COMMUNITY HOUSING
Industry Association Victoria

Rooming Houses

A legal guide for Community Housing Organisations

1. Introduction

This document is intended to provide Community Housing Organisations (**CHOs**) operating rooming houses in Victoria with a high-level summary of their legal obligations and practical guidance for compliance (where appropriate). This document also provides a detailed summary of the Residential Tenancies (Rooming House Standards) Regulations 2023 (Vic) (**Rooming House Regulations**) and identifies the changes for CHOs compared with the 2012 regulations.

This document is not detailed legal advice and is intended to serve as a tool to help CHOs identify legal issues and risk as part of the organisation's broader legislative compliance process. CHOs with specific legal questions or concerns regarding the operation of a rooming house should obtain legal advice.

2. How to use this guide

This guide collates the key legal obligations for rooming houses operators into themes so that they can be easily reviewed by rooming house managers.

Rooming house managers should familiarise themselves with this guide, and refer to the following resources for further information:

- the *Residential Tenancies Act 1997* (Vic) (**RTA**), in particular Part 3 relating to Rooming Houses;
- the *Residential Tenancies Regulations 2021* (Vic) (**General Regulations**);
- the Rooming House Regulations;
- the *Rooming House Operators Act 2016* (**RHOA**) (Vic);
- Part 6 of the *Public Health and Wellbeing Act 2008* (Vic) (**PHWA**), relating to the registration of Rooming Houses;
- Published guidance and forms on the Consumer Affairs Victoria website, including the prescribed form of fixed term rooming house agreement;
- CHIA VIC's rent setting policy guide;
- CHIA VIC's rooming house disclosure statement; and
- CHIA VIC's accessibility modification guide.

3. Definitions

Terms used in this guide have the definitions set out in this table.

Australian Standards	The set of recognised safety standards for products and buildings, which may apply to rooming houses or fixtures and fittings within them.
CAV	Consumer Affairs Victoria, or the Director of Consumer Affairs.
CHO	A community housing organisation operating a rooming house.
EOA	*Equal Opportunity Act 2010* (Vic)
Facilities	Includes any of the following facilities provided for the use of residents, other than those provided under a rooming house agreement for use by a specific resident: • Storage and car parking space; • Laundry and cooking facilities; • Recreational areas; • Lifts; • Garbage disposal and storage facilities; • Bathroom, toilet and washing facilities; • Heating and cooling appliances; • Lawns, gardens and outhouses; • Stairways; and • Any other common areas designed or set aside for residents.
NTV	A notice to vacate issued in accordance with the RTA.
Prescribed form	The style of form required to be used when issuing a notice or providing information to residents. Prescribed forms are located in Schedules 1 and 2 of the General Regulations. CAV also publishes formatted versions of most prescribed forms on its website: https://www.consumer.vic.gov.au/housing/renting/starting-and-changing-rental-agreements/different-rental-agreements/rooming-house-agreements.
Rent	The amount paid by a resident to occupy a room and use facilities and services. Rent does not include any amounts relating to: service charges; or separately metered utilities paid for pay the CHO. In the context of the RTA, rent is typically the "market rent" specified in a residents rooming house agreement (i.e. the amount payable before any rebate is applied). However, there are some sections of the RTA which specifically refer to the rebated rent (i.e. section 91ZM).
Resident	A person who, with the agreement of the rooming house operator, occupies a room as their only or main residence.
Room	A room in a building, where the room is occupied or intended to be occupied for the purpose of a residence together with a right to use any common facilities in the

	building, and includes any self-contained apartment if the self-contained apartment is located in a rooming house which: has at least a 3:1 ratio of rooms to self-contained apartments; or is a gazetted rooming house.
Rooming house	A building in which there is one or more rooms available for occupancy on payment of rent in which the total number of people who may occupy those rooms is not less than 4, or which has been declared a Rooming House under section 19(2) of the RTA.
Self-contained apartment	A portion of a building which forms a self-contained residence, including kitchen and bathroom and toilet facilities, under the exclusive possession of the occupier. However, a room is not a self-contained apartment if it is located in a rooming house which: has at least a 3:1 ratio of rooms to self-contained apartments; or is a gazetted rooming house.

4. Rooming House Regulations

	Existing Standard (2012)	New Standard (2023)	Possible actions
Door to resident's room	A door used for entry to and exit from a room must be fitted with a locking device that is operated by a key from the outside, and can be unlocked from the inside without a key	No change	No change
Power outlets	The room must have at least 2 electrical power outlets in working order.	Existing Standard applies until 25 February 2024. From 26 February 2024 onwards, the room must have at least 2 unoccupied outlets in safe working order that are available for use by the resident and are not already used to power room amenities.	If the room currently does not have 2 unoccupied outlets (i.e. they are already used for room appliances), the CHO must consider whether it is able to install new power points in the room, or whether it can make existing outlets available

	Existing Standard (2012)	New Standard (2023)	Possible actions
		Power outlets must be installed by a suitably licensed or qualified electrician and comply with the relevant Australian Standard.	without compromising existing amenities (e.g. air-conditioning). Rooms with older outlets may need to be inspected by a qualified electrician to confirm compliance with Australian Standards.
Window coverings	Windows in a room must be fitted with a window covering that can be opened or closed by the resident and affords privacy to the resident.	Existing Standard applies until 25 February 2025. From 26 February 2025, the window covering in rooms and common areas must also reasonably block light and be of a kind ordinarily acquired for personal, domestic or household use or consumption.	Over next 18 months, CHOs should review their window coverings to ensure they are not letting in too much light (there is no prescribed standard for how much light is acceptable). Common area windows now must have similar coverings to room windows.
Bathroom doors	All doors to a shared toilet or bathroom facilities must have a secure privacy latch which is usable without a key.	Existing standard applies until 25 February 2024. From 26 February 2024, all doors to a shared toilet or bathroom must be fitted with a bolt or catch that is installed by a suitably qualified person or, if it is unreasonable to install a bolt or catch, a latch which secures the door	Bolt, catch and latch terminology is not defined in the regulations. However, cabin hooks and similar catches are expressly deemed to not be secure. Where cabin hooks or similar latches are used in shared facilities, these will

	Existing Standard (2012)	New Standard (2023)	Possible actions
		from the inside without the use of a key must be installed.	need to be replaced by a qualified person.
Showers	No Existing Standard	From 26 February 2024, all shower heads provided in a bathroom must be in good working order and have a 3 star or higher WELS rating under the *Water Efficiency Labelling and Standards Act 2005*, unless installation is not possible or cannot operate effectively due to the age, nature or structure of the plumbing.	Review existing shower heads for WELS rating, then consider whether replacement of under-performing shower heads is reasonably possible.
Food preparation area	A food preparation area must be provided either in each room, or in a common area.	An area which is intended to be used solely for food preparation must be provided either in each room, or in a common area.	If existing food preparation areas currently have a shared use (e.g. a common bench space), CHOs should consider how to provide an area which is solely for food preparation use.
Sink	A sink must be provided in each resident's room or in a common area.	No change	-
Oven	An oven in good working order must be provided in each resident's room or in a common area (for every 12 or fewer residents* who do not have an oven in their room). *based on the maximum number of residents the rooming house can accommodate.	No change	-

	Existing Standard (2012)	New Standard (2023)	Possible actions
Cook top	A cook top in good working order must be provided in each resident's room or in a common area (for every 12 or fewer residents* who do not have an oven in their room). *based on the maximum number of residents the rooming house can accommodate.	No change	-
Fridges	A refrigerator in good working order must be provided: with a minimum gross capacity of 80 litres, in each resident room; or with a minimum gross capacity of 400 litres, in a common area	Existing Standards applies until 25 February 2024. From 26 February 2024, in addition to the current requirements, a refrigerator with a minimum gross capacity of 400 litres must be provided for every 4 or fewer residents* who are not provided a refrigerator in their room, and an additional 28.5 litre capacity must be provided for each additional resident who is not provided with a refrigerator in their room. *based on the maximum number of residents the rooming house can accommodate.	28.5 litres of additional refrigerator space may be required for each resident who does not have access to a refrigerator in their room.
Cupboards	At least one cupboard for each resident*, with a minimum storage space of 0.1 cubic metres, and which is	No change	-

	Existing Standard (2012)	New Standard (2023)	Possible actions
	lockable, if provided in a common area. *based on the maximum number of residents the rooming house can accommodate.		
Dining	Sufficient chairs and dining space in each room to comfortably accommodate the maximum number of residents of that room.	Sufficient chairs and dining space in each room or in a common area to comfortably accommodate the maximum number of residents of that room or the rooming house (if in a common area). The dining table must be separate from any space used for food preparation.	Regulations now allow for communal dinning spaces (rather than requiring dining space in rooms), but require a separate space for food preparation.
Laundry	A communal laundry must be provided with: a communal wash trough or basin plumed with both hot and cold water; immediately next to the wash trough, a space with hot and cold water supply outlets suitable for a washing machine; and a clothes line or other clothes drying facility.	Existing Standard applies until 25 February 2024. From 26 February 2024, a communal laundry as per the Existing Standards and a washing machine must be provided for every 12 or fewer residents*. *based on the maximum number of residents the rooming house can accommodate.	Risk for rooming house operators with maximum occupancy of 13 or more residents, as additional laundry space may be required, or a reduction in the maximum occupancy of the rooming house.
Lighting	Internal rooms, corridors and hallways have access to light, either natural or artificial, to appropriately illuminate the room. A habitable room must have access to natural	No change	-

	Existing Standard (2012)	New Standard (2023)	Possible actions
	light during daylight hours, and artificial light during non-daylight hours to appropriately illuminate the room.		
Emergency plans and procedures	An evacuation diagram compliant with the relevant Australian Standard must be prepared and displayed in each resident's room and in all common areas.	No change	-
Electrical requirements	All power outlets and lighting circuits in the rooming house are connected to switchboards, circuit breakers and current devices which comply with the relevant Australian Standards.	No change	-
Ventilation	Each habitable room, bathroom, shower room, toilet and laundry complies with the relevant ventilation requirements of the Building Code of Australia.	Same as Existing Standard, with minor changes to the relevant Building Code of Australia provisions.	Changes appear to reflect recent amendments to the Building Code. The Building Code requires that each space within a class 1b or class 3 building (note - a rooming house will fall into one of these two categories) which is used by residents (i.e. not use for storage) must have access to outdoor air which maintains adequate air quality. A mechanical air-handling system

	Existing Standard (2012)	New Standard (2023)	Possible actions
			(i.e. a fan or exhaust) must be installed where required to control objectionable odours and the accumulation of harmful bacteria, pathogens or other contamination. Any contaminated air must be disposed of in a manner which does not unduly create a nuisance or hazard to people in the rooming house or neighbouring properties. CHOs who wish to confirm compliance with these standards should engage a licenced builder.
Gas safety checks	A gas safety check must be conducted at least once every 2 years by a licensed gasfitter of all gas installations and fittings at the rooming house.	Same as Existing Standard, plus a gas safety check must be completed as soon as practicable after a resident occupies a room if one has not been conducted within the last two years.	Minor change, but requires CHOs to include gas safety checks in their resident onboarding checklist. Prescribed form of condition report requires date of last gas safety check to be included.
Electrical safety checks	An electrical safety check must be conducted at least once every 5 years by a licensed electrician of all	An electrical safety check must be conducted at least once every 2 years by a licensed electrician of all	More frequent electrical safety checks. Room appliances (lamps,

	Existing Standard (2012)	New Standard (2023)	Possible actions
	electrical installations and fittings at the rooming house.	electrical installations, appliances and fittings at the rooming house. A safety check must also be completed as soon as practicable after a resident occupies a room if one has not been conducted within the last two years.	kettles, etc) also must be checked. Prescribed form of condition report requires date of last electrical safety check to be included.
Windows	Each external window of the rooming house that is able to be opened is able to be securely fixed in a closed or open position without a key.	In addition to Existing Standards, from 26 February 2025, each window must also have a functioning latch that secures the window against external entry.	-
Common area window coverings	No Existing Standard	From 26 February 2025, the window covering must also reasonably block light and be of a kind ordinarily acquired for personal, domestic or household use or consumption.	-
Corded window coverings	No Existing Standard	Any corded internal window covering installed from 1 January 2015 onwards must comply with the relevant Commonwealth Safety Standard. From 26 February 2024 onwards, any corded internal window covering installed prior to 1 January 2015 must comply with the installation requirements as set out in regulation 23.	From 26 February 2024, the loop formed by the window cord must be less than 220mm if within 1600mm of the floor. The loop must also be secured by a cord guide or cleat. CHOs must ensure window cords must not present a choking hazard, and should ensure window coverings comply with this standard.

	Existing Standard (2012)	New Standard (2023)	Possible actions
Entrances	Each entrance to the rooming house must have a locking device operated by a key from the outside, can be unlocked without a key from inside and has a window, eyehole or intercom.	No change.	-
Structural soundness	No Existing Standard	Rooming house must be structurally sound and weatherproof.	-
Mould and dampness	No Existing Standard	Rooming house must be free of mould and damp caused by or related to the building structure.	Possible significant impact for CHO if there are recurrent mould problems with the rooming house. Arguably, even where resident is largely responsible for mould issues, CHO will still be required to rectify any contributing structural issues.
Records of gas safety check	Retain a record of each gas safety check conducted in the last 2 years, including details of the licenced gasfitter who performed the check.	Retain a record of each gas safety check until a new gas safety check is conducted. Records must include: gasfitter's name and licence or registration number; date of check; the results of the check; and a copy of the record of works provided by the gasfitter. CHO must provide a resident with a copy of the records of the most recent safety check	CHO will need to develop a system for recording additional safety check details and providing copies to residents on short notice.

	Existing Standard (2012)	New Standard (2023)	Possible actions
		within 7 days of receiving a request.	
Records of electrical safety check	Retain a record of each electrical safety check conducted in the last 5 years, including details of the licenced electrician who performed the check.	Retain a record of each electrical safety check until a new electrical safety check is conducted. Records must include: electrician's name and licence or registration number; date of check; the results of the check; and a report prepared by the electrician in accordance with the relevant Australian Standard. CHO must provide a resident with a copy of the records of the most recent safety check within 7 days of receiving a request.	CHO will need to develop a system for recording additional safety check details and providing copies to residents on short notice.
Production of records	CHO must ensure gas and electrical safety records are made available to CAV if it investigates.	No change.	-
Exemptions	CAV may exempt a rooming house from some or all Rooming House Regulations if it is satisfied that: due to the nature, age or structure of the rooming house, it would be unreasonable to modify the rooming house to comply with the relevant standards; due to the obligation of the CHO to comply with	No change	-

	Existing Standard (2012)	New Standard (2023)	Possible actions
	a competing law, the CHO cannot comply with the relevant standards; or the rooming house operator has sufficiently addressed the relevant standards by alternative means.		

5. Key RTA Obligations

In this section, we have highlighted some of the core legal requirements and common pitfalls which affect rooming houses and CHOs.

5.1 Self-contained apartments

Self-contained apartments are typically treated in the same way as a standard residential tenancy, rather than a room in a rooming house. This means that:

- the RTA provisions relating to standard tenancies apply to self-contained apartments, rather than the rooming house provisions of the RTA; and
- standard residential rental agreements should be used for self-contained apartments, rather than rooming house agreements.

Be aware that a self-contained apartment will be treated as a room in a rooming house if either:

- the self-contained apartment is located in a rooming house, and there is at least 3 times as many rooming house "rooms" as self-contained apartments located in the building (i.e. a 3:1 ratio of "rooms" to "self-contained apartments"); or
- the self-contained apartment is located in a gazetted rooming house.

In these circumstances, the room ceases to be a self-contained apartment as defined by the RTA, and a rooming house agreement can be used.

5.2 Terms and conditions of rooming house agreements

Similar to a standard residential rental agreement, the General Regulations contain a 'prescribed' form of fixed term rooming house agreement. CAV also publishes a version of the prescribed form which should be used. However, the prescribed form is not required for ongoing/periodic rooming house tenancies. CHOs have greater flexibility when preparing agreements without a fixed end date. However, all rooming house agreements must meet the following requirements:

Terms must not be inconsistent with the RTA

Any term of a rooming house agreement which is inconsistent with the rights and obligations granted by the RTA is invalid.

Put another way, CHOs and residents are not able to contract out of their obligations under the RTA.

Prohibited clauses

The RTA also expressly prohibits certain clauses in a rooming house agreement. A fixed term rooming house agreement must not include any of the following prohibited clauses:

- Any requirement that the resident to take out insurance or pay any excess under the CHOs insurance policy.
- Any statement that the CHO is not responsible for their own acts or the acts of any person acting on their behalf;
- Any legal indemnity, whereby the resident agrees to pay costs which would otherwise by payable by the CHO.
- Any penalty clause, whereby if the resident breaches the rooming house agreement the resident must pay to the CHO:
    - all or part of the remaining rent under the agreement
    - increased rent; or
    - any kind of penalty or damages.
    - A 'good behaviour bonus' whereby if the renter does not contravene the agreement their rent payable is or may be reduced.
- Any obligation for the resident to pay for the CHOs costs to prepare the rooming house agreement.
- Any pre-commitment binding the resident to a tenancy before they have had an opportunity to review the rooming house agreement;
- Any clause which prevents the resident from making a claim for compensation from the landlord because the room was unavailable at the commencement date;
- Any requirement that the resident pay rent using a method which charges additional costs (other than bank fees).
- Any obligation to use services of a third-party service provided nominated by the CHO (other than in relation to an "embedded network");
- Any requirement for the resident to pay the CHO's costs for filing an application in VCAT.
- An unreasonable limitation on the resident's use of utilities.

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Harsh or unconscionable terms

A term of an agreement may be harsh or unconscionable if a reasonable person would find it to be unfair, exploitative and/or taking advantage of the imbalance of bargaining power between the parties.

A resident may apply to VCAT for an order declaring a harsh or unconscionable term invalid. VCAT may also vary the rooming house agreement to make it fairer for the resident.

5.3 Condition Reports

Prior to the resident moving into a room, the CHO must give the resident 2 physical copies or 1 electronic copy of a condition report in the required form signed on behalf of the CHO. Within 5 business days of moving in, the resident must return one copy of the condition report signed by them, specifying where they agree or disagree with the report.

A condition report is conclusive evidence of the state of repair or general condition of the room on the date it is made. However, a condition report cannot be used by a CHO as evidence that the resident was aware of:

- any issue with the room that could not have been discovered during a reasonable inspection of the room by the resident (e.g. damage or defects hidden behind walls or fixtures); or
- any damage or disrepair to any part of the room which the parties have not both agreed to in the condition report.

CHO should try to reach agreement with the resident regarding the condition of the room as soon as possible after commencement. A condition report accepted by both parties can avoid a dispute regarding the required condition when the renter vacates the room. If you and your resident cannot agree on the accuracy of the condition report, either party may apply to VCAT to amend the condition report.

Within 10 days of the resident moving out of the room, the CHO must complete a retained copy of the condition report confirming the condition upon exit. The CHO must give the resident reasonable opportunity to be present when the final report is prepared.

5.4 Market Rent increases

A CHO must give a resident at least 90 days' notice of a proposed "market" rent increase. Market rent must not be increased more than once in each 12-month period.

A renter may apply to CAV to investigate an excessive market rent increase. Where CAV determines that the market rent is excessive, a resident may apply to VCAT for an order declaring a reasonable rent for the room.

Market rent is not increased where:



- a rental rebate is applied, adjusted or cancelled by the CHO;
- a change to the rebate causes an increase in the amount payable by the resident; or
- other non-rent charges payable by the renter are increased or varied (e.g. a service charge).

Put another way, variations in the amount of the rebate granted to a renter can occur as often as required by the CHO, as long as this complies with the CHO's rent policy and does not exceed market rent.

For more information, please refer to CHIA's Rent Setting Guide.

5.5 Separately metered utilities

A CHO may charge a resident an amount not included in rent for utilities consumed in the room if:

- the CHO is responsible for payment of the utilities;
- the room is separately metered; and
- the room is not a shared room.

The amount charged must not be more than the charge made by the relevant supplier of the utility.

A resident who received an excessive utilities bill can apply to VCAT for compensation from the CHO, if:

- the excessive bill is caused by a fault in infrastructure at or connected to the room (e.g. a burst water pipe);
- the resident notified the CHO of the excessive charges and the possible fault as soon as they became aware; and
- the fault was not caused by the resident.

5.6 Service charges

Note – a recent VCAT decision has called into question the practice of using 'additional property costs' to calculate rent, finding that this is in fact an improperly levied service charge. CHIA Vic is updating its 'rent setting policy guide' with detailed guidance as to additional property costs and service charges and the potential risks of using either approach.

A CHO may impose a service charge on a resident of a registered rooming house. The service charge must:

- only be imposed in relation to water, central heating, laundry or utility services made available to the resident;
- not be imposed except where it is not possible or practicable to accurately measure the use by the resident of the services or facilities; and
- not exceed the cost of providing the service or facility to the resident.

When imposing or varying a service charge, the CHO must provide written notice to the resident advising of the imposition or variation, including the particulars of the change in the cost of providing the services or facilities to which the charge relates.

Service charges are expressly excluded from the RTA definition of rent, and therefore do not form part of ordinary rental arrears and cannot be pursued as such.

5.7 Breach of Duty

Where either a resident or CHO is in breach of their duties under the RTA (**Breaching Party**), the other party (**Notifying Party**) may give a breach of duty notice to that party in the prescribed form.

If the breach of duty notice is not complied with, the Notifying Party may:

- apply to VCAT for an order of compensation or compliance relating to the breach of duty; and/or
- issue a second breach of duty notice.

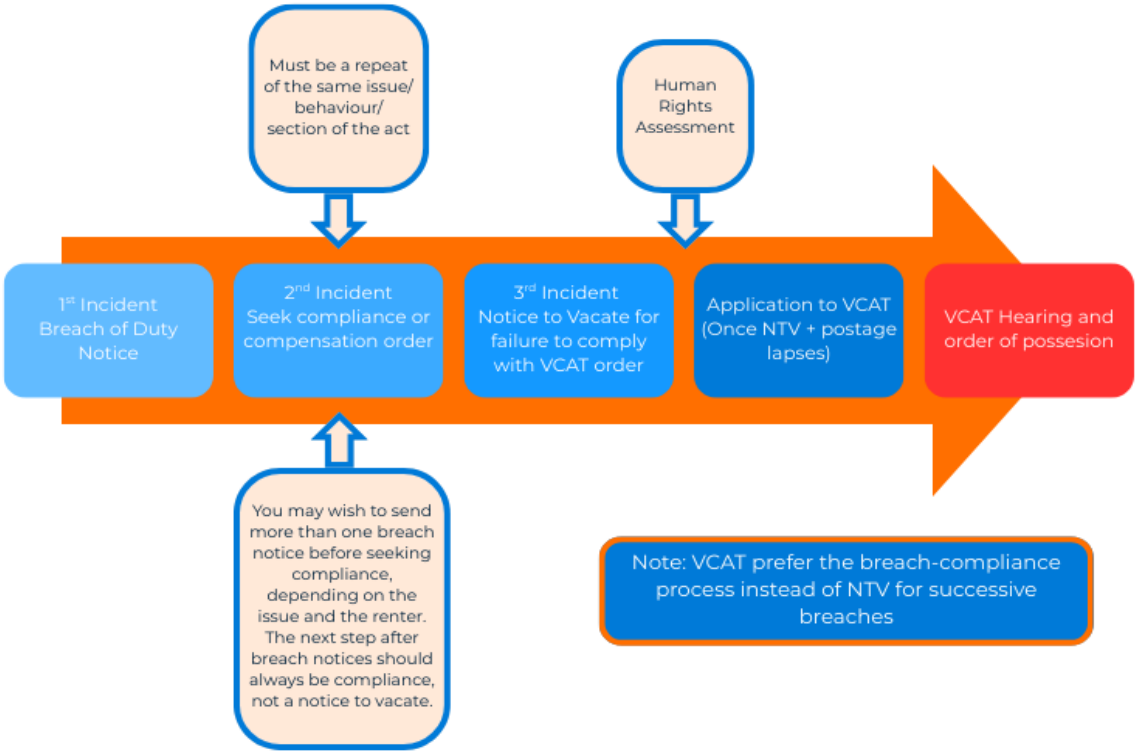
RTA duties operate on a 'three strike' system, where the CHO can issue a notice to vacate instead of a third breach of duty notice if:

- a resident has breached their duties under the RTA; and
- the CHO has on two previous occasions issued a valid breach of duty notice to the resident relating to breaches of the same duty ;

The CHO does not need to have obtained two previous VCAT compliance orders in order to issue a notice to vacate for repeated breach of duty. However, in practice a VCAT member is unlikely consider it reasonable and proportional to evict a resident unless at least one previous compliance order has been maintained.

An example breach process may be to:

- for the first breach, issue a breach notice only;
- for the second breach, issue a breach notice and apply for a compliance order if the breach is not remedied; and
- for the third breach, issue a notice to vacate and seek a possession order.
- Using the above process may assist with demonstrating to VCAT that a possession order is reasonable and proportionate in the circumstances



5.8 House Rules

CHOs may make house rules which apply to the use and enjoyment of facilities and rooms of the rooming house. VCAT has typically interpreted "use and enjoyment of facilities and rooms" to mean that the house rule must be intrinsically tied to resident's behaviours or use of facilities at the rooming house. Any house rule that does not relate to use and enjoyment of the rooming house is invalid.

As an example:

- A house rule which restricts visitor hours at the rooming house relates to use and enjoyment of the rooming house (by both the visitor and the resident).
- In comparison, a house rule which states that residents must not park in permitted on-street parking spaces would not be valid because the rule does not relate to the use of the rooming house.

When creating or varying house rules, CHOs must give residents at least 7 days' notice in writing of the new or amended rules. CHOs must take all reasonable steps to ensure that house rules are observed by all residents and are enforced and interpreted consistently and fairly.

Residents have a duty to observe house rules, and a rooming house operator can issue a breach of duty notice where a resident fails to observe the house rules.

In a recent decision, VCAT has found that the Australian Consumer Law (ACL) applies to rooming house agreements and related house rules. The ACL prohibits any unfair contracting terms – this also applies to house rules made by a CHO.

House rules will be considered unfair under the ACL if:

- the relevant house rule would cause a significant imbalance in the parties' rights and obligations under the contract;
- the house rule is not reasonably necessary to protect the CHO; and
- the house rule causes detriment to the CHO

The ACL also requires that house rules are transparent and easily understandable.

House rules should be carefully worded to avoid VCAT challenge. House rules should provide sufficient details to clearly define the rule, while still being easy for residents to read and understand.

Please refer to CHIA Vic's House Rules Practice Guidance for detailed guidance on setting and managing house rules.

5.9 Notice Requirements

If a CHO is considering issuing a NTV to a resident, it should consider the following factors:

Timing of notice

- Each RTA section which provides grounds to issue a NTV will specify a minimum period after which the renter must exit the premises (for example: immediately, or not less than 28 days, 60 days or 90 days after the date the notice is given).
- This is the minimum notice period required under the RTA, which can be extended where notices are sent by registered post.
- In many cases, it is appropriate for CHOs to provide a longer notice period to allow the resident time to vacate. If a longer notice period is specified in the NTV, the CHO must abide by the terms of the notice, even where it may delay an application to VCAT for possession of the room.

Prescribed form of notice

- It is crucial that CHOs use the prescribed form of NTV, and that it is properly completed with all relevant details.
- VCAT will routinely dismiss an application for possession on the basis that the NTV:
    - specifies the wrong section or subsection of the RTA;
    - does not provide sufficient detail of the CHOs grounds for issuing the notice;
    - provides incorrect amounts owed by the renter to the CHO; or
    - provided incorrect timing for the renter to vacate the premises.

Evidence

Where possible, CHOs should attach evidence to the NTV supporting the grounds for seeking an eviction.

6. PHWA obligations

The PHWA regulates public health and infectious diseases in Victoria. In the context of rooming houses, the PHWA has two primary roles:

- to regulate nuisances which might cause risk to health of the general public; and
- to require registration of rooming houses with local councils.

6.1 Nuisances

A nuisance is any event which may present a risk to public health or offensive, including:

- excessive refuse or rubbish;
- animals capable of carrying a transmissible disease (e.g. vermin infestations); or
- substantial noise emissions (e.g. loud music or machinery).

Councils have the power to investigate reported nuisances and issue a statutory notice to the owner or occupier of any property where the nuisance is located.

The notice will either prohibit or place limits on the cause of the nuisance and require the owner or occupier of the property to take steps to prevent future nuisances.

In practice, the nuisance needs to be significant and affect a number of neighbouring properties for council to investigate and take steps to prevent further nuisance. For example, a recent VCAT proceeding upheld a statutory notice issued after a rock concert was held at an unlicensed venue.

6.2 Registration of accommodation

Note – the PHW Act registration process is separate from the RTA rooming house registration process.

The owner of a rooming house with 5 or more beds must register with municipal council. Where a rooming house is owned by the Director of Housing, the general lease may require the CHO to undertake statutory duties (including PHWA registration) on its behalf.

Upon receipt of a request for registration, council may require alterations or improvements be made to the rooming house so as to comply with the PHWA or the RTA minimum standards. Council may also require access to the rooming house for an inspection prior to accepting registration. CHOs may need to provide access to rooms and issue notice to residents in this regard.

Council can determine any fees payable by the CHO for registration and whether registration is for a fixed term of up to 3 years or ongoing and not requiring renewal.

6. Other RTA obligations

The following table summarises RTA obligations for CHOs operating rooming houses.

Topic	References	Obligations
Occupancy right	Sections 92, 92A, 92B, 92C, 93, 94B, 94C and 94D.	• When offering a room in a rooming house for lease, a CHO must specify whether the resident will have an exclusive right to occupy the room, or if the room is to be shared with other residents. • A residency right granted by a rooming house agreement is presumed to be an exclusive occupancy right, except where the CHO complies with the RTA process for offering a shared room. • It is possible for multiple people to share an exclusive occupancy right (e.g. family members sharing a single room). • It is not standard practice in the community housing sector to house unrelated residents in a shared room. CHOs should be aware that there are specific obligations for shared room occupancies and refer to these sections of the RTA if and when relevant. •
Fixed term agreements	Section 93A	• A rooming house agreement for a fixed term must be provided in writing in the prescribed form. • The RTA does not specify whether periodic or ongoing rooming house agreements must be in writing, or if these can be verbal. • However, because fixed term agreements must be in writing, any verbal agreement is considered to be a periodic/ongoing rooming house agreement. • CHOs should always execute a written rooming house agreement with each resident.

Self-contained apartments	Section 94	• If a self-contained apartment is located in a rooming house which:
		  • has less than a 3:1 ratio of standard rooming house rooms to self-contained apartments; and
		  • is not a gazetted rooming house,
		• then the self-contained apartment can only be leased using a standard residential rental

Topic	References	Obligations
		agreement (i.e. not using a rooming house agreement). • The rental agreement for a self-contained apartment should contain special conditions regarding the use of any common areas and facilities by the renter.
Terms and conditions of rooming house agreement	Sections 94A, 94AB, 94AC, 94AD and 94AE	• Similar to a standard residential rental agreement, there is a 'prescribed' form of fixed term rooming house agreement – see Form 7 of the General Regulations. CAV also publishes a version of the prescribed form which can be used. • However, the prescribed form is not required for ongoing/periodic rooming house tenancies. • CHOs have greater flexibility when preparing rooming house agreement templates for periodic tenancies, subject to the following restrictions: ***Harsh or unconscionable terms*** • A resident may apply to VCAT for an order declaring invalid or vary any term of a rooming house agreement. VCAT will grant this order where it is satisfied that the term is 'harsh or unconscionable'. • A term of an agreement may be harsh or unconscionable if a reasonable person would find it to be unfair, exploitative and/or taking advantage of the imbalance of bargaining power between the parties. ***Term inconsistent with the RTA*** • Any term of a rooming house agreement which is inconsistent with the RTA is invalid. Put another way, CHOs and residents are not able to contract out of their obligations under the RTA. ***Prohibited clauses*** • A fixed term rooming house agreement must not include any of the following prohibited clauses: • A requirement for the resident to take out insurance, or for the resident to pay any excess under the CHOs insurance policy;

Topic	References	Obligations

		• An exemption of liability for the acts of the CHO or any person acting on their behalf;
		• Any legal indemnity by the resident in favour of the CHO;
		• A penalty clause, whereby if the resident contravenes the agreement they must pay:
		  • all or part of the remaining rent under the agreement;
		  • increased rent; or
		  • any kind of penalty or damages.
		  • A 'good behaviour bonus' whereby if the renter does not contravene the agreement their rent payable is or may be reduced.
		• An obligation for the resident to pay for the CHOs costs to prepare the rooming house agreement.
		• Any pre-commitment binding the resident to a tenancy before they have had an opportunity to review the rooming house agreement;
		• A clause which prevents the resident from making a claim for compensation because the room was unavailable at the commencement date;
		• A requirement to pay rent using a method which charges additional costs (other than bank fees);
		• An obligation to use services of a third-party service provided nominated by the CHO (other than in relation to an "embedded network");
		• Any requirement for the resident to pay the CHO's costs for filing an application in VCAT;
		• An unreasonable limitation on the resident's use of utilities.
		• The general conditions of the CAV standard form fixed term rooming house agreement comply with the RTA requirements. CHOs will only need to assess whether any additional terms added to the standard form are consistent with the RTA.

Information to be provided to incoming residents	Sections 94E, 94I, 109, 124, 125	• If providing a prospective renter with an application form to rent a room in a rooming house, the CHO must include a copy of the prescribed statement of information regarding

Topic	References	Obligations

		unlawful discrimination against applicants. CAV publishes a template form which complies with the General Regulations.
		• Before the resident occupies the room, the CHO must disclose (where applicable) any of the following information in writing:
		  • the CHO has engaged an agent or prepared a contract of sale to sell the rooming house;
		  • a mortgagee has commenced proceedings to take possession of the rooming house;
		  • the CHO does not own the rooming house, but has the right to permit occupancy of a room (note – this disclosure is mandatory where the Director of Housing owns the building); and
		  • the CHO is a registered housing agency and is not required to be licenced under the RHOA;
		  • the rooming house is registered with the local council under the PHWA;
		  • the CHO has received a notice relating to mould or damp caused by or related to the building's structure in the last three years;
		  • an owner's corporation dispute applies or affects the rooming house;
		  • a copy of any owner's corporation rules;
		  • if the CHO charges an amount for services to a resident (whether or not charged as a part of the rent), a schedule of the amounts charged relating to those services;
		  • a written statement in the prescribed form setting out the resident's rights and duties under the RTA;
		  • a copy of any house rules;
		  • contact information for the CHO, including an address for service of documents;
		  • a 24-hour telephone number to organise urgent repairs;
		  • a homicide has occurred in the rooming house or common property in the last 5 years;
		  • the rooming house is subject to a building or planning application, notice, order, report or declaration;
		  • the rooming house contains asbestos, as determine by an inspection by suitably qualified persons; and/or

Topic	References	Obligations
		• the rooming house is contaminated because of prior use for the trafficking or cultivation of drugs in the last 5 years. • CHOs should review the content of their onboarding packets and information sheets on a regular basis to ensure all information required is provided and remains accurate.

Information not to be collected	Section 94H	• A CHO must not require a prospective resident to disclose the following information:
		  • whether the resident has previously taken legal action, has been a respondent to legal action, or has had a dispute with a previous accommodation provider;
		  • the resident's rental bond history;
		  • a credit or bank account statement containing daily transactions; or
		  • any information about the applicant that relates to a protected attribute under section 6 of the EOA, unless the reason that the information is required is provided in writing.

Condition reports	Sections 97, 97A and 98	• Prior to moving in , a CHO must give a resident 2 physical copies or 1 electronic copy of a condition report in the required form (refer to General Regulations Form 9 of Schedule 1) signed on behalf of the CHO. • Within 5 business days of moving in, the resident must return one copy of the condition report signed by them, specifying where they agree or disagree with the report. • Where the parties cannot agree on the accuracy of the condition report, either party may apply to VCAT to amend the condition report. • A condition report is conclusive evidence of the state of repair or general condition of the room at the relevant date. However, a condition report is not evidence of: • any repair or general condition of the room that could not have been discovered a reasonable inspection of the room (e.g. damage or defects hidden behind walls or fixtures); or

Topic	References	Obligations
		• any damage or disrepair to any part of the room which the parties have not both agreed to in the condition report. • CHO should try to reach agreement with the resident regarding the condition of the room as soon as possible after commencement. A condition report accepted by both parties can avoid a dispute regarding the required condition when the renter vacates the room. • Within 10 days after the resident moves out, the CHO must complete a retained copy of the condition report. The report should be completed with a representative of both parties present, unless the CHO has given the resident reasonable opportunity to be present when the report is completed and the resident does not attend.
Rent payment method	Sections 99A and 100	• CHOs must: • allow the resident to use Centrepay to pay their rent; • provide a payment method to the renter that incurs no additional costs (other than bank or account fees chargeable by the resident's bank); and • provide the resident with information about any costs that may be incurred using that payment method in addition to rent. • If requested by the resident, the CHO must provide a written receipt to the resident within 5 business days (or immediately, if payment is made in person).
Increase in rent	Sections 101, 102, 103 and 104	• A CHO must give a resident at least 90 days' notice (in the prescribed form) of a proposed "market" rent increase. • Rent is not increased where: • a rental rebate is applied, adjusted or cancelled by the CHO; • the application, adjustment or cancellation of the rebate caused an increase in the amount payable by the resident; or • other non-rent charges payable by the renter are increased or varied.

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		• Put another way, variations in the amount of the rebate granted to a renter can occur as required by the CHO, as long as this does not result in market rent being exceeded and complies with the CHO's rent policy. • Market rent must not be increased more than once in each 12-month period. • A renter may apply to CAV to investigate an excessive market rent increase. • Where CAV determines that the market rent is excessive, a resident may apply to VCAT for an order declaring a reasonable rent for the room. • For more information, please refer to CHIA's Rent Setting Guide.
Reduction in rent	Sections 106	• If a rooming house ceases to provide a service to a rooming house (for example, the rooming house no longer offers a laundry and residents are required to use an off-site laundromat), the rent must be reduced by an amount agreed between the parties, or an amount determined by VCAT in the absence of agreement.

Separately metered utilities	Sections 108 and 120AA	• A CHO may charge a resident an amount not included in rent for utilities consumed in the room if:
		  • the CHO is responsible for payment of the utilities;
		  • the room is separately metered; and
		  • the room is not a shared room.
		• The amount charged must not be more than the charge made by the relevant supplier of the utility.
		• A resident who received an excessive utilities bill may claim from the CHO an amount equal to the amount in excess of their ordinary usage where:
		  • the excessive usage of the utility in the resident's room is caused by a fault in infrastructure at or connected to the room;
		  • the resident has notified the CHO as soon as reasonably practicable of the excessive utility charges and the fault causing them; and

Topic	References	Obligations
		• the fault was not caused by the resident.

Service charges	Section 109A	• A CHO may impose a service charge on a resident of a registered rooming house.
		• The service charge must:
		  • only be imposed in relation to water, central heating, laundry or utility services made available to the resident;
		  • not be imposed except where it is not possible or practicable to accurately measure the use by the resident of the services or facilities; and
		  • not exceed the cost of providing the service or facility to the resident.
		• When imposing or varying a service charge, the CHO must provide written notice to the resident advising of the imposition or variation, including the particulars of the change in the cost of providing the services or facilities to which the charge relates.
		• Service charges are expressly excluded from the RTA definition of rent, and therefore do not form part of ordinary rental arrears and cannot be pursued as such.

Modifications	Section 115	• A resident must not install any fixtures in the room or rooming house without prior consent in writing from the CHO.
		• A CHO must not unreasonably refuse consent to modifications by the resident that are:
		  • assessed and determined to be required by an accredited occupation therapist or prescribed practitioner; and
		  • reasonable alterations within the meaning of section 55 of the EOA.
		• Modifications will be reasonable under the EOA if:
		  • the resident has a disability;
		  • the modifications are made at the residents' expense;
		  • the modifications do not require any alterations to a room of another resident or neighbour;

Topic	References	Obligations
		• it is reasonably practicable to remove the modifications and restore the room or rooming house to its previous condition when the resident moves out; and • the resident agrees to restore the accommodation to its previous condition before leaving, and it is reasonably likely that the resident will do so. • CHOs can reasonably refuse to permit modifications to shared premises where the co-resident(s) do not consent. • Except in the case of very minor alterations, it is unlikely that the resident will be able to finance modifications themselves. Where the modifications are funded by the NDIS, the CHO should confirm that the NDIS funding covers the removal of the modifications when the renter exits the premises.
Duty provisions	Sections 120, 121, 122, and 126,	• The RTA imposes 'duties provisions' when managing rooming houses, which CHOs must comply with in the course of operating a rooming house. • CHOs must: • where repairing or renovating the rooming house, minimise inconvenience and disruption to residents and, where necessary, provide temporary alternative accommodation or facilities; • comply with the rooming house standards); • ensure residents have 24-hour access to their rooms and bathroom facilities; • not unreasonably restrict or interfere with a resident's quiet enjoyment and proper use of their room and the facilities of the rooming house; • take reasonable steps to provide security for the property of residents in their room; • display in each room a copy of the resident's rights and duties under the RTA, and a copy of any house rules; and • take all reasonable steps to ensure that house rules are observed by all residents, and are enforced and interpreted consistently fairly.

Topic	References	Obligations

Breach of duty	Sections 142ZH, 142ZG, and 208,	• Where either a resident or CHO is in breach of their duties under the RTA (Breaching Party), the other party (Notifying Party) may give a breach of duty notice to that party in the prescribed form.
		• If the breach of duty notice is not complied with, the Notifying Party may:
		  • apply to VCAT for an order of compensation or compliance relating to the breach of duty; and/or
		  • issue a second breach of duty notice.
		• RTA duties operate on a 'three strike' system Where:
		  • a resident has breached their duties under the RTA; and
		  • the CHO has on two previous occasions issued a valid breach of duty notice to the resident relating to breaches of the same duty ;
		  • the CHO can issue a notice to vacate instead of a third breach of duty notice.
		• The CHO does not need to have obtained two previous VCAT compliance orders in order to issue a notice to vacate for repeated breach of duty. However, in practice a VCAT member is unlikely consider it reasonable and proportional to evict a resident unless at least one previous compliance order has been maintained.
		• An example breach process may be to:
		  • for the first breach, issue a breach notice only;
		  • for the second breach, issue a breach notice and apply for a compliance order if the breach is not remedied; and
		  • for the third breach, issue a notice to vacate and seek a possession order.
		• Using the above process may assist with demonstrating to VCAT that a possession order is reasonable and proportionate in the circumstances.
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Topic	References	Obligations

House rules	Sections 119, 126 and 209AA
	
	Section 23 and 24 of the Australian Consumer Law
		• CHOs may make house rules which apply to the use and enjoyment of facilities and rooms of the rooming house. VCAT has typically interpreted "use and enjoyment of facilities and rooms" to mean that the house rule must be intrinsically tied to resident's behaviours or use of facilities at the rooming house.
		• As an example, a house rule which restricts visitor hours at the rooming house relates to use and enjoyment of the rooming house (by both the visitor and the resident).
		• In comparison, a house rule which states that residents must not park in permitted on-street parking spaces would not be valid because the rule does not relate to the use of the rooming house.
		• Any house rule that does not relate to use and enjoyment of the rooming house is invalid.
		• When creating or varying house rules, CHOs must give residents at least 7 days' notice in writing of the new or amended rules.
		• CHOs must take all reasonable steps to ensure that house rules are observed by all residents, and are enforced and interpreted consistently and fairly.
		• In a recent decision, VCAT has found that the Australian Consumer Law (ACL) applies to rooming house agreements and related house rules. Under the ACL, an unfair term of a standard form contract (including a rooming house agreement and house rules) is void.
		• House rules will be considered unfair contract terms under the ACL if:
		  • the relevant house rule would cause a significant imbalance in the parties' rights and obligations under the contract;
		  • the house rule is not reasonably necessary to protect the legitimate interests of the CHO; and
		  • the house rule would cause detriment to the resident if it were relied upon.
		• The ACL also requires that contract terms must be transparent and easily understandable.
		• It is recommended that house rules are carefully worded to avoid challenge. House rules

Topic	References	Obligations
		should provide sufficient details to clearly define the rule, while still being easy for residents to read and understand. • Residents have a duty to observe house rules, and a rooming house operator can issue a breach of duty notice where a resident fails to observe the house rules.

Urgent repairs	Sections 129 and 130	• A resident may arrange for urgent repairs to be completed where:
		  • the resident has taken reasonable steps to arrange for the CHO to immediately carry out the urgent repairs;
		  • the CHO does not carry out the repairs;
		  • there is (or is likely to be) immediate damage to health or safety; and
		  • the resident is unable to use other facilities in the rooming house.
		• If a resident carries out urgent repairs, the resident must give the CHO 7 days written notice of the repairs carried out and the cost of the repairs.
		• The CHO must reimburse the resident for the reasonable costs of the repairs within 7 days of receiving notice of the cost of the repairs.
		• A resident may apply to VCAT for an order requiring the CHO to carry out urgent repairs if:
		  • the resident cannot meet the cost of the repairs; or
		  • the total cost of the urgent repairs exceeds $2,500.

Non-urgent repairs	Section 120, 120A and 131	• CHOs have an obligation to keep the rooming house rooms and common areas in good condition and compliant with the rooming house standards. CHOs must undertake non-urgent repairs where necessary to maintain the condition of the rooming house. • A CHO will be in breach of this duty if it fails to complete non-urgent repairs within 14 days of receiving notice from a resident that non-urgent repairs are required to a room or the rooming house. • Residents may apply to CAV to investigate whether the CHO is in breach of its duty to complete non-urgent repairs. If CAV finds non-

Topic	References	Obligations
		urgent repairs are required and have not been completed, the resident may apply to VCAT for an order requiring non-urgent repairs. • CHOs are not obliged to repair damage to the rooming house caused by the misuse or negligence of a resident or their visitor.

Access	Sections 136 -142A	• A CHO or its employee may enter a room occupied by a resident only in the following circumstances:
		  • At any time where:
		  • there is an emergency and immediate entry is necessary to save life or valuable property;
		  • each resident of the room agrees to that time; or
		  • services are provided and it is necessary to enter to provide the services at that time, and the house rules specifies that the services may be provided by the CHO at that time.
		  • At a time between 8am and 6pm on any day, on at least 24 hours' notice to each resident:
		  • A notice to vacate or a notice of intention to vacate the room has been validly served and entry is required to show the room to a prospective resident;
		  • The rooming house is to be sold, and entry is required to show the rooming house to the prospective buyer;
		  • Entry is required to enable the CHO to carry out a duty under the RTA or any other applicable legislation; or
		  • The CHO has reasonable grounds to believe that a resident has failed to comply with their duties under the Act.
		  • At a time between 8am and 6pm on any day, on at least 48 hours' notice to each resident, entry is required to enable an inspection of the room by the CHO (such an inspection not to occur more than once every 4 weeks).
		• A CHO must compensate a resident where the exercise of a right of entry results in the damage

Topic	References	Obligations
		or destruction of a resident's belongings in the room.
Rooming house standards	Sections 142B and s142BA	• A CHO must not provide a room, facility or service that does not comply with the rooming house standards (see details of rooming house standards above). • A CHO must comply with any prescribed requirements for keeping records of gas and electrical safety checks conducted at the rooming house.
Service of notices	Section 506	• RTA notices (including breach of duty notices, NTVs and applications to VCAT) must be served by: ❖ delivering the notice personally to the recipient (note - while the notice does not need to be physically handed to the recipient, the recipient must be present and aware of the delivery of the notice); ❖ delivering the notice to the usual or last known residence or business of the recipient with a person apparently over the age of 16 residing or employed at that location; ❖ mailing by registered post to the usual or last known residence or business of the recipient; or ❖ by email, where the recipient has agreed in writing that service of notices by email will be accepted. • VCAT will dismiss any application which is based on a notice that has not been served in accordance with the RTA. • The following are examples of service which VCAT has found to be improper service under the RTA: • allowing a family member or friend to pick up the notice from the CHO's offices; • providing the notice to a resident's support worker; • putting the notice under the door of the resident's room; • sending notice via email where the resident has not expressly consented in writing to electronic service (even where the resident typically communicates via email or has not objected to previous electronic service).

Topic	References	Obligations
		• Improper service of a notice can be remedied by re-service of the notice if the time period for service of the notice has not expired. It is therefore good practice to serve any notice as soon as reasonably practicable to provide a buffer to remedy any defects in the notice or the service.

Notice to vacate	Section 124M – 124ZK	• If a CHO is considering issuing a NTV to a resident, it should consider the following factors:
		• Timing of notice
		  • Each RTA section providing grounds to issue a NTV will specify a minimum period after which the renter must exit the premises (for example: immediately, or not less than 28 days or 60 days after the date the notice is given).
		  • This is the minimum notice period required under the RTA, which can be extended where notices are sent by registered post.
		  • In many cases, it is appropriate for CHOs to provide a longer notice period to allow the resident time to vacate. If a longer notice period is specified in the NTV, the CHO must abide by the terms of the notice, even where it may delay an application to VCAT for possession of the room.
		• Prescribed form of notice
		  • It is crucial that CHOs use the prescribed form of NTV, and that it is properly completed with all relevant details.
		  • VCAT will routinely dismiss an application for possession on the basis that the NTV:
		  • specifies the wrong section or subsection of the RTA;
		  • does not provide sufficient detail of the CHOs grounds for issuing the notice;
		  • provides incorrect amounts owed by the renter to the CHO; or
		  • provided incorrect timing for the renter to vacate the premises.
		• Evidence

Topic	References	Obligations
		• Where possible, CHOs should attach evidence to the NTV supporting the grounds for seeking an eviction.

Application for possession		• The CHO may apply to VCAT for a possession order:
		  • no earlier than the date the NTV was validly served on the resident (or 7 days after receiving a notice of intention to vacate); and
		  • no later than the 30 days after the termination date specified in the NTV or notice of intention to vacate.
		• The prescribed form, service and evidence requirements for an application for possession are similar to those for issuing a NTV. CHOs should be clear as to each of these requirements before submitting its application for possession.
		• The VCAT member will make a possession order only where it is satisfied that:
		  • the CHO was entitled to give the resident a NTV under the relevant RTA provision;
		  • the NTV was valid completed and served;
		  • the CHO has validly served a copy of its application for possession on the resident;
		  • the resident is still occupying the room; and
		  • it is reasonable and proportionate to make a possession order.
		  • When considering if it is reasonable and proportionate to make a possession order, the VCAT member must consider the interests of:
		  • the CHO;
		  • the resident;
		  • any other residents of the room or the rooming house; and
		  • any neighbour or other person who may be, or has been, affected by the acts of the resident.
		• When considering if it is reasonable and proportionate to make a possession order, the VCAT member must also have regard to the following factors:

Topic	References	Obligations
		• the nature, frequency and duration of the resident's conduct which led to the NTV; • whether the resident's conduct is recurring; • the severity of the breach; • whether any other persons other than the resident contributed to the breach; • whether the resident has made an application for family violence or personal safety protection orders; • if the breach has been remedied as far as is practicable; • whether the resident has or will soon have capacity to remedy the breach and comply with its obligations going forward; • whether any other order or course of action is reasonably available instead of making a possession order; • the conduct of the CHOs employees. • In practice, VCAT will be unlikely to grant an order of possession except in circumstances where: • the breach is extremely serious (for example, substantial deliberate harm to another person or property); • the grounds for the possession order relate to substantial works to the rooming house, which are to commence in the near future; or • the resident: o has an extensive history of committing similar breaches; o has been subject to previous VCAT compliance orders; o is likely to commit a similar breach again in future; and o there is a plan to provide the resident with alternative accommodation.