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Fairer Safer Housing
yoursay@fairersaferhousing.vic.gov.au

Melbourne City Mission's response to Stage Three: Fairer Safer Housing RTA Options Paper

Melbourne City Mission wishes to thank Consumer Affairs Victoria (CAV) for the opportunity to respond to the *Options Paper* as part of the review of the Residential Tenancies Act (RTA).

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) Options Paper* follows Melbourne City Mission's earlier submissions (April 2016, December 2015, and August 2015) to the RTA Review.

This submission is informed by the perspectives of 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.

Acknowledgements

This submission was written by Morgan Cataldo, Policy and Strategic Projects Officer, Melbourne City Mission, in collaboration with the following team members of Melbourne City Mission's Adult and Family Homelessness Services:

- Belinda Belanji
- Belinda Simpson
- Benjamin Anastasiou
- Celeste Brittain
- Irena Kiprov
- Karan Mahida
- Liz Nicholls
- Levi Marroquin
- Mary Savic
- Rebecca Carless

We also wish to acknowledge the contribution of Rob Hosking from Fronytard Youth Services for his insights relating to Rooming Houses.

Landlords versus tenants: power dynamics / rights and responsibilities

Melbourne City Mission is pleased that the *Options Paper* acknowledges the significant impact of power dynamics between landlords and tenants and additionally, how certain issues can affect vulnerable tenants in a disproportionately greater way due to limited private rental market options.

Although Melbourne City Mission understands that both landlords and tenants are impacted by a range of issues, and that these issues reflect a 'dichotomy of interests' that cannot not be studied in isolation, it is important to acknowledge that this Review takes place against a backdrop of a **crisis in housing affordability, insufficient social housing supply and spiralling private rental costs**.

In addition to this, newly released research has revealed that one in three Victorians is a renter, with 83 per cent having no long-term security¹.

With this comes a range of complexities that *must* be acknowledged to make fair and adequate policy decisions that don't precipitate vulnerable households into homelessness.

However, in many cases throughout the *Options Paper*, the onus is on the tenant to ensure they are the 'enforcer' of certain measures and standards. This not only makes tenants accountable for ensuring their rights are upheld but also negates the power imbalance. It also assumes that tenants have the literacy and resources to be able to challenge, and remain aware of, the rights and responsibilities of landlords.

¹ Choice, 'Unsettled: Life in Australia's private rental market'

<https://www.choice.com.au/money/property/renting/articles/choice-rental-market-report>

With this in mind, Melbourne City Mission wishes to focus on **areas of concern** in response to the preferences set out in the *Options Paper*, advocating for the people we support who are often tenants dealing with housing stress, are living in low-income households, and who deal with vulnerabilities that increase their risk of falling into homelessness.

Further information

Deborah Fewster
Head of Policy, Advocacy and Government Relations
Melbourne City Mission
Email: dfewster@mcm.org.au
Phone: (03) 8625 4462

Melbourne City Mission's responses:

Part A: Overview

2.5 Modern terminology for parties to a residential tenancy

In response to *Consultation Question 3*, Melbourne City Mission supports updating terminology from 'landlord' and 'tenant' to 'property owner' and 'property renter'. Our specialist housing workers reflect that this newer terminology offers clarity to all parties, specifically ensuring that tenants are aware of the status of their landlord and that they *are* the property owner – not simply stating they are.

Part B: Starting and maintaining a tenancy

3.2 Long-term leasing in general tenancies

Melbourne City Mission supports Option 3.3 – 'Provide for the option for tenants to extend fixed-term leases for a subsequent period'. We believe this option offers more flexibility to both landlords and tenants, ensuring tenants are able to exercise their rights in requesting longer rental periods. This option works to protect longer tenure periods for some of our most vulnerable households. Our only concern is the 'long-term' lease period is currently undefined. We would advocate that this period be a minimum of two years and above.

4.1 Unlawful discrimination against applicants and tenants

In response to *Consultation Question 14* regarding unlawful discrimination at the tenancy application stage, Melbourne City Mission advocates for a regulatory body that could act as a tenancy advocate and would work in conjunction with other advocacy organisations such as the Tenants Union of Victoria (TUV) and the Victorian Civil and Administrative Tribunal (VCAT).

4.3 Tenancy database

In response to *Consultation Question 16*, Melbourne City Mission advocates for an outright prohibiting of charging a fee for seeking a copy of a tenant's listing, rather than a fee-free option. This ensures the discontinuation of the fee and that tenants aren't unfairly charged through an alternative option into the future.

4.6 Terms of tenancy agreement

Melbourne City Mission believes that if additional terms are to be enforceable, then they must be accessible, easy-to understand, transparent, and are reasonable to the tenant. We also advocate for the itemising of any additional lease break fees, with reasons clearly identified and the option for the tenant to be able to appeal to VCAT.

Without these assurances, it is Melbourne City Mission's belief that the enforcement of additional terms may prove detrimental to tenants experiencing vulnerabilities through potential unjust treatment from landlords. We do not support additional clauses unless consumer protection is guaranteed.

5.1 Processes for breach

In response to *Consultation Question 27*, Melbourne City Mission believes that the required timeframe to comply should be 'as soon as practicable' and ensures that tenants are given an extended amount of time, more than 14-days, where damage to the property needs to be fixed. Looking at low-income households and pensioners as an example, the 'immediate' timeframe would place significant, additional resource stress onto these groups.

5.2 Pets in rented premises

Australia has one of the highest household rates of pet ownership in the world, with around 5.7 million of Australia's 9.2 million household's home to a pet².

Melbourne City Mission does not agree with the options outlined in the *Options Paper* in respect to pets in rented premises. We believe the recommended options that attempt to incentivise landlords to accept more tenants with pets would prove unsuccessful. Attempts to incentivise this option would also work to further discriminate low-income tenants and ultimately ensures the balance of power is in favour of landlords' decisions under the list of 'reasonably refuse' guidelines.

For some tenants, not being able to bring their pets can also mean an entry point to homelessness – being forced to decide between having a rental property, or having to abandon their animal companion.

Tenants pay a bond amount to the landlord at the beginning of a lease, which covers off on any damages made to the property – whether this is caused by pets or not.

Regular property inspections are also a safe-guard to landlord concerns re potential property damage caused by a pet. Further, most landlords take out landlord insurance and this too can cover off on any damage, negating the necessity of a pet bond.

We support tenants' right to having pets live with them, so long as the physical living space is taken into consideration. We believe that there should be more onus on landlords to object with *good reason*, over landlords being able to outright refuse tenancy to a potential tenant with a pet.

² Australian Veterinary Association, *Pet ownership statistics*
<http://www.ava.com.au/news/media-centre/hot-topics-4>

5.3 Rights of entry

In response to *Consultation Question 40*, Melbourne City Mission advocates for required seven days' notice for both a valuation and general inspections.

In response to *Consultation Question 45*, Melbourne City Mission believes Option 5.9B – ‘Tenant’s reasonable consent for entry to take advertising images’ – is preferable for regulating entry to take advertising pictures where the property is being sold or re-leased.

This option offers tenants an opportunity to consent to entry, as well as safeguards both the landlord and tenant with the option of a VCAT pathway if issues arise.

5.4 Subletting and assignment

In response to *Consultation Question 46*, Melbourne City Mission believes that landlord consent is unnecessary in regards to parting with possession of whole or part of privately rented premises. It is our understanding that lead-tenants remain responsible for the property, the lease agreement, and any visitors they might have. We don’t agree that this option is fair grounds for termination.

It is important to note that *housing flexibility* is crucial in this context to support rental affordability and pathways away from homelessness – particularly in regards to share-housing.

In regards to social housing, Melbourne City Mission understands that waiting lists must be upheld and that the issue of sub-letting and assignment is unique to this situation.

In response to *Consultation Question 49*, Melbourne City Mission believes Option 5.12A – ‘Assignment fee: reasonable expenses’ – is preferable as it echoes other Australian jurisdictions and ensures that a landlord cannot charge a fee for consent to an assignment.

6.1 Lease break fees

Melbourne City Mission wishes to state that Option 6.1 – ‘Codify common law compensation principles for lease break fees’ – ensures more adequate protection for tenants, whereas Option 6.2 – ‘Fixed lease break fees as an optional clause in prescribed tenancy agreement’ – puts at-risk households further at risk with the addition of an optional ‘break-fee clause’. We wish to add that a maximum time must be specified for rent loss compensation (e.g. no more than four weeks).

6.2 Severe hardship

In response to *Consultation Question 57*, Melbourne City Mission asserts that the tenants we support and work alongside often don’t have access to an extra two

weeks rent due to limited income. We support compensation being waived altogether in cases of severe hardship.

6.3 Lease breaking in special circumstances

In response to *Consultation Question 58*, Melbourne City Mission wishes to add the following grounds as additions to the list of special circumstances:

- death of a spouse,
- loss of employment, ability to work, or income (e.g. Centrelink payment suspension),
- prison or remand, and
- unexpected physical or mental illness or serious decline in health.

7 Bonds and rent

In response to *Consultation Question 63*, Melbourne City Mission believes Option 7.1B – ‘Update high value exemption to reflect current market rents and remove other exemptions’ – most fairly balances the needs of tenants in limiting the upfront costs of entering a tenancy and for landlords to have security that tenants will meet the costs of damage to the property or unpaid rent.

In response to *Consultation Question 64*, Melbourne City Mission believes that a potential unintended consequence for limiting maximum bonds and rent in advance may be that there are less properties available for low income tenants to view due to market value for median price rising. This could potentially affect rental affordability.

7.2 Bond claims

In response to *Consultation Question 66*, Melbourne City Mission prefers Option 7.3C – ‘Automatic bond repayments for tenants when a claim is not disputed and evidence based claims for landlords (hybrid of current model and NSW model)’.

7.3 Frequency of rent increase

In response to *Consultation Question 68*, Melbourne City Mission believes that a significant risk in relation to restricting rent increases to once per year is that the current options do not stipulate how much the increase should be, other than matching increases against market value. We hold concerns that the RTA currently ‘*does not explicitly limit the amount by which rent is increased.*’

7.5 Rent payment fees and methods

In response to *Consultation Question 71*, Melbourne City Mission wishes to state that an unintended consequence that may result from requiring landlords to accept Centrepay payments is that of additional fees being charged to the tenant.

Although we strongly support landlords having to accept Centrepay payments, we would also recommend that an additional point is specified that prohibits landlords from placing any additional charges onto tenants for the use of this service.

7.6 Rental bidding

In response to *Consultation Question 72*, Melbourne City Mission strongly believes that rental bidding should not only be regulated, but abolished indefinitely.

In response to *Consultation Question 73*, Melbourne City Mission supports Option 7.8B – ‘Rental properties must be advertised at a fixed price and landlords and agents cannot request or accept rental bids’. We believe that this option provides a fair, equitable, and transparent approach to providing rental properties in a way that is fair for all.

8.2 Condition reporting – Measuring changes in a property’s condition

In response to *Consultation Question 75*, Melbourne City Mission does not believe that providing the tenant with a condition report on or before the day they move in is sufficient time to determine whether a vacant premises is suitable for occupation. We would recommend a longer time frame – a minimum of two working days – as fair and equitable.

8.3 Condition of vacant property at the start and end of a tenancy

In response to *Consultation Question 82*, Melbourne City Mission feels that some of the items under the guidelines are unreasonable, in particular – ‘cracked glass caused by warping of window frames’. Although this may be considered in the RTA as ‘wear and tear attributable to natural deterioration’, cracked glass still poses a serious health and safety risk to tenants.

In response to *Consultation Question 83*, Melbourne City Mission believes that the general cleanliness and good repair of a property should be reasonable, *despite its age and character*.

8.4 Locks and security devices

In response to *Consultation Question 85*, Melbourne City Mission believes that the requirement for deadlocked external doors would *most definitely* improve security in rental properties.

In response to *Consultation Question 86*, Melbourne City Mission wishes to add the following security measures that landlords could be reasonably expected to provide:

- proper lockable security doors (no wire-screen doors due to safety issues, e.g. easy to cut and break-into main doors), and
- sensor lighting for front and rear entrances.

8.5 Health, safety and amenity standards at point of lease

In response to *Consultation Question 88*, Melbourne City Mission believes that a specified, time-limited roll-over period would be necessary to ensure landlords' ability to evaluate and upgrade housing stock and initiate changes to private rental stock in relation to basic minimum standards.

In response to *Consultation Question 89*, Melbourne City Mission believes that duties related to good repair and general cleanliness are two separate aspects that need to be covered and therefore, *should not* be dealt with through the earlier guidelines in Option 8.8.

In response to *Consultation Question 90*, Melbourne City Mission does not believe that any of the listed features go beyond basic standards.

In response to *Consultation Question 91*, Melbourne City Mission believes that an optimal transition period for ensuring that landlords have adequate time to bring their properties up to legislative standards is anywhere between *two to five years*, with an in-built sliding scale based on urgency of repair items (highest risk repair items to be dealt with first).

In response to *Consultation Question 92*, Melbourne City Mission believes that all properties must be brought up to, at minimum, basic legislative standards. Without this assurance, properties may still be in states of serious disrepair. A potential two to five year roll-over period for basic minimum standards offers landlords a substantial amount of time to upgrade their housing stock.

In response to *Consultation Question 93*, Melbourne City Mission asserts that allowing conditional non-compliance with any standards would seriously undermine or weaken a landlord's incentives for addressing property defects.

In response to *Consultation Question 94*, Melbourne City Mission believes that the proposed additional remedies and protections against eviction *would* encourage tenants to take possession of properties that are in poor condition at the start of a tenancy, in particular, tenants who have negative rental histories, or none, and are willing to take on properties in worse condition in order to build a positive tenancy record. This would potentially enable greater choice and prospects of private rental options into the future.

8.6 Condition of premises during a residential tenancy

In response to *Consultation Question 95*, Melbourne City Mission believes that the proposed list of maintenance activities *do* reflect common practice in different tenure types for tenants, but *not* for landlords. It is often our clients' experience as tenants that landlords are often not held to the same standards as a tenant to maintain property conditions. In the case of landlord/tenant power dynamics, this is a strong example of the scales tipping in favour of landlords.

Melbourne City Mission also wishes to see the term 'periodic' clearly defined in the updated RTA.

In response to *Consultation Question 96*, Melbourne City Mission believes that there are additional measures needed to prevent tenants from being required to take on onerous maintenance activities. Landlords *must* be required to prove they have upheld their maintenance activities *before* the claim of bond at the end of a tenancy through evidence of payment receipts for completed works.

In response to *Consultation Question 97*, Melbourne City Mission believes that landlords should be mindful of tenants with disabilities and/or injuries in relation to agreed maintenance arrangements. It should also be noted that VCAT are made aware of tenants' capacity to perform all listed maintenance duties.

8.7 Modifications

In response to *Consultation Question 99*, Melbourne City Mission asserts that a list of reasonable modifications needs to be clear and listed in lease agreements to avoid any confusion for either party. Tenants should only have to seek consent for modifications *outside* of the landlord's listed requirements.

In response to *Consultation Question 101*, Melbourne City Mission agrees that the use of a suitably qualified person would reduce landlord concerns about approving a modification outside of the landlord's listed requirements, however, this qualified person must also be affordable to tenants.

8.8 Liability for access to services

In response to *Consultation Question 102*, Melbourne City Mission believes that tenants should have the right to be able to dispute the imposition of a supply related charge in social housing. The base rent of community housing is currently more expensive than that of Office of Housing, such that in certain circumstances, community housing may fail to operate as a social housing option without these additional services included in tenants' rent.

In response to *Consultation Question 103*, Melbourne City Mission strongly agrees that the list of fees and charges borne by landlords also include pump out charges for septic tanks.

Without this, tenants may unfairly bear the costs of the use of past tenants or for septic equipment that has naturally deteriorated over time. It is our belief that pump out charges for septic tanks falls under the category of essential maintenance as a classification.

In response to *Consultation Question 104*, Melbourne City Mission believes that the following information would need to be accounted for in order to base accurate supply or usage calculations:

- number of places within the larger site or park,
- separating community versus individual usage, and
- separating costs associated with operational requirements (such as landlord's offices and living dwellings) versus tenants' actual usage.

In response to *Consultation Question 105*, Melbourne City Mission asserts that under no circumstance would telecommunications infrastructure *not* amount to a capital improvement. This is an essential capital works item and ultimately improves the rentability of the property, plus the connectivity and liveability of the property for tenants.

8.9 Reporting and addressing damage

In response to *Consultation Question 106*, Melbourne City Mission believes the term 'damage' needs to be defined in the RTA.

8.10 Resolving disputes about repairs

In response to *Consultation Question 107*, Melbourne City Mission wishes to add the following additional changes which would work to promote the timely resolution of repairs disputes:

- extra penalties to landlords for failure to promptly respond to urgent repairs,
- ensuring after-hours safe-guards for urgent repairs are implemented – landlords / real estate agents to provide an emergency number, and
- list of emergency repairs that must be dealt with within a 24 hour period to be provided by landlord / real estate agent.

In response to *Consultation Question 111*, Melbourne City Mission believes that an unanticipated impact may be that in circumstances where a tenant decides not to immediately contact the landlord or real estate agent (due to the minor nature of repair, or alternatively, having a landlord who insists on home-repairs) – the tenant may be unfairly penalised.

9.3 Unregistered rooming houses

In response to *Consultation Question 117*, Melbourne City Mission believes a potential evidentiary issue that may be raised would be the difficulty in determining whether the owner did in fact know that their building was being used as a rooming house and is unregistered. It could prove difficult to produce evidence of this.

In response to *Consultation Question 118*, although Option 9.4 – ‘Enhanced inspection powers for CAV rooming house inspectors’ – may result in better enforcement outcomes in the rooming house sector, Melbourne City Mission holds concerns about what measures would be put in place to effectively ensure this enforcement does not infringe on the privacy and rights of individuals residing in these properties, particularly where access to their rooms is being suggested.

9.4 Operation of rooming house without building owner consent

In response to *Consultation Question 119*, it is the experience of Melbourne City Mission’s housing workers that it is extremely difficult to know which properties are operating as rooming houses without the consent of building owners, particularly in cases where council databases are not up-to-date.

In response to *Consultation Question 120*, Melbourne City Mission believes that education for property owners is a measure that could be considered to prevent rooming house operators from using a building as a rooming house without the consent of building owners.

This education could be delivered through:

- the dissemination of information relating to rooming houses and how they operate, which also works to incorporate information about the online public register of rooming houses, and
- a potential hotline for property owners to contact if they suspect their property is being used inappropriately, or alternatively, making clear that owners and real estate agents have a responsibility to notify the relevant local council if they have reason to believe their building is being used as a rooming house.

9.5 Tenancy agreement in rooming houses

In response to *Consultation Question 121*, Melbourne City Mission believes specifying the terms and conditions of a residency agreement in relation to a fixed-occupancy period ensures that rooming house tenants are aware of their rights and have the option to work in collaboration with the landlord or rooming house operator if both parties wish to agree to a fixed term lease.

9.6 House rules

In response to *Consultation Question 126*, Melbourne City Mission believes that house rules should be displayed in the common room of a rooming house, in addition to all residents receiving a copy in an information pack upon arrival. This ensures that residents have the choice of whether they wish to display the house rules in their individual rooms, as well as all residents being made aware of these rules through display in the common area.

In response to *Consultation Question 127*, Melbourne City Mission believes matters relating to safety, cleaning responsibilities, and visitors are suitable for inclusion in model rules under Option 9.7 – ‘Development of guidance for model house rules’.

In response to *Consultation Question 128*, Melbourne City Mission believes model rules would best accommodate the diversity within the rooming house sector through working alongside residents and operators of rooming houses to create a set of mutually agreed guidelines that are flexible, inclusive and reasonable.

9.8 Rights of entry

In response to *Consultation Question 131*, Melbourne City Mission strongly asserts that the notice period for a two-monthly general inspection of a residents’ room should be extended to 48 hours.

9.9 Utilities

In response to *Consultation Question 132*, Melbourne City Mission holds concerns that permitting operators to charge a resident for water consumption, in cases where the room is separately metered, would become unnecessarily complicated. We believe that all amenities being included in the cost of rent is a more efficient option.

9.11 Personal security and security of mail

In response to *Consultation Question 134*, Melbourne City Mission believes that the RTA should specify how an operator must comply with the requirements to ensure external mail is sorted into the internal mail boxes.

9.12 Quiet enjoyment of other residents

In response to *Consultation Question 136*, Melbourne City Mission holds concerns that the lack of actual guidelines in relation to Option 9.13 – ‘Restrict a resident’s quiet enjoyment duty to conduct within property boundary of rooming house’ – permits the subjective opinion of others and is therefore open to individual interpretation. This could potentially create unnecessary confusion and conflict for all parties involved.

Part C: Dispute resolution and ending a tenancy

10 Dispute resolution services and mechanism

In response to *Consultation Question 138*, Melbourne City Mission wishes to state that no costs should be placed onto the tenant in regards to the proposed additions to CAV's information and advice service.

In Response to *Consultation Question 139*, Melbourne City Mission wishes to list the following additional options that would contribute to raising the awareness of rights and responsibilities:

- building awareness about the role and function of CAV as an organisation (i.e. ads in yellow pages, advertising on television, radio and online, and holding community information forums),
- real estate agents to provide information to tenants about the role of CAV and relevant contact numbers, and
- a refresh of CAV's website to ensure its accessibility.

10.2 Third-party assisted non-binding dispute resolution

In response to *Consultation Question 140*, Melbourne City Mission wishes to state that no costs should be placed onto the tenant, or landlord, for extending CAV's Frontline Resolution and conciliation services.

In response to *Consultation Question 141*, Melbourne City Mission wishes to add that landlords, or real estate agents, could provide a booklet to tenants of services relating to advocacy channels and tenancy mediation services.

10.3 Binding agreements, order and determinations

In response to *Consultation Question 142*, Melbourne City Mission wishes to state that although there is value in implementing an Alternative Dispute Resolution (ADR) body, it must be able to service the purpose of *accessible* mediation and hold decision-making power. We also recommend that no disincentives should be placed on this service, such as additional costs to the tenant and/or landlord.

In response to *Consultation Question 143*, Melbourne City Mission wishes to list the following, recommended roles and functions that might be delivered by a specialist ADR service with the role to support, advocate, refer and coordinate tenants and landlords who are in need of intervention provisions: crisis workers, financial counsellors, general advocacy assistance, interim-response social workers, interpreting service, legal advice and trained mediators.

In response to *Consultation Question 144*, Melbourne City Mission suggests that the ADR service be delivered by organisations such as CAV, TUV, and Justice Connect.

We believe that the service should be funded by State Government and the taxpayer.

10.4 Quality of decision-making by VCAT

In response to *Consultation Question 145*, Melbourne City Mission believes that relevant and up-to-date qualifications of members must be realised to ensure sound judgement and decision making practices.

In response to *Consultation Question 146*, Melbourne City Mission wishes to state that the features of re-hearing processes at VCAT as outlined in Option 10.4A – ‘Introduce re-hearing process for residential tenancies cases at VCAT’ –

are dependent on *how* the appeal process works and the kinds of supports available to tenants in order to be able to complete an appeal application. Until an official appeal is determined, no further action from a landlord should be permitted.

10.5 Compliance and enforcement

In response to *Consultation Question 148*, Melbourne City Mission holds concerns about increased rents used as a strategy by landlords to mitigate costs incurred via civil penalties under the RTA.

In response to *Consultation Question 149*, Melbourne City Mission believes that ‘issuing a range of binding orders’ as an additional power would assist in addressing non-compliance with minimum standards.

In response to *Consultation Question 150*, Melbourne City Mission believes that mandatory landlord insurance written into leases is another approach that should be considered.

11.1.1 Processes for termination

In response to *Consultation Question 151*, Melbourne City Mission believes that a potential benefit of introducing a termination order process to the RTA would be greater flexibility in allowing for mediation processes.

11.1.2 VCAT decision-making process in granting termination and possession orders

In response to *Consultation Question 153*, Melbourne City Mission believes that a potential benefit of expanding VCAT discretion in regards to possession orders and pre-eviction checklists is that tenants with significant barriers are safe-guarded with other courses of action through VCAT *before* being evicted.

Melbourne City Mission also wishes to assert that the definitions of ‘discretionary’ and ‘risk’ must be defined.

In response to *Consultation Question 154*, Melbourne City Mission believes that an alternative option to ensure VCAT decisions regarding possession adequately take into account the reasonableness of the termination, the hardship of the tenant, and to ensure VCAT discretion is favoured over the individual opinions of others (such as landlords and/or neighbours).

Melbourne City Mission also feels that the role of the ADR service would be crucial in circumventing many of these issues before needing to reach VCAT.

We also recommend that eviction checklists are to include referral pathways to relevant community services agencies for further support to the tenant.

11.1.3 Damage

In response to *Consultation Question 156*, Melbourne City Mission feels that a potential benefit of requiring a termination order from VCAT in lieu of giving notice to vacate is the additional safeguards in the flexibility of this new process.

Melbourne City Mission wishes to add that the use of the word 'termination' may still unfairly disadvantage tenants in wrongly thinking they must move out before pursuing the appropriate appeal channels.

11.1.4 Danger

In response to *Consultation Question 158*, Melbourne City Mission believes a potential benefit of amending the language and scope of the provisions for danger is that of providing clarity. In situations of community endangerment, it is easier to understand remediation rather than going through successive breaches due to not understanding that VCAT provisions regarding immediate danger may be a more appropriate and valid response.

In response to *Consultation Question 159*, Melbourne City Mission believes an alternative to clarifying circumstances under which a tenant had caused danger to another person that would constitute grounds for termination is that of the endangered person lodging an IVO (intervention order) or reporting to the police.

In response to *Consultation Question 160*, Melbourne City Mission believes a potential risk is that discretion without a decision-making framework or guide allows for members' own value and personal judgements to have strong implications on a tenancy and the tenants' future rental prospects. This could potentially allow for discrimination, whereby different decisions can be made in similar circumstances dependent on the amount of advocacy the tenant is able to obtain.

11.1.5 Termination by a notice to leave for violence on managed premises

In response to *Consultation Question 163*, Melbourne City Mission believes that a potential circumstance may be if the tenant is actively engaging in supportive

services that will work in collaboration with their behaviors, but also believes that VCAT is to make the final judgement call in situations where the safety of other residents is at serious risk.

In response to *Consultation Question 164*, Melbourne City Mission believes the ability to serve a notice to leave on a resident due to the conduct of their visitor be confined to particular circumstances.

In response to *Consultation Question 165*, Melbourne City Mission believes that other practical information that should be included on an updated notice to leave is the details of tenancy support services such as CAV and TUV.

11.1.6 Disruption

In response to *Consultation Question 168*, Melbourne City Mission advocates for longer notice periods in relation to termination for disruption. A minimum of 14 days should be mandatory, unless there are serious safety concerns or issues that put other people at risk of harm. In cases such as these, the relevant community support pathway referrals should be made to support the individual(s).

In response to *Consultation Question 170*, Melbourne City Mission believes that it is crucial that people know of and understand their rights in relation to termination orders through VCAT. Requiring landlords to apply for a termination order from VCAT in order to service a notice to vacate ensures that tenants are protected by a neutral decision-making body and are not exploited or taken advantage of, particularly in situations where they are vulnerable.

In response to *Consultation Question 171*, Melbourne City Mission advocates for an option to access mediation be considered, offered to the landlord and resident before the matter reaches VCAT. There is significant trauma involved in cases where a resident receives a notice to vacate, particularly in cases where the person is at-risk or vulnerable.

11.1.7 Non-payment of rent

In response to *Consultation Question 172*, Melbourne City Mission believes a minimum period of three weeks is appropriate before action can be taken to negotiate a repayment plan or to terminate a tenancy for non-payment of rent.

In response to *Consultation Question 173*, Melbourne City Mission advocates for landlords / real estate agents informing tenants of when they are behind in rent through a courtesy letter, email, or phone-call advising of rental arrears and options for payment plans. In addition to this, we also advocate for options to pay rent on a weekly or fortnightly basis be instated. Monthly rental payments are an unrealistic requirement for many low-income households.

In response to *Consultation Question 175*, Melbourne City Mission asserts that without the flexibility of payment plans, severe rental stress eventually leads to

pathways to homelessness for households who are already living on the edge. We believe that a mediation process is crucial in instances of late rental payments and that the RTA must clearly define what timeframes 'repeated late payments' fall within.

In response to *Consultation Question 176*, Melbourne City Mission strongly advocates for continuation of tenancy as an alternative option to facilitate and incentivise the use of repayment plans for tenants to pay rent arrears.

11.1.9 Use of premises for illegal purpose

In response to *Consultation Question 181*, Melbourne City Mission believes that an potential benefit under Option 11.22A – 'Require a conviction to be in place for a notice to vacate for use of the premises for illegal purpose' – is that it falls under criminal acts – therefore, there must be actual proof that the premises is being used for illegal purposes rather than the decision being based on hearsay.

In response to *Consultation Question 182*, Melbourne City Mission feels that the provisions described under Option 11.22B – 'Require a landlord to apply directly to VCAT for a termination order for use of the premises for illegal purposes' – are questionable due to the susceptibility of a landlord's word being used against a tenants.

In response to *Consultation Question 183*, Melbourne City Mission believes an alternative to ensure that the provisions are used correctly to avoid wrongful evictions would be for landlords to contact either their local council or police services and that these services investigate the claim independently.

11.1.10 Parting with possession for consideration without consent

In response to *Consultation Question 184*, Melbourne City Mission feels that the provision for parting with possession under Option 11.23 – 'Include parting with possession for consideration without consent as grounds for termination' – is ineffective due to a possible lack of evidence.

In response to *Consultation Question 186*, Melbourne City Mission believes that circumstances such as a tenant having a friend or relative stay a for short, medium or long-term period would put them at risk of being evicted under grounds of sub-letting or financial gain.

11.1.11 Antisocial behavior

In response to *Consultation Question 187*, Melbourne City Mission believes a risk of expanding grounds for termination for anti-social behaviour is in the definition of 'antisocial behaviour'. What is seen as 'antisocial behavior' is inherently subjective and could quite easily be taken out of context.

In response to *Consultation Question 188*, Melbourne City Mission believes that a list of what 'antisocial behaviour' includes should be clearly defined so as not to be left to

subjective interpretation.

11.2.1 Notice to vacate for end of fixed term tenancy

In response to *Consultation Question 189*, Melbourne City Mission sees a potential benefit as being more secure tenancy for the tenant.

In response to *Consultation Question 191*, Melbourne City Mission believes that an alternative reform is for landlords to be responsible in advising tenants that they intend to terminate the tenancy at the end of the fixed-term agreement – a minimum of two to three months prior to the end of the fixed-term agreement.

11.2.2 Notice to vacate for no specified reason

In response to *Consultation Question 193*, Melbourne City Mission sees a potential benefit of increasing the notice to vacate period to 182 days as supporting tenants to access private rental properties in the private rental market that has traditionally had fewer options in the past.

In response to *Consultation Question 194*, Melbourne City Mission advocates for both options 11.27B – ‘Require a reason to be specified for a notice to vacate during periodic tenancy’ – and 11.27C – ‘Require a landlord to apply directly to VCAT for a termination order where termination is for reasons not specified in the RTA’ – not either or.

In response to *Consultation Question 195*, Melbourne City Mission sees a potential benefit of removing the notices to vacate during a periodic tenancy as allowing for more secure tenancy.

In response to *Consultation Question 196*, Melbourne City Mission strongly believes that all options listed in this section need to be included in order to be effective in protecting tenants against unfair termination.

In response to *Consultation Question 198*, Melbourne City Mission strongly believes that the longer the tenancy duration, the longer a period from VCAT should be prescribed.

11.2.3 Notices to vacate for changes of use

In response to *Consultation Question 199*, Melbourne City Mission believes that the requirements to accompany a notice to vacate for change of use under Option 11.28 – ‘Require notice to vacate to be accompanied by evidence of change of use’ – are workable and effective, but require *proof of evidence* of change of use to VCAT from the landlord.

In response to *Consultation Question 202*, Melbourne City Mission advocates for extending the notice period for terminations for changes of use to a minimum of 120 days, unless mitigating circumstances are present on behalf of the landlord (e.g.

financial hardship).

11.2.4 Notice to vacate mortgagee repossession (general tenancies)

In response to *Consultation Question 207*, Melbourne City Mission advocates for a 90 days' notice to vacate period plus compensation for the termination of a tenancy due to mortgagee repossession.

11.3 Terminations provisions and security of tenure

In response to *Consultation Question 209*, Melbourne City Mission believes that Model 3 most effectively provides an appropriate balance of protections to the tenant against unfair termination of their tenancy, while also providing the landlord with adequate confidence that they can manage the risks associated with letting property.

11.5.1 Termination after death of sole tenant

In response to *Consultation Question 212*, Melbourne City Mission believes that Option 11.36B – ‘Streamline provisions and provide for VCAT discretion’ – provides the most effective process for termination of a tenancy following the death of a sole tenant.

11.5.2 Reduced period of notice of intention to vacate in certain circumstances

In response to *Consultation Question 214*, Melbourne City Mission wishes to list the following additional circumstances where we believe tenants would be appropriately entitled to give a reduced period of notice of intention to vacate:

- adjoining tenancies and neighbours who are subject to breach notices, IVO's, unsafe or dangerous persons, police interventions etc. – particularly where tenant may be involved in providing evidence against adjoining tenant or neighbor,
- disability,
- financial hardship,
- family violence, and
- sudden, serious illness.

In response to *Consultation Question 215*, Melbourne City Mission advocates for a minimum of 14 days' notice period as being reasonable and that balances the needs of both landlords and tenants.

12.1 Access to family violence protections in the RTA

In response to *Consultation Question 216*, Melbourne City Mission supports Option 12.1B – ‘Allow VCAT to also consider other evidence of family violence’ – as we believe this has the most flexibility in being able to substantiate family violence without an IVO.

In response to *Consultation Question 217*, Melbourne City Mission believes that the provisions suggested in Option 12.2 – ‘Family violence related applications to be heard by VCAT within a specified time’ – are adequate.

12.2 Terminating a tenancy

In response to *Consultation Question 218*, Melbourne City Mission believes that Option 12.4B – ‘Termination of tenancy via notice to vacate’ – is essential in best addressing the needs of victims of family violence while providing for any potential impacts on landlords and other co-tenants. Our specialist housing workers feel this policy reform is long overdue and will work to protect victims of family violence.

12.5 Challenging notices to vacate

In response to *Consultation Question 222*, Melbourne City Mission believes Option 12.9 – ‘Enable a notice to vacate to be challenged in the context of family violence’ – does strike an appropriate balance between protecting a victim of family violence and managing risks to landlords and other co-tenants. We also wish to state that the alternative of not having this option may lead to instances where stress is prolonged.

12.6 Compensation orders and claims against the bond

In response to *Consultation Question 224*, Melbourne City Mission wishes to state that another factor that should be considered in the serving of notices or documents as part of family violence-related residential tenancies applications is that of perpetrators who *can't* be served due to deliberate avoidance (e.g. leaving the property and staying at a friend’s house).

Melbourne City Mission strongly advises that the serving method be extended to include other common electronic forms of communication, such as email and Facebook.