

MBIE Survey on the RTA Review

Submission from
Dated

Quinovic Group Office
15 October 2018

The following is a list of questions extracted from the Residential Tenancies Act 1986 Discussion Document. All questions have been included although some have been answered N/A where they are not applicable.

Questions have been answered from the Quinovic Franchisor's perspective and some questions more appropriately dealt with by Quinovic Franchisees have not been responded to.

General Comments

A number of the proposed RTA Amendments, if enacted, will unfairly impinge on the rights of property owners. It will make it more difficult for property owners to manage their property and in some cases could adversely impact the value and/or saleability of their asset. These concerns are addressed in the body of the response below.

Questions on no-cause terminations

2.1.1 If no-cause terminations are removed and a tenant displays anti-social behaviour (to the point where the landlord wants to end the tenancy) should the landlord be required to issue a notice to the tenant to improve their behaviour, before they can apply to the Tenancy Tribunal to end the tenancy?

If a tenant is exhibiting anti-social behaviour to the point where the landlord wants to end the tenancy then the landlord must have the ability to issue a no-cause termination. No-cause termination notices are used as a last resort but are essential for a landlord being able to deal with these types of situations.

2.1.2 Do you think the examples listed in paragraph 37 above cover the kinds of behaviour that would interfere with the reasonable peace, comfort, or privacy of any other tenants or neighbours? If not, what other examples would you include and why?

Being overly prescriptive may have unintended consequences. Landlords should have the right to determine what type of behaviour would interfere with the reasonable peace, comfort or privacy of any other tenants or neighbours. The proposed examples in clause 38 are prefaced with "repeated" and "sustained" which would make it more difficult to justify an action.

If specific examples were to be used then these should be expanded to include: Noise, parties, abuse, rubbish, inconsiderate acts towards neighbours, problems caused by animals and children, drug use and drug dealing, domestic abuse.

2.1.3 What kinds of evidence could a landlord produce to prove a tenant was behaving in an anti-social way if affected people such as neighbours, did not want to speak out? (Examples could include photographs, letter, affidavit, audio recording, video recording.)

Anti-social behaviour is often accompanied by intimidation which makes obtaining evidence (either from those effected by the behaviour or by the property manager) very difficult. The 90 day no-cause notice is often the last resort used by landlords wishing to protect their property, their tenants and neighbours.

Questions on landlords being able to end a tenancy

2.1.4 Landlords are currently required to give tenants 42 days' notice if they have sold the property with a requirement for vacant possession, want to move in, or need it for an employee or family member. What do you think the impact would be if this notice period was extended from 42 to 90 days?

Ninety days equates to almost 13 weeks, which is an unusually long time for a settlement period and could impact on an owner's ability to sell their rental property in the open market. Most property sales are made with a settlement period of considerably less than the 90 days proposed.

2.1.5 When a rental property is sold, should the new owner only be able to require vacant possession if they want to use the property for a purpose that can't reasonably be accommodated with the existing tenants in place? E.g. to live in the property themselves, for a family member to live in, to renovate or to convert to a commercial property.

The new owners of the property should not be restricted in how they use the asset they have acquired. Restricting vacant possession to certain limited circumstances impacts on an owner's ability to decide the best use of the property given their specific circumstances.

2.1.6 Should a landlord be able to end a tenancy so they can advertise the property for sale with vacant possession? What impact do you think this would have on tenants?

Yes, property owners should be able to end a tenancy so they can advertise it for sale with vacant possession, provided they give the requisite notice to tenants.

Questions on making sure termination grounds are used fairly

2.1.7 Do you think that landlords should give tenants evidence about why they are terminating a tenancy? If yes, what sort of evidence should that be?

No. Property owners should have the right to manage their property as they see fit, so long as they give notice and existing laws are followed. Requiring evidence to be presented could result in a landlord/tenant dispute and only serves to undermine the property owner's ability to manage their asset.

2.1.8 Do you think using a false reason to terminate a tenancy should be considered an unlawful act and subject to penalties, such as those described in Section 5 (Enforcing Tenancy Laws)? If you answered yes, what kind of penalty do you think would be appropriate?

False reasons should not be given to terminate a tenancy. Where a false reason is given, consideration should be given to the context and whether there was a risk to people or property.

Questions on changing notice periods for landlords and tenants

2.1.9 If landlords are required to give 90 days' notice, should tenants be required to give more or less than 21 days' notice? What would be the ideal notice period?

Tenants should be required to give 42 days notice regardless of any requirement on landlords to give 90 days notice. A 42-day notice period does not preclude the parties agreeing to a shorter duration.

2.1.10 If you are, or have been a landlord or property manager, what is the longest length of time it has taken you to re-tenant a property once a tenant has served notice

Franchisee to respond.

Questions on reasons for issuing a 90 day no cause notice

2.1.11 If you are/have been a landlord, are there situations where you have used the 90 day 'no cause' termination provision that would not be covered by the grounds for termination in the above table? If so, what was the situation?

There may be reasons not normally contemplated under the "peace comfort and privacy" provision such as overcrowding and rubbish around the property.

2.1.12 What impact do you think removing 90 day 'no cause' terminations and only allowing terminations for the reasons in the table above would have?

Restricting no-cause terminations to a prescriptive list may interfere with a property owner's ability to manage their rental property. It may also have unintended consequences and place other tenants and neighbours at risk if the landlord is unable to effectively manage the situation.

Questions on termination for public housing providers

2.1.13 If you are a public housing provider, are there other grounds for terminating a public housing tenancy that should be considered in place of 'no cause' terminations? If you answered yes, what are the other grounds?

N/A

2.1.14 W

What are appropriate notice periods for additional grounds for termination that are specific to public housing? What is your rationale for the notice periods?

N/A

Questions on tenancy types

2.1.15 Do you agree with our assumption that if 'no cause' terminations are removed from periodic agreements, landlords could be more likely to offer fixed-term agreements?

Yes, landlords are more likely to offer fixed term agreements to give them more certainty. I note under 2.1.20 you are proposing to force open ended tenancies which the landlord can't end, which would be unduly harsh for property owners.

2.1.16 If you have been a landlord or a tenant in a Fixed term agreement, how long was the longest fixed term? Why did you choose a fixed term rather than a periodic tenancy?

Franchisee to respond.

Questions on fixed term tenancies

2.1.17 Do you think tenants should have the right to renew, extend or modify their fixed-term tenancy (option 1), if their landlord has not raised any concerns with their behaviour or if specific termination provisions do not apply at the time the tenancy was due to be renewed? What effect do you think this would have on the relationship between landlords and tenants?

No. This is not a fixed term contract and would be tantamount to an open-ended tenancy, which unless the landlord has expressly agreed to this type of agreement, would severely restrict the landlord's ability to manage their property asset.

2.1.18 What do you think would be the impact of setting a minimum length (option 2) for fixed term agreements? What do you think would be a suitable length?

Setting a minimum term would reduce the flexibility for both landlords and tenants. There will always be circumstances where either party will desire a term less than the legislated minimum.

2.1.19 What else could the Government do to make sure landlords feel comfortable offering periodic agreements, if they can only terminate for the reasons proposed?

We advocate the use of fixed term tenancies to give both landlords and tenants certainty. Where more flexibility is required by either party the option to enter into a shorter fixed term, or periodic tenancy is always available.

Questions whether we need two types of tenancy agreements

2.1.20 Do you think only allowing open-ended tenancies which the landlord can't end unless they require the property for another purpose or the tenant isn't meeting their obligations (option 3) is the best way for the Government to meet its objective to improve security and stability for tenants?

No. This is too restrictive and impacts on the rights of the property owner.

2.1.21 Do you think the Government should further investigate removing fixed-term tenancies from the market? Please explain your answer.

No. We advocate fixed term tenancies as they give certainty to both parties without impinging on the rights of the property owner, such as would be the case with open ended tenancies.

2.1.22 If fixed-term tenancies were removed, what changes could be made to periodic agreements to balance security for tenants and landlords?

Fixed term tenancies should not be removed.

Questions on tenant responsibilities

2.2.1 Have you ever disagreed with your tenant or landlord about whether or not they are meeting their obligation? If yes, how could this have been avoided?

Franchisee to respond.

2.2.2. Do you think tenants should have more responsibilities for the property that they rent? Please explain your answer. Are there other things a tenant should or should not be able to do? Please explain your answer.

Yes. Tenants should be responsible for all damage to the property, either caused by accident or intentionally. They should be required to return the property in the same condition, save for normal wear and tear.

2.2.3. Do you think a tenant's responsibilities to keep a property 'reasonably clean and tidy' make it clear what sort of behaviour a landlord can expect? If not, how could this be made clearer to a tenant?

The inclusion of "reasonably" makes it less clear as people will have differing views on what is reasonable, however, trying to specify what is "reasonable" is fraught with difficulty.

2.2.4. Should a tenant in a longer-term tenancy have additional responsibilities for the care and maintenance of the property? If you answered yes, at what point during a tenancy should these additional responsibilities be triggered, and what sort of responsibilities should a long-term tenant take on?

I think that these are matters that could be discussed and agreed at the time rather than there being legislated responsibilities or obligations on both parties.

2.2.5 What other changes to tenants' responsibilities might be needed to modernise the law so it can appropriately respond to changing trends in the housing and rental markets?

No response.

Question on what happens if a tenant is not meeting their obligations

2.2.6 Are there sufficient repercussions for tenants who don't meet their obligations? If not, what would you change?

No. Not all acts by tenants are deemed unlawful and therefore exemplary damages will not always apply. This includes not paying rent and accidental damage caused to properties.

Questions on landlord responsibilities (Please state if you are a tenant or landlord when answering)

2.2.7 Do you think landlord obligations are clear and well understood?

[Landlord] Yes.

2.2.8 Are there other things a landlord should be responsible for? If yes, please specify. Are there other things that a landlord should or should not be able to do? If yes, please specify.

[Landlord] No.

2.2.9 Do you think the current obligations make it clear what tenants can expect from landlords in terms of maintenance? If you answered no, how could this be made clearer?

[Landlord] Yes, I think they are clear in terms of expectation that the landlord must maintain the premises in a reasonable state of repair. There is an argument that tenants should be held responsible for maintenance if that maintenance is required as a result of their actions and not through general wear and tear.

2.2.10 What other changes to landlords' responsibilities might be needed to modernise the law so it can appropriately respond to changing trends in the housing and rental markets?

[Landlord] There are no additional landlord responsibilities necessary.

2.2.11 Are there sufficient repercussions for landlords who don't meet their obligations? If not, what would you change?

[Landlord] Yes.

Questions on landlords and tenants working together to keep a property warm and dry

2.2.12 How do you think landlords and tenants should share the responsibility for maintaining heating equipment, ventilation methods, and any other improvements installed under the Healthy Homes standards?

If heating items are provided by the landlord then the responsibility for servicing them should rest with the landlord. Tenants should be responsible for ventilation and be held responsible for any maintenance required as a result of the property not being ventilated adequately.

2.2.13 If a landlord makes improvements to a property to make it warmer or drier, should tenants be obligated to use those improvements? Please explain your answer.

Yes, although this will be hard to monitor. Tenants should be held responsible for issues that arise out of the non-use of items designed to make the home drier, for example mould accumulation due to not using ventilation provided.

Questions on tenants modifying rental properties

2.3.1 If you are or have been a tenant, what has been your experience seeking agreement to make modifications (that you considered to be reasonable) to rental properties?

N/A.

2.3.2 If you are, or have been a landlord or property manager, in what instances have you withheld, or granted permission for tenants to modify a property? What were your reasons for doing so?

N/A.

Questions on whether tenants should be responsible for reversing their modifications

2.3.3 Should a tenant be under an obligation to reverse any modifications they make in rental properties, unless the landlord agrees to take on the modification? Please explain your answer.

Yes. Modifications not agreed to be the landlord should be reinstated by the tenant at the tenant's cost.

2.3.4 Do you think that if the landlord doesn't wish to take on a modification at the end of a tenancy and the tenant doesn't reverse it, that this should be an unlawful act with a potential financial penalty? Please explain your answer.

Yes. Any modification should be agreed in writing prior to it being undertaken and signed off as agreed by both parties after it has occurred. In that way modifications are dealt with during the tenancy and not subsequent thereto. If unauthorised modifications are made then this should be considered an unlawful act as it will have been performed without consent and will likely be contrary to the tenancy agreement.

Questions on option 1 silent permission for tenants to modify rental properties

2.3.5 What are reasonable grounds to object to a tenant's request to make minor modifications to a rental property?

Minor modifications are not likely to have an adverse impact on the property's value, however if they were to have such an impact, then permission should be able to be withheld. If modifications are going to affect the structural integrity of the property then they should not be allowed to be done.

2.3.6 Do you agree that 21 working days is a reasonable amount of time for a landlord to consider a tenant's request to make minor modifications to a rental property? If you answered no, what would you consider to be a reasonable amount of time and why?

Yes. Often landlords are not in the country and property managers may need to contact them to seek permission if the request is outside of their delegated authority. Time is required to complete this process.

2.3.7 Depending on the type of modification, should a landlord be able to require the tenant to use a suitably qualified trade person? If so, what modifications should, or should not, be subject to this requirement?

Yes. Qualified people should be required to complete all modifications, unless they are of a such a minor nature that they do not require a Licenced Building Practitioner (or other qualified professional) to complete. Tenants should only be able to complete themselves, minor modifications expressly agreed to by the landlord.

Questions on option 2 tenants having a statutory right to make specific modifications

2.3.8 What are sorts of modifications that could be included on a list of alterations tenants have a right to make without seeking their landlord's permission?

Only very minor modifications and there should be a requirement for the property to be returned in the condition it was prior to the modification. For example, picture hooks should be allowed but surfaces must be repaired by the tenant at their cost at the end of the tenancy.

2.3.9 Do you think that the advantages, disadvantages and impacts of each option have been correctly identified?

It is difficult to say. There needs to be a balance between the landlord's right to have their property respected and looked after and the tenants desire to make modifications to suit their needs. Being too prescriptive on modifications may not suit some landlords and it is perhaps better for landlord and tenant to agree on these matters prior to the commencement of the tenancy.

2.3.10 If government was to develop either option 1 or 2 further, which model do you prefer and why?

The interests of landlords need to be paramount. They are the owners of the property and their rights need to be respected. Landlords should be able to decide what modifications are allowable and tenants should be made aware of this prior to the commencement of any tenancy. Tenants can then elect to sign up to the tenancy or not sign up on this basis.

Questions for your consideration on pets

2.4.1 Should a landlord be able to refuse a tenant's request to keep a pet without giving a reason? Please explain.

While there may be benefits to owning a pet from an individual's perspective, the landlord should have the right to decide on whether pets are permissible in their tenancy. Requiring a landlord to justify reasons why a pet is not allowed could create a dispute between the landlord and the tenants which is not resolvable. Tenants should be made aware of the landlord's policy around pets prior to the commencement of a tenancy and they can elect to proceed or otherwise on that basis. Pets can often cause a considerable amount of damage in a property and can be the grounds for claims at tenancy tribunal. A landlord must have the right to choose if a tenant is able to have a pet in their property or not.

2.4.2 If you are, or have been a tenant, what has been your experience seeking agreement to keep a pet in a rental property?

Franchisee to respond.

2.4.3 If you are, or have been a landlord or property manager, what has been your experience allowing tenants to keep pets at your rental property?

Franchisee to respond.

2.4.4 If you are, or have been a landlord or property manager, and you withheld permission for tenants to have pets, why did you do so?

Franchisee to respond.

Questions on when tenants can have a pet

2.4.5 What might be reasonable grounds for a landlord to object to a tenant's request to keep a pet?

There are many reasonable grounds under which an owner could object to pets, however, we believe that the owner should not need to justify their choice and should have the ability not to allow pets in their property. Reasonable grounds could include; against body corporate policy, property not suitable for pets (unfenced or no place for pets to toilet), safety issues for neighbours, landlord, general public (some pets may be considered dangerous including large dogs or dogs of certain breeds), adverse impact on other tenants or neighbours, and concern over number of pets.

2.4.6 Would it be more effective if tenants instead gave reasons why they should be able to keep pets in rental properties?

Having tenants give reasons why they should be able to keep pets implies a right for them to keep pets in the first place. A landlord should be able to determine if they want pets on their property. Creating uncertainty and an expectation that pets may be allowed will lead to unnecessary disputes between landlords and tenants. It is better for the landlord to be able to set out their pet policy for tenants to consider prior to the commencement of any tenancy.

2.4.7 Do some premises have specific attributes that mean they are inappropriate for some types of pet? If so, what?

Refer 2.4.5 above

Question on pet damage

2.4.8 What types of changes to the law could be made to compensate landlords for potential damage to rental properties if tenants keep pets?

The standard bond may be insufficient to cover pet damage, particularly if this is combined with rental arrears. Consideration should be given to an additional bond to cover pets and the requirement for tenants to repair any damage caused by pets at their cost.

Questions on tenant's obligations for pets

2.4.9 Do you support the introduction of specific obligations in the RTA for tenants who keep pets in regards to their rental property and the peace and comfort of their neighbours?

We do not support a tenant's ability to have a pet as of right. However, if pets were to be allowed as of right there would need to be safeguards put in place including extra bonds, specific requirements to ensure that properties are looked after and returned in good condition, specific obligations to ensure safety (of landlords, the public and other tenants) and specific obligations to ensure the peace and comfort of neighbours.

2.4.10 If you are a landlord, are there any other options not covered in this section that would make you feel more comfortable with tenants having pets? If yes, please explain.

Refer 2.4.9 above

Questions on Rental bidding

3.1.1 Have you been involved in rental bidding? If yes, what was your experience?

No.

3.1.2 Do you think rental bidding should be banned or controlled? Why or why not?

Yes. I think this is an unsavoury practice and could lead to properties being rented in excess of their fair market value.

3.1.3 If you think something should be done about rental bidding, do you have a preference between option one or option two, or another option? Please explain

The practice should be banned.

Questions on tenants challenging rent increases at the Tenancy Tribunal

3.2.1 An application for a rent adjustment under a fixed-term tenancy agreement must be made to the Tenancy Tribunal within three months of the last rent review or from the commencement of the tenancy. Do you think three months is an appropriate amount of time to allow for this process? Why or why not?

No. Three months is too long a timeframe. Rent increases are advised to tenants in advance and they have ample time to research the proposed increase prior to it being implemented.

3.2.2 Do you think the RTA should include guidance on what constitutes 'substantially exceeding market rent'? If you answered yes, what do you think constitutes 'substantially exceeding market rent'?

No. Every rental property is different so it is difficult to compare two properties without understanding the specific nature of those properties. Applying say a simple formula as a guide to what might substantially exceed market rent will necessarily fail to consider the specifics of the property.

Question on rent increases

3.3.1 If you are a tenant or a landlord, how often has the rent for your rental property increased? (e.g. six monthly, yearly, every two years)?

An assessment of rent is performed every six months based on movements in underlying rents.

3.3.2 Do you agree that rent increases should only be allowed once every twelve months?

No. It is unfair to limit rent increases to every twelve months. Market conditions can change quickly and these can impact on cost to landlords. Landlords need to be able to respond to these in a timely manner.

3.3.3 Should landlords be required to disclose how they will calculate future rent increases when a new tenancy is entered in to?

No. Landlords may face cost increases that they have no control over (such as new taxes or levies) which may not be contemplated in a pre-agreed formula. If these were to be levied and become uncollectable through future rent increases then the landlord could be significantly disadvantaged.

Questions on boarding houses

4.1.1 Do you think tenants' and landlords' current responsibilities for boarding houses are fit for purpose? Please explain.

N/A.

4.1.2 If you are, or have been, a tenant of a boarding house, what has been your experience of boarding house quality? Was it very poor, poor, average, good, or excellent?

N/A.

4.1.3 Are stronger enforcement powers needed to improve the quality of boarding houses?

N/A.

4.1.4 Do you think a self-certification regime would lift the quality of boarding houses, and/or mean standards could be effectively enforced? Please explain.

N/A.

4.1.5 Do you think self-certification should focus on; the physical property, the operator, and/or both? Please explain.

N/A.

4.1.6

Are there any other standards boarding house landlords should need to meet in order to self-certify?

N/A.

4.1.7 If you are, or have been a boarding house landlord, how do you think a self-certification regime would affect you?

N/A.

4.1.8 Do you Think a Warrant of Fitness would lift the quality of boarding houses and/or mean standards can be effectively enforced? Please explain

N/A.

4.1.9 The introduction of a boarding house Warrant of Fitness would result in new costs being placed on tenants, landlords and the government. Do you think this would be justified?

N/A.

4.1.10 If additional protections were introduced for boarding houses, which model would you prefer, a self-Certification regime, or a Warrant of Fitness? Please explain

N/A.

4.1.11 If a Warrant of Fitness were to be introduced for boarding houses and their operators, do you think responsibility for the regime should sit with local or central government? Please explain.

N/A.

4.1.12 Is the definition of a boarding house understandable and does it capture all the premises you think should be treated differently because of the shared nature of the accommodation?

N/A.

4.1.13 Should all room-by-room tenancies be treated as boarding houses? Why or why not?

N/A.

Questions on enforcing tenancy laws

5.1.1 Have you ever had a situation related to your tenancy where you felt that action, in some form, was warranted but decided against it? Please explain

N/A.

5.1.2 Have you ever, sought the assistance of MBIE's tenancy services to investigate your tenancy?

Franchisee to respond.

5.1.3 If you answered yes to the previous question, please explain which part of MBIE's tenancy services you sought assistance from and please comment on the quality of the service you received. If you had any problems with your experience with Tenancy Services, do you think they were due to lack of resources or information (on your part, or the part of agencies), the provisions of the law, or something else? Please describe.

Franchisee to respond.

5.1.4 Do you consider it appropriate for MBIE to have the power to enter the common spaces of boarding houses without the prior agreement of at least one of the tenants?

N/A.

5.1.5 How much notice should MBIE be required to give a boarding house landlord before exercising this power? (e.g., no notice, 24 hours or 48 hours' notice) Please explain

N/A.

5.1.6 Do you think it's appropriate for MBIE to carry out audits of a landlord or property managers? Please explain your reasons.

Yes. Auditing is an important tool to ensure compliance with relevant legislation and regulations.

5.1.7 Do you think it's appropriate for MBIE to be able to take a single case in respect of multiple breaches of the RTA?

Yes. If there are multiple breaches of the same thing, then MBIE should have the ability to have these heard as a single action.

5.1.8 What level of penalty should MBIE be able to seek when taking a single case in respect of multiple breaches?

It would depend on the nature of the breach but if there are repeated breaches then the penalty needs to reflect that.

Question on MBIE enforcement powers

5.1.9 Do you consider it appropriate for MBIE to enter into enforceable undertakings with landlords? Please explain

An enforceable undertaking as defined is "an agreement between a landlord and MBIE that sets out the circumstances that led to a breach, the steps a landlord needs to undertake to remedy the breach, and a time frame and consequences for failing to adhere to the agreement". I think it reasonable for MBIE to take an enforceable undertaking but only in situations of repeated breach or where the breach is of a very serious nature.

Questions on improvement notices

5.1.10 Do you think it's appropriate for MBIE to issue improvement notices? If so, in what situations?

An improvement notice as defined is a notice that "would alert the party of a breach, and provide them with an opportunity to rectify the breach within a specific time period without further penalties". I think it reasonable for MBIE to be able to issue improvement notices.

5.1.11 What should the penalty be for failing to comply with an improvement notice?

An enforceable action (or infringement notice – see below) could be served if an improvement notice is not complied with.

Questions on MBIE issuing infringement notices

5.1.12 Do you agree MBIE should have the ability to issue infringement notices in circumstances where a breach of the RTA is straightforward to prove?

Yes, but only if the breach is straightforward, there are no extenuating circumstances and no dispute of the facts involved. In these case infringement notices could be cost effective way for MBIE to ensure compliance and allow a proportional response to be taken.

5.1.13 Do you think infringements for landlords would be effective in holding them to account for poor behaviour, and/or encouraging positive behaviours?

Yes, particularly those landlords that do not currently have the system and processes to be able to adequately manage their property portfolio.

5.1.14 What situations do you consider would be appropriate to issue an infringement notice in?

See 5.1.12 above. Infringement notices should not be the tool of first resort, but should be used when a landlord has failed to comply with an improvement notice. The improvement notice provides the opportunity to rectify the breach and the infringement notice is the follow up to that for straightforward breaches of the RTA.

Questions on exemplary damages (awards made by the Tenancy Tribunal payable to the other party of the tenancy)

5.1.15 Do you think these existing exemplary damage levels are appropriate for unlawful acts?

An in-depth analysis of exemplary damages claimed/awarded historically needs to be carried out to provide greater insight before level are changed.

5.1.16 Are there any other breaches of the Act you consider meets the threshold for unlawful acts?

Yes. The tenant has signed a contract and agreed to pay rent. If the tenant stops paying rent (either during the tenancy or when notice has been given) then this should be deemed an unlawful act.

5.1.17 Do you think changing the name of exemplary damages to 'penalty' would better clarify the purpose of the regime? Please explain

Yes.

5.1.18 Do you think MBIE should have the ability to apply to the Tenancy Tribunal to award a penalty where unlawful acts have been committed? If yes, what do you consider would be the appropriate maximum penalty MBIE should be able to apply for?

No. Decisions on unlawful acts should be decided by Tenancy Tribunal.

5.1.19 Do you think a landlord, tenant, or MBIE should be able to take a case and seek exemplary damages after 12 months from when the act was committed?

No. Twelve months is too long a timeframe for subsequent action to be taken.