Fairer, Safer Housing:
Residential Tenancies Act Review
Options Paper

A Submission from the Community Housing Federation of Victoria

The Community Housing Federation of Victoria (CHFV) welcomes this opportunity to make a submission in response to the Options Paper, released by the Victorian Government as a part of its review of the Residential Tenancies Act 1997 (Vic) (RTA).

CHFV is the peak body that represents the not-for-profit community housing sector in Victoria. CHFV's member community housing organisations (CHOs) are committed to providing secure, affordable and decent housing for people on low to middle incomes. Members include the CHOs registered as housing associations or housing providers under the Victorian regulatory framework for non-profit housing providers plus other organisations and individuals interested in housing.

In this response to the Options Paper on Alternative Dispute Resolution, CHFV builds upon its earlier submissions to the Laying the Groundwork Consultation Paper and to the subsequent six Issues Papers.

Background

Why the RTA matters

As social housing landlords, CHOs use the RTA on a daily basis. The RTA provides the principal formal framework under which CHOs relate to their tenants and residents. CHOs are required by regulation under the Housing Act 1983 (Vic) to seek to sustain social housing tenancies wherever possible. The RTA is used as a tool by CHOs to sustain tenancies by:

- providing a frame of reference for the rights and responsibilities of tenants and rooming house residents; and
- the utilisation of enforcement mechanisms through the Victorian Civil and Administrative Tribunal (VCAT) – not as a method of ending tenancies but principally as a means to ensure tenants and residents comply with their obligations and fully appreciate the consequences of not doing so.

Evictions for non-payment of rent or repeated breaches of duty provisions of the RTA are required by regulation and by CHOs' policies to be used as a last resort only. This approach, coupled with a rent-setting approach that keeps rent at or below affordability benchmarks, and a greater ability to link tenants and residents with support, offers tenants and residents a measure of security of tenure not seen in the private rental market.

Summary

CHFV is pleased to see that the Options Paper has incorporated a number of suggestions made in our earlier submissions. These include options that deal with the protection of landlords' staff and contractors, clarification of the breach process and strengthening of the danger, damage and violence provisions and streamlining their enforcement.

As requested we have tried to address your consultation questions. We have not responded to all the questions as there are a number of issues canvassed that have little relevance to community housing.

Keeping the RTA simple

There are a number of options suggested in the paper where choices are given between including lists of requirements in the RTA or setting them out in guidelines issued by the Director of Consumer Affairs Victoria (CAV). CHFV believes that the use of guidelines issued by CAV is greatly preferable because:

- The RTA is already a sizeable and complex Act. Every effort should be made to keep it as simple and easy to use as possible.
- Times change and requirements that may seem appropriate now may not be so in the future. Use of CAV guidelines would enable greater flexibility by avoiding the need to alter legislation or regulations when circumstances change.

We have a similar opinion with regard to adding long lists of items to forms such as the residential tenancy agreement and the condition report. Again we believe that these documents should be kept simple. The use of guidelines issued by CAV is greatly preferable.

Consistent Treatment of Public Housing and Community Housing

In our initial response to the Laying the Groundwork Paper we suggested that the review should consider whether both forms of social housing – public and community – should be treated the same.

Certain provisions of the RTA acknowledge the attributes of social housing which set it apart from private market housing, such as those relating to eligibility. However, these provisions often refer only to the Director of Housing. In other cases, they can also apply to CHOs but use inconsistent terminology to describe CHOs. The establishment of a dedicated regulatory system for CHOs under the Housing Act means that it should be simple to describe what community housing is (and is not).

The Options Paper includes the term social housing (comprising both public and community housing) in a number of options, but is not explicit in saying that this will happen throughout the RTA. It would be good if this could be clarified.

Part A: Overview

2 Snapshot of current market issues

2.4 Policy objectives for a modern framework

Consultation questions

1. Do the proposed objectives meet the needs of the contemporary market and will they continue to do so into the future?
2. What changes could be suggested to further tailor the objectives to the needs of all parties?

CHFV Response:

The current purposes of the RTA include to "…provide for the inexpensive and quick resolution of disputes…."

Over the last decade VCAT residential tenancy cases have become complex and taken longer. This is a trend that has seen a regrettable move away from this original objective. The current wording is much clearer than the proposed "promotes equity and efficiency and reduces unnecessary costs for both landlords and tenants".

2.5 Modern terminology for parties to a residential tenancy

The options paper proposes alternative terminology for consideration and feedback to replace references in the RTA to:

- landlord – property owner, owner or lessor, and
- tenant – property renter, renter or lessee.

Consultation questions

3. Which, if any, of the proposed terms should replace the current references in the RTA to landlord and tenant and why?
4. What other terms could be considered to replace the current references in the RTA to landlord and tenant, and why?

CHFV Response:

It may be argued to a degree that the use of the terms landlord and tenant contributes to the sense of imbalance between the parties. However they are terms that are widely understood in the community and there would seem to be little to be gained except confusion if these terms were abandoned.

In the community housing sector one anomaly is that CHOs managing rooming houses owned by the State government are still described as the "rooming house owner". Indeed, the definition in the RTA says that "rooming house owner in relation to a rooming house which is leased to a person who conducts the business of operating the rooming house, includes the lessee". This is contrary to

normal English usage of the word “owner”. Perhaps this title could be changed to “rooming house manager” to remove the inaccuracy of the current term.

Part B: Starting and maintaining a tenancy

3 Application of the RTA and lease lengths

Consultation questions

5. What costs or risks could arise from the changing the scope of the RTA to cover longer fixed term agreements as per option 3.1?
6. What are the potential benefits of amending the RTA to cover longer fixed term agreements as per option 3.1?
7. What are any other relevant considerations or implications of amending the scope of the RTA?

Consultation questions

8. What are the potential benefits and risks of developing an optional prescribed long-term lease as under option 3.2?
9. What features should be included in a long-term agreement to provide the correct balance of incentives for tenants and landlords?
10. What features would not be appropriate for inclusion in a long-term lease agreement?
11. What are the potential benefits and risks of providing the option for tenants to extend fixed term lease agreements as under option 3.3?
12. What other relevant considerations are there for facilitating long-term leases for tenants and landlords who may be interested in this type of arrangement?

CHFV Response:

Tenure in community housing is generally run as periodic tenancies, which remain on foot unless the tenant elects to leave or if the tenancy becomes unsustainable owing to the tenant’s own conduct. Accordingly, CHFV’s members do not generally have a practice of offering fixed term tenancies. If the RTA was amended to allow for fixed term tenancies of greater than five years, or to otherwise encourage landlords and tenants to agree longer-term leases of 2-5 years duration, it is unlikely that this would have much application to community housing. CHOs are generally not looking for tenants to make a commitment to stay in housing for a particular period, taking the view that the housing should be there for the tenant as long as the tenant needs it.

Looking at the private market it is interesting that provision for 5-year terms has been present for many years but this is rarely used. The options paper suggests removing the five-year limit on the scope of the RTA (3.1) and providing for the option for tenants to extend fixed term leases for a subsequent period (3.3). These suggestions are good in principle but are unlikely to change actual practices by real estate agents. The CHFV submission on the Security of Tenure Issues Paper

suggested that possible solutions could be found in reducing financial incentives for agents to write shorter leases, or providing tax incentives for owners to write longer leases as suggested in the issues paper. As we said then, these are both outside the scope of the RTA but the Review could make recommendations to government.

4 Rights and responsibilities before a tenancy

Sections 4.1 to 4.5

These sections deal with issues like discrimination and privacy. CHFV does not have any issues with the options presented. They would be improvements for tenants in the private rental market.

CHFV would like to point out that any provisions made in these areas should not hinder the operations of the new Victorian Housing Register as a database for the allocation of tenancies in social housing in Victoria. For example, section 142E of the Housing Act empowers the Director of Housing to establish priority categories for the purposes of identifying the relative needs of eligible applicants for social housing. This will include a category for applicants aged over 55 years.

4.6 Terms of tenancy agreement

The Options Paper puts forward three suggestions regarding tenancy agreements:

- Option 4.9 – A comprehensive standard prescribed tenancy agreement.
- Option 4.10 – Blacklist of tenancy agreement prohibited terms.
- Option 4.11 – Offence to include invalid or prohibited term.

It then provides two alternatives for enforcement of additional terms:

- Option 4.12A – Maintain status quo for enforcement of additional terms, or
- Option 4.12B – Additional terms enforceable, with limited exceptions.

Consultation questions in relation to options 4.9 to 4.12B

22. If a more comprehensive tenancy agreement was introduced in line with option 4.9, which requirements of the RTA should be included as prescribed terms and which should not be included?
23. Should each of the prohibited terms listed in option 4.10 warrant inclusion in a blacklist, and should any further terms be included?
24. Is there a reason why a contracting out offence, as set out in option 4.11, should not be introduced in Victoria?
25. Is option 4.12A or option 4.12B preferable, and why?
26. Under option 4.12B, should the processes for a breach of duty apply equally to breaches of additional terms, or should the process for enforcing compliance with an additional term be different?

CHFV Response:

The current tenancy agreement is a simple document that is relatively easy to follow for both parties. CHFV would be concerned about making it more complicated. The existing simple form with provision for additional terms is more user friendly and allows greater flexibility.

In general, CHFV members prefer the status quo with regard to enforcement of additional terms, as described in Option 4.12A. However we think that there should be specific enforceable conditions permitted for social housing, including:

- Provide continuing details of household composition and income (as required by DHHS – the government funding body)
- Participate in therapeutic or training programs in specialised community housing (this would provide incentive to community landlords to give participants tenancy rights rather than managing properties outside the RTA as health or educational facilities).
- Participate in an exit plan in transitional housing – see our previous comments in regard to sections 262A and 287A.

5 Rights and responsibilities during a tenancy

5.1 Processes for breach

Consultation questions

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?

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

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

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?

31. Which obligations of landlords and tenants should not be subject to the breach of duty process?

32. Should the RTA differentiate between a breach of duty and a breach of contract, and what should be the remedy and process for enforcement in each instance?

CHFV Response:

CHFV strongly supports option 5.1. For breaches where the remedy requires the party to refrain from doing something, the required timeframe to comply should be immediate. This addresses the problem that the current process does not allow the other party to serve a second breach notice or apply to VCAT for a compliance order until the 14 day window has elapsed (for example, the tenant served with a breach notice could continue to disturb the neighbours for a further 14 days plus postage before the landlord could take any further action). CHFV believes that since the notice in these cases requires the person to stop doing something, rather than to do something, the

appropriate timeframe would be immediately. For requirements to do something, the current timeframes should remain.

Most CHOs tend to apply for a compliance order after the second breach in an effort to preserve tenancies and do not rely on the "three strikes" rule. Accordingly, Option 5.2C (abolition of the "three strikes" rule) is appropriate. In our members' experience VCAT members are generally reluctant to give orders of possession for three strikes applications in any event. Option 5.2C would reflect the effective status quo.

Option 5.2B would provide the option for a landlord to seek a termination order instead of a compliance order in response to a failure to comply with a breach of duty notice. As CHOs seek to sustain tenancies, they generally use the breach process to bring about compliance with the tenancy agreement and not to the end of the tenancy. Where a serious breach has occurred and where immediate termination is appropriate, CHOs would instead prefer to rely on the provisions discussed in parts 11.1.3 to 11.1.6 of the Options Discussion Paper (subject to our comments on those areas).

5.2 Pets in rented premises

Consultation questions

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

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

35. Under option 5.3B, what cleaning-related obligations would be appropriate for inclusion in an optional clause in the standard prescribed tenancy agreement?

36. How should option 5.3A and option 5.3B distinguish between costs and cleaning related to the pet, and costs and cleaning related to the regular bond and state of the property?

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

38. Is option 5.4 likely to facilitate reasonable compromises to be made in relation to pets in tenancies, and what other options could facilitate reasonable compromises?

39. What criteria would be appropriate for VCAT to consider under option 5.4, and should any other criteria be considered

CHFV Response:

CHFV is not in favour of pet bonds. We believe they would disadvantage lower-income tenants with pets. We also think that including pet-related cleaning obligations as suggested in Option 5.3B is not a good idea. Tenants with pets should be held to the same cleaning obligations at the end of a tenancy as any other tenants. Both option 5.3A and option 5.3B would be unlikely to incentivise

more landlords to accept more tenants with pets. In fact, by alerting landlords to the presence of pets they may have the opposite effect.

In general CHFV members are happy with the status quo in regard to pets in rented accommodation. They believe that the other existing duty provisions that cover interference with the peace, nuisance and damage are adequate to deal with problems caused by pets. However, if Option 5.4 were to be adopted, the criteria listed for consideration by VCAT would seem to be reasonable.

5.3 Rights of entry

Consultation questions

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?

CHFV Response:

This is the only question of major relevance to community housing. CHFV members would not have a problem with notice being increased to seven days for general inspection or valuations.

5.4 Sub-letting and assignment

Consultation questions

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?

47. How should the arrangements in option 5.10 be defined, and should the reference to consideration be confined to monetary consideration?

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?

49. Is option 5.12A or option 5.12B preferable, and why?

50. For option 5.12B, what would be an appropriate cap for a fixed assignment fee?

CHFV Response:

The options listed have obviously been prompted by the recent phenomenon of tenants listing all or part of their rented premises as short-term accommodation on platforms such as Airbnb without the landlord's consent.

CHFV is pleased that option 5.10 includes a statement that it would not be unreasonable for a social housing landlord to withhold consent because it would disadvantage people on a waiting list. (This should include the now-established Victorian Housing Register.) We are concerned however that the option might capture tenants who are having friends or relatives in their homes for short stays. The reference to consideration should definitely be confined to monetary consideration. We do not favour a fee being charged for consent.

6 Rights and responsibilities at the end of a tenancy

Sections 6.1 and 6.2

These are not relevant to community housing.

6.3 Lease breaking in special circumstances

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?

CHFV Response:

CHFV believes that the special circumstances outlined in option 6.5 are appropriate. We are particularly pleased with the inclusion of a tenant being offered and accepting accommodation in social housing (public or community housing). All of our members have seen circumstances where low-income tenants have been offered social housing, but had to refuse it because of the very high costs of breaking a lease early. The result is that they continue to struggle in poverty caused by the high cost of private rental.

6.4 Goods left behind

Consultation questions

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

60. Under option 6.7, to what extent should the RTA set out the reasonable steps a landlord must take to attempt to notify a former tenant about goods left behind?

61. In what circumstances are landlords most in need of assistance from CAV for advice and assessments in relation to goods left behind?

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?

CHFV Response:

Option 6.7 has CHFV approval as it removes the requirement for landlords to publish a notice.

We believe that the circumstances where landlords would need to contact CAV under option 6.8 are appropriate.

7 Bonds and rent

7.1 Maximum bond amounts and rent in advance

Consultation questions

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

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

CHFV Response:

CHFV supports option 7.1C. The current exemption is far too low and takes in a considerable proportion of Victoria's rental housing stock.

7.2 Bond claims

Consultation questions

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

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?

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

Some CHFV members charge bonds and CHO tenants are eligible for the DHHS Bond Loan Scheme. Other CHOs do not charge bonds at all. Our members who do charge bonds do not report any significant issues with the current bond claim process. CHFV is supportive of measures to make the bond claim processes fairer and more straightforward for landlords and tenants generally, but does not have a particular view of the efficacy of the various options presented.

7.3 Frequency of rent increases

The paper proposes two options to change the way rent increases work:

- Option 7.4 – Annual rent increases.
- Option 7.5 – Disclosure of rent settings in fixed term leases.

Consultation questions

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

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

CHFV Response:

CHFV members have varying responses to restricting rent increases to once per year. Many CHFV members only review rents annually so removing the ability to increase rent every 6 months would not present a problem. However, many others do review rents six-monthly.

Given that CHOs fund most of their ongoing long-term housing programs from rent paid by tenants, changes to these provisions of the RTA could have unintended consequences for the viability of their housing programs.

In this context, we note that the question of rebated or income-based rents in public and community housing has still not been addressed. We quote from our previous submission:

> *Most CHOs calculate rents based on either a percentage of gross household income or a proportion of the market rent of the property, or a combination of both. Where rent is based on household income, this can be a complex process which requires a tenant to provide reasonable details of household income. Household income can change dramatically, either through changes in household composition or changes to a tenant's employment status. The regime in the RTA, which requires 60 day notice of rent increases and for rent increases no more than every 6 months, is inflexible and not well-adapted to this process. For example, a CHO may be prevented from increasing a tenant's rent even when a tenant has informed the CHO that they are earning additional income, if a rent review has already been undertaken recently.*
>
> *Some CHOs respond to this complexity by separating out notices under the RTA (used to set a market or maximum rent) with a separate process which calculates the tenant's entitlement to a rental subsidy. These processes are complex and difficult for tenants to understand.*
>
> *CHFV acknowledges that this is a difficult issue. The needs of CHOs to maintain their financial viability through appropriate rent-setting must be balanced against the rights of tenants to a clear and transparent process, proper notice of rent increase and to appeal rental assessments if unsatisfied with the outcome. What the review should consider is*

whether any amendments could be made to the RTA to better reflect the realities of the rent-setting process to provide more certainty to both CHOs and tenants.

For this reason, we do not support Option 7.4 without further allowances in the RTA for adjustments to rent in social housing where rent (or a rent rebate) is set based on total household income.

CHFV supports disclosure of rent setting during a fixed term tenancy.

7.5 Rent payment fees and methods

Consultation questions

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

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

CHFV Response:

CHFV supports options 7.6 and 7.7.

There is a possibility that requiring private landlords to accept Centrepay payments could lead to them incorporating the Centrelink charge for this service in their rent setting. It would be an internal calculation, as the agreement prohibits them from explicitly charging the tenant for this service.

7.6 Rental bidding

Consultation questions

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

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

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

CHFV Response:

CHFV believes that the RTA should regulate rental bidding and prefers option 7.8B where rentals would have to be advertised at a fixed price and no bids accepted.

8 Property conditions

8.2 Condition reporting – Measuring changes in a property's condition

Consultation questions

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

76. Alternatively, should the condition report be completed at the time the tenant is presented with a tenancy agreement for signing? Are the premises likely to be vacant at that time so as to enable an accurate condition report to be completed?

77. Do the proposed changes to the contents of the condition report strike a balance between relevance and ease of completion? Should more details be included (such as water and power meter readings)?

78. What property features particularly relevant to other tenure types should be documented in a condition report?

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

80. Does the proposed inclusion of photos in the report mitigate the risk of disagreement with the contents of a condition report?

81. Are the proposed condition reporting triggers adequate? Should a condition report be required more or less often?

CHFV Response:

CHFV believes that providing the tenant with a condition report on or before the day they move in does give the tenant sufficient time to determine whether vacant premises are suitable for occupation. We would be reluctant to see the condition report become any more complicated than it already is.

Five days after occupation is too long for the tenant to complete and return the condition report. The purpose of the condition report is to establish the condition of the building at the time the tenancy commences. The longer the gap between the tenancy commencing and the condition report being returned, then the greater chance there is of damage occurring and a debate arising between landlord and tenant over whether the damage was new or pre-existing.

CHFV believes that the proposed inclusion of photos in the report would mitigate the risk of disagreement with the contents of a condition report.

CHFV does believe that the proposal to do a condition report each time an inspection is completed is not a desirable suggestion. Conducting a condition report properly is a time-consuming task, especially once a property is tenanted. This would be onerous for landlords in terms of both work and time commitment, and an unfair intrusion on tenants, who are entitled to peaceful enjoyment of the property. An inspection during a tenancy should just be a simple check to make sure that the property is being kept reasonable clean, there is no damage, there are no repairs required, and there are no structural issues. It should not be expanded to involve a full condition report.

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

Consultation questions

82. Other than the current test of reasonableness, and the proposed Director's guidelines, what other factors might VCAT consider when assessing whether a property has been provided or left in the condition required by the RTA?

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

84. What specific tailoring of the options is required to assist the parties

CHFV Response:

CHFV believes that the proposed Director's guidelines would be adequate for assessing whether the condition meets the requirements of the RTA.

8.4 Locks and security devices

The paper suggests 2 stand-alone options:

- Option 8.11 – Single action deadlocks on external doors.
- Option 8.12 – Requirement for reasonable security measures.

Consultation questions

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

86. What other security measures (for example, lockable screen door, sensor lighting) could landlords reasonably be expected to provide?

87. Could these options be applied to other tenure types without significant adaptation?

CHFV Response:

CHFV believes that a requirement for deadlocked external doors would improve security in rental properties. This is standard practice for many of our members already.

8.5 Health, safety and amenity standards at point of lease

Consultation questions

88. In light of available evidence on current property conditions, how difficult would it be in practice for a property to achieve compliance with basic minimum standards prior to lease?

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

90. Do any of the features listed go beyond basic standards and, if so, could they be addressed through other means (for example, by permitting particular modifications or via the tenant adopting their own solution – such as a portable air conditioner)?

91. What is an optimal transition period for ensuring that landlords have adequate time to bring their properties up to any legislative standards?

92. Should a landlord be able to lease out a property that is fit for habitation, clean and has working features, regardless of whether it meets any other standards?

93. Would allowing conditional non-compliance with any standards undermine or weaken the landlord's incentives for addressing defects in their property?

94. Would the proposed additional remedies and protections against eviction encourage tenants to take possession of properties that are in poor condition at the start of a tenancy?

CHFV Response:

CHFV supports the introduction of standards for rental housing. The absence of these has been a long-standing anomaly in the regulation of residential tenancies in Victoria.

Implementation of these standards should be staggered to avoid a large financial impost all at once for CHOs (and private landlords).

We notice that Option 18.13C suggests that social housing reletting standards could be adapted for general tenancies. However, there is no such defined set of "social housing standards". CHOs are required under the Housing Act by its prescribed performance standards (Performance Standards) to manage their assets in a manner that ensures suitable properties are available now and into the future, including by setting and meeting relevant property condition standards. The Options Paper may be referring to the Public Housing Reletting Standards, which are a very large and cumbersome set of documents that would not be easy to use for this purpose.

Energy for the People (EFTP) and CHFV have been working together on a number of projects to improve energy efficiency and reduce the carbon footprint of community housing in Victoria. We have jointly prepared the following material on this topic:

EFTP/CHFV cautiously supports the need for minimum energy efficiency standards, particularly in terms of "value for money" improvements to social housing properties.

Since September 2016, CHFV and EFTP have been developing business cases for seven community housing organisations in Victoria, with a particular focus on the installation of solar power as one of the most simple to implement, cost-effective measures with long-lasting benefits. Simultaneously, EFTP have been facilitating implementation of $5m worth of investment in energy upgrades in community housing properties in New South Wales, and working with a further four housing providers in Victoria to implement cost-effective energy / energy efficiency upgrade measures.

The current study has focused on rooming houses, apartment buildings and aged care facilities. Noting that solar power does not directly impact the fitness of properties for habitation, the ability to reduce energy costs through the implementation of solar power does mean that energy efficiency, which improves the health and wellbeing of tenants (but may not provide a clear financial benefit), can be included in a business case using a blended simple payback. However, there has proven to be a wide distribution of costs and benefits even across these three property types, demonstrating that the need for specific, tailored business cases for individual stand-alone properties in social housing (and the private rental market, for example) is required prior to recommending investment in individual circumstances.

Based on upgrade projects with housing providers across Victoria and New South Wales, it is clear that achieving minimum energy efficiency standards across *all* housing properties (community housing and beyond) will be a long-term commitment. This can be most readily achieved in partnership with government (particularly in properties owned by the Director of Housing but managed by the community housing sector).

Given the likelihood of changes in public policy around these issues over time, we recommend a policy and program focus on innovation within the private and NFP sectors, to ensure that support for the implementation of minimum energy efficiency standards (and beyond) can be provided on an ongoing basis.
For example, support for the development of platform solutions and business models, which close the landlord/tenant split incentive while addressing barriers such as resource and time constraints, would enable energy efficiency improvements to the entire Victorian housing stock on an ongoing basis. These solutions can also be supported to include social procurement and impact investment opportunities (such as that currently being implemented by CHFV and EFTP), which help address disadvantage in a systematic way, and enable an ongoing program of implementation, regardless of future government subsidies or support.

8.6 Condition of premises during a residential tenancy

Consultation questions

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

96. Are additional measures needed to prevent tenants from being required to take on onerous maintenance activities?

97. Under what circumstances would it be acceptable for the landlord and tenant to agree to different maintenance arrangements?

CHFV Response:

The list of maintenance activities includes "providing the tenant with any particular instructions relating to the use and/or cleaning of particular property features or fixtures". In practical terms manuals for appliances, etc. are often long gone after a property has been tenanted a number of times. It should be clear that these instructions would not be required to be written, and could be verbal, or, in many cases, the tenant would able to access these materials online.

The list also includes "servicing any gas and/or electrical appliances at least once every two years". This is certainly necessary for heaters, but with other appliances appropriate servicing regimes can be longer – up to five years, depending on the nature of the appliance. It would not be appropriate to include two years as a catch-all interval as it could impose an unnecessary impost for little benefit.

The list includes pest control as a duty for the landlord. This is very reasonable but there should be an exemption for this if the pest problem was caused by the tenant's negligence, e.g. failure to keep the property in a clean and hygienic state?

CHFV believes that the maintenance duties should be in separate CAV guidelines and not in the tenancy agreement. Again we believe that the tenancy agreement should be kept as simple as possible.

8.7 Modifications

Consultation questions

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

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?

100. Are there any disadvantages to continuing to strictly regulate modifications in other tenure types?

101. Would the use of a suitably qualified person reduce landlord concerns about approving a modification?

CHFV Response:

CHFV members prefer option 8.20A, where the tenant must seek the landlord's consent for modifications but the landlord may not unreasonably refuse consent to certain modifications in certain circumstances (minor, health and safety, energy efficiency, disability, telecommunications). See also our comments in part 12.3 in relation to modifications in respect of risks from family violence.

Option 8.21 would allow a landlord to require a tenant to restore changes, but in the case of health, disability, ageing, safety or security related modifications, landlords would have to demonstrate that retaining the modification at the end of the tenancy would cause them hardship before they can request that a tenant remove it. CHFV does not see this as a problem.

8.8 Liability for access to services

Consultation questions

102. Should tenants be able to dispute the imposition of a supply related charge in social housing?

103. Should the list of fees and charges borne by landlords also include pump out charges for septic tanks?

104. If park / site owners were able to recover supply or usage charges for bulk metered utilities, what types of information would they base their calculations on?

105. Under what circumstances would telecommunications infrastructure not amount to a capital improvement?

CHFV Response:

Tenants should be able to dispute the amount of a supply related charge in social housing but not the imposition of a charge.

CHFV believes it would be reasonable for the landlord to be responsible for the cost of installing a telephone landline and a television aerial (but not for activating or using such infrastructure).

8.9 Reporting and addressing damage

Consultation questions

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

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?

108. Apart from email, what other effective communication channels could be used to ensure that landlords or property managers are able to contact tenants in order to ensure that any issues relating to unrepaired damage is resolved?

CHFV Response:

CHFV believes that the proposed rewording of the tenant's duty would make it easier for the parties to understand what is expected in terms of the tenant not damaging the property.

We assume that the list of examples of damage under Option 8.25 includes a few examples and is not an exhaustive list.

As well as an email address tenants should be required to provide a mobile telephone number, contact details for next of kin, and contact details of a support worker (where they have one).

The description of damage needs to be in CAV guidelines that VCAT would have to use, rather than in the RTA. Again, we are desiring to keep the RTA simple, and avoiding the need to alter legislation in response to new technologies or changing community standards.

8.10 Resolving disputes about repairs

Consultation questions

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

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?

111. What unanticipated impacts would these options have on either party?

112. How well would these options translate to other tenure types?

113. Are any further options needed to ensure that requests for repairs are reasonable

CHFV Response:

CHFV members believe that some of the new items that would be included in Option 8.29 go beyond what would normally be considered an urgent repair. They could still be classed as non-urgent repairs that a landlord would be required to complete, but not as quickly. This may be an area where it is appropriate that CAV guidelines provide further detail on what is classified as an urgent repair.

CHFV members consider that the proposed changes in option 8.32 would improve the existing process for handling repairs. Tenants have a right to have urgent repairs dealt with more promptly.

Option 8.35 (a landlord's maintenance bond) would be a significant and unfunded financial burden for CHOs. Accordingly, CHFV does not support this for CHOs. Tenants who are unhappy with the CHOs' maintenance service have access to the CHOs' complaints service (required under the Housing Act) which includes referral of unresolved complaints to the Housing Registrar for investigation and determination.

9 Rooming houses

9.2 Declared rooming houses

Consultation question

115. Are these any concerns with permitting registered housing agency buildings to be declared as rooming houses, in the manner outlined in option 9.2?

CHFV Response:

Option 9.2 reflects submissions by CHFV on this issue and CHFV supports this. As the Options Paper states, rooming house-type buildings that have self-contained apartments still have many of the same features as traditional rooming houses, with common area corridors and stairways, high density close proximity living and residents with complex needs and difficult behaviours. It is important that managers of these buildings have the ability to use enforceable house rules and shorter compliance periods for breach notices.

9.5 Tenancy agreements in rooming houses

Consultation questions

121. What outcomes would arise under option 9.5 for current occupants of rooming houses, for operators and for the rooming house sector more broadly?

122. 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?

123. 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?

124. Are there any other factors that would need to be considered for fixed-occupancy residency agreements under Part 3 of the RTA?

125. Does the ratio for determining which self-contained apartments are 'rooms' under the RTA need to be changed, and if so, how?

CHFV Response:

Option 9.5 reflects a suggestion in the CHFV submissions. CHFV supports this option. At the moment rooming house residencies are all periodic and there is no provision for a fixed term residency agreement. Rooming house managers have expressed a belief that being able to have fixed term residencies would be a valuable tenancy management tool. It would also be useful in educational and health-related accommodation facilities where managers wish to provide residents with rights under the RTA but the accommodation is attached to a fixed-length training or therapeutic program.

CHFV members cannot see any problems with removing the ability to have a tenancy agreement in a rooming house.

9.6 House rules

Consultation questions

126. Where should house rules be displayed in a rooming house – in residents' rooms, at the entrance, in one or more common areas, or some combination of these – and why?

127. What matters would be most suited for inclusion in model rules under option 9.7, and what types of rules are not appropriate?

128. How can model rules best accommodate the diversity within the rooming house sector, or should there be different model rules for different segments of the sector?

129. Are these any concerns with the measures proposed in option 9.8?

CHFV Response:

CHFV believes that house rules should only be displayed in residents' rooms. As we said in our submission on Alternative Tenures, our members try to make rooming houses as homelike as possible, minimising signage in common areas (except for fire safety signs) to try to avoid an 'institutional' feel to the premises.

CHFV does not support the idea of model rules due to the diversity of the rooming house sector in terms of client groups and building types.

9.7 Pets in rooming houses

CHFV endorses the Option Paper's recommended retention of the current provisions.

9.8 Rights of entry

Consultation questions

130. Does option 9.9 sufficiently balance the rights residents with the responsibilities of operators with regard to the frequency of general inspections of a resident's room?

131. Should the notice period for a two-monthly general inspection of a residents' room be extended to 48 hours under option 9.9, or is 24 hours adequate?

CHFV Response:

CHFV members managing rooming houses believe that option 9.9 would sufficiently balance the rights of residents with the responsibilities of operators with regard to the frequency of general inspections of a resident's room.

They would also not have a problem with the notice period for a two-monthly general inspection of a residents' room being extended to 48 hours under option 9.9.

9.11 Personal security and security of mail

Consultation questions

134. Under option 9.12, should the RTA specify how an operator must comply with the requirement to ensure external mail is sorted into the internal mail boxes?

135. In the alternative to option 9.12, what other measures, if any, could be introduced to protect the security of residents' mail?

CHFV Response:

Most CHFV members running rooming houses have provided external mailboxes for every room. We would think that is much less cumbersome than requiring sorting into individual mailboxes.

9.12 Quiet enjoyment of other residents

The paper suggests:

Consultation questions

136. Does option 9.13 adequately balance the interests of the resident in question and the interests of other residents in the rooming house?

137. Are there legitimate circumstances in which conduct 'near' a rooming house should be captured by this duty owed by residents?

CHFV Response:

CHFV strongly believes that the reference to near the rooming house should be retained. Rooming house residents have a right to privacy and peace and quiet. If whatever another resident is doing outside the house is near enough to disturb these rights then the rooming house owner needs to have a means of dealing with this.

Part C: Dispute resolution and ending a tenancy

10 Dispute resolution services and mechanisms

10.3 Binding agreements, orders and determinations

Consultation questions

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

143. What other features or functions if any, should be delivered by a specialist administrative dispute resolution service to ensure that outcomes that are fair, fast, informal, and provide certainty to the parties in a non-adversarial environment?

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

CHFV members already try to negotiate matters before seeking an order at VCAT. When disputes arise during the course of a residency their first response is to contact the tenant and see if the matter can be sorted out by mutual agreement. For instance, if a rent payment is not made the CHO will contact the tenant to discuss why the payment was missed, what they can do to assist the tenant, and organise a generous repayment plan that ensures arrears are slowly caught up without jeopardising the tenant's ability to make ends meet with the other expenses in their life. If there are behavioural issues, again the CHO will contact the tenant to discuss these and see what both parties can do to remedy the situation. Progression to formal dispute resolution via official notices to the tenant and applications for VCAT hearings only occurs once these other options have been exhausted.

CHFV's concern is that a specialist administrative dispute resolution service process would go along a path that a CHO has already explored and could further lengthen the time it takes to resolve a matter.

10.4 Quality of decision-making by VCAT

Consultation questions

145. What further information is required to determine the extent to which there is a problem with the quality of VCAT decision-making?

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?

147.	What are any other features or mechanisms that would address the issues and be effective for both VCAT and the parties to a dispute?

CHFV Response:

CHFV does not believe that there is further information required to determine the extent to which there is a problem with the quality of VCAT decision-making. The fact that all the major users of the Tribunal (including usual opponent bodies in disputes) agree that there is a problem means that this needs to be addressed.

CHFV has participated in a joint submission with others users of VCAT on developing Option 10.4A. We support that submission.

11 Terminations and security of tenure

11.1 Terminations instigated by landlord or owner: tenant at fault

Consultation questions

151.	What are the potential benefits and risks of introducing a termination order process to the RTA?
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?

CHFV Response:

CHFV supports the idea of replacing the time-consuming and confusing notice to vacate and separate application for a possession order with a single application for a termination order. Under the current system our members have to serve on the tenant two separate notices containing much the same information, but can only apply to VCAT once the notice to vacate is deemed to be served. Given the new postal times this can cause significant delays. We also support the Option Paper's observation that the termination order process would be particularly beneficial to those tenants who would otherwise vacate a rented premises without realising that they had the right to challenge a notice to vacate in VCAT.

Given that it is usual for parties to wait around four weeks after the application is made for a non-urgent hearing, shortening the processes by requiring the landlord to serve one notice (and not two) notices) to the tenant should not materially disadvantage tenants who are preparing to contest a matter at a hearing.

11.1.2 VCAT decision-making process in granting termination and possession orders

Consultation questions

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?

154. What alternative options are there to ensure VCAT decisions regarding possession adequately take into account the reasonableness of the termination and the hardship of the tenant?

CHFV Response:

In CHFV's members' experience, the current grounds for VCAT members to exercise discretion in applications for possession in the RTA and the Victorian Civil and Administrative Tribunal Act 1998 (VCAT Act) generally sets an appropriate balance. For this reason, CHFV does not support Option 11.2, particularly in relation to applications for possession in respect of damage, danger, violence, disruption and anti-social behaviour where there are serious threats to the health and safety of other people or property. Option 11.2 is worthy of further consideration in respect of the breach of duty process and illegal use.

11.1.3 Damage

Consultation questions

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?

156. What are any potential benefits and risks of requiring a termination order from VCAT in lieu of giving a notice to vacate?

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

CHFV Response:

CHFV believes that the Options Paper's approach to clarifying the type of damage and the circumstances under which the damage is caused are appropriate.

We welcome the paper's suggestion that damage be expanded to include:

"if the tenant had intentionally or recklessly caused or permitted serious injury to the landlord, the landlord's agent, an employee or contractor of either, or a neighbour or person on neighbouring property or premises used in common with the tenant."

However, it is perhaps confusing to place this provision in the damage section. These provisions should be in a separate section, or perhaps under danger.

11.1.4 Danger

Consultation questions

158. What are the potential benefits and risks of amending the language and scope of the provisions for danger?

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

160. What are potential benefits and risks of removing VCAT's discretion to make possession orders based on the likeliness of a recurrence of the behaviour?

161. What are the potential benefits and risks of requiring termination by application to VCAT?

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

CHFV Response:

CHFV agrees that the wording of the danger provision needs to be modified in the manner suggested in Option 11.5. Acts that cause danger should be seen as a very serious matter and it is very difficult for VCAT to predict the likeliness of a recurrence of the behaviour.

The effect of this will be that more tenants that display dangerous behaviour will be evicted. This will be a great benefit to the safety and peace of mind of neighbours and fellow rooming house residents. We do understand the position of tenant advocacy services that are concerned about these provisions resulting in people being evicted into homelessness. We believe that government needs to invest in appropriate supportive housing options for people with complex support needs. This comment also applies to evictions for violence and disruption in the sections that follow.

11.1.5 Termination by a notice to leave for violence on managed premises

Consultation questions

163. In what circumstances, if any, is it appropriate for a resident who was served a notice to leave on reasonable grounds to be permitted to resume occupancy, and how can the landlord/operator ensure the safety of other residents against future harm from that resident?

164. Should a landlord or operator be able to serve a notice to leave on a resident due to the conduct of their visitor in the manner proposed in option 11.8, or should this ability be confined to particular circumstances?

165. Is there any other practical information that should be included for a suspended resident on an updated notice to leave, other than the information noted in option 11.9?

166. Are there any practical issues that arise for landlords or operators, suspended residents and their representatives under the proposal in option 11.10?

167. Under what circumstances may it be necessary to adjourn an application under option 11.11?

CHFV Response:

As with the danger suggestion CHFV strongly agrees that VCAT must terminate a tenancy if it was appropriate to give a notice to leave. Violence should be seen as very serious matter and it is very difficult for VCAT to predict the likeliness of a recurrence of the behaviour.

11.1.6 Disruption

Consultation questions

168. What is an appropriate notice period for termination for disruption?

169. What are the potential benefits and risks of removing VCAT discretion to make possession orders based on predictions of future behaviour?

170. What are the potential benefits and risks of requiring a landlord to apply for a termination order from VCAT as described under option 11.14?

171. What are any alternative considerations or procedures that would be appropriate for terminations for disruption?

This applies only to rooming houses, and would only be used where there is severe disturbance of the other residents of the building. Our members who manage rooming houses believe that the immediate termination should be retained, considering the disturbing and often frightening effect of such behaviour on numbers of other residents. It would not be appropriate for such serious matters to be dealt with via the much slower breach system.

11.1.7 Non-payment of rent

Consultation questions

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?

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

174.	What are the potential benefits and risks to removing payment of rent a duty from rooming houses and applying the relevant protections via the provisions for assessing application for possession?
175.	What are the potential benefits and risks of including repeated late payment as grounds for termination on application to VCAT?
176.	What alternative options are there to facilitate and incentivise the use of repayment plans for tenants to pay rent arrears?

CHOs are required by the Performance Standards to:

- have policies and procedures which strive to sustain tenancies, and where eviction is treated as a mechanism of last resort; and
- have policies and strategies to deal with tenants in financial difficulties and with arrears of rent.

Accordingly, Options 11.15 and 11.6 are consistent with current CHO practice and are supported by CHFV.

Most CHFV members do not think it is necessary to introduce termination for repeated late payment of rent as per Option 11.17.

CHFV is supportive of Option 11.18.

11.1.8 Failure to comply with a VCAT order

Consultation questions	
177.	What are the potential benefits and risks of time limiting compliance orders as under option 11.19?
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?
179.	What are the potential benefits and risks of removing VCAT's discretion not to make a possession order based on a prediction about the tenant's future actions?
180.	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?

Most CHFV members would not have a problem with the idea of compliance orders having a limited duration, such 12 months. In practice in our members' experience VCAT is unlikely to make a possession order for a failure to comply with a compliance order that was made more than 12 months previously.

Similarly, Option 11.21 is reflective of our members' experience that VCAT is under the current provisions of the RTA and VCAT Act unlikely to make a possession order where the breach is trivial or not a recurrence of the previous breach.

11.1.9 Use of premises for illegal purpose

Consultation questions

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?

182. How effective would provisions such as those described under option 11.22B be in addressing concerns about the misuse of the notice to vacate for use of the premises for illegal purpose?

183. What alternatives are there to ensure that the provisions are used correctly to avoid wrongful evictions while adequately protecting landlords where illegal activity is occurring on the premises?

CHFV Response:

CHFV strongly opposes the proposal that a conviction be required in these cases for a possession order to be made. The court system is very slow and it may be some time after the event before a conviction is obtained. VCAT members decide these cases on the balance of probability and that is appropriate.

11.1.11 Antisocial behaviour

Consultation questions

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

188. What alternative options are there to define the level and type of anti-social behaviours that would appropriately constitute grounds for termination in the RTA?

CHFV Response:

CHFV has in its previous submissions to the RTA view raised concerns that the RTA did not adequately protect the safety of its members' staff and contractors. Changes in the nature canvassed by Option 11.24 are in our view a step in the right direction by including protection for employees and contractors of the landlord.

The description of the tenant's conduct that triggers the section needs careful consideration to strike the appropriate balance between the interests of landlords and tenants. In our previous

submissions, we suggested that the RTA should include behaviour that would be reasonably likely to cause the person to be "intimidated or harassed". The Options Paper has added behaviour that would cause the person to be "alarmed or distressed" as well. We think that conduct that causes alarm or distress to another is too low of a bar to be appropriate grounds for immediate termination of a tenancy.

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

11.2.1 Notice to vacate for end of fixed term tenancy

Consultation questions

189. What are the potential benefits and risks of removing the option for a landlord to terminate a tenancy at the end of a fixed term agreement, as under option 11.25A?

190. How effective would provisions enabling tenants to challenge notices to vacate for the end of the fixed term as under option 11.25B be in protecting tenants against unfair terminations?

191. What alternative reforms to the provisions for terminating a tenancy at the end of the fixed term could better protect tenants against unfair termination while providing landlords with adequate certainty about the period of time they will be letting the property and the length of any particular agreement?

192. What are the potential benefits and risks of enabling the termination date to be on or after the end of the fixed term as under option 11.26?

CHFV Response:

Some CHFV members use fixed term leases as a management tool in some community housing programs, however the use of fixed term tenancies is not widespread in community housing.

CHFV believes that enabling the termination date to be on or after the end of the fixed term as under option 11.26 would be a good idea. It would provide flexibility for the landlord and a potentially longer stay for the tenant.

In respect of options 11.25A and 11.25B, we refer to our comments under part 11.2.2, which reflect similar considerations.

11.2.2 Notice to vacate for no specified reason

- Option 11.27A – Extend the notice period for a notice to vacate during periodic tenancy, or
- Option 11.27B – Require a reason to be specified for a notice to vacate during periodic tenancy, or
- Option 11.27C – Require a landlord to apply directly to VCAT for a termination order where termination is for reasons not specified in the RTA, or

- Option 11.27D – Remove the notice to vacate for no specified reason.

Consultation questions

193. What would be the potential risks and benefits of increasing the notice period to 182 days for this notice to vacate as described in option 11.27A?

194. How effective would provisions enabling tenants to challenge the notice to vacate as under options 11.27B and 11.27C be in protecting tenants against unfair terminations?

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

196. Which of the options in this section would be most effective in protecting tenants against unfair termination while providing adequate scope for landlords to exit an agreement other than by at-fault evictions or prescribed changes of use?

197. What are any alternative reforms to the provisions for terminating a tenancy for no specified reason that could better protect tenants against unfair termination while providing adequate scope for landlords to exit an agreement other than by at-fault evictions or specified changes of use?

198. What are any alternative reforms that would provide appropriate additional protections to tenants who have been in a tenancy for five years or more?

CHFV Response:

In the CHFV submission on Security of Tenure we said that there are divergent views amongst CHOs about the appropriateness of the use of these termination provisions by both private and social housing landlords.

- Some of CHFV's members believe that there remain circumstances where these termination provisions can and should be used as a part of sound tenancy management of complex social housing tenancies.
- Other CHOs believe that these provisions do not need to be used in any circumstances, but are supportive of amendments to the RTA to expand and clarify other termination provisions where the landlord is required to specify a reason.

Reasons why CHOs use the 'no specified reason' notice to vacate (canvassed in our Security of Tenure Submission) were as follows:

Issue	Explanation
A tenant's or resident's actions are a threat to the safety of others who are themselves vulnerable and unwilling to give evidence at a VCAT hearing.	A violent tenant or resident may have intimidated other tenants, residents or neighbours such that the victims are unwilling to be a witness at VCAT or be mentioned in a Notice to Vacate. In these circumstances it may be problematic to start a normal Termination process for a breach of the tenant's duties under the RTA. CHOs could issue Summonses to Appear, but they must consider whether this puts the witnesses in danger or the possibility that they may become

	hostile witnesses.
Protection of CHOs' staff and contractors	The RTA does not provide a remedy where a tenant threatens the safety of workers or contractors. This is becoming a serious occupational health and safety issue for CHOs who are under a legal duty to provide a safe working environment.
Where tenants are sub-letting without the CHO's permission.	In our members' experience this is difficult to prove at VCAT. Firstly the CHO has to prove that the illegal sub-tenant is living there, which is difficult given 24 hours' notice of inspection is required under the RTA. The CHO is also required to prove that the illegal sub-tenant is paying rent to the tenant, which is similarly difficult to prove. The result can be that a person who is ineligible for community housing (for example, because they are not an Australian permanent resident or because their household income is too high) is staying in subsidised social housing cheaply or rent-free. This is commonly also associated with serious neighbourhood disturbance caused by the unauthorised sub-tenant
Difficulties in establishing that a tenant's act or omission endangers the safety of occupiers of neighbouring premises (sections 244 and 279)	VCAT and the Supreme Court (Director of Housing v Pavletic) have interpreted the word "endangers" as meaning that there is an ongoing danger to others from the person receiving the notice. Some VCAT members have required a string of dangerous incidents to have occurred in order to prove that the danger is ongoing. This makes it very difficult for a CHO to protect other tenants and neighbours.
Tenants in transitional housing who refuse alternative offers of accommodation	Sections 262A and 287A were inserted in the RTA in 2002 to provide for 30 days' notice to vacate in these cases. These provisions required the Director of Housing to publish requirements for tenants of transitional housing to seek alternative accommodation. More than 13 years after these sections were included the requirements have still not been published despite CHFV's requests for this matter to be addressed.
Tenants who: • provide misleading information about eligibility; • no longer comply with eligibility criteria for a particular housing program.	These provisions currently only apply to public housing. As a general principle CHFV believes that public and community housing should be treated consistently in the RTA. CHOs may (although need not) enact policies and procedures to ensure that their housing assistance is delivered to people the CHO was funded to assist. This may be where a program was designed to assist particular cohorts or people who engage with a particular support program.

Some of these issues have been addressed by options in the paper, while others (including transitional housing) have not. The problem of a tenant's or resident's actions being a threat to the safety of others who are themselves vulnerable and unwilling to give evidence at a VCAT hearing, is difficult to deal with in legislation. Accordingly, there is no consensus amongst CHFV's membership for the removal from the RTA of the notice to vacate for no specified reason as set out in option 11.27D.

Given the nature of problems like intimidation, CHFV believes that 120 days is a more appropriate length than 182 days for the notice period, and therefore does not support option 11.27A.

Provisions enabling tenants to challenge the notice to vacate as under options 11.27B and 11.27C need careful consideration. CHOs only currently use the "no reason" termination provision when there actually is a reason for doing so and having followed a fair process prior to serving the notice. Accordingly, these options could be a reasonable balance between the interests of community housing tenants and CHOs, as well as being an appropriate safeguard for tenants generally.

However, if such provisions are drafted or applied by VCAT to effectively require the landlord to prove its reasons in a similar way to specific termination provisions of the RTA, then this could compromise the usefulness of the no reason notice as a mechanism of last resort.

Much turns on the precise language of the new provisions. The current wording suggested in the Options Paper states that VCAT could consider "the interests (personal and financial) of the tenant in maintaining the tenancy." In our view, this language is too broad and does not provide VCAT members and parties with sufficient certainty as to the meaning of this discretion.

12 Family violence

CHOs have a key role to play in a community-wide response to family violence. CHOs may be the first to know that violence is occurring in a family and be well placed to refer tenants to support services. CHOs have responsibilities to the victims of family violence, their families, neighbours and communities. In many cases CHOs may be managing tenancies for current or former perpetrators of violence. Managing this equitably and effectively is part of the role of a successful CHO. CHFV has produced a resource kit: *Playing Our Part*, in which CHFV outlines the role that CHOs can play. Our comments here are reflective of the general approach which CHFV recommends for its members in preventing and responding to family violence.

12.1 Access to family violence protections in the RTA

CHFV's preferred option is Option 12.1B. This enables VCAT to consider additional evidence if there is no family violence safety notice, an interim intervention order or a final intervention order.

Option 12.1A in requiring that a family violence safety notice, an interim intervention order or a final intervention order be in place is too narrow. However, Option 12.1C does not place appropriate weight on the fact that a family violence safety notice, an interim intervention order, a final intervention order and relies too much on the discretion of the VCAT member involved.

CHFV supports both Options 12.2 and 12.3.

For Option 12.2, we recommend a period of 3- 5 business days. It is essential that VCAT be resourced to ensure this can occur without unduly delaying other important cases. We also suggest that VCAT staff be trained in family violence matters. In this regard we are encouraged that VCAT has appointed a dedicated Family Violence Support Worker.

12.2 Terminating a tenancy

If the victim of family violence is a tenant of a CHO, in our view the policies of the CHO should enable the victim to be released from further liability under the tenancy agreement without need to resort to the RTA.

In general terms, CHFV's preferred option is Option 12.4B, which we think would be a more accessible process for those impacted by family violence. Option 12.4A, while also an improvement on the current provisions of the RTA, could take too long using the VCAT process.

12.3 Modifications to rented Premises

CHFV's preferred option is Option 12.5B. While our general view is that landlord consent should be required for modifications (prior to the modification being made) (see part 8.7), there is merit to permitting modifications for protection against family violence being treated separately owing to the urgency of such situations.

While Option 12.5A would also be an improvement on the RTA at present, it is likely that the proposed process (including requirements such as the landlord be required to provide a response within 2 days, or the tenant seeking a VCAT order if the landlord withholds consent) would delay the process for too long and result in the premises being unsafe for an unreasonable period of time.

12.4 Residential Data Bases

CHFV supports Options 12.6, 12.7 and 12.8.

12.5 Challenging notices to vacate

CHFV supports Option 12.9. Similar to our comments under part 12.2, this is also a matter where the CHO's policy should be not to seek possession where the relevant action or conduct was attributable to another person who committed an act of family violence.

12.6 Compensation Orders and claims against the bond

CHFV supports Options 12.11 and 12.12. Similar to parts 12.2 and 12.5, this is something that should be dealt with by CHO policy without recourse to the RTA. In the wider rental sector this does raise risks to landlords, but we think this is an appropriate community-wide response to family violence.

12.7 Serving Notices and documents

CHFV prefers Option 12.13 B. Notices should be served in all formats, electronically, to the last known address (if there is one) or via social media.