



Proposed Residential Tenancies Regulations 2020

Response to Regulatory Impact Statement

COTA Victoria

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COTA Victoria

4th Floor
533 Lt Lonsdale Street
Melbourne 3000
(03) 96552100
www.cotavic.org.au

To: Mr Simon Cohen
Deputy Secretary – Regulation
Department of Justice and Community Safety

Email: rentalreforms@justice.vic.gov.au

Authorised by: Alexia Huxley (Manager Policy & Communications)

Prepared by:
Donna Swan (Senior Policy Officer)

Email: dswan@cotavic.org.au
(03) 9655 2139

1. About COTA Victoria

COTA Victoria is the leading not-for-profit organisation representing the interests and rights of people aged over 50 in Victoria. For 70 years in Victoria, we have led government, corporate and community thinking about the positive aspects of ageing. Today our focus is on promoting opportunities for and protecting the rights of people 50+.

We see an ageing population as a time of opportunities for personal growth, contribution and self-expression. We believe there are obvious National, State, community, family and individual benefits from this approach. We are also focused on the protection of the rights of people 50+.

COTA Victoria is a not-for-profit member based organisation run by, for and with Victorians 50+. We fund our activities and services through the support of government, members, philanthropic trusts, businesses and the public.

We have an experienced Board, highly qualified, permanent staff located in a central Melbourne office location and a broad State membership. We also have over 130 community volunteers throughout Victoria with skills in training, group facilitation, policy development and advocacy, including volunteers bi-lingual in a number of languages. We work with local government, senior citizen centres, community houses and a broad range of community and service organisations.

2. Executive summary

The Council on the Ageing Victoria (COTA Victoria) is pleased to respond briefly to the public consultation process regarding the Regulatory Impact Statement on Victoria's Residential Tenancies Regulations 2020.

Affordable, secure and appropriate housing is a priority issue for older people.¹ For older people on fixed incomes, there are limited housing options to support ageing in place in Victoria. There is significant evidence that a direct and cumulative correlation exists between quality of life and the appropriateness and health of housing². The rental market is increasingly an unsuitable form of housing tenure for older people due to poor housing standards and affordability - particularly in Melbourne and Sydney.

As the leading not-for-profit organisation representing the interests and rights of older Victorians, we are therefore deeply concerned with the increasing numbers of older people moving into rental housing. Between 2011 – 2016, Victoria saw a 33 per cent increase in older people moving into the rental market.³ The risk of older people becoming homeless has markedly increased as rent and energy bills

¹ COTA Victoria's 2016 membership survey on issues of concern to older people found that 44.2% of respondents identified housing as their greatest concern.

² Mallett, S, Bentley, R, Baker, E, Mason, K, Keys, D., Kolar, V & Krnjacki, L (2011). Precarious housing and health inequalities: what are the links?' Hanover Welfare Services.

³ Housing for the Aged Action Group's *Home at Last* service identifies a 44 per cent increase in older people moving into insecure private rental housing over this five year period.

become unaffordable. For many older people, restrictions on the modification to homes has exacerbated a limited supply of appropriate housing. The reforms to the RTA and the proposed Regulations have been an important step towards recalibrating greater obligations on landlords and stronger consumer protections.

The draft Residential Tenancies Regulations achieves a number of improvements in the safety, affordability and rights of tenants. We commend the government on introducing bond limits, minimum standards, family violence protection and broadening what is now included under urgent repairs. We are also pleased to see mandatory disclosure of exit fees and estimated liabilities by Park Operators. The implementation, monitoring and compliance of these requirements requires appropriate resources and transparency.

We are however concerned with the scope and limitations of some of these important reforms in the rental market where the liveability and health of renters will continue to be compromised. The final Residential Tenancies Regulations (RTA) 2020 must prioritise the health and safety of Victorians.

Our comments therefore address key areas of the Regulatory Impact Statement (RIS) that impact on the health, safety and affordability of renting for older people. In particular we are concerned with the limited scope of minimum standards, their transitional arrangements, the lack of energy efficiency standards and the conditions set for modifications.

3. Recommendations for improvement

1. When making safety modifications to a property, all victim/survivors escaping family violence should be exempted from having to return the property to the original condition at the end of the tenancy, and from a requirement to pay an additional bond in relation to a fixture.
2. A modification that is a “safety measure” should be exempt from the requirement to obtain landlord consent in circumstances of family violence, for example additional door locks.
3. All relevant recommendations from the Royal Commission into Family Violence should be consistently implemented. For example, the removal of contradictions when formal intervention orders are required.
4. Minimum energy efficiency standards for homes must be prioritised in the final RTA Regulations. This must include:
 - Minimum energy efficiency standards for the replacement of all cooling appliances must be introduced immediately.
 - The installation of energy efficiency cooling appliances in rental properties within a transitional period.
5. The development of insulation standards for properties should be developed by mid 2020. The introduction of insulation standards should have transitional arrangements from 2020.
6. Ventilation should also be included as a minimum standard to keep a property mould and damp free.
7. Draught proofing should be included in minimum standards – with open flued heater safety measures.

8. Window coverings for all rooms (including bathrooms and toilets) should be introduced in 2020 as a minimum standard.
9. Renters that install home modifications to support accessibility, safety, health and ageing in place, should not be required to remove and pay for the costs of restoring properties to their previous condition.
10. Consent to make modifications required to transition out of hospital care or for hospital in the home programs should be granted automatically.
11. There should be mandatory disclosure of previous mould, damp and water conditions.
12. Mandatory disclosure should include asbestos status, insulation information, heritage rules, VCAT repair order non-compliance, gas/electricity safety and energy efficiency status.

4. Family Violence

Older people in situations of family violence (elder abuse or intimate partner violence) are particularly vulnerable to homelessness when seeking to terminate a tenancy or facing eviction due to financial debt incurred by the offender. We therefore commend the RTA reforms that recognise and support victim survivors of family violence, particularly in regard to VCAT's options for evidence when considering whether to terminate or create a new tenancy due to family violence. However, there is inconsistency in standards of evidence across other tenancy areas.

Recommendations:

1. In regards to making safety modifications to properties – older people escaping family violence should be exempted from having to return the property to the original condition at the end of the tenancy, and from a requirement to pay an additional bond in relation to a fixture.
2. A modification that is a “safety measure” should be exempt from the requirement to obtain landlord consent in circumstances of family violence, for example additional door locks.
3. All relevant recommendations from the Royal Commission into Family Violence should be consistently implemented. For example, the removal of contradictions when formal intervention orders are required.

5. Minimum Standards & Energy Efficiency

There is significant research and policy evidence on the economic and health benefits of making rental homes energy efficient, healthy and therefore more affordable⁴. For older people, low energy use due to constrained finances has a direct correlation to negative physical, mental and social well-being. Whilst the RIS acknowledges there are strong public health concerns and an awareness of fuel poverty (i.e. the underuse of energy to save money), minimum standards for the energy efficiency of homes has been deferred to the future.

⁴ Australian Institute of Health and Welfare 2018. Australia's health 2018. Australia's health series no. 16. AUS 221. Canberra: AIHW.

Insulation and costs

COTA Victoria holds serious concern for those renters living in poorly insulated homes without cooling. An older renter on a fixed lower income (i.e. pension) has little scope to pay more and meet the energy costs of poorly insulated homes and inefficient cooling. Renters more than any other household are at risk of rising energy prices due to poor energy performance of appliances and poor thermal shell control over where they live.

We need only look to New Zealand’s mandatory Healthy Homes Standards – which requires rental providers to insulate the floor and ceilings of their properties to a standard relevant to the climate zone (with limited exemptions). This holistic scheme provides an example for Victoria.

Extreme Heat & health and climate change

In the context of climate change and extreme weather events, we know that older people, those living with chronic health issues, in poverty and social isolation and children are at greatest risk of heatstroke and death from heatwaves – Australia’s most hazardous ‘natural killer’.⁵

Older people are more likely to live with health conditions that can impact on their ability to regulate their body temperature and cope with extreme heat.⁶ This can lead to an increased reliance on air conditioning being used to manage their vulnerability to heat related illness.

In 2014, the Intergovernmental Panel on Climate Change warned that increasing deaths from heatwaves could become one of Australia’s most detrimental impacts of climate change. The Victorian Government’s commitment to action on climate change must include a public health approach to its reforms and regulations across government departments – including rental reform. There will be increased morbidity and exacerbation of pre-existing medical conditions unless minimum standards are set for cooling and insulation.

Minimum energy efficiency standards

Apart from developing standards for ceiling insulation (from 2021) there are no standards proposed for cooling. Setting minimum energy efficiency standards needs to be a health adaptation measure to address those that are most vulnerable to heatstroke and fuel poverty – older renters and those that suffer chronic health conditions and young children.

Introducing minimum energy standards for cooling would also contribute to Victoria’s energy supply challenges over summer. *Home cooling is the most significant contributor to demand for electricity at peak times (‘peak demand’).*⁷

⁵ <https://www.climatecouncil.org.au/resources/silentkillerreport/>

⁶ Nicholls, L, McCann, H, Strengers, Y, Bosomworth, K, *Electricity pricing, heatwaves and household vulnerability in Australia*, RMIT, 2017, Cited: Ibrahim and McInnes, 2008; Kovats and Hajat, 2008, P6

⁷ Nicholls, L, McCann, H, Strengers, Y, Bosomworth, K, Op Cit P6

As we face unprecedented heatwaves, it is difficult to understand why minimum energy efficiency standards have not been prioritised in the proposed Residential Tenancies Regulations.

Minimum Standards for Heating

We support the proposal for the introduction of a fixed heater in Class 1 and 2 properties. However, we believe there should be an increase in the minimum standard to heating efficiency from 2 to 3-star rating for all replacement heaters for both Class 1 and Class 2 properties. A minimum energy efficiency standard (2-star rating) should also be set for heaters being installed in Class 2 buildings

Minimum heating standards must go hand in hand with insulation standards. The affordability and effectiveness of heating and cooling appliances is tied to insulation. The development of standards for insulation should be considered earlier than 2021.

Minimum Standards for Ventilation

Whilst rented premises must be *free from mould and damp caused by or related to the building structure*, adequate ventilation is required throughout a rental property in order to keep it mould and damp free. It is now recognised within mandatory requirements in the National Construction Code and the Australian Building Construction Board that moisture control and ventilation management in bathrooms and laundries is required to ameliorate the health impacts of excessive moisture. This needs to be introduced to current rental properties. There also needs to be a clear standard to guide compliance to improving the ventilation of rental properties.

Recommendations:

4. Minimum energy efficiency standards for homes must be prioritised in the final RTA Regulations. This must include:
 - The immediate introduction of minimum energy efficiency standards for the replacement of all cooling appliances.
 - The installation of energy efficiency cooling appliances in rental properties within a transitional period.
5. The development of insulation standards for properties should be prioritised. The introduction of insulation standards should have transitional arrangements from 2020.
6. Ventilation requirements across all rooms should also be included as a minimum standard to keep a property mould and damp free.
7. Draught proofing should be included in minimum standards – with open flued heater safety measures. Where there are open flued heaters these should be verified safe to allow draught proofing to occur. Where draught and weatherproofing is required, the cost of this should not fall on renters.
8. Window coverings for all rooms (including bathrooms and toilets) should be introduced in 2020 as a minimum standard.

6. Modifications

With increasing numbers of older people moving into rental properties, modifications to homes supports longer-term tenure and ageing in place. We are pleased to see rental providers can no longer *unreasonably* refuse consent to tenants installing property modifications recommended by health professionals. However, we are disappointed there is still the requirement to remove structural modifications and pay for costs of restoration unless otherwise agreed to by both parties.

A tenant's investment in a property should be viewed as a capital improvement in the property. The benefits of modifications and the rights of the older tenants to make the required adjustments to age in place should be promoted to rental providers. This will also address the dearth of private rental housing stock appropriate for older people and people living with disability where modifications for accessibility, health and safety are required.

Where modifications are part of transitioning out of hospital care (i.e. non-slip surfaces) or a requirement to qualify for hospital-in-the-home reprograms, consent should be automatically granted.

Recommendations:

9. Renters that install home modifications to support accessibility, safety, health and ageing in place, should not be required to remove and pay for the costs of restoring properties to their previous condition.
10. Consent to make modifications required to transition out of hospital care or for hospital in the home programs should be granted automatically.

7. Mandatory disclosure

Mould and Damp

Older people are particularly vulnerable to respiratory health conditions that are exacerbated by damp and mould conditions. There are significant health impacts and costs where damp and mould can occur. We therefore strongly endorse the inclusion of mould and damp under the definition of "urgent repairs".

Whilst low income renters have little if no choice in the rental market, a residents' right to health and safety requires transparency and disclosure of a property's health and safety history. A property may be mould free upon inspection, however we are concerned there is still no requirement to disclose mould, damp and water history. Without this disclosure requirement a potential tenant with respiratory conditions e.g. asthma, pulmonary fibrosis could be exposed to the reoccurrence of mould and damp conditions.

Under the current proposed Regulations, it will be difficult for a tenant to find out if a property has a mould and damp history. It is difficult to know if remediation work has been undertaken and the quality and effectiveness of this work. Unfortunately in Australia there is still no building standards for the

remediation of mould and damp and no requirement to provide information on a property's mould and damp history.

Other mandatory disclosures

Tenants must be provided with full disclosure of information that will allow them to assess the health, safety and affordability of a home. We therefore support Tenants Victoria's call for mandatory disclosure to include: asbestos status, insulation information, heritage rules, VCAT repair order non-compliance, gas/electricity safety and energy efficiency status.

Recommendation

11. There should be mandatory disclosure of previous mould, damp and water conditions.
12. Mandatory disclosure should include asbestos status, insulation information, heritage rules, VCAT repair order non-compliance, gas/electricity safety and energy efficiency status.

References

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