



Submission to the Inquiry into the Rental and Housing Affordability Crisis in Victoria

Tenants Victoria

July 21, 2023

Tenants Victoria acknowledges the Wurundjeri people of the Kulin Nation as the traditional owners of the land on which we practise. We recognise that sovereignty was never ceded and pay our respects to their Elders past, present and emerging. Our offices are on Wurundjeri Woi Wurrung Country. Our work gives us a special insight into the value of place and home, and we respect the Wurundjeri people's ongoing connection to Country, culture and community. We also acknowledge the connection of all First Nations peoples on whose Country Victoria is today situated. We recognise that sovereignty was never ceded and pay our respects to Elders past and present.

About Tenants Victoria

Tenants Victoria is the peak body for the state's renters, who number almost 2 million people. Our vision is for a safe, secure and affordable home for Victorian renters in a fair housing system. For many renting is a permanent situation rather than a transition from the family home to home ownership. We believe all renters should be able to afford a home that allows them to live full lives and contribute to their communities.

Founded in the 1970s by renters, we aim to empower all renters and make sure their voices are heard in our advocacy. We work in partnership with other community legal centres and housing sector organisations, and strategically with government to inform policy development and enhance service delivery.

Our services include information, legal representation and advice, financial counselling, and outreach. We aim to make the housing system fairer in several ways. We advocate for practices and attitudes that respect renting and for policies and laws that support the rights of renters. We increase the skills of the community workers who assist renters. We provide information that encourages rental providers and real estate agents to act responsibly.

Acknowledgments

Tenants Victoria acknowledges the support of the Victorian Government.



Contact

Jennifer Beveridge, CEO:
jennifer.beveridge@tenantsvic.org.au

Farah Farouque, Director of Community Engagement
farah.farouque@tenantsvic.org.au



Tenants Victoria Level 2, 255 Bourke Street, Melbourne Victoria 3000
ACNC and Community Legal Centre's Australia Accredited
ABN 36081348227 | ACN 081 348 227
Safe, secure and affordable homes
tenantsvic.org.au

Contents

Recommendations	4
Introduction	5
Fairness formula for rent increases	5
Tenancy support sector	8
Real estate agent training	9
Regulation of short-stay accommodation	11
Minimum standards	12
Insulation	12
Draught-proofing	14
Energy efficiency rating	14
Consumer Affairs Victoria enforcement	14
VCAT reform	15
VCAT internal review	16
Family violence training for VCAT members	17
Civil penalties	18
Listing time frames	18
Minor Residential Tenancies Act amendments	19
Student accommodation	19
Rooming houses	20
Social housing investment	21
Social housing regulation	21
Housing and the Charter of Human Rights	22
Appendix 1	24
Appendix 2	32
Appendix 3	34

Recommendations

Recommendation 1: Introduce legislation to provide for a ‘fairness formula’ by which maximum rent increases would be calculated.

Recommendation 2: Invest in tenancy legal-support services as an early intervention measure against homelessness.

Recommendation 3: Enforce training in relation to the *Residential Tenancies Act 1997* for real estate agents and property managers to meet minimum yearly continuing professional development requirements.

Recommendation 4: Introduce regulation for short-stay accommodation.

Recommendation 5: Amend the *Residential Tenancies Regulations 2021* to add new minimum standards of ceiling insulation, window coverings that provide adequate thermal insulation and draught proofing, and minimum energy efficiency standards for rental homes.

Recommendation 6: Strengthen the capacity of Consumer Affairs Victoria for investigation and enforcement in the renting sphere.

Recommendation 7: Reform the Victorian Civil and Administrative Tribunal (VCAT) to allow for internal review and regular training for VCAT members in family violence by family violence experts or the Judicial College of Victoria.

Recommendation 8: Amend the *Residential Tenancies Act* to invest VCAT with the power to order parties to a proceeding to pay civil penalties set out in the Act.

Recommendation 9: Reduce waiting times for matters listed in the Residential Tenancies List at VCAT by introducing mandatory listing time frames for all matters.

Recommendation 10: Amend the *Residential Tenancies Act* to clarify gaps arising from the recent amendments to the Act. [Refer to Appendix 1 for a list of proposed minor amendments].

Recommendation 11: Include student accommodation in the *Residential Tenancies Act* and repeal Section 21 of the Act.

Recommendation 12: Adopt the recommendations contained in our ‘Submission in response to the draft *Residential Tenancies (Rooming House Standards) Regulations 2022*’, found at Appendix 2.

Recommendation 13: Make ongoing investment to expand the state’s social housing stock.

Recommendation 14: Adopt the recommendations contained in the ‘Joint legal assistance sector response to the Interim Report of the Social Housing Regulation Review’, found at Appendix 3.

Recommendation 15: Enshrine the right the right to adequate housing in the *Victorian Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

Introduction

Victoria has some of the most progressive rental laws in Australia – in March 2021 over 130 reforms to the *Residential Tenancies Act 1997* were implemented. Yet there remains scope for further reform.

Some 681,419 Victorian households rented in in 2021, up from 607,354 households in 2016, according to the census¹. Yet while renting is common, life as a renter remains hard for too many Victorians amid record low vacancy rates. Unaffordable rent increases, late or no repairs, and chronic delays at the Victorian Civil and Administrative Tribunal (VCAT) indicate that rental law reforms are an unfinished project in our state.

Close to 30% of Victorian households² rent their home today with nearly 90% of all tenants renting in the competitive private rental market. Today, many more people are renting for longer or renting for life.

A chronic shortage of affordable rental homes is a systemic challenge for our housing system exacerbated by the uniquely disruptive circumstances of the COVID-19 pandemic. Crises in housing availability and affordability have been long in the making and there is no ‘silver bullet’ solution to address the challenge. This problem requires sustained effort and policy contributions and co-ordination from local, state and federal governments – and the issue of housing supply is obviously critical.

Tenants Victoria’s vision is for safe, secure and affordable homes for Victorian renters in a fair housing system. In our submission, we present practical ideas to tackle the challenges of renting in our state based on credible evidence, our frontline experience helping renters and our expertise in tenancy law as the dedicated statewide legal centre for renters.

Fairness formula for rent increases

Amid the tightening of the private rental market, our frontline services have logged a flurry of rent increases. Since July 2022, renters on low-to-middle incomes have reported to us rent increases from \$30 a week to more than \$500 a week. We are seeing some landlords (called rental providers in the *Residential Tenancies Act*) profiteering from the shortage of rental stock as renters, unable to secure another affordable rental property, are forced to accept unfairly high rent increases.

Of those who cannot pay the increased amount, many have told us that they are facing homelessness due to being unable to secure another suitable home in a capricious rental market. The Productivity Commission's ‘Report on Government Services 2023’ noted that even among Victorian households that

¹ ‘Region Summary: Victoria’, *Australian Bureau of Statistics* (Web Page) < <https://dbr.abs.gov.au/region.html?lyr=ste&rgn=2>>.

² Ibid.

received Commonwealth Rent Assistance at the end of June 2022, 44.3% still experienced rental stress defined as spending more than 30% of their gross income on rent³.

Under the *Residential Tenancies Act 1997*, there is no fixed formula to calculate a rent increase. There are rules about how often rent can be increased and how a landlord is to notify the renter of their intention to do so. But the missing piece in these arrangements in our state is the lack of a prescribed method to arrive at the dollar value of the rent increase that is fair to both the renter and the landlord.

Presently, if a Victorian renter receives a rent increase that they believe is excessive, it is entirely up to them to challenge the increase. First, they must go to Consumer Affairs Victoria (CAV) for a rent assessment. After the assessment is done, the tenant can apply to VCAT for an order that rent be capped at a lower amount. This process places an undue burden of fighting unfair rent increases on the renter and reinforces power imbalances. Whilst we encourage renters to exercise their right to challenge rent increases they regard as unfair, many of the renters we speak to are demoralised after finding out about the process and discouraged from challenging rent increases – sometimes due to a genuine fear of retaliation from the landlord or real estate agent, which may or may not be unfounded.

Another strong theme we have seen is that renters report being hesitant to ask for repairs to their homes as they fear the improved state of the property will lead to a rent increase, or that their landlord will issue them a high rent increase in retaliation for asking for maintenance.

I'm in an old home in a low-income area. There are some major repairs that need sorting, but I'm not game to push too hard to get them done as in the past I've been pushed out of rentals by high rent increases after repairs, or by the owners deciding it's too much hassle owning a rental and selling the place. I'm on disability, have severe chronic illness and live alone. To move at the moment would be a nightmare and it frightens me. ⁴

Like the energy market, the private rental market where most renters find their home requires additional regulation to ensure fairness for all the parties. Legislating for a 'fairness formula' for rent increases would ensure more certainty for renters and better reflect the reality that the provision of housing is an essential service.

Renters have shared many experiences with us via the 'Tell us your story' section of our website about navigating the tight rental market under current conditions.

[Landlord] recently increased my rent by an exorbitant 80%. This drastic increase has placed a significant burden on me, making it difficult to afford my living expenses. I firmly believe that this rent increase is unreasonable and not in line with market rates or the principles of fair rental practices.

Suburban renter

³ Australian Government Productivity Commission, *Report of Government Services 2023: Part G, Section 18 Housing* (Report, 6 June 2023) < <https://www.pc.gov.au/ongoing/report-on-government-services/2023/housing-and-homelessness/housing>>.

⁴ Tenants Victoria, *Under Pandemic Pressure: How Renters are Faring under 'COVID Normal'* (Report, March 2021) 4 < <https://tenantsvic.org.au/articles/files/surveys/Under-Pandemic-Pressure-How-Renters-Are-Faring-Tenants-Vic-2021.pdf>>.

Was renting a 2 Bedroom, 1 bathroom for \$160 a week. No heating, cooling, the backdoor was nailed shut, there was no ventilation in the kitchen or bathroom and the bathroom was just cement, so I had to pay out of my own pocket to put linoleum – that is why it was so cheap. In December, [the landlord] almost doubled the rent at \$350 per week with only a week's notice. Still don't know what action to take.'

Regional renter

Received a phone call yesterday from our agent telling me that the owner is under financial stress and needs to increase our rent from \$450 to \$600 per week. Our rent went up in September 2022 when we re-signed a 12-month lease. If we don't agree to the rental increase, we will then be evicted so he can sell the property. Keeping in mind that this is an old house with cheap work, busted heater and a leak in the roof that he has still failed to address.

Suburban renter

Have been looking and applying for rentals for over a year now but there are so few, and the rental prices have exploded making it near impossible to find a new home and keep myself and my children in our community ... I am aware that there are many other locals being priced out of the area too. It is extremely stressful not being able to feel secure in our home.

Single parent

I am a single mum living in a townhouse with my two young children. I have just been informed that the rent will be increased \$80 a week from \$420 to \$500. The property manager has written that this is 'Due to the nature of the rental market, and as a primary aspect of service to our investors'.

Suburban renter

Victoria already has a version of a fairness formula. In the new Homes Victoria affordable housing program, after the initial 3-year lease the rent can be increased by a maximum of 5%. Extending a model for a fairness formula like this to other leases would help improve housing security and affordability.

Elsewhere, the Australian Capital Territory has also fixed a method for calculating maximum increases tied to the rent portion of the ACT Consumer Price Index which the Chief Minister, Andrew Barr, has said

acts as ‘a safeguard, effectively, against the most egregious forms of rental increase’⁵. If the rent increase is higher than the maximum prescribed increase *and* the tenant does not consent to the increase, it is up to the landlord to apply to the ACT Civil and Administrative Tribunal (ACAT) for an order allowing the rent increase if it is found not to be excessive.

Regulation of rents is also common internationally. In Canadian provinces rents can only be increased according to a limit set by the provincial government⁶. In Paris, local authorities determine how much rent can be charged based on the size, location and features of the property⁷. Similarly, for most properties in the Netherlands authorities determine what landlords are allowed to charge on the basis of the quality and location of the premises⁸. In Ireland, in areas where rents are the highest and where households are experiencing the most rental stress, rents can increase by a maximum of inflation of 2% per year, whichever is lower⁹. There are many more examples.

Recommendation 1: Introduce legislation to provide for a ‘fairness formula’ by which maximum rent increases would be calculated.

Tenancy support sector

As a community, we need to urgently invest in more targeted support services for renters.

Tenancy legal support services need to be better recognised as part of the ecology of early intervention responses against homelessness. The majority of tenancy matters are resolved quickly after the intervention of an advocate. More Victorian renters need to be able to access such legal help.

The work of the tenancy legal support sector, which includes Tenants Victoria, other community legal centres and Tenancy Assistance and Advocacy Program (TAAP) and Tenancy Plus providers within the broader community sector, is essential to ensure that renters know their rights and have access to justice. The sector provides help such as legal advice and information, community legal education and conducts advocacy and representation in and out of VCAT.

⁵ Poppy Johnston, ‘Rent Caps Protect Tenants from “Egregious” Price Hikes’, *The Canberra Times* (online, 26 June 2023) <<https://www.canberratimes.com.au/story/8248264/rent-caps-protect-tenants-from-egregious-price-hikes/>>.

⁶ ‘Rent Control Policies Across Canada’, *Canadian Centre for Housing Rights* (Web Page, 14 July 2022) <<https://housingrightscanada.com/resources/rent-control-policies-across-canada/>>.

⁷ Rachel Holman, ‘Rent Control Makes a Controversial Comeback in Paris’, *France 24* (online, 5 April 2019) <<https://www.france24.com/en/20190405-france-paris-rent-control-controversial-comeback-housing-crisis-rising-living-costs>>.

⁸ Christine Whitehead and Peter Williams, *Assessing the Evidence on Rent Control from an International Perspective* (Report, October 2018) 21–2 <<https://www.lse.ac.uk/geography-and-environment/research/lse-london/documents/Reports/LSE-International-Evidence-on-Rent-Control-Report-2018-Final.pdf>>.

⁹ Department of Housing, Local Government and Heritage (Ireland), ‘Legislation Capping Rent Increases at 2% Passed by both Houses of the Oireachtas’ (Press Release, 9 December 2021) <<https://www.gov.ie/en/press-release/6d865-legislation-capping-any-rent-increases-at-2-passed-by-both-houses-of-the-oireachtas/>>.

In the past financial year, Tenants Victoria's intake and legal team responded to over 10,000 tenancy matters. However, in the social and economic context of more people renting their homes and for longer with rental costs escalating, our service faces a daily dilemma: we can only answer 20% of phone calls to our advice lines. Demand from renters remains intense – and too often unmet – because of resource constraints. It is all too common for community legal centres, including Tenants Victoria, to be at capacity and unable to accept referrals, or that renters they help may wait weeks for assistance. In this context, Victorian renters are being disadvantaged and urgently need more frontline legal support services.

Though VCAT aims to be simple for parties representing themselves, making or responding to an application requires a high level of literacy and communication skills that poses a barrier, for example, for many new and emerging multicultural communities. Aspects of tenancy law which have a particularly profound impact on lives can be difficult to understand for many renters; for example, requirements for a possession order, or the family violence provisions in the *Residential Tenancies Act*.

Recommendation 2: Invest in tenancy legal-support services as an early intervention measure against homelessness.

Real estate agent training

Our service experience over several years has been that there is great inconsistency between the standards of service provided by real estate agents in relation to the renters of the properties they manage. This ranges from reasonable and competent, to simply not knowing the law to behaviours which can be construed as misleading renters.

The conduct of some real estate agents was a strong theme raised by renters during COVID-19 lockdowns. In our 2020 report, 'Portraits of a Pandemic'¹⁰, we detailed key findings of a survey of 370 renters about their experiences in the first stages of the pandemic lockdowns. In relation to real estate agents, it was noted that:

- Of the 18% who had not asked for a rent reduction, 12% said this was due to their real estate agents' conduct.
- Of those that did apply for a rent reduction, 34% stated their request for a reduction was either ignored, or no reason for a refusal was given (often by an estate agent).

The agent has been unhelpful since COVID. Suggesting I access my superannuation - asking me when will I move out if I cannot afford the property anymore. They wanted me to sign an agreement to defer my rental payment which would put me in a worse position. This has been a stressful and ongoing situation.¹¹

¹⁰ Tenants Victoria, *Portraits of a Pandemic* (Report, 18 August 2020) <<https://tenantsvic.org.au/articles/files/surveys/portraits-of-a-pandemic-20200818.pdf>>.

¹¹ Ibid 6.

Since 29 March 2021, when reforms to the *Residential Tenancies Act* came into effect, complaints about estate agents frequently relate to agents' failure to understand aspects of key amendments to the Act. Regular examples relate to failure to attach required documentary evidence to notices to vacate, failure to use updated rental agreements and agents stating that landlords are not required to undertake gas and electrical safety checks, which are now mandatory.

We acknowledge that the sheer number and complexity of the amendments to the *Residential Tenancies Act* posed a significant dissemination and training challenge for all working in the rental sphere. However, we too regularly hear about, and oppose in VCAT proceedings, real estate agents who are not sufficiently familiar with the provisions of the amended Act to properly fulfill their function. This includes inconsistent knowledge of, among other things, the new family violence provisions, mandatory minimum standards, new requirements in relation to documents such as notices to vacate, and their responsibility to ensure they do not make misleading representations to renters.

Renters regularly complain about the behaviour of agents through the 'Tell us your story' section of our website.

I feel completely powerless. The estate agent didn't disclose that there was mould before I moved in, so I didn't know about it.

Renter 1

The [real estate agency] is using a non-prescribed standard form agreement, which contains invalid and prohibited terms. This is after two years of the new changes ...The agreement is designed in a way to give less rights to renters. For example, they deleted the part where renters receive compensation for sales inspection.

Renter 2

I have now moved and unfortunately the house has some very dangerous parts. The back deck, which the agent said at the viewing inspection would be repaired, has been cobbled together out of old wood and has exposed nails, lots of cracks and is unstable. The bricks out the front of the house are loose and would cause someone to fall. The tiles in the laundry are missing and those remaining come off when you walk on them. But worst - the sunroom has missing windows, other windows don't close properly and the back door is held together with a hook and a carabiner (and doesn't close properly). Meaning it's unsafe, exposed to the elements, and hard to heat and cool. I just did the condition report - and they left the sunroom off it!! So I have had to call and email the agent to mention these issues and ask for repairs. I am a single mum with two young children and I feel really unsafe.

Renter 3

Victoria needs to introduce further and mandatory educational obligations for real estate agents in order for them to more consistently fulfill their professional obligations, and in particular their obligation under section 6(b) of the *Estate Agents (Professional Conduct) Regulations 2018* to have a sufficient working knowledge of the law relevant to their function. This should be extended to all property managers as they have an equal obligation to know the law relevant to their function.

Recommendation 3: Enforce training in relation to the *Residential Tenancies Act 1997* for real estate agents and property managers in order to meet minimum yearly continuing professional development requirements.

Regulation of short-stay accommodation

There is virtually no regulation of short-stay accommodation in Victoria, other than potential fines for the behaviour of guests¹². While short-stay accommodation is a feature of Australia's tourism sector, more regulation is needed to minimise property owners' incentives to use their properties solely for short-term rentals, which may net higher incomes than long-term rentals. The prevalence of short-stay accommodation has been linked to low rental vacancy rates and housing stress, particularly in 'hotspots' popular with tourists including inner-city areas and some popular holiday locations¹³. We have spoken to renters who have been told by their landlord that their tenancy is ending because the property is being turned into an Airbnb.

Internationally, many countries and individual cities have implemented measures to regulate short-term accommodation in response to its impact on rental affordability and availability, including licensing, fines, and limits on the number of days a property can be let each year. For example, in cities such as Amsterdam, San Francisco and London, there are limits of how many nights a year an entire home can be rented, ranging from 30 to 90¹⁴. In New Orleans short-term rentals can only be offered in certain areas, and in some areas of Scotland short-term rentals cannot be offered without permission from the government authorities¹⁵.

We have also seen moves to regulate short-term accommodation in other Australian states. Since 2019, there has been a 180-day cap on using empty properties for Airbnb-style letting for Sydney and some

¹² Larry Schlesinger, "'Weakest' Airbnb Regulations Imposed in Victoria', *Australian Financial Review* (online, 9 August 2018) < <https://www.afr.com/property/commercial/weakest-airbnb-regulations-imposed-in-victoria-20180809-h13quu>>.

¹³ Laura Crommelin et al, *Technological Disruption in Private Housing Markets: the Case of Airbnb* (AHURI Final Report No 305, October 2018) < <https://www.ahuri.edu.au/sites/default/files/migration/documents/AHURI-Final-Report-305-Technological-disruption-in-private-housing-the-case-of-airbnb.pdf>>.

¹⁴ Nicole Gurran and Peter Phibbs, 'Australia has Taken a "Light Touch" with Airbnb. Could Stronger Regulations Ease the Housing Crisis?', *The Conversation* (online, 8 March 2023) < <https://theconversation.com/australia-has-taken-a-light-touch-with-airbnb-could-stronger-regulations-ease-the-housing-crisis-200347>>.

¹⁵ Ibid.

New South Wales coastal areas and regional centres¹⁶. Hobart, which before the pandemic was found to be Australia's most unaffordable city for renters due to the impact of tourism driving a rise in short-term rentals, recently doubled council rates for short-stay properties, echoing a similar move by the Brisbane City Council¹⁷. There have also been proposals to cap the number of nights for short-term accommodation in Byron Bay in NSW and Western Australia¹⁸.

Short-stay accommodation has undoubtedly been a factor in reducing the much-needed supply of long-term rental homes. It is time for Victoria to regulate short-term accommodation to mitigate its contribution to rental unavailability and unaffordability.

Recommendation 4: Introduce regulation for short-stay accommodation.

Minimum standards

Insulation

One of the minimum standards introduced in 2021 is that the main living space in the premises must have an energy efficient heater. However, further amendments are needed to ensure that renters can keep their homes within a safe temperature, which according to the World Health Organisation is 18 to 24°C¹⁹.

Cold homes are linked to a range of health impacts, such as increased blood pressure, asthma, and poor mental health²⁰. Low temperatures in homes also contribute to the growth of mould²¹. Living in a mouldy home can cause a variety of serious health problems, such as asthma, respiratory infection, allergic response, and mental illness such as depression²². There is a rental minimum standard that homes are to be free of mould or damp caused by or related to the building structure. However, mould remains within the top 10 most common issues our service receives enquiries about. Mould is more

¹⁶ 'New Short-Term Holiday Letting Regulations', *NSW Fair Trading* (News Article, 15 August 2018) <<https://www.fairtrading.nsw.gov.au/news-and-updates/news/new-short-term-holiday-letting-regulations>>.

¹⁷ Clancy Balen, 'Hobart City Council Doubles Rates for Short-Stay Properties in 8-3 Vote', *ABC News* (online, 20 June 2023) <<https://www.abc.net.au/news/2023-06-20/tas-hobart-council-doubles-rates-for-short-stay-properties/102495636>>.

¹⁸ Gurran and Phibbs (n 14).

¹⁹ World Health Organisation, *WHO Housing and Health Guidelines* (23 November 2018) 33 <<https://www.who.int/publications/i/item/9789241550376>>.

²⁰ Ibid 32; Cynthia Faye Barlow, Lyrian Daniel and Emma Baker, 'Cold Homes in Australia: Questioning Our Assumptions about Prevalence' (2023) 100 *Energy Research and Social Science* 103124: 1–5, 1–2 <<https://www.sciencedirect.com/science/article/pii/S2214629623001846>>.

²¹ Rebecca Bentley, Nicola Willand and Tim Law, 'Breaking the Mould: Why Rental Properties are More Likely to be Mouldy and What's Needed to Stop People Getting Sick', *The Conversation* (online, 16 May 2023) <<https://theconversation.com/breaking-the-mould-why-rental-properties-are-more-likely-to-be-mouldy-and-whats-needed-to-stop-people-getting-sick-205472>>.

²² Lisa Coulburn and Wendy Miller, 'Prevalence, Risk Factors and Impacts Related to Mould-Affected Housing: An Australian Integrative Review' (2022) 19(3) *International Journal of Environmental Research and Public Health* 1854: 1–26, 2, 7 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8835129/>>.

common in rental properties than in owner-occupied homes: in Australia, mould is present in 19% to 33% of private rentals, 42% to 50% of social housing properties, and 13% of owner-occupier homes²³. Mould is disproportionately prevalent in households of Indigenous Australians, people from refugee or asylum seeker backgrounds, and families with children²⁴.

For renters, the prevalence of mould contributes to housing insecurity. Nearly a fifth of the 103 renters who accessed our 2022 Mould Clinic could not sleep in their homes due to the severity of the mould. Two had no choice but to sleep in their cars. In cases of severe mould, renters asking for it to be fixed may instead be met with a notice to vacate for uninhabitability or a 60-day notice to vacate for repairs.

Living in an energy-inefficient (including poorly insulated) home contributes to energy vulnerability, the state of not being able to heat your home adequately, which is especially prevalent in low-income households and rental households in Victoria²⁵. In 2022, the Australian Council of Social Service (ACOSS) surveyed Australians relying on Centrelink payments for their incomes and found that 28% have an energy debt bill, another 22% expect to be unable to pay their next bill, and 7 in 10 are heating their homes less to save money²⁶.

Adequate insulation is key to making sure that a home is kept at a safe temperature, mitigating the risk of mould and negative health impacts of cold homes and reducing the need to use heaters. A fully insulated home stays warm inside during winter and cool in summer²⁷. According to the Department of Energy, Environment and Climate Action, 'insulation is the most cost-effective way to improve the energy efficiency and comfort of' homes and can save households up to 45% on energy bills²⁸. Ceiling insulation can save 20% on heating and cooling costs²⁹.

Earlier this year the ACT introduced a minimum standard for ceiling insulation in rental properties³⁰. Both ceiling and underfloor insulation is required in New Zealand³¹. However, Victoria has no minimum

²³ Ibid 14.

²⁴ Ibid.

²⁵ Nicola Willand, Bhavna Middha and Gordon Walker, 'Using the Capability Approach to Evaluate Energy Vulnerability Policies and Initiatives in Victoria, Australia' (2021) 26(9) *International Journal of Justice and Sustainability* 1109, 1109, 1115 <<https://www.tandfonline.com/doi/full/10.1080/13549839.2021.1962830>>.

²⁶ ACOSS, *How JobSeeker and Other Income Support Payments are Falling Behind the Cost of Living* (Report, September 2022) 3 <https://www.acoss.org.au/wp-content/uploads/2022/09/ACOSS-cost-of-living-report_web_v02.pdf>.

²⁷ 'Home Insulation', *Sustainability Victoria* (Web Page, 15 September 2022) <<https://www.sustainability.vic.gov.au/energy-efficiency-and-reducing-emissions/building-or-renovating/key-principles-of-energy-efficient-design/planning-and-design/insulation>>.

²⁸ 'Insulation', *Department of Energy, Environment and Climate Action (Vic)* (Web Page, 7 September 2022) <<https://www.energy.vic.gov.au/for-households/victorian-energy-upgrades-for-households/insulation>>.

²⁹ 'Home Ceiling Insulation', *Sustainability Victoria* (Web Page, 15 September 2022) <<https://www.sustainability.vic.gov.au/energy-efficiency-and-reducing-emissions/building-or-renovating/key-principles-of-energy-efficient-design/planning-and-design/insulation/ceiling>>.

³⁰ 'Minimum Energy Efficiency Standards for Rental Homes', *Justice and Community Safety Directorate (ACT)* (Web Page) <<https://www.justice.act.gov.au/renting-and-occupancy-laws/energy-efficiency-standards-for-rental-homes>>.

³¹ 'Healthy Homes Standards', *Ministry of Housing and Urban Development (New Zealand)* (Web Page) <<https://www.hud.govt.nz/our-work/healthy-homes-standards/>>.

standard for insulation. Unlike owner-occupiers, renters are not in control of insulation in their home³². Hence, introduction of new minimum standards for every rental property to have ceiling insulation and window coverings which provide thermal insulation would make it more affordable for renters to keep their homes at a safe and healthy temperature.

Draught-proofing

As with insulation, draught proofing is important for a warm home and helps reduce energy bills. In New Zealand, rental properties must not ‘have unreasonable gaps or holes in walls, ceilings, windows, skylights, floors, and doors which cause noticeable draughts’³³. Introduction of a similar standard in Victoria would improve the energy efficiency of homes, building on the steps taken by the introduction of minimum standards for energy efficient appliances and the standard that premises be weatherproof.

Energy efficiency rating

House energy efficiency ratings measure a home’s energy performance. For renters, knowing the energy efficiency rating of properties they are considering would help them determine which homes would be most affordable to live in. Ninety per cent of new home designs are already assessed using the Nationwide House Energy Rating Scheme³⁴. For existing homes, landlords can obtain a Residential Efficiency Scorecard assessment for the cost of \$250 to \$500, with rebates provided by some local councils and community organisations³⁵. We recommend that it be a requirement for landlords to obtain and disclose an energy efficiency rating before signing new leases, so that prospective renters are able to make informed decisions as to whether properties would meet their needs and budgets, and to provide an incentive for landlords to improve the energy efficiency of their properties.

Recommendation 5: Amend the *Residential Tenancies Regulations 2021* to add new minimum standards of ceiling insulation, window coverings that provide adequate thermal insulation and draught proofing, and minimum energy efficiency standards for rental homes.

Consumer Affairs Victoria enforcement

As the responsible authority for monitoring and enforcement of the *Residential Tenancies Act*, Consumer Affairs Victoria must be resourced and positioned to take a more active role in enforcement to ensure all landlords as well as real estate agents comply with the law.

³² Barlow, Daniel and Baker (n 20) 4.

³³ *Healthy Homes Standards* (n 31).

³⁴ ‘About NatHERS’, *Nationwide House Energy Rating Scheme* (Web Page) <<https://www.nathers.gov.au/>>.

³⁵ ‘What is a Scorecard Assessment and How can it Help Me?’, *Residential Efficiency Scorecard* (Factsheet, 21 June 2023) <<https://www.homescorecard.gov.au/about-scorecard/what-is-a-scorecard-assessment-and-how-can-it-help-me>>.

The current enforcement policy³⁶ is proving to be ineffective for disadvantaged renters, leading to some renters living in unacceptable housing conditions and being treated without dignity and respect.

CAV invests energy and time in relation the mishandling of trust money by real estate agents with scores of prosecutions each year³⁷. However, when it comes to ‘mum and dad’ property investors and renters seeking support regarding the safety of their home, they are not met with the same robust attitude.

The Act provides for over 100 different offences, and various penalties have been increased substantially since 29 March 2021. Previous data shows that the preferred enforcement action relied upon by Consumer Affairs Victoria is predominately warning letters. Despite the legislative capacity for CAV to issue infringements³⁸, there is no culture of issuing infringements for even nominal amounts³⁹.

Housing offences should be treated like a traffic light. People should know that if the offence is committed there will be consequences and that deterrence is real. Renting is not a business that should rely upon trial and error by the landlord to learn the rules – it should be ‘strict and absolute’⁴⁰ where people’s health, safety and the sanctuary of the home is at stake.

Recommendation 6: Strengthen the capacity of Consumer Affairs Victoria for investigation and enforcement in the renting sphere.

VCAT reform

An efficient and accessible dispute-resolution mechanism is integral to renters’ rights. Just knowing what your rights are is not enough; if a landlord is not complying with their obligations, renters must have a pathway to seeking compliance and compensation. In Victoria, tenancy disputes are heard by VCAT, which is designed to be efficient and less formal than a court. However, there continue to be significant delays in the VCAT process, with some renters continuing to report to us wait times of up to 3 years for bond and compensation hearings. These wait times mean that many renters are discouraged from challenging unfair bond claims or applying for compensation, and landlords do not have as much of an incentive to comply with their duties. To ensure access to justice, VCAT must be appropriately resourced to handle applications efficiently and to appropriately train its members.

Additionally, enforcement mechanisms under the *Residential Tenancies Act* including penalties are under-utilised so fail to appropriately incentivise compliance with the Act. We present recommendations on how these mechanisms can be improved.

³⁶ ‘Our Compliance Policy’, *Consumer Affairs Victoria* (Web Page, 8 May 2021) <<https://www.consumer.vic.gov.au/about-us/regulatory-approach-and-compliance-policy/our-compliance-policy>>.

³⁷ See ‘Latest News’, *Consumer Affairs Victoria* (Web Page) <<https://www.consumer.vic.gov.au/latest-news>>.

³⁸ *Residential Tenancies Act 1997* (Vic) ss 510B–510C.

³⁹ FOI data showing only 6 infringements under the *Residential Tenancies Act 1997* in 2016 and 5 in 2017.

⁴⁰ *Shields v Deliopoulos* [2016] VSC 500 [30].

VCAT internal review

Though VCAT was established to be ‘fair, efficient, and affordable justice’ and a one-stop shop for resolving disputes, it lacks an internal review mechanism. If a renter wishes to have a decision made by a VCAT member reviewed, they must appeal to the Victorian Supreme Court within 28 days⁴¹.

Unlike VCAT, the Supreme Court is not designed to be accessible to the general public without legal representation, nor is it affordable. The appeals process is highly technical and assumes the presence of lawyers. Most renters, especially those with low education or literacy levels, or disabilities that affect learning or cognition, do not have the legal skills required to run their own Supreme Court appeal, and the cost of representation is prohibitive for the average person.

The cost of an appeal that proceeds to a final hearing could be \$30,000 to \$50,000. Even for unrepresented applicants, court fees by themselves add up to thousands of dollars. Unlike VCAT, the Supreme Court is a costs jurisdiction, so applicants risk having to pay the other party’s legal costs if they are unsuccessful. This high cost takes appeals beyond the realm of possibility for most renters, especially those on low incomes, for whom the risk of homelessness is the highest.

Additionally, the lack of an internal appeals mechanism in the VCAT Residential Tenancies list contributes to inconsistency in decision making between tribunal members. VCAT decisions are not binding precedent, and while Supreme Court decisions are binding, the low number of appeals has meant that there is little guidance for tribunal members, legal professionals, and renters on how the law is to be applied. Publication of internal appeals decisions would build a body of precedents to provide much-needed guidance to tribunal members, reducing errors and improving the quality of decision-making. The increase in certainty as to likely outcomes would make it easier to provide accurate legal advice and could reduce applications with little or no merit.

In his 2009 review of VCAT, then-President of VCAT Justice Kevin Bell recommended that an internal appeal mechanism be introduced⁴².

Decisions made by VCAT under the *Guardianship and Administration Act 2019*⁴³, the *Powers of Attorney Act 2014*⁴⁴, and the *Disability Act 2006*⁴⁵ can be reheard by a senior member on application by a party to the matter. This process recognises the serious impacts of these decisions on the lives and liberty of individuals. The outcomes of matters heard in VCAT’s Residential Tenancies list can also have a profound impact on the lives of renters. An application for possession, for instance, may result in a renter being evicted into homelessness.

Internal appeals already exist in the civil and administrative tribunals in Queensland, South Australia, New South Wales and the ACT. Applications for internal appeals are only a small fraction of the

⁴¹ *Victorian Civil and Administrative Tribunal Act 1998* (Vic) s 148.

⁴² Justice Kevin Bell, *One VCAT: President’s Review of VCAT* (Report, 30 November 2009) 55–60, archived at <[https://web.archive.org/web/20110327024135/https://www.vcat.vic.gov.au/CA256902000FE154/Lookup/miscellaneous_pdfs/\\$file/president's_review_of_vcat_report.pdf](https://web.archive.org/web/20110327024135/https://www.vcat.vic.gov.au/CA256902000FE154/Lookup/miscellaneous_pdfs/$file/president's_review_of_vcat_report.pdf)>.

⁴³ *Guardianship and Administration Act 2019* (Vic) pt 7.

⁴⁴ *Powers of Attorney Act 2014* (Vic) ss 125–33.

⁴⁵ *Disability Act 2006* (Vic) ss 197–8.

applications that are received by these tribunals. In the 2021-22 financial year, in New South Wales 1.2% of all lodgements were for appeal⁴⁶, and in Queensland 1.4%⁴⁷. In South Australia in the fourth quarter of the 2021-22, 2.5% of all lodgements relating to tenancy were applications for appeal⁴⁸, and in the ACT in the 2021-22 financial year just 1.5%⁴⁹.

The internal appeals processes vary between the civil and administrative tribunals. In each of them, leave to appeal is required for appeals based on an error of fact, but in Queensland and NSW no leave is required for appeals based solely in an error of law⁵⁰. The requirement that renters demonstrate arguable error acts to ensure that the tribunals do not have to consider meritless appeals, reducing delays. A similar requirement should be present in Victoria's internal appeal scheme.

Family violence training for VCAT members

Inconsistent and sometimes incorrect VCAT decisions in matters regarding the new family violence provisions of the *Residential Tenancies Act* has emerged as a concern, both in terms of decision-making outcomes and how such matters are conducted by tribunal members.

The Act has introduced provisions to assist family violence victim-survivors to end a rental agreement, or to remove a person using family violence from a rental agreement, and to apportion bond and compensation liability at the end of the rental agreement. However, the way some proceedings are currently conducted mean that the protective elements of the Act are not being fully realised. This has unintended consequences of allowing controlling and coercive behaviours to continue in the hearing or can otherwise minimise the experiences of family violence victim-survivors, leading to unjust outcomes.

VCAT members need to be provided with more training and professional development in this key area of law. Tribunal members should all receive compulsory family training provided by a FV specialist service, or at least the Judicial College of Victoria. This should be a core competency and should be continually updated to keep in line with best practice standards.

Recommendation 7: Reform the Victorian Civil and Administrative Tribunal (VCAT) to allow for internal review and regular training for tribunal members in family violence by family violence experts or the Judicial College of Victoria.

⁴⁶ *NCAT Annual Report 2021–2022* (Report, 17 November 2022) 9 <<https://www.ncat.nsw.gov.au/publications-and-resources/news-and-announcements/news/2022/ncat-annual-report-2021-2022.html>>.

⁴⁷ *QCAT Annual Report 2021–2022* (Report, 27 September 2022) 14 <https://www.qcat.qld.gov.au/__data/assets/pdf_file/0009/747099/qcat-2021-22-annual-report.pdf>.

⁴⁸ *SACAT Performance Report 2021–2022: Q3* (Report) <<https://www.sacat.sa.gov.au/about-sacat/publications-and-resources/our-service-data/2021-22/SACAT-Performance-Report-2021-2022-Q4.pdf>>.

⁴⁹ ACT Civil and Administrative Tribunal, *Annual Review 2021–22* (Review) 26 <https://www.acat.act.gov.au/__data/assets/pdf_file/0005/2119478/ACAT-Annual-Review-2021-22.pdf>.

⁵⁰ *ACT Civil and Administrative Tribunal Act 2008* (ACT) s 79; *Civil and Administrative Tribunal Act 2013* (NSW) s 80; *South Australian Civil and Administrative Tribunal Act 2013* (SA) s 70; *Queensland Civil and Administrative Tribunal Act 2009* (Qld) s 142(3).

Civil penalties

The amendments in 2021 introduced a slew of new offences and pecuniary penalties for landlords, such as landlord disclosure obligations, the ban on rent bidding, and the requirement that rental premises meet minimum standards at the start of a new lease. Consumer Affairs Victoria is the body responsible for enforcement of these provisions, through warning letters, infringement notices, applications to the Magistrates Court for civil penalties, and criminal prosecutions. Enforcement is key to these provisions. It is not enough that pecuniary penalties and offences exist on paper; to inspire better behaviour they must have teeth. As set out earlier, Consumer Affairs Victoria's has a record of not serving infringement notices on rental providers who have breached their duties.

The Act's enforcement scheme would be strengthened by investing VCAT with the power to make civil penalty orders. In such a model, if VCAT finds that a landlord breached a penalty provision in the Act while hearing an application by a renter (for example, for compensation or a restraining order), the VCAT member could make a separate order that the landlord must pay a civil penalty. These penalties could then be enforced in the same way as infringements. Note that, as with infringement notices, there would need to be a mechanism for appealing the penalty.

This is similar to Consumer Affairs Victoria applying to the Magistrates Court for a civil penalty, except with no requirement that CAV make an application. This would reduce CAV's burden of investigating breaches and enforcing the Act and so preserve their resources. It also would not strain VCAT's resources as the tribunal would already be hearing the matter.

Recommendation 8: Amend the *Residential Tenancies Act* to invest VCAT with the power to order parties to a proceeding to pay civil penalties set out in the Act.

Listing time frames

One of VCAT's goals is to be an efficient dispute-resolution mechanism, but in practice renters may wait a long time for their matters to be heard. There is no maximum timeframe for the listing of most applications, including those for bond claims, compensation, compliance, restraining orders, and possession orders. This means that renters and rental providers often face unreasonable waits for their hearings. We consistently have renters report to us about waiting more than two years (sometimes up to three) for their bond or compensation hearings.

The prospect of these delays discourages renters from applying to VCAT for compensation and reduces the incentive for rental providers to comply with their duties. We have seen property managers use these wait times as a tactic to get renters to agree to unfair bond deductions. Many renters cannot afford to wait years for a hearing so agree for a portion of their bond to be released to the rental provider to get the rest of it straight away, even if they had complied with all their duties on leaving the property.

Some application types do have maximum waiting times legislated in the *Residential Tenancies Act*. For example, applications for urgent repairs are to be heard within two business days, non-urgent repairs within seven days, and applications under the family violence provisions within three business days. Extending maximum waiting times to all applications would improve VCAT efficiency and

administration of justice, boost consistency of service, and ensure effective remedies for non-compliance with duties under the Act.

Recommendation 9: Reduce waiting times for matters listed in the Residential Tenancies List at VCAT by introducing mandatory listing time frames for all matters.

Minor Residential Tenancies Act amendments

The tenancy legal-assistance sector has identified several likely unintended issues with the current drafting of the *Residential Tenancies Act* that appear contrary to the intent of the *Residential Tenancies Amendment Act 2018 (Vic)*. These drafting issues could be easily overcome with simple new amendments. Presently, these drafting inconsistencies and gaps diminish the effective operation of the legislation, and risk undermining public confidence in the *Residential Tenancies Act*.

These drafting issues that pose challenges include:

- A lack of definition, or clarity of definition, of key terms (notably ‘unpaid rent’).
- The absence of time limits, or minimum notice periods, in some provisions (including sections 326, 91ZZS, and 91N).
- Provisions that do not cover the field, for example section 439P not requiring restraining orders to be listed on the Rental Non-Compliance Register.
- Legislative gaps, for example the absence of a clear grant of power for VCAT to make a compliance order where there is no duty provision relating to a notice to vacate.
- Unintended consequences, for example no option for postponement of a warrant under section 344 in cases of family or personal violence.

Further detail of these legislative gaps are set out in the table in Appendix 1.

Recommendation 10: Amend the *Residential Tenancies Act* to clarify issues arising from the recent amendments to the Act [Refer to Appendix 1 for a list of proposed minor amendments].

Student accommodation

In Victoria, student accommodation which is owned by or affiliated with a university is not covered by the *Residential Tenancies Act*. This means that students living in this type of common accommodation cannot access any of the rights that other renters in Victoria have, such as the requirement that their landlords comply with duties under the Act including the duty to maintain the premises, limits on entry by the landlord and evictions. If not for an exemption available in Section 21 of the Act, much of this style of student housing would be captured by the rooming house provisions of the Act.

Moreover, much student accommodation even when affiliated with universities is operated by commercial landlords on a large scale to meet demand from students for housing. Students living in this sort of housing urgently need protection from predatory landlords like any other Victorian renter.

It is entirely unsatisfactory that there are currently no accessible or practical legal options for students to resolve disputes in such exempted housing. This could also be provided by the rooming house provision in the Act should the exemption for university-owned and affiliated accommodation be repealed.

Recommendation 11: Include student accommodation in the *Residential Tenancies Act* and repeal section 21 of the Act.

Rooming houses

A rapidly growing social housing wait list and declining affordability of private rentals have meant more renters have little choice but to move into rooming houses. Such tenants are counted by the Census as homeless due to their insecure housing. They usually receive a very low income, such as Youth Allowance, JobSeeker or the Disability Support Pension. Overseas students are another newer cohort of rooming house residents, and their precarity offers a new dimension to the longstanding challenge of adequately regulating rooming houses.

Rooming house residents regularly report to us the disrepair of many, particularly private, rooming houses, which despite their non-compliance with minimum standards, have continued in this state for many years. The often unsafe, even hazardous, conditions of these rooming houses directly and indirectly affect the physical safety and mental health of residents and are the very antithesis of safe, secure and affordable housing.

In our submission in response to the Victorian Government's draft changes to the *Residential Tenancies (Rooming House Standards) Regulations*⁵¹ we said the updates were welcome but still did not go far enough. New regulations commenced on 26 February 2023 and do include new minimum standards commencing between 26 February 2024 and 25 February 2025.

However, we believe there is scope for adoption of all the recommendations we have made.

Recommendation 12: Adopt all recommendations contained in our 'Submission in response to the draft *Residential Tenancies (Rooming House Standards) Regulations 2022*', found at Appendix 2.

⁵¹ Tenants Victoria, *Submission in Response to the Draft Residential Tenancies (Rooming House Standards) Regulations 2022* (Submission, 30 January 2023) <<https://tenantsvic.org.au/articles/files/submissions/Residential-Tenancies-Rooming-House-Standards-Regulations-January-2023.pdf>>.

Social housing investment

Australia has one of the smallest allocations of social housing among comparable nations in the Organisation for Economic Co-operation and Development (OECD) – the proportion of Australian households living in social housing is 4.1%. Victoria has the lowest of all the states and territories. The proportion of Victorian households living in social housing, comprising both public and community housing, is 2.9%, according to the Australian Institute of Health and Welfare⁵². In comparison, NSW has 4.7% and Queensland has 3.5%.

As part of the 2020-21 State Budget, the Victorian Government invested \$5.3 billion over four years to build new community housing and upgrade a proportion of existing public housing. The program, the Big Housing Build, is now in its final year and 4152 of the 9300 new homes have been completed. This year, other welcome social housing initiatives have also been announced, notably the regional housing package flowing from the cancelled 2026 Commonwealth Games.

However, once-off investments will not be enough to meet housing need from people on very low incomes. In the Making Social Housing Work campaign, Tenants Victoria, together with other Victorian peak housing organisations, have outlined how Victoria needs to build 6000 new properties each year for the next 10 years. While most renters will have to continue to find their homes in the private rental market, Victoria needs at least 60,000 new social housing properties by 2032 to accommodate⁵³ more renters facing disadvantage and the prospect of homelessness.

Recommendation 13: Make ongoing investment to expand the state’s social housing stock.

Social housing regulation

At present, our state has a two-tiered system of social housing. Community housing renters, with not-for-profit landlords, are afforded lesser rights and an alternate regulatory system compared to public housing renters who have Homes Victoria (also known as the Director of Housing), part of the Department of Families, Fairness and Housing, as the landlord.

The shift to community housing through government investment that is occurring under Victoria’s Big Housing Build and other programs must be matched by appropriate support and protections for renters who depend on such social housing. Without these protections, our housing system will entrench a two-tier approach to social housing. This undermines the purpose of social housing, as set out in the *Housing Act 1983* (Vic), to ‘ensure that every person in Victoria has access to adequate and appropriate housing’ and to ‘promote security ... of tenure’.

⁵² Australian Institute of Health and Welfare, Housing Assistance in Australia, (Web report, last updated 14 July 2023) <<https://www.aihw.gov.au/getmedia/99cecf0-c493-4fbd-bbc3-953f526852b7/Housing-Assistance-in-Australia.pdf.aspx?inline=true>>.

⁵³ Housing Peaks Alliance, Make Social Housing Work: A Framework for Victoria’s Public and Community Housing 2020–2030 <<https://tenantsvic.org.au/articles/files/campaigns/Make-Social-Housing-Work.pdf>>.

Tenants Victoria, along with our community-legal-sector colleague organisations, supports a re-imagining of the social housing regulatory system.

Key aspects of this should include:

- Ensuring that social housing is safe, secure, affordable and of good quality.
- Ensuring that all long-term social housing renters are treated equally, and that there is no diminution of rights of renters.
- Empowering residents.
- Making it easier to know how social housing providers are performing, to increase transparency and accountability.
- Ensuring fair, swift and effective resolution of complaints.
- Strengthening the standards social housing providers must meet and creating a strong, proactive regulatory regime to enforce them.
- Ensuring greater coordination and consistency among support services assisting social housing renters.

Recommendation 14: Adopt the recommendations contained in the ‘Joint legal assistance sector response to the Interim Report of the Social Housing Regulation Review’, found at Appendix 3.

Housing and the Charter of Human Rights

The Victorian Charter of Human Rights and Responsibilities protects 20 key rights, but housing is not included at present. This omission means housing is not recognised as essential to a dignified life and to the enjoyment of other key rights. Yet housing is a universal good and should be enjoyed by all, much like universal health and universal education.

The right to adequate housing has long been part of the international human rights regime. The United Nations defines it as ‘the right to live somewhere in security, peace and dignity’, irrespective of one’s income⁵⁴ with ‘adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities’⁵⁵. It is not enough to have a roof over one’s head; for the right to be fulfilled: one must have a safe, secure and affordable home which meets their needs.

The UN recognises that the right to adequate housing is integrally linked to the enjoyment of other key human rights, including ‘the rights to work, health, social security, vote, privacy or education’⁵⁶. For example, homes which are too cold or mouldy have been linked with health impacts such as asthma,

⁵⁴ Committee on Economic, Social and Cultural Rights, *General Comment No 4: The Right to Adequate Housing (Art 11(1) of the Covenant)*, UN Doc E/1992/23 (1992, adopted 1991) annex III [7] <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G92/153/07/PDF/G9215307.pdf?OpenElement>>.

⁵⁵ Ibid.

⁵⁶ Office of the United Nations High Commissioner for Human Rights, ‘The Right to Adequate Housing’ (Fact Sheet No 21 Rev 1, November 2009) 9 <https://www.ohchr.org/sites/default/files/Documents/Publications/FS21_rev_1_Housing_en.pdf>.

respiratory infection, allergic response, and mental illness such as depression⁵⁷. Homelessness, meanwhile, is associated with poor health, vulnerability to crime and personal attacks, no privacy, difficulty in accessing education and work as well as social security, stigmatisation and discrimination, and barriers to registering to vote and exercising the freedoms to movement, association and expression⁵⁸.

Australia is a signatory to a number of international treaties which enshrine the right to adequate housing. It is more than timely to recognise it in our domestic law, including by amending Victoria's Charter of Human Rights to recognise housing as a right integral to living a dignified life.

Recommendation 15: Enshrine the right the right to adequate housing in the *Victorian Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

⁵⁷ World Health Organisation (n 19) 32–38, 91.

⁵⁸ Homelessness is a Human Rights Issue', *Australian Human Rights Commission* (Web Page, 1 January 2008) [6] <<https://humanrights.gov.au/our-work/rights-and-freedoms/publications/homelessness-human-rights-issue>>.

Appendix 1

Clarifying gaps in the Residential Tenancies Act (RTA):

List of legislative drafting issues within the RTA and potential solutions

Section of the Act	Issue	Potential solution
S 91ZM – Non-payment of rent	The lack of a definition for the term ‘unpaid rent’.	<p>Include a definition of ‘unpaid rent’.</p> <p>A starting point is the <i>Kaur v Lawton</i> definition at [19] as: ‘rent owing to the date the notice is created, being the amount or rent arrears owing as referred to in the notice to vacate’, noting this only deals with payment before vacate date, not payment before a possession order hearing.</p>
S 326 – Time limit for possession order applications does not include s 91ZM applications	Section 326, which specifies a time limit of not more than 30 days after termination date for applications for possession order following service of a Notice to Vacate, does not include applications under s 91ZM. This means that applications for PO due to rent arrears are being brought over 30 days after the termination date.	Amend s 91ZM to include that applications must be made within 30 days of the expiry of the notice.
S 91ZZS - and equivalent provisions – time limit for challenging NTVs	<p>Section 91ZZS (1) states that pre-emptive challenges can be brought ‘on or before the hearing’. However, subsection (2) states that this must be brought no later than 30 days after the NTV was given. A hearing is likely to occur over 30 days after the NTV was given.</p> <p>Homeless Law VCAT experience was that VCAT members have suggested that where renters have applied under s 91ZZU and 30 days have passed, that the renter request an</p>	One option would be to amend s 91ZZS(1) and its equivalents to read: “...a renter who has received a notice to vacate...can challenge the validity of the notice”, and to amend s 91ZZS(2) and its equivalents to clarify that the 30-day time limit only applies to pre-emptive challenges.

	<p>extension of time under s 126 VCAT Act. We consider this should not be necessary and suggest seeking clarification on this issue.</p> <p>If the intention of the drafters was to allow challenge up to and including the hearing, we propose the sections be amended as discussed at right.</p> <p>See similar provisions s 91ZZU, s 142ZX, s 206AZM, s 142ZZ, s 206AZO, and s 207ZN.</p> <p>Query different restrictions on renters/residents right to apply to pre-emptively challenge, for example rooming house residents cannot apply ‘on or before the hearing’ but rather have only 14 or 30 days after the notice was given (see section 142ZM(5)). See also section 91ZZI(5).</p>	
<p>S 30D - Information that residential rental providers must disclose before entering residential rental agreement</p>	<p>This clause provides that ‘before entering a residential rental agreement’ the RRP (residential rental provider) is required to disclose particular things. Is clarification required that this would also be required prior to ‘renewal’ of a rental agreement?</p> <p>Further – is clarity required on what is required to be disclosed in relation to 30D(a)-(c) and (e)? For example, regarding s 30D(e), in relation to mould – the requirement is to disclose if there’s been a repair notice in past 3 years, but not the notice, the problem, whether it’s been fixed etc.</p>	<p>Amend the clause to state that (proposal underlined) ‘Before entering into <u>or renewing</u> a’ rental agreement, disclosures are required.</p> <p>Amend regulation 16 to include clarity on disclosures required pursuant to 30D(a)-(c) and (e).</p>
<p>S 27B - Prohibited terms</p>	<p>Clarify that section 27B(1)(f)(iii) excludes ‘rental rebate’ as defined in section 3.</p>	<p>Amend the provision as follows (proposed amendment underlined):</p>

		<p>(iii) the renter is to be paid a rebate or other benefit (<u>other than a rental rebate, as defined in section 3 of this Act</u>); ...</p>
<p>Application of minimum standards</p>	<p>The transitional provision in cl 16(3) of Schedule 1 to the RTA provides that section 65A (relating to minimum standards), as inserted, does not apply to a fixed term tenancy agreement or a periodic tenancy agreement referred to in subclause (1). Subclause 16(1) provides that the provision does not apply to a fixed-term or periodic tenancy agreement entered into before the commencement of the applicable amendment until that agreement is terminated. This is in contrast to subclause 16(2) which limits applicability of provisions in cases where a tenancy agreement as ‘come to an end’.</p> <p>It is arguably ambiguous as to whether section 65A applies where a tenancy was on foot prior to 29 March 2021 and became a periodic agreement after that date (as it is unclear whether that tenancy can be said to have ‘terminated’).</p> <p>Section 65A lends itself to that reading, by stating that an RRP must ensure compliance with the minimum standards ‘on or before the day on which the renter enters into occupation of the premises.’</p>	<p>Amend subclause 16(3) of Schedule 1 to the RTA to state section 65A does not apply to: ‘a fixed term tenancy agreement or a periodic tenancy agreement referred to in subclause <u>(2)</u>.</p> <p>Amend section 65A(1) to state:</p> <p>(1) Without limiting sections 65, 68 and 70, a residential rental provider must ensure that rented premises comply with prescribed rental minimum standards on or before the day <u>on which the term of the rental agreement commences</u></p>
<p>Section 27C – Safety checks</p>	<p>Section 27C(2) states that a residential rental agreement ‘may’ include a term requiring safety checks.</p>	<p>Require that safety checks be undertaken as a duty within the RTA, rather than a term of the agreement.</p> <p>For example, if there is no written agreement, these</p>

	In practice, this means that very few rental agreements contain provisions in relation to this.	obligations are then not included.
Section 44 – Method of calculating rent increase	Section 44(3)(c) state the Notice of Rent Increase is to specify the ‘method’ by which a rent increase was calculated. However, what methods satisfy this requirement, and the degree of detail required to satisfy that requirement, are unclear.	Clarification, by way of CAV Guidelines or similar, on what methods satisfy this requirement.
Ventilation minimum standard definition	<p>The minimum standard for ventilation is linked to other documents and incomprehensible for an ordinary person to understand. It also relies on the Building Code of Australia/National Construction Code, which requires payment for access to some documents. This makes it almost impossible to enforce.</p> <p>The minimum standard is provided in s 13 of Schedule 4 to the RTR as follows:</p> <p style="padding-left: 40px;">13 Ventilation</p> <p style="padding-left: 40px;">(1) If the rented premises is a Class 1 building, each habitable room, bathroom, shower room, toilet and laundry must have ventilation satisfying Performance Requirement P2.4.5 of the BCA Volume Two, or the Acceptable Construction Practice in Part 3.8.5 of the BCA Volume Two.</p> <p style="padding-left: 40px;">(2) If the rented premises is within a Class 2 building, each habitable room, bathroom, shower room, toilet and laundry must have ventilation satisfying Performance Requirements FP4.3, FP4.4 and FP4.5 of the BCA Volume One, or the Deemed-to-Satisfy Provisions requirements in</p>	An online guidance on what the standard is, perhaps by way of CAV Guideline.

	F4.5, F4.6 and F4.7 of the BCA Volume One.	
Section 86(2A)(c) – Compensation for sales inspections	Section 86(2A)(c) states that ‘a renter at the premises is entitled to the prescribed compensation for sales inspections’. However, there is no guidance provided, either in the Act, Regulation, or CAV Guidelines, on at what stage this compensation is payable, and how. Renters therefore have to chase rental providers for payment.	Introduce a regulation that requires that this compensation be paid by way of rent credit (and evidence of ledger showing that provided), or other payment, prior to the day of inspection.
Section 91N – Termination after death of sole renter	Section 91N provides no minimum notice period for the NITV or NTV to be served under subsections (2) and (3) respectively. This may make it more difficult for family/next of kin to make arrangements upon the death of a sole renter dying.	Amend section 91N(2) to provide a minimum notice period for NITVs of not less than 14 days. Given the ‘special circumstances’ that exist in the case of a person’s death, consider also including this NITV under the exclusion from ‘any form of lease-break fee’ under section 91ZB. Amend section 91N(3) to provide a minimum notice period for NTVs to not less than 30 days.
Section 439P – Rental non-compliance register	Section 439P does not require the Director to enter into the Register restraining orders made by VCAT, and these are not captured by part 5 breach and not likely to be captured as an offence. Section 439P requires listing where an RRP has ‘committed an offence’, but it is unclear whether this is on the basis of a VCAT finding, or whether a prosecution outcome is required to trigger this section.	Amend section 439P to include at 439P(2)(c): ‘the Tribunal has made a restraining order that the RPP must refrain from committing a breach’. Amend section 439P to clarify the definition of ‘committed an offence’.

<p>Power to make a compliance order where there is no duty provision relating to an NTV – and sections 212 and 332A</p>	<p>Section 332A allows VCAT to apply for a compliance order ‘under section 212’ where an NTV is served under that provision. Section 212 only allows a compliance order to be made in order to rectify a breach of a duty provision. However, in of behavioural NTVs in which a compliance order is appropriate, it is arguably not open for VCAT to make such an order because there is no equivalent duty provision in the Act. These include:</p> <ul style="list-style-type: none"> • Section 142ZD allows a rooming house operator (RHO) to apply for an NTV where a resident has threatened or intimidated the RHO or their employee. However, there is no duty for rooming house residents to not threaten or intimidate RHOs or their staff. • Section 91ZK, where an NTV can be issued in relation to threats and intimidation directed at the RRP or their agent or employee. • Section 206AS, in relation to threats and intimidation against a caravan park owner. • Section 207Y, in relation to threats and intimidation against a site owner. <p>While not included in section 332A, we submit it would be appropriate to include the option to issue a compliance order in the case of the following further NTVs (particularly given the more serious ‘danger’ NTV is included within s 332A):</p> <ul style="list-style-type: none"> • successive breaches (s 91ZP); and • disruption (s 142ZE, s206AT and s207Z). 	<p>Introduce a new subsection to section 332A that clarifies how a compliance order can be made where the NTV does not relate to a breach of duty.</p>
--	--	--

	While VCAT has made compliance orders in relation to such NTVs (see i.e. <i>Southport Community Housing v Ng</i> , the reasoning is strained (see in particular[53])).	
Section 54A – ensuring each resident has access to a fob	Section 54A requires each ‘renter’ be given a key by the rental provider – but what about older children? One of our services assisted in a case where a single mother requested an additional fob for her teenage son and was refused by the RRP and owners corporation.	Add an additional subsection (3) – the rental provider must not unreasonably refuse to provide a key or security device to the renter upon request. Or alternatively require a key or security device be provided to each ‘resident’.
Section 64 – installation of security and safety measures	Section 64 prohibits a RRP from unreasonably refusing consent to the installation of security cameras, particularly in the case of family violence. However, in an Owners Corporation (OC) controlled building, it is the OC Committee than has the power to refuse. This undermines the protection afforded to survivors under section 64.	Amend the <i>Owners Corporation Act</i> to require Owners Corporations cannot unreasonably withhold consent to such modifications.
344/352 – postponement of warrant in cases of family violence/personal violence	In some cases of family or personal violence the perpetrator is the sole renter, and the survivor is not on the lease. In such cases, where a family violence/personal violence Intervention Order or Safety Notice are issued excluding the perpetrator from the home, the perpetrator has the option to apply for a possession order under s 344 (where premises occupied without consent). In such cases, s 346 requires the issue of a warrant of possession ‘without delay’, and s 352 does not allow for a non-renter, resident or site tenant to apply to postpone the warrant. This	Amend section 346 to include a new subsection that reads: “Section 346(a) doesn't apply in applications in which the respondent is a person specified in s 91V(2) of this Act.”.

	has the perverse effect of giving perpetrators the option to evict the protected person under a FVIO or FVSN with very little notice.	
--	---	--

Appendix 2

This recommendation summary comes from Tenants Victoria's *Submission in response to the draft Residential Tenancies (Rooming House Standards) Regulations 2022*. To read the full submission, go to:

<https://tenantsvic.org.au/articles/files/submissions/Residential-Tenancies-Rooming-House-Standards-Regulations-January-2023.pdf>

Summary of recommendations

Recommendation 1: That regulation 7 of the draft Regulations is amended to require that all 'doors used for entry to and exit from a room provided to a resident of a rooming house' and locks fitted on those doors meet an Australian standard that ensures they are able to withstand forced entry.

Recommendation 2: That consideration be given to how a 'change of lock framework' could be established for rooming houses when there is a need to limit access of previous residents to the premises: i.e., when there has been a personal safety order obtained by a resident or when a resident has been removed from the premises for safety reasons (danger, etc.) but their key has not been recovered.

Recommendation 3: In relation to power outlets, that:

- Regulation 8 of the draft Regulations be amended to require at least 2 double power points be located in each resident's room of at least a total capacity of 10 amps per room, preferably at different locations in the room.
- If the word term 'electrical power outlet' is used that this is defined as a double power point.

Recommendation 4: In relation to bathrooms, that regulation 12 of the draft Regulations be amended to require that:

- Bathroom screens be of a standard that minimises slip hazards for residents.
- If a shower is installed, it has floor-level entry with a maximum of clearance of 150mm.
- Bathroom fans are sufficiently powerful to service high-volume usage and effective at preventing mould growth (if this is not covered by the ventilation standard).

Recommendation 5: In relation to cupboards and fridges, that proposed regulation 13 of the draft Regulations be amended to require the following:

- Suitable cupboard storage with a lock within each resident's room.
- A fridge of at least 120 litres within each resident's room, or, alternatively, that 100 litres of fridge capacity be provided within communal facilities for each resident within a rooming house (including those after the first 4 residents, who are afforded 100 litres of fridge capacity each under the current proposed drafting).

Recommendation 6: In relation to dining facilities, that proposed regulation 14 of the draft Regulations be amended to ensure there is a dedicated dining area, or areas, with sufficient space to accommodate the required table and chairs. Submission in response to the draft Residential Tenancies (Rooming House Standards) Regulations 2022 4

Recommendation 7: That proposed regulation 15 of the draft Regulations be amended so that:

- regulation 15(1)(c) requires a clothesline or other clothes-drying facility to be ‘sufficient for the maximum amount of residents within the rooming house’;
- regulation 15(2) reads that the provision of the laundry facilities in (a) and (b) is required for ‘every 12 or fewer’ residents; and
- regulation 15(2)(b) require that the washing machine be in ‘good working order’.

Recommendation 8: That proposed regulation 18(b)(iii) of the draft Regulations be reviewed in light of Energy Safety Victoria’s ban on compact residual current circuit breakers (RCBOs) and additional testing requirements on remaining RCBOs.

Recommendation 9: That consideration be given as to how continuous access to heating, including heating appliances, can be afforded to rooming house residents.

Recommendation 10: That the Victorian Government:

- consider the removal, or limitation to exceptional circumstances only, of the exemption provisions in the Regulations;
- alternatively, consider amendment of the exemption process such that an application for an exemption order is made to VCAT, and any order granting an exemption is required to be published on a public register.

Recommendation 11: That the Victorian Government amend the draft Regulations to specify that they expire on the day which is the fifth anniversary of the Regulations’ making (rather than the tenth anniversary, which is ordinarily the case).

Recommendation 12: That the draft Regulations be amended to include the following:

- the requirement of a dedicated living space;
- a minimum standard that the premises be free of pest infestation;
- the introduction of personal mailboxes and room numbers on each room;
- the introduction of a central communication board, highlighting key contacts including regulatory authorities; and that these be required to be implemented no later than 26 February 2024.

Recommendation 13: That the Regulations be amended to require the provision of high-quality access to the internet as an essential service in all rooming house properties at no or low cost to residents

Appendix 3

This recommendation summary comes from Tenants Victoria's *Joint legal assistance sector response to the Interim Report of the Social Housing Regulation Review*. To read the full submission, go to:

<https://tenantsvic.org.au/articles/files/submissions/Joint-response-to-SHRR-interim-report-by-CLCs-Feb-2022.pdf>

Summary of our recommendations

We recommend:

1. That section 330A of the Residential Tenancies Act 1997 (Vic) should be amended to add new criteria for consideration in the 'reasonable and proportionate test', as follows:

- a. Where the residential rental provider is a social housing provider, the Tribunal must consider the following:
 - i. The specific obligations of the social housing provider under the Housing Act 1983 (Vic), performance standards, any service charter, and its own policies;
 - ii. Whether the housing provider has made all reasonable efforts to transfer, relocate or otherwise secure alternative accommodation for the renter; and
 - iii. Whether the order is sought as a genuine avenue of last resort.

2. In order for tenancy sustainment to be embedded in the social housing regulatory framework, we support the following range of initiatives:

- a. Requiring more effective and consistent tenancy sustainment policies across the whole social housing sector, drawing on best practice models, such as those that:
 - i. Embed an understanding of the role and responsibilities of the social landlord in policy content, including by meaningfully and concretely incorporating a focus on early intervention, problem-solving, support and referral;
 - ii. Are sufficiently detailed to support housing workers to make consistent, transparent and appropriately documented decisions based on relevant considerations, including the Charter of Human Rights and Responsibilities Act 2006 (Vic);
- b. Mandating improved and consistent processes for addressing rental arrears across the social housing sector, drawing on the Department of Fairness, Families and Housing (DFFH) rent-arrears management policies as an example of best practice;
- c. Better coordination and facilitation of transferring people into appropriate housing with adequate support services;
- d. Supporting the housing workforce to identify and refer renters for support.

3. In order to meaningfully clarify that the Charter applies to all social housing renters, the Victorian Government should:

- a. Make legislative amendments to expressly include community housing providers that are registered under section 84 of the Housing Act 1983 (Vic) as ‘public authorities’ for the purposes of the Charter; b.
- b. Include compliance with the Charter as an enforceable performance standard for all social housing providers;
- c. Ensure VCAT has jurisdiction to consider Charter compliance.

4. In order to embed the interests of current, future and prospective renters in law, the Victorian Government should make legislative amendments to include the right to housing in the Charter.

5. The proposed service charter should be sufficiently particularised and enforceable by individual renters, and introduce a set of mandatory and enforceable benchmark policies for all social housing providers in at least the following key areas:

- a. Sustaining housing;
- b. Access to temporary absence;
- c. Rental arrears;
- d. Rent setting and review;
- e. Disability and family violence modification;
- f. Reviewable complaints process;
- g. Maintenance and repairs.

6. In order to ensure equal renter access to information across the social housing landscape, amendments to the definition of ‘agency’ in the Freedom of Information Act 1982 (Vic) to include any agency registered under section 84 of the Housing Act 1983 (Vic).

7. That the new social housing dispute resolution body takes the form of either:

- a. A new entity, such as a Social Housing Ombudsman or Commissioner; or
- b. Clarifying that the Victorian Ombudsman’s jurisdiction is expanded to include an expanded social-housing complaints-handling function.

8. That this body aligns with the following principles:

- a. It is a single-entry point for all social housing complaints escalated beyond the internal complaints process;
- b. One consistent external dispute resolution process is introduced for all social housing renters, which does not diminish current renters’, and in particular public housing renters’, rights;
- c. The dispute resolution body’s jurisdiction covers as wide a range of disputes as possible, and exclusions from its jurisdiction are minimal;
- d. The body is independent, including being an independent body separate from government departments that play a role in funding social housing;
- e. It is guided by a clear purpose related to dispute resolution, for example to provide a ‘fair, independent and effective dispute resolution service for renters and rental providers’;
- f. It has in place a robust information sharing mechanism with the regulator;
- g. It can make binding decisions, in a manner similar to the Australian Financial Complaints Authority (AFCA) in that:

- i. If the renter agrees to a proposed determination of the scheme within 30 days of the determination being proposed, the determination will then be made and binding upon both rental provider and renter;
- ii. If the renter does not agree, the body would not make a determination, and the renter or rental provider would be free to pursue remedy before VCAT;

h. If (g) is not available, all parties would be able to apply for merits review of any binding order made by the scheme to VCAT.

9. The Victorian Government should provide additional and adequate funding to legal assistance services to support the anticipated growth in the number of social housing renters, to support their participation in the proposed dispute resolution process, and to sustain the strength of the regulatory framework by supporting renters to raise meritorious complaints against housing providers in cases of regulatory non-compliance.

10. The Victorian Government should fund free and high-quality education of different forms (including in-person training and training tailored to particular rental provider groups) for rental providers and property managers, which includes the following content:

- a. Legal obligations in relation to:
 - i. Their basic duties and obligations as rental providers;
 - ii. Minimum standards, maintenance and repairs;
 - iii. Payment of compensation, when and where required;
 - iv. Family and personal violence, including modifications;
 - v. The process of advertising for renters, and establishment of a new rental agreement;
 - vi. Rights of entry, and how to provide adequate notice;
 - vii. The process of ending a tenancy; b. What is family violence, and how to support someone who is experiencing family violence; c. What is trauma, and how to work with someone who has experienced trauma.
- b. What is family violence, and how to support someone who is experiencing family violence;
- c. What is trauma, and how to work with someone who has experienced trauma.