



**Anika**  
Legal

15 July 2024

By email: [RegulationPolicy@dgs.vic.gov.au](mailto:RegulationPolicy@dgs.vic.gov.au)

Regulation and Policy Division  
Department of Government Services

Dear Regulation and Policy Division,

## **Energy Efficient Minimum Standards for Rental Properties and Rooming Houses**

We welcome the opportunity to provide our submission to the new minimum energy efficiency and safety standards proposed for rental properties and rooming houses.

We strongly support the new standards for residential rental properties as part of ensuring safe and energy efficient homes for Victorian renters.

A summary of recommendations is available at **Appendix A**.



Level 6, 179 Queen Street  
Melbourne, VIC 3000

[info@consumeraction.org.au](mailto:info@consumeraction.org.au)  
[consumeraction.org.au](http://consumeraction.org.au)  
T 03 9670 5088  
F 03 9629 6898

## TABLE OF CONTENTS

<b>About Consumer Action</b> .....	<b>1</b>
<b>1. Do you support the introduction of the proposed minimum standards to improve energy efficiency and safety of rental properties and rooming houses in Victoria?</b> .....	<b>3</b>
<b>1.1. Renters are a third of the Victorian population</b> .....	<b>3</b>
<b>1.2. Health impacts</b> .....	<b>3</b>
<b>1.3. Affordability and quality</b> .....	<b>4</b>
Housing affordability.....	<b>4</b>
<b>2. Do you have any feedback on when the obligation for each proposed minimum standard will be triggered, as outlined in the proposed Regulations?</b> .....	<b>5</b>
<b>3. Do you have any feedback on the proposed exemptions for the minimum standards, noting there are a range of exemptions for rental providers and rooming house operators, as outlined in the proposed Regulations and Regulatory Impact Statement?</b> .....	<b>5</b>
<b>3.1. Risks of proposed exemptions</b> .....	<b>6</b>
3.1.1. Exemptions for 'where it is not reasonably practicable to undertake' or where 'it is unreasonable to install'.....	<b>6</b>
3.1.2. Circumstances where 'the cost is significantly higher than the average cost in a Class 1 or Class 2 building' and Circumstances where compliance with any other Act or local law makes the cost of installation prohibitive.....	<b>7</b>
3.1.3. Exemptions for draught proofing .....	<b>7</b>
<b>4. What practical implementation issues / challenges might be associated with the proposed minimum standards? What steps should be taken to manage risks and challenges identified?...</b>	<b>8</b>
<b>4.1. Lack of compliance with minimum standards</b> .....	<b>8</b>
<b>4.2. Mandatory reporting through condition reports</b> .....	<b>8</b>
<b>4.3. Risk to costs being passed on to renters</b> .....	<b>9</b>
<b>APPENDIX A - SUMMARY OF RECOMMENDATIONS</b> .....	<b>11</b>

## 1. Do you support the introduction of the proposed minimum standards to improve energy efficiency and safety of rental properties and rooming houses in Victoria?

Consumer Action strongly supports the introduction of the new proposed minimum standards for rental properties. These standards are crucial in ensuring a safe and liveable home.

The dynamics of a tenancy can put a renter at a significant power imbalance with respect to their landlord, meaning a renter is less likely to exercise their rights and request repairs for fear of repercussions. This dynamic is referenced in the Issues Paper, is illustrated through our case studies below, and is likely amplified in Victoria's housing crisis. In this context, mandatory standards around safety and energy efficiency are good policy for the health and wellbeing of a very large proportion of our population.

### 1.1. Renters are a third of the Victorian population

Renting has become the fastest growing form of housing tenure in Australia<sup>1</sup> compared to mortgaged or homeownership. It has become more likely than ever that Australians will rent long term or for their whole adult lives<sup>2</sup>. As renters represent over 27% of the Victorian population<sup>3</sup>, and are likely to be renting long-term, it is crucial to develop stronger energy efficiency and safety requirements for rented properties to meet minimum standards of liveability.

### 1.2. Health impacts

As outlined in the regulatory impact statement, the need for well-maintained, rented homes is fundamental to the health and wellbeing of renters<sup>4</sup>. Consistent research has found a direct association between poor quality housing and poor physical and mental health<sup>5,6</sup>.

#### Box 1: Rosie

Rosie\* was experiencing financial hardship after a workplace injury forced her to cease work. Due to being unable to work, Rosie's sole income is Centrelink Jobseeker of approximately \$550 per fortnight. Rosie had been living in a rented property with her parents. However, recently, Rosie was hospitalised after suffering a serious allergic reaction to mould spores in the home. This serious medical episode made continuing to live at the property impossible for her.

Rosie had to move into a hotel, and she pawned her jewellery in order to cover her expenses. When she contacted Consumer Action's financial counsellors on the National Debt Helpline, she has multiple debts including Buy Now Pay Later accounts and was being contacted by all her creditors. Rosie was facing homelessness when she contacted our financial counsellors, and she requested help with accessing financial assistance for a bond or grant to help apply for a rental property.

\*name changed

<sup>1</sup> Australian Bureau of Statistics. Housing Occupancy and Costs 2019-2020. <https://www.abs.gov.au/statistics/people/housing/housing-occupancy-and-costs/latest-release> (2022).

<sup>2</sup> Pawson, H., Hulse, K. & Morris, A. Interpreting the rise of long-term private renting in a liberal welfare regime context. *Hous. Stud.* 32(8), 1062–1084, <https://doi.org/10.1080/02673037.2017.1301400b> (2017).

<sup>3</sup> H. Holst, Commissioner for Residential Tenancies *Renting in Victoria: Snapshot 2020* available at [https://files.rentingcommissioner.vic.gov.au/2021-01/Renting%20in%20Victoria%20Snapshot%202020\\_o.pdf](https://files.rentingcommissioner.vic.gov.au/2021-01/Renting%20in%20Victoria%20Snapshot%202020_o.pdf).

<sup>4</sup> Department of Energy Environment and Climate Action, Minimum energy efficiency and safety standards for rental homes – Regulatory Impact Statement, May 2024,, p.11; 17; 18.

<sup>5</sup> Baker, E., Lester, L. H., Bentley, R., & Beer, A. (2016). Poor housing quality: Prevalence and health effects. *Journal of Prevention & Intervention in the Community*, 44(4), 219–232. <https://doi.org/10.1080/10852352.2016.1197714>.

<sup>6</sup> Sweltering Cities and Healthy Homes for Renters *Summer Survey 2022 Report* [Copy of SC Summer Survey 2022 Report \(swelteringcities.org\)](https://www.swelteringcities.org/).

There are significant detrimental effects to the health of a large proportion of Victorian renters when minimum standards are not maintained. These detriments are especially prevalent for First Nations peoples, as well as people in low-incomes, younger aged and under or unemployed, who have been found to be more likely to live in poor-quality housing.<sup>7</sup>

### 1.3. Affordability and quality

#### Housing affordability

In 2020, 58% of low-income private renters in Australia were spending over 30% of their income towards rent. Private rents have continued to increase without correlation to the standard and quality of the properties themselves. As the Issues Paper notes, 85% of assessed properties had the worst possible thermal rating during hot weather, and 75% had low or very low thermal ratings during cold weather<sup>8</sup>.

#### **Box 2: Carlo**

Carlo\* is a renter receiving the Jobseeker income while his application for the Disability Support Pension is reviewed. Carlo has a chronic mental illness and receives support from a mental health worker. Recently, Carlo's rent was increased by around \$100 per week, which he was struggling to afford. He contacted the National Debt Helpline and told us that his rent was due in a few days, but he would be late paying it because he wouldn't receive his Centrelink income until a few days later. He stated he receives text messages from his real estate agent which he finds very stressful. Carlo said he was unwilling to dispute his rent increase as his landlord had threatened to demolish the house.

\*name changed

#### Energy affordability

As outlined in Consumer Action's [Energy Assistance Report: Keeping the Lights On](#), we have identified through our casework that private renters are disproportionately more likely to experience financial hardship or difficulty in affording their energy costs<sup>9</sup>. When compared with homeowners, renters are spending more than \$150 per year on average, compared to non-renter households, causing additional financial strain<sup>10</sup> for renters who tend to already have lower net wealth.

With these considerations in mind, we strongly support the regulatory impact statement position that '*standards play a crucial role in ensuring renters receive appropriate value for their rental payments*'<sup>11</sup>. Establishing minimum standards is an integral step in strengthening a basic quality standard for rented homes and rooming houses. Of note, additional priority should be given to ensuring that these standards are met without causing additional financial strain or risk to tenure for renters. There are notable considerations in the implementation of these standards outlined further below in this submission.

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<sup>7</sup> Australian Institute of Health and Welfare *Social determinants of health – housing and homelessness*, July 2022 [Social determinants of health snapshot - Australian Institute of Health and Welfare \(aihw.gov.au\)](#).

<sup>8</sup> Regulatory Impact Statement (above) reference to Victorian Residential Efficiency Scorecard p.14.

<sup>9</sup> Consumer Action Law Centre, *Energy Assistance Report 4<sup>th</sup> Edition* June 2024, [https://consumeraction.org.au/wp-content/uploads/2024/06/CALC-Energy-Assistance-Report-2024-FINAL\\_WEB.pdf](https://consumeraction.org.au/wp-content/uploads/2024/06/CALC-Energy-Assistance-Report-2024-FINAL_WEB.pdf) p 38.

<sup>10</sup> Best, R. and Burke, P.J. (2022), Effects of renting on household energy expenditure: Evidence from Australia, CCEP Working Paper 2202, May 2022. Crawford School of Public Policy, The Australian National University.

<sup>11</sup> *Ibid.* p.28.

### Box 3: Rob

Rob\* is a renter and receives the Disability Support Pension. He contacted the National Debt Helpline because he was struggling with his energy bills. Rob had received an electricity bill for over \$2,000. He said that his bills were always high because his landlord refused to install insulation. Rob said he had recently applied for the Power Saving Bonus and Utility Relief Grant so wasn't able to access these for his most recent bills.

Rob stated that the house he rents was built in the 1800s. In addition to having no insulation, he said his windows don't close properly and there are gaps in the floor owing to collapsed stumps. Rob said he had been trying to fill the gaps himself, which he said had been "a bit" effective. However, his energy use – and accordingly, his energy costs – remained unaffordably high.

\*name changed

## 2. Do you have any feedback on when the obligation for each proposed minimum standard will be triggered, as outlined in the proposed Regulations?

We broadly support the outlined compliance trigger timeline, noting that it does not limit landlords or rooming house managers from conducting energy efficient upgrades before the proposed dates, provided they meet lease requirements.

## 3. Do you have any feedback on the proposed exemptions for the minimum standards, noting there are a range of exemptions for rental providers and rooming house operators, as outlined in the proposed Regulations and Regulatory Impact Statement?

It is our view that the proposed exemptions could conflict with landlord obligations in the Residential Tenancies Act (RTA) including the obligation to ensure that the rented premises are maintained in good repair<sup>12</sup>. In *Shields v Deliopoulos*, the Supreme Court held that 'the duty imposed upon a landlord to ensure that rental premises are in good repair is strict and absolute, and imposes an obligation upon a landlord to identify and rectify any defects of which they are aware or ought to be aware'<sup>13</sup>. Case law has defined good repair to include meaning 'reasonably fit and suitable for occupation'<sup>14</sup>. As research has indicated, properties that don't meet the proposed minimum standards including insulation or draught proofing, expose tenants to risks to health and safety risks<sup>15</sup>, and may limit a tenant's peaceful and quiet enjoyment of the property<sup>16</sup>.

Considering these fundamental obligations under the RTA, the proposed exemptions are broad and include where:

- it is not reasonably practicable to undertake the upgrade
- costs to conduct the work is significantly higher than the average equivalent cost
- it would require substantial building work, or result in substantial damage to the property

<sup>12</sup> Residential Tenancies Act 1997 (Vic) section 68

<sup>13</sup> Supreme Court Decision – *Shields v Deliopoulos* [2016] VSC 500 (7 September 2016) [Para 30]

<sup>14</sup> *Ibid* [Para 38]

<sup>15</sup> Bentley, R. et al. Housing affordability and mental health: an analysis of generational change. *Hous. Studies*. 37, 1842–1857 (2019);

<sup>16</sup> Residential Tenancies Act 1997 (Vic) section 67

- it concerns a flueless space heater or open flued gas appliance, in regards to draught proofing
- with reference to ceiling insulation, gas safety requirements as outlined in the current minimum standards have not been met.

We consider the following additions may strengthen the implementation of these standards:

### 3.1. Risks of proposed exemptions

As identified in the impact statement, there is a higher likelihood that rental properties that are more 'affordable' are less likely to meet Principal Regulation<sup>17</sup> minimum standards. The impact statement further notes that there is a lack of data to adequately assess whether the standards set out in the Principal Regulations have been implemented. Due to these considerations, there is a potential risk that renters who are more likely to live in these homes will continue to be exposed to detrimental impacts of energy inefficiency, and related energy costs.

While in some circumstances there will be the unavoidable need for rental providers to rely on an exemption, the broad approach of the proposed exemptions risks undermining the incredibly important policy aims of the proposed regulations, including to:

- *improve renter health, wellbeing, comfort and safety*
- *reduce renter energy bills*
- *reduce greenhouse gas emissions, supporting the energy transition and decarbonisation of the rental sector.*

In our view, the newly established Renting Taskforce and Consumer Affairs Victoria (CAV) should prioritise monitoring and enforcement activity for rental properties where minimum standards in the Principal Regulations<sup>18</sup> have not been met, and for CAV to require the implementation of these standards as a priority with a view to ensuring as many of these properties as possible meet the proposed standards by October 2025.

#### 3.1.1. Exemptions for 'where it is not reasonably practicable to undertake' or where 'it is unreasonable to install'<sup>19</sup>

The proposed regulations provide significant latitude for a landlord to consider that they fall within exemptions. The regulations contain exemptions from meeting minimum energy efficiency standards if it is "unreasonable" to install or upgrade, or "not reasonably practicable" (clause 13 (7) of exposure draft/proposed regs) in some cases without qualifying or defining the circumstances where it would be considered unreasonable. The regulations do not establish or contemplate there being oversight over the veracity or reasonable reliance on this exemption, or an express right of renters to challenge a decision by a landlord to rely on an exemption. It is reasonable to assume that this exemption would rely on landlords self-assessing that they are exempt, and not conducting upgrades.

As the impact statement outlines, there are considerable issues and risks that upgrades won't be implemented by landlords due to the 'split incentive' arising from the landlord-tenant relationship<sup>20</sup>. We submit that the carve outs risk landlords declining to conduct the required upgrades, without necessitating an independent third party to assess whether the circumstances are "unreasonable" enough to warrant not conducting the upgrade.

We recommend that the wording and application of the exemption provisions be restricted as much as possible. In light of the policy objectives of the energy efficiency minimum standards, we see the need for approval by

<sup>17</sup> Residential Tenancies Regulation 2021 (Vic)

<sup>18</sup> *ibid*

<sup>19</sup> Residential Tenancies and Residential Tenancies (Rooming House Standards) Amendment (Minimum Energy Efficiency and Safety Standards) Regulations Exposure Draft: Non exhaustively: Part 2, Section 7 (1) (d) proposed subregulations (1)(ca), (cb), (e) and (f); and Section 9, (1) (d): proposed subregulations (ca) (i); (cb) (i); (e)(i); (f)(i); (g)(i) & Section 10 (1) (d): proposed subregulations (ca)(i), (cb)(i), (e)(i), (f)(i), (g)(i) & Section 10 (5) proposed regulation clause 14 (7)(e)

<sup>20</sup> Residential Minimum Standards Regulatory Impact Statement, Section 2.5

CAV of a landlord's reliance on an exemption. This can be done through a simple application process, with the power conferred on CAV to accept, reject or accept/reject with conditions, any request to rely on the exemptions.

CAV or the Renting Taskforce might see value in prioritising investigations of properties where landlords have relied on an exemption to deny upgrading a property.

3.1.2. Circumstances where 'the cost is significantly higher than the average cost in a Class 1 or Class 2 building' and Circumstances where compliance with any other Act or local law makes the cost of installation prohibitive

For the reasons outlined above, the inclusion of these exemptions necessitates independent oversight and approvals.

Additionally, when considering the costs of implementing the minimum standards, we note that all Victorian households are eligible to participate in the Victorian Energy Upgrades scheme, and discounts are available for residential rental properties. Discounts include upgrades to weather sealing, hot water systems, shower heads and window glazing<sup>21</sup>.

We strongly support the Victorian Energy Upgrades scheme, and its inclusion of eligibility for rental properties. We hold the view that these discounts and accreditation scheme will provide assistance to reduce many costs associated with implementing these upgrades. Therefore, requests for exemptions by landlords citing costs should be reviewed and assessed by CAV, with regard to whether the landlord has accessed of the VEU scheme.

**RECOMMENDATION 1.** To add an express obligation in the proposed regulations on landlords to seek approval from the Director of CAV to rely on an exemption to meeting the energy efficiency minimum standards.

**RECOMMENDATION 2.** To add an express power of the Director of CAV to consider, investigate and accept or reject (or accept/reject with conditions) an application by a landlord for an exemption to meeting the energy efficiency minimum standards.

3.1.3. Exemptions for draught proofing

As outlined in the regulatory impact statement, there are severe risks including loss of life associated with the installation of draught proofing in homes that have certain gas appliances<sup>22</sup>. In these cases, we submit that instead of exempting these properties, CAV and the Renting Taskforce should give regulatory priority to properties in this category and work with relevant safety regulators, in order to accurately assess the extent of the risk and to monitor and enforce the compliance of minimum standards regarding gas safety checks<sup>23</sup> (and the additional modifications required in the event they don't meet minimum standards).

<sup>21</sup> Department of Energy, Environment and Climate Action, [Victorian Energy Upgrades for households](#).

<sup>22</sup> Coroners Court of Victoria (2018), Inquest into the death of Sonia Sofianopoulos. (File no. COR 2017/3566) as noted in the Regulatory Impact Statement. p.40.

<sup>23</sup> *Residential Tenancies Regulation 2021 (Vic)* Section 30; *Residential Tenancies Act 1997* Division 5A Section 65A (1), 68, 68A, 68B.

## 4. What practical implementation issues / challenges might be associated with the proposed minimum standards? What steps should be taken to manage risks and challenges identified?

### 4.1. Lack of compliance with minimum standards

We note the considerations outlined in the impact statement that there are some identified barriers to implementation such as split incentives, information asymmetry and externalities such as third-party benefits<sup>24</sup>. Further, as identified in the Victorian Residential Efficiency Scorecard, after the enactment of the Principal Regulations in 2021, a significant majority of assessed residential properties were not meeting the regulations. Due to these potential barriers, compliance and enforcement must be prioritised by relevant regulators, including meaningful enforcement in cases where minimum standards have not been met for deterrence.

Given the fundamental nature of adequate housing as a social determinant of health, the proposed standards could have measurable success in addressing or preventing serious risks to Victorians' health and safety. In order to ensure the implementation of these necessary reforms, it is paramount that private residential tenancies are able to be comprehensively monitored and regulated to meet these aims.

We recommend that CAV and the Department of Energy, Environment and Climate Action (**DEECA**) develop a compulsory register of residential rental properties. This register could utilise existing data on Victorian rental housing stock<sup>25</sup> in order to expand data collection, monitoring and assessment of Victorian residential rental properties and their compliance with minimum standards. Priority should be given to report and record the compliance with standards that are in place to directly address significant health hazards such as black mould, carbon dioxide inhalation and electrical hazards.

**RECOMMENDATION 3.** For CAV and DEECA to develop a compulsory register of residential rental properties to assess Victorian residential rental properties and monitor and enforce landlords' compliance with minimum standards

### 4.2. Mandatory reporting through condition reports

We support the consumer sector's recommendations to include a requirement for landlords to assess and detail whether the property meets the minimum standards, as part of standard reporting requirements<sup>26</sup>.

We support the development of mandatory disclosure obligations regarding the energy efficiency of a rental property. As part of this development, we hold the view that energy efficiency ratings should be integrated into the Victorian Residential Energy Efficiency Scorecard.

As part of the adoption of mandatory disclosure obligations and this scorecard, an assessment and reporting of the proposed minimum standards could be added into the current condition report for a rental property.

The RTA outlines obligations for landlords to provide a condition report before the renter occupies the property<sup>27</sup>. The RTA also outlines obligations for landlords to provide regular gas and electrical safety checks

<sup>24</sup> Regulatory Impact Statement section 2.5.

<sup>25</sup> For example, the *Phase out of Open Flued Gas Space Heaters RIS* (2021) and the Residential Tenancies Bond Authority (RTBA) Victoria.

<sup>26</sup> Brotherhood of St Laurence, [Submission to regulatory impact statement on efficiency standards for rental properties \(bsl.org.au\)](#); [Financial Counselling Victoria submission](#).

<sup>27</sup> *Residential Tenancies Act 1997* section 35



prescribed in the Principal Regulations (2021)<sup>28</sup>. We propose that the obligation of providing information in the condition report also includes whether the property meets the proposed minimum standards. This would provide clear and transparent information to the tenant and would complement the development of a standardised process of mandatory disclosure.

This assessment and reporting of whether the property meets these standards should be done by authorised and VEU accredited providers, to be included within the condition report before the commencement of a new lease. For ongoing lease agreements, landlords would be required to provide an assessment each two years during a lease. This way, the assessment would complement pre-existing minimum standard requirements including gas safety checks each two years.

**RECOMMENDATION 4.** To include a provision requiring the assessment, reporting and disclosure of minimum standards including energy efficiency ratings into the prescribed form for condition reports.

### 4.3. Risk to costs being passed on to renters

The Senate Community Affairs References Committee inquiry into the worsening rental crisis in Australia received considerable evidence that rents have consistently increased in recent years, causing significant hardship for renters<sup>29</sup>, often with landlords issuing increases well above Consumer Price Index<sup>30</sup>. Significantly, these increases were often provided despite the property not meeting minimum standards<sup>31</sup>.

While the Issues Paper outlines that there is little evidence that rent increases have been associated with minimum standards upgrades, there is consistent evidence that rents have continued to increase regardless. Further, there is no comprehensive data to assess whether Principal Regulations of minimum standards have been implemented across properties in Victoria, in order to accurately assess whether there has been any correlation with rent increases. Despite limited evidence reported in the Issues Paper, we do anticipate that these upgrade costs could be passed on to renters, and we recommend close monitoring of this correlation by CAV.

The Issues Paper identifies that approximately 4.1% of properties in Victoria are affordable to low-income renters. As outlined above, it's the cheaper rental properties that are less likely to meet energy efficiency minimum standards, but offering a property for lease for low-income renters cannot be a proxy or excuse for non-compliance. It would also be unfair for any landlord to raise the rent at a property, but simultaneously rely on an exemption to making the required upgrades due the upgrades being cost prohibitive. Ensuring there are sound protections against rent increase where the property has not met minimum standards is therefore an important lever to achieving the objectives of the energy efficiency minimum standards. Such protections would therefore provide incentive for rental providers to comply with required energy efficiency minimum standards.

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<sup>28</sup> *Residential Tenancies Act 1997* section 65A; 68A; 68B; 69 [Residential Tenancies Act 1997 \(legislation.vic.gov.au\)](https://www.legislation.vic.gov.au/Residential-Tenancies-Act-1997)

<sup>29</sup> Senate Community Affairs References Committee, *The worsening rental crisis in Australia Interim report* September 2023 [The worsening rental crisis in Australia \(apo.org.au\)](https://www.apo.org.au/the-worsening-rental-crisis-in-australia) section 2.46;

<sup>30</sup> *Ibid* section 2.50

<sup>31</sup> *Ibid* section 2.51

**RECOMMENDATION 5.** Insert a provision within the RTA and associated Regulations that rental increases cannot be implemented unless the residential property meets minimum standards or

**RECOMMENDATION 6.** Insert a provision within the RTA and associated Regulations that rental increases cannot be implemented without inspection and assessment of minimum standards conducted by an independent qualified assessor assigned by Director of Consumer Affairs Victoria



## APPENDIX A - SUMMARY OF RECOMMENDATIONS

**RECOMMENDATION 1.** To add an express obligation in the proposed regulations on landlords to seek approval from the Director of CAV to rely on an exemption to meeting the energy efficiency minimum standards.

**RECOMMENDATION 2.** To add an express power of the Director of CAV to consider, investigate and accept or reject (or accept/reject with conditions) an application by a landlord for an exemption to meeting the energy efficiency minimum standards.

**RECOMMENDATION 3.** For CAV and DEECA to develop a compulsory register of residential rental properties to assess Victorian residential rental properties and monitor and enforce landlords' compliance with minimum standards

**RECOMMENDATION 4.** To include a provision requiring the assessment, reporting and disclosure of minimum standards including energy efficiency ratings into the prescribed form for condition reports.

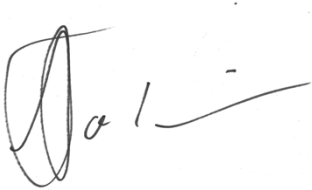
**RECOMMENDATION 5.** Insert a provision within the RTA and associated Regulations that rental increases cannot be implemented unless the residential property meets minimum standards or

**RECOMMENDATION 6.** Insert a provision within the RTA and associated Regulations that rental increases cannot be implemented without inspection and assessment of minimum standards conducted by an independent qualified assessor assigned by Director of Consumer Affairs Victoria

Please contact Policy Officer **Eirene Tsolidis Noyce** at **Consumer Action Law Centre** on 03 9670 5088 or at [eirene@consumeraction.org.au](mailto:eirene@consumeraction.org.au) if you have any questions about this submission.

Yours Sincerely,

**CONSUMER ACTION LAW CENTRE**



**Stephanie Tonkin** | Chief Executive Officer



**Zyl Hovenga-Wauchope** | Executive Officer  
Financial Counselling Victoria (FCVic)



**Louisa Gibbs** | CEO  
Federation of Community Legal Centres (FCLC)



**Noel Lim** | CEO  
Anika Legal



**Christopher Carr** | Tenancy Program Manager  
Westjustice