

7 July 2023

Legislative Council Legal and Social Issues Committee  
Parliament House  
Spring Street  
EAST MELBOURNE VIC 3002

Via: [rentalandhousinginquiry@parliament.vic.gov.au](mailto:rentalandhousinginquiry@parliament.vic.gov.au)

To Committee members,

**RE: INQUIRY INTO THE RENTAL AND HOUSING AFFORDABILITY  
CRISIS IN VICTORIA**

The Victorian Trades Hall Council (VTHC) welcomes the opportunity to make a submission to the Legislative Council Legal and Social Issues Committee's Inquiry into the rental and housing affordability crisis in Victoria.

VTHC was founded in 1856 and is the peak body for trade unions in Victoria. VTHC represents over 41 affiliate unions and more than 500,000 workers in the state. These workers are members of unions that reach into every industry across Victoria, many of which are renters experiencing the brunt of the cost-of-living crisis.

Housing is union business. Without secure, safe and appropriate housing, finding a job, keeping a job, and contributing to the community are next to impossible.

VTHC congratulates the Victorian Government on the significant reforms made in recent years to improve renters rights and the record investment made in social housing made through Victoria's big housing build.

There does however remain opportunities for further legislative reforms to level the playing field for renters, who face huge power imbalances in the housing market in the context of a cost-of-living crisis. VTHC makes recommendations below across many areas to address the rental and housing affordability crisis, including wages, taxation, renter protections, and rights for unhoused people in Victoria.

If you have any questions, please do not hesitate to get in touch with Politics and Research Lead, Ted Sussex, at [tsussex@vthc.org.au](mailto:tsussex@vthc.org.au).

Sincerely,



Luke Hilakari  
**Secretary**

Ref: LH:JK 31.134



**Luke Hilakari**  
Secretary

**Amanda Threlfall**  
Assistant Secretary

**Wilhelmina Stracke**  
Assistant Secretary

**Trades Hall**  
54 Victoria Street  
Carlton 3053

**Ph: 03 9659 3511**  
**[info@vthc.org.au](mailto:info@vthc.org.au)**  
**[weareunion.org.au](http://weareunion.org.au)**



**Victorian Trades Hall Council**  
**Submission to the Inquiry into the rental**  
**and housing affordability crisis in Victoria**

## BACKGROUND

Australia is currently in a rental crisis that is putting renters at risk of homelessness and housing insecurity. It is increasingly difficult to find affordable rent or secure a rental property. In Australia, only 0.8% of rental properties were available to rent in January 2023.<sup>1</sup> Melbourne experienced a record low rate of available rentals at only 1%.<sup>2</sup> Renters are reporting groups of up to a hundred people at rental inspections as demand soars.

Renters are also facing huge rent increases, plunging more and more renters into rental stress. Anglicare Victoria conducted an annual analysis of rental properties in March 2023 that found the number of affordable rentals in Melbourne and regional Victoria decreased by 44% and 40% respectively in just one year.<sup>3</sup> Only 100 properties across Victoria at any given time are affordable for people on income support, equating to less than 1% of all properties available for rent.<sup>4</sup>

The rental crisis is pushing workers with jobs into becoming the working poor, with huge proportions of their income spent on keeping a roof over their heads. In Victoria, there are 35,000 households currently in rental stress.<sup>5</sup> Advocacy group Everybody's Home found that in Victoria there are currently no affordable regions for essential workers earning award wages.<sup>6</sup>

The Victorian Government has taken concrete steps to begin to address the rental crisis faced by Victorian workers. Reforms including bans on rental bidding, setting caps on maximum bonds and rent in advance requirements have evened the playing field for renters seeking to find a new lease. New or improved minimum standards for door locks, ventilation, mould and dampness, electrical safety and heating are a significant increase in the rights renters have while inhabiting a rental, and an end to 'no specified reason' eviction notices have also given renters more certainty in their tenancies.

Victoria's record \$5.3billion investment in social housing will also create more than 10,000 new homes for Victorians who need them most. This historic investment in social housing provides an excellent launching point for the continued investment in housing, considering the expanded expertise developed within the public service.

Despite these reforms landlords continue to operate in an environment of incentives that detract from renters' access to secure, affordable housing. For example, landlords are incentivised by the market to keep properties vacant to push up rental prices in the area. Given demand far outstrips supply of housing, landlords are also better able to avoid their legal responsibilities to tenants without fear of repercussion. This is exacerbated by the unfairly high lease-breaking fees many renters continue to face.

---

<sup>1</sup> Malo, J. and Razaghi, T. (2023), "Pretty bleak for tenants': Rental vacancy rate at record low', Sydney Morning Herald, accessed: <https://www.smh.com.au/property/news/pretty-bleak-for-tenants-rental-vacancy-rate-at-record-low-20230202-p5chdr.html>

<sup>2</sup> Ibid.

<sup>3</sup> Kirkham, R. & Miles, D. (2023), 'Rental affordability decreases 44 per cent across Melbourne', Anglicare Victoria analysis reveals, ABC News, accessed: <https://www.abc.net.au/news/2023-04-27/anglicare-victoria-rental-affordability-snapshot-2023/102266418>

<sup>4</sup> Ibid.

<sup>5</sup> Ortolan, M. & Chvastek, N. (2023), 'Cost of living sees 35,000 Vic households struggle with rental stress, homelessness and overcrowding', ABC News, accessed: <https://www.abc.net.au/news/2023-02-01/rental-costs-rise-regional-victorians-experience-homelessness/101915344>

<sup>6</sup> AAP (2023), 'Here's who is being hit hardest by Australia's rental crisis', SBS News, accessed: <https://www.sbs.com.au/news/article/heres-who-is-being-hit-hardest-by-australias-rental-crisis/o4qqayzdw>

Reform is much needed to begin to rebalance the playing field of the rental market. These reforms are especially urgent during a rental crisis that overlaps with a cost-of-living crisis, when renters experience heightened risk of homelessness and poverty.

## **INVASIVE QUESTIONS ON RENTAL APPLICATIONS**

In the context of tightening rental markets, real estate agents have increasingly required referees on rental applications to answer invasive questions about applicants. Many employers are asked questions about an applicant's job performance, how their superannuation is paid, their history at a workplace and even employment prospects. These invasive questions go far beyond confirming that an applicant is employed so they can pay rent and there is no good reason for rental providers or their agents to collect this information.

These invasive questions afford far too much power to an employer to affect the lives of employees who are renters. If a worker has a dispute with their employer, their employer's reference can have serious impacts on the applicant's housing prospects.

As VTHC Secretary Luke Hilakari said: "It gives the employer way too much power over someone else's life. If that boss has an issue with that worker, or they have just had a bad week and gave a negative review, that person isn't getting a house."<sup>7</sup>

Both the renters' applications and employers' references are collected in centralised rental application portals. Given recent Harcourts and RealtyAssist data breaches, there is a real demonstrated risk to the privacy of rental applicants. Yet applicants do not get a choice which portal they use to apply for a specific property and must accept the privacy practices, no matter how inadequate, of whichever portal the agent chooses. Senior Research Fellow at the University of New South Wales's City Futures Research Centre, Dr Chris Martin, argues that the requirement to provide excessive personal information "with ...not a whole lot of purpose behind it" both obstructs access to housing and exposes applicants to security risks. Dr Martin says the rental sector needs to rebalance the "asymmetric" power dynamics between landlords and tenants.

In Victoria the law only provides certain safeguards on permissible information requested by a rental provider or their agent in the application process:

- If the applicant has previously been involved in legal action or dispute with a rental provider
- Questions about the applicant's bond history
- For credit card or bank statements that contain the applicant's daily transactions
- Any information about you the applicant that could be discriminatory, under Section 6 of the Equal Opportunity Act 2010, unless written reason why the information is required has been provided.

Despite the above, invasive questions still routinely get asked by rental providers in the application process. In its current form, the Residential Tenancies Act 1997 does not go far

---

<sup>7</sup> Touma, F (2022), 'Employer calls for changes to Victoria's rental laws after receiving 'invasive' questions from agent', The Guardian, accessed: <https://www.theguardian.com/australia-news/2022/aug/03/employer-calls-for-changes-to-victorias-rental-laws-after-receiving-invasive-questions-from-agent>

enough to protect rental applicants from their referees being asked unnecessary personal questions by rental providers.

The Victorian Government must amend Section 30C in the Residential Tenancies Act 1997 to restrict questions that rental providers may ask a rental applicant or their referees in the course of an application process.

Permissible questions that rental providers ask employers about an applicant need to be limited to confirmation of employment and income, and nothing else.

**Recommendation 1:** Amend Section 30C in the Residential Tenancies Act 1997 to restrict questions that rental providers may ask a rental applicant or their referees in the course of an application process.

## **TAXES ON VACANT HOUSING**

The current tax on vacant houses that are not made available for tenancy should be expanded.

Vacant residential land tax applies to homes in inner and middle Melbourne that were vacant for more than six months in the preceding calendar year. This annual tax is set at 1% of the capital improved value (CIV) of taxable land. For example, if a vacant home has a CIV of \$500,000, the tax will be \$5000.

The number of vacant residential properties is difficult to measure, as it relies on self-reporting by owners. However, in 2019, Prosper's tenth analysis of vacant land and housing in Melbourne found that 69,004, or 4.1%, of homes were likely vacant. This is double the 2% of properties advertised for rent at the time. This number of empty or underutilised properties could house most of the 80,000 people on Victoria's public housing waiting list.<sup>8</sup>

Failing to inform the State Revenue Office that you own vacant residential property can make a homeowner liable for penalty tax.

To increase the supply of housing in the private rental market, as well as discourage landlords from hoarding in order to inflate the price of housing, the tax should be expanded to further lower these perverse incentives.

As part of this expansion, the Victorian Government should also explore methods to automate this tax to ensure the highest level of compliance. Relying on self-reporting by landlords is problematic, given their financial interests to evade taxes such as these.

**Recommendation 2:** Increase Vacant Land Tax to all LGAs through the Local Government Act 2010.

**Recommendation 3:** Explore methods to automate Vacant Land Tax to ensure the highest level of compliance.

---

<sup>8</sup> Prosper Australia (2021), 'Speculative Vacancies 10: A Persistent Puzzle: The study of Melbourne's vacant land and housing', Prosper Australia, accessed: [https://www.prosper.org.au/wp-content/uploads/2021/01/Prosper\\_SpeculativeVacancies\\_FINAL\\_web23.pdf](https://www.prosper.org.au/wp-content/uploads/2021/01/Prosper_SpeculativeVacancies_FINAL_web23.pdf)

## EXCESSIVE LEASE-BREAKING FEES

The Victorian Government should amend the Residential Tenancies Act to limit the cost for tenants who need to break their fixed-term tenancy agreement.

Renters need to break their lease for many reasons. Even in cases of family violence and financial hardship, the Residential Tenancies Act does not provide a right to end a lease, only the opportunity to apply to the Tribunal to end or amend the lease.

If there are costs that the landlord has to cover as a result of a tenant breaking a lease, the tenant breaking the fixed term lease is liable for those costs as compensation. These are known as 'lease-break fees'. While they are not specifically defined in legislation, these costs might include the remaining rent for the rest of the fixed term, advertising fees or fees to re-let the property. If a renter needs to break their lease in the first month of a 12-month tenancy because of a sudden change in circumstances, they could be liable for up to 11 months' rent plus advertising fees. This is excessive and unfair given it is out of the hands of the renter how soon the property is re-let.

While the Act states that lease-breaking costs should be 'reasonable', it does not define exactly what reasonable costs are. If the renter and the landlord are not able to agree what is reasonable, they can apply to VCAT to make the decision for them. At VCAT, there is no guarantee that the renter's liability for compensation can be reduced. This provides no useful basis for the renter to dispute lease-breaking costs.

The Victorian Government must amend the Residential Tenancies Act to specify a limit to lease-breaking fees that make it fairer for renters.

Fees for renters breaking a fixed term lease should add up to no more than 8 weeks' rent, comprised of:

- a letting fee equivalent to two weeks' rent
- a lease break fee equivalent to two weeks' rent
- up to four weeks' rent to cover lost rent while the property is vacant. In the event that the property is re-let sooner than four weeks, this amount should be reduced to reflect the time the property was vacant (i.e. if the property was only vacant one week, the tenant would only be liable for one week's rent).

Provisions should also be put in place for renters experiencing severe financial hardship or personal/family violence to reduce their financial liability even further.

**Recommendation 4:** Amend the Residential Tenancies Act to define limits for lease-break fees, creating a cap on lease-break fees at the equivalent of 8 weeks' rent.

## RENTER PROTECTIONS

Renters in Victoria need stronger protections against adverse action when they defend their rights.

The current system is not working. VCAT members do not specialise in laws regarding residential tenancies as they see matters for disputes relating to many things, from

construction disputes, planning permits, and even legal guardianship. As a result of this lack of specialisation the rights of tenants are undermined through inconsistent decisions that engender a lack of confidence in our legal processes. This is not fair and erodes the integrity of the Residential Tenancies Act.

That is why VTHC supports recommendations to establish and authorise a Residential Tenancies Ombudsman to investigate and apply penalties for breaches to Tenancy law. The Ombudsman should have authority to apply and enforce penalties to real estate agencies, their branches or franchises and real estate agents found in breach of regulations.

In addition, the rights of tenants are undermined when, after taking action to defend their rights through VCAT or Consumer Affairs Victoria, renters are subjected to adverse action by a current or prospective landlord of leasing agent.

The Victorian Government should legislate protections for tenants exercising their legal rights under the Residential Tenancies Act against adverse action by landlords or real estate agents. This includes protection of the right to lodge a complaint with VCAT or Consumer Affairs against adverse action and should apply both during a tenancy as well as in the application for a tenancy.

Too many renters are fearful that landlords and real estate agents will not renew a lease or will refuse to accept a future tenancy application if they have a record of enforcing their legal rights as a renter. Renters must be empowered to defend their rights with adverse action protections.

Finally, renters also need further protections on the cost of renting to begin to counteract the power imbalance that landlords use to seek rents. While there are provisions in the Residential Tenancies Act around reasonable rent increases, this is open to wide interpretation by VCAT members with no expertise in housing. As a result, rent increases are functionally unregulated.

That is why new rules need to be put in place through amendments in the Residential Tenancies Act that effectively limit excessive rent increases mid tenancy agreement.

**Recommendation 5:** Establish and authorise a Residential Tenancies Ombudsman to investigate and apply penalties for breaches of Consumer, Industry and Tenancy law.

**Recommendation 6:** Implement new rules to limit rent increases during tenancy agreements.

**Recommendation 7:** Legislate to ban adverse action against renters during tenancy and in the rental application process on the basis of having enforced their rights through VCAT or Consumer Affairs Victoria.

## **RIGHT TO COOLING IN RENTALS**

Australian summers are already very hot, but climate change will make heatwaves even more dangerous. For renters who are elderly or have a disability, the risk of serious illness as a result of heat is high.

That is why the Victorian Government should establish minimum standards for cooling, in line with the current standards for heating, to minimise the health risks of extreme heat.

In January 2014, the Chief Health Officer reported that there were an estimated 167 excess deaths in Victoria during the heatwave.<sup>9</sup> This heatwave also saw a 7% increase in presentations to the emergency department at public hospitals. For people over 75, public emergency rooms saw a 23% increase in presentations, placing immense pressure on the public health system.<sup>10</sup> Extreme heat has serious consequences for many renters, including older renters or renters with disability or chronic illness.

The Residential Tenancies Act should require that landlords install a fixed cooling system in the main living area as a minimum standard.

The Victorian Government should act urgently to establish minimum standards for cooling in line with the standards for heating, to minimise or eliminate the health risks of extreme temperatures for renters.

**Recommendation 8:** Amend the Residential Tenancies Act to require landlords to provide a fixed cooling system in the main living area of any rental property as a minimum standard.

## RIGHT TO SHELTER

Homelessness is no longer a marginal issue. It increasingly impacts working class people, creating a growing proportion of working poor. Homelessness may include sleeping rough, sleeping in a car, couch surfing, boarding or rooming houses, and may also include houses that are severely over-crowded and unsafe. 122,494 people were estimated to be experiencing homelessness on Census night in 2021.<sup>11</sup> In Victoria, 47 people in every 10,000 were experiencing homelessness on Census night, a significant increase from 35 in 2006.<sup>12</sup>

Rough sleeping in particular is dangerous. As Launch Housing describes: “Regardless of individual circumstances, sleeping rough is extremely difficult, physically and mentally. Many have significant mental health difficulties linked to childhood trauma and victimisation, as well as acute and chronic physical health difficulties. Drug and alcohol problems persist as physical and mental health deteriorate. Premature ageing and

---

<sup>9</sup> Department of Health (2021), Research and reports - extreme heat and heatwaves, Victorian Government, accessed: <https://www.health.vic.gov.au/environmental-health/research-and-reports-extreme-heat-and-heatwaves>

<sup>10</sup> Department of Health (2014), The Health Impacts of the January 2014 Heatwave in Victoria, Victorian Government, accessed: [https://www.health.vic.gov.au/sites/default/files/migrated/files/collections/research-and-reports/t/the-health-impacts-of-the-january-2014-heatwave-in-victoria\\_october-2014---pdf.pdf](https://www.health.vic.gov.au/sites/default/files/migrated/files/collections/research-and-reports/t/the-health-impacts-of-the-january-2014-heatwave-in-victoria_october-2014---pdf.pdf), p. 13.

<sup>11</sup> ABS (2023), ‘Estimating Homelessness: Census’, Australian Bureau of Statistics, accessed: <https://www.abs.gov.au/statistics/people/housing/estimating-homelessness-census/latest-release>

<sup>12</sup> Ibid.



premature death are common. People sleeping rough are at heightened risk of violence and being killed.”<sup>13</sup>

On the night of the Census in 2021, 7,626 people across Australia were 'living in improvised dwellings, tents or sleeping out'.<sup>14</sup> However, Census data on rough sleeping is only available every five years. If the Victorian Government is to take seriously the issue of homelessness, and rough sleeping in particular, it must rectify this sparsity in data by performing a rough sleeper count at least monthly in Victoria.

The causes of homelessness are complex and interrelated. According to the 2016 Census, about 30% of homeless people were employed.<sup>15</sup> The compounding impacts of insecure work, low wages growth, an inadequate minimum wage and unaffordable housing has seen far too many people fall through the gaps. It is essential that every member of our society is afforded the fundamental right to a safe and secure home, regardless of circumstances. These risks are further exacerbated for LGBTIQ+ people, elderly people, disabled people, migrant workers (especially temporary visa holders) and women subjected to gendered and family violence. The issue of housing is therefore also an issue of justice.

The Victorian Government should therefore legislate a 'right to shelter' to make it the Victorian Government's responsibility to ensure every person in Victoria can access adequate shelter if they need it.

This should guarantee that every person has access to shelter that is safe, private, secure, hygienic, functional, not over-crowded, and with all necessary amenities. The right to shelter should also explicitly encompass people with disability in Victoria, to ensure that the safety of that shelter includes all necessary adjustments and equipment to meet the needs required by their disability.

This legislation could be modelled on a right to shelter in New York City, which kick-started accurate data gathering on the number of unhoused people in New York City. It drove massive investment in homelessness services.

**Recommendation 9:** Conduct a monthly rough sleeper count in Victoria to gather the scope of the issue and identify populations at risk of sleeping rough.

**Recommendation 10:** Legislate a Right to Shelter to create an obligation on the Victorian Government to ensure every person has access to shelter that is safe and appropriate.

---

<sup>13</sup> Launch Housing (2023), 'Rough Sleeping', Launch Housing, accessed:

<https://www.launchhousing.org.au/ending-homelessness/research-hub/rough-sleeping>

<sup>14</sup> Australian Bureau of Statistics (2023), 'Estimating Homelessness: Census', Australian Bureau of Statistics, accessed: <https://www.abs.gov.au/statistics/people/housing/estimating-homelessness-census/latest-release#homeless-operational-groups>

<sup>15</sup> Scutella, R. (2018), 'FactCheck Q&A: do 'about 30% of homeless people have a job'?', The Conversation, accessed: <https://theconversation.com/factcheck-qanda-do-about-30-of-homeless-people-have-a-job-95514>

## RECOMMENDATIONS

**Recommendation 1:** Amend Section 30C in the Residential Tenancies Act 1997 to restrict questions that rental providers may ask a rental applicant or their referees in the course of an application process.

**Recommendation 2:** Expand the vacant residential land tax to increase supply of housing.

**Recommendation 3:** Explore methods to automate Vacant Land Tax to ensure the highest level of compliance.

**Recommendation 4:** Amend the Residential Tenancies Act to define limits for lease-break fees, creating a cap on lease-break fees at the equivalent of 8 weeks' rent.

**Recommendation 5:** Establish and authorise a Residential Tenancies Ombudsman to investigate and apply penalties for breaches to Consumer, Industry and Tenancy law.

**Recommendation 6:** Implement new rules to limit rent increases during tenancy agreements.

**Recommendation 7:** Legislate to ban adverse action against renters during tenancy and in the rental application process on the basis of having enforced their rights through VCAT or Consumer Affairs Victoria.

**Recommendation 8:** Amend the Residential Tenancies Act to require landlords to provide a fixed cooling system in the main living area of any rental property as a minimum standard.

**Recommendation 9:** Conduct an annual rough sleeper count in Victoria to gather the scope of the issue and identify populations at risk of sleeping rough.

**Recommendation 10:** Legislate a Right to Shelter to create an obligation on the Victorian Government to ensure every person has access to shelter that is safe and appropriate.