



# **Residential Tenancies Act 1997**

## **Review Options Paper**

### **Submission**

**Prepared by**  
**COTA Victoria Policy Council**

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## COTA Vic

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4<sup>th</sup> Floor Block Arcade  
98 Elizabeth Street  
Melbourne 3000  
(03) 96552100  
[www.cotavic.org.au](http://www.cotavic.org.au)

Authorised by:  
Name: Ronda Held  
Title: Chief Executive Officer  
Email address: [rheld@cotavic.org.au](mailto:rheld@cotavic.org.au)  
(03) 9655 2102

Prepared by:  
Name: Donna Swan  
Title: Policy Officer  
Email address: [dswan@cotavic.org.au](mailto:dswan@cotavic.org.au)  
(03) 9655 2139

### Acknowledgement

We refer the Residential Tenancies Act Review to COTA Victoria's [previous submission \(August 2015\)](#) and we acknowledge the significant work of Housing for the Aged Action Group, VCOSS and the Tenants Union in this area of reform.

## EXECUTIVE SUMMARY

COTA Victoria commends the Victorian Government for its commitment to undertake a comprehensive evidence – based review of the Residential Tenancies Act 1997 (RTA).

We note the focus of this consultation and submission is to comment on key areas identified as potential legislative changes that could be made to the RTA. We strongly endorse a number of options presented and make comment on areas where we believe improvement or reconsideration needs to be given to achieve better outcomes for older people, living in rental accommodation. This submission does not cover all options and we defer to those stakeholders better placed and informed to make comment.

As the primary organisation representing the interests and wellbeing of older Victorians, our values of dignity, respect and autonomy underpin our policy development and advocacy work. Each year COTA Victoria conducts a survey on issues of most concern to older people to guide our policy and program work. Our 2016 survey nominated access to affordable, secure and appropriate housing as the greatest concern for older people (44.25% of respondents).

There are increasing numbers of older people in private rental. The impact of regular rent increases, uncertainty of tenure, low fixed incomes and no minimum housing standards has an accumulative and direct correlation with health outcomes and quality of life for older people and other vulnerable groups. Unsuitable housing is linked with poor physical and mental health.<sup>1</sup> There are limited housing options to support older people ageing in place in Victoria. The rental market is not accessible to many older people and current restrictions in modifying homes further exacerbates a limited supply of appropriate housing.

COTA Victoria views the ‘commercial environment’ of private rental housing in need of recalibrating greater obligations on landlords to provide safe, secure, appropriate, and affordable housing. Tenants are viewed as consumers within this ‘commercial environment’. COTA supports strengthening regulations to enable tenants to be treated fairly and improved provisions for the protection and security of tenants’ rights to live in appropriate homes with minimum standards.

Our comments therefore focus on the following areas:

- Security of tenure and lease lengths
- Rent increases and bonds
- Additional clauses
- Repairs and maintenance
- Minimum standards of housing
- Modifications to homes
- Family violence

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<sup>1</sup> Mallett, S. et al ‘Precarious housing and health inequalities: What are the links?’ Hanover Welfare Services (2011)

Alongside other key agencies concerned about the rights of residents and the conditions of residential and caravan parks and villages, COTA Victoria is looking to the (soon to be released) final report of the Parliamentary Inquiry into the Retirement Housing Sector. We will respond to the recommendations and consider how the regulatory needs of this sector can better support positive outcomes for older people in this fast growing area of lower cost housing.

## Policy objectives for a modern framework

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Addressing the imbalance between tenants and landlords across key reform areas is particularly necessary to support older people to age well in their community. We note the framework proposed by the Victorian Government considers the review of the RTA must address *the mix of equity and public interest, and economic and efficiency purposes it serves ....as it regulates transactions in a predominantly commercial environment.*

Further to this, COTA contends that housing, whether it is public, social, privately owned housing, a residential or caravan park, is part of a shared social contract. When a group is identified as being 'vulnerable' and requiring additional social care, policy objectives need to be predicated on this. Why bring social contract theory into a framework that regulates the rights and responsibilities of landlords, renters, real-estate agents and dispute resolution bodies? Because housing matters. Without it, and without regulation that deems what is fair and provides reasonable protections and rights to those that are vulnerable, harm is done.

The issue of affordability, security and appropriateness is becoming increasingly significant, particularly for older people on fixed incomes. A policy objective that recognises the social contract underpinning the 'commercial environment' of rental housing can also promote good corporate and business ethics. COTA Victoria sees this as part of Consumer Affairs Victoria's role.

## Security of tenure and lease lengths

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### Option 3.2

COTA provides qualified support for the removal of the five-year limit on leases to extend the coverage of RTA.

Security of tenure is linked to a range of conditions including, affordability, minimum standards, accessibility and appropriateness to need. We want to ensure those tenants that are likely to seek longer leases (such as older people and families) are not negatively impacted by such an option. We understand the question around incentives for landlords and real-estate agents to offer up longer leases but are cautious where this might result in maintenance, rent increases and other cost imposts on low-income renters.

In addition, longer periods of notice to vacate and greater consumer protections against unpredictable rent increases during the lease period are required. As with other contracts COTA recommends a cooling off period and a requirement for plain English contracts.

The operation of longer leases requires further work to address the issue of security of tenure for older people.

### Option 3.3

COTA supports the option for tenants to extend fixed term leases for a subsequent period.

## Rights and responsibilities at the start of a tenancy

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### Discrimination & Privacy

COTA supports the following options that address discriminatory behaviour:

- Option 4.1 – Include an information statement about unlawful discrimination in application forms.
- Option 4.2 – Strengthen linkages between the RTA and the Equal Opportunity Act 2010.

We recognise the difficulty of enforcement but would also like to see steps addressing discrimination at the lease stage.

COTA supports:

- Option 4.3 Prohibit a landlord or agent from using information in tenancy application for other purpose
- Option 4.4 – Prohibit charging fee to tenant for copy of tenant's listing.
- Option 4.5 – Give VCAT power to make an order if database listing is unjust in the circumstances.
- Option 4.6 – Require disclosure of certain information prior to tenancy.
- Option 4.7 – Prohibit false, misleading or deceptive representations prior to tenancy.

The issue of compliance with this provision requires an appropriate penalty/disincentive.

- Option 4.9 – A comprehensive standard prescribed tenancy agreement.
- Option 4.10 – Blacklist of tenancy agreement prohibited terms.
- Option 4.11 – Offence to include invalid or prohibited term.

### Comment in regards to Option 4.12 – Additional terms

This should be clearly separated from the lease and identified as an additional clause that is either enforceable or not enforceable. These should be subject to the test of what is reasonable and fair. For example a landlord may make an enforceable condition that the carpet be professionally cleaned where a tenant wishes to have a pet.

There should not be unreasonable restrictions on the use and enjoyment of a property as a home, for example placing pictures on walls and improvements to living standards (e.g. installation of curtains).

## Rights and responsibilities during a tenancy

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### Pets

Older people living alone may rely on pets for safety, company and physical activity. This companionship has significant mental health and wellbeing outcomes for many people. This has become increasingly an issue as tenants are routinely told no pets are allowed. It has become a default condition. COTA supports options that encourage landlords to accept pets and prevent unreasonable 'no pets' clauses in lease agreements. Restriction on the number of pets is viewed as reasonable in certain types of housing and locations. Prospective tenants should not have to disclose if they have a pet as this may lead to discriminatory selection.

We do not support the option of an additional pet bond as we believe this is an unwarranted cost that would discriminate against low-income renters. Tenancy bonds can be drawn upon for any damage caused during a tenancy.

### Rights of entry

As noted by the Victorian Law Commission, older people do hold concerns about *privacy, safety and risk of theft* when their home is being photographed.<sup>2</sup> COTA supports the option where there is the reasonable attempt by a landlord (or agent)) to arrange a suitable time for the entry if the tenant wished to be present with seven days notice.

### Sub-letting and assignment

This option, aimed at AirBnb arrangements, may have unintended consequences on tenants, including restricting informal living arrangements and short stays where contributions or services are offered in exchange for accommodation. For older people, arrangements made with family members, friends or carers should not be subject to sub-letting restrictions.

COTA does not agree with the options presented under this section and is concerned with the over-reach this will have on a range of circumstances that is simply part of day-to-day life.

## Rights and responsibilities at the end of a tenancy

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### Lease break fees

A range of life circumstances can precipitate the need to break a lease. For older people, ill health, financial stress and changed life circumstances (for example the death of a partner), may necessitate a break of lease.

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<sup>2</sup> Victorian Law Reform Commission Photographing and Filming Tenants' Possessions for Advertising Purposes: Report 2015, P56

COTA is concerned that currently landlords and agents often charge excessive lease break fees and there are not incentives to promptly readvertise for tenants or to charge excessive advertising fees. Codifying lease break fees would go some way towards guiding what constitutes a reasonable fee. Under this option, landlords are required to promptly place the premises back onto the rental market at the same rent and not unreasonably reject proposed new tenants. However COTA acknowledges this option does not address how to incentivise landlords or agents to find a new tenant promptly. We agree that giving certainty to both parties regarding the costs involved in lease break fees appears a reasonable reform to canvas.

Option 6.2 to fix a break lease fee at five weeks' and four weeks' rent however is not supported by COTA as it takes a punitive approach and enables landlords to profit from a fee rather than receiving reasonable compensation for loss. An approach where a break lease fee of three weeks (full rent) then 50% for the fourth week might provide a balance of compensation and incentive.

COTA does not support higher lease break fees being implemented for long term leases. Codifying lease break fees should be applied equally.

COTA strongly supports the following three options:

- Option 6.3 VCAT can take a tenant or landlord's severe hardship into account when awarding compensation after a lease is broken
- Option 6.4 In cases of recognised severe hardship, compensation to landlord capped at two weeks' rent.
- Option 6.5 Tenants in special circumstances are not required to pay lease break fees

COTA would also like to see VCAT to waive compensation in a wider defined range of severe hardship. This would go some way to redress the broader and unforeseen changes and address issues such as death of a partner or ill health.

## Rent and bonds

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COTA supports:

- Option 7.3C Automatic bond repayments for tenants when a claim is not disputed and evidence based claims for landlords.
- VCOSS's proposal that people have *the right to elect to pay their rent fortnightly, despite any contrary clause in a residential tenancy agreement.*<sup>3</sup>

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<sup>3</sup> VCOSS: Strengthening rental laws, Submission to the Residential Tenancies Act options paper, February 2017, P17



## Frequency of rent increases

COTA supports:

- Option 7.4 – that annual rent increases should replace the current six monthly increases allowed under the RTA.

Whilst social housing providers use a percentage of household income to discount market rent, measures need to be taken to prevent excessive rent increases in the private rental market. COTA strongly contends that once a lease is signed, rents should only be raised in line with the Consumer Price Index (CPI). Older people are particularly vulnerable to rent increases as they will avoid moving and are unlikely to contest an unfair rent increase at VCAT.

Under Option 7.6 (One fee –free method of paying rent) there should be the option of direct payment into an account. Older people who are not digitally connected should not be disadvantaged if they choose to make a direct payment into an account through a non- digital transfer option.

In looking to *enhance the Act for digital arrangements and transactions* COTA recommends that access to tenancy applications is not solely reliant on being able to access digital forms.

COTA supports the following:

- Option 7.7 – Landlords must accept Centrepay payments
- Option 7.8B – Rental properties must be advertised at a fixed price and landlords and agents cannot request or accept rental bids

With a shortage of affordable housing, equity of access measures to properties are needed. We refer back to our social contract comments on the policy objectives of the framework. Landlords are also interested in renters who will be reliable and take care of the property. Rental bidding further excludes those most vulnerable to rental stress and homelessness.

## Property Conditions

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Completing the condition report prior to signing the tenancy agreement provides a better balance in protections and responsibilities. This enables people to assess the property and choose not to sign the agreement.

### Condition of vacant property at the start and end of a tenancy

COTA Victoria supports the following definition: The landlord is required to provide the property in a reasonably clean condition and in good repair, so as to be reasonably fit and suitable for occupation.<sup>4</sup>

### Locks and security devices

COTA supports Options 8.11 and Option 8.12 in regards to deadlocks and provision of reasonable security measures.

Increasing security requirements by requiring deadlocks and locks on external windows and doors is important for all tenants and in particular older people who may feel particularly vulnerable and unsafe, due to increased frailty and mobility issues. Locks and security devices are also important to survivors of family violence.

In addition, provision of 'reasonable security measures' reduces insurance costs for renters.

### Health, safety and amenity standards at point of lease

Establishing clear minimum standards are essential to improving the health, safety amenity and efficiency standards of rental properties. Adapting rooming house minimum standards are not acceptable.

Minimum standards are important for all the health and well being of all private renters. For older people there is increased vulnerability to respiratory issues, falls and mobility issues. Minimum standards mitigate the risks to health and safety and support older people to age in place. We support VCOSS's addition that the *standard relating to mould should also apply to bedrooms, not just living areas, given the risks to respiratory health from sleeping in a mouldy bedroom*<sup>5</sup>.

Whilst not covered in this review we strongly support the introduction of minimum standards to Independent Living Units, caravan parks, residential parks and rental villages.

COTA therefore supports:

- Option 8.13D Minimum health, safety, amenity standards for vacant premises
- Option 8.15B Complete prohibition on letting non-compliant properties.

COTA supports a time defined staggered implementation to ensure there is progress towards minimum standards whilst protecting the lease tenure for current tenants.

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<sup>4</sup> TUV interpretation of the Supreme Court decision set out in *Shields v Deliopoulos* in their response to Option 8.7 – Composite repair and cleanliness duties, TUV Submission to the RTA Options Paper February 2017, P41

<sup>5</sup> VCOSS: Strengthening rental laws, Submission to the Residential Tenancies Act options paper, February 2017, P21

## Condition of premises during a residential tenancy

COTA supports clearer guidelines for tenants and landlords around what is 'reasonably clean' and 'good repair'. In particular the regular safety check for all gas and electrical appliances is important.

## Modifications

With an ageing population and increasing numbers of older renters, modifications to homes will support longer-term tenure and ageing in place. Landlords should not be able to refuse tenants installing property modifications recommended by health professionals such as grab rails or communications technology.

Where modifications are part of transitioning out of hospital care (non-slip surfaces) or installation of modification is required to qualify for hospital-in-the-home reprograms -this should be automatically granted.

Tenants should be able to make modest cosmetic and amenity changes (such as picture hooks or the installation of television outlets or antennas), without having to seek consent from the landlord. In addition modifications that improve the efficiency of utilities and reduce costs for the tenant should be allowed.

COTA strongly supports:

- Option 8.20A – Landlord may not unreasonably refuse consent to certain modifications.

COTA does not support the removal of structural modifications and the restoration of the property where modifications have enabled a tenant improved quality of life by increasing accessibility, health, safety and lowered energy costs. A tenant's investment in a property should be viewed as a capital improvement in the property. For example, the removal of handrails in bathrooms is both costly and an additional feature that adds value to a property. Promoting the benefits of modifications and the rights of tenants to make adjustments to their living space will support and encourage many older people to make the modifications they need to age in place.

This will address a dearth of private rental housing stock appropriate for older people and people with a disability where modifications for access and mobility are required.

## Liability for access to services

Option 8.22 - Update landlord's liability in line with modern installation and supply practices.

COTA supports an updated list of fees and charges covering a full range of essential services. We support VCOSS's recommendation for the installation of landline telephone connections particularly where mobile services are not covered to enable access to services (P24).

## Resolving disputes about repairs

COTA would like to see the introduction of a repairs and maintenance bond paid by landlords as this would better balance the rights and responsibilities of renters and landlords.

COTA supports options 8.35, 8.36 and 8.37 aimed at providing incentives for landlords to undertake repairs. We also endorse the timeframe amendment for urgent repairs from 14 to 7 days.

## Dispute resolution

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COTA supports the introduction of a Housing Ombudsman to mediate disputes that are not able to be resolved between a landlord and the tenant. This agency would be more accessible and identified as a complaints agency for dispute resolution.

A Housing Ombudsman would also be responsible for providing direction on addressing minimum standards, home modifications and play an enforcement role where there are repeated breaches by landlords.

## Terminations and security of tenure

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COTA believes eviction should be a last resort as it disproportionately impacts on people most vulnerable to homelessness particularly those experiencing mental health issues.

Alongside housing affordability, security of tenure is a serious concern for older people living in rental accommodation. COTA strongly opposes a termination and possession order being made for repeated late payment of rent. Allowing some flexibility for repayment through payment plans provides a more reasonable and proportionate response to repeated late payment.

Security of tenure and the balance of rights and responsibilities between tenants and landlords can be improved by removing the current provision that allows landlords to issue a notice to vacate for 'no reason'. There is currently little protection for renters against retaliatory action by a landlord that can take the form of a notice to vacate.

A lease should be upheld even when a property is sold and not be grounds for eviction.

## Family Violence

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Older people in situations of family violence (elder abuse or partner violence) are particularly vulnerable to homelessness when seeking to terminate a tenancy or facing eviction due to financial debt incurred by the offender. Older people face additional barriers in accessing the rental market, homelessness services and family violence services. For older women, the cumulative impact of economic and gender inequality compounds the barriers for those seeking safe and affordable accommodation options.

COTA strongly supports the proposals made by the Royal Commission's Inquiry into Family Violence Report (2016) regarding terminating a tenancy and VCAT member education and training in family violence.

Alongside a number of measures to increase protections and modifications to properties, we commend the RTA Review options in supporting family violence survivors, to stay in their rental properties by:

- Simplifying and fast tracking applications to make it is easier for victims to have a tenancy agreement terminated and a new one created in their name following the exclusion of the perpetrator
- Educating VCAT members on family violence
- Prohibiting estate agents and landlords from making a listing on a tenancy database.