



Action for More Independence & Dignity in Accommodation

1st Floor, Ross House, 247 Flinders Lane, Melbourne Vic 3000
Phone: 9650 2722 Fax: 9654 8575
Email: amida@amida.org.au Website: www.amida.org.au
Inc No: A001608SV ABN: 32 993 870 380

Advocacy, Self Advocacy, Rights, Accessibility, & Community Living for People with a Disability

Submission Dispute Resolution - Residential Tenancies Act Review Fairer Safer Housing June, 2016

AMIDA (Action for More Independence & Dignity in Accommodation) is an independent advocacy organisation which advocates for good housing for people with disability. We provide advocacy to individuals, with priority given to people with an intellectual disability, and advocate for change in systems which prevent people from achieving good housing.

AMIDA acknowledges that people with disability have a right to a choice of who they live with and where they live. Further, people with disability have a right to good quality housing which is accessible, affordable and non-institutional. People with disability have a right to live in the community with access to support to participate and have a good quality of life.

AMIDA strongly supports the United Nations Convention on the Rights of Persons with a Disability and works to assert these rights and community inclusion for people with a disability and supports people with disability as valued members of our community. AMIDA recognises that people with disability contribute to and develop our community.

With this background and experience, we submit the following on the Review of the Residential Tenancies Act - Dispute Resolution:

1. Imbalance in bargaining power between parties

As acknowledged in the issues paper there is often an imbalance in power between parties, creating challenges for vulnerable and disadvantaged tenants. This must be addressed by the provision of sufficient, expert support for vulnerable people. There are already organisations in existence to do this, but they are unable to do so as they are insufficiently funded.

Steps should be taken to address any significant power imbalances between disputants.

2. Vulnerable and disadvantaged tenants face difficulties seeking assistance

Again, support is limited, and has been reduced drastically in recent years. Organisations, because of a lack of funding, have limited the type of issue they are able to support. This leads to people with disability seeking support from disability advocacy groups which don't have the expertise required.

3. **Accessibility**

Information about dispute resolution processes and options must be made available. SAAP needs to be promoted more, with list of organisations freely available so people can access them.

Information should be freely available with a variety of option for contact, ie not only internet information.

4. **Key outcomes from residential tenancies dispute resolution system**

The key outcomes must be that all parties have equal access to a fair outcome, and this will not occur unless everyone has equal access to information and support.

5. **Important features for effective residential tenancies dispute resolution**

The most important features are that the issue is resolved quickly, with no unfair onus on party to report or appeal decision. This cannot happen without sufficient and appropriate support.

6. **Consistent approach by CAV**

As the experts in consumer affairs it would be good if CAV took a consistent approach. AMIDA has experience of CAV becoming involved and resolving the issues quickly, in a proactive way before VCAT hearings are needed. If this could happen more regularly, this would be an improvement. Our experience is that the hotline staff are excellent as a resource and that managers are sometimes consulted to follow up in a proactive way with landlords and agents via a phone call to remind them of the provisions of the Act. This short term advocacy role may not be recognized as valuable but in our view it is an excellent way to ensure people with disability are not taken advantage of. To do this CAV must be funded sufficiently.

From the perspective of the tenants with issues with their tenancy, the current arrangements for resolving disputes ie VCAT hearings, should not have to take place. An earlier intervention by Consumer Affairs, as happens sometimes, should result in issues being resolved. Also the funded agencies such as Tenants Union are not resourced enough to take on all cases, and people with a disability require more advocacy particularly looking forward to the NDIS and 20,000 to 30,000 extra people with a disability looking for housing mostly in the public and private rental sector.

7. **Tenancy Advice Program**

CAV provides funding for 11 tenant advocacy agencies and community organisations as part of its Tenancy Advice and Advocacy Program (TAAP) to support vulnerable and disadvantaged tenants. These TAAP agencies should be accessible to the general public, so they can make direct contact when needed. This will also make it possible for other advocacy agencies to refer directly to the most appropriate organisation rather than searching for these 11 tenant advocacy agencies and community organisations mentioned above.

There seems to also be a discrepancy between the TUV website which states "Advice, Assistance and Advocacy" and what they have the funding to provide. As experts on tenancies it would be appropriate if they were funded to provide support and advocacy. AMIDA has found that TUV, although willing and very able to provide secondary consultation, is reluctant to provide advocacy.

8. Effectiveness of information and advice services provided by CAV, DSCV, TAAP and other agencies

Information provision is sometimes all that is needed, but at other times, more is required, and in these instances the agencies need to be funded to be able to provide this service, rather than referring to others with less expertise. Many of the other agencies are also limited in their capacity to take on advocacy, especially if it is not an area they are experienced in.

As well as capacity to provide more than advice, CAV, DSCV and TAAP services must be more widely promoted to the general public.

9. Improvement to existing services

Improvements could be made if services were promoted more widely, and if they were able to support more people.

10. Services for vulnerable and disadvantaged tenants

CAV provides funding for 11 tenant advocacy services and community organisations to provide specialize support services to vulnerable and disadvantaged tenants through TAAP. "Tenants can access the services directly, but may also be referred by CAV or another agency. Their eligibility for assistance is determined by the individual agency." But these organizations need to be well advertised to be accessible directly to tenants and other advocacy agencies need access to lists of these organisations so they can directly refer people to them.

The issues paper also says that if a 'resolution is not reached, the TAAP agency can provide assistance in completing paperwork and preparing a tenant to represent themselves at VACT. Alternatively, a TAAP worker may attend and advocate for a tenant where needed.' This will only be happening if the tenant is first linked into the TAAP agency, and in the case of many people with disability, representation by an expert worker will be necessary. Organisations must have the funding capacity to do so.

11. Other relevant services to assist residential tenancies disputes

Relevant services are those with experience and expertise. It is not feasible to refer to advocacy agencies which don't have the relevant experience or expertise. Expansion of those already in existence which have the relevant expertise is preferable.

12. Aspects of third party assistance that work well

If you are linked in they may well work well, but if you can't gain access to the appropriate service, this indicates that the system is not working.

13. Alternative and additional tools

For maintenance issues there would be no need for alternative or additional tools to assist parties, including vulnerable and disadvantaged tenants, to resolve disputes quickly and informally if the onus was on the landlord to carry out maintenance and repairs if required. If this happened time, effort and stress would be removed from the equation. This would also have the result of the system being free to handle more efficiently those issues which could not be resolved easily. This would take pressure off CAV, TU etc.

14. CAV inspections and advice

For people with disability, they are only effective if they have received the support they require to seek an inspection or advice. Advocacy groups are sometimes approached to support people with disability, but may consider that their time could be used elsewhere, if an 'inspection and reporting' stage is being undertaken. People should have confidence that this will bring about a satisfactory resolution, not just prolong the dispute. Perhaps it should be the expected goal of the inspection and reporting to finalise the dispute, rather than be a step in a long, prolonged process.

It should not be seen as a matter of course for the tenant to need to issue the landlord with a request for non-urgent repairs. If repairs are reported to the landlord, it should be the normal practice to perform said repairs. People with disability are less likely to approach their landlord about repair, especially if they think that their request will be ignored, and they will need to start the process of contacting CAV, and possibly ending up at VCAT.

15. Victorian Civil and Administrative Tribunal (VCAT)

Applications to VCAT must be made in writing. Again, people with disability, and other vulnerable members of the community need support to be able to do this. Agencies must have the resources to support people in this area. If they do not, applications can be rejected or worse, VCAT hearing can be set and case thrown out due to incorrect paperwork.

16. Representation at VCAT

People with relevant professional experience must be available, otherwise people with disabilities and other vulnerable people are disadvantaged by the system.

17. Where VCAT orders are not complied with, or compensation is not paid

For a person with a disability, or other vulnerable person, if the only recourse is to apply to the Supreme Court, this again disadvantages them.

18 Tenant appearance at hearings

The issues paper refers to 'Stakeholders such as the Victorian Council of Social Service and the Victorian Aboriginal Legal Service have noted a range of factors that could contribute to low usage and attendance including fees, waiting times, complexity of the application process, the formal nature of the proceedings, and the lack of adequate notice of hearings'. AMIDA supports these views.

In addition, AMIDA considers the high non attendance at hearing by tenants is probably a direct result of them being unable to obtain appropriate support, this again comes back to accessibility of appropriate services, and ability of services to provide requested support because of lack of resources.

19. Social Housing Tenants

The issues paper refers to social Housing Tenants and supports available to them to support them in their tenancies. SHASP now only works with people 'at risk of homelessness'. Their very good service has been greatly reduced because of funding cuts and lack of resources. Again we see reductions that are having a direct impact on people with disabilities and other members of the community.

20. Compliance and Enforcement mechanisms

'under the Act it is an offence to:

- persuade someone not to exercise rights or take proceedings'

People with disability, the most vulnerable members of our community are susceptible to pressure, may not know of their rights or know how to pursue them – again a lack of resources prevent this.

21. Campaigns, Awareness and Education on duties and obligations

Expansion and development of these programs would increase fairness in the system.

22. Effectiveness of the dispute resolution system

As referred to in the issues paper, a 'comprehensive system is one that is equipped to address the full range of needs for dispute resolution in residential tenancies...supports tenant advocacy and early intervention support programs and relevant educational and guidance materials'. I think the main words here are 'full range of needs' and 'education'.

23. Ombudsman

An expansion of the Ombudsman role perhaps to cover a wider criteria, but also offering support to make complaints to the Ombudsman's office would be helpful.

24. Compulsory mediation and conciliation

People with disability and other vulnerable groups require support to access even this intermediate step.

Conclusion

In conclusion the system is not effective, as it continues to be unjust for the reasons stated in this submission.

The main affect on people with disabilities is the lack of expert support, which has been reduced even further by the drastic cuts in funding to agencies which have traditionally been experts in RTA. The funding cuts have meant that all these groups and organisations now limit who and what they work on, effectively channelling the most vulnerable members of society to disability advocacy groups, which have limited expertise in the RTA.

The RTA and legal intricacies mean that many people cannot access the system which has been set up to support tenants and landlords. The inequity exists, and will continue to do so until it is acknowledged that extra funding is essential.

To alleviate this huge problem extra funding must be provided, so those groups with expertise can support people who seeks their advice and support appropriately, not minimally.

As the experts in this field limit, out of necessity, who they work with and on what issues, eventually that expertise will dwindle and disappear. To prevent this, expert groups must be funded so they can continue to train new staff for the future.