

Friday, 10th December, 2009



New Courts Act Project
Courts and Tribunals Unit
Department of Justice
GPO Box 4356
MELBOURNE VIC 3001

Registered Office

55 Johnston Street
Fitzroy VIC Australia
Mail P O Box 234
Fitzroy VIC 3065
Phone (03) 9411 1444
Fax (03) 9416 051
Web www.tuv.org.au

Via email: newcourtsact@justice.vic.gov.au

Dear Sir/Madam,

JUDICIAL CONDUCT AND COMPLAINTS

The Tenants Union of Victoria (TUV) welcomes the opportunity to comment on the Judicial Conduct and Complaints Discussion Paper.

The TUV was established in 1975 as an advocacy organisation and specialist community legal centre, providing information and advice to residential tenants, rooming house and caravan park residents across the state. We assist about 18,000 private and public renters in Victoria each year. Our purpose is to improve the status, rights and conditions of all tenants in Victoria.

The issue of judicial conduct is importantly interconnected with the principle of access to justice. A litigant may be reluctant to take action in the courts or tribunals if there is a risk that they will be treated rudely, without respect or worse.

Individuals from time to time need to call on the courts or tribunals to protect their rights. In the tenancy sphere these include fundamental human rights to privacy, health, safety and security, protection of the home, children and family.

It is a great concern where the conduct of particular judicial members inhibits individuals from taking action to protect their rights. In this respect there is a real concern that exists for tenants who are thinking about taking action at the Victorian Civil & Administrative Tribunal (VCAT).

continued...

VCAT is the dispute resolution body to which tenants and landlords come when they have a dispute under the *Residential Tenancies Act 1997* (the Act).

As mentioned above the Act provides fundamental protections to tenant's human rights to privacy, health, safety and security, protection of the home, children and family and the VCAT is the place for tenants to go where they need to take action to protect these rights.

Tenant access to VCAT is very low. Ninety-three per cent of applications to the tribunal are made by landlords or their representatives compared to seven per cent by tenants. Moreover tenants only attend twenty-two per cent of matters that were initiated by landlords.

Tenants already face structural barriers to asserting their legal rights, where they do they may be subject to reprisals or detriment with only very limited legal protection.

For similar reasons vulnerable and disadvantaged people are often reluctant to exercise their legal rights. Significant public resources and effort goes into empowering vulnerable and disadvantaged people to assert their rights and if necessary to take action in the courts or tribunals. It runs counter to these efforts of empowerment when judicial officers treat these people rudely, without respect or worse.

We often hear from tenants who have a perception that they will not be given a 'fair go' at VCAT and this usually stems from the tenant receiving anecdotal reports from their friends.

We have been involved in VCAT advocacy since the tribunal started and in 2008 – 2009 our advocates and lawyers attended VCAT hearings on 413 occasions. We also receive many complaints from self-represented tenants and other organisations about member behaviour.

From our collective experience and these reports of self-represented tenants we hold deep concerns about the behaviour of some individual VCAT members and we consider that there are inadequate measures in place to address the poor standard of behaviour of some individual members.

In our view there is a pressing need to change fundamentally the current system for addressing complaints about VCAT member conduct. This is why we support the introduction of an independent judicial complaints commission in Victoria and such a commission should have the mandate to investigate complaints received about any member of VCAT. The complaints process should be formalised, clear and transparent.

We note that the definition of 'judicial officer' used in the discussion paper includes a non-judicial member of VCAT. This is preferable to the approach in NSW where tribunal members are excluded from the Judicial Commission complaints process. Users of VCAT are just as entitled to an adequate complaints process as court users; this is so particularly given the sizable and important role that VCAT plays in Victoria's civil justice system.

We understand that VCAT has an informal complaints system. Over the years we are aware of complaints being made to VCAT without the complainant receiving a response from VCAT.

We do not consider that the recommendations made by Professor Sallman in the 2003 report on the Judicial Conduct and Complaints System in Victoria have been adequately addressed by VCAT.

Professor Sallman recommended that that VCAT should publish a booklet clearly and simply setting out basic information on how VCAT, its members and in particular its complaint system operates.

This year VCAT has published a booklet 'Taking it to VCAT' which sets out basic information on how it and its members operates. The booklet contains no reference to VCAT's complaints system.

If one navigates to the VCAT website and uses its search field with the search term 'complaints', the results reveal no information on VCAT's complaints system. In fact VCAT does have a 'complaint's protocol' published on its website in the FAQ section. The document itself is not user friendly and in its tone discourages complaints. There is no complaint form.

In contrast when one navigates to the Magistrates' Court of Victoria website there is a direct link from the front page to a page on complaints. That page contains a

comprehensive and impressive complaints policy and a dedicated form. There is also a user friendly brochure about making a complaint.

Professor Sallman also recommended that VCAT consider publishing general information about its complaint handling activities in its annual reports. This would include the number and types of complaints received and general information about their outcomes. The VCAT has not published such information.

It has been 6 years since Professor Sallman's report was published. This is more than enough time for VCAT to arrange a transparent and open complaints process. It has failed to deliver the goods.

We call on the Victorian government to intervene and set up an independent Judicial Complaints Commission to address complaints of judicial and VCAT member behaviour.

If you wish to meet with us or discuss this letter, please contact Lee Hansen, Policy Solicitor on 9411 -1444 should you require further information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Lee Hansen', is centered on the page.

Lee Hansen
Policy Solicitor
Tenants Union of Victoria