

Response to ‘Photographing & Filming Tenants’ Possessions for Advertising Purposes - Consultation Paper’

Background

Housing Justice is a program of the Advocacy and Rights Centre now trading as ARC Justice. The Housing Justice program provides information, advice, advocacy and support for both private and public tenants.

In our collective experience within the Housing Justice program there has been the occasional query about this issue and we have never been able to provide much information as the RTA does not directly address this scenario. We do feel that a balance needs to be struck between the right of a landlord to sell a property and a tenant’s right to privacy in their own home.

Specific responses

We have only answered questions we feel we can make a relevant contribution to.

2. Do you know of an instance in which a tenant was concerned that their possessions could be seen in advertising photographs or videos? If so, why was the tenant concerned?

Tenants who have contacted the Housing Justice program regarding advertising photography have expressed concern about their right to privacy (in a general sense), as they see it.

6. Can you suggest a workable, standard practice that could be adopted by landlords and agents advising tenants that advertising photographs and videos will be taken inside their homes?

A workable standard practice may involve:

- gaining permission in writing first and foremost
- giving substantial notice (more than 24 hours), and discussion about areas to be photographed or filmed so the tenant has a chance to remove anything personal or identifying.
- Landlords having stock photographs of their property prior to tenants moving in to be used for future advertising purposes.

7. Does the law in relation to the right to enter to show the property to a prospective tenant or buyer need clarification? Should landlords and agents have a right to enter to

take photographs and videos for advertising purposes, or should the right be restricted to visits in person?

Given the law currently does not address this matter specifically, and there has been concern expressed by tenants, an amendment in the RTA would be warranted so that all parties know where they stand, and so there is some protection for tenants.

The right to enter should definitely be restricted to visits in person, and the issue of taking photos or films should be negotiated on top of this. It is apparent that some tenants do not have specific concerns if photos are taken, but if they are concerned there should be further protections.

The right to enter as it is addressed in the RTA has generally been about balancing the rights of the landlord with those of the tenant. Putting photographs or film into the public arena brings in another set of issues about privacy and safety, and these issues need to be considered in legislation. These issues are a reflection of current developments in social media and technology and the mindset these developments have engendered. Legislation needs to be mindful of this.

8. Do you consider that it is an invasion of the tenant's privacy to take or use advertising photographs or videos of tenants' possessions without their consent?

We are of the opinion that it is an invasion of a tenant's privacy to take or use advertising photographs or videos of their possessions without their consent. The general nature of queries from tenants of this service who don't want this to occur is that it feels like a violation.

By distributing photos or film of tenant's possessions into the public sphere a real estate agent or landlord is creating a situation where any curious person can potentially see inside someone else's home. They may have no intention of renting or buying and they may even be looking for clues about that home's security system or personal life. This is a gross invasion of privacy.

9. How should the law protect tenants' privacy in relation to photographs or videos that contain tenants' possessions?

Perhaps Victorian law should broaden its' definition of 'quiet enjoyment' from the common law meaning to one that includes 'reasonable peace, comfort and privacy' to provide further protection as other states have. This would be a start.

Further to this the legislation should address the matter more specifically as they have in Queensland and Tasmania, requiring landlords to gain permission in writing. (It is possible that this permission could be coerced and tenants be threatened with eviction, but then

they may be able to argue that any potential Notice to Vacate is retaliatory). It would provide some protection to tenants who feel their privacy may be being violated.

Although less common, the risk of personal harm requires more formal guidelines. If a tenant expresses a known risk the landlord or their agent should work with the tenant to ensure their identity and location is not given away through property advertising. Possible methods could include the use of earlier existing images of the property, where possible waiting for a tenant to vacate or working closely to ensure photographs do not include any personal items.

10. Should Victorian law require tenant consent before photographs or videos of tenants' possessions are used for advertising purposes?

Victorian law should require tenant consent as there will be a much wider audience for the photos or film than if a prospective tenant or buyer were to inspect the property in person.

11. Should Victorian law allow landlords and agents to take photographs and videos containing tenants' possessions for advertising purposes provided that they first inform the tenant in writing that they will be taking the images and give tenants the opportunity to remove any items from view?

Giving tenants the opportunity to remove items from view is not enough of a prerequisite to then giving landlords the right to take photos if the tenant still objects. It is still an invasion of privacy if permission is not given.

12. Can you suggest any other reforms that might strike the right balance between the desire of landlords to advertise their properties and the concerns of tenants in relation to photographs and videos that contain their possessions?

Perhaps landlords could be educated to take photos and films of their property before they rent it out in the first place, or when it is empty between tenants, so that pictures or footage showing the empty house could be used to advertise the property. Once a prospective buyer shows interest then an appointment could be made with the tenant to show them through.

As well as this perhaps both landlords and tenants, or the public in general, could be educated about the issues and potential risks involved in using photos and films of tenant's possessions to rent out or sell a property. This education could include a video that demonstrates how photos placed on the internet can be used beyond the original intent and are not necessarily secure.

