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Mould in Victorian rental disputes: analysis of VCAT litigation with comparative insights from Australian jurisdictions

Abstract

Mould-related litigation in Australian rental properties has increased by 250% over the past decade, fundamentally transforming expert witness practice and civil dispute resolution at the intersection of rental law, indoor air quality science, and public health and building science. This paper updates the author's 2018 analysis, presenting the first comprehensive longitudinal study of Victorian Civil and Administrative Tribunal (VCAT) mould jurisprudence through analysis of 406 published decisions spanning 27 years (1998-2025). The dataset documents annual case volumes rising from 6-7 cases (1998-2013) to over 30 cases by 2025, with quadratic trend modeling (R^2=0.611) indicating sustained structural growth. However, these 406 determinations represent only a lower-bound indicator of dispute prevalence, as many matters resolve through negotiation, consent outcomes, alternative dispute resolution, or withdrawal without generating published decisions. Victoria's 2021 Residential Tenancies Regulations introduced Australia's first explicit requirement that rental properties be "free from mould and dampness caused by or related to the building structure," creating unprecedented regulatory clarity that coincided with robust health evidence demonstrating 30-50% increased respiratory risks from dampness exposures. Comparative jurisdictional analysis reveals that while Queensland has adopted similar explicit standards, most other Australian states and territories rely on general habitability provisions, lacking Victoria's causation-focused evidentiary framework. VCAT case analysis demonstrates the tribunal's increasing sophistication in evaluating competing expert evidence, demanding quantitative data rather than mere visual observation for causation analysis, moisture measurement, and remediation assessment. The tribunal has progressively rejected dubious methods such as standalone fogging, establishing evidence-based decision-making that provide critical operational guidance for mould inspectors and assessors in collecting quantitative environmental data, documenting moisture pathways, and applying professional remediation protocols aligned with international standards for cleaning/remediation and source removal expectations. For renters contemplating proceedings, VCAT jurisprudence demonstrates that favorable outcomes turn less on the mere presence of visible mould and more on quality evidence linking the moisture sources, building defects, and remediation adequacy to the mould and in turn to loss of amenity or health risk. These findings establish an evidence-based framework for mould inspectors, assessors, remediators, expert witnesses, legal practitioners, affected occupants, and policymakers navigating the evolving regulatory landscape for mould disputes across Australian jurisdictions.

Keywords: mould, building disputes, VCAT, indoor air quality, health impacts, expert witness, building science, moisture management, residential tenancies, regulatory framework, Australian jurisdictions, fogging, remediation

Volume 14 Issue 1 - 2026

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Received: January 1, 2026 | **Published:** January 29, 2026

Abbreviations

VCAT, victorian civil and administrative tribunal; IAQ, indoor air quality; IICRC, institute of inspection, cleaning and restoration certification; EPA, environmental protection agency; MVOCs, volatile organic compounds; CFU, colony forming units; AMG, Australian mould guideline; RTA, residential tenancies authority.

Introduction and context

The proliferation of mould in residential and commercial buildings represents a critical and expanding challenge at the intersection of law, public health, and building science. Once considered a niche issue, mould has emerged as a significant public health concern in Australia, driven by a confluence of factors including climate change, an aging housing stock, and evolving legal and regulatory frameworks.[1] This paper provides a comprehensive analysis of mould in Victorian building disputes, integrating a complete 27-year dataset of VCAT published determinations with contemporary research on health impacts, indoor air quality (IAQ), and legislative changes.

Since the original 2018 analysis by Jones,[2] the landscape of mould-related disputes has transformed dramatically. The exponential growth in litigation, particularly in Victoria, reflects heightened public awareness of mould-related health risks and greater willingness to seek legal recourse. This trend has been catalyzed by significant legislative reforms, most notably the Residential Tenancies Regulations 2021 (Vic), which introduced explicit minimum standards for mould and dampness in rental properties.[3] These changes have fundamentally altered the legal responsibilities of landlords and the avenues for redress available to tenants, reshaping the dynamics of VCAT disputes.

This updated analysis examines the complete VCAT dataset of 406 mould-related cases from 1998 to 2025, revealing a 250% increase in case volumes from the baseline period (1998-2013) to 2025. The data demonstrates a clear shift in dispute patterns, with Building and Property cases now constituting the dominant category (51.4% of classified cases), reflecting the increasing complexity and financial stakes of mould-related litigation. Concurrently, the paper integrates key findings from contemporary research to provide a nuanced understanding of the health impacts of mould exposure, the challenges of mould assessment and remediation, and the significant gaps in Australian regulatory frameworks for IAQ.

Data sources and case identification

This study analyzed mould-related disputes using AustLII's database of published VCAT determinations spanning 27 years (1998-2025). The search query "(mould)" returned 406 published decisions, representing cases that proceeded to contested hearings with written reasons.

Data extraction methodology: The analysis utilized AustLII's search result excerpts, which display text segments surrounding the search term "mould" within each published determination. These excerpts provide sufficient context to identify: (1) case metadata (parties, date, and citation), (2) nature of mould-related issues, (3) tribunal reasoning and orders, and (4) expert evidence patterns. This excerpt-based approach enables systematic pattern analysis across the complete dataset while maintaining methodological efficiency.

Scope limitations: The excerpts represent contextual segments rather than complete case texts. For cases requiring detailed analysis of tribunal reasoning on specific technical issues (e.g., remediation methodologies, causation frameworks, expert evidence evaluation), selected cases were accessed in full text. This dual approach combines breadth (406-case pattern analysis) with depth (detailed analysis of illustrative cases).

Forthcoming research: A comprehensive case-by-case analysis examining detailed tribunal reasoning, expert witness methodologies, and evidentiary standards across the complete dataset is planned for separate publication. The current study establishes the landscape, trends, and regulatory framework, while detailed jurisprudential analysis will follow.

All publicly available decisions returned by the AustLII search query were reviewed manually. Cases in which the term "mould" was used in a non-biological or non-building context were excluded. Each decision was counted once, regardless of the number of references to mould within the text.

Where decisions raised multiple issues across different legal lists, cases were classified according to the primary dispute list identified by VCAT (e.g. Residential Tenancies, Building and Property, Owners Corporations). This approach reflects how disputes are practically framed and adjudicated by the Tribunal. The resulting dataset comprises 406 unique decisions, representing the complete population of public-facing, retrievable online, mould-referenced VCAT determinations over the 27-year study period.

Author scope and disciplinary position: The author is a microbiologist and mycologist, not a legal practitioner. This analysis does not constitute legal advice or legal interpretation, but an empirical examination of how scientific and environmental evidence relating to mould, moisture, and remediation is evaluated within civil adjudicative settings. The author's engagement with Victorian Civil and Administrative Tribunal (VCAT) determinations arises from repeated involvement as a subject matter expert in mould-related disputes, where laboratory data, environmental measurements, and building context are tested through evidentiary processes. This research is motivated by the applied scientific challenges that arise when microbiological and indoor air quality evidence is subjected to legal evidentiary scrutiny, rather than by legal advocacy or interpretation.

Legal framework and VCAT case analysis

The pre-2021 legal position: a framework of ambiguity

Prior to 29 March 2021, the legal framework for addressing mould in Victorian rental properties was characterized by a degree of ambiguity that often left both tenants and landlords uncertain of their rights and obligations. The primary recourse for tenants was through the general provisions of the Residential Tenancies Act 1997, which implied a warranty of habitability and provided for "urgent repairs" under Section 72. However, the Act did not explicitly define mould or dampness as an urgent repair, leaving it to the discretion of VCAT to determine whether the severity of a mould issue warranted immediate action.[4] This created a significant burden of proof for tenants, who had to demonstrate not only the presence of mould but also that it rendered the property unfit for habitation or constituted a serious risk to their health and safety.

While epidemiological and building science research increasingly supports an association between mould exposure and elevated respiratory and inflammatory risk at a population level, VCAT determinations generally require evidence of building-related causation rather than individual medical attribution, and do not operate as findings of clinical diagnosis.

The 2021 regulatory watershed: explicit minimum standards

The turning point in Victorian mould litigation came with the introduction of the Residential Tenancies Regulations 2021, which took effect on 29 March 2021. Schedule 4 of these regulations established a set of 15 minimum standards for rental properties, including a specific provision for mould and dampness:

Standard 8 - Mould and Dampness: "*Each room in the rented premises must be free from mould and damp caused by or related to the building structure.*"[5]

This single provision represented a watershed moment in Victorian tenancy law. It eliminated the ambiguity of the previous framework, establishing a clear, non-negotiable obligation for landlords to provide mould-free premises. Critically, the standard explicitly links mould to building structure causation, creating a clear legal focus on the origin of moisture and mould growth. The standard applies to all new rental agreements entered into on or after 29 March 2021, and to existing periodic (month-to-month) agreements from the same date.

The impact of this change was immediate and profound, providing tenants with a clear legal basis for demanding remediation and empowering VCAT to make consistent, enforceable orders. The 2025 amendments further strengthened these protections. From 25 November 2025, rental properties must meet the minimum standards before they are advertised for rent, and from 1 December 2025, all rental properties must comply with the enhanced standards.[6] These amendments represent a significant tightening of the regulatory framework, placing greater responsibility on landlords to ensure compliance before properties enter the rental market.

Citation: Jones CL. Mould in Victorian rental disputes: analysis of VCAT litigation with comparative insights from Australian jurisdictions. *J Bacteriol Mycol Open Access*. 2026;14(1):1–10. DOI: 10.15406/jbmoa.2026.14.00420

VCAT case analysis: a 27-year perspective

The comprehensive analysis of 406 VCAT mould cases from 1998 to the end of 2025 provides a stark illustration of the impact of these legislative changes and the broader societal trends driving mould litigation. The data reveals three distinct phases in the evolution of mould disputes in Table 1 below.

A quadratic trend model fitted to the complete 1998–2025 dataset ($R^2 = 0.611$, explaining 61.1% of variance in case volumes) indicates accelerating growth through the mid-2010s followed by partial stabilization at a higher baseline following the introduction of explicit minimum rental standards in 2021. This is illustrated in Figure 1. Extrapolation of this model suggests annual mould-related VCAT case volumes increasing gradually from the low-30s in the mid-2020s toward approximately 40 cases per year by 2030. These projections are indicative rather than predictive and are intended to characterize structural litigation pressure rather than forecast precise annual counts.[7]

Table 1 Phases of VCAT mould-related litigation (1998–2025). Three distinct phases were interpreted from the data.

Phase	Period	Total cases (n)	Mean cases per year	Key characteristics
Emergence	1998–2013	105	6.6	Low case volume; limited precedent; mould primarily argued via general habitability and urgent repairs provisions
Acceleration	2014–2020	186	26.6	Rapid growth in disputes; increased public awareness; pre-regulatory surge; expanding reliance on expert evidence
Maturation	2021–2025	115	23	Post-regulatory era; explicit minimum standards; shift toward building causation and construction defects

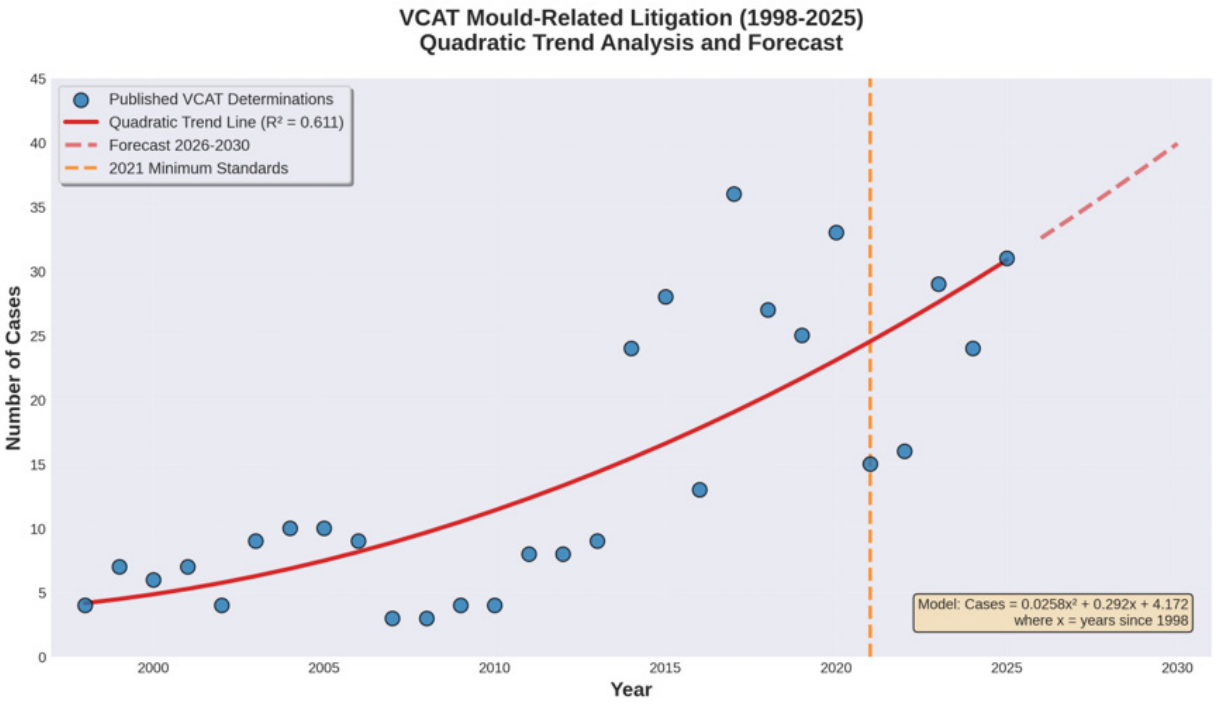

Figure 1 VCAT Mould Cases Time Series (1998-2025) with Quadratic Trend and 2026-2030 Forecasts.

This illustrates the temporal distribution of published mould-referenced VCAT determinations and does not capture matters resolved through negotiation, withdrawal, or alternative dispute resolution pathways. Trend lines are shown for descriptive purposes only and do not represent forecasts of future dispute volumes.

The shifting landscape of dispute types

Perhaps the most significant finding from the expanded up to end of the 2025 year dataset is a clear shift in the distribution of mould-related matters across VCAT lists. This is shown in Table 2. Whereas the original 2018 analysis identified Residential Tenancies disputes as the dominant category, the complete 1998–2025 dataset demonstrates that mould-related determinations are now distributed across multiple jurisdictions, with Building, Construction, and Owners Corporation matters forming the largest single category (33.7% of all published determinations), closely followed by Residential Tenancies disputes (28.3%).[2]

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Table 2 Distribution of published mould-referenced VCAT determinations by primary legal jurisdiction (unique determinations, n = 406).

Primary legal jurisdiction	1998–2010	2011–2020	2021–2025	Total (%)
Residential tenancy	2	82	31	115 (28.3%)
Building / construction / owners corporation	9	75	53	137 (33.7%)
Other civil / administrative matters	66	54	34	154 (37.9%)
Total	77	211	118	406 (100%)

Where multiple AustLII index entries referred to the same underlying VCAT determination (notably in early-period material), cases were counted once to avoid duplication. Counts therefore represent unique published determinations rather than keyword index hits

Not all VCAT decisions explicitly identify a single primary list within AustLII search result summaries; accordingly, category totals reflect only decisions for which the Tribunal's principal jurisdiction could be clearly determined from the published reasons.

This shift reflects the increasing complexity of mould disputes. While the 2021 regulations have provided greater clarity for tenants in residential disputes, they have also created a new frontier of litigation focused on the causation of mould. The requirement that mould be "caused by or related to the building structure" has shifted the focus of disputes from the mere presence of mould to the technical question of its origin. This has led to a surge in Building and Property cases, which often involve complex expert evidence from building practitioners, remediators, engineers, occupational hygienists and microbiologists/mycologists to determine the root cause of moisture ingress and mould proliferation and its' management and control. These cases are typically of higher financial value and involve more extensive legal and expert resources than the more straightforward residential tenancy disputes.

Published determinations as a lower-bound indicator of dispute prevalence

Published VCAT determinations represent a conservative subset of mould-related disputes. Many matters resolve through negotiation, consent outcomes, alternative dispute resolution processes, withdrawal, or non-attendance orders and therefore do not generate a written decision that is published and indexed.

VCAT's annual reporting demonstrates that the Tribunal finalises very large volumes of matters each year and explicitly deploys early-resolution approaches, particularly in high-volume jurisdictions such as residential tenancies. As a result, only a proportion of mould-related disputes that enter the formal system progress to a contested hearing and published determination.

Accordingly, the 406 published mould-referenced determinations analysed in this study[7] should be interpreted as a lower-bound indicator of the frequency with which mould issues enter the formal dispute-resolution system, rather than as a comprehensive measure of dispute prevalence.

More broadly, empirical civil justice research suggests that in Australia most civil disputes resolve without trial, reinforcing the expectation that adjudicated decisions systematically understate the true burden of underlying disputes.

This under-ascertainment of dispute prevalence has direct implications for the interpretation of VCAT jurisprudence. Published determinations represent the most contested, evidentially complex, and resource-intensive subset of disputes, in which evidentiary standards, causation analysis, and remediation adequacy are subjected to the highest level of scrutiny.

This study focuses exclusively on VCAT disputes as the primary low-cost civil tribunal for residential tenancy matters in Victoria. However, it should be noted that some mould-related disputes may be escalated to the Magistrates' Court or higher courts, particularly where damages exceed VCAT's jurisdictional limits or where complex legal questions arise. These cases fall outside the scope of this analysis and may represent disputes with different characteristics, potentially including more severe contamination or higher financial stakes.

Mould regulation and evidentiary approaches across Australian jurisdictions

While Victoria has developed the most explicit and causation-focused mould evidence through its 2021 Regulations, other Australian states and territories have adopted varying approaches to regulating mould in rental properties. Understanding these differences is essential for practitioners working across multiple jurisdictions and for assessing the broader regulatory landscape in Australia.

New South Wales

New South Wales addresses mould through the Residential Tenancies Act 2010 and a framework of seven minimum standards that include "adequate ventilation."[8,9] Unlike Victoria's explicit mould evidence, NSW embeds mould regulation within the broader habitability framework. The NSW condition report contains a dedicated section on mould and dampness, requiring landlords and agents to note any signs of mould when the report is completed.

Responsibility allocation in NSW depends on the cause of mould development. If mould developed from moisture build-up due to a landlord's failure to repair a defective window or provide adequate ventilation, the landlord is responsible. Conversely, if mould developed because a tenant failed to maintain ventilation by not opening windows or using bathroom exhaust fans, the tenant may be responsible. NSW Fair Trading acknowledges that mould has been associated with respiratory illness and health problems, and directs affected tenants to local Public Health Units for health risk assessment. Pre-existing mould noted on the ingoing condition report is recognized as the landlord's responsibility to remediate.[10]

Queensland

Queensland has adopted an explicit minimum housing standard requiring that rental premises be "free from damp and mould."[11] This standard applies to all rental properties except rooming accommodation. The Residential Tenancies and Rooming Accommodation Act 2008 places the primary responsibility on the property manager or owner to ensure the premises is free from mould when the tenant moves in and throughout the tenancy. Tenants must notify the property manager or owner as soon as possible if mould, damp, or vermin appears during the tenancy.

The Queensland Residential Tenancies Authority (RTA) provides guidance on minimum housing standards, and the framework is enforceable through the RTA's dispute resolution processes. The ingoing condition report must document any mould present at the start of the tenancy, establishing a baseline for responsibility allocation. Queensland's approach is less causation-focused than Victoria's but provides clearer baseline protections than NSW.[12]

Western Australia

Western Australia regulates mould through the Residential Tenancies Act 1987, which requires that rental premises be maintained as habitable. The Western Australia Department of Health has published comprehensive "Guidelines for Managing Mould and Dampness Related Public Health Risks in Buildings," which emphasize the health protection dimension of mould management.[13] These guidelines provide detailed assessment and remediation protocols aligned with the Australian Mould Guideline (2010).[14]

WA's approach emphasizes the habitability framework, with mould and dampness recognized as factors that can render a property uninhabitable. The ingoing condition report must document mould and dampness, establishing the baseline for responsibility allocation. Landlords are responsible for structural causes of mould (water ingress, ventilation defects), while tenants are responsible for mould caused by their behavior or misuse. WA's health-focused approach reflects recognition that mould poses significant public health risks.

South Australia

South Australia regulates rental properties through the Residential Tenancies Act 1995 and the Rental Housing Code of Conduct. Properties must be reasonably draught-proof, weatherproof, and free from mould or other irritants. This approach links mould prevention to the broader weatherproofing obligation, recognizing that water ingress is the primary cause of mould growth.

The ingoing condition report must document mould and dampness at the start of the tenancy. Landlords are responsible for providing a weatherproof, draught-proof property and for addressing structural causes of mould. Tenants are responsible for mould caused by their misuse or failure to maintain reasonable ventilation. South Australia's approach is similar to Western Australia's, emphasizing structural responsibility and habitability (Table 3).

Table 3 Comparative summary of mould evidence across Australian jurisdictions

Jurisdiction	Dominant mould evidence type emphasised in adjudication	Typical evidentiary features observed in published determinations	Regulatory framing	Key legislative / regulatory sources
VIC	Visual identification supplemented by objective environmental and building evidence	Visual observation of mould or dampness; moisture diagnostics; environmental sampling; building-pathway analysis; remediation verification	Explicit minimum standards (post-2021)	[VIC-RTA]; [VIC-REG-2021]
NSW	Contextual habitability evidence	Visual observations; repair and maintenance history; moisture indicators; supporting expert opinion	Implicit via habitability and repair duties	[NSW-RTA]
QLD	Mixed evidence (transitional)	Visual observations; moisture diagnostics; increasing reliance on objective measurements post-2021	Emerging minimum housing standards	[QLD-RTRA]; [QLD-REG-2023]
SA	General habitability evidence	Visual condition; reasonable state of repair; limited objective testing	Implicit via fitness for habitation	[SA-RTA]
WA	General habitability evidence	Visual inspection; maintenance history; limited environmental measurement	Implicit via reasonable state of repair	[WA-RTA]
TAS	Safety and weatherproofing evidence	Dampness indicators; structural condition; visual mould presence	Implicit via safety and repair duties	[TAS-RTA]
ACT	Health and safety-oriented evidence	Moisture ingress; amenity impacts; environmental context	Minimum housing standards	[ACT-RTA]; [ACT-STD]
NT	General repair and condition evidence	Visual assessment; basic moisture indicators	Implicit via repair obligations	[NT-RTA]

Legislative sources: Victoria,[15,16] NSW,[17] Queensland,[18,19] SA,[20] WA,[21] Tasmania,[22] ACT,[23,24] NT[25]

Victoria's 2021 Regulations represent the most comprehensive and explicit approach to mould regulation in Australia, with the causation-focused standard creating a clear legal framework for determining landlord responsibility. Other states rely on broader habitability or weatherproofing frameworks, which provide less explicit guidance on mould-specific issues. This variation across jurisdictions has significant implications for expert witness practice, as causation analysis is most developed and most frequently required in Victoria.

Health impacts and indoor air quality

The health effects of mould exposure

Mould produces a complex mixture of spores, hyphal fragments, and volatile organic compounds (MVOCs), all of which can be inhaled and can trigger a range of adverse health effects.[26] The health risks are particularly acute for vulnerable populations, including children, the elderly, and individuals with pre-existing respiratory conditions or

compromised immune systems. Recent meta-analyses have confirmed that exposure to dampness and mould is associated with a 30-50% increased risk of adverse respiratory outcomes.[27]

The health effects of mould exposure can be broadly categorized as follows. First, allergic and hypersensitivity reactions represent the most common health effect of mould exposure, manifesting as sneezing, runny nose, red eyes, and skin rash. For individuals with asthma, mould exposure can trigger asthma attacks and exacerbate their condition. Studies have shown that living in a mouldy home during childhood significantly increases the risk of developing bronchial asthma later in life.[28] Second, in individuals with compromised immune systems, exposure to certain mould species, such as *Aspergillus fumigatus*, can lead to serious and even life-threatening infections. Third, some mould species produce mycotoxins, which are toxic compounds that can cause a range of health problems, including respiratory irritation, fatigue, and neurological symptoms. A 2025 study linked household mould to hypersensitivity pneumonitis, an inflammatory lung disease.[29]

The challenge of indoor air quality (IAQ)

Despite the growing awareness of the health risks of mould, Australia has been slow to develop a comprehensive regulatory framework for indoor air quality. Unlike many other developed countries, Australia does not have any nationally enforceable standards for IAQ in residential buildings. This regulatory vacuum creates significant challenges for public health protection and for the resolution of mould-related disputes.

In the absence of clear standards, it can be difficult to determine what constitutes an "acceptable" level of mould in a building. The Australian Mould Guideline (2010) provides quantitative metrics for assessing mould contamination, including airborne fungal concentration ratings and surface contamination ratings.[14] The guideline establishes rating categories ranging from "Normal" to "Extremely Contaminated" based on colony forming units (CFU) per plate or spores per cubic meter. However, these metrics are not universally adopted or enforced in Australian regulatory frameworks despite the fact the entailed methods like spore traps and tape lifts (for assessing respectively mould levels in the air or on surfaces) having explicit international Standards for method, measurement and analysis. Resistance to the AMG's precision framework often emerges from stakeholders e.g. property managers; lot owners, strata committees, insurers, body corporate who face financial exposure when quantitative evidence definitively establishes contamination. This makes it challenging for tenants to prove that their health is at risk, for landlords to know what is expected of them, and for VCAT to make consistent and evidence-based decisions. The lack of clear standards despite robust guidelines also creates a fertile ground for unqualified or unscrupulous operators in the mould testing and remediation industry, who may exploit the fear and uncertainty of consumers.

An unregulated industry: assessment and remediation

The mould assessment and remediation industry in Australia is largely unregulated, with no mandatory qualifications, licensing, or accreditation for practitioners.[1] This lack of regulation has led to a wide variation in the quality and effectiveness of services, with many consumers paying for work that is substandard or even fraudulent.

In contrast, other jurisdictions have taken a more proactive approach to regulating the industry. In the United States, for example, several states have introduced licensing requirements for mould assessors and remediators, and the Environmental Protection Agency (EPA) has published detailed guidance on mould remediation.[30] Importantly, ANSI/IICRC S520 has now been formally adopted in Australia as AS-IICRC S520:2025, published by Standards Australia as a modified national adoption of ANSI/IICRC S520:2024. The Australian Standard reproduces the core remediation framework, definitions, and contamination classifications of the international document, with jurisdictional modifications set out in an appendix, and do not alter the substantive remediation principles discussed in this paper. In Australia, the adoption of the IICRC S520 Standard for Professional Mould Remediation is a positive step, but it is a voluntary standard and is not consistently applied across the industry. The Australian Mould Guideline (2010) in comparison provides comprehensive protocols for mould assessment and testing including commentary on remediation, containment procedures, PPE classification systems, and risk management verification of remediation effectiveness through clearance testing.[14] However, these protocols are not mandated in Australian legislation. While the AMG provides explicit, standardized methodologies for quantifying mould contamination—clarity that some stakeholders seek when definitive evidence serves their interests—these same protocols may be dismissed or circumvented by parties facing financial exposure when quantitative results would establish liability or trigger remediation obligations.

The problem of unqualified operators is further compounded in jurisdictional contexts where subject matter evidence requirements are minimal. While some Australian courts require experts participating in concurrent evidence proceedings ('hot tubs') to hold tertiary qualifications relevant to their field of expertise, VCAT's more accessible framework does not uniformly impose such requirements. This creates a two-tiered system where the evidentiary standards applied to mould contamination claims may vary significantly depending on the forum in which disputes are heard.

Building science and moisture management

The science of mould growth

Mould is a ubiquitous organism, and its spores are present in almost every environment. However, for mould to grow and proliferate, it requires a source of moisture, a food source (such as cellulose-based building materials), and appropriate temperatures. The critical factor in most building-related mould issues is moisture. Fungal growth can begin within 24-48 hours of a water event, and even dormant mould spores can be reactivated within hours of exposure to moisture. This makes a timely and effective response to water damage absolutely critical in preventing mould growth.

Mechanisms of water ingress

Water can penetrate a building envelope through a variety of mechanisms, each of which has different implications for determining the cause of mould growth. Rainfall-related ingress is the most common cause of water damage and can result from a wide range of building defects, including faulty roof flashing, cracked render, inadequate waterproofing of balconies and wet areas, and poorly sealed windows and doors. The increasing intensity of rainfall events due to climate change is placing greater stress on building envelopes, leading to a higher incidence of water ingress.[31] Condensation occurs when warm, moist air comes into contact with a cold surface, causing the moisture to condense into liquid water. This is a common problem in poorly ventilated or inadequately insulated buildings, particularly in bathrooms, kitchens, and bedrooms. Rising damp results from groundwater migrating upward through porous building materials via capillary action, typically affecting walls within one meter of ground level where inadequate or failed damp-proof courses allow moisture

ingress. Plumbing leaks from pipes, fittings, and appliances can be a significant source of hidden moisture, leading to extensive mould growth within wall cavities and under floors.

Expert witness practice in mould disputes

The role of the expert witness: beyond visual observation

In a VCAT mould dispute, the expert witness plays a crucial role in providing the tribunal with an independent and objective assessment of the technical issues at the heart of the case. This extends far beyond simple visual observation of mould. A comprehensive expert assessment relies on quantitative data to determine the extent and nature of contamination. This can include identifying the species of mould present and assessing the potential health risks, determining the source and cause of the moisture that is supporting the mould growth, assessing the extent of the mould contamination using quantitative metrics from the Australian Mould Guideline (2010),[14] and providing an opinion on the appropriate remediation strategy. The expert's primary duty is to the tribunal, not to the party who has engaged them.[32]

The shift toward Building and Property disputes has increased the demand for expert evidence on causation. In these cases, experts must determine whether mould is caused by building structure defects (water ingress, inadequate ventilation, structural moisture) or by tenant behavior (inadequate ventilation, moisture generation). This requires sophisticated analysis of building science, moisture dynamics, and building defect mechanisms. The role of the expert witness has expanded to include not just mycologists and IAQ professionals, but also building experts who can identify the root cause of moisture ingress. This includes experts in waterproofing, cladding, rendering, and plumbing, who can provide evidence on issues such as inadequate render, faulty flashing, poor workmanship in wet areas, and the impact of excessive rain on timber frames during construction.

The challenge of hidden mould and causation

A significant challenge in mould disputes is the issue of hidden mould, which may not be visible on the surface but can cause significant health problems and structural damage. Hidden mould can result from a variety of causes, including slow plumbing leaks, condensation within wall cavities, and water ingress through building defects. Examples include water-damaged shaft linings between townhouses, which can create a hidden reservoir of moisture and mould growth, and malicious damage to plumbing or fire sprinklers, which can cause sudden and extensive water damage.

In these cases, quantitative data is essential to establish the presence and extent of hidden mould. This can include moisture mapping, thermal imaging and invasive testing of wall cavities and other concealed spaces. The expert witness must be able to connect the presence of hidden mould to a specific building defect or event, providing a clear chain of causation for the tribunal.

Appropriate vs. dubious remediation methods: the case of fogging

The unregulated nature of the mould remediation industry in Australia has contributed to the widespread promotion of fogging as a rapid or low-disruption solution to mould contamination. Fogging involves the aerosolisation of a biocidal agent intended to inactivate fungal spores and vegetative growth on exposed surfaces. Under controlled laboratory conditions, aerosolised biocides can achieve meaningful microbial reduction when applied at appropriate concentrations, with defined dwell times, and within environments of known volume, surface composition, and air exchange. Such conditions underpin established laboratory protocols for high-level disinfection and sterilisation.

However, these laboratory protocols rely on precise control of agent concentration, contact time, surface exposure, and operator safety, often using substances that are highly toxic and unsuitable for routine use in occupied buildings. In contrast, commercially marketed fogging products used in residential and tenancy settings are typically constrained by low-toxicity requirements, variable room geometries, heterogeneous contents, and uncontrolled air movement. Under these conditions, achieving reproducible log-reduction thresholds comparable to laboratory disinfection standards is rarely demonstrated, measured, or verified.

Critically, even where aerosolised biocides achieve partial or localised microbial inactivation, fogging does not remove mould-contaminated materials, does not extract settled spores or fragments, and does not address the moisture conditions that permit fungal persistence and regrowth. The IICRC S520 Standard for Professional Mould Remediation explicitly states that "attempts to kill, encapsulate, or inhibit mold instead of proper source removal generally are not adequate."[33] The standard emphasizes that physical source removal of contaminated materials is the cornerstone of effective remediation. The Standard positions fogging, at most, as a supplementary hygiene measure that may be used after appropriate material removal and moisture correction, but not as a standalone remediation method. As well, fogging does not remove point sources of mould.

VCAT jurisprudence reflects this distinction with increasing clarity. While tribunals do not dispute that biocidal agents can inactivate mould under certain conditions, fogging has repeatedly failed to satisfy the Tribunal's expectations of remediation adequacy where it is relied upon as the primary or sole intervention.

All three cited cases below were accessed in full text (RTF format) and systematically reviewed for accuracy.

VCAT has been presented with cases where fogging has been recommended as a remediation method, and the Tribunal has shown increasing skepticism toward this approach. In GOV v Guglotti (2015), a remediation proposal including decontamination fogging was part of broader maintenance failures, with the Tribunal finding in favor of the tenant and awarding $5,400 compensation - though the decision focused on the landlord's knowledge of defects rather than explicitly critiquing fogging methodology.[34] In Cardamone v Van Der Waerden (2019), competing expert reports-including one recommending decontamination fogging despite no visible mould-highlighted disputes over appropriate assessment and remediation approaches, with the Tribunal ultimately finding premises unfit for habitation based on contamination evidence rather than chemical treatment claims.[35] The evolution toward explicit methodological critique is most evident in Blatt v Black Dog Ashgrove (2023), where the Tribunal explicitly rejected fogging as an adequate remedy, accepting expert evidence that 'fogging doesn't remove mould' and that the proposed fogging chemicals would have been hazardous to the tenant's health.The Tribunal ordered the physical removal of all mould and affected materials, reinforcing that fogging is not a substitute for source removal.[36] This decision reflects a maturation in tribunal reasoning: fogging is not rejected because biocides are ineffective in principle, but because chemical inactivation without source removal, moisture correction, and verification does not resolve building-related mould risk.

Accordingly, VCAT determinations demonstrate a consistent evidentiary principle. Fogging may reduce viable organisms transiently under favourable conditions, but it does not satisfy the standard of care required to demonstrate remediation, fitness for habitation, or prevention of recurrence. Where fogging is relied upon without accompanying removal, drying, and verification, it has tended to undermine, rather than support, claims of adequate remediation. Expert witnesses therefore play a critical role in distinguishing between laboratory efficacy, practical deployability, and legally relevant remediation outcomes when advising the Tribunal.

Implications for affected occupants

The findings of this study have direct implications for occupants experiencing mould and dampness who are considering, or are already engaged in, civil dispute processes. As discussed above, the published VCAT determinations analysed here represent a conservative subset of mould-related disputes, reflecting only those matters that progress to contested hearings and written reasons. Many disputes resolve earlier through negotiation, consent outcomes, or alternative dispute resolution pathways, and therefore do not appear in published case law.

Within this narrower subset of adjudicated disputes, Tribunal reasoning consistently demonstrates that outcomes turn less on the mere presence of visible mould and more on the quality and relevance of evidence linking building condition, moisture sources, and remediation adequacy to the alleged loss of amenity or risk to health. Claims framed primarily around the existence of mould, odour, or generalised health concerns frequently encounter evidentiary difficulty where building-related causation is not clearly established.

Importantly, VCAT does not operate as a forum for clinical diagnosis. Medical evidence, where relied upon, is typically considered in terms of consistency with established population-level associations rather than as proof of individual causation. As a result, occupants reporting health symptoms commonly associated with mould exposure may experience challenges where claims are advanced without accompanying evidence addressing moisture pathways, building defects, or environmental exposure mechanisms.

The introduction of explicit minimum standards for mould and dampness in 2021 has lowered the threshold for establishing non-compliance in residential tenancy matters. Nevertheless, the cases reviewed here indicate that evidentiary clarity remains critical, particularly where disputes involve competing expert opinions, alleged remediation failures, or contested causation scenarios. Published determinations represent the most evidentially scrutinised subset of disputes, in which deficiencies in documentation, causation analysis, or remediation verification are most likely to be exposed.

Taken together, these findings suggest that occupants engaging with civil dispute processes are best served by an understanding of how mould disputes are adjudicated in practice: as questions of building condition, causation, and evidentiary sufficiency, rather than as determinations based solely on the presence of mould or assertions of health impact. This distinction is central to interpreting both successful and unsuccessful outcomes within the VCAT jurisprudence analysed.

Novel findings and regulatory effects

This longitudinal analysis demonstrates for the first time a sustained structural shift in mould-related litigation away from predominantly residential tenancy disputes toward Building and Property matters following the introduction of explicit minimum standards in 2021. An unreported consequence of this regulatory change is the increasing financial and evidentiary complexity of disputes, with greater reliance on expert evidence addressing hidden and non-obvious mould, moisture pathways, construction defects, and remediation adequacy rather than visible mould alone.

Implications for practice and policy

These findings have direct implications for legal practitioners, expert witnesses, and policymakers. VCAT decisions now function as a de facto regulatory proxy in the absence of nationally harmonised indoor air quality standards, shaping expectations around evidence quality, causation analysis, and remediation practices. For expert witnesses, multidisciplinary competence in building science, moisture dynamics, and fungal ecology has become essential. For policymakers, the sustained volume and changing nature of disputes highlight the need for clearer national guidance on assessment and remediation standards to reduce litigation-driven public health responses. In the absence of such national guidance we are encouraged by those determinations that have sought to match quantitative evidence of mould and predicted or verified water source causation.

Emerging national frameworks for indoor air quality

Recent national initiatives indicate growing recognition that indoor air quality represents a systemic public-health and building-performance issue rather than a series of isolated compliance failures. Of particular relevance is the State of Indoor Air in Australia 2025 report37 produced by the Australian Research Council–funded Training Centre for Advanced Building Systems Against Airborne Infection Transmission (THRIVE).

This report represents the first coordinated national effort to synthesise empirical indoor air quality measurements across Australian building types, drawing on more than 100 peer-reviewed studies conducted since 2000 and encompassing approximately 2,500 buildings nationwide. The authors identify indoor air quality as a critical, yet historically under-measured, determinant of population health, noting that less than 0.03% of Australia's building stock has been subject to systematic IAQ assessment to date.

Several findings from the THRIVE report align closely with patterns observed in VCAT mould litigation. In particular, the report highlights the absence of a coherent national indoor air quality strategy, limited integration of biological contaminants (like mould and bioaerosols) into building verification frameworks, and a historical reliance on ambient air metrics that do not adequately reflect indoor exposure risks. These gaps mirror evidentiary challenges frequently encountered in tribunal proceedings, where disputes arise only after prolonged exposure, building deterioration, or failed remediation.

Viewed together, VCAT jurisprudence and the THRIVE national assessment can be understood as complementary signals within an evolving governance landscape: tribunal decisions document the downstream consequences of inadequate indoor air management, while coordinated research initiatives articulate pathways toward prevention through improved building systems, ventilation performance, and source control.

Conclusion and recommendations

The landscape of mould disputes in Victoria has been fundamentally reshaped over the past decade by a confluence of

Citation: Jones CL. Mould in Victorian rental disputes: analysis of VCAT litigation with comparative insights from Australian jurisdictions. *J Bacteriol Mycol Open Access*. 2026;14(1):1–10. DOI: 10.15406/jbmoa.2026.14.00420

legislative reform, evolving scientific understanding, and growing public awareness. The analysis of 27 years of VCAT data, integrated with contemporary research on health and building science, reveals a clear and compelling narrative of a legal and social issue that has come of age. The exponential growth in litigation, the shift towards more complex and high-value disputes, and the increasing focus on the health impacts of mould all point to a problem that is demanding a more sophisticated and integrated response from the legal, building, and health sectors.

The 2021 Residential Tenancies Regulations have been a game-changer, providing tenants with a clear and enforceable right to a mould-free home. However, the regulations have also created new challenges, particularly in relation to the complex issue of causation. The battleground in VCAT has shifted from the question of whether mould is present to the question of why it is present, a shift that has created a significant and growing demand for expert evidence.

Looking to the future, it is clear that mould is a problem that is not going away. Climate variation, building defects, site-specific factors and plumbing problems will continue to test the resilience of our building stock, and the community will continue to demand healthier and safer indoor environments. To meet this challenge, a multi-faceted and collaborative approach is required.

Recommendations

For government and regulators: There is an urgent need for national standards for indoor air quality and for the assessment and remediation of mould. The mould remediation industry should be regulated to ensure that all practitioners are appropriately trained, qualified, and insured. More research is needed to better understand the health effects of mould and other bioaerosols and to develop more effective methods for assessing and remediating mould. The Australian Mould Guideline should be updated and integrated into national building standards and tenancy regulations.

For the legal profession: Lawyers practicing in this area need to develop a sophisticated understanding of the relevant legal, scientific, and technical issues. In any mould dispute, it is essential to engage a qualified subject matter expert at an early stage. In the post-2021 legal landscape, causation (the water) is the key issue combined with its consequence (the mould), and additional expert evidence on building defects and moisture dynamics is critical. The variation seen across Australian jurisdictions requires practitioners to develop state-specific knowledge.

For the building and property industry: The building industry needs to place a greater emphasis on moisture management in the design, construction, and maintenance of buildings. There is a need for greater training and education for building professionals on the causes of mould and the principles of effective moisture management. Building defect prevention and early remediation based on robust and comprehensive mould assessment of suspect materials is more cost-effective than litigation.

Acknowledgements

All intellectual contributions originated with the author. I acknowledge the use of AI language models (Claude, ChatGPT, Gemini, Grok and Manus) for structural assistance in manuscript preparation, including formatting, reference organization, and language refinement. All data collection, analysis, interpretation, and substantive content remain solely the work of the author and were verified manually.

Conflicts of interest

The author has provided expert witness services and mould laboratory reports in property-related disputes, including matters heard by the Victorian Civil and Administrative Tribunal. These professional activities did not influence the objective analysis or interpretation of the publicly available VCAT decisions examined in this study.

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