Part 1 of my response to the RTA Options paper

This is by far the hardest paper to respond to as it is a huge document at 234 pages which has taken over 25 hours to read and start to get my head around the content.

With the 184 options and 224 questions that need to be considered and answered within the time frame allowed (released 7th January when on holiday with only 34 days to formulate a response) it is too short a time to allow meaningful consideration of all options and questions, particularly as many of them are interrelated.

So despite the 7 papers that have been put out for consultation and the extensive feedback provided on all of them by affected parties, there does not appear to have been any attempt to narrow down recommendations to a manageable number. If anything the range of uncosted options, questions, and consequences presented in this final public discussion paper have grown exponentially rather than being distilled to workable alternatives.

While I appreciate the two week extension of time granted by CAV, I find it concerning that this important and comprehensive final paper is being rushed through in less time than the individual papers that came before. I also note that the final 187 page EY Sweeney report was released at the same time which further complicates the analysis as it contains extensive factual statistical information to balance the anecdotal evidence that has been provided by stakeholders to date that appears to be based on outliers without comparison to the market as a whole.

I would further suggest that this is a huge task even for the 11 TAAP agencies that CAV fund or even the REIV in the time frame allowed especially as this is the last opportunity for important external input from people and organisations that are actually on the ground and will have to deal with the eventual outcomes of the review.

The greatest concern I have in analysing the document is that there are a large number of options/questions that are asking for input with either missing or yet to be announced rules/regulations and those options then have interdependencies on other parts of the proposed changes to the legislation, forthcoming external regulation/legislation as well as huge potential costs to the sector.

In this part 1 of my response I provide analysis of two sections (minimum standards and ending a tenancy) to highlight just a few of my concerns

Minimum Standards
Chapter 8.5 and Alternate Options 8.13A, 8.13B, 8.13C & 8.13D (the idea to pick one or none)

Option 8.13A – Requirement that vacant premises are safe for habitation is subject to the outcomes of DELWP (Department of Environment, Land, Water and Planning) Strategy and could result in some future standards and suggests that the option could be amended so that rental properties must meet “anything else prescribed in the regulations”. It further goes on to state that the Director of CAV would issue guidelines on what “fit for habitation” means in practice. Without knowing what these guidelines or regulations are, how can any landlord comment on the validity of this option or assess the likely cost/impact?

Option 8.13B Adapt minimum standards for rooming houses for general tenancies states that “Not all of the existing rooming house minimum standards would be suitable for a general tenancy setting. Relevant standards might include:” which then goes on to list 14 standards that might form

part of this option. Again, without detail of which standards are likely to be included, how can any landlord comment on the validity of this option or assess the likely cost/impact?

Option 8.13C Adapt social housing reletting standards for general tenancies, states that these standards are currently under review and that "it is not possible to provide greater detail". Enough said.

Option 8.13D – Minimum health, safety, amenity standards for vacant premises has a large number of minimum standards listed, with some being suggested that currently do not exist in the RTA such as cooling which may or may not include built in Air Conditioning or fans depending on the type of property (no information on how/who will determine this), fly screens, adequate power points (number not stated) in living room and bedrooms and energy efficient features subject to outcomes of a future DELWP Strategy.

Additionally, whichever of these options is imposed, landlords will then also be impacted by alternate Options 8.15A and 8.15B. 8.15A will expose landlords to significant financial risk by imposing huge financial penalties to landlords if a property does not meet those unarticulated minimum standards in Option 8.13 (A, B, C or D) including being liable for full rent refunds and compensation and then, after remedying any faults, facing further penalty under Option 8.37 possibly facing the prohibition of charging a market rent to match the renovated property or not being able to rent it out at all. Or, if 815B is chosen, quite simply, the landlord will not be able to rent the property until it meets the minimum standard option selected, which can only lead to properties either being left vacant, thereby reducing housing supply, or being renovated to meet the standard and then leased at a higher rent for the greater amenity, further aggravating the current housing affordability crisis.

The potential cost effect of just two of the proposed minimum standards being the introduction of Cooling as a minimum standard and fly screens are as follows:

Cooling - the EY Sweeney report states that 74% of Victorian rental properties have functioning AC which shows that overall 26% of properties would incur costs to meet this standard. On this basis with more than 545,000 rental properties in Victoria, this would indicate that some 141,700 homes/apartments will need either AC or at a minimum ceiling fans installed to meet proposed minimum standards. Based on one AC unit to living space at conservative cost $2000 installed, this would cost $283 Million. As a lower cost alternative, ceiling fans installed to living and bedrooms at an average 3 fans per property totalling $900 installed, would cost $127.5 Million.

Similarly for flyscreens, the EY Sweeney report states 49% of all rentals have flyscreens in good condition which then would see 278,000 rental properties needing to be fitted with flyscreens. Excluding situations such as high rise properties with no opening windows or some heritage properties where its not practical to fit to some windows/doors, working on half that amount 139,000 properties with a conservative cost per home/unit of $1100 installed would cost $153 Million.

These are just conservative costings based on the information from the EY Sweeney report, DHHS Rental Report and my own experience in renovation, but obviously the selected minimum standards option will need to be costed further by the government during the Regulatory Impact Statement process to fully assess the impact of these proposed legislative changes on the housing sector.

The second area of major concern is the imbalance in Part C

Part C – Dispute Resolution and ending a tenancy

There are extensive changes mooted regarding dispute resolution and ending a tenancy, with 78% of the 51 options presented shifting the balance in favour the tenant and some of them even focused on outright punishment of landlords as though they are all slumlords.

Lets not forget renting is actually a simple concept

> Landlords want the rent paid on time, the property looked after & no problems between tenant and neighbours.
> Tenants are looking for a the nicest place they can afford that is maintained as needed.
> Both are looking for a respectful and responsive business relationship

This is supported by the EY Sweeney report that shows only 18% of tenants and 9% of landlords are dissatisfied with their rental experience. Of note is that the most common theme of dissatisfaction from tenants is with poor experiences with Real Estate Agents (7% of the 38% that provided a response or 2.6% overall), which would be more appropriately addressed by the review of Real Estate legislation rather than punishing landlords in the review of the RTA.

The statistics show that of all the cases presented at VCAT, 91.7% are brought by landlords with the majority seeking to have unpaid rent or damage made good and yet, despite changes being proposed to penalise landlords for not fulfilling their side of the contract, there is nothing to address these issues when the tenant is at fault and the losses well exceed the bond taken.

The facts are that between 80 to 90 percent of tenant moves are initiated by the tenant and yet most of the changes in Part C are designed to make it harder on the landlord to have the freedom of choice to determine what they do with what is their largest asset and generally linked to their largest debt. Most concerning is that there is pressure to extend the contractual obligations of the landlord to much longer tenancies to provide greater security of tenure, with no commensurate increase in obligation for tenants. In fact the intent of Options 6.1-6.4 appears to be to significantly reduce the obligations of tenants in the contract by reducing lease break fees to a minimum, while Option 11.25B further degrades the tenant's responsibility when a fixed-term contract is ended by the landlord issuing a 90 day end of lease notice, by enabling them to give a 14 day notice in retaliation.

There is a huge focus in the paper placed on the current "no specified reason" being used by landlords to discriminate or be vindictive toward tenants and yet the figures supplied by tenants themselves show only 4% have ever experienced this in their entire rental history. This option has often been used where a fixed term agreement has transformed into a periodic agreement and the landlord has had a change of circumstances where they wish to regain control of the property. Other situations where its been used have been where a tenant has been less than desirable to deal with and exhibiting behaviours that have driven up costs and stress levels but no one thing can be used to terminate a lease.

What is particularly toxic in the termination section though is the extensive options aimed at having every Notice to Vacate replaced by a termination order through VCAT. Given the extensive focus throughout the many papers on the issues in VCAT with tenants feeling intimidated, lengthy delays and high administrative and financial costs for all parties, this is going to create a total nightmare!!

VCAT can't cope with their current workload of almost 60,000 cases a year and yet there are no figures available on how many Notices to Vacate are issued now and complied with, that would require a termination order in future. Speak to any real estate agent, or get REIV to survey their

members, and you will discover that only a small proportion of Notices to Vacate are taken to VCAT by either tenant or landlord. This change will result in an explosion of VCAT hearings that will add needless cost and administration to all parties concerned.

What appears to be overlooked is the fact that while a review is well overdue, if the balance in the social contract between landlords and tenants is skewed to the extent that is anticipated by this paper, it will have a detrimental effect on the rental market in Victoria. While there is feedback from stakeholders that they don't believe this will happen, they won't be the people bearing the consequences if they are wrong.

In this, Part 1 of my response to the paper, I have only addressed two areas that I see as representative of the many problems contained within the options paper.

As you have kindly granted me a two week extension for my submission, I will endeavour to work through some additional areas of concern and attempt to articulate the position of a landlord further.