



Council to Homeless Persons – Residential tenancies act review – Response to *Heading for Home* final options paper



Table of Contents

Table of Contents	2
Glossary of terms	3
Introduction	4
Chapter 3. Application of the RTA and lease lengths	7
Chapter 4. Rights and responsibilities before a tenancy	8
Chapter 5. Rights and responsibilities during a tenancy	11
Chapter 6. Rights and responsibilities at the end of a tenancy	14
Chapter 7. Bonds and Rent	16
Chapter 8. Property Conditions	19
Chapter 9. Rooming Houses	25
Chapter 10. Dispute resolution services and mechanisms	30
Chapter 11.1 Terminations and security of tenure - Terminations instigated by landlord or owner: tenant at fault	32
Chapter 11.2 Terminations and security of tenure - Terminations instigated by landlord or owner: tenant not at fault	40
Chapter 11.3 Terminations provisions and security of tenure	42
Chapter 11.4 Terminations provisions and security of tenure	44
Chapter 11.5 Terminations instigated by the tenant: landlord not at fault	45
Chapter 12 Family violence	46

Glossary of terms

ABS – Australian Bureau of Statistics

AIHW – Australian Institute of Health and Welfare

CAV – Consumer Affairs Victoria

CHP – Council to Homeless Persons

DHHS – (Victorian Government) Department of Health and Human Services

DHS - (Victorian Government former) Department of Human Services

ERP – Estimated Resident Population

MFB – Metropolitan Fire Brigade

NDIS – National Disability Insurance Scheme

PESP – Peer Education Support Program

RTA – Residential Tenancies Act

TAAP – Tenancy Advice and Advocacy Program

TUV – Tenants Union of Victoria

VCAT – Victorian Civil and Administrative Tribunal

VCOSS – Victorian Council of Social Service

Introduction

The Council to Homeless Persons

The Council to Homeless Persons (CHP) is the peak Victorian body representing organisations and individuals with a commitment to ending homelessness. CHP works to end homelessness through leadership in policy development, advocacy, capacity building and consumer participation.

The Council to Homeless Persons welcomes the opportunity to provide input into the Residential Tenancies Act (RTA) review options paper 'Heading for Home' (hereafter referred to as the options paper). The provisions of the RTA have wide ranging impacts upon homelessness in Victoria.

What we mean by 'ending homelessness'

Homelessness occurs at the intersection of personal vulnerabilities and structural forces, such as poverty, housing affordability and security of tenure. People who become homeless are often financially disadvantaged and some will have spent a lifetime in insecure housing.

Ending homelessness doesn't mean that people will never find themselves without shelter. It means that homelessness will be rare, the experience brief, and it will not recur in a cycle of repeated homelessness.

To achieve this vision, Victoria requires the services to help people manage the vulnerabilities that can lead to homelessness. Pathways into homelessness include eviction, job loss, family violence, mental ill health, relationship breakdown, or indeed a combination of these factors. There is neither a single cause, nor a single solution. Some people may need relatively little assistance for a short period of time, while others may need support over a lifetime.

Ending homelessness also requires action to reduce poverty, increase access to employment and critically, to improve the supply of housing that is affordable to people on low incomes, and the security of people's tenure within that housing.

The Residential Tenancies Act and homelessness

The provisions of the RTA have wide ranging impacts upon homelessness in Victoria, with the RTA regulating critical and defining aspects of homelessness. According to the Australian Bureau of Statistics (ABS):

When a person does not have suitable accommodation alternatives they are considered homeless if their current living arrangement:

- is in a dwelling that is inadequate; or
- has no tenure, or if their initial tenure is short and not extendable; or
- does not allow them to have control of, and access to space for social relations.

Australian Bureau of Statistics, 2012

The RTA provides governance around each of these defining characteristics of homelessness; the adequacy of buildings in the rental market, tenants' security of tenure, and the rights and responsibilities of landlords and tenants. As such, the RTA is one of the primary ways in which the Government can influence the extent of homelessness in Victoria.

Victoria has seen a significant increase in homelessness over recent years (see table 1). The Victorian Government has demonstrated significant will to address this rise, particularly through much needed investments in housing and support services. CHP views reform of the RTA as a continuation of this work. The RTA doesn't just define the relationship between landlords and tenants, but on a broader level is a representation of societal values. It is the vehicle through which we express what housing rights we believe people should have in times of personal or financial crisis. For thousands of Victorians each year the rights contained within the RTA are their last protection against homelessness. However, for thousands of vulnerable Victorians, the current provisions of the RTA do not sufficiently protect them from homelessness.

Some 658,500 Victorians have experienced homelessness at some point in their lives¹. These considerations are integral to this review. The number of people accessing homelessness services each year is approximately one-fifth the size of Victoria's rental market². With little capacity to become owner-occupiers, those experiencing homelessness make up a substantial proportion of the private rental tenancing population.

Table 1. Homelessness Support Services in Victoria³⁴

Data	2011–12	2012–13	2013–14	2014–15	2015–16
Clients (number)	86,150	92,462	99,892	102,793	105,287
Support periods (number)	165,234	179,897	191,589	196,959	205,478
Clients (per 10,000 ERP)	155.6	164.2	174.2	176.1	177.3
Active Rental Bonds	437,577	467,971	493,247	517,215	540,921

Through this submission we will argue for changes to the RTA that will improve on the fair and reasonable rights of tenants facing personal or financial crises to sustain their housing, and avoid homelessness, and for stronger protections for those experiencing homelessness seeking stable rental accommodation.

Major points of concern

A number of options provided in this options paper have the capacity to greatly increase the level of homelessness in Victoria. These options would overwhelm the

¹ Australian Bureau of Statistics, General Social Survey 2014.

² DHS Rental Report June 2016.

³ AIHW Specialist Homelessness Services Collection 2016.

⁴ DHHS rental reports

existing capacity of the homelessness sector, and would lead to a large and persistent increase in the number of Victorians rough sleeping.

Major points of concern include:

- the options to broaden the three strikes rule (5.2A) and to allow termination of tenancies after a single incidence of breach (5.2B).
- the option to create termination orders (11.1).
- the options to significantly expand scenarios under which tenants may be evicted with zero notice (11.3 and 11.5).
- the option to allow evictions for late payment of rent, even where rent has been repaid in full (11.17).
- the option to create a generalist ‘anti-social behaviour’ termination with almost unlimited scope (11.24).

The RTA has a significant impact on homelessness in Victoria, and the adoption of any of the above clauses as described in the options paper would create enormous levels of new homelessness in Victoria.

Reading this submission

CHP has written this submission with reference to the ‘Heading for home’ options paper produced by Consumer Affairs Victoria (CAV) for the *Fairer Safer Housing Residential Tenancies Act Review*. Chapters and sub-headings in this submission are reflective of those in ‘Heading for home’. The response refers regularly to ‘options provided in this section’, by way of referring to the options paper, and should be read in conjunction with the issues paper. Responses do not stand alone and do not always reference in full the options included in the issues paper.

While recognising that all aspects of the RTA will have impacts on homelessness, we limit our response to those which have the greatest or most direct effect on homelessness.

Chapter 3. Application of the RTA and lease lengths

Lease lengths and homelessness

An opportunity exists to increase on current levels of uptake of longer term leases. Those who require housing modifications face greater housing insecurity, due to a range of inter-relating factors including poorer employment prospects, lower incomes, rental discrimination, and ill-health. Without the right supports in place, groups with greater housing insecurity experience homelessness at greater rates. Installing necessary housing modifications can come at a significant cost to households. Short-term leases can mean that tenants can make housing modifications, incurring large costs, only to be evicted not long after. Lease lengths also have important implications for households' capacity to budget. The cumulative costs of moving house can run to many thousands of dollars, which can require significant forward planning for low-income households. Longer lease lengths will improve the ability of households to form connections within their community, impacting social cohesion, as well as community and individual resilience.

3.1 Limitations to the scope of the RTA

CHP supports the option to remove the five-year limit on the scope of the RTA. Applying the protections of the RTA to leases of five years or longer will remove an existing barrier to uptake of longer leases and the stability that they entail.

Longer term leases may particularly benefit those who require property modifications, such as older people and people with disabilities. A major reason that people require property modification is to support their mobility impairments. Unfortunately, there is a high correlation between mobility impairments and low incomes⁵. These modifications can be costly, and those who invest in them expect to be able to utilise them for a longer period time than is typically supported under current lease arrangements. This option removes an impediment to longer term leases, and may be of benefit to this group.

Any move to introduce longer term leases would need to be sufficiently paired with appropriate protections for tenants who need to vacate due to financial or personal crises.

3.2 Long term leasing in general tenancies

Options provided in this section of the paper have only tangential bearing on homelessness.

⁵ Australian Bureau of Statistics, Census of Population and Housing 2011

Chapter 4. Rights and responsibilities before a tenancy

Rights and responsibilities before a tenancy, and their interaction with homelessness

The rights of individuals seeking to enter the private rental market have a significant impact on their ability to gain housing and make positive exits from homelessness. Where protections for prospective tenants are weak, barriers are created that exclude those experiencing homelessness from the private rental market. Similarly, where conditions of continued occupancy are overly onerous, this only serves to facilitate evictions. Weak protections for tenants, and overly restrictive occupancy conditions create experiences of homelessness where they might otherwise be avoided.

Unlawful discrimination against applicants and tenants

The Council to Homeless Persons supports both options provided in this section of the issues paper, believing that they complement one another and should both be applied to offer improved protections against discrimination for those seeking rental accommodation. Of the two options provided, strengthening links between the RTA and the Equal Opportunity Act 2010 offers the stronger protections to the housing insecure and those experiencing homelessness, and is preferred.

Those facing discrimination over protected attributes face higher rates of homelessness. Aboriginal and Torres Strait Islander peoples, single mothers, young people, and people from culturally and linguistically diverse communities are particularly vulnerable to both rental discrimination and homelessness. Rental discrimination makes it difficult to secure rental properties, in some instances leading to homelessness, as well as hindering efforts of those currently experiencing homelessness to gain housing.

CHP reiterates our call from previous stages of this review for the creation of a standard application form for rental properties. This would prevent some forms of discrimination against housing applicants by excluding information on irrelevant or protected factors from application processes (ie. requesting bank statements and forming judgements based on applicants' spending habits).

Privacy and use of tenancy application information

CHP supports the option of prohibiting landlords and agents from using information in tenancy applications for other purposes. Extending protections against disclosure of tenants' personal information will have a particular impact upon the housing vulnerable and those experiencing homelessness.

Feedback from stakeholders indicates that, particularly where rental markets are small, such as in regional areas, or in rooming house markets, informal networks exist between agents or landlords to discuss tenants. This reputedly leads to informal 'blacklists', whereby tenants are unable to secure accommodation in their location of choice, and have no recourse or opportunity to enforce the rights they have within formal tenancy database systems.

This reform will go some way to ensuring that prejudicial information outside of the scope of a regulated environment and access to natural justice is not passed on to potential future landlords or agents. This will eliminate an existing barrier for those seeking housing from obtaining it in their community of choice.

Tenancy databases

CHP strongly supports both of the options provided around tenancy databases, and urges CAV to provide that option 4.5 may be initiated by third parties.

While stronger regulation of tenancy databases is important, CAV should consider whether tenancy databases are a legitimate part of the rental housing system. Tenancy databases are commonly known as “black lists” in reference to the fact that if your name is on the list, you can be effectively excluded from the private rental market. CHP urges CAV to consider whether excluding people from the private rental market is a welcome role in the Victorian real estate sector, and if not, whether tenancy databases ought to be prohibited.

Irregardless, the proposed prohibition on charging a fee to tenants for a copy of their tenant’s listing must effectively prohibit such fees, rather than allowing database operators to offer a fee free option, as said options may be designed to be deliberately onerous. The prohibition must also specify that information provided for the purpose of checking tenancy database status cannot then be on-sold by tenancy database operators.

This option should also clarify that the opportunity to access tenancy listings applies not only to people who have an existing tenancy, but to any member of the community who may be seeking to enter a tenancy. Failure to do so would exclude many of those experiencing homelessness and make such a provision redundant.

CHP further strongly supports the option to give the Victorian Civil and Administrative Tribunal (VCAT) power over tenancy database listings. Feedback from the Victorian homelessness sector indicates that disputing a tenancy database listing can be extremely difficult once the information is uploaded. They further indicate that there is widespread non-compliance by database operators with provisions requiring listings to be removed after three years. Those who have listings made against them on tenancy databases require an opportunity to dispute this information, particularly where the ramifications of such listings can be so extreme as total exclusion from the private rental market. CHP urges CAV to provide that this option may also be exercised by third parties, in recognition of the support needs of many people experiencing homelessness, who may not have the capacity to initiate VCAT proceedings on their own behalves.

Disclosures and representations prior to entering a tenancy

CHP supports the options outlined in this section of the options paper. The disclosures and representations outlined in this section of the options paper have a material impact on whether the tenancy will continue for the full duration of the agreement. With the cost of obtaining a new tenancy often running to several thousands of dollars

when all factors are considered, it is of critical importance that tenants have some certainty about how often they will be expected to meet these costs; at minimum they should have confidence that their tenancy will last for the duration of the fixed term. Many Victorian households simply do not have the financial capacity to sustain the costs of moving house multiple times in a year and would be unable to meet bond and rent in advance requirements imposed by the false, misleading or absent disclosures received at the start of the tenancy.

Details of landlord for legal proceedings

CHP supports the option that provides that a landlord's details must be provided in a tenancy agreement (4.8A). It is of critical importance to the effective conduct of the housing system that VCAT orders are enforceable. We endorse the finding of the Tenants Union of Victoria (TUV) that this option will most effectively ensure that both parties have the information required to engage in any necessary legal proceedings.

Terms of tenancy agreements

CHP strongly opposes the option to make additional terms to tenancy agreements enforceable (option 4.12B). The creation of arbitrary additional terms has the capacity to infringe upon a tenant's right to engage in all of the lawful behaviours available to them under the law. Under this scenario, unreasonable rules are likely to be imposed on tenants, creating a situation whereby tenants receive breaches, or are even evicted for failing to comply with enforcement orders for unreasonable terms beyond the scope of the RTA.

Importantly, these terms are likely to be applied most onerously against vulnerable tenants who have few options in the housing market, and must accept the terms of whatever tenancy agreement they are presented with. CHP does not believe that it is appropriate to give the landlords such discretionary powers over the behaviour of the tenants.

CHP instead supports the option for a comprehensive standard prescribed tenancy agreement. This will protect against the application of unreasonable terms in tenancy agreements. CAV should further consider whether any additional terms to the comprehensive prescribed tenancy agreement must be approved by VCAT. CHP believes that the options to create a blacklist of tenancy agreement prohibited additional terms and to create an offence to include invalid or prohibited term are positive measures and consistent with the option to create a comprehensive standard prescribed tenancy agreement.

Chapter 5. Rights and responsibilities during a tenancy

Rights and responsibilities during a tenancy, and their interaction with homelessness

The strength of tenants' rights in their tenancy is a major influence on whether they are able to sustain their tenancy, and avoid homelessness. The matters covered in this chapter of the options paper speak to the types of unintentional barriers to housing that can be created by the RTA. Matters such as the process for breaches have a direct impact on the ease with which a tenant is evicted from their home. These matters call for a full understanding of the outcomes that we as a society hope to achieve through the rental market, and who we hope to include or exclude from those outcomes. Reform to the matters considered in this chapter has the capacity to reduce the level of homelessness in Victoria. CHP calls for this to be a key consideration in this review.

Processes for breach

CHP strongly opposes the option to tailor remedies for breach of duty to the nature of the duty. This option would have devastating effects on anybody living in the community who has complex needs. A person experiencing a crisis or a major episode of mental illhealth may not have the ability to resolve the issues leading to their being a 'disturbance' immediately. For many people, this is not as simple as refraining from being a 'nuisance'. This talks to a larger point that if we agree that those with complex needs are to live in the community, then we must allow them to sustain tenancies. This requires that we build into our laws the structures that will support the continued wellbeing of all tenants, rather than building new mechanisms that lead to homelessness for those in crisis.

Currently, the 14 days before a new breach notice may be issued allows for the fact that those in crisis may not currently have the capacity to refrain from particular behaviours. The 14 day period allows for the tenant to begin accessing supports, or to begin to come to terms with the situation that brought them to crisis.

CHP urges CAV to recognise that the RTA doesn't just govern the relationship between landlords and tenants, but has wider implications. The question for government as a whole is the holistic consideration of what purposes the rental market is designed to achieve, and how the RTA can support those outcomes. We posit that the private rental market must be designed to provide homes for all of those not living in owner occupation, but who are able to live independently. The RTA therefore needs to be sufficiently flexible to support the needs of this large and diverse section of society. Subjecting tenants to rigid conditions builds flaws into the RTA by creating the conditions for failure to sustain a tenancy for rental market participants.

It is for these reasons that CHP further strongly opposes the options to broaden the three strikes rule (5.2A) and to allow termination of tenancies after a single incidence of breach (5.2B). Instead, CHP endorses the option to abolish notices of termination for successive breaches, which would instead provide for a situation whereby if a breach can be satisfactorily remedied by a tenant, then their tenancy is not subject to punitive retaliation.

Pets in rented premises

CHP does not believe that any of the options provided in this section of the options paper are sufficient. The option that ‘no pets’ clauses would be unenforceable if unreasonable is perhaps an appropriate mechanism – however, the content provided in the ‘heading for home’ options paper make it clear that under the current proposal the definition of ‘reasonable’ with regards to pet restrictions will be applied extremely liberally. A presumption that pet ownership is allowed in rental properties is required, yet no option provided in the options paper comes close to such a presumption.

With pet owners ineligible for crisis housing (and rooming houses), and pet-friendly rentals so restricted, many pet owners are forced directly into rough sleeping immediately upon losing their housing. As reported in the submission by The Salvation Army, many people experiencing homelessness are forced to make choices between securing housing and retaining their beloved pets. Homelessness agencies supporting those experiencing homelessness advise that they face significant difficulty securing housing for those with pets. As such, the current provisions not only create episodes of homelessness that might otherwise be avoided, but prolong the experience of homelessness.

While rejecting that the options provided in this section of the options paper are sufficient to protect pet owners, CHP further opposes the option for landlords to require an additional ‘pet bond’ from tenants. As the situation currently stands the cost of moving house can run to many thousands of dollars. Imposing additional bonds on tenants will only create higher barriers to securing housing. In responding to CAV’s question 34 in the options paper, existing bond loan schemes can have negative unintended consequences on those who uptake them. By way of example, the bond loan scheme operated by the Victorian Department of Health and Human Services (DHHS) can prolong people’s experiences of homelessness by rendering them ineligible for public housing should they owe any debt to the program. Should the RTA provide for additional bonds from pet owners the resultant barrier to accessing private rental will result in a missed opportunity to provide better housing outcomes for vulnerable Victorians.

Rights of entry

The options provided in this section of the options paper have only tangential bearing on homelessness. Considerations relevant to those experiencing family violence are addressed later in the options paper.

Sub-letting and assignment

CHP notes that the content of this section of the options paper has focused almost exclusively on ‘Air BnB’ style arrangements. To the extent that this is the focus of these options CHP provides no comment.

CHP believes that the options provided in this section of the options paper are not intended to cover those who provide accommodation to friends and family experiencing homelessness (otherwise known as ‘couch surfers’) who might be staying

with the tenant temporarily, regardless of whether the 'couch surfer' assists with bills or pays some form of board. We advise caution in ensuring that the drafting of any provisions stemming from this section of the options paper do not accidentally have ramifications beyond 'Air BnB' arrangements. If it is intended that this section should have ramifications on sub-letting and assigning beyond 'Air BnB' type arrangements, further open and honest consultation is required.

Chapter 6. Rights and responsibilities at the end of a tenancy

Rights and responsibilities at the end of a tenancy, and their interaction with homelessness

The rights and responsibilities of tenants at the end of a tenancy can have a significant impact on homelessness. The options detailed in this chapter of the options paper particularly relate to where tenants vacate housing at the point of crisis, including into homelessness. Appropriate and well designed mechanisms to support those vacating a tenancy when in crisis can make the difference between an experience of homelessness that is brief, and an experience of homelessness that becomes entrenched. Where those experiencing crises such as homelessness are supported they have an opportunity to stabilise their situation and return to the general tenancy housing market. Yet where punitive measures are applied to those who are experiencing crisis, this serves to worsen the crisis, ultimately entrenching the disadvantage faced by that person. The matters considered in this chapter can make the difference between supporting those in crisis to exit homelessness, or punishing them for experiencing crisis and entrenching those circumstances.

Lease break fees

CHP supports the option to codify the existing common law compensation principles around lease breaking. Codifying these principles will ensure that they are applied more uniformly than is currently the case. This is particularly true for vulnerable clients, whom anecdotal evidence tells us, are less likely to enforce their rights at VCAT, and therefore, are more likely to accept the advice of their landlords' agents, which can be inconsistent with these principles. Codifying them would offer a protection against such practices, at an important period of housing transition.

CHP opposes the option to provide fixed lease break fees as an optional clause in prescribed tenancy agreements on the basis that fees as described in the options paper are punitive, and indeed more punitive than current practice. Where a tenant does break a lease, it is likely that they are seeking to establish a new tenancy elsewhere. The adoption of fees in these instances may impact a tenant's ability to enter a new lease, which can be expensive. CHP believes that the RTA should not be deliberately punitive, and believes that, as per other sections of the RTA, lease breaking costs should compensate for loss, rather than impose penalties.

Severe hardship

CHP strongly supports both options provided in this section of the options paper, which particularly apply to people experiencing homelessness. Under situations of severe hardship some 35,000 Victorians from the private housing market turn to homelessness agencies for support each year. Homelessness occurs for a great many reasons, and for those experiencing significant personal or financial crises, it may not be possible to sustain a tenancy during these periods. For those experiencing homelessness, including those escaping family violence, an inability to access hardship

provisions due to their having vacated possession of the property is a cruel quirk in a mechanism designed to protect those very same people.

Capping compensation in cases of severe hardship provides further recognition that those experiencing severe hardship have limited capacity to pay compensation, and that during times of financial and personal crises, large compensation payments can have an outsized effect on a vulnerable person's wellbeing.

Lease breaking in special circumstances

CHP strongly supports the option provided in this section of the options paper. Under special circumstances such as those provided in the options paper, tenants' wellbeing is materially harmed if they are unable to end their tenancies – which in some cases is not possible if the already high costs of starting a new tenancy (including rent in advance, bond costs, and moving costs) is compounded by extended periods of paying for tenancies that they have vacated.

With regard to the reasons specified in the options paper, CHP would recommend the extension of special circumstances to all tenants whose landlords are selling the property, whether in a fixed or periodic lease. Further, we recommend the inclusion of special circumstances provisions where:

- property conditions have fallen below any minimum standards and the landlord or their agent have not addressed this within 14 days of notification; and
- where the tenant has been the victim of a crime that has led them to feel less safe in their home or going about routine business in their neighbourhood.

CHP believes that including such provisions is consistent with ensuring that tenants' wellbeing is not harmed by their ongoing tenancy.

Goods left behind

CHP supports option 6.6A as it offers the strongest protection of tenants rights. Those who experience homelessness report having lost goods and documents of significant importance after vacating a property. The RTA must provide adequate flexibility to recognise that the end of some tenancies represents an extremely poor outcome for some people, and that those people may be facing a significant crisis as a result. The loss of items of irreplaceable personal value can be extremely harmful for former tenants. Option 6.6A provides former tenants a greater opportunity to remove their belongings, particularly where they may be experiencing crisis.

CHP offers support for option 6.7. Updating notification methods as described will improve the likelihood that relevant parties will become aware of notifications relating to themselves. CHP advises that this provision should also include for documentation.

Chapter 7. Bonds and Rent

Bonds, rent, and homelessness

The primary need of those experiencing homelessness is to gain and sustain housing. The matters covered in this chapter have a direct impact on the ability of all Victorians, including those experiencing homelessness to gain and sustain housing. Stronger protections for tenants and prospective tenants around bonds and rent will improve the housing prospects of those experiencing homelessness, while supporting those currently in the private rental market to sustain their housing, and ultimately avoid homelessness.

Maximum bond amounts and rent in advance

CHP supports the options detailed in this section of the options paper, believing that they will have a positive impact on those people seeking to enter new tenancies. The option to remove all exemptions but the VCAT exemption is the most preferred, as it will ensure that the provisions around bonds do not have an outsized impact on those living in large households, including culturally and linguistically diverse or Aboriginal and Torres Strait Islander households who are more likely to live in large households.

Bond claims

CHP supports the options in this section of the options paper for speedier bond repayments when all parties are in agreement, and for evidence based claims for landlords (7.3C). These options represent the stronger protections to tenants of the options provided.

Consultation with our consumer advocacy group, the Peer Education Support Program (PESP) of individuals who have experienced homelessness, highlighted the importance of stronger protections for tenants regarding bonds, and for speedier return of bonds. The cumulative costs of moving house can run to many thousands of dollars. Our consultations have found that, particularly for low-income households, being able to access funds for a bond can be challenging. We have heard accounts of people having to sleep rough because they did not have the ability to pull together a bond at short notice. Speedier return of bonds will facilitate people back into the rental market more quickly. Stronger protection against illegitimate claims against a bond will protect vulnerable tenants from having to meet often unachievable bond costs where they have appropriately met their tenancy responsibilities.

CHP opposes the option 7.3B. This option relies more heavily than the current system on VCAT. Anecdotal evidence tells us that highly vulnerable individuals including those who have experienced homelessness, or those who are currently in crisis, are unlikely to attend VCAT. Option 7.3B will disproportionately negatively impact these individuals, leading to greater losses from their bonds, and related greater difficulty in gaining new housing. It will also likely have an impact on the number of individuals who are on tenancy databases, effectively 'black listing' more people from the rental market.

Frequency of rent increases

CHP supports both options in this section of the options paper. The ability to tightly manage a limited budget is all that keeps some people from homelessness, with many household budgets providing little or no flexibility around spending. Rental increases can rapidly make a tenancy unsustainable. In our experience, a common reason that a tenancy ends for homelessness service consumers is an increase in rent that makes their tenancy unaffordable. This can then precipitate a housing crisis, as moving house in itself can put significant financial strain on a household.

'Affordability of rental housing both at the point of entry and across the duration of a tenancy is arguably the most significant structural factor affecting secure occupancy for lower-income households'

- Hulse et al (2011)

The options provided in this section of the options paper will give tenants more certainty about their outgoing costs, which provides them with a greater ability to manage their budgets and sustain their housing.

Rent arrears

No options for consideration are presented in this section of the options paper. CHP will provide further comment in response to options in chapter 11.

Rent payment fees and methods

CHP strongly supports the option to require that landlords must accept Centrepay payments. This has long been a point of concern for the specialist homelessness sector, whose role focuses not only on gaining housing for those experiencing homelessness, but on supporting those who have experienced homelessness, or at risk of it, to sustain their housing. For those tenants with complex needs, or altered brain function such as an acquired brain injury, Centrepay provides them with an opportunity to meet their rental commitments, no matter their current state of wellbeing. Requiring landlords to accept Centrepay payments is a relatively simple way for the RTA to improve housing sustainment outcomes, particularly for the highly vulnerable. CHP strongly urges the inclusion of this requirement in any updated RTA.

CHP further offers its support for the option to require at least one fee-free method of paying rent. Indeed, CHP believes that where landlords or agents wish to utilise third party payment options, the onus to pay any fees is on the landlord. This is comparable to the common practice of retailers absorbing fees associated with the use of EFTPOS in their sales.

Rental bidding

CHP supports both options provided in this section of the options paper, with a strong preference for option 7.8B. People on low-incomes, who are already at a disadvantage in the private rental market, are further disadvantaged by the practice of rental bidding and may end up wasting considerable time attending 'open for inspections' at properties that ultimately rent at prices they cannot afford. A prohibition on rental bidding would support all tenants, but would particularly impact those extremely

vulnerable tenants, including those facing or experiencing homelessness, who may have few viable options in the private rental market, and who can currently be outbid on those homes which they may otherwise have been able to gain and sustain.

Chapter 8. Property Conditions

Property conditions and homelessness

Property condition regulations have both a direct and indirect impact on homelessness. Where a tenant is living in a property that most in the community would deem uninhabitable, that person may be considered homeless, despite having a tenancy agreement. While *Shields v Deliopoulos* provides some clarity that uninhabitable rental properties must be brought to tenantable repair, a lack of guidance around property conditions allows for significant differences in interpretation of what standards should be considered acceptable. Property condition standards (and the lack of minimum standards) have a disproportionate effect on those experiencing or having previously experienced homelessness. These cohorts have perhaps the least market power of anybody in the private rental system, and are therefore far more likely to receive offers of only the worst maintained properties. The matters contained in this chapter have an impact on the rights of those who are experiencing (or have experienced) homelessness, as well as in some instances, such as regarding modifications, on whether the RTA facilitates homelessness, or supports housing sustainment.

Effectiveness of current regulation

No options for consideration are presented in this section of the options paper.

Condition reporting – Measuring changes in a property’s condition

CHP provides no comment on options 8.1 – 8.4 which have only tangential bearing on homelessness. CHP offers support for options 8.5 and 8.6. Consultation with our consumer advocacy group, the Peer Education Support Program (PESP) of individuals who have experienced homelessness, highlighted the importance of stronger protections for tenants regarding bonds, and endorsed options to improve condition reporting in order to ensure that bond repayments were fair. Further to this, improved condition reporting may lead to improvements in landlords’ maintenance practices, ensuring the ongoing adequacy of dwellings.

Condition of vacant property at the start and end of a tenancy

CHP supports the option to clarify cleanliness and good repair expectations through guidelines (option 8.8), though advising that the guidelines as drafted in the options paper require further consultation prior to adoption. In particular we oppose the inclusion of expectations which would be likely to result in unreasonable cost imposts being passed through to tenants, such as steam cleaning of carpets. For those with limited discretionary spending capability it is unlikely that some of the measures listed represent spending priorities.

CHP further supports option 8.10, providing that it does not include an associated fee for the use of the property after having given up possession. The RTA must provide adequate flexibility to recognise that the end of some tenancies represents an extremely poor outcome for some people, and that those people may be facing a significant crisis as a result. Option 8.10 provides former tenants an improved

opportunity to ensure that they are not subject to professional cleaning costs, particularly where they may be experiencing crisis.

Locks and security devices

CHP supports both options in this section of the options paper. While recognising the advice provided to CAV from the Metropolitan Fire Brigade (MFB) that deadlocks on external windows may be a fire hazard, we reiterate our call for deadbolts on external windows, believing it necessary to the safety of many tenants, and cognisant of the fact that tenants do not have a right to make such installations themselves. Further consultation is required with the MFB as well as parties representing vulnerable tenants to find a mutually acceptable agreement.

Health, safety and amenity standards at point of lease

CHP strongly supports option 8.13D from this section of the options paper, believing it to be one of the single most important measures that the Victorian Government can adopt to address homelessness in Victoria. Those working with vulnerable tenants (including CHP) have long called for the adoption of minimum standards for general tenancies, in order to ensure that homes are safe and meet community expectations of adequacy. Specific minimum standards will ensure that safety and adequacy are clearly defined, which allows for simpler enforcement.

CHP would take this opportunity to highlight that people can experience homelessness even where they have formal tenure over a dwelling, if that dwelling is grossly inadequate. Studies have found that approximately 12% of advertised rental properties are uninhabitable⁶. CHP has provided [significant evidence at earlier stages of the review](#) process to the need for the adoption of minimum standards via the RTA.

The proposed list of minimum standards in the options paper makes a good start on ensuring the safety and adequacy of private rentals, and CHP urges the adoption of each of the standards specified in 8.13D. CHP would further include as minimum standards:

- That main living areas and bedrooms are of a sufficient size.
- Provide for a gas connection
- Light fixtures in every room
- Electrical wiring is not exposed, and is in good repair
- Free from pest and vermin infestation

CHP further supports option 8.15D which provides for a complete prohibition on letting non-compliant properties. Fierce competition for access to rental properties, particularly at the cheaper end of the market, means that vulnerable tenants are effectively forced to accept substandard conditions under a conditional letting mechanism. Those experiencing homelessness will remain particularly vulnerable to substandard rentals under a conditional letting policy.

⁶ Victorian Council of Social Service, 'Decent not dodgy' 2010

Condition of premises during a residential tenancy

CHP opposes option 8.16 from this section of the issues paper. While recognising that greater clarity is needed around responsibility for maintenance in residential tenancies, and without providing comment on the division of duties provided in the options paper, CHP opposes the use of breaches as the mechanism to enforce such responsibilities.

The use of breaches to enforce such responsibilities creates a significant opportunity for misuse, particularly where the repercussions of receiving breach notices are currently under consideration (see response to Chapter 5). CHP argues that there is little proportionality in breach of duty notices (which can lead to evictions) for matters as trivial as dusty window tracks, food spattered stove tops, or light bulbs in need of replacement. While guidance as to which party holds responsibility for such matters would be welcome, the adoption of breach notices for such matters has the capacity to create significant levels of arbitrary evictions, may lead to increased levels of homelessness, and is an inappropriate application of the breach of duty mechanism.

Further to this, CHP opposes the proposed changes under this option to rooming house maintenance rules. This change represents a significant shift of responsibility from rooming house operators to rooming house residents. Those residents living in rooming houses are often in the midst of significant personal and financial crises, and the imposition of onerous new responsibilities onto them is not only inappropriate, but creates a situation where residents are likely to fail to be able to meet such responsibilities. While it is important that the RTA is flexible enough to allow that all members of the community may sustain their housing, even where they have multiple and complex needs, there needs to be active recognition of the multiple disadvantages faced in particular by rooming house residents, some of whom will not be able to meet these proposed new requirements at all times. The RTA must not include provisions which parties will be unable to meet. Nor is it clear how a provision such as that proposed around common areas can practically be applied. Ascribing common area cleanliness to any one person is likely to be a fraught and inexact process. Enforcing collective responsibility for common areas against any one individual is unfair on the individual, and creates a significant opportunity for abuse of power by the operator. It is also likely to add to tensions between tenants in already volatile environments, which can precipitate homelessness. Responsibility for the cleanliness of common areas must remain with rooming house operators, who may institute house rules which support this responsibility, but are not incompatible with this duty.

CHP supports option 8.18, believing that it is an important new mechanism to ensure the safety and support the adequacy of homes.

CHP oppose option 8.19 in this section of the issues paper. Any measures pertaining to smoke alarms are likely to have a particular impact on rooming house residents, due to the requirement that each rooming house bedroom is fitted with a smoke alarm, as well as the fact that they are subject to inspections of greatly increased regularity. By necessity then, this option proposes new punitive measures to be applied regularly

against rooming house residents. Given the significant vulnerability of these residents, CHP opposes this punitive approach to fire safety, which will lead to fines on those who are already financially disadvantaged, and evictions for those who are already in the most unstable accommodation. CHP advises that this will simply add to levels of homelessness. New mechanisms to support proper maintenance and repair of smoke alarms must not include punitive measures against the highly vulnerable.

Modifications

CHP supports both options 8.20A and 8.20B, urging CAV to consider them not as alternatives to one another, but as two options which complement one another and should both be applied. As mentioned previously (see response to Chapter 3), for many, property modifications are necessary to ensure that tenants can sustain private tenancies. People with disabilities face high rates of homelessness, while the rate of homelessness amongst older people has been rising rapidly.

In particular, CHP recommends that landlords may not unreasonably refuse consent for modifications requiring structural change, affecting common property, or significantly changing the property's appearance (8.20A), but that where modifications are more minor than this threshold, tenants do not require landlord approval (8.20B).

Those who require modified housing to sustain their tenancy, yet are unable to make such modifications are at significant risk of homelessness due to the dearth of accessible housing in Victoria, or are likely to end up in supported residential health facilities at significant cost to governments, where with the right supports, including physical, they may more cost effectively remain living independently, with associated improved outcomes for the individual. Currently the RTA represents a barrier for retained independent living. With an aging population, including a notable increase in older renters, and the advent of the National Disability Insurance Scheme (NDIS), the rental market must be able to support property modifications now, lest it should become outdated within the short-term and require further review in order to support demographic and policy change which is already foreseeable.

CHP further supports option 8.21 as a common sense measure that will support those who require property modifications to sustain their housing, ensuring that they are not subjected to arbitrary cost impositions at the end of a tenancy.

Liability for access to services

CHP supports option 8.22, believing that it recognises broader community expectations of household amenity. This will particularly impact upon those facing housing insecurity, whose market power is such that they are most likely to be subject to unfair charges, despite typically having lesser financial resources.

CHP opposes option 8.23. Currently, community housing tenants pay a proportion of their income as rent, similar to provisions for public housing. This arrangement recognises that for those with small incomes, market based rental costs are unsustainable, with serious harmful effects on tenants' quality of life. The creation of additional costs for this client group would fail to recognise their financial vulnerability.

Reporting and addressing damage

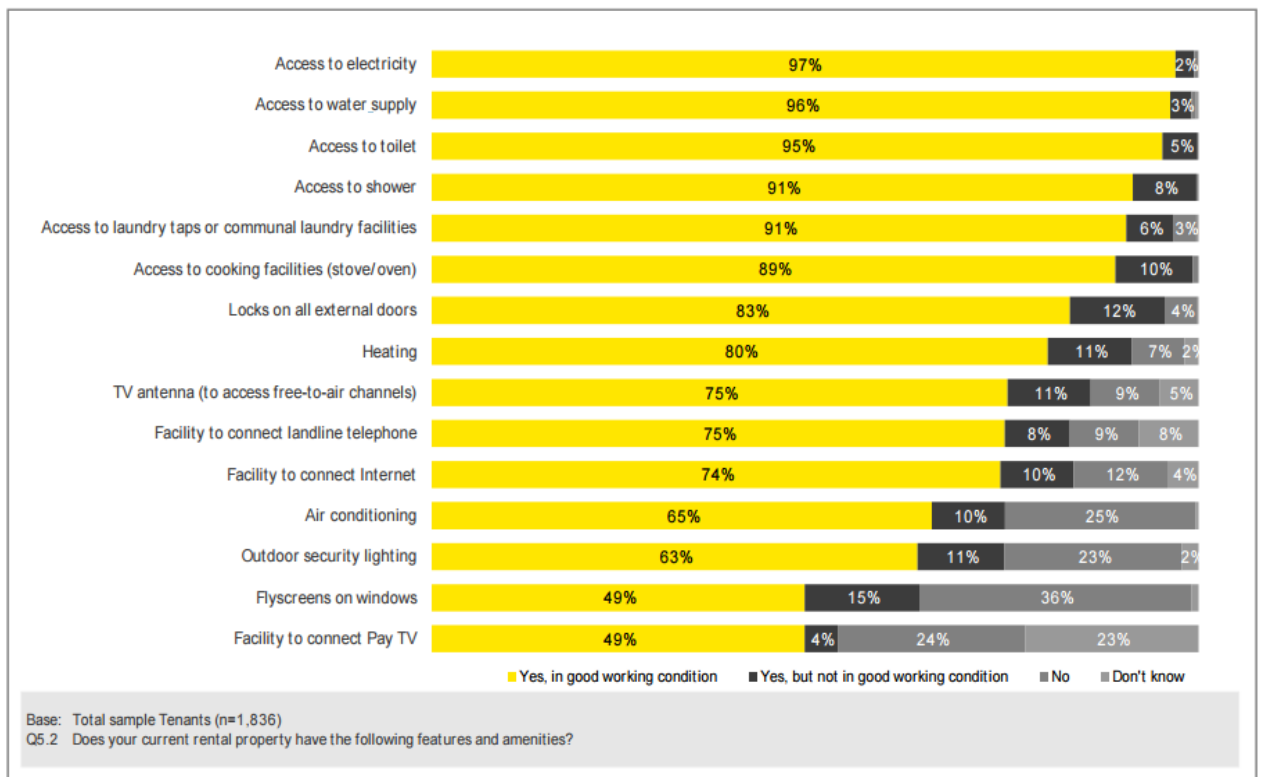
CHP opposes option 8.24, which imposes greater burdens against tenants, including vulnerable tenants, while removing clarity around allowable wear and tear on a property during a tenancy. As with many measures, this will particularly impact those experiencing housing insecurity, who are more likely to occupy older properties, whose reasonable wear and tear is higher.

Resolving disputes about repairs

CHP supports options 8.31, 8.34, 8.35 and 8.38 in this section of the options paper, and notes that all options in this section of the options paper have a neutral to positive impact.

Where properties require repairs, particularly urgent repairs, they can quickly become unfit for habitation, leaving tenants experiencing homelessness, perhaps while still paying rent on an inadequate dwelling. Research by CAV identified that some two per cent of rentals do not have access to electricity, while five per cent do not have access to a toilet (see Image 1 below). While the RTA currently provides mechanisms for tenants in these circumstances, uptake is currently poor, and limitations exist on the use of these mechanisms. The options supported by CHP should form part of a suite of mechanisms for tenants in this situation, in order to lead to improved compliance with landlords' repair duties in residential tenancies.

Image 1. Tenants - report of property features and amenities⁷



⁷ EY Sweeney, Rental experiences of tenants, landlords, property managers, and parks residents in Victoria 2016, pages 55-56

Option 8.33 should be amended to also enable tenants to join owners' corporations to proceedings.

CHP notes that the provisions for excessive usage charges caused by leaks, intermittent faults or hidden problems (Option 8.38) will have a particularly positive impact on the housing insecure, who are more likely to occupy older dwellings, which in turn are more likely to develop such faults. Those experiencing housing insecurity are likely to also be experiencing financial disadvantage, and large bills outside of their control can precipitate a financial crisis that in some instances will lead to homelessness.

Chapter 9. Rooming Houses

Rooming houses and homelessness

Rooming houses are the primary form of emergency accommodation in Victoria, and as such are the typical housing response for those Victorians experiencing homelessness. The rights and responsibilities of rooming house residents and operators are of particular concern to CHP. There is great variance in rooming houses, with some providing security and stability to those in crisis, while others perpetuate homelessness through dangerous health and safety standards, and failing to address criminal and violent behaviours against residents. As such, rooming house residents experience an ongoing form of homelessness.

The matters considered in this chapter have an enormous impact on the rights and responsibilities of rooming house tenants and operators. These matters have the capacity to perpetuate homelessness, or alternatively to provide stability and security for rooming house residents such that they are not hindered from achieving positive personal aims and outcomes. In these matters it is important to remember that a home is not merely a place to sleep, but should provide the security, stability and safety that allows residents to engage to the fullest extent in life in Victoria.

Rooming house definition and emerging accommodation models

CHP supports the option detailed in this section of the options paper. Differing definitions of rooming houses create uncertainty as to which regulations apply to which rooming houses, ultimately degrading the quality of inspection and enforcement of Victorian rooming houses. CHP advises that a new rooming house definition needs to further include relevant state and federal government bodies with jurisdiction over the Victorian Planning Provisions and the National Construction Code in order to bring all definitions in line.

Declared rooming houses

CHP opposes the option in this section of the issues paper. Community housing operated by community housing organisations runs to a fundamentally different model than privately run rooming houses. It is important to note that community housing organisation operated community housing is designed to be long term accommodation in which even consumers with complex needs can achieve stabilisation, housing security and long term tenure.

As such, declaring community housing organisation operated community housing to be rooming houses does not provide the additional protections for consumers under the RTA, as detailed in table 2 below (replicated from the options paper). Instead, the application of rooming house regulations to community housing organisation operated community housing only serves operators seeking easier evictions for clients. This is not an acceptable outcome for highly vulnerable people who have been granted access to stable housing by community housing organisations.

CHP believes that the importance of strong protection for tenants of community housing organisation operated community housing is made even more critical by the

adoption of the Common Housing Register which sees community housing organisation tenants drawn from the public housing wait list. Eviction from such housing would disadvantage these clients compared to were they to have been offered public housing instead. With over half of all community housing organisation housing drawn from the public housing stock, similar protections as exist for public housing tenants should exist for those in community housing organisation operated community housing. Certainly, the protections for these tenants must be stronger, and do more to promote security of tenure than those that apply to rooming houses.

Table 2: Comparison of different requirements for rooming house residents and tenants

Requirement	Part 3 resident	Part 2 tenant
Minimum period of notice of intention to vacate	2 days	28 days, but cannot be used to end a tenancy agreement before the end of the fixed term
Maximum rent payable on termination without notice	Capped as the lesser of: 2 days after vacating, or until another resident takes up occupancy	Lease breaking rules apply – landlord can seek compensation for loss, which can cover rent until premises re-let or end of lease (but should mitigate loss)
Maximum equivalent period of rent which can be required as bond	14 days	1 month
Duty owed to pay rent on time	Yes	No
Minimum period of rent arrears before notice to vacate may be served	7 days	14 days
Entry by owner into room permitted for routine inspection	Every 4 weeks	Every 6 months
120 day notice to vacate for no specified reason may be served	At any time	Cannot be used to end a tenancy agreement before the end of the fixed term, but can be served at any time during a periodic tenancy agreement
Immediate notice to vacate can be served for disruption – causing serious disturbance to the peace and quiet of other residents	Yes	No
Duty owed to comply with house rules	Yes	No
Duty owed to not keep pet without consent	Yes	No

Requirement	Part 3 resident	Part 2 tenant
Immediate notice to vacate for damage – standard of proof	‘resident or visitor intentionally or recklessly causes or allows serious damage’	‘tenant or visitor maliciously causes damage’

Unregistered rooming houses

CHP supports option 9.4 to provide enhanced inspection powers for CAV rooming house inspectors – under certain conditions. CAV inspectors have responsibility for enforcing a number of minimum standards in rooming houses, critically including some bedroom standards. That CAV are unable to enter said bedrooms in most instances is a significant barrier to enforcement of such standards.

Consultation with our consumer advocacy group of individuals who have experienced homelessness, including in some instances of rooming house residency (the PESP), advised that CAV inspectors must have powers to enter bedrooms if they are to enforce minimum standards, and that they should be able to do so without first obtaining a warrant. However, PESP and CHP advise that CAV must give an appropriate notice period to residents prior to entering their bedroom.

Operation of rooming house without building owner consent

No options for consideration are presented in this section of the options paper.

Tenancy agreements in rooming houses

CHP strongly supports the option to allow rooming house residency agreements with a specified occupancy period, and remove use of tenancy agreements for occupancy of rooms in rooming houses. Signing a tenancy agreement means residents are not offered the protections under Section 3 of the Act, created specifically for rooming houses. Considering the unique experience of rooming house tenure, where there is often significant resident churn, complex personal issues and strangers sharing common facilities, CHP believes that tenancy agreements in rooming houses should be abolished. We believe that the provisions in Section 3 of the Act respond directly to the complexities of rooming houses, and that residency agreements are more appropriate for this form of tenure.

House rules

CHP supports options 9.7 and 9.8 in this section of the options paper. CHP provided detailed comment on our support for option 9.7 in [a previous submission](#) to this consultation. Option 9.8 ensures that improper rules cannot be used as grounds for a termination or breach. This is an important protection for rooming house residents, ensuring that they do not live in fear of primary homelessness because of arbitrary rules created by their landlord.

Pets in rooming houses

No options for consideration are presented in this section of the options paper.

Rights of entry

Once again, CHP's position on the option in this section stems from our consultation with our consumer advisory body, the PESP. This consultation found that 48 hours' notice increases the likelihood that residents will actually receive their notice prior to an inspection, within a timeframe that allows them to ensure that their privacy is maintained. Under current provisions, should a resident be spending a night with friends or family, they may not receive the notice of inspection, and therefore, may not be aware that it is taking place. A 48-hour notice period would represent an improvement in tenants' rights.

The consultation further found however that monthly inspections were appropriate. It was advised that monthly inspections allow for a safe level of cleanliness to be maintained. In environments such as rooming houses where pests and vermin can proliferate, effecting all residents, and where residents are reliant on one another to comply with fire safety measures, monthly inspections can provide an appropriate incentive, and should continue to be allowed under the RTA.

Utilities

CHP supports option 9.10 in this section of the options paper. Rooming house residents pay a significant amount of their income for a shared room or exclusive occupancy of a room. Residents often have very little disposable income left with which to cover the costs of daily living. While the Act clearly spells out that residents cannot be charged for electricity and gas (unless their room is separately metered), there is no clear statement in relation to water charges. Ensuring that residents can only be charged for separately metered utilities protects them from cost blowouts which they cannot control, and which can lead to financial crises which can ultimately lead to primary homelessness, as well as to tension among tenants.

Minimum standards

CHP supports the updates to rooming house minimum standards as detailed in this section of the options paper. These updates are consistent with the existing minimum standards, and simply provide further clarity as to their practical application.

Personal security and security of mail

CHP supports option 9.12. Providing secure mail sorting is the type of investment that allows rooming house residents to control their social relations, and to meet with their outside obligations. A small one-off financial outlay by operators would provide significant ongoing independence for residents.

Quiet enjoyment of other residents

CHP supports option 9.13 detailed in this section of the options paper. Provisions in the Act that require residents to take responsibility for their guests' behaviour when near a rooming house seem both unrealistic and unnecessary. CHP believes that

residents cannot be held responsible for incidents that occur near a rooming house and that this reference should be removed. Consultation with consumer advisory group the PESP highlighted that such rules can lead to rooming house residents feeling that they are not welcome in their communities, and that they can be used by neighbours to harass rooming houses and their residents.

Chapter 10. Dispute resolution services and mechanisms

Dispute resolution services and mechanisms and homelessness

Dispute resolution services and mechanisms for housing have an enormous impact on those experiencing homelessness. Those experiencing homelessness are often in the midst of personal and financial crises, and are likely to be experiencing multiple complex situations which require resolution. Those experiencing homelessness are more likely to be subject to housing disputes as a result of these crises. The administrative and legal burdensomeness of these dispute resolution services and mechanisms can either add to these crises, or can support their alleviation.

Many of those experiencing homelessness require support to resolve their crises, which is provided by specialist homelessness services, or by complementary services. Unfortunately, while it is possible for these services to support those experiencing homelessness where they are the respondent to a dispute, current mechanisms are inadequate to allow services to support those experiencing homelessness where it is necessary to initiate a dispute resolution mechanism in order to resolve their crisis, but the client is unwilling to do so. There are many reasons that a reasonable client may not be willing to initiate such proceedings, including that they lack housing market power and fear retribution, or that the administrative and legal burden of such undertakings feel overwhelming and add to their sense of crisis. In order to resolve their crises, those in this situation may require that third party support services are able to initiate dispute resolution. Such an option is not canvassed in this section of the options paper. Regardless, CHP strongly calls for such mechanisms to be introduced.

Measures considered in this chapter have the capacity to make the difference between entrenching homelessness, or supporting its avoidance or conclusion.

Tools for independent resolution of disputes

CHP believes that while enhanced information and advice services are required, the critical deficit is not in CAV delivered services, but in those services delivered under the Tenancy Advice and Advocacy Program (TAAP). Vulnerable clients tend to need more intensive support to understand their rights and responsibilities, and how to proceed to resolve a dispute, than can be delivered online or over the phone. TAAP services apply a case management approach to clients' needs, consistent with recognising that many people may need support in enforcing their rights. CHP details the underfunding of TAAP services in a [previous submission](#) to this consultation. CHP believes that while an expansion of services is required, it is most needfully required at TAAP initiatives.

Third-party assisted non-binding dispute resolution

CHP opposes the option put in this section of the options paper. In particular, CHP endorses the stance of the TUV that:

“mediation or conciliation does not commonly lead to favourable outcomes for tenants who are in a weaker bargaining position and will often settle for less than the law entitles”

CHP notes that while the above is true of all tenants, those experiencing homelessness have the weakest bargaining position of anybody in the private rental market.

Binding agreements, orders and determinations

CHP opposes option 10.3 reiterating our concern that those experiencing homelessness have the weakest bargaining position of anybody in the private rental market, and are unlikely to initiate dispute resolution on their own behalves. We endorse the recommendation from the TUV that instead calls for a residential tenancies ombudsman.

CHP reiterates our previous call for third party support services to be given power to initiate proceedings.

Quality of decision-making by VCAT

CHP supports option 10.4A from this section of the options paper. Currently, where a VCAT finding provides for unfair or unlawful decisions, the only option available to parties is to appeal to the Supreme Court. Costs associated with this option are typically significantly higher for parties to the tenancy agreement than the rewards from sought outcomes. For those experiencing homelessness, housing insecurity, or financial difficulties this option is simply not viable. Introduction of a re-hearing process for residential tenancies cases at VCAT would allow vulnerable tenants to appeal unfair or unlawful decisions at VCAT, and removes a structural barrier which prevents their recourse to justice.

Compliance and enforcement

CHP supports the option to expand remedies under the RTA to allow CAV referral for civil remedies. As mentioned above there is a further need to allow other third party actors to bring compliance, enforcement or remedial proceedings on behalf of affected parties. Those experiencing homelessness or related crises often have little capacity to navigate complex legal proceedings, the market power to challenge landlords, and are often not inclined to create new and complex situations in their life such as legal proceedings.

Chapter 11.1 Terminations and security of tenure - Terminations instigated by landlord or owner: tenant at fault

Terminations instigated by landlord or owner: tenant at fault and homelessness

Many of the provisions in this chapter, if adopted, would lead to significant increases in homelessness. Where tenants are arbitrarily evicted with zero or extremely short notice this is also most likely to result in that homelessness taking the form of rough sleeping as people have no time to make temporary arrangements such as couch surfing, and homelessness services are generally unable to secure temporary accommodation.

CHP calls for the rejection of the punitive approach to tenancies underpinning many of the options proposed in this chapter. The objective of the RTA is to facilitate people being housed in the private rental market. It is not an appropriate tool for seeking to achieve aims that rightly lie with the justice system and criminal or civil courts.

CHP does not believe that revoking tenancies and causing homelessness is appropriate as a punitive measure. The termination of tenancies should only be applied in order to address current or future non-compliance with lawful tenancy agreements, and only after reasonable alternative means of achieving compliance have been exhausted.

The provisions outlined in this chapter have the capacity to have an enormous effect on homelessness in Victoria.

Process for termination

CHP strongly opposes option 11.1 in this section of the options paper, and rejects all options premised on its adoption throughout this chapter. This option will lead to large numbers of new evictions, under shortened timeframes, creating a surge in homelessness well beyond the capacity of the homelessness sector in Victoria to respond. This option is extremely dangerous for the social and economic health of Victoria and must be rejected outright.

This section of the options paper provides a strong analysis of the issues around notices to vacate as they currently exist. However the option identified to address these issues is inappropriate.

Under current arrangements, where tenants receive a notice to vacate, it specifies the reasons for which the landlord is seeking to terminate the tenancy. Of critical importance, this allows tenants to remedy the cause of the notice to vacate prior to a possession hearing. Current practice is that where a tenant can demonstrate that they have remedied the cause of the notice to vacate, and it is unlikely to reoccur, they are able to maintain possession of the property. The current practices focus on remedying disputes, rather than punishing tenants. CHP believes that terminating a tenancy, possibly creating homelessness, should never be used to achieve punishment outcomes. Evictions must remain, as now, focused on where future compliance is in

doubt, and never as a mechanism to punish past non-compliance. Any such change would greatly increase the number of evictions in Victoria. In a competitive rental market such as exists in Victoria today, increasing evictions will lead to more experiences of homelessness.

While the use of evictions as punishment for past behaviour is reason enough to oppose this option, the option further proposes to greatly decrease timespans between a landlord beginning an eviction process, and a tenant's being evicted. The proposed new system would remove the period of time between the expiry of the notice to vacate period and the possession order hearing, as well as the period of time following a possession order that VCAT may award to ensure that the tenant is able to gain new housing prior to eviction. These periods of time are of critical importance to tenants seeking to enter new tenancies and take possession of them, and also provide important opportunities for tenancy issues to be addressed. Greatly reducing the timespan between the beginning of eviction proceedings and tenants losing possession would of itself create many new episodes of homelessness which might otherwise be avoided.

An increase in evictions paired with a decrease in eviction process timespan, as proposed in this option would be disastrous. It would create significantly increased levels of homelessness, overwhelming the homelessness sector, and in all likelihood, a vast array of complementary services as well.

CHP urges further consideration of an alternative option to address the issues highlighted in this section of the options paper, in particular, those put to previous stages of this consultation by Homeless Law Justice Connect (see [page 26](#)). Amending the misleading title of 'notices to vacate', and improving the quality of information provided therein (similar to option 11.9 in the options paper) are all that is required to address the concerns raised in this section of the options paper. Critically, these options would reduce homelessness, whereas option 11.1 would greatly increase it.

VCAT decision-making process in granting termination and possession orders

CHP strongly supports the option 11.2 to consider reasonableness in granting possession orders. That the laws that people are subject to should be proportional is a self-evident good. Further, that some people experience homelessness due to evictions for trivial infractions or unreasonable application of the RTA is a significant injustice that must be rectified. Experiencing homelessness is not only a significant hardship in itself, but can have serious negative ramifications on people's wellbeing across a wide array of domains.

Damage

CHP strongly opposes option 11.3, which vastly increases the application of immediate notices to vacate. The result of an immediate notice to vacate is homelessness, and must only be applied in the most serious of circumstances. A significant reduction in the security of tenure held by renters, this option would drastically increase the levels of homelessness in Victoria.

Currently, summary eviction is a tool which can be used to address current and future behaviours, but is not used in punishment for past acts. This reflects the gravity of such an eviction, which makes the recipient homeless. The application of summary eviction to past acts is totally inappropriate, and must be rejected. Past acts of damage are provided for under the breach mechanisms of the RTA, and allow for tenants to remedy said damage and avoid eviction.

CHP believes that the term ‘maliciously’ is deliberately interpreted narrowly because applications for immediate eviction are supposed to be applied only in the most serious circumstances. Feedback to this review from stakeholders that indicates that ‘malicious damage’ is only recognised where it is ‘urgent, current, or imminent, or continuing conduct’ reflect that the mechanism is working as designed, rather than being used to summarily evict residents who pose little immediate or future risk. Summarily evicting tenants who pose little risk into homelessness lacks proportionality, and must be rejected by this review.

It is obvious that while damaging a safety device is a serious matter, it does not meet this high threshold that should be applied when considering evicting a tenant into homelessness. CHP strongly opposes the inclusion of damage to safety devices as a justification for an immediate notice to vacate.

CHP strongly opposes option 11.4. See our response to termination orders above (option 11.1).

Danger

CHP strongly opposes the options in this section of the options paper. Our opposition to option 11.5 is consistent with the opposition provided to option 11.3 above. It would be perverse to summarily evict residents who pose little immediate or future risk. Using homelessness as a punishment for those who pose little future risk fails to meet the community’s expectation of proportional responses to offenses. Similarly, wielding homelessness as a punishment for acts of omission lacks any sense of being a reasonable or measured response.

Expansion of immediate notices to vacate for danger also poses an unacceptable risk of creating high levels of new homelessness.

CHP strongly opposes option 11.6. See our response to termination orders above (option 11.1).

Termination by a notice to leave for violence on managed premises

CHP strongly opposes option 11.7 from this section of the issues paper. Current provisions ensure that for a termination via a notice to leave to be put in effect, two criteria must be satisfied. These criteria are that the notice was lawfully given, and that the resident cannot show why this behaviour is unlikely to reoccur. It is our belief that as it currently operates, the system provides for an appropriate balance between the rights of other tenants to be safe and comfortable in their own homes, and for the notice recipient to avail themselves of natural justice. Any system which removes the

opportunity for natural justice would fail to meet the norms expected of our judicial system, and would be extremely likely to make unjust rulings. This cannot be allowed where people's tenancies are at stake.

CHP opposes option 11.8 from this section of the issues paper. Issuing a notice to leave on a resident in response to their visitor's violence or damage serves no harm minimisation purpose. This proposed measure is merely punitive. Withdrawing a tenant's occupancy (even temporarily) is not an appropriate punishment mechanism. It is a particularly inappropriate punishment mechanism where the punishment is for the behaviour of another person, and is not in their control.

CHP supports option 11.9 from this section of the issues paper. Notices to leave should include practical information for suspended residents. This includes the relevant legal information as proposed in the options paper, but also necessary information on legal and housing supports available to them. At a minimum, notices to leave and immediate notices to vacate (see above) must include information on the afterhours crisis and emergency accommodation telephone service.

CHP supports option 11.10 from this section of the issues paper. Excluded residents are likely to still require access to their personal belongings including medications, clean clothing, and essential toiletries. This common sense reform supports the resident's stabilisation, and should be adopted.

CHP supports option 11.11 from this section of the issues paper. Where a person is excluded from their home, they experience homelessness which hinders the stabilisation of whatever crises may have precipitated the actions which lead to the issuing of the notice to leave. Those in crisis require prioritisation at VCAT so that they may resolve their housing crisis.

Disruption

CHP supports option 11.12 to increase the notice period for disruption evictions. The result of an immediate notice to vacate is homelessness, and must only be applied in the most serious of circumstances. Indeed, CHP does not believe that disruption is correctly identified as an anti-social behaviour leading to termination, and instead should represent a breach of duty, in accordance with the limited severity of the harms caused. We further note that disruption evictions have a disproportionately large effect on those experiencing mental ill-health.

CHP opposes option 11.13 to remove the requirement that VCAT not make a possession order where the disruption will not be repeated. With disruption only loosely defined, it is not apparent what sort of behaviour constitutes disruptive behaviour. Nor is it in line with community expectations, or the necessities of running a rooming house, that single instances of noisy behaviour should lead to eviction from one's home. This option is out of line with community values and inconsistent with any sense of proportionality.

CHP strongly opposes option 11.14. See our response to termination orders above (option 11.1).

Non-payment of rent

CHP strongly opposes option 11.15, specifically the binding limit of just one extension to payment plans prior to granting possession to the landlord. Such a measure would create a significant increase in the number of people experiencing homelessness in Victoria. VCAT should retain their discretion over extending and renegotiating payment plans.

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.

- *Heading for Home options paper*

A range of circumstances exist where a tenant may default on a payment plan, but where repayment remains a viable option. Those on low incomes have very limited to no discretionary budgets. Examples where non-compliance with a payment plan may be reasonable in the short term include where a tenant has received an unexpected bill such as for repairs, or where a casual worker has received fewer shifts than expected. In instances such as these the underlying financial capability of the tenant to make repayments has not changed, and VCAT should retain their current discretion to take such factors into account.

The options paper does not make it sufficiently clear whether under option 11.15 landlords will be able to begin the termination process before rent is 14 days overdue. CHP would oppose such a provision as it would lead to more evictions of those on low incomes, which may precipitate a housing crisis for that household.

CHP supports option 11.16. As recognised in the options paper, RTA provisions regarding evictions and the non-payment of rent have a significant impact on the level of homelessness in Victoria.

Option 11.16 provides stronger tenancy security for those on low incomes, and will have a direct impact on reducing homelessness. It reflects the current, increasingly unaffordable rental market, where those on low incomes experience great difficulty absorbing unexpected financial shocks and maintaining their rental payments. Such an option allows for increased payment flexibility for those with limited discretionary budgets.

CHP strongly opposes option 11.17. As mentioned in response to option 11.16, RTA provisions regarding evictions and the non-payment of rent have a significant impact on the level of homelessness in Victoria. A provision to enable VCAT to make a termination order for repeated late payment of rent would significantly add to current levels of homelessness. In a rental market such as the current one, where many households are paying high proportions of their income in rent, and in which incomes

are often irregular, this measure would build unfair outcomes into the design of the RTA. Current provisions providing for continued occupation by tenants who have repaid all rent arrears are a critical mechanism supporting housing sustainment in Victoria. Adopting option 11.17 would see many of these households experience homelessness. Further to this, see our response to termination orders above (option 11.1).

CHP supports option 11.18, which would provide increased security of tenure to one of the most housing insecure cohorts in the private rental market. Those living in rooming houses are highly likely to be on low incomes, and as such their budgets are more likely to be highly affected by unexpected costs. This can make meeting all repayments by their designated due date significantly more difficult. Option 11.18 would recognise the reality that many people living in rooming houses experience serious financial stress, and provide for greater flexibility in response.

Failure to comply with a VCAT order

CHP supports option 11.19 which has the effect of preventing situations in which tenants have no tenure; which is effectively a form of homelessness. Putting a timespan on compliance orders protects against this concealed form of homelessness.

CHP strongly opposes option 11.20. See our response to termination orders above (option 11.1).

While CHP supports amending the conditions under which a possession order must not be made, option 11.21 does not go far enough. The conditions under which VCAT must not make a possession order must be concurrently met under the current system. CHP believes that any one of these conditions should be sufficient to ensure that VCAT must not make a possession order.

The options paper highlights that if the breach of duty is not a recurrence, then the matter “would not constitute a failure to comply with the initial order”, and thus an application for a possession order based on non-compliance would be invalid (page 188). As such, this condition should be sufficient of itself to bind VCAT against making a possession order.

Further to this, CHP believes that trivial failures to comply should never lead to eviction, no matter reoccurrence. Were a person to be evicted from their home (and with only 2 or 14 days’ notice) due to a technical breach or trivial non-compliance with an order, this would fail to meet standards of proportionality and justice. Similarly, should VCAT be satisfied that there will not be further non-compliance then the granting of a possession order can achieve no positive outcomes. Such an outcome is inconsistent with the aims of the RTA, and that VCAT is satisfied that there will be no further non-compliance should also bind VCAT to not make a possession order against the tenant.

As such, CHP contends that whether the condition that “VCAT is satisfied that there will be no further non-compliance” remains or not, these conditions should be made separately sufficient to require VCAT not grant a possession order.

Use of premises for illegal purpose

CHP prefers option 11.22A in this section of the options paper. CHP strongly opposes option 11.22B, per our response to termination orders above (option 11.1). While option 11.22A is preferable, and can prevent erroneous evictions for innocent tenants, CHP’s strongest preference is for an option not specified in the options paper, whereby the use of premises for illegal purposes would be a breach of duty by the tenant. The RTA regulates the private rental market, and should not seek to achieve outcomes that rightly belong with the justice department or criminal courts.

Under our proposed option, continued use of the premises for illegal purposes could lead to eviction in the standard manner for a breach of duty. Aside from a duty to not use premises for illegal purposes, CHP believes that the justice system, and not the housing system, should provide punishment for illegality. CHP opposes the revocation of tenancies as a punitive measure, and believes that such revocation should only be used to achieve positive outcomes – such as discontinuance of illegal activities.

Parting with possession for consideration without consent

CHP opposes option 11.23 as detailed in this section of the options paper. Our opposition stems from two aspects of this option; the potential for unintended consequences, and the ramifications for sublessees and assignees where consent has not been sought.

Assuming that there are no unanticipated negative impacts on ‘couch surfers’, we focus instead on the impacts on assignees and sublessees. For more detail on the concerns regarding couch surfers see our response to chapter 5.4 ‘subletting and assignment’ above.

The application of such a notice to vacate should this be a sublet or assignment without consent rather than an Air BnB style situation, would leave the current sublessees/assignees with insufficient time to obtain and receive possession of a new property. Given the sorts of discrimination feared by many in the rental market, seeking an informal lease such as a sublet or assignment is not uncommon. Under current operation of the RTA, CHP understands that many sublets and assignments do not seek the consent of the landlord, for fear of receiving a ‘no specified reason’ notice to vacate in response. Nor are parties always aware that landlord’s may not unreasonably withhold consent, and thus may be under the impression that they are operating outside of the RTA. Those who agree to such arrangements are typically those with the least market power, who are unlikely to find new accommodation with a short period of time. A 14 day notice to vacate does not provide sufficient opportunity for these informal sublessees or assignees to find new homes, in all likelihood evicting them into homelessness.

Antisocial behaviour

CHP strongly opposes the option to create a new generalist ‘antisocial behaviour’ termination. The creation of a new provision for termination based on any behaviour that is “likely to cause alarm” would in practice give landlords almost unlimited discretion in evicting tenants, most likely at a significantly lessened timeframe than the current 120 day ‘no specified reason’ notice to vacate. It further provides landlords with greatly increased power over the lawful behaviours of tenants within their homes. CHP’s position is that the RTA should allow for tenants to engage in any lawful activity within their own home, without fear of breach of duty, and certainly without fear of tenancy termination.

Nor does this proposal meet with broader community expectations of reasonableness. That a tenant should face termination for verbally abusing a landlord, but that landlords are under no such obligation furthers the power imbalance between tenants and landlords.

It is appropriate that under the current operation of the RTA the provisions for terminating a tenancy are specific and defined. Where a tenancy is terminated tenants find themselves homeless within zero to 14 days. So significant are the ramifications of tenancy termination that tenants must be empowered to proactively avoid triggering them. Were a new generalist antisocial behaviour termination, or a large expansion in defined termination conditions to occur, tenants would lose the ability to proactively avoid triggering them. They would be subject to tenancy terminations at the almost unlimited discretion of landlords, resulting in homelessness. Giving landlords such high discretion over applying instantaneous evictions would create significantly increased levels of homelessness.

While it is positive that the options paper states that “appropriate protections would be in place for tenants with mental illness”, CHP holds grave concerns that despite any protections that may be put in place, it is highly likely that this provision will have a disproportionate effect on those who experience mental ill-health.

Chapter 11.2 Terminations and security of tenure - Terminations instigated by landlord or owner: tenant not at fault

Terminations instigated by landlord or owner: tenant not at fault and homelessness

The measures in this chapter of the options paper are likely to have an outsized effect on those experiencing (or who have previously experienced) homelessness. The experience of homelessness service providers is that many of their clients have been subject to evictions outside of the justifiable reasons listed in the RTA. It is CHP's view that the provision for terminations instigated by landlords where the tenant is not at fault simply allow for landlords to evict tenants in order to not have to comply with the rights afforded tenants in the RTA. For those with experiences of homelessness, these protections are critical supports to sustaining housing, and must be upheld. This can only be done through the removal of these provisions.

Notice to vacate for end of fixed term tenancy

CHP supports option 11.25A, to remove the notice to vacate for the end of a fixed term tenancy. Anecdotal evidence tells us that this notice to vacate is often applied in a retaliatory manner, but that the lack of requirement for landlords to demonstrate any reason for the eviction serves to hide this motive from view. Retaliatory evictions occur most frequently against those who experience housing insecurity and / or financial disadvantage, including those who are experiencing or have experienced homelessness. This is because these groups are more likely to rent dilapidated properties which have higher maintenance and repair needs, which means they are also more likely to request a repair leading to retaliatory eviction. Since those experiencing housing insecurity are less likely to obtain a new tenancy, and more likely to experience homelessness, removing the notice to vacate for the end of a fixed term tenancy will contribute to a reduction in homelessness.

With regard to option 11.25B, CHP advises that in practice protections for tenants "if the notice is vindictive or retaliatory in nature" and "if the notice is discriminatory under the EOA" are extremely difficult to enforce. As no reason needs to be given to a tenant to justify their eviction, where discriminatory or retaliatory evictions do occur, they are almost impossible to prove. Evictions should be limited to where the landlord is able to show cause, or demonstrate compliance with a specified 'reason for eviction where tenant is not at fault'.

Notice to vacate for no specified reason

CHP strongly supports option 11.27D to remove the provision for notices to vacate for no specified reason. It is not appropriate that landlords are able to evict tenants from their homes without any justification.

As per our response to 12.25A above, the existence of the notice to vacate for no specified reason actively discourages tenants from exercising their rights to repairs and quiet enjoyment, as many tenants fear being evicted if they complain. While

retaliatory evictions are not allowed, they are difficult to prove. Often, the possibility of being evicted for no reason is enough to deter tenants from exercising their rights, particularly at the lower cost end of the rental market. These notices should be abolished to provide greater security of tenure to renters, and to apply downward pressure on the rate of homelessness in Victoria.

CHP notes that options 11.27A and 11.27B are largely insubstantial. They do not address the range of issues that exist with the 'no specified reason' notices to vacate, including those detailed in the options paper. Option 11.27C provides for almost no change at all in the current operation of the RTA, other than to burden VCAT with responsibility for a new step in the process. Under this option, there is still no requirement for any justification or reasoning to be offered for an eviction, and as such it retains all of the characteristics of the current system. The removal of the provision for notices to vacate for no specified reason (option 11.27D) is the only option in this section of the options paper which meaningfully addresses the problems identified.

Notices to vacate for changes of use

CHP supports the options in this section of the options paper, particularly options 11.28 and 11.31. The options in this section of the options paper provide for greater security of tenure for tenants, more clarity of responsibilities for landlords, and will lead to greater consistency with existing law.

Notice to vacate mortgagee repossession (general tenancies)

CHP supports the options in this section of the issues paper, particularly the option to require mortgagees in possession to give 60 days' notice to vacate and compensate tenants (option 11.34). This will ensure that tenants have sufficient time to obtain and receive possession of a new property. Allowing those facing eviction sufficient time to obtain a new property is often all that is required to avoid homelessness, and should be a central tenet of the RTA.

Chapter 11.3 Terminations provisions and security of tenure

Terminations provisions, security of tenure and homelessness

The matters considered in chapter 11 have enormous impacts on homelessness. CHP has provided advice above that some options proposed in this chapter will lead to significantly increased levels of homelessness.

As such, CHP opposes each of the bundled options, as each further undermines rather than improves security of tenure. See instead responses to the specific provisions as throughout this submission.

Model 1

Model 1 is the least worst model of the three provided. CHP maintains that termination orders as described in option 11.1 would create a surge in homelessness the consequences of which would be devastating for those at risk of experiencing homelessness, as well as having broader impacts across the community.

Model 2

CHP strongly opposes model 2. This option retains 'no specified reason' notices to vacate, whilst also introducing a raft of new and highly punitive provisions around duties, breaches of duty, and terminations of tenancies. If adopted, this model will increase the level of homelessness in Victoria. Please see our responses above to:

- Option 5.2A to broaden three strikes system for breaches of duty for the same duty, to cover breach of any duty, which we strongly oppose.
- Option 11.1 to create termination orders, which we strongly oppose.
- Option 11.17 to allow terminations of tenancies even where rent arrears have been repaid in full, which we strongly oppose.
- Option 11.24 to expand definition of antisocial behaviour to include a wider range of behaviours and people who may be affected by those behaviours, which we strongly oppose.
- Option 11.27B (and 11.27D, and relevant section of 11.25) to amend notice to vacate for no specified reason during a periodic agreement with 120 days' notice to require specification of a reason for the notice, which we described as "largely insubstantial", and "(unable to) address the range of issues that exist with the 'no specified reason' notices to vacate, including those detailed in the options paper".

Model 3

CHP strongly opposes model 3. This option retains 'no specified reason' notices to vacate, whilst also introducing a raft of new and highly punitive provisions around duties, breaches of duty, and terminations of tenancies, each of which we highly oppose.

With regard to the proposal to extend the notice period for a notice to vacate during periodic tenancy, please see our response to option 11.27A (and 11.27D, and relevant section of 11.25). We have described this proposal as “largely insubstantial”, and “(unable to) address the range of issues that exist with the ‘no specified reason’ notices to vacate, including those detailed in the options paper”.

Chapter 11.4 Terminations provisions and security of tenure

No options are provided for further discussion in this chapter of the issues paper.

Chapter 11.5 Terminations instigated by the tenant: landlord not at fault

Termination after death of sole tenant

The options provided in this section of the options paper have only tangential bearing on homelessness.

Reduced period of notice of intention to vacate in certain circumstances

CHP supports the options provided in this section of the options paper. The option to enable tenants to give notice of intention to vacate under prescribed circumstances, was supported during consultations with our consumer advocacy group, the Peer Education Support Program (PESP) of individuals who have experienced homelessness. PESP particularly highlighted the importance of the proposed right for tenants to give notice of their intention to vacate in response to notice of a rent increase. The ability to tightly manage a limited budget is all that keeps some people from homelessness, with many household budgets providing little or no flexibility around spending. Rental increases can rapidly make a tenancy unsustainable. Given the severe ramifications of rent non-payment under the RTA, which can include inclusion on a rental tenancy database which serves as a 'black-list' against gaining future private rental tenancies, it is absolutely critical that tenants are empowered to end a tenancy where the agreed price has been altered.

CHP supports the option to update the terminology in the provision that allows tenants to give reduced period of notice where they have accepted an offer of public housing to include community housing. We endorse this as a common sense update that reflects the emergence of community housing providers to play a role largely akin to that of public housing.

Chapter 12 Family violence

Family violence and homelessness

Family violence is the second largest cause of homelessness in Victoria, and the single largest cause of homelessness amongst Victorian women, accounting for 34% of all homelessness in Victoria. Those experiencing family violence are in the midst of significant personal and financial crises, and are likely to be experiencing multiple complex situations which require resolution. As identified by the Royal Commission into Family Violence, the current operation of the RTA can contribute to the complexity of this crisis. This review of the RTA can support the alleviation of such crises, and in so doing support those experiencing family violence to sustain housing and avoid homelessness, or to gain new and appropriate housing which can support the resolution of other crises.

Access to family violence protections in the RTA

CHP strongly endorses VCOSS's preference for an option that might include a statutory declaration from a professional working with the applicant, as in the South Australian model (detailed in Option 12.1B), but should also extend to the types of evidence in the Queensland model (detailed in Option 12.1C). If a list of types of evidence is included in the legislation, this should be an indicative list, rather than exhaustive.

It is absolutely imperative that the RTA should define family violence appropriately. While the options paper provides strong analysis of the necessary mechanisms required by those experiencing family violence, should this review fail to provide appropriate coverage of these mechanisms to all those experiencing family violence, then many of those who need such supports will be denied them. This would be an unsatisfactory outcome that perpetuates family violence.

CHP particularly supports option 12.3 whereby an applicant may include a parent or guardian of a child who has experienced family violence. This is a common sense reform that would ensure that where family violence had occurred against a minor, family violence related protections under residential tenancies legislation would be available.

Terminating a tenancy

CHP supports option 12.4B, which provides for termination of tenancy by notice to vacate in instances of family violence. CHP's consultation with our consumer advocacy group (the PESP) of individuals who have experienced homelessness, including in some instances of family violence, determined that this option is preferable as it reduces the administrative and legal burden on those seeking to escape family violence. As noted above, those experiencing family violence are often experiencing multiple complex needs; it is therefore imperative that we ensure that they may interact with government and legal systems with the least burden possible.

Modifications to rented premises

CHP supports an amalgam of the options 12.5A and 12.5B, consistent with our position to earlier options 8.20A and 8.20B. Specifically, CHP recommends that landlords may

not unreasonably refuse consent for modifications requiring structural change, affecting common property, or significantly changing the property's appearance, but that where modifications are more minor than this threshold, tenants do not require landlord approval. We believe that options 12.5A and 12.5B are consistent with one another and can be applied to complement one another and provide full coverage for those requiring modifications.

Residential tenancy databases

CHP supports the three options in this section of the options paper. These options will ensure that those who have experienced family violence are not unduly penalised. Inclusion on a tenancy databases can amount to a "black list" ban, excluding listed parties from the private rental market. Such exclusion leaves many who have experienced family violence with a choice of returning to the home of their perpetrator or continuing in homelessness for a period of up to three years. Such situations occur under the current operation of the RTA, guaranteeing poor outcomes for the person who has experienced violence, while subjecting them to significant personal harm, and must be addressed.

Challenging notices to vacate

CHP broadly supports the option to enable a notice to vacate to be challenged in the context of family violence. This would be an important tool to ensure that those who have experienced family violence were not arbitrarily subjected to homelessness at the hands of their perpetrators. However, CHP calls for the removal of the more restrictive eligibility requirements for this option compared to others posed in this chapter of the options paper. Specifically CHP calls for the removal of the draft provisions:

VCAT would also be required to consider the following:

- any steps that have been taken to remove the perpetrator from the rented premises, or ensure that the perpetrator does not attend the rented premises
- the likelihood of the action or conduct re-occurring, based on evidence tendered, for example by the police

(Page 231)

The inclusion of the above can be seen to limit the application of this important protection for those who have experienced family violence to only those who were unlikely to be subjected to such violence again, and who had obtained an exclusion order. Such barriers are unreasonable. If a person were experiencing ongoing episodes of violence from the perpetrator, these provisions would seemingly render them ineligible. CHP calls for the option to enable a notice to vacate to be challenged in the context of family violence to be extended to all those experiencing family violence in recognition of the fact that such a mechanism is a critical tool to avoiding homelessness at the hands of a perpetrator.

Compensation orders and claims against the bond

CHP supports option 12.11 and broadly supports option 12.12. These options will provide a much needed mechanism to ensure that those who have experienced family violence are not held liable for rent (or other tenancy-related debts) that are properly attributable to perpetrators of family violence. Such debts can prevent those who have experienced family violence from gaining or maintaining a new tenancy, and as such this tool is critical.

However, CHP calls for the removal of the strict eligibility criteria required by option 12.12. In particular, CHP calls for the removal of the draft provision that:

In making such a determination, VCAT would need to be satisfied that: ...

- an order (interim or final) with an exclusion condition had been made against the perpetrator of family violence.

(Page 233)

Such a provision makes it a requirement that the person who has experienced violence has sought an exclusion condition against the perpetrator. This limits the application of this mechanism to just a subset of those who have experienced family violence, and does not provide full coverage for all of those who require it. This eligibility criterion should be removed.

Serving notices and documents

CHP endorses the submission of VCOSS with regard to this matter. CHP believes that a consistent approach to serving notices across family violence matters is preferable.