Residential Tenancies Act

130 Reforms came into effect on 29 March 2021. A series of issues have since impeded efficient functioning of the Victorian residential rental market.

OPPORTUNITIES TO IMPROVE THE LEGISLATION

REIV proposes changes aimed to simplify the Act, remove ambiguity and reinstate some balance between rental provider and renter obligations.

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VERSION: 1

DATE: June 2023

Introduction

A vast number of changes to residential tenancies came into effect because of amendments to the Act in 2018. The bulk were effective from 29th March 2021 and the details of many was contained in Regulations released almost on the eve of the effective date.

It has become apparent that the changes are not operating efficiently and perhaps not as intended. The complexity and inefficiency of the changes has become a significant contributing factor to:

- A reduction in the supply of rental premises as rental providers sell properties or withdraw them from the longer term rental market, due to increased costs, complexity and lack of control over their investment*.
- A huge backlog of residential tenancy cases at VCAT#
- An exodus of property managers and major difficulty in finding and training people to take up residential property management roles*.

While still respecting the government's intent and recognising that some opportunities for improvement were not addressed, this paper has been prepared to demonstrate opportunities for enhancement and suggests how the enhancements might be achieved.

The recommendations listed here aim to simplify the Act, remove ambiguity and reinstate some balance between rental provider and renter obligations.

This document is not presented as a comprehensive list of the issues the REIV has identified. The Act is a vast document and more effort and engagement is required to identify and make enhancements. At this stage the key identified opportunities are:

1. Making the legislation more useable, or 'user friendly', by dividing the Act into four Acts each dealing with a specific type of residential accommodation.
    - Rental Houses, Units and Apartments Act
    - Rooming House and Boarding Act
    - Caravan Parks and Moveable Dwellings Act
    - Specialist Disability Accommodation Act

2. Reducing ambiguity and simplifying the legislation by:
    - removing the Director's ability to issue guidelines from "time to time"

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- removing the requirement that VCAT consider Director's Guidelines
- removing the use of standards that can change from "time to time"
- Removing uncertain terminology and referring the reader to another part of the document which may in turn refer to another document.

3. Reducing uncertainty for the rental providers and renters by removing the director's right to issue guidelines and the requirement for VCAT to consider those guidelines and the requirement under s330A(j) that it have regard to "any other matter the Tribunal considers relevant".

4. Removing the requirement to "give reasons" in notices to vacate, **in addition** to the reason allowed for under the Act, by removing the requirement that VCAT consider what is 'reasonable and proportionate'.

5. Reducing complexity by aligning the descriptions of perpetrators and victims in s91ZJ Danger and 91ZK Threats and Intimidation.

6. Reducing complexity by deleting s88(c), the service of documents process specific to access.

7. Reducing uncertainty by replacing the definition of an 'occasion' of non-payment of rent.

8. Simplifying the timing requirements for an application for a possession order.

9. Simplifying the process for challenging a notice to vacate.

10. Amending the Act, Regulations and CAV website to reflect the presumed intent of the minimum standard for locks on external doors.

11. Amending the Act, Regulations and CAV website to be consistent in respect of locks for windows.

12. s.322(3) is referred to in the Act but it **does not exist**, so correct or delete the reference.

13. Addressing deficiencies in the safety related activities for gas by:
    - applying a standard consistent with owner occupied properties,

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- improving enforceability by requiring the rental provider to supply a copy of the gas safety inspection report to the renter,
- improving enforceability by making explicit in the Act penalties on the rental provider for failing to carry out safety related inspections and/or for failing to carry out the identified rectification,
- specifying in the Act that agents are excluded from liability in cases where the rental provider fails to comply with the gas safety related activities.

14. Addressing deficiencies in the safety related activities for electrical by:
    - applying a standard consistent with owner occupied properties,
    - deciding whether appliances are to be checked and if so, impose the same inspection requirements in respect of the renter's appliances as is imposed on rental providers in respect of the appliances they supply,
    - improving enforceability by requiring the rental provider to supply a copy of the electrical safety inspection report to the renter,
    - improving enforceability by making it explicit in the Act the penalties on the rental provider for failing to carry out safety related inspections and/or for failing to carry out the identified rectification.
    - by requiring renters, if required to have their electrical appliances checked, to supply a copy of the electrical safety inspection report to the rental provider,
    - making explicit in the Act penalties on the renter for failing to carry out safety related inspections and/or for failing to carry out the identified rectification.
    - specifying in the Act that agents are excluded from liability in cases where the rental provider fails to comply with the gas safety related activities.

15. Reducing the potential workload on VCAT by amending s411A to reduce the opportunity for frivolous bond claims.

16. Reducing uncertainty when the rental provider or a family member wants to occupy the property by making the documentary evidence requirements more practical and reducing the degree of discretion available to VCAT.

17. Reducing uncertainty where a notice to vacate is given on the basis of the first fixed term coming to an end by removing the requirement for

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VCAT to consider what is reasonable and proportionate and have regard for "any other matter the Tribunal considers relevant". Also removing the contradictory information between s91ZZI(5) and 91ZZS.

18. Simplifying the Act by removing the provisions specific to notices to vacate where the property was the rental provider's principal place of residence.

19. Reducing uncertainty and complexity by removing the Director's right to issue guidelines which must be considered by VCAT. For example:
    - Director's guidelines on cleanliness include contradictions and faulty assumptions.
        - The guideline on damage and fair wear and tear should be removed as it makes no useful contribution to Tribunal deliberations because the annotated version of the Act already contains extensive commentary about the assessment of damage under s.210.
        - The guideline on endanger should be removed as it makes no useful contribution to Tribunal deliberations because the annotated version of the Act already contains extensive commentary on the subject.
    - The quality of the maintenance guideline needs to be enhanced to remove contradictions and faulty assumptions.

24. Reducing complexity by changing s72(1) to address the timeliness of urgent and non-urgent repairs rather than attempting to deal with it through Director's guidelines

25. Reducing the unbalanced nature of the Act by making rental providers responsible for pest infestations only where they are caused by or related to an unreasonable deficiency in the property.

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Different types of residential accommodation

The Act attempts to deal with many different types of residential accommodation, it is cumbersome, the risk of error is heightened, and it deters use.

Suggested Improvement

Divide the RTA into the following standalone Acts with associated Regulations:

- Rental Houses, Units and Apartments Act
- Rooming House and Boarding Act
- Caravan Parks and Moveable Dwellings Act
- Specialist Disability Accommodation Act

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Complex structure

To compliantly carry out an action or fulfil a responsibility it is necessary to access too many documents and in some cases several parts of the one document.

Example 1

For example, if there is a proposal for the premises to be occupied by the rental provider or the providers family the relevant information and compliance requirements are spread across the following:

S.91ZB After receiving notice the renter may give a 14-day notice
S.91ZZA Premises to be occupied by residential rental provider or provider's family
S.91ZZH VCAT may approve reletting
S.91ZZI(1)(b) Termination date cannot be before the end of a fixed term
S.91ZZI(2) Notice of no effect if it would constitute discrimination
S.91ZZO Form of notice to vacate.
S91ZZS(1) Renter may challenge notice at VCAT
S.322(1) Application for possession order
S.326(1) Time of application for possession order
S.329 Application for possession order cannot be heard before termination date
S330(f) VCAT must consider what is reasonable and proportionate
S.330A What is reasonable and proportionate
S.486A Director may approve documentary evidence
Gov Gazette For documentary evidence approved from time to time by Director
CAV website For documentary evidence approved from time to time by Director

Example 2

The rental provider and the renter have responsibilities for safety related to gas. To understand these responsibilities it is necessary to access the following:

27C Prescribed terms – professional cleaning, maintenance and related obligations
30D Information that residential rental providers must disclose before entering residential rental agreement
63A Renter's safety-related duties
S68A Provider's duty to comply with safety related repairs and maintenance requirements

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68B Provider must keep and produce records of gas safety checks
Part 5 Breach of duty
Reg 5 Definition of gas safety check
Reg 13 Safety related activities
Reg 16 Information provider must disclose to applicant
Sch 1 Safety related activities
Sch 3 Safety related activities
AS/NZS 5601.1 “Gas installations”, as published from time to time;
S3 Gas Safety Act for definition of Type A appliance
S68 Gas Safety Act for definition of Type A appliance
S69 Gas Safety Act for definition of Type A appliance
S72 Gas Safety Act for requirements for work on gas installation
Reg 12(4) Gas safety (Gas Installation) Regulations 2018
Energy Safety Victoria for approved Type A appliances

Suggested Improvement

- Remove the ability for the Director to issue guidelines from time to time which must be considered by VCAT.
- Remove the use of standards that can change from “time to time”.
- Remove uncertain terminology and the habit of referring the reader to another part of the document which may in turn refer to another document.

For example:

> **S. 68A Residential rental provider’s duty to comply with safety related repairs and maintenance requirements**
>
> (1) Subject to subsection (2), a residential rental provider must undertake any safety-related repairs and maintenance activities set out in the residential rental agreement if that agreement contains a term prescribed under section 27C(2).

This could instead have been written as follows:

> (1) Subject to subsection (2), a residential rental provider must undertake the safety related repairs and maintenance activities set out in the prescribed residential agreement.

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Uncertainty

The Act increases the level of uncertainty for both rental provider and renter in two ways:

1. Director's Guidelines
The Director is granted the power to "issue guidelines" and "approved documentary evidence". The guidelines and approved documentary evidence can be changed by the Director at any time without giving prior notice.

Finding the "guidelines" is not easy, on the CAV site it is necessary to search under "changes to renting laws", which implies the person doing the search knows they relate to recent changes.

On the other hand, the "approved documentary evidence" is more logically found under "notice to vacate". However, these requirements have changed since first published but the history of the change is not apparent on the site. The change is not found under "changes to renting laws" even though the change is more recent than the changes under that heading.

Apart from the challenges associated with finding this information and the fact that it may change at any time it seems that the Director is being give a role in interpreting legislation rather than the role resting with VCAT and the courts. It given to a bureaucrat the role of influencing the judiciary. It is an unnecessary layer to be considered by VCAT and it can be argued that some of the guidelines conflict with the Act.

2. VCAT is required to consider what is reasonable and proportionate
In deciding an application for a possession order VCAT must be satisfied that it is "reasonable and proportionate" to make an order. It is required to consider the impact on a wide range of people [s.330(f)] and have regard to s.330A which seems to assume possession order applications are always related a breach. However, under s330A(j) it is also required to have regard to "any other matter the Tribunal considers relevant".
Clearly these requirements, particularly the requirement to have regard to "any other matter the Tribunal considers relevant", add to uncertainty and encourage the use of VACT as a lucky dip.

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Suggested Improvement

In relation to item 1 above delete s.486A to remove the Director's right under the Act to issue guidelines which must be considered by VCAT.
In relation to item 2 above at a minimum remove s.330A(j) so that VCAT is no longer required to have regard to any other matter it considers relevant. Ideally, also remove s.330(f) and s.330A so that VCAT is no longer required to consider what is reasonable and proportionate.

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Notice to vacate requiring reasons other than the reason

The prescribed form for giving a notice to vacate states the following under the heading “Reason for notice”.

- The rental provider must select the relevant reason section number and the minimum required notice under the Act from the attached information sheet and write it in the box below.
- The rental provider must also explain why the notice has been given. It is not enough to quote just form the Act or the reasons on the information sheet; this must be accompanied by specific details.
- VCAT may find a notice invalid where it does not provide enough details or is not accompanied by the required documentary evidence.

No explanation is given as to why VCAT requires so much detail, but it is presumed it is because if the matter comes before it as an application for a possession order it must consider what is reasonable and proportionate, not just the permitted reasons for a notice to vacate as stated in the Act.
This requirement creates the ridiculous situation of demanding a reason other than the reason available under the Act. For example, 91ZZD permits a notice to vacate at the end of the first fixed term of not more than 5 years, yet the form demands additional reasons. There is no knowing what additional reasons might be deemed adequate, so this becomes another example of the Act creating uncertainty and encouraging the use of VCAT as a lucky dip.

Suggested Improvement

Remove s.330(f) and s.330A so that VCAT is no longer required to consider what is reasonable and proportionate.
Remove the additional details requirements on the prescribed notice to vacate.

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Disparity between reasons for notice to vacate

Sections 91ZJ and 91ZK provided for the issue of a notice for vacate for similar reasons, namely danger (91ZJ) and threats and intimidation yet inexplicably there are significant differences between the descriptions of the perpetrators and the victims.

91ZJ Danger	**91Z Threats and intimidation**
Perpetrators	
The renter	The renter
The renter's visitor	Any other person occupying or jointly occupying the rented premises
Victims	
Occupiers of neighbouring premises	The rental provider or their agent
The rental provider or their agent	A contractor or employee of the rental provider or their agent
A contractor or employee of the rental provider or their agent	

Suggested Improvement

For these two sections align the description of the perpetrators and victims to the following:

Perpetrators

(a) The renter
(b) Any other person occupying or jointly occupying the rented premises
(c) The visitor of any of the people listed at (a) and (b) above

Victims

(a) The rental provider or their agent
(b) A contractor or employee of the rental provider or their agent
(c) Occupiers of neighbouring premises

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Disparity in processes for the service of notices on a renter

The service of documents is dealt with in s.506 and in the prescribed rental agreement, yet inexplicably s.88 which relates to access requires different forms of service. The sections do not reference each other, and the prescribed lease reflects s.506 with no mention of s.88.

Suggested Improvement

Delete from s88 the specified ways by which a notice may be served, namely s88(c).

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An occasion of non-payment of rent

91ZM Non-payment of rent

This section relates to trying to obtain a possession order due to rent arrears and deals with what can be done on an occasion of non-payment of rent.
What can be done on the fifth occasion in a 12-month period differs from what can be done first to fourth occasions.
If the renter is given a notice to vacate due to arrears but pays the unpaid rent on or before the termination date in the notice, the notice is of no effect. s.91ZM(1)(b)
On the fifth such occasion in a 12-month period the notice remains in effect even if the rent is paid, so a possession application can be heard by VCAT.
The section defines an occasion of non-payment of rent as follows:

> "**occasion of non-payment of rent** means an occasion where the renter owes at least 14 days rent within a 12 month period of the residential rental agreement, but does not include any amount owing under a payment plan ordered by the Tribunal;"

A reasonable person might take this to mean that once the termination date in a notice to vacate has passed another notice to vacate may be given once the renter is again in arrears by at least 14 days, as it would fit the definition of an "occasion of non-payment of rent" assuming that no payment plan had been ordered by VCAT.
Member K Campana commented in reasons for decision in the case *Jackson v Field (Residental Tenancies)[2022] VCAT 859* that the definition "..has not been the subject of consideration, or interpretation, in any written decision of the Tribunal or the Supreme Court of Victoria." The Member went on give the following definition:

> "For an entitlement to arise to give a subsequent notice to vacate, each *occasion* must also be a <u>new</u> *occasion of non-payment of rent*. That is, rent owed under the first occasion, cannot be caught up, or included in, a subsequent "occasion". There must be a new period of time, a new occasion, where a renter has fallen into arrears of at least 14 days rent. In practical terms, this subsequent occasion cannot commence any earlier than the date that a prior valid notice to vacate was given to a renter."

Assuming the interpretation by Member Campana was what was intended when the definition was written the definition needs to be made more explicit to reduce the likelihood of futile possession order applications.

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Suggested Improvement

Replace the definition of an occasion of non-payment of rent with the following:

> "**occasion of non-payment of rent** means an occasion where the renter owes at least 14days rent within a 12 month period of the residential rental agreement, but does not include unpaid rent in respect of which the renter has previously been given a notice to vacate or rent owing under a payment plan ordered by the Tribunal;"

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Contradictions re timing an application for a possession order

Where notice to vacate has been given by the rental provider [322(1)]

s.322(1) states:

> "A residential rental provider may apply to the Tribunal for a possession order for the rented premises if the residential provider has given a notice to vacate the rented premises."

No mention is made of a need to satisfy any other section, yet s.326(1) states:

> "An application under section 322(1) may be made at any time after the notice to vacate has been given but not later than 30 days after the termination date specified in the notice."

S91ZM(1)(a) states:

> "(1) On the first, second, third and fourth occasion of non-payment of rent –
>
> (a) the residential rental provider may give a notice to vacate under this section to the renter;"

s.91ZM(1)(c) states:

> "If the renter does not pay the unpaid rent on or before the termination date in the notice under paragraph (a), the residential rental provider may apply to the Tribunal for a possession order;"

s.329 "Hearing of application for possession order" states:

> "The Tribunal must not determine and application for a possession order under this Division earlier than the termination date specified in the notice to vacate or notice of intention to vacate accompanying the application."

As s.322(1) makes no reference to the other restrictions on the lodgment of a possession order application it has the potential to lead applications that are doomed to fail on a procedural issue.

Delaying the lodgment of an application until after the failure to vacate reduces the likelihood of withdrawn VCAT applications, but it lengthens the time for the resolution of the matter, perhaps facilitating the renter to slip further into debt. Given that s.329 prevents a possession order application being heard before a failure to vacate the other restriction seems pointless and unreasonable.

Suggested Improvement

Amend s322 to the following:

322 Possession order application and hearing

(a) A residential rental provider may at any time after a notice to vacate has been given but not later than 30 days after the termination date

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specified in the notice apply to the Tribunal for a possession order for the rented premises.

(b) A residential rental provider may at any time after a notice of intention to vacate has been given but not later than 30 days after the termination date specified in the notice apply to the Tribunal for a possession order of the rented premises.

(c) An application made under 322(a) or 322(b) cannot be heard by the Tribunal until after the termination date stated in the notice to vacate or the notice of intention to vacate.

Delete s.329 as its content is incorporated in the proposed amended s.322.

Amend s.91ZM(1)(c) to the following:

"the rental provider may after giving a notice to vacate in accordance with subsection (a) apply to the Tribunal for a possession order in accordance with s.322"

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Challenging a notice to vacate is unnecessarily complicated

The Act includes the following:

Subdivision 7 - Can a notice to vacate be challenged?

91ZZR Application of this Subdivision

Nothing in this Subdivision affects any right a renter may have to challenge the validity of any other notice to vacate under this Act.

91ZZS Renter may apply to Tribunal

(1) On or before the hearing of an application for a possession order in respect of a notice to vacate given under section 91ZX, 91ZY, 91ZZ, 91ZZA, 91ZZB or 91ZZC, a renter who has received the notice to vacate may apply to the tribunal challenging the validity of the notice to vacate.

(2) An application under subsection (1) must be made within 30 days after the notice to vacate is given.

91ZZS overlooks the fact that the Tribunal cannot hear a possession order application before the termination date in the notice to vacate. Also, despite 91ZZS the matter is also dealt with in 91ZZI(5) as follows:

91ZZI Notice to have no effect in certain circumstances

(5) A person is not entitled to apply to the Tribunal challenging the validity of a notice –

(a) in the case of a notice under section 91ZZD or 91ZZDA relating to a fixed term residential rental agreement for a fixed term of 6 months or more, after the end of the 28 days after the date on which the notice is given; or

(b) in the case of a notice under section 91ZZD or 91ZZDA relating to a fixed term of less than 6 months, after the end of 21 days after the date on which the notice is given.

91ZZI(5) overlooks the fact that 91ZZDA only relates to leases for a fixed term of more than 5 years and in addition the subsection seems unnecessary given what is in Subdivision 7.

Suggested Improvement

Delete 91ZZI(5)
Delete 91ZZR
Amend 91ZZS to the following:

91ZZS Renter may apply to Tribunal

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(1) A renter may apply to the Tribunal challenging the validity of a notice to vacate.
(2) An application under subsection (1) must be made within 30 days after the notice to vacate is given.

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Locks for external doors – rental minimum standards

The Act includes the following:

s.70 Locks

(1) A residential rental provider must ensure that all external doors able to be secured with a functioning deadlock at the rented premises, other than any screen door attached to an external door, are secured with a functioning deadlock.

(1A) It is reasonable for a residential rental provider not to ensure an external door at rented premises is secured with a functioning deadlock if-

(a) another act or law provides for a different type of lock or device for the premises; or

(b) the external door cannot be accessed because of another security barrier at the premises.

(2) A party to a residential rental agreement who changes any external door or window lock must as soon as practicable give a key to the lock to the other party.

…….

(5) In this section and sections 70A, 70B and 71 –
key of a lock means a device or information normally used to operate the lock;
lock means a device for securing a door or window or other parts of the premises;

s.3 deadlock means a deadlatch with at least one cylinder;

The Regulations include the following:

Schedule 4 – Rental minimum standards

1 Locks

(1) All external entry doors to the rented premises which are not able to be secured with a functioning deadlock, other than any screen door attached to an external door, must at least be fitted with locking device that –

(a) is operated by a key from the outside; and

(b) may be unlocked from the inside with or without a key.

(2) Subclause (1) does not apply –

(a) to a public lobby door that opens to common property (e.g. an entrance from outside to a lobby in an apartment building); or

(b) if the rented premises is a registered place and a request for a permit to alter the relevant features of the premises to comply

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with the standard has been refused in accordance with Part 5 of the **Heritage Act 2017**.

Consumer Affairs Victoria

On 10th May 2021 the Consumer Affairs Victoria site contained the following statement:

> "A rental provider must make sure that each external door of the rental property has a working deadlock (a deadlock is a deadlatch with at least one cylinder).
> A deadlock is not necessarily a lock that always needs a key to be opened from the inside. In fact, these types of locks are not recommended."

On 17th October 2022 the Consumer Affairs Victoria site contained the following statement:

> The property's external entry doors must have functioning deadlatches or be fitted with locks that can be unlocked with a key from the outside but can unlocked without one from the inside.
> The only cases where a deadlatch doesn't have to be fitted to a door are when:
>
> - a door cannot he secured with a deadlatch – for example, because of its position
> - it is a screen door in the same door frame as an external door
> - a different type of lock or device is required under another Act or law
> - the door is not directly accessible because there is another type of security barrier, such as a locked door to an apartment building or a locked gate
> - the property is registered under the Heritage Act 2017 and has an approved exemption from the standard.

Anomalies

The Act and Regulations require that a deadlock be fitted unless certain exceptions apply, but CAV in one iteration said that one of the forms of a deadlock commonly available is not recommended.
A deadlock is defined in the Act as being a deadlatch with at least one cylinder but there is not definition of a deadlatch or cylinder
A deadlock which can only be operated with a key including from the inside can be dangerous when urgent escape from the property is needed due to fire, family violence or some other reason.

A renter is permitted to change a lock but the Act does not specify that in doing so they must not cause the rental premises to not meet the rental minimum standards.

Scenario 1

The rental property has three external doors – standard front and back doors each fitted with a deadlock and an aluminium framed sliding glass door opening a terrace. The design of the aluminium framed sliding door does not permit the installation of a deadlock. Currently, it has a rod inserted in the door track so it can only be unlocked from the inside only. The premises is not affected by any heritage classification.

Access from outside via doorways is prevented and two of the three ways of exiting the premises allow for the premises to be locked on the way out.

The premises do not meet the rental minimum standards.

Scenario 2

The premises is an apartment with a door accessed from a foyer shared by three other apartments. Access to the foyer from outside the apartment building is via a security door requiring a security card or remote opening by any of the occupants of the apartments. The rental provider will not have a deadlock installed because the door "cannot be accessed because of another security barrier at the rented premises".

The Act and Regulations do not contain a definition of "another security barrier" to assist in resolving the dispute with the rental provider.

Scenario 3

The premises is a single storey standalone unit with the only external doors being a front door and a back door. Each of these doors is capable of being fitted with a deadlock.

The rear door opens to a courtyard surrounded by a 1.8 metre high fence and the only other access to the courtyard is via a garage roller door at the front and a door at the rear capable or being fitted with a dead lock.

The rental provider refuses to authorise the installation of deadlocks to any of the external doors (the front and back doors and the two doors to the garage). She argues that the front and back doors "cannot be accessed because of another security barrier at the premises". Namely the security screen door at the front and the fence and garage at the rear. Additionally, she argues that the rear door is not an "external entrance door" because the design of the premises is such this it was only designed for occupants to access the rear courtyard, and the doors to the garage are not external entrance doors because they only provide access to the garage.

It is not possible to say whether the rental provider is correct because, definitions of "another security barrier" and "external entry door" have not been provided in the Act or Regulations.

Scenario 4

The premises has front and back doors each fitted with a deadlock. There is also a door opening from the garage into the entrance hall, it is not fitted with a deadlock although it could be.

Is the door between the garage and the entrance hall an "external entry door" or instead a door for getting from one part of the premises to another? Is the door from the garage to the exterior is an "external entry door"?

Alternatively, if the door between the garage and the entrance hall is deemed to be an external entry door, is it excused from the deadlock requirement because it cannot be accessed due to another security barrier, namely the garage and its other door or doors.

There doesn't appear to be a clear answer for the rental provider in this circumstance.

How has this confusion and uncertainty arisen?

Possibly the current situation has arisen because the intent of the minimum standard has been lost by being too specific about types of locks.

Presumably the intent of the minimum standard is that the rental provider supply to the renter a means of preventing unwanted external access to the property via doorways.

Suggested Improvement

s.70 Locks

Amend s70(1) to the following:

(1) A residential rental provider must ensure that all external doors able to be secured with a locking device at the rented premises, other than any screen door in the same doorway as an external door, are fitted with a functioning locking device.

Delete s.70(1A)

Change s.70(2) to the following:

(2) A party to a residential rental agreement who changes any external door or window locking device must as soon as practicable give a key to the locking device to the other party.

Add s.70.(2A)

(2A) A renter who changes any external door or window locking device must not by doing so cause the rented premises to not meet rental minimum standards.

Change s.70(5) to the following:

In this section and sections 70A, 70B and 71-

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key of a locking device means a device or information used to operate a locking device;

locking device means a device which can be engaged from inside, or inside and outside, of the rented premises to prevent unwanted access to the premises via a doorway or window;

master key system means a set of locks in which-

(a) each lock or sub-set of locks has a unique key; and

(b) one single key or master key can operate all the locks in the set.

If a Rental Houses, Units and Apartments Act is created the definitions could be placed with other definitions in s.3.

Delete the definition of “deadlock” from s.3.

Change the minimum standard in Schedule 4 of the Regulations to the following:

1 Locks

(1) All external entry doors to fully enclosed parts of the rented premises must include a functioning locking device that:

(a) can be locked from inside, or inside and outside of the premises to prevent unwanted access via the doorway; and

(b) is able to be unlocked, or set so that it can be unlocked, from the inside the premises without the use of a key.

(2) Subclause (1) does not apply to –

(a) a screen door set in the same doorway as a door required to have a locking device; or

(b) a door from the outside to common property; or

(c) a door between two parts of common property; or

(d) the rented premises if it is a registered place and a request for a permit to alter the relevant features of the premises to comply with the standard has been refused in accordance with Part 5 of the **Heritage Act 2017**.

Change information on the CAV site to reflect the above.

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Locks for windows – rental minimum standards

The Act includes the following:

s.70 Locks

(1B) A residential rental provider must provide locks to secure all windows of the rented premises that are capable of having a lock.

……..

(5) In this section and sections 70A, 70B and 71-

……..

lock means a device for securing a door or window or other part of the premises;

The Regulations include the following:

Schedule 4 – Rental minimum standards

11 Windows

(1) All external windows in the rented premises that are capable of opening must be able to be set in a closed or open position.

(2) All external windows in the rented premises which are capable of opening must have a functioning latch to secure the windows against external entry.

Note

A window lock or bolt will meet the minimum standard referred to in subclause(2).

Consumer Affairs Victoria

On 18th October 2022 the CAV site included the following under the heading: Rental Properties – minimum standards".

Windows

All external windows in a rental property that can be opened must be lockable. They must also be able to be left open or closed. If the window can't have a lock fitted, it must have a functioning latch to keep it closed.

The confusion

The terminology used across the Act, Regulations and CAV site to described how a window must be secured is not consistent:

Act	- lock
Regulations	- functioning latch, window lock or bolt
CAV site	- lock, latch

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All of this misses the fact one of the most effective ways of preventing access to a premises with horizontally sliding windows is to place a rod in the track of the window. So as with locks for external doors the confusion arises from attempts to be too specific about what must be used to secure the window against external entry.
Also, the terminology used across the Act, Regulations and CAV site to describe the type of window to be secured is not consistent:

Act	- all windows
Regulations	- capable of opening
CAV	- that can be opened

s.60 requires the rental provider to maintain the rental premises in good repair, which presumably means that if a window has been designed to be opened it must be possible to open it. “Capable of opening” or “that can be opened” suggests it is acceptable for a window to be painted or nailed shut in contradiction of s.60.

Suggested Improvement

Amend s.70(1B) to the following:
s.70 Locks
Replace (1B) with the following:

(1B) A residential rental provider must provide a locking device to secure in a closed position all windows of the rented premises that have been designed to be opened.

Change s.70(5) to the following:

In this section and sections 70A, 70B and 71-

key of a locking device means a device or information used to operate a locking device;

locking device means a device which can be engaged from inside, or inside and outside, of the rented premises to prevent unwanted access to the premises via a doorway or window;

master key system means a set of locks in which-

(a) each lock or sub-set of locks has a unique key; and

(b) one single key or master key can operate all the locks in the set.

If a Rental Houses, Units and Apartments Act is created the definitions could be placed with other definitions in s,3.
Change the minimum standard in Schedule 4 to the Regulations to the following:

11 Windows

(1) All external windows in the rented premises that have been designed to be opened must be able to be set in a closed or open position.

(2) All external windows in the rented premises which have been designed to be opened must have a functioning locking device to secure the windows in a closed position against external entry. Delete the “Note” at the end of item 11 in Schedule of the regulations.

Consumer Affairs Victoria

Change the windows information on the CAV site under the heading: Rental Properties – minimum standards”.

Windows

All external windows in a rental property that have been designed to be opened must be able to be left in an open or closed position. These windows must also have a functioning locking device to prevent external access when the window is closed.

The mystery sub-section

s.330 Order of Tribunal
s.330(2) refers to an application made under 322(3).
Subsection 322(3) does not exist.

Suggested Improvement

Find subsection 322(3),
or
delete from s.330(2) the reference to 322(3).

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Safety related activities – gas

The following is a list of the sections of the Act and Regulations which specifically refer to gas safety related activities. They are in the order in which they appear in those documents.

Residential Tenancies Act 1997

S.27C Prescribed terms - professional cleaning, maintenance and related obligations

s.30D Information the residential rental provider must disclose before entering residential rental agreement.

S.63A Renter's safety related duties

S.68B Residential rental provider's duty to comply with safety related repairs and maintenance requirements

S.68B Residential rental provider must keep and produce records of gas and electrical safety checks

Gas Safety Act 1997

s.3 Definition of gas installation

s.72(1) Compliance with prescribed standards

Gas Safety (Gas Installation) Regulations 2018

R.12(4) Prescribed standard for Type A appliance servicing work

Residential Tenancies Regulations 2021

R.5 Gas installation has the same meaning as the **Gas Safety Act 1997**

R.5 Gas safety check means

R.13 Safety related activities

R.16 Information which residential rental provider must disclose to rental applicant

R.30 Requirements for gas and electrical safety check record keeping

Sch 1 SAFETY RELATED ACTIVITIES (the prescribed lease)

Sch 3 Safety related activities

The Detail

The spread of this subject across the Act and Regulations contributes to the compliance challenge but for the purpose of this paper the focus will be on a key element of unreasonableness.

The Act

The Act does not specify what safety related activities must be carried out, instead saying that the prescribed rental agreement may impose requirements regarding safety related activities on both the rental provider and the renter. The gas safety activities are specified in the prescribed rental agreement [Schedule 1 Residential Tenancies Regulations] as follows:

15. Gas safety activities

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

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

If a gas safety check has not been conducted within the last 2 years at the time the renter occupies the premises, the rental provider must arrange a gas safety check as soon as practicable

Sch 3 Safety related activities

2 Gas safety activities

(1) The safety-related activities in subclauses (2) and (3) only apply if the rented premises contain any appliances, fixtures or fittings which use or supply gas.

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

(b) If a gas safety check has not been conducted within the last 2 years at the time the renter occupies the premises, the residential rental provider must arrange and a gas safety check as soon as practicable.

Reg 5 gas safety check means

(a) the following gas installation checks-

(i) that LPG cylinders and associated gas components are installed correctly;

(ii) that appliance gas isolation valves are installed where required by AS/NZS 5601.1 “Gas installations”, as published or amended from time to time;

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(iii) that gas appliances and their components are accessible for servicing and adjustment;
(iv) that the gas installation is electrically safe;
(v) that the clearances from appliances to combustible surfaces are in accordance with installation instructions and AS/NZS5601.1 “Gas installations”, as published or amended from times to time;
(vi) that there is adequate ventilation for appliances to operate safely;
(vii) that gas appliances (including cookers) are adequately restrained from tipping over;
(viii) checking the condition of gas appliance flue systems including chimneys;
(ix) checking gas appliances for evidence of certification; and

(b) testing the installation for leakage; and

(c) for a standard gas installation servicing all Type A gas appliances that are part of that installation;

Note

See regulation 12(4) of the gas Safety (Gas Installation) Regulations 2018, which prescribes a standard under section 72 of the Gas Safety Act 1997 for servicing work carried out on a Type A gas appliance that is part of a standard gas installation. Section 72 of the Gas Safety Act 1997 requires that a person carrying out gasfitting work ensure that the work complies with the standards under that act in relation to that work.

Endnotes

Title of applied, adopted or incorporated document

Regulation 5 definition of ***gas safety check***

The whole of Australian/New Zealand Standard AS/NZS 5601.1, “Gas Installations”, as published by Standards Australian and Standards New Zealand on 16 September 2013.
Appendix F of Australia Standard AS4575 “Gas appliances–Servicing of Type A appliances“, as published by Standards Australia on 9 August 2019.

Gas Safety Act 1997

Part 1 – Preliminary

1 Purpose

The main purpose or tis Act is to make provision for the safe conveyance, sale, supply measurement, control and use of gas and to generally regulate gas safety.

3 Definitions

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gas installation means, in respect of the use or intended use of gas, a combination of -

(a) any pipe or system of pipes for or incidental to the conveyance of gas and components or fittings associated with the pipe or pipes which are downstream or the gas supply point; and

(b) any one or more of the following –

(i) any liquefied petroleum gas storage vessels with an aggregate capacity not exceeding 500 litres

(ii) any appliance and associated components of fittings which are downstream of the gas supply point;

(iii) any meter which is downstream of the gas supply point;

(iv) any means of ventilation or system for the removal of combustion products which is downstream of the gas supply point;

The problems

The key problem is in the standard which inspectors are required to apply. It is a standard "as published or amended from time to time". In other words, it is a standard applicable to an installation being carried out at the time of the inspection. This standard may differ from the standard applicable when the item being inspected was installed and there is not requirement to change old installations to be redone in the way now required of a new installation.

Owner occupiers are not required to change old installations to be the same as a new installation each time there is a change to installation standards yet rental providers do have such a requirement imposed on them via the Residential Tenancies Act.

For example:

One of the surprises hidden in the complexity is Reg 5(a)(v):

- "that the clearances from appliances to combustible surfaces are in accordance with installation instructions and AS/NZS5601.1 "Gas installations", as published or amended from time to time;"
- This means the assessment is against the installation standards that exist at the time of the inspection which may be different from those existing at the time of the installation. At the time of the installation a rangehood may be compliant at 600mm above the cooktop, but installation standard may change to 650mm for new installations. In the case of a residential rental property a rectification would be required but not in the case of an owner-occupied property.

Other problems include:

- The complexity which is obvious to anybody who tries to find an answer in the Act and Regulations.
- The processes only allow for the renter to become aware that rectification has not been completed when provided with a prescribed disclosure prior to entering into a new agreement. Therefore, a long-term continuing renter may never discover the non-compliance.
- If the need for rectification is so unimportant that the information can be withheld from the renter until the current renter or a new renter is about to enter into a new agreement, or the renter makes a written request, then perhaps the inspection standard which generated the rectification requirement is the wrong standard. Alternatively, given that it is a safety related item the requirement should be for immediate notification so that the renter can make an informed decision about whether to stay in the property, or if they do stay, so that they can monitor that the rectification has been done.
- The penalty appears to be for not disclosing the non-compliance rather than for the non-compliance.
- Many agents fear that a rental provider's refusal to have the inspections done will expose the agent to a liability. The Act does not deal with this explicitly.

Suggested Improvement

Adopt or if necessary, create a standard which focuses on whether the installation was done in accordance with the standard applicable at the time, whether any upgrades prescribed for all residential properties (rented and owner occupied) have been carried out and whether there has been any deterioration jeopardising the safety of occupants of the property.
Replace the definition of gas safety check contained in Reg 5 to reflect the new standard adopted or created as suggested above.
Change Reg. 13 to refer to Schedule 1 rather than Schedule 3.
Delete Schedule 3 as its content is contained in Schedule 1.
Require the rental provider to supply a copy of the gas safety inspection report to the renter immediately if there is a need for rectification and otherwise within seven days of receiving it.
Make explicit in the Act penalties on the rental provider for failing to carry out safety related inspections and for failing to carry out the identified rectification.
Add to the Act a section worded along the following lines:

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Agent indemnity

In any instance where an agent for the rental provider informs the rental provider of a compliance requirement to be met by the rental provider, the agent cannot be held liable for the non-compliance or any consequences arising unless the rental provider has supplied the agent with adequate instructions and funds to achieve the compliance.

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Safety related activities – electrical

The following is a list of the sections of the Act and Regulations which specifically refer to electrical safety related activities. They are in the order in which they appear in those documents.

Residential Tenancies Act 1997

S.27C Prescribed terms - professional cleaning, maintenance and related obligations

s.30D Information the residential rental provider must disclose before entering residential rental agreement.

S.63A Renter's safety-related duties

S.68B Residential rental provider's duty to comply with safety related repairs and maintenance requirements

S.68B Residential rental provider must keep and produce records of gas and electrical safety checks

Residential Tenancies Regulations 2021

Reg 5	Electrical safety check means
Reg 13	Safety related activities
Reg 16	Information which residential rental provider must disclose to rental applicant
Reg 30	Requirements for gas and electrical safety check record keeping
Sch 1	SAFETY RELATED ACTIVITIES (the prescribed lease)
Sch 3	Safety related activities

The Detail

The spread of this subject across the Act and Regulations contributes to the compliance challenge but the purpose of this paper the focus will be on a key element of unreasonableness.

The Act

The Act does not specify what safety related activities must be carried out, instead saying that the prescribed rental agreement may impose requirements regarding safety related activities on both the rental provider and the renter. The electrical safety activities are specified in the prescribed rental agreement [Schedule 1 Residential Tenancies Regulations] as follows:

14. Electrical safety checks

(a) The rental provider must ensure an electrical safety check of all electrical installations, appliances and fittings provided by a rental provider in the rented premises is conducted every 2

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years by a licensed or registered electrician and must provide the renter with the date of the most recent safety check, in writing, on request of the renter.

(b) If an electrical safety check of the rented premises has not been conducted within the last 2 years at the time the renter occupies the premises, the rental provider must arrange an electrical safety check as soon as practicable

Sch 3 Safety related activities

1 Electrical safety activities

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

If an electrical safety check of the premises has not been conducted within the last 2 years at the time the renter occupies the premises, the residential rental provider must arrange an electrical safety check as soon as practicable.

Reg 5 electrical safety check means a check of all electrical installations, fixtures and fittings carried out in accordance with section 4 of AS/NZS 3019 "Electrical installations – Periodic verification", as published or amended from time to time;

Endnotes

Title of applied, adopted or incorporated document

Regulation 5 definition of ***Electrical safety check***

Section 4 of Australian/New Zealand Standard AS/NZS 3019, "Electrical installations - periodic verification" as published by Standards Australian and Standards New Zealand on 5 November 2007.

The problems

The key problem is in the standard which inspectors are required to apply, the standard is as "published or amended from time to time" [see Reg 5 definition of electrical safety check]. This standard may differ from the standard applicable when the item being inspected was installed and there is no requirement to change old installations to be redone in the way now required of a new installation. Owner occupiers are not required to change old installations to be the same as a new installation each time there is a change to installation standards yet rental providers do have such a requirement imposed on them via the Residential Tenancies Act.

Schedule 3 requires an electrical safety check of all electrical installations, appliances and fittings provided by the residential in the rented premises.

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However, the definition of electrical safety check in Reg 5 refers to electrical installations, fixtures and fittings and omits appliances. Therefore, the inspection standard applicable to appliances is unknown.
There is no requirement on renters to have the electrical safety of their appliances checked every two years. So, a washing machine supplied by a rental provider must be checked but one supplied by the renter does not have to be checked. The Grenfell Tower fire in London was caused by an electrical fault in a refrigerator, an item usually supplied by the renter.
Other problems include:

- The complexity which is obvious to anybody who tries to find and answer in the Act and Regulations.
- The processes only allow for the renter to become aware that rectification has not been completed when provided with a prescribed disclosure prior entering into a new agreement. Therefore, a long-term continuing renter may never discover the non-compliance.
- If the need for rectification is so unimportant that the information can be withheld from the renter until the current renter or a new renter is about to enter into a new agreement, or the renter makes a written request, then perhaps the inspection standard which generated the rectification requirement is the wrong standard. Alternatively, given that it is a safety related item the requirement should be for immediate notification so that the renter can make an informed decision about whether to stay in the property, or if they do stay, so that they can monitor that the rectification has been done.
- The penalty appears to be for not disclosing the non-compliance rather than for the non-compliance.
- Many agents fear that a rental provider's refusal to have the inspections done will expose the agent to a liability. The Act does not deal with this explicitly.

Suggested Improvement

Adopt or if necessary, create a standard which focuses on whether the installation was done in accordance with the standard applicable at the time, whether any upgrades prescribed for all residential properties (rented and owner occupied) have been carried out and whether there has been any deterioration jeopardising the safety of occupants of the property.

Decide whether appliances are to be checked and if so impose the same inspection requirements in respect of the renter's appliances as is imposed on rental providers in respect of the appliances they supply.

Replace the definition of electrical safety check contained in Reg 5 to reflect the new standard adopted or created as suggested above.

Change Reg. 13 to refer to Schedule 1 rather than Schedule 3.

Delete Schedule 3 as its content is contained in Schedule 1.

Require the rental provider to supply a copy of the electrical safety inspection report to the renter immediately if there is a need for rectification and otherwise within seven days of receiving it.

Make explicit in the Act penalties on the rental provider for failing to carry out safety related inspections and for failing to carry out the identified rectification.

If renters are required to have their electrical appliances checked, they must be required to supply a copy of the electrical safety inspection report to the rental provider immediately if there is a need for rectification and otherwise within seven days of receiving it.

Make explicit in the Act penalties on the renter for failing to carry out safety related inspections and for failing to carry out the identified rectification.

Add to the Act a section worded along the following lines:

Agent indemnity
In any instance where an agent for the rental provider informs the rental provider of a compliance requirement to be met by the rental provider, the agent cannot be held liable for the non-compliance or any consequences arising unless the rental provider has supplied the agent with adequate instructions and funds to achieve the compliance.

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Frivilous bond claims compelling VCAT applications

S.411 Claims for rental bonds

(3) A claim must not be made before the termination of a residential rental agreement unless –

(a) it is made jointly by or on behalf of the residential provider and all of the renters; or

(b) it is made by or on behalf of the residential rental provider and directs the bond to be paid to all of the renters; or

(c) it is made by or on behalf or all of the renters and directs that the bond be paid to the residential rental provider.

S411A Notice or claim to be given to other parties

(2) The Authority must give written notice of a claim referred to in subsection (1) to all the other parties to the residential rental agreement known to the Authority.

(3) The notice given by the Authority –

(a) may be addressed to one or more of the parties to the residential rental agreement; and

(b) must be given to the Director of Housing if the whole or part of the bond was paid by the Director of Housing; and

(c) must state that the Authority will pay the claim unless within 14 days after receiving the notice under subsection (2) the party to the residential rental agreement gives written notice to the Authority that the claim is subject to an application to the Tribunal.

411AC Repayment of bond where no dispute

The Authority must repay the amount of bond if –

(d) one or more of the following apply –

(i) the claim is made by the renter or the agent of the renter;

(ii) the claim is for payment to the party who made the claim or on whose behalf the claim was made;

(iii) no party to the residential rental agreement has notified the Authority of an application within 14 days after notice is given under section 411A(2).

The problems

The authority “may” address to one or more of the parties to the rental agreement a notice that a bond claim has been made, yet the only way of

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stopping the Authority paying the bond to the applicant is if a party to the rental agreement notifies the Authority "of an application within 14 days", presumably this means an application to the Tribunal. A different standard applies if the bond or part of it has been paid by the Director of Housing, it "must" be given a notice. There is a contradiction within s.411A, on one hand it says in subsection (2) the Authority must give notice of an application to all the other parties to the rental agreement but on the other hand in subsection (3) it says the notice "may be addressed to one or more parties to the residential rental agreement".
If a renter makes an application for the bond at any time during the life of the tenancy the only way the pay out of the bond can be stopped is by making an application to VCAT, it is not sufficient for the Authority to reject the application on the basis that the agent for the rental provider advises that the tenancy has not ended. This seems to be an unnecessary waste of VCAT time, the agents time and the rental providers money in having to fund representation at VCAT.

Suggested Improvement

In section 411A change subsection (3) to the following:

S411A Notice of claim to be given to other parties

(3) The notice by the Authority –

(a) must be addressed to all other parties to the residential rental agreement; and

(b) must be given to the Director of Housing if the whole or part of the bond was paid by the Director of Housing; and

(c) must state that the Authority will pay the claim unless within 14 days after receiving the notice under subsection (2) the party to the residential rental agreement gives written notice to the Authority that the claim is subject to an application to the Tribunal or that the claim has been made before the termination of the residential rental agreement and does not comply with s.411(3).

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Premises to be occupied by rental provider or provider's family

Residential Tenancies Act 1997

S.91ZB After receiving notice the renter may give a 14-day notice
S.91ZZA Premises to be occupied by residential rental provider or provider's family
S.91ZZH VCAT may approve reletting
S.91ZZI(1)(b) Termination date cannot be before the end of a fixed term
S.91ZZI(2) Notice of no effect if it would constitute discrimination
S.91ZZO Form of notice to vacate.
S91ZZS(1) Renter may challenge notice at VCAT
S.322(1) Application for possession order
S.326(1) Time of application for possession order
S.329 Application for possession order cannot be heard before termination date
S330(f) VCAT must consider what is reasonable and proportionate
S.330A What is reasonable and proportionate
S.486A Director may approve documentary evidence

Government Gazette and CAV website

Documentary evidence approved from time to time by the Director

The Detail

S.91ZZA

- if immediately after the termination date the premises are to be occupied by:
  - the rental provider; or
  - if the rental provider is an individual:
    - by the rental provider's partner, child, parent, or partner's parent; or
    - another person who normally lives with the rental provider and is wholly or substantially dependent on them.
- termination not less than 60 days after the notice is given.

Note:
Documentary evidence supporting the reason must accompany the notice (see section 91ZZO)
The documentary evidence which is specified by the Director must include a witnessed, statutory declaration signed by the rental provider, stating either:

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- they intend to reside in the rented premises, or
- the name of the person who will occupy the rented premises, their relationship to rental provider, and declaring whether the person is a dependant, and
- that the rental provider understands that they must not re-let the premises to any person (other than the person named to be moving into the rented premises in the statutory declaration) for use primarily as a residence before the end of 6 months after the date on which notice was given, unless approved by VCAT.

The premises cannot be relet as a residence within 6 months after the notice is given; unless:

- they are to be occupied by another of the rental provider's family under this section, or
- VCAT determines they may be let. (see section 91ZZH)

The termination date cannot be before the end of a fixed term. [see section 91ZZI(1)(b)]
The notice is of no effect if it would constitute discrimination under the Equal Employment Opportunity Act 2010. [see section 91ZZI(2)]
The renter may apply to VCAT to challenge the notice. [see section 91ZZS(1)]

After receiving the notice to vacate the renter may give a 14 day notice of intention to vacate even if their intended vacate date is before the end of a fixed term if there is one. [see section 91ZB]
An application for a possession order may be made at any time after the notice to vacate is deemed to have been given (ie allow for postage time) but not more than 30 days after the termination date in the notice. [see sections 322(1) and 326(1)]

If the renter does not vacate and it is necessary to proceed with a possession application VCAT must consider whether it is reasonable and proportion to grant the possession order. [see sections 330 and 330A]

The problems
Some of the problems are:

- The required documentary evidence to be included with a notice to vacate is determined by the Director and could change at any time with the only evidence to the change being in the Government Gazette and the CAV website if it is kept up to date. To be sure the notice is compliant, it would be necessary to check these sources on each occasion a notice is given.

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- Currently the documentary evidence required includes a statutory declaration about what the rental provider understands as the limitation on reletting the property. This is overly prescriptive, a slight failure to duplicate the wording will render a subsequent application for a possession order unsuccessful. The right to give a notice to vacate available to rental providers under s.91ZZA does not state that exercise of the right requires the rental provider to demonstrate an understanding of some other part of the Act, yet the Director has seen fit to impose this requirement.
- In deciding what is "reasonable and proportionate" VCAT "must have regard to" among other things "any other matter the Tribunal considers relevant". [section 330A(j)] This adds a massive about of uncertainty to an attempt to the exercise of a right gain possession of a property under section 91ZZA "Premises to be occupied by rental provider or provider's family".

Suggested Improvement

Replace s.91ZZO(e) and the reference to s486A with the following:

(e) it specifies they intend to reside in the rented premises, or the name of the person who will occupy the rented premises, their relationship to rental provider, and declaring whether the person is a dependant,

Regarding what VCAT must consider:

- at a minimum remove s.330A(j) so that VCAT is no longer required to have regard to any other matter it considers relevant.
- ideally also remove s.330(f) and s.330A so that VCAT is no longer required to consider what is reasonable and proportionate.

Change the notice to vacate form to reflect the above.

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End of fixed term residential rental agreement of not more than 5 years

Residential Tenancies Act 1997

S.30 Cannot refuse to let premises because renter has a child
S.30A Cannot unlawfully discriminate against renter
S.91ZB Renter may give a 14 day notice of intention to vacate
S.91ZZD End of fixed term residential rental agreement of not more than 5 years
S.91ZZI(1)(b) The termination date cannot be before the end of a fixed term
91ZZI(2) Notice of no effect if it would constitute discrimination
91ZZI(4)(a) Notice of no effect if in response to the renter exercising or proposing to exercise a right under the Act
91ZZI(4)(b) Notice of no effect if in response renter making a report under section 72AA
91ZZI(5) Renter can challenge a notice to vacate provided they do so within the prescribed time after receiving the notice
S.91ZZO Form of notice to vacate.
S91ZZS(1) Renter does not have the right to challenge notice at VCAT
S.322(1) Application for possession order
S.326(1) Time of application for possession order
S.329 Application for possession order cannot be heard before termination date
S330(f) VCAT must consider what is reasonable and proportionate
S.330A What is reasonable and proportionate

The Detail

Section 91ZZD

- if it is the initial fixed term a notice may be given before the end of the term.
- the termination date may be on or after the end of the fixed term.
- the notice must be given not less than 90 days before the end of the initial fixed term if the fixed term is for 6 months or more; or
- the notice must be given not less than 60 days before the end of the initial fixed term if the fixed term is for less than 6 months.

Note:
If the fixed term agreement is the second or subsequent fixed term agreement with this renter, this section cannot be used.

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The termination date cannot be before the end of a fixed term. [see section 91ZZI(1)(b)]
The notice is of no effect if it would constitute discrimination under the Equal Employment Opportunity Act 2010. [see section 91ZZI(2)]
The notice is of on effect if it was in response to the renter:

- exercising or proposing to exercise a right under the Act; or
- making a report under section 72AA, i.e. a report of damage or breakdown of facilities. [see section 91ZZI(4)]

After receiving the notice to vacate the renter may give a 14 day notice of intention to vacate even if their intended vacate date is before the end of a fixed term if there is one. [see section 91ZB]
91ZZI(5) indicates the renter can challenge a notice to vacate provided they do so within the prescribed time after receiving this notice to vacate. This is in conflict with 91ZZS which does not give the renter a right to challenge the notice.
S.91ZZO Form of notice to vacate.
The prescribed form for giving a notice to vacate states that in addition to including the "relevant reason, section number and minimum notice period required under the Act" the rental provider "must also explain why the notice has been given" and that "it is not enough to quote just from the Act or from the reasons on the information sheet; this must be accompanied by specific details". There is no requirement for the inclusion of prescribed documentary evidence.

The requirement for additional explanation is problematic and strange given that the reason for the notice seems to be contained in the heading of section 91ZZD. The justification may be in what VCAT is required to consider in deciding whether to grant a possession order. It must firstly determine if the notice to vacate is valid and then whether it is reasonable and proportionate to make a possession order. Section 330A deals with what is reasonable and proportionate and seems to assume notices to vacate are in response to a breach, however it also says VCAT must have regards to "any other matter the Tribunal considers relevant". [330A(j)]

An application for a possession order may be made at any time after the notice to vacate is deemed to have been given (ie allow for postage time) but not more than 30 days after the termination date in the notice. [see sections 322(1) and 326(1)]

The problems

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Some of the problems are:

- Section 91ZZD allows for a notice to vacate at the end of the first fixed term. This seems fairly simple but if the tenant does not vacate and an application is made for a possession order VCAT is required to consider what is reasonable and proportionate, including any other matter the Tribunal considers relevant". Presumably for this reason the prescribed notice to vacate requires the inclusion of a reason apart from the reason that the first fixed term has come to an end. In other words, it is demanding a reason other than the reason.
- 91ZZI(5) contradicts 91ZZS, one indicates the renter can challenge a notice to vacate and the other indicates they cannot.

Suggested Improvement

Regarding what VCAT must consider:

- at a minimum remove s.330A(j) so that VCAT is no longer required to have regard to any other matter it considers relevant.
- ideally also remove s.330(f) and s.330A so that VCAT is no longer required to consider what is reasonable and proportionate.

Change s.91ZZS to include a notice under 91ZZD as one of the circumstances where a renter can challenge a notice to vacate.

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91ZW Residential rental provider's principal place of residence (fixed term residential rental agreement)

This section allows the rental provider, provided several criterial are fulfilled, to give as little as 14 days notice to the renter to vacate the premises. In other similar instances where the rental provider is giving the renter a notice to vacate on or after the end of a fixed term 60 or 90 days notice is required. For example:

- Premises to be occupied by residential rental provider or provider's family (60 days)
- End of fixed term rental agreement of not more than 5 years. (60 days if the term was less than 6 months or 90 days if the term was six months or more)

Given the other options for terminating a rental agreement there is no apparent justification for this section and the short notice period.

The Problems

This is an unnecessary complication in an excessively lengthy and complicated Act.
The criteria which must be satisfied mean that it is probably rarely used.
There is no apparent justification for the short notice period.
Some rental providers choose to interpret the provision in a way which suits them, by just focusing on "principal place of residence" and "14 days notice" while overlooking the other criteria which must be satisfied.
The prescribed lease does not invite inclusion of whether the premises was the rental providers principal place of residence. It is not prescribed as information to be disclosed under s.30D and Reg 16.
The possible consequence of a statement on the rental agreement that immediately prior to the tenancy the premises was the rental providers principal place of residence is unlikely to be known to the renter entering into the agreement.

Suggested Improvement

Delete s.91ZW
Include a savings provision for agreements already entered into.

Director's Guidelines

s.486 Functions of Director

The functions of the Director under this Act are-

…

(fa) to issue guidelines;

…

s.452 General application to the Tribunal

…

(9) Without limiting the matters which the Tribunal may consider, the Tribunal must consider the Director's guidelines in determining an application under this section.

S.211BDirector's guidelines to be considered by Tribunal

The Tribunal, must consider the Director's guidelines when hearing an application under section 209, 209AAB, 210, 210AA, 210A or 210B.

The Problems

Directors Guidelines are an unnecessary added complication to an already complicated Act:

- Section 211 specifies matters which the Tribunal **may** take into account when hearing and application under section 209, 209AAB, 210AA, 210, 210A or 210B.
- Section 211A specifies **further matters to be considered** by the Tribunal but does not specify the same set of sections as specified in s.211. The content of the section indicates it relates to the calculation of compensation.
- Section 211B specifies that Director's guidelines **must** be considered when hearing an application under section 209, 209 AAB, 210, 210AA, 210A or 210B.

It appears the Act only requires the Tribunal to consider the guidelines, so in the settlement of any matters outside of the Tribunal it seems there is no need to consider the guidelines. Most matters are settled without the assistance of the Tribunal.

The ability to write guidelines which the Tribunal must consider gives the Director the ability to influence the Tribunal to interpret legislation in the way preferred by the Director. It seems very strange that a bureaucrat is given the power to influence the judiciary in this way.

There is no limitation on the subjects about which the Director may issue guidelines, only a specification of the types of hearings in which the Tribunal must consider them.

The guidelines may change or be added to at any time.

The guidelines are difficult to locate on the CAV site.

The Act only specifies the that guidelines must be considered by the Tribunal, it does not require the renter or the rental provider to adhere them.

The Magistrates Court is required to determine matters where one of the parties to the rental agreement resides in another state of Australia, it is not a Tribunal, so is it excused from having to consider the guidelines?

VCAT's annotated version of the Act contains commentary on its interpretation. Will this now be adapted to include an interpretation of the Director's interpretation?

Section 211B, despite the heading "Director's guidelines to be considered by Tribunal" and stating they must be considered when hearing applications under a specified list of sections fails to mention they must also be considered when hearing an application under s.452.

As just mentioned, s.211B, has the heading "Director's guidelines to be considered by Tribunal" and specifies and that they must be considered in hearings under a specified list of sections of the Act, however further reading reveals s.330(3) which contains another list of instances where "the Tribunal must have regard to any guidelines issued by the Director".

Section 73(3) also requires the Tribunal to consider the Director's guidelines. Section 211B lists the same sections as s.211 but in a different order and a different to the way they appear in the Act.

Suggested Improvement

Delete sections 486, 452(9), 330(3), 211B, 73(3) and any other similar section or subsection to remove the Director's authorisation to issue guidelines and the requirement that the Tribunal must consider them in the case of some types of hearings.

Director's Guideline – Cleanliness

As stated under Director's Guidelines on previous pages the ideal improvement would be that there no provisions allowing the Director to issue guidelines and requiring the Tribunal to consider them when hearing certain matters. However, deficiencies in the content cannot go without mention.

The Problems

The guidelines when referring to case law mentions that VCAT has referred to the following examples as a demonstration of a lack of cleanliness:

- Visible accumulation of unregistered vehicles on the premises.
- Presence of rats or mice in the property.
- Storage of salvaged material and goods.

Despite this the Director's Guidelines do not include these items in a list of examples of cleanliness that would be expected in premises which are reasonably clean. Does this mean the Director disagrees with the Tribunal's interpretation?

This guideline overlooks the fact that the guideline on maintenance states that the management of pest infestations is a rental provider responsibility yet states the presence of rats and mice in the property as evidence of a lack of cleanliness. If the rats or mice are there at the beginning of a tenancy it may be a rental provider responsibility but if they are there during the tenancy, they may be evidence or the renter's lack of cleanliness.

In the list of what is expected of a reasonably clean premises the Director states:

> "Heating ducts and exhaust fans to be clean and free of dust. Note, cleaning at heights may often be considered maintenance which is the responsibility of the RRP. Renters are not expected to access ceiling fans where access may be dangerous."

In support of this statement the Director cites two VCAT decisions. VCAT decisions might be persuasive but as stated by the Director they not binding. Citing them in the Director's inappropriately elevates their status.

The Act requires the renter to keep the premises reasonably clean and the rental provider to present the property in a reasonably clean condition, it does not excuse either of them from this if they cannot personally perform the cleaning task. It requires the renter to keep the premises reasonably clean, it does not specify how this standard of reasonably cleanliness is to be achieved. Both the rental provider and the renter are free to engage the

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services of somebody else to carry out the cleaning task if they cannot or don't want to do it themselves.

Suggested Improvement

Delete sections 486, 452(9), 330(3), 211B, 73(3) and any other similar section or subsection to remove the Director's authorisation to issue guidelines and the requirement that the Tribunal must consider them in the case of some types of hearings.

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Director's Guideline – Damage and fair wear and tear

As stated under Director's Guidelines on previous pages the ideal improvement would be that there are no provisions allowing the Director to issue guidelines and requiring the Tribunal to consider them when hearing certain matters. However, deficiencies in the content cannot go without mention.

The Problems

In this instance the Director's Guidelines make no useful contribution to Tribunal deliberations as the annotated version of the Act already contains extensive commentary about the assessment of damage under s.210.

Suggested Improvement

Delete sections 486, 452(9), 330(3), 211B, 73(3) and any other similar section or subsection to remove the Director's authorisation to issue guidelines and the requirement that the Tribunal must consider them in the case of some types of hearings.

Director's Guideline – Endanger

As stated under Director's Guidelines on previous pages the ideal improvement would be that there no provisions allowing the Director to issue guidelines and requiring the Tribunal to consider them when hearing certain matters. However, deficiencies in the content cannot go without mention.

The Problems

In this instance the Director's Guidelines make no useful contribution to Tribunal deliberations as the annotated version of the Act already contains extensive commentary one the subject.

Suggested Improvement

Delete sections 486, 452(9), 330(3), 211B, 73(3) and any other similar section or subsection to remove the Director's authorisation to issue guidelines and the requirement that the Tribunal must consider them in the case of some types of hearings.

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Director's guideline – Maintenance

As stated under Director's Guidelines on previous pages the ideal improvement would be that there no provisions allowing the Director to issue guidelines and requiring the Tribunal to consider them when hearing certain matters. However, deficiencies in the content cannot go without mention.

The Problems

This Guideline states that the management of pest infestations is the responsibility of the rental provider. This contrasts with the Cleanliness Guideline which cites the Tribunal's interpretation that the presence of rats or mice in the property can be a sign of a lack of cleanliness. Clearly if the presence of rats or mice comes about during the tenancy it may be the result of a lack of cleanliness. Keeping the premises reasonably clean during the tenancy is the responsibility of the renter so always requiring the rental provider to manage pest infestations is contrary to the Act.

Other pest infestations occurring during the tenancy which would be attributable to renter could be:

Cockroaches – due to a lack of cleanliness
Fleas – due to pet ownership
Flies – due to a lack of cleanliness

Some pest infestations are simply an act of nature and are not attributable to either a deficiency in the premises or the way in which the renter uses the premises, for example a snake in the garden or a native beehive. Wind is an act of nature so if it blows the renters clothes off the clothesline it is simply a part of daily living and there would be no logic in requiring the rental provider to rewash the clothes or replace missing items.

Some pest infestations may not be immediately obvious, for example termites.

Some pest infestations may damage the premises, for example termites, borers, wet rot fungus.

These complexities are not dealt with in the Guideline, instead it is suggested all pest infestation management is the responsibility of the rental provider.

The Guideline contradicts itself, in 5.2.1 its states the renter has a duty to keep and leaved the premises in a reasonably clean condition but 5.1.3 it exempts the renter from cleaning gutters and washing the outside of windows that are not easily accessible to the renter. The Act does not say the renter is only responsible for the cleaning they can personally do themselves, just is it doesn't require the rental provider to only do the maintenance they can personally do themselves. The Guideline ignores the fact that both the renter and the rental provider can engage the services of somebody else to assist them to fulfill their duties under the Act.

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Another contradiction is that 5.2.3 suggests the renter should replace light globes that do not require a new light fitting but in the Cleanliness Guideline the renter is exempted (without a basis in the Act) from high cleaning.

Suggested Improvement

Delete sections 486, 452(9), 330(3), 211B, 73(3) and any other similar section or subsection to remove the Director's authorisation to issue guidelines and the requirement that the Tribunal must consider them in the case of some types of hearings.

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Director's guideline – Urgent Repairs

As stated under Director's Guidelines on previous pages the ideal improvement would be that there no provisions allowing the Director to issue guidelines and requiring the Tribunal to consider them when hearing certain matters. However, deficiencies in the content cannot go without mention.

The Problems

This Guideline includes a lot of commentary about the interpretation of "immediately" and acknowledges that there is no significant case law on the subject. The problem is that the Act does not acknowledge the complexity surrounding attending to urgent repairs, instead it makes the impractical demand they be undertaken immediately.

Suggested Improvement

Rather than try to address this via Director's guidelines which are only required be considered by the Tribunal the problem could be addressed by relatively simple changes to the Act along the following lines:

Change s72(1) to the following:

(1) A renter may arrange for urgent repairs to be carried out to the rented premises if-

(a) the renter has taken reasonable steps to arrange for the residential rental provider or that person's agent to promptly carry out the repairs, having regard to personal safety, the habitability of the premises, the risk of further damage to the premises, the time at which the request was made and the availability of appropriate repair services; and

(b) the renter is unable to get the residential rental provider or that person's agent to carry out the repairs.

Add the following subsections to section 68:

The residential rental provider must ensure that urgent repairs are carried out promptly, having regard to the renter's personal safety, the habitability of the premises, the risk of further damage to the premises, the time at which the repair request was made and the availability of appropriate repair services.

The residential rental provider must ensure that non-urgent repairs, having regard to the availability of appropriate repair services, are carried out within 14 days of being given a written notice requesting a repair by the renter.

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Also delete sections 486, 452(9), 330(3), 211B, 73(3) and any other similar section or subsection to remove the Director's authorisation to issue guidelines and the requirement that the Tribunal must consider them in the case of some types of hearings.

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Pest infestations defined as urgent repairs

Section 3 includes in the definition of urgent repairs a pest infestation that makes premises unsafe or insecure. Therefore, the rental provider is required to immediately eliminate the pest infestation once informed of it. If the renter has taken reasonable steps to have the rental provider eliminate the infestation and the rental provider has not done so the renter can have the work carried out and claim reimbursement from the rental provider up to the prescribed limit.

Attributing responsibility for dealing with pest infestation to the rental provider implies the rental provider has some control over whether the infestation occurs in the first place. The Director's guideline on maintenance states that the management of pest infestations is the responsibility of the rental provider. This contrasts with the Guideline on cleanliness which cites the Tribunal's interpretation that the presence of rats or mice in the property can be a sign of a lack of cleanliness.

Some pest infestations, including those that may affect safety are simply an act of nature and are not attributable to either a deficiency in the premises or the way in which the renter uses the premises, for example a snake in the garden, native beehive moving to the garden, mosquitoes when mosquito borne diseases are prevalent. A renter could step outside the boundary of the rented premises and be confronted with same type of pest and risk to their safety. It is unreasonable to impose on the rental provided a liability once such a pest enters the boundary of the rented premises.

It may also be the case that the pest infestation is due to the renter's action or inaction, for example leaving rubbish around the property providing a food source and habitat for pests some of which may pose risk to safety.

In the case of mould or damp the same section of the Act only attributes an urgent repair responsibility to the rental provider if it is caused by or related to the building structure, but the same type of liability limitation is not extended to pest infestation affecting safety or security.

Suggested Improvement

Change s.3(k)(i) to the following:

(i) a pest infestation caused by or related to an unreasonable deficiency in the rented premises, or …..

Summary

An urgent review is required to attract more homeowners, investors, and property managers to participate in the Victorian rental market. There has been a mass loss of property managers and rental providers across Victoria exacerbating the rental supply crisis.

The REIV urges government to initiate a review of the RTA and the Regulations. The Government must consult on the review of the changes to the Act and present a timeline to gather the sector's feedback and consider the impact it has had on the availability of rental properties in Victoria and on the management of tenancies and properties.

The REIV advocates for a better RTA, that creates a sustainable rental market while protecting renters' rights and the investment made by average Victorians.

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