Cleanliness

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's) 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 have regard to this guideline when determining an application under sections 211B and 452 of the Act regarding the cleanliness of the rented premises.

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 all tenancy types except specialist disability accommodation.

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

3. Context

One aim of residential tenancies legislation is to balance the RRP's interest in protecting their asset with the renter's right to a safe and habitable home. While the RRP is responsible for

ensuring that the rented premises are provided and maintained in good repair, the renter must keep the premises reasonably clean and free from damage. Reform 44 of the Fairer, Safer Housing reforms provides that the Director will issue guidelines setting out examples or instances of cleanliness and good repair. VCAT will be required to have regard to the guidelines when determining related disputes. This reform applies to rented premises, rooming houses, caravan parks and residential parks (a park where a Part 4A site is rented).

These guidelines address the meaning of cleanliness and good repair, terms which are frequently subject to different interpretations.

4. The law

4.1 Legislation

The requirements around cleanliness are set out in the following provisions:

Section 65 of the Act requires the RRP to ensure that, on the day that it is agreed the renter is to occupy the rented premises, the premises are vacant and in a reasonably clean condition. A renter is not required to enter into occupation of premises which do not meet these conditions. The premises must also meet the rental minimum standards prescribed by the Residential Tenancies Regulations 2021 (the Regulations).[1]

Section 120 of the Act requires that the rooming house operator must ensure that the rooming house and its rooms and any facilities are maintained in good repair. The rooming house must also comply with the minimum standards prescribed by the Residential Tenancies (Rooming House Standards) Regulations 2012.

There are similar provisions for caravan park owners (sections 178 and 179) and site owners (sections 206ZV and 206ZW). Caravan park owners and site owners must keep common areas, facilities, gardens, roadways, paths and recreation areas in the park clean and in a safe condition. They must also arrange for the collection of residents'/site tenants' garbage and other garbage from the park and must maintain, repair and keep clean and tidy all communal bathrooms, laundries and other communal facilities.

Sections 63, 114, 171 and 206ZM of the Act require the renter to ensure that the rented premises, room, caravan or Part 4A site, as case may be, are kept and left in a reasonably clean condition, except to the extent that the RRP is responsible under the Act for keeping the premises in that condition. At the end of the tenancy, residency or site agreement, the renter must leave the premises in a reasonably clean condition and in the same condition as when the renter entered into occupation, taking into account fair wear and tear.

4.2 Residential Tenancies Regulations 2021

Rented premises

Regulation 12 of the Regulations prescribes a professional cleaning clause for the purposes of section 27C(1)(a) of the Act that must be included in a residential rental agreement as follows:[2]

[1] The transitional arrangements in the Act provide that section 65A (rental minimum standards) does not apply to residential rental agreements entered into before 29 March 2021. 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.

[2] The transitional arrangements in the Act provide that section 27C professional cleaning clause does not apply to residential rental agreements entered into before 29 March 2021. The professional cleaning clause will only apply to new fixed term agreements entered into on or after 29

"The residential rental provider must not require the renter to arrange professional cleaning or cleaning to a professional standard at the end of the tenancy unless –

(a) professional cleaning or cleaning to a professional standard was carried out to the rented premises immediately before the start of the tenancy and the renter was advised that professional cleaning or cleaning to a professional standard had been carried out to those premises immediately before the start of the tenancy; or

(b) professional cleaning or cleaning to a professional standard is required to restore the rented premises to the same condition they were in immediately before the start of the tenancy, having regard to the condition report and taking into account fair wear and tear."

A residential rental agreement entered into after 29 March 2021 must not include a clause requiring professional cleaning of the rented premises that is inconsistent with this clause.

Rooming houses, caravan parks and Part 4A sites

There are no additional requirements in the Regulations relating to cleanliness for rooming houses,[3] caravan parks or Part 4A sites.

4.3 Case law

Condition reports are required for all rental tenure types. The condition report is evidence of the state of repair and general condition of the rented premises (section 36), room (section 98), caravan (section 149) or Part 4A site (section 206P), as the case may be, at the start of the tenancy. VCAT relies on the condition report and any photos or video taken to determine the condition of the premises and whether they were 'reasonably clean' at the start of the tenancy.

VCAT has held that 'reasonably clean' does not mean a condition which is superior to that documented in the condition report and the fact that the premises are in a lesser state than they were at the beginning of the tenancy does not necessarily mean that the renter is liable to compensate the RRP.[4]

VCAT has previously found that cobwebs, dusty walls and dirty kitchen appliances are indicative of a state which is not 'reasonably clean'.[5] Similarly, overgrown garden beds and personal belongings left behind are consistent with a premises which has not been left reasonably clean.[6]

VCAT has also provided the following examples as falling below 'reasonably clean'. While these decisions are not binding, they illustrate how the concept of cleanliness has been historically interpreted by the Tribunal.

- Visible accumulation of unregistered vehicles on the premises.
- Excessively long grass that has been the subject of a local council or fire authority notice.
- Presence of rats or mice in the property.
- Storage of salvaged material and goods.

March 2021. The professional cleaning clause will not apply to existing fixed term agreements of less than 5 years that roll over into periodic agreements on or after 29 March 2021, or existing periodic agreements that continue to roll over on or after 29 March 2021. However, the professional cleaning clause will apply to residential rental agreement of 5 years or more, that roll over into a periodic agreement on or after 29 March 2021.

[3] In relation to rooming houses, clause 11 of the prescribed Fixed Term Rooming House Agreement states that A rooming house operator must not require the resident to arrange professional cleaning at the end of the residency, unless this is needed to restore the room to the condition it was in before the resident moved in, allowing for fair wear and tear.

[4] *Salir Pty Ltd v Morris* [2017] VCAT 495

[5] *Piouillico v Koufidis* [2019] VCAT 984

[6] *Vanston v Ciaverella* [2017] VCAT 2086

- Hoarding such amounts of furniture, papers and/or household goods which pose a fire or occupational health and safety risk.

The phrase 'fair wear and tear' relates to 'reasonable use of the premises by the tenant and the ordinary operation of natural forces'.[7] It relates to general deterioration in the property as opposed to something caused by misuse.

5. Guidance on the interpretation of cleanliness

Cleanliness should be measured according to average standards in the community. It does not mean spotless or pristine nor does it mean terribly messy; the standard should sit somewhere in the middle and will depend on the nature, age, and circumstances of the rented premises.[8]

Generally, an item or surface may be considered reasonably clean if it is free from marks, dirt, cobwebs, stains or dust etc. and cannot be further improved by additional cleaning to a reasonable standard (e.g. wiping down a benchtop again doesn't produce a higher standard of cleanliness).

Key factors to consider when determining whether the premises are reasonably clean

- The cleanliness of the property when the renter moved in. This may be assessed by:
  - Referring to the incoming condition report and any photos or videos that were taken at the start of the rental agreement.
  - Close up photos can be used to identify any existing deterioration such as scuff marks on walls, carpets, appliances, and fixtures.
  - Advice and evidence from the RRP, prior to the start of the tenancy, that premises had been professional cleaned, or cleaned to a professional standard immediately before the tenancy.
- The presence of mould or damp, and whether the mould or damp was caused by a renter's failure to take care of the premises, as compared to mould or damp caused by or related to the building structure.
- How much of the condition is attributable to fair wear and tear, as RRPs must allow for 'fair wear and tear' when assessing the condition of the property at the end of the rental agreement.
- Comparing photos documenting the state of the rented premises provided in the exiting condition report, with the original photos taken as part of the incoming condition report.

What is expected of reasonably clean premises?

The following outlines examples of cleanliness that would be expected in premises which are 'reasonably clean':

- Cooking appliances including the oven, stove and rangehood to be free of oil, grease, and food stains.[9]

[7] *Regis Property Co Ltd v Dudley* [1959] AC 370; *Australian Tenancy Practice and Precedents* MJ Redfern & DI Cassidy (Butterworths) 1987 at 2856.

[8] *Faulder v Tran* [2018] (Appeal) ACAT 80

[9] *Sherlock v Harper* (Residential Tenancies) [2015] VCAT 1799

- Dishwasher to be clean, that is free from grease, grime, food scraps and any strong odours.
- Baths, showers, toilets, sinks and vanity units to be free from dirt/dust, stains, soap scum and mould caused by renter's failure to take care.
- Kitchen sink to be free from soap scum and food scraps.
- Mirrors to be free from dust, marks, and smears.
- Walls and skirting boards to be reasonably free of scuff marks, fingerprints, and dust.
- Floors to be washed and free from dirt, dust, and stains.
- Carpets free of pet hair, stains, and any strong odours (such as urine).[10]
- Premises clear of personal belongings (at end of the rental agreement).[11]
- Garden beds and lawns to be weeded and neat.[12]
- Lawns to be mowed unless this is the specific responsibility of the RRP.
- Windowsills free from dust and dirt.
- Windows, including the outside of any external ground floor windows, to be free from marks, smears, dust, and dirt.
- Curtains or blinds free from dust and stains.
- Cupboards emptied and free from dust and dirt.
- Heating ducts and exhaust fans to be clean and free of dust.[13] 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.[14]
- Rubbish removed and disposed of correctly.[15]
- Shed or garage (where provided) to be kept neat, tidy and emptied at the end of the rental agreement.

What if a renter in rented premises is asked to professionally clean the premises?

This guidance applies only to rented premises

A requirement to have the rented premises professionally cleaned, or cleaned to a professional standard, seeks to impose a requirement for cleanliness over and above what is required under the Act. This will often include all the examples listed above, as well as the steam cleaning of carpets.

For residential rental agreements entered into after 29 March 2021, professional cleaning can only be required in accordance with the professional cleaning clause prescribed by regulation 12 of the Regulations.

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[10] *Vanston v Ciavarella* (Residential Tenancies) [2017] VCAT 2086; *Aboutaleb v Wang* (Residential Tenancies) [2016] VCAT 129

[11] *Director of Housing v Bennett* (Residential Tenancies) [2017] VCAT 326

[12] With regard to rooming houses, a rooming house operator is responsible for the maintenance of lawns and gardens pursuant to section 120(1) and s3(1) of the Act

[13] *Piouillico v Koufidis* (Residential Tenancies) [2019] VCAT 984

[14] *Clarke v Cremor-Peel* (Residential Tenancies) [2015] VCAT 1291

[15] *Carlisle v Krowing* (Residential Tenancies) [2017] VCAT 1761

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Guidance on interpreting the professional cleaning clause (regulation 12)

This guidance applies only to rented premises

Professional cleaning means engaging a person whose paid occupation is cleaning or a person who has special expertise or skills in cleaning.

Cleaning to a professional standard means cleaning to a standard that is higher than 'reasonably clean', although not necessarily performed by a professional cleaner or a person who has special expertise or skills in cleaning.

- Regulation 12(1)(a) limits the circumstances in which the RRP can require a renter to arrange for professional cleaning or cleaning to a professional standard at the end of a tenancy. The RRP must advise the renter whether professional cleaning or cleaning to a professional standard was carried out to the premises *immediately* before the start of the tenancy, for example, by including this information in the condition report.

  If the renter has not been advised that professional cleaning or cleaning to a professional standard was carried out to the premises, the RPP will not be able to seek professional cleaning or cleaning to a professional standard at the end of the tenancy.

  The term '*immediately*' implies that the rented premises must be professionally cleaned or cleaned to a professional standard as close as possible to the start of the tenancy, in order for the RRP to be permitted to require the renter to perform such cleaning at the end of the tenancy. The RRP must not require a renter to have the rented premises professionally cleaned or cleaned to a professional standard in circumstances where such cleaning was performed well in advance (for example, months or even years prior) to the start of the tenancy.

  This timeframe limitation is intended to address circumstances in which rented premises might be professionally cleaned or cleaned to a professional standard but are then vacant for months prior to a renter taking possession. In such circumstances, the RRP cannot require the renter to have the rented premises professionally cleaned or cleaned to a professional standard at the end of the tenancy. However, the renter is required to leave the premises in a reasonably clean condition, and in the same condition as when they entered into occupation, taking into account fair wear and tear.

- Professional cleaning or cleaning to a professional standard may also be required under regulation 12(1)(b). In some cases, there may be incidents during the renter's occupation that have a detrimental impact on the cleanliness of the premises, necessitating professional cleaning or cleaning to a professional standard.

  Professional cleaning or cleaning to a professional standard will only be required at the end of the tenancy to restore the premises to same condition it was in at the start of the tenancy, taking into account the condition report and fair wear and tear. Examples of this may include:

  - Lingering odours from cigarette smoke or pets.
  - Wine or urine stains in the carpet.
  - Grease or soot stains on walls or ceilings.
  - Soap scum build up in the bath or shower.

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