RAAV's response to the
Rights and Responsibilities of Landlords and Tenants Issues Paper

A. Context for RAAV's submission

The Registered Accommodation Association of Victoria (RAAV) appreciates the opportunity to respond to the Issues Paper being undertaken for the review of the Residential Tenancies Act (RTA).

As outlined in our submission dated 4 April 2016 for the Issues Paper on Rent, Bonds and Other charges, RAAV is the industry association whose members number around 350 registered rooming houses. RAAV's members provide accommodation for a wide cross section of the population including vulnerable and disadvantaged persons.

RAAV's earlier submission also outlined:

- RAAV's concerns of the effect of over-regulation on registered rooming houses and the effect that this is having in retaining good operators in the sector;
- The potential effect of the proposed Licensing legislation for ongoing supply of registered rooming houses;
- The difference between registered and unregistered rooming houses

RAAV is encouraged to note that the Landlord and Tenants Issues Paper recognises that *"striking a fair balance between the rights and responsibilities of tenants and landlords is also essential to ensuring that conditions support landlords to continue to provide accommodation in the rental market"* (Reference page 8). RAAV supports the view expressed in the Issues Paper that the RTA already contains the *"essential rights and responsibilities are stated in broad terms to allow tenants and landlords to tailor to some extent a tenancy agreement to the particular circumstances, provided the requirements of the Act are met"* (Reference page 11).

RAAV considers that the *"broad terms*" in the current Act enable sufficient flexibility for registered rooming houses owners and operators to successfully provide the much needed accommodation for its clientele base.

However, the increasing demands through Government regulations being placed on registered rooming house owners and operators is making it less attractive for them to provide affordable housing to vulnerable and disadvantaged person. Instead, RAAV has observed that some long serving and professional owners are leaving the rooming house sector and investing in other forms of accommodation or disposing of their assets. The outcome is making it more likely to contribute to Victoria's growing homelessness in the medium and longer term.

RAAV encourages the Review to consider these matters when framing any new regulations so that they will not affect the viability of registered rooming houses, cause good operators to close and exacerbate the growing demand for the type of accommodation provided by RAAV's members.

B. Executive summary

- Running a rooming house with differing clientele requirements is a complex business. It requires a different approach and mindset by owners and operators than for other forms of rental accommodation. They have regular contact with the tenants, often on a daily basis placing additional pressure on them to consider the tenants' wellbeing and amenity.
- Discrimination is a commonly used allegation and technique by disgruntled applicants for which the agent or operator has a combination of valid and non-discriminatory reasons to decline.
- RAAV's members have found that the greatest obstacle to tenants challenging discriminatory treatment and seeking remedies is that when discrimination is claimed it is seldom accompanied by evidence.
- RAAV recommends that a strategy is developed to encourage unregistered rooming houses that are well run and on the cusp of becoming registered to take the next step to become registered.
- A landlord or agent should be able to use any information reasonably obtained in order to properly assess a tenancy application. There are adequate privacy rules now to deal with the acquisition and storage of this type of information.
- A standard application form would be a case where "one size does not fit all" as it would not provide sufficient information on credit worthiness, a criminal check and working with children.
- There are security risks in giving out key for inspections of rooming houses with the recipient making a duplicate copy or undertaking criminal behaviour in the property. The use of security key deposits is sensible but there are privacy issues which should be considered for rooming houses.
- Existing tenancy databases don't do enough to protect landlords and can be expensive for individual landlords to access.
- Establishing a landlords' database would appear to be a fair proposal to have available to prospective tenants as long as it is curated - possibly that only negative outcomes at VCAT are put on it.
- If there is evidence that there is an issue with information not provided to tenants, it would be better addressed via best practice guidance rather then legislation.
- A consideration period for a tenancy agreement is unnecessary and may have unintended consequences, i.e. if there is competition for the property.
- The incidents that prompt a notice to vacate can be severe and urgent such that service should be made easier, not harder. Communication methods need to be brought up to date. The world is now digital and most communication is done electronically.
- It is suggested that a landlord be responsible for the tenants' quiet enjoyment. This is a dangerous suggestion, particularly in a rooming house when a tenant could take action against a landlord because of the behaviour of another tenant or neighbour without the landlord's knowledge.
- The time currently available to remedy breaches in the Act are currently too long and situations can get out of control before they can be addressed.
- A party issuing a breach should have the flexibility to apply reasonable requests which should include remedying the breach and/or pay compensation relevant to the circumstances.
- Breaches for behaviour are so hard to prove that to place an expiry date on them would defeat the purpose of the entire breach system and an increase in avoidable evictions.
- The current prescribed tenancy agreement is simple and catches the essential information.
- If explicit consent is allowed, then the tenant should also be able to sign a document stating if they were given that opportunity, but noting if they declined to exercise it.
- The proposal for explicit consent for additional contract provisions is too onerous and may be going a bit too far.

- RAAV supports the policy stated in the Issues Paper that the Act prohibits the keeping of pets in a rooming house without the rooming house owner's consent (see case study). It is a sensible policy for the overall wellbeing of all the tenants and the restriction should remain.
- The Act should be reinforced to tenants that they require written consent for any change of tenants within the property. Sub-letting and lease assignments should need the agreement of the landlord.
- A notice to leave should also be able to be used for malicious damage and major disturbances of peace along with better enforcement powers to protect other residents in a rooming house.
- The proposal that tenants should be able to serve a reduced notice of intention to vacate if they are offered social housing seems to unfairly punish private landlords whilst favouring the Not for Profit sector (see case study).
- There is always a real reason behind a notice to vacate. A notice to vacate for no specified reason is relied on frequently because it is often too onerous to prove the actual reasons.
- The suggesting of agreed lease-break costs are sensible but should be limited to family violence situations proved via an intervention order, and should not be extended to unproven general illness.
- In family violence situations the landlord should be able to act at the request of the victim to immediately evict the perpetrator. The landlord should have ability to claim an amount equivalent to the full bond plus compensation if required.
- The responsibility should remain with the tenant to advise the landlord of whether they are returning to collect goods that are left behind at the end of a tenancy.

NOTE

This submission by the Registered Accommodation Association of Victoria (RAAV) is in support of the registered rooming house industry particularly for class 1B and class 3 buildings. Comments are not intended to be applied to regular tenancies in class 1A and class 2 buildings.

For the sake of brevity, the term "tenant" may also mean "resident" in this submission - and vice a versa, viz.

- **Residents** are classified as occupants of a rooming house who are not on a lease and may be on an agreement; and
- **Tenants** are occupants in a rooming house who are on a lease.

Similarly for the sake of brevity, "Owner" and "Operator" are interchangeable in this submission.

c. Rooming houses differ from other types of accommodation

Running a rooming house with differing clientele requirements is a complex business. It requires a different approach and mindset by owners and operators than for other forms of rental accommodation.

Socially responsible rooming houses owners and operators often have a mix of clients with different aspirations. They may have mental health, drug or alcohol related problems and in some cases residing in a rooming house may be accommodation of last resort. The aspirations of older tenants may be vastly different to younger tenants or students.

Due to the nature of rooming house facilities, especially the use of common areas, rooming house owners and operators have regular contact with the tenants, often on a daily basis placing additional pressure on them to ensure that the tenants' wellbeing and amenity is being considered. This places additional pressure on implementing a duty of care for all the tenants.

D. Comments on questions raised in the Issues Paper *"Rights and Responsibilities of Landlords and tenants".*

1. Under what circumstances do tenants encounter unfair treatment or unlawful discrimination?

Although discrimination to a small degree surely does occur, this is also a commonly used allegation and technique by disgruntled applicants for which the agent or operator has a combination of valid and non-discriminatory reasons to decline.

RAAV believes that tenants in the low cost end of the market will experience a higher degree of unfair treatment in the future due to the rapid erosion of the base of registered rooming houses through over regulation. This will drive more tenants into substandard unregistered rooming houses where they will have little or no ability to raise concerns over issues such as discrimination or substandard conditions.

If excessive regulatory action through a revised RTA looks imminent which will affect both registered and unregistered rooming houses, these tenants will be progressively made homeless as registered rooming houses vacate the market and the unregistered houses close down to avoid legal action.

RAAV recommends that Consumer Affairs Victoria (CAV) and the Municipal Councils develop a strategy to encourage unregistered rooming houses that are well run and on the cusp of becoming registered to take the next step to become registered. This will assist in eliminating the gap which is currently occurring in rooming houses not being available for the vulnerable and disadvantaged persons.

2. What are the obstacles to tenants challenging discriminatory treatment and seeking remedies and what are the solutions to these obstacles?

RAAV's members have found that the greatest obstacle is that when discrimination is claimed it is seldom accompanied by evidence.

Tenants have many avenues to challenge discriminatory treatment from the Victorian Equal Opportunities & Human Rights Commission to CAV. What is sometimes seen as discrimination towards tenants is often the ability of the landlord or agent to choose from many applicants who may have better/more or even just one reference which enables the landlord to make hopefully a good choice.

If there is any move to make landlords house tenants on any other criteria then this will have a detrimental effect of the supply of property.

3. How should tenants and landlords be informed about their rights and obligations in relation to discrimination, for example under the Equal Opportunity Act 2010?

RAAV queries that it is the responsibility of the landlord to lay out all of the equal opportunity legislation and provisions. There is ample information and press available for the general public who wish to be informed of their rights.

If CAV wishes to provide more information to tenants, this may be done through an information campaign using the appropriate websites in cooperation with the relevant anti discrimination body.

4. What types of information is used by landlords and agents to assess the suitability of rental applicants?

Rooming house operators have to take many things into consideration when assessing an applicant's suitability for their properties and also take into consideration the personalities and amenity of the other residents.

There is no hard and fast rule in assessing their suitability depending on the applicant's background. Often used checks include proof of identity, income and financial probity including past rental history and if rent has been paid on time. What condition have previous properties been left in?

As well as questions which establish personality, likes, dislikes, expectations, requirements of the property, use and abuse of substances, medical and criminal history, police checks, etc. other questions may include:

- Are the applicants employed and do they have good references;
- If they are new to renting is there someone prepared to guarantee the rent/bond;
- Are they a good fit for the other tenants in a rooming house if the property houses mainly older or younger persons – what are their aspirations;
- How long do they want to stay in the property; and
- Are they prepared to commit to signing a lease?

A personal interview may provide any other indications that the prospective tenant may present an unreasonable risk to the property owner and their investment.

5. When landlords and agents are provided with information about prospective tenants, what measures can be taken to ensure it is used appropriately?

A landlord or agent should be able to use any information reasonably obtained in order to properly assess a tenancy application. We have adequate privacy rules now to deal with the acquisition and

storage of this type of information and the misuse of that information would be subject to privacy laws.

There is no need to create a further regulatory burden on landlords which will encourage more to leave the industry.

It makes more sense to leave this responsibility with the applicant as they are most motivated to protect their own information. For example tenants can simply edit or sensor their own bank statements of irrelevant information.

6. What is your view on the stakeholder proposal to prescribe a standard application form, and what information requests should be required to be included in such a form?

This is a case where "one size does not fit all". There needs to flexibility for landlords, agents and tenants. Every tenant should be afforded the opportunity to agree to additional terms of a standard tenancy as it suits their requirements and the features of the property.

A standard form would not provide information on credit worthiness and a criminal check and working with children if the rooming house contains families.

7. What are the benefits and risks of landlords and agents requiring a security deposit from prospective tenants to obtain a key to view premises?

Whilst there are security risks in giving out keys, e.g. the recipient making a duplicate copy or undertaking criminal behaviour in the property, the use of security key deposits are sensible, widespread and working and should thus be allowed with or without regulation.

If a person is granted access to view a house/apartment without the owner or agent present then it makes sense to have security such as a deposit as well as adequate identification. As there are some scams running on the internet if a prospective tenant has concerns then they should not deal with a prospective agent/landlord unless they can meet in person.

However there are privacy issues which should be considered for rooming houses. A tenant's room would be "off limits" as this is protected by the RTA. It is difficult to imagine someone obtaining a key to make an inspection just of the common areas.

8. What other issues arise from the operation of tenancy databases, and how do these impact on prospective tenants?

Existing tenancy databases don't do enough to protect landlords and can be expensive for individual landlords to access. A positive referral system for good tenants would also be worthwhile.

A small number of repeat offender tenants cause the majority of losses and this has led to the creation of much needed tenancy databases. An obvious issue is that they are difficult and costly to

access, particularly for individual landlords. The Government could consider offering a free tenant database to improve fairness so that good tenants aren't contributing to the costs landlords suffer from bad tenants.

Accurate tenancy databases have an impact on tenants with bad records as they are intended. They could be improved as currently they are mostly only available to Real Estate Agents and not private landlords. This ensures they do not accurately reflect both sectors of the market. It would be advantageous to have free access to all parties (tenants/agents & Private landlords) incorporating current requirements and an eventual removal after say 3 clear years of history, similar to the credit reference process.

9. What measures do landlords, agents and database operators have in place to protect personal information about tenants and to ensure it is used appropriately?

These measures are already in place and working well under the Privacy Act. The privacy act has significant penalties for companies and individuals who breach the requirements of storage and use. Creating more legislation would be a counter-productive measure.

10. What is your view on the stakeholder proposal to establish a database that tenants can use to assess the reputation or reliability of a prospective landlord or agent?

There is a misbelief that landlords or agents have an ulterior motive when in reality in the main they act ethically and legally.

It would appear to be a fair proposal to have an agent or landlord database available to prospective tenants as long as it is curated, possibly that only negative outcomes at VCAT are put on it. A positive rating system appears problematic as who would be responsible for curating it and what guidelines would be developed to create a uniform or unbiased response from stakeholders or tenants.

Databases become obsolete quickly if not regularly updated. Who would be responsible for the data entries and how would the cost be covered?

Some landlords get their tenants to sign a privacy statement for this reason.

11. What additional information should a landlord be required to give a tenant at the start of a tenancy, if any?

Having landlords to provide confidential business information such as proof of ownership or insurance policies would be unrealistic. These suggestions jeopardise the safety and privacy of the landlord which is a paramount consideration to offering the accommodation.

Some of the items suggested to provide instructions for complex items such as car stackers, positions of shut off valves and meters and relevant Owners Corporation rules would be a best practice recommendation for most properties/landlords/agents.

Furthermore tenants should not be encouraged to use infrastructure facilities in the property such as control valves and meters as this could affect their safety and the safety of other tenants if they do not understand the complexity of these systems. The suggested requirements can create a lot of paperwork especially with the way some agents add in many extras into the standard CAV tenancy agreement. To require items such as insurance documents, Owners Corporations rules, etc. To be made available would create a virtual storm of paper that would overwhelm most tenants let alone ones from disadvantaged backgrounds. What would be the cost to provide this information and who would ultimately bear this cost?

If there is evidence that there is an issue with information not provided to tenants, it would be better addressed via best practice guidance rather then legislation. The suggestion of providing an insurance policy to a tenant is nonsensical. If there is conduct prohibited in a tenancy agreement, it makes no difference if this is required by the insurer or not.

Instructions for most appliances are readily available online. Whilst it may sound sensible to provide details of location of meters, mains water tap etc., this is more appropriate for the landlord to monitor and control.

Evidence of the landlord's legal right to rent out the property may make sense, but should not be a requirement as this may jeopardise contractual arrangements with the supplier and in most cases would prove to be unworkable. If a tenant feels there is a need to ask for any information, they can and there is no need to make anything a requirement.

12. In what circumstances would the stakeholder proposal of a consideration period be appropriate for a tenancy agreement, and what would be a suitable duration?

A consideration period is unnecessary. Tenants are generally over informed of their rights and under informed of their obligations. It is common knowledge that an agreement is something you keep, and the tenancy agreement is merely proof of a verbal agreement. Tenants have the opportunity to "consider" the tenancy agreement prior to signing or moving in.

Instead of a suggested 3 day consideration period, tenants should be given information about the conditions of what is a fixed term lease and the cost incurred in breaking it and have this in the "Red Book". This can also be included on stakeholders' websites including CAV and RAAV.

Introducing a "consideration period" may have unintended consequences, i.e. if there is competition for the property then someone wanting to exercise this right is not going to get the property as someone else may not require a "consideration period, say yes and get the property first. The current practice now is if a tenant is not sure then they do not have to go ahead to rent the property.

Making it a requirement that a landlord has to extend a period for consideration to prospective tenants would create administration difficulties as the tenant may have taken similar action with a

multitude of other properties. This will be another reason for landlords not to want to be in the rooming house sector.

13. What requirements and approaches, including communication channels and support, should govern the form and service of documents for tenants, landlords and agents?

The incidents that prompt a notice to vacate can be severe and urgent such that service should be made easier, not harder. This is especially so for those tenants being served for damage and danger and those relating to vandalisation or neglect of a safety system or requirement.

Communication methods need to be brought up to date. The world is now digital and most communication is done electronically. Any suggestion to have communication only able to be made by Post is designed to disadvantage the landlord/agent and enable vexatious tenants to evade responsibilities.

Business and Government communication has rapidly moved to email and SMS over the last decade and is recognised in legislation (Electronic Transactions (Victoria) Act 2000). Experience in the real world with great tenants shows they like it and it works. CAV needs to embrace the digital revolution and only have the current paper systems for those very few cases where there is no electronic access. Notice should also be taken of how fast Australia Post is trying to kill off the postal system with increased delivery times and possible alternate day deliveries.

There should be no additional requirements on a landlord to prove delivery. If a tenant is away and hasn't made appropriate arrangement for mail, that is their problem, not the landlords. Similarly if they delay in picking up registered mail from the post office the onus should be on them to comply with the contents of the document.

Notices to vacate are not issued all that frequently and operators should be encouraged to follow up by delivering a copy by hand.

14. How should the current statutory duties for both landlords and tenants be reformed to meet their contemporary needs?

Tenants should be given an additional duty to immediately notify and pay compensation from their rental payments for the cost to repair and replace part of a safety system, particularly in rooming houses where damage by one person can endanger the safety of other individuals.

There is a suggestion that a landlord be responsible for the tenants' quiet enjoyment. This is a dangerous suggestion, particularly in a rooming house. A tenant could take action against a landlord because of the behaviour of another tenant or neighbour without the knowledge of the landlord until it is too late to resolve a situation.

What is "reasonable enjoyment"? Socially aware rooming house operators spend a lot of time counselling the tenants to develop a consensus of good behaviour because if a tenant is causing a

problem in the house, it is difficult to evict them but there are options available to bring action against the landlord.

It must be recognised that given the diversity of backgrounds and aspirations of the tenants, a landlord is not in full control on how one tenant's behaviour may affect the amenity of another tenant and the other tenants. Rather than legislating for "reasonable enjoyment", it behoves the Government and organisations like RAAV to assist in keeping this measure under control through promoting rooming house best practice.

There has been a change in our contemporary and high density market which has led for the need and growth of the number of registered rooming houses since 2008. Consequently, it is imperative that landlords have the power to rectify any adverse behaviour situations and be a moderating influence in a registered rooming house. Socially responsible landlords understand this dynamic and the need to take action against errant individuals and balance the needs of multiple tenants to maintain peace and harmony in the house.

It would assist landlords to have a clear understanding of what is "reasonable enjoyment" so that they can take the appropriate action to maintain peace and harmony in the house.

15. What are your views as to whether the length of time currently allowed for remedying the various breaches outlined in the Act is appropriate? If the length of time is not appropriate, what other time should be specified?

In general, the time currently available to remedy breaches in the Act are currently too long and situations can get out of control before they can be addressed.

RAAV recommends that 24 hours should be allowed to take action on serious breaches and 7 days for lesser breaches. The introduction of digital technology will assist in meeting these deadlines.

16. Where a breach notice is issued, should the person who received it have the option of remedying the breach or paying compensation in order to comply with the notice, or should compensation only be permitted where the breach cannot be remedied?

This is not an "either/or" situation. The party issuing the breach should have the flexibility to apply reasonable requests which should include remedying the breach and/or pay compensation, relevant to the circumstances in the opinion of the issuing party.

The compensation is a penalty if the breach is not remedied within the relevant time and compensation does not negate the obligation to remedy the breach.

17. What, if any, measures should be available for tenants and landlords to address a breach of duty before seeking redress at VCAT?

Generally landlords will try and address any issues first and will issue a breach order as a last resort.

If no action is taken after a breach notice is issued, then a further breach notice and ultimately a notice to vacate should be issued. If the breach notices are not complied with, then it is better for the matter to be dealt with independently by VCAT.

18. Should the Act require initial compliance orders for a breach of duty to be limited in duration, and if so what limitation is appropriate?

No limit to duration should be considered. If a breach has been serious enough to get to VCAT, then any compliance order should be upheld to ensure appropriate behaviour for the remainder of the tenancy.

Breaches for behaviour are so hard to prove that to place an expiry date on breaches would defeat the purpose of the entire breach system, and lead to an increase in avoidable evictions.

19. What are the advantages and disadvantages of the current prescribed tenancy agreement, compared with a more comprehensive agreement?

The current form is simple and catches the essential information, It is working well because it is simple and a more comprehensive form may tend to create confusion. The current form strikes the balance between the need to outline rights and responsibilities without imposing excessive regulation.

Many tenants in rooming houses struggle with limited literacy or come from an ethnic background and would find a longer more comprehensive agreement to be onerous. If there are identified issues that need to be addressed, it would be preferable for CAV to address these through best practice guidance rather than further regulation.

20. What arrangements should apply in respect of the inclusion and enforcement of addition contractual provisions that go beyond the prescribed agreement and statutory duties?

The proposal for explicit consent is too onerous and may be going a bit too far. The other two proposals are acceptable.

If explicit consent is allowed, then the tenant should also be able to sign a document stating if they were given that opportunity, but noting if they declined to exercise it.

The current agreement form is backed up by the comprehensive "Red Book" which clearly outlines the responsibilities and obligations of both parties. Developing a form similar to that used in New South Wales with 45 clauses would be excessive.

As mentioned in response to Question 19, many tenants in rooming houses struggle with limited literacy or may come from an ethic background and would find a longer more comprehensive agreement to be onerous.

21. What is the right balance between the interests of tenants and landlords in respect of pets in rented premises? What reforms, if any, are required to current arrangements?

RAAV supports the current policy as stated in the Issues Paper that the Act prohibits the keeping of pets in a rooming house without the consent of the rooming house owner. The comment in the Issues Paper that "the provisions recognise the more communal nature of residence in these other forms of tenure (e.g. rooming houses), where residents live in close proximity to one another and share facilities/common areas is a significant reason to maintain the status quo.

Pets are not the issue – the owners are. Irresponsible owners can let pets damage or destroy property and/or create nuisance for other tenants. Landlords must have the ability to implement control measures and refuse the right to allow any pets if they take into account the nature of the rooming house facilities and the welfare and quiet enjoyment of the other tenants. If tenants are allowed to have a pet the option of imposing a pet bond is more likely to facilitate the acceptance of a pet.

Experienced rooming house landlords state that it is generally not workable to have pets in a rooming house. If there is an Owners Corporation rule against pets then the landlord must be able to enforce this. In the case of rooming houses and other alternative forms with high density living, the landlord should be given greater powers to address residents and tenants who have introduced a pet without written consent.

We refer to RAAV's submission in response to the Issues Paper on Rent, Bonds and other Charges, RAAV's concerns about the suggestion by a stakeholder to house pets in rooming houses is expressed in Section (g) page 18, viz.

> **"Obligations on rooming houses to admit pets.** Whilst RAAV acknowledges there may be possible therapeutic benefit of introducing such a policy, RAAV is concerned that if tenants were allowed to have pets in their rooms or on the properties, it would be difficult to manage their activities e.g. toilets in rooms for cats, avoiding damage to carpets and furniture, noise levels and welfare of multiple number of pets throughout the property.
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> There are also potential hygiene issues and the amenity for those tenants to be considered who do not have a pet. In addition, RAAV is aware of councils' requirements for the number of pets, e.g. dogs that can be located in a property. Would the landlords be placed in a situation where they would have to approve pets for one or two tenants and refuse approval for other tenants?

Case study

RAAV has an example of a member who incurred high cost to repair damage caused by a cat which was secreted into the house and hidden outside during regular inspections. When the tenant vacated the property, the odour of cat's urine became noticeable and objectionable as the tenant had used air freshener to mask the smell. The new tenant left after 3 days.

The result was complete replacement of the felt carpet underlay and the carpet, replacement of vinyl tiles and significant repairs to the concrete floor to remove the odour plus the cost of a specialist firm to make the repairs to the floor. This cost almost $4,000 plus the downtime that the property was vacant.

The existing prohibition on pets in rooming houses is a sensible policy for the overall wellbeing of all the tenants and the restriction should remain.

22. What entry to premises arrangements strike the right balance between the rights of tenants to quiet enjoyment and the rights of landlords to enter premises and what, if any, reforms are required?

The current provisions balance the rights of tenants and landlords.

23. What other issues and factors arise from current arrangements for entering a property that is to be re-let or sold and what, if any, reforms are required?

This situation is less likely to occur in a rooming house than other rented property.
The issues of balancing the right of quiet enjoyment with the right of the landlord to take action when re-letting or selling the property is a difficult balance and best addressed by negotiation between the landlord and the tenant rather than further regulation.

Attempts to regulate to restrict access/photography/open for inspections could lead to landlords evicting tenants prior to putting the property up for sale rather than allowing them to remain and face potential conflict regarding access during the sale period, which could be detrimental to the tenant.

24. Does the Act require amendment to accommodate the growth of short term accommodation platforms? If so, what amendments should be considered?

Clearly the landlord has the right to select or decline any applicant and the landlord has only agreed to the tenancy with the original applicant. If for example the tenant allows other people to move in then they have breached the landlord's right to determine who resides in the property, and whether it be via Flatmate Finders or Air BnB and regardless of any exchange of money, it is still subleasing and a breach of the landlord's rights. The current Act requires the landlord's permission to sub-let and this should continue.

Amending the Act to set minimum lease terms as has been done in other jurisdictions (e.g. restricting to over 60 days) could have unintended consequences for the Rooming House sector where some tenants are on short term agreements. This area is currently evolving and this suggestion is tantamount to trying to encompass short term holiday letting into the Residential Tenancies Act would be ridiculous.

There are other considerations for rooming houses such as observing the number of tenants approved for a room size under the Health and Wellbeing Act, additional usage of common facilities (cost and availability to the other tenants) and the need to check the bona fides of the additional person/s to safeguard the safety of the other tenants.

25. What other reforms, if any, are required to balance the interests of landlords and tenants in respect of sub-letting and lease assignments?

Reinforce to tenants that they require written consent for any change of tenants within the property. Sub-letting and lease assignments should need the agreement of the landlord.

They are two distinctly different actions and to place them in the same question seeks to hide the vastly different effects they have. A sub-let still has the original tenant who signed the lease in effective control - an assignment is effectively a new lease.

To remove the ability of a landlord/agent to actively check/vet and approve the tenant to live in their property will have a detrimental affect of the supply of rental property as the risks to the owner go up exponentially, A tenant could (with the suggestion of a 7 day period and knowing that a landlord was not in a position to act) could basically assign the lease to anyone

Suggestions of a lease redraft fee cap are not practical. Reasonable costs should be determined by the landlord and paid by the tenant(s). Whether the outgoing or incoming tenant pays should be agreed between the tenants.

26. What issues arise in practice for residents and on-site managers in relation to the use of notices to leave because of violence in managed premises, and should any amendments to current arrangements be considered?

In a rooming house or other managed premises, there are normally witnesses who are not prepared to have their identity revealed to the assailant either on paper or at VCAT for fear of retribution. As such the RTA review must recognise this and explicitly state that such high degrees of evidence are not required and acknowledge that managers of managed premises do not issue such notices lightly.

Furthermore there should be greater incentive for tenants and residents who have been issued these notices to not return, to reflect that scenarios requiring such action are similar to those which result in the issuance of an intervention order.

A notice to leave should also be able to be used for malicious damage and major disturbances of peace along with better enforcement powers to protect other residents in a rooming house when a tenant or visitor is causing a major disturbance.

27. What are your views on the stakeholder proposal that tenants should be able to serve a reduced notice of intention to vacate if they are offered social housing by a community housing provider?

This proposal seems to unfairly punish private landlords whilst favouring the Not for Profit sector. It also raises concerns of proof and definition of the housing type being considered. There would be confusion around if the reduced notice of intention would still apply if the tenant did not take up the offer and how could we ensure it is not used merely to shorten a fixed term tenancy.

RAAV is already concerned that S237 (Reduced notice of intention to vacate) is frequently being misused by housing referral agencies and free legal aid as per the following example. RAAV believes that normal notice periods should apply and cites the following case study.

Case study

A RAAV member reported that her tenant, who was still on a fixed lease, abandoned the premises without even providing a notice of intention to vacate. Her tenant also did not report vacating the rooming house until rent arrears of over $400 had accrued and the landlord declared the room abandoned.

Two months after successfully claiming $400 from the bond, the landlord began receiving intimidating requests from a local free legal aid under a false basis that the debt created by the bond claim had to be urgently repaid by the landlord in order for the tenant to secure Ministry of Housing Accommodation, despite the tenancy having ended 2 months earlier.

It is likely that if reduced notice of intention to vacate is extended to social community housing providers then this misuse will dramatically increase and cause a further financial burden to the private sector housing providers – providers that service the same market, but who don't receive funding such as the social providers do.

28. For what reasons should a landlord be permitted to end a tenancy, and what notice periods should a tenant be given?

It is imperative the Government understands that there is always a real reason behind a notice to vacate. A notice to vacate for no specified reason is relied on frequently because of circumstances making it too onerous to prove the actual reasons.

The current reasons and notice periods for landlords ending tenancies is insufficient and consideration could be given to allowing more power to landlords to end a tenancy as the Act is already too limited and most of the notice periods are too long.

Some of the suggestions in the Issues paper (page 33) would be difficult to enforce and lead to the closure of rooming houses, e.g.

- a 14 day notice of intention overriding any fixed term agreement;
- tenants being able to claim compensation for defending notices to vacate;
- landlords being prohibited in reletting their premises for 24 months instead of six months after issuing a notice to vacate; and
- generally the other issues raised in this section of the Issues Paper.

29. For what reasons should a tenant be permitted to end a tenancy, and what notice periods should a landlord be given?

The reasons and notice periods are outlined in the current Act and these are appropriate

30. What remedies or defences should be available to a tenant to prevent bad faith by a landlord who is attempting to end a tenancy?

The current Act specifies the notice periods for different categories of Notices to Vacate already specified and there should be no reason for action against a landlord applying the provisions in the Act. The retaliation argument is flawed in all cases where the notice for no specified reason is chosen because all other reasons are too hard to prove.

The tenant should acknowledge when they have misbehaved. A landlord should be able to have the retaliation defence ignored if they can demonstrate their attempt to first evict via other notices.

If a landlord is not acting in accordance with the Act, it provides that the tenant can approach VCAT for an order.

RAAV reiterates the comments made in response to Question 28 about retaliation - if a tenant and landlord are already in conflict why should they be forced to continue a relationship?

31. What are the appropriate approaches to compensate a landlord where a tenant breaks a lease?

The current arrangements for compensating a landlord when the tenant breaks the lease are adequate. This compensation must include loss of rent and any proposal for pro-rata reimbursement should only be applied to reletting fees and not to loss of rent. A reasonable re-letting fee should be charged whether the landlord uses an agent or not.

32. What, if any, additional protections should be provided to a tenant who breaks a lease or wishes to end a lease early due to circumstances such as financial hardship, family violence or illness?

The Issues Paper suggests that consideration be given that "compensation to the landlord should be strictly capped in cases where VCAT recognises severe hardship, or waived in situations such as family violence, or where due to accident or health condition the tenant can no longer occupy the premises". The suggesting of agreed break costs are sensible but should be limited to family violence situations proved via an intervention order, and should not be extended to unproven general illness.

The current issues around violence particularly against women, while needing to be dealt with at a Government level, should not be conflated as an issue that the RTA needs to address. Regardless of the reason for breaking a lease, the landlord should always be compensated."

In recognising that there may be some mitigating circumstances about this matter, the Government must also take into account the potential financial and administrative pressures which are brought upon a landlord through tenants breaking a lease.

33. What arrangements should apply to goods that a tenant leaves behind at the end of a tenancy?

In rooming houses and other managed premises there is a high prevalence of low value and perishable goods left behind and as such the assessment of a manager of these properties should

carry as much weight as a CAV inspector's assessment. The manager should also be considered adequate at deciding that the tenancy has in fact ended.

Often when goods are left behind it is because the tenant has left without giving appropriate notice/ behind in rent etc. How can a landlord tell whether the goods are abandoned, or left behind and the tenant wants to come back for them? If there is no contact, then the goods should be considered abandoned and be able to be disposed of immediately. If a tenant hasn't considered their belongings valuable enough to take with them, then obviously they no longer want them.

RAAV supports the view in the Issues paper that the current method of assessing the monetary value or advertising or locating an auction are outmoded. Goods such as clothing and electrical appliances could be given to a local Op Shop or charity collection bin. An exception would be more valuable items such as mobile phones, iPads and statutory papers such as a passport which may be kept for one month and then disposed of in a similar manner.

34. Are there any issues in relation to other rights and responsibilities that occur before, during, or at the end of a tenancy not discussed in this paper that should be considered in this Review?

RAAV has nothing further to add that has not already been outlined in this response to the Issues Paper.

35. For tenants experiencing family violence, what changes to the Act will further promote their access to safe and sustainable rental housing?

In family violence situations the landlord should be able to act at the request of the victim to immediately evict the perpetrator, and also to do so without consent if the perpetrator may also be placing others at risk, particularly in managed premises. There would be benefit in allowing the landlord to issue an urgent Notice to Vacate to the perpetrator and to remove the perpetrator from the lease without consent."

RAAV appreciates that this is a hot topic at the moment. However, RAAV queries the logic behind making the landlord/owner part of someone else's domestic/personal issues. There are already a number of organisations currently providing support in this area. RAAV believes that a landlord's attention is more effective when applied to address issues of property management and maintenance.

36. How are the interests of the landlord best protected in circumstances where family violence impacts on an existing tenancy?

In a family violence scenario the landlord should have ability to claim an amount equivalent to the full bond plus compensation if required. If this provision is reduced then Landlords will cater less to couples at risk of family violence.

RAAV notes the suggestion in the Issues Paper that the interests of the landlord, who is not a party to the family violence, may be impacted. RAAV would appreciate being given the opportunity to discuss the suggestion that “the creation of a family violence tenancy fund which could permit compensation to be paid to landlords and tenants affected by family violence”.

37. Does the Act need to specifically deal with the conduct of agents acting on behalf of landlords, and if so what reforms would address this conduct?

As agents' conduct is already governed under the Estate Agents Act, it would be appropriate to put any further guidance in their Act.