

Comments on Heading for Home Residential Tenancies Act Review: Options Discussion paper

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	Reference	Comment
1	General	<p>Professional student accommodation providers are required to manage large numbers of students and balance the sometimes conflicting personal wants of the individual against the safety and wellbeing of the student community. In some cases, this challenge requires the establishment of rules and procedures which would not be necessary or appropriate in the general housing tenancy market. An example would be the need for rules controlling smoking, burning candles, storing inflammables etc that would not normally be found in standard tenancy arrangements. The different requirements for student accommodation arise due to the fact that the tenancy premises are not only the home of the tenant but the home of other students as well. The following key themes are present:</p> <ol style="list-style-type: none"> 1. Safety – large populations of young people are typically at higher risk exposure due to inexperience in dealing with living management issues, new unrestrained access to alcohol etc and usually benefit from rules and guidance for behavioural control. 2. Tenancy commitment. Students are a transient population, who may stay at properties for short periods of time. Tenancy legislation should encourage responsibility on the part of students to hold to contract periods to which they commit, otherwise significant wastage, disruption and cost increase is caused in the allocation of scarce accommodation resources and negative impact on the rest of the student body. 3. Community. A strong sense of community is required to bind together high density populations of students and reinforce student engagement with their academic/technical studies and peer

		<p>students. Student accommodation operators look to build this community spirit through provision of large community areas (outside the leased premises), active community support programs (eg resident assistant, events programs etc) and eliminate negative activities such as inter-student conflicts, bullying, cyber-bullying, etc. Good student community management by necessity requires a more active and interventionist approach than normally found in the general tenancy market and policies and procedures to be in place regarding co-operative living in shared and community spaces.</p>
2	<p>Consultation Question 23: Should each of the prohibited terms listed in option 4.10 warrant inclusion in a blacklist? Option 4.10: Blacklist of tenancy agreement prohibited additional terms... would include</p> <ul style="list-style-type: none"> • a term which purports to make a tenant who breaches the agreement liable to pay a penalty, increased rent or liquidated damages 	<p>We recommend that such a term should not be on a blacklist for safety reasons.</p> <p>When student residents set off fire alarms (e.g. if they smoke in rooms which is prohibited under House Rules/additional terms) the Fire Brigade attend and they may determine that is a 'false fire alarm' because there was only cigarette smoke that set off the alarm and there was no fire. The call out costs are considerable (up to \$2,500 per fire brigade call-out) and are passed on to the offending resident to pay. The pass-through of fines to the person who caused the false alarm is encouraged by the Fire Brigade as it helps to avoid wastage of Brigade resources, brings accountability to student behaviours and avoids de-sensitisation of residents to fire alarm signals.</p> <p>Even though Fire Brigade fines are passed on without further administration, penalty or handling charge to the resident concerned, they could be misunderstood as liquidated damages or penalties and disallowed under Option 4.10.</p> <p>When student residents enter their tenancy or rooming agreements they are clearly warned of the risk of Fire Brigade call outs, how they can be caused, how to avoid them and they are</p>

		<p>told of the the sizes of the fines they will be required to pay.</p> <p>The warning and the pass-through of fines act as a deterrent to the student residents so they avoid risky behaviours with smoking, burning candles and in the kitchens. This 'fine' or 'damages' helps keep shared accommodation safe and should remain.</p>
3	<p>Consultation Question 27: Under option 5.1, for breaches where the remedy requires the party to refrain from doing something, should the required time frame to comply be immediate, as soon as practicable, or some other time frame?</p>	<p>We note that violent tenants may have their tenancies terminated immediately.</p> <p>However in running shared accommodation with strangers there is a heightened need for a student accommodation operator as a landlord to deal with a 'fellow tenant's' dangerous, illegal or offensive behaviour much more quickly than for most tenants of residential properties where the effect of their difficult behaviour is limited to neighbours rather than house-mates. As such, we agree that the time frame should be immediate if the behaviour of the tenant is dangerous, illegal, offensive etc. (e.g. a student resident is violent at the property or harasses a flatmate) then as a landlord we must be able to terminate that violent or harassing resident's tenancy immediately for the safety of all other residents. The notice of breach and termination may need to be concurrent.</p> <p>For lesser breaches other timeframes will be appropriate but the breaches that affect other people in the community are more serious than in regular residential tenancies (see below)</p>
4	<p>Consultation Questions 28 & 29: Which option is preferable in terms of process for successive breaches of duty, and why?</p> <p>What are the risks, if any, of unintended consequences arising with the measures proposed in options 5.2A, B & C</p>	<p>We consider that Option 5.2B – (Abolish the three strikes rule) is preferable but it is not the whole answer.</p> <p>In shared student accommodation (e.g. 6 residents share a kitchen and living room but each person has an individual bedroom and bathroom) if a resident behaves badly, we may want to terminate their tenancy immediately or after one or two warnings depending on the severity of the behaviour and its effect on the safety, well-being or quiet enjoyment of the</p>

		<p>other flat mates or the wider community in the entire property.</p> <p>Ideally there would be no need to apply first to VCAT to issue a termination order in instances of a tenant’s seriously unacceptable behaviour. This is because in shared accommodation with strangers (non-family) the risks of unacceptable behaviour to other residents in shared apartments or in the community generally are much higher than for neighbours in adjoining apartments, especially if there is violence or the threat of it, harassment, excessive noise or certain mental health behaviours to deal with.</p> <p>The unintended consequences of all the options in 5.2 are that in each event a breach notice must be issued and there must be an application to VCAT. As noted above this is not a speedy enough a remedy for serious breaches of duty.</p> <p>Where there are breaches of duty that do not risk fellow residents’ physical safety but constitute nuisance within the property, the need to deal with that resident’s behaviour is more immediate than for most other tenancies where the effect of bad tenant behaviour is limited to external neighbours and a landlord is unlikely to be aware of it.</p> <p>Where the breaches relate to damage to property only, the position would be the same as for most residential tenancies.</p> <p>We note and agree that the breach of duty process is cumbersome</p>
5	<p>Consultation Questions 33- 39 Pets in rented premises option 5.4</p>	<p>We support a ‘no pets clause’ for shared student accommodation.</p> <p>We consider that the shared nature of our premises where several hundred students share apartments with people who are strangers when they move in, means keeping pets is impracticable and this prohibition should be permitted in this type of tenancy.</p>
6	<p>Consultation Question 40 Under option 5.5 should 7 days notice be required for a general inspection?</p>	<p>We favour the current requirement of 24 hours’ notice for general inspections. This is to ensure that , fire safety and health and hygiene standards of the rented property are</p>

		maintained and is particularly necessary in the case of shared accommodation
7	Consultation Questions 51-55 Rights and responsibilities at the end of a tenancy- compensation for breaking a lease	<p>The student accommodation market relies heavily on renting out its student rooms and apartments at the beginning of the 2 university semesters for the year or 6 month terms around January and July. These lease-up periods, particularly at the beginning of the academic year largely determine the occupancy of the student properties. If a student resident breaks the lease for convenience it can be very difficult to re-let the room mid-term and even more difficult to re-let the room/ apartment after exams which is typically 6-8 weeks before the end of the lease. For this reason students are encouraged to find a replacement tenant from amongst their network to avoid paying out the remaining rent for the term.</p> <p>If a break fee is mandatory student accommodation providers will need to increase the weekly rents over a shorter university term period to ensure the business is viable</p> <p>We consider our current arrangements in NSW and Queensland where if students terminate their lease early for convenience works well for both landlord and tenant in the student accommodation market. There the student must either pay rent for the balance of the term or find a replacement tenant for the remainder of the term and pay a one week rental fee for the additional administration charge.</p>
8	Consultation Question 63 Bonds and rent: Which option most fairly balances the needs of tenants in limiting the upfront costs of entering a tenancy, and for landlords to have security that tenants will meet the costs of damage to the property or unpaid rent?	<p>Option 7.1A</p> <p>We have a large number of overseas students and sometimes those students return to their home countries with no intention of returning to Australia owing rent that is in excess of the bond and rent paid in advance.</p> <p>The transient nature of students' stay at student accommodation and the carefree attitude of some students means that the risks of non-payment of rent and property damage are higher than in a conventional rental housing setting.</p>

		<p>It is important that student accommodation companies can recover the full value of the tenancy and damage from tenants, otherwise unrecovered costs inevitably push up the cost of housing for contract abiding students. Non recovery of unpaid rent and damage costs from tenants would not be fair to student accommodation providers and the majority of students who observe their contractual and community obligations.</p> <p>Rooming house residents can only be charged 2 weeks rent in advance and 2 weeks bond. This provides 2 weeks less security than in NSW and Queensland. This poses a significant financial risk to us.</p>
9	<p>Consultation Questions 66 and 67 Bond repayments 66. Which option do you prefer for facilitating bond repayments when parties cannot reach agreement and would you suggest any changes to improve operability of the option?</p> <p>7 Are there administrative protections for tenants under Option 7.3C necessary and /or fair or is the administrative simplicity and balance of the NSW model preferable?</p>	<p>Option 7.2 – Speedier bond repayments when all parties are in agreement: the only issue with this clause is that it should not be the landlord’s responsibility to lodge consent to repay the full bond within 14 days. The tenant should notify VCAT who then notifies the landlord and asks for consent. If the landlord does not object, or remains silent, or gives consent, then VCAT can pay out the full bond. If the landlord objects, option 7.3B should apply. The 14 day timeline is acceptable. This would bring the timeline into alignment with when landlords must lodge a claim against the bond to VCAT.</p> <p>Option 7.3A – Current model strengthened: the new requirement that the landlord has to apply to VCAT seems to be too onerous for the landlord. If there is disagreement about the amount the landlord will withhold, then it is fair to assume the landlord would have provided reasons, cost estimates etc. to the tenant. If the tenant still does not agree them it should not be the landlord to have to apply to VCAT – this should be the tenant’s choice. This option is unfavourable.</p> <p>Option 7.3B – NSW model (automatic bond repayments when a bond claim is not disputed): this option is fair and balanced</p> <p>Option 7.3C – Automatic bond repayments for tenants when a claim is not disputed and evidence based claims for landlords (hybrid of current model and NSW model): this option is unfavourable. Again, the landlord needs to</p>

		apply to VCAT to prevent the full bond repaid to the tenant in case of objections.
10	<p>Consultation Question 75</p> <p>Should there be a requirement to provide a condition report a specified number of days before the tenant is due to take possession of the premises?</p>	<p>Our student accommodation business is run so that one student can exit their apartment on the last day of their tenancy which is the same day as the new tenant takes over a new lease of the same apartment. A condition report of the outgoing tenant is done in the morning and any cleaning done before the new tenant takes possession when a new condition report is prepared.</p> <p>If the RTA requires landlords to provide condition reports a number of days before the tenant takes possession, this would cause significant financial hardship to us as the apartment or rooms are left vacant and without anyone paying rent.</p>
11	<p>Consultation Question 114</p>	<p>Purpose-built Student Accommodation can sometimes fall into both conventional residential tenancy and rooming house categories. It is essential for building and community safety reasons that house rules are in place for student accommodation regardless of whether the accommodation is treated as a conventional tenancy or a rooming house. For this reason, the prohibition on house rules for conventional residential tenancies should not apply in the case of professionally managed purpose built student accommodation.</p>
12	<p>Consultation Question 122</p> <p>Should the cap on rent payable for termination without notice of a residency agreement with a specified occupancy period under option 9.5 be increased from 2 days rent, and if so, what would be an appropriate cap?</p>	<p>There should be no cap on rent payable for termination for convenience. The tenant's obligation should be to pay the remainder of the rent under the agreement until such time as an alternate tenant is found. Unless the tenant is held responsible for commitments made under the lease, significant wastage will occur with students double booking accommodation and leaving vacancy periods as they relocate to alternative accommodation or take short term holidays.</p> <p>In practice, students are not normally exposed to significant break costs as they are only required to pay rent up until an alternative tenant is found. This arrangement ensures efficient allocation of accommodation resources and avoids the chaos and disruption that would ensue if students were not required to hold to their contract time commitments.</p>

13	<p>Consultation Question 123</p> <p>Are there rooms in rooming houses that would still require the provisions of Part 2 rather than Part 3 if the measures in Option 9.5 were introduced with scope for exemptions</p>	<p>Yes,</p> <ul style="list-style-type: none"> • the minimum notice to vacate should be as for Part 2 • the lease breaking rules should also apply • The 1 month bond should apply • The 120 day notice to vacate for no specified reason should not apply <p>These provisions reflect the level of security that a fixed term gives the student resident and are the quid pro quo for the operator landlords</p>
14	<p>Consultation Question 124</p> <p>Are there any other factors that would need to be considered for fixed occupancy residency agreements under Part 3 of the RTA?</p>	<p>The type of residential agreements that we offer for student accommodation require some elements of rooming agreement terms to run the properties safely and appropriately (e.g. House Rules to govern safety and behaviour issues) but they also need some elements of general residential tenancy agreements (e.g. lease breaking rules and higher bond payments that are appropriate for fixed term residential agreements of 6 months or a year).</p> <p>So the other factors to be considered for Rooming arrangements under Part 3 of the RTA for professionally run student accommodation relate to selecting the appropriate Part 2 tenant clauses and some additional terms that are in neither Part 2 or 3 (e.g. terms such as permitting the payment of rent for the whole tenancy period up front. This is frequently requested where a parent chooses to pay 6 months rent in advance for their student child to ensure that they have suitable accommodation for the semester</p>
15	<p>Consultation Question 125</p> <p>Does the ratio for determining which self-contained apartments are 'rooms' under the RTA need to be changed and if so how?</p>	<p>The ratios may give unintended results whatever the numbers. Most of our accommodation has some shared apartments (closer to a rooming arrangement) and some individual studios (closer to a tenancy arrangement). Really they are a hybrid as described in point 13 above and so the ratio test could be counter productive. Perhaps some separate arrangement for professionally run student accommodation could be produced or a hybrid of Part 2 and 3 be created by listing acceptable exemptions</p>
16	<p>Consultation Question 126</p> <p>Where should House Rules be displayed in a rooming house-in residents' rooms, at the entrance, in one or more common area or some combination of these and why?</p>	<p>We consider that there is no need to display House Rules in any of the places suggested. Each resident is provided with a copy on signing the residential agreement/ tenancy and have them to refer to. [In addition they can be accessed on-line]</p>

		We agree with the comments that posting House Rules in common areas and in rooms detracts from the atmosphere of the property as the residents' home
17	Consultation Question 127 What matters would be most suited for inclusion in model rules under option 9.7 and what types of rules are not appropriate	House rules are specific to each property and should not be prescribed. The control is that they must be compliant with the Residential Tenancies Act.
18	Consultation Question 128 How can model rules best accommodate the diversity within the rooming house sector, or should there be different model rule for different segments of the sector?	Refer above
19	Consultation Question 129 Are there any concerns with the measures proposed in option 9.8	Yes, there may be instances when the house rules may not have been introduced or changed in accordance with the strict procedure of the RTA (whatever the rules are, check?) but the offence by the resident was severe and it was justified for the landlord to terminate the offending resident's agreement under the "invalid" house rule, e.g. House rule about disparaging other residents on social media is flouted by the offender in some major way causing distress or severe mental health problems of the victim. It would be unjust for the offender to be allowed to remain at the property
20	Consultation Question 130 Does option 9.9 sufficiently balance the rights of residents with the responsibilities of operators with regard to the frequency of general inspections of a residents' room? (2 month inspection on 48 hours notice instead of every 4 weeks on 24 hours notice)	We do not have a strong view on this proposed change but the right to conduct unplanned inspections without notice where the landlord suspects problems in relation to drugs, weapons, theft, noise pets hygiene and odours is important for other residents' safety and well being and for the protection of the asset
21	Consultation Question 134 Should the RTA specify how an operator must comply with the requirement to ensure external mail is sorted in the internal mail boxes?	No, there should be no requirement to provide a mail box for each room. Very little postal mail is received by our residents that would be put into mailboxes. The majority of mail is parcels from online purchased goods that require collection or registered mail that requires a signature Collection of mail from a central secure reception area deals with security of mail for residents
22	Consultation Question 163	We consider that if a resident has had their tenancy terminated for violent behaviour they

	In what circumstances, if any, is it appropriate for a resident who was served a notice to leave on reasonable grounds (for violence) to be permitted to resume occupancy	should not be allowed back into the property for the safety of all other residents, except to collect their belongings under supervision.
23	Consultation Questions 168-171 on termination because of disruption	<p>In cases of certain serious mental health events, serious disruptive behaviour or other offensive behaviour, we may consider it necessary to terminate the tenancy with notice to take effect immediately. Again this is because of the offending resident's adverse impact on the safety and well-being of their flatmates living in the shared apartment or for the well-being of the rest of the community living in the property.</p> <p>There needs to be a heightened duty on residents to accept and abide by House Rules that require acceptable behaviour to ensure that communal living is an enjoyable experience for all student residents. It is incumbent on us as operators and managers of shared student accommodation to enforce these known and agreed rules fairly and swiftly amongst the community. This means that a tenant's anti-social behaviour is less acceptable in shared forms of accommodation than it would be in residential accommodation where the demised premises are private. For these reasons accommodation providers must have the ability to terminate a disruptive tenant quickly and without undue process.</p> <p>If a landlord in this position terminates tenants for marginal disruption or a single event then the harsh treatment will have an adverse effect on the landlord's reputation and the property as a reasonable and fun place to live. Social media complaints have been an effective method for aggrieved residents to complain about a number of issues, some with justification, some without</p>
24	Consultation Questions 181-183 Termination for use of premises for illegal purpose	<p>Option 11.22 A to require a conviction before termination can take place is far too long for a shared accommodation facility.</p> <p>Additional House Rules would typically require a resident to leave if there was an arrest for a criminal offence that had impacted or could impact the safety and well-being of the fellow residents.</p> <p>It should not require a termination order form VCAT, rather the tenant could apply to have</p>

		the tenancy re-instated if they consider it unjust and not in breach of House Rules
25	Consultation Questions 187 & 188 Option 11.24 expand the definition of anti-social behaviour	<p>When living in shared accommodation premises it is vital that all residents feel safe from harm and the threat of harm. Where a resident causes others harm or they are perceived to threaten to do so in some material way it is important to support the victim or potential victims and this should override the offending tenant's right to remain in the property.</p> <p>This means that the anti-social behaviour definition proposed in option 11.24 is welcome but it does not go far enough for shared accommodation where House Rules regarding anti-social behaviour need to be stringent and enforced fairly.</p> <p>The level of seriousness and repetition of the anti-social behaviour will determine whether it is reasonable to terminate the tenancy.</p>