Residential Tenancies Act Review

Rent, Bond and Other Charges Submission

22 April 2016

# About Victoria Legal Aid

Victoria Legal Aid (VLA) is a major provider of legal advocacy, advice and assistance to socially and economically disadvantaged Victorians. Our organisation works to improve access to justice and pursues innovative ways of providing assistance to reduce the prevalence of legal problems in the community. We assist people with their legal problems at courts, tribunals, prisons and psychiatric hospitals as well as in our 14 offices across Victoria. We also deliver early intervention programs, including community legal education, and assist more than 100,000 people each year through Legal Help, our free telephone advice service.

VLA lawyers provide phone advice, in person advice and duty lawyer representation to tenants. We prioritise tenants who are homeless or at risk of eviction, living with disability (including mental illness), or who are otherwise socially and economically disadvantaged. We provide duty lawyer services daily in the residential tenancies list at the Victorian Civil and Administrative Tribunal (VCAT) in Melbourne and if able to do so on an as needs basis around the state. We also provide limited casework services for eligible tenants with ongoing hearings at VCAT and occasionally assist people seeking judicial review in the Supreme Court. VLA is represented on the VCAT Residential Tenancies User Group and the Federation of Community Legal Centres’ Tenancy Working Group.

In the 2014/15 financial year we received approximately 3,184 enquiries through our Legal Help telephone line in relation to landlord/tenant disputes and other real estate matters. We provided advice in relation to landlord/tenant disputes and other real estate matters on 2,230 occasions. On 827 occasions the person we provided advice to was born outside of Australia and in just under 28 per cent of these occasions, the person we assisted had arrived in Australia within the last 5 years. On 390 occasions we provided representation to tenants, and in just over 33 per cent of these occasions the person we represented disclosed having a disability.

# Key contacts

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# Executive Summary

Demand for housing in Victoria is increasing and private rental is becoming less affordable, particularly for low-income households.[[1]](#footnote-1) In Victoria there are currently approximately 34,464 people on the public housing wait list,[[2]](#footnote-2) and research has shown that legal problems in the area of housing can cause stress-related illness, physical ill health, relationship breakdown and financial strain.[[3]](#footnote-3) It is well understood that housing issues can also lead to other legal problems. Affordability issues are fundamental to people’s capacity to obtain and maintain tenancies, and some of the recommendations made in this report were first detailed in our *Security of Tenure* submission.

VLA supports reforms to the *Residential Tenancies Act 1997* (RTA) and the *Victorian Civil and Administrative Tribunal Act 1998* (VCAT Act) to ensure that frameworks for the management of tenancies promote both affordability and accessibility of housing. VLA considers it imperative that legal remedies are accessible and effective.

This submission outlines specific reforms aimed at enabling people to exercise their legal rights and removing barriers that prevent people from securing housing. We also identify areas where processes already available in the RTA could be made more efficacious based on our practical experience. We’ve supported amendments that align our legislation with that of other Australian jurisdictions, protecting those who are at risk of significant housing stress, and we’ve made recommendations focussed on improving the transparency and accessibility of existing RTA processes.

# Summary of recommendations

## Remove barriers to obtaining housing

### Recommendation 1: Create and disseminate policies for loans to tenants out of the Residential Tenancies Fund under section 496 of the RTA and enable repayments of the loan from previous bonds

1.1 Consumer Affairs Victoria (‘CAV’) prepare policy guidelines for the provision of payments under section 496 of the RTA.

1.2 CAV consider how it can promote the scheme.

1.3 Amendments be made to the RTA to enable the direct refund of bond from previous properties to the Residential Tenancies Fund where the Director of CAV has advised the Residential Tenancies Bond Authority (‘RTBA’) that a loan has been made to a tenant under section 496 of the RTA.

### Recommendation 2: Maximum bond should be limited to one month’s rent

Amend section 31 (3) of the RTA so that the weekly rental above which a bond can exceed the maximum bond reflects the highest 20 per cent of rental properties in the market.

### Recommendation 3: Limit ability of landlord to claim bonds after 10 days

Amend section 126 to explicitly state that it does not apply to the 10 business day limitation period in section 417(2) of the RTA for making an application in relation to a tenant’s bond.

### Recommendation 4: Rent should not be required more than two weeks in advance

Amend section 40 of the RTA to restrict landlords from asking for more than two weeks rent in advance.

### Recommendation 5: Centrepay should be a recognised method of payment for rent to all real estate agents

Amend the RTA or the prescribed standard-form tenancy agreement to provide tenants receiving social security payments with a right to pay rent via Centrepay where the tenancy is managed by a real estate agent.

## Improving the efficacy of the current legislation

### Recommendation 6: Transparent processes for assessing rent increases under the RTA and use of data from the RTBA to assist with this task

6.1 CAV make publically available its policies and procedures for performing its rent assessment function under section 45 of the RTA.

6.2 CAV and the RTBA consider whether data from the RTBA could provide a useful and objective reference for assessing comparable rents under section 45 and 47 of the RTA.

### Recommendation 7: Amend section 44 of the RTA to require landlords to specify any increases proposed during a fixed term

Amend section 44(4) to require that the details of any rent increase during a fixed term are detailed in the tenancy agreement. This should include the day it will be implemented and the amount of any increase.

### Recommendation 8: The Rent Special Account provisions should be used more often to ensure repairs are completed and VCAT orders are complied with

8.1 Amend the Rent Special Account provisions to require VCAT to make orders requiring payment into a Rent Special Account where VCAT is satisfied that the landlord is in continued breach of a VCAT order.

8.2 Amend the Rent Special Account provisions to require VCAT to allow a tenant to claim compensation, or the costs of repairs, directly from the Rent Special Account.

### Recommendation 9: Prohibit all charges for use of third-party rent payment facilitation services

Amend section 51 (3)(b) of the RTA so that it prohibits charges in relation to both the establishment and use of all types of electronic transfer methods for the payment of rent under a tenancy agreement.

### Recommendation 10: Support the recommendations of the Royal Commission into Family Violence report

10.1 Amend s. 233A of the RTA so that VCAT is empowered to make orders under that provision without the need for a final intervention order.

10.2 Amend the RTA so that VCAT has the power to apportion liability for rental arrears where a person has left the rented premises due to family violence.

# Focusing on affordability and sustainability of tenancies

A focus of the Issues Paper is the significant impact of affordability of rental premises for low-income households. Our recommendations focus on amendments and clarifications of existing law aimed at increasing the affordability and sustainability of tenancies for people facing social and economic disadvantage, and for low-income tenants seeking to obtain secure and safe long-term housing.

## Remove barriers to obtaining housing

Initial costs associated with obtaining housing are a key affordability issue for people facing social and economic disadvantage and marginalisation. Bonds are usually a minimum of one month’s rent and are usually paid at the same time as the first month’s rent. Where a tenant is moving from one property to another then it is likely they will need to pay bond at the new property before they receive any funds from their previous tenancy. Many tenants are of course required to vacate in circumstances where they had not planned financially for a new bond, and are forced to attempt to obtain the funds during the significant disruption of sourcing and obtaining new accommodation. The requirement that rent be paid one month in advance also contributes to the significant upfront financial costs in establishing private rental.

The options for managing ongoing rent obligations also impacts on those under financial stress. We make recommendations that aim to improve the ability of tenants to meet these obligations.

### Payments from the Residential Tenancies Fund for those who require financial assistance at the beginning of the tenancy

Low income tenants often face acute financial disadvantage when forced to pay a new bond and the first month’s rent on a prospective property prior to the release of their current bond. Financial assistance is currently available through the Director of Housing’s Bond Loan Scheme and, in more limited circumstances, the Housing Establishment Fund (‘HEF’). However, the current income and asset eligibility criteria for the Bond Loan Scheme essentially limits the scheme to those in receipt of Centrelink payments. HEF payments may be made to those ineligible for the Bond Loan Scheme; however; transitional housing managers generally only provide a small contribution toward the bond or rent, and only in circumstances where the rent is a sustainable proportion of an applicant’s income. These limitations restrict assistance under the scheme to only the poorest tenants. Moreover, if an applicant has a current bond issued through the Bond Loan Scheme, a new bond will not be issued in the absence of an undertaking by the landlord that the current bond will not be called upon.

We have observed through our duty lawyer service that a large number of tenants who are not eligible for assistance through HEF or the Bond Loan Scheme also face great difficulties saving for a new bond at the end of a tenancy*.*

Section 496 of the RTA enables the Director of Consumer Affairs Victoria (‘CAV’) to authorise the provision of financial assistance from the Residential Tenancies Fund to an applicant under a proposed tenancy agreement for payment of all or part of a bond, and all or part of the first month’s rent. It is VLA’s experience that tenants are unaware of this provision, and the process for making an application to the Director. The financial pressure on relatively low-income tenants could be alleviated through better use of the Residential Tenancies Fund.

It would increase access to this fund if there were published policy guidelines and processes for prospective applicants, and appropriate action is taken to promote the scheme. Consideration should be given to a process for tenants to repay the loan over the first 12 months of a tenancy agreement, thereby reducing the financial pressure and potentially allowing tenants to repay the loan after recovering their former bond. In addition the RTA could be amended to enable the RTBA to transfer any released bond from a tenant’s previous property directly to the Residential Tenancies Fund to repay any loan. A similar process exists for Director of Housing Bond Loan Scheme in s. 421 of the RTA.

**Mark and Hannah’s experience**

Mark and Hannah received a notice to vacate as their landlord was selling the property. Mark was employed as a labourer while Hannah was a student and reliant on Centrelink payments. They had never been in rent arrears however their budget was always tight. Shortly after receiving the notice to vacate Mark injured himself and was not able to work for a period of four weeks. Mark and Hannah were searching for new properties during the notice period, and were able to provide proof of good rental history and ongoing employment.

They were offered a new private rental and were required to pay a month’s rent in advance and a bond. As Mark had been unemployed they did not have any income other than Hannah’s Centrelink payments, which they had used on their current rent. Mark and Hannah turned to a private bond loan company and signed an agreement for that company to provide the bond to their prospective agent, which they would repay with interest. The agent received confirmation from the company that a bond would be paid, however the agent refused to hand over the keys until the bond was received.

The private bond loan company took three weeks to provide the bond to the agent at the new property. During the three weeks, Mark and Hannah were forced to move in to an overcrowded house occupied by his parents and siblings. Ultimately Mark and Hannah received the keys to their new rental property however they are now repaying a debt to a third party who are charging excessive interest.

Recommendation 1: Create and disseminate policies for loans to tenants out of the Residential Tenancies Fund under section 496 of the RTA and enable repayments of the loan from previous bonds

1.1 CAV prepare policy guidelines for the provision of payments under section 496 of the RTA.

1.2 CAV consider how it can promote the scheme.

1.3 Amendments be made to the RTA to enable the direct refund of bond from previous properties to the Residential Tenancies Fund where the Director of CAV has advised the RTBA that a loan has been made to a tenant under section 496 of the RTA.

### Limiting the maximum bond payable at the beginning of the tenancy

While bonds are not compulsory under the RTA, it is standard industry practice for landlords to require that tenants pay a bond of one month’s rent at the commencement of their tenancy. Section 247 of the RTA provides that tenants can be evicted for failing to pay the bond required in the tenancy agreement. Tenants who are unable to afford the bond will therefore experience significant barriers to obtaining housing in the private rental market. For this reason, bonds that exceed one month’s rent should be rare.

The RTA contains reasonable protections for landlords in relation to bonds. It allows for a landlord to ask for bond in excess of one month’s rent where they rent out their principal home (s. 31(2)), and gives discretion to VCAT to increase the maximum bond amount for a particular property having regard to the character and condition of the premises, or goods, furniture and fittings provided with the premises (s. 32 and s. 33).

As detailed in the Issues Paper, the original intention of the RTA was for bonds in excess of one month’s rent to be limited to housing in the top 20 per cent of the rental market. We support this setting, but note that the current limit in the statute has not been increased since 1997, despite there being a capacity for higher amounts to be prescribed.

We support an increase in the weekly rental amount in s. 31(3) consistent with the original intention of the RTA. We note that an increase will only remain effective over time where provision is made for review and subsequent regulation under s. 511 of the RTA.

Recommendation 2: Maximum bond should be limited to one month’s rent

Amend section 31 (3) of the RTA so that the weekly rental above which a bond can exceed the maximum bond reflects the highest 20 per cent of rental properties in the market.

### Limit ability of landlord to claim bonds after 10 days

Bonds provide a protection for landlords in the event of damage to the property, but once the tenancy has terminated, the RTA recognises the importance of tenants having speedy access to the return of their bonds. Section 417 of the RTA requires landlords to make any application for the bond within 10 business days of the tenancy terminating. It is a time where tenants are often in the process of transferring from one tenancy to another and, as detailed above, this can involve a number of initial costs that can leave tenants in significant financial stress.Tenants are usually concerned to get their bond back as soon as possible and can bring an application to VCAT for its return. Such a claim is usually made where a landlord has not made an application to VCAT themselves within the required 10 business days. Landlords often apply outside this time limit, and this can lead to significant delays in the return of tenants’ bonds.

Unfortunately, in our experience, VCAT does not strictly impose landlords’ compliance with the 10 business day limitation in s. 417 of the RTA. Instead, VCAT regularly uses its power under s. 126 of the VCAT Act to extend the timeline so that an out-of-time application is accepted. It is reasonable for VCAT to be flexible about its timelines, however in our view VCAT does not have sufficient regard to the purposes of the time limit in these cases. Whilst the landlord who has brought an application out of time loses the opportunity to claim directly against the tenant’s bond, they can still bring any claims for compensation directly against a tenant, in the same manner as any other parties to a contract. Landlords can also bring two claims. A prudent landlord would bring an initial claim within 10 business days, and can still make a further claim at a later date should they identify a further basis for compensation. This is the important and unusual effect of s. 214 of the RTA. The purpose of the RTA in this regard is clear; if a landlord seeks to utilise the security of the bond, then a timely application must be submitted. This is the appropriate balancing of the rights and interests of landlords and tenants.

Because tenants have a legitimate concern to have their bond money returned as soon as possible at a time of financial stress there should be strict limits on landlords’ ability to bring claims against the bond outside the statutory timeline. This would have the added benefit of encouraging landlords to bring their claim within 10 business days, which is a reasonable period of time to assess the property and obtain quotes for relevant work. Amendments to s. 126 of the VCAT Act to state that it does not apply to s. 417 of the RTA would remove any discretion of VCAT members to hear applications made out of time.

Recommendation 3: Limit ability of landlord to claim bonds after 10 days

Amend section 126 to explicitly state that it does not apply to the 10 business day limitation period in section 417(2) of the RTA for making an application in relation to a tenant’s bond.

### Limits on rent required in advance

The RTA enables landlords to demand up to a month’s rent in advance and as a result the first month’s rent is usually required at the beginning of the tenancy. This contributes to the significant costs involved in establishing a new tenancy.

In NSW, Western Australia and South Australia a landlord can only ask for two weeks’ rent in advance. Amendments to section 40 to restrict landlords from asking for more than two weeks’ rent in advance would halve this initial payment, significantly reducing the financial pressure on those with low incomes when having to move to a new home.

Recommendation 4: Rent should not be required more than two weeks in advance

Amend section 40 of the RTA to restrict landlords from asking for more than two weeks rent in advance.

### Improving access to rental payment via Centrepay

The Centrepay payment system allows recipients of regular social security payments to authorise deductions from their regular payments to a designated payee. The payment system is facilitated through Centrelink and involves no additional charges. It is commonly used to assist with meeting important financial obligations such as rent. It provides significant benefits to tenants in terms of budgeting and guaranteeing convenient and timely payment of rent. This in turn increases the security for landlords that rent will be paid on time, and that the tenant will not fall into arrears, particularly for those whose capacity to repay arrears once they fall behind might be limited. It is a very important feature of sustainable tenancies for those on low incomes.

Businesses need to apply to Centrelink for approval to be a recipient of funds under the Centrepay system. Some real estate agents refuse to accept Centrepay arrangements for payment of rent.

VLA is of the view that Centrepay should be a method of rent payment available to anyone in receipt of social security payments. There are practical and logistical limits on how this might be achieved, but VLA is of the view that it should be an objective to ensure all real estate agents operating in Victoria are required to receive Centrepay payments.

There are a number of potential methods to achieve this. One could be via regulation of real estate agents to require registration with Centrelink for the purposes of Centrepay, with amendments to require that Centrepay payments be a manner of payment where the landlord or their real estate agent are registered for Centrepay. A more limited but simpler method would be to amend the prescribed standard form agreement referred to in s. 26 of the RTA to require Centrepay payments as an option for rental payment where the tenancy is managed by a real estate agent. This would then be enforceable as a manner of payment specified in the agreement under s. 42 of the RTA.

Recommendation 5: Centrepay should be a recognised method of payment for rent to all real estate agents

Amend the RTA or the prescribed standard-form tenancy agreement to provide tenants receiving social security payments with a right to pay rent via Centrepay where the tenancy is managed by a real estate agent.

## Improving the efficacy of the current legislation

There are valuable safeguards in the RTA that may not be providing the protection to tenants initially intended by the provisions. The recommendations below aim to ensure the efficacy of these provisions to better balance the interests and obligations of landlords and tenants, and to improve access to legal remedies for tenants. We also make recommendations aimed at increasing the transparency and accessibility of existing RTA processes.

### Transparent processes for assessing rent increases under the RTA and use of data from the RTBA to assist with this task.

The RTA provides a framework for assessing rent increases that tenants believe are excessive. CAV undertakes an assessment and produces a report that considers the factors contained in s 47(3) of the RTA. The process and procedures CAV uses to conduct the assessments are not set out in the RTA. We have heard varying reports from tenants about this process, with some advising that real estate agents play an important role in the assessment. It would give tenants and their advocates a better understanding of the assessment process, and promote transparency and consistency, if CAV were to make publically accessible its processes and procedures for assessment of rent increases.

One of the key factors for assessing whether a rent increase is excessive is via comparison with rents for comparable properties in the same locality. Data from the RTBA could provide a useful objective data source for CAV in undertaking this role. The bond-lodgement form for new tenancies includes data such as the weekly rent amount, house type, size and location. This information provides a good general basis for an initial comparison for assessing rental increases with reference to the criteria in s. 45 of the RTA. This information could be made publicly available on a monthly or quarterly basis.

Recommendation 6: Transparent processes for assessing rent increases under the RTA and use of data from the RTBA to assist with this task

6.1 CAV make publically available its policies and procedures for performing its rent assessment function under section 45 of the RTA.

6.2 CAV and the RTBA consider whether data from the RTBA could provide a useful and objective reference for assessing comparable rents under section 45 and 47 of the RTA.

### Preventing rent increases during the first year of a fixed-term lease

Section 44(4) provides that a landlord under a fixed-term tenancy agreement must not increase the rent ‘unless the agreement provides for a rent increase within the fixed term’. The provision is ambiguous. Does the amount and date of the rent increase need to be specifically ‘provided’ for in the fixed-term agreement, or can a landlord reserve a general right to increase rent through the duration of the term? The Annotated Residential Tenancies Act 1997*[[4]](#footnote-4)* provides no clarity in relation to this issue.

The details of any proposed rent increase during the fixed term of a tenancy agreement should be specifically set out in the terms of the agreement so that a tenant can properly gauge their financial liability over the duration of the agreement, and negotiate about this fundamental term. Otherwise, tenants may sign up to an agreement on the basis of an agreed amount of rent, only to have the rent increased under s. 44(4) whilst the tenant is nonetheless bound by the terms of the fixed-term lease. The capacity for one party to unilaterally vary a fundamental term of a contract without the other party having a right to terminate would usually be a firm basis for an argument the term is unfair under s. 24 and s. 25 of the Australian Consumer Law.[[5]](#footnote-5)

While it may be argued that the matter of increases under a fixed-term should be left to lease negotiations, our experience is that tenants, particularly those experiencing disadvantage, or where English is not their first language, do not have the knowledge to understand the ramifications of a general term in relation to rent increases, or do not have the bargaining power to have it removed.

Tenants should have certainty about their rent for the duration of the fixed term. If there is to be a rent increase at some time in the agreement, the proposed date and amount should be clear from the start and a matter of negotiation between the parties.

**Arun’s experience**

Arun arrived in Australia in 2015. He lives with his wife and four children. He and his wife are reliant on Centrelink payments for income. Soon after arriving in Australia, he was assisted by his settlement worker to find a private rental for his family. The lease said that his rent would be $320 per week.

A month after Arun and his family moved in to the property, he received a notice of rent increase. He was given 60 days’ notice that his rent would be increased to $335 per week. Arun thought that this was unfair; his family was already finding it tough to make ends meet and the extra $15 per week would make it even harder for them. Arun sought legal advice.

The legal advice that Arun received was that the landlord was entitled to increase the rent because they had included a general clause in his lease allowing them to increase the rent during the fixed-term. Arun would still be subject to the 12-month lease despite the increase in rent. Arun’s only option would be to ask CAV to investigate whether the rent was excessive. However, Arun was outside the time limit to make that request.

Recommendation 7: Specifying rent increases during fixed-term leases

Amend section 44(4) to require that the details of any rent increase during a fixed term are detailed in the tenancy agreement. This should include the day it will be implemented and the amount of any increase.

### Use of Rent Special Account

Sections 77, 134, 193 and 485 of the RTA give VCAT the power to order a tenant or resident to pay rent into VCAT’s Rent Special Account (‘RSA’) in situations where a landlord is refusing to do repairs. The funds can be released to the landlord if they satisfy VCAT they have completed the repairs.

The RSA provisions are intended to target situations where a landlord is wilfully ignoring their lawful obligations under the RTA or is refusing to engage in VCAT proceedings filed against them. The withholding of a landlord’s rental income is an effective incentive for landlords to carry out prompt repair or to participate in VCAT repair proceedings in a meaningful way.

The RSA provisions are critically important as they provide tenants with a practical and effective means of enforcing orders relating to repairs. Most of VLA’s clients are not in a financial position to be able to pay for urgent repairs themselves and then seek reimbursement. Moreover, a landlord who is refusing to comply with non-monetary orders of VCAT may not comply with monetary orders to pay a tenant compensation.

Section 122 of the VCAT Act provides an alternative for the enforcement of non-monetary orders through the Supreme Court. VLA is unaware of any tenant enforcing a non-monetary order in this manner. Recourse to the Supreme Court is not a straightforward process for tenants seeking to enforce an order: it is intimidating, complex, expensive and time consuming. In addition, it depends on the success of an initial application for a certificate from VCAT which VCAT has discretion to refuse. Tenants can therefore be left with no practical remedy when a landlord refuses to comply with a repair order. This significantly limits access to appropriate legal remedies for those who have obtained the benefit of a court order in their favour and who are suffering ongoing detriment.

Despite the RSA provisions being a critical tool for compelling landlords to meet their repair obligations in s. 68 of the RTA, in our experience VCAT Members are reluctant to use these powers out of concern for the financial impact on the landlord. There are other important issues to weigh up though. From a tenants perspective there is an imperative to rectify promptly any fault or disrepair with the premises due to the risks to safety that can arise from properties that are in poor repair.

The lack of RSA orders could be rectified by an amendment to the RSA provisions to require orders for payment into the RSA during periods where a landlord is in breach of a VCAT order without a lawful excuse. If combined with a narrowing of the legal circumstances where an RSA order can be made, so that it is no longer available just because a tenant had issued a notice to the landlord, it would mean orders are made routinely where a landlord refuses to comply with an order of VCAT, but not otherwise.

A landlord in breach of ongoing orders in relation to other serious breaches of the RTA could also be subject to this important enforcement provision. This might include ongoing breaches of the obligation to provide quiet enjoyment through repeated entry into the premises, or other failures to comply with duties under the Act, such as failing to lodge a bond with the RTBA.

VCAT should also have jurisdiction to pay compensation out of the RSA once the repairs are completed. This would allow a tenant to use rent paid into the RSA to either to pay for the cost of repairs, or to allow VCAT to compensate the tenant without the tenant needing to enforce any order for compensation through the Magistrates’ Court.

**Andrew’s experience**

Andrew was a resident living in a rooming house in St Kilda. He suffers from PTSD, anxiety and depression. Andrew had been living at the rooming house for about a month when he requested certain urgent repairs, including securing his room after his possessions were stolen and fixing a broken communal toilet that meant residents had to use a bathroom in a park. He also sought to restrict the rooming house owner from frequently letting himself into Andrew’s room unannounced and intoxicated.

Andrew was successful in obtaining orders from VCAT that the rooming house owner install locks and carry out urgent repairs to the toilet within seven days and cease entering his room.

The rooming house owner refused to do the repairs, and continued to threaten Andrew with illegal evictions and enter his room. Over a period of three weeks the owner issued Andrew with 17 separate notices to vacate.

Andrew applied again to VCAT for further orders and compensation. VCAT made further restraining orders, orders for repairs and further ordered that the owner pay Andrew compensation of $500. The rooming house owner continued to ignore these orders whilst simultaneously making his own applications for possession orders (all of which were dismissed).

Eventually Andrew applied to VCAT for orders allowing him to pay rent into the RSA. At the hearing the Member refused to make orders for the RSA citing the risk that the hardship wold cause the owner to default on their mortgage. The Member however made further orders requiring the rooming house owner to comply with previous orders of VCAT. When asked by Andrew what would happen if the owner refused to comply with these orders, the Member told the resident to call the police. When Andrew did call the police he was told it was a civil matter and to go back to VCAT. Andrew eventually moved out of the rooming house. At the time he vacated, the repairs had still not been addressed.

Recommendation 8: The Rent Special Account provisions should be used more often to ensure repairs are completed and VCAT orders are complied with

9.1 Amend the Rent Special Account provisions to require VCAT to make orders requiring payment into a Rent Special Account where VCAT is satisfied that the landlord is in continued breach of a VCAT order.

9.2 Amend the Rent Special Account provisions to require VCAT to allow a tenant to claim compensation, or the costs of repairs, directly from the Rent Special Account.

### Limit tenant’s liability for charges for use of third-party rent payment facilitation services

The use of third-party service providers to manage rental payments is common. These services provide administrative benefits and cost savings to real estate agents.

Section 51(3)(b) of the RTA does not allow tenants to be charged for the establishment or use of a direct debit facility. This is confirmed by several VCAT cases in which Members have held that fees charged by agents and third parties for rent payments are unenforceable.[[6]](#footnote-6) Nonetheless, our clients report that third-party rent collectors often charge tenants a monthly fee for their service, and may also charge fees for a dishonoured direct debit.

It is unreasonable for tenants to be financially responsible for schemes introduced by agents to reduce their own administrative burden and costs. It is of course understandable that the landlord and their agent would seek to negotiate a method of payment that is convenient for their business, but the administrative costs associated with the use of that payment system should properly be borne by the agent or landlord who prefers that method. All other jurisdictions have legislation that seeks to limit the use of rent payment charges.

Amendments to s. 51(3) would clarify that landlords and third parties can not demand or receive payment from a tenant in relation to the issue or use of electronic transfer methods for the payment of rent.

Recommendation 9: Prohibit all charges for use of third-party rent payment facilitation services

Amend section 51 (3)(b) of the RTA so that it prohibits charges in relation to both the establishment and use of all types of electronic transfer methods for the payment of rent under a tenancy agreement.

### Supporting the recommendations of the Royal Commission into Family Violence report

VLA supports Recommendation 116 of the Royal Commission into Family Violence report which includes a recommendation that the RTA be amended to allow a mechanism for apportioning liability for rent when a victim of family violence leaves the home, and for the family violence provisions in the RTA to be operable without the need for a final family violence intervention order. We often see examples of people moving out of rental properties as result of family violence without obtaining interim or final intervention orders. They regularly incur significant housing debts either for rent or damage to the property as their name remains on the tenancy agreement. This can compound the financial pressure they under, may force them into interaction with person who has committed the family violence, and can significantly impede their ability to obtain the safe and secure housing they need.

Recommendation 10: Support the recommendations of the Royal Commission into Family Violence report

11.1 Amend s. 233A of the RTA so that VCAT is empowered to make orders under that provision without the need for a final intervention order.

11.2 Amend the RTA so that VCAT has the power to apportion liability for rental arrears where a person has left the rented premises due to family violence.

1. *2015 Rental Affordability Snapshot,* Anglicare Australia, 18. Cited in *Residential Tenancies Act Review. Laying the Groundwork - Consultation Paper* (2015), 9. [↑](#footnote-ref-1)
2. Department of Health and Human Services, *Public Housing Waiting and Transfer List* (June 2015). [↑](#footnote-ref-2)
3. Law and Justice Foundation, *Legal Australia-Wide Survey: Legal Need in Australia* (2012), 86. [↑](#footnote-ref-3)
4. Billings, Kefford, Vassie & Barker (2015) ANSTAT. [↑](#footnote-ref-4)
5. Section 25 provides examples of the kinds of terms that may be considered unfair. It includes:

terms that have the effect of permitting one party to vary the contract terms, and not the other (s 25(1) (d)); and

terms that have the effect of permitting one party to vary the price disclosed at the start of the contract (‘upfront price’) without allowing the other party to terminate the contract (s 25(1)(f)). [↑](#footnote-ref-5)
6. See for example *Rossetto & Anor v Calder & Ors (Residential Tenancies*) [[2012] VCAT 816](http://www.austlii.edu.au/au/cases/vic/VCAT/2012/816.html) and *Palmer v Hutchinson (Residential Tenancies)* [2013] VCAT 873*.* [↑](#footnote-ref-6)