Noel Allenby Part 2 of my response to the RTA Options Paper. To be read in conjunction with my part 1 response.

My position is as someone who has leased numerous properties in Victoria and has since moved to being a landlord. I therefore fully understand that a tenant must have protections within the framework of commercial law to reside in peace and quiet for the period they have agreed to commit to and have any repairs promptly attended to when they arise. In the real world (not the one created by a social contact to provide housing to those who can not help themselves) a tenant must expect to look after any property they inhabit to an acceptable standard as agreed to with the landlord. They also will need to accept that over time the property is going to cost more for the landlord to own and operate and that the rent will rise as that is how market forces operate.

The landlord in this contract must accept that the tenant has the right to peaceful enjoyment of the property and that, if it needs it, maintenance should be carried out promptly as the tenant is paying for a complete package. On the other hand the landlord has the right to expect that the tenant will take care of the property, pay the rent and pay for any damage that they cause (it's all part of the contract). Should these things not be carried out then the landlord should be able to enjoy the protection of the law to have costs awarded when they are not at fault and to regain control of the property in a timely fashion so they can fix it up if required and get it back on the market to enable them to cover the very real costs of running it.

With the release of the Options Paper we see, without public declaration, the powers in control of this review have taken it on themselves to redefine what is currently a contractual relationship between a private home owner (landlord) and tenant into a social contract, where the landlord is required to provide housing to the tenant with numerous stipulations and requirements that currently do not exist in contract law. On the face of it there is no problem with this approach if it were to be stated with clear objectives and disclosure of the risks that landlords will be required to adopt, so that they can evaluate whether they wish to be on the supply side of this new Social Contract.

While views are sought on the cumulative effect of adopting various options it's almost impossible for me to do this due to the many number of possible combinations. My partner and I have spent over 100 hours reading, evaluating and formulating responses as it is and do not have more time to contribute, despite the seriousness of my concerns.

As stated in the preamble of the Options Paper (pg6), there is very much a focus on security of tenure identified as an underlying consideration throughout, however there is no reciprocity in this for the landlord, as there is an easing of the commitment required by the tenant. The effect of this is, conversely, reduced security of contract for the owner/landlord and without a win win focus the market will change for the worse.

Additionally, despite the status quo being suggested as an option in the preamble, it is not reinforced throughout where there is either one or a limited number of options presented.

The *terms of reference stated at the start of the review (pg12) have not been fully addressed or addressed in an unbalanced fashion. Some examples include:*

> *1 assess whether the Act is operating efficiently, in particular, meeting its objectives and balancing the needs and responsibilities of tenants and landlords with respect to starting, maintaining and ending tenancies*

Stakeholders from both sides have indicated that they think the other side have the advantage and yet there has been no independent assessment by CAV as to the actual position. What is apparent

from the imbalance in the options (77% in favour of tenants 6% in favour of landlords) is that whoever has drafted this options paper clearly sides with the tenants.

> *4 consider the potential impact that issues surrounding the supply and affordability of private tenancies have on the operation of the mechanisms and procedures under the Act*

In conversations with landlords and agents its apparent that the possible impacts of some of these options have not been well thought through as the minimum standards alone could have costs well into the billions of dollars to the supply side depending on what is implemented.

> *7 explore opportunities to clarify, simplify and streamline regulatory requirements and processes, and to modernise and enhance the Act for digital arrangements and transactions*

This one got missed big time! If only half of the options presented here are adopted there will be a major regulatory load imposed mainly on the supply side and scant attention paid to suggestions for bringing systems into the modern digital era.

> *8 research and consider approaches and developments in other Australian states and territories and overseas*

There has been selective information provided regarding the different approaches taken in different states and territories, however no information has been provided about how their markets are operating in comparison to Victoria, or whether those approaches have been successful in fixing the issues they were implemented to address. There are additional issues when trying to compare to overseas markets due to the completely different market conditions. How can you compare the Victorian market, focused mostly on mum-and-dad investors with one or two properties, to that in Germany where there are large institutional investors or the United Kingdom where it is largely government housing? Another simple example is around minimum standards & heating, comparing Victoria to overseas countries that have snow on the ground for months of the year.

My biggest problem in addressing this paper has been the radical change in the direction of the review, therefore I went back to the Founding document, Laying The Groundwork, released in June 2015 to see if there was any such declaration from the Victorian Government.

Pg 12 of Laying the Groundwork states:

> *“The current Act aims to support a residential tenancies sector where informed landlords and tenants enter into mutually beneficial rental agreements. During the period of the rental agreement, landlords receive rent and maintain the property in good repair; tenants pay rent, avoid damage and keep the property clean. Where repairs or other issues arise with a property, these are expected to be resolved in a quick and inexpensive manner.”*

Furthermore, it outlines the rights and responsibilities of both parties very well on page 14 bringing it down to the basics. Crucially, it also outlines on page 17 the fact that **public housing has fallen well behind the growth in private rentals** (10.5% versus 50.1% in private rentals in the same period) as well as acknowledging the decline in group housing from 14 to 12% on page 19. Could this have been impacted by the extensive reforms already made to rooming house standards? Has any research been undertaken on this prior to considering the application of similar standards to the broader market?

It is clear that there has been a fundamental shift in the market in this time and it’s understandable why the TUV and other tenant focused groups are repeatedly calling for more public housing for the vulnerable and disadvantaged.

The problem, as stated above, is that the Victorian governments answer to the systematic running down of public housing is to instigate this review, where more than three quarters of the changes mooted will change (from small to large amounts) the advantage to tenants to the detriment of landlords. This does not appear to align with the stated objective in the Forward of Laying the Groundwork where it states:

> *"This review will contribute to Victoria's vision for a modern and dynamic rental market in which tenants are safe and secure, and which meets the current and future needs and expectations of tenants, landlords and their property managers."*

It goes on to provide statistics on the incidence of renters moving in the previous year. In 1996 82.5% of all renters moved compared to only 32% in 2011 (pg 27). This is a very solid indicator of both trending toward and, satisfaction in, the rise in the private rental market. This is also backed up by the spread in weekly rent levels in 2011 compared to 1996 (pg31) shows a wider acceptance of renting versus ownership within the wider community. To put it another way, if the market was not supplying what the market wants, then why is it working so well? In the 20 years since 1996 the stability (security of tenure) of people renting has had a major shift from 8 out of 10 renters moving every year, to 3 in 10 renters moving in any one year. This is a clear indication that the implementation of the current RTA in 1996 has significantly improved security of tenure already.

Page 38 attempts to draw a link between negatively geared investors being more likely to exit the market, missing the point that the big issue with negative gearing is, and has been since 2000, the associated capital gains tax concessions which encourage people to purchase, renovate/develop and then sell to take advantage of the growth and reduced tax on profit. This does affect the market and can only be addressed by federal action. The main effect on the rental market is by bringing short term rentals on and off the market (generally at the lower end as they are often run down and awaiting development) however it has little effect on landlords who are in the market for the long term.

On page 40 it is mentioned that the number of applications to VCAT have risen by 5% per year to over 61,000 in 2013-14 and is explained solely as a result of more tenancies due to population increase however there are no numbers provided to back this up in percentage terms. What is most relevant is that 92% of cases are initiated by landlords and, of those, most of the applications are for non payment of rent and/or damage by the tenant. There is nothing in the review that addresses these statistics, yet they are the most prevalent issues.

With Laying The Groundwork and subsequent papers, CAV's stated intention has been that they are seeking input from both sides of the rental market, however despite this, the Options Paper has a huge bias toward the tenants viewpoint (77%) and only 6% to improve the position for landlords.

The Options Paper has failed to present clear well formed options that can be easily evaluated and in fact introduces many new concepts and suggestions that have not been brought up for discussion in the various papers. With this in mind I, and I suspect most independent landlords, am unable to answer every question. So many of the options are either incomplete, unable to be answered in isolation (due to the complex inter-relationship with other options) or, quite simply, flawed. Additionally many of these options appear to go well beyond, or have completely ignored, the governments terms of reference.

As I have previously stated, there has been poor communication to Landlords about this review being undertaken, as evidenced by the fact that nearly every landlord I talk to is not aware of the review, nor the possible far reaching implications for the supply side put forward in the Options Paper. As can be seen from my previous submissions (and this one), I am active in promoting the

views and needs of landlords and even I did not find out until a year into the review, despite CAV having my details as a landlord.

Section 2.3 of the Options Paper, **"Options for enabling a healthy rental sector",** outlines:

The package of reforms eventually put to government for approval will focus on building a healthy rental sector with the following characteristics:

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

Taken by itself this is very encouraging for tenants, landlords and the Victorian economy, however it then goes on to say:

> *The options presented in this paper should therefore be assessed in terms of the extent to which they contribute to these outcomes.*
>
> *The development of the government's reform package will consider the need for a flexible rental market, and one that can cater for diverse groups of tenants, including low income tenants, increasing numbers of older tenants, and increasing numbers of tenants with a disability, who will be entering the private rental market with the rollout of the National Disability Insurance Scheme (NDIS).*

While we are all aware that Victoria has an ageing population, this is addressed through extensive federal and state legislation for retirement villages and nursing homes. My understanding of the NDIS is that this is an extensive package to assist people with disabilities, not that it would create additional people with disabilities. Aren't these people already accommodated in society, or does this mean that the government is divesting itself of responsibility and intending to move vulnerable disabled people out of supported accommodation into the commercial housing market? It goes on to say:

> *The needs of the sector and the capacities and constraints of the market to address those needs will also inform the development of the reform package to ensure that the RTA:*
>
> - *reflects current community expectations regarding what is a fair balance of rights and responsibilities of parties to residential tenancy agreements*
> - *is relevant to the current and future market environment in Victoria, and*
> - *is conducive to a well-functioning sector for the benefit of all participants (healthy rental sector principles).*

I guess the question comes back again to what is the RTA all about? Is its intention as simple as described previously (from Pg 12 of Laying the Groundwork):

> *"The current Act aims to support a residential tenancies sector where informed landlords and tenants enter into mutually beneficial rental agreements. During the period of the rental agreement, landlords receive rent and maintain the property in good repair; tenants pay rent, avoid damage and keep the property clean. Where repairs or other issues arise with a property, these are expected to be resolved in a quick and inexpensive manner."*

Or is it a complete redesign of what a commercial contract between a landlord and a tenant is, with a new social agenda incorporated to enable the government to carry on its significant reduction in social housing, placing more of the burden on private citizens who happen to be property investors?

Questions

I finished these questions at 11pm on the last day for submission attempting to answer as many as possible before the deadline. When reviewing them I see that the ones at the end are not as well formed as quite simply the amount of time required to fully evaluate the options and questions has not been adequate for this paper.

NATA Not able to answer either due to no time,not worth it or too complex

1. The proposed objectives if adhered to would certainly meet the needs of the market now and into the future, unfortunately the reality is that the majority of options presented in the paper do not meet the objectives stated.
2. The objectives are fine, what is needed is to reconsider each option within the context of the proposed objectives and determine whether they are actually aligned.
3. No changes as the current terms suffice, changing these sell understood terms can lead to further complexity as, for example, the landlord may not necessarily be the property owner therefore you could end up with multiple terms.
4. See 3
5. Lease terms of more than 2 years are rarely negotiated now even though currently they are allowed up to 5 years now under the current RTA, the implications of many of the other proposals in this paper make it risky for landlords to even consider longer leases as the opportunities for tenants are many to break leases but not for landlords.
6. None
7. NATA
8. To the landlord there are none as again its important to look at the focus in other parts of the paper as they negate any advantage to the landlord. For example the most severe option (6.5) that a tenant can break any lease with 14 days notice and no lease break fees.
9. The status quo is the best option.
10. NATA
11. NATA
12. NATA
13. NATA
14. There is other legislation in place to deal with this why burden the RTA by duplicating.
15. Again its duplicating other legislation
16. NATA
17. NATA
18. More unnecessary imposition on landlords, this opens up avenues to persecute a landlord who has a change in circumstances outside their knowledge at the time of entering a lease. In other words more reason for potential landlords to stay out of the market.
19. NATA
20. Of course they will, there would be many situations where it would be possible to apparently mislead a tenant by not knowing something that the tenant later claims they were told as fact. This option will encourage landlords and agents to create large unwieldy documents to be signed at the time of taking the lease to cover off all and any possible future spurious claims.

21. Neither is workable, are landlords not entitled to privacy? If a landlord does not use an agent does it then mean that they have to provide their address to the tenant? What would happen in the case of family violence where under court order the landlord has to side with one or other tenant by excluding the perpetrator, who then decides to take it out on the landlord? There must be an option for this information to be available to the appropriate agencies, if and when it's required, without violating the landlords right to privacy.
22. Some good proposals in here and some problem ones, in that it will create more complexity especially for tenants with ESL. This is also another area that seeks to punish landlords for getting it wrong which is yet another reason to not be in the market. Its seams particularly unfair that these proposals want to blacklist a term requiring a tenant that breaches the agreement liable to pay a penalty, increased rent, or liquidated damages, while at the same time making it an offence for the landlord to include invalid or prohibited terms and therefore having to pay a penalty. For clarity, no penalties for the tenant only for a landlord.
23. See 22
24. See 22
25. See 22
26. See 22
27. The only thing I can see here is that, despite repeated calls in the various papers for less VCAT involvement, the proposals here are pushing for more interaction with what is an overloaded confrontational process. Whatever is changed here it needs to make it easier rather than harder. Having said this option 5.1 does appear to be sensible in being able to deal with urgent issues immediately is good.
28. See 27
29. See 27
30. See 27
31. See 27
32. See 27
33. The Option 5.3A asks a question without a dollar figure stating that it would be prescribed in regulations, this question then asks what amount would be suitable. What has been determined by survey is that more landlords would be happy to let tenants have pets (where appropriate) with a pet bond. The amount needs to be flexible as, for example, a goldfish is not likely to cause damage (other than a water leak) and yet someone keeping rats without appropriate care can cause a property to need stripping internally and a full decorate to get rid of the stench even if they were in a cage.
34. Simple, if a low income tenant can not afford a bond then they most likely can not afford to keep a pet. Pet ownership comes with responsibility and costs and, if in rented property, a bond is just part of the cost of responsible ownership. There is no reason that a landlord should take on extra risk to their asset just because it's not fair on a low income tenant.
35. Waste of time, in many cases if there is no extra bond amount then words on paper will not encourage someone leaving the property to clean up after their pet if they have nothing to lose.
36. A properly completed condition report will assist to determine action required at the end of the lease. Unless CAV is going to offer an on site inspection service in the event of a dispute there is no easy answer.
37. Both, flexibility for tenants and landlords to negotiate an arrangement to suit the situation would be best, and more likely to result in more tenants having permission to keep pets.
38. This one definitely does not fit the objective of reducing red tape its hard to say how it will work in reality as VCAT members will be making judgement calls without really knowing the property or the pet.
39. As 38

40. The status quo would be the best option as having different notice periods for different types of access just adds to complexity and therefore confusion.
41. This could open up a huge amount of problems with claims being made without proof, the RTA is not an area for this, the appropriate avenue is the police if there is a valid loss.
42. Another poorly worded Option as there are three provisions within the one option, notice period, negotiation on access and compensation, with no indication on what would be a reasonable amount of compensation?
43. NATA
44. As per question 40 creates confusion with differing notice periods for access.
45. 5.9A appears to be the more reasonable however how will it be practically applied if a tenant deliberately tries to obstruct the process by claiming that none of their possessions can be photographed as it will identify them? It would appear to be another area where VCAT will have to become involved at cost and time penalty to the landlord.
46. The question is not clear. If the property is used "for consideration" and in conjunction with "parting with possession of whole or part" which captures the issue of a tenant placing the owner of a property at risk of not being insured as a result of their activity. Then they should be prohibited from this activity Major insurers do not cover loss caused by paying guests either in whole or part possession of the insured property. The further problem with this option/question is that the landlord is not allowed to unreasonably withhold permission while at the same time under proposed option 4.10 not being able to include a term obliging a tenant to take out insurance to cover this. SO confusing!
47. The concept of parting with possession in the context of swapping properties for the purposes of holidays overseas or interstate should also be included as again the insurance company could refuse cover if the circumstances of cover are not as stated.
48. In the spirit of open communication this could work as long as the arrangement is fair to both parties and full disclosure is made, unless option 4.10 is passed in which case the landlord may be able to be prosecuted for making this type of agreement.
49. 5.12A as covers costs incurred.
50. Not practical as no one fee can cover all circumstances

51. Maintain the status quo as this appears to penalise landlords who are required to honour the lease to its conclusion unless the tenant has not kept their side of the contract. In recognition of the fact that peoples circumstances change a process is needed. To balance the commitment that the landlord makes when signing with a tenant they should be entitled to all fair and reasonable costs to have the property leased to the terms in the original contract. The landlord, with the assistance of the tenant, should make all possible efforts to find an alternative tenant however they should not have to accept someone of lesser standing than the outgoing tenant. To impose a fixed arbitrary amount could, in same cases, disadvantage the tenant and more often disadvantage the landlord as there are sometimes considerable costs incurred in changing a tenant.
    However another example of something hidden inside an option to the disadvantage of the landlord is in 6.1 where it prevents landlords from claiming for loss of rent where the landlord has served a notice to vacate i.e. if after a notice to vacate is issued the tenant can cease to pay rent entirely throughout the notice period and the landlord would be unable to claim any compensation (this may even apply to notice to vacate for arrears of rent).
52. See 51
53. See 51
54. See 51
55. See 51
56. Where is the fairness when the option favours tenants, with compensation to landlords capped at two weeks and compensation to the tenant being left open ended for landlord severe hardship. If there is to be a two way hardship clause then it would appear that if

negotiation can not resolve it and it goes to VCAT then both parties should be treated evenly.

57. See 56
58. This seemingly reasonable option dramatically modifies the fundamentals of a contract by nullifying it and penalising a landlord due to circumstances outside their control. The status quo would be a better option as the unintended consequences of this clause would be more stringent selection of tenants to avoid entering a contract that can be nullified at a virtual drop of a hat.
59. None of the A,B or C options are fair to landlords and the status quo should stand. In situations where the tenant has abandoned goods, there is often rent owing, damage done, and always a major clean up that will not be covered by the bond. There is often a bond to be claimed through VCAT, as well as the time taken to deal with the CAV inspection, as well as the disposal through auction if goods are worth more than the cost of disposal. The advantage of the current system is that the landlord can rely on the protection of the CAV inspection if a tenant subsequently claims against the landlord, which none of the suggested options will do. There would be an advantage in 6.7 as it's far more likely to establish contact with the tenant than newspaper advertising.
60. See 59
61. See 59
62. See 59
63. NATA
64. NATA
65. My suggestions to a previous paper dealing with bonds made numerous suggestions around bonds that would have been of major benefit to tenants as well as to landlords particularly around speedy lodgement and refund of bonds (potentially same day refunds). The current system, being largely paper based, is open to fraud and increasing delays due to the ongoing demise of the postal system.
    The RTBA needs to rapidly move toward a fully online system which would simply speed up full or agreed bond refunds, and facilitate communication around bond disputes and actions needed by either/both parties to facilitate resolution.
66. See 65
67. See 65
68. NATA
69. To cover the unknown future a landlord would have to put in high percentages just in case, rather than get caught short by circumstances outside their control (remember the extremely high interest rates of the 80's)
70. NATA
71. As long as any landlord is able to accept a Centerpay payment then there should be no issue with this option. Centerlink have criteria and this option needs to be worked through carefully or landlords will not be able to accept a tenant as they may not be able to get paid.
72. No, if you attempt to limit the market it will just find another way to make it happen. Supply and demand can not be stopped if there is no demand prices will drop and the opposite is true.
73. See 72
74. See 72
75. The options in this section are well meaning but poorly put together. The condition report should be compulsory at the start of the tenancy and signed off by both parties to provide the best possible proof of the condition should there be dispute at a later point, easy!

    As I have pointed out in a previous submission, to be effective it would be best migrated to

an online system where both parties can easily tick off and note issues with the important ability for either party to add photos of actual conditions.

To create a requirement of actual photos to be provided (and time stamped) other than digital will create a high level of cost, predominantly due to time needed to deal with the physical process, as well as the cost to then produce at least two copies. The assumption is then that any photos that the tenant takes would also have to be printed and copies provided to the agent/landlord.

To change the time frame for the tenant to complete the report will not have the effect intended, as it will have no sense of urgency/importance and will be forgotten. If it was an online system the tenant could be reminded to complete until done with warnings that it is for their protection.

To try and slip in that a condition report is required at a periodic inspection is crazy as the cost of management will rise due to the increased time to complete. Couple this with the suggestion in another option that the report certify that items such as essential services and mandatory requirements are fully functioning will require various specialists to provide reports at each inspection to be compliant with costs to be passed on through higher rents and to what purpose? Again I state that this does not meet the proposed objectives of the RTA (promotes equity and efficiency and reduces unnecessary costs). Most tenants I know would also consider such an intensive inspection every 6 months as an intrusion on their quiet enjoyment.

Often with inspections you call around say gidday to the tenant have a quick look around (a sniff test) , ask if they have any issues, thank them for their time and care of the property then leave as its clear that they are doing a great job and its not appropriate to bother them any more.

76. See 75
77. See 75
78. See 75
79. See 75
80. See 75
81. See 75
82. Maintain the status quo, this is another area of concern that will redefine the industry as this section combined with 8.5 and then Part C creates real risk for certain forms of housing.

    There is no reason for any landlord to profit from a property that does not have the basics, safe and basically sound, safe electrical and gas where present, secure etc.

    The problem here is that one persons basic can either be another persons palace or dump and to take the approach of *Composite repair and cleanliness duties and consideration of additional criteria* with its associated commentary will cause the removal of large numbers of serviceable low cost rentals from the market due to the risk to the landlord.

    Aside from the need to have protection against low quality landlords not providing the basics, the market determines supply and demand and must be in some form of balance at the moment. This section along with 8.5 will in one fell swoop cause a distortion in the market by creating fear amongst landlords who have low end properties that might not come up to the new rules. Rather than expose themselves to the risk both financial and

personal, they are more likely to remove the properties from the rental market and either update and re rent at a higher amount, develop the site, or sell into the low end home owner market.

To then grant a tenant who is under contract, to look after the property during the tenancy to return in the same condition (fair wear and tear accepted), an extra 5 business days at no cost to come and go to carry out the cleaning and or repairs that should have been done at the conclusion of the contract is inequitable to the landlord, as well as adding an extra week in most cases to the lease term without payment.
In fact, if option 8.10 is adopted, this would become the norm as you could start a new rental the same day you are supposed to finish the current one and use the 1 weeks free period to move, clean and do any repairs required.

83. See 82
84. NATA
85. Finally some common sense! The adoption of single action deadlocks (ones that can be opened from the inside in case of fire) is the most sensible option along with effective latches on windows rather than locks which can cause deaths in case of fire is sensible. Any further security devices need to be up to the landlord and tenant to discuss and install under negotiation.
86. See 85
87. See 85
88. I have addressed this comprehensively in my Part 1 submission sent in on 14-Feb-17
89. See 88 and my Part 1 submission
90. See 88 and my Part 1 submission
91. See 88 and my Part 1 submission
92. See 88 and my Part 1 submission
93. See 88 and my Part 1 submission
94. See 88 and my Part 1 submission
95. This area will potentially have a high impact to the market as it seeks to redefine a number of areas.
    It appears to be looking to place more responsibility and penalty onto landlords, while at the same time acknowledging that most claims at VCAT are for damage or not carrying out required maintenance by the tenant. There have been many anecdotal stories provided by tenants, which are most likely somewhat accurate as there are some shonky landlords in the market (a small minority).
    Of great concern is the shifting of responsibility for ongoing maintenance of safety related items, such as smoke alarms and pool fencing, to the landlord rather than the person on site who is in the most danger.
    Without doubt, at the start of the tenancy these essential items must be in good working condition, from that point on, just as with a home owner, the only person who can have any immediate and ongoing impact on the efficacy of these items is the person who has control of the property and who's life will be affected if they are not working.
    How can a tenant possibly move from being a tenant to a home owner, with the associated responsibilities, if society insists on someone coming around to carry out essential basic tasks that are important for their well being.
    Currently electrical tests in rooming houses are carried out every 5 years not the 2 years as stated in the option text. Similarly the footnote on page 111 points out that social housing providers only have to service gas and electrical items every 5 years so why are private landlords going to be held to a higher, and therefore, more expensive standard?
96. See 95
97. See 95

98. There is a major flaw in Option 8.20B where it states “tenants would only need to seek landlord approval for modifications requiring structural change” and then goes on to use an example of putting an adhesive hook on a wall. From a building perspective a permit is required when carrying out work that modifies the structure of a building so for example a renovation that does not alter the framing of a house is deemed to be “non structural” this would easily include painting, changing carpets, changing a kitchen even having plumbing work done, all are non structural! It would make no difference if the tenant has a suitably qualified person doing the work as the scope and specification is not that of the person who owns the property and ultimately will suffer loss if it turns out to be a disaster.
    Furthermore as with the majority of the RTA should a tenant be liable for restoration at the end of the tenancy there is no easy method for a landlord to get restitution even when being awarded by VCAT.
99. See 98
100. See 98
101. See 98
102. NATA
103. If the tenant has created a blockage or failure due to inappropriate disposal of items other than human waste and toilet paper then they should be liable for the cost to remedy.
104. NATA
105. A reality check here is needed! Currently we have a botched political rollout of a supposedly high speed broadband network across the country which, for those of us with not very long memories is reminiscent of the high speed fibre optic cable networks in our major cities, which will be fully redundant in the next 5 to 10 years, if not sooner. Why, when the majority of tenants have broadband (13% don’t due to cost or just do not want?) should landlords be forced to pay for installation of the next you beaut thing that may or may not be relevant in the future?
    Based on 545,000 rentals, and assuming that fibre to the home becomes the next must have consumer product (Optus are currently rolling out 4.5G services which are already beating the current NBN speeds), and the cost being say $2000 per property, then at 50% rollout, the cost to the supply side would be over half a billion dollars just in Victoria.
    You only have to look at most rentals to see the now defunct Optus/Foxtel fittings in the walls, or the satellite dishes on roofs, to understand that this stuff has a very short lifespan and is a consumer choice.
    If the market wants it, and is happy to pay for it, then landlords will supply it without more regulation.
106. NATA
107. NATA
108. Having the contact details of a tenant once they have left is only a very small part of the problem if they have left owing money for damage and/or unpaid rent.
    There is nothing in the options paper that addresses the situation where a landlord is left out of pocket after the contract has ended, other than what is often lengthy and expensive court action with no guarantee of success. By having no easy system to recover costs from tenants, while actively pursuing methods to penalise landlords who are not holding up their side of the contract, is unjust.
109. There is no doubt that any landlord in the market place must be prepared to maintain the property both to a safe standard and to the standard it was leased in. The options in this area are so prescriptive and oppressive that its more likely that even more landlords will divest themselves of low end rentals as it’s suggested that some of the proposed minimum standards will be treated as urgent repairs.
    For example, a failed AC unit in the height of summer is likely to be treated as an urgent repair and its nearly impossible to get a service agent out within a week, let alone one or two days.

The preamble to the options states *"Recent VCAT advice indicates that 241 applications for urgent repair orders and 144 applications for non-urgent repair orders have been made, out of more than 3,931 applications by tenants in 2014-15"* 3931 applications represent just 0.72% of all tenancies and 241 applications for urgent repairs represents less than 0.044% of all tenancies!
So, in response to a problem that is so small as to be practically non-existent, because it has attracted a huge amount of anecdotal evidence supplied by way of social media and now a Choice survey, we are faced with 10 suggested options.
What better way to encourage landlords to leave the industry than by imposing a bond on them as if they have not invested 100's of thousands of dollars already!
Additionally, for it to Not be a duty for a tenant to report the need for a repair (option 8.30) is astounding, as it then removes any ability to take action to remove the tenant for not taking steps to minimise damage to the property.

Overall, one of the biggest issues is around the effectiveness of communication and I made a suggestion in my response to a previous paper that having an online system to record requests for repairs and subsequent actions would assist tenants, agents and landlords to fulfil their responsibilities and, in the case of dispute at VCAT, provide a timeline of actions, as well as a history of landlords who consistently fail to maintain properties to an acceptable standard.

110. See 109
111. See 109
112. See 109
113. See 109
114. through 137 are best dealt with by the RAAV who are the only organisation in Victoria with the relevant experience.

138. Advice is fine, however if both first time Landlords and Tenants had to complete an online course on being their role there would be a higher awareness of the various obligations and responsibilities involved. CAV currently provide extensive information both online and in written form from multiple locations, the issue is to get people to read it. As I have said before, the basics of renting are so simple that people just get in and do it and it mostly works then, when something goes wrong, they might read the instructions.
139. See 138
140. If this service was available to all parties, had access to ongoing communication between landlords and tenants as well as documents such as condition reports, it could make some accurate assessments and recommendations. If these were then taken into account, should the matter go further to VCAT, it would assist this to be a viable option as both sides would know that there is oversight into their actions.
    If the various TAAP agencies also worked toward constructive resolution, rather than having a vested interest in confrontational disputes, this would also facilitate better outcomes.
141. See 140
142. WOW a whole new system that, on the face of it, is predominantly for the benefit of tenants with the ability to penalise landlords. How is this going to display to landlords that the system is not stacked against them?
143. If this was to be an alternative to VCAT that would hear for both sides of the contract and provide binding resolutions on both parties then it may have a place otherwise it will only add another layer of bureaucracy to further disadvantage landlords.
144. NATA
145. Ask any property manager with years of experience of VCAT to understand how inconsistent the process is.

Any system that provides confidence in the consistency and reliability of VCAT decisions would be fantastic and in itself reduce the incidence of cases going to VCAT, as it would become less of a lottery and more of a certainty.

146. See 145
147. See 145
148. Again WOW! Yet again a suggestion to further penalise landlords as though they are the only parties in tenancies to be problematic!
Believe it or not, there are systemic problem tenants who repeatedly take advantage of the system and cause problems to landlords – will these penalties also apply to them?
Effective penalties/reimbursement for both sides would be a fairer solution.
149. See 148
150. See 148
151. I am stunned by this section! I have never been to VCAT and have only ever had to issue one notice to vacate which was sorted out amicably. This section proposes to massively ramp up VCAT's workload by requiring every single notice to vacate to go through a Termination Order Process, which will have a cost attached for the landlord.
Issues:
What will the cost be to the industry i.e how many notices are issued now that will require an application fee (plus time taken, which will be the biggest cost to the economy) to attend VCAT?
How does this satisfy the stated intention to reduce the attendance at VCAT by all parties?
With the majority (80/90% quoted) of moves being initiated by tenants how is this fair on landlords?
Tenants currently can challenge a notice to vacate at VCAT if they believe it to be unfair so why complicate the system with additional red tape?
152. See 151
153. This moves the whole process from the VCAT member working out points of contract law to one of social worker, whose criteria is to concern themselves more about the welfare of a problematic tenant, than whether the decision is correct at law. More red tape and workload to the landlord, VCAT and the economy.
154. The status quo where a tenant who feels they are being poorly treated can take their case to VCAT.
155. Changing 'maliciously' to 'intentionally or recklessly' would assist in clarifyling damages and extending this to injury is a step forward, closing a hole in the current legislation.
156. Again more workload and expense for landlords and a suggestion for "serious damage" or "serious injury" to be determined by someone removed from the event at VCAT.
Most concerning is how will they determine serious injury?? Is a small cut with a knife not serious or maybe a light tap with a baseball bat is not serious? How does this fit with the government's agenda on family violence?
157. The status quo where a tenant who feels they are being poorly treated can take their case to VCAT.
158. Same as 155 with further thoughts in today's world, where we are more aware than before of the importance of prompt effective action in relation to violence or threat thereof.
To again make it another trip to VCAT with expense but more importantly timeliness is beyond crazy!
159. See 158
160. See 158
161. See 158
162. See 158
163. Best dealt with by the RAAV who are the only organisation in Victoria with the relevant experience.
164. See 163

165. See 163
166. See 163
167. See 163
168. See 163
169. See 163
170. See 163
171. See 163
172. There is only one effective method to have rent paid in a timely fashion and that is for the tenant to understand that non-payment equals eviction. Any system that enables a tenant to delay payment will ensure that the current flood of cases at VCAT will not only continue, but grow.
    The longer non-payment continues, the harder it is for a tenant to recover and, in some circumstances, it's easier for them to continue non-payment, using the landlord as a bank while they look around for the next property to move into.
    Overall, this is one of the current big issues for landlords, and any changes here that do not pro-actively deal with it will have the following effects:
    - Extreme vetting of potential tenants to weed out the ones less likely to pay as it will be much harder to remove a non-paying tenant.
    - More low income/marginal tenants will find it harder to find housing
    - More landlords will look for other states or asset classes to invest in.
173. See 172
174. See 172
175. See 172
176. See 172
177. This is just more time and expense for Landlords to regain control of their asset when a tenant has not been complying with the terms of the lease.
178. See 177
179. See 177
180. See 177
181. Option 11.22B would appear to be a more workable option however, yet again, the landlord has to trot off to VCAT, pay money and lose time to get a result.
    If there are grounds for a landlord to go to VCAT (police raid, court appearance etc) then why not let them issue a notice to vacate and, if the tenant has a case, they can take it to VCAT?
182. See 181
183. See 181
184. Yay! Common sense and no doubt, as per normal, the tenant could always go to VCAT if they feel it's not right. Though I'm not sure why this is easier to evict someone under these circumstances than where the tenant is conducting illegal activity.
185. See 184
186. See 184
187. Some common sense here, although the landlord is off to VCAT again with time and expense. Have some concerns around the comment on "Appropriate protections would be in place for tenants with mental illness" does this mean a violent tenant who has a mental illness gets to carry on with no consequence?
188. See 187
189. As stated in the preamble to the options "the option to end a fixed term agreement is an enshrined common law principle and fundamental right of either party to an agreement where a fixed end date is specified". To remove this option would be to deny the owner this fundamental right.
    On the face of it, the option 11.25B would be more palatable, however the sting in the option (and this appears as though someone is trying to sneak it through) is to then alter

what was a fixed term agreement by up to 78 days to the landlords disadvantage by allowing a tenant to break the lease with 14 days notice.

190. See 189
191. See 189
192. Again the sting in option 11.26 (by sneaking it through in these options) is to then alter what was a fixed term agreement by up to 78 days to the landlords disadvantage. The rest of the option appears sensible.
193. In the preamble to these options it's stated that these notices are infrequently used and yet the various options suggested will all make it harder or impossible to use. I personally have never used this option however can see that, when needed, it would be appropriate to be able to use it to regain control of my asset.
    Without this option and, if some of the other options are enforced, landlords will lose even more control of their asset and some flexibility to deal with a particular set of circumstances where nothing else fits.
    For example, a fixed term lease has run its course and the property is looking unloved, the rent has been late half a dozen times and required phone calls or other action and the tenant has been uncooperative and even hostile to requests for action. It's all been too hard and there is another tenant you have become aware of who is looking for a nice place and comes with impeccable references and simply life is too short to have to deal with problems. It's your asset and you want the limited freedom of the RTA contract law to choose to not continue without breaking your side of the bargain.
    Regarding the increase in notice period to six months, the EY Sweeney report indicates that the most effective notice period from a tenant's perspective is 90 days, therefore it would make more sense to change it to this and be consistent with fixed term tenancies.
194. See 193
195. See 193
196. See 193
197. See 193
198. See 193
199. At this stage of answering these questions, this section makes my head hurt and appears to be even more landlord bashing, making them jump through hoops to be able to exercise their rights as well as so many flaws within the options. Just one example is that no trades person is going to expose themselves to liability by undertaking significant repairs with a tenant in situ. More interaction with VCAT just to be able to do what any home owner should be allowed to do.
200. See 199
201. See 199
202. See 199
203. See 199
204. See 199
205. This one is completely unworkable, how can it be expected for a landlord who might be suffering financial challenges to have to disclose this to strangers? How often does this even happen for it to be an issue to be addressed? It's most likely that someone in this sort of hardship is confident that they will be able to carry on or they would give up and let the bank repossess.
    Any other constraints imposed on the banking industry to take on tenant liability will have a negative effect on the overall market in Victoria, as they will either decline to lend to investors, or load the loans as the risk perception will rise.
206. See 205
207. See 205
208. See 205

209. The models are confusing and there is nothing in them to advantage landlords i.e. it's all tenant focused and has never been suggested in prior papers.
210. Why do we need a model? There is no explanation of what rationale there is to include this in the options paper, other than to shift the advantage to the tenant rather than having a win-win situation. Is it proposed that they become part of the RTA? Where was the consultation?
211. NATA
212. NATA
213. NATA
214. In a previous question it stated that a landlord needed to advise a tenant if they knew that they were going to sell prior to the lease starting, this set of options takes the disadvantage to the landlord to another level i.e. the landlord leases out the property for 1 year and 6 months in their partner dies or some other life changing event happens and need to sell the property due to financial pressures, the property is put on the market and bingo, the tenant gives them 14 days notice and leaves, even though there was a possibility that the property might have been sold to someone intending to carry on leasing. Just another advantage to the tenant.

    Given that a notice of rent increase requires the landlord to give 60 days notice, why would the tenant have the option to leave before the rent even increases?
215. See 214

The whole section on family violence and changes in the RTA raises many issues for a landlord, predominantly around the selection of tenants (note the word selection and not discrimination). The more potential challenges placed into the equation when choosing between tenant A and tenant B will simply make the choice from a future liability/cost/heartache perspective much simpler, to the disadvantage of the very people this section seeks to protect. I've briefly looked through all the options in this section and what I've seen is all the onus being put onto the landlord to pick up the costs and liabilities for damage. A more effective system would see the government working with landlords to see that they are reimbursed for costs incurred to help protect those victims of family violence, then the government can seek reimbursement from the perpetrator.

216. NATA
217. NATA
218. NATA
219. NATA
220. NATA
221. NATA
222. NATA
223. NATA
224. NATA