Maintenance

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 have regard to this guideline when determining an application under sections 211B and 452 of the Act regarding maintenance of 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,[1] the renter must keep the premises reasonably clean and free from damage.[2]

Both the RRP and renter must undertake safety-related activities prescribed in Schedule 3 of the *Residential Tenancies Regulations 2021* (the Regulations) and included in the schedule of activities in Part C of the residential rental agreement. This guideline clarifies both the RRP's and the renter's obligations in relation to maintenance.

The Act does not define 'maintenance', other than to say that the rented premises must be 'in a reasonably clean condition' on the day of occupation.[3]

Reform 43 of the Fairer, Safer Housing reforms provides that the Director will issue maintenance guidelines which must be considered by VCAT when determining whether a party has met their maintenance obligations under the Act. This reform applies to rented premises, rooming houses, caravan parks and residential parks (a park where a Part 4A site is rented).

4. The law

4.1 Legislation

The Act and the Regulations create duties at both the time of occupation and during the rental period:

Section 65 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. The premises must also meet the rental minimum standards prescribed by the Regulations.[4]

Section 68, of the Act requires the RRP to ensure that the rented premises are provided and maintained in good repair and 'in a reasonably fit and suitable condition for occupation'. This duty creates an initial and continuing obligation for ongoing maintenance and any necessary repairs to the property.

Sections 120, 178A and 206ZVA of the Act require that a room or site are maintained in good repair.

Sections 63, 114, 171 and 206ZM of the Act require the renter to ensure that the rented premises, room, caravan or site, as the case may be, are kept 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 agreement, the renter must leave the premises in a reasonably clean condition and in the same condition as when the renter entered into possession or occupation, taking into account fair wear and tear. In regard to caravan parks, a renter must also maintain the site or caravan in a manner and condition that does not detract from the general standard of the caravan park.

Therefore, whilst the Act does not use the term 'maintenance' in relation to the duties of a renter, this duty is implied insofar as renters must ensure that a certain (i.e. reasonable) level of cleanliness is maintained throughout their tenancy. For rented premises, the Regulations

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[1] *Residential Tenancies Act 1997 (Vic)* s68

[2] *Residential Tenancies Act 1997 (Vic)* s63

[3] *Residential Tenancies Act 1997 (Vic)* s65

[4] Section 65A of the Act states that, without limiting sections 65, 68 and 70, a RRP must ensure that rented premises comply with prescribed rental minimum standards on or before the day on which the renter enters into occupation of the premises. 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.

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prescribe a professional cleaning term that may apply to particular rental agreements. Please refer to Guideline 2 Cleanliness, which provides guidance on interpreting the professional cleaning requirement.[5] Renters also have a duty not to damage the premises and to report any damage and/or breakdown of facilities as soon as practicable to the RRP. These duties contribute to the maintenance of rented premises.

4.2 Case law

Case law regarding a RRP's duty to provide and maintain premises in good repair and in a reasonably fit and suitable condition for occupation stipulates that the RRP's duty is strict and absolute.[6] RRPs must ensure the property is maintained in a way that avoids injury to the renter and premises must be reasonably fit for living in by a reasonable renter.[7]

The term 'ensure' obliges RRPs to 'take reasonable steps to ascertain and satisfy [themselves] that the premises are in good repair at the start of the tenancy'.[8] Premises that are in good repair are tenantable and 'reasonably fit for occupation'.[9]

The term 'good repair' can be described as 'tenantable repair' or 'habitable repair'. The court has characterised it as repairs which 'having regard to the age, character and locality of the house, would make it reasonably fit for the occupation of a reasonably minded tenant…'.[10]

5. Maintenance activities

5.1 Rental Provider Responsibilities

The RRP is responsible for ensuring that the rented premises are provided and maintained in good repair. This means that generally, the RRP will be responsible for maintenance activities to the premises, as outlined below.

Maintenance activities may be required to be done regularly or irregularly (depending on the nature of the activity, such as changing smoke alarm batteries) and may often require specialised equipment such as a ladder or power tools and particular skills or qualifications.

A RRP should ensure that a suitably qualified person is engaged to carry out repairs.

5.1.1 Duties under the Act

- For all tenancy types, ensuring that the premises are provided and maintained in good repair.[11]

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[5] 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 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.

[6] *Shields v Deliopoulos* [2016] VSC 500

[7] *Proudfoot v Hart* [1886-90] All ER Rep 782

[8] *Reliance Permanent Building Society v Harwood-Stamper* [1844] Ch 362

[9] [1886-90] All ER Rep 782 at 785

[10] *Proudfoot* [1886-90] All ER Rep 782

[11] *Residential Tenancies Act 1997 (Vic)* s68 (rented premises), s120 (rooming house), 178A (caravan park), s180 (caravan), s206ZVA (Part 4A site)

- For rented premises, if the RRP owns or controls common areas relating to the rented premises, the RRP must take reasonable steps to ensure that the common areas[12] are maintained in good repair.[13]
- In the case of rooming houses, caravans and Part 4A parks:[14]
    - maintenance of any common areas such as common laundry or bathroom facilities.
    - garden maintenance in any common areas.
- For rented premises, rooming houses, a room or a caravan:
    - Managing pest infestations; and
    - Treating mould or damp that is caused by or related to the building structure, as compared to mould or damp caused by a renter's failure to ensure that care is taken to avoid damaging the premises, for example, by not using exhaust fans in the bathroom.

The following activities are defined as urgent repairs under the Act and there are specific consequences for non-compliance with these duties.[15]

- For a caravan site or a Part 4A site, responsibility for urgent site repairs:[16]
    - Any fault or damage which makes the site unsafe, unsecure, or uninhabitable.
    - Any failure or breakdown of a gas, electricity or water supply, or sewerage access.
    - Any fault or damage that impedes safe access to a site.
    - Subsidence of a site.
- For rented premises, ensuring that the premises comply with the rental minimum standards, on or before the day on which the renter enters occupation.[17] Under the rental minimum standards, each room must be free from mould or damp related to the building structure.
- In the case of rooming houses, ensuring that a room, facility, service, or common area provided to a resident complies with any applicable rooming house standards.[18]

5.1.2 Prescribed maintenance activities

In the case of rented premises, Schedule 3 of the Regulations also specifies certain safety related activities for which the RRP is responsible.[19]

1. Electrical safety activities

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[12] Pursuant to section 3(1) of the Act, 'common area' means any area in which facilities are provided for the use of renters, residents or site tenants otherwise than as part of the rented premises, room, site or Part 4A site.

[13] *Residential Tenancies Act 1997 (Vic)* s68(3)

[14] *Residential Tenancies Act 1997 (Vic)* s120(1) (rooming house), s178, s179 (caravan park), s206ZW (Part 4 A site)

[15] *Residential Tenancies Act 1997 (Vic)* s3

[16] *Residential Tenancies Act 1997 (Vic)* s3, *Residential Tenancies Regulations 2020* s7

[17] *Residential Tenancies Act 1997 (Vic)* s65A

[18] *Residential Tenancies Act 1997 (Vic)* s142B

[19] The transitional arrangements in the Act provide that section 27C safety-related activities do not apply to residential rental agreements entered into before 29 March 2021. The safety related activities will only apply to new fixed term agreements entered into on or after 29 March 2021. The safety related activities 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 safety related activities will apply to residential rental agreement of 5 years or more, that roll over into a periodic agreement on or after 29 March 2021.

- The RRP must ensure that an electrical safety check of all electrical installations, appliances and fittings provided by them is conducted every 2 years, using a licensed or registered electrician. The RRP should keep records of these checks and must provide the renter with the date of the most recent safety check, in writing, if requested by the renter.

2. Gas safety activities
   - If the rented premises contain any appliances, fixtures or fittings which use or supply gas, the RRP must ensure that a gas safety check of the installations and fittings is conducted every 2 years, using a licensed or registered gasfitter. The RRP should keep records of these checks and must provide the renter with the date of the most recent safety check, in writing, if requested by the renter.
3. Smoke alarm safety activities
   - The RRP must ensure that each smoke alarm is correctly installed, in working condition and tested according to the manufacturer's instructions at least once every 12 months.
   - The RPP must ensure that the batteries in each smoke alarm are replaced as required.
   - The RRP must provide the renter with information about how to use and test smoke detectors at the premises as well as outlining their duty not to tamper with smoke alarms and to report any breakdowns to the RRP.
4. Swimming pool barrier safety activities
   - If the rented premises contain a swimming pool, the RRP must ensure that the swimming pool barrier is maintained in good repair.
   - If a swimming pool barrier is not in working order, the RRP must repair or replace the barrier as an urgent repair.
5. Bushfire-prone area activities
   - If the rented premises are in a designated bushfire-prone area and a water tank is required for firefighting purposes, then the RRP must ensure the water tank and any connected infrastructure is maintained.

In the case of rooming houses, regulations 19 and 20 of the *Residential Tenancies (Rooming House Standards) Regulations 2012* specify that gas and electrical safety checks must be conducted at least every 2 years by a licenced gasfitter or electrician.

5.1.3 General maintenance activities

Whilst the following maintenance activities are not prescribed in the Act or the Regulations, RRPs should additionally undertake these activities to ensure that they are meeting their general duties under the Act to ensure the rented premises are provided and maintained in good repair:

- Recording maintenance requests.
- Providing the renter with any instructions that might relate to the use or cleaning of fixtures at the property.

The completion of these tasks contributes to the maintenance of the rented premises.

Outside the property

- Painting or repairing fences.
- Major pruning and removal of trees, shrubs, and plants.

- Clearing gutters.
- Washing the outside of windows that are not easily accessible to the renter (especially those on upper levels).
- Building work involving the property's structure.
- Maintenance of water tanks if present.
- Checking septic tanks and septic tank pumps at regular intervals in accordance with the manufacturer's instructions.

In the case of rented premises where there is an owners corporation (such as apartment buildings) the owners corporation will generally be responsible for repairing and maintaining:

- common property, for example a garden or nature strip,
- chattels, fixtures, fittings and services related to common property, for example, in common hallways or entry areas, and
- equipment and services that benefit some or all of the lots and common property, for example, a common laundry.

5.2 Renter's responsibilities

Once a renter takes possession of the rented premises, the renter is responsible for keeping the premises reasonably clean and free from damage.

If organising repairs, for example, in circumstances where a renter is unable to get a RPP or their agent to carry out urgent repairs, a renter should engage a suitably qualified person to carry out the repairs.

5.2.1 Duties under the Act

- For all tenancy types:
  - keeping and leaving the premises/site in a reasonably clean condition,[20]
  - must not damage the premises,[21] and
  - notifying the RRP of damage and/or breakdown of facilities as soon as practicable.[22]
- Renters of rented premises may also be required to undertake professional cleaning at the end of a tenancy agreement, but only in accordance with the prescribed professional cleaning clause in their rental agreement.
- For renters and residents of rooming houses, not removing, deactivating or otherwise interfering with the operation of a prescribed safety device at premises unless reasonable to do so.[23] Examples of a 'prescribed safety device' include a smoke alarm, a carbon monoxide alarm, a fire sprinkler system and a hose reel.

[20] *Residential Tenancies Act 1997 (Vic)* s63 (rented premises), s114 (rooming house), s171 (caravan park), s206ZM (Part 4A site)

[21] *Residential Tenancies Act 1997 (Vic)* s61 (rented premises), s142ZB (rooming house), s206AQ (caravan park), s207W (Part 4A site)

[22] *Residential Tenancies Act 1997 (Vic)* s62 and s72AA (rented premises), s116 (rooming house), s173 (caravan park), s206ZO (Part 4A site)

[23] *Residential Tenancies Act 1997 (Vic)* s63A (rented premises), s114A (rooming house)

5.2.2 Prescribed maintenance activities

In the case of rented premises, Schedule 3 of the Regulations also specifies certain safety related activities for which the renter is responsible.

1. Smoke alarm safety activities
    - The renter must give written notice to the RRP as soon as practicable after becoming aware that a smoke alarm in the rented premises is not in working order.
2. Swimming pool barrier safety activities
    - If the rented premises contain a swimming pool, the renter must give written notice to the RRP as soon as practicable after becoming aware that the swimming pool barrier is not in working order.
3. Relocatable swimming pool safety activities
    - A renter must not erect a relocatable swimming pool without prior written notice to the RRP and the renter must obtain any necessary approvals before erecting such a pool.

5.2.3 General maintenance activities

Whilst the following maintenance activities are not prescribed in the Act or the Regulations, renters should additionally undertake these activities to ensure that they are meeting their general duties under the Act to ensure the premises are reasonably clean and free from damage.

Inside the property

- Cleaning any fixtures installed at the rented premises.
- Replacing light bulbs which do not require new light fittings
- Dusting and wiping down of surfaces, including heating or cooling vents.
- Carpet and floor cleaning.
- Cleaning the inside of any windows and the outside of any ground floor windows.
- Cleaning the inside of the balcony doors, windows, and tracks.
- Emptying and cleaning the dishwasher filter as needed (if a dishwasher is installed), following manufacturer's instructions.
- Cleaning behind and underneath appliances if they can be moved safely without damage to floor.
- Cleaning scuff marks and fingerprints off walls where the texture of the wall allows it to be cleaned.
- Cleaning of wet areas, such as bathrooms and laundries.

Outside the property

- Regular gardening duties and yard maintenance- for example, weeding, pruning or lawn mowing.
- Regular disposal of garbage and other waste using council provided bins. In the case of rented premises, the rental minimum standards require that a rubbish bin and a recycling bin are supplied for use by the renter. The bins must be provided by the council or vermin proof and compatible with local council collection.