







Deliver Rental Fairness

**VCOSS Submission to the Proposed
Residential Tenancies Regulations 2020
and the Regulatory Impact Statement**

The Victorian Council of Social Service is the peak body of the social and community sector in Victoria.

VCOSS members reflect the diversity of the sector and include large charities, peak organisations, small community services, advocacy groups and individuals interested in social policy.

In addition to supporting the sector, VCOSS represents the interests of Victorians experiencing poverty and disadvantage, and advocates for the development of a sustainable, fair and equitable society.

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A fully accessible version is available online at vcoss.org.au/policy/



VCOSS acknowledges the traditional owners of country and pays respect to past, present and emerging Elders.

This document was prepared on the lands of the Kulin Nation.



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Introduction

The Victorian population is growing, house prices are increasing, and there is a chronic shortage of public and community housing. This means that Victorians increasingly rely on the private rental market to meet their housing needs.

Victorian renters welcomed historic changes to rental laws in 2018. These legislative changes better reflect the reality of housing in Victoria, where more people are living in rental properties for longer. They also reflect the Victorian community's **expectation** – and the State Government's **commitment** – that rental housing will be affordable, safe and secure, and be responsive to the community's needs (for example, in relation to disability, ageing, and family violence risk).

Strong laws need to be backed by robust regulations. The State Government's promise of rental fairness is contingent on getting the proposed Residential Tenancies Regulations ('the Regulations') right.

Good regulatory reform provides an opportunity to shift the dial for vulnerable and disadvantaged Victorians, who are more likely than other Victorians to be living in rental housing **and** experience the worst that the market can serve up in terms of housing that is in poor condition, expensive to maintain, and bad for their health and wellbeing.

From VCOSS's perspective, a fair and equitable rental system is one that comprises strong minimum standards for health, safety and energy efficiency, and takes a just approach to information disclosure. It also regulates costs, protects against unnecessary evictions, clarifies tenant rights and responsibilities in relation to modifications and repairs, and allows people to have pets, so that renters, like other Victorians, can make a home, establish roots in their community, and get on with their lives.

Using this yardstick, VCOSS considers that the proposed Regulations provide a strong foundation for rental fairness.

However, there is still more that can be done to ensure Victorian renters live in healthy, comfortable, safe and affordable homes.

This submission highlights areas of support, but also draws attention to opportunities to:

- Strengthen energy efficiency standards, in line with the State Government's broader work on climate adaptation
- Expand modification rights, and
- Bolster protections that maximise tenant safety, privacy and choice.

These opportunities are detailed in the body of this submission, including recommended amendments to the draft Regulations and recommended actions to support implementation of the new system.

Adopting these recommendations would not only benefit renters, but deliver value to rental providers, by way of reduced turnover costs, and increased marketability and capital value of their property.

VCOSS looks forward to working in partnership with the State Government to make final refinements to the Regulations and ensure we fully leverage the opportunity we have in front of us to deliver rental fairness.

Strengthen rental minimum standards

The State Government's proposed introduction of new regulated minimum standards represents a big step forward for rental fairness and is welcomed by VCOSS.

The draft Regulations incorporate many standards that VCOSS and the community have campaigned for, including:

- Deadlocks on external doors
- Vermin-proof rubbish and recycling bins
- Working toilets
- Bathrooms with hot and cold water
- Kitchens with working appliances and hot and cold water
- Basic structural soundness of properties
- Access to light in interior rooms
- Weatherproof properties
- Mould-free properties (at the time of lease commencement).

These reforms will give renters – including those who are most disadvantaged in the market – the confidence that any property they apply for delivers a baseline level of quality and safety.

However, the list of minimum standards is imperfect.

The proposed rental minimum standards could go further to ensure Victorian renters are healthy and comfortable in their homes. In particular, VCOSS is advocating for the proposed rental minimum standards to be strengthened in the areas of heating, cooling, ventilation, insulation and draught proofing. More detail is provided in the recommendations over the page.

While the RIS states that some of these suggested standards have not been included as they go beyond a minimum community expectation, VCOSS does not concur with this position. VCOSS also challenges the presumption that renters who consider features beyond the rental minimum standards to be important could choose a rental property which meets their specific needs or negotiate modifications with the rental provider.

Low-income or otherwise vulnerable households do not have such market power. These households often compromise on housing quality due to the very low supply of affordable rental properties, or in situations when a housing need is urgent, such as where a person is escaping family violence. Regulation provides an opportunity to equalise power relations.

Implementing these recommendations would also deliver broader community benefit by making a large portion of Victoria's housing stock more energy efficient, cutting pollution and saving people money on their power bills.

Raise the heating standard and develop a cooling standard

RECOMMENDATIONS

- Increase the energy efficiency rating for heaters to 4 stars
- Include an equivalent minimum standard for heating in class 2 buildings, with exemptions as necessary
- Promptly engage community and consumer representatives in the development of a cooling standard

The inclusion of a minimum energy efficiency rating for heating is a good start towards assisting people to live in healthy homes.

We are disappointed that it has been set so low, at a bare minimum, basic standard instead of at best practice (RIS p49). We refer to Environment Victoria's submission for detailed analysis of this. Further, the standard does not apply to class 2 buildings, which effectively excludes people who live in apartments or multilevel residential buildings from benefiting. By phasing out LPG fueled heaters, the standard may also unfairly impact on renters living in regional areas, where LPG fueled heaters are commonly used.

The heating standard makes progress towards protecting Victorian renters against extreme cold. However, Victorian renters also need protection from extreme heat. The proposed regulations do not include a minimum standard for cooling, which is a disappointing omission. According to the RIS analysis, the public health benefit of a regulatory response to cooling has been considered, but requires further investigation by DELWP (RIS p56).

VCOSS calls for this work to be prioritised in 2020/21.

Include a standard for ventilation

RECOMMENDATIONS

Prescribe a standard for ventilation, whereby:

- Living rooms, dining rooms, kitchens and bedrooms have openable windows;
- Kitchens and bathrooms have extractor fans.

Renters reasonably expect properties to be free from mould. We welcome the proposed minimum standard ensuring that a property is free from mould at the time of commencing a tenancy.

However, mould, damp and moisture may arise during a tenancy if the property does not have adequate ventilation. Ventilation would protect the renter from the negative health effects of mould, damp and moisture, and would protect both the renter and the residential rental provider from the unnecessary burden of having to address these preventable issues when they arise.

The need for moisture control and management has been recognised by the Australian Building Construction Board and National Construction Code. A ventilation standard was recently mandated for new buildings and renovated properties.

The RIS (p46) states that housing issues such as mould, damp and excess moisture would be addressed under the rental provider's general duty to ensure the rented premises are reasonably clean, and in good repair.

Since the rental minimum standard is explicit on rental properties being free from mould at the start of the tenancy, the inclusion of a ventilation standard would prevent mould, damp and moisture during the tenancy, and remove ambiguity from the rental provider's general duty.

Develop insulation and draught proofing standards

RECOMMENDATION

- Promptly engage community and consumer representatives in the development of an insulation standard
- Revise minimum standard item 7 to “structurally sound, weatherproof and substantially draught proof”.

Insulation and draught proofing are features of healthy, comfortable homes and contribute to keeping household energy costs down.

The RIS recognises that ceiling insulation and draught sealing are required as part of an effective thermal response (RIS p55). However, insulation has not been included in the proposed minimum standards, on the basis that DELWP will investigate options for an insulation standard in 2020.

The importance of draught proofing has been recognised in proposed r28C, where renters have the right to draught proof their property. However, by regulating draught proofing as a modification right rather than a minimum standard, the responsibility, cost and effort to draught proof a home is likely to land on renters.

The proposed minimum standard 7 requires that the premises be “structurally sound and weatherproof”, which implies that a premises should be made draught proof to comply. This standard could be clarified to remove ambiguity and place responsibility for draught proofing on the rental provider, rather than on the renter by modification.

Expand modification rights

RECOMMENDATIONS

Allow non-structural modifications without landlord consent for the following needs:

- Accessibility and ageing in place, such as grab-rails and ramps, non-slip flooring, shower seats, and assistive devices
- Safety and security in family violence situations, such as security cameras, alarm systems and security lighting
- Health, such as shower seats and non-slip flooring

Allow structural modifications with landlord consent for family violence related safety and security features, such as fencing and gates.

Prescribe a 24 hour time limit for rental providers to grant consent for family violence related modifications.

As more people are renting for longer, people will increasingly need to make modifications over the life of their tenancy, to meet their changing needs, including (but not limited to) age-related needs.

VCOSS has campaigned for renters to be entitled to make certain non-structural modifications without landlord consent. We welcome the range of modifications which are now allowed under the proposed Regulations including:

- Installation of picture hooks or screws for shelves
- Wall anchoring devices to secure furniture
- Installation of LED light globes
- Replacement of halogen or compact fluorescent lamps
- Installation of blind or cord anchors
- Replacement of curtains
- Installation of child safety locks.

However, we do note that the features which are allowed for modification mostly provide for quite basic amenity, energy efficiency and safety, which are reasonably expected as renters stay in their homes for longer.

The proposed r26 and r28 have missed an important opportunity to give renters the right to make non-structural modifications to support their health, disability, ageing and security needs as they arise during their tenancy.

Do not require tenants to unnecessarily remove modifications

RECOMMENDATION

- Prescribe that renters should be permitted, but not required, to remove modifications at the end of a tenancy.

A tenant should not be required to remove any modifications, or pay the cost of removal or restoration, when the modifications have been necessary to support their health, disability, ageing, safety and security or essential energy consumption needs. There should be a presumption that such modifications adds both marketability and capital value to the home.

Consequently, VCOSS does not support proposed reform 32 (RIS p176), which states that if a rental provider asks, the renter will also need to restore any changes or face losing their bond to cover the cost if the rental provider has to do this.

Protect tenants safety, privacy and choice in the market

Strengthen protections for victim survivors of family violence

RECOMMENDATION

- Do not require an IVO as proof of family violence in any tenancy issue.
- Amend the RTA to reduce evidentiary burden and better protect victim survivors of family violence.

There remain critical gaps and inconsistencies in how the RTA and the proposed Regulations respond to family violence. We refer to the submissions from Tenants Victoria and Domestic Violence Victoria for detailed discussion on these issues.

As previously stated, the proposed Regulations have missed an important opportunity to allow victim survivors of family violence to make safety and security related modifications to their homes.

We welcome the broad range of items which would be considered as evidence of family violence in tribunal hearings in proposed r36. However, there are inconsistencies across the RTA and the proposed Regulations on the evidence requirements in other circumstances. There should be consistent evidence requirements, which place the least evidentiary burden on victim survivors of family violence.

Our position remains that an Intervention Order (IVO) should not be required as evidence, as they are not sought or granted in all family violence situations.

Protect tenants from discrimination and privacy breaches

RECOMMENDATION

Prohibit questions related to the following from rental application forms:

- Whether the rental applicant will be using a bond loan
- Why the rental applicant left their last property
- Any characteristic listed in the proposed Form 3 – Statement of Information for Rental Applicants
- Asking the rental application to pay rent or bond before getting a residency or tenancy agreement
- Any questions regarding the rental applicant's financial situation other than what is required to determine whether the applicant could pay the rent
- Any questions that would allow personal information to be provided to third parties

VCOSS members report people are often not provided reasons their tenancy application has been refused, and are not privy to the rental provider's decision-making process. However, the professional judgement of housing workers is that rental providers often make value judgements on the basis of personal information that has been provided in a rental application.

The Regulations will play an important role in driving rental fairness by protecting applicants from discrimination and privacy breaches.

VCOSS is pleased that, under the proposed r15, rental applicants will **no longer be required** to disclose the following information:

- Previous legal disputes or actions with a rental provider
- Bond history or whether there has ever been a claim on their bond
- Passport (if there are other forms of ID)
- Bank statements which are not redacted
- Nationality or residency status (unless it is required for community or public housing).

However, we are concerned that the proposed Regulations will not prohibit rental providers from asking questions on application forms related to the following:

- Whether the rental applicant will be using a bond loan
- Why the rental applicant left their last property
- Any characteristic listed in the proposed Form 3 – Statement of Information for Rental Applicants
- Asking the rental application to pay rent or bond before getting a residency or tenancy agreement
- Any questions regarding the rental applicant's financial situation other than what is required to determine whether the applicant could pay the rent
- Any questions that would allow personal information to be provided to third parties

This information imposes on people's privacy and could be misused by a rental provider to discriminate against a person seeking a lease.

This information is not relevant or necessary for the rental provider to know, and removing the requirement to disclose would reduce the potential for discrimination.

Give tenants the information they need before entering an agreement

RECOMMENDATION

Prescribe the mandatory disclosure of the following information:

- Recent history of mould repairs within five years
- The presence and type of insulation in the property
- Energy performance of rental property, using the Victorian Government's Energy Efficiency Scorecard
- Previous use of the property as a brothel
- Previous illegal use of the property within five years
- Where property is a rooming house – the proprietor is registered as a Fit and Proper Person

- Clarify that “prior to entering a rental agreement” is adequately timed to enable the prospective renter to compare their rental options and make an informed decision about a rental property.

A prospective renter should have enough information about a rental property to make an informed decision on whether it meets their needs.

We welcome the information prescribed in R16 that a rental provider must now disclose to a tenant before entering into a rental agreement. This will assist prospective tenants to determine whether there may be impacts during their tenancy which would not be appropriate to them, such as potential changes to land use or safety risks.

However, we think there are other features and issues that may significantly impact on a tenancy which should be disclosed to a prospective renter before they agree to and enter into a tenancy agreement.

The Act and the proposed R16 states that information should be disclosed to the prospective renter “prior to entering a rental agreement”. However, the RIS states that the rental provider is to disclose this information at the time of entering the rental agreement, which is considered to be the most efficient way for the renter to gain this information (RIS p80).

The timing of disclosure is significant as the purpose of information disclosure is to enable the prospective renter to compare their rental options and make an informed decision about whether a rental property meets their needs (RIS p76).

We think information disclosure provided at the time of entering the rental agreement is too late, and that information must be disclosed “prior to entering a rental agreement”.

Clarify scope of the new laws

Ensure the reforms benefit all renters

RECOMMENDATION

- Clarify transitional arrangements to ensure laws apply to all private, public and community housing renters within a two-year period

The transitional arrangements (RIS 4.2) mean that a number of the reforms do not apply to fixed term rental agreements and periodic tenancies entered into before 1 July 2020.

As a result of this, we are concerned that public and community housing renters will not benefit from many of the reforms, including the rental minimum standards and the limiting of rent increases to once a year, due to these transitional arrangements.

All renters, including private, public and community housing renters who are currently in tenancies, should benefit from and be protected by the new legal framework within a fixed two-year transitional period, commencing on 1 July 2020. The current transitional arrangements are not clear and do not provide for an orderly transition nor certainty for owners, agents or renters.

Align the definition of temporary crisis accommodation with DHHS definitions

RECOMMENDATION

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

- experiencing homeless or at risk of experiencing homelessness; or





- being subjected to family violence or at risk of being subjected to family violence.

People residing in temporary crisis accommodation are excluded from protections under the RTA. Presently, temporary crisis accommodation comprises approximately 400 beds.

We are concerned that the proposed prescribed definition of temporary crisis accommodation is too broad, and may include all non-permanent accommodation provided by homelessness and family violence services provided under DHHS funding.

VCOSS notes that submissions by the Council to Homeless Persons, Justice Connect and Domestic Violence Victoria explore this matter in further detail, and we support their treatment of temporary crisis accommodation.



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