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## 2. BEFORE A TENANCY

### *Applying for a Tenancy*

Referencing Q1 AND Q2:

- *Under what circumstances do tenants encounter unfair treatment or unlawful discrimination?*
- *What are the obstacles to tenants challenging discriminatory treatment and seeking remedies, and what are the solutions to these obstacles?*

- 2.1. In its initial submission to the review, the VMC brought the matters raised by its Regional Advisory Councils (RACs) regarding the issues that create additional barriers for multicultural communities when seeking private residential tenancies. These included factors not directly related to maintaining a tenancy such as ethnicity, visa status (newly arrived and humanitarian entrants), and the outright discrimination experienced by people from diverse backgrounds at the inquiry and viewing stages.
- 2.2. These issues relate directly to the ability of the RTA to regulate in terms of equity and creating a level playing field for all applicants. They are also important issues to consider when anticipating the factors that can contribute to segregation (along ethnic or socio-economic grounds) which detract from goals to create more integrated socially cohesive communities.<sup>3</sup>
- 2.3. In seeking remedies and solutions to these issues people from diverse backgrounds also face greater obstacles. These can include a lack of familiarity with local tenancy practices and processes, as well as ignorance of their rights in the Australian context. Many multicultural households may also lack the resources to pursue redress. Newly arrived groups in particular may have endured onerous conditions prior to settlement. Many fleeing trauma and persecution have experienced, or someone in their immediate family have experienced, at least one type of traumatic event pre-settlement.<sup>4</sup>
- 2.4. Newly arrived groups have particular vulnerability which can leave them exposed in open residential tenancy markets. Jenkinson et al. (2016) reported a prevalence of moderate-to-high levels of psychological distress in newly arrived humanitarian migrants when compared to the general population, especially among female participants.<sup>5</sup>
- 2.5. This vulnerability is evidenced by high levels of housing mobility in recently arrived humanitarian migrants. Jenkinson et al. (2016), reported that within 3–6 months of having arrived in Australia, two-thirds of humanitarian entrants had moved home during this period, and around one-third of those had moved multiple times.<sup>6</sup> VMC RAC members have confirmed that ‘people from diverse backgrounds are much more likely to move on than others’.<sup>7</sup>

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<sup>3</sup> Salvi del Pero, Adema, Ferraro, & Frey, 2016.

<sup>4</sup> Jenkinson, Silbert, De Maio, & Edwards, 2016.

<sup>5</sup> In terms of psychological distress, 35% of males and 45% of females were at “moderate” or “high” risk of psychological distress during the four weeks prior to survey, compared to 7% of males and 11% of females in the general Australian population (Jenkinson, Silbert, De Maio, & Edwards, 2016).

<sup>6</sup> Ibid

<sup>7</sup> Hume RAC, August 2015.

- 2.6. These high levels of housing mobility directly relate to difficulties in finding housing and obtaining secure housing tenure.<sup>8</sup> Further, difficulties in securing safe secure long term accommodation have repercussions for stability by impacting social inclusion and participation more generally. Household effects include hindering capacity to settle into a neighbourhood, employment prospects, and settling children into schools.
- 2.7. Solutions include ensuring that landlords and agents are not only sufficiently well versed in their rights and responsibilities, but are held to account. Other solutions include considering introducing incentives for landlords who rent properties to disadvantaged tenants, and these solutions are covered below in reference to Question 4.
- 2.8. Creating a level playing field could entail ensuring that prospective tenants are also better informed of their rights and responsibilities. Developing a readily available resource that informs anyone entering the market with an overview and general guide to private residential renting in Victoria could assist in this aim. The resource could include maps (where to live, choosing an area), types of accommodation available, information on public transport, schools, average rents for different types of accommodation, information on real estate agents, details of viewing, applications and contract procedures.
- 2.9. The resource could be developed in collaboration with the Real Estate Institute of Victoria (REIV), Tourism Victoria, the Department of Economic Development, Jobs, Transport and Resources (DEDJTR), and/or other entities. For a comprehensive example, see the Organisation for Economic Co-operation and Development (OECD) *Housing Guide, Welcome to Paris, Renting accommodation in and around Paris. A guide to help you make arrangements for the rental of an apartment or a house.*<sup>9</sup>

*Referencing Q3: How should tenants and landlords be informed about their rights and obligations in relation to discrimination, for example under the Equal Opportunity Act 2010?*

- 2.10. The VMC supports the Issues Paper proposal, to create clearer links between the prohibitions in the Equal Opportunity Act and the Residential Tenancies Act, in order to provide tenants with more tailored grounds for redress. At the very least a readily available resource that spells out the links between the legislation would be helpful.
- 2.11. The West Australian Equal Opportunities Commission produced a resource for landlords and tenants, *Accommodating Everyone*, available through the WA Department of Commerce, Consumer Protection, which draws together Residential Tenancy and Equal Opportunity legislation in respect to rights and responsibilities when renting out property.<sup>10</sup>
- 2.12. Another method could be to offer an incentive that seeks to build greater confidence in tenants from diverse backgrounds and acculturates landlords and agents to processing their applications without prejudice. For example, the New South Wales (NSW), *Tenancy Guarantee* is an incentive based additional security offered to landlords and agents to increase acceptance of people they might otherwise refuse as tenants. A Tenancy

<sup>8</sup> Jenkinson, Silbert, De Maio, & Edwards, 2016.

<sup>9</sup> Retrieved 6 May 2016: <http://www.oecd.org/careers/RENTING%20ACCOMMODATION.pdf>

<sup>10</sup> Available at: <https://www.commerce.wa.gov.au/sites/default/files/atoms/files/accommodatingeveryoneforagents.pdf>

Guarantee of up to \$1,500 is made available to landlords/agents to cover rental arrears and/or property damage over and above the rental bond.<sup>11</sup>

- 2.13. In Scotland, following a similar RTA review process, a voluntary scheme was set up to promote and support agents and landlords by accrediting their property management skills. *Landlord Accreditation Scotland (LAS)* is a national accreditation scheme for landlords and agents, that promotes best practice in the private rented sector by offering training and education across the country. The voluntary accreditation system adds further assurance for tenants by demonstrating that agents and landlords management practices meet good practice standards.
- 2.14. In its earlier submission the VMC also suggested the introduction of a compulsory *Tenant Information Pack* to ensure that all private residential tenants receive the same information by providing clear information about private residential tenancy. While the suggestion was to include such a pack on the establishment of a tenancy, it is also something that could be made readily available through Consumer Affairs Victoria, Tenants Union Victoria, and other community based centres such as real estate offices, local council offices, libraries and so on; ensuring that translated materials are also available. Examples are readily available from Renting Scotland<sup>12</sup> and AMES.<sup>13</sup>

### ***Other screening practices during the application process***

#### ***Referencing Q4 AND Q6:***

- *What types of information is used by landlords and agents to assess the suitability of rental applicants?*
  - *What is your view on the stakeholder proposal to prescribe a standard application form, and what information requests should be required to be included in such a form?*
- 2.15. VMC RAC members have confirmed that people from diverse backgrounds, especially new arrivals are at a distinct disadvantage in the private residential rental housing market. RAC members report that 'humanitarian arrivals face difficulties in securing rental accommodation'. This includes issues such as a 'lack of rental history', 'rising rents', 'language barriers', and because they 'do not have the references landlords require'.
- 2.16. These additional difficulties for newly arrived migrants must be duly considered by the review as these groups can be particularly vulnerable. In terms of successful settlement, finding rental accommodation fairly early is a priority, to facilitate independence and participation in local communities, which is a main aim in settlement processes.<sup>14</sup> This makes addressing the barriers for these groups imperative.

<sup>11</sup> NSW Family and Community Services. Tenancy Guarantee booklet available at:

[http://www.facs.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0007/329704/Tenancyguarantee.pdf](http://www.facs.nsw.gov.au/__data/assets/pdf_file/0007/329704/Tenancyguarantee.pdf)

<sup>12</sup> <https://rentingscotland.org/tenant-information-pack/responsibilities-tenants-and-landlords>

<sup>13</sup> [http://www.ames.net.au/files/file/Settlement/Tenancy%20Information%20Pack/Information%20Pack\\_English.pdf](http://www.ames.net.au/files/file/Settlement/Tenancy%20Information%20Pack/Information%20Pack_English.pdf)

<sup>14</sup> The Australian Government Department of Social Services, Multicultural Affairs and Settlement states that it 'works to improve the lifetime wellbeing of migrants and refugees settling in Australia by responding to their specific needs, encouraging their independence and participation in the Australian community.' Retrieved 5 May 2016: <https://www.dss.gov.au/settlement-and-multicultural-affairs>

- 2.17. Thus, considering other means by which prospective tenants can be screened is important. Alternatives, such as good character references could be considered. In many instances settlement services have worked closely with real estate agents in local areas to build trust and break down the barriers. Examples include AMES accommodation support program, and other local partnerships.<sup>15</sup> RAC members have advised that local settlement agencies work to build trust with real estate agents locally to break down barriers.
- 2.18. Although these local programs are valuable, a state-wide push by the review has the potential to make greater inroads, to assist in breaking down barriers and facilitate more equitable practice. References should be enough to establish a householder's ability to pay rent, either from a former landlord or agent, without recourse to other documentation such as bank statements which includes personal spending not relevant to an application. Otherwise a character reference together with a Tenancy Guarantee as at 1.6 above, would create greater equity in the process.
- 2.19. The VMC supports the proposal of a standard tenancy application form being prescribed by the revised RTA. The benefits of greater uniformity and seeking to limit consideration to the factors most relevant to maintaining a functional tenancy also support greater equity in the process.

*Referencing Q10: What is your view on the stakeholder proposal to establish a database that tenants can use to assess the reputation or reliability of a prospective landlord or agent?*

- 2.20. In its submission to the previous Issues Paper, *Rents, bonds and other charges*, the VMC proposed establishing a *Landlord Registration* system and making the register available online. It would then also function as an online database. The website could have facility that enables landlords and agents to apply for registration online, and to track their applications. A landlord registration system potentially offers more than a database which merely lists landlords or agents. The registration process would give greater confidence to the broader community that the private residential rental market was well regulated.

## **VMC RECOMMENDATIONS – BEFORE A TENANCY**

### **Recommendation 2**

The VMC recommends that the review:

- i. *develop a comprehensive information pack to assist anyone seeking private residential rental accommodation in Victoria; ensure that packs are translated and include picture boards as necessary;*
- ii. *confer with the Real Estate Institute of Victoria (REIV), Tourism Victoria, the Department of Economic Development, Jobs, Transport and Resources (DEDJTR), and/or other entities as appropriate to produce the information pack and to ensure a wide distribution across the state;*

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<sup>15</sup> Jenkinson, Silbert, De Maio, & Edwards, 2016.

- iii. *create clearer links between the prohibitions in the Equal Opportunity Act and the Residential Tenancies Act in order to provide tenants with more tailored grounds for redress;*
- iv. *consider introducing a Tenancy Guarantee as an incentive to landlords and agents to increase acceptance of people they might otherwise refuse as tenants and seek to address discrimination unrelated to ability to maintain a tenancy;*
- v. *introduce a Tenancy Guarantee of up to \$1,500, available to landlords to cover rental arrears and/or property damage over and above the rental bond to assist in addressing discriminatory factors not directly related to maintaining a tenancy;*
- vi. *seek to ensure greater equity overall by ensuring that screening practices during the application phase protect the most vulnerable prospective tenants;*
  - *this can be achieved by considering other means by which tenants can be screened, such as enabling alternative reference types when rental history is not available, i.e. good character reference, reference from settlement agency and similar;*
- vii. *introduce a standard tenancy application form, prescribed by the revised RTA, to produce greater uniformity and ensure that factors most relevant to maintaining a functional tenancy are prioritised to maintain equity; and*
- viii. *establish a Landlord Registration system in preference to a landlord or agent database which would also function as an online database and provide greater confidence to the broader community that the private residential rental market in Victoria was well regulated.*

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### **3. DURING A TENANCY**

*Referencing Q14: How should the current statutory duties for both landlords and tenants be reformed to meet their contemporary needs?*

- 3.1. Continuing on the theme of a *Landlord Registration* system, this could also be utilised to meet the contemporary needs of both tenants and landlords, through a sufficiently well designed and streamlined system, which could also be regulated and updated as contemporary needs demand. A well designed and operated registration system would promote confidence at all levels of the private residential housing rental market, for tenants, landlords and agents.
- 3.2. A *Landlord Registration* system, together with an accreditation scheme (see 2.13 above) would reinforce tenant confidence by a transparent expression of duty to act honestly and in good faith, and with due care and diligence. With a landlord registration system and an accreditation scheme operating in tandem, and regulated by the revised RTA, it may not be necessary to include an express duty as an aspect of the legislation.

#### ***Entry to Premises***

*Referencing Q22: What entry to premises arrangements strike the right balance between the rights of tenants to quiet enjoyment and the rights of landlords to enter premises and what, if any, reforms are required?*

- 3.3. The VMC supports the direction of the Government's *Plan for Fairer, Safer Housing* in highlighting landlord access to rental premises as a priority for review. All tenants have the right to enjoy their homes in reasonable privacy without interruption. The VMC supports the narrow set of circumstances when landlords and agents are permitted to enter.

- 3.4. Entry to premises arrangements must also consider conduct and the need to act with respect, maintaining tenants' dignity in whatever circumstances entry is required. According to Doney (2015), 'refugees have their dignity taken from them. The process of housing and other services are trying to restore their dignity to them.' In seeking to balance tenants' quiet enjoyment with landlords' right of entry therefore the period of notice, frequency of general inspections and mechanisms for negotiating entry, are important to ensure respectful conduct also maintains the dignity of the householder when managing entry.
- 3.5. Reforms to the amount of notice required and a requirement (other than in emergency situations) for all notice to be provided in writing is desirable to maintain suitable distance so that the tenants' right to exclusive possession and quiet enjoyment of the premises is upheld.
- 3.6. The VMC would also support a mechanism in the RTA that requires landlords to negotiate entry times that suit the tenant where the reason for entry does not allege any non-compliance on the part of the tenant. Such a mechanism would uphold the tenants' rights for exclusive possession and quiet enjoyment in a respectful manner and support formality in the balance of rights and responsibilities.
- 3.7. To this end the VMC recommends that the 24 hours' written notice for any of the reasons for entry should be extended. The review can consider how notice periods operate in other jurisdictions. For example, the VMC would support seven days written notice being required to inspect the premises or to conduct a valuation as in NSW.
- 3.8. Regarding entry for general inspection, the current legislation allows for entry once in any six month period. We would suggest that is a valid period within a first period tenancy say for the first 12 months. After the initial 12 months, if there are no problems arising from inspections, the frequency could reasonably be pared back to annual inspections.
- 3.9. Regarding showing the premises to prospective buyers where the property is being sold, the VMC supports the current 14-day period with written notice.

## **VMC RECOMMENDATIONS – DURING A TENANCY**

### **Recommendation 2**

The VMC recommends that the review:

- i. *consider a Landlord Registration system, operating in conjunction with an accreditation scheme and regulated by the revised RTA, to maintain confidence and transparency in the system and reinforce tenant confidence; and*
- ii. *Regarding entry to the premises:*
  - *introduce an RTA mechanism that requires landlords to negotiate entry times that suit the tenant where the reason for entry does not allege any non-compliance on the part of the tenant;*

- *extend the 24 hours' written notice for any of the reasons for entry, by looking to other jurisdictions for alternatives, i.e. in NSW seven days written notice is required for inspection or to conduct a valuation;*
- *entry for general inspection to be extended from entry once in any six month period, following a successful initial 12 month period; should no problems be identified during inspection, the frequency could reasonably be pared back to annual inspections; and*
- *for entry to show the premises to prospective buyers where the property is being sold, the current 14-day period with written notice is supported.*

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