



**New Residential Tenancies Act  
under the RTA Amendments**

VCOSS Presentation

Presented by: Ben Cording

This session is an overview only of  
the many changes ahead from 29  
March 2021

Presented by: Ben Cording



## → Acknowledgement of Country and Traditional Owners and Custodians

In the spirit of reconciliation Tenants Victoria and those gathered acknowledge the Traditional Custodians of country throughout Australia and their connections to land, sea and community

We pay our respect to their Elders past, present and emerging, and extend that respect to all Aboriginal and Torres Strait Islander peoples

## → Disclaimer

These slides are designed for the purpose of community legal education, and are not a substitute for legal advice

If you need assistance or advice on a specific area, you can seek advice from Tenants Victoria on (03) 9411 1444 or via email through Tenants Victoria's email portal on our website, [tenantsvic.org.au](http://tenantsvic.org.au)



## → Hyperlinks

Hyperlinks in this presentation to new laws won't work until Austlii has updated their website.

Until then you can find the New Laws [here](#) after 28 March 2021.



## → Terminology



# Abbreviations and terminology



LL (landlord) = RRP or (residential rental provider or rental provider)

T (tenant) = R (renter)

RTBA = Residential Tenancies Bond Authority

VCAT = Victorian Civil & Administrative Tribunal

FTTA = Fixed Term Tenancy Agreement, FTRA = Fixed Term Residency Agreement

FV = Family violence

PV = Personal violence

IVO = Intervention order

BODN – Breach of Duty Notice

NtRP – Notice to Rental Provider

NORI – Notice of Rent Increase

RSA – Rent Special Account

SDA – Specialist Disability Accommodation

→ Legislation





# Legislation and regulations



You can access the Residential Tenancies Act for free [here](#).

The law also has new “regulations” which can be found [here](#).

## **What happens on 28 March 2021?**

- All the Residential Tenancy COVID emergency laws end (Part 16 is repealed).
- This means Notice to Vacate for rent arrears and other grounds can again be served and rent increase notices may also be given.

## **What happens on 29 March 2021?**

- New Laws and Regulations start 29 March 2021 (Proclamation of RTAA)

## → Transitional Framework



# Transitional Provisions



## What are transitional provisions?

These are the laws that tell us how to deal with issues that are caused by the old laws ending and new laws starting.

## What are they?

These were just released 23 March 2021:

- [COVID-19 Omnibus \(Emergency Measures\) Transitional Regulations 2021](#)
- [Residential Tenancies Amendment Act 2018 \(Transitional Regulations 2021\)](#)  
(This is in addition to transitional provisions that RT Act Schedule 1 – Division 5 in the RT Act from the original amendment act in 2018)
- [Residential Tenancies Amendment Regulations 2021](#)

# 1. COVID-19 Omnibus (Emergency Measures) Transitional Regulations 2021



## *Summary*

- *Termination Orders under COVID laws will be treated as NTVs (r6)(2).*
- *Applications to CAV or RTDRS pre 29 March 2021 will be dealt with by VCAT as if Part 16 had not been repealed. (r7,8)*
- *Variation, extensions or cancellation of dispute resolution orders made under this regulation will be dealt with by VCAT (r9). Applications generally made within 60 days of the “dispute resolution” Order being made – time may be extended.*
- *Breaches of dispute resolution orders dealt with by VCAT - allows to make “any Orders VCAT considers appropriate.”*
- *Notice of intention to Vacate for severe hardship (amongst other reasons) during the COVID period will be effective as if Part 16 applied (r12).*
- *Non-compliance with duties due to COVID reasons during the COVID period will be protected (r14,15)*

# 1. COVID-19 Omnibus (Emergency Measures) Transitional Regulations 2021



## *Summary (cont)*

- *PO applications between 29 March 2020 and 25 April 2021 – no warrant can be given.*
  - *Seek advice to confirm.*
- *PO made before 29 March 202 also cannot get warrants for eviction (r20).*

## 2. Residential Tenancies (Residential Tenancies Amendment Act 2018) 2021



- Applications for rent arrears before 29 March 2020 that resulted in a payment plan do not have benefit of reasonable and proportionate test (r5) and dealt with under old laws.
- Before a PO for rent arrears, the Tribunal must:
  - Determining any outstanding claim to what would have been the RTDRS (ie. Rent reductions etc if application made prior to 29 March 2021) and then also;
  - Consider any Dispute Resolution Orders and any application to vary cancel or extend payment plans made in dispute resolution orders before dealing with the possession order for rent arrears (r6)

## 2. Residential Tenancies (Residential Tenancies Amendment Act 2018) 2021



- Private RRP's may use the NTV for ceasing to be eligible (s91ZZE) if they person is no longer eligible for the NRAS scheme ( r7)
- (These regulations expire on 19 June 2021).

### 3. Residential Tenancies Amendment Regulations 2021



Minors clarification on:

- Temporary crisis accommodation
- Energy efficiency in relation to air conditioners and heat pump – taking into account seasonal performance factors
- Cannot use RCBOs, must use RCCBs (certain type of safety switch)



# What happens to RTDRS and RRG?



## Residential Tenancies Dispute Resolution Scheme

During COVID the Residential Tenancies Dispute Resolution Scheme (RTDRS) provided for negotiations for rent reductions, rent arrears, rental repayments and deferrals of rent.

This was compulsory before most things could get to VCAT if there were issues with rent because of COVID.

### Now:

- any applications made to CAV or RTDRS before 29 March 2021 may be dealt with by VCAT (meaning a rental reduction still be possible in relation to the COVID period (March 2020- March 2021)).
- Any applications after this will be dealt with by VCAT under the new laws

## Rent Relief Scheme

- The Rent Relief grant scheme provided for grants of up to \$3,000 for eligible persons.
- It is anticipated that as at 28 March 2021 no further rent relief grants will be allocated (there may be exceptional circumstances). The final position remains unclear.

→ What remains a unknown?

# What we *still* don't know?



- Director guidelines (new documents that affect legal outcomes)
- Gazette on requirements of what needs to be attached to Notices to Vacate published on Consumer Affairs Victoria website
- Clarity on windup of the Residential Tenancies Dispute Resolution Scheme (RTDRS)
- Clarity on Rent Reduction Grant scheme windup and overhang
- Resolution to *Burns v Corbett* (interstate jurisdiction issues)
- How the Rental Non-compliance Register will operate
- Residential Tenancies Bond Authority direct release of bond form
- Notice of intention to sell form produced by Consumer Affairs Victoria (**s86(2A)**)
- Goods left behind form (**s386**)

# Additional Amendments – Social Housing



Consumer Legislation Amendment Act 2020 - this is significant for **social housing**:

- Introduction of rental rebate into Residential Tenancies Act
- Discrimination exemption
- Rent increase exemption
- Receipt exemption
- Broader protections also apply to registered agencies
- See also change in meaning of temporary crisis accommodation ([s3](#), [s22](#))
- Carve out under [s7](#) of the Residential Tenancies Act in relation to head-leasing (see [s91R](#))

*Registered housing agency* means—

- a) a participating registered agency within the meaning of the Housing Act 1983; or
- b) a registered agency

→ Director guidelines

# Director guidelines (s486)



This is a *new* document issued by CAV that influences and seeks to make VCAT decisions more consistent by forcing VCAT Members to consider certain things when make a decision. They are NOT binding.

Director guidelines are relevant to:

- General disputes (s452(9))
- Urgent repairs (s73(3), s130(3), s189(3), s189A(3), s206ZZAB(3), s498P)
- Compliance orders, compensation claims (s211B)
- Possession orders relating to *Threats and Intimidation Notice to Vacate* (s91ZK, 142ZD, 206AS, 207Y: (s330(3)))
- Termination of Agreement in SDA due to coercion or deception (s91YB(5))
- Possession orders being made in SDA (s498ZZH(1A))

→ **Current Social Context**

# Reference Reading



- Mental Health Royal Commission Findings

**Recommendation 25 is directed to housing:**

- 1. recognise people who are living with mental illness as a priority population group as part of Victoria's 10-year strategy for social and affordable housing and ensure that, during the next decade, people living with mental illness are allocated a continuing substantial proportion of social and affordable housing.*
- 2. revise the Victorian Housing Register's Special Housing Needs 'priority access' categories to include people living with mental illness, including people who need ongoing intensive treatment, care and support.*
- 3. ensure that the 2,000 dwellings assigned to Victorians living with mental illness in the Big Housing Build are delivered as supported housing and are prioritised for people living with mental illness who require ongoing intensive treatment, care and support, with Area Mental Health and Wellbeing Services assisting with the selection process.*
- 4. in addition to the 2,000 dwellings, invest in a further 500 new medium-term (up to two years) supported housing places for young people aged between 18 to 25 who are living with mental illness and experiencing unstable housing or homelessness.*
- 5. ensure that the supported housing homes for adults and young people living with mental illness are:*
  - a. delivered in a range of housing configurations including stand-alone units, self-contained units with shared amenities and various forms of clustered independent units on a single-site property;*
  - b. appropriately located, provide for the requirements of people living with mental illness and are co-designed by Homes Victoria, representatives appointed by the Mental Health and Wellbeing Division and people with lived experience of mental illness; and*
  - c. accompanied by an appropriate level of integrated, multidisciplinary and individually tailored mental health and wellbeing treatment, care and support.*
- 6. periodically review the allocation of supported housing homes as part of the statewide*



# Reference Reading



- [Homelessness Inquiry in Victoria](#)

The key rental related recommendations are:

**Recommendation 11:** That the Victorian Government ensure ongoing funding for the Private Rental Assistance Program in recognition of its key role in preventing entry into homelessness and that the funding grows to meet demand.

**Recommendation 12:** That the Victorian Government consider the barriers faced by young people, persons experiencing family violence and other groups in relation to difficulties entering or remaining in the private rental market in continued development of the Private Rental Assistance Program, with a view to making the service more accessible for these cohorts

**Recommendation 13:** That the Victorian Government provide additional and ongoing funding for the Private Rental Assistance Program Plus to ensure the program can continue to grow to meet demand.

**Recommendation 15:** That the Victorian Government investigate methods to tailor the Private Rental Assistance Program Plus to provide appropriate and effective services to people experiencing diverse mental health issues.

**Recommendation 25:** That the Victorian Government introduce legislative provisions for Victorian Civil and Administrative Tribunal compliance orders in respect of residential tenancies to be time limited where appropriate.

**Recommendation 26:** That the Victorian Government amend the content of the Notice to Vacate form for tenants of rented premises to provide information about legal rights and details of legal assistance services within the notice.

**Recommendation 27:** That the Victorian Government provide additional funding with a view to expanding the provision of tenancy-focused legal supports for tenants involved in residential tenancy proceedings at the Victorian Civil and Administrative Tribunal.

→ 30 changes in 30 minutes...

# 1. Change in language



# 1. New Naming System



The language in the Residential Tenancies Act has changed:

- Tenants will be called **Renters (R)**
- Landlords will be called **Residential Rental Providers (RRPs)**
  - In the slides we will use both tenants and landlords as well as renters and RRPs (or RPs).

## → 2. Eviction



# No Reason Notice to Vacate abolished



No reason” 120-day  
Notice to Vacate  
(NTV) has been  
repealed.

All NTVs must now be  
accompanied by  
some sort of reason  
with the exception of  
end of the initial fixed  
term lease.

# Notice to Vacate – Tenancy – Form 6



**FORM 6**  
**Residential Tenancies Act 1997**  
(Section 91ZZO(a))

(Regulation 37)

## NOTICE TO VACATE TO RENTER OF RENTED PREMISES

### INFORMATION FOR RENTERS

1. This is a notice to vacate. It tells you that the residential rental provider (rental provider) wants you to move out by a certain date. You can find details of this date in clause 10 "Termination date" below.
2. **Challenging this notice**—You may be able to challenge this notice at the Victorian Civil and Administrative Tribunal (VCAT). Reasons to challenge a notice include—
  - you believe you were given this notice due to unlawful discrimination or because you tried to exercise your rights as a renter; or
  - you believe it was not given to you properly; or
  - you disagree with the reason given or the information in the form is incorrect or incomplete; or
  - you have experienced family or personal violence and this caused the behaviour listed in the notice to vacate. In this case, you should apply to VCAT within 30 days after the notice has been given.

Specific timeframes may apply to certain reasons to challenge a notice. You may also challenge the validity of the notice if the rental provider applies to VCAT for a possession order.

You should seek advice if you are considering challenging a notice to vacate.

### 3. Unpaid rent

If you received a notice because you have not paid your rent—

- If you pay all of the unpaid rent on or before the termination date in the notice, this notice has no effect.
- You can find out more about this type of notice to vacate on the Consumer Affairs Victoria website.

4. **Possession orders and warrants**—Rental providers must give you the appropriate notice to vacate before they apply to VCAT for a possession order.

If you do not vacate on the date stated in the notice, the rental provider may apply to VCAT asking for an order requiring you to leave (a possession order). VCAT will notify you of a hearing date that you can attend. You are encouraged to attend the hearing.

At the hearing, VCAT decides whether the rental provider was entitled to give you a notice to vacate. VCAT will make a possession order if it is satisfied that it is reasonable and proportionate to do so. VCAT may consider whether the notice to vacate was given in response to the act of a person who has subjected you to family or personal violence. It may also consider whether you can comply with a payment plan for any rental arrears, if applicable.

VCAT will decide if you must leave the property and on what date that should occur. You may ask for more time in the property if you will be in hardship. Rental providers cannot personally use force to remove you if you refuse to leave the property. Only Victoria Police can carry out a forcible eviction, and only when they are acting on a VCAT order (a warrant for possession).

5. **Ending the residential rental agreement earlier**—In some cases, you may be able to end the residential rental agreement (rental agreement) earlier than the termination date in the notice to vacate, if the notice is given for one of the following reasons:

Repairs or renovations; demolition; change of use of premises; occupation by the rental provider or their family; the premises are to be sold; the premises are required for a public purpose; the renter no longer meets the eligibility criteria; or in the case of a fixed term rental agreement, to specify a termination date that is on or after the date of the end of the initial fixed term of the agreement.

To notify the rental provider, use a Notice of intention to vacate form and provide at least 14 days notice.

6. **Seeking advice**—If you think you have grounds to challenge a notice to vacate at VCAT you should seek advice immediately by contacting one of the community legal organisations listed on the Consumer Affairs Victoria website. For further information visit the renting section of the Consumer Affairs Victoria website at [consumer.vic.gov.au/renting](http://consumer.vic.gov.au/renting) or call 1300 558 181.

### NOTICE

7. Address of rented premises [*insert address of rented premises*]
8. Renter's details [*insert full name of each renter*]



Include the name of each renter who is a party to the residential rental agreement.

9. **\*Rental provider's/\*mortgagee's details**

I am giving you this notice as—

†  the rental provider

†  the mortgagee

Full name of \*rental provider/\*mortgagee (this cannot be the agent's name) [*insert rental provider's or mortgagee's full name*]

\*Rental provider's/\*mortgagee's address for serving documents (this may be the agent's address) [*insert address of \*rental provider/\*mortgagee/\*agent*]

Contact details

Business hours [*insert contact telephone number*]

After hours [*insert contact telephone number*]

Email address [*insert contact email address*]

10. **Termination date**

The termination date must allow for—

- the minimum notice required under the **Residential Tenancies Act 1997** (the Act); and
- the proposed method of delivery and the date the renter is expected to receive the notice.

The minimum number of days notice required under the Act is [*insert minimum number of days*].

I request that you vacate on or before the following termination date [*insert termination date*].

If you want to challenge this notice you should seek legal advice as soon as possible.

11. **Reason for notice**

I am giving you this notice for the following reason:

[*Insert the relevant reason and section number of the Act. The rental provider must also explain why the notice has been given. It is not enough to quote from the reasons on the information sheet; this must be accompanied by specific details. VCAT may find a notice to vacate invalid if the notice does not provide enough details, or where required by the Act, it is not accompanied by the form of documentary evidence approved by the Director of Consumer Affairs Victoria.*]

Is documentary evidence attached?

†  no

†  yes

Provide details of the evidence attached [*insert details of the evidence attached*]

12. **Delivery of this notice**

This notice was sent on [*insert date notice sent*]

This notice will be delivered

†  personally, for example by hand

†  by registered post    Expected delivery time [*insert expected delivery time*]

†  by email (if consent has been provided by the renter)

Renter's postal or email address [*insert renter's postal or email address*]

*Insert each email address being used for service*

13. **Signature of \*rental provider/\*mortgagee/\*agent**

Signature of \*rental provider/\*mortgagee/\*agent [*insert signature of \*rental provider/\*mortgagee/\*agent*]

Name of \*rental provider/\*mortgagee/\*agent [*insert name of \*rental provider/\*mortgagee/\*agent*]

Date of notice [*insert date notice is issued*]

\*Delete if not applicable.

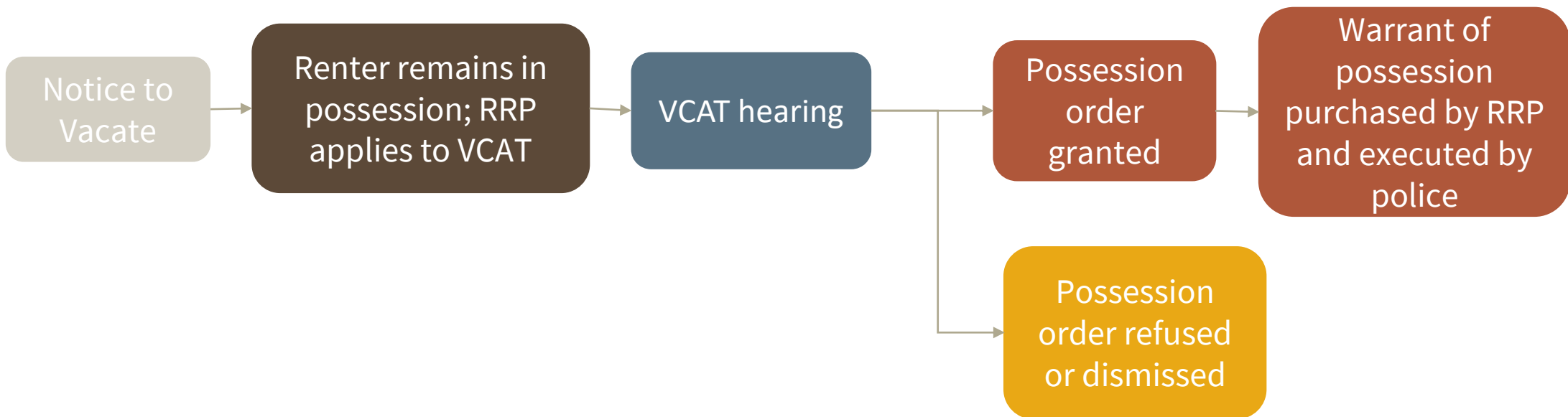
† Tick as applicable.



# Eviction



Basic eviction process fundamentally remains the same as pre-COVID Residential Tenancies Act.



# Eviction: what hasn't changed?



What must be in a **valid** Notice to Vacate (**NTV**) ([s91ZZO](#))?

If a NTV does not all the criteria – then VCAT **must dismiss** the application and no eviction can be obtained on an **invalid NTV**.

The **requirements** include:

- Valid service still essential on minimum periods and notice for purpose of jurisdiction ([s506](#))
- Clear and sufficient statement of reasons are still essential, however, additional document which is required to be attached may reopen this issue about sufficiency and what is self evident.
- Minimum times as provided for in the section (ie. 14 clear days notice in a rent arrears NTV).

## “Fault” Based Notices to Vacate

Current	New	Name	Change
243	<u><a href="#">s91ZI</a></u>	Damage	amended
244	<u><a href="#">s91ZJ</a></u>	Danger	amended
	<u><a href="#">s91ZK</a></u>	Threats and intimidation	<b>new section</b>
245	<u><a href="#">s91ZL</a></u>	Condition of premises	amended
246	<u><a href="#">s91ZM</a></u>	Non-payment of rent	amended
247	<u><a href="#">s91ZN</a></u>	Failure to pay bond	
248	<u><a href="#">s91ZO</a></u>	Failure to comply with VCAT order	
249	<u><a href="#">s91ZP</a></u>	Successive breaches by renter	
250	<u><a href="#">s91ZQ</a></u>	Use of premises for illegal purpose	
250A	<u><a href="#">s91ZR</a></u>	Drug-related conduct in public housing	
250B	<u><a href="#">s91ZS</a></u>	Prescribed indictable offence in public housing	
251	<u><a href="#">s91ZT</a></u>	Permitting child to reside in premises	
252	<u><a href="#">s91ZU</a></u>	False statement to housing authority	
253	<u><a href="#">s91ZV</a></u>	Assignment or sub-letting without consent	



## “No Fault” Based Notices to Vacate



Current	New	Name	Change
254	<b><u>s91ZW</u></b>	RRP’s principal place of residence	evidence required
255	<b><u>s91ZX</u></b>	Repairs	evidence required
256	<b><u>s91ZY</u></b>	Demolition	evidence required
257	<b><u>s91ZZ</u></b>	Premises to be used for business	
258	<b><u>s91ZZA</u></b>	Premises to be occupied by RRP’s family	evidence required
259	<b><u>s91ZZB</u></b>	Premises to be sold	evidence required
260	<b><u>s91ZZC</u></b>	Premises required for public purposes	evidence required
261	<b><u>s91ZZD</u></b>	End of fixed term rental agreement of not more than 5 years	amended
	<b><u>s91ZZDA</u></b>	End of Fixed Term Tenancy Agreement of more than 5 years	
262	<b><u>s91ZZE</u></b>	Renter no longer meets eligibility criteria	
262A	<b><u>s91ZZF</u></b>	Renter in transitional housing refuses alternative accommodation	

Current	New	Name	Change
	<b><u>s91ZZG</u></b>	Notice to vacate when pet kept without consent	<b>(fault based)</b>
264	<b><u>s91ZZH</u></b>	Prohibition on letting premises after notice	
266	<b><u>s91ZZI</u></b>	Notice to have no effect in certain circumstances	amended
267	<b><u>s91ZZJ</u></b>	Notice by owner	
268	<b><u>s91ZZK</u></b>	Notice by mortgagee	amended
268A	<b><u>s91ZZL</u></b>	NTV given by VCAT under Rooming House Operations Act	
268B	<b><u>s91ZZM</u></b>	NTV - refusal of licence under Rooming House Operators Act	



# End of Fixed Term NTV – only applies to *initial* Fixed Term Tenancy Agreement (s91ZZD)



This NTV is for when the Fixed Term Rental Agreement (FTRA) has expired. Leases automatically roll over to become a periodic agreement.

This is the closest a RRP has to a “no reason NTV”.

Termination date does not have to be the *exact* last day of the Fixed Term Rental Agreement (FTRA)

Only applies to *initial* fixed term, not renewed or subsequent fixed term agreements

Retaliation defence still available (s91ZZI(4)).

## Wording

Only applies to initial FTTA term. Wording of this provision is important:

**s91ZZD(1)** - RPP may... “before the end of the term of the residential rental agreement, may give the renter a notice to vacate the rented premises at the end of the **initial** fixed term”.

**91ZZD(2)** - must specify a termination date that is on **or after** the date of the end of the initial fixed term.

# Example: 91ZZD – End of FTRA NTV



- On 15 June 2021, Ling entered a rental agreement with Boyle for 12 months and moved in.
- On 2 February 2022, Boyle gives Lin a NTV 91ZZD for end of FTRA.

Lin now has 3 main ways to challenge the NTV:

- Show the NTV is **technically** invalid (not served properly, or details significantly inaccurate)
- Show the NTV was caused by Ling exercising a right under the RT Act (often referred to informally as “**retaliation**”) (ie. Ask for oven to be fixed and get a NTV the next day) ([s91ZZI\(4\)](#))
- Show that it was not **reasonable and proportionate** ([s330A](#)) to end the lease

**Note:** If Lin was on a renewed lease as at 15 June 2021, then 91ZZD would not be available to Boyle.

## → 3. Mortgagee NTVs





# Mortgagee NTVs (s91ZZK)



A Mortgagee is usually the Bank.

This NTV generally happens where a RRP is failing to make mortgage payments and the bank is seeking to sell the property. It can be complicated and may involve Supreme Court Orders.

## Relevant new laws:

- Disclosure requirement (s30D(b))
- R leaving in response to mortgagee NTV (s91I)
- Application by mortgagee to VCAT (s325)
- From 28 days NTV to **60 days**
- Mortgages granted after the tenancy was entered into will still be excluded

Now requirement to prove entitlement to exercise right of sale – court documents. Systemic issue: are court documents necessary to gain the right of sale under mortgage. It would seem tacit that they are now.

### Important

Cf. s91ZZK(4) A notice to vacate must not be given by a mortgagee if the mortgagee **has expressly or impliedly consented to the mortgagor entering into a residential rental agreement** in relation to the rented premises, regardless of when the residential rental agreement was entered into.

Cf. MA 46 Pty Ltd v Paglia Properties Pty Ltd [2020] VSC 695 (20 October 2020)

→ 4. Reasonable and proportionate test in evictions

# Possession orders from “must” to “may”



- Previously, if the grounds for a NTV were made out, VCAT was forced to evict a person (**s330(1)**) if the grounds for the order were proven.
- Now, **s330** still forces a possession order (must): BUT it is conditioned upon the Tribunal being satisfied that:
- *“In the circumstances of the particular application, it is **reasonable and proportionate** having regard to section 330A [the R&P test], to make a possession order taking into account the interests of, and the impact on..” other parties ... include “any neighbours or any other person who may be, or who has been affected by, the acts or behaviour of the renter, resident or site tenant to whom the notice to vacate was given.”*



# Reasonable and proportionate (R&P test)



- Next Session with Sam of Justice Connect will cover this in more detail.
- COVID examples of the application of that reasonable and proportionate test will be applicable.
- In ***Residential Tenancy Act***, post COVID), the R&P test is only applied **once** to determine if the application should be granted or dismissed (COVID framework applies the test twice – termination and possession).
- VCAT cannot dispense “palm tree justice” so R&P decisions will strongly influence any PO application on a valid NTV.
- Applies to all NTVs (including rent arrears) and Notices to Leave (only applies to managed premises)
- **Rent Arrears** - balancing test in relation to **repayment plans (s331 )** and R&P test will be largest issue and focus over the next year.
  - What does reasonable and proportionate mean in a “post-covid world?”

# s330A – R&P - Factors



(a) the nature, frequency and duration of the conduct of the tenant, resident or site tenant which led to the notice to vacate being given, including whether the conduct is a **recurring breach** of obligations under a tenancy agreement, residency right or site agreement;

(b) whether the breach is **trivial**;

(c) whether **the breach was caused by the conduct of any person** other than the tenant, resident or site tenant;

(d) whether the tenant, resident or site tenant has made an application for a **family violence** safety notice, family violence intervention order, recognised non-local DVO or personal safety intervention order and—

(i) if an application **has been made**, whether a family violence safety **notice**, family violence intervention order, recognised non-local DVO or personal safety intervention order has been made and whether the notice or order is **still in force**; and

(ii) if a notice or order was made, **whether** it included **an exclusion condition**; and

(iii) any other matter in relation to family violence or personal violence the Tribunal considers relevant;

# s330A



(e) whether the breach **has been remedied as far as is practicable**;

(f) whether the tenant, resident or site tenant has, or will **soon have, capacity to remedy the breach and comply with any obligations** under the tenancy agreement, residency right or site agreement, as the case requires;

(g) the **effect of the conduct of the tenant**, resident or site tenant on others as a tenant, resident or site tenant;

**(h) whether any other order or course of action is reasonably available instead of making the order sought;\***

(i) as the case requires, the **behaviour of the landlord**, the landlord's agent, the rooming house owner, the caravan park owner, the caravan owner or the site owner;

(j) any other matter the Tribunal considers relevant.

- We saw a reasonable conservative interpretation of this about any other course of action available to VCAT, rather than a broader consideration of options. **LKZ v BSL (Residential Tenancies) [2020] VCAT 909 (24 August 2020)**

## → 5. Compliance orders in lieu of Possession Order

# Compliance orders used in lieu of possession order (new s332A)



- Instead of some being evicted, VCAT may choose to make a “compliance order” instead ((s209, 212).
- A compliance Order is like being on probation. A renter must do, or, refrain from doing something.
- If a Renter breaches a compliance order, the RRP can give a 14 day NTV under section 91Z0.
- Fortunately, the R& P test will also apply at a compliance order NTV hearing as well.





# Compliance orders used in lieu of possession order (new s332A)



Applies to NTVs for:

- damage (s91ZI)
- danger (s91ZJ)
- threats and intimidation (s91ZK)
  - (Strangely, does NOT apply to **s91ZP** – successive breaches)

VCAT may, if “reasonable and proportionate” (**s330A**):

- dismiss possession order application, and, if appropriate
- make a compliance order under **s212 (s332A(1))**

Compliance order may require R to:

- remedy the breach, and
- refrain from committing further/similar breaches (**s332A(2)**)

VCAT may also order R not to permit a person to enter/remain at the premises if they caused/committed the breach (**s332A(3)**)

NB: **s332(1)(b)(ii)** (VCAT **must not** make possession order if satisfied there’ll be no further breach) – **repealed**

## → 6. New Notices to Vacate

# 2 New Notice to Vacate (NTV) grounds



## 1. Threats and Intimidation (14 days) (s91ZK)

- Defence - Threats and Intimidation (**s91ZK**) NTV invalid if it was given in response to the exercise, or proposed exercise, by the renter of a right under the RTA (**s91ZZI(3)**)
- Example decisions, see: [unison housing ltd v perkich \(residential tenancies\) \[2020\] vcat 1249 \(8 november 2020\)](#); [donaldson v dore \(residential tenancies\) \[2020\] vcat 1325 \(25 november 2020\)](#)



## 2. NTV when pet kept without consent (28 days)\* (s91ZZG)

This provision has been in operation for a while.

\*This title is very misleading:

If a renter is caught with a pet without consent, the RRP must still prove consent is reasonable to withhold and only when the Renter breaches an order prohibiting a pet can the NTV be valid.



# NTV – threats and intimidation



Part of RTA	NTV	No effect
Tenancy	<u>s91ZK</u>	<u>s91ZZI(3)</u>
Rooming house	<u>s142ZD</u>	<u>s142ZM(4)</u>
Caravan park	<u>s206AS</u>	<u>s206AZE(2)</u>
Part 4A	<u>s207Y(1)</u>	<u>s207ZH</u>
SDA	N/A	

→ 7. Extensions and postponement of warrants to all accommodation types

# Additional considerations on the timing of a possession order (s333)



On possession order made, and decide the “timing” of when a renter ...

- “The Tribunal may take into account any special requirements the renter, resident or site tenant may have to **access relevant social support or alternative accommodation**” (s333(1B))
- Limit for the timing on a possession order is also a maximum of 30 days from the date of the order
- Applies to possession orders made under, where no postponement is possible, save for conditions of premises:

	Tenancy	Rooming House	Part 4	Part 4A
Damage	<b>s91ZI</b>	<b>s142ZB</b>	<b>s206AQ</b>	<b>s207W</b>
Danger	<b>s91ZJ</b>	<b>s142ZC</b>	<b>s206AR</b>	<b>s207X</b>
Threats and Intimidation	<b>s91ZK</b>	<b>s142ZD</b>	<b>s206AS</b>	<b>s207Y</b>

# Postponement of the warrant changes



All accommodation types now allow for the postponement of the warrant to evict for up to the maximum of 30 days from when the tenant is required to move out under the order ([s352](#)).

Possession orders where postponement of warrant is **not** available:

	Tenancy	Rooming house	Part 4	Part 4A
Damage	<a href="#"><u>s91ZI</u></a>	<a href="#"><u>s142ZB</u></a>	<a href="#"><u>s206AQ</u></a>	<a href="#"><u>s207W</u></a>
Danger	<a href="#"><u>s91ZJ</u></a>	<a href="#"><u>s142ZC</u></a>	<a href="#"><u>s206AR</u></a>	<a href="#"><u>s207X</u></a>
Threat and intimidation	<a href="#"><u>s91ZK</u></a>	<a href="#"><u>s142ZD</u></a>	<a href="#"><u>s206AS</u></a>	<a href="#"><u>s207Y</u></a>
Conditions of premises (unfit NTV from RP)	<a href="#"><u>s91ZL</u></a>	<a href="#"><u>s142ZE</u></a>	<a href="#"><u>s206AT</u></a>	<a href="#"><u>s207Z</u></a>

# Postponement of the warrant changes



## What is a postponement of the warrant?

This is where the Tribunal can make an Order that prevents the RRP from immediately getting purchasing a warrant of possession (eviction) from the VCAT registry.

The maximum extra time that can be given to is **30 days**. You must prove hardship and it is discretionary.

- See [\*Balasis v Williams & Ors \(Residential Tenancies\) \[2012\] VCAT 706 \(30 May 2012\) @ \[45\]\*](#) in relation to impact of homelessness.

## Purchasing the warrant

Once a RRP has a possession order, they pay VCAT \$114 for a warrant to evict the renter. VCAT then sends a copy of the warrant to the police.

## Execution of a warrant

Only the police can do an eviction, usually Orders only provide for a 14 day window of when the warrant is executed (police turning up and changing the locks).

It is discretionary for the police of when the warrant is executed. It could be on the first day or the last day of that 14 day period.



# Getting Extra time



VCAT Hearing

(extra time must be request in hearing)

Renter remains in Possession & liable for rent

Eviction

VCAT Hearing

VCAT may use general adjournment powers

VCAT may delay date of PO being effective (s333)\*

VCAT may postpone the when RRP can purchase the warrant (s352) Max. 30 days

Time delay as provided by VCAT Order

RRP purchases warrant from VCAT Registry for \$114

VCAT sends copy of warrant to local Police Station

Vic Pol attempt contact with Renter to let them know of date of eviction

Eviction: Vic Pol and REA/RRP attend to have locks changed

\* This is rarely applied, but has been amended; each of these options are discretionary

If renter has missed a hearing, an application to reopen the matter may be made at any time prior to warrant to evict being executed - see [Application to Reopen an Order](#)

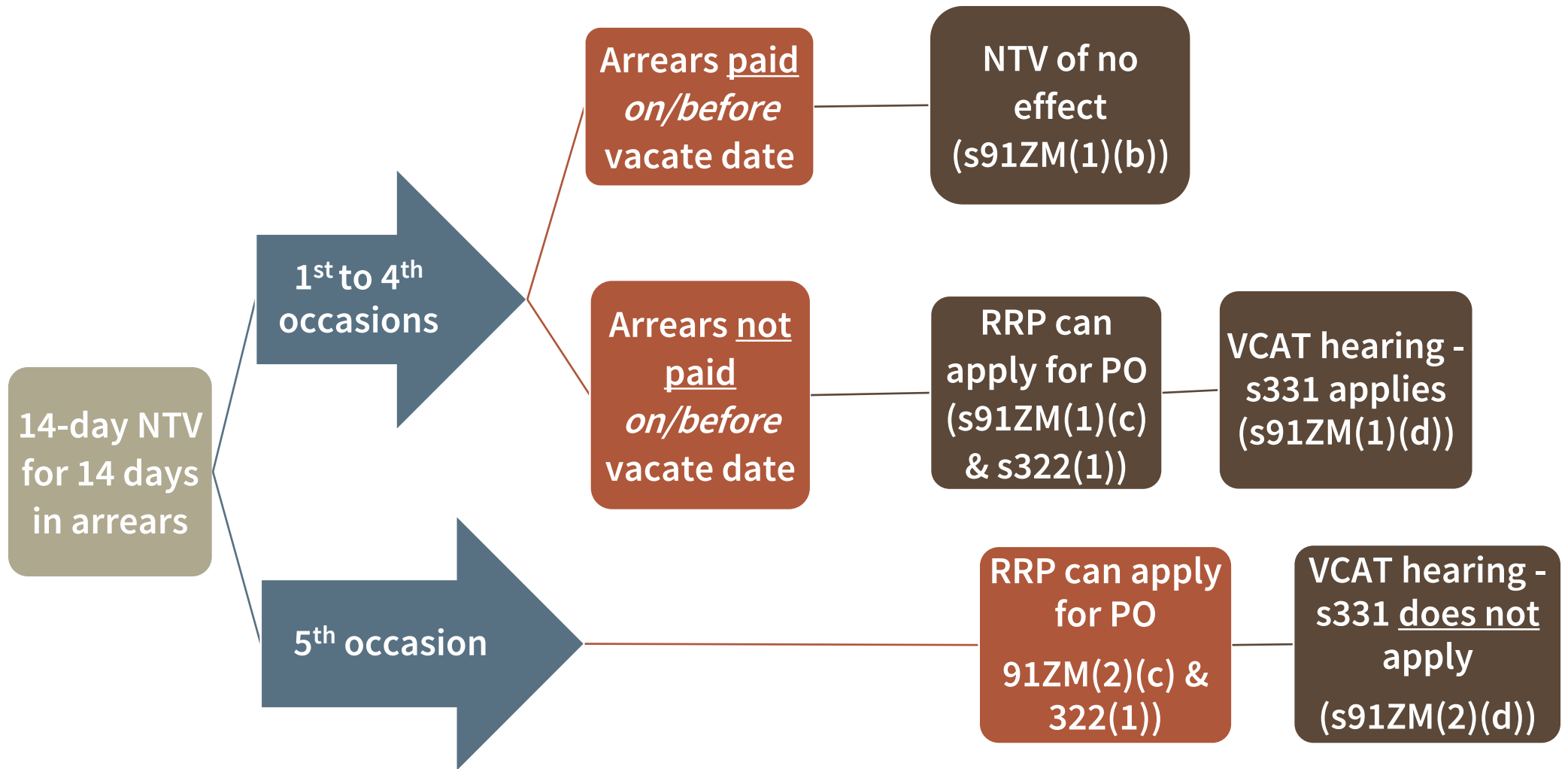
→ 8. Rent arrears – “5 strikes”  
and financial counsellor  
reports

# Quick overview – rent arrears (s91ZM)

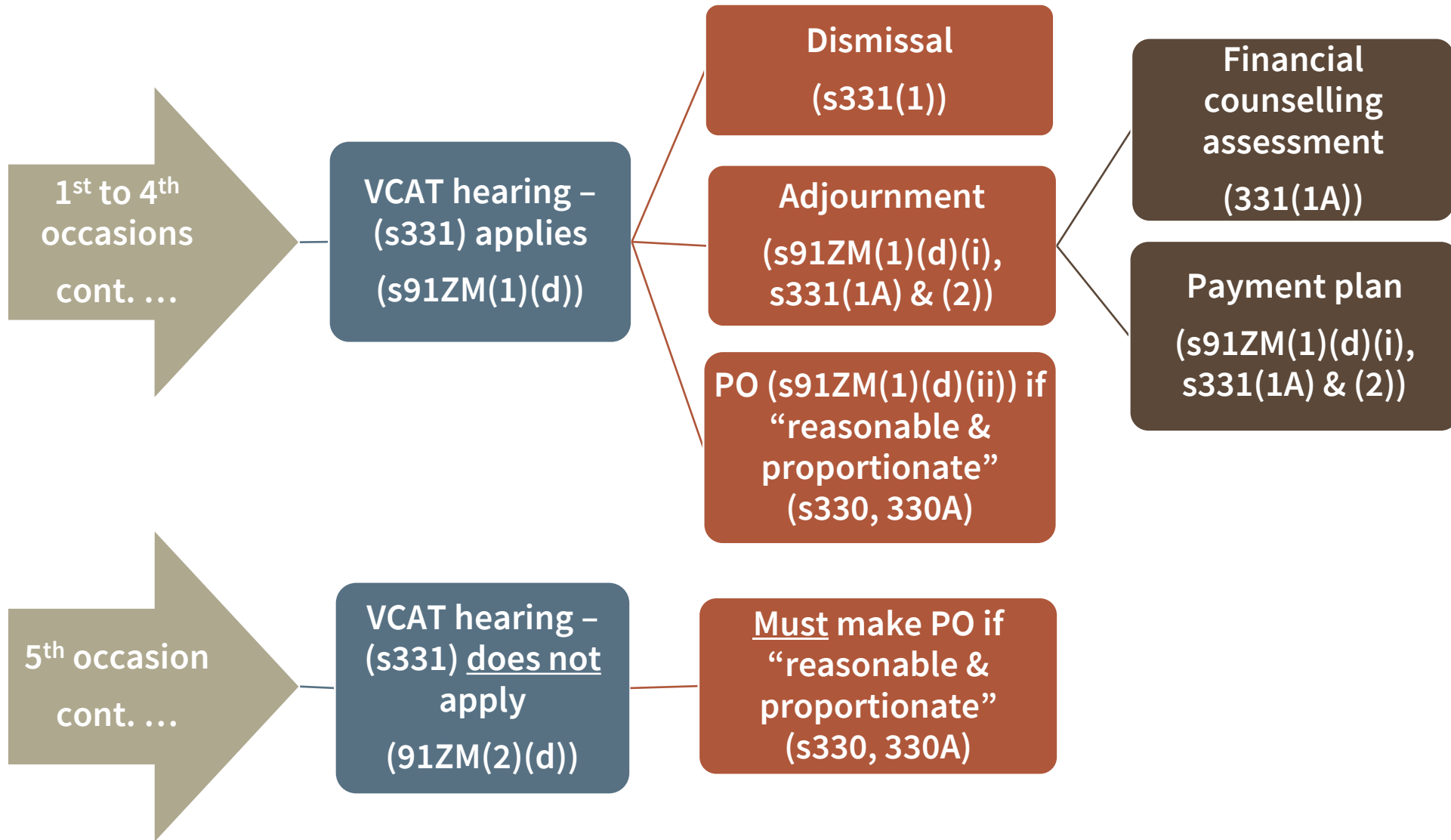


- Justice Connect will cover in more detail in next session.
- 14 day arrears, 14 day notice - arrears under payment plans not included assuming compliance
- Arrears paid off before termination date and the NTV goes away for the first 4 NTVs, in a 12 month period
- Normal payment plan test applies on each occasion it goes to VCAT
- 5 strikes (NTVs) in a specific 12 months period will mandate(?) an eviction, despite reasonable and proportionate test (R&P)
  - Note: **s91ZM(2)(d)** excludes **s331** on fifth valid NTV but the R&P still applies and VCAT may grant a possession order – so have to see VCAT response if it is possible to dismiss it purely for R&P.
- Financial counselling reports are now available and can be required
- Unclear how R&P test will interact with repayment test in **s331**

# Non-payment of rent



# Non-payment of rent



# What can you do to help (s91ZM)



## *Financial Support*

- *Identify if the client has any characteristics that mean they can access support funding this may be towards rent or other financial supports.*
- *Housing Establishment Funds (HEF), PRAP+, Queens fund, Gamblers Anonymous, No Interest Loans (NILS), Utility Relief Grants – URGS,*

Many Legal Service would benefit from better understanding and education of this side of things.

## → 9. Rent rebates defined in the Act



# Social housing – rebate carve out (new)

The “rebate” scheme is now included in the Residential Tenancies Act.



## Definition

**S3:** “**rental rebate** means a rebate of rent, or any other reduction in rent, granted to a renter or a resident of a rooming house by the Director of Housing or a registered agency” - cf. **s27(f)(ii)**

## Rent Increases

**s44(4B):** For the purposes of this section, **rent is not increased merely because** —

(a) a rental rebate is applied, adjusted or cancelled under a residential rental agreement where the residential rental provider is the Director of Housing or a registered agency; and

(b) the **application, adjustment or cancellation** of that rental rebate **caused an increase in the amount payable by the renter** under that residential rental agreement

## Rent Arrears:

**s91ZM (8):** For the purposes of this section, rent in relation to a residential rental agreement under which the Director of Housing or a registered agency is the residential rental provider, **is the amount payable to the residential rental provider by the renter to occupy rented premises and use facilities or services less any applicable rental rebate.**

**Systemic Issue:** Can VCAT now deal with Rebate Issues given they are in the RT Act?

Unlikely, but new challenges are possible now the rebate is expressly stated in the empowering enactment.



→ 10. Reduced notices of intention to vacate (NITVs) as a defence to lease breaking

# When are you not breaking your lease? (s91ZB): reduced NITV – no longer lease breaking?



Renter can give a 14-day NITV **irrespective of the FTTA** or periodic(s91ZB(2)) if:

- Renter is given an NTV **under a provision in the following slide for table of applicable provisions**
- Renter has special or person care needs and has to leave to get care (**evidence required with NITV**)
- Has offer from director of house or community house (new) (**evidence required with NITV**)
- Is required to access temporary crisis accommodation (**evidence required with NITV**)
- RRP served a “**Notice of Intention to Sell**” (s86(1)) and R was not notified at time of disclosure obligations
- SDA resident given notice that provider’s registration or enrolment has been revoked

Part	
Tenancy	s91ZB
Rooming house	N/A
Caravan park	N/A
Part 4A	s207S
SDA	s498D

## Important (s91ZB(5));

- For everything in **green** there are no lease breaking costs, however described, for early termination
- All NITVs in response to applicable NTVs **(in red)** **do not** have the same protection. More on this in the next slide
- Director guidelines still operate as a consideration to any compensation claim (s211B)

# When Renter can give NITV; but still some potential liability (**s91ZB(5)**, **s211A(e)**)



Section RTA	Notice	Evidence
<b>s91ZX</b>	Repairs	
<b>s91ZY</b>	Demolition	
<b>s91ZZ</b>	Premises used for business	
<b>s91ZZA</b>	Occupied by rental provider or family	
<b>s91ZZB</b>	Premises to be sold	
<b>s91ZZC</b>	Public purpose	
<b>s91ZZD</b>	End of Fix Term Residential Rental Agreement (not more than 5 years)	
<b>s91ZZE</b>	No longer meets eligibility criteria	
<b>s91ZB(1)(b)</b>	Special care needs	YES
<b>s91ZB(1)(c)</b>	Offer of public or community housing	YES
<b>s91ZB(1)(d)</b>	Renter requires crisis accommodation	YES
<b>s91ZB(1)(e)</b>	Rental provider has given renter notice of intention to sell ( <b>s86</b> ); does not apply if sale disclosed in accordance with <b>s30D</b>	
<b>s91ZB(1)(f)</b>	Refused request to make reasonable alterations in accordance with <b>s55 of EO Act</b>	

# When Renter leaves before the end of FTTA after getting certain NTVs (reduced NITV)



While it appear possible for *some* compensation to be awarded to the RP despite their NTV, section **s211A** states:

**s211A(3)(d)** – *[The Tribunal must] **not award any compensation for loss of future rent** to the residential rental provider, or the site owner (as the case requires), if the residential rental provider or the site owner **served a notice to vacate** on the renter or the site tenant, unless the notice was served because the renter or the site tenant terminated or repudiated the residential rental agreement or the site agreement;*

**s211A(3)(e)** – [The Tribunal must] compensation payable after a renter or a site tenant has given the residential rental provider or the site owner a notice of **intention to vacate under section s91ZB, s91ZC or s207S.**

**Systemic issue: s91ZB(1),(5)** are all situations where the RP, or Site Owner, has served an NTV.

So no loss of rent should be awarded. In most cases, the grounds for the notice mean they premises will not be relet – so there are no advertising or reletting fees. It is unclear what compensation would be addressed.

The subsequent provision of **s211A(e)** suggests that *some* ambiguous amount of compensation may be payable, that is not effectively a loss of “future rent” – nor prospective advertising or reletting fees.

## → 11. Duties update

# Duties summary – tenancy renter duties



Duty	Section	Required time (days)	Comment
Renter must not use premises for illegal purpose	<a href="#"><u>s59</u></a>	N/A	Cannot get a BODN, <a href="#"><u>s3</u></a> “duty provision”
Renter must not cause nuisance or interference	<a href="#"><u>s60</u></a>	7	
Renter and visitor must not damage premises or common areas	<a href="#"><u>s61</u></a>	14	
Renter must notify residential rental provider of damage	<a href="#"><u>s62</u></a>	N/A	Cannot get a BODN, <a href="#"><u>s3</u></a> “duty provision”
Renter must keep and leave rented premises reasonably clean	<a href="#"><u>s63</u></a>	14	
Modifications to rented premises	<a href="#"><u>s64</u></a>	14	
Permit Entry	<a href="#"><u>s89</u></a>	<a href="#"><u>s86(1)(a,c,f)</u></a> 14 days <a href="#"><u>s86(1)(b,d,e)</u></a> 3 days	

# Duties summary – tenancy – RRP duties



Duty	Section	“Required time” (days) ( <b>s3</b> )	Comment
Residential rental provider's duty in relation to provision of premises	<b><u>s65</u></b>	14	
Occupation of rented premises that do not comply with rental minimum standards	<b><u>s65A</u></b>	14	Can still treat as urgent repair
Residential rental provider must give renter certain information	<b><u>s66</u></b>	N/A	Not a duty; may be given electronically
Quiet enjoyment	<b><u>s67</u></b>	7 days	
Residential rental provider’s duty to maintain premises	<b><u>s68</u></b>	14	
Residential rental provider's duty to comply with safety-related repairs and maintenance requirements	<b><u>s68A</u></b>	14	
Residential rental provider must keep and produce records of gas and electrical safety checks	<b><u>s68B</u></b>	14	
Residential rental provider must ensure rating compliance for replacement appliances	<b><u>s69</u></b>	14	Significant change to all appliances; cf. <b><u>s54</u></b>
Locks	<b><u>s70</u></b>	14	

## → 12. Safety-related activities



# Gas and electrical checks conducted at the property (s68B, see also s68A)



Part	Gas	Electrical	Checks
Tenancy	<b>r30</b> RT Regs	<b>r30</b> RT Regs	<u><b>s68B</b></u>
Rooming house	RH Min Standards <b>r19; r23</b>	<u>RH Min Standards</u> <b>r20; r24</b>	<u><b>s142BA</b></u> RTA; RH Min Standards <b>r25</b>
Caravan park			
Part 4A			
SDA			



Gas and electrical safety checks are specifically defined in Regulations (**r5**) and must be done **every 2 years**. They must be disclosed if outstanding at start of new tenancy.

This will operate when a new lease (including when renewals) is signed.  
(see s68A, 27C, and section 26 of the RT Act)



## → 13. Minimum standards

# Minimum standards? (s65A)



- First time they have been introduced in Victoria
- Schedule 4 Minimum Standards only apply to Part 2 – Tenancies.
- They **do not** apply to rooming houses, or caravan parks, or Part 4A or SDA
- Residential Tenancies (Rooming House Standards) Regulations 2012 are expected to be aligned with tenancy minimum standards

# What are the minimum standards?



## Section 65A (Reg [29](#), Schedule 4 Regulations)

*Occupation of rented premises that do not comply with rental minimum standards*

- (1) *Without limiting sections 65, 68 and 70, a residential rental provider must ensure that rented premises comply with **prescribed rental minimum standards on or before the day on which the renter enters into occupation** of the premises.*

*Penalty: 60 penalty units in the case of a natural person;  
300 penalty units in the case of a body corporate.*

- (2) *If rented premises do not comply with the rental minimum standards on or immediately after the day on which the renter enters into occupation of the premises, the renter may issue a request to the residential rental provider for **urgent repairs** to be carried out to the premises to ensure that the premises comply with the standards.*

*Note: This section is a duty provision and a contravention of this section may be dealt with as a breach of a duty under Part 5 and other provisions of this Act.*

# When do the minimum standards apply?



As couched in **s65A**, it is conservatively believed that the minimum standards **only apply to new tenancies from 28 March 2021**.

**System issue: minimum standards inserted in s65 rather than s68**

Not meeting the minimum standards is included as a urgent repair.

## **Current position**

Minimum standards don't apply unless you start a residential rental agreement on or after 29 March 2021. Significant issue for social housing or long term agreements.

## **Unclear**

Transitional Regulation states: s65A only applies to new tenancies; but meeting the minimum standard is still considered to be an urgent repair.

# What are the 14 minimum standards?



Descriptor	MS (Sch 4)	Content	Comment
Locks	1	Deadlocks where possible to all external doors, at least lock which can lock from outside with key but not key requires to unlock from inside. (exceptions lobbies and Heritage listed request for change has been rejected)	
Vermin proof bins	2	Rubbish AND recycling bins	Nothing about green waste bins. Nothing about shared bins in OC.
Toilets	3	Toilet with proper sewage, located in a structure intended to be used as a toilet	
Bathroom facilities	4	Reasonable supply of hot and cold water; wash basin and a shower or bath; shower has minimum water efficiency	
Kitchen facilities	5	Dedicated cooking and good preparation area with sink and reasonably supply of hot and cold water; cook top with 2 or more burns	<b>r(5)(3)</b> – oven must be in good repair. Does not appear to mandate provision of oven
Laundry facilities	6	<i>Any</i> laundry facilities presented must be connected to reasonable supply of hot and cold water.	Wording suggests such facilities are not required as a minimum. Just if present.
Structural soundness	7	Structural sounds AND <i>weatherproof</i>	Meaning of these will be subject to test cases

# What are the 14 minimum standards?



Descriptor	MS (Sch 4)	Content	Comment
Mould and dampness	8	Each room must be “free from mould and damp” “caused by or related to structure of building”	
Electrical Safety	9	Switchboards must be replaced to include safety switches (RCDs; RCCBs)	From <b>29 March 2023</b> ; Note Victorian ban on use of <a href="#">RCBOS</a> (Energy Safe).
Window coverings	10	Bedroom and living area to be fitted with curtain or blind that can open and close, block light and provide reasonable privacy	From <b>29 March 2022</b> ; first occasion Part 2 identify as a right “privacy”
Windows	11	Windows that are “capable of opening” must be able to be “set in a closed or open position”. If it can open it must have a latch	Does not have to be lock and key; working latch or bolt sufficient (cf. s70)
Lighting	12	All parts of premises must have sufficient levels of light to the function of the room (exception where heritage listing would prevent this and request <i>has been refused</i> ).	
Ventilation	13	Each room, bathroom and laundry must meet standard. Class 1 Building-Performance Requirement P2.4.5 Vol 2 Building Code Vol 2; Class 2 Building – Performance Requirement FP4.3,4 or equivalent Building Code Vol 1	
Heating	14	Must have a heater in stage 1 Must have an energy efficient heater in stage 2	See next slide. <b>Stage 1: 29 March 2021 - 28 March 2023</b> <b>Stage 2 starts - 29 March 2023</b>

# Heaters



There must be a fixed (not portable) heater in the main living area.

## **From 29 March 2021 to 28 March 2023**

If there is a heater it does not need to be energy efficient

If you get a hearing between these dates then it does need to be energy efficient

## **From 29 March 2023**

All heaters need to be energy efficient

### **Exceptions:**

Class 2 buildings where it would be “unreasonable to install an energy efficient fixed heater”. This is described as “cost of installation being significantly higher than other Class 2 buildings, compliance with other Act or local laws, makes the cost prohibitive, Owners Corporation rules prohibit.

### **Energy Efficiency is defined as:**

Two stars or above for non-ducted a/c (split system types), gas heater, hydronic, or “solid fuel burning” (wood heater or similar).





→ 14. Termination before taking possession - minimum standards

# Minimum standards: when the premises don't comply



## Option 1. Seek urgent repairs

### Repairs

- You can seek urgent repairs to bring the premises up to standard and apply under **s73** for urgent repairs. This is included under **s3** definition of “urgent repairs” **s3(ib) - (ib)**: a failure to comply with any rental minimum standards

### Rent Special Account

- The Rent Special Account is also available for this purpose under **s77(4)(a)**

# Minimum standards: when the premises don't comply



## Option 2. Termination before taking possession

You can terminate the agreement under **s91L**. This is the amended version of the former **s226** – *Termination before taking possession*.

This provision allows termination before “entered into possession” to include the premises not being in good repair, as well as the premises “do not meet any rental minimum standards” (**s91L(f)**).

→ **15. Maximum bond and rent  
in advance**

# Bonds (s31, r17)



- The maximum bond limit has gone up to \$900 per week, if paying more than **\$3,910.71 per month**
- **Bond limit** is that you cannot ask for more than one month's worth of rent as bond (s31(3), r17).
- This also impacts on the amount of rent in advance that can be requested. **If the rent is less than \$900 a week, then the landlord cannot ask for rent in advance that is more than one month's rent also (s40)**

## → 16. Bond recovery

# Bonds



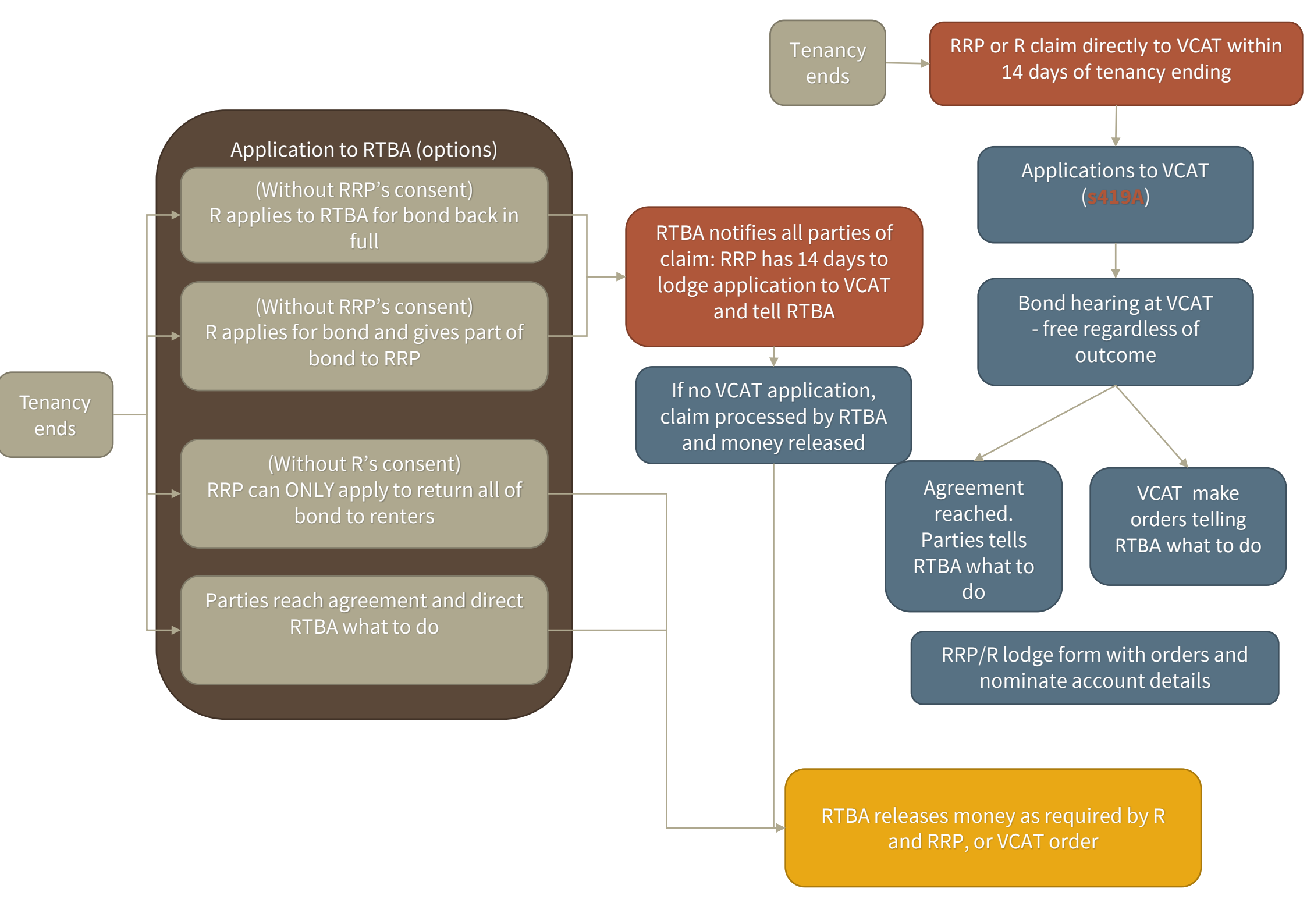
**Lodgement:** Lodgement hasn't changed much ([s405](#)). Copy of lodgement must immediately be given to renter upon payment.

## Main changes to getting your bond back:

- Renters can apply directly to the RTBA for bond release; RTBA notifies parties of claim ([s411,411A](#))
- Residential rental provider (RRP) **cannot** apply to RTBA for any part of bond (unless with agreement of renter/s or to release all bond back)
- RRP must lodge VCAT application to object within 14 days of RTBA telling them about the renter's request for release ([s411A\(3\)\(c\)](#))
- RRP must apply to VCAT within 14 days of the tenancy ending (should be otherwise barred) ([s419A\(2\)](#))
- Interested parties can also apply and bonds can be directed to third parties

All VCAT Applications (RRP and Renter) are made under [s419A](#).

Both should RRP and Renter should make their application within 14 day of the tenancy ending.





# Family Violence and Bonds – major changes



Bonds or parts of Bonds belonging to FV/PV victims may now be protected in specific circumstances

## **Alleged Offered is a co-renter**

**s420A** -The Tribunal can make the alleged offender liable for some or all of the loss, damage **or rent arrears** (if any), and the victim of the FV/PV bond contribution is protected from being able to satisfy any debt beyond the bond amount.

- (IVO/DVO NOT REQUIRED – but need proof)

## **Alleged Offender is not on the lease**

**s420B** – If there is a **current** IVO in force, then the Tribunal can order that the renter is not liable for any damage or loss caused by the alleged offender. May not include rent arrears (unclear).

- (IVO/DVO REQUIRED)

Protections here are discretionary according to a test, and not guaranteed.

# Interactions between **s91V-91Y** (old 233A-D) and **s2420 & 420B**



	Alleged Offender on the lease	Alleged Offender not on the lease
<b>Tenancy ended under s91V (creation of new lease or termination and leaving)</b>	<p><b>s91X</b> and <b>s420A</b> can apply if done in tandem</p> <p>Utilities, rent arrears and damage and any loss can be dealt with</p>	<p><b>s91X</b> still applies</p> <p>No final IVO is required for FV; but is required for PV.</p> <p>Can apportion rent arrears under <b>s91X</b>; but not under <b>s420B</b></p>
<b>Tenancy did not end under s91V</b>	<p>Only <b>s420A</b> applies</p> <p>Damage, loss and rent arrears can be apportioned</p> <p>AFM - Renter Bond is protected</p> <p>No IVO required</p>	<p>Can only apportion damage and loss.</p> <p>Unlikely to be able to apportion rent arrears.</p> <p>No ability to adjust utilities. Requires IVO (FV or PV) to be in place at time of Order (interim, or final)</p>

It is important to consider if an IVO is necessary, having one in place is the best strategy given the issue of rent arrears

## → 17. Exit condition reports

# There are now... exit condition reports!



There are now exit condition reports ([s35\(5\)](#)).

See Part E of the Condition Report Form ([Sch 1, Form 4](#)):

Within **10 days** after the end of the tenancy, the RRP or their agent, must complete Part E of the condition report

This **MUST** be done in the “presence of the renter” or “give them the *reasonable opportunity* to be present when the report is complete” ([s35\(5\)](#)).

This is not an offence provision

Part	Provision	Comment
Tenancy	<a href="#">s35</a>	
Rooming house	<a href="#">s97</a>	
Caravan park	<a href="#">s148</a>	
Part 4A	<a href="#">s2060</a>	
SDA		See <a href="#">s498ZI(2)(e)</a>

## → 18. Lease breaking



# Lease breaking



## What is lease breaking?

Lease breaking are the charges you may be required to pay if you leave earlier than the date in your fixed term agreement. (ie. Lease for 12 months from 5 April 2021 to 4 April 202).

If you leave earlier it is referred to as “lease breaking”.

Generally people are charged 3 costs:

1. Pro rata\* advertising
2. Pro rata – reletting fee
3. Rent until a new renter is found

\*Pro rata means “at rate” – so if you have 9 months through a 12 months tenancy, you would pay  $\frac{1}{4}$  the amount because there is 3 months left.

So a \$400 advertising and reletting fee would cost \$100, if you left at this point.

# Lease breaking



- Codification of lease breaking (**s211A**)
- Codification of practice
  - Advertising and reletting fee (**s211A(3)(a)**)
  - Obligation to mitigate by promptly reletting (**s211A(3)(b)**)
  - Having regard to any severe hardship the renter would have suffered for unforeseen circumstances
  - Express statement cannot claim for lease breaking where NTV
  - There are now more specific statements in relation to obligation to mitigate loss such as an obligation to relet premises as soon as practicable is now set out in statute.
- Now includes specific statement to allow for consideration of what renter would have suffered in terms of severe hardship

The new laws may be controversial on the issue of advertising and reletting fees on renewed leases – which previously you could not charge for advertising and reletting fees ( see [Craig v Mitchell \(Residential Tenancies\) \[2015\] VCAT 597 \(27 April 2015\) @ \[24\]](#))

# Lease breaking – regulated and retrospective consideration of hardship



## Section 211A (3)

Applies to renter or site agreements (not residents):

It is VCAT that must determine:

- advertising and reletting (**if any**) on a basis that is **proportionate** to the **actual cost** of securing the renter or the site tenant;

Statutory example - significant issue of interpretation:

- A renter has lived in rented premises under a residential rental agreement, on terms including a 12-month fixed term, rent of \$500 per week and a reletting fee of \$500. The renter notifies the property manager that the renter will terminate the rental agreement 6 months before the end of the fixed term. The property manager advertises the rented premises for rent immediately and finds a new renter. The advertising costs were \$250.
- The new renter enters the premises one week after the previous renter vacates the premises. The rental provider's costs of advertising and reletting fees are \$1000, which is the sum of one week's rent (\$500), the reletting fee pro-rata for 6 months of the unexpired term of the agreement (\$250) and advertising costs (\$250).



# Lease breaking



Part	Early termination	Rent payable on termination without notice	Notice of no effect if earlier than Fixed Term Tenancy Agreement
Tenancy	Lease breaking ( <a href="#">s91ZA(1)(b)</a> )		
Rooming house		<a href="#">s142X</a> , <a href="#">s142Y</a>	
Caravan park		<a href="#">s206AM</a> , <a href="#">s206AN</a>	
Part 4A	Lease breaking ( <a href="#">s207R</a> )		
SDA	See <a href="#">s498ZZA</a>		
All			<a href="#">s210</a> , <a href="#">210B</a> , <a href="#">211A(3)</a>

## → 19. Mandatory disclosure obligations

# Mandatory disclosures

## 30D – new section



The rental provider **must** disclose the following to the renter **before**\* entering into an agreement:

- that there is a proposal to sell, if rental provider has **engaged** an agent to sell or prepared a contract of sale
- that the mortgagee is **taking** action for possession, if a mortgagee has commenced proceedings to enforce a mortgage
- that the rental provider has the **right to let** the premises, if they are not the **operator** of the rented premises
- The details of the **embedded electricity network**, if the premises are supplied with electricity from an embedded electricity network
- any other prescribed information

**\*Note:** there is **no specification** that disclosures must be made in writing.



# Mandatory disclosures: prescribed information that must be disclosed (r16)



## Embedded network operator:

ABN, trading name, contact details - including phone and email - and tariffs and all associated fees/charges, or where these can be accessed

## Knowledge of rental provider in relation to:

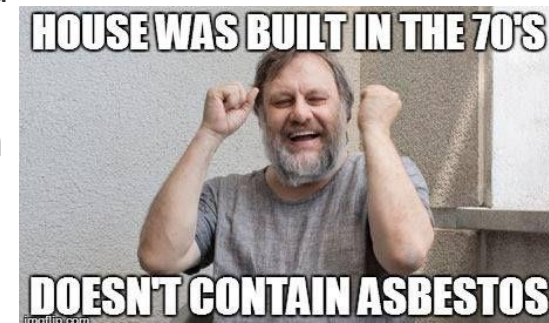
(a) if the rented premises or common property has been the location of a **homicide** in the last 5 years; or

(g)(i) whether it is contaminated because of **trafficking/cultivation of a drug of dependence** in the last 5 years on premises; or

(g)(ii) to have **friable/non-friable asbestos** based on an inspection of a suitably qualified person

(g)(iii) to be affected by a **building/planning application** that has been lodged with the relevant authority

(h) any notice, order, declaration, report, recommendation by a relevant/municipal building surveyor, public authority or government dept relating to **any building defects/safety concerns** that apply to the premises or common property



# Mandatory disclosures: prescribed information that must be disclosed (r16)



## **Prior notices of mould (c)**

On and from 31 Dec 2021, if the rental has received a repair notice in the last 3 years regarding mould or damp in the premises caused by the building structure.

## **Minimum standards (b)**

If the rented premises complies with the minimum standards

## **Safety checks completed or outstanding (e)**

The date of the most recent gas/electrical/pool barrier (if required) safety checks for the premises and any outstanding recommendations for work to be completed from a gas/electrical safety check

## **Heritage listed/overlay (f)**

If the premises is a “registered place”: i.e. heritage listed

## **Domestic building works (i)**

Current domestic building work disputes that apply to, or affect, the premises under the Domestic Building Contracts Act 1996

## **Owners corporation (j, k)**

- Current owners corporation disputes that apply to, or affect, the premises
- Copy of any owners corporation rules

→ 20. False, misleading, and deceptive conduct and advertising

# Misleading advertising or representations (s30G)



Unusual drafting (read in conjunction with **s30E** that has similar issue). Appears to be leaving other conduct to [Australian Consumer Law and Fair Trading Act \(ACLFTA\)](#).

*“(1) This section applies to—*

*(a) a residential rental provider who is **not** acting in trade or commerce in entering into a residential rental agreement; and*

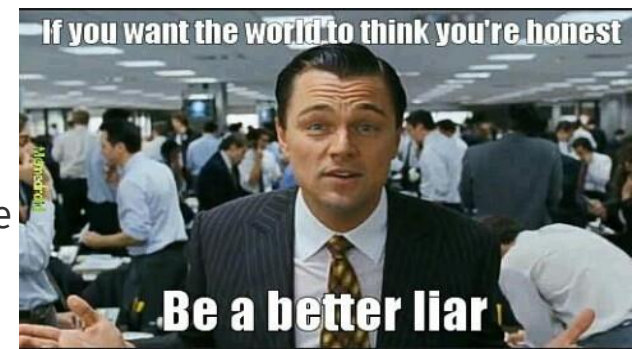
*(b) the agent of a residential rental provider referred to in paragraph (a) who is not acting in trade or commerce.*

*(2) A residential rental provider or that person's agent who promotes or advertises rented premises must not make a false or misleading representation in relation to the rent for the premises.*

*(3) **This section does not limit the operation of the Australian Consumer Law (Victoria).**”*

60 penalty unit/300 penalty unit offence provision

While this is an offence provision, there is still a strong resistance to the remedy of rescission because it is not expressly stated in the Residential Tenancies Act (**s91B**). Seek specific advice. Reduction of fixed term tenancy (**s91U**) remains the safer route



# Misleading and deceptive conduct (s30E)



[Has same as **s30G** - “applies to persons NOT engaged in trade and commerce issue]

“...false or misleading representation concerning any of the following—

- a) the residential rental provider’s **interest** in the land;
- b) the **rent payable** under the agreement;
- c) the **location** of the premises to be let under the agreement;
- d) the **characteristics** of the premises to be let under the agreement;
- e) the **use** to which the premises to be let under the agreement are capable of being put or may lawfully be put;
- f) the **existence or availability of facilities associated** with the premises to let under the agreement

60 penalty unit/300 penalty unit offence provision

This section does not limit the operation of the *Australian Consumer Law* ([ACL](#)) (Victoria).”

**Systemic issue:** these specific measures will need to be read into the *Australian Consumer Law and Fair Trading Act 2012*





## → 21. Prohibited questions

# Prohibited questions

s30C, r15



The real estate agent (REA)/residential rental provider (RRP) **must not** request that applicants disclose *prescribed* information

(60 penalty units for natural person/300 for body corporate):

- Whether renter has previously taken/been a respondent to legal action with a RRP or had a dispute with an RRP - bond history, including claims on bonds by an RRP
- unredacted credit/bank accounts
- addition of protected attributes under **s6 of the EOA unless** RRP/REA provides a written reason for this information: e.g. visa status for students to show they can stay for full length of lease

## **Systemic issues:**

- Prejudice for having a pet still exists, and it not a prohibited question (other than EO Act)
- Sufficiency of reasons for certain information may form basis of discrimination or other claims

## → 22. Prohibited terms

# Prohibited terms



- In addition to invalid terms ([s27](#)), harsh terms ([s28](#)), there are now *prohibited* terms ([s27B](#)).

Prohibited terms include:

- Requiring renter to obtain insurance
- Terms that exempt liability for RRP or agent of RRP
- Penalties, rent increases, or damages for breach of agreement
- Reduced rent or rebate will be granted if the renter doesn't breach agreement (cf. [s44](#))
- The renter has obligation to pay all or part of rent if they break the agreement.
- Term that requires the renter to have all or part of the premises professionally cleaned other than what is contained in standard form (see also [s27C](#))
- Other **prescribed terms** ([r11](#))

# Prescribed – prohibited terms (s27B, r11)



- a) a term which binds the renter to a contract that the renter **did not agree to in writing**, after having an opportunity to review the contract, before entering into the residential rental agreement
- b) a term which requires the renter to **indemnify** the residential rental provider
- c) a term which **prevents** the renter from making **a claim for compensation** because the rented premises is not available on the commencement date of the residential rental agreement
- d) a term which **requires** the renter to pay rent in advance by a payment method **which requires additional costs** (other than bank fees or account fees payable on the renter's bank account)
- e) a term which requires the renter **to use the services of a third party service** provider nominated by the residential rental provider other than an embedded network
- f) a term which imposes **fees** for, or **delegates, safety-related maintenance** that is the responsibility of the residential rental provider (Cf. s27C(2))
- g) a term which makes the renter liable for the residential rental provider's **costs of filing an application** at the Tribunal
- h) a term which makes the renter **liable by default for an insurance excess** to be paid under an insurance policy of the rental provider
- i) a term which **imposes fixed fees for terminating** a residential rental agreement early, **unless the basis for calculating the fixed fees has been set out in the agreement** (cf. s211A(3), 91ZZB)

→ 23. Free payment method

# Method of paying rent - [s42](#), cl 8 of FTTA



## **Free method of payment ([s42\(4\)](#))**

The rental provider or agent must ensure that a rent payment method that incurs no additional costs - other than bank fees or account fees payable on the renter's bank account - is reasonably available to the renter (cf [r11\(d\),\(e\)](#))

RRP must also allow electronic funds transfers ([r19, s42\(5\)](#))

## **Disclosure of fees or charges by using particular method (including cost charged by 3<sup>rd</sup> Parties) ([s42\(7\)](#))**

Onus is on RRP or REA

## **Cannot refuse to allow someone to use Centrepay ([s42\(5\)](#))**

Centrelink must also be made available (not applicable to Director of Housing or DoH Agents ([s42\(5A\)](#)))

See [s99A](#) (RH), [s150A](#) (P4), [s206TA](#) (P4A)

**Systemic issue:** while you can compel acceptance of Centrepay the frequency of payment may cause issues. Aligned monthly rent and fortnightly cycles of payment in Centrelink remains an issue unless parties reach an agreement or VCAT makes an order.

→ 24. Rent increases





# Rent increases (s44)



## What has changed

- Must include the rent increase, **and** the **method** by which the rent increase was calculated
- Now clear that increase during FTTA must be specified amount or specifies the **method**.

## Transitional

Any lease entered into **on or after 19 June 2019** must not be increased more frequently than 12 months. Periodic leases prior to this remain on 6-month increases until re-signed or new tenancy (this will be around for a while).

## Systemic issues

- “Method of increase” is not defined. See Rent Increase provision in Form 2 FTTA cl. 15 for examples.
- In light of **s44(4)(b)**, there may be an increase in the number of agreements that attempt to use CPI or other methods to regulate increases. This does not exempt them from serving the 60 day notice of rent increase.
- Incorrect rent increases are usually worth a lot of money. Get instruction on any arrears matters.

→ 25. Rent fixed-price advertising



# Fixed-price advertising (s30F)



- If advertising for an amount – this must be for a fixed amount of rent
- However, advertisements for a rental property may be silent on price by placing a sign at or near the rented premises.

## SYSTEMIC ISSUE

This still does not prevent renters from making offers themselves and being accepted.

## TIP:

Always encourage people to save/screenshot the advertisement of properties (especially on less reputable sites).



→ 26. Free set of keys

# Keys



**Each** renter on the agreement must be given a key (and any other security device) to *access and enjoy* the rented premises **free** of charge. Additional copies are at a reasonable fee.

Part	Provision	Locks
Tenancy	<u><a href="#">s54A</a></u>	
Rooming house	N/A	<b>r6</b> RH min standards; not described as free (implied)
Caravan park	<u><a href="#">s161</a></u>	
Part 4A	<u><a href="#">s206ZD</a></u>	
SDA	N/A	Note you can have a Part 2 agreement in an SDA.



## → 27. Fixtures and modifications



# Fixtures and modifications (s64, r26-28)



- Previously, there was no way of compelling a rental provider to consent to modifications with the exception of disability modifications
- New laws provide for mechanisms to **compel consent**, if required, for specific reasons
- It is now a *very* long provision



## **Important to remember:**

- This does not shift cost to the rental provider
- The renter **still** has the responsibility to restore the premises to their original condition save for fair wear and tear - even if no consent is required or give - unless otherwise agreed in writing

# Fixtures and modifications - new s64



## General rule

A renter must not make modification, alteration, addition, or installation of fixture without the rental provider's consent in writing.

## Class A modifications (r26)\*

Allow renter to make modifications **without** consent if the modification is **prescribed**.

## Class B modifications (r28)\*

Are modifications that the rental provider cannot unreasonably withhold (s64(1B)).

Class B modifications include:

- In **s64** - do not penetrate or permanently modify surface, fixture, structure, required for “health and safety”; disability modifications (**s55 Equal Opportunity Act**) and assessed by class of therapists; to ensure telco services; are reasonable security measures; “necessary to ensure safety” for person with family violence history; necessary to increase thermal comfort, reduce energy and water costs
- There can also be **prescribed** modifications for Class B (r28).

\* Not formally referred to as Class A (r26) or B (r28) modifications anywhere. This is just for conceptual convenience.



# Modification considerations



## Factors in determining whether it is “reasonable” to refuse consent

NTV been issued (“imminent change in possession”); significantly change the premise; mod would require mod to other premises or common area; results in non-compliance with another law or Act; result in additional maintenance costs if not restored at the end; action required to restore the rented premises upon termination make it not practical in the circumstances.



## **Equal Opportunity Act** modification Act

Consent is not subject to the “reasonable grounds to refused” factors above.

## Standard – suitably qualified person

Any modification may be required to be done by a suitably qualified person.



# Prescribed class A modifications - no consent required (s64(1), r26)



- (a) In a rented premises that is not a registered place (heritage listed/overlay):
  - (i) Installation of picture hooks or **screws for wall mounts**, shelves or brackets on surfaces **other than brick walls**
  - (ii) Installation of wall anchoring devices on surfaces **other than brick walls** to secure items **of furniture**
  - (iii)** Installation of **LED light globes** which do not require new light fittings
  - (iv) Installation of water efficient shower head if original is kept
  - (v) Installation of **blind or cord anchors**
  - (vi)** Installation of security lights, alarm system or security cameras that:
    - (i) Do not impact privacy of neighbours - i.e. not camera or light that faces a neighbour directly**
    - (ii) Can be easily removed**
    - (iii) Are not hard wired**
  - (vii) Installation of hardware-mounted **child safety gate** other than in exposed brick or concrete wall
  
- (b) In all rented premises regardless of heritage listing:
  - (i) Installation of non-permanent window film for insulation, reduced heat transfer or privacy
  - (ii) Installation of wireless doorbell
  - (iii) Replacement of curtains** if the original curtains are **retained**
  - (iv) Installation of **adhesive child safety locks** on drawers and doors
  - (v) Installation of pressure-mounted child safety gates
  - (vi) Installation of lock-on letterbox



# Prescribed class B modifications - cannot be unreasonably refused (s64(1B)(h), r28)



Additionally, consent cannot be unreasonably withheld in relation to:

- (a) Installation of picture hooks or screws for wall mounts, shelves or brackets on **exposed brick or concrete walls**
- (b) installation of hardware-mounted **child safety gates** on **exposed brick or concrete walls**
- (c) installation of **wall anchoring devices** on **exposed brick or concrete walls** to secure items of furniture;
- (d) **Draughtproofing** in homes without open flued gas heating, including installing weather seals, caulking or gap filling around windows, doors, skirting and floorboards;
- (e) Installation by a suitably qualified person of a **security system** which does not impact on the privacy of neighbours if an invoice with the name of the installer is provided to the residential rental provider at the time the consent is requested;  
Example: a residential rental provider may reasonably refuse a request to install a security camera or security light that directly faces a neighbouring premises.
- (f) installation of **flyscreens** on doors and windows
- (g) installation of a **vegetable or herb garden**
- (h) installation of a **secure letterbox**
- (i) **painting** of the rented premises
- (j) modifications to **secure external gates** in rented premises that are not multi-unit dwellings;
- (k) any modification which contributes to the **conservation**, within the meaning of section 3(1) of the Heritage Act 2017, of a registered place and is proposed to be undertaken in accordance with Part 5 of that Act



## → 28. Rights of entry

# Entry – what has changed



- Now different times for different grounds (see table in next slide)
- Entry times are still between 8am and 6pm
- Open inspections now lawful
  - Entry frequency provided now
  - Protected persons can request inspections by appointment
  - Compensation is mandatory for sales inspections
  - Reasonable efforts to make arrangements for sales inspections
- General entry includes grounds
- General inspection notification now 7 days
- Process for obtaining advertising material and objections set out specifically
  - Photos also addressed
  - Reasonable attempt to agree on time
  - Process for objection to taking of advertising material
  - There is no clear power for renters to quickly go to VCAT in relation to **s89A**
- Family violence provisions and arrangements

# Grounds and times



Section	Ground	Time (s85)	Other
<b>s86(1)(a)</b>	Show prospective renter including open inspection	48 hours	<ul style="list-style-type: none"> <li>• Entry 21 days prior to termination date</li> <li>• 2x per week; not longer than 1 hour</li> <li>• Protected persons can require inspection appointment</li> </ul>
<b>s86(1)(b)</b>	Prospective buyer or lender including open Inspection	48 hours	<ul style="list-style-type: none"> <li>• Must have given Notice of Intention to Sell 14 days before entry, and RRP must make “reasonable efforts” to agree date and time</li> <li>• 2 x per week; no longer than 1 hour</li> <li>• Protected persons can require inspection appointment</li> <li>• Renters entitled to greater of either <b>\$30 or half day of rent</b></li> </ul>
<b>s86(1)(ab)</b>	To produce advertising images and videos ( <b>s89A</b> )	7 days	<ul style="list-style-type: none"> <li>• <b>s89A(2)</b> – reasonable attempt to agree on suitable time</li> <li>• Renters may make written objection (<b>s89A(3)</b>) on specific grounds</li> <li>• Right to review photos for valuables and RRP needs consent</li> <li>• 12 months limit on consent</li> <li>• Photos for evidence cannot be used for advertising</li> </ul>
<b>s86(1)(c)</b>	To carry out duty under Act or Rental Agreement or any other Act	24 hours	
<b>s86(1)(e)</b>	RRP believes R failed to comply Act or Agreement	24 hours	
<b>s86(1)(g)</b>	Inspection – DV Orders – <b>s91V</b>	24 hours	Excluded person may have a representative at the inspection. They must provide name and contract details to rental provider or real estate agent prior to entry.
<b>s86(1)(d)</b>	Valuation	7 days	
<b>s86(1)(f)</b>	General inspection: not more frequent than every 6 months	7 days	Not in the first 3 months of the tenancy

# Entry issues? Express right to apply to VCAT to regulate conditions and frequency



Renters can apply to **limit or specify when** date and time or other conditions when entry is to occur (**s89(2)**).

- Note: Renter applications do not have a listing time requirement (cf. **s209A(a)**) – open inspection refusals must be listed in 5 days)

## Example:

Hagar works night shift in a hospital as a doctor, and she needs to limit when the rental provider can arrange open inspections. The rental provider refuses to accommodate her request to limit inspections to between 2pm and 6pm.

Hagar can apply to VCAT under **s89(2)** to limit the entry times under order.



# Photographs for advertising - s85(1)(a,b) and s89A



- 7 days notice
- They can enter for this purpose to **produce advertising images and video of the property**
- This does **not** require Notice of Intention to Sell to be given
- Must make reasonable attempt to agree on **time** for entry (**s89A(2)**)
  - Unfortunately does not broadly apply to entry
- Renters have some rights to object – more information in next slide
- **s89A(6)** – RRP or real estate agent **must not take** or produce images referred to in **s89A(3)** if written objection has been made by renter (**s89(6)**). This is **not** specifically an offence provision (cf. **s91A**)
  - In other words, it appears likely the RRP cannot take images of *those* items but other photos may be possible. **s89A(7)** appears to apply to “any possessions of the renter”





# Photographs and video inspection



**Section 89A(8)** states:

*If an image or a video **was produced** for **a purpose other than advertising**, the RRP or agent must obtain the renter's written consent before using the image or video for **advertising purposes**.*

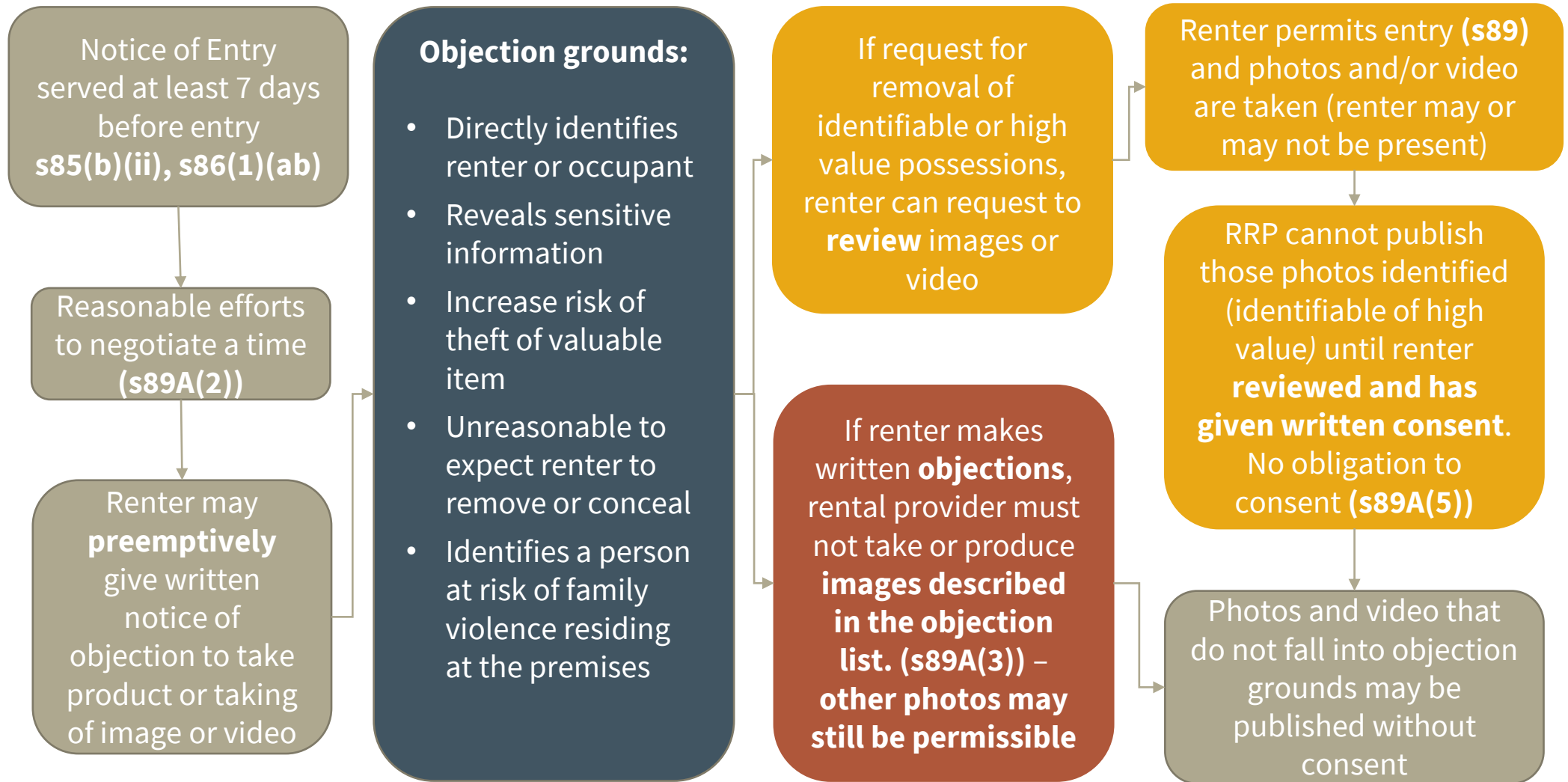
## **Systemic issues**

- What is a valuable item?
- What is an identifying item?
- Will the burden be on renters because it is not an offence provision if there is disagreement about photos and what is protected/able to be excluded by objection?
- Measure of compensation

## **General inspection photography**

The Act still seems **silent** on the taking of photos during a general inspection. Or, does this section implicitly suggest that photos during general inspection can be taken provided that are not used for “advertising purposes”. There does seem to be a right to object.

# Photos and advertising material s89A



→ 29. Discrimination in the  
*Residential Tenancies Act*

# Mandatory discrimination statement



- Residential rental applications must include prescribed information (**s29C, r14, Sch 1, Form 3**).
- Must not unlawfully discriminate (**30A**)

Part	Section (Prescribed information, not discriminate)	Reg for prescribed information	Form Prescribed information (schedule 1)
Tenancy	<u><a href="#">s29C</a></u> , <u><a href="#">s30A</a></u>	<b>r14</b>	3
Rooming House	<u><a href="#">s94E</a></u> , <u><a href="#">s94F</a></u>	<b>r40</b>	8
Caravan Park	<u><a href="#">s145A</a></u> , <u><a href="#">s145B</a></u>	<b>r55</b>	13
Part 4A	<u><a href="#">s206JB</a></u> , <u><a href="#">s206JC</a></u>	<b>r75</b>	18
SDA			

# Discrimination generally



- Discrimination has been heavily integrated into the ***Residential Tenancies Act***
- Includes the ability to claim compensation for discrimination (**s210AA**)
- Proof of discrimination now also operates as a defence to some Notices to Vacate (cf. *Unison Housing Ltd v Perkich (Residential Tenancies) [2020] VCAT 1249 (8 November 2020) @ [72]* – “no evidence the disability causes the conduct”)
  - Note: discrimination as a potential defence depends on proof of **direct** discrimination rather than **indirect** discrimination, so a technical understanding of discrimination will be necessary

# Discrimination Generally



- Relates to refusing to let a property to an applicant
- Refusing modification to property (**s64**)
- Refusing to assign or sublet (**s81**)
- Proof of direct discrimination can be a defence to Notice to Vacate on certain grounds (**s91ZX, s91ZY, 91ZZ, 91ZZA, 91ZZB, 91ZZC, 91ZZD, 91ZZDA or 91ZZE**)
- Mandatory Prescribed Notification of **Equal Opportunity Act** rights attached to agreements (**s29C, r14**)
- Exemption for Department of Families, Fairness and Housing in relation to housing allocation and functions
- Residential Tenancies **Equal Opportunity Act** provisions **do not** prevent engagement of the **Equal Opportunity Act** directly, or of using the Victorian Equal Opportunity and Human Rights Commission (VHREOC). However, generally cannot use VHROEC and VCAT concurrently for same matter.

→ 30. Repairs



# Repairs – what has changed



- New additional definitions are included in “urgent repairs” (**s3**)
  - Airconditioning (cooling devices)
  - Minimum standards
  - Safety devices
  - Mould and damp caused by building structure
  - Pest infestation
  - Inclusion of repairs in caravan parks and Part 4A parks to sites, and structures owned by caravan park operators, (see **r7** - includes subsidence)
  - Prescribed class of repairs (**s3**)
- Repairs reimbursement hearings for urgent repairs – reimbursement Notice requires payment within 7 days, from 14 days previously
- Applications for reimbursement can be made under **s209AAB**.





# The duty to maintain in good repair - s68



**s68** has been updated to codify (put into statute) the principles set out in *Shields v Deliopoulos [2016] VSC 500 (7 September 2016)*:

A. “**provided and maintained in good repairs**” and

B. “reasonably fit and **suitable** condition for occupation”

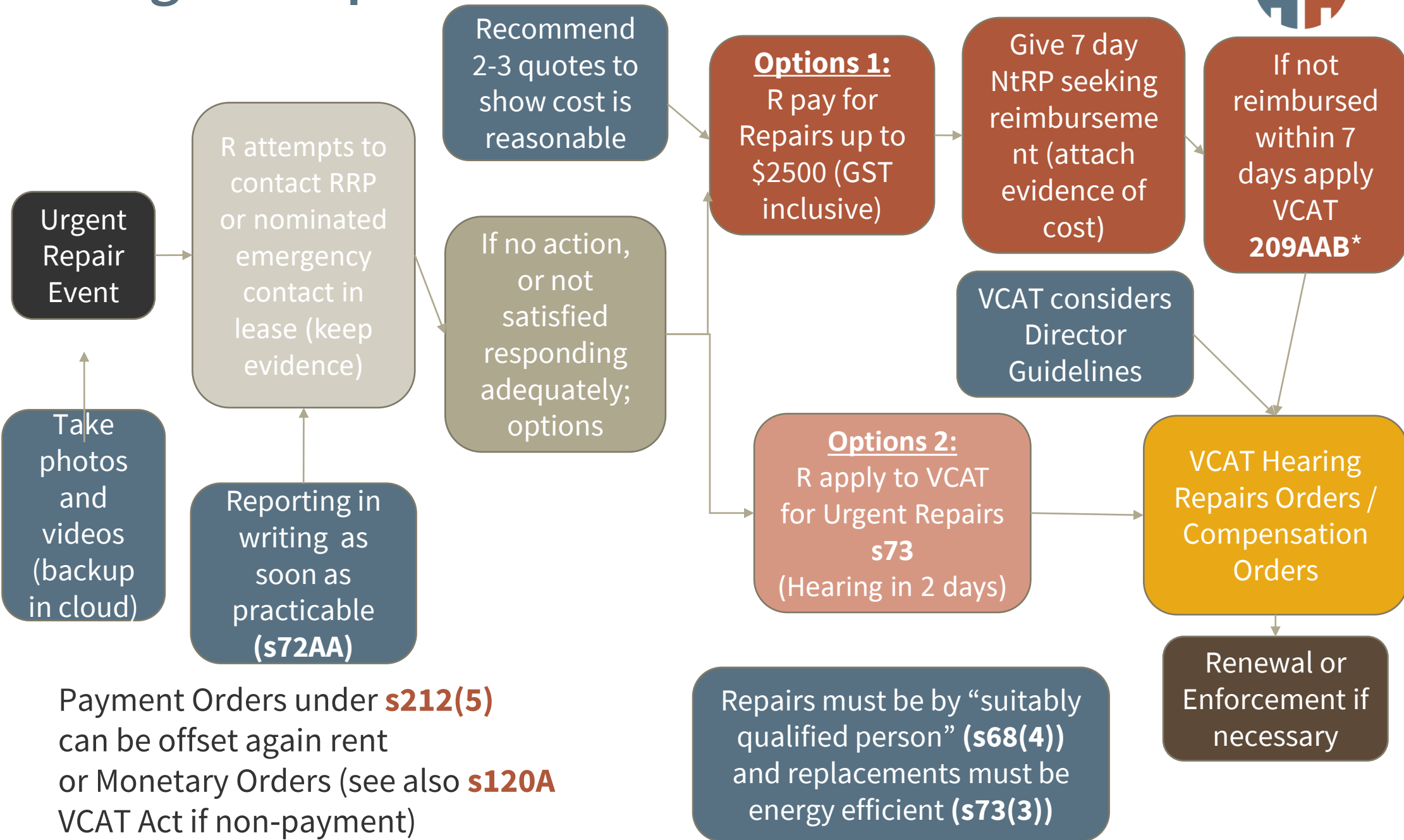


# Repairs – other changes



- Increase in urgent repairs from \$1800 to \$2500, GST inclusive ([s72](#),[s73](#),[r32](#),[r34](#))
- Director guidelines - not yet published
- Obligation to report damage and breakdown in writing as soon as practicable ([s72AA](#))
- Replacements must be energy efficient ([s72\(3\)](#), see [r23](#))
- Repairs must be done by suitably qualified person ([s68\(4\)](#))
  - *Suitably qualified person* includes a tradesperson who is registered or licensed in respect of relevant work to be undertaken, if that work requires a person to be so registered or licensed ([s3](#))

# Urgent Repairs



# Urgent Repairs - Legislation



Accommodation	VCAT Application for Repairs	Max Reimbursement amount (GST inclusive)
Definition	<b><u>s3</u></b>	
Tenancy	<b><u>s73</u></b>	\$2500 ( <b>r34</b> )
Rooming House	<b><u>s130</u></b>	\$2500 ( <b>r50</b> )
Part 4 – Caravan	<b><u>s188</u></b>	\$2500 ( <b>r65</b> )
Part 4 – Caravan Site	<b><u>s189A</u></b>	\$2500 ( <b>r70</b> )
Part 4A	<b><u>s206ZZAB</u></b>	\$2500 ( <b>r87</b> )
SDA	<b><u>s498P</u></b>	(N/A no reimbursement provision)
Compensation for urgent repairs	<b><u>s209AAB</u></b> (all accommodation types)	<b><u>s209AAB</u></b> RPs have 7 days from time of notice to reimburse for the cost of repairs
Compliance Prescribed Standard Standards	<b><u>s209AA</u></b>	

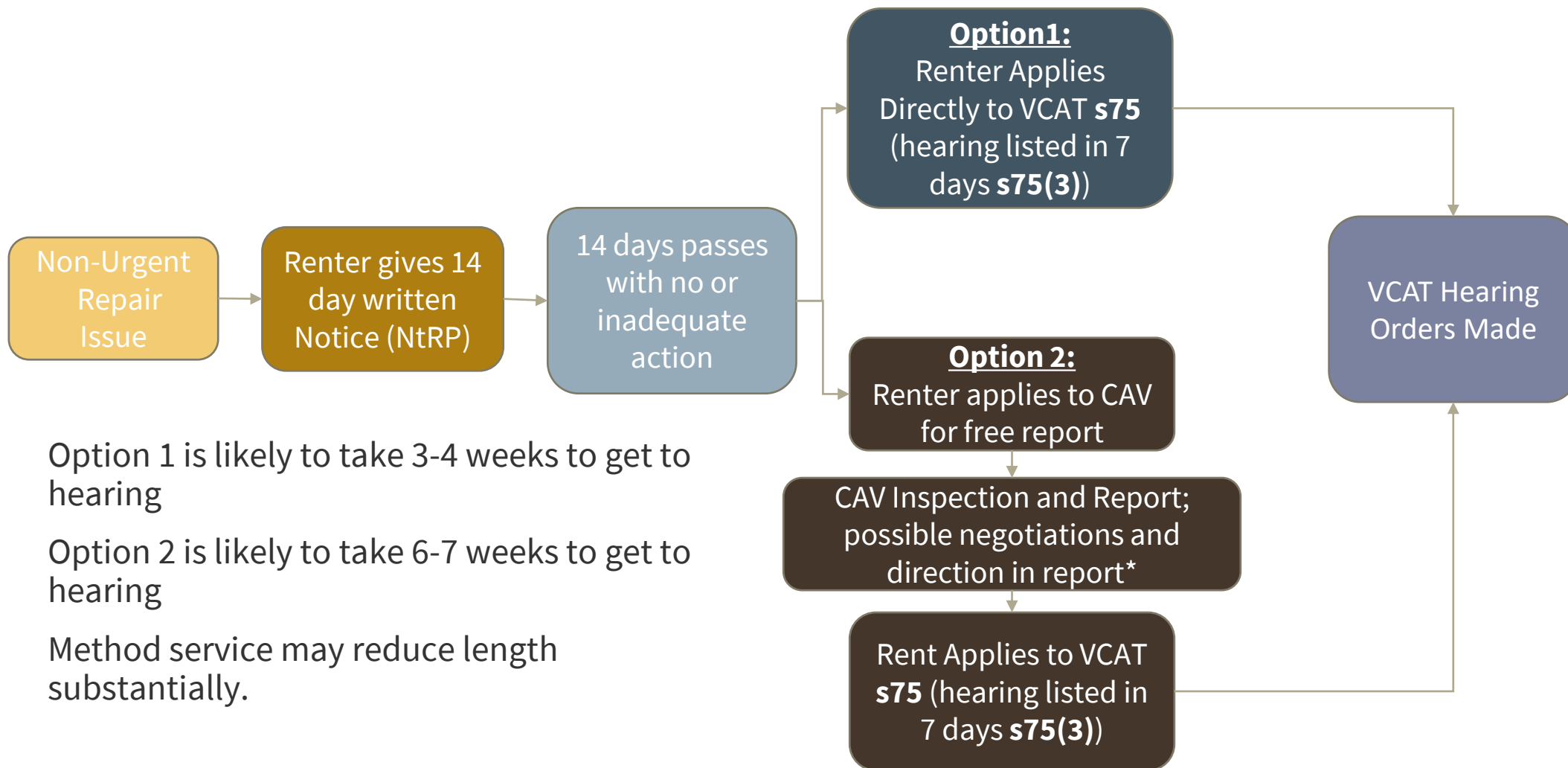
# Repairs – non-urgent repairs



- Consumer Affairs Victoria report now **optional**. Can apply to VCAT after 14 days giving written notice (cf. ***s53 Interpretation of Legislation Act***)
- Consumer Affairs Victoria may now potentially reject request for report:
  - If renter seeks Consumer Affairs report, they must wait until report is obtained before applying to VCAT
  - Seemingly stronger Consumer Affairs directive powers in report



# Non-Urgent Repairs



Option 1 is likely to take 3-4 weeks to get to hearing

Option 2 is likely to take 6-7 weeks to get to hearing

Method service may reduce length substantially.

\* If Consumer Affairs Victoria request for inspection rejected for any reasons, can still apply to VCAT there after.

# Non-Urgent Repairs - Legislation



Accommodation	Application Section	CAV Report Section	Comment
Definition	Not defined – anything not urgent		Anything that is not urgent <b>s3</b>
Tenancy	<b><u>s75</u></b>	<b><u>s74</u></b>	Must be hear application within 7 days of applying ( <b>s75(3)</b> )
Rooming House	<b><u>s132</u></b>		<b><u>s131A</u></b> – CAV independent investigation
Part 4 – Caravan	<b><u>s191</u></b>	<b><u>s190</u></b>	
Part 4 – Caravan Site	<b><u>s191A</u></b>	<b><u>s190A</u></b>	
Part 4A	<b><u>s206ZZAD</u></b>	<b><u>s206ZZAC</u></b>	No duty to repair Part 4A dwelling because site tenant must own part interest in dwelling.
Compliance Orders	<b><u>s209</u></b>		Director can also make an independent application on behalf of a person without renter’s consent ( <b>s209(2)</b> where Notice to RP has been given). Applies to all accommodation types.
SDA	<b><u>s498P</u></b>	<b><u>s498R</u></b>	

→ **31. Residential Non-compliance Register**





# Residential Non-compliance Register – Part 10B (s439O-439U)



An entry on the register **must** occur if ([s439P\(2\)](#)):

- Either VCAT has made an order under Part 5 (Compensation and Compliance)
  - Note: restraining orders are **not** under Part 5.
  - Orders that direct a residential rental provider from refraining from committing a breach are covered.
- Or the residential rental provider has committed an offence under the Residential Tenancies Act

Despite mandate in [s439P\(2\)](#), [s212\(5\)](#) which states:

*“The Tribunal **may** order the Director **not to list** the making of an order under this section for compensation or compliance against a residential rental provider on the Rental Non-compliance Register **if it is satisfied that, in all the circumstances, it would be unfair** to list the making of the order on the Register.”*

→ Summary of 30 changes

# 30 changes



1. Change in language
2. No more No Reason Notice to Vacate
3. Mortgagee Notice to Vacate now 60 days
4. Reasonable and proportionate test
5. Compliance orders in lieu of possession orders
6. New Notices to Vacate
7. Extension of postponement of the warrant to all accommodation types
8. Rent arrears – “5 strike” rule and financial counselling
9. Rental rebates and service charges
10. Reduced Notice of Intention to Vacate
11. Update of duties
12. Safety related activities
13. Minimum standards
14. Termination before taking possession
15. Maximum bond and rent in advance

# 30 changes



16. Bond recovery
17. Exit condition reports
18. Lease breaking
19. Mandatory disclosure obligations
20. Misleading and deceptive conduct and advertising
21. Prohibited questions
22. Prohibited terms
23. Free payment method
24. Rent increases
25. Fixed price advertising
26. Free set of keys for each renter
27. Fixtures and modification
28. Rights of entry
29. Discrimination in the Residential Tenancies Act
30. Repairs
31. Rental Provider Non-Compliance Register (OK – that’s 31 😊 )

→ **Resource: Free Lead Cases  
Update from VCAT**

# VCAT – Red Spot Case pdf



Compilation of important VCAT Cases that be important

Click link here for PDF:

<https://www.vcat.vic.gov.au/sites/default/files/2020-07/Useful-Supreme-Court-and-VCAT-decisions-about-renting.pdf>

# Thank you

## **Community worker line**

**(03) 9411 1444**

Monday to Friday 9:00 am – 4.00 pm

Closed on weekends and public holidays

Free advice or support for workers at not-for-profit organisations assisting people who rent in Victoria.

Email: [admin@tenantsvic.org.au](mailto:admin@tenantsvic.org.au) with the subject line “Organisation enquiry”

If it’s urgent, please try one of our [practice resources](#).

## **Tenant advice line**

**(03) 9416 2577**

Monday to Friday 10.00 am – 2.00 pm

Closed on weekends and public holidays

The approximate waiting time is over 30 minutes.

Calls are answered by lawyers, advocates and intake workers with specialist knowledge of Victorian rental laws.

## **Social housing tenants**

**1800 068 860**

Monday to Friday 9.00 am – 4.00 pm

Closed on weekends and public holidays

For tenants in public housing and community housing.

Calls are answered by lawyers with specialist knowledge of Victorian rental laws.



Specialist community legal centre on tenancy matters

55 Johnston Street, Fitzroy Victoria 3065

[admin@tenantsvic.org.au](mailto:admin@tenantsvic.org.au) | [tenantsvic.org.au](http://tenantsvic.org.au)