

Security of Tenure

Review of the Residential Tenancies Act 1997

Summary of responses to the issues paper, *Security of Tenure*

Overview

Fairer Safer Housing is a Victorian Government initiative to ensure that all Victorians have access to safe, affordable and secure housing. One of the key elements of the initiative is a review of the *Residential Tenancies Act 1997* (the Act).

The first of six issues papers, explored issues relating to security of tenure — a measure of how certain someone is about their renting situation.

Who responded to this issues paper?*

In total, 331 contributors responded to the Issues Paper through four different channels ranging from posting stories online, participating in online forums, providing written submissions and social media posts.

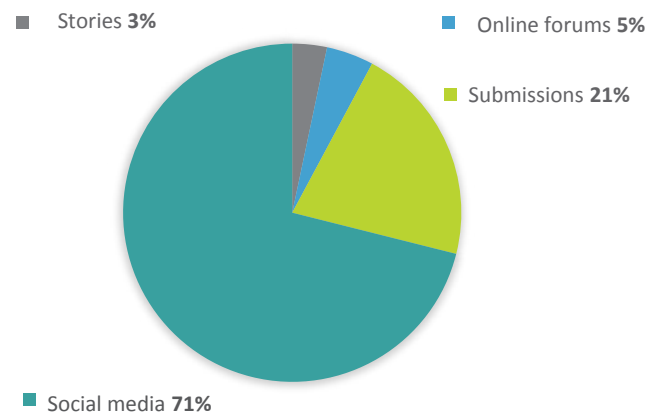
Twenty-nine organisations provided a written submission, the majority of which were from organisations and support services that represented the views and experiences of tenants. Across all available channels, individual tenants were the largest participant group at 61.9 per cent (or 202 people).

Information was accessed in a language other than English 375 times. The top three languages downloaded were Traditional Chinese, Amharic and Dinka.

Summary of findings

This phase of the review is focused on understanding the nature and extent of any issues identified rather than solutions provided by respondents.

Figure 1: Methods stakeholders used to respond to the Issues Paper



Theme 1: What are the needs and preferences of tenants and landlords for security of tenure?

Many agreed that this issue is increasingly important given that greater numbers of Victorians are renting for longer periods of time.

The most common factors given by respondents that defined security of tenure were:

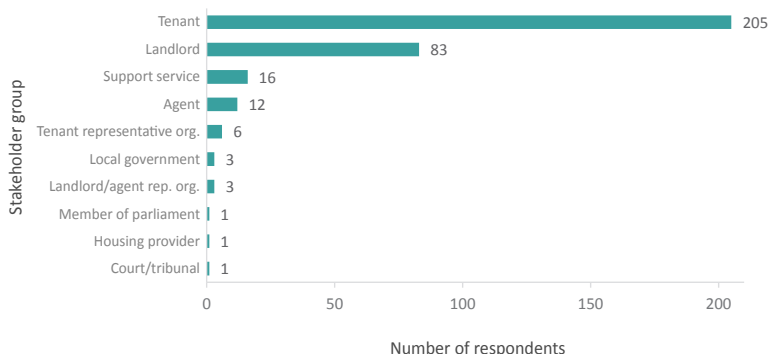
- the ability to exercise choice over the length of tenancy in a rental property
- confidence about how long a tenant can remain in a rental property
- access to affordable rental accommodation, and
- a comfortable, functional and safe home.

A variety of reasons were given about why security of tenure is important to tenants, the most popular reasons are shown in *Figure 3*.

Some of the ways in which respondents thought security of tenure could be beneficial included that it:

- can increase physical and mental wellbeing for tenants because it reduces the stress created through fear of having to move from their home and leave a community. A consistent community was particularly important to families with children
- enable tenants to invest in rental property to make it a home, for example creating a vegetable garden or improving the energy efficiency of the property
- can reduce financial stress as it prevents unreasonable rent increases and the financial costs of moving house.

Figure 2: Stakeholder cohorts that responded to the issues paper



Number of respondents = 331

Figure 3: Most commonly cited reasons why security of tenure is important to tenants



Number of respondents = 87

Security of Tenure

Review of the Residential Tenancies Act 1997

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Preferences for stability and flexibility in rental accommodation

Respondents noted that preferences are often linked to tenants' life stages.

Tenant representative organisations shared that the groups within the community who prefer flexibility include:

- university students to accommodate long holiday periods or changes to work and study situations
- young professionals so they can respond to changes in family and work circumstances.

Groups within the community identified as having a stronger desire and requirement for rental stability were:

- elderly people who prefer to live independently and 'age in place'
- people with a disability who find it difficult to move and find properties they can modify
- families that want stability for their children
- people with low incomes who are at risk of homelessness if they are not able to remain in affordable accommodation.

Landlords noted varying perspectives on stability and flexibility

For **landlords** the ability to remove problematic tenants was the most significant factor contributing towards their preference for short term leases. The primary concern for landlords was with finding reliable tenants rather than establishing long term tenancies.

Several respondents acknowledged that long term leases offered some financial benefits due to the significant cost to landlords of re-advertising.

Some landlords emphasised the importance of being able to regain possession of their rental property if their personal circumstances change, such as job loss or separation from a partner.

Matching tenant and landlord preferences

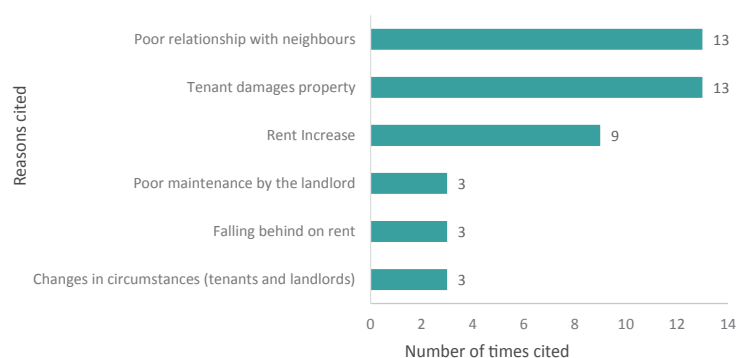
Respondents provided a range of examples as to why tenancies end. The most frequent reasons cited are captured in *Figure 4*.

Respondents identified some of the challenges in obtaining the lease terms they prefer as follows:

- a lack of awareness and understanding of the legislation can be an obstacle to tenants who want longer leases
- the Act currently stipulates that unless another fixed term lease is signed at the end of an existing fixed term lease, the lease continues on a month-by-month basis. Some support services, tenant representative organisations and individual tenants expressed the view that this locks tenants into short term leases because landlords may not be willing to offer additional fixed term leases
- some landlords may not be willing to offer longer leases because they believe the Act does not provide assurance for them if a tenant breaks a longer lease, or abandons or damages the property
- the role of the agent often results in a disconnect between tenants and landlords, resulting in potential for both parties to be unaware that a long term lease is a possibility or desirable.



Figure 4: The frequency with which respondents cited these reasons tenancies end



Number of respondents = 44

Security of Tenure

Review of the Residential Tenancies Act 1997

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Theme 2: How does the Residential Tenancies Act provide for security of tenure in general residencies?

Lease length

Key obstacles noted by respondents to tenants and landlords entering long leases are detailed below.

- a. Imbalance of power in negotiations between tenants and landlords**
- tenants noted there is a low supply of affordable rental housing, therefore landlords know that they can easily replace tenants. Fear of losing their affordable rental accommodation makes tenants reluctant to negotiate long term leases or request to move from a periodical lease to a fixed term lease
 - tenants took the view that the Act effectively allows landlords to re-possess their property at any time, rather than protecting tenants' right to a home.

Industry practices do not encourage long term leases

- landlords and agents asserted that there is low market demand for long term leases, and suggested that standard industry practice reflects this assumption
- respondents suggested that agents tend not to promote long term leases to landlords or tenants.

c. Obstacles to long term leases within the Act

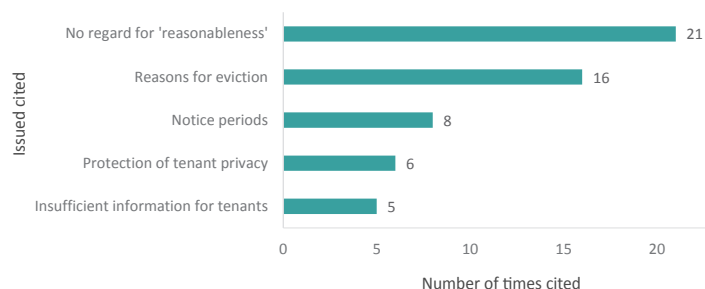
It was noted that the Act itself can be an obstacle to long lease terms, particularly because it does not apply to leases of over five years.

- some submissions from support services, tenant representative organisations and local governments also noted that because the Act is restrictive in the type of rental situations it encompasses, any security it did currently provide should be broadened to apply to alternative types of tenancies such as co-tenant situations, or where landlords have license arrangements with tenants instead of lease arrangements.

Tenancy terminations

Respondents raised a range of issues regarding the way in which termination provisions in the Act affect security of tenure. These issues can be categorised under five broad themes as seen in *Figure 5*.

Figure 5: Issues regarding how termination provisions in the Act affect security of tenure



Number of respondents = 56

No allowance for reasonableness

Respondents expressed the view that there is little regard for the tenant in the termination provisions, for example:

- tenants can be given a notice to terminate for being 14 days in rent arrears. Respondents found that this occurred even if the tenant communicated in advance, made plans to pay the owed rent or was only partially behind in rent
- respondents questioned if some of the 'breaches in duty' by tenants were serious enough to result in the possibility of a tenant becoming homeless
- in some instances, such as renovations to a property or sale to an investor, it is not always necessary for the tenant to move out
- concerns were raised about the indefinite nature of compliance orders and the subsequent impact on a tenants' security of tenure.



Reasons to evict

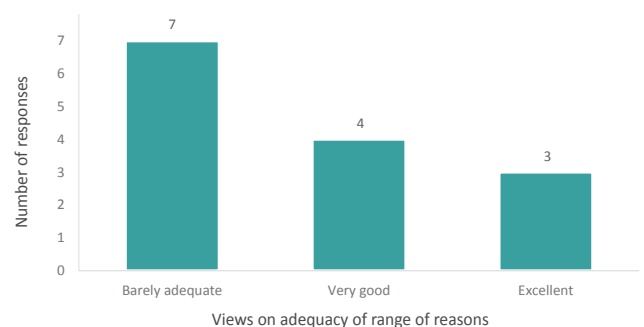
- Several tenant representative organisations took the view that the number of reasons to terminate a lease needs to be streamlined
- However, when landlords were polled on the same topic, half of the small sample of 14 respondents took the view that the range of reasons is 'barely adequate'.

No specified reason' to vacate

Support for removal

- There was strong support from tenants, tenant representative organisations and support services for removing the 'no specified reason' notice to vacate from the Act. Respondents expressed the view that this option affected security of tenure because it could be used in retaliation, or to discriminate against tenants

Figure 6: Quick poll - Landlords, is there an adequate range of reasons for terminating a tenancy?



Number of direct comments = 14

Security of Tenure

Review of the Residential Tenancies Act 1997

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Landlord concerns about removing 'no reason' notices

- landlords who responded to this question indicated that they predominantly use the 'no specified reason' notice to remove 'difficult' tenants who have damaged the property or are in rent arrears
- some landlords expressed concern that properties could become unsafe because landlords have no ability to remove violent tenants, or tenants engaging in criminal activity
- they also identified the 'no specified reason' notice as a vital tool of last resort for landlords and thought removing it may discourage owners from leasing their property
- another view amongst landlords was that including too many reasons to terminate a tenancy in the Act could make it complicated for landlords to exercise their right to regain their property.

Notice periods

- the predominant view shared by tenant representative organisations and support services is that existing notice periods for terminations are too short and in some cases do not provide tenants enough time to find alternative accommodation.

Protecting tenant privacy

- tenants noted that the 24 hours' notice period for a landlord or agent to enter the property reduced their ability to experience 'quiet enjoyment' of the rental property, which is particularly an issue when a property is for sale and inspections occur
- the photography of tenants' possessions for images when a property is being sold was also a concern shared by some tenants.

Inadequate information for tenants

- many tenants, support services and tenant representative organisations emphasised that there is a need to provide more information to tenants about their rights to appeal termination notices. They also noted that existing information is unclear and inaccessible, particularly for people for who English is a second language
- respondents reiterated that the above issues are exacerbated by the lack of options and/or incentives for landlords and agents to take steps to resolve issues before terminating a lease.

Rent increases

- many respondents raised concern that there is no reliable market rent standard for the Victorian Civil and Administrative Tribunal (VCAT) to base a decision as to whether a rent increase is appropriate. There is also no regulation to prevent rent increases when there is an outstanding repair order for a property
- several respondents stated that tenants should be permitted to terminate a tenancy if they cannot afford a rent increase, without incurring financial costs for breaking a lease

- the majority of respondents suggested aligning rent increases with the Consumer Price Index (CPI), while very few respondents thought that council rates or interest rates could be used as a potential standard for rent increases
- the most common suggestion for an appropriate alternative to the current allowable period for a rent increase of every six months was every twelve months
- all three landlord agent representative organisations who provided submissions held the view that the current rent increase provisions in the Act are appropriate.

Repairs and maintenance

- the overwhelming issue that respondents raised was not having non-urgent repairs fixed within an appropriate time period
- there were also many tenants and landlords who noted that agents do not pass on requests for repairs, nor organise trades people efficiently once the repair is approved by a landlord
- many landlords cited experiences where tenants requested repairs that were unnecessary and caused them significant costs
- respondents noted that tenants are discouraged from reporting repairs and maintenance for fear of a rent increase or termination
- having minimum standards for rental properties was suggested by 23 respondents out of a total of 99 respondents to repairs and maintenance related questions
- support services and tenant representative organisations highlighted that the current system of the tenant agreeing to the standard of the property when signing the lease is flawed. This is because many structural issues are not obvious until the tenant is living in the property
- landlords generally took the view that it is much easier for them to carry out maintenance when a property is empty.



Modifications

- modification discussions focussed predominantly on modifying properties for people with a disability and the elderly
- while tenant representative organisations recommended that a landlord should not be able to unreasonably refuse to modify their property, landlords did not hold the view that they should be responsible for paying for modifications
- the point was made by respondents from both groups that many people with a disability have access to funding from external sources that could be utilised if they were assured security of tenure once the modifications were made.

Security of Tenure

Review of the Residential Tenancies Act 1997

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Theme 3: How does the Residential Tenancies Act provide for security of tenure in rooming houses, caravan parks and residential parks?

Rooming houses

- some landlords/operators see rooming houses as a long term business and provide a higher quality of accommodation, while others provide rooming houses as a secondary business and are reluctant to invest in and maintain the property
- lack of rooming house supply was identified by respondents as a factor intensifying the imbalance of needs, as residents fear being evicted and are therefore hesitant to request improvements
- the poor condition and maintenance of rooming houses was a common issue raised by respondents, who were exposed to un-safe conditions such as a lack of fire exits, broken windows, and health risks due to poor maintenance.

The role of long term and fixed term leases in providing security of tenure in rooming houses.

- residents can become stuck in a fixed term lease which makes leaving a rooming house difficult and potentially costly
- while a fixed term agreement can be beneficial to a rooming house resident, some operators appear to be taking advantage of this provision as it allows them to request more rent in advance, as well as a higher bond
- security of tenure would not necessarily improve with the presence of fixed term agreements, largely due to rooming house operators' conduct. Tenants can be trapped in unfavourable living agreements that they have little control over
- rent arrears is a particular issue for rooming houses, where many of the tenants are vulnerable and have a lack of alternative accommodation options.

Caravan parks

- the Victorian Caravan Parks Association noted that there is no evidence that current provisions in the Act are affecting security of tenure in caravan parks.

The predominant view of others was that the Act should apply to residential arrangements in caravan parks that are currently excluded, (ie: leases of less than 60 days, premises that are to be used by a landlord as their principal place of residence at the end of the arrangement or agreements for sites in residential parks that are ordinarily for holiday purposes).



Respondents noted that such restrictions discouraged people from buying and moving into a park, for example.

- respondents also took the view that there was insufficient guidance available to ensure that a notice to vacate within the 60 days was issued for reasonable reasons
- respondents noted that there is no consideration of the large costs to residents if they have to relocate their dwellings if their tenancy is terminated
- with regards to termination periods, it was suggested that residents on a pension should have a minimum of 120 days if they are site tenants, and six months if they own a caravan. This is in recognition of their increased vulnerability and the potential impact a move can have over their quality of life and well-being.

Residential parks

- there is a lack of legislative protection for residents if the park is sold or closed and a lack of consistency across the sector with regard to long term leases
- provision of a 'no specified reason' notice to vacate means that residents do not feel secure; however, the Victorian Caravan Parks Association expressed the view that removing this notice to vacate will shift the balance too far in favour of the tenant and result in park operators rejecting certain groups of tenants
- the cost of moving also includes moving the dwelling, which can come at a significant cost
- there is no security in the event that a park has both a freehold landowner and a leasehold company owner. If the two parties have conflicting intentions in relation to the future of a park, this can impact on the tenant's tenure security
- the Act does not provide a clear formula for rent increases and allows for market-based rent reviews, which can often place financial stress on tenants
- there is a lack of a mechanism to request repairs. There needs to be a way for residents to ensure that repairs are completed in a timely manner.

*The results of the consultation are not representative of the market but, rather, reflect current views about security of tenure amongst the organisations and individuals who chose to participate. In addition, people who responded via social media and other online channels self-identified as either tenant or landlord.