

REIV's response to the Regulatory Impact Statement

Residential Tenancies
Regulations 2020

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REIV

INTRODUCTION

The Real Estate Institute of Victoria (REIV) is the peak professional association for the real estate industry in Victoria.

Our members specialise in all facets of real estate, including residential and commercial and industrial leasing and sales, auctions, business broking, buyers' agency, property management, owners' corporations and valuations.

REIV represents more than 80 per cent of these professions.

These businesses employ more than 15,000 people in Victoria in a market that handles around \$76 billion in transactions totalling 20 per cent of GSP.

GENERAL COMMENTS

The REIV's response is appropriately limited to the Regulatory Impact Statement. However we consider it essential that we again draw attention to the likely outcomes arising from the substantial amount of change brought about by the commencement of the Residential Tenancies (Amendment) Act 2018. The government's own 2017 'Heading for Home' Options Discussion Paper made the following observation:

"It is important to acknowledge that some of the risks of regulating the market could affect its function and the provision of affordable, secure, rental housing."

It would be superfluous to reiterate the six points under this observation, suffice to say that REIV is identifying the fulfilment of some of these observations in the lead-up to the introduction of the full suite of 139 changes to the legislation. That fulfilment is likely to accelerate in the lead-up to and after the commencement of the full suite of changes scheduled for 1 July 2020.

The REIV notes that two of the broad principles underlying the 1980 Act have been forgotten in the new Act as outlined in section 2.1.3 of the RIS. They are:

- To provide effective and speedy procedures for a rental provider's recovery of possession; and
- To provide a renter with security of tenure, bearing in mind the rental provider's rights as owner of the property.

Matters held 'in reserve'

The second dot point at the bottom of page 25 of the RIS notes that in some circumstances "*it is intended to hold the regulation-making power in 'reserve'*".

The REIV **QUESTIONS** whether an RIS will be required for those matters held in 'reserve' when those matters are moved out of the 'reserve' category. Alternatively, in the absence of any RIS, what assessment or consultation will be undertaken prior to the prescription in regulation.

Strategies employed during the making of the regulations

The REIV **SEEKS CLARIFICATION** on the reference in the third dot point on page 26 to "*pet-related damage*" as a problem area under rights and responsibilities of rental providers and renters. The REIV is unclear as to how the issue of pet-related damage has been addressed during the review.

There was, in REIV's opinion, a strategic decision made by government to bring forward the legislation relating to pets in rented premises to avoid any RIS process. This action means that the financial impact of pets allowed 'as of right' into rental premises did not form part of this RIS.

The REIV has been advised there will be no RIS relating to pets in rented premises and that the only regulatory consideration is the development of a form. The REIV **STRONGLY OPPOSES** any commencement of the pet's legislation until such time as there is an evaluation of the likely associated costs.

Matters not responded to

The REIV has limited its response to the RIS to the general rental provisions and has not commented on rooming house, or caravan parks and movable dwellings provisions.

RESPONSE TO THE RIS

5 Ensuring that renters are provided with safe and habitable living arrangements

5.1 Responsibilities for safety

The REIV **SUPPORTS IN PRINCIPLE ONLY PART OF** the proposed Regulation 13 and consequently Schedule 3 (Safety-related activities), and makes the following observations and recommendations (including posing some questions):

Bushfire prone area activities

- In the third paragraph on page 35 of the RIS, in the section “*The problem to be addressed*”, there is discussion on the cyclical cleaning of water tanks relating solely to household water; there is absolutely no discussion or explanation in the RIS on the matter of fire-fighting water tanks required in bushfire prone areas. Put simply, it is unnecessary, and in fact quite misleading, for the RIS to include commentary solely on the cleaning and maintenance of household water tanks and avoid any commentary on the cleaning and maintenance of fire-fighting water tanks.
- There has been no assessment in the RIS or during the preparation of the Regulations as to the need to clean the interior of a fire-fighting water tank. These tanks typically do not have the rise and fall in water levels associated with household use water tanks. The REIV **QUESTIONS** on what basis the cleaning of water tanks required for firefighting purposes is part of the safety responsibilities. The need to clean that type of water tank is quite different from the need to clean a household use water tank, the latter posing a significantly higher risk through the drinking of and contact with the water.
- The REIV **RECOMMENDS** that Clause 7(2) of Schedule 3 of the Regulations be amended to remove the words, “and cleaned as required”. This would still require the tank to be maintained in good working order.
- As previously advised when responding to the draft rental agreement, the REIV **QUESTIONS** how property managers are expected to know whether the property is in a bushfire prone area (and for that matter, what the BAL rating is – as this rating determines the need for a water tank).

Pool fence safety activities

- The REIV **RECOMMENDS** that the term “pool fence”, wherever appearing in regulations be replaced with “pool barrier”
- The last section on page 37 of the RIS relates to responsibilities of renters including giving written notice to the rental provider that a pool fence in the rented premises is not in working order. The REIV **RECOMMENDS** that there should be a clear statement that the renter is obligated (beyond the requirement of reg. 142 of the Building Regulations 2018) to ensure that the barrier is not made ineffective by (for example) propping open the gate or placing climbable objects adjacent to the barrier.

- The second paragraph on page 41 states that there “...are existing obligations on the owner or occupier...” regarding the maintenance of swimming pool fences. While that might be true, the introduction of additional responsibilities relating to swimming pool and spa barriers will place even greater costs on residential providers. There has been no discussion regarding or evaluation of this in the RIS. The REIV has consistently reported the additional obligation and disparity for rented premises compared with owner-occupied premises under these new provisions. The REIV **QUESTIONS** why the cost of this added regulatory burden was not evaluated in the RIS process.

Relocatable pool activities

- The REIV **RECOMMENDS** that Clause 6 of Schedule 3 be completely re-written. The two subclauses are not compatible. Subclause 1 states that the “... safety-related activity only applies if a relocatable pool is erected on the rented premises”, which tends to mean the relocatable pool is already erected. However, subclause 2 does not provide a safety-related activity but rather a limited prohibition on erecting a relocatable pool. It is difficult to understand how the safety-related activity (presumably being the limited prohibition) can apply when it only applies to an existing relocatable pool.
- The issue of relocatable pools is a difficult matter. The inclusion of a provision that enables a renter to erect a relocatable pool for up to one day places the rental provider at risk and arguably provides a breach of the rental agreement. The REIV strongly **RECOMMENDS** that the provision allowing a relocatable pool to be erected without consent for up to one day be removed. It is a nonsense to include this concession in the regulations, a provision which may encourage unlawful actions and which increases the risk to accidental drownings.

Electrical safety activities / Gas safety activities / Smoke alarm safety activities

- The REIV **QUESTIONS** the accuracy and assumptions of “Table 7: Costs of rental provider safety-related obligations” on page 40 of the RIS. Some of the calculations simply do not ‘add-up’.
- The REIV **QUESTIONS** the estimate of \$300 per annum in the last paragraph on page 40 of the RIS for the cost of safety checks. By way of example, electrical installation testing at \$150 per service every second year, gas installation testing at \$250 per service every second year and annual smoke alarm testing at \$120 equates to \$320 per annum at today’s rates which the REIV argues is grossly understated. These costs are likely to increase substantially over the life of the proposed Regulations far in excess of the \$300 stated (**Please note our commentary on our consultation with RAAV below**).
- The REIV **QUESTIONS** why the RIS tends to quote at the lower or current day level of cost to the residential rental provider, however applies the ‘life of the Regulations’ method of estimating any cost to renters.

- The REIV **QUESTIONS** the assumptions associated with the benefits outlined in “*Table 9: Benefits of electrical and gas appliance testing and smoke alarm checks*” on page 43 of the RIS. There is no rationale or supporting reference for the self-proclaimed assumption that “...currently 50 percent of rental properties do not have a working smoke alarm...”.
- What is also not included or taken into account in the estimated costs of the safety related activities is the additional administration costs associated with their arrangement, reporting and recording. It is not an overstatement to say that the additional regulatory burden that will be placed on property managers will be substantial. This seems to have been ignored, not just in the evaluation of these costs, but also across all additional regulatory requirements. The REIV **STRONGLY RECOMMENDS** that further investigation into, and evaluation of, the additional regulatory administration costs be undertaken prior to the introduction of the Regulations.
- The REIV **QUESTIONS** why there is no obligation on the renter to carry out the most basic of maintenance activities on smoke alarms. The commentary in the second last paragraph on page 39 of the RIS supports the spurious argument that renters should not be required to dust smoke alarms because they cannot interfere with them. The REIV **CONTENDS** that dusting is not interference. It is arguable that if a smoke alarm is dusty, it may become less effective. Presumably what is being put here is the proposition that the residential rental provider would have to arrange for the dusting of the smoke alarm, a proposition that seems ludicrous in our estimation. The REIV **RECOMMENDS** that the rental provider’s instructions under section 27C(2) may include a requirement for the renter to periodically dust a readily accessible smoke alarm and that this be included in the safety-related activities in Clause 3 of Schedule 3.
- The REIV **OBSERVES** there is no cost analysis regarding carbon monoxide alarm safety-related activities. The REIV notes that there might be a propensity for Rental Providers to remove these alarms rather than to be burdened with their maintenance. In the absence of any regulatory burden analysis or evaluation under this RIS the REIV **RECOMMENDS** Clause 4 of Schedule 3 be removed.

Consultation with the Registered Accommodation Association of Victoria Ltd

- The REIV notes that the RAAV has had significant input into the previous RIS for the Rooming House Minimum Standards in 2012.
- RAAV undertook a detailed analysis of the expected costs of implementing the Rooming House Minimum Standards. The RIS estimated that the additional costs would be slightly more than \$5 million whereas RAAV’s analysis showed that the true cost would be \$82 million. The Department of Housing accepted RAAV’s analysis which resulted in significant cost reductions and enabled the private rooming house sector to continue to provide affordable accommodation for vulnerable and disadvantaged persons.

- RAAV has produced an analysis of one component of the RIS which shows a similar outcome where the cost of the rental provider safety-related obligations for electrical installation testing, gas installation testing and smoke alarm testing would be \$235 million over the next 10 years. RAAV believes that this is grossly understated, and the cost could be up to \$1.4 billion (noted below) but most likely would be in the range of \$500 million to \$750 million.
- If RAAV's assumptions which are outlined below are correct, it brings into question the benefit that the amendments to the RTA will provide to the Victorian economy.
- Table 7 on page 40 of the RIS details the expected costs of rental provider safety-related obligations and it is noted that the costing is based on only 26% requiring electrical safety checks and 13% requiring gas safety checks and smoke alarm testing. The REIV agrees with RAAV that these figures seem very low. When the RIS was completed for the introduction of minimum standards in rooming houses, the figures arrived at were grossly understated as they assumed that most properties were already undertaking tests. The RAAV undertook a survey of members and they advised that this was not the case and that most were self-managing and did not do this prior to being included in the minimum standards.
- Similarly, the figures provided of 26% and 13% appear low, and no details of the research undertaken in the EY Real Estate Advisory Service Market Quotes report have been released, however the RAAV's evidence is that self-managing landlords (26% of the market) are unlikely to currently undertake this testing. Assuming that all properties require testing, the costs would increase as follows:

Year (from 1 July)	Number of premises subject to obligations	Electrical installation testing	Gas installation testing	Smoke alarm testing	TOTAL (NPV)
2020	182093	\$26,263,419	\$43,772,361	\$21,010,730	\$91,046,511
2021	327767	\$20,202,630	\$33,671,046	\$36,364,730	\$90,238,407
2022	435749	\$38,681,234	\$64,468,723	\$46,485,469	\$149,635,426
2023	517525	\$29,163,857	\$48,606,430	\$53,085,884	\$130,856,173
2024	581143	\$43,606,423	\$72,677,369	\$57,318,876	\$173,602,669
2025	632242	\$33,021,280	\$55,035,469	\$59,960,423	\$148,017,173
2026	674775	\$45,164,784	\$75,274,638	\$61,532,815	\$181,972,238
2027	711514	\$34,556,753	\$57,594,592	\$62,387,546	\$154,538,892
2028	744406	\$45,223,850	\$75,373,084	\$62,761,200	\$183,358,134
2029	774821	\$35,031,765	\$58,386,276	\$62,812,992	\$156,231,034
TOTAL (NPV)		\$350,916,000	\$584,859,992	\$523,720,669	\$1,459,496,661

While it is unlikely that 100% of properties are not currently being tested, it is likely that the actual figures would be somewhere between the original figure of \$235M and the above figure of \$1.4B, most likely in the middle range of \$500-750M, based on 26% self-managing landlords in addition to the above. The REIV **NOTES** the 4% discount applied each year to calculate NPV - this figure appears high in the current environment, and also does not allow for any increase in the cost of testing over the ten-year calculation period.

Additionally, there is no provision in the RIS for the cost of bringing the property up to standard following the gas or electrical safety check, only provision for the checks themselves. The RAAV's experience with the implementation of minimum standards in rooming houses demonstrated that when the initial checks were undertaken, plumbers and electricians were unwilling to provide a clearance on a property unless it was brought up to modern standards. For many properties, this includes not only the installation of safety switches, but in some cases, re-wiring of the entire property. Given the large number of residential properties covered by the new regulations, and the likely age of many properties, this is likely to be a significant cost for many landlords.

REIV also **RECOMMENDS** the Government capture two extra costs in the RIS:

- costs of upgrading electrical systems to modern standards
- cost to upgrade gas systems to modern standards

Of more concern however, is that the properties most likely to be affected by these changes are older, unrenovated properties, which tend to be in the lower, more affordable sector of the rental market. There is a greater risk that when a property is required to undergo these checks, the rental provider will either:

- undertake a full upgrade/renovation of the property and release at a higher rent, or
- sell the property to an owner/occupier who will not need to undertake checks.

In both these cases, the property will be removed from the lower cost affordable accommodation pool. Over time, this will exacerbate the current shortage of affordable housing for low income renters, putting further pressure on the state government to address market failure through providing more public housing.

With regard to the cost savings from testing outlined in Table 9 on page 43 of the RIS, there appears to be flawed information used to inflate this figure. The figures provided have calculated the number of deaths and injuries and cost of repairs in properties where smoke alarms were not operational and then assumed that there would be zero deaths, injuries or damage if smoke alarms were operational. Unfortunately there were no figures provided by the MFB of deaths and injuries occurring in properties with functional smoke alarms to allow an accurate calculation of comparable figures. As a minimum, the damage figures are incorrect, as while it could be argued that functional smoke alarms could prevent all injuries and deaths, a smoke alarm does not prevent a fire, and thus damage, as a smoke alarm only activates once a fire has occurred. It may minimise damage, but it will not eliminate it, and there are no figures for insurance claim data broken down by presence or not of smoke alarms to allow an accurate comparison.

Prescribed Safety Devices

- The REIV **SUPPORTS IN PRINCIPLE** Regulation 25 (Safety devices), however **STRONGLY RECOMMENDS** that “a pool fence” be replaced with “a pool barrier”. The barrier may include features other than a fence which are as essential to the integrity and efficacy of the barrier as the fence.

The REIV **SUPPORTS** Regulation 30 (Requirements for gas and electrical safety check record keeping).

5.2 Minimum standard of rental properties

The REIV **SUPPORTS IN PRINCIPLE** the proposed Regulation 23 (Efficiency rating systems).

The REIV **CANNOT CURRENTLY SUPPORT** proposed Regulation 24 (Ratings – residential rental provider’s liability for charges to non-complying appliances). This objection should be read in conjunction with our response to the REIV’s concerns over the minimum energy efficiency levels set by Regulation 29 (and Schedule 4)

The REIV **SUPPORTS IN PART** the proposed Regulation 29 and consequently Schedule 4 (Rental minimum standards). The REIV **DOES NOT SUPPORT** the minimum energy efficiency levels. The REIV makes the following observations and recommendations:

Locks

- The REIV notes that there is uncertainty around the requirement for deadlocks on external doors in premises where there is a security door or swipe card entry. There are a range of combinations applicable for entry into different types of rented premises. It would be non-sensical to require a deadlock to the entrance door of an apartment building. The use of the descriptor “*external entry doors*” is largely responsible for the lack of certainty. The REIV **RECOMMENDS** that Clause 1 of Schedule 4 be amended to clarify this requirement.

Vermin proof bins

- The REIV **SUPPORTS IN PRINCIPLE** this clause however we have raised our concerns regarding this requirement during the consultation phase. It is unclear what is required of rental providers in circumstances where bins are supplied by local government, particularly by some regional councils and shires, that might not be vermin proof. The REIV **RECOMMENDS** that this clause be amended to enable the use of a bin provided by the local council, or a vermin proof bin which is compatible with local council collection.

Kitchen facilities

- The REIV **SUPPORTS IN PRINCIPLE** this clause however **DOES NOT SUPPORT** paragraph (1)(d) on the basis that it is unreasonable to apply a standard across the board that is higher than what might currently exist and operate perfectly well within each rented premises. Stovetop burners come in a variety of configurations and utilising a simple number count does not work. The REIV **RECOMMENDS** that the paragraph be amended to simply read “a stovetop in good working order”.

Laundry facilities

- The REIV **SUPPORTS IN PRINCIPLE** this clause however **RECOMMENDS** that the word “reasonable” be removed.

Structural soundness

- The REIV **SUPPORTS IN PRINCIPLE** this clause noting that the fourth paragraph on page 44 of the RIS struggles to define the meaning of structural soundness. The reference to ABS data citing that 83.6 per cent of rental properties are structurally sound, would lead to the conclusion that more than 16 per cent are not structurally sound. It would be cause for substantial alarm if one in six rental properties was not structurally sound or ‘dilapidated’ or ‘uninhabitable’ as stated and this assertion, which cites research but not the reference or context, is doubtful. If it is to be believed that more than 16 per cent of rented premises are not structurally sound then this signals a massive failure by local government who have the power to take immediate and urgent action against such properties.
- The REIV notes also that structural failures or inadequacies in all buildings are not readily identifiable and this has been borne out through some balcony collapses and other examples. This clause as-written could require a rental provider to obtain a building inspection prior to every lease being entered into.
- The REIV **RECOMMENDS** that this clause be amended to read “the rented premises are to be weatherproof and structurally sound insofar as can be reasonably determined or is reasonably apparent.”

Heating

- The REIV **DOES NOT SUPPORT** this clause and notes the expansive commentary under 5.2.1 of the RIS which is presumably aimed at justifying the intent of government to apply a particular level of energy efficient products in all rental premises. The REIV raises some concern at the apparent alarmist use of research to paint a less than favourable picture of the Victorian rental stock.
 - The REIV raises its concern over the use of research findings in the first paragraph on page 46 of the RIS on the issue of energy efficiency standards. The WHO research cited at reference 57 states clearly that its focus was on insulation rather than heating.

- Additional research cited at reference 58 (Gasparrini, Guo Hashizume et al) refers to death rates in Australia from hot and cold exposure. An analysis of this research indicates that the research did not differentiate between indoor or outdoor deaths. This would be a very important factor to consider when seeking support for heating of premises.
- The same reference in the RIS also unfavourably compares Australia's result to Sweden while ignoring the vastly favourable comparison Australia holds against the UK, Canada, USA and Japan (just to mention a few).
- The REIV notes the estimated cost of \$1,540 to purchase and install a base level Reverse Cycle Air Conditioner. There is no evaluation of or commentary on the cost of:
 - recommended annual servicing; and
 - filter cleaning recommended every two months (presuming that the renter is not to do this – they are not required to dust smoke alarms); and
 - any replacement of the internal or external unit inside the life of the proposed regulations.
- The REIV **RECOMMENDS** that further evidence be provided on the financial impact of the new standards that looks beyond the purchase and installation costs. In the absence of clear evidence of the benefit this regulation should either be amended or omitted (depending on the findings).

5.3 Energy efficiency for end of life appliances

The REIV **SUPPORTS IN PRINCIPLE** Regulation 31 (Rating compliance for residential rental provider's appliances), however it refers the reader to our comments under 5.2 and **RECOMMENDS** that further evidence be provided on the financial impact of the new standards that looks beyond the purchase and installation costs. In the absence of clear evidence of the benefit this regulation should either be amended or omitted (depending on the findings).

The REIV **SUPPORTS** Regulation 32 (Amount – urgent repairs by renter).

The REIV **SUPPORTS IN PRINCIPLE** Regulation 33 (Compliance with efficiency systems for urgent repairs by renter), however it refers the reader to our comments under 5.2 and **RECOMMENDS** that further evidence be provided on the financial impact of the new standards that looks beyond the purchase and installation costs. In the absence of clear evidence of the benefit this regulation should either be amended or omitted (depending on the findings).

The REIV **SUPPORTS** Regulation 33 (Amount – application by renter to Tribunal for urgent repairs).

6 Enhancing the functioning of the rental market by improving clarity and certainty of rights and responsibilities between rental providers and renters

6.1 Compensation for sales inspections

The REIV **SUPPORTS** the proposed Regulation 35 (Compensation – sales inspections).

6.2 Mandatory disclosures

The REIV **SUPPORTS IN PRINCIPLE** the proposed Regulation 16 (Information which residential rental provider must disclose to rental applicant), but makes the following observations and recommendations:

- The REIV **CONTENDS** that section 16(1)(d) is unreasonable as written and that there should be no obligation to provide the electricity tariff details and all associated charges. The ‘escape clause’ is the phrase “...or where that information can be accessed”. Having provided the information under Regulations 16(1)(a) & (b) the obligation on sourcing that tariff and charges should fall on the renter. The discussion on embedded electricity networks on page 73 of the RIS only highlights the difficulty a rental applicant might have in identifying if there was an embedded network and how to find the relevant information. The provision of the advice in Regulations 16(1)(a) & (b) will negate that obscurity however it is unnecessary and overly onerous to require the information in Regulations 16(1)(c). The REIV **RECOMMENDS** that Regulation 16(1)(c) be deleted and that Regulation 16(1)(b) be amended to include not only the phone number but the website address of the provider.
- The REIV **RECOMMENDS** that Regulation 16(2)(b)(i) be amended to remove the word “use” or at least to amend it to read “*illegal use*”. Many of the drugs categorised as a drug of dependence have legitimate uses and are commonly prescribed. While the intent of the Regulation might be to only include premises wholly or mainly used as a ‘shooting-gallery’ in that context, the applicability of the definitions of ‘drug of dependence’ and ‘use’ obfuscate the whole of the Regulation and unfairly exposes the rental provider to action.
- The REIV **SEEKS CLARIFICATION** on the applicability of the term “assessed” in Regulation 16(2)(b)(iii) as it pertains to asbestos.

6.5 Modifications to rented premises

The REIV **SUPPORTS IN PRINCIPLE** the proposed Regulation 26 (Modifications which can be made without residential rental provider’s consent), but makes the following recommendation:

- The REIV **RECOMMENDS** that Regulation 26(a)(i) be amended to only allow a ‘reasonable’ number of picture hooks or screws for wall mounts, shelves or brackets.

The REIV **SUPPORTS** the proposed Regulation 27 (Prescribed practitioners).

The REIV **SUPPORTS** the proposed Regulation 28 (Modifications for which residential rental provider must not unreasonably refuse consent), but makes the following recommendations:

- The REIV **RECOMMENDS** that Regulation 28(a) be amended to specify a 'reasonable' number of picture hooks or screws for wall mounts, shelves or brackets.
- The REIV **RECOMMENDS** that Regulation 28(f) be amended to include the word 'suitably' before the words "qualified person". This would be consistent with the usage of the general requirements in the amending legislation.

6.7 Prescribed professional cleaning terms in rental agreements and fixed term rooming house agreements

The REIV **SUPPORTS IN PRINCIPLE** the proposed Regulation 12 (Professional cleaning), but makes the following observations and recommendation:

- There is a flaw in the notion of returning a property to a point-in-time condition, allowing for fair wear and tear. The introduction of the pet's 'as of right' clause means that damage from pet urine/faeces, and pet dander, which will not be visible (i.e. in the underlay and at the base of the carpet) cannot be rectified. There is a real danger that this type of damage may now be assessed as fair wear and tear. Professional cleaning provides a level of comfort in the treatment of carpets in premises where pets have been kept. This may not be known at the time of entering the lease, as pets may now be introduced mid-tenancy as-of-right. The REIV **RECOMMENDS** that the regulation be amended to include an exception for premises where pets are kept (for all or part of the tenancy).

6.8 Liabilities for utilities

The REIV **SUPPORTS** the proposed Regulation 22 (Utility charges).

6.9 Prohibited Terms

The REIV **SUPPORTS IN PRINCIPLE** the proposed Regulation 11 (Prohibited Terms), but makes the following observations and recommendations:

- Regulation 11(a) refers to the unreasonable limitation of the renter's activities. The use of the terminology around reasonableness and unreasonableness necessarily means that the limitations and scope will be left to be decided by the Victorian Civil and Administrative Tribunal. Therefore only after a number of cases are tested and decided will there be clarity for renters and residential rental providers, and this is a matter on which ongoing training will be required to be delivered to property managers and agents at a cost.

- Regulation 11(b) does not refer to the reasonableness test and seeks to prohibit terms that “...*indemnify the residential rental provider... from any conduct of the renter or visitor of the renter*”. The REIV refers the Department to the recent case where a balcony collapse occurred at a rented premises when it was clearly overloaded with equipment and people. The REIV **RECOMMENDS** the inclusion of the word ‘reasonable’ before the word conduct and considers that no regulation should support protection against any conduct.
- Regulation 11(e) prohibits the nomination of a third-party service provider. A total prohibition on such a nomination is impracticable in some circumstances such as where a property has a bulk hot water service and a particular service provider is necessary. The REIV **RECOMMENDS** that provision be made in the Regulation for just such an eventuality.

7 Ensuring that the regulated elements of residential tenancies reflects current community expectations

7.1 Maximum amount of bond

The REIV **DOES NOT SUPPORT** the proposed Regulation 17 (Amount of rent for which maximum bond does not apply), and makes the following observations and recommendations:

- The second paragraph on page 102 of the RIS provides the comment that at the time of making these regulations the median weekly rent amount in Melbourne was \$420. Taking the arguments within the RIS, this would propose a limit on the bond at double the median weekly rent or \$840. Instead the proposal is to set the limit to \$900 in recognition that the amount will apply for 10 years, being the life of the proposed Regulations.
- The REIV **OBSERVES** that the RIS tends to quote at the lower or current day level of cost to the residential rental provider, however applies the ‘life of the Regulations’ method of estimating any cost to renters such as bonds. This is not the only place in this response that this unbalanced methodology is noted.
- The REIV also notes that a state-wide application of double the median weekly rent amount unfairly impacts on regional Victoria where the median weekly rent amount is substantially lower.
- The REIV **RECOMMENDS** that Regulation 17 be amended to reflect a limit of \$850 for metropolitan Melbourne and \$760 for regional Victoria.

7.3 Rental applications

The REIV supported the introduction of the statement of information on our response to the Options Paper in 2017. At that time the REIV noted that we did “... *not consider any additional information is required in the proposed information statement. Agents and landlords are already aware of their obligations in relation to the Equal Opportunities Act and by including the proposed information statement as part of a prescribed application form (as outlined in Option 4.1) will ensure tenants are also informed of their rights...*”.

Consequently, the REIV **SUPPORTS IN PRINCIPLE** the proposed Regulation 14 (Statement of Information for Rental Applicants), but makes the following observations and recommendations:

- The Form 3 is very wordy; the REIV considers that the form has developed beyond the scope of the proposal in the Options Paper. The REIV **RECOMMENDS** that the two scenarios and examples in paragraphs 6 and 7 be omitted.
- The REIV occasionally deals with claims of unlawful discrimination by its members from persons or groups of persons who have been unsuccessful in a rental application. The REIV considers that the current paragraph 8 of Schedule 3 makes too broad a statement regarding unlawful discrimination which could lead to applicants or renters being inappropriately encouraged to lodge an application with VCAT because of a mistaken belief regarding discrimination. The REIV **STRONGLY RECOMMENDS** that paragraph 8 be amended by changing the words “If a rental provider or a real estate agent...” to “If you believe that a rental provider or estate agent...”
- The REIV considers that the current Form 3 is drafted with an imbalance that might tend to heighten the perception of unlawful discrimination. The REIV **STRONGLY RECOMMENDS** that the Form 3 include clear advice that the mere presence of a ‘protected characteristic’ does not of itself mean that a rental application will be successful and that an unsuccessful application by a person or group of persons with a ‘protected characteristic’ is not evidence in itself of unlawful discrimination.

7.4 Rental provider must not request prescribed information from renters.

The REIV notes that Section 30C of the Act and Regulation 15 now go far beyond the scope of limitations envisaged and put out for public consultation in the Options Paper. Initially, this was about providing a process to guard against “... a landlord [rental provider] or agent using personal information provided by an applicant in a tenancy application for a purpose other than to access the applicant’s suitability as a tenant [renter].” What we are now left with is a list of prohibited information requests which make it more difficult to assess the applicant’s suitability as a tenant [renter]. The REIV **DOES NOT SUPPORT** the proposed Regulation 15 (Information which residential rental provider must not require rental applicant to disclose) in its current form and contends that the prohibition on what can be asked for in a rental application has not been subject to appropriate consultation and has been introduced into legislation and into the proposed regulations by stealth. The REIV makes the following observations and recommendations:

- The REIV respectfully suggests that regulation 15(a) is mis-worded and should include the word “against” as follows:
 - “whether the applicant has previously taken legal action *against* or has had a dispute with...”
- The REIV **CONTENDS** that the use of the phrase in the second last paragraph on page 108 of the RIS, “...*may have a chilling effect on renters* ...” is hyperbole in the extreme and has no place in an RIS.
- The last sentence in the second last paragraph on page 108 of the RIS, suggests that questions about bond history of the applicant **may** be inappropriate. This is a ‘lukewarm’ stance on the issue of bond history. The REIV **STRONGLY ASSERTS** that not only is this an appropriate matter on which to seek information, but it is vital in the application process. Whether a person has a history of regular bond claims is a material fact for the rental provider to know. The REIV **RECOMMENDS** that Regulation 15(b) be amended to require the provision of information regarding successful claims against the bond.
- The REIV asserts it is anomalous that a secondary form of photo identification such as a passport is prohibited. Passports are regularly required as proof of identification in a vast array of administrative and bureaucratic applications. Typically, a single photo identification is unsatisfactory in these applications; the same should apply for rental applications. The REIV is currently working with the Victoria Police and Federal Police on matters relating to criminal activity in certain rented premises, such as drug houses and illegal brothels. Both law enforcement bodies have urged our Members to get multiple forms of proof of identification in that regard. The REIV **RECOMMENDS** that Regulation 15(c) be amended to allow for a request for a passport in circumstances where confirmation of identity is in question.

- The REIV asserts that the wording of Regulation 15(d) is obscure. Simply put, the phrase “...*which has not been redacted*” is unclear in its extent or intent. What may be redacted and to what extent is left open to interpretation. The REIV **RECOMMENDS** that Regulation 15(d) be amended to stipulate the allowable level and limitations of redaction. It is noted that there is no discussion on this matter in the RIS.
- The REIV **STRONGLY OPPOSES** Regulation 15(e) on the basis that the applicant’s residency status is a material fact for the rental provider to know. A person with limited residency status poses a risk to their ability to honour the term of the lease. The REIV **RECOMMENDS** that Regulation 15(e) be amended to remove the words “or residency status”.

7.5 Family and personal violence

The REIV **SUPPORTS** Regulation 36 (Matters – Tribunal Orders).

7.6 Goods left behind at end of tenancy

The REIV **SUPPORTS** Regulation 92 (Goods left behind).

8 Other minor proposals

The REIV **SUPPORTS** proposed Regulation 19 (Payment methods for rent).

The REIV makes no comment in relation to proposed Regulation 20 (Exemption from receipts for rent).

COMMENTS ON FORMS

Form 1 RESIDENTIAL RENTAL AGREEMENT OF NO MORE THAN 5 YEARS

- Item 6 should read 'Calendar Month' rather than just 'Month'.
- Item 7 should include the option of 'bank cheque' – suggest money order/bank cheque
- Item 13 the second tick-box is unnecessary – it is unlikely a condition report would be provided prior to the signing of the agreement
- Item 14 to be considered in conjunction with REIV's response to the RIS on safety-related activities (Electrical Safety)
- Item 15 to be considered in conjunction with REIV's response to the RIS on safety-related activities (Gas Safety)
- Item 16 to be considered in conjunction with REIV's response to the RIS on safety-related activities (Smoke Alarm)
- Item 17 the entire section needs to be written to make it clear that it only applies in circumstances where a carbon monoxide alarm is actually installed and is to be considered in conjunction with REIV's response to the RIS on safety-related activities (Carbon Monoxide Alarm)
- Item 18 to be considered in conjunction with REIV's response to the RIS on safety-related activities (Pool Fence – should actually refer to barrier as per the Building Regulations)
- Item 19 this entire section needs to be reviewed in the context of the REIV's response to the RIS on safety-related activities (Relocatable Pools)
- Item 20 to be considered in conjunction with REIV's response to the RIS on safety-related activities (Bushfire-prone Areas)
- Item 25 the last dot point should include a reference to this work being carried out by a suitably qualified person
- Item 29 the opening sentence should require the renter to notify the rental provider in writing
- Item 32 the fourth dot point should read "to take images or videos of the property for advertising for sale or rent

Form 2 RESIDENTIAL RENTAL AGREEMENT OF MORE THAN 5 YEARS

Refer to comments on the Form 1 where applicable.

Form 4 CONDITION REPORT – RENTED PREMISES

- Item 10 should read 'A telephone is connected/able to be connected to the rented premises'
- Item 18 this requirement may not apply for some time after the commencement of the Residential Tenancies Act
- Item 26 this provision is unacceptable. There should be no requirement for a renter to be present when the rental provider or their agent completes the form at the end of the rental agreement. This could cause conflict which is could give rise to an occupation health and safety issue

Form 5 NOTICE OF PROPOSED RENT INCREASE TO TENANT OF RENTED PREMISES

- Title the word 'proposed' should be removed from the title of the document
- Item 11 the method used to calculate rent increase [insert method used to calculate rent increase] should include the accepted forms of calculation

Form 6 NOTICE TO VACATE TO RENTER OF A RENTED PREMISES

- Item 1 second dot point should read 'if you believe it was not served properly' rather than 'given to you properly'
- Item 12 the REIV questions whether email is the correct terminology – suggest electronic communication for consistency