


# There's No Place Like Home: Submission on the Rent, Bonds and Other Charges Issues Paper



April 2016



## About Justice Connect Homeless Law

Justice Connect Homeless Law (**Homeless Law**) is a specialist legal service for people experiencing or at risk of homelessness.

Homeless Law staff work closely with pro bono lawyers to provide legal advice and representation to over 400 people experiencing or at risk of homelessness each year. Our services are outreach based and client centred, and our two staff social workers allow us to respond to clients' legal and non-legal needs.

In 2014–15 Homeless Law prevented the eviction of 139 clients and their families through legal representation and social work support.

Homeless Law also runs a specialist women's program, the Women's Homelessness Prevention Project (**WHPP**). In its first 12 months of operation, the WHPP provided 62 women with 102 children in their care with a combination of legal representation and social work support. Of these 62 women at risk of homelessness, 95% had experienced family violence. Of the completed matters, 81% resulted in women maintaining safe and secure housing or resolving a tenancy legal issue (eg a housing debt) that was a barrier to accessing housing.

In the 12 months from August 2014, Homeless Law provided legal assistance to 96 prisoners through the Debt and Tenancy Legal Help for Prisoners Project. Through the provision of legal representation, Homeless Law has assisted 25 Victorian prisoners to avoid eviction. Through this work we have built a stronger, better informed understanding of the common reasons that prisoners lose their tenancies while in prison and the barriers to finding housing upon release.

Homeless Law uses the evidence from our direct casework to inform systemic change aimed at preventing homelessness and reducing the negative impact of the law on people who are homeless or at risk of homelessness.

## Acknowledgements

In contributing to the Residential Tenancies Act Review, Homeless Law conducted detailed interviews with five people who had faced eviction and, in some cases, been evicted. We sincerely thank these people for their time in sharing their stories and insights with us. Their names and identifying details have been changed.

Thank you to our pro bono lawyers whose casework continues to generate positive outcomes for our clients and to inform our recommendations for a safer, fairer residential tenancies system.

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# 1. Executive summary and key recommendations

Justice Connect Homeless Law (**Homeless Law**) welcomes the opportunity to contribute to the Victorian Government's Residential Tenancies Act Review (**Review**) and to respond to the Rent, Bonds and Other Charges Issues Paper (**Issues Paper**). This submission is the third of Homeless Law's submissions to the Review. Our first submission responded to the Laying the Groundwork Consultation Paper (**Consultation Paper**) (**First Submission**),<sup>1</sup> and our second submission was in response to the Security of Tenure Issues Paper (**Second Submission**).<sup>2</sup>

We commend the Government for its commitment to 'a modern and dynamic rental market in which tenants are safe and secure, and which meets the current and future needs and expectations of tenants, landlords and their property managers'.

The *Residential Tenancies Act 1997* (Vic) (**RTA**) regulates features of tenancies which determine whether a person can afford to enter, retain or leave a tenancy:

- Bonds, rent in advance and holding deposits shape the size of the up-front payment tenants must cover to secure a tenancy.
- Rent increases and mechanisms for dealing with rental arrears impact the affordability and sustainability of tenancies.
- The RTA's approach to family violence, compensation and return of bonds can mean victims of family violence leave tenancies burdened by debt and unable to access new housing.

As we increasingly rely on the private market to meet the needs of low-income tenants who are unable to get to the top of lengthy waiting lists for social housing, the RTA reform needs to contemplate the true impact of weak regulation of the costs associated with renting.

As a specialist legal service for people who are homeless or at risk of homelessness, Homeless Law sees directly that people are stretched extremely thinly financially and even minor additional costs can transform a property from being viable to unviable; tip them into arrears; and cause tenancies to fail. The arrears debt, withheld bond or high upfront costs of securing properties can then prevent them from accessing new housing needed to avoid or exit homelessness.

Through our Women's Homelessness Prevention Project, Homeless Law also sees that victims of family violence can find themselves unable to access or afford housing because of high costs of bonds and rent in advance, burdened with debts as a result of damage or arrears attributable to the perpetrator and, consequently, at risk of homelessness.

Reform of the regulation of rent, bonds and other charges is a vital component of modernising Victoria's rental market to more effectively balance the needs of landlords and tenants and to improve the fairness, accessibility and sustainability of renting a home in Victoria.

Informed by the evidence-base gathered from running 304 tenancy matters in 2014–15, including 219 eviction matters, as well as the insights of five consumers who have experienced barriers to affordable housing, Homeless Law makes the following seven recommendations for changes to the RTA that will contribute to fairer, more accessible and more sustainable housing for all Victorians.

<sup>1</sup> See Justice Connect Homeless Law, *There's No Place Like Home: Submission to the Residential Tenancies Act Review* (August 2015) (available at: <https://www.justiceconnect.org.au/our-programs/homeless-law/law-and-policy-reform/preventing-evictions-and-sustaining-tenancies/there%E2%80%99s-no-place-home-submission-residential-tenancies-act-review>) (**First Submission**).

<sup>2</sup> See Justice Connect Homeless Law, *There's No Place Like Home: Submission on the Security of Tenure Issues Paper* (December 2015) (**Second Submission**).

## SEVEN RECOMMENDATIONS FOR FAIRER, MORE ACCESSIBLE, MORE SUSTAINABLE HOUSING

### Affordable rent, accessible housing and preventing avoidable evictions

1. **Limiting the upfront costs of securing housing, and stopping rental bidding, auctions and holding deposits.** To reduce the current barriers Victorian tenants face in accessing safe and affordable housing, Victoria should follow the examples of other Australian jurisdictions to limit rent in advance to two weeks' rent and prohibit rental bidding and auctions and holding deposits. Each of these features of the current market work to put affordable rental homes out of reach for low-income renters.
2. **Supporting sustainable tenancies.** To support stable, sustainable tenancies, which benefit both landlords and tenants, Homeless Law recommends:
  - a. Requiring landlords and real estate agents to offer a fee-free way of paying rent (and preventing fees for rent collectors being passed on to tenants); and
  - b. Encouraging the use of Centrepay by landlords and real estate agents, recognising the stability and security this mechanism provides to both landlords and tenants.
3. **Limiting rent increases and recognising their impact.** In a deeply unaffordable private rental market, increases in rent are undermining security of tenure and putting tenants at risk of homelessness. Rent increases should not be permitted more than once per year and amendments should be introduced that allow tenants to exit a fixed term tenancy where a substantial or unforeseen rent increase will cause them severe hardship.
4. **Preventing unnecessary evictions for rental arrears.** Terminating tenancies is costly for both landlords and tenants and, in many cases, the needs of the landlord can be better met by the tenant being quickly supported to comply with their obligations (for example, by addressing arrears owing), rather than terminating the tenancy. In relation to rental arrears, Homeless Law recommends that:
  - a. landlords are required to give tenants a 'rent arrears warning' within 14 days of rent arrears arising. This warning, which could be a form provided by Consumer Affairs Victoria, should contain referral options for appropriate services, including financial counsellors and housing, family violence and legal services;
  - b. if steps are not taken by the tenant to address the arrears in response to the 'rent arrears warning', a notice to vacate can be issued if the tenant owes at least 28 days rent to the landlord; and
  - c. real estate agents should be better supported to understand alternatives to eviction, including through making early referrals to support services when they identify a tenant having difficulty complying with their obligations.

Homeless Law also reiterates our previous recommendations to introduce: a 'reasonableness' requirement for all evictions under the RTA, to give VCAT members discretion to avoid eviction where they are not satisfied it is reasonable in the circumstances; and a pre-eviction checklist for landlords to satisfy before applying to VCAT for a possession order.

### Regulating bonds to reduce barriers to accessing safe housing

5. **Amendments to allow clear apportionment of liability and return of bonds in compensation claims against tenants who are victims of family violence.** Homeless Law recommends amending section 211 of the RTA, '[m]atters which may be considered by [the] Tribunal' when assessing compensation claims, to provide that the Tribunal may take into account:

*211(aa): In the case of a claim against multiple tenants in respect of the same tenancy agreement, and where the Tribunal is satisfied that some or all of the damage or compensation sought has arisen as a result of family violence perpetrated by one party against another, whether any amount or amounts of the claim should be*

*apportioned between the parties to take into account their respective responsibility for the damage or loss caused...*

In addition to appropriate apportionment of liability, there should be a streamlined process for victims of family violence to have their bond returned to allow them the best chance of securing alternative housing if needed.

- 6. Effective regulation of bonds to address outdated barriers to housing.** Recognising the high levels of housing stress in the Victorian rental market and low levels of affordability, the maximum bond should be four weeks' rent without exception. No bond increases should be allowed during a tenancy.
- 7. Promptly returning bonds to allow access to new properties.** Bonds should be promptly released to tenants and, where a portion is in dispute, the undisputed amount should be immediately released to support tenants to access alternative properties.

## 2. Rent, bonds and the risk of homelessness

The regulation of rent, bonds and charges plays a significant role in determining whether Victorians can (a) get and (b) keep, a safe and secure roof over their heads.

As the Review has recognised, Victoria has a highly competitive, deeply unaffordable rental market that is relied on by over 525,000 households to provide a safe and stable home.<sup>3</sup>

The following figures provide a stark reminder that Victorian households are struggling to access and maintain affordable housing:

- Thirty-eight per cent of Victorian households in the private rental market are experiencing rental stress (i.e. paying more than 30% of their income as rent) and 76% of these households are low-income.<sup>4</sup>
- The recent Rental Affordability Index report found that 'rents are severely unaffordable for households in Greater Melbourne's first income quintile, with non-family households affected most severely'.<sup>5</sup>
- A snapshot of private rental properties showed that less than 0.1% of rental properties in Metropolitan Melbourne were affordable for single parents relying on the single parenting pension and 0.8% were affordable for these families in coastal or regional Victoria.<sup>6</sup>
- 102,793 people sought assistance from specialist homelessness services in Victoria in 2014–15.<sup>7</sup>
- There are approximately 22,789 Victorians experiencing homelessness, almost half are women and one-sixth are children under the age of 12.<sup>8</sup>
- Specialist homelessness services in Victoria currently turn away 108 people each day.<sup>9</sup>
- In 2014–15, a total of 59,184 new applications were made to the Residential Tenancies List, and 18,459 (31%) were for possession and rent (12,586) or possession, rent and bond (5,873).<sup>10</sup>
- The most recent figures from the Australian Institute of Health and Welfare's annual report, *Specialist homelessness services 2014–15*, show that 46,532 people in Victoria cited financial issues as a reason for seeking assistance from a specialist homelessness service, including 20,663 who cited housing affordability stress.<sup>11</sup>

In this context, regulating the costs of obtaining and retaining a rental property has an important role to play in shaping a fairer, more accessible and more sustainable rental sector:

- The RTA determines the processes and financial hurdles that tenants face to obtain a tenancy in the first place. Bond amounts, rent in advance, holding deposits and rental bidding determine the amount a tenant must have available for lump-sum payments before entering the property, and the kind of financial commitment they have to make over the course of the tenancy.

<sup>3</sup> State Government of Victoria, *Residential Tenancies Act Review: Laying the Groundwork – Consultation Paper* (June 2015) 16 citing ABS *Customised Census Report* (2015) (**Consultation Paper**).

<sup>4</sup> State Government of Victoria, *Rent, Bonds and Other Charges Issues Paper: Residential Tenancies Act Review* (March 2016) 8 citing ABS, *Customised 2011 Census Report* (2015) (**Issues Paper**).

<sup>5</sup> SGS Economics and Planning, *Rental Affordability Index* (November 2015) (**SGS Report**).

<sup>6</sup> On 11–12 April 2015, less than 0.1% of private rental properties in metropolitan Melbourne were affordable and appropriate for a single mother of two children who relies on a parenting pension: Anglicare Australia, *Anglicare Australia Rental Affordability Snapshot* (2015) (**Anglicare Snapshot**) 88. See also Department of Health and Human Services, *Rental Report December Quarter 2015* (**DHHS Rental Report**): just 2.9% of two-bedroom rental lettings in the December 2015 quarter were affordable to a single parent reliant on Centrelink.

<sup>7</sup> Australian Institute of Health and Welfare, *Specialist Homelessness Services: 2014–2015* (2015) (**AIHW Report**).

<sup>8</sup> Australian Bureau of Statistics, *Census of Population and Housing: Estimating Homelessness 2011* (12 November 2012) 12 (**Census 2011**).

<sup>9</sup> See AIHW Report, above n 7, 'Table VIC 5: Daily average unmet requests for assistance, by type of service requested and sex, 2014–15, adjusted for non-response'.

<sup>10</sup> Victorian Civil and Administrative Tribunal, *VCAT Annual Report 2014–2015* (25 November 2015) 7 (**VCAT Annual Report**).

<sup>11</sup> AIHW Report, above n 7.

- Rent and bond increases, quick eviction processes due to rental arrears and payment fees can cause financial hardship and stress for tenants during the tenancy and, in the current housing climate, present a risk of eviction into homelessness.
- Regulation of bond and compensation claims can burden tenants with debt that acts as a barrier to accessing new housing, even where the tenant is a victim of family violence or otherwise not at fault.

These features make housing less affordable and less accessible for all Victorians, but their effects are disproportionately felt by low-income and disadvantaged tenants. For these tenants, in the current environment, even small increases to the costs of renting, or small delays in paying rent, can endanger a tenancy and expose them to debt, eviction and homelessness.

In 2014–15, 68% of Homeless Law’s 219 eviction matters involved tenants facing eviction for falling into rental arrears and 40% of these clients were living in private rental properties.

Through this work, we see directly that people are stretched extremely thinly financially and even minor unexpected costs can transform a property from being viable to unviable; tip them into arrears; and cause tenancies to fail. The arrears debt, withheld bond or high upfront costs of securing properties can then prevent them from accessing new properties needed to avoid or exit homelessness.

Through our Women’s Homelessness Prevention Project, Homeless Law also sees that victims of family violence can find themselves unable to access or afford housing because of high costs of bonds and rent in advance, burdened with debts as a result of damage or arrears attributable to the perpetrator and, consequently, at risk of homelessness.

Reform of the regulation of rent, bonds and other charges is a vital component of modernising Victoria’s rental market to more effectively balance the needs of landlords and tenants and to improve the fairness, accessibility and sustainability of renting a home in Victoria.



## 3. Affordable rent, accessible housing and preventing avoidable evictions

As Homeless Law's previous two submissions identified, Victorian tenants are struggling to afford their rent and their tenancies are failing as a result: 46,532 people in Victoria sought assistance from a specialist homelessness service in 2014–15 because of financial issues, including 20,663 who cited housing affordability stress as the reason they needed this assistance.<sup>12</sup>

Unaffordable rental costs place low-income and disadvantaged Victorians at risk of eviction and homelessness. They contribute to financial stress and hardship, and can act as barriers preventing Victorians from accessing affordable, stable housing. A number of rent features regulated by the RTA should be reformed to support a fairer, more stable rental market for tenants and landlords and to reduce the current links between financial hardship, tenancy failures and homelessness.

### 3.1 Regulating rent features that limit access to affordable housing

As we increasingly rely on the private market to meet the needs of low-income tenants who are unable to get to the top of lengthy waiting lists for social housing, the RTA reform needs to contemplate the true impact of weak regulation of the costs associated with renting.

While RTA reform alone will not improve housing affordability, the Review has significant potential to eliminate key features of the current market which make it difficult for tenants on low incomes to access housing. Three of these reforms include:

- Prohibiting rental bidding and auctions;
- Limiting rent in advance to two weeks' rent; and
- Regulating holding deposits.

Each of these measures have been introduced in other Australian jurisdictions and constitute modest changes that would go some way to ameliorating the current harsh imbalance between the tenants and landlords in the Victorian rental market.

#### 3.1.1 Rental bidding and auctions: opaque, unfair and unnecessary

Rental bidding creates a lack of transparency, an asymmetry between landlords and tenants, and a serious financial barrier to housing, all of which disproportionately impact on low-income and disadvantaged tenants.

Rental bidding is currently not prohibited under the RTA, but is governed in part by the Real Estate Institute of Victoria's (REIV) 2007 internal guidelines. The process works against an open, accessible and affordable rental market. It removes incentives for properties to be advertised at a genuine price and allows landlords and real estate agents to solicit and encourage bids, regardless of whether there is a competing interest in the property.

Preventing rental bidding in Victoria would restore transparency to the housing application process and reduce the risk that prospective tenants are pressured into paying excessive and unaffordable rents.

As this case study shows, tenants can be seeking alternative housing in high pressure situations, making multiple applications and having little understanding of why their applications are unsuccessful. They are in an unequal bargaining position, sometimes desperate for housing and at risk of homelessness.

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<sup>12</sup> AIHW Report, above n 7.

## Single mother and daughter finishing year 12 apply for 30 properties

Sandra is a single mother. She is university educated but has been dependent on Centrelink payments for income since her last job ended and she had some physical health issues that limited her ability to work.

She has two children, one of whom was completing year 12. The last few years for Sandra have been difficult, and have included a traumatic relationship break down, physical health issues and a subsequent change in her income.

She had lived in her private rental property for about two years and she had been a reliable tenant. Occasionally she made her rent payments two or three days late but she would always inform the real estate agent if there were any issues.

She was evicted after receiving a 120 day no reason notice to vacate. The VCAT member postponed the eviction for 30 days to allow the family to remain until exams were over.

Sandra applied for upwards of 30 properties before securing one just days before the warrant was executed. She said:

*I was going to open homes and it just wasn't happening ... If I didn't go to 40 open homes I'd be surprised. I might've put 30 applications in. I know being single, I mean someone said to me once two incomes will be taken over one ... It got very close; I was quite scared that we would have nowhere to go. I had a friend that had said to me that I could go there but you know I was really starting to cry, I was really starting to feel it because I felt that we would end up homeless.*

While there may have been a number of factors acting as a barrier to Sandra accessing alternative housing, her example highlights the reality of the market in which tenants are seeking to find homes.

In this environment, a clear prohibition on rental bidding and auctions that applies across the board would avoid inconsistencies between the practices of landlords and REAs and would provide some relief to tenants that they can rely on the advertised price when seeking a rental property.

It would minimise the risk that tenants are pressured to pay more than a fair rate and would avoid tenants wasting time applying for properties that will not ultimately be leased at a rate they can afford.

Rental bids and auctions are already prohibited in Queensland and Tasmania and Victoria should also embrace these regulatory changes to prevent some of the harshest impacts of the private rental market on tenants.

### 3.1.2 Lowering upfront costs of securing housing: rent in advance

As Sandra's case study above and the figures in part 2 above make clear, securing housing is an uphill battle for Victorian tenants, particularly those on low incomes.

In addition to rental bidding and auctions, the high upfront costs associated with obtaining a new tenancy make it difficult for tenants to secure properties and can contribute to a risk of homelessness.

One of the women Homeless Law consulted with as part of the Royal Commission into Family Violence explained the impact financial hardship had on her ability to leave her violent relationship:

*There was one time I was pregnant with my [child] and he punched me in the stomach ... there have been times when we were on the verge of splitting up – that I have actually looked into moving out on*

*my own and I haven't had the money to do it ... I had to stay in that situation because I didn't have the money to get up and leave ...*<sup>13</sup>

The current costs of bond and rent in advance can be unmanageable for people on low-incomes, supporting families who, although they are able to afford the rent, are not in a position to pay such high lump sums.

As the Issues Paper notes, in New South Wales, Western Australia and South Australia, a maximum of two weeks' rent in advance is permitted and Homeless Law recommends that this period is also appropriate in Victoria. One month's rent, in addition to bond, represents a prohibitively high lump sum amount for many tenants, which will prevent them from accessing housing.

In addition, Homeless Law supports the recognition in the Issues Paper that, while \$350 rent per week was previously seen as a high value property for which higher amounts of bond and rent in advance could be justified, this is no longer the case. As the Issues Paper notes, 50% of new tenancy agreements in Victoria in the past quarter were for amounts higher than \$350 per week,<sup>14</sup> including in Homeless Law's experience tenants whose circumstances mean that if evicted they are at risk of homelessness.

### **Client at risk of homelessness paying \$370 per week**

Janet rents a three-bedroom property in the Outer West in order to ensure her children can stay with her every other week. The property costs \$370 a week which Janet pays herself from her salary as a nurse. Janet was admitted to hospital with a mental illness and was unable to work for an extended period of time. Janet fell into arrears while in hospital and was issued with a notice to vacate by her landlord. She is now facing homelessness as a result of these exceptional circumstances, as her period off work has left her with an arrears debt she can't repay on her own. Justice Connect have provided Janet with brokerage options and entered into negotiations with the landlord to enter a payment plan that will allow her to remain in the property.

As this case study highlights, paying in excess of \$350 per week is no longer the domain of high-end properties and high income renters and this outdated exception should be removed in recognition of these changes in the market.

Reducing the amount of rent that can be required to be paid in advance and removing the outdated exception to this cap will reduce the current barriers tenants face to securing safe and affordable housing.

### **3.1.3 Holding deposits: inappropriate in the current rental environment**

Holding deposits add more financial strain to tenants and serve no clear purpose in protecting landlords' interests. Despite the increase in new properties in Victoria, the vacancy rate across Victoria was only 3% in the December quarter of 2015 and has been at that level over the past few years.<sup>15</sup> Insincere rental applications are unlikely given the size and demand in the Victorian rental market, and in the rare situation where a rental application is withdrawn, it is highly unlikely that landlords would suffer a loss.

By contrast, the imposition of holding deposits presents a further barrier for tenants, especially low-income tenants, as they need to obtain even more money for lump-sum payment. This money would also be tied up for up to 14 days awaiting a decision by the landlord. This creates a situation likely to have complications, increased costs, and tenants' funds being made inaccessible at a time when they need as much money available as possible for the other costs associated with changing or starting a tenancy and relocation. Additionally, tenants often have to apply for a number of tenancies at once in order to increase their chances of having a property to move into, especially if they are being forced to leave another property due to family violence or the property no

<sup>13</sup> Homeless Law Family Violence Consultation, participant interview (interview conducted on 7 April 2015). All quotes and case studies used in this submission have been de-identified and names have been changed. See Justice Connect Homeless Law, *Home Safe: Submission to the Royal Commission into Family Violence* (2015) (**Home Safe**).

<sup>14</sup> Issues Paper, above n 4, 19.

<sup>15</sup> DHHS Rental Report, above n 6, 12.

longer being affordable. The payment of multiple holding deposits would impose a significant additional cost for tenants in securing a tenancy.

Holding deposits disadvantage tenants and worsen the effects of the housing affordability crisis in Victoria. They present a further barrier to accessing housing and increase the risk that individuals and families will be unable to secure a home in the available time and will face homelessness as a result.

### **Recommendation 1: Limiting the upfront costs of securing housing, and stopping rental bidding, auctions and holding deposits**

To reduce the current barriers Victorian tenants face in accessing safe and affordable housing, Victoria should follow the examples of other Australian jurisdictions to limit rent in advance to two weeks' rent and prohibit rental bidding and auctions and holding deposits. Each of these features of the current market work to put affordable rental homes out of reach for low-income renters.

## **3.2 Supporting sustainable tenancies: rent collector fees and Centrepay**

Once a tenancy has commenced, it is generally in the interests of both the tenant and the landlord for that tenancy to remain on foot. The current calibration of tenancy regulation does not support stable, sustainable tenancies. Obstacles to payment of rent include rent collector fees that are passed on to tenants and low take-up of Centrepay. Both features leave tenants with administrative and financial burdens that increase the likelihood some tenancies will fail.

As part of the Review, the Government should contemplate what regulatory settings give tenancies the greatest likelihood of success, with a view to benefiting Victorian landlords and tenants.

Two key changes are:

- Requiring landlords and real estate agents to offer of a fee-free way of paying rent (and preventing fees for rent collectors being passed on to tenants); and
- Encouraging the use of Centrepay by landlords and real estate agents, recognising the stability and security this mechanism provides to both landlords and tenants.

### **3.2.1 Rent collector fees should not be passed on to tenants**

As has been consistently pointed out as part of the Review, Victoria's current housing is tough on renters and involves a highly unaffordable and competitive rental market, soaring waiting lists for social housing and homelessness services overwhelmed with demand.

In these circumstances, tenants find themselves with limited bargaining power when presented with the landlord's preferred method of payment, which may include use of the third party rent collector.

The current practice of passing fees charged by these collectors onto tenants is a symptom of the imbalance in the rental market and should be addressed. It is a service selected by the landlord or agent, which they benefit from, and it makes sense that they should bear the cost of this service.

As is the case in New South Wales, Western Australia, South Australia and Tasmania, rent payment or administration charges should be prohibited and tenants should be offered a fee-free way of paying rent.

### **3.2.2 Use of Centrepay by real estate agents**

Centrelink's Centrepay system enables automatic deductions to be made from Centrelink recipients' fortnightly payments. The Centrepay system can be used by real estate agents to assist tenants who receive Centrelink to make rental payments. However, Homeless Law's experience suggests that few real estate agents have signed

up for Centrepay. Chris's story, below, demonstrates how the availability of Centrepay payments had a significant impact on his ability to maintain his tenancy.

### Access to Centrepay and sustaining tenancies

Chris suffers from bipolar disorder, has undergone periods of incarceration and has difficulty organising his finances.

In 2013, Homeless Law represented Chris at VCAT where his landlord sought possession of the property due to rental arrears. Through Homeless Law's advocacy, Chris entered into a payment plan with the real estate agent (REA) whereby he made his fortnightly payments automatically through Centrelink's Centrepay system.

Through the Centrepay system, Chris was up-to-date with rental payments for the remainder of 2013 and into 2014. In late 2014, a new REA took over the management of the property. The new REA did not accept Centrepay payments, so Chris was required to manually make fortnightly rental payments.

Chris struggled to make manual payments and quickly accrued rental arrears. The new REA applied for a possession order, but agreed to enter into a new payment plan with an upfront lump-sum payment. However, Chris soon missed another payment and was subsequently evicted from the property.

Had the new REA accepted Centrepay payments, it is very likely Chris would have continued to regularly make his rental repayments. Instead, the landlord now has the time and expense of finding a new tenant and Chris has re-entered homelessness and is experiencing the detriment to his mental health and wellbeing that homelessness brings with it.

As the above case study highlights, Centrepay can be a simple but critical different between a landlord regularly and reliably receiving their rent and a tenancy failing. While the most obvious hardship in this case was for Chris who re-entered homelessness and experienced a deterioration in his mental health, the landlord was also disadvantaged through the failure of a tenancy that had – until the cessation of Centrepay – been reliable and profitable.

Centrepay currently imposes a \$0.99 fee per transaction, which is covered by landlords and cannot be passed on to the consumer.<sup>16</sup> For tenants paying rent fortnightly, this would mean a very minor cost of \$25 per year would be incurred by the REA. Similar to the cost of third party rent collectors, this is a minor cost that should be borne by the REA or landlord as part of the business of renting an investment property. The interests of both tenants and landlords would be better served if the service was widely available, supporting tenants with payment and ensuring that landlords receive regular, timely rent payments. As discussed throughout Homeless Law's contributions to the Review, if we continue to rely on the private rental market to provide housing to people who might otherwise choose to live in social housing, our regulation and systems need to be set up to sustain tenancies to the mutual benefit of tenants and landlords.

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<sup>16</sup> Australian Government, *Centrepay Procedural Guide for Businesses* (available at: <https://www.humanservices.gov.au/business/services/centrelink/centrepay-businesses>).

## Recommendation 2: Supporting sustainable tenancies

To support stable, sustainable tenancies, which benefit both landlords and tenants, Homeless Law recommends:

- Requiring landlords and real estate agents to offer a fee-free way of paying rent (and preventing fees for rent collectors being passed on to tenants); and
- Encouraging the use of Centrepay by landlords and real estate agents, recognising the stability and security this mechanism provides to both landlords and tenants.

### 3.3 Limiting rent increases to sustain tenancies and recognising financial hardship

For many renters, rental payments are their primary monthly expense. As the Consultation Paper recognised, 'private rental is becoming less affordable, particularly for low-income households'.<sup>17</sup> In this climate of unaffordability and high demand for properties, many Victorian renters are forced to spend a very high proportion of their weekly income on rental payments. Accordingly, for renters with limited disposable income, even small increases in rent can dramatically increase the likelihood of rental arrears and eviction.

The following amendments should be made to the RTA to reduce the impact of rent increases on Victorian tenants, including through protecting against unreasonable and/or retaliatory increases in rent by a landlord:

- **Limiting rent increases to once every 12 months:** Section 44(4A) of the RTA provides that a landlord must not increase the rent payable under a tenancy agreement at intervals of less than 6 months. Given the serious consequences a rent increase can have, landlords should not be entitled to increase rent at intervals of less than 12 months. This would more fairly balance the flexibility afforded to landlords against the stability and predictability needed by tenants. This is consistent with the position in Tasmania, where rent increases are limited to once every 12 months.<sup>18</sup>
- **Reduction of fixed term tenancy due to increase in rent:** Recognising the extent of unaffordability in the Victorian rental market, increases in rent during fixed term tenancies (permitted if the agreement provides for a rent increase within the fixed term under section 44(4) of the RTA) should be a factor that can be considered in an application for a reduction of the fixed term tenancy agreement. Some options for achieving this include:
  - Amending section 234(2A) of the RTA to refer to a substantial increase in rent as a factor indicating that the applicant has experienced an unforeseen change in circumstances (noting that although the rent increase was provided for in the agreement, the amount of the increase or its impact on the tenant may still be unforeseen). Whether or not a rental increase is substantial could be determined with reference to the amount of the increase and the applicant's financial capacity.
  - Enacting a similar provision to section 66(3) of the *Residential Tenancies Act 1986* (NZ). The section provides that the a fixed term tenancy can be terminated where there is a rent increase that:
    - (a) Is substantial;
    - (b) Is of an amount that the tenant could not reasonably foresee when he or she entered into the tenancy agreement; and
    - (c) Has caused, or will cause, serious hardship.

<sup>17</sup> Consultation Paper, above n 3.

<sup>18</sup> *Residential Tenancies Act* (Tas) s 20(3).

These provisions would operate compatibly with sections 45 to 47 of the RTA, which provide a mechanism for tenants to seek an order declaring that the proposed rent is excessive and directing what the rent will be for a specified period. Sections 45 to 47 of the RTA operate where the tenant is seeking to maintain the tenancy, whereas the above reforms recognise that tenants may need to forfeit the tenancy in response to the rent increase and that they should not be penalised for doing this.

The benefits of maintaining housing affordability and minimising the risk of tenancy failure for both tenants and landlords have been set out in detail in Homeless Law's First Submission and Second Submission.

### **Recommendation 3: Limiting rent increases and recognising their impact**

In a deeply unaffordable private rental market, increases in rent are undermining security of tenure and putting tenants at risk of homelessness. Rent increases should not be permitted more than once per year and amendments should be introduced that allow tenants to exit a fixed term tenancy where a substantial or unforeseen rent increase will cause them severe hardship.

## **3.4 Preventing unnecessary terminations for rent arrears**

As noted above, falling behind in the rent is the most common factor putting Homeless Law's clients at risk of homelessness: 150 of our clients facing eviction in 2014–15 were at risk of losing their tenancies due to rental arrears. This was 68% of the total eviction matters.

Through this work, while advocating for tenants, Homeless Law also sees that it is inconvenient and costly for landlords to terminate tenancies. In many cases, the needs of the landlord can be better met by the tenant being quickly supported to comply with their obligations (for example, by addressing arrears owing), rather than terminating the tenancy.

Based on this experience, Homeless Law is strongly of the view that it is not appropriate for time periods under the RTA to be reduced so that a notice to vacate could be issued when rent is seven days late (rather than the current 14 days).

As the case study below highlights, both landlords and tenants can benefit from the sustainment of tenancies. In the current environment of highly unaffordable rent, long waiting lists for social housing and increasing homelessness, it is not sensible to be moving toward swifter evictions with fewer safeguards.

This example identifies an outcome which could be described as 'win win' in that the landlord was repaid outstanding rent and a victim of family violence was able to avoid entering homelessness with her children.



## Single mother falls behind in rent, but gets support to catch up. Landlord benefits

Bianca, a single mother who had experienced family violence, lived in a private rental property with her two children. Bianca had a steady job when she entered into the tenancy agreement, but after suffering debilitating mental health issues was forced to stop work and became reliant on the Newstart Allowance and Family Tax Benefit payments.

As a result of her reduced income, Bianca fell behind in the \$270 weekly rental payments, and quickly accrued rental arrears. The real estate agent issued a Notice to Vacate and then applied to VCAT for a possession order, putting Bianca and her children's housing at risk.

Bianca approached Homeless Law and was assisted through the Women's Homelessness Prevention Project, which combines legal representation with social work support to prevent women and children entering homelessness.

Bianca's pro bono lawyers negotiated with the real estate agent, including by offering an upfront payment of \$1400 toward the arrears, \$1000 of which was provided through the Launch Housing/REA Group brokerage fund for women who have experienced family violence who are seeking to sustain or obtain private rental. The other \$400 was obtained by Bianca with support from a financial counsellor whom Homeless Law's social worker linked her with.

The real estate agent and the landlord were open to negotiation. The proposed payment plan meant the full arrears would be addressed in six months.

The landlord agreed to withdraw their application for a possession order, which meant both parties avoided the stress and inconvenience of a VCAT hearing.

The availability of brokerage and the willingness of the real estate agent to negotiate ultimately led to a successful outcome for both the landlord and Bianca. Bianca and her children could maintain their housing and the landlord was saved the hassle and costs of finding a new tenant.

In Bianca's case, both the tenant and the landlord would have suffered financial loss and inconvenience as a result of a tenancy being terminated for rental arrears. The suggestion that tenancies should be able to be ended more quickly for rental arrears ignores the fact that both parties benefit from the tenancy being saved rather than terminated.

Currently a significant barrier to the successful sustainment of tenancies is the lack of knowledge of, or access to, support services for real estate agents to refer struggling tenants to. In the case of Bianca, it is highly likely that if she had not been provided with legal representation, combined with social work support and access to brokerage, the eviction would have gone ahead. Homeless Law's strong view is that real estate agents need to be better supported to explore alternatives to eviction, including through making early referrals to support services when they identify a tenant having difficulty complying with their obligations. The necessity of early intervention should not be confined to the social housing sector. It is an integral component of making sure private landlords are supported to make choices other than eviction, which is costly for both tenants and landlords.

As discussed in detail in Homeless Law's First Submission and Second Submission, the Review should be moving toward more balanced regulation of a market that provides homes for 525,000 Victorian households. While acknowledging the importance of timely payment of rent, to allow the eviction process to commence when a tenants falls one week behind in rent would increase the risk of avoidable evictions going ahead to the detriment of both landlords and tenants.

Instead, Homeless Law recommends that a hardship process is commenced within 14 days and, if steps are not taken by the tenant to address the arrears in this time, a notice to vacate can be issued after 28 days. Homeless Law reiterates that, based on our experience providing legal representation and social work support to tenants



facing eviction for arrears, the majority of tenancies are salvageable. The focus should be on getting tenancies back on track as soon as possible and this can be effectively done through negotiation and links with appropriate supports prior to issuing a notice to vacate. Homeless Law cautions against the use of the notice to vacate – which is the first step in the eviction process – as a tool for addressing arrears. A pre-notice process that involves speaking with the tenant and linking them with services has greater potential to address the needs of both landlords and tenants, avoid the burden of and for VCAT and prevent unnecessary evictions.

Homeless Law also reiterates our detailed recommendations 11, 12 and 14 in our Second Submission aimed at improving security of tenure in Victoria and minimising the risks of avoidable evictions into homelessness:

- **Legislative and procedural safeguards to prevent unnecessary evictions into homelessness.** To make sure that evictions from both social and private tenancies only ever occur as a last resort, Homeless Law recommends:
  - The introduction of a ‘reasonableness’ requirement for all evictions under the RTA, to give VCAT members discretion to avoid eviction where they are not satisfied it is reasonable in the circumstances; and
  - Development of a pre-eviction checklist for landlords to satisfy before applying to VCAT for a possession order.
- **Improving accountability for human rights in eviction decisions.** To make sure that evictions from social tenancies only ever occur as a last resort, Homeless Law recommends law reform to give VCAT jurisdiction to consider the human rights compatibility of eviction decisions by social landlords. Social housing providers should also be supported with training and resources to adopt Charter-based policies and practices in managing tenancies and making eviction decisions.
- **Investing in services and programs proven to be highly successful at sustaining tenancies.** With timely, effective support, the majority of evictions are preventable. We need an investment in services and programs, including integrated legal representation, SHASP and rental brokerage, that are proven to be highly effective at avoiding unnecessary evictions to the benefit of both landlords and tenants.<sup>19</sup>

Overall, while it is important for landlords to be able to regain possession of their properties in prescribed circumstances, this priority must be balanced against the consequences of easy evictions in the current housing market. As the figures in part 2 and the case studies and consumer insights throughout Homeless Law’s contributions to the Review show, the personal, financial and social cost of evictions into homelessness are high and should only be incurred as a last resort.

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<sup>19</sup> See Homeless Law, Second Submission, above n 2.

#### **Recommendation 4: Preventing unnecessary evictions for rental arrears, which are detrimental to landlords and tenants**

Terminating tenancies is costly for both landlords and tenants and, in many cases, the needs of the landlord can be better met by the tenant being quickly supported to comply with their obligations (for example, by addressing arrears owing), rather than terminating the tenancy.

In relation to rental arrears, Homeless Law recommends that:

- landlords are required to give tenants a 'rent arrears warning' within 14 days of rent arrears arising. This warning, which could be a form provided by Consumer Affairs Victoria, should contain referral options for appropriate services, including financial counsellors and housing, family violence and legal services;
- if steps are not taken by the tenant to address the arrears in response to the 'rent arrears warning', a notice to vacate can be issued if the tenant owes at least 28 days rent to the landlord; and
- real estate agents should be better supported to understand alternatives to eviction, including through making early referrals to support services when they identify a tenant having difficulty complying with their obligations.

The necessity of early intervention should not be confined to the social housing sector. It is an integral component of making sure private landlords are supported to make choices other than eviction, which is costly for both tenants and landlords.

Homeless Law also reiterates our previous recommendations to introduce: a 'reasonableness' requirement for all evictions under the RTA, to give VCAT members discretion to avoid eviction where they are not satisfied it is reasonable in the circumstances; and a pre-eviction checklist for landlords to satisfy before applying to VCAT for a possession order.

## 4. Regulating bonds to reduce barriers to accessing safe housing

As discussed throughout this submission, in a highly competitive, deeply unaffordable rental market, the upfront costs of establishing a new tenancy can present a barrier to low-income people being able to access housing. In the current housing climate, the consequences of these barriers can be severe, including being unable to leave violent relationships or entering homelessness, and these consequences need to be properly considered when designing laws and policies to balance the needs of landlords and tenants.

In the context of bonds, this section considers:

- The way in which compensation claims and bond debts impact on victims of family violence;
- The need for maximum bonds to be set at four weeks' rent without exception; and
- How the delay in release of bonds – in whole or part – can prevent vulnerable people accessing alternative housing and increase the risk of homelessness.

### 4.1 Protecting victims of family violence from financial barriers to safe housing

As the recent report of Victoria's Royal Commission into Family Violence recognised:

*Victims of family violence living in rental accommodation, either public or private, are often burdened with compensation claims and debts that limit their ability to obtain safe alternative housing.<sup>20</sup>*

The Royal Commission expressly recommends that, as part of the Review, the Government considers amending the RTA to:

*[P]rovide a clear mechanism for apportionment of liability arising out of the tenancy in situations of family violence, to ensure that victims of family violence are not held liable for rent (or other tenancy-related debts) that are properly attributable to perpetrators of family violence.<sup>21</sup>*

Homeless Law welcomes these recommendations and the Issues Paper's consideration of appropriate regulation of bonds in family violence situations. Homeless Law understands that the implications of family violence for tenancies will be considered in more detail in the Rights and Responsibilities of Landlords and Tenants Issues Paper and we will address these issues in response to that paper. For the purpose of this Issues Paper, however, Homeless Law notes our experience that victims of family violence are often in urgent need of new accommodation and are disadvantaged or barred from new tenancies because the amount of bond is prohibitive and/or they have previous bonds and maintenance debts tied up in the tenancy they have been forced to vacate.

As discussed throughout this submission, Homeless Law's Women's Homelessness Prevention Project (**WHPP**) assisted 62 women with 102 children in their care in its first 12 months of operation. Of these women:

- 95% had experienced family violence;
- 68% were at risk of eviction due to rent arrears;
- 10% required assistance with compensation claims; and
- one-third of those at risk of eviction due to rent arrears required assistance through financial brokerage.<sup>22</sup>

<sup>20</sup> State of Victoria, *Royal Commission into Family Violence* (March 2016), Volume IV, 113 (**Royal Commission Report**) citing Justice Connect Homeless Law, *Home Safe: Submission to the Royal Commission into Family Violence* (May 2015) 22.

<sup>21</sup> Royal Commission Report, above n 20, Volume IV, 125 (recommendation 116).

<sup>22</sup> Justice Connect Homeless Law, *Women's Homelessness Prevention Project – keeping women and children housed – Twelve month project report* (September 2015) 6 (**WHPP 12-month report**).

As Homeless Law submitted, and as the Royal Commission into Family Violence recognised, victims of family violence are particularly vulnerable to arrears and maintenance debts caused by perpetrators of family violence. Compensation claims or claims against bond are most commonly brought under the RTA against victims of family violence in one of the following two ways:

- A landlord claims compensation against all co-tenants in relation to damage caused by a single co-tenant who is the perpetrator of family violence; and/or
- The landlord claims compensation for rent arrears that accrued after a victim of family violence fled the premises and a perpetrator remained in possession.

These debts are often difficult to apportion correctly and expose victims to homelessness, debt and tenancy black lists.<sup>23</sup>

The following case study provides an example of how such claims arise.

### **Elaine (part 1): compensation claim against co-tenants in the context of family violence**

Elaine is a 21 year old woman with an 11 month old baby. In late 2013 she entered a 12 month fixed term lease with her ex-partner who is the father of her child. Elaine's ex-partner used family violence against her, which escalated when he became addicted to ice and his behaviour became increasingly erratic.

There were numerous instances where Elaine was forced to call police to the property due to threatening and abusive behaviour, and in some of these instances damage was caused at the property. After six months at this premises, a serious incident took place which led Elaine to flee the property back into her family home.

After fleeing, Elaine's ex-partner remained in the premises but was not contributing any rent. For two months, Elaine paid all of the rent at the property to prevent him being evicted. Eventually, Elaine obtained an IVO against her ex-partner as he continued to harass her after she had fled the premises.

When Elaine couldn't afford to pay the rent anymore, the landlord applied to VCAT for a possession order and compensation of \$8000 for damage caused at the premises, and rent arrears that had accumulated. The claim was made against both Elaine and her ex-partner as co-tenants. Elaine hadn't spoken to her ex-partner in months, and was told by the real estate agent that he had not left a forwarding address and hadn't contacted them.

The default position under the RTA is that a landlord seeking an award of compensation can make their claim against any or all of the co-tenants to the lease agreement. This is due to the principle of joint and several liability which provides that any one or all of the co-tenants can be pursued for any loss or damage that the landlord suffers as a result of a breach of the tenancy agreement or the RTA by any one of the co-tenants.

Except in limited circumstances, the RTA makes no distinction between co-tenants to a lease agreement.

This default position is altered to some extent as a result of Part IVA of the *Wrongs Act 1958 (Vic)* (**Wrongs Act**), which provides scope for apportionment of claims between concurrent wrongdoers where the claim relates to economic loss or damage to property arising from a failure to take reasonable care.<sup>24</sup> Various parts of the commentary in the Annotated RTA indicate that it is within VCAT's power to apportion liability for compensation between co-tenants in accordance with the Wrongs Act principles,<sup>25</sup> and VCAT members hearing disputes will generally consider this commentary provided it is brought to their attention.

<sup>23</sup> See Homeless Law, Home Safe, above n 13, part 4.

<sup>24</sup> *Wrongs Act 1958 (Vic)* ss 24AF and 24AH.

<sup>25</sup> See, eg, *Annotated Residential Tenancies Act 1997 (Vic)* [3.03] and [210.08].

However, as the provisions of the Wrongs Act and the commentary in the RTA both make clear, there are limitations and issues with applying the Wrongs Act provisions to assist a victim of family violence against whom a compensation claim has been made.

For example:

- A breach of the RTA that does not involve a failure to take reasonable care, which would ordinarily include failure to pay rent, will not attract the operation of the Wrongs Act provisions. This means a victim of violence who fled a property will ordinarily be liable for subsequent arrears that accrue unless she can show the tenancy was legally varied after she fled.<sup>26</sup>
- The power to apportion responsibility only exists against a ‘concurrent wrongdoer’, and therefore it may not be possible to apportion responsibility where one co-tenant is the sole wrongdoer and the other co-tenant is a blameless victim of family violence.
- In relation to the above, it is inappropriate for a victim of family violence to be forced to assert that she is a ‘concurrent wrongdoer’ in order for the beneficial provisions of the Wrongs Act to apply in a compensation claim.
- In Homeless Law’s experience, many landlords and real estate agents are unfamiliar with the annotated version of the RTA which references the relevant Wrongs Act provisions, and are therefore unlikely to settle disputes outside of VCAT where arguments of apportionment are put by a tenant or their advocate.

In practice, it is Homeless Law’s experience that compensation claims by landlords are usually made against all co-tenants, and a party must then argue at VCAT for apportionment of liability. The second part of Elaine’s case study highlights the issues with this approach, and the way in which some VCAT members look outside the Wrongs Act provisions in order to achieve a fair outcome in apportionable compensation claim matters.

### **Elaine (part 2): relying on consent rather than apportionment under the Wrongs Act**

When Elaine learned of the \$8000 compensation claim that had been made against her, she sought assistance from Homeless Law. Homeless Law obtained a copy of the IVO and other relevant evidence to demonstrate that Elaine had fled the property long before the VCAT possession order was made. They also obtained police reports that supported Elaine’s instructions that most of the damage at the property was caused by the other co-tenant.

The Homeless Law lawyers tendered written submissions at the compensation hearing and argued that the member could apportion liability in accordance with the Wrongs Act provisions. Given the commentary in the RTA and wording of the Wrongs Act provisions, there was uncertainty as to whether the VCAT member would agree to apportion the arrears that had accrued after Elaine fled the property.

After reviewing the written submissions, the member advised that they would prefer to resolve the matter by consent if possible, and urged the landlord to consent to an apportionment of liability so that Elaine was not liable for any aspect of the claim arising after she had fled the premises. The landlord consented to this arrangement, and the original claim of \$8000 was reduced to \$4500, with only \$900 payable by Elaine.

While the consent-based outcome was fair and appropriate in this case, it will not always be possible for a victim of family violence to obtain the landlord’s consent to apportion claims in this way. Further, if the other co-tenant and perpetrator of family violence is also in attendance at the hearing, it is highly unlikely such a negotiated outcome would have been reached.

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<sup>26</sup> See *Annotated Residential Tenancies Act 1997 (Vic)* [3.03]. This is not a straightforward process. The commentary in the Annotated Residential Tenancies Act notes that whether or not a co-tenant can give notice of intention to vacate a joint lease is unclear and will depend on the particular facts of each case.

This case study highlights the deficiencies in the Wrongs Act provisions and the need for legislative reform to clarify how VCAT members can apportion liability in claims against co-tenants, without requiring the consent of the parties to a dispute.

Homeless Law recommends that the RTA is amended to provide VCAT members with a clearer method for apportioning liability between co-tenants in the context of family violence, which will have obvious implications for the return of bonds. The proposed amendment would directly assist victims of family violence in the following ways:

- Ensuring that victims of family violence are not held legally liable for compensation claims and debts that are properly attributable to perpetrators who are or were their co-tenants.
- Reducing one barrier to victims of family violence leaving violent relationships, by removing the fear that they will be legally responsible for damage they didn't cause, and rent arrears that were accrued after they had fled.
- Encouraging landlords and their agents to settle and/or withdraw compensation claims or bond claims against victims of family violence outside of VCAT, where it can be shown that the victim will not be held liable for that claim at a hearing.

### **Recommendation 5: Amendments to allow clear apportionment of liability and return of bonds in compensation claims against tenants who are victims of family violence**

Homeless Law recommends amending section 211 of the RTA, '[m]atters which may be considered by [the] Tribunal' when assessing compensation claims, to provide that the Tribunal may take into account:

*211(aa) In the case of a claim against multiple tenants in respect of the same tenancy agreement, and where the Tribunal is satisfied that some or all of the damage or compensation sought has arisen as a result of family violence perpetrated by one party against another, whether any amount or amounts of the claim should be apportioned between the parties to take into account their respective responsibility for the damage or loss caused ...*

In addition to appropriate apportionment of liability, there should be a streamlined process for victims of family violence to have their bond returned to allow them the best chance of securing alternative housing if needed.

## **4.2 Regulating bonds and reducing outdated barriers to affordable housing**

As discussed above in relation to rent in advance, the 'high value' exceptions to rent and bond requirements have unintended consequences, exposing low-income and disadvantaged tenants to a lack of protection from unaffordable conditions.

Homeless Law recommends that, consistently with other jurisdictions, including New South Wales and Tasmania, the maximum bond is four weeks' rent with no exceptions. This reform recognises that more than 50% of new Victorian tenancy agreements now see tenants paying more than \$350 per week, and this exception no longer serves its original purpose of applying to a small, luxury segment of the market.<sup>27</sup>

As the case study in part 3.1 above shows, the fixed value now captures properties being occupied by low-income and disadvantaged tenants.

It should continue to be the case that the bond cannot be increased during a tenancy or for subsequent tenancy agreements (i.e. a periodic or renewed lease) where the tenant has already paid a bond. This limitation should apply without exception. As is apparent from the case studies and data before the Review, Victorian tenants are

<sup>27</sup> DHHS Rental Report, above n 6, 3. In the December quarter of 2015 the median weekly rent in Melbourne was \$380, and \$360 across Victoria.

living very close to the line financially and experiencing high levels of rental stress. In this environment, even relatively small increases in housing related costs could jeopardise tenancies and are difficult to justify.

### **Recommendation 6: Effective regulation of bonds to address outdated barriers to housing**

Recognising the high levels of housing stress in the Victorian rental market and low levels of affordability, the maximum bond should be four weeks' rent without exception. No bond increases should be allowed during a tenancy.

## **4.3 Prompt return of bonds to allow access to new properties**

Homeless Law is fortunate to have access to generous brokerage provided by Launch Housing and the REA Group to support women who have experienced family violence to sustain or access private rental properties.

Through the management of this brokerage, we see just how difficult it is for low-income people to set up new tenancies in Victoria.

By way of example, over a 12 month period, Homeless Law used approximately \$3,700 in brokerage to help five women set up new tenancies. These women were required to leave their existing properties for a range of reasons, including that it was no longer safe, they were being evicted or it was no longer affordable. Without access to this additional money, it is highly unlikely that these women and their children would have been able to access housing and it is probable that they would have entered or re-entered homelessness.

The current approach to bond, particularly the delay in providing access to bonds, presents a very real risk that people will not be able to obtain a new property. Often the search for a new property is being undertaken in strained circumstances and under time pressure, particularly where leases are coming to an end, properties have become unaffordable or eviction proceedings have been commenced.

If tenants do not have access to a lump sum of money, for example because an REA only lodges its claims monthly or is disputing part of the bond, this is a significant barrier to tenants being able to access new properties and presents a risk of homelessness.

Where bonds are contested in part, new mechanisms should be introduced to allow the uncontested amounts to be released to the tenants. The current practice of withholding the entire bond amount until the claim is resolved deprives tenants of their money and adds another financial complication to an already unaffordable and inaccessible market.

### **Recommendation 7: Promptly returning bonds to allow access to new properties**

Bonds should be promptly released to tenants and, where a portion is in dispute, the undisputed amount should be immediately released to support tenants to access alternative properties.