

Tenant advocacy

Background

In light of the feedback received at recent training sessions conducted by the TUV regarding advocacy and VCAT representation, it is timely to clarify the concept of advocacy and the role of a tenant advocate in assisting clients experiencing difficulties with tenancy matters.

The TUV provides legal advice, assistance and advocacy to residential tenants, rooming house residents and caravan park residents, with a focus on tenancies/residencies located in metropolitan Melbourne. Casework and advocacy services are provided to those clients who require more than basic advice and information.

One of the (four) funded core activities of the SHASP program is the provision of advocacy for 'social housing' (public/community housing) tenants experiencing tenancy difficulties and who are unable to advocate on their own behalf in their dealings with the Office of Housing (OOH) or their social housing provider.

Definitions

Advocacy involves promoting, supporting and representing the rights of tenants, and the protection of tenants' rights and interests to obtain justice. It involves acting, speaking, or responding on behalf of the person to ensure they have access to, and receive services that meet their individual needs and respect their right to choose.

Advocacy should ensure that clients are able to make informed choices and assert their rights/ exercise their entitlements afforded to them under current legislation.

Advocacy differs from conciliation (in which the conciliator does not represent any specific interest other than dispute resolution per se), mediation (in which the mediator does not have any interest other than assisting the parties to agree) and support (which may involve a range of activities extending beyond the scope of advocacy, and may not include representation or negotiation etc).

Advocacy does not usually involve the direct provision of services required by the tenant, such as financial assistance or the provision of alternative housing.

What does a tenant advocate do?



In the context of services provided by SHASP/ TUV, an advocate supports and represents tenants, and in particular, targets those tenants who are unable to act on their own behalf/ represent themselves in relation to a specific tenancy matter due to their position of vulnerability or disadvantage.

Vulnerability relates to a person's overall mental and physical capacities, and their particular circumstances including age, literacy, cultural/educational background, socio-economic status, etc. Disadvantage relates to any unfavourable circumstance or condition (temporary or long term) that may lead to a reduced capacity to act on one's own behalf.

Advocacy occurs when a client requests the agency to act on their behalf in relation to a dispute or problem. It may involve:

- > Providing advice to the client regarding the application of the relevant legislation to the dispute or problem and the possible options/consequences for the client. Such advice should enable clients to make informed choices and have realistic expectations regarding desired outcomes etc;
- > Drafting documents on the client's behalf and assisting the client to complete applications/forms etc;
- > Writing letters/ preparing written submissions on the client's behalf;
- > Negotiations with the landlord/other parties or their representative on the client's behalf;
- > Representation at VCAT hearings; ¹
- > Representation at Office of Housing Appeals;
- > Legal representation.

A 'professional advocate' is defined at sub-section (8) of s.62 of the VCAT Act as:

- (a) a person who is or has been a legal practitioner; or
- (b) a person who is or has been an articulated clerk or law clerk in Australia; or
- (c) a person who holds a degree, diploma or other qualification in law granted or conferred in Australia; or
- (d) a person who, in the opinion of the Tribunal, has had substantial experience as an advocate in proceedings of a similar nature to the proceeding before the Tribunal-

Other than a person who is in a class of persons disqualified by the rules from being a professional advocate.

It will usually be the case that Housing Officers representing the Director of Housing and SHASP workers, by virtue of their role in representing the tenant, will be considered to be professional advocates under section 62(8)(d) when appearing before the Tribunal. Accordingly, SHASP workers are able to represent tenants at VCAT in any proceedings in which the Director of Housing is the landlord.

Similarly, where the landlord is represented by an estate agent (who are considered to be a professional advocates), the tenant may be represented by a tenant advocate.

This Practice Note is a guide only and should not be used as a substitute for professional legal advice. If you have a question about this Practice Note or a specific case you want advice about then you should contact us on **(03) 9411 1444**

Regards,

Tenants Union Legal Service

¹ Section 62 of the VCAT Act sets out the circumstances in which a party may be represented at the Tribunal by a professional advocate. This includes the circumstances in which the other party is represented, and (at schedule 67) the circumstances in which an application for a possession order is made under the RT Act.