

Annexure A: Feedback on the Residential Tenancies Act Review Options Discussion Paper
Atira Student Living

Option	Support	Reasons
<p>Option 3.3 Provide for the option for tenants to extend fixed term leases for a subsequent period.</p>	No	This option would remove landlords' certainty regarding the term of a tenancy agreement. Landlords may not wish to offer a renewal to all tenants. If tenants have failed to perform their obligations under the tenancy agreement during the term, for example, then landlords should not be required to renew that agreement.
<p>Option 4.2 Strengthen linkages between the RTA and the <i>Equal Opportunity Act 2010</i> (Vic).</p>	Yes	Atira Student Living supports this option, provided that the penalty provisions clearly outline what is covered.
<p>Option 4.6 Require disclosure of certain information prior to tenancy.</p>	No	<p>Atira Student Living proposes adopting a similar approach to Queensland in relation to the sale of rented premises. If a property is advertised for sale within two months of a tenancy starting, and the tenant was not informed of the landlord's intention to sell the property at the time of signing the agreement, the tenant may end the agreement with two weeks' notice.</p> <p>Concerns about how the sale of rented premises affects residents do not apply in relation to purpose built student accommodation facilities (PSBAs), as the sale of a PSBA would not involve any inspections of rooms or other disruptions to residents.</p>
<p>Option 4.9 Comprehensive standard prescribed tenancy agreement.</p>	No	Atira Student Living proposes adopting a similar approach to Queensland in relation to this issue, which requires a landlord/agent to provide a prospective tenant with a copy of the proposed agreement (including all additional terms and house rules) before accepting a holding deposit.

<p>Option 4.10</p> <p>Blacklist of tenancy agreement prohibited terms.</p>	<p>No</p>	<p>This option needs to be refined to apply to vulnerable tenants (namely tenants in social housing arrangements) who require greater levels of consumer protection. It should not extend to PBSAs. Landlords of PBSAs should not be limited in the terms that they may include in a tenancy agreement, provided that those terms are not unlawful or inconsistent with any standard terms and are disclosed to the tenant prior to entering into the tenancy agreement.</p> <p>Atira Student Living proposes adopting Queensland's approach in relation to additional terms. If any additional term is inconsistent with a standard term in the prescribed standard form tenancy agreement, or with any provision of applicable legislation, then the additional term will be overridden. Imposing special terms in tenancy agreements that contravene applicable legislation is also an offence.</p>
<p>Options 5.2A, 5.2B and 5.2C</p> <ul style="list-style-type: none"> • Broaden the three strikes rule, but limit it to a 12 month period and require a VCAT order to terminate for repeated breaches (option 5.2A); • Abolish the three strikes rule, allow VCAT to terminate if breach is sufficient to justify termination (option 5.2B); or • Abolish notices of termination for successive breaches (option 5.2C). 	<p>Yes (option 5.2B)</p>	<p>Atira Student Living agrees with option 5.2B.</p>
<p>Options 5.3A and 5.3B</p> <ul style="list-style-type: none"> • An additional pet bond lodged with RTBA (option 5.3A); or • Optional pet consent clauses in standard prescribed tenancy agreement (option 5.3B). 	<p>Yes</p>	<p>These options are reasonable as they require the landlord's consent to a pet being kept on the premises.</p>
<p>Options 5.4</p> <p>A 'no pets' clause is unenforceable if it is unreasonable.</p>	<p>No</p>	<p>Landlords should have absolute discretion as to whether or not pets may be kept in rental premises, as pets present additional risks to landlords (e.g. health and safety risks, interference with other tenants' right to quiet enjoyment, etc.). This</p>

		<p>position is also fair to tenants, as tenants must be given a copy of the tenancy agreement (together with any additional terms and house rules) before entering into the agreement, and this informs them whether pets are permitted before they let the premises. Additional notice could be provided to tenants if any terms of a tenancy agreement relating to pets are provided before the application process, for example while the property is being advertised.</p> <p><i>Note: Atira Student Living does not propose any change to the current provisions relating to assistance dogs, which prohibit landlords from refusing to provide accommodation to a person with a disability because that person has an assistance dog.</i></p>
<p>Option 5.7</p> <p>Reasonable inspections to show to prospective purchasers, with right to compensation for tenant.</p>	No	
<p>Option 6.3</p> <p>VCAT can take a tenant or landlord's severe hardship into account when awarding compensation after a lease is broken.</p>	Yes	<p>Atira Student Living agrees with option 6.3, however what constitutes 'severe hardship' should be clearly defined under the <i>Residential Tenancies Act 1997</i> (Vic) (RTA).</p>
<p>Option 6.5</p> <p>Tenants in special circumstances not required to pay lease break fees.</p>	Not in current form	<p>The 'special circumstances' in which tenants will not be required to pay lease break fees should be clearly defined (in an exhaustive list) under the RTA. Atira Student Living would support this option if a landlord refusing to make reasonable modifications to meet a disabled tenant's special needs did not amount to 'special circumstances'. We agree that it is important to ensure that the special needs of tenants with a disability are met, however our PSBAs already comply with all applicable requirements in the Building Code of Australia in an effort to ensure that many people with a disability can reside at the facility comfortably.</p> <p>Requiring landlords to further modify the premises for particular tenants imposes an unreasonable burden and creates uncertainty. The onus should be on a tenant</p>

		with a disability to satisfy himself or herself that premises meet their needs prior to entering into a tenancy agreement.
<p>Options 8.13A, 8.13B and 8.13D</p> <ul style="list-style-type: none"> • Requirement that vacant premises are safe for habitation (option 8.13A); • Adapt minimum standards for rooming houses for general tenancies (option 8.13B); • Adapt social housing reletting standards for general tenancies (option 8.13C); or • Minimum health, safety and amenity standards for vacant premises (option 8.13D). 	Yes	Atira Student Living agrees with these options as they provide additional tenant protection and do not impose an unreasonable burden on landlords.
<p>Options 8.20A and 8.20B</p> <ul style="list-style-type: none"> • Landlord may not unreasonably refuse consent to certain modifications (option 8.20A); or • Landlord will be required to approve modifications unless they are prescribed modifications (option 8.20B). 	No	Landlords should have discretion to refuse modifications to their property, including minor modifications. Any variation to this position can be negotiated between the landlord and tenant prior to entering into a tenancy agreement. As tenants may inspect the premises prior to entering into the agreement, they have the opportunity to assess whether or not the premises are suitable. The onus should not be on the landlord to permit unwanted modifications in order to make the premises more suited to a particular tenant.
<p>Option 8.24</p> <p>Tenant must notify landlord of, and compensate landlord for, damage caused by the tenant or visitors.</p>	Yes	
<p>Option 8.26</p> <p>Remedies for damage.</p>	Yes	
<p>Option 8.28</p> <p>Requirement for tenant email and/or forwarding address.</p>	Yes	This will assist landlords in contacting tenants who have damaged the premises and are required to pay compensation. We note that this is already standard practice at our PBSAs. Atira Student Living collects such information during the

		application and exit processes, and our privacy policy regulates how we collect, store and use tenants' personal information.
Option 8.30 Require tenant to report defects	Yes	This option would promote the prompt repair of damage to the premises, thereby assisting landlords in preventing avoidable and more serious damage.
Option 8.32 Reduced time for landlords to dispute an urgent repair	No	
Option 8.35 Landlord repairs and maintenance bond	No	
Option 8.36 Better access to Rent Special Account	Not in current form	Atira Student Living agrees that it is important to ensure that landlords undertake repairs in a timely manner and maintain the premises in a safe and liveable condition. However, we consider that Queensland's approach to repair obligations is preferable and a similar process should be adopted in Victoria. Under this approach, if the landlord does not organise a repair within a reasonable time, then the tenant may issue a notice to remedy giving the landlord 7 days to complete the repairs (the period for residents in rooming accommodation is 5 days). If the landlord does not comply with the notice, the tenant may apply for dispute resolution. The first forum will be a conciliation service (unless the repairs are urgent, in which case the tenant may apply directly to the Queensland Civil and Administrative Tribunal (QCAT)). If the parties cannot reach a negotiated resolution through the conciliation process, then the dispute is resolved at QCAT.
Option 8.38 Special provision for excessive usage charges caused by leaks, intermittent faults or hidden problems	No	
Option 9.4	Yes	

Enhanced inspection powers for CAV rooming house inspectors		
<p>Option 9.5</p> <p>Allow rooming house residency agreements with a specified occupancy period, and remove use of tenancy agreements for occupancy of rooms in rooming houses.</p>	No	This option would need to be refined so as to apply to vulnerable tenants only. This option is not tenable from an investment perspective. Further, the extensive flexibility that it provides to residents would not benefit the majority of our residents, as most are students intending to live in Australia for between two and three years while they complete their studies.
<p>Option 9.8</p> <p>No termination for breach of house rules if invalid or not properly made.</p>	Yes	
<p>Option 9.9</p> <p>Two month frequency for general inspection of resident's room with 48 hours' notice.</p>	Yes	
<p>Option 9.10</p> <p>Rooming house operator can charge resident for water consumption for separately metered rooms.</p>	Yes	
<p>Option 9.11</p> <p>Amend rooming house minimum standards.</p>	Yes	Atira Student Living agrees with this option. However, in prescribing a minimum number of laundry facilities, it is important to ensure that the requirement is not too onerous and is based on industry benchmarks and accurate data provided by rooming house operators.
<p>Option 9.12</p> <p>Operator to provide mail box for each room and ensure sorting of mail.</p>	No	Due to site restrictions, it is not always feasible to provide a mail box for each room and ensure that mail is sorted. Alternative options, such as an operational management plan outlining how rooming house operators will manage mail to ensure that it is delivered to residents, should be considered. Most PBSAs have a front desk that is staffed during business hours. Where this is the case, it should

		be permissible for staff at the front desk to sort the mail and ensure that it is delivered to the addressee.
<p>Option 9.13</p> <p>Restrict resident's quiet enjoyment duty to conduct within property boundary of rooming house.</p>	No	The duty not to interfere with the quiet enjoyment of other residents will be more effective in protecting residents' quiet enjoyment if it applies to conduct outside of the property boundary. The current position should therefore be maintained.
<p>Option 10.2</p> <p>Extend CAV's Frontline Resolution and conciliation services to landlords, property managers and rooming house and park operators.</p>	Yes	This option is likely to promote the timely, cost-effective and non-adversarial resolution of tenancy disputes.
<p>Option 10.3</p> <p>Establish a specialist administrative dispute resolution service that makes binding orders.</p>	Yes	
<p>Options 10.4A and 10.4B</p> <ul style="list-style-type: none"> • Introduce re-hearing process for residential tenancies cases at VCAT (option 10.4A); or • Support consideration of peer-to-peer review of decision of non-judicial members by VCAT for the Residential Tenancies List (option 10.4B). 	No	Option 10.4A may delay the resolution of disputes and option 10.4B lacks transparency.
<p>Option 11.1</p> <p>Introduce a process for termination orders to the RTA.</p>	No	This requirement will make the administration of student accommodation facilities (and other rental properties) more cumbersome and costly.
<p>Option 11.2</p> <p>Require VCAT consideration of reasonableness in making possession orders.</p>	No	This option would undermine certainty in this area, as whether or not a possession order is granted would no longer depend on the satisfaction of strict criteria but would instead turn on the opinion of VCAT as to reasonableness, proportionality, and potential hardship. In relation to proceedings for a termination or possession

		<p>order, it is essential that delays are minimised to allow the landlord to fulfil its legal obligations and meet its commercial objectives with respect to the premises and other residents. Increased uncertainty as to the circumstances in which a possession order will be made would create delays and other difficulties in managing risks.</p> <p>Atira Student Living proposes adopting a similar approach to Queensland in relation to the termination of tenancy and residency agreements, as the <i>Residential Tenancies and Rooming Accommodation Act 2008</i> (Qld) strikes an appropriate balance between protecting tenants/residents and creating a commercially viable regulatory environment for landlords and rooming accommodation providers.</p>
<p>Option 11.7</p> <p>VCAT must terminate tenancy if it was appropriate to give notice to leave (for violence on managed premises).</p>	Yes	<p>This option would facilitate landlords and rooming house operators' ability to terminate agreements where a tenant or resident is violent.</p> <p>In relation to the termination of residency or tenancy agreements in rooming houses, Atira Student Living proposes adopting a similar approach to Queensland by allowing rooming house operators to terminate a residency or tenancy agreement where a resident or tenant commits a 'serious breach' of the agreement. Violent behaviour would fall within the definition of 'serious breach'.</p>
<p>Option 11.8</p> <p>Notice to leave can be served on resident for visitor's serious violence (where appropriate)</p>	Yes	<p>This would enhance landlords and rooming house operators' ability to ensure the safety of surrounding tenants/residents in student accommodation facilities (and similar properties).</p>
<p>Option 11.12</p> <p>Increase notice period for termination for disruption.</p>	No	<p>Where a rooming house resident or their visitor seriously interrupts the quiet enjoyment of other residents, the landlord should be able to issue the resident with a notice to vacate that is effective immediately. This is important for the protection of other residents' rights and from a risk management perspective for rooming house owners/operators. Owners have a duty not to unreasonably restrict or interfere with a resident's peace and quiet or proper use and enjoyment of his or her room and the shared facilities.</p>

		Atira Student Living proposes adopting a similar approach to Queensland by allowing rooming house operators to give a notice to vacate to a resident or tenant (effective immediately) where they reasonably believe that the resident or tenant has committed a 'serious breach' of the agreement. A 'serious breach' would include interfering significantly with another tenant's quiet enjoyment of the premises. Defining 'serious breach' exhaustively in the RTA would promote certainty for rooming house residents.
<p>Option 11.15</p> <p>Provide option for tenant to negotiate repayment plan where seven days' rent owed (under general tenancies)</p>	No	<p>This option needs to be refined to apply to vulnerable tenants requiring greater levels of consumer protection and to not extend to residents in PBSAs. In relation to PBSAs, any repayment plan should only be negotiated with landlord and tenant consent. Landlords should not be required to enter into a repayment plan with a tenant; it is more appropriate for this to remain a matter for the landlord's discretion.</p> <p>Atira Student Living proposes adopting a similar approach to Queensland in relation to non-payment of rent. Under this approach, where rent is unpaid for 7 days, the landlord would need to discuss this with the tenant and then issue a notice for breach of duty. If the tenant failed to pay the unpaid rent within 7 days, the landlord could give the tenant a 7 day notice to vacate. If the tenant failed to vacate within 7 days, the landlord could apply to VCAT for a possession order.</p>
<p>Option 11.18</p> <p>Amend provisions for rooming houses to be consistent with general tenancies (increasing the allowance period for late payment of rent and removing payment of rent as a resident duty).</p>	No	<p>This option needs to be refined to distinguish between vulnerable tenants requiring greater levels of consumer protection and residents in PBSAs. It should not apply to PBSAs.</p> <p>Atira Student Living proposes adopting a similar approach to Queensland in relation to termination for non-payment of rent by residents in rooming houses.</p>
<p>Option 11.19</p> <p>Place time limitations on compliance orders.</p>	No	<p>This option would potentially require landlords to tolerate multiple breaches of a tenancy agreement. Compliance orders should apply for the entire duration of a tenancy as it is not unreasonable to require tenants to comply with the terms of the tenancy agreement and a compliance order.</p>

<p>Options 11.22A and 11.22B</p> <ul style="list-style-type: none"> Require a conviction to be in place for a notice to vacate for use of the premises for illegal purpose (option 11.22A); or Require a landlord to apply directly to VCAT for a termination order for use of the premises for illegal purposes (option 11.22B). 	<p>No</p>	<p>Under either of these options, landlords will lose the ability to terminate a tenancy where they reasonably consider that the tenant is using the premises for an unlawful purpose. This would impede landlords' ability to ensure that they meet their obligations to other residents.</p> <p>As discussed above, Atira Student Living proposes adopting a similar approach to Queensland by allowing rooming house operators to give a notice to vacate to a resident or tenant (effective immediately) where they reasonably believe that the resident or tenant has committed a 'serious breach' of the agreement. A 'serious breach' would include using the premises (or adjacent property), including shared facilities, for an unlawful purpose.</p>
<p>Option 11.24</p> <p>Expand the definition of antisocial behaviour to include a wider range of behaviours and people who may be affected by those behaviours.</p>	<p>Yes. We also suggest an alternative option.</p>	<p>This option would enhance the ability of landlords and rooming house operators to fulfil their obligations to other tenants or residents in PBSAs.</p> <p>If the RTA is amended to allow rooming house operators to give a notice to vacate where they reasonably believe that a resident/tenant has committed a 'serious breach' of the residency/tenancy agreement, the definition of 'serious breach' should cover antisocial behaviour.</p>
<p>Options 11.25A and 11.25B</p> <ul style="list-style-type: none"> Remove the notice to vacate for the end of a fixed term agreement (option 11.25A); or Retain the notice to vacate for the end of a fixed term agreement and provide additional protections against unfair terminations (option 11.25B). 	<p>No</p>	<p>It is essential that landlords have certainty regarding when a tenancy will end, particularly in the student accommodation sector. A lack of certainty in this area would interfere with our ability to re-let rooms in PBSAs, as students generally prefer to secure a room well in advance of the start of a tenancy or residency agreement. A university semester typically starts in either February or July in any given year, and students and landlords must have the ability to plan for and let with certainty around these timeframes.</p> <p>It is appropriate for notice to be given to tenants prior to the end of a fixed term tenancy agreement, however the current notice periods under the RTA are adequate.</p>

<p>Options 11.27A, 11.27B, 11.27C and 11.27D</p> <ul style="list-style-type: none"> • Extend the notice period for a notice to vacate during periodic tenancy (option 11.27A); • Require a reason to be specified for a notice to vacate during periodic tenancy (option 11.27B); • Require a landlord to apply directly to VCAT for a termination order where termination order is for reasons not specified in the RTA (option 11.27C); or • Remove the notice to vacate for no specified reason (option 11.27D) 	<p>No</p>	<p>These options either impede or remove landlords' ability to terminate for convenience. These options should be refined to distinguish between vulnerable tenants requiring higher levels of consumer protection and residents in PBSAs.</p> <p>For non-vulnerable tenants, the current requirement to give 120 days' notice provides sufficient protection but unreasonably restricts landlords' ability to deal with the premises. The notice period for a notice to vacate for no specified reason should be reduced to 90 days, as this would still provide tenants with ample notice that the tenancy will be terminated.</p>
<p>Options 11.30A and 11.30B</p> <ul style="list-style-type: none"> • Extending the notice period for all change of use terminations to 90 days (option 11.30A); or • Extending notice periods for long-term tenancies to 90 days (option 11.30B). 	<p>Yes (option 11.30A)</p>	<p>Atira Student Living agrees with option 11.30A.</p>
<p>Option 11.28</p> <p>Require notice to vacate to be accompanied by evidence of change of use.</p>	<p>Yes</p>	<p>This option provides additional protection to tenants and does not impose unreasonably onerous obligations on landlords.</p>
<p>Option 11.29</p> <p>Allow for greater VCAT discretion granting possession orders.</p>	<p>No</p>	<p>Landlords, rather than VCAT, should have discretion to decide whether or not a tenancy agreement will end based on the changed use of the premises, provided that appropriate notice is given. Current notice requirements provide sufficient protection to tenants, who must vacate at the end of the tenancy or 45 days after the notice to vacate is issued (whichever is later).</p>
<p>Option 11.35</p>	<p>No</p>	<p>This option may discourage mortgagees from consenting to premises being let.</p>

<p>Require mortgagee in possession to honour agreements where consent granted.</p>		
<p>Option 11.37 Enable tenant to give notice of intention to vacate at any time before the termination date specified by a notice to vacate under prescribed circumstances – notice of sales campaign.</p>	<p>No</p>	<p>Atira Student Living would agree with this proposal in option 11.37 if it was amended so that tenants may only give 14 days' notice during a sales campaign for the rented property:</p> <ul style="list-style-type: none"> • before the date that is two months after the commencement date of the tenancy agreement; and • if the tenant was not notified of the sales campaign before the tenancy. <p>This approach is consistent with the position in Queensland (discussed above) and provides greater flexibility to landlords in dealing with the property by limiting the time within which tenants will be able to terminate the agreement on two weeks' notice.</p>
<p>Option 11.37 Enable tenant to give notice of intention to vacate at any time before the termination date specified by a notice to vacate under prescribed circumstances – rent increases.</p>	<p>No</p>	<p>Tenants should not be entitled to terminate a tenancy agreement where the rent increases, provided that sufficient notice of the rent increase is provided. Landlords are required to give tenants at least 60 days' notice of any rent increase, and this already provides sufficient protection to tenants.</p>
<p>Option 11.37 Enable tenant to give notice of intention to vacate at any time before the termination date specified by a notice to vacate under prescribed circumstances – notice to vacate where tenant not at fault.</p>	<p>No</p>	<p>Tenants should not be entitled to vacate the premises before the end of a fixed term agreement. If tenants vacate the premises before the end of the tenancy, they should be required to pay lease break fees. Allowing tenants to vacate before the end of a fixed term without paying lease break fees would completely undermine the legally binding agreement between the landlord and tenant, therefore legislation should not be introduced to this effect.</p>