

Submission

Minimum Standards for Rental Properties and Rooming Houses

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CPRC

The Consumer Policy Research Centre (CPRC) is an independent, not-for-profit, consumer think-tank. CPRC aims to create fairer, safer and inclusive markets by undertaking research and working with leading regulators, policymakers, businesses, academics and community advocates.

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Statement of Recognition

CPRC acknowledges the Traditional Custodians of the lands and waters throughout Australia. We pay our respect to Elders, past, present and emerging, acknowledging their continuing relationship to land and the ongoing living cultures of Aboriginal and Torres Strait Islander Peoples across Australia.

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Victorian renters deserve safer, healthy homes

Every person deserves to live in a healthy, comfortable and affordable home. For people who rent, ensuring their home is energy efficient and of a liveable standard is not always in their control. Consumer Policy Research Centre (CPRC) research has found renters often have an inadequate safety net, do not find suitable properties that suit their needs, and experience difficulty exercising consumer rights.¹ The power imbalance between renters and landlords and property managers further adds to the requirement for considered policy intervention from government, to ensure people who rent live in homes of a satisfactory standard.

CPRC is strongly supportive of the Victorian Government's commitment to implementing additional energy efficiency related minimum standards for rental properties and rooming houses. The Exposure Draft - Residential Tenancies and Residential Tenancies (Rooming House Standards) Amendment (Minimum Energy Efficiency and Safety Standards) Regulations 2024 and the accompanied Regulatory Impact Statement (RIS) provide for effective required measures to ensure Victorian renters live in safe and energy efficient homes.

¹ CPRC, 2019, *The Renter's Journey*, <https://cprc.org.au/report/report-the-renters-journey/>

The proposed regulations sufficiently address many of the issues uncovered through CPRC’s research on renters’ experiences, including our recent research into rental property minimum standards in practice.

In 2023, CPRC in partnership with Tenants Victoria conducted a mystery shop of 100 rental properties in Bendigo and Wyndham Vale in Victoria, to assess compliance with the current minimum standards.² Our research identified the impact that a lack of standards for home insulation has on renters. We found that while rental properties may have a heater, a home could be very poor at retaining that heat. This leaves people who rent paying much higher energy bills just to heat their home. Including minimum standards for ceiling insulation and draught sealing goes some way to addressing these limitations. These measures alongside additional requirements for standards relating to hot water systems and shower heads, heating and cooling, and blind cord safety are commendable proposed reforms.

In this submission we provide recommendations and outline additional requirements that could further strengthen the regulations and enhance intended positive impacts on Victorian renters and the property market more broadly.

Recommendations

Recommendation 1.	Include energy efficiency mandatory disclosure requirements for agents, to be provided at the point a property is advertised/listed for rent for residential tenancy, or for a rooming house. In instances where a rental property is privately leased and an agent is not involved, apply the same disclosure requirements to landlords.
Recommendation 2.	Improve safety in rental properties by including smoke alarm placement requirements in the minimum standards.
Recommendation 3.	Extend all safety checks to retrospectively apply to all rental properties in Victoria.
Recommendation 4.	The Victorian Government assess and further develop its enforcement approach to minimum standards and commit to public reporting of its approach alongside compliance rates for transparency.
Recommendation 5.	Remove exemptions based on ‘unreasonableness’ from the minimum standards, that do not provide further context or circumstantial requirements.
Recommendation 6.	Publicly outline how exemptions will be reviewed, granted and monitored under the standards.

² CPRC, 2024, *Is It Liveable? A mystery shop of private rental properties*, <https://cprc.org.au/report/is-it-liveable/>

Raising the bar - strengthening the proposed regulations

Mandate energy efficiency disclosure requirements for agents

In many instances, real estate agents are the primary contact and connector between a renter and landlord. CPRC's research into renter experiences highlights the need for improved information disclosure requirements of quality alongside living costs at the stage a renter is searching for a rental property.³ Without proactive information sharing from agents to renters, renters are in the dark about the energy efficient features of a home they might apply for, and the possible negative impact on their health and energy bills.

Agents are already required to disclose important information to prospective renters, including the last date an electrical and safety check was undertaken, and any subsequent recommendations. Agents are also obliged to state whether repairs stemming from mould or damp have been undertaken in the past three years, and if the rented premises comply with the rental minimum standards.⁴ However, our research revealed that half of all agents could not provide information on the compliance and safety of the property to prospective renters.⁵

Clause 3.2.4 (Mandatory disclosure) contained within the RIS accompanying the proposed regulations, identifies the benefits of mandatory disclosure for renters, rental providers and rooming house managers. The RIS cites that the mandatory disclosure of the energy features and rating of a rental property or rooming houses would improve the quality of information in the property market and would enable renter choice while encouraging providers to make improvements to their property. The conclusion outlined in the RIS is that despite the benefits, mandatory standards are a preferable approach to mandatory disclosures. While mandatory disclosures may not be as relevant to some renters who are particularly disadvantaged and have limited choice when finding a rental, including and enforcing mandatory disclosures as an additional requirement to the standards would have a broadly positive impact.

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Incorporate smoke alarm placement requirements into the minimum standards

By law, all residential properties must have working smoke alarms complying with Australian Standards AS 3786. Our mystery shop of 100 rental properties across Victoria identified five

³ CPRC, 2019, *The Renter's Journey*, <https://cprc.org.au/report/report-the-renters-journey/>

⁴ *Residential Tenancies Regulations 2021*, sch 16(2)

⁵ CPRC, 2024, *Is It Liveable? A mystery shop of private rental properties*, <https://cprc.org.au/report/is-it-liveable/>

properties where that did not comply with the smoke alarm standard at the time of inspection. This was specifically due to an absence of alarms, alarms present but not yet installed (e.g. on a kitchen bench), or alarm placement that breached the Building Code requirements, such as not being installed near bedrooms.⁶

Currently there are no specific requirements for the placement of smoke alarms in the Residential Tenancies Act, sitting alongside of other mandatory standards. Technically, many of the properties we identified that had one smoke alarm could meet the standard set out in Victorian law through the *Building Act 1993*, as the smoke alarm was often placed in the hallway near all bedrooms. However, one smoke alarm can put residents at risk if a fire starts in certain areas of the house. For example, a single smoke alarm placed near bedrooms may offer little protection if a fire starts in a kitchen at the other end of the house. There is opportunity to improve the practices of smoke alarm placement in these homes to better protect people who rent.⁷

Recommendation 2.

Improve safety in rental properties by including smoke alarm placement requirements in the minimum standards.

Backdate essential safety checks, including smoke alarm checks

Including a requirement to backdate essential safety checks including smoke alarm checks would significantly strengthen the regulations and ultimately the safety of renters and rooming house residents. Currently, essential safety checks only apply to rental agreements made after March 2021, meaning that ongoing tenancies made before this date are not covered by obligations to check fire, gas, or electrical safety.⁸

This applies to a very large number of tenancies in Victoria. As of 5 July 2023, 43.5% of existing residential agreements would not be required to comply with the smoke alarm testing or other safety requirements.⁹

As the RIS identifies, the inclusion of minimum standards for blind cord safety in rental properties sadly follows a Coroner's report recommendation that blind cord safety anchors be mandated in all residential rental properties, following the loss of life at a residential rental property that did not have blind safety anchors installed. The matter of smoke alarm checks has also been raised by the Coroners Court of Victoria as a serious safety issue, specifically in

Recommendation 3.

Extend all safety checks to retrospectively apply to all rental properties in Victoria.

⁶ Ibid

⁷ Ibid

⁸ Ibid

⁹ Coroners Court of Victoria, COR 2022 000829: Finding into death without inquest, Page 16, https://www.coronerscourt.vic.gov.au/sites/default/files/COR%202022%20000829%20Form%2038%20-%20Finding%20into%20Death%20without%20Inquest_Signed.pdf

relation to a case of a fire that could have been prevented if regular safety checks of a smoke alarm occurred.¹⁰

Commit to ensuring strong enforcement provisions

CPRC research into minimum standards compliance showed that while the majority of properties appeared to meet the standards, a concerning number fell short.¹¹ More than one in six properties (15%) in our mystery shop failed to meet minimum standards. This finding suggests that Consumer Affairs Victoria's current enforcement approach is not sufficiently achieving compliance. Since CPRC's report with Tenants Victoria, the Federal Government has announced a significant investment into a Rental Taskforce within CAV. This will include resources for proactive investigations into non-compliance of rental laws. This is very welcome news.

Without transparent, regular and well-resourced enforcement provisions, there is no way to ensure property owners and managers are fulfilling their obligations.

The current regulations mostly rely on tenants reporting non-compliance to their agent or landlord, which is not a suitable model when considering the existing power imbalance that exists between renters and agents and landlords. It is unfair to place the onus on renters to ensure the standards are being adhered to. Further, tenants may not know how to assess whether their rental property is compliant.

Robust enforcement is critical to ensuring standards are complied with and that accountability sits with property owners and managers, and not with tenants bearing the brunt of the work.

Recommendation 4.

The Victorian Government assess and further develop its enforcement approach to minimum standards and commit to public reporting of its approach alongside compliance rates for transparency.

Provide additional transparency about the application of exemptions in practice

Currently the proposed regulations are unclear about application of exemptions, leaving a gap to potential misinterpretation and therefore reduced protections for people who rent. The proposed regulations outline exemptions to some provisions of the standards where compliance is deemed 'unreasonable'. This includes in relation to the installation of a non-ducted and standard air conditioner or heat pump, energy efficient water heater or fixed cooler. There are multiple specified circumstances that constitute 'unreasonable' outlined in the Exposure Draft legislation, including cost and impracticality.

There may indeed be some, limited circumstances in which it is genuinely unreasonable for a property owner or manager to comply with the standards. CPRC recommends amendment of the current list of exemptions based on unreasonableness to include more specific details. This would help to omit any vagueness around what constitutes a genuine reason for non-

¹⁰ CPRC, 2024, *Is It Liveable? A mystery shop of private rental properties*, <https://cprc.org.au/report/is-it-liveable/>

¹¹ Ibid.

compliance. By way of example, the proposed regulations for draughtproofing provide for an exemption if “*it is otherwise unreasonable to draughtproof the rented premises*”. We are concerned that the standards will not be effective without further guidance and specificity around these exemptions.

Where the exemption of a property owner or manager from a specific provision of the standards is appropriate, adequate guardrails are needed to ensure exemptions are applied on legitimate grounds. Currently, there is no information contained with the RIS or Exposure Draft to demonstrate how exemptions will be approved and monitored. Appointment of an independent body to ensure exemptions are legitimate is essential to the standards being successfully implemented.

Recommendation 5.

Remove exemptions based on ‘unreasonableness’ from the minimum standards, that do not provide further context or circumstantial requirements.

Recommendation 6.

Publicly outline how exemptions will be reviewed, granted and monitored under the standards.