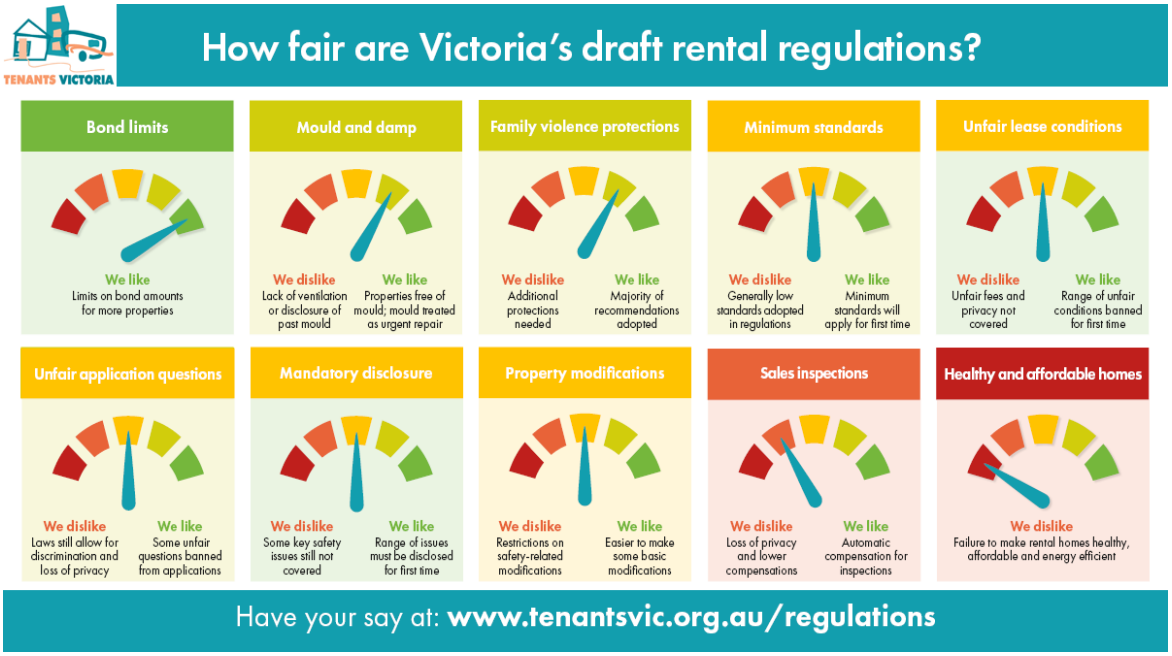
TENANTS VICTORIA

Submission on some key changes to the Residential Tenancies Act Draft Regulations

5 December 2019



WHY RESIDENTIAL TENANCIES ACT AND REGULATIONS CHANGES MATTER

Executive Summary

Tenants Victoria has been working for nearly 40 years to improve the legal status of renters, including to ensure that they are safe and secure in their rental homes. We worked with other community legal centres, housing advocates and community groups to lobby to Make Renting Fair. We were very pleased that our efforts led to once in a generation reforms in the September 2018 *Residential Tenancies Amendment Act* (RTA). How the RTA will work in practice depends on the details in the Regulations. The draft Residential Tenancies Amendment Regulations (the Regulations) have now been released for public consultation until 18 December 2019.

Tenants Victoria welcomes most of the changes in the Regulations, as they help to make homes for renters more secure and comfortable, and will for the first time recognise renters should have the rights that other consumers already have in other areas. We welcome the protect renters from intrusive questioning by property agents, the establishment of minimum standards for rental properties, banning some unfair lease terms and that a property owner must provide information to its prospective renters. We are pleased that the monetary limits in the Act have been updated to recognise cost of living changes, i.e. that bonds can't be more than 4 weeks rent if your rent is up to $900 per week, and that the urgent repairs amount has been adjusted.

IMPROVING THE SAFETY, SECURITY AND PRIVACY OF RENTERS

- Having a home is a basic need and home is important to everyone. A secure and comfortable place to live maximises everyone's opportunity to engage with and participate in their community (whether through school or work). Minimising unnecessary disruption allows people to put down roots, helps create communities and social capital.
- Decreasing housing affordability means that more and more people are renting and renting for longer, whether they are singles, families, older people. In Victoria that means that almost a third of the population (as recorded by the 2016 Census) lives in a rented property, and this figure is rising[1].
- More vulnerable people are renting, and increasingly they find their homes in private rental. As the Productivity Commission has recently reported "the population of low-income households grew 42 per cent between 1994-95 and 2017-18, the number of low-income households renting privately increased by 134 per cent and the number in public housing has fallen by 6 per cent[2].
- The world has changed considerably since 1997 (when the last major changes to the RTA were passed). As a community we have higher expectations and standards. The legislation protecting the rights of renters and landlords should reflect community expectation.

Renters' Rights – Renters are finally recognised as consumers

Rent is a huge cost for many people, but paying for the right to live in a rental property didn't give basic consumer protections. Consumer protection means people are armed with knowledge about what they are buying, that the product is safe and that there are strong rights to fix the item where it malfunctions.

[1] 2016 Census showed 26.9% of 5,946,059 Victorians were in rental housing on census night; 2018 population estimates put Victoria's population as 6.27million http://www.population.net.au/population-of-victoria/

[2] Vulnerable Private Renters: Evidence and Options, Productivity Commission Research Paper, September 2019, p.5 and Figure 3, p 6 https://www.pc.gov.au/research/completed/renters/private-renters.pdf

The new changes will mean that:

- prospective renters are informed about some of the characteristics of their expected home (when applying for rental), so they know what they can expect before they commit to renting e.g. will there be building works or is there flammable cladding on the building,
- a landlord's responsibility for safety maintenance is clearer,
- rental properties must meet some basic standards,
- VCAT can act to enforce these fair standards.

Greater protection of victims of family violence and more vulnerable renters

The changes mean the law reflects the care that **all** of the community would want taken for these individuals. The changes we welcome include:

- supporting vulnerable renters and family violence victims to have comfortable and secure homes
- going some way to ensure that family violence victims are not financially penalised by the acts of the violence perpetrator
- ensuring that family violence victims can maintain continuity of residence in rental properties
- ensuring that family violence victims' reputations are not tarnished/negatively affected by their relationship with a violent person.

Many of the detailed changes included in the new draft regulations released for public comment will help create a fairer system. Unfortunately, while the changes are a good start, in some instances they do not completely fulfil what the public is entitled to expect in their homes. Tenants Victoria welcomes the changes that have been made so far. They are important, but in many instances they represent only a first step. Where this is the case, we will comment specifically on how the draft regulations could be improved to meet the ambition of the changes announced by the Government in August 2018[3].

Summary of Recommendations:

Mandatory Pre-Disclosure

Require mandatory pre-disclosure of previous mould or damp repairs
Require additional mandatory pre-disclosure of Heritage status
Require ventilation as a minimum standard
Require asbestos assessment to support renter safety

Minimum standards & Energy Efficiency

Increase minimum standard for heating, introduce energy efficiency measures such as minimum standard for insulation to support rental affordability
Introduce window coverings minimum standards immediately

Modifications:

Allow additional modifications for renter safety – e.g. locks on gates
Require that a landlord cannot unreasonably refuse a health and safety modification
Require draft proofing as a minimum standard or reconsider the prohibition where an unflued heater exists
Allow energy efficiency showerheads to be installed without keeping old showerheads (to take account of existing schemes)

[3] Labor Government Unveils New Laws to Make Renting Fair, 5 August 2018 https://www.premier.vic.gov.au/labor-government-unveils-new-laws-to-make-renting-fair/

Family Violence Protections:
Institute time limit for landlord to consent to safety modifications, and implied consent if time elapses. Consider further legislative amendments.

Sales Inspection Compensation:
Recognise disruption to renters by payment of 1 days rent as compensation per inspection, paid within the renter's payment cycle

Consumer protection:
Ban asking for payment before providing a rental agreement
Clarify prohibition on asking questions about previous eviction or debt owed to former landlord by using examples
Ban irrelevant questions:
how long renter has lived at previous properties,
are you applying for other properties?
Limit documents required to verify identity to standard 100 point check
Prohibit blanket clauses on lease breaking or assignment charges

Some of the key changes where we want to see further change are listed below.

Mould and Damp

Core Message: Mould and Damp are dangerous. For their safety, renters are entitled to homes that are free from damp and mould. This requires information about the property at the start of the tenancy and ventilation minimum standards that apply during the tenancy to support the requirement that the landlord has to maintain the property.

Tenants Victoria welcomes the widening of the definition of "urgent repairs" to include mould or damp caused or related to the building structure. This is supported by new draft minimum standard regulations[4]. Both these will enable renters to ask a landlord to make urgent repairs. While this is an important step forward and a valuable recognition of the importance of maintaining a damp and mould free home, these changes alone **will not** ensure renters are protected. Maintaining the external fabric of the home, so there is no incursion of water or damp **will not,** by itself fix the problem.

Damp and mould in residential buildings creates significant health concerns for inhabitants including exacerbation of asthma and other respiratory tract infections[5]. Some people have a high sensitivity to damp and mould, and children can be particularly affected by these conditions in their living environment. NZ experience has shown that the significant negative health effects and costs to individuals and the community can be prevented using a combination of strategies to create warmer dryer homes.[6]

[4] R29, Schedule 4, r7 –The rented premises are to be structurally sound and weatherproof. And r8 Each room in the premises must be free from mould and damp caused by or related to the building structure.
[5] The Standing Committee on Health Aged Care and Sport Enquiry into Biotoxins related illnesses in Australia recommended that the Department of Health produce information and undertake further research on the health effects of exposure to damp and mould, its prevalence in the built environment and advice on prevention and removal; Recommendation 1, https://www.aph.gov.au/Parliamentary_Business/Committees/House/Health_Aged_Care_and_Sport/BiotoxinIllnesses/Report/section?id=committees%2freportrep%2f024194%2f26276
[6] The NZ Healthy Homes Initiative which provided insulation and draft proofing for low-income households was evaluated to assess whether it improved health and social outcomes for families. As at December 2018, the program is estimated to have resulted in 1,533 fewer hospitalisations, 9,443 fewer GP visits and 8,784 fewer filled prescriptions in the first year after the programme's intervention. The savings to the health care system due to these reductions are estimated to be approximately $10.4 million. In total, the HHI programme is

Tenants Victoria has received many complaints about shoddy repairs of mould and damp problems in rental properties. These include painting over black mould, failing to fix drainage, lack of damp courses or water proof membranes in bathrooms, and drainage problems on balconies of apartment blocks impacting on adjacent residences. On inspecting a property, renters cannot assess whether there has been a previous mould problem, let alone the quality of the remediation work undertaken. The lack of building standards to remediate mould and damp was also recognised by the Commonwealth Parliament's Social Affairs Committee as a problem requiring attention in all jurisdictions.[7]

Mould and damp is relevant to renters before they enter the tenancy[8], during the tenancy and, because of the duty to maintain cleanliness and condition of the property, at the end of the tenancy. To fully implement the government's aims to protect renters' safety the regulations should be altered.

Mandatory Disclosure of Previous Mould and Damp Repairs

Before a prospective renter enters a tenancy, they should be aware of whether there has been repairs undertaken for mould and damp. Knowledge of previous repairs of damp and mould will help prospective renters make an informed decision on whether to seek to rent a premises. At the very least being on notice of previous repairs would alert prospective renters to make enquiries about the nature and extent of the damage.

This information is not covered by other obligations, is not readily discoverable by the renter, is not already managed by other means and does not require the landlord to undertake investigations. The RIS does not give specific rationale for rejecting this suggestion by tenant advocates, other than citing "the cumulative burden that managing a larger list of required disclosures would impose on landlords, particularly institutional landlords".[9] If immediate mandatory disclosure of this safety issue is a concern for housing providers such as Director of Housing or some community housing providers, a phased approach could be included in the regulation. In our submission, a requirement to disclose this information supports the consumer rights and health and safety of renters, is a condition readily able to be met by most landlords, and supports other changes already proposed by the RTAA and draft regulations.[10]

Ventilation minimum standard to maintain freedom from damp and mould

A ventilation minimum standard is required to keep a house free from damp and mould during the tenancy. Renters commonly complain that they are unable to adequately ventilate some areas of rental properties such as bathroom and laundry areas to prevent damp and growth or spread of mould, despite diligent cleaning. This issue arises in new buildings as well as older buildings[11].

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expected to avert approximately $30 million in health care costs over a 3-year period. The return on investment is expected to be less than two years. Pierse N, White M and Riggs L. 2019. Healthy Homes Initiative Outcomes Evaluation Service: Initial analysis of health outcomes (Interim Report). Wellington: Ministry of Health 23 September 2019

[7] Loc Cit, The Standing Committee on Health Aged Care and Sport Enquiry into Biotoxins related illnesses in Australia Recommendation 4 - that the Australian Government work with states and territories to conduct further research into the adequacy of current building codes and standards related to the prevention and remediation of dampness and mould in buildings.

[8] Loc Cit, The Standing Committee on Health Aged Care and Sport Enquiry into Biotoxins related illnesses in Australia – Recommendation 3 - that States and Territories ensure renters in rental properties, social and public housing are given timely information about disclosure and rectification of any previous or existing mould and/or water damage issues with a property before entering a residential leasing agreement.

[9] RIS, p.79

[10] For example, draft Schedule 4, Rental Minimum Standards (under r29) includes requirements on structural soundness, mould and damp which are only known or able to be known by the property owner who has records of expenditure.

[11] As one expert commentator on the new code requirements put it "For anyone exposed to post-construction remediation, water vapour and condensation issues have increased exponentially in our single and multi-residential markets. For those looking for a career in mould

The Australian Building Construction Board and National Construction Code have now recognised the negative effects of excess moisture[12] including the need to address both moisture control and ventilation management, publishing updated mandatory requirements in May 2019[13]. Ventilation of bathrooms and laundries is a feature of the Building Code for new buildings or renovated properties including Class 1 buildings and sole occupancy units in Class 2 Buildings.

Introducing this standard for existing rental properties would improve the quality of housing stock inhabited by renters.

The draft Minimum Standard regulations do not refer specifically to ventilation, and merely state that "*Each room in the rented premises must be free from mould and damp caused by or related to the building structure*"[14]. While this general prescription is very valuable, the lack of specificity and general nature of the regulation will, as a matter of course require renters and residents to turn to VCAT for definition and delineation of what is "caused by or related to the building structure". Similarly, by not setting out a standard that guides a landlord's compliance, the regulation will not immediately improve renters' situation. One way to address this would be to include a minimum ventilation requirement of "sufficient ventilation to prevent occurrence of mould arising from ordinary use".

Importantly the implementation provisions combined with the wording of s65A will prevent many renters from benefiting from minimum standards. S65A only imposes minimum requirements standards "*on or before occupation*", so will not affect existing renters. We note that specific ventilation requirements already exist for Rooming Houses[15], and submit that further regulation and guidance is required to clearly state requirements for other tenancies in keeping with current building standards.

The three M's-Modifications Mandatory Pre-disclosure and Minimum Standards.

Core Message: Regulations for Mandatory Pre-Disclosure, Minimum Standards and the ability to Modify a rental property must work together seamlessly to improve the safety, security, liveability and affordability of rental property. It is unfortunate that the transitional provisions complicate implementation of this scheme[16].

Renters must be able to make their house a secure home – for their families including their pets. This requires ability to install locks on external gates or windows, attach window blind holders, grab rails in wet areas and wall anchors for heavy furniture into brick walls.

Tenants Victoria considers that renters in Victoria are entitled to expect that their rental home will be safe when it is rented, that they will know enough about the property to understand dangers and

management, the market is hot", Fabric First,- Passivhaus, Building Physics & Diagnostics, https://www.fabricfirst.com.au/post/ncc-2019-condensation-management

[12] Including "triggering mildrew and mould growth, and perfect conditions for dust mites" and that "all these can be detrimental to health", Australian Building Codes Board, 'Minimising Condensation in Buildings', https://www.abcb.gov.au/Resources/Videos/Minimising-Condensation-in-Buildings

[13] New Condensation requirements in NCCC 2019, 29/05/19, Connect, Australian Building and Construction Board- https://www.abcb.gov.au/Connect/Articles/2019/05/21/New-condensation-requirements-in-NCC-2019 for building membranes and new Deemed to Satisfy provisions for exhaust systems and ventilated roof spaces. ABCB states"these provision require 'risks associated with water vapour and condensation must be managed to minimise their impact on the health of the occupants' and apply to Class 1 buildings, sole –occupancy units (SOUs) of Class 2 buildings and Class 4 parts of Buildings.

[14] R 29, Schedule 4, r8.

[15] Residential Tenancies (Rooming House Standards) Regulations 212, r 17

[16] Minimum standards will only apply to renters who move house after 1.7.2020. The effect will be to disadvantage long term renters such as public housing and community housing residents.

that it can be readily made safe through the new modifications process created by the RTAA and supporting regulations.

Tenants Victoria welcomes changes to allow renters to make modifications to rented properties. We have argued that enabling renters to make modifications is necessary for security and safety as well as the homeliness and liveability of the property. As more renters remain in the rental market longer and with the increased ease of entering longer term rental agreements, making modifications has become more and more important.

Minimum standards

Tenants Victoria welcomes the inception of minimum standards regime, but is disappointed at the low standards that have been set for heating (2 Star heating), the exclusion of Class 2 buildings (apartment or multilevel residential buildings) and lack of consideration for regional areas demonstrated by the banning of LPG fuel for heating.

That rental properties would not already have appropriate heating in the main living area of a rental home is inconceivable for most members of the community, especially in Victoria's climate. Victoria has two climate zones with the bulk of the state falling in cold zone (along with Canberra, Hobart and New Zealand), and the north west of the state is deemed to be in the average zone (along with Adelaide, Perth and Sydney). The Commonwealth Government energy rating labels used for air conditioners account for these zones to provide a star rating reflecting the expected annual energy use for both heating and cooling in the zone[17], while only an industry based Gas Energy rating label is used for natural gas appliances. It is not clear whether the gas star energy rating system is accurate across heater types[18].

Tenants Victoria believes a more stringent heating standard is required. This is further discussed under Energy Efficiency.

Interaction of modifications provisions with other regulations – mandatory pre-disclosure

The division of modifications between what cannot unreasonably be refused and those a renter can make without consent appears to be arbitrary and in some instances without consideration of the interaction of modification provisions with other changes in the regulations.

Heritage status

Modifications without consent are limited by whether the property is a "registered place" under the Heritage Act[19], but draft r16 **does not** require the landlord to disclose the property's known heritage status. Compared to the renter, the landlord is more likely to know of the heritage status of a property. As this status would affect how a renter lives in the property, it is reasonable that a landlord be required to disclose this status to prospective renters.

Brick Walls

Regulation 26(a)(i) allows picture hooks, brackets, and shelves to be installed without discussion with a landlord where the surfaces are not brick walls. A renter may not know what the wall surface

[17] See Zoned Energy Rating Label, http://www.energyrating.gov.au/products/space-heating-and-cooling/air-conditioners; introduced from 2019.

[18] 'Research Report: Gas Space Heaters – Performance Testing and Energy Labelling', Equipment Energy Efficiency program, September 2015, found energy output varied from the label in most of the gas heaters tested. http://energyrating.gov.au/document/research-report-gas-space-heaters-performance-testing-energy-labelling

[19] R26(a)

is and it can be difficult to tell whether a building material contains asbestos[20] [21] and the mandatory disclosure requirements in relation to the presence of asbestos are limited to properties "previously assessed to have friable or non-friable asbestos"[22]. A landlord is not required to obtain information about a long-known hazardous substance that may create a danger for renters or occupants of the property. A landlord's failure to enquire or wilful blindness can then endanger the occupants who are trying to make their home safe by fixing heavy furniture to prevent crush hazard. Friable or damaged asbestos, even in small quantities can have catastrophic effects[23]. Ordinary risk management principles would suggest that an informed consumer/renter can avoid a known hazard.

Unfortunately, it was a common practice when renovating to dump asbestos building materials (instead of the more expensive option of disposing of it safely). This resulted in contamination of many back gardens throughout Victoria, endangering the children who play there, and pick up broken asbestos. In our submission, further changes are needed to fix this type of unintended consequence, it would be reasonable to require asbestos assessment and widen mandatory pre-disclosure.

Further basic safety modifications

Making a property safe has been recognised to some degree in the draft regulations, but the regulations can and should be stronger. The operation of the regulations should be considered as a whole and in light of all of the provisions of the amended Residential Tenancies Act. For example, a family with children will naturally be concerned to ensure that external gates to the property can be locked to prevent children running on to a road. Similarly, a renter who has a pet, should be able to secure it behind a locked gate, without having to seek permission from the landlord to install a lockable gate. These modifications should be able to be completed by the renter without seeking the consent of the Landlord, and if a keyed latch is used, a key supplied to the Landlord as currently occurs under s70(2).

Modifications that require consent

There are practical issues with the application of the draft r28 supporting s64(1B)(h) RTA and instances where the regulations as drafted do not balance safety and practicality, or simply do not align well with existing energy efficiency schemes such as the Victorian Residential Efficiency Scorecard[24]. There are no timelines for consent to be given, and this is a significant concern for safety modifications, where renters are at risk until consent is given.

r28a) and b) A landlord 'can't unreasonably refuse' consent to health and safety modifications. An example would be fixing a bookcase to a brick wall. However, there is no timeline or guidance to the landlord or renters on how long the landlord may take to make and communicate this decision. So while safety is prioritized by the legislation, the practical application of the regulation doesn't

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[20] A discussion of risks of asbestos created by drilling, cutting or sanding and recommendations for dealing with it in the home can be found at www.betterhealth.vic.gov.au/health/healthyLiving/asbestos-in-the-home. The advice states that: '*It is difficult to tell whether a building material contains asbestos, and the only way to be certain is to have a sample of the material tested by an accredited laboratory (see Where to get help section). If the material is not tested, it should be treated as though it contains asbestos'.*

[21] Common Domestic applications of asbestos includes vinyl tiles, hessian sacks used to carry asbestos used as lining under carpet and tiles, millboard behind heaters and stoves, asbestos cement sheeting in various forms and styles on walls and eaves, insulation inside fuse boxes, asbestos ceiling insulation, asbestos plasters, asbestos mixed into paint to give walls and ceilings a textured look. https://www.asbestosdiseases.org.au/asbestos-info/asbestos-products/

[22] See Draft Regulations r16(b)(iii)

[23] Asbestos related diseases can take many years to develop, these include asbestosis, lung cancer, reduced lung capacity and malignant mesothelioma https://www.betterhealth.vic.gov.au/health/healthyliving/asbestos-and-your-health

[24] https://www.victorianenergysaver.vic.gov.au/save-energy-and-money/get-a-home-energy-assessment - The scorecard assessment includes recommendations on how to weather tightness of the building, including "upgrading insulation, sealing gaps and cracks, improving window glazing or windows' external or internal coverings (such as curtains)"

support the urgency needed for this type of decision. A deemed consent after a short period or a short time to consent is needed to support safety especially for family violence victims/survivors.

r28c) Draught proofing – Tenants Victoria supports regulations and standards that would promote thermally efficient and affordable homes. Therefore, being able to make modifications to improve thermal efficiency is supported.

Given the Landlord's duty under s68[25]It is unclear however why the property should not be substantially draught proof and weatherproof at the inception of the tenancy. Nor is it clear why the cost of rectification should fall to the renter. The minimum standards (r29, Schedule 4, item 7 requires the premises to be "*structurally sound and weatherproof*"). The Collins English Dictionary defines weatherproof as "keeps out wind and rain"[26]. So the draft minimum standard can be interpreted as already requiring the premises to be draught proof, and correction of any defects would be amenable to the urgent repairs process. The need to make a further regulation to allow renter-initiated modification suggests that the minimum standard should be reworded for clarity "*structurally sound, weatherproof and substantially draught proof*".

r28c) does not allow renters to draught proof rental properties where homes have open flued gas heating. Following a coronial enquiry[27] related to carbon monoxide poisoning, one gas heater was withdrawn and the ACCC issued safety alerts about 4 further open-flued gas heaters[28] that stated "*The four models subject to the latest Safety Alert can be made safe with a technical fix. Households with these heaters will be able to register and have a qualified gasfitter modify and test their heater. Where there are no other issues affecting performance, the technical fix will make the heater safe to use and the responsible supplier will meet the costs*." (Emphasis added). In light of this advice and the new safety duty to test gas appliances biannually (r13, Schedule 3-Safety Related activities, item 2 Gas safety activities), it is not clear why draught proofing is limited to properties without open flued heating, especially as this modification is one which a landlord cannot unreasonably refuse. It is extremely disappointing that rather than enforce a requirement to provide a liveable and safe property, the draft regulations limit the ability of renters to improve their comfort, and instead continues to support failure by landlords to fulfil their obligations.

r28d) Installation of low flow shower heads where the original is retained. Schemes operated by major metropolitan water providers and councils, for example that by City West Water[29], provide free low flow showerheads in exchange for the existing high volume more wasteful shower head. The Act requires modifications to be remediated, unless the landlord agrees. The regulation should be adjusted to reflect these schemes – e.g "*installation of low flow shower heads. Unless this is done as part of an energy or water saving exchange scheme, the original must be retained*".

Family Violence Protections

Core Message: Victims of family violence must be able to be secure in their homes, and not be financially penalised because they are family violence victims. This requires the ability to modify the property – e.g. lockable post boxes, gates, security cameras; ability to easily demonstrate to

[25] "*RRP must ensure that renter premises are provided and maintained – a) in good repair and b) in a reasonably fit and suitable condition for occupation*"

[26] https://www.collinsdictionary.com/dictionary/english/weatherproof

[27] Inquest into the Death of Sonia Sofianopoulos, Coroner Jacqui Hawkins, 22 August, 2018 https://www.coronerscourt.vic.gov.au/sites/default/files/2018-12/soniasofianopoulos_356617.pdf

[28] ACCC, Vic: safety alert on four open-flued gas heaters, 4 Feb 2019, https://www.productsafety.gov.au/news/vic-safety-alert-on-four-open-flued-gas-heaters

[29] https://www.citywestwater.com.au/saving_water/bathroom/showerhead_exchange_program.aspx

VCAT the danger they face – e.g. a wide range of evidence must be acceptable to demonstrate their situation.

Tenants Victoria applauds the Victorian Government's commitment to implement the 227 recommendations of the Family Violence Royal Commission, and the great progress made to date so that all areas of government adapt law, policies and procedures to support victim/survivors of family violence. The changes to support victim survivors of family violence in the RTA are also a significant step forward, but in some instances it is not yet clear how they will operate in practice, or examination of the RTA indicates a need for amendments to fully give effect to family violence victim survivor protections (see Appendix 1 for a full list of suggested changes).

Tenants Victoria supports the broad list of options for evidence (r36, s91W(3)) that may be considered by the Tribunal in deciding whether to terminate or create a new tenancy due to family violence.

In relation to modifications, family violence victim survivors are at risk until the requested modification has been made, so time is of the essence. Economic abuse is included in the definition of family violence in the Family Violence Prevention Act[30]. Domestic Violence Victoria (the primary organisation advocating for family violence victims/survivors) advises that 90% of family violence victims/survivors have experienced some form of economic abuse by perpetrators. The RTA therefore should be amended:

- to streamline and provide time constraints on the landlord's considerations of the changes, and if consent is not granted in 24 hours, it is implied. In light of the significant cohort of people with disability being victims/survivors of family violence, or family violence being the cause of disability[31], these changes should also be made to the RTA (s64(1D) to include s64(1)(b)(f) to the modifications that s64(1C) does not apply to).
- to exempt victim survivors from having to return the property to original condition at the end of the tenancy, and from a requirement to pay an additional bond in relation to a fixture.

The draft regulations should also more fully support family violence victim survivors to fulfil the Victorian Government's commitments and investments to date that implement flexible support packages to promote the safety of victim survivors. This could be done by a regulation that exempts a modification that is a "safety measure" from the requirement to obtain landlord consent in circumstances of family violence, for example additional door locks.

The "*safety measure*" should be broadly defined as including, but not limited to:

a) Additional locks or door changes to any door or window
b) Security cameras
c) Window bars or security screen doors and security screen windows
d) Alarm systems
e) Sensor lights
f) Gates and fencing
g) Replacement locks, keys and electronic remotes for doors or windows or
h) *Locks for letter boxes and new or replacement letterboxes that provide additional security*

[30] S5 & s6 Family Violence Prevention Act 2008 (Vic)

[31] Overseas studies cited in 'Double the Odds – Domestic Violence and Women with Disabilities' Women with Disabilities Australia, http://wwda.org.au/issues/viol/viol2001/odds/ find that women with disabilities, regardless of age, race, ethnicity, sexual orientation or class are assaulted, raped and abused at a rate of at least two times greater than non-disabled women (Sobsey, 1988, 1994; Cusitar,1994 Stimpson and Best,1991; DAWN 1988).

Sales inspection compensation (Open for Inspections)

Core Message: Renters must be properly compensated if the landlord/agent interrupts their peace and quiet in their home. Sales inspections disrupt family life, privacy and their enjoyment of their home.

The RTA creates a clear requirement to notify a prospective renter if a landlord is proposing to sell the rental property before a lease is signed. This is welcome, but does not benefit renters during their occupancy. For the first time the RTA now allows disruption to existing renters to help a landlord sell a property, as well as entry to take photos or videos. Renters should be compensated for this disruption. Fair payment for this disturbance is 1 day per sales inspection.

All renters are entitled to expect to have their right to quiet enjoyment of the property respected by their property owner and real estate agent. This is fundamental and due to its importance, the landlords' duty to provide quiet enjoyment is clearly set out in the Act. Previously, renters could restrain owners, real estate agents and potential buyers from entry for sales campaigns. Renters control has been exchanged for compensation for entry set in the draft regulations (r35) as ½ day rent per inspection.

The disruption to renters' lives caused by sales campaigns is often more than just an annoyance. Renters have reported to Tenants Victoria that they have to clean up after property agents have completed inspections, as furniture or possessions have been moved to "better present" a property to potential buyers. We are told of threats of breach of duty notices (for lack of cleanliness) unless the property is a showroom[32] (though the law requires only reasonably clean). We have received complaints of agents leaving premises unsecured, curtains left open and all lights blazing on exit. Renters also report a clear expectation from some agents that extra cleaning or tidying in anticipation of these inspections would be appreciated or looked on favourably when renters seek alternative properties with that agency.

While it is clearly not a legal requirement, agents may make renters uncomfortable staying at home during the inspections. The compensation provided in the regulations does not and should not be taken to imply that renters make themselves scarce during inspections.

Sales campaigns commonly entail inspections several times per week and often include open house inspections on a weekend. Renters who work from home can be significantly inconvenienced by inspections during the week. A standard sales campaign runs for 4 weeks; however, the property owner may wish to have a longer campaign to gain the best return on their capital investment. Opening a property on the weekend is particularly disruptive for renters who work on weekdays, and who expect to be able to relax in their home during their leisure time. The occupational health and safety results of sleep disruption are not recognised in this draft regulation. Shift workers (e.g. nurses, doctors, police and firefighters), who have limited ability to alter their working hours, can also be extremely adversely affected[33] by sales campaigns affecting their homes' quiet enjoyment. Whether it is families with young children or a share house of students studying for exams, all are inconvenienced by inspections. A person suffering anxiety or other mental health issues or a family violence victim/survivor may also suffer emotional disruption or fear. Strangers looking at your

[32] There appears no clear way to protect renters from breach of duty notices based on unreasonable demands by sales agents.

[33] Studies demonstrate lack of sleep creates deficits similar to blood alcohol levels, with 17 to 19 hours without sleep showing performance equivalent to or worse than 0.05% Blood Alcohol Concentration – e.g. Williamson, A., Feyer A-Ml, Friswell, R., Flinlay-Brown, S, Development of measures of fatigue: Using an alcohol comparison to validate the effects of fatigue on performance, ATSB, July 2000. Tenants Victoria frequently receive calls on this issue. A hospital doctor on nightshift whose sleep was continually disrupted by sales inspections reported he couldn't guarantee he was safe to treat patients, and was concerned that he was breaching his duty of care by continuing to work.

belongings and opening and closing your cupboards raises fears of future break-ins. Tenants Victoria recognises that some attempts have been made in the RTA to mitigate this[34], however our clients tell us that estate agents do not supervise visitors inspecting the property and it is common to find personal belongings moved.

Renters' routines for the entire day are disrupted even if the inspection is only for one hour. Families with children have frequently contacted Tenants Victoria about sales campaigns. Children, especially young children, those who are studying for important milestone assignments or exams (such as during VCE) and those with disabilities such as autism should be considered in drafting this regulation.

A further issue is that property owners employ agents specifically to sell their property. Thus the renters are not dealing with a property manager with whom they have established a relationship during the life of their tenancy. This commonly results in poor communication, and higher expectations for the presentation of the property. Agents who are only focussed on achieving a sales do not, in Tenants Victoria's experience, consider the positon of the renter. We hear frequently that after complaining about a sales agent's conduct to the letting agent, the agent has threatened forcible entry. Despite agency principles, in our experience in practice renters making agreements with the sales agent, doesn't always translate into these agreements being met by the landlord.

Tenants Victoria receives many queries and complaints about estate agents conduct, and their lack of supervision of prospective purchasers during the inspection as well as failure to comply with long established notice provisions. The organisation has provided advice to many renters including on seeking compensation for breach of quiet enjoyment. The new inspection regime may mean that these renters are no longer adequately compensated for this interruption to their day to day lives. In our experience compensation is calculated by reference to a percentage of the rent, representing the day or part day loss of use of the property.

In our view the ½ day rent payable per sales inspection (draft r35) does **not** adequately compensate renters and a minimum compensation of 1 day per inspection is required. In addition, the regulation does not address the time required to make the compensation payment or adjust rent. Lack of communication between the selling agent and the property manager will mean that renters will be forced to chase up this payment. We recommend that r35 be amended to require payment within the rental payment period for the property (e.g. at the time of entry or at the least within in the rental payment period specified by the rental agreement).

[34] Through limitations on advertising materials, s89A(3)-(8).

Discrimination and Privacy - Broadly drafted rental application forms and banned questions

Core Message: Renters should not have to sign away their rights when they apply for a rental property. Prohibiting some questioning by estate agents is an important first step, but more is needed to protect renters from discrimination, to preserve consumer rights and privacy.

The new draft r15 (s30C) limits the questions a landlord can ask a prospective renter. Banned questions include whether renters have previously taken any legal action, like applying to VCAT, or been in a dispute with the landlord, any questions about a renter's bond history, including whether there has ever been a claim made on their bond, credit/bank records that are unredacted, nationality/residency status if not required to assess whether the applicant is eligible for public or community housing, and for a copy of the renters passport where alternative proof of identification is available.

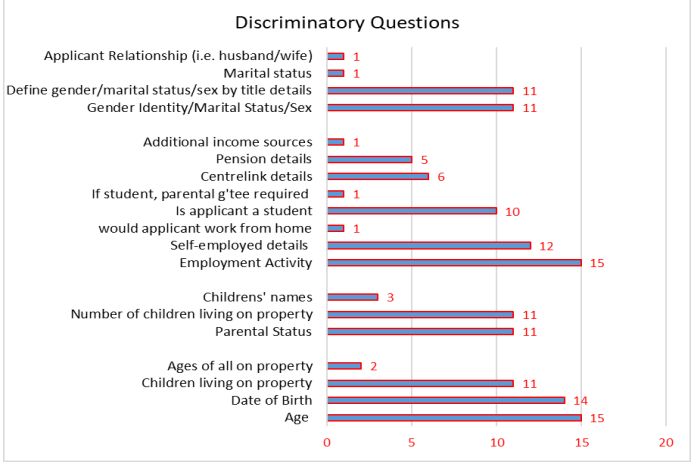
Tenants Victoria welcomes all of these valuable changes. They are important to help prevent discrimination (e.g. on basis of nationality or status) by excluding irrelevant information. Claims on bonds or previous disputes can have arisen due to no fault by a renter (e.g. not wanting to dispute dubious fair wear and tear claims by previous agents) and have no bearing on applications. Allowing questions about previous disputes has a dampening effect on renters, discouraging them from exercising rights under the RTA. Banning these type of questions will allow landlords to focus on the renter's current situation without being swayed by poor practices of other estate agents.

Landlords and agents can still ask discriminatory questions

Despite alerting renters to potential discrimination using the s29C statement, (see r14, Schedule 1, Form 3), some discriminatory questions can still be asked. These are generally irrelevant or should, if a rental application is assessed lawfully and without discrimination, be irrelevant. For example, a landlord can ask for marital status, family status and whether the renter has children. These questions, or questions that go to age, employment activity disability or any of the protected personal characteristics from r14 should be prohibited under r15.

Current practice

To better understand the effect of the draft regulations, Tenants Victoria has reviewed 15 rental application forms from a representative sample of estate agents. All of these forms require that **all** the questions they contain be answered, and supporting documentation provided, otherwise rental applications will not be assessed. They also **all** require applicants to sign disclaimers, privacy statements and give all consents before applications will be assessed.



Using a bond loan

A renter should not be asked if they are using a bond loan. Tenants Victoria is aware of landlords or property managers refusing to accept an application once they become aware that a DHHS Bond Loan is being sought or will be used to pay a bond.[35] The prospective renter's ability to pay rent is not related to their ability to stump up for a new bond, while awaiting return of a previous bond. The question is likely to negatively affect people fleeing family violence. The bond loan scheme is a positive measure that promotes housing affordability and availability and has been proven to work. Allowing this type of question militates against and could render ineffective a Victorian government program that assists renters to be housed.

Asking for payment before providing a rental agreement

Renters routinely report to Tenants Victoria that property managers ask for rent and/or bond before providing a tenancy agreement for the renter to review. It is not uncommon that after paying the money, the renter discovered unfavourable or harsh terms and then wishes to void the transaction. Despite s50 of the RTA in relation to holding deposits, renters frequently report difficulties with having their money returned. This practice is extremely widespread. In any contract, the terms should come before payment. Requiring rent and bond payments before providing contract terms should be banned and parties should be given an opportunity to be clear on the exact nature of the agreements they are entering into prior to payment being requested.

Two thirds of the application forms reviewed required payments of rent, bond or both before a rental agreement was provided. Rental agreements are the only consumer contract where it is expected that payment will be made before even seeing the contract. This common practice should be explicitly prohibited.

Requiring applicants to commit to renting a property before providing a rental agreement

In addition to routinely being required to pay rent and/or bond before being provided with a rental agreement, many application forms also require renters to agree that they will enter an agreement before they are presented with a rental agreement. Six of the 15 rental application forms reviewed by Tenants Victoria required applicants to sign disclaimers that they agreed to enter into a rental agreement if their application was accepted prior to being presented with a rental agreement. Being asked to commit to a contract without having the opportunity to review and negotiate the terms and conditions should be explicitly prohibited.

Landlords can still ask irrelevant or intrusive questions

Many, if not most, estate agents use tenancy databases to help them assess tenancy applications. These are regulated, and can be corrected by renters but making sure that irrelevant and intrusive information is not added to these databases will help protect renters' rights. The draft r15 will help renters avoid some irrelevant questioning about rental disputes or bond history. However, it could be made clearer, using examples to show that it extends to bans on questions about previous eviction or debt owed to a former landlord or property manager.

Some application forms require information on why the renter left previous address. The current draft r15 prohibits questions about previous rental disputes and rental bond history, but does not stop intrusive and irrelevant questions such as this. If a renter did leave a previous rental property because of legal action between themselves and their former landlord, and does not answer the

[35] One of the 15 application forms surveyed asked these questions, it is notable that this agency operates in a regional area where vulnerable people find it difficult to obtain housing. Another 2 agencies included advertisements for a bond loan company, however only one of these acknowledged that it received 2% commission if the renter used that company.

question, the assumption will be made that leaving related to a dispute. In effect the current prohibition doesn't work without further prohibitions on questions about previous rentals. A renter may have moved due a wide range of factors, such as changes to work or personal circumstances, relationship breakdown or other household members moving out and making the property unaffordable. All 15 rental application forms reviewed required renters to disclose how long they lived in their former homes and the reason for leaving. It is hard to conceive how banning this type of question would harm a landlord's ability to assess a renter.

A common irrelevant question is "Are you applying for other properties?" Two application forms required this information. Tenants Victoria does not understand why this is relevant to assessment of a renter's suitability to rent a property. It should be banned.

Currently landlords and estate agents ask irrelevant questions such as whether the applicant owns an investment property or what is the applicant's net worth. Six of the 15 Rental application forms reviewed required this information and details of the managing agents/sales agents for these properties! Tenants Victoria is aware that these questions are asked as a means of generating new clients for real estate agencies or related investment companies. Most application forms also required evidence of income or financial details far in excess of that needed to determine whether a tenancy would be sustainable. Despite its lack of relevance to the application, this information was required before the form could be processed. We are pleased that s30B bans landlords and agents from using information disclosed by renters for reasons outside the application, however r15 does not prohibit it from being asked. r15 should be amended to ban questions of this type from being asked.

Application forms that require renters to surrender rights

Victoria is aware of rental applications that require a potential renter to give permission for, or waive their rights to object to, database searches or inclusion in databases, despite the provisions of s30C and r15, which prohibits the landlord from requesting details where there may have been previous legal action between renters and landlords.

Of the 15 rental application forms Tenants Victoria reviewed **all** required renters to expressly consent to landlords accessing tenancy databases otherwise their application forms would be refused. Many of these forms also required applicants to consent to any information located on tenancy databases to be shared for reasons other than assessing the applicant for the rental property. This included sharing this information with REIV, other tenancy databases, and with debt collection agencies, credit providers and related persons to permit them to contact or locate a renters. These forms also require consent to list personal details on databases if the landlords/agents **believe** renters have breached the tenancy agreements during a tenancy.

Under the RTA[36] a renter can **only** be listed on a tenancy database if:

- they owe a landlord more money than the bond will cover; or
- VCAT has given a landlord a possession order for the property because a renter:
    - breached the tenancy agreement;
    - maliciously caused damage;
    - used the property for illegal purposes;
    - sub-let/assigned without consent;
    - caused danger to neighbours/co-resident;
    - was in arrears; or

[36] Part 10A RTA

- breached a compliance order made by VCAT.

If there are legal grounds for a renter to be listed on a database the law requires the landlord give the renter the information to be listed at least 14 days before the listing, and that they must consider any objections or changes by the renter.

An allegation by a landlord of a breach of agreement **is not**, without a possession order from VCAT, grounds for listing a renter on a database. Any disclaimer on an application form that purports to agree to allow database listing as a condition of acceptance of an application form should be expressly prohibited. Note that these types of disclaimers are in direct contradiction of amendments to the RTA and Regulations to avoid and void listings relating to family violence.

Requiring renters to agree to other broadly worded disclaimers affecting their rights should also be strictly prohibited. For example eight of the 15 application forms reviewed required renters to sign disclaimers that they found the property reasonably clean and would accept it in its current condition, or would not take any action against a landlord if the property were not available on the day the tenancy were to commence, despite landlord's having a duty under section 65 of the RTA to ensure the property is both reasonably clean and vacate on the day the tenancy is to commence, along with their continued duty under section 68 of the RTA to ensure the property is maintained in good repair.

All disclaimer statements attempting to affected renters' rights should be strictly prohibited.

As digital forms become more common, the ability of a renter to submit an application form without answering all questions is reduced. Tenants Victoria would like to see further regulation of digital forms that do not allow for non-completion of all questions *(*i.e. can't submit without answers in all field*s).*

Some rental applications also require an applicant to agree to contact from other organisations, third parties or services allied to the real estate agent in order to make their application for the property. It is not possible to complete an application without agreeing to this. While reputable estate agents have extensive privacy policies that explain the use of this information and how a renter can later opt out of contact, a renter should not have to agree to supply this information to third parties as a by-product of seeking a new home.

All 15 rental applications reviewed by Tenants Victoria required renters to agree to having their personal information disclosed to third parties, in breach of their right to quiet enjoyment under s67 of the RTA. Many also included "secondary" disclosures forcing applicants to agree to having their information shared on the internet, shared for marketing purposes and for various other reasons that are unrelated to applying for a tenancy.

Real estate agents may use a third party organisation or app[37] to collect information for rental applications. The r16 prohibitions should be extended to third party information aggregators or companies that collect information for real estate agents or landlords use.

[37] One example is the 1Form website which aggregates tenant data so that renters can apply for more than one property. The website notes that "Some agencies will request that you answer questions that are outside of what is included in the standard application. If these are not marked as mandatory, we suggest answering if possible, as this can show how you are most suited to the property"

Limitation on documents to verify identification (e.g. 100-point check)

Banks and other institutions that need to verify identification use the Australian standard 100-point check[38] for identification for financial transactions. Information sought from renters should not be onerous and should be limited to the type of documents commonly used by these institutions. Tenants Victoria notes that this aligns with State Government work by Service Victoria to establishing appropriate assurance levels to verify identity for government transactions including digital transactions.

In the application forms reviewed by Tenants Victoria whilst many agencies expressed that only a 100-point identification check was required, the forms set the point values significantly lower than those accepted by Government and financial institutions, requiring renters to provide significantly more personal information and identification than should be required. For example, while Government and financial institutions provide passports and birth certificates with an identification value of 70 points each, some of the application forms viewed by Tenants Victoria ranked them much lower allocating on 20-40 points for the same forms of identification.

Unfair Lease Conditions – Unfair Terms

Core Message - Unfair terms have no place in tenancy agreements. The changes under the draft regulations go some way to Make Renting Fair, but more needs to be done to protect people living in rental properties.

Progress in outlawing unfair terms in rental agreements

The amendments to the RTA have made significant progress in outlawing unfair terms in rental agreements. The Act now prohibits clauses that require renters to take out insurance, or exempt landlords or their agents from liability for their own actions, ask renters to pay an increased rent or a penalty or damages if a renter breaches the agreement[39]. The groundwork laid by the changes to the RTA is further detailed in the new draft r11 (s27(1)(g)).

Tenants Victoria welcomes the further improvements made in the draft regulation but considers that these should could go further to properly ensure renters have strong consumer protections. The positive changes that have been included in r11 will prevent unfair terms and are important improvements for a number of reasons.

In our experience is rare for real estate agents to use the form currently prescribed by s29 of the RTA.

Most renters are not in a position to negotiate the “fine print” of their lease. The power balance between a renter and a landlord is strongly in favour of the landlord. The availability of rental properties at a price that the renter can afford is generally limited (and particularly for vulnerable renters), so a renter may effectively have little choice but to take it or leave it, whatever the terms of the lease. In Tenants Victoria’s experience unfair terms in rental contracts are ubiquitous and it is rare to see a lease without unfair terms. These types of unfair or onerous terms are contagious, seeming to be adopted by one property management company to another as soon as they appear in their rival’s standard lease.

[38] See for example that used by the Australian Federal Police: https://www.afp.gov.au/sites/default/files/PDF/NPC-100PointChecklist-18042019.pdf

[39] See s27B RTA.

Banning terms that limit renter's activities in a property based on the landlord's insurance policy or premiums is important. A renter has no control over or knowledge of the landlord's insurance arrangements. The insurance is a third party contract. The landlord's previous history may restrict it to a poor insurance policy with restrictive terms. Alternatively, relatively cheap insurance cover may be given on condition of highly restrictive uses of the property. In any event, the renter should be able to use the property as residential property without undue restriction, whatever the landlord's insurance arrangements. The wording of draft r11 implies that a contract can be drafted to limit use of property by a renter. This conflicts with s67 duty to provide quiet enjoyment and should be amended to clearly state that a landlord "*cannot limit use because of an insurance contract*".

A routinely seen term purporting to stop a renter from claiming compensation if a rental property isn't ready on the day the rental agreement starts is unfair and limits the renter exercising the rights given by the RTA. We support prohibition of this type of clause.

Tenants Victoria has for many years been concerned about rent methods that accrue charges that the renter must pay. We welcome the prohibition of these types of terms.

Landlords have a duty to maintain the property, and specific safety requirements such as including smoke alarms and pool fencing. These duties are strengthened under the amended RTA to include requirements to maintain a specified list of safety equipment. Any attempts to outsource or delegate these duties to the renter is unconscionable, and banning these clauses is applauded. Unfortunately, the effect of transitional provisions means that these safety activities will only apply on the signing of a new prescribed form lease after 1 July 2020[40].

A common clause seen in rental agreements at Tenants Victoria has attempted to make renters liable for a landlord's VCAT filing fees. VCAT is a jurisdiction where costs are not automatically awarded, this attempt by estate agents to defray costs has been very common in leases seen by Tenants Victoria. The reality is that a decision to issue at VCAT may be unfounded, based on misunderstanding of "fair wear and tear" or simply malicious. The costs of enforcing a landlord's rights are business expenses that can be deducted from profits earned in taxation returns. Banning this clause is a positive step forward, and we welcome this change, as it helps rebalance the rights between landlord and renter.

At law it is clear that just because a lease clause is not prohibited, does not mean that it is valid. It is unfortunate that this is not more widely known. A further improvement would be a note in r11 to the effect that: "Terms not prohibited may still be subject to s185 of the Australian Consumer Law Fair Trading Act".

Further changes that are needed to make rental agreements fair

Examination of changes made to the RTA in September 2018, reveal that further amendment is needed to protect renters in cases of lease breaking, particularly to maintain the effect of VCAT decisions on costs renters can be charged for advertising. As in any form of compensation, the party claiming has to show they have mitigated their loss. The RTA as amended does not clearly and fully preserve this requirement s211A(3). The wording of the example that is intended to explain the operation of the provision, and while it describes pro-rating the letting fee, does not do so for the advertisement cost. This should be amended for clarity[41].

[40] See RTAA Schedule 1A Clause 16

[41] Effect of Craig v Mitchell [2015] VCAT 597 is not included in the note.

Blanket clauses on lease breaking or assignment charges

Clauses that charge renters a fixed amount to assign the lease to a new renter or break a lease are very common. It is not clear that the figures set have any relationship to the actual cost of the work done by the estate agent and they may just reflect a "going rate" or what the industry believes they can get away with (without renters seeking redress at VCAT). In some cases, these fees are referrable to the rent charged. So that an assignment fee for higher priced rental property is calculated as a percentage of rent, despite there being no variation in the cost of any work required.

Information empowers consumers, so renters should be informed up front that there **may** be costs if the assign or break their lease, but blanket assignment and lease breaking costs are unreasonable should be prohibited from inclusion in rental agreements.

Healthy and Affordable Homes – Energy Efficiency

Tenants Victoria, along with other advocates, has argued for firm minimum standards to be established including energy efficiency standards. The quality of housing is important to the health, social and economic engagement of individuals in their community. Access to appropriate, affordable and secure housing is a social determinant of health, and it has long been recognised that poor quality housing influences physical and mental health.[42]

The Regulatory Impact Statement clearly identifies some of the issues that renters face due to the poor thermal quality of their rental homes, including physical and emotional impacts, increased morbidity and mortality[43]. The RIS also includes arguments and information about the effect of high energy costs on renters, stating that "*data on Victoria's existing housing stock indicates that rental properties are likely to be amongst the poorest for energy performance. There is a significant body of literature that shows that renters are at increased risk from rising energy prices compared to other household segments*."[44] [45] In addition there is ample evidence that our changing climate will result in more extreme weather[46].

Despite this evidence, the RIS only proposes the future development of energy related standards "*in due course*". It states that development of standards on ceiling insulation is to commence from 2020, and standards on hot water efficiency are for development from 2021[47] while indicating that CAV will consult with DEWLP on "*potential for future standards*" for cooling.

Effect of poor thermal shell – summer and winter

Lack of energy efficiency drives significant economic disadvantage, and rental insecurity and reduces rental affordability. This is particularly the case for renters who move into an uninsulated rental property with inefficient heating. They only learn the cost of running their rental property when they receive their energy bill. Unfortunately, in a cycle commonly seen by Tenants Victoria, instead of seeking a payment plan through the Energy and Water Ombudsman, vulnerable renters first pay to keep their heating on before paying rent, and accrue rental arrears, leading to breach notices and lease termination. This does not assist landlords or renters.

Victoria's renters do not just face a cold winter, many suffer through consistently high temperatures; the ACBC climate zones recognize these requirements in the energy efficiency requirements for buildings[48]. Australian and NZ government joint work that classifies energy efficiency in appliances applies a simpler classification of two climate zones: most of the state's climate is grouped with Canberra and Hobart and New Zealand in the Cold Zone, and the north west of the state's climate's characteristics in the Average Zone like Adelaide Perth and Sydney)[49].

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[42] See for example Australia's Health 2018, Chapter 4.2 Social Determinants of Health, Australia's health 2018. Australia's health series no. 16. AUS 221. Canberra: AIHW.

[43] Regulatory Impact Statement p.46 and following

[44] Op cit p 47

[45] Azipitarte, F. Johnson, V and Sullivan, D (2015) Fuel poverty, household income and energy spending: An empirical analysis for Australia using HILDA data. Brotherhood of St Laurence, Melbourne

[46] Bureau of Meteorology, State of Climate 2018, http://www.bom.gov.au/state-of-the-climate/australias-changing-climate.shtml

[47] (emphasis added) RIS p55.

[48] The Australian Building Codes Board zoning based on meteorological data for energy efficiency Deemed to Satisfy provisions has 8 climatic zones. Victoria has 4 zones ranging from Alpine to Hot Dry Summer, warm winter in the north west, Mallee and Riverina. https://www.abcb.gov.au/Resources/Tools-Calculators/Climate-Zone-Map-Victoria;

[49] See The Zoned Energy Rating Label used for Air Conditioners http://www.energyrating.gov.au/news/zoned-energy-rating-label

The benefits of improved thermal efficiency improving warmth and dryness have been demonstrated in a cold climate through the NZ Healthy Homes Initiative[50]. This program initially concentrated on low income households in 11 district health board catchments targeting children at risk of rheumatic fever, and was later broadened to provide warm dry health housing for pregnant women, and low income families with housing related risk factors. Interventions included help getting insulation, curtains, beds bedding, minor repairs floor coverings, ventilation and heating.

The effect of living in uninsulated premises in the "average" zone has recently been graphically chronicled by public health researchers in a study on public housing renters in Mildura[51]. The study lists the well documented effects of exposure to extreme heat in physical health (including increased morbidity and mortality, exacerbation of preexisting medical conditions etc.), psychological health (including increased stress, suicide rate spikes, negative interaction with antipsychotic/antidepressant drugs, sleep disruption, lethargy, reduced functioning), and economic and social wellbeing. Economic and social effects include increased aggression, violence and increased alcohol consumption during heatwaves, as well as constraints on social activities[52].

The study is of public housing renters, an already very vulnerable group, with extremely limited financial resources or ability to change their circumstances, and in some cases entrenched disadvantage. Interviews with renters report the high financial cost of running inefficient portable air conditioners[53], that all of the family remains in one room for extended periods and the social effects (e.g. crowding, loitering in public cooled areas), as well as negative effects on education (inability to sleep reducing school attendance[54]) and work productivity in an already disadvantaged population. Among other things, the study recommends that consideration be given to thermal appropriateness of public housing properties.

Despite understanding the negative effects on renters of a poor thermal shell (economic cost, negative physical, emotional and social impacts), no attention has been given to dealing with this problem.

Tenants Victoria sought an insulation standard, together with draught exclusion and ventilation to create homes that are healthy and meet community expectations. As we have previously submitted:

> Tenant Victoria notes that NZ has introduced mandatory Healthy Homes Standards[55]. These include standards for heating, insulation, ventilation, moisture and drainage and draught stopping. NZ requires landlords to insulate floor and ceilings of their properties to an R-standard[56] appropriate to the relevant climate zone (subject very limited exemptions). This holistic scheme provides an example for Victoria.
> A staged approach to achieving minimum standards of energy efficiency for rental properties would deliver improvements in the quality of rental properties over time. This can be accomplished using a feature-based approach to insulation initially, moving towards an

[50] https://www.health.govt.nz/system/files/documents/publications/healthy-homes-initiative-evaluation-apr-2018.pdf

[51] Lander, J., Breth-Petersen, Ml, Moait, R., Forbes,C and Stephens, L, Dickson M (2019) Extreme heat driven by the climate emergency: impacts on the health and wellbeing of public housing renters in Mildura, Victoria. Report prepared for Mallee Family Care, Sydney.

[52] https://www.theage.com.au/national/victoria/desperately-hot-summer-drives-push-to-keep-public-housing-cooler-20190406-p51bjq.html

[53] Lander et al, loc cit, "three months later the power bill comes in, for example $2000, and they face the issue of ow to pay it";

[54] Loc cit, p.21

[55] https://www.tenancy.govt.nz/healthy-homes/about-the-healthy-homes-standards/

[56] https://www.tenancy.govt.nz/healthy-homes/insulation-standard/

energy efficiency rating minimum standard that is supported by a testing and compliance framework to ensure that dwellings achieve a "rent-worthy" certification. For example:

By 2021:

- Ceiling insulation that achieves a minimum R value of R3.5.
- All residential properties to be rated using the Victorian Residential Efficiency Scorecard
- An energy efficiency rating is determined as the minimum standard

By 2023:

- Housing below a defined minimum rating cannot be leased.

Implementing this proposal would improve capital value of Victorian properties, help reduce energy use, and as a consequence positively contribute to Victoria's carbon emission reduction targets, and compliment other energy efficiency measures. Failing to do so will again entrench renters as second class citizens who have little or no ability to control their energy costs and living conditions.

The recommended changes would have other beneficial effects of reducing rental arrears and stabilising rental tenure. They are changes that should be made as a matter of urgency.

Appendix 1 – Further Family Violence Amendments

The broad wording for an application to challenge a Notice to Vacate on the grounds of family or personal violence (s91ZZV) means it is not clear what VCAT will consider or whether an Intervention Order (IVO) is needed.

An important instance where further legislative change is needed is at Part 5 of the RTA, so that compensation sections would ensure that a family victim survivor is not liable for a perpetrators damage (consistent with bond apportionment sections).

In other instances, the new standards set by the new provisions in the Act are not coherent and should be reconsidered. For example, the new s330A "reasonable and proportionate test" setting out considerations for giving a Possession Order sets a higher standard of evidence when family violence is alleged (requiring an IVO) than an application to terminate or make a new rental agreement because of family violence (s91V).

Tenants Victoria considers that the standard across the board for all FV protections needs to be the same and no IVO should be required for proof in family violence matters. It is onerous and a barrier to safety to ask victims/survivors to go through the stressful and potentially dangerous IVO process in order to manage tenancy issues.

There are a number of examples where the RTA should be amended to reduce evidentiary burden and better protect family violence victim survivors. Especially where a high evidentiary burden is imposed in one instance but not another, e.g. under s86 **only** a person with an IVO can ask that estate agents/etc make appointments for inspection of premises, increasing the evidentiary burden, but the same does not apply to s89A for objections to videos or photographs at properties where someone residing there is at risk of family violence. These inconsistencies need to be resolved and the evidentiary burden reduced in circumstances relating to family violence.

Modifications sections should be amended to:

- Streamline and provide time constraints on the landlord's considerations of the changes, and if consent is not granted in 24 hours, it is implied. In light of the significant cohort of people with disability being victims/survivors of family violence, or family violence being the cause of disability[57], these changes should also be made to the RTA (s64(1D) to include s64(1)(b)(f) to the modifications that s64(1C) does not apply to).
- Exempt victim survivors from having to return the property to original condition at the end of the tenancy, and from a requirement to pay an additional bond

Family Violence Royal Commission Recommendations

The following recommendations of the Family Violence Royal Commission have particular relevance to Victorian renters.

Recommendation 13

The Victorian Government give priority to supporting victims in safely remaining in, or returning to, their own homes and communities through the expansion of Safe at Home–type programs across Victoria. These programs should incorporate rental and mortgage subsidies and any benefits offered

[57] Overseas studies cited in 'Double the Odds – Domestic Violence and Women with Disabilities' Women with Disabilities Australia, http://wwda.org.au/issues/viol/viol2001/odds/ find that women with disabilities, regardless of age, race, ethnicity, sexual orientation or class are assaulted, raped and abused at a rate of at least two times greater than non-disabled women (Sobsey, 1988, 1994; Cusitar,1994 Stimpson and Best,1991; DAWN 1988).

by advances in safety devices, with suitable case management as well as monitoring of perpetrators by police and the justice system.

Recommendation 17
The Victorian Government expand the provision of Family Violence Flexible Support Packages [within 12 months]. These packages should provide to victims assistance beyond the crisis period and should include longer term rental and mortgage subsidies where required, along with assistance for costs associated with securing and maintaining counselling, wellbeing, education, employment, financial counselling and other services designed to assist housing stability and financial security.

Recommendation 19
The Victorian Government establish a Family Violence Housing Assistance Implementation Task Force consisting of senior representatives from the public and commercial housing sectors and family violence specialists [within 12 months]. The task force, which should report through the Minister for Housing to the Cabinet Family Violence Sub-committee, should:

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

Recommendation 116:
The Department of Justice and Regulation's review of the Residential Tenancies Act 2006 (Vic) consider amending the Act to:

- *empower Victorian Civil and Administrative Tribunal members to make an order under section 233A of the Act if a member is satisfied that family violence has occurred after considering certain criteria—but without requiring a final family violence intervention order containing an exclusionary condition*
- *provide a clear mechanism for apportionment of liability arising out of the tenancy in situations of family violence, to ensure that victims of family violence are not held liable for rent (or other tenancy-related debts) that are properly attributable to perpetrators of family violence*
- *enable victims of family violence to prevent their personal details from being listed on residential tenancy databases, and to remove existing listings, where the breach of the Act or the tenancy agreement occurred in the context of family violence*
- *enable victims of family violence wishing to leave a tenancy to apply to the Victorian Civil and Administrative Tribunal for an order terminating a co-tenancy if the co-tenant is the perpetrator of that violence—including, where relevant, an order dealing with apportionment of liability for rent (or other tenancy-related debts) between the co-tenants*
- *prevent a landlord from unreasonably withholding consent to a request from a tenant who is a victim of family violence for approval to reasonably modify the rental property in order to improve the security of that property*

Recommendation 117

The Victorian Government encourage the use of applications under section 233A of the Residential Tenancies Act 2006 (Vic) [within 12 months], including by means of training and education for family violence support workers, Victoria Police and other relevant support staff in relation to the existence and operation of the provision

Recommendation 119
The Victorian Government consider any legislative reform that would limit as far as possible the necessity for individuals affected by family violence with proceedings in the Magistrates' Court of Victoria to bring separate proceedings in the Victorian Civil and Administrative Tribunal in connection with any tenancy related to the family violence [within two years].

Recommendation 120
The Victorian Government ensure that Victorian Civil and Administrative Tribunal members receive training and education to ensure that they have adequate expertise in the Family Violence Protection Act 2008 (Vic) and family violence matters [within 12 months].

Recommendation 179
The Victorian Government encourage the National Disability Insurance Agency, in the transition to the National Disability Insurance Scheme, to provide flexible packages that are responsive to people with disabilities experiencing family violence. These packages should incorporate crisis supports and assistance for rebuilding and recovering from family violence [within two years].