# West Heidelberg Community Legal Service - Response to Dispute Resolution Issues Paper

## Introduction

West Heidelberg Community Legal Service (WHCLS) is a community legal centre that provides assistance to vulnerable and disadvantaged people in the City of Banyule. For almost 40 years, WHCLS has operated a unique integrated legal service delivery model through its co-location with Banyule Community Health (formerly West Heidelberg Community Health Service Inc.). On 1 July 2014, WHCLS formally merged with and became a programme of Banyule Community Health (BCH).

While our community is diverse, the SEIFA Index (an index of relative socio-economic disadvantage) indicates that suburbs within Banyule such as West Heidelberg, Heidelberg Heights and Bellfield are some of the most disadvantaged in Australia.

The provision of advice and assistance in respect of tenancy matters comprises a significant proportion of our service's caseload. In addition, since March 2015, we have been undertaking a project about the barriers to tenant attendance at the Victorian Civil and Administrative Tribunal (VCAT). "*You'll never know if you never go: improving housing and health outcomes for tenants by understanding and addressing barriers to VCAT attendance",* is a two year project funded by the Victorian Legal Services Board.

It is on the basis of this experience of assisting vulnerable clients with tenancy disputes, and with the benefit of our recent focus on tenant engagement with VCAT that we make the following submission to the Dispute Resolution Issues Paper recently released as part of *The Review of the Residential Tenancies Act*. In keeping with the parameters of our project, we will focus in particular on dispute resolution at VCAT. We note, however, that our project has yet to enter the research consolidation and analysis stage. As such, project findings outlined here are preliminary. The project's final report will be available in May 2017.

Further, our project is focused on an examination of tenant engagement with VCAT in instances where the tenant is a respondent to an application brought by a landlord. We note that data published annually by VCAT shows an overwhelming disparity between the rate at which landlords and tenants initiate applications at VCAT to access a remedy or enforce a protection provided by the *Residential Tenancies Act 1997* (Vic) (the Act). The reluctance or inability of tenants to initiate applications at VCAT means that there is often a material gulf

between the statutory protections and entitlements afforded to tenants and their lived experience. We endorse any submissions made by other organisations in the legal assistance sector which address this important issue.

**Preliminary Project Data Sample**

Between September 2015 and June 2016 we have observed and collected data from more than 350 Residential Tenancies List (RT List) hearings at VCAT's Preston venue. Initial collation of a data sample (100 hearings) collected during these observations provides evidence of the low rate of tenant attendance at VCAT hearings. It also shows clearly, as expected, that there is a significantly increased likelihood of negative outcomes for tenants who **do not** attend a hearing in which they are the respondent.

Data obtained from the first 100 hearings observed as part of the project, showed the following:

- The tenant was the respondent in 92 of the applications heard (with a further 2 hearings being to determine a tenant's application under s.120 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) for a review of an earlier Order made in favour of the landlord).
- Where the tenant was the respondent, the tenant hearing attendance rate was 28%.
- Where the tenant was the respondent and the matter was determined (i.e. substantive Orders made) the attendance or non-attendance of the tenant had a significant impact on the landlord's likelihood of success. Where the tenant **did not** attend, the landlord was substantially successful in 93% of matters. Where the tenant **did** attend, the landlord was substantially successful in 29% of matters.
- Almost half (45%) of hearings were in respect of applications brought by landlords for a possession Order. Most (90%) of these applications related to the tenant's alleged accrual of rental arrears.
- The tenant hearing attendance rate for applications where the landlord sought possession was slightly higher (32%) than the overall tenant attendance rate.
- Based on information provided to VCAT by the landlord or the landlord's representative, it appeared that in 89% of instances where the tenant failed to attend the hearing of the landlord's application for possession, the tenant remained in possession of the rented premises at the time of hearing. In other words, in 89% of possession Order applications in which the tenant failed to appear there was no evidence that the tenant had taken steps to relinquish or abandon the tenancy.

**Recommendations**

1. **VCAT regularly publish its data about tenant attendance rates at hearings.**

Currently, in its Annual Report, VCAT publishes data about applications to the RT List by case type and applicant type. This information provides a number of useful measures which tenant representatives and other stakeholders can track and compare over time.

In a 2010 discussion paper, *Transforming VCAT,* Justice Iain Ross stated that tenant non-attendance rates at the Tribunal were high, citing a figure of approximately 80%. Strikingly, though it is widely acknowledged by VCAT, and within the legal assistance sector, that tenant non-attendance at VCAT is an issue of note, there is scant quantitative evidence on the topic. In addition to reliance on anecdotal experience, the figure of 80%, despite now being six years old, remains the usual basis on which it is asserted that tenant non-attendance at VCAT hearings is a problem.

In the last decade, numerous VCAT reports, reviews and papers have referred to the implementation of measures designed specifically to improve the tenant attendance rate (e.g. SMS hearing reminders). However, there is no publicly available evidence to indicate the success or otherwise of these measures. Similarly, in recent years VCAT has implemented various service delivery improvements (e.g. an expansion of the number of venues in which it sits). It might be expected that this, and other measures not here mentioned, might affect the numbers of tenants attending hearings at VCAT. Unfortunately this evidence is not publicly available.

We respectfully submit, that the numbers of tenants *responding* to VCAT applications brought by others is at least as important a measure of tenant engagement with VCAT, and access to justice, as the number of tenants *bringing* applications. Further, if there were any perception that low tenant attendance rates at VCAT were accepted as intractable, the regular publication of these rates would challenge this perception and instead establish firmly that VCAT and other stakeholders see this as a measure that can and should be improved.

**2. VCAT improve its method of notifying tenants about hearings, in particular that it significantly alter the Notice of Hearing sent to tenants.**

The current form of the VCAT Notice of Hearing requires significant improvement and alteration. The Notice of Hearing is the principal means by which VCAT communicates with the approximately 55,000 tenants who, annually, will be a respondent to an application made at the Tribunal. Receipt of a Notice of Hearing is very often a tenant's first contact with VCAT.

Yet, the Notice of Hearing is intimidating and confusing. Rather than contributing to improved engagement with tenants, we submit that it is in fact a hindrance to tenants, particularly as respondents, engaging with VCAT. In discussions with housing support organisations consulted as part of our project, the Notice of Hearing was described as "impenetrable" and "archaic".

The Notice of Hearing recommends that parties "allow a minimum of two hours for [their] attendance" and refers to "bring[ing] witnesses" and "present[ing] your case". This explains little about VCAT or its role. It does little to assure a tenant, who will likely not have legal representation, that the Tribunal is intended to be an accessible and informal avenue for dispute resolution. In this way, the current form of the Notice of Hearing is entirely at odds with VCAT's otherwise commendable attempts to improve engagement with its services.

Further, the Notice of Hearing, provides little practical guidance to tenants about what steps they should take or where they might seek advice about the application that is the subject of the proceedings.

Across all of its lists, respondent tenants, as a group, are the single largest type of party that VCAT engages with. We submit that its method of communicating with this group must be directed specifically at delivering the information respondent tenants require, and in a clear and accessible manner. This will likely require the abandonment of the single page telegram-like Notice of Hearing and its replacement with an ordinary document which sets out the information respondent tenants require in plain English, including suggested contacts for legal advice or other support.

The format of the Magistrates' Court of Victoria's documentation to parties to proceedings before it, provides an indicative template for such correspondence.

Similarly, we submit that VCAT should trial different methods of communicating with respondent tenants about hearings, including by telephone or email. These methods should not be seen as a replacement for an improved Notice of Hearing but rather, would supplement the Notice and improve VCAT's accessibility.