Urgent repairs

Director's Guidelines under the *Residential Tenancies Act 1997*



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1. Purpose

Between 2015 and 2018, the Victorian Government conducted a review of the *Residential Tenancies Act 1997* (the Act), as part of its plan for Fairer, Safer Housing.

In September 2018, the Victorian Parliament passed the *Residential Tenancies Amendment Act 2018* (RTAA) to respond to the outcomes of the review. The RTAA provides for over 130 reforms to the Act to increase protections for renters, while ensuring residential rental providers (RRP) can still effectively manage their properties.

Of the 130 reforms, five reforms relate to the issuing of guidelines by the Director of Consumer Affairs Victoria (the Director) as follows:

- Guideline 1 – Maintenance
- Guideline 2 – Cleanliness
- Guideline 3 – Damage and fair wear and tear
- Guideline 4 – Urgent repairs
- Guideline 5 – Endanger.

The Director may issue guidelines under section 486 of the Act. The Victorian Civil and Administrative Tribunal (VCAT) must consider the guidelines when determining particular applications made under the Act.

The purpose of the guidelines is to outline the Director's position on compliance and non-compliance with the Act, ensuring greater consistency in VCAT decision making and dispute resolution.

The Act is not prescriptive and does not go into great detail about what the parties' obligations mean in practice. The guidelines summarise relevant case law that may be useful in interpreting the Act and providing practical guidance that parties to a tenancy agreement can rely on when determining how to comply with their duties, facilitating the resolution of unnecessary or protracted disputes.

VCAT must consider this guideline when determining an application by a renter, resident, or site tenant for an order requiring the RRP, rooming house operator, caravan park owner, caravan owner, site owner or specialist disability accommodation (SDA) provider to carry out specified urgent repairs. This guideline may also be considered by VCAT in determining other applications such as an application for compensation under section 209.

2. How to read these guidelines

The subject matter of the guidelines is interrelated and often overlaps - for example, maintenance issues may result in the need for urgent repairs. Accordingly, the guidelines should be read in conjunction with one another where appropriate.

This guideline applies to tenancies relating to rented premises, rooming houses, caravan parks, residential parks (a park where a Part 4A site is rented) and SDA enrolled dwellings.[1]

[1] SDA became a new tenure type regulated under the Act, with the insertion of Part 12A by the *Disability Service Safeguards Act 2018*. Although the Fairer, Safer Housing reforms did not provide for SDA, section 498P(3) (inserted by the *Disability (National Disability Insurance Scheme Transition) Amendment Act 2019*) provides that VCAT must have regard to guidelines issued by the Director CAV when determining an application for urgent repairs.

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- The term RRP has been used to include rooming house operators, caravan owners, caravan park owners, site owners and SDA providers for simplicity.
- The term *renter* has been used to include rooming house residents, caravan park residents, site tenants and SDA residents for simplicity.

3. Context

Under the Act, defects requiring urgent repair must be attended to 'immediately'. However, as it is not possible to resolve most repairs within moments of a RRP being notified of the issue, these guidelines have been developed to provide guidance on how the term 'immediately' is to be interpreted in the context of urgent repairs.

Consumer Affairs Victoria (CAV) research has found that half of the requests for urgent repairs are not dealt with promptly.[2] Whether a repair can be dealt with 'immediately' may depend on the type of repair required, whether it poses a safety risk (for example, a gas leak) and the time the fault occurs, for example, after business hours or on a weekend or public holiday. In some cases, a repair might involve multiple steps or may depend upon waiting for a suitably qualified person to undertake the work, and it may be appropriate for the RRP to organise a temporary fix. Both the renter and RRP may benefit from clear information on the expected timeframes for urgent repairs.

Reform 56 of the Fairer, Safer Housing (FSH) reforms provides that the Director will issue guidelines clarifying timeframes for responding to urgent repairs. VCAT must have regard to this guideline when determining urgent repairs disputes. This reform also applies to rooming houses, caravan parks and residential parks (a park where a Part 4A site is rented). Under section 498P(3) of the Act, VCAT must also have regard to this guideline in relation to urgent repairs for SDA enrolled dwellings.

4. The law

4.1 Legislation

Under section 68 of the Act, the RRP has a duty to maintain the premises in good repair. A failure to resolve a request for urgent repair under section 72 may be a breach of that duty.[3]

Section 72(1) of the Act provides that the renter may arrange for urgent repairs to be carried out where the renter has taken 'reasonable steps' to arrange for the RRP or their agent to 'immediately carry out the repairs' but these have been without success.

Section 3(1) of the Act outlines the definition of 'urgent repairs'. For residential rental premises, the premises must also meet the rental minimum standards prescribed by the *Residential Tenancies Regulations 2021* (the Regulations) at the point of occupation. If a renter moves into the rented premises, they can request an urgent repair to trigger compliance with the rental minimum standards.[4]

[2] Residential Tenancies Act Review: Options Discussion Paper 128

[3] Amendments to section 72 (and equivalent urgent repairs provisions for other tenure types) commence immediately upon commencement of the Residential Tenancies Amendment 2018 (RTAA) on 29 March 2021.

[4] The rental minimum standards will only apply to new fixed term agreements entered into on or after 29 March 2021, and fixed term agreements that roll over into periodic agreements on or after 29 March 2021. All other changes to the definition of urgent repairs will commence on commencement of the RTAA on 29 March 2021, regardless of when the agreement was entered into.

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If the renter arranges the repairs, the RRP must reimburse the lesser of the reasonable cost of the repairs or the amount prescribed in the Regulations, within 7 days of receiving written notice of the cost of the repairs.

Under Section 73 of the Act, the renter may apply to VCAT for an order requiring the RRP to carry out specified urgent repairs where:

- the renter cannot afford to cover the cost of the repairs, or
- the repairs cost more than the prescribed amount, or
- the RRP refuses to pay the cost the repairs carried out by the renter.

There is no explicit waiting period before an application can be made to VCAT. Once an application has been made, VCAT is required to hear the case in 2 business days.[5]

VCAT may order the RRP or their agent to carry out the urgent repairs. VCAT must consider these guidelines in determining an application made under section 73.

For other tenure types under the Act, the process is broadly similar however some nuances exist.

The same process for urgent repair also applies to residents of rooming houses and caravan parks under sections 129, 130, 188 and 189 of the Act.

In the case of SDA enrolled dwellings, under section 498P of the Act, an SDA resident or their chosen person may apply to VCAT for an order requiring the SDA provider to carry out urgent repairs if they have taken reasonable steps to arrange for the SDA provider to immediately carry out the repairs and the SDA provider did not carry out those repairs.

The Act also provides a resident of a caravan park[6] or site tenant of a Part 4A park[7] to carry out 'urgent site repairs', in a similar manner. Urgent site repairs are defined in section 3(1) of the Act.

A renter may apply to VCAT for compensation or a compliance order under sections 209 or 498ZQ of the Act for breach of duty to maintain the premises in good repair.

Alternatively, a renter (other than an SDA resident) may apply to VCAT under section 209AAB for compensation under section 212 of the Act where

- the renter has arranged for urgent repairs,
- the renter has given written notice to the RRP of the urgent repairs and the cost of repairs, and
- the RRP has not reimbursed the renter for the cost within 7 days after receiving written notice.

4.2 Case law

There is no significant case law which provides additional guidance on the interpretation of 'immediately' in the context of urgent repairs.[8]

[5] Sections 73(2), 130(2), 189(2), 189A(2), 206ZZAB and 498P(2).

[6] Section 188A and 189A.

[7] Section 206ZZAA and 206ZZABA.

[8] Encyclopaedic Australian Legal Dictionary

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5. Guidance on the interpretation of immediately

Although section 3(1) of the Act provides a comprehensive definition of urgent repairs, and the Act provides for a renter to apply to VCAT any time after informing the RRP of the need for urgent repairs, it is not likely that 'urgent repairs' can often be resolved within minutes of a renter informing a RRP of the need for repairs. There is often a gap between a renter's expectations of when an urgent repair should be carried out, and when a RRP is able to arrange for the repairs to be completed.

The interpretation of the term '*immediately*' and the expectations regarding an RRP's duty to undertake urgent repairs will be considered based on the factual circumstances and the following factors:

1. The urgency of the repair.
2. The complexity or significance of the repair.

The factual circumstances should be considered as a whole in determining whether the RRP is meeting their obligations.

Under section 68 of the Act, the RRP has a duty to maintain the premises in good repair and a failure to resolve a request for urgent repair under section 72 of the Act, may be considered in breach of that duty. The factors above should be considered when determining whether the RRP has met their obligations under their duty.

1. The urgency of the repair

All the items listed in the definition in section 3(1) of the Act are urgent repairs, however they are not all equally urgent. The following considerations will affect the urgency of the repairs:

- Whether failing to respond to the fault or damage leaves the property unsafe and/or uninhabitable.
- Whether the fault or damage poses a severe risk to health and/or safety of the renter or any occupier of neighbouring premises.
- Whether the fault or damage has caused serious damage (or has the potential to cause serious damage) to the renter's property and/or the rented premises.

All urgent repairs should be considered on a scale of urgency depending on how the factors above apply to the damage or fault.

If the situation is highly urgent, the repair should be completed within 24 hours of the renter notifying the RRP or the RRP's agent, or at the very least arrangements must be made to make the fault or damage safe.

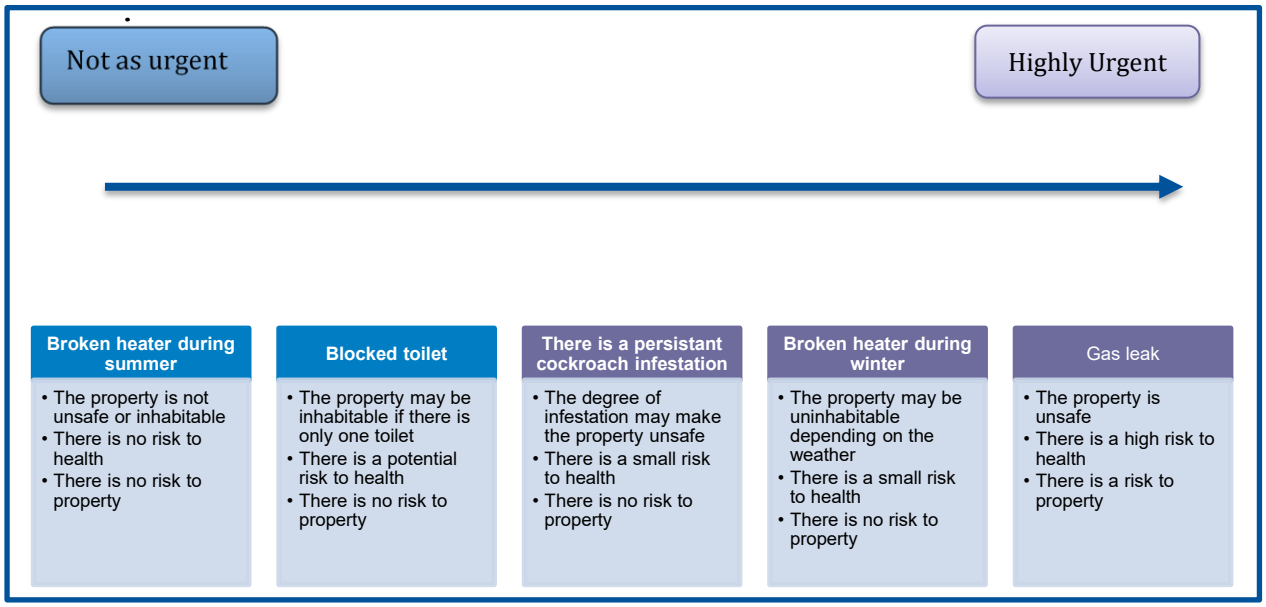
For example, a dangerous electrical fault in the premises would be considered a 'highly urgent repair' as it presents a severe risk to human health and safety. Therefore, the RRP would be expected to arrange for a suitably qualified person to fix the fault, or at least make the premises electrically safe, within 24 hours of being notified.

More latitude would be expected for a fault such as a blocked toilet, particularly if there are other toilets available in the premises. This is an example of an urgent repair which would be much lower on the scale of urgency. Although an urgent repair is required under the Act, as the premises are safe and habitable, more leeway would be afforded the RRP if they are unable to arrange repairs quickly.

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Figure 1 is a visual representation illustrating the spectrum of complexity and risk posed by typical urgent repairs. It is designed to assist in assessing the scale of urgency and determining an appropriate time for responding to an urgent repairs request.

Fig 1. *Spectrum of urgent repairs – from 'not as urgent' to 'highly urgent'*



Note, despite this guidance, if a renter determines that the situation is 'highly urgent' and the RRP is taking too long to make the situation safe, the renter may arrange for urgent repairs themselves in accordance with section 72(1) of the Act. An example of this situation includes where a renter contacts the RRP in the afternoon about a suspected gas leak. If the RRP responds stating that they will have a tradesperson attend the rented premises the next day, given the potential danger posed, the renter may arrange for a suitably qualified person to attend as soon as possible (i.e. later that day), rather than waiting for the next day.

The example above can be contrasted with the situation of the blocked toilet in a three-bathroom house where it would be suitable for the RRP to arrange for a next business day repair. A blocked toilet in a single bathroom house which cannot be used at all, though not dangerous, would again have greater urgency due to the impact on the habitability of the premises.

2. The complexity or significance of the repair

In some instances, such as a blocked toilet, the repair will often be simple. In others, there may be greater complexity to the repair and an immediate resolution may not be possible.

Examples of significant or complex repairs, which may not allow for immediate resolution include:

- A blocked toilet that is the result of tree roots growing in the pipes.
- Mould remediation.
- Investigation of a roof leak.
- A fence which is about to fall down.

It is also understood that RRPs are often dependent on other parties to carry out complex repairs and this may affect an RRP's ability to complete an urgent repair quickly. This will include the following:

- if authorisation is required from an owners corporation, or
- if the repairs involve assessment by an insurer (e.g. flood and storm damage), or
- if the property is geographically isolated, and it is difficult to have a suitably qualified person attend the rented premises, or
- if the RRP has been unable to access the premises with the agreement of the renter.

In these cases, at a minimum it is expected that the RRP will:

- take steps to mitigate any risk to human health and/or safety to the renter, the renter's property and any occupier of neighbouring premises as a priority,
- keep a record of the steps taken to facilitate the repair, and
- keep the renter informed of the RRP's next steps for a complete resolution of the fault or damage.

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