



Submission to Consumer Affairs Victoria Dispute Resolution Issues Paper

Residential Tenancies Act Review
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1st Contact

Kate Wheller
Executive Officer
Community Information & Support Victoria
03 9672 2001
kate@cisvic.org.au

2nd Contact

Minh Nguyen
Advocacy & Research Manager
Community Information & Support Victoria
03 9672 2004
minh@cisvic.org.au

Capacity to Submit

Community Information & Support Victoria (CISVic) is the peak body representing local community information and support services representing 60 community-based, not-for-profit agencies, staffed by over 300 paid staff and in excess of 3,000 volunteers.

Our local services assist people experiencing personal and financial difficulties by providing information, referral and support services including Emergency Relief (ER), financial counselling and financial literacy. Our agencies provide free services to an average of 300,000 people every year.

We direct people who need help to local centres for services.

Helping those most in need Our main work is with the vulnerable and disadvantaged, including those on welfare payments, single parents, newly arrived, refugees, those with mental health issues, drug and alcohol issues and those experiencing family violence and family breakdown.

Emergency relief Many of our agencies can provide emergency relief, both financial and practical, by providing food, food vouchers, travel cards, petrol vouchers, assistance with household bills, rent, pharmaceutical supplies and telephone bills.

One voice for many We liaise with all tiers of government and other peak bodies, conduct training and undertake sound, evidence-based research. We are grateful to the State and Federal Governments for their funding support for core and special projects. We also have increasingly strengthening contact and cooperation with a range of peer organisations.

This is a vital interface for not just CISVic and its members but also for the community support sector as a whole, exploring more effective use of resources, skills and funding conduits. This has included partnerships to deliver important training to volunteers and community workers.

We also sit on a number of state & federal government groups including a State Ministerial Advisory Council and Federal Consultative Committee and other relevant peak body advisory groups, including VCOSS (Victorian Council of Social Services), the ultimate state community peak body.

CISVic agencies are embedded in their communities

The CISVic membership service model is place-based and holistic in working with its communities and clients. The provision of supported services by CISVic member agencies is primarily directed at vulnerable and disadvantaged families and individuals who fall through service gaps. As generalist services providing a range of free, confidential and supported services, we connect vulnerable people and families to vital services and their communities.

Collectively, the CISVic ER Consortium of thirty (30) agencies, is the second largest Federal Government funded provider of ER services in Victoria. In total, forty-two (42) CISVic agencies deliver ER across forty-eight (48) sites from a combination of government, philanthropic and donated funds. Our engagement with community, local service providers and stakeholders is built on a strong local presence, place-based focus to problem identification and solution, and by drawing upon and enhancing local social capital.

Submission

CISVic appreciates the opportunity to make a submission to the Residential Tenancies Act Review (RTA Review), to provide a perspective from a sector that has, for the past decade, seen the repercussions of lack of affordable housing on vulnerable families and individuals. CISVic member agencies provide support to families experiencing financial and personal crisis through the provision of material and/or financial aid through emergency relief (ER) programs. All clients accessing our ER services experience financial difficulties, and families receiving ER do so because they cannot make ends meet.

Our submission seeks to address the broader questions about barriers to accessing the dispute resolution process, which we see as linked to an increase in vulnerable tenants in a demand-driven rental market. Increasingly, we are seeing clients experiencing financial stress directly as a result of housing affordability and it is not uncommon for our clients to pay upwards to seventy percent (70%) of their income towards rent. We are concerned that the confluence of factors such as housing affordability, vulnerable and low income tenants and a rental market that situates bargaining power with landlords are creating distortions in the way tenants access the current residential dispute resolution process. These distortions reflect the power imbalance that comes from a demand-driven rental market; a sense that tenants cannot afford to access dispute resolution because the stakes will always be higher for tenants than landlords. In addition, vulnerable tenants are often struggling with other financial pressures and lack the resources to support entry to dispute resolution processes.

These structural and practical barriers to accessing formal dispute resolution process can be addressed by an enhanced dispute resolution framework that puts the focus on the enforcement of 'safe, secure and habitable' housing rather than enforcement of landlord rights to possession, rents and compensation. We believe that this could be done with a new approach to the provision of information and/or community education that emphasises a right to a 'safe, secure and habitable' home, de-linking this from the issue of affordability and a demand-driven rental market. We suggest that this is done simultaneously with a promotion of a less formal, less adversarial VCAT process. We further submit that the Tenancy Advice and Advocacy Program (TAAP) be broadened beyond its current class of vulnerable groups, to include in the first instance, low income tenants experiencing financial difficulties or multiple disadvantage.

Housing and Emergency Relief

The cost of housing is a significant contributor to financial hardship amongst vulnerable individuals and families who seek emergency relief (ER). Insecure tenancies contribute to reluctance to report or pursue enforceable rights. The ER sector provide a range of financial assistance and support to clients experiencing housing related financial stress including assistance with housing costs (including rent, crisis accommodation), utility payments, food vouchers and food parcels. Agencies provide assistance because clients are at high risk of homelessness. Negotiation, advocacy and collaborative arrangements are the most common means with which vulnerable clients are assisted with overcoming their financial crisis.

Those with low incomes experience considerable barriers to housing, and given the lack of public housing stock, many are forced into unaffordable private rental. They often juggle competing cost of living pressures to keep a roof over their heads. In the previous financial year, sixty-one per cent (61%) of CISVic ER clients seeking emergency relief live in some form of rental accommodation. Of these, about fifty per cent (50.8%) live in private rental, followed by thirty-five percent (35.2%) in public rental, thirteen per cent (13%) in boarding/lodging arrangement and one per cent (1%) in caravan parks. Our ER services frequently assist people on low income and/or those receiving income support, with a little over seventy per cent (70.6%) of our clients deriving their main source of income from government payments. Rental affordability for households in the lowest twenty percentile is extremely dire, with non-family households facing critically unaffordable rents by paying seventy-five per cent (75%) of their income on rent. The situation is slightly better for households in the lowest forty percentile, with families paying about thirty-two per cent (32%) on rent, while non-family households pay fifty-six per cent (56%) of their income on rent.¹

We are concerned that the confluence of factors such as housing affordability, vulnerable tenancies and a rental market that situates bargaining power with landlords are creating distortions in the way tenants access the current residential dispute resolution process. These distortions reflect the power imbalance that comes from a demand-driven rental market; a sense that tenants cannot afford to access dispute resolution because the stakes will always be higher for tenants than landlords. In addition, vulnerable tenants are often struggling with other financial pressures and lack the resources to support entry to dispute resolution processes.

Vulnerable tenants have a right to housing that is safe, secure and habitable

As previously mentioned, the majority of CISVic ER clients rent, and although members do not provide advice on tenancy issues, in the previous financial year, 444 clients identified housing tenancy issues as the reason they seek emergency relief. Our clients report increased vulnerability around raising issues with landlords and their agents, while some reported misinformation about rights and inflexibility around late rental payments. This creates an environment of intimidation and misinformation that further entrenches tenants' vulnerabilities. For some, this is sufficient for them to put up with substandard conditions as a trade-off for security of tenure.

Elements of the current process (such as the requirement to be in writing, the issuing and service of notices and time frames are intimidating and overbearing for many vulnerable tenants) requires a familiarity with adversarial systems, administrative processes and grasp of technical language. They also feed into a perception that the process is geared towards those with systems knowledge, rather than the stated intent for independent resolution between the parties. The reality is that tenants will often face landlords' agents in a tribunal setting, unclear and uncertain whether or not their case will be disadvantaged by their lack of representational nous or whether it will be decided on the inherent merits of the case.

¹ Community Sector Banking, Shelter Australia and SGS Economics & Planning, November 2015, *Rental Affordability Index*, Canberra.

Consequently, we submit that vulnerable tenants should be provided with information and/or education that puts the focus on the right to safe, secure and habitable housing, and promoting processes that are accessible, timely and affordable. This means educating and informing tenants about a pathway that is informal, simple and timely. It also involves educating tenants about a pathway that enables them to raise tenancy issues, seek enforcement of rights and coming to a resolution that is based on both parties' rights and responsibilities. In other words, that the range of dispute resolution mechanisms are there to empower tenants as much as landlords. We believe a re-orientation of information, education and enforcement towards these substantive components of a tenancy contract, combined with a less adversarial, less formal and less complex VCAT process can bring about a more accessible and fair dispute resolution mechanism.

Vulnerable tenants should be supported to access dispute resolution mechanisms

In addition to above-mentioned measures aimed at alleviating barriers to access, we submit that the TAAP should be amended to encompass a broader definition of vulnerable and disadvantaged tenants. This broader definition would recognise the impact that housing affordability has in compounding vulnerabilities and disadvantage experienced by low income households. It is only through broadening the target groups who are able to access TAAP (or similarly funded services) can we see improvements in access to dispute resolution mechanisms for low income, vulnerable tenants. Financial and life challenges for people living on low income are no longer ad hoc or sporadic – they are now chronic and ongoing, due mainly to structural economic and social causes. Funding for more tenant advocates will better reflect this new landscape. Therefore, vulnerable tenants assisted under TAAP should include:

- Tenants/households whose main source of income is government support in private tenancies and boarding/lodging houses;
- Tenants/households on low to median income experiencing housing stress (ie. pay more than 30% of their income towards rent).

Tenant advocates could provide a range of services from advice and support to building tenants' knowledge and capabilities around self-advocacy, to representing tenants at tribunals and hearings. The role of tenant advocates could also include:

- Identification of appropriate mechanisms for resolution of presenting residential issues (such as those available via Frontline Resolution, Conciliation, Mediation and Inspections) and providing ongoing advocacy and support, and where required to engage in self-advocacy
- In addition to enabling better and timely access to VCAT processes, tenant advocates can provide support that focuses on building tenants' capabilities for independent resolution in appropriate circumstances.

Finally, we strongly support tenant advocates who are based in community services. This makes for a fast and effective referral pathway, and more importantly, early identification of issues for vulnerable clients.

Case story - the affordability trade-off

Jennifer and John Smith came to our service in the municipality of Whittlesea for support with material aid due to high utilities bills. The Smiths are in their 50s, and have been renting a house in the area for over ten years. They have no formal lease in place, although they have been making monthly rent payments to their landlord over this period. Jennifer works part-time and John is looking for work, having been made redundant 12 months ago. The couple's financial reserves are nearly depleted, and they are currently paying 40% of their income on rent. The main source of their income is government payments.

Their fireplace had been broken for six months, during which time they had contacted the landlord on several occasions to have fixed. The fireplace is the main source of heating for their house, the couple are getting anxious that they may not have adequate heating for the coming winter. Having not heard back from the landlord, the Smiths were reluctant to pursue the matter further, believing that they will be evicted if they were too insistent on repairs being done. After all, they have no lease in place, and it will cost so much money to come up with bond and having no rental history limited their opportunities to present themselves as reliable renters.

Consequently, Jennifer bought cheap electric heaters to heat the property. However, their electricity bills sky-rocketed. Now that they are truly in the throes of winter, the Smiths worry that they will not be able to keep up with their bills and rent. Ultimately, high utilities bills are the price the Smiths decided to pay for a roof over their head.

Case story – you don't know what you don't know

Aye Aye Myat came to our service in south-eastern Melbourne on a Thursday for food vouchers as she has no money until her payment due the coming Tuesday. Aye Aye came to Australia as a refugee six years ago. Aye Aye Myat initially lived with her uncle and his family, but due to overcrowding, moved out two years ago to board in a nearby house. She lives in the three bedroom house with the landlord and another young couple. However, in the past two months, the landlord had converted the family room into a fourth bedroom, and two young women has moved in. This was a little overcrowded, but Aye Aye didn't see much of a problem with it as she is hardly home anyway. She either studies or is over at her uncle's house visiting.

The lock to Aye Aye's room has not been working lately. It's an old house, and has a peep-hole lock and the key just won't turn. Aye Aye has noticed a few little things going missing, pieces of costume jewellery, pretty stationery. She doesn't know if it's the new tenants, but would like her room safe and secure. She's approached the landlord a few times, and the landlord's been dismissive. Instead the landlord's been making comments about how low her rent is and that there's no problem, 'we like family'. The landlord keeps telling her how the new tenants are 'so rich' (they are overseas students) compared to Aye Aye ('you refugee, no money, I give you low rent'). Aye Aye knows the landlord likes the pokies and is in some money trouble. Aye Aye is afraid to make too much fuss in case the landlord kicks her out and let the room to the other new tenant.

This was Aye Aye's only experience of renting, her uncle doesn't know much about rental rights either. He tells her that her landlord has all the power, and can do whatever she wants, so Aye Aye shouldn't make waves. Aye Aye feels she has nowhere to go for help because her uncle is between jobs and has his own worries. Aye Aye is very stressed, she has hardly much money left after expenses, and just wants to finish her studies so she could find real work and move out. The worry about her rental security, her money worries, her study stress are making her physically and emotionally unwell. She worries excessively about her future and personal security, and have recurring dreams of her time living as an asylum seeker in Thailand.