

Real Estate Agents (Education) Regulations 2020

SUBMISSION BY TENANTS VICTORIA

NATALIE RUTHERFORD

Executive summary

Real estate agents play a key role in tenancies provided by private landlords. Training for them has been extremely limited and continuing professional development is not required. This submission responds to new rules on the minimum education standard for the industry.

Unprofessional or unethical conduct by agents, which may be due to ignorance of the law, creates difficulties for tenants and landlords. Highlighting the issue are the delays, non-responsiveness and inappropriate responses by agents over tenants' requests for rent reductions related to COVID-19.

The Residential Tenancies Act 1997 (RTA) is complex and has been expanded in the last decade to create long term leases and include specialist disability accommodation and protections for survivors of family violence. Further substantial amendments, due to take effect in March 2021, will change the law again.

The new education requirements are welcome but are not sufficient to protect tenants.

The extensive 'grandfathering' arrangements will not ensure that estate agents understand and fulfill their duties to landlords, agents and the community. Training is needed on understanding and identifying family violence and knowing how to access supports for survivors. The Estate Agents Act 1980 (ETA) must be changed to require continuous professional development as a registration requirement. To protect the public, and improve enforcement of estate agent regulation, a searchable public register should record any undertakings given by estate agents about their conduct.

Recommendations

Training units should include specific course content on family violence, identification, and the supports available to survivors.

Continuing professional development should be mandatory for real estate agents and their representatives.

Any enforceable undertakings given by estate agents should be published in a searchable register maintained by Consumer Affairs Victoria.

About Tenants Victoria

Tenants Victoria was founded more than 45 years ago to promote and protect the rights of tenants. We educate tenants about their rights and work for social change to improve conditions for all tenants.

Since its inception, Tenants Victoria has provided advice to individual tenants while working towards long-term change for the benefit of all tenants. In recent years Tenants Victoria was a leader of the Make Renting Fair campaign in 2018 which resulted in landmark amendments to the Residential Tenancies Act including minimum standards for all rental properties. These have been delayed by the COVID-19 pandemic.

We work in partnership with other community legal centres and housing sector organisations, and strategically with government to inform policy development and enhance service delivery. We have assisted more than half a million tenants since our inception.

Tenants Victoria works to improve the rights of public and private tenants, rooming house and caravan park residents. We also provide advice and assistance to those at risk of homelessness or suffering housing insecurity. We advocate for improvements to tenancy law and practice to support the nearly

one third of Victorians who are tenants at any one time. Our experience as a source of advice to tenants and to tenancy advocates puts Tenants Victoria in a position to see the effect of economic and policy changes over time on tenants in all types of residential accommodation. We seek to use this experience to establish a fair legal framework for tenancy in Victoria.

Background

Tenants Victoria has long had an interest in the role, behaviour and regulation of estate agents. Ethical and inappropriate conduct by estate agents is a key concern because tenants tell us about the negative impact of such conduct. As the Tenants Union of Victoria, we made a submission in 2017 to the Consumer Protection Law Review – Options paper 1 on Estate Agents¹ (see Appendix 1 below). It is pleasing that our concerns have been noted and this consideration has been reflected in the current Regulatory Impact Statement (RIS) on Estate Agents Education Regulations. We take this opportunity to provide further information and make suggestions for further improvements.

Real estate industry in Victoria

According to the Consumer Affairs 2018-19 annual report, 15,039 estate agents (individuals and businesses) were on the Business Licensing Authority register of estate agents in 2019² with a further 1,850 applications for licensing lodged in 2018-19. The RIS cites the industry's revenue as \$4.1 billion with expenses of \$2.0 billion – suggesting that it is a significant contributor to economic activity in Victoria.

Real estate agents' key role in housing

Real estate agents are key intermediaries in housing transactions, whether as auctioneers, sales agents, or property managers for landlords. A recent indicative Australian Bureau of Statistics snapshot finds that in 2017-18 29% of Victorians were renting³.

Australian Housing and Urban Research Institute (AHURI) research⁴ shows that the private rental sector is no longer predominantly singles and young people transitioning to home ownership, but increasingly includes older people and families with children. It reported that over a 30-year period affordability declined, and that a third of all private renters were renting for more than 10 years. Over 45% of such renters were in low to moderate income households, suggesting greater financial vulnerability.

Having a home provides security, comfort, and the ability to participate fully in society through education, work and community engagement. As we have seen during the COVID-19 pandemic, it is also a public and individual health requirement. Renting a property is not just a commercial transaction. Moving is costly and tenants frequently report their anxiety due to insecurity and the difficulty of house hunting in a competitive and unaffordable market. The intermediary role of agents becomes a critical, yet unpredictable, influence in accessing the essential services of housing.

¹ Cited in the RIS.

² Consumer Affairs Annual Report 2018/19 -p.11

³ ABS 4130.0 - Housing 4130.0 - Housing Occupancy and Costs, 2017-18 (released 17/07/2019)

⁴ Australian Housing and Urban Research Institute, Research and Policy bulletin, Issue 185, Feb 2015.

Limited consequences for inappropriate agent conduct

A real estate agency is charged with the responsibility to make sure that land dealings are lawful and ethical. As operating a business becomes more legally complex, it is vital that business operators and consumers are properly informed for the benefit of all parties.

Industry standards provide benefits for consumers and business operators and help ensure business confidence. In the case of tenancies, consequences of things going wrong can include a family being rendered homeless.

Agents play a critical role in managing tenants and in establishing the climate and sense of security of the home. While there are many active landlords there are also many investor landlords whose interest in the tenancy is limited to ensuring their asset is protected and the rent paid. As a result, the agent has wide discretion and power.

Save for regulatory intervention by Consumer Affairs Victoria⁵, or the Australian Competition and Consumer Commission (ACCC), agents are largely immune from tenant claims made directly against them⁶. While R9 of the Estate Agent (Professional Conduct) Regulations 2018 purports to capture unprofessional conduct, if the agent goes on to make the application to VCAT, there is really no consequence other than VCAT dismissing the claim⁷.

Benchmarking an appropriate standard of behaviour and an industry duty of care should also be welcomed by landlords. A search of published decisions by landlords against estate agents in relation to residential tenancies misconduct shows a dearth of cases. It indicates the difficulty of a landlord taking action against their letting agents for misconduct or losses.

There are few incidents of landlords acting against agents compared with actions against agents over sales issues. This may be because of the money involved, but also because of the likely oversight by lawyers and conveyancers.

The lack of consequences for agent behaviour necessitates a better education regime to ensure a meaningful minimum professional standard, that landlords are properly advised and that tenants, in turn, are assured that the agent is acting ethically and in accordance with their legal duties.

Objective and scope of review of real estate education regulations

The regulatory impact statement (RIS) for the *Estate Agents (Education) Regulations 2020* proposed to address the deficiency of knowledge among agents and their delegated representatives. Tenants Victoria views education as *one* of the cornerstones of a robust property market and ensuring consumer confidence, and more importantly, protections.

The other key elements are an equally robust approach to enforcement, regulation and balancing rights and powers.

Tenants Victoria wholeheartedly endorses the aims stated in the RIS: improving the reputation of the real estate industry, reducing risks to vulnerable tenants from substandard agents, and reducing disputes between consumers and agents.

⁵ <https://www.consumer.vic.gov.au/about-us/regulatory-approach-and-compliance-policy/our-compliance-policy>

⁶ *Hollis v Vabu Pty Ltd* [2001] HCA 44; 207 CLR 21; 75 ALJR 1356; 106 IR 80; 181 ALR 263 (9 August 2001)

⁷ s109(4) VCAT, while VCAT could Order remuneration if the agent of a party is responsible for the loss

The recognition of the imperfect market⁸ is also welcomed and consistent with Tenants Victoria's experience of unprofessional or unethical agent conduct despite good intentions of the landlord. It is Tenants Victoria's experience that good landlords will dismiss bad agents, and bad landlords will have their retainers terminated by good agents because they are detrimental to the agent's reputation. However, intransigent landlords can be empowered by unethical agents. The minimum standards and subsequent accountability are critical for this cohort. Further, the COVID-19 pandemic will continue to create the need for legislative changes, and mechanisms to avoid misleading or reckless conduct that injures both business suppliers and consumers.

Landlords engaging real estate agents

While not within the scope of the proposed RIS, Tenants Victoria would advocate for education around consumer law principles, specifically, including fair contract terms as a core subject rather than a potential elective. This applies to not only leases for tenants, but also the contract between landlords and agents.

Anecdotally, Tenants Victoria has often heard of landlords complaining about the conduct of their agent: this may include delay in communication, not passing on communication from the tenant in a timely manner, and failing to attend or inspect premises.

Usually these issues are not discovered until the tenant directly contacts the landlord.

As the contract between landlord and agent is not a prescribed form, it can contain a number of harsh or unfair terms such as exit fees, making it harder for the landlord to terminate it.

The consequence is that the tenant, and to an extent the landlord, is beholden to the agent, and that the character of the tenancy experience is as much affected by the quality and ethics of the agent as those of the landlord.

Role of real estate agents' representatives

As outlined in on page 20 of the RIS, it is critical to understand the role of licence holders and their representatives and the difference between these roles.

In Tenant Victoria's experience most residential tenancies are not directly managed by a qualified real estate agent. Rather, the rental is managed by the agent's representative.

If there is to be genuine change in industry conduct, agent's representatives need to be empowered and protected to bring about change if they see unethical practice occurring. This starts with education.

It is therefore a high priority that agent's representatives receive a rigorous education on their responsibilities and in other core areas such as sexual harassment and other worker and whistle-blower rights - important if they consider the landlord is acting unethically.

Unprofessional conduct by a representative conduct may result in them moving from agency to agency. In the absence of accountability this minority will continue to cause significant instability in the market despite better education, and undermine the objectives and investment proposed in the RIS.

⁸2.2 of RIS

These regulations must be accompanied by ongoing education requirements and improved regulation of agent representatives. Investment in the requirements to be an agent's representative is likely to produce a better service for the landlord, for the principal of the agency, and for the tenant.

Legislative changes require more education

Recent legislative changes affecting real estate agents have included amendments to support family violence survivors, the inception of long-term lease provisions, changes attendant on the National Disability Insurance Scheme that will mean more people with disability will rent independently, and the inclusion of Supported Disability Accommodation in the Residential Tenancies Act. Significant amendments were legislated in the Residential Tenancies Amendment Act 2018 (RTAA). When all the amendments take effect they will markedly alter requirements on real estate agents.

It is not yet clear how implementation of the amendments will occur. However, they will require considerable education of the real estate agent workforce. Our experience to date has not demonstrated that changes in law are readily understood and applied by agents. The difficulties with agents experienced by tenants during the COVID-19 pandemic described below do not auger well for the transition to the RTAA.

Growth in legal complexity

While the content of the core subjects is not within the remit the review, it is worth drawing attention to the issue of legal complexity and unqualified legal practice.⁹ The complexity of legal issues that may emerge in tenancies is increasing. Examples include: whether a premise is a rooming house, mortgagee intervention, potentially criminal conduct by the principals to be in contempt of an Order of the Tribunal, whether a decision by the landlord amounts to discrimination, whether the Tribunal has jurisdiction to hear a matter based on where the tenant lives¹⁰. As noted, the RTA has been amended to include coverage of Specialist Disability Accommodation¹¹ as well as the more complex long-term leases.

As part of this reform proper consideration is also needed about the scope and types of matters an agent's representative may deal with.

Dealing with vulnerable tenants – family violence

The role of the estate agent is particularly important when the tenant is vulnerable. A significant group who are vulnerable are those affected by family violence. Family violence¹² is the single biggest cause of homelessness in Victoria¹³. More than one third of women accessing homelessness services are fleeing family violence.

⁹ *Giurina v Deak & Ors* [2018] VSC 409 (27 July 2018) @ [143]-[148]

¹⁰ [Meringnag v Interstate Enterprises Pty Ltd \[2020\] VSCA 30 \(25 February 2020\)](#)

¹¹ Part 12A of the Residential Tenancies Dispute Resolution

¹² Family violence includes but isn't limited to: Physical violence, sexual assault and other sexually abusive behaviour; Economic abuse; Emotional and psychological abuse; Stalking; Kidnapping or deprivation of liberty; Damage to property or an animal (the victim doesn't have to own either); Behaviour by the person using violence that causes a child to be exposed to the effects of any of the above - ABS(a), 2009, Conceptual framework for family and domestic violence

¹³ Australian Government (2008) *The Road Home: A national approach to reducing homelessness*, White Paper, Department of Families, Housing, Community Services and Indigenous Affairs, Canberra

The critical importance of a secure and safe home has been recognised in the application of the recommendations made in 2016 by the Victorian Family Violence Royal Commission. These recommendations lead to new support mechanisms to keep survivors in their properties by removing perpetrators, installing safety measures, and changes that would to some degree protect victims from arrears or debts incurred by a perpetrator. An element of this work is the inception of the Family Violence Multi-Agency Risk Assessment and Management (MARAM) Framework to ensure services identify, assess and manage family violence risks.

Professional services, including real estate agents, can be a key contact for survivors. Understanding the nature of domestic violence, its effects and how it may manifest enables estate agents to support such tenants. Regrettably, without education, survivors will not be adequately considered by agents.

It is critical that agents are trained to identify, and appropriately manage tenancies affected by domestic violence. Facilitating communications and providing clarity of the law for all parties should be a community minimum standard. The situation of a person becoming homeless due to family violence or any other reason, should be treated as a form of health and crisis management that merits proper education.

Tenants Victoria recommends that the training units include specific course content on family violence, identification, and the supports available to survivors.

COVID-19 pandemic highlights pivotal role of agents

The COVID-19 pandemic has again demonstrated the pivotal role of agents in tenants' lives. To maintain homes in the face of the economic effects of the pandemic the Victorian Government halted rent increases and evictions due to COVID-19 related arrears. Tenants Victoria has seen an increase in landlords seeking to resume properties for occupation by themselves or family members, together with an increase in properties put up for sale or renovated during the pandemic. While these may be related to landlords' economic circumstances, they could also be a means to avoid the ban on evictions.

Tenants Victoria reached out to tenants visiting our website to gain an understanding of their experience during the pandemic. Initially, many tenants reported agents ignored social distancing, or concerns about vulnerability during inspections. Some agents asked tenants to leave the property during inspections and continued to conduct open houses despite the ban on these. Some agents even asked tenants to provide hand sanitiser for those inspecting the property.

Before the ban on rent increases and evictions began tenants reported considerable pressure by agents to continue to pay all their rent regardless of their circumstances. Such behaviour by agents did not cease with the implementation of the COVID-19 Emergency Measures (Omnibus) Act 2020 and regulations to enable rent reduction using Consumer Affairs Victoria and others. Tenants reported their experiences of seeking rent reduction through an online survey¹⁴. Many found the process stressful, with 34% getting no response or no reason for refusal of their request for help. In 12% of cases, the only reply was to offer to defer rent, potentially creating a large future debt. Many tenants were only able to begin serious discussions when Consumer Affairs Victoria became involved, and in some cases had to take their matter to VCAT for resolution.

¹⁴ Portrait of a Pandemic: A Survey of Tenant Experiences seeking Rent reduction, 6 June to 27 July 2020 with 374 respondents.

It is not clear how much of the difficulty tenants faced getting a response from their agents was due to the landlords or the agents themselves, noting that agent remuneration for property management is usually based on a percentage of rent collected.

See Appendix 2 (attached) for examples of unethical conduct by agents that tenants reported to us in a snapshot survey published in August 2020.

Legislated rental protection and agents' conduct

As noted in the previous section, in March 2020, the Victorian Government passed an omnibus bill amending, among other things, the Residential Tenancies Act 1997) to include numerous protections for tenants who may experience hardship as a result of the COVID-19 pandemic. These amendments came into effect on 29 March 2020 for 6 months, until 29 September 2020, and have been further extended until March 2021:

The measures include:

- A moratorium in relation to evictions due to rent arrears as a result of hardship due to COVID-19
- The creation of a new dispute resolution scheme run through Consumer Affairs Victoria (RTDS) to mediate select tenancy disputes regarding, among other things, rent reductions or deferrals due to COVID-19
- Right to apply to the Victorian Civil and Administrative Tribunal (VCAT) for rent reduction or deferral
- Rendering Notices to Vacate issued during this period invalid.

Since this law was passed, Tenants Victoria has received numerous complaints daily about real estate agent conduct in relation to the following:

- Agents pressing tenants for rental deferrals rather than reductions, resulting in tenants entering into unsustainable payment arrangements which will result in significant and unsustainable arrears at the conclusion of the arrangement
- Agents delaying response on applications for rent deferrals or reductions, again causing the accrual of unnecessary rental arrears
- Agents not advising tenants of their right to apply for a rent reduction or deferral to the new RTDS or through VCAT.

Examples of this conduct, recorded by our workers, are listed in Appendix 3 (attached).

Grandfathering

While it is expected that current agents and their representatives would receive special consideration and their previous experience taken into account, the regulation is too generous. It allows anyone who has been working as an agent or representative at any time in the previous 10 years, or has worked 2 years full time at any time in the previous 10 years before applying for recognition, to be registered, or anyone who has taken the previous course up to 5 years ago to be recognised, without completing further study.

This is unacceptable, in light of the many changes to the RTA¹⁵ noted above. It does not ensure that an individual starting work in a real estate agency would have a sufficiently broad understanding of the legal background of their work, nor their obligations to family violence survivors or vulnerable tenants to adequately perform their duties.

Recommendation: Continuing professional development should be mandatory for real estate agents and their representatives.

Raising the bar

Requirements of estate agents have changed since the 1997 RTA commenced. The 2018 RTAA has brought an increased focus on the consumer rights of the renter and attempted to address the power imbalance with the landlord, including through mandatory pre-disclosure, and improved electricity and gas safety provisions.

Misleading conduct and bad faith negotiation by agents have been common in tenants' reports to us. It is regrettable that further work to improve agent behaviour has not occurred to combat this.

In our 2017 submission to the Consumer Protection Law Issues Paper, we suggested that enforceable undertakings for an agent be publicly searchable, so all can see that enforcement has occurred - and have the effect of improving standards of agents and their compliance with the law over time. The model adopted by the ACCC for enforceable undertakings could be replicated¹⁶ for Victorian real estate agents and their representatives.

Tenants Victoria recommends that any undertakings given by estate agents be published in a searchable register maintained by Consumer Affairs Victoria.¹⁷

Implementation plan

The RIS notes that the proposed regulations begin on 21 October 2020, and that a transition period for the current training ends on 30 September 2021¹⁸.

However, there is no indication of how the preferred option will be implemented. There must be timely consultation with stakeholders, particularly education providers, so that the courses delivering the overdue education packages for agents and their representatives are ready as soon as possible.

Longer term reforms

While continuing professional development (CPD) is not within the scope of this review, the experiences in Western Australia and the Australian Capital Territory, as well as stakeholder feedback, suggest an inverse relationship between the level of training of agents and agents' representatives and the

¹⁵ Changes made to the RTA can be summarised as the inclusion of Specialist Disability Accommodation, changes due to NDIS, changes to give effect to the Family Violence Royal Commission, the COVID-19 Emergency Measures Act and the RTAA.

¹⁶ <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/about-the-enforceable-undertakings-register/>

¹⁷ Cf. For example as a matter of protecting the community, consumer confidence and integrity of the profession - <https://lsbc.vic.gov.au/register-disciplinary-action>

¹⁸ RIS – p71

incidence of consumer complaints. As such, this RIS assumes that as the level of training increases, the complaints made by consumers will decrease¹⁹.

In the light of the importance of real estate agents and changes in the regulatory schemes in which they operate, we urge that continuing professional development be required for all estate agents and representatives.

It is regrettable that the legislative change required for this education regime has not been made. Without a requirement for CPD, the full effect of the increased education requirements proposed by the preferred option will not be realised.

Response to specific question in RIS:

Do you agree or disagree with the arguments outlined in section 8.1.4 regarding the impact more qualifications will have on the number of qualified agents operating in Victoria?

Requiring agency representatives to engage in the prescribed Registered Training Organisation-based course will improve the value of the job. As with any other industry-based course, creating an industry requirement and standard has a cost, but also creates value for the industry and the accredited individual. It is difficult to speculate how changes in the housing market will affect the real estate agency industry specifically. If costs are passed on to consumers, it is doubtful the rental market will become more tenant friendly. Higher commissions to subsidise education costs would be a disincentive for landlords to use an agency to manage property.

Tenants Victoria would value having input into the industry expectations when formulating the key criteria for the following units:

CPPREP4121 - Establish landlord relationships
CPPREP4122 - Manage tenant relationships
CPPREP4123 - Manage tenancy
CPPREP4124 - End tenancy

In Tenants Victoria's view, substantial individual investment in education by an agent representative, in conjunction with better personal accountability mechanisms such as temporary and permanent bans for egregious conduct, will improve the incentive to stamp out unethical or sub-standard performance.

By analogy, in a legal practice the principal solicitor is responsible for themselves as well as those they supervise. If there is malpractice by a supervised lawyer, then both the principal and that individual may be subject to disciplinary actions and may be subject to disqualification from the profession. The threat of losing this qualification is significantly heightened by the investment of money and time in gaining it. Tenants Victoria believes that such a framework applied to the real estate agent industry would have a similar benefit.

¹⁹ RIS – p29

Appendix 1: Recommendations made by Tenants Victoria in 2017 to Consumer Protection Law Review – Options paper 1

- R1.** Property managers should be accredited, and training requirements must be adequately comprehensive.
- R2.** Legislate compulsory annual CPD for estate agents and agents' representatives, including compulsory units relating to property management.
- R3.** Outline clear roles and responsibilities for estate agents and representatives.
- R4.** Introduce a transparent and accessible complaints process through the establishment a real estate industry Ombudsman scheme to undertake dispute resolution for all consumers of estate agent services.
- R5.** The VCAT Act should be amended to provide a referral power from VCAT to the Consumer Affairs Victoria (CAV) Director where the Tribunal believes there has been professional misconduct.²⁰
- R6.** Any enforceable undertakings should be publicly accessible on the CAV website and should include a summary and a copy of the signed undertaking.
- R7.** A requirement for any communications from tenants (or other interested parties) to be properly documented and recorded

²⁰ A similar mechanism exists under VCAT Act, schedule 1, cl. 72. However, a preferable model is analogous to the powers of a Judge to refer poor conduct of a lawyer for disciplinary action to the Legal Services Commissioner; [Legal Services Commissioner v Rushford \[2012\] VSC 632 \(20 December 2012\)](#)

Portraits of a Pandemic

Dear Landlord, we need to talk about a rent reduction

18 August 2020

The Victorian Government introduced special measures to protect tenants who lost income due to the COVID-19 pandemic, effective from March 29, for six months.

Premier Daniel Andrews announced the measures with an expectation that landlords and tenants should have 'good faith' negotiations to benefit people experiencing rental stress due to the pandemic. The law ensures that tenants are protected from evictions if they fall behind on their rent and rental increases are banned. Tenants in dispute with their landlords over obtaining a rent reduction due to financial hardship from the pandemic are able to turn to mediation by accessing a new Residential Tenancy Dispute Resolution Scheme.

Renters who register their agreements with Consumer Affairs Victoria and obtain a reduction are also able to apply for up to \$2000 in a rent relief grant, administered through the Department of Health and Human Services. The rental assistance fund is worth \$80 million. Landlords who provide rent relief are also eligible for a 25% discount on their land tax and deferral of any remaining tax until March 2021.

Under the measures, tenants should ask their agent or landlord for a rent reduction. If they are unsuccessful in this negotiation, they can seek assistance from Consumer Affairs Victoria. If this fails, Consumer Affairs Victoria is empowered to refer them to mediators. If the mediation is not successful, Consumer Affairs Victoria can refer the tenant-landlord dispute to the formal setting of the Victorian Civil and Administrative Tribunal.

Tenants Victoria surveyed 'on the ground' experiences

"It's the worst rental nightmare I've had to endure in 40 years of renting."

Tenants Victoria wanted to understand tenants' experiences in seeking rent reduction. It surveyed tenants via a questionnaire from 5 June until 27 July 2020, which was publicised through social media and other means. Some 370 tenants responded.

They reported that negotiating to reduce their rent was difficult and stressful, particularly against the backdrop of uncertainty over their work and finances. Whether in single or larger households, loss of income was significant.

Negotiated reductions were hard won, and some tenants felt they were forced to settle for deferral of rent signifying a future debt. Few negotiations resulted in six-month reductions — most were for three months or less. Notably, renters who participated in the survey reported that they expect their homes to be at risk as soon as the protection against eviction for arrears related to COVID-19 ended.

"As soon as restrictions on evictions are lifted, we are going to get kicked out. I know that at same time, any money I was receiving from the government will be reduced. I am worried

that I'm one of thousands of Australians that are in the same situation. Are we all going to become homeless in September? It is a huge stress, and the lack of uncertainty is the biggest impact on my personal health at the moment, despite the threat of the Coronavirus."

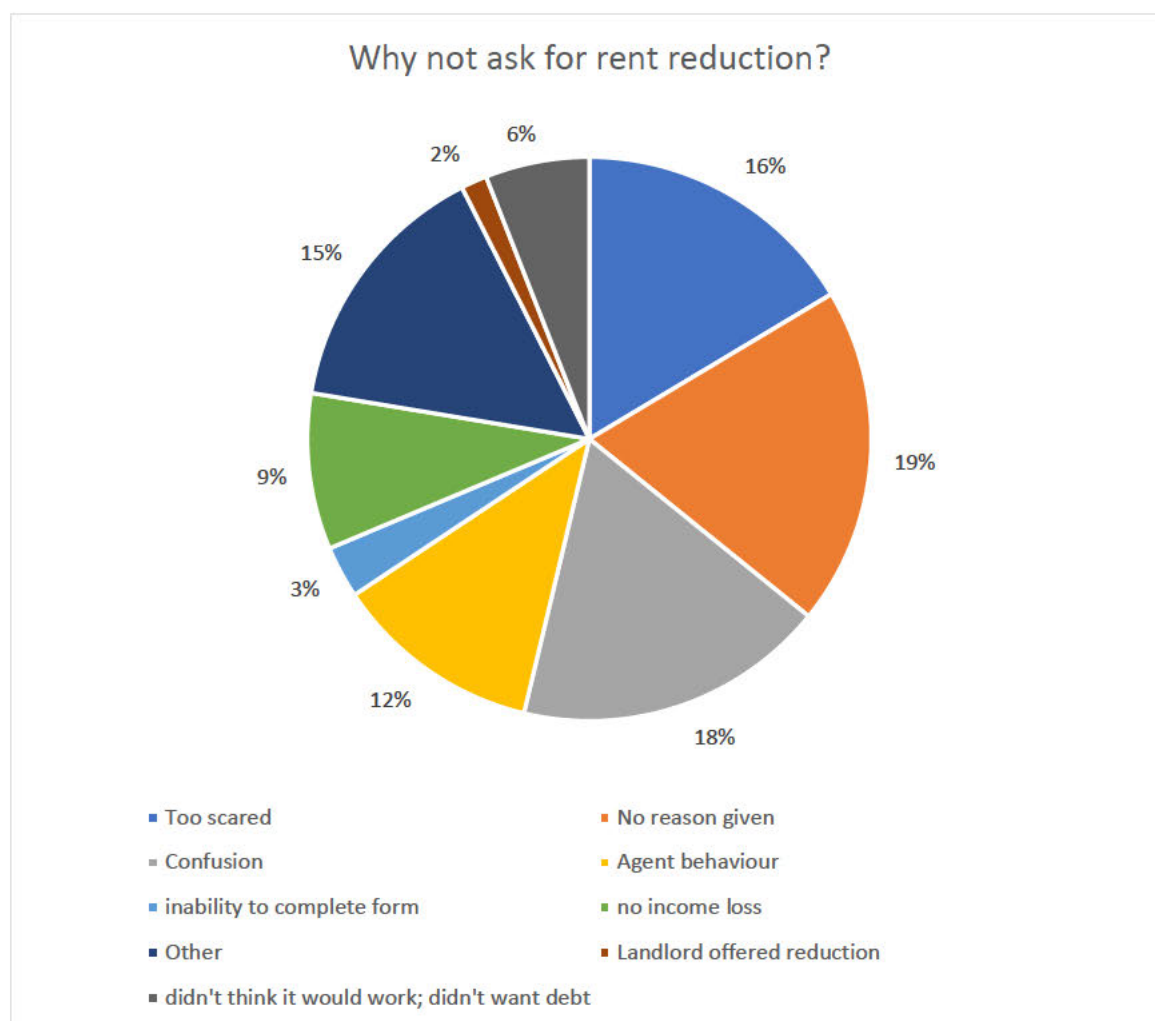
Key insights

One in five did not ask for a rent reduction

Almost one in five (18%) of those completing the survey had not asked their landlord or agent for a rent reduction.

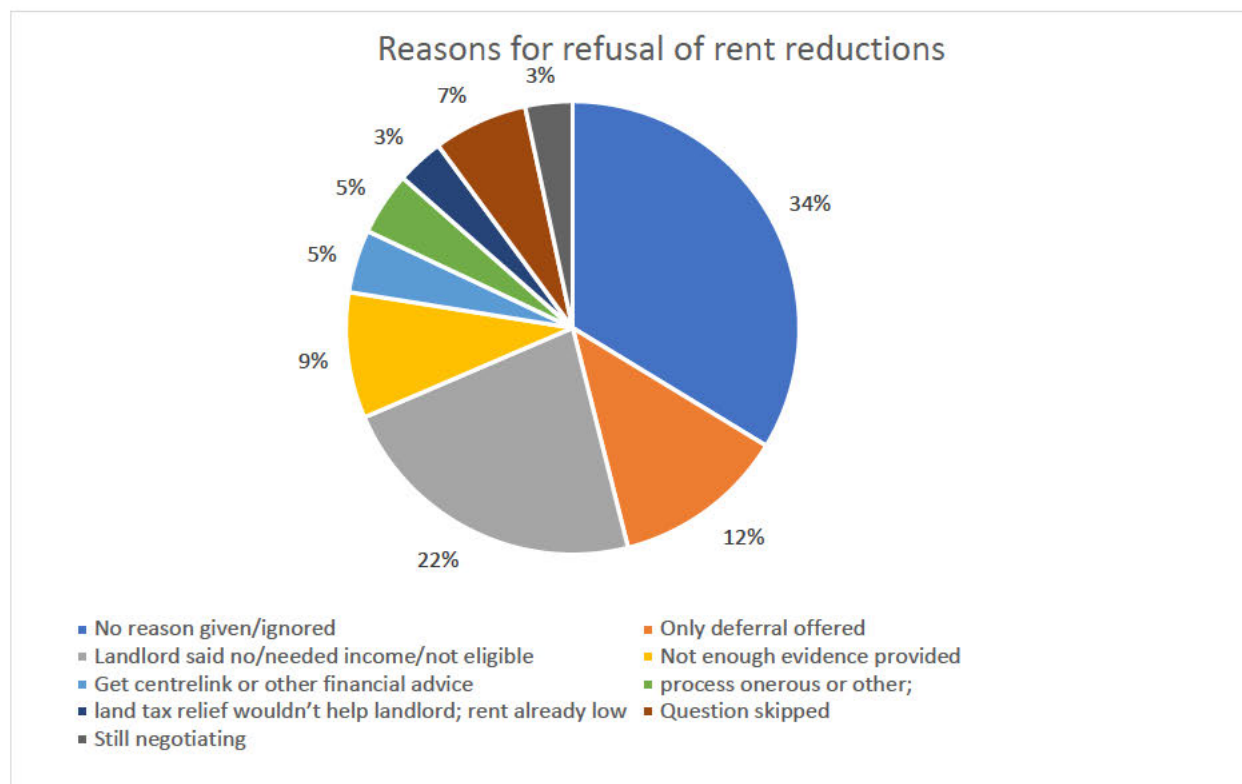
Just 2% of this subset – a fortunate few – said they had a proactive landlord who initiated a reduction without the renter having to ask after the Victorian law was passed in April 2020.

The main reasons given for not asking for a reduction were confusion (19%), being too 'scared' to ask (16%), and discouragement due to the agent's behaviour (12%).



Reasons given for refusing a rent reduction

Landlords gave tenants a wide range of reasons for the refusal to agree to a rent reduction. Some 34% of tenants were ignored, or no reason was given at all, while 22% said they were told their landlord needed the income or they were not eligible for a rent reduction — usually without any information on what eligibility would entail. A few agents provided financial advice, while in 12% of cases the only help offered was the deferral of rent, hence incurring a future debt they had to pay back, and not a rent reduction as sought.



One tenant reported how lucky they felt amid the pandemic:

“Our situation was handled privately and was at the discretion of the landlord, who’s been great.”

Many others indicated, however, they were not so fortunate.

“They made an offer that required me to pay MORE per month (from May 2020) to make up the shortfall in rent. Since then I have been bombarded by overdue emails/texts.”

“I didn't fill out the form because I explained I was not asking for a deferral but a reduction and provided them with an amount I wished the rent to be reduced by and a completed Temporary Rent Reduction Agreement Form (from Consumer Affairs website). The response was to resend the rent deferral form, ignore my proposed rent reduction and say any negotiation could takes months because there was such a backlog.”

“I received a very nasty email telling me we would be evicted and stating the laws of renting. Also was threatened with a bad reference upon vacating.”

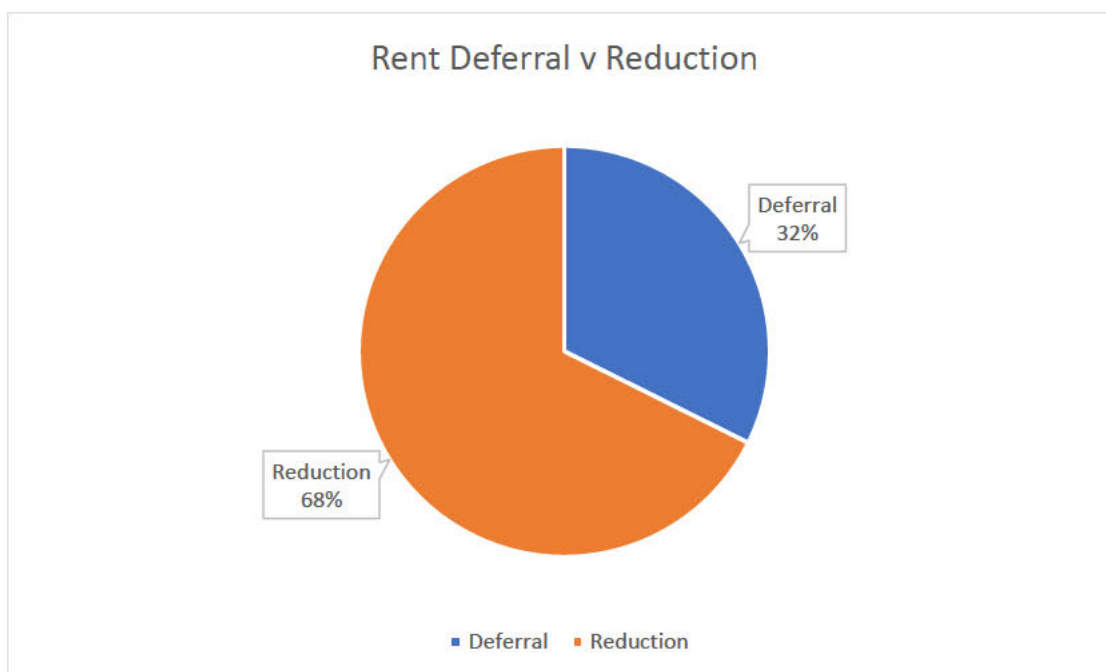
“Our agent said we’re not qualified for it. That’s it. I explained even if my partner still works full time, I lost my half shift which means our income decreased 75%. more than 20% so I asked for deduction around 20~30% but they just refused. and not even replying back”

“The next day she replied to my email and gave us a 90 day Notice to Vacate. The Landlord said no rent reduction. My rent is still paid up to date.”

Renters’ experiences of seeking a reduction

“I lost my job due to Covid 19, my roommate lost income. We both work/worked in entertainment, which looks like it may be a while before it comes back, so we could both be out of work. As soon as this happened to us in late March we contacted our agent, who has since been unable to get hold of the landlord to arrange a rent reduction, so we are paying what we can afford, but we are gathering the difference in debt to the agent, which is worrying me a lot as I have no idea when I can work again, I am trying to find work but getting nothing. We just need help!”

Of those who negotiated with their agent, only 15% reported that they agreed to the agent’s offer, but only 8% reported they went on to formally sign a reduced rent agreement. While only 16% of total survey respondents reported details of their negotiations in the survey, what was reported shows a wide variation in the period of reduced rent — from one to six months — and the percentage of rental reduction — from 6% to 50%. It is clear from this limited information that many tenants will need to again approach their agent or landlord for further rent relief. We will continue to seek information from tenants on this process.



"It took government incentives on land tax reductions for our landlord to even consider rental reduction. It was only after we paid full rent for two months, before announcements made by the government forced her hand to negotiate a reduction with us. Her original offer was a \$200 reduction for 5 months to be paid back in September. Our rent was \$3300 per month. So it would be a \$50 per month reduction for each housemate. We rejected that offer. It took a month, but we negotiated \$1000 reduction per month, with no repayment, and to be renegotiated in September. Our landlord has already threatened us multiple times with eviction when restrictions on evictions are raised."

"I think the only reason we got the reduction is because we have a good relationship with the landlord himself. Although we have a real estate agent, we are often in communication with our landlord and he sometimes comes for inspections or completes maintenance around the house himself. I don't think we would have got the reduction if it wasn't for the relationship we have. The initial letters and emails we got from the real estate weren't terribly empathetic!"

Real estate agents and rent reductions

A strong sentiment that emerged in the survey was a frustration with conduct of real estate agents in interactions with renters who sought reductions. A lack of responsiveness to renter's queries and delays, excessive demands for personal information and suggestions on how renters can better manage their financial situations all emerged as themes.

"Very unhappy with the person in charge of my property as she fails to respond to phone calls, text messages & fails to provide answers to direct questions."

“The reduction was for 50% for two months which was a great offer from the landlord, but Centrelink took 3 months to process my claim and the agent just wasn't taking that as an answer, and I had no guarantee that my circumstances would be communicated to the landlord, I believe that they weren't.”

“I have affected by the lack of cooperation from the agent. Also, gave me notice to vacate the property on 9th April. I have complied. I did not get any house in Melbourne after applying many. I had to relocate in Adelaide with my belongings. I had to leave my work in Melbourne as well. I am in process of apply at VCAT.”

“We have been suffering mental health problems exacerbated by COVID 19 which has made negotiating with the agents incredibly difficult. I believe this is a big reason why they were able to take advantage of us. I intend to contact Tenants Victoria/Consumer Affairs to see whether we can renegotiate a proper rent reduction.”

“(The agent) said it would have to be referred to the landlord for consideration. Unfortunately, this referral was not made until I made several more applications over several weeks!”

“The agent has been unhelpful since COVID. Suggesting I access my superannuation asking me when will I move out if I cannot afford the property anymore. They wanted me to sign an agreement to defer my rental payment which would put me in a worse position. This has been a stressful and ongoing situation.”

Conclusion

During the pandemic, Victoria has legislated a strong framework for tenants and landlord to come to fair and reasonable agreements for rent reductions. Tenants Victoria’s survey suggests the implementation phase remains challenging for many renters facing hardship with barriers, reinforced by longstanding power imbalances between landlord and tenants, to taking up the rights afforded to them under the emergency law.

The role of some real estate agents in blocking good faith negotiations is troubling and requires further investigation – and remedial action.

Appendix 3 – Examples of reported real estate agent misconduct reported by Tenants Victoria workers

No	Issue	Summary of case
1	Rent reductions end. Landlord flagging that they can send notice to vacate	Rent reduction agreement approved from 1/05/2020 to 01/08/2020. Tenant still not working and unlikely to pay full rent from August. Recently tenant received email from agent asking for full rent of \$2086 from August or 'do you want me to send the vacate notice now?'.
2	Real estate agent misconduct	Tenant concerned that real estate agent is going to try to evict them because they do not want to sign a new lease – real estate agent constantly harassing them about signing a new lease, saying that they have to do it - additionally tenants suspect that agent has entered the premises while they are out (made comments on something that they couldn't have seen without entering) and instead of doing repairs just occasionally knock a bit off the rent when tenants report issues.
3	Notice to vacate Issued during COVID-19	Real estate agency served a notice to vacate during COVID-19 to 'pressure' tenants to leave the premises so that the landlord could move in. Under current law notices to vacate are invalid, and a successful application to the Victorian Civil and Administrative Tribunal (VCAT) is required for a Termination Order and Possession Order in order to remove tenants from the premises in such circumstances.
4	NTV - Renovations forcing T out	Tenant received notice to vacate in May. Termination date 1st Oct 2020 8 Units in complex managed by one real estate agency .Landlord/real estate agent went house to house calling, knocking on door asking when people will leave. Most tenants left early. Two units left. Builders started coming on site and started renovating the units. Tenant's water and gas and electricity have been turned off to allow the contractors to renovate. Gas was off for four days. After four days tenant demanded they called in an emergency plumber so she could use the shower and toilet. They fixed the water. That was last Friday. They keep turning the water off again for a full week. Jack hammered into ceiling in her bathroom - so now there is a hole in her home. Tenant got a notice the agent has lodged a termination due to premises being unfit for habitation. Tenant has lost one of her jobs due to COVID-19. Doesn't have money to leave and find a new house. Tenant lived in property for two years and two months. Her neighbour, an elderly man, came to her house in tears – landlord/real estate agent forcing him out too. He's got nowhere to go. Tenant wants to leave but can't get the money together to get out. Only can sustain rental payments, not move.

5	Real estate agent asking tenant to leave home for inspections	Tenant is homeschooling his four children. The real estate agent is asking him to leave the house so they can run private appointment inspections on Thursdays and Saturdays. Agent says due to the new laws an agent can't show a purchaser while tenant is in the house - he must leave – which is not correct.
6	Real estate agent misleading tenant re Rent Relief Grant	Tenants approved for the rent relief grant \$2,000. Agent is insisting grant is bonus for landlord they provided discount in rent during the first lock down. But the real estate agent staff keeps saying 'Are you asking for more discount because the landlord gets \$2,000? The grant is nothing to do with your rental payment and it is just for the landlord because the landlord provided discounts for two months.'
7	NITV for severe hardship - real estate agent treating as lease break	Tenant gave one month's notice to vacate and vacated on 24 June due to 'severe hardship'. She has not worked since February and has a daughter with autism and elderly parents. The law is that she is not required to pay rent after the expiration of the notice, and she is not required to pay for lease break costs in such circumstances. However, the real estate agent told her that she had to continue to pay rent for nearly a full month after moving out and advised tenant that she had to pay for the cost of a "For Lease" board. Tenant ended up overpaying rent - felt extremely misled by real estate agent who she felt was stating that it was the law that she had to continue to pay rent and pay for advertising even though T had explained her hardship.
8	Bad faith rental reduction	Tenant's husband's work dried up due to COVID-19. Rent was \$2911. Tenant has four kids. Scary time. Tenant wanted to maintain payments. Not be blacklisted. Tenant contacted real estate agent, which said we can pay half rent on the due date. The landlord was slow at responding. Tenant was waiting for weeks. Real estate agent responded said landlord has mortgage. Landlord wants tenant to sign a deed of variance that we will owe the \$5000 in rent arrears and tenant will pay off arrears in 6 months. Tenant said she can't agree to that. Agent verbally said that landlord would rather you leave if she can't sustain rental payments. Tenant was scared Tenant left to a house that was much more affordable on their two government payments. Quite a while away from the kids' school but in a more affordable home. Tenant was on a periodic lease. So no lease break. Keys handed back on Monday two weeks ago. But as they have left without a rent reduction they now are at risk of owing the whole amount as rental arrears instead of getting a rental reduction.
9	Rent deferral	The tenant has resided at her home for four years. Tenant has one child. She lost her paid gig works is on Jobseeker. Requested a rent reduction. The real estate agent only offered her a rent deferral of \$200 for 3 months. Tenant now must pay that rental arrears back as the three months is up but nothing has changed for her financially. She is still on Jobseeker and struggling.
10	Rent Increase during COVID-19	Agent send a notice of rent increase in January to start on 31 March. Tenant didn't know it was illegal until they called Consumer Affairs Victoria regarding repairs. Agent won't give overpayment back.

11	Abuse of termination due to safety by real estate agent	Our practice represented a client with rent arrears. The application to have her evicted based on rental arrears and an invalid Notice to Vacate was immediately struck out by VCAT. The landlord (represented by the agent) applied for a Termination Order the next day, on the basis of 'endangering the landlord or Agents safety'. We are instructed that there is no basis for this application, and that it is retaliatory. The tenant hasn't spoken to the agent since we have been involved.
12	Real estate agent misconduct	Real estate agent showed up tenant's sister's house to tell sister that if tenant didn't leave tenant would be evicted (Landlord had already made an application for termination so seems like they were just trying to intimidate tenant into leaving and not defending app) - Tenant's nephew has an ABI and was very distressed and told real estate agent that he would help her move out and called tenant worried that she was going to be evicted - tenant has been supporting her daughter who is leaving a FV situation and has an 18 month old child - real estate agent told tenant that she should forget about her daughter and focus on moving out.
13	Real estate agent unprofessional conduct	Tenant on a 12 month lease due to end. Tenant gave proper NITV. Tenant received 'angry' call from the agent to the effect of: "the landlord has lost their job due to COVID and my notice is 'dropping her in it' and she will not have it re-let in the current rental climate.
14	Agent/landlord acting in bad faith re rent reduction scheme	Tenant communicated to their real estate agent that tenant was laid off. Agent said pay whatever rent you can. Tenant is only \$2800 in arrears, his last payment was in May as he couldn't find work. Tenant said can we get a rent reduction during COVID-19 as tenant wants to stay. Tenant is on Jobseeker. Rent is \$2300/month - Jobseeker \$2400/month. Despite this real estate agent said tenant could afford rent and was not suffering hardship. Tenant sent in separation certificate and bank statement to real estate agent - Still hardship application was denied. Tenant tried to speak to the director real estate agency to appeal their decision or a rent reduction - no one will talk to him. (Tenant didn't know about Consumer Affairs Victoria process). Real estate agent said that he should access his superannuation to pay his rent! Tenant was a sale rep. Tenant now moved to country to try to drive trucks, but has not found work yet. He is really stressed, and is living in his mate's shed in the bush. Tenant feels like he has been treated so badly. His property manager is not taking phone calls. He has never been in this situation and he is really scared about his future. The cost of the rent until the end of his fixed term lease (expires in Feb 2021) is around \$18,000.
15	Real Estate Institute of Victoria 's position on rent relief grant	The tenant has been successful in getting a rent reduction agreement, only until July, and also obtained access to the rent relief grant. The tenant was told by her agent that the President of the Real Estate Institute of Victoria believes the rent relief grant exists to compensate the landlord and is paid to the landlord in addition to what the tenant agreed to paid. DHHS have advised the tenant that this is not how it works, and said they would be contacting the agent to explain that it exists to assist the <i>tenant</i> pay the reduced rent they agreed to. The agent wrote as follows: <i>"I have once again approached the President of the REIV for clarification as to how the rent relief grant is administered.</i>

		<i>As I said yesterday the monies are to go to the owner in consideration of the reduced rent pay arrangement that he has entered into. It is not to subsidise future rental payments that you are already being given a reduction on.</i> <i>I have been informed that when the President meets this week with the CAV and DHHS she will request they amend their wording as it is in fact misleading and incorrect.</i> <i>Once the grant monies are received, they will be disbursed to the owner."</i> For clarity on the purpose of the scheme, see here: https://www.housing.vic.gov.au/help-renting/rentrelief
16	Lease breaking during COVID-19	The tenant was a student in financial hardship due to COVID-19. The tenant was advised by the property manager of the rental that if she wanted to end her tenancy due to being affected by COVID-19, she would not be liable for break lease fees, but she would be liable to pay the rent on her property until the end of her lease in December. I made a follow up call and she has since been advised that she has to give a minimum notice period of 28 days, pay cleaning fees, and relinquish her bond in full. The tenant advised this is a widespread issue among renters through this property manager and is very enthusiastic to share her experience with Tenants Victoria.
17	Lease breaking misinformation – family violence	Tenant is a single mother, recently separated with husband due to family violence. Tenant has an Intervention Order in place. He has left property. He has ceased financial support. Tenant is carer for four year old child with special needs. Tenant's lease ends on 1 July 2020. Tenant lived here for three years. Current rent is \$2455 per month. Tenant had no way to pay next month. Tenant has no family supports. Tenant has found a cheaper home to live. Tenant has told the agent that she and her husband have broken up not on good terms (she hasn't sent them the IVO - she is scared to make it known publicly and felt embarrassed) Tenant advised in writing that she will be moving on 29th June. Lease expires on 1st July. Real estate agent has advised her that she will have to pay rent - called her to demand rent paid. Agent advised that she will have to give 28 days notice to leave. Tenant said that her husband has abandoned them and she has no money to pay. She asked for understanding as her circumstances have changed and the agent refused to offer any assistance. Frustrating that the Real estate agent know that a tenant can give 14 days for severe hardship but they are saying 28 days notice is required. So much misinformation being advised to vulnerable tenants.
18	Agent acting in bad faith	The tenant writes: In March 2020, the agent contacted me about the rent increase. Then he told me there may not be an increase if I confirmed I plan to renew 12month. He made me believe I have to sign a 12-month renewal to prevent rent increasing. I believed him, signed and emailed the renewal, which commences on 01/07/2020, on 27/03/2020.

		On 15/06/2020, I called the real estate agent office, stating my intention to move out the property due to COVID-19 financial difficulty. The real estate agent informed me that the landlord understands my difficulties and agreed to terminate the fixed-term lease early if I give a 14-day formal notice. They urged me to give notice and they told me to refer to the break lease compensation charge scale.
19	Agent acting in bad faith	After the lease has terminated, the real estate agent was insisting that the tenant attended to professional cleaning amongst other things. They presented the tenant with a 'quote' and asked for it to be deducted from the bond. The tenant caught on and picked up a detail in the quote that included a portion for the real estate agent's 'commission'.
20	Real estate agents in relation to organising open house inspections	The tenant didn't want an open house inspection to be conducted to find new tenants, particularly because she is 68 years old and living in a COVID-19 hotspot. Tenant instructed that their practice is to: - First, ask the tenant if they can conduct an open house inspection. - Then, if the tenant does not consent, they proceed with giving a notice in accordance with the RTA. Worker is concerned about this because the RTA does not exist as a 'back up option' if a tenant doesn't want to consent. The inherent power imbalance between tenants and landlords means that many tenants feel they have to say yes, particularly if they aren't aware of the operation of section 86. This is not in the spirit of the Act. The agent also seems confused as to whether open house inspections are a lawful ground of entry. (However, worker notes that the RTA amendments will change the entry provisions to allow for open house inspections, so this issue does have an expiry date).
21	Agent misleading about periodic tenancy	Tenant is a 70 year old renter whose fixed term tenancy agreement (FTTA) expired 28 May. The rental agreement has a clause that appears to say that she cannot continue on a periodic lease, it states 'if the tenant remains on the premises after the term of the lease they must give their intention to vacate with no less than 28 days notice or sign another FTTA.' i.e. saying that she can't just do month to month. Tenant is not sure about her work in the future and doesn't want to sign a FTTA in case her work is reduced. She wants the flexibility to be able to move. But the real estate agent are emailing her and calling her saying that she must sign another FTTA. Tenant wants to know her rights, she is feeling bullied by the agents and scared that she will be locked into a contract. In this way the real estate agent attempts to contract out of the operation of s230 of the Act, which results in the tenancy becoming a periodic tenancy after the end of a FTTA.

22	Agent/landlord acting in bad faith	Eviction through harassment The tenant called seeking advice on how to defend a bond claim. It came out in the conversation that they moved out quickly after the real estate agent called them to say that the landlord has divorced and wants to move back into the property. The tenants are uni students around 25 years old and the agent called them every few days saying have you found a house yet? No NTV, No Termination order, just barrage of calls to ask them to leave as soon as they can.
23	Agent/landlord acting in bad faith	Rent increase through new rental agreement loophole Tenant has been living in this property for ten years. His current fixed term of two years expires in July. The agent has offered him another 12month agreement with an rent increase. There is a ban on rent increases until Sep 2020. However technically a new lease is not a rent increase.
24	Insufficient rent reduction, fear around asking for repairs	The tenant is on the DSP and his wife has lost her job. They asked real estate agent for a rent reduction. They responded saying \$10, after negotiating they offered a \$20 reduction. They advised him that the landlord is also suffering financial stress due to the mortgage repayments and won't offer anything more. Tenant feels he had no choice but to accept. They are doing it hard with just his income. The tenant is very frightened that they will ask him to leave as the house is very old and run down (oven only has some parts working, power point switch has deteriorated, and the gutters are rusted). He has been asking for these repairs but hasn't had any luck. If they are asked to leave they won't be able to find another house due to their low income being one person on a DSP.
25	Denial of rent reduction	A tenant went through months of open house inspections during COVID-19, while she was home schooling her third grader. She has now been served a NTV for Sale by the real estate agent. She lost her job and asked for a rent reductions and the agent said no it would impede their sale so she took out funds from her super to pay.
26	Agent acting in bad faith Text of email sent by real estate in March	Received by tenant in March 2020, tenants had lost job due to COVID-19 and subsequently did not apply for a rent reduction. <i>"This email is being sent to all Landlords, tenants, clients that form the [name of real estate agency] extended family. We are committed in getting you to a better place. We are here to educate you through this as best as possible.</i> <i>This is written by the Director of [the agency]. These words are his opinion, the information may or may not concern all, seek your own independent advice.</i> <i>This COVID 19 situation is fluid. In one week auctions cancelled, sales opens cancelled, we have strict numbers to attend funerals & weddings, we have to stay 1.5m from others, pubs, clubs, bars, restaurants & the like have closed. Unemployment is heading towards 11%. These are times not experienced in our lifetime. This email is not to alarm, merely to plan from what we know after Dan Andrews announcement 9:30am 28/3/2020. This is our understanding of this announcement:</i> <i>Dan Andrews has announced that there is NO Victorian economic stimulus! However there is some relief (hence the urgency of this email). \$500M is allocated for small business relief where your wages are below \$650Kpa. You are entitled to a \$30K cash injection. Conditions always apply; mainly, if you are in the category of small businesses that has been effected by COVID 19. It is a first come first served grant. Applications begin Monday, expect a meltdown of requests. The ABS says there's</i>

	around 600,000 small businesses in Victoria; 16,000 grants = 2.6% of small businesses will receive funds! If your wages exceed the \$650K threshold your business pays 4.5% payroll tax. This has been waived. Those businesses that have paid for a liquor license will be reimbursed, if you haven't paid; it will be waived. If you pay rent to a Government body, your rent is frozen. By the end of April you will be allowed to access up to \$10K from your superannuation + a further withdrawal up to \$10K in the coming financial year. Some banks are saying that you can push your mortgages out for 6 months, however at the end of the 6 months it is our understanding that they want their interest paid up to date, so this needs to be budgeted for. All banks are saying to contact them early if you are under financial stress. Centrelink is paying \$500 + extra benefits to those that are recently unemployed, if you can get through to them seek further assistance there. We have a list of charities that offer food + rental assistance, email us & we will forward you these details. It is clear that the Victorian Government wants any economic stimulus to be funded by the Federal Government. The Prime Minister Scott Morrison said early on that there is some \$80 odd Billion in sole trader / small business assistance. We are still waiting on if / when / how this is forthcoming. We are not a Government body, most of fun our investors are mum & dads with one property that needs the rent to cover their commitments. Do not ask for a rent reduction or a rent freeze as we will not put these requests forward. Saving for that rainy day? You may need to dip into any savings you have. This is the time where you need to look at alternative employment / ways to pay rent + any outgoings. Commercial tenants; you may have to look at borrowing against your home, refinancing, thinking differently to cover rent / expenses / outgoings. We do not believe this COVID 19 will be forever after, however we have no idea how long it will last. Those living / running a business 'hand to mouth' will be worst affected. If you are month to month in your living / working life, now is the time to set a budget to have reserve funds. Good business practice is having 3 months of expenses ready for such a rainy day. Those that do not will struggle. We will take instructions from our investors about eviction proceedings. The majority of the feedback we are currently hearing is that investors do not want to evict tenants, pay what you can, commercial tenants need to pay all outgoings as we've not seen any allowance of non-payment from councils, water authorities, owners corporation or insurances. It is quite clear that when this is over our investors want a concise plan on how you will catch up. This is general commentary, it'll have to be case by case. [Name of agency] is at the forefront of current events. We specialise in residential, commercial, sales & leasing. This is my 30th year in real estate. I started in the "recession we had to have." This is my 20th year in owning this business, we survived the GFC. We adapt, change to whatever is thrown at us. We grow by taking our extended family with us. We are all in this together. We see more than property. We are here for you."
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