

VICTORIAN MULTICULTURAL COMMISSION

FAIRER SAFER HOUSING VICTORIA

**SUBMISSION TO THE RESIDENTIAL TENANCIES ACT (RTA) REVIEW
OPTIONS DISCUSSION PAPER: HEADING FOR HOME**

1. INTRODUCTION

- 1.1. The Victorian Multicultural Commission (VMC) is the voice of Victoria's culturally and linguistically diverse (CALD) communities and is the main link between them and the government. The VMC provides independent advice, informed by regular community consultations, to the Victorian Government in accordance with its statutory role under the *Multicultural Victoria Act 2011*.
- 1.2. The VMC prepared submissions to the RTA Review in respect to Consultation Papers released in 2015 including, *Laying the Groundwork, Rents, bonds and other charges* and *Rights and Responsibilities of Landlords and Tenants*, and was a participant member of the steering committee that contributed to development of the options in the current discussion paper.
- 1.3. This submission is informed by VMC community consultation findings as well as information provided by members of VMC Regional Advisory Councils (RACs) who regularly report on housing matters affecting community members throughout Victoria.
- 1.4. This submission responds to some of the 228 questions posed in the discussion paper. Responses are relatively brief due to the level of detail provided in earlier submissions to Stage 1 and contributions to the RTA Steering Committee deliberations.

2. ADDRESSING CURRENT MARKET ISSUES

Policy Objectives for a modern framework

***Question 1:** Do the proposed objectives meet the needs of the contemporary market and will they continue to do so into the future?*

- 2.1. The discussion paper acknowledges that 'secure stable housing has public interest benefits', and notes the economic efficiency aims of the RTA. Increasingly however, those public interest benefits extend to housing as essential infrastructure that impacts upon the mobility of labour, with a growing sense that housing outcomes limit long-term growth prospects in some places.¹
- 2.2. Housing is both a key indicator of, and contributor to, social advantage and or disadvantage. It provides a sense of security and belonging to community and place, and assists self-

¹ Maclennan, Ong, & Wood, 2015.

determination.² In order for the objectives to continue to meet the contemporary market in the future therefore, inclusion of the role of private residential housing in contributing to public interest benefits and essential infrastructure is recommended. This directly relates to consideration of the types of communities that we want to create through the revised legislation.

Question 2: *What changes could be suggested to further tailor the objectives to the needs of all parties?*

- 2.3. The VMC supports a package of reforms that seeks to balance bargaining power between the parties, and promote a positive and non-adversarial culture within the private residential rental market. In its submission to the initial issues paper, *Laying the Groundwork*, the VMC raised the importance of the private rental housing market to migrants who, more than any other group, are required to meet initial and ongoing housing needs through the open rental market.
- 2.4. Thus, the vulnerability of multicultural tenants in the open market was raised by the VMC in its earlier submissions. In addressing the power imbalance therefore, the starting point should be in consideration of needs of the most vulnerable tenants, in order to create broad protections and create a more level playing field.
- 2.5. In providing a private residential property, landlords are also providing a public service. It is in this sense that customer service and consumer protection are important. The VMC recommends explicit and clear linkages between consumer protection and residential tenancy legislation, such as improved consumer information and advice, to provide balanced bargaining power between the parties, and as a further reminder to the parties of their rights and responsibilities.
- 2.6. Regarding the suggested wording, 'ensures that tenants are provided with safe and habitable premises under tenancy agreements...' we suggest replacing 'safe and habitable premises' with 'high quality and sustainable homes'. Many of the suggested options throughout the paper seek to meet this objective and thus framing it within the objectives helps to make the revised RTA contemporary and adds a measure of 'future-proofing' to wording.

Modern terminology for parties to a residential tenancy

Question 3. *Which, if any, of the proposed terms should replace the current references in the RTA to landlord and tenant and why?*

- 2.7. The VMC supports the proposal for alternative terminology to replace references in the RTA to landlord and tenant. The plain English value of 'property owner' and 'property renter' is in the explicit references that describe the relationship to the property and make it more meaningful in a multicultural state. The VMC supports the use of these alternative terms.

² Holdsworth, 2011.

3. APPLICATION OF THE RTA AND LEASE LENGTHS

Limitations to the scope of the RTA

Question 6. What are the potential benefits of amending the RTA to cover longer fixed term agreements as per option 3.1?

- 3.1. The VMC supports removal of the 5 year limit. Doing so would provide for greater flexibility. Secure tenancy is an important factor for multicultural property renters. Longer fixed term agreements offer a measure of certainty and treat private rental housing as essential infrastructure that assists in the building of local economies. Removing the 5 year limit on the scope of the RTA could assist community building by facilitating greater stability.

Long-term leasing in general tenancies

Question 8. What are the potential benefits and risks of developing an optional prescribed long-term lease as under option 3.2?

- 3.2. Longer fixed term agreements also offer a measure of security to both parties and the VMC recommends mandating longer term leases and their terms and conditions. Benefits for the property owner include regular rental income over a sustained period, as well as savings on advertising and re-let costs. The property renter is provided a measure of security and assurance. As long as each party adheres to their rights and responsibilities under the agreement longer fixed term leasing provide for greater stability which may also appeal to other investor types with the potential to open up the market to corporate investors.
- 3.3. Safeguards however, need to be developed to protect the parties in terms of lease breaking, especially in circumstances of severe hardship or unexpected events such as long-term illness or death. This will be addressed in response to questions 56 and 57.
- 3.4. The risk is that the property owner will not be able to increase the rent amount for the longer period which may deter owners from being willing to offer long-term leases. However, this also has to be balanced against the greater certainty around having the property occupied and receiving rent throughout the term.

Question 9. What features should be included in a long-term agreement to provide the correct balance of incentives for tenants and landlords?

- 3.5. Consideration of the period of the lease and whether or not the rent can be increased during the long-term agreement are features to include. A stipulation restricting rent increases to the Consumer Price Index (CPI) or some other measure could also be considered. Therefore, the lease should include clauses that specify a limit on how much and how often the rent can be raised.
- 3.6. A long-term agreement must also be clear about the amount of advance notice that the property renter must give the property owner, and vice versa, if either decides to end the agreement. There must also be an amount of advance notice required by the owner to the renter should there be a need to change the terms of the rental agreement other than the rent.

- 3.7. Providing a written translation of the long-term agreements is particularly important for people from non-English speaking backgrounds. The VMC would like to see this as a requirement for all agreements but most especially long-term agreements to ensure that multicultural property renters are fully briefed on their rights and obligations as set out in the tenancy agreement.³ Use of the Translating and Interpreting Service (TIS National) at the point of lease signing for people from non-English speaking backgrounds is also advised to ensure a firm grasp of the commitments being made under the agreement.
- 3.8. Another feature could be including an option for the property owner to be able to sell their investment property with the lease in place and a sitting tenant. The new property owner could then be given the option of agreeing to the conditions outlined in the existing lease agreement and transfer the lease. This option provides benefits for both parties. The renter may experience some disruption during viewing periods but would have a measure of security in not having to move when the property is sold. For the new owner, with a sitting renter, a guaranteed income for the remainder of the lease without the additional expenses involved of having to seek and vet a replacement tenant.
- 3.9. Defence Housing Australia (DHS) offer standard long-term leases of 9-12 years, with shorter lease terms of 3-6 years available. While this is a more closed market their lease may be worth reviewing to see how it balances incentives in longer term leasing. The wording is not in the public domain however, and a copy would need to be sought directly.

Question 11. *What are the potential benefits and risks of providing the option for tenants to extend fixed term lease agreements as under option 3.3?*

- 3.10. It is worthwhile to include an option for property renters to extend fixed term leases for a subsequent period with the agreement of property owners. Presumably this would work well where a previous agreement has been a success for both parties. The potential benefits include an extension of the status quo, enhanced security and stability for the renter and a further guaranteed period of rental income for the property owner.
- 3.11. As this is only being considered as one option perhaps the risk is acceptable. Were the previous fixed term lease agreement unsuccessful for either party, then surely one or other party would choose not to pursue an extension?

4. RIGHTS AND RESPONSIBILITIES BEFORE A TENANCY

Unlawful discrimination against applicants and tenants

Question 13. *What additional information, if any, do you think should be included in the proposed information statement, other than the information outlined in option 4.1?*

- 4.1. Including an information statement about unlawful discrimination in application forms is a good first step, however the real need is to provide potential applicants with information about discrimination prior to the application stage. The evidence indicates that refugees move house

³ Under Californian law for example, *Civil Code Section 1632(b)*, there is an assurance that the Spanish-, Chinese-, Tagalog-, Vietnamese-, or Korean-speaking person has a genuine opportunity to read the written translation of the proposed agreement that has been negotiated primarily in one of these languages, and to consult with others, before signing the agreement.

an average of three times in the first year of arrival in Australia, therefore it is particularly important for new and emerging communities to be well informed of the process.⁴

- 4.2. Refugees in particular, encounter barriers to settlement through a lack of understanding and experience of the Victorian housing system. This relates especially to the processes and protocols involved in securing a private rental property, as well as fully understanding their rights and responsibilities as renters. Some also arrive with unrealistic expectations regarding the availability of suitable housing and the processes involved in securing it.⁵
- 4.3. Therefore, it is preferable for prospective renters to be informed of their rights, including the right to seek redress, prior to the application stage in order to be better prepared. The CAV guide, *Renting a home; A guide for tenants*, is an excellent resource that should be more widely available and in languages of newly arrived groups. It would be helpful for this guide to be translated and distributed widely through settlement providers such as AMES Australia, Spectrum Migrant Resource Centre, New Hope Foundation and similar organisations.

Question 14. *If an applicant is unlawfully discriminated against at the application stage, what practical redress can the RTA provide, if any, particularly if the premises has already been let to someone else?*

- 4.4. The VMC supports clearer links between the *Equal Opportunity Act 2010* and the RTA to support educating agents, property owners and renters on matters of discrimination relative to the private residential property market.
- 4.5. The VMC also supports the suggested penalty provisions. While these may not produce instant results they would send a strong message illustrating what unlawful discrimination consists of and that the government is serious in seeking to counter it.
- 4.6. Over time, this approach is likely to have a positive cumulative effect as awareness grows and sanctions applied. The review also needs to consider mechanisms to implement the penalty provisions.

Privacy and use of tenancy application information

Question 15. *Is the scope of the protection proposed in option 4.3 sufficient to address concerns around misuse of applicants' personal information and, if not, what other measures are required?*

- 4.7. The VMC supports option 4.3 which seeks to cover information provided in a tenancy application which is not bound by the principles of the *Privacy Act 1988*. The suggested option provides property renters with additional safeguards that are not currently covered in the legislation.

⁴ Victorian Government, Department of Human Services, 2010.

⁵ Ibid.

Question 16. *Should option 4.4 require a tenant to be offered a fee-free option rather than outright prohibiting a fee and, if so, why?*

- 4.8. The VMC supports outright prohibition of a fee rather than a fee-free option. Prohibition helps to create a level playing field. There is no guarantee that a fee-free option would result in the same level of service or product.

Tenancy databases

Question 17. *Is there a reason why the measure proposed in option 4.5 should not be introduced in Victoria?*

- 4.9. The VMC supports powers to VCAT to make an order if a database listing is unjust in the circumstances. This brings Victorian legislation into line with other Australian jurisdictions and provides greater security for the property renter. It also provides protection for the renter, the owner and agents who might otherwise discount a good tenant from due consideration at application stage.

Details of landlord for legal proceedings

Question 21. *Is option 4.8A or option 4.8B fairer for all parties, and why?*

- 4.10. The VMC supports option 4.8A, regarding landlord's details being stated in the tenancy agreement, and not the agent's details. This clarifies the parties to the contract and enables renters to take the landlord to VCAT should the need arise and seek an enforceable order.

Terms of tenancy agreement

Question 22. *If a more comprehensive tenancy agreement was introduced in line with option 4.9, which requirements of the RTA should be included as prescribed terms and which should not be included?*

- 4.11. It might be better to have the terms separate from the agreement. While the VMC supports setting out the core rights and responsibilities for owners and renters, and clearly indicating all duties for which a breach of duty notice can be served, the additional text might add a distracting level of complexity to an already complex document. Setting out those terms in an appendix to the agreement might be a better approach. It would remain with the renter as something to be referred to as and when required. As a separate document it would also be easier to provide translations for renters from non-English speaking backgrounds.

Question 23. *Should each of the prohibited terms listed in option 4.10 warrant inclusion in a blacklist, and should any further terms be included?*

- 4.12. This option is too prescriptive and not supported.

Question 24. *Is there a reason why a contracting out offence, as set out in option 4.11, should not be introduced in Victoria?*

- 4.13. It is VMC understanding that this is current practice however, renters are not familiar with it. We suggest including this information in an appendix, as suggested at question 22 above. It should also be included in the section 'At the start of your tenancy' in the Guide to Renting CAV booklet.

5. RIGHTS AND RESPONSIBILITIES DURING A TENANCY

Processes for breach

Question 27. *Under option 5.1, for breaches where the remedy requires the party to refrain from doing something, should the required timeframe to comply be immediate, as soon as practicable, or some other timeframe?*

- 5.1. The VMC does not support this option. Requiring immediate remedy to a breach of duty notice is unrealistic. Maintaining the current limits of 3 days for rights of entry and 14 days for most other provides greater opportunities for compliance and assists in discounting the pursuance of trivial breaches.

Question 28. *Which option is preferable in terms of process for successive breaches of duty, and why?*

- 5.2. Option 5.2C is preferable. While this option does not broaden the current breach duty process, or reduce protections, it does provide greater clarity and a more accountable process through VCAT compliance.

Pets in rented premises

Question 33. *Under option 5.3A, what would be an appropriate amount for a pet bond, and should the amount be calculated as equivalent to a number of weeks' rent for the tenancy?*

- 5.3. The charge for a pet bond in Western Australia (WA) is a one-off payment of \$260, in addition to the regular bond. Having a set amount is preferable to an amount to be calculated in terms of weekly rent as it provides for consistency. According to CAV's market research project a bond is an incentive for property owners to accept pets: "41 per cent would either 'definitely' or 'might' allow pets if they could charge an additional pet deposit."
- 5.4. Regulations will need to be clear about the pet bond and the situation where there are multiple animals (i.e. a cat and a dog, or two cats). One bond should be considered as sufficient and not multiplied where there is more than one animal.

Question 34. *How could the concern that introduction of a pet bond may disadvantage lower-income tenants with pets be addressed?*

- 5.5. \$260 is not an onerous additional amount for an animal lover and most pets are valued family companions. The bond would provide clarity and assist pet owners in gaining a rental property. It is an important step forward in broadening the number of rentals available to pet owners.

There is a concern that it would be an additional financial burden for low-income households, however there are many other expenses involved with owning a pet.

Question 37. *Would either, both, or neither of option 5.3A and option 5.3B be likely to incentivise more landlords to accept more tenants with pets?*

- 5.6. In WA these options are rolled into one with the pet bond being linked to cleaning and fumigation.⁶ By associating fumigation with the bond there is greater incentive for more property owners to accept pets.

Rights of entry

Question 40. *Under option 5.5, should seven days' notice be required for a valuation as well as for a general inspection, or should seven days' notice only be required for a general inspection?*

- 5.7. It is reasonable to offer seven days notice in both circumstances, for valuation and general inspection. Seven days allows property renters time to prepare without imposing too much on their right to quiet enjoyment of the premises. Seven days notice for valuation and general inspection is supported.

Question 41. *Under option 5.6, is there a reason why a landlord should not be liable for any loss of the tenant's goods caused when the landlord is exercising a right of entry?*

- 5.8. It is reasonable to expect that, when the property owner is exercising their right of entry, they also be liable for any loss to the renters' goods in the event. This circumstance is something outside the renters' control with people, not invited by or known to the renter, being given freedom in their home. The landlord or agent should not be bringing more people to an inspection, even on auction day, than they can properly supervise. As similar measures operate under New South Wales legislation this is a tried and tested approach that safeguards renters' goods.

Question 42. *Does option 5.7 sufficiently balance the rights of landlords and tenants where a property is being shown to prospective purchasers?*

- 5.9. This option would be more balanced were the premises, on agreement between the parties, made available for inspection to prospective buyers limited to no more than two a week. Any more than two inspections in one week is onerous on renters, especially those with children, and weakens rights to quiet enjoyment. The VMC submits that this option does not sufficiently balance the rights of property owners and renters.

Question 43. *Should tenants be entitled to compensation for each inspection to show the premises to prospective purchasers, and should the RTA quantify that compensation in some way?*

- 5.10. Yes, renters should be entitled to compensation for each home inspection. These inspections are an intrusion on their right to quiet enjoyment, and they do not set to gain from

⁶ Government of Western Australia, Department of Commerce, Pet Bond. Retrieved 15 February 2017: <https://www.commerce.wa.gov.au/consumer-protection/pet-bonds>

the intrusion as the property owner does – through an eventual sale of the property. The renter may also be placed in a state of uncertainty as to whether a new owner will continue the lease, which may cause some anxiety.

- 5.11. As a result the renter is placed in a non-bargaining position in effect, having to await an outcome between other parties over the future of the rented property that is their home. If the property takes some time to sell this places undue demands on the renter. Therefore, the VMC supports rent compensation for each inspection and suggests that the RTA quantify the compensation as a percentage of weekly rent.

Question 44. *Does option 5.8 sufficiently balance the rights of landlords and tenants where a property is being shown to prospective tenants?*

- 5.12. Yes, this option does sufficiently balance the rights of property owners and renters where a property is being shown to prospective tenants. The VMC supports this option.

Question 45. *Is option 5.9A or option 5.9B preferable for regulating entry to take advertising pictures where the property is being sold or re-leased, and why?*

- 5.13. Notwithstanding the Victorian Law Reform Commission (VLRC) recommendations for entry to take advertising images and the property owners' right to do so, the VMC submits that stock photos should be used wherever possible.

- 5.14. It has been the case for some twenty years that properties are advertised online with a number of images. A safeguard would be required in relation to the age of stock photos so that old unrepresentative images are not used. Unless there has been a material change in the property since the recently expired lease, stock photos should be acceptable. Option 5.9A is not supported because it puts the onus on the renter to object and does not sufficiently uphold tenants' rights.

- 5.15. To further protect the rights of renters option 5.9B should include a vetting procedure. Property renters should have a right to view the images prior to them being published where their goods are being displayed. The VMC supports option 5.9B with this additional corollary.

6. RIGHTS AND RESPONSIBILITIES AT THE END OF A TENANCY

Lease break fees

Question 51. *What other principles around compensation could be considered under option 6.1 to be codified into the RTA, to give greater guidance around reasonable lease break fees?*

- 6.1. Codifying the common law principles for lease break fees is supported because it provides greater clarity than the current legislation. The requirement for the property owner to mitigate loss by placing the premises back on the market promptly at the same rent is sound. However, a further qualifier may be necessary in regards to the period in which the property is on the market at the same rent, before it is reduced in order to gain a new tenant depending on market conditions.

Question 55. *How can the RTA provide appropriate incentives for a landlord to find a new tenant promptly once a lease is broken?*

- 6.2. The RTA can provide appropriate incentives by not supporting excessive lease break fees. The RTA can provide an appropriate balance between a property owner being able to sell a property with a sitting renter, and the renter's need to break a lease when circumstances change. The VMC does not support option 6.2 and suggests instead some sort of sliding scale that relates to the period of the lease. For example, if the lease break is early in the agreement, greater compensation, if later and near the end of the lease, a nominal amount.

Severe hardship

Question 56. *What are the risks, if any, of unintended consequences arising under option 6.3?*

- 6.3. Allowing the Victorian Civil and Administrative Tribunal (VCAT) to take account of severe hardship and balance which party has suffered greatest hardship seems a fair and equitable solution. Until it is tested at VCAT it is difficult to foresee unintended consequences. The VMC supports option 6.3.

Question 57. *Is two weeks' rent an appropriate cap for compensation to the landlord in cases of tenant hardship as provided in option 6.4, should compensation be capped at some other amount or waived altogether, or should VCAT retain discretion to award compensation on a case by case basis?*

- 6.4. Yes, capping compensation to two weeks rent is appropriate in cases of hardship where a term is reduced on the application of the property renter. This amount acknowledges loss of the property owner without unduly imposing an excessive amount on the renter. Having this limit would also assist VCAT in speedy determinations and hopefully reduce time and costs associated with an application and order.

Lease breaking in special circumstances

Question 58. *Are the special circumstances outlined in option 6.5 appropriate, and should there be any additional grounds on which a tenant can end a tenancy without compensation?*

- 6.5. The removal of lease break fees for the special circumstances listed in option 6.5 is appropriate. We would suggest one other additional ground related to labour market conditions and requirements. If a renter is made unemployed for example, they may need to move to secure alternative work elsewhere. Sudden unemployment and having to move to secure future work should be added to the grounds.

Goods left behind

Question 59. *Which of the alternative options outlining procedures for dealing with goods to be stored best balances the interests of landlords and tenants?*

- 6.6. Option 6.6A offers the best alternative and balances the interests of both parties. It offers protection for both parties by laying out a clear process that safeguards the goods for a reasonable period. It gives sufficient time for the renter to reclaim the goods, and make

alternative arrangements. It also safeguards the owner from disposing of goods unnecessarily by providing compensation in circumstances whether the renter retrieves their goods or not.

- 6.7. The VMC supports option 6.6A including removal of the ability to claim compensation from the Residential Tenancies Fund.

7. BONDS AND RENT

Maximum bond amounts and rent in advance

***Question 63.** Which option most fairly balances the needs of tenants in limiting the upfront costs of entering a tenancy, and for landlords to have security that tenants will meet the costs of damage to the property or unpaid rent?*

- 7.1. Option 7.1C most fairly balances the needs of property renters while providing security for owners. The extra step required to seek an increase through VCAT, with regard to the character and condition of the property, offers safeguards for renters, while not unnecessarily impinging upon the rights of the owner to seek an increase where s/he feels it is warranted.

***Question 64.** Would any of the options for limiting maximum bonds and rent in advance result in unintended consequences?*

- 7.2. Updating the high value exemption is long overdue in order to meet contemporary residential property market conditions. Setting the high value exemption at 3 times the median rent for Victoria for the most recent March quarter and publishing that figure provides for consistency and transparency.
- 7.3. Enabling for flexibility by setting out the high value rental amount in regulations provides greater certainty. As each option deals with updating the high value exemption consistently the risk of unintended consequences is minimal.

Bond claims

***Question 66.** Which option/s do you prefer for facilitating bond repayments when parties cannot reach agreement, and would you suggest any changes to improve the operability of the option?*

- 7.4. Option 7.3C is the most comprehensive solution and offers the best safeguards for both parties. It places the RTBA in the role of an objective third party and enables either party to the tenancy agreement to apply for release of the bond monies. This would go a long way to addressing property renters negative perceptions about bonds as a common reason for disputes.
- 7.5. Additionally the 14 day period allows the property owner to lodge a claim against the bond at VCAT. With the advice of the RTBA each party is kept informed.

***Question 67.** Are the additional protections for tenants under option 7.3C necessary and/or fair, or is the administrative simplicity and balance of the NSW model preferable?*

- 7.6. The additional protections for property renters under 7.3C are necessary and fair in setting out a clear process for both parties to follow. It does not negate the administrative simplicity of the NSW model but enhances it by providing clarity.
- 7.7. The VMC would like to see an additional mechanism introduced in cases where only part of the bond is in dispute so that the undisputed amount can be paid out to the renter. With modern banking electronic fund transfer (EFT), it is not an administrative burden for the RTBA to be able to do this and would be particularly valuable to low income renters who are usually financially stretched by having to move. This could be achieved by adding an additional qualifier to option 7.3C.

Frequency of rent increases

Question 68. *What are the benefits and risks of restricting rent increases to once per year?*

- 7.8. The benefit of restricting rent increases to once per year is in offering a measure of certainty for both parties, for owners in terms of income and renters in terms of expenditure. The risk is in the cumulative impact on the renter. Annual rent increases over an extended period could render the rent highly unaffordable and result in unsustainable tenancies, especially where the rent was high at the outset of the agreement. For this reason, option 7.4 Annual rent increases is not supported.
- 7.9. CAV's own market research demonstrates that two years is the optimum period for rent increases consistent with sustainable tenancies with 54 per cent of renters stating that once every two years was reasonable. If a main objective of the redrafted RTA is to 'provide clarity and certainty' then an approach that sets rent increases at two year intervals would help to achieve this.
- 7.10. In the current economic climate mortgage interest rates and the consumer price index (CPI) are relatively low. Statistics demonstrate that salary increases, on the whole, are not keeping pace with the CPI, currently 1.5%.⁷ The Australian Bureau of Statistics (ABS) Wage Price Index (WPI), (Cat.5345.0) demonstrates a trend of 0.4% overall for the September 2016 quarter. In the current economic climate therefore property owners are better equipped to make headway with mortgage repayments while renters, especially low income renters, are likely to experience rental stress with annual rent increases. The VMC does not support annual rent increases as proposed at option 7.4.

Question 69. *Are there any unintended consequences from requiring landlords to disclose how rent will be set during a fixed term tenancy?*

- 7.11. Option 7.5 would provide a measure of certainty for parties to the agreement. As with the answer to question 68 however, the detail of frequency of rent increase and the amount of the increase would determine whether or not this is a fair option for renters. The VMC does not support annual rent increases for fixed term tenancy agreements and further recommends that the method of calculation of the increase be mindful of the CPI and the WPI.

⁷ December 2016 figures released by the ABS, Cat.6401.0 show CPI at 1.5% for the year.

Rent payment fees and methods

Question 70. *Would option 7.6 appropriately balance the interests of landlords and tenants in regulating rent payment fees?*

7.12. Yes, offering one fee-free method of paying rent, as with the NSW model, balances the interests of the parties and helps to regulate payment fees by giving renters a real choice. Introducing a fee-free method that facilitates regular payment of rent also benefits both renters and owners.

Question 71. *Are there any unintended consequences that could result from requiring landlords to accept Centrepay payments?*

7.13. Accepting payments through Centrepay offers property owners greater security in terms of receiving regular rent payments because Centrelink deducts those at source. The fact that owners are charged \$1 for each transaction is a minimal and tax deductible expense in exchange for the certainty of receiving regular rent. Clearly the frequency of payments affect the full amount of the expense to owners. However, even if rent is fortnightly this amounts to \$26 over the course of a year. The VMC supports option 7.7 and the acceptance of Centrepay payments.

Rental bidding

Question 72. *In your view, should the new RTA regulate rental bidding?*

7.14. Rental bidding is an unfair practice and affects our multicultural communities disproportionately. It is a form of discrimination which works against transparent and fair processes. Australian Consumer Law prohibits misleading and deceptive practice, which can also include acts of silence and omission and misleading conduct (s.52).

7.15. One of the primary issues affecting humanitarian entrants housing aspirations is finding affordable, appropriate and sustainable housing.⁸ Although the Real Estate Institute of Australia and the Real Estate Institute of Victoria have produced guidelines outlawing rental auctions and banning the use of a rental price range in advertising, it still takes place. As the real estate industry itself is not good at regulating the practice the VMC supports regulation by the new RTA.

Question 73. *Which option for regulating rental bidding do you prefer, and why?*

7.16. The VMC supports option 7.8B because it levels the playing field by restricting agents and landlords from accepting rental bids.

Question 74. *Would option 7.8B unfairly restrict a tenant's ability to offer a rental bid?*

7.17. The VMC supports an outright ban on rental bidding which seeks to introduce a further level of competition to an already competitive market. The position was laid out in our submission to the earlier paper, *Rent, Bonds and Other Charges*. Accepting an offer above the advertised price is not an acceptable consumer practice in any other arena, nor should it be acceptable in the private residential housing market.

⁸ Refugee Council of Australia, 2014.

8. PROPERTY CONDITIONS

Condition reporting – Measuring changes in a property’s condition

Question 75. *Does the requirement for providing the tenant with a condition report on or before the day they move in give the tenant sufficient time to determine whether vacant premises are suitable for occupation? If not, should the RTA be more specific – for example, should the RTA specify that the report must be completed and provided to the tenant a specified number of days before they are due to take possession of the premises?*

- 8.1. By the time the renter receives the condition report they have already viewed the property and would have an overall impression of the state of repair. However, receiving the condition report on or before the day they move is not sufficient time to determine overall suitability for occupation. Providing a copy earlier in the process would assist renters and help to remind owners of their obligations to provide habitable premises and maintain them in a reasonable state of repair. The VMC supports the proposition that renters be given an opportunity to inspect the property in a vacant state before they move is as option 8.1.
- 8.2. In addition the VMC would suggest that the original condition report be used as a guide throughout the duration of the lease. Rather than state that ‘...a condition report must be completed...’ ‘for the purposes of a periodic inspection, on the day of the inspection...’ a form is available and in use by agents for regular inspections. It would be onerous for all parties to complete a condition report at each inspection, especially if inspections are at six monthly intervals. However, using the original condition as a reference point, normal wear and tear can be recorded on the accompanying form, and noted together with any other relevant property related information.
- 8.3. This would provide a historic record of the property without requiring a full condition report to be completed on each inspection.

Question 79. *Is five days after occupation too long a period for allowing the tenant to complete and return the condition report?*

- 8.4. The VMC supports the changed timeframe under option 8.2 which better facilitates the needs of renters from non-English speaking backgrounds. We would also support translations of the condition report or at least a translated cover page that explains the importance of the report. A brief series of dot points would be sufficient to gain due attention and assist completion for those renters.

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

Question 83. *Is the age and character of a property relevant to determining whether it could reasonably be considered to be clean and in good repair?*

- 8.5. Yes, the age and character of a property is relevant to determining its state of repair. In 2016, the Victorian Supreme Court held that property owners must ensure that residential premises are maintained in good repair, even if the property is dilapidated when the tenancy begins.⁹

⁹ Shields v Deliopoulos [2016] VSC 500 (7 September 2016)

8.6. Property owners have a responsibility to keep premises in a good state of repair and a broad interpretation of the owners' repair obligations should be the benchmark. Any safeguards to be built into the new legislation should seek to protect the most vulnerable renters who are those most likely to lease properties in poor repair because rent is more affordable. In protecting the rights of the most vulnerable, the rights of the majority will also be protected.

Locks and security devices

Question 85. In practice, would the requirement for deadlocked external doors improve security in rental properties?

8.7. The VMC supports option 8.11. Single action deadlocks on external doors and window locks are minimum requirements under most household contents insurance policies. In fact there are certain suburbs where theft and break-in cover is not available for household contents without deadlocks on external doors and key lockable windows.

Health, safety and amenity standards at point of lease

Question 89. Is there any overlap between the duties relating to good repair or reasonable cleanliness and, if so, should those particular requirements instead be dealt with through the earlier guidelines in option 8.8?

8.8. Yes, there is overlap in terms of the age and character of a property with duties relating to good repair and cleanliness. Issues such as damp and mould for example, can impact on the health of a renter and or their children no matter the level of cleanliness. Damp is an issue that overlaps good repair and reasonable cleanliness.

8.9. The condition of a building will degrade over time without adequate maintenance. The property owner's obligation therefore to maintain the premises in a state of good repair and cleanliness must be upheld under the RTA. We agree that those particular requirements could be included through the earlier guidelines in option 8.8. The VMC would suggest in addition to the suggested wording, a statement reminding property owners of the responsibility to maintain premises in reasonable repair so that they are safe, secure and healthy. High quality and sustainable homes should be the objective.

Condition of premises during a residential tenancy

Question 95. Does the proposed list of maintenance activities accurately reflect common practice in different tenure types?

8.10. The guidelines proposed under option 8.16 place an onerous burden on renters and opens the way for possible repercussions in the form of excuses for non-compliance and possible eviction as a result. The VMC does not support this option. It would be additionally burdensome for multicultural communities who may have trouble understanding the full extent of their responsibility, especially as many of the requirements are common sense, e.g. weekly disposal of garbage.

8.11. Option 8.17 is not supported for similar reasons because it includes an onerous maintenance schedule that opens up potential avenues for eviction.

- 8.12. The VMC supports option 8.18 which focuses on compliance with specific safety-related repairs and maintenance prescribed in the regulation. This is in keeping with other options/provisions that relate to safety and health, such as duties under option 8.8.

Modifications

***Question 98.** Would the proposed options support the most critical types of modifications?*

- 8.13. Yes, the proposed options would comprehensively support the most critical modification types. The VMC preference is for option 8.20B where renters need only seek approval for modifications requiring structural change, affecting common property or that changes the property's appearance significantly. This is a sensible compromise and enables renters to make energy saving improvements plus alterations that reflect personal taste. The latter can be especially important for multicultural families who want their home to reflect their culture.

Reporting and addressing damage

***Question 106.** Does damage need to be defined in the RTA, or would the proposed guidelines suffice?*

- 8.14. The VMC suggests that the proposed guidelines should suffice to distinguish damage from wear and tear. Refer back to Section 8 Property Conditions and measuring changes in a property's condition. Where a regular record of general inspections is kept during a lease either by a property owner or agent, regular inspections should suffice to indicate any recent damage and or wear and tear.
- 8.15. The proposed options 8.24-8.28 all place added burden on renters; 8.24 to notify the owner; 8.25 involves the renter making a judgement between damage and wear and tear; 8.26 is a remedy for property owners following a failure by a renter to carry out a repair; 8.27 consideration of depreciation is current practice; and 8.28 requirement for tenant's email.
- 8.16. The VMC does not support any of these proposed options but does support a definition of damage in the proposed guidelines.

Resolving disputes about repairs

***Question 109.** Would the proposed options encourage landlords to respond promptly to a request for a repair?*

- 8.17. The VMC suggests that the proposed options will encourage property owners to respond to repairs more promptly, especially options 8.29, 8.35, 8.36, and 8.38.
- 8.18. Updating the current list of urgent repairs as option 8.29 seeks to benefit both parties. It offers clarity and reassurance to renters that urgent repairs are legitimate and assists owners in maintaining their investment property while mitigating loss due to damage.
- 8.19. The VMC supports options 8.35 and 8.36, designed to ensure better access to repairs for renters. Option 8.35 is preferable. Requiring property owners to lodge a prescribed amount with the RTBA protects renters and owners in the event of non-performance of repairs. A landlord

bond also provides balance to the contractual relationship where the renter is also required to provide a prescribed amount to the RTBA, and instils confidence that repairs can be carried out by application to an objective body in the event the owner drags their heels.

8.20. Although option 8.36 is also supported, having to apply to VCAT in the first instance may act as a deterrent to proceed, especially for multicultural communities.

9. ROOMING HOUSES

The VMC did not provide a submission to the issues paper, *Alternate forms of tenure*, and is not responding to questions under this section of the options paper.

10. DISPUTE RESOLUTION SERVICES AND MECHANISMS

Tools for independent resolution of disputes

Question 139. *Taking into account CAV's existing education programs and initiatives targeted to different groups in the residential sector, what other options would contribute to raising awareness of rights and responsibilities and thereby assisting dispute prevention and independent resolution?*

10.1. The VMC supports option 10.1, to enhance CAV's information and advice services. The retention of current service levels provided by telephone is essential for parties from non-English speaking backgrounds whose access to digital and online content may be limited.

10.2. Continuing to provide materials in languages other than English is supported, as is strengthening connections with multicultural communities. We would suggest that CAV also look at pictorial literature in the form of CALD COM storyboards as created by Moreland City Council for people with low level literacy. There are people within multicultural communities who may have had limited education in their country of origin, especially the elderly. CALD COM storyboards are a simple and effective tool to reach those cohorts with information in accessible format. The series of CALD COM storyboard themes is available at:

<http://www.moreland.vic.gov.au/community-care/multicultural-services/cald-com-storyboards-and-videos/download-caldcom/>

Third-party assisted non-binding dispute resolution

Question 141. *Where the landlord has a dispute with their tenant or resident, what other options would contribute to:*

- *early intervention and prevention of disputes escalating?*
- *constructive resolution of disputes and preservation of tenancies?*
- *early referrals of vulnerable and disadvantaged tenants and residents, and tenants and residents experiencing financial difficulties to appropriate specialist services?*

10.3. The VMC does not support option 10.2. Although it is an excellent suggestion to extend CAV's Frontline Resolution and conciliation services the VMC notes a conflict of interest that could result in poor service to renters. The VMC notes that participation in CAV's Frontline Resolution and conciliation service is voluntary and any agreements reached are non-binding.

The need to escalate to VCAT for binding orders adds an additional layer of difficulty in the process.

- 10.4. The VMC supports an independent arbiter such as an Ombudsman who can help property owners and renters use their complaints process to resolve disputes related to private residential rental property. An ombudsman works to review the service a landlord is providing in response to the concerns raised by its residents. The ombudsman service is also able to initiate investigations which can help to clarify situations for future interpretation.
- 10.5. The VMC suggests that CAV considers an ombudsman as a constructive dispute arbiter who can help to preserve tenancies, and act to assist vulnerable and disadvantaged renter's with the process. An ombudsman is a tried and tested model that instils confidence in the market in terms of fairness and accountability.
- 10.6. The Housing Ombudsman Service in the United Kingdom requires housing associations to be members of the scheme and private landlords are voluntary members. In its submission to the issues paper *Rent, bonds and other charges*, the VMC recommended creating a Landlord Registration system. In Scotland for example, under the *Private Housing (Tenancies) (Scotland) Act 2016*, landlords are required to be registered.
- 10.7. While Victoria does not have a Landlord Registration system, this could be facilitated by requiring membership under an ombudsman's scheme. The VMC suggests that CAV hold discussions with the Victorian Ombudsman with a view to extending ombudsman dispute services to matters of residential tenancy. The result could be an independent one stop shop for property owners and renters in the resolving of disputes, early resolution and otherwise. This would also dispense with a cumbersome two-step process involving the CAV and VCAT.
- 10.8. As mentioned at question 13, in the Rights and Responsibilities Before a Tenancy section, Unlawful discrimination against applicants and tenants, low levels of awareness by tenants and landlords persist across the residential rental sector about their rights and responsibilities under the RTA. Accurate information that is translated for accessibility (there are property owners as well as renters with low level English proficiency) on rights and responsibilities could contribute to better informed parties and fewer disputes.

Binding agreements, orders and determinations

Question 144. *If a specialist administrative dispute resolution was introduced in Victoria, who should it be delivered by and how should it be funded?*

- 10.9. As suggested in response to question 141 above the VMC considers that the most appropriate form of specialist administrative dispute resolution service is a housing ombudsman service. The Victorian Ombudsman's core role is to investigate complaints received from citizens about the administrative actions of state government departments, local councils, most

statutory authorities and some private bodies who assist agencies in performing their statutory duties.¹⁰

- 10.10. The Victorian Ombudsman provides access for all members of the public to an independent means of complaint resolution, including rural and regional Victoria. In the UK the Housing Ombudsman looks at complaints about social housing and about private landlords who are subscribed to their scheme.
- 10.11. The UK Housing Ombudsman seeks early resolution as an alternative process to investigation by working with the parties to help resolve the dispute as fairly and quickly as possible. Once an agreement is reached they set out the terms in an Ombudsman's determination and ensure that any agreed actions are carried out.¹¹
- 10.12. The VMC recommends that the CAV approach the Victorian Ombudsman with a view to setting up a specialist administrative dispute resolution service specifically for RTA disputes. The service could be funded by requiring all private landlords to join the scheme, once established and a fee set.

Quality of decision-making by VCAT

Question 146. Would the features of re-hearing process at VCAT as outlined in option 10.4A address the concerns relating to the quality of VCAT decision-making?

- 10.13. Yes, option 10.4A provides a means to address these concerns. While the degree of specificity of residential tenancies matters is a considerable factor, over the course of time, as a more cases of similar specificity is built, it will help to guide future matters.
- 10.14. Also, with the establishment of an administrative dispute resolution service, such as a Housing Ombudsman hearing some disputes, a situation may also emerge where VCAT hears fewer and more particular matters. Therefore, with two dispute resolution mechanisms operating costs will be spread. Notwithstanding the potential to exacerbate existing barriers to achieving timely resolution of disputes, the ability for VCAT to re-hear residential tenancies cases is a valuable addition to the services it offers.

11. TERMINATIONS AND SECURITY OF TENURE

VCAT decision-making process in granting termination and possession orders

Question 153. What are the potential benefits and risks of expanding VCAT discretion to make possession orders and requiring a pre- eviction checklist as under option 11.2?

- 11.1. The benefits of expanding VCAT discretion and requiring a pre- eviction checklist are greater clarity, transparency and protections for property renter's that takes account of the potential risk of homelessness in the event of a possession order.

¹⁰ Victorian Government Directory. Retrieved 20 February 2017: http://www.vic.gov.au/contactsandservices/directory/?ea0_lfz149_120.&organizationalUnit&0b2e5482-ead9-4935-85b1-e1bfe1f34e95

¹¹ UK Housing Ombudsman Service, Early Resolution. Retrieved 20 February 2017: http://www.housing-ombudsman.org.uk/learning-faqs/factsheets/early-resolution/#.WKo2W_40OUk

11.2. The VMC supports option 11.2 because it provides clear direction through specific guidelines. This would also allow temporary circumstances to be considered. For example, a tenant may have suffered a temporary financial setback and requires time to be able to recover from the hardship. In these circumstances VCAT can make orders that take account of this in order to preserve a tenancy. The VMC supports VCAT taking into account the hardship to the tenant, and not making a possession order unless it is reasonable and proportionate in the circumstances.

Damage

Question 157. What are any alternative considerations or procedures that would be appropriate for terminations for damage?

11.3. The VMC does not support option 11.3 which lowers the current threshold to use an immediate notice to vacate. Damage can be caused to safety equipment other than through malicious damage. For example, simply removing coverings to find out the problem can result in damage. Therefore, allowing this to stand as a reason to terminate a tenancy could leave a renter very vulnerable indeed.

11.4. We do not support option 11.4 which would enable a property owner to apply to VCAT directly without informing the renter. This option also places a renter in a vulnerable position. The VMC supports the status quo rather than the options offered.

Danger

Question 162. What are any alternative considerations or procedures that would be appropriate for terminations for danger?

11.5. Similar to the options for damage the VMC does not support options 11.5 or 11.6 which reduce current safeguards by reducing the threshold to use an immediate notice to vacate. Incorporating a notice to vacate with obtaining a possession order could, in our view, be open to abuse by property owners. Therefore, the VMC advocates for the status quo.

Termination by a notice to leave for violence on managed premises, and Disruption

As these matters relate to rooming houses and other managed tenancies, the VMC is not responding to these sections.

Non-payment of rent

Question 173. What alternative options are there to incentivise or facilitate timely payment of rent?

11.6. Unnecessary evictions are to be avoided wherever possible. As highlighted in our submission to the discussion paper, *Laying the Groundwork*, multicultural households are invariably larger. They comprise single workers living in group households, or larger extended families housing more than one generation. Afghani families tend to be large with 5-8 children not uncommon.

11.7. The VMC recommends that the 14 day notice period be retained and the initiation of repayment plans within the 14 day period, without recourse to VCAT. If we are serious about preserving tenancies wherever possible, then facilitating regular payment of rent is vital.

11.8. Incentivising regular payment of rent is best facilitated when payment coincides with income. An option where a renter can re-align the due date for rent payment to better fit an income schedule, including by a partial payment to amend a cycle is suggested.

12. FAMILY VIOLENCE

Access to family violence protections in the RTA

***Question 216.** Which alternative option do you support and why?*

12.1. Option 12.1C is supported because it offers the broadest scope of criteria for VCAT to consider. In enabling VCAT to consider a broad range of factors offers greater protection to victims of family violence and satisfies the Royal Commission's Recommendation 116 (a).

***Question 217.** What would be a reasonable time within which VCAT should hear a family-violence related application?*

12.2. The suggested timeframe as option 12.2, 3 business days, would seem appropriate. The length of time acknowledges the urgency of the situation while at the same time allowing the applicant to attend to other matters.

Terminating a tenancy

***Question 218.** Which option best addresses the needs of victims of family violence while providing for any potential impacts on landlords and other co-tenants? Why?*

12.3. Option 12.4B, Termination of tenancy via notice to vacate is the preferred option. This option provides a clear yet simple mechanism where a victim of family violence who is a co-tenant is able to end their tenancy immediately.

12.4. This option also sets out a clear process that considers the needs of the property owner by providing the opportunity to either terminate the tenancy or enter into a new agreement with the other co-tenant. At the same time there is a safeguard for the co-tenant should a final intervention order be made. If that co-tenant is found to be the primary aggressor there is a mechanism to render the notice to vacate terminated in that event with an apportionment of compensation and loss to be made to the property owner and co-tenant. This option also provides the clear mechanism required by the Royal Commission Recommendation 116.

Modifications to rented premises

***Question 220.** If non-structural modifications were prescribed under option 12.5B, what should it include?*

12.5. Non-structural modifications would be related to additional home security measures, such as those mentioned at the fourth dot point in option 12.5B. It should include whatever

additional measures are required to secure the property from invasion, including changed and or additional locks and bolts on doors and windows, and including a garage entry and interior garage-to-house entry if the property has those.

Residential tenancy databases

Question 221. *Do these options adequately address the issue of victims of family violence being listed on residential tenancy databases? If not, how can they be improved?*

- 12.6. Yes, these options address the listing of victims of family violence on residential tenancy databases. Option 12.7 is the preferred option because it would make specific provision within the RTA consistent with Royal Commission Recommendation 116.
- 12.7. It is unclear why the 'safety' of the victim has been removed from this option and considered separately under 12.8. Surely, the safety is the primary concern and should be included regardless. Option 12.7 should also include 'risk to safety' in addition to 'actions of another person' in order to fulfil the spirit of this recommendation. VCAT therefore, should also have regard to specific criteria related to safety.
- 12.8. The Royal Commission Recommendation 116, states that "the breach of the RTA or the tenancy agreement occurred in the context of family violence", and that wording would seem appropriate for the revised RTA as it relates to the family violence context.

Works Cited

- Victorian Government, Department of Human Services, Graduate Learning Team Report. (2010). *Housing options for newly arrived refugees*. Retrieved February 14, 2017, from Settlement Council of Australia:
http://www.scoa.org.au/resources/433360_72752_Housing%20options%20for%20newly%20arrived%20refugees%20Vic%202010.pdf
- Holdsworth, L. (2011). Sole Voices: Experiences of Non-home-Owning Sole Mother Renters. *Journal of Family Studies*, Vol.17, No.1, pp.59-70.
- Maclennan, D., Ong, R., & Wood, G. (2015, October). *Making connections: housing, productivity and economic development*. Retrieved February 13, 2017, from Australian Housing and Urban Research Institute:
http://www.ahuri.edu.au/__data/assets/pdf_file/0019/5662/AHURI_Final_Report_No251_Making-connections-housing,-productivity-and-economic-development.pdf
- Refugee Council of Australia. (2014). *The Home Stretch. Challenges and alternatives in sustainable housing for refugees and asylum seekers*. Surry Hills, NSW: RCO.