

Rights and Responsibilities of Landlords and Tenants

Joint submission of Barwon Community Legal Service and Gunditjmara Aboriginal

Co-operative

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Barwon Community Legal Service

Barwon Community Legal Service (BCLS) provides free legal advice and specialist casework services to people who live in the Geelong, Bellarine Peninsula, Surf Coast and Colac Otway regions. BCLS also provides limited services to people who live in Corangamite, Moyne, Warrnambool, Glenelg and Southern Grampians shires. Our catchment region consists of over 360,000 people with many pockets of extreme disadvantage.

We also provide community education and training directly to the community and to other community sector staff and government. We run community awareness campaigns and provide education that gives people the knowledge to self-manage their situation and assert their rights. We also contribute to policy and law reform work.

BCLS is a TAAP funded organisation who integrates the tenancy program with a broader generalist service allowing for a holistic approach to legal issues clients are faced with.

Gunditjmara Aboriginal Co-operative

Gunditjmara Aboriginal Cooperative is a Community initiated independent non-for-profit community based organisation.

Our purpose is to provide community controlled culturally appropriate services that meet the identified needs of people in the Aboriginal community and their families within the South West Victoria.

We are a united, strong, proud and healthy Aboriginal Community

We are committed to a positive and healthy future for our community and organisation

We respect our history, culture, our families and community

We continue to strengthen and expand our partnerships with other organisations.

We maintain and manage an ITAR program funded by the Department of Health and Human Services to ensure stability of tenancy for Aboriginal clients.

Before a tenancy

1. *Under what circumstances do tenants encounter unfair treatment or unlawful discrimination?*

BCLS and Gunditjmara advocate and support clients from a low socio economic background with challenges including mental health, disability and cultural stigma.

The income source for such clients usually places them in a situation for which they would be deemed “judgement proof”.

This is often used, though not said formerly, as a reason why a client does not meet the Landlords criteria.

We submit the more appropriate response should be based on an applicant’s capacity to meet the rental obligation only.

2. *What are the obstacles to tenants challenging discriminatory treatment and seeking remedies, and what are the solutions to these obstacles?*

The main obstacle would be providing evidence that the decision was based on a discriminatory factor.

Even if proven the remedies available to people believing to have been discriminated against or screened in a more prohibitive manner is limited.

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

The tenancy application form must provide an avenue for redress for those potential tenants refused a tenancy on the basis of alleged discrimination

4. *What types of information is used by landlords and agents to assess the suitability of rental applicants?*

Prospective tenants should only be required to provide:

- Proof of income
- Current liabilities
- Rental References
- Rental history

This should be sufficient to assess capacity to meet rental obligations as opposed to some practices whereby Landlords and Agents seek to investigate bank statements to understand the spending habits of the prospective tenants and making a judgement call from this perspective.

5. *When landlords and agents are provided with information about prospective tenants, what measures can be taken to ensure it is used appropriately?*

The information required should be limited to

- Proof of income
- Current liabilities
- Rental References
- Rental history

It is submitted that the demand for further information would be an invasion of an individual's privacy and superfluous to the task of assessing capacity to meet the rental obligation.

6. *What is your view on the stakeholder proposal to prescribe a standard application form, and what information requests should be required to be included in such a form?*

The information required should be limited to

- Proof of income
- Current liabilities
- Rental References
- Rental history

7. *What are the benefits and risks of landlords and agents requiring a security deposit from prospective tenants to obtain a key to view premises?*

Benefits:

Ensures an opportunity for a prospective tenant to view the property prior to making an application therefore the application is genuine.

It also allows for more prospective tenants to view without being restricted by agent/Landlord schedules.

Risks:

No reasonable deposit would cover damage or theft if that was the genuine intention of the person seeking to view.

Also provides an opportunity for deviates to take a copy of the key for use at a later date.

8. *What other issues arise from the operation of tenancy databases, and how do these impact on prospective tenants?*

It is submitted that in order to afford fairness to both tenants and Landlords the tenants must be able to access, oppose, remove and provide additional details on such database to ensure the information available for viewing are true and correct and fairly reflect the circumstances of their addition to such data base.

9. *What measures do landlords, agents and database operators have in place to protect personal information about tenants and to ensure it is used appropriately?*

Unfortunately all computer based information is susceptible to manipulation and hacking.

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

It is submitted that this is the only way to ensure information available for viewing is fair and genuinely reflects the circumstances which resulted in the addition to the database.

Tenants should be able to add Landlord and Agency details to the database where appropriate to do so.

11. *What additional information should a landlord be required to give a tenant at the start of a tenancy, if any?*

Full name and contact details (PO Box acceptable for correspondence to ensure the safety of the Landlord is balanced with the tenant's right to be able to contact when there is an urgent repair or dispute)

12. In what circumstances would the stakeholder proposal of a consideration period be appropriate for a tenancy agreement, and what would be a suitable duration?

As with most contracts there is a cooling off period. For a Tenant/Landlord the appropriate period would be 2 business days to allow both parties to consider the terms of the Agreement prior to signing the Lease Agreement.

13. What requirements and approaches, including communication channels and support, should govern the form and service of documents for tenants, landlords and agents?

As has been recently experience Australia Post is not timely or reliable. Electronic communication and SMS must be seen as an appropriate form of communication based on today's technological sound community

During a tenancy

1. How should the current statutory duties for both landlords and tenants be reformed to meet their contemporary needs?

There needs to be consideration given to the use of technology with respect to such issues as:

- Service of documents
- Electronic signatures/identification
- Advertising of property and interior display on websites
- Virtual property inspections

2. What are your views as to whether the length of time currently allowed for remedying the various breaches outlined in the Act is appropriate? If the length of time is not appropriate, what other time should be specified?

It is submitted that the 14 day period is appropriate given that is the most common "pay period" whether it be a wage or a Centrelink entitlement that would be used to fund the remedy where costs will be incurred i.e.: repairs.

However there should be a limitation period imposed on VCAT Compliance Orders where the remedy relates to personal conduct such as creating a nuisance, for neighbouring properties, to ensure fair actions of the Landlord once compliance has occurred and been maintained for a statutory period

3. ***Where a breach notice is issued, should the person who received it have the option of remedying the breach or paying compensation in order to comply with the notice, or should compensation only be permitted where the breach cannot be remedied?***

The purpose of the notice should be to seek the remedy and only when there is no alternative should compensation be an option.

This would provide a level of protection to a tenant being harassed by a Landlord seeking additional income and protect a Landlord from a tenant refusing to comply with a breach.

Thus providing a fair and balanced outcome for all parties

4. ***What, if any, measures should be available for tenants and landlords to address a breach of duty before seeking redress at VCAT?***

Negotiations and mediation should always be available to avoid the need to initiate proceedings at VCAT.

This would also remove the ability of unscrupulous Landlords and Real Estate Agents to threaten VCAT when VCAT is seen as a respected authority comparable with a Court of law to many tenants who have never been “*in trouble with the law*”

5. ***Should the Act require initial compliance orders for a breach of duty to be limited in duration, and if so what limitation is appropriate?***

Yes and depending on the compliance required and history of non-compliance the terms imposed should be limited to a 6-12 month period

6. ***What are the advantages and disadvantages of the current prescribed tenancy agreement, compared with a more comprehensive agreement?***

Advantage

Limits the capacity of Landlords and Real Estate Agents to impose onerous conditions on those desperate for housing

Disadvantage

The limitations in addressing individual situations and needs of Landlords and Tenants

Rights and Responsibilities of Landlords and Tenants

7. ***What arrangements should apply in respect of the inclusion and enforcement of additional contractual provisions that go beyond the prescribed agreement and statutory duties?***

Prior to the enforceability of such additional inclusions the party seeking the inclusion must seek an Order from VCAT to declare the appropriateness of the inclusion and the remedy for breach.

If not Ordered the inclusion remains unenforceable thus protecting the weaker party in the negotiation process.

If Ordered there must be a provision for the tenant to end the tenancy prior to the inclusion of the condition on any future Tenancy Agreement.

VCAT must be afforded the power to add or refuse inclusions where deemed appropriate.

8. ***What is the right balance between the interests of tenants and landlords in respect of pets in rented premises? What reforms, if any, are required to current arrangements?***

It is acknowledged it is not illegal to house a pet at an individual's residence it is already provided for that any damage caused as a direct result of a pet is able to be compensated to ensure no loss to the Landlord pursuant to a breach of a tenants obligation to maintain the residence in good repair.

The risk with the current situation is that a Landlord loses a right to compensation being enforceable where a tenant is "*judgement proof*" therefore a fair and just balanced approach needs to be considered.

An additional pet bond would be appropriate where the chosen pet is more likely than not to require additional cleaning or cause damage to the interior or garden area of a property i.e.: gold fish/pig

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

It is submitted the current provisions are adequate

10. What other issues and factors arise from current arrangements for entering a property that is to be re-let or sold and what, if any, reforms are required?

This is a growing area of concern given the nature of internet advertising and the display of personal items on show at any time a property is open for inspection. The risk to a tenant of burglary has become one which cannot be ignored.

In this instance it is submitted the privacy and protection of the individual tenant and their property must at all times be a paramount concern.

The protection of a person must come before the interests of property investment

11. What other reforms, if any, are required to balance the interests of landlords and tenants in respect of sub-letting and lease assignments?

This is a matter that should be left until such time as the Supreme Court has made a finding.

12. What issues arise in practice for residents and on-site managers in relation to the use of notices to leave because of violence in managed premises, and should any amendments to current arrangements be considered?

There needs to be a balance of the rights of all parties given such conduct usually precedes criminal proceedings and the cross-over of the “*innocent until proven guilty*” principle applies.

In a family violence situation the perpetrator may not be clear.

The Manager may rely on the Victoria Police assessment or the named respondent on a Safety Notice for an interim period of exclusion and then revert to normal RTA requirements to cause a tenant to vacate.

It is submitted that perpetrators of family violence are well skilled in manipulating the facts to blame the victim to the outside world and the victim has no capacity to speak out for fear of retribution or not being believed.

This must be taken into consideration when proposing strict wording for legislation.

At the end of a tenancy

- 1. What are your views on the stakeholder proposal that tenants should be able to serve a reduced notice of intention to vacate if they are offered social housing by a community housing provider?***

Given the current shortage of social housing and the extensive waiting periods no person should be forced to forego social housing because they cannot afford to lease break to accept the social housing offer

- 2. For what reasons should a landlord be permitted to end a tenancy, and what notice periods should a tenant be given?***

It is submitted the current legislation is fair and just at the present time.

- 3. For what reasons should a tenant be permitted to end a tenancy, and what notice periods should a landlord be given?***

It is submitted the current legislation is fair and just save for the following:

Offer of social housing – immediate notice given to vacate on the day social housing is available

Family violence – immediate notice given to vacate based on a need to relocate to an undisclosed location. Support agency correspondence to suffice as not all victims seek the assistance of Victoria Police

- 4. What remedies or defences should be available to a tenant to prevent bad faith by a landlord who is attempting to end a tenancy?***

Tenants should have redress via costs to defend a Notice to Vacate where there is a genuine belief the grounds are invalid

Tenants should have the right to name a Landlord on a database as one who acts in bad faith

5. *What are the appropriate approaches to compensate a landlord where a tenant breaks a lease?*

There needs to be more flexibility and balance as current provisions do not take into consideration the impact of family violence and the need to flee for safety reasons.

Whilst it is submitted the Landlord should not bear the brunt of this there is a suggestion that a compensation fund could be created for such situations.

This fund could be in part funded by court ordered compensation/donations/sentencing orders for perpetrators of family violence

6. *What, if any, additional protections should be provided to a tenant who breaks a lease or wishes to end a lease early due to circumstances such as financial hardship, family violence or illness?*

As above

7. *What arrangements should apply to goods that a tenant leaves behind at the end of a tenancy?*

This needs to be clarified as the cost of goods being stored by an innocent party whether that be Landlord or co-tenant are exorbitant and unjust.

There needs to be clear provisions setting out the capacity to destroy, dispose or otherwise remove such items that do not include legal documentation.

8. *For tenants experiencing family violence, what changes to the Act will further promote their access to safe and sustainable rental housing?*

The current provisions for the change of locks need to include the installation of security cameras. As this would enhance property security there should be no requirement to remove and return the property to its original state if such professional installation costs were met by the Victims of Crime Assistance Tribunal or the like.

9. *How are the interests of the landlord best protected in circumstances where family violence impacts on an existing tenancy?*

The creation of a fund to protect the Landlord from loss

Conduct of agents

- 1. Does the Act need to specifically deal with the conduct of agents acting on behalf of landlords, and if so what reforms would address this conduct?*

Agents must provide the Tribunal an authority signed by the Landlord confirming the Agent is acting on their instructions and they are aware of the proceedings, what the agent is seeking on their behalf and they accept the outcome of the Tribunal hearing

We are finding the tenant has a different agreement than that described by the Agent when the lease is being ended and the Landlord and tenant have spoken directly. The Agent then purports to act in accordance with the Landlords instructions and provides the Tribunal with a completely different proposal (and predominantly detrimental to the tenant)

Consideration may be given to provisions which require Agents to act in circumstances similar to that of an officer of the court or model litigant to ensure they conduct themselves at all times in a professional and honest manner

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