

I wish to comment briefly on two issues raised in the *Heading for Home Residential Tenancies Act Review: Options Discussion Paper*.

Option 5.4 – A ‘no pets’ clause is unenforceable if it is unreasonable

33. What criteria would be appropriate for VCAT to consider under option 5.4, and should any other criteria be considered?

I am in favour of a stand-alone option whereby a ‘no pets’ clause would be unenforceable if it is unreasonable. In this context, ‘unreasonable’ could constitute any prohibition on pets that the owner would not be subject to were he or she to occupy the rental property. ‘Reasonable’ prohibitions are exclusions beyond the owner’s control, such as council limits on pet numbers and body corporate bans on pets in some strata-title buildings. Problematic pets may be dealt with via the usual channels, for example, complaints lodged with the local council or the EPA. A tenant should not be required to pay an extra bond for having a pet. Any damage to a property can be dealt with via the existing bond system, and the owner has the option of taking a tenant to VCAT in order to seek compensation for damage, placing the onus on the owner to prove that the property has been damaged to the extent that payment is required for repairs. This option would prevent an owner from prohibiting a tenant from doing something that is lawful and socially acceptable – having a pet constitutes neither an alteration to a rental property nor an unlawful activity and therefore should not be subject to the scrutiny of the owner of a rental property.

4.4 Disclosures and representations prior to entering a tenancy

18. Should each of the items of information listed in option 4.6 warrant disclosure before entering into a tenancy agreement, and should any other material facts be considered?

Along with the information in option 4.6, I would add the address of the rental property owner and whether the owner him- or herself intends to carry out repairs on the property. Having an owner living in close proximity to his or her rental property can affect tenants as some owners are in a position to ‘police’ their property and monitor tenants’ movements. This may allow owners to unlawfully access a property as they know exactly when a tenant is not there. It may also lead an owner to report suspicions to an agent handling the property, who may then confront a tenant with accusations of improper conduct – for example, accusations that people live at the property who are not signatories to the lease when in fact those people are just visiting – adding to the stress experienced by tenants. Although this option would not solve issues to do with unlawful access to rental properties or unfounded accusations of improper conduct made against tenants, it would, along with other disclosures, provide a tenant with pertinent information to allow them to make an informed decision about whether to lease a property. It may also lead to fewer owners covertly policing properties as they would be stripped of any anonymity that might have otherwise allowed them to do this undetected.