Submission by Adrian Lobo on FSH RTA Review - Options discussion paper

Notes:

- I have made direct comments on Options for most questions that were posted for discussion online. See username **adrianlobo** in the "Join a discussion" part of the website. I have also reproduced these in Part 2 below.

- However, my overall view is that in several areas the Options Paper is far too limited in what it has considered, by omission ruling out many potential improvements. Ultimately, governments and bureaucracies will be judged by the outcomes actually delivered. For example, a 3 year process to deliver legislation that may last the next 20 years (till circa 2038) shouldn't result in minimal actual improvements to security of tenure for long-term renters. (The simplistic fixation on simply making possible multi-year leases doesn't address the real barriers and issues.) The same applies to other key areas where there is a large and growing gap between the current state and what is desireable: affordability, safety, health, energy efficiency, being able to enjoy one's home, freedom from unnecessary disputes and stress.

- In Part 1 below I've provided examples of "Option" improvements (some of which are not purely RTA-focused but may need complementary support within the RTA) to indicate the kinds of broader and more consequential changes that should be considered. These examples are not exhaustive and the full list will be maintained online here: http://winwinrenting.blogspot.com.au/2017/02/a-comprehensive-list-of-worthwhile.html

- My starting point for determining what should constitute fair, reasonable and socially-desirable laws and regulations is not existing laws - which are often outdated and ineffective at achieving optimal outcomes. Hence, this list is not concerned with a fine-tuning of existing provisions but takes a "blank slate" approach: If we had to create an RTA and regulatory regime from scratch today that will be suitable for the next 20 years, what should it include and achieve?

- An underlying theme of this list is that the RTA and associated regulations should actively engender and incentivise "win-win" renting arrangements between tenants and landlords: cooperation for mutual benefit over the long run. Accordingly, they should also disincentivise and penalise arrangements and actions that are zero-sum, exploitative or unnecessarily adversarial.

- Specific requests for clarification or elaboration can be emailed to loboadrian AT gmail.com

Part 1 - Examples of improvements to renting laws and regulations

Security of tenure

Lease break fees should be strictly capped regardless of how long the lease is. The current uncapped exposure is a major barrier to multi-year leases. In practice, if claims proceed to VCAT, lease break fees are already capped in an ad hoc way as landlords are expected to minimise losses. But most tenants are unaware of this and would consider it too time-consuming and risky to have to rely on VCAT.

Apart from changes to introduce greater predictability to rent increases (see below under Rent affordability), the RTA and tenancy agreement templates should facilitate predictable rents or at least opt-out at no loss. Another big obstacle to multi-year leases for tenants is not wishing to sign up for uncapped and uncertain rent increases. But there are smart ways around this such as having an annual renewal date on which any rent increase must be agreed or the agreement can end with no break fees.

Relevant provisions offering greater security of tenure to tenants should allow for a 12 month "probation period" during which landlords face less strict constraints - such as giving tenants notice to vacate. For example, a tightening on the limitations of the use of s263 No Specified Reason notices and a lengthening of notice periods (e.g. to 180 days) would not apply in the first 12 months for each tenant (reset on any tenant change).

There should be enforced disincentives for giving notices to vacate when the tenant is not at fault (including change of use). The aim should be to make most properties available for continuing multi-year tenancies. Currently, many properties churn through supposed renovations or owners/relatives moving in (or other change of use reasons), resetting leases/rents and vacant periods but actually remain long-term in the letting market. Enforced disincentives (can't re-let for 6 months) would eliminate much of the unnecessary tenant churn.

Where unnecessary obstacles or friction in the current system is the cause of tenant churn (e.g. change of agent, minor repairs or renovations that don't actually need vacant possession) there should be provisions and incentives introduced to actively facilitate continuing tenancies where this is desired by the tenant.

There needs to be much better matching of tenant and landlord duration preferences during the initial property search and application process. A landlord offering a 6 month lease only will receive far fewer applicants and typically less rent as having to move out in 6 months is obviously not desirable for most tenants. Yet, a landlord who is only offering a 12 month lease does not need to declare this in their advertising due to the de facto norm whereby 12 months is the standard lease term offered. Tenants looking for multi-year tenure should have transparent ways to identify suitable properties and landlords upfront. Potential solutions include requiring lease agreements to specify (and properties to be advertised) either for "Fixed term period only" or "Fixed Term continuing into periodic or renewing at same term". Shorter notice periods could apply to the former and longer to the latter.

The longer a tenancy has existed, the longer the notice to vacate periods should be when a tenant is not at fault. (As in Germany)

Notices to vacate

All notices to vacate should be required to be registered via an online form on the CAV website. The questions and conditional fields and notes can facilitate compliant notices (preliminary checks, dates, reasons, evidence required). The questions/answers (e.g. section, reason) can then also be used to automatically filter many of the problematic terminations for further review and action. If the regulator is aware a notice to vacate is illegal or potentially illegal then there should be proactive action to intervene.

Tenancy agreements, notices and forms

All residential tenancies continuing for longer than 3 months should require written agreements (verbal agreements no longer allowed). This should be the landlord's responsibility to ensure. Penalties should apply for non-compliance as well as giving the tenant the right to vacate with no notice period and the benefit of any resulting doubt in disputes.

All types of agreements, notices and forms should have standard templates provided on the state regulator's website (CAV in Victoria). The current standard form should be required to be used by all landlords, agents and tenants.
See:
CAV - Forms and Publications - Renting

CAV should continue to publish a simple Residential Tenancy Agreement but switch to setting out enumerated standard terms as in the ACT. However, it should also publish a Guidelines for Additional Terms document with legally-compliant statements of most common additional terms (e.g. regarding pets, carpet cleaning, gardens, wall fittings) and notes on other terms that are invalid and should not be included (e.g. various fixed fees and penalities, restricting tenants from using facilities that they reasonably ought to be able to.) The ACT's approach to regulating Additional Terms should be considered across Australia based on its effectiveness.
See:
Tenants Union ACT - Standard Lease Agreements in the ACT
Tenants Union ACT - Standard Tenancy Agreement (pdf)
Tenants Union ACT - Extra terms and standard leases – what terms are enforceable?
Unfair Terms in Residential Tenancy Contracts

Very simple written agreements and forms specific to sub-letting should be available on CAV's website. Most sub-letting is verbal and any written arrangements tend to be minimal. However, there are a few key aspects (dates, rent amount and payment details, landlord acceptance, bond arrangements) that should be required in writing.

The overarching presumption that all of the RTA apply in a sub-tenancy between the head tenant and sub-tenants also needs review, particularly given proposed changes. Most head tenants and sub-tenants aren't even aware of this legality and consider sub-tenancy a much more limited arrangement.

Fees charged to tenants

The few types of fees permitted to be charged to tenants (including by third parties) should be explicitly stated in the RTA with reference to maximum amounts listed on CAV's website. For example, there should be a standard Assignment of Tenancy form on CAV's website which is required to be used. The maximum fee for an agent arranging completion and signing of this form should be in the order of $50. Note: Additional Terms in tenancy agreements should not be able to get around these limitations.

CAV should also publish clear guidance to landlords and agents of these fee restrictions and stamp out illegal and excessive fees.
See:
VCAT ruling finds extra fees incurred by tenants may be illegal

It is not enough to simply require a fee-free alternative for paying rent regardless of how inaccessible it is or how many tenants actually use it. The government should be ensuring virtually all tenants are not paying unnecessary fees to rent. If it's unwilling to prohibit all such fees it should at minimum require accessible fee-free methods like electronic direct deposits.
Wait, I have to pay, to pay rent?

CAV should undertake a proactive initiative to eliminate or minimise all unnecessary fees and costs to tenants and landlords, especially where these relate to compliance with the RTA. Ensuring all types of standard forms are available and used wherever possible is one obvious method. But there are various other opportunities.

Rent affordability

Rent increases should be limited to once every 12 months not 6 months. 12 months (or lease renewal which is typically 12 months) is de facto practice anyway as there is no benefit to raising rents more frequently.

The extent of rent increase should be limited in any year to a reasonable factor of either CPI or market rent increase. E.g. If the greater of CPI or market rent increase is 5% and the factor is 1.5 then the maximum annual increase would be 7.5%. Currently, in all Australian states and territories there is no effective cap on the annual percentage maximum except the ACT where such a system provides a partial solution in shifting the burden of proof. Alternatively, as in some German cities, rent increases could be limited to a maximum over each 3 year period (e.g. 20% over 3 years).
See:
Tenants Union of ACT - Rent Increases and Reductions
TUV - Fairer more predictable rents

Reputation, reference, prior history and guarantees

Reliable and trustworthy tenants and landlords would both benefit from transparent reputation systems. Instead they suffer from not being able to easily make available trustworthy references or verified key details about their prior history. Tenants cannot demonstrate that their prior rent was always paid in full and on time or the proportion of the bond returned. The better landlords do not benefit from having better quality properties and maintaining them, from providing a pleasant renting experience, and from providing stable tenancies and rents. This results in unnecessary discrimination, rental bidding, and a lowest-common-denominator approach to standards on both sides. It is instructive to compare with Airbnb and see how the simple rating and review system drives quality and desirable behaviour.

Landlords and properties with significant prior breaches and known issues

There should be an accessible list of bad landlords - unpaid VCAT-awarded compensation, overall VCAT judgements against, formal complaints, etc.

There should be a form of "landlord bonds" allowing automatic deduction of unpaid compensation or amounts owed to tenants.

There should be a simple licensing system for landlords. And then landlords who repeatedly breach their duties or refuse to comply with VCAT orders can be banned from renting out properties temporarily or, for serious ongoing offences, permanently.

Compensation awards

There should be a way to check if compensation paid for damage is actually used to make repairs and for the amounts ordered.

Part 2 - Responses provided to Options Paper questions posted on the FSH website

How could an administrate dispute resolution service help tenants and landlords to resolve residential tenancy disputes?

A new administrative dispute resolution service as outlined in the Options Paper would be better for all good faith tenants and landlords. It could also provide more time and capacity to identify bad faith actors and document findings such that appealed or VCAT determinations were fairer and less of a lottery.

A significant proportion of disputes between tenants and landlords would be better resolved via approaches that facilitated:

- Effective, unfiltered (by agents, formal processes) communication between tenants and landlords. This doesn't mean they have to sit down together (though that's often not a bad idea) but they should always be able to ensure provision of their concerns in writing in a non-adversarial way (i.e. not issuing breach notices)

- The mediation and resolution service must first focus on *educating* tenants and landlords about their rights and responsibilities and offering a reasonable interpretation of them as applies to specific circumstances and disputes. The initial aim is a mutual agreement based on a better understanding of legal rights and responsibilities. All too often these disputes skip education and mutual agreement and go straight to adversarial breaches, compliance orders and terminations.

- The mediation and resolution service should be proactively and explicitly geared toward enlightened, longer term win-win outcomes. Most disputes are viewed and handled as "I win, you lose" with short-term perspectives. For example, tenants should actively seek to minimise unnecessary costs for landlords, while landlords responsively address unavoidable issues and aim to create better tenant experiences. Over multi-year tenancies, win-win approaches have large potential benefits for both parties.

- Much unfairness in the current system is because determinations don't reflect all of the actual, relevant facts. VCAT often relies on time-constrained proceedings with verbal testimony that is often false. Determinations are usually not provided in writing - even if you ask for them. Virtually no-one can then appeal them as that would involve the cost of a Supreme Court hearing. A new service with binding powers should take the time to collect and assess all relevant documented evidence. Phone calls are efficient initially to see if a mutual agreement is viable. But for disputes which will need binding determination the evidence should fully shift to written submissions (photos, emails, lease documents, etc) which will dissuade much of the outright lying that currently plagues VCAT.

The new service would greatly benefit from the ombudsman-like features noted in the Options Paper:

"• scope to choose from a toolbox the most appropriate method of dispute resolution for the dispute and the parties
- relative informality compared to a tribunal
- processes that are less adversarial than a tribunal
- cases decided by an impartial referee with reference to the legislation
- transparent outcomes, and
- sector-wide issues identified and addressed at a sector level."

How would the proposed change to the definition of antisocial behaviour impact tenants and landlords?

With respect to the issues raised:

"Stakeholders identified gaps in the treatment of anti-social behaviour in the RTA, in particular in relation to:
•the range of problematic behaviours that cause harm or distress and which could be described as anti-social behaviour
•those who can potentially be harmed or distressed by anti-social behaviour."

It is perfectly reasonable that the legitimate gaps be closed so that breaches of duty, notices to vacate and possession orders can be issued. However, there should always be a right to seek independent, timely adjudication at VCAT with reasonable protections (evidence needed, non-trivial, seek remediation before eviction where sensible).

It is also reasonable that all persons acting on the landlord's behalf for legitimate responsibilities (e.g. inspection, maintenance) covered by the RTA be protected. Balancing this, some tenants need better protection from illegitimate and unnecessary visits from their landlords or their representatives.

However, extending coverage of a very broad antisocial provision (e.g. Scottish law cited notes nuisance and annoyance) to "any other person" (neighbours, community) the tenant could come into contact with could lead to spurious or discriminatory complaints - or worse, discrimination up front in tenant selection.

There are already avenues for resolving antisocial complaints in the community (police, local government) and a strong rationale would be needed to create an extra set of laws, processes and restrictions on tenants in the private market - as opposed to strengthening the general community resolution options and understanding of the diversity of lifestyles and how to communicate effectively with neighbours.

Some extra constraints on antisocial behaviour in public housing given the realities is acceptable as Australia needs much more well-located and community-integrated public housing, so it also needs community support for it. There is no unrestricted right to public housing. However, this should go hand-in-hand with effective interventions - for mental health issues but also more broadly education and community connection efforts.

If a landlord is required to obtain a termination order from VCAT to evict a tenant who has breached their agreement, would it avoid unnecessary and unfair evictions?

Answering just the Q asked, the obvious conclusion is that in theory forcing VCAT review of all terminations would lessen unnecessary and unfair evictions. However, in practice it's the contentious and potentially unfair/unneccessary evictions that need to be better isolated and independently mediated or adjuticated via the RTA and CAV processes. Clearly, rent arrears which are the large bulk of tenant at fault evictions need an efficient, fair process to protect landlords as well as tenants who are acting in good faith and prepared to make good their arrears.

As TUV notes in its Security of Tenure submission there are currently flaws in the Notice to Vacate and Eviction processes for "tenants at fault" - where fault is often in the eyes of the landlord or agent not an objective, independent determination (apart from the small % that are able to be challenged and reviewed by VCAT).

To quote TUV:

"For example a breach of duty may be given due to the property being perceived as not reasonably clean, however if the tenant believes that the property is in fact clean they have no way of disputing the notice. If the matter progresses to a notice to vacate for successive breaches under s249 the tenant

is still unable to dispute the breach and VCAT does not have discretion to determine whether the breaches were valid and must award the possession order.

This process puts the tenants at great risk of eviction and allows estate agents and landlords to serve unreasonable notices with no mechanism for oversight or repercussion."

"In general terms to enhance security of tenure:
> Notices to vacate for the less serious breaches should be subject to reasonable opportunities for remedy of any alleged breach.
> Notices to vacate for a specified reason should have tighter conditions and better substantiation at the point of service of the notice and VCAT should be given much wider discretion to reject applications for possession."

Rather than ignore existing flaws these should all be fixed up - such as ensuring there is a feasible pathway for tenants to challenge any eviction in a timely way. (See the s249 Successive Breaches flaw in TUV's submission).

Once those flaws are fixed then there is no need to catch all terminations with independent review by VCAT. VCAT would only need to review terminations that were challenged by the tenant or isolated as potentially unfair/unnecessary via requiring all notices to vacate to be registered via a simple online form on the CAV website - the questions/answers (e.g. section, reason) can be used to automatically filter many of the problematic terminations.

http://www.tuv.org.au/articles/files/submissions/151223-TUV-RTA-Security%20of%20Tenure.pdf

What are the advantages of requiring tenants to seek the landlord's consent for all modifications to a property?

Section 8.7 Modifications in the Options Paper involves various aspects so it would be desirable if related questions seeking public input were connected-up better and reflected the entirety of the targeted changes that would be desireable and feasible.

Also, the Options Paper does not seem to address the critical question of "who would bear responsibility, including costs, for any maintenance requirements associated with the modification?" (Please advise of the Option reference number which addresses this?)

Clearly, greater ability for essential or compliant modifications - especially those which are simpler and can be removed or have no adverse impact - must be enabled for the reasons cited:
- People with disabilities
- safety and health

Though simply for feasibility reasons one has to set a modification threshold such that appropriate property selection is a priority where more practical.

And there's a good rationale for specifying common types of minor modifications that are easily removed or have no adverse impact but contribute to a more comfortable or pleasant home. Most of these are so reasonable (draught-proofing, curtains, minor garden changes) that they already typically occur without seeking landlord consent as it is pointless and undignified.

But this isn't *all* modifications. Some modifications cannot be readily removed with no adverse consequence or may not be when the tenant leaves. Some modifications would imply new health and safety obligations and it's an open question as to how responsibility would be managed.

And, as mentioned above, maintenance for modifications the tenant has made can be complicated. Especially given new proposals like mandating safety checks by qualified service people every 2 years for all electric and gas appliances.

However, given any proposed RTA change would put modification cost on tenants not landlords, my view is that the improvement (not safety) objectives are generally better achieved through tenant-landlord negotiation in medium/long-term tenancies.

For example, in our 6 year tenancy we requested a reverse cycle air conditioner be put in and said upfront that we would contribute the full cost (including installation) pro rata over a 10 year expected lifetime. The full cost was $2400. We are paying an extra $240 a year at the start of each 12 month lease period (simple verbal agreement based on trust). If we moved out the pro rata $240/yr cost would simply be incorporated within the rent for the improved property.

This change has greatly improved our comfort but would not be feasible without a win-win, cooperative tenant and landlord relationship. For example, if necessary maintenance costs were incurred within the timeframe of our occupancy, we would voluntarily offer to pay for them. No discussion or written agreement has been made as it's not necessary given our cooperative approach (work things out fairly to mutual long-term benefit). We would reject a new RTA obligation to have our air conditioner inspected every 2 years as we would see that as an unnecessary cost that would be passed along to us (at least in part) via rent increase.

How would the removal of the notice to vacate for ‘no specified reason’ impact tenants and landlords?

Brief answer: The current RTA provides minimal security of tenure for tenants. The s263 120 day "No specified reason" notice is critical to this insecurity (alongside s261 End of fixed term tenancy which also requires no reason). This is simply because tenants who have not breached any duty and always pay their rent on time can be kicked out without an acceptable reason. The property can be immediately re-let to a new tenant and in most instances this is what occurs - hence there is no significant landlord disincentive to using it. The main impact of these "no specified reason" abilities is the tenant insecurity they create and forming the basis for a unfair balance of power toward landlords and agents that undermines the nominal rights given to tenants in the RTA.

Details:
To see why we can simply note the impact of "no specified reason" notices on the quotes from this review's own Security of Tenure issues paper:

"Security of tenure refers to the degree of certainty a person has about their residential circumstances. Someone with a high degree of security of tenure in rental accommodation is likely to:

have a choice to stay or leave
Impact: Obviously if you can be kicked out of your home for no valid reason with 90-120 days notice then all Victorian tenants have no control over residing in properties that remain in the rental market for continuous periods of years (even decades) even when they can afford the rent

have legal protections regarding their tenancy

Impact: Not only do "no specified reason" notices explicitly not protect Victorian tenants interests but they also implicitly undermine the other legal protections they are nominally given

pay a sustainable rent, and
Impact: There is no limit on the percentage increase in rent that can be demanded of a tenant. The tenant's only option is to seek a rent review from CAV. Thousands of tenants elect to move each year due to the extent of the rent increase received. Less than 1% of them seek a rent review from CAV. Why bother with the effort when the landlord can throw you out anyway without providing any reason?

have certainty that the property will be maintained appropriately.
Impact: Nominally the RTA is meant to protect tenants from unsafe and unhealthy properties as well as ensure that amenities provided at the time of lease continue to be available (e.g. heating/cooling, working bathrooms). In practice, most tenants are restrained from pursuing much maintenance at all or within the reasonable timeframes outlined by the RTA because of the overhanging threat of being able to be kicked out without cause.

Hence, there are many benefits of eliminating "no specified reason" notices which are captured by the concept of enhancing security of tenure (in its broad sense). To quote from the issues paper again:

"1.2 Why is security of tenure important?
Security of tenure is important today for a greater proportion of Victorians than ever before, given that more Victorians are renting, and for longer. Security of tenure is important for the community. It provides people with the stability needed to meaningfully engage in education and employment, and to build social and support networks within their local community.

Stable residential accommodation can support better social, economic and health outcomes. Tenants with low incomes and those with additional needs, such as people with a disability or older tenants, are likely to be impacted disproportionately by frequent moves and uncertainty about the length of their tenancies."

...
Lower income, disadvantaged and vulnerable households are especially affected by insecure tenure. As protecting these tenants was a chief purpose of the review it is essential that there be effective reform in this area. Again to quote from the issues paper:

"In those cases, households with restricted financial resources can suffer disproportionately from a lack of security of tenure. Given the ongoing shortage of low cost housing, these households have relatively less bargaining power to negotiate the outcomes they want at the outset, and during the tenancy. The end of a tenancy can mean finding alternative schooling, employment and other service providers in a new location. It can present obstacles to maintaining family and social connections. Unexpected moving costs can create considerable financial hardship. Tenants in these households may be the most vulnerable, particularly where the household includes or is composed of:

families with school aged children (especially single-parent families)
older people
people with physical disabilities
people with mental illness
Aboriginals and Torres Strait Islanders
recent immigrants
young people, and
women fleeing domestic violence."

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There is copious evidence (see the research documents, references, tenant surveys on this site) that security of tenure for Victorian renters would be much better protected by changes to the RTA including removing or constraining the use of "no specified reason" notices to vacate. All honest, informed stakeholders concede this. Some supply-side stakeholders go on to argue that the downside for landlords would be greater than the upside for tenants.

Landlords always have a reason for ending a tenancy so all of them *can* be specified. The reality is that some of these reasons are not morally defensible: they would not be found lawful or acceptable if stated at VCAT; they would never be enshrined as valid "specified reasons" within the RTA.

There are 20 legally permitted reasons to end tenances under the RTA (all with shorter notice periods than s263 and s261). And if a landlord really wants to end a tenancy or remove a tenant when the tenant has done nothing wrong or there is insufficient evidence they can do so under various "change of use" provisions. However, there should be an enforced disincentive for using this fallback. If you give notice for repairs or for a relative moving in then you should definitely not be able to re-let for 6 months. I also support there being a provision for VCAT to determine a notice to vacate is valid for acceptable reasons cited directly at VCAT.

Provide an option for tenants to negotiate a repayment plan where seven days' rent is owed

Reasonable landlords and tenants acting in good faith and operating within a regulated market with appropriate incentives would seek to make paying rent fully and on time as easy and reliable as possible including:

- Checking the rent (and rent increases) are readily affordable before signing/extending a lease
- Automating rent payments (scheduled bank transfer or direct debit)
- Agreeing to use Centrepay where necessary
- Establishing immediate notification and communication (resolution) processes for failed (e.g. insufficient funds in debiting account), partial or late rent payments

etc...

If a good faith tenant lost their job or had some other temporary financial hardship the reasonable and preferred option ought to be to try to work out a catch up as quickly as possible with the landlord. Alternatively, if the rent will no longer be affordable over the medium term then an open conversation about easing an efficient transition to more affordable accommodation should be undertaken. Proscribed repayment plans should generally be unnecessary to such a tenant. Creating a repayment plan for just 7 days of rent should be seen as pointless overhead by good faith parties.

This brings us to a main issue which is isolating the bad faith tenants and landlords from the good faith ones. In the 21st century it ought to be possible to design laws, processes and incentives that reward good faith behaviour and penalise bad faith behaviour. Good faith actors shouldn't suffer the burden, overhead and potential losses that ought to only apply to those acting in bad faith. Too many proposed RTA changes (in favour of tenants or landlords) don't distinguish between good and bad faith actors.

All that said, the affordability of rents, provisions for temporary financial hardship, and improving individual's personal financial management are key issues for broader government policy and community action. There's much that can and should be done in this space which would be far more effective than trivial changes to the RTA.

Is this a suitable solution for tenants and landlords who wish to enter a fixed-term agreement of five years or longer?

Firstly, the RTA should be amended to remove the clause that prevents it applying to fixed term leases of more than 5 years as this makes no sense.

However, while facilitating much longer fixed term leases sounds like a useful security of tenure solution it has many obstacles in practice. Already there is nothing preventing leases longer than 12 months and up to 5 years in duration but the instances are almost unheard of (likely less than 1 in 500 leases).

The TUV Security of Tenure issues paper response covers the key problems:

"Longer term tenancies and security of tenure

The ability for long-term leases to improve security of tenure is a complex issue and one that needs to be properly thought through.

There are a number of questions that tenants would need to see addressed:

- Tenants are a diverse group with varying needs. How will tenants who need flexibility be catered for?
- If a tenant needed to move, how will a —lease break || be managed in terms of cost and compensation?
- How will the legislation be amended to increase compliance to give tenants assurance that their landlord will undertake repairs and respect their right to privacy?
- Will tenants have financial stability through rent regulation or some other measure?
- How will more vulnerable tenants such as the elderly, single parents and those on low incomes be protected against discrimination from landlords who may see these groups as an increased liability in a longer fixed-term agreement?
- Will longer fixed-term agreements be compulsory or if not how will they be incentivised in a way that is consistent, successful and fair?

In order for longer fixed-term agreements to be attractive and beneficial to tenants and landlords these issues need to be properly considered. There is a potential to do more harm than good to tenants‘ security of tenure if all aspects are not properly thought through and addressed."

By all means provide a tailored agreement for longer fixed terms but design it to cover 2 years to 5 years rather than 5 years and longer. Given current norms and priorities for flexibility and safeguarding against large financial losses the takeup of fixed term leases over 5 years will be negligible.

I do think that the takeup of 2-3 year fixed term leases could increase somewhat with a tailored agreement for landlords and tenants who have a continuing tenancy that's already run happily for at least a couple of years. The main issues to be resolved are provision for annual rent increases, preserving at-fault and change of use notice (the latter with longer periods), and ensuring lease breaking fees are capped to a reasonable level. There may also need to be extra protection for landlords regarding assignment of such longer tenancies to other parties.

Nevertheless, in the medium term longer fixed term leases will not be a security of tenure solution for the vast majority of tenants so priority has to be given to other reforms. Quoting from the TUV response:

"An important distinction must be made between a long-term tenancy and a long fixed-term agreement as they would have very different outcomes for tenants and landlords. It is the fixed term element that causes complications through locking tenants in, although it is this lock that can also provide increased protection. A move towards long-term tenancies without fixed terms could be a great opportunity for tenants and landlords alike. This would need to occur by strengthening tenants‘ occupancy rights and compliance around the

landlords‘ duties. It would also involve a necessary cultural shift towards an emphasis on tenants‘ right to a secure home."

Do proposed changes balance the rights of tenants and landlords when the property is open for inspection by prospective buyers?

The median price of properties is several hundred thousand dollars and so being able to provide convenient access to the greatest number of prospective buyers and show off a property in its best light could be worth several thousand dollars (and much more if it means extra bidders at auction).

Yet the Options Paper notes that only 1 in 10 tenants are offered any financial incentive (even just $100/week) to cooperate:

"Only one in ten surveyed tenants were offered compensation during the sale of the property. Of those who were not offered compensation and felt that the number of inspections was unreasonable, 83 per cent report that they would have felt the number of inspections was reasonable if compensation (such as a reduction in rent) had been offered."

This is obviously not a very enlightened approach. While the RTA can be used by landlords to insist on some limited access, tenants - who have paid rent to have exclusive use of their home - are free to:

- Be in the property during all visits and sales inspections (e.g. watch TV, use the kitchen)
- Make no extra effort to tidy up or remove any possessions
- Prevent the taking of photographs of their possessions or themselves (thus most indoor photos)
- Bar entry if there are more than 2 visits per week and more than 6 visits per year (it is their home and if the landlord wishes to try and force access they can be required to apply to VCAT to do so and demonstrate they aren't interfering with the tenant's quiet enjoyment).
- Bar access for any sale-related visit if they feel the landlord is unreasonably interfering with their quiet enjoyment of the property or is not paying appropriate compensation

The vast majority of tenants - as evidenced by the comments and stories submitted - do not vigorously defend their rights using the actions outlined above. But more should be encouraged to do so if the landlord has not negotiated all aspects of sale-related disruption.

Options 5.5, 5.6, 5.7 and 5.9B provide some improvement in minimum protections for tenants and should be added to the RTA. But they don't cover everything. There are circumstances in which tenant concerns about safety, theft (during inspections or later), privacy and damage should be addressed. And even if 2 sales inspections a week is a maximum, there is no cap on the maximum sales-related visits a year or amount of time or disruption permissible.

Hence, a revised RTA should firmly incentivise landlords to negotiate all aspects of the sales process that affect tenants. A sample written agreement covering the most common aspects could be provided by CAV. While the RTA may specify minimum rent compensation per sales inspection, the best approach is a comprehensive agreement with an overall weekly/fortnightly rent discount that is negotiated.

Tenants who go the extra mile to accommodate all desired requests (e.g. minimal clutter, very clean and tidy, quality photos, absent during inspections, potential short notice visits if unavoidable) could then be compensated appropriately.

If the landlord has engaged a selling agent or drawn up a contract of sale, should they advise a prospective tenant of their intention to sell prior to tenancy?

Yes landlords who have already commenced the process of trying to sell their property should be required to inform all prospective tenants - upfront through the advertising (why waste people's time) and in writing to the selected applicant.

Nobody considering renting a property would consider it immaterial that a sale was pending. Everyone not willing to put up with the disruption or uncertainty of staying more than a short time, could then apply for more suitable property.

Those whose circumstances are more fitting (only need a place short term, would not be too put out by moving, are less impacted by a sales process) would then make up the applicant pool and could amicably negotiate any terms for the sales process (inspection times, photos, property condition, etc).

The absence of such basic protections in the RTA for tenants leads to needless impacts like the one shared in the tenant story below:

"I rented a small house and had only been there for six months when the owners decided to sell it.

I then moved to another place and after ten months was told my lease would not be renewed because the owners were getting a divorce and they needed to sell the house.

I moved into my current house in September 2016 and it, too, went on the market in October 2016. It sold within a week and I've been told that an investor has bought it but I've been told so many lies by the selling agent that I won't believe him until I am able to sign another lease in twelve months time."
http://fairersaferhousing.vic.gov.au/renting/stories/sick-of-having-to-move-every-12-months

Note that it isn't only pending sales processes that should be disclosed to prospective tenants. Tenants need better protection from landlords whose primary purpose isn't providing appropriate rental housing and thus aren't motivated to meet their obligations under the RTA.

In another tenant story the landlord had plans to demolish their unfit (mouldy) house and replace it but this was only disclosed after the tenant moved in and found the mould. The new minimum rental standards need to protect tenants from such situations.

"We found ourselves a place to rent in May last year. It had all the space and extra bedroom that we needed and allowed for pets. On paper everything looked great. We applied and were successful. Upon moving in, we realised some matters needed attending to and contacted the real estate agency. One particular concerning issue was the existence of mould in the bathroom. We had an assessor come out and made a report that the bathroom tiles needed to be replaced and an extensive cleaning needed to to take place. The landlord, upon receiving the report, asked to come and make his own assessment. He came & told me and my young family that he was not going to spend that money to fix it despite the health risks and that he was planning on demolishing the house to make way for student accommodation anyway. I was stunned and upset. He also said that he would rather have the house empty than spend that money to clean it. Why would I move my young family into a house where the landlord was going to demolish the house? When I asked if the property knew of this plan, she denied it. However, with a little research, I discovered that it was her agency that sold the property 6 months earlier. We did not want to move again in 12 months. I felt it was irresponsible that they would choose a young family to move it. Why not choose students or young professionals? Its opposite a university. We are a young family. My son is 17 months old."
http://fairersaferhousing.vic.gov.au/renting/stories/transparency-from-landlords-and-real-estate-agencies

Finally, it is critical to stress that in all such reforms it is not enough to simply allow the tenant to get out of the tenancy agreement. The reform needs to include penalties or significant disincentives for landlords/agents such that these unfair situations do not continue to occur so frequently.

Should a landlord be able to lease out a property that is fit for habitation, clean and has working features, regardless of whether it meets any other standards?

All rental properties must be required to meet minimum health and safety standards before they can be offered for lease - these gaps should be closed immediately. And they should meet minimum amenity and sustainability standards - these standards should be prioritised and thresholds set and the introduction can be phased in and extended over time (e.g. insulation and efficiency requirements).

The Options Paper admits the RTA currently does not ensure this and inappropriately makes unfit housing the incoming tenant's responsibility to identify immediately upon occupation and either terminate or seek remedy.

"Except in the case of rooming houses, landlords may rent out properties that fall short of the conditions required by the RTA, or which are otherwise unsuitable for habitation because they are in poor condition or lack the necessary services or features to provide a tenant with a comfortable living environment.

The RTA assumes that tenants will utilise the remedies that are available to them – that is, delay moving in until it is raised to the requisite standard or, if the property is so serious that it is unfit for human habitation, terminate the tenancy before moving in. In the case of requirements imposed by other legislation, the tenant must pursue a remedy through the local council or any other specifically appointed statutory bodies (such as the Victorian Building Authority and Energy Safe Victoria), who have the ability to require alterations or improvements to property to ensure compliance with an occupancy permit, building regulations (for example, smoke alarm and pool fencing requirements), or any minimum health and wellbeing standards. Stakeholder submissions throughout the review repeatedly stressed that this assumption is false, particularly for vulnerable or disadvantaged tenant groups..."

I'd agree that all of the minimum standards proposed in Table 8.1 of the Options Paper be introduced:

Health
- Adequate natural light
- Ventilation (including natural cross-flows)
- Weatherproofing
- No damp and mould
- Insulation

Security/safety
- Structural soundness
- Functioning smoke alarm and safety switch
- Deadlocks on external doors
- Windows that can be secured against external entry

Amenities
- Electricity and/or gas connection (subject to any infrastructure availability)
- Cooking, laundry and bathroom / toilet facilities
- Hot and cold water connections in kitchen, laundry and bathroom
- Functioning heating and cooling in main living area
- Window coverings for privacy in bedrooms and living areas
- Serviced, functioning fixed appliances

Energy and water efficiency
- Efficient fixed appliance (including water heaters)
- Efficient showerheads and dual flush toilets

There are some others that should also be added including ones that may be conditional:
- Carbon Monoxide monitors (which cost as little as $15) if gas heating exists
- Window coverings for shade in bedrooms and living areas
- Water taps should be working including outdoors
- There should be a minimum set of useable powerpoints defined for rooms
- There should be no gaps in windows/doors that cannot be closed and are exposed to outdoor air

A phase-in period may be necessary for the ones requiring more work/cost or considerable modification.

Finally there should be a list of desirable features that if not available need to be disclosed in writing to prospective tenants when the property is advertised and before a lease is signed:
- External TV antenna with working signal and indoor connection points
- Phone and internet connection possible
- Windows that don't open and bathroom/toilet doors that don't have locks
- Flyscreens that are missing or not functional

Should agents and landlords be able to request and accept rental bids?

This is a complicated topic beset with unintended consequences and de facto solutions. Also, the market tends to work around simplistic rules when there aren't alternate solutions on offer (e.g. for lessening one's perceived risk as an applicant, for expressing one's greater desire for a property, etc). The best thing government can do for tenants is to enact broader policy reform that keeps vacancy rates sufficiently high such that tenants aren't driven to desperate measures. Also note that while low income tenants can be somewhat protected from rent/bond bidding at commencement they can't be protected from future rent increases to whatever the market can bear.

It's useful to consider the reasons why bidding occurs and what would realistically happen under proposed changes:
http://www.domain.com.au/news/one-in-five-victorian-tenants-offer-to-pay-extra-rent-survey-reveals-20160905-gr75mw/(External link)

On the specific proposal:

1. Firstly, separate out "bids" of higher rent from other differentiating bids - rent up-front, bond amount, pet bonds, rent guarantees, longer fixed term leases, paying for furnishings, etc.

Some methods of differentiation are clearly fair and should be permitted. E.g. Offering to sign a 2 or 3 year fixed term lease rather than 12 months. They simply enable better matching of landlord and tenant preferences.

Some methods are fair in the absence of other legal solutions. E.g. Pet bonds (as there is no current RTA provision for them).

Some methods used may be driven in many circumstances only by the tenant making the offer for justifiable reasons. For example, a tenant who is considered higher risk (pets, kids, no prior rental history, no job, recent

migrant, etc) may offer a higher bond or rent in advance as a means of improving their chances of being selected.

The key adverse issues of opaque bids of higher rents are:
- Rent auctions that are not public can be unethically exploited by the landlord/agent to get one of the preferred tenants (who would be offered the property anyway) to pay more.
- It's not transparent and often wastes the time and effort of those bidding at the listed price or lower range
- Rent auctions can result in higher rents generally and will often result in certain properties renting for much more than similar properties
- Less savvy tenants (e.g. disadvantaged ones) are less able to optimally leverage informal systems

Some proposed elements of solutions (e.g. publically listing actual rents versus advertised rents) may also have downsides - like driving higher rent increases generally, especially where vacancy rates are low.

There are targeted ways to regulate unfair behaviour (e.g. exploitation of opaque auctions) while creating acceptable solutions for the real problems.

For example:
- The current norms of matching tenants to properties and landlords are very deficient. Fundamentals of better matching like the desired duration are not facilitated at all.
- In the 21st century it's possible to create much more effective methods of demonstrating one has a trustworthy reputation, has capacity to pay, always does pay and on time, has a history of not causing damage, has no adverse judgements, etc.

There's much more that could be productively discussed on this topic if effective, targeted reform and policy improvement (not just of the RTA) was genuinely sought by government.

What are the benefits and risks in limiting rent increases to once per year?

There is almost no downside and only benefits - including to most landlords - from making the change to limit rent increases to once per year.

Firstly, the current ability to increase rent every 6 months doesn't apply to those on fixed term leases. Most tenancies start as 12 months and many continue renewed on a 12 month basis. Less than 1% of fixed term tenancies of 12 months or more are written to include rent increases more frequently than annually. One can easily conclude that an annual rent increase is sufficient.

Secondly, the vast majority of landlords with tenants on periodic leases do not seek to increase rent more than once per year as it is unnecessary and loses money over the long run as it drives good tenants away.

The primary impact of the current RTA provision allowing rent increases every 6 months for those on periodic leases is to add to the insecurity of tenure and low status of renting. Given it is unnecessary and barely used in practice (and never by good faith landlords), eliminating it would actually make renting a better experience at no cost. This has obvious benefits for tenants and most landlords (only the short-sighted, zero-sum thinking or unprofessional ones believe they're better off by making tenants more insecure for no good reason.)