Fairer, Safer Housing:
Residential Tenancies Act Review
Rights and Responsibilities of Landlords and Tenants Issues Paper

A Submission from the Community Housing Federation of Victoria

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

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

In this response to the Issues Paper on Rights and Responsibilities of Landlords and Tenants, CHFV builds upon its earlier submission to the Consultation Paper published in August 2015.

Background

Why the RTA matters

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

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

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

Why the rights and responsibilities of landlords and tenants matter

Both landlords and tenants have obligations as parties to a residential tenancy or residency. Landlords have a right to receive rental payments and to have their property looked after, and also have an obligation to provide a secure well-maintained premises for tenants to live in. In the case of social housing landlords they also have an obligation to ensure that accommodation is affordable for low to middle income tenants. Tenants have a right to a secure well-maintained home and have an obligation to pay rent and look after the property.

The RTA has tried to establish a balance between these sometimes competing rights and responsibilities, and has generally achieved this purpose fairly well.

Due to the withdrawal of government subsidisation of community housing programs over the last ten years, community housing organisations have become more and more dependent on the income they derive from rent in order to pay for management and maintenance of housing and, in some cases, the costs of borrowings to construct new housing. It therefore remains vital that CHOs are able to enforce the requirement for their tenants to pay rent and to not damage the premises through the provisions of the RTA.

An additional factor in community housing is that many of the tenants have complex needs involving mental health, drug and alcohol problems and other forms of disadvantage which can make it difficult for CHOs to ensure that their neighbours (often also low-income people with their own issues) can have peaceful and safe enjoyment of their homes. It is important that the RTA is able to give social housing landlords the ability to strike an appropriate balance between tenants' rights and responsibilities.

CHFV's response to the Issues Paper

In the following sections, CHFV will set out its response to the issues raised in following aspects of the RTA raised in the Issues Paper:

3. Before a tenancy
4. During a tenancy
5. At the end of a tenancy

3 Before a tenancy

3.1 Applying for a tenancy

3.1.1 Discrimination against prospective tenants

CHFV believes that discrimination is more than adequately covered by the *Equal Opportunity Act* 2010 and the *Charter of Human Rights and Responsibilities Act* 2006. There is no need to further

complicate the already complex RTA by adding further sections on matters that are adequately dealt with in other Acts.

There could be problems with inserting anything too prescriptive re discrimination in the RTA. For instance some CHOs are concerned that they could be required to provide disability suitable accommodation when they do not currently have such stock and are not funded adequately by government to construct it. (There are some specialist CHOs who do have such stock and could cater for this category of applicant.)

CHFV believes that discrimination issues could be better addressed by inserting information about prospective tenants' rights in the Consumer Affairs booklet "Renting a Home – A Guide for Tenants".

3.1.2 Other screening practices during the application process

Type of Information Collected

It is important to note that because public and community housing are forms of subsidised social housing they have eligibility requirements. For this reason social landlords need to collect information about income, assets, housing history and residency status. Some community housing programs are further targeted at people with specific disabilities, ethnic backgrounds, age groups, and so on. Any amendments to the RTA should not impinge on CHOs ability to continue to collect such information from applicants for their housing programs.

Centrepay and DOH Bonds

CHFV supports the idea of including specific sections in the RTA to outlaw the withdrawal of rental offers by agents or landlords where the tenant proposes to use Centrepay for rent payments or to use Director of Housing bond loans to pay for all or part of their bond.

Appropriate use of personal information

All CHOs have privacy policies that require that personal information provided by applicants is treated confidentially and not used for an alternative purpose without the agreement of the tenant.

CHFV would support an inclusion in the RTA that requires landlords to use confidential information for its original purpose only, unless the tenant has agreed to its use for an alternative purpose. This should be subject to existing exemptions under privacy law, for example disclosure to law enforcement officials or for public safety.

Standard Application Form

The Issues Paper says that submissions have proposed that a standard tenancy application form be prescribed by the Act to encourage more uniform information collection practices amongst landlords and agents, and limit consideration only to those factors most relevant to maintaining a functional tenancy. DHHS is currently in the process of developing a common housing list for all public and community housing in Victoria. This project is called the Victorian Housing Register (VHR). It was an election commitment of the Government and it is expected to be completed and rolled out by the end of 2016. The project will involve the development of a standard application form for all public

and community housing. Any work by the Review on requirements for a standard application form in the RTA would need to take this development into account.

3.1.3 Tenancy databases

As described above, DHHS is currently developing the VHR and the Review should confer with them to ensure that the VHR and any proposed amendments to the RTA are compatible.

CHFV generally supports greater regulatory oversight of tenant databases. This should include free access for tenants, a simple, cost-free process for tenants to correct inaccurate details, and an option for removal of listings on databases in circumstances of extreme hardship.

3.2 Beginning a tenancy

3.2.1 Form of agreement

Fixed Term Residencies

At the moment rooming house residencies are all periodic and there is no provision for a fixed term residency agreement. Rooming house managers have expressed a belief that being able to have fixed term residencies would be a valuable tenancy management tool. It would also be useful in educational and health-related accommodation facilities where managers wish to provide residents with rights under the RTA but the accommodation is attached to a fixed-length program. Under the current RTA managers wanting to stipulate a fixed term are obliged to use the residential tenancies provisions which do not provide for House Rules. House Rules are essential in a rooming house or similar style accommodation.

This would need a new definition in section 3:

> ***fixed term residency agreement*** means a residency agreement for a fixed term;

and may require other changes elsewhere in the RTA.

One rooming house manager did not agree with this proposal, believing it would undermine the concept of rooming houses as long-term accommodation. However, it is merely bringing the length of rooming house residencies into line with a normal residential tenancy. Most importantly, it would be optional. As happens with existing residential tenancy agreements, the owner could specify whether the agreement would be fixed term or periodic.

The suggested changes to the RTA are:

Section	New sub-section
3	**Definitions** New definition: ***fixed term residency agreement*** means a residency agreement for a fixed term;
287B	**End of fixed term residency** (1) A rooming house owner under a fixed term residency agreement may, before the end of the term of the residency agreement, give the resident a notice to vacate the room at the end of the fixed term. (2) The notice must specify a termination date that is on or after the date of the end of the term. (3) The notice must be given— (a) in the case of a fixed term residency agreement for a fixed term of 6 months or more, not less than 90 days before the end of the fixed term; or (b) in the case of a fixed term residency agreement for a fixed term of less than 6 months, not less than 60 days before the end of the fixed term.

3.2.2 Adequacy of Disclosure

Owners' Corporation Rules

Provision of a copy of the Owners' Corporation rules is a condition of the Owner's Corporations Act – rather than duplicate requirements and further complicate the RTA, additional information could be included in CAV's "Renting a home – A Guide for Tenants".

Instructions for Appliances and Facilities

A requirement for landlords to provide instructions for appliances would be problematic, as the previous tenant may not have left relevant manuals/instructions in the property. Also, these are generally available on line. This should not be included in the RTA.

Consideration Periods

CHFV understands why this may be a good approach in the private sector, particularly if the landlord has included a long list of conditions, but it would be potentially problematic for CHOs. The potential delay in commencing a tenancy could lead to a loss of revenue and reduced capacity to meet the Housing Registrar's performance standards under the *Housing Act* 1983. It may also complicate the current and proposed process and systems (Victorian Housing Register) for offering and allocating social housing.

3.2.3 Form of documents and manner of service

Electronic service of documents is supported in principle, but there need to be safeguards in place to ensure that service has in fact been achieved. Low income tenants are more likely to have issues of lack of credit or disconnection from digital technology. Perhaps it could be an option for service of documents but only as an addition to current requirement for service by hand, ordinary or registered mail, unless a tenant has signed a form saying that electronic transmission is the preferred form of communication.

4 During a tenancy

4.1 Duties and breaches of duty

CHFV believes that the current statutory duties for both landlords and tenants are adequate.

The Issues Paper mentions that the Tenants Union has raised the duty relating to nuisance or interference, which states that tenants must not use the premises 'in any manner' that causes a nuisance or interference with the reasonable peace, comfort or privacy of neighbours. They believe that the phrase, 'in any manner', may be unreasonably narrow in practice as it may capture conduct perceived to be a nuisance but that is nonetheless permissible by law. CHFV's response to this is that if the only nuisance behaviour covered by this section is illegal behaviour it would severely limit the usefulness of these duty provisions. The purpose is to ensure that neighbours are not continuously disturbed by unsociable behaviour.

4.1.1 Breaches of duty

Time to Remedy Breaches

Breach of Duty Notices can be divided into two categories – requests that a tenant or landlord do something, e.g. pay for a broken window or conduct a repair, and requests that a tenant or landlord stop doing something, e.g. stop making noise and disturbing the neighbours. CHFV believes that the periods for compliance of 14 days for residential tenancies and 3 days for rooming houses are appropriate for the first category. However, they are inappropriate for when a tenant or landlord is being asked to stop doing something.

The ridiculous situation that occurs under the current legislation is that a tenant who is having noisy parties that disturb the neighbourhood can continue to do this for a further 14 nights after being served a Breach of Duty notice. A further 3 to 10 days can be added for postage, depending on the method of service. The landlord cannot apply to VCAT for a Compliance Order or issue a further Breach of Duty notice until after the 14-day notice period is over. On some interpretations, they cannot even send it then if the behaviour has not occurred again after the notice period has expired. Housing workers explaining this to frustrated neighbours are met with incredulity when they explain how the law works in these situations.

CHFV believes that there should not be a compliance period following the Breach of Duty notice for these sorts of notices. The suggestion is that section 207 be amended as follows:

Section	Current Wording	Proposed Amendment
207	**207 Definitions** In this Part— ***required time*** means— (a) in relation to rented premises— (i) for a duty under section 89 in relation to a right of entry for a purpose set out in section 86(1)(a), (c) or (f), 14 days; or (ia) for a duty under section 89 in relation to a right of entry for a purpose set out in section 86(1)(b), (d) or (e), 3 days; or (ii) for a duty under Division 5 of Part 2, 14 days; or (b) in relation to a rooming house, for a duty under section 140 or Division 5 of Part 3, 3 days; or	**207 Definitions** In this Part— ***required time*** means— (a) in relation to rented premises— (i) for a duty under section 89 in relation to a right of entry for a purpose set out in section 86(1)(a), (c) or (f), 14 days; or (ia) for a duty under section 89 in relation to a right of entry for a purpose set out in section 86(1)(b), (d) or (e), 3 days; or **(ii) for a duty under section 63, 64, 65, 68, 69 or 70, 14 days; or** **(iii) for a duty under section 60, 61, or 67 immediately; or** (b) in relation to a rooming house, **(i) for a duty under section 140 or 110, 112, 114, 115 116, 117, 118, 120, 121, 123, 124, 125 or 127, 3 days; or** **(ii) for a duty under section 113, 119 or 122, immediately**

Informal approaches prior to Breach of Duty

CHFV is confident that all CHOs would approach tenants and attempt other methods of resolving problems before applying to VCAT. It would be very hard to word legislation to cover these kinds of procedures. In practice at hearings on these types of matters, one of the first questions the VCAT member will ask is whether the matter has been discussed by the two parties and what attempts at resolution have been made. In that regard CHFV is satisfied with current approach.

Limits on Duration of Compliance Orders

CHOs have varying opinions on appropriate lengths of VCAT compliance orders. Some believe 6 months would be acceptable, others 12 months or 2 years while others believe they should be open-ended. There is also a belief that different lengths might be appropriate in different circumstances and that the VCAT member should retain the discretion to decide this.

In practical terms, when an application for possession based on breach of a VCAT Compliance Order comes before VCAT, the member presiding will apply the "reasonable person" test when considering the time that has elapsed between the Compliance Order and the breach of the Order. In that light, perhaps no change is needed.

4.1.2 Form of the tenancy agreement and breaches of additional terms

CHFV does not believe that tenancy agreements should be more comprehensive like those prescribed by New South Wales legislation or that there should be a provision for enforcement of addition contractual provisions that go beyond the prescribed agreement and statutory duties.

4.1.3 Pets in rented premises

CHFV believes that the current wording in the RTA regarding pets should be retained – no mention in residential tenancies provisions and no pets allowed without owner's permission in rooming houses.

Many CHOs have their own pet policies, and even have pet agreements. They find this gives them more control over the pets, which are going to be there anyway, whatever the tenancy agreement says.

One CHO managing rooming houses has advised that more and more of their residents are claiming they need a companion dog. This is an area that is not appropriately regulated. There is a company in NSW called MindDog that advises prospective applicants that any refusal by their landlord constitutes an act of discrimination and also a breach of their human rights. We need clarification here because a rooming house full of dogs would be extremely difficult to manage.

Pet bonds are an interesting concept but would difficult to legislate for. As an example a Doberman would probably attract a more substantial pet bond than a goldfish.

4.2 Entry to premises

CHFV believes that the current provisions for entry are satisfactory. Section 91A provides the justification for a welfare check when there are legitimate concerns about a tenant, or to enter without notice for an urgent repair that needs to be done immediately.

In its previous submission on the *Laying the Groundwork* paper CHFV said that the Act should provide clarification of landlords' responsibilities in assisting police with their inquiries, including the circumstances in which landlords would have the right to enter premises to provide access to police, without the knowledge of the tenant.

4.3 Sub-letting, assignment and the sharing economy

CHFV does not have an issue in principle with the use of rented premises for short term accommodation stays. However, public and community housing are forms of subsidised social housing and therefore CHFV considers that it is important to include specific provisions in section 81 to prevent the use of premises for commercial short term accommodation stays "if the landlord is the Director of Housing or a registered housing agency".

Apart from this change, CHFV believes that the Assignment and Sub-letting sections should not be amended. CHFV agrees with the suggestion that sub-letting and assignment are too hard to prove at VCAT. However we have been unable to come up with a solution to suggest for this problem.

A CHO working with Aboriginal clients advises that VALS has concerns that existing sub-letting provisions can be used to the detriment of Aboriginal people, who have strong cultural expectations of mutual support. This potentially impacts on the capacity of Aboriginal people to maintain private rental tenancies.

The suggested changes to the RTA are:

Section	Current Wording	Proposed Amendment
81	**Assignment and sub-letting by a tenant** (1) A tenant under a tenancy agreement must not assign or sub-let the whole or any part of the rented premises without the landlord's written consent.	**Assignment and sub-letting by a tenant** (1) A tenant under a tenancy agreement must not assign or sub-let the whole or any part of the rented premises without the landlord's written consent. **(1a) Where the landlord is the Director of Housing or a registered housing agency, a tenant under a tenancy agreement must not use the premises for commercial short term accommodation stays.**

Alternatively this could be inserted as a new duty provision in Part 5.

4.4 Violence in managed premises

Issuing Notices to Leave is always a notoriously difficult exercise. At the moment the notice can be served on a resident's visitor. This is of limited usefulness. What would be very useful is to have the power to issue a Notice to Leave on the resident where that resident's visitor has committed a serious act of violence. This actually would help to remove the problem and is consistent with other provisions in the Act which hold the resident responsible for the behaviour of their visitors. Of course it is still incumbent on the applicant if the matter proceeds to VCAT to satisfy the referee of the link/tie between the resident and the visitor. However often in rooming houses this is precisely the context out of which the violence erupts.

5 At the end of a tenancy

5.1 Terminations

5.1.2 Termination by tenant

CHFV strongly supports the proposal that tenants should be able to serve a reduced notice of intention to vacate if they are offered social housing by a community housing provider, as is currently the case for public housing offers. This is important as, under the current arrangements, low income people in private rental are incurring the expense of an additional fortnight's rent to move into much affordable community housing. Sometimes this even prevents them from being able to take up the community housing offer.

The suggested changes to the RTA are:

Section	Current Wording	Proposed Amendment
237(1)(c)	(c) the tenant has received a written offer of public housing from the Director of Housing;	(c) the tenant has received a written offer of public housing from the Director of Housing **or a registered housing agency**;

5.1.3 Notices to vacate

Immediate Notice to Vacate

Recently community housing providers have had difficulty getting orders of possession for danger because VCAT and the Supreme Court (Director of Housing v Pavletic) have interpreted the word "endangers" in the Act as meaning that there is an ongoing danger to others from the person receiving the notice. Some VCAT members have required a string of dangerous incidents to have

occurred in order to prove that the danger is ongoing. The VCAT member is forced to conduct an exercise in mind-reading and prediction of the future in order to determine whether the respondent "is" a danger to others. This makes it very difficult for a CHO to protect other tenants and neighbours.

CHFV has dozens of examples of instances where violent tenants have been allowed to remain in their housing because a theoretical ongoing danger could not be proved at VCAT. The result is that their neighbours – who often are also community housing tenants on low incomes with their own issues – must live in fear.

This issue could be remedied by changing the word "endangers" to "has endangered" in sections 244 or 279.

Threats to health and safety of community housing workers and contractors

As discussed in the earlier CHFV submission to the Consultation Paper published in August 2015, CHOs owe duties under OHS legislation to, so far as is reasonably practicable, provide and maintain for employees and contractors a working environment that is safe and without risks to health.

Many of CHFV's members report challenges in circumstances where the conduct of a tenant poses an unacceptable risk to the health and safety of employees and contractors. In multi-unit complexes or rooming houses in particular, adhering to this paramount responsibility may inhibit the CHO from carrying out duties such as maintenance, cleaning and tenancy management which benefit all tenants.

The RTA contains provisions relating to tenant conduct which:

- create a breach of duty if a tenant interferes with the peace, comfort or privacy of neighbours or peaceful occupation of other residents (sections 60 and 113);
- allow a landlord to serve a notice to vacate if the tenant/resident (or their visitor) endangers the safety of occupiers of neighbouring premises or any person in the rooming house (sections 244 and 279).

These provisions tend not to be of assistance in circumstances where a tenant has caused a danger to the landlord or the landlord's employees, contractors or agents. This is a serious concern for CHOs who are left without legal remedies under the RTA where tenants or rooming house residents pose a safety risk to staff and contractors. We are aware of at least one recent instance where a tenant of a CHO made a series of persistent and serious threats to the safety of a tenancy worker of a CHO. These threats took place outside of the rented premises and the building. As the RTA did not provide any remedy in respect of this behaviour, the CHO and staff member were subject to 12 months of police and Magistrates' Court proceedings resulting in a Community Corrections Order against a tenant. It seems anomalous that there can be no consequence for a tenant under the RTA in these circumstances which would have been much quicker, cheaper and less stressful for all concerned and consistent with the CHO's OHS obligations.

The suggested changes to the RTA are:

Section	Current Wording	Proposed Amendment
244	**244 Danger** (1) A landlord may give a tenant a notice to vacate rented premises if the tenant or the tenant's visitor by act or omission endangers the safety of occupiers of neighbouring premises.	**244 Danger** (1) A landlord may give a tenant a notice to vacate rented premises if the tenant or the tenant's visitor by act or omission **has endangered** the safety of: (a) occupiers of neighbouring premises; or **(b) the landlord or the landlord's employee, agent or contractor.**
244A	[New section] **244A Threat, abuse, intimidation or harassment** (1) A landlord may give a tenant a notice to vacate rented premises if the tenant or the tenant's visitor has: (a) seriously or persistently threatened or abused the landlord, the landlord's agent, or any employee or contractor of the landlord or landlord's agent, or caused or permitted any such threats, abuse or conduct, or (b) intentionally engaged, or intentionally caused or permitted another person to engage, in conduct in relation to any such person that would be reasonably likely to cause the person to be intimidated or harassed (whether or not any abusive language or threat has been directed towards the person) (2) The notice may specify a termination date that is the date on which the notice is given or a later date.	
279	**279 Danger** (1) A rooming house owner may give a resident a notice to vacate the room occupied by the resident if the resident or the resident's visitor by act or omission causes a danger to any person or property in the rooming house.	**279 Danger** (1) A rooming house owner may give a resident a notice to vacate the room occupied by the resident if the resident or the resident's visitor by act or omission **has caused a** danger to: (a) any person or property in the rooming house; or (b) **the rooming house owner or the rooming house owner's employee, agent or contractor**
279A	Proposed new section: **279A Threat, abuse, intimidation or harassment**	

	(1) A rooming house owner may give a resident a notice to vacate rented premises if the resident or the resident's visitor has (a) seriously or persistently threatened or abused the rooming house owner, the rooming house owner's agent or any employee or contractor of the rooming house owner or rooming house owner's agent, or caused or permitted any such threats, abuse or conduct, or (b) intentionally engaged, or intentionally caused or permitted another person to engage, in conduct in relation to any such person that would be reasonably likely to cause the person to be intimidated or harassed (whether or not any abusive language or threat has been directed towards the person) (2) The notice may specify a termination date that is the date on which the notice is given or a later date.

Please note that later in this submission we suggest that incidents giving rise to immediate notices to vacate should be able to be taken directly to VCAT without the issuing of a notice to vacate. In that case these sections would be repealed and similar words would be introduced into sections 322 and 323. See the section of this submission titled "Removing need for Notice to Vacate for Immediate Possession applications".

Notice to Vacate for end of Fixed Term

Section 261 of the RTA says that "a landlord under a fixed term tenancy agreement may, before the end of the term of the tenancy agreement, give the tenant a notice to vacate the rented premises at the end of the fixed term" and that "the notice must specify a termination date that is the date of the end of the term". This should be altered to specify a termination date that is "on or after the end of the fixed term" as is found in the NSW Residential Tenancies Act 2010 (NSW RTA). This would give landlords more flexibility and obviate the need for overlapping tenancy arrangements.

Consistency with Director of Housing in Notices to Vacate

These sections should be amended to included registered housing agencies as well as the Director of Housing.

Section	Current Wording	Proposed Amendment
250A (and 250B[1])	**250A Drug-related conduct in public housing**	**250A Drug-related conduct in public or community housing**

[1] Section 250B states that the Director of Housing may give a tenant a notice to vacate rented premises of which the Director of Housing is the landlord if the tenant has committed a prescribed indictable offence on the rented premises or in a common area. To date no indictable offences have been prescribed in the regulations made under the RTA.

	(1) The Director of Housing may give a tenant a notice to vacate rented premises of which the Director of Housing is the landlord if the tenant has, on the rented premises or in a common area, illegally— **…**	(1) The Director of Housing **or a registered housing agency** may give a tenant a notice to vacate rented premises of which the Director of Housing **or a registered housing agency** is the landlord if the tenant has, on the rented premises or in a common area, illegally— **…**
252(1)	**252 False statement to housing authority** (1) A landlord which is a public statutory authority engaged in the provision of housing may give a tenant a notice to vacate rented premises if the authority was induced to enter the tenancy agreement by a statement by the tenant— (a) which related to a matter on which eligibility to rent the premises depended; and (b) which the tenant knew to be false or misleading.	**252 False statement to housing authority or registered housing agency** (1) A landlord which is a public statutory authority engaged in the provision of housing **or a registered housing agency** may give a tenant a notice to vacate rented premises if the authority was induced to enter the tenancy agreement by a statement by the tenant— (a) which related to a matter on which eligibility to rent the premises depended; and (b) which the tenant knew to be false or misleading.
262	**Tenant no longer meets eligibility criteria** (1) A landlord which is a public statutory authority engaged in the provision of housing may give a tenant a notice to vacate rented premises if— (a) the rented premises are premises only available to be let to persons who meet the eligibility criteria for housing published by the public statutory authority under subsection (3); and (b) the tenant ceases to meet one or more of the eligibility criteria. (2) The notice must specify a termination date that is not less than 90 days after the date on	**Tenant no longer meets eligibility criteria** (1) A landlord which is a public statutory authority engaged in the provision of housing **or a registered housing agency** may give a tenant a notice to vacate rented premises if— (a) the rented premises are premises only available to be let to persons who meet the eligibility criteria for housing published by the public statutory authority **or the registered housing agency** under subsection (3); and (b) the tenant ceases to meet one or more of the eligibility criteria. (2) The notice must specify a

	which the notice is given. (3) A public statutory authority, by notice published in the Government Gazette, may publish its criteria for eligibility for the provision of housing by that public statutory authority.	termination date that is not less than 90 days after the date on which the notice is given. (3) A public statutory authority, by notice published in the Government Gazette, may publish its criteria for eligibility for the provision of housing by that public statutory authority **or registered housing agency**.

Notice to Vacate where Tenant in transitional housing refuses alternative accommodation

The Residential Tenancies Amendment Act 2002 came into effect on 22 October 2002. It inserted a new section into the Residential Tenancies Act 1997 (RTA) – Section 262A. This section was intended to give transitional housing managers the ability to evict tenants who do not seek or accept alternative accommodation. It required the Director of Housing, by notice published in the Government Gazette, to publish its requirements for tenants of transitional housing to seek alternative accommodation.

A similar section, section 287A, was inserted into the rooming house provisions of the RTA at the same time. In the 12 years since these amendments came into effect the Director of Housing has not published these criteria. CHFV has put a number of submissions regarding such publication to the Director of Housing and has not received a formal response. Indications from DHHS are that this is unlikely to happen.

This has resulted in the intention of the legislation never being realised, and the program being extremely difficult to manage due to the inability of Transitional Housing Managers (THMs) to move on people who have been given exit options and refused to accept them, or who have not cooperated with exit plans.

Currently the only legal option that THMs have available in these situations is to issue a 120-day Notice to Vacate for No Specified Reason. Not only does this take 3 months longer, it is also vulnerable to challenge by tenant advocacy lawyers citing the Charter of Human Rights and Responsibilities Act.

We believe that the efficiency of the THM program would be considerably enhanced if this section was activated. Given the Director of Housing's unwillingness to do this we are proposing the following changes:

Section	Current Wording	Proposed Amendment
262A	**Tenant in transitional housing refuses alternative accommodation** (1) A landlord which is the Director of Housing or a delegate of the Director	**Tenant in transitional housing refuses alternative accommodation** (1) A landlord which is the Director of Housing or **a registered housing**

	of Housing may give a tenant a notice to vacate rented premises if— (a) the rented premises were provided as transitional housing; and (b) the Director of Housing, under this section, has published requirements for tenants of transitional housing to seek alternative accommodation; and (c) the tenant has— (i) unreasonably refused to seek alternative accommodation in accordance with those requirements; or (ii) refused a reasonable offer of alternative accommodation made in accordance with those requirements. (2) The notice must specify a termination date that is not less than 30 days after the date on which the notice is given. (3) In this section transitional housing means accommodation for a period of more than 14 days and less than 12 months provided to persons in crisis as a result of homelessness or impending homelessness. (4) The Director of Housing, by notice published in the Government Gazette, may publish its requirements for tenants of transitional housing to seek alternative accommodation.	**agency** may give a tenant a notice to vacate rented premises if— (a) the rented premises were provided as transitional housing; and (b) **the tenant has—** **(i) unreasonably refused to seek alternative accommodation or** **(ii) not lodged an application for early public housing, or ensured that an existing application is still in effect, within the first three months of the tenancy** **(iii) unreasonably refused to participate in the development of a valid housing exit plan or** **(iv) unreasonably refused to abide by all the undertakings made in the housing exit plan or** **(v) unreasonably refused to attend a tenancy review meeting or** **(vi) refused any valid offer of public housing that meets the requirements of their family size as specified on their public housing application or** **(vii) refused any offer of community or private housing that meets the requirements of their family size, and does not cost more than 30% of their assessable income.** (2) The notice must specify a termination date that is not less than 30 days after the date on which the notice is given. (3) In this section transitional housing means accommodation for a period of more than 14 days and less than 12 months provided to persons in crisis as a result of homelessness or impending homelessness.

Title of "Notice to Vacate"

The Issues Paper says that Justice Connect has questioned the term 'notice to vacate', alleging it is misleading as tenants may interpret these notices as a final request to leave, rather than the initial step in an eviction.

CHOs have varied opinions about this. Some agree that it is a misleading title and tenants may misinterpret its impact. Perhaps an alternative term such as 'request to vacate' or 'notice of intention to end tenancy agreement' could be used in the RTA instead.

Most CHOs believe that their tenants are well aware of how such notices work and they also attach covering letters with the notice explaining how it works. The current prescribed notice offers the option of referral to CAV but maybe it could be enhanced by inclusion of TUV and Justice Connect via regulations to RTA.

Removing need for Notice to Vacate for Immediate Possession applications

Under the RTA immediate notices to vacate can be issued for danger, malicious damage or where the premises are unfit for human habitation or destroyed. In rooming houses they can also be issued for serious disruption of the quiet and peaceful enjoyment of the rooming house by other residents. This process then requires an application to VCAT for a hearing for a possession order. CHFV encourages our members to serve these notices by hand and serve a copy of the application to the respondent immediately afterwards. However this is not always possible. Often the respondent cannot be found and sometimes distances are prohibitive with limited staff resources. In these cases the notice to vacate must be sent by Registered Post, and the application cannot be made until the notice is deemed to have been served. Even using Priority Registered Post this adds a further 3 to 5 days (depending on day of postage) to the process. Despite requests for an urgent hearing it can often be a further week before the matter is heard at VCAT.

These notices are issued in cases where there the immediate ending of the tenancy is needed. In the current system a person who is dangerous to neighbours can remain there for two weeks before a hearing occurs and our members have to try to keep neighbours, often also their disadvantaged tenants, safe in the meantime. Regarding malicious damage, one of our members reports a recent case where an immediate Notice to Vacate was issued and the house was virtually destroyed by the time the matter reached VCAT.

The NSW RTA enables landlords to apply directly to the Tribunal for an Order of Possession without first issuing a Notice to Vacate in cases like damage, danger and harassment. This would certainly speed up the process for landlords and make it less ambiguous for tenants and CHFV recommends that similar provisions be introduced in the Victorian RTA. The suggested new sub-sections would read:

Section	New sub-section
322	**Application for possession order by landlord** (4) A landlord may apply to the Tribunal for a possession order for rented premises if— (a) by the conduct (by act or omission) of the tenant or the tenant's visitor damage is maliciously caused to the premises or common areas; or (b) the tenant or the tenant's visitor by act or omission has endangered the safety of: (i) occupiers of neighbouring premises; or (ii) the landlord or the landlord's employee, agent or contractor. (c) the tenant or the tenant's visitor has: (i) seriously or persistently threatened or abused the landlord, the landlord's agent, or any employee or contractor of the landlord or landlord's agent, or caused or permitted any such threats, abuse or conduct, or (ii) intentionally engaged, or intentionally caused or permitted another person to engage, in conduct in relation to any such person that would be reasonably likely to cause the person to be intimidated or harassed (whether or not any abusive language or threat has been directed towards the person)
323	**Application for possession order by rooming house owner** A rooming house owner may apply to the Tribunal for a possession order for a room if— (c) the resident or the resident's visitor intentionally or recklessly causes or allows serious damage to any part of the rooming house; or (d) if the resident or the resident's visitor by act or omission has caused a danger to: (i) any person or property in the rooming house; or (ii) the rooming house owner or the rooming house owner's employee, agent or contractor; or (e) the resident or the resident's visitor has (i) seriously or persistently threatened or abused the rooming house owner, the rooming house owner's agent or any employee or contractor of the rooming house owner or rooming house owner's agent, or caused or permitted any such threats, abuse or conduct, or (ii) intentionally engaged, or intentionally caused or permitted another person to engage, in conduct in relation to any such person that would be reasonably likely to cause the person to be intimidated or harassed (whether or not any abusive language or threat has been directed towards the person); or (f) the resident or the resident's visitor seriously interrupts the quiet and peaceful enjoyment of the rooming house by other residents.

If these sub-sections were included then sections 243, 244, 278, and 280 would be repealed.

Remedies available to tenants to prevent landlords from issuing NTVs in "bad faith"

CHFV supports in principle the position that landlords should not be able to issue NTVs (particularly 120-day notices) in retaliation for tenants' actions, but CHOs also need to be able to manage their housing stock in a way which maximises access for low-income eligible people and peace and quiet for neighbours. The current provisions in the Act would seem to be a good balance.

5.1.3 Lease breaking

This is not an issue for CHFV members as CHOs generally do not pursue compensation in these cases. However, CHFV does support the ability for tenants to break a lease without payment of compensation when the action is due to circumstances of financial hardship, family violence or illness.

5.2 Goods left behind

CHFV does not necessarily have any difficulties with the current provisions, although the need to publish notices of goods left behind and notices of auctions in newspapers is somewhat out-dated.

The main problem our members have is that inspections by the Director of Consumer Affairs can sometimes take an unreasonably long time. Section 385 should be amended so that the inspection must take place within 7 business days of the request, and that, if this has not occurred, the landlord can dispose of the goods as they see fit.

5.3 Tenancies and family violence

CHFV strongly supports the review of RTA provisions proposed as part of the recommendations of the Royal Commission into Family Violence report.

6 Conduct of Agents

Conduct of agents is dealt with under the *Estate Agents Act* 1980, so shouldn't be duplicated in RTA. Perhaps more information could be included in the CAV "Renting a Home – A Guide for Tenants" booklet.