

Submission to the Residential Tenancies Act Review

Rent, bonds and other charges Issues Paper

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Introduction

About Melbourne City Mission

Melbourne City Mission is one of Victoria's oldest and largest community services organisations, with a broad service platform encompassing early years, education and employment, disability services, palliative care, and homelessness and justice services.

Melbourne City Mission's Homelessness and Justice Services span the continuum of early intervention, crisis and case management. Staff work to address the underlying causes of homelessness, and support individuals and families to find ongoing, sustainable housing options.

This one-on-one work is complemented by the work we do at the systems level to try and mitigate structural inequality.

About this submission

This submission to the *Residential Tenancies Act (RTA) Rent, bonds and other charges Issues Paper* follows Melbourne City Mission's earlier submissions (August 2015 and December 2016) to the first two stages of the RTA Review.

Melbourne City Mission is pleased that the *Issues Paper* acknowledges the significant increase in housing costs in Victoria, particularly in Melbourne, and the declining housing affordability for tenants, particularly those whose household incomes have not kept pace with house price growth.

This submission is informed by perspectives from Melbourne City Mission's:

- Adult and Family Homelessness Services (AFHS), which deliver case management and outreach support to single adults and families who are homeless, or at risk of becoming homeless, in the western region of Melbourne, or who wish to reside in the west. This region includes the cities of Melbourne, Brimbank, Wyndham, Hobson's Bay, Moonee Valley, Maribyrnong and Melton.
- Melbourne Youth Support Service (MYSS) Initial Assessment Planning (IAP) and Intensive Support Work (ISW) teams. MYSS is a statewide homelessness access point for young people aged 16 to 24. MYSS provides information, short-term support and referral for young people who are homeless or at risk of homelessness. This service is physically located at Frontyard Youth Services in the City of Melbourne, with a statewide telephone information and referral service.

Melbourne City Mission's perspectives on: Rental Affordability

Whilst many people accessing Melbourne City Mission supports meet the eligibility criteria for social housing, **lack of supply** means that they are principally seeking opportunities via the private rental market. **Rental affordability** is a major issue. Research shows that only one per cent of properties are affordable for families reliant on income support and almost none are affordable for someone living on Newstart or a Youth Allowance¹. The Council to Homeless Persons (CHP) reports that one-in-four renters in Victoria are low-income households (earning \$640/week or less) paying more than 30 per cent of their income on rent.²

Melbourne City Mission data paints an even bleaker picture:

- In our Adult and Family Homelessness Services (AFHS) in Melbourne's west, 93 per cent of households are in housing stress (paying over 33 per cent of income on accommodation). Nearly 40 per cent of people spend over 50 per cent of their income on accommodation.
- Specialist housing workers at Melbourne Youth Support Services (MYSS) – a statewide service headquartered at Frontyard Integrated Youth Services in the Melbourne CBD – report that MYSS clients who are in the private rental market are spending a minimum of 50 per cent of their total income on rent (including share housing).

AHURI has identified affordability "*at the point of entry and across the duration of a tenancy*" as "*arguably the most significant structural factor affecting secure occupancy for lower-income households*"³.

Affordability at point of entry – the lived experience of young people on low incomes

The majority of young people engaged with Melbourne City Mission services rely on income support from Centrelink. Those seeking to enter the private rental market are usually eligible to access funds from the Housing Establishment Fund (HEF), however, to be able to access these funds, a criteria young people must meet is to find a property where the rental cost is no more than 55 per cent of their income.

Given that the average cost of rent for a young person currently meets or exceeds this amount, it is virtually impossible for a young person to be able to access private rental on their own.

Many young people who rely on income support also face barriers to share housing – a seemingly more accessible option. The Melbourne Rent Map⁴, which captures the average cost of share housing across Melbourne, shows that the majority of suburbs are unaffordable for low-income young people.

¹ Anglicare (2015), *Rental Affordability Snapshot 2015 Summary*
http://www.anglicare.asn.au/site/rental_affordability_snapshot.php

² Council to Homeless Persons, *Rental stress mapped by electorates*,
<http://chp.org.au/rental-stress-mapped-across-electorates/#.Vu-QWeJ95aQ>

³ Hulse K, Milligan V and Easthorpe H, 2011, *Secure occupancy in rental housing: conceptual foundations and comparative perspectives*, AHURI final report No.170, Australian Housing and Urban Research Institute, Melbourne.

⁴ Flatmates.com.au, *Melbourne Rent Map*, November 2015
https://flatmates-res.cloudinary.com/t_blog/v1448346341/cuyrra8zpzpftfdq7aee0.pdf

It is Melbourne City Mission’s experience that many young people who aspire to – and have the life skills to sustain – a private rental tenancy are locked out of the market and are churning through crisis homelessness services.

Affordability across the duration of tenancy – the lived experience of women and children who have experienced family violence

The report of the Royal Commission into Family Violence identified that the private rental market *‘plays a central role in both resettlement and in providing medium term housing options for women affected by family violence’*, however, the high cost of private rental accommodation can make it difficult for many women to obtain and maintain a tenancy.⁵

WIRE’s research into family violence and financial abuse found *“the household income of all participants was reduced substantially after leaving their relationship. Almost half (44 per cent) had a household income of less than \$40,000 post-separation, with one-in-five of those earning less than \$20,000.”* WIRE reported almost half were renting and, of these women, one-in-three was in the private rental market, *“making them and their children vulnerable to rent increases and the uncertainties of tenancy.”*⁶

This is borne out in Melbourne City Mission’s Adult and Family Homelessness Services, where caseworkers are assisting low-income households unable to keep up with rental payments, because:

- Their rent is being increased at or above five per cent (which is more than Centrelink, minimum wage and pension increases).
- Their rent is being increased more frequently than the average rate of once per calendar year.

A significant component of Melbourne City Mission’s work is assisting households experiencing homelessness – or at risk of homelessness – as a consequence of unsustainable rent increases.

Recommendations:

- Melbourne City Mission supports the Tenants Union of Victoria’s (TUV) call for a form of *“soft rent regulation [that] has an effect of slowing down an otherwise out of control rental market ... better balances the rights between landlords and tenants [and] ... also creates a more stable and secure environment for both landlords and tenants”*⁷. The TUV submission advises that *“many of the basic elements needed to apply ... a method of rent regulation in Victoria already exist”*. The TUV submission identifies these discrete elements and the way in which *“they would just need to be strengthened”*⁸.
- Melbourne City Mission advocates for ‘rent in advance’ (i.e. when a tenant first moves into a property) to be set at two weeks, instead of requesting a full month of rent in advance.⁹

⁵ Royal Commission into Family Violence, Volume II Report and Recommendations, March 2016
<http://www.rcfv.com.au/MediaLibraries/RCFamilyViolence/Reports/Final/RCFV-Vol-II.pdf>

⁶ WIRE, “Relationship Problems and Money: Women talk about financial abuse”, 2014.

⁷ <https://www.tuv.org.au/articles/files/submissions/160406-TUV-RTA-bonds-&-rents.pdf>

⁸ Ibid.

⁹ It should also be noted that this is currently offered across Australia in states such as WA. Victoria is one of the only states that expects tenants to pay a full month of rent in advance.

<https://www.commerce.wa.gov.au/sites/default/files/atoms/files/tenantsguide.pdf>

Rental bidding

The Issues Paper notes that the practice of “*rental bidding*” lacks transparency and is therefore vulnerable to agents and landlords falsely bidding up prices, notwithstanding REIV guidelines designed to prevent misleading and deceptive conduct. The Issues Paper speculates that the “*information asymmetry*” between parties “*could have a disproportionate impact on disadvantaged tenants*”. Melbourne City Mission is more equivocal on this point – we believe rental bidding **does** have a disproportionate impact on vulnerable Victorians:

- Many people we support do not have the financial means to engage in rental bidding, and miss out on properties
- Some people we support have engaged in rental bidding because fatigue and desperation have set in; they extend themselves beyond their financial means, and enter into unsustainable rental agreements (housing stress).
- Some people we support are vulnerable to exploitation – for example, women who are fleeing family violence and need rapid housing, and young people who have experienced family breakdown and are navigating the transition to independence, including independent housing, without family support/advice.

Recommendation:

Even though the REIV guidelines specify that agents should “*refuse any counter-offer once a tenant has been told their application is successful*” and “*not initiate a bidding process for a rental property*”, given the prevalence of rental bidding in Victoria, Melbourne City Mission advocates for the introduction of regulatory measures that disallow real estate agents from seeking or taking rental bids. Melbourne City Mission agrees with the TUV that regulation is required “*to ensure applicants can rely on the advertised price when seeking a rental property*”.

Unsustainable rent increases

As described earlier in this submission, in Melbourne City Mission’s Adult and Family Homelessness Services in the west, we see many people and families who have had rental payments increased above the average rental increase of once per calendar year. Inability to keep up with payments leads to evictions and/or tenancy database blacklisting, and puts people at risk of homelessness.

Recommendations:

Melbourne City Mission supports the recommendations of the Council to Homeless Persons that:

- Rent increases should not occur more than once every 12 months
- Rent increases should be capped in line with CPI increases
- Rent increases should not be allowed if there are outstanding repairs
- The onus should be on the landlord to apply to VCAT for any rent increases beyond the CPI
- The notice period given around rental increases should be increased to 120 days, to allow for the hearing of rent appeals.¹⁰

¹⁰ <http://chp.org.au/wp-content/uploads/2016/04/160318-CHP-Submission-Bonds-rents-and-other-charges-FINAL.pdf>

Notice to Vacate (NTV) notice periods

As stated in Melbourne City Mission's responses to Stages 1 and 2 of the RTA Review, we hold concerns about the current Notice to Vacate (NTV) process.

Under the current system, there are many circumstances in which a landlord can ask a tenant to vacate before a lease ends. These are listed on the Consumer Affairs Victoria¹¹ website and within the current Act (1997)¹² and enable landlords/agents to take swift action, including the ability to serve a 14-day Notice to Vacate to the tenant.

Melbourne City Mission understands the need to balance the rights of all parties, however, we believe there are some exceptional categories of hardship and complexity that should be taken into account. Examples of what we would regard as exceptional categories include: vulnerability associated with exits from statutory services (e.g. care leavers, people who have been incarcerated); family violence; disability; and sudden loss of income and/or significant unexpected financial expense.

MYSS workers reflect on the time they invest in building relationships with real estate agents. For at-risk tenancies, these relationships can mean the difference between an agent understanding a young person's situation and working with them, or serving them Notice to Vacate when times get tough.

Recommendations:

Melbourne City Mission advocates for a less adversarial system, in which effective communication and relationships are the norm, rather than the exception. We aspire to a system underpinned by timely two-way communication and a commitment to issue resolution and sustainable tenancies.

- In keeping with this, Melbourne City Mission agrees with the recommendation of the Council to Homeless Persons that a *"breach of duty issued at 14 days, to allow a household to enter into a payment plan with the agent or landlord, would be a more appropriate response and encourage swift remedial action"* and that *"Notice to Vacate as a consequence of arrears should be extended to 28 days"*.¹³
- In the absence of such measures, and where a Notice to Vacate is served, Melbourne City Mission advocates for more comprehensive information resources to be enclosed with the Notice to Vacate. Currently, the standard NTV letter includes contact information for Consumer Affairs Victoria (CAV), which is often unhelpful to our clients seeking further housing assistance.

¹¹ Consumer Affairs Victoria, *Landlord giving notice to vacate*, <https://www.consumer.vic.gov.au/housing-and-accommodation/renting/ending-a-lease-or-residency/if-the-landlord-or-owner-wants-the-tenant-to-leave/landlord-giving-notice-to-vacate>

¹² Residential Tenancies Act 1997, [http://www.legislation.vic.gov.au/domino/web_notes/ldms/pubstatbook.nsf/edfb620cf7503d1aca256da4001b08af/c7f3c6d8118d4bcaca256e5b00213c3d/\\$file/97-109a.pdf](http://www.legislation.vic.gov.au/domino/web_notes/ldms/pubstatbook.nsf/edfb620cf7503d1aca256da4001b08af/c7f3c6d8118d4bcaca256e5b00213c3d/$file/97-109a.pdf)

¹³ Council to Homeless Persons (2016) *Submission to Bonds, rents and other charges Issues Paper*, <http://chp.org.au/wp-content/uploads/2016/04/160318-CHP-Submission-Bonds-rents-and-other-charges-FINAL.pdf>

Melbourne City Mission recommends a standard NTV information pack include the following information:

- Contact information for the Residential Tenancies Bond Authority (RTBA)
 - Contact information for the Tenancy Advocates Service
 - Contact information for the Tenants Union of Victoria (TUV)
 - Contact information for a list of financial counselling options
 - Specific support information on four of the main reasons for housing breakdown (family violence, gambling, drugs and alcohol, and mental health).
- Our MYSS workers have suggested that if a young person falls behind in their rent, a list of Homelessness Access Points¹⁴ is sent to the young person by the real estate agent or landlord to assist with financial hardship.
 - In those cases where matters escalate to VCAT, Melbourne City Mission again urges that hardship is taken into account.

Rental fees and charges

Timing

Melbourne City Mission notes that rental payments do not always align with a tenant's pay cycles. Typically, landlords determine the rent payment schedule. Where the payment schedule does not align with a tenant's pay cycle, this can lead to budgeting difficulties for tenants and can lead to a cycle of debt and rental arrears.

Third-party collection systems/automated payments

Tenants in rental properties often utilise a third-party provider to make automated payments. In earlier submissions to the RTA Review, Melbourne City Mission has described the way in which tenants who receive Commonwealth income support via Centrelink and use the Department of Human Services Centrepay payment system are stigmatised by landlords.

Additionally, low-income households are adversely impacted by the industry practice of landlords passing on third-party provider administration charges to tenants. These fees add to the cost of renting and put additional pressure on households which are already experiencing – or are vulnerable to – housing stress.

Recommendations:

- Melbourne City Mission advocates for the RTA to be amended to reflect VCAT rulings that fees charged by a third-party rent collector for the direct debit of rent are prohibited.
- Melbourne City Mission proposes that tenants are provided with the option to have rental payments align with pay cycles, with options of weekly, fortnightly or monthly payments.

¹⁴ Council to Homeless Persons, *The Opening Doors Framework*, <http://chp.org.au/homelessness/about-victorias-homelessness-system/support-services/the-opening-doors-framework/>

Housing vulnerability

This submission has previously described the way in which many young people are precluded from accessing opportunities in the private rental market due to cost – young people do not have the same level of income or accumulated wealth as older people, putting them at a significant disadvantage in a highly competitive housing market.

Age-based discrimination is another major issue for young people seeking to enter the private rental market. In our experience, young people are often not taken seriously and/or can be seen as a liability by many real estate agents and landlords, due to their age.

These factors make young people vulnerable to what our intake workers describe as “*dodgy*” housing options. For example, specialist workers from MYSS note that many of their young clients are bypassing real estate agents and seeking private rental housing options on online forums. Many young people in this situation are exploited by landlords or their agents, who intentionally target young people with limited income (and therefore limited choice and bargaining power), little experience navigating the private rental market and/or no awareness of tenancy rights. Many of these young people find themselves in dwellings that have been advertised as ‘share’ or ‘student’ accommodation, but which in reality are modern-day slums: unsafe, overcrowded dwellings with no privacy provisions or security of tenure.

Melbourne City Mission's response to: Bonds

Bond Loan Scheme and access to private rental brokerage assistance

As described earlier in this submission, young people have significant financial barriers to access in the private rental market. Many young people seeking housing assistance from MYSS are reliant on income support and find it difficult to meet the criteria to access the Bond Loan Scheme. There are also significant financial barriers for women leaving violent relationships, as described in previous sections of this submission.

Bond Loan Scheme clearing period

MYSS workers report difficulties for young people associated with the Bond Loan Scheme's three-day clearing period. If a young person is approved for a private rental property, they often have only one business day to pay their bond and rent in advance to the landlord. With the bond loan brokerage money taking one business day to clear, young people are vulnerable to losing the property as a consequence of funds not being accessible in a timely manner.

The laborious process is captured in a flowchart on page 13 of this submission.

Overcharged bonds

Case Study – Jack

Jack first accessed the Melbourne Youth Support Service (MYSS) at Frontyard Youth Services for assistance with his rental arrears, finding a more affordable property, and pathways into education.

At the time, Jack was residing in a rooming house with his rent in arrears.

During his first meeting with MYSS, Jack identified a number of goals he wanted assistance with.

The intensive support worker has been working with Jack for the past two months. During this time, Jack has continued to stay in the same rooming house after being assisted to access Centrelink Rent Assistance (including a large amount of back-pay) to cover his rent arrears.

Jack recently informed his MYSS and drug and alcohol workers that he has been paying an extra \$100 each pay to cover a \$1000 bond. Jack was linked into the Tenants Union of Victoria, which advised Jack that a rooming house provider cannot request a bond amount larger than the equivalent of two weeks rent in advance. In Jack's case, the bond amount far exceeded this ratio.

Jack established he was already ahead in bond payments by at least \$200 and could stop paying the extra money to the landlord. Despite this, the landlord continues to apply pressure and Jack's tenancy is now at risk

Release of bond money at termination of tenancy

A significant issue noted by Melbourne City Mission case workers is that landlords and estate agents view and treat bond money as 'theirs', when in actuality, the money belongs to the tenant.

As a consequence, we see landlords and real estate agents holding bond money for longer periods than they should, and taking bond money away from tenants at the end of a tenancy at their own discretion. Many people we support experience major difficulties advocating for their bond money to be returned.

Bond is meant to be cleared and returned back the tenant within 10 business days, provided no claim is lodged within this period from either party. Where disputes occur, the full bond amount or part of the amount is sanctioned until process is resolved.

Melbourne City Mission believes that sanctioning bond money from the tenant whilst paperwork is being processed at the end of a tenancy, places inequitable burden on tenants. It is particularly detrimental for low-income households who have negligible discretionary income and need to transfer bond money over from the original agreement, to their next rental property. These tenants are highly vulnerable to losing the new property because they cannot access sanctioned bond money.

Unofficial holding of bond money

Melbourne City Mission workers report instances where landlords take a tenant's bond money and don't appear to officially register the amount with the RTBA. In the absence of an official receipt from the RTBA stating that their bond has been lodged, tenants are vulnerable to not receiving their bond money back at the end of a tenancy (in cases where they are entitled to it back).

Bond Loan Debt

Information about bond loan debts is communicated by way of hard copy letter mailed out to a tenant's last known address. Women experiencing family violence or young people who are in the early stages of homelessness can fall through the cracks in terms of correspondence/communication. Melbourne City Mission frequently deals with cases where women or young people are making housing applications, unaware of outstanding debt in their name.

Recommendations:

Melbourne City Mission notes and welcomes the recommendations of the Royal Commission into Family Violence and the State Government's initial \$572 million investment in implementing 65 of the recommendations, including a \$152 million "housing blitz".

Melbourne City Mission particularly notes action on:

- **Recommendation 13**

The Victorian Government give priority to supporting victims in safely remaining in, or returning to their own homes and communities through the expansion of Safe at Home-type programs across Victoria [within two years]. These programs should incorporate rental and mortgage subsidies and any benefits offered by advances in safety devices, with suitable case management as well as monitoring of perpetrators by police and the justice system.

- **Recommendation 17**

The Victorian Government expand the provision of Family Violence Flexible Support Packages [within 12 months]. These packages should provide to victims assistance beyond the crisis period and should include longer term rental and mortgage subsidies where required, along with assistance for costs associated with securing and maintaining counselling, wellbeing, education, employment, financial counselling and other services designed to assist housing stability and financial security.

- **Recommendation 19**

The Victorian Government establish a Family Violence Housing Assistance Implementation Task Force consisting of senior representatives from the public and commercial housing sectors and family violence specialists [within 12 months]. The task force, which should report through the Minister for Housing to the Cabinet Family Violence Sub-committee, should:

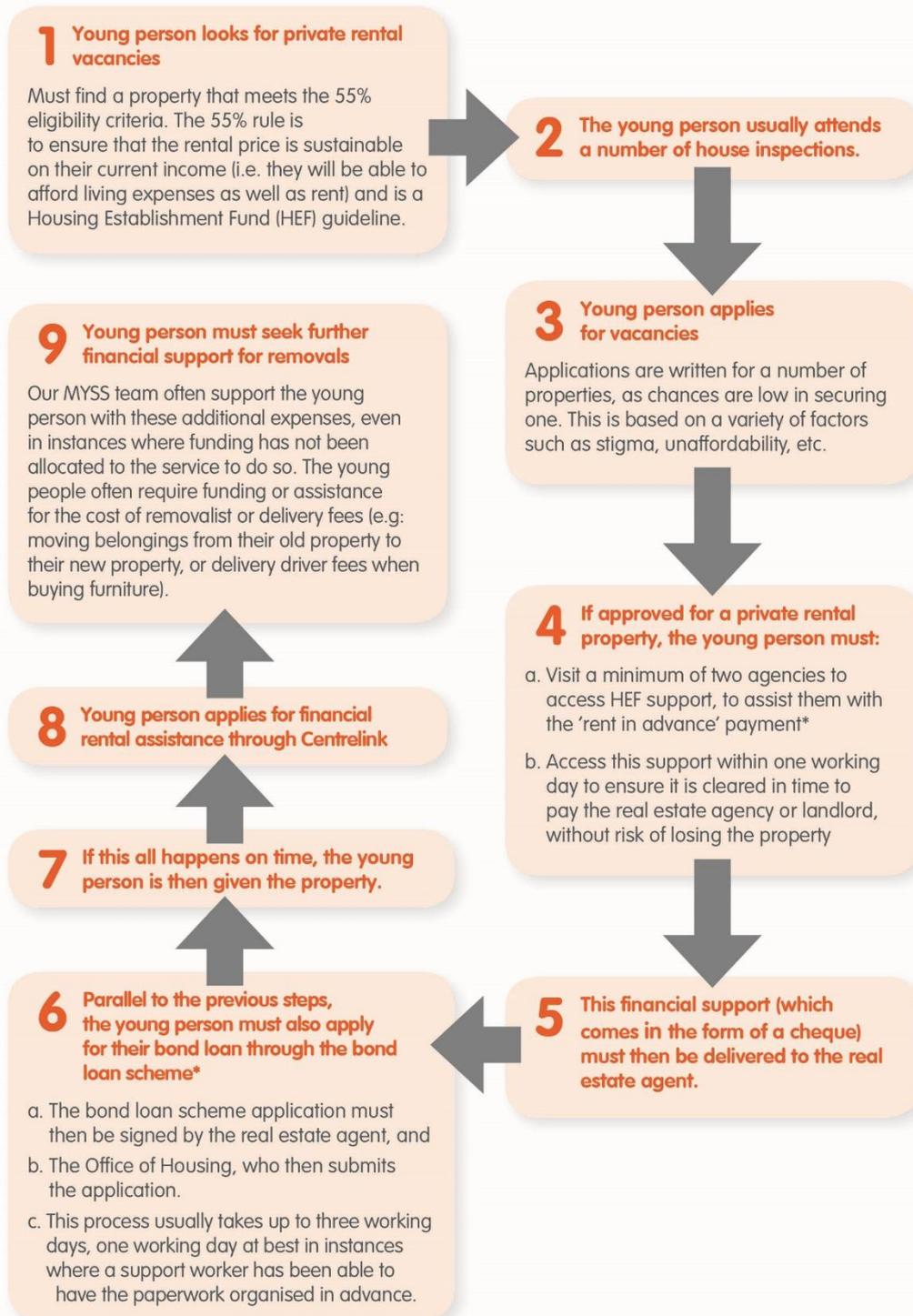
- *oversee a process designed to remove blockages in access to family violence crisis accommodation by rapidly rehousing family violence victims living in crisis and transitional accommodation*
- *design, oversee and monitor the first 18-month phase of the proposed expanded Family Violence Flexible Support Packages (including rental subsidies)*
- *quantify the number of additional social housing units required for family violence victims who are unable to gain access to and sustain private rental accommodation*
- *subject to evaluation of the proposed expanded Family Violence Flexible Support Packages, plan for the statewide roll-out of the packages (including rental subsidies) and the social housing required.*

Additionally, in the context of this RTA Review Issues Paper, Melbourne City Mission:

- Supports the expansion of Victorian Bond Loan Scheme program and the national pool of private rental brokerage money. This will further assist lower income households and individuals who need to access brokerage assistance with up-front bond payments for rental properties.
- Advocates for a process for tenants to appeal bond loan debts through an 'exceptional circumstances' principle. This would be particularly helpful for victims of family violence in instances where the perpetrator has left the property damaged.
- Advocates for immediate bond repayment back to the tenant, in cases where the bond is uncontested.
- Melbourne City Mission also calls for the option of a consensual 'bond holding' option for tenants, where returned bond money is held, and once cleared, transferred to a new property or lease agreement.

Young person accessing private rental market

For a young person accessing our Melbourne Youth Support Service (MYSS) who must enter into the private rental market, the process is as follows:



*Most young people who enter into the more affordable share housing options and are NOT signing onto the lease are not eligible for HEF money OR bond loan assistance (unless they are able to obtain a confirmation letter from the landlord).

Conclusion

Some of Victoria's most vulnerable citizens are navigating a private rental market that is unaffordable and characterised by processes and practices that heighten and exploit vulnerability.

Greater protections are needed. Melbourne City Mission acknowledges the breadth of the RTA Review process to date, and looks forward to the introduction of measures that deliver improvements in accessibility, affordability, quality and security of rental housing.