SUBMISSION BY EASTERN COMMUNITY LEGAL CENTRE

Rights and Responsibilities of Landlords and Tenants Issues Paper

Residential Tenancies Act Review

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Background

Eastern Community Legal Centre (ECLC) is located in the Eastern region of Melbourne and serves the Cities of Whitehorse, Boroondara, Manningham, Maroondah, Knox and the Shire of Yarra Ranges. The ECLC Tenancy program serves an additional municipality namely, the City of Monash. ECLC offers free legal advice from its offices in Box Hill, Boronia and Healesville during the day, at night and also through various outreach locations across the East, with a priority being given to those who are disadvantaged.

The Eastern Region has a number of areas of significant disadvantage. Healesville, in the Shire of Yarra Ranges, is home to the second most populous indigenous population in Victoria. The cities of Whitehorse, Maroondah and Knox host large communities of new arrivals to Australia.

In addition to direct legal services, ECLC also focuses on community development and education activities that empower clients, workers and the general community. It raises awareness of its service, new legal developments and human rights through various projects.

The ECLC Tenancy Advice and Advocacy Program ("TAAP") has been operating since 2012, and is funded by Consumer Affairs Victoria (CAV) to protect vulnerable and disadvantaged tenants. In providing funding, CAV 'recognises that some of the most v[ulnerable] and d[isadvantaged] Victorians often experience tenancy problems. These can lead to adverse outcomes, including homelessness, if they remain unaddressed.'[1]

The ECLC TAAP has assisted in more than 1312 separate tenancy matters since it opened in late 2012, and its advocates assist clients via advice, advocacy, negotiation and representation at the Victorian Civil and Administrative Tribunal ('VCAT'). The tenant advocates at ECLC have over twenty years tenancy experience between them. All of the ECLC TAAP clients have limited financial resources and receive Centrelink allowances.

Additionally, ECLC has been funded by Deakin University since April 2012 to provide on-site legal information, casework and support to all currently enrolled Deakin University students at the Burwood campus. Tenancy matters make up about 10% of this work, and the service has provided assistance on 132 tenancy matters to date. The majority of students are either receiving a Centrelink benefit and/or are being fully or partially supported by their families and/or working only nominal casual hours. Many clients are also international students for whom English is not their first language, are unfamiliar with Australian culture and the legal system, and are first-time renters.

[1] Department of Justice, Consumer Affairs Victoria., *Guidance on TAAP- Operational guidelines on the Tenancy Advice and Advocacy Program*, p 6

This submission is informed by the experiences of our clients from TAAP and the Deakin University program.

We have directly addressed questions raised in the Rights and Responsibilities Issues Paper in areas where we believe the Centre's and clients' experience will add value in considering reforms to the *Residential Tenancies Act 1997* (Vic) (the 'Act').

Before a tenancy

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

When tenants have left a property after disputes about the tenancy, this can affect the ability of the tenant to get a good referral for future housing. Even when VCAT orders find in favour of the tenant - either defending an application or in their application against the landlord - tenants are reluctant to note down referrals for previous addresses as they won't know what will be said over the phone.

As with many situations for unfair treatment and unlawful discrimination, it is very difficult for people to collect evidence on the wrongdoing. Many tenants may suspect that they are being rejected for housing on the basis of race or relationship status, but rarely will this be explicitly stated by a landlord or agent. Further, agents may not necessarily be aware of the landlord's discriminatory beliefs or intentions and vice versa.

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

A tenancy database increases the power differences between landlords and tenants, because it allows landlords to have access to information about tenants while tenants could never access the same information about landlords.

Even accurate database listings rarely give a full picture of a situation – for example, a tenant may successfully challenge an inflated VCAT claim from thousands of dollars to have the claim reduced to hundreds, but a database listing would simply show that an order for compensation had been successfully made against the tenant. Lease breaking costs can also be the cause of listed compensation claims, and a tenant may need to end a lease early due to genuine hardship. In these cases, it may be that a tenant is willing to pay some costs, but it is necessary to attend VCAT in order to get a fair outcome on the amount claimed.

The database is also silent on the compliance with orders – for example, if a tenant pays off the ordered debt either as a lump sum or as part of an ongoing payment plan, which would minimise loss to the landlord.

For these reasons, we submit that tenancy databases should be more limited in operation, and that listings are only made where outstanding debts have not been paid within 3 months, or where parties have not entered into a payment agreement or have not complied with such a payment agreement.

Recommendations:

- ***Tenancy database listings should only be made where outstanding debts have not been paid within 3 months of the order. Landlords and agents should not list tenants where tenants have entered and complied with payment plans.***

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?

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

Many tenants with repairs and maintenance problems hear anecdotal stories that the landlord and agents were aware of the issue from a previous tenancy (eg. hearing from a neighbour, tradesperson or even the agents themselves), or have serious repair problems where it would be highly improbable that the agent or landlord were unaware with regular inspections (eg. freshly-painted wall over water damage from a leak).

A database would address the information imbalance and ensure that landlords would need to permanently fix any issues and properly maintain the property, rather than delaying the process when old tenants leave because they are served with a notice to vacate, or due to the repair issues, and then signing up new tenants who are unaware of the ongoing problems.

While a database would be the ideal solution, and we understand that there may be logistical, legal, time and cost issues with such a database. We suggest that a similar goal could be achieved if landlords and agents were required to provide all copies of all breach notices and VCAT orders made about the property within the past 12 months to new tenants before signing the lease. Such disclosure requirements could also be incorporated into section 240 of the Act to allow a tenant to end a fixed term tenancy early for successive breaches. Similarly, non-compliance should attract penalty provisions, but also a right for the tenant to terminate a tenancy early. We believe this kind of disclosure will allow tenants to address the issue of repairs on a more systematic basis, and would complement a landlord database if one were implemented later in time.

We also support proposals for agents to provide copies of their authority to act; in particular, documents that list specific charges toward the landlord for services such as reletting, as this is often a claimed as a loss against the tenant if the fixed term lease is broken.

We also refer to our previous submissions regarding the necessity for all tenancy agreements to disclose the landlord's full name and service address.

Recommendations:

- ***A landlord and real estate agent database be established for tenants to search for information about prospective properties.***
- ***Landlords and agents be required to disclose and provide prospective tenants copies of any served notices or VCAT orders regarding the property in the previous 12 months.***
- ***Tenants to be allowed to serve section 240 notices of intention to vacate for successive similar breaches, even if such breaches occurred while the property was tenanted by another person.***
- ***Agents be required to provide copies of their authority to act, and any documents that specify charges to the landlord that will be made.***
- ***Requirement for the landlord's full name and service address be disclosed on the tenancy agreement.***

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

We note this issue has been addressed in part with amendments to the *Residential Tenancies Act 1997* (Vic) under *the Consumer Acts and Other Acts Amendment Act 2016* (Vic).

Service by registered mail is still extremely important given some tenants do not regularly check their emails or necessarily have a reliable internet connection. In most cases, registered mail is still the best way to ensure that a tenant receives notices.

However, this has led instances where notices and applications have been sent to the rental property after the tenant has vacated. Many agents and landlords do attempt to contact tenants to notify them of upcoming hearings, however, we have had cases where agents deliberately stayed silent on VCAT applications and hearings despite being in contact with the tenant via email and phone for other matters.

The Act should therefore be amended to ensure agents and landlords make all reasonable attempts at notifying tenants of any notices or applications.

Recommendations:

- ***Landlords and agents to serve notices and applications to the tenant via registered mail, and be required to make all reasonable attempts to notify the tenant of those notices and applications.***

During a tenancy

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

Most tenants are reluctant to bring matters to VCAT, and this is reflected in the data showing that tenants make up only 6.6% of all applications while private landlords and agents make up 69.8% of applications[2].

Landlords and agents are often uncommunicative when issues are raised by the tenant; sometimes this is due to poor customer service, and other times it is a deliberate tactic to avoid their obligations under the Act. Therefore, we find that many will only consider settling or responding to the tenants' requests when faced with the prospect of a VCAT hearing. We note that there is a small percentage who will still delay repairs for months with multiple VCAT hearings being scheduled over this time.

Problematically, a tenant does not have a direct contract with a real estate agent although they are overwhelming the recipients of the service that agents provide. This means tenants have no control over agents the landlord chooses to manage the property, and cannot simply switch to another service provider when the service is inadequate. As many of these problems result from a lack of action or communication from agents, we would support a binding Ombudsman scheme for real estate agents, as suggested in submissions to the review of the *Estate Agents Act 1980* (Vic).

Where landlords and agents raise issues with the tenant, even when a negotiated settlement is possible, many prefer having a VCAT order by consent as this would allow them to issue a notice to vacate under section 248 for failing to comply with a VCAT order.

While we do not oppose pre-litigation schemes, we note that these schemes would need to provide binding resolutions and consequences for non-compliance. Otherwise, these schemes may simply increase the time to resolve issues that are already spanning months.

Recommendations:

- ***An Ombudsman scheme be set up for real estate agents, as outlined in the submissions to the Estate Agents Act 1980 (Vic) review.***

[2] Victorian Civil and Administration Tribunal Annual Report 2014-2015, page 39. Number of applications in the Residential Tenancies list: in total 59,184, landlords with real estate agents 38,794, private landlords 2,537 and tenants and residents 3,931.

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

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

Many extended tenancy agreements used by real estate agents contain numerous unenforceable provisions that purport to restrict or modify rights under the Act or are harsh and unconscionable, as prohibited under sections 27 and 28 respectively. Common unenforceable provisions include requirements to steam clean carpets, prohibiting tenants from using blu-tack on the walls, and making tenants responsible for utilities where there is no separate metering. We note that agreements including similar provisions could be characterised as offences under section 501 to 503, although are not prosecuted as such. Generally, we do not support the use of extended or "comprehensive" agreements as they are easily abused by agents and landlords, as current such agreements prove.

In comparison, the approach taken by New South Wales is that a number of common unenforceable terms are specifically banned under section 19(2) of the *Residential Tenancies Act 2010* (NSW), such as an obligation for professional carpet cleaning for example.

Recommendations:

- ***Agreements that include additional contractual provisions that go beyond statutory duties should be limited in use.***

21 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?

Allowances for pets in rental properties is a widespread issue with no guidance or clarity in the current Act. Studies have shown that up to 50% of Australians have a cat or a dog in their household[3], and as a society we place great emphasis on responsible pet ownership through pet registration and microchipping. A tenant who owns existing pets would be irresponsible to abandon animals simply because they cannot find a property that allows pets – and many properties do not. In a competitive rental market, many tenants are reluctant to ask landlords about pets because they are fearful this will negatively affect their application. Anecdotally, many renters simply do not disclose their pet when applying for a property, and their landlords and agents are not aware of any additional damage during inspections.

[3] Roy Morgan Research, June 4, 2014. http://www.roymorgan.com/findings/6272-pet-ownership-in-australia-201506032349

Given that many agents and landlords do not realise that undisclosed pets are living at the property at inspections, we submit that pets should be allowed at properties by default. There is no requirement for an additional "pet bond" because any damage caused by an animal would be covered by the regular bond amount and could be claimed in additional compensation. Nor is there any evidence showing that animals on the whole will cause more damage to a property than, for example, a young child. Where animals have caused damage, these are usually individual, isolated incidents that are tenant-specific.

However, if landlord has a reasonable belief that they require an extra bond or extra money to cover damages due to a pet, we submit that this could be done only with VCAT oversight to ensure the amounts requested are reasonable, and there is a real basis for the belief.

We also recognise in some cases, landlords may have legitimate medical conditions around animals, especially if they intend to move back into the rental property at a later date. If this is the case, then we suggest that landlords be able to apply for a VCAT order to exempt the property from allowing pets with the support of medical documents.

Recommendations:

- ***Pets should be allowed in rental properties by default.***
- ***Where the landlord has a reasonable belief they will require an additional bond amount for the pet, the landlord may make an application to VCAT.***
- ***Where landlords have a medical condition with respect to animals, the landlord may make an application to VCAT to be exempt from allowing certain pets in the property.***

22 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?

23 What other issues and factors arise from current arrangements for entering a property that is to be relet or sold and what, if any reforms are required?

Most complaints about rights of entry occur during the sale of a property. There is no numerical cap on the number of times an agent can enter a house for the purposes of showing it to a prospective buyer. It is not uncommon for agents to organise "open inspection" dates twice a week, and then additional attendances by individual buyers during week. For the landlord, there is obviously a financial advantage having the property available for inspection as often as possible, but this comes at a cost to the tenants' quiet enjoyment. At one extreme end of the scale, one tenant had agents attend the property a total of 8 times over a period of two and a half weeks – this is almost one attendance every second day.

In our experience, most tenants are reasonable about having inspections at the house, and understand the need to conduct inspections when a property is being sold or relet. Most complaints refer to a lack of notice and a lack of consultation about inspections; many

tenants are simply sent a list of dates and times and expected to agree. Many tenants do agree because they believe they are required to do so – although a recent decisions at VCAT have determined that landlords do not have a right to "open for inspections" under the Act[4] – and even if they did not agree, landlords only need to issue notices of entry 24 hours in advance. In a couple of cases, tenants were not even notified by the agents about the sale of property or inspection times, and had to rely on the dates and times specified on the board erected at the front of the house.

We submit there should be a legislative cap of three inspections per week. In the case where "open for inspections" are reincorporated into the Act, that cap be once a week for open inspections and twice a week for individual buyers. We note that three attendances can already be a substantial burden on a tenant as they are responsible for tidying the property, and sometimes showing the prospective buyer through the property, and cannot otherwise organise activities during this time at their home.

If the agent requires any further attendances, this should automatically attract compensation to the tenant as their rate of daily rent, in recognition for their loss of quiet enjoyment as would be ordered by VCAT. This would also have the consequence of requiring agents to better manage their own time and the tenants' time, and to consider prospective buyers more carefully.

We also submit that the period for most written notices of entry. In practice, many agents will try to organise attendances with the consent of the tenant, and then issue a written notice where consent is refused. With the exception of reasons specified under sub-sections 86(1)(c) (to enable a landlord to carry out a duty under the Act) and 86(1)(e) (failure of the tenant to comply with duties under the Act), all other attendances at the property are often organised several days in advance. We would therefore support a 72 hour written notice of entry all reasons with the exceptions of sub-sections 86(1)(c) and 86(1)(e). We also believe this will give agents and landlords more incentive to negotiate with the tenant about appropriate times for attendances.

Many tenants will also want to be present while the landlord or agent attends the property. At the moment the Act does not require a timeframe for attendances, as long as the entry occurs between the hours of 8am and 6pm to comply with section 85(b). Many tenants have complained that they have stayed at home for the notices do not specify when the attendance will occur on the day. For this reason, we submit that all notices of entry should specify a two hour period of time in which attendances will occur.

Recommendations:

- ***A cap of three private attendances per week or one "open for inspection" and two private attendances for the purpose of showing prospective buyers or lettors into the property.***

[4] See: Higgerson v Ricco [2014] VCAT 1214; Hargans v Ronchetti [2015] VCAT 1779.

- ***Tenants to be compensated for additional attendances at the rate of the daily rent per attendance for their loss of the quiet enjoyment.***
- ***For written notice of entry to require at least 72 hours notice in advance, with the exception of reasons listed under sections 86(1)(c) and 86(1)(e) which would require the current 24 hours notice.***
- ***For notices of entry to specify a two hour period of time during which attendances will occur.***

End of a tenancy

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

Under section 100(1)(a), the *Residential Tenancies Act 2010* (NSW) allows for early termination of a fixed term tenancy without compensation to the landlord where the tenant has been offered social housing. We support and recommend a similar provision to be included in the Victorian Act.

Recommendations:

- ***That the Act be amended to allow tenants serve a reduced notice of intention to vacate in a fixed term lease, where they have been offered social housing.***

28 For what reasons should a landlord be permitted to end a tenancy, and what notice periods should a tenant be given?

29 For what reasons should a tenant be permitted to end a tenancy, and what notice periods should a landlord be given?

We refer to our lengthy submissions in this area in reply to the Issues Paper on Security of Tenure.

32 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?

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

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

We refer back to question 11, and the issue of agents providing authorities at the start of the tenancy to substantiate the charges they would otherwise pass on to the landlord where a tenant breaks a lease.

While the Act includes requirements to mitigate loss under section 211(e), the provision is hidden in the Act and it is often less than obvious to landlords and agents that they have a duty to mitigate. An express section to address breaking fixed term leases, with examples of ways to mitigate loss, would assist landlords and agents with understanding this area of the

law and prevent inflated claims. Such a section should include an express provision about mitigation and examples of what may constitute mitigation.

Similarly, many landlords and agents do not understand that "rent" as defined in the Act ends after the tenant moves out, and any money for the period while the property is empty is compensation. This has led to tenants believing they are responsible for paying "rent" in a property until a new tenant is found, when this may not necessarily be the case if the agent has failed to mitigate the loss. Unfortunately, unscrupulous agents may continue taking money from the outgoing tenant without making any or minimal efforts to secure a new tenant. In one particular case, an international student continued to pay monthly "rent" for 7-8 months while the agent claimed they could not find a new tenant for the property. A section on breaking a fixed term lease could also address this issue, and state that compensation will not be ordered if the loss could be avoided.

With respect to the specific family violence provisions under the Act, there is an emphasis on final orders, particularly under sections 233A to 233D inclusive. However, an interim order that excludes a tenant from the property can take more than 3 months to resolve (if contested), during which time the excluded person would be committing a criminal offence for attending the property and yet is ostensibly still responsible for paying rent. Understandably, most excluded tenants often wish to be removed from the lease and have their bond returned as soon as possible. Even where interim orders do not eventuate into final orders, there is often little chance of the tenants living together in the future. Where tenants do choose to continue to live together after the interim order expires, they will simply refrain from making an application to VCAT.

While section 234 allows for the reduction of fixed term tenancies under an interim order, we note that the powers regarding determining cotenant liability for compensation and bond are only available under section 233C and these are matters that should be dealt with in a timely manner together in one hearing. The Act should therefore be reformed to apply to all intervention orders, regardless of whether they are at the final or interim stages.

Recommendations:

- ***An express provision dealing with compensation for ending a fixed term lease early, including sub-sections on duty to mitigate loss, and that tenants may be required to pay compensation for loss of rent, but are not required to continue to pay rent on an ongoing basis.***
- ***Sections 233A to 233D inclusive to apply to both interim orders as well as final orders.***

Conduct of agents

37 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?

Unfortunately, where both agents involved, despite the fiduciary relationship between landlord and agent, VCAT has been reluctant to hold landlords responsible for agent conduct, despite the agent holding a general authority to act for the landlord. In many cases, the agent has been responsible for the wrongdoing with obtaining proper instructions from the landlord, and in many cases, the landlord is not even aware of the wrongdoing. Unfortunately, due to privity of contract, the agent is not able to be held directly responsible by the tenant, and they must pursue the landlord.

We have had numerous cases with agents engaging in misleading and deceptive conduct, breaching penalty provisions under the Act, and failing in their obligations under the Act. In some cases, the landlord has later changed agents and the new agents (and the landlord) disavow any responsibility or knowledge of the previous agent's actions. Even where landlords maintain the same agent, tenants complain of property managers changing every few months, and that previous promises or concerns raised with past property managers are not passed on within the company.

For these reasons, there should be a power to hold real estate agent companies directly responsible for breaches of the Act, and for VCAT to order compensation be paid by agents rather than the landlord. We believe this will promote compliance and knowledge of the law by agents who are in a much more authoritative position than private landlords, and also address systematic issues where agents may be breaching the Act across multiple tenancies they manage. Holding agents directly responsible will also encourage agents to keep better file notes where conduct has been a result of the landlord failing to act or meet their obligations under the Act. Similarly, penalties should also apply to agents who are found to have breached those sections where Consumer Affairs Victoria may take action. We note that similar provisions exist in the Civil Procedure Act 2010 (Vic) that allow legal representatives to be held directly responsible for conduct that would contravene the overarching obligations or if they assist a client in contravening their obligations.

In the alternative, we submit there needs to be an express provision that a landlord will be responsible for all actions of their agents where a general authority to act has been provided. At the moment, what should occur is that compensation is paid by the landlord, and then the landlord can commence legal proceedings against their agents for providing subpar services. In practice, numerous Tribunal Members have been reluctant to make orders against the landlord where they have no knowledge of the wrongdoing by their agents, presumably because they felt the result to be unjust toward the landlord. However, this means the tenants are denied compensatory relief, and it is unfair and often impossible

for tenants to take the burden of ensuring that adequate instructions have been taken from the landlord by the agent.

We also note that many agents attend VCAT without the landlord, and unless there is a written decision, the landlord may never know about the agents' wrongdoing on their behalf.

Recommendations:

- ***That agents may be held directly responsible where they have caused breaches or contraventions of the Act, and they may be ordered to pay compensation to the tenant.***
- ***In the alternative, that an express provision holding landlords responsible for all conduct by the real estate agents, after they have given the agents an authority to act on their behalf with respect to the property.***

Cotenancy matters

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

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

34 Are there any issues in relation to other rights and responsibilities that occur before, during, or at the end of a tenancy not discussed in this paper that should be considered in this Review?

As outlined in our previous submissions, especially in our Laying the Groundwork submission, the increase of rental prices has led to an increase in the number of people in shared households. Unfortunately, this is an area of law that is particularly difficult to navigate, especially when agreements are contained in informal written documents or purely verbal. It can be difficult for all parties to understand whether their obligations fall under the Act at all, and if so, whether they're tenants, rooming house residents or sublettors.

Given the changing circumstances of renters, we submit that some cotenancy disputes should fall under VCAT's jurisdiction. In particular, we refer to the law in New South Wales, and sections 101 and 174 under the *Residential Tenancies Act 2010* (NSW) which respectively provides for the termination of a fixed term tenancy by individual cotenants and a repayment of bond to cotenants. Terminations and bonds are some of the most common problems encountered in cotenancies; and especially where there are ongoing conflicts between tenants or even violence and safety matters, it is unfair to bind parties to tenancy agreements that may lead to the situation escalating. Nor should tenants be required to apply for intervention orders, costing the state financial resources in an already overrun system, especially if violence can be prevented by parties leaving a property and at minimal financial loss to those involved. We therefore submit that Victoria should adopt similar provisions to the ones currently in place in New South Wales.

We submit that most licensees should also fall under the current Act and therefore the jurisdiction of VCAT. We note that the difference in rights between licensees and subtenants are significant, but legally, these rights may be decided over something as arbitrary as a lock on the door, or how many others live at the property (to meet the definition of a rooming house resident). We propose that where a person regards a property or a room as their primary place of residence and pay rent, they should be entitled to the same rights as subtenants or residents under the Act.

If the law were reformed in such a way, we submit that laws with respect to subletting would also need to be changed to ensure that tenants could not be evicted for subletting part of a house. Section 253 notices to vacate under the Act should only apply where a

whole sublet or assignments apply, and not when only a partial sublet – such as a single room – occurs[5]. This would effectively restore the tenant's ability to take on a licensee-like housemate at the property without requiring the landlord's consent, which can be crucial when the process for agents and landlords to approve new tenants is often protracted.

Lastly, the process for assignments is unclear, especially where cotenants are involved, and has been the cause of many disputes between cotenants and landlords. The industry standard seems to regard the signing of a bond transfer form as an assignment. However, we have encountered several cases where parties disagree about how the bond is to be paid but agree the assignment should occur. Timeliness is often crucial to shared household assignments as many cannot cover the full rent without an incoming tenant, and outgoing tenants are keen to end their legal liability with the property as soon as possible. For these reasons, we submit that a prescribed form for assignments is necessary that could be produced and distributed through Consumer Affairs Victoria.

Recommendations:

- ***Individual tenants of joint tenancies to be able to issue a valid notice to vacate.***
- ***Bond disputes between cotenants to come under the jurisdiction of VCAT.***
- ***Licensees, where they are living in a property as their primary domestic residence and pay rent to a member of the household, to be legislated as subtenants regardless of whether they have exclusive possession.***
- ***Where the distinction between licensees and subtenants are eliminated, that section 253 notices to vacate for subletting should only apply to whole sublets, not partial sublets where a person lives in one room of the property.***
- ***A prescribed form for lease assignments to be produced by Consumer Affairs Victoria and be used as the industry standard.***

[5] See section 75 of Residential Tenancies Act 2010 (NSW) which makes a distinction between "whole" or "partial" subletting and assignments.

List of Recommendations

Before a tenancy

1. Tenancy database listings should only be made where outstanding debts have not been paid within 3 months of the order. Landlords and agents should not list tenants where tenants have entered and complied with payment plans.
2. A landlord and real estate agent database be established for tenants to search for information about prospective properties.
3. Landlords and agents be required to disclose and provide prospective tenants copies of any served notices or VCAT orders regarding the property in the previous 12 months.
4. Tenants to be allowed to serve section 240 notices of intention to vacate for successive similar breaches, even if such breaches occurred while the property was tenanted by another person.
5. Agents be required to provide copies of their authority to act, and any documents that specify charges to the landlord that will be made.
6. Requirement for the landlord's full name and service address be disclosed on the tenancy agreement.
7. Landlords and agents to serve notices and applications to the tenant via registered mail, and be required to make all reasonable attempts to notify the tenant of those notices and applications.

During a tenancy

8. That the Act be amended to allow tenants serve a reduced notice of intention to vacate in a fixed term lease, where they have been offered social housing.
9. An Ombudsman scheme be set up for real estate agents, as outlined in the submissions to the Estate Agents Act 1980 (Vic) review.
10. Agreements that include additional contractual provisions that go beyond statutory duties should be limited in use.
11. Pets should be allowed in rental properties by default.
12. Where the landlord has a reasonable belief they will require an additional bond amount for the pet, the landlord may make an application to VCAT.
13. Where landlords have a medical condition with respect to animals, the landlord may make an application to VCAT to be exempt from allowing certain pets in the property.
14. A cap of three private attendances per week or one "open for inspection" and two private attendances for the purpose of showing prospective buyers or lettors into the property.
15. Tenants to be compensated for additional attendances at the rate of the daily rent per attendance for their loss of the quiet enjoyment.

16. For written notice of entry to require at least 72 hours notice in advance, with the exception of reasons listed under sections 86(1)(c) and 86(1)(e) which would require the current 24 hours notice.
17. For notices of entry to specify a two hour period of time during which attendances will occur.

End of a tenancy

18. An express provision dealing with compensation for ending a fixed term lease early, including sub-sections on duty to mitigate loss, and that tenants may be required to pay compensation for loss of rent, but are not required to continue to pay rent on an ongoing basis.
19. Sections 233A to 233D inclusive to apply to both interim orders as well as final orders.
20. That agents may be held directly responsible where they have caused breaches or contraventions of the Act, and they may be ordered to pay compensation to the tenant.
21. In the alternative, that an express provision holding landlords responsible for all conduct by the real estate agents, after they have given the agents an authority to act on their behalf with respect to the property.

Cotenancy matters

22. Individual tenants of joint tenancies to be able to issue a valid notice to vacate.
23. Bond disputes between cotenants to come under the jurisdiction of VCAT.
24. Licensees, where they are living in a property as their primary domestic residence and pay rent to a member of the household, to be legislated as subtenants regardless of whether they have exclusive possession.
25. Where the distinction between licensees and subtenants are eliminated, that section 253 notices to vacate for subletting should only apply to whole sublets, not partial sublets where a person lives in one room of the property.
26. A prescribed form for lease assignments to be produced by Consumer Affairs Victoria and be used as the industry standard.