



**Tenants' Union of Tasmania**

with support from Community Legal Centers Tasmania,

Youth Network of Tasmania and TasCOSS

# **Modernising the Residential Tenancy Act**

*Submission*



10 June 2026

Department of Justice  
Office of the Secretary  
GPO Box 825  
Hobart TAS 7001

via email: [haveyoursay@justice.tas.gov.au](mailto:haveyoursay@justice.tas.gov.au)

To the Department of Justice,

**Re: *Modernising the Residential Tenancy Act – Discussion paper***

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We welcome the opportunity to respond to the *Modernising the Residential Tenancy Act Discussion paper* ('the review'). The review has been a long time coming with the Act currently providing significantly less protection for residential tenants than most other Australian jurisdictions.

We trust that the Government will grasp the opportunity to adopt Australian best practice or even introduce nation-leading reform as it did when minimum standards for rental properties were introduced.

Please find enclosed our joint response.

If you have any queries or we can be of any further assistance, please do not hesitate to contact us.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Alexander Bomford'.

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**Tenants' Union of Tasmania**

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## Tenants' Union of Tasmania

with support from Community Legal Centres Tasmania, Youth Network of Tasmania and Tasmanian Council of Social Services

# MODERNISING THE RESIDENTIAL TENANCY ACT

## *Submission*

nipaluna/ Hobart, June 2026

The writing and publication of this report was made possible through a grant from the Tasmanian Government.

The Tenants' Union of Tasmania and Community Legal Centres Tasmania would like to acknowledge those people and organisations who gave freely of their time in assisting with the preparation of this report.

The Tenants' Union of Tasmania wish to acknowledge the Tasmanian Aboriginal community, the palawa/pakana people, who have survived invasion and dispossession, and who continue to maintain their identity, culture, and Aboriginal rights. We pay respect to the palawa/pakana elders past and present.

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## GLOSSARY OF TERMS AND ACRONYMS

|                |   |
|----------------|---|
| TUT            | The Tenants' Union of Tasmania  |
| RTA            | <i>Residential Tenancy Act 1997 (Tas)</i>   |
| RTR            | <i>Residential Tenancy Regulations 2025 (Tas)</i>   |
| Landlord       | The owner of rental property within the meaning of s 3 of the RTA, including their agent. |
| The Government | The Tasmanian Government  |
| Minister       | The relevant Minister   |
| The Court      | Magistrates Court of Tasmania   |
| TASCAT         | Tasmanian Civil and Administrative Tribunal   |
| RTC            | Residential Tenancy Commissioner  |
| RDA            | Rental Deposit Authority  |
| FV             | Family violence   |
| SDA            | Specialist Disability Accommodation   |
| RPA            | <i>Residential Parks Act 2026 (Tas)</i>   |
| ACT Act        | <i>Residential Tenancies Act 1997 (ACT)</i>   |
| ACT Regs       | <i>Residential Tenancy Regulations 1998 (ACT)</i>   |
| NSW Act        | <i>Residential Tenancies Act 2010 (NSW)</i>   |
| NSW Regs       | <i>Residential Tenancy Regulations 2019 (NSW)</i>   |
| NT Act         | <i>Residential Tenancies Act 2010 (NT)</i>  |
| NT Regs        | <i>Residential Tenancies Regulations 2000 (NT)</i>  |
| Qld Act        | <i>Residential Tenancies and Rooming Act 2008 (Qld)</i>                                   |
| Qld Regs       | <i>Residential Tenancies and Rooming Regulation 2025 (Qld)</i>                            |
| SA Act         | <i>Residential Tenancies Act 1995 (SA)</i>  |
| SA Regs        | <i>Residential Tenancy Regulations 2025 (SA)</i>  |
| SA HI Act      | <i>Housing Improvement Act 2016 (SA)</i>  |
| SA HI Regs     | <i>Housing Improvement Regulations 2017 (SA)</i>  |
| Vic Act        | <i>Residential Tenancies Act 1997 (Vic)</i>   |

|              |   |
|--------------|---|
| Vic Regs     | <i>Residential Tenancies Regulations 2021 (Vic)</i>                             |
| WA Act       | <i>Residential Tenancies Act 1987 (WA)</i>                                      |
| WA Regs      | <i>Residential Tenancies Regulations 1989 (WA)</i>                              |
| NZ Act       | <i>Residential Tenancies Act 1986 (NZ)</i>                                      |
| NZ Regs      | <i>Residential Tenancies (Healthy Homes Standards) Regulations 2019 (NZ)</i>    |
| UK Act       | <i>Renters Rights Act 2025 (UK)</i>   |
| Ireland Act  | <i>Residential Tenancies Act 2004 (Ire)</i>                                     |
| Ireland Regs | <i>Housing (Standards for Rental Houses) Regulations 2019 (Ire)</i>             |
| Ontario Act  | <i>Residential Tenancies Act, 2006 (ON)</i>                                     |
| Ontario Regs | <i>Residential Tenancies Act, 2006 (Maintenance Standards Regulations) (ON)</i> |

## 1.2 SUPPORT SUPPLY AND AFFORDABILITY

1.2 (a) How should the Act strike an appropriate balance between tenant protections and supporting ongoing investment in rental housing?

(b) What reforms would improve fairness and clarity without creating disproportionate cost, uncertainty or pressure on rental supply?

(c) What evidence, examples or practical experience should the Government take into account when assessing whether a proposed reform is necessary, workable and sustainable?

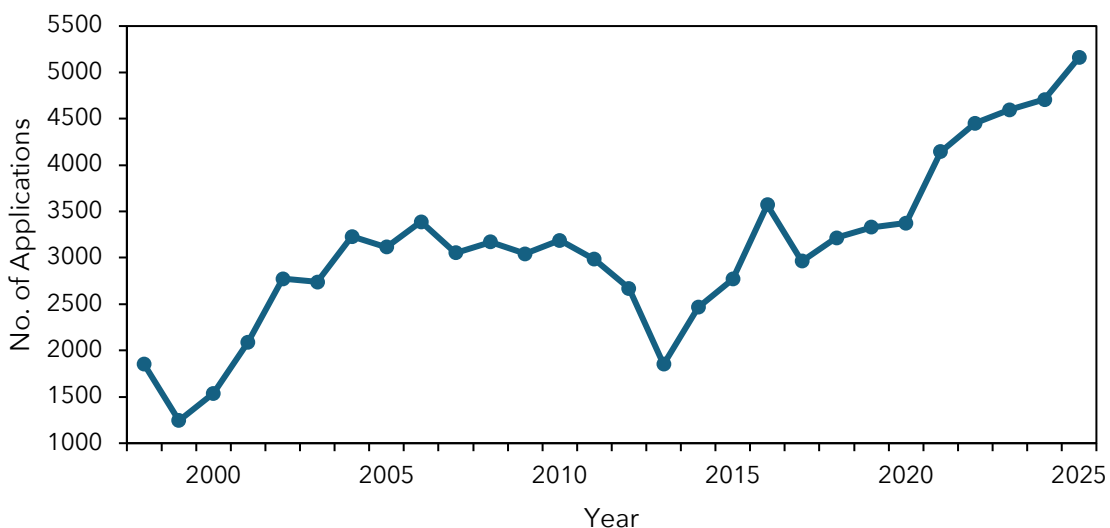
In December 2027, the RTA will be turning 30. The RTA was the long-delayed realisation of the 1975 “Sackville Report”, which recommended (as summarised by AHURI):<sup>1</sup>

1. Prescribed forms, terms, charges and notice periods;
2. Accessible dispute resolution;
3. Market rents; and
4. Ready but orderly eviction.

This was a significant material improvement on what came before.<sup>2</sup> However, in the period since the RTA came into force the Tasmanian housing market has changed dramatically.

It is no longer the case that the wait for public (or social) housing is relatively short:

**Tasmania Social Housing Waitlist (at June each year)**

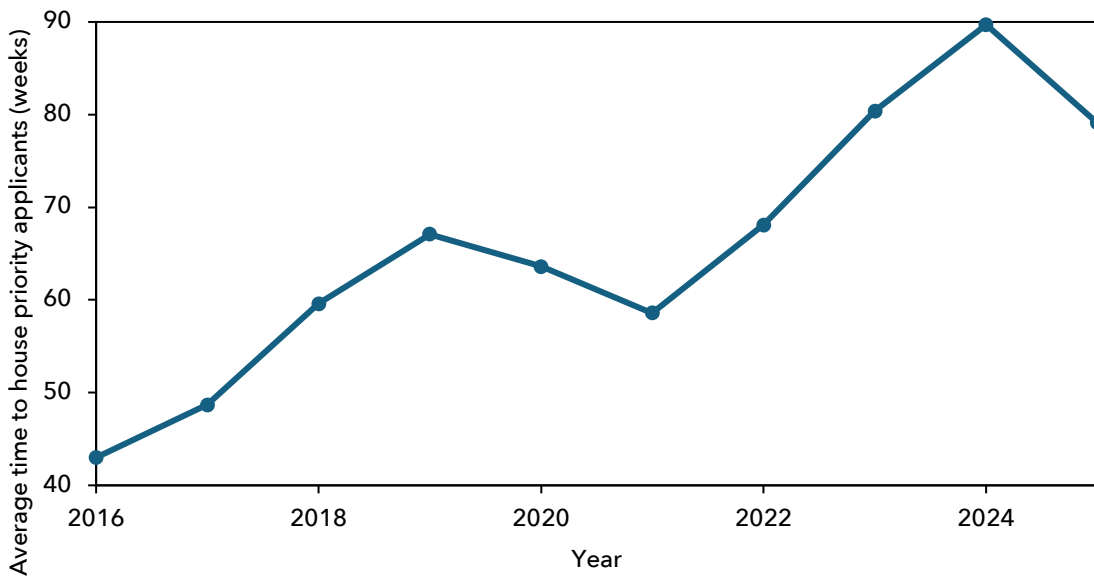


Source: Productivity Commission, *Report on Government Services – Housing and Homelessness (1998 – 2025)*

<sup>1</sup> AHURI, ‘Regulation of residential tenancies and impacts on investment’ (Final Report no 391, November 2022) page 28.

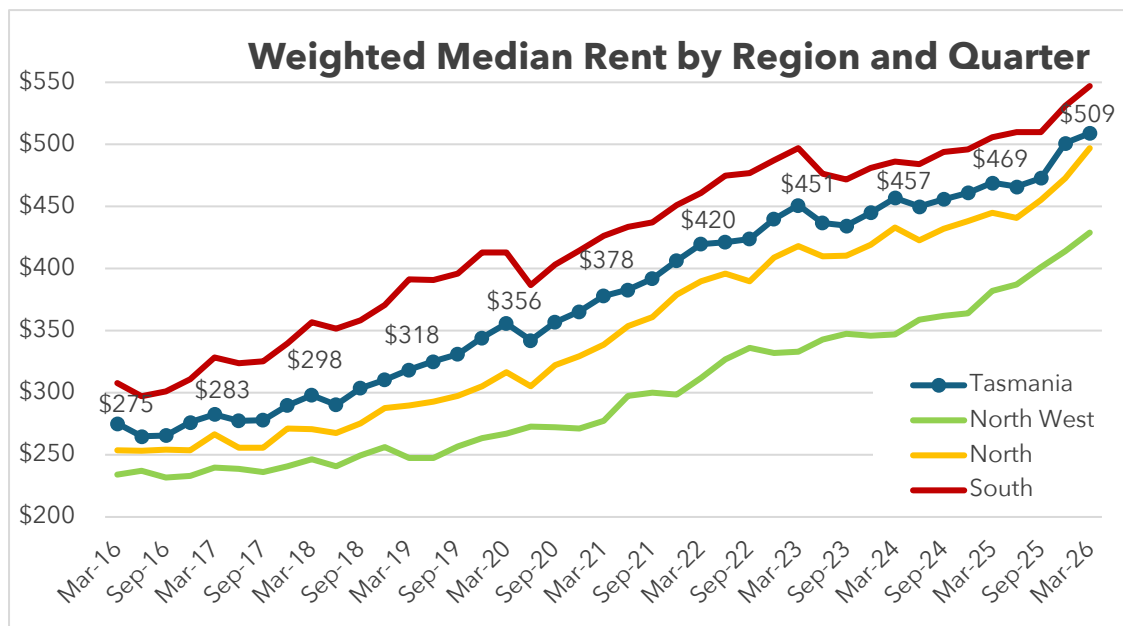
<sup>2</sup> For a more detailed account of the history of the RTA see Tenants’ Union of Tasmania, ‘Tenancy Matters!’ (2024).

Tasmania: Weeks to house priority applicants (rolling 12-month average)



Source: Productivity Commission, *Report on Government Services - Housing and Homelessness* (1998 - 2025)

And it is no longer the case that finding a rental property on the private market is relatively affordable:



Source: Tasmanian Rents (March Quarter 2026)

In short, there are more Tasmanian renters than ever – one in three Tasmanian households rent their home – and those renters remain renters for longer. If it ever was true that renting was just a transition period between living with parents and buying a first home, it is certainly no longer the case. People from across the socio-economic spectrum are raising families in rental properties. What they want and what they need is **secure, affordable** and **healthy** rental housing. That is not provided by the RTA in its current form. For instance:

1. The RTA allows renters to be evicted at the end of a fixed term lease for no reason

When a fixed term residential tenancy agreement – which most Tasmanian renters have – comes to an end, the landlord is permitted to evict the tenant without justification.<sup>3</sup> This makes renters feel extremely insecure in their own home and makes them reluctant to exercise their rights out of fear of retaliation. There is no reward for being a “good tenant” – you can be evicted anyway.

2. The RTA permits a landlord to increase the rent to whatever they want

Whilst a landlord may only increase the rent once every 12 months, they can increase it by whatever they want: 5%, 20%, 200%.<sup>4</sup> A tenant is able to challenge a rent increase but very few do, as the consequence is likely to be non-renewal of their lease. Faced between an exorbitant rent increase and taking their chances finding a new home on the rental market, most accept the rent increase and make sacrifices elsewhere.

3. The RTA does not require homes to be able to be heated to a safe level

The RTA mandates that all rental properties must have heating but does not set any quality or efficiency standards: all the landlord has to do to satisfy the RTA is affix the cheapest heater they can find to the living room wall.<sup>5</sup> To get the property close to the World Health Organisation’s acceptable temperature for habitation, tenants often need to supplement the heating provided with the property with their own portable heaters, spending thousands of dollars on electricity.

The RTA prioritises the flexibility of landlords over the interests of renters having secure, affordable and healthy housing. This is not consistent with modern community expectations, or with having a productive and thriving economy:

- If renters are spending a large portion of their incomes on rent, they are not spending it at local shops, restaurants or attractions;
- If renters can’t afford to live close to work or school, they contribute to traffic and urban sprawl;
- If renters are sick from cold, damp and mouldy homes, and the stress of insecurity, there is an increase in sick leave and strain on the health system;
- An unaffordable private rental market imposes significant pressure on the social housing sector and housing support services.

Thankfully, other jurisdictions across Australia and the English-speaking world have led the way in showing that it is possible for rental housing to be secure, affordable and healthy:

---

<sup>3</sup> RTA s 42(1)(d).

<sup>4</sup> RTA s 20(2).

<sup>5</sup> RTA s 36M(3)(a).

- Arbitrary end of lease evictions have been abolished in Victoria,<sup>6</sup> New South Wales,<sup>7</sup> the Australian Capital Territory,<sup>8</sup> South Australia,<sup>9</sup> the United Kingdom,<sup>10</sup> Ireland, and soon Western Australia;<sup>11</sup>
- The ACT, Ontario and Ireland have tied rent increases to inflation;<sup>12</sup> and
- Victoria, the ACT and New Zealand have introduced mandatory retrofitting of insulation;<sup>13</sup> and
- Victoria, the ACT, New Zealand, Ontario, South Australia and Ireland have implemented quality and efficiency standards for heating.<sup>14</sup>

Improving renters' rights has little to no effect on the rate of investment in the private rental market,<sup>15</sup> which is predominately driven by capital gains.<sup>16</sup> According to Western Australia's Commerce Minister Tony Buti, the "market hasn't been affected" by prohibiting arbitrary evictions.<sup>17</sup> Landlords themselves admit that rental reforms are the least likely thing to motivate them to sell an investment property.<sup>18</sup>

It is now cheaper to rent in Melbourne than it is in Hobart, despite the significantly stronger protections for renters found in the Vic Act compared to the RTA, and despite the Victorian government making significant changes to land tax which have led to an investor sell-off:<sup>19</sup>

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<sup>6</sup> Vic Act s 91ZZD.

<sup>7</sup> NSW Act Division 2.

<sup>8</sup> ACT Act standard agreement cl 92-97.

<sup>9</sup> SA Act s 81.

<sup>10</sup> UK Act s 1.

<sup>11</sup> Keane Bourke, 'Removal of no-grounds evictions in WA could signal more policy backdowns', *Australian Broadcasting Corporation* (5 May 2026) <<https://www.abc.net.au/news/2026-05-05/removal-of-no-grounds-evictions-wa-major-policy-backdown/106639678>>

<sup>12</sup> ACT Regs 5A; Ireland Act s 19; Ontario Act s 120.

<sup>13</sup> Vic Act Schedule 4; ACT Regs Part 3; NZ Regs 13 and 15.

<sup>14</sup> Vic Act Schedule 4; NZ Regs 10 and schedule 4; Ontario Regs 15; SA Act s 68A; Ireland Regs 6.

<sup>15</sup> Tenants' Union of New South Wales, 'No evidence of no-grounds reform impacting housing investment: A difference-in-difference analysis' (20 September 2024) <[https://www.tenants.org.au/reports/impact\\_of\\_no\\_grounds\\_reform\\_did\\_analysis](https://www.tenants.org.au/reports/impact_of_no_grounds_reform_did_analysis)>; AHURI, 'Regulation of residential tenancies and impacts on investment' (Final Report no 391, November 2022) page 81; Whitehead C et al, *The Private Rented Sector in the New Century: A Comparative Approach* (2016, University of Cambridge) page 69; Tenants Queensland, 'Residential tenancy law and residential rental investment' (2018) <<https://tenantsqld.org.au/wp-content/uploads/2019/12/Tenancy-Law-Rental-Investment.pdf>>

<sup>16</sup> AHURI, 'Regulation of residential tenancies and impacts on investment' (Final Report no 391, November 2022) page 81; Tenants Queensland, *Residential tenancy law and residential rental investment* (2018) <<https://tenantsqld.org.au/wp-content/uploads/2019/12/Tenancy-Law-Rental-Investment.pdf>> page 12.

<sup>17</sup> Keane Bourke, 'Removal of no-grounds evictions in WA could signal more policy backdowns', *Australian Broadcasting Corporation* (5 May 2026) <<https://www.abc.net.au/news/2026-05-05/removal-of-no-grounds-evictions-wa-major-policy-backdown/106639678>>

<sup>18</sup> AHURI, 'Regulation of residential tenancies and impacts on investment' (Final Report no 391, November 2022) pages 46-48.

<sup>19</sup> Domain, 'December 2025 Rental Report' <<https://www.domain.com.au/research/rental-report/december-2025/?pin=540f36f131dca3c282b3c68aa4424a71>>; Domain, 'March 2026 Rental Report' <<https://www.domain.com.au/research/rental-report/march-2026/>>; Matt Grudnoff, 'Investors fled Victoria, houses stayed put', *The Point* (29 April 2026) <<https://thepoint.com.au/off-the-charts/260429-investors-fled-victoria-houses-stayed-put>>.

| <b>Jurisdiction</b> | <b>Median rent (house)<br/>March 2026 (\$)</b> | <b>Median rent (house)<br/>December 2025 (\$)</b> |
|---------------------|--|---|
| Melbourne           | 590  | 580   |
| Hobart              | 620  | 600   |
| Sydney              | 800  | 800   |
| Brisbane            | 680  | 670   |
| Adelaide            | 640  | 625   |
| Perth               | 740  | 700   |
| Canberra            | 700  | 700   |
| Darwin              | 720  | 700   |

The ACT, the only jurisdiction in the country which limits rent increases to CPI, is also the only part of the country where rents are at an “acceptable” level according to the Rental Affordability Index,<sup>20</sup> and along with Melbourne has the lowest rents when expressed as a share of income, and the best RAI scores:

| <b>Jurisdiction</b> | <b>RAI score</b> | <b>Rent as share of<br/>income (per cent)</b> | <b>Relative<br/>unaffordability</b> |
|---------------------|------------------|---|-------------------------------------|
| ACT                 | 133              | 23  | Acceptable rents                    |
| Greater Melbourne   | 118              | 25  | Moderately<br>unaffordable rents    |
| Greater Hobart      | 106              | 28  | Moderately<br>unaffordable rents    |
| Greater Sydney      | 100              | 30  | Unaffordable rents                  |
| Greater Brisbane    | 103              | 29  | Moderately<br>unaffordable rents    |
| Greater Adelaide    | 101              | 30  | Moderately<br>unaffordable rents    |
| Greater Perth       | 94               | 32  | Unaffordable rents                  |

Vacancy rates are also higher in Melbourne and Canberra than they are in all other jurisdictions,<sup>21</sup> whereas they are the lowest in Hobart, Darwin and Perth – the jurisdictions with the weakest tenancy laws:

| <b>Jurisdiction</b> | <b>Vacancy rate April 2026 (per cent)</b> |
|---------------------|---|
| Melbourne           | 1.8                                       |
| Canberra            | 1.6                                       |
| Sydney              | 1.5                                       |
| Brisbane            | 1.0                                       |
| Adelaide            | 0.8                                       |

<sup>20</sup> SGS Economics and Planning, ‘Rental Affordability Index 2025’ page 58  
<[https://sgsep.com.au/maps/rai/australia-rental-affordability-index-nov25/SGS%20Economics%20and%20Planning\\_Rental%20Affordability%20Index%202025.pdf](https://sgsep.com.au/maps/rai/australia-rental-affordability-index-nov25/SGS%20Economics%20and%20Planning_Rental%20Affordability%20Index%202025.pdf)>

<sup>21</sup> SQM Research, ‘National Vacancy Rate Rises to 1.2%’ (12 May 2026)  
<<https://sqmresearch.com.au/uploads/12-05-26-National-Vacancy-Rates-April-2026-2021.pdf>>

|        |     |
|--------|-----|
| Perth  | 0.7 |
| Darwin | 0.7 |
| Hobart | 0.6 |

Victoria has also outpaced every other jurisdiction in building new dwellings since 2019, and in the year to February 2026 building approvals in the ACT increase by 113.7 percent whilst in the same period approvals in Tasmania dropped.<sup>22</sup>

In other words, the commonly held views that improving renters' rights and increased private investment in the rental or property development sectors are mutually exclusive, and that improving renters' rights will lead to higher rents, are at odds with reality. To put it another way, there is no jurisdiction where weakening rights has led to cheaper rentals, and no jurisdiction where strengthening rights has led to more expensive rentals.

By accepting the recommendations set out in these submissions, it is entirely within the power of the Government to ensure that every Tasmanian has secure, affordable and healthy housing. This goal should not be compromised by disingenuous appeals to perversity, futility and jeopardy,<sup>23</sup> and other crude fear tactics, from parties that have a vested interest in maintaining the status quo or even weakening current protections.

Building new residential dwellings is a necessary but inadequate pre-condition to all Tasmanians having secure, affordable and healthy homes. By their nature, new builds are slow, expensive, and liable to be affected by supply shortages – both in respect of materials and labour – and economic headwinds. By contrast, bolstering tenants' rights is, for all intents and purposes, immediate and costs the Government very little.

A dysfunctional rental market does not exist in a vacuum; its negative externalities are felt in the wider economy. Any cost-benefit analysis of properly modernising the RTA must take into account not just the costs to individual landlords, but also the wider costs of not acting. A rent increase of \$50 per week is \$2,600 per annum that is not being used productively: it does not stimulate local businesses, and it prevents tenants investing in themselves and their communities. On the other hand, bolstering tenancy protections has wide positive consequences. For instance, mandating the retrofitting of insulation and improving heating standards would:

- Stimulate the construction sector;
- Reduce health expenditure;
- Reduce energy use and bills;
- Help meet climate goals; and
- Reduce sick days.

The Government, in assessing the costs and benefits of properly modernising the RTA, should take a broad view, and not give disproportionate weight to the views of groups that

<sup>22</sup> National Housing Supply and Affordability Council, 'State of the Housing System' (2026) page 29 <<https://nhsac.gov.au/sites/nhsac.gov.au/files/2026-04/ar-state-housing-system-2026.pdf>>

<sup>23</sup> Albert Hirschman, *The Rhetoric of Reaction* (Harvard University Press, 1991) page 7.

are predominately driven by financial self-interest rather than what is good for Tasmania as a whole.

The Government should instead prioritise the lived experience of Tasmanian renters, and their advocates: the people that have to live with the stress of not knowing where they will live from year to year, the people that have to sacrifice buying food and medicine in order to pay their rent, the people that have to live in houses that make them and their children sick. They are the victims of a catastrophic market failure and as such their needs should be the primary concern of this review process.

## 2.1 REGULATED APPLICATIONS

*2.1 (a) What are the potential benefits and drawbacks of a single, standardised rental application form?*

*(b) What information is essential for assessing a rental application, and what information should be considered unnecessary?*

*(c) Are the proposed timeframes for data retention and destruction appropriate?*

Tasmanian tenants currently have very few protections with respect to rental applications, and the pre-contractual stage of residential tenancy agreements in general. The RTA does not even expressly apply to prospective tenants and landlords.<sup>24</sup> Absent these protections, landlords are able to, by virtue of their generally advantageous bargaining position, extract a significant amount of sensitive information and documents from tenants without needing to disclose very much about themselves or the rental property in return.<sup>25</sup>

Much of the sensitive information and documents required by landlords is unnecessary to determine a rental application, and facilitates:<sup>26</sup>

- Security risks, if the information and documents are improperly stored;
- Exacerbating the power imbalance between tenants and landlords;
- The sale of personal information; and
- Discrimination, whether conscious or sub-conscious.

That is, the current unregulated application process does not adequately protect an applicant's security and privacy, and does not provide a fair process for choosing between applicants. A prescribed application form would go some way to addressing both issues, by limiting the information and documents that a tenant is required to disclose. There are no grounds for opposing the introduction of a prescribed application form that are not, at their

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<sup>24</sup> See s 3 definitions of "owner" and "tenant", contra NSW Act s 3; SA Act s 3; NZ Act s 2; WA Act s 3; UK Act s 42; ACT Act ss 5 and 6.

<sup>25</sup> *Commissioner Initiated Investigation into IRE Pty Ltd (Privacy)* [2026] AICmr 24 (1 April 2026) at [110].

<sup>26</sup> *Ibid.*

core, arguments in favour of jeopardising applicants' privacy and security, or arguments that landlords should be permitted to discriminate.<sup>27</sup>

In assessing an application, a landlord needs to be sure of the applicant's: (1) identity; (2) ability to pay the rent; and (3) whether the applicant is likely to look after the property.<sup>28</sup> However, a landlord's ability to ask for information and documents to support these criteria should be curtailed in order to protect the applicant's reasonable expectations of privacy and fairness.

Without limits on the amount and types of information and documents that an applicant must provide, applicants are incentivised to and/or tacitly required to overshare in the hope that it will set their application apart. In a tight rental market, notionally voluntary disclosure then becomes the normal expectation, and any applicant that defies expectations is very unlikely to be approved for a house;<sup>29</sup> creating a race to the bottom. For instance, currently it is expected that an applicant will provide a credit check as part of an application. Though a property management company that falls within the scope of the *Privacy Act 1988* (Cth) cannot "require" that it be provided, if it is not, the applicant will almost certainly be unsuccessful.

As such, a landlord should be limited to asking for a maximum of two prescribed forms of evidence to support each of the criteria.<sup>30</sup> Tenants should be able to elect which of these forms of evidence they provide – that is, for example, a landlord should not be able to dictate that a tenant must prove their identity only with a driver's licence or a passport, as that is an indirect way of discriminating against certain demographics. For similar reasons, the RTA should also specify that a landlord cannot take any form of proof as superior to any other – identity that is certified by a Personal Information Card is not inferior to identity certified by a passport.

With respect to demonstrating the applicant's ability to pay, landlords should not be permitted to require bank statements, as these potentially contain very sensitive and personal information, and have little probative value for determining a tenant's ability to pay. Where the tenant gets their income – the nature of their employment or otherwise – is not relevant. We have encountered property management companies that will not consider any applicant whose income derives from a Commonwealth payment or needs assistance from Housing Connect to pay their bond.

Further, landlords should not expect to be able to offload their balance sheet risk onto customers (and, by extension, the public at large) by requiring applicants to demonstrate that they have sufficient savings to cover rent if they have no income for a certain period. Investment, particularly in a necessity of life like housing, cannot be devoid of risk. Broader society's interest in having a securely housed population should take precedence over eliminating all risk for a narrow class of investors.

Landlords should also not be able to collect, and take into account, factors that would only be relevant to the applicant's suitability if the landlord assessing the application has a pre-existing bias, whether it be conscious or unconscious, against people with particular

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<sup>27</sup> Ibid.

<sup>28</sup> Ibid at [80].

<sup>29</sup> Ibid at [110].

<sup>30</sup> SA Regs 8; Qld Act s 57C.

characteristics. An applicant is not more or less suitable because of any of the attributes listed in s 16 of the *Anti Discrimination Act 1998* (Tas) so a landlord should not be able to require the applicant to disclose information about those attributes,<sup>31</sup> nor should they be able to ask about whether the applicant has a history of family violence, or their education level.

The Australian Information Commissioner has determined that the following information and documents are not necessary to determine an application for a rental property, are in breach of the *Australian Privacy Principles*, and may facilitate discrimination:<sup>32</sup>

- Gender;
- Details of dependants, in particular names and ages;
- Student status;
- Bankruptcy status;
- Retirement status;
- Previous living history;
- Property ownership status;
- Details of applications for other properties;
- Bond and rent assistance status;
- Citizenship/visa status;
- Emergency contact;
- Vehicle details;
- Smoker status;
- Bond history and claims;
- Copies of or details from identification documents;
- More than two documents proving income; and
- Employment details and status.

Further, a landlord should not be allowed to take into account, or be privy to, information and documents relating to an applicant's willingness to assert their rights under the RTA or their tenancy agreement. An applicant should not be preferred on the basis of their passivity, or unwillingness to "rock the boat". If this is allowed, it creates a chilling effect amongst tenants: they are unwilling to pursue their lawful rights under the RTA out of fear that it will affect their ability to secure a rental in the future. In conjunction with arbitrary evictions (discussed later in these submissions) this has the effect of rendering many of the rights ostensibly granted under the RTA as purely hypothetical. This is borne out by TUT statistics. In the six months from 1 July 2024 to 31 December 2024, 191 tenants who called the TUT

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<sup>31</sup> Vic Act s 30A; NZ Act s 12; UK Act s 39.

<sup>32</sup> *Commissioner Initiated Investigation into IRE Pty Ltd* (Privacy) [2026] AICmr 24 (1 April 2026) at [83]-[85]; see also: Vic Regs 30; SA Regs 8; Qld Act s 57C; NT Act s 18A; WA Act s 56A.

advice line were advised to seek repair orders from the RTC. In the entire 2024/25 financial year, only 70 applications for repair orders were actually filed with the RTC. Whilst there may be other reasons for declining to proceed with an application, the very significant disconnect between the two sets of numbers suggests that fear of retribution, whether through an end of lease notice to vacate or a negative reference, is a strong motivating factor.

As such, as well as prohibiting questions regarding whether an applicant has been in a bond dispute or any other legal dispute with a previous landlord, the RTA must tightly restrict how a reference is given, and what form it takes. Currently, whilst the RTA strictly regulates formal tenancy databases, verbal and written references are unmentioned. Formal databases are, in our experience, very rarely used in Tasmania. Instead, landlords and agents rely on verbal references from their predecessors. What is said in these conversations is not disclosed to the applicant, and not subject to any kind of oversight. A landlord is perfectly able to advise against approving an applicant on the basis that they are “difficult” or that they “rock the boat” or that they “ask for too many repairs” or that they “complained to the RTC”. This is clearly unfair to applicants, and as stated above undermines the whole operation of the RTA.

References must instead be in a prescribed form, must only answer prescribed questions, and must be disclosed to, and subject to challenge by, the applicant. Any other form of reference must be prohibited.

For similar reasons, the restrictions that apply to external blacklists must be extended to internal blacklists. There are certain geographic areas of the state where one or two property management companies have a de facto monopoly or duopoly over the local private rental market. As such, if a tenant gets a “bad name”, whether fairly or unfairly, with one of these companies, it will be very difficult for them to secure housing in that area (which they may need for work or family commitments). Internal databases should be limited to what is set out in s 48Y of the RTA, that is, serious breaches of the RTA, and be subject to oversight by the affected person and the RTC.

We support the proposed 30-day time frame for retention and destruction of documents and information, whether or not the applicant is successful, unless an applicant agrees for the landlord or agency to retain the documents and information in order to make other applications in the immediate future.<sup>33</sup> With respect to identification documents, they should not be retained at all; they can be witnessed, or verified through a third-party verification service.<sup>34</sup> The RTA must also specifically provide that the information and documents can only be used for the purpose of assessing the application, must be sorted securely, and must not be sold or otherwise provided to any third party. If proscribed documents or information comes into the possession of the landlord, inadvertently or otherwise, it (1) must be destroyed (or surrendered) immediately; (2) must be disclosed to the applicant; and (3) must not be taken into account when assessing the application.

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<sup>33</sup> Vic Act s 30B; SA Act s 76B; Qld Act ss 57D and 457E; NT Act s 18B.

<sup>34</sup> *Commissioner Initiated Investigation into IRE Pty Ltd (Privacy)* [2026] AICmr 24 (1 April 2026) at [85].

## Recommendations

2.1.1 The definition of “owner” in s 3 is amended to include a prospective landlord.<sup>35</sup>

2.1.2 The definition of “tenant” in s 3 is amended to include a prospective tenant.<sup>36</sup>

2.1.3 An application for a residential tenancy agreement must be in the prescribed form (*penalty provision*).<sup>37</sup>

2.1.4 In the course of an application, and landlord must not require an applicant to disclose proscribed documents or information (*penalty provision*).<sup>38</sup>

2.1.5 In the course of an application, a landlord must not require an application to provide more than two prescribed forms of evidence to prove their identity, ability to pay, and suitability, and may not restrict which of the prescribed forms of evidence will be accepted (*penalty provision*).<sup>39</sup>

2.1.6 The proscribed information and documents (which may be expanded in the RTR) must include (*penalty provision*):<sup>40</sup>

- Whether the applicant has been involved in a tenancy-related legal dispute;
- The applicant’s bond history;
- Bank statements;
- Any protected attribute under the Anti Discrimination Act 1998;
- Family violence history;
- Credit checks;
- Police checks;
- Medical records;
- Employment history, other than payslips;
- Social media account details;
- Source of income;
- Education level; or
- Whether the tenant has a pet.

2.1.7 If proscribed information or documents comes into the knowledge or possession of the landlord, the landlord must (1) destroy or surrender it immediately;

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<sup>35</sup> NSW Act s 3; SA Act s 3; NZ Act s 2; WA Act s 3; UK Act s 42.

<sup>36</sup> NSW Act s 3; ACT Act ss 5 and 6; NZ Act s 2; WA Act s 3; UK Act s 42.

<sup>37</sup> Vic Act s 30AC; SA Regs schedule 1; Qld Act s 57B.

<sup>38</sup> Vic Regs 30; SA Regs 8; Qld Act s 57C; NT Act s 18A; WA Act s 56A.

<sup>39</sup> SA Regs 8; Qld Act s 57C.

<sup>40</sup> Vic Regs 30; SA Regs 8; Qld Act s 57C; NT Act s 18A; WA Act s 56A.

(2) notify the affected application; and (3) must not determine application on the basis of the proscribed information or documents (*penalty provision*).

2.1.8 A prospective landlord may request an applicant to provide a reference from a previous landlord, but the reference must be in the prescribed form and the landlord must not get a reference in any other manner (*penalty provision*).

2.1.9 Any information and documents provided as part of an application must (1) not be used for any other purpose; (2) be kept securely; (3) not be sold or provided to any third party; and (4) be destroyed within 30 days, unless agreed by the applicant to be kept for further applications to be made within a further 30 day period - identification documents must not be kept at all (*penalty provision*).<sup>41</sup>

2.1.10 A landlord must not decline an applicant on the basis that they have children, unless the premises are unsuitable for children (*penalty provision*).<sup>42</sup>

2.1.11 A landlord must apply for an order from the RTC declaring premises to be unsuitable for children.

2.1.12 The RTA must incorporate the *Anti Discrimination Act 1998* and provide that a landlord must not unlawfully discriminate at the application stage, or during a tenancy (*penalty provision*).<sup>43</sup>

2.1.13 A landlord must provide an unsuccessful applicant with the reason(s) why they were unsuccessful (*penalty provision*).

2.1.14 Repeal s 48V so that database provisions apply to internal blacklists.

2.1.15 At any time during a tenancy, or within 12 months after the end of a tenancy, a tenant may request a landlord to provide them a written reference.

2.1.16 Upon request, a landlord must provide the tenant with a written reference within 14 days (*penalty provision*).

2.1.17 The written reference must be in the prescribed form, and must only provide information in accordance with questions on the prescribed form (*penalty provision*):

- Whether the rent was ever two or more payment periods in arrears; or
- Whether the tenant significantly breached the residential tenancy agreement (meaning caused loss above a prescribed amount or was evicted

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<sup>41</sup> Vic Act s 30B; SA Act s 76B; Qld Act ss 57D and 457E; NT Act s 18B.

<sup>42</sup> Vic Act s 30; SA Act s 52; WA Act s 56; RPA s 41; UK Act s 33.

<sup>43</sup> Vic Act s 30A; NZ Act s 12; UK Act s 39.

on the basis of a notice to vacate issued under ss 42(1)(a) or (g), or a s 41 application).

2.1.18 A landlord must not give a reference that is false, misleading or deceptive (*penalty provision*).

2.1.19 A tenant must not falsify, alter or temper with a reference from a landlord (*penalty provision*).

2.1.20 A tenant may apply to the RTC for an order that (1) if the landlord has failed to provide a reference upon request, that they must; or (2) that a reference is false, misleading, deceptive or otherwise unfair and must be amended.

2.1.21 If the landlord intends to use a third-party app to manage the tenancy, it must be opt-in (*penalty provision*).

## 2.2 SUB-TENANCIES

*2.2 (a) Should specific protections in the Act be extended to people in subletting arrangements? If so, what should those protections be?*

*(b) What are the potential challenges in formalising the relationship between tenants and subtenants?*

Private sub-tenants have, for all intents and purposes, no enforceable rights. Whilst, notionally, they may be under the protection of the *Australian Consumer Law*, there is little they can do in practice to prevent unfair and arbitrary evictions and general exploitation. For instance, if a head tenant requires the payment of a bond and the start of the occupancy, then refuses to give it back at the end, the only option available to the sub-tenant is to file a small claim against the head tenant. When the bond is only a few hundred dollars, and the cost of filing a claim is \$143.25, few sub-tenants are likely to pursue this option.

Sub-tenants are, almost by definition, people that are not readily able to secure a “normal” tenancy and are therefore especially vulnerable and in need of legislative protection. They often include recent migrants, with no local rental history, who rely on diaspora communities and can often be exploited by opportunistic members of those communities.

The protections of the RTA already extend to sub-tenants, but only if the sub-tenants have a social housing agreement.<sup>44</sup> It means that, for the purposes of the RTA, the head tenant social housing provider becomes the landlord and the sub-tenant occupant becomes the tenant. There are few practical issues with this arrangement, and we see no reason not to extend it to all sub-tenancy arrangements.

Private sub-tenancies in Tasmania generally take the form of a head tenant renting out a room within their principal place of residence – a boarding tenancy, within the meaning of the RTA. The other form of sub-let, where an entire residence is subject to the agreement, is explicitly banned under s 49(2). This was done with the intention of preventing sham head tenancies designed to avoid the operation of the RTA,<sup>45</sup> but creates more issues than it solves. Firstly, there is no penalty for a party that breaches the provision, nor any remedy for a victim. Secondly, it has the effect of rendering any sub-tenancy agreement made under it void, meaning that the victim, who the provision is notionally intended to protect, is left homeless.

### **Case Study**

*Bob\* and Maddy\* rented rooms in a boarding house operated by a corporation. The corporation had a head lease over the house, and sub-let agreements with Bob and Maddy. Because the corporation head tenant could not and did not “occupy” the house, the sub-let agreements were in breach of s 49(2). However, because Bob and Maddy had nowhere else to go, their agreements continued to have de facto effect. After vacating, they complained to the RTC, who had no jurisdiction to do anything. As far as Bob and Maddy are aware, the unlawful boarding house continues to operate.*

<sup>44</sup> RTA s 10(1).

<sup>45</sup> Tasmania, *Parliamentary Debates*, House of Assembly, 12 October 2010, 68-69 (Nick McKim, Minister for Corrections and Consumer Protection).

Both issues would be solved by simply making all sub-tenancy agreements subject to the RTA, broadening the definitions of “owner” and “tenant” to include head tenants and sub-tenants. Contrary to views at the time that s 49(2) was introduced,<sup>46</sup> we do not think that this would be onerous; numerous other jurisdictions have done it.<sup>47</sup> Few other provisions of the RTA would need to be modified:

- If a head tenant vacates the premises, a new agreement is automatically formed between the sub-tenant and the landlord;
- If the head tenant has been issued with an application for vacant possession, the sub-tenant must be notified and given a reasonable opportunity to be heard;
- The Court must be given the power, if the order for vacant possession is made against the head tenant, to make a new agreement between the sub-tenant and the landlord;
- If the sub-tenant gives notice to the head tenant of the need for repairs or maintenance, and the issue is the responsibility of the landlord, the head tenant must notify the landlord in accordance with their obligations under the RTA, and, if the sub-tenant makes an application for repairs, the RTC can make orders against the landlord as if they were a party to the application; and
- If the head tenant also lives at the same premises, s 56 must be limited to the parts of the premises that are intended for the exclusive use of the sub-tenant.

There must also be an explicit prohibition on head-tenants profiteering from sub-tenants. We do not want there to be an incentive for people to rent multiple properties, then sub-let them for much more than is paid under the head lease(s). As such:

- The head tenant must disclose the rent paid under the head lease before entering into a sub-tenancy;
- The rent charged by the head tenant must be proportionate and fair, relative to rent charged under the head lease;<sup>48</sup> and
- The sub-tenant must have the ability to apply to the RTC for a review of their rent at any time during the tenancy.

Finally, we recommend that the provisions concerning the approval of sub-tenants (as well as co-tenants and occupants), found at ss 49 and 50, are comprehensively overhauled. Whilst it is ostensibly the case that a landlord must not unreasonably refuse a tenant’s request to add a sub-tenant, in substance the landlord has an unfettered discretion, as:

1. The landlord is not obligated to provide reasons for the refusal;
2. There is no dispute resolution mechanism; and
3. There is no express remedy for a tenant when consent has been unreasonably refused.

We instead suggest that the request and approval process takes a similar form to Part 3C, that is:

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<sup>46</sup> Ibid.

<sup>47</sup> NSW Act s 3; Vic Act s 3; Qld Act ss 8 and 13; ACT Act ss 5 and 6.

<sup>48</sup> Ontario Act s 134.

- The tenant must seek approval (in the prescribed form);
- The landlord must respond within 14 days;
- If the landlord opposes the request, they must make an application to TASCAT; and
- The landlord must satisfy TASCAT that it would be reasonable to refuse consent.

Prima facie (but rebuttable) reasonable reasons may include: genuine overcrowding, poor rental history of prospective sub-tenant, if the tenancy is for a particular purpose, if the tenancy was made under an employment agreement, and, if the tenancy is for social housing, that the prospective sub-tenant (or occupant of co-tenant) is not eligible for social housing and/or is not a carer.<sup>49</sup>

For the sake of clarity, s 49 should also specify that tenants are not required to give notice or seek permission for: temporary guests who are not paying consideration, dependent children of the tenant, or a spouse that has their own principal residence but stays with the tenant from time-to-time. It often the case that landlords seek to restrict guests and other temporary visitors in a way that is incompatible with a tenant's right to quiet enjoyment, privacy, and peace.

#### **Case Study**

*Josie\* had a friend from interstate stay with her for a week while they visited Tasmania. When her property manager found out about this, she told Josie that in the future she must "notify us of any guests staying for more than 24 hours" and that "[w]e also require a copy of their ID for our records." When Josie pushed back on this, pointing out that there was nothing in her lease agreement or the RTA that required her to do this, the property manager sent her a break lease form, saying in not so many words that if she did not like it, she could leave. Josie also suspects that she is being treated differently on the basis of her ethnic background, and stereotypes relating to that, but has no direct evidence.*

## **Recommendations**

**2.2.1 Definition of "owner" in s 3 is amended to include a head tenant.<sup>50</sup>**

**2.2.2 Definition of "tenant" in s 3 is amended to include a sub tenant.<sup>51</sup>**

**2.2.3 Amend s 10(2) so that application to sub-tenancies is not limited to social housing sub-tenancies.**

**2.2.4 If a head tenant vacates the premises (except in the case of an order for vacant possession), a new head tenancy between the landlord and sub-tenant(s) is formed.<sup>52</sup>**

<sup>49</sup> NSW Act s 75; ACT Act s 35G.

<sup>50</sup> NSW Act s 3; Vic Act s 3; Qld Act s 8.

<sup>51</sup> NSW Act s 3; ACT Act ss 5 and 6; Qld Act s 13.

<sup>52</sup> Vic Act s 91R.

2.2.5 If a landlord makes an application for vacant possession with respect to the head lease, the court/TASCAT must be satisfied that the sub tenant(s) have been notified of the application and been given reasonable opportunity to attend.<sup>53</sup>

2.2.6 If an application for vacant possession has been granted against the head tenant, the sub tenant can apply to the court/TASCAT for an order to be made the head tenant if they are reasonably able to fulfill the obligations under the previous head lease.<sup>54</sup>

2.2.7 There must not be an incentive to profit from subletting: (1) head tenants must disclose the rent paid under the head lease prior to entering a sub-tenancy agreement (*penalty provision*) ; (2) the rent charged by the head-tenant must be proportionate and fair (*penalty provision*);<sup>55</sup> and (3) at any point during the term of an agreement, a sub-tenant may apply to the RTC for a review of the rent paid under the sub-tenancy agreement.

2.2.8 If only a room is sub-let, the provisions regarding boarding premises apply to the sub-tenancy agreement.

2.2.9 If a sub-tenant gives notice to a head tenant that repairs or maintenance are required, the head tenant is required to give notice to the landlord ASAP, and, in the process of making orders under any application for repairs made by the sub-tenant, the RTC may make orders against the landlord.

2.2.10 Repeal s 49(2).

2.2.11 Add to s 56 that, if the agreement is a sub-tenancy agreement for boarding premises, and the head tenant resides at the property, then the "premises" that are subject to s 56 is the bedroom (and any other party of the premises) intended for the exclusive occupation of the sub-tenant.

2.2.12 Add "or otherwise provide occupancy to persons not listed in the agreement" to s 49(1) to broaden to occupants and co-tenants.

2.2.13 A request to add a sub-tenant, occupant, or co-tenant must be in the approved form.

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<sup>53</sup> SA Act s 25

<sup>54</sup> NSW Act s 77; Qld Act s 243; WA Act s 59C; RPA s 109.

<sup>55</sup> Ontario Act s 134.

2.2.14 For the purposes of s 50, consent and notice are not required for: temporary guests that are not paying rent or a fee for their stay; dependent children of the tenant; or for the spouse of the tenant to stay from time-to-time.

2.2.15 If a request is made under s 49, the landlord must approve or oppose it within 14 days, otherwise approval is implied.<sup>56</sup>

2.2.16 If the landlord intends to oppose the request, they must provide written reasons and must make an application to TASCAT within the 14 day notice window.

2.2.17 The landlord must satisfy TASCAT that refusal of the request is reasonable. It may be reasonable to refuse where:<sup>57</sup>

- The addition of the extra person(s) would cause overcrowding (defined as being the ratio of bedrooms to occupants, with shared bedrooms prima facie considered overcrowding unless they are shared by spouses or children);
- The prospective person has a poor rental history;
- If the tenancy is for a special purpose;
- If the tenancy is made under and contingent on an employment agreement;
- or
- If the tenancy is for social housing, that the person is not eligible for social housing and/or is not the tenant's carer.

Refusal will not be reasonable if:<sup>58</sup>

- It is based on a protected attribute under the Anti Discrimination Act 1998;
- It is based on the prospective person's family violence history; or
- The person is a spouse or dependant of the tenant.

2.2.18 A prospective sub-tenant, co-tenant, or occupant may move into the premises pending the outcome of landlord's dispute, unless TASCAT orders otherwise. If TASCAT determines that refusal is reasonable, it can make an order that the occupant moves out by a certain date, with the order taking the effect of a possession order with respect to that person.<sup>59</sup>

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<sup>56</sup> ACT Act s 35C.

<sup>57</sup> NSW Act s 75; ACT Act s 35G.

<sup>58</sup> Vic Act s 81; SA Act s 74.

<sup>59</sup> ACT Act s 35D.

## 2.3 (A&B) BOARDING PREMISES AND SHARED ACCOMMODATION

*2.3 (a) What specific criteria should define a 'boarding premises' to distinguish it from other forms of shared accommodation? Should there be a process to determine whether a premises is a boarding premises, and if so, what should this process be?*

*(b) Should particular shared living arrangements be defined and included in the Act? If so, which ones and why?*

Boarding premises are, presently, simply any shared living arrangement where individual bedrooms are on separate residential tenancy agreements, and facilities are shared.<sup>60</sup> There is no threshold that premises are not boarding premises unless the building in question has a certain number of bedrooms. As such, Part 4A of the RTA applies whether a building has two or 20 bedrooms that are rented out, though the lived experience of an occupant will be significantly different between the two: the former is similar to a share house, the latter much more like a hotel or hostel. Nevertheless, we suggest that this is a difference of degree rather than kind, and that for the purposes of the RTA it is important to maintain the application of Part 4A (and other specific boarding provisions and variations) all the way up and down the scale.

If, instead, a size threshold was introduced, and buildings with, for instance, less than four bedrooms were no longer considered to be boarding premises for the purposes of the RTA, then there would no longer be clear rights and responsibilities regarding common area and shared facilities, utilities and other services, house rules, and the security of bedrooms (though we certainly think that these issues could be better dealt with, as detailed in these submissions). In other words, the current broad definition of boarding premises is useful for buildings of all sizes where there are shared living spaces but individual tenancy agreements, as there are particular issues associated with arrangements of that type that are not otherwise dealt with in the RTA.

Whilst we are of the view that boarding premises should need to be registered with the RTC, we think this should apply to all boarding premises, large and small, to compensate for the fact that, as a consequence of bonds not being permitted in boarding premises, the RDA has very little data as to the number and nature of boarding premises operating in Tasmania.

Rather than narrowing boarding premises status it should instead extend to types of agreements that are currently excluded from the RTA. *Firstly*, the exemption for student accommodation in the definition of boarding premises should be abolished. The natural reading of it suggests the absurd situation that in any building where more than 50 per cent of tenants are students then none of the tenants, including the tenants that are not students, are protected by the RTA. Even on a more generous reading, that it is only intended to exclude premises that are specifically marketed as student accommodation and reserved for students, there is no good reason to deny students the protections of the RTA, particularly if the accommodation is provided by a third party and not the education provider itself (though we are also of the view that the general exemption for educational institutions

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<sup>60</sup> RTA s 3.

should also be abolished).<sup>61</sup> International students, in particular (but not exclusively), are vulnerable to exploitation.

*Secondly*, s 6(2)(c), which, inter alia, excludes tenancies from the RTA where (1) the landlord occupies the premises as their principal place of residence; and (2) there are fewer than three bedrooms rented out, should be abolished. The threshold is arbitrary, and, as explained in the answer to 2.2 regarding sub-tenancies, tenants that fall outside the RTA are readily exploited and abused. Whilst we acknowledge that the permanent presence of the landlord could facilitate abuse and exploitation in the other direction, we do not think that this justifies the current blanket exemption. Rather, we suggest that in tenancies of this type, the landlord has access to emergency temporary exclusion orders modelled on those found in the RPA<sup>62</sup> and the Vic Act.<sup>63</sup>

#### **Case Study**

*Dale\* rented a bedroom in the landlord's residence. After a period, Dale gave notice that he intended to move elsewhere. In retaliation, the landlord gave him 48 hours verbal notice to leave the premises, otherwise she would call the police. Dale was worried that he would not be able to get his possessions back. Because the agreement was not covered by the RTA, Dale had no easily accessible remedies available to him: he could not complain to the RTC, and he could not rely on the fact that the landlord would need an order for vacant possession to forcibly remove him.*

*Thirdly*, other shared living arrangements, we suggest that the status of “occupants” is clarified and formalised. “Occupant” only appears in the RTA twice, in unhelpful contexts,<sup>64</sup> but day-to-day it is often seen in written tenancy agreements, as is “approved occupants”. It is often used interchangeably with sub-tenant, but is broader in that it also covers people that are not paying rent to the landlord or to the head tenant, most commonly the children of the tenant(s), but also others that may be living at the premises ex gratia. Though these people do not provide “value” within the meaning of s 10,<sup>65</sup> they nevertheless should be afforded some basic protections, including:

- If the head tenant(s) vacate, the tenancy does not automatically terminate. Rather if the landlord wants the occupant to vacate, they must serve a 14-day notice to vacate that is subject to s 45;<sup>66</sup> and
- Upon the hearing of s 45 application, the Court may create a new tenancy in the name of the occupant.<sup>67</sup>

If our recommendations regarding sub-tenants and co-tenants are adopted, in particular, it will be vital that there is a clear distinction between tenants, co-tenants, sub-tenants, and occupants.

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<sup>61</sup> Both issues were raised during debate of the Residential Tenancy (Boarding Premises) Bill 2003: Tasmania, *Parliamentary Debates*, House of Assembly, 20 August 2003, 30-93 (Judy Jackson, Attorney-General, and Kim Booth).

<sup>62</sup> ss 59, 60 and 101.

<sup>63</sup> ss 368-377A.

<sup>64</sup> ss 17(4) and 57(1A)(b).

<sup>65</sup> *Jordan v Community Housing Limited* [2024] TASSC 63.

<sup>66</sup> NSW Act s 77; Qld Act s 243; WA Act s 59C; RPA s 109.

<sup>67</sup> *Ibid*.

Finally, though co-tenancy arrangements (called “joint tenancies” in s 47C but colloquially are generally known as “share houses”)<sup>68</sup> are included in the RTA, their particulars, and the issues that frequently arise within them, are not dealt with. The RTA, s 47C aside, simply assumes co-tenants are a monolith; that any intra-tenancy conflict is outside its purview. We do not think that this is consistent with the modern rental sector, where, as a consequence of increasingly unaffordable rents and house prices, people are renting as co-tenants, including with strangers, for many years.<sup>69</sup> Co-tenants have no formal mechanism for resolving disputes. For instance, co-tenants are not able to remove themselves from a co-tenancy without the agreement of all parties, co-tenants are not able to remove a co-tenant who is jeopardising the tenancy as a whole, or is a safety risk to the other co-tenants, and there is no means for co-tenants to recover money owed by other co-tenants, or even determining liability, except through a civil claim.<sup>70</sup>

## Recommendations

**2.3.1 Repeal ss (c) and (d) of the definition of “boarding premises” and the definition of “tertiary student”.**

**2.3.2 Provide further clarity in the definition of “boarding premises” - for instance that it is the right to exclusive occupancy of a room (or rooms) but not whole premises, and that it is not self-contained.<sup>71</sup>**

**2.3.3 Add a new definition of “co-tenant”.<sup>72</sup>**

**2.3.4 Add a new definition of “occupant”: person approved to reside in premises by the landlord that is not a sub-tenant or co-tenant.**

**2.3.5 Repeal s 6(2)(c).**

**2.3.6 If a co-tenant wishes to vacate a tenancy unilaterally, they must issue the landlord and other co-tenants 21 days notice (in the prescribed form) - within that period the other parties can consent or refuse (silence is taken to be consent).<sup>73</sup>**

**2.3.7 If consent is refused, or the co-tenant needs to leave as a matter of urgency (as defined), then the co-tenant can apply to the RTC for an order that removes them from the tenancy.<sup>74</sup>**

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<sup>68</sup> Zoe Goodhall et al, ‘Understanding Housing Justice in Shared Housing’, *Housing, Theory and Society* (11 September 2025) page 4.

<sup>69</sup> Ibid page 3.

<sup>70</sup> Ibid page 9.

<sup>71</sup> Qld Act s 15.

<sup>72</sup> ACT Act s 6AA; SA Act s 3.

<sup>73</sup> ACT Act s 35A; NSW Act s 101.

<sup>74</sup> ACT Act s 35G.

2.3.8 Co-tenants may make an application to the Court/TASCAT for an order removing a co-tenant from the tenancy, with the same effect as an order for vacant possession made under s 45. The Court/TASCAT may only make the order if it is appropriate in the circumstances, taking into account:<sup>75</sup>

- The history of the tenancy;
- The conduct of the respondent co-tenant;
- The conduct of the applicant co-tenant(s);
- Any remedial action taken by the respondent;
- Whether any other orders (such as compensation or orders restricting or requiring an act or behaviour) are more appropriate; and
- The relative hardship of making or refusing to make the order.

2.3.9 The Court/TASCAT has general jurisdiction to resolve disputes between co-tenants, including determining liability, ordering compensation, etc.

2.3.10 If a tenant vacates premises and an occupant remains, the tenancy does not terminate; the landlord can accept the occupant as the new tenant, or issue a 14 day notice to vacate.<sup>76</sup> If the landlord makes an application for vacant possession following the notice to vacate taking effect, the Court may, if appropriate, create a new tenancy in the name of the occupant.<sup>77</sup>

2.3.11 If an application for vacant possession is made in relation to a co-tenancy, the Court may make the order for vacant possession only in respect to some co-tenants if: only some co-tenants consent to leaving, or, if the notice to vacate relates to a breach or s 42(1)(g), that only some of the co-tenants are wholly or mostly responsible.

2.3.12 Clarify that s 47C does not limit orders that the RTC/TASCAT/Court can make with respect to a co-tenancy dispute, including with respect to a former co-tenant.

2.3.13 All boarding premises must be registered with the RTC (*penalty provision*).<sup>78</sup>

2.3.14 If the landlord of the premises also resides there as their principal place of residence, and less than four bedrooms are used as boarding premises, then the landlord may temporarily prohibit entry to tenants and third parties in cases of serious misconduct.<sup>79</sup>

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<sup>75</sup> ACT Act s 35G; NSW Act s 102.

<sup>76</sup> NSW Act s 95; SA Act s 96.

<sup>77</sup> NSW Act s 77; Qld Act s 243; WA Act s 59C; RPA s 109.

<sup>78</sup> Vic Act s 142E; SA Act 103B.

<sup>79</sup> Vic Act ss 368-377A; RPA ss 59, 60 and 101.

## 2.3 (C) OCCUPANTS IN SOCIAL HOUSING

*2.3(c) How can the Act provide greater clarity on the status of occupants in social housing?*

As noted above, the word ‘occupant’ only appears in the RTA twice. Once in relation to ensuring that a lock is fitted to a bathroom to ensure that other persons are excluded whilst the facilities are being used and secondly in relation to water consumption charges.<sup>80</sup> Nevertheless, despite the lack of formal recognition, occupants in social housing tenancies are common, with Homes Tasmania confirming that “the numbers of approved occupants are a significant proportion of social housing tenancies”; around 39 per cent of all social housing properties have adult approved occupants (approx. 4300 adult approved occupants) and 48 per cent have children occupants (approx. 5300 child occupants).<sup>81</sup> However, the lack of legislative recognition of approved occupants in social housing means that until recently it was unclear whether they had the same protections as residential tenants – or any rights at all.

### **Case Study**

*Lorraine Jordan moved into her son's social housing property in Launceston in 2017. The social housing landlord agreed that she could live there and listed her on the residential tenancy agreement as an 'approved occupant'. In September 2023, Lorraine's son moved out of the property, with the social housing provider serving a trespass notice on Lorraine on the basis that she was not a 'tenant' and therefore a Notice to Vacate did not need to be served on her. After Lorraine and her cat were locked out of her home, Lorraine filed an application with the Magistrates Court, unsuccessfully arguing that she was a tenant and therefore entitled to a key to the property. On appeal, the Supreme Court found that although Lorraine was listed on the lease agreement as an 'approved occupant' she was in fact a 'tenant' because the rent had increased by approximately \$180.00 per fortnight after she moved in. The effect of the Supreme Court decision is that persons listed as 'approved occupants' in social housing will be recognised as 'tenants' and provided with all the protections set out in the RTA, as long as they are providing 'value' i.e. the household rent is higher because the approved occupant/s is living in the property.*

As a result of the *Jordan v Community Housing Limited* decision,<sup>82</sup> 4300 approved occupants living in social housing have been recognised as having the same protections as tenants. This was a significant win which ensures that approved occupants living in social housing cannot be evicted into homelessness without being afforded procedural fairness.

Nevertheless, we recognise that the decision has created some concern from social housing providers, particularly Justice Marshall’s finding that two residential tenancy agreements are created (a ‘parallel tenancy’) when an occupant is approved, moves in and thereafter

<sup>80</sup> RTA ss 17(4) and 57(1A).

<sup>81</sup> Correspondence from Eleri Morgan-Thomas CEO of Homes Tasmania to the Tenants’ Union of Tasmania on 9 December 2024.

<sup>82</sup> [2024] TASSC 63.

provides 'value' (though we are of the view that this element of the decision is obiter dicta, and therefore not binding):<sup>83</sup>

*When the appellant was listed by the respondent as an approved occupant, and the rent received by the respondent increased as a result of the appellant's presence as an occupant of the property, the "for value" aspect of the residential tenancy agreement was satisfied from that time. A residential tenancy agreement under the Act was thereby created at the time at which the appellant became an occupant at the property and rent was adjusted to reflect her occupancy. The existence of a separate residential agreement between the appellant's son and the respondent, and its later termination, did not affect the currency and continuation of the residential tenancy agreement to which the appellant was a party, and upon which she relied, to give her standing to make her application under s 57(3) of the Act to the magistrate [emphasis added].*

Whilst we recognise that the decision may impact on the ability of social housing providers "to allocate dwellings in a fair way",<sup>84</sup> due to occupants being approved without necessarily being eligible for social housing, we do not believe the problem is insurmountable. It is also worth emphasising that approved occupants provide a significant financial boost to social housing providers, with around \$15-20M per annum in extra payments being received.<sup>85</sup>

In circumstances where a social housing tenant has vacated the property due to death, illness or other life change, we strongly believe that approved occupants should be provided with an opportunity to remain in their home. We support a model in which all approved occupants can be recognised as a tenant following a hearing before an independent decision-maker. For example, s 77 of the NSW Act provides as follows:

- (1) The Tribunal may, on application by a person who is occupying residential premises, make an order recognising the person as a tenant under a residential tenancy agreement or join the person as a party to any proceedings relating to the premises, or both.
- (2) The Tribunal may make an order if—
  - (a) the sole tenant under the residential tenancy agreement to which the premises are subject has died, or
  - (b) the tenant no longer occupies the premises.
- (3) An order under this section may—
  - (a) vest a tenancy over the residential premises in the occupant on such of the terms of the previous residential tenancy agreement as the Tribunal thinks appropriate, having regard to the circumstances of the case, and

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<sup>83</sup> Ibid at [28].

<sup>84</sup> Adam Holmes, 'Tenancy rights tested in Tasmania after social housing provider changes locks with cat inside', *Australian Broadcasting Corporation*, 1 February 2025. <<https://www.abc.net.au/news/2025-02-02/social-housing-tasmania-dispute-gives-more-tenants-rights/104864290>> (accessed 20 April 2026).

<sup>85</sup> In Lorraine Jordan's case, the rent was increased by around \$180.00 per fortnight. \$180.00 x 26 x 4300 adult approved occupants amount to \$20,124,000 per annum.

(b) vest the tenancy from a date that is earlier than the order.

(4) An application for an order under this section may be made at the same time as any other application or during proceedings before the Tribunal or independently of any such other application or proceedings.

This section does not apply if the landlord is a social housing provider.

Unlike the NSW model, we believe that social housing tenants should be included. Expressed in another way, we do not believe that it is fair that someone could have lived in a home for many years, paid a contribution towards the rent, and then without notice or process be evicted into homelessness. For social housing properties, eligibility should remain fundamental to the decision-maker's assessment as well as consideration being given to whether vacating the premises would result in unreasonable financial or social disadvantage.<sup>86</sup>

## Recommendations

**2.3.15 That 'approved occupants' living in social housing and providing 'value' are provided with an opportunity to be recognised as a tenant following a hearing before an independent decision-maker.**

**2.3.16 Approved occupants in social housing should be required to meet eligibility criteria as well as consideration being given to whether vacating the premises would result in unreasonable financial or social disadvantage.**

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<sup>86</sup> RTA s 42(1) states that a social housing tenant can be served with a Notice to Vacate because the tenant's income is more than the prescribed amount; that the premises contain 4 or more bedrooms and the tenant does not reasonably require them all; that the premises have a special facility or modification that is not needed by the tenant and is required for someone with a disability; and that the tenant without the approval of the social housing provider has not occupied the premises for a continuous period of 8 weeks or more. Section 45(3)(ca) provides the tenant with an ability to challenge the Notice to Vacate on the basis that vacating the premises would result in unreasonable financial or social disadvantage.

## 2.4 SOCIAL HOUSING TENANCIES

*2.4.1 (a) Would creating a dedicated Part within the Act for social housing and housing assistance tenancies improve the operation of the Act?*

*(b) What specific provisions should be included in such a Part to ensure consistency and address current gaps?*

All residential tenants should have the same level of protection. We do not believe that creating a two-tiered system in which social housing tenants and other disadvantaged groups are treated differently will improve the operation of the Act. Indeed, it is likely that ‘reform’ will lead to weaker protections for socially and financially disadvantaged tenants. A good example is the minimum standards set out in the Act with all private landlords required to ensure that there are curtains or blinds in all rooms likely to be used as a bedroom or living area.<sup>87</sup> However, in social housing properties, curtains or blinds are only required in new residential tenancies meaning that many disadvantaged renters are not afforded the same privacy protections as renters in the private rental market and are forced to spend more on electricity keeping their homes warm.<sup>88</sup>

In Victoria, the Australian Capital Territory and South Australia there is no dedicated Part in their respective Acts for social housing and housing assistance tenancies. In the Northern Territory and Western Australia there is a dedicated Part/Division but it is limited to social housing terminations,<sup>89</sup> whilst in Queensland, there is a chapter on social housing tenants and ‘acceptable behaviour agreements’ including the ability to terminate based on breaching the agreement.<sup>90</sup> New South Wales is the only jurisdiction in Australia that has a broad-ranging and dedicated social housing section, addressing topics including bonds, fixed term agreements, rent and other charges, acceptable behaviour agreements and terminations.<sup>91</sup>

The analysis from other Australian States and Territories highlights that there is no reason for a dedicated social housing Part in the Act. Social housing terminations already form part of the Tasmanian Act.<sup>92</sup> Acceptable behaviour agreements in Queensland are entered into between the social housing provider and the tenant where antisocial behaviour has occurred or is likely to occur based on the tenant’s previous rental history.<sup>93</sup> After the agreement has been entered into, if the tenant “seriously or persistently breaches the terms

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<sup>87</sup> RTA s 36N

<sup>88</sup> See, for example Tenants’ Union of Tasmania, Shelter Tasmania and TasCOSS letter to members of the Legislative Council sent on 26 September 2023 which found that most social housing properties did not have window coverings. <<https://tutas.org.au/letter-to-legislative-council-window-coverings/>> (accessed 13 May 2026).

<sup>89</sup> NT Act Part 15; WA Act Part 5, Division 3.

<sup>90</sup> Qld Act Chapter 13A.

<sup>91</sup> NSW Act Part 7.

<sup>92</sup> RTA ss 42(1)(da)-(dd).

<sup>93</sup> Qld Act s 527D(5). See also <<https://www.qld.gov.au/housing/public-community-housing/public-housing-tenants/during-your-tenancy/tenancy-and-behaviour/tenant-behaviour>> (accessed 14 May 2026).

of the agreement” the social housing provider can seek a termination.<sup>94</sup> In Tasmania, any tenant is able to be evicted for seriously or persistently breaching their lease agreement.<sup>95</sup> We would also note that if the powers of the Court/TASCAT are broadened, as we recommend (see ‘Security of Tenure and Ending Fixed-Term Agreements’ discussion), the decision-maker will have the power to put in place measures akin to an acceptable behaviour agreement.<sup>96</sup>

Nevertheless, we do recommend the introduction of specific provisions in relation to the rent contribution paid by social housing tenants. The Tenants’ Union of Tasmania is regularly contacted by social housing tenants querying:

1. The calculation of their rent contribution;
2. How much notice they need to be given before their contribution is increased; and
3. The frequency with which their contribution is increased.

In private rentals, rent can only be increased once every twelve months and the tenant must be given at least 60 days’ notice of the increase. In social housing, the rent contribution is usually (but not uniformly) reviewed twice a year, and social housing providers do not have to provide any notice of an increase to the contribution (only the market rent).<sup>97</sup> There is no prescribed formula for how the contribution is arrived at: some providers take into account forms of income that others do not,<sup>98</sup> and if a tenant has inconsistent income (for instance, they work casual hours and are supplemented by a Commonwealth benefit, which may mean their entitlement to Commonwealth Rent Assistance fluctuates) it can be onerous to determine what their reasonable contribution should be.

A tenant on the social housing waitlist has no real choice in which provider they are assigned to, as if they reject an offer they will go back to the bottom of the waitlist, and certain community housing providers have monopolies over certain geographic areas. As such, all community housing tenants should be on a level playing field – no tenant should be worse off by virtue of needing a house in an area that is serviced by a particular provider.

Limiting the number of times the rent contribution can be increased each year, requiring a notice period to be provided, clarifying that social housing providers have to provide a written outline of how the rent contribution is calculated and providing a right of review to the Residential Tenancy Commissioner would ensure consistency between social housing providers and a level of transparency that is currently lacking.

## Recommendations

### 2.4.1 We recommend the status quo be maintained with no dedicated Part for social housing providers or for housing assistance tenancies.

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<sup>94</sup> Qld Act s 527E(1)(b).

<sup>95</sup> RTA s 42(1)(g).

<sup>96</sup> For example, Vic Act s 330A(h) requires the Tribunal member to consider “whether any other order or course of action is reasonably available instead of making a possession order”.

<sup>97</sup> RTA s 20.

<sup>98</sup> Such as the Energy Supplement and Pharmaceutical Allowance – which we believe should be off-limits, given their intended purpose.

#### 2.4.2 Specific provisions should be introduced for social housing properties:

- Limiting the number of times the rent contribution can be increased each year;
- Requiring a notice period to be provided;
- Clarifying that a written outline of how the rent contribution is calculated be provided; and
- Providing a right of review to the Residential Tenancy Commissioner.

## 3.1 BONDS

*3.1.1 Should bonds be portable? What are the benefits and potential challenges of implementing a portable bond scheme in Tasmania?*

*3.1.2 If there was an option to pay a rental bond in instalments, should this be available to all tenants?*

*3.1.3 Do you support removing the requirement for bond contributors to be prescribed in the Regulations? What, if any, safeguards might be needed if this requirement is removed?*

*3.1.4 Should the process for handling uncontested bond claims be the same regardless of whether the claim is initiated by the tenant or the landlord?*

*3.1.5 What other matters should be considered in relation to administering bonds?*

### Portable bonds

The median rent in Tasmania is currently \$510 per week,<sup>99</sup> meaning that tenants are having to pay around \$3000 (two weeks rent in advance as well as four weeks bond) just to be able to move into their home. As a bond cannot be released until after a tenancy has been terminated, in most instances, unless the tenant has gap between tenancies, the tenant will not get their bond back until after their next tenancy has already started – they need to secure money elsewhere to service their new rental. This can put tenants under a lot of financial strain and therefore makes them susceptible to predatory lenders.

A portable bond scheme, allowing a tenant to transfer their bond money directly from one rental property to another is likely to result in less administration and financial stress. It is also likely to result in fewer tenants asking the landlord to take the final 1-4 weeks of rent from their bond which some tenants request because they need to save up to pay the bond on their new rental property. In circumstances where the bond is exhausted paying the outstanding rent, the landlord has to file a claim in the Court in order to be repaid for common bond issues such as cleaning and damage to property. For all these reasons, we strongly support a portable bond scheme. In New South Wales, the ‘Portable Rental Bonds Scheme’ was announced in 2024,<sup>100</sup> however it is not yet operational, with a mid-2026 start date proposed.<sup>101</sup> Victoria passed a Bill in late 2025 introducing a portable bond scheme but

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<sup>99</sup> Tenants’ Union of Tasmania, Tasmanian Rents – March 2026.

<<https://assets.tutas.org.au/uploads/2019/11/TasRents-Mar-26.pdf>>

<sup>100</sup> New South Wales Government, ‘Portable bonds scheme to deliver cost of living relief’, (29 July 2024) <<https://www.nsw.gov.au/ministerial-releases/portable-bonds-scheme-to-deliver-cost-of-living-relief>> (accessed 17 May 2026).

<sup>101</sup> New South Wales Government, ‘Smart Rental Bonds set to give renters cost-of-living relief by allowing the transfer of rental bonds’ (23 March 2026) <<https://www.nsw.gov.au/ministerial-releases/smart-rental-bonds-set-to-give-renters-cost-of-living-relief-by-allowing-transfer-of-rental-bonds>> (accessed 17 May 2025).

it is yet to appear in the Vic Act<sup>102</sup> and South Australia has committed to introducing a portable bond scheme.<sup>103</sup>

### Bond paid in instalments

Whilst social housing providers in Tasmania may allow tenants to pay bond in instalments, this is not available to the majority of tenants, who rent privately.<sup>104</sup> We strongly support the ability of all tenants to pay bond in instalments as is legislatively prescribed in New South Wales, Queensland and Western Australia.<sup>105</sup> We do not believe that the payment of bond in instalments should be at the discretion of the landlord. We also do not believe that landlords should be able to discriminate against prospective tenants who are unable to pay bond in a lump sum and recommend a legislative requirement that tenants cannot be discriminated against because they intend to pay the bond in instalments.

### Deposit contributors

The RTA defines a ‘deposit contributor’ as a person/institution who pays “the whole or any part of a security deposit”.<sup>106</sup> The advantage of being a deposit contributor is that following the termination of a residential tenancy agreement, they are able to make a claim to the Rental Deposit Authority for the disbursement of bond. Currently, reg 4 of the RTR prescribes only two deposit contributors (Loreto Community Housing and Anglicare Tasmania Inc) meaning that other organisations or individuals who want to assist a tenant with paying their bond have to pay the money to the tenant directly and thus are not a party to any bond dispute. As a result, they have no way to recover the money at the end of the tenancy except lodge a small claim against the tenant, if the tenant does not return it voluntarily.

We believe that deposit contributions should be open to anyone with altruistic motives. Family members and community organisations amongst others should be able to be recognised as deposit contributors providing them with the opportunity to put in a bond claim. To ensure that the intention of providing some or all of the bond remains altruistic, we strongly recommend that the RTA make clear that no fee or interest can be charged for the payment of the bond contribution.

Provision must also be made for co-tenancies, as currently deposit contributions are not compatible with the often fluctuating nature of a share house: if a tenant that has been granted a deposit contribution moves into premises, that contribution cannot be used to pay out the outgoing tenant.

### Uncontested bonds

Bond is money paid by the tenant and held as security by the RDA. In other words, it is the tenant’s money unless proven otherwise. This should be the case whether or not the tenant

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<sup>102</sup> Vic Act Division 3A. The Consumer Legislation Amendment Bill 2025 (Vic) introducing this reform received royal assent on 25 November 2025 but Division 3A does not yet appear in the Vic Act.

<sup>103</sup> The South Australian Government announced a portable bond scheme as part of its March 2026 re-election campaign. See <<https://www.sa.alp.org.au/assets/documents/Booklet-Portable-Rental-Bonds.pdf>> (accessed 17 May 2026).

<sup>104</sup> RTA s 25(2A).

<sup>105</sup> NSW Act s 162(2); Qld Act s 117(1)(c); WA Act s 29(2A).

<sup>106</sup> RTA s 3(1).

participates in the bond dispute process<sup>107</sup> (though they should be afforded every chance to: the RTC should contact them on any form of contact that the RTC has on hand, and the landlord should be required to provide updated contact details as part of their claim, in case they have changed during the tenancy). If landlords are not required to demonstrate a prima facie case in favour of being awarded the bond, they will be incentivised to claim the entire bond in every case, whether or not they have any real basis for the claim, in the hope that the tenant defaults in responding.

Instead, landlords should only be able to lodge a claim if they also lodge supporting evidence.<sup>108</sup> If a claim is vexatious, misleading, deceptive or fraudulent, the RTC should be able to fine the claimant.

### Other matters

**Procedural fairness** At the end of the tenancy, if there is a dispute about the bond, both the landlord and tenant are informed that evidence in support of their claim needs to be provided, with both parties having to return their evidence at the same time. In some cases, the tenant is unaware why the landlord is requesting the bond, and is not given any opportunity to make submissions regarding the evidence filed by the landlord. In our opinion, this amounts to a failure to provide procedural fairness.

We strongly believe that the landlord should be required to provide tenants with their evidence before the tenant is required to respond. This model is already in place in Victoria with landlords required to provide their evidence to the tenant at least three days before their claim is submitted.<sup>109</sup> If parties are aware of the case against them, it may lead to negotiation, and a reduction in disputes. The Government should explore whether or not the current MyBond infrastructure is able to facilitate this – ie, that any file that is uploaded by one party can be viewed by the other.

**Excess** It is often the case that an owner will claim more than the bond, as they believe that their loss exceeds the bond. In these cases, the RTC is limited by the bond – if the landlord wants to claim more, they need to make a separate civil claim. If the bond determination is also appealed, it may be the case that there are two separate matters on substantially the same subject matter. Instead, it is our view that if the landlord makes a claim in excess of the bond, the matter should automatically be transferred to the Court/TASCAT, and treated as a minor civil claim (or compensation claim under the RTA, if a statutory cause of action is added), with the filing fee payable by the

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<sup>107</sup> Which they may have reasonable reasons for not doing, such as fleeing family violence.

<sup>108</sup> Vic Act s 419(1A). The Consumer Legislation Amendment Bill 2025 (Vic) introducing this reform received royal assent on 25 November 2025 but does not yet appear in the Act.

<sup>109</sup> Vic Act s 411(1A). The Consumer Legislation Amendment Bill 2025 (Vic) introducing this reform received royal assent on 25 November 2025 but does not yet appear in the Act. See also NSW Act s 165; Qld Act s 136AA.

landlord. This would allow the orderly and efficient resolution of the entire dispute, as well as disincentivising landlords from making ambit claims to the bond – if they want to make a claim beyond the bond, and thus incur the additional cost and time, they will need to be confident in its merits.

|                      |  |
|----------------------|--|
| Ambit claims         | Landlords regularly make ambit claims which include discretionary improvements, renovations, and obvious fair wear and tear. It should be made clear that the landlord is not entitled to claim the bond for these costs. <sup>110</sup>   |
| Prohibited costs     | It is the default position of both TASCAT and the minor civil division of the Court that parties to a dispute bear their own costs. <sup>111</sup> Landlords should not be able to circumvent this by claiming filing fees and costs from the bond. <sup>112</sup>   |
| Complex matters      | Bond disputes are determined by the RTC “on the papers”. As such, witness accounts are often given little weight and are unchallenged by cross-examination. This can lead to unfair outcomes, as it means that tenants are de facto required to keep everything in writing, even if the RTA does not otherwise require it, or if their landlord actively discourages it. In these cases, or in cases that involve complex legal matters, the RTC should have the discretion to transfer the matter to the Court/TASCAT, at no additional cost to the parties. <sup>113</sup> |
| Relevant factors     | To provide clarity to the parties and to the RTC, the RTC should be given guidance as to what may be considered as part of a bond dispute, such as the conduct of the parties, the efforts of the tenant to comply with s 53, and depreciation of assets, but should not be able to penalise a victim-survivor of family violence for the consequences of family violence. <sup>114</sup>  |
| Partial disbursement | If part of the bond, but not all, is in dispute, the entire amount is still held by the RDA until the determination has been resolved – which as it currently stands may take over three months. <sup>115</sup> That is, only \$100 of a \$2,000 bond may be in dispute, but until that dispute is resolved the remaining \$1,900 will be held by the RDA. This may encourage tenants to agree to claims that they would not otherwise agree with. Instead, the uncontested part of the bond should be disbursed as soon as the parameters of the dispute are finalised. To  |

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<sup>110</sup> Vic Act s 411AB; ACT Act s 31; RPA s 44.

<sup>111</sup> Section 120 *Tasmanian Civil and Administrative Tribunal Act 2020* (Tas); section 31AF *Magistrates Court (Civil Division) Act 1992* (Tas).

<sup>112</sup> Ibid.

<sup>113</sup> WA Act s 11L.

<sup>114</sup> Qld Act s 136D. Also see our response at 6.1 headed 'Family Violence and Bond'.

<sup>115</sup> CBOS, 'Disputing a rental bond claim' (18 October 2024) <

<https://www.cbos.tas.gov.au/topics/housing/renting/bonds/disputes-about-a-bond/disputing-a-bond-claim>>.

protect against any accidental or premature pay outs, the Court/TASCAT should be given jurisdiction to deal with appeals even where all or part of the bond has already been disbursed.<sup>116</sup>

Set-off

Currently, if a tenant has a valid argument to set-off part of the bond claim – for instance that their landlord has charged them a bill erroneously, or caused them non-economic loss – then the RTC cannot take it into account. Instead, they have to file a separate minor civil claim, which may not be worth doing given the likely amounts involved. As a matter of fairness and efficiency, the RTC should be able to set-off tenant losses against otherwise valid claims to the bond.

Co-tenancy transfer

With respect to co-tenancies, it is currently the case that the transfer system runs on good faith alone – the ingoing tenant is expected to pay out the outgoing tenant. Even if the ingoing tenant complies, it is potentially unfair, as they have no way of knowing if the outgoing tenant has taken any actions that will detrimentally affect the return of the bond at the end of the tenancy. The RTC/TASCAT must be given jurisdiction to deal with disputes around co-tenancies, for instance whether or not some of the bond paid out to the outgoing tenant should be deducted to compensate for damage caused.<sup>117</sup>

“Security deposit”

Although the term ‘security deposit’ is referred to throughout the RTA, it is more commonly referred to as ‘bond’. The Government already accepts this reality, as the RDA’s frontend is called “MyBond” and the CBOS material on the issue uses the word ‘bond’.<sup>118</sup> For the sake of clarity, and layperson understanding, we strongly recommend that the term ‘security deposit’ in the RTA is replaced with ‘bond’ as is the case in the majority of Australian jurisdictions.<sup>119</sup>

Lodging with RDA

Currently, the RTC cannot force a landlord to lodge a bond with the RDA, only threaten a fine. Even if this works, it is not ideal, as there should be consequences for failing to lodge the bond in the first place; the RTC should be able to order that the bond is lodged *and* issue an infringement notice to deter the landlord from doing it again.

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<sup>116</sup> NSW Act s 169.

<sup>117</sup> NSW Act s 174; ACT Act s 35F; Qld Act s 430; WA Act s 17A.

<sup>118</sup> For instance: CBOS, ‘Disputing a rental bond claim’ (18 October 2024) <<https://www.cbos.tas.gov.au/topics/housing/renting/bonds/disputes-about-a-bond/disputing-a-bond-claim>>.

<sup>119</sup> In Victoria ‘bond’ is used: Vic Act Part 10. In the Australian Capital Territory, ‘bond’ is used for residential tenancies and ‘security deposit’ for occupancy agreements: ACT Act Part 3 and Part 5A. In NSW the term ‘rental bond’ is used: NSW Act Part 8. In Queensland the term ‘rental bond’ is used: Qld Act Part 3. In the Northern Territory ‘bond’ and ‘security deposit’ are used interchangeably: NT Act Part 5 Division 2. In South Australia the term ‘bond’ is used: SA Act Part 4 Division 4. In Western Australia, the term ‘security bond’ is used: WA Act Part IV Division 1.

|                |  |
|----------------|--|
| Lodging claim  | The RTA provides that a landlord must lodge their claim within three days of the tenancy ending. In practise, this rarely, if ever, actually occurs, for both reasonable (such as that the landlord cannot secure quotes within the requisite time frame) and nefarious (such as that the landlord makes their return of the bond contingent on other payments by the tenant) reasons. That a tenant is also prevented from lodging their own claim until the three days has elapsed, then, just seems arbitrary and unjustified. Any party (including a deposit contributor) should be able to instigate a claim as soon as the tenancy has terminated. |
| Time to appeal | The current appeal period of seven days is too short to allow the parties time to properly consider their options and seek advice. We suggest that it is doubled to 14 days, so as to ensure the bond is dealt with in a timely manner but also to give the parties a reasonable chance to instigate an appeal. As previously suggested, the Court/TASCAT should be given jurisdiction to deal with appeals even where all or part of the bond has been disbursed, so that the bond can still be disbursed before the 14 days has elapsed.   |

## Recommendations

**3.1.1.1 A portable bond system is implemented.**

**3.1.2.1 All tenants be able to pay bond in instalments.<sup>120</sup>**

**3.1.2.2 Consent is not required for a tenant to be able to pay their bond in instalments.**

**3.1.2.3 The introduction of a provision prohibiting landlords discriminating against prospective tenants because they intend to pay the bond in instalments.**

**3.1.4.1 The landlord should be required to provide their evidence to the tenant at least three days before the claim is submitted.<sup>121</sup>**

**3.1.5.1 Landlords are only able to challenge a bond claim if supporting evidence is attached.**

**3.1.5.2 That the term 'security deposit' is replaced with 'bond'.**

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<sup>120</sup> NSW Act s 162(2); Qld Act s 117(1)(c); WA Act s 29(2A).

<sup>121</sup> Vic Act s 411(1A). The Consumer Legislation Amendment Bill 2025 (Vic) introducing this reform received royal assent on 25 November 2025 but does not yet appear in the Act. See also NSW Act s 165; Qld Act s 136AA.

3.1.5.3 Landlord must not require payment of bond before agreement is finalised (*penalty provision*).<sup>122</sup>

3.1.5.4 s 25(5) is amended to provide the RTC with a direct power to order a bond to be deposited with the RDA.

3.1.5.5 Specific provision is made for bonds in co-tenancies:<sup>123</sup>

- s 27 is amended to provide for a form relating to transferring a bond in a co-tenancy;
- When a co-tenant vacates a tenancy in accordance with other recommendations, that the remaining co-tenants must notify the RDA and pay out the outgoing tenant less any rent or other costs owing;
- The RTC/TASCAT is given jurisdiction to determine disputes;
- Arrangements are made in order to allow deposit contributors to receive their contribution when a co-tenancy ends.

3.1.5.6 ss 28(a), 29B(1), 29D(1), and s29F(1)(a) are amended so any party can lodge a claim for the bond after the tenancy is terminated.

3.1.5.7 If a landlord claims part of the bond but not the whole bond, the amount that is not in dispute is paid out to the tenant immediately.

3.1.5.8 A landlord may not claim the following from a bond (*penalty provision*):<sup>124</sup>

- Court/TASCAT fees and costs unless awarded by the Court/TASCAT;
- Discretionary renovations or improvements;
- Repairs or maintenance that are the consequence of fair wear and tear.

3.1.5.9 s 29G is amended to provide that:

- The RTC has jurisdiction to set-off any issue raised by the tenant against the bond, such as overpayment of rent or any compensation owed;
- The RTC may refer the matter to TASCAT/the Court if the issues are complex and/or the claim made by the landlord greatly exceeds the bond;<sup>125</sup>
- In determining a dispute, the RTC can have regard to efforts made by the tenant to comply with s 53, and the conduct of the parties, but cannot penalise a tenant for the consequences of family violence.<sup>126</sup>

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<sup>122</sup> NSW Act s 159.

<sup>123</sup> NSW Act s 174; ACT Act s 35F; Qld Act s 430; WA Act s 17A.

<sup>124</sup> Vic Act s 411AB; ACT Act s 31; RPA s 44.

<sup>125</sup> WA Act s 11L.

<sup>126</sup> Qld Act s 136D.

3.1.5.10 s 29G(1) is amended to provide that the RTC must not determine a dispute until all parties have had a reasonable chance to respond to any evidence, submissions, etc. The Government should explore whether MyBond is capable of allowing parties to view materials uploaded by the opposing party to a dispute, a la interstate electronic court filing systems.

3.1.5.11 s 29G(3) is amended to provide that notification must be sent to all points of contact.

3.1.5.12 s 29G(4) is amended to provide that RTC can issue fine if claim is vexatious, or material is misleading, deceptive or fraudulent.

3.1.5.13 s 30 is amended to provide that:

- The time to instigate an appeal is extended to 14 days from the date that the determination was made;
- The Court/TASCAT has jurisdiction to hear the appeal even if the bond has been wholly or partially paid out;<sup>127</sup>
- If the claim exceeds the bond, or the tenant has a counterclaim, the Court/TASCAT can treat it as a joined civil claim;
- All determinations are published by the RTC/Court/TASCAT;<sup>128</sup> and
- All appeals are to be referred to conciliation.

3.1.5.14 Amend the definition of 'deposit contributor' by removing the requirement that the person or institution must be prescribed in the RTR.

3.1.5.15 Expressly prescribe that no fee or interest can be charged by any person or institution acting as a deposit contributor for the payment of the bond contribution (*penalty provision*).

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<sup>127</sup> NSW Act s 169.

<sup>128</sup> WA Act s 11K.

## 3.2 SOCIAL HOUSING TENANCIES AND DEBT

*3.2 Should the Act be amended to allow social housing providers to accept payments from tenants to address debts from previous tenancies?*

All residential tenants who owe debts (that have been accepted or proven before an independent decision-maker) from previous tenancies should pay them. If a debt is not repaid, landlords, including social housing providers, can file a claim in the Court and obtain an order that the debt be paid. If the debt is not repaid, the landlord can apply for a warrant to sell property or seek a garnishee order.

In our experience however, social housing providers rarely pursue debts through the Court. Instead, the tenant is informed that they will not be able to re-apply for social housing until such time as they agree to enter into a repayment plan. In some cases, it can be many years before a tenant with a former social housing debt reapplies for social housing. This can be problematic particularly if the tenant disputes their liability. Whilst we support social housing providers being able to accept payments from tenants to address debts from previous tenancies, it is critical that there is an independent right of review to ensure that the debt is valid and the amount being sought is correct.

### Recommendations

**3.2.1 A provision formalising that social housing providers are able to accept payments from tenants to address debts from previous tenancies.**

**3.2.2 An independent right of review for social housing debts, either directly to the RTC/Court/TASCAT or with a right of appeal to one of those bodies.**

### 3.3 COST OF VARYING TENANCY AGREEMENT

*3.3 In what circumstances should the responsibility for costs associated with varying a tenancy agreement lie with the landlord?*

In Tasmania, a landlord “is liable for the payment of any costs incurred in the preparation of the residential tenancy agreement relating to those premises”<sup>129</sup> and cannot charge “any money or other consideration for entering into, renewing, extending or continuing a residential tenancy agreement other than rent, a security deposit and a holding fee”.<sup>130</sup> Similar provisions are in operation in every other Australian State and Territory.<sup>131</sup> We strongly believe that the status quo should be maintained as it would be unfair for the costs to be borne by the tenant in circumstances where a landlord seeks to vary or is ordered to vary the residential tenancy agreement. Whilst the RTA expressly prohibits costs “for making an application to rent residential premises”,<sup>132</sup> clarification that a landlord cannot charge for varying a residential tenancy agreement is recommended.

## Recommendations

**3.3.1 s 60 is amended to explicitly state that a landlord cannot charge for varying a residential tenancy agreement (*penalty provision*).**

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<sup>129</sup> RTA s 60.

<sup>130</sup> RTA s 17(1).

<sup>131</sup> Vic Act s 51; ACT Act Schedule 1 'Costs and procedures for establishing tenancy agreement'; NSW Act s 23; Qld Act s 59; NT Act s 24; SA Act s 50; WA Act s 55.

<sup>132</sup> RTA s 17(2)(a).

## 4.1 RENT INCREASES

4.1.1 *If alternative criteria for assessing rent increases were introduced, what should these criteria be?*

4.1.2 *Do you support other changes to assessing rent increases?*

4.1.3 *What would the impact of changes to the way rent increases can be determined be on the supply of rental properties?*

Since 2014, the median rent for a three-bedroom house in Hobart has almost doubled, from \$395 per week to \$685 per week.<sup>133</sup> This has out-stripped general inflation by \$153.93 per week – or over \$8,000 per annum.<sup>134</sup> Renting has become extremely unaffordable for all Tasmanians, with the median Tasmanian household spending close to 30 per cent of their income on rent, but especially for those on low incomes: according to Anglicare, zero properties on the private rental market are affordable for people on a Commonwealth payment.<sup>135</sup> In the period between 2016 and 2021, homelessness in Tasmania increased by 45 per cent.<sup>136</sup>

In short, the private market has catastrophically failed to provide Tasmanians with secure and affordable housing, its notional purpose. This has placed tremendous strain on the public and non-profit sector: the wait list for social housing is now 5,533 and average wait time to be housed is 104.4 weeks for *priority* applicants.<sup>137</sup>

Whilst we support measures to increase the number of rental properties in the private rental market – including by prohibiting the use of entire properties as short-stay accommodation, encouraging medium and high density in-fill development, and implementing a punitive tax on empty homes – increasing supply will never be sufficient on its own to ensure that rental properties will be secure and affordable. Shelter is a basic human need, a necessity of life; it is not a disposable and interchangeable piece of consumer ephemera. As such, the bargaining position between a person that *has* shelter and a person that *needs* shelter will always be asymmetric. In the words of the Australian Information Commissioner:<sup>138</sup>

*In the absence of any legislated right to housing, the competitiveness of the current rental market means that individuals are at a disadvantage when trying to rent a home and are more vulnerable to unfair practices. Unlike other consumer products and services, housing is an essential need, as well as being recognised as a human right*

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<sup>133</sup> Tenants' Union of Tasmania 'Tasmanian Rents' (December 2014) <<https://tutas.org.au/wp-content/uploads/2017/01/Tasmanian-Rents-December-2014-EC.pdf>>, Tenants' Union of Tasmania, Tasmanian Rents (March 2026) <<https://assets.tutas.org.au/uploads/2019/11/TasRents-Mar-26.pdf>>.

<sup>134</sup> Reserve Bank of Australia 'Inflation Calculator' <<https://www.rba.gov.au/calculator/annualDecimal.html>>.

<sup>135</sup> Anglicare Tasmania, 'Rental Affordability Snapshot Tasmania 2026' (April 2026) page 6.

<sup>136</sup> Shelter Tas, 'Homelessness in Tasmania' <<https://shelbertas.org.au/homelessness-in-tasmania/>>

<sup>137</sup> Homes Tasmania, 'Dashboard' (March 2026) <<https://www.homes Tasmania.com.au/data/assets/pdf/file/0021/291540/Homes-Tasmania-Dashboard-March-2026.pdf>>

<sup>138</sup> Commissioner Initiated Investigation into IRE Pty Ltd (Privacy) [2026] AICmr 24 (1 April 2026) at [110].

*in international law. The implications of not securing housing are significant, and those mediating access to housing wield significant power.*

This is borne out in the statistics regarding disputes of rent increase under the current system. In 2024/25, only 37 applications were received by the Residential Tenancy Commissioner. Of these, 24 related to a single landlord,<sup>139</sup> so only 13 rent increases in the general private market were disputed, though there were likely thousands of increases in that period. 86 per cent of the applications were wholly or partially successful. We do not think these statistics should be interpreted to mean that the vast majority of tenants considered their rent increases to be fair and reasonable. Rather, they suggest that:

1. Many rent increases are in fact unreasonable within the meaning of the RTA, even within the narrow range of factors that are able to be considered by the RTC;
2. Tenants have an insufficient amount of information readily available to them to determine what the general level of rents for similar properties in their area is; and
3. Tenants do not challenge these increases out of fear that they will be left without shelter as a consequence.

#### **Case Study**

*Norma\* is living in her first tenancy out of home. She is a good tenant, paying her rent on time every week and passing all routine inspections without issue. She has been given notice that her rent will be increasing by \$25 per week with her next renewal. She knows that, relative to some cases, it is not a huge increase in absolute terms, but she is a full-time student and is already eating into her savings to pay the current rent amount – it will not be easy for her to come up with an extra \$1,300 a year. She has also done her own research, and found that the median rent for the suburb she lives in is only \$5 above what she is paying now, and she doesn't think her house is above the median with respect to amenity. She would like to stay where she is – she wants to focus on her studies, not cause herself a bunch of stress by looking for a new rental – but she doesn't think the increase is fair. She is aware that she could try to negotiate with her agent, or challenge the increase through the RTC, but she does not know how the agent or landlord will react – it's possible that they will withdraw the renewal offer in retaliation or won't renew her lease the next time it expires. As such, it is likely that, in her words, she will just "cop it on the chin".*

If a tenant disputes a rent increase, either formally through the RTC or by attempting to negotiate with their landlord, they take the risk that any offer of renewal or extension of lease will be withdrawn, and they will receive a notice to vacate for end of lease. This could be partially addressed by (1) clarifying when and how a rent increase notice must be given; (2) abolishing end of fixed term evictions; and (3) explicitly prohibiting retaliatory evictions, which are all changes that should be made but are not adequate to ensure that rent increases are reasonable, predictable, and not wielded in a way that is intended to discipline a tenant.

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<sup>139</sup> Adam Holmes, 'Eureka Villages increases rents on aged and disability pensioners, despite regulator finding them to be 'unreasonable'', *Australian Broadcasting Corporation* (26 April 2024) <<https://www.abc.net.au/news/2024-04-26/eureka-villages-rent-rises-on-aged-pensioners/103735936>>

### **Case Study**

*Audrey\* has been living in the same private rental property for over a decade. She lives by herself, and her sole source of income is a disability support pension. She also has multiple pets. When her fixed-term lease had almost expired, her property manager sent her a lease renewal, which stated that her rent would be increasing by \$50 per week. This would make her rent close to 50 per cent of her DSP. She attempted to negotiate with her property manager. In response, her property manager immediately withdrew the renewal offer, and served Audrey with a notice to vacate for end of lease. After weeks of severe stress, Audrey and the landlord were able to negotiate an arrangement where the implementation of the rent increase would be delayed, but she still does not know how she is going to be able to cope when it does eventually take effect.*

As there is no objective marker to assess rent increases against, and because of the significant imbalance in the bargaining position of tenants and landlords, landlords are free to test the limits of what the market will bear. This is not the market performing as intended – it is a market failure. The lack of guardrails facilitates a feedback loop: as housing makes up a significant portion of the Australian Bureau of Statistic’s “basket of goods” used to determine the Consumer Price Index,<sup>140</sup> large increases in rents lead to higher general inflation, which may lead the Reserve Bank of Australia to increase interest rates, which are often used by landlords to justify rent increases, and so on.

### **Case Study**

*Kaitlin\* is a 63-year old widow’s pensioner who had lived quietly in her 2-bedroom West Hobart unit for 15 years. Her rent was always paid on time and she kept her home spotless. Despite her excellent rental history Kaitlin received a letter from her real estate agency informing her that the rent was increasing by 70 per cent, from \$175.00 to \$300.00 per week. When Kaitlin challenged the rent increase with the Residential Tenancy Commissioner on the basis that such a large increase was ‘unreasonable’ the RTC responded that “...the Act does not require or enable me to regulate the market, simply to assess rents in line with what the market is currently achieving”.*

We support the introduction of a “soft cap” on rent increases, as pioneered in the ACT, whereby if a proposed rent increase exceeds a marker set in the legislation, the landlord is obligated to apply to a decision-making body and satisfy it that the increase is justified in the circumstances.<sup>141</sup> If the increase is at or below the marker, the tenant is still able to challenge the increase, but they bear the onus of making the application and satisfying the decision maker that the rent is unreasonable.<sup>142</sup>

Though rents are higher in an absolute sense in Canberra than they are in Hobart, as a proportion of median income they are the lowest of all capital cities:<sup>143</sup>

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<sup>140</sup> Australian Bureau of Statistics, ‘Frequently asked questions (FAQs) about the Consumer Price Index’ (30 October 2024) <<https://www.abs.gov.au/articles/frequently-asked-questions-faqs-about-consumer-price-index>>

<sup>141</sup> ACT Act s 64B; Ireland Act s 19.

<sup>142</sup> ACT Act s 68.

<sup>143</sup> SGS Economics and Planning, ‘Rental Affordability Index 2025’ page 58

<[https://sgsep.com.au/maps/rai/australia-rental-affordability-index-nov25/SGS%20Economics%20and%20Planning\\_Rental%20Affordability%20Index%202025.pdf](https://sgsep.com.au/maps/rai/australia-rental-affordability-index-nov25/SGS%20Economics%20and%20Planning_Rental%20Affordability%20Index%202025.pdf)>

| <b>Jurisdiction</b> | <b>RAI score</b> | <b>Rent as share of income (per cent)</b> | <b>Relative unaffordability</b> |
|---------------------|------------------|---|---------------------------------|
| ACT                 | 133              | 23  | Acceptable rents                |
| Greater Melbourne   | 118              | 25  | Moderately unaffordable rents   |
| Greater Hobart      | 106              | 28  | Moderately unaffordable rents   |
| Greater Sydney      | 100              | 30  | Unaffordable rents              |
| Greater Brisbane    | 103              | 29  | Moderately unaffordable rents   |
| Greater Adelaide    | 101              | 30  | Moderately unaffordable rents   |
| Greater Perth       | 94               | 32  | Unaffordable rents              |

Vacancy rates are the equal second highest in the country (whilst Hobart's are the lowest):<sup>144</sup>

| <b>Jurisdiction</b> | <b>Vacancy rate April 2026 (per cent)</b> |
|---------------------|---|
| Melbourne           | 1.8                                       |
| Canberra            | 1.6                                       |
| Sydney              | 1.5                                       |
| Brisbane            | 1.0                                       |
| Adelaide            | 0.8                                       |
| Perth               | 0.7                                       |
| Darwin              | 0.7                                       |
| Hobart              | 0.6                                       |

In the year to February 2026 building approvals in the ACT increase by 113.7 percent whilst in the same period approvals in Tasmania dropped.<sup>145</sup>

In short, the soft cap in the ACT has kept rents low, relative to income, and has not stifled private investment in new housing.

In the ACT, the CPI reading for Canberra is used as the marker by which rent increases are measured (in Ontario, there is a CPI reading for the entire province). This is uniquely ideal for the ACT, which is more or less a city state. It is less suitable for Tasmania, where around 50 per cent of the population lives outside the capital; the CPI in Hobart may not have any real connection to what is happening on, for instance, the North-West Coast. As such, rent increases outside Hobart, tied to Hobart's CPI, may be more liable to be disputed. This undermines a large part of the purpose of adopting a soft cap: providing a reasonable degree

<sup>144</sup> SQM Research, 'National Vacancy Rate Rises to 1.2%' (12 May 2026)

<<https://sqmresearch.com.au/uploads/12-05-26-National-Vacancy-Rates-April-2026-2021.pdf>>

<sup>145</sup> National Housing Supply and Affordability Council, 'State of the Housing System' (2026) page 29 <<https://nhsac.gov.au/sites/nhsac.gov.au/files/2026-04/ar-state-housing-system-2026.pdf>>

of certainty and stability for both tenants and landlords. It may be preferable in Tasmania to instead establish a panel or board that determines the yearly marker for the whole of Tasmania based on a range of factors, including CPI, wage growth, and other cost of living issues, similar to New York City's Rent Guidelines Board. The Rent Guidelines Board "holds an annual series of public meetings and hearings to consider research from staff and testimony from tenants, landlords, advocacy groups, elected officials, and industry experts."<sup>146</sup>

If a soft cap is adopted, we also suggest that a ceiling of 2.5 per cent is imposed to soften the impact of unforeseeable supply shocks or other events that may cause a dramatic increase in short-term inflation.<sup>147</sup>

If a rent increase is disputed, by either the tenant or the landlord, the RTA should specify factors the RTC is to take into account beyond simply the general level of rents. These should include:<sup>148</sup>

- Capital improvements made to the premises by either party;
- The general condition of property, including whether the premises fails to meet, meets, or exceeds the minimum standards;
- The conduct of the parties, including whether the tenant would be entitled to seek compensation or a rent reduction flowing from a breach;
- The outgoings of both parties in relation to the premises (for instance, the cost of running the heating, which also benefits the landlord);
- The quantum of the increase;
- The previous history of rent increases, if any;
- The floor area of the premises;
- The relative hardship of the parties if the increase is or is not permitted.

With respect to the general level of rents, which should only be one factor amongst many, it is onerous for a party (particularly a tenant) to establish what it is. Per *Muddyman v Nest Property*:<sup>149</sup>

*The applicant submitted that the evidence of information on real estate agents' websites indicated that in the September quarter 2016, median rent for 'available private rental properties' in the greater Hobart area was \$320. 'Median' is the middle number in a series, where half the numbers are above the median and half are below. That statistic is not very useful in the analysis as contemplated in paras [27]-[29] above, because it says nothing about whether the rents for comparable residential premises are above or below the median. The median figures do not provide any real support for any particular conclusions about the general level of rent in the Rokeby locality.*

That is, tenants are required to provide specific examples of properties as a point of comparison. How exactly they are meant to do this, especially if there are few or no

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<sup>146</sup> New York City, 'About the RGB' <<https://rentguidelinesboard.cityofnewyork.us>>

<sup>147</sup> Ontario Act s 120.

<sup>148</sup> Vic Act s 47 and Regs 21A; ACT Act s 68; SA Act s 56; Ireland Act s 22; RPA s 52; Ontario Act s 126.

<sup>149</sup> [2021] TASMC 2 at [43].

properties listed for rent in their area at the time, is unclear. Per *Residential Tenancies Law and Practise New South Wales*:<sup>150</sup>

*In order for a tenant to discharge his or her onus of proof, even in the relatively benign circumstances of a landlord who presents no evidence on the issue, the tenant must visit other premises in the area and seek and obtain an interview with the occupants of those premises to ascertain the rent level, commencement of occupation date, date of last rent increase etc. The tenant must also seek permission from the occupant to take photographs or inspect the premises. As a single premises is unlikely to constitute an adequate basis of comparison, the tenant must repeat this process several times. If the details collected by the tenant are challenged at the hearing then the obliging occupants of the other premises may have to attend to give evidence or at least make available to the tenant documentary evidence corroborating the tenant's assertions.*

Instead, the RTC should carry out its own valuation of the property, or order the Office of the Valuer-General to carry out an assessment, to provide well-researched and reasonably objective data.<sup>151</sup>

Though the proposed soft cap is not “rent control” as traditionally defined, it is the case that the Government is obligated to impose rent caps, controls and freezes if they are necessary to ensure housing affordability.<sup>152</sup> We suggest, in addition to the soft cap, that the RTA contains a power for the Minister to declare an emergency period where all rent increases are frozen, similar to that imposed during the COVID-19 emergency period. Even if the power is not often exercised, the possibility that it might have the effect of disciplining the market.

There are other drafting issues with ss 20 and 23 that increase uncertainty, and often further discourage tenants from disputing increases:

- It is not clear whether it is enough for notice of an increase to be contained within an offer of renewal or extension, or whether it must be a separate document; if it is just in a prospective renewal or extension, is the rent increase conditional on the lease being extended or renewed (that is, does it still take effect if instead the tenancy moves to being a lease for a non-fixed period)? Is a tenant able to dispute an increase contained within a renewal/extension if they have not yet agreed to the renewal or extension? If the tenant does agree to the renewal/extension, has the tenant also agreed to the increase meaning it is no longer able to be disputed?
- If the landlord gives less than the required 60 days' notice of an increase, is the increase of no effect, or does it take effect only after 60 days has elapsed?
- A literal construction of s 20(3)(a), by virtue of the inclusion of "or extended or renewed" would prevent a landlord from ever increasing the rent if the fixed terms are for a period of 12 months or less;

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<sup>150</sup> Allan Anforth et al, *Residential Tenancies Law and Practice New South Wales* (The Federation Press, 8<sup>th</sup> ed, 2022) pages 131-132.

<sup>151</sup> NZ Act s 100.

<sup>152</sup> Leilani Farha, Special Rapporteur, *Guidelines for the Implementation of the Right to Adequate Housing A/HRC/43/43* (26 December 2019) para 69.

- If an unreasonable rent application is not determined by the RTC before the increase is due to take effect, or the determination is appealed to the Court, it is not clear what rent applies in the interim, and what happens if the tenant over or under pays.

## Recommendations

4.1.1 Amend s 20 to make it clear that rent cannot be increased during a fixed term unless the amount of the increase, or method of calculation, is specified in the written agreement.<sup>153</sup>

4.1.2 Notice of a rent increase must:<sup>154</sup>

- Be in the prescribed form;
- State whether the increase is above the prescribed rate;
- State the justification for the rent increase;
- State that if the increase is above the prescribed rate then it is not payable unless it is approved by the RTC;
- State that if it is below the prescribed amount, the tenant may dispute the increase to the RTC within 60 days of receiving the notice;
- Give the tenant at least 90 days notice of the increase;
- Be given even if the increase is already in the written agreement, or a proposed written agreement;
- Only contain one increase at a time; and
- Be served on the RTC, whether or not the increase is disputed, for the purpose of data collection.

4.1.3 A rent increase is not payable unless notice is given in accordance with the above, even if tenant has offered to pay higher rent, or has notionally “agreed” to pay it (*penalty provision*).<sup>155</sup>

4.1.4 Amend s 20(3)(a) for clarity: delete “residential”, “agreement” and “or was extended or renewed”.<sup>156</sup>

4.1.5 Rent increases are assessed in reference to a prescribed rate (CPI, or as set by a board, up to 2.5 per cent). A rent increase above the prescribed rate is prima facie unreasonable unless the landlord satisfies the RTC otherwise. If a landlord has given

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<sup>153</sup> Vic Act s 44; Qld Act s 91; NT Act s 41.

<sup>154</sup> Vic Act ss 44, 101 and schedule 1; ACT Act s 64B; Ontario Act s 116; Ireland Act s 22.

<sup>155</sup> NSW Act s 41; Vic Act s 101; Ireland Act s 22; Ontario Act ss 110 and 116.

<sup>156</sup> Ireland s 20; RPA s 50; Ontario s 119.

notice of a rent increase above the prescribed rate, they must make an application to the RTC within 30 days.<sup>157</sup>

4.1.6 If a tenant receives a rent increase notice at or below the prescribed rate, they may dispute the increase to the RTC within 60 days of receiving the notice. The tenant is able to dispute the increase even if they have notionally “agreed” or consented to it by, for instance, signing a lease agreement containing the increase.<sup>158</sup>

4.1.7 The party that makes the application to the RTC bears the onus of proof. The RTC must make its determination with reference to:<sup>159</sup>

- Capital improvements made to the premises by either party;
- The general condition of property, including whether the premises fails to meet, meets, or exceeds the minimum standards;
- The conduct of the parties, including whether the tenant would be entitled to seek compensation or a rent reduction flowing from a breach;
- The outgoings of both parties in relation to the premises;
- The quantum of the increase;
- The previous history of rent increases, if any;
- The floor area of the premises;
- The relative hardship of the parties if the increase is or is not permitted;
- The general level of rents.

4.1.8 In order to determine the general level of rents, the RTC may conduct its own investigation, including attending the premises, and/or order the Office of the Valuar-General to conduct a valuation.<sup>160</sup> Each party is to be given a reasonable opportunity to make submissions on the findings of the report(s).<sup>161</sup>

4.1.9 If the determination has not been made before the increase is intended to take effect, the increase is stayed. If it is eventually ordered that the increase can take effect, in part or in whole, the RTC may impose a payment plan on the tenant if they are unable to pay the gap as a lump sum. This gap is not rent arrears for the purposes of Part 4 unless the tenant falls behind on their payment plans (which may be amended by consent or by application to the RTC).<sup>162</sup>

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<sup>157</sup> ACT Act s 64B and Regs 5A; Ireland Act s 19; Ontario Act s 120.

<sup>158</sup> WA Act s 32.

<sup>159</sup> Vic Act s 47 and Regs 21A; ACT Act s 68; SA Act s 56; Ireland Act s 22; RPA s 52; Ontario Act s 126.

<sup>160</sup> NZ Act s 100.

<sup>161</sup> *Muddyman v Nest Property* [2021] TASMC 2.

<sup>162</sup> ACT Act s 69.

4.1.10 The RTC is to develop a calculator available on the CBOS website that allows parties to assess rent increases against the prescribed rate.<sup>163</sup>

4.1.11 The time to appeal a determination of the RTC is reduced to 14 days.

4.1.12 If a tenant receives notice of a rent increase during a fixed term lease, they are able to give a 14-day notice of termination within the notice period for the increase.<sup>164</sup>

4.1.13 The Minister may declare an emergency period where all rents are frozen if there is evidence of severe market failure and unaffordability.

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<sup>163</sup> Ireland Act s 19.

<sup>164</sup> NSW Act s 99; Ontario Act s 47.

## 4.2 RENT REDUCTIONS

*4.2 Should the Residential Tenancy Commissioner or TASCAT have the power to order a temporary rent reduction when a property is significantly damaged, including by a disaster or a similar event? What are the advantages or disadvantages of such an approach?*

Of all the jurisdictions considered in the writing of this report (all Australian states and territories, New Zealand, Ireland, Ontario, and the UK),<sup>165</sup> Tasmania is the only one where the tenancy legislation does not expressly provide a mechanism for tenants to get a rent reduction, or some form of compensation, following a breach by the landlord that causes the tenant loss.<sup>166</sup>

Whilst a tenant can still pursue compensation through a civil claim, this is inferior to a statutory right as (1) a statutory right is limited by the restrictions on general law causes of action;<sup>167</sup> (2) it is assumed by many landlords and property managers that the RTA operates as code,<sup>168</sup> and therefore that there are no remedies available to tenants outside those expressly provided for in the RTA, or they know that the process for seeking compensation is relatively onerous and threats are unlikely to be followed through with, which makes it difficult for tenants to instigate negotiations for compensation or a rent reduction; (3) a rent reduction or abatement are not remedies available at general law per se; and (4) an implied right, or a right found outside the RTA, is inconsistent with the stated purpose of the RTA, which is to provide a set of clear rights and responsibilities for all parties.<sup>169</sup>

### **Case Study**

*Leo\* is renting a property that is subject to severe mould and condensation. His TV has been rendered unusable because mould has started to grow inside of it, and his family has been constantly sick with respiratory issues. The landlord of the property has refused to acknowledge or fix the issues and has refused to compensate Leo. Leo cannot readily move, as he is a recent immigrant and does not have an extensive local rental history.*

The power to reduce rent, or award compensation, should be broad in order to allow the decision maker (whether it be the RTC or TASCAT) to make orders that are just in the circumstances, and to ensure that there are consequences for not complying with the RTA. It would be artificial to allow a reduction in the case of a natural disaster, but not where the neglect of the landlord causes a similar loss of amenity. Landlords should be financially incentivised to comply with the legislation; the possibility that a tenant may terminate their lease early is not an adequate deterrent when the vacancy rate is so low as (1) it will be difficult to for the tenant to secure another rental; and (2) it will not be difficult for the

<sup>165</sup> See, inter alia: ACT Act s 71; SA Act s 68; Qld Act s 94; Ontario Act s 130; NZ Act ss 59 and 59A; NSW s 43; Vic s 472; WA Act s 15; Ireland Act ss 56 and 118.

<sup>166</sup> This can be contrasted with the RPA s 98.

<sup>167</sup> *Young v Chief Executive Officer (Housing)* [2023] HCA 31 per Kiefel CJ, Gageler, Gleeson JJ.

<sup>168</sup> Which is at least partially true: *Director of Housing v Parsons* [2019] TASFC 3 per Estcourt J at [37].

<sup>169</sup> Tasmania, *Parliamentary Debates*, House of Assembly, 28 November 1997, 131-134 (Ray Groom, Minister for Justice).

landlord in breach to secure a new tenant. In the case of social housing or SDA, terminating is practically not available to the tenant at all as it will just put them at the back of the social housing wait list, and expose them to the private rental market.

### **Case Study**

*Donna\* and Shelly\* both rent from the same social housing provider. Parts of their dwellings are unusable due to ongoing repairs, delayed by insurance claims. Donna's property is subject to structural mould. She has been told that she will be transferred, but that there are no properties available for her at the moment. In Shelly's case she does not have a bathroom for her kids to use – she has been provided with a portable shower which is in full view of her neighbour. Neither tenant has been offered a rent reduction, or temporary alternative accommodation.*

Where the partial or total loss of habitability is caused by an event outside the control of the parties, such as a natural disaster, the rent should abate automatically in proportion with the loss of use.<sup>170</sup> If the premises are wholly uninhabitable, this should be fairly straightforward: the entire rent abates. If it is only partial, and the parties cannot agree as to how much the rent should abate, there should be a process for resolving the dispute. If premises are rendered uninhabitable and the landlord has appropriate insurance, it is often the case that the insurance company covers the rent for the period that the premises are uninhabitable. However, there is no requirement that the landlord must pass this benefit on to the tenant, though they often do. Including abatement provisions: (1) incentives landlords to get appropriate insurance protection; and (2) ensures that tenants are not paying rent for a property they cannot live in, which is a matter of fairness but also means they have the financial bandwidth to secure temporary alternative accommodation. If landlords have appropriate insurance, they should not be any worse off as a consequence of this change.

## **Recommendations**

**4.2.1 The parties can mutually agree to reduce the rent for a fixed period, or until a service or facility or part of the property is restored. An increase back to the normal rent does not constitute an increase for the purposes of s 20.**

**4.2.2 A tenant can apply to the RTC/TASCAT at any time during a tenancy for a rent reduction where:<sup>171</sup>**

- **Services and facilities (including shared facilities) have been withdrawn by the landlord, or are not able to be used as a consequence of the landlord's failure to comply with the RTA;**
- **The landlord has breached the tenant's quiet enjoyment, comfort, privacy, and/or peace;**

<sup>170</sup> NSW Act s 43; NZ Act ss 59 and 59A.

<sup>171</sup> ACT Act s 71; SA Act s 68; Qld Act s 94; Ontario Act s 130.

- The landlord has failed to comply with the minimum standards;
- The landlord has failed to carry out repairs;
- Or otherwise, that the tenant's comfort or enjoyment has been reduced as a consequence of the breach(es) of the landlord.

4.2.3 If the RTC/TASCAT is satisfied of one or more of the above, it must order a reduction commensurate with the loss of enjoyment or amenity, and may backdate the order. The order may be for a fixed period, or until the service has been restored, behaviour desists, etc. As part of the same application, the RTC/TASCAT may also make an order for repairs, or an order to desist behaviour, or order to comply with the RTA, as it sees fit in the circumstances, or a compensation order if the tenant has incurred financial loss.

4.2.4 Add a broad definition of "facilities" in s 3 that includes:<sup>172</sup>

- Essential services;
- Parking facilities;
- Laundry facilities;
- Recreational areas;
- Lifts;
- Garbage storage and disposal;
- Lawns and gardens;
- Stairways;
- Common areas.

4.2.5 If whole or part of the rental premises are rendered uninhabitable, through no fault of the landlord, rent abates accordingly.<sup>173</sup>

4.2.5 Any notice of a rent increase that is issued during a rent reduction is void (*penalty provision*).<sup>174</sup>

4.2.6 A tenant may make an application for a rent reduction within 12 months after a tenancy has been terminated, any award taking the form of compensation.<sup>175</sup>

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<sup>172</sup> Vic Act s 3; NZ Act s 2; Ontario Act s 2.

<sup>173</sup> NSW Act s 43; NZ Act ss 59 and 59A.

<sup>174</sup> ACT Act s 71.

<sup>175</sup> NSW Act s 188; RPA s 96; Ontario Act s 87.

## 4.3 HARDSHIP

*4.3 Should the Act include a permanent provision allowing either party to apply to end a tenancy early on the grounds of severe hardship? If so, what might constitute 'severe hardship'?*

We do not think it is necessary to include a general hardship in the RTA if the other recommendations made in these submissions are adopted, specifically:

- Limits are placed on rent loss following a break lease;
- That the reason for breaking a lease is made relevant when determining whether a landlord has mitigated their losses under s 64A;
- That the grounds for terminating a fixed-term lease early are expanded:
  - If a tenant has been offered social housing, aged care, or SDA accommodation;
  - If a tenant is affected by family violence;
  - If a tenant is the subject to abuse, harassment, threats, or violence by a neighbour;
  - If a tenant has been served with a rent increase notice during a fixed term;
  - If the premises do not meet minimum standards, are not habitable, or are not vacant;
  - If a tenant is adversely affected by a change to strata by-laws.

If these recommendations are not adopted, we support a hardship provision that does not place narrow parameters on what could constitute hardship (so as not to exclude unusual factual scenarios that undoubtedly constitute hardship) but imposes guardrails to ensure the interests of both parties are appropriately considered:

- The hardship of the party making the application must outweigh the hardship that is likely to be caused to other party if the order is made, particularly with respect to the relative financial capacity of the parties;
- The Court/TASCAT must consider whether there are other reasonable options available to the applicant; and
- The Court/TASCAT must have the power to award compensation to the respondent.

As explained in the answer to question 8.2, we do not think that the RTC should have the power to terminate tenancies.

## Recommendations

**4.3.1 ss 38A and 38B are repealed.**

**4.3.2 If a general hardship provision is adopted, that:**

- “Hardship” not be narrowly defined;
- The jurisdiction to hear an application be given to the Court or TASCAT;
- The hardship of the party making the application must outweigh the hardship that is likely to be caused to other party if the order is made, particularly with respect to the relative financial capacity of the parties;
- The Court/TASCAT must consider whether there are other reasonable options available to the applicant; and
- The Court/TASCAT must have the power to award compensation to the respondent.

## 4.4 RENT BIDDING

*4.4 Should the acceptance of offers from tenants to pay more than the advertised price be prohibited? Why or why not?*

In Tasmania, landlords and real estate agents cannot invite a prospective tenant to offer a higher rent than the advertised rent.<sup>176</sup> However, unsolicited rent bidding, where a prospective tenant voluntarily offers to pay more rent, is not currently prohibited.

It is incontrovertible that some prospective tenants faced with a shortage of rental properties will voluntarily offer more than the advertised rent in order to improve their chances of their application being successful. In 2025, the NSW Government released a report entitled *Bidding in the NSW Rental market – Analysis and Regulatory Insights* which analysed rental listing data against the NSW Government’s Rental Bond database.<sup>177</sup> The report found that over a ten year period rent bidding occurred “in approximately 12 per cent of tenancies, increasing to a height of 22 per cent during peak market pressure (2022-2024)”.<sup>178</sup> During the period of ‘peak market pressure’ (2022-24) the vacancy rate declined to 1.5 per cent in Greater Sydney and 1.3 per cent in regional NSW.<sup>179</sup> However, it is worth emphasising that over the same timeframe the vacancy rate in Greater Hobart and the rest of Tasmania was even lower which suggests that the pressure on Tasmanians to engage in rent bidding may be even higher.<sup>180</sup>

Unsolicited rent bidding should be made unlawful for a number of reasons. *Firstly*, when a property is advertised at a fixed amount, but prospective tenants believe they need to offer more, the listed price becomes meaningless. This results in an erosion of trust in the market and makes it harder for renters to compare options. *Secondly*, the line is often blurry between a tenant offering more and landlords or real estate agents subtly suggesting that higher offers may assist. Abolishing rent bidding will simplify enforcement and provide certainty to prospective tenants that the amount listed in the advertisement is the amount that the property will ultimately be rented out for. *Finally*, abolishing rent bidding will level

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<sup>176</sup> RTA s 16B.

<sup>177</sup> NSW Fair Trading, *Bidding in the NSW Rental Market: Analysis and Regulatory Insights* (Report, March 2025) <<https://www.nsw.gov.au/sites/default/files/noindex/2025-03/bidding-in-the-nsw-rental-market-analysis-and-regulatory-insights.pdf>> (accessed 23 April 2026).

<sup>178</sup> NSW Fair Trading, *Bidding in the NSW Rental Market: Analysis and Regulatory Insights* (Report, March 2025), page 7 <<https://www.nsw.gov.au/sites/default/files/noindex/2025-03/bidding-in-the-nsw-rental-market-analysis-and-regulatory-insights.pdf>> (accessed 23 April 2026).

<sup>179</sup> NSW Fair Trading, *Bidding in the NSW Rental Market: Analysis and Regulatory Insights* (Report, March 2025), page 8 <<https://www.nsw.gov.au/sites/default/files/noindex/2025-03/bidding-in-the-nsw-rental-market-analysis-and-regulatory-insights.pdf>> (accessed 23 April 2026).

<sup>180</sup> The NSW Fair Trading Report relied on vacancy rates provided by PropTrack. Publicly available PropTrack data from 2022 reported that the vacancy rate in Hobart was 0.89 per cent and 0.95 per cent for the rest of Tasmania. Similarly, PropTrack data from 2024 reported a vacancy rate in Hobart of 0.84 per cent and 1.27 per cent for the rest of Tasmania: PropTrack, *Market Insight: Rental Vacancy Rates October 2024* (Report, 20 November 2024); PropTrack, *PropTrack Rental Report: December 2022 Quarter* (Report, PropTrack, January 2023). Both reports are available at <<https://www.rea-group.com/about-us/news-and-insights/proptrack-insights/>> (accessed 24 April 2026).

the playing field, ensuring that applications are assessed based on suitability including reliability and references rather than excess financial capacity.

All Australian jurisdictions have banned solicited rent bidding.<sup>181</sup> Victoria, Queensland and the Northern Territory have gone further in also abolishing unsolicited rent bidding with a requirement that an offer cannot be solicited, invited or accepted from a prospective tenant.<sup>182</sup> We strongly recommend that Tasmania make unsolicited rent bidding unlawful to level the playing field, provide certainty and simplify enforcement.

## Recommendations

**4.4.1 That unsolicited rent bidding is abolished by making it unlawful to accept an offer of rent higher than the advertised rent.**

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<sup>181</sup> Vic Act s 30F(4); ACT Act s 11AD; NSW Act s 22A; Qld Act s 57(3); NT Act s 38A(3); SA Act s 52A; WA Act s 27AA.

<sup>182</sup> Vic Act s 30F(4); Qld Act s 57(3); NT Act s 38A(3).

## 5.1.1 MINIMUM STANDARDS

*5.1.1 (a) Should minimum energy efficiency standards be mandated for appliances (like heaters) provided in rental properties? What challenges might this present for property landlords?*

*(b) Are there other minimum energy efficiency standards that should apply to rental properties?*

*(c) What impact would adding minimum efficiency standards for appliances have on the supply of rental properties in Tasmania?*

Tasmania was the first jurisdiction in Australia to introduce minimum standards for rental properties. Whilst that is an achievement that is worth being proud of, it has become abundantly clear that the minimum standards as they currently stand are not adequate to ensure that Tasmanian renters have safe and healthy homes. For instance, whilst the RTA mandates that a rental property must have a heater, a landlord can satisfy the requirement by bracketing a cheap plug-in electric heater to a wall in the living room; there is no need to ensure that the heater is actually able to heat the room (let alone the house), or do it affordably.

This is not compatible with the World Health Organisation’s guidelines around healthy homes, which recommend that homes are kept in a range of 18-24 °C,<sup>183</sup> and it is not enough to prevent houses from becoming mouldy and damp. “Mould” is not mentioned in the RTA at all, but it is a pervasive problem in Tasmania. Tenants are more than twice as likely to experience issues with mould and damp than owner-occupiers.<sup>184</sup> Inquiries about mould make up a significant proportion of calls made to our advice line, more than one in every 20 calls:

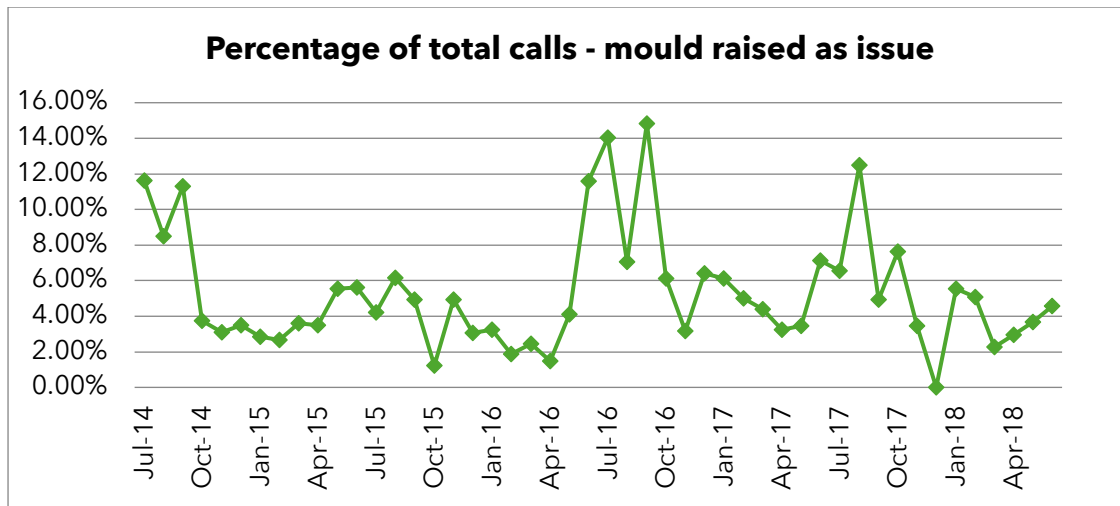
**Table: Tenants’ Union of Tasmania advice calls about mould**

| <b>Year</b> | <b>Total advice records</b> | <b>Advice records mentioning mould</b> | <b>Percentage of total calls</b> |
|-------------|-----------------------------|--|----------------------------------|
| 2022/23     | 2942                        | 208                                    | 7.1                              |
| 2023/24     | 3095                        | 194                                    | 6.3                              |
| 2024/25     | 2903                        | 189                                    | 6.5                              |

In the colder months, mould related calls have been up to almost 15 per cent of total calls:

<sup>183</sup> World Health Organisation, ‘WHO Housing and Health Guidelines’ (Geneva, 2018) page 33.

<sup>184</sup> Environmental Health Intelligence New Zealand, ‘Dampness and mould in New Zealand households: a tenure-based analysis’ (July 2023) page 1.



**Case study**

*Below are photos from premises rented on the private market. During the winter, the tenant and her two teenaged children slept together in the living area because the bedrooms were so damp, cold and mouldy. The property only had an oil heater, which was not compliant with the RTA and, regardless, did not work. The tenant's son developed nosebleeds and was constantly sick. Though the tenant complained to the RTC about the condition of the premises, no fine was ever issued.*



Mould, cold and damp can be catastrophic to human health. They can cause asthma, allergies and breathing problems,<sup>185</sup> particularly in infants, children and the elderly.<sup>186</sup> In extreme cases, they can cause death:

<sup>185</sup> Tasmanian Government, 'The Health Revolution 20-Year Preventative Health Strategy' (2026 exposure draft) Pillar 4 page 4; Environmental Health Intelligence New Zealand, 'Dampness and mould in New Zealand households: a tenure-based analysis' (July 2023) page 1.

<sup>186</sup> Environmental Health Intelligence New Zealand, 'Dampness and mould in New Zealand households: a tenure-based analysis' (July 2023) page 1.

In 2020, 2-year-old Awaab Ishak died from exposure to mould in his home in the UK.<sup>187</sup> The coroner found that the family’s concerns around the mould had been dismissed: they were told to “paint over it” and that it had been caused by their “family lifestyle”. No preventative steps had been taken by the landlord to improve the ventilation of the property, to find the cause of the mould, or to treat the mould.<sup>188</sup>

New Zealander Emma-Lita Bourne, also two, died from a brain haemorrhage in 2014, which the coroner found was caused by her cold, damp and mouldy home. The family repeatedly asked the landlord to fix the draught and mould in the toddler’s room but was ignored. They were provided with a plug-in heater, but it was too expensive for the family to run it consistently.<sup>189</sup>

The facts of these tragic cases demonstrate that it is simply a matter of dumb luck that something similar has not occurred in Tasmania. It is the reflexive response of landlords, both in the private and social housing sectors, to blame tenants for mould and damp. For instance, the Homes Tasmania fact sheet for damp, condensation and mould explicitly states that these problems are a tenant responsibility.<sup>190</sup> Nowhere in the fact sheet does it state that these issues may be a consequence of structural or design defects with the premises. In fact, it goes as far as to say that tenants contribute to the problem by breathing too much:

| <b>Activities</b>  | <b>Moisture/condensation</b> |
|--------------------|------------------------------|
| Breathing (asleep) | 0.30 Litres (per person)     |
| Breathing (awake)  | 0.85 Litres (per person)     |
| Cooking            | 3 Litres                     |
| Shower, bath       | 1 Litre                      |
| Drying clothes     | 5.5 Litres                   |

If mould and damp is caused simply by *living* in the house then the problem is the house, not the tenants. As stated in the Awaab Ishak report:<sup>191</sup>

*Professionals plac[ed] too much emphasis on the cause of the mould being due to "family lifestyle." In fact as [redacted] indicated, homes need to be habitable for modern living. There is no evidence the family lived an "excessive" lifestyle and the daily*

<sup>187</sup> Kearsley, J (2022) *Report to prevent future deaths* (2022-0365) Coronial Court Area of Manchester North page 1.

<sup>188</sup> Ibid page 2.

<sup>189</sup> Laura Walters, Josh Fagan, Vernon Small, ‘Damp state house played part in toddler’s death’, *Stuff* (4 June 2015) <<https://www.stuff.co.nz/auckland/69095130/damp-state-house-played-part-in-toddlers-death>>

<sup>190</sup> Homes Tasmania, ‘Fact sheet Damp condensation and mould’ <[https://www.homes Tasmania.com.au/\\_\\_data/assets/pdf\\_file/0025/270817/Fact-sheet-Damp,-condensation-and-mould-Homes-Tasmania.pdf](https://www.homes Tasmania.com.au/__data/assets/pdf_file/0025/270817/Fact-sheet-Damp,-condensation-and-mould-Homes-Tasmania.pdf)>

<sup>191</sup> Kearsley, J (2022) *Report to prevent future deaths* (2022-0365) Coronial Court Area of Manchester North page 2.

*activities of living which contributed to the damp and condensation were normal activities such as cooking, washing, bathing and drying clothes.*

In other words, blaming mould and damp on normal activities of living directly led to the death of Awaab Ishak, yet it is still the express position of Tasmania’s model landlord. It is particularly absurd to blame cooking when there is no requirement that a kitchen must be equipped with a rangehood, or any other form of ventilation.

Of the 15 orders for repairs made by the RTC in 2024/25, nine were made against social housing providers, that is, they had to be forced to carry out their obligations under the RTA. This suggests that there is a culture of shifting blame to tenants.

For an example of mould in social housing that was blamed on the tenant’s “lifestyle” and lack of cleanliness (shared with the permission of the tenant):





The cost of failing to ensure that renters have healthy and safe homes is ultimately borne by the renter and by the State. Per the exposure draft of the Government's 20-Year Preventative Health Strategy:<sup>192</sup>

*Every year that Tasmania doesn't meet the need for affordable housing, the state loses about \$17 million in avoidable health, wellbeing and social costs. That's money we could save simply by making sure people have secure homes.*

*When houses aren't healthy, they chip away at our wellbeing and push costs onto the health system. Fixing this pays off in a big way.*

- *Clearing mould and dampness in Australian homes could save around \$100 million in health costs for every one million people over twenty years.*
- *Tackling cold housing could save an estimated \$870 million in health costs and deliver billions in economic gains across South Eastern Australia.*
- *It costs about \$7,000 to make an unhealthy home safe, but each year after that the same home gives back about \$14,000 in avoided health costs and wellbeing gains. In other words, it pays for itself in the first year.*

In 2019/20, 35-39 per cent of people in the three lowest income quintiles were renters, as opposed to around 25 per cent of people in the highest income bracket.<sup>193</sup> Low-income households spend around 6.4 per cent of their incomes on energy costs, as compared to high income houses at about 1.5 per cent.<sup>194</sup> Rising energy costs, along with rising rents, make it very difficult for tenants to afford to heat their homes to a safe level; around 50,000

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<sup>192</sup> Tasmanian Government, 'The Health Revolution 20-Year Preventative Health Strategy' (2026 exposure draft) Pillar 4 pages 4 and 5.

<sup>193</sup> Australian Institute of Health and Welfare, 'Home ownership and housing tenure' (16 October 2025).

<sup>194</sup> Australian Council of Social Services, Brotherhood of St Laurence and Australian National University, 'Energy stressed in Australia' (October 2018) page 4.

Tasmanian households experience energy poverty.<sup>195</sup> For a concrete example of rising costs, the price of water is set to increase by 35 per cent over the next five years.<sup>196</sup>

In order to ensure that tenants are able to keep their homes within the safe range recommended by WHO, free of dangerous mould and damp and other safety risks, to reduce their energy costs, and to mitigate their carbon footprints, it is necessary to phase out electric panel heaters, wood heaters, and gas heaters as valid options under the RTA. In other words, heating should be limited to split system heat pumps and ducted heating. These systems should be required to meet a certain energy efficiency rating, and be suitable for the property, not just the living room; there is no health-based rationale for limiting heating requirements to one room, keeping in mind that Emma-Lita Bourne died due the condition of her bedroom.

However, improving heating standards will be far from sufficient by itself to ensure that tenants are safe, and that heating is affordable:

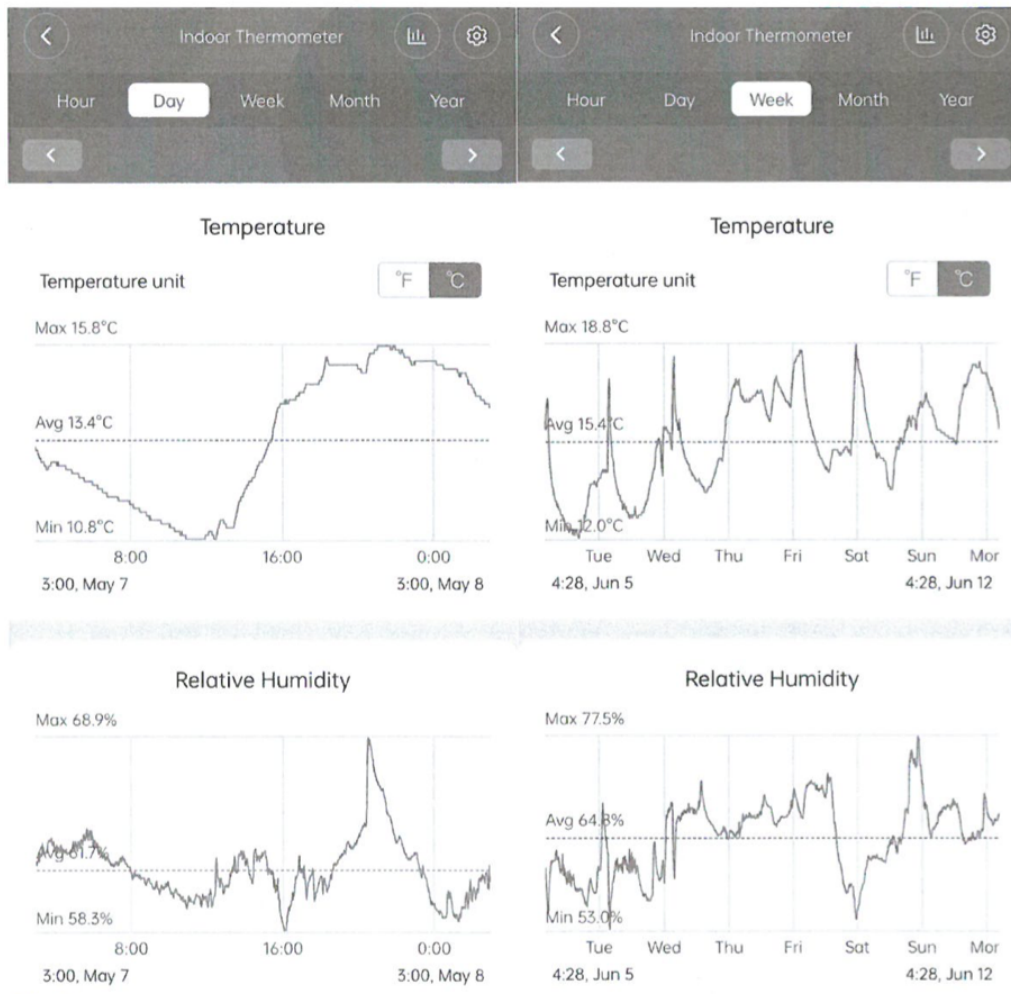
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<sup>195</sup> Tasmanian Council of Social Services, 'Submission to the Inquiry into Energy Prices in Tasmania' (October 2023).

<sup>196</sup> Office of the Tasmanian Economic Regulator, '2026 Water and Sewerage Price Determination Investigation Summary for customers and stakeholders' (April 2026) page 9.

**Case study:**

Bronwyn Smith lives with her family in a three-bedroom rental property north of Hobart. The house is continuously cold over the winter months. Although there is a heat-pump in the main living area it does not warm up the rest of the house meaning that the children sleep with beanies on. Bronwyn bought a small plug-in heater in the hope that she could warm up her children’s bedrooms but after receiving a big jump in her electricity bill has stopped using it because she is worried how she will pay the increased electricity bill. After contacting the Tenants’ Union of Tasmania, Bronwyn installed a sensor thermometer which demonstrated that the family are often living in a home colder than the healthy temperature range recommended by the World Health Organisation.



In order to achieve this the house also needs to be constructed in a manner that ensures that heat is retained. This can be done by mandating that all rental properties are retrofitted with insulation, a step that has been taken in Victoria, ACT, and New Zealand<sup>197</sup> – jurisdictions with similar winter climates to Tasmania. Insulation should be installed in the roof and floor (where possible) and pumped into the walls to provide the best effect. Landlords must also be required to ensure the premises are free of damp and mould, including the sub-floor, and must take all reasonable steps to draughtproof the premises.<sup>198</sup>

<sup>197</sup> Vic Act Schedule 4; ACT Regs Part 3; NZ Regs 13 and 15.

<sup>198</sup> Vic Act schedule 4; Qld Regs schedule 6 s 4; SA HI Regs 15; NZ Regs 28; Ontario Regs 6.

Ventilation requirements must also be improved. It is one thing to blame tenants for mould and damp when the premises is fitted with an abundance of openable windows, it is another when a property has few points of ventilation. The current s 360 is drafted in a confusing manner but taken on its face most properties will meet the minimum requirements simply by having a front door, which is included in the definition of “opening”. In other words, an otherwise typical property could have no openable windows and still satisfy ventilation requirements:<sup>199</sup>

Diagram 1

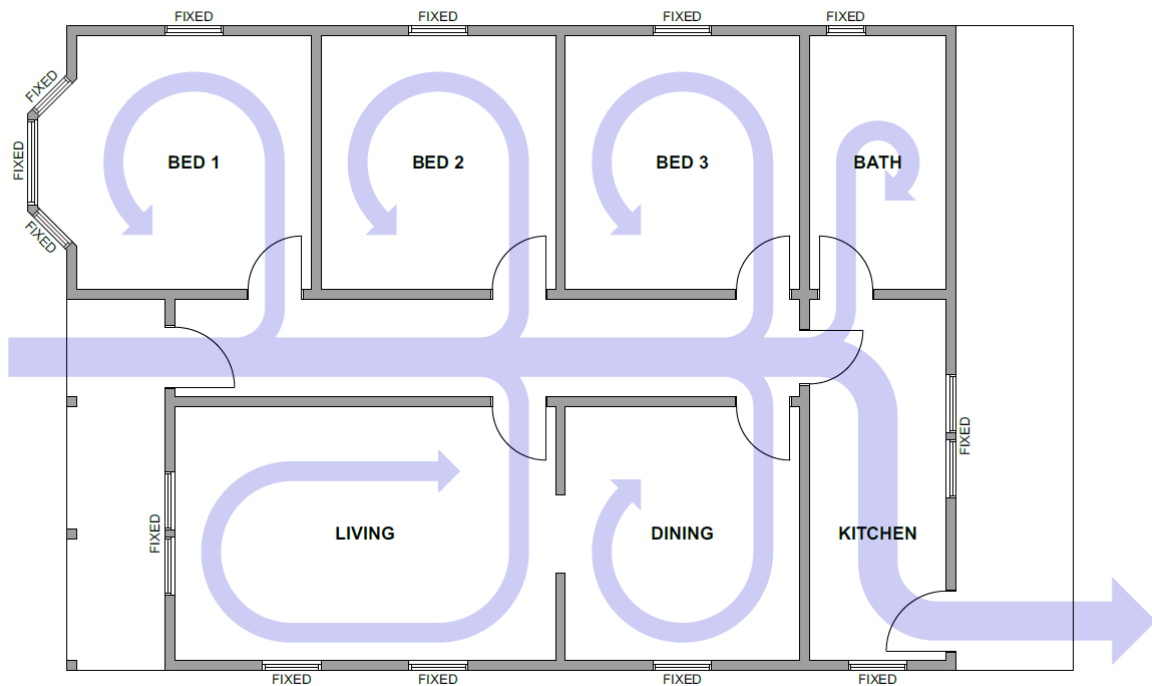
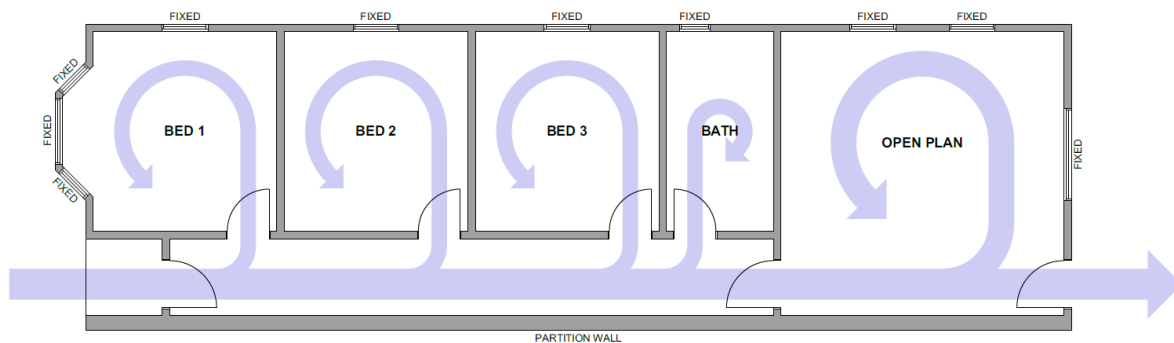


Diagram 2



All drafting by JJJ Design

A front (or back or side) door should not be considered an opening for the purposes of ventilation, except perhaps if it is equipped with a porous and lockable security door:<sup>200</sup>

<sup>199</sup> For further examples of properties that would meet the ventilation standards without having openable windows, see [schedule 2].

<sup>200</sup> NZ Regs 21; Ontario Regs 20.

If a window was manufactured with the intent that it should be openable, the landlord should be required to ensure that it is able to be opened and secured.<sup>201</sup> It is common practice in rental properties for landlords to haphazardly whitewash over windows, so they are rendered inoperable.

All appliances and fittings provided with the premises (whether they are required to be or not) should meet efficiency standards, with respect to both energy and water usage, to reduce costs and wastage. Specifically:

- The hot water service;<sup>202</sup>
- Shower heads and taps;<sup>203</sup>
- Light bulbs;<sup>204</sup>
- Ovens;<sup>205</sup> and
- Non-essential appliances such as dishwashers, washing machines, dryers and cooling devices.<sup>206</sup>

The cost of upgrading premises to meet the new standards should be borne by landlord, as thus far the costs associated with unhealthy and inefficient homes have fallen on renters, in the form of energy and water bills and health effects, and on the State, in the form of health expenditure. Landlords have received, essentially, a free ride; the “spilt incentive”<sup>207</sup> has fallen in their favour.

However, landlords still stand to personally gain from making these changes, as they increase the amenity, and thus the value, of the property. To that end, the government should explore mandating that all properties carry an energy efficiency rating when sold, as is required in the ACT,<sup>208</sup> to ensure that these (often invisible) improvements are properly “priced in” to the value of the property.

It is also the case that the heating provided with the premises (and measures to ensure that the heat generated is retained) is not just about the comfort of the tenant, it is also a means of keeping the premises in a good state of repair by preventing mould, damp and condensation. The more the tenant uses the heater, the better it is for the ongoing condition of the landlord’s asset. Yet, currently, the tenant bears the entire cost of carrying out this “maintenance”, in the form of energy bills. If a tenant doesn’t use the heater because it’s inefficient and ineffective, or the house does not retain heat, they will be blamed for letting the property fall into disrepair. Viewed through this lens, it is only fair and reasonable that, if the tenant is expected to cover energy bills, the landlord is made responsible for ensuring that the heating is effective and efficient.

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<sup>201</sup> Ontario Regs 23.

<sup>202</sup> Vic Act schedule 4.

<sup>203</sup> Vic Act schedule 4; SA Regs 19; Qld Regs 32.

<sup>204</sup> ACT Regs part 3.

<sup>205</sup> Vic Act schedule 4; SA Act s 68A; Ontario Act s 137.

<sup>206</sup> Ibid.

<sup>207</sup> Luca Castellazzi et al, ‘Overcoming the split incentive barrier in the building sector’, *JCR Technical Reports* (European Commission, 2017) pages 3 and 4.

<sup>208</sup> *Civil Law (Sale of Residential Property) Act 2003 (ACT)*.

Investment in the rental sector is driven by capital gains and other tax settings, not by changes to tenancy legislation.<sup>209</sup> A recent reduction in rental investment in Victoria was a consequence of changes to land tax,<sup>210</sup> not the introduction of more stringent minimum standards.<sup>211</sup> The reduction in rental properties in Victoria has not increased rents, which are still lower than they are in Hobart, rather the properties sold by investors have been purchased by first home buyers – former renters.<sup>212</sup> Analysis of the rental markets in the ACT and United Kingdom following the introduction of energy efficiency standards found that they had no impact on rents.<sup>213</sup>

Further information regarding energy efficiency and related minimum standards can be found in our submissions to the Joint Select Committee on Energy Matters.<sup>214</sup>

## Recommendations

**5.1.1 s 36I is amended to provide that the premises must be free of mould and moisture, including in the subfloor (*penalty provision*).<sup>215</sup>**

**5.1.2 s 36I is amended to provide that “weatherproof” includes taking all reasonable steps to ensure that the premises are draughtproof,<sup>216</sup> and that the premises are equipped with a drainage system that is sufficient to prevent water ingress (*penalty provision*).<sup>217</sup>**

**5.1.3 A new provision is added to specifically deal with the supply of water (*penalty provision*):<sup>218</sup>**

- **Taps and shower heads must comply with water efficiency standards;**
- **Any appliances that use water, such as dishwashers or washing machines, must comply with water efficiency standards;**
- **Water must be safe for consumption;**
- **There must be a reasonable flow of water;**

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<sup>209</sup> AHURI, ‘Regulation of residential tenancies and impacts on investment’ (Final Report no 391, November 2022) page 81.

<sup>210</sup> Matt Grudnoff, ‘Investors fled Victoria, houses stayed put’, *The Point* (29 April 2026) <<https://thepoint.com.au/off-the-charts/260429-investors-fled-victoria-houses-stayed-put>>.

<sup>211</sup> Scott Carbines, ‘Victorian rental minimum standards: Market impact one year on and what’s to come’, *Herald Sun* (27 March 2022) <<https://www.realestate.com.au/news/victorian-rental-minimum-standards-market-impact-one-year-on-and-whats-to-come/>>

<sup>212</sup> Matt Grudnoff, ‘Investors fled Victoria, houses stayed put’, *The Point* (29 April 2026) <<https://thepoint.com.au/off-the-charts/260429-investors-fled-victoria-houses-stayed-put>>.

<sup>213</sup> Fuerst F et al., ‘The impact of minimum energy efficiency standards on the private rental market’, *Energy Policy* (2026); Adams H et al., ‘Monitoring and evaluation of the minimum energy efficiency standard for rental properties in the Australian Capital Territory’ (2024).

<sup>214</sup> Dated: 13 October 2023; 30 August 2024; 3 April 2025.

<sup>215</sup> Vic Act schedule 4; Qld Regs schedule 6 s 4; SA HI Regs 15; NZ Regs 28; Ontario Regs 6.

<sup>216</sup> Vic Act schedule 4; SA HI Regs 15; NZ Regs 25 and 26; Ontario Regs 6.

<sup>217</sup> NZ Regs 27; Ontario Regs 6.

<sup>218</sup> Vic Act schedule 4; SA Regs 19; Qld Regs schedule 6 s 2; SA HI Regs 11; Ontario Reg 10.

- The hot water service must have a reasonable capacity for the size of the property;
- The hot water service must meet energy efficiency standards;
- If water is supplied by a tank, the tank: (1) must have a reasonable capacity for the size of the property; (2) must be clean, safe, and free of hazards; and (3) any water collection fittings must be in good repair.

5.1.4 s 36L(b) is amended to provide that a stove top must be electric (including induction), not gas (*penalty provision*).

5.1.5 s 36L is amended to provide that all stoves must be accompanied by a rangehood (*penalty provision*).<sup>219</sup>

5.1.6 s 36O is amended to provide that (*penalty provision*):

- An external door is not an “opening” unless it is equipped with a porous and lockable security door;<sup>220</sup> and
- Any window that was manufactured with the intent of being able to be opened must be openable.<sup>221</sup>

5.1.7 s 36M(2)(b) is amended to provide that the landlord must replace all globes with energy efficient LEDs (*penalty provision*).<sup>222</sup>

5.1.8 s 36M(3) is amended (*penalty provision*):<sup>223</sup>

- ss (a), (c) and (d) are repealed;
- Ducted heating is added as an approved form of heating;<sup>224</sup>
- Add that the heater must be effective for the premises, with reference to the WHO recommended range;<sup>225</sup> and
- A landlord must retrofit (as far as reasonably possible):<sup>226</sup>
- Ceiling insulation (R4 for raked ceiling, R5 for flat ceilings);
- Pumped-in wall insulation (R2.5); and
- Underfloor insulation (R2).

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<sup>219</sup> NZ Regs 23; Ireland Regs 7.

<sup>220</sup> NZ Regs 21; Ontario Regs 20.

<sup>221</sup> Ontario Regs 23.

<sup>222</sup> ACT Regs part 3.

<sup>223</sup> Parliament of Tasmania, Joint Select Committee on Energy Matters, ‘Inquiry into energy prices and related matters in Tasmania’ (interim report, no 17 of 2026) page 20.

<sup>224</sup> Vic Act schedule 4.

<sup>225</sup> Vic Act Schedule 4; NZ Regs 10 and schedule 4; Ontario Regs 15; SA Act s 68A; Ireland Regs 6.

<sup>226</sup> Vic Act Schedule 4; ACT Regs Part 3; NZ Regs 13 and 15.

5.1.9 Add that all appliances provided with the premises must comply with energy efficiency standards (*penalty provision*).<sup>227</sup>

## 5.1.2 RTC AND MINIMUM STANDARDS

*5.1.2 Should the Residential Tenancy Commissioner have the power to order a property landlord to bring a property up to the minimum standards?*

As expanded upon in our answer to question 5.3, we believe that a failure to meet minimum standards should constitute an urgent repair. However, this must be in addition to a penalty, rather than instead of. As explained further in the answer to question 9.1, the RTA must be rigorously and proactively enforced; noncompliance cannot be more cost effective for a landlord than compliance.

### **Case study**

*Judy\* moved into a property with an oil heater. This is not permitted under the RTA. The landlord refused to accept that they were in breach, going so far as to contact the RTC themselves for approval. The RTC did not investigate the matter thoroughly: they did not contact Judy at all, or seek the opinion of an expert. Rather they approved the heater on the basis of the landlord's very selective and misleading evidence. During the course of the tenancy, Judy spent almost \$2,500.00 on oil for the heater. The landlord used the RTC's opinion as grounds to refuse compensation to Judy, and only relented after Judy filed a claim with the Court.*

Currently, if a tenant moves into a property that does not meet minimum standards they largely just have to put up with it. If the premises are not clean, they have the option of complaining to the RTC but having to put up with the mess in the meantime, or cleaning it themselves. In most cases, people do not want to be living in filth so they will just do it themselves: the tenant ends up bearing the practical consequences and costs of the landlord's breach. Giving the RTC jurisdiction to make compliance orders would not rectify this problem. Instead, if premises do not meet the *minimum* standards at the start of the tenancy they should not be considered habitable: the tenant should be permitted to refuse to take possession and not pay rent until the standards have been met, with the landlord covering the costs of alternative accommodation.

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<sup>227</sup> Vic Act schedule 4; SA Act s 68A; Ontario Act s 137; see also Parliament of Tasmania, Joint Select Committee on Energy Matters, 'Inquiry into energy prices and related matters in Tasmania' (interim report, no 17 of 2026) page 20.

## Recommendations

5.1.10 s 33 is amended to provide that a failure to meet minimum standards, including if the premises falls into breach during the tenancy (except in the case of cleanliness), constitutes an urgent repair, and consequently s 36J(3) is repealed.<sup>228</sup>

5.1.11 If premises do not meet minimum standards at the intended start date of the tenancy:<sup>229</sup>

- The tenant may refuse to take possession until the premises are made compliant;
- Rent is not payable until the premises are made compliant;
- The tenant may seek compensation for their reasonable costs associated with the landlord's breach (eg temporary alternative accommodation, rescheduling removalists).

5.1.12 If there is a dispute over whether the premises do meet minimum standards for the purposes of the above, either party may apply to TASCAT for a determination, and for a compensation order (including back payment of rent, if the premises did in fact comply).

### 5.1.3 TECHNICAL STANDARDS

*5.1.3 Do you agree that technical standards, such as those for energy efficiency, should be located in the Regulations rather than the Act to allow for easier updates? Why or why not?*

We support the ability to improve standards incrementally in the RTR but believe that a base minimum must be included in the RTA itself so that standards cannot drop below the “floor”. Standards should not be able to be watered down by stealth, with reduced Parliamentary oversight.

We also do not want to be left in the situation where there is an enabling provision in the RTA but the implementation of the substantive content in the RTR is subject to extensive delays. For instance:

- s 185(2)(e) of the Qld Act, added in 2024, allows for minimum standards to be prescribed, but the provision was not given substance until the following year, and the standards arrived at are minimal;
- The energy efficiency requirement in South Australia was filled out over a year after the enabling provision was passed; and

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<sup>228</sup> Vic Act s 3.

<sup>229</sup> Vic Act s 65.

- In the UK, the “Decent Homes standards” provided for in the UK Act will not be specified until late 2026 at the earliest and are not expected to fully take effect until 2035.230

We do not think it is necessary to further kick the can down the road. The Government can take advantage of being “late to the party” by building off the work done by other larger and better resourced jurisdictions, who have already done the research and drafting.

## Recommendations

**5.1.13 A concrete and enforceable base level standard is included in the RTA, with the capacity for it to be incrementally improved and refined via regulation.**

### 5.1.4 ADDITIONAL MINIMUM STANDARDS

*5.1.4 What other matters should be considered to improve the Act’s operation in relation to minimum standards?*

#### General condition of premises

It is our position that “good repair” and “clean” are insufficiently precise; it is difficult for parties to determine what they mean in a concrete sense, particularly good repair. Good repair is not defined in the RTA, but has a long history at common law. If it is taken to have its traditional common law definition, though, then what constitutes good repair will be relative to the locality of the property and “the class [of tenant] who would be likely to take it.”<sup>231</sup> That is, the standard depends on the socio economic (and probably ethnic) character of the location and the likely tenant. We do not think that this is compatible with modern egalitarian sensibilities. As such, “good repair” should be specially defined, with its scope more clearly articulated.

“Clean” must also be elaborated on, to make it clear that a landlord is responsible for clearing rubbish and chattels, making the garden tidy, and providing vacant possession, and that there is an ongoing obligation to keep all common areas and gardens in a clean and tidy state.

## Recommendations

**5.1.14 s 36J(2) is amended to provide a clear definition of good repair (penalty provision):**

<sup>230</sup> Tarah Welsh, ‘What the Renters’ Rights Act means for tenants and landlords’, *British Broadcasting Corporation* (1 May 2026) <<https://www.bbc.com/news/articles/cqjwqp72y7ro>>

<sup>231</sup> *Proudfoot v Hart* (1890) 25 QBD 42 per Lord Esher at 52.

- Fit for habitation, and not pose any risk to health and safety, irrespective of age, rent level and locality;<sup>232</sup>
- The fixtures, fittings and any appliances and furnishings must be:<sup>233</sup>
  - Properly installed;
  - Fit for purpose; and
  - In good working order;
- The premises must be free of hazardous materials that pose a material harm (such as exposed asbestos, and residual drug contamination).<sup>234</sup>

5.1.15 s 36J(1) is amended to provide a clear definition of cleanliness (*penalty provision*):

- Premises must be clear of chattels (unless agreed), rubbish and vermin;<sup>235</sup>
- Any gardens must be tidy;<sup>236</sup> and
- The landlord must provide vacant possession, except areas where it is agreed that the tenant will not have exclusive possession.<sup>237</sup>

5.1.16 s 36J(1) is amended to provide that any landlord has an ongoing obligation to keep common areas clean, tidy and free of rubbish and vermin (*penalty provision*).<sup>238</sup>

### Additional facilities and services

**Internet:** Since the pandemic, it has become much more common for everyday office workers to work from home. For an office worker to work from home they need access to the internet. However, there is currently no requirement that rental premises must have an internet connection. Further, if there is no internet connection and the tenant requests that a connection is installed, the landlord has absolute discretion under s 54 to refuse the request. If they do give consent the landlord can make it conditional on the tenant paying the connection fee, despite it being a capital improvement to the premises that provides an unequivocal long-term benefit to the landlord.

<sup>232</sup> ACT standard agreement cl 54; Vic Act s 68; Ireland Regs 4; Ontario Act s 20 and reg 6.

<sup>233</sup> Qld Act s 2, Ontario Regs 32; SA HI Regs 9.

<sup>234</sup> SA HI Regs 14.

<sup>235</sup> Vic Act s 65; SA HI Regs 15; Qld Regs schedule 6 s 4; Ontario Regs 6; Ireland Regs 4.

<sup>236</sup> Ibid.

<sup>237</sup> Vic Act s 65; SA Act s 64; NZ Act s 37; WA Act s 40; RPA s 20.

<sup>238</sup> Qld Act s 185; RPA s 23; Ontario Regs 26.

**Rubbish:** A landlord is not obligated to provide a rubbish collection or disposal service, or disclose to the tenant whether the premises is entitled to a council rubbish collection and disposal service. If premises are entitled to a service, but the landlord has not provided a bin or bins, the tenant cannot apply to the council for replacements; only the landlord can make the application. They can refuse at their discretion, or pass the cost onto the tenant as a precondition for making the application. Rubbish collection is an indispensable part of living for most people, and should be provided where possible. If it is not possible, then the landlord must disclose as such prior to entering into a residential tenancy agreement.

**Noise protection:** If a tenant rents an apartment or terraced house there are no standards under the RTA for the prevention of noise pollution from adjoining properties. Properties of this nature should be equipped with a reasonable level of noise protection to block out the noise that is incidental to ordinary life, as this would not be actionable against the neighbour in nuisance (nor should it be).

## Recommendations

**5.1.17 All premises must be connected to the National Broadband Network where possible (*penalty provision*).<sup>239</sup>**

**5.1.18 Landlords must provide a council rubbish collection service where available, and must disclose prior to entering into a residential tenancy agreement if it is not (*penalty provision*).<sup>240</sup>**

**5.1.19 There must be a reasonable level of ceiling and/or wall noise protection between premises that are conjoined (*penalty provision*).**

### Modifications of existing standards

**Power points:** Though power points contained within the premises must be safe and working, there is no requirement that any power points must be provided per se; premises could meet s 36M(1) by containing one operational power point.

**Light:** Section 36M(2)(b) provides that all rooms must have adequate natural light *or* artificial light - the requirement is conjunctive -

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<sup>239</sup> NZ Act s 45B.

<sup>240</sup> Vic Act schedule 4; Ireland Regs 11; Ontario Regs 45.

meaning that a room that has adequate natural light during the day does not necessarily need artificial light during the night.

Oven: An oven is essential to cooking and baking; a microwave is not an effective substitute. As such, a microwave should only be permitted with the consent of the RTC, if the premises are not reasonably equipped to house a standard oven (for instance, some studio apartments).

Window coverings: The heading of s 36N states that window coverings are intended to provide privacy, but this is not a part of the body of the provision, and thus not relevant for statutory interpretation purposes.<sup>241</sup> Further, privacy is only one function of window coverings: they also block sunlight and provide thermal insulation.

## Recommendations

5.1.10 s 36M(2) is amended to provide that all rooms must contain a reasonable number of functioning power points (*penalty provision*).

5.1.21 s 36M(2)(b) is amended to provide that all rooms must have an appropriate level of artificial light for non-daylight hours (*penalty provision*).<sup>242</sup>

5.1.22 s 36L(c) is amended to provide that a microwave is not an approved form of oven, unless pre-approved by the RTC (*penalty provision*).

5.1.23 s 36N is amended to provide that window coverings must reasonably (*penalty provision*):<sup>243</sup>

- Provide privacy;
- Block light; and
- Provide thermal insulation.

### Locks and security devices

Whilst s 57 is not a de jure minimum standards provision, we suggest that it has a minimum standards function and should be bundled with Part 3B for the purposes of this review.

The minimum security standards are currently minimal and vague; they do not provide any concrete requirements for the security of tenants or rental properties. Consequently, there is no guarantee that tenants will be able to qualify for contents insurance. Many policies will, for instance, require that at least the front door is fitted with a deadlock.

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<sup>241</sup> *Acts Interpretation Act 1931* (Tas) s 6(4)(a).

<sup>242</sup> Vic Act schedule 4.

<sup>243</sup> Vic Act schedule 4.

There are also no specific provided about keys. It is common for co-tenants to only be provided with one set of keys, or for tenants to not be provided with the keys to windows and secondary exits at all.

## Recommendations

5.1.24 s 57 is amended to provide that (*penalty provision*):<sup>244</sup>

- A key (or code, or method of opening any security device) must be provided for all locks contained within the premises;
- If the tenancy is a co-tenancy, copies of the keys must be provided to all co-tenants.

5.1.25 s 57(1) is amended to provide that (*penalty provision*):

- All premises must be fitted with dead locks;<sup>245</sup>
- For the purposes of determining whether premises are secure, factors for consideration may include:<sup>246</sup>
  - Whether the tenant is able to get contents insurance;
  - The likelihood of a break-in;
  - Physical aspects of the premises and surrounds;
  - Local community standards.

5.1.26 Jurisdiction to determine matters under s 57 is given to the RTC, with a right of appeal.

5.1.27 If a party requests to change the locks, the other party must not unreasonably refuse.<sup>247</sup>

5.1.28 s 57(2B) is amended to provide that:<sup>248</sup>

- A tenant may change the locks without consent if they are protected by restraining orders; and
- A tenant may change the locks without consent if an occupant or sub-tenant is protected by a family violence order or restraining orders.

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<sup>244</sup> NSW Act s 70; Vic Act s 54A; Qld Act s 210.

<sup>245</sup> Vic Act s 70; WA Regs 12B; SA HI Regs 15.

<sup>246</sup> NSW Act s 191; Qld Act s 213.

<sup>247</sup> Vic Act s 70; ACT standard agreement cl 54; NSW Act s 71.

<sup>248</sup> Vic Act s 70A; SA Act s 66A and Regs 16.

5.1.29 If the RTC makes an order that the locks may be changed, it may also order, if the circumstances warrant it:

- That the cost of changing the locks must be paid by the other party; and/or
- That the tenant does not have to provide a copy of the keys (or other opening method) to the landlord.<sup>249</sup>

### Boarding premises

Section 48C(1)(b) provides that tenants in boarding premises must have access to a shower “at least once a day”. We believe that this is arbitrarily restrictive; there is no good reason why these facilities should not be available around the clock. Further, there should be a reasonable number of these facilities depending on the number of bedrooms.

Though rooms are required to be lockable, tenants are limited in the ways they can protect their security and privacy. Landlords should be required to take steps to ensure the security of the tenants’ personal property, and each room should be equipped with a lockable cupboard or chest for valuable or personal items.

## **Recommendations**

5.1.30 s 48C(1) is amended (*penalty provision*):

- “at least once a day” is deleted;<sup>250</sup> and
- There must be a reasonable amount of bathroom facilities relative to the number of bedrooms.<sup>251</sup>

5.1.31 The landlord is responsible for the security of the tenant’s personal property, and must provide a lockable cupboard or chest or other storage unit in every room, for the exclusive use of the occupant of that room (*penalty provision*).<sup>252</sup>

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<sup>249</sup> NSW Act s 73; Qld Act s 213.

<sup>250</sup> Vic Act s 121; RPA s 22.

<sup>251</sup> SA HI Regs 16.

<sup>252</sup> Vic Act s 123; Sa Act s 105O.

## 5.2 MINOR MODIFICATIONS

*5.2 (a) What, if any, types of minor modifications should tenants be allowed to make without seeking the landlord's permission and what types should not be permitted?*

*(b) Should tenants be required to 'make good' their modifications at the end of a lease?*

In September 2025, the Government introduced a Bill to allow a limited number of minor modifications to be made to rental properties. The Residential Tenancy Amendment (Safety Modifications) Bill 2025, if passed, will allow tenants “to fix an item of furniture to the premises, for example to a wall, to prevent that furniture from posing a risk to residents or visitors, especially small children”.<sup>253</sup> We support the Bill.

However, we strongly recommend that the ability of tenants to make minor modifications should be comprehensive and not limited to a narrow range of safety modifications. As we outlined at the beginning of our submission, more Tasmanians are renting and are renting for longer. Allowing minor modifications in rental properties such as putting up picture hooks, installing a bathroom shelf or planting a herb or vegetable garden will ensure that renters feel more at home, and improve their safety, security and amenity.

Minor modifications that should be allowed include:

- **Safety modifications** – anything that promotes the safety of people on the property (e.g. furniture anchors or child safety gates);
- **Security modifications** – anything that improves the security of the property or people on the property (e.g. installing deadlocks or alarms);
- **Disability- and aged-related modifications** – anything that assists a tenant who has a disability (e.g. access ramps, grab rails);
- **Energy-efficiency modifications** – anything that improves the energy efficiency of the property (e.g. switching to energy efficient lighting or putting glazing film on windows); and
- **Telecommunications modifications** – anything that enables access to telecommunication services (e.g. installing an NBN connection or TV antenna).

### Security modifications

In Tasmania, only survivors of family violence who also have a Family Violence Order or Police Family Violence Order in place can “add, alter or remove any lock or security device”.<sup>254</sup> Without either a FVO or a PFVO locks cannot be changed. More importantly, security modifications for both survivors of family violence and others should be broadened.

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<sup>253</sup> Proposed second reading speech

<[https://www.parliament.tas.gov.au/\\_data/assets/pdf\\_file/0034/97288/Second-Reading-Speech-residential-tenancy-amendment-safety-modifications-bill-2025.pdf](https://www.parliament.tas.gov.au/_data/assets/pdf_file/0034/97288/Second-Reading-Speech-residential-tenancy-amendment-safety-modifications-bill-2025.pdf)>

<sup>254</sup> RTA s 57(2B).

Minor security modifications that renters should be able to make in appropriate cases include the addition of a security door, a sensor light or a security camera.

### Accessibility modifications

Tasmania's Anti-Discrimination Commissioner has found that under the *Anti-Discrimination Act 1998* a landlord cannot refuse minor modifications that make rental properties more accessible for older persons, or those with mobility issues or disabilities. However, renters should not have to make a complaint to the Office of the Anti-Discrimination Commissioner to assert their rights. Whilst complaints are likely to be successful, it may irreversibly damage the relationship between the parties. Specifying in the RTA that accessibility modifications cannot be unreasonably refused will provide peace of mind for older persons and those with disabilities and clarify landlords' responsibilities under the *Anti-Discrimination Act 1998*.

#### **Case Study**

*Jenna Lovell lived in her Hobart home for around eight years. Due to a medical condition (hypermobility), the joints in Jenna's hands would dislocate if she was required to twist taps or door handles. Jenna asked her landlord if she could install lever taps. The landlord refused. After receiving legal advice from the Tenants' Union that the landlord's refusal may amount to discrimination on the basis of disability, the landlord relented and lever taps were installed. Jenna found the process extremely stressful and wants the law changed so that landlords cannot unreasonably refuse a renter's right to make their home accessible by allowing minor modifications.<sup>255</sup>*

Legislation that a landlord cannot refuse minor modifications that improve the accessibility of the premises for persons with disability has already been passed in most Australian jurisdictions.<sup>256</sup>

### Energy-efficiency modifications

Many renters, particularly those with the least capacity to pay, live in poorly insulated housing that is expensive to heat and cool. Until proposed recommendations regarding minimum standards are fully implemented, granting tenants the ability to make minor modifications will mean that tenants will have agency to reduce their expenses. For instance, all social housing tenants will be able to install window coverings. As the law currently

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<sup>255</sup> Jenna Lovell has publicly advocated for accessibility modifications to be able to be made to rental properties: Adam Holmes, 'Tenants unable to make minor changes to rentals in Tasmania despite government plans for law change', *Australian Broadcasting Corporation*, (6 April 2024) <<https://www.abc.net.au/news/2024-08-07/tasmania-minor-modification-rentals-laws-criticised/104190068>> (accessed 27 April 2026).

<sup>256</sup> ACT Act s 71AA(b)(ii); Vic Act s 64(1B)(c); Qld Act s 209B(a); SA Act ss 70(1a)(c)-(d); WA Act s 50R.

stands, only renters in the private rental market and social housing tenants entering into new lease agreements are required to have window coverings.<sup>257</sup>

### Telecommunication modifications

In Tasmania, there is no minimum telecommunication standard. As a result, some renters move into properties without an NBN connection. Without the landlord's consent, renters are unable to have either the internet or a television aerial installed, even where they have offered to pay for the cost of installation. In short, the law allows landlords in Tasmania to unreasonably refuse access to television or internet. The refusal will often lead to either higher costs, with renters having to purchase more expensive options (such as increased mobile phone data), or in some cases total digital exclusion. Whilst we strongly recommend that all rental properties be required to be connected to the National Broadband Network (NBN), as an absolute minimum, landlords should not be able to unreasonably refuse telecommunication modifications to allow internet or digital television access.

A broad but non-specific list of 'minor modifications' (such as those listed above) should be expressly included in the RTA to ensure that tenants and landlords are aware of modifications that will generally be able to be made. Both the Australian Capital Territory and Victoria list the broad range of modifications noted above.<sup>258</sup> However, we also recommend the inclusion of a prescribed list of minor modifications in the RTR that do not require landlord consent as is the case in Victoria:<sup>259</sup>

*For the purposes of section 64(1) of the Act, the following modifications are prescribed—*

*(a) in a rented premises that is not a registered place —*

*(i) installation of picture hooks or screws for wall mounts, shelves or brackets on surfaces other than exposed brick or concrete walls; and*

*(ii) installation of wall anchoring devices on surfaces other than exposed brick or concrete walls to secure items of furniture; and*

*(iii) installation of LED light globes which do not require new light fittings; and*

*(iv) installation of a water efficient shower head if the original shower head is retained; and*

*(v) installation of blind or cord anchors; and*

*(vi) installation of security lights, alarm systems or security cameras that—*

*(A) do not impact on the privacy of neighbours; and*

*Example: A renter must not install a security camera or security light that directly faces a neighbouring premises.*

*(B) can be easily removed from the rented premises; and*

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<sup>257</sup> RTA s 36N.

<sup>258</sup> ACT Act s 71AA(b); Vic Act s 64(1B).

<sup>259</sup> Vic Regs 26. See also WA Regs 71 and NSW Regs 22.

*(C) are not hardwired to the rented premises; and (vii) installation of hardware-mounted child safety gates on walls (other than exposed brick or concrete walls);*

*(b) in all rented premises—*

*(i) installation of non-permanent window film for insulation, reduced heat transfer or privacy; and*

*(ii) installation of a wireless doorbell; and*

*(iii) replacement of curtains if the original curtains are retained by the renter; and*

*(iv) installation of adhesive child safety locks on drawers and doors; and*

*(v) installation of pressure mounted child safety gates; and*

*(vi) installation of a lock on a letterbox.*

The inclusion of a prescribed list of minor modifications in the RTR will provide certainty for tenants and landlords, lead to less disputes and ensure that there is a relatively straightforward means of adding to the list without new legislation needing to be passed.

We also recommend a list of minor modifications that a landlord should generally not refuse with the Vic Regs providing:<sup>260</sup>

*For the purposes of section 64(1B)(h) of the Act, the following modifications are prescribed—*

*(a) installation of picture hooks or screws for wall mounts, shelves or brackets on exposed brick or concrete walls;*

*(b) installation of hardware-mounted child safety gates on exposed brick or concrete walls;*

*(c) installation of wall anchoring devices on exposed brick or concrete walls to secure items of furniture;*

*...*

*(e) installation by a suitably qualified person of a security system which does not impact on the privacy of neighbours if an invoice with the name of the installer is provided to the residential rental provider at the time the consent is requested;*

*Example A residential rental provider may reasonably refuse a request to install a security camera or security light that directly faces a neighbouring premises.*

*(f) installation of flyscreens on doors and windows;*

*(g) installation of a vegetable or herb garden;*

*(h) installation of a secure letterbox;*

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<sup>260</sup> Vic Regs 28.

*(i) painting of the rented premises;*

Where a landlord refuses to give consent for minor modifications, we believe the onus should be on them to apply to the RTC/TASCAT/Court for an order confirming the refusal as reasonable, as occurs in the ACT and Western Australia.<sup>261</sup> We also recommend that 'reasonableness' factors be listed to assist in the decision-making process. Factors that should be considered include:<sup>262</sup>

- Whether the landlord would suffer significant hardship if the modification were made;
- Whether the modification would be contrary to the law for any reason (e.g. it would not be permitted under planning or building laws);
- Whether the modification is likely to require modifications to other residential properties or common areas (e.g. in apartment buildings); and
- Whether the modification would result in additional maintenance costs for the landlord.

We would also note that in most jurisdictions where renters are able to make minor modifications to their homes, the landlord and/or tribunal is able to impose reasonable conditions on consent, such as that a qualified tradesperson undertake the works or that the proposed modification be done in a particular way to minimise damage to the premises.<sup>263</sup>

In relation to the removal of minor modifications at the end of a tenancy, we recommend the status quo with the RTA currently providing that a tenant must return the premises as nearly as possible in the same condition as the beginning of the tenancy but for fair wear and tear and remove fixtures unless the removal is likely to cause damage to the premises.<sup>264</sup> This is also the position in South Australia.<sup>265</sup>

A final consideration which the review will need to consider is which decision-making body will adjudicate the unreasonable refusal and/or conditions imposed for minor modifications. Whilst applications in most States and Territories are to their respective civil and administrative tribunal, in Western Australia the application is made to the Residential Tenancy Commissioner.<sup>266</sup> Our preference is that applications are made to the RTC if the onus is on the tenant and TASCAT if the onus is on the landlord. However, we would only support applications being made to the RTC if appropriate resourcing is assured.

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<sup>261</sup> ACT Act s 71AB(3)(a); WA Act s 50S(1).

<sup>262</sup> See, for example, ACT Act s 71AC(3).

<sup>263</sup> ACT Act ss 71AB(4) and 71AC(2)(c); Vic Act s 64(1E); NT Act s 55A(4)(c); Qld Act s 209C(3); NSW Regs 22(2); WA Act s50P(a).

<sup>264</sup> RTA ss 53(1)(b) and 54(2).

<sup>265</sup> SA Act s 70(2).

<sup>266</sup> ACT Act s 71AC(1); Vic Act s 64(5); NSW Act s 66(1); Qld Act s 209C(2); NT Act s 55A(7); SA Act s 110(1)(b); WA Act s 50S(1).

## Recommendations

5.2.1 We recommend that renters be able to make minor modifications including express recognition of safety, security, disability and aged-related, energy-efficiency and telecommunications modifications.

5.2.2 A prescribed list of minor modifications be included in the RTR that do not require landlord consent.

5.2.3 A further list of minor modifications that a landlord should generally allow be included in the RTR.

5.2.4 In circumstances where consent is required, the landlord should not be able to 'unreasonably refuse' consent and where consent is refused, the landlord should be required to make an application to TASCAT/the RTC/the Court.

5.2.5 A list of 'reasonableness' factors be expressly listed to assist in the decision-making process.

5.2.6 A tenant must return the premises as nearly as possible in the same condition as the beginning of the tenancy but for fair wear and tear and remove fixtures unless the removal is likely to cause damage to the premises.

## 5.3 REPAIRS AND MAINTENANCE

*5.3 (a) Would changes to repair and maintenance responsibilities (e.g. for taps, starters and gutters) be fair and practical for both tenants and landlords? If not, what other solutions should be considered?*

*(b) Should repair timelines be consistent across all types of rental properties, including boarding houses?*

*(c) What other changes to the Act's repairs and maintenance provisions would improve its operation?*

We are of the view that the problems with the existing repairs provisions are mostly a matter of form, rather than substance. The principle that underpins the division – that a tenant is responsible for all maintenance and repairs that are needed as a consequence of the actions of the tenant, and the landlord is responsible for everything else – should be retained, but the provisions built on top of this solid foundation should be redrafted for the sake of clarity.

As such, we do not think the responsibility for replacing tap washers or light globes should be reassigned to tenants – they degrade as a consequence of ordinary and reasonable use (that is, fair wear and tear) and are thus not the tenant's fault (unless the tenant has caused the damage maliciously or negligently).

It is accepted that some forms of maintenance are not readily assignable under the guiding principle of the division. For instance, one may argue that an overgrown lawn, weeds, and even dust are not the responsibility of the tenant because they are the consequence of natural forces, not the actions of the tenant. However, they should be read in the light of the tenant's obligations under s 53 to keep premises reasonably clean: if the tenant does not keep the premises reasonably clean then any consequences that directly flow from that are the tenant's fault within the meaning of s 32.

We do not think that the tenant's duty to keep the premises *reasonably* clean extends to cleaning or maintenance that requires a specialist, specialist equipment, and/or poses a real risk to the tenant's health and safety. This includes cleaning gutters, cleaning windows above a certain height, pruning trees, cleaning flues and servicing heat pumps, or cleaning certain internal parts of the property that are above a certain height. We do not support muddying the issue by providing that gutters are the responsibility of the tenant if they are "accessible"; almost by their very nature gutters will be at least one-story high (or at least 2.5 meters), and only safely accessible via a ladder that is around three meters long.

The definition of essential services should instead be expanded to include other facilities and services that are considered to be required to meet a reasonable standard of comfort and amenity, such as an internet connection (given the proliferation of working from home) and cooling devices (given the impacts of climate change) such as a stand-alone air conditioner or ceiling fan, and any appliances included as part of the tenancy, such as a dishwasher, washing machine, or dryer. The partial carve-out for stoves and ovens should also be repealed.

We agree that timeframes should be made uniform across for all tenancies, however there should be special provisions for boarding tenancies where if a shared facility, such as a bathroom, toilet, or kitchen, is rendered unusable the landlord must supply a temporary

alternative or compensation, depending on the circumstances (such as portaloos, portable showers, and reimbursing tenants for the reasonable cost of pre-prepared food).

But, as mentioned, our primary issue with ss 32-36A is with the way it is drafted and structured. Repairs are split between three categories, general, urgent and emergency, depending on their nature and severity. Whilst urgent repairs are fairly clearly defined, the express parameters of emergency repairs are only that “damage” has occurred. Damage is not defined, and is not qualified by a modifier such as “significant” or “extensive” or “structural”. Taken on its face, then, almost everything is an “emergency” repair, including a chipped kitchen cabinet and a collapsed roof, and everything in between. It also has the consequence of making the parameters of what constitutes a “general” repair very narrow. It is doubtful that this is the intent of the provision.

Instead, s 34 should be repealed, and repairs instead rationalised into two categories, general and urgent, as is the case in other jurisdictions.<sup>267</sup> General repairs should more or less stay the same in scope, subject to the recommendations made below, but urgent repairs should be greatly expanded to include:

- Restoring essential services;
- Complying with minimum standards;
- Rectifying damage from flooding and other serious water damage;
- Rectifying fire or storm damage;
- Fixing anything that poses a real risk to the health and safety of the tenants, could cause injury, or renders the premises insecure;
- Restoring safety devices such as smoke alarms and pool fences;
- Eliminating structural mould;
- Exterminating pests; and
- Maintaining and emptying a septic system.

It is acknowledged that setting a time frame whereby repairs must be carried out is difficult, given the proposed breadth of the urgent repairs provision. However, “as soon as practicable” is too nebulous; it is uncertain when the line is crossed into an actionable breach – particularly when an insurance company is involved. As such, tenants are unsure of when they are able to exercise their right to terminate or seek compensation. We propose two potential solutions:

- “As soon as practicable” is retained, but given a clear definition that allows the complexity of the issue and the availability of workers to be taken into account, but not any delays associated with an insurance assessment and claim, or quote-shopping; and
- There is a general-application ceiling of days after which a tenant can terminate the lease or seek a rent abatement whether or not the landlord has taken steps to carry the repairs out as soon as practicable (without limiting the tenant’s ability to do either of these things earlier if the landlord has not acted as soon as practicable), to

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<sup>267</sup> ACT Act s 60; Vic Act s 3; NSW Act s 62; SA Act s 67A; Qld Act s 214; WA Act s 43.

acknowledge that the landlord's efforts do not mitigate the loss of amenity and comfort suffered by the tenants;

Or

- That individual time frames are provided for in the RTR for each particular sub-category of urgent repair, to take into account that certain things, like the repair and replacement of appliances, should be more or less immediate but that the restoration of a partly-destroyed house may take a significant amount of time (and the effect on the tenant is mitigated by the proposed abatement provisions).

In either case:

- The ability for a tenant to seek an order for repairs from the RTC at any stage should be retained;
- The rarely utilised ability to contact a nominated or suitable repairer should be retained with an upper limit, but accompanied by a further requirement that if the landlord is represented by an agent, the agent must arrange to carry out all repairs at or under a prescribed amount which then must be reimbursed by the landlord (or deducted from future rent payments on top of the agent's standard share);<sup>268</sup>
- If repairs are not carried out within the prescribed time frames, whatever they may be, rent abates in accordance with the loss of amenity or comfort, which may depend on the circumstances (for instance, the impact of the loss of a heater during summer is minimal, but during the winter is significant);<sup>269</sup> and
- If a landlord relies on an insurance company to carry out the repairs or restoration, they will not be able to comply with the timeframes and must accept the consequences of that.

With respect to general repairs, s 32(1) must be amended to delete "apart from reasonable wear and tear". Read in conjunction with the tenant's obligations under s 53, this means that no party is responsible for damage or degradation that is a consequence of fair wear and tear. Though fair wear and tear is not defined, if it is taken to mean, approximately, natural forces and reasonable and ordinary use,<sup>270</sup> then landlords would not be responsible for fixing weather damage and not be responsible for fixing anything that has fallen into disrepair due to age. This is clearly not consistent with the intent of the Division as a whole and taken on its face creates a gaping chasm in responsibility.

## Recommendations

**5.3.1 The definition of "essential services" in s 3 is amended to include: (1) NBN/telecommunications; (2) oven and stove; (3) cooling devices; (4) appliances provided as a part of the tenancy.**

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<sup>268</sup> Qld Act s 219A.

<sup>269</sup> NSW Act s 43.

<sup>270</sup> *Taylor v Webb* [1937] 2 KB 283.

5.3.2 s 32(1) is amended by deleting “apart from reasonable wear and tear”.<sup>271</sup>

5.3.3 s 32(1) is amended to provide clarification that a landlord is responsible for maintenance tasks that are the consequences of wear and tear and general entropy requiring specialist knowledge or qualifications, specialist equipment, and/or cannot be carried out without posing risk to the health and safety of the tenant, with a non-exhaustive list of such tasks including:<sup>272</sup>

- Clearing gutters;
- Trimming trees and other large bushes and plants;
- Servicing heat pumps and other heating devices, and cleaning flues;
- Servicing a hot water service;
- Servicing a septic tank;
- Servicing a water tank; and
- Oiling decking and other external timber.

5.3.4 s 32(1) is amended to clarify that a landlord is responsible for maintaining and repairing common or shared areas that are provided as part of the tenancy.<sup>273</sup>

5.3.5 ss 32(s) and 33(1) are amended to clarify that a landlord can be put on notice of the need for repairs other than by direct notice from the tenant, including actual or constructive notice.<sup>274</sup>

5.3.6 ss 32(2) and (3) are amended to clarify that the tenant must only notify the landlord that there is a defect that is need of attention, whether it be maintenance, repair, or replacement, rather than the specific repair that is required.<sup>275</sup>

5.3.7 s 31A is broadened to all repairs and maintenance.

5.3.8 Specify that all repairs and maintenance carried out by a landlord must be carried out by a suitable repairer and to a good standard of workmanship (*penalty provision*).<sup>276</sup>

5.3.9 Add that if the premises are part of a strata complex, that a landlord is still responsible for carrying out all repairs under the RTA, but if the responsibility for the

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<sup>271</sup> Ireland Act s 12.

<sup>272</sup> Vic Act schedule 4; Ireland Regs 11; Ontario Regs 45.

<sup>273</sup> Vic Act s 68; RPA s 23.

<sup>274</sup> NSW Act s 45.

<sup>275</sup> Ireland Act s 16.

<sup>276</sup> Ontario Regs 3.

repairs would otherwise fall with the strata corporation the landlord may seek reimbursement.<sup>277</sup>

5.3.10 ss 32(4) and (5) are repealed.

5.3.11 s 34 is repealed, and the scope of s 33 is expanded to include:<sup>278</sup>

- Utilities and essential services;
- Minimum standards;
- Flooding or burst pipes;
- Serious leaks;
- Serious fire or storm damage;
- Anything that renders the premises unsafe or insecure;
- Anything likely to cause the tenant injury;
- Failure of a safety device such as a smoke alarm or pool fence;
- Structural mould;
- A pest infestation; and
- Emptying a septic tank.

5.3.12 “As soon as practicable” is defined to explicitly take into account the complexity of the issue and the availability of trades, but not to include wait times associated with insurance claims or quote shopping, and a ceiling of 28 days is set after which the tenant may terminate or seek abatement of the rent (without limiting their right to do so earlier if the landlord has not complied); or individual time limits are set in the RTR for each sub-category of urgent repair.<sup>279</sup>

5.3.13 If the landlord is represented by an agent, an agent must arrange to carry out all urgent repairs under the prescribed amount, which then may be deducted from future rent payments (*penalty provision*).<sup>280</sup>

5.3.14 If a landlord does not carry out repairs within the requisite time periods, rent abates in proportion to the loss of amenity or enjoyment.<sup>281</sup>

5.3.15 A tenant may only seek to arrange a suitable repairer to carry out repairs at or below the prescribed amount.<sup>282</sup>

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<sup>277</sup> Tenants' Union of NSW, 'Submission on Improving NSW Rental Laws' (August 2023)

<sup>278</sup> ACT Act s 60; Vic Act s 3; NSW Act s 62; SA Act s 67A; Qld Act s 214; WA Act s 43.

<sup>279</sup> WA Act s 43.

<sup>280</sup> Qld Act s 219A.

<sup>281</sup> NSW Act s 43.

<sup>282</sup> Vic Act s 72(2)(b).

5.3.16 The definitions of what constitutes a functional essential service are rationalised into a single, general-purpose definition that a service is not functional if it no longer performs its intended purpose to the same level as would be reasonably be expected when it was manufactured.

5.3.17 s 36A(4) is amended to specify that where a tenant makes an application for an order for repairs and the RTC is satisfied that the repairs are urgent repairs, the RTC *must* make the order, and if the RTC is satisfied that there is an imminent risk to health and safety that the order must be complied with within a shortened period.<sup>283</sup>

5.3.18 s 36A(4) is amended to provide that an order for repairs may order who is to carry out the repairs, and must contain other prescribed information regarding what and how the repairs are to be carried out.<sup>284</sup>

5.3.19 If the premises are part of a strata complex, the RTC may add the strata corporation as a respondent to an application.<sup>285</sup>

5.3.20 As part of an application for an order for repairs, the RTC can order that rent is abated or reduced (and that it is backdated), and/or that rent is paid into the RDA until the repairs are carried out.<sup>286</sup>

5.3.21 Clarify that an order for repairs does not extinguish if the tenancy is terminated before it is complied with.<sup>287</sup>

5.3.22 If, in making the order, the RTC is unable to contact the landlord, or the landlord is non-responsive to attempts to be contacted, or hostile to the process, then the RTC may arrange for the repairs to be carried out on its own accord and seek reimbursement from the landlord.<sup>288</sup>

5.3.23 s 36A(6) is amended to reduce the period to file an appeal to seven days.

5.3.24 s 36A is amended to specify that the failure to comply with a repair order is a continuous offence.<sup>289</sup>

5.3.25 Upon hearing an appeal of a decision of the RTC, TASCAT/the Court may make interim orders including that, if the absence of repairs poses a safety risk to the

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<sup>283</sup> SA HI Act s 14

<sup>284</sup> Vic Act s 76; SA Regs 14.

<sup>285</sup> Vic Act s 75A.

<sup>286</sup> NSW Act s 65; Vic s 77; SA HI Act s 25; Qld Act s 221A; NZ Act s 78; WA Act s 15.

<sup>287</sup> Qld Act s 221A.

<sup>288</sup> *Housing (Miscellaneous Provisions) Act 1992* (Ire) s 5.

<sup>289</sup> Qld Act s 221C.

tenant, or a severe loss of comfort, that the landlord must carry out the repairs and that the subject of the appeal is then the liability for the cost of the repairs.

5.3.26 s 48F is amended to provide that:

- A landlord of boarding premises is responsible for the maintenance and upkeep of all common areas and shared facilities and services;
- The loss of a shared facility or service is an urgent repair;
- If the premises are being repaired or renovated in a way that affects a service or facility, that the landlord must minimise interference and provide a temporary alternative or compensation (*penalty provision*).<sup>290</sup>

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<sup>290</sup> Vic Act s 120.

## 6.1 FAMILY VIOLENCE

*6.1 (a) Are the proposed measures adequate to protect tenants experiencing family and domestic violence?*

*(b) Who should be considered a 'prescribed professional' for the purpose of verifying that a tenant needs to end a tenancy due to family violence?*

*(c) Are there any other changes that should be made to the Act to help protect victims of family or domestic violence?*

### Family Violence and Termination of a Residential Tenancy Agreement

Section 17 of the *Family Violence Act 2004* (Tas) (the "FVA") provides that if a person against whom a Family Violence Order is to be made is a tenant of residential premises occupied by a victim-survivor, a court may

- Make an order to terminate the residential tenancy agreement ('the agreement'), or
- Terminate the agreement and establish a new agreement for the benefit of the victim-survivor, or
- Terminate the agreement and establish a new agreement for the benefit of the person against whom the Family Violence Order is to be made.

Section 17 of the FVA is supported because it allows for the expeditious grant of a Family Violence Order and the termination of an agreement in the one court proceeding. However, we believe that a tenant affected by family violence should also be able to terminate in circumstances where the perpetrator is not currently listed on the agreement, a reform already introduced in all other Australian jurisdictions and New Zealand.<sup>291</sup> Examples may be that a relationship has only recently commenced and both parties live in separate properties. Or, that an ex-partner has discovered where the victim-survivor is now living and the victim-survivor fears for their safety. As it stands, the court is unable to terminate the agreement where the perpetrator is not listed on the agreement.<sup>292</sup> Protecting victim-survivors of family violence by allowing them to terminate their lease agreement provides them with the opportunity to escape the perpetrator and allows for a fresh start. We strongly believe that the same protection should be provided to victim-survivors regardless of whether the perpetrator is listed on the agreement.

We also believe that the termination of an agreement due to family violence should not be conditional on the issuing of a Family Violence Order. Anecdotally, there are few applications to terminate agreements being sought through the FVA. The reasons for this are multifaceted. Some victim-survivors may not want to apply for a Family Violence Order because of the anxiety attached to having to prove in a courtroom that family violence occurred. Victim-survivors may be worried about antagonising the perpetrator by making

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<sup>291</sup> Vic Act s 91V; ACT Act s 46D; NSW Act ss 105B and 105C; Qld Act ss 308A and 308B; NT Act s 92A; SA Act s 85D; WA Act s 71AB; NZ Act s 56B.

<sup>292</sup> Section 17(1A) of the *Family Violence Act 2004* (Tas) expressly provides that a court can only make an order terminating a residential tenancy agreement where "the person against whom an FVO is to be made is a tenant of residential premises occupied by an affected person..."

them attend court. Some victim-survivors may just want to vacate their home safely without the perpetrator finding out.

In the majority of Australian jurisdictions and in New Zealand, a victim-survivor<sup>293</sup> can serve a notice of termination on the landlord, by enclosing with the notice, written confirmation of the family violence from a ‘prescribed professional’, usually a registered health practitioner or a social worker. We support the NSW model where the list of prescribed professionals includes registered health practitioners or social workers and prescribed employees of government or non-government agencies that provide services relating to family violence, sexual assault, refuge or emergency accommodation or child welfare.<sup>294</sup>

In most Australian jurisdictions and New Zealand, the prescribed professional report is not able to be challenged on the basis that the family violence did not transpire or that the victim-survivor could safely remain at the property, however the notice of termination is able to be challenged on procedural grounds.<sup>295</sup> To ensure the veracity of the report, a safeguard enacted in some jurisdictions is that penalties will apply in circumstances where false or misleading information is provided.<sup>296</sup> Relevantly, all of the jurisdictions that allow for a notice of termination to be issued for family violence have the provisions in their residential tenancy legislation.

Amending the FVA and the RTA to allow victim-survivors to terminate their agreement in circumstances where the perpetrator is not listed on the agreement and allowing victim-survivors to serve a notice of termination on their landlord enclosing a report from a prescribed professional, would also ensure compliance with the Government’s 2023 commitment to “allow tenants experiencing domestic or family violence to end agreements without penalty and with a streamlined process and evidence e.g. a declaration by a prescribed professional such as a doctor or support service worker”.<sup>297</sup>

## Co-tenants

Whilst victim-survivors of family violence should be allowed to have their name removed from the agreement, co-tenants also require legislative protection. In all other Australian jurisdictions and New Zealand, after a family violence victim-survivor has moved out of the property, the co-tenant/s (if any) is informed and provided with an opportunity to either

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<sup>293</sup> In most Australian jurisdictions and New Zealand, a victim-survivor of family violence is defined broadly to include occupants, such as an occupant daughter living with her tenant mother. See ACT Act s 46D; Qld Act ss 308B and 310; NT Act s 92A; SA Act s 85D and SA Regs 30; WA Act s 71AB; NZ Act s 56B.

<sup>294</sup> NSW Act s 105D. Note: this provision has not yet come into effect but was passed in October 2025 as part of the Residential Tenancies Amendment (Domestic Violence Reform) Bill 2025. Also see ACT Act s 46D(3)(b)(iii); Qld Regs 37; NT Act s 4A(1)(c); WA Act s 71AB(2)(d).

<sup>295</sup> ACT Act s 46L; Qld Act section 308H(4); WA Act s 71AC; NZ Act s 77(7B).

<sup>296</sup> ACT Act s 46M; NSW Act s 105D.

<sup>297</sup> In August 2023, National Cabinet agreed to “harmonise and strengthen renters’ rights across Australia” including “allow tenants experiencing domestic or family violence to end agreements without penalty and with a streamlined process and evidence e.g. a declaration by a prescribed professional such as a doctor or support service worker”: Anthony Albanese, *Meeting of National Cabinet – Working together to deliver better housing outcomes* (Media Release, Prime Minister of Australia, 16 August 2023) <<https://www.pm.gov.au/media/meeting-national-cabinet-working-together-deliver-better-housing-outcomes>>.

terminate the lease or continue the agreement without the family violence victim-survivor.<sup>298</sup> Recognising the financial burden imposed on co-tenant/s, in NSW and New Zealand the rent is apportioned for two weeks after the victim-survivor has terminated the agreement, providing the remaining co-tenant/s with an opportunity to find another tenant to share the property without being financially penalised.<sup>299</sup>

### Family Violence during a tenancy

In Tasmania, tenants are liable “for any act or omission in relation to the premises, by a person who is lawfully on the premises as if it had been an act or omission by the tenant”.<sup>300</sup> The effect of this provision is that victim-survivors of family violence are often burdened with debts for which they should bear no responsibility. Debts accrued during a tenancy have flow-on effects with victim-survivors subject to bad references and unable to access alternative accommodation. We therefore strongly recommend the adoption of the New South Wales model which recognises that a tenant should not be held vicariously responsible for the actions of a co-tenant or any other person lawfully on the premises if the act or omission amounts to family violence.<sup>301</sup> Where there is a dispute, the New South Wales Civil and Administrative Tribunal is able to determine whether the conduct amounted to family violence and apportion liability accordingly.<sup>302</sup>

### Family Violence and the bond

Most tenants are required to pay four weeks rent as bond at the commencement of their tenancy with the RTC determining the proportion of the bond to be paid to the tenant and/or landlord upon the termination of the agreement.<sup>303</sup> However, the RTC only has one power in relation to the distribution of bond, namely “determining the amount, if any, of the security deposit that is to be disbursed to the landlord”.<sup>304</sup> In practice this means that the RTC may find that the loss or damage was the result of family violence but is still legally required to have the victim-survivor’s bond paid to the landlord. A better model, adopted in most Australian jurisdictions, grants the decision-maker the power to determine apportionment, including that a victim-survivor’s share of the bond be protected and the perpetrator held liable for all of the landlord’s loss and damage.<sup>305</sup> Broadening the powers of the RTC to allow for apportionment would better protect victim-survivors of family violence from further traumatisation and force perpetrators to confront the consequences of their actions.

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<sup>298</sup> Vic Act s 91V; ACT Act s 46D; NSW Act ss 105H and 104; Qld Act ss 308E and 310; NT Act s92A(4); SA Act ss 85D and 89; WA Act s 71AD; NZ Act s 56B(3).

<sup>299</sup> NSW Act s 105I(3) provides that “[F]or the 2 weeks immediately after the termination date in the termination notice, the tenant is not liable to pay more than the amount of rent payable under the residential tenancy agreement on the termination date divided by the number of tenants under the agreement immediately before that date”. See also NZ Act s 56B(5).

<sup>300</sup> RTA s 59.

<sup>301</sup> See, for example, NSW Act ss 54(1A)-(1B). See also Qld Act s 188; NT Act s 12(3)(c).

<sup>302</sup> NSW Act s 54B.

<sup>303</sup> RTA Division 3.

<sup>304</sup> RTA s 29G(2).

<sup>305</sup> See, for example, Vic Act ss 91X(1) and 420A(3); NSW Act s 175A; Qld Act s 136D(3); SA Act s 89A(12); WA Act s 17B(1).

## Blacklists and informal references

Part 4C of the RTA regulates the use of tenancy databases ('blacklists') that store information about rental histories. In Tasmania, a tenant may only be blacklisted if they have breached their lease agreement and either owe money exceeding the bond or a court has terminated the tenancy because of the breach.<sup>306</sup> A reform introduced in most Australian jurisdictions, is the legislative exclusion from blacklisting of victim-survivors of family violence. In Victoria for example, a landlord or real estate agent cannot list a tenant in a blacklist if the "breach was a result of an act or a circumstance of family violence or personal violence experienced by the person".<sup>307</sup> In 2023, the Government committed to law reform which would allow victim-survivors to "have their name removed from databases due to property damage caused by family or domestic violence".<sup>308</sup> We call on the Government to uphold its commitment and introduce this reform.

We also strongly recommend that the Government regulate tenancy references. In our experience it is rare for landlords and real estate agencies to use formal databases but rather they rely on word-of-mouth references from the prospective tenant's former landlord or real estate agency. We strongly recommend that references are only able to be provided in writing and must be compliant with a legislatively prescribed form or contain prescribed information. Prescribing forms and information are not unusual with Victoria, for example listing 25 prescribed forms<sup>309</sup> and Tasmania prescribing information that must be contained in Notices to Vacate and Terminate.<sup>310</sup> Penalties should attach to non-compliance.

## Discrimination against tenants subjected or exposed to family violence

Landlords should also be prohibited from discriminating against prospective tenants with a family violence history (both perpetrators and victim-survivors) when they are applying for a tenancy. Such a protection would ensure that victim-survivors are not punished, and perpetrators are not left homeless. A model that should be considered is found in Western Australia:

*A person must not refuse, or cause any person to refuse, to grant a tenancy to any person on the ground that the person —*

*(a) has been or might be subjected or exposed to family violence; or*

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<sup>306</sup> RTA s 48Y.

<sup>307</sup> Vic Act s 439E. Also see NSW Act s 213A; Qld Act s 461(3)(b); NT Act s 134(2A); SA Act s 89A(4)(d)(ii); WA Act s 82J(2A)-(2B).

<sup>308</sup> In August 2023, National Cabinet agreed to "harmonise and strengthen renters' rights across Australia" including "allow tenants experiencing domestic or family violence to end agreements without penalty and with a streamlined process and evidence e.g. a declaration by a prescribed professional such as a doctor or support service worker": Anthony Albanese, *Meeting of National Cabinet - Working together to deliver better housing outcomes* (Media Release, Prime Minister of Australia, 16 August 2023) <<https://www.pm.gov.au/media/meeting-national-cabinet-working-together-deliver-better-housing-outcomes>> (accessed 1 April 2026).

<sup>309</sup> Vic Regs schedule 1. Also see SA Regs schedule 1; Qld Regs schedules 1-5; NT Regs, WA Regs schedule 4.

<sup>310</sup> RTA ss 40 and 44. See also NT Regs 10A.

*(b) has been convicted of a charge relating to family violence.*

*Penalty: a fine of \$5 000.*

### Family violence applications heard in private

In Queensland, family violence residential tenancy applications are heard in private. Applications heard in private include being removed from a residential tenancy agreement or being recognised as either a sole tenant or a co-tenant in circumstances where a perpetrator is being removed from the agreement.<sup>311</sup> Given that family violence often involves deeply personal and traumatic evidence, ensuring that applications involving family violence are heard in private is likely to reduce the risk of traumatisation when victims testify, protect children from long-term stigma and minimise the risk of sensitive medical, psychological or sexual information being made public. We recommend that family violence residential tenancy applications are heard in private.

### Locks and reasonable belief

Finally, the RTA currently provides that a victim-survivor can add, alter, or remove any lock or security device if a Family or Police Family Violence Order is in place.<sup>312</sup> However, as we observed earlier, some victim-survivors may not want to apply for a Family Violence Order because of the anxiety attached to having to prove in a courtroom that family violence occurred or are worried about antagonising the perpetrator by making them attend court. A reform from Queensland that we believe should be introduced is the ability of a tenant to change a lock at the premises if they “believe the change is necessary to protect the tenant or another occupant of the premises from domestic violence”.<sup>313</sup>

## **Recommendations**

**6.1.1 That victim-survivors should be able to terminate their lease agreement in circumstances where the perpetrator is not listed on the residential tenancy agreement.**

**6.1.2 That victim-survivors be able to serve a Notice to Terminate on the landlord enclosing written confirmation from a ‘prescribed professional’.**

**6.1.3 The definition of ‘prescribed professional’ should include registered health practitioners or social workers as well as prescribed employees of government and non-government agencies that provide services relating to family violence, sexual assault, refuge or emergency accommodation or child welfare.**

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<sup>311</sup> Qld Act s 433A.

<sup>312</sup> RTA s 57(2B).

<sup>313</sup> Qld Act s 211(2)(a).

6.1.4 The report prepared by the prescribed professional should not be able to be challenged on the basis that the family violence did not transpire or that the victim-survivor could remain at the property but should be able to be challenged on procedural grounds.

6.1.5 A co-tenant must be informed that the victim-survivor has moved out of the property and be provided with an opportunity to either terminate the lease or continue the agreement without the victim-survivor.

6.1.6 A co-tenant should have their rent apportioned for two weeks after the victim-survivor has terminated the agreement.

6.1.7 During a tenancy, a victim-survivor should not be held vicariously responsible for the actions of a co-tenant or any other person lawfully on the premises if the act or omission amounts to family violence.

6.1.8 In circumstances of family violence, the RTC/Court should be provided with the power to apportion bond.

6.1.9 Victim-survivors should be excluded from blacklists in circumstances where the breach was the result of an act or a circumstance of family violence.

6.1.10 References should only be provided in writing and must be compliant with a legislatively prescribed form or contain prescribed information.

6.1.11 Prohibit discrimination against a prospective tenant with a family violence history (both perpetrators and victim-survivors)

6.1.12 Family violence related matters are to be heard in private by TASCAT/the Court.

6.1.13 Tenants affected by family violence (including occupants) can change the locks or other security device if they have a reasonable belief it is necessary to prevent family violence, whether or not there is an order in place.

## 6.2 DISABILITY

6.2 (a) How can the Act best ensure that a person's disability is appropriately considered in tenancy matters, particularly at the end of a tenancy?

(b) What specific protections are needed for NDIS participants living in SDA?

For a number of years, the Tenants' Union of Tasmania has been contacted by people living in specialist disability accommodation (and their carers).<sup>314</sup> In many cases, the resident lives with extreme functional impairment or has very high support needs. Regardless of the type of accommodation in which they are living, most residents are not protected by the RTA as they have usually entered a sub-tenancy, with the residential tenancy agreement in place between the disability provider and a landlord. The Government has previously recognised the need to close this loophole and better protect SDA residents, with the Attorney-General informing Parliament in 2022 that amendments to the RTA would be required to "provide further protection to group homes and special supported accommodation, including specialist disability accommodation under the National Disability Insurance Scheme".<sup>315</sup>

In 2023, the *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* recommended "increasing tenancy and occupancy protections for people with disability by adopting and enhancing the best regulatory and legislative models available".<sup>316</sup> For people living with disability who were protected by residential tenancy legislation, the Royal Commission observed that security of tenure would be increased if States and Territories adopted the following law reform:<sup>317</sup>

- Enacting legislation to replace landlords' 'no-grounds' termination rights with 'reasonable grounds';
- For both social housing and private housing tenancies, where a tribunal has discretion whether or not to order termination of the tenancy, empowering the tribunal to take the tenant's or a co-occupier's disability and the nature of that disability into account.

Abolishing no-grounds evictions and ensuring that a person's disability is considered when terminating a lease agreement is addressed in our response to questions 7.1 and 7.2.

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<sup>314</sup> The *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* ('the Royal Commission') 8.3 defines Specialist Disability Accommodation (SDA) as "a form of accommodation funded by the NDIS for people who need specialist housing solutions - that is, homes with design features that facilitate the provision of intensive supports in response to extreme functional impairment or very high needs". Group homes are defined as a form of accommodation where services and supports are provided to residents and are 'distinguished from other houses by having four or five long-term residents': *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020* (Cth).

<sup>315</sup> Tasmania, *Parliamentary Debates*, House of Assembly, 24 August 2022, 64 (Elise Archer, Attorney-General).

<sup>316</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report: Volume 7 - Inclusive education, employment and housing - Part C* (Report, September 2023), 535 <<https://disability.royalcommission.gov.au/publications/final-report>> (accessed 1 April 2026).

<sup>317</sup> Ibid recommendation 7.37.

For people living with disability who were not adequately protected by residential tenancy legislation, including sub-tenants and persons living in boarding premises the Royal Commission observed that greater protection would be assured if the following reforms were adopted:<sup>318</sup>

- Adopting the provisions included in the Vic Act Part 12A to protect residents of SDA under the National Disability Insurance Scheme;
- Introduce ‘occupancy principles’ similar to those under the *Boarding Houses Act 2012* (NSW), to cover all non-SDA housing, such as assisted boarding houses in New South Wales and supported residential services in Victoria;
- Extend occupancy principles to cover ‘general boarding houses’ in New South Wales and unsupported boarding and rooming houses in other jurisdictions where many people with disability live. This reform should include conferring jurisdiction on the appropriate tribunal to resolve disputes, particularly in relation to eviction; and
- In hearing disputes about eviction, tribunals be required to consider the occupant’s disability, the nature of that disability, the possibility of retaliatory eviction, and the likelihood of finding suitable alternative accommodation.

Part 12A of the Vic Act specifically addresses SDA and was recommended as a model to be adopted across Australia. Importantly, the Victorian model defines an ‘SDA resident’ broadly as either living in an SDA enrolled dwelling (i.e. receiving funding through NDIS) or “any other permanent dwelling that provides long term accommodation and where daily independent living support is provided to one or more residents...”<sup>319</sup> A broad definition is preferred as not all persons living in a SDA will receive funding through the NDIS.<sup>320</sup> Other protections set out in Part 12A of the Vic Act that should form part of any Tasmanian reform include:

- That the resident must be provided with a residency agreement that contains specified information;<sup>321</sup>
- If the SDA property is being sub-let confirmation that the property is able to be sub-let;<sup>322</sup>
- That the SDA provider install fixtures required by the resident to assist their daily living or proper use and enjoyment of the SDA dwelling;<sup>323</sup>
- That the SDA provider cannot demand or receive a bond from a resident;<sup>324</sup>
- The SDA provider has to give 90 days’ notice of a proposed rent increase;<sup>325</sup>

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<sup>318</sup> Ibid.

<sup>319</sup> Vic Act s 498B.

<sup>320</sup> In Tasmania, an example of a person with disability who is not receiving funding through the NDIS could be a person who had been in a car accident and received compensation through the Motor Accidents Insurance Board (MAIB).

<sup>321</sup> Vic Act s 498J.

<sup>322</sup> Vic Act s 498LB(c).

<sup>323</sup> Vic Act s 498M(1)(ca).

<sup>324</sup> Vic Act s 498ZL.

<sup>325</sup> Vic Act s 498ZB(1).

- That the SDA provider is responsible for the installation costs and charges in respect of the initial connection of electricity, water or gas;<sup>326</sup>
- Recognising the difficulty some persons with disability will have finding appropriate alternative accommodation, the SDA provider must give the SDA resident at least 90 days' notice of termination of the agreement.<sup>327</sup>

The Royal Commission also heard evidence that many people living in boarding houses are disadvantaged “living on low incomes who do not or cannot work and experience health and mental health issues or significant impairment from substance misuse and addiction”.<sup>328</sup> Other characteristics of boarding house tenants include:<sup>329</sup>

*[T]hat they are more likely to live with psychiatric and behavioural issues, social isolation and poor access to community supports and high levels of general health care needs with a profile in many cases of repeated admissions to acute care health facilities.*

Although the Royal Commission recommended greater legislative protection for people living in boarding houses across Australia,<sup>330</sup> this reform is unnecessary in Tasmania where most boarding house tenants have more or less the same rights as residential tenants.

## Recommendations

**6.2(a) We strongly support the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability recommendations including:**

- Replacing ‘no-grounds’ evictions with ‘reasonable grounds’; and
- Empowering the Tribunal/Court to take the tenant’s disability and the nature of that disability into account when considering whether to make an eviction order.

**6.2(b) That similar legislation be enacted in Tasmania modelled on Part 12A of the Vic Act including:**

- That the resident must be provided with a residential agreement that contains specified information;
- If the SDA property is being sub-let confirmation that the property is able to be sub-let;

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<sup>326</sup> Vic Act s 498ZM(1).

<sup>327</sup> Vic Act s 498ZX(6)(b).

<sup>328</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report: Volume 7 - Inclusive education, employment and housing - Part C* (Report, September 2023) at 545 <<https://disability.royalcommission.gov.au/publications/final-report>> (accessed 1 April 2026).

<sup>329</sup> Ibid.

<sup>330</sup> Ibid.

- That the SDA provider install fixtures required by the tenant to assist their daily living or proper use and enjoyment of the SDA dwelling;
- That the SDA provider cannot demand or receive a bond from a resident;
- The SDA provider has to give 90 days' notice of a proposed rent increase;  
and
- That the SDA provider is responsible for the installation costs and charges in respect of the initial connection of electricity, water or gas.

## 6.3 QUIET ENJOYMENT, PEACE, COMFORT AND PRIVACY

*6.3 (a) Should the Act's quiet enjoyment and entry provisions be reformed? If so, what changes should be made and why?*

*(b) Should tenants with a proven track record of positive tenancy be required to have three-monthly inspections?*

The right to quiet enjoyment casts a long shadow over the rest of the RTA, as all obligations imposed on tenants must be read with an eye to it; tenants should be able to do what they want and live how they want, unless the RTA (or another law) expressly provides otherwise. Before a rental property can become a home, tenants must be free from undue interference from the landlord, including from unnecessary and invasive visits and inspections.

Accordingly, the right to quiet enjoyment must be diligently enforced. However, there is currently no penalty attached to a breach of quiet enjoyment per se, only interference with peace, comfort and privacy, which is overlapping but not entirely the same. A penalty should attach to breach of s 55(1), and a breach or breaches of ss 55(1) or (2) that amount to harassment should be made an offense.<sup>331</sup>

The right to quiet enjoyment also only expressly applies to the direct actions of the landlord; a landlord is not vicariously liable for the actions of their other tenants, even though they have the power to take steps to prevent anti-social behaviour. Instead, a tenant must deal directly with the offending neighbour through restraining orders or the tort of nuisance, putting themselves at risk of retribution.

With respect to right of entry, tenants presently have very little capacity to compel landlords to reschedule inspections and other appointments. There is no way for tenants to force a landlord to agree to a time under s 56(5)(a). This can cause inconvenience and distress, for instance if the tenant is a shift worker, if the scheduled entry time is during a child's nap time, if the tenant is unwell, or if the tenant works from home and has an appointment that cannot be rescheduled.

Tenants should be able to request that a proposed entry is rescheduled, and it be incumbent on the landlord to seek permission from the RTC to refuse consent to the change. If the right of entry is stayed pending the outcome of any dispute, this should have the effect of encouraging landlords to negotiate in good faith, if they want to avoid delays. The RTA should also place more limits on how a right of entry is to be exercised. For instance, it should only be for the purpose stated on the notice, it should only be for as long as necessary to achieve the purpose, and it must generally be exercised in a reasonable manner and preserve the tenant's privacy.<sup>332</sup> If the landlord is not attending themselves, or is not a natural person, or intends to have another person present with them, they should be required to specify who they are in the notice, and justify why their presence is necessary to fulfill the purpose of the visit.<sup>333</sup> If a landlord does not exercise their rights in a reasonable

<sup>331</sup> SA Act s 65; Ontario Act s 235.

<sup>332</sup> Vic Act s 87; Qld Act s 261; WA Act s 46; RPA s 30.

<sup>333</sup> Qld Act s 194.

manner, a tenant should be able to apply to the RTC for orders that place further restrictions on the landlord's rights.<sup>334</sup>

Entry for reasons that are not related to the tenancy agreement, such as anything related to the sale of the property, should be tightly restricted and tenants should be compensated for the nuisance.<sup>335</sup> Tenants derive no benefit whatsoever from these incursions, but suffer significant inconvenience and discomfort.

### **Case study**

*Ed\* rents a property with his partner, who was recently diagnosed with cancer. While she was undergoing treatment, and was consequently bedridden, their property manager notified them that the property was up for sale, and that they would be carrying out private viewings for prospective purchasers. Ed explained the situation and asked that the viewings be cancelled or rescheduled, but the property manager refused.*

It is a common complaint from tenants that their landlord has reserved a part of the premises for their exclusive use, whether or not that was made clear prior to entering the tenancy agreement, and accesses it freely without notice or consent. As set out in *Huskisson v Roper*,<sup>336</sup> it should be assumed that the tenant has exclusive occupation of the address stated in the written agreement, unless the written agreement clearly states otherwise. If the landlord has retained part of the premises, it must only be accessed in a reasonable manner, and upon giving notice.

Routine inspections should be limited to once every six months for all tenants.<sup>337</sup> This is sufficient to check that a tenant is complying with their obligations under s 53. If a landlord has a reasonable belief that the tenant has significantly breached their commitments under s 53, then they may exercise right of entry for that reason. Otherwise, quarterly inspections unduly inconvenience tenants, particularly if they wish to be present for the inspection, as they (1) have no way to compel the inspection to be rescheduled; (2) may be given as little as 24 hours' notice; and (3) may need to take time off work.

## **Recommendations**

### **6.3.1 s 55(1) is amended to add a penalty.**

**6.3.2 A landlord must take all reasonable steps to ensure that neighbours that they also have tenancy agreements with (whether under the RTA or otherwise) do not interfere with the reasonable peace, comfort, and privacy of other tenants (penalty provision).**<sup>338</sup>

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<sup>334</sup> Vic Act s 91; NSW Act s 61.

<sup>335</sup> Vic Act s 86.

<sup>336</sup> [2011] ACAT 41.

<sup>337</sup> ACT standard agreement cl 77; Vic Act s 86.

<sup>338</sup> NSW Act s 50; SA Act s 65; NZ Act s 45; WA Act s 44; RPA s 21.

6.3.3 Add that a breach of ss 55(1) and/or (2) that amounts to harassment is an offence.<sup>339</sup>

6.3.4 A landlord seeking consent for entry under s 56(1) must only seek consent within seven days of when the entry is sought (*penalty provision*).<sup>340</sup>

6.3.5 When exercising right of entry, a landlord must (*penalty provision*):<sup>341</sup>

- Only exercise it in order to achieve the stated purpose;
- Only stay at the property as long as is necessary to achieve the stated purpose;
- Exercise the right in a reasonable manner;
- Must take all reasonable steps to preserve the tenant's privacy.

6.3.6 s 56(2)(a)(iv) is amended to provide that a landlord may only enter premises without notice if the premises have been destroyed or rendered uninhabitable.

6.3.7 s 56(2) is amended to provide that a landlord can enter the premises (but not the dwelling) in order to serve notices and documents under the RTA.

6.3.8 Any notice of entry must be in the prescribed form, and contain (*penalty provision*):<sup>342</sup>

- Who will be attending, and, if the landlord intends to attend with others, why;
- What ground the landlord is relying on, and particulars of the ground;
- The date of proposed entry (which must not be on a Sunday or public holiday unless agreed in writing); and
- The time of the proposed entry (which must not be outside 9am-5pm unless agreed in writing).

6.3.9 s 56(3)(d) is repealed, s 56(3)(f) is amended to provide that a landlord may enter if they have a reasonable belief that the tenant is in significant breach of their obligations under s 53.<sup>343</sup>

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<sup>339</sup> SA Act s 65; Ontario Act s 235.

<sup>340</sup> Vic Act s 85; NZ Act s 48; Ontario Act s 26.

<sup>341</sup> Vic Act s 87; Qld Act s 261; WA Act s 46; RPA s 30.

<sup>342</sup> NSW Act s 57.

<sup>343</sup> Qld Act s 192.

6.3.10 Notice periods for routine inspections and entry under s 56(3)(f) are extended to a minimum of seven days (*penalty provision*).<sup>344</sup>

6.3.11 Routine inspections are only permitted once every six months (*penalty provision*).<sup>345</sup>

6.3.12 Entry for a private viewing for a prospective tenant or purchaser is restricted (*penalty provision*):

- To a maximum of twice a week;
- In the case of a tenant, only where a notice to vacate or notice of termination has been issued, or the tenant has given notice of an intention to break lease; and
- In the case of a purchaser, only after a notice of intention to sell has been given to the tenant.<sup>346</sup>

6.3.13 If a landlord conducts a private viewing, or the tenant agrees to an open home, the landlord (*penalty provision*):

- Must compensate the tenant the equivalent of one day of rent;<sup>347</sup>
- Is liable for any damage to or theft of the tenant's possessions, and all damage to the premises;<sup>348</sup>
- Must not require the tenant to put the premises in a better state of cleanliness or repair than what is required under s 53; and
- Must not require the tenant to vacate the premises for the period that the viewing or open home is taking place.<sup>349</sup>

6.3.14 In the course of selling or re-letting the premises, the landlord (*penalty provision*):

- May only conduct a valuation, building inspection, or photo shoot with the consent of the tenant;<sup>350</sup>
- May only use photos/videos of the premises which show the tenant's possessions with the written consent of the tenant;<sup>351</sup>

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<sup>344</sup> ACT standard agreement cl 77; NSW Act s 55.

<sup>345</sup> ACT standard agreement cl 77; Vic Act s 86.

<sup>346</sup> Qld Act s 198.

<sup>347</sup> Vic Act s 86.

<sup>348</sup> WA Act s 46.

<sup>349</sup> WA Act s 46.

<sup>350</sup> NZ Act s 48.

<sup>351</sup> NSW Act s 55A; Qld Act s 203.

- Must make the photos/videos available for the tenant to view before publishing.<sup>352</sup>

6.3.15 Upon receiving a notice that the landlord intends to exercise their right of entry the tenant may request that is moved to an alternative date and/or time, and give reasons why the time and/or date in the notice is not appropriate.<sup>353</sup> The landlord must not unreasonably refuse any request, and must seek consent from the RTC to refuse any request.<sup>354</sup> Refusal to accept the proposed change will be prima facie unreasonable, depending on why entry is sought, if it is requested on the basis that, inter alia:<sup>355</sup>

- The tenant is unwell, or on medical grounds generally;
- The tenant has a dependent child, and the proposed time of entry is at their regular nap time;
- The tenant works from home at the proposed time of entry.

6.3.16 At the start of the tenancy, the tenant is to provide the landlord with times and days of the week that are suitable and unsuitable for entry and is to take reasonable steps to notify the landlord if these times and dates change. If the tenant fails to update the landlord and does not have reasonable grounds for doing so, it may affect the outcome of any application to the RTC as above.

6.3.17 If a landlord does not comply with s 56 the tenant can apply to the RTC to place further restrictions on how and when the landlord can exercise their right of entry.<sup>356</sup>

6.3.18 If a landlord takes photos/videos in the course of exercising their right of entry, they (*penalty provision*):

- Must be provided to the tenant within seven days of access;
- Must only be used for the purpose stated in the notice of entry, unless the tenant gives written consent; and
- Must be kept securely, and destroyed after the tenancy has been terminated.

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<sup>352</sup> NT Act s 74A.

<sup>353</sup> WA Act s 46.

<sup>354</sup> Vic Act s 89.

<sup>355</sup> SA Act s 72.

<sup>356</sup> Vic Act s 91; NSW Act s 61.

6.3.19 If a landlord intends to reserve part of the premises for their own use (*penalty provision*):

- It must be clearly stated in the written lease agreement;
- The landlord must give a minimum of 48 hours notice before exercising their right to access the part of the premises that has been reserved; and
- The landlord must exercise their right of entry in a reasonable manner.

6.3.20 If the tenancy is a sub-tenancy of boarding premises (that is, a bedroom in a larger premises rented by the head tenant), and the head tenant also resides at the premises, or the premises are boarding premises and that the landlord also occupies, the "premises" for the purposes of s 56 are defined as the part of the premises that the sub-tenant/lodger has exclusive occupation of.

## 6.4 CRISIS ACCOMMODATION

*6.4 (a) Should Regulation 7 be amended to extend the exemption period for crisis accommodation providers? If so, for what duration and why?*

*(b) How should crisis accommodation providers be defined?*

*(c) Would introducing a separate framework for crisis accommodation provide a better balance between protecting residents' rights and ensuring safety for other residents and crisis accommodation providers?*

The intent of crisis accommodation is to provide very short-term accommodation for people that need to escape from danger, or are currently experiencing homelessness, until more permanent accommodation can be secured. This is predicated on their being a ready supply of social housing and affordable private housing. At present, neither of these exist in any significant number. The wait time for a priority applicant for social housing is on average 92.3 weeks, and there are zero private rentals in the entire state that are affordable for a single person on a Commonwealth benefit. As such, crisis accommodation providers are put in the very difficult position where they either need to serve as de facto medium to long-term social housing, which restricts the supply of accommodation available to people that are in immediate crisis, or evict people that have not secured permanent accommodation in order to be able to provide crisis accommodation to people with immediate need.

Crisis accommodation providers are not at fault for this situation. However, the same can be said, if not more so, for the tenants that live in crisis accommodation. They do not want to be living in crisis accommodation for longer than they have to – they would prefer a permanent home of their own. The occupants of crisis accommodation are, by definition, some of the most vulnerable people in society. So, whilst we accept that crisis accommodation providers are not to blame for the situation the sector finds itself in, we do not think that the consequences should be pushed down onto the tenants.

Instead, we think it is possible to develop a system whereby crisis accommodation providers are given tools to guarantee the safety and privacy of the shelter itself, all tenants, and staff, but also does not “throw the baby out with the bath water” with respect to the rights of individual tenants. The exemption in the RTR should not be extended – it should be abolished entirely. As good as the intentions of the crisis accommodation operators may be, no one should have functionally unfettered power to evict a vulnerable tenant into homelessness without any external checks and balances. The operator of crisis accommodation must balance the interests of the organisation itself, the physical space of the shelter and the staff that run it, the occupants as a collective, and finally the rights of each individual tenant. If there is a conflict between these interests, it is likely that that latter will lose out. This is not intended to be a value judgment, rather a clear-eyed assessment of the priority of the competing interests that a crisis accommodation provider must balance.

Firstly, the definition of crisis accommodation provider must be narrow, applying only to organisations that have been registered with and approved by the relevant Minister, in order to prevent unscrupulous operators from exploiting extremely vulnerable people.<sup>357</sup>

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<sup>357</sup> ACT Act s 126; Vic Act s 3.

Secondly, all crisis accommodation should fall within the scope of the RTA. To accommodate the distinct nature of crisis accommodation, a new part should be added to the RTA that deals only with crisis accommodation, analogous to Part 4A, which deals with boarding premises. The new part should provide that:

- If there is an inconsistency between the part and the rest of the RTA, then the new part prevails to the extent of the inconsistency;<sup>358</sup>
- A tenancy agreement for crisis accommodation must be in the prescribed form (to provide certainty to operators and tenants, and save operators the cost of drafting their own);
- Crisis accommodation providers are not required to comply with any pre-tenancy disclosure requirements;
- That crisis accommodation providers are able to impose a set of “shelter rules”, whether or not the shelter constitutes boarding premises;
- The shelter rules must be in the prescribed form and provided to a tenant before their tenancy begins;
- The RTC must develop a set of “model rules” that a shelter may adopt (a la model strata rules);<sup>359</sup>
- Shelter rules must be made with the purpose of ensuring the health and safety of persons or safety of the property and not unreasonably interfere with tenants’ quiet enjoyment, peace, comfort and privacy, taking into account the interests of all occupants;<sup>360</sup>
- If the provider wants to amend the shelter rules, they must give each occupant 14 days’ notice;<sup>361</sup> and
- At any time, a tenant may apply to the RTC for a review of a shelter rule, who may order that it is amended or severed if it is not reasonable.<sup>362</sup>

Thirdly, other changes will need to be made to the broader RTA:

- If the shelter provides boarding premises, that s 48D regarding shared rooms does not apply;
- That a crisis accommodation provider may give a tenant a 28 day notice to vacate if: (1) the premises are needed for another person; and (2) the tenant has not made reasonable attempts to secure permanent accommodation, or has refused a reasonable offer of permanent accommodation, so that shelters can move people on if they have no genuine need for crisis accommodation;<sup>363</sup> and

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<sup>358</sup> NSW Act s 137.

<sup>359</sup> Qld Regs schedule 4.

<sup>360</sup> SA s 105A.

<sup>361</sup> Vic Act s 128; RPA s 93.

<sup>362</sup> Vic Act s 128; RPA s 93.

<sup>363</sup> Vic Act s 91ZZF.

- That crisis accommodation is not subject to any loosening of the consent requirements for sub-tenancies; it remains at the discretion of the crisis accommodation provider.

*Finally*, in order to ensure the safety of all staff and occupants, the RTA should incorporate the temporary removal provisions found at ss 59, 60 and 101 of the RPA, and ss 368-377A of the Vic Act. These provisions, if adopted, would allow crisis accommodation providers to remove people – tenants or otherwise – from the premises if there is a serious threat to safety, without first needing to seek an order from the Court/TASCAT. Only if the crisis accommodation wants to make the removal permanent, do they need to seek an order from the Court/TASCAT. There are extensive guardrails in these provisions to prevent the power being exercised except in urgent situations.

In totality, we suggest that these proposed changes would protect individual tenants, provide a clear set of rights and obligations for all parties, and cater for the particular needs of crisis accommodation providers and their staff.

## Recommendations

6.4.1 The exemption from the RTA for crisis accommodation is repealed.

6.4.2 “Crisis accommodation” is defined as being provided by an organisation that has been registered with the Minister, with the purpose of providing emergency accommodation for people facing homelessness and/or family violence.<sup>364</sup>

6.4.3 A new part is added to the RTA which specifically deals with crisis accommodation, and provides:

- If there is an inconsistency between the part and the rest of the RTA, then the new part prevails to the extent of the inconsistency;<sup>365</sup>
- A tenancy agreement for crisis accommodation must be in the prescribed form (*penalty provision*);
- Crisis accommodation providers are not required to comply with any pre-tenancy disclosure requirements;
- That crisis accommodation providers are able to impose a set of “shelter rules”, whether or not the shelter constitutes boarding premises;
- The shelter rules must be in the prescribed form and be provided to a tenant before their tenancy begins (*penalty provision*);
- The RTC must develop a set of “model rules” that a shelter may adopt;<sup>366</sup>
- Shelter rules must be made with the purpose of ensuring the health and safety of persons or safety of the property and not unreasonably interfere

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<sup>364</sup> ACT Act s 126; Vic Act s 3.

<sup>365</sup> NSW Act s 137.

<sup>366</sup> Qld Regs schedule 4.

with tenants' quiet enjoyment, peace, comfort and privacy, taking into account the interests of all occupants;<sup>367</sup>

- If the provider wants to amend the shelter rules, they must give each occupant 14 days' notice;<sup>368</sup> and
- At any time, a tenant may apply to the RTC for a review of a shelter rule, who may order that it is amended or severed if it is not reasonable.<sup>369</sup>

6.4.4 A crisis accommodation provider may temporarily remove a person - being a tenant or otherwise - from the premises where there has been serious violence, or there is a strong likelihood of serious violence or risk to safety if the right of removal is not exercised (*penalty provision*).<sup>370</sup>

6.4.5 A crisis accommodation provider may serve a 28 day notice to vacate on a tenant if (1) the premises are needed for another person; and (2) the tenant has not made reasonable attempts to secure permanent accommodation, or has refused a reasonable offer of permanent accommodation.<sup>371</sup>

6.4.6 If the crisis accommodation is for boarding premises, s 48D does not apply, but a room must not be overcrowded (*penalty provision*).

6.4.7 Any recommendations regarding changes to ss 49 and 50 do not apply to crisis accommodation.

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<sup>367</sup> SA s 105A.

<sup>368</sup> Vic Act s 128; RPA s 93.

<sup>369</sup> Vic Act s 128; RPA s 93.

<sup>370</sup> Vic Act ss 368-377A; RPA ss 59, 60 and 101.

<sup>371</sup> Vic Act s 91ZZF.

## 7.1 FORCED EVICTIONS

*7.1 (a) Should property landlords be required to provide a prescribed reason to bring a fixed-term tenancy to an end? If so, what reasons should be considered valid?*

*(b) Should a longer notice period apply rather than a prescribed reason?*

*7.4 What protections, if any, are needed to prevent tenants from being evicted based on retaliation?*

*8.2 Should the Residential Tenancy Commissioner be given the power to issue orders for vacant possession, or should this power be reserved for a court or tribunal?*

### End of fixed term agreement

In Tasmania, renters on a fixed-term lease can be evicted at the end of their lease for no other reason than that their lease is ending.<sup>372</sup> Data collected by the Tenants' Union of Tasmania demonstrates that around 85 per cent of all renters in Tasmania are on fixed-term lease agreements.<sup>373</sup>

Security of tenure provides continuity in work, schooling and community engagement as well as ensuring that disadvantaged groups avoid further social exclusion. Renters with security of tenure are also able to assert their rights without fear of eviction. Currently, this is not the case, with reports published by CHOICE et al finding:<sup>374</sup>

- Around half of all tenants worry they will be blacklisted from future tenancies; and
- 44 percent of tenants are concerned that a request for repairs could result in eviction; and
- 14 per cent of tenants refuse to stand up for their rights because of the possibility of landlord recrimination.

Evictions also significantly impact renter well-being.<sup>375</sup> Renters are more likely to report poor physical<sup>376</sup> and mental health than non-renters with a recent study finding that “private rental tenants report worse mental health than homeowners... [but] the longer they remain in their homes (the more stable their tenure), the smaller the tenure-based health differential.<sup>377</sup> Children subject to regular forced moves often have disrupted schooling,

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<sup>372</sup> RTA s 42(1)(d).

<sup>373</sup> Tenants' Union of Tasmania, *Annual Report 2016/17* at page 19.

<sup>374</sup> CHOICE, National Shelter and the National Association of Tenant Organisations, 'Unsettled: Life in Australia's private rental market' (February 2017). See also CHOICE, National Shelter and the National Association of Tenant Organisations, 'Disrupted: The consumer experience of renting in Australia' (December 2018).

<sup>375</sup> Rachel Ong ViforJ, Ranjodh Singh, Emma Baker, Rebecca Bentley and Jack Hewton, 'Precarious housing and wellbeing: a multi-dimensional investigation' (Australian Housing and Urban Research Institute, Final Report No. 373: February 2022).

<sup>376</sup> Australian Housing and Urban Research Institute, 'Do housing conditions make a difference to our health?' (AHURI Research and Policy Bulletin, No. 6: April 2002).

<sup>377</sup> Ang Li, Emma Baker and Rebecca Bentley, 'Understanding the Mental Health Effects of Instability in the Private Rental Sector: A Longitudinal Analysis of a National Cohort' (2022) 296 *Social Science & Medicine*, page 6. See also John Cairney and Michael Boyle, 'Home ownership, mortgages and psychological distress', *Housing Studies* (2004) 19(2) pages 161-174.

and as a result are more likely to exhibit anti-social behaviour in later life.<sup>378</sup> Finally, it is expensive to move on a regular basis, with each forced displacement costing a renter around \$4,000.00.<sup>379</sup>

The ability of landlords to evict renters for no other reason than ‘end of lease’ does not mean that they do not have a reason for terminating the agreement. It simply means that the landlord does not need to disclose the reasons to the renter. It gives rise to the threat of retaliatory eviction (whether actual or implied), it potentially facilitates unlawful discrimination, and it operates to dissuade renters from enforcing their notional rights under the RTA.

We strongly believe that if there is no change to the use of the property (such as the landlord or family members of the landlord moving in, or significant renovations), renters should be able to maintain their tenure unless the landlord can prove that they have breached their residential tenancy agreement. Tasmania has already committed to making this change as part of ‘A Better Deal for Renters’, Western Australia recently announced that it would be introducing a Bill to abolish no-ground evictions<sup>380</sup> and it is already law in the Australian Capital Territory, New South Wales, South Australia and Victoria.<sup>381</sup>

### Section 42(1)(b)

If s 42(1)(d) is repealed, as is strongly recommended, we suggest that s 42(1)(b) is broadened so that a notice may be issued under it during a fixed term tenancy – though it cannot take effect until the fixed term has concluded. It would be artificial to require a landlord to wait until the fixed term has ticked over onto a non-fixed term before they can issue the notice. However, in every other sense s 42(1)(b) notices should be restricted and subject to oversight to ensure that they do not supplant end of fixed term as de facto no grounds evictions.

Firstly, sale of the property should be abolished as a valid ground for a notice to vacate. There is no need for a tenant to be evicted to facilitate a sale, as (1) if the premises are purchased by an investor, there is no good reason why they should be able to evict the tenant and (2) if the landlord intends to move in, or have a family move in, or otherwise change the use of the property, they can rely on other s 42(1)(b) grounds. That is, the only material effect s 42(1)(b)(i) has is to permit investors to evict in situ tenants on a no grounds basis.

Secondly, a landlord relying on a s 42(1)(b) notice to vacate must be able to prove that they are acting in good faith, by affixing evidence of the grounds to the notice to vacate. This is already the case with respect to sale of property, but a notice to vacate for renovations (or demolition) should be accompanied by, for example, council permits and building contracts, and a notice to vacate for a family member moving in should be accompanied by an affidavit

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<sup>378</sup> Roger Webb, Carsten Pedersen, Pearl Mok, ‘Adverse outcomes to early middle age linked with childhood residential mobility’, *American Journal of Preventive Medicine* (2016) 51(3) pages 291-300.

<sup>379</sup> Tenants’ Union of NSW, ‘Eviction, Hardship and the Housing Crisis’ (February 2022).

<sup>380</sup> Government of Western Australia, ‘Cook Labor Government to deliver protection, rent relief for tenants’, *Media Release*, 4 May 2026. Also see Joe Spagnolo, ‘‘Overdue’ laws for evictions - Safeguards for renters’, *Sunday Times*, 5 April 2026, page 10.

<sup>381</sup> ACT Act standard agreement cl 92-97. See also Vic Act s 91ZZD; SA Act s 81; NSW Act Division 2.

from that family member. A tenant should not be expected to accept the validity of a notice to vacate on faith.

Thirdly, there should be consequences if a landlord falsely relies on a s 42(1)(b) ground. It should be made an offence to issue a notice on the grounds that the landlord knows are not true, and the Court should have the power to reinstate a tenancy that has ended under false pretences. Further, a landlord should be prohibited from re-letting premises for a fixed period after issuing a notice to vacate under s 42(1)(b). The RTC should monitor listings to ensure compliance.

Fourthly, though s 42(1)(b)(iii) should be broadened to include the demolition of property, the definition of “significant renovations” in s 42(1A) should be tightened. Currently, the provision could be relied upon if the premises were rendered unsafe for a single day or a single afternoon. It is also nebulous as to whether “renovations” can include “repairs” – we do not think that landlords should be able to rely on their own neglect of the premises to evict a tenant; renovations must be significant discretionary improvements only. Before issuing a notice on this ground, the tenant should be given the option of continuing the tenancy with abated rent or entering into a new agreement once works are completed.

Fifthly, if a landlord gives a notice to vacate for a no fault reason (that is, not under ss 42(1)(a) or (g)) then the landlord should be required to compensate the tenant for the reasonable costs of moving, given the eviction is solely for the benefit of the landlord, the tenant has not done anything wrong, and the tenant is likely to incur significant expense as a consequence. The amount should be prescribed and should be equivalent to the approximate cost of moving.

Finally, the notice period for any no-fault ground should be at least 90 days, to allow the tenant a reasonable chance to secure another property. 42 days is inadequate with the private and social sectors being what they are. In conjunction with the recommendation (in the answer to question 8.3) that a tenant not be liable for rent past vacation if they vacate during the period of a notice to vacate, it should ensure that landlords only issue a notice under s 42(1)(b) where the grounds are genuine.

## Recommendations

### 7.1.1 s 42(1)(d) is repealed, as well as ancillary provisions:

- s 11(4);
- s 11(5);
- s 11(6);
- s 43(1)(c);
- s 43(3B);
- s 43 (3C).

7.1.2 s 42(1)(a) is amended to provide that, if the breach is rental arrears, the tenant must be in at least 14 days arrears.

7.1.3 s 42(1) is amended to provide additional grounds for issuing a notice to vacate:

- That the premises are overcrowded in a manner that is not consistent with reasonable health and safety standards (14 days);
- If the sole tenant has died, the landlord may give a notice to vacate to the estate/family (unless occupied by a spouse or dependant that opts to take over the tenancy) (14 days);
- If the premises are to be demolished (90 days);
- If the accommodation is student housing, that the tenant is no longer a student (28 days);
- If the agreement was made under an employment contract, that the tenant is no longer an employee and the accommodation is needed for another employee (28 days).

7.1.4 s 42(1)(b) is amended to delete “where the tenancy is not for a fixed period, that” and s 43 is amended to provide that if a s 42(1)(b) notice is issued during a fixed term, the notice cannot take effect until after the fixed term has concluded.

7.1.5 ss 42(1)(b)(i) is repealed.

7.1.6 s 42(1)(b)(ii) is amended to specify that using the premises for short-stay accommodation is not a “change of use” for the purposes of the provision.

7.1.7 s 42(1)(b) is amended to provide that if a landlord relies on it then they are not permitted to re-let the premises for at least 12 months following the termination of the tenancy (penalty provision).

7.1.8 s 42(1)(dc) is amended to add “wilfully and” before “without”.

7.1.9 s 42(1)(dd) is repealed.

7.1.10 s 42(1A) is amended to provide that:

- The premise must be (1) unfit for occupation for at least six weeks; and (2) the tenant must have rejected an offer to temporarily relocated with abated rent;
- “Renovations” do not include repairs that the landlord is responsible for carrying out under ss 32-33 or Part 3B.

7.1.11 s 42 is amended to provide that:

- It is an offence to issue a notice to vacate on the basis of a ground that the landlord knows or should know is not true;

- If the landlord gives a notice to vacate that is not true, or is otherwise defective, and the tenant acts in reliance of it, the tenant can apply to have the tenancy reinstated (or for compensation if the premises have been filled in the interim).

7.1.12 s 43 is amended to provide that a notice to vacate can be withdrawn before it expires with the consent of the parties - including implied withdrawal.

7.1.13 s 43 is amended to provide that a landlord can only issue a fresh notice to vacate on the same grounds if any previous notice has expired or been withdrawn.

7.1.14 s 43(3A) is amended to remove any reference to sale, but add that any other notice issued under s 42(1)(b) must be accompanied by supporting evidence, such as:

- Contracts with trades;
- Council permits;
- Affidavits from family members.

7.1.15 s 44 is amended to provide that:

- A notice to vacate must be in the prescribed form;
- Must be signed by the landlord or agent;
- If issued under s 42(1)(b), must specify that the tenant can comply with the issue and render the notice of no effect;
- Must specify that a tenancy can only be terminated by order of the Court;
- Must not include information that is misleading or deceptive (*penalty provision*).

7.1.16 s 43 is amended to provide that the period of notice for s 42(1)(b) notices to vacate is extended to 90 days.

7.1.17 If notice is given for a no-fault reason (ie any ground other than ss 42(1)(a) or (g)), the landlord must compensate the tenant with the prescribed amount, equivalent to reasonable cost of moving.

## 7.2 GENUINE AND JUST

*7.2 Should the Act be amended to ensure that orders for vacant possession are granted only when the reasons are genuine and just?*

Forced eviction is treated as relatively routine and minor under the RTA and accompanying legislation; an application for vacant possession is a “minor civil matter” with a corresponding level of formality and gravity, and whether or not a tenant (and their family) is likely to be made homeless by an order is simply not a relevant consideration under the RTA. It is not seen for what it is: the state forcibly depriving someone of shelter, a fundamental human right.<sup>11</sup> Unlike losing a job, there is essentially no safety net; an unemployed person can access Jobseeker, as meagre as it is, whilst a person that is forcibly evicted is likely to be waiting almost two years for social housing. Being made homeless is catastrophic for a person’s mental and physical health. In the criminal law, it is an accepted principle of sentencing that a custodial sentence should only be imposed as a last resort, where all other options have been exhausted.<sup>12</sup> In our view, forced eviction can often be as detrimental, if not more so, than a custodial sentence – at least a person in prison has a roof over their heads, and a bed. Increased homelessness also compromises the safety of the wider community. As such, forced eviction into homelessness should be avoided wherever possible. The Court should instead have a range of options at its disposal that do not amount to eviction – again, analogous to the range of options available when sentencing a criminal offender.

Victoria is currently the only jurisdiction in Australia that applies an adequately solemn approach to forced evictions, that is consistent with treating shelter as a human right. When considering the making of a termination order, the Victorian Civil and Administrative Tribunal (VCAT) must be satisfied “that in the circumstances of the particular application, it is reasonable and proportionate... to make the order...”.<sup>382</sup> In other words, even when the termination notice is ostensibly valid, VCAT may only evict the resident if it is reasonable and proportionate, taking into account a number of factors including the respective personal circumstances of the parties.

The Victorian provision reads as follows:<sup>383</sup>

*For the purposes of determining whether it is reasonable and proportionate to make a possession order, the Tribunal must have regard to the following—*

*(a) the nature, frequency and duration of the conduct of the renter, resident or site tenant which led to the notice to vacate being given, including whether the conduct is a recurring breach of obligations under a residential rental agreement, residency right or site agreement;*

*(b) whether the breach is trivial;*

*(c) whether the breach was caused by the conduct of any person other than the renter, resident or site tenant;*

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<sup>382</sup> Vic Act s 330(f).

<sup>383</sup> Vic Act s 330A.

*(d) whether the renter, resident or site tenant has made an application for a family violence safety notice, family violence intervention order, non-local DVO or personal safety intervention order and—*

*(i) if an application has been made, whether a family violence safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order has been made and whether the notice or order is still in force; and*

*(ii) if a notice or order was made, whether it included an exclusion condition; and*

*(iii) any other matter in relation to family violence or personal violence the Tribunal considers relevant;*

*(e) whether the breach has been remedied as far as is practicable;*

*(f) whether the renter, resident or site tenant has, or will soon have, capacity to remedy the breach and comply with any obligations under the residential rental agreement, residency right or site agreement, as the case requires;*

*(g) the effect of the conduct of the renter, resident or site tenant on others as a renter, resident or site tenant;*

*(ga) in the case of an application referred to in section 322A, any community impact statement provided by Homes Victoria;*

*(h) whether any other order or course of action is reasonably available instead of making a possession order;*

*(i) as the case requires, the behaviour of the residential rental provider, the provider's agent, the rooming house operator, the caravan park landlord, the caravan landlord or the site landlord;*

*(j) any other matter the Tribunal considers relevant.*

In Tasmania, following the Supreme Court decision of *Parsons v Director of Housing*<sup>384</sup> Magistrates are required to consider whether it would be “genuine and just” to evict a social housing tenant.<sup>385</sup> In that decision, Geason J found:

57. Turning to the meaning of each of those terms, “genuine” in this context means “real” or “authentic”. “Just” means “appropriate in the circumstances” or “fair”. The Court is required to be satisfied that the reason for the notice is the authentic or the real reason for it; and that the reason is fair. That is a judgment to be made by the Court on the evidence, in the same way as other discretionary powers are exercised.

58. In my view, the content of those standards is adaptable: what is genuine and just in one case may not be in another; and the Court must apply the terms to the situation before it. In a social housing context, the substance of those concepts might

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<sup>384</sup> [2018] TASSC 62. Upheld on appeal in *Director of Housing v Parsons* [2019] TASFC 3.

<sup>385</sup> RTA s 45(3) provides that a Magistrate can make an order to evict a tenant if satisfied that the reason for serving the Notice to Vacate was “genuine or just”. In *Parsons* Justice Geason found that the phrase should be interpreted as meaning “genuine and just”. See also *Blowfield v Centacare Evolve Housing Ltd* [2024] TASSC 27 at [11].

be different from a case where parties have negotiated a lease on an equal footing. For example, the respondent's published guides about tenancy and behaviour might be relevant; past conduct or engagement between tenant and landlord, too. It is not necessary to be prescriptive about the content of this consideration. The reason for the notice will be the landlord's reason and that is the starting point of the evaluation. What is "just" takes its colour from all the circumstances, including rights of ownership and matters agreed at the commencement of the lease. It is not a consideration focussed solely on the circumstances of the tenant. But it is an incident of the conduct of a hearing – unequivocally the context for the required evaluative exercise that both parties are heard, and it cannot be that the tenant's evidence is to be ignored. Otherwise the notice might just as well be "rubber stamped" in the registry.

Whilst similar to the Victorian 'reasonable and proportionate' test, the Tasmanian test has several limitations including that the precedent has only been applied to its full extent in social housing cases, the decision is only obiter dicta and thus not binding on the Court, and the parameters of the test are nebulous. Another limitation is that the Court has been reluctant to recognise that breaches can be rectified between the Notice to Vacate being served and the Application for an Order for Vacant Possession being heard.

In the case of *Housing Choices Tasmania v Jennifer Hall*,<sup>386</sup> the tenant was a single mother with three dependent children who had lived in her Devonport social housing home for four years. The tenant was served with a Notice to Vacate after falling \$1800.00 into rental arrears. However, on the day the hearing took place, all rental arrears had been repaid, and the tenant's rent was two weeks in advance. In finding that she would make the order for vacant possession, her Honour Magistrate Topfer said "it is my view that the relevant considerations on the evaluation of whether the reason was 'just' is limited to the time at which the Notice to Vacate became effective".<sup>387</sup>

Adoption of the Victorian 'reasonable and proportionate' model would mean that the Court would be able to evaluate more than just the circumstances that existed at the time the Notice to Vacate took effect. It would also codify the decision in *Parsons* in a way that is clear and unambiguous for both landlords and tenants, by setting out factors that the decision-maker must take into account.

In determining whether it would be 'reasonable and proportionate' to make the eviction order, the Victorian Civil and Administrative Tribunal is required to weigh the hardship that would be suffered by the tenant if the order was made and whether it is outweighed by the hardship encountered by the landlord. In the case of *Mikho v Burgess (Residential Tenancies)*,<sup>388</sup> the landlord was in the process of selling his own home and wanted to move into his investment property. The tenant's evidence was that the landlord had at least two other investment properties, it took them nine months to find a home that was close to the

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<sup>386</sup> (17 May 2024, M/2024/379) (unreported, decision attached).

<sup>387</sup> *Housing Choices Tasmania v Jennifer Hall* (17 May 2024, M/2024/379) at [15]. Also see *Housing Choices v Philip Hardman* (25 August 2022, M/2022/1257) (transcript attached) at [6]. Cf *Centacare Evolve Housing Ltd v Denis Leeson* (25 November 2022, M/2022/1393 & M/2022/621) (unreported decision attached) at [53].

<sup>388</sup> [2020]VCAT 691.

children’s school, there were a limited number of properties in the area within the tenant’s budget, the tenant’s household income had reduced which would make it difficult to incur additional expense in moving and their home was close to a hospital where one of the tenants’ received regular treatment.<sup>389</sup> After considering the evidence provided by both parties VCAT determined that it was not reasonable and proportionate to make the eviction order on the basis that “the impact of making the termination order sought by the landlord would be overwhelmingly harsher on the tenants and their children than the landlord”.<sup>390</sup>

Importantly, the adoption of a reasonable and proportionate test will mean that each case is determined on the facts and circumstances before the Court. On occasion, the hardship of the tenant will outweigh that of the landlord, and in other cases the landlord’s hardship will be determinative. For example, in the case of *Towt Bros Pty Ltd v Clissold (Residential Tenancies)*,<sup>391</sup> a landlord sought to evict their tenant because she was \$2000 in rental arrears and owed \$3000 for electricity supplied to the property. The tenant argued that the Tribunal should refuse the eviction order and allow her to enter into a payment plan on the basis that she was in sole receipt of a Disability Support Pension and there were few alternative properties within her price range in the local area. The landlord’s response was that the relationship between the parties had irretrievably broken down, that it was unfair that they were being asked to carry a significant debt, that the tenant could live with other family members or find alternative accommodation. The Tribunal determined that it was reasonable and proportionate to evict the tenant “especially in circumstances where the relationship has broken down, there is considerable debt owed by the resident to the caravan park landlord, where there is demand for the accommodation by others in need and the resident has alternative accommodation options available”.<sup>392</sup>

Changes should also be made to s 41 for similar reasons, though they should be slightly more restrictive to acknowledge that an application under s 41 is by definition serious and urgent.

Finally, the *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* recommended that when a decision-making body has discretion to evict a tenant that there should be a requirement to take into account that the tenant has a disability and in particular “the nature of that disability, the possibility of retaliatory eviction, and the likelihood of finding suitable alternative accommodation”.<sup>393</sup> Whilst we recommend the Victorian ‘reasonable and proportionate’ test and note that VCAT is required to consider “any other matter the Tribunal considers relevant”,<sup>394</sup> for clarity there should be an express reference made to disability.

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<sup>389</sup> Ibid at [13].

<sup>390</sup> Ibid at [14].

<sup>391</sup> [2020] VCAT 1116.

<sup>392</sup> Ibid at [42].

<sup>393</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report: Volume 7 - Inclusive education, employment and housing - Part C* (Report, September 2023), recommendation 7.37 <<https://disability.royalcommission.gov.au/publications/final-report>> (accessed 1 April 2026).

<sup>394</sup> Vic Act s 330A(j).

## Recommendations

7.2.1 s 45(3) is amended to provide that:

- The Court must be satisfied that the notice to vacate has not been withdrawn;
- If the notice was issued for rental arrears (or some other payment), the Court must be satisfied that the monies have not been repaid.

7.2.2 s 45(3)(b) is amended to provide:

- “[G]enuine or just” is substituted with “the s 42(1) grounds for serving the notice to vacate are proven/established/true”;
- The order must only be made if the Court is satisfied that it would be reasonable and proportionate to make the order;
- A non-exhaustive list of relevant factors that the Court may take into account when determining whether or not it would be reasonable and proportionate:
  - Nature duration and frequency of any breach;
  - Whether breach trivial;
  - Whether breach caused by a person other than the tenant;
  - Family violence;
  - Whether the breach has been remedied;
  - Whether the tenant has or soon will have capacity to remedy;
  - The effect of the conduct on others;
  - Any community impact statement;
  - Whether any other order or course of action reasonably available;
  - The behaviour of the landlord;
  - The relative hardship of the parties if the order was or was not made;
  - Whether the tenant has a disability that may impact on their ability to move or source suitable alternative accommodation.

7.2.3 s 45(3)(4) is amended to provide that if the parties are unable to reach an agreement as to when an order for vacant possession is to take effect, the Court is to choose the date, which must be at least seven days after the date the order is made unless there are extraordinary circumstances, based on the circumstances of the parties:

- Potential financial loss;
- Ability to secure alternative premises;
- Effect on children;
- Effect on any sub tenant or occupant;

- The nature of the grounds (fault or no fault).

7.2.4 s 45 is amended to provide that if the Court is satisfied that that the grounds for the notice to vacate are true, but that it would not be reasonable and proportionate to make an order for vacant possession, the Court may instead:

- Impose a payment plan;
- Make behaviour orders;
- Order the tenant to attend financial counselling;
- Any other order that is appropriate in the circumstances.

7.2.5 If a tenant does not comply with such an order, the landlord may reapply to the Court for a vacant possession order, if the breach is not trivial. If the tenant complies with the order, or the landlord declines to reapply, the application is dismissed.

7.2.6 If an application is based on rental arrears, or some other monetary compensation, and the tenant reimburses the landlord in full before any warrant for possession is executed, the warrant and order for vacant possession are rendered of no effect.

7.2.7 s 41(2) is amended to provide that before making an order for termination the Court must be satisfied that it would be appropriate in the circumstances, taking into account:

- The severity of the conduct;
- The frequency of the conduct;
- The nature of the conduct;
- Any gap between the conduct and the making of the application.

7.2.8 If the Court is not satisfied that it would be appropriate to make the order, the Court can instead:

- Impose behaviour orders; and/or
- Take the application as an application for restraining orders; and/or
- Adjourn the application for a period; and/or
- Make compensation orders; and/or
- Any other order.

## 7.3 ABANDONMENT

*7.3 Should the Residential Tenancy Commissioner be responsible for determining if a property has been abandoned? What other changes, if any, should be made to the Act's abandonment provisions?*

As expanded upon in our answer to question 8.3, we do not think that the RTC should be given the power to terminate a tenancy, which an abandonment order effectively is. The power to evict a tenant should not be used lightly, and should thus be reserved for judicial or quasi-judicial officers (in the case of TASCAT members).

The existing s 47 should be amended to provide the decision maker tasked with making the determination further guidance. Factors the decision maker can take into account should include:<sup>395</sup>

- The failure of the tenant to pay rent;
- That the tenant no longer resides at the premises;
- That the tenant has failed to comply with other obligations, such as keeping the premises in a reasonable state of cleanliness;
- That the letter box contains uncollected mail;
- Reports from neighbours that the premises are empty;
- The absence of the tenant's possessions; and
- The disconnection of services and facilities.

A tenant that has been affected by an abandonment order should be given the right to apply to the Court or TASCAT to have their tenancy reinstated (or, if the premises have been reoccupied, for compensation) if an order for abandonment has been made erroneously.<sup>396</sup>

To allow for the difficulties of serving an application for an order for abandonment, where the premises have legitimately been abandoned, the applicant should be able to, after taking reasonable steps to try and serve the application on the tenant through ordinary means, effect service of the application by attaching a copy of it to the front door of the premises, without first needing to seek an order for substituted service (though the Court/TASCAT may disallow this method of service if not first satisfied that the landlord has taken reasonable steps contact the tenant directly).

The provisions regarding the abandoned personal property of the tenant must be redrafted, as they lack clarity and permit injustice.

*Firstly*, "goods on the premises to which the agreement relates appear to be abandoned by the tenant" is nebulous; are goods ipso facto abandoned by virtue of them being left at the premises after a lease has been terminated, or must the landlord form the subjective view that the tenant has no intent to collect the goods? The former is clear but harsh, as there may be many valid circumstances where a tenant is unable to clear out the premises before

<sup>395</sup> NSW Act s 106; SA Act s 94; Qld Act s 357; WA Act s 3; RPA s 107.

<sup>396</sup> Qld Act s 361; WA Act s 76B.

their lease terminates (including where there has been family violence). If it is the latter, the tenant could string the landlord out indefinitely, or the landlord may form the view erroneously and unreasonably.

*Secondly*, s 48 only categorises abandoned goods with respect to their monetary value. It does not consider that there may be, or are even likely to be, certain objects that have no monetary value per se, but are nevertheless vitally important and should be subject of protection, such as passports, birth certificates and other official documents, and obvious sentimental items such as family photos. As far as s 48 is concerned, these items are equivalent to rubbish.

*Thirdly*, the RTA does not set out how and when abandoned goods must be kept, whether they can be moved, how they are to be collected, or provide any process for dispute resolution.

Instead, s 48 should:

1. Apply to all possessions left behind at the premises after a tenancy has been terminated;<sup>397</sup>
2. Provide three categories of items: rubbish with no monetary value; items with monetary value, and important documents (including sentimental items with no monetary value);<sup>398</sup>
3. Allow a landlord to seek an order from the RTC as to what category an item belongs to, if there is any ambiguity;<sup>399</sup>
4. Provide that a landlord must give notice to the tenant of the items that need to be collected;<sup>400</sup>
5. Provide that:
  - a. Important documents must be kept for 90 days from the date of giving notice;<sup>401</sup>
  - b. Goods must be kept for 28 days from the date of giving notice;<sup>402</sup> and
  - c. Rubbish and perishable foodstuffs may be disposed of immediately;
6. Allow a landlord to remove the items from the premises and store them securely elsewhere;<sup>403</sup>
7. Provide that a landlord must not refuse to return the items or charge for their return, though may charge for the reasonable costs of removal and storage;<sup>404</sup>
8. Provide that if the items are not collected, the landlord must hand in important documents to police, may sell or dispose of goods with a value below the prescribed amount, and must sell goods with a value above the prescribed amount;<sup>405</sup>
9. Provide that TASCAT has the jurisdiction to:<sup>406</sup>
  - a. Order compensation to either party;

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<sup>397</sup> SA Act s 97; NZ Act s 62.

<sup>398</sup> Vic Act ss 380, 384 and 386; WA Act s 80A; RPA s 86.

<sup>399</sup> WA Act s 79.

<sup>400</sup> Vic Act s 386; WA Act s 79.

<sup>401</sup> Vic Act s 381; WA Act s 79; RPA s 86.

<sup>402</sup> NT Act s 109; NZ Act s 62A; RPA s 89.

<sup>403</sup> Vic Act s 386.

<sup>404</sup> Vic Act s 382.

<sup>405</sup> Vic Act ss 381 and 391; SA Act s 97B; NZ Act s 62A.

<sup>406</sup> Vic Act ss 395 – 397; Qld Act s 365; NT Act s 109; RPA s 89; Ontario Act s 41.

- b. Extend the period to collect the items if the landlord has refused a request from the tenant; and
- c. Order delivery of or access to the items if the landlord refuses.

## Recommendations

7.3.1 The Court (or TASCAT) is to retain the jurisdiction to make orders declaring abandonment.

7.3.2 s 47 is amended to provide a list of factors the Court/TASCAT may consider when determining whether or not premises have been abandoned.<sup>407</sup>

- Whether the tenant has failed to pay rent;
- Whether the tenant no longer resides at the premises;
- Whether the tenant has failed to comply with other obligations;
- Whether the letter box contains uncollected mail;
- Whether there are reports from neighbours that the premises are empty;
- The absence of the tenant's possessions; and
- Whether services and utilities have been disconnected.

7.3.3 If an order declaring abandonment has been made, an aggrieved tenant may apply to the Court/TASCAT to have the tenancy reinstated, or compensation awarded, if the premises were not abandoned.<sup>408</sup>

7.3.4 s 48 is amended to make clear that it applies to all items left behind by the tenant following the termination of a tenancy.<sup>409</sup>

7.3.5 All items left behind by the tenant are to be placed in three categories:<sup>410</sup>

- Rubbish, foodstuffs, and dangerous goods, except prescription medicine;
- Documents, including passports, birth certificates, and family photos;
- All other goods.

7.3.6 A landlord may apply to the RTC for a determination of which category an item belongs to.<sup>411</sup>

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<sup>407</sup> NSW Act s 106; SA Act s 94; Qld Act s 357; WA Act s 3; RPA s 107.

<sup>408</sup> Qld Act s 361; WA Act s 76B.

<sup>409</sup> SA Act s 97; NZ Act s 62.

<sup>410</sup> Vic Act ss 380, 384 and 386; WA Act s 80A; RPA s 86.

<sup>411</sup> WA Act s 79.

7.3.7 A landlord must give the tenant notice in the prescribed form that the landlord has the tenant's items in their possession (*penalty provision*).<sup>412</sup>

7.3.8 Following giving notice, the landlord must securely store goods for 28 days and documents for 90 days (*penalty provision*). The landlord may store the goods at the premises or may move them to a secure location. All rubbish, foodstuffs, and dangerous goods may be disposed of immediately.<sup>413</sup>

7.3.9 A landlord must not refuse to return the items to the tenant, and must not make the return conditional on the payment of storage fees (*penalty provision*), though a landlord may otherwise seek reimbursement for the costs of removal and storage.<sup>414</sup>

7.3.10 If a tenant does not collect the items within the prescribed time periods, the landlord may:<sup>415</sup>

- Hand official documents, and documents that contain personal information, to police;
- Sell all goods that appear to have a value above the prescribed amount; and
- Sell or dispose of all goods that appear to have a value below the prescribed amount.

7.3.11 Following the disposal and/or sale of goods, the landlord must (*penalty provision*):

- Declare to the RTC how the items were disposed of; and
- With the proceeds of any sale:
  - Cover the landlord's reasonable expenses, including storage;
  - Pay the remainder to the tenant;
  - If the tenant doesn't collect the money, or cannot be contacted, it is surrendered to the RDA.

7.3.12 Any purchaser of an item sold by the landlord has good title, unless the item was not sold in accordance with the provision.<sup>416</sup>

7.3.13 TASCAT is granted general jurisdiction to determine any dispute that arises out s 48, including:<sup>417</sup>

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<sup>412</sup> Vic Act s 386; WA Act s 79.

<sup>413</sup> Vic Act s 381; WA Act s 79; RPA ss 86 and 89; NT Act s 109; NZ Act s 62A.

<sup>414</sup> Vic Act s 382.

<sup>415</sup> Vic Act ss 381 and 391; SA Act s 97B; NZ Act s 62A.

<sup>416</sup> Vic Act s 394.

<sup>417</sup> Vic Act ss 395 – 397; Qld Act s 365; NT Act s 109; RPA s 89; Ontario Act s 41.

- Awarding a landlord compensation for storage, removal, and/or sales costs;
- Awarding a tenant compensation for the improper storage or disposal of an item;
- Extending the period to collect the items, if the landlord has refused a reasonable request by the tenant;
- Delivery of the items if the landlord refuses to allow the tenant to collect them.

## 7.4 RETALIATORY EVICTIONS

*7.4 What protections, if any, are needed to prevent tenants from being evicted based on retaliation?*

Evictions based on retaliation occur. They occur because a landlord or real estate agent does not like that the tenant has asked for repairs to be carried out or has challenged an unreasonable rent increase or in some other way has stood up for their rights. The implicit threat of retaliatory action stops tenants from exercising their notional rights; 44 per cent of tenants believe that requesting repairs could lead to eviction.<sup>418</sup> New Zealand and every jurisdiction in Australia except Tasmania and the Northern Territory recognise that retaliatory evictions occur and have sought to make them unlawful.<sup>419</sup> We also note that as part of 2023 National Cabinet's 'A Better Deal for Renters' the Government also committed to law reform which would abolish retaliatory evictions.<sup>420</sup>

Amending the RTA so that tenants cannot be evicted without a fair reason will have the most impact in stamping out retaliatory evictions. However, as well as abolishing no-grounds evictions, many Australian jurisdictions also make retaliatory evictions explicitly unlawful.

To provide clarity, the RTA should set out a non-exhaustive list of circumstances that could amount to retaliation. The ACT model helpfully provides that an eviction is prima facie retaliatory where:<sup>421</sup>

- The tenant applied to the tribunal for an order in relation to the landlord;
- The tenant complained to a government entity in relation to the landlord;
- The tenant took reasonable action including seeking legal advice or mediation to secure or enforce their rights;
- The tribunal made an order in favour of the tenant against the landlord;
- The tenant published information, or disclosed information that was published, about the premises, the residential tenancy agreement, or the landlord.

It is also worth emphasising that retaliatory actions can also be taken by a landlord during a tenancy. For example, a landlord may seek to increase the rent or request that a tenant remedy a 'breach'. We strongly believe that all tenants should be able to enforce their rights without fear of retaliatory action. The Qld Act recognises that retaliatory actions can also

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<sup>418</sup> CHOICE, National Shelter and the National Association of Tenant Organisations, 'Disrupted: The consumer experience of renting in Australia' (December 2018).

<sup>419</sup> Vic Act s 91ZZI(3); ACT Act ss 57 and 64AD; NSW Act s 115; Qld Act s 246A; SA Act s 90A; WA Act ss 26A-B; NZ Act s 54.

<sup>420</sup> In August 2023, National Cabinet agreed to "harmonise and strengthen renters' rights across Australia" including "Ensure provisions to allow appeals against retaliatory eviction notices are fit for purpose (e.g. evictions motivated by tenants taking reasonable action to secure or enforce legal rights, complain or disclose information about their tenancy)": Anthony Albanese, *Meeting of National Cabinet - Working together to deliver better housing outcomes* (Media Release, Prime Minister of Australia, 16 August 2023) <<https://www.pm.gov.au/media/meeting-national-cabinet-working-together-deliver-better-housing-outcomes>> (accessed 1 April 2026).

<sup>421</sup> ACT Act s 64AD.

occur during a tenancy without eviction proceedings being commenced and should also be unlawful.<sup>422</sup>

## Recommendations

7.4.1 That the RTA expressly prohibits retaliatory evictions (*penalty provision*).

7.4.2 That the RTA set out a non-exhaustive list of circumstances that could amount to retaliation:

- The tenant applied to the Court/TASCAT/RTC for an order in relation to the landlord;
- The tenant complained to a Government entity in relation to the landlord;
- The tenant took reasonable action including seeking legal advice or mediation to secure or enforce their rights;
- The Court/TASCAT/RTC made an order in favour of the tenant against the landlord;
- The tenant published information, or disclosed information that was published, about the premises, the residential tenancy agreement, or the landlord.

7.4.3 That the RTA also prohibit retaliatory actions taken by a landlord during the tenancy (*penalty provision*).

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<sup>422</sup> Qld Act s 246A.

## 7.5 BREAK-LEASE FEES

### 7.5 Should break-lease fees be capped based on a sliding scale?

When a tenant in Tasmania breaks their lease agreement, they are liable for the advertising cost of finding a new tenant and the rent until such time as a new residential tenancy agreement is entered into.<sup>423</sup> In many cases, the cost of breaking lease is high with tenants forced to pay the rent at both their former home and their new home. In some cases, the double rent is borne for a number of months.

As part of 2023 National Cabinet's 'A Better Deal for Renters' the following reform was agreed to:<sup>424</sup>

*Limit break lease fees for fixed term agreements to a maximum prescribed amount which declines according to how much of the lease has expired (e.g. a maximum of four weeks' rent if less than 25 per cent of the fixed term has expired).*

Most States and Territories have capped break lease fees. New South Wales, Queensland, South Australia, the Australian Capital Territory and the Northern Territory all have tiered break lease fees dependent on how long the tenant has lived in the property.

In NSW and Queensland, the following break lease costs are paid for fixed-term leases of not more than three years:<sup>425</sup>

- 4 weeks' rent if less than 25% of the fixed term has expired
- 3 weeks' rent if 25%–50% per cent of the fixed term has expired
- 2 weeks' rent if 50%–75% of the fixed term has expired
- 1 weeks' rent if more than 75% of the fixed term has expired

For fixed-term agreements longer than three years, the break fee is not fixed in New South Wales meaning that the tenant must either reach agreement with the landlord or pay rent until a new tenant is found.<sup>426</sup> In Queensland, the tenant pays either 4 weeks rent for every year remaining on the lease agreement or rent until a new tenant is found.<sup>427</sup>

In the Australian Capital Territory, the capped break lease costs are:<sup>428</sup>

- 6 weeks' rent if less than half of the fixed term has expired;
- 4 weeks' rent if more than half of the fixed term has expired.

In South Australia:<sup>429</sup>

- 4 weeks' rent if less than 24 months of the fixed term remains;

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<sup>423</sup> RTA s 47B.

<sup>424</sup> Anthony Albanese, *Meeting of National Cabinet - Working together to deliver better housing outcomes* (Media Release, Prime Minister of Australia, 16 August 2023) <<https://www.pm.gov.au/media/meeting-national-cabinet-working-together-deliver-better-housing-outcomes>> (accessed 1 April 2026).

<sup>425</sup> NSW Act s 107(4); Qld Act s 357A(4).

<sup>426</sup> NSW Act s 107(2).

<sup>427</sup> Qld Act s 357A(3)(b).

<sup>428</sup> ACT Act s 89A(1).

<sup>429</sup> SA Act s 75A.

- 4 weeks' rent for every 12-month period remaining on a fixed term lease with more than 24 months remaining.

In the Northern Territory:<sup>430</sup>

- 4 weeks' rent if less than half of the fixed term has expired;
- 2 weeks' rent if more than half of the fixed term has expired.

We prefer the Northern Territory and NSW/Queensland models of a maximum of four-weeks being required to be paid, on the basis that it most closely aligns with what National Cabinet agreed to. Section 64A should be retained, meaning that if a new residential tenancy agreement was entered into within two weeks of the tenant breaking their lease, the maximum that they would have to pay is two weeks' of rent loss. This is the position in Queensland and the Northern Territory, and we recommend its inclusion in any Tasmanian reform to cap break lease costs.<sup>431</sup>

Finally, after speaking to colleagues from the Tenants' Union of New South Wales it is not clear where a maximum break lease cost for fixed-term leases of three years or less originated. In any event, in Tasmania it is extremely rare for tenants to be on fixed-term lease agreements of three years, with most fixed-term lease agreements of 12 months duration and less commonly 24 months duration. We therefore recommend no time-limit on the length of the agreement with the maximum break lease fee for a fixed-term lease agreement of any duration being 4 weeks.

## Recommendations

**7.5.1 Break lease fees are tiered with a maximum 4 weeks rent having to be paid for any fixed-term lease agreement.**

**7.5.2 Rent loss is not payable until a new tenancy has been entered into, the period has ended and that any agreement for rent to be paid by direct debit does not include rent loss (*penalty provision*).**

**7.5.3 That mitigation of loss also takes into account any hardship incurred by the tenant as a consequence of unforeseen change in circumstances.**

**7.5.4 That TASCAT/the RTC may determine a dispute over liability for rent loss and may order reimbursement if a tenant has overpaid.**

**7.5.5 If the tenancy is for a non-fixed period, and the tenant leaves without giving notice under s 38, rent loss is capped at a maximum of two weeks.**

**7.5.6 Section 47B(b) is amended to specify that only advertising costs are payable, and that they are not payable if the break lease occurs less than eight weeks from the end of a fixed term.**

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<sup>430</sup> NT Act s122(5)(c).

<sup>431</sup> Qld Act s 357A(3)(a)(ii); NT Act s 122(6).

## 7.6 HOLD-OVER PERIODS

*7.6 Should the Act be amended to address the situation where a tenant remains in a property after a residential tenancy agreement has expired but vacant possession is yet to be delivered? If so, how?*

We do not believe there is any great ambiguity here, as s 37(1) clearly sets out when a tenancy is terminated: the tenancy is ongoing until a tenant delivers vacant possession, or until vacant possession is delivered by order of the Court. Until either of those conditions have been met all rights and obligations under the RTA still apply. If there is any ambiguity, it is a consequence of s 42(3) which on its face is inconsistent with both s 37(1) and the finding in *Parsons* (both on first instance and appeal)<sup>432</sup> that a notice to vacate is merely a condition precedent to an order for vacant possession being made under s 45; that it does not terminate the tenancy in and of itself (this can be contrasted with a termination notice issued under the RPA). As such, we recommend that s 42(3) is repealed.

There is some ambiguity regarding the status of a tenant that remains in occupancy of premises after an order for vacant possession, or termination order under s 40, has taken effect. Presently, an order for vacant possession does not expire after a certain period, if a landlord decides not to enforce it. Warrants for the repossession of the property are dealt with under the *Magistrates Court (Civil Division) Rules 1998*, rather than the RTA. A warrant of possession does not expire for 12 months after it is issued. It is possible, therefore, for a landlord to gain an order for vacant possession and warrant for possession, but allow the tenant to stay in occupancy, outside the RTA, whilst having the “Sword of Damocles” of the order and warrant constantly hanging over them in order to enforce obedience. Instead, warrants and vacant possession orders should expire after a short period, and if a landlord allows a tenant to remain in the premises, either explicitly or implicitly, then the tenancy should automatically be reinstated.

### Recommendations

**7.6.1 s 42(3) is repealed.**

**7.6.2 An order for vacant possession, or a termination order, only terminates the lease at the point that the landlord executes it.**<sup>433</sup>

**7.6.3 An order for vacant possession expires 14 days after it takes effect, unless the landlord applies to have the period extended, which may only be done before it expires.**<sup>434</sup>

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<sup>432</sup> [2018] TASSC 62 and [2019] TASFC 3.

<sup>433</sup> Vic Act s 334.

<sup>434</sup> Vic Act s 351.

7.6.4 The process for warrants is provided for in the RTA, and a warrant for possession expires after 14 days.<sup>435</sup>

7.6.5 A warrant may not be executed on weekends, public holidays or outside 8am - 6pm unless the Court/TASCAT orders otherwise (*penalty provision*).<sup>436</sup>

7.6.6 If an order for vacant possession or warrant for possession expires, the tenancy continues for a non-fixed period.<sup>437</sup>

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<sup>435</sup> Vic Act s 351; Qld Act s 351.

<sup>436</sup> ACT Act s 40; Vic Act s 355.

<sup>437</sup> NZ Act s 60.

## 7.7 UNDERUTILISED PROPERTIES

*7.7 Should the Act be amended to allow social housing providers to transition tenants from underutilised properties, with less than four bedrooms, into smaller homes? If so, what safeguards or conditions should apply?*

We do not think that it is necessary or just to expand s 42(db)(i) to cover properties with three bedrooms (or less).

If a tenant has excess bedrooms it is likely it is because they had children occupying those rooms that have since moved out. Consequently, they have almost certainly lived at the premises for an extended period of time. Aside from any sentimental attachment to the premises, which should not be discounted, it is likely that the tenant has formed deep connections within the local community, and that their support network (including General Practitioners and other treating health care professionals) are based in the area. We do not think that a tenant should be forcibly removed from their community because successive governments have failed to build enough social housing that caters to families.

Further, whilst an argument may certainly be made that four bedrooms is excessive for one or two people, three bedrooms may not be. For instance, as a couple ages, they may opt to sleep in different bedrooms. They may need a carer, or family member, to look after them overnight, or need to house medical equipment. According to AHURI,<sup>438</sup> 76.8% of dwellings in Australia have one or more spare bedroom. Whilst it may be the case that this is not an efficient allocation of resources, we submit that (1) it is clearly a part of the fabric of Australian culture to have excess space; and (2) social housing tenants should not be the first targets of a drive to better utilise existing dwellings. Further to the latter, if owner occupiers are encouraged to downsize, and more large family-sized homes come onto the private market, it may have the downstream effect of reducing demand for social housing. Whereas forcing social housing tenants out of their family-sized homes is unlikely to have any similar “upstream” effect.

If there is a shortage of family-sized properties and a relative glut of studios, and single- or two-bedroom dwellings, then rather than compelling tenants to move, social housing providers should offer these people incentives that compensate them for what they will lose as result of moving; a carrot rather than a stick. Again, these tenants are not at fault for the deficiencies of the social housing sector, and should not be punished for the mistakes of the people that had the power to prevent the situation that the sector finds itself in.

As social housing rent is calculated based on income, most will not otherwise receive a financial benefit from downsizing (unlike in the private sector, where one would expect to pay less rent for a one-bedroom unit than a three-bedroom house). Incentives may include:

- Removalist costs;
- Storage fees;

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<sup>438</sup> AHURI, ‘Are there 1 million empty homes and 13 million unused bedrooms?’ (13 September 2022) <<https://www.ahuri.edu.au/analysis/brief/are-there-1-million-empty-homes-and-13-million-unused-bedrooms>>

- Reduced rent;
- Utilities connection fees; and/or
- Ongoing assistance with securing new support services, or transportation to existing ones

## Recommendations

7.7.1 No change is made to s 42(db)(i).

7.7.2 If s 42(db)(i) is amended, that the forced eviction must comply with Australia's international obligations. That is, that there must be:<sup>439</sup>

- Meaningful engagement with the person affected;
- Exploration of all viable alternatives;
- Relocation to adequate housing agreed upon by the person affected; and
- Procedural fairness.

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<sup>439</sup> Leilani Farha, Special Rapporteur, *Guidelines for the Implementation of the Right to Adequate Housing* A/HRC/43/43 (26 December 2019) para 35.

## 8.1 TASCAT

*8.1 Do you support transferring jurisdiction for certain tenancy matters to TASCAT? If so, what matters should or should not be transferred to TASCAT? What are the potential advantages and disadvantages of such a change?*

In 2024, the Tenants' Union of Tasmania, with financial support from the Government, published 'Tenancy Matters! The case for transferring tenancy cases from the Magistrates Court to TASCAT'. Our research and full list of recommendations can be found in that report. In brief, we support the change on the proviso that TASCAT, inter alia:<sup>440</sup>

- Introduces an internal review/appeal process;
- Has a permanent physical presence in Launceston and the North-West, has a permissive remote appearance policy, and has a flexible hearing schedule;
- Has an online lodgement and case management system;
- Publishes all or most residential tenancy decisions, and keeps and publishes detailed statistics regarding tenancy matters;
- Publishes guidelines and procedures regarding how hearings are conducted, to ensure consistency, predictability and efficiency;
- Makes specific provision for enforcement of debts and vacant possession orders;
- Ensures that all tenancy matters that are not emergencies are first subject to Alternative Dispute Resolution, including in matters impacted by *Burns v Corbett*;<sup>441</sup>
- Ensures that its fee structure reflects the true cost of the application.

We do not support the current jurisdiction of the RTC being transferred to TASCAT on the basis that, to quote 'Tenancy Matters!':<sup>442</sup>

- *That making an application to the RTC is simpler, easier, quicker, cheaper and less stressful than attending TASCAT;*
- *That the experience in the Northern Territory suggests that such a change may dissuade tenants from enforcing their rights;*
- *That the RTC's asynchronous process is preferable for most low-level disputes;*
- *That finalisation times in other jurisdictions' tribunals are still significant for issues such as repairs and bonds; and*
- *That giving TASCAT the entirety of the RTC's current workload would require a significant boost in resources, including members, registry staff, and physical locations, and may cause finalisation times for all matters to lengthen;*

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<sup>440</sup> Pages 91-99.

<sup>441</sup> [2018] HCA 15.

<sup>442</sup> *Ibid* page 91.

- *That, due to Burns v Corbett, the Court would potentially end up dealing with more low-level (that is, non-eviction) tenancy matters than it does currently, undermining the impetus behind the change.*

In the period since ‘Tenancy Matters!’ was published, the RTC’s wait times have blown out significantly, with the average wait period being around 100 days for a bond determination, and 28 days for an order for repairs. This is unacceptable, and highlights the real issue: we are less concerned with which body the tenancy jurisdiction sits with, than we are that that body is properly resourced to perform its functions expediently and thoroughly. The RTC is, in theory, an ideal way to resolve minor tenancy disputes simply, easily, quickly, and cheaply, but it can only do that if it is staffed appropriately. In 2024/25, the RTC had 7.5 FTE. In the same year, it was required to issue 2,318 bond determinations – almost 310 determinations per FTE. That is not sustainable, as evidenced by the blow out in wait times.

Similarly, as pointed out in ‘Tenancy Matters!’,<sup>443</sup> there is no reason that the Magistrates Court could not deliver expedient dispute resolution in tenancy matters with the proper investment and revision of practices and procedures:

- Dedicated civil Magistrates and lists, a la the coronial division;
- Updating the Court’s civil rules and practices, such as around publishing decisions, reopening matters, and allowing representation;
- An overhaul and modernisation of information technology: electronic lodgement, case file management, and record keeping, and permissive policies regarding remote appearances at hearings (a la the Federal Court system); and
- More liberal use of Alternative Dispute Resolution in tenancy matters.

That is to say, whilst we softly endorse the transfer of the Court’s jurisdiction to TASCAT, we are primarily concerned that all decision-making bodies are properly resourced to exercise their functions.

The jurisdiction of whichever body or bodies are ultimately chosen must be greatly expanded to ensure that disputes between landlords and tenants can be justly resolved. There are presently very few explicit remedies available to tenants: termination (which is in most cases extremely impractical and expensive), or an application or complaint to the RTC. There should be a body which has the power to order that the RTA is complied with, and to right wrongs:<sup>444</sup>

- Order compensation, including that a landlord must arrange alternative accommodation for the tenant;
- Order that behaviour desists;
- Make orders that are in substance injunctions or for specific performance;
- Make interim orders, or set aside,<sup>445</sup> stay or vary orders; and

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<sup>443</sup> Ibid pages 110 and 111

<sup>444</sup> This is, in general terms, the role of TASCAT under the *Residential Parks Act 2026*.

<sup>445</sup> Partially in order to codify *Blowfield v Centacare Evolve Housing* [2024] TASSC 27 per Blow CJ at [20]-[38].

- Reinstate a tenancy that was improperly terminated.

After a tenancy has ended, applications for compensation etc. should be required to be made within 12 months, to provide certainty and closure to the parties.

We also submit that the Government should explore the possibility of TASCAT being given jurisdiction to hear small personal injury matters that arise out of a tenancy agreement. Though this may be complicated to implement, it is somewhat farcical that, in other jurisdictions with statutory causes of action, compensation may be awarded under the tenancy legislation for the anxiety and physical inconvenience caused by a risk to health and safety, but not any *actual* physical injury.<sup>446</sup>

## Recommendations

8.1.1 All recommendations regarding TASCAT outlined in ‘Tenancy Matters!’ are adopted insofar as they are consistent with the other recommendations made in these submissions.

8.1.2 That all bodies granted jurisdiction under the RTA are properly resourced to delivery expedient and thorough dispute resolution.

8.1.3 During a tenancy a party may apply to the RTC/TASCAT to resolve a dispute relating to the tenancy. In addition to any other orders that are available under the RTA, the RTC/TASCAT may order that a party:<sup>447</sup>

- Complies with the RTA;
- Compensates the other party;
- Desists behaviour;
- Remedies a breach;
- Delivers goods;
- Allows access to collect goods;
- Reinstates a tenancy; or
- Delivers documents (eg a copy of a lease or condition report, or a reference).

8.1.4 If a party has breached a statutory duty, TASCAT may award exemplary damages.<sup>448</sup>

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<sup>446</sup> See *Moore v Scenic Tours Pty Ltd* [2020] HCA 17 for a discussion of the distinction between physical inconvenience and loss of enjoyment and actual injury.

<sup>447</sup> Vic Act s 472; NSW Act s 187; ACT Act s 87; SA Act s 110; Qld Act s 420; NZ Act ss 77, 109A and 126H; WA Act s 15; Ontario Act ss 29 and 30; Ireland Act ss 56 and 118; RPA s 98.

<sup>448</sup> NZ Act s 109.

8.1.5 The RTC/TASCAT may make orders to that are in substance injunctions or for specific performance.<sup>449</sup>

8.1.6 The RTC/TASCAT may stay, set aside, or vary orders, and may make interim orders.<sup>450</sup>

8.1.7 Make explicit that the powers also apply to former tenants and landlords, where appropriate, but that any application after the tenancy has ended must be made within 12 months (unless an extension of time is granted).<sup>451</sup>

8.1.8 Set a jurisdictional limited for TASCAT of \$40,000.<sup>452</sup>

8.1.9 Where the RTC/TASCAT/Court makes a written decision in a tenancy matter, it must be published. Names may be changed where appropriate.<sup>453</sup>

8.1.10 If, during the course of proceedings, the RTC/TASCAT/Court forms a suspicion that a party has committed an offence under the RTA, it may be referred for prosecution.<sup>454</sup>

8.1.11 If the tenancy that is the subject of the application or claim is ongoing, the matter must be listed in the registry closest to the location of the premises in question.<sup>455</sup>

8.1.12 All bodies given jurisdiction under the RTA are to publish detailed statistics regarding that jurisdiction, including the number and nature of orders made, and who they are made against, and average wait times.<sup>456</sup>

8.1.13 The Government should explore options for allowing TASCAT to hear small personal injury claims arising from tenancy agreements.

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<sup>449</sup> NSW Act s 187; SA Act s 35; Qld Act s 420; NZ Act s 78; WA Act s 15; RPA s 99.

<sup>450</sup> NSW Act s 188; NZ Act s 79; WA Act s 17.

<sup>451</sup> NSW Act s 189; RPA s 96; Ontario Act s 87.

<sup>452</sup> SA Act s 24; Vic Act s 447.

<sup>453</sup> SA Act s 39; NZ Act ss 95A, 104 and 115B; WA Act s 11K.

<sup>454</sup> WA Act s 86.

<sup>455</sup> WA Act s 13A; Ireland Act s 88.

<sup>456</sup> Ireland Act s 114A.

## 8.2 ORDERS FOR VACANT POSSESSION

*8.2 Should the Residential Tenancy Commissioner be given the power to issue orders for vacant possession, or should this power be reserved for a court or tribunal?*

We strongly believe that the power to order an eviction should be solely exercised by a court/Tribunal - a judicial or quasi-judicial body. Forced eviction is no small matter; it is the deprivation of shelter, a fundamental human right. A forced eviction should only take place after both the tenant and the landlord have had an opportunity to be heard, the evidence has been assessed, and questions of law have been addressed, by a decision-making body with a level of experience, knowledge and solemnity befitting the gravity of the decision that is being considered. It is also worth noting that the assessment of whether an eviction should be ordered is likely to become more complex, with the possible inclusion of amendments to the RTA including retaliatory evictions and a 'reasonable and proportionate' test. Importantly, all Australian jurisdictions require their respective court/Tribunal to make eviction orders.<sup>457</sup>

### Recommendation

**8.2.1 The power to order an eviction should be solely exercised by a Court/Tribunal.**

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<sup>457</sup> Vic Act s 322; ACT Act s 36(e); NSW Act s 89A; Qld Act s 293; NT Act Division 4; SA Act s 87; WA Act s 71.

## 8.3 INCONSISTENCIES

### National Construction Code

*8.3 (a) Does the Act require clarification to resolve the potential conflict between its ventilation requirements and the National Construction Code's safety standards? If so, how should this be implemented?*

As far as we understand the operation of the National Construction Code, there is no inconsistency between it and the minimum standards in the RTA as the NCC only applies to new builds and renovations; it does not have retroactive effect. Whereas the RTA's minimum standards apply to all residential premises that are the subject of a residential tenancy agreement. A property that is compliant with the NCC will be well and truly in excess of almost all requirements under the RTA, but that is not a problem as the requirements under the RTA are intended to be the bare minimum.

As recommended in the answer to question 5.1, the gap between the RTA and the NCC should be closed as much as possible, to ensure that all tenants have a reasonable standard of comfort, are able to keep their premises safe and healthy in accordance with WHO guidelines, and are able to minimise their energy bills and climate footprint.

### Expanding property manager licensing

*(b) Should the exemption for property manager licensing be expanded to include managers of SDA and other supported accommodation?*

We do not have any strong view regarding the application of the *Property Agents and Land Transactions Act 2016* per se, but we do think that every person that intends to manage a tenancy – whether they are a property manager, social housing tenancy officer, or landlord – should be required to demonstrate a working knowledge of the RTA and demonstrate that they are a fit and proper person before they are permitted to manage a tenancy. Ignorance cannot be an excuse; if a person chooses to invest in a necessity of life such as housing they should know and understand the legislation that sets out their obligations.

#### **Case Study**

*Judy\* was in an abusive relationship and desperate to find alternative housing for her and her three children. She secured a self-managed property. After moving in, she found that the property did not have a heater that met minimum requirements. When challenged, the landlord said she didn't know that it wasn't compliant, as she had not read the RTA, or taken any steps to familiarise herself with her obligations under it.*

The RTC should also develop a registry of all residential premises and landlords. Upon registration the only will be provided an accreditation number, which will be required to be produced when the premises are advertised – as is required under the *Short Stay Accommodation Act 2019* for short stay accommodation. This (1) protects people against

scams, as prospective applicants will be able to ignore listings without accreditation, and will be able to cross reference the accreditation number provided; and (2) provides the RTA and other policy makers with additional information about the private rental market.

In order to deter landlords from doing the wrong thing, and protect tenants from repeat offenders, the RTC should also develop and publish a database of decisions and fines levied against landlords, based on the model developed in Victoria.<sup>458</sup>

Where a self-managing landlord demonstrates themselves to be incapable or unwilling to comply with the RTA, the RTC should have the power to appoint a licensed property manager to manage the premises, at the landlord's expense.

In order to ensure that a landlord is reasonably able to meet their obligations, especially obligations regarding repairs, they should be required to appoint an agent if they intend to be outside Australia for more than 21 days.

## Recommendations

**8.3.1 All residential premises and landlords must be registered with the RTC, and the accreditation must be displayed when residential premises are advertised for rent (*penalty provision*).<sup>459</sup>**

**8.3.2 All persons intending to manage a residential tenancy agreement must demonstrate knowledge of the RTA and must be fit and proper persons (*penalty provision*).<sup>460</sup>**

**8.3.3 If a landlord intends to be away from Australia for more than 21 days, they must appoint an agent to manage the tenancy (*penalty provision*).<sup>461</sup>**

**8.3.4 The RTC must keep and publish a database of landlords and agents that have:<sup>462</sup>**

- Had orders made against them;
- Have had fines issued against them;
- And/or have been found guilty of an offense under the RTA or in relation to a tenancy.

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<sup>458</sup> Vic Act ss 439O - 439T; see also UK Act s 83.

<sup>459</sup> RPA s 8; Ireland Act ss 127 and 135; UK Act ss 75 and 82.

<sup>460</sup> SA Act s 103C

<sup>461</sup> NZ Act s 16A.

<sup>462</sup> Vic Act ss 439O - 439T; UK Act s 83.

8.3.5 The RTC may appoint an agent to manage rental premises if the landlord has demonstrated that they are unable or unwilling to comply with the RTA or are not a fit and proper person.<sup>463</sup>

### Residential Management Agreements

*(c) Should section 16A be amended to clarify its application to residential management agreements?*

Per the second reading of the bill that added s 16A to the RTA,<sup>464</sup> it was only intended to apply to social housing, to facilitate the transfer of management of public housing to the private sector and the now-defunct National Rental Affordability Scheme. However, there is nothing s 16A itself that so confines it. As such, there is legitimate confusion as to whether property management agreements between private landlords and property management companies constitute a “residential management agreements” for the purposes of s 16A. If they do, it would have the effect of shielding the true landlord from all liability in relation to the tenancy.

To prevent this, s 16A should be narrowed in scope, only applying to social housing and SDA. There should also be a presumption that any sub-let arrangement by a social housing or SDA provider is an RMA, so that there is no ambiguity for the tenant as to what legislation they fall under, and who is ultimately responsible for meeting obligations under the RTA.

Further, in order to provide clarity, the RTA should clearly provide that:

- Any unlawful act or omission under the RTA is the responsibility of both the agent and the landlord;
- A person or entity purporting to be acting as agent for a landlord must provide evidence of the agreement to the tenant;
- A tenant is to serve all documents on the agent, and service on the agent is taken to be service on the landlord;
- If a landlord is represented by an agent, the agent is the proper party in any proceedings,<sup>465</sup> unless ordered otherwise (where, for example, there is a dispute between the agent and landlord as to liability).

## **Recommendations**

8.3.6 s 16A is narrowed in scope, to only apply to social housing and SDA.

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<sup>463</sup> NSW Act s 206.

<sup>464</sup> Tasmania, *Parliamentary Debates*, House of Assembly, 12 October 2010, 68-69 (Nick McKim, Minister for Corrections and Consumer Protection).

<sup>465</sup> This also mitigates the effect of *Burns v Corbett*, if jurisdiction is transferred to TASCAT.

8.3.7 s 3(2) is amended to provide that both a landlord and agent are liable for any unlawful act or omission under the RTA.<sup>466</sup>

8.3.8 A person or entity purporting to act for a landlord must provide proof in the prescribed form (*penalty provision*).

8.3.9 If a landlord appoints an agent to manage the tenancy, all documents must be served on the agent and are taken to be served on the landlord.<sup>467</sup>

8.3.10 In proceedings involving a landlord represented by an agent, the agent is the proper party for the proceedings unless ordered otherwise by the decision-making body (in which case the agent can be ordered to provide the tenant with a service address for the landlord).<sup>468</sup>

### Other inconsistencies

*(d) What other inconsistencies or ambiguities of this nature, or more generally, exist within the Act?*

## Recommendations

8.3.11 A new purpose provision is added to the start of the RTA to provide guidance to parties and decision makers.<sup>469</sup> For example, s 1 of the Ontario Act provides that:

*The purposes of this Act are to provide protection for residential tenants from unlawful rent increases and unlawful evictions, to establish a framework for the regulation of residential rents, to balance the rights and responsibilities of residential landlords and tenants and to provide for the adjudication of disputes and for other processes to informally resolve disputes.*

8.3.12 All COVID-19-era emergency provisions are repealed as they are no longer applicable or relevant, and there is no reasonable possibility of them being re-activated.<sup>470</sup>

8.3.13 The definition of “dispute” is broadened (1) as it is not used consistently within the RTA as is; and (2) to facilitate the expansion of the RTC/TASCAT/the Court to determine disputes in a more general sense.<sup>471</sup>

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<sup>466</sup> Qld Act ss 24 and 25; WA Act ss 86A, 86B and 87A.

<sup>467</sup> Qld Act s 206; NZ Act s 47.

<sup>468</sup> Vic Act s 481.

<sup>469</sup> ACT Act s 4A; Vic Act s 1; Qld Act s 5; NT Act s 3.

<sup>470</sup> NZ Act s 145.

<sup>471</sup> SA Act s 3; RPA s 3.

8.3.14 Add a definition of “invalid” to make clear that any reference to invalid, “no effect”, or “void” within the RTA are synonymous.<sup>472</sup>

8.3.15 The definitions of “tenant” and “landlord” are amended to make clear that they apply to former tenants and landlords, as appropriate, and that if the tenancy is a co-tenancy that every reference to “tenant” is also a reference to “tenants”.<sup>473</sup>

8.3.16 s 11(2) and the definition of “tenancy” are amended to make it clear that it is a reference to a continuous or unbroken period of occupancy that may have been renewed, extended, or become non-fixed, to clear up any unintentional ambiguity such as that raised in *Director of Housing v LeFevre* [2021] TASSC 33.<sup>474</sup>

8.3.17 ss 5 and 52(a)(ii) are amended to clarify that the RTA applies if the predominant use of the premises are residential, even if business, trade, profession or agriculture also take place on the premises, or it is made under an employment agreement, to better reflect contemporary standards regarding, inter alia, working from home and engaging in hobbyist commerce.<sup>475</sup>

8.3.18 s 5 is amended to clarify that a corporation may be a tenant within the meaning of the RTA provided that it is intended that the premises will be occupied by a natural person.<sup>476</sup>

8.3.19 s 5 is amended to clarify that a minor is able to enter into a residential tenancy agreement if they have the legal capacity to do so - this is an issue that is regularly raised by workers in the housing and homelessness support sector who work with young people.<sup>477</sup>

8.3.20 s 6 is amended to repeal the grossly ambiguous “ordinarily used for holiday purposes” and replaced with: that an agreement is excluded from the RTA if the purpose of the occupancy is for holiday purposes, with a rebuttable assumption that the visit is not a holiday visit if it is for more than 28 days (including if the premises are a hotel or motel).<sup>478</sup>

8.3.21 s 6 is amended to make it clear that the RTA does not apply to a life tenancy.

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<sup>472</sup> Vic Act s 3.

<sup>473</sup> SA Act s 3; NZ Act s 2; WA Act s 3; RPA s 3.

<sup>474</sup> NSW Act s 18; SA Act s 79A; Qld Act s 70; WA Act s 76C; NT Act s 4; Ontario Act s 38.

<sup>475</sup> NSW Act s 7; Vic Act s 7; Qld Act s 10.

<sup>476</sup> NSW Act s 13; SA Act s 4; RPA s 3.

<sup>477</sup> QLD ACT S 28; NT Act s 8; WA Act s 59A.

<sup>478</sup> ACT Act s 6D; Qld Act ss 31 and 40; SA Act s 5 and Regs 7; NZ Act s 5; WA Act s 5; Ireland Act s 3; RPA s 5; Ontario Act s 5.

8.3.22 s 6 is amended to allow a party to apply to the RTC (with a right of review) to determine whether or not an agreement is a residential tenancy agreement, with the party asserting that it is not covered having the onus of proof.<sup>479</sup>

8.3.23 s 6 is amended to provide that parties may opt-in to the RTA if the agreement would otherwise be excluded, as even under a revised RTA there may be edge cases where it is not otherwise clear, even if the parties want to be subject to it.<sup>480</sup>

8.3.23 s 10(2) is amended to make clear that an agreement for four weeks or less is in effect an agreement for a non-fixed period, not excluded from the RTA.<sup>481</sup>

8.3.24 s 12 is amended to provide that parties with a non-fixed lease may enter into a fixed term agreement that extends the existing tenancy.<sup>482</sup>

8.3.25 s 12A is amended to clarify that an agreement may also be varied by the order of the RTC, TASCAT, or the Court, exercising their lawful jurisdiction.

8.3.26 s 13 is amended to reduce the period for providing a copy of a lease to seven days, and a fine is attached for non-compliance, as otherwise a tenant has no leverage to compel delivery.<sup>483</sup>

8.3.27 s 15 is amended to clarify that it does not prevent a landlord from agreeing to take on additional responsibilities, or from waiving rights and powers, for instance that landlord pays for professional gardening or will not charge for water.<sup>484</sup> As it stands, a landlord may offer these things but could then rely on s 15 to renege.

8.3.28 s 17(3)(b) is amended to provide that, in the case where no rent is payable under the agreement, the agreement may provide that the tenant is to reimburse the landlord for land tax, rates, and/or all utilities. Agreements in this form are not unusual, but currently do not fit comfortably within the RTA.<sup>485</sup>

8.3.29 s 17(3)(c) is amended to limit the ostensible liability of tenants to losses flowing from a breach of the RTA, rather than just their actions generally.<sup>486</sup>

8.3.30 s 17(3)(c) is amended to protect tenants from liability for "call out fees" if the request for attention was made honest and reasonably (for example, if the issue is

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<sup>479</sup> NSW Act s 11; RPA s 5; NZ Act s 10.

<sup>480</sup> ACT Act s 6B; Qld Act s 18; NZ Act s 8.

<sup>481</sup> SA Act s 4.

<sup>482</sup> Qld Act s 70.

<sup>483</sup> Vic Act s 29.

<sup>484</sup> NZ Act s 11; Ireland Act s 18.

<sup>485</sup> Qld Act s 163.

<sup>486</sup> SA Act s 78A.

that the electricity cuts out, the tenant must demonstrate that they took steps to isolate the cause of the problem by methodically using each appliance and outlet). Tenants should not be disincentivised to report issues with the premises, particularly with respect to potential safety issues such as electricity, out of fear that their landlord will try to pass on fees if there doesn't turn out to be a problem.

8.3.31 s 18 is amended to state that a tenant is not responsible for rent past the termination of the agreement, to clarify that rent loss payable following a break lease is compensation, not rent per se.

8.3.32 s 18 is amended to provide that if rent is paid electronically, it is taken to have been paid when the transaction is entered by the tenant,<sup>487</sup> not when the funds are received by the landlord, which may be a day or longer afterwards, and is largely out of the tenant's control. If it was the reverse, which is the current assumption, the day the rent falls owing is functionally multiple days before the notional payment day. We have experienced many instances of a tenant being told that they need to pay their rent two or three days before it is actually due, because of this lag.

8.3.33 s 19 is amended to make clear that if a tenancy terminates part way through a payment period then rent is payable on a pro rata basis,<sup>488</sup> and that if a landlord specifies in an agreement or notice to vacate or otherwise that vacant possession must be returned before a certain time, that rent for that day is payable on a pro rata basis.

8.3.34 s 19 is amended to provide that if a tenant overpays rent that a landlord must reimburse it,<sup>489</sup> and may not use it to service any other debts owed by the tenant unless (1) the tenant agrees in writing for it to be used to service the debt, or that it can be used as credit if the tenancy is ongoing; or (2) that the debt has been found to be owing by the RTC/TASCAT/Court as appropriate (*penalty provision*).<sup>490</sup>

8.3.35 s 19 is amended to clarify that a landlord must not refuse the payment of unpaid rent (or other monies) and cannot rely on a refusal to accept payment in termination proceedings (*penalty provision*).<sup>491</sup>

8.3.36 s 19(2) is amended to add a penalty for imposing or accepting a payment period of more than four weeks, but does not include a situation where the tenant

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<sup>487</sup> Qld Act s 86.

<sup>488</sup> SA Act s 59; Qld Act s 97; NZ Act s 31; WA Act s 36.

<sup>489</sup> NSW Act s 47; WA Act s 83; UK Act s 10.

<sup>490</sup> NSW Act s 33; Qld Act s 96; NT Act s 43.

<sup>491</sup> NSW Act s 34.

pays more than what is required intentionally and unilaterally, to put themselves in credit.<sup>492</sup>

8.3.37 s 21 is amended to add a penalty for not providing a rent receipt in circumstances where a receipt is required.<sup>493</sup>

8.3.38 s 25(1) is amended to add a penalty for asking for a bond for boarding premises, as it is presently an almost ubiquitous practise and there is no deterrent.

8.3.39 s 26(3)(b) is amended to extend the period for tenants to return a condition report to five working days, as two days is not sufficient to carry out a thorough response.

8.3.40 s 26 is amended to provide that any time during a tenancy a landlord must provide a copy of the condition report on request, within 14 days (*penalty provision*), as tenants sometimes misplace the original and have no point of comparison when they are in the process of vacating.<sup>494</sup>

8.3.41 s 37(1) is amended to clarify that an agreement is only terminated in the ways listed, "despite anything to the contrary in law", to make it clear that, for instance, a warrant for possession issued by the Supreme Court, arising out of a mortgage default, does not terminate a residential tenancy agreement.<sup>495</sup>

8.3.42 s 37(1) is amended to expressly provide that an agreement terminates when a tenant provides vacant possession on the end date of a fixed-term tenancy.<sup>496</sup>

8.3.43 ss 37(1)(dc) and 49B are repealed, as the instantaneous and automatic termination of a tenancy upon the death of the tenant currently creates logistical headaches (particular with respect to the tenant's personal property) for the landlord and the family and estate of the tenant.<sup>497</sup>

8.3.44 s 37(2) is amended to include any attempt to rescind a binding tenancy agreement before the tenancy has begun. It is not uncommon for this to happen, and should be strongly deterred.

8.3.45 s 37 is amended to provide that if a landlord agrees to a mutual termination of a fixed term tenancy, that their consent is irrevocable.<sup>498</sup> It is not uncommon for

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<sup>492</sup> SA Act s 54.

<sup>493</sup> RPA s 54.

<sup>494</sup> Qld Act s 65.

<sup>495</sup> ACT Act s 36.

<sup>496</sup> ACT Act s 36.

<sup>497</sup> SA Act s 79B; NZ Act s 50A; RPA s 69; Ontario Act s 91.

<sup>498</sup> Vic Act s 91D.

landlords to renege on such agreements, after a tenant has relied on it to their detriment, and arguably they are not binding (at least in contract) as there is no consideration on the tenant's part.

8.3.46 s 38(1)(a) is amended to substitute "under section 32(2)" with "division 4", as notice of the need for an urgent repair is not given under s 32(2) and thus the failure to carry out an urgent repair is not clearly grounds to give a notice of termination.

8.3.47 s 38(1)(a) is amended to clarify that a tenant may give notice under that provision despite any reasonable attempts by the landlord to carry out repairs - as the right of termination should stem not from the landlord's actions per se, but from the prolonged loss of enjoyment and amenity suffered by the tenant.

8.3.48 s 38(2) is substituted with provision that if a tenant fails to vacate in accordance with a notice of termination that the notice is taken to have been withdrawn and the tenancy continues.<sup>499</sup> Similar to s 42(3), the current s 38(2) creates confusion because according to s 37 a tenancy is only terminated by actual vacancy, not by a notice taking effect.

8.3.49 ss 40(1)(e) and 44(e) are amended to substitute "details" with "particulars", to make it clear that providing a facsimile of the provision/clause relied upon is not sufficient.<sup>500</sup> The party that has been given a notice must be able to determine what the case is against them, without reference to the other party, as a matter of fairness.<sup>501</sup>

8.3.50 s 40 is amended to clarify that a tenant may vacate premises before a notice of termination has taken effect, but must pay rent until it takes effect, unless the landlord enters into a new residential tenancy agreement before then.<sup>502</sup>

8.3.51 s 41(1) is amended to remove "likely to", as it is essentially guesswork that is unfair to both parties.<sup>503</sup> In its stead, the provision should be broadened to allow a party to apply for an order where they have been seriously harassed, abused, intimidated, or threatened by the other party, that is, actual provable conduct rather than prospective future conduct.<sup>504</sup> The provision should also clearly apply to an

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<sup>499</sup> ACT Act s 46B.

<sup>500</sup> ACT standard agreement cl 83; Qld Act s 327; RPA s 70.

<sup>501</sup> *Smith v Director of Housing* [2005] VSC 46 at [14]-[20]

<sup>502</sup> NSW Act s 110.

<sup>503</sup> SA Act s 87.

<sup>504</sup> NSW Act s 92; Vic Act ss 91ZJ and 91ZK; ACT Act s 45A.

employee of the landlord, an agent of the landlord, and occupants and sub-tenants of the premises.<sup>505</sup>

8.3.52 s 41 is amended to allow tenants to apply for a termination order where a neighbour has injured them, caused serious damage, abused, threatened, harassed, etc., as presently a tenant in this situation has no remedy in the RTA - if they do not feel safe they must break lease and incur liability for rent loss. Placing the right in s 41 provides a safeguard against abuse, given that the landlord is not at fault - the tenant must satisfy the Court/TASCAT that the situation is sufficiently serious to warrant termination.

*Case Study*

*Laura\* was living in a complex where a neighbour started abusing, harassing and threatening her. She went to her agent for assistance, but they told her that there was nothing they could do, and if she wanted to leave she'd have to break lease. She stayed put, as she could not afford to move, then the problem neighbour sexually assaulted her. Her agent still refused to mutually terminate her lease, so Laura gave in and broke her lease, and has been homeless and paying rent for a property she cannot safely live in.*

8.3.53 s 42(1) is amended to substitute "for any of the following reasons" with "on any of the following grounds", and s 44(e) is amended to substitute "reason" with "grounds", to clearly separate the subjective reasoning for issuing the notice (which is still relevant to whether a notice is retaliatory, or otherwise whether an order should be made) from what the basis for the notice is in the RTA.

8.3.54 s 43(3) is amended to provide clarification of what "comply" can mean depending on the nature of the breach, for instance desisting from conduct, carrying out repairs, or paying compensation.<sup>506</sup> "Comply" has often been read as "remedy" which has led to arguments as to whether certain breaches are incapable of being remedied. Though we think this argument is without merit, it should nevertheless be made clear that all breaches are capable of being complied with.

8.3.55 Putting aside that ss 43(3B) and 43(3C) should be repealed on the basis that they only concern s 42(1)(d), they are also subject to likely drafting errors; context suggests that they intend to refer to s 42(1)(d) but they are drafted with reference to s 43(1)(d).

8.3.56 s 43 is amended to provide that, if a tenant has been issued with a notice to vacate on any grounds other than ss 42(1)(a) or (g), the tenant's liability to pay rent

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<sup>505</sup> Vic Act s 91ZK.

<sup>506</sup> Ireland Act s 35.

ends upon vacation, not upon the notice to vacate taking effect.<sup>507</sup> The purpose of giving tenants longer notice periods is to provide them time to secure alternative premises, this purpose is undermined if they then have to pay “double rent” if they are fortunate enough to secure a new rental quickly. We do not think that landlords should be able to “have their cake and eat it too”; if they are asking a tenant to vacate under a no-fault ground, it is not fair or reasonable to expect a tenant to keep paying rent until the notice - which is a minimum of 42 days but could be much longer at the unfettered discretion of the landlord - takes effect.

8.3.57 s 45(2) is amended to substitute “a reasonable time” with “at least five working days” to allow a defined period for a tenant to seek advice, which includes business hours.

8.3.58 s 46 is amended to clarify that early vacation includes if a tenant rescinds a lease agreement before they have taken occupancy.

8.3.59 s 47C is amended to substitute “joint tenant” with “co-tenant”, to be consistent with other proposed changes to the RTA, and avoid any potential confusion with “joint tenant” landlords of property.

8.3.60 s 48A is amended to clarify that in the event of an inconsistency between Part 4A and the remainder of the RTA, that Part 4A prevails to the extent of the inconsistency.<sup>508</sup>

8.3.61 s 48B is amended to provide that: (1) a landlord may only charge for prescribed services; (2) if a tenant is away from their room for a period, they may apply to have their services fee(s) temporarily waived or reduced; and (3) a landlord can only charge for utilities that are separately metered.<sup>509</sup> These changes would address any potential inconsistency with s 17(3).

8.3.62 s 48D is amended to add a fine for renting out a shared room.

8.3.63 s 48F is amended to clarify that, with respect to minimum standards requirements, boarding premises will be compliant if the building meets the standards. That is, there must be a common kitchen with a sink and stove, but not every room needs a kitchen with a sink and stove.

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<sup>507</sup> NSW Act ss 110A and 110B; Ontario Act s 49.

<sup>508</sup> NSW Act s 137.

<sup>509</sup> SA Act s 105E; Qld ss 107 and 170; Vic Act s 108.

8.3.64 s 48Q(2) is amended to provide that all money forfeited under s 48 forms part of the funds of the RDA, as well as all money collected through fines.<sup>510</sup>

8.3.65 s 49A is amended to clarify that, if the tenancy is a co-tenancy and only one tenant is transferring their rights, that all tenants must consent to the transfer. If partial co-tenancy transfers are dealt with elsewhere, as recommended, then this provision should clarify that it only applies to total transfers. Any request for consent must also be in the prescribed form.

8.3.66 s 50(a) is amended to add "or s 49A" to ensure that requests for transfers cannot be refused unreasonably. All recommendations regarding sub-tenancies at 2.2 should also apply to transfer requests.

8.3.67 s 51 is amended to add a fine for a breach, and a right for the tenant to seek an order from TASCAT/the Court that all or part of the rent paid under any such agreement is reimbursed.<sup>511</sup> Presently, there are no real consequences for a landlord that rents out premises that are subject to an impediment to occupancy.

8.3.68 s 53 is amended to provide more precise responsibilities:

- At the end of the tenancy, not just during, premises must be in a reasonable condition relative to the ingoing state;<sup>512</sup>
- During the tenancy a tenant must not negligently, recklessly or intentionally cause damage to the premises<sup>513</sup> - though this is obvious, it is not expressly stated anywhere; and
- On top of the requirement to return the premises in a reasonable state of cleanliness, the tenant must remove their goods and rubbish.<sup>514</sup>

8.3.69 s 53 is amended to provide a clear definition of reasonable wear and tear, as it is currently so nebulous as to not provide any real guidance to parties when they are trying to determine responsibility. We suggest a definition that encompasses natural forces, reasonable use, and the normal incidents of living, with reference to the composition of the household.<sup>515</sup> This provides concrete criteria for parties, and decision makers, to base their assessment on. Where wear and tear is raised in a dispute, it should be for the landlord to prove that the damage was not the consequence of reasonable wear and tear, to deter landlords from making ambit

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<sup>510</sup> UK Act s 16A.

<sup>511</sup> NZ Act s 78A.

<sup>512</sup> SA Act s 69; NZ Act s 40; Ontario Act s 33.

<sup>513</sup> Vic Act s 61; SA Act s 69; NZ Act s 49B; WA Act s 38; RPA s 25; Ontario Act s 34.

<sup>514</sup> NSW At s 51; NZ Act s 40.

<sup>515</sup> Vic Act s 3; ACT standard agreement cl 63.

claims regarding damage that is, in any reasonable person's view, reasonable wear and tear.

8.3.70 s 53 is amended to separately provide tenants' obligations with respect to gardens, as they do not neatly fit with responsibilities that are drafted with dwellings in mind. Tenants are to keep and return gardens in a reasonable (not professional) state of tidiness with reference to, inter alia, the ingoing state, the season, the weather, the location, other natural forces, and water restrictions.

8.3.71 s 54 is amended to clarify that a landlord must not make alterations, additions, or add fixtures, unless required under the repairs or minimum standard provisions, without the consent of the tenant (*penalty provision*).<sup>516</sup>

8.3.72 s 59 is amended to clarify that a tenant is not liable for the actions of someone they have granted entry to if the tenant has taken all reasonable steps to eject them from the premises.<sup>517</sup> Whilst a tenant should exercise caution with respect to who they let onto the premises, the actions of others are not always reasonably foreseeable. As such, tenants should be afforded some leeway where they have taken appropriate action to remove the person who is causing trouble.

8.3.73 s 61 is amended to provide:

- A fine for non-compliance;<sup>518</sup>
- That a landlord must also record all other payments, such as reimbursement of water charges;<sup>519</sup>
- That a landlord must provide a copy of the record to the tenant within seven days of request (*penalty provision*);<sup>520</sup> and
- That a landlord must not falsify a rent record (*penalty provision*).<sup>521</sup>

8.3.74 Part 3C is amended to provide that:

- If the landlord requires consent from a strata corporation or superior landlord (eg if it is a sub-tenancy), then:<sup>522</sup>
  - The landlord must seek consent from the person with superior title;
  - The period to accept or refuse consent is extended to 21 days; and

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<sup>516</sup> WA Act s 50X.

<sup>517</sup> NZ Act s 41.

<sup>518</sup> NT Act s 37; WA Act s 34; RPA s 53.

<sup>519</sup> SA Act s 57.

<sup>520</sup> Vic Act s 43; NSW Act s 37.

<sup>521</sup> SA Act s 57; Qld Act s 90; NT Act s 36; WA Act s 34; RPA s 53.

<sup>522</sup> UK s 16A.

- At the start of the tenancy a tenant may have a pet without consent if they make a request within the first 14 days of the tenancy, and may keep the pet on a provisional basis unless ordered otherwise by TASCAT.<sup>523</sup>

8.3.75 The s 3 definition of “social housing” is amended to provide a clearer definition of what constitutes social housing, including homes managed by registered community housing providers that charge rent based on income even where the premises are not owned by Homes Tasmania or otherwise declared by the Minister.

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<sup>523</sup> Residential Tenancies Amendment (Protection of Personal Information) Bill 2025 (NSW) cl 13.

## 9.1 OTHER AREAS IN NEED OF REFORM

*9.1 What additional issues or gaps should be addressed in the Act or through broader tenancy reforms? Please provide details and examples where possible.*

### Functions and powers of the Residential Tenancy Commissioner

It is essential that, if significant reforms to the RTA are implemented, that those reforms are properly enforced otherwise their practical effect may be minimal. We have long expressed concern that the RTA is not properly enforced. Firstly, it is up to tenants to make complaints – opening them up to retribution. Secondly, if a tenant does make a complaint, there is very little chance that their complaint will result in any real consequence:

| <b>Year</b> | <b>“Well founded” complaints</b> | <b>Number of infringement notices issued to landlords</b> | <b>Per centage of “well founded” complaints that result in infringement notices</b> |
|-------------|----------------------------------|---|---|
| 2021/22     | 26                               | 10  | 38  |
| 2022/23     | 14                               | 6   | 42  |
| 2023/24     | 22                               | 13  | 59  |
| 2024/25     | 43*                              | 3   | 7   |

\*Best guess based on numbers provided, as no specific number was given

If there is a less than 50 per cent chance your complaint will result in a consequence, you are very unlikely to bother, and very few tenants do. It would not be hyperbolic to say that we advise tenants to complain to the RTC about punishable breaches more than 14 times on many *days*, let alone over a 12-month period.

For punishment to act as an effective deterrent, it must be fast and it must be certain.<sup>524</sup> That is, the cost benefit analysis of a landlord cannot be that they are likely to get away with a breach, and therefore that the prudent financial decision is to not comply. Much like speeding or parking tickets, infringement notices under the RTA should be automatically issued if a breach is found. If a landlord thinks that the breach was honest and reasonable, it is up to them to apply to the Court to have the fine reviewed. It is not for the RTC to say that a breach does not warrant a fine, when Parliament has legislated otherwise. Justice Hayne, in his findings following the Royal Commission into the banking sector, made similar points regarding the culture at ASIC:<sup>525</sup>

<sup>524</sup> Mark A R Kleiman, *When Brite Force Fails. How to have Less Crims and Less Punishment* (Princeton University Press, 2009).

<sup>525</sup> Tenancy Matters! page 41

1. “Negotiation and persuasion, without enforcement, all too readily leads to the perception that compliance is voluntary”;<sup>526</sup>
2. “The regulator *must* do whatever can be done to ensure that breach of the law is not profitable”<sup>527</sup>; and
3. “Breach of the law carries consequences. Parliament, not the regulators, sets the law and the consequences. There are cases where there is good public reason not to seek those consequences. Prosecution policies have always recognised that there may be good public reasons not to pursue a particular case. But the starting point for consideration is, and must always be, that the law is to be obeyed and enforced. The rule of law requires no less. And, adequate deterrence of misconduct depends upon visible public denunciation and punishment.”<sup>528</sup>

Particularly if, as recommended, landlords are required to demonstrate a working knowledge of the RTA before renting out premises, there can be no excuse for ignorance.

The RTC must also act proactively to investigate potential breaches, rather than rely on tenants making complaints. This can take the form of, inter alia:

- Random checks of premises to ensure compliance with minimum standards;
- Instigating or intervening in proceedings that are in the public interest;<sup>529</sup> and
- Carrying out “shadow shopping” auditing.<sup>530</sup>

In order to prevent disputes escalating to the Court or TASCAT, the RTC should be granted broader powers and funding to carry out mediation and conciliation, similar to Queensland’s Residential Tenancies Authority, though it should not be mandatory. As well as disputes between tenants and landlords, the RTC should pay particular attention to disputes between co-tenants and tenants that occupy boarding houses, where ongoing co-habitation may be necessary and adversarial dispute resolution is not conducive to good outcomes.<sup>531</sup>

The RTC should also collect and publish data regarding bonds, evictions, rents, fines, applications, and wait times, to guide policy and potential reform.

In order to be able to perform these functions to an appropriate level, the RTC’s funding should be significantly increased. Some of this funding should come from the interest collected on bonds, which presently is reserved for the RDA.

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<sup>526</sup> Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Final Report, 2019) vol 1, page 424-425.

<sup>527</sup> Ibid 427.

<sup>528</sup> Ibid 432-433

<sup>529</sup> RPA s 97.

<sup>530</sup> Shadow shopping is a technique regularly used by ASIC, for example: ASIC, ‘Shadow shopping study of retirement advice’ (Report 279, March 2012)

<<https://download.asic.gov.au/media/1343876/rep279-published-27-March-2012.pdf>>

<sup>531</sup> Zoe Goodhall et al, ‘Understanding Housing Justice in Shared Housing’, *Housing, Theory and Society* (11 September 2025) table 1 page 12.

## Recommendations

9.1.1 s 8 is amended to expressly provide that a function of the RTC is to investigate, prosecute and otherwise enforce the RTA.<sup>532</sup>

9.1.2 s 8(2) is amended to give the RTC the power to (in addition to other recommendations made in these submissions):<sup>533</sup>

- Intervene in matters of public interest;
- Instigate proceedings in the public interest;
- Carry out investigations and audits including “shadow shopping”;
- Levy different fines depending on whether the landlord is a natural person or a corporation.

9.1.3 s 8(1)(c) is amended to give the RTC the power to mediate or conciliate disputes between landlords and tenants generally, co-tenants, and occupants of a boarding house.<sup>534</sup>

9.1.4 s 8 is amended to provide that the RTC must collect and publish data on, inter alia, wait times, evictions, rents and enforcement action, and may require landlords to provide certain information, such as how a tenancy has been terminated.<sup>535</sup>

9.1.23 s 48Q(1) is amended to provide that the funds of the RDA may be used to fund the RTC.<sup>536</sup>

### Pre-Contractual obligations

There is a large information gap between tenants and landlords, which partially causes the market failure discussed in the answer to question 4.1. Tenants are entitled to very little information about a property before they move in, let alone before they make an application. From a viewing or open home, a tenant cannot readily determine whether the premises meets minimum standards, or whether the appliances supplied with the premises function, or whether the premises are connected to the NBN. If a landlord makes a representation to a prospective applicant that the premises is equipped with a certain service or facility, and that turns out not to be the case, there is little that a tenant can do under the RTA aside from terminating their lease.

Before agreeing to make an application or sign a lease, tenants should have available to them all information that may reasonably inform that decision. This can take the (prescribed)

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<sup>532</sup> NSW Act s 222; SA Act s 8; WA Act s 8; UK Act s 107.

<sup>533</sup> NSW Act ss 192 - 200; SA Act s 109; SA HI Act s 11; Qld Acs s 443; NZ Act ss 123, 123D and 124A; WA Act s 9; Ireland Act ss 148S - 148AG; RPA s 97; UK Act ss 114 - 132.

<sup>534</sup> SA Act s 107.

<sup>535</sup> NSW Act s 222A; Ireland Act s 114A; UK Act s 110.

<sup>536</sup> SA Act s 101.

form of a simple checklist, handed to all prospective applicants. Certain information should be included in all listings, so tenants can readily filter out properties that are not suitable.

Information that is reasonably within the power of a landlord to provide, and essential to a tenant's ability make an informed decision, includes:<sup>537</sup>

- Certification that the premises meets minimum standards;
- What type, and how many, pets will be consented to;
- Whether the premises are vacant or furnished;
- Whether the premises have been subject to structural mould or damp within the previous five years;
- Whether there has been a violent crime at the premises in the last five years;
- Whether the premises have been used to manufacture or cultivate drugs in the last five years;
- If the landlord is not the title holder (eg a head tenant), whether they have the necessary authority to enter the agreement;
- Whether the landlord has engaged a sales agent or otherwise intends to sell the premises within 12 months;
- The dates of the most recent safety checks for power and gas and whether there are outstanding issues;
- Whether asbestos is present and when it was last assessed for safety;
- Whether there is any legal impediment to renting the premises;
- Whether the premises are subject to a building order or public health order;
- Whether the premises is subject to mortgage proceedings;
- Whether the premises are part of a strata corporation;
- If the premises are part of a strata corporation, whether the strata has scheduled any major repairs or renovations;
- Whether the landlord has sought or been granted planning permits in relation to the premises;
- The energy efficiency rating for the premises, if any;
- Whether the premises are located in a bush fire or flood risk zone;
- Whether there are any health or safety risks that are not readily apparent;
- Whether there is off-street parking provided with the premises;
- Whether the premises includes shared spaces or easements;

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<sup>537</sup> ACT Act s 12; Vic Act s 30D and Regs 16; NSW Regs 8; SA Act s 47A; NZ Act s 13A; Ireland Act s 112; NZ Act s 13A.

- Whether the premises have been certified by the RTC as being unsuitable for children;
- Whether a gardener or other service will be provided;
- If the premises are social housing premises, how the rent contribution is to be calculated;
- Whether the premises are subject to a residential management agreement;
- How the rent has been determined;
- If the premises were rented immediately prior, how much the rent was under that agreement;
- Whether the landlord intends to reserve any part of the address for their own use;
- Whether the landlord has building insurance, and how much the excess will be if the tenant causes damage in breach of the RTA; and
- Whether the premises are equipped with laundry facilities (ie taps designed to be connected to a washing machine).

As well as giving tenants the information they need to be informed consumers, it will mean that landlords can be held to any representations that they make during the application process.

Misleading or deceptive conduct, including regarding tenants' rights and obligations under the RTA or the agreement, should attract a penalty.<sup>538</sup> TASCAT or the Court should have the power to order compensation or make other orders, such as specific performance, if the landlord misleads or deceives a tenant. If the landlord's conduct amounts to fraud, it should be made an offence under the RTA.

For an example of conduct that should not be tolerated, albeit conduct that occurs during a tenancy rather than the pre-contractual stage, if a tenant tells their property manager that they would like to terminate their lease due to the failure of the landlord to carry out repairs, it is, in our experience, the almost ubiquitous practice of property managers to tell them that their only option is to break their lease, and thus that they *will* be responsible for rent loss. This is obviously incorrect advice, not provided in the best interests of the tenant, with the purpose of gaining a material benefit for the landlord.

## Recommendations

**9.1.5 A landlord must not mislead, deceive, or induce in a listing of residential premises, or in general during the pre-contractual stage of a tenancy (*penalty provision*).<sup>539</sup>**

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<sup>538</sup> Vic Act s 30E; SA Act s 47C.

<sup>539</sup> Vic Act s 30E; SA Act s 47C.

9.1.6 A landlord must not mislead, deceive, or induce before or during a tenancy with respect to a tenant's rights and obligations under the RTA or the agreement (*penalty provision*).

9.1.7 In all listings of residential premises, the listing must include prescribed information (*penalty provision*).<sup>540</sup>

9.1.8 Before accepting an application from a prospective tenant, the landlord must provide them with prescribed information and documents in the prescribed form (*penalty provision*).<sup>541</sup>

9.1.9 The landlord must provide instructions manuals for all appliances provided with the premises (*penalty provision*).<sup>542</sup>

## Residential Tenancy Agreements

Tasmania is the only during jurisdiction in Australia where a residential tenancy agreement is not required to be in a prescribed form, or at least must contain prescribed terms.<sup>543</sup> Though ss 10(3), 15 and 64 do curtail what terms of an agreement will and will not be enforceable, many tenants quite reasonably assume that anything written in the lease agreement they have signed is binding on them. In order to provide clarity to all parties, and to reduce the potential for exploitation, all residential tenancy agreements should be required to be in a prescribed form.

Though additional clauses may still be permitted, the RTA should specify certain proscribed terms, as well as a general restriction on inconsistent clauses and contracting out of the RTA.<sup>544</sup>

Before signing a residential tenancy agreement, a landlord should be required to give the tenant a reasonable time to read the proposed agreement, so they do not feel unduly pressured to sign something they have not read.<sup>545</sup> Tenants should also be afforded a brief, 24-hour cooling off period after signing a lease in case they change their mind, or their circumstances suddenly change. This should not cause any great inconvenience for the landlord; the listing will simply need to be kept up for an extra day.

When a fixed term agreement is approaching its end, there should be prescribed time frames around when a landlord is permitted to offer a renewal or extension, and how much time they must give the tenant to consider the offer. It is common practice for landlords to offer a renewal, which may include a large rent increase, many months before a fixed term expires, and impose a short and completely arbitrary deadline for the tenant to accept it, along with

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<sup>540</sup> ACT Act ss 11A and 11AB; SA Act s 47C.

<sup>541</sup> ACT Act s 12; Vic Act s 30D and Regs 16; NSW Regs 8; SA Act s 47A; NZ Act s 13A; Ireland Act s 112; NZ Act s 13A.

<sup>542</sup> SA Act s 48; RPA s 16.

<sup>543</sup> Inter alia: Vic Act s 26; NSW Act s 14; Qld Act s 61; WA Act s 27A; RPA s 12.

<sup>544</sup> NSW Act ss 22 and 219; Vic Act s 26A; SA Act s 115; Qld Act s 53; WA Act s 82.

<sup>545</sup> ACT Act s 12; RPA s 11.

the threat that a notice to vacate for end of lease will be issued if the tenant does not accept. This is done with the obvious intent of exploiting the tenant's fear of being made homeless at the end of their fixed term, and discouraging them from assessing their options to move to cheaper or better premises. As such, as well as being an unfair business practice, it likely puts upwards pressure on rents.

## Recommendations

9.1.10 ss 10, 13 and 48G(1) are amended to provide that all residential tenancy agreements must be in writing, and in the prescribed form (*penalty provision*).<sup>546</sup> Different forms will apply to different forms of tenancy (social housing, crisis, or boarding).<sup>547</sup> The failure of the agreement to be in the prescribed form does not invalidate the agreement.<sup>548</sup> Part performance of an unsigned agreement is to be taken as an agreement.<sup>549</sup>

9.1.11 s 12 is amended to provide that an agreement to renew or extend a fixed term must be in the prescribed form, and the landlord must not impose a deadline to accept an offer of a renewal or extension earlier than 21 days before the expiry of a fixed term, and must give the tenant at least 14 days to consider an offer (*penalty provision*).

9.1.12 s 13 is amended to provide that a tenant must be given a reasonable opportunity to read a proposed lease agreement,<sup>550</sup> and has a 24-hour cooling off period after signing an agreement (or renewal or extension) (*penalty provision*).

9.1.13 ss 15 and 64 are amalgamated, and amended to provide that a landlord must not purport to contract out of the RTA or part of the RTA (*penalty provision*),<sup>551</sup> and must not include proscribed terms (*penalty provision*):<sup>552</sup>

- That the tenant must have the premises and/or carpets professionally cleaned at the end of the tenancy (unless it is necessary to meet their obligations under s 53);
- That the tenant must use a specific third-party service provider;
- That the tenant is liable for Court/TASCAT/RTC filing fees or costs (unless ordered as such during proceedings);
- That the tenant is liable for insurance excess (unless provided for in the RTA).

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<sup>546</sup> Inter alia: Vic Act s 26; NSW Act s 14; Qld Act s 61; WA Act s 27A; RPA s 12.

<sup>547</sup> ACT Act s 8; Vic Regs schedule 1.

<sup>548</sup> Vic Act s 26; NSW Act s 14; Qld Act s 61; WA Act s 27A; RPA s 12.

<sup>549</sup> NSW Act s 17; Vic Act s 29A; WA Act s 54.

<sup>550</sup> ACT Act s 12; RPA s 11.

<sup>551</sup> NSW Act ss 22 and 219; Vic Act s 26A; SA Act s 115; Qld Act s 53; WA Act s 82.

<sup>552</sup> NSW Act s 19; Vic Act s 27B and Regs 11; SA Act s 77; Qld Act s 171.

## Utilities

There are three common issues that we are contacted about with respect to utilities:

1. Liability for power (and gas and internet) that is in the name of the landlord;
2. Whether the tenant can compel the landlord to change the tariff the electricity is metered under;
3. Liability for reimbursing water bills where there has been significant gap between the bill being incurred by the landlord and being passed on to the tenant; and
4. Liability for the cost of utilities that have been affected by a repair issue (e.g. a burst pipe, malfunctioning hot water cylinder, or a gas leak).

In each case, the RTA fails to provide a clear and/or fair answer:

1. It can be implied from s 17(3) that a landlord is liable for any utilities in their name, though it is not express and it may be argued that it is a “loss” for the purposes of s 17(3)(c);
2. The tenant cannot compel a landlord to change the tariff;
3. There is no time frame for providing water bills, the only potential limit is the landlord’s duty to mitigate their losses under s 64A; and
4. A tenant is liable if the landlord was not on notice (actually or constructively) of the fault and carried out their repair obligations as required when put on notice. If the landlord is in breach, the tenant will be required to make a minor civil claim if the landlord does not reimburse them voluntarily.

## Recommendations

9.1.14 s 17 is amended to provide that:

- The landlord is responsible for all utilities that are in their name, and/or are not separately metered (*penalty provision*);<sup>553</sup>
- “Separately metered” is defined to mean a meter that is installed by the utility supplier;<sup>554</sup>
- With respect to electricity, the landlord is responsible for ensuring that it is connected on the correct tariff (*penalty provision*);
- The landlord is responsible for all costs associated with the connection of utilities;<sup>555</sup>
- If a landlord is entitled to seek reimbursement, they must not charge more than what was paid, and must pass on all rebates (*penalty provision*);<sup>556</sup>

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<sup>553</sup> Vic Act s 53.

<sup>554</sup> Vic Act s 3.

<sup>555</sup> Vic Act s 52.

<sup>556</sup> Vic Act s 56.

- The landlord is responsible for reimbursing the tenant for all excess utilities costs associated with a fault with the premises, whether or not the landlord was aware of the fault;<sup>557</sup>
- The landlord must be pay all charges associated with utilities in their name, and must not put the tenant at risk of being cut off from those utilities (*penalty provision*);<sup>558</sup>
- The landlord must not seek reimbursement for a water bill unless (1) the premises are water efficient; and (2) the bill is provided to the tenant within 28 days of it being issued to the landlord, and a tenant must be given at least 28 days to reimburse the landlord;<sup>559</sup> and
- A tenant is not liable for a partial water bill around the start of a tenancy unless a water meter reading is included in the condition report.<sup>560</sup>

### Disputes over liability under s 17(3)(c)

If a landlord requests compensation under s 17(3)(c), there is no dispute process if the tenant doesn't accept liability and/or believe that the amount asked for is reasonable. If the tenant refuses to compensate the landlord, they run the risk that they will be issued with a notice to vacate for a breach of the tenancy, or that their fixed term lease will not be renewed. As such, tenants often agree to pay compensation that they do not believe they are liable for. Instead, there should be a clear process for giving notice, calculating appropriate compensation, apportioning liability, and paying any compensation owing.

## Recommendations

9.1.15 s 17(3)(c) is amended to provide that:

- A landlord must give notice in the prescribed form, including particulars of the cause of the loss, and supporting documents;<sup>561</sup>
- The tenant must be given at least 28 days to pay the bill;
- If the tenant does not accept liability, disputes the amount of compensation requested, and/or is unable to pay in the given timeframe, they may apply to the Court/TASCAT within the notice period to determine the dispute;<sup>562</sup>
- In determining reasonable compensation for damage to the premises, the Court/TASCAT must take into account the capital depreciation scale;<sup>563</sup>

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<sup>557</sup> Vic Act s 53A; SA Act s 73B.

<sup>558</sup> Ontario Act s 21.

<sup>559</sup> NSW Act s 39; SA Act s 73; Qld Act s 166; WA Act s 49A.

<sup>560</sup> Qld Act s 166A.

<sup>561</sup> Vic Act s 79.

<sup>562</sup> Vic Act s 79.

<sup>563</sup> Vic Act s 211A.

- If the landlord has building insurance, compensation is capped at the lower of the excess payable under that policy, and four weeks rent;<sup>564</sup> and
- The landlord's insurer is not able to pursue the tenant for loss in excess of the above (*penalty provision*).<sup>565</sup>

### Payment of rent

Paying rent should be easy, free and flexible for tenants. Though the RTA already provides that a landlord or third party cannot charge for rent payments, it should also positively assert that certain methods of payment must be made available to tenants.

## Recommendations

9.1.16 ss 18 and 19 are amended to provide that:

- A landlord must allow a tenant to pay rent (and other charges) via Centrepay or electronic fund transfer (*penalty provision*);<sup>566</sup>
- During a tenancy, a landlord must not refuse a request from a tenant to change their method of payment to Centrepay or EFT (*penalty provision*);<sup>567</sup> and
- A landlord must not unreasonably refuse a request from a tenant to change their payment day or payment period, if the current payment day or period does not align with their work or Centrelink pay day - in the case of a dispute, a tenant can apply to the RTC.

### Ingoing and outgoing condition of the premises

Condition reports should be required to be in a prescribed form, to ensure that they contain all relevant information under the RTA, and to properly put tenants on notice of what they need to pay attention to in completing the form.

At the end of the tenancy, tenants should be given the ability to attend exit inspections with the landlord and make comments that are recorded on the exit report. Presently, Tasmanian tenants have no oversight over exit reports, despite landlords being incentivised to be overly fastidious. Giving tenants greater involvement at this stage may reduce the number of bond disputes and consequently the workload of the RTC.

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<sup>564</sup> NZ Act s 49B.

<sup>565</sup> NZ Act s 49C.

<sup>566</sup> Vic Act s 42 and Regs 19; NSW Act s 35; SA Act s 56A.

<sup>567</sup> NSW Act s 35.

## Recommendations

9.1.16 s 26 is amended to provide that:

- A condition report must be in the prescribed form (*penalty provision*);<sup>568</sup>
- Any record of a defect or fault in a condition report is taken to be notice of the need for repair for the purposes of the repairs provisions;<sup>569</sup>
- An exit report must be undertaken within five working days of the end of a tenancy, otherwise will not be afforded evidentiary weight;<sup>570</sup>
- A tenant must be given a reasonable opportunity to attend the exit inspection and record comments on the exit report (*penalty provision*);<sup>571</sup>
- An exit report is to be in the prescribed form (*penalty provision*).

### Termination of agreements by tenants

There are multiple issues with ss 38-40 with respect to:

- How they are drafted;
- How they are interpreted; and
- How they operate in the real world.

This means that, despite termination being ostensibly the most powerful remedy available to a tenant, it is relatively rarely exercised.

Before a tenant can issue a notice to terminate, they must first secure alternative premises. As such, once a notice has been issued, it is for all and intents and purposes final and irrevocable. Section 39(2), which allows a landlord to “comply” with a notice the same way that a tenant can “comply” with a notice to vacate, is incompatible with this reality – once a notice has been given it is already too late for the tenant to reverse course and remain at the tenancy. There is also no upper limit on how many times a landlord may “comply” with a termination notice. For example, a landlord may regularly enter the premises in breach of s 56, ease off for the notice period, then start again after the notice has been rendered of no effect, repeat ad infinitum. Thus, a tenant cannot ever be confident that a notice of termination issued under s 38(1)(b) (including for a breach of minimum standards) will be effective, even when the breach is serious or persistent.

Further, the way ss 38-40 have been interpreted by the RTC (largely in the course of bond disputes where they are given the jurisdiction to determine the validity of a notice of termination by proxy) is not compatible with the natural reading of the provisions, leading to further uncertainty. Though the RTA provides that the tenant may issue a notice of

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<sup>568</sup> NSW Act schedule 2; Vic Act schedule 1.

<sup>569</sup> Vic Act s 36.

<sup>570</sup> Vic Act s 35; NSW Act s 29; ACT Act s 30A; WA Act s 27C.

<sup>571</sup> Vic Act s 35; NSW Act s 29; ACT Act s 30A; WA Act s 27C.

termination if *any* repair has taken longer than 28 days, or if the landlord has breached *any* provision of the RTA or agreement, the RTC nevertheless asserts that:<sup>572</sup>

*[A] tenant's use of the property must be affected by issues of non-compliance.*

*The consideration of 'reasonableness' is a means to establishing a balance between the interests of an owner and the interests of a tenant.*

*In determining whether the Tenant's termination is valid, the Commissioner will consider the reasonableness of the Tenant's reliance on the breach.*

None of this is found in the RTA itself. It is not for the RTC to usurp Parliament and impose its own view of what is reasonable and balanced. Parliament's clear intent when drafting ss 38(1)(a) and (b), by using the word *any*, was to provide clarity above all else; though there may consequently be situations where a tenant is able to issue a notice of termination for what seems like a trivial reason, that is the price that Parliament is willing to pay for providing certainty. It is asymmetrical with the provisions regarding termination by a landlord, which do, via s 45(3)(b), take into account the circumstances of the tenancy and notice, because the situations are asymmetric – the consequences of forced eviction and voluntary termination are not comparable.

Nevertheless, we suggest that s 38 is amended to better reflect the reality of termination, and to better balance the interests of the parties, without sacrificing clarity. Section 38(1)(b) should be reserved for serious or persistent breaches but should not be able to be remedied or complied with – s 39(2) should be repealed entirely. Additional grounds to issue a notice to terminate should be added to compensate for the loss of the broad s 38(1)(b), including:

- If the premises are not fit for habitation or are destroyed;<sup>573</sup>
- If the premises do not meet minimum standards;<sup>574</sup>
- If the premises are not vacant;<sup>575</sup> or
- If, during the first three months of the tenancy, it becomes clear that the landlord has misrepresented the nature of the premises, including facilities and services.<sup>576</sup>

Other circumstances, which may not result from the fault of the landlord but may nevertheless severely affect the tenant's comfort, or otherwise justify the ability to terminate, include:

- If the tenant is offered social housing, SDA, aged care or is otherwise incapable of living independently;<sup>577</sup>
- If the landlord has given the tenant notice of an intention to sell the premises;<sup>578</sup>

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<sup>572</sup> Residential Tenancy Commissioner, 'Guide to the Residential Tenancy Commissioner' (2019) page 22.

<sup>573</sup> ACT Act s 46AA; Vic Act s 91L; Qld Act s 307A; SA Act s 86B.

<sup>574</sup> ACT Act s 46AA; Vic Act s 91L; Qld Act s 307A; SA Act s 86B.

<sup>575</sup> ACT Act s 46AA; Vic Act s 91L; Qld Act s 307A; SA Act s 86B.

<sup>576</sup> Qld Act s 312A.

<sup>577</sup> ACT Act s 46A; Vic Act s 91ZB; NSW Act s 100; SA Act s 85C and Regs 29; NT Act s 96.

<sup>578</sup> NSW Act s 100; Vic Act s 91ZB.

- If the landlord has given the tenant notice of a rent increase during a fixed term;<sup>579</sup>
- If a tenant is adversely affected by a change to strata by-laws.<sup>580</sup>

Each ground should be subject to a different notice period, to reflect the urgency of the issue.

We are of the view that a landlord must take positive steps to dispute the validity of a notice, if they do not accept it. The current practice of landlords and agents is to reflexively dispute any notice to terminate issued by a tenant, no matter how baseless their opposition is. Landlords are financially incentivised to do so: some tenants may fold, and accept liability for rent loss whether or not it is warranted; they are able to use the threat of a protracted bond dispute to leverage payment; a bond dispute may end up being determined *ex parte*; or they may get lucky with the RTC's nebulous implied criteria for validity.

In order to discourage this practice, which wastes the time and resources of tenants and the RTC, the landlord, upon receiving a notice of termination, should be required to lodge a dispute with the Court/TASCAT within 14 days, where they may argue that (1) the notice has not been issued in the proper form, and that deficiency has resulted in material prejudice, and/or (2) that the grounds relied upon are not true. If the tenant has already vacated the premises before a determination has been made, as is likely to be the case, the Court/TASCAT can order compensation in accordance with s 47B if the notice is ultimately found to be invalid.

If the landlord does not dispute the notice to terminate, or is not successful before the Court/TASCAT, then they should be estopped from contesting the validity of the notice in any other proceedings, including a bond dispute.

## Recommendations

**9.1.17 s 38(1)(b) is amended to provide that a notice of termination may only be issued where breaches have been serious or persistent, and s 39(2) is repealed.**

**9.1.18 ss 38 and 39 are amended to add the following grounds for issuing a notice of termination:**

- **The premises do not meet minimum standards (seven days notice);<sup>581</sup>**
- **The premises are not fit for habitation or have been destroyed (immediate);<sup>582</sup>**
- **The premises are not vacant (immediate);<sup>583</sup>**
- **The landlord has misrepresented the nature of the premises (14 days);<sup>584</sup>**

<sup>579</sup> NSW Act s 99; Ontario Act s 47.

<sup>580</sup> NZ Act s 66.

<sup>581</sup> ACT Act s 46AA; Vic Act s 91L; Qld Act s 307A; SA Act s 86B.

<sup>582</sup> ACT Act s 46AA; Vic Act s 91L; Qld Act s 307A; SA Act s 86B.

<sup>583</sup> ACT Act s 46AA; Vic Act s 91L; Qld Act s 307A; SA Act s 86B.

<sup>584</sup> Qld Act s 312A.

- The tenant has been offered social housing, aged care, SDA, crisis accommodation, or is incapable of living independently (14 days);<sup>585</sup>
- The landlord has issued the tenant with notice of an intention to sell (seven days, within 60 days of the notice being issued);<sup>586</sup>
- The landlord has issued the tenant with notice of a rent increase to take effect during a fixed term tenancy (14 days, issued within the 60 days notice period);<sup>587</sup>
- The tenant is adversely affected by a change to strata by-laws (21 days, issued within 60 days of being notified of the change).<sup>588</sup>

9.1.19 ss 38 and 39 are amended to provide that the estate of a tenant who has died, and is the sole tenant, or any remaining co-tenants, if the tenant who died was not the sole tenant, may issue a 14 day notice of termination.<sup>589</sup>

9.1.20 s 39 is amended to provide that, upon being issued with a notice of termination and within 14 days (irrespective of the notice period required), a landlord may dispute the notice to the Court/TASCAT, on that basis that:<sup>590</sup>

- The form of the notice is not in the prescribed form, or is otherwise deficient in a way that has caused the landlord real prejudice; and/or
- The grounds in the notice are not true (except in the case of family violence).

9.1.21 If the Court/TASCAT upholds the landlord's dispute:<sup>591</sup>

- It may award compensation to the landlord in accordance with s 47B, if the tenant has vacated; or
- The tenancy continues, if the tenant has not vacated.

9.1.22 If the landlord accepts the notice, fails to lodge a dispute within the 14 day period, or is unsuccessful before the Court/TASCAT, they are estopped from disputing the validity of the notice in the course of any other proceedings.

### Boarding premises - house rules

Though s 48H places some parameters around the subject matter of house rules, there is no process for changing the rules, or disputing the validity of the rules. Tenants in a boarding

<sup>585</sup> ACT Act s 46A; Vic Act s 91ZB; NSW Act s 100; SA Act s 85C and Regs 29; NT Act s 96.

<sup>586</sup> NSW Act s 100; Vic Act s 91ZB.

<sup>587</sup> NSW Act s 99; Ontario Act s 47.

<sup>588</sup> NZ Act s 66.

<sup>589</sup> NSW Act ss 78 and 108; Qld Act ss 307B and 324A.

<sup>590</sup> SA Act s 85; ACT Act s 46L; WA Act s 71AC.

<sup>591</sup> Qld Act s 424.

house should be given reasonable notice of any change, and the ability to dispute a proposed house rule.

## Recommendations

9.1.24 s 48G(3) is amended to add a penalty for failing to provide the house rules or posting them in the common area.

9.1.25 s 48H(1) is replaced with a requirement that house rules must be in the prescribed form, and the RTC is to draft model house rules (*penalty provision*).<sup>592</sup>

9.1.26 ss 48H(1)(i) and (ii) are amended to provide that a landlord must give all tenants at least 21 days notice in the prescribed form of any proposed change to the house rules, and that any point during a tenancy a tenant may apply to the RTC for a review of the house rules, or house rule.<sup>593</sup>

9.1.27 s 48H(2) is amended to provide that all house rules “must be for the purpose of enhancing the health and safety of persons or safety of property and must not unreasonably interfere with individual tenant’s quiet enjoyment, peace, comfort, and privacy, taking into account the reasonable interests of all occupants.”<sup>594</sup>

## Service

Currently, the rules regarding service of documents and applications under the RTA are not found in the RTA itself. They are in, depending on the document in question, found in the *Acts Interpretation Act 1931*, *Magistrates Court (Civil Division) Rules 1998*, or the *Tasmanian Civil and Administrative Tribunal Act 2020* (and subordinate legislation). Most notices are given under ss 29AB and 30 of the AIA, but there is still some ambiguity about service of certain notices: see for instance *Jackson v Gearman*.<sup>595</sup> Nor does the AIA provide for electronic service, it must be implied from the *Electronic Transactions Act 2000*. All that is to say, there is a general lack of clarity regarding service, and it is unreasonable to expect laypeople to navigate this maze of legislation. The RTA should instead provide clear rules for service of notices, applications, and other documents.

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<sup>592</sup> Qld Act ss 267 and 268 and Regs schedule 7.

<sup>593</sup> Vic Act s 128; Qld Act s 274; NZ Act s 66P; RPA s 93.

<sup>594</sup> SA Act s 105A.

<sup>595</sup> [2009] TASMC 4.

## Recommendations

9.1.28 All notices, documents and applications under the RTA, other than under ss 41 and 45, may be served by:<sup>596</sup>

- Personal service;
- Post;
- Leaving it at the business address or residence of the other party;
- Any electronic form (email, SMS, instant messaging service) nominated by the other party;
- Or as permitted by the Court/TASCAT.

9.1.29 An application under ss 41 or 45 must be personally served, or sent by registered post, or as otherwise permitted by the Court/TASCAT.

9.1.30 If the tenancy is a co-tenancy, or there is more than one landlord, service on one co-tenant or co-landlord is assumed to constitute service on all co-tenants or co-landlords. A co-tenant or co-landlord that wishes to rebut the assumption bears the onus of proving that they were not served - unless they provide evidence that they were affected by family violence and the co-tenant or co-landlord that was actually served was the perpetrator.<sup>597</sup>

9.1.31 If the tenant opts in to using a third party app to manage the tenancy, the landlord must ensure that all documents uploaded to the app by the tenant or the landlord are accessible at all times during the tenancy, are able to be downloaded and stored locally, and are not deleted (*penalty provision*).

9.1.32 In order to protect the privacy and dignity of tenants, affecting service on the tenant by attaching the document to the front door, or another place in public view, is not permitted unless it is an application under s 47, or it is approved by an order of the Court/TASCAT (*penalty provision*).

9.1.33 A period of days is taken to be clear days.<sup>598</sup>

9.1.34 A party must notify the other as soon as possible if their service address changes, including their email address or phone number.<sup>599</sup>

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<sup>596</sup> NSW Act s 223; Vic Act s 506; ACT Regs 5; SA Act s 120; NZ Act ss 13AB and 136; WA Act s 85; Ireland Act s 6.

<sup>597</sup> NSW Act s 223; NT Act s 155; NZ Act s 136; WA Act s 85.

<sup>598</sup> SA Regs 3; NZ Act s 136A.

<sup>599</sup> NZ Act s 16.

## Strata properties

Though s 64C requires landlords to provide tenants with strata by-laws, it is our experience that this is rarely, if ever, complied with. Tenants often do not know where they stand with respect to parking, common areas, or pets. Even if the by-laws are provided at the start of the tenancy, there is no express requirement that a landlord must let the tenant know if and when the by-laws change.

Per the decision in *Bonner v Lockhart*,<sup>600</sup> a landlord of a strata premises can effectively circumvent the prima facie right to a pet that tenants have under the RTA, as under the *Strata Titles Act 1998* a body corporate can impose a rule that gives the body corporate the unfettered discretion to refuse a request for a pet. This effects both tenants and owner-occupiers of strata premises. In our submissions to the Government regarding the changes to the RTA relating to pets, filed on 31 May 2024, we said:

Allowing renters to have pets in strata title properties means that the *Strata Titles Act 1998* (Tas) will have to be amended. The best model that we have been able to find is New South Wales which expressly provides that body corporates are unable to completely exclude the keeping of a pet:<sup>601</sup>

*(1) Each of the following has no force or effect to the extent that it would unreasonably prohibit the keeping of an animal on a lot—*

*(a) a by-law,*

*(b) a decision by an owners corporation under a by-law.*

*(2) It is taken to be reasonable to keep an animal on a lot unless the keeping of the animal unreasonably interferes with another occupant's use and enjoyment of the occupant's lot or the common property.*

*(3) The regulations may specify circumstances in which the keeping of an animal unreasonably interferes with another occupant's use and enjoyment of the occupant's lot or the common property.*

Whilst a blanket ban on pets is prohibited in the NSW legislation, body corporates are able to exclude pets on a case-by-case basis where the pet “unreasonably interferes with another occupant’s use and enjoyment” of the property:

*For the purposes of the Act, section 137B(3), the circumstances in which the keeping of an animal unreasonably interferes with another occupant's use and enjoyment of the occupant's lot or the common property are—*

*(a) the animal makes a noise that persistently occurs to the degree that the noise unreasonably interferes with the peace, comfort or convenience of another occupant, or*

*(b) the animal repeatedly runs at or chases another occupant, a visitor of another occupant or an animal kept by another occupant, or*

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<sup>600</sup> [2026] TASCAT 60.

<sup>601</sup> Section 137B of the *Strata Schemes Management Act 2015* (NSW).

*(c) the animal attacks or otherwise menaces another occupant, a visitor of another occupant or an animal kept by another occupant, or*

*(d) the animal repeatedly causes damage to the common property or another lot, or*

*(e) the animal endangers the health of another occupant through infection or infestation, or*

*(f) the animal causes a persistent offensive odour that penetrates another lot or the common property, or*

...

It is likely that most body corporates adopt the model by-laws rather than drafting their own rules. The NSW model by-laws expressly provide that landlords or occupiers of body corporates are allowed to have a pet.<sup>602</sup>

*Note— Select option A or B. If no option is selected, option A will apply.*

#### **Option A**

*(1) An owner or occupier of a lot may keep an animal on the lot, if the owner or occupier gives the landlords corporation written notice that it is being kept on the lot.*

*(2) The notice must be given not later than 14 days after the animal commences to be kept on the lot.*

*(3) If an owner or occupier of a lot keeps an animal on the lot, the owner or occupier must—*

*(a) keep the animal within the lot, and*

*(b) supervise the animal when it is on the common property, and*

*(c) take any action that is necessary to clean all areas of the lot or the common property that are soiled by the animal.*

#### **Option B**

*(1) An owner or occupier of a lot may keep an animal on the lot or the common property with the written approval of the landlords corporation.*

*(2) The owners corporation must not unreasonably withhold its approval of the keeping of an animal on a lot or the common property and must give an owner or occupier written reasons for any refusal to grant approval.*

*(3) If an owner or occupier of a lot keeps an animal on the lot, the owner or occupier must—*

*(a) keep the animal within the lot, and*

*(b) supervise the animal when it is on the common property, and*

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<sup>602</sup> Schedule 3 of the Strata Schemes Management Regulations 2016 (NSW).

*(c) take any action that is necessary to clean all areas of the lot or the common property that are soiled by the animal.*

*(4) An owner or occupier of a lot who keeps an assistance animal on the lot must, if required to do so by the owners corporation, provide evidence to the owners corporation demonstrating that the animal is an assistance animal as referred to in section 9 of the Disability Discrimination Act 1992 of the Commonwealth.*

We believe that renters living in strata title properties should not be excluded from proposed reforms to the Act. We therefore recommend amendment to the Act which will allow renters the right to have a pet unless there are reasonable grounds for their exclusion. These changes will also benefit owner-occupiers that live in strata properties.

## Recommendations

9.1.35 s 64C is amended to:

- Add a penalty for a breach;<sup>603</sup>
- Provide that a tenant does not have to comply with by-laws that are not consistent with the RTA;<sup>604</sup>
- Provide that a landlord must notify a tenant if by-laws are changed, and provide a copy of the updated by-laws (*penalty provision*);<sup>605</sup> and
- Provide that the landlord must provide the contact details of the strata corporation, pass on all complaints and requests (such as a request for consent for a pet) and ensure that the tenant is given notice of meetings (*penalty provision*).<sup>606</sup>

9.1.36 The *Strata Titles Act 1998* is amended so that body corporates cannot not impose blanket bans on pets.

### Miscellaneous

9.1.37 A landlord is required to give notice to a tenant that they intend to sell the premises - as often the first a tenant hears of it is when a landlord gives notice under s 56(4B) (*penalty provision*).<sup>607</sup>

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<sup>603</sup> Qld Act s 69.

<sup>604</sup> ACT Act standard agreement cl 66.

<sup>605</sup> NZ Act s 16B.

<sup>606</sup> Ireland Act s 12.

<sup>607</sup> SA Act s 71A; NZ Act s 47.

**Schedule 1:**

# **Table of Proposed Changes**

| Section of Residential Tenancy Act 1997                         | Proposed changes (if any)  | Examples of other jurisdiction(s) where proposed change has been adopted (if any)   | Notes  | Recommendation reference |
|---|--|---|--|--------------------------|
| <b>new provision - purpose of RTA</b>                           |  | <i>Residential Tenancies Act 1997 (ACT) ("ACT") s 4A; Residential Tenancies Act 1997 (Vic) ("Vic") s 1; Residential Tenancies and Rooming Act 2008 (Qld) ("Qld") s 5; Residential Tenancies Act 1999 (NT) ("NT") s 3; Residential Tenancies Act 2006 (Ontario) ("ON") s 1</i> | additional guidance for interpretation by court/TASCAT/RTC interpretation, could formalise and expand <i>Parsons/Logan</i> finding that Act is (at least in part) a code | 8.3.11                   |
| <b>s 1 short title</b>  |  |   |  |                          |
| <b>s 2 commencement</b>   |  |   |  |                          |
| <b>s 3 interpretation</b>                                       |  |   |  |                          |
| boarding premises   | repeal (c) and (d) - imprecise and no principled reason for exclusion  | specialist student accommodation agreements included in RTA, grounds to give NTV if no longer student at end of fixed lease: <i>Residential Tenancies Act 2010 (NSW) ("NSW") s 87K</i>  | See parliamentary debate 2003 between Judy Jackson and Kim Booth   | 2.3.1                    |
|   | definition could be more detailed - right to occupy room(s) but not whole premises; not self-contained   | Qld s 15  |  | 2.3.2                    |
| covid-19 emergency  | repeal   | <i>Residential Tenancies Act 1986 (NZ) ("NZ") s 145</i>   |  | 8.3.12                   |
| new definition - co-tenant                                      |  | ACT s 6AA; <i>Residential Tenancies Act 1995 (SA) ("SA") s 3</i>  |  | 2.3.3                    |
| dispute   | narrow and not used consistently through RTA as it stands  | SA s 3; <i>Residential Parks Act 2026 (Tas) ("RPA") s 3</i>   |  | 8.3.13                   |
| emergency period  | repeal   |   |  | 8.3.12                   |
| essential services  | include: (1) NBN/telecommunications connection (2) oven (3) cooling device   |   |  | 5.3.1                    |
| new definition - invalid  | clarify that invalid, no effect, and void are synonymous   | Vic s 3   |  | 8.3.14                   |
| new definition - occupant                                       | define scope of occupant: children of tenant ("T"), etc.   |   | regularly used phrase but no legislated definition - often used interchangeably with sub-tenant in a way that is misleading and confusing                                | 2.3.4                    |
| owner   | include head tenant  | Person that grants right of occupancy: NSW s 3; person by whom premises have of are to be let under an agreement: Vic s 3; Qld s 8  |  | 2.2.1                    |
|   | includes prospective owner   | NSW s 3; SA s 3; NZ s 2; <i>Residential Tenancies Act 1987 (WA) ("WA") s 3; Renters Rights Act 2025 (UK) ("UK") s 42</i>  |  | 2.1.1                    |
|   | includes former owner  | SA s 3; NZ s 2; WA s 3  |  | 8.3.15                   |
|   | includes SDA provider  |   |  | 6.2(b)                   |
| socially-dislocating disease                                    | repeal   |   |  | 8.3.12                   |
| social housing  | expressly include premises rented by community housing provider intended to be used as social housing, whether or not owned by Homes Tasmania  |   |  | 8.3.75                   |
| tenancy   | amend to specify that reference to tenancy encompasses whole of continuous/unbroken period of occupancy where residential tenancy agreements may have been extended or renewed or converted to non-fixed period  |   |  | 8.3.16                   |
| tenant  | include sub-tenant   | NSW s 3; ACT ss 5 and 6; Qld s 13   |  | 2.2.2                    |
|   | include prospective tenant   | NSW s 3; ACT ss 5 and 6; NZ s 2; WA s 3; UK s 42  |  | 2.1.2                    |
|   | include former tenant  | SA s 3; NZ s 2; WA s 3; RPA s 3   |  | 8.3.15                   |
|   | include SDA tenant   |   |  | 6.2(b)                   |
|   | add that every reference to "tenant" includes "tenants"  |   |  | 8.3.15                   |
| tertiary student  | repeal   |   | See "boarding premises"  | 2.3.1                    |
| s 3(2)  | add that an omission or unlawful act by an agent both the agent and the landlord ("LL") are liable   | Qld ss 24 and 25; WA ss 86A, 86B and 87A  | current ambiguity around responsibility - solely agent?  | 8.3.7                    |
| <b>s 3A extension of COVID-19 emergency period</b>              | repeal   |   |  | 8.3.12                   |
| <b>s 3B declaration of subsequent COVID-19 emergency period</b> | repeal   |   |  | 8.3.12                   |
| <b>s 5 application of Act</b>                                   | add that applies if predominant use is residential, even if business, trade, profession, agriculture also takes place on premises  | NSW s 7; Vic s 7; Qld s 10  |  | 8.3.17                   |
| s 5(2)  | includes agreements related to employment agreement  | ACT s 6C  |  | 8.3.17                   |
|   | add that T can be corporation provided that intended to be occupied by natural persons   | NSW s 13; SA s 4; RPA s 3   |  | 8.3.18                   |
|   | make explicit that minor is able to enter into residential tenancy agreement   | Qld 28; NT s 8; WA s 59A  | regular issue raised by housing support sector   | 8.3.19                   |
| <b>s 6 non-application of Act</b>                               |  |   |  |                          |
| s 6(1)(e)   | delete "not ordinarily used for holiday purposes" and decrease exemption period to 28 days   | ACT s 6D(c)   |  | 8.3.20                   |
| s 6(2)(a)   | repeal   | Qld s 40  | holiday purposes adequately covers field   | 8.3.20                   |
| s 6(2)(b)   | repeal for ambiguity, add instead holiday purposes, assumed not to be holiday if longer than 28 days   | SA s 5 and reg 7; ACT s 6D; Qld s 31; NZ s 5; WA s 5; <i>Residential Tenancies Act 2004 (Ireland) ("Ire") s 3</i> ; RPA s 5; ON s 5   | Any holiday exemption should be related to purpose of stay rather than nebulous nature of premises   | 8.3.20                   |
| s 6(2)(c)   | repeal   |   | arbitrary and facilitates exploitation: sub-tenancies to be covered, lodgers to be included under boarding part  | 2.3.5                    |
|   | add doesn't apply to life tenancies  |   |  | 8.3.21                   |
|   | add right to apply to RTC (with right of review) to determine whether agreement covered by RTA   | NSW s 11; RPA s 5   |  | 8.3.22                   |
|   | add right to contract into RTA if not otherwise within scope   | ACT s 6B; Qld s 18; NZ s 8  | SDA and other agreements regularly opt in when otherwise may not be covered but not explicit capacity to do so, would cover <i>bone fide</i> edge cases                  | 8.3.23                   |
|   | party asserting that the RTA does not apply has onus of proof  | NZ s 10   |  | 8.3.22                   |
| <b>s 7 Residential Tenancy Commissioner</b>                     |  |   |  |                          |
| <b>s 8 general functions and powers of RTC</b>                  | add expressly that RTC is to investigate, prosecute and otherwise enforce RTA  | NSW s 222; SA s 8; WA s 8; UK s 107   |  | 9.1.1                    |
|   | add the RTC is to maintain and publish landlord database and administer landlord licencing   | Vic ss 4390-439T  |  | 8.3.1                    |
|   | add that RTC is to collect data on and publish eviction information, and publish statistics re, for instance, wait times every three months  | NSW s 222A; Ire s 114A; UK s 110  |  | 9.1.4                    |
|   | add that RTC is to develop and make available for public use a calculator to calculate the prescribed amount of a rent increase  | Ire s 19  |  | 4.1.10                   |
| s 8(1)(c)   | add that RTC has power to mediate or conciliate disputes between landlords and tenants, between co-tenants, and between tenants of boarding premises   | SA s 107  |  | 9.1.3                    |
| s 8(2)  | give broader explicit powers to (1) intervene in matters of public interest (2) instigate proceedings in public interest (3) make orders that landlord must be represented by an agent or can be barred from letting premises (4) investigation powers including "shadow shopping" auditing and random inspections | NSW ss 192-200, s 206; SA s 109; <i>Housing Improvement Act 2016 (SA) ("HISA") s 11</i> ; Qld s 443; NZ ss 123, 123D and 124A; WA s 9; Ire ss 148S-148AG; RPA s 97; UK ss 114-132   |  | 9.1.2                    |

| Section of Residential Tenancy Act 1997              | Proposed changes (if any)   | Examples of other jurisdiction(s) where proposed change has been adopted (if any) | Notes   | Recommendation reference |
|--|---|---|---|--------------------------|
| <b>s 9 delegation by Commissioner</b>                |   |   |   |                          |
| <b>s 10 Residential Tenancy Agreement</b>            | add that must be in writing in prescribed form(s) (with penalty) but does not invalidate any agreement that is not in prescribed form(s)  | Vic s 26; NSW s 14; Qld s 61; WA s 27A; RPA s 12                                  | can be different prescribed forms for different sub-categories of agreement (e.g. boarding, sub-lease, social housing, occupation) - Vic regs schedule 1; ACT s 8. important to be writing as lack of written agreement can cause issue with proving tenancy for Centrelink, migration etc. | 9.1.10                   |
| s 10(1)  | add that if agreement not signed by LL but accepts rent or otherwise partly performs will be taken as if it has been signed   | NSW s 17; Vic s 29A; WA s 54  |   | 9.1.10                   |
|  | specify that RTA applies to sub-tenancies not just social housing sub-tenancies   |   |   | 2.2.3                    |
| s 10(2)  | Amend for ambiguity - are fixed terms of four weeks exempt from RTA or is the fixed term severed and they are non-fixed? Prefer that latter interpretation is made express  | SA s 4  |   | 8.3.23                   |
|  | add that a social housing tenant that is a <i>Jordan</i> tenant is not a tenant but must be provided with an opportunity to take over the tenancy if the head tenant vacates the premises   |   | clear up issue with <i>Jordan</i> creating parallel tenancy agreement   | 2.3.15                   |
| <b>s 11 expiry</b>                                   |   |   |   |                          |
| s 11(2)  | rephrased to make clear that "new" agreement is continuation of existing tenancy rather than brand new agreement  | NSW s 18; SA s 79A; Qld s 70; WA s 76C; NT s 4; ON s 38                           | rectify inconvenient consequences of <i>Director of Housing v LeFevre</i> [2021] TASSC 33   | 8.3.16                   |
| s 11(4)  | repeat - abolishment of end of lease eviction and allows LL to unilaterally extend fixed term lease   |   |   | 7.1.1                    |
| s 11(5)  | repeat  |   |   | 7.1.1                    |
| s 11(6)  | repeat  |   |   | 7.1.1                    |
| <b>s 12 extension and renewal</b>                    | provide that parties on a non-fixed lease can agree to enter into fixed term agreement  | Qld s 70  |   | 8.3.24                   |
|  | Provide that LL must not impose arbitrary deadline for acceptance of extension or renewal e.g. time to accept renewal or extension must not be earlier than 21 days before fixed term expires   |   | Prevent LLs from pressuring tenants into renewing or extending leases months early  | 9.1.11                   |
| s 12 (2)   | agreement to extend or renew must be in prescribed form   |   |   | 9.1.11                   |
| <b>s 12A variation</b>                               | amend to add that agreement can be varied by order of court/TASCAT/RTC  |   |   | 8.3.25                   |
| <b>s 13 written agreement</b>                        |   |   |   |                          |
| s 13(1)  | must be in prescribed form - see s 10   |   |   | 9.1.10                   |
| s 13(2)  | must provide tenant reasonable time to read lease before signing  | ACT s 12; RPA s 11  |   | 9.1.12                   |
|  | add 24 hour cooling off period for tenants  |   |   | 9.1.12                   |
|  | add penalty to failure to provide copy of lease   | Vic s 29  |   | 8.3.26                   |
|  | reduce period to provide to 7 days  |   |   | 8.3.26                   |
| <b>s 14 information as to rights and obligations</b> |   |   |   |                          |
| <b>new provision - pre-contractual obligations</b>   | must not mislead or deceive or induce in ad or otherwise in pre-contractual stage - fine  | Vic s 30E; SA s 47C   |   | 9.1.5                    |
|  | must provide certain information in ad: (1) whether premises meets minimum standards, (2) what type of pets and how many will be consented to, (3) whether vacant or furnished  | ACT ss 11A and 11AB; SA s 47C   |   | 9.1.7                    |
|  | must provide certain documents/information prior to signing agreement: (1) certified that property meets min standards, (2) whether subject to structural mould or damp within previous 5 years; (3) whether violent crime in last 5 years; (4) whether used to manufacture or cultivate drugs within last five years; (5) if LL is not title holder, whether they have the right let the premises (e.g. sub-tenancy); (6) whether LL has engaged a sales agent or otherwise intends to sell within 12 months; (7) dates of most recent safety checks for power/gas and whether there are outstanding issues; (8) whether asbestos present and last assessed for safety; (9) no legal impediment to letting premises; (10) whether subject to building or public health order; (11) whether subject to mortgage proceedings; (12) whether strata (plus rules); (13) whether any strata construction/renovations/major repairs scheduled; (14) any planning permits; (15) energy efficiency rating for premises; (16) whether in bush fire or flood risk zone; (17) any health and safety risks that are not immediately apparent; (18) whether off-street parking and if not, whether premises qualify for permit; (19) whether common areas or easements; (20) if the premises are unsuitable for children; (22) if premises are social housing how rent contribution is calculated; (23) whether the agreement is subject to a residential management agreement; (24) how the rent has been calculated; (25) if the premises were rented immediately prior, how much the rent was | ACT s 12; Vic s 30D reg 16; NSW reg 8; SA s 47A; NZ s 13A; Ire s 12               |   | 9.1.8                    |
|  | must disclose whether LL has insurance policy, if yes must provide information as to excess if tenant causes damage   | NZ s 13A  |   | 9.1.8                    |
|  | must not mislead or deceive in relation to rights and obligations under RTA or agreement before or during tenancy - fine  |   |   | 9.1.6                    |
|  | application (other than SH, SDA or crisis accom) must be in prescribed form - fine  | Vic s 30AC; SA regs schedule 1; Qld s 57B   |   | 2.1.3                    |
|  | LL must not require T to disclose proscribed information/documents - fine   | Vic s 30C; SA s 47B   | Better Deal For Renters commitment  | 2.1.4                    |
|  | LL must not require more than two documents re (1) identity; (2) ability to pay; (3) suitability - and T has discretion to choose which documents are provided to satisfy each criteria   | SA reg 8; Qld s 57C   | Better Deal For Renters commitment  | 2.1.5                    |
|  | Proscribed information/documents: (1) whether T has been involved in tenancy-related legal dispute; (2) bond history; (3) bank statement; (4) any protected attribute under ADA; (5) whether perpetrator or victim of family violence; (5) credit checks; (6) police checks; (7) medical records; (9) employment history other than payslips; (10) social media details; (11) education level; (12) whether the tenant has a pet  | Vic reg 30; SA reg 8; Qld s 57C; NT s 18A; WA s 56A                               | Credit checks already likely banned under Commonwealth privacy laws but still standard practice   | 2.1.6                    |
|  | if proscribed information/documents become in possession/knowledge of LL, (1) must not base outcome of application on that information; (2) must be disclosed to applicant; (3) must destroy record securely ASAP - fine  |   | Better Deal For Renters commitment  | 2.1.7                    |
|  | prospective LL may request T to provide reference from previous LLs/agents, reference must only be requested or given in prescribed form, LL must not get reference in other form - fine  |   |   | 2.1.8                    |
|  | must not use personal info provided as part of application for any other purpose, must keep securely, must properly dispose of within 30 days of unsuccessful application or end of tenancy, must not keep copy of ID - fine  | Vic s 30B; SA s 76B; Qld ss 57D and 457E; NT s 18B                                | Better Deal For Renters commitment  | 2.1.9                    |

| Section of Residential Tenancy Act 1997                                    | Proposed changes (if any)   | Examples of other jurisdiction(s) where proposed change has been adopted (if any) | Notes   | Recommendation reference |
|--|---|---|---|--------------------------|
|  | must not decline application on the basis that applicant has children unless premises are unsuitable for children - fine  | Vic s 30; SA s 52; WA s 56; RPA s 41; UK s 33                                     |   | 2.1.10                   |
|  | If LL intending to rely on premises being unsuitable for children, must apply and be granted exemption by RTC   | Vic s 30  | Vic relies on prospective T making application, but should be up to LL to approve in advance  | 2.1.11                   |
|  | must not decline on basis of source of income   | UK s 34   |   | 2.1.6                    |
|  | incorporate <i>Anti Discrimination Act 1998</i> (Tas) protected attributes: must not discriminate in course of application process or during tenancy - fine   | Vic s 30A; NZ s 12; UK s 39   |   | 2.1.12                   |
|  | if application for premises declined, LL must provide unsuccessful applicant with reasons - fine  |   |   | 2.1.13                   |
|  | must provide instructions to operate appliances etc   | SA s 48; RPA s 16   |   | 9.1.9                    |
|  | use of third-party app to manage tenancy must be opt-in   |   | Digital Rights Watch recommendations  | 2.2.21                   |
| <b>s 15 Inconsistent provisions</b>  | add that (1) term of lease must not be inconsistent with RTA; (2) incorporated s 64 and repeat that section; (3) cannot contain proscribed terms; (4) cannot contract out of RTA - fine   | NSW ss 22 and 219; Vic s 26A; SA s 115; Qld s 53; WA s 82                         |   | 9.1.13                   |
|  | proscribed terms: (1) professional cleaning; (2) professional carpet cleaning; (3) requires tenant to use specific third party service provider; (4) liable for court/TASCAT/RTC filing fees; (5) liable for insurance excess                                       | NSW s 19; Vic s 27B and reg 11; SA s 77; Qld s 171                                |   | 9.1.13                   |
|  | does not prevent LL from contracting into incurring more extensive obligations, or from waiving rights and powers   | NZ s 11; Ire s 18   | e.g. gardening services, LL taking on water bills   | 8.3.27                   |
| <b>s 16 orders relating to inconsistency</b>                               | broaden to whether inconsistent, proscribed term, etc etc   |   |   | 9.1.13                   |
| <b>s 16A residential management agreements</b>                             | where social housing provider or SDA provider rents premises for purpose of providing social housing or SDA housing, head agreement between owner and SH/SDA provider is taken to be RMA regardless of the form of the agreement                                    |   | Should only apply to social housing and SDA to prevent confusion as to whether private agency agreements are RMAs and to be consistent with stated purpose in 2nd reading; provides clarity to everyone | 8.3.6                    |
| <b>s 16B rental properties to be advertised and offered at fixed price</b> |   |   |   |                          |
| <b>s 16(b)(1)</b>  | must not accept bid from tenant even if not induced   | Vic s 30F(4); UK s 56   |   | 4.4.1                    |
| <b>s 17 money other than rent</b>  |   |   |   |                          |
| <b>s 17(3)(b)</b>  | add provision to deal with payment of utilities   | Vic ss 52-54  |   | 9.1.14                   |
|  | LL responsible for all utilities that are not separately metered  | Vic s 53  |   | 9.1.14                   |
|  | separately metered means installed by utilities provider  | Vic s 3   |   | 9.1.14                   |
|  | LL responsible for ensuring utilities connected on appropriate tariff - fine  |   |   | 9.1.14                   |
|  | LL responsible for all connection costs   | Vic s 52  |   | 9.1.14                   |
|  | LL responsible for excess utilities costs caused by fault with prop (e.g. broken pipes, wrong tariff) - no requirement of fault   | Vic s 53A; SA s 73B   |   | 9.1.14                   |
|  | can be resolved through court/RTC/TASCAT  | Vic s 53B   |   | 9.1.14                   |
|  | if utility is paid by LL but T is liable, LL must not charge more than what was paid, and must include rebates  | Vic s 56  |   | 9.1.14                   |
|  | LL must pay for utilities that they are liable for and not place tenant at risk of being cut off - fine   | ON s 21   |   | 9.1.14                   |
|  | if LL seeking reimbursement, must provide bill from utility provider within 4 weeks of it being issued, must give at least 28 days to pay, if not given within 4 weeks T is not liable to pay   | NSW s 39; SA s 73; Qld s 166; WA s 49A  |   | 9.1.14                   |
|  | not liable for water bill unless premises are water efficient   | Qld s 166   |   | 9.1.14                   |
|  | not liable for partial water bill (if tenancy starts or ends during billing period) unless meter reading is recorded in condition reports   | Qld s 166A  |   | 9.1.14                   |
|  | if rent is not payable under the agreement, LL may require T to reimburse for rates, land tax and full utilities  | Qld s 163   |   | 8.3.28                   |
| <b>s 17(3)(c)</b>  | specify that loss must flow from breach of RTA or Act rather than action  | SA s 78A  |   | 8.3.29                   |
|  | T not responsible for call out fees if request was honest and reasonable  |   |   | 8.3.30                   |
|  | must provide notice in prescribed form with particulars and amount and documents to support amount  | Vic s 79  |   | 9.1.15                   |
|  | Must provide 28 days to pay   |   |   | 9.1.15                   |
|  | T has right to review to court/TASCAT within period   | Vic s 79  |   | 9.1.15                   |
|  | court/TASCAT can order not liable, partially liable, and make orders for payments plans if liable or partially liable   | Vic s 79  |   | 9.1.15                   |
|  | if LL is claiming compo for damage, decision maker must take into account capital depreciation scale  | Vic s 211A  |   | 9.1.15                   |
|  | if LL has building insurance compo for damage is capped at lower of excess and four weeks rents   | NZ s 49B  |   | 9.1.15                   |
|  | insurer has no right to seek damages from T in excess of above  | NZ s 49C  |   | 9.1.15                   |
| <b>s 18 rent payable in advance</b>  | add T is not liable for rent past date of termination of agreement  |   |   | 8.3.31                   |
|  | LL must allow payment by Centrepay and by EFT - fine  | Vic s 42 and reg 19; NSW s 35; SA s 56A   |   | 9.1.16                   |
|  | must not refuse T request to change method to Centrepay or EFT  | NSW s 35  |   | 9.1.16                   |
|  | if rent is paid electronically it is taken to be paid at the time that T made the payment, even if due to circumstances beyond the T's control it entered the LL's account later  | Qld s 86  | if it was the other way around the time limits for payment functionally do not apply, they are date minus 1-2 days  | 8.3.32                   |
| <b>s 19 payment period</b>   | if tenancy terminates part way during payment period tenant is liable for rent on pro rata basis  | SA s 59; Qld s 97; NZ s 31; WA s 36   |   | 8.3.33                   |
|  | if LL insists on vacant possession on last date of tenancy at a time before 11:59pm (must be specified in lease) then T only liable for pro rata amount for that day  |   |   | 8.3.33                   |
|  | LL must reimburse overpayment of rent   | NSW s 47; WA s 83; UK s 10  |   | 8.3.34                   |
|  | LL must not use overpaid rent to service any other liability alleged to have been incurred by T - fine  | NSW s 33; Qld s 96; NT s 43(2)  |   | 8.3.34                   |
|  | LL must accept payment of unpaid rent - fine  | NSW s 34  |   | 8.3.35                   |
|  | add LL cannot unreasonably refuse T request to change date that rent is due - can apply to RTC - can make order to pay additional pro rata rent to accommodate change over  |   |   | 9.1.16                   |
| <b>s 19(2)</b>   | add fine for requiring payment period longer than 4 weeks/2weeks  | SA s 54   |   | 8.3.36                   |
| <b>s 20 increase in rent</b>   |   |   |   |                          |
|  | specify that cannot increase rent during fixed term unless increase specified in agreement  | Vic s 44; Qld s 91; NT s 41   |   | 4.1.1                    |
| <b>s 20(2)</b>   | notice must be in prescribed form, state how amount arrived at, state whether above prescribed amount, state that if above prescribed amount T not liable to pay unless approved by the RTC, state if below prescribed amount that T able to dispute within 60 days | Vic s 44 and schedule 1, ACT s 64B  |   | 4.1.2                    |
|  | notice must be given even if increase already in written lease agreement  | NSW s 41  |   | 4.1.2                    |
|  | notice may only contain one increase at a time  | Vic s 101   |   | 4.1.2                    |
| <b>s 20(3)</b>   | amend to clear up ambiguity of s20(3)(a) - delete "residential" and "agreement" and "or was extended or renewed"  | Ire s 20; RPA s 50; ON s 119  |   |                          |

| Section of Residential Tenancy Act 1997               | Proposed changes (if any)  | Examples of other jurisdiction(s) where proposed change has been adopted (if any) | Notes   | Recommendation reference |
|---|--|---|---|--------------------------|
|   | increase notice period to 90 days  | ON s 116  |   | 4.1.2                    |
|   | rent increase not payable unless notice given in accordance with section - fine - including if T has offered to pay higher rent  | NSW s 41; Vic s 101; Ire s 22; ON ss 110 & 116                                    |   | 4.1.3                    |
|   | notice of increase must also be served on RTC  | Ire s 22  | RTC will have more accurate data for actual general rents: Tenants' Union of NSW Submission on Improving NSW Rental Laws (August 2023)  | 4.1.2                    |
| s 20(3A)  | notice must be in prescribed form: how market rent has been calculated, how it will impact T's contribution (if at all), specifics T able to dispute within 60 days  |   |   | 2.4.2                    |
| s 20(5)   | add separate provisions for social housing increase in contribution  |   |   | 2.4.2                    |
|   | must give prescribed notice - includes how contribution has been calculated, must give 21 days notice, must detail right of internal review  | WA s 31A  | no notice requirements for increase is not reasonable   | 2.4.2                    |
|   | social housing providers may only assess contribution in prescribed manner - form of income, % amounts, how income is averaged   |   | inconsistent between providers and method of calculation is opaque - should comply with spirit of <i>Badari v Minister for Territory Families and Urban Housing</i> [2025] HCA 47 | 2.4.2                    |
|   | Social housing providers must not review rent contribution more than 2 times in a 12 month period unless: (1) instigated by tenant (2) LL becomes aware that T is entitled to drop in contribution   |   |   | 2.4.2                    |
|   | LL must give notice of review in prescribed form: (1) certain number of days to provide information/docs (2) what information required (3) that if not provided within time frame without reasonable excuse rent will increase to market rent from specific date   |   |   | 2.4.2                    |
| s 21 receipt for rent paid                            | add fine   | RPA s 54  |   | 8.3.37                   |
| s 22 postdated cheques                                |  |   |   |                          |
|   | add a rent increase above the prescribed amount is unreasonable and not liable to be paid by the tenant unless the LL has had increase endorsed by   |   |   |                          |
| s 23 unreasonable rent increase                       | RTC  | ACT s 64B; Ire s 19   |   | 4.1.5                    |
|   | prescribed amount = tied to inflation, but shall not be more than 2.5 per cent   | ACT reg 5A; Ire s 19; ON s 120  | Alt: rent board that sets acceptable rate a la New York City  | 4.1.5                    |
|   | LL must make application that increase is reasonable within 30 days of issuing rent increase notice with increase above prescribed amount  |   |   | 4.1.5                    |
| s 23(1)   | add "if the proposed rent increase is the prescribed amount or less"   |   |   | 4.1.6                    |
|   | add other factors: capital improvements made by either party, condition of premises, conduct of parties, outgoings, quantum of increase, previous history of increases; floor area; general inflation; impact on the tenant  | Vic s 47 & reg 21A; ACT s 68; SA s 56; Ire s 22; RPA s 52; ON s 126               |   | 4.1.7                    |
| s 23(2)   | if rent increase is above prescribed amount assumed to be unreasonable unless LL proves otherwise, if rent increase below prescribed amount assumed to be reasonable unless T can prove otherwise  | ACT s 68  |   | 4.1.7                    |
|   | T able to dispute increase even if they have notionally agreed to it in renewal of lease etc.  | WA s 32   |   | 4.1.6                    |
|   | add RTC may order valuer to conduct valuation to determine general level of rent   | NZ s 100  |   | 4.1.8                    |
|   | any materials relied upon by the RTC in making determination must be provided to the parties and parties must be provided reasonable opportunity to give submissions   |   | to address <i>Muddyman v Nest Property</i> [2021] TASMC 2   | 4.1.8                    |
|   | add if dispute not resolved before the increase is to take effect, the increase is stayed pending the outcome of the dispute   |   |   | 4.1.9                    |
|   | if RTC allows increase it is backdated to date that it was due to take effect, any shortfall must be paid within 60 days, RTC can order payment plan or extension on request, unless outside those parameters not rent arrears for purposes of termination provisions  | ACT s 69  |   | 4.1.9                    |
| s 23(3)   |  |   |   | 4.1.11                   |
| s 23(6)   | time to file appeal reduced to 14 days   |   |   | 4.1.11                   |
|   | add that the minister may declare an emergency period where rent increases are prohibited  |   |   | 4.1.13                   |
| s 24 distress for rent prohibited                     |  |   |   |                          |
| s 24A payment of rent arrears accrued during COVID-19 | repeal   |   |   | 8.3.12                   |
| s 24B appeal against order under s 24A                | repeal   |   |   | 8.3.12                   |
| new provision - rent reductions                       |  |   |   |                          |
|   | LL and T can reduce rent by agreement for period as agreed to by parties, increase back to normal rate does not constitute increase for purposes of s 20   |   |   | 4.2.1                    |
|   | T can apply to RTC/TASCAT/court at any time during a tenancy where: services, facilities etc (including shared facilities) have been withdrawn by the LL or are otherwise not able to be used, LL has breached QE and/or reasonable comfort, privacy, peace of T, LL failed to comply with min standards, LL failed to carry out repairs, or otherwise that comfort or enjoyment has been reduced as consequence of breach of LL, if land tax or rates have been reduced | ACT s 71; SA s 68; Qld s 94; ON s 130   |   | 4.2.2                    |
|   | add definition of facilities   | Vic s 3; NZ s 2; ON s 2   |   | 4.2.4                    |
|   | if whole or part of prop is uninhabitable rent abates accordingly  | NZ ss 59 and 59A; NSW s 43  |   | 4.2.5                    |
|   | RTC/TASCAT/court must order reduction if satisfied of one or more of above, to amount it sees fit, may back date to when issue first arose and order back payment by LL  | ACT s 71  |   | 4.2.3                    |
|   | order can be for specific time period or until service restored/repairs carried out/behaviour desists/ prop restored etc. - LL must apply to RTC/TASCAT/court and prove that condition has been satisfied  |   |   | 4.2.3                    |
|   | RTC/TASCAT/court may also accept application as application for order for repair or application to desist behaviour etc and can make orders to that effect   |   |   | 4.2.3                    |
|   | any rent increase notice given during period that rent reduction order is in effect is void  | ACT s 71  |   | 4.2.5                    |
|   | T can make application after tenancy has finished - award takes form of compensation   |   |   | 4.2.6                    |
| s 25 security deposits                                |  |   |   |                          |
| s 25(1)   | add fine for bond in boarding premises   |   |   | 8.3.38                   |
| s 25(2A), (3B), (3C)                                  | permit payment by instalment in all tenancies  | NSW s 162   |   | 3.1.2.1                  |
| s 25(4)   | add that an owner must not refuse a bond on the basis that it is paid by a deposit contributor   |   |   | 3.1.2.3                  |
|   | add must not require payment of bond before RTA has been signed  | NSW s 159   |   | 3.1.5.3                  |
|   | "security deposit" is replaced with "bond" throughout  |   |   | 3.1.5.2                  |
| s 25(5)   | give RTC direct power to order that a bond is deposited  |   |   | 3.1.5.4                  |
| s 26 condition report                                 |  |   |   |                          |

| Section of Residential Tenancy Act 1997  | Proposed changes (if any)   | Examples of other jurisdiction(s) where proposed change has been adopted (if any) | Notes  | Recommendation reference |
|--|---|---|--|--------------------------|
| s 26(1)  | condition report must be in prescribed form - fine  | NSW schedule 2, Vic Schedule 1  |  | 9.1.16                   |
| s 26(3)(b)   | extend period to return to five working days  |   | impractically short period given how granular con reports are, and that Ts will be moving into the premises at the same time   | 8.3.39                   |
|  | add that any statement of defect in con report is taken to be notice of need for repairs for purposes of repairs provisions   | Vic s 36  |  | 9.1.16                   |
|  | add LL must provide copy on request within 14 days - fine   | Qld s 65  |  | 8.3.40                   |
|  | add that exit report must be done within five working days of end of tenancy and T must be given reasonable opportunity to (1) be present and (2) to provide recorded comments  | Vic s 35(1), NSW s 29, ACT s 30A, WA s 27C  | alt option is Qld s 66 - T completes outgoing con report and LL makes comments and gives back copy   | 9.1.16                   |
|  | exit report must be in prescribed form - fine   |   |  | 9.1.16                   |
| <b>s 27 forms relating to security deposit</b>   | add form for transfer of bond in co-tenancy   |   |  | 3.1.5.5                  |
| <b>s 28 provision of claim form at end of tenancy</b>                                  |   |   |  |                          |
| s 28(a)  | repeat  |   | not followed in practice - any party should be able to lodge claim once tenancy has ended  | 3.1.5.6                  |
| s 28(b)  | LL must provide all quotes, invoices and evidence relied upon in making claim within three days - fine  | NSW s 165; Qld s 136AA  |  | 3.1.4.1                  |
| <b>s 29 claims for disbursement of security deposit generally</b>                      |   |   |  |                          |
| <b>s 29A claims where all parties agree</b>  |   |   |  |                          |
| <b>s 29B claim by tenant</b>   |   |   |  |                          |
| s 29B(1)   | delete (a) and (b)  |   |  | 3.1.5.6                  |
| <b>s 29C claim by owner</b>  |   |   |  |                          |
| s 29C(1)   | replace with "the owner may lodge with the Authority a claim form following the end of a residential tenancy agreement that is not endorsed by the tenants"   |   |  | 3.1.4.1                  |
|  | form must have check that LL has provided all relevant evidence relating to claim to T  |   |  | 3.1.4.1                  |
|  | add that if the owner is not claiming the entire bond, the remainder is to be disbursed to the deposit contributor and/or tenant prior to the dispute process   |   |  | 3.1.5.7                  |
|  | add things that LL is prohibited from claiming bond for: (1) court/TASCAT fees and costs unless awarded by court/TASCAT, (2) renovations or improvements, (3) repairs or maintenance that are consequence of fair wear and tear, (4) any other amount prohibited under the Act - fine | Vic s 411AB, ACT s 31; RPA s 44   |  | 3.1.5.8                  |
| <b>s 29D claim by deposit contributor</b>  |   |   |  |                          |
| s 29D (1)  | replace with "the deposit contributor may lodge with the Authority a claim form following the end of a residential tenancy agreement"   |   |  | 3.1.5.6                  |
| <b>s 29DA referral by authority to commissioner</b>                                    |   |   |  |                          |
| <b>s 29E disbursement of security deposit</b>  |   |   |  |                          |
| <b>s 29F lodging disputes</b>  |   |   |  |                          |
| s 29F(1)   | delete (1)(a)   |   |  | 3.1.5.6                  |
| s 29F(6)   | if LL has not complied with requirement to provide all quotes, invoices etc., or has provided additional materials, RTC in addition to fine can (1) provide to T all docs; (2) extend period to make submissions  |   |  | 3.1.4.1                  |
| <b>s 29G determining disputes</b>  |   |   |  |                          |
|  | add that if T is liable for part or all of the bond but has argument for counter claim in relation to: (1) overpayment of rent; (2) loss of enjoyment or use etc that would otherwise lead to compo/rent reduction, RTC can off-set against claim on bond                             |   |  | 3.1.5.9                  |
|  | add that if claim greatly exceeds deposit and/or T's counter claim may exceed bond and/or evidence/legal arguments are complex or ill suited for "on the papers" determination, RTC can refer matter to court/TASCAT  | WA s 11L  |  | 3.1.5.9                  |
|  | add that RTC can have regard to: efforts by T to comply with obligations under s 53; the parties' compliance; but cannot penalise someone for FV  | Qld s 136D  |  | 3.1.5.9                  |
| s 29G(1)   | change that must not determine until parties given reasonable time to respond to evidence, materials, submissions etc   |   | should explore possibility for case file to be viewable for all parties on MyBond  | 3.1.5.10                 |
| s 29G(3)   | must be sent to all provided points of contact  |   | in case lost phone, goes to spam etc   | 3.1.5.11                 |
| s 29G(4)   | change/add that can issue fine if vexatious, or provided material that is misleading, deceptive, fraudulent   |   |  | 3.1.5.12                 |
| <b>s 30 appeal against determination</b>   |   |   |  |                          |
| s 30(2)  | time for appeal extended to 14 days from date determination was given   |   | seven days too short of a turn around, other party cannot know when other party has received   | 3.1.5.13                 |
|  | add that court/TASCAT has jurisdiction to hear appeal even if part or all of security deposit has been disbursed by RDA   | NSW s 169   |  | 3.1.5.13                 |
| s 30(4)  | add that if claim exceeds bond and/or T has grounds to counterclaim can take appeal as also being small claim joined  |   |  | 3.1.5.13                 |
|  | add all decisions are to be published by the RTC/court/TASCAT   | WA s 11K  |  | 3.1.5.13                 |
|  | add that, if still handled by court, all appeals are to be referred to conciliation first a la minor civil claims   |   |  | 3.1.5.13                 |
| <b>s 30A unclaimed security deposit forfeited</b>                                      |   |   |  |                          |
| <b>new provision - portable bond</b>   | to be provided for in regs  | Qld 155A; NSW s 186A  |  | 3.1.1.1                  |
| <b>new provision - co-tenants</b>  | add provisions regarding bond transfer and co-tenancy: when a co-tenant vacates premises (1) the parties are to notify the RDA (2) the remaining co-tenants are to pay out the vacating co-tenant less any rent or other costs owing - RTC/court/TASCAT can determine disputes        | NSW s 174; ACT s 35F; Qld s 430; WA s 17A   | transfer can be incorporated into existing MyBond infrastructure - if party instigates other parties are notified  | 3.1.5.5                  |
|  | must make provision for where multiple co-Ts have received bonds from deposit contributors  |   |  | 3.1.5.5                  |
| <b>s 31 holding agreement and fees</b>   |   |   |  |                          |
| <b>s 31A reference in this division to repair may include reference to replacement</b> | delete "that is an essential service and that" and substitute "object" for "fitting, fixture, appliance, service or facility" in (1) and (2)  |   | (1) no reason to limit to essential services and leads to absurd outcomes - e.g. roof that blew off in storm must be repaired rather than replaced (2) "object" non descriptive and limiting | 5.3.7                    |
| <b>s 32 general repairs</b>  |   |   |  |                          |

| Section of Residential Tenancy Act 1997      | Proposed changes (if any)  | Examples of other jurisdiction(s) where proposed change has been adopted (if any)   | Notes  | Recommendation reference |
|--|--|---|--|--------------------------|
| s 32(1)                                      | delete "apart from reasonable wear and tear"   | Ire s 12  | currently, LL is not responsible for any repairs or maintenance that are the consequence of natural forces or reasonable use of the premises - leaves a massive gap in responsibility that is inconsistent with remainder of division and RTA and real-world practice. Literal reading is that the general deterioration of property, fixtures and appliances are not the responsibility of LL or the T. | 5.3.2                    |
|  | add that LL is responsible for maintaining and repairing common areas that T is able to access as part of agreement  | Vic s 68; RPA s 23  | current confusion as to who is responsible for upkeep of e.g. shared gardens and yards   | 5.3.4                    |
|  | add non-exhaustive list of maintenance tasks LL is responsible for: (1) clearing gutters (2) trimming trees (3) servicing heat pump (4) servicing hot water service (5) oiling decking (6) chimneys; (7) anything in regs  | Vic schedule 4; HA Ire reg 11; Residential Tenancies Act 2006 (Maintenance Standards Regulations) (Ontario) ("ON reg") reg 45 | codifying existing obligations   | 5.3.3                    |
| s 32(2)                                      | amend to make clear that the T only needs to notify the LL of a defect   | Ire s 16  | current wording suggests that T needs to specify repairs required, and precludes maintenance   | 5.3.6                    |
|  | add that LL is put on notice if aware or should be aware of need for repairs and maintenance, whether or not been put on notice by T   | NSW s 65  | current wording allows wilful blindness  | 5.3.5                    |
|  | add that if a sub-tenant gives notice to a head tenant of a defect, and rectifying the issue is an LL responsibility, the head tenant is to notify the LL ASAP   |   |  | 2.2.9                    |
| s 32(3)                                      | substitute "specified in the notice" with "or maintenance"   |   |  | 5.3.6                    |
|  | add that all repairs organised by LL are to be carried out by suitable repairer and with good workmanship - fine   | ON regs 3   |  | 5.3.8                    |
| s 32(3)(ab)                                  | delete   |   | should be urgent repair  | 5.3.1                    |
| s 32(4)                                      | repeal   |   | Covid-19   | 5.3.10                   |
| s 32(5)                                      | repeal   |   | Covid-19   | 5.3.10                   |
|  | add if premises are strata, LL is liable to carry out all repairs under RTA but may seek reimbursement from strata where repair is of a type that would otherwise be the responsibility of the strata  |   | Tenants' Union of NSW Submission on Improving NSW Rental Laws (August 2023)  | 5.3.9                    |
| <b>s 33 urgent repairs</b>                   |  |   |  |                          |
| s 33(1)                                      | add new definition of urgent repairs that is combined with emergency repairs: (1) utilities and essential services; (2) minimum standards; (3) flooding or burst pipe; (4) serious leak; (5) serious fire or storm damage; (6) anything that renders premises unsafe or insecure; (7) likely to cause injury; (8) failure of safety device including smoke alarm or pool fence; (9) mould; (10) pest infestation; (11) emptying of septic system; (12) any other prescribed matter | ACT s 60; Vic s 3; NSW s 62; SA s 67A; Qld s 214; WA s 43   | simplifies RTA and provides more clarity as to what is and what isn't urgent, previously rendering property unsafe was not urgent or emergency necessarily   | 5.3.11                   |
|  | add definition of "as soon as practicable": taking into account (1) complexity of issue; (2) availability of suitable repairers but not (1) LL shopping around for best price; (2) waiting for assessment and works to be carried out by insurer   |   | fixed time frame impractical given broad proposed nature of provision but as soon as practicable too nebulous on its own and often abused - cannot be "as soon as practicable" to wait for building insurance OR alternative could have specific time frames for specific repairs in regs - e.g. WA s 43   | 5.3.12                   |
|  | add that LL is to arrange for works to be carried out by suitable repairer - fine  |   |  | 5.3.8                    |
|  | add that LL is put on notice if aware or should be aware of need for repairs and maintenance, whether or not been put on notice by T   |   |  | 5.3.5                    |
|  | add that if LL is represented by agent, agent must arrange to carry out repairs at own expense up to prescribed amount, agent can deduct costs from future rent payments   | Qld s 219A  | Qld sets limit at 4 weeks rent but doesn't make sense - cost of repairs is not going to scale with rent - tenants that pay lower rent disadvantaged  | 5.3.13                   |
|  | add that rent abates in accordance with loss of amenity or use for the period that until repairs are carried out   | NSW s 43  |  | 5.3.14                   |
| s 33(3)                                      | amend that T can authorise up to the prescribed amount   | Vic s 72(2)(b)  | current definitions confusing and unnecessary if s 33(3) repealed/amended  | 5.3.15                   |
| s 33(6)                                      | repeal, replace with broader general definition of function - "no longer performs intended purpose to same level as when manufactured"   |   | not necessary for specifics if 33(3) is changed  | 5.3.16                   |
| <b>s 34 emergency repairs</b>                |  |   |  |                          |
|  | repeal   |   | (1) unnecessary and confusion to have three sub categories of repairs (2) current definition of what constitutes an emergency repair is ambiguous - could be anything  | 5.3.11                   |
| <b>s 35 reimbursement of cost of repairs</b> |  |   |  |                          |
| <b>s 36 disputing liability to reimburse</b> |  |   |  |                          |
| s 36(3)(a)                                   | clarify that LL can have notice by means other than through T - actual or constructive   |   |  | 5.3.5                    |
| <b>s 36A order for repairs</b>               |  |   |  |                          |
| s 36A(4)                                     | amend that if satisfied repairs are urgent repairs RTC must make order   |   |  | 5.3.17                   |
|  | add that can order who carries out repairs   | Vic s 76  |  | 5.3.18                   |
|  | add order must contain certain information   | HI SA s 14  |  | 5.3.18                   |
|  | add may make emergency order if imminent safety issue  | HI SA s 14  |  | 5.3.17                   |
|  | add that if strata involved LL can add strata as party and orders can be made against strata as if they were LL  | Vic s 75A   |  | 5.3.19                   |
|  | add if sub-tenancy the order can be made against the LL  |   |  | 2.2.9                    |
|  | add that RTC/TASCAT can order (1) that rent or part of rent is paid into RDA until repairs are carried out and/or (2) rent is reduced and/or compo paid until issues resolved  | NSW s 65; Vic s 77; HI SA s 25; Qld s 221A; NZ s 78; WA s 15  |  | 5.3.20                   |
|  | a repair order does not extinguish if a residential tenancy agreement is terminated before it's complied with  | Qld s 221A  |  | 5.3.21                   |
|  | In lieu of repair order, RTC may organise repairs and seek reimbursement from LL   | Housing (Miscellaneous Provisions) Act 1992 (Ireland) s 5   |  | 5.3.22                   |
| s 36A(6)                                     | reduce application period to 7 days  |   | 60 days excessive - means T can be forced to live with need for urgent repairs for months - e.g. no heater for the whole of winter   | 5.3.23                   |
|  | add failure to comply with repair order is continuing offence  | Qld s 221C  |  | 5.3.24                   |
|  | add that upon appeal TASCAT/the court may make interim orders that the repairs are carried out, and that the dispute then becomes who is liable for the cost.  |   |  | 5.3.25                   |

| Section of Residential Tenancy Act 1997                         | Proposed changes (if any)   | Examples of other jurisdiction(s) where proposed change has been adopted (if any)  | Notes  | Recommendation reference |
|---|---|--|--|--------------------------|
| <b>s 36B Interpretation of part 3A</b>                          |   |  |  |                          |
| <b>s 36C smoke alarms</b>                                       |   |  |  |                          |
| <b>s 36D maintenance of smoke alarms</b>                        |   |  |  |                          |
| <b>s 36E defences</b>   |   |  |  |                          |
| <b>s 36F removal of or interference with smoke alarms</b>       |   |  |  |                          |
| <b>s 36G right to install in strata title units</b>             |   |  |  |                          |
| <b>s 36H power of RTC to order compliance</b>                   |   |  |  |                          |
| <b>s 36I premises to be weatherproof and structurally sound</b> | add that must be free of damp and mould, including subfloor must be moisture proof  | Vic schedule 4; HI SA reg 15; Qld regs schedule 6 s 4; Residential Tenancies (Healthy Homes Standards) Regulations 2019 (NZ) ("NZ HH") regs 28; ON reg 6 |  | 5.1.1                    |
|   | weatherproof includes that LL must make all reasonable efforts to draughtproof the premises, including blocking open fire places  | Vic schedule 4; HI SA reg 15; NZ HH regs 25 and 26; ON reg 41  |  | 5.1.2                    |
|   | weatherproof includes must have sufficient drainage system (drains, flood prevention, guttering etc)  | NZ HH regs 27; ON reg 6  |  | 5.1.2                    |
| <b>s 36J cleanliness and good repair</b>                        |   |  |  |                          |
| <b>s 36J(1)</b>   | add that cleanliness means being clear of rubbish and chattels (other than as agreed) and vermin, and the garden must be tidy   | Vic s 65; HI SA reg 15; Qld regs schedule 6 s 4; Housing (Standards for Rental Houses) Regulations 2019 (Ireland) (HA Ire) reg 4; ON reg 6               |  | 5.1.15                   |
|   | add that if area is common area, LL must keep clean during tenancy  | Qld s 185; RPA s 23; ON reg 26   |  | 5.1.16                   |
|   | add that LL must provide vacant possession, aside from common areas   | Vic s 65; SA s 64; NZ s 37; WA s 40; RPA s 20  |  | 5.1.15                   |
| <b>s 36J(2)</b>   | add must be fit for habitation, add must be good repair irrespective of age, nature of property, and rent, may provide examples of what needs to be present and functional  | ACT cl 54 standard agreement; Vic s 68; HA Ire reg 4; ON s 20 & reg 6  | common law definition of good repair may allow different standards depending on rent level and class of person likely to take premises which is inconsistent with modern standards, see: <i>Proudfoot v Hart</i> (1890) 25 QBD 42 per Lord Esher at 52 | 5.1.4                    |
|   | add premises and fixtures and fittings must not be health or safety hazard, all fixtures and fittings and facilities must be (1) properly installed, (2) fit for purpose; and (3) in good working order   | HI SA regs 9; Qld s 2; ON reg 40   |  | 5.1.4                    |
|   | premises must be free of hazardous materials that pose a material harm  | HI SA reg 14   |  | 5.1.4                    |
| <b>s 36J(3)</b>   | repeat  |  | redundant if breach of min standards becomes urgent repair   | 5.1.9                    |
| <b>s 36K bathrooms and toilets to be provided</b>               |   |  |  |                          |
| <b>s 36K(2)</b>   | add water efficiency requirements for shower head etc (prescribed in regs)  | Vic schedule 4; SA reg 19; Qld reg 32  |  | 5.1.3                    |
|   | clarify that reasonable supply of water includes both (1) flow/pressure and (2) capacity of hot water service relative to the size of the premises (3) if tank, capacity of tank relative to size of premises   | HI SA reg 11; ON reg 10  |  | 5.1.3                    |
|   | add energy efficiency requirements for hot water service (prescribed in regs)   | Vic schedule 4   |  | 5.1.3                    |
| <b>s 36L cooking facilities</b>                                 |   |  |  |                          |
| <b>s 36L(a)</b>   | see s 36K(2) re water   | HI SA reg 11; Qld regs schedule 6 s 2  | may be preferable to spin water requirements into own provision - can also include that water must be safe for consumption   | 5.1.3                    |
| <b>s 36L(b)</b>   | specify that stovetop must be electric (inc induction)  |  | gas unsafe   | 5.1.4                    |
| <b>s 36L(c)</b>   | delete microwave oven   |  |  | 5.1.22                   |
|   | add rangehood   | NZ HH regs 23; HA Ire reg 7  |  | 5.1.5                    |
| <b>s 36M electricity and heating</b>                            |   |  |  |                          |
| <b>s 36M(2)</b>   | add each room must have reasonable number of power points   | HI SA reg 12   |  | 5.1.20                   |
|   | amend to specify that appropriate level of artificial light needed for non-daylight hours   | Vic schedule 4   |  | 5.1.21                   |
| <b>s 36M(2)(b)</b>  | add LL must replace all light globes with energy efficient globes   | ACT regs part 3  |  | 5.1.7                    |
| <b>s 36M(3)</b>   | delete (a), (c) and (d)   |  | inefficient, expensive, polluting  | 5.1.8                    |
|   | add ducted heating  | Vic schedule 4   |  | 5.1.8                    |
|   | add heating must be effective, and able to heat premises to WHO min within two hours and maintain temperature   | HA Ire reg 6; NZ HH regs 10A and schedule 2; ON reg 15   | Health Revolution action plan  | 5.1.8                    |
|   | add LL must ensure premises are equipped with insulation (as prescribed) in roof, walls and underfloor, where possible  | Vic schedule 4; ACT regs part 3; NZ HH regs 13 and 15  | Health Revolution action plan  | 5.1.8                    |
| <b>s 36N window covering for privacy</b>                        | add that window coverings must provided reasonable privacy and reasonably block light   | Vic schedule 4   |  | 5.1.23                   |
| <b>s 36O ventilation</b>  |   |  |  |                          |
|   | must exclude front door as source of ventilation unless it is able to be fixed; does not compromise security - i.e. must be lockable security door  | NZ HH regs 21; ON reg 20   |  | 5.1.6                    |
| <b>s 36O(5)</b>   | add any window that was manufactured with the intent of being able to be opened must be operational   | ON reg 23  | prevent LL painting over windows   | 5.1.6                    |
| <b>new provisions</b>   | add premises must be connected to NBN/telecommunications where possible   | NZ s 45B   |  | 5.1.17                   |
|   | add that if premises adjoins another (townhouse, apartment etc) must be reasonable level of noise protection  |  |  | 5.1.19                   |
|   | add LL must provide council rubbish collection service where possible   | Vic schedule 4; HA Ire reg 11; ON reg 45   |  | 5.1.18                   |
|   | add all appliances and services provided by LL, whether min standards or not, must comply with energy efficiency ratings (prescribed)   | Vic schedule 4; SA s 68A; ON s 137   |  | 5.1.9                    |
|   | add that if premises do not meet minimum standards on the nominated start date of the tenancy: (1) T is not required to take possession; (2) T is not required to pay rent or take possession until rectified; (3) LL is required to pay T's reasonable losses                          | Vic s 65   |  | 5.1.11                   |
|   | if LL does not agree that prem are not in min standards, can apply to RTC/court/TASCAT, if found that prem did meet can order payment plan of back rent   |  |  | 5.1.12                   |
|   | add provisions giving RTC power to inspect rental premises randomly for compliance  |  | Health Revolution action plan  | 9.1.2                    |
| <b>part 3C pets</b>   | add that if LL requires permission from superior LL or from strata, that (1) LL must seek consent; (2) the period for providing an answer is extended by seven days   | UK s 16A   |  | 8.3.74                   |
|   | add that within the first 14 days of a tenancy there is a "grace period" whereby a tenant is permitted to have an animal without consent, but must make a request within that period, and is permitted to retain the pet until TASCAT makes an order to the contrary (interim or final) |  | proposed NSW change to accommodate people that come into tenancies with pets   | 8.3.74                   |
| <b>s 37 termination of agreement</b>                            |   |  |  |                          |

| Section of Residential Tenancy Act 1997     | Proposed changes (if any)  | Examples of other jurisdiction(s) where proposed change has been adopted (if any)    | Notes   | Recommendation reference |
|---|--|--|---|--------------------------|
| s 37(1)                                     | add "despite anything to the contrary in law"  | ACT s 36   | make clear any ambiguity over status of possession orders made by Supreme Court to mortgagees   | 8.3.41                   |
|   | add where T provides vacant possession upon the end date of a fixed term tenancy   | ACT s 36   |   | 8.3.42                   |
| s 37(1)(dc)                                 | repeal   | SA s 79B; NZ s 50A; RPA s 69; ON s 91  | causes issues for all parties re possessions and outstanding liabilities etc - add new provisions elsewhere   | 8.3.43                   |
|   | add if T vacates following Notice to Vacate ("NTV") or order of court, LL must notify RTC and provide NTV and supporting documents - fine  | NSW reg 23L  |   | 9.1.4                    |
| s 37(2)                                     | add includes termination after tenancy agreement is signed but before it the tenancy begins  |  | prevent LLs trying to rescind lease agreements  | 8.3.44                   |
|   | add that if LL terminates tenancy in breach of s 37(2) T can apply to Court/TASCAT to have tenancy reinstated - specific performance - unless premises already occupied by innocent party - compo          |  | currently remedy not available except through Supreme Court, or trying app under s 57(4)  | 8.1.3                    |
|   | add if parties mutual agree to terminate lease LL's consent is irrevocable   | Vic s 91D  |   | 8.3.45                   |
| <b>s 38 notice of termination by tenant</b> |  |  |   |                          |
| s 38(1)(a)                                  | delete "under section 32(2)" replace with "division 4"   |  | makes clear that it applies to urgent repairs   | 8.3.46                   |
|   | add that T can issue termination under this section despite any reasonable efforts of the LL to carry out the repairs within the 28 day period   |  | makes clear that right to terminate is connected to undue wait period not actions of LL   | 8.3.47                   |
| s 38(1)(b)                                  | amend to that the LL has seriously or persistently breached the agreement  |  |   | 9.1.17                   |
|   | add if upon entry the premises do not meet minimum standards, are not fit for habitation, are not vacant   | ACT s 46AA; Vic s 91L; Qld s 307A; SA s 86B  |   | 9.1.18                   |
|   | add if it becomes clear, in the first three months of the tenancy, that the LL has misrepresented the nature of the premises, services, etc  | Qld s 312A   |   | 9.1.18                   |
|   | add if T has been offered social housing, aged care, crisis accommodation, SDA, incapable of independent living  | ACT s 46A; Vic s 91ZB; NSW s 100; SA s 85C and reg 29, NT s 96 (social housing);     |   | 9.1.18                   |
|   | add if LL has notified of intention to sell  | NSW s 100; Vic s 91ZB  |   | 9.1.18                   |
|   | add if T or child of T effected by family violence   | ACT s 46D; SA s 85D and reg 30; Qld s 308B; NT s 92A; NZ s 56B; WA s 71AB; ON s 47.3 | Better Deal For Renters commitment  | 6.1.1                    |
|   | add if LL has issued T with notice of a rent increase during fixed term  | NSW s 99; ON s 47  |   | 4.1.12                   |
|   | add if T has died, estate or remaining co-Ts can give TN   | NSW ss 78 and 108; Qld ss 307B and 324A  |   | 9.1.19                   |
|   | add if T is adversely affected by change to strata by-laws   | NZ s 66  | e.g. no longer able to have a pet   | 9.1.18                   |
|   | replace with: if a T fails to vacate in accordance with a notice of termination notice is taken to have been withdrawn and tenancy continues   | ACT s 46B  |   | 8.3.48                   |
| s 38A                                       | repeal   |  | Covid-19  | 8.3.12                   |
| s 38B                                       | repeal   |  | Covid-19  | 8.3.12                   |
| <b>s 39 effect of notice of termination</b> |  |  |   |                          |
| s 39(1)                                     | Different time period for different matters  |  |   | 9.1.18                   |
|   | Non fixed lease, breach, offer of alternate housing, rent increase: 14 days  | ACT s 46A; Vic s 91ZB; NSW s 100   |   | 9.1.18                   |
|   | Min standards, intention to sell: 7 days   |  |   | 9.1.18                   |
|   | Not fit for habitation, family violence: immediate   | ACT s 46B  |   | 9.1.18                   |
| s 39(2)                                     | repeal   |  | (1) Conflict with time period for boarding premises notices under s 39(1)(a) (2) impractical to allow remedial action when T has almost certainly already secured alternative premises at the point they are issuing notice (3) no allowance for repeated and serious breaches. Alt: have breach notices, if not remedied can give termination notice that cannot be remedied: Qld ss 301 and 302 | 9.1.17                   |
|   | replace with provision that if the LL does not accept the validity of the notice, must lodge dispute with TASCAT/court within notice period.   | SA s 85  | Currently LLs dispute termination notices on reflexive basis as there is little incentive to do otherwise - needs to be friction (inc filing cost) so that only opposed where there are valid grounds and cannot hold bond hostage  | 9.1.20                   |
|   | LL can dispute on basis that (1) not in proper form or (2) grounds relied upon are not true (not permitted in case of FV)  | ACT s 46L; WA s 71AC   |   | 9.1.20                   |
|   | if T has vacated premises before the matter has been determined, the TASCAT/court can make compensation (and payment plan) orders as if the T had broken lease   | Qld s 424  |   | 9.1.21                   |
|   | if the T has not vacated and the notice is ruled invalid, the lease continues uninterrupted or any other orders that TASCAT/court deems appropriate  | Qld s 424  |   | 9.1.21                   |
|   | if the LL declines to file a dispute within the notice period, the LL is taken to have accepted the validity of the notice, and is estopped from disputing the validity of the notice in other proceedings |  |   | 9.1.22                   |
|   | if notice is given by co-t for FV reasons, remaining co-Ts pay reduced rent for following two week period  | NSW s 105D; NZ s 56B   |   | 6.1.6                    |
| <b>s 40 form of notice of termination</b>   |  |  |   |                          |
| s 40(1)                                     | form to be prescribed  |  |   | 9.1.20                   |
| s 40(1)(b)                                  | add "or tenants"   |  |   | 8.3.15                   |
| s 40(1)(c)                                  | add ", owners, or agent for the owner"   |  |   | 8.3.15                   |
| s 40(1)(e)                                  | substitute "details" with "particulars"  | ACT cl 83 standard agreement; Qld s 327; RPA s 70                                    | make clear that facsimile of clause/provision relied upon is not sufficient   | 8.3.49                   |
|   | add family violence provisions: if served for FV must have proof attached (1) document from competent person (2) FV order  | ACT s 46D; Qld reg 37; NT s 4A; WA s 71AB  | Better Deal For Renters   | 6.1.2                    |
|   | LL cannot disclose info to anyone else, or ask for further info, must destroy unless ordered otherwise - fine  | ACT ss 46H-46K; Qld s 308; NZ s 56E; WA s 71AB                                       |   | 6.1.4                    |
|   | competent person must not give info that is misleading or deceptive  | ACT s 46M  |   | 6.1.4                    |
|   | LL must inform remaining co-Ts (if any) that T has left but must not give any other details  | ACT s 46F  |   | 6.1.5                    |
|   | if other co-Ts also want to leave they can give 14 day termination notice within 28 days of being notified of vacancy  | ACT s 46G  |   | 6.1.5                    |
|   | add that if T issues notice may vacate before notice takes effect but must pay rent until date it takes effect or until new tenancy entered into   | NSW s 110  |   | 8.3.50                   |

| Section of Residential Tenancy Act 1997 | Proposed changes (if any)   | Examples of other jurisdiction(s) where proposed change has been adopted (if any) | Notes  | Recommendation reference |
|---|---|---|--|--------------------------|
| <b>new provision - co-tenants</b>       | a co tenant may issue notice to other co tenants and LL that intending to vacate and seeking consent for vacation - 21 days notice - silence taken as consent - no consent needed if non-fixed            | ACT s 35A; NSW s 101  |  | 2.3.6                    |
|   | a co tenant may apply to RTC be removed from agreement if consent refused   | ACT s 35G   | currently co-T unable to remove self from agreement except with consent of all parties   | 2.3.7                    |
|   | a co tenant or co tenants may apply to TASCAT/court to remove other co tenant   | ACT s 35G; NSW s102   | currently nothing in RTA to assist co-Ts dealing with malicious or otherwise problematic co-T  | 2.3.8                    |
|   | may only make order if appropriate in the circumstances: history of tenancy, conduct of co-t, conduct of applicants, remedial action, whether other orders (e.g. compo or behavioural) more appropriate   | NSW s 102   |  | 2.3.8                    |
|   | TASCAT/court may also order exiting co-T to compensate for damage, lost rent, etc   | ACT s 35G; NSW s102   |  | 2.3.9                    |
|   | order has same effect as order for vacant possession vis a vis co-T and remaining Co-Ts   | NSW s 102   |  | 2.3.8                    |
| <b>s 41 order for termination</b>       |   |   |  |                          |
| s 41(1)                                 | remove "likely to" in both cases  | SA s 87   | too difficult to establish and basically guess work - unfair to both parties   | 8.3.51                   |
|   | add that party can make application if other party seriously harasses, abuses, intimidates, threatens   | NSW s 92; Vic ss 91ZJ and 91ZK; ACT s 45A   | better than likelihood as based on actual conduct rather than future intent  | 8.3.51                   |
|   | add that application can be made by tenant if person that is neighbour that is not party to agreement causes injury, serious damage, abuse, harassment  |   | should be some protection against behaviour that does not fall within FV and not fault of LL   | 8.3.52                   |
|   | add that party includes agent, employee of landlord if body corp, occupant of residence including children  | Vic s 91ZK  |  | 8.3.51                   |
| s 41(2)                                 | add if satisfied must make if appropriate in circumstances, taking into account severity, frequency, nature   | ACT s 45A   | remove ambiguous "may" and set out clear criteria for when order must be made  | 7.2.7                    |
|   | add if court/TASCAT not satisfied appropriate in the circumstances, can make behaviour orders and/or adjourn application (vis a vis neighbour, can take as restraint orders application)                  | Vic s 322A  |  | 7.2.8                    |
| <b>s 42 notice to vacate by owner</b>   |   |   |  |                          |
| s 42(1)                                 | substitute "for any of the following reasons" with "on any of the following grounds"  |   | clear up Parsons ambiguity of conflating grounds and subjective reasons for issuing NTV  | 8.3.53                   |
| s 42(1)(a)                              | delete "except in subsection 4A"  |   | Covid-19   | 8.3.12                   |
|   | add that must be at least 14 days in arrears  | Vic s 91ZM, NSW s 88; SA s 80; NZ s 55  |  | 7.1.2                    |
|   | add additional grounds as substitute for unapproved sub-t/occupant/co-tenant breach: number of persons occupying premises is not consistent with reasonable health and safety standards (ie overcrowding) | ON s 67   |  | 7.1.3                    |
| s 42(1)(b)                              | delete "where the residential tenancy agreement is not for a fixed period, that -"  |   |  | 7.1.4                    |
| s 42(1)(b)(i)                           | repeal  |   | no need for sale grounds: as (1) if new owners want to occupy or renovate they can rely on ss 42(1)(b) or (iii); (2) if sold to investor no good reason to be able to evict - de facto no grounds eviction | 7.1.5                    |
| s 42(1)(b)(iii)                         | specify that changing use to short-stay is not change of use for purposes of section  |   |  | 7.1.6                    |
|   | add that must not use as rental premises for 12 months after vacation - fine  | NSW s 87L; SA s 81; RPA s 79  |  | 7.1.7                    |
| s 42(1)(b)(iii)                         | add demolition  | NSW s 87G   |  | 7.1.3                    |
|   | add that must not use as rental premises for 12 months after vacation - fine  | NSW s 87L; SA s 81; RPA s 79  |  | 7.1.7                    |
| s 42(1)(d)                              | repeal  | ACT, Vic, NSW, SA, WA, Ire, UK s 1  | end arbitrary end of lease evictions - Better Deal For Renters commitment  | 7.1.1                    |
| s 42(1)(dc)                             | add "wilfully and" before "without"   |   | T should not fall afoul if they are involuntarily prevented from occupying the premises  | 7.1.8                    |
| s 42(1)(dd)                             | repeal  |   | T should not be disadvantaged by events out of their control   | 7.1.9                    |
|   | add that if crisis accom, can issue NTV if (1) premises needed for another person and (2) T has not made reasonable attempts to secure alt accom or has refused reasonable offer of alt accom             | Vic s 91ZZF   |  | 6.4.5                    |
|   | add that if sole T has died, LL may give NTV to estate  | NSW s 108   |  | 7.1.3                    |
|   | unless occupied by spouse or child of dead T who elects to stay in premises   | Ire s 39  |  | 7.1.3                    |
|   | add that if agreement made under employment agreement, can give NTV if employment has ended and needed for another employee   | ACT s 53  |  | 7.1.3                    |
|   | add that if accommodation is student accom and T is no longer student   | NSW s 87K; SA reg 24; Qld s 290F; NZ s 53A  |  | 7.1.3                    |
| s 42(1A)                                | add that premises must be unfit for occupation/unsafe for at least six weeks, and T must be have rejected offer to temporarily vacate with abated rent  |   | LL should not be able to rely on ground if premises only uninhabitable/unsafe for a few days   | 7.1.10                   |
|   | add that significant renovations do not include repairs that the LL is responsible for carrying out under ss 32-33 or Part 3B   |   | LL should not be able to rely on own breaches/neglect - should just be discretionary improvements  | 7.1.10                   |
| s 42(3)                                 | repeal  |   | confusing - tenancy does not end without order of court or voluntary vacancy. after NTV takes effect T still needs to pay rent in accordance with agreement as agreement has not terminated.               | 7.6.1                    |
| s 42(4A)                                | repeal  |   | covid-19   | 8.3.12                   |
|   | add provision that offence for LL to issue NTV on ground that LL knows or should know is not true   | NSW s 86; SA s 81; RPA s 79   |  | 7.1.11                   |
|   | add that if LL gives NTV on basis of ground that LL knows or should know is not true, or is otherwise defective, and T moves out in reliance of that, T can apply to have tenancy reinstated/compo        | ACT s 58  |  | 7.1.11                   |
|   | add provision that if a T vacates premises and an occupant remains, LL must give prescribed notice to occupant  | NSW s 95; SA s 96   |  | 2.3.10                   |
| <b>s 43 effect of notice to vacate</b>  |   |   |  |                          |
| s 43(1)(ba)                             | extend to 90 days   |   |  | 7.1.16                   |
| s 43(1)(c)                              | repeal  |   |  | 7.1.1                    |
| s 43(1)(d)                              | extend to 90 days   |   |  | 7.1.16                   |
|   | add for crisis accom NTV 28 days  |   |  | 6.4.5                    |
|   | add for death NTV 21 days   | NSW s 108   |  | 7.1.3                    |
|   | add for occupant NTV 14 days  | NSW s 95  |  | 2.3.10                   |

| Section of Residential Tenancy Act 1997 | Proposed changes (if any)   | Examples of other jurisdiction(s) where proposed change has been adopted (if any) | Notes   | Recommendation reference |
|---|---|---|---|--------------------------|
|   | add for employment/student 28 days  | ACT s 53  |   | 7.1.3                    |
| s 43(2)                                 | repeal  | NSW s 88; ON s 74   | if arrears are cleared should not be evicted  | 7.2.1                    |
| s 43(2A)                                | repeal  |   | Covid-19  | 8.3.12                   |
| s 43(3)                                 | clarify what "comply" can mean depending on nature of breach: eg desist from conduct, carry out repairs, pay compensation   | Ire s 35  | historical conflation and confusion of "comply" and "remedy" and whether certain acts can be "remedied"   | 8.3.54                   |
| s 43(3A)                                | repeal vis a vis sale and transfer, replace with similar provision with respect to other s 42(1)(b) grounds: contracts with trades, statement from LL, statement from family members, council permits   | Vic s 91ZZO; Ire ss 34 and 35; ON s 72  |   | 7.1.14                   |
| s 43(3B)                                | delete (other than section 1(d))  |   | likely drafting error - context suggests refers to s 42(1)(d) not s 43(1)(d)  | 8.3.55                   |
| s 43(3C)                                | repeal  |   | likely drafting error - context suggests refers to s 42(1)(d) not s 43(1)(d)  | 8.3.55                   |
|   | add that if (1) NTV issued under s 42(1)(b) or employment or student accom or crisis accom and (2) lease is for a fixed term then (3) date that notice takes effect must not be before end date of fixed term   | NSW ss 87D-87N  |   | 7.1.4                    |
|   | add that LL can withdraw NTV at any point before it expires with consent of parties - including implied withdrawal and agreement  | NSW s 112   | would include agreement to extend or renew agreement  | 7.1.12                   |
|   | can only issue fresh NTV for same grounds if previous notice has expired or been revoked  | NSW s 118   |   | 7.1.13                   |
|   | add that if an NTV is given for any reason other than breach or substantial nuisance, T's liability for rent ends upon vacation   | NSW ss 110A and 110B; ON s 49   |   | 8.3.56                   |
|   | add that if an NTV is given for any reason other than breach or substantial nuisance, LL must compensate T, must be paid before the notice to vacate takes effect   | ON ss 48.1 and 54   | Tenants' Union of NSW Submission of Improving NSW Rental Laws (August 2023)   | 9.1.17                   |
|   | add that if NTV given for renovations or demolition T has right of refusal to become tenant when works are completed  | ON s 53   |   | 9.1.10                   |
| <b>s 44 form of notice to vacate</b>    |   |   |   |                          |
|   | must be in prescribed form  | Vic s 91ZZO   |   | 7.1.15                   |
|   | add must be signed by LL or agent   | Vic s 91ZZO   |   | 7.1.15                   |
|   | add that if given under s 42(1)(a) must specify that T may comply and render of no effect   |   |   | 7.1.15                   |
|   | add that must specify that tenancy only terminated by order of court  |   |   | 7.1.15                   |
|   | add must not include information that is misleading or deceptive - fine   | NSW s 85  |   | 7.1.15                   |
| s 44(e)                                 | substitute "details" with "particulars"   | ACT cl 83 standard agreement; SA s 91; Qld s 326; WA s 61; RPA s 70               | make clear that facsimile of clause/provision/grounds relied upon is not sufficient, whether or not there is a right to remedy. <i>Smith v Director of Housing</i> [2005] VSC 46 at [14]-[20] | 8.3.49                   |
|   | substitute "reason" with "grounds"  | WA s 61; RPA s 70   | clear up <i>Parsons</i> ambiguity of conflating grounds and subjective reasons for issuing NTV, consistency with s 40, pluralises   | 8.3.53                   |
| <b>s 45 order for vacant possession</b> |   |   |   |                          |
| s 45(2)                                 | substitute "a reasonable time" with "at least five working days"  |   | clarity, ensures that tenant has working days to seek advice  | 8.3.57                   |
| s 45(3)                                 | add that NTV has not been withdrawn   | Vic s 330   |   | 7.2.1                    |
|   | add if the NTV was issued for rental arrears, that the tenant has not repaid the arrears  | NSW s 89  |   | 7.2.1                    |
|   | add that if there is a sub-tenant, that the sub-tenant has been notified of the application and given reasonable opportunity to attend  | SA s 25   |   | 2.2.5                    |
|   | add that must be satisfied that the NTV was not retaliatory wholly or in part: T exercising rights (application, gov complaint, etc), looking to explore rights, seeking advice   | ACT s 57; SA s 90A; Qld s 246A; NZ s 54; WA s 71; Ire s 14; RPA s 111; ON s 83    | Better Deal For Renters commitment  | 7.4.2                    |
|   | can levy fine if found to be retaliatory  | SA s 90A  |   | 7.4.3                    |
| s 45(3)(b)                              | substitute with "the grounds for serving the notice to vacate proven/established/true"/"LL was entitled to give notice"   | Vic s 330; WA s 71  | clear up <i>Parsons</i> ambiguity of conflating "grounds" and subjective "reasons" for issuing NTV, makes clear that LL must prove allegations in NTV   | 7.2.2                    |
|   | add that it would be appropriate and proportionate in the circumstances to make the order for vacant possession   | Vic s 330   | codification of <i>Parsons</i> "fair in the circumstances"  | 7.2.2                    |
|   | add list of factors that the court must take into account: copy Vic verbatim. 1. Nature, duration and frequency of breach 2. Whether breach trivial 3. Whether breach caused by person other than T 4. FV or RO 5. Whether breach has been remedied 6. Whether T has or will soon have capacity to remedy 7. Effect of the conduct on others 8. Homes community impact statement 9. Whether any other order or course of action reasonably available 10. The behaviour of the LL 11. Any other relevant matter. | Vic s 330A; ON s 83   | provides clear guidance and direction for parties and court compared to <i>Parsons</i>  | 7.2.2                    |
| s 45(4)                                 | amend: if parties are unable to agree to date, court is to choose date based on circumstances of the parties including: potential financial loss, ability to secure alternative premises, effect on children, effect on sub-tenant/occupant, nature of basis for eviction (fault v no-fault); minimum period of 7 days unless extraordinary circumstances   |   |   | 7.2.3                    |
|   | add that order for vacant possession terminates lease at point it is executed   | Vic s 334   | provides clarity if LL declines to execute on day, or declines to execute at all  | 7.6.2                    |
|   | add that an order for vacant possession expires a 14 number of days after it takes effect, unless extended  | Vic s 351   | LL shouldn't be able to hold execution of warrant over head of T for 12 months  | 7.6.3                    |
|   | add that warrant for possession expires after 14 days   | Vic s 351; Qld s 351  | LL shouldn't be able to hold execution of warrant over head of T for 12 months  | 7.6.4                    |
|   | add that warrant must only be executed within certain time frames unless exceptional circumstances  | ACT s 40, Vic s 355   |   | 7.6.5                    |
|   | add that if LL does not execute warrant within time frame then implied non-fixed continuation of lease  | NZ s 60   |   | 7.6.7                    |
|   | add that warrant is of no effect if (1) NTV for rental arrears and (2) all monies paid before warrant is executed   | NSW s 89; ON s 74   |   | 7.2.6                    |
|   | add that if (1) NTV is for breach or substantial nuisance and (2) court is satisfied of all s 43 factors aside from appropriate and proportionate or if parties agree, that (3) court is able to make orders in lieu of termination orders: (1) payment plans; (2) attend financial counselling; (3) behaviour orders - requiring or restraining actions  | Vic ss 331 and 332A; SA s 87  | court should be flexible and look to avoid eviction wherever possible   | 7.2.4                    |
|   | if T does not comply LL can reapply and court can make vacation order if appropriate and proportionate  | Vic ss 331 and 332A; ACT s 49   |   | 7.2.4                    |
|   | if T complies with order/LL does not apply before period is over, app for VP is dismissed   | Vic ss 331 and 332  |   | 7.2.5                    |
|   | add that if NTV given to occupant remaining after T has vacated, LL must make app seeking order for vacant possession   | NSW s 95  |   | 2.3.10                   |

| Section of Residential Tenancy Act 1997                   | Proposed changes (if any)  | Examples of other jurisdiction(s) where proposed change has been adopted (if any) | Notes  | Recommendation reference |
|---|--|---|--|--------------------------|
|   | add as part of above application, sub-T/occupant can make application to be made T if they have reasonable capacity to fulfill obligations under previous agreement  | NSW s 77; Qld s 243; WA s 59C; RPA s 109  |  | 2.2.6                    |
|   | add that if tenancy subject to application is co-tenancy, may make findings as to blame, and may terminate only with respect to some tenants   | ire s 51  |  | 2.3.11                   |
| <b>s 46 early vacation</b>                                | add early vacation includes if T rescinds lease before it begins without notice of termination   |   | currently silent on pre-tenancy termination  | 8.3.58                   |
| <b>s 47 abandonment</b>                                   |  |   |  |                          |
| <b>s 47 order declaring abandonment</b>                   | add in determining whether premises are abandoned, court can take into account: failure to pay rent, no longer resides, failure to comply with other obligations; uncollected mail; reports from neighbours; absence of possessions; disconnection of services | NSW s 106; SA s 94; Qld s 357; WA s 3; RPA s 107                                  |  | 7.3.2                    |
|   | former T affected by abandonment order can apply to have abandonment order set aside, court/TASCAT can order reinstatement or compo depending on circumstances   | Qld s 361; WA s 76B   |  | 7.3.3                    |
| <b>s 47B loss following abandonment or early vacation</b> |  |   |  |                          |
| <b>s 47B(a)</b>   | replace with legislated break lease caps depending on how much of fixed term is remaining  | NSW s 107; SA s 75A; Qld s 357A   | Better Deal For Renters commitment   | 7.5.1                    |
|   | if lease non-fixed capped at 14 days from when vacant possession returned  | ACT s 63; ON s 88   |  | 7.5.5                    |
| <b>s 47B(b)</b>   | replace with advertising, must be reasonable and not payable if less than 8 weeks before end of fixed term   | ACT ct 89A standard agreement   |  | 7.5.6                    |
|   | add that rent loss is only payable after new tenancy has been secured, or break lease period has ended, and that approval for rent to be paid by direct debit is not also approval for rent loss to be paid by direct debit - fine                             |   | LLs generally continue to take "rent" via direct debit and refuse to cancel it even when a T has grounds to argue that they are not mitigating loss    | 7.5.2                    |
| <b>s 47C joint tenant ceases occupancy</b>                | add does not limit any award of compo that court/TASCAT can make under co-tenancy provisions   |   |  | 2.3.12                   |
|   | substitute "joint tenant" with "co tenant"   |   | consistent with normal language, not liable to be confused with "joint tenant" owners of premises  | 8.3.59                   |
| <b>s 48 disposal or sale of abandoned goods</b>           |  |   |  |                          |
|   | replace with "goods left behind", remove all reference to abandonment, or define abandoned as goods left behind  | SA s 97; NZ s 62  | eliminates subjectivity, makes clear referring to goods left behind post termination   | 7.3.4                    |
|   | add sub-categories of goods: (1) rubbish, food stuffs, dangerous; (2) important documents: passport, birth certificate, family photos and other sentimental items etc; (3) all other goods   | Vic ss 380, 384 and 386; WA s 80A; RPA s 86                                       | currently no reason why LL cannot dispose of important documents as do not fit into neat monetary categorisation                                       | 7.3.5                    |
|   | LL may apply to RTC for opinion as to whether goods fall into one category or another  | WA s 79   |  | 7.3.6                    |
|   | must keep documents for 90 days from notice  | Vic s 381; WA s 79; RPA s 88  |  | 7.3.8                    |
|   | must keep items for 28 days from notice  | NT s 109; NZ s 62A; RPA s 89  |  | 7.3.8                    |
|   | LL must give prescribed notice to T  | Vic s 386; WA s 79  |  | 7.3.7                    |
|   | LL may move items from premises to secure place  | Vic s 386   |  | 7.3.8                    |
|   | LL must not refuse to return documents or goods - fine   | Vic s 382   |  | 7.3.9                    |
|   | LL may require reasonable costs of removal or storage but cannot demand payment as condition of return   |   | Vic et al allows LL to withhold return until payment made - unfair in where T is impecunious, or has left on short notice for reasons of safety inc FV | 7.3.9                    |
|   | if T does not collect within notice period, LL can (1) hand personal documents to police; (2) sell goods that have value above prescribed amount; (3) dispose of good below prescribed amount  | Vic ss 381 and s 391; SA s 97B; NZ s 62A  |  | 7.3.10                   |
|   | proceeds of sale can cover LL's costs, remainder goes to T, if unclaimed goes to RDA   |   |  | 7.3.11                   |
|   | court/TASCAT may order: (1) compo to T if LL disposes of goods except in accordance with this section; (2) extension of storage period if T makes request and LL refuses; (3) delivery if LL refuses to return   | Vic ss 395, 396 and 397; Qld s 365; NT s 109; RPA s 89; ON s 41                   |  | 7.3.13                   |
|   | any purchaser of good has good title except if they were not sold in accordance with this section  | Vic s 394   |  | 7.3.12                   |
| <b>s 48A application of part 4A</b>                       | add that if there is inconsistency between this Part and remainder of RTA, this Part prevails to the extent of the inconsistency   | NSW s 137   | clarity, reduces need to replicate everything a la Vic   | 8.3.60                   |
|   | add that all boarding houses must be registered with RTC - fine  | Vic 142E; SA s 103B   | as no bond permitted currently little data   | 2.3.13                   |
| <b>s 48B cost of meals and other services</b>             | "other services" must be prescribed and proscribed   | SA s 105E   | presently unclear how it interfaces with s 17(3)   | 8.3.61                   |
|   | if T is away from room for period (holiday, medical etc) may apply to have services fees waived or reduced for period of absence   | Qld s 107   |  | 8.3.61                   |
|   | can only charge for utilities if separately metered  | Vic s 108; Qld s 170  |  | 8.3.61                   |
| <b>s 48C access to toilets and ablution facilities</b>    |  |   |  |                          |
| <b>s 48C(1)(b)</b>  | delete "at least once each day"  | Vic s 121; RPA s 22   |  | 5.1.30                   |
|   | add must be reasonable number of facilities relative to number of bedrooms   | HI SA reg 16  |  | 5.1.30                   |
|   | add fine for breach  |   |  | 5.1.30                   |
| <b>s 48D shared rooms</b>                                 | add fine for breach  |   |  | 8.3.62                   |
|   | does not apply if premises are crisis accommodation, but shared rooms must not be overcrowded - fine   |   |  | 6.4.6                    |
| <b>s 48E meal times</b>                                   |  |   |  |                          |
| <b>s 48F shared facilities</b>                            | broaden that LL is responsible for all common areas, facilities and services   |   |  | 5.3.26                   |
|   | if facility or service not available, urgent repair  |   |  | 5.3.26                   |
|   | repair provisions otherwise apply as if common area is part of residential premises  |   |  | 5.3.26                   |
|   | add if LL is renovating or repairing facilities, must minimise interference and provide temporary alternative - fine and right to apply for compo/rent reduction   | Vic s 120   |  | 5.3.26                   |
|   | min standards apply to boarding prem insofar as reference to what must be provided in premises apply to building - i.e. not every room needs a heat pump or oven   |   |  | 8.3.63                   |
| <b>s 48G statement of key terms</b>                       |  |   |  |                          |
| <b>s 48G(1)</b>   | replace with prescribed agreement - fine   |   |  | 9.1.10                   |
|   | add landlord required to ensure security of Ts' personal property and provide lockable cupboard/locker for storage in every room   | Vic s 123; SA s 105O  |  | 5.1.31                   |
| <b>s 48G(3)</b>   | add fine for breach  |   |  | 9.1.24                   |
| <b>s 48H house rules</b>                                  |  |   |  |                          |
| <b>s 48H(1)</b>   | replace with prescribed form - fine  | Qld ss 267 and 268  |  | 9.1.25                   |

| Section of Residential Tenancy Act 1997                                      | Proposed changes (if any)   | Examples of other jurisdiction(s) where proposed change has been adopted (if any) | Notes  | Recommendation reference |
|--|---|---|--|--------------------------|
|  | include model house rules in regs   | Qld regs schedule 7   |  | 9.1.25                   |
| s 48H(1)(i) and (j)  | replace with provision that (1) LL must give 21 days notice of intention to change house rule (2) at any time, T may apply to RTC/TASCAT for review of house rule   | Vic s 128; Qld s 274; NZ s 66P; RPA s 93  |  | 9.1.26                   |
| s 48H(2)   | substitute with "house rules must be for purpose of enhancing health and safety of persons or safety of the property and not unreasonably interfere with the T's quiet enjoyment, peace, comfort, and privacy, taking into account the reasonable interests of all occupants" | SA s 105A   | currently arguable that many of the example house rules are inconsistent with provisions of the RTA: e.g. s 17(3) and s 55   | 9.1.27                   |
| s 48I power of commissioner to make orders                                   | add that RTC has jurisdiction to hear disputes between tenants of boarding house and make orders compelling behaviour   | NZ s 126H   |  | 9.1.3                    |
| s 48J appeals from orders of the commissioner                                |   |   |  |                          |
|  | add that if LL also resides at premises and four bedrooms or less rented out LL is able to temporarily remove person from premises  | Vic ss 368-377A; RPA ss 59, 60 & 101  | provides emergency protection to owner but sufficient checks and balances  | 2.3.14                   |
| add new part - crisis accommodation  | add definition of crisis accommodation: registered organisation for provision of emergency accommodation for people facing homelessness and/or family violence  | ACT s 126; Vic s 3  |  | 6.4.2                    |
|  | add that if there is inconsistency between this Part and remainder of RTA, this Part prevails to the extent of the inconsistency  | NSW s 137   |  | 6.4.3                    |
|  | add that agreement for crisis accom must be in prescribed form - fine   |   | may include e.g. provision that T is not to disclose address of shelter  | 6.4.3                    |
|  | add that crisis accommodation provider not required to comply with provisions re pre-tenancy disclosure   |   |  | 6.4.3                    |
|  | add that crisis accommodation provider able to impose shelter rules, whether or not crisis accommodation constitutes boarding premises  |   |  | 6.4.3                    |
|  | shelter rules must (1) be in prescribed form (2) be provided before agreement begins  |   |  | 6.4.3                    |
|  | include model shelter rules in regs   | Qld regs schedule 7   |  | 6.4.3                    |
|  | shelter rules must be for purpose of ensuring health and safety of persons or safety of the property and not unreasonably interfere with the T's quiet enjoyment, peace, comfort, and privacy, taking into account the reasonable interests of all occupants                  | SA s 105A   |  | 6.4.3                    |
|  | (1) LL must give 14 days notice of intention to change shelter rule (2) at any time, T may apply to RTC/TASCAT for review of shelter rule   | Vic s 128; RPA s 93   |  | 6.4.3                    |
|  | add provision that allow crisis accommodation provider to temporarily remove person from premises   | Vic ss 368-377A; RPA ss 59, 60 & 101  | provides emergency protection to residents and staff but sufficient checks and balances  | 6.4.4                    |
| add new part - SDA accommodation   |   | Vic Part 12A  |  | 6.2.2                    |
| s 48K rental deposit authority   |   |   |  |                          |
| s 48L constitution of authority  |   |   |  |                          |
| s 48M functions of authority   |   |   |  |                          |
| s 48N powers of authority  |   |   |  |                          |
| s 48O staff of authority   |   |   |  |                          |
| s 48P assistance and facilities  |   |   |  |                          |
| s 48Q funds of authority   |   |   |  |                          |
| s 48Q(2)   | interest and forfeited bonds are to be used to (1) fund RTC and (2) fund tenancy advocacy services  | SA s 101(ab)  | (1) RTC is underfunded and staffed relative to demand and interest coming in<br>(2) tenants should get benefit of interest collected on their money  | 9.1.23                   |
|  | add any monies forfeited under s 48   |   |  | 8.3.64                   |
|  | add all fines and penalties   | UK s 16A  |  | 8.3.64                   |
| s 48R account in public account  |   |   |  |                          |
| s 48S accounts and financial statements of authority                         |   |   |  |                          |
| s 48T delegation   |   |   |  |                          |
| s 48U interpretation   |   |   |  |                          |
| s 48V application of part  | repeat  |   | internal blacklists are used to unfairly reject tenants and are of particular concern in areas where there is only one or two property management companies operating  | 2.1.14                   |
| s 48W notice of usual use of database  |   |   |  |                          |
| s 48X notice of listing if database used                                     |   |   |  |                          |
| s 48Y listing can be made only for particular breaches by particular persons |   |   |  |                          |
| s 48Z further restrictions on listing  | add LL must not list person on database if person victim-survivor of family violence and loss is consequence of family violence   | SA s 89A  | Better Deal For Renters commitment   | 6.1.8                    |
| s 48ZA ensuring quality of listing - owner's or agent's obligation           | add if LL becomes aware of FV must remove   |   | Better Deal For Renters commitment   | 6.1.8                    |
| s 48ZB ensuring quality of listing - database operator's obligation          | add if operator becomes aware of FV must remove   |   | Better Deal For Renters commitment   | 6.1.8                    |
| s 48ZC providing copy of personal information listed                         |   |   |  |                          |
| s 48ZD notifying relevant non-parties of Commissioner order about listing    |   |   |  |                          |
| s 48ZE keeping personal information listed                                   |   |   |  |                          |
| s 48ZF civil proceedings to enforce compliance with Part                     |   |   |  |                          |
| s 48ZF(3)  | add that if RTC satisfied that listed person victim-survivor of FV and loss caused by FV  |   |  | 6.1.8                    |
| add provision - references   | add that at any time during a tenancy or within 12 months of the end of a tenancy, a T may request a LL/agent to provide them with an individual reference  |   | reference process currently unregulated and entirely beyond T's purview and control - permits LL/agent to refuse reference or give bad reference in retaliation for enforcing rights - T has no ability to oversee whether information given is accurate | 2.1.15                   |
|  | LL/agent must provide reference within 14 days of request - fine  |   |  | 2.1.16                   |

| Section of Residential Tenancy Act 1997                    | Proposed changes (if any)   | Examples of other jurisdiction(s) where proposed change has been adopted (if any) | Notes   | Recommendation reference |
|--|---|---|---|--------------------------|
|  | reference must be in prescribed form - fine - information allowed: whether rent ever more than two weeks in arrears, whether other significant breaches   |   | Tenants' Union of NSW Submission on Improving NSW Rental Laws (August 2023)   | 2.1.17                   |
|  | LL/agent must not give reference that is false, misleading or deceptive - fine  |   |   | 2.1.18                   |
|  | LL/agent must not disclose FV, must not give negative reference to victim survivor of FV if breach/arrears consequence of FV  |   |   | 6.1.11                   |
|  | T must not alter reference given by LL/agent, must not falsify reference - fine   |   |   | 2.1.19                   |
|  | T may apply to RTC for order: (1) if LL/agent has failed to give reference, that they must; (2) that reference must be amended if information is false, misleading, deceptive or otherwise unfair   |   |   | 2.1.20                   |
|  | LL/agent must not provide reference in form other than provided for in this section - fine  |   |   | 2.1.8                    |
| <b>add provision - landlord accreditation and database</b> |   |   |   |                          |
|  | all tenancies must be registered with RTC - fine  | RPA s 8; Ire s 127; UK s 75   | bond registration can double as tenancy registration, but must be separate form for boarding tenancies and other tenancies with no bond   | 8.3.1                    |
|  | before managing a tenancy themselves, a landlord must complete and pass a course administered by the RTC - fine   |   |   | 8.3.2                    |
|  | RTC must be satisfied that LL is fit and proper person to manage tenancy  | SA s 103C   |   | 8.3.2                    |
|  | each premises will be assigned an accreditation number  | Ire s 135; UK s 82  |   | 8.3.1                    |
|  | LL must provide accreditation to T as part of ad listing - fine   | UK s 82   | prevents scammers   | 8.3.1                    |
|  | also applies to agent that is not licensed property manager   |   |   | 8.3.2                    |
|  | LL must appoint agent if they are going to be away from Australia from more than 21 days  | NZ s 16A  | time zone differences not consistent with obligations to carry out urgent repairs, makes service of documents difficult                   | 8.3.3                    |
|  | RTC must keep and publish information if LL or agent or agency has had orders made against them, or fines issued against them: breaches, compo, etc   | Vic ss 439O - 439T; UK s 83   |   | 8.3.4                    |
|  | RTC may order that LL is not permitted to manage rental premises, and may appoint licensed agent at LL's expense  | NSW s 206   |   | 8.3.5                    |
| <b>s 49 subletting</b>                                     |   |   |   |                          |
| s 49(1)  | add "or otherwise provide occupancy to persons not listed in the agreement"   |   | increases scope to co-tenants and occupants   | 2.2.12                   |
|  | request for consent must be in approved form  |   | a la pets   | 2.2.13                   |
| s 49(2)  | repeal  |   | adequately addressed if sub-Ts are tenants for purposes of RTA - currently sub-Ts get no protection or benefit from contravention         | 2.2.10                   |
| s 49(1AA)  | add SDA providers   |   |   | 6.2.2                    |
|  | add that consent under s 49(1) not required for (1) temporary guests of T staying for reasonable period and not paying consideration for stay; (2) children or dependants or spouse of T; (3) romantic partner of T that has own permanent place of residence |   | makes clear that T does not need permission to have guests, partner, or have children live with them                                      | 2.2.14                   |
|  | if children or dependants or spouse moving in permanently, T must give notice to LL   |   |   | 2.2.13                   |
|  | If LL asserts that (1) overcrowding or (2) not suitable - must make app to RTC/TASCAT for order to that effect  |   |   | 2.2.17                   |
|  | add if T sublets premises, T must not profit from rent charged - must be proportional to amount sub-let, if boarding premises, must not be more than rent of head lease   | ON s 134  |   | 2.2.7                    |
|  | prior to entering sub-t agreement T must disclose to prospective sub-t rent under head agreement  |   |   | 2.2.7                    |
|  | sub-t may apply to RTC at any point during tenancy for review of rent   |   |   | 2.2.7                    |
|  | if only part of premises sub-let, boarding premises provisions apply to sub-tenancy agreement   |   |   | 2.2.8                    |
| <b>s 49A transfer of residential tenancy agreement</b>     |   |   |   |                          |
|  | add that if co-tenancy and at least one original tenant remaining, original tenant(s) must also consent and must also sign agreement  |   |   | 8.3.65                   |
|  | request for consent must be in approved form  |   | a la pets   | 8.3.65                   |
| s 49B tenancy ceases on death                              | repeal  |   | see termination provisions  | 8.3.43                   |
| <b>s 50 consent</b>  |   |   |   |                          |
| s 50(a)  | add "or s 49A"  |   |   | 8.3.66                   |
|  | add if T makes request under ss 49 or 49A LL/co-t must respond within 14 days   |   |   | 2.2.15                   |
|  | add if LL/co-t does not respond, constructive consent   | ACT s 35C   |   | 2.2.15                   |
|  | add that if LL refuses, must provide written response with reasons and must make app to TASCAT seeking permission for refusal   |   | currently T has no remedies if consent unreasonably refused, and no requirement to disclose reasons, so provision has no practical effect | 2.2.16                   |
|  | new co-T/sub-T/occupant is able to move in pending outcome of dispute unless TASCAT makes interim order otherwise   | ACT s 35D   |   | 2.2.18                   |
|  | factors that may be reasonable: overcrowding, poor rental history of prospective sub-T/co-t/occupant, if tenancy for special purpose, if employment agreement   | NSW s 75; ACT s 35G   |   | 2.2.17                   |
|  | add definition of overcrowding: not overcrowding if: equal number of occupants to bedrooms, bedrooms not shared unless spouses/children not reasonable if protected characteristic or FV  | Vic s 81; SA s 74   |   | 2.2.17                   |
|  | if TASCAT finds that refusal is reasonable, and co-T/sub-T/occupant has already moved in, then TASCAT can make order that person must move out within certain number of days, has effect of possession order  |   |   | 2.2.18                   |
|  | if head T vacates and sub-tenancy not terminated in accordance with RTA, new agreement between sub-t and LL is formed   | Vic s 91R   |   | 2.2.4                    |
|  | add social housing provider also able to refuse if person not entitled to social housing  | Vic s 83; SA s 74   |   | 2.2.17                   |
|  | add crisis accommodation provider and boarding premises LL not subject to this section  |   |   | 6.4.7                    |
| s 51 impediment to occupancy                               | add fine for breach   |   |   | 8.3.67                   |
|  | TASCAT/court can order all rent paid under unlawful agreement repaid, or as fair in circumstances   | NZ s 78A  |   | 8.3.67                   |
| <b>s 52 use of premises</b>                                |   |   |   |                          |

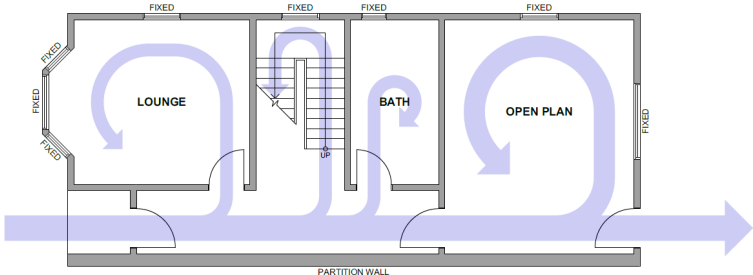
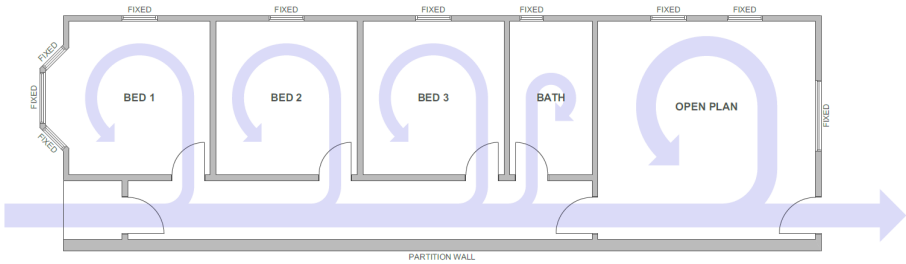
| Section of Residential Tenancy Act 1997                         | Proposed changes (if any)   | Examples of other jurisdiction(s) where proposed change has been adopted (if any)            | Notes   | Recommendation reference |
|---|---|--|---|--------------------------|
| s 52(a)(ii)   | add that residential purposes includes working from home, carrying out business, trade, profession in manner that is not inconsistent with predominate purpose as residence, purpose that is consistent with council zoning                                   |  | narrow reading of current provision would put T in breach for WFH, hobbyist business  | 8.3.17                   |
| <b>s 53 responsibility of tenant for cleanliness and damage</b> |   |  |   |                          |
|   | amend to make clear reasonable cleanliness standard also applies to end of lease too  | SA s 69; NZ s 40; ON s 33  | currently ambiguous   | 8.3.68                   |
|   | add that during tenancy T must not negligently or intentionally cause damage to the premises during tenancy   | Vic s 61; SA s 69; NZ s 49B; WA s 38; RPA s 25; ON s 34                                      | currently not clearly stated anywhere - RTA implies that T responsible for damage below negligence threshold per ss 17(3)(c) and 32(3)  | 8.3.68                   |
|   | add must remove T's goods and be free of T's rubbish at end of tenancy  | NSW s 51; NZ s 40  |   | 8.3.68                   |
|   | add definition of reasonable wear and tear: reasonable use + natural forces + normal incidents of living with reference to household composition  | Vic s 3; ACT cl 63 standard agreement  | on its face "reasonable wear and tear" so vague as to be useless, Vic definition sets clearer parameters  | 8.3.69                   |
|   | in any proceedings it is for the LL to prove that the damage was not caused by fair wear and tear   | NZ s 49B   |   | 8.3.69                   |
|   | add separate provision re garden: must be kept and returned in reasonable state of tidiness with reference to season, weather, other natural forces, water restrictions and ingoing state   |  | gardens do not neatly fit within standards largely intended to address dwellings: dwellings degrade over time, gardens expand and grow, significant amount of ongoing work to keep in perfect condition | 8.3.70                   |
|   | add obligations do not apply if consequence of FV   | Qld s 188  |   | 6.1.7                    |
| <b>s 54 alterations, additions and fixtures</b>                 |   |  |   |                          |
| s 54(1)   | repeat  |  |   | 5.2.1                    |
|   | add that T may carry out changes that constitute prescribed modifications without consent: anchors, picture hooks, free standing security cameras and lights, LED globes, child safety gates and hooks, lock on letterbox, removable flyscreens, FV safety    | Vic s 64, reg 26; WA reg 12BC  | Better Deal For Renters commitment  | 5.2.2                    |
|   | add that LL must not unreasonably refuse consent for minor modifications: decorations, safety, disability, garden, energy saving, telecommunications, medical, any other changes that are not significant   | Vic s 64; ACT ss 71AA and 71AB; NSW reg 22; SA s 70; NZ s 42B; WA reg 71; Ire s 16; RPA s 27 |   | 5.2.3                    |
|   | T must make request in approved form  |  | a la pets   | 5.2.3                    |
|   | LL has 14 days to confirm or refuse   | RPA s 27   | a la pets   | 5.2.3                    |
|   | may impose reasonable conditions: e.g. done by suitable person, removed at end of tenancy   | Vic s 64   | a la pets   | 5.2.6                    |
|   | LL must make app to TASCAT if refused   | ACT s 71AB; WA s 500   | a la pets   | 5.2.4                    |
|   | reasonable may include: if NTV issued or change of possession imminent, if would significantly change prem, would need change to another prop or common area, non-compliance with another law, additional maintenance costs, restoration costs not reasonable | Vic s 64; ACT s 71AC; Qld s 209C; WA s 50S   |   | 5.2.5                    |
|   | if strata LL must make request to strata within 28 days   | Qld s 207  |   | 5.2.5                    |
|   | if not prescribed or minor LL may refuse  |  |   | 5.2.4                    |
|   | If agreed must be in writing in approved form, but lack of approved form does not invalidate consent  |  | currently LL's can rely on lack of written consent, even if there was verbal, to declare breach   | 5.2.1                    |
|   | LL must not make modifications (that are not repairs or required to meet minimum standards) without the written consent of T  | WA s 50X   |   | 8.3.71                   |
| <b>s 55 quiet enjoyment</b>                                     |   |  |   |                          |
| s 55(1)   | add fine for breach   |  |   | 6.3.1                    |
|   | add that LL must take all reasonable steps to ensure that neighbouring Ts of theirs don't interfere with reasonable peace, comfort and privacy of other Ts  | NSW s 50; SA s 65; NZ s 45; WA s 44; RPA s 21  | currently LLs do not take responsibility for this   | 6.3.2                    |
|   | offence if amounts to harassment  | SA s 65; ON s 235  |   | 6.3.3                    |
| <b>s 55A certain photographs not to be displayed by owner</b>   |   |  |   |                          |
|   | substitute with "an owner of residential premises must not, without the written consent of a tenant, display to the public a photograph, film or video recording of the premises that displays any possession of the tenant"                                  | NSW s 55A; Qld s 203   |   | 6.3.14                   |
|   | LL must make any photos or videos available to T for review before publishing   | NT s 74A   |   | 6.3.14                   |
| <b>s 56 right of entry</b>                                      |   |  |   |                          |
| s 56(1)   | add that LL must only seek consent within 7 days of when entry is sought  | Vic s 85; NZ s 48; ON s 26   | prevents open ended pre-emptive consent being written into lease agreement  | 6.3.4                    |
|   | add that must only exercise right in order to achieve stated purpose, stay as long as necessary to achieve purpose, must exercise right in reasonable manner and must preserve T's privacy  | Vic s 87; Qld s 261; WA s 46; RPA s 30   |   | 6.3.5                    |
| s 56(2)(a)(iv)  | amend to the premises are no longer habitable   |  | should not be able to enter without notice if there is minor damage   | 6.3.6                    |
|   | add can come to premises (but not enter dwelling without consent) to serve document under Act   |  |   | 6.3.7                    |
| s 56(3)   | notice of entry must be in prescribed form, must specify: (1) who will be attending; (2) what ground and particulars of ground; (3) what date; (4) specific time  | NSW s 57   |   | 6.3.8                    |
| s 56(3)(d)  | repeat  |  | no basis for right of entry for e.g. rental arrears   | 6.3.9                    |
| s 56(3)(e)  | amend to that if the LL has a reasonable belief that T is in significant breach of s 53 commitments, increase notice to 7 days  | Qld s 192  |   | 6.3.9                    |
| s 56(3)(f)  | notice period for routine inspections increased to 7 days   | ACT cl 77 standard agreement; NSW s 55   | 24 hours unreasonably short time period   | 6.3.10                   |
|   | period for routine inspection extended to 6 months  | ACT cl 77 standard agreement; Vic s 86   |   | 6.3.11                   |
| s 56(4)(a)(ii)  | must only be twice per week   | ACT cl 81A standard agreement  |   | 6.3.12                   |
| s 65(4)(a)  | add if T has given notice that will be breaking lease   |  |   | 6.3.12                   |
| s 56(4)(b)  | repeat  |  | if end of lease abolished much less likely that tenancy will end  | 6.3.12                   |
| s 56(4B)  | add only if notice of intention to sell has been issued   | Qld s 198  |   | 6.3.12                   |
| s 56(4B)(b)   | must only be twice a week   |  |   | 6.3.12                   |
| s 56(5)   | add that T may request that LL change specified date and or/time  | WA s 46  |   | 6.3.15                   |
|   | LL must not unreasonably refuse request   |  |   | 6.3.15                   |
|   | unreasonable refusals: medical reasons, working from home, child naptime  | SA s 72  |   | 6.3.15                   |
|   | LL may apply to RTC for determination that T refusal is reasonable  | Vic s 89   |   | 6.3.15                   |
|   | add that T is to notify the LL at the start of the tenancy of preferred times and dates for entry, and is to take reasonable steps to update the LL if their situation changes  |  |   | 6.3.16                   |

| Section of Residential Tenancy Act 1997                   | Proposed changes (if any)   | Examples of other jurisdiction(s) where proposed change has been adopted (if any)                        | Notes   | Recommendation reference |
|---|---|--|---|--------------------------|
|   | T may apply to RTC restraining use of right of entry if used unreasonably or entry has been unlawful  | Vic s 91; NSW s 61   |   | 6.3.17                   |
|   | add date stated in notice must not be Sunday or public holiday, unless agreed by parties - fine   | NSW s 57   |   | 6.3.8                    |
|   | add if exercising entry under ss 56(4), 56(4A), 56(4B), 56(4C) LL must compensate T   | Vic s 86   |   | 6.3.13                   |
|   | add may only do valuation, building inspection, or sales photos with consent of T   | NZ s 48  |   | 6.3.14                   |
|   | add if viewing, open home, photos LL cannot require T to put the premises in a state better than what is required under s 53  |  |   | 6.3.13                   |
|   | add that LL liable for damage, theft etc to T's possessions that occur during right of entry  | WA s 46  |   | 6.3.13                   |
|   | T can apply to TASCAT for compo   | Vic s 90; NSW s 61   |   | 6.3.13                   |
|   | add that if LL has reserved access to part of premises (e.g. shed, shared area) must only access with 48 hours notice, and must only exercise right reasonably  |  | regular complaint of asserting and exercising unfettered access without notice  | 6.3.19                   |
|   | add that if LL takes photos/videos during routine inspection must only do to achieve stated purpose, and must not use for any other purpose except with consent of T, must provide to T within 7 days of access |  |   | 6.3.18                   |
|   | add that LL cannot require T to vacate premises during period right of entry is being exercised, unless there are safety requirements while repairs are being carried out                                       | WA s 46  |   | 6.3.13                   |
|   | add that LL must only enter with another person if it is necessary to achieve purpose of entry  | Qld s 194  |   | 6.3.8                    |
|   | add that if the tenancy is a boarding sub-tenancy where the head tenant lives, that the premises for the purpose of s 56 is the bedroom where the sub-tenant has exclusive possession                           |  |   | 6.3.20                   |
| <b>s 57 locks and security devices</b>                    |   |  |   |                          |
|   | add that at the start of the tenancy the LL is to provide each T with a copy of all key/keycard/etc relating to the premises - doors, gates, letterbox, internal doors, windows, annexes etc                    | NSW s 70; Vic s 54A; Qld s 210   |   | 5.1.24                   |
| s 57(1)   | add that premises must be equipped with deadlock  | Vic s 70; HI SA reg 15; WA reg 12B   |   | 5.1.25                   |
|   | add that in determining whether secure: requirements to get insurance; likelihood of break in, physical aspects of premises and surrounds; local community standards  | NSW s 191; Qld s 213   |   | 5.1.25                   |
| s 57(1A)  | change to RTC   |  |   | 5.1.26                   |
| s 57(2)   | add a party must not unreasonably refuse consent  | Vic s 70; ACT cl 54 standard agreement; NSW s 71   |   | 5.1.27                   |
| s 57(2B)(b)   | add and/or occupant and person protected by restraining orders  | Vic s 70A; SA s 66A and reg 16   | Better Deal For Renters commitment  | 5.1.28                   |
|   | doesn't need actual FV order in place, just need reasonable suspicion that it will prevent FV   | WA s 45  |   | 6.1.13                   |
| s 57(4)   | change to RTC   |  |   | 5.1.26                   |
|   | add that may also order that other party carries out/pays for change  |  |   | 5.1.29                   |
| s 57(5)   | add that RTC may order that T does not have to provide key to LL if satisfied that justified in circumstances   | NSW s 73; Qld s 213  |   | 5.1.29                   |
| <b>s 58 compliance with orders</b>                        | add that TASCAT/court can order compensation as well as fine  |  |   | 8.1.3                    |
| <b>new provision - general powers of TASCAT/RTC/court</b> |   |  |   |                          |
|   | at any point during a tenancy a party may apply to TASCAT/RTC/court for orders that the other party complies with RTA/agreement or compensates for past breach  | Vic s 472; NSW s 187; ACT s 87; SA s 110; Qld s 420; NZ ss 109A and 126H; WA s 15; ON s 29               |   | 8.1.3                    |
|   | can order that party: desists, remedies, compensates, delivers goods, allow access to collect goods, reinstate tenancy; deliver documents (e.g. lease, rent record)   | Vic s 472; NSW s 187; ACT s 87; SA s 110; Qld s 64; NZ s 77; WA s 15; Ire ss 56 & 118; RPA s 98; ON s 30 |   | 8.1.3                    |
|   | TASCAT/court may award exemplary damages when LL has breached statutory duty  | NZ s 109   |   | 8.1.4                    |
|   | TASCAT/RTC/court able to make orders that are in substance specific performance or injunction even if those remedies would not otherwise be within jurisdiction   | NSW s 187; SA s 35; Qld s 420; NZ s 78; WA s 15; RPA s 99  |   | 8.1.5                    |
|   | TASCAT/RTC/court may stay, set aside, vary etc orders and may make interim orders   | NSW s 188; NZ s 79; WA s 17  | codification of <i>Blowfield</i>  | 8.1.6                    |
|   | powers also apply to former LLs and Ts where appropriate - but applications must be made within 12 months of the tenancy ending (can apply to extend)   | NSW s 189; RPA s 96; ON s 87   |   | 8.1.7                    |
|   | TASCAT/court (minor civil) monetary jurisdiction is \$40,000  | SA s 24; Vic s 447   |   | 8.1.8                    |
|   | notwithstanding Civil Liability Act TASCAT/court has jurisdiction to make awards for personal injury that do not exceed monetary limit  |  | complex but seems unfair that Ts are in a practical sense excluded from seeking compo for actual injury, just loss of enjoyment that does not amount to actual injury | 8.1.13                   |
|   | if RTC/TASCAT/court makes written decision must publish online, may change names if appropriate   | SA s 39; NZ ss 95A, 104 and 115B; WA s 11K   |   | 8.1.9                    |
|   | FV related matters are to be heard in private   | Qld s 433A; NZ s 95  |   | 6.1.12                   |
|   | if during proceedings court/TASCAT forms suspicion that LL has committed offence under RTA, may refer to RTC for investigation  | WA s 86  |   | 8.1.10                   |
|   | if the tenancy is ongoing, proceedings are to be listed at the registry closest to the location of the residential premises in question   | WA s 13A; Ire s 88   | Ts more likely to make applications if TASCAT/court if given broader powers, shouldn't be inconvenienced by LL/RE being located elsewhere                             | 8.1.11                   |
|   | court/TASCAT is to publish statistics about wait times and outcomes   | Ire s 114A   |   | 8.1.12                   |
| <b>s 59 liability for actions of others</b>               | add does not apply if done by person in process of FV and T or occupant is victim survivor  | NSW s 54; NT s 12(3)   |   | 6.1.7                    |
|   | add not liable for actions of person that has been granted lawful entry onto the premises if the T has taken all reasonable steps to eject the person from the premises   | NZ s 41  |   | 8.3.72                   |
| <b>s 60 cost of preparing agreements</b>                  |   |  |   |                          |
| <b>s 61 record of rent paid</b>                           |   |  |   |                          |
|   | add must record all payments - not just rent (e.g. water bills, compo)  | SA s 57  |   | 8.3.73                   |
|   | add fine for breach   | NT s 37; WA s 34; RPA s 53   |   | 8.3.73                   |
|   | add that LL must provide copy to T within 7 days of request   | Vic s 43; NSW s 37   |   | 8.3.73                   |
|   | must not falsify - fine   | SA s 57; Qld s 90; NT s 36(4); WA s 34; RPA s 53   |   | 8.3.73                   |
| <b>s 62 notification of name and address</b>              | add T can apply to RTC/TASCAT for disclosure of LL's address for service  | Vic s 481  | often difficult to determine service address for LL   |                          |
| <b>s 63 agent of tenant</b>                               |   |  |   |                          |
| <b>new provision - agent of owner</b>                     | add a person or company purporting to act on behalf of the owner must provide proof that they act for the LL - prescribed form - fine   |  |   | 8.3.8                    |
|   | add that agent appointed under this section is not residential manager within meaning of s 16A  |  | presently confusing   | 8.3.6                    |

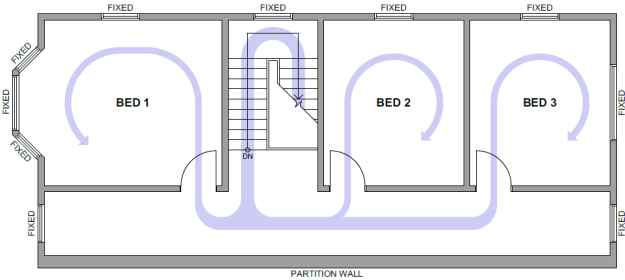
| <b>Section of Residential Tenancy Act 1997</b> | <b>Proposed changes (if any)</b>   | <b>Examples of other jurisdiction(s) where proposed change has been adopted (if any)</b> | <b>Notes</b>  | <b>Recommendation reference</b> |
|--|--|--|---|---------------------------------|
|  | add that if the LL appoints an agent the T is to serve all documents and notices and applications under the RTA on the agent, and service on the agent is taken to be service on the LL  | Qld s 206; NZ s 136  | mirror ss 63(4) and (5)   | 8.3.9                           |
|  | add that if agent represents LL, agent is appropriate party name for any proceedings   |  | way of mitigating <i>Burns v Corbett</i> [2018] HCA 15 if jurisdiction is partly or wholly moved to TASCAT  | 8.3.10                          |
| <b>new provision - notification of sale</b>    | if premises being put up for sale, must notify within 14 days, if sold, must notify within 14 days - fine  | SA s 71A; NZ s 47  |   | 9.1.37                          |
| <b>new provision - service</b>                 |  |  |   |                                 |
|  | all notices and documents and applications other than termination under s 41 or 45 may be served in following ways: post, leaving at premises or office, personal service, electronic form (SMS and/or email and/or instant messaging service) nominated by party, or as permitted by TASCAT/court order | NSW s 223; Vic s 506; ACT reg 5; SA s 120; NZ ss 13AB and 136; WA s 85; Ire s 6          | better for clarity sake to unify in RTA rather than spread over Mag Court Rules, TASCAT Rules, AIA, and Electronic Transactions Act - also clear position on electronic service | 9.1.28                          |
|  | application for termination under ss 41 or 45 must be personal or registered post (with delivery confirmation) or as permitted by TASCAT/court order   |  |   | 9.1.29                          |
|  | delivery of one co-T or one LL is assumed to be service on all co-Ts or all LLs - party claiming no service bears onus of proof - unless FV  | NSW s 223; NT s 155; NZ s 136; WA s 85   |   | 9.1.30                          |
|  | if LL chooses to use app to manage tenancy, must allow T to store copies of documents locally - fine - LL must not delete anything uploaded by T - fine  |  | issue with notices, evidence etc being uploaded to app then deleted on the server side  | 9.1.31                          |
|  | service by attaching document to door or outside of premises not permitted except by order of court/TASCAT or if abandonment application - fine  |  | Ts have reported humiliation/embarrassment as consequence   | 9.1.32                          |
|  | period of days is taken to be clear days   | SA s 3; NZ s 136A  |   | 9.1.33                          |
|  | if LL is aware that T is impaired and under guardianship order or has power of attorney or has been assisted by someone then any notice under RTA must also be served on them  | Qld s 525  | had matters where Public Trustee/Guardian was not aware of proceedings  | 6.2.2                           |
|  | party must notify other if address (including email address or phone number) changes   | NZ s 16  |   | 9.1.34                          |
| <b>s 64 certain provisions void</b>            | repeal and move to front of RTA - see s 15   |  |   | 9.1.13                          |
| <b>s 64A mitigation of loss</b>                | add that T may apply to TASCAT/RTC for compo/reimbursement if T overpays following lease break   |  |   | 7.5.4                           |
|  | add that mitigation of loss following lease break must be considered view of any hardship incurred by T as consequence of unforeseen change in circumstances   | Vic s 211A   |   | 7.5.3                           |
| <b>s 64B pets</b>                              |  |  |   |                                 |
| <b>s 64C strata title property by-laws</b>     |  |  |   |                                 |
|  | add fine for breach  | Qld s 69   |   | 9.1.35                          |
|  | add that T does not have to comply with strata by-laws that are inconsistent with RTA  | ACT cl 66 standard agreement   |   | 9.1.35                          |
|  | LL must notify T if by-laws are changed, and provide updated copy  | NZ s 16B   |   | 9.1.35                          |
|  | LL must provide strata contact details to T, pass on complaints and requests (such as pets), and ensure T has notice of any entitlements (presence at meetings)  | Ire s 12   |   | 9.1.35                          |
| <b>s 65 regulations</b>                        |  |  |   |                                 |

# SCHEDULE 2

## Ventilation diagrams



**GROUND FLOOR**  
SCALE 1:100 @A3



**FIRST FLOOR**  
SCALE 1:100 @A3

