



Residential Tenancies Amendment Bill 2018

Bill Brief

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Caley Otter
Research & Inquiries Unit
Parliamentary Library & Information Service

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Links to key documents including the Bill, Explanatory Memorandum, Statement of Compatibility and Second Reading Speech can be found on the Library's New Bills Information Links [page for this Bill](#).

For further information on the progress of this Bill, please visit the [Victorian Legislation and Parliamentary Documents website](#).

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Introduction

On 7 August 2018, the Minister for Consumer Affairs, Gaming and Liquor Regulation, Marlene Kairouz MP, introduced the Residential Tenancies Amendment Bill 2018 ('the Bill') in the Legislative Assembly.

The Bill seeks to make significant changes to the regulatory regime concerning residential tenancies in Victoria and proposes a number of amendments including, among others:

- updating the terminology used in the Act;
- setting minimum standards for rental properties;
- allowing animals to be kept in rental properties;
- allowing renters to make minor modifications to a rental property; and
- establishing a non-compliance register listing residential rental providers and agents who fail to meet their obligations.

In the second reading speech, delivered on 9 August 2018, the Minister stated that the Bill was 'the culmination of a four-year, broad-based review' of the *Residential Tenancies Act 1997*. The Minister added that this review represented 'a once-in-a-generation opportunity to revisit the regulatory settings that have been in place since 1997, and to ensure they meet the needs of participants in today's modern rental housing market'.¹

This Bill Brief provides an overview of the Bill, including:

- a comprehensive background to the Bill;
- an analysis of several key features of the Bill—specifically, the setting of minimum standards, family violence provisions, and the keeping of pets; and
- a comparison with other jurisdictions in Australia.

It also contains links to relevant legislation, media and further reading.

Please note that this Brief does not cover the content of the Bill in its entirety.

¹ M. Kairouz, Minister for Consumer Affairs, Gaming and Liquor Regulation (2018) '[Second reading speech: Residential Tenancies Amendment Bill 2018](#)', *Debates*, Victoria, Legislative Assembly, 9 August, p. 2734.

Background

Residential Tenancies Act 1997

The *Residential Tenancies Act 1997* ('the Act') provides the legislative framework in Victoria for residential tenancy arrangements relating to rented premises, including general tenancy agreements, as well as those for rooming houses, caravan parks, and site agreements for park residents with moveable dwellings. The Act also defines the rights and duties of landlords and tenants in those arrangements.²

The Act applies to private rental tenancies and social housing tenancies (including public and community housing), but does not apply to holiday accommodation (for example, hotels, motels and bed and breakfasts).

The Act also:

- establishes the Residential Tenancies Bond Authority and the framework for administering bonds;
- details the role and functions of relevant agencies, courts and tribunals—including the Victorian Civil and Administrative Tribunal (VCAT) and Consumer Affairs Victoria; and
- details the dispute resolution processes available to landlords and tenants party to a residential tenancy arrangement.

The Act is supported by the Residential Tenancies Regulations 2008.³

The 2016 Census identified that 28.7 per cent of occupied private dwellings in Victoria were rented.⁴ For Greater Melbourne, the figure was slightly higher, at 30.0 per cent; for the rest of Victoria, the figure was 25.1 per cent.⁵ This means that the regulatory regime established in the Act affects the living conditions of around three in ten homes in Victoria. As these figures relate to private dwellings only, the actual number of rented dwellings in Victoria would be higher if those categorised as community or social housing were also taken into account.

Review of the Act

In an election policy document released in November 2014 entitled *Labor's plan for fairer, safer housing*, the Victorian Labor party stated its intention, if elected to government, to amend the Act.⁶

In June 2015, the newly elected Labor government launched a review of the Act and released a consultation paper entitled *Laying the Groundwork*. The paper's foreword states that the review 'will contribute to Victoria's vision for a modern and dynamic rental market in which tenants are safe and secure, and which meets the current and future needs and expectations of tenants, landlords and their property managers'.⁷

The terms of reference clarified that the review would be broad-based, and would seek to assess a range of issues, including: whether the Act was operating efficiently, and whether its objectives were

² *Residential Tenancies Act 1997* (Vic).

³ *Residential Tenancies Regulations 2008* (Vic).

⁴ ABS (2018) *2016 Census QuickStats: Victoria*, ABS website.

⁵ 'Greater Melbourne' and 'Rest of Victoria' are Greater Capital City Statistical Areas, as defined by the ABS: see ABS (2018) *2016 Census QuickStats: Greater Melbourne*, ABS website; and ABS (2018) *2016 Census QuickStats: Rest of Victoria*, ABS website.

⁶ Victorian Labor (2014) *Labor's plan for fairer, safer housing*, Victorian Labor policy document, Election 2014.

⁷ State Government of Victoria (2015) *Residential Tenancies Act Review: Laying the Groundwork – Consultation paper*, Melbourne: State Government of Victoria, p. 2.

still relevant; the degree of flexibility it offered and whether that was compatible with a modern residential rental framework; and how the interests of landlords and tenants were taken into consideration in the Act on matters such as length and security of tenure, bonds, rent and termination arrangements. The review would also seek to identify options and make recommendations for reform.⁸

Issues Papers

A series of six public consultation papers were released between 2015 and 2016 following the announcement of the review. The papers covered the main issues that were identified in submissions made by stakeholders concerning the operation of the Act. These included:

- **Security of tenure**, which looked at the degree of certainty that tenants and landlords have in the modern rental market, and how the Act may provide residential tenancy arrangements that meet their needs;⁹
- **Rent, bonds and other charges**, which looked at how the Act assists landlords and tenants in managing the costs of a residential tenancy arrangement;¹⁰
- **Rights and responsibilities of landlords and tenants**, which looked at how the Act covers the behaviour of landlords and tenants throughout the residential tenancy arrangement;¹¹
- **Dispute resolution**, which looked at the options that landlords and tenants have available to them to resolve disputes under the Act, and whether or not these options met the expectations and needs of these parties in a modern rental market;¹²
- **Regulation of property conditions in the rental market**, which looked at the condition in which a rental property must be kept under the Act and the standards that property is required to meet;¹³ and
- **Alternate forms of tenure: parks, rooming houses and other shared living rental arrangements**, which looked at the rights and responsibilities of residents living in rooming houses, caravan parks and residential parks.¹⁴

Participants responded through a range of channels, including social media, online forums, written submissions and stories posted online. In total, 1,980 people provided their views to the Issues Papers process, which included 232 written submissions.¹⁵

⁸ State Government of Victoria (2017) *Heading for Home: Options Discussion Paper*, Residential Tenancies Act Review, Melbourne, State Government of Victoria, pp. 12–13.

⁹ State Government of Victoria (2015) *Security of tenure: Issues Paper*, Residential Tenancies Act Review, Melbourne, State Government of Victoria.

¹⁰ State Government of Victoria (2016) *Rent, bonds and other charges: Issues Paper*, Residential Tenancies Act Review, Melbourne, State Government of Victoria.

¹¹ State Government of Victoria (2016) *Rights and Responsibilities of Landlords and Tenants: Issues Paper*, Residential Tenancies Act Review, Melbourne, State Government of Victoria.

¹² State Government of Victoria (2016) *Dispute Resolution: Issues Paper*, Residential Tenancies Act Review, Melbourne, State Government of Victoria.

¹³ State Government of Victoria (2016) *Regulation of property conditions in the rental market: Issues Paper*, Residential Tenancies Act Review, Melbourne, State Government of Victoria.

¹⁴ State Government of Victoria (2016) *Alternate forms of tenure: parks, rooming houses and other shared living rental arrangements: Issues Paper*, Residential Tenancies Act Review, Melbourne, State Government of Victoria.

¹⁵ State Government of Victoria (2017) op. cit., p. 13.

Market research

In 2016, as a supplement to the Issues Papers and the public consultation process, Consumer Affairs Victoria commissioned separate market research through EY Sweeney. The purpose of this research was ‘to gather information that could provide an indication of the extent to which issues identified by stakeholders occurred across the entire Victorian rental market.’¹⁶

The final report, entitled *Rental experiences of tenants, landlords, property managers, and parks residents in Victoria*,¹⁷ considered primary data through the collection and analysis of quantitative surveys relating to experiences in the rental market, the impact of those experiences, and respondents’ rental expectations and preferences. The themes explored in the report were aligned with those covered in the Issues Papers.¹⁸

Options Paper

In January 2017, the government released an Options Paper, which summarised and responded to the most important issues raised by individuals and organisations who made submissions to the review.¹⁹ The Options Paper also drew upon the EY Sweeney study, and was informed by additional consultation with key public stakeholders, including Tenants Victoria (formerly Tenants Union of Victoria) and the Real Estate Institute of Victoria (REIV).²⁰

The Options Paper put forward 224 consultation questions and canvassed various options for amending the Act. The Victorian community was then invited to provide feedback and comments on the Options Paper, until 10 February 2017.²¹ Some of the options canvassed included:

- facilitating fixed term leases of longer than five years;
- restricting rental increases to once per year;
- banning rental bids;
- introducing minimum health and safety standards for rental properties;
- improving incentives for landlords to make repairs quickly;
- introducing a mediation service with powers to make binding decisions;
- requiring notices to vacate to be accompanied by supporting evidence;
- requiring tenants to have the consent of the landlord before listing a property on Airbnb or similar sites;
- allowing tenants who are victims of family violence to challenge notices to vacate if given as a result of conduct by a perpetrator; and
- banning ‘no pets’ clauses in tenancy agreements.²²

During the review of the Act, more than 4,800 public comments were submitted by a range of people and organisations, including renters, real estate bodies and community organisations.²³ Submissions can be found on the government’s *Fairer Safer Housing* website.²⁴

¹⁶ *ibid.*, p. 14.

¹⁷ EY Sweeney (2016) *Rental experiences of tenants, landlords, property managers, and parks residents in Victoria: Final Report*, prepared for Consumer Affairs Victoria, Melbourne, EY Sweeney.

¹⁸ *ibid.*, p. 4.

¹⁹ State Government of Victoria (2017) *op. cit.*

²⁰ *ibid.*, p. 4.

²¹ L. D’Ambrosio, Acting Minister for Consumer Affairs (2017) *Have your say on Victoria’s renting laws*, media release, 7 January.

²² *ibid.*

²³ State Government of Victoria (2018) ‘*Fairer Safer Housing*’, Engage Victoria website.

²⁴ See: <<https://engage.vic.gov.au/fairersaferhousing>>

Tenancy reforms

In October 2017, the Victorian government announced an initial package of reforms, with a focus on ‘strengthening tenants’ rights, to provide those who rent with a sense of security and support’.²⁵

In the government’s media release, the Premier stated that the proposed package of reforms ‘gives tenants more rights, helps them stay on longer leases, makes bonds smaller and fairer, and cracks down on dodgy landlords’.²⁶

The six initial reform areas proposed relate to rental security, tenant rights, rental bonds and payments, rental prices, pets, and modifications. The reforms were announced via media release and were displayed on the *Rent Fair Victoria* website,²⁷ with the intention that they be included in a future bill to be introduced to Parliament.

Residential Tenancies Amendment (Long-term Tenancy Agreements) Bill 2017

In August 2017, the government introduced the Residential Tenancies Amendment (Long-term Tenancy Agreements) Bill 2017 in the Legislative Assembly. The Long-term Tenancy Agreements Bill seeks to amend the Act to provide for residential tenancy agreements for a fixed term of more than five years.

The Long-Term Tenancy Agreements Bill was second read on 23 August 2017 and passed the Lower House, unamended, on 7 September 2017. It then moved to the Legislative Council, where it was second read on 21 August 2018, and later that day passed both the Committee stage—with minor amendments relating to commencement and repeal dates—and the third reading stage.

On 22 August 2018, the Legislative Assembly agreed to the amendments made by the Council, meaning that, once the Royal Assent is received, amendments proposed in this Long-term Tenancy Agreements Bill come into effect on or before 1 February 2019.²⁸

Residential Tenancies Amendment Bill 2018 introduced

On 7 August 2018, the Minister for Consumer Affairs, Gaming and Liquor Regulation introduced the Residential Tenancies Amendment Bill 2018 in the Legislative Assembly. The Bill was second read on 9 August 2018.

The Minister’s second reading speech indicated that the reforms proposed in this Bill represent the first part of a longer process the government is undertaking to reform the Act—a process which will also involve working with VCAT and relevant stakeholders with the aim of significantly improving dispute resolution processes for residential tenancy matters. The Minister further stated that the process will conclude with an eventual rewrite of the Act to ‘ensure its structure and language are as easily accessible as possible’.²⁹

²⁵ State Government of Victoria (undated) ‘[Making renting fair](#)’, Rent Fair Victoria website.

²⁶ D. Andrews, Premier of Victoria (2017) [Andrews Labor government will make renting fair](#), media release, 8 October.

²⁷ State Government of Victoria (undated) ‘[Making renting fair](#)’, op. cit.

²⁸ For further information on the Bill’s passage, please consult the Victorian Legislation and Parliamentary Documents website: [Residential Tenancies Amendment \(Long-term Tenancy Agreements\) Bill 2017](#).

²⁹ M. Kairouz, Minister for Consumer Affairs, Gaming and Liquor Regulation (2018) ‘[Second reading speech: Residential Tenancies Amendment Bill 2018](#)’, op. cit.

Commissioner for Residential Tenancies appointed

On 21 August 2018, the government announced the appointment of an inaugural Commissioner for Residential Tenancies, Dr Heather Holst.³⁰ The Commissioner is tasked with working closely with stakeholders across the rental sector to identify systemic issues and make recommendations to government.³¹ The Commissioner role was first proposed by the government as part of the Rent Fair reforms in October 2017.³² The Commissioner is an executive rather than a statutory position and therefore does not feature in the Bill.

³⁰ M. Kairouz, Minister for Consumer Affairs, Gaming and Liquor Regulation (2018) *Inaugural Commissioner for Residential Tenancies*, media release, 21 August.

³¹ *ibid.*

³² State Government of Victoria (undated) 'Tenant rights', Rent Fair Victoria website.

The Bill

The Residential Tenancies Amendment Bill 2018 seeks to amend the *Residential Tenancies Act 1997* to make more than 130 reforms, which are informed by the review process and consultation work detailed in the previous section of this Brief.

In a media release on 5 August 2018, the Premier stated that the Bill represented ‘the biggest change to the *Residential Tenancies Act* since it was implemented more than two decades ago’.³³

Some of the key proposed reforms include:

- updating the terminology used in the Act (clause 5);
- setting minimum standards for rental properties, such as in relation to the privacy, security and amenity of rental premises (cl 52);
- expanding the circumstances in which tenants are able to keep pets in rental properties (cl 61);
- allowing renters to make minor modifications to a rental property (cl 49);
- establishing a ‘Rental Non-compliance Register’ listing residential rental providers and agents who fail to meet their obligations under the Act (cl 310);
- requiring residential rental providers to disclose certain information prior to entering into a rental agreement, such as an intention to sell the rental property, and prohibiting misleading or deceptive conduct inducing a person to enter into a residential rental agreement (cl 21);
- restricting solicitation of rental bids by residential rental providers and agents (cl 21);
- providing for rent increases to be able to occur every 12 months, rather than every six months (cl 34(5)(c));
- providing for faster reimbursement where tenants have paid for urgent repairs (cl 63(2)(d)); and
- enabling automatic bond repayments, which will be available to a renter within 14 days where the parties are not in dispute over the apportionment of the bond (cl 287 – see proposed s 411AC).

The Bill also proposes a number of amendments relating to rooming houses, caravan parks and moveable dwellings, and amendments relating to site agreements.³⁴

Additionally, the Bill seeks to implement reforms recommended by the Victorian Law Reform Commission relating to the photography of rented premises (cl 77), and to implement recommendations from the Royal Commission into Family Violence relating to the termination of rental agreements in situations of family violence (cl 236, sub 3).

The following section looks at some of the proposed reforms in further detail. As it is not possible to consider all the reforms in this Brief, a few of those that have garnered considerable media coverage and community debate have been selected.³⁵

³³ D. Andrews, Premier of Victoria (2018) [Labor government unveils new laws to make renting fair](#), media release, 5 August.

³⁴ Please see Parts 4, 5 and 6 of the Bill, respectively. Due to the scope of this Brief, the amendments proposed in these Parts will not be discussed herein.

³⁵ See, for example, J. Hair & B. Arrow (2017) [‘Victorian tenants given right to have a pet under sweeping changes to rental laws’](#), *ABC News*, 8 October; E. Webb (2016) [‘Dickensian approach to residential tenants lingers in Australian law’](#), *The Conversation*, 13 September; (2016) [‘Welfare advocates call for end to Victoria's 'dodgy rentals’](#), *ABC News*, 2 September; and B. Fernandez (2018) [‘Tenancy law reform urgently required to help domestic and family violence victims’](#), *ABC News*, 6 January.

Terminology

The Bill proposes a change in some key terminology currently employed in the Act. The terms ‘landlord’ and ‘tenant’ are to be replaced by ‘residential rental provider’ and ‘renter’, respectively, while ‘tenancy agreement’ is to be replaced by ‘residential rental agreement’. The term ‘owner’ is to be replaced by ‘operator’—for example, ‘rooming house owner’ will now be known as ‘rooming house operator’ (see Part 2, cls 4–5). For further information on changes to terminology, please consult clause 5 of the Bill.

Minimum standards

The Bill seeks to insert new section 65A into the Act, which would require residential rental providers to ensure that rental properties comply with prescribed rental minimum standards on or before the day on which the renter moves into the property (cl 52(1)). If the rental premises do not comply with these standards on or immediately after the day on which the renter moves in, then the renter can issue a request for urgent repairs to be undertaken (cl 52(2)).

The Bill provides for rental minimum standards to be prescribed in regulations (cl 340). According to the Minister’s second reading speech, the proposed minimum standards would include:

- a vermin-proof rubbish bin;
- a functioning toilet;
- adequate hot and cold water connections in the kitchen, bathroom and laundry;
- external windows that have functioning latches to secure against external entry;
- a functioning cooktop, oven, sink and food preparation area;
- a functioning single-action deadlock on external entry doors;
- functioning heating in the property’s main living area; and
- window coverings to ensure privacy in any room likely to be a bedroom or main living area.³⁶

Supreme Court decision

The inclusion of minimum standards in the proposed reforms also follows in the wake of a Supreme Court of Victoria decision in September 2016, which clarified that renters had the right to expect that a rented home be maintained in ‘good repair’, even if the home was initially rented out in poor condition.³⁷ It was reported by one media outlet as being a ‘landmark ruling on rental rights’.³⁸

The plaintiff, represented by Victoria Legal Aid, had successfully appealed a 2014 VCAT decision which had found that if a home was rented out in poor condition from the start of the tenancy agreement, then a landlord had no obligation to bring it up to ‘good repair’ during the tenancy.³⁹ Victoria Legal Aid stated that this decision highlighted ‘the need for minimum standards for rental properties to be clearly articulated in legislation so everyone clearly understands their rights and obligations’.⁴⁰

Stakeholder views

In its submission to the review of the Act, specifically in relation to the Issues Paper on regulation of property conditions in the rental market, Victoria Legal Aid listed as its first recommendation that

³⁶ M. Kairouz, Minister for Consumer Affairs, Gaming and Liquor Regulation (2018) ‘[Second reading speech: Residential Tenancies Amendment Bill 2018](#)’, op. cit.

³⁷ *Shields v Deliopoulos* [2016] VSC 500 (7 September 2016).

³⁸ M. Perkins (2016) ‘[“We have to be treated like humans”: Court’s landmark ruling on rental rights](#)’, *The Age*, 8 September.

³⁹ *Shields v Deliopoulos* (Residential Tenancies) [2014] VCAT 1556 (26 November 2014).

⁴⁰ Victoria Legal Aid (2016) [Landmark decision for tenants living in squalid housing](#), media release, Victoria Legal Aid, 8 September.

minimum standards for all rental properties be introduced.⁴¹ Similarly, this was also the first recommendation listed by Tenants Victoria in its submission to the same Issues Paper.⁴² The Victorian Council of Social Service (VCOSS) also recommended the introduction of mandatory minimum standards for rental housing, and suggested that these standards could be phased in over time.⁴³

Conversely, the REIV does not support the proposal for minimum standards to be included in the Act. In its submission to the aforementioned Issues Paper, the REIV stated that it:

... strongly rejects the need for prescribed standards as a minimum standard for residential property is already established in Victoria – as set out in the Victorian Building Regulations and Codes. It is unreasonable to suggest that higher property standards should apply simply because a property is being rented out.⁴⁴

The REIV asserts that any costs borne by landlords as a result of higher standards being implemented would ‘undoubtedly’ be passed on to tenants, and that property investors may subsequently choose to leave the market—which would result in reduced housing stock and higher rents.⁴⁵

The Property Council of Australia has stated that it ‘supports the intent of the Victorian Government’s rental reforms’.⁴⁶ However, the Council didn’t specifically address the proposal for minimum standards to be set.

Family violence

In February 2015, the Royal Commission into Family Violence was established in Victoria, in recognition of the harm caused by family violence, and the seriousness with which the community has come to regard it and its consequences for individuals and families.⁴⁷ The Commission’s final report was released in March 2016 and the government has committed to implement all 227 recommendations made in the report.⁴⁸

In light of this commitment, the Bill seeks to insert into the Act a number of provisions to ensure the safety and support of victims of family violence in residential rental housing, including every component of Recommendation 116 made by the Commission.⁴⁹ The Act currently makes provision for victims of family violence, but only in certain circumstances for a rented premises where a family violence intervention order, a family violence safety notice, a non-local recognised domestic violence order, or a personal safety intervention order is in place.⁵⁰

⁴¹ Victoria Legal Aid (2016) *Regulation of property conditions in the rental market: Submission to the Residential Tenancies Act Review*, Melbourne, Victoria Legal Aid, p. 2.

⁴² Tenants Union of Victoria (2016) *Response to Regulation of property conditions in the rental market Issues Paper of the Residential Tenancies Act Review*, Fitzroy, Tenants Union of Victoria, p. 3.

⁴³ Victorian Council of Social Service (2016) *Regulation of property conditions in the rental market: Submission to the issues paper for the Residential Tenancies Act 1997 Review*, Melbourne, VCOSS, August, p. 4.

⁴⁴ REIV (2016) *Submission: Regulation of property conditions in the rental market*, Camberwell, REIV, p. 3.

⁴⁵ *ibid.*, p. 6.

⁴⁶ Property Council of Australia (2018) *Balanced rental reform welcome; build-to-rent must be in the mix*, media release, 5 August.

⁴⁷ State of Victoria (2016) *Royal Commission into Family Violence: Report and recommendations*, Parliamentary Paper no. 132 (2014–16), p. 1.

⁴⁸ D. Andrews, Premier of Victoria & F. Richardson, Minister for the Prevention of Family Violence (2016) *It’s time to fix our broken family violence system*, media release, 30 March.

⁴⁹ M. Kairouz, Minister for Consumer Affairs, Gaming and Liquor Regulation (2018) ‘*Second reading speech: Residential Tenancies Amendment Bill 2018*’, *op. cit.*; see: State of Victoria (2016) *Royal Commission into Family Violence: Report and recommendations*, *op. cit.*, p. 77.

⁵⁰ *Residential Tenancies Act 1997* (Vic), see, for example, ss 70A, 233A, and 317M.

The Bill proposes to address both termination of rental agreements and new residential rental agreements because of family violence or personal violence (cl 236). Under the proposed amendments, a person may apply to VCAT for an order terminating the existing agreement and, if desired, requiring the residential rental provider to enter into a new agreement with the person specified in the application.

In situations of family violence, VCAT would also be able to determine the parties' liabilities under a terminated residential rental agreement. VCAT would make this determination in relation to a bond and any existing liability under the agreement, such as outstanding rent, utilities or damage caused to the premises. In these circumstances, unless VCAT gave leave, a person subjected to family violence would not be able to be personally cross-examined by the person who subjected them to that violence. Further, a renter would have additional rights to challenge a notice to vacate on grounds of family violence or personal leave (cl 236).

Family violence is also addressed in another clause, which describes the procedure by which VCAT must hear applications for the repayment of a bond in circumstances of family violence or personal violence. In that instance, VCAT has discretion to order that the victim is not liable for any loss or damage suffered by the residential rental provider under the residential rental agreement. To make this finding, VCAT must be satisfied that the loss or damage was caused by the alleged perpetrator who is not a renter under the agreement (cl 292).

Additionally, if a person has breached the agreement as a result of family violence or personal violence experienced by the renter, then personal information about that person must not be listed in a residential tenancy database (cl 301). Similarly, personal information about termination and creation of a new agreement in these circumstances would not be able to be listed in a residential tenancy database if the person objected (cl 302); and, an application could be made to VCAT for an order requiring personal information to be removed, amended or not listed (cl 307).

On the basis of recommendations of the Victorian Law Reform Commission, clause 77 seeks to insert new section 89A into the Act, dealing with entry to rented premises for the purposes of producing advertising images and videos.⁵¹ The proposed section states that the renter may object to their production, if those images or video could identify a person residing at the premises who is at risk of family violence or personal violence (cl 77).

Stakeholder views

The review process saw a number of respondents express the need to reform the existing law to better protect victims of family violence. For example, VCOSS noted in its submission that some of the existing tenancy laws were problematic in the context of family violence, particularly in relation to the imposition of housing debt on victims of family violence for costs incurred by perpetrators, and the difficulties in transferring or creating a new lease in victims' names.⁵² Similarly, the Victorian Aboriginal Legal Service recommended that the Act be amended to give VCAT the power to assess family violence in a similar way to the method used by the Victims of Crime Assistance Tribunal.⁵³

The REIV, however, supports the current arrangements in place under the Act to assist victims of family violence and does not see the need to change them; although, it does support the immediate return of the bond for cases where family violence has been demonstrated and the renter needs to vacate

⁵¹ See: Victorian Law Reform Commission (2015) *Photographing and Filming Tenants' Possessions for Advertising Purposes*, Melbourne, VLRC.

⁵² VCOSS (2015) *Residential Tenancies Act Review: VCOSS Submission to the consultation paper*, Melbourne, VCOSS, p. 9.

⁵³ Victorian Aboriginal Legal Service (2015) *Residential Tenancies Act Review: Consultation Paper - Submission from the Victorian Aboriginal Legal Service*, Preston, VALS, p. 12.

quickly.⁵⁴ The REIV argues that this should take place based on an order from VCAT, so that the onus is not on the property manager or residential rental provider to make that decision.⁵⁵

Pets

Another area of the proposed reforms that has received considerable media coverage relates to the keeping of pets in rental properties. A 2016 study showed that Australia has one of the highest household rates of pet ownership in the world, at 62 per cent.⁵⁶ The study identified that more than half of Australians would like a new type of pet, yet only 13 per cent of respondents were planning to purchase a new type of pet in the next 12 months. The most common reason provided for not owning pets was having an unsuitable home or lifestyle.⁵⁷

The Bill seeks to insert into the Act a new Division 5B relating to pets (cl 61). In the proposed changes, a renter may keep a pet at rented premises with the consent of the residential rental provider, or through an order by VCAT (cl 61, see 71A). Under the amendments, a residential rental provider would not be able to unreasonably refuse a request to keep a pet, and will be said to have consented to the request unless they apply to VCAT for an order to refuse within 14 days after receiving the request (cl 61, see 71C).

Stakeholder views

The proposed reforms have received mixed responses. They are broadly supported by the Royal Society for the Prevention of Cruelty to Animals (RSPCA). In its submission to the Issues Paper on rights and responsibilities of landlords and tenants, the RSPCA stated that it:

... strongly believes that tenancy agreements should automatically include a provision for tenants to keep pets, with some clear checks and balances to protect the owner's financial interests in their properties... RSPCA Victoria strongly believes that simple changes to the current Act would substantially improve the welfare of pets and their owners, without creating unreasonable risk or onerous management requirements for property owners.⁵⁸

The RSPCA indicated, in a media release in October 2017, that 'over the past two years, around 15% of the dogs and cats surrendered to us came into our care because their owners were moving and could not take them to the new home'.⁵⁹ The organisation further stated that this was also the case for other animal shelters in Victoria; for example, at Lort Smith Animal Hospital.⁶⁰

Other stakeholders also support removing certain restrictions. Tenants Victoria, in its submission to the Issues Paper on the rights and responsibilities of landlords and tenants, argued that terms seeking to restrict a tenant's ability to keep a pet should not be included in a tenancy agreement.⁶¹ WEstjustice, in its submission to the same Issues Paper, also recommended that the Act be amended to allow tenants to keep pets without prior consent.⁶²

⁵⁴ REIV (2016) *Submission: Rights and responsibilities of landlords and tenants*, op. cit., p. 11.

⁵⁵ *ibid.*

⁵⁶ Australian Veterinary Association (2018) *Pets, owners and the rise of the fur baby*, AVA website.

⁵⁷ Animal Medicines Australia (2016) *Pet Ownership in Australia - 2016*, Barton, AMA, p. 21.

⁵⁸ RSPCA Victoria (2016) *RSPCA submission to the Residential Tenancies Act Review: Rights and Responsibilities of Landlords and Tenants – Issues Paper*, Burwood East, RSPCA Victoria, p. 3.

⁵⁹ RSPCA Victoria (2017) *Changes making it easier to rent with pets welcome*, media release, 8 October.

⁶⁰ RSPCA Victoria (2016) op. cit., p. 3.

⁶¹ Tenants Union of Victoria (2016) *Response to Rights and Responsibilities of Landlords and Tenants Issues Paper of the Residential Tenancies Act Review*, Fitzroy, Tenants Union of Victoria, p. 6.

⁶² WEstjustice (2016) *WEstjustice submission in response to the 'Rights and Responsibilities of Landlords and Tenants' issues paper*, Werribee, WEstjustice, p. 10.

Conversely, the REIV does not support the automatic inclusion of a provision in a residential tenancy agreement for renters to keep pets. It stated in its submission to the review that the Act's current silence on the topic of pets must be clarified through the review process, to ensure that pets are prohibited from rental homes without the express consent of the landlord and property manager.⁶³

The REIV added that the Act 'should emphasise that the owner has the right to place a covenant or conditions on pets in a property. Why should a tenant have the right to have an animal inside the property that might go against the wishes of the landlord?'⁶⁴

In its submission to the *Laying the Groundwork* paper, Little Real Estate, Australia's largest independently owned real estate agency, stated that the Act should include a requirement of the tenant to declare a pet at the commencement of the tenancy.⁶⁵

The REIV has also called for the introduction of an additional bond for pets.⁶⁶ In Western Australia, a residential rental provider can charge an additional bond amount to cover the cost of any fumigation of the rental premises that may be required, if the tenant is allowed to keep a pet on the premises 'capable of carrying parasites that can affect humans'.⁶⁷ However, the introduction of a 'pet bond' in Victoria is not supported by some stakeholders, such as Launch Housing.⁶⁸

⁶³ REIV (2016) *Submission: Rights and responsibilities of landlords and tenants*, Camberwell, REIV, p. 8.

⁶⁴ *ibid.*

⁶⁵ Little Real Estate (undated) *Submission to the RTA – Laying the Groundwork*, p. 1.

⁶⁶ REIV (2016) *Submission: Rights and responsibilities of landlords and tenants*, *op. cit.*, p. 8.

⁶⁷ *Residential Tenancies Act 1987* (WA), section 29.

⁶⁸ Launch Housing (2016) *Rights and Responsibilities of Landlords and Tenants - Residential Tenancies Act Review*, Fitzroy, Launch Housing, p. 3.

Other Jurisdictions

The following table lists the relevant legislation in other Australian jurisdictions, and provides information relating to some of the proposed amendments discussed above. Please note that the information below is intended for comparative purposes only and does not provide a comprehensive assessment of the legislation mentioned.

Jurisdiction	Legislation and subordinate legislation	Notes
ACT	<p><i>Residential Tenancies Act 1997</i></p> <p><i>Residential Tenancies Regulation 1998</i></p> <p><i>The Act uses the terms 'lessor', 'tenant' and 'residential tenancy agreement' (ss 5–6A).</i></p>	<p>Minimum standards: The Act states that a lessor must provide premises in a 'reasonable state' at the start of the tenancy, and ensure that the premises are: fit for habitation; reasonably clean; in a reasonable state of repair; and reasonably secure (Sch 1, cl 54(1)). There are no prescribed minimum standards in the Act, nor is 'reasonable state' defined.</p> <p>Family violence: The Act makes provision for a party to a residential tenancy agreement who is subject to a protection order to apply to the tribunal for an order to terminate the existing agreement and, if desired, to enter into a new agreement (s 85A). It also allows for the tenant, or a person living at the premises, to change the locks if they are a protected person under a relevant order (s 54(5)).</p> <p>Pets: The Act makes no explicit mention of pets.</p>
NSW	<p><i>Residential Tenancies Act 2010</i></p> <p><i>Residential Tenancies Regulation 2010</i></p> <p><i>The Act uses the terms 'landlord', 'tenant' and</i></p>	<p>Minimum standards: The Act states that a landlord must provide and maintain the residential premises in a reasonable state of repair, having regard to the age, life and rent payable for the premises (s 63). There are no prescribed minimum standards in the Act, nor is 'reasonable state' defined.</p> <p>Family violence: The Act provides for the termination of a tenancy where an apprehended violence order (AVO) is in place, and allows for the tribunal to recognise an occupant as a tenant following the order (s 79). There is also provision made for a person to change locks and other security devices following an AVO (s 71(2)(d)). Additionally, an occupant may remain in residential premises to have reasonable opportunity to obtain a final AVO against a tenant, even if termination is sought by the landlord (s 95(4)). A tenant may also</p>

	<p><i>'residential tenancy agreement' (s 3).</i></p>	<p>terminate a fixed term agreement early (s 100(1)(d)), and is not required to repay the bond to a former tenant (s 174(4)), provided there is an AVO in place.</p> <p>Pets: The Act makes no explicit mention of pets, other than that a residential tenancy agreement may include a term requiring the carpet to be professionally cleaned if the landlord has permitted the tenant to keep an animal on the premises (s 19(3)). Additional clauses that may be included in relation to pets are listed in the Regulation (Sch 1, cls 43–45).</p>
<p>NT</p>	<p><i>Residential Tenancies Act 1999</i></p> <p>Residential Tenancies Regulations 2000</p> <p><i>The Act uses the terms 'landlord', 'tenant' and 'tenancy agreement' (s 4).</i></p>	<p>Minimum standards: The Act states that premises under a tenancy agreement must be: habitable, clean, secure, and meet all relevant health and safety requirements (ss 47–49). There are no prescribed minimum standards in the Act.</p> <p>Family violence: The Act makes provision that a tenant cannot be held responsible for the act or omission of another person on the tenant's premises, if the act is considered to be an act of domestic violence (s 12).</p> <p>Pets: The Act makes no explicit mention of pets.</p>
<p>Qld</p>	<p><i>Residential Tenancies and Rooming Accommodation Act 2008</i></p> <p>Residential Tenancies and Rooming Accommodation Regulation 2009</p> <p><i>The Act uses the terms 'lessor', 'tenant' and</i></p>	<p>Minimum standards: The Act makes provision for a prescribed minimum housing standard to be prescribed by a regulation (s 17A). The minimum standard prescribed could relate to, for example:</p> <ul style="list-style-type: none"> ▪ sanitation, drainage, cleanliness and repair of the premises; ▪ ventilation and insulation; ▪ protection from damp and its effects; ▪ construction, condition, structures, safety and situation of the premises; ▪ dimension of rooms in the premises ▪ privacy and security; ▪ provision of water supply, storage and sanitary facilities; ▪ laundry and cooking facilities; ▪ lighting; ▪ freedom from vermin infestation; and

	<p><i>'residential tenancy agreement' (ss 8, 12–13).</i></p>	<ul style="list-style-type: none"> ▪ energy efficiency (s 17A(3)). <p>The Act also lists the lessor's obligations at the start of the tenancy, which are to ensure that the premises are: clean; fit for the tenant to live in; and in good repair. The lessor must also ensure that no health and safety laws have been breached and that the premises comply with any prescribed minimum housing standards (s 185(2)).</p> <p>Family violence: The Act stipulates that a person in an intimate personal relationship, a family relationship or an informal care relationship with a tenant may apply to a tribunal for an order to be recognised as the tenant or a cotenant under the tenancy agreement, if the person is a victim of domestic violence (s 245). The person may also apply to a tribunal for a termination order or an interim order if the person has been the victim of domestic violence (ss 321, 323). In making an order, the tribunal must have regard to whether or not a domestic violence order has been applied for and whether or not it is in force (s 344).</p> <p>Pets: Schedule 1 of the Regulations relates to general tenancy agreements, and states that the tenancy agreement must list whether pets are approved and, if so, the types and numbers of pets that may be kept (Sch 1, cl 17).</p>
<p>SA</p>	<p>Residential Tenancies Act 1995</p> <p>Residential Tenancies Regulations 2010</p> <p><i>The Act uses the terms 'landlord', 'tenant' and 'residential tenancy agreement' (s 3).</i></p>	<p>Minimum standards: Division 7 of the Act details the landlord's obligations in regard to condition of the premises, and states that the landlord must ensure that the premises are in a 'reasonable' state of cleanliness and repair (ss 67–68). There are no prescribed minimum standards in the Act, nor is 'reasonable state' defined.</p> <p>Family violence: The Act stipulates that the tribunal may, on application by a tenant or co-tenant, terminate a residential tenancy, if satisfied that an intervention order is in place against a person who resides at the residential rental premises, or that a person who resides at the premises has committed domestic abuse against the tenant, co-tenant or domestic associate (s 89A). In considering an application, the tribunal must have regard to whether any relevant orders or proceedings are in place (s 89(9)).</p> <p>Pets: The Act makes no explicit mention of pets for general tenancy agreements. It does state that a resident subject to a rooming house agreement must not keep an animal on the premises without the proprietor's consent (s 105R).</p>

<p>Tas</p>	<p><i>Residential Tenancy Act 1997</i></p> <p>Residential Tenancy Regulations 2015</p> <p><i>The Act uses the terms 'owner', 'tenant' and 'residential tenancy agreement' (s 3).</i></p>	<p>Minimum standards: Part 3B of the Act prescribes minimum standards for premises, which include, among others, that the premises must:</p> <ul style="list-style-type: none"> • be weatherproof and structurally sound; • be clean and in good repair; • have a flushable toilet, in a room that contains a vent or opening window; • have a bathroom with a bath or shower, and a washbasin; • have a functioning kitchen sink, stovetop (with a prescribed number of heating elements) and oven; • have a functioning electricity and heating supply; • have window coverings for privacy; and • have adequate ventilation (ss 36I–36O). <p>Family violence: The Act states that a residential tenancy agreement can be terminated by the making of an order of termination in accordance with s 17 of the Family Violence Act 2004 (Tas). A tenant may also add, alter or remove any lock or other security device if a relevant family violence order is in place (s 57).</p> <p>Pets: The Act states that a tenant is not to keep a pet on residential premises without permission of the owner of the premises or unless permitted to do so under the residential tenancy agreement (s 64B).</p>
<p>WA</p>	<p><i>Residential Tenancies Act 1987</i></p> <p>Residential Tenancies Regulations 1989</p> <p><i>The Act uses the terms 'lessor', 'tenant' and 'residential tenancy agreement' (s 3).</i></p>	<p>Minimum standards: The Act states that the lessor 'must deliver up to the tenant vacant possession of the premises in a reasonable state of cleanliness and a reasonable state of repair having regard to its age and character' (s 42(2)); no minimum standards are prescribed in the Act, nor is 'reasonable state' defined.</p> <p>Family violence: There is currently no explicit provision in the Act relating to family violence protections. However, the Residential Tenancies Legislation Amendment (Family Violence) Bill 2018 was recently introduced and seeks to amend the Act 'to provide for termination of tenants' interests on the grounds of family violence'.</p> <p>Pets: The Act does not explicitly mention whether pets may or may not be kept; however, s 29 makes provision for an additional bond to be paid by the tenant, if they are permitted to keep a pet on the premises, to cover the cost of fumigation on the termination of the tenancy (s 29).</p>

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Author

Caley Otter

Research & Inquiries Officer
Victorian Parliamentary Library & Information Service
Department of Parliamentary Services

Enquiries:

Jon Breukel
Coordinator, Research & Inquiries
Victorian Parliamentary Library & Information Service
Parliament House
Spring Street, Melbourne
Telephone (03) 9651 8633
www.parliament.vic.gov.au