

CLIMATE JUSTICE LEGAL PROJECT

# Climate hotbeds: Extreme heat in social housing



## Acknowledgement of Country

Environmental Justice Australia (EJA) acknowledges the power, strength and expertise of Aboriginal and Torres Strait Islanders who have cared for and protected their communities and Country since time immemorial. We acknowledge the First Nations people who work in our sector and who live in social housing and thank for them for their generosity, wisdom and persistence as we work together to dismantle the systems that perpetuate injustice and destruction.

We acknowledge that there is no climate justice without First Nations justice.

## Acknowledgements

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We thank the Community Legal Centres and community organisations that have contributed to this project.

Thank you to the people who have shared their lived experiences of climate injustices with us, particularly each member of the CJLP's Advisory Group. We are deeply appreciative of the stories they have shared in helping us to develop our understanding of climate justice.

## About the Climate Justice Legal Project

The Climate Justice Legal Project is an innovative partnership between the Federation of Community Legal Centres, EJA and the Climate Council. Together we are using the law to empower communities across Victoria to advocate and seek justice, especially those disproportionately impacted by the climate disruption.

This project aims to:

- support communities to feel empowered to fight injustice and lead the way in addressing climate change according to their needs and aspirations
- be a catalyst for change by connecting climate impacts, human rights and social justice through stories about communities impacted by unfair decisions and policies that they can supported to solve
- focus on solutions that put communities at the centre, informed by examples of their experiences of being impacted by unfair decisions that are part of a wider systemic context, which together we can address.

## About Environmental Justice Australia

Environmental Justice Australia (EJA) is a national public interest legal organisation. For more than 30 years, EJA lawyers and specialists have used the law for a safe climate, thriving nature, environmental justice and a radically better world. We use a unique combination of public interest litigation and legal advocacy to hold power to account. We seek justice for creatures and communities, for this beautiful continent we call home, and for everyone who comes next.

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# As temperatures rise, people face complex and interconnected injustice

## Executive summary

This report summarises EJA's learnings and research from our work on the Climate Justice Legal Project's first advocacy focus, extreme heat in social housing.<sup>1</sup> This work considers how the law can be used to address the disproportionate risk of climate harms experienced by the frontline communities serviced by Victorian Community Legal Centres (CLCs). Our research focuses on understanding the legal avenues of redress at the intersection between climate science, tenancy and housing law, and human rights law in Victoria. Through this, we hope this report provides a resource for Victorian CLCs in understanding opportunities for legal assistance, intervention and law reform to create climate safe housing for social housing residents.

As temperatures rise and heatwaves become more frequent, social housing can become a 'hotbed' of complex and intertwining issues for tenants and their communities. Extreme heat events cause more deaths in Victoria than any other climate-related disaster and social housing tenants – including people with disabilities, First Nations people, women, children, and older adults – are especially at risk of experiencing injustice and harm. Their homes are not built to withstand the increasing frequency and intensity of heatwaves and many lack basic cooling infrastructure. When air conditioning is available, high energy costs can make it unaffordable for residents to use.

The right to adequate housing, enshrined in international law, is not specifically protected as a human right in Victoria; however, aspects of the right are recognised in piecemeal residential tenancies laws for basic habitability and protection from environmental hazards. The capacity of these laws in Victoria to protect social housing tenants from the growing climate-related risks they face has not been tested. In addition, Victoria's current legal and policy frameworks lack sufficient tools to ensure tenants' homes are climate resilient and habitable, reflecting a significant climate justice concern.

CLCs are on the frontlines of these issues in Victoria, assisting individuals with legal issues that are compounded by climate change – issues that are not well understood or comprehensively addressed within current legal and policy frameworks.

This report highlights legal opportunities to address heat vulnerability in Victoria's social housing system and the importance of climate safety in protecting communities. It outlines important actions for legal practitioners in CLCs to identify climate-related legal needs and advocate for their clients, and calls for systemic change to ensure the safety, well-being and dignity of those most at risk from extreme heat in a rapidly warming world.

Key recommendations include:

- **listening to communities** and empowering them as agents of change in their own lives
- **identifying the climate justice dimensions** of community legal needs relating to housing and tenancy
- **exploring opportunities for legal redress** through the Victorian Civil and Administrative Tribunal (VCAT) and other forums
- **advocating for broader policy reforms** to improve social housing infrastructure and embed climate resilience in housing law.

By recognising the intersection between climate justice and social justice, CLCs can help push for systemic change to ensure social housing is climate-resilient, liveable and equipped to protect its residents from a warming climate, today and into the future.

<sup>1</sup> Social housing in Victoria includes public housing, which provides long-term tenancies in properties under the responsibility of the Victorian Director of Housing/Chief Executive Officer of Homes Victoria; and community housing, which includes tenancies in housing owned or otherwise managed by not-for-profit community housing providers who receive funding from, and are regulated by, the Victorian Government through the Department of Families, Fairness and Housing. Further information about responsibilities for public and community housing in Victoria is provided at Attachment B.

During a four-day heatwave in Melbourne in early March 2024, Jay described having showers continuously as the only way to keep cool, saying he needed to ‘live in the bathroom’.

Despite not otherwise experiencing any underlying health conditions, Jay suffered migraines from the heat.

Jay lives in a multi-storey public housing tower in an inner-city suburb of Melbourne

Huon is blind and lives in community housing. His unit is in a suburb identified as at high risk for heat vulnerability, with projections suggesting it will experience double the number of days over 35°C by 2050.

Huon requested an air conditioning unit several years ago. Instead he received a fan.

Huon calls a multi-storey community housing block home, alongside 150 other people with disabilities and complex needs.



## Introduction

Climate justice must become a central concern in law and policy to ensure all Victorians, especially those living in social housing, have **safe and liveable homes in the face of a heating planet.**

As Victoria’s summers become more extreme and unpredictable, it is increasingly clear people living in social housing are on the frontline of climate injustice.

Inadequate action by governments to address climate risks has meant that much of Victoria’s social housing stock is ill equipped for current extreme weather conditions and unlikely to withstand exacerbating climate harms. These homes are often in neighbourhoods with more concrete, fewer trees and higher average temperatures than greener parts of our cities and towns. During heatwaves, they become dangerous to live in – especially for older adults, young children, people who are socially isolated or who have disabilities and medical conditions.

For community lawyers, the climate crisis presents new and complex challenges and opportunities to apply a climate-conscious lens to their legal practice. Climate disruption is increasingly impeding access to justice. These barriers can be physical – like extreme weather making it difficult for Victorian Community Legal Centres (CLCs) to stay open despite people urgently needing help. Barriers to justice can also be less overt, like a lack of legal remedies for communities experiencing what might appear to be isolated tenancy, debt or housing maintenance matters, but are in fact exacerbated by climate injustice.

The legal system has yet to catch up with these realities. Existing laws, policies, institutions and frameworks were not designed to address the escalating climate risks faced by communities. As a result, the protections and legal remedies available to social housing tenants are insufficient in mitigating climate-related harms.

This report outlines the critical gaps in Victoria’s legal and policy frameworks that leave tenants in social housing and their communities exposed to the risks of extreme heat. It also provides practical recommendations for legal practitioners and advocates to address these challenges through existing legal avenues and pushing for broader systemic change.

Climate justice must become a central concern in law and policy to ensure all Victorians, especially those living in social housing, have safe and liveable homes in the face of a heating planet. Through the CJLP, the project partners identified a need for climate justice to be framed to lead with people and their experiences, connect individual stories to the wider regulatory and systemic picture, and demand ambitious action. Accordingly, it is critical for community lawyers to start with the lived experience and knowledge of climate-impacted individuals who are best placed to identify their own needs and aspirations for their communities.

In this report, ‘social housing’ refers to long-term rental housing known as ‘public housing’ and ‘community housing’. This report uses the term ‘tenant’ to refer generally to renters in social housing, unless otherwise indicated. While we have not addressed rooming houses in this report, we acknowledge Victorian rooming house residents are likely to experience climate injustices and limited avenues to have their voices heard similar to those described for social housing tenants.

## Starting with the lived experience of climate-impacted communities

### KEY POINTS

- Climate justice and social justice are deeply intertwined and action to address climate change must also create a fairer and more just world for climate-impacted communities in the process.
- Starting with the diverse experiences of individuals across communities, and understanding how these experiences weave together, can expose the underlying relationships between climate harms and legal issues that might develop from them.

Climate justice requires a focus on the experiences of frontline communities to support meaningful justice outcomes for individuals and communities that address climate harms and build environmental, social and economic resilience. Starting with the lived experience of climate-impacted people can highlight intersections between human rights, social justice and climate change and the need for solutions that work across different sources of systemic and institutional marginalisation.

People experiencing climate disruption are more likely to also experience discrimination based on their socioeconomic status, age, health, gender, history, ethnicity, location, politics and other power imbalances. Tackling the unfair systems at the root of people's lived experience, including supporting social equity, economic security and access to care, is critical to addressing the climate crisis and empowering communities to create climate solutions that work for them. This requires listening to and understanding the lived experiences of communities at the frontline of social and climate harms.

From our research, we have identified the following actions community lawyers and organisations should consider in identifying and communicating climate justice legal needs:

### 1. LISTEN TO AND EMPOWER COMMUNITIES

The key action of listening to and empowering communities includes recognising and allowing spaces for diverse voices to reflect different perspectives on their experiences of intersecting social and climate harms. It involves active listening, accessible information and providing supports to enable people to be heard. The CJLP developed guidance to support the project's partner organisations to communicate about climate justice. The following six key messaging principles are important ways to centre lived experience in identifying and advocating to address climate justice needs:

- **lead with shared values:** like fairness, healthy communities, inclusiveness, interdependence, compassion, care, solidarity and our shared future
- **elevate the diverse voices and experiences of people with lived expertise** and remind audiences of these communities' strengths, knowledge and vital role in making decisions
- **name who or what is responsible** and connect specific experiences to the bigger systemic story
- **focus on what affected individuals and communities at the frontline of climate harms want** – particularly on tangible outcomes, not just problems or processes – and seek to spread hope and defiance so that winning to address needs is achievable
- **use simple, tangible language** for big concepts – start with stories to bring ideas and issues to life
- **avoid focusing on or repeating myths and accusations**, even to correct or rebut them.

### 2. ACTIVELY CONSIDER THE CLIMATE JUSTICE ELEMENTS OF COMMUNITY LEGAL NEEDS

Community lawyers provide critical legal assistance to people experiencing a variety of civil and criminal legal needs. This presents opportunities to identify the climate justice-related dimensions of community legal assistance and casework, whether at intake or during the conduct of a matter. The questions included at Attachment A provide an example of additional queries that could be raised in relation to housing and tenancy matters, including questions to help identify any adverse impacts of extreme heat in social housing.

### 3. SUPPORT INDIVIDUALS AND COMMUNITIES TO RECOGNISE CLIMATE HARMS AND RISKS

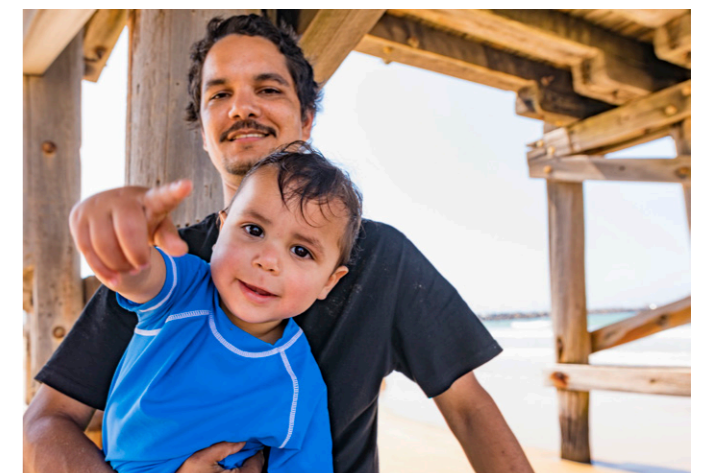
Climate justice-related dimensions of a person's broader legal needs may not be immediately apparent, and they may require further support to recognise them. In addition, it is often likely that the harms experienced by individuals will be experienced by others in their community. This may require proactive action to identify issues in infrastructure in a specific dwelling as well as in the surrounding homes, for example, through residents' groups. It may also require resources to gather information about heat impacts – such as thermometers to record temperatures and daily experiences and impacts during a heatwave.

### 4. EXPLORE OPPORTUNITIES FOR REDRESS

As outlined below, in the context of extreme heat in social housing, this could include direct requests to rental providers, avenues of redress through VCAT, and review of decisions if unsuccessful.

### 5. CONSIDER OPPORTUNITIES FOR BROADER IMPACT AND INFLUENCE

In addition to direct redress, climate justice requires broader systemic change to improve policy and practice and to build a strong evidence base demonstrating the link between the responsibility for climate action by government, non-government and private entities to address the causes of climate change and the climate harms already being experienced by individuals and communities



## Stories we heard

### KEY POINTS

- The stories we heard indicate the damaging impacts of living in social housing ‘hotboxes’ which cumulate and compound other forms of injustice.
- Social housing tenants can be disproportionately affected by adverse impacts due to inadequate infrastructure and pathways to address growing risks.
- Climate safe housing is a basic need that should be safeguarded by legal rights and proactive action that ensures climate safety for everyone is prioritised and future climate harms are minimised.

Renters struggling with extreme heat often lacked the knowledge to seek repairs, or feared adverse consequences if they raised issues – especially due to the power imbalance between renters and landlords, particularly when the landlord is the government.

Climate disruption impacts all areas of law and all people, however, the impact is most acute and long-lasting for individuals and communities who experience climate harm while already faced with overlapping and intertwining systemic injustices, including, for example, racism, sexism and/or ableism. This renders climate injustice uniquely difficult to address through the processes and institutions within our legal system, which are underpinned by colonial structures and often uphold systemic discrimination.<sup>2</sup>

As the dynamics of globalisation, capitalism and colonialism interact and overlap to compound the injustices frontline communities face, their experiences require a holistic view that recognises the complexity of their situational needs in the context of global climate harms.<sup>3</sup>

Of the close to 120,000 Victorians who live in public housing, nearly 5 per cent are Aboriginal, 57 per cent are women and more than 29,000 are under 18 years of age.<sup>4</sup> Victoria has approximately 88,000 social housing dwellings,<sup>5</sup> all with varying levels of exposure and vulnerability to climate change.<sup>6</sup> Many of these homes are vulnerable to climate change impacts, including asset loss, damage or reduced service and amenity (for example, air conditioning units, chillers and emergency generators failing in extreme heat).<sup>7</sup> These homes are more likely to be in neighbourhoods with more concrete, fewer trees and higher average temperatures.

Carlton, Flemington, Norlane, Reservoir and Richmond are the top five suburbs identified by Homes Victoria where public housing tenants reside. By 2050, each of these suburbs will experience twice as many days above 35°C as the average over the period 1986 to 2005.<sup>8</sup> These locations are all in cities, likely to be exposed to the ‘urban heat island effect’, in which urban areas are warmer than the surrounding land.<sup>9</sup>



On hot nights, with no air-conditioning or insulation, people living in social housing can have trouble sleeping and struggle to concentrate the next day at school and work. When there are power outages, people can’t keep medicine cool in the fridge. Even when homes have cooling, without energy efficient building infrastructure or cost-effective energy options, families can face unaffordable energy bills. Extreme heat is a silent killer, affecting cognitive function, hearts and lungs. During extreme heat, 89 per cent of fatalities are people with a disability.<sup>10</sup>

Often, people living in social housing are also already experiencing other forms of disadvantage and exclusion. Research has also shown there are more incidents of violence in summer and on hot days.<sup>11</sup> This relationship is stronger in neighbourhoods with higher social and economic disadvantage and the characteristics of the built environment, such as aged housing and lack of greenery, are correlated with heat-induced crime.<sup>12</sup> The adverse social outcomes that flow from extreme heat compound with other vulnerabilities, confirming that strong action is critical to ensure the people who live in social housing and the places they live in are safe in a changing climate.

All of us need liveable, climate-safe homes with effective infrastructure and appropriate thermal comfort to mitigate known and foreseeable risks of escalating heat due to climate change.

2 Jan Wilkens and Alvine R C Datchoua-Tirvaudey, ‘Researching climate justice: a decolonial approach to global climate governance’ (2022) 98 (1) *International Affairs* 125 <https://doi.org/10.1093/ia/iab209>; Farhana Sultana, ‘Critical climate justice’ (2022) 118 *The Geographical Journal* 118 <https://doi.org/10.1111/geoj.12417>.

3 Meg Parsons et al, ‘A bibliometric and topic analysis of climate justice: Mapping trends, voices, and the way forward’ (2024) 44 *Climate Risk Management* 100593:1-20 <<https://doi.org/10.1016/j.crm.2024.100593>>.

4 ‘Housing Explainer’, Homes Victoria (Web Page, 25 June 2024) <https://www.homes.vic.gov.au/housing-explainer>.

5 Victorian Auditor-General’s Office, Report on Planning Social Housing (Report, June 2024) [https://www.audit.vic.gov.au/report/planning\\_social\\_housing](https://www.audit.vic.gov.au/report/planning_social_housing).

6 State of Victoria Department of Health and the Department of Families, Fairness and Housing, Health and Human Services Climate Change Adaptation Action Plan 2022-26 (2022) 31 <https://www.health.vic.gov.au/environmental-health/climate-change-and-sustainability-in-the-health-sector>.

7 Ibid.

8 ‘Climate Heat Map of Australia’, Climate Council (Interactive Tool, 28 February 2024) <https://www.climatecouncil.org.au/resources/heatmap>.

9 This is a result of the presence of roads, pathways, buildings and dark roofs that trap and absorb heat more than green (for example, gardens and parks) and blue (for example, rivers and creeks) surfaces. With the urban heat island effect, temperatures in urban areas can be 1–7 °C higher than in surrounding areas; Dr Sarah Hill, Zena Cumpston and Gabriela Quintana Vigiola, ‘Urban heat’ in *Australia State of the Environment 2021* (Report, 2021) <https://soe.dceew.gov.au/urban/pressures/climate-change>.

10 Coates, L. et al. Heatwave fatalities in Australia, 2001–2018: An analysis of coronial records (2022) *International Journal of Disaster Risk Reduction*, 67. <https://doi.org/10.1016/j.ijdrr.2021.102671>.

11 Stevens HR, et al. Associations between violent crime inside and outside, air temperature, urban heat island magnitude and urban green space. (2024) *Int J Biometeorol.* 68(4), 661-673. Accessed at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10963557/>

12 Heilmann, K. et al. The urban crime and heat gradient in high and low poverty areas (2021) *Journal of Public Economics*, 197. <https://doi.org/10.1016/j.jpubeco.2021.104408>.

The following case studies are deidentified examples of the experiences of people EJA spoke to as part of our advocacy work under the Climate Justice Legal Project.

#### CASE STUDY A

Jay<sup>13</sup> is a middle-aged single person who lives in a small bedsit unit on one of the lower floors in a multi-storey public housing tower in an inner-city suburb of Melbourne. Jay lives in a suburb that is likely to face twice as many days above 35°C<sup>14</sup> by 2050.<sup>15</sup> The unit has a single window and there is no outside greenery or other coverings providing shade. The unit does not have a balcony. The unit does not have an air conditioning unit and Jay bought his own portable cooling unit. He is reluctant to use this cooling unit on hot days because he finds it is too expensive to run.

During a four-day heatwave in Melbourne in early March 2024, Jay described having showers continuously as the only way to keep cool, stating that he needed to ‘live in the bathroom’ with his two cats over that time. Despite not otherwise experiencing any underlying health conditions, Jay described getting migraines from the heat and suffering from disrupted sleep over the heat, impacting his capacity to work.

Jay has not requested the Department of Families, Fairness and Housing to provide cooling in his unit. He told us he doesn’t want to ‘make a fuss’ but also that he was not clear about the processes he would need to follow to make a request.

#### CASE STUDY B

Huon<sup>16</sup> has a disability (blindness) and resides in a multi-storey community housing block, which also houses around 150 other people with disability and complex needs. The block is owned by Homes Victoria, however a not-for-profit community housing provider is the rental provider. Despite being on the ‘good side of the building’, Huon’s unit gets extremely hot whenever the temperature rises above 30°C. Huon’s unit is in a local government area in Victoria identified as currently posing a high risk for heat vulnerability,<sup>17</sup> with projections suggesting his suburb will experience double the number of days over 35°C by 2050.<sup>18</sup>

Huon told us that he previously requested an air conditioning unit several years ago, however this was refused and he instead received a fan. He was told at the time that he could purchase his own cooling device at his own expense.

Huon is unsure about making a new request, including whether he should make the request through the community housing provider or through the Department of Families, Fairness and Housing.

<sup>13</sup> This case study is based on circumstances of a real person. Pseudonyms have been used, and references to locations adapted, to ensure their true identity remains anonymous.  
<sup>14</sup> This is the current temperature limit recommended for human survival, however this does not take into consideration individual characteristics or variables related to how humans live and work in the heat. See Jennifer Vanos et al, ‘A physiological approach for assessing human survivability and liveability to heat in a changing climate’ (2023) 14 Nature Communications 7653:1-14 <https://doi.org/10.1038/s41467-023-43121-5>.  
<sup>15</sup> Climate Heat Map of Australia, n 8.  
<sup>16</sup> This case study is based on circumstances of a real person. Pseudonyms have been used, and references to locations adapted, to ensure their true identity remains anonymous.  
<sup>17</sup> Sun C et al, Urban Vegetation, Urban Heat Islands and Heat Vulnerability Assessment in Melbourne, 2018 (Clean Air and Urban Landscapes Hub, 15 April 2019) [https://www.planning.vic.gov.au/\\_data/assets/pdf\\_file/0032/655826/UHI-and-HVI2018\\_Report\\_v1.pdf](https://www.planning.vic.gov.au/_data/assets/pdf_file/0032/655826/UHI-and-HVI2018_Report_v1.pdf).  
<sup>18</sup> Climate Heat Map of Australia, n 8.





### EXPERIENCES OF VICTORIAN COMMUNITY LEGAL CENTRES AND THEIR CLIENTS

EJA met with various lawyers working across Victorian CLCs, including place-based and specialist CLCs, to hear generally about the experiences of their clients in relation to extreme heat. These discussions highlighted differences in the circumstances and needs of communities between metropolitan and regional locations in their housing situations and experiences of extreme heat. For example, single-storey dwellings are more prevalent in regional locations, compared to higher density and multi-storey blocks in inner urban areas. Regardless of the locations, CLCs reported that, based on the issues presented by their clients, most social housing was not equipped with adequate cooling, or if installed cooling devices were available, they were not in usable condition. Where cooling devices were available, they contributed to financial stress to clients due to unaffordable energy costs.

CLCs also reported that tenants and residents were given limited ongoing and regular opportunities to be involved in ‘client voice’<sup>19</sup> processes to enable them to share their experiences of their social housing tenancies. The availability of these processes was dependent on the location and the proactiveness of individual officers or community housing staff rather than on structured mechanisms for engagement and participatory decision-making related to maintenance as well as capital design and development to create greener and more sustainable social housing communities.

According to the CLCs, renters experiencing adverse heat effects in their homes often lacked the knowledge to seek repairs, or feared adverse consequences to retaining their tenancy if they raised issues. This was often related to feeling insecure in the tenure of their tenancies and feeling unable to enforce their rights due to the power imbalance between renters and landlords, particularly when the landlord is the government. The CLCs observed that accessing protections under tenancy law in Victoria relies on renters taking action themselves to ensure their rights are upheld; however, people in social housing may feel compromised to ‘take a stand’ as not only is their housing subject to government decision-making, but so are many other aspects of their lives, such as social security payments and immigration status. CLCs reported that social housing tenants may not fully understand their entitlements and rights against government decisions generally, while also being unable to differentiate between the responsibilities of public authorities across different levels of government.

<sup>19</sup> Client voice refers to the views, needs, experiences or outcomes of people who have lived experience of services. The Victorian Department of Families, Fairness and Housing has produced a Client voice framework for community services aimed at providing guidance to the Department, its agencies and the community services sector on embedding client voice approaches into service design and delivery. See Health and Human Services, Victoria State Government, Client voice framework for community services (October 2019) <https://www.dffh.vic.gov.au/publications/client-voice-framework-community-services>.

These observations of CLC lawyers that EJA spoke with as part of our advocacy work echo the experiences highlighted in Mallee Family Care’s 2019 ‘Extreme heat driven by the climate emergency: impacts on the health and wellbeing of public housing tenants in Mildura, Victoria’ report<sup>20</sup>. That report describes tenants experiencing direct physical impacts like heat stroke, heat exhaustion, sweating, dehydration, headaches and difficulty breathing, with one tenant describing ‘... you can’t even breathe. My son last year got sick, he couldn’t breathe so we had to rush him to hospital’.<sup>21</sup> Tenants whose stories were featured in the Mallee Family Care report also listed indirect physical impacts like lower nutrition as it is too hot to cook, lower physical activity, and exhaustion from lack of sleep. Residents who identified having mental ill health stated that the heat made their health worse.<sup>22</sup> Tenants discussed increases in feelings of isolation, family violence, antisocial behaviour, crime, vandalism, and alcohol and drug consumption. Social service providers noted a decrease in clients accessing their services during extreme heat. Children were less likely to attend school or less likely to focus due to lack of sleep, impacting their learning and social integration.

### EXPERIENCES OF CLIMATE JUSTICE LEGAL PROJECT ADVOCACY ADVISORY GROUP MEMBERS AND THEIR COMMUNITIES

EJA convened an advisory group to provide lived experience guidance and advice to support the Climate Justice Legal Project’s advocacy activities. The members of the Advisory Group have lived expertise as social housing tenants themselves or advocating for renters through the organisations they work for. They also identify with different communities and locations, including people from regional/rural communities, people with disability, people identifying as LGBTQIA+, older Victorians and parents of children and young people.

<sup>20</sup> Lander J et al, Extreme heat driven by the climate emergency: impacts on health and wellbeing of public housing tenants in Mildura, Victoria (Mallee Family Care, 2019) <https://www.malleefamilycare.org.au/News-and-Media/MFC-Projects/Public-Housing-Report.aspx>.

<sup>21</sup> Ibid 7.

<sup>22</sup> Ibid 10.

When asked about their experiences of extreme heat and those of the communities they work with, members of the advisory group described the significance of health, wellbeing and social impacts, particularly for people with low or no incomes without the means or supports to travel to cooler places outside their homes or to make changes within their homes. Members spoke about the lack of equity this exposes, where individuals, families and communities with financial resources have the capacity to protect themselves against heat harms, while others with additional needs and limited means cannot.

For children and young people, the impact of disruption to educational and extra-curricular activities is often underestimated, particularly where school closures and cancelled sports and events mean that children and young people are missing out on social and recreational opportunities critical to their development.

Advisory Group members also highlighted that the needs and risks of communities in regional and rural areas in relation to extreme heat are often very different to urban locations. Limited rental availability (whether that is because of low housing supply or because of short term holiday accommodation), including social housing, means that people in regional rural areas have a lack of options if they are living in ‘hothouses’. Their only option is to rely on precarious or unstable housing situations such as ‘couch-surfing’, becoming homeless or leaving their communities, which can lead to significant mental health and wellbeing issues resulting from the loss of community connections. These issues are exacerbated after climate disasters, for example where homes become uninhabitable due to flooding or fire.

“Nothing about us without us.”



## Understanding extreme heat in social housing as a climate injustice

### KEY POINTS

- As Victoria continues to get hotter due to climate change, the health, social and economic needs of frontline communities will exacerbate and their safety, wellbeing and opportunities for participation will be disrupted, breaching their human rights, including their right to adequate housing.
- Extreme heat impacts people in social housing based on their exposure to heat, sensitivity to heat and ability to keep cool, with each of these factors able to be mitigated by adequate infrastructure and supports to address heat vulnerability. This means that advocating for a better, climate safe built environment for tenants in social housing is critical.

The climate crisis is also a housing crisis.



Climate justice recognises that climate harms affect individuals and communities differently and it is often the communities experiencing longstanding social and economic injustices that are disproportionately impacted most despite contributing the least to the causes of climate change. Further to this, it is increasingly being recognised that the climate crisis is also a housing crisis.<sup>23</sup> Many Victorians who are currently unhoused are the most vulnerable to severe weather events, flooding, food scarcity and heatwaves resulting from climate change. Australia's First Nations populations are particularly vulnerable, with remote communities already facing inadequate and unsafe housing conditions.<sup>24</sup> Social housing can often be the only option for individuals and families priced out of the private rental market, so as extreme weather events displace those who are housed, the available housing stock is put further under pressure to adapt. Social housing, therefore, is, and is likely to become more so, a frontline measure in individuals, families and communities' efforts to be resilient in the face of the climate crisis.

Adequate housing is essential for human survival and is protected as a human right under article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Beyond mere shelter or accommodation, this right must be adequate, which incorporates factors of habitability, accessibility, availability of materials, facilities and infrastructure, and cultural safety. The protection from unlawful or arbitrary interference with Victorians' homes is also recognised in domestic human rights legislation,<sup>25</sup> and the right not to have one's home interfered with has particular importance in the area of social housing.

However, Victoria's key human rights instrument that enshrines civil, political and cultural rights into Victoria law, the Charter of Human Rights and Responsibilities Act 2006 ('Victorian Charter'), does not include a right to adequate housing. The inclusion of a right to housing in the Victorian Charter was recommended by the Victorian Parliament's Legal and Social Issues Committee in both its inquiry into homelessness in Victoria in March 2021<sup>26</sup> and its inquiry into the rental and housing affordability crisis in Victoria in November 2023.<sup>27</sup> The Victorian Government's responses to both inquiries suggested that the Victorian Government is

focused on improving the accessibility and enforceability of the Victorian Charter before considering the addition of further rights, such as the right to housing.

Despite often receiving less attention than other disasters, extreme heat causes more deaths in Victoria than any other climate harm.<sup>28</sup> It is estimated that approximately 20 per cent of dwellings in Victoria do not have a cooler.<sup>29</sup> Cooling devices, whether temporary or fixed, are not installed or available in every social housing dwelling, and operation where they are available can have significant financial impacts for low income tenants making these devices unaffordable to use. Community sector staff have reported that their greatest concern relating to the impacts of extreme heat are homes, including public housing, with 'low thermal comfort'.<sup>30</sup> Without significant action to address the underlying causes of our heating planet – principally the emission of greenhouse gases – the climate harms of extreme heat will continue to worsen and have very real and substantial impacts on individuals, families and communities.

The Victorian Government has recognised the need for Victoria's social housing infrastructure to address the risks associated with extreme heat resulting from climate change. Despite establishing policy frameworks,<sup>31</sup> including the Victoria's Housing Statement: The decade ahead 2024–2034, and the Health and Human Services Climate Change Adaptation Action Plan 2022–26 (required by the Victorian Climate Change Act 2017) which include references to a whole of government commitment to creating social assets and communities that meet the challenges of climate change, actions to ensure climate safe social housing have been inadequate.

While Victoria's new social housing homes are required to be built to higher energy efficiency standards<sup>32</sup> than historic public housing dwellings, existing public housing stock, which houses the majority of public housing renters, is inadequate for extreme heat events and is not future proofed for the risk of increased heat as climate harms intensify and climate disasters, such as heatwaves, become more frequent and severe.

## WHAT OUR RESEARCH TELLS US ABOUT THE IMPACTS OF EXTREME HEAT

Adverse impacts of extreme heat exposure present across various domains necessary for human survival, including health, wellbeing and social and economic participation.<sup>33</sup> These impacts are expected to increase substantially with a warming climate, particularly for at-risk populations such as older adults, people who are 'unhoused' and people with chronic conditions.<sup>34</sup> Research shows that heat contributes to the deaths of more than 1,000 people aged over 65 across Australia each year.<sup>35</sup>

Leading risk factors for heat-related mortality and morbidity in heatwaves include experiencing homelessness, physical disability, and mental health illnesses or behavioural disorders.<sup>36</sup> In a study examining coronial records across Australia from 2000 to 2018, at least 473 heat-related deaths were identified, with 354 of those occurring during heatwaves.<sup>37</sup> The risk of dying in a heatwave increased with age, socio-economic disadvantage, social isolation, geographical remoteness, the presence of disabilities (physical or mental) and some prescribed medications, and the absence or non-use of air conditioning or other building heat protection.<sup>38</sup> It is predicted that the estimated annual average number of heat-related deaths in Melbourne will double to 1149 deaths by 2050.<sup>39</sup>

Children and young people are also significantly impacted by their experience of climate disasters, immediately as well as over their lifetime. In a report released in February 2024,<sup>40</sup> Deloitte Access Economics for UNICEF Australia found more than 1.4 million Australian children and young people experience a disaster or extreme weather event in an average year, and those in remote areas, from lower socio-economic backgrounds, and Indigenous children are more likely to be impacted. The analysis estimated that Australian young people who experience a disaster are 4.2 per cent less likely to finish year 12, leading to a loss of \$2.9 billion in earnings in an average year or more than \$100,000 less per young person over a lifetime.

As highlighted by the case studies above, the following are some of the significant impacts experienced by people exposed to extreme heat.

## HEALTH IMPACTS

- Morbidity due to heat, particularly for people with disability who account for 89 per cent of heatwave deaths.<sup>41</sup>

33 Vanos et al (n 14) 1.

34 Ibid.

35 'Urban heat' in Australia State of the Environment 2021 (n 9).

36 Ibid; Vanos et al (n 14).

37 Coates et al, 'Heatwave fatalities in Australia, 2001–2018: An analysis of coronial records' (2022) 67 International Journal of Disaster Risk Reduction 102671:1-9 <https://www.science-direct.com/science/article/pii/S2212420921006324>.

38 Ibid.

39 'Urban heat' in Australia State of the Environment 2021 (n 9), Figure 13.

40 Deloitte Access Economics, The impact of disasters on children and young people (Report, February 2024) UNICEF Australia.

41 Coates, L. et al., n 10.

42 For most medications, the recommended maximum storage temperature is 25°C.

- 'Medical cooling' related to illness as a result of exposure to extreme heat.
- Escalation of existing illnesses and inability to manage symptoms with existing treatment methods.
- Heat-related illnesses, including heat stroke, heat syncope (loss of consciousness, dizziness or fainting resulting from overheating), heat exhaustion due to fluid depletion and heat fatigue.
- Inability to appropriately store medication leading to degradation and ineffectiveness.<sup>42</sup>
- Adverse mental health impacts due to factors, including sleeplessness and inability to participate in social, recreational and other activities.

## SOCIAL PARTICIPATION AND WELLBEING IMPACTS

- Inability to go to work, impacting productivity and financial capacity.
- Inability to attend educational settings or participate in educational activities.
- Inability to participate in social and recreational activities, including sport.
- Not feeling safe and inability to access help and support from services.
- Feeling stressed.
- Antisocial behaviour as a consequence of stress induced by heat.

## FINANCIAL IMPACTS

- Financial stress due to higher energy bills, increased use of other utilities (such as water), petrol prices and rental costs.
- Expenditure on immediate maintenance and repairs and cooling devices due to inadequate building infrastructure.

As our research has shown, the experience of extreme heat by social housing tenants can have significant impacts for them across all areas of their lives. As temperatures increase due to climate change, these impacts are likely to exacerbate further compounding the disproportionate climate burdens individuals and their communities face.

23 Balakrishnan Rajagopal, Towards a just transformation: climate crisis and the right to housing – Report of the Special Rapporteur on the right to adequate housing, Balakrishnan Rajagopal, UN Doc A/HRC/52/28 (23 December 2022) 3 <https://www.ohchr.org/en/documents/thematic-reports/ahrc5228-towards-just-transformation-climate-crisis-and-right-housing>.

24 'Santa Teresa & Remote Housing Rights', Grata Fund (Web Page) [https://www.gratafund.org.au/santa\\_case\\_win](https://www.gratafund.org.au/santa_case_win); Young v Chief Executive Officer (Housing) [2023] HCA 31.

25 Charter of Human Rights and Responsibilities Act 2006 s 13(a).

26 Legal and Social Issues Committee, Parliament of Victoria, Inquiry into homelessness in Victoria (Final Report, March 2021) 200 <https://www.parliament.vic.gov.au/get-involved/inquiries/inquiry-into-homelessness-in-victoria>.

27 Legal and Social Issues Committee, Parliament of Victoria, Inquiry into the rental and housing affordability crisis in Victoria (Final Report, November 2023) 11 <https://www.parliament.vic.gov.au/rental-and-housing-inquiry>.

28 State Of Victoria Department Health, Heat health (Web page) <https://www.health.vic.gov.au/your-health-report-of-the-chief-health-officer-victoria-2018/environmental-health/heat-health>.

29 Deloitte Access Economics, Minimum energy efficiency and safety standards for rental homes – Regulatory Impact Statement (Report, May 2024) <https://engage.vic.gov.au/new-minimum-standards-for-rental-properties-and-rooming-houses>.

30 Victorian Council of Social Services, Feeling the Heat (Report, May 2021) 11 <https://vcoss.org.au/climate-change-environment/2021/06/feelingtheheat/>.

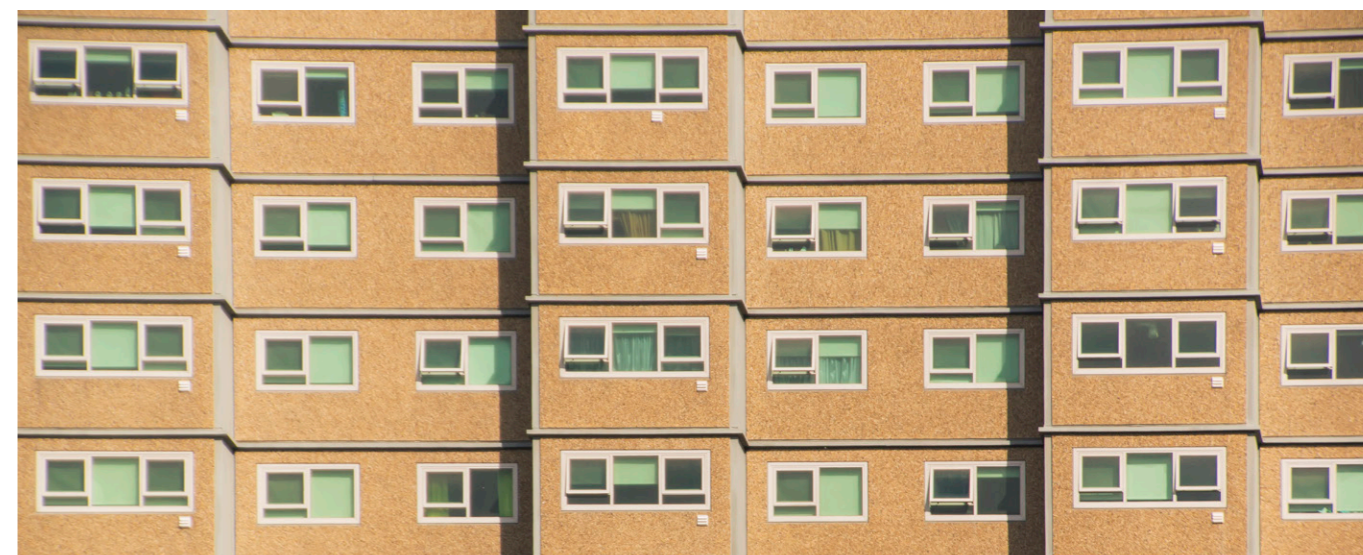
31 An overview of relevant actions included in the Victorian Health and Human Services Climate Change Adaptation Action Plan 2022–26 is included in Attachment 2.

32 'Lowering our environmental impact', Homes Victoria (Web Page, 25 June 2024) <https://www.homes.vic.gov.au/lowering-our-environmental-impact>.

## Legal avenues to address risk in heatwaves and support thermal comfort in social housing

### KEY POINTS

- The responsibility for climate safe tenancies often sits best with rental providers, including Homes Victoria, rather than tenants themselves to make it practical and affordable for a home to be thermally comfortable and fit for habitation. For tenants in social housing, addressing the burden of climate change impacts should not rest upon households who are the least responsible for their cause and have the least capacity and power to address them.
- Avenues are available under the Residential Tenancies Act 1997 (Vic) ('RTA') and the Housing Act 1983 (Vic) ('Housing Act') to require residential rental providers to make modifications to a property. These avenues can provide pathways for tenants to address housing issues that may impact their underlying needs and to ensure health risks are not exacerbated due to extreme heat.
- Because a tenancy may terminate where premises are found to be unfit for habitation, potentially risking homelessness for social housing tenants, it is likely that options allowing for repairs or maintenance would be preferable to enable tenants to remain in their homes.



The rights and obligations of renters and residential rental providers in Victoria are covered by the RTA. The risk of impacts posed by heatwaves can be mediated by better rental housing and financial resources,<sup>43</sup> however, these are often not available to people living in social housing to secure themselves. For social housing, tenancy laws in Victoria provide options for renters to seek redress against Homes Victoria and community housing providers.<sup>44</sup> While we have not addressed rooming houses in this report, we acknowledge Victorian rooming house residents are likely to experience climate injustices and limited avenues to have their voices heard similar to those described for social housing tenants.

Potential avenues for redress in response to social housing that does not address the risk of extreme heat impacts include:

- taking action to ensure a rental premises is compliant with the minimum rental standards prior to or immediately after occupation
- undertaking or requesting repairs once the renter has moved in
- seeking redress for a residential rental provider's breach of their duty to maintain premises in good repair and in a reasonably fit and suitable condition for occupation
- ending a tenancy where the premises is found unfit for habitation.

Potential avenues to address the risk of extreme heat and support climate safe social housing will depend on the specific circumstances and evidence available. Because social housing can often be the only accommodation option available for renters unable to afford private rentals or where other housing

options are unsuitable, termination of leases, particularly where premises are found to be unfit for habitation, can be an unfavourable and detrimental option for social housing renters who face homelessness. As such, repair and maintenance options both at the commencement of a tenancy or once a tenancy has commenced, are likely to be preferred redress options to pursue as they allow for renters to remain in the premises.

### RENTAL MINIMUM STANDARDS

Rental minimum standards provide important protections for the liveability of homes. In the context of social housing, where renters are already unable to access the private rental market, they prescribe a mechanism for safeguarding baseline requirements for safe and healthy homes and ensure that the obligation to provide them sits with the Victorian Government (through Homes Victoria) and community housing providers.

In Victoria, minimum rental standards, including the cleanliness, privacy, security and amenity for rental properties and rooming houses, are prescribed under the Residential Tenancies Regulations 2021 (Vic) ('RT Regulations') and the Residential Tenancies (Rooming House Standards) Regulations 2023 (Vic), both made under the RTA. The Victorian rental minimum standards applicable to social housing dwellings are located in schedule 4 of the RT Regulations (reg 29).<sup>45</sup> That schedule prescribes minimum standards for the purposes of s 65A of the RTA for a range of items, including energy efficient heating installed in the premises' main living area. Under s 65A of the RTA, residential rental providers must ensure all standards are met when a new renter enters into occupation of rental premises and a penalty can be applied for a breach.

<sup>43</sup> Better Renting, Cruel Summers: renters diverse experiences of summer 23-24 (Report, 19 March 2024) [https://www.betterrenting.org.au/renter\\_researcher\\_summer\\_24](https://www.betterrenting.org.au/renter_researcher_summer_24).

<sup>44</sup> See Attachment 2 for an overview of responsibility for social housing in Victoria.

<sup>45</sup> The current minimum rental standards do not apply to rental agreements that became periodic agreements before 29 March 2021 (when the current Regulations came into operation).

## Social housing residents are often hit first and worst with climate injustice. They shouldn't have to bear the cost of making their homes safe, comfortable and fit for habitation.

The current rental minimum standards, however, do not include installation of a cooling device or air conditioner. Proposed changes to the minimum rental standards are being considered in Victoria which would include cooling.<sup>46</sup> These are described in Attachment 2. The proposed Regulations were expected to be made in October 2024, however they have not been made at the time of publication of this report. Should these proposed standards requiring cooling be included and assuming there are no additional changes to s 65 of the RTA prior to the regulations coming into effect, a renter would be able to request for repairs to be made so that the required cooling standard is complied with.<sup>47</sup>

### Repairs

Under the RTA, a renter may apply to VCAT for an order requiring the rental provider to carry out urgent repairs.<sup>48</sup> There are a variety of matters which constitute 'urgent repairs',<sup>49</sup> including a breakdown of a cooling device provided by the rental provider, and any fault or damage that makes a rented premises, a rooming house, a room, a caravan or a specialist disability accommodation (SDA) enrolled dwelling unsafe or insecure (including mould). Our research has not found any reported cases in Victoria where it has been argued that a complete lack of cooling would make a dwelling unsafe.

For non-urgent repairs, a renter may apply to VCAT for an order seeking the rental provider to carry out non-urgent repairs but must have first given the rental provider a notice and waited the prescribed period.<sup>50</sup> As an alternative to applying to VCAT a renter may also apply to the Director of Consumer Affairs Victoria (within the meaning of the Australian Consumer Law and Fair Trading Act 2012 (Vic)) to investigate the need for non-urgent repairs.<sup>51</sup>

Under s 76(1) of the RTA, if VCAT is satisfied that the residential rental provider is in breach of the duty to maintain the rented premises in good repair, it may make an order that requires (a) the residential rental provider to carry out specified repairs; and (b) the use of a suitably qualified person to carry out the repairs; and (c) compensation to be paid in accordance with s 212(2).

It should be noted, however, that in *Various Applicants from Santa Teresa v Chief Executive Officer (Housing)* – a case concerning comparable laws in the Northern Territory – the lack of air-conditioning did not constitute a 'repair' as there was no appliance installed which could have been repaired.<sup>52</sup> In that case, the rental provider had after some time installed an air conditioner at the request of Ms Young, and she was awarded compensation due to the lack of habitability in the period before the air conditioner's installation.

The RT Regulations prescribe certain modifications which can be made without a residential rental provider's consent (reg. 26) and modifications for which a residential rental provider must not unreasonably refuse consent (reg. 28). Cooling devices or devices supporting thermal comfort in a premises are not included under either regulation. The statement of reasons provided following public consultation prior to the making of the Regulations notes that several individual submissions suggested inclusion of installation of a cooling device (for example, a ceiling fan) where no other cooling exists.<sup>53</sup> This was not supported by the Department of Justice and Community Safety due to the potential works involved and the cost of restoration, and that installation of non-permanent window film (insulation) to improve thermal comfort was to be included in the list of modifications which can be made without a residential rental provider's consent.<sup>54</sup>

### DUTY FOR RENTED PREMISES TO BE PROVIDED AND MAINTAINED IN A REASONABLY FIT AND SUITABLE CONDITION FOR OCCUPATION

Section 68(1) of the RTA requires that a residential rental provider must ensure that the rented premises are provided and maintained (a) in good repair; and (b) in a reasonably fit and suitable condition for occupation. Section 68 is a duty provision and a contravention may be dealt with as a breach, enabling VCAT to issue compensation or compliance orders to the rental provider in breach.<sup>55</sup> The extension of this duty to requiring that a rental premises is 'thermally comfortable' and incorporates cooling has not been tested in Victoria.

The Victorian Supreme Court case of *Shields v Deliopoulos*<sup>56</sup> provides authority in Victoria for the meaning and extent of a landlord's obligation to maintain rental premises in 'good repair'. In considering s 68 of the RTA, the Court found that the duty imposed upon a landlord to ensure that rental premises are in good repair is strict and absolute and imposes an obligation upon a landlord to identify and rectify any defects of which they are aware or ought to be aware. The Court states that:

*... the term 'good repair' means 'tenantable repair', or 'reasonably fit and suitable for occupation', and that while what amounts to 'good repair' may be referable to the age and character of the relevant premises, it cannot ordinarily be qualified by the state of repair at the commencement of the tenancy, regardless of the state of repair. Again, the obligation to maintain rental premises in good repair imports an obligation to put them in good repair in the first place. Further, the obligation of a landlord cannot be diluted by charging a low rent.<sup>57</sup>*

<sup>55</sup> RTA (n 47) ss 208-209.

<sup>56</sup> [2016] VSC 500

<sup>57</sup> *Ibid* [38].

<sup>58</sup> *Santa Teresa* (n 52).

<sup>59</sup> *Ibid* [182] (Professor Les McCrimmon).

Findings in favour of tenants' rights have built on the judgment of Lord Atkin in *Summers v Salford Corporation* [1943] AC 283 that established the legal standard of 'habitability' requiring premises that are safe, healthy and of reasonable comfort. In *Summers v Salford Corporation*, Lord Atkin emphasised the importance of contemporary standards which necessarily must evolve. Despite this being an old case, from a climate change perspective, this potentially enables the concept of 'habitability' to include advancement in building materials, construction and energy technology that could include insulation, and arguably solar panels and similar renewable energy equipment and fittings, and design required for thermal comfort.

To assist an assessment of whether this argument around fitness for habitation could be deployed in the context of risk of heatwaves, the conditions that have been considered 'unfit for human habitation' in various comparable contexts include the following:

- A lack of air-conditioning, where the house was located in the desert where daytime temperatures exceeded 40°C.<sup>58</sup> Importantly, however, the residing Northern Territory Civil and Administrative Tribunal member stated:

*My findings in this case should not be taken to suggest that all houses rented by the Respondent in desert communities in the Northern Territory should have an air conditioner. Whether the absence of an air conditioner renders a home uninhabitable will depend on many factors, including the architectural design of the building, the presence of functioning ceiling fans and the evidence presented in a particular case regarding the question of habitability.<sup>59</sup>*

<sup>46</sup> See <https://engage.vic.gov.au/new-minimum-standards-for-rental-properties-and-rooming-houses>  
<sup>47</sup> An overview of renters' rights when rental minimum standards are not met is provided at Attachment 2.  
<sup>48</sup> Residential Tenancies Act 1997 (Vic) (RTA) s 73.  
<sup>49</sup> *Ibid* s 3 (definition of 'urgent repairs').  
<sup>50</sup> *Ibid* s 75.  
<sup>51</sup> *Ibid* s 74.  
<sup>52</sup> *Various Applicants from Santa Teresa v Chief Executive Officer (Housing)* [2019] NTCAT 7 ('Santa Teresa'), [180]-[181] at [177].  
<sup>53</sup> Department of Justice and Community Safety, Statement of Reasons Residential Tenancies Regulations 2021 (Reasons, March 2021) 14 <https://engage.vic.gov.au/rentingregulations>.  
<sup>54</sup> *Ibid*.



Unfitness due to some structural or other issue but to also include unfitness for any reason, regardless of cause.<sup>60</sup> Premises may meet this definition even where it is possible to physically live at the premises if the state is such that there is a risk of injury to the health of a person living in them.<sup>61</sup>

The presence of mould, where it was unsafe for the renters to occupy the premises as one renter had contracted a rash from the mould and the mould report had stated, ‘most tested surfaces showed very significant evidence of mould growth at culture ... Make safe works should be implemented immediately and no persons should reside here until remedial works have occurred and clearance achieved’.<sup>62</sup>

‘If the state of repair of a house is such that by ordinary user [sic] damage may naturally be caused to the occupier, either in respect of personal injury to life or limb or injury to health, then the house is not in all respects reasonably fit for human habitation’.<sup>63</sup>

Additionally, a list of common law examples of premises which were deemed unfit was outlined in *Hampel v South Australian Housing Trust*.<sup>64</sup> There, Millstead J noted that the common feature between these cases is that the defects put the renters’ health and safety at risk and went beyond mere inconvenience or aesthetic deficiencies.<sup>65</sup> Millstead J went on to conclude that:

*A house is unfit for human habitation if an occupier could be expected to suffer physical injury or injury to health from the ordinary use of the premises. It may be so unfit for any reason. The risk to health or safety may arise because the premises are in a state of disrepair or dilapidation or because of a lack of facilities such as the provision of adequate water, light, ventilation and so on.*<sup>66</sup>

Conditions which have not met the threshold for

60 *Evans v Pathak* [2023] VCAT 1431, citing *Hall v Manchester Corporation* (1915) 84 LJ Ch 732, 741-2.

61 *Ibid*, referring to *Summers v Salford Corporation* [1943] AC 284, 289.

62 *Ibid* [106].

63 *Ibid*, citing *Morgan v Liverpool Corporation* [1927] 2 KB 131, 145-146.

64 [2007] SADC 64, [52].

65 *Ibid*.

66 *Ibid* [63].

67 *Halcombe v Hitchman (Residential Tenancies)* [2018] ACAT 5, [83].

68 *Pace v Hachlica (Residential Tenancies)* [2018] VCAT 257.

69 *Boyd v Finweb Pty Ltd (Residential Tenancies)* [2013] VCAT 1319; *Pullman v King (Residential Tenancies)* [2016] VCAT 82.

70 *Chief Executive Officer (Housing) v Young* [2022] NTCA 1.

71 *Santa Teresa* (n 52) [180]-[181].

‘uninhabitable’ include blinds which allow light into the room and wear and tear on carpet;<sup>67</sup> ongoing noise from the neighbouring property;<sup>68</sup> mould infestation and a premises in poor repair.<sup>69</sup>

Overall, the scope of the considerations for what may be ‘unfit for human habitation’ encompasses risk to physical injury or physical health, although this can also extend to including considerations of amenity and reasonable comfort.<sup>70</sup> This could arguably give rise to extreme heat and lack of air-conditioning resulting in the premises being deemed uninhabitable, as was the case in *Various Applicants from Santa Teresa v Chief Executive Officer (Housing)*,<sup>71</sup> however our research has not found further cases yet which specifically address the need for cooling in the context of habitability, especially in Victoria.

Importantly, ‘unfit for human habitation’ falls under the provisions relating to grounds upon which a rental provider can choose to terminate the agreement. If lack of cooling is deemed to make a premises unfit for human habitation, this gives rise to the risk that the tenancy will be ended by a rental provider, rather than require that the lack of cooling in the dwelling be rectified. For social housing tenants, this may give rise to the risk of homelessness given the likely inability of those tenants to be able to afford private tenancies. Given limited social housing availability and the inability of tenants to afford private rentals, social housing tenants may be unlikely to pursue this course of action. As such, it may be more advantageous for the tenant to pursue and exhaust options related to seeking repairs and maintenance that support thermal comfort to enable them to retain their tenancy.



### Seeking VCAT powers of redress

In addition to its specific enforcement powers relating to repairs, VCAT also possesses broader powers as set out in s 472 of the RTA. In relation to residential rental agreements, the Tribunal may make any order that it sees fit to require any action in the performance of duties under this Act relating to the residential rental agreement,<sup>72</sup> as well as requiring the payment of compensation to any person.<sup>73</sup>

Section 209 of the RTA grants the ability for a renter to apply to VCAT for a compliance or compensation order on the grounds of a breach of duty by the rental provider.<sup>74</sup> In this context, the relevant duty provision to which this compensation or compliance power would apply is the rental provider’s duty to maintain premises.<sup>75</sup> This means that if extreme heat is deemed to make a dwelling not reasonably fit and suitable for occupation, VCAT may make a compliance order to the rental provider, ordering it to comply with the duty.

In *Blatt v Black Dog Ashgrove (Residential Tenancies)*,<sup>76</sup> when discussing mould remediation requirements that had not been complied with, the Tribunal stated:

*In Ms Blatt’s circumstances though, and given the Rental Provider has a duty under s 68(1)(b) of the Act to ‘ensure that the rented premises are... maintained in a... reasonably fit and suitable condition for occupation’, I am of the view that any mould remediation works to be undertaken by the Rental Provider must take into account the Renters’ particular health situation [emphasis added] by maintaining the rented premises in a reasonably fit and suitable condition for occupation by the actual Renters as opposed to a hypothetical standard renter without mould and mould treatment sensitive health conditions.*<sup>77</sup>

If a rental premises is ‘unfit for human habitation’ in Victoria, there are a variety of legislative provisions which provide that the renter may terminate the agreement or give notice of intention to vacate on this ground.<sup>78</sup> Importantly, the rental provider may also terminate the agreement or give the renter notice to vacate on this ground.<sup>79</sup> Given that social housing is often the only accommodation option available for renters unable to afford private rentals or where other housing options are unsuitable, termination can be an unfavourable and detrimental option for social housing renters who face homelessness.

72 RTA (n 47) s 472(1)(b).

73 *Ibid* s 472(1)(f).

74 *Ibid* s 209(1).

75 *Ibid* s 68.

76 [2023] VCAT 1060.

77 *Ibid* [57]; Notwithstanding these comments, the ultimate order made by VCAT in this case related only to compensation under s 472 of the RTA. This was due to the Renters in this case vacating the premises prior to the end of the rental agreement.

78 *Ibid* ss 91L and 91ZD.

79 *Ibid* ss 91M and 91ZL.

## Influencing social housing policy improvement

### KEY POINTS

- Our work as part of the Climate Justice Legal Project has shown us that policy advocacy can be most impactful where it relies on a strong evidence base demonstrating a systemic problem and is informed by the unique experiences of social housing tenants.
- The opportunities for policy reform we have identified focus on holding government accountable to bear the burden of redressing climate harms through embedding housing as a human right, supporting policy and practice reform, and enabling social housing renters to feel safe and supported in the context of escalating climate risks.

Homes Victoria and community housing providers should ensure all tenants have access to a **climate safe location** within their home or immediate vicinity.

In addition to achieving individual legal outcomes related to housing condition and habitability, engagement with the Department of Families, Fairness and Housing/Homes Victoria and community housing providers and/or action through VCAT may create broader advocacy opportunities. For example, social housing tenants, or community lawyers on their behalf, may use these individual cases to advocate for housing policy and practice improvement to promote climate justice outcomes.

Informed by research and analysis undertaken through the Climate Justice Legal Project, this could include:

- the proposed new minimum rental standards relating to cooling be implemented in Victoria, noting it was anticipated that new residential tenancies regulations would be confirmed in October 2004, however they have not been made at the time of publication of this report
- Victoria's Housing Statement and any future social housing climate change adaptation action plan should include commitments in relation to climate safe housing supply or infrastructure necessary for communities to meet the risk of increasing extreme heat events or other climate disasters

- the *Charter of Human Rights and Responsibilities Act 2006* (Vic) should be amended to include a human right to adequate housing (aligned to the ICESCR)
- social housing tenants should have access to direct and supported 'client voice' mechanisms<sup>80</sup> appropriate to their needs to support social housing infrastructure planning and address repair and maintenance issues with community housing providers and Department of Families, Fairness and Housing and Homes Victoria
- social housing tenants should be supported by their rental provider to develop, and have reviewed prior to each summer, a heat safety plan, and Homes Victoria and community housing providers should ensure each tenant has access to a climate safe location within their home or immediate vicinity to which they have ready access.
- people should be provided with enhanced financial assistance and financial counselling to meet the direct and indirect costs of energy consumption required to maintain thermal comfort appropriate to their needs.

<sup>80</sup> For further information see Client voice framework for community services (n 19).



## Conclusion

This report highlights that Victoria's social housing renters are particularly susceptible to the adverse impacts and burdens posed by climate change.

Poor quality social housing infrastructure presents significant risks to the health, wellbeing and social participation of renters and these are likely to be exacerbated in the context of more frequent and severe heatwaves. This pushes broader climate change impacts, which threaten the habitability of all environments and global ecological systems, into the personal sphere of people's homes and local communities. Climate change impacts, therefore, compound and intensify the pre-existing inequities and barriers experienced by people challenged by social and economic injustices.

As outlined in this report, opportunities exist for lawyers working with social housing tenants to advocate for climate safe housing and advance climate justice. Applying a 'climate lens' to identify the climate justice dimensions of tenancy matters experienced by social housing renters means that community lawyers can more holistically address their intersecting immediate and longer term needs in a changing climate. This report informs and adds to the foundations for how lawyers might identify and consider extreme heat in social housing and climate justice in their work. Through this, it highlights potential avenues for testing Victorian tenancy law to promote climate justice in meaningful ways for individuals and communities most exposed to climate harms.

Community Legal Centres can push for systemic change to ensure **social housing is climate-resilient, liveable and well-equipped to protect its residents** from a warming climate, today and into the future.



**ATTACHMENT A****Identifying climate justice needs related to tenancies****SUGGESTED QUESTIONS TO ASK A CLIENT TO HELP IDENTIFY LEGAL NEEDS ASSOCIATED WITH EXTREME HEAT**

- Do you do anything to stay cool at home? How easy is it for you to stay cool at home?
- Do you have an air conditioner or a cooling fan? How often do you use it? How much would you spend on cooling/air conditioning?
- If you have one, do you know what the type and model of air conditioner or cooling device you have, including its energy rating?
- How do you get information about when it's going to be hot?
- Have you or a support person spoken to a Housing Officer about what you need to keep cool at home? If so, when? What was their response?
- What does it feel like at home when it gets hot outside?
- Do you have any pre-existing medical issues or a disability? Does intense heat impact those issues? How?
- If you have a pre-existing medical issue or disability that is impacted by heat, did anyone in Housing or any other worker ask you about this when you moved in?
- Have you started to experienced any new medical issues since you've been living in your home? Have you seen a doctor about these? Have you been told if any were a result of heat you experience at home?
- When it gets hot at home, do you feel like there's anything you would normally do that you can't because of the heat?
- How hot does it need to get for you to not stay at home?
- Where do you go when it gets hot?
- If you go somewhere to stay cool when it is hot, how long do you stay? How do you get there?
- Are there any barriers or challenges you experience to being able to stay home?



## ATTACHMENT B

# Victoria's social housing legal and policy context related to cooling

## RESPONSIBILITIES OF LANDLORDS IN VICTORIA

Rights and obligations of tenants and residential rental providers (commonly known as landlords) are covered by the *Residential Tenancies Act 1997* (Vic) ('RTA'). This includes 'public housing' where the Homes Victoria, through its CEO (also referred to as the Director of Housing), is the residential rental provider.

Section 68(1) of the RTA requires that a landlord ('residential rental provider') must ensure that the rented premises are provided and maintained (a) in good repair; and (b) in a reasonably fit and suitable condition for occupation. Section 68 is a duty provision and a contravention may be dealt with as a breach, enabling the Victorian Civil and Administrative Tribunal ('VCAT') to issue compensation or compliance orders to the rental provider in breach.<sup>81</sup>

Under s 80, a rental provider will be in breach of s 68 if the rented premises are or are part of a house in respect of which a declaration under s 64 of the Housing Act 1983 (Vic) ('Housing Act') is in force, however s 64 has since been repealed.<sup>82</sup>

Section 65A(1) requires that a residential rental provider, including Homes Victoria, 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. Section 65A(2) provides that 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.

<sup>81</sup> RTA (n 47) ss 208-209.

<sup>82</sup> Section 64 was repealed in 1996. See Housing Act 1983 endnotes, explanatory details.

<sup>83</sup> Housing Act 1983 (Vic) s 148.

<sup>84</sup> Ibid s 14(g).

<sup>85</sup> See 'Arranging maintenance and repairs', Housing Vic (Webpage, 5 August 2024) <https://www.housing.vic.gov.au/repairs>.

<sup>86</sup> See 'Making modifications and alterations to your home', Housing Vic (Webpage, 19 June 2024) <https://www.housing.vic.gov.au/making-modifications-and-alterations-your-home>.

## WHO IS RESPONSIBLE FOR PUBLIC HOUSING IN VICTORIA?

'Public housing' is defined under s 3 of the RTA as 'non-profit housing in the public sector, other than under the Victorian Affordable Housing Programs, for which Homes Victoria is the residential rental provider'.

The Housing Act has been amended to change the 'Director of Housing' referred to in the legislation to 'Homes Victoria' or to its Chief Executive Officer.<sup>83</sup> The powers granted to Homes Victoria are prescribed under Part V Division 1 of the Housing Act. Homes Victoria is subject to the same obligations of residential rental providers prescribed under the RTA.<sup>84</sup>

Maintenance and repairs in public housing are the responsibility of the Department of Families, Fairness and Housing. Requests for responsive maintenance are made through the Housing Call Centre<sup>85</sup>, while requests for alternations or modifications, including cooling due to a medical condition or disability, are made through a housing officer and should be accompanied information about support needs by a social worker or health care professional.<sup>86</sup>

## WHO IS RESPONSIBLE FOR COMMUNITY HOUSING IN VICTORIA?

The registration and regulation of 'community housing' providers in Victoria are prescribed in the Housing Act. Registration occurs through the Housing Registrar who must be satisfied that registered agencies meet all criteria specified within Schedule 7 of Part VIII of the Housing Act and have the capacity to meet gazetted Performance Standards.<sup>87</sup> The Housing Registrar also provides an avenue for assistance from people who are affected by decisions of a registered agency on matters relating to community housing if they are not satisfactorily resolved through the agency's own complaints process.<sup>88</sup>

Community housing renters sign a residential rental agreement with the registered agency and tenants and residents have the same rights as other renters have under the RTA.



<sup>87</sup> See 'Eligibility to register as a rental housing agency in Victoria', Government of Victoria (Webpage, 21 December 2023) <https://www.vic.gov.au/eligibility-criteria-registration>.

<sup>88</sup> See 'Managing Complaints', Government of Victoria (Webpage, 21 December 2023) <https://www.vic.gov.au/managing-complaints>.

<sup>89</sup> Deloitte Access Economics, Minimum energy efficiency and safety standards for rental homes – Regulatory Impact Statement (Report, May 2024) 80 [12.4] <https://engage.vic.gov.au/new-minimum-standards-for-rental-properties-and-rooming-houses>.

Because there are different arrangements in relation to ownership of community housing properties (some are owned by a registered agency, while others may be owned by the Victorian Government), responsibilities for responsive maintenance or alterations to a dwelling should consider property ownership and obligations set out in service agreement between the agency and the Department of Families, Fairness and Housing.

### Rental minimum standards: renters' rights when rental minimum standards are not met

If the property does not meet minimum standards and the renter has not yet signed the rental agreement and not yet moved in, the renter can request that the rental provider make repairs or changes.

If a rental agreement has been signed and the renter has not moved in yet, and the property does not meet minimum standards, the renter can either end the rental agreement immediately without fees by notifying the rental provider that the property does not meet minimum standards, or move in anyway and make a request for urgent repairs. If the premises do not comply with the rental minimum standards upon moving in or immediately after occupation, the renter can also request for urgent repairs to be carried out at the rental provider's expense so that the standards are complied with (s 65(2), RTA).

If the repairs cost less than \$2500 and the renter can afford to pay for them, the renter can themselves arrange for urgent repairs to be carried out if the renter has given notice to the rental provider or their agent and is unable to get them to carry out the repairs (s 72(1), RTA). Given most people in social housing have low incomes, their financial capacity to undertake their own repairs will be limited. The renter can apply to VCAT for an order requiring the rental provider to carry out or pay for the urgent repairs (s 73, RTA).

If a property falls below minimum standards any time during a rental agreement, the renter can contact the rental provider or agent straight away to request an urgent repair to meet the standards.

### Compliance and enforcement

Enforcement and compliance processes are in place for the current minimum standards and are the responsibility of Consumer Affairs Victoria in ensuring compliance with the current and any new minimum standards by rental providers, registered rooming houses and licensed rooming house operators, primarily through its existing enforcement activities.<sup>89</sup>



## PROPOSED NEW MINIMUM ENERGY EFFICIENCY AND SAFETY STANDARDS FOR RENTAL PROPERTIES

Efficient electric cooling installed within rental homes promotes liveability and limits disruptions to everyday activities for renters during heatwaves. The Victorian Government's commitment to transition towards net zero emissions by 2045 requires deliberative action; the Victorian Government has commenced development of new proposed minimum energy efficiency and safety standards for rental homes. The proposed Regulations<sup>90</sup> include various measures to improve thermal comfort that would mitigate extreme heat, including cooling, draft sealing and insulation. It was anticipated that new regulations including these standards would be prescribed in October 2024, however they have not been made at the time of publication of this report.

The proposed standard for cooling will require rental properties to have installed a 2 Star electric room heater or a 3.2 heating seasonal performance factor (HSPF) ducted electric heating system (equivalent to a 1.5 Star room heater) and a 3 Star electric room cooler or a 3.8 total cooling season performance factor (TCSPF) ducted electric cooling system (equivalent to a 2 Star room cooler).

From 30 October 2025, compliance with the minimum standard will be required at the time of a new lease, if there is no existing cooling appliance in the rental property. When there is an existing cooling appliance, it must be replaced with an efficient cooler at end of life. From 30 October 2027, all rental properties will be required to have a fixed cooler installed in the main living area.

## POLICY CONTEXT

As required under the Victorian Climate Change Act 2017, Victoria's health and human services system, which includes public health and wellbeing services and assets, social housing infrastructure, and support for vulnerable community members, has a Health and Human Services *Climate Change Adaptation Action Plan 2022 – 26*.<sup>91</sup> Actions relevant to addressing extreme heat in social housing include:

- reporting on current and future impacts of climate change on the health of Victorians and on health service demand, under various climate and intervention scenarios, and implementing an ongoing surveillance program which brings together data on changes in climate-related health hazards, vulnerabilities, and population health outcomes in Victoria
- actively managing and reducing climate hazards across the social housing asset base and upgrading existing social housing to adapt it to the range of Victoria's possible future climates and improve thermal safety for residents
- developing options to manage the impacts of urban heat on health and social housing infrastructure and health and human services, and reducing health and social housing infrastructure's contribution to urban heat
- embedding sector-wide climate change adaptation and risk management by partnering with health services, the Victorian Council of Social Service, and other peak community service organisations to support the health and community service sector's climate change adaptation.

While stating that it is progressing the *Health and Human Services Climate change adaptation action plan 2022–26* actions across health and social housing infrastructure, public health programs and services, the Victorian Government has not publicly reported on its progress against these particular actions.<sup>92</sup>

*Victoria's Housing Statement: The decade ahead 2024 – 2034*, released in September 2023, outlines the Victorian Government's framework for boosting housing supply and affordability in Victoria, including building new social housing stock and redeveloping public housing assets, such as Melbourne's 44 public housing towers. It also includes proposed measures to strengthen rental rights, primarily aimed at putting downward pressure on rental prices and regulating real estate agents, rental applications and banning rent bidding.

While the Statement includes references to the Victorian Government's commitment to creating sustainable homes and communities, it does not refer explicitly to housing requirements needed to meet the challenges of a changing climate. For example, it does not include commitments in relation to climate safe housing supply or infrastructure necessary for communities to meet the risk of increasing extreme heat events or other climate disasters. It also does not include statements that position housing as an essential service, like other essential services such as medical or financial services, that is subject to greater protection and safeguards connected to the human right to adequate housing.

Victoria's new social housing stock constructed by Homes Victoria and community housing providers under the Big Housing Build program – will be required to meet the following environmental and energy standards:

- a minimum 7-star Nationwide House Energy Rating Scheme (NatHERS) energy efficiency standard to ensure a comfortable living environment and low energy costs
- a minimum 5-star Green Star certification
- new housing designed in accordance with the Liveable Housing Design Guidelines – Silver Level, where residents can more easily age in place
- new and rejuvenated shared green and open spaces designed to promote integration and community.<sup>93</sup>

Victoria has committed to a high-rise cooling program, announced in 2022, to install new air conditioners in public housing high rise towers across metropolitan Melbourne by 2026 (this does not include the four public housing towers announced as part of the high rise redevelopment).<sup>94</sup>

90 Residential Tenancies and Residential Tenancies (Rooming House Standards) Amendment (Minimum Energy Efficiency and Safety Standards) Regulations 2024 (Vic) Exposure Draft.

91 Health and Human Services Climate Change Adaptation Action Plan 2022-26 (n 6).

92 Victorian Department of Families, Fairness and Housing, Annual Report 2022-23 (Report, 30 November 2023) <https://www.dffh.vic.gov.au/publications/annual-report>.

93 Lowering our environmental impact', Homes Victoria (Web Page, 25 June 2024) <https://www.homes.vic.gov.au/lowering-our-environmental-impact>.

94 'Cooling our high rise towers', Home Victoria (Web Page, 1 February 2024) <https://www.homes.vic.gov.au/cooling-our-high-rise-towers>.

