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Introduction

The Council to Homeless Persons (CHP) welcomes the opportunity to provide a submission to the Rights and Responsibilities Issues Paper (the Issues Paper) as part of the Residential Tenancies Act Review.

We have limited CHP's comments to the issues with direct bearing on people's risk of homelessness and difficulties associated with exiting homelessness, including discrimination, use of tenancy databases, and rights and responsibilities during and at the conclusion of tenancies.

Before a tenancy

Discrimination and screening practices during the application process

There is considerable evidence that when applying to rent a property in the private rental market, discrimination is commonplace, particularly in relation to:

- low income (Tenants Union of Victoria (TUV), 2008; Victorian Equal Opportunity and Human Rights Commission (VEOHRC), 2012)
- race (MacDonald et al, 2016)
- family status – single parents (TUV, 2008) and large families (Evans & Gavarotto, 2010)
- debt (Slesnick & Erdem, 2012; Schetzer & StreetCare, 2013)
- age – older people (Westmore & Mallett, 2011; Batterham et al, 2012) and young people (VEOHRC, 2012)
- lack of employment (Slesnick & Erdem, 2012; TUV, 2008)
- histories of anti-social behavior in housing (Povey, 2010) and
- prior evictions (Slesnick & Erdem, 2012).

These barriers may not be discrete and often overlap. A study by the Tenants Union of Victoria (TUV, 2008) found that income levels are the primary information landlords and agents use to assess the suitability of rental applications in Victoria (TUV, 2008). Hence, people trying to access the private rental market when on a low income are likely to be disadvantaged, even when the rent is affordable (TUV, 2008; VEOHRC, 2012).

Tenants have little to no capacity to address any discrimination they face when undertaking a housing search. Further landlords are not required to disclose the reason for an individual or households' application being unsuccessful.

In order to reduce discrimination in the private rental market, the Act should be amended to prescribe a standard application form for all prospective tenants. This would create a fairer playing field for tenants overall. However, as a stand-alone measure, this is unlikely to eliminate discrimination faced by many households.

Tenancy databases

Tenancy databases are privately owned services that are paid for by landlords and agents to screen potential tenants. According to Consumer Affairs (2016):

'A landlord or estate agent can only list a tenant on a tenancy database if:

- the tenant was named on the tenancy agreement
- the agreement has ended and
- they breached the agreement and because of the breach, either:
 - they owe an amount more than the bond and the Victorian Civil and Administrative Tribunal (VCAT) has made an order that they pay that amount; or
 - VCAT has made a possession order.

This only applies to the following breaches of the tenancy agreement:

- maliciously damaging a rental property
- endangering neighbours' safety
- not paying rent
- failing to comply with a VCAT order
- using a rental property for illegal purposes
- subletting a rental property without the consent of the landlord or estate agent'.

There are widespread reports throughout the housing and homelessness sectors of people being unable to gain housing due to being listed on tenancy databases that are incorrect or out of date. Often women fleeing family violence become listed on a tenancy database as a consequence of tenancy issues, such as damage to property, caused by the perpetrator of family violence. People can also be repeatedly refused tenancies and not be aware that they are blacklisted, because they are listed on the database.

CHP endorses recommendations made by the TUV (2015) in relation to tenancy databases, namely that:

- 'R126. The Act should be amended to give CAV the power to audit residential tenancy database records every 12 months and fine the operators if they discover entries that should not be recorded.
- R127. The Act should be amended to ensure there is one free method available for a tenant to obtain their file from a database operator.
- R128. The Act should be amended to allow for a mechanism for tenants to apply to be removed from a database on hardship grounds, particularly in cases of family violence'.

CHP strongly supports the Royal Commission into Family Violence Report (2016) recommendation that the review of the Residential Tenancies Act should:

- 'enable victims of family violence to prevent their personal details from being listed on residential tenancy databases, and to remove existing listings, where the breach of the Act or the tenancy agreement occurred in the context of family violence'.

Form of documents and manner of serving

While developments in information technology have created the capacity for the serving of documents electronically, the 'digital divide' in our community means that low-income households often lack reliable access to these tools.

The [ABS indicates](#) that while 97 per cent of people earning over \$120,000 are internet users, this is the case for only 77 per cent of those earning less than \$40,000 a year.

A recent study into the connectivity of people experiencing homelessness found that 77 per cent of people surveyed had access to a smart phone. However, this group of consumers also reported significant difficulty in staying connected, citing credit shortage and service restrictions as key challenges (Humphry, 2014). Furthermore, the study found that vulnerable consumers with complex needs had the most significant payment and debt issues relating to telecommunication services.

As a consequence the proposed reform under the Consumer Acts and Other Acts Amendment Bill (2015) that would allow landlords and agents to serve notices to vacate by email, presents a serious and genuine risk to tenants, that if passed, will result in many consumers not receiving these notices in a timely manner, or at all.

As such, CHP believes that notices to vacate should be exempt from electronic communication and the provision of documents and the manner of service should remain in hard copy format.

CHP is also disappointed that this review is consulting on this important issue, while a Bill to enact the reform is already before the Parliament.

During a tenancy

Breaches of duty

Under the Act compliance orders for breaches of duty are not time limited. This can mean that after a compliance order has been served, tenants may be at risk of being issued with further breaches – which can eventually lead to an eviction for the remainder of their tenancy. CHP agrees with the proposal by Homeless Law as part of their submission to the Security of Tenure Issues paper, that breaches should be limited to six months before lapsing, and only extended where further breaches occur. In the event of further breaches, the order should be able to be reinstated for 12 months.

Pets in rented premises

Potential tenants often face significant challenges in finding a pet-friendly rental property. This is largely because landlords and agents view pets as posing a risk to the overall condition of the property. For many people, however, pets are important members of their household.

CHP believes that the Act should allow individuals to keep pets consistent with local laws (which are outlined by Councils in relation to the number and type of pets

allowed at a property). As stated by the TUV (2015, p. 67), 'local laws regulate safety, registration and noise complaints, and nuisance provisions should already capture some of these concerns'.

Violence in managed premises

The risk of homelessness and ongoing episodes of rough sleeping exists for both people who have experienced violence within a rooming house, as well as for the person about whom violent or dangerous behavior is alleged. CHP believes that the Act must work to protect the safety of rooming house residents, while also ensuring sound process for people accused of violent, dangerous or threatening behavior. The legislation also needs to protect residents from the dangerous or threatening behavior of people visiting other residents.

As such we support TUV proposals that:

R159. The Act should be amended to state that a manager may issue a "prescribed trespass notice" to any visitor of any resident in the rooming house or on the grounds (in substitution of section 368(2)).

R160. The Act should be amended to state that if a resident's visitor has been criminally charged and convicted in relation to the serious act of violence that has taken place in the rooming house, the manager may apply to VCAT for an order to prevent the resident's visitors from visiting the rooming house for a period of up to 6 months

R161. The excluded visitor may apply for revocation or a variation order if they can show cause that a similar incident will not occur'

At the end of a tenancy

Current termination provisions in the Act adversely affect security of tenure, and there is little requirement for landlord to demonstrate proof when serving notices to vacate for specified reasons. It should be mandatory under the Act for landlords to provide certified evidence proving their reasons for issuing a notice to vacate. As stated previously, CHP believes that "no reasons notices to vacate" should be abolished.

Tenants have to terminate leases for a variety of reasons including financial hardship for example caused by loss of employment, and family violence. CHP believes that the Act must be amended to provide protection for people experiencing financial hardship. We support TUV's recommendation that formed part of its response to the Discussion Paper, that where severe hardship is demonstrated the compensation to the landlord for breaking a lease is strictly capped.

The Act currently allows a shorter notice to vacate period for people who receive an offer of tenure from the Director of Public Housing. In line with current reforms to the housing sector, including the Victorian Housing Register, wording in the Act must be re-framed to ensure that people being offered housing through community housing providers are also able to have shorter periods in which to provide their notice to vacate. We recommend that current wording be changed to social housing, with an

explanatory note indicating that this includes public housing, community housing and Aboriginal community housing.

In the instance of family violence, CHP recommends that regardless of whether keys have been returned for a property, the Act must allow VCAT to order a reduction of fixed term tenancy agreements. We support the recommendations made by the Family Violence Royal Commission that the Act must be changed to:

- ‘enable victims of family violence wishing to leave a tenancy to apply to the Victorian Civil and Administrative Tribunal for an order terminating a co-tenancy if the co-tenant is the perpetrator of that violence—including, where relevant, an order dealing with apportionment of liability for rent (or other tenancy-related debts) between the co-tenants’.

In our submission to the Bonds, Rents and Other Charges Issues Paper, CHP included the story of Pri, who was forced to flee family violence. Pri was advised it was unsafe for her to return to the property unaccompanied to collect her possessions, however Police were only able to stay with her for an hour. Consequently, Pri lost a considerable proportion of her possessions and much of her bond in paying for the removal of the items. An amendment to the Act would ensure people like Pri are not placed in such compromised situations. As such, we support the recommendation by TUV that:

- ‘The Act should be amended to provide that goods of monetary value must be stored if the value of all or part of the goods left behind exceeds the cost of removal and storage of those goods’ (R66).

Family violence provisions

CHP was pleased to see the recommendations of the recently released Royal Commission into Family Violence Report (2014-16) addressing tenancy issues arising as a consequence of family violence. We support Recommendation 116 in the Report including:

‘The Department of Justice and Regulation’s review of the Residential Tenancies Act 2006 (Vic) consider amending the Act to:

- empower Victorian Civil and Administrative Tribunal members to make an order under section 233A of the Act if a member is satisfied that family violence has occurred after considering certain criteria—but without requiring a final family violence intervention order containing an exclusionary condition
- provide a clear mechanism for apportionment of liability arising out of the tenancy in situations of family violence, to ensure that victims of family violence are not held liable for rent (or other tenancy-related debts) that are properly attributable to perpetrators of family violence
- enable victims of family violence to prevent their personal details from being listed on residential tenancy databases, and to remove existing listings, where the breach of the Act or the tenancy agreement occurred in the context of family violence

- enable victims of family violence wishing to leave a tenancy to apply to the Victorian Civil and Administrative Tribunal for an order terminating a co-tenancy if the co-tenant is the perpetrator of that violence—including, where relevant, an order dealing with apportionment of liability for rent (or other tenancy-related debts) between the co-tenants
- prevent a landlord from unreasonably withholding consent to a request from a tenant who is a victim of family violence for approval to reasonably modify the rental property in order to improve the security of that property’.

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