



## Table of contents

Introduction .....	3
Policy goals.....	3
Information and advice services .....	4
Independent third-party assistance .....	5
Victorian Civil and Administrative Tribunal .....	6
Sector wide compliance and enforcement.....	8
Other dispute resolutions models and mechanisms .....	8
References .....	8

## Introduction

Unresolved tenancy issues are a significant factor contributing to homelessness, hence CHP is pleased to be able to provide a response to the Dispute Resolution Issues Paper, as part of the review of the Residential Tenancies Act.

Analysis of the Australian Institute of Health and Welfare (AIHW) Victorian Specialist Homelessness Services (SHS) data, shows that one third of people presenting to homelessness services in 2014-15 (36,290 people) needed help to sustain their tenancy or to prevent tenancy failure or eviction. Having access to appropriate and accurate information and effective processes for resolution of disputes is critical to ensuring these clients do not become homeless.

CHP's submission is informed by the work of the Homelessness Advocacy Service (HAS) provided by CHP. HAS is the key advocacy service for consumers seeking or receiving assistance from any Victorian community-managed homelessness assistance or social housing service. The goal of HAS is to achieve mutually beneficial resolutions for consumers and service providers. It achieves this goal by providing consumers and service providers with:

- secondary consultation
- appropriate and accurate information
- problem-solving
- complaints resolution
- referral, and
- advice.

## Policy goals

CHP was pleased to see the Issues Paper acknowledge the unique nature of the rental market when compared with other markets offering goods and services. We agree that arrangements between individuals and agents or landlords are long term, and that 'housing is something a tenant requires in continuation' (p. 8).

CHP concurs with the desired outcomes of a dispute resolution process outlined in the Issues paper, including that it will:

- deliver fast, fair and equitable outcomes consistent with the law
- accommodate constructive resolution and outcomes
- bring about compliance with the law and contractual obligations, and
- provide certainty and confidence in the market.

CHP also welcomes the recognition given in the Issues Paper of the particular challenges experienced by vulnerable and disadvantaged tenants. Unfortunately, as a

consequence of these challenges, and the underlying imbalance of power between landlords and tenants, in many cases the status quo is *not* delivering fair and equitable outcomes consistent with the law.

CHP also concurs with the features required for effective dispute resolution mechanisms outlined in the Issues paper, including that they be fair, fast, low-cost, accessible, fit-for-purpose, and certain. Each of these features is critical, and consequently we have not proposed a ranking. However, as noted below the current processes are not adequately fair, low cost, accessible or certain.

## Information and advice services

Tenants access information and advice from multiple locations. As noted in CHP's previous submissions to this review, tenants are often unaware of their rights and responsibilities, or unaware of how to exercise their rights.

Often in the first instance of a dispute arising, the landlord or agent with whom the tenant is attempting to negotiate the dispute, provides information and advice – often that is prejudicial to the tenant's interest. It is common that tenants accept at face value, and act on, the advice given directly by real estate agents or landlords.

Consequently, it is important that tenants have easy access to accurate and unbiased information about their rights and responsibilities. Currently, this can be accessed online, or via the phone advice services of Consumer Affairs Victoria (CAV) or the Tenancy Advice and Advocacy Program (TAAP). These services play an important role. However, vulnerable clients tend to need more intensive support to understand their rights and responsibilities, and how to proceed to resolve a dispute, than can be delivered online or over the phone.

TAAP in particular is an important source of information for clients of homelessness services, as they are often generally vulnerable and disadvantaged, and consequently the target group of these specialist services. Tenants are also likely to prefer to access TAAP services rather than those provided by CAV, as TAAP is specifically for tenants, rather than being a source of information for both tenants and landlords.

However, TAAP services are in high demand and are offered at just nine locations across the state. The high demand relative to available resources means that some people seeking case work are unable to be assisted. People needing face to face support who don't live near a TAAP service are also likely to miss out. TAAP phone services are also in high demand, and consequently callers often need to wait. This means that some people who need assistance miss out, both on phone advice, and in

relation to case work. Improved resourcing of TAAP services would ensure that more people who require it will be able to receive tenancy support.

## Independent third-party assistance

CHP supports effective and efficient resolution of tenancy disputes at the earliest possible stage, and the independent third-party assistance mechanisms in place can help demystify the system as well as providing tenants with valuable information about their rights and responsibilities. Independent third-party assistance can also advocate on behalf of tenants for timely resolution of issues, thus helping to sustain tenancies.

In our experience, people using homelessness services rarely engage with Frontline Resolution (FLR) or conciliation through CAV. Instead, HAS, which is a trusted service for many consumers, works to assist through advocacy and negotiation. Consumers also access TAAP services for this support.

Each of these specialist services has the skills necessary to engage with vulnerable clients who need additional support to exercise their rights. Where tenants make use of these services, they can provide a useful means of arriving at a resolution that is satisfactory to each party. This is demonstrated in the example of Zoe, below.

### Case study:

*Zoe is a woman in her late forties who has a history of trauma, and a long term addiction to alcohol. She has lived in her current private rental property for three years. Over the last seven months, her neighbours made a series of complaints to her landlord about noise, resulting in three breaches of duty notices being issued.*

*The landlord applied to VCAT and at the hearing subpoenaed the neighbours as witnesses. Zoe attended the hearing with her case worker, but VCAT awarded the landlord an order of possession based on anti-social behaviour. Zoe's case worker contacted HAS for additional support as Zoe was facing eviction.*

*The HAS Advocate contacted the landlord, suggesting mediation for all parties with a view to stopping the eviction. In discussions, the landlord agreed that better communication with Zoe could have prevented the eviction and agreed to mediation to resolve further anti-social behaviour.*

*The advocate brought together Zoe, her caseworker, the landlord and the neighbours who had been affected. During mediation, it was discovered that the Zoe was partially*

*deaf and played her music loudly because of this. It also became known that the music assisted Zoe with her Post Traumatic Stress Disorder.*

*Both the neighbours and landlord were unaware of these issues and as a group, they worked together to find reasonable solutions going forward. The landlord withdrew the eviction notice and Zoe, with assistance from her case worker, was able to stay living in her property.*

## Victorian Civil and Administrative Tribunal

As acknowledged by the Issues paper, the most significant VCAT applicants by type are landlords represented by estate agents or property managers. Tenants face considerable barriers in bringing matters to VCAT, from most including, being unfamiliar with the processes, and often intimidated by the court procedure.

Tenants without a concession card (and those who do not have adequate personal documentation) also face costs in applying to VCAT. These costs include hearing costs and the risk having VCAT award costs against them.

Consumers accessing the HAS report that they find VCAT processes difficult to navigate and the application and evidence gathering process overwhelming. The HAS advocate also reports that people being supported by this service often don't have access to tools with which to gather evidence, such as digital cameras. HAS also sees a considerable number of people with mental health issues, which compounds the challenges of accessing the VCAT process.

These barriers place tenants at a distinct disadvantage to landlords who are usually represented by real estate agents familiar with the processes of the court and the nuances of the Act, and who are generally more able to bear the risk of having costs awarded against them.

Tenants are also often reluctant bring matters to VCAT for fear of retaliation from their landlords – whether by a rent increase or issuing of a no reason notice to vacate.

In order to reduce these considerable barriers for tenants to access VCAT, the fees for applications by tenants should be waived, as should any requirement to reimburse an agents fee. The fact that the Residential Tenancies List is funded by interest on tenants' bonds reinforces the argument to remove these fees.

In addition, TAAP services should be more adequately resourced to ensure vulnerable people needing a lawyer to support them in VCAT are able to receive this service.

CHP is also concerned about the inadequacy of mechanisms to enforce VCAT orders, and the serious problems posed for tenants when the subject of their VCAT orders fails to comply. Given the very considerable barriers posed to vulnerable tenants and consumers in pursuing a complaint in VCAT, it is unacceptable that avoiding compliance is in practice, so easy. CHP believes that Act needs to give particular consideration to building in follow-up to the service model, to ensure clients secure agreed outcomes.

CHP believes that the Review of the Act should examine opportunities for VCAT to be able to award civil penalties to tenants. We agree with TUV that this would both encourage and enforce compliance.

Finally, CHP agrees with submissions that suggest that internal appeals processes should be introduced to VCAT. As it currently stands, challenging VCAT decisions involves tenants appealing a decision through the Supreme Court.

#### Case study

*David is a rooming house tenant who has lived in his current property for two years. Within those two years he has been issued two 120 day notice to vacate, and numerous breach notices for hoarding. David has a mild intellectual disability and is the subject of a guardianship order by the State.*

*David originally lived in a private rooming house where he had a room large enough to store his personal possessions but was forced to leave this rooming house when the owner sold the property and he was referred to a community run rooming house. At the new rooming house, David had much less room for his possessions, and his room became very cluttered. David was issued with a breach of duty notice for hoarding.*

*At the same time David made complaints to the rooming house about bed bugs and the anti-social behaviour of other tenants. David was not offered any mediation, and at the VCAT hearing the referee ordered that the landlord had the right to obtain an order of possession.*

*David wanted to appeal the VCAT decision as he was facing imminent homelessness, but was advised that any appeal would have to be heard through the Supreme Court. David did not have the resources or the capacity to take the matter further.*

## Sector wide compliance and enforcement

CHP is aware that in 2013, as part of the review of consumer protection, the Auditor General highlighted significant deficiencies in CAV's compliance activities. In the report, it was found that of the 24 rooming house inspections audited not one compliance officer gained entry to the property and seven were recorded as taking only one minute to complete (Victorian Auditor General, 2013).

Following this report CAV committed to addressing these issues. However, as there has not been a subsequent audit, we are unable to comment on whether these issues have been resolved.

In the past 18 months, significant changes have occurred in legislation, including the introduction of the Rooming House Operators Bill (2016). This legislation will require all operators to undergo a Fit and Proper Persons Check, and increase the penalties for operation of illegal rooming houses.

Effective compliance and enforcement activity will continue to be important to ensure the ambitions of this bill are fulfilled.

## Other dispute resolutions models and mechanisms

CHP supports recommendations made by the Tenants Union of Victoria (TUV) as part of the 'Access to Justice Review' that would:

*'[shift] the dispute resolution process in an "ombudsman-like" direction where disputes are resolved by Consumer Affairs Victoria consistent with law and proper industry practice" (TUV, 2016, p. 5).*

**We see this as the most effective approach for tenants in relation a response to non-compliance.**

## References

Tenants Union of Victoria, (2016) *Response to Access to Justice Review*, Tenants Union of Victoria, Melbourne

Victorian Auditor General, (2013), *Consumer Protection*, Victorian Government, Victoria