Residential Tenancies Act Review: Options Paper

Submission of the Victorian Aboriginal Legal Service February 2017

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RTA Review Options Paper

Submission from the Victorian Aboriginal Legal Service

The Victorian Aboriginal Legal Service (**VALS**) welcomes the opportunity to respond to this important options paper. As noted in our initial submission to the review of the *Residential Tenancies Act 1997 (Vic)* (**RTA**) in August 2015, housing and tenancy are key areas of concern for the Victorian Aboriginal community.

The 2014 Indigenous Legal Needs Project for Victoria[1] identified that tenancy disputes were one of the most common areas of legal need for Aboriginal and Torres Strait Islanders in Victoria. A 2008 study also found that Indigenous Australians were greatly over-represented in Australia's overall homeless population, accounting for 2.4% of the national population, but approximately 9% of the national homelessness population.[2]

Given what we know about high rates of homelessness and legal need within the Aboriginal community in Victoria, VALS' civil law practice prioritises tenancy and eviction prevention as a key practice area. VALS routinely assists tenants in private and social housing in the following areas:

- Advocating for urgent and non-urgent repairs;
- Preventing evictions through negotiation and advocacy at VCAT;
- Defending compensation claims and claims against tenants' bonds;
- Applying for compensation on behalf of tenants against landlords in breach;
- Representing tenants accused of misconduct, including breach of duty notices and applications for compliance orders; and
- Assisting tenants in relation to goods left behind at rented premises.

These frequent interactions with disadvantaged tenants at risk of eviction and other adverse action ensures VALS is well placed to comment on the ways in which the existing RTA framework might be amended to ensure fairer and more just outcomes.

This response to the options paper will:

1. Provide a brief background of VALS as an organisation;
2. Note various common cultural and other characteristics that can influence the interaction that members of the Aboriginal community in Victoria have with the the RTA and its associated frameworks; and
3. Address specific questions outlined in the options paper, with a focus on key reform areas most relevant to VALS' client group and tenancy practice.

[1] M Schwartz, F Allison, C Cunneen, *The Civil and Family Law Needs of Indigenous People in Victoria: A Report of the Australian Indigenous Legal Needs Project*, Cairns Institute, James Cook University, Cairns. Available at http://www.jcu.edu.au/ilnp/ on 6 February 2017.

[2] Chamberlain C & MacKenzie D 2008. Australian census analytic program: counting the homeless, 2006. ABS cat. no. 2050.0 Canberra: ABS. Available at http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=10737418954 on 6 February 2017.

1 Background to the Victorian Aboriginal Legal Service

VALS is an Aboriginal community controlled organisation. It was established in 1972 by committee, and incorporated in 1975. VALS is committed to caring for the safety and psychological well-being of clients, their families and communities, and to respecting their cultural diversity, values and beliefs. VALS' vision is to ensure Aboriginal and Torres Strait Islander people in Victoria are treated with true justice before the law, have their human rights are respected, and have the choice to live a life of the quality that they wish.

VALS operates in a number of strategic forums which help inform and drive initiatives to support Aboriginal and Torres Strait Islander people in their engagement with both the justice and broader legal system in Victoria. VALS has strong working relationships with the other five peak Aboriginal community controlled organisations in Victoria and regularly supports clients to engage in services delivered by our sister organisations. VALS' legal practice spans across Victoria and operates in the areas of criminal, civil and family law (including child protection and family violence).

VALS' 24 hour support service is supported by the strong, community-based role our client service officers play as the first point of contact when an Aboriginal or Torres Strait Islander person is taken into custody, through to the finalisation of legal proceedings. VALS' legal education program supports the building of knowledge and capacity within the community, enabling people to identify and seek help on personal issues before they become significant legal challenges.

VALS seeks to represent women, men and children who request assistance in their legal matters. In circumstances where VALS is unable to assist, we provide warm referrals to other suitable legal organisations, including Victoria Legal Aid, the Aboriginal Family Violence Prevention Legal Service, community legal centres and private practitioners, as appropriate.

2 Relevant characteristics of the Aboriginal community

2.1 Mistrust and avoidance

The Aboriginal and Torres Strait Islander community in Victoria has a long history of adverse interventions, dispossession, abuse and mistreatment by government and non-Aboriginal institutions. This has resulted in deep levels of mistrust and fear of organisations including large-scale housing providers, but also courts and other administrative arms of government. This intergenerational trauma cannot be ignored in setting a policy agenda that responds to the specific needs of this community.

As a result, Aboriginal clients are, often to their detriment, highly avoidant in their engagement with non-Aboriginal people and institutions. One relevant example of this is the fear and trepidation many VALS' clients report when required to attend hearings at the Victorian Civil and Administrative Tribunal (**VCAT**) in relation to their tenancy.

These issues need to be addressed if VALS' clients are to enjoy safe and secure housing within the Victorian residential tenancies scheme. Part of the value of an Aboriginal legal service is that it bridges the gap between Aboriginal clients and non-Aboriginal systems and laws. VALS has an important role to play in supporting and advocating for Aboriginal clients through the RTA framework.

2.2 Cultural expectations

A further characteristic of the Aboriginal community in Victoria is that there is a strong cultural expectation that fellow community members will support each other. This means that for every

Aboriginal person who is securely housed, several others who are not housed may receive support from that person. Therefore, not only are many Aboriginal community members at a heightened risk of eviction under existing RTA provisions, but the eviction of one member of the Aboriginal community can have far-reaching effects across multiple families and communities, including vulnerable children.

2.3 Transience

Some Aboriginal community members can be highly transient. This is for many reasons. Some are cultural. Connection to "country" of origin is extremely important in many cases. If there are difficulties in life some people will need to return to country. This can include events like deaths in the family or community of origin. It can also be in response to an existing crisis such as drug or alcohol dependency, homelessness, or violence (including family violence). In the context of both the existing and proposed RTA frameworks, this type of transient behaviour can be legally problematic, and can place Aboriginal community members at increased risk of adverse legal action and eviction.

2.4 Family Violence

Family violence affects every community in Victoria. However, it is widely recognised that the incidence of violence in Aboriginal communities is disproportionately higher in comparison to the same types of violence in the Australian community as a whole.[3] In addition, the links between family violence and homelessness are becoming increasingly clear, with recent data indicating family violence is the most common reason people seek assistance from homelessness services in Victoria.[4]

Eviction from housing and debts to landlords arising from perpetrator damage are some of the obvious ways that victims of family violence can be continually re-punished as a result of a perpetrator's actions. Sadly, this is the experience of many VALS' clients.

2.5 Common characteristics of tenancy

Many VALS clients reside in public, social and transitional housing. It is well accepted that Aboriginal people are at a higher risk of low education, unemployment, criminality and discrimination than the non-Aboriginal population. This can impact on Aboriginal peoples' ability to access the private rental market, with discrimination also being perceived as a major issue for many community members.

In addition, many Aboriginal people are housed by Aboriginal-specific housing agencies, a number of which are run by Aboriginal co-operative organisations (such as Rumbalara) or through Aboriginal Housing Victoria.

[3] AIHW: Al-Yaman F, Van Doeland M & Wallis M 2006. Family violence among Aboriginal and Torres Strait Islander peoples. Cat. no. IHW 17. Canberra: AIHW. Available at: http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=6442458606 on 6 February 2017.

[4] See Australian Institute of Health and Welfare, Specialist Homelessness Services: 2015–2016 (2016) (AIHW Report), 'Supplementary table: VIC CLIENTS.14: Clients, by main reasons for seeking assistance, 2015–16, adjusted for non-response'. Available at http://www.aihw.gov.au/homelessness/specialist-homelessness-services-2015-16/supplementary-tables/ on 6 February 2017.

3 Responses to options paper questions

3.1 Unlawful discrimination against applicants and tenants

1. **Consultation 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?**

Given the relative complexity of discrimination law and the often low level of familiarity many tenants will have with these legal principles, it would be helpful if the proposed information statement contained simple examples of the types of discrimination tenants are most likely to face. This would assist tenants to better understand what may amount to discrimination.

We note the following examples from the Victorian Equal Opportunity and Human Rights Commission website that could be easily adapted to a housing context:

> *George unsuccessfully applies for a position with a construction company. When he telephones the company's personnel manager to ask why he did not get the position, George is told: 'We've employed people from your country before. You lot simply don't share our work ethic'.*
>
> *Deb and Max are Aboriginal Victorians. When they telephone a local kindergarten to see if there are any places for their son, Henry, they are told that there is plenty of room. But when Deb takes Henry to the kindergarten, the teacher tells her that she didn't realise Henry was Aboriginal and that Deb should take him to a place where he'll fit in better.*[5]

Similarly, the use of videos depicting examples of discrimination could equally be a powerful educative tool, particularly if widely distributed via social media.

2. **Consultation 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?**

The RTA should provide a clear right for prospective tenants who have been discriminated against to seek compensation against the relevant landlord or their agent. This might be achieved by amending various provisions of the RTA as follows:

- Inserting a new stand-alone definition for 'prospective tenant' into section 3 of the RTA, which should include any applicant for a rented premises who has completed and submitted a written application to the relevant landlord or their agent;
- Adding a new section 452A to the RTA, to provide that a 'prospective tenant' who has been discriminated against by a landlord or their agent during the process of applying for a rented premises, can seek leave to apply to the Tribunal for compensation.

A similar outcome could also be achieved by allowing 'prospective tenants' to bring claims under the *Equal Opportunity Act 2010 (Vic)* in the residential tenancies list at VCAT. Any such amendments could be modelled on the current section 507A of the RTA, which permits parties to tenancy

[5] Available at http://www.humanrightscommission.vic.gov.au/index.php/types-of-discrimination/race on 6 February 2017.

agreements to seek relief under the *Australian Consumer Law* through the residential tenancies list at VCAT.

Importantly, any ability of a tenant to seek compensation for discrimination should be in addition to the landlord also being liable for a penalty under the proposed penalty provisions outlined in option 4.2

3.2 Tenancy databases

1. **Consultation 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?**

No. Outright prohibition of a fee is the preferable option.

First, it is difficult to imagine any set of circumstances where a tenant would choose to pay for this information where they were otherwise entitled to obtain it for free.

Second, creating a fee-free 'option' may invite database operators to introduce different tiers of tenant information. For example, it is possible that database operators would provide only limited information about a tenant's history for free (i.e. tenant history the past 12 months), and more detailed history for a substantial fee (i.e. tenant history for the past three years).

Such an outcome would work against the purpose of reforming the practices of database operators in this area.

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

No. Implementation of the measure proposed in option 4.5 should be introduced as a matter of priority. The existing regime in Victoria is too rigid and provides no clear mechanism for faultless tenants to remove their details from tenancy database listings.

This can have negative flow on effects in a range of circumstances, including in the context of family violence, where a victim's details can be listed on the database due to damage caused by a perpetrator. This issue was recognised in the final report of the Victorian Royal Commission into Family Violence, which recommended that victims be able to both avoid listings and have them removed once discovered.[6] Given the prevalence of family violence in many Aboriginal communities within Victoria, VALS strongly supports a more flexible mechanism that would allow victims to avoid database listings and apply to have them quickly removed.

Implementing the measure proposed in option 4.5 will also bring Victoria's RTA into line with similar frameworks in Queensland and NSW.

[6] State of Victoria, Royal Commission into Family Violence: Summary and recommendations, Parl Paper No 132 (2014–16), 77 (recommendation 116).

3.3 Rights and responsibilities during a tenancy

1. **Consultation 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?**

VALS does not support option 5.1.

However, if this option were to be implemented, VALS would support a more flexible timeframe for compliance, which could be worded as "as soon as practicable, taking into account the circumstances of the tenant and the breach in question".

There are a number of reasons why implementing a timeframe of immediate compliance with breach of duty notices would unfairly impact on many vulnerable and disadvantaged tenants:

a) Many tenants are issued breach of duty notices in relation to the actions and behaviour of other occupants or visitors (e.g. a perpetrator of family violence who uses loud abusive language, or a tenant's child whose mental health and behavioural issues contribute to nuisance behaviour):
    - In these cases, it may be difficult or even unsafe for tenants to take steps to immediately prevent the relevant conduct from reoccurring. For example, a perpetrator of family violence might retaliate if unplanned action is taken to remove them from the premises.

b) In many instances where tenants themselves are personally responsible for the conduct giving rise to the breach of duty notice, there is likely to be complex underlying reasons for this behaviour (e.g. mental illness, fraught family dynamics that may include family violence, a lack of understanding of rights and obligations):
    - In these cases, it may be difficult for a tenant to immediately comply with a breach of duty notice, not only because the underlying issues are complex, but also because other factors may make it difficult for a tenant to properly understand their obligations (e.g. illiteracy, NESB tenants).

Therefore, it is important that a degree of flexibility in the timeframes for compliance is maintained.

If option 5.1 were to be implemented, it would also be crucial that a tenant could seek review at VCAT of whether the amount of time provided for compliance was reasonable in the circumstances, and if VCAT finds that it wasn't, that any breach of duty notice and associated notice to vacate be set aside.

2. **Consultation question 28: Which option is preferable in terms of process for successive breaches of duty, and why?**

VALS does not support option 5.2A or 5.2B. VALS supports option 5.2C as the preferred option.

However, if either option 5.2A or 5.2B are to be implemented, VALS would support option 5.2A. This is because option 5.2B essentially shortens the existing process of eviction for breach of a VCAT compliance order, by removing the safeguard of an initial compliance order hearing, and giving VCAT the power to make eviction orders at first hearing.

In VALS' experience, where behavioural issues are placing a tenancy at risk, the initial VCAT hearing for a compliance order is an important opportunity for tenants to engage with the process. The hearing can be an opportunity for them to obtain important legal advice about their responsibilities, as well as non-legal referrals to help prevent further breaches. Option 5.2B removes this safeguard, allowing swift applications for eviction orders. The likely result of these applications is the eviction of many more disadvantaged tenants who have complex underlying legal issues that might otherwise be resolved via appropriate referrals once they are engaged with the legal process.

Whilst option 5.2A also contemplates a single VCAT hearing after the issuing of two previous breach of duty notices, the additional time for a tenant to comply provides some protection to tenants by giving them more time to take steps or seek assistance to avoid further breaches. The requirement that the breaches must all occur within a 12 month period also provides some protection to tenants with long-term underlying issues (e.g. mental illness) that can place them at risk of eviction due to breach of duty notices accumulating over a longer period of time.

3. **Consultation question 29: What are the risks, if any, of unintended consequences arising with the measures proposed in options 5.2A, 5.2B and 5.2C?**

The risks associated with options 5.2A and 5.2B are set out in the response above (see sections 3.3(1) – (2)).

In relation to proposed measure 5.2C, VALS does not consider there would be any substantial lessening of a landlord's rights in relation to problematic tenant behaviour if this measure were implemented. This is because there are already alternative options open to landlords to address problematic tenant behaviour, including specific notice to vacate provisions for instances of illegal use, dangerous behaviour and malicious damage, and the compliance order eviction framework for less egregious breaches.

4. **Consultation question 30: Which obligations of landlords and tenants should be subject to the breach of duty process beyond the current duty provisions – all terms in the prescribed tenancy agreement (if the prescribed agreement is made more comprehensive, as proposed)? What about additional terms to the tenancy agreement?**

VALS has not commented on the prescribed tenancy agreement.

However, beyond the existing duty provisions, the duty of the landlord to provide certain information at the commencement of the tenancy (RTA section 66) should be subject to the breach of duty process. This would provide an additional incentive for landlords to ensure tenants have all relevant information at the commencement of the tenancy, including important information about pursuing urgent repairs requests, as provided for by section 66(2)(b) of the RTA.

Whilst there are currently penalties attached to section 66, given CAV may not have capacity or appetite to prosecute individual breaches of these duties, it would be simpler and more effective if a tenant could take steps to obtain this important information by issuing a breach of duty notice and then seeking a compliance order at VCAT. In circumstances where the landlord continues to refuse to provide this information, a tenant would have the option of terminating the tenancy by issuing a 14 day notice of intention to vacate under section 239 of the RTA.

3.4 Rights of entry

1. **Consultation 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?**

The seven days' notice period should be required for both general and valuation inspections.

An inspection for valuation purposes will necessarily entail complete strangers coming through a tenant's home, an experience that can be disruptive and personally invasive for many tenants. The provision of 24 hours for an inspection of this nature is insufficient. By requiring seven days written notice for a valuation inspection, tenants will have appropriate warning, which would hopefully lead to a smoother process for both parties.

2. **Consultation 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?**

No.

The existing section 90 of the RTA is an important mechanism for tenants to seek to recover loss for damage to goods that occurs during an inspection. The expansion of this existing mechanism proposed by option 5.6 is welcome. It will provide tenants with additional rights where damage is caused or loss suffered during an inspection initiated by the landlord. In addition, option 5.6 is also likely to encourage landlords to adopt stricter security measures before permitting entry to tenant's home by members of the public attending open for inspections.

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

Partly.

The 14 day notice period is welcome, as is the requirement that a landlord should make reasonable efforts to agree with the tenant on dates and times for proposed inspections. However, other aspects of the proposal appear unbalanced from the tenant's perspective.

First, it is not reasonable for an owner to hold more than one open for inspection per week, unless the express consent of the tenant has been given. This is because prospective purchaser inspections are typically held on weekends, to attract the maximum amount of interest. Allowing two such inspections per week without a tenant's consent could mean landlords hold open for inspections on both Saturday and Sunday of the same week. This would unreasonably restrict a tenant's right to quiet enjoyment.

Second, where the parties are unable to agree on a mutually convenient inspection time, the landlord should not have an automatic right to hold the inspections regardless. Rather, tenants should be entitled to apply to VCAT seeking an order preventing the inspection from taking place at the proposed time, and VCAT should be required to consider whether there are reasonable alternative times available, before make appropriate orders.

4. **Consultation 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?**

Yes.

Tenants should be automatically entitled to a full day's rent reduction for any day that an open for inspection takes place at the premises, regardless of whether it is an inspection for the public at large, or for private prospective purchasers. This is in recognition of the fact that these inspections are disruptive, and often require a higher than reasonable standard of household cleanliness.

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

Yes. VALS agrees with this option.

3.5 Sub-letting and assignment

1. **Consultation question 46: Would option 5.10 capture arrangements that are not properly characterised as commercial short-term accommodation, or other arrangements that should not require consent?**

Yes, and for this reason VALS does not support option 5.10.

This issue is of particular concern to VALS in light of the common expectation that community members will assist other family members with short-term accommodation where they are vulnerable (see sections 2.2 and 2.3 above). These concerns apply to many community members living in social housing.

In some instances, a tenant who offers short-term accommodation to a vulnerable acquaintance or family member may request some type of consideration in return. This may range from the informal (e.g. contribution towards food and bills), to more formal (e.g. regular cash payments).

Whilst such arrangements are clearly not commercial in nature, they would be caught by the proposed option 5.10, including where the tenant is only allowing a person to stay in one room at the property on a temporary basis. Given it is often the case that these short-term temporary arrangements will be in response to an urgent crisis (e.g. a person is evicted from other housing, or excluded from their previous premises by a court order), it is unrealistic to expect tenants in possession to first obtain a landlord's consent prior to allowing a vulnerable friend or family member to stay at the premises in return for basic consideration.

In a social housing context, the consequences for tenants are particularly heightened because many will have waited several years to be allocated affordable housing, and could be banned from re-applying for a period of time if evicted for illegal subletting. Given the cultural pressure many community members face when a family member or other close friend is vulnerable and in need of short-term accommodation, the proposed option 5.10 would be an unwelcome development in the law.

If changes are to be made in this area, it's important that any amendments aiming to address concerns raised by the *Swan v Uecker*[7] decision draw a clear line between permissible short-term license agreements that are non-commercial in nature, and profit-driven sub-let arrangements advertised for a clear commercial purpose through channels such as Airbnb and Gumtree.

This distinction could be achieved by including a requirement that the relevant provision only applies to agreements that are commercial in nature, having regard to a range of factors including:

- The existence of a formal agreement for monetary consideration;
- The existence of advertising (online or otherwise); and
- The relationship between the tenant and the other person who has commenced occupation at the premises.

2. **Consultation question 47: How should the arrangements in option 5.10 be defined, and should the reference to consideration be confined to monetary consideration?**

VALS does not support the introduction of option 5.10.

However, if a version of option 5.10 is to be implemented, we reiterate our comments above, that any new provision should only capture arrangements that are commercial in nature, having regard to appropriate relevant factors.

3. **Consultation question 48: What are the risks and benefits of permitting a fee for consent to parting with possession for consideration, as outlined in option 5.11?**

There is no indication that these fees could be capped, and it can therefore be presumed that landlords would charge a premium for this consent.

The risk then arises that many tenants will proceed without the landlord's permission in order to avoid excessive fees. This would undermine the purpose of the proposed option 5.11.

3.6 Lease breaking

1. **Consultation 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?**

VALS would support codification of the common law principles outlined at option 6.1. We view these principles as sufficient.

2. **Consultation question 52: How can fixed lease break fees strike a balance between acknowledging the commitment of the lease that has been broken, and compensating for the actual loss incurred by the landlord?**

[7] *[2016] VSC 313*

VALS does not support a fixed lease break fee. This is because it is impossible to finally quantify the landlord's loss until the premises have been re-let. Accordingly, in circumstances where the premises are re-let swiftly, it is likely the tenant(s) would pay more via a fee than they would if the common law principles of compensation were applied. Such a provision would create confusion among tenants, many of whom already have a poor understanding of their rights as to what is reasonable compensation in a lease-break context.

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

This could be achieved by codifying the landlord's obligation to mitigate their losses, as well as specifically providing that a tenant is not required to pay any amount in lease breaking costs to a landlord until the earlier of the premises being re-let, or the fixed term lease expiring.

There should also be consideration given to imposing a specific provision prohibiting a landlord from claiming lost rent for any period of time before the property has been advertised for re-letting.

4. **Consultation question 56: What are the risks, if any, of unintended consequences arising under option 6.3?**

VALS welcomes the proposed option 6.3. It is an important amendment in the law that will provide fairer outcomes for disadvantaged and vulnerable tenants.

5. **Consultation 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?**

In cases of proven tenant hardship, VCAT should have a clear discretion to waive compensation to the landlord altogether. It is inconsistent for VCAT members to be encouraged on the one hand to recognise extreme hardship in significantly reducing the term of a lease, while also permitting onerous compensation orders to be made in favour of the landlord as part of the same proceeding.

In addition, the commercial reality is that the vast majority of landlords have insurance that will protect them should a tenant terminate the tenancy early due to severe hardship. Accordingly, these costs are generally not born by landlords directly, but are a factored in risk cost in the existing premiums charged by insurance providers.

6. **Consultation 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?**

There could be an additional discretionary provision to capture other 'exceptional circumstances' situations that may arise. In the event a landlord disagrees that circumstances relied upon are exceptional, an application could be made to VCAT to determine whether any compensation is payable.

3.7 Goods left behind

1. **Consultation question 62: Under option 6.8, should landlords be under an obligation to contact CAV in the outlined circumstances, and if so, how should the obligation be framed and what should be the consequences of non-compliance?**

Yes. These are situations where it will be difficult for the tenant to remove important personal documents and belongings prior to their removal into storage and/or disposal under the existing regime.

This obligation should be framed in such a way that a landlord is required to make reasonable inquiries of a tenant as early as practicable (e.g. immediately after a VCAT possession order is made) to determine whether the tenant is experiencing any circumstances that might make removal of goods or belongings difficult. In other situations, these circumstances may already be a matter of record (e.g. the tenant applied to reduce the term of lease due to family violence).

The RTA could provide both a penalty for landlords who fail to make reasonable inquiries in these circumstances, and a separate offence for landlords who fail to contact CAV where they knew a tenant was experiencing one or more of the listed circumstances. Whilst these offences may be difficult for CAV to enforce, they would hopefully encourage landlords to avoid any risk of prosecution by being pro-active and making inquiries of tenants, then notifying CAV prior to disposing of any goods.

It is equally important that CAV inspectors are equipped with appropriate referral information and access to financial brokerage that can be used to assist tenants to remove personal belongings and documents from rented premises prior to their disposal in situations of hardship.

3.8 Bond claims

1. **Consultation question 65: How well does option 7.2 address stakeholder concerns about delays to bond repayments when all parties are in agreement?**

Option 7.2 adequately addresses these concerns. This option aligns well with option 7.3C, which VALS also supports.

2. **Consultation 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?**

Option 7.3C is preferable, both for when parties are in agreement and when in dispute.

VALS often assists tenants whose landlords are either significantly delaying the release of a bond, or who are making spurious claims against the bond which are unfounded in evidence. In some instances, landlords will claim more than they are entitled to in order to intimidate tenants into settling for a lesser amount, which is still more than the landlord is legally entitled to. It is important to bear in mind the power imbalance that exists between all tenants and landlords, particularly in the context of claims against a bond, as tenants face the very real risk of their details being entered

on a residential tenancy database if a compensation order is made against them by VCAT. The fear of this outcome is a significant point of pressure on tenants to settle otherwise inflated compensation claims being made by landlords.

In this context, it is entirely appropriate that there be additional protections for tenants seeking return of their bond. Option 7.3C addresses the delay issue by giving tenants the right to apply to VCAT for their bond, which will be returned if no dispute is lodged by the landlord within 14 days. This option also addresses instances of spurious or unfounded bond claims from landlords, by requiring proper evidence to be filed by a landlord if they are seeking to dispute a return of the tenant's bond.

These more stringent requirements are likely to also have a broader normative effect, and would hopefully see a reduction in the number of over-inflated bond claims by landlords.

3.9 Rent payment fees and methods

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

Yes.

It is important that tenants have a method of rent payment that does not incur fees. Any administrative or other costs incurred by landlords or real estate agents where rent is paid other than through large third-party organisations should be borne by the landlord, not the tenant.

2. **Consultation question 71: Are there any unintended consequences that could result from requiring landlords to accept Centrepay payments?**

From VALS' perspective, it is important that landlords be required to accept Centrepay payments. The vast majority of VALS' clients are low-income Centrelink recipients, and many find it difficult to make regular rent payments without the use of Centrepay, which enables them to 'set and forget'.

Relevantly, as the initial consultation paper recognises, private rental accommodation is becoming less affordable, particularly for low-income families.[8] It is therefore crucial that simple and cost effective rent payment methods are made available to tenants in all types of housing, including private rental accommodation, to help prevent these tenancies sliding into arrears unnecessarily.

For this reason, it makes sense to ensure landlords will accept rent payments via Centrepay. The only unintended consequence may be that the $1 per transaction fee is passed on to tenants by way of a rent increase. This could be prevented by specifically providing in section 51 of the RTA that tenants cannot be charged any fees associated with the use of Centrepay.

[8] State Government of Victoria, Residential Tenancies Act Review: Laying the Groundwork – Consultation Paper (June 2015)

3.10 Condition of premises during residential tenancy

1. **Consultation question 95: Does the proposed list of maintenance activities accurately reflect common practice in different tenure types?**

Whilst VALS does not oppose the idea of a maintenance schedule, more work is required to ensure the relevant items for tenants and landlords are realistic, reasonable, and balanced against the tenant's right to quiet enjoyment of the premises.

Some of the items listed for tenants under option 8.16 go beyond what many would consider reasonable (e.g. dusting of window tracks, cooling vents and surfaces). Prescribing these responsibilities in a particular way also creates a risk that landlords will seek compensation for relatively minor issues. For example, where a property is old and naturally dusty, or has been vacant for a period of time after the tenancy terminated and dust has accrued, it may be more difficult for tenants to show they are not liable for relevant additional cleaning costs where each individual head of responsibility has been prescribed.

2. **Consultation question 96: Are additional measures needed to prevent tenants from being required to take on onerous maintenance activities?**

Yes. This could be achieved by amending section 63 to insert a clarification that tenants are not required to undertake work that could only reasonably be completed by a professional tradesperson or cleaner.

3.11 Modifications

1. **Consultation question 98: Would the proposed options support the most critical types of modifications?**

Yes, these are welcome changes.

Disability modifications to rented premises are a common issue for VALS' clients. Whilst DHHS has clear policy manuals setting out the relevant application and assessment process, there is no like clarity for community housing or private rental. The existing RTA regime provides no incentive for landlords (including community housing landlords) to accede to reasonable disability medication requests, and the potential for a no reason retaliatory notice to be issued can be a disincentive for some tenants even having this important conversation with their landlord.

VALS would also support a seven-day time limit for landlords to respond, either negatively or positively, to a request for modifications.

Whilst it may not be within the scope of the current RTA review, VALS strongly supports the creation of publicly available policy documents for all community housing providers, which should include a clear application and assessment process for disability modification requests.

2. **Consultation question 99: Are there any advantages to retaining a requirement to seek the landlord's consent for all modifications? For example, does this promote better relations between the parties, or avoid unnecessary disputes?**

VALS prefers option 8.20B.

VALS accepts it is possible that removing the requirement for landlords' consent for certain modifications might lead to an increase in disputes when these modifications are discovered at the end of a tenancy, or during an inspection whilst the tenancy is on foot.

However, these potential disadvantages must be weighed against the inconvenience for tenants in seeking the landlord's consent for even the most minor modifications to the premises (e.g. hanging a picture on the wall). Where consent is not granted, the tenant would be required to make an application to VCAT for overriding consent, which should ordinarily be granted by the Tribunal for minor modifications.

This risk of additional disputes arising would also be addressed to some extent by limiting the types of modifications that don't require a landlord's consent to those entailing no structural change, as suggested by option 8.20B.

3.12 Liability for access to services

1. **Consultation question 102: Should tenants be able to dispute the imposition of a supply related charge in social housing?**

Yes. Without a right to dispute this charge, it is possible that arbitrary fee amounts would be imposed on tenants by their social housing landlords.

Rather than tenants being forced to dispute these charges via section 452 or 472 of the RTA, there should be a clear mechanism within any new provision that indicates tenants can dispute the imposition of a charge at VCAT. As part of any VCAT proceeding, the social housing provider must be able to establish the factual basis for the charge amount being sought (e.g. as a percentage of the overall utility bill for the asset, taking into account any other relevant factors).

3.13 Reporting and addressing damage

1. **Consultation question 106: Does damage need to be defined in the RTA, or would the proposed guidelines suffice?**

No.

The use of guidelines to distinguish damage from fair wear and tear is be a more effective and flexible method of enabling parties to a tenancy agreement to understand the concept of damage.

The wording and content of these guidelines would require further consultation and close consideration in order for them to be fairly and effectively applied by the parties and Tribunal.

2. **Consultation question 107: Would the proposed rewording of the tenant's duty make it easier for the parties to understand what is expected in terms of the tenant not damaging the property?**

No. Instead, it would place too great a burden on the content of the proposed guidelines.

VALS does not support the rewording of the tenant's duty as proposed by option 8.24.

The rewording would remove the consideration of reasonable care in determining whether a tenant is legally responsible for the damage caused. This existing discretion is important because, in certain cases, a tenant may be said to have caused damage despite exercising a reasonable level of care to avoid damaging the premises (e.g. opening an old window which breaks, moreso due to the age of the asset than any excessive force applied by the tenant).

Removal of the reasonableness consideration in section 61 of the RTA would place too great a burden on the content of proposed guidelines that aim to distinguish between damage and fair wear and tear (option 8.25). In the context of contested compensation claims for damage at VCAT, the reworded provision would provide less flexibility and discretion for VCAT members, who are usually best placed to determine whether a tenant should be liable for the alleged damage, as they are fully apprised of all relevant facts.

The introduction of guidelines distinguishing damage from fair wear and tear will provide greater clarity in this area generally. However, the guidelines should not be implemented as a wholesale replacement of the existing flexibility found in section 61 of the RTA.

3.14 Resolving disputes about repairs

1. **Consultation question 109: Would the proposed options encourage landlords to respond promptly to a request for a repair?**

Yes, these proposed changes are welcome.

VALS considers that there is currently a lack of appropriate incentives encouraging landlords to quickly respond to urgent repairs requests from their tenants. This is equally true of many social housing providers, as well as private landlords and their real estate agents.

A combination of the proposed options 8.29, 8.31, 8.32 and 8.34 would help to address this by providing greater clarity around what constitutes an urgent repair and an appropriate response time, as well as by giving tenants greater power to self-help with an increase of the authorised urgent repair amount. In particular, the inclusion of 'air-conditioning or cooling' in the definition of urgent repairs is long overdue and should be implemented as soon as possible.

VALS further notes that many landlords complain they are unable to find appropriate tradespeople to complete urgent repairs at busy times of year (e.g. Christmas). For this reason, any CAV guideline on appropriate response times under option 8.31 should take these issues into account, and provide alternative options to landlords that can reduce the impact on a tenant where an urgent repair issue has been raised but can't be immediately addressed.

In relation to non-urgent repairs, VALS considers that the existing process takes far too long, and is overly complicated by the involvement of CAV after the initial notice period has expired. For this

reason, VALS strongly supports option 8.32, and the right of a tenant to apply directly to VCAT once a landlord has failed to comply with a request for non-urgent repairs.

More broadly, VALS strongly supports the use of landlord repairs bonds and measures to enable quicker access to a rent special account as added incentives for landlords to respond to repairs requests in a timely manner. These are important accountability mechanisms that would go some way to addressing the negative experiences of many VALS' clients who face real difficulties in having repair issues resolved quickly.

2. **Consultation question 110: Would the proposed changes in option 8.32 improve the existing process for handling repairs? What other changes would promote the timely resolution of repairs disputes, and give VCAT or another dispute resolution service access to all relevant information?**

Yes, for the reasons outlined above (see section 3.14(1)), the non-urgent repairs process would be simpler without early involvement of CAV. In relation to non-urgent repairs, option 8.32 would also provide less scope for protracted disputes about whether a repair is urgent.

However, it is important that the measures proposed by option 8.32 are supported by robust accountability measures, including simpler access to rent special accounts, and the use of landlord repairs bonds.

3. **Consultation question 112: How well would these options translate to other tenure types?**

There is no reason why these options shouldn't also be applied for the benefit of rooming house and caravan park residents. Residents in these other forms of residency are likely to face similar delays and uncertainty arising from existing repairs frameworks in the RTA. There is no reason why any changes should be limited to rented premises only.

4. **Consultation question 113: Are any further options needed to ensure that requests for repairs are reasonable?**

No, although we reiterate the importance of updating the current list of urgent repairs to include air conditioning and cooling units.

Under the proposed options, if a landlord disputes responsibility for effecting either urgent or non-urgent repairs, VCAT will be in a position to determine the dispute provided relevant time frames for any application are adhered to. Where a request for repairs is unreasonable and not supported by relevant provisions of the RTA, VCAT is likely to find against the tenant at any such hearing.

3.15 Binding agreements, orders and determinations

1. **Consultation question 142: What are the costs and risks, if any, associated with a specialist administrative dispute resolution service that provides binding orders?**

Whilst VALS is broadly supportive of dispute resolution (**DR**) alternatives to VCAT, one of the risks is that tenants will be bound by agreements they've made without having first had the benefit of proper legal advice.

VALS currently assists many tenants either referred to us directly by VCAT, or who seek VALS' assistance after receiving a formal notice of hearing or other application involving VCAT. This is largely due to the community understanding that VCAT is a legal entity dealing with housing disputes and evictions, and it is therefore important to obtain legal advice prior to attending if possible.

With any move to a separate DR service, there is a risk that some tenants may proceed without first obtaining legal advice, which could disadvantage them where orders are made or agreements struck that then become binding. This is particularly the case if there are subsequent costs implications where a tenant uplifts a matter from the DR service to VCAT, and obtains a worse outcome.

To address this risk, it is important that any introduction of a new dispute resolution model is preceded by consultation with the community legal and other sectors about appropriate funding arrangements to ensure tenants using any frontline DR service are able to access quality legal advice and representation.

3.16 Quality of decision making by VCAT

1. **Consultation 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?**

VALS supports the implementation of internal VCAT appeals for residential tenancies list decisions, as outlined by option 10.4A.

The features of this re-hearing process would significantly assist in improving the consistency and predictability of outcomes within VCAT's residential tenancies list. As noted in the discussion paper, internal appeal decisions would be a simple and cost-effective way of developing an expansive bank of jurisprudence that parties and first-instance VCAT decision makers could refer to for guidance. The additional certainty would also lead to many disputes being resolved by consent between parties, given the outcome would be easier to predict.

An internal appeals mechanism would also provide an important and cost-effective safeguard against flawed VCAT decisions that can lead to unnecessary evictions, in circumstances where those same tenants would otherwise have difficulty funding legal assistance to litigate an appeal in the Supreme Court.

Any concerns about the proposed model leading to unmanageable numbers of appeals being lodged might be further addressed by introducing additional criteria that an applicant must meet in order for their application for internal review to be granted (e.g. that the law has been incorrectly applied, or that a finding of fact was not reasonably open on the available evidence).

3.17 Terminations instigated by landlord or owner: tenant at fault

1. **Consultation question 151: What are the potential benefits and risks of introducing a termination order process to the RTA?**

VALS strongly opposes the introduction of a termination order process to the RTA.

The discussion paper acknowledges that some tenants unnecessarily leave rented premises upon receipt of a notice to vacate, in part due to the wording of these notices. However, the solution proposed by option 11.1 fails to address this negative outcome in any real sense, as it would instead mean tenants receive a 'termination notice', which is arguably more intimidating than a 'notice to vacate'.

In addition, the proposal at option 11.1 risks further hastening the eviction process by effectively removing any additional time a tenant has between a notice to vacate being issued, and an application for a possession order being lodged. The proposal requires one less step for a landlord to go through, and therefore one less opportunity for a tenant to be reminded they require urgent legal advice.

In light of the above, it is difficult to see how the proposed option 11.1 addresses the issues noted in the same section of the discussion paper.

2. **Consultation question 152: What alternative options are there to provide an appropriate level of checks and balances in cases of at-fault evictions with creating undue burden or barriers to legitimate tenancy terminations for landlords?**

First, the language of 'notices to vacate' should be altered to prevent the risk that certain tenants might respond by vacating their premises. Language that implies the landlord is intending to seek possession of the property, rather than formally ordering the tenant to vacate, should be preferred.

Second, the addition of reasonableness requirements in evictions discussed below is an important accountability measure to ensure appropriate checks and balances are in place to prevent unnecessary evictions.

3. **Consultation 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?**

VALS supports increasing VCAT's discretion in relation to the making of possession orders, as well as the requirement that landlords complete a pre-eviction checklist.

Many clients VALS assists with eviction proceedings are leading complicated lives with intersecting and overlapping forms of disadvantage, including mental illness, family violence, low socio-economic status, and childhood trauma. Where VCAT is satisfied of the *prima facie* legal case for eviction, it is critical that there is a residual discretion not to order an eviction in circumstances where it would be unreasonable to do so, having regard to the respective impact on any such decision on the parties involved.

The pre-eviction checklist would be a welcome tool in ensuring landlords themselves have turned their mind to alternative options before seeking to evict the tenant. It would also provide a useful point of reference for VCAT members in assessing the reasonableness of the proposed eviction.

In this context, we note with support the detailed earlier submission of Justice Connect Homeless Law, which sets out a range of other benefits that would flow from the introduction of additional discretion for VCAT members and the requirement of a pre-eviction checklist for landlords.[9]

4. **Consultation question 155: What are any alternatives to clarifying the type of damage and the circumstances under which the damage is caused that would appropriately constitute grounds for immediate termination?**

VALS does not consider there is sufficient need to expand the existing provisions relating to immediate termination of a tenancy agreement due to malicious damage. In particular, we do not agree that damage that is caused as a result of recklessness should be sufficient to form a legal basis for the issuing of an immediate notice to vacate.

To the extent that there is some uncertainty in the way in which VCAT members have interpreted the concept of malicious damage, these concerns would be addressed via the introduction of an internal appeal mechanism for RTA decisions. The internal appeal decisions would provide additional clarity around the types of damage that will constitute malicious damage for the purpose of section 243 of the RTA.

5. **Consultation question 158: What are the potential benefits and risks of amending the language and scope of the provisions for danger?**

VALS strongly opposes amending the language and scope of the danger provisions as described in option 11.5.

It is important to bear in mind that notices to vacate for danger are immediate notices to vacate. They provide a blunt and speedy instrument for the eviction of a tenant from rented accommodation. For most clients VALS assists, the result of a substantiated danger notice is immediate homelessness. It is therefore crucial that danger notices are only used where there is ongoing danger to persons likely to come into contact with the relevant tenant.

In VALS' opinion, expanding the application of danger notices to situations where the dangerous conduct is in relation to persons other than a tenant's neighbours would be a significant overreach. This is because unlike neighbours, there is no requirement for these other people to attend the premises. They do not formally reside in close proximity to the tenant in question, and as a result, their ongoing presence there can be at best avoided, or at least, managed and lessened.

Second, expanding the application of danger notices to include situations where there is no ongoing danger at the time the notice to vacate is issued would be a further unwarranted overreach. As a matter of common sense, if the relevant danger has passed by the time the landlord issues a notice to vacate, the relevant conduct cannot be said to be serious enough so as to warrant the issuing of

[9] Justice Connect Homeless Law, 'There's no place like home', submission to the RTA review, August 2015. Page 30. Available online at: https://www.justiceconnect.org.au/sites/default/files/Homeless%20Law%20-%20Submission%20to%20the%20RTA%20Review%20%28August%202015%29.pdf

an immediate notice to vacate to a tenant. The removal of this requirement would also lead to absurd and unintended consequences. For instance, a landlord might decide to issue a danger notice to a tenant for an incident that occurred 12 months ago. If the requirement of ongoing danger at the time the notice is issued is removed, there would be no prohibition on a landlord taking this course of action, including where it was in obvious retaliation for a tenant exercising a right under the act (e.g. requesting a repair).

6. **Consultation question 159: What are any alternatives to clarifying circumstances under which a tenant had caused danger to another person that would constitute grounds for termination?**

To avoid confusion, the existing relevant VCAT practice notes referred to in the discussion paper at pages 176-177 could be specifically inserted into section 244 of the RTA as pre-conditions to the issuing of a valid notice to vacate for danger (e.g. section 244 could specifically provide that a notice can only be issued if the danger is ongoing at the time the notice is issued).

As an alternative to preconditions within section 244 itself, these relevant principles could be added as notes at the bottom of section 244 of the RTA.

7. **Consultation question 172: What is the period of time following the due date for rent payment that would be appropriate before action can be taken to negotiate a repayment plan or to terminate a tenancy for non-payment of rent?**

VALS does not support option 11.15.

This proposal will set many vulnerable tenants up to fail. This is because vulnerable tenants who are having difficulty paying rent will be pressured by their landlords to enter repayment agreements, probably without first receiving legal advice. If the tenant then defaults, the proposed model will lead to a swifter eviction process with even more limited discretion for VCAT to adjourn the possession order application than currently exists under section 331 of the RTA. This proposal will only add to the already staggering numbers of rent arrears evictions currently taking place in Victoria.

8. **Consultation question 173: What alternative options are there to incentivise or facilitate timely payment of rent?**

Tenants already know that the result of sustained failure to pay rent will be eviction from the premises. The more relevant question is what role landlords can play to help prevent arrears from quickly accruing, and to preserve tenancies wherever possible, in recognition of the fact that it is in all parties' interests to avoid arrears evictions.

Landlords, real estate agents and VCAT staff-members should be in a position to refer tenants to relevant support services that might be able to assist them with temporary financial brokerage and ongoing support to address underlying causes of the arrears (e.g. mental health supports, issues with Centrelink). This would go some way towards avoiding unnecessary arrears evictions.

9. **Consultation question 175: What are the potential benefits and risks of including repeated late payment as grounds for termination on application to VCAT?**

VALS strongly opposes option 11.17, as it will increase the number of potentially avoidable arrears evictions, and place more vulnerable tenants at risk of homelessness.

10. **Consultation question 177: What are the potential benefits and risks of time limiting compliance orders as under option 11.19?**

VALS supports time limits on VCAT compliance orders. This is a welcome proposal.

Under the existing framework, it is unreasonable and unduly onerous for compliance orders to place tenants only one breach away from eviction for the entire duration of their tenancy agreement. VALS would support a minimum compliance order time period of 6 months, and a maximum period of 12 months.

11. **Consultation question 178: What are the potential benefits and risks of requiring a landlord to apply for a termination order from VCAT for failure to comply with a VCAT order as under option 11.20?**

VALS does not support the introduction of termination orders. We repeat our comments outlined above (see section 3.17(1)).

12. **Consultation question 179: Are there any alternative decision making guidelines VCAT should observe when determining whether a possession order should be made for failure to comply with an order?**

Yes. Regardless of the legal case for eviction, VCAT should be required to consider the reasonableness of any eviction arising from a breach of Tribunal order, along with any pre-eviction checklist provided by the landlord.

We refer to out comments above (see section 3.17(3)).

13. **Consultation question 181: What are the potential benefits and risks of requiring that grounds for termination for use of the premises for illegal purpose include that a conviction be in place as under option 11.22A?**

VALS supports option 11.22A, and the requirement that a conviction or finding of guilt be recorded for a relevant offence prior to a notice to vacate for illegal use being validly issued.

This would ensure that tenants are not being unfairly evicted for alleged illegal use, in circumstances where they are subsequently criminally exonerated for charges arising from the same conduct. This proposal is welcome, because it recognises the serious time differences that exist between determination of possession order applications for illegal use at VCAT (approximately 3-4 weeks from the issue of a notice to vacate), and finalisation of criminal charges arising from the same conduct (anywhere from 3-18 months for charges to be withdrawn during summary case conferencing, or successfully contested in the Magistrates' Court summary stream).

This proposal would also ensure that tenants are not being placed in the difficult position of having to answer questions under oath in VCAT proceedings that might indirectly prejudice their ability to defend future criminal proceedings. The an uneasy tension in these circumstances, has been recognised by the High Court in an analogous context in the case of *Commissioner for Australian Federal Police v Zhao [2015] HCA 5*. In line with this authority, in certain instances, VCAT would be required to stay any illegal use hearing where a tenant would be required to give evidence until the parallel criminal proceedings were finalised.

Option 11.22A would clarify the above situation and ensure the rights of tenants are appropriately safeguarded.

14. **Consultation question 184: How effective would provisions for parting with possession for consideration without consent be in clarifying that use of the property for financial or other form of gain is grounds for termination, as under option 11.23?**

VALS does not support expansion of the existing provisions around subletting and assignment to include parting with possession for consideration. Accordingly, we do not support option 11.23.

15. **Consultation question 187: What are the potential benefits and risks of expanding the grounds for termination for anti-social behaviour as under option 11.24?**

VALS strongly opposes option 11.24.

The inclusion of a new, broad basis for eviction for 'anti-social behaviour' would introduce another method for evicting vulnerable and disadvantaged tenants, for whom the underlying causes of the relevant behaviour can be complex and out of their control (e.g. mental illness, family violence). Given the broad definition proposed in option 11.24, there is also a risk that these types of eviction could be used to retaliate against tenants for other reasons.

From an evidentiary perspective, VALS has concerns about the difficulties a tenant who is unfamiliar with legal processes and the operation of the Tribunal might face in contesting the evidence of a professional real estate agent that they were subjected to threatening conduct. This is relevant because it is likely many of these cases will involve word-on-word evidence about antisocial behaviour. The breadth of the proposed provisions could lead to their abuse by landlords seeking to evict a tenant for other reasons not supported by the legislation.

3.18 Terminations instigated by landlord or owner: tenant not at fault

1. **Consultation question 195: What are the potential benefits and risks of removing the notices to vacate during a periodic tenancy as under option 11.27D?**

VALS supports the abolition of no reason notices to vacate.

As acknowledged in the discussion paper, no reason notices to vacate are confusing, intimidating, and by their very nature, undermine many of the other legislative provisions designed to promote the rights of tenants in possession. It is notoriously difficult to challenge no reason notices as

retaliatory, and this uncertainty means that they continue to be an issue for many tenants who are genuinely afraid they'll be evicted via a no reason notice if they attempt to assert their rights.

The benefits of abolishing no reason notices to vacate would be significant, and would go a substantial way towards correcting the natural power imbalance that exists between landlords and tenants.

In terms of the risks, VALS considers these would be minimal. As acknowledged by the discussion paper, there are a range of other reasons a landlord could seek to recover possession of the premises, both where a tenant is and is not at fault. Landlords who are seeking to evict tenants should be able to rely on one of the existing statutory bases to do so, and should not require no reason notices to vacate.

3.19 Terminations provisions and security of tenure

1. **Consultation question 209: Which of the models most effectively provides an appropriate balance of protections to the tenant against unfair termination of their tenancy, while also providing landlord with adequate confidence that they can manage the risks associated with letting property?**

Whilst VALS does not agree with all aspects of model 1, in light of the contents of this submission, it is the preferred model for security of tenure.

3.20 Terminations instigated by the tenant: landlord not at fault

1. **Consultation question 214: What are any other circumstances in which tenants would be appropriately entitled to give a reduced period of notice of intention to vacate?**

An additional category could include instances where a tenant is required to provide special or personal care to a family member and must vacate in order to provide that care.

Given many VALS clients have close and regular contact with extended family, VALS submits that the definition of family member in the above proposed category should include extended family, as well as persons considered family within the cultural sense of that word as it is understood in Aboriginal communities.

3.21 Access to family violence protections in the RTA

1. **Consultation question 216: Which alternative option do you support and why?**

VALS supports option 12.1B.

This model strikes an appropriate balance with the type of evidence and factors VCAT should be required to consider when determining whether family violence has occurred. Whilst it is important

that the existing framework is improved and greater flexibility is given to promote the rights of survivors of family violence to remain in rented premises, it is also important that VCAT's inquiries in determining whether family violence has occurred are grounded in evidence, and that the risk of potentially irrelevant considerations being taken into account is addressed.

In this context, where VCAT's inquiry is focused on determining if family violence occurred, the proposal under option 12.1B that VCAT can consider 'other evidence of family violence' is sufficiently broad to capture non-intervention order related material.

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

VALS considers the proposed three business day time period to be reasonable and sufficient.

3.22 Terminating tenancies due to family violence

1. **Consultation 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?**

VALS considers that option 12.4A is preferable.

The key advantage of option 12.4A is that there will be a higher degree of finality about the victim of violence's application to terminate the tenancy agreement due to family violence. At the VCAT hearing, all relevant parties' interests can be properly weighed and considered by the VCAT member, and if a finding of family violence is made, all appropriate orders relating to termination of the tenancy, compensation payable, and further orders preventing any database listing can be finalised. This process provides the applicant with the closure they need to move forward after an experience of violence.

Whilst option 12.4B is initially attractive in the sense that it doesn't require the victim to attend VCAT initially, there is still the risk of lingering uncertainties in relation to compensation payable, and possibly further VCAT hearings required in relation to the bond, or where the applicant is later found to be the primary aggressor. The processes under option 12.4B are also relatively complex, and could be more difficult for all parties to understand. In contrast, under the option 12.4A process parties will be more likely to obtain legal advice prior to hearing, and will also be able to receive some limited guidance from the presiding Tribunal member during the hearing.

On balance, VALS considers option 12.4A to be preferable, but notes any applications of this nature must be listed for hearing at VCAT venues where appropriate security arrangements can be made to protect applicants from their alleged perpetrators.

3.23 Residential tenancy database listings in context of family violence

1. **Consultation 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?**

Yes. VALS welcomes these proposals.

3.24 Challenging notices to vacate due to family violence

1. **Consultation question 222: Does this option strike an appropriate balance between protecting a victim of family violence and managing risks to landlords and other co-tenants? If not, how can this option be improved?**

Yes, VALS welcomes this proposal.

Consideration might also be given to whether this provision should also expressly apply to situations where the perpetrator of family violence is a co-tenant at the premises. In these circumstances, the perpetrator would be party to the proceedings, and appropriate measures would need to be put in place to ensure these proceedings could be conducted in a safe manner. The role or input a perpetrator would have in any such proceedings would need to be carefully considered.

3.25 Compensation orders and claims against bond in a family violence context

1. **Consultation question 223: What are the risks, if any, of unintended consequences arising from the options proposed?**

VALS is supportive of both options.

It is crucial that the recommendations of the Royal Commission into Family Violence are given effect through implementation of a clear mechanism for apportioning liability away from victims of family violence, both where the perpetrator is a co-tenant as well as when they are not a party to the lease. The proposed options achieve this purpose and should be implemented as a priority.