if we need to.

Michael GALEA: Yes, that will be good to see. As of course you are aware, there is the major housing statement that has been released and a package of further rental reforms as part of that. I know one of them involves mandatory training and licensing for estate agents. Do you think this will address particular concerns that have arisen to your office in terms of some of the compliance issues that you have seen?

Nicole RICH: Again, it is hard to say definitively, but I think it is a positive step. There are many regulated professions that have training and continuing professional development obligations associated with them. I think it is a really important and serious profession that has a lot of contact with people. There are educational standards that apply now for you to be eligible to be registered as an estate agent or indeed actually to become an agent's representative let alone an estate agent. But I guess there is a clear gap in the legislation at the moment in that once you are licensed there is no ongoing training or professional development obligations. I think it definitely fills in that gap.

Michael GALEA: Cool. Thank you. Going on to some conversations previously as well about rent reviews and other statutory roles that you play, another major reform is the new Rental Dispute Resolution Victoria authority, which will, I understand, take away a lot of that backlog that is currently in VCAT. Will that also take any of your current roles away from CAV, or is that still separate?

Nicole RICH: Apologies for taking a bit long to answer some questions about the scheme earlier. I sort of see it as, again, fitting into a gap. We have only got the statement announcement, and I do not think I can make pronouncements on what the policy details will end up being and what the legislation will look like. It has to travel through Parliament. But I see it as sort of filling a gap, because like I said earlier, we have really clear functions around providing information and advice. We do provide frontline conciliation support in certain cases for maybe renters who are experiencing a bit more vulnerability in the market, but ultimately that relies on I guess our general regulatory authority to ring parties and say ‘Look, this is what the law says’ and encourage a resolution. But ultimately if the parties do not agree through that process, we provide advice about their formal options, and they are to go to a formal legal process of either the tribunal or the courts. I do see the dispute resolution scheme as neatly fitting in between and providing hopefully a cheaper, faster and easier dispute resolution mechanism that does not require everybody who cannot resolve on their own with or without our assistance to have to go straight down the legal path.

Michael GALEA: Sure. Thank you. Stepping from one side, from rental, to the ownership side, are there any particular trends you have observed in terms of underquoting from real estate agents?

Nicole RICH: Yes. You are right. It is sort of flipping to the other side of the market – people who have the opportunity to buy. But I would probably just say that that is another one of our clear regulatory priorities for the year. The government announced a taskforce last year. We have been recruiting to that taskforce. We have a full complement now. We are out in the community. I think the level of community concern about it indicates that it is still an issue, and we are really committed to stamping it out once and for all. I was actually out at auctions with one of my teams on Saturday. I went to a number of auctions, and we observed various things. Those auctions come at the end of sales campaigns that we monitor, so I think it is fair to say watch this space. It is definitely something that is a high priority for us.

Michael GALEA: Very interesting. Thank you. Thank you, Chair.

The CHAIR: Thanks, Michael. Dr Mansfield.

Sarah MANSFIELD: Thank you. One of the things we heard a lot of, particularly earlier in the inquiry from renters, was that although we have got these standards and by all accounts a lot of them are quite reasonable – there are some gaps there, but there are some reasonable standards – the lack of enforcement seems to be the thing that is really concerning a lot of renters. A lot of them feel quite powerless in terms of bringing up a dispute. Despite all of the resources that are out there, the onus seems to be on the renter to raise disputes and issues and there is a bit of a power imbalance there. What do you feel would assist with addressing that power imbalance?

Nicole RICH: Again, you are highlighting a really important issue in the way that the market works and the regulatory framework. I think it is fair to say that the legislation and the framework do establish a regime that largely operates like that. I sort of anticipated we would have a discussion around this at some point. The legislation is clear in that largely speaking it is asking rental providers and renters, or residents and park operators et cetera, to try and resolve these matters on their own, and then it sets out a framework for what your rights and responsibilities are. So even with the minimum standards, there is a pathway. The reforms essentially gave renters or residents various rights if the minimum standards are not being complied with. That includes that you have got the right to terminate the rental agreement before you move in or to immediately seek an urgent repair, and you have got those rights that are triggered. However, unlike a lot of the other provisions, the reforms are also really clear that there are offence provisions associated with the minimum standards, and we take that really seriously at the regulator as well, which is one of the things that is driving the fact that it is a regulatory priority for us. I mean, I think it is probably not unfair for renters to feel like there could be more done around the enforcement aspect of it. We are not ever going to get around the fact that the law is asking parties to take those matters up and advocate for themselves, and I absolutely appreciate that can be very, very difficult. There can be power imbalances in a tight market. People make decisions every day about pragmatically whether they are going to raise issues or not based on the overall nature of the relationship and whether they want to maintain the tenancy. That is why it is really important that there are those kinds of conduct provisions that are singled out, and it is so important that where there is an offence attached and the regulator should be monitoring it that we perform that function. Yes, we have heard that, and we are signalling that we are going to be more active in that space.

Sarah MANSFIELD: Yes. In terms of being more active, does that involve proactively going out there and looking for breaches or –

Nicole RICH: I would probably just say I do not want to give away our methods at this early stage. But yes, potentially, I think that is right. They are all things – that is in the underquoting toolkit. There are a range of tools and methods at our disposal as a regulator with law enforcement functions. We have a published regulatory approach and a published compliance policy that give people a bit more information about how we work through those functions and how we graduate the response. We would apply that here like we would with others, suffice to say I think we agree at the regulator that we need to be there for renters. Like I said earlier, the minimum standards are not negotiable. They are basic standards, and you should be meeting them. So some of the stuff that I have seen out there – we cannot just name and shame when we have a complaint. I think people expect us as a government agency to do our due diligence with any individual matter, look into it and do a proper investigation. But if you just take it at face value, some of it is really appalling and not acceptable, and they are the more egregious kinds of instances that we will be looking at in the coming year.

Sarah MANSFIELD: Okay. In terms of I guess that enforcement side of it and your role in it, the case for other government departments and other areas of policy, there are limited resources to undertake that enforcement work and you have got to make decisions about where you channel those. Is resourcing an issue?

Nicole RICH: Look, I think no regulator is ever going to say no to more resources. So if somebody is listening and they would like to give us more resources, that is always going to be welcome. So sure, but also the government could double consumer affairs' resources overnight, and we would still have to make decisions about what we are going to do and prioritise and not do. Ultimately, I think that is where we have agency to signal what are going to be the top priorities or not, and that is what we do through things like the annual regulatory priorities, and we have signalled that this is a priority. So I am confident that we do have the resources to be able to focus on this issue, or we would not have caught that out.

Sarah MANSFIELD: In terms of an issue like I guess challenging a rent increase, at the moment the onus is on the tenant to bring a complaint if they believe it is unfair. If we reverse the onus there and put the onus on the rental provider, what effect do you think that would have?

Nicole RICH: It is a good question. It is asking me to speculate on a change to the legislation. I am not sure how that would work. I guess what you are saying is there would have to be – it might be a bit like the ACT that has provisions that work a little bit like that where the rental provider still has the right to issue a notice to increase rent, but if it goes above a certain amount, then they have to apply to the tribunal there to seek permission. So I guess it could work. I guess there is a model there. I do not know. I understand the point of the question. I feel like I would just be speculating, though, because you could imagine there could be all sorts of impacts. It could be helpful, but at the same time it could just mean a lot of rental providers flood VCAT with requests. It is hard to know. That is why I love my policy colleagues. We tell them what we are seeing, and then they go and they do the work of testing different options, and in some cases they might do some modelling about what the impacts might be in other bits of the system if you do changes.

Sarah MANSFIELD: Great. That is all from me. Thank you.

The CHAIR: Thank you, Dr Mansfield. Mr McCracken.

Joe McCracken: I do not have any questions.

The CHAIR: No questions. Okay. We have got a bit of time. Would you like to?

Ryan BATCHELOR: Well, can I stop? One of the things that Mr Galea talked about was underquoting; I might go to rental bidding, which is a kind of a similar issue in some respects. We have obviously had a ban on rental bidding on the agent side for a number of years, and there has been announced changes in the housing statement to extend those prohibitions across the board. I am just wondering if you have got any sort of context for us on what consumer affairs is seeing occurring and how you expect the enforcement, the new proposed laws, to occur.

Nicole RICH: Yes. It is a really good question again. Again, rental bidding provisions are one of these provisions that are tagged as an offence provision. It has got obligations. So obviously as a regulator we pay

attention to that, and we have monitored the rental bidding provisions really closely. When the reforms first came in to place, we developed a compliance approach and priorities that we developed with input from stakeholders, and rental bidding was singled out as one of the things we were going to focus on. But I think it is fair to say we have had really low numbers of contacts about rental bidding just generally. I think last financial year we had under 50 contacts –

Ryan BATCHELOR: Across the year, right.

Nicole RICH: across the entire year, across the entire state, around rental bidding compared to, you know, whatever it was – 63,000, 64,000-odd contacts. However, we are mindful that that is probably largely because of the nature of the rental bidding provisions currently. So they clearly outlaw advertising a price unless it is a fixed price, and they outlaw the rental provider or the agent in any way asking for, inviting or soliciting a higher offer, and we take that soliciting really seriously as well. So we are on the lookout for any conduct that could be construed in that way.

Ryan BATCHELOR: And what sort of conduct would that typically be on the lookout?

Nicole RICH: It might be like a ‘Nudge, nudge, wink, wink, other people are offering more money’. I think as an agent you could potentially be straying into that territory. However, we have had really low contacts, and I think that is why. We did a bit of a manual analysis of the contacts that we did get – not just for this hearing, sorry, but as part of our sort of general monitoring – and I think it is fair to say that the contacts that we did receive really all did not raise concerns around breaches of the law because they were all instances where renters had of their own choice chosen to make offers of higher rent. But, I mean, I think that really goes to the issue, which we are aware of, that that conduct is probably still occurring in the marketplace because of the nature of what is going on in the market. So that commitment in the housing statement I think is sensible because it addresses that issue. Really there has not been a lot of work for us to do with the current provisions, and what we do know is that people are still offering higher rent. So if the intention is to stop that occurring, then the commitment I think will address that properly.

Ryan BATCHELOR: Without giving away your trade secrets, do you think it is going to be possible to do? Do you get enough data to monitor? What mechanisms do you think you have got in place to check compliance?

Nicole RICH: I think, assuming that passes into law, we will set up monitoring in the way we would for other provisions. I mean, we get a lot of intelligence through the public, which is why we are always talking to the public and encouraging people to contact us about issues. That is always a ripe source of information. Stakeholders who work with members of the public are also really, really important to us. They tell us about things that they are seeing in the marketplace. And even other providers and agents in the market often will tell us. Underquoting is a really good example of that. I mean, the majority of underquoting complaints that we receive are from prospective buyers. However, there is a not insignificant minority of those that are coming from other agents or from vendors, which I think just speaks to the fact that you cannot paint everybody with one brush. People care about what is happening in the community. I have no tolerance for poor estate agent conduct, but there are also a lot of estate agents that are actually trying to comply, and sometimes it is harder if you are acting fairly and you are being undermined by someone who is competing with you who is not.

Ryan BATCHELOR: If they are trying to do the right thing, yes.

Nicole RICH: They do not like that either, and they will report that kind of conduct to us. I am fairly confident that if that law is changed, we will be able to monitor that and take action if we need to.

Ryan BATCHELOR: Okay. If I can, Chair, I just want to talk a bit about urgent repairs. So obviously we have got the minimum standards for the property, but also we have heard evidence of, in this inquiry more broadly, tenants who cannot seem to get their rental provider, to use the emerging parlance, to take action to fix something that is wrong with the property. I was wondering if you have got any reflections on the regulatory and compliance work that you do at consumer affairs about the dynamic around urgent repairs, what you are seeing and what more we may need to think about in terms of that.

Nicole RICH: Sure. Urgent repairs are I think again really central to the regulatory framework but essentially solely for renters and rental providers to deal with. The law establishes that there is a right to seek

repairs and characterises certain types as urgent, others as non-urgent, and if something is an urgent repair, then the renter has certain rights, and the rental provider has an obligation to immediately address that repair. I know that I said rental contacts are the single biggest sort of area of contact. The top five in renting – the top one is anything to do with terminations, ending a rent, and the second is repairs, so it is quite high. But also my understanding is that VCAT does prioritise those matters. They get on more urgently. Where a repair has not been completed, renters have the ability to apply and then obviously VCAT will prioritise it. That is not to say it is not – I understand every time you have to do that it can be draining, it is time consuming et cetera. So the regulatory framework sort of works okay in terms of setting up a framework to resolve those matters. For non-urgent repairs we have a particular function that we can go in and do inspections. They can take a bit longer, and there can be arguments about them. So we do have a role where people can ask us to come and do that.

Ryan BATCHELOR: Just on that point, where does it click over into something you can –

Nicole RICH: There is a clear, defined list of urgent repairs, and anything that is not urgent is a non-urgent repair. There is also a role for the Director of consumer affairs to issue guidelines under the legislation for certain areas, and one of the guidelines is around repairs. I have issued guidelines to help people understand what may be an urgent repair or a non-urgent repair. A really good example would be a broken toilet in a rental property. If it is the only bathroom and the only toilet in the home, then it is clearly going to be an urgent repair and it needs to be dealt with immediately. But if you have got three bathrooms in your home and one of the toilets has broken but the other two are working fine, it is probably not an urgent repair. So we try and give guidance to renters and rental providers to try and reduce disputes, and then obviously our frontline staff can use the guidance to help people understand their rights and obligations and encourage compliance and give renters support if they need to. But, yes, it is up to renters ultimately to pursue that.

But the minimum standards is a really, really important mechanism where we have a role to try and get properties into shape. Obviously things can break, but the minimum standards are really important in terms of getting properties into an appropriate state to begin with.

Ryan BATCHELOR: I will leave that. Maybe on notice – I do not know if you have provided it to us previously, but you talked earlier about the demand for rent reviews. Have you got, any time in the last few years – I do not know if you publish it in your annual report – how many rent review requests you have got so that we can see those trends?

Nicole RICH: I think we do publish it, so I can tell you that we did I think over 5400 in the 2022–23 year. It will be in the annual report. I do know it was over a 120 per cent increase on the year before, so I think that does show a really significant increase in demand for rent reviews.

Ryan BATCHELOR: Okay. No worries. Thanks, Chair.

The CHAIR: Thanks, Ryan. Jeez, that was quite a questioning. I would just like to follow up on Mr Galea's question in relation to our diverse community. In relation to your department, what program or what material have you provided our diverse community in relation to languages? Because I understand for most the language is still an issue, and without the language they will not approach the office even for assistance at all. So have we so far done anything in relation to providing material in language or other methods of communication with your service?

Nicole RICH: Yes. Again, I think there is a really important issue. When the reforms were implemented we produced a number of resources, and they have been translated into about 30 different community languages, and they are available. And then when we ran the large sort of multichannel communications campaign we pointed to those resources for people as well. And then I mentioned that we funded a couple of community agencies – so we specifically funded them amongst other things to work with culturally and linguistically diverse communities and kind of do outreach into those communities, to do more direct engagement, build awareness of the reforms and where to go obviously to get the translated materials and so on. So I am confident we undertook a range of activities to address that issue, but to the earlier point that Mr Galea was raising, I think there is always more that can be done. I would not purport to say to you that, you know, it is perfect and we have reached everybody and that it is really easy for people who speak a language other than English as their first language to engage. I think it is a fair, fair point that there is more we could do to reach those communities.

The CHAIR: Maybe in terms of those communities – because I know there are two issues or two complaints regularly. That is basically about communication on the phone or direct communication – seeking information. And also I was wanting to ask: is most of this on the website in different languages as well or not?

Nicole RICH: On the website we have got translated materials, and in fact there is sort of a landing page for different language groups that takes you to not only the renting materials but other important materials. That said, you know, I appreciate that a lot of members of the community are not necessarily going to know about that or how to find it, which is why it is really important that we do those things like outreach to different communities. In terms of the phone, you know, obviously we use the translating and interpreting service and people can request that when they call, and obviously we work through that service, so again, that is available. But I mean clearly it is not – I mean, my dream would be to have a multilanguage sort of phone service. That can be really hard, because obviously agents need to be not only trained in different languages but also trained in the subject matter and material and so on, but it remains a dream. But in the meantime I would really hope and encourage anybody to call us and use the TIS, and all of our frontline officers are trained and very comfortable using that service.

The CHAIR: Just going on to a different question. We have heard a lot of evidence regarding renters and issues regarding their properties and the rental prices et cetera. We also have complaints in relation to the owners' side of things regarding non-payment and the process they have to go through to actually seek repossession of their property and the amount of time they have to go through non-payment before actually seeking repossession of their property. I am just wondering: what have you encountered and how can we improve on that?

Nicole RICH: Look, I think you know, certainly the rental reforms – I mean, I guess the rental reforms make no bones about the fact that they have changed the process around late payment of rent and notices to vacate for non-payment of rent, so the reforms are really clear that essentially you get more than one opportunity if you are a renter to make a late payment of rent. So I guess all I can say about that is that, you know, the law has been changed. It is really clear. I have no doubt that there are probably a range of experiences across the whole spectrum of everything from, like you are describing, rental providers that are really struggling with renters that are regularly late with rent and then they kind of seek action and then it gets rectified at the last minute and you know the process starts again, all the way through to renters that are having really, really difficult circumstances with rental providers and then people who are doing fine every day.

I guess all I can say as the regulator with a really clear responsibility around providing good information to people is that if a rental provider calls us with that sort of issue or problem, we will give them really clear information about what their rights are in that circumstance, what the rights are of the renter, what the process is, what they can do to address it, how they can go to the tribunal if they need to. I guess that what we can do and take seriously is sort of provide a really respectful ear to people and provide really good quality, accurate information about how they can address that issue if they need to.

The CHAIR: Just jumping onto one more thing before we head off, in your document regarding the big build, it makes the point in relation to the \$5.3 billion Big Housing Build that it has 10 per cent of new housing for Aboriginal Victorians. I was wondering: is that actual new housing? Are we able to get a number for housing available to them or actually allocated, or is that just 10 per cent over all – or is it renting? Actually, what is it, that 10 per cent?

Nicole RICH: I do not know if I am qualified to answer that, but I did see your appearance list and I think you have Homes Victoria coming in after me, so I might suggest that you could ask them that question. I think they will be in a better position than me.

The CHAIR: Because it has actually got numbers: 2000 homes for mental illness. You have got 1000 homes for survivors of family violence, but you have not actually put a number for Aboriginal – you have just got a percentage. I was just wondering: actually homes themselves or just accommodations?

Nicole RICH: I am not the agency that is responsible for the build, but I am sure they will be able to assist.

The CHAIR: Thank you. Just while finishing off, also in relation to that, it said all new homes need to meet 7-star energy efficiency. How are you going to achieve and regulate that? Do you actually go out and check every single one, or –

Nicole RICH: It does not fall to my agency, but I am sure you will be able to ask my colleague who comes in. But what does fall to my agency is under the rental minimum standards, where there are certain energy efficiency requirements, and that is something that we monitor. But the 7-star commitment I think is around the housing build, so it is a different area.

The CHAIR: Okay. Thank you. In the last 2 minutes – anyone, any questions?

Aiv PUGLIELLI: I have one, very specific. Something we heard about from several renters in person but also in written submissions is scenarios where a landlord is performing maintenance jobs on their property in the place of a licensed professional, and in some instances actually indicating that they themselves are the professional rather than saying they are the owner of the property, which sounds a bit sketchy. What are the repercussions for that behaviour?

Nicole RICH: There are safety-related obligations under the legislation. It is sort of important in a roundabout way, which I will not go into, but essentially they form part of the residential rental agreement between the rental provider and the renter. Under those requirements it is really clear that there need to be safety checks every two years – electricity and gas safety checks – and they need to be performed by a licensed or qualified tradesperson. That is the clear obligation, so if somebody unqualified or the owner themselves is maintaining those obligations, then it is going to be a breach of the agreement, and it is quite a serious matter. It is not a conduct obligation, but certainly I would say it is a very, very serious matter and something where we take really seriously our obligation to advise people about what their rights are and also a rental provider what their obligations are in that circumstance.

Aiv PUGLIELLI: And given that we are hearing several instances of this recurring within the renter cohort that submitted, would you say that this standard is being enforced, if that is regularly occurring?

Nicole RICH: It is not one of the minimum standards, but it is a provision that is a prescribed part of people's rental agreements. The other thing I would say just in closing is that obviously to perform certain services, electricity or gas related, you do need to be a licensed trade. It is not consumer affairs that regulates that, but again I just note that we talk regularly with our fellow regulators and there are really important obligations to actually be a licensed plumber and gasfitter or a licensed electrician, and then if so, to comply with the relevant safety regulations. So if anybody has any concerns about that, again I agree it is a really serious matter. We do talk regularly with those regulators, and I would be encouraging anybody that sees that conduct to make a formal complaint.

Aiv PUGLIELLI: To consumer affairs?

Nicole RICH: To the relevant regulator, which I appreciate can sometimes be a bit confusing. If they have got a concern that someone is performing electrical or gas work when they are not qualified, they should report that to the relevant regulator, which will be Energy Safe Victoria or the Victorian Building Authority depending on the nature of the issue, which we do not have time to go into today. If anybody is not sure about what to do about it, I always say, yes, call Consumer Affairs Victoria. We are a front door. We will help you. We will provide further advice about who else you can talk to about those issues.

Aiv PUGLIELLI: Thank you.

The CHAIR: We have run out of time. Thank you, Nicole, for coming in. I bring this panel session to a close. I again thank you for your time and for giving evidence today. You will receive a copy of the transcript for review in about a week before it is published on the website.

Witness withdrew.