

Submission in response to Residential Tenancies Regulations 2020

This submission is in response to the proposed changes to the Residential Tenancies Act (Residential Tenancies Regulations 2020), on behalf of Detector Inspector Pty Ltd. Detector Inspector is the pre-eminent provider of smoke alarm and gas servicing in Victoria, servicing more smoke alarms and gas appliances than any other provider annually. Having operated for almost 15 years, Detector Inspector currently services in excess of 125,000 properties in Victoria alone. Nationally, we undertake a total of more than 200,000 annual services. In doing so, we pride ourselves on being at the peak of both industries in terms of safety and compliance. We are constantly working with Energy Safe Victoria (ESV) and the Victorian Building Authority (VBA) to ensure that safety standards are upheld in service work and redefining the level of a quality service.

However, the current environment in which we and other providers are operating is ambiguous and lacks specifications in terms of defining the scope of services in both gas servicing and electrical servicing. This submission responds to problematic areas in:

1. Gas and electrical safety activities.
2. Record keeping.
3. Corded blinds.
4. Safety related activities and urgent repairs.

1. Gas and Electrical Safety Activities

The Regulatory Impact Statement itself sets out the importance of providing clarity around how safety activities are conducted,

“Safety-related standards are provided for in specialist building and electrical safety legislation. However, these laws do not clarify how safety devices or gas and electrical appliances and installations are to be maintained by the parties in the context of a rental agreement. Lack of clarity around rental provider and renter responsibilities for safety-related maintenance under a rental agreement poses health and safety risks for renters.”

The above statement explicitly addresses the current lack of clarity in how safety devices, gas and electrical appliances or installations are maintained. However, the proposed Regulations lack detail in what constitutes an appropriate gas or electrical safety check, and this is a gross oversight when the intention of the proposed changes is to ensure safety of renters.

In 2017, Sonia Sofianopoulos tragically passed away as a result of a combination of unsafe factors in her gas heating set up in her home. The Victorian Coroner described the combination of events as:

- *“A faulty draught diverter in the open flue heater which caused carbon monoxide spillage from an open flue space heater into living areas*
- *The sealing of Ms Sofianopoulos’ unit which significantly reduced ventilation*
- *The operation of exhaust fans which created what is known as a ‘negative pressure’ environment where carbon monoxide was drawn into living spaces”*

From Coroner’s Report “Inquest into the Death of Sonia Sofianopoulos”, COR 2017 3566 and ‘Coroner’s Findings into the Death of Sonia Sofianopoulos’ Energy Safe Victoria’

This negative pressure environment and the concurrent spillage of carbon monoxide resulted in the build-up of carbon monoxide in Ms. Sofianopoulos’ body and her subsequent death due to carbon monoxide toxicity. The inquest into her death details that the heater had been last serviced in 2015, and there is was record of the activities performed in the service. Further to this, the heater was again serviced in 2017, following the death of Ms. Sofianopoulos. This service was also found to be inadequate due to the lack of detail in records kept regarding the service, as well as the admission from the gasfitter that he failed to conduct a carbon monoxide spillage test at all. From the report,

“.. there was limited description of the works carried out, there was no record of the actual faults observed with the heater and the service focussed mainly on the replacement of parts. Further, there was no mention of the performance of the heater, its state of dilapidation, or a point score of where it was at in its life, along

with some of the other mandatory requirements in accordance with the appropriate servicing standards.”

1.1 Gas Safety Check

We propose that the gas safety check should be prescribed in the Regulations to include the necessary steps to complete a satisfactory check, with reference and guidance from ESV and particularly, Gas Information Sheet 38: “Testing for negative pressure and carbon monoxide spillage while carrying out gas service work”. Gas Information Sheet 38 details how gasfitters can test for negative pressure and carbon monoxide spillage. This is a crucial step in a gas safety service, and one that may be missed if there is no minimum standard for activities performed in a gas safety check.

The death of Ms. Sofianopoulos is one example of the absolute necessity of including a minimum standard of gas safety check that includes testing for negative pressure and carbon monoxide spillage. A checklist of minimum standard of works completed that would ensure a thorough and complete gas safety check is necessary to ensure that renters are safe in their homes and that gasfitters are completing an appropriate gas safety service that ensures every aspect of gas safety has been checked, as well as ensuring uniformity of service across all gas safety checks.

In reference to who may conduct the gas safety activity:

“15. Gas safety activities”

“This safety-related activity only applies if the rented premises contain any appliances, fixtures or fittings which use or supply gas.

- (a) The rental provider must ensure that a gas safety check of all gas installations and fittings in the rented premises is conducted every 2 years by a licensed or registered gasfitter and must provide the renter with the date of the most recent safety check on request of the renter.”*

We propose that the statement 'by a licenced or registered gasfitter' is not adequate to define the necessary qualifications of a gasfitter conducting a gas safety check. To perform gas servicing, a gasfitter must hold the 'Type A Servicing Tick', as per VBA regulations and licencing. In simply stating 'a licenced or registered gasfitter', the proposed changes neglect to specify that the licenced or registered gasfitter must hold a Type A Servicing Tick to legally service gas appliances in Victoria.

1.2 Electrical Safety Checks

In reference to:

“14. *Electrical safety checks*

- (a) *The rental provider must ensure an electrical safety check of all electrical installations, fittings and appliances provided by a rental provider in the rented premises is conducted every 2 years by a licensed or registered electrician and must provide the renter with the date of the most recent safety check on request of the renter.”*

We propose that the electrical safety check should also include the necessary steps to complete an electrical safety check. Similar to the gas safety check, the proposed electrical safety check lacks any detail surrounding what a check actually means, and the steps which need to be undertaken to have completed a satisfactory electrical safety check. We recommend referencing the relevant government body (in this case, also ESV) for information regarding what purports a satisfactory electrical safety check. This would provide a minimum standard of quality, as well as ensuring uniformity across electrical safety checks.

From a study by Flinders University in 2007, over the two-year period in which research was conducted there were 1,493 hospitalised due to electrical injury. Of these, the majority (42%) of incidents occurred in the home and when looking at children alone, this number increases to 77%. In a more recent case, on December 9, 2019, a 50 year old man passed away in his home as a result of an electrical shock in his home. These statistics demonstrate the necessity of completing electrical safety checks, but also reinforce the need for these checks to include

a checklist of steps to be undertaken and that checks be undertaken by a licenced A Grade electrician.

The issue with a lack of clarity around what constitutes an appropriate and valid electrical safety check (as in the case of what constitutes an appropriate and valid gas safety check), is that it is open to an unscrupulous rental provider to do a bare minimum check that does not actually satisfy the safety requirements. Then, as in the death of Ms. Sofianopoulos, an absence of clear records of what checks have taken place and the results of such checks, a lack of accountability follows.

It is for this, among other reasons, that we recommend that there be a minimum standard of activities/checklist that takes place in a gas or electrical safety check.

2. Record Keeping

Requirements for gas and electrical safety check record keeping:

The above points refer to the necessity of a checklist of minimum standards for what constitutes a safety check for both gas and electrical, but such a checklist would be redundant if no record was kept. Therefore, we believe that record keeping for gas and electrical safety checks should include details regarding the activities conducted within the check, as well as lodgement with both relevant government bodies and rental providers. This is explored in more detail below.

3. In reference to

“30. Requirements for gas and electrical safety check record keeping”

These requirements reference the need for record keeping, and state that the following details should be included in the record of a gas safety check:

- (i) the name of the licensed or registered gasfitter who conducted the check;*
- (ii) the licence or registration number of the licensed or registered gasfitter who conducted the check;*
- (iii) the date the check was conducted;*

(iv) the results of the check, including any repairs that were required and actions taken to address the repair

Following the passing of Ms. Sonia Sofianopoulos, the coroner's report addressed the lack of adequate record keeping and detail within the records kept as contributing factors to the unsafe environment in which Ms. Sofianopoulos was living. In direct correlation with the need for a checklist of minimum standards for gas and electrical safety checks, these minimum standards need to be recorded in a formal record or certificate of compliance.

We propose that the aforementioned record of a gas safety check should need to be lodged with the relevant government authority, as well as with the rental provider. This record should be known as a formal Certificate of Compliance, in line with current practice that holds the gasfitter under whose licence the work was performed accountable for any issues that may arise as a result of negligent work.

Electrical Safety Check Record Keeping

The requirements for an electrical safety check record are similar to those of a gas safety record and therefore not listed again. We propose that the record of an electrical safety check should include the necessary steps taken in performing the electrical safety check and should act as a Certificate of Compliance with the electrician who performed the safety check held accountable for any negligent work performed.

We propose that this record should be lodged with Energy Safe Victoria as well as with the rental provider. In the same line of reasoning as with gas safety checks, lodging records with the relevant government body as well as with the rental provider ensures that a qualified body with the necessary relevant knowledge can enforce the quality of the electrical safety check. The rental provider can only be assumed to be a layman and not qualified to judge whether the safety check was completed to a suitable standard.

Corded Blinds:

In reference to:

26 “Modifications which can be made without residential rental provider’s consent

For the purposes of section 64(1) of the Act, the following modifications are prescribed—

(a) in a rented premises that is not a registered place—

(i) installation of blind or cord anchors;”

We propose that rental providers should hold sole and total responsibility for any installation and maintenance of blind or cord anchors. This seemingly simple task can become a hazard for small children in a home when blinds are installed incorrectly, with 1-2 children in Australia dying each year as a result of non-compliant corded blinds (Australian Competition and Consumer Commission, 2016). In a survey of 131 homes in 2016, the ACCC found that only 10% of homes complied with the mandatory installation requirements. Whilst being a small sample size, this illustrates the scope of non-compliant installations that exist across Victoria, creating a risk for any homes affected.

Concurrent with the Competition and Consumer (Corded Internal Window Coverings) Safety Standard 2014, mandatory installation requirements exist for the installation of internal window coverings. These requirements ensure that internal window coverings, including blind or cord anchors, are installed safely and securely.

Rental providers should contract the services of a third party who is trained in the Competition and Consumer (Corded Internal Window Coverings) Safety Standard 2014 and who is able to safely and securely install corded blinds in line with the mandatory installation requirements. While both renters and rental providers have a vested interest in the safety and maintenance of the home, they are generally unaware of the Safety Standard relating to the safe installation of corded blinds and may unknowingly install an unsafe anchor, thereby causing unnecessary risk to children living in the home.

Safety Related Activities:

In reference to:

“28. Urgent repairs

Section 3 of the Act defines urgent repairs. Refer to the Consumer Affairs Victoria website for the full list of urgent repairs and for more information, visit consumer.vic.gov.au/urgentrepairs.

Urgent repairs include failure or breakdown of any essential service or appliance provided for hot water, cooking, heating or laundering supplied by the rental provider.”

Urgent repairs are a necessity in any rental agreement. We propose that urgent repairs should include safety related activities. As demonstrated by the tragic passing of Sonia Sofianopoulos, Chase and Tyler Robinson and many others who have tragically passed away as a result of negligence in servicing of potentially hazardous appliances and failing safety devices in homes, safety checks are often not conducted in a timely or routine manner thus causing risk to renters.

Further to this, many faults and defects in appliances or safety equipment in the home are often not detected until a routine safety check has been conducted by a qualified tradesperson who is able to identify risks and faults. Including safety related activities in the urgent repairs list would ensure that their completion could not be inhibited by lack of funding or timeliness from a rental provider.

Under the *Residential Tenancies Act 1997*, urgent repairs in a rental property are:

- burst water service
- blocked or broken toilet system
- serious roof leak
- gas leak
- dangerous electrical fault
- flooding or serious flood damage
- serious storm or fire damage

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- failure or breakdown of any essential service or appliance provided by a landlord or agent for hot water, water, cooking, heating, or laundering
- failure or breakdown of the gas, electricity or water supply
- any fault or damage in the premises that makes the premises unsafe or insecure
- an appliance, fitting or fixture that is not working properly and causes a substantial amount of water to be wasted
- a serious fault in a lift or staircase.

From this definition of urgent repairs given by the Consumer Affairs Victoria website, any fault or damage in the premises that makes the premises unsafe or insecure is classed as an urgent repair and as such requires immediate attention. To ensure the safety of all renters, safety related activities should be conducted as a matter of priority due to the likelihood of resulting fault or damage that a qualified tradesperson may find that a renter would not.

Safety related activities are a matter of priority in ensuring that renters are safe in their homes and should be treated as such. To ensure that checks are completed every 2 years for gas safety checks and electrical safety checks, and annually for smoke alarm checks, they should be classed as falling under urgent repairs and have access to the proposed \$2500 urgent repairs fund. This will avoid the possibility of 'as soon as is practicable' becoming an extended period of time in which renters are at risk of death in their homes.

Detector Inspector is an organisation dedicated to ensuring that renters are safe in their homes and takes this responsibility incredibly seriously. With 15 years of experience in property compliance, this submission draws upon the considerable understanding that we have in compliance and operational effectiveness of enforcing and ensuring compliance. We trust that the recommendations and proposals included in this submission will be taken into consideration in finalising the proposed changes to the Residential Tenancies Act.