

Housing for the Aged Action Group submission in response to the Regulatory Impact Statement for the proposed Residential Tenancies Regulations 2020

Housing for the Aged Action Group (HAAG) appreciates this opportunity to provide feedback to the review of the proposed *Residential Tenancies Regulations 2020* (the Regulations). HAAG is a member-based organisation that provides a range of services to older renters across a range of tenure types. In particular, our outreach service assists large numbers of older tenants in private rental, and our Retirement Housing Advice Service assists residents of housing types such as caravan and residential parks and rental villages. We also convene a working group made up of retirement housing residents, the Retirement Accommodation Action Group, to discuss a range of policy issues in this area and ensure that our policy advocacy continues to express the experiences and views of our members.

HAAG has been involved throughout the Residential Tenancies review process, and considers the reforms to date a major achievement of the Andrews government. We see the regulations as an important opportunity to ensure the details of that achievement carry through the value of those reforms.

<u>Transitional provisions</u>

HAAG supports the submissions regarding transitional provisions made by the Victorian Public Tenants Association.

Existing transitional provisions specify certain rental reforms – such as minimum standards – that will only apply to new fixed term or periodic agreements entered into after July 2020. We are concerned this will tend to disproportionately disadvantage older renters.

Tenants in public and social housing, who tend to have very long fixed terms and/or periodic agreements, will be substantially excluded from the benefits of

these reforms. This will be more burdensome for older public tenants, who are very unlikely to move until they require residential care or pass away. We are unaware of current figures, but as of 2004-05 there were 17,807 Victorian public tenants aged over 55 – 28% of all public tenants.[1] With both the number and proportion of older tenants in social housing increasing since then,[2] transitional provisions that effectively exclude current public tenants will have an even broader impact on older renters.

Our experience has also been that many older people in private rental have very long periodic agreements in the range of 10-20 years or more; some older people in this category would be seriously disadvantaged if transitional provisions permanently exclude them from the full benefits of the rental reforms.

Transitional provisions should specify a date beyond which all existing tenancies will be covered by the full range of rental reforms.

Section 7 – Urgent site repairs

HAAG are pleased that the rental reforms introduce a process for urgent site repairs, and support the proposed definition.

Section 35 – Compensation for sales inspections

The appropriate amount of compensation for a sales inspection is one day's rent, but not less than $50.

The proposed amount of compensation for sale inspections does not fairly compensate tenants, especially older renters, for the inconvenience and loss of quiet enjoyment entailed in standard sales inspections. Sales inspections produce disruption well beyond the time of the inspection itself, routinely including expectations that tenants will clean and tidy the property beyond their duty under the Act, that they will either attend or absent themselves

[1] McNelis, S. (2007) 'Older persons in public housing: present and future profile.' https://www.ahuri.edu.au/__data/assets/pdf_file/0021/3099/AHURI_Research_Paper_Older_persons_in_public_housing.pdf Accessed 17 December 2019.

[2] State Government of Victoria (2015) 'Laying the Groundwork – Consultation Paper'. https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/4014/8816/6479/LTGW_RTA_Act_Review_Fairer_Safer_Housing_Consultation_Paper_Laying_the_Groundwork_2.pdf Accessed 17 December 2019.

from the property, etc. Older tenants in particular find these demands very onerous.

The Regulatory Impact Statement (RIS) suggests that the 'typical' amount of inconvenience to renters caused by a sales inspection is less than that considered by VCAT in in *Hargans v Ronchetti*, but does not set out any basis for this conclusion. We submit that this *is* a typical amount of inconvenience. Elsewhere, the RIS seems to recognise that there is no basis for its position, noting that

> the bulk of the impost [of sales inspections is] created by there being an inspection at all (e.g., tidying the property and putting away personal items before each inspection and the psychological cost of knowing other people are in one's home).

These are often greater burdens for older people, who as a group spend more time in their homes and tend to have greater concerns about their security and safety.

We also note that the RIS does not compare the costs of the payment of compensation to inconvenienced tenants during sales inspections to a key alternative open to landlords – the loss of rent following the service of a notice to vacate for sale. Landlords who prefer not to compensate their tenants are still able to obtain vacant possession of the rented premises. The payment of compensation should be seen as a saving relative to this option, rather than a cost measured against uncompensated breaches of the tenants' quiet enjoyment.

<u>Section 77 - Information that site owners must disclose</u>

In addition to the information set out in the draft regulations, site owners should be required to disclose whether the Part 4A site, Part 4A park or any other site in the Part 4A park is prone to or has a history of subsidence.

Subsidence has long been one of the most difficult problems for site tenants to resolve. While the draft regulations incorporate subsidence into the definition of urgent site repairs, creating a remedy for site tenants, subsidence still has the potential to cause serious structural damage to Part 4A dwelling before or as a site tenant identifies that it is occurring, leaving them with significant

repair bills and without remedies for any loss they suffer. In at least some cases, remediating subsidence will also involve very substantial disruption and inconvenience for site tenants (as well as site owners). In almost all cases, it would be better for prospective site tenants to know there was a history of or tendency to subsidence, than it would to try and resolve the subsidence through a repair process once it has occurred.

In our experience, subsidence is also a much more common problem for site tenants than is flooding.

A requirement to disclose a history of subsidence might also encourage site owners to take proactive steps to prevent it from occurring, and to ensure that incidences of subsidence are remediated promptly and thoroughly.

Schedule 4 – Rental minimum standards

Minimum standard for rental properties should include standards for cooling and insulation.

HAAG has long advocated the introduction of minimum standards for rental properties to protect older renters from unsafe and substandard rental properties, and believe this introduction is one of the most significant achievements in the government's rental reforms. However, we are concerned that the proposed minimum standards fall short of meeting the needs of older tenants, particularly in the areas of thermal comfort and energy efficiency. The intersection of these issues is a key concern for financially disadvantaged older renters, especially older women, both because low income households spend proportionally more of their income on energy, and because they are particularly vulnerable to negative health and mortality outcomes attributable to heat and cold.

The proposed standards in this area focus exclusively on heating, with standards for cooling and insulation relegated to be 'developed in due course'. This would leave the 2020 Regulations, at best, a missed opportunity. Effective cooling standards, including insulation standards, should be prescribed now.

The regulatory impact statement minimises the negative effects of heat on renters, citing a "study comparing deaths from hot and cold exposure [which] found that 6.5 per cent of deaths in Australia are related to cold exposure,

compared to 0.5 per cent attributed to hot weather exposure". The proposed regulations do not adequately consider the effect of heat and especially heatwaves (as opposed to chronic high or low temperatures) in terms of health and mortality, and the value of prescribing a cooling (and/or insulation) standard to mitigate those effects. This is, of course, particularly important because the effects of climate change are expected to increase the frequency, intensity and duration of heatwaves.[3]

The seriousness and severity of health impacts of heatwaves, particularly on older people, is well established. The Victorian Government has identified that during the five-day heatwave from 27-31 January 2009:

> There were 374 excess deaths over what would be expected – a 62 per cent increase in total all-cause mortality. The total number of deaths was 980 compared with a mean of 606 for the previous five years. The greatest number of deaths occurred in those aged 75 years or older, representing a 64 per cent increase.[4]

One study found that heatwaves in Australia were associated with an average death increase of 28%, with elderly people the most likely to be effected.[5] Researchers identified a 15-17% increase in average daily mortality for people aged 65 or over in Melbourne when the mean daily temperature exceeded 30˚.[6] Based on this research, the Victorian Government's Health Intelligence Unit concluded "that within 24 hours of the temperature in Melbourne reaching mean 30˚ or more, there is excessive morbidity from the heat and excess deaths occur among older people". In short, there is a well-established connection between high outdoor temperatures and increased mortality for older people.

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[3] Alexander, L.V. and Arblaster, J.M. (2009). 'Assessing trends in observed and modelled climate extremes over Australia in relation to future projections'. *International Journal of Climatology*, 29(3), 417-435.

[4] Victoria State Government Department of Human Services (2009) 'January 2009 Heatwave in Victoria: an Assessment of Health Impacts'. https://www2.health.vic.gov.au/public-health/chief-health-officer/cho-publications/heatwave-in-victoria Accessed 12 December 2019.

[5] Cheng, J., Xu, Z., Bambrick, H., Su, H., Tong, S., Hu, W. (2018) 'Heatwave and elderly mortality: An evaluation of death burden and health costs considering short-term mortality displacement'. *Environment International*, Vol 115, 334-342.

[6] Nicholls N, Skinner C, Loughnan M, Tapper N 2008, 'A simple heat alert system for Melbourne, Australia', *International Journal of Biometeorology*, vol. 52, pp. 375–384.

The Regulatory Impact Statement for the Regulations cites research finding the use of reverse-cycle air-conditioning, especially during heatwaves, would have positive health outcomes especially for older people and other vulnerable groups. Nevertheless, the proposed Regulations do not include a cooling standard, with the RIS noting a hope that the heating standard will act as a kind of de facto cooling standard, and that it is 'likely that many rental providers will install RCACs in Class 1 rental properties' under the proposed 2-star heating standard.

It is not clear to us why it is useful to rely on this likelihood rather than simply prescribing a standard. Failing to provide a meaningful cooling standard – or deferring it as 'an area for future work' – would be a huge missed opportunity as the government otherwise moves to ensure tenants enjoy a reasonable basic standard for rental properties. And if it's the case that many rental providers will install RCACs in response to the prescribed heating standards, it seems to follow that there would be minimal additional costs if this standard was also prescribed.

In respect of both heating and cooling, HAAG's strong view is that insulation is an essential component of both thermal comfort and energy efficiency, and that it would be a mistake to prescribe a heating (or cooling) standard without also prescribing an insulation standard.

Without insulation, it is not clear to us that older tenants will see a real increase in energy efficiency and, crucially, energy costs based on the installation of heaters that meet the proposed standards. At the same time, we expect installation costs in respect of new heating will be passed onto tenants in the form of increased rent. If their rent goes up without an offsetting decrease in energy costs, a heating standard may not actually benefit vulnerable tenants who will still be unable to afford to run their heaters.