

**Submission
No 585**

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

Organisation: Anika Legal

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

Re: Submission to the Inquiry into the Rental and Affordability Crisis in Victoria

Thank you for the opportunity to make this submission on the rental and affordability crisis in Victoria. We commend the Legislative Council Legal and Social Issues Committee for investigating the urgent and unrelenting situation Victorian renters are currently facing.

About us

Anika Legal is a community legal service, registered charity and social enterprise that provides free legal support to renters who are locked out of the justice system. Anika Legal's services provide online legal casework to Victorian renters, in the hope that renters' rights to safe, secure housing are realised without need for litigation.

In the last financial year, Anika assisted over 200 renters to maintain safe and secure housing. Our client base consists largely of renters who live in private rentals (90%), receive income support (50%) and are in rental stress (75%).

Our services focus on:

- Helping renters entering a tenancy to ensure it is up to standard, and take steps to prevent tenancy issues from arising in the future;
- Helping renters ask rental providers to carry out their duties to perform urgent and non-urgent repairs;
- Helping renters negotiate a settlement to bond disputes at VCAT; and
- Helping renters maintain safe housing by avoiding evictions on the basis of rental arrears.

Our responses to the Committee's terms of reference

Anika Legal's focus is squarely on representing Victorian renters. Our responses are based on observations of the systemic legal, economic and social barriers that Victorian renters face, drawn from our continued provision of legal services. As such, our submission is limited to terms of reference relevant to our client base:

- The adequacy of the rental system and its enforcement;
- The adequacy of regulation with regards to standards and conditions of rental housing;
- Options to address insecurity, availability and affordability issues facing Victorian renters;
- The experience of and impacts of all of the above on renters.

Increasing affordable housing stock for renters is vital, but addresses only part of the problem. Government has an equally important role to play in safeguarding the quality and cost of new and existing rental properties, so that all Victorian renters have access to a safe, secure and affordable home which supports their quality of life. Unless there is better regulation of rental homes and tenancies, Victorians will continue to live in rentals that are damaging to their health and cost more than they can afford, with the fear of being evicted at any point.

The adequacy of the rental system and its enforcement

Victoria's tenancy system relies on self-enforcement from renters, which doesn't work

Last year, Anika Legal released a report, 'Repairing Rental Homes: Why self enforcement fails tenants' (Annexure 1), which highlights the difficulties renters face when seeking repairs to residential properties despite legislative safeguards. The report explores the power imbalance involved where renters are required to assert their rights against estate agents and landlords.

Self enforcement of Victoria's tenancy laws - not just in relation to requesting repairs but in all aspects of residential tenancy - is a problem at the heart of our tenancy system. Self enforcement assumes that renters have the understanding and capacity to enforce their legal rights, and can overcome the significant power imbalance between themselves and their rental provider or real estate agent. This ignores the reality that many renters face multifaceted social and economic challenges which prevent them from being able to effectively advocate for themselves, and presumes that rental providers and real estate agents are always acting in good faith. We commonly see clients who have not asserted their rights for fear of retaliation from their rental provider or real estate agent, such as a rent increase or eviction notice.

A lack of regulation allows rental providers and real estate agents to intentionally or inadvertently mistreat renters

Victorian tenancy laws are not proactively enforced, leaving insufficient protection for renters where a rental provider or real estate agent has failed to adhere to them. Renters in Victoria have rights on paper but, in practice, these are rarely upheld without significant efforts from renters themselves or multiple complaints to Consumer Affairs in relation to a repeat perpetrator. This gap in effective regulation against misconduct from rental providers or real estate agents can lead to a laissez-faire approach to complying with tenancy laws on one end of the spectrum, and intentional exploitation of renters on the other.

In terms of misconduct that is inadvertent, or involves a failure to act:

- We regularly assist clients because rental providers or real estate agents do not understand or incorrectly apply tenancy laws. To date, there are agents who are unwilling to respond to requests in relation to the entitlements that were introduced in March 2021 due to a lack of comprehension of the new laws.
- Often, rental providers and real estate agents are unable or unwilling to communicate proactively or effectively with renters, resulting in a heightened risk of disputes. A common complaint we hear from our client base is that rental providers or agents simply ignore their requests for repairs.

In terms of misconduct that is deliberately exploitative:

- Some of our clients have reported that rental providers or their agents have used intimidatory tactics to coerce them out of asserting their rights as renters, for example:
 - threatening litigation, eviction or blacklisting of the renter without cause;
 - submitting a bond claim to VCAT with little or no evidence to force renters to give up some or all of their bond;
 - issuing a notice to vacate, then not following the reason given for the notice. For instance, we sometimes see renters asked to vacate so that the rental provider can move into the property, only for the property to be returned to the rental market.
- This type of conduct can be particularly threatening for renters who are most in need of protection, for example:
 - Renters who do not have Australian permanent residency or citizenship are in fear that litigation will put their visa status in jeopardy; or
 - Renters with multiple dependents who cannot afford to be at risk of homelessness if evicted from their rental property.

Compounding these instances of poor conduct, existing enforcement mechanisms fall short. For example:

- Delays at VCAT discourage renters from pursuing their rights to the point of a final, enforceable decision. In fact, rental providers sometimes rely on VCAT delays to coerce renters to drop or settle their claim, resulting in unfavourable outcomes for renters.
- The non-compliance register managed by Consumer Affairs Victoria (CAV) relies on matters proceeding to a VCAT order before an entry is made. This does not capture the full gamut of cases where renters were unwilling or unable to go to VCAT or see the matter all the way through to an order. Only 16 rental providers are listed on the register, suggesting it is being underused.

Rental providers and their agents will continue to treat renters poorly as long as there is a low risk that they will face negative consequences and there are no effective mechanisms to quickly address misconduct.

Recommendations

- Develop alternative mechanisms to regulating tenancy law that don't rely on renters self-enforcing their rights, for example:
 - CAV could conduct a minimum number of random inspections per year at premises where tenants have submitted, but neglected to pursue, a complaint with CAV, VCAT, Victorian Legal Aid, or other NGO tenancy services.
 - The Director of CAV should be provided with powers to investigate and prosecute serious complaints against rental providers and real estate agents.
 - More proactive application of civil penalties for rental providers and real estate agents who fail to perform their duties in a timely manner, that doesn't require enforcement by the renter.

The adequacy of regulation in regards to the standards and conditions of rental housing

Despite recent reforms, many renters are still living in homes that are unsafe, insecure or in need of repairs

There is a growing body of research to show that poor quality housing has a number of health and wellbeing impacts on individuals and communities which can consolidate inequities. For example, we concur with Better Renting's 2022 findings that renters are at an increased risk of anxiety, depression and isolation in winter because of a lack of energy-efficient heating, and that physical risks from cold homes can be as serious as cardiovascular and respiratory disease.

These findings are borne out through our rental repairs service. We regularly see matters which highlight that Victorian renters are making do in homes that are not up to standard and pose an unacceptable risk to their health, safety and security. Often there is a lack of action or refusal from the rental provider or agent to conduct serious or relatively straightforward repairs, such as:

- black mould;
- inadequate heating or cooling;
- dysfunctional and unsafe fixtures and fittings; and
- electrical faults.

The 2021 reforms to Victorian tenancy laws made small steps towards ensuring renting in Victoria fairer and safer, but there is a lot more to be done. There has been no proactive regulation of the updated Victorian rental standards, and the self-enforcement model means that renters who are experiencing disadvantage in other aspects of their lives are often those less equipped to advocate for better living conditions for themselves. Regularly, it is not until a legal service like Anika Legal is involved that rental providers or their agents take action on a renter's request for repairs.

Recommendations

- Provide greater funding to renter support services, to make sure Victorian renters have access to affordable casework and advocacy when they need it.
- Fund the Residential Tenancies Commissioner to undertake regular research into, and collect reliable data on, the quality of rental homes in Victoria, the impacts of poor quality homes on tenants, and the circumstances/demographics who are most at risk.
- Invest in partnerships between legal service providers so that the co-occurrence of separate legal issues, and their impacts on renters, can be captured.

Rising costs of living acutely affect renters, especially those already experiencing financial stress

Housing is an essential service – one that we can't afford to leave entirely to the free market without sturdy regulations and guardrails in place. Current tenancy laws, even when followed, don't give renters housing security or affordability. Victorian renters are still at risk of receiving rent increases they can't afford or being evicted for no reason other than the expiration of their fixed term lease.

Government must proactively protect access to secure and affordable rental housing in Victoria. Through initiatives that ensure tenants have the choice and can afford to stay in their rental homes for longer periods, we can shift the cultural narrative from one where rental properties are seen as investments, to one that upholds renters living in a quality home as a core human right.

Recommendations

- We concur with and support Better Renting's recommendation that a rental freeze or increase rental controls tied to wage growth or CPI ought to be implemented.
- Government should minimise incentives for investors to buy up housing stock without consideration of the renters who will occupy the property. For instance, negative gearing could be reduced, removed, or made contingent on rental providers' history of compliance with their obligations under the Victorian Residential Tenancies Act.
- Government should incentivise rental providers to provide open-ended, indefinite tenancies at the outset, removing renters from the possibility of having to move upon the expiration of every fixed term lease. Though the 2021 Residential Tenancies Act amendments included a capacity to allow tenants to enter into long term leases, which could provide renters with greater security, the amendment has not been promoted by real estate agents or CAV.

The experience of, and impacts of, the above issues on renters

All Victorians are deserving of a place to call home. As our Repairs Report suggests, access to a safe home that is in good repair, is affordable, and is secure is essential to the health and wellbeing of Victorians and our communities. A home is a core human right, and a home that promotes a decent quality of living is at the heart of sustained mental and physical health.

Our current housing crisis is affecting renters in a number of ways. Key issues that we see recurring through our services include:

- a number of health and wellbeing impacts due to houses being in poor condition, discussed above;
- financial stressors from sudden, radical increases in rental payments, bonds being unfairly withheld, and evictions leaving people to pay for short-term accommodation or the cost of moving homes at short notice;
- a proliferation of co-occurring legal issues. For example, we often see clients who are struggling to make rental payments incur debt from energy bills they cannot pay off due to their rentals being energy inefficient. When multiple setbacks like this turn into legal issues, they can become intractable without further legal, social or economic support, entrenching renters within a cycle of disadvantage.

Conclusion

Building a fairer, more accessible regulatory and legal system for renters is central to Anika's

vision. Anika Legal is committed to contributing to systemic responses that facilitate fairer outcomes and a better quality of life for all.

We thank the Committee again for inviting Anika Legal to submit to the inquiry, and welcome the opportunity to provide the Committee with further comment or clarification, including by way of hearing.

Regards,



Anika
Legal



Annexure: Repairs Report