

# Written submissions to VCAT

## Background

Tenant advocates representing their clients at VCAT prepare written submissions to the Tribunal in order to achieve desired outcomes. A number of training sessions conducted this year have touched on the preparation and use of submissions as a vital tool in representing clients at VCAT. This Practice Note provides a summary of the information discussed at these training sessions.

## Purpose and use of written submissions

Some benefits in the preparation and use of written submissions include:

- > Indicates that the matter has been taken seriously and given due consideration.
- > Enhances familiarity with the relevant facts, legal provisions and arguments, hence increases advocate confidence in making verbal submissions.
- > Enhances credibility before a Tribunal Member if the relevant facts, circumstances and provisions of the Act(s) are presented in an unambiguous, succinct and organised manner.
- > Clear written presentation of the law as it applies to the issues at hand assists the presiding Member in making the desired orders; arguments with supporting (documentary) evidence and verbal submissions form the most persuasive and powerful cases. Ideally, the submission would leave the Member with no/little alternative other than to make the desired orders.
- > Useful to simplify /clarify complex or sophisticated issues and reduce them to matters that relate to specific provisions under the Act etc.
- > Can be useful even if the submission is not handed up to the presiding Member as the basic form/structure of your arguments and as a reference point for the issues/arguments you wish to raise, allegations you wish to respond to, etc.
- > Can have the effect of unsettling the other party to the point that several issues are conceded etc. or allegations/applications may be withdrawn or settled.
- > Can be used and/or submitted by another advocate and/or tenants themselves if required.
- > Successful submissions can be kept as examples of common scenarios or arguments, referred to as often as needed and any relevant parts plagiarised or lifted into new cases as applicable etc.
- > Desired order can be drafted in advance
- > Submission can be faxed to VCAT in advance so that the presiding Member is aware of the issues and arguments before the matter is heard

- > Provides an excellent preparation for a “test case” or new argument.

## **General structure of submissions**

Written submissions may be drafted in a number of ways; the following structure follows the format of submissions drafted by TUV advocates and is suggested as a guide only, to the preparation of submissions made at VCAT.

### **1. State the particulars of the application**

Name of applicant and respondent, tribunal reference no. etc.

Request written reasons (if desired) for the tribunal’s decision.

### **2. State the particulars of the tenancy and application**

State address of property; fixed term (duration?) Or periodic agreement; commencement and termination date (if applicable) of tenancy; rent/bond charged/paid; name of landlord’s agent (if applicable).

### **3. Provide a succinct outline of issues/events and circumstances relevant to the application or dispute**

Outline all relevant details of actions (in sequential/chronological order), correspondence etc in relation to the application/dispute.

Include copies of **all** relevant/supporting documents as attachments to be submitted as evidence e.g. Tenancy agreement, condition report, notices/letters/lease-break agreements sent to/from landlord/agent and/or tenant and any other parties to the proceedings, quotes/invoices as appropriate, etc.

### **4. State the relevant laws applicable to the issue, application or dispute**

Refer directly to the relevant provisions of the legislation, rules, regulations, practice notes etc. And/or common law principles that apply to the circumstances or issues at hand.

It may be appropriate to refer to previous cases or rulings made on matters of similar circumstances etc. The tribunal is bound by decisions made in a higher court in cases of similar acts, facts or circumstances. Previous orders handed down in the tribunal are also of use as the tribunal is reluctant to make orders that may contradict it’s own findings.

### **5. Apply the relevant legal provisions, clauses or requirements to the issues/circumstances of the case**

Use the provision referred to or quoted to construct an argument in order to achieve the desired outcome.

### **6. Repeat steps 3, 4 and 5 above for each point raised or issue in dispute**

State to each issue and refer to the law as it applies to that issue and submit that the tribunal ought to view the dispute in view of the relevant provisions etc.

## 7. Conclude with a strong statement of the desired outcome

For example, “In accordance with the above, the tenant submits that the landlord should be held liable for the cost of all repairs carried out by the tenant and the tenant ought to receive the bond in full.”

### When should you hand up a submission?



Submissions should be handed up at the discretion of the advocate, based partly on the nature of the proceedings and the conduct or directions of the Member.

Some Members prefer submissions to be verbally presented and refuse to read materials presented if the information contained therein could more conveniently be communicated verbally- insistence that the Member read a written submission may have the unintended effect of antagonising the Member.

You should also consider the following:

- > In light of new and/or conflicting evidence presented at the hearing, parts of the submission may no longer be accurate or applicable.
- > It may not be necessary to hand up a submission if the Member indicates acceptance of your evidence/arguments and advances these arguments without prompting.
- > A request that the Member read the submission may interrupt the momentum of the proceedings, which may be to your client’s disadvantage.
- > It may be superfluous or unnecessarily repetitive to hand up a written submission if the contents of it have already been made clear.

Always ensure that you are extremely familiar with any written submissions handed up to the Tribunal, as you may be required to verbalise these and refer specifically to certain parts of the written submissions.

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**