



Tenants Union of Victoria  
response to

**Regulation of property conditions in the rental  
market Issues Paper of the Residential  
Tenancies Act Review**

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Yes, what else but home?

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# About Us

The Tenants Union of Victoria (TUV) was established in 1975 as an advocacy organisation and specialist community legal centre, providing information and advice to residential tenants, rooming house and caravan park residents across the state.

Our aim is to promote and protect the rights and interests of residential tenants in Victoria.

We operate an integrated service model that combines our three main areas of activity:

- > client services (advice and advocacy),
- > community education, and
- > social change

## **1. Client Services (advice & advocacy)**

The purpose of our client service is to provide accessible and effective assistance to residential tenants across Victoria. Advice is provided by telephone, in person, by email and through secondary consultations with other services.

During 2014/15, the TUV handled more than 19,200 enquiries. The TUV provided advocacy on behalf of tenants in almost 880 matters, represented tenants in over 225 hearings at VCAT or other Courts, and attended 350 outreach visits to 250 rooming house, caravan parks and services.

## **2. Community Education**

The TUV produces a wide range of publications and practical resources for tenants, rooming house and caravan park residents, and community service workers to assist tenants to understand their rights and responsibilities and to resolve their own tenancy problems. We have about 150,000 unique users accessing resources through our website each year.

The TUV also runs a training program for community sector workers to provide basic training in tenancy rights and responsibilities. During 2014/15 we did 29 training sessions and other community education presentations.

## **3. Social Change**

The TUV undertakes a broad range of social change activities to represent the interests of tenants and to highlight the impact of living in the rental sector. This work includes research, policy formulation, lobbying and media liaison.

Across these three areas of activity our strategic goals can be summarised as:

- > Better tenants' rights
- > Better tenant resources
- > Better tenant services

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# Summary of Recommendations

## **Minimum standards**

- R1.** Implement minimum standards for all rented housing in Victoria.
- R2.** The Act should be amended to provide greater protections from rent increases.
- R3.** The Act should be amended to repeal no reason and end of fixed term notices to vacate.

## **Beginning of the tenancy**

- R4.** The Act should be amended to provide that the landlord is liable for the installation of telecommunication infrastructure (including internet).
- R5.** The Act should be amended to include mandatory disclosure of specific information prior to the signing of any residential tenancy agreement.
- R6.** The Act should be amended to permit a tenant to apply to the Tribunal to terminate their lease agreement if the correct information has not been provided by the landlord in the disclosure statement.

## **Condition report**

- R7.** The Act should be amended to provide that the condition report must be a true and accurate record of the condition of the property and any provided fixtures. This should be an offence provision.
- R8.** The Act should be amended to include minimum standards in the condition report. The condition report should detail how the property meets or exceeds the minimum standards and provide evidence where necessary.
- R9.** The Act should be amended to increase the timeframe in which the condition report is to be returned from three business days to five business days.
- R10.** The Act should be amended to permit an extension where the tenant is able to prove illness during this time period or any other valid reason why they could not do the report.

## **During the tenancy**

- R11.** Section 61(1) of the Act should be amended to include the word 'reasonable' – A tenant must ensure that reasonable care is taken to avoid damaging the rented premises.
- R12.** Section 63 (Tenant must keep rented premises clean) of the Act should be amended to be restricted to the end of the tenancy to provide that the tenant must leave the property in a reasonably clean condition.
- R13.** The Act should be amended to make it clear that a landlord is in breach of their duty to maintain the premises in good repair if there is any defect or fault in the premises or the appliances provided by the landlord.
- R14.** The Act should be amended to ensure that a tenant is entitled to rely on the report of the CAV Director for the completion of any repairs and to create an offence for a landlord not to comply with the report.

- R15.** The Act should be amended to vest responsibility for the Rent Special Account with the CAV Director who may at their own discretion receive payments of rent directly from an affected tenant where the landlord has failed to comply with the report.
- R16.** The Act should be amended to allow minor, reasonable modifications without the need to gain the landlord's consent and need not be remedied at the end of a tenancy.
- R17.** The Act should be amended to provide that a landlord cannot unreasonably withhold consent for disability modifications. The Act should make specific reference to section 53 of the Equal Opportunities Act 2010.
- R18.** The Act should be amended to state that a landlord cannot unreasonably withhold consent for the installation of additional fixtures.
- R19.** The Act should be amended to allow a tenant to apply to the Tribunal to install reasonable fixtures where the landlord has refused.

#### **End of the tenancy**

- R20.** The Act should be amended to give VCAT jurisdiction to consider the application of human rights in social and public housing cases under the Charter of Human Rights and Responsibilities Act 2006 (Vic).
- R21.** The Act should be amended to return the bond automatically to the tenant if the landlord does not make a claim within the 10 business days' time limit.
- R22.** The Act should be amended to include a provision that states that the landlord must take into account depreciation when determining any costs owed by the tenant.
- R23.** The Act should be amended to include clarifying considerations to help parties determine what is 'reasonably clean' and what is 'fair wear and tear'.

#### **Family violence**

- R24.** Implement the Royal Commission into Family Violence recommendations.
- R25.** Section 332 of the Act should be amended to state that a possession order must not be made if the notice to vacate has been given to a tenant who has experienced family violence and the malicious damage referred to in the notice was caused by the perpetrator of the family violence.

#### **Social housing**

- R26.** To maintain affordable and decent social housing a recurrent and transparent operating subsidy should be established which is fully funded up front in budget. This consistent subsidy is separate and in addition to increased capital investment to boost supply.
- R27.** Section 35 of the Act should be amended to provide that a condition report must be completed for all properties, not just where a bond is collected to reduce disputes in the public housing sector.

#### **Caravan and residential parks**

- R28.** The Act should be amended to clarify that the site owner is responsible for maintenance of the site including any structures that have become attached to the site.

The Act should be amended to include urgent and non-urgent repair processes that mirror the provisions in the Act in relation to tenancies.

# Introduction

The Tenants Union of Victoria welcomes the opportunity to contribute to the *Regulation of property conditions in the rental market Issues Paper* as part of the Residential Tenancies Act Review.

Housing is the fundamental building block in people's lives. Having access to housing that is safe, healthy and secure is the vital foundation to build a healthy and happy life. Unfortunately tenants are disproportionately more likely to live in properties of a lower standard, with the most vulnerable and disadvantaged; the young, people with disabilities and ill health, those with low incomes and without employment, and Indigenous people being overrepresented in poorer quality housing.<sup>1</sup>

Poor housing conditions have a measurable and statistically significant impact on mental, physical and general health.<sup>2</sup> Those living in substandard housing are most likely to be socioeconomically disadvantaged and have long-standing illness. In addition, vulnerable groups who are among those most likely to live in poor housing also tend to spend large amounts of time in their homes exposed to potentially hazardous environments.<sup>3</sup>

The lack of minimum health, safety and energy efficiency standards for rented housing has the unfortunate consequence of creating additional burden for disadvantaged households who are already struggling financially. Government direction to address housing conditions will improve living conditions of vulnerable groups and will work to reduce the cycle of social and health inequalities.

The market is not equipped to provide protection from poor quality housing and so reform to tenancy legislation is needed to ensure that every Victorian has access to a safe and healthy house.

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<sup>1</sup> Ibid, p225.

<sup>2</sup> Emma Baker, Laurence H. Lester, Rebecca Bentley & Andrew Beer (2016) Poor housing quality: Prevalence and health effects, *Journal of Prevention & Intervention in the Community*, p229.

<sup>3</sup> World Health Organisation, *Environmental burden of disease associated with inadequate housing*, 2011

# Minimum standards

## R1. Implement minimum standards for all rented housing in Victoria.

### Why we need minimum standards

Mandatory minimum standards for rented properties are vital for ensuring that renters have access to a level of housing quality that is consistent with community expectations. Renter households are more likely to be living in properties that are of a poorer standard than owner-occupier households.<sup>4</sup> Minimum standards provide a simple and effective mechanism for guaranteeing the provision of safe, healthy and affordable accommodation for renters in Victoria to bridge the established gap legislating dwelling standards for rented housing.

Mandating minimum standards becomes particularly important for low-income renter households. The market currently relies on the capacity of consumer choice within rental housing, where renters are allegedly able to refuse substandard properties. Yet the lack of affordable housing and high level of competition for lower cost properties limits the housing choices of low income renters. Additionally the high level of competition in this segment of the market provides little incentive for landlords to voluntarily meet certain standards by investing in improving the quality and efficiency of these rental properties. This has a disproportionate effect on the most vulnerable and disadvantaged; with young people, people with disabilities and ill health, those with low incomes and without employment, and Indigenous people being overrepresented in poorer quality housing.<sup>5</sup>

Sarah\* a young single mother with a baby struggled to find a rental property. She applied for 23 properties before being accepted to one. At this point she was desperate and accepted a six month lease as the property was to be demolished at the end of this period.

Sarah discovered that the house had asbestos in the walls and was particularly concerned as the walls were full of cracks and holes. During the first week in the property a wall caved-in in the second bedroom. Sarah was forced to block off this room as the estate agent and landlord refused to undertake any works on the property.

The kitchen floor had been covered by a loose sheet of carpet, when Sarah rolled it back for hygiene reasons she found that the floorboards beneath were covered with mould.

Sarah also had problems with hot water faults in the kitchen. She was advised after inspection from a plumber that the pipes needed to be replaced in the property. She was warned not to drink the water without boiling it as it was unsafe. The landlord refused to undertake these works.

In addition to this the property had windows that were jammed open and a toilet that leaked. Sarah was worried about the health of herself and her baby but felt she had few options because she had found it so difficult to be accepted to a property.

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<sup>4</sup> Ibid, p224.

<sup>5</sup> Ibid, p225.

\*Names have been changed.

In regional and rural areas properties are often older with poor heating and cooling, and additional features requiring greater maintenance. Additional amenities such as water tanks, bottled gas and off-the-grid energy supplies such as generators and solar systems require additional thought when considering minimum standards. These extra amenities can cause issues especially if the landlord has not clearly identified the properties' needs and the tenant is not aware of the potential implications and cost.

Opposition to the regulation of property standards is typically based on unsubstantiated claims that any such modification will drive away investors and initiate the sector's decline. However, available research tends to suggest that tenancy law reforms are of marginal importance to what ultimately motivates individuals and households to invest in residential property, and to continue investing over a long period of time.<sup>6</sup>

Another popular claim is that introducing mandated minimum standards would see rents increase. Again, however, there has been minimal impact globally. There is little evidence from other jurisdictions who have adopted similar measures – in the UK, Canada and New Zealand, for instance – to corroborate such arguments. In Alberta, Canada, for example, minimum standards have been in operating since 2000;<sup>7</sup> however, there is no evidence that their introduction had any significant impact on the supply of rental housing, nor on rents.

[John\\* had been living in a property for three years. The gas heater broke and a plumber was sent to inspect the heater. The plumber said that the flue had not been installed properly and that the heater had been leaking large amounts of carbon monoxide into the property.](#)

Most rental properties will already meet all or most of the standards we have set out below. It is the lower cost, poorer quality housing, the segment housing the most marginal and disadvantaged tenants which this legislation is ultimately targeting. Collectively, these tenants are not in a position to exercise market choice and are forced to live in housing of lower quality construction and design, with its associated health, safety and financial implications.

A secret shopper survey of rental properties at the lower end of the market conducted in 2010 by the Victorian Council of Social Services (VCOSS) for the 'Decent not Dodgy' campaign, found that 41 per cent of the rental properties surveyed either met VCOSS's proposed minimum standards or required a minor change and 12 per cent of properties required two changes. Meanwhile 21 per cent and 26 per cent of surveyed rental properties would require three and four (or more) upgrades or repairs, respectively.<sup>8</sup> The survey did find that 12 per cent of the surveyed rental properties could be considered uninhabitable, with multiple significant problems that had implications for the health and safety of the tenants living in them.<sup>9</sup>

It is important to emphasise that minimum standards are not about:

- > Mandating high quality, or even new, appliances.
- > Mandating high levels of amenity.
- > Forcing owners to regularly invest in their properties.

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<sup>6</sup> See Seelig *et al.* 2009, Understanding What Motivates Households to Become and Remain Investors in the Private Rental Market, AHURI Final Report No. 130, March 2009, Australian Housing and Urban Research Institute.

<sup>7</sup> The *Minimum Housing and Health Standards* form part of Alberta's Public Health Act 2000.

<sup>8</sup> VCOSS 2010, 'Decent no Dodgy: a Secret Shopper Survey', June 2010, p.11

<sup>9</sup> *ibid*, p.9

Minimum standards are about basic human habitation standards and not about high cost amenity. Rather than mandating high quality or new appliances, for example, minimum standards simply require a reasonable health, safety and energy efficiency rating. While landlords are likely to benefit from regular investment and maintenance, minimum standards are not about forcing continual planned investment on landlords. Instead, meeting the minimum standards will likely entail, if anything at all, a one off cost with long lasting benefits

Indeed the vast majority of rental properties will already meet such minimum standards; however, mandating these standards essentially creates a floor under which it is not lawful to rent out residential premises similar, for example, to a roadworthy certificate for a motor vehicle. It does not mandate that every renter gets the housing equivalent of a Ferrari!

### **What the standards should include**

The Tenants Union of Victoria believes that the minimum standards should, at the very least, cover each of the items in the list below. Each of these standards are considered critical to achieving the goal of ensuring renters have access to healthy, safe, secure and affordable homes.

The below standards broadly align with the minimum standards implemented in other jurisdictions – in Alberta, Canada and in Tasmania, for example – as well as with the standards detailed in the Decent not Dodgy campaign.<sup>10</sup>

Further, in 2007 the Victorian Department of Human Services commissioned a report on the minimum amenity standards, which covers many of the areas below and, while now somewhat dated, described what would constitute low, decent or premium standard for different amenities.<sup>11</sup> It should not be difficult to build on this report to determine what would be considered more current, decent standards.

#### **Health**

- > Building structure must be weatherproof and draft proof
- > Building able to be maintained without risk of damp
- > Must be vermin proof (no structural ability for infestation)
- > Adequate lighting- preferably natural light but with a reasonable level of artificial light
- > Adequate ventilation
- > Running hot and cold potable water
- > Flyscreens on all opening windows
- > Must have adequate waste provision (such as bins provided at start of tenancy)

#### **Safety**

- > Building must be structurally sound
- > Building must not to be a fire hazard
- > Approved gas (if available and connected) and electricity connection
- > Must have adequate electrical outlets in each habitable room
- > Electrical safety switches and circuit breakers

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<sup>10</sup> <http://vcoss.org.au/social-justice/housing/decent-not-dodgy/>

<sup>11</sup> Ernst & Young 2007, Minimum Amenity Standards in Private Rental Accommodation, Report produced for the Victorian Department of Human Services, May 2007.

- > Regular gas safety checks
- > Installed appliances (e.g. heaters, hot water systems, ovens etc.) should be periodically tested or serviced
- > Deadlocks installed on all external doors and window locks on windows
- > Sufficient smoke detectors (already legislated but not in the RTA)

### **Energy and Water Efficiency**

- > A decent level of thermal insulation
- > Access to at least one form of inbuilt heating (in the main living area) with a minimum energy efficiency standard and in good working order
- > Access to an energy efficient hot water service which is in good working order
- > Efficient and properly installed cooking appliance
- > Access to fixed water appliances which are both efficient and in good working order (e.g. dual flush toilet cisterns, AA rated showerheads etc.)
- > A basic level of window covering (e.g. curtains or blinds)

Energy and water efficiency standards are important because they can have a significant impact on the ongoing affordability of housing for low-income households. There is clear evidence that Victoria needs to prepare its housing for the future; a future that will increasingly be dictated by climate change and the heat waves and other extreme weather events that are likely to ensue. Low-income renters are especially vulnerable to these changes, particularly the elderly and those suffering from chronic health conditions, because they live in poorer quality housing and have less capacity to climate-proof their homes.<sup>12</sup>

A good example is insulation. Numerous surveys demonstrate the difference in thermal efficiency between owner-occupied dwellings and dwellings that are rented. In 2015, the Victorian Utility Consumption Households Survey found renter households, private and public, were far less likely to live in a dwelling with at least some form of insulation, than owner-occupiers: 58 per cent, 55 per cent and 95 per cent, respectively. Such a stark differential, however, does not necessarily take into account the extent of inadequate or ineffective insulation. The Victorian Energy and Water Taskforce in 2008 found that the proportion of renter households with inadequate insulation was much greater than the households with no insulation.<sup>13</sup>

Hamila\* lived in a property with inadequate insulation and visual gaps in external structures and so suffered cold drafts in winter, dust and loud noise. The heater did very little against the drafts and heat was lost due to the absence of insulation and single glazed windows. Hamila complained of health problems including a flared dust allergy, and costly energy bills, both of which severely reduced the Hamila's quality of life.

Tenants in low cost housing have little control over their housing situations and are more likely to suffer most from higher energy and water prices. Research for the Brotherhood of St Laurence in 2015 found 38 per cent of private renters were unable to heat their home, while 43 per cent were unable to pay their energy bill on time.<sup>14</sup> Importantly, these tenants typically reside in poor quality housing and remain heavily reliant on inefficient heating and cooling devices. Introducing minimum standards for

<sup>12</sup> VCOSS 2013, *Feeling the Heat: Heatwaves and Social Vulnerability in Victoria*, March 2013

<sup>13</sup> Department of Sustainability and Environment 2009, *Housing condition / energy performance of rental properties in Victoria*, July 2009, p.34

<sup>14</sup> Azpitarte, F., Johnson, V. and Sullivan, D. 2015, *Fuel poverty, household income and energy spending*, Brotherhood of St Laurence, p.viii

rented premises provides a cost effective mechanism to drive the uptake of basic energy and water efficiency measures in these rented properties.<sup>15</sup>

## Compliance and enforcement

Enforcement costs can be minimised by providing processes for both regulator and consumer enforcement. Regulator enforcement is vital to protect the interests of vulnerable and disadvantaged tenants. Additionally there should be a consumer enforcement mechanism to allow tenants' to raise breaches to the standards themselves.

Compliance with the minimum standards should become a condition of the lease agreement. In this way it would be triggered at the beginning of a new tenancy agreement or when a lease renewal is signed. This is similar to the approach to the energy efficiency standards in England and Wales, as well as the minimum insulation standards which recently came into force in New Zealand.

In England and Wales, recently passed regulations will implement minimum standards in energy efficiency, which will make it unlawful, from 1 April 2018, for landlords to grant a new lease or renew a lease for properties that have an energy performance certificate (EPC) below a certain level; however, these measures are also triggered by a periodic tenancy arising from the end of a fixed term agreement.<sup>16</sup> Similarly, in New Zealand, from 1 July 2016, all new tenancy agreements will need to include a statement of the extent and condition of insulation in the property, and any replacement or installation of insulation must meet the require standard.<sup>17</sup>

After a month of living in a new property Kim\* discovered that the bathroom walls contained gaps and holes caused by rot which allowed pests to enter the property. The dwelling also had bare wires outside which were exposed to the weather. During heavy rain the ceiling in one of the rooms leaked through near a light fitting causing a fire risk. Requests for repair were ignored by the estate agent.

The onus for compliance with the standards would be placed on the landlord and enforced by CAV and VCAT. Similar to the repairs process TUV has outlined in our responses to previous issues papers, a renter could apply to the CAV Director to investigate whether the dwelling meets the standards and produce a binding report. Alternatively, the CAV Director could choose to investigate of its own volition.

This investigative power is similar to that used in the rooming house minimum standards, as well as in the UK,<sup>18</sup> and Alberta,<sup>19</sup> Canada where local authorities are given powers to investigate and enforce compliance with these measures. In Alberta, the *Residential Tenancies Act* specifies that a rented dwelling must meet the mandated minimum standards Minimum Housing and Health Standards under Alberta's Public Health Act. Tenants can make a complaint to the health authority to investigate and request the landlord make the necessary modifications to meet the standards. The authority also has the power to take the landlord to court; if the landlord does not comply with a court order, he or she is liable to a daily fine until compliance is met.<sup>20</sup>

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<sup>15</sup> See, for example, The Environmental Sustainability of Australia's Private Rental Housing Stock, AHURI Research & Policy Bulletin, Issue 145, October 2011; One Million Homes Alliance 2010, One Million Homes: A 2010 Energy and Water Efficiency Campaign, July 2010.

<sup>16</sup> The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

<sup>17</sup> Greater detail can be found via the New Zealand Ministry of Business, Innovations an Employment's website on tenancy related matters, <https://tenancy.govt.nz/maintenance-and-inspections/insulation/>

<sup>18</sup> The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

<sup>19</sup> The *Minimum Housing and Health Standards* form part of Alberta's Public Health Act 2000.

<sup>20</sup> Ibid.

## Implementation

The process for adopting minimum rented housing standards should be as follows:

- > Amend the Act to provide a broad power for the Minister to make regulations for minimum standards for all residential tenancies.
- > Establish the initial minimum standards to be specified in the regulations and incorporate the current standards for moveable dwellings and the minimum standards for rooming houses.
- > Amend the Act to provide for both an offence for noncompliance with the relevant standards and a duty to comply with the relevant standards. This means that a landlord (including a rooming house, caravan park or caravan owner) could be both prosecuted by the regulator for noncompliance and a tenant or resident could seek a compliance order and be compensated if the non-compliance caused them to suffer a loss.
- > Provide a reasonable length of time for all existing properties to transition to the new minimum standards. This could also be staged as, for example, after two years the premises must meet the standards for each new letting and then after five years all premises must meet the standards. Similar implementation processes have been used in England and Wales, for example. The first stage of the process begins from 1 April 2018, where landlords cannot grant a new lease, or renew a lease, if the property has a substandard energy performance certificate. The minimum standards will apply to all privately rented properties from 1 April 2020.<sup>21</sup> This transition is important for reducing the likelihood that compliance requirements will be gamed into rent increase for sitting tenants.
- > Provide either a grants or loans program for those landlords that are asset rich but income poor and can demonstrate a need for financial assistance. The grants or loans should be subject to terms and conditions that restrict profiteering and discourage churning of tenancies. Again this is important to reduce the likelihood of withdrawal of supply in the low-cost market segment.

## Protections

**R2. The Act should be amended to provide greater protections from rent increases.**

**R3. The Act should be amended to repeal no reason and end of fixed term notices to vacate.**

If implemented correctly minimum energy efficiency standards are unlikely to have any significant effect on supply of rented housing or rent levels. However, the current provisions in the tenancy law relating to rent increases need to be strengthened to specifically regulate excessive pass through of costs (rent gouging) in sitting tenancies. This could include restricting rent increases and providing financial assistance to cash poor landlords.

Additionally there is a need for strengthened safeguards from retaliatory evictions through the repeal of no reason and end of fixed term notices to vacate.

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<sup>21</sup> The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015

# Property conditions at the beginning of the tenancy

## Telecommunications

### **R4. The Act should be amended to provide that the landlord is liable for the installation of telecommunication infrastructure (including internet).**

Greater clarity is needed around the responsibility of the installation of telephone and internet connections in rental properties. According to the CAV Issues Paper 86.2 per cent of households in Victoria were connected to the internet in 2014-15.

As the owner of the property this should be the responsibility of the landlord. Any connection fees to a provider understandably would be the responsibility of the tenant. This would bring telecommunications in-line with other utilities under the Act.

Farah\* moved into a rented property in the inner suburbs of Melbourne. The property had been refurbished before the tenancy commenced and phone lines were removed during the renovations. They were never re-installed in the property so Farah was unable to get internet or a home phone line. The only option for Farah was to pay for installation at a cost of \$1600 plus GST. The landlord refused to pay for the reinstallation. Farah could not afford this cost however needed the phone line and internet.

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## Disclosure statements

### **R5. The Act should be amended to include mandatory disclosure of specific information prior to the signing of any residential tenancy agreement.**

As TUV has noted in previous submissions, there is a systemic information asymmetry between tenants and landlords at the point of contracting. The tenant has virtually no information about the property, the landlord or the estate agent at the time of entering into a new tenancy agreement. For the tenant to be capable of making an informed consumer choice, it is important that they are provided with adequate information to assist finding housing that is appropriate to their needs. This is particularly important if we are moving towards more long term tenancies.

Research by TUV has shown that such a lack of knowledge on the part of the tenant is a key reason many tenants are reluctant to be locked into longer term fixed-term tenancy agreements. We believe that such concerns can be partly addressed by the mandatory disclosure of critical information by the landlord. This could be done through a simple prescribed checklist that the landlord or their agent must complete, declare and provide to the prospective tenant prior to the signing of any tenancy agreement.

Mandatory disclosure statements should include:

- > Does the property meet the minimum standards?
- > Are utilities connected and/or separately metered

- > Is there a functional telephone line installed that is connected to the telephone exchange and capable of carrying the internet/Is the property connected to the NBN
- > Is there a connected television antenna that is capable of receiving a clear digital television signal
- > Is there a working heater and when was it last serviced
- > Is there a working air conditioner and when was it last serviced
- > Is there a Green bin provided
- > Is there parking available (including council permit information for on-street parking)
- > Is the landlord planning to sell the premises
- > Has a mortgagee started court proceedings to enforce a mortgage over the premises
- > Have there been any VCAT repair orders in the last 2 years. Details.
- > Are there any known planning applications in the vicinity of the property.

Mandatory disclosure statements would be complimented by the inclusion of mandatory minimum standards. Mandatory disclosure provides important information to tenants however it does not address the lack of bargaining power experienced by many tenants, particularly those who are vulnerable and disadvantaged. Minimum standards are a critical intervention for low-income households who have little control over their housing situation, and are much less capable of exercising market choice.

Minimum standards will go quite a way to ensuring that low-income, disadvantaged and marginal households are provided better quality housing. Mandatory disclosure will allow tenants to have greater control over their living arrangements and will reduce the number of disputes and early terminations caused by lack of knowledge about the property.

**R6. The Act should be amended to permit a tenant to apply to the Tribunal to terminate their lease agreement if the correct information has not been provided by the landlord in the disclosure statement.**

The introduction of any new requirement must include enforcement measures to ensure compliance. We recommend that a tenant should be able to break a fixed-term or periodic lease at no cost if it is because they did not receive the prescribed information prior to signing the agreement.

## **The Condition Report**

### **Minimum standards in the condition report**

**R7. The Act should be amended to provide that the condition report must be a true and accurate record of the condition of the property and any provided fixtures. This should be an offence provision.**

**R8. The Act should be amended to include minimum standards in the condition report. The condition report should detail how the property meets or exceeds the minimum standards and provide evidence where necessary.**

There are often disputes at the end of a tenancy concerning damage to the property and the refunding of bonds. The level of detail provided in the condition report is often inadequate and not a true and accurate record of the condition of the property. Agents

frequently provide information that is incomplete or incorrect. Tenants are not always aware of their rights and obligations around the condition report.

It is critical that the condition report is a true and accurate record of the condition of the property to minimise disputes at the end of the tenancy.

To assist the tenant in upholding the minimum standards the condition report should include a section to detail how the property meets or exceeds the minimum standards.

For example, the condition report should include the energy and water efficiency of installed appliances (e.g. heaters, hot water systems etc.) and when these were last tested or serviced. Similarly, the condition report could state the rating of any installed insulation.

### **Providing adequate time to the tenant**

- R9. The Act should be amended to increase the timeframe in which the condition report is to be returned from three business days to five business days.**
- R10. The Act should be amended to permit an extension where the tenant is able to prove illness during this time period or any other valid reason why they could not do the report.**

Given the importance of the condition report, the timeframe provided to the tenant to return the condition report is too short at only three business days. It can be difficult for a tenant to inspect the property and make amendments to the report in this timeframe due to work and the many commitments associated with moving house. Often a tenant will not begin occupancy of a property immediately and it may be difficult to inspect the property before this time.

# Property conditions during the tenancy

## Tenant damage

**R11. Section 61(1) of the Act should be amended to include the word 'reasonable' – A tenant must ensure that reasonable care is taken to avoid damaging the rented premises.**

Section 61(1) and (2) refers to damage to the rented premises (1) and common areas (2). These two subsections use inconsistent language with (2) stating that 'reasonable care' must be taken, whilst (1) states that 'care' is to be taken. It would be preferable if this were consistent.

## Tenant's duty to maintain the property

**R12. Section 63 (Tenant must keep rented premises clean) of the Act should be amended to be restricted to the end of the tenancy to provide that the tenant must leave the property in a reasonably clean condition.**

The fact that there is no definition of 'reasonably clean' in the Act is the cause of many disputes between landlords and tenants. A tenant can be served a breach of duty notice that they may disagree with, but because there is no definition the tenant may not know whether they are truly in breach or not.

When a tenant leases a property they are granted exclusive possession and should be free to use the property as their home as they see fit, as long as they are not causing damage. It should not be the concern of the landlord whether or not the property is reasonably clean during the tenancy. The landlord themselves may have an untidy house, but is still able to make demands on the tenant's lifestyle. There are protections for the landlords' property under section 61 of the Act (Tenant must avoid damage to premises or common areas). Therefore the regulation of the tenant's lifestyle under section 63 is overly proscriptive and should be amended. Section 63 should be amended so that the duty only applies to the end of the tenancy agreement when they hand back the property to the landlord. This would bring it in-line with the landlord's duty to provide the property in reasonably clean condition.

## Landlord's duty to maintain property

**R13. The Act should be amended to make it clear that a landlord is in breach of their duty to maintain the premises in good repair if there is any defect or fault in the premises or the appliances provided by the landlord.**

For the repairs process it is common to interpret the landlord as being in breach of their duty to maintain the property if there is any defect or fault within the rented premises including any fixed appliances provided by the landlord. This is important to ensure that any fault or defect can be corrected and is consistent with the manner in which items are described in the definition of urgent repair.

However, for the compensation process (and for some termination matters) VCAT has interpreted this duty as requiring that the premises as a whole are not in good repair given the general age and condition of the dwelling. On that interpretation, even a number of faults or defects may not necessarily mean that the landlord has breached their duty and that the tenant is entitled to compensation if those defects have caused the tenant to suffer a loss.

These are clearly not the same tests in relation to the same duty. This creates confusion for the parties about whether or not the duty is being complied with. We would be very concerned if the latter interpretation became more accepted as this would leave many repair issues incapable of resolution.

Additionally greater clarification is needed around certain responsibilities including the maintenance of gardens, pest and mould infestations and the provision of telecommunication infrastructure. As well as areas where access is difficult including ceiling fans, light fittings and gutters.

## **Repairs**

**R14. The Act should be amended to ensure that a tenant is entitled to rely on the report of the CAV Director for the completion of any repairs and to create an offence for a landlord not to comply with the report.**

**R15. The Act should be amended to vest responsibility for the Rent Special Account with the CAV Director who may at their own discretion receive payments of rent directly from an affected tenant where the landlord has failed to comply with the report.**

The timeliness and quality of repairs is a major issue for many tenants. According to research commissioned by CAV less than half of repair requests are completed promptly and to an acceptable standard; with the average length of time taken to complete repairs two weeks for an urgent repair and nearly a month for non-urgent repairs.<sup>22</sup>

We have previously made recommendations to improve the repairs process and reiterate their importance.

Additionally we note that there appears to be a disconnect between the landlords' duty to maintain the property and the landlords' understanding of their duty. Many landlords do not seem to understand their responsibilities as a landlord and often seem to be ill-prepared to deal with repairs as they arise. Other organisations have recommended the introduction of a landlord bond to be used at the time of repair.

However CAV decides to deal with this issue it is clear that investors in rental property need to have a better understanding of their obligations and be better prepared to meet these obligations as they arise. Estate agents seem reluctant to inform the landlord of their responsibilities; if a landlord is unwilling to do repairs the agent should compel them to act within the law.

## **Modifications**

**R16. The Act should be amended to allow minor, reasonable modifications without the need to gain the landlord's consent and need not be remedied at the end of a tenancy.**

**R17. The Act should be amended to provide that a landlord cannot unreasonably withhold consent for disability modifications. The Act should make specific reference to section 53 of the Equal Opportunities Act 2010.**

**R18. The Act should be amended to state that a landlord cannot unreasonably withhold consent for the installation of additional fixtures.**

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<sup>22</sup> EY Sweeney 2016, Rental experiences of tenants, landlords, property managers, and parks residents in Victoria, p60

**R19. The Act should be amended to allow a tenant to apply to the Tribunal to install reasonable fixtures where the landlord has refused.**

With the change in the rental market towards long term renting, and to families and the elderly remaining in rental properties for longer periods, the provisions around modifications are woefully inadequate and out-dated. It is no longer acceptable for tenants' actions to make their house a home to be so restricted. If we want long term, secure tenancies tenants need to be comfortable in their own homes. The bond is in place to cover any potential damage caused by the tenant and the landlord is able to apply to the Tribunal if they wish to claim additional costs over the bond.

Although tenants have an exclusive possession of the rental property, section 64 prohibits tenants from treating the property like their home. Under the Act there is no way for landlords to be compelled to install or allow the installation of a fixture, except for the case of disability modifications under the Equal Opportunities Act (and arguably this does not provide adequate protection).

The ability of people with disabilities to install fixtures is an issue of great importance particularly with the rollout of the National Disability Insurance Scheme. Access to housing that is physically appropriate is a large barrier for tenants with disabilities who live in or wish to access the private rental market. Many landlords are reluctant to allow disability fixtures to be added to their properties, despite provisions under the Equal Opportunity Act. People with disabilities are one group who are more likely to experience discrimination at the letting stage of renting, and are unlikely to have enough bargaining power to demand agreement to fixtures at this stage of the process. Many people with disabilities have low incomes due the barriers to employment and so already struggle to gain access to the private rental market.

Installing disability fixtures can be costly and when there is little certainty that the tenancy will last beyond the first fixed-term, making the decision to outlay the costs to install items can be a difficult one.

The Act provides further barriers through the provision that the property must be restored to its original condition prior to moving in. This does not take into account that the fixtures may add value to the property and the landlord may wish to keep them installed or the significant burden this can place on tenants with disabilities.

# Condition of property at the end of a tenancy

## The Charter and possession order hearings

- R20. The Act should be amended to give VCAT jurisdiction to consider the application of human rights in social and public housing cases under the Charter of Human Rights and Responsibilities Act 2006 (Vic).**

The CAV *Regulation of property conditions in the rental market issues paper* states that VCAT must consider the Victorian Charter of Human Rights and Responsibilities (the Charter) when determining a possession order for malicious damage.<sup>23</sup>

As a point of clarification, the Charter cannot be considered by VCAT in possession order hearings. The Charter can only be considered for interpretation purposes if there is ambiguity in the manner of the statute. Under the RTA the Tribunal *must* make a possession order if the notice to vacate is valid and there were grounds to give the notice (for malicious damage or any other reason other than rent arrears). The Tribunal cannot refuse to make a possession order on Charter grounds or any other grounds once the validity of the notice has been established.

Additionally the Tribunal can only consider the Charter in cases where the Director of Housing is the landlord. The Charter is not applicable for private tenancies and the jurisdiction over community housing is unclear.

## Bond

- R21. The Act should be amended to return the bond automatically to the tenant if the landlord does not make a claim within the 10 business days' time limit.**
- R22. The Act should be amended to include a provision that states that the landlord must take into account depreciation when determining any costs owed by the tenant.**
- R23. The Act should be amended to include clarifying considerations to help parties determine what is 'reasonably clean' and what constitutes 'fair wear and tear'.**

Bond disputes at the end of the tenancy are common. These are often disputes about whether the property has been left in a reasonably clean condition and what constitutes fair wear and tear.

We believe that there needs to be greater clarification around this terminology. Whilst defining the terms would help to give more clarity there is a risk that a definition would be overly restrictive in an environment that includes great diversity. It is thought that including prescribed considerations would work to guide the parties whilst remaining flexible enough to be relevant to all situations.

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<sup>23</sup> CAV, *Regulation of property conditions in the rental market issues paper*, p26.

### **Reasonably clean**

Considerations that should be included when determining whether a property is reasonably clean:

- > The age of property
- > State of repair
- > Whether the item is reasonably able to be accessed by the tenant – for example whether a ladder is needed

### **Fair wear and tear**

Considerations that should be included when determining whether the condition of an item constitutes fair wear and tear:

- > The length of the tenancy
- > The number of occupants
- > The quality or suitability of the product and materials
- > Whether repairs were reported and completed

Jamie\* was looking for a long term home however had her tenancy cut short when she was given a 60 day notice for repairs. During her tenancy Jamie had made a number of complaints to the landlord about a series of maintenance issues such as frequent plumbing blockages, a leaking shower, broken asbestos walls in the garage, and inadequate heating throughout the house. A family member of the landlord attempted some of the repairs however did so to a substandard quality. After Jamie again raised issue with the condition of the property she received a notice to vacate. Jamie believed this was retaliation due to her complaints.

After the tenancy ended the landlord applied to VCAT claiming bond and compensation for cleaning and repairs. Jamie did not agree with many of the landlord's claims and attended the hearing prepared with photos, emails, notes and diary entries to defend her position. Allegedly the VCAT member did not listen to Jamie and would not look at the documents that she had prepared. As a result of the hearing Jamie was ordered to pay almost \$1000 on top of her bond to the landlord.

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### **Family violence**

**R24. Implement the Royal Commission into Family Violence recommendations.**

**R25. Section 332 of the Act should be amended to state that a possession order must not be made if the notice to vacate has been given to a tenant who has experienced family violence and the malicious damage referred to in the notice was caused by the perpetrator of the family violence.**

A tenant can be given an immediate notice to vacate under section 243 of the Act if they or their visitor causes malicious damage to the rental property. A victim of family violence could be given this notice to vacate as a result of the perpetrator committing family violence if this led to the rental property being damaged. As this is an immediate notice to vacate, this could lead to a victim of family violence being made homeless due to an event beyond their control.

# Social housing

## Property conditions in social housing

**R26. To maintain affordable and decent social housing a recurrent and transparent operating subsidy should be established which is fully funded up front in budget. This consistent subsidy is separate and in addition to increased capital investment to boost supply.**

Successful social housing provision is highly capital intensive, requiring significant financial resources for ongoing maintenance and upgrades, as well as for the construction of additional housing stock. Yet the tenure's sustainability and financial viability, particularly so for public housing, is under pressure from a broken operating model and a severe lack of funding. One of the impacts of this situation has been increasingly poor property conditions from the deferral of maintenance. A recent study found that almost one in five public renters live in poor to derelict quality dwellings.<sup>24</sup>

In fact, a 2012 report into Victoria's public housing system by the Victorian Auditor-General found an accruing maintenance liability not fully accounted for. As public housing stock continues to age the costs associated with maintenance, repairs and upgrades continue to climb, and more dwellings become either inappropriate or not fit for purpose.<sup>25</sup> In 2012 as much as 14 per cent of Victoria's public housing dwellings, around 10 000 properties, were close to no longer being fit for purpose.<sup>26</sup> Saving these 10 000 dwellings was anticipated to cost \$600 million over three years.<sup>27</sup>

The very existence of a maintenance backlog is a symptom of wider system failure. Expanding structural operating deficits arise from a mismatch in rental revenue – that is, the rebated rents paid by public housing tenant households which is typically 25 per cent of a statutory income – and the costs associated with managing those tenancies and providing ongoing support to households experiencing multiple disadvantage and often with complex needs, ensures the public housing system struggles to achieve the sector's core goals.

The problem ultimately stems from the fact that social housing's rental system has two competing goals: the financial viability of the housing provider and the provision of accessible and affordable housing for public tenants to allow them to live, work and prosper. Without the provision of a system operating subsidy the sustainability of a public housing sector that ensures affordability, accessibility and appropriateness remains highly questionable. If the policy is to house people with complex needs on low incomes, then the Government needs to fund the difference between the reduced rental income received and the increased expenditure accrued.

These operating deficits are still funded, but this is currently done retrospectively as operating expenses are realised. The system does not account for, nor budget for, this

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<sup>24</sup> Emma Baker, Laurence H. Lester, Rebecca Bentley & Andrew Beer (2016) Poor housing quality: Prevalence and health effects, *Journal of Prevention & Intervention in the Community*, p225.

<sup>25</sup> Victorian Auditor-General's Office (VAGO) 2012, *Access to Public Housing*, Victorian Auditor-General's Report, March 2012, pp. vii, 5, 11

<sup>26</sup> *ibid*, pp. viii, 5

<sup>27</sup> *ibid*, p.11. The report notes that these were immediate maintenance costs and did not account for maintenance costs after three years.

operating subsidy; instead it is funded by raiding capital grants, utilising funds from asset sales and deferring maintenance.

One possible solution, which TUV details in our recent report on the Victorian public housing system's need for a recurrent operating subsidy,<sup>28</sup> is for the Victorian Government to transparently fund the implied community service obligation (CSO) inherent in public housing, an approach similar to that used for other corporatised government services, such as the supply of government services, where the gap between the concessional price and the commercial price is fully funded. In the case of public housing, the CSO is the difference between the market rent on public housing dwellings and the rent paid by eligible rebated tenants – i.e. the rental rebate.<sup>29</sup>

## **Maintenance claims against public housing tenants**

### **R27. Section 35 of the Act should be amended to provide that a condition report must be completed for all properties, not just where a bond is collected.**

A long standing issue for public housing tenants is compensation claims for maintenance costs made against them at the end of their tenancy. There is a systemic occurrence of excessive and inaccurate charges being made against tenants by the Office of Housing. This issue is complicated by a number of factors including; the often lengthy tenancies provided in public housing, the Office of Housing policies and implementation of their policies, the potential for complex needs of the tenants, and the lack of a condition report completed at the beginning of a tenancy.

[Cathy\\* vacated a public housing property after occupying the property for 16.5 years. Cathy received a notice of cost of repair. Cathy disputed the notice and was able to get the Office of Housing to agree to reduce the claim as they could not provide proof of the cost of repair for many of the items. The revised amount sought by the Office of Housing totalled \\$4,400 which includes \\$3,000 for replacing carpets and cost of repairs to windows that were not the fault of the tenant.](#)

At the time of writing this submission the Victorian Ombudsman is undertaking an own motion investigation into the provision of maintenance debts by the Office of Housing.

Independent of this review a simple amendment of the RTA to mandate a condition report in all tenancies (even where a bond has not been paid) could aid to reduce this issue. As the tenant is still liable for damage the provision of a condition report would assist to reduce disputes over liability.

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<sup>28</sup> TUV 2016, 'Towards a Viable Public Housing Sector: The Need for a Recurrent Operating Subsidy'

<sup>29</sup> Hall and Berry 2004, 'Sustainable financing for public housing authorities'; Hall and Berry 2004, 'Operating deficits and public housing: policy options for reversing the trend'; McNelis S. and Burke T. 2004, 'Social housing rental policy in Australia and overseas', AHURI Positioning Paper No. 74, April 2004.

# Rooming houses

## **Compliance in the rooming house sector**

Our experience in the rooming house sector indicates significant issues with compliance in both registered and non-registered properties. Large portions of the sector remain non-compliant despite the extensive legislation and regulation in the industry. Of the 76 registered rooming houses visited by the TUV outreach team between January and July 2016 over half of them had significant issues with repairs and maintenance, cleaning, and/or fire and electrical safety. The outreach team also visited almost 50 unregistered rooming houses during this time.<sup>30</sup> We hope that the implementation of the licensing scheme for rooming house operators will work to improve compliance in the sector.

Affordability in rooming houses has also been identified as an emerging issue. Rooming houses provide accommodation to the most vulnerable population in Victoria, who are generally unable to access private or social housing. Shockingly this accommodation is causing severe financial strain to residents. Data collected by our outreach team has indicated that the median rent being charged in rooming houses is \$195 per week. On average residents were paying 50 per cent of their incomes on rent, with some paying as high as 83 per cent of their income.<sup>31</sup>

We will address rooming house issues in more detail in our response to the final Issues Paper.

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<sup>30</sup> TUV internal data collection.

<sup>31</sup> Ibid.

# Caravan and Residential parks

## Site Maintenance and Fixtures

- R28. The Act should be amended to clarify that the site owner is responsible for maintenance of the site including any structures that have become attached to the site.**
- R29. The Act should be amended to include urgent and non-urgent repair processes that mirror the provisions in the Act in relation to tenancies**

Clarification is needed to ensure that all parties understand who is responsible for site maintenance including where fixtures have become attached to a site.

### Case Study

Sally\* had purchased the dwelling in 2011. The dwelling had been constructed and purchased on site on top of a concrete slab laid by a third party. Several years later, the slab had shown some minor cracking and there appeared to be movement in either the slab or the dwelling, causing cracks in walls to appear, doors to jar and the floors to become un-level. The site tenant believed that it was the movement in the ground beneath the slab. The site owner alleged that it was an issue with the Part 4A dwelling. It was unclear as to whether the cause was in relation to the dwelling, the concrete slab or the earth that made up the site.

Sally discovered there was no repair mechanisms or obligations specific to the site, save for the section 61 of the Australian Consumer Law, in relation to the site being fit for purpose. It was further unclear as to the nature and responsibility of the concrete slab. That is to say, was the concrete slab a fixture of the land, and whose responsibility it would be to repair the slab if there was a defect, or if the dwelling had to be relocated who would be responsible for laying a new slab or removing the old slab if a new dwelling was required to be placed onto the site. The dwelling also contained additional fixtures such as a veranda and carport.

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We will address caravan and Part 4A park issues in more detail in our response to the final Issues Paper.

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