

Noel Allenby Submission and covering letter for the Dispute Resolution Issues Paper

While I am submitting from a landlord's perspective, having read the information presented and monitoring both the FSH website and Facebook page I absolutely support moves to bring poor landlords into line while maintaining the viability of the private rental sector in this state.

As a landlord who will work with tenants to put pictures on the walls, hang TV's, put in block out blinds for night shift workers and respond promptly to repair requests, it angers me to hear of tenants waiting weeks for basic services such as cooking or hot water service. This process we are currently in needs to make the system better for both sides rather than slant it one way or the other.

Since the last submission on the Rights & Responsibilities Issues paper I have been talking to as many landlords/owners as possible to get a feel of the level of knowledge & understanding of what is happening in this space and **found a near 100% lack of awareness** that the review was even happening and upon further discussion **a high degree of concern** about the possible direction of the Victorian residential tenancies market. I have also contacted all my local Real Estate agents who manage property to see what they know about the current review and was shocked by the response.

Most of the agents have no real idea of the far reaching implications of some of the proposals made by some of the tenant advocacy agencies, such as the TUV. Upon discussion it became apparent that most agents have no time to even consider putting in a submission and are leaving it entirely up to the REIV to do a submission on their behalf.

What also became apparent in conversing with agents is the complete and absolute frustration agents are having with VCAT processes, particularly around the length of time it takes to get a resolution and the then subsequent lack of accountability by the tenant when judgement is made against them. Situations such as tenants having pets without permission (despite extra clauses in agreements signed by the tenants) and then subsequent damage being inflicted on the property by the tenant not taking adequate care of the pet and damage being caused, e.g. to carpets by cat urine and backyards by dogs.

VCAT appear to have become an advocate for tenants' rights rather than an independent arbiter of disputes. The recent case in relation to short term accommodation providers such as Airbnb where a VCAT decision was set aside by the Supreme Court is a case in point where VCAT ruled against a landlord on what was a point of fact that in the standard RTA agreement a tenant cannot sub-lease a property without a landlord's permission. Similarly, I have seen anecdotal reports on Facebook and discussion boards where tenants complain that VCAT have favoured a landlord in disputes. VCAT should be making clear consistent decisions based on law, that can then be relied upon by all parties, rather than based on emotive arguments with no application of the law.

Most of the agents have not let landlords/owners know of the current RTA review in process and feel

that most landlords owners do not have the time required to submit an effective submission, which I can understand as each paper takes many hours to read/evaluate and knowledgeably respond to. While the REIV is making submissions on behalf of real estate agents, they are looking after agents, not landlords, and their interest is in converting more landlords to use agents. So while those landlords using an agent are not well represented in this review over one third of landlords self-manage their properties and they do not have a voice here.

Unlike landlords, who are mostly busy people with day jobs that rent properties as an investment for their future, tenant advocates like TUV and ACOSS receive government funding to employ lawyers to read and respond to these large papers, creating an imbalance in feedback as the government isn't funding submissions on behalf of landlords.

Something I have learned from this paper is that the CAV funds **11 different TAAP** agencies to advocate/support tenants and in a fair society it is a good thing that there is support for tenants especially the Vulnerable and Disadvantaged groups. I do wonder if there has been any thought given to the fact that 11 different agencies have 11 lots of admin support staff, 11 lots of property to lease, 11 lots of utilities to pay 11 lots of vehicles to run etc etc which reduces the available funds to support tenants. From my own experience, the lack of information in the CAV guide to tenants and even looking at Facebook posts by tenants on the Fairer Safer Housing site, it's obvious that tenants do not even know about all these agencies which indicates that the CAV would be better off putting that funding into a one stop more effective central agency to provide excellent support to tenants.

Also I wonder if CAV are even aware that when calling the likes of the TUV (which I have done) and when waiting in the queue, their on hold messaging tries to push tenants to a paid service rather than promoting any of the other 11 agencies. How is this supporting the average tenant, let alone the Vulnerable and Disadvantaged tenants?

A common theme in conversations I have had with owners (also seen on the Fairer Safer Housing Facebook page) is, if some of the proposed anti owner/landlord regulations are implemented, then there are other asset classes such as commercial real estate and/or other states that have more landlord friendly legislation where people will move their investments to.

Finally a trend has appeared in this Dispute Resolution paper which is the very high use of the term "vulnerable and disadvantaged" to describe an area of the tenant sector (yes the terms Vulnerable and Disadvantaged have been used in other papers separately or with the word "or" between them) which in this paper the term has been used 22 times.

The concern here is what is going on and what is the actual definition of a "vulnerable and disadvantaged" tenant and then the actual statistics of how many are in the rental market to quantify the possible problem.

Number of times used in the various papers.

22 times Dispute Resolution

3 times in the Rights and Responsibilities of Landlords and Tenants

0 times in Rent, bonds and other charges

0 times in Security of tenure

5 times in Laying the Groundwork

It is of vital importance that the current system is brought into the modern era to create a better system for **both tenants and landlords** without creating capital flight from the state which will only increase the lack of adequate well regulated housing especially at the lower end of the market. If the private rental market no longer provides affordable housing, the state government will be pressured to invest more heavily in community and public housing to make up the difference, which is precisely the preferred outcome sought by the TAAP agencies such as TUV and ACOSS. This would appear to be a good solution however history has shown that State and Federal Governments have been divesting themselves of public assets for decades and this applies very much in the area of public housing.

1 What characteristics of the residential tenancies sector (if any) are relevant to its dispute resolution system?

Often a disconnect happens between the tenant who is looking for a mansion for as little as possible and to treat it as their castle (except when it comes to taking care of the property) and the owner (or agent when good) who just want the tenant to pay on time, look after the property and cause no problems in the local community.

Despite this the majority of agreements in place work and when it breaks down it requires speedy solutions for both parties to resolve. As it's often an emotive issue due to the nature of accommodation/shelter, high levels of investment and people's needs it is important that these disputes are settled promptly so that both sides can get on with life.

2 What are the key outcomes that a residential tenancies dispute resolution system should aim to provide for?

I would prioritise the issues of speed and certainty – if it's slow it creates an issue for both parties (including escalating costs) and too often if there is a finding against a tenant or landlord, it's never enforced (could there be a provision for VCAT to deal with it under small claims to make it enforceable?) Overall an effective mediation process that takes into account both sides of dispute and having an element of being immediately and completely binding on both parties would be useful.

3 What features do you consider important for effective residential tenancies dispute resolution mechanisms?

Low cost for both parties, speedy action, the ability to enforce and that would be for both sides whether it is a tenant that is not paying or a landlord who is not maintaining or behaving well. As previous question answer having outcomes that are fully binding would be useful i.e. a tenant judged against to be bound to pay without having to take further action and a landlord who has been ordered to carry out repairs or follow direction to be bound to do so promptly or the tenant to be able to have work done and deduct from future rent. In either case if a tenant or landlord is regularly appearing in disputes there is likely some sort of issue that might need to be taken into account.

4 How would you rank the importance of these features?

I think a well run process is all encompassing and doesn't really require ranking other than actioned promptly.

5 How effective are the information and advice services provided by CAV, DSCV, TAAP and other agencies as tools for parties to independently resolve disputes?

Until this discussion paper I was not even aware of options such as DSCV & FLR and I have just checked the renting a home a guide for tenants and they are not even mentioned in there. it feels almost like one of the best kept secrets of the CAV, from what I understand these agencies are only available for the use of tenants which feels unfair on landlords to only provide services for tenants.

6 How could the existing services be improved?

Firstly if landlords would also use these agencies services that would be useful, mentioning to tenants that they are available in the Renting A Home A Guide For Tenants would be useful. Having the results of any investigations carried out by these agencies available as a reference/evidence for subsequent escalation of an issue may enhance the compliance of the investigators as currently they are non binding and possibly not referenced in subsequent action.

7 What alternative or additional tools or initiatives could assist parties, including vulnerable and disadvantaged tenants, to independently resolve disputes?

Really! Currently CAV fund 11 outside agencies to assist these parties (what is not being said here is how much this is costing the Victorian Taxpayer!) so what more needs to be done? Over assisting can and does create unhealthy dependence, people who are vulnerable and disadvantaged would be better helped by training them how to work within the real world and how to find the assistance they require rather than creating unworkable burdens on landlords which will encourage capital flight from the accommodation sector.

For example (in the low cost area of rooming houses) is the onerous disabled/access requirements when setting up a new rooming house in this state, well over 99.97% of registered rooming houses have never had disabled persons applying (RAAV member survey 2015). Current legislation actually means that a standard 4 bedroom home rented to 4 people is a rooming house and needs a minimum \$50,000 of work to be made compliant!

Given the particular issues in Rooming houses due to multiple tenants in shared spaces, many of whom are vulnerable, it would be beneficial if CAV, rather than just funding advocacy services for disputes with landlords, funded a dispute resolution service for tenant/landlord and also tenant/tenant disputes. This would do more to maintain stability for this vulnerable community than the current adversarial system of advocacy.

8 How effective are the third-party assistance mechanisms provided by CAV, TAAP agencies and DSCV in dealing with residential tenancies issues?

Obviously as most people appear to not know about the third party assistance mechanisms it could be suggested that they are not actually dealing all that well with Residential Tenancies issues. As a percentage of the over 515,000 tenancies in Victoria the FLR handling of Repairs and maintenance 1,332 represents only 0.2% of total active tenancies. As for the DSCV and CAV conciliation options they are being used even less. On the numbers it would appear that TAAP agencies such as TUV are more effective however they are being funded by CAV and there is evidence that they actively agitate tenants to justify their existence.

9 What other relevant services of this kind are available to assist with residential tenancies disputes?

None known however it would appear that having the one place to go to i.e. CAV is better than having many.

10 What aspects of the third party assistance mechanisms work well?

Personally I wonder if a more informal verbal approach from CAV may be effective, used as a first quick option for both sides to essentially let the other party know that there is a problem and that CAV is aware and is trying to get things sorted out. This may be all that is required in a lot of cases to have disputes resolved and if not then there would be an initial record. Anecdotal evidence suggests that some of the third party advocacy agencies are using tenants to build cases from little substance to justify their existence.

11 What alternative or additional tools could assist parties, including vulnerable and disadvantaged tenants, to resolve disputes quickly and informally, and to prevent their escalation?

The biggest issue around disputes is a lack of clear communication and records of that communication. As I have suggested in a previous paper it would be a good idea to move to an electronic platform for the recording of RTA documents and a sub benefit of this could be the effect of recording from both sides of **tenant and landlord**. Any issues raised and the subsequent resolution of those issues should it

be needed to take it further to a more formal VCAT process i.e. if a tenant has to be reminded nearly every month to pay the rent and they do so just before the 14 day period or pay a lesser amount to string things out this would then be recorded should there be any action taken by a landlord at a later date. This would also work the other way in that a tenant repeatedly asks for a repair to be done and it's not actioned by the landlord it is also recorded.

Both tenants and landlords would then understand that from the start of the lease that any communication, what was said and what was done or not done is going to be more clearly recorded with the benefit that the offending party is more likely to take timely and effective action.

With the right support personnel for vulnerable and disadvantaged persons (one of the 11 TAAP agencies surely could do this) would also enhance the process for them by ensuring more timely response.

It would be great to have services that focus on dispute resolution rather than just advocacy. It's all fine and well to encourage tenants to go pursue their rights and/or go to VCAT, but at the end of the day, that does more damage to the tenant/landlord relationship than simply communicating and negotiating a mutually beneficial solution. Once the relationship becomes damaged, it is more likely to break down, to the detriment of both parties.

12 How effective are CAV's inspections activities in facilitating both independent resolution of disputes and resolution of disputes at VCAT?

CAV are the only agency handling resolution of disputes in regard to residential tenancies act and therefore it's hard to say how effective they are as there is no comparison. Fact that there is a somewhat independent agency handling these issues on behalf of both tenants and landlords is a good thing.

13 How could CAV's inspections activities be improved?

Making sure that they turn up when booked/arranged, keeping a sense of reality when assessing goods left behind to be kept for the person who has actually abandoned them and the impost that is placed on a landlord who then has to keep the junk!

14 How could CAV's inspections activities be of greater benefit to vulnerable and disadvantaged tenants?

If they are doing the job they are paid for there should be no extra or less benefit to this group of people.

15 What (if any) alternative or additional areas of dispute would be appropriate for the Director of CAV (or another agency) to have powers to intervene?

It would be great to have services that focus on dispute resolution for tenant/tenant disputes in the rooming house sector.

16 How effective are the ADR, hearings and other services provided by VCAT?

It may be because I have not had to use VCAT that I have not been aware of the ADR however again I note that there is no mention of it in the Guide For Tenants

17 How could VCAT's services be improved?

Looking at the numbers provided in this section it appears that there is a bigger issue with tenants not fulfilling their side of the agreement bargain etc and that landlords/agents are having to take official action to be reimbursed for the actions of tenants (as well as time/cost to CAV/VCAT). It would follow that processes by VCAT to ensure that landlords/agents don't have to go to VCAT to get reimbursed would be a great saving of time for everyone concerned.

Going back to a previous question where I indicated an electronic recording process would be useful a

VCAT person/referee/mediator could access that information perhaps call the tenant and/or the landlord and make a determination based on that information. This Would combine elements of the FLR process with the more formal and binding adjudication of a VCAT official to quickly and efficiently deal with what would appear to be often a tick the box process (turn up to VCAT meeting, tenant does not appear, box ticked judgement made).

18 What are the obstacles (if any) to tenants or landlords in taking appropriate matters to VCAT?

Cost of time.... Its an incredible waste of time to prepare and go to VCAT not to mention the unknown amount of time and money it must cost the taxpayer to run each case. Some tenants at the lower socioeconomic end of the market (read disadvantaged and vulnerable) have issues around a court like environment and are less likely to attend an official VCAT style process and may be more likely to engage with a informal binding process focused on an outcome rather than a confrontational process. For Landlords there is no support from VCAT such as the 11 TAAP agencies supporting tenants so its very hard to put together what is required to mount an effective defence/case against a tenant supported by one of the TAAP.

19 What barriers or obstacles are there to enforcing VCAT orders, and how can these be improved to achieve compliance with orders?

No experience with this area other than what I have heard which appears that VCAT have little actual teeth/enforcement once a determination is made? Do VCAT need more powers to enforce their judgements?

20 What particular or additional barriers or obstacles are there for vulnerable and disadvantaged tenants in accessing or utilising VCAT's services, or defending cases that have been brought to VCAT against them, and how can these be addressed?

There is a lot of support for disadvantaged tenants funded by VCAT and It would be great to have services that focus on dispute resolution rather than just advocacy. It's all fine and well to encourage tenants to go pursue their rights and/or go to VCAT, but at the end of the day, quick, informal dispute resolution that is solution-focussed is best for all parties and much less intimidating for vulnerable tenants.

21 How effective are the compliance and enforcement functions provided by CAV?

Who would want to be a rooming house operator as the figures provided for this question appear to focus on inspections of registered rooming houses (over 500,000 standard rentals versus less than 2,000 rooming houses and yet more inspections of rooming houses), it would be much more beneficial for vulnerable tenants if compliance action was focused on identification and compliance of the unregistered rooming house sector, where the majority of non-compliance occurs. These houses are often over-crowded, unregulated and a fire hazard. The minimum standards were introduced following the death of two people in an unregistered rooming house in 2006, yet no effort appears to be put into enforcement of the unregistered sector to bring them up to the minimum standard. Until this happens, there is potential for further abuse. Does someone else have to die before the government will address unregistered operators? For those aware of the latest Act on rooming houses there is nothing in there that will address this issue despite it being one of the most pressing issues. Also why are there not more inspections of lower quality standard rentals as there appears to be many tenants not getting basic maintenance and services in these properties.

22 How could CAV's compliance and enforcement functions be improved?

Yes it's the same answer as above, Who would want to be a rooming house operator as the figures provided appear to focus on inspections of registered rooming houses (over 500,000 standard rentals

versus less than 2,000 rooming houses and yet more inspections of rooming houses), it would be much more beneficial for vulnerable tenants if compliance action was focused on identification and compliance of the unregistered rooming house sector, where the majority of non-compliance occurs. These houses are often over-crowded, unregulated and a fire hazard. The minimum standards were introduced following the death of two people in an unregistered rooming house in 2006, yet no effort appears to be put into enforcement of the unregistered sector to bring them up to the minimum standard. Until this happens, there is potential for further abuse. Does someone else have to die before the government will address unregistered operators? For those aware of the latest Act on rooming houses there is nothing in there that will address this issue despite it being one of the most pressing issues. Also why are there not more inspections of lower quality standard rentals as there appears to be many tenants not getting basic maintenance and services in these properties.

23 What are the problems, issues and gaps (if any) that impact the effectiveness (comprehensiveness, coherence and efficiency) of the overall system for dispute resolution in residential tenancies?

A problem I see here is a lack of factual information on the scope of any problems. When looking at table 2.1 it would appear that there is a huge amount of compliance and/or dispute problems but no real idea of what percentage there are, for example in this document it's stated that In 2014-15, CAV provided 1,115 rental reports. but there is no indication if that is 10% 1% or .0001% of all rent reviews so is there a problem that is worth addressing? Also, of those reports, how many were found in favour of the tenants? If it was very low, then what is the point of providing this service? This is all the way through this RTA review process there are problems identified with no actual quantitative assessment of the current situation and more importantly the possible effects that proposed changes could have. Coupled with this is the fact that advocacy groups focus on an adversarial approach rather than cooperative dispute resolution. VCAT also seem to interpret things however they want depending on the attitude of the member on the day.

24 What additional information or data would assist in evaluating the effectiveness of the residential tenancies dispute resolution mechanisms and the system as a whole?

See previous answer, the old maxim of garbage in garbage out applies. If problems/situations are being presented as facts with no actual data behind them and solutions are based on emotive reaction rather than reasoned fully thought out processes then the final solutions will have a detrimental effect on one or both sides of the equation as well as costing the taxpayer more to pick up the pieces.

25 What changes or improvements to the residential tenancies dispute resolution system would better enable vulnerable and disadvantaged tenants to engage in the processes and have their disputes resolved?

CAV fund 11 TAAP agencies/organisations! If they are not active in this area then I suggest redirecting some of the funds to agencies that actually provide real assistance. Having a separate system or rules for vulnerable/disadvantaged tenants can only lead to selective selection practices by agents/landlords which will create even more of a problem.

It would be better to redirect funding to have services that focus on dispute resolution rather than just advocacy. Both tenants and landlords want quick, informal dispute resolution that is responsive, solution-focussed, much less time-consuming for everyone involved and therefore cheaper. If a vulnerable/disadvantaged tenant is being a bad tenant then they either need to be assisted to get their act together or find a solution that works better for them without making it a landlord's responsibility which WILL work against this sector in the long run.

26 What alternative or additional mechanisms used by other jurisdictions or sectors (or aspects thereof) would be suitable for residential tenancies dispute resolution in Victoria?

As indicated by CAV in this RTA review process the system is in need of review and bringing into the modern digital era. There is no doubt by looking at what is working well in other jurisdictions and utilising available technologies to enhance communications and record keeping could see some major improvements in resolution and enforcement for both tenants and landlords. In today's environment people are time poor and any system that brings about faster and fairer resolution of disputes along with savings of time for tenants landlords and regulatory authorities such as VCAT is likely to see rapid adoption by all parties. However for example the New Zealand system sounds, great, cheap and quick – but does it work? It would be beneficial if CAV provided evidence based practice on what actually works well and what doesn't in different jurisdictions rather than just outline the process – what are the pros and cons based on that jurisdiction's experience? Without understanding that, it's difficult to comment.

27 What would be the advantages and disadvantages of adopting any of the dispute resolution models or mechanisms described in this section for residential tenancies disputes resolution in Victoria?

Done well by creating a modern effective digital system suited to this state will create more advantage than disadvantage. It would be necessary for a period to continue with a paper based system for those who are not able to cope with a digital system and it should be part of the role of the TAAP agencies to assist those persons to lodge/deal with tenancy issues under any new system.

What is clear that any modern system moving forward that relies on dinosaur systems such as Australia Post and sending Cheques rather than online systems would be a retrograde step and currently disadvantages both Landlords and Tenants.

28 What features and considerations would be important for a compulsory mediation or conciliation step to be effective in resolving residential tenancies disputes?

In my previous answers I have indicated that by crafting a system that facilitates a live, comprehensive ongoing system that encompasses initial application, creation of lease, lodgement of bond, creation of condition report from both sides and subsequent communication between both parties would create a situation where any action from conciliation/mediation to action at VCAT would be much easier process as full history would be easy to see by all parties. This should facilitate speedier resolution/judgment of issues which is to the advantage of landlord/tenant and importantly the taxpayer by decreased involvement of CAV/VCAT

Both tenants and landlords want quick, informal process that are responsive, solution-focussed, much less time-consuming for everyone involved and therefore cheaper. These are the features and considerations that are important, as long as a compulsory mediation or conciliation step meets these requirements and stops disputes from escalating to VCAT, rather than just adding red-tape, it will be more effective than the current system.