

# Strengthening Rental Laws

Submission to the *Residential Tenancies Act* options paper

February 2017



## About VCOSS

The Victorian Council of Social Service (VCOSS) is the peak body of the social and community sector in Victoria. VCOSS members reflect the diversity of the sector and include large charities, peak organisations, small community services, advocacy groups, and individuals interested in social policy. In addition to supporting the sector, VCOSS represents the interests of disadvantaged Victorians and advocates for the development of a sustainable, fair and equitable society.

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VCOSS acknowledges the traditional owners of country and pays its respects to Elders past and present.

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## Acronyms

CAV	Consumer Affairs Victoria
NSW	New South Wales
RBTA	Residential Tenancies Bond Authority
RSA	Rent Special Account
RTA	<i>Residential Tenancies Act 1997</i>
VCAT	Victorian Civil and Administrative Tribunal
VCOSS	Victorian Council of Social Service



# Executive summary

The Victorian Council of Social Service (VCOSS) welcomes this opportunity to contribute to the Victorian Government's Options Discussion Paper (the options paper) for its review of the *Residential Tenancies Act 1997* (RTA).

VCOSS supports options to strengthen rental laws to increase people's ability to create a safe, stable and liveable home when renting. People facing poverty and disadvantage are more likely to live in rental housing than other Victorians. Due to an increasingly unaffordable housing market, more people are renting for longer. Victorians experiencing disadvantage can be highly vulnerable when living in rental housing, being subject to unnecessary evictions, disempowered in disputes with property owners, exposed to unnecessary costs, and vulnerable to poor housing conditions.

In this submission, VCOSS supports and builds upon options that help protect people living in rental housing from poor outcomes, and advances some additional proposals supporting this goal.

VCOSS supports:

- **Greater protections for renters in tenancy agreements**, including from discrimination, unnecessary intrusion, unfair additional responsibilities, exposure to unnecessary penalties and restrictions on keeping pets
- **Greater protection against unreasonable costs**, including from excessive rent increases, payment restrictions, bonds, fees, charges, liability for unfair costs and unfair rental bidding
- **Creating healthy, liveable homes**, including by introducing minimum standards for health, safety, amenity and energy efficiency, better management of repairs and maintenance, allowing reasonable modifications, and access to essential services
- **Better mechanisms for resolving disputes**, including better information and advice, establishing a Victorian housing ombudsman, more consistency VCAT decisions, and stronger enforcement mechanisms
- **Promoting secure of tenure**, including by abolishing 'no-cause' evictions, ensuring eviction is genuinely a last resort, and allowing people greater freedom to move when they need to
- **Protecting victims of family violence**, including by improving access to family violence protections, allowing homes to be made safer, and establishing stronger mechanisms to secure housing for survivors of family violence, and protecting survivors' rights in tenancies.

# Introduction

VCOSS is the peak body of the social and community sector in Victoria. Our members include organisations that support people experiencing disadvantage, including people facing difficulty securing affordable and appropriate housing, and the further problems this can cause.

A secure, affordable and appropriate home is the foundation of a good life. A home is not only a building or shelter, but is imbued with social meaning, emotional connection and forms part of a person's identity. It provides a base for participation in employment, continuity in education, maintaining family relationships, raising children and taking part in the life of a community.

The laws protecting people living in rental housing are an important aspect of this. With more than half a million families or households currently living in private rental homes across Victoria, protecting their access to, security in and quality of housing is an essential part of promoting people's wellbeing.

An increasing number of Victorians are living in private rental for longer periods of their lives. Private renting is no longer a transitional housing option for many people, and the shortage of social housing means many low-income and vulnerable people and families are increasingly living in private rental properties. There are now more than half a million rental households, 35 per cent more than in 1996.<sup>1</sup> Of these, more than 275,000 are low-income Victorian households, more than three times the number of households in social housing.<sup>2</sup> Low-income households are also more likely to rent homes than other households, with more than a third (34.4%) of households in the lowest income quintile live in private rental housing in Victoria.<sup>3</sup>

Housing should provide the shelter, security, safety and privacy that people need to reach their potential, participate in the community and live healthy and meaningful lives. Several factors affect this. These include the cost, size and functionality of a home, the quality of its materials and fittings, a person's ability to adapt it to their needs, or to leave it when they choose, as well as its location and the amenities available around it.

Housing is an important determinant of health.<sup>4</sup> Good quality housing protects against heat and cold extremes, and other effects of weather including fire, flood and storms.<sup>5</sup> It enables people to maintain good hygiene, prepare and cook nutritious food, and access essential services such as

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<sup>1</sup> Victorian Government, Residential Tenancies Act Review: Laying the Groundwork - Consultation Paper, p.16

<sup>2</sup> Australian Bureau of Statistics, *Housing occupancy and costs 2013-14: Additional tables – low income rental households*, Cat. No 4130, 2015.

<sup>3</sup> Australian Bureau of Statistics, *Victorian Housing Tenure by Income and Wealth 2011-12*, from the Survey of Income and Housing, unpublished data commissioned by VCOSS.

<sup>4</sup> Victorian Council of Social Service, *A Future Focussed Housing Standard*, 2009, p. 4.

<sup>5</sup> Victorian Council of Social Service, *Disaster and Disadvantage: Social Vulnerability in Emergency Management*, 2014, p. 18.

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energy, water and telecommunications. It protects people against exposure to disease, mould and vermin that can cause ill health. Housing is also important for people's mental health, including their ability to experience stability, security and privacy. Housing has important relationships to the rights protected by the *Charter of Human Rights and Responsibilities Act 2006*, and those in other human rights instruments to which Australia is a signatory.

This submission supports options and makes proposals that improve the protections for the large and growing number of people in Victoria living in rental homes, with specific focus on supporting and improving options that help reduce poverty and disadvantage.

# Protect renters in tenancy agreements

## Allow longer leases

VCOSS supports increasing security of tenure by encouraging longer, more secure tenancy agreements that provide people with the flexibility to leave their rental home where necessary without punitive financial penalties. VCOSS does not support arrangements whereby people must secure longer leases by 'trading off' consumer protections to which they are otherwise entitled.

VCOSS does not object to increasing the scope of the RTA to apply to fixed term leases longer than five years (option 3.1). However, given the current culture of renting practice, this is unlikely to result in longer term leases being signed. In addition, VCOSS remains concerned that people should not be 'locked-in' to long term leases meaning they cannot end their tenancy if their circumstances change, including to pursue employment and education, or accommodate changes to family composition or caring relationships.

VCOSS notes the option of introducing a prescribed fixed-term lease for tenancies of five years or longer (option 3.2). VCOSS is concerned at the suggestion that such a lease might reduce the protections available to people with shorter leases, and at the suggestion that owners be given 'incentives' to enter into these leases, potentially by transferring costs and responsibilities to renters they otherwise would not be required to bear. For low-income or otherwise vulnerable renters, these may affect the sustainability of the tenancy. For example, VCOSS members report that older renters are most often attracted to longer term leases. However, it would be a perverse outcome if these older people face higher costs and greater maintenance responsibilities than other renters, when this group is more likely to be on a fixed income (such as the age pension), and more physically frail and less capable of manual labour tasks.

VCOSS does not object to including an option extending fixed term leases (option 3.3). The options paper does not clearly state whether property owners would be required to offer renters this option. The options paper makes a comparison to the *Retail Leases Act 2003*, where options for extending leases are negotiated between landlord and tenant, and not required to be offered. If lease extension options are proposed to be merely discretionary, VCOSS members suggest that they are unlikely to be agreed to by property owners, and therefore do little to improve security of tenure.

VCOSS observes that none of the options put forward are likely to result in longer term leases becoming more common.



## Protect renters from discrimination

VCOSS supports including an information statement about unlawful discrimination on application forms (option 4.1) and stronger penalties against discrimination in the RTA (option 4.2).

Including penalties against discrimination provides stronger reinforcement for property owners and their agents to adopt non-discriminatory practices. In particular, penalties against discrimination may be effective for renters after they have signed a lease and moved into their home, as discriminatory behavior may be more obvious and people have stronger motivations to seek redress. These would include penalties for refusing reasonable consent to changes required for a protected characteristic under the *Equal Opportunity Act 2010*, or issuing notices to vacate based on a protected characteristic.

However, these options may be less effective at providing redress when a person faces discrimination when seeking a lease. VCOSS members report people are often not provided reasons their tenancy application has been refused, and are not privy to the decision-making process for deciding whether to accept a tenancy application.

Consumer Affairs Victoria (CAV) could consider additional means of preventing discrimination by:

- requiring property owners and agents to provide reasons a tenancy application was refused, on request
- requiring property owners and agents to keep records of the way a tenancy application was decided
- preventing property owners and agents from collecting information on protected characteristics (e.g. on application forms)
- allowing prospective renters to claim compensation from owners if their application was refused on the basis of an applicant having a protected characteristic.

## Consider limiting the exemption of Specialist Disability Accommodation

VCOSS is concerned at a possible emerging gap in tenancy legislation resulting from changes in specialist housing for people with disability. Changes to the RTA should ensure people with disability have appropriate tenancy rights, especially where their rights are not protected by other means.

The funding responsibility for specialist disability accommodation will progressively transfer from the State Government to the NDIS. Currently, under Victorian law, residential services provided to people with disability is regulated by the *Disability Act 2006*. This legislation provides various protections to residents. The first level of protection is for people in residential services, a term defined in the *Disability Act 2006*. More substantial protections apply to people in group homes. A group home is declared to be so by publication in the Government Gazette. The RTA does not apply to such services (see RTA s23).

As the NDIS rolls out there will be homes that do not meet the criteria for being a residential service under the *Disability Act 2006* or are not gazetted group homes. But these homes would meet the exclusion criteria under section 23 of the RTA. Consequently, people living in these homes may not be protected by either Act and the law that applies to them may only be the Australian Consumer Law.

New disability housing may not meet the *Disability Act 2006* definition of a residential service as admission to NDIS-funded disability housing is not determined by the Victorian Government. Thus the *Disability Act 2006* safeguards concerning tenure will not have clear application to residents.

It is not clear whether new disability housing will be gazetted by the Victorian government and hence whether the safeguards will apply.

One option for ensuring that some of Victoria's most vulnerable renters do not fall into a potential new gap between disability-related legislation and tenancy-related legislation under the new market-based disability service provision paradigm, would be to amend the RTA to remove or limit the section 23 exclusion. In particular, it may be appropriate that individual NDIS-funded disability housing, intended to accommodate a single person with a disability, should be included in the coverage of the RTA, and only exclude group housing gazetted by the Victorian government.

## Protect people's privacy in tenancy databases

VCOSS supports greater protections for people's private information, including by:

- prohibiting a property owner or agent using information in a tenancy application for other purposes (option 4.3)
- prohibiting charging a fee to a person for a copy of their listing in a tenancy database (option 4.4)
- giving VCAT the power to make an order if a database listing is unjust in the circumstances (option 4.5).

These provisions strengthen people's privacy, and help ensure their personal information is not misused for purposes other than intended.

## Increase transparency in agreements

VCOSS supports options to increase transparency for people so they are aware of the possible future implications for their tenancy and security of tenure.

VCOSS supports the option to require disclosure of certain information before the tenancy (option 4.6), however, we believe this option can be strengthened. VCOSS also supports prohibiting false, misleading or deceptive information (option 4.7).

Disclosure provisions can be strengthened by:

- requiring property owners or their agents to disclose the information before requiring a person to complete a tenancy application

- including information about whether the property owner has an intention to sell the rental home, not only if they have engaged an agent or prepared a contract for sale.

Information about property owners' intentions for a rental home may have significant consequences for whether a person wishes to apply for it. The options paper suggests that this information need only be disclosed before a lease is signed, which in practice may mean it is provided immediately before signing a lease, when a prospective renter has already organised bonds and may have begun preparations to move into a property. Finding out this information at such a late stage gives a person very little time to consider whether this information affects their agreement to the lease.

Similarly, the options paper suggests this information is only required if a person has engaged an agent to sell the home, or prepared a contract for sale. These activities may occur some time after a person has decided they wish to sell a property. The RTA could contain a provision that property owners must disclose an intention to sell the property during the term of a fixed term lease, regardless of whether further steps have been taken.

Further, the review process should consider whether people must disclose risks or property defects that may not be easily observed by people upon inspection, or when completing condition reports, for instance the presence of hazardous material, such as asbestos, in the property.

## **Ensure people know who owns their home**

VCOSS supports the requirement that property owners must disclose their identity and contact details to person renting their home (option 4.8A).

It seems a basic requirement that when two parties are signing a contract, they need to know who the other party is. As the options paper points out, the current lack of this requirement can lead to difficulty in enforcing tenancy law. VCOSS notes there may be special circumstances (such as family violence) where it is reasonable to protect a property owners' identity. It is possible in these circumstances that a property owner may seek approval from CAV or another body to withhold their identity on a lease, but it could be made available to VCAT for enforcement purposes.

VCOSS believes people should otherwise be able to know who owns their rental home before signing a lease, so that they may make a judgement about whether that is a person they wish to be in a contractual relationship with, and allow them to undertake due diligence, where possible, before they enter into an agreement with that person. As such, VCOSS prefers option 4.8A over option 4.8B, which would only require a person's identity to be disclosed by an order of a court or tribunal.

## **Protect renters from additional responsibilities**

VCOSS members report that additional clauses are frequently included in leases as a matter of standard practice by many property owners and their agents. They are rarely 'negotiated', whereby owners and prospective renters meet to discuss possible changes and both parties agree to

different rights and responsibilities in a 'quid pro quo' arrangement. Rather, the clauses are inserted in leases prepared by owners and agents and presented as a 'fait accompli' to prospective renters at the arranged time for signing the agreement, on a 'take it or leave it' basis.

Because of this practice, additional clauses can effectively increase the responsibilities on renters with no counterbalancing change in property owners' responsibilities. Common additional clauses include more arduous responsibilities for maintenance of gardens or agreement to conduct extra cleaning at the end of the tenancy, despite these responsibilities being more onerous than renters' general duty to avoid damage and keep premises clean. If these more onerous duties are not met, owners can pursue costs in excess of those able to be retrieved through a standard tenancy agreement. These additional costs can have a significant impact on people, especially as they may come at a time of high financial pressure when people are moving home.

VCOSS observes that none of the proposed options seek to substantively curtail property owners' ability to insert more onerous lease terms which leave renters worse off than if they had agreed to a basic tenancy agreement with no additional terms.

Of the options presented, VCOSS believes there may be benefits in a comprehensive standard prescribed tenancy agreement (option 4.9), but is concerned by the suggestion that it include extra 'optional' prescribed terms that can be enforced by VCAT. VCOSS suggests that these 'optional' clauses may effectively become new standard duties of renters, and become included as a matter of standard practice by property owners and their agents.

VCOSS believes there may be limited benefits in establishing a 'blacklist' of prohibited terms (option 4.10), and creating an offence for invalid or prohibited terms (option 4.11). However, we note these options generally reinforce existing arrangements, and do not prevent property owners from effectively unilaterally inserting additional terms into leases.

VCOSS opposes allowing additional clauses to be enforceable by VCAT (option 4.12B). Currently, additional clauses cannot be enforced by VCAT during the tenancy, such as by issuing compliance orders for their enforcement. Allowing additional clauses to be enforceable exposes people to more intrusion by property owners and their agents in their use of their home, potentially creating new pathways for eviction, and ultimately reducing people's security of tenure and quiet enjoyment of their homes.

## **Regularise the breach of duty and compliance order process**

VCOSS believes in instances of conflict that cannot be resolved by discussion and negotiation between an owner and renter, the breach of duty process remains a reasonable method of enforcing tenancy duties in most instances. The benefit of this process is that people are advised of the problem and given an opportunity to rectify it. If parties fail to adhere to their duties under an agreement, this can then be reinforced by a VCAT compliance order. Only after repeated failures to adhere to a duty does lease termination become a last resort.

VCOSS notes that this process should not be undermined by other provisions of the RTA, such as grounds for terminating leases, in cases where serving a breach of duty or seeking a compliance order is the most appropriate means of enforcing the provisions of a tenancy agreement.

VCOSS supports abolishing notices of termination of successive breaches (option 5.2C). This 'three strikes rule' currently undermines the compliance order process, and prevents VCAT from considering the nature and seriousness of breaches for the purposes of a compliance order before it is called upon to make a decision about a possession order. By removing the notice of termination for successive breaches, parties will be encouraged to seek a compliance order from VCAT before issuing a notice to vacate. In this way, the RTA can more strongly encourage resolution of conflicts in tenancy agreements, and help ensure eviction is only used as a last resort.

## Ensure people can keep suitable pets

People have deep and enduring bonds with their pets. For some people, pets may be their closest companions, or be considered 'part of the family'. Pets or companion animals may be essential for some people to maintain their health and wellbeing. People should not be prevented from keeping suitable pets in a rental property.

VCOSS opposes the introduction of an additional 'pet bond' (option 5.3A) It is unclear why cleaning or repairs resulting from the keeping of pets should be treated differently to other cleaning or repairs. VCOSS is not aware of any evidence of more frequent damage to properties costing more than existing bond amounts for people keeping pets than those who do not. The introduction of a 'pet bond' may introduce additional costs for people with pets, including for low-income or otherwise vulnerable households who rely on pets or companion animals to improve their health and wellbeing.

The most common issue reported to VCOSS is people with pets are routinely refused tenancy applications. VCOSS notes that none of the options proposed in the options paper are likely to reduce this practice.

The review could consider as additional options:

- preventing property owners and their agents from requiring people to disclose their ownership of pets in tenancy application forms
- including a clause in tenancy agreements that specifies people are entitled to keep suitable pets in their home, without requiring to seek permission of the owner to do so
- if an owner believes that a renter is keeping an unsuitable pet in their home, for instance, through a rental inspection, they may seek to enforce the terms of the rental agreement
- reinforcing the requirement allowing people to keep assistance dogs on rental premises without having to disclose or ask permission to do so



- expanding the scope of ‘assistance dog’, to any animal a person’s health practitioner agrees is required to assist with relieving a person’s medical condition, disability or impairment.

## Give people reasonable notice of entry

VCOSS generally supports options proposed that give greater notice to renters and clarify property owners’ rights of entry and the responsibilities accompanying them. VCOSS supports:

- property owners and their agents being required to give seven days’ notice for general inspections or valuation (option 5.5)
- property owners being liable for loss to renter caused during entry (option 5.6)
- 48 hours’ notice for entry to show to prospective renters, within 21 days of termination (option 5.8).

VCOSS does not support:

- property owners and agents being able to show a person’s home to potential purchasers with only 48 hours’ notice, twice a week, including for open houses (option 5.7)
- rights of entry to take photographs of the property, including renter’s possessions, with limited ability for them to object (option 5.9A)
- renter’s consent for photographing their possessions being able to be challenged at VCAT for being unreasonable (option 5.9B).

The proposed option for property owners and their agents to be able to show a person’s home to potential purchasers with only 48 hours’ notice, including for open houses, up to twice a week is a considerable burden on the people living there. This could lead to high levels of disruption and anxiety, including where large numbers of people could be entering people’s home, twice weekly, where they may not be able to be observed simultaneously.

The options paper proposes two options for reducing people’s rights to images of their own property (options 5.9A and 5.9B). VCOSS opposes both, believing people should be entitled to privacy regarding possessions stored in their own home, and be able to have full control over public images of them. Publicly displaying images of people’s possessions poses a security risk, including for people who have experienced family violence. People have highly personal and individual responses to their possessions, including people with mental health conditions and intellectual disabilities. People require the ability to make decisions about images of their property that are reasonable for their individual circumstances, and they should not be required to justify those decisions against the standard of an ‘average’ person.

## Ensure people may freely invite guests to their home

A rented property is a person’s home, and people should be able to freely share their home with guests, and provide shelter to friends, relatives and people in need. A person should not be

prevented from sharing their home with others, so long as they abide by the conditions of a tenancy agreement.

VCOSS observes that many of the issues raised in the discussion paper pertain to the use of commercial home-sharing services such as Airbnb. VCOSS does not take a position on the use of private rental housing for these purposes.

VCOSS notes there are some complexities for social housing, as the number of people residing in the home has implications for rent-setting, and publicly-subsidised housing should not be used for private gain.

Regardless of the issue of commercial home-sharing services, renters should have the ability to freely invite guests to share their home. This can include babysitters, who may be paid to temporarily have control of a home while caring for children, or house-sitters, who may be paid to ensure that a home is secure and pets are cared for when the people are temporarily elsewhere.

People may also offer a spare room to a friend or relative who may have nowhere else to live. This form of 'couch-surfing' is an important form of accommodation for people experiencing homelessness who might otherwise be forced to 'sleep rough'. In some cases, these guests may contribute to household costs during their stay. VCOSS would be deeply concerned if this form of accommodation for homeless people was curtailed, potentially worsening the number of people sleeping rough in Victoria.

VCOSS is concerned that a proposal ostensibly designed to prevent renters using commercial home-sharing services (option 5.10) may over-capture and include legitimate use of premises for guests, relatives and friends.

VCOSS opposes the introduction of fees for possession for consideration (option 5.11) or assignment (5.12A and 5.12B). The introduction of new, additional fees adds to people's housing costs, and will likely become standard practice for property owners and agents to charge fees for permission which currently may be granted without cost.

## **Protect renters from unreasonable costs if they must break a fixed-term lease**

The ability of people to move when necessary affects their ability to pursue employment opportunities. This has broader implications for Victoria's economy and unemployment levels, as lease-breaking costs can reduce labour mobility and prevent people from taking up employment opportunities in other locations, including people experiencing unemployment.

People may also need to relocate to care for loved ones, or pursue alternative accommodation options due to changes in their incomes, health, age, disability, or family composition. The costs of breaking a fixed term lease present a financial barrier to people's housing choices that can increase their financial costs at times of high personal and financial stress, and affect the health and wellbeing of both the person renting and their loved ones.

VCOSS observes that people's lives can be unpredictable, and life events can occur that may not be foreseeable. By reducing or eliminating the costs of breaking fixed term leases in these circumstances, people are more able to respond to them with less financial and emotional stress. VCOSS also observes that lease-break costs present a barrier to people agreeing to longer-term leases. By reducing these costs, people may be more amenable to negotiating longer leases.

VCOSS supports codifying common law principles for lease break fees (option 6.1). This helps standardise existing practice in determining the level of these fees. VCOSS does not support including an optional clause specifying lease break fees in a tenancy agreement (option 6.2), but notes having a limit on the size of lease break fees could be a useful addition to option 6.1.

VCOSS supports proposals to more clearly advise a person's hardship can be taken into account in determining compensation (option 6.3). We recognise in cases of hardship among renters, capping compensation to owners at two weeks' rent is a positive clarification (option 6.4), but question whether compensation should be awarded at all. Severe hardship generally refers to circumstances beyond a person's control that causes them difficulties. We understand from our members that VCAT rarely awards any compensation to owners in cases of severe hardship. This option can be improved by stating compensation cannot be awarded to owners in cases of hardship.

VCOSS supports the proposal to extend current protection for special circumstances to fixed-term leases without paying compensation or fees (option 6.5), but believes it can be extend to include a wider range of circumstances.

VCOSS notes the option proposes to extend special circumstances to where a property owner has refused to make modifications at the request of a person with disability. VCOSS observes that this provision interacts with other proposals about the right of renters to make modifications. In any case, the provision for special circumstances coverage should extend to refusal of permission to make any modifications necessary for renters' health and financial wellbeing, including modifications relating to disability, age, health conditions, safety (including child safety), security or energy efficiency improvements.

Lease-break fees can act as a barrier to employment, if a person is prevented by the costs of breaking a lease from accepting an offer of employment requiring relocation to reasonably undertake that role. Both the Victorian and Commonwealth governments have policies directed to maximising employment, minimising unemployment and enhancing labour mobility. VCOSS proposes that special circumstances extend to a person who accepts an offer of employment that cannot be reasonably undertaken while residing in their current rental home. VCOSS is especially concerned that this proposal extend to people experiencing unemployment, underemployment or who are attempting to re-enter the labour force, who may have limited financial capacity.

VCOSS notes these provisions are related to the proposal to allow renters a shorter notice period for a periodic lease where they have accepted an offer of public or community housing (option 11.38). VCOSS proposes the two provisions should mirror one another, having the same grounds in each case.

## **Offer reasonable protection for goods left behind**

VCOSS is aware that the issue of goods left behind can be a particular issue where people have had to leave their home quickly and been unable to organise removal of large or heavy items, or had limited access to the property (such as being served with a notice to leave). Tenancy laws should offer reasonable protection for people to reclaim their possessions. VCOSS notes that sometimes possessions can have emotional value even if they do not have monetary value. For instance, personal photographs, diaries, letters, children's toys or newspaper clippings may have little monetary value but deep personal value to an individual.

In general, VCOSS supports adoption of the NSW model (option 6.6A), with sensible modernisation of notification provisions (option 6.7).

# Protect people from unreasonable bonds, rent and fees

## Protect people against excessive, above-market rent increases

VCOSS rejects the analysis in the options paper that suggests preventing landlords from excessively increasing rent beyond market prices constitutes 'rent control'. 'Rent control' and 'rent stabilisation' are in fact policies whereby regulation prevents rents rising to market levels. Based on this incorrect analysis, the options paper has excluded any proposals to prevent excessive rent increases beyond market levels.

Currently, property owners can increase rents to above-market levels, by unilaterally increasing rents to whatever level they wish. The only current protection for people renting is their ability to contest a rent increase at VCAT. This places a heavy burden on sometimes vulnerable people to understand their rights and take action at VCAT, which can be a confusing and confronting experience, and potentially face a better resourced and more knowledgeable property owner in an adversarial setting. VCOSS members report that excessive rent increases may be improperly used against people to encourage them to vacate the premises. In these circumstances, inadequate protection against excessive rent increases threatens people's security of tenure.

VCOSS proposed that rent increases be limited to an appropriate annual amount, such as the CPI or a fixed percentage. Property owners may apply to an external arbiter, such as the CAV Director or VCAT, to increase rents beyond this level, with an onus to show that this was an appropriate market rent. People would retain the ability to oppose any rent increase or request a rent decrease if the resulting rent is above market prices.

VCOSS notes that social housing providers have different rent structures, based on a percentage of household income, providing discount to market rent, or other settings. The purpose of social housing is to provide affordable rental housing, and it uses a range of mechanisms to keep effective social housing rents at or below market prices. As such, it may not need to be subject to restraints on rent increases.

## Give people the right to elect to pay rent fortnightly

VCOSS observes that the discussion paper does not include options about allowing people to increase the frequency of rent payments to help manage their finances. In Australia, both employees and income support recipients most commonly receive their income fortnightly. Having to pay rent monthly can lead to cash flow problems, as household income and expenditure cycles do not match. These arrangements hinder property owners' ability to receive rent payments on



time. VCOSS notes that the current provisions of the RTA limit the amount of rent that can be required in advance to one month for tenancies rented at less than \$350 per week, meaning people have little ability to change their rent payment cycle to match their income.

VCOSS proposes that people always have the right to elect to pay their rent fortnightly, despite any contrary clause in a residential tenancy agreement.

## **Limit bond amounts and increase speed of bond repayments**

VCOSS members report that the amount and return of bonds can be a critical factor for low-income and vulnerable people being able to secure a rental home. High bond amounts or not being able to access existing bonds may compromise a person's ability to find a home.

VCOSS supports removing exemptions to bond limits, other than as ordered by VCAT (option 7.1C). Currently there are exemptions on bond limits for properties where the weekly rent is more than \$350, or the property is the owner's principal place of residence (for example, if the property owner is temporarily overseas during the period of a fixed-term lease).

VCOSS is unaware of any evidence that bond claims are disproportionately higher or more common for higher-value rental premises. Anecdotal evidence from our members suggest the reverse, that high-value, high-cost rental properties are less likely to have claims on the bond, and for lower amounts when they do.

VCAT also is similarly unaware of any evidence that bond claims are higher or more common for properties that are the owners' principal place of residence. This exemption is unclear in its application, is of unclear usage in practice, and creates an arbitrary difference in people's rights based on a property owner's characteristics.

VCOSS would add that the \$350 exemption also applies to the limitation on requiring no more than one months' rent in advance. VCOSS proposes this exemption be removed as well.

VCOSS supports speedier bond claims. We observe that the options paper puts forward a number of proposals to achieve this (options 7.2, 7.3A, 7.3B and 7.3C).

VCOSS believes an appropriate model would be:

- when all parties are in agreement about the release of all or part of a bond, the Residential Tenancies Bond Authority (RTBA) will release that amount to the renter immediately
- if a property owner does not lodge a claim on the bond with VCAT within 14 days of the conclusion of the tenancy, the renter may reclaim the bond at any time
- where a property owner lodges a claim for part of a bond with VCAT (or other body) within 14 days of the conclusion of the tenancy, the renter may claim any remaining amount 14 days after the conclusion of the tenancy
- when lodging a claim at VCAT, the property owner must attach copies of the final condition report, along with evidence of quotes, invoices or receipts relating to the claim, and provide

them to the renter. In order to apply, the property owner must demonstrate a reasonable attempt to resolve the dispute with the person renting.

- the RBTA must be notified of an application to VCAT, and only hold that part of a bond that is claimed
- after a decision has been made, the bond would be immediately released to the appropriate parties.

## **Limit rent increases to once each year**

VCOSS supports limiting rent increase to a maximum of once per year (option 7.4). We understand that this is often standard practice in the real estate industry, and a legislated requirement in some other states and territories. It helps protect people against constant and repeated rent increases, which may seek to push rents above market prices. An annual figure can be more easily compared to other indicators to determine whether a rent increase may be excessive.

## **Retain protection from excessive rent increases in fixed term leases**

VCOSS supports the disclosure of rent settings in fixed term leases (option 7.5). This limits rent increases to a method or increases disclosed in a fixed-term lease. However, VCOSS adds that this provision should not stop a person's from contesting excessive rent increases. While recent experience has seen large increases in market rent levels, people should not be locked paying above market rents. Even where specified in a fixed term lease, people should retain the ability to seek a reduction in line with market rents.

## **Provide fee-free method of paying rent and accept Centrepay**

VCOSS supports ensuring people can pay rent using a fee-free, convenient method (option 7.6) and requiring property owners and agents to accept Centrepay payments without charge if a person chooses to use this option (option 7.7).

## **Outlaw rental bidding**

VCOSS supports a prohibition on requesting or accepting rental bids higher than the advertised price (option 7.8B). Notably, the prohibition on accepting rental bids higher than the advertised price is essential to ensure proper transparency and fair operation of the rental housing market. VCOSS members report that rental bidding is often informal, and may be used by more advantaged people to try to secure a rental property above another person with fewer resources. People on lower incomes who can afford to pay the advertised rent should not be disadvantaged in this way.

# Enable people to live in healthy, safe, secure and efficient homes

## Allow people to check housing conditions

VCOSS supports expanded circumstances in which a condition report is required (option 8.1), but would prefer a requirement for the property owner to complete the report and provide it to the prospective renter at the time the tenancy agreement is presented for signing, along with an opportunity to inspect the home. Aligning these two processes (completing the condition report and making the tenancy agreement) better empowers renters to disagree with the report, if necessary. As the options paper notes, people may not understand they can disagree with the condition report once they have moved in, or not feel empowered to disagree.<sup>6</sup>

Providing the condition report earlier would also allow people to determine if the home is suitable to live in, and not enter the agreement if necessary.

VCOSS also supports:

- new timeframes for people to complete and return the condition report (option 8.2) – at the start of the tenancy, this would be no later than five business days after moving in
- the condition report being evidence of repair needs (option 8.3), though not a requisite form of evidence
- renters being able to complete a condition report where they were not provided with one, either at all or within the RTA's timeframe (option 8.4), though the time for completion and return should be extended to 10 business days after moving in, because of property owner non-compliance with the RTA
- a condition report checklist/prescribed information for the condition report (option 8.5), though it would be preferable to have a prescribed form of condition report in the RTA regulations, designed to be accessible to people with low literacy levels and other vulnerable groups
- a specific prohibition on making false, misleading or deceptive statements in a condition report (option 8.6).

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<sup>6</sup> Consumer Affairs Victoria, *Heading for Home – Residential Tenancies Act Review: Options Discussion Paper*, 2017, p.85.

## Clarify cleanliness and good repair requirements

While VCOSS supports clarifying the requirement to keep a home 'reasonably clean' (such as through guidelines, option 8.8), these guidelines should not impose additional costs on people renting, such as carpet steam-cleaning costs.

VCOSS supports a prescribed cleanliness and good repair checklist for property owners, incorporated within the condition report (option 8.9), and an opportunity for people moving out to return to the property within five business days of vacating in order to clean or repair it (option 8.10).

## Improve people's safety and security

VCOSS supports a requirement for single-action deadlocks on all external doors and a mechanism for securing external windows (option 8.11). This is particularly important for family violence survivors, older people, and people living in multi-unit dwellings who have unique security needs due to occupant turnover in neighbouring dwellings and the proximity of those dwellings. Deadlocked external doors would also reduce renters' contents insurance costs, which helps to improve the net affordability of the home.

VCOSS also supports a property owner's duty to provide reasonable security measures, and a requirement that property owners not unreasonably refuse requests for further security devices (option 8.12). 'Reasonable security measures' could include:

- gate locks
- bolts for external doors that are not otherwise secure (e.g. sliding doors)
- latches for external doors
- lockable screen doors, where these are necessary for adequate ventilation and/or cooling
- maintenance of an existing alarm system (which should be covered by the duty to maintain the property in good repair, but could be specified in the guidelines for clarity)
- window bolts (non-lockable)
- garden maintenance to ensure the front door is unobscured
- visible house/unit number for emergency services identification.

## Introduce health, safety, amenity and efficiency standards

VCOSS strongly supports minimum health, safety, amenity and efficiency standards for rental housing (option 8.13D). We do not support other options that offer less stringent protections. VCOSS does not support a requirement that properties are 'fit for habitation' (option 8.13A), which is too vague for both property owners and people renting and therefore difficult to comply with and enforce. We also do not support the alternative options of adapting rooming house minimum standards for general tenancies (option 8.13B), or the adaptation of social housing re-letting standards for general tenancies (option 8.13C).

VCOSS agrees with the principles informing minimum standards:

- focus on the most critical issues affecting relatively low-cost homes, and particularly those that impact fitness for habitation
- focus on ‘value for money’ improvements, particularly in the case of energy efficiency measures
- set clear and achievable requirements
- allow generous lead-in times.<sup>7</sup>

### Elements of minimum standards

VCOSS agrees with the proposed elements of minimum standards,<sup>8</sup> which are basic requirements for a healthy, safe, secure, and energy efficient home. These standards target the very worst performing rental properties.

We note energy efficiency standards are central to a minimum standards regime, given the importance of energy efficiency to health and the net affordability of the home. For example, efficient, affordable heating and adequate insulation create a warm home that is less susceptible to mould and damp, lessening the risk of health problems like respiratory conditions and depression.<sup>9</sup> We therefore agree with the express inclusion of prescribed energy efficiency measures in the list of proposed standards, and emphasise that energy efficiency should be expressly included in the power to make standards by regulation.

We add that the standard relating to mould should also apply to bedrooms, not just living areas, given the risks to respiratory health from sleeping in a mouldy bedroom.

### Application of minimum standards

All Victorian rental housing should have to eventually be compliant with minimum standards. These standards create a public good by promoting community health, protecting children’s wellbeing and development, reducing basic costs of living, and reducing state government expenditure on health and concessions.<sup>10</sup> VCOSS therefore considers property owners should not be able to lease a property unless it complies with minimum standards, *whether under an existing tenancy or a new tenancy*, subject to conditional letting being available for existing tenancies.

Minimum standards should be the touchstone for property conditions under the RTA. If minimum standards are introduced, the RTA does not need to make a distinction between minimum standards and properties unfit for habitation (for example, sections 80 and 238), which creates unnecessary confusion. However, renters should continue to have termination rights where the property has been destroyed totally or to such an extent as to be rendered unsafe.

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<sup>7</sup> Consumer Affairs Victoria, *Heading for Home – Residential Tenancies Act Review: Options Discussion Paper*, 2017, p.100.

<sup>8</sup> Consumer Affairs Victoria, *Heading for Home – Residential Tenancies Act Review: Options Discussion Paper*, 2017, pp.103-104.

<sup>9</sup> Philippa Howden-Chapman et al, ‘Effect of insulating existing houses on health inequality: Cluster randomised study in the community’ (2007) 334 *British Medical Journal* (available online at <http://www.bmj.com/content/334/7591/460>).

<sup>10</sup> Victorian Council of Social Service, Regulation of property conditions in the rental market: submission to the issues paper for the *Residential Tenancies Act 1997 Review*, pp.8-14.



## Implementation of minimum standards

In principle, VCOSS proposes a staged transition to minimum standards, with different compliance dates for new and existing tenancies. A staged approach:

- lessens disruption to renters where more substantial work is required on homes in very poor condition—we note property owners may issue a notice to vacate if they intend to repair or renovate the property immediately after termination and the work cannot be properly carried out unless the person vacates<sup>11</sup>
- allows property owners to spread costs over a longer period, making compliance more feasible and minimises any pass-through costs to renters.
- allows property owners additional time to meet minimum standards under existing leases, encouraging retention of existing renters, thereby reinforcing their security of tenure

A full list of standards and a proposed schedule for implementation needs to be specified in the RTA regulations. VCOSS would be concerned at any process that ‘staggered’ determining minimum standards, meaning that the content of final minimum standards would be delayed for a decision at some future time. However, we believe there should further consultation on the detail of the standards, as the options paper does not provide this. This will help inform a discussion about an optimal compliance schedule.

## Conditional letting for existing renters

Existing renters need special protections during the transition to minimum standards compliance. Government needs to avoid a situation where existing renters are rendered homeless or otherwise disadvantaged (for example, forced to move to less affordable housing) because their tenancy agreement is invalid for non-compliance with minimum standards. Willfully non-compliant property owners could exploit this situation to end tenancies against a renter’s wishes.

VCOSS therefore recommends conditional letting for *existing tenancies only*, provided the home is otherwise clean, in good repair, secure and safe for habitation. This should also apply to the *renewal of existing tenancies*, to promote security of tenure.

Existing renters with non-compliant homes should still have rights to:

- seek compliance with minimum standards
- seek remedies for non-compliance or breach of repairs duty, including:
  - rent increase freezes
  - a rental reduction where there is reduced amenity
  - compensation if the person has to move because of non-compliance (for example, due to health problems caused by the property)
- terminate the agreement without penalty (such as lease-break fees).

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<sup>11</sup> Residential Tenancies Act 1997 (Vic) s 255.

These rights and remedies would create an incentive for property owners to comply with minimum standards.

A strong detection and enforcement regime is vital for effective minimum standards. VCOSS supports the creation of an alternative dispute resolution body—preferably in the form of an ombudsman—that can investigate systemic issues with minimum standards non-compliance and initiate enforcement action against recalcitrant property owners. A housing ombudsman could operate along similar lines to the Fair Work Ombudsman, which has the capacity to both resolve individual disputes and investigate systemic issues.

### **Clarify maintenance responsibilities**

VCOSS supports clarifying maintenance responsibilities through guidelines (option 8.17), rather than a schedule to the tenancy agreement (option 8.16). These guidelines should not impose additional costs on people renting.

VCOSS also supports property owners and people renting complying with specific safety-related maintenance requirements (option 8.18). It is important for public safety that people have to report faulty gas or electrical installations/fittings and faulty smoke alarms.

### **Enable people to make reasonable home modifications**

For the reasons outlined in our previous submission,<sup>12</sup> VCOSS supports people being able to make non-structural home modifications without the owner's consent (option 8.20B). Such modifications support ageing in place, improve accessibility for people with disability, improve safety and security for family violence survivors and people with children, and allow people living on low-incomes to make their homes more energy efficient. VCOSS prefers option 8.20B to option 8.20A, which would require owner's consent to all modifications, no matter how minor, provided that consent could not be unreasonably refused. That option would result in less secure tenancies, particularly as the growing population of long-term renters will require minor modifications to cope with unavoidable circumstances in their lives, such as ageing, health conditions and disability.

VCOSS does not consider there are advantages in requiring property owner's consent to all modifications. Guidelines specifying structural and non-structural modifications (as envisaged under option 8.20B) will give people confidence about the types of modifications that can be lawfully made without owners' consent, and reduce the likelihood of disputes. Option 8.20B should in fact promote better relations between the parties, by allowing people to create a home that suits their needs and commit to a tenancy. Minor, non-structural modifications can also enable more reliable rent payments where they improve the net affordability of the home (e.g. energy efficiency modifications that reduce energy bills).

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<sup>12</sup> Victorian Council of Social Service, Regulation of property conditions in the rental market: submission to the issues paper for the *Residential Tenancies Act 1997* Review, pp.20-26.

In any case, VCOSS considers that any risk to the parties' relationship is outweighed by the health, safety and security benefits of more flexible non-structural modification rights.

While VCOSS would prefer no requirement to remove modifications at the end of a tenancy (consistent with the *Residential Tenancies Act 2010* (NSW) s 67), if such a requirement is proposed, we support an exception for health, disability, ageing, safety or security related modifications, requiring property owners to demonstrate that retaining the modification would cause them hardship before requesting removal of the modification (option 8.21).

## **Ensure people can access essential services**

VCOSS supports updating property owners' liability for essential services access charges (option 8.22).

We recommend an express requirement for property owners to cover the cost of installing a fixed telephone line (landline) connection, where necessary. Landlines are important for people living in rural and regional Victoria with unreliable wireless technology and inadequate mobile services, providing access to health and other essential services.

## **Protect renters against unreasonable damage claims**

VCOSS opposes the proposed amendment to a renter's duty to take care to avoid damaging the property (section 61 of the RTA). Changing this to a duty to notify the property owner or agent of damage, and compensate them for damage (option 8.24), fundamentally alters the nature of the duty by making people renting liable for all acts of damage, even unintentional, remote or unforeseeable acts. This approach would create a substantially different duty, contrary to what the options paper claims.<sup>13</sup>

The current lack of clarity should be resolved by amending section 61 of the RTA so that the people only has to compensate the property owner where they intentionally or negligently damage the property.

VCOSS supports an express distinction between damage and fair wear and tear throughout the RTA, and clarifying the definitions of 'fair wear and tear' and 'damage' through guidelines (option 8.25).

In reimbursing property owners for any repairs, many low income and vulnerable people will not be able to pay within 14 days of the owner issuing a repair notice, as proposed under option 8.26. Income support recipients often struggle to cover rental costs, let alone repair amounts. We therefore support the option for a people to pay repair costs under a longer-term payment plan, but recommend the people be able to do this as of right, rather than only with the owner's agreement.

VCOSS supports an express requirement for VCAT to take depreciation into account when determining compensation claims against renters (option 8.27). We also recommend an express

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<sup>13</sup> Consumer Affairs Victoria, *Heading for Home – Residential Tenancies Act Review: Options Discussion Paper*, 2017, p.123.

requirement for VCAT to consider whether a property owner has made an insurance policy claim. This will stop 'double-dipping' by property owners, which particularly harms low income and vulnerable renters.<sup>14</sup> It should be made clear to property owners that VCAT will consider this factor, helping to avoid waste of VCAT resources where the application is dismissed because of a successful insurance claim.

VCOSS opposes a requirement for renters to provide their email address or another mode of communication that does not include their current residential address (option 8.28). This is inappropriate due to the inherent power imbalance between property owners and renters, and the resulting risk of harassment and intimidation via a quick and easy communication tool such as email. Some people's safety will already be compromised (for example, family violence survivors), and providing email addresses or other personal information may worsen this situation. For similar reasons, VCOSS opposes a requirement for renters to provide a forwarding address or email address at the time they give notice of intention to vacate. These personal details should only be provided with a person's consent.

## Resolving disputes about repairs

VCOSS supports the following options:

- an expanded list of urgent repairs, including any minimum standards (option 8.29). We recommend that the list also include a failure or breakdown of any essential service or appliance provided for cooling (at present, only heating is covered), given the health risks associated with extreme heat<sup>15</sup>
- guidelines on reasonable timeframes for responding to repair requests (option 8.31)
- reduced time for property owners to dispute repair requests, being seven days to dispute urgent repair requests, down from 14 days (option 8.32)
- direct applications to VCAT (or any alternative dispute resolution service) where the property owner has not carried out non-urgent repairs within 14 days of being notified by the renter that repair is required, with applications to be heard within 7 days (option 8.32) – this allows much faster repair dispute resolution, by removing the requirement for a CAV investigation before applying to VCAT
- an increased authorised repair amount, from the current limit of \$1800 (option 8.34), though we note that many low income and vulnerable renters are not able to fund repairs upfront and seek reimbursement
- a property owner's repairs and maintenance bond (option 8.35) – while VCOSS would prefer a claim to be able to be made on the bond through the RTBA where the owner does not carry out repairs within the statutory period, we support the introduction of the bond in

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<sup>14</sup> See WEstjustice, *The impact of landlord insurance policies on tenants: landlord insurance practice interim report*, October 2015, pp.12-14.

<sup>15</sup> Department of Health, *The health impacts of the January 2014 heatwave in Victoria*, 2014.

the terms proposed (a person renting could apply to VCAT for payment out of bond where property owners breach an order to carry out repairs)

- improved access to the Rent Special Account (RSA) (option 8.36), allowing people to apply for rent to be paid into the RSA when requested repairs are not carried out
- an increased range of remedies for breach of repairs duty, including orders that freeze rental increases, prohibit market rents where the home has diminished amenity, and prohibit re-letting properties that do not comply with minimum standards (option 8.37). VCOSS also supports a protection against eviction where the people exercise repair rights
- property owner liability for excessive usage charges caused by hidden faults (option 8.38).

VCOSS opposes a requirement for people renting to report defects, and a failure to report being considered by VCAT in claims for breach of repairs duty, a damages claim for reduced amenity, or a retaliatory eviction notice (option 8.30). This will disadvantage people who feel unable to report defects (including people facing hostile property owners, and people who struggled to secure a home in the first place), and may compromise their security of tenure.

# Create more accessible dispute resolution services

## Enhance CAV's information and advice services

VCOSS supports enhancing CAV's information and advice services, through provision of additional digital and online services (Option 10.1). While low-income and vulnerable households have relatively low digital inclusion rates,<sup>16</sup> enhancing these services will assist people benefiting from community-scale internet access, social housing internet projects, and other affordable digital services. Strong online and digital services are also important for community and consumer advocates.

## Recognise renters' unique needs in dispute resolution

VCOSS does not support extending CAV's Frontline Resolution and conciliation services to property owners, property managers, and rooming house and park operators (option 10.2). These renter-only services provide some counterbalance to disproportionate VCAT use by property owners, and a more approachable and affordable avenue for people renting to resolve disputes.

We recommend, however, that an alternative dispute resolution service ultimately provide conciliation services, as well as make binding orders. If this service is independent of government (like the Victorian Energy and Water Ombudsman, for example), it will be more accessible to vulnerable renters who may otherwise fear approaching a government dispute resolution service.

## Introduce a housing ombudsman

VCOSS supports establishing a specialist dispute resolution service that makes binding orders (option 10.3). This would help to overcome fundamental problems with a tribunal model, including its formality, necessarily legalistic processes, and relatively intimidating environment.

We agree there are insufficient options for renters to resolve disputes rapidly, which are informal, non-adversarial, and allow binding orders to be made. A new service is particularly necessary because the majority of renter disputes relate to property repairs and maintenance,<sup>17</sup> requiring rapid resolution for health, safety and amenity reasons. Regardless of any improvements made to VCAT processes, a tribunal represents 'overkill' for many disputes (e.g. a property owner's refusal

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<sup>16</sup> J Thomas, J Barraket, S Ewing, T MacDonald, M Mundell and J Tucker, *Measuring Australia's digital divide: The Australian digital inclusion index 2016*, Swinburne University of Technology, 2016.

<sup>17</sup> Consumer Affairs Victoria, *Heading for Home – Residential Tenancies Act Review: Options Discussion Paper*, 2017, p.158.



to repair a toilet). An informal, accessible service would also promote earlier intervention, and help to avoid VCAT escalation and delays that compromise people's wellbeing.

While VCOSS supports an alternative dispute resolution service, we continue to recommend an ombudsman model. We disagree an ombudsman would not typically be considered a suitable model for handling disputes between private individuals in the residential tenancies sector, as stated in the options paper.<sup>18</sup> While the United Kingdom Housing Ombudsman only handles complaints against social and institutional landlords (not private landlords), there are Australian ombudsmen models that would work well in the private rental sector. For example, the Fair Work Ombudsman handles disputes between private individuals (employees and employers), while commission-type bodies such as the Australian Human Rights Commission and the Victorian Equal Opportunity and Human Rights Commission resolve discrimination complaints between private individuals.

Unlike an administrative dispute resolution service, an ombudsman could investigate and identify systemic issues in private rental housing and feed these insights into education programs and resources, advice to government, and improved dispute resolution services. It could also initiate its own inquiries and investigations, as the Fair Work Ombudsman does. These features are essential for a sector that has such a profound impact on people's health, wellbeing, community participation, education and employment.

## **Improve the quality and consistency of VCAT decision-making**

VCOSS supports the introduction of a VCAT re-hearing process for residential tenancies cases (option 10.4A), consistent with most other Australian jurisdictions. VCOSS members report variability and unpredictability in VCAT decision-making about residential tenancies. A rehearing process would help to achieve greater consistency in VCAT decision-making, by providing a feasible avenue for appeals on matters of fact or law. At present there is little actual oversight of VCAT decision-making, due to the cost and complexity of Supreme Court appeal processes. A VCAT rehearing process would be more affordable, less intimidating and less procedurally complex than Supreme Court appeals.

We agree with the proposed appeals process features at page 166 of the options paper, but recommend consideration of a requirement to seek leave to appeal. It is not clear from the options paper whether this is envisaged. A requirement to seek leave would help to avoid unnecessary delays and costs caused by spurious appeals.

As an alternative to VCAT rehearings, VCOSS does not support peer-to-peer review of non-judicial members' decision-making in residential tenancies matters (option 10.4B). This process would lack transparency and offend the principle of open justice. It provides no opportunity for the parties to

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<sup>18</sup> Consumer Affairs Victoria, *Heading for Home – Residential Tenancies Act Review: Options Discussion Paper*, 2017, p.163.

ventilate their grievances about the first instance decision, nor raise new evidence that has come to light following that decision (where a discretion to consider new evidence exists).

Peer review is unlikely to achieve greater consistency in VCAT decision-making. It is through reference to *published appeal decisions* that parties bring rigor and consistency to first instance decision-making. An appeals process also allows senior decision-makers to provide clarification and guidance about common errors in an open and transparent manner.

## Strengthen enforcement measures

VCOSS supports expanded civil remedies under the RTA, allowing CAV (or a housing ombudsman) to seek civil penalties for specified breaches (Option 10.5). We recommend minimum standards non-compliance be one of those breaches.

We also recommend maximum civil penalties be set as a proportion of annual rental income profits, annual capital gains or another measure, rather than only set as a maximum sum. This should better deter property owner non-compliance by directly targeting the benefits derived from rental housing. For example, this approach is followed under the *Competition and Consumer Act 2010* (Commonwealth) in relation to restrictive trade practices. The maximum penalties for corporations are the greater of \$10 million, three times the value of benefits obtained, or 10% of annual turnover in the preceding 12 months.<sup>19</sup> A similar approach should be followed under the RTA given property owners operate rental housing as business-like, profit-maximising ventures. It would be very feasible for decision-makers to ascertain annual rental income profits, capital gains or other benefits, and impose a penalty representing a proportion of those gains.

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<sup>19</sup> *Competition and Consumer Act 2010* (Cth) s 76.

# Promote secure tenancies

VCOSS believes that evicting people from their homes should be a last resort. The way leases are ended should reflect this principle, and protect people from being evicted where a less drastic solution is possible. The threat of eviction is the greatest barrier to security of tenure, and presents a significant hurdle to people asserting their tenancy rights.

VCOSS is deeply concerned that current legislation, and some proposals in the options paper, can encourage property owners to view eviction as a 'quick and easy' option to deal with problems or conflict that could be managed in more effective ways.

For instance, some proposals appear to capture problems that can already be addressed through the breach of duty and compliance order process. This pathway of resolving problems provides a mechanism by which people are notified of problems and given the ability to rectify them. In many cases, the options paper has not made clear why this process is insufficient to deal with problems, and a faster or expanded pathway to eviction is proposed.

## Introduce a reasonableness test

VCOSS supports the introduction of a reasonableness test (option 11.2), requiring VCAT to consider the reasonableness and proportionality of the termination, and having the capacity to consider people's hardship in making decisions.

VCOSS believes, however, any such provision must not be curtailed by other specific clauses that require VCAT to make orders in certain circumstances. In both the current legislation, and in some proposals in the options paper, VCAT's ability to consider reasonableness and proportionality would be constrained by other clauses. These constraints should be removed, and it should be clear that the reasonableness and proportionality of eviction can always be taken into account by VCAT when making a possession order.

## Managing challenging behaviours

VCOSS observes that vulnerable people who may have mental health conditions, intellectual disabilities or health problems relating to drug and alcohol dependence may from time-to-time exhibit challenging behaviours. VCOSS is concerned that tenancy law recognises that people may exhibit behaviours over which they have limited or no control, and should not be punished for them.

VCOSS notes that many proposals in the options paper may capture actions or behavior relating to a mental health or other health condition, or a disability, including very strong provisions that may lead to rapid eviction or homelessness for people experiencing these conditions. The financial and

emotional impact of eviction and homelessness can be highly detrimental to people experiencing these conditions, likely exacerbating them and causing additional disadvantage. Even if people can find alternative accommodation, eviction may simply relocate a problem to another place.

VCOSS is concerned that there are appropriate protections for vulnerable people, including people with mental and other health conditions and intellectual disabilities in the application of the RTA. This includes ensuring that provisions do not inadvertently capture these people in the way they are drafted. For example, VCOSS opposes using very broad language to describe behaviours, such as behavior that 'causes a person to be alarmed or distressed' (p.196).

VCOSS also notes that many options presented in the chapter on terminations and security of tenure overlap with existing provisions where problems can be resolved through the breach of duty and compliance order process. VCOSS is concerned that the legislation is drafted to ensure that property owners and their agents use this pathway for resolving problems where appropriate, and are not encouraged to use eviction as a 'short-cut' to solving problems able to be resolved by other means.

VCOSS is concerned that the RTA contains sufficient protections to ensure that eviction is genuinely a last resort, especially for people with mental health conditions and intellectual disabilities.

## Managing rental arrears

Many people on low incomes struggle to afford basic necessities, including paying for their housing. VCOSS strongly believes people living on low incomes should be able to receive some reasonable flexibility and accommodation in paying rent given their circumstances. Overly strict conditions on paying rent can inadvertently lead to eviction and homelessness for people who are otherwise able to pay with reasonable flexibility.

As such, VCOSS strongly opposes creating a new ground of eviction for repeated late payment of rent (option 11.17). Rental arrears are more appropriately managed by allowing some leeway for late payment of rent, and allowing people in rental arrears to make payment plans for managing arrears caused by temporary cash flow problems or fluctuating incomes.

As proposed, this new option would allow VCAT to issue a termination and possession order in circumstances where someone had made a late rent payment by a few days on a few occasions, potentially with substantial time between them. It bypasses the current notice to vacate process. Even more worryingly, it can occur even when the rent is fully up to date and no longer in arrears. The proposal is very broadly conceived and potentially captures a very large number of tenancies. It represents a substantial threat to people's security of tenure, and likely will increase anxiety and distress for people who, potentially through no fault of their own, do not have enough money to pay their rent on time.

VCOSS supports the proposal that repayment of arrears invalidates a termination process (option 11.16). While its benefit is limited to people who can fully pay all rental arrears, it is a useful

additional protection against eviction. VCOSS is supportive of the idea of people being entitled to a repayment plan for rental arrears (contained in option 11.15), but is concerned at the idea that VCAT's discretion to extend a repayment plan would be limited to a single occasion. VCAT should not be arbitrarily limited in this manner, and be able to make decisions based on an individual's financial circumstances.

VCOSS is generally supportive of aligning provisions for rental payments in rooming houses to those of general tenancies (option 11.18), contingent upon ensuring that disadvantageous provisions such as a new grounds for eviction for late payment of rent were not implemented.

### **Place a time limit on compliance orders**

VCOSS supports placing a time limit on compliance orders (option 11.19). People should be able to know the period for which they are required to comply. It allows VCAT to stipulate an appropriate period of compliance, without people being exposed to eviction indefinitely for what may be a minor deviation from an order.

### **Do not disproportionately penalise people for parting with possession without consent**

VCOSS opposes creating a new ground of eviction for parting with possession without consent (option 11.23). This appears to be an extraordinarily heavy handed response to this problem. As previously discussed on the issue of subletting and assignment, this proposal may potentially over-capture ordinary use of a property for friends, relatives and guests. While the options paper discusses the possibility of extensive damage by guests, malicious damage by a visitor is already a ground for eviction under the RTA. In other circumstances, where there is no damage and the person is paying rent owed, eviction is not an appropriate response. The review could consider less drastic options for responding to issues of parting with possession without consent.

### **Remove the notice to vacate for no reason, including at the end of a fixed term agreement**

VCOSS strongly supports removing the existing provision allowing property owners to issue a notice to vacate for no reason (option 11.27D), including at the end of a fixed term tenancy (option 11.25A). The notice to vacate at the end of a fixed tenancy (for no reason other than the fixed term is expiring) is effectively a "no reason" notice to vacate.

Allowing property owners to evict people for "no reason" gives them an extraordinary amount of discretion to evict someone. This ability is one of the most significant infringements on people's security of tenure. Due to this clause, people are perpetually 120 days from a potential eviction during a periodic lease.

There is always a reason why a property owner has decided to evict someone. The ability to evict for "no reason" can mask the real reason an eviction is pursued, which could include for discriminatory reasons, or a retaliatory eviction against people who request repairs or otherwise

assert their rights. As no reason is required, renters have little capacity to contest the decision, or show the eviction is unreasonable.

VCOSS notes the other options for reform of this requirement are generally much weaker and likely to offer minimal additional protection (options 11.25B, 11.27A, 11.27B, 11.27C), or even reduce renters' security of tenure (option 11.26) by extending the flexibility granted to property owners to evict.

## **Sale should not be grounds for eviction**

VCOSS proposes that sale of a property be removed as a grounds for eviction. The options paper has not included this option. VCOSS members report instances where someone has been evicted for the purposes of sale of the premises, only for a new owner to subsequently re-let the premises. If a new owner wishes to occupy the premises, there is already grounds for eviction under section 258 of the current RTA. The options paper does not discuss the reasons it believes a sale of a property between successive landlords should remain a trigger for an eviction.

## **Renters should not be affected by repossession proceedings**

VCOSS supports strengthening people's security of tenure in circumstances where their property owner has a property repossessed by a mortgagee. All rights and responsibilities should transfer to the mortgagee upon repossession, and mortgagees should not have additional rights to terminate tenancies on the basis of repossession.

VCOSS observes that the options paper does not provide this option in its entirety. We are supportive of proposals that partially achieve this aim, particularly requiring a mortgagee in possession to honour agreements when consent was granted to lease the property (option 11.35). We particularly note this option suggests this includes consent given implicitly. This should be clarified to include a presumption that providing finance for an investment property includes consent for the property to be rented.

## **Reduce the notice to vacate period for renters**

VCOSS proposes that people renting can end a periodic lease with 14 days' notice, in line with other jurisdictions. People may need to move homes for many reasons, including financial, employment or education reasons, changed relationship status, a pregnancy or additional child, or the need to care for a relative. People are unlikely to give notice until they have secured another home, and may already have paid for a bond and begun paying rent on their new home at the time they give notice. A reduced notice period reduces the likelihood someone is unnecessarily forced to pay rent on two homes at once, putting them at increased risk of financial hardship. VCOSS notes the options paper has not included this option.

VCOSS supports the ability of a renter to give notice of intention to vacate during a fixed term tenancy in certain circumstances (option 11.37). This should be extended to be available in response to any notice to vacate given by the property owner. Receiving a notice to vacate can



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places a great deal of anxiety and immediate financial pressure on someone. When this is a property owner's decision, people should be able to vacate the property early, with minimal notice requirements, regardless of whether it is a fixed term or periodic lease. In issuing a notice to vacate, property owners should also advise people renting of their ability to vacate the property earlier when entitled to.

VCOSS is supportive of reduced notice periods when offered public or community housing (option 11.38). People offered these homes are already likely to be living on low incomes and experiencing disadvantage. Reduced notice periods reduces their liability for paying unnecessary rents, and further entrenching their financial position. VCOSS notes this proposal aligns with proposals for special circumstances in determining costs for breaking fixed leases (option 6.5). The special circumstances criteria for breaking a fixed-term lease without penalty should be replicated for shorter notice periods during periodic leases, at a minimum.

## Protect family violence survivors

As VCAT is the jurisdiction most likely to deal with matters arising under the RTA, VCOSS notes that VCAT members are likely to have a range of skills, ability and knowledge of family violence. We support the proposition in the Royal Commission into Family Violence *Report and Recommendations* that VCAT members should be provided with family violence training and education, to assist with their decision making on these matters (page 124).

Some of the proposals below are technical and detailed. VCOSS notes that when a tenancy commences, people are provided with a document detailing rights and responsibilities. VCOSS suggests that people renting should also be provided with information about their rights and responsibilities should the tenancy be impacted by family violence. This would include the types of evidence that can be used in application under an amended section 233A and the specific requirements of terminating a tenancy in cases of family violence. Family violence survivors should be able to easily access information about how to end or continue their tenancy safely.

All Victorians have a role in preventing family violence and protecting people who have experienced family violence. Property owners and real estate agents should not be exempt from these responsibilities on the basis of their business operations. Our responses to the issues raised in Chapter 12 of the Options Discussion Paper are based on the principles of affording the widest possible protections to people who have experienced family violence.

### Improve access to family violence protections

The scope of current section 233A is too narrow and VCOSS supports changes to this section that would further enhance and promote the safety of family violence survivors. We are of the view that VCAT members should be able to consider a broad range of evidence in determining an application under 233A, and other family violence related provisions, further detailed below.

As in the South Australian model (detailed in option 12.1B), this might include a statutory declaration from a professional working with the applicant, but should also extend to the types of evidence in the Queensland model (detailed in option 12.1C). If a list of types of evidence is included in the legislation, this should be an indicative list, rather than exhaustive. This evidence could be appropriately used in any of the situations detailed below.

VCOSS also supports the proposed approach that allows a parent or a guardian to make application under these provisions on behalf of a child who is a family violence survivor (option 12.3). The safety and wellbeing of any child survivors should be the paramount consideration in both the construction of these amendments and the decision making of VCAT members. VCOSS

agrees that modifications that protect child survivors should be allowed, even though the child is not a party to the tenancy agreement.

VCOSS also supports an approach that would ensure these hearings come on at VCAT with minimal delay (option 12.2).

## **Allow people to safely end tenancies in the case of family violence**

VCOSS supports option 12.4B, based on the NSW reforms, which helps a survivor safely end their tenancy, without needing to go to VCAT. In VCOSS' view, processes designed to protect family violence survivors and enhance and promote their safety in future, including leaving the perpetrator, should be as straightforward as possible. We note the point that enables the property owner or co-tenant to challenge the notice on procedural grounds, and support clear and concise provision of information about the process, to help survivors avoid procedural errors in their notice to terminate.

## **Allow family violence survivors to create safer homes**

VCOSS supports the proposition that non-structural modifications should be able to be made to a property without the property owner's consent, to enhance and promote the safety of a family violence survivor.

Non-structural modifications may allow a family violence survivor to stay safely in their home, which is a key intention of family violence reform.

VCOSS suggests that a simple list of what can and can't be done without consent, and what reasonable modifications require consent, should be provided at the commencement of a tenancy. In relation to reasonable modifications, we also support the proposition in option 12.5A, that the property owner should not be able to unreasonably withhold consent from a person who is a family violence survivor. We also support time limits on providing consent for modifications to enhance safety. As noted above, we are of the view that all Victorians have a responsibility to respond appropriately to family violence survivors.

Survivors of family violence should be entitled to appeal property owner refusal for modifications to VCAT, noting the comment above that VCAT members will require support and training to understand the nature and impact of family violence. To assist their decision making in relation to this, reasonable modifications could be defined in the legislation with an indicative, not exhaustive, list.

## Protect survivors of family violence in tenancy databases

VCOSS supports the additions to the RTA to enable:

- a family violence survivor to object to a proposed listing on the grounds that they were a family violence survivor and the breach resulted from the actions of another person, and include supporting evidence as referred to in 12.1C (option 12.6)
- VCAT to order the removal of a listing on a database in relation to a family violence survivor (option 12.7)
- VCAT to order removal or editing of an existing listing if the listing contains information that poses a safety risk to a family violence survivor.

## Allow challenges to notices to vacate in instances of family violence

VCOSS supports mechanisms that allow a survivors of family violence, to remain in their home where conduct by a perpetrator of family violence caused a property owner to give a notice to vacate. Supporting a family violence survivor to remain safely in their own home is an important underpinning of family violence reform.

VCAT should be empowered to hear a challenge to a notice to vacate on the basis that the conduct giving rise to the eviction was caused by a perpetrator of family violence.

## Protect family violence survivors from unfair compensation orders and claims against bond

VCOSS supports the introduction of a mechanism that would protect people from claims against their bond in cases where damage was caused by the perpetrator, or rent arrears accrued following the survivor's departure from the rented accommodation. VCOSS agrees that the options provide a useful way to apportion liability. This should extend to excluding a family violence survivor from liability to ensure they are not penalised for the actions of a perpetrator. The Royal Commission supported this approach to ensure survivors are not liable for debts that are more appropriately attributable to the perpetrator (page 124).

## Allow alternative service of notices and documents

The Royal Commission into Family Violence recommendation 57 proposes changes to service of documents related to proceedings under the *Family Violence Protection Act 2008* (Vic). These allow for "alternative" service (service other than delivery in person) in certain circumstances. VCOSS understands that these amendments are currently in process, and would suggest a similar scheme be adopted in relation to service in cases where a notice needs to be served on a perpetrator of family violence, in relation to residential tenancies issues. This would promote a consistent response in family violence matters in the legal system.

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