

20 July 2016

Residential Tenancies Act Review – Fairer Safer Housing  
Dispute Resolution Issue Paper

**By email:** [yoursay@fairersaferhousing.vic.gov.au](mailto:yoursay@fairersaferhousing.vic.gov.au)

Dear Sir / Madam,

***Submission of the Barwon Community Legal Service to the Fairer Safer Housing Review – Dispute Resolution Issue Paper***

Barwon Community Legal Service (BCLS) provides free legal advice and specialist casework services to people who live in the Geelong, Bellarine Peninsula, Surfcoast and Colac Otway regions. BCLS also provides limited services to people who live in Corangamite, Moyne, Warrnambool, Glenelg and Southern Grampians shires. Our catchment region consists of over 360,000 people with many pockets of extreme disadvantage.

We also provide community education and training directly to the community and to other community sector staff and government. We run community awareness campaigns and provide education that gives people the knowledge to self manage their situation and assert their rights. We also contribute to policy and law reform work.

The below submission is compiled with reference to BCLS experience in assisting clients and personal experiences of these client, staff and volunteers.

## Policy goals

### **Q1. What characteristics of the residential tenancies sector (if any) are relevant to its dispute resolution system?**

- The residential tenancies sector primarily includes private individuals meaning services need to be directed at the everyday person who may otherwise not have adequate knowledge.
- As the relationship between a landlord and a tenant is long term, a power imbalance can develop which may prevent a tenant from enforcing their rights – particularly when moving is costly and housing is in short supply. These are characteristics which need to be taken into account when disputes are being decided.

### **Q2. What are the key outcomes that a residential tenancies dispute resolution system should aim to provide for?**

- The system should aim to deliver fast, fair and equitable outcomes which are consistent with the law by ensuring compliance with law. Resolutions should be constructive and provide a confidence and certainty in the market which many people are a part of.
- At all times the system should aim to be comprehensive and coherent to ensure efficient and speedy resolutions.
- The system also needs to be fair and seen as such by all parties to a dispute.

### **Q3. What features do you consider important for effective residential tenancies dispute resolution mechanisms?**

- Whilst having fast and fair outcomes, the dispute resolution should have mechanisms in place to ensure that the services are accessible to all meaning that they should also be low-cost – no individual should be barred from having their dispute heard due to financial hardship.
- The method of dispute resolution should be fit for purpose in that it should be appropriate for each particular matter and should take advantage of technological advances to enable accessibility for all (eg. use of the internet and electronic service where appropriate.) It is however noted there must be

alternative mechanisms for those who do not have access or knowledge to technological based mechanisms.

- Their should be certainty in decisions, that is decisions are binding and should be transparent and consistent across the board so future tenants can look to cases with similar circumstances and judge their potential outcome. We note as the Tribunal has a lot of discretion outcome can vary to a large degree even with matters of similar facts.

#### **Q4. How would you rank the importance of these features?**

- A single feature can not be championed on its own. The system needs to be balanced and take into account the needs and abilities of all users.

### **Information and advice services**

#### **Q5. How effective are the information and advice services provided by CAV, DSCV, TAAP and other agencies as tools for parties to independently resolve disputes?**

**CAV** – CAV provide information in various forms, from website, to mobile apps to a telephone service. For parties able to access and act upon this information it is readily available. Advice can sometimes be misinterpreted if the party does not provide full particulars of what has occurred or they have a special vulnerability. CAV have the ability to refer these people to another internal service or a TAAP service for additional assistance.

**TAAP** – From a TAAP service provider prospective the information and advice service provide is of a really high standard. A lot of the time the tenants do not know the rights and obligations they have and also those of landlords. By being able to provide this information and advise to tenants via multiple different means (face to face appointments, phone appointments, out reach services, fact sheets and community legal education) tenants have quick, easy access to what they need to solve a dispute independently if they are able to.

The Tenants Union of Victoria as well as other TAAP service produces valuable facts sheets and guide that enable a tenant to understand rights and obligations in plain English.

**DSCV** – can assist parties to resolve a dispute through information provision or mediation services. The major hurdle, addressed in more detail at question 8, is DSCV is voluntary.

**Q6. How could the existing services be improved?**

- Ensuring they are well known and easily accessible when they are needed. This applies to all parties to a tenancy agreement but it's noted it is generally more important for a tenant to have access to these services as they don't have a real estate agent, as many landlords do, acting for them.
- Additional funding for service that assist vulnerable and disadvantaged tenants so those services are able to assist in a greater capacity. In some matters this can ensure a tenant continues to have a roof over their head and is not forced to rely on community and charitable services for assistance.

**Q7. What alternative or additional tools or initiatives could assist parties, including vulnerable and disadvantaged tenants to independently resolve disputes?**

Please find below a short extract from BCLS submission to Residential Tenancies Act Review – Fairer Safer Housing of 19 August 2015

***Disputes between co-tenants / Expansion of Residential Tenancies List jurisdiction***

*The RTA should be amended to allow tenants to make an application to the VCAT for a determination of disputes between co-tenants. Presently there are limited options available to tenants when these disputes arise.*

*The Dispute Settlement Centre of Victoria offers mediation, but requires voluntary consent of both all parties. There are limited services, beyond paid legal service, that can offer advice. The Residential Tenancies List of VCAT is an appropriate jurisdiction to deal with matter of this nature. It already deals*

*with tenant v tenant disputes in a limited capacity through the intervention order provisions of the RTA.*

*Presently the only enforceable jurisdictions that can hear these matters are the Courts, most commonly the Magistrate's Court. The majority of tenant v tenant disputes are over limited monetary amounts. An amendment to allow this nature of dispute would still be subject to the Residential Tenancies List \$10,000.00 limit, however for smaller claims is substantially more accessible than the Courts. The Court has higher costs, in regards to filling fees, and considerable more formalities.*

#### ***Jurisdiction of Magistrates' Court – FVIO matters***

*In 2014 BCLS acted in over 500 family violence cases.*

*In Geelong there has been a staggering 122 percent increase in the number of family violence incidents per 100,000 in the last five years. Worse still is the Colac area with a staggering 340 percent increase in family violence incidents. This is compared to a 72 percent increase across Victoria. This reflects the huge issue our region is faced with. Both Geelong and Colac form part of the catchment area in which BCLS assist with tenancy matters.*

*A delay of up to 8 weeks or more can occur between the time a person makes an application for an intervention order and its conclusion. Presently a lease can only be changed, under the family violence provisions, by VCAT on the basis of a final Order being made. Our view is that the Magistrates' Court should be empowered to deal with leases under the family violence provisions of the RTA. This would allow the lease to be dealt with at the first hearing of the intervention order application. It would ensure applicants do not have to make multiple applications to deal with the family violence and its related impacts, including changing a lease agreement due to fleeing the rental property or having another tenant excluded.*

*The RTA could further expand / change its definition to ensure either the Courts or VCAT have the power to consider applications to change a lease at an earlier stage, prior to a final intervention order being made. These provisions could be similar to those contained in the Residential Tenancies and Rooming Accommodation Act 2008 (QLD), sections 245 and 246.*

### **Independent third-party assistance**

#### **Q8. How effective are the third-party assistance mechanisms provided by CAV, TAAP agencies and DSCV in dealing with residential tenancies issues?**

**CAV** – CAV effectiveness depends on the type of issue and the type of client. For more straightforward issues and those that can be solved by provision of information, CAV can be effective. Further, for more capable clients, the advice-only model can be effective in empowering the client to self-help a solution. However, for more complex matters and for clients who are less capable, and possibly vulnerable, CAV does not offer the casework continuity that might be called for. For example, clients who do not obtain satisfaction via Frontline Resolution or conciliation are not assisted in taking their matter to VCAT. They are referred to a TAAP agency, who must build a case from scratch, often with little time before a hearing.

**TAAP** – TAAP agencies see a lot of tenancy matters and their capacity to help is limited by their funding. Many clients ask assistance from TAAP agencies to help with VCAT hearings. With limited resources TAAP agencies can only offer limited assistance. This will often mean the assistance is advice-only, when the client wants and potentially needs, something more, such as representation at a VCAT hearing.

**DSCV** – DSCV may be effective in reaching a resolution, however the parties must first attend for this to happen. Often relationships are so soured, and the power imbalance so stark, that the tenant is reluctant to be in the same room as the landlord. DSCV is a great asset for dispute resolution, but its main issue lies in its voluntary nature. Where one or both parties are hostile to each other, DSCV cannot do the very thing its name professes. Because tenancy can be quite an adversarial

area of law once there has been a break down in the relationship between the parties, DSCV can only help in the some of cases where the parties are on good terms or willing to participate. DSCV however has the ability to mediate between co-tenants, where the majority of other services have no or very limited ability to do so.

**Q9 What other relevant services of this kind are available to assist with residential tenancies disputes?**

Some community and charitable groups, such as the Salvation Army, offer support to people in tenancy difficulties. This may take the form of financial assistance or emotional support. Tenants may also be linked in with a community agency and have a case worker that can offer assistance when liaising with landlords or real estate agents.

**Q10 What aspects of the third party assistance mechanisms work well?**

**CAV** is easily, and widely, accessed. A number of the clients we see at BCLS have first spoken to someone at the CAV call centre. This helps to address the information asymmetry that often exists in a landlord-tenant relationship. It only goes part way to solving the power imbalance that also therein exists. TAAP agencies, with their capacity to offer slightly more in-depth assistance, are able to take information about tenant rights and translate this into a challenge to the power imbalance, by representing the client in negotiations with the landlord, or at VCAT hearings.

**DSCV** offers a potentially less confrontational way to resolve the dispute, or an arena to resolve that is not fundamentally adversarial. (While VCAT seeks to provide a forum for hearing matters without the fees and lawyers associated with litigation, it is still based on an adversarial model, where each party presents evidence and argues their case before a decision is imposed.) By agreeing on an outcome in a non-adversarial atmosphere, parties to mediation can preserve good relations. This is important for many tenants who value the bigger picture of continuing in their accommodation, or being able to apply for future accommodation with that same real estate agent, over enforcing a particular legal right.

**Q11 What alternative or additional tools could assist parties, including vulnerable and disadvantaged tenants, to resolve disputes quickly and informally, and to prevent their escalation?**

Please find below a short extract from BCLS submission to Residential Tenancies Act Review – Fairer Safer Housing - Rental Responsibilities issue paper of 17 May 2016

***What, if any, measures should be available for tenants and landlords to address a breach of duty before seeking redress at VCAT?***

*Negotiations and mediation should always be available to avoid the need to initiate proceedings at VCAT.*

*This would also remove the ability of unscrupulous Landlords and Real Estate Agents to threaten VCAT when VCAT is seen as a respected authority comparable with a Court of law to many tenants who have never been “in trouble with the law”*

Increasing the evidential threshold to initiate a VCAT action would prevent VCAT being used as a weapon of first resort by landlords seeking to resolve a dispute. In particular it would protect the vulnerable, who feel the threat of ‘going to VCAT’ particularly strongly.

## **CAV inspections**

**Q12 How effective are CAV’s inspections activities in facilitating both independent resolution of disputes and resolution of disputes at VCAT?**

In themselves they may not have an enforcement effect. BCLS has helped clients who have availed CAV’s inspections activities but find the legal right linked to the subject matter of that inspection goes unenforced until and unless our client is prepared to go to VCAT to have the right enforced. Where the landlord is being difficult, evidence from a CAV inspection is very useful.

**Q13 How could CAV's inspections activities be improved?**

Whilst we note there are limited resources and the majority of inspections activities are already undertaken quickly, from observations within a fortnight, ensuring a quick response to requests is vital as there are delays at each stage of the process. A non-urgent repair matter can take well over a month and a half, even if everything runs smoothly from the initial notice to landlord to a VCAT determination stage.

**Q14 How could CAV's inspections activities be of greater benefit to vulnerable and disadvantaged tenants?**

CAV monitors compliance. Without monitoring there can be no prosecution. But the reverse might also apply: without prosecution there may be no compliance. To ensure CAV's inspection activities deliver the greatest benefit to those who need them most, CAV's inspection activities need to occur in an atmosphere of enforcement. Currently, the statistics do not suggest such a general atmosphere exists.

**Q15 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?**

Please find below a short extract from BCLS submission to Residential Tenancies Act Review – Fairer Safer Housing of 19 August 2015

***Creation of a public Landlord/Estate Agent reputation database***

*There are some instances of poor conduct by landlords and agents, just as there are bad tenants. Our view is that a landlord/agent database should be established and maintained where records of non-compliance with or breach of the RTA can be publicly accessed as a guide for tenants seeking good landlords or agents.*

*Once one tenant has had to deal with various, sometimes ongoing, problems with a landlord or agent, they often vacate the rented premises with the problems outstanding, and a subsequent tenant moves in to face the same problems.*

*Many tenants are scared to pursue their rights for fear of being given a Notice to Vacate or not being able to secure another rental property due to a bad reference. A database system could be along the lines of those that presently exist for listing tenants. The basis of a listing might be, for example, if a tenant is awarded compensation as the landlord has failed to comply with a VCAT repairs order.*

*By listing both landlords and agents an additional incentive would be created for agents to have the correct authorities to be able to undertake repairs when a landlord is refusing the delays or not contactable. Any database system could run alongside existing complaint mechanisms regarding real estate agents.*

*Databases would have to be free or of low cost to tenants who wish to list a landlord or agent, and freely accessible to all potential tenants. Proper checks and balances would need to be put in place before a listing is approved, for example a copy of a VCAT order.*

## **Victorian Civil and Administrative Tribunal**

### **Q17 How could VCAT's services be improved?**

Please find below a short extract from BCLS submission to Residential Tenancies Act Review – Fairer Safer Housing of 19 August 2015

#### ***Recovery of monies owed under a VCAT order***

*A simple, streamlined approach is required to allow recovery of monies owed under a VCAT Order. The current process is cost prohibitive and generally not viable given the amount that may be recovered. This can relate to when either a tenant or a landlord has an order made in their favour.*

*One approach to this, in regards to when a tenant has an order made in their*

*favour, is on the provision of a statutory declaration to support a VCAT order, rent from rental property may be paid to the tenant. This may involve an Order that can be directed towards subsequent tenants or property managers. It would have a similar effect to a garnishee order obtained through the Magistrates Court.*

**Q18 What are the obstacles (if any) to tenants or landlords in taking appropriate matters to VCAT?**

Landlords are comfortable using VCAT. Real estate agents are usually acting on their behalf and attend regularly on a wide range of matters. Tenants find VCAT foreign and daunting. Clients understand it is adversarial and think that means it is just like going to court. Some are worried about the stigma of 'court action'. Others are worried about appearing before the Member and fear public humiliation. Some clients, given a choice of enforcing a right or not going to VCAT, have stated they will elect the latter.

Please find below a short extract from BCLS submission to Residential Tenancies Act Review – Fairer Safer Housing of 19 August 2015

***Equity of access.***

*The Residential Tenancies list at VCAT is almost entirely used by landlords against tenants with 95% of matters on the tenancies list being landlord initiated. 80% of all landlord initiated matters are undefended.<sup>1</sup>*

*We believe that vulnerable and disadvantaged tenants are reluctant to assert their rights under the Act for fear of landlord retribution ie) may lead to a loss of housing. It would be beneficial to tenants that any Notice of Hearing in the*

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<sup>1</sup> Justice Kevin Bell, One VCAT President's Review of VCAT (30 November 2009) VCAT, 25 [www.vcat.vic.gov.au/resources/document/transforming-vcat-one-vcat-presidents-review-vcat-november-2009](http://www.vcat.vic.gov.au/resources/document/transforming-vcat-one-vcat-presidents-review-vcat-november-2009) quoted in Home Sweet Home – Act for the house not the tenant, Footscray Community Legal Centre Inc 2013, Jane Berry at page 4

*Residential Tenancies List be accompanied by a referral list of local tenancy advice providers or alternatively some further information about rights and Consumer Affairs Contact details (who fund a lot of tenancy advice providers).*

*There has also been some procedural issues with both the VCAT online and RTBA online facilities only been available to landlords or there agents. It is noted steps are being taken to address access issues for tenants in regards to VCAT online.*

**Q19 What barriers or obstacles are there to enforcing VCAT orders, and how can these be improved to achieve compliance with orders?**

- We refer to the answer to question 17 above and note it is also applicable to this question.
- Furthermore, enforcing compensation Orders made at VCAT is currently cost prohibitive in many cases. Due to amount of compensation ordered (usually well under \$10,000) enforcement proceedings through the Magistrates Court are a risk of throwing good money after bad. This is in addition to the fact many tenants BCLS assist would not have the legal knowledge to navigate the enforcement systems or the financial means to gamble on this process with no guarantee they will ever recover money owed.
- In regards to repair orders (compliance) VCAT has many options at its disposal including rent being paid into a special account or a daily amount of compensation. These are normally effective but it can be a long process for a tenant sometimes having to live with a large inconvenience in the mean time.

**Q20 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?**

VCAT has taken strides in active information provision. The sms service that notifies parties to VCAT hearings is one example. Practical barriers still exist to accessing 'passive' information however. BCLS clients have previously report hanging up on

the VCAT information line because the wait is too long, although this has substantially improved over the last couple of years.

And while overall the provision of information by VCAT is good, vulnerable people by their nature require more than information provision. Some need support. Many need an advocate, particularly for appearances. Magistrates' courts often have court support workers and duty lawyers, provided by VLA and community legal centres. Similar support services are needed at VCAT. Currently 80% of all landlord initiated matters are undefended. If VCAT offered and advertised to tenants support workers and duty lawyers, maybe this unfortunate statistic might be addressed. This could be sent with hearing notice.

## **Sector-wide compliance and enforcement**

### **Q21 How effective are the compliance and enforcement functions provided by CAV?**

- There are minimal prosecutions.
- Understandably this is resource intensive and expensive but landlords, rooming house operators and park managers know they are very unlikely to be prosecuted for breaches their obligations. Noted in the issue paper there are only 2 prosecutions commenced in the 2014 – 2015 year. (TABLE 2.6)
- This means in many cases there is very little recourse for tenants for what can be systematic, ongoing breaches.
- Some landlords would be in the position where they would just get rid of the current tenant and move on to the next. It is likely they face a small compensation claim through VCAT as the worse consequence.
  - o Eg. Refusing to do repairs, misleading and threatening tenant that they will be kicked out if they cause a fuss.
- Further behaviour includes changing real estate agents on a regular basis.
- CAV are best positioned to deal with these issues.
- Another example is where a real estate agency makes excessive compensation claims for cleaning almost regardless if the property was in a clean state when a tenant vacated or not.

A greater focus on deterrence is necessary. Compliance and enforcement are only helpful after the fact, so the only aspect capable of deterring behaviour contrary to the legislation is education provided through CAV. Education can tell a person that what they are doing is wrong, but it will not deter them from doing it. There were only 2 prosecutions commenced in the 2014 – 2015 year as noted in the issue paper, which does not put on a display of force that informs landlords and tenants of the minimum standard of behaviour accepted by the law. Resources can be poured into education, but education will not stop a dishonest person. Resources might be better off allocated to helping with deterrence.

- Difference between ignorance and deliberate behaviours.

**Q22 How could CAV's compliance and enforcement functions be improved?**

- Education, information and inspections are all great tools in ensuring compliance.
- The majority of landlords, rooming house operators and park managers comply with their obligations. Some ignorantly breach these whilst a small percent engage in the behaviours refer to in question 21.
- CAV need to actively show that deliberate non-compliance will be swiftly dealt with.
- This can include the issuing of infringement notice and more prosecutions. If these are well publicised it will hopefully ensure compliance.
- CAV has a large data set it can rely upon and they could also use TAAP and other external databases (with relevant client consent).
- An official warning could be sent out for first time offences along with relevant information to help ensure future compliance.

## **How effective is the current system for residential tenancies dispute resolution?**

### **Q23 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?**

- There is an inherent power imbalance between landlords and tenants. A system needs to protect all parties to a tenancy agreement in a fair and just way. Landlord often have a property manager acting on their behalf whilst tenants are reliant on information they can collect or organisations that provide advice or assistance.
- There are some enforcement of VCAT order issues as noted above in questions 17 and 19.
- There are some inconsistencies with VCAT decisions. As VCAT members have a large amount of discretion you may get different decisions for matters with very similar facts. It is understood Members are provided guidance on this but a public document outlining some common decisions and the factors considered would be useful to be able to provide parties with more accurate advice about a likely outcome.
- Following the tenancy legislation, the dispute resolution system contemplates disputes between landlord and tenant. Disputes between tenant and tenant are not well provided for, leaving few options if the matter can't be resolved through mediation.

### **Q24 What additional information or data would assist in evaluating the effectiveness of the residential tenancies dispute resolution mechanisms and the system as a whole?**

There are some statistics, as outlined in the issue paper, on outcomes when third parties provide front line resolution, conciliation and mediation. Less is known about tenants who avail themselves of advice and information from these third parties but do not act on it, for example, the 80% who do not attend to defend a VCAT application. Why did they not attend? Did they know about the hearing but found it too daunting? Would they have gone if they had been offered representation?

- A Survey or information as to why –
  - o A large number of tenants do not attend VCAT hearings.

- How many tenants do not enforce their rights and the reasons for this.
- How many matters need further intervention or are abandoned after initial assistance is provided, eg. CAV front line resolution service or initial advice from a TAAP organisation.

**Q25 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?**

- If there was an additional step between agencies assistance and VCAT, as noted in some other jurisdictions in the issue paper, tenants may be more willing to participate and hopefully a better relationship between all parties to the dispute is retained.
- Funding – TAAP agencies (and similar organisations) can only assist a limited number of people for the funding they receive. As demand is very high the scope of the assistance needs to be adjusted. From the legal assistance point of view, BCLS first approach is self empowerment through provision of information and resources, the second is assistance with negotiations or completion of paper work and lastly is running a matter through the above steps and representation at VCAT if needed. BCLS also tries to provide a more holistic approach with referrals to other services to assist with non-legal aspects of the matter – this can include housing services.
- More support services for tenants. Information is generally easily available, but vulnerable people often need more than information provision. The lack of a support person or a legal advocate who can represent tenants is an obstacle preventing them acting on this information provided to them.
- Victoria Legal Aid funding being available for tenancy matters would also be desirable.

## Other dispute resolution models and mechanisms

### **Q26 What alternative or additional mechanisms used by other jurisdictions or sectors (or aspects thereof) would be suitable for residential tenancies dispute resolution in Victoria?**

- The ability of the Magistrates' Court to deal with tenancy matters at the same time as family violence matters. This is discussed in question 7 above.
- The issue paper refers to the Queensland model entitled 'Notice of Unresolved Dispute'. Even if this was not fully implemented with a conciliation process it serves as a very good idea. There could be at least a minimal amount of negotiations with particulars to be provided and disclosure obligations. This would help ensure all parties are model litigants and prevents parties been ambushed with large amount of documents minutes before a hearing.
- The issue paper further refers to a New Zealand model entitled 'FastTrack Resolution'. This approach gives more certainty to any agreement reached between parties, is of very low cost and can be achieved in a short time frame. This will hold all parties to account. A suggested check would be to ensure tenants have been offered an opportunity to obtain advice from an appropriate service before signing an agreement.
- Mediation is another mechanism that could be beneficial. This is discussed in question 28 below.

### **Q27 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?**

While the Canadian Online dispute system, as referred to in the issue paper, is a barrier to tenants who do not have online access, a supervised, and scrutinised, arms-length negotiation would appeal to those tenants uncomfortable with, or intimidated by, the prospect of sitting in the same room as the party with whom they are having a dispute. Also, by providing information and monitoring negotiations it may also address the information asymmetry and power imbalance that characterises the landlord-tenant relationship generally and specifically their dealings in disputes. Comparative to other systems this would be cheap, quick and

has the further advantage of not being bound by geographical constraints. With advancing technology, this system could also benefit the efficiency of process in the dispute resolution mechanism. Parties could upload documents and information that could then be passed on electronically to related organisations, as such parties wouldn't have to multi handle evidence for matter – eg. a tenant would not need to re-tell story to multiple organisations and then a Tribunal.

**Q28 What features and considerations would be important for a compulsory mediation or conciliation step to be effective in resolving residential tenancies disputes?**

- A compulsory mediation or conciliation step could be beneficial in trying to resolve disputes at an earlier stage and preserve the relationship between the parties. The issue paper, in reference to retail leases, indicates mediations have a high success rate. Factors that would need to be considered are the cost and any time delays it may cause in reaching an ultimate resolution. If a process to fast track urgent matters was implemented this may alleviate some concern.
- A suggested check would be to ensure tenants have been offered an opportunity to obtain advice from an appropriate service before attending a mediation to address any power imbalance between the parties.
- At a minimum a compulsory disclosure and an attempt at negotiations should take place for all non-urgent, non family violence related matters. This could be similar to the Queensland 'Notice of Unresolved Dispute' as mentioned in the issue paper and question 26 above.

**Conclusion**

All legislation should be subject to ongoing review. The submissions suggested above could be introduced gradually but any suggestion introduced would be a good step forward.

**Barwon Community Legal Service**

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