



IT'S TIME TO END  
HOMELESSNESS

# January 2017 Options Paper

## Residential Tenancies Act Review

# Launch Housing Submission

February 2017

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A merger between



## Launch Housing

Launch Housing was established in July 2015 following a merger between Hanover Welfare Services and HomeGround Services. We have an unambiguous mission – to end homelessness in Melbourne and beyond.

Launch Housing delivers a broad range of housing and homelessness services across 14 Melbourne sites. This includes crisis accommodation; transitional housing; support for people experiencing homelessness; Education First Youth Foyers; and *HomeGround Real Estate*, one of Australia’s first not-for-project real estate agencies.

## Responding to the Options Paper

Launch Housing welcomes the statement that the package of reforms eventually put to government for approval will focus on building a healthy rental sector with the following characteristics:

- balanced bargaining power between the parties
- a positive and non-adversarial culture, which includes:
- an appropriate balance of rights and responsibilities, and this matches with the perceptions parties have of the market, and
- effective dispute resolution functions that allows disputes to be resolved constructively’.

Victoria needs to seize the opportunities presented by this review of the Residential Tenancies Act and bring it into line with the best approaches within Australian and in international jurisdictions. The comprehensive consultation process should enable Victoria to go beyond catch-up and include innovations suggested and improved throughout the process.

We are pleased to note that a number of recommendations suggested by Launch Housing have been included in the current Options Paper. Our submission confirms which of the Options we do or do not support, and includes ideas for improvement of language and implementation.

Launch Housing looks forward to reviewing the package of reforms that will be put to government for approval.

## Structure of this submission

Launch Housing’s submission in response to the Options Paper is broken into two parts:

- Firstly, we respond to the options and questions included in the Options Paper. The topics we are responding to are headlined in purple. The Options that we comment on are numbered and underlined.
- Secondly, we make an additional number of recommendations for amendments to Residential Tenancies Act. We looking forward to seeing these addressed in the next Options Paper.

## Section 2 Application of the RTA and longer lease terms

Launch Housing recommends including a definition of a longer 'standard' lease within the Act. Tenants would have a right to a 'standard' lease of five years, but could waive this right and sign a lease for a shorter period of time. Longer leases could also be linked with longer notice to vacate periods where both the tenant and the landlord/agent would give longer notice to vacate periods.

Our view is that neither Option 3.1 – Remove the five-year limit on the scope of the RTA nor Option 3.1 – Remove the five-year limit on the scope of the RTA is likely to lead to longer lease terms being available for tenants.

The introduction of Option 3.3 – Provide for the option for tenants to extend fixed term leases for a subsequent period would need to be considered in conjunction with changes to notice to vacate regulations. The Options Paper has not clearly linked the two issues.

## Section 4 Unlawful discrimination against applicants and tenants

Launch Housing recommends:

- The Residential Tenancies Act should explicitly state that landlords and agents cannot discriminate against prospective tenants. Anti-discrimination provisions should be consistent with the *Equal Opportunity Act 2010*.
- Consumer Affairs Victoria should work with landlords and agents to ensure they understand their responsibilities to comply with anti-discrimination provisions in the Act.

Therefore, Launch Housing believes that Option 4.2 – Strengthen linkages between the RTA and the Equal Opportunity Act 2010 is better than Option 4.1– Include an information statement about unlawful discrimination in application forms.

Practical redress could include penalties for landlords who unlawfully discriminated against an applicant/s. Redress options include fining landlords who have unlawfully discriminated against an applicant, with payment made to the applicant.

Investigatory and enforcement responsibilities need to be assigned to CAV and properly resourced.

## Section 4 Tenancy databases

Tenants who are listed on a tenancy database may find it difficult to remain in the regulated rental market. It is crucial that they be able to view and if necessary be able to get unjust listings removed. Launch Housing recommends:

- As a general rule, tenants should have free access to tenancy databases, however, this right should be balanced against their right to privacy.

We believe that the both Option 4.4 and 4.5 should be adopted.

In regards to Option 4.4 – Prohibit charging fee to tenant for copy of tenant's listing, there is no apparent value in offering a fee-free option rather than outright prohibiting a fee.

We believe it is time for Option 4.5 – Give VCAT power to make an order if database listing is unjust in the circumstances to be implemented so that Victoria would be consistent with equivalent provisions in the residential tenancies legislation in NSW, Queensland, WA, Tasmania and the ACT.

## Section 4 Form of the tenancy agreement and breaches of additional terms

Changes to the current prescribed tenancy agreement will need to be enforced. It is not sufficient to include a general obligation for the parties to comply with the RTA.

Launch Housing states:

- Launch Housing does support changes to the Residential Tenancies Act that would increase the number of obligations prescribed in the Act, as per the NSW example.
- Launch Housing supports changes to the Residential Tenancies Act that would make it an offence to include in any tenancy agreement a term that attempts to exclude, restrict or modify the operation of the Act.

Therefore, Launch Housing supports:

- Option 4.10 – Blacklist of tenancy agreement prohibited additional terms
- Option 4.11 – Offence to include invalid or prohibited term.

As noted in the Options Paper, the inclusion of the blacklist would bring Victoria in line with a similar provision in NSW residential tenancies legislation while the creation of an offence for attempting to contract out of the RTA would be consistent with the approach taken in Queensland’s legislation.

## Section 5 Pets in rented premises

Pets have a very important place in the lives of many Victorians and, like other stakeholders, Launch Housing questions the extent to which it is reasonable for landlords to prevent tenants from keeping pets. Treating pets as almost certain to cause damage is not supported by anecdotal evidence from landlords who have granted permission to tenants to keep their pets with them. Our position is:

- Launch Housing does not support the introduction of a ‘pet bond’.
- Launch Housing believes pets should be allowed in rented properties and any nuisance or damage should be dealt with as damage or a breach, as below.
- The Residential Tenancies Act does not need to be amended to address damage, and subsequent breach notices, caused by pets. Tenants’ responsibilities regarding damage is already covered in the Act and explicit reference to pets does not need to be added.

Launch Housing does not support Option 5.3A – An optional pet bond lodged with RTBA or any of the other options listed.

## Section 5 Rights of entry to premises

Tenants should have the right to enjoy the privacy of their home, without being constantly prepared for an inspection or other access by the landlord, their agent or other persons. The current 24-hours’ notice to enter a property negates this right.

- Launch Housing believes that 24-hours’ notice to enter a property is too short (except in exceptional circumstances such as concern for the wellbeing of occupants or suspected dangerous activities). Notice to enter should be extended to seven days written notice.
- Launch Housing agrees with the approach in Queensland that prohibits a landlord from using an image that shows a tenant’s possession to promote or advertise the property unless the tenant gives written consent for it to be used.

Therefore, Launch Housing supports the following Options:

Option 5.5 – Seven days’ notice for general inspection or valuation.

Option 5.6 – Landlord liable for tenant loss caused during entry.

Option 5.8 – 48 hours’ notice for entry to show to prospective tenants, within 21 days of termination.

We do not support the other options proposed.

## Section 6 Lease breaking in special circumstances

It is important to enable tenants to break their lease, without penalty, in certain circumstances. As previously stated:

- Launch Housing supports the proposal that tenants be able to give a reduced notice to vacate (14 days) if offered social or community housing.

The Options Paper states:

*Where a tenant requires temporary crisis accommodation or special or personal care, or is offered public housing, the current RTA recognises these special circumstances by permitting the tenant to give a 14 day notice of intention to vacate instead of the usual 28 days*

Launch Housing recommend that the reduced notice to vacate be extended to include social and community housing, not just public housing.

We support Option 6.5 – Tenants in special circumstances not required to pay lease break fees.

Launch Housing supports these options:

- Option 11.37 – Enable tenant to give notice of intention to vacate at any time before the termination date specified by a notice to vacate under prescribed circumstances.

This would introduce a more appropriate balance of rights and responsibilities than is currently in place.

- Option 11.38 – Enable tenant to give reduced period of notice where they have accepted offer of public or community housing.

This Option would be improved with the inclusion of the word ‘social’ so it reads Option 11.38 – Enable tenant to give reduced period of notice where they have accepted offer of public, social or community housing.

## Section 7 Bonds

We welcome the focus on ensuring that the upfront costs of entering a tenancy are not excessive. As noted, it is essential it will also be adaptable to meet future changes in market conditions. Launch Housing recommends:

- there is merit in the proposal to introduce landlord bonds in Victoria, however, if this was to occur, we believe it should be done so with exemptions for community housing organisations
- the Residential Tenancies Act be amended to reflect the approach in New South Wales and Tasmania where bond increases are not permitted during the tenancy
- that bonds be limited to a maximum of one month’s rent for general tenancies and two weeks rent for rooming houses and caravan parks. The high uptake of landlord insurance reduces the need for landlords to set a bond that is higher than one month’s rent.
- the Residential Tenancies Act be amended so that as a default, the bond be returned to the tenant within 10 days of the end of the tenancy if the landlord does not make a claim against the bond.<sup>1</sup>
- the Residential Tenancies Act be amended so the part of the bond that is not being contested be returned to the tenant within 10 days of the tenancy ending.

Launch Housing agrees that the current high value exemption no longer reflects the intent of the original exemption.

We support:

- Option 7.1B – Update high value exemption to reflect current market rents and remove other exemptions

Under this alternative option, the high value exemption to the maximum bond amount and maximum rent in advance would be updated as per option 7.1A and there would not be any other permitted exemptions to the maximum bond amount.

Launch Housing supports: Option 7.3C – Automatic bond repayments for tenants when a claim is not disputed and evidence based claims for landlords.

In addition, the Residential Tenancies Act should be amended so that as a default, the bond be returned to the tenant within 10 days of the end of the tenancy if the landlord does not make a claim against the bond. If there is a dispute, the part of the bond that is not being contested be returned to the tenant within 10 days of the tenancy ending.

## Section 7 Rent payment fees and methods

There are other screening practices during the application that are used to discriminate against prospective tenants. These include additional costs such as fees associated with paying rent as well as instructions to agents not to consider applicants who will use Centrepay payments of Department of Housing bond loans. Launch Housing recommends:

- The Residential Tenancies Act should prohibit landlords and agents from withdrawing a tenancy offer when the prospective tenant uses a Department of Housing bond loan to pay their bond.
- All tenancies should have the option of at least one fee-free method of rental payment. This would reduce the risk of discrimination against tenants who propose to use Centrepay for rental payments.

Therefore, Launch Housing believes both Option 7.6 – One fee-free method of paying rent and Option 7.7 – Landlords must accept Centrepay payments should be adopted, instead of presented as stand-alone options. In order to avoid any confusion about the intent, Option 7.7 should be extended so that it reads Option 7.7 – Landlords must accept Centrepay payments and Dept. of Housing bond loans.

## Section 7 Rents including frequency of rental increases and rental bidding

The RTA currently restricts a landlord's ability to increase rent to once every six months. We note that while the Options Paper mentions the response of landlords to the question of how often they increase rent, it does not include the response of tenants to the question how often is their rent increases or of this question was asked. The Options Paper does refer to the views of tenants what is a reasonable frequency of rental increases and the proposal falls between the current once every 6 months and tenants' preference for once every two years.

Launch Housing recommends:

- rent should only be allowed to be increased once every 12 months during a tenancy
- recommends the Residential Tenancies Act be amended to prohibit rental auctions and rental bidding.
- believes CAV's rent assessment process should be amended to give greater protection to tenants when they believe a rent increase is too high.
- Where the tenant believes the rent increase is excessive, Launch Housing believes the onus should be on the landlord to justify an increase that is higher than CPI.
- Rent increases should not be allowed if there is an outstanding repair order on the property.

- The Residential Tenancies Act should offer greater protection for tenants who are struggling with late rental payments. Specifically, we recommend that the Act be amended to:
  - a) Change the notice to vacate period to 28 days for tenant initiated breaches.
  - b) Require VCAT to consider if eviction is reasonable in the circumstances.
  - c) Establish a trigger or warning system (after 14 days rent in arrears, for example) to alert tenants (and agencies that provide support to those tenants) that they are in arrears.
- does not believe there is a strong case for allowing a landlord to claim compensation because rent has been paid late. As a previous Issues Paper noted, Victoria’s rental market is particularly tight and rents are increasing considerably faster than CPI.
- the Residential Tenancies Act be amended to prohibit holding deposits.
- the Victorian Government provide funding for a housing support worker to be located at VCAT to provide support and referral services to tenants who are evicted from their rental property, to ensure they are not evicted into homelessness.

Launch Housing supports:

- Option 7.4 – Annual rent increases.

Under this option, rent would only be allowed to be increased once every 12 months during a tenancy. This is in line with our recommendation.

Launch Housing is opposed to rental bidding and supports Option 7.8B – rental properties must be advertised at a fixed price and landlords and agents cannot request or accept rental bids. We do not support Option 7.8A – rental properties must be advertised at a fixed price and landlords and agents cannot request rental bids as this will allow rental bidding to continue.

## Section 7 Adequacy of disclosure

Launch Housing agrees with the proposal in an earlier Issues Paper that prospective tenants be given three business days to seek independent advice to consider a tenancy agreement. A cooling-off or review period is a sensible safeguard designed to give tenants the opportunity to change their minds about an agreement they have made. It applies to other consumer decisions and renting a property is a key decision.

The Options Paper includes a proposal that tenants be given a longer time to complete the condition report, increasing from three days to five days. We support Option 8.2 – Change timeframe for returning condition report and recommend that specific reference to the a review period for the tenancy agreement also be included.

In regards to Option 8.6 – Prohibition on false, misleading or deceptive information, we support this move to deter the parties from falsifying the contents of a report.

## Section 8 Minimum standards for property conditions

Victoria lags behind other states and territories in mandating minimum standards for property conditions. While the Victorian government is the largest stakeholder that will be impacted by the introduction of minimum standards, this is no reason to avoid ensuring that all tenants should be able to live in safe and secure housing. We believe there are positive mental and physical health outcomes linked to minimum standards for property conditions.

Launch Housing recommends that:

- That the CAV commission an economic analysis examining the costs associated with substandard housing in both the private and public sectors.

- As part of the review of the RTA, CAV develop minimum standards for rental property. These must include energy efficiency. Energy hardship is an increasing issue for tenants and at its worse results in low-income households making choices between ‘food and fuel’ in cold weather periods. Heat related deaths are predicted to rise in future and vulnerable groups, such as the elderly, are often tenants rather than owners.
- That the UK model of minimum benchmarks for energy efficiency could provide a useful framework for the introduction of minimum standards in rental properties.
- That an appropriate enforcement body be identified. This could be either CAV or local councils.
- That CAV conduct an education campaign to inform tenants and landlords of their rights and responsibilities under the new minimum standards. This should be in plain language and accessible to a range of different cultural and language groups. (The work conducted by Footscray Legal Centre found that many of the tenants in substandard housing were newly arrived immigrants or refugees.)

Launch Housing believes Option 8.13D – Minimum health, safety, amenity standards for vacant premises to be the best of the options provided and can be improved by our recommendations. The transition arrangements should be staggered as per Option 8.14A. Transition supports could include:

- establishing financing schemes that help cover the up-front costs of meeting mandatory minimum standards.
- the introduction of a repairs and maintenance bond (as previously stated, we support Option 8.35 – Landlord repairs and maintenance bond) and
- establishing a Housing Ombudsman.

Landlords who are found to have rented a property that does not meet the minimum standards for vacant premises should be made to pay a larger land tax for a fixed period of time.

## Section 8 Resolving disputes about repairs

We welcome the intent to remove any confusion about what constitutes a reasonable time frame for responding to a repair request, a reluctance or failure on the part of tenants to request repairs, the involvement of an Owners’ Corporation, or damage caused by the tenant themselves.

Launch Housing supports these options:

- Option 8.29 – Expand list of urgent repairs.
- Option 8.32 – Faster resolution of repairs disputes.
- Option 8.35 – Landlord repairs and maintenance bond.
- Option 8.36 – Better access to Rent Special Account.

In addition to the details provided, Launch Housing also recommends that plain language information about the Rent Special Account (RSA) be provided to all tenants. The Options Paper makes reference to underuse of the RSA and this is a way to ensure that tenants are aware of this remedy.

- Option 8.37 – Increased range of remedies for a breach of repairs duty.
- Option 8.38 – Special provision for excessive usage charges caused by leaks, intermittent faults or hidden problems.

## Section 9 Regulation of rooming houses

Launch Housing welcomed the passing of the *Rooming House Operators Act 2016*, which establishes a licensing scheme for rooming house operators, including a fit and proper person test.



We recommend that:

- That the CAV consider new provisions to allow third parties to complain about the conditions in rooming houses.
- That CAV educates local councils about their enforcement responsibilities under the RTA, particularly in relation to any new provisions.

Our view is that Option 9.1 – Future inter-governmental project to consider whether rooming house definition requires amendment to capture emerging accommodation models is a better option than 9.2

Launch Housing are keen to participate in any future work to consider whether the definition of rooming house should be amended for the purposes of the RTA and the PHWA.

Launch Housing believes that Option 9.4 – Enhanced inspection powers for CAV rooming house inspectors is a better option than 9.3. It is likely that it could result in better enforcement outcomes in the rooming house sector.

## Section 10 Tools for independent resolution of disputes

Consumer Affairs Victoria should work with the Tenants Union of Victoria to ensure that forms of agreement are written in plain English and are accessible to people from disadvantaged groups and culturally and linguistically diverse backgrounds.

We acknowledge that the Options Paper includes proposals to improve tenancy agreements and recommend that the detail in Option 10.1 – Enhance CAV's information and advice services be widened to all materials produced by CAV. Plain language should be mandatory in the Residential Tenancies Act and all guides and information produced in relation to it.

Another option that would contribute to assisting tenants and community would be for the Victorian Government to provide funding for a housing support worker to be located at VCAT to provide support and referral services to tenants who are evicted from their rental property, to ensure they are not evicted into homelessness.

A similar approach involving the Victorian Department of Human Services (DHS), Australian Government Department of Human Services (AGDHS), and Launch Housing (previously HomeGround Services) was a successful trial example of how the complementary contributions of the partners can facilitate outcomes that would be difficult for any of the agencies to achieve in isolation.

The Summary Report presents key findings of the evaluation of the 360 Degree Integrated Homelessness Service Offer Trial (“the 360 Degree Trial”) and can be made available on request. Qualitative evidence indicates that it is likely that the Trial did have some diversionary effect at system level, particularly where clients received preventive early intervention that substantially resolved their housing difficulty. The majority of this group of clients would otherwise have become homeless or transitioned to low-quality interim accommodation arrangements, which in some cases would have led to substantial downstream contact with homelessness services and potentially other service systems including acute health care and the justice system.

## Section 11 Rental arrears

The Options Paper states:

*Non-payment of rent was identified as a principal reason for tenancies ending. Termination for non-payment of rent can therefore increase the risk of homelessness for some tenants, who may have difficulty paying on time.*

It is essential that RTA improves the options for tenants who are temporarily unable to make rental payments.

Launch Housing supports this option if it is improved:

- Option 11.16 – Require that repayment of arrears invalidate termination processes.

This option would be improved by mandating that the landlord would be required to give notice that the rent is late and offer to negotiate a repayment plan with the tenant before taking steps to terminate the tenancy. Without this addition, it may be possible for a landlord not to contact the tenant prior to taking steps to terminate the tenancy.

The Options Paper also discusses reduced period of notice of intention to vacate in certain circumstances. It states:

*Circumstances were identified under which it may be appropriate for a tenant to give a reduced period of notice of intention to vacate, including during a fixed term tenancy agreement.*

Launch Housing supports these options:

- Option 11.37 – Enable tenant to give notice of intention to vacate at any time before the termination date specified by a notice to vacate under prescribed circumstances.
- Option 11.38 – Enable tenant to give reduced period of notice where they have accepted offer of public or community housing.

## Section 11 Security of tenure

The Options Paper has a significant focus on security of tenure and provides three Models for comment. Model 1 is the best of the described option and we look forward to participating in further consultation with regard to the details. Of the three models, Model 1 most effectively provides an appropriate balance of protections to the tenant against unfair termination of their tenancy, while also providing landlord with adequate confidence that they can manage the risks associated with letting property.

We note that in describing Model 2, the Paper states that actual usage of the notice to vacate for no specified reason is rare and wonder if the threat of usage or fear of usage has reduced the balanced of bargaining power between the parties. Please indicate if any research has been conducted into this issue.

## Section 11 Failure to comply with a VCAT order

Launch Housing agrees that the indefinite nature of compliance orders is unfair and recommends:

- The Residential Tenancies Act should be amended so compliance orders have a time limit of 12 months.

Launch Housing supports Option 11.19 – Place time limitations on compliance orders.

## Section 12 Family Violence

Launch Housing acknowledges that the Victorian Government has undertaken to implement all recommendations from the Royal Commission.

Launch Housing supports these options:

- Option 12.11 – Apportioning liability in the context of family violence where a perpetrator is a co-tenant.
- Option 12.12 – Apportioning liability in the context of family violence where a perpetrator is not a co-tenant.

The Royal Commission recommendation that consideration be given to enabling victims of family violence to prevent their personal details from being listed on residential tenancy databases, and to remove existing listings, where the breach of the RTA or the tenancy agreement occurred in the context of family violence.

Launch Housing supports:

- Option 12.6 – Prohibit estate agents and landlords from making a listing on a tenancy database.

If the submission to the landlord, agent or tenancy database is not acted on, then VCAT should be able to make an order that the landlord, landlord's agent or a database operator must remove an existing listing or not make a listing on a residential tenancy database in relation to a victim of family violence, using the tenant's submission as evidence.

### **Additional number of recommendations from Launch Housing for amendments to Residential Tenancies Act**

Launch Housing recommends that the Review consider these recommendations and addresses these in the next Options Paper.

### **Adult and Youth Residential Rehabilitation Services**

Many clients of Launch Housing are (or have been) residents within adult or youth residential rehabilitation services within the community mental health system or the alcohol and other drug system.

Most of these services provide supported accommodation for months and, in many cases, years. These facilities are not included in the residential tenancies act and, consequently, the rights and responsibilities of both the resident and leaseholder are undefined. This leaves a number of vulnerable residents without any protection of their tenancy rights.

Launch Housing manages a number of supported accommodation facilities (Common Ground Elizabeth Street and transitional housing) which are subject to the RTA and where tenant's rights are defined and protected under the Act.

LH recommends:

- legislative options be developed for defining the rights and responsibilities of residents and leaseholders of adult and youth residential rehabilitation services.

The Options Paper makes no reference to Residential Rehabilitation Services.

### **Residential Accommodation**

LH recommended

- the Residential Tenancies Act, the Disability Act and Mental Health Act be amended (or clarified if necessary) to ensure that people living in residential accommodation under the Disability Act or Mental Health Act are covered by the Residential Tenancies Act.

There is no mention of amending the Residential Tenancies Act, the Disability Act and Mental Health Act.

### **Shared tenancies**

It is increasingly common for rental households to comprise of housemates who do not form the usual family unit nor occupy the premises as a rooming house.

Launch Housing recommends:

- that the RTA needs to include better mechanisms for the resolution of disputes between housemates in matters relating to their tenancy such as payment of rent and bonds, damage, nuisance and quiet enjoyment.

The Options Paper refers to shared tenancies only in reference to Family Violence.

### Issues with sub-letting and assignment

None of the Options presented in regards to sub-letting and assignment directly address our concerns about social housing. Launch Housing recommends:

- The Residential Tenancies Act should prohibit sub-letting and unauthorised sharing in social housing, including the use of Airbnb and similar services.

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<sup>1</sup> For further exploration of this recommendation, refer to: Tenants Union of Victoria, *Response to Laying the Groundwork – Residential Tenancies Act Review Discussion Paper*, 2015, Recommendation 67, pp. 44-45.