

# Rental reforms



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Hello

## Acknowledgement of Country

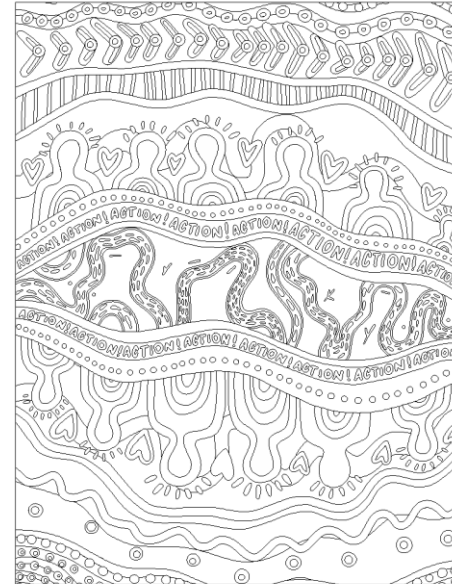
Some resources from National Reconciliation Week 2021

[\(https://nrw.reconciliation.org.au/actions-for-reconciliation/\)](https://nrw.reconciliation.org.au/actions-for-reconciliation/)

[\(https://nrw.reconciliation.org.au/posters-and-resources-2021/\)](https://nrw.reconciliation.org.au/posters-and-resources-2021/)

### Colour for Reconciliation

Action by Jessica Johnson



Action is the story of the land and community sharing the united call for action on reconciliation.

Aboriginal and Torres Strait Island peoples have been listening to the heart beat of the land and sea for generations. With their rainbow striped and scale the spirits ask for us to join a rd make reconciliation more than a word, take action. We all have a role to play.

Hello

**Isabelle – UMSU Legal Service**

**James - Youthlaw**



- Overview/resources
- Discrimination
- Repairs
- Bonds
- Pets



# Reforms

## Before

New language

New forms

Fixed price bidding

Discrimination/questions

Minimum rental standards

Keys

Bonds

Condition reports

## During

Modifications

Repairs

Inspections

## After

Notices to vacate

Eviction

Bond

## Other

Family violence

Pets

## Resources

- Tenants Victoria (general): <https://tenantsvic.org.au/>
- Tenants Victoria (Family Violence Guide): <https://tenantsvic.org.au/advice/during-your-tenancy/family-violence-and-your-tenancy/>
- Consumer Affairs Victoria (general) : <https://www.consumer.vic.gov.au/housing/renting>
- Consumer Affairs (guides) : <https://www.consumer.vic.gov.au/housing/renting/changes-to-renting-laws>
- Homeless Law in Practice : <https://hlip.justiceconnect.org.au/practice-areas/housing-and-tenancy/>
- Residential Tenancies Act : [http://www5.austlii.edu.au/au/legis/vic/consol\\_act/rta1997207/](http://www5.austlii.edu.au/au/legis/vic/consol_act/rta1997207/)
- Regulations : [http://www5.austlii.edu.au/au/legis/vic/consol\\_act/rta1997207/](http://www5.austlii.edu.au/au/legis/vic/consol_act/rta1997207/)



### New protections from discrimination

RRP must not unlawfully discriminate by refusing to let premises (s 30A RTA)

RRP must not request prescribed information from applicants (s 30C RTA, r 15 RT Regs)

Can apply to Tribunal for compensation for discrimination (s 210AA RTA)

Mandatory discrimination statement (s 29C RTA, r 14 & Schedule 1 Form 3 RT Regs)

- Protection from discrimination in accommodation always existed under *Equal Opportunity Act 2010* (Vic) (EO Act) - now made explicit in RTA
- EO Act still applicable, and contains details of actions and types of discrimination etc.

**Tip:** These reforms sit alongside complex, overlapping state and federal discrimination law framework - various time limits apply, and there are benefits and drawbacks to making a claim in different jurisdictions. Worthwhile to refer clients with potential discrimination claims for legal advice

### Unlawful discrimination (s 30A) - what is it, and how can you prove it?

- Direct vs. indirect discrimination
  
- Protected attributes include:
  - age, parent and carer status, disability, employment activity, expunged homosexual conviction, gender identity, industrial activity, lawful sexual activity, marital status, physical features, political belief or activity, pregnancy and breastfeeding, race, religious belief or activity, sex, sexual orientation, personal association with someone who has, or is assumed to have, one of these personal characteristics (s 6 EO Act)
  
- Evidence - can be difficult to obtain
  
- Remedies - under discrimination law, these include apology, rectification of practice, compensation, specific performance



### Prohibited questions - what are they? (s 30C RTA, r 15 RT Regs)

- RRP/agent must not ask applicants to disclose “prescribed information,” which can be found in r 15
  - r 15 includes any information relating to a protected attribute under s 6 of the EO Act, unless RRP/agent provides a **written reason** for requiring this information
  
- Prohibition applies to both written and oral questions
  
- Only protected attributes - e.g. doesn't apply to pets

### Prohibited questions - how will they work in practice?

- Difficult area - certain requests may reveal information indirectly
- No prohibition on renters volunteering information
- “Written reasons” - what will be considered sufficient?
- Who does prohibition apply to - third party agent e.g. 1Form?
- What if online application form requires all questions be answered to submit?

### Prohibited questions - what can you do if you get one?

Breach of s 30C is an offence and should be reported to CAV, but no clear remedy or means of forcing RRP to let property

May be able to apply to Tribunal as general dispute, but:

- Who can apply?
- What can Tribunal do?
- Likely renter will be accepted for property after this dispute?

Compensation for discrimination (s 210AA RTA) - renter or proposed renter must show loss or damage

### What has changed?

- ❑ Non-compliance with “minimum standards” (urgent repair)
- ❑ Urgent Repairs expanded (mould, pests, safety devices)
- ❑ Director’s Guidelines - Urgent Repairs (note word download)
- ❑ Upped the amount renters can pay for urgent repairs (\$2500)
- ❑ Can apply directly to VCAT for non-urgent repairs

### What hasn’t changed

- ❑ Young renters remain reluctant to pursue repairs
- ❑ Process can be understood as largely the same
- ❑ Still can request a CAV report



### How to support young renters to pursue repairs

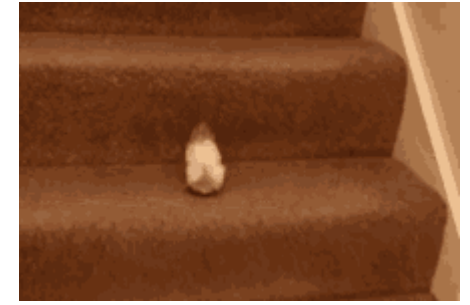
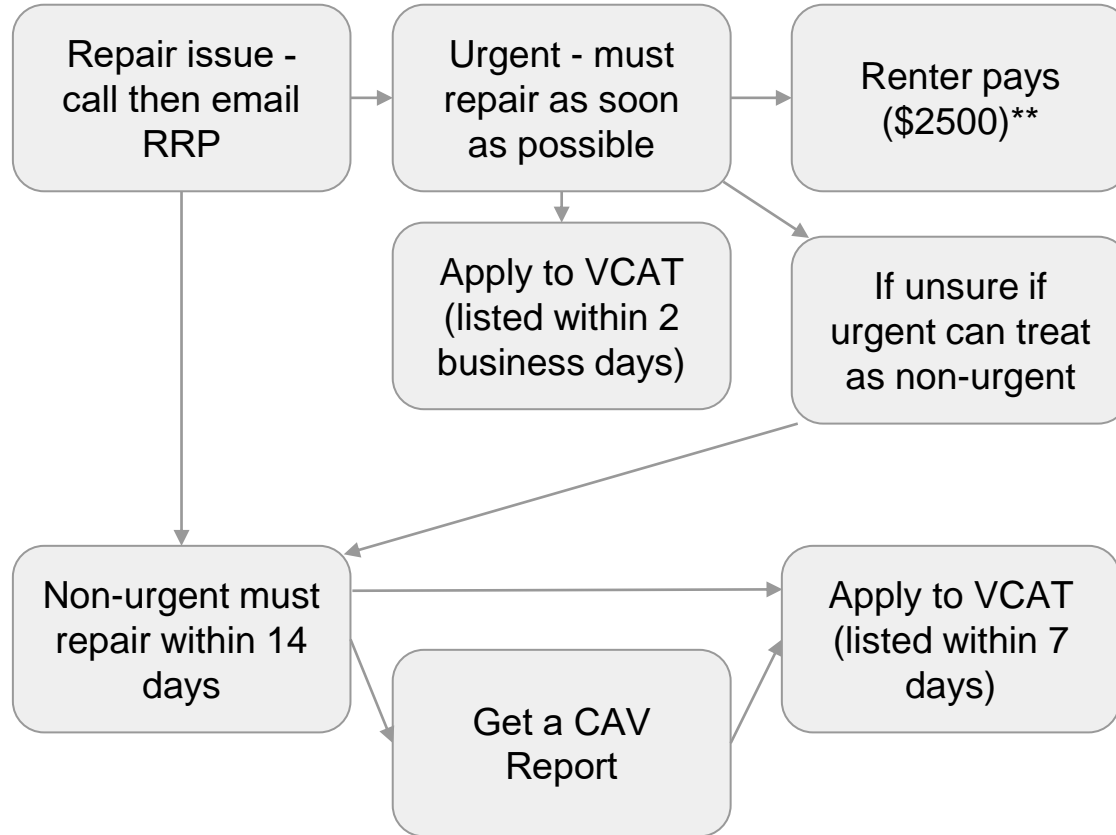
Important to let them know - the renter has the job to tell the rental provider in writing if anything needs repairs or is damaged especially if not fixing it could cause more damage (section 62/72AA)

Owner has the job of keeping the premises are provided and maintained “in good repair” and “in a reasonably fit and suitable condition for occupation” (section 68)



TIP: all repairs must be carried out by a “suitably qualified person” (section 68)

## Repairs



TIP: There is a persistent “myth” that urgent repairs must be repaired within 48 hours. The guidelines say “all the items listed in the definition... are urgent repairs, however they are not all equally urgent”

### New streamlined process for renters to claim bond directly from RTBA (s 411 RTA)

- Faster, simpler process to get bond back
- Renter can apply without RRP's consent
- Onus on RRP to dispute if they have a problem, otherwise bond repaid to renter
- Applies to all leases, even if began before reforms
- BUT doesn't help where bond not lodged with RTBA



### Applying to the RTBA by agreement

- Renter and RRP can still apply to RTBA by agreement for refund/apportionment of bond
  - ◆ If the agreement is for the bond to go to the RRP, claim form must be signed by renters no earlier than 14 days before the end date of the lease

### Can a claim be made to the RTBA before the end of the lease?

Yes, if:

1. it's made jointly by the RRP and all renters; or
2. it's made by the RRP for the bond to be repaid to the renters; or
3. it's made by the renters for the bond to be repaid to the RRP.

**Tip:** It's still an offence for the RRP to get the renter's signature on a claim form if it doesn't state the amount and apportionment of the bond refund.



### How does the process work in practice?

Most often:

1. Lease ends
1. If no agreement or if RRP doesn't initiate bond refund, renter can apply directly to RTBA (s 411 RTA)
1. RTBA will notify RRP that claim has been made, RRP has 14 days to dispute (s 411A RTA)
1. If no dispute: RTBA repays bond to renter (s 411AC RTA)

**Tip:** If the RRP wants to dispute a claim made by the renter to the RTBA, they should provide a copy of the VCAT reference number to the RTBA. In our view, the RTBA shouldn't accept notification of a dispute by the RRP without a VCAT reference number.

### What if there's a dispute?

- RRP can apply to RTBA to refund the full bond to the renter, BUT they can't apply to RTBA to claim some or all of the bond themselves (unless its by agreement)
  - ◆ Otherwise if RRP wants to claim bond, they have 14 days from end of lease to apply to VCAT

**Tip:** In the past, VCAT has often allowed extensions to the time limit for RRP's claiming bonds. Unclear whether this time limit will be more strictly enforced now.

- Renter can apply to VCAT for the bond within 14 days from end of lease

**Tip:** Any person who has an interest in the bond can apply to VCAT within 14 days from end of lease - including previous co-renter

### Determining bond disputes - what's relevant?

- New Director's Guidelines produced by CAV - not binding, but VCAT must consider
- Provide guidance on common issues and how cases have been decided in the past
- Most relevant for bond disputes:
  - ◆ Guideline 1: Maintenance
  - ◆ Guideline 2: Cleanliness
  - ◆ Guideline 3: Damage and fair wear and tear

**Tip:** VCAT has a backlog of bond and compensation claims owing to COVID-19. They have recently started a trial of deciding simple bond disputes “on the papers,” where they request relevant documents from the parties and decide the matter without a hearing. If clients have outstanding bond claims waiting to be listed, look out for correspondence from VCAT about this new trial.

What are we talking about when we talk about “pets”?

How to go about it:

1. Use the “Pet request form” 📄
2. Send it to the rental provider 💻
3. Wait 14 days... ⌚
4. No objection = Get the pet 😊
5. Rental provider objects = go to VCAT 🚫



## What happens at VCAT?

The VCAT member decides whether it is whether it is “reasonable to refuse consent”

Will look at:

1. Type of pet (in one case the renters provided member with an explanation using <https://www.dogzone.com/>)
2. Character of the rented premises/appliances/fixtures (size of the property - VCAT has looked at cruelty laws regarding “minimums” for keeping animals).
3. Whether another law permits the refusal (ie: what about Owners Corp? Rooming Houses? Student housing?)
4. Anything else they think is relevant (experience with pets, whether will be “left alone”)

### What has been happening to date?

Strong reform for renters to date.

1. Owner's allergies = not a reasonable ground
2. Increase in insurance = not a reasonable ground

Cases: Jaggers v Webster & Teschner v Vearing

TIP: Watch out for “Notices to Vacate” regarding pets. It looks “official” but this can only happen **after** a VCAT order.

TIP: If a renter gets a pet without consent - still goes to VCAT and the same test applies.



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THANKS

**Any questions?**





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