

Property conditions

Review of the Residential Tenancies Act 1997

Summary of responses to the issues paper, *Regulation of property conditions in the rental market*.

Overview

Fairer Safer Housing is a Victorian Government initiative to ensure that all Victorians have access to safe, affordable and secure housing. One of the key elements of the initiative is a review of the *Residential Tenancies Act 1997* (the Act).

The fifth of six issues papers explored issues relating to the regulation of property conditions in the rental market.

Who responded to this issues paper?*

A total of 411 individuals and organisations provided a response to the Issues Paper through five different channels. These channels included posting stories online, participating in online forums, providing written submissions, emailing comments and social media posts.

Individual tenants were the largest participant group with 200 respondents (48.6 per cent), as illustrated in *Figure 1*.

During the consultation, information was accessed 228 times in a language other than English for the period of this Issues Paper. The top three languages downloaded were Somali, Nuer and Espanol. The summary draws on a broad spectrum of views captured in the results.

Figure 2 illustrates that the majority of responses received 329 (80 per cent), were made via social media.

The majority of landlords and tenants responded to questions on social media. Tenant and landlord/agent representative organisations, support services, tribunals, Federal and State Government agencies or entities contributed solely through written submissions.

Figure 1: Stakeholder cohorts that responded to the issues paper

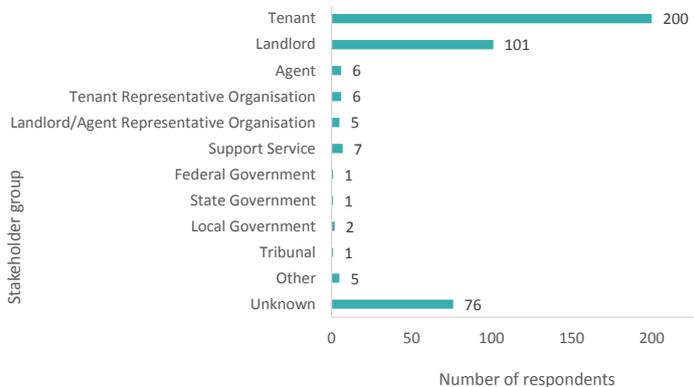
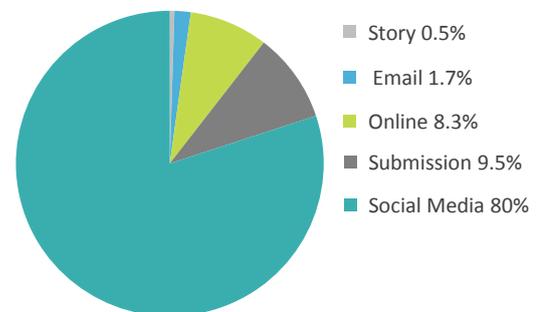


Figure 2: Methods stakeholders used to respond to the Issues Paper



Number of responses = 411

Theme 1: Property conditions in rental housing

Respondents had differing views about the balance of rights and responsibilities needed with respect to property conditions.

Respondents provided the following commentary:

- The current provisions are reasonable, exhaustive and place the onus on the appropriate party (one landlord).
- Greater protection of tenants' rights is needed in the Act to support tenants who may be reluctant to exercise their rights due to fear of notice to vacate from a landlord (VCAT).
- Landlords do not have adequate rights to claim compensation for damage at the end of a tenancy (one landlord).

- Essential health and safety maintenance and repairs are not being carried out due to tenants' rights to quiet enjoyment, which prevents building access for trades people (one landlord and one landlord/agent representative organisation).
- The tenant's right to quiet enjoyment is often ignored when landlords and agents schedule maintenance/repairs without consulting them (two tenants).
- There need to be clearer definitions of the terms 'good repair' and 'reasonably clean' to ensure that both landlords and tenants are aware of their responsibilities (one tenant and one landlord/agent representative organisation).
- More guidance material should be developed to assist tenants, agents and landlords to understand their rights and responsibilities (one Federal Government department, one tenant and one landlord).

*The results of the consultation are not representative of the market but, rather, reflect current views about the regulation of property conditions in the rental market amongst the organisations and individuals who chose to participate. In addition, people who responded via social media and other online channels self-identified as either tenant or landlord.

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Provisions respondents would like to see added to the existing rights and responsibilities were:

- Landlords should be responsible for the safe management of asbestos in residential properties. This would ensure that no health risk is posed to tenants and trades people engaged to perform maintenance work (one Federal Government department).
- Legislation should make it clear who is responsible for paying for property damage when it is carried out in situations of family violence or unintentionally by people with a disability (one support service).
- There need to be different rights and responsibilities in place for properties earmarked for demolition (one Local Government).
- Rights and responsibilities should be more closely interfaced with related legislation including the *Planning and Environment Act 1987* and the *Equal Opportunities Act 2010* (one Local Government).

Respondents gave the following examples of legislation from other jurisdictions they would like to see replicated in Victoria's Act:

- In the Australian Capital Territory, a number of Acts, including the *Civil Law (Sale of Residential Property) Act 2003* and the *Residential Tenancies Act 1997* all place responsibility on landlords/owners to supply information about asbestos to tenants. In France there are also laws that dictate all buildings built prior to 1997 must have an asbestos assessment before being leased (one Federal Government department).
- Several jurisdictions are introducing minimum energy efficiency standards including New Zealand, England and Wales (one support service and one other organisation).
- *The South Australian Home Improvement Act* enables tenants in substandard homes to refer the problem to an authority which sends an inspector to view the building for structural soundness, safety and health. If the inspector identifies a problem, this person can initiate an order to be made against the property (one support service).

Theme 2: Property conditions at the beginning of a tenancy

Respondents provided the following commentary on the term 'reasonably clean':

- The term 'reasonably clean' is ambiguous or subjective and can mean different things to different people (two tenants, one landlord, one landlord/agent representative organisation, one tenant representative organisation and one unknown).
- 'Reasonably clean' should differentiate between 'cleanliness' and fair wear and tear (three tenants and two tenant representative organisations).
- A checklist would provide clarity over what 'reasonably clean' implies (six tenants, two tenant representative organisations, two landlords and one support service).
- A clear definition of 'reasonably clean' would result in tenants entering clean rental properties (six tenants).
- A clear definition of 'reasonably clean' would result in a reduction in disagreements between tenants and landlords (two landlord representative organisations and two tenants).
- A definition of 'reasonably clean' would 'minimise unreasonable expectations' from both parties (VCAT).
- Defining 'reasonably clean' would be too restrictive (one tenant representative and one support service) and could lead to scenarios where a tenant is responsible for cleaning things beyond their control such as damp (two tenants and one tenant representative).
- A definition could lead to tenants being responsible for cleaning dangerous or hard to reach places which may require the use of a ladder (three tenants and one tenant representative).



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Condition reports

Respondent views were split on whether the condition report provides an effective means of recording the condition of the property at the start of a tenancy.

Views on the effectiveness of condition reporting:

- The condition report is effective evidence about the condition of the property at the start of a tenancy. However, the condition report must be completed, include photos and be mutually agreed upon (five respondents, three landlord/agent representative organisations, one landlord and one support service).
- Current condition reports are inadequate (one support service, two tenant representative organisation and VCAT). This is because the tenant is only able to respond to the landlord's descriptions and comments. VCAT shared that it is common for landlords to record appliances as working without turning them on to check.
- The timeframe for returning the condition report is inadequate because three days does not give tenants enough time to identify issues with the condition of the property (two support services and two tenant representative organisations).
- Current condition reports are not suitable for rooming houses as they ask tenants to report on communal areas which the tenant has little control over (one landlord/agent representative organisation).

Suggestions for how condition reports could be improved:

- Incorporate check box options, similar to those in NSW, that allow the tenant to check whether the room is clean, damaged and/or there are potential health hazards (two support services, one tenant representative organisation and VCAT).
- Introduce a requirement to record the age and efficiency ratings of all appliances and when the appliance was last serviced (one support service and VCAT).
- Increase the timeframe to return the report in five days (two tenant representative organisations) or seven days (one support service).
- Make a condition report compulsory even when a bond is not paid (one support service and one tenant representative organisation).
- Ensure photos are included as evidence in all condition reports (one support service, one tenant, one agent and one tenant representative organisation). VCAT noted that landlords and agent often include wide angle lens photos used for advertisements and recommended that these are not permitted in condition reports.
- Provide training about the importance of condition reports for first time renters (one landlord, one support service and one tenant representative organisation).

Access to services

Respondents provided the following commentary about access to services:

- Access to services currently strikes the right balance (one landlord and one landlord/agent representative).
- Landlords should be responsible for the installation of services (VCAT).
- Tenants should have to request and pay for the installation of a service such as internet, as it does not add any value to the property (one landlord and one landlord/agent representative organisation).
- The rise of wireless technologies negates the need for landlords to provide access to telecommunications infrastructure (one landlord and one landlord/agent representative organisation).
- The landlord should bear the cost of telecommunications infrastructure installation as the owner gains benefit from improvement of the asset (one tenant representative organisation, one support service and one landlord).



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Minimum standards for private rental houses

Respondents provided arguments in favour of prescribing minimum standards for private rental housing, as illustrated in *Table 1*.

Table 1: Arguments for and against minimum standards for private rental housing.

For	Against
<p>It will raise the standard of low quality properties. 9 respondents: 3 tenant representative organisations, 2 support service, 2 landlords and 2 tenants.</p>	<p>Minimum standards could reduce the availability of affordable rental stock. 3 respondents: 1 tenant, 1 landlord and 1 landlord/agent representative organisation.</p>
<p>Minimum standards will improve the safety of rental properties by better managing instances of extreme cold or heat. 11 respondents: 5 tenant representative organisations, 4 support services, and 2 tenants.</p>	<p>Duplication of standards in building and housing regulations would be onerous for property owners. 2 respondents: landlord/agent representative organisations</p>
<p>Minimum standards will reduce utility/energy bills and reduce financial stress caused by costly bills. 12 respondents: 5 tenant representative organisations, 4 support services, 2 tenants and 1 other organisation.</p>	
<p>Without mandating minimum standards property conditions won't improve as tenants are reluctant to request upgrades. 3 respondents: 1 support service, 1 tenant representative organisation and 1 landlord) and 2 respondents: split incentive of upgrading a house (1 tenant representative organisation and 1 other organisation).</p>	

Respondents made many recommendations regarding the requirements that should be included as minimum standards. *Table 2* demonstrates the most commonly recommended standards, grouped under the themes health, security/safety and energy/water efficiency.

Table 2: Commonly recommended standards by category.

Category	Recommendations	Respondent/s who support this suggestion
Health	Adequate heating	15 respondents: 8 tenants, 3 tenant representative organisations, 2 landlords and 2 support services.
	Ventilation	11 respondents: 5 tenants, 3 tenant representative organisations and 3 support services.
	Cooking facilities	8 respondents: 5 tenants, 1 landlord, 1 support service, and 1 tenant representative organisation.
Security/safety	Smoke alarms	4 respondents: 2 tenant representative organisations and 2 support services.
	Electrical safety switches	3 respondents: 2 tenant representative organisations, 1 'other' organisation, and 1 support service).
Energy/water efficiency	Insulation	5 respondents: 3 tenant representative organisations and 2 support services.
	Efficient heating and water heating appliances	6 respondents: 3 tenant representative organisations, 2 support services and 1 tenant.
	Efficient shower heads and dual flush toilets	4 respondents: 2 support services and 2 tenant representative organisations.

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Respondents identified a number of impacts on landlords and tenants of prescribing these standards:

- It was highlighted that the cost of providing these minimum standards would force landlords to increase rent and, as a result, reduce availability of affordable rental stock (two landlord/agent representative organisations and one landlord).
- Respondents recommended that landlords should receive support for the cost of energy efficiency upgrades through schemes such as the Victorian Energy Efficiency Target (VEET) (one tenant representative organisation and one support service).
- Some believe tenants would experience improved levels of comfort in the home and one support service and one tenant representative organisation hope tenants will have reduced utility bills (one tenant representative organisation and one support service).

Theme 3: Property conditions during the tenancy

Defining a tenant's responsibility not to 'damage' a property

Eighteen respondents were in favour of defining the tenant's duty not to damage a property in greater detail (eight landlords, five tenants, two support services, two landlord/agent representative organisations and one unknown respondent). They believe improved definitions will result in less disputes going to VCAT.

No disadvantages were put forward by respondents.

Suggestions inclusions in the definition of damage were:

- The Act should define fair wear and tear rather than damage (one tenant, one landlord and one landlord/agent representative organisation).
- Fair wear and tear should include things that are worn out through use, not instances where something has been consistently neglected or broken (three landlords and one tenant).
- Tenants should not be responsible for damage they have no control over, such as paint flaking off because of age (one tenant and VCAT).
- Structural damage to properties should not be defined as fair wear and tear (one landlord).
- As not all properties are built with universal access, fair wear and tear should take into account that people with disabilities can cause greater wear due to disability supports such as wheelchairs (support service).
- Tenants should pay for any damage they cause conducting their own repairs (one landlord).

Four comments were provided about the prohibition on malicious damage and its current interpretation.

Commentary on the definition of malicious damage:

- The definition of malicious damage should include intentional damage to safety equipment, for example, fire alarms (one landlord/agent representative organisation).
- Clarification is needed about whether malicious damage needs to be ongoing to warrant eviction (one landlord/agent representative organisation).
- Current provisions do not adequately enable caravan park owners to take steps to protect their property. Park managers should be able to immediately remove someone who is causing intentional damage with the support of the police (one landlord/agent representative organisation).
- Details about the nature of the malicious damage should be included in a notice to vacate (VCAT).

Assisting family violence victims

Suggested remedies to assist tenants who are victims of family violence in resolving issues of property maintenance and damage:

- Establish mechanisms for landlords and tenants to access financial assistance to pay for damage caused by family violence situations. Mechanism could include landlords accessing the Victorian Property Fund or increased access to the Residential Tenancies Fund (one landlord/agent representative organisation, one landlord and one support service).
- Have an immediate notice to leave, for perpetrators of family violence in rooming houses (one landlord/agent representative organisation and once support service).
- Create a provision that a property cannot be immediately re-possessed by a landlord on grounds of malicious damage, if the damage has been caused by a perpetrator of family violence (one tenant representative organisation).

Suggestions for how victims of family violence could access additional security features:

- Provide funding for rooming houses to improve their security features, particularly where there has been a history of family violence (one landlord and one landlord/agent representative organisation).
- Allow tenants to make non-structural modifications to properties, such as setting up alarm systems, without permission from the landlord (one tenant representative organisation).

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Property modifications

In total, 49 respondents thought that the current arrangements to require landlord consent should remain. Twenty three respondents thought it should change.

Landlords were predominantly in favour of retaining the right to require permission for any modifications to a rental property (thirty-two landlords, eight tenants, three landlord/agent representative organisations and six unknown respondents).

Suggested impacts that would result from permitting property modifications without consent were:

- Tenants could damage and devalue the property.
- Changes without consent can invalidate landlord's insurance.
- Landlords are ultimately responsible for ensuring that properties meet building and other codes. Tenant modifications could result in properties not fulfilling codes.
- The term 'reasonable modifications' is too open to interpretation.
- Personal tastes vary greatly; what one tenant likes, future tenants may consider unacceptable.

Tenants, and their representative organisations were more likely to support tenants being able to make some modifications without consent (thirteen tenants, four landlords, three tenant representative organisations, one landlord/agent representative organisation, one agent and one other respondent).

Justification for advocating property modifications:

- Tenants should be able to make their rental properties a home by adding artworks, or creating a garden.
- Small modifications can be required to improve safety for children.
- People with a disability may require modifications to access the property.

The 23 respondents who support changing the requirements think tenants should be able to hang pictures on the wall, have plants and modify gardens, paint walls neutral tones, and improve accessibility for people with a disability without permission from the landlord.

Many of the respondents who were in support of tenants being able to make modifications without permission believe that the property must be returned to its original condition and structural changes must still require permission.



Property modifications for people with a disability

Suggestions to support tenants with a disability in arranging necessary modifications to their home:

- Many people with a disability are looking for long term leases. Long term reliable tenants are attractive to most landlords, and this could be used as a communication incentive to encourage landlords to support modifications for tenants with a disability (one support service, one housing provider, one tenant representative organisation and one tenant representative organisation).
- The Act should encourage long term leases for tenants with a disability who have spent significant money modifying properties (one support service and one tenant representative organisation).
- The Property Owners Association of Victoria could inform landlords about legislation, guidelines and processes around improved access to dwellings and the installation of modifications for people with a disability (one landlord).
- The Act should recognise that modifications can also include additional security needs for tenants with mental disabilities, such as security fences (one support service).

Tenant's duty to maintain a rental property during a tenancy

Commentary about maintaining a rental property during the tenancy:

- Five respondents want to see the Act define what 'reasonably clean' means for tenants during a tenancy. They believe the current regulations are too open for interpretation and landlords cannot enforce tenants to take action to avoid damage to the property (three landlords, one landlord/agent representative organisation and one tenant).
- The Act should provide guidelines for tenants about maintaining gardens and light fixtures, and cleaning up after pets (one landlord/agent representative organisation).
- There should be rules against hoarding (one landlord). However, another respondent believes tenants with hoarding disorders should be given support rather than threatened with eviction (one support service).

Addressing repairs and maintenance

The view of most respondents was that the processes prescribed in the Act for completion of repairs is not effective. In total, 27 respondents believe there needs to be more obligation in the Act to make landlords complete repairs in a shorter timeframe (twenty-one tenants, two landlords, two support services, one Local Government and one tenant representative organisation).

Cited issues with the current repair requests process:

- The only option for tenants to ensure landlords complete repairs is to go to VCAT. Tenants are generally unwilling to go to VCAT because it is considered daunting, expensive, time consuming and hard to access for rural people (six tenants, one landlord/agent representative organisation).

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- Many residents are concerned about jeopardising their security of tenure if they push landlords to complete repairs, particularly unreasonable rent increases and notices (five tenants, one tenant representative and VCAT).
- Agents exacerbate repair issues by not passing repair requests from tenants to landlords (three tenants, two landlords and one tenant representative organisation).
- Sometimes tenants cannot contact landlords on their emergency number to resolve urgent repairs (two tenants).

Suggestions for additional measures and information that would assist parties to resolve repairs were:

- Establish penalties for landlords who do not complete repairs within the established timeframes, for example, reduced rent, or a landlord bond that tenants can access to pay for repairs (three tenants, three tenant representative organisations and one support service).
- Create a free online process for submitting repair requests that notifies both the landlord and agent (one tenant and one landlord).
- Provide accessible formats for people with English as a second language, such as repair forms in other languages (one tenant representative organisation).
- Consider a condition report as a valid repair request if there are any repairs identified in the report (one support service).
- Inform more tenants about the ability to be refunded up to \$1,800 for repairs they organise themselves (VCAT).
- Include greater clarification in the Act specifying that landlords or agents should always be present to supervise visits to the property by tradespeople rather than forwarding the tenant's contact details to the tradesperson (VCAT).

Suggestions for improved education of tenants and landlords about available methods in addressing maintenance and repair issues:

- Develop an app or online system to support condition reports and repair requests, that will provide relevant information to both landlords and tenants about their rights and responsibilities (one landlord).
- Include a brochure about rights and responsibilities for maintaining safety switches and smoke alarms, and include it with the lease (one national trade association).
- Require agents to provide information to tenants about the process of resolving a repair dispute when tenants submit repair requests (one support service).
- One landlord/agent representative organisation believes the current range of information services provided by CAV and independent third-party organisations are adequate.

Landlords duty to maintain a property during tenancy

Respondents highlighted that some landlords refuse to conduct maintenance because it is too expensive (one landlord) or they want the property to decline so that they can demolish and rebuild (one tenant).

Four respondents, one tenant, one tenant representative organisation, one landlord/agent representative organisation and one landlord, want to see clarifications about specific maintenance in the Act, particularly responsibilities for maintaining gardens, telecommunication infrastructure and safety systems. VCAT also believe that the Act should stipulate that all maintenance be carried out by a certified professional.

Smoke alarms

Commentary about maintaining smoke alarms and other appliances:

- In total, 32 respondents supported a requirement for landlords to undertake an annual or bi-annual check on smoke alarms, and electrical and gas appliances (17 tenants, seven landlords, two other organisations, one agent and one landlord/agent representative organisation).
- While the majority of respondents focussed on checks for smoke alarms, three respondents wanted to see carbon monoxide alarms also included.
- Twelve respondents think the landlord should be responsible for the installation of smoke alarms but it is the tenant's responsibility to regularly test the battery and notify the landlord of any issues (five landlords, five tenants and two unknown respondents).
- Three landlords believe tenants should pay for the inspection of smoke alarms and carbon monoxide.
- Three respondents want to see a broken smoke alarm classified as an urgent repair so that it is repaired immediately (a landlord, landlord/agent representative organisation and one 'other' organisation).
- Two landlords also want to see penalties put in place for tenants who tamper with smoke alarms, for example, removing batteries.
- Seven respondents including Master Electricians Australia and the Metropolitan Fire and Emergency Services Board believe the Act should stipulate that smoke alarms in all properties, be photoelectrical type alarms and hard wired (three unknown, two 'other' organisations and two tenants).

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Repairs and maintenance in rooming houses, caravan parks and site agreements

Respondents indicated that they have found that maintenance of caravan parks vary depending on the site manager. Two tenants shared good experiences, while another two shared poor experiences.

Three respondents, two tenants and one tenant representative organisation, emphasised the poor conditions of many rooming houses. They believe this is exacerbated by the high number of unregistered rooming houses in Victoria.

Suggested improvement to maintenance in rooming houses and caravan parks:

- The Act should be amended to clarify that the site owner is responsible for maintenance of the site and any fixtures attached to the site. This should include examples of what constitutes a fixture (one tenant representative organisation).
- There should be regulation to distinguish responsibilities for property maintenance between caravan parks that are holiday parks and those that are permanent homes for people (one Local Government and VCAT). VCAT highlighted that this is a common area of dispute at caravan parks.
- The Act should provide more regulation to recognise the shared nature of facilities in rooming houses (one landlord/agent representative organisation).
- Rooming houses and caravan parks should be legislated under a separate Act to the private residential housing sector (one landlord/agent representative organisation and one landlord).



Theme 4: Condition of property at the end of a tenancy

The absence of an explicit duty relating to the condition of a rental property at the end of a tenancy raises a number of issues for both landlords and tenants.

Respondents provided the following feedback:

- The Act needs to provide further clarification around the condition the property must be vacated in (one tenant representative organisation and VCAT). They suggested that it take into account: the original condition report; repairs and maintenance issues that have been reported during the tenancy; length of tenancy; number of occupants; and the suitability of building products/materials.
- Clarification and more detailed guidelines are needed on the definitions of 'reasonably clean' and fair wear and tear (one support service, one landlord/agent representative organisation).
- There is contention between tenants and landlords in regard to carpet cleaning. One tenant representative organisation believes that tenants should not always be required to pay for carpet cleaning at the end of the lease, as the condition of the carpet could be put down to fair wear and tear. One landlord/agent representative organisation, on the other hand, feels that tenants should have to pay for carpet cleaning when vacating a property.

Other points discussed in relation to end of tenancy property conditions include:

- There needs to be an explicit duty for tenants to maintain a property to a reasonable standard during the tenancy, not just at the end (one landlord, one landlord/agent representative organisation).
- Tenants need to be reminded to reverse modifications at the end of a tenancy (one landlord/agent representative organisation).
- The final property inspection must be carried out jointly by the tenant and the landlord/agent during daylight hours. This does not always happen (one landlord).
- There is apprehension from tenants regarding the potential for inclusion in a database listing that may impact future rental applications and their inability to provide clarification if money was deducted from their bond (VCAT).
- Existing provisions are adequate to allow landlords to recover costs from tenants (one landlord/agent representative organisation).

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Theme 5: Responding to breaches of the Act

Respondents had different opinions on the effectiveness of current remedies in the Act to address problems relating to property condition:

- Current provisions are generally adequate, and great care should be taken before considering additional responsibilities (one landlord/agent representative organisation).
- Landlords do not get as much support as tenants in dispute resolutions (one landlord/agent representative organisation).

To assist parties to more effectively remedy disputes, the following was suggested:

- The Act should be amended to allow tenants to seek compensation due to suffering from reduced amenity of the premises, based as a proportion of rent paid to be refunded (one support service).
- It would be beneficial if the Act clearly defined terms and set out property conditions and standards based on modern community expectations. This would allow parties to assess whether one or the other was complying with their obligations based on a relatively objective standard, encourage parties to independently resolve disputes, and minimise the escalation of disputes to VCAT (VCAT).
- CAV should provide an information or advisory service which all parties could use to check whether certain standards have been met or a duty breached (VCAT and one tenant).
- Tenants need to be given the skills to support themselves in disputes so they don't need to turn to representative agencies for help (one landlord and three landlord/agent representative organisation).