



**SUBMISSION
REGARDING THE
PROPOSED
RESIDENTIAL
TENANCIES
REGULATIONS 2019**

**VICTORIAN PUBLIC
TENANTS
ASSOCIATION**

December 2019



About Us

The Victorian Public Tenants' Association (VPTA) is the voice of public housing in Victoria.

As the peak body representing existing public housing tenants and those on the waitlist, our goal is to provide advice to tenants, and to improve and expand the public housing system in Victoria. Although not formally part of our role, we also assist community housing tenants where possible.

We undertake systemic advocacy and provide policy advice to the Department, undertake community engagement work and operate a free and confidential telephone advice service.

In the 2018-19 financial year, we processed more than 8,000 calls through our free advice line.

Our Submission

Pressure on the joint public and community housing waiting list (the Victorian Housing Register, or, VHR), is at record levels.

Demand is driven by a combination of several factors; the unaddressed societal level prevalence of issues such as mental illness and family violence, stagnating wages, increased casualization of the workforce and inadequate social security payments, to name just a few.

The upward pressure this has had on rental costs, combined with increasing costs of living and the other issues raised mean that it is becoming harder and harder for many everyday Australians to maintain a private tenancy, and more people than before are either choosing to, or being forced to remain in the private rental market for longer, or indefinitely.

More than ever, the cohort we advocate for and assist is as, or more likely, to be in a private rental, than they are to actually be living in public housing.

The Residential Tenancies Amendment Act and the new Regulations are, therefore, of key importance to us at the VPTA.

This submission focuses on how the changes in the Regulations and the Amendment Act will impact on existing tenants. It is supported by more than 40 signatories to our 'Treat All Renters Fairly' petition.

We endorse the submissions made by our colleagues at Tenants Victoria with regards to the private rental market.

Transitional Arrangements

In Victoria, 27.5 per cent of all households are renters. Of renting households, tenants in a form of social housing represent, 10 per cent.¹

The transitional arrangements, as they stand, will therefore deny approximately 10% of their intended beneficiaries' access when they come in to effect.

The Act specifies a number of provisions that are subject to transitional arrangements which mean that, for periodic tenancies and fixed term agreements entered in to before 1 July 2020, these provisions will not apply.

Alternatively, some provisions are already in effect, such as changes to how frequently rent can be increased but are applied upon the signing of a new rental agreement and will not apply to agreements that commenced before the amendment.

In Victoria, leases in public housing properties are not time limited.

This means they are periodic.

The effect of the transitional arrangements as they stand on people who live in public housing is to deny them the protection of these provisions until they move. For many people, especially older people, they will remain in their properties until they die or need to enter an aged care facility. Effectively, this means they will never benefit.

As a result, a cohort of the most vulnerable Victorians will be denied access to crucial rental reforms which have the power to significantly increase their quality of life, including enforcement of rental minimum standards, and limiting of rent increases to once a year.

Minimum Standards

The introduction of minimum standards is an important, and welcome, reform. It will increase the safety and security of properties for all renters, and ensure that vulnerable renters will no longer be paying to live somewhere that is not habitable.

¹ Figures calculated from data found at, 'Victoria, Housing tenure,' <https://profile.id.com.au/australia/tenure?WebID=110&BMID=41>, accessed 9 December 2019.

However, the minimum standards are affected by the transitional arrangements – and as a perverse outcome, some of Victoria’s most vulnerable people and families will not be protected by them.

The minimum standards also do not include key standards, such as a requirement for all properties to have air conditioning.

In the last 20 years, major heatwaves have killed more people than bushfires, cyclones, earthquakes, floods and severe storms combined.²

Given the extreme, and worsening, weather conditions that Australians often experience during the summer months, it is appropriate that air conditioning be included in properties as a minimum standard.

This is particularly important for people who live in the various forms of social housing, as they are more likely to fall within the cohorts of people who are particularly vulnerable to heat related illness – older Australians, people with disability, people with mental illness or other health related issues, people from culturally and linguistically diverse backgrounds and children.

It is also our view that the minimum two star energy efficiency for fixed heaters in class 1 properties is insufficient, but the issue of energy efficiency ratings, as well as the failure to include insulation in minimum standards, will be considered separately in this submission.

Safety-related activities

We welcome the inclusion of safety-related activities, such as requirements that electrical and gas safety checks are conducted with records of testing kept, smoke alarms are tested annually and batteries replaced and any carbon monoxide alarms are correctly installed and tested annually, in the draft Regulations.

We also welcome clarity around the renter’s obligation to provide written notice when a smoke or carbon monoxide alarm is not in working order, and also the list of safety devices which a renter must not interfere with.

Action on recommendations from the Victorian Coroner and the residential fire incident data from the Worcester Polytechnic Institute for the Metropolitan Fire Brigade is very important.

² Lander, J., Breth-Peterson, M., Moait, R., Forbes, C., and Stephens, L., Dickson, M. (2019). Extreme heat driven by the climate emergency: impacts on the health and wellbeing of public housing tenants in Mildura, Victoria. Report prepared for Mallee Family Care. Sydney: Authors, 2.

It is not clear why such critical safety improvements will not apply to all tenancies.

Frequency of Rent Increases

Currently, the Department of Health and Human Services reviews, and adjusts if necessary, the rent of people who live in public housing twice a year.

Residents pay either 25 per cent of their household income (known as rebated rent), or market rent, whichever is the lesser amount.

Many people who live in public housing pay a rebated rent and receive some form of income support, these payments have a scheduled indexation increase twice a year. As a result, a significant proportion of people living in public housing receive regular, twice yearly rent increases.

Rent review time (as it is known) is often a period of stress or confusion, and services which support people who live in public housing, as well as housing offices, often see a spike in demand for assistance at these times.

It is our view that all people who live in public housing should have their rent increased on the same timetable.

Not only is it unfair to differentiate rent treatment between new and existing tenants, a change in policy which does not affect all people who live in public housing places additional complexity and workload on community services and housing staff when services are already not adequately resourced to meet existing demands.

This is due to the addition of either a new rent review period which affects some tenants and not others, or additional complexity in what is already a convoluted process.

Recommendation:

1. That a sunset date for the transitional arrangements be introduced, so that the reforms apply to all tenancies in Victoria equally on 1 July 2023.

Modifications

The new minimum standards require that “the rented premises are to be structurally sound and weatherproof.”³

However, the Regulations state that “draughtproofing in homes without open flued gas heating, including installing weather seals, caulking or gap filling around windows, doors, skirting and floorboards,” are listed as ‘Modifications for which residential rental provider must not unreasonably refuse consent.’⁴

If a renter needs to draughtproof, caulk, install weather seals or gap fill – that is an indication that the property is not weatherproof, and therefore is not compliant with the minimum standards.

It should not be the renter’s responsibility to maintain a property’s compliance with the minimum standards once a tenancy has begun. This is logically inconsistent with the prima facie purpose of the minimum standards.

Recommendation:

2. That section 28(c) be removed from the draft Regulations, and section 7 of Schedule 4 of the draft Regulations be amended to specify that draughtproofing, installing weather seals, caulking or gap filling around windows, doors, skirting and floorboards are examples of weatherproofing activities.

³ Proposed Residential Tenancies Regulations 2019, Schedule 4, section 7.

⁴ Proposed Residential Tenancies Regulations 2019, section 28(c).

Energy Efficiency Standards

We consider that not including insulation and draught proofing in the minimum standards is a missed opportunity.

The Regulatory Impact Statement provides that;

Thermal comfort is important for health and wellbeing as well as productivity. Human thermal comfort depends on the metabolic rate (internal heat production), the heat loss from the body and the climate conditions. A lack of thermal comfort can cause physical and emotional stress among building or dwelling occupants. There is strong evidence that living in a cold home has significant, direct and indirect health impacts.⁵

And:

Compared to owner-occupied properties, rental properties use less efficient appliances and the properties are generally older, in poorer repair and more likely to be thermally inefficient. This means that...it will be harder [for renters] to make their home comfortable and to manage their energy costs...data on Victoria's existing housing stock indicates that rental properties are likely to be amongst the poorest for energy performance.⁶

Despite this, only a low, two star rating has been specified as the minimum standard for an energy efficient heater in class 1 buildings, and no standard for efficiency has been set for class 2 buildings.

There is concern that the two star energy rated heaters are not efficient enough to actually deliver the cost benefits to renters that the Government considers they will.

Further, many of Victoria's public housing properties are 'class 2' buildings, which means the energy efficiency standard will not apply at all. Of the 72,288 properties owned by the Director of Housing, 27,738 are classified as 'medium density attached', 7,580 are classified as 'low-rise flat', and 7,636 are classified as 'high-rise flat'. If all of these classifications are considered

⁵ Regulatory Impact Statement: Residential Tenancies Regulations 2020, pg 48.

⁶ Regulatory Impact Statement: Residential Tenancies Regulations 2020, pg 49.

to be class 2 buildings, 42,954 properties, or 59 per cent of Director owned stock could be exempt from minimum energy efficiency standards for heating.⁷

We believe these standards should be lifted, and greater consideration be given to how class 2 buildings can be included, given the structural barriers mentioned in the Regulatory Impact Statement.

Recommendation:

3. Further consideration be given to ways in which structural and body corporate issues in class 2 buildings can be mitigated to allow for their inclusion in Regulations regarding minimum energy efficiency of all appliances, including heating.
4. The minimum energy efficiency standards for heaters be increased.

⁷ All figures in this paragraph from DHHS, 2018-19 Housing Assistance Additional Service Delivery Data, pg 20.

Conclusion

We would welcome an opportunity to work further with Consumer Affairs Victoria to ensure the final Regulations treat all renters, including those who live in social housing, fairly.

Summary of recommendations

1. That a sunset date for the transitional arrangements be introduced, so that the reforms apply to all tenancies in Victoria equally on 1 July 2023.
2. That section 28(c) be removed from the draft Regulations, and section 7 of Schedule 4 of the draft Regulations be amended to specify that draughtproofing, installing weather seals, caulking or gap filling around windows, doors, skirting and floorboards are examples of weatherproofing activities.
3. Further consideration be given to ways in which structural and body corporate issues in class 2 buildings can be mitigated to allow for their inclusion in Regulations regarding minimum energy efficiency of all appliances, including heating.
4. The minimum energy efficiency standards for heaters be increased.