



Council to Homeless Persons – Residential tenancies act regulations – Response to *Regulatory Impact Statement*



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## Introduction

### Council to Homeless Persons

Council to Homeless Persons (CHP) is the peak Victorian body representing organisations and individuals with a commitment to ending homelessness. CHP works to end homelessness through leadership in policy development, advocacy, capacity building and consumer participation.

Council to Homeless Persons welcomes the opportunity to feedback on the Regulatory Impact Statement (RIS) for the Residential Tenancies Act (RTA). The regulations governing Victoria's rental market can determine how many people experience homelessness in Victoria. Matters contained in the RIS have an enormous capacity to address the level of homelessness in Victoria, and impact on the effective operation of Victoria's homelessness services.

### What we mean by 'ending homelessness'

Homelessness occurs at the intersection of personal vulnerabilities and structural forces, such as poverty, housing affordability and security of tenure. People who become homeless are often financially disadvantaged and some will have spent a lifetime in insecure housing.

Ending homelessness doesn't mean that people will never find themselves without shelter. It means that homelessness will be rare, the experience brief, and it will not recur in a cycle of repeated homelessness.

To achieve this vision, Victoria requires the services to help people manage the vulnerabilities that can lead to homelessness. Pathways into homelessness include eviction, job loss, family violence, mental ill health, relationship breakdown, or indeed a combination of these factors. There is neither a single cause, nor a single solution. Some people may need relatively little assistance for a short period of time, while others may need support over a lifetime.

Ending homelessness also requires action to reduce poverty, increase access to employment and critically, to improve the supply of housing that is affordable to people on low incomes, and the security of people's tenure within that housing.

### Reading this submission

While recognising that all aspects of the RIS will have impacts on homelessness, we have limited our response to those which have the greatest or most direct effect on homelessness. In this submission we first address the matters with the most immediate impact on homelessness (the definition of temporary crisis accommodation, and the prescribed forms) before working through the remaining proposals in the order they have been set out in the RIS. This submission refers regularly to the RIS without replicating the content from the RIS, and should therefore be read alongside the RIS which is available at [chp.org.au/regulatory\\_impact\\_statement-7/](http://chp.org.au/regulatory_impact_statement-7/)

## 7.7 Temporary Crisis Accommodation

### The current situation

Victoria's supported temporary crisis accommodation services, including large congregate services, youth and women's refuges, are exempt from the Residential Tenancies Act. This reflects the intention of crisis accommodation to provide short-term accommodation as a setting for the delivery of support services – it is not provided as a home.

This exemption serves an important practical purpose. Victoria has approximately 400 crisis accommodation beds, while 25,000 people experience homelessness in Victoria each night. While crisis accommodation is not an appropriate response to each of these 25,000 people, it is clear that Victoria's crisis accommodation facilities require the capacity to triage scarce resources and manage the challenges of congregate accommodation for Victoria's most vulnerable people.

Throughout conversations on the proposed definition for Temporary Crisis Accommodation, it has been clear that all stakeholders agree that the definition must be designed to reflect the existing supported crisis accommodation program of approximately 400 beds, without greatly expanding the exemption from the RTA, which would see people who had experienced homelessness denied the protection of the RTA.

### Prescribed period under part a.

The Residential Tenancies Amendment Act requires a period to be prescribed under part a. The RIS proposes a period of 6 months. CHP gives qualified support for this proposed regulation.

While crisis accommodation is intended to be short-stay only, in practice, positive housing outcomes aren't achieved instantaneously once a person has received support. Successfully applying for a rental property, and then gaining possession takes time, especially after a period of homelessness, where the lack of a positive rental history can serve as a barrier to obtaining a tenancy. Nor are all users of supported crisis accommodation alike, with some people requiring the intensive supports available in supported crisis accommodation for a longer period of time. These factors can increase the length of a person's stay in supported crisis accommodation. For this reason, CHP supports the comparatively long option of six months.

However, CHP also believes that a legislative amendment is required to remove the prescribed period altogether. Including a prescribed period does nothing to address VCAT's concern as identified in the RIS that it is unclear whether a residential tenancy is in place upon the conclusion of the prescribed period. While providing a longer period than previously will reduce the number of instances in which VCAT must consider this question, it does nothing to answer the question itself.

There are two other important factors recommending the removal of the prescribed period. The first is that with crisis accommodation resources under significant pressure

(see above), should a residential tenancy be established in a crisis facility, that bed and the important resources that support it would become unavailable to all others who may require it, which would be an inappropriate use of precious crisis resources. The second factor supporting the recommendation of removal of a prescribed period from the RTA, is that the inclusion of a prescribed period has the unintended consequence of legislating the future operation of Victoria's supported crisis accommodation in the RTA. This will mean that DHHS and homelessness providers will not be able to agree to alter the model of supported crisis accommodation in response to changing practice or updated research.

It is CHP's view that parts b to d of the definition should be sufficient to define Temporary Crisis Accommodation without a prescribed period of time (assuming a workable definition under part d).

#### Prescribed accommodation under part d

CHP strongly opposes the proposed definition of Temporary Crisis Accommodation under part d. This definition is far too broad, and can conceivably apply to all non-permanent accommodation provided by homelessness or family violence services. Rather than achieving the agreed aim of exempting Victoria's crisis accommodation from the RTA, this may result in thousands of people experiencing or at risk of homelessness or family violence each year not having any tenancy rights.

Instead, we propose a regulation that achieves three core aims:

- Only covering DHHS funded supported crisis accommodation programs
- In the event that a supported crisis accommodation program offers multiple forms and lengths of accommodation, only covering accommodation provided as supported crisis accommodation
- In the event that an accommodation site provided as supported crisis accommodation has multiple uses, only covering the use of that accommodation as supported crisis accommodation.

In order to achieve these aims, which represent a framework for achieving the shared aim of defining Temporary Crisis Accommodation as it currently operates, CHP proposes an alternative definition:

*d) accommodation that is specifically funded and provided as part of the Department of Health and Human Services (DHHS) Temporary Crisis Accommodation program by a DHHS accredited service agency funded to deliver Temporary Crisis Accommodation support to people:*

- *experiencing homeless or at risk of experiencing homelessness; or*
- *being subjected to family violence or at risk of being subjected to family violence.*

CHP advises that getting this regulation right is essential to the continued functional operation of Victoria's temporary crisis accommodation program. We do not believe

that it would be responsible for the Department to cease consultation on this matter at the end of this RIS consultation, given the substantial likelihood of unintended consequences.

## 8.2 Other regulations, forms, and notices

A range of forms and notices (hereafter collectively called “the forms”) are proposed in the RIS. These forms are of great importance to the operation of the Residential Tenancies Act, and will have a material impact on how people understand their rights and responsibilities under the RTA.

CHP provides detailed feedback during the development of a number of the forms below, but in general, we propose a few clear principles, which the draft forms go some way to achieving:

- Forms should be written in such a way that they provide advice to the recipient (typically the renter), rather than to the person filling out the form.
- They should use plain language.
- They should help people to understand what they should do upon receipt of the form.

### Notice to vacate rented premises

The operation of the notice to vacate has a significant impact on homelessness. Evictions are one of the major pathways into homelessness, and the notice to vacate is the primary means of communicating to people facing possible eviction about their rights and responsibilities in the eviction process. Renters better understanding the process and their rights would reduce evictions, and reduce homelessness.

The draft notice to vacate rented premises is a great improvement on the form that is currently in use (we will call these two versions “the draft” and “the current” form). An unintended consequence of the current form is that it infers to the renter who is the recipient of the notice to vacate, that the residential rental provider is exercising a unilateral power to evict the renter. The inference of a unilateral right to evict was not reflective of the Residential Tenancies Act, and is certainly not reflective of the amended RTA. The result was a large proportion of renters were not aware that they could assert their rights. The draft form addresses this issue well.

Council to Homeless Persons has seen the minor amendments to the draft proposed by Justice Connect Homeless Law, and endorses its submission. In particular we would reiterate a few points from that submission.

It is important for the Notice to Vacate to reflect that from 1 July 2020 VCAT will not terminate a tenancy unless to do so is reasonable and proportionate. As highlighted above, there is a strong impression in the community, created in part by the current form, that a residential rental provider has a right to terminate a tenancy. In order to counter this impression, the draft should reflect this important right for renters against terminations that are unreasonable. In practice, this would mean more renters understanding and asserting their rights under the RTA.



We would also reiterate that while the draft form provides a great improvement on the current form in part 4 of the form (Termination date), the new language remains likely to confuse people into thinking that they must have vacated the premises by the Termination date. While recognising that the term “Termination Date” comes from the RTA itself, the form should make clear what this termination date means for the recipient renter, which the draft form fails to do. We would however add that the changes that have already been made in this section of the draft are important, and will go some way to addressing the misconception that the termination date is the date by which renters are required to vacate the property having received this notice. It must however provide advice to a renter about what this termination date means.

Lastly, we recommend the removal of the list of reasons and evidence requirements for each allowable use of a notice to vacate. It is important to recognise that the receipt of a notice to vacate is an enormously stressful occasion, denoting that people are on the path to losing their homes. These additional pages of information, which do not provide the recipient of the notice with information that is tailored and relevant to them, are likely to create confusion, and add to the stress of the notice to vacate. This information should be provided to those filling in a notice to vacate via another means, such as making this information available online.

#### Notice to leave to resident of managed premises or resident’s visitor

The notice to leave to a resident of managed premises or resident’s visitor is a form that only applies to people in rooming houses. It is important to recognise the immense vulnerability of most rooming house residents. One study found that 25 per cent of people living in rooming houses were sleeping rough prior to entering the rooming house<sup>1</sup>. As such, CHP recommends two additional changes to the draft presented in the RIS, greater clarity, and more information about support.

CHP has had an opportunity to review the submission from Justice Connect Homeless Law (JCHL) on this matter, and endorses its submission. In particular, we note the inclusion of the word temporarily across the document to provide clarity that a person’s removal is time limited. JCHL’s proposed information on the collection of belongings is also superior in clarity than the version presented in the RIS.

Most important however is the inclusion of information about accessing Crisis Accommodation. Given that people who receives a notice to leave is immediately barred from accessing their home, it is important that information is provided to them about how they can find a safe place to sleep during their removed period. It is important to recognise the numbers of recipients of a notice to leave who will not have anywhere to go. The appropriate mechanism for this is the crisis accommodation phone line (1800 825 955). If this information is not included, the impact will be that recipients will be less safe.

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<sup>1</sup> The Salvation Army Adult Services, 2011, ‘No room to move? Report of the Outer West Rooming House Project’, p.16

CHP has provided this advice at previous stages of this consultation process and is concerned that the proposal has not been adopted. There is no reason for any stakeholder to object to the inclusion of this vital information as it benefits all concerned parties, including the excluded rooming house resident, the rooming house operator, fellow residents at the rooming house, and Victoria's homelessness service system. CHP is unclear why this proposal has not been adopted to date, but notes again that this change is vital to the success of the new notice to leave to residents of managed premises or residents' visitors.

## 5.1 Responsibilities for safety

The safety of properties is of utmost concern to homelessness. In Victoria's highly competitive rental market, people with poor rental histories and histories of homelessness are often only able to obtain poor quality housing – sometimes of dangerously poor quality. As such, the responsibilities of renters and residential rental providers for safety, are perhaps of most concern in relation to the lives of people who have experienced homelessness.

### Safety related activities

The RIS proposes a list of safety related activities that are the responsibility of the residential rental provider, and another list of activities that are the responsibility of the renter. CHP supports the proposed responsibilities for safety related activities, which achieve the aim of being easily understood.

In particular, it is important to note that the RIS proposes that the majority of responsibilities are held by the residential rental provider. It is important that this is the case. The RTA governs all residential tenancies, and so, must be designed in such a way that all renters are able to meet their responsibilities – including those with vulnerabilities. Were the safety related activities to prove difficult for renters to understand, it is likely that a large portion of renters, such as those with cognitive impairments, or intellectual disabilities, would be burdened with responsibilities that they could not reasonably be expected to meet. This would be a significant unintended consequence.

### Record keeping of gas and electrical safety checks

Council to Homeless Persons supports the proposal put in the RIS for record keeping of gas and electrical safety checks. This common sense approach provides renters who are concerned about the safety of their homes with reasonable access to records of electrical and gas safety checks. Given the quality of housing that many formerly homeless people must often accept, this is of particular importance to people who have experienced homelessness. Anecdotally, we know that the safety of electrical wiring in many homes is of concern to many people who have experienced homelessness.

### Costs

There are a number of matters in the costs section in relation to safety related



obligations about which CHP provides comment. The first is that CHP advises that the RIS fails to account for the savings from reduced fires from faulty electrical wiring, an estimate of which is provided by Energy Safe Victoria. The second is that the Value of a Statistical Life likely represents an undervaluation. This is because the demographic profile of renters is younger than the general population, and therefore the death of a renter likely represents a greater loss in future productive value than the RIS has assumed. This means that the benefits of the safety related changes are likely to be higher than accounted for in the RIS.

However the most important matter to address in relation to the costs of responsibilities to safety section of the RIS is the proposed transition arrangements. The RIS proposes that these responsibilities should only apply to new rental agreements, providing progressively greater coverage of Victoria's rental housing stock over time. Without providing comment on whether this is a necessary arrangement, it is important to note that this significantly disadvantages renters who retain a property long-term. In particular, the RIS notes the low turnover of Victoria's public housing, and so the slow adoption of these responsibilities in that section of the market. Given that 90 per cent of public housing allocations go to people who have the greatest need (including homelessness)<sup>2</sup>, and given that in these instances, sustaining a tenancy is a substantial positive outcome, the transition arrangements are likely to have a disproportionate impact on those who have experienced homelessness. As with other phased transitional arrangements throughout the RIS, CHP proposes that all rental properties are compliant in on 1 July 2023, regardless of whether a new rental agreement has been applied.

## 5.2 Minimum standard of rental properties

As mentioned above, property conditions and minimum standards have a disproportionate effect on those experiencing or having previously experienced homelessness. These cohorts have perhaps the least market power of anybody in the private rental system, and are therefore far more likely to receive offers of only the worst maintained or equipped properties. Data demonstrating as much is provided in the RIS.

### Heating

CHP strongly supports the inclusion of a heating standard. As identified in the RIS, cold weather is attributable for a great many deaths in Australia, and it is appropriate that this should be addressed.

Without providing comment on the detail of the energy efficiency arrangements proposed, CHP is supportive of the inclusion of energy efficiency standards. A heating standard can only be effective if renters can afford to use that heating. The removal of energy efficiency standards would see the functional elimination of a heating standard

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<sup>2</sup> Productivity Commission, 2019, *Report on Government Services; Housing attachment tables; Table 18A.15 Greatest need allocations as a proportion of all new allocations — public housing (per cent)*

for the poorest households.

### Transition arrangements

As mentioned previously, it is not acceptable that some renters in sustained tenancies may never have access to the protections of minimum standards. This will particularly have a negative impact on people who have experienced homelessness, as many are able to achieve sustainable long term housing outcomes in social housing. For many social housing residents it will never be viable to move house, thus excluding them from these protections. CHP strongly calls for all properties to be required to be compliant by 1 July 2023.

### Insulation

CHP was disappointed to note that insulation has been excluded from the proposed minimum standards, as it would seem to meet the Minister's criteria of "basic, yet critical requirements which no reasonable person could object to". We note that while the RIS comments that "DELWP is commencing work for the consideration of a minimum insulation standard for rental properties", the RIS lacks a commitment from the Department to institute such a standard.

### Cooling

The lack of a cooling standard is one of the most notable flaws in the proposed minimum standards regime. This omission is particularly regrettable given that the RIS identifies that the use of split-system units will be a common means for residential rental providers to meet their heating and energy efficiency obligations. By omitting cooling from the minimum standards while the Department continues to consult with DELWP, it is likely that residential rental providers will buy and then quickly need to replace compliant heating if and when a cooling standard is introduced, while renters will suffer unnecessarily. Nor does CHP agree with the implication in the RIS that 0.5% of deaths in Australia being attributable to heatwave stress is a low proportion. CHP believes that this figure actually underscores the importance of a cooling standard.

### Locks

CHP supports the proposed standard. Locks are an important security measure for all homes, and are the type of standard to which no reasonable person could object. Specifying single action deadlocks will ensure that locks are of sufficient quality to avoid mere technical adherence to the standard, and are also an important fire-safety measure.

### Vermin proof bins

CHP supports the proposed standard. Renters should be empowered to dispose of their waste in a Council approved way.

### Toilets

CHP supports the proposed standard. Appropriate home sanitation is an important public health measure. That a small proportion of renters are currently unable to access appropriate sanitation in their home fails to meet community expectations.

### Bathroom facilities

CHP supports the proposed standard. Washing facilities with hot and cold water are an important public health measure. That a small proportion of renters are currently unable to access washing facilities with hot and cold water fails to meet community expectations.

### Kitchen facilities

CHP supports the proposed standard. The capacity to prepare food in a property is a standard that would meet community expectations. This includes all of the elements proposed in the RIS, each of which is an important inclusion.

### Laundry facilities

CHP supports the proposed standard. Hot and cold running water in laundry facilities is a community expectation.

### Structural soundness, Mould and dampness & Ventilation

That homes are structurally sound and weatherproof, and free from mould and damp caused by or related to the building structure is essential. Housing that leaves people exposed to the weather, or living in dangerous mould is inadequate for the purpose of providing a living environment, and so CHP supports these proposals.

However, CHP has been advised that the need for ventilation in “wet areas” of the house has been omitted from the list of minimum standards, as it is the Department’s belief that meeting the structural soundness and mould related standards would require adequate ventilation. CHP disagrees, and strongly calls for a ventilation standard.

A common practice in Victoria’s rental market at present is the treatment of structural mould by painting over it. This is a dangerously inadequate response, and one that these regulations do little to eliminate. A ventilation standard is a necessary standard to protect the health of vulnerable renters.

### Electrical safety

Without providing comment on the detail of the proposed standard, CHP supports the inclusion of an electrical safety standard. This is an important safety standard.

### Window coverings

CHP supports the proposed standard. While this standard would meet community expectations of the level of comfort a renter should be able to reasonably expect, it is also important to note that window coverings are an important safety and security measure for renters. CHP believes that all three elements of the proposed regulation are important and must be adopted, namely that window coverings; can be opened and closed, reasonably block light, and provide reasonable privacy.

### Windows

CHP strongly supports this proposed standard. While the RTA provides for locks in all

windows capable of having locks, the inclusion of this standard (that windows incapable of having locks should have latches) is an important safety measure. That windows should be able to be set in open and closed positions is an important energy efficiency measure.

### Lighting

CHP supports the proposed standard. Natural light in all habitable rooms, and artificial light appropriate to the function of all internal rooms meets community expectations.

### Additional matters to be included

As well as the need to provide for cooling and adequate ventilation (see above), CHP believes that the minimum standards should also include fly-wire screens on windows in all habitable rooms. This is an important energy efficiency standard.

CHP also believes that there should be a standard for an adequate number of electrical sockets in each habitable room. This would both meet with community expectations, but would also be an important safety standard, designed to eliminate the dangerous over-reliance on power-board adaptors, which can be dangerous.

## 5.3 Energy efficiency for end of life appliances

Council to Homeless Persons supports the measures included in this proposal. This proposal will help to bring the living standards of renters in line with those of the rest of the community, recognising that renting is now a lifelong form of tenure for many Victorians.

However, we would also advocate for the inclusion of a broader scope of appliances for which energy efficiency standards should be applied at the end of the appliance's life. This should include all appliances subject to the star rating system that are provided by the residential rental provider. The current proposal seeks to exclude appliances that are only uncommonly provided by residential rental providers, which only serves to undermine the important aims of this proposal.

## 6.2 Mandatory disclosures

As with other sections of the regulations, the mandatory disclosures regulations are an important quality safeguard, which will have an outsized impact on those who have experienced homelessness, many of whom are able to obtain only the poorest quality rental housing.

Council to Homeless Persons endorses Tenants Victoria's submission that mandatory disclosures should be made during the application process, rather than at the time of the rental agreement.

The matters proposed in the RIS for mandatory disclosure are far too narrow. Below, we highlight three additional matters that we believe must be made into mandatory

disclosures, in order to promote the fair operation of the rental market for people who have experienced homelessness.

#### History of damp and mould treatments

The recent history of damp and mould treatments in a property is an important matter for disclosure. CHP understands that Department rejected this proposal because they believed it immaterial; that a mould treatment represented the eradication of a mould problem. CHP contends that this assumption is false, and that while certain mould treatments (such as fixing the roofing) represent the eradication of a mould problem, other mould treatments (such as painting over mould) actually serve as an important indicator that a property has dangerous mould problems that are likely to impact on renters' health. As such, the recent history of mould treatments (including frequency and treatment type) should be subject to a mandatory disclosure requirement.

#### History of use which increases the likelihood of chemical contamination in properties and detailed information on the testing

As with the history of damp and mould treatments, information on uses that increase the likelihood of chemical contamination is an important health and safety measure. Chemical residues can be both invisible, and extremely hazardous to a person's health. Where residential rental providers are aware for example that a property is contaminated from extensive use of methamphetamine, prospective renters have a right to know this, and to determine whether the property is likely to be safe for them and their families. Renters' lives should be made a priority, and one essential means for achieving this, is that there should be a mandatory disclosure for histories of use which increase the likelihood of chemical contamination in properties.

#### Existing applications for development or renovation of neighbouring properties

Renters have a right to the quiet enjoyment of their home, and this can be impeded by neighbouring housing developments. This measure is not simply about ensuring renters' comfort in their homes, but has important health ramifications. A significant proportion of household experiencing homelessness are young mothers and their children. For highly vulnerable young families, having just experienced the trauma of homelessness, the ability to build strong healthy routines is a critical component of their recovery. If said routines (such as children's sleep schedules) are likely to be further impacted by noisy building works in adjoining properties, those families have a right to make an informed decision about the suitability of that property prior to being locked into a rental agreement.

## 6.4 Urgent repairs and urgent site repairs

Council to Homeless Persons has had an opportunity to review the submission made by Housing for the Aged Action Group. We reiterate its call that urgent site repairs need to also include common facilities that have a significant impact on health and amenity, for example, a broken light that leaves a stretch of footpath dark at night presents a serious hazard. The inclusion of such features and facilities is in line with the aims of the regulation, and ought to be included.

## 6.5 Modifications to rented premises

Without providing comment on other aspects of the proposed regulation, CHP makes two comments on the proposed regulation for modifications to rented premises.

First, CHP supports the proposed list of prescribed practitioners. It is important to recognise that a range of practitioners have a range of areas of expertise, particularly when it comes to creating built environments that support a person's health. The proposed regulation recognises that expertise.

Second, Council to Homeless Persons has had an opportunity to review submissions by Tenants Victoria and Domestic Violence Victoria that call for security measures in properties, the need for which results from family violence, to be included in the list of matters that the renter may carry out without the consent of the rental provider. This is a critical safety measure, and is critical to saving the lives of women and children subject to family violence.

## 6.6 Condition reporting

Council to Homeless Persons supports the proposed condition reports, including across Part 2 and Part 3. While recognising that the new condition reports represent additional imposts on renters and residential rental providers due to their comprehensive natures, we believe that this greater impost is necessary to achieve the regulation's aim of clarifying disputed matters during and after tenancies.

## 6.7 Professional cleaning terms

Council to Homeless Persons strongly objects to the inclusion of any prescribed term for professional cleaning. The Residential Tenancies Amendment Act makes clear that it is prohibited to require professional cleaning except in circumstances where cleaning is required to return the property to the condition it was in at the commencement of the rental agreement, taking into account fair wear and tear.

The intention of these sections of the Act (including general tenancies and rooming house tenancies) is clearly to prohibit the requirement of professional cleaning, excepting where it is necessary. CHP is strongly of the view that the Act sufficiently achieves this outcome, without the inclusion of a prescribed term.

In fact, a prescribed term is likely to create unintended consequences. By including in tenancy agreements a condition that re-states that professional cleaning can only be required in order to restore a property to the condition that the renter or rooming house resident is already required to achieve, CHP believes this term will lead to confusion. Many renters will read this as a requirement that if a property was professionally cleaned prior to their tenancy agreement, it is incumbent on them to pay for professional cleaning. Nor is this an unreasonable interpretation of the proposed prescribed term.



The opportunity for such confusion is even greater among highly vulnerable rooming house residents (whose vulnerability we have evidenced earlier in this submission). As such, CHP makes a particular call for the removal of any prescribed term in Part 3 agreements.

It is CHP's strongly held view that the best way to achieve the aim that this regulation seeks to achieve (to ensure that renters and rooming house residents cannot be required to pay for professional cleaning unless it is required to restore a property's condition) would be to decline to create a prescribed term. CHP strongly supports an approach that includes no prescribed terms under s27C and 93A of the Act.

Should the Department decline to take CHP's advice, CHP has reviewed the submission by Tenants Victoria and endorses it as superior to the proposal put in the RIS.

## **6.9 Prohibited terms**

While the proposed regulation includes important matters, Council to Homeless Persons believes that terms that are invalid under the RTA should also be prohibited. While recognising that the RIS states that it is not necessary to prescribe every term that seeks to exclude, restrict, or modify the protections of the RTA, CHP disagrees.

Recognising the vulnerability of many renters, and particularly those who have experienced homelessness, CHP advises that many renters are not aware of what constitutes an invalid term. As such, failing to prohibit invalid terms from being included is likely to see terms that impinge on the renter's right to quiet enjoyment being complied with by renters, whether they are valid or not. It is reasonable that rental providers should share the responsibility for being aware of whether terms are valid by including a general prohibition on invalid terms in the regulations.

## **7.1 Maximum amount of bond**

Council to Homeless Persons supports the proposed value for the prescribed amount beyond which the maximum bond loan no longer applies. The intention of this exemption has always been to cover only luxury properties, but drastic increases in Victoria's rental prices have excluded more and more rental properties from this maximum. We note with approval that the proposed \$900 threshold would exempt only 1.45% of properties from the maximum bond limit. This successfully achieves the law's intent.

## **7.2 Fixed term rooming house agreement**

The creation of a fixed term rooming house agreement creates a significant opportunity for an unintended consequence which the Department must address.

The creation of a fixed term rooming house agreement was intended as a mechanism for providing certain groups of rooming house residents (such as those in student

accommodation) with greater security of tenure than is available under a typical rooming house agreement. CHP understands, and the text of the *Heading for Home Final RTA Options Paper* confirms, that it was never intended that fixed term rooming house agreements would supplant the standard agreement for most rooming house residents.

Should the fixed term rooming house agreement see large scale uptake in standard rooming houses, this would represent a significant reduction of the rights of rooming house residents. They would also be subject to responsibilities and obligations that are inappropriate for the demographic cohort of many of those living in rooming houses.

Council to Homeless Persons understands that the Act requires the Department to develop a fixed term rooming house agreement. The Act is silent however on whether the Department should provide a rooming house agreement that reflects the standard operation of rooming houses. At a minimum CHP believes that a standard agreement for rooming houses must be made available, and promoted alongside, or preferably promoted as preferable to, the required fixed term rooming house agreement.

CHP also advises that the uptake of fixed term rooming house agreements should continue to be monitored, and should fixed term rooming house agreements become commonplace in standard rooming houses, a legislative amendment may be required. This is necessary to address the great possibility that the fixed term rooming house agreement will have negative consequences far beyond the purpose for which it was intended.

### **7.3 Rental applications**

Council to Homeless Persons supports the proposed Statement of Information for Rental Applications. However, CHP further believes that questions requiring a person to identify their protected attributes ought to be prohibited (see 7.4 prohibited questions).

### **7.4 Prohibited questions**

Council to Homeless Persons strongly supports the proposed prescribed information. We further call for additional information to be prescribed. First we focus on why the items that are prescribed are important.

#### **Whether the applicant has previously taken legal action or a dispute about a property**

An aim of the Residential Tenancies Amendment Act 2018 was to improve the ability of renters to assert their rights at VCAT. The ability for residential rental providers to ask prospective renters whether they had previously asserted their rights would be very likely to provide a basis for residential rental providers to make prejudicial judgements against renters who had done so. Whether individual residential rental providers did form negative judgements about rental applicants who had attended

VCAT or not, were they to have the ability to ask for this information to be provided, it would have a chilling effect on the ability of renters to assert their rights.

### The rental applicant's bond history or whether a claim had been made on a bond

The Residential Tenancies Act provides for the use of Residential Tenancy Databases (blacklists), and regulates the information that can and cannot lead to inclusion on a blacklist – including providing financial thresholds on bond claims under which a person may not be listed on a blacklist.

Should a residential rental provider ask for bond histories or whether claims had been made on a bond, this would circumvent and undermine the protections provided in the RTA.

### Passport, if alternative proof of identification is required

The holding of a renter's passport creates a significant power imbalance between renters and residential rental providers. It limits a renter's movement, and anecdotally, we understand has been a mechanism to coerce people involved in work-stay arrangements. It should be prohibited.

### A statement from a credit or bank that has not been redacted

Following a NZ property manager telling a New Zealand Parliamentary inquiry in 2018 that she "[won't rent to people who buy KFC, trucks, or pay court fines](#)", CHP heard numerous anecdotal reports of property managers making judgements about prospective renters based on where they choose to spend their money.

It is worth noting that many people experiencing homelessness have little choice but to buy ready-to-eat food in the absence of having a kitchen, or to be engaged in the court system as the result of family violence. Such judgements are illegitimate and should be prohibited by ensuring that Residential Rental Providers cannot request bank statements.

### Details of a rental applicant's nationality or residency status

Information on nationality or residency status can be used to form discriminatory judgements against rental applicants. This information does not have any legitimate use to a residential rental provider, and should be prescribed for prohibition.

### The income of a rooming house applicant, where the rental cost has not yet been provided

Council to Homeless Persons strongly supports the inclusion of this prescribed prohibited question. Many rooming house vacancies are not publicly advertised, and rents are instead set according to which income support payment a renter is receiving. It is illegitimate for rooming house operators to seek to charge a higher price for the same product just because a person receives the (higher) disability support pension. Prescribing this information would address that inappropriate practice.

#### Other matters: Protected attributes

Council to Homeless Persons has reviewed the submission by Tenants Victoria, and supports its call to prescribe information that leads to residential rental providers having access to information about a rental applicant's protected attributes. Discrimination in the rental market is an ongoing issue for many people, and protected attributes are irrelevant to a person's rental application.

#### Other matters: DHHS bond loans, Centrepay, and statutory incomes

Council to Homeless Persons further calls for the prescribed information to include whether a person is seeking to access DHHS's bond loans scheme, utilise Centrepay, or is on a statutory income. While this information may be necessary at the point of completing a tenancy agreement, it is not of use when determining whether a person is a suitable applicant for a property. Requesting this information has significant capacity to keep people homeless for longer.

## 7.5 Family and personal violence

Council to Homeless Persons strongly supports the list of prescribed matters, both in relation to VCAT and as they pertain to Residential Tenancy Databases (blacklists). The adoption of this list of prescribed matters would represent a significant contribution to the realisation of the recommendations of the Royal Commission into Family Violence.

Council to Homeless Persons has had an opportunity to review the submission of Domestic Violence Victoria calling for legislative amendments that would remove the need for Domestic Violence Orders to have been made in order to gain access to certain protections under the RTA, and endorses that call.