



COVID19 Omnibus Legislation - Renters 3 Month Review

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COVID19 Omnibus - Renters: 3 Month Review

Intention

To outline the issues renters faced during the initial 3 months of the COVID19 Omnibus legislation, and demonstrate the necessity of the legislations extension and further amendments.

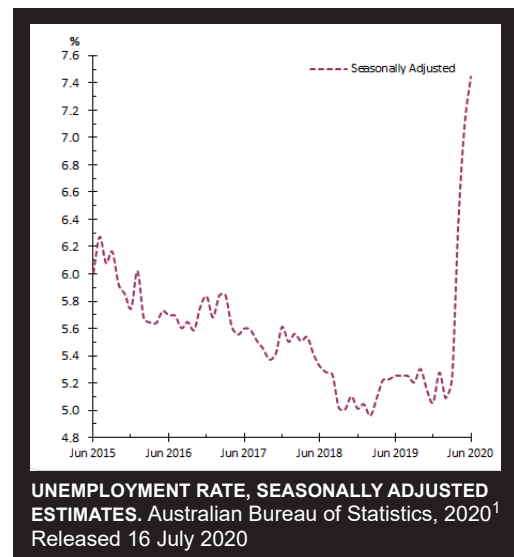
Background

The COVID19 pandemic and resultant economic crisis has left workers with previously stable income facing unemployment, tenancy stress, and rental arrears¹.

Renters who are recently unemployed; of low income and insecure employment²; and migrant and temporary visa holders³ are facing eviction and have accrued rental debts which are due in September. These demographics are disproportionately affected by the economic impacts of the pandemic, and the consequential insecurity of housing.

The COVID19 Omnibus residential tenancies legislation advised for renters and landlords to establish partnerships and negotiate new agreements. Yet many landlords and their agents have refused or delayed these requests, often roping renters into deferrals of payment which are due at the end of the eviction moratorium.

The COVID19 second wave has prompted a second lockdown in Victoria, lasting potentially more than 6 weeks.



1 6202.0 - Labour Force, Australia, Jun 2020 - <https://www.abs.gov.au/ausstats/abs@.nsf/mf/6202.0>

2 '2.2 million temporary visa holders potentially excluded by the scheme'... 'About 1 million casual workers are also not eligible' - <https://www.smh.com.au/politics/federal/expanding-jobkeeper-to-visa-workers-casuals-could-cost-25-billion-20200412-p54j50.html>

3 Migrants and Temporary Visa holders excluded from Government subsidy support
<https://www.abc.net.au/news/2020-06-05/australia-migrant-workers-temporary-visa-holders-coronavirus/12301394>
<https://www.theguardian.com/australia-news/2020/apr/30/victoria-latest-state-to-help-temporary-migrants-excluded-from-federal-coronavirus-support>



Executive Summary of Recommendations

The eviction moratorium must be extended and broadened to prevent continued rising infection rates. For renters to be financially able to stay at home, an amnesty on rental payments must be enacted.

1. The eviction moratorium must be extended and broadened until September 2021⁴
2. An amnesty on rental payments for tenants affected for any reason by COVID19 must be enacted for renters to be financially able to stay at home.
3. All rental debts accrued due to the impacts of the pandemic are to be forgiven, with no fault or penalty.
4. New and existing rent reduction agreements must be below 30% of tenants' income as projected in September⁵ and to persist for the length of the pandemic.
5. Penalties to apply to landlords, agents and agencies who refuse to negotiate rental agreements in good faith; and or; who infringe upon tenants' rights, breach lease agreement duties.



4 "Housing, the front line defence against the COVID-19 outbreak," says UN expert
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25727&LangID=E>

5 JobKeeper and JobSeeker rates cut in September 2020
<https://www.abc.net.au/news/2020-07-21/jobkeeper-jobseeker-extended-rates-cut-coronavirus-morrison/12475716>

The Issues



a) Omnibus legislation ending in September

The Omnibus measures ending in September has created a short window in which renters feel they might be able to negotiate for a specific time, often causing renters to fear retaliation from landlords. Renters have been hesitant to attempt negotiation when they need to because of fear they will lose their tenancy in September.

Renters negotiating for rent reductions at their average income level including JobSeeker and JobKeeper COVID19 supplements, which upon reduction in September will plunge them into further rental hardship.

b) Refused and delayed negotiations

- 95% of cases real estate agents and landlords have refused, or significantly delayed requests from renters to negotiate reasonable reductions. In some cases, 5 months has passed without reaching a new agreement. (*Image 1*)
- Many landlords and agents have denied reaching new agreements that renters have attempted. This has meant delayed rent relief for many renters in serious hardship by necessitating dispute resolution routes, as they are unable to provide a copy of the new agreement reached with their application for rent relief funding.
- Delayed negotiations has caused a backlog in processing disputes through relevant bodies, including Consumer Affairs, Residential Tenancies services, Civil Administrative Tribunals⁶



Michelle Buckle

Entertainment industry casual,
on Disability Support Pension

- Requested a reduction in March
- Rent is now 65% of her pension
- Agent sent her repeated eviction threats when she attempted negotiations
- Pending VCAT hearing after agent refused reduction during mediation

*Image courtesy of 7.30 Report,
June 18th "Rent Squeeze"*

6 ie. Consumer Affairs Victoria; Residential Tenancies Dispute Service, Victorian Civil Administrative Tribunal

The Issues

c) Renters still facing no-fault evictions

RAHU has seen an increase in termination notices by landlords for reasons that were allowed in eviction moratorium legislation⁷ (Image 2)

Low income renters are being disproportionately affected by this, as landlords are pursuing these methods to prevent continuing tenancies where their rental income is not guaranteed.

Informal Tenancy Agreements

Renters in informal or short-term lease agreements have experienced illegal evictions during the COVID19 pandemic due to fraudulent threats by the agent or landlord. Many of these cases were from migrant and temporary visa holders in extreme hardship, who feared their visa status would be threatened by not complying.

Formal Tenancy Agreements

Renters in short and long-term tenancy agreements through private rental have been sent repeated Notices To Vacate before and after the COVID19 Omnibus Legislation, without following legislated process of mediation, or VCAT process; and often with threat of the Police carrying out possession orders.

Application by a Landlord to the Victorian Civil and Administrative Tribunal

CAV Reference Number: [REDACTED]
Reference Number: [REDACTED]

Applicant (Landlord/s)
Roger Fredrick Property Trust
[REDACTED]
Phone: [REDACTED] (Mobile)

Respondent (Tenant/s)
Bond: [REDACTED] Tenant: [REDACTED] POH: [REDACTED]
[REDACTED] \$597.50 [REDACTED] \$597.50

Rented Premises
[REDACTED]

The claim is for
Section 417, 418, 419 Description bond - unpaid rent and loss or damage to both - Landlord
Compensation amount claimed: \$1195.00

More details about the claim are
Application - bond - unpaid rent and loss or damage to both - Landlord The landlords is seeking the bond of \$1195.00 for unpaid/overdue rent. The tenant is currently paid up until and including 14/06/2020 with \$0 on account. The tenant vacated the property on the 14/07/2020.

Bond lodged
Who supplied bond: [REDACTED] Bond No. [REDACTED] Amount [REDACTED]
Tenant: [REDACTED] \$597.50
Director of Housing: [REDACTED] \$597.50
Total Amt Paid: \$1,195.00

Previous VCAT File Numbers
[REDACTED]

Signature
[REDACTED]

Application sent to tenant on
20 July 2020 by Email
Addresses: [REDACTED]

Hearing Details
Hearing not yet scheduled

Image 2

Termination Notice for unpaid rent issued to renter in hardship.

⁷ ie. Section 417, 418, 419 of the Residential Tenancies Act (1997)
http://www5.austlii.edu.au/au/legis/vic/consol_act/rta1997207/s417.html

The Issues



d) Rent Deferrals misconstrued as rent reductions

Real estate agents and landlords are coercing renters into deferrals of rental payments instead of rent reductions as part of new agreements, with unreasonable time frames of deferred payments due.

These agreements often pressure renters to agree to these terms rather than face the prospect of no reduction. In many cases agents have misled renters that they were unable to negotiate for reductions. (Image 3)

A screenshot of a financial hardship form from Ironfish. The form is titled 'OTHER SUPPORT AVENUES EXHAUSTED' and lists several categories of support, each with a checkbox and a list of options. The categories are: CENTERLINK (YOUTH ALLOWANCE, JOBSSEKER PAYMENT / JOBBKEEPER SCHEME, PARENTING PAYMENT), TAXATION OFFICE (FINANCIAL RELIEF FOR SMALL BUSINESS AND EMPLOYERS), FINANCIAL INSTITUTION (HOME LOAN REPAYMENT PAUSE, PERSONAL LOAN PAUSE, CREDIT CARD REPAYMENT PAUSE), and FAMILY ASSISTANCE (RENTAL GUARANTEE FROM FAMILY, FINANCIAL ASSISTANCE FROM FAMILY/FRIENDS). Below these is a section titled 'DETAILS OF RENTAL ASSISTANCE REQUESTED' with checkboxes for 'RENT PAYMENT PLAN' and 'RENT REDUCTION'. The 'RENT REDUCTION' checkbox is selected. Below this, there is a section for 'RENT RESUMES TO NORMAL RATE PLUS ARREARS ON' with a date field (DD/MM/2020). A red box highlights the bottom section of the form, which contains the text: 'I apply to IRONFISH REAL ESTATE for rental assistance from my landlord and declare all information provided in respect to this application is true and complete.' The form is labeled 'Page 2' at the bottom right.

Image 3

Ironfish financial hardship form with mandatory deferral clause.

The Issues



e) Financial Hardship forms issued by real estate agencies breaching law

RAHU has found that Financial Hardship forms were templated by real estate peak bodies such as the Real Estate Institute Victoria (REIV), and issued by agencies to renters when requesting rent reductions. (Image 4)

Agents falsely claimed they were unable to negotiate any new agreement without these forms being completed by each tenant, tantamount to extortion. This often misled renters into assuming that any process of reduction necessitated the compulsory completion of these forms.

COVID19 - Residential Rent Relief Request Form

Please Note: While care has been taken to ensure that the information provided here is true and correct at the time of the publication, changes in circumstances may impact the accuracy of this information. All tools, templates and updates provided by the REIV are to assist Members, they are NOT Advice. You must review and adapt these to suit your circumstances. Please seek legal advice.

Proposed temporary rent: \$_____ per week/per fortnight/per month (please be appropriate)

Proposed duration of temporary rent: _____ to _____ (inclusive)

Payment of rent (Select one of the options below, as appropriate and delete the other two):

OPTION 1: Reduction of rent recoverable by landlord

I, along with my co-tenants (where applicable), agree to pay the amount by which the rent is reduced once the period of temporary rent reduction has ended. The payment will be by way of an additional amount of \$_____ paid with each rent payment paid in accordance with the terms of the tenancy agreement and will commence with the first rent payment due after the end of the period of temporary rent.

OPTION 2: Reduction of rent FULLY recoverable by landlord

I, along with my co-tenants (where applicable), agree to pay _____% of the amount by which the rent is reduced once the period of temporary rent reduction has ended. The payment will be by way of an additional amount of \$_____ paid with each rent payment paid in accordance with the terms of the tenancy agreement and will commence with the first rent payment due after the end of the period of temporary rent. The balance of the amount by which rent is reduced will not be recoverable by the landlord.

Image 4

Sweeney Estate Agents form: "All tools, templates and updates provided by the REIV".

These financial forms included:

- Demands for excessive and unreasonable personal and financial information, without explicit guarantee or information provided about its use. These are considered breaches of the Privacy Act 1988⁸ (Image 5)
- Language that coerced renters into withdrawing or accessing early Superannuation funds, providing financial advice; breaching Corporations Act⁹.
- Clauses outlining that tenants must agree that the landowner could vary the terms of new agreements if the tenant's financial circumstances changed, including improved circumstances of any tenant on the lease. (Image 6)

⁸ Privacy Act 1988 Schedule 1: Principles 5 & 6
http://www5.austlii.edu.au/au/legis/cth/consol_act/pa1988108/sch1.html

⁹ Corporations Act 2001 Chapter 7 - SECT 791A 'Need for a license'
http://www5.austlii.edu.au/au/legis/cth/consol_act/ca2001172/s791a.html

The Issues



The screenshot shows a financial hardship application form. Red boxes highlight the following sections:

- A header bar with a blue background and a white icon of a document with a pencil.
- A section with the text: "I have applied for Centrelink Assistance ☐ What type How Much When/...../2020". Below this is another line: "I have applied for another scheme – Federal, State or Local ☐ What package(s), when and your accountant's advice on ability to apply, Amount \$".
- A section with the text: "Have you applied or considered the federal/CBA low interest rate small business loan ☐". Below this is a line: "If No- why not ?".
- A section with the text: "If Yes – When/...../2020 How much applied for \$".
- A section with the text: "I have applied for early access to superannuation ☐ no – why not". Below this is a line: "Have you made any other applications for assistance of any sort (details)".
- A section with the text: "Given supply of the information required- please ensure it is all included as we accept many requests and will deal first with those that have completed the form and supplied the information".
- A section with the text: "What do you want your landlord to consider ?".

Image 5

Harrington Earl financial hardship application form with excessive requests for information including withdrawal of superannuation.

Image 6

Nicholson Real Estate
"all-tenants" clause.

The screenshot shows a Nicholson Real Estate form. A red box highlights the following section:

- A section with the text: "I acknowledge that if my financial circumstances or those of other tenants on the tenancy agreement improve the landlord reserves the right to cancel and/or vary the terms of any rental payment assistance agreed to."

Below this section, there is a line for "Signature: _____ Name: _____ Date: ____/____/20____".

The Issues



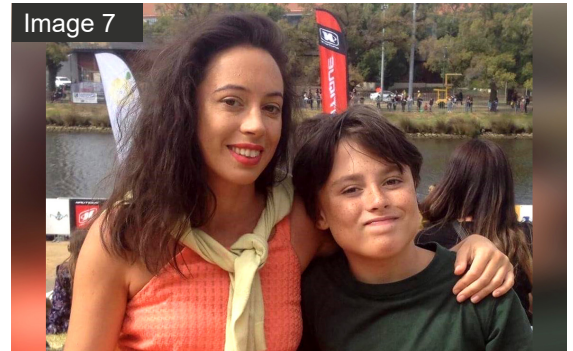
f) Exacerbated liability for rental arrears

Landlords and agents claiming the pre-existing agreement is applicable for the length of the negotiation period, incurring renters extended liability of greater rental debt.

g) Rent reductions that are not binding, nor significant enough to give renters reasonable relief

- Rent reduction amounts offered by landlords and real estate agents were equivalent to 5% in many cases, and were not relative to the income loss experienced by the tenant. (*Image 8*)
- Many reduction offers were not written, nor done formally as new agreements.
- Renters were hesitant to pursue formal mediation routes for fear of retaliation by landlords and agents at the end of the moratorium.

Image 7



Kayleigh Grice

International student, single mother, ineligible for any income subsidies or international student relief.

- Lost 100% of her income in March and requested to pause rental payments.
- Agent hassled her to complete a rent reduction form with a mandatory deferral clause.
- Medication expenses increased due to exacerbated mental health issues due to rental stress.
- Was offered a 50% reduction with incurred debts from March, case still unresolved.

Image Courtesy of Kayleigh Grice.



Image 8

Alisha Wormald

Graphic artist in Events Industry, on Jobkeeper payments

- Lost 100% employment, requested a reduction in March
- After initial request denied, offered a rental discount of \$30/week for three months, keeping them in Rental Hardship
- On-going mediation in June, and may face eviction in October, after Moratorium is due to end.

Image courtesy of 7.30 Report, June 18th "Rent Squeeze"

The Issues

Fraud/ Cheated by the landlord. (Bills)

(MELBOURNE) Hey, there just wanted to get help and my options in a situation where my landlord has bills on her name and she has always been sending crop parts of the bills to us, and not the entire bill. I just randomly got the suspicion because the landlord has been bailing out on certain issues recently. Alinta is the service provider, I checked there online sample bill which showed that the paying bill before or on due date gives you a discount. E.g if 100\$ is the total bill for a month and if it's paid before 10th (let's say) you just have to pay 70\$. So, the landlord has always paid the discount price and charged us for the full price. Now, when I confronted her by just asking the first page of the entire bill, she sent me the page 2 and then kept on giving excuses as Alinta sent me the bill and not the first page which is totally nonsense and lie. Then asked me why I need the bill and I said I need the bill to check the discount. She said she would give me the bill and I need the bill to check the discount. She said she would give me the bill and I need the bill to check the discount.

h) Increase in excessive or fraudulent bond claims against renters who have received rental reductions

Landlords charging excessive and unreasonable maintenance fees for renters who had successful rent reductions; and or claiming against the bond for renters who had successfully negotiated a rent reduction.

Bond claims and excessive maintenance costs (in some cases over three times the bond) may be fraudulent, and potentially retaliatory methods to recompense the reduced rental income from renters.





Renters And Housing Union: 10 Demands

1. An immediate 12-month eviction ban followed by an independent evaluation on social and legal outcomes.

The UN Special Rapporteur on adequate housing announced on 21 March 2020, that if Government's advice to 'stay home' is intended to be heeded, then there should be no evictions of anybody at any time for any reason¹⁰. There should be monitoring and accountability mechanisms put in place by governments to ensure the full implementation of a ban that will ultimately save lives.

Introduce an anti-eviction trial period until September 2021 where all eviction proceedings are held in embargo by VCAT until the trial expiry. After 12 months, an independent audit and evaluation of the anti-eviction trial should be conducted, and the findings reviewed by a standing committee of the legislative assembly to provide recommendations that consider the possibility of introducing legislation that effectively makes any form of eviction illegal.

In limited cases, specific reasons¹¹ would be allowable by process of termination of lease, yet would not instigate eviction proceedings.

The terms of reference for the audit and evaluation should consider the social impact of the trial on low-income and precariously housed people, and the impact of the trial on areas of government responsibility, including; corrective services, public housing, judicial system, health services, homelessness relief, family violence.



¹⁰ "Housing, the front line defence against the COVID-19 outbreak," says UN expert
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25727&LangID=E>

¹¹ ie. co-tenant violence; extreme damage to property; or landlord needing to move into the property.

2. An immediate amnesty on rental payments as long as the economic and health impacts of the pandemic continue.

RAHU has observed that for the majority of our cases, new agreement reduction requests were initiated by renters in March-April, with negotiation continuing until present.

For private rental renters, an across-the-board means-tested policy of rent amnesty would alleviate the risks of homelessness to those in hardship, and help match the relief measures landlords have received since March.

A blanket policy of rent amnesty for all renters in hardship in public and community housing.



3. Removal of Victoria Police from health/COVID-19 response(s). Any (COVID19) health crisis necessitates a healthcare and community driven response, not a carceral or military response.

In the recent government decision to deploy Victoria Police to the Flemington, North Melbourne & Kensington public housing towers, we saw the effects on renters in accessibility to essential needs, with some residents' pre-existing health conditions worsening with no access to their prescription medicines, with many infant children affected.

We support the independent investigation into the emergency response, and amendments to these procedures in accordance with protecting human rights during emergency measures.

The use of power to detain orders by Victoria Police to any residents was not apparent during this period of hard lockdown, nor if utilised, would it have been considered appropriate.

Under the Public Health and Wellbeing Act¹², the Chief Health Officer should appoint as authorised officers appropriate community and healthcare persons to execute public health responses, and provide them with the resources and funding necessary to deploy this.

For example, the relevant community group Australian Muslim Social Services (AMSSA) in the recent case of the residential public housing towers (*Image 9*)



12 PUBLIC HEALTH AND WELLBEING ACT 2008 - SECT 30
http://classic.austlii.edu.au/au/legis/vic/consol_act/phawa2008222/s30.html

4. All rental debts accrued due to the impacts of the pandemic are to be forgiven with no fault or penalty.

The intention of the legislation in regards to negotiating rent reductions was to provide immediate and urgent relief to renters facing hardship.

A blanket policy for rental 'debts' accrued during the period of negotiation must be waived in order to achieve the legislations' intention, and provide immediate relief to thousands of renters in financial hardship, who would otherwise be in extreme and prolonged debt.



5. New and existing rent reduction agreements must be below 30% of renters' income and to persist for the length of the pandemic.

To prevent rental hardship as defined by Victorian Government¹³. The intention of the rent relief grant is to incentivise landlords through covering any gap remaining from a rent reduction¹⁴.

In practice this seems to generate a financial incentive for landlords and agents to insist on a rent reduction agreement above 30%.

Applicants for the rental grant have experienced delays in receiving notice of eligibility, and agents have denied rental reductions to these tenants in extreme hardship with the false grounds that the tenant did not receive the rent relief grant.



¹³ <https://fac.dhhs.vic.gov.au/sites/default/files/2020-06/COVID-19%20Rental%20Relief%20Grant%20-%20operational%20guidelines%20Final%20%20V0.1%20May%202020%20.docx> Rental Relief Grant operational Guidelines, May 2020 (page 8)

¹⁴ <https://www.housing.vic.gov.au/help-renting/rentrelief> "Who is eligible for the grant?"

8. Proportionate Penalties to apply to landlords, agents and agencies who refuse to negotiate rental agreements in good faith. Penalties to apply to landlords, agents and agencies who infringe upon tenants' rights, breach lease agreement duties

- Penalties to apply to agencies and landlords both in formal and informal tenancy agreements who falsely or fraudulently notify their tenants of eviction, or necessity to vacate the property without a valid termination order from VCAT; including by using invalid Notices To Vacate (NTVs). (Image 10)
- Where a claim against the bond by the landlord or agent is found to be fraudulent or grossly excessive (ie. unreasonable) eg. over 20% of the bond, the landlord should lose access to any of the bond as a result of this claim.
- Where a landlord, agent or agency is found to breach lease agreement duties, relevant legislations, or violate human rights law, penalties are applied to the agent or agency on their behalf, ie. Unsolicited and no-prior warning entry to premises during COVID19 restrictions.

Notice to Vacate To tenant of rented premises
Residential Tenancies Act 1997 S319 Regulation 28

Tenant Details

1. This notice is given to [REDACTED]

2. Regarding the rented premises at [REDACTED]

3. Tenant/s address [REDACTED]

Landlord Details

4. I am giving you this notice as the landlord

5. Landlord's name [REDACTED]

6. Address for serving documents
1st Floor 516 Church St
RICHMOND VIC 3121

7. Contact telephone numbers are
03 9421 7000 (BH)

Termination Date

8. The Residential Tenancies Act 1997 requires me to give you at least 14 days' notice to vacate.
I require you to vacate on
09 May 2020

9. Reason for Notice to Vacate
Section 246(1)
You owe at least 14 days' rent. Your rent is paid up to, and including 31 March 2020. You owe \$1,429.00.
Your rent is currently paid up to and including 31.3.2020 with \$200.00 on account for the period 1.4-30.4.2020. The amount you owe is \$1429.00 - being the balance of rent for the period 1.4.2020, the amount you owe was due on or by 1.4.2020. Please note that if the amount you owe is paid in the next few days then we will consider the matter closed and this Notice be considered as withdrawn.

10. This notice is given by
Email on 20 April 2020
Addresses: [REDACTED]

11. Signature of agent
[REDACTED]

12. Name of agent signing this notice
[REDACTED]
RICHMOND VIC 3121

Tenant please note

If you want help with this notice, then ring the Consumer Affairs Victoria on 1300 55 8181

Notice Number [REDACTED]

Image 10

Notice to Vacate emailed to a tenant on 20 April 2020, after the Eviction Moratorium had been announced by the Prime Minister.

10. This notice is given by
Email on 20 April 2020



9. Victorian Government to decontaminate existing unoccupied dwellings to be used for quarantine and isolation for all who are affected, including homeless and displaced people.

- Demanding a massive expansion of the Housing Establishment Fund, and extension to December 2021 with projection of expanding for another 5 years
- Adoption of a Housing First policy
- Parliamentary Inquiry into the state of short-term and long-term crisis accommodation
- Transition from the usage of private motels and rooming houses for emergency accommodation to unoccupied public housing
- Introduce a new amendment to the Land Acquisition and Compensation Act¹⁶(LACA 1986) for relevant Councils under the emergency powers of the Public Health and Wellbeing Act (PHWA 2008¹⁷) to compulsorily acquire private rental properties, including short stay accommodation, for a period of up to 10 years, if those properties have remained vacant for a total of 6 nonrecurrent months over a period of 12 months. Landlords will be compensated at half market rent, and properties will be returned at the end of the lease to the same condition¹⁸.
- Incentivise longer-term tenancy agreements to reduce the number of vacant and unoccupied housing.



¹⁶ Section 4, Land Acquisition and Compensation Act 1986 (Vic) ('LACA')

¹⁷ PUBLIC HEALTH AND WELLBEING ACT 2008 - SECT 24

Function of Councils http://classic.austlii.edu.au/au/legis/vic/consol_act/phawa2008222/s24.html

¹⁸ Bloomberg, 17th July 2020

<https://www.bloomberg.com/news/articles/2020-07-16/to-fill-vacant-units-barcelona-seizes-apartments>

'Expropriation and social use of empty bank-owned flats to resume'

https://www.barcelona.cat/internationalwelcome/en/noticia/expropriation-and-social-use-of-empty-bank-owned-flats-to-resume_640261

10. State government to improve and expand existing public housing.

This includes:

- Prohibiting the transfer of public housing stock and public lands to any non-government actor, except in the case of Aboriginal repatriation.
- Immediate halt to public housing redevelopment projects, and move to a refurbishment and upgrading model
- Commitment to house all applicants on the Victorian Housing Register within five years, primarily through direct capital investment by the government, in a government managed build program.
- Prohibit public-private partnerships in public housing build programs



- Engage Commonwealth Government to prepare a national plan for a fair, sustainable and adequate housing system that is appropriately funded and targeted to areas and populations of need; to set national funding and building targets of around 730,000 public housing dwellings over the next 20 years to equate to an annual average growth of 5.5% over existing stock; secure a current Commonwealth-State housing agreement that retains public housing, ceases stock and management transfers, and ceases the sale of government-owned land until a review and feasibility study of all sites for potential public housing provision can be undertaken.