Fairer, Safer Housing:
Residential Tenancies Act Review
Alternative Forms of Tenure Issues Paper

A Submission from the Community Housing Federation of Victoria

The Community Housing Federation of Victoria (CHFV) welcomes this opportunity to make a submission in response to the Alternative Forms of Tenure discussion paper, released by the Victorian Government as a part of its review of the Residential Tenancies Act 1997 (Vic) (RTA).

CHFV is the peak body that represents the not-for-profit community housing sector in Victoria. CHFV's member community housing organisations (CHOs) are committed to providing secure, affordable and decent housing for people on low to middle incomes. Members include the CHOs registered as housing associations or housing providers under the Victorian regulatory framework for non-profit housing providers plus other organisations and individuals interested in housing.

In this response to the Issues Paper on Alternative Dispute Resolution, CHFV builds upon its earlier submissions to the Laying the Groundwork Consultation Paper and to the Rights and Responsibilities of Landlords and Tenants Issues Paper.

Background

Why the RTA matters

As social housing landlords, CHOs use the RTA on a daily basis. The RTA provides the principal formal framework under which CHOs relate to their tenants and residents. CHOs are required by regulation under the *Housing Act* 1983 to seek to sustain social housing tenancies wherever possible. The RTA is used as a tool by CHOs to sustain tenancies by:

- providing a frame of reference for the rights and responsibilities of tenants and rooming house residents; and
- the utilisation of enforcement mechanisms through the Victorian Civil and Administrative Tribunal (VCAT) – not as a method of ending tenancies but principally as a means to ensure tenants and residents comply with their obligations and fully appreciate the consequences of not doing so.

Evictions for non-payment of rent or repeated breaches of duty provisions of the RTA are required by regulation and by CHOs' policies to be used as a last resort only. This approach, coupled with a rent-setting approach that keeps rent at or below affordability benchmarks, and a greater ability to link tenants and residents with support, offers tenants and residents a measure of security of tenure not seen in the private rental market.

Why rooming houses matter

This paper mainly discusses caravan parks and rooming houses. CHFV members have little dealing with caravan parks, but manage a sizeable portion of the State's rooming houses, so this submission

will specifically address the RTA's treatment of rooming houses. As at 30 June 2015 CHFV members managed 133 rooming houses with a total of 2,201 rooms.

As the Issues Paper says, "the rooming house sector meets a critical need by accommodating some of Victoria's most vulnerable and disadvantaged individuals, many of whom have complex needs and no other viable housing options." In fact, for a single person on a low income who becomes homeless in Victoria, particularly in Melbourne, a rooming house is virtually their only accommodation option.

The community rooming house sector in particular houses large numbers of residents with complex needs and difficult behaviours. This includes residents with a range of mental illnesses, personality disorders, and drug and alcohol issues. It is vital to the management of these buildings that rooming house owners retain the stronger capabilities provided by the rooming house provisions, including the ability to make enforceable house rules and shorter breach compliance and termination provisions. The safety of residents and staff needs to be protected by strengthening the provisions relating to danger, damage and violence.

We note that the rooming house part of the Issues Paper includes 15 suggestions drawn from the Tenants Union's submissions, but not one of the many suggestions CHFV has made regarding the RTA and rooming houses in our previous submissions. It is important that the rooming house provisions strike the appropriate balance between the rights of residents and the duty of rooming house owners to provide a safe environment for their other residents, employees and contractors.

CHFV's response to the Issues Paper

In the following sections, CHFV addresses:

- Definition of rooming house
- Residency rights and agreements to live in rooming houses
- House rules
- Entry to resident's room
- Pets in rooming houses
- Security of residents, in particular protection from danger and violence
- Quiet enjoyment of other residents

Summary of Recommendations

1. The ability for a Minister to declare a rooming house should be expanded to include those owned by community housing organisations.
2. There should be a provision for fixed term residencies in rooming houses.
3. There should not be a requirement that house rules must be displayed in common areas, as well as in each resident's room.
4. There should not be a mandatory uniform set of house rules for all rooming houses.
5. The 4 week interval for general inspections should be retained.
6. The provision that a resident must not keep an animal on the premises of the rooming house without the rooming house owner's consent should be retained.
7. The danger provisions should be strengthened by changing the word "endangers" to "has endangered" in section 279
8. The violence provisions should be strengthened by removing the ability for a VCAT member to reinstate a residency if they believe that "the circumstances giving rise to the giving of the notice to leave will not be repeated".
9. The need for a Notice to Vacate for Immediate Possession applications should be removed.
10. Rooming house owners and their employees and contractors should be protected through specific mention in the RTA.
11. A Notice to Leave should be able to be served on the resident where that resident's visitor has committed a serious act of violence.
12. There should not be a compliance period following Breach of Duty notices where an owner or resident is required to stop doing something.

CHFV would also like to clarify that nearly all of its members who manage rooming house are registered housing associations or registered housing providers. They are therefore specifically excluded from the requirement to be registered under the *Rooming House Operators Act* 2016. They are regulated by the Housing Registrar under the *Housing Act* 1983.

7.1 Definition of rooming house

CHFV believes that the ability for a Minister to declare a rooming house should be expanded to include those owned by CHOs.

In CHFV's first submission on the Laying the Groundwork Consultation Paper we pointed out the inconsistent treatment of public housing and community housing in different parts of the RTA. The Consultation Paper itself stated that social housing comprises both public and community housing and the two systems fulfil a similar purpose. Therefore, CHFV believes that the RTA should treat both consistently, and we submitted a number of proposed amendments to the RTA to achieve this.

One of these was to provide the ability for a Minister to declare a building owned or leased by a registered housing agency and containing one or more self-contained apartments to be a rooming house for the purposes of this Act.

CHFV suggest the following changes to the RTA:

Section	Current Wording	Proposed Amendment
3	[new definition] ***registered housing agency*** means a means a rental housing agency registered as a registered housing association or registered housing provider under Part VIII of the Housing Act 1983	
19(3)	The Minister, at the request of the Director of Housing, may declare a building owned or leased by the Director of Housing and containing one or more self-contained apartments to be a rooming house for the purposes of this Act.	The Minister, at the request of the Director of Housing, may declare a building owned by the Director of Housing **or owned or leased by a registered housing agency** and containing one or more self-contained apartments to be a rooming house for the purposes of this Act.

Thirty years ago the vast majority of community-managed rooming houses were the traditional model of a number of simple bedrooms and shared kitchen, toilet and bathroom facilities. They were owned by the Director of Housing and managed by CHOs.

Since then the Government has embarked on a major program of renovations and renewals and converted most of these rooms into self-contained apartments with their own kitchen, toilet and bathroom facilities. This was partly driven by community expectations that accommodation should contain its own cooking and washing facilities, and also by the increasing difficulty of managing shared facilities with the advent of an increasing number of residents with mental health, drug and/or alcohol issues. These were still able to be managed under the rooming house provisions if the Minister gazetted the buildings under section 19 of the RTA.

In recent years the Government has begun a process of transferring titles of some of these buildings to registered housing associations and housing providers. This process is likely to continue in future years. The upshot is that due to the wording of section 19(3), the Minster no longer has the ability to declare them as a rooming house.

It is very important that CHOs regain the ability to manage such buildings under the rooming house provisions because this enables them to institute enforceable house rules and to have shorter compliance periods for breach notices. Despite the rooms now having their own facilities the buildings still have many of the same features (and problems) as traditional rooming houses. All the units are in one building, there is a high density, the units are very close to each other, there are numerous common areas including corridors and stairways, and there is usually a high percentage of

residents with complex needs and difficult behaviours. Managing such accommodation without enforceable house rules is a very difficult task for managers and unfair for the residents who live there.

7.3 Unregistered rooming houses

While CHFV agrees with the registration process there is a concern that many women seeking rooming house accommodation have escaped domestic violence. Addresses of rooming houses should not be made publically available.

7.4 Residency rights and agreements to live in rooming houses

CHFV's previous submission on the Rights and Responsibilities Issues Paper suggested that there should be a provision for fixed term residencies in rooming houses.

At the moment rooming house residencies are all periodic and there is no provision for a fixed term residency agreement. Rooming house managers have expressed a belief that being able to have fixed term residencies would be a valuable tenancy management tool. It would also be useful in educational and health-related accommodation facilities where managers wish to provide residents with rights under the RTA but the accommodation is attached to a fixed-length training or therapeutic program. Under the current RTA, managers wanting to stipulate a fixed term are obliged to use the residential tenancies provisions which do not provide for House Rules. House Rules are essential in a rooming house or similar style accommodation.

This would need a new definition in section 3:

> ***fixed term residency agreement*** means a residency agreement for a fixed term;

and a new section in Part 6.

Fixed term residency agreements would be optional for a rooming house owner. As occurs with existing residential tenancy agreements, the owner could specify whether the agreement would be fixed term or periodic.

CHFV suggests the following changes to the RTA:

Section	New sub-section
3	**Definitions** New definition: ***fixed term residency agreement*** means a residency agreement for a fixed term;

287B	**End of fixed term residency** (1) A rooming house owner under a fixed term residency agreement may, before the end of the term of the residency agreement, give the resident a notice to vacate the room at the end of the fixed term. (2) The notice must specify a termination date that is on or after the date of the end of the term. (3) The notice must be given— (a) in the case of a fixed term residency agreement for a fixed term of 6 months or more, not less than 90 days before the end of the fixed term; or (b) in the case of a fixed term residency agreement for a fixed term of less than 6 months, not less than 60 days before the end of the fixed term.

7.5 Rooming house rights and responsibilities

7.5.1 House rules

CHFV members are generally happy with the current application and enforcement of house rules.

CHFV does not agree with the suggestion that house rules must be displayed in common areas, as well as in each resident's room. Our members try to make rooming houses as homelike as possible and to minimise signage in common areas except for signs to do with fire safety. House rules prominently displayed in common areas would create exactly the kind of institutional "feel" that we are trying to avoid. A set displayed in each resident's room should be more than adequate to inform them of the rules.

CHFV also does not agree with the Tenants Union suggestion of a mandatory uniform set of house rules for all rooming houses, with variations only permitted with approval by the Director of CAV. A uniform set of house rules would not work as all rooming houses are different and some rules need to be made specific to the rooming house. Any house rule found to be unreasonable can be challenged by the resident at VCAT if disputed.

7.5.2 Entry to resident's room

CHFV believes the 4 week interval for general inspections should be retained. We disagree with the Tenants Union's suggestion that three months would be a more appropriate frequency period for general inspections in rooming houses. Rooming houses present higher dangers in terms of fire and other health and safety issues than a normal residential tenancy. There is a much greater dwelling density so many more people would be adversely affected if an incident occurred.

Very few rooming house owners would actually conduct inspections every 4 weeks, but given their onerous responsibilities to the safety of all residents, it is important that the option be retained.

7.5.3 Pets in rooming houses

There is definite pressure to allow pets in rooming houses. Some pets may be acceptable in a rooming house, e.g. fish and birds, but dogs and cats become more problematic. The current duty

provision (section 117) says that "A resident must not keep an animal on the premises of the rooming house without the rooming house owner's consent". We believe this is adequate.

The Tenants Union suggestion to include "a rooming house owner must not unreasonably withhold consent to a pet" is going too far. Owners would then have to prove that their decisions were "reasonable" at VCAT. Such decisions are best left to the people managing the property.

Pets in rooming houses are problematic for numerous reasons:

- If one resident is allowed to keep a dog, others may want one too. A rooming house full of dogs would be extremely difficult to manage.
- Other residents may suffer from allergies or asthma.
- Pet hair and hygiene in common areas would be a problem.
- Pets may be aggressive to other residents.
- Damage could be done to the property through animals being confined to a room with nowhere to play or access to a yard to go to the toilet.
- Confinement to a small room would be a bad experience for the animal. Indeed animals may sometimes be in danger from other residents.

7.5.4 Security

The Act provides that a rooming house owner must take all reasonable steps to ensure security for the property of a resident in his or her room. The Tenants Union has suggested that this duty should be expanded to taking all reasonable steps to ensure security of the resident's person while at the rooming house premises, in addition to the security of the resident's property. In our experience the chief danger to a resident's security comes from other residents and their visitors. A rooming house owner can only remove them if they can prove that they are a danger to others, which is very difficult under current legislation.

CHFV would be agreeable to this change provided our previous suggestions regarding the strengthening of the danger and violence provisions were accepted. These suggestions were made in the CHFV submission on the Rights and Responsibilities Issues Paper. These included:

- Changing the word "endangers" to "has endangered" in section 279
- Removing the need for a NTV for immediate Possession applications
- Protection for the rooming house owner and their employees and contractors
- Allowing a Notice to Leave to be served on the resident where that resident's visitor has committed a serious act of violence.

These are restated and expanded upon below.

Immediate Notice to Vacate and Notice to Leave

Recently community housing providers have had difficulty getting orders of possession for danger because VCAT and the Supreme Court (Director of Housing v Pavletic) have interpreted the word "endangers" in the Act as meaning that there is an ongoing danger to others from the person

receiving the notice. Some VCAT members have required a string of dangerous incidents to have occurred in order to prove that the danger is ongoing. Similarly, the Violence provisions in Part 8 allow a VCAT member to reinstate a residency if they believe that "the circumstances giving rise to the giving of the notice to leave will not be repeated".

In both cases, the VCAT member is forced to conduct an exercise in mind-reading and prediction of the future in order to determine whether the respondent "is" a danger to others. This makes it very difficult for a CHO to protect other residents and neighbours.

CHFV is aware of many examples of instances where violent residents have been allowed to remain in their housing because a theoretical ongoing danger could not be proved at VCAT. The result is that their neighbours – who often are also community housing residents on low incomes with their own issues – must live in fear or move out. An example is given below:

Danger/Violence Case Study

Keith*, an intellectually disabled resident was punched to the ground by another resident, Jim*, who was affected by alcohol and sedatives at the time. Keith's eye was badly damaged which required him to attend hospital.

The CHO served a Notice to Leave and Jim's residency was suspended. At the VCAT hearing Keith was very scared but nervously gave his evidence. He was not represented. Other witnesses to Jim's past aggressive behaviour were unwilling or unable to attend the hearing. The CHO presented a hospital report stating that there was damage to Keith's right eye. They also produced a previous Breach of Duty notice that had been issued for disturbing the peace but the member appeared to not consider this to be relevant. The housing worker also testified that Jim had been intoxicated every time she had spoken with him after the incident.

Jim was represented by a tenant advocacy service and testified that he could not remember anything about the incident. His advocate questioned him about getting help and he advised he would go to detox/rehab. He spoke about not being a violent person and said that he would not take Valium with alcohol again and that he would "eat well and exercise every day!"

The VCAT member found that the violent incident had occurred but said that she did not think it would happen again and the resident should be allowed to resume occupation of his room.

As a result of this outcome Keith was too scared to stay in the property and effectively became homeless for about three months until he obtained accommodation in a supported facility. Jim was able to continue living at the property.

The housing worker reports that following this and other unsuccessful hearings, other residents of the rooming house who display aggressive or intimidating behaviour now look at her and say "There's nothing you can do about it – we know."

* Not their real names.

These types of experiences are replicated many times for CHOs running rooming houses. This state of affairs makes it very difficult to ensure the future safety of residents and staff. It is interesting to note the changing of community attitudes toward family violence – pleas of "I won't do it again" are no longer believed when violence has been proven. In the meantime some of Victoria's most disadvantaged citizens – residents in rooming houses – are forced to live in fear of assault in their own homes. The perpetrators of violence are often represented by Government-funded legal advocates while the victims are not because (supposedly) their residency is not under threat.

This issue could be partially remedied by changing the word "causes a danger" to "has caused a danger" in section 279, and by removing the sub-section 376 (1) (a) ii) that allows a member to find that "the circumstances giving rise to the giving of the notice to leave will not be repeated". We have also suggested protection for the rooming house owner and their agents, employees and contractors.

Section	Current Wording	Proposed Amendment
279	**279 Danger** (1) A rooming house owner may give a resident a notice to vacate the room occupied by the resident if the resident or the resident's visitor by act or omission causes a danger to any person or property in the rooming house.	**279 Danger** (1) A rooming house owner may give a resident a notice to vacate the room occupied by the resident if the resident or the resident's visitor by act or omission **has caused a** danger to: (a) any person or property in the rooming house; or (b) **the rooming house owner or the rooming house owner's employee, agent or contractor**
376	**What can the Tribunal order?** (1) After hearing an application under section 374, the Tribunal may— (a) if the Tribunal determines that it was appropriate to give the resident the notice to leave the managed premises— (i) make an order terminating the tenancy agreement, residency right or site agreement as at the date of that order; or (ii) if the Tribunal is satisfied that	**What can the Tribunal order?** (1) After hearing an application under section 374, the Tribunal may— (a) if the Tribunal determines that it was appropriate to give the resident the notice to leave the managed premises make an order terminating the tenancy agreement, residency right or site agreement as at the date of that order; or (b) in any other case, order that

	the circumstances giving rise to the giving of the notice to leave will not be repeated, order that the suspension of the tenancy agreement, residency right or site agreement cease and that the resident be allowed to resume occupation of the rented premises, room, site or Part 4A site under the tenancy agreement, residency right or site agreement; or (b) in any other case, order that the suspension of the tenancy agreement, residency right or site agreement cease and that the resident be allowed to resume occupation of the rented premises, room, site or Part 4A site under the tenancy agreement, residency right or site agreement.	the suspension of the tenancy agreement, residency right or site agreement cease and that the resident be allowed to resume occupation of the rented premises, room, site or Part 4A site under the tenancy agreement, residency right or site agreement.

Removing need for Notice to Vacate for Immediate Possession applications

Under the RTA immediate notices to vacate can be issued for danger, malicious damage or serious disruption of the quiet and peaceful enjoyment of the rooming house by other residents. This process then requires an application to VCAT for a hearing for a possession order. CHFV encourages our members to serve these notices by hand and serve a copy of the application to the respondent immediately afterwards. However this is not always possible. Often the respondent cannot be found and sometimes distances are prohibitive with limited staff resources. In these cases the notice to vacate must be sent by Registered Post, and the application cannot be made until the notice is deemed to have been served. Even using Priority Registered Post this adds a further 3 to 5 days (depending on day of postage) to the process. Despite requests for an urgent hearing it can often be a further week before the matter is heard at VCAT.

These notices are issued in cases where there the immediate ending of the residency is needed. In the current system a person who is dangerous to neighbours can remain there for two weeks before a hearing occurs and our members have to try to keep neighbours (also their disadvantaged residents) safe in the meantime. Regarding malicious damage, one of our members reports a recent case where an immediate Notice to Vacate was issued and the house was virtually destroyed by the time the matter reached VCAT.

The NSW legislation enables landlords to apply directly to the Tribunal for an Order of Possession without first issuing a Notice to Vacate in cases like damage, danger and harassment. This would certainly speed up the process for landlords and owners and make it less ambiguous for residents.

Accordingly CHFV recommends that similar provisions be introduced in the Victorian RTA. The suggested new sub-sections would read:

Section	New sub-section
323	**Application for possession order by rooming house owner** A rooming house owner may apply to the Tribunal for a possession order for a room if— (c) the resident or the resident's visitor intentionally or recklessly causes or allows serious damage to any part of the rooming house; or (d) if the resident or the resident's visitor by act or omission has caused a danger to: (i) any person or property in the rooming house; or (ii) the rooming house owner or the rooming house owner's employee, agent or contractor; or (e) the resident or the resident's visitor has (i) seriously or persistently threatened or abused the rooming house owner, the rooming house owner's agent or any employee or contractor of the rooming house owner or rooming house owner's agent, or caused or permitted any such threats, abuse or conduct, or (ii) intentionally engaged, or intentionally caused or permitted another person to engage, in conduct in relation to any such person that would be reasonably likely to cause the person to be intimidated or harassed (whether or not any abusive language or threat has been directed towards the person); or (f) the resident or the resident's visitor seriously interrupts the quiet and peaceful enjoyment of the rooming house by other residents.

Notices to Leave

Issuing Notices to Leave is always a notoriously difficult exercise. At the moment the notice can be served on a resident's visitor. This is of limited usefulness. What would be very useful is to have the power to also issue a Notice to Leave on the resident where that resident's visitor has committed a serious act of violence. This actually would help to remove the problem and is consistent with other provisions in the Act which hold the resident responsible for the behaviour of their visitors. Of course it is still incumbent on the applicant if the matter proceeds to VCAT to satisfy the referee of the link between the resident and the visitor. However often in rooming houses this is precisely the context out of which the violence erupts.

One of our members has suggested that

"Notice to Leave is the only Notice that stipulates it must be served on an actual person. Given that a Notice to Leave is, more often than not, given after a dangerous event has occurred, it is unreasonable to state that the Notice must be given to the Resident. Often when something of a serious nature occurs the Resident flees and cannot be located, or serving it on the Resident may put the Rooming House owner/operator in danger."

This is worth consideration. Perhaps there could be wording inserted about making every effort to serve the Notice in person and then provision for other methods. We understand that VCAT members have often informally interpreted the provision along these lines.

Mail Boxes

CHFV does not oppose the suggestion that that a rooming house owner should provide a separate mail box for each room of the rooming house.

7.5.5 Duty to pay rent

The timely payment of rent should continue to be a duty owed under the Act by rooming house residents.

7.5.6 Duty to compensate for damage

CHFV is uncertain about the Tenants Union's view that the obligation on rooming house residents is inconsistent with the obligation on tenants and imposes a harsher requirement and unfair financial burden on residents. We think that the obligation is much the same. It is just that for residential tenancies the obligation to compensate the landlord is described in **Division 6 – Repairs and Maintenance** rather than **Division 5 – General Duties**.

7.5.7 Quiet enjoyment of other residents

The suggestion by the Tenants Union that the duty provision for residents of rooming houses be amended to say "unreasonably restricts or interferes with the quiet enjoyment of other residents" is concerning. It is difficult enough to prove these matters at VCAT already without making the test harder.

As with security, the greatest threat to the quiet enjoyment of residents comes from other residents and their visitors. The CHFV submission on the Rights and Responsibilities Issues Paper addressed Breach of Duty Notices for behavioural issues. The suggestion was:

Breach of Duty Notices can be divided into two categories –

- requests that a resident or owner to do something, e.g. pay for a broken window or conduct a repair, and

- requests that a resident or owner stop doing something, e.g. stop making noise and disturbing the neighbours.

CHFV believes that the period for compliance of 3 days for rooming houses is appropriate for the first category. However, they are inappropriate for when a resident or owner is being asked to stop doing something.

Under the current RTA, a resident who is having noisy parties that disturb the rooming house can continue to do this for a further 3 nights after being served a Breach of Duty notice. A further 3 to 10 days can be added for postage, depending on the method of service. The owner cannot apply to VCAT for a Compliance Order or issue a further Breach of Duty notice until after the notice period is over. On some interpretations, they cannot even send it then if the behaviour has not occurred again after the notice period has expired. Housing workers explaining this to frustrated neighbours are met with incredulity when they explain how the law works in these situations.

CHFV believes that there should not be a compliance period following the Breach of Duty notice for these sorts of notices. The suggestion is that section 207 be amended as follows:

Section	Current Wording	Proposed Amendment
207	**207 Definitions** In this Part— ***required time*** means— (a) in relation to rented premises— (i) for a duty under section 89 in relation to a right of entry for a purpose set out in section 86(1)(a), (c) or (f), 14 days; or (ia) for a duty under section 89 in relation to a right of entry for a purpose set out in section 86(1)(b), (d) or (e), 3 days; or (ii) for a duty under Division 5 of Part 2, 14 days; or (b) in relation to a rooming house, for a duty under section 140 or Division 5 of Part 3, 3 days; or	**207 Definitions** In this Part— ***required time*** means— (a) in relation to rented premises— (i) for a duty under section 89 in relation to a right of entry for a purpose set out in section 86(1)(a), (c) or (f), 14 days; or (ia) for a duty under section 89 in relation to a right of entry for a purpose set out in section 86(1)(b), (d) or (e), 3 days; or **(ii) for a duty under section 63, 64, 65, 68, 69 or 70, 14 days; or** **(iii) for a duty under section 60, 61, or 67 immediately; or** (b) in relation to a rooming house, **(i) for a duty under section 140 or 110, 112, 114, 115 116, 117, 118, 120, 121, 123, 124, 125 or 127, 3 days; or** **(ii) for a duty under section 113, 119 or 122, immediately**

7.5.8 Utilities

In rooming houses water and other utility costs are included in the overall charge called rent and not listed separately. If there is an issue with overall rent charged CAV will compare it to similar rooms with similar services. It would be interesting to understand why this is considered an issue by others.