REIV THE STANDARD FOR SUCCESS

SUBMISSION

HEADING FOR HOME: RTA OPTIONS PAPER

February 2017

ABOUT REIV

The Real Estate Institute of Victoria has been the peak professional association for the Victorian real estate industry since 1936.

Over 2,000 real estate agencies in Victoria are Members of the REIV. These Members are located in city, rural and regional areas.

A key component of the REIV membership is the property management sector. The REIV represents the majority of property managers (PMs) in Victoria. The REIV's property managers, in turn, represent a significant number of residential landlords across the state.

Introduction

The Residential Tenancies Act (RTA) and the associated legislation is of significant importance to our members. More than 1,200 of our members belong to an REIV PM chapter dedicated to the management of residential rental premises.

In response to the Heading for Home Options Paper, the REIV has established an RTA Working Group comprising senior property managers who collectively represent residential rental properties across Melbourne and regional Victoria. The Institute has also held multiple sessions with stakeholders and undertaken surveys of landlords and property managers.

The REIV has also sought input from its broader membership regarding the proposed reforms.

This submission includes the REIV's responses to questions 1-137. Further input on dispute resolution (questions 138 -224) and additional supporting material will be provided to CAV on Friday, 3 March 2017.

RTA-General Comments

The REIV believes the Heading for Home Options Paper lacks balance and that many of the proposals will impact heavily on the sector, creating imbalance and signficantly affecting security of tenure and supply of rental properties.

The REIV has serious concerns relating to changes to termination provisions and the loss of landlord consent in many areas - leaving landlords at risk and financially exposed.

It is vital that any future legislation is balanced, taking into account landlords, property managers and tenants in a fair, balanced way.

RTA OPTIONS PAPER:
Heading for Home

Q1. Do the proposed objectives meet the needs of the contemporary market and will they continue to do so into the future?

The REIV considers the proposed objectives are adequate in meeting the needs of the current rental market, now and in the future. In particular, the focus on a sustainable, viable rental sector is critical. Only a viable sector driven by fair, balanced residential tenancies legislation, can deliver the housing required over coming years.

Q2. What changes could be suggested to further tailor the objectives to the needs of all the parties?

As above, the proposed objectives - particularly in regard to viability and sustainability - are adequate in addressing the needs of all stakeholders.

Q3. Which, if any, of the proposed terms should replace the current references in the RTA to landlord and tenant and why?

The REIV does not consider it necessary to replace the current references to landlord and tenant in the RTA, as some of the proposed terms - particularly lessor and lessee – are likely to result in greater confusion in the marketplace. Feedback from REIV members indicates that if landlord and tenant references were to be removed, they should be replaced with property owner and property renter.

Q4. What other terms could be considered to replace the current references in the RTA to landlord and tenant, and why?

As outlined above, the REIV does not deem it necessary to replace references to landlord and tenant.

Q5. What costs or risks could arise from changing the scope of the RTA to cover longer fixed term agreements as per option 3.1?

The REIV does not foresee any additional costs arising from the removal of the five year limit for fixed-term tenancies. As such, the REIV supports Option 3.1 and the removal of Section 6. In regards to risk considerations, the REIV believes it is necessary for rent increases and lease-break fees to be clearly outlined and built into long-term fixed tenancies. Access to the property for repairs and maintenance is another consideration, particularly as major works are usually carried out between tenancies with the average duration of a lease being 1.5 years. Subletting of properties in order to avoid lease break fees is another concern for REIV property managers.

Q6. What are the potential benefits of amending the RTA to cover longer fixed term agreements as per option 3.1?

Feedback from REIV members indicates that there is little demand from either stakeholder for long-term fixed tenancies of more than five years. However, the removal of Section 6 will provide protection under the RTA for both landlords and tenants who may wish to enter into such an agreement.

Q7. What are any other relevant considerations or implications of amending the scope of the RTA?

As outlined above, the REIV considers it imperative for rent increases and lease break fees to be clearly defined in longer term fixed leases. Feedback from REIV property managers indicates that a landlord may agree to a lower weekly rent in exchange for a five year commitment by a tenant. Equally important, if the tenant decides to break that agreement, then the landlord is entitled to fair compensation. This ensures 'balanced bargaining power' for landlords and tenants.

Q8. What are the potential benefits and risks of developing an optional prescribed long-term lease as under option 3.2?

The REIV supports the introduction of an optional prescribed long-term lease, as proposed under Option 3.2. This option clearly outlines the rights and responsibilities of all stakeholders in long-term fixed tenancies – which will vary significantly to standard fixed-term tenancies. A prescribed long-term lease

agreement will provide greater protection and security to both parties in regards to rent increases and lease break fees. The REIV deems it necessary for any prescribed long-term lease agreement to prohibit subletting without prior consent from the landlord.

Q9. What features should be included in a long-term agreement to provide the correct balance of incentives for tenants and landlords?

Feedback from REIV members indicates prescribed long-term agreements must provide substantial protections for landlords, particularly in relation to rent arrears and lease break fees. Given the difficulty landlords currently have in removing problem tenants, the REIV would support the introduction of a three-strike system for breaches (including rent arrears). In addition, the REIV supports the introduction of clearly defined lease break fees, similar to existing NSW legislation. Definitions surrounding reasonably clean upon the termination of a long-term fixed lease would also be required, and should include mandatory professional cleaning.

Q10. What features would not be appropriate for inclusion in a long-term lease agreement?

As outlined above, the REIV does not support including provisions allowing subletting without the prior consent of the landlord. Illegal subletting can result in multiple issues for the landlord, including bond transfers, maintenance, compensation and accountability for any damage or arrears. In addition, the REIV does not support modifications to the property without the prior consent of the landlord. Any modifications that are made must be rectified by the tenant upon the conclusion of the tenancy.

Q11. What are the potential benefits and risks of providing the option for tenants to extend fixed term lease agreements as under option 3.3?

The REIV strongly opposes Option 3.3, which would allow tenants to extend fixed term leases for a subsequent period without approval from landlords. It would create a significant imbalance between landlords and tenants and may drive up rents. This option removes a valuable right from landlords, who will not be able to refuse a tenant from extending their fixed term tenancy - significantly disadvantaging landlords who have a substantial financial asset tied up in the agreement. Requiring any future owner of the rental premises to honour a lease agreement will also significantly affect the selling price of the property, limiting potential buyers to investors only. Furthermore, it's imperative to understand the substantial differences between the Retail Leases Act and the RTA particularly in relation to rent arrears and problematic tenants. With the former, a tenant can be locked out of the premises for non-payment of rent. This option must be rejected by the Victorian Government.

Q12. What other relevant considerations are there for facilitating long-term leases for tenants and landlords who may be interested in this type of arrangement?

Repairs and maintenance are a major consideration for longer term fixed tenancies. REIV property managers report that it is unrealistic to complete substantial property upgrades - such as painting, re-carpeting, polishing of floor boards, renovations to kitchens and bathrooms – whilst a premises is occupied by a tenant. In addition to inconveniencing the tenant, undertaking such works while occupied will significantly increase financial costs for landlords due to the additional time the works would take to complete. Furthermore, basic maintenance is often carried out between tenancies, with the average tenancy duration being about 1.5 years. There is a concern amongst members that tenancies of five years or more may result in some properties falling into disrepair.

Q13. What additional information, if any, do you think should be included in the proposed information statement, other than the information outlined in option 4.1?

The REIV does not consider any additional information is required in the proposed information statement. Agents and landlords are already aware of their obligations in relation to the Equal Opportunities Act and by including the proposed information statement as part of a prescribed application form (as outlined in Option 4.1) will ensure tenants are also informed of their rights. The REIV deems it essential that the information is not unnecessarily duplicated in both application forms and the Red Book.

Q14. If an applicant is unlawfully discriminated against at the application stage, what practical redress can

the RTA provide, if any, particularly if the premises has already been let to someone else?

Feedback from REIV members indicates discrimination against prospective tenants is uncommon. Tenants are already afforded significant protections under existing legislation, such as the EOA, and duplicating these rights in the RTA is unnecessary. Landlords choose the most suitable applicant for a particular property using the information available to them. The REIV also considers it crucial that landlords and property managers are not penalised for perceived discrimination, simply because a prospective tenant objects to not being offered a particular property.

Q15. Is the scope of the protection proposed in option 4.3 sufficient to address concerns around misuse of applicants' personal information and, if not, what other measures are required?

Privacy laws prohibit the misuse of applicants' personal data and information, providing strong protections for tenants. Agents, in particular, must comply with privacy law regulations and the majority (if not all) shred unsuccessful applications. As the majority of rental homes in Victoria are managed by an agent, the proposed protections in Option 4.3 are sufficient in addressing any concerns surrounding the use of tenancy application information.

Q16. Should option 4.4 require a tenant to be offered a fee-free option rather than outright prohibiting a fee and, if so, why?

The REIV considers the provision of a fee-free option – which is already available to tenants at present – is adequate. Outright prohibition of a fee for tenants will unfairly result in additional costs for landlords and property managers, which may then be passed onto tenants through higher rents. Option 4.4 benefit tenants but at the expense of landlords. It's important to remember that only tenants who have breached their tenancy agreements and owe more than their bond are listed on a database. In these instances, their previous landlord has already been financially disadvantaged by at least four weeks rent. In comparison, the cost for tenants to receive a copy of their listing is minimal – or nothing if they opt for the fee-free option.

Q17. Is there a reason why the measure proposed in option 4.5 should not be introduced in Victoria?

The REIV does not support providing VCAT with the power to make orders relating to database listings (Option 4.5). Feedback from our members suggests VCAT often rules in favour of tenants, which would result in many tenants having their listing on a tenancy database amended or removed when their details should stay on the list. Tenancy databases are the only real means, at present, of verifying some areas of a tenant's capacity to meet the rental payments consistently throughout the term of the rental and ensure major property damage is avoided. It also provides valuable information relating to any breaches or damage a tenant may have caused at a previous rental. Landlords have a significant financial asset in the transaction and have a right to know if the prospective tenant has a history of non-payment of rent or damage.

Q18. Should each of the items of information listed in option 4.6 warrant disclosure before entering into a tenancy agreement, and should any other material facts be considered?

Feedback from REIV property managers indicates that landlords should be required to disclose if the property is in an embedded electricity network or if a mortgagee is taking action for possession of the premises (if they are aware of it). If a person is subletting the property then they are not a landlord. They are a tenant who is subletting the premises. In such instances, the REIV deems it crucial that the individual be required to inform prospective tenants that they do not have a legal right to let the premises. The REIV does not support requiring landlords to disclose if they intend to sell the premises, as it is a breach of their privacy. If they do intend to sell the property with vacant possession, landlords are required to provide tenants with at least 60 days' notice. More than 75 per cent of tenants surveyed by CAV say this notice period is reasonable. Tenants may also be able to seek compensation at VCAT for any inconvenience. This option lacks balance and will heavily impact on the landlord/tenant relationship – both clear concerns for CAV and this review. In this way, the REIV strongly opposes landlords

providing their address, as this creates significant security risks to the landlord and it creates major privacy issues.

Q19. Which factors are important or most likely to influence the tenant's decision to enter into a tenancy agreement, and which are more appropriately dealt with in a condition report?

Factors most likely to influence a tenant's decision to enter into a tenancy agreement include location of the property, condition of the premises, facilities and amenities as well as the cost of the weekly rent. The condition of the property at the commencement of the tenancy as well as available facilities and amenities should be appropriately dealt with in the condition report.

Q20. Would a prohibition on false, misleading or deceptive representations under option 4.7 have unanticipated consequences, or be unduly burdensome for landlords and agents to satisfy?

The REIV considers Option 4.7 to be grossly imbalanced in favour of tenants. If a tenant has the right to terminate a tenancy on the grounds a false or misleading representation was made (which includes omissions), then landlords should be able to terminate a lease agreement if the tenant has made a false or misleading representation regarding their rental history, employment, unauthorised pets or ability to pay rent. The REIV would support the introduction of this option on the grounds that it applies to both landlords and tenants.

Q21. Is option 4.8A or option 4.8B fairer for all parties, and why?

Feedback from REIV property managers indicates support for Option 4.8B, whereby an agent must provide a landlord's details upon request of court or tribunal. As tenants only require a landlord's personal information in a dispute, Option 4.8B protects the landlord's right to privacy while ensuring tenants can enforce VCAT orders. Landlords use property managers for a range of reasons, not least because it affords them privacy. As outlined above, releasing a landlord's details introduces significant risks and as such the REIV strongly opposes Option 4.8A. Furthermore, REIV property managers report that tenants frequently vacate a property without providing a forwarding address. Will tenants be required to provide the same information?

Q22. 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?

The REIV considers it necessary that tenancy agreements include the following prescribed terms: consent to keep a pet; consent to modify the property; consent to sublet the premises; professional cleaning at the conclusion of a tenancy, including carpet cleaning; and lease break fees. These prescribed terms all have the ability to affect the value of a rental property, as well as the landlord's ability to relet the premises in a timely manner – all vital in a fair, balanced agreement.

Q23. Should each of the prohibited terms listed in option 4.10 warrant inclusion in a blacklist, and should any further terms be included?

The REIV supports the inclusion of some of the items listed in Option 4.10 - with the clear exception of 'a term which purports to make a tenant who breaches the agreement liable to pay a penalty, increased rent or liquidated damages'. As previously stated in our responses to multiple RTA issues papers, the REIV supports the introduction of penalties for tenants who frequently are late in their payment of rent or are in arrears. The majority of landlords in Victoria are carrying a mortgage, with 73 per cent of all property investors only owning one rental property. As such, frequent late payment of rent can impact on their ability to service their mortgage, resulting in bank penalties and financial hardship for the landlord. Furthermore, the REIV considers it essential that tenants be required to take out insurance for their own contents.

Q24. Is there a reason why a contracting out offence, as set out in option 4.11, should not be introduced in Victoria?

Feedback from REIV members suggests the introduction of a contracting out offence (as proposed in Option 4.11) is not required, as additional terms cannot be enforced and therefore would not constitute a breach of the agreement. In addition, tenants are already afforded substantial protections under the Act, with access to a range of knowledgeable third party services and support such as the Tenants Union of Victoria. Greater education for all stakeholders regarding prohibited terms is preferable.

Q25. Is option 4.12A or option 4.12B preferable, and

why?

Enforceable additional terms (Option 4.12B) is the Institute's preferred option. REIV property managers report that retaining the status quo is impractical as additional terms – which the tenant agrees to at the commencement of a tenancy – cannot be legally enforced at VCAT. Providing greater clarity for both parties around what terms are legally considered a breach would improve the relationship between stakeholders. As previously outlined in earlier submissions, the REIV strongly believes 'no pets' clauses should be an enforceable additional term. As pets can cause substantial damage to a property – often significantly more than the bond – landlords should have the legal right to enforce a 'no pets' clause.

Q26. 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?

The REIV believes recognised additional terms should be enforced using the same processes as those used for a breach of duty. This will reduce confusion for all stakeholders.

Q27. 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?

Feedback from REIV members indicates the timeframe for breaches where the remedy requires the party to refrain from doing something (as proposed in Option 5.1) should be immediate.

Q28. Which option is preferable in terms of process for successive breaches of duty, and why?

Option 5.2A, which proposes to broaden the three strikes rule, is the REIV's preferred method for successive breaches of duty. This option – which the REIV strongly supports - will allow property managers and landlords to effectively deal with problematic tenants while encouraging positive tenant behaviour. As landlords are unable to rely on a consistent decision at VCAT with Tribunal members often favouring tenants, Option 5.2B and 5.2C are not appropriate.

Q29. What are the risks, if any, of unintended consequences arising with the measures proposed in options 5.2A, 5.2B and 5.2C?

If Option 5.2B or 5.2C were adopted, then potentially property managers and landlords would be unable to remove a problematic tenant who was damaging and devaluing a rental property. These options also protect tenants engaging in anti-social behaviour. Given VCAT often sides with tenants and Tribunal decisions lack consistency, landlords and their representatives would not be able to rely on a lease being terminated despite successive breaches by the tenant. It's important to remember that landlords have a significant financial asset at risk, and allowing successive breaches to be determined on a case-by-case basis will provide instability in the market and may even result in investors choosing to leave the market.

Q30. 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?

The REIV considers rent arrears, anti-social behaviour, prescribed tenancy agreement terms as well as enforceable additional terms should be subject to the breach of duty process. Additional terms may include 'no pets' clauses and subletting without approval.

Q31. Which obligations of landlords and tenants should not be subject to the breach of duty process?

Any instances which are grounds for serving an immediate notice to vacate – such as wilful damage, danger to neighbours and criminal matters – should not be subject to the breach of duty process. In these matters, it is imperative that a tenancy be terminated immediately, and that landlords/property managers are able to respond effectively and immediately.

Q32. 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?

As outlined above, the REIV considers additional terms should be subject to the breach of duty process, rather than considered a breach of contract.

Q33. 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?

Feedback from REIV property managers suggests an appropriate pet bond should be the equivalent of one month's rent. A mandatory bond will incentivise landlords to accept tenants who have pets, as it will provide security for damage caused by the animal. As highlighted in our earlier submissions, the REIV believes pet bonds should be mandatory – not optional.

Q34. How could the concern that introduction of a pet bond may disadvantage lower-income tenants with pets be addressed?

REIV property managers report that pets can cause significant damage to a rental property, with the damage far exceeding the bond held. As such, the REIV considers it crucial that a mandatory pet bond be introduced, particularly as damage caused by a pet could result in considerable financial hardship for the landlord.

Q35. Under option 5.3B, what cleaning-related obligations would be appropriate for inclusion in an optional clause in the standard prescribed tenancy agreement?

As outlined above, the REIV's preferred option is 5.3A. In relation to Option 5.3B, the REIV considers it vital that cleaning obligations include fumigation, deodorising carpet and professional carpet cleaning. Depending on the condition of the property at the conclusion of the tenancy, the walls and windows may also require cleaning or painting. If the property contains a backyard, the condition of the garden should also be included in the tenant's obligations.

Q36. 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?

Damage and cleaning related to a pet is usually easy to distinguish – for example clawing by dogs. Also animal waste will result in the property having a distinct odour and damage to carpets, which is easy to distinguish even if the carpet has had a quick clean by the tenant. Often replacement is the only option.

Q37. 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?

Feedback from REIV property managers indicates landlords would be incentivised to accept more tenants with pets if they had the security of a pet bond to cover potential damage caused by the animal, as proposed in Option 5.3A. Option 5.3B may not be enough of an incentive for landlords as pets can cause substantial damage that requires more than cleaning, such as replacing carpets or blinds. REIV property managers report that pet damage can also affect incoming tenants - for example flea eggs can exist in carpets for months before they hatch.

Q38. 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?

The REIV strongly opposes Option 5.4, which proposes that a 'no pets' clause is unenforceable if it is unreasonable. This option will result in a significant increase in the number of cases likely to go to VCAT to determine whether a 'no pets' clause is unreasonable. In addition, it removes an important landlord right –to consent to a pet in their rental premises - and is unlikely to result in landlords being compensated appropriately when pets damage the property. Option 5.4 contains too many variables for VCAT to determine if prohibiting a pet is unreasonable. The REIV strongly believes that pets should be permitted in rental properties only by agreement between the landlord and tenant.

Q39. What criteria would be appropriate for VCAT to consider under option 5.4, and should any other criteria be considered?

As outlined above, the REIV does not support Option 5.4. In relation to pets, the REIV considers it imperative that tenants seek prior consent from landlords. And if approval is given, tenants should pay a month's rent as bond prior to the pet moving in.

Q40. Under option 5.5, should seven days' notice be required for a valuation as well as for a general inspection, or should seven days' notice only be required for a general inspection?

The REIV does not support increasing the notice period for a general inspection from 24 hours to seven days. The manufacturing of drugs in rental properties is a serious issue in the Victorian rental sector, and extending the inspection notice period may result in further damage to these properties or allow the tenant to abandon their tenancy prior to the inspection. Extending the notice period could therefore impact heavily on a landlord's capacity to respond to issues that may arise, creating a significant imbalance in the landlord-tenant relationship – with balanced outcomes a clear guideline for this review.

Q41. Under option 5.6, is there a reason why a landlord should not be liable for any loss of the tenant's goods caused when the landlord is exercising a right of entry?

The REIV strongly rejects this option as it is fraught with difficulties, particularly as there is no requirement for the tenant to prove that an item was in fact stolen – for example a police report – or that they owned the item initially, such as a receipt. The Act allows for sufficient notice of an open for inspection. In this way, tenants who have valuable possessions should be responsible for removing/concealing them from sight prior to an inspection.Feedback from REIV property managers indicates it is highly unlikely that a tenant's possessions will be stolen or broken during an inspection. Agents and landlords cannot take responsibility for a tenant's possessions as, for one; they will not necessarily know what items are of most value.

Q42. Does option 5.7 sufficiently balance the rights of landlords and tenants where a property is being shown to prospective purchasers?

While the REIV supports many elements of Option 5.7 - requiring landlords to make all reasonable efforts to agree with the tenant on days and times for the property to be available for inspections – the Institute does not believe tenants should be entitled to compensation for each inspection that takes place. Under the new proposed options tenants are already provided 48 hours' notice for each sales inspection with the number of inspections limited to two per week. In this way, requiring compensation in addition to these restrictions does not sufficiently balance the rights of all stakeholders. One VCAT case saw a tenant awarded 2.5 hours of their hourly pay, plus the cost of a cup of coffee, for an inspection (Geelong consultation session 7/2/17). Furthermore, the REIV believes a notice of inspection (for the purpose of sale) should be capped at no more than the current maximum notice period of seven days – not 14 days as proposed under Option 5.7. Once inspection dates and times have been agreed to, the REIV believes it is vital that neither party be able to retract their permission. A sales period is already limited to a narrow window of opportunity and by limiting access and the number of visits could have a significant impact on property supply, and in turn rental property prices.

Q43.Should tenants be entitled to compensation for each inspection to show the premises to prospective purchasers, and should the RTA quantify that compensation in some way?

As outlined above, the REIV does not support compensation for each sales inspection. Input from REIV property managers suggests compensation should only be offered when there are more than two inspections per week, with the compensation only paid at the conclusion of the sales or leasing period. This will encourage and support positive tenant behaviour throughout the sales or leasing campaign. For extended sales campaigns, the REIV suggests compensation be capped at a 10 per cent rent discount on the proviso that the property is presented in a clean and tidy manner.

Q44. Does option 5.8 sufficiently balance the rights of landlords and tenants where a property is being shown to prospective tenants?

Option 5.8 provides greater flexibility for all stakeholders as it allows for longer inspection periods prior to the termination of a tenancy agreement as well as increased notice periods for tenants. This is the REIV's preferred option in relation to access to a property for reletting purposes. Feedback from REIV property managers report the current practice of conducting OFIs in the last 14 days of a tenancy has never been practical, as this is when tenants are usually packing. Option 5.8 is a balanced outcome for all parties – which is a key objective of this

review.

Q45. Is option 5.9A or option 5.9B preferable for regulating entry to take advertising pictures where the property is being sold or re-leased, and why?

The REIV supports Option 5.9A. Extensive time and effort has already been invested into developing the Victorian Law Reform Commission report of 2015. The REIV believes that revisiting the regulations in relation to photographing and filming tenants' possessions for advertising purposes is unnecessary so soon after this report. Both the REIV and the Tenants Union of Victoria provided extensive input to that report and therefore we consider it to be unwarranted duplication (clearly given the effort by VLRC) to revisit the regulations so soon. As such, the REIV supports this recent finding by the Victorian Law Reform Commission (VLRC) 'Photographing and Filming Tenants' Possessions for Advertising Purposes (Option 5.9A).

Q46. Would option 5.10 capture arrangements that are not properly characterised as commercial short-term accommodation, or other arrangements that should not require consent?

While Option 5.10 would assist in capturing arrangements that are not properly characterised as commercial short-term accommodation, the REIV believes it is imperative that landlords have the right to refuse such an arrangement. Tenants who part with occupation of their rented premises are profiting from doing so and as such shouldn't have the ability to challenge a landlord's refusal. In addition, the REIV strongly supports permitting landlords to negotiate a fee for consent to parting with possession. This is particularly relevant as poor conduct by Airbnb 'guests' can result in fines or penalty notices for the property owner for breaches of the owners' corporation rules, under changes to the OC Act. Feedback from REIV property managers suggests the tenant should also be responsible for any damage caused by short-term guests, as it is the tenant who entered into the arrangement, regardless of the owners' approval. It's important to add that a landlord's insurance will not cover damage if the property is sublet.

Q47. How should the arrangements in option 5.10 be defined, and should the reference to consideration be confined to monetary consideration?

The REIV considers any arrangement that involves a financial transaction – such as Airbnb – should be included under Option 5.10. As outlined above, the REIV believes tenants should not be able to challenge a landlord's refusal to part with possession, as landlords have a significant financial asset at stake and little control over the individuals who may be occupying the premises. Non-monetary consideration should be included in the definition to avoid tenants working around this.

Q48. What are the risks and benefits of permitting a fee for consent to parting with possession for consideration, as outlined in option 5.11?

As outlined above, the REIV clearly supports Option 5.11- permitting landlords to negotiate a fee for consent for parting with possession. The benefit of this Option is that it will encourage more landlords to grant consent and will improve relationships between stakeholders. At present, tenants are able to profit off the landlord's asset without being financially responsible for any damage or significant wear and tear. Any negotiated fee will assist landlords in covering additional expenses, such as fines from the owners' corporation. As outlined above, the REIV considers it essential that tenants be responsible for any damaged caused by short-term guests. In addition, landlord consent cannot override owners' corporation regulations around short-term lettings.

Q49. Is option 5.12A or option 5.12B preferable, and why?

The REIV prefers Option 5.12A, whereby tenants are required to bear any reasonable expenses incurred by the landlord in assigning the agreement. Option 5.12B will disadvantage landlords who may be left out of pocket if the assignment fee is capped below expenses they have already incurred during the assignment process. Transfers vary in complexity and one tenant moving out and all others remaining is vastly different from four tenants moving out and four tenants moving in.

Q50. For option 5.12B, what would be an appropriate cap for a fixed assignment fee?

As outlined above, the REIV does not support a fixed cap in the regulations for assignment fees.

Q51. What other principles around compensation could be considered under option 6.1 to be codified into the

RTA, to give greater guidance around reasonable lease break fees?

The REIV supports calculated lease break fees for fixed-term tenancies (and subsequent fixed-term tenancies with the same tenant), with fees dependent on when the tenant breaks the lease (as proposed in Option 6.2). This provides fair compensation and greater certainty and simplicity for all parties. However, feedback from REIV members indicates no support for Option 6.1 as many of the principles further penalises landlords, including where landlords cannot claim for loss of rent where they have served a notice to vacate. REIV property managers cite tenants are often advised to cease paying rent which will result in them being served a notice to vacate, allowing the tenant to break their fixed tenancy agreement without penalty.

Q52. How can fixed lease break fees strike a balance between acknowledging the commitment of the lease that has been broken, and compensating for the actual loss incurred by the landlord?

As outlined above, the REIV supports calculated lease break fees as it provides greater certainty and clarity for stakeholders wishing to break a fixed-term agreement. Calculated fees will improve relations between stakeholders, reduce VCAT hearings in these matters, and compensate the landlord for advertising and reletting costs. The REIV considers it vital that calculated lease break fees are included in prescribed tenancy agreements – they should not be optional or discretionary. The Institute has had input from a large number of landlords who consider it vital that the party breaking the lease is held responsible for the financial impact.

Q53. Should the optional fixed lease break fee in option 6.2 be a set amount, or should the RTA prescribe a method for calculating the fee in proportion to the remaining term of the lease?

The REIV suggests Victoria consider NSW legislation (S107 (4) RTA NSW) in relation to calculated lease break fees – the equivalent of six weeks rent as compensation if a tenant breaks the lease in its first half, and the equivalent of four weeks' rent as compensation if the tenant breaks the agreement in the second half of the lease. Lease break fees should be paid once a tenant has vacated the premises, with the tenant unable to use their bond as payment.

Q54. Should the optional fixed lease break fee in option 6.2 be higher for long term leases discussed in chapter 3.2, and if so, what factors should be relevant?

Feedback from REIV property managers indicates fixed lease break fees should be higher for long term tenancies as they should recognise the level of commitment that is being broken and the financial impact on the landlord. Furthermore, it's important to remember that landlords may have accepted a lower weekly rent on the basis they were gaining security through a long-term fixed lease.

Q55. How can the RTA provide appropriate incentives for a landlord to find a new tenant promptly once a lease is broken?

Input from REIV property managers suggests landlords already seek to find a new tenant promptly in a lease break situation, as compensation through VCAT is not guaranteed or adequate in covering loss of rent and reletting expenses. The REIV does not support requiring landlords to place the premises back on the market at the same rent, as the previous tenancy may have been long-term. The original weekly rent may no longer be appropriate or in line with similar properties in the area. In addition, significant repairs may have been required at the end of a long-term tenancy – necessitating landlord expenses which will need to be recouped (to some extent).

Q56. What are the risks, if any, of unintended consequences arising under option 6.3?

Feedback from REIV property managers indicates VCAT already takes a tenant's hardship into account when awarding compensation. It's important that any future legislation adequately balances the rights of all stakeholders; otherwise some potential tenants may find it more difficult to secure a tenancy in the first instance as landlords will be reluctant to enter agreements where there is a high risk that the tenant will terminate the lease early without any financial ramifications. Just one of the unintended consequences of this option is likely to be reduced confidence in the market by landlords. In this way, it's imperative that hardship be clarified under the Act as 'hardship caused by unforeseen circumstances.'

Q57. Is two weeks' rent an appropriate cap for compensation to the landlord in cases of tenant hardship as provided in option 6.4, should compensation be capped at some other amount or waived altogether, or should VCAT retain discretion to award compensation on a case by case basis?

In instances of genuine tenant hardship, the REIV would support capping compensation to landlords at the equivalent of two weeks' rent. However, there needs to be clarity around genuine hardship to ensure that this is appropriately applied. As outlined above, the REIV suggests it should be hardship arising from unforeseen circumstances. Input from REIV property managers indicates that some tenants have sought to terminate a fixed-term agreement early on grounds of hardship due to illness, only to be found living in the next suburb healthy and well.

Q58. 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?

The REIV considers it imperative that adequate protections are in place for landlords at this end (the lower end) of the market. Legislating that tenants are able to break a fixed-term tenancy by providing only a 14 day notice to vacate without any compensation will mean that these very tenants will struggle in obtaining a tenancy in the first instance. In order to combat this, the REIV would support landlords being able to claim appropriate compensation (reletting fees and associated costs) from the residential tenancies fund (or possibly, the VPF) in these instances, which will encourage landlords to accept this significant financial risk. Furthermore, it's important that tenants provide the landlord or property manager with written evidence to support their request to break the fixed-term agreement without penalty. The REIV does not consider an owner selling the property as a valid reason for early termination, especially as it is possible that the purchaser may be prepared to honour the lease agreement.

Q59. Which of the alternative options outlining procedures for dealing with goods to be stored best balances the interests of landlords and tenants?

The REIV strongly rejects all of the alternative options for dealing with abandoned goods. All of the proposed options result in the landlord being left significantly out of pocket with no recourse to compensation. Given the relative affordability of furniture, landlords/property managers should not be responsible for removing, storing and selling abandoned goods, as this creates significant and unnecessary expense for what could be worthless items. Tenants may abandon heavy furniture with the intention of repurchasing furniture in a new location rather than paying for transport and storage costs. Furthermore, organising transport, storage and selling of abandoned items is time-consuming for the landlord or agent and there is no incentive for tenants to remove items quickly. The REIV believes costs for storage should therefore be paid from the tenant's bond, although in some instances these costs may exceed any remaining bond. Additionally, the REIV is extremely concerned that agents will no longer be able to rely on advice of CAV inspectors in relation to abandoned goods.

Q60. 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?

The REIV does not consider it necessary to outline 'reasonable steps' a landlord/property manager must take in attempting to notify a former tenant about abandoned goods. If these steps must be defined, the REIV considers an email and SMS to the former tenant to be adequate.

Q61. In what circumstances are landlords most in need of assistance from CAV for advice and assessments in relation to goods left behind?

Given the significant costs of removal and storage of abandoned goods, CAV inspectors provide important advice for landlords and agents in determining goods of monetary value. Landlords/property managers are most often in need of assistance in relation to abandoned goods at the conclusion of a tenancy – whether by agreement or eviction. It is imperative that this service remains, as landlords and agents should not be held responsible for disposing of potentially valuable goods. The current CAV arrangement indemnifies property managers if 'valuable goods' were disposed of. As outlined above, the REIV does not support requiring landlords to

cover considerable expenses for goods that have been abandoned, particularly without recourse to the tenant's bond or the residential tenancies fund.

Q62. 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?

In instances where the landlord/property manager is aware of the outlined circumstances, then CAV should be contacted to undertake an assessment of the abandoned goods. As outlined above, the REIV supports enabling landlords to access the residential tenancies fund or the tenant's bond to cover removal and storage costs for abandoned goods. While the listed circumstances are unfortunate, it is unreasonable to expect landlords to pay significant expenses without adequate compensation for doing so.

Q63. 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?

As highlighted in the RTA Options Paper and previous submissions, the percentage of landlords charging bonds of more than four weeks' rent is relatively low (13.8 per cent according to the ABS) with affordability of the bond being ranked as the least important factor by tenants. Feedback from REIV property managers indicates support for updating the high value exemption to reflect current market rents (Option 7.1A) - however it should reflect double the median statewide rent, rather than three times as proposed. A property that commands double the median rent for Victoria is a high value property and should be treated as such. An investment property is a significant financial asset for landlords, particularly as Melbourne now has a median house price of $770,000. At present, a four week bond is often grossly inadequate in covering damage and/or arrears. A standard rent arrears claim takes a minimum of six weeks before a landlord or property manager can reclaim the property. In instances where only four weeks rent is held as bond, the landlord is at least two weeks' rent out of pocket, excluding any potential damage , repairs or cleaning that may be required. In addition, the REIV considers it imperative that the special circumstances exemptions are retained. Maintaining both high value and special circumstances exemptions are essential in ensuring bonds provide adequate security to landlords and are sufficient in covering minor damage or arrears. Limiting a landlord's security over their investment will affect supply of rental properties.

Q64. Would any of the options for limiting maximum bonds and rent in advance result in unintended consequences?

As outlined above, limiting bonds and rent in advance may result in landlords opting to exit the rental market as it reduces their security in the event of damage or arrears. It's also important to note that tenants do not consider current upfront costs of entering a tenancy – such as the bond and rent in advance – to be a major issue with less than 14 per cent of private rental tenants in Victoria paying bonds higher than one month's rent. In addition, only one per cent of tenants surveyed by CAV said bonds were too high. It's also important to note that limiting bonds and rent in advance could also result in an increase in applications to VCAT at the end of a tenancy.

Q65. How well does option 7.2 address stakeholder concerns about delays to bond repayments when all parties are in agreement?

The REIV supports Option 7.2 – speedier bond repayments when all parties are in agreement – as it provides an appropriate timeframe (14 days) for consent to the bond being paid out. Whether parties are in agreement or not, the REIV considers it crucial that landlords and property managers retain the existing 14 days (10 business days) to provide the final condition report along with estimates, quotes, invoices or receipts relating to a bond claim. This is necessary due to the increasing number of regional property investors who live in Melbourne, interstate or overseas.

Q66. 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?

Feedback from REIV property managers indicates overwhelming support for retaining the status quo in relation to facilitating bond repayments when parties

cannot reach agreement. The proposed bond repayment options reduce the balance of power between the stakeholders too far in favour of tenants, further complicating the processes for landlords/agents to order to claim against the bond. The REIV already considers it inappropriate that landlords/agents must supply invoices - rather than trade quotes - when claiming compensation as landlords must pay for the costs upfront. At present there are clear procedural processes when making a claim for a tenant's bond, including that the claim is made within 14 days and all correspondence is served by registered post. However, property managers report that they receive correspondence by regular mail, or not at all. In this way, the REIV considers it crucial that all stakeholders are required to serve applications in the same format and in accordance with the legislation.

Q67. 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?

As outlined above, the REIV believes the additional protections for tenants (as outlined in Option 7.3C) are unnecessary and unfair, and will shift the balance of power between stakeholders too far in tenants' favour. In this way, the REIV strongly opposes Option 7.3C and urges CAV to retain the status quo in relation to bond repayments. The status quo is fair and equitable for all stakeholders.

Q68. What are the benefits and risks of restricting rent increases to once per year?

Feedback from REIV property managers suggests that six monthly rent increases are uncommon. In this way, the REIV supports restricting rent increases to once per year, as it will provide greater stability for tenants while improving the relationship between stakeholders. However, as this option involves the loss of yet another landlord right, the REIV recommends the notice period for rent increases be reduced from 60 days to 30 days.

Q69. Are there any unintended consequences from requiring landlords to disclose how rent will be set during a fixed term tenancy?

The REIV does not foresee any unintended consequences arising from requiring landlords to disclose how rent will be set during a fixed-term tenancy (Option 7.5). This option is particularly useful for fixed long-term tenancies, where it is vital that both stakeholders are informed of the conditions of the tenancy for the duration of the agreement.

Q70. Would option 7.6 appropriately balance the interests of landlords and tenants in regulating rent payment fees?

As tenants are already afforded a number of payment methods, including fee-free options, the REIV does not consider it necessary to implement additional payment options. Fee-free methods currently available to tenants include payment in person, electronic transfers, BPAY and BPOST. In this way, while the REIV does not object to Option 7.6, the Institute does not believe legislation is required.

Q71. Are there any unintended consequences that could result from requiring landlords to accept Centrepay payments?

The REIV opposes Option 7.7, which requires landlords to accept Centrepay payments. It's unreasonable to expect landlords to pay a fee in order to receive rent for their rental property. Fee-free methods are already available and if a tenant opts to use Centrepay, then the cost for doing so lays with the tenant – not the landlord. If regulation obliges landlords to accept Centrepay payments, the unintended consequence may be that landlords refuse to let their property to lower-income tenants.

Q72. In your view, should the new RTA regulate rental bidding?

Given rental bidding is generally instigated by tenants and is not a frequent practice, the REIV does not deem it necessary to regulate rental bidding. Allowing tenants to offer varying prices for rental properties better enables market forces to effectively establish the true market value. REIV property managers report that it is common practice for tenants to offer a lower rent than advertised - which is also a form of rental bidding.

Q73. Which option for regulating rental bidding do you prefer, and why?

If rental bidding is to be regulated, the REIV prefers Option

7.8A – rental properties must be advertised at a fixed price and landlords and agents cannot request rental bids. This option is in line with current practices.

Q74. Would option 7.8B unfairly restrict a tenant's ability to offer a rental bid?

As outlined in the RTA Options Paper, rental bidding is led by tenants. Option 7.8B would remove the tenant's right to offer a higher bid in order to improve their chances of securing a particular property. It's important to note that tenants are not guaranteed a property simply because they offer a higher weekly rent than advertised. Landlords and property managers select the most suitable candidate for the property, which takes into consideration their rental history as well as ability to pay the rent. The REIV does not support Option 7.8B.

Q75. 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?

As tenants currently have three business days to respond or challenge a condition report, the REIV considers this sufficient time to determine whether vacant premises are suitable for occupation. Feedback from REIV property managers indicates tenants are entitled to request access to the vacant premises prior to taking possession. Property managers also report that it is often not possible to complete the condition report more than a day before the tenancy commences.

Q76. 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?

As rental premises are not always vacant at the time the tenant signs a lease agreement, the REIV considers it problematic to require the condition report to be completed at this stage. The current arrangements relating to the completion and distribution of the condition report are appropriate. As outlined above, in the majority of instances it is not possible to provide the condition report at the time the lease is signed. On average tenancies are entered into 14 days prior to the commencement of the lease, and this is generally during the time the property is occupied by the owner or another tenant.

Q77. 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)?

The REIV encourages a standard condition report supported by photos, particularly as photographing vacant premises is already common practice. However, the Institute strongly rejects the proposed changes to the contents of the condition report. This level of detail will impact on the timeframe in which a property would then become available for reletting and impact significantly on property managers and landlords. In turn, it could reduce the number of properties in the market. A condition report is not a building report and as such, a property manager is not qualified to comment on the structural integrity of a premise.

Q78. What property features particularly relevant to other tenure types should be documented in a condition report?

The REIV has opted to not respond to this question, as it relates to other forms of tenure.

Q79. Is five days after occupation too long a period for allowing the tenant to complete and return the condition report?

Feedback from REIV property managers indicates support for extending the timeframe for returning the condition report to five days. This will allow tenants ample opportunity to return and/or respond to the condition report at the beginning of the tenancy. Given the extended timeframe, the condition report should be treated as evidence at VCAT should the matter arise at the conclusion of a tenancy agreement. However, requiring the report to be completed within five business days at the end of the tenancy is not practical, particularly if the landlord self-manages the premises and lives interstate.

Q80. Does the proposed inclusion of photos in the

report mitigate the risk of disagreement with the contents of a condition report?

As outlined earlier, feedback from REIV property managers indicates photographing vacant premises is common practice. The REIV believes the presence of digital time-stamped photos and videos - along with a comprehensive written report -significantly reduces disagreement between the parties, particularly at the conclusion of a tenancy.

Q81. Are the proposed condition reporting triggers adequate? Should a condition report be required more or less often?

The REIV considers the current condition report timeframes to be appropriate. Requiring a condition report to be carried out when a lease is transferred or sublet will result in additional costs for landlords, which will be passed on to the incoming or outgoing tenant. In addition, a condition report should not be completed at a routine inspection as the property is not vacant and the condition cannot be properly assessed. Further, the time that it takes to complete a condition report (upwards of an hour for small properties) would impact on a tenant's quiet enjoyment. Feedback from REIV property managers also indicates that the constant updating of the condition report during the tenancy would cause an adversarial relationship between stakeholders with issues of damage being dealt with throughout the tenancy.

Q82. 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?

The REIV has concerns about the Director's guidelines, in that these may impose onerous conditions on property managers and impact on landlords. Should these proceed, there would need to be extensive consultation with the REIV on the breadth and extent of the guidelines. In regard to VCAT, feedback from REIV members suggests the Tribunal should have regard to the age and weekly rent of a property when determining whether it has been provided in an acceptable condition. Furthermore, the same standards of cleanliness should apply at the beginning and conclusion of a tenancy, particularly if the property was professionally cleaned immediately before the commencement of the tenancy. This is essential in maintaining balance between stakeholders. The REIV strongly opposes Option 8.10, which would allow outgoing tenants to return to clean or repair the property within five business days of vacating it. This option would delay the reletting of a property by up to a week without any guarantee that it will be handed over in a condition suitable for incoming tenants. This creates further imbalance between stakeholders as landlords will lose at least a week's rental income - the Victorian median rent is currently $370 a week - while there are no financial ramifications for the tenant for failing to return the property in an acceptable condition. This is a significant impact on investors and an inefficient allocation of economic resources. It's important to consider that should a landlord choose to commence a new tenancy within the five days, and the previous tenant wishes to re-attend a repair, a new Right of Entry would need to be included.

Q83. Is the age and character of a property relevant to determining whether it could reasonably be considered to be clean and in good repair?

As outlined above, the REIV deems it crucial that the age and character of a property is taken into consideration when determining if a property is in clean and good repair. Feedback from REIV property managers indicates that some tenants apply for a more affordable, older style property and then request multiple adjustments, which would be expected of a more expensive rental property. Multiple landlords reported this was the case with tenants requesting the entire premises be painted after moving in, despite being happy to rent the property in its previous condition. This impacts on the landlord-tenant relationship as the weekly rent will no longer be commensurate with the condition of the property. Referencing the condition of a property will also assist in providing clarity around standards of cleanliness during, and at the conclusion, of a tenancy. This is particularly relevant in regards to professional carpet cleaning, which should be an enforceable requirement at the conclusion of a tenancy. The ability to offer a property in a condition commensurate with the weekly rent allows landlords to provide lower cost housing to the private rental sector. Research conducted by the REIV shows that if landlord costs rise, 80 per cent of landlords will increase rent to

cover these costs (survey of more than 3,000 landlords Feb 2017).

Q84. What specific tailoring of the options is required to assist the parties in alternate tenure types?

The REIV has opted to not respond to this question, as it relates to other forms of tenure.

Q85. In practice, would the requirement for deadlocked external doors improve security in rental properties?

REIV property managers report that deadlocked external doors are frequently a condition of landlord insurance and as such, are common in rental properties. While deadlocked external doors improve security, legislating their necessity would increase costs for landlords - which may be passed on to tenants through higher rents.

Q86. What other security measures (for example, lockable screen door, sensor lighting) could landlords reasonably be expected to provide?

The REIV does not consider it reasonable to expect landlords to provide additional security measures, such as sensor lighting. Provided they obtain the landlord's consent, tenants are already able to install additional security measures at their own cost. Additional safety measures would only be considered appropriate if the building regulations required these items to be included.

Q87. Could these options be applied to other tenure types without significant adaptation?

The REIV has opted to not respond to this question, as it relates to other forms of tenure.

Q88. 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?

The REIV is concerned about the introduction of minimum property standards, as these already exist under the National Construction Code. It is unreasonable to suggest that higher minimum standards should apply simply because a property is being rented out. South Australia and Tasmania have not been able to demonstrate the benefits of minimum standards, with South Australia currently reviewing its legislation and Tasmania only introducing its version last year. NSW, which comprehensively reviewed its legislation last year, has chosen not to introduce minimum standards. It's important to note that neither Tasmania nor South Australia's private rental markets are comparable to the size of Victoria's rental sector. In addition, research shows that the majority (90 per cent) of tenants are living in suitable, appropriate rental housing. Given the existing standard of rental properties in Victoria is already high and that minimum property standards currently exist, the REIV deems it unnecessary to implement additional minimum standards governing this sector. Any changes to the RTA which increase landlord costs will undoubtedly result in rents rising and landlords opting to exit the market. This is supported by landlord research undertaken by the REIV which shows 82 per cent of landlords will increase rents to cover costs of implementing minimum standards while 17 per cent will exit the market if minimum standards are introduced.

Q89. 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?

Damp and mould in a rental property is a particular issue that relates to both the structural condition and cleanliness of a premises. Its presence in a rental property can be caused by a number of factors, including external/structural problems or created by tenants with poor living habits who have not used exhaust fans and windows appropriately. Feedback from landlords and REIV property managers indicates this issue should be dealt with according to the cause of the mould. Requiring landlords to install new exhaust fans to address mould issues will be futile if the tenant refuses to use it. A Ballarat landlord told a CAV consultation session on 7/2/17 that many tenants do not use an exhaust fan and then complain about mould.

Q90. 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)?

As outlined above, the REIV does not support the introduction of additional minimum standards for rental properties as minimum standards are already set out

in the National Construction Code. Furthermore, the overwhelming majority of rental properties in Victoria are already of a high standard. Of concern are a number of listed 'minimum standard' features that go beyond basic requirements, such as cooling, a specified number of power outlets in each room, an electrical safety switch and the provision of clothes drying facilities. Many of the proposed options relating to property conditions significantly affect the balance of power between stakeholders, to the detriment of landlords. A clear example of this is Option 8.15A whereby a tenant who takes possession of a rental property that is uninhabitable would be entitled to a full refund of any rent paid regardless of how long the tenant has lived in the property and whether they were aware of the condition previously. This will encourage low-income tenants to seek out such properties in order to be able to avoid paying rent.

Q91. What is an optimal transition period for ensuring that landlords have adequate time to bring their properties up to any legislative standards?

The REIV does not support the introduction of additional minimum standards. Any measures that increase costs for landlords will result in rents rising and/or landlords exiting the rental market, thereby reducing the supply of rental properties. It is unreasonable to suggest that landlords should view their rental property as a public good, particularly when it is a significant financial investment over which their rights and control are being eroded. In the event that minimum standards are introduced, the REIV prefers a staggered transition arrangement (Option 8.14) over an extended period of time - for example, five years. The REIV considers it reasonable for Government to offer a rebate for additions to the property. In addition, the age and style of a property must also be considered in relation to any additional minimum standards. For example, many brand new apartments do not allow the installation of flyscreens due to the construction design.

Q92. 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?

The REIV supports landlords being permitted to lease out property that is fit for habitation, safe, clean and has working features - provided it has working smoke alarms. Over regulation of property conditions will increase rents across the state and reduce available rental stock at the lower end of the market.

Q93. Would allowing conditional non-compliance with any standards undermine or weaken the landlord's incentives for addressing defects in their property?

Given that the overwhelming majority of rental properties in Victoria are already of a high standard, the REIV does not believe allowing conditional non-compliance would undermine a landlord's incentives for addressing defects. Instead, it may encourage landlords at the lower end of the market to remain in the private rental sector. It's important to note that a significant number of older properties will not meet listed requirements, particularly in relation to an electrical safety switch and energy efficiency features. It does not make these properties uninhabitable and to remove them from the market will result in fewer housing options for low-income tenants. While the REIV supports elements of 8.13A, the REIV has serious concerns relating to tenants being given the right to apply for a full refund of any rent paid if they occupy an 'uninhabitable' property. This applies regardless of how long the tenant has lived in the property and whether they were aware of the property's condition beforehand. This may encourage some tenants to seek out such properties.

Q94. 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?

Proposed additional remedies and protections for tenants will significantly impact on the balance of power between stakeholders. Tenants are already afforded substantial protections under existing legislation, particularly in relation to property conditions, repairs and maintenance. Allowing for a full refund of rent paid (among others) will encourage some tenants to exploit the system to avoid paying rent, rather than working with the landlord/agent in rectifying any issues. As outlined above, increasing costs to landlords through extensive additional minimum property standards – as well as criminal penalties and

prohibiting reletting – will result in increased rents across the state and landlords opting to exit the private rental market. It's also important to note that the Department of Health and Human Services (DHHS) is the largest landlord in Victoria. Any introduction of minimum standards will also affect the provision of social housing – as these properties MUST be of the same standard expected of private landlords. The REIV does not support exceptions for social housing, which would further imbalance the rental market. It's important to consider that tenants may opt to lease a property at a low rent that does not meet minimum standards, and then while in occupation require the landlord to increase the standard of the property whilst enjoying increased amenity at the original fixed low cost. This would clearly be unreasonable and impact significantly on landlords.

Q95. Does the proposed list of maintenance activities accurately reflect common practice in different tenure types?

Feedback from REIV members indicates many of the listed maintenance activities (Option 8.16) reflect common practice in general tenancies, particularly for landlords. The REIV strongly opposes tenants being able to install any fixtures without landlord consent (Option 8.16 –bullet point three). Any maintenance of approved fixtures should be carried out by a licensed tradesperson – at the tenants' expense. Furthermore, the REIV would support Option 8.19, as it would deter tenants from removing or deactivating the smoke alarm.

Q96. Are additional measures needed to prevent tenants from being required to take on onerous maintenance activities?

Tenants should not be undertaking maintenance activities, particularly substantial works. As such, tenants who carry out detailed maintenance works without landlord consent should be issued with a breach of duty notice for the tenant – and depending on the severity of the damage, termination of the tenancy. The REIV does not support tenants undertaking substantial maintenance works without landlord consent. Furthermore, the Institute deems it essential that any substantial maintenance activities are carried out by licensed professionals.

Q97. Under what circumstances would it be acceptable for the landlord and tenant to agree to different maintenance arrangements?

Feedback from REIV property managers suggests it is not common practice for different maintenance agreements to be agreed upon by stakeholders. While uncommon, the REIV supports stakeholders being able to agree on different arrangements, provided they were enforceable in VCAT.

Q98. Would the proposed options support the most critical types of modifications?

The REIV strongly rejects allowing tenants to make property modifications without landlord consent. Landlords have a significant financial asset at stake and property modifications can affect the value of their investment as well as their ability to sell or relet the premises. The REIV strongly opposes Options 8.20A, 8.20B and 8.21 – all of which would remove valuable landlord rights and control over their rental property. These options significantly affect the balance of power between stakeholders – as tenants will have rights that far exceed their financial investment in the property. Removing important landlord rights in relation to property modifications will result in instability in the market, with landlords opting to exit the market and invest in other portfolios. More than 99 per cent of respondents in a survey of more than 3,000 landlords and 200 property managers do not support tenants having the option to make modifications without landlord consent (REIV survey February 2017). As such, the REIV urges Government to retain the status quo in relation to property modifications.

Q99. 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?

As outlined above, the REIV strongly urges Government to retain the status quo in relation to landlord consent for property modifications – as well as the tenant requirement to rectify any modifications at the conclusion of the tenancy. The significant investment by landlords must be paramount – rather than tenants' desire to make a rental property more homely. It is unreasonable to provide tenants with the rights of a homeowner (ability

to make modifications) while significantly reducing a property owners' control over their investment. Removing a landlord's rights in relation to their rental property – and making them financially responsible for rectifying a tenant's modifications – will cause substantial instability in the market and affect the supply of rental properties. These two areas – balance between stakeholders and future supply – are a cornerstone of the review and are heavily impacted by a range of proposals in 'Heading for Home'. As mentioned above, landlords have categorically rejected these options.

Q100. Are there any disadvantages to continuing to strictly regulate modifications in other tenure types?

The REIV has opted to not respond to this question, as it relates to other forms of tenure.

Q101. Would the use of a suitably qualified person reduce landlord concerns about approving a modification?

The REIV strongly opposes tenants being permitted to make modifications without landlord consent. Irrespective of who carries out the modifications, a landlord MUST consent to the modifications. The REIV deems it essential that any landlord approved modifications are carried out by a licensed professional (at the cost of the tenant) and any modifications are rectified by the tenant at the conclusion of the tenancy. As outlined throughout the review, a rental premises is a significant financial investment for landlords and their rights and control over what happens to their property should not be eroded. Any change to the status quo in relation to property modifications will affect supply of rental properties.

Q102. Should tenants be able to dispute the imposition of a supply related charge in social housing?

Feedback from REIV property managers suggests tenants in social housing should not be able to dispute the imposition of a supply related charge, unless the charges are unreasonable.

Q103. Should the list of fees and charges borne by landlords also include pump out charges for septic tanks?

As septic tanks do not need to be pumped out annually, the REIV considers this to be a landlord responsibility. However, if a fixed long-term lease was in place (for example, five years), emptying of septic tanks should lay with the tenant.

Q104. 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?

Usage charges for bulk metered utilities should be based on number of occupants and dwelling size.

Q105. Under what circumstances would telecommunications infrastructure not amount to a capital improvement?

Given the popularity of 3G/4G devices and wireless connectivity - used by a significant number of tenants - the REIV considers it unreasonable for landlords to be expected to pay for the installation and connection of additional telecommunication and entertainment services. In this way, the REIV strongly rejects telecommunications infrastructure being a landlord liability, as proposed under Option 8.22A. Should tenants still wish to have telecommunications infrastructure installed, they need to gain landlord consent and agree to costs (ie whether tenant pays for most or all of this installation). Telecommunications infrastructure is not necessarily a capital improvement in instances where the property has been damaged during the installation of these services (such as pay TV).

Q106. Does damage need to be defined in the RTA, or would the proposed guidelines suffice?

Feedback from REIV property managers indicates there is a genuine need to define damage in the RTA – and its distinction from 'fair wear and tear'. It's also important that damaged caused by a pet is specifically excluded from being treated as fair wear and tear – and that damage does not have to be continuous in order for a landlord to serve a notice to vacate on the tenant. In addition, the REIV considers it imperative that VCAT legislation be amended to allow landlords/property managers to present quotes to repair damage caused by tenants at the Tribunal, rather than invoices. Under existing legislation, landlords are required to pay to repair damage caused by tenants, before they can seek compensation from the tenant at VCAT, which may not then be granted, leaving landlords heavily out of pocket.

Q107. 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?

The REIV believes the proposed rewording of the tenant's duty in relation to damage will reduce confusion between the stakeholders, particularly the removal of whether the tenant has taken reasonable care not to damage the premises. In this way, the REIV supports Option 8.24 – tenant must notify landlord of, and compensate for, damage.

Q108. 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?

Input from property managers indicates the provision of a tenant mobile phone number would assist in ensuring supply side stakeholders can contact tenants and resolve issues relating to damage. This may be either a phone call or SMS.

Q109. Would the proposed options encourage landlords to respond promptly to a request for a repair?

The REIV considers a number of proposed reforms will assist in improving the repairs process. These include Option 8.30 (require tenant to report defects), Option 8.31 (guidelines clarifying time frames for responding to urgent repairs) and Option 8.33 (enable property owners to join an owners corporation to proceedings). The REIV would also support Option 8.34 (increase authorised repair amount) provided landlords retained the current 14 days to dispute the tenant's claim. These options will also assist in providing clarity for all stakeholders regarding their rights and responsibilities.

The REIV opposes the other proposed options in relation to repairs, particularly reducing time for landlords to dispute an urgent repair and requiring landlords to lodge a repairs and maintenance bond. A landlord bond is not required as tenants already have sufficient recourse through VCAT, which can order rent paid into a special fund until repairs are repaid. Furthermore, requiring such a bond would further disrupt the balance of power between stakeholders and disadvantage the majority of landlords who maintain their rental properties and carry out repairs in line with the RTA. It's also important to note that repairs and maintenance are not nearly as substantial an issue as the Options Paper suggests. Recent VCAT statistics indicate that less than 400 orders for urgent and non-urgent repairs were made in 2014-15, compared with about 33,000 applications relating to bond, rent arrears and possession.

Q110. 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?

The REIV strongly opposes Option 8.32 which would significantly reduce timeframes for landlords. Given 10 per cent of surveyed landlords (CAV market research) identified damage as the main reason a landlord declined a maintenance or repair request, the REIV deems it unreasonable to further erode landlord response times. As outlined above, repairs and maintenance are not a major issue in the Victorian rental sector – certainly not when compared to rent arrears and bond issues. If a landlord's response times for repairs and maintenance are halved, then it would only balance the relationship between stakeholders if a notice to vacate could be served when a tenant is seven days in arrears. It's vital that any future legislation remains balanced for all parties, which is a key objective of this review.

Q111. What unanticipated impacts would these options have on either party?

If some of these reforms were implemented, REIV research shows that a significant proportion of landlords will opt to exit the rental market, reducing supply of private rental stock at a time when migration to Victoria is at its highest in 40 years. Requiring landlords to lodge a bond with the RTBA as security against future claims for non-performance is offensive, particularly when protections for landlords against rent arrears and damage are being eroded despite more than 60,000 landlord applications to VCAT last year – many of these for damage caused by tenants. Furthermore, would tenants with a poor rental history be required to pay a higher bond in case they fall into arrears again?

Q112. How well would these options translate to other

tenure types?

The REIV has opted to not respond to this question, as it relates to other forms of tenure.

Q113. Are any further options needed to ensure that requests for repairs are reasonable?

As outlined in earlier respones, the REIV believes the age and condition of the property should be taken into account in determining whether requests for repairs are reasonable.

Q114. What other related issues ought to be canvassed if an inter-governmental project like the one described in option 9.1 were to be convened?

Feedback from REIV property managers suggest the definition of a rooming house should not be amended to include emerging accommodation models. These emerging accommodation models (such as short term accommodation providers) are quite different to rooming houses and cater to very different tenants. Rooming houses are predominately utilised by financially disadvantaged people while short term accommodation is often used by interstate and overseas tourists.

Q115. Are these any concerns with permitting registered housing agency buildings to be declared as rooming houses, in the manner outlined in option 9.2?

The REIV does not have any concerns with permitting registered housing agency buildings to be declared as rooming houses (Option 9.2).

Q116. What are the risks, if any, of unintended consequences arising if the clarification in option 9.3 were introduced?

The REIV deems it unreasonable to penalise either a landlord or agent because they ought to have known a building was being used as a rooming house (Option 9.3). Furthermore, it is not the landlord or agent's role to establish whether the rooming house is registered. That is the role of the operator, regulator and local council.

Q117. What evidentiary issues, if any, would be raised if the clarification in option 9.3 were introduced?

Feedback from REIV property managers indicates it would be very difficult for an agent to ascertain the level of registration from the rooming house operator. As outlined above, the REIV does not consider this the role or responsibility of a property manager.

Q118. Could option 9.4 result in better enforcement outcomes in the rooming house sector?

The REIV has opted to not respond to this question, as it relates to rooming houses, rather than general tenancies.

Q119. What evidence is there of operators using a building as a rooming house without the consent of the building owner, and causing detriment to residents?

The REIV has opted to not respond to this question, as it relates to rooming houses, rather than general tenancies.

Q120. What other measures could be considered to prevent rooming house operators from using a building as a rooming house without the consent of the building owner?

Input from REIV property managers suggests operators should be required to provide written authorisation to offer a sublease from the property owner to any potential resident, as well as a copy of council registration as a rooming house.

Q121 - Q137

The REIV has opted to not respond to these question, as they relate to rooming houses, rather than general tenancies.

Summary

The REIV thanks Consumer Affairs Victoria (CAV) for providing the opportunity to deliver input to the Heading for Home Options Paper.

This submission provides responses to Part A and B of the paper (questions 1-137). The REIV will provide final feedback to Part C (questions 137-224) on Friday, 3 March 2017.

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