Residential Tenancies Act Review – *Fairer, Safer Housing*

Regulation of Property Conditions in the Rental Market – Minimum Standards and Improving Property Conditions Across Victoria

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1. Introduction

1.1 About WEstjustice (Western Community Legal Centre)

WEstjustice (Western Community Legal Centre) was formed in July 2015 as a result of a merger between the Footscray Community Legal Centre, Western Suburbs Legal Service, and the Wyndham Legal Service. WEstjustice is a community organisation that provides free legal assistance and financial counselling to people who live, work or study in the Maribyrnong, Wyndham and Hobsons Bay areas.

WEstjustice has a particular focus on working with newly arrived communities. More than 40% of our clients over the last four years spoke a language other than English as their first language. Further, approximately 57% of our clients during that period were newly arrived, having arrived in Australia in the last five years.

1.2 About the WEstjustice Tenancy Program

WEstjustice has two lawyers who provide specialist advice, casework and representation to vulnerable and underprivileged tenants who live in Melbourne's West. In the past five years, WEstjustice's tenancy program has assisted over 1,200 clients with over 1,800 matters. Our catchment area covers Melbourne's inner-west (including Footscray, Sunshine, and Braybrook), and outer-west (including the fast growing areas of Werribee, Wyndham Vale, Hoppers Crossing and Melton).

As part of our tenancy program, we also provide a duty lawyer service to assist tenants with on-the-spot advice and representation one day per week at the Victorian Civil and Administrative Tribunal ('VCAT') in Werribee. Whilst we primarily assist tenants in private tenancies, we also advise those who live in rooming houses, public and community housing.

Our tenancy program has a particular focus on working with clients from refugee and non-English speaking backgrounds. We work closely with local refugee settlement agencies and community development workers, and almost 60% of our tenancy clients in the past two years were born outside of Australia.

WEstjustice also undertakes specialist insurance casework within the context of our tenancy program. This program has focused on the impact of landlord insurance policies on tenants.

WEstjustice's submission and recommendations are informed by our significant experience in utilising the *Residential Tenancies Act 1997 (Vic)* ("the Act") in the course of the above casework.

2. Executive Summary

Maintaining property conditions and minimum standards are not a new concept in Australia, with their intention being to ensure that premises meet basic living conditions that are consistent with modern expectations. Fundamentally, these conditions and standards, through whichever legislative form they take, provide clarity to landlords and tenants and aim to ensure tenants are not exposed to substandard living conditions.

A discussion of the current legislative landscape (**Part 4**) shows that whilst certain safeguards do exist for tenants faced with substandard properties, the lack of minimum standards make it possible for landlords to provide tenants with substandard premises from the outset. WEstjustice submits that the creation of minimum standards would serve as a benchmark from which landlords would be unable to derogate, thereby making tenants less likely to be faced with substandard housing.

WEstjustice's proposals for minimum standards (**Part 5**) centre around security, safety, amenity and thermal efficiency and aim to provide certainty around property conditions, protect tenants from substandard premises and enhance security of tenure. We assess a number of different jurisdictional approaches to minimum standards, both interstate and international, in the areas of thermal comfort, thermal efficiency, security, fire safety, hygiene and provision of cooking facilities. We further utilise this approach to make proposals relating to utility connections, structural integrity and weatherproofing as well as dangerous goods declarations.

Enforcement of minimum standards (**Part 6**) is looked at through the prism that there should be no divergence or negotiation by landlords on the provision of premises in line with the proposed minimum standards. We envision an enforcement system similar to the current procedures used by CAV in relation to the non-urgent repairs process. We submit that an inspection and report would need to be completed by CAV, which becomes a binding directive on landlords to complete works. Should VCAT action be necessary for compliance, compensation should automatically attach and be considered by the Tribunal.

WEstjustice has also identified and commented on a number of areas in the current legislative framework in particular need of reform (**Part 7**). These add context and expand on previous submissions as part of the review of the Act. We submit that reform is needed of the condition report system to make these documents fairer and more robust as evidence in landlord-tenant disputes. Further, we consider necessary to reform tenants' rights to make modifications so as to protect against actions of landlords for reasonable changes to premises. Also, we draw attention to the current repairs process. We submit that this should be streamlined in order to make the realisation of repairs quicker, and reduce the need for dispute resolution. WEstjustice also reiterates the importance of reforms regarding damage and the standard of cleanliness expected of tenants. In terms of family violence issues WEstjustice supports the recommendations made by the Royal Commission into Family Violence.

The tenancy framework has certainly changed and adapted over time. WEstjustice advocates for this process to continue into the future. We submit this paper to the current reform discussion, and hope to see positive changes made. Whilst we believe that the current situation presents many inequities for tenants in their relationship with landlords, we are optimistic that our recommendations below will see a true balancing of rights and responsibilities of all parties.

3. Summary of minimum standards and recommendations

3.1. Minimum standards:

Minimum standard 1: Landlords are only permitted to enter into, extend or renew a lease where the premises provides a reasonable degree of thermal comfort.

Minimum standard 2: All houses offered for rent must meet thermal efficiency standards:

1. Premises must have floor and ceiling insulation subject to the relevant AS/NZS and Building Code of Australia standards;
2. Premises must be draught proof; and
3. Landlords must report to tenants on the type, location and condition of insulation

Minimum standard 3: A landlord must not offer a premises for rent unless all external windows and doors have functioning locks. The tenant must be provided with keys to all such locks.

Minimum standard 4: A property that is offered for lease must have functioning smoke alarms. Smoke alarms must be tested within the first 30 days of a tenancy, and new batteries installed with each new tenancy. Written instructions on maintaining the smoke alarm must be provided.

Minimum standard 5: A landlord must not offer, extend or renew a lease for a property unless it has suitable hygiene facilities:

1. A toilet
    a. Must be in a dedicated room or in the bathroom;
    b. Must provide privacy;
    c. Must have adequate ventilation, either through a window or mechanical system;
2. A bathroom
    a. Must be a separate room, and may contain a toilet;
    b. Must provide privacy;
    c. Must have a bath or shower or both;
    d. Must have a wash basin;
    e. Must have adequate ventilation, either through a window or mechanical system;
3. An adequate supply of hot and cold water must be supplied to all:
    a. Kitchen facilities;
    b. Bathrooms;
    c. Laundries;
    d. Kitchens.

Minimum standard 6: A landlord must not enter into, extend or renew a lease unless a property contains:

1. A kitchen sink with running hot and cold water;
2. An oven, whether conventional, convection, microwave, or any combination of these;
3. A stovetop with at least:
    a. Three burners for a two bedroom house;
    b. Four burners for three or more bedroom premises.

Minimum standard 7: Landlords must provide the initial connection of electricity, gas, water and telephone line capable of conveying broadband internet. Landlords must keep the utility connection in good repair throughout the tenancy.

Minimum standard 8: A landlord must ensure that a premises to which a residential tenancy agreement pertains is weatherproof and in a proper state of structural repair. This includes, but is not limited to, the roof, floor, ceilings, walls and stairs being in good repair, free of dampness, and not liable to collapse or significant movement.

Minimum standard 9: Landlords must not offer a property for rent that contains asbestos, or other dangerous construction materials that post a risk to health and safety, unless a thorough dangerous goods declaration is provided prior to a tenant signing a lease. This declaration must include:

- The nature of the materials;
- The location of the materials;
- The condition of the materials (and whether any have been damaged, or any particles have become disturbed);
- The date and nature of any renovations conducted that affected the dangerous materials;
- If a professional assessment has been conducted of the dangerous materials, this must be provided to tenants

3.2. Recommendations:

Recommendation 1: The Act must be amended to allow CAV to inspect reported breaches of minimum standards. This report is a binding directive to a landlord that repairs must be conducted to bring the premises to the required standard. CAV may re-inspect the property where the tenant disagrees with the work that has been performed.

Recommendation 2: The Act must be amended to include penalty provisions for a breach of a minimum standard.

Recommendation 3: The Act must be amended to state that that where a tenant is forced to seek a compliance order compelling a landlord to meet a minimum standard, compensation should automatically form part of the application.

Recommendation 4: The Act should be amended to state that prospective tenants must be provided with the condition report upon inspection of the property, and again prior to signing the lease and paying a bond.

Recommendation 5: The Act should be amended to state that a condition report must be of no evidentiary value where it can be shown it was not explained to the tenant, in their primary language.

Recommendation 6: The Act should be amended requiring condition reports contain a clear warning to tenants outlining the importance of the document, that they may disagree with what is listed, and they must return the document within the required timeframe.

Recommendation 7: The Act must be amended to allow 7 days for the condition report to be returned to the landlord.

Recommendation 8: The Act should be amended to state that a condition report as signed, amended and returned by a tenant constitutes a Notice to Landlord of repairs required at the premises.

Recommendation 9: The Act should be amended to include penalty provisions where a landlord completes a condition report in a false and misleading way.

Recommendation 10: The Act should be amended to take into account the above scheme for modifications

Recommendation 11: The Act must be amended to allow tenants, in circumstances of family violence, to make modifications to a premises that enhance their safety. Consent of the landlord is not necessary; however, the tenant should inform the landlord in writing.

Recommendation 12: The Act should be amended to make a report produced by CAV in accordance with Section 74 binding on the landlord.

Recommendation 13: The Act should be amended to state that where a landlord does not carry out the repairs stipulated in a CAV in a reasonable time, the tenant may apply to VCAT for compliance. Compensation should automatically attach to such an application, and be assessed by VCAT.

Recommendation 14: The Act should be amended to allow a tenant to pay rent into the Rent Special Account upon CAV issuing an inspection report requiring the landlord complete repairs.

Recommendation 15: Section 61(1) should be amended to read 'a tenant must ensure that reasonable care is taken to avoid causing damage to the rented premises.'

Recommendation 16: The Act should be amended to compel VCAT, when considering a landlord's application for bond and/or compensation, to consider apportioning the claim in circumstances of family violence.

Recommendation 17: The Act must be amended to include a definition of 'reasonably clean'. This should take into account the ordinary course of living, deterioration of the property over time and reasonable wear and tear, and restrict the use of Breach Notices to circumstances where health is threatened, fire may be caused, damage may occur, or laws or regulations may be breached.

4. Property conditions and minimum standards

WEstjustice advocates for a standard set of conditions that every rental property in Victoria must meet. Minimum standards are not a new concept in Australia, including Victoria – their intention is to ensure that premises meet basic living conditions, and are consistent with modern expectations. WEstjustice advocates for the introduction of 9 minimum standards, which we outline below. They are derived from our extensive casework experience which shows that many properties, especially those rented by people of cultural and linguistically diverse (CALD) backgrounds and with lower incomes, do not meet acceptable levels of amenity, safety, comfort or security. We believe that the introduction of our minimum standards would remove ambiguity as to landlord obligations by enshrining the base level of acceptability for rental accommodation in law, and thereby enhance the security of tenure of tenants in Victoria.

4.1. The current landscape

"Property conditions" refers to the state of repair and maintenance that premises must meet, and a standard a landlord must ensure. The condition of a property is fundamentally important to tenants for a number of reasons. Firstly, poorly maintained premises can lead to adverse health effects, both physical and mental, and detract from a person's overall wellbeing.[1] The World Health Organisation has found that where an occupier enjoys adequate, secure housing, this leads to better health outcomes of the inhabitants.[2] Secondly, where premises have poor thermal efficiency,[3] the basic heating (and cooling) of a premises can result in financial pressure, and in worst cases, financial distress that may lead to serious outcomes such as rent arrears and utility disconnection. This is sometimes referred to as 'energy hardship', and is exacerbated by Victoria's mostly cool climate that is prone to extreme heat conditions in summer. It has been noted that private renters constitute the largest segment of occupiers who cannot afford to heat their homes, or pay their bills on time.[4] Finally, property standards impact on security of tenure, and the degree to which tenants feel renting, whether by necessity or choice, is seen as a legitimate long-term housing option.

There is presently no minimum standard, or benchmark, that a rented property must meet in Victoria.[5] That is not to say, however, that the Act is without safeguards, including termination rights where a property is unfit for human habitation,[6] or where fixtures and fittings in place at the beginning of the tenancy fail and require repair or maintenance.[7] Furthermore, a property must be

[1] Commission on Social Determinants of Health, Closing the gap in a generation: Health equity through action on the social determinants of health (Final Report), World Health Organisation, Geneva (2010).
[2] Commission on Social Determinants of Health, Closing the gap in a generation: Health equity through action on the social determinants of health (Final Report), World Health Organisation, Geneva (2010).
[3] See below for further explanation on thermal efficiency.
[4] Francisco Aziparte, Victoria Johnson and Damian Sullivan, Brotherhood of St Lawrence, 'Fuel Poverty, household income and energy spending', 2015, viii.
[5] This compares to rooming houses,
[6] *Residential Tenancies Act 1997* (Vic) s 226.
[7] *Residential Tenancies Act 1997* (Vic) s 68.

clean and vacant when a tenant takes possession of the property,[8] and locks must be provided for external doors and windows.[9] Worth noting, also, is that protections beyond the Act cover health and sanitation, building design and safety, and fire and pool safety. However, WEstjustice believes that a set of unambiguous minimum conditions within the purview of the Act is needed from the outset to protect Victorians from substandard living conditions. It must not be the case that tenants can accept substandard properties and have no means of recourse, because the tenant 'accepts the property in the condition they inspected it.' This must no longer be a defence for landlords insofar as denying tenants a minimum condition of suitability.

Case study – Shafiz – property unfit for human habitation

Shafiz moved with his family from New South Wales to Footscray. When he arrived at the house, he immediately realised there was no way that he and his young children could live in the house safely. The kitchen was severely dilapidated, the ceiling was falling in, there was a smell of leaking gas, mould was growing, the toilet was leaking water and the windows did not lock. After feeling like he had nowhere to turn and seeking our assistance, WEstjustice was successful in terminating any agreement on the basis the property was uninhabitable. However, this was not without a lengthy contest at the Tribunal to determine whether the tenant actually had the right to terminate the lease.

WEstjustice submits that in circumstances such as Shafiz's, minimum standards would have made it clear to the landlord (and the agency that originally advertised the property for lease) that providing a property in such condition was unacceptable. Even if Shafiz had taken the property, this should not negate his right to a safe house merely because this was the condition he accepted it. The tenant might have also avoided a stressful litigation process.

4.2. Poor property conditions disproportionately affect vulnerable and disadvantaged communities

WEstjustice makes this submission based on our extensive experience in assisting the most vulnerable and disadvantaged communities in Melbourne's west. Many of our clients come from culturally and linguistically diverse backgrounds, and the majority have low incomes. We have focused much of our work on refugees and the newly arrived, and actively promote tenants' rights to migrant communities. Our work shows us that the higher the level of vulnerability a person presents with, the more likely they are to have lower standards of housing. Studies support this

[8] *Residential Tenancies Act 1997* (Vic) s 65.
[9] *Residential Tenancies Act 1997* (Vic) s 70.

claim, and demonstrate that tenants on lower incomes are more likely to endure lower standards of accommodation.[10]

[10] See, eg, Andy Barton et al, 'Evidence base public policy practice: The Watcombe Housing Study: The short term effect of improving housing conditions on the health of residents' *Epidemiol Community Health* Vol 2007 Vol. 61(9). pp. 71-77.

5. Proposals for minimum standards

WEstjustice advocates for the introduction of the following minimum standards into Victorian law. They centre around security, safety, amenity and efficiency and aim to provide certainty around property conditions, protect tenants from substandard premises, and enhance security of tenure.

5.1. Thermal comfort

Among the most common maintenance issues WEstjustice assists with relates to heating. Whilst research conducted by Consumer Affairs Victoria ('CAV') in 2016 found that the vast majority of housing has heating provided, a significant proportion did not have heating at all, or it was not in proper working condition.[11] This is certainly the case with tenants we assist, and must not be downplayed. We believe that Victoria's climate necessitates adequate heating facilities be provided. The consequences to tenants of no or poor heating can be more severe than failures of many of the other standards below.[12]

Case study – Joan – a tenant who could not heat their house

Joan lived with her partner and three young children. There were two gas heaters at the property, however they both stopped working after the tenancy began. Joan purchased small electric heaters whilst waiting for the landlord to make the necessary repairs, however, they were very expensive to run, and Joan had to stop using them because she could not afford to do so. Meanwhile the landlord took a very long time to repair the gas heaters, in contravention of a repairs order issued by VCAT.

During a cold winter, the entire family took very ill, especially the young children, who contracted serious respiratory conditions. The cost to Joan of the heaters not working was not only financial, but took a significant toll on the tenants' physical and mental health.

Tasmania has recently legislated minimum standards, including a mandatory requirement for heating.[13] Landlords are now explicitly prohibited from entering into, renewing or extending a lease where a premises does not have heating, whether gas, electric or wood fired.[14] Thermal comfort is also provided for in many international jurisdictions:

[11] EY Sweeney 2016 *Rental experiences of tenants, landlords, property managers, and park residents in Victoria*, 55.
[12] See Angela Curl and Ade Kearns, 'Can housing improvements cure or prevent the onset of health conditions over time in deprived areas?', *BMC Public Health* 2015 Nov 28; Vol. 15, pp. 1191.
[13] See *Residential Tenancies Act 1997* (Tas).
[14] *Residential Tenancies Act 1997* (Tas) s 36M(3).

- Ireland's rental standards require that every room intended for use must have an appliance to provide heating, whether permanently fixed or not, that is independently manageable by the tenant;[15]
- Properties in France are required to have 'proper heating' installed;[16]
- In New York City and Alberta, Canada, there are regulations in place to cover the coldest months of the year ('heat season'). Heating appliances must be capable of maintaining a baseline temperature in the premises – 16 degrees Celsius in Canada, and 13 degrees Celsius in New York City;[17]
- The United Kingdom's Housing Health and Safety Rating System requires that a reasonable degree of thermal comfort be given to tenants, and empowers local authorities to inspect rental properties to assess whether this is provided[18]

With respect to air conditioning, WEstjustice does not advocate for a broad mandatory requirement in Victoria. However, we do believe that where properties are specifically intended for older tenants, and where a tenant's health requirements necessitate air conditioning in summer, and the tenant requests such a modification, landlords should provide this at reasonable cost.

Minimum standard 1: Landlords are only permitted to enter into, extend or renew a lease where the premises contains a reasonable degree of thermal comfort.

5.2. Thermal efficiency

Insofar as thermal comfort is important, the efficiency of heating a premises is equally significant. Where no heat is retained, tenants will be forced to run heaters continuously for no benefit other than short-term and proximate warmth.[19] The energy efficiency of a property is perhaps one of the less tangible elements of a premises. The cost to tenants and the environment more broadly, however, can be significant, and the key to thermal efficiency is insulation and draught proofing.

[15] *Housing (Standards for Rented Houses) Regulations 2008* (Ireland), art 7.
[16] Décret n°2002-120 du 30 janvier 2002 relatif aux caractéristiques du logement décent pris pour l'application de l'article 187 de la loi n° 2000-1208 du 13 décembre 2000 relative à la solidarité et au renouvellement urbains (France), art 3.
[17] See *Housing Maintenance Code* (New York City), §27-2029; *Residential Tenancies Act 2004* (Alberta). Fines for persistent heat violations can exceed US$1,000 per day.
[18] *Housing Health and Safety Rating System*, *Guidance for Landlords and Property Related Professionals*. Department for Communities and Local Government: London, May 2006. Accessed at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/9425/150940.pdf on 25 August 2016.
[19] A property that isn't draught proofed, for example, can account for 25% of heat loss alone. 'Insulation', Your Home, < http://yourhome.gov.au/passive-design/insulation>, accessed 21 August 2016.

Sustainability Victoria notes that the average House Energy Rating ('HER') for homes built before 1990 is 1.57.[20] This compares with a HER of 3.14 for housing constructed between 1990 – 2005.[21] Most rental properties in Victoria were constructed prior to 1991 when mandatory insulation requirements were first introduced.[22] Research notes that owner-occupied homes were more likely to be insulated, had a higher proportion of more efficient heating and cooling systems, were more likely to use gas heating over electric (noting the higher running costs of electric appliances), and more than half of rental properties had problem with their heating in cooler months. Owner-occupiers were far more likely to have insulation than private or public renters.[23]

New Zealand is currently embarking on a campaign to insulate all residential rental homes. Amendments to the *Residential Tenancies Act 1986* (NZ) require that all properties offered for rent have insulation by 1 July 2016 for social housing, and 1 July 2019 for private rentals.[24] All landlords must provide a statement to tenants outlining the location, type and condition of insulation. Failure to comply with the new requirements is a breach of the legislation, and can attract a fine of up to NZD$4,000. In explaining the initiative, the Minister noted that whilst legislating to provide warmer, drier and safer houses would increase compliance costs, likely to be passed on to tenants, this was determined to be minimal, and offset by energy savings.[25]

It should be noted that the insulation standards mandated by New Zealand's amendments are consistent with the national requirements for new buildings and alterations introduced in 1978, and do not require the replacement of insulation installed since then. It allows exemptions for properties that cannot be "cost-effectively" insulated (as many as 100,000 rental properties in New Zealand).[26] We believe that any equivalent requirement in Victoria should aim for a more modern insulation standard, and that the assessment of what is 'cost-effective' be considered carefully where an investment property is intended to be rented for the long-term.

WEstjustice has assisted many tenants living in properties that are poorly insulated, not draught proof, and suffering the consequences of poor energy efficiency. We therefore advocate for the

[20] Sustainability Victoria, Victorian Households Energy Report, May 2014, pp. 1, 6.
[21] Sustainability Victoria, Victorian Households Energy Report, May 2014, pp. 1, 6.
[22] Residential Tenancies Act Review, Regulation of property conditions in the rental market – issues paper, p. 21. Insulation acts as a barrier to heat flow, and assists in keeping a house warm in winter, and cool in summer. The Australian Government notes that a well-insulated house can cut energy costs by up to 50%. Insulation can also help with weatherproofing a property, and aid in keeping it drier. Insulation in ceilings is perhaps the most commonly thought of, however insulation may also go in walls, and in cooler climates also in flooring. The Commonwealth Government notes that it is possible to install insulation into virtually all roof types common in Australia. See 'Insulation', Your Home, < http://yourhome.gov.au/passive-design/insulation>, accessed 21 August 2016.
[23] Residential Tenancies Act Review, Regulation of property conditions in the rental market – issues paper, p. 21.
[24] *Residential Tenancies Act 1986* (NZ) ss 45(1)(bc), 45(1B).
[25] It was estimated that the average increase in rent would be around NZ$3.20.
[26] "Insulation, smoke alarms and other residential tenancy improvements", Office of the Minister for Building and Housing, Cabinet Social Policy Committee, NZ, 2015. Accessed at https://www.beehive.govt.nz/sites/all/files/Cabinet-paper.pdf on 25 August 2016.

introduction of energy efficiency measures to be introduced into all rental properties in Victoria where possible. We believe that the disparity between rented and owner-occupied homes in respect of insulation must be addressed in order to provide safer, healthier and more efficient standard to Victorian renters.

Case study – Shaqi – lived in a house with no insulation

Shaqi had lived in his house for 10 years before seeking assistance of WEstjustice. Before a work injury, Shaqi worked long hours as an interstate train driver – this meant he was not home a great deal. When he was forced to spend a lot of time at home, Shaqi noticed that heating his house was extremely difficult. When he conducted a further inspection, he found that there was next to no insulation in the walls or roof. This explained why despite running an electric heater for hours on end, as soon as he turned it off, the house went cold almost immediately. Shaqi spent large amounts of his already limited income on energy bills, and at one point required a utility relief grant.

WEstjustice does acknowledge the compliance costs involved in fully insulating a property. For that reason, we advocate for a 5-year timeframe for such works to be completed (in comparison to the shorter period granted under the NZ reforms). We note that the NZ amendments incentivised landlords to carry out works on uninsulated properties for high-needs tenants by providing nationwide subsidies, and that local councils offered loans for retrofitting homes that were recouped as a future increase on rates.[27] We would encourage the Victorian government to explore similar options that would make the 5-year timeframe more feasible.

Minimum standard 2: All houses offered for rent must meet thermal efficiency standards:

1. Premises must have floor and ceiling insulation subject to the relevant AS/NZS and Building Code of Australia standards;
2. Premises must be draught proof; and
3. Landlords must report to tenants on the type, location and condition of insulation

[27] Ibid.

5.3. Security

The Act requires that landlords provide locks to all external doors and windows.[28] Despite this duty, however, WEstjustice assists many tenants every year where keys are not provided, locks are in a state of disrepair, and doors and windows either do not lock, or conversely, do not open at all.

Case study – Musa – had several doors and windows with no keys

Musa sought our assistance with regards to a number of repairs required at his property. Of the more urgent repairs were a number of doors and windows that were permanently locked. Musa had never been provided with keys, and she was concerned about what might happen, for instance, in a fire. We assisted Musa in getting keys to the external openings, however, it involved taking the matter to VCAT. We felt this should have been unnecessary.

Case study – Minh – had broken locks in garage

Minh moved into a new house, that had only been recently constructed. Much to his disappointment, Minh found that the garage door was broken, and the door between the house and garage had a very flimsy lock that did not work. This meant that it was possible for an intruder to simply lift the sliding door to the garage, and push their way into the house. Despite this being an urgent repair, and despite requests, the landlord refused to undertake the necessary maintenance.

WEstjustice accepts that there is currently a duty in the Act for landlords to ensure locks are provided to tenants. We believe that this must form part of a set of minimum standards that is unambiguous, and clearly states the non-negotiable obligation of landlords. The aim is to reduce the need, in this context, for a tenant to attend VCAT where there is little argument over what a landlord is required to do.

Minimum standard 3: A landlord must not offer a premises for rent unless all external windows and doors have functioning locks. The tenant must be provided with keys to all such locks.

[28] *Residential Tenancies Act 1997* (Vic) s 70.

5.4. Fire safety

Fire safety is paramount as the consequences of fire destroying a property, either in part or in whole, can be deeply traumatising for tenants. Laws regulating smoke alarms and fire safety vary significantly across Australia. In Victoria, there are no minimum standards in the Act beyond the landlord's usual duty to keep the property in good repair.[29] Conversely, Queensland,[30] Western Australia,[31] and Northern Territory (NT),[32] require landlords to ensure that smoke alarms are installed, are in working order at the commencement of the tenancy (or shortly after), and even provide replacement alarms where units are past their lifespan. The Northern Territory approach mirrors recommendations in our *Rights and Responsibilities* submission, requiring landlords to provide information on how to clean the smoke alarms, and written instructions on how to properly maintain them.[33]

Case study – Mira – house burnt down

Mira had reported issues with a malfunctioning smoke alarm for several months. Very little was done about it by the landlord. One evening, while Mira was home asleep with her two children, the house caught fire and was completely destroyed. Whilst the smoke alarm went off, Mira thought it was another false alarm, as had happened three times in previous months. Mira would not have taken this alarm seriously had her son not alerted the family in a state of panic.

Mira has been left traumatised by the experience, and wishes that the landlord had attended to the alarm. Although she got out of the property, it was a much closer call than it might otherwise have been.

It is incumbent that smoke alarms be made mandatory in all properties offered for rent, and that landlords repair or replace them when notified of their defectiveness. Tenants should otherwise be responsible for periodic testing of smoke alarms to ensure that they function correctly. Fire safety must not be negotiable, and no tenant should be put at risk. We also believe that the cost of compliance with this is low, especially when compared with the alternatives.

[29] *Residential Tenancies Act 1997* (Vic) s 68.
[30] *Fire and Emergency Services Act 1990* (QLD) Part 9A, Div. 5A.
[31] *Building Regulations 2012* (WA) Part 8, Div. 3.
[32] *Fire and Emergency Regulations* (NT) Part 2A.
[33] *Fire and Emergency Regulations* (NT) r 13D.

Minimum standard 4: A property that is offered for lease must have functioning smoke alarms. Smoke alarms must be tested within the first 30 days of a tenancy, and new batteries installed with each new tenancy. Written instructions on maintaining the smoke alarm must be provided.

5.5. Hygiene

Perhaps the single most common maintenance issue WEstjustice assists with concerns showers, toilets and running hot and cold water. Consumer Affairs Victoria research recently found that up to 96% of households had functioning access to water, 95% to a working toilet, and 91% had access to a working shower. This does not show the complete picture, however. While at one particular given time most hygiene-related amenities are functioning, many households may have to endure extended periods without such facilities where they cease to work reliably. The consequences can be significant, both in terms of health effects, and the struggle to get repairs performed, which may involve litigation.

Case study – Lukas – no hot water

Lukas had been asking his landlord for several months to fix the hot water problem at the property. The situation had become so bad, in the middle of winter, that to shower, Lukas was forced to drive to a relative's house. This involved taking his partner and children several kilometres every day just to bathe. The landlord was unresponsive to requests, and when the situation was finally acknowledged, progress was slow.

WEstjustice believes that were minimum standards to exist, and penalties for non-compliance a possibility (see below), the incentive to comply with the Act in Lukas's case may have been higher, and this situation avoidable.

Case study – Mischa – no cold water

Mischa is a tenant and had a young son, Blocky. The cold water supply to the kitchen became steadily worse, and virtually stopped working. Mischa was forced to use the hot water for every purpose in the kitchen. Unfortunately, Blocky suffered from a behavioural affliction that meant he washed his hands a lot, including in the kitchen. Mischa became extremely worried that Blocky would burn himself by having no choice but to use the hot water, as the cold water had so little pressure. Despite her best efforts, Mischa was unable to get her cold water restored until WEstjustice stepped in.

Case study – Rahida – shower leaking

Rahida had noticed that the wall in her bedroom was damp, which rapidly grew into a larger problem involving mould. It was determined that the shower was not properly waterproofed. Rahida found herself having to make the decision every day of whether to shower and exacerbate the damp and mould, or travel to a relative's house. More often than not, she did the latter.

Tasmania has recently made changes to their tenancies legislation in this respect. Landlords must ensure that rental properties have flushable toilets that are connected to a sewerage or waste disposal system.[34] Toilets must be private and ventilated.[35] A bathroom must be provided as a separate room (and may contain a toilet), have suitable privacy, must have a shower or bath (or both), have a washbasin, and all plumbing must be connected.[36] Moreover, a number of jurisdictions worldwide have moved to ensure that hygiene is enshrined in minimum standards including France,[37] Ireland,[38] and New York City[39] all requiring running hot water and suitable bathing facilities.

In Victoria there are means of ensuring that hygiene facilities meet a certain standard where they fail during a tenancy. However, there is little to prevent landlords from leasing properties that have substandard and inadequate hygiene facilities from the outset. We see this at WEstjustice routinely. The elevation of fit and proper bathroom facilities, and running cold and hot water to a minimum standard removes ambiguity about their importance, provides greater security of tenure, and protects a tenant's right to suitable housing.

Minimum standard 5: A landlord must not offer, extend or renew a lease for a property unless it has suitable hygiene facilities:

1. A toilet
    a. Must be in a dedicated room or in the bathroom;
    b. Must provide privacy;
    c. Must have adequate ventilation, either through a window or mechanical system;
2. A bathroom
    a. Must be a separate room, and may contain a toilet;
    b. Must provide privacy;
    c. Must have a bath or shower or both;

[34] *Residential Tenancies Act 1997* (Tas) s 36KL(1)(a)(i).
[35] *Residential Tenancies Act 1997* (Tas) s 36KL(1)(a)(ii), s 36(1)(b).
[36] *Residential Tenancies Act 1997* (Tas) s 36KL(1)(a)(i).
[37] Décret n°2002-120 du 30 janvier 2002 relatif aux caractéristiques du logement décent pris pour l'application de l'article 187 de la loi n° 2000-1208 du 13 décembre 2000 relative à la solidarité et au renouvellement urbains (France), art 3.
[38] *Housing (Standards for Rented Houses) Regulations 2008* (Ireland), art 6.
[39] *Housing Maintenance Code* (New York City) §27-2031.

d. Must have a wash basin;
e. Must have adequate ventilation, either through a window or mechanical system;

3. An adequate supply of hot and cold water must be supplied to all:
   a. Kitchen facilities;
   b. Bathrooms;
   c. Laundries;
   d. Kitchens.

5.6. Cooking facilities

The vast majority of houses in Victoria have at least some access to cooking facilities.[40] Their suitability and level of repair, however, varies greatly. WEstjustice regularly assists in cases where cooking facilities are the subject of dispute between tenant and landlord. Whilst ovens are sometimes problematic, stove tops are a more frequent issue – whether it is they are functioning at all, unreliable, or not delivering enough variable heat. Often, the issue will not be immediately known to tenants, who will not test a stove stop on an inspection. Many landlords will simply state that the burners were not in good condition upon inspection, and that was the condition in which the property.

Case study – Joan – heating elements do not function correctly

Joan was a long term tenant in her property. The stove had been getting gradually worse over the years, and she decided that she had put up with inadequate cooking facilities for too long before contacting WEstjustice. Joan informed us that two of the gas burners did not work, and the remaining two did not vary in heat. They were permanently on high, meaning that it was difficult for Joan to cook for her family. This had caused significant stress for Joan time.

Case study – Wiko – electric stovetop failed to heat

Wiko moved into an apartment with his large family. He had arrived as a refugee only three months prior, and this was his first property outside of transitional housing. When he inspected the property, he and his partner noted the presence of cooking facilities including oven and stovetop. Shortly after signing the lease, however, the inadequacy of the facilities became evident. The electric hotplates delivered so little heat, a dish that would otherwise would take 15 minutes to prepare was now taking over one hour or more.

[40] EY Sweeney 2016 *Rental experiences of tenants, landlords, property managers, and park residents in Victoria*.

Unfortunately, as is the case with many of our clients who arrive as refugees, Wiko decided he would not progress this matter further. He was fearful that by upholding his rights, he would be evicted for doing so. We believe that the presence of a minimum standard would have gone some way to eliminating this problem from the start, by requiring the landlord to provide adequate cooking facilities from the outset.

In the jurisdictions we have analysed, both Tasmania and Ireland specify the number of burners that must be provided by landlords. Irish tenants must be provided with four stovetop burners, a grill and oven.[41] Tasmania has legislated that cooking facilities be provided, including a sink with running hot and cold water, a stove top with at least two burners (for a house with two bedrooms or less) or three burners (for houses with three bedrooms or more), and an oven.[42]

WEstjustice advocates for the introduction of minimum standards for cooking facilities. The reasons are varied and compelling. In the absence of effective facilities – families are forced to eat takeaway and instant food, which is both financially burdensome and less than ideal from a public health perspective. Many tenants come from cultures where home cooking, and the time associated with it, is culturally significant. Additionally, we find that more vulnerable tenants are often less likely to 'rock the boat' and enforce their rights. Minimum standards in this context would address poor cooking facilities, make the condition required unambiguous, and provide security to tenants who should expect such facilities to work from the outset.

Minimum standard 6: A landlord must not enter into, extend or renew a lease unless a property contains:

1. A kitchen sink with running hot and cold water;
2. An oven, whether conventional, convection, microwave, or any combination of these;
3. A stovetop with at least:
    a. Three burners for a two bedroom house;
    b. Four burners for three or more bedroom premises.

5.7. Utility connections

Landlords are required to provide initial connection of electricity, water and gas at a rented premises.[43] In our experience, the initial connection of these services has not generally been the issue, but rather it is problems that eventuate during a tenancy (most commonly with water supply) that cause concern.

[41] *Housing (Standards for Rented Houses) Regulations 2008* (Ireland), art 8.
[42] *Residential Tenancies Act 1997* (Tas) s 36L.
[43] *Residential Tenancies Act 1997* (Vic) s 53.

Case study – Miranda – water supply burst

Miranda had been a tenant at her property for 3 years. Her water bills had always been average, until she received a bill considerably larger than previous quarters. Miranda could not figure out why. She made numerous representations to the landlord's agent, who eventually sent a plumber to inspect. It transpired that the pipes under the house had burst, leaking large amounts of water. Unfortunately for Miranda, this began a lengthy argument with the landlord, and the utility company, over who was liable.

Case study – Gaayathri and Arul – dispute over utilities

Gaayathri and Arul are refugees who rented a standalone bungalow unit behind their landlord's existing property. The unit was not separately metered for water usage. Gaayathri and Arul were told by the landlord that they would be splitting water bills "50/50" with the household of five in the front house. They spent $1000.00 during a tenancy of less than a year this way. We successfully argued before VCAT on Gaayathri and Arul's behalf that the water bills should have been the landlord's responsibility to pay as the property was not separately metered, and they were refunded for their share of the bills.

We advocate for section 53 of the Act to be classified a minimum standard, and expanded to include an landlord's ongoing responsibility to ensure that connections are kept in good repair where there is a breakdown or failure. We reiterate that by doing so, the importance of working utility connections becomes clear, landlords' responsibilities become unambiguous, and security of tenure is enhanced.

WEstjustice has commented in previous papers that section 53 of the Act should be amended to include internet connections, and we expand on that here. We believe that the requirement to provide utilities has failed to evolve with the requirements of families as technology and needs change. The Australia Bureau of Statistics highlights just how important and pervasive the internet has become in the way interact with other individuals, institutions, in commerce and education:[44]

- 86% of households have access to the internet;
- 99.3% of these connections are broadband;
- Where households had children under 15, access to internet services was 97%;
- The mean number of devices in a household accessing the internet is 6;

[44] Australian Bureau of Statistics, 8146.0 Household Use of Information Technology, Australia 2014-2015, 2016, < http://www.abs.gov.au/ausstats/abs@.nsf/PrimaryMainFeatures/8146.0?OpenDocument> accessed 22 August 2016.

- Whilst 51% of people over 65 use the internet, 99% of 15-17 year olds were connected;
- Of those using the internet, the most common uses are banking (72%), social networking (72%), purchasing goods and services (61%) and entertainment (60%);
- For those aged 15-17 years, 73% used the internet for formal education;
- Around one third of people (35%) used the internet for their most recent contact with government;[45]
- Four in five (79%) people use a search engine to locate a government organisation on the internet;[46]
- Just over one quarter (27%) of people who used the internet to contact government found the website by searching for it. A similar proportion (24%) already knew about the website because they had used it before.[47]

We note that many of our clients are required to engage with Centrelink, which has moved a large number of its services online in recent years. Many of our clients are also students, and education providers have increasingly moved to an online delivery model. Jobseekers are also likely to benefit from a reliable and ongoing internet connection.

Minimum standard 7: Landlords must provide the initial connection of electricity, gas, water and telephone line capable of conveying broadband internet. Landlords must keep each utility connection in good repair throughout the tenancy.

5.8. Structural integrity and weatherproofing

As noted above, most rental properties in Victoria were constructed prior to 1991. As properties age, many will become subject to structural issues over time. These can include cracking, dampness, rotting, doors and windows not closing properly, and in the worst cases a higher propensity for the dwelling to collapse or move on its foundations.

Case study – Kuan – house had cracks that got worse, let in draught

Kuan moved into his property and noticed that there were significant cracks in the walls and plaster. He offered to fix these for the landlord, who accepted. Kuan sealed the cracks, but they reappeared within 6 months. The cracks allowed a cold draught in, along with insects and spiders. Whilst structural problems are the landlord's responsibility, Kuan was forced to deal with the consequences over the course of his 12-month tenancy.

[45] Interacting with Government: Australians' use and satisfaction with e-government services – 2011 (Department of Finance, Commonwealth of Australia).
[46] Ibid.
[47] Ibid.

Kuan's story is certainly not unique, and we have assisted many tenants in similar situations.

Properties in Tasmania are now required to meet a certain level of structural soundness, and be free from 'significant dampness.'[48] A failure to meet this standard can see landlords fined up to $7,850.[49] We believe that Victoria should follow Tasmania in this respect not only to increase the safety and amenity of properties, but enshrine in legislation the notion that tenants should not be forced to live in substandard accommodation.

> **Minimum standard 8**: a landlord must ensure that a premises to which a residential tenancy agreement pertains is weatherproof and in a proper state of structural repair. This includes, but is not limited to, the roof, floor, ceilings, walls and stairs being in good repair, free of dampness, and not liable to collapse or significant movement.

5.9. Dangerous goods declaration

Many properties across Victoria have been constructed, at least in part, with dangerous materials. Perhaps the worst of these is asbestos. The term 'asbestos' refers to a group of six naturally occurring mineral fibres.[50] It was once thought to be among 'the most useful and versatile minerals known to humanity',[51] as it was unique in being able to be manipulated, spun and woven like cotton or wool into fibres or fabrics.[52] Manufactured around the world, it was used extensively from the 1940s until 1985, and was found in more than 3,000 Australian building products such as fibro cement sheeting, insulation and heat-resistant clothing.[53] Other products include as fencing, carpet and tile underlays, carports and sheds and packing under beams.[54] It benefited from being cheap, versatile, strong, flexible and the fact that it had insulating properties.

Concerns as to the health impacts and the dangers of asbestos on those exposed to the material were expressed throughout the 20th century, but due to suppression by certain entities, the health impact of the material and the public understanding of cause and effect was not readily confirmed

[48] *Residential Tenancies Act 1997* (Tas) s 36I.
[49] *Residential Tenancies Act 1997* (Tas) s 36I.
[50] Asbestos Safety and Eradication Agency, 'Asbestos information' <https://www.asbestossafety.gov.au/asbestos-information#home> accessed 22 August 2016.
[51] Slater & Gordon, 'What is asbestos' <https://www.slatergordon.com.au/compensation-law/asbestos/what-asbestos> accessed 22 August 2016.
[52] Slater & Gordon, 'What is asbestos' <https://www.slatergordon.com.au/compensation-law/asbestos/what-asbestos> accessed 22 August 2016.
[53] Maurice Blackburn, 'Asbestos diseases' <https://www.mauriceblackburn.com.au/rest/asbestos-diseases/> accessed 22 August 2016.
[54] Asbestos Safety and Eradication Agency, 'Asbestos information' <https://www.asbestossafety.gov.au/asbestos-information#home> accessed 22 August 2016.

until the 1970s.[55] An Australia-wide ban on the manufacture and use of all types of asbestos and asbestos-containing materials took effect on 31 December 2003.[56]

It is thought that approximately one third of all homes built in Australia contain asbestos products. The Australia government advises that as a general rule any dwelling constructed before 1980 is highly likely to have some asbestos content.[57] Australia was one of the highest per-capita users of asbestos in the world.[58]

Jurisdictions across Australia have approached dangerous materials differently. In the Australian Capital Territory (ACT) landlords are under an obligation to provide the tenant with a copy of any asbestos assessment report where one has been produced.[59] Where no such report has been produced, an Asbestos Advice must be given to the tenant, outlining when the property was built, various management procedures and the condition of the asbestos products contained.[60] New South Wales regulations require substantial pre-contractual disclosure to tenants, which includes whether the premises is listed on the loose-fill asbestos insulation register, or poses any significant health and safety risk not apparent to a reasonable person upon inspection.[61]

Dangerous materials pose a risk to the health and safety of Victorian renters. We are conscious, however, that many tenants will continue to live in properties that contain building products like asbestos. Adding to our call in the *Rights and Responsibilities* submission for pre-contractual disclosure to be expanded and strengthened, we advocate for mandatory reporting to tenants of the presence of dangerous building materials. Tenants will then have the right to determine whether the property is suitable for them based on this disclosure.

Minimum standard 9: Landlords must not offer a property for rent that contains asbestos, or other dangerous construction materials that post a risk to health and safety, unless a thorough dangerous goods declaration is provided prior to a tenant signing a lease. This declaration must include:

- The nature of the materials;
- The location of the materials;
- The condition of the materials (and whether any have been damaged, or any particles have become disturbed);

[55] Asbestos Safety and Eradication Agency, 'History of asbestos – chronology, <https://www.asbestossafety.gov.au/history-asbestos-chronology> accessed 22 August 2016.
[56] Ibid.
[57] Asbestos Safety and Eradication Agency, 'Asbestos information' <https://www.asbestossafety.gov.au/asbestos-information#home> accessed 22 August 2016.
[58] Ibid.
[59] *Dangerous Substances Act 2004* (ACT) s 47L.
[60] *Dangerous Substances Act 2004* (ACT) s 47J.
[61] *Residential Tenancies Regulations 2010* (NSW) cl 7.

- The date and nature of any renovations conducted that affected the dangerous materials;
- If a professional assessment has been conducted of the dangerous materials, this must be provided to tenants.

6. Enforcement of minimum standards

Minimum standards outline the manner and condition a property is to be offered in. There cannot be any negotiation regarding this, or any divergence by landlords. This protects tenants by providing a clear set of obligations and expectations. Where there is a failure to meet the standard, we believe that:

1. CAV should have the power to inspect and report, in parallel with the powers outlined in the non-urgent repairs process;[62]
2. The report must be seen as a binding course of action on the landlord;
3. Only when the landlord fails to take such action should a VCAT application be necessary;
4. Compensation should automatically attach if a tenant requires a compliance order; and
5. Where a landlord engages in repairs that do not meet the required standard, the tenant may request that CAV re-inspect the works.

Furthermore, any breach of minimum standards should attract penalties, as the Act currently provides for the contravening of some sections.

There must be no defence by a landlord that the property was taken in the same condition as inspected in regards to a minimum standard.

Recommendation 1: The Act must be amended to allow CAV to inspect reported breaches of minimum standards. This report is a binding directive to a landlord that repairs must be conducted to bring the premises to the required standard. CAV may re-inspect the property where the tenant disagrees with the work that has been performed.

Recommendation 2: The Act must be amended to include penalty provisions for a breach of a minimum standard.

Recommendation 3: The Act must be amended to state that where a tenant is forced to seek a compliance order compelling a landlord to meet a minimum standard, compensation should automatically form part of the application.

[62] *Residential Tenancies Act 1997* (Vic) s 74.

7. Repairs and modifications

In addition to the introduction of minimum standards, WEstjustice notes that there are many other reforms needed to ensure tenants' rights in respect of property conditions. In particular, we assess changes needed to condition reports, modifications, the repairs process, damage and cleanliness, and family violence.

7.1. Condition reports

The Act requires that where a bond is paid, two copies of a condition report must be provided to the tenant prior to taking occupation.[63] This is not a prescribed form, but must include a list of fixtures and fittings; and outline their condition, cleanliness and state of repair. Tenants have three business days to return the condition report with any amendments,[64] and this is intended to assist where disputes arise between the tenant and landlord. The document is conclusive evidence of the condition of the property when the tenant enters into occupation after both parties have signed it.[65]

WEstjustice has a number of concerns about the current way in which condition reports function, and we believe that a number of changes are required to make these documents fairer, and more robust as evidence in landlord-tenant disputes.

Tenants often do not complete condition reports, questioning their evidentiary value

Many of WEstjustice's clients who are in a dispute with a landlord will commonly state that either they did not know they could disagree with the report provided to them, or did not understand the importance of the document itself. We often find this situation worsen with clients from CALD backgrounds. The prospect of commencing a tenancy with broad disagreements about the condition of the property often discourages tenants from annotating their reports. A further problem is that the condition report will often not be given to the tenant until after the bond is paid, and after what is usually a brief inspection of the property. This undermines its value as a pre-contractual disclosure as to the general state of the premises.

Case study – Anshin – did not know she could disagree with the condition report

Anshin moved into a property in Braybrook. It was in poor condition generally, and was deteriorated and damaged throughout. Anshin told us that the family did their best to keep the property reasonably clean, even though it always looked worse for wear because of the house itself. A condition report was provided at the start of the tenancy, but she had little understanding what it was, and certainly did not know that she could disagree with the

[63] *Residential Tenancies Act 1997* (Vic) s 35.
[64] *Residential Tenancies Act 1997* (Vic) s 35.
[65] *Residential Tenancies Act 1997* (Vic) s 36.

broad statements in the condition report that fixtures and fittings were largely 'clean, working and undamaged'.

When Anshin vacated the property, a bond claim was made against her. Unfortunately, Anshin had not taken any photos, and whilst the condition report was not returned and signed, therefore not conclusive evidence, it was taken as heavily persuasive. Anshin was upset at having to pay for what she thought amounted to 'repairs and renovations' for the landlord.

WEstjustice has assisted in numerous cases exactly like the above case study. Tenants often do not know their rights, misunderstand condition reports, and, unfortunately, even incomplete and unsigned reports are taken as persuasive evidence of the condition of the property.

Recommendation 4: The Act should be amended to state that prospective tenants must be provided with the condition report upon inspection of the property, and again prior to signing the lease and paying a bond.

Recommendation 5: The Act should be amended to state that a condition report must be of no evidentiary value where it can be shown it was not explained to the tenant, in their primary language.

Recommendation 6: The Act should be amended requiring condition reports contain a clear warning to tenants outlining the importance of the document, that they may disagree with what is listed, and they must return the document within the required timeframe.

Tenants must have longer to complete and return condition reports

Often a source of contention between landlords and tenants is when the condition report is returned. The Act specifies that a tenant must return a copy within three business days of receiving it.[66] WEstjustice believes this is undoubtedly too short a timeframe, especially where a tenant may need to arrange assistance. This document must be seen in the context of a whole moving process, which often brings stresses and complications that may minimise the immediate importance of the condition report in a tenant's mind. We believe that a longer period of consideration is required, though we accept that it cannot be open needed, insofar as the intention is to reflect the condition of the property upon occupation.

Recommendation 7: The Act must be amended to allow 7 days for the condition report to be returned to the landlord.

[66] *Residential Tenancies Act 1997* (Vic) s 36(2).

Condition report to serve as a Notice to Landlord

Further, we believe that where a condition report is returned to a landlord as amended, this should constitute a written Notice to Landlord, triggering the repairs process.[67] For many tenants this will be the first, and sometimes only, notification that repairs are required. We believe that this is an appropriate and sensible reform to ensure that all parties to a tenancy uphold their obligations.

> **Recommendation 8**: The Act should be amended to state that a condition report as signed, amended and returned by a tenant constitutes a Notice to Landlord of repairs required at the premises.

Penalties for false and misleading condition reports by landlords

Finally, WEstjustice routinely encounters condition reports that contain no information or comments about the state of the property, and a blanket statement that all fixtures and fittings are 'clean, working and undamaged'. We often note this to be incorrect and misleading. Where tenants frequently do not return the condition report at all, it is simply an added obstruction to suggest that renters must essentially conduct a more thorough assessment than the landlord should have already completed. Penalties should apply where reports are false and misleading.

> **Recommendation 9**: The Act should be amended to include penalty provisions where a landlord completes a condition report in a false and misleading way.

7.2. Tenants' rights to make modifications

WEstjustice discussed the right to make modifications in our *Security of Tenure* submission. However, we make a number of comments in the context of this submission to strengthen tenants' rights in respect of property conditions.

The Act broadly prohibits permanent or enduring modifications being made to the property. The exception is where the landlord expressly permits such modifications, and there may need to be separate agreement as to whether any modifications should be removed and the property returned to its original condition. WEstjustice has already discussed the remedies available to landlords where they believe modifications have occurred without consent. We believe that the current legislative provisions must be changed to protect tenants against actions of landlords for reasonable modifications.

[67] *Residential Tenancies Act 1997* (Vic) Part 2.

We submit that in the context of minimum standards, and enhancing security of tenure, there must be some degree of permissibility for tenants to make modifications:

1. Modifications that do not require consent – those around safety, including locks and smoke alarms, and minor energy efficiency measures, including energy efficient light bulbs;
2. Modifications that require notice, but not consent – those that bring the property up to minimum standards as prescribed by law, and those that otherwise do not alter the structure or foundation of the building;
3. Modifications required for disability – a landlord must not reject a proposed modification where the modification is reasonable, and necessary for a person with a disability.

Not only will these measures ensure that properties continue to meet minimum standards, see landlords held to this standard, but this also serves to enhance security of tenure of tenants into the future.

Recommendation 10: The Act should be amended to take into account the above scheme for modifications.

Modifications and family violence

WEstjustice assists hundreds of family violence victims each year. The personal effect of physical, emotional and economic abuse can be devastating. In almost every WEstjustice submission to the Residential Tenancies Act Review, we have made recommendations that we believe are required for the Act to better respond to situations of family violence. In addition to the recommendations above, we believe that where a modification is needed to a property to ensure the safety of the tenant, in circumstances of family violence, a landlord may be put on notice of such modification, but consent is not required. This allows a tenant to take the necessary safety steps to protect themselves from further threat, including changing of locks, installation of security screens, sensor lights and alarm systems.

Should a landlord feel strongly enough to object to a modification, they may seek a declaration from VCAT, which must not make a restraining order unless it is satisfied the modification will have structural or foundational consequences. Landlords will be responsible for the cost where the modifications are necessary to return the property to its minimum acceptable condition.

Recommendation 11: The Act must be amended to allow tenants, in circumstances of family violence, to make modifications to a premises that enhance their safety. Consent of the landlord is not necessary; however, the tenant should inform the landlord in writing.

7.3. The repairs process

WEstjustice has made many submissions in respect of the repairs process throughout the Residential Tenancies Act Review. In the context of property conditions in the rental market, we believe that this process should be streamlined in order to make the realisation of repairs quicker, reducing the need for dispute resolution. Not only will this serve to lessen the significant consequences of poor property conditions on tenants, but strengthen the Act in its statement of parties' obligations.

Consumer Affairs Victoria inspection report to be a binding directive on a landlord

We advocated above that where a property fails to meet a minimum condition, CAV should have the power to inspect and report. This report should then become a binding directive to the landlord. Currently, the non-urgent repairs process has many steps that only serve to discourage tenants from enforcing their rights. From a written Notice to Landlord, 14 days to comply, an inspection by CAV, application to VCAT, all of which may not even see the repairs done at all.

We believe that to potentially reduce the need for VCAT at all, the CAV inspection report must demand compliance by landlords. In our experience, CAV reports are fair, practical, and weigh up the needs and obligations of all parties. We also find that tenants feel more comfortable up to the reporting stage, which does not involve formal proceedings before the Tribunal. Taking this step, we find, is very difficult particularly for members of CALD communities.

Where a landlord fails to conduct the repairs in a timely manner, the tenant must then have the right to seek compliance at VCAT. As with our recommendation above for compliance of minimum standards, compensation should automatically attach to a compliance application and be assessed by the Tribunal.

Recommendation 12: The Act should be amended to make a report produced by CAV in accordance with Section 74 binding on the landlord.

Recommendation 13: The Act should be amended to state that where a landlord does not carry out the repairs stipulated in a CAV in a reasonable time, the tenant may apply to VCAT for compliance. Compensation should automatically attach to such an application, and be assessed by VCAT.

Rent Special Account to be easier to access

The Act currently allows a tenant to apply to VCAT for an order permitting rent be paid into the Rent Special Account.[68] The Tribunal may make the order where the tenant has given written notice that

[68] *Residential Tenancies Act 1997* (Vic) s 77.

repairs are required, and these repairs have not been conducted.[69] WEstjustice believes that the Rent Special Account has a role in compelling landlords to complete repairs – one of the key problems we face when assisting tenants is actually seeing the repairs attended to, or having them completed in a reasonable timeframe. The Rent Special Account must be easier to access, however. We advocate for an automatically ability for tenants to pay into the account once CAV have conducted a repairs inspection, and determined that repairs are required.

Often out of sheer frustration, tenants stop paying rent in circumstances where they have repeatedly requested repairs. The Act does not allow for this, and nor should it. However, the incentive to complete repairs, as a consequence of the landlord's rental income being held on trust until they are complete, is a worthwhile reform for the Act.

> **Recommendation 14**: The Act should be amended to allow a tenant to pay rent into the Rent Special Account upon CAV issuing an inspection report requiring the landlord complete repairs.

7.4. Damage and cleanliness

WEstjustice has previously made submissions regarding damage and the standard of cleanliness expected of tenants. However, we reiterate the importance of reforms in this area.

Duty to avoid damage

Tenants are required to avoid causing damage to the rented premises, and take reasonable care to avoid damaging the common areas. WEstjustice notes that there is an inconsistency in standard between damage to the premises and common areas which should be removed.

> **Recommendation 15**: Section 61(1) should be amended to read 'a tenant must ensure that reasonable care is taken to avoid causing damage to the rented premises.'

We refer to our recommendations in the Rights and Responsibilities submission around damage in the context of family violence, and the requirement that VCAT be more rigorous in apportioning claims for damage in such circumstances.

[69] *Residential Tenancies Act 1997* (Vic) s 77.

Case study – Dashinka – property was damaged by abusive partner

Dashinka had been the victim of long-term family violence. As is common with many victims, it took Jane several attempts to finally leave her abusive partner and co-tenant. Jane tried everything to have her name taken off the lease – neither her partner nor the landlord or agent was responsive to these requests.

When leaving the property, significant rent arrears had accrued, the house had not been cleaned, and there was damage caused by her former partner. Common in many family violence matters, Dashinka, as the victim, was the only one to engage in the VCAT process, and the partner could not be found. Dashinka did not seek our assistance until after the hearing, where she was unsuccessful in arguing against a compensation order. Despite submitting that it was her former partner's damage, the order was made against both tenants.

Recommendation 16: The Act should be amended to compel VCAT, when considering a landlord's application for bond and/or compensation, to consider apportioning the claim in circumstances of family violence.

Reasonably clean standard

We submit that a lack of clear definition in the Act, or even further guidance, contributes to misunderstandings and misinterpretations about the condition the property is required to be kept in by tenants. The Act should define 'reasonably clean' so as to remove value judgements of landlords and their agents. This goes to the heart of property conditions during a tenancy, and a tenant's obligations in this respect. Providing a tenant with a relatively vague requirement, we submit, is unacceptable and unhelpful.

Recommendation 17: The Act must be amended to include a definition of 'reasonably clean'. This should take into account the ordinary course of living, deterioration of the property over time and reasonable wear and tear, and restrict the use of Breach Notices to circumstances where health is threatened, fire may be caused, damage may occur, or laws or regulations may be breached.

7.5. Family violence

WEstjustice supports the recommendations made by the Royal Commission into Family Violence. We look forward to the recommendations being fully implemented to ensure that Victorians are safer in their homes, and that properties are maintained in a condition that ensures the safety of victims and survivors.