

The background of the entire page is a photograph showing the lower faces and eyes of two young children with dark hair, looking out from behind horizontal window blinds. The blinds are white and partially open, creating a sense of looking out from a confined space.

Making it Home

Refugee Housing in Melbourne's West

Laura Berta

Footscray Community Legal Centre
March 2012

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ABBREVIATIONS

AHURI	Australian Housing and Urban Research Institute
AMEP	Adult Migrant English Program
ASIC	Australian Securities and Investments Commission
CALD	Culturally and Linguistically Diverse
CAV	Consumer Affairs Victoria
CMY	Centre for Multicultural Youth
DHS	Department of Human Services
DIAC	Department of Immigration and Citizenship
DOH	Director of Housing
EDR	External Dispute Resolution
FCLC	Footscray Community Legal Centre Inc and Financial Counselling Service
HSS	Humanitarian Settlement Services
IDR	Internal Dispute Resolution
NTV	Notice to Vacate
OOH	Office of Housing
RCA	Refugee Council of Australia
RTA	<i>Residential Tenancies Act 1997</i> (Vic)
RTBA	Residential Tenancies Bond Authority
SAAP	Supported Accommodation and Assistance Program
SGP	Settlement Grants Program
SHP	Special Humanitarian Program
TUV	Tenants Union Victoria
VCAT	Victorian Civil and Administrative Tribunal
VCOSS	Victorian Council of Social Service

SUMMARY OF FINDINGS

1. Refugees experience homelessness and rental market difficulties at alarming rates – **Chapter 4**
2. The housing assistance currently available to refugees is grossly inadequate – **Chapter 5**
3. Vulnerable tenancies could be sustained with greater financial assistance – **Chapter 6**
4. Refugees face significant disadvantages at VCAT – **Chapter 7**
5. There is an urgent need for culturally appropriate legal assistance for housing matters – **Chapter 8**
6. Community education for refugees and their caseworkers can help prevent many legal problems – **Chapter 9**
7. Bond claims made by landlords lack merit and display elements of opportunism – **Chapter 10**
8. Landlords and agents ignore repeated requests for repairs – **Chapter 11**
9. Weak eviction laws permit unfair evictions – **Chapter 12**
10. Particular real estate agents act dishonestly, unlawfully and unethically – **Chapter 13**
11. The Director of Housing often fails to meet its obligations to maintain properties in good repair, and meet model litigant obligations – **Chapter 14**
12. Refugees are vulnerable targets for home ownership scams – **Chapter 15**

SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1: Housing

- (a) Specialist housing assistance that meets the needs of refugee clients must be funded in areas of higher density refugee settlement, including Melbourne's western suburbs.
- (b) State Government bond loan policy should allow for more flexible repayment arrangements of bond loan debts, which do not automatically disentitle an applicant to a new bond loan.
- (c) State and Federal Governments need to create better incentives for landlords to lease properties to disadvantaged tenants, taking into account existing models such as Housing NSW's Tenancy Guarantee.
- (d) A greater allocation of Housing Establishment Fund grants must be made available to assist individuals and families at risk of homelessness in sustaining tenancies.

RECOMMENDATION 2: VCAT

- (a) VCAT should make detailed data on access to the Residential Tenancies List of the Tribunal publicly available, including:
 - types of tenants accessing the Tribunal as both applicants and respondents;
 - number of tenants who are represented and the nature of representation;
 - types of matters tenants are initiating as applicants; and
 - types of matters proceeding undefended.
- (b) VCAT should undertake a comprehensive review of outcomes for disadvantaged tenants at the Tribunal, which may include:
 - a comparison of VCAT outcomes for represented and unrepresented tenants;
 - analysis of outcomes of bond/compensation hearings initiated by landlords, including size of claims and success rates; and
 - analysis of outcomes of compensation hearings initiated by tenants, including size of claims and success rates.

- (c) VCAT should adopt best practice procedures for communicating with CALD clients at hearings.
- (d) VCAT Registries should have procedures in place to minimise errors with interpreter bookings. If the correct interpreter is not available for a hearing date, the hearing should be adjourned by the Principal Registrar and parties notified *prior* to the hearing date.
- (e) VCAT Registries should also examine listing practices and consider strategies to avoid unnecessary adjournments.

RECOMMENDATION 3: Advocacy

- (a) The establishment of tenancy advocacy services, appropriately tailored to the needs of refugee clients, which are:
 - face-to-face;
 - physically accessible;
 - able to provide intensive casework and VCAT representation;
 - culturally appropriate, responsive and trusted by refugee communities; and
 - engaged with local settlement services and relevant community agencies.

RECOMMENDATION 4: Education

- (a) The provision of tenancy education to refugee communities, developed as a partnership between legal and settlement service providers, on issues including:
 - how to report maintenance issues, and what to do if repairs are not undertaken;
 - how to avoid a bond dispute, including the significance of condition reports, damage caused by “fair wear and tear”, and a tenant’s duties to avoid causing damage and to maintain a property in clean condition;
 - the termination of a lease, including how a tenant or landlord can legally terminate a lease, and the significance of different types of leases (eg fixed term and periodic leases);
 - where to seek help for tenancy and housing problems.

- (b) The provision of basic tenancy and referral training to settlement workers and other relevant caseworkers, delivered by TUV with funding provided by the State Government.

RECOMMENDATION 5: Bond disputes

- (a) Amendment of section 506 of the RTA to oblige a VCAT applicant to make reasonable enquiries as to the respondent's address for service.
- (b) Abolishment of the exemption under section 6.23(b) of the *Victorian Civil and Administrative Tribunal Rules 2008* (Vic), which allows landlords to serve supporting documentation at the VCAT hearing (rather than at the time of making an application).
- (c) Amendment of section 36(1) of the RTA to make the general presumption that a condition report is evidence of the state of a property rebuttable. VCAT should consider relevant circumstances regarding the validity of a condition report, including whether the tenant can read and write English and other relevant factors.

RECOMMENDATION 6: Repairs and housing standards

- (a) The urgent repairs process under the RTA needs to be significantly reformed. The urgent repairs process should allow a landlord 2 days to respond to a tenant's verbal or written request for repairs. If the complaint is not resolved within 2 days, the landlord should provide the tenant with a blank application to VCAT and a simple factsheet explaining the urgent repairs process and the tenant's rights.
- (b) The non-urgent repairs process under the RTA needs to be significantly reformed. The non-urgent repairs process should allow a landlord 7 days to respond to a tenant's verbal or written request for repairs. If the complaint is not resolved within 7 days, the landlord should provide the tenant with a blank notice to landlord and a simple factsheet explaining the non-urgent repairs process and the tenant's rights. Tenants should not be required to obtain a CAV repairs inspection report prior to making an application to VCAT.
- (c) Landlords should be penalised for non-compliance with repairs provisions.
- (d) VCAT should adopt practice procedures in relation to compensation applications brought by tenants for a landlord's failure to undertake repairs.
- (e) Minimum mandatory rental standards should be introduced as regulations under RTA, as advocated by the Victorian Council of Social Services.

RECOMMENDATION 7: Evictions

- (a) Landlords should be penalised for the issue of a notice to vacate that is without valid grounds or not in the prescribed form.
- (b) Tenants should be easily able to apply to VCAT for compensation for loss of time and inconvenience arising from defending an invalid notice to vacate.
- (b) “No reason” notices to vacate should be abolished.

RECOMMENDATION 8: Real estate agents

- (a) There needs to be a greater emphasis on enforcement action by CAV against real estate agents who are failing to meet their professional obligations or engaging in dishonest or unprofessional conduct.
- (b) DIAC should continue to fund telephone interpreting services for real estate agents and, in addition, should fund an education program about the appropriate use of interpreters.

RECOMMENDATION 9: Public housing

- (a) DHS needs to implement procedures to ensure local housing offices are acting in accordance with their obligations as “model litigants”, including acting fairly and promptly, avoiding legal proceedings and resolving matters by agreement where possible.
- (b) DHS needs to improve procedures for dealing with requests for repairs, in particular urgent repairs posing a risk to health and safety.

RECOMMENDATION 10: Refugee homeownership

- (a) CAV and VCAT need to consider options for consumers lacking the financial and legal capacity to pursue a builder in the Domestic Building List of VCAT.
- (b) CAV should undertake targeted education outreach which assists refugee communities to avoid housing “scams”. Community education resources, such as FCLC’s *“Building a House”* DVD, should be made widely available.
- (c) Financial institutions should be put on notice as to the lack of financial literacy in refugee communities and warned that inadequate loan assessment could constitute maladministration in lending.

Part A

Refugee Housing and Tenancy Disadvantage



1 INTRODUCTION

1.1 Introduction to the Refugee Tenancy and Housing Project

This report presents findings from Footscray Community Legal Centre's ("FCLC") Refugee Tenancy and Housing Project ("the Project"). The Project was developed in response to the need for tenancy advocacy services in Melbourne's western suburbs and in recognition of the major barrier that housing difficulties pose to successful refugee settlement. The Project encompassed the following:

- a legal tenancy clinic providing free legal advice and representation to people of refugee background living in the western suburbs of Melbourne;
- community legal education; and
- community development initiatives.

These three activities form core aspects of the work of Community Legal Centres. FCLC tailored the services delivered through the Project to the needs of refugee communities in order to systematically observe and document the major legal and non-legal issues facing refugees in the housing market.

The report encompasses our findings and recommendations for the improvement of housing outcomes for refugee communities.

Part A summarises our client profile and the nature of legal disputes faced by our clients and provides a critical analysis of refugee housing disadvantage, including with respect to:

- housing support and financial assistance currently available (Chapters 5 and 6);
- access to justice and, more specifically, assistance at VCAT (Chapter 7);
- availability of tenancy advice and advocacy (Chapter 8); and
- urgently required community education about tenancy rights and obligations (Chapter 9).

Part B explores specific examples of disadvantage in housing-related legal disputes and makes law reform recommendations to address existing imbalances in the law, including with respect to:

- bond and compensation applications (Chapter 10);
- repairs disputes (Chapter 11);

- evictions (Chapter 12);
- conduct of real estate agents (Chapter 13);
- public housing (Chapter 14); and
- refugee communities and homeownership (Chapter 15).

Many issues highlighted in this report are reflective of systemic failures affecting a large number of low income Australian renters and as such have broader policy implications.

1.2 The Refugee Tenancy Clinic

The refugee tenancy clinic (“**the clinic**”) operated as a service based at FCLC’s Footscray office, to assist clients of refugee background with tenancy and housing issues. Footscray is a diverse suburb in Melbourne’s inner west, readily accessed by migrant and emerging communities for shopping, social and religious events and welfare and settlement services. A solicitor managed the casework under the supervision of FCLC’s principal solicitor.

The clinic provided 241 advices and opened 88 files on behalf of clients over approximately 18 months. Advices included single consultations, though many one-off consultations also required follow-up phone calls on a client’s behalf. A file was opened when a client required ongoing advocacy, including correspondence sent on their behalf or representation at VCAT.

The clinic received invaluable support from two refugee community workers of Chin (Burmese) and Sudanese background. These workers assisted with the promotion of the clinic’s services amongst their communities and acted as a bridge between their communities and the clinic. Without the input and expertise of these workers, it is likely that many clients would not have approached the service due to language and cultural barriers or a lack of awareness of the availability of free assistance. In addition, the workers provided expert onsite interpreting assistance and valuable insights into the cross-cultural experiences of the clinic’s clients.

1.3 Limitations of This Report

This report is based on the legal casework undertaken by the clinic. The analysis is qualitative and centred on case studies of common problems experienced by our clients (modified to protect confidentiality) and our own interaction with the tenancy and housing system throughout the course of the casework. It does not offer detailed quantitative data. Rather, the analysis is based on observation of the common themes and issues affecting refugee communities, which may also be relevant to other vulnerable and disadvantaged tenants. Academic and quantitative research into this area is scarce and would be of great utility in refining our findings.

2 CLIENT PROFILE



The clinic assisted people with the following common characteristics:

- **Low income earners:** Ninety-two percent (92%) of clients were on a low income and 77% were reliant on social security benefits.
- **Non-English speaking background:** Eighty-four percent (84%) of clients were from a non-English speaking background.
- **Families:** Thirty-one percent (31%) of clients were sole parents and 29% were two parent families with dependent children. Sixty percent (60%) of clients were women.

Clients came from a diverse range of backgrounds and the following trends were evident:

- clients came from a range of CALD backgrounds, including Burmese, Sudanese, Ethiopian, Somali, Liberian, Iraqi and Afghani;
- the majority of the clinic's clients had been in Australia for 1–5 years;
- almost all clients were “offshore” refugee entrants with permanent resident status, settled through the Federal Government’s humanitarian programs; and
- many clients had spent a considerable period of time in refugee camps prior to arriving in Australia and many had experienced trauma, torture and persecution.

With respect to referrals to the clinic:

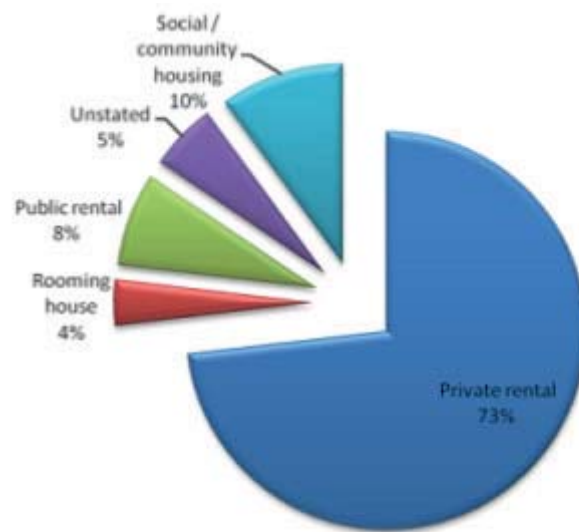
- over two-thirds of clients came from outside our centre's usual catchment area¹;
- most clients came from outer-western suburbs;
- approximately fifty percent of clients were referred by word-of-mouth; and
- approximately one-third of clients were referred by a community agency.

¹ FCLC's generalist legal services are available to persons who live, work or study in the City of Maribyrnong.

3 NATURE OF LEGAL DISPUTES

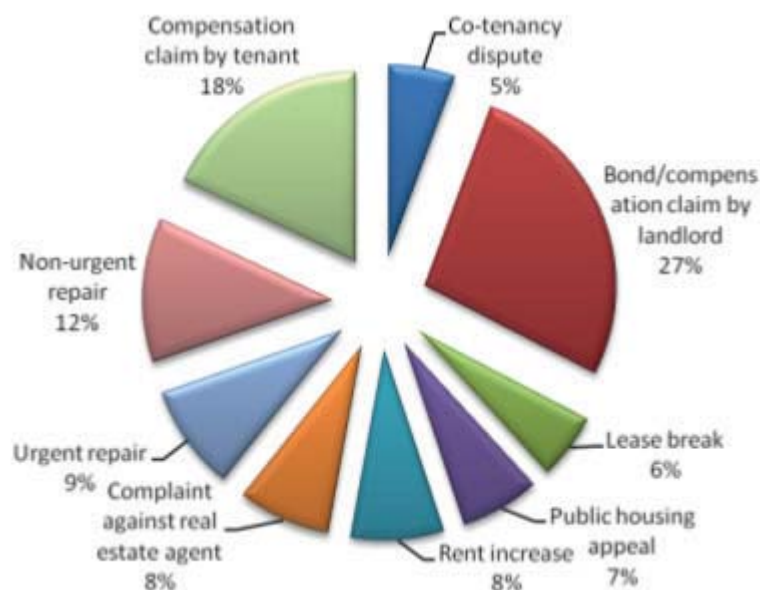
Seventy-three percent of disputes related to private rental accommodation and 75% of private rental properties were managed by a real estate agent rather than directly through the landlord. Only 8% of clients were in public rental accommodation and 5% were in social and community housing. These figures reflect the limited availability of public and social housing options for refugee families in Melbourne's west.

Disputes by Accommodation Type



The following table contains a breakdown of the clinic's casework by the type of legal issue. The bulk of the clinic's casework consisted of repairs (including compensation claims by tenants), bond and eviction disputes.

Disputes by Legal Issue



4 HOMELESSNESS, RENTAL MARKET AND HOUSING DISADVANTAGE

4.1 Case Study

Awal's Story

Awal is a single mother of 4 dependent children who arrived in Australia from Sudan 5 years ago. Awal was referred to our clinic by a domestic violence worker because her 16-year-old daughter, Katie, was being verbally and physically abused by her ex-boyfriend, Peter. Peter made verbal threats to burn down Awal's house, threatened Katie and her 3-year-old brother with a knife and caused serious property damage during several altercations at Awal's house.

Police obtained an intervention order on Katie's behalf 6 months earlier, however Peter continued his threats. Several weeks before approaching our clinic, Peter followed Katie home from the train station, strangled her until she fell unconscious and stole her handbag. Awal approached our service for assistance in breaking her 12 month lease because she feared for her family's safety. There were 6 months remaining on Awal's lease. We advised Awal that we could assist her to get out of the lease, but she would need to access housing services for assistance to secure alternative housing.

Our clinic negotiated a lease break at no cost to Awal, allowing her 4 weeks to find housing. Awal immediately sought the assistance of her local housing service. The housing worker advised Awal that she would need to find private rental accommodation on her own. Our clinic spoke to the housing worker and explained that Awal spoke little English, was highly distressed and had no capacity to secure private rental accommodation without assistance. At the end of the notice period, Awal had nowhere to go.

The housing agency paid \$1,000 to accommodate Awal and her 4 children in a one-bedroom motel room as emergency housing for a week and continued to refer her to private rental. Awal was forced to pay for the second week at the motel from her Centrelink income and went into deficit. On the third week, the housing agency paid the motel, although Awal had great difficulty arranging it. On the fourth week, a different housing service intervened. They nominated Awal for a transitional housing property and she moved in several weeks later. Awal is now receiving complex case support from a settlement agency and her life has improved.

4.2 Housing Disadvantage

Housing has been recognised by refugee advocates as a priority issue in successful settlement.² Ager and Strang describe housing as both a “*marker*” and a “*means*” of successful settlement – in other words, housing is both a

² *Australia's Refugee and Humanitarian Program 2011 Report*, above n 2, 144

vehicle for successful settlement and a determinant as to whether an individual has achieved settlement.³ A multitude of factors restrict access to housing for refugee arrivals. Low vacancy rates in the rental market and soaring rents place many recent arrivals – arriving in Australia with limited finances – into instant housing stress.⁴ Public housing, which many aspire to as a means of escaping the private rental market,⁵ is virtually unattainable.

Non-financial barriers include a lack of rental history, discrimination by agents and landlords and difficulties negotiating the private rental application process. Large families, single parents and single individuals with no family or friendship networks have particular difficulties locating suitable housing for their family composition relative to their financial resources.⁶

4.3 Refugee Homelessness

Chamberlain and Mackenzie's widely utilised definition of "homelessness" in Australia describes 3 types of homelessness:⁷

- primary homelessness, which includes sleeping rough;
- secondary homelessness, including staying with friends or relatives ("couch surfing") or in specialist homelessness services; and
- tertiary homelessness, including living in a boarding house or caravan park, with no secure lease and no private facilities, both short- and long-term.

A study conducted in 2003 by Beer and Foley, which surveyed 434 refugees, approximated that about 30% of recently-arrived refugees have experienced homelessness.⁸ The majority of these refugees reported circumstances of secondary or tertiary homelessness since arriving in Australia; although, in

³ Alistair Ager and Alison Strang: "Understanding Integration: A Conceptual Framework" *Journal of Refugee Studies* (2008) 21(2) 166

⁴ It is estimated that in 2007–08 around 45% of low income private renters in Australia were in "housing stress", which is defined as spending more than 30% of income on housing costs; Australia Institute of Health and Welfare, *Housing Assistance in Australia 2011* (15 June 2011), 7–8; Australian Bureau of Statistics, *Housing Occupancy and Costs 2009-2010* (16 November 2011), 85

⁵ Andrew Beer and Paul Foley: *Housing Need and Provision for Recently Arrived Refugees in Australia* (October 2003), Australian Housing and Urban Research Unit, 31; Ethnic Communities Council of Victoria, *Availability, Affordability, Accessibility: Housing Victoria's New Migrant and Refugee Communities* (2008), 13

⁶ The Refugee Council of Australia's 2008–2009 report on Australia's humanitarian settlement program includes detailed submissions on refugee access to the housing market, discrimination, affordability, quality and location of housing. See Refugee Council of Australia: *Australia's Refugee and Humanitarian Program: Community Views on Current Challenges and Future Directions* (February 2008), 4857

⁷ Chris Chamberlain and David Mackenzie: "Understanding Contemporary Homelessness: Issues of Definition and Meaning" (1992) 27(4) *Australian Journal of Social Issues* 274, 291

⁸ Andrew Beer and Paul Foley: *Housing Need and Provision for Recently Arrived Refugees in Australia* (October 2003), Australian Housing and Urban Research Unit, 21–23

general, they did not identify themselves as homeless. Beer and Foley state that homelessness may not be a major concern for this demographic because homelessness is:

- “a) not seen as homelessness by this group; and
- b) part of their transition to more secure and permanent housing.”⁹

Refugee youth homelessness has received some attention recently. The available literature appears to agree that secondary homelessness in the form of “couch surfing” is the main form of homelessness experienced by refugee youth.¹⁰ Couch’s recent study found: “The under-recognised phenomenon of homelessness experienced by young people of refugee background is often hidden and does not match commonly held beliefs about homeless people.”¹¹

A report by the Centre for Multicultural Youth (“**CMY**”) notes pre-arrival displacement as one explanation for refugee youth not identifying as homeless.¹² The majority of the clinic’s clients were over 25 years of age. Nonetheless, many of the findings in relation to refugee youth homelessness correspond with our own. While this research gives an indication as to the types of problems experienced by refugee households, further research into refugee homelessness is required.

It is remarkable that government policy on homelessness does not specifically address the needs of Culturally & Linguistically Diverse (“**CALD**”) communities, including those of refugee background. The Federal Government’s *White Paper* on homelessness, *The Road Home: A National Approach to Reducing Homelessness*,¹³ does not specifically comment on the needs of CALD communities. The Victorian Government’s *A Better Place: Victorian Homelessness 2020 Strategy*¹⁴ also fails to specifically address the needs of CALD communities.

4.4 Rooming Houses

The clinic assisted 12 clients with problems relating to rooming houses. This report will not cover rooming house problems in detail as they raise different legal issues to the principal work of the clinic to date. However, we do

⁹ Ibid, 23

¹⁰ Jen Couch: “A New Way Home: Refugee Young People and Homelessness in Australia” (2011) 2(1) *Journal of Social Inclusion* 39; Issihaka Toure: “Hidden Homelessness: The Impact of Refugee Homelessness on Newly Arrived Youth” (Association for Services to Torture and Trauma Survivors Inc, July 2008) 25–27

¹¹ Jen Couch: “A New Way Home: Refugee Young People and Homelessness in Australia” (2011) 2(1) *Journal of Social Inclusion* 39, 39

¹² Centre for Multicultural Youth: “A Place to Live: Invisible Homelessness and the Experience of Young People from Refugee and Migrant Background” (2010) 23(3) *Parity* 18, 18

¹³ Commonwealth of Australia: *The Road Home: A National Approach to Reducing Homelessness* (2008)

¹⁴ Department of Human Services: *A Better Place: Victorian Homelessness 2020 Strategy* (September 2010), Victorian Government

summarise the negative impact of rooming houses on the wellbeing of our clients. Rooming houses are a marginal form of accommodation in which residents have exclusive or shared occupation of a room and commonly share other facilities, such as the bathroom, kitchen, laundry and common areas. Rooming house residents are generally very disadvantaged and unable to secure other types of rental accommodation. They are considered to be within the definition of “tertiary homelessness”.¹⁵

Many are assisted to enter rooming house accommodation by housing support services at a time of housing crisis, due to the scarcity of other housing options. Johnston et al states: “When people are forced to accept inappropriate accommodation their situations usually get worse. Low standards also express and reinforce the stigma associated with homelessness.”¹⁶

Rooming house accommodation is culturally and socially inappropriate for clients of refugee background. The rooming house clients we assisted were highly distressed by the impact of their accommodation on their welfare. For example, we assisted a single mother of Ethiopian background with a 1-year-old child who had been placed in a rooming house following an eviction on the grounds of rental arrears. The mother was extremely distressed by the unclean and insecure state of the premises, as well as her infant son’s exposure to co-residents with drug and alcohol problems. She was desperate to get out of the accommodation, but had nowhere to go and little hope of re-entering the private rental market.

4.5 Legal Disputes and Housing Crises

Based on our experience, a significant proportion of legal disputes arise in the context of a housing transition. The casework of the clinic suggests that 1–5 years post-arrival is a critical time for refugee families. Most families experience one or numerous housing transitions during this period – whether voluntary or forced. At this point, the client will often be dealing with two serious issues: a legal dispute and an urgent need to secure alternative housing.

Consistent with the studies conducted into refugee youth homelessness, our clients’ lives were highly disrupted by insecure and inappropriate housing. They experienced related problems with employment, education, physical and mental health. Clients felt that housing service providers were not able to assist them and were helpless to resolve their housing situation themselves. Clients generally did not identify as homeless and this lack of self-identification may have resulted in being overlooked by housing services. We would question Beer and Foley’s suggestion that homelessness in this demographic may not be of concern to policy makers because it is a transitional phase. Refugee and CALD housing should be a priority area of Government housing policy.

¹⁵ See Chapter 4.3 of this report and Chris Chamberlain and David Mackenzie: “Understanding Contemporary Homelessness: Issues of Definition and Meaning” (1992) 27(4) *Australian Journal of Social Issues* 274, 291

¹⁶ Guy, Johnson, Hellene Gronda and Sally Coutts: *On the Outside: Pathways In and Out of Homelessness* (Australian Scholarly Publishing, Melbourne, 2008) 214–215

5 HOUSING ASSISTANCE



5.1 Intensive Assistance (Post-Arrival)

Within the first 6 months of arrival, refugees receive intensive assistance with housing. Refugees who have been granted a visa subclass 200 (refugee), 201 (in country special humanitarian), 203 (emergency rescue), 204 (woman at risk) or 866 (protection visa) receive intensive assistance by a Humanitarian Settlement Services (“HSS”) provider during the first 6 months of living in Australia.¹⁷ This can be extended to 12 months from their arrival. Refugees arriving on these visa categories are allocated a case coordinator who manages the individual or family’s settlement needs, including placing them in suitable long-term housing and explaining basic tenancy rights and responsibilities.

Most refugees receive very good housing assistance under HSS and legal problems are more common when they are no longer eligible for intensive HSS support and are left to negotiate the rental market alone. However, several cases have demonstrated problems arising out of lack of tenancy law knowledge amongst HSS workers, as will be explored at case study at Chapter 8.2.

5.2 Assistance for Proposers (Post-Arrival)

Offshore entrants arriving as part of the Special Humanitarian Program (“SHP”) on a subclass 202 visa are expected to be accommodated or assisted to access alternative housing by their “proposer”.¹⁸ The current HSS contract entitles

¹⁷ The Humanitarian Settlement Services program is funded by the Australian Government Department of Immigration and Citizenship (HSS was formerly known as Integrated Humanitarian Settlement Services)

¹⁸ The Special Humanitarian program is designed to assist people who do not fit within the international legal definition of a refugee but are nonetheless subject to discrimination amounting

proposers to support from HSS providers; however, housing for SHP entrants remains the primary responsibility of proposers and, in most cases, the proposer will allow the SHP entrant to live in their home for an indefinite period. Many tenancy issues arise in these circumstances. As noted in a report by Fraser: “[In] reality, many proposers have been in Australia for a relatively short period of time themselves and may be struggling with their own settlement issues, including employment, education and the need for secure housing.”¹⁹

5.3 Limited Assistance (Within 5 Years of Arrival)

For refugee entrants who have been in Australia for less than 5 years and are no longer eligible for HSS services, limited housing assistance is available from Settlement Grant Program (“SGP”) providers. SGP providers can assist with public and private rental applications and advise clients of their housing options. However, SGP workers have limited capacity to assist clients to locate suitable housing and liaise with real estate agents; as such, clients are generally left to negotiate the private rental market alone.

5.4 Asylum Seekers

Asylum seekers are not entitled to HSS or SGP services whilst their application for a protection visa is being determined. They have limited access to government services and are not eligible for public housing. Limited financial assistance is provided through the Asylum Seeker Assistance Scheme if a person meets strict eligibility criteria. Due to their immigration status and financial situation, asylum seekers are almost entirely excluded from the private rental market and are forced to rely on rooming houses, charitable assistance and informal support networks.²⁰ As the bulk of the clinic’s work related to private tenancies, the clinic advised only a minimal number of asylum seekers.

5.5 Mainstream Housing Services

There is little data available on the number of refugees who access mainstream housing services. However, the vast experience of our clients who did access mainstream housing services was that they were advised to search for housing themselves in the private rental market. As demonstrated by Awal’s story at Chapter 4.1, mainstream housing agencies have little capacity to deal with high-needs clients. The 2004 report by Hanover Welfare Services identified that, although less than 1% of clients seeking assistance from mainstream housing services were refugees or asylum seekers, the special circumstances of this group placed pressure on the

to a gross violation of their human rights in their home country. An SHP applicant must be “proposed” by an Australian citizen, permanent resident or organisation to be considered for entry into Australia - if an applicant is granted a visa, the proposer assumes the primary responsibility for assisting the entrant to settle in Australia

¹⁹ Katie Fraser: *Prevention is Better than Cure: Can Education Prevent Refugees’ Legal Problems?* (March 2008) Victoria Law Foundation, 28

²⁰ Johanna Burns: “Locked Out: Position Paper on Homelessness of Asylum Seekers Living in the Community” (Position Paper, Asylum Seeker Resource Centre)

resources of these services. Housing service providers reported that they experienced difficulties meeting the needs of refugees and asylum seekers because of “language barriers, support engagement challenges, low availability of accommodation for large families and low availability of support before and after housing crisis”.²¹

5.6 Specialist Refugee Housing Workers

A joint report by the Migrant Information Centre and South Central Region Migrant Resource Centre identified a large demand for specialist refugee housing assistance to improve accessibility to the private market.²²

Consumer Affairs Victoria (“CAV”) funded a pilot project to employ a full-time housing worker to assist refugee and migrant families to secure private rental housing and to undertake community education and networking with local real estate agents to improve relationships with refugee communities. The pilot assisted 89 clients, most of whom required less than 8 hours of assistance.²³ Over half of all clients were successful in accessing private rental or transitional housing at the conclusion of the pilot. Unfortunately, funding for the project was not continued.

AMES²⁴ incorporates refugee housing workers into their provision of HSS services. During the initial settlement period, AMES housing workers provide intensive housing assistance for newly arrived refugees. AMES housing workers are drawn from refugee communities and are multilingual. They have the capacity to liaise and build relationships with real estate agents, educate clients and assist clients with common difficulties.

Our casework identifies an urgent need for specialist refugee housing workers in areas of high density refugee settlement. Overall, these present good models for the provision of specialist refugee housing assistance.

Recommendation 1(a):

Specialist housing assistance that meets the needs of refugee clients needs to be funded in areas of higher density refugee settlement, including Melbourne’s western suburbs.

²¹ Eve Kelly: *A New Country - But No Place to Call Home: The experiences of refugees and asylum seekers in housing crisis and strategies for improved housing outcomes* (2004) Hanover Welfare Services, 67. See also Centre for Multicultural Youth: “A Place to Live: Invisible Homelessness and the Experience of Young People from Refugee and Migrant Background” (2010) 23(3) *Parity* 18, 27–28, which states that the “front door” housing system is failing to provide housing for young refugees and migrants.

²² Migrant and Refugee Rental Housing Assistance Project: *Finding A Home: A Research Report on Supporting Newly Arrived Migrants and Refugees to Secure Housing* (February 2007), 24, 30

²³ Migrant and Refugee Rental Housing Assistance Project: *Migrant and Refugee Rental Housing Assistance Project: Final Project Evaluation Report* (September 2007), 12

²⁴ AMES is the leading HSS provider in Victoria.

6 FINANCIAL ASSISTANCE

6.1 Government Bond Loan Scheme

The Victorian State Government, through the Director of Housing (“DOH”), offers a government bond loan scheme to assist low income tenants. Eligible applicants are able to receive an interest-free loan to cover all or part of their bond.²⁵ In order to make a claim on a bond that has been paid through the scheme, a landlord must make an application to VCAT.²⁶ As observed at Chapter 10.3 of this report, there are significant concerns about whether this provision is adequately protecting Government bond loans where landlords are failing to give tenants notice of VCAT applications and claims are proceeding undefended.

A further problem arises with the application of the eligibility criteria for a bond loan. If the landlord successfully claims all or part of a DOH bond, the tenant must repay the loan in full before they will be eligible for a new loan. Whilst this is a reasonable policy in most respects, the experience of the clinic was that an overly strict application of the eligibility criteria by local housing offices appears to operate counter to the broader policy objective of preventing homelessness.

For example, upon arrival in Australia, Eric, a Rwandan male, was assisted to find a house with two co-tenants. They received a joint DOH bond loan of \$1,200. Not long after moving in, Eric felt threatened and unsafe with his co-tenants, who were from an opposing Rwandan tribe. Eric wanted to leave but could not afford to pay the bond for a new property. He was not able to get a DOH bond loan due to the outstanding loan, which would not be cleared until all the co-tenants vacated the property. Eric could not bear to remain in the property any longer so he left and stayed on a friend’s couch in the outer-eastern suburbs.

Government bond loans are a cost-effective method for increasing access to the private rental market for low income families. However, as the above example shows, there are shortcomings in the administration of loans where a debt is owed to DOH. There are varied and complex reasons for DOH bond loan debts. The policy ought to be amended to take into account the possibilities of co-tenancies breaking down and to allow more flexible repayment options. Ultimately, the cost of homelessness is much higher than the cost of an unpaid bond loan.

6.2 Incentives to Lease to Disadvantaged Tenants

In Victoria there are few incentives for landlords to lease properties to disadvantaged tenants.

²⁵ Department of Human Services: *Bond Loans* (9 December 2011)

<http://www.dhs.vic.gov.au/for-individuals/housing-and-accommodation/public-housing/applying-for-housing/income-and-asset-limits-public-housing/bond-loans#Bond%20loan%20limits>

²⁶ *Residential Tenancies Act 1997* (Vic) s412(6)

Examples from other jurisdictions provide a useful starting point. The NSW Tenancy Guarantee Program encourages private sector landlords and agents to rent properties to people who are having difficulty entering the private rental market, by providing a Tenancy Guarantee of up to \$1,000 (over and above the rental bond) for eligible applicants.²⁷ The Tenancy Guarantee is available to landlords to cover rental arrears and/or property damage over and above the rental bond. Tenancy Guarantees are issued by Housing NSW and selected community housing providers. The Tenancy Guarantee helps tenants build a successful tenancy history, thus reducing or eliminating the disadvantages they previously experienced when trying to access the private rental market.

6.3 Assistance with Rental Arrears

We assisted 26 clients who had received an NTV on the grounds of rental arrears and a further 12 clients who had been threatened with eviction on the grounds of rental arrears but who had not yet received an NTV.²⁸ Clients were generally referred to a housing service for assistance in paying rent. Housing services can assist clients with limited emergency grants from the Housing Establishment Fund (“HEF”)²⁹, which they can allocate only if they assess that the tenancy can be sustained. Housing services will generally not assist clients with emergency funds unless they have received a NTV, by which point a situation has escalated into crisis.



²⁷ Housing NSW: “Tenancy Guarantees” accessible at:

<<http://www.housing.nsw.gov.au/Community+Housing+Division/Community+Housing+Providers/Products+and+Services/Tenancy+Guarantees.htm>>

²⁸ This is consistent with a study by Beer et al, which determined that rental arrears was the major reason for eviction of the 150 participants in their study. See Andrew Beer, Michele Slatter, Jo Baulderstone and Daphne Habibis: *Evictions and Housing Management: toward more effective strategies* (2003) Australian Housing and Urban Research Unit, 20

²⁹ Department of Human Services: *Housing Establishment Fund* (6 May 2011):

<http://www.dhs.vic.gov.au/about-the-department/plans,-programs-and-projects/programs/housing-and-community-building/housing-establishment-fund>

Early intervention and prevention of homelessness is a principal aim in government homelessness policy.³⁰ However, vulnerable tenants are not being adequately assisted by housing services to sustain tenancies due to a lack of funding. There needs to be far greater allocation of funding to assist individuals and families at risk of homelessness to sustain a tenancy prior to a point of crisis.³¹ Once an individual or family is homeless, their social, health and financial problems deepen, which ultimately comes at a very high cost to government and community resources.³²

Recommendations 1(b)–(c)

State Government bond loan policy should allow for more flexible repayment arrangements of bond loan debts, which do not automatically disentitle an applicant to a new bond loan.

State and Federal Governments need to create better incentives for landlords to lease properties to disadvantaged tenants, taking into account existing models such as Housing NSW's Tenancy Guarantee.

A greater allocation of Housing Establishment Fund grants must be made available to assist individuals and families at risk of homelessness in sustaining tenancies.

³⁰ Department of Families, Housing, Community Services and Indigenous Affairs, Homelessness Taskforce: *The Road Home: A National Approach to Reducing Homelessness* (2008) Commonwealth of Australia

³¹ Andrew Beer: *Evictions and Housing Management: toward more effective strategies* (2003) Australian Housing and Urban Research Unit, 45–46

³² Paul Flatau: *The effectiveness and cost-effectiveness of homelessness prevention and assistance programs* (2005), Australian Housing and Urban Research Unit

7 ACCESS TO JUSTICE AND DISPUTES AT VCAT

The VCAT Residential Tenancies List is the primary forum for the determination of tenancy disputes arising under the *Residential Tenancies Act 1997* (Vic) (“RTA”) in Victoria. VCAT is required to operate as informally as possible in order to determine disputes fairly, efficiently and according to the substantial merits of the case.³³ There is no general right to legal or other professional representation for residential tenancies matters at VCAT, other than in the case of eviction hearings³⁴ and other defined categories³⁵.

The absence of detailed, published statistics on the VCAT Residential Tenancies List creates great difficulties in ascertaining the extent of access to justice issues. Justice Bell’s review of VCAT acknowledges that tenants have poor access to VCAT.³⁶ Approximately 95% of applications to VCAT are initiated by landlords and (of those) approximately 80% proceed undefended (with no appearance at the hearing by the tenant).³⁷ The majority of landlords are represented by property managers who appear regularly at VCAT. In 2009–10, 65% of landlords were represented by agents or property managers.³⁸ A further 23% of applications were made by DOH, which is represented by a public officer.³⁹ There is no available data on the number of tenants who are represented at VCAT; however, we observed that refugees who attend VCAT unrepresented face significant disadvantage.

7.1 Disadvantages Faced by Self-Represented Refugee Tenants at VCAT

Our clinic represented 28 clients at VCAT. From our experience, refugee tenants are extremely disadvantaged as self-represented litigants. They suffer considerable language and cultural barriers and their capacity to understand the Australian legal system is limited. Even where a client had received some advice, cultural and language barriers restricted them from being able to apply the information or advocate for themselves.

We know anecdotally from reports by refugee community members and leaders that they are unlikely to attend VCAT without an advocate. Where our service had no capacity to represent a client at VCAT, they usually opted not to appear, despite having received detailed legal advice about their case and the VCAT process.

³³ *Victorian Civil and Administrative Tribunal Act 1998* (Vic) s97–98

³⁴ *Victorian Civil and Administrative Tribunal Act 1998* (Vic) Schedule 1, Clause 67

³⁵ *Victorian Civil and Administrative Tribunal Act 1998* (Vic) s62

³⁶ Justice Kevin Bell: *One VCAT: President’s Review of VCAT* (November 2009) Victorian Civil and Administrative Tribunal, 25; Victorian Civil and Administrative Tribunal: *VCAT Annual Report: 2009/10* (2010), 28–29

³⁷ Justice Kevin Bell: *One VCAT: President’s Review of VCAT* (November 2009) Victorian Civil and Administrative Tribunal, 25

³⁸ Victorian Civil and Administrative Tribunal: *VCAT Annual Report: 2009/10* (2010), 29

³⁹ *Victorian Civil and Administrative Tribunal Act 1998* (Vic) s62(2)(c)

Justice Bell's review of VCAT sets out three basic requirements for effective self-representation at VCAT, namely:

- some prior knowledge of the procedures that would be followed in the hearing, so that the person knew – more or less – what to say and do;
- some prior knowledge of the laws or principles governing the case, so that the person could – to a reasonable degree – bring their case within VCAT's frame of reference; and
- some source of advice about these matters, be that from someone in the family, a friend or a community legal centre, whether that person was a lawyer or a non-lawyer, as long as they had a basic understanding of the procedures and issues involved.⁴⁰

Justice Bell describes that in His Honour's experience, "when people did not have a source of advice about these matters, they were all at sea and the experience of appearing for themselves was a very negative one".⁴¹ Clients of refugee background who possess one of these requirements, let alone all three, are rare. There is no data available regarding access to VCAT by CALD clients, though Justice Bell's review of VCAT conceded a lack of utilisation of VCAT by CALD clients.⁴²

7.2 Cultural Awareness

Clinic lawyers found that some Tribunal Members possessed better cultural awareness and sensitivity than others. The majority of clients we represented at VCAT were fearful and nervous of appearing before a Tribunal Member. Communication with CALD parties can require specialised skills and a greater degree of sensitivity than eliciting evidence from native English speakers, particularly where a person has a history of persecution and trauma.

7.3 Issues with Interpreters

Clinic lawyers encountered difficulties with interpreters at VCAT, with instances of the correct language interpreter being booked through the VCAT Registry but the wrong language or dialect being provided at the hearing. This was particularly an issue for languages of emerging communities, such as Burmese dialects, where suitably qualified

⁴⁰ Justice Kevin Bell: *One VCAT: President's Review of VCAT* (November 2009) Victorian Civil and Administrative Tribunal, 78

⁴¹ Justice Kevin Bell: *One VCAT: President's Review of VCAT* (November 2009) Victorian Civil and Administrative Tribunal, 78

⁴² Justice Kevin Bell: *One VCAT: President's Review of VCAT* (November 2009) Victorian Civil and Administrative Tribunal, 25

interpreters are scarce. Where the correct interpreter was unavailable, this resulted in an adjournment. In several cases, clients opted to settle their matter on terms potentially less favourable to them than had the hearing taken place, in order to avoid the stress and cost of returning to VCAT.

Errors with interpreter bookings pose a significant access to justice issue and provide further disincentive for CALD tenants to appear at VCAT. VCAT Registries need to have processes in place to minimise errors with interpreter bookings and the harm that ensues when parties attend for a hearing and it has to be adjourned. If the correct interpreter is not available for a hearing date, the hearing date should be adjourned by the Principal Registrar prior to the hearing date and the parties notified to avoid the costs of unnecessary appearances.

7.4 Adjournments and Settlement of Matters

Clinic lawyers occasionally experienced difficulties at VCAT due to the Tribunal Member having no time to hear a contested application at the designated hearing time. As noted, the majority of applications to the Residential Tenancies List at VCAT are initiated by landlords and approximately 80% of these proceed undefended.⁴³ Accordingly, a number of matters will be listed concurrently before a Member; the presumption is that most matters allocated the same hearing time will be finalised quickly. This becomes an issue when several matters listed for the same hearing time are contested and need to be determined. Adjournments in this context pose the same problems as adjournments brought about by interpreter booking errors referred to in Chapter 7.2.

Recommendations 2(a)–(e)

VCAT should make detailed data on access to the Residential Tenancies List of the Tribunal publicly available, including:

- types of tenants accessing the Tribunal as both applicants and respondents;
- number of tenants who are represented and the nature of representation;
- types of matters tenants are initiating as applicants; and
- types of matters proceeding undefended.

⁴³ Justice Kevin Bell: *One VCAT: President's Review of VCAT* (November 2009) Victorian Civil and Administrative Tribunal, 25

VCAT should undertake a comprehensive review of outcomes for disadvantaged tenants at the Tribunal, which may include:

- a comparison of VCAT outcomes for represented and unrepresented tenants;
- analysis of outcomes of bond/compensation hearings initiated by landlords, including size of claims and success rates (see Chapter 10.6); and
- analysis of outcomes of compensation hearings initiated by tenants, including size of claims and success rates (see Chapter 11.5).

VCAT should adopt best practice procedures for communicating with CALD clients at hearings.

VCAT Registries should have procedures in place to minimise errors with interpreter bookings. If the correct interpreter is not available for a hearing date, the hearing should be adjourned by the Principal Registrar and parties notified *prior* to the hearing date.

VCAT Registries should also examine listing practices and consider strategies to avoid unnecessary adjournments.

8 TENANCY ADVICE AND ADVOCACY

8.1 Tenancy Advocacy by Caseworkers

Caseworkers fulfil a critical role in supporting clients with housing problems. Settlement and housing workers, in particular, are well placed to negotiate outcomes between tenants and landlords by non-adversarial means. Caseworkers also acknowledge that clients are constantly referred between services and seek to minimise “referral fatigue” by assisting them internally with as many problems as possible.⁴⁴ It is, however, important to identify the limitations of caseworkers who lack relevant training to deal with tenancy disputes. As demonstrated by the case study below, caseworkers with limited tenancy expertise can inadvertently jeopardise their clients’ legal interests.

A further notable limitation is that caseworkers pour significant resources into building positive relationships with local landlords and real estate agents.⁴⁵ Given the current rental market, caseworkers depend on these relationships to arrange housing for large numbers of clients. Accordingly, caseworkers can be hesitant to run the risk of damaging relationships with agents by seeking to enforce their clients’ tenancy rights.

8.2 Case Study

Lian’s Story

Upon arrival in Australia in 2010, Lian, a Burmese man, moved into a rundown rental property with his wife and 5 children. When winter came, Lian discovered his heater was not working. At around the same time, his hot water service broke down. Lian reported the problems to the real estate agent and was informed that the heater was not working when he moved in and that he could use the wood fireplace. The landlord was unwilling to repair the hot water and told the client to boil water on the stove. Upon hearing this, Lian’s settlement worker immediately attempted to persuade the agent to have the repairs undertaken.

When the repairs were not completed, Lian’s caseworker negotiated to break the lease on the condition that Lian would not seek compensation for the 4 month period he did not have heating and hot water. When Lian moved out of the property, the landlord sought a sum in excess of \$2,000 in bond and compensation.

Much of the claim related to burn marks on the bench-tops and carpets, which were caused by pots of boiling water that the family were using to bathe the children. Lian was likely to be barred from making a counterclaim for compensation because of the agreement negotiated by his settlement worker. We assisted Lian to settle the dispute. If Lian had sought legal advice at an earlier

⁴⁴ Fraser, Katie: “Prevention is Better than Cure: can education prevent refugees’ legal problems?” (Fellowship Report, Victoria Law Foundation, March 2011) 23

⁴⁵ See Refugee Council of Australia: *Australia’s Refugee and Humanitarian Program: Community Views on Current Challenges and Future Directions* (February 2008), 53

stage in the dispute, it is likely he could have compelled the landlord to complete the repairs and/or terminated the lease on favourable terms and potentially made a claim for compensation.

8.3 Consumer Affairs Victoria

CAV is the principal source of information and advice on tenancy problems in Victoria. Advice is mainly provided through a telephone service. In 2010, CAV answered 87,315 calls in relation to renting and 95,321 enquiries regarding the Residential Tenancies Bond Authority (“RTBA”).⁴⁶ It is also possible to seek face-to-face advice from CAV regional offices and various outreach locations. Officers at these services attempt to solve problems on the spot. For example, officers can make telephone calls to agents or register complaints on behalf of tenants which may then proceed to dispute resolution or investigation. However, their role is limited to giving information and advice, rather than providing advocacy. If a need for VCAT representation or more extensive advocacy is identified, CAV refers clients to a CAV-funded advocacy service like TUV.

8.4 Tenants Union Victoria

The Tenants Union Victoria (“TUV”) is the largest provider of specialist tenancy services in Victoria, which includes providing information, advice and advocacy. The bulk of TUV’s work is done over the telephone. In 2010, 92% of assistance was provided on an advice or information only basis; 74% of this advice was provided over the telephone.⁴⁷ Only 5% of clients received advocacy assistance and 3% representation at VCAT.⁴⁸

TUV undertakes advocacy for selected clients who access its drop-in service, which is located at their office in the inner-northern suburb of Fitzroy. However, the TUV’s capacity to do this is limited. Generally, the drop-in service provides clients with an assessment of their case, information about the VCAT process, factsheets and assistance completing forms or drafting letters. Correspondence to other parties completed at the drop-in service is not written on TUV letterhead.

TUV generally encourages tenants to represent themselves at VCAT, particularly in legally straight-forward matters such as bond and repairs disputes. TUV’s procedures aim to maximise the number of people that can be assisted with limited resources and to empower tenants to advocate on their own behalf. This is effective where a client is able to self-advocate to a satisfactory extent. However, where a client is in a severely marginalised position, the efficacy of this is limited.

⁴⁶ Consumer Affairs Victoria, *Annual Report 2009-10* (2010), 5

⁴⁷ Tenants Union Victoria, *Annual Report 2009-10* (2010), 17

⁴⁸ Tenants Union Victoria, *Annual Report 2009-10* (2010), 20

8.5 Victoria Legal Aid and Community Legal Centres

As a general rule, CLCs and VLA undertake limited tenancy advocacy outside of basic advice due to lack of expertise and resources in conjunction with the availability of specialist advice at TUV. CLCs that do not have a dedicated tenancy advocate are unlikely to have the resources to represent clients at VCAT. Limited duty advocate services are available at some VCAT locations.



8.6 Access Needs of Refugee Tenants

Refugee tenants can be as reticent to approach advocacy and legal services as they are to confront landlords and real estate agents. Cultural conceptions of government, authority and the legal system can be strong deterrents to seeking legal assistance. Strong relationships with settlement services and other support agencies have been valuable in building relationships between FCLC's clinic and refugee communities, as has been the employment of workers from within refugee communities.

Refugee tenants require face-to-face assistance and advocacy. Those who reside in the western suburbs suffer significant mobility barriers and are generally unable or unwilling to travel into the CBD or the wider metropolitan region. Language and cultural barriers prevent refugee tenants from seeking assistance by telephone. Most refugee clients find the process of even booking an appointment or requesting an interpreter by telephone extremely difficult; many of our clients were assisted to make an appointment by a caseworker or friend. Refugee clients typically do not have the cultural resources to apply complex

information that is relayed verbally or in writing to them by generalised services such as CAV and TUV, even if an interpreter is used.

Recommendation 3

The establishment of tenancy advocacy services, appropriately tailored to the needs of refugee clients, which are:

- face-to-face;
- physically accessible;
- able to provide intensive casework and VCAT representation;
- culturally appropriate, responsive and trusted by refugee communities; and
- engaged with local settlement services and relevant community agencies.

9 URGENT NEED FOR COMMUNITY EDUCATION

9.1 Preventing Tenancy Errors

The Project delivered approximately 15 tenancy education seminars. Seminars were organised in partnership with settlement services and community groups, and where possible were facilitated by a bilingual refugee community worker. The seminars were very well received and encouraged attendance at the clinic.

As demonstrated by the case studies in Part B of this report, refugee tenants frequently make basic tenancy errors which are preventable through prior education. For example, in relation to bond disputes, common mistakes include a failure to maintain the garden; the late return of keys after vacating a premises and leaving items out on the nature strip after vacating. Tenants do not understand the significance of condition reports and fail to challenge bond claims by landlords due to a mistaken belief that they are legally liable for damages caused by “fair wear” of the property.

An overriding problem is the inability to identify a tenancy dispute as a *legal* problem. Many clients first seek assistance at a point of crisis. Community legal education plays a key role in empowering people to recognise and avoid problems and to seek help at an early stage of the dispute.⁴⁹ Community legal education also builds stronger relationships between refugee communities and CLCs, which encourages communities to access legal services when they are required.⁵⁰

9.2 Case Study

Community Education Event

FCLC organised a community education event in Werribee in partnership with the local settlement planning committee.⁵¹ The seminar was split into two components. First, information about tenancy rights and housing assistance was presented by an FCLC lawyer, a CAV officer and a housing worker from the local housing service. Following the information seminar, the lawyer, CAV officer and housing worker were available to give individual advice to participants.

Approximately 70 community members from a range of refugee and CALD backgrounds attended. Participants engaged in a lively and interactive debate about tenancy issues. Participants commented that they wished they had known about their tenancy rights sooner, which may have helped them to avoid problems. They also expressed a great interest in knowing about services available to assist them. Approximately 15 clients sought professional assistance after the seminar.

⁴⁹ See Katie Fraser: *Prevention is Better than Cure: can education prevent refugees' legal problems?* (March 2011) Victoria Law Foundation

⁵⁰ Ibid

⁵¹ The seminar was facilitated by the Legal and Consumer Working Group of the Wyndham Humanitarian Network.

9.3 Current Sources of Information and Education

In Victoria, landlords are required to provide tenants a tenancy booklet at the commencement of a tenancy.⁵² This does not provide adequate protection to refugee tenants. The tenancy booklet is helpful only to those in a position to read and apply detailed technical material and to assert their own rights.

Newly arrived refugees receive general tenancy and housing information when they arrive in Australia as a component of HSS. The most recent Adult Migrant English Program (“AMEP”) contract requires AMEP providers to educate students about housing and introduce them to the Australian legal system. SGP providers are also funded to provide some information on private rental and public housing and referrals to legal services.

A recent report by Fraser, *Prevention is Better than Cure: Can Education Prevent Refugees’ Legal Problems?*, highlights that settlement services, including HSS, SGP and AMEP providers, are well-placed to deliver legal and financial education to large groups of new arrivals. However, as they are not legal practitioners or providers of legal services, they are usually not suited to creating this information.⁵³ A new initiative by National Legal Aid, *What’s the Law? Australian Law for New Arrivals*, is a free education kit designed for use in English language classes and community settings and includes a chapter on renting.⁵⁴ *What’s the Law?* presents an example of an effective resource developed as a partnership between legal and settlement service providers.

9.4 Community Education Models

A tenancy education program which meets the needs of refugee communities should include information about:

- how to report maintenance issues, and what to do if repairs are not undertaken;
- how to avoid a bond dispute, including the significance of condition reports, damage caused by “fair wear and tear”, and a tenant’s duties to avoid causing damage and to maintain a property in clean condition;
- the termination of a lease, including how a tenant or landlord can legally terminate a lease, and the significance of different types of leases (eg fixed term and periodic leases);

⁵² *Residential Tenancies Act 1997* (Vic) s66

⁵³ Katie Fraser: *Prevention is Better than Cure: can education prevent refugees’ legal problems?* (Fellowship Report, Victoria Law Foundation, March 2011), 7–8

⁵⁴ Victorian Legal Aid: *Victoria Legal Aid, What’s the law? Australian Law for New Arrivals* (20 October 2011):

<<http://www.legalaid.vic.gov.au/3641.htm>>

- where to seek help for tenancy and housing problems.

Basic factsheets can be useful, if they are translated or in simple English and targeted at communities with adequate literacy skills. In our experience, DVDs, visual materials and face-to-face information is more accessible to clients with low levels of literacy.

Tenancy education for refugee communities should ideally be developed as a partnership between settlement services, community legal services and housing support services. The education itself should be delivered by skilled community educators with the aid of visual resources. Tenancy law varies across state jurisdictions, and any national tenancy education model targeting refugee communities would need to take account of different state and territory laws.

9.5 Education for Caseworkers

As demonstrated in the case study at Chapter 9.2, caseworkers require training to assist them to navigate tenancy disputes and to identify problems that should be referred to a professional advocate at the earliest possible stage. Targeted tenancy training for caseworkers has a great capacity to prevent tenancy problems and to achieve better housing outcomes for refugee tenants. Given the impact of on clients, tenancy training should form a part of ongoing professional development of settlement workers and ought to be repeated every 1–2 years.

TUV is in a strong position to provide training to the settlement sector, if appropriate resources are provided by the State Government to do so. TUV also offers a telephone legal advice service for caseworkers, which could be better promoted in the settlement sector.

Recommendations 4(a)–(b)

The provision of tenancy education to refugee communities, developed as a partnership between legal and settlement service providers, on issues including:

- how to report maintenance issues, and what to do if repairs are not undertaken;
- how to avoid a bond dispute, including the significance of condition reports, damage caused by “fair wear and tear”, and a tenant’s duties to avoid causing damage and to maintain a property in clean condition;
- the termination of a lease, including how a tenant or landlord can legally terminate a lease, and the significance of different types of leases (eg fixed term and periodic leases);
- where to seek help for tenancy and housing problems.

The provision of basic tenancy and referral training to settlement workers and other relevant caseworkers, delivered by the TUV with funding provided by the State Government.

Part B

Refugee Disadvantage in Housing and Tenancy Legal Disputes



10 BOND AND COMPENSATION APPLICATIONS

In Victoria, bond is registered with the RTBA. Under the RTA, at the termination of a tenancy a landlord can make a claim for any loss incurred as a consequence of rental arrears⁵⁵ or a tenant's failure to avoid causing damage to the premises or maintain the premises in a reasonably clean condition⁵⁶. A tenant can direct the RTBA to pay the landlord all or part of their bond by signing a bond claim form. If a tenant does not sign a bond claim form, the landlord may apply to VCAT for a determination within 10 business days of the tenant delivering up vacant possession of the property.⁵⁷ If the bond was paid by the Victorian Government bond loan scheme⁵⁸, the landlord *must* make an application to VCAT to claim all or part of the bond⁵⁹ even if the tenant agrees with the landlord's claim. Where a landlord wishes to claim more than the amount of the bond, they can apply to VCAT for an order requiring the tenant to pay additional compensation.⁶⁰

10.1 Our Concerns

The clinic advised 69 clients in relation to bond and compensation applications brought by landlords. Our casework suggests that an alarming number of bond and compensation claims by landlords lacked merit and displayed elements of opportunism. Where our clinic provided representation, it was rare for the landlord to recover the full amount claimed; the majority of claims were drastically reduced. The impression gained by the clinic was that many landlords claim bond from tenants of refugee background as a matter of course, for damages or maintenance that pre-exist the tenancy or are the legal burden of a landlord. The clinic's casework also raised a number of technical legal issues that consistently place marginalised tenants at an unfair disadvantage and identified common problems that clients could have avoided with prior tenancy education.

10.2 Case Study

Makuei's Story

Makuei is a 29-year-old single Sudanese man who rented a run-down apartment in West Footscray with his cousin for 2 years. When he signed the lease he had

⁵⁵ *Residential Tenancies Act 1997* (Vic) s418

⁵⁶ *Residential Tenancies Act 1997* (Vic) s419

⁵⁷ *Residential Tenancies Act 1997* (Vic) s417

⁵⁸ Department of Human Services: *Bond Loan Scheme* (6 October 2011):

<<http://www.dhs.vic.gov.au/for-individuals/housing-and-accommodation/private-renter-assistance/bond-loan-scheme>>

⁵⁹ *Residential Tenancies Act 1997* (Vic) s412(6)

⁶⁰ *Residential Tenancies Act 1997* (Vic) s210

been in Australia for about 6 months. The property was over 40 years old and in poor condition. The condition report marked all rooms as “clean” and “undamaged”. The property had a history of being let to Sudanese tenants.

According to Makuei, the previous tenants had paid for damages claimed by the agent because the agent had threatened to “blacklist” them and they were too scared to attend VCAT. Makuei decided to leave the property because the landlord had increased the rent for the fourth time in 2 years and he could no longer afford the rent.

The landlord’s claim

Upon vacating the property, the landlord claimed bond and compensation from Makuei to the sum of \$1500. The bond paid was \$750. The agent claimed costs for removal of rubbish, replacement of carpet and repair of wallpaper and a shower screen. The agent also claimed four days of rent arrears and general cleaning costs. Makuei had made several complaints to the agent about the faulty shower screen and was ignored.

After vacating, he left some personal items and furniture at the front of the apartment building but removed them after several days. Makuei conceded making a small stain on the carpet; however he stated that the carpet and walls were in poor condition when he moved in. Makuei did not understand why the agent was claiming four days’ rent, but admitted he returned the keys four days after vacating because the agent’s office was shut over a long weekend.

The agent did not serve Makuei notice of the landlord’s application, which was made a month after he vacated and following his repeated refusals to pay out the landlord’s claim in cash. The tenancy lawyer had to make repeated requests for the application and supporting documentation prior to the hearing.

The outcome

The hearing occurred 6 weeks after Makuei vacated. By that time, no repairs had been made; the agent presented only quotations at the hearing. Makuei conceded that he owed 4 days’ rent. The agent conceded that Makuei had removed the items left at the front of the building. VCAT accepted that at the time Makuei signed the condition report he had limited English skills and had been in Australia for a short time.

The Member found the contents of the report to be unreliable and accepted most of Makuei’s evidence in relation to the poor state of the premises. VCAT rejected the landlord’s claim in relation to the carpet, wallpaper and cleaning. However, VCAT found that there was no evidence that Makuei had informed the landlord of damage to the shower screen and found Makuei liable for its repair. The landlord’s claim was proven to the sum of \$400. This comprised \$170 for rental arrears and \$230 for repair of the shower screen. Since vacating the property, Makuei has found it impossible to find alternative private rental accommodation and has slept on friends’ couches.

10.3 Service of VCAT Applications

A repeated practice evident amongst agents and landlords was the failure to effect adequate service of VCAT applications and supporting documentation on the tenant. Section 506 of the RTA merely requires that service be effected by leaving or posting a document to a person's last known place of residence. We discovered it is common practice to post applications to the vacated property, even in situations where the agent has been in recent telephone or face-to-face contact with the outgoing tenant and could easily ascertain their new address. Several clients sought our assistance because their bonds had not been returned weeks, and even months, after vacating. Enquiries frequently revealed that VCAT had already made a determination requiring the tenant to pay their bond to the landlord.



10.4 Particulars and Supporting Documentation

Applications by landlords for bond and compensation were often poorly particularised and rarely accompanied by supporting documentation. Sometimes, clients had asked agents for supporting documentation and had been refused. In general, the tenancy lawyer was able to obtain particulars and copies of supporting documentation by making a request in writing. However, many agents provided documents at late notice which placed tenants at a disadvantage.

The *Victorian Civil and Administrative Tribunal Rules 2008* (Vic) ("**VCAT Rules**") are contradictory in relation to the provision of supporting documentation. Rule 6.25(14) of the VCAT Rules provides that an application for bond by a landlord must include a copy of the condition report and any "quotation, account or receipt on which the landlord relies to prove the claim". However, Rule 6.23(b) states that if an application has been lodged electronically (using VCAT Online) the documents may be provided to VCAT at the hearing or at the request of the Principal Registrar before the hearing. The majority of agents make applications using VCAT Online and are technically not required to

provide supporting documentation save at the request of the Principal Registrar.

Early exchange of information is crucial to the efficient and effective resolution of disputes. Although this is envisaged by VCAT Rule 6.25(14), it is contradictory for a broad exemption to be granted for applications made electronically by Rule 6.23(b). Tenants are more likely to attend hearings and/or seek professional advice if they understand the claim against them and should also be given a reasonable opportunity to prepare their defence.

10.5 Condition Reports and Pre-Existing Damages

Condition reports were a major area of concern. Properties in substandard condition, with multiple pre-existing maintenance issues, were misrepresented in condition reports. Common issues included mould, rubbish left in the garden, damaged locks, dirty carpets and walls, cupboards and other fixtures in a state of disrepair, damaged vertical blinds and ripped fly screens. Condition reports often suggested that an ageing, bottom-end property was in excellent condition. Refugee tenants rarely made amendments to condition reports; most clients did not understand the contents or significance of their condition report at all.

Section 36(1) of the RTA provides that a condition report is “conclusive evidence” of the state of repair or condition of a property prior to a tenant moving in if it is signed by the landlord and the tenant. The finality of this provision takes no account of tenants who cannot read and write to a reasonable standard of English; it also overlooks those who, for reasons of culture or education, do not understand the significance of a written contract. Unfortunately, we believe that some landlords and agents exploit these vulnerabilities and purposely misrepresent the condition of properties.

With the assistance of a representative able to make relevant submissions, the effect of this legislative provision can be mitigated. Tribunal Members have discretionary powers and in some cases considered a tenant’s circumstances at the time of signing a condition report. However, not all Members found these factors to be relevant. Further, it is unlikely that a Member would consider these factors in the absence of submissions by a professional advocate.

The general presumption that a condition report is evidence of the state of a property should remain. However, the presumption should be rebuttable and a tribunal should be obliged to consider relevant circumstances that may decrease the weight accorded to a condition report.

10.6 The “Scatter-Gun” Approach

Where our clinic was able to provide representation to tenants of refugee background, it was rare for the landlord to recover the full amount claimed. In most cases, claims were drastically reduced.

For example:

- **Melissa, Sudanese single mother of two dependent children:** The landlord claimed \$2,800 in bond and compensation. VCAT dismissed the landlord’s application.
- **Saw Moo, Chin couple sharing with another Chin couple:** The landlord claimed \$1,200 in bond. The matter was settled by consent and the tenants paid \$350.
- **Atem, Sudanese man sharing with two relatives:** The landlord claimed \$13,500 in bond and compensation. The tenant conceded \$1,600 in rental arrears and cleaning costs. VCAT ordered that the tenants pay \$2,100.

VCAT’s Annual Report for 2010–11 states that 28.5% of applications to VCAT in that period were for payment of bond.⁶¹ A full appraisal of the quality of VCAT outcomes for disadvantaged tenants is outside the scope of this inquiry. It is strongly recommended that VCAT undertake a review of outcomes at VCAT for disadvantaged tenants, which includes an analysis of outcomes of bond/compensation hearings initiated by landlords (see recommendation 2(b)). Our experience is that making multiple claims proves an effective strategy for landlords against disadvantaged tenants. The effect of this “scatter-gun” approach, in our view, is to compound the case against the tenant by painting them as a “bad tenant” and thereby maximising the chances of a landlord recovering bond and/or compensation. Where a tenant fails to appear at the hearing, our experience is that the landlord’s claim is likely to succeed in its entirety. This is particularly troubling given the issues of service noted above.



⁶¹ Victorian Civil and Administrative Tribunal: *VCAT Annual Report: 2009/10* (2010), 25

Recommendations 5(a)–(c)

Amendment of section 506 of the RTA to oblige a VCAT applicant to make reasonable enquiries as to the respondent's address for service.

Abolishment of the exemption under section 6.23(b) of the *Victorian Civil and Administrative Tribunal Rules 2008* (Vic), which allows landlords to serve supporting documentation at the VCAT hearing (rather than at the time of making an application).

Amendment of section 36(1) of the RTA to make the general presumption that a condition report is evidence of the state of a property rebuttable. VCAT should consider relevant circumstances regarding the validity of a condition report, including whether the tenant can read and write English and other relevant factors.

11 REPAIRS DISPUTES

A landlord's obligation to undertake repairs arises from their duty under the RTA to maintain the premises in "good repair".⁶² The RTA provides separate processes for urgent and non-urgent repairs. Included in the definition of an "urgent repair" is a failure of essential fixtures such as heating, cooking or hot water appliances, flooding or a serious roof leak and anything that makes premises unsafe or insecure such as broken locks or windows.⁶³ A tenant may arrange for urgent repairs to be undertaken if the landlord refuses to carry out the repairs and the cost is under \$1,800.⁶⁴ In general, refugee tenants cannot cover the cost of repairs. In this case, s 73 of the RTA allows a tenant to make an application to VCAT to order the landlord to carry out repairs. VCAT must hear the matter within two business days of the application being lodged.

In contrast, the non-urgent repairs process has three stages. First, a tenant must put their request in writing, usually by completing a "notice to landlord", setting out the repairs required and requesting that they be undertaken within 14 days. If the landlord does not undertake the repairs, the tenant may request that CAV carry out an inspection and produce a report detailing necessary repairs. If the dispute is still not resolved the tenant may make an application to VCAT.

If a tenant can prove that their landlord had notice of repairs and did not carry them out, they may be able to make an application to VCAT for compensation. The tenant may also apply to pay their rent into the Rent Special Account⁶⁵ until the repairs are completed.



⁶² *Residential Tenancies Act 1997* (Vic) s68

⁶³ *Residential Tenancies Act 1997* (Vic) s3

⁶⁴ *Residential Tenancies Act 1997* (Vic) s2 (up until 1 September 2011, the prescribed amount was only \$1,000 (*Residential Tenancies Amendment Regulations 2011* (Vic) reg 7A))

⁶⁵ *Residential Tenancies Act 1997* (Vic) s77

11.1 Our Concerns

Repairs were a prevalent issue for clients of the clinic. We advised 53 clients in relation to non-urgent repairs and 35 in relation to urgent repairs. Landlords and agents ignoring or refusing repeated requests for repairs were a cause of great frustration and distress for clients, who had sometimes endured dismal living conditions for months – even years – prior to approaching our service.

Prior to approaching our service, the majority of clients had attempted to request repairs themselves or with the aid of a caseworker or friend. Commonly, requests had been ignored or deferred, or the client was incorrectly advised that the repair was not the landlord's responsibility. At worst, tenants were made to pay for repairs themselves or accused of causing the damage in subsequent bond disputes. With the intervention of an advocate, the majority of repairs disputes were resolved at one of the early stages of the urgent or non-urgent repairs processes, without recourse to VCAT.

The clients we assisted had consistently positive outcomes. However, most tenants (and their caseworkers) were unaware of their legal rights. Prior to approaching the service, none of the clients had commenced the repairs procedures mandated in the RTA. Although some caseworkers did assist clients to put their repairs requests in writing, none of our clients had been assisted to complete a "notice to landlord" for non-urgent repairs or an application to VCAT for urgent repairs and the process had to be commenced from the beginning.⁶⁶

11.2 Case Study

Zee's Story

Zee and her husband, clients of Karen background, arrived in Australia from a refugee camp on the Thai–Burma border in 2007 and moved into a house in St Albans with their 6 children. The house was in a terrible state of repair. They sought our assistance as their agent had ignored their requests for repairs since they had moved in three years prior.

Zee was sick of the property and wanted to move out. The most serious complaints were of water leaking through the front door and the living room ceiling, which flooded the front of the house and living room when it rained. In addition, they had a hole 10 centimetres in diameter in the rotting floorboards of their bedroom; their youngest child had got his leg stuck in the hole. The non-urgent repairs issues included broken door hinges and kitchen cupboards.

⁶⁶ Issues in relation to tenancy advocacy by settlement workers will be explored in further detail in Chapter 11 of this report.

The VCAT hearings

An urgent repairs application was made to VCAT in relation to the leaks and the hole in the floor; the non-urgent repairs process was engaged for the broken cupboards and doors. At the urgent repairs hearing, the landlord agreed to undertake the urgent repairs and Zee consented to a two week adjournment. Two weeks later nothing had been repaired.

At the second hearing, the landlord attempted to argue that the hole in the floor was caused by Zee's failure to ventilate the property. VCAT made orders with regards to the leaks and hole in the floor in Zee's favour, as well as to the non-urgent repairs application. The third hearing occurred 1 month later. The landlord made no appearance. VCAT ordered that Zee could make rental payments into the Rent Special Account until the repairs were completed.

The outcome

Following Zee's first payment into the Rent Special Account, the landlord commenced making repairs. Zee paid rent into the Rent Special Account for 4 months until the repairs were finally completed. Zee was strongly advised to make an application for compensation for the period of time that the landlord had failed to make the repairs. Zee and her husband declined to apply for compensation, stating they were fearful that the landlord might attempt to claim their bond at the end of their tenancy and that they did not wish to make trouble. Zee and her family continue to live in the property. They are not confident they could find better accommodation.

11.3 Unfair Burden on Tenants

The critical problem with the current repairs process is that it requires tenants to understand their legal rights and have the capacity to enforce them. The current regime does not address the fact that most repairs requests are made informally (often over the telephone) and it does little to encourage landlords to undertake informal repairs requests in a timely manner. Community education and increased access to tenancy advocacy are important components of improving outcomes for disadvantaged tenants. However, these measures alone do not shift the disproportionate burden on tenants. Reforms to the repairs process should involve a significant shift of the burden back onto landlords and agents – which is where the legal burden really lies. The repairs process should be able to operate with minimal prior education or outside intervention.



11.4 Reforming the Repairs Process

The repairs process in the RTA can be contrasted with complaints processes in other commercial sectors. In the financial services sector, a financial service provider is required to follow a dispute resolution procedure wherever a person has made a “complaint”. Complaints may be oral or written and do not have to be in any specified form. They are broadly defined in Regulation 165.90 of the Australian Securities and Investments Commission (“ASIC”) Regulatory Guide 165 as: “An expression of dissatisfaction made to an organisation, related to its products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.”⁶⁷

This definition is based on the Australian Standard AS ISO 10002–2006 *Customer satisfaction—Guidelines for complaints handling in organizations*.⁶⁸ The making of a complaint instantly triggers an Internal Dispute Resolution (“IDR”) process. A financial services provider is expected to acknowledge receipt of a complaint promptly⁶⁹, and if the complaint is not resolved within a maximum of 45 days the client must be advised of the final outcome of their complaint at IDR⁷⁰. In addition, the client must be informed of the availability

⁶⁷ Australian Securities and Investment Commission, *Regulatory Guide 165: Licensing: Internal and External Dispute Resolution*, 23.

⁶⁸ Committee OB-009, Complaints Handling, Standards Australia, *Customer satisfaction—Guidelines for Complaints Handling in Organizations* (AS ISO 10002:2006) (Standards Australia, 5 April 2006)

⁶⁹ Australian Securities and Investment Commission, *Regulatory Guide 165: Licensing: Internal and External Dispute Resolution* (Regulatory Guide, ASIC, April 2011)

⁷⁰ The maximum time period allowed for the resolution of a complaint can depend on the nature of the complaint. For example, there is a maximum allowance of 21 days for a complaint regarding a default notice.

of an External Dispute Resolution (“**EDR**”) process⁷¹, such as the Financial Ombudsman Service and given information about accessing EDR. These provisions apply to a broad range of financial actors, including banks, credit providers, insurers and credit unions.

It is possible to reform the repairs process under the RTA so that it is fairer, more accessible and closer to best practice in other sectors such as financial services, whilst being appropriate for the real estate industry. When a tenant raises a complaint, verbally or in writing, the legal process should be immediately engaged. The urgent repairs process should allow a landlord 2 days to respond to a tenant’s verbal or written request for repairs. If the complaint is not resolved within 2 days, the landlord should provide the tenant with a blank application to VCAT and a simple factsheet explaining the urgent repairs process and the tenant’s rights. The tenancy handbook given to tenants at the commencement of tenancies is inadequate for the reasons set out at Chapter 9.3. The factsheet should be brief; it should explain in simple terms the landlord’s obligation to make repairs, and the tenants options for enforcing their rights at VCAT.

Similarly, the non-urgent repairs process should allow a landlord 7 days to respond to a tenant’s verbal or written request for repairs. If the complaint is not resolved within 7 days, the landlord should provide the tenant with a blank notice to landlord, a blank application to VCAT and a simple factsheet explaining the non-urgent repairs process and the tenant’s rights. CAV inspection reports should be eliminated from the non-urgent repairs process. The requirement to obtain a CAV inspection report creates unnecessary complexity and delay for tenants, whilst not adding significant value to the evidence a tenant could supply to VCAT themselves through oral and photographic documentation. Tenants should be able to apply to VCAT directly after the 14-day notice period has lapsed. VCAT is accustomed to making decisions based on oral and photographic evidence; urgent repairs and bond applications provide prominent examples of this. CAV resources could be better utilised in enforcement procedures against landlords and agents who fail to comply with the repairs provisions. The diagram opposite provides a sketch of how the provisions would operate.

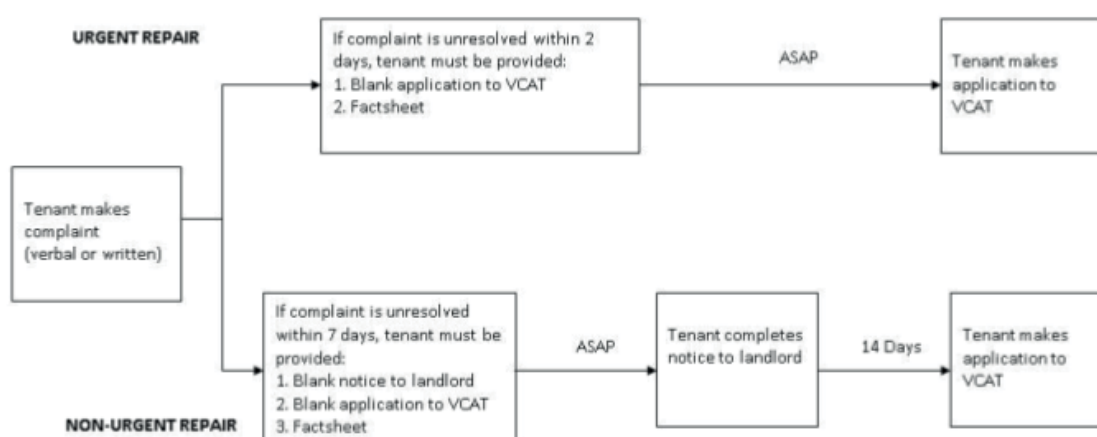
The intention of these reforms is to encourage landlords and agents to make timely repairs, whilst giving tenants the tools to enforce their rights if repairs are not made. The fact that real estate agencies are usually small businesses should make best practice processes easier to implement, rather than more difficult. It could be argued that obliging landlords to formally respond to every individual repairs complaint would unduly affect the workloads of property managers or landlords. In our view this is unwarranted. It is the obligation of landlords and agents to maintain a rental property in reasonable

⁷¹ Australian Securities and Investment Commission, *Regulatory Guide 165: Licensing: Internal and External Dispute Resolution* (Regulatory Guide, ASIC, April 2011), RG 165.102 (at 25), RG 165.140 (at 32)

condition. Our casework suggests that the real estate industry is a long way behind best practice in meeting its legal obligations, which substantiates an urgent need for reform.

The proposed reforms would also provide a meaningful avenue of increased access to VCAT for tenants, who currently represent only 6% of all applicants.⁷²

Proposed Repairs Process



11.5 Compensation Applications by Tenants

We advised 41 clients in relation to claiming compensation for their landlord's failure to undertake repairs. Less than 5 clients provided instructions to bring a claim for compensation against their landlord. In our experience, applications for compensation initiated by tenants do not provide sufficient transparency or certainty. It is relatively easy to quantify economic loss to a landlord by damage caused to property. In contrast, it is difficult to estimate costs relating to inconvenience or reduced amenities arising from a landlord's failure to maintain a property. In our limited experience, we found Tribunal Members to have greatly varying views on how to quantify amounts of compensation for tenants.

Practice procedures developed by VCAT would provide greater transparency for tenants, which could encourage a greater number of tenant initiated compensation applications to VCAT.

11.6 The Need for Minimum Housing Standards

Victoria has extremely limited regulated requirements on rental property standards.⁷³ Principally, the RTA stipulates that landlords are required to

⁷² Victorian Civil and Administrative Tribunal, *VCAT Annual Report: 2010/11* (2011), 25

provide a clean dwelling at the start of the tenancy and to maintain the premises in good repair (good repair is not further defined).⁷⁴ The RTA also defines urgent repairs; however, the requirement to undertake urgent repairs presupposes existing conditions in a property that are not set out in basic housing standards. Other relevant Victorian legislation such as the *Health Act 1958* (Vic) and the *Building Act 1993* (Vic) and associated building codes, allow for a building to be declared uninhabitable and require repairs or demolition. However, there is little guidance as to when this determination should be applied and it provides no protection to tenants living in substandard accommodation that may not require demolition.

A study of 112 “affordable”⁷⁵ homes advertised for lease undertaken by the Victorian Council of Social Services (“**VCOSS**”) found 12% of surveyed homes to be uninhabitable. This included two or more of the following characteristics:

- no heating;
- visible lack of weatherproofing (including large holes or cracks in floors or roof, broken windows etc);
- visible and extensive mould; and
- no or only some deadlocks on external doors and no safety switch.⁷⁶

In Victoria, it is legal for a landlord to rent out a property that is not weatherproof and that has no window coverings, heating or hot water. There is also no requirement for landlords or agents to inform prospective tenants about the standard of their properties. Australian Bureau of Statistics figures show that 26% of renters from private landlords (and 27% from State and Territory housing authorities) reported major structural problems to their properties.⁷⁷ Homes at the lowest end of the rental market tend to be energy inefficient, with poor insulation and heating leading to high utilities costs⁷⁸ and negative health outcomes⁷⁹.

⁷³ Rooming houses are subject to some minimum standards under the *Public Health and Wellbeing Regulations 2009* (Vic), though the focus of this report is private rental accommodation.

⁷⁴ Victorian Council of Social Services, *A Future Focussed Housing Standard: The Case For Rental Housing Standards to Help Vulnerable Households Adapt to Climate Change* (October 2009), 9

⁷⁵ VCOSS set the following weekly rental thresholds for affordable housing: \$150 for a studio, \$200 for one bedroom, \$300 for two bedrooms and \$400 for three bedrooms – this was significantly higher than the Office of Housing's affordable housing thresholds of \$125 for a studio, \$125 for one bedroom, \$195 for two bedrooms and \$255 for three bedrooms, Victorian Council of Social Services: *Decent Not Dodgy: “Secret Shopper” Survey* (June 2010), 4

⁷⁶ Ibid 9

⁷⁷ In comparison to 14% of home owners with or without a mortgage: Australian Bureau of Statistics, *Housing Mobility and Conditions 2007–08* (November 2009), 30

⁷⁸ Adrienne Barrett and Toby Archer, “Utilities and Residential Tenancies: Part 1 Regulatory

VCOSS argues that the most efficient and effective mechanism to implement mandatory housing standards is via the creation of regulations under the RTA that could be updated as community standards, technology and climatic conditions evolve. These basic standards for rental properties would aim to ensure that all renters are guaranteed a home that is safe, healthy and affordable to run.⁸⁰

A common argument raised against legislated minimum property standards for rental housing is the impact that this would have on the availability and affordability of rental properties. However, research into the motivation of landlords in investing in rental property both in Australia and internationally suggests that there is no clear causal relationship between regulation and landlords and their decision to enter or remain in the rental property market. The evidence suggests that landlords acquire or maintain rental properties for a variety of reasons and therefore are “unlikely to follow the principal of profit or utility maximising behaviour”.⁸¹

VCOSS contend that mandatory standards are critical because a shortage of properties coupled with excessive demand have created a market in which tenants are determined by the price they are able or willing to pay, rather than the quality of the accommodation. A mandatory standards regime that applies to all properties raises the bar of all affordable dwellings.⁸² VCOSS identify that, in contrast, voluntary incentive schemes create a differential between improved properties and non-improved properties, putting improved properties into a different market segment with wealthier prospective tenants and consequently provide greater opportunity for landlords to increase rent.

The clinic observed that substandard housing conditions were a major concern for refugee tenants, and had a major influence on social, health and financial outcomes. There is an urgent need to address the poor level of protection for tenants through the introduction of minimum mandatory rental standards as advocated by VCOSS.

Context” (Research Report, Tenants Union Victoria, December 2010); Dr Andrea Sharam, Toby Archer, Adrienne Barrett and Mark O’Brien, “Utilities and Residential Tenancies: Part 2 Future Directions for Rental Housing Standards” (Research Report, Tenants Union Victoria, December 2010); Victorian Council of Social Services, *A Future Focussed Housing Standard: The Case For Rental Housing Standards to Help Vulnerable Households Adapt to Climate Change* (October 2009)
⁷⁹ See, for example, Matthias Braubach, David E Jacobs, David Ormandy (eds), *Environmental Burden of Disease Associated with Inadequate Housing* (Report, World Health Organisation, 2011)

⁸⁰ Victorian Council of Social Services: *Decent Not Dodgy: "Secret Shopper" Survey* (June 2010), 10–11

⁸¹ T Seelig, T Burke & A Morris: *Motivation of investors in the private rental market* (2006) Australian Housing and Urban Research Institute

⁸² Ibid, 13

Recommendations 6(a)–(e)

The urgent repairs process under the RTA needs to be significantly reformed. The urgent repairs process should allow a landlord 2 days to respond to a tenant's verbal or written request for repairs. If the complaint is not resolved within 2 days, the landlord should provide the tenant with a blank application to VCAT and a simple factsheet explaining the urgent repairs process and the tenant's rights.

The non-urgent repairs process under the RTA needs to be significantly reformed. The non-urgent repairs process should allow a landlord 7 days to respond to a tenant's verbal or written request for repairs. If the complaint is not resolved within 7 days, the landlord should provide the tenant with a blank notice to landlord and a simple factsheet explaining the non-urgent repairs process and the tenant's rights. Tenants should not be required to obtain a CAV repairs inspection report prior to making an application to VCAT.

Landlords should be penalised for non-compliance with repairs provisions.

VCAT should adopt practice procedures in relation to compensation applications brought by tenants for a landlord's failure to undertake repairs.

Minimum mandatory rental standards should be introduced as regulations under RTA, as advocated by VCOSS.

12 EVICTIONS

In order to legally evict a tenant, the landlord must serve an NTV in the prescribed form. An NTV must be addressed to the tenant; signed by the person giving the notice or by that person's agent; specify the reason or reasons for giving the notice; and specify the date by which compliance is required.⁸³ The reasons for giving an NTV and the amount of notice required are set out in the RTA.⁸⁴ If the tenant does not vacate the premises, the landlord can apply to VCAT for a possession order and, if granted, purchase a warrant of possession.

12.1 Our Concerns

The clinic advised 58 clients who had received a Notice to Vacate (“NTV”). The most common reason for an NTV was on the basis of rental arrears (26). A further 12 clients, who had not yet received an NTV, sought assistance due to a threat of eviction arising out of rent arrears.

The following table provides a breakdown of NTVs our clients presented with at the clinic.

Reason for Notice to Vacate



Clients of the clinic were fearful of NTVs and eviction threats. Some clients who had received an NTV or other threat of eviction opted to leave their accommodation without challenging its legality. Clients were forced into temporary accommodation, such as illegal rooming houses or friends’ couches, where they would be charged rent but would not necessarily be eligible for rent assistance.

⁸³ Residential Tenancies Act 1997 (Vic) s319

⁸⁴ Residential Tenancies Act 1997 (Vic) s243–268

12.2 Case Study

Abuk's Story

Abuk arrived in Australia from Sudan in 2009 with her 3 young children. Abuk could not speak English and lived entirely on Centrelink benefits. Abuk asked her landlord to make some repairs to the property and was instead served an NTV. Abuk was terrified of the law and was concerned she was going to jail. She was also afraid of the landlord telling other property owners that she was a bad tenant in case they would not accept her future applications.

Abuk was advised that she could challenge the notice at VCAT because it was given in response to her exercising her right to request repairs and was not in the prescribed form. Abuk was further advised that if she decided not to challenge the notice, she had at least a week longer to leave the property than she had been told as the landlord would need to apply to VCAT for a possession order.

The outcome

Abuk decided she would not challenge the matter under any circumstances and would vacate the property by the date stated on the NTV. Abuk approached her local housing agency but there was no immediate housing available. Abuk and her family became homeless. Abuk moved into the lounge room of a friend's house with her 3 children because she could not find rental accommodation.

12.3 Absence of Penalties for Invalid Notices to Vacate

There is no penalty for a landlord who issues an NTV either without valid grounds or not in the prescribed form. Our experience, which is supported by a study by Beer et al⁸⁵, suggests that vulnerable tenants typically move out on or before the date stated on an NTV due to fear, ignorance of their rights or a lack of access to advice and advocacy. Anecdotal evidence suggests that unscrupulous landlords and agents exploit these vulnerabilities to illegally evict tenants.

The imposition of a penalty for the issue of an invalid NTV would act as a deterrent for dishonest behaviour. Penalties should be imposed by CAV. Tenants should be easily able to apply to VCAT for compensation for loss of time and inconvenience arising from defending an invalid NTV. It is the legal responsibility of landlords to utilise correct eviction procedures; if they fail to do so and a property is vacated unnecessarily, the cost to individuals and families is enormous. The dire consequences that flow from illegal evictions, including homelessness, place a significant burden on victims and government-funded services.

⁸⁵ Andrew Beer, Michele Slatter, Jo Baulderstone and Daphne Habibis: *Evictions and Housing Management: Toward More Effective Strategies* (Research Report, AHURI, 2003)



12.4 “No reason” Notices to Vacate

In Victoria, a landlord is entitled to issue a tenant with a “no reason” NTV, which gives the tenant 120 days to vacate the premises for no specified reason.⁸⁶ It is problematic that landlords have this power where there is no wrongdoing by the tenant and no planned changed use of the premises.

A report prepared by Carr and Tennant for the National Association of Tenant Organisations emphasises that “without ground” evictions underline and emphasise the power differential and result in tenants trading off their rights against the fear of eviction.⁸⁷ This reflects the experience of our clients.

Abolishing “no reason” notices would retain the landlord’s power to make decisions about the use and protection of their property, without disproportionately disadvantaging tenants.

Recommendations 7(a)–(c)

Landlords should be penalised for the issue of a notice to vacate that is without valid grounds or not in the prescribed form.

Tenants should be easily able to apply to VCAT for compensation for loss of time and inconvenience arising from defending an invalid NTV.

“No reason” notices to vacate should be abolished.

⁸⁶ *Residential Tenancies Act 1997* (Vic) s263

⁸⁷ Penny Carr and Maria Tennant, *A Better Lease on Life: Improving Australian Tenancy Law* (April 2010) National Shelter, 24

13 THE CONDUCT OF REAL ESTATE AGENTS

Real estate agents are bound by strict professional obligations. For example, the *Estate Agents (Professional Conduct) Regulations 2008* (Vic) requires agents to:

- act at all times fairly and honestly⁸⁸;
- exercise due skill, care and diligence⁸⁹;
- not engage in conduct that is unprofessional or detrimental to the reputation or interests of the estate agency industry⁹⁰; and
- make all reasonable enquiries to ascertain information that is relevant to the services or transactions relating to the agency⁹¹.

In addition, the *Estate Agents Act 1980* (Vic) imposes strict obligations on real estate agents in relation to trust moneys.

13.1 Our Concerns

Seventy-five per cent of our clients' properties were managed by a real estate agent rather than by a private landlord. The clinic assisted clients whose matters raised serious concerns about the conduct of real estate agents, including issues around trust account money, discrimination, eviction threats and illegal rent increases.

Some real estate agents our clinic dealt with displayed negative attitudes towards tenants of refugee background. Real estate agents often used the language of "those people" to differentiate refugee tenants from "normal" tenants and to reference prior negative experiences with tenants of shared ethnic or cultural backgrounds.

Views that the clinic frequently encountered included that:

- refugee tenants are prone to default on rent payments;
- refugee tenants are dirty and/or likely to damage properties; and
- refugee tenants tend to have family members living in the property without the landlord's consent.

It should be noted that many agents our clinic dealt with did not embody these attitudes. However, some of our clients' experiences suggest concerning elements of discrimination and unprofessional conduct.

⁸⁸ *Estate Agents (Professional Conduct) Regulations 2008* (Vic) reg 11

⁸⁹ *Estate Agents (Professional Conduct) Regulations 2008* (Vic) reg 13(1)

⁹⁰ *Estate Agents (Professional Conduct) Regulations 2008* (Vic) reg 13(2)

⁹¹ *Estate Agents (Professional Conduct) Regulations 2008* (Vic) reg 15

13.2 Case Study

Ingme's Story

Ingme, a Chin woman, arrived in Australia from a refugee camp on the Thai–Burma border last year. She began renting a property with her husband and another Chin family. The rent of \$1,345 was due on the first of each month. They always paid the rent on time.

On the fourth month of the tenancy, Ingme and her husband attended the real estate agent and paid the rent in full. They paid \$1,350 in cash and received \$5 change. Ingme and her husband did not notice that their rent receipt stated they had only paid \$345. Several days later, Ingme received a letter from the real estate agent stating that Ingme had \$345 on account but owed \$1,000 for the remainder of the rent for the month. Ingme did not understand this letter and took no action. Around 2 weeks later, Ingme was sent a 14-day NTV on the grounds of rental arrears.

The outcome

Ingme approached our service for assistance in a distressed state and we sent a letter to Ingme's real estate agent. We were contacted by the real estate agent, who advised that \$1,000 "unidentified" monies had been found in their general trust account. We were told that the money had not previously been attributed to Ingme and her co-tenants, as "they hadn't complained". The real estate agent suggested that Ingme had paid \$345 and then gone to an ATM to retrieve the remaining \$1,000, which was not properly recorded. Ingme maintained that the agent was lying; they had paid the full amount as always. The NTV was withdrawn.

Further problems

One month later, Ingme was sent a notice of rent increase. We advised the real estate agent that the notice was void as Ingme was on a fixed-term lease. Towards the end of her lease, Ingme was sent an NTV on the grounds that the landlord was planning to move into the premises. It is likely that the NTV was issued in response to Ingme defending her rights and was invalid. Ingme and her co-tenants felt they had been persistently threatened by the agent. They chose to move out rather than challenge the NTV. Ingme's family and her co-tenants could not find a new property. They have been homeless for over three months.

13.3 Dishonest Behaviour by Real Estate Agents

We received a large number of complaints from other clients about Ingme's real estate agent. Tenancy advocates working within a particular geographical region are in a strong position to identify suspicious or

unprofessional behaviour by particular real estate agencies and report it to CAV for investigation. There needs to be a far greater emphasis on enforcement action by CAV against real estate agents who are failing to meet their professional obligations or engaging in dishonest or unprofessional conduct in relation to residential tenancies.



13.4 Communication and Use of Interpreters

Clients frequently reported serious communication difficulties with their real estate agents, sometimes leading to a complete breakdown in the relationship. Some problems arose from mutual misunderstandings or the client's difficulty comprehending Australian processes. At times, the misunderstandings appeared to arise from opportunism or a degree of dishonesty on the part of the real estate agent. Clients complained that real estate agents did not explain things clearly and sometimes refused to communicate with them at all.

Select real estate agents have access to telephone interpreting services through a pilot funded by the Department of Immigration and Citizenship ("DIAC").⁹² This pilot has recently been extended until October 2012 and expanded to include more agencies.⁹³ None of our clients reported using a telephone interpreter with their real estate agent. It was more common for children or community members with a comparatively higher level of English to act as interpreters, or for there to be no interpreter used at all. In the course of our casework, when we asked real estate agents if an interpreter was used, responses included that:

⁹² Department of Immigration and Citizenship: *Talking TIS Newsletter* (Autumn 2011) Australian Government, 6:
<http://www.immi.gov.au/living-in-australia/help-with-english/help_with_translating/_pdf/talking-tis-autumn-11.pdf>

⁹³ The Hon Kate Lundy "Helping humanitarian entrants navigate the private rental market" (Media Release, 8 December 2011)

- using telephone interpreters took too long;
- the tenant pretended that they do not understand English but actually understood “more than you think”; and
- a child, family or community member with a basic understanding of English, acting as an interpreter was sufficient.

Real estate agents require ready access to telephone interpreters and education about the appropriate use of interpreters. The extension of DIAC’s pilot program is welcomed. However, it is important that this is complemented with access to specialist housing workers and tenancy advocacy services.

Recommendations 8(a)–(b)

There needs to be a greater emphasis on enforcement action by CAV against real estate agents who are failing to meet their professional obligations or engaging in dishonest or unprofessional conduct.

DIAC should continue to fund telephone interpreting services for real estate agents and in addition should fund an education program about the appropriate use of interpreters.

14 PUBLIC HOUSING DISPUTES

Public and social housing authorities assume all the obligations of a landlord under the RTA. Public housing in Victoria is managed by the Department of Human Services (“DHS”) and administered through local Office of Housing (“OOH”) offices. A series of OOH practice and procedures manuals set out in detail how tenancies will be managed.⁹⁴

14.1 Our Concerns

We assisted 25 clients with public housing problems. The relatively small number can be attributed to the limited access to public housing for recent refugee arrivals in Melbourne’s western suburbs. The general waiting list for public housing in Victoria contains over 38,000 applicants⁹⁵ and eligibility requirements for the “early housing” list are strict. Public tenants we assisted had usually been in Australia for 10 years or longer. We also assisted 18 clients with social housing⁹⁶ disputes but will not describe those in detail here.

There is an expectation in the community that public housing authorities will behave as model landlords and “model litigants”.⁹⁷ However, our casework suggests that local OOH offices frequently fall short of best practice. A comprehensive *Inquiry into the Adequacy and Future Directions of Public Housing in Victoria* was undertaken by a parliamentary committee and published in September 2010 (“the Parliamentary Inquiry”).⁹⁸ Our casework is consistent with many of the findings of the inquiry; as such, we do not seek to replicate our own findings in detail here. However, we will briefly outline the main issues affecting our clients, which related to repairs, communication between OOH and public tenants and effective dispute resolution.

14.2 Case Study

Flora’s Story

Flora is a Sudanese single mother of three dependent children who lives in a public rental property in St Albans. The property was in a run-down condition.

⁹⁴ Office of Housing Policies and Procedures Manuals are available at <<http://www.dhs.vic.gov.au/for-service-providers/housing-and-homelessness/public-housing/public-housing-policy-and-procedure-manuals>>

⁹⁵ The Hon Wendy Lovell MLC “Minister releases public housing waiting list for September” (Media Release, 28 October 2011)

⁹⁶ Social housing is government-funded accommodation that is owned and managed by not-for-profit registered housing agencies.

⁹⁷ Department of Justice, *Victorian Model Litigant Guidelines* (Guidelines, DOJ, March 2011): <<http://www.justice.vic.gov.au/wps/wcm/connect/justlib/DOJ+Internet/resources/3/4/34fd7f00459fb2b0b6a2b6e6d4b02f11/RevisedModelLitigantGuidelines.pdf>>

⁹⁸ Family and Community Development Committee, Parliament of Victoria: *Inquiry into the adequacy and future directions of public housing* (2010)

Flora came to our service for advice because she had received a notice of a VCAT hearing for a possession application on the grounds of rental arrears and a VCAT Order requiring her to pay the DOH \$4,000 compensation. In addition, despite repeated complaints, Flora's home was in a serious state of disrepair.

The eviction

Flora advised us that she had had a problem with her Centrelink payment and had consequently missed a rent payment. Prior to approaching our service, she had attempted to make a payment plan with her local housing officer but the officer had insisted the matter go to VCAT. We spoke to Flora's housing officer who could not clearly determine the amount of arrears Flora was in. The eviction matter was settled by consent at VCAT. Flora entered into a payment plan to pay off her arrears of two weeks' rent.

The landlord's compensation claim

The compensation matter related to a fire that had occurred on Flora's property in the summer of 2009, when a fire self-ignited in the outdoor tin shed on a hot day. The shed was burnt down causing \$4,000 worth of damage. The fire brigade and police attended.

In June 2011, OOH made an application to VCAT for compensation. Flora received no notice of their application and did not attend the hearing, which was decided in OOH's favour. We assisted Flora to apply for review of VCAT's decision. We requested documents from OOH to support its claim that Flora was liable for the damages. No documents were provided. VCAT agreed to review the case and found that OOH had no evidence to support its claim for compensation. The claim was dismissed and Flora did not have to pay any compensation.

Repairs

Finally, we assisted Flora in engaging the repairs process for a range of issues. Her home had not been substantially maintained since she had moved in 10 years prior. Following several VCAT hearings, the repairs were gradually completed.

14.3 Failure of OOH to Meet Model Litigant Obligations

VCAT conducts a disproportionate number of hearings relating to tenancy disputes for public housing tenants.⁹⁹ Our casework points to significant communication problems between OOH and tenants, which in part may explain the overuse of VCAT by OOH. In the above case study, the OOH did not clearly explain to Flora that it would be making applications to VCAT for compensation and eviction. It was not able to provide adequate information to Flora (or her legal representative) about the amount of arrears she owed,

⁹⁹ Family and Community Development Committee, Parliament of Victoria: *Inquiry into the adequacy and future directions of public housing* (2010), 244–248

or how it would substantiate its \$4,000 claim for compensation. A housing officer did advise that they had a fire report on file, but would only provide it through freedom of information.

As a public authority, the OOH is bound to act as a “model litigant”. Various practices displayed in Flora’s case appear to be contrary to a model litigant’s obligation to resolve matters quickly and fairly.¹⁰⁰ In another case, where we assisted a tenant to make a compensation application for OOH’s failure to undertake repairs, OOH officers suggested that they will never pay compensation (or make an offer of settlement) unless ordered by VCAT.

Clients frequently reported that OOH officers did not take their complaints seriously, failed to clearly explain internal processes – such as complicated rental account statements – and did not take steps to negotiate outside of VCAT. Results from the *National Social Housing Survey* (2007) suggest that public housing tenants in Victoria are significantly less likely to be satisfied with “treatment by housing authority staff” (67%)¹⁰¹ than public tenants in other jurisdictions. The Victorian Parliament’s 2010 inquiry into public housing found that the quality of service provision by local housing offices is inconsistent.¹⁰² In relation to rental arrears processes, the Parliamentary Inquiry noted that although generally sound, practices in local housing offices vary and rental payment summaries are confusing for tenants.¹⁰³

We agree with the recommendations made by the Parliamentary Inquiry in relation to rent collection and recovery (11.1–11.10) and quality of service (13.1–13.7) practices. Further to these, policies need to be put in place to ensure that OOH officers are acting in accordance with their obligations as “model litigants”, which includes acting fairly and promptly and avoiding legal proceedings and resolving matters by agreement where possible.

14.4 The Unsafe State of Public Housing

Public housing stock in Victoria is ageing and in a poor state of repair.¹⁰⁴ Our casework suggests that OOH is failing to meet its obligation as a landlord to maintain properties to such an extent that health and safety is being jeopardised. The *National Social Housing Survey* (2007) results suggest that 60% of public tenants in Victoria are satisfied with the overall condition of their home, with a notable 27% reporting dissatisfaction.¹⁰⁵

¹⁰⁰ Department of Justice, *Victorian Model Litigant Guidelines* (Guidelines, DOJ, March 2011): <<http://www.justice.vic.gov.au/wps/wcm/connect/justlib/DOJ+Internet/resources/3/4/34fd7f00459fb2b0b6a2b6e6d4b02f11/RevisedModelLitigantGuidelines.pdf>>

¹⁰¹ Roy Morgan Research, “National Social Housing Survey” (Research Report, AIHW, November 2007), 32

¹⁰² Family and Community Development Committee, Parliament of Victoria: *Inquiry into the adequacy and future directions of public housing* (2010), 278

¹⁰³ Ibid 235–242

¹⁰⁴ Ibid 306

¹⁰⁵ Roy Morgan Research, ‘National Social Housing Survey’ (Research Report, AIHW, November 2007), 67

The Parliamentary Inquiry concluded that the Victorian Government cannot meet all maintenance requests due to funding restrictions and that unresolved maintenance issues can contribute to health and safety issues.¹⁰⁶ The Inquiry found that almost one-third of public housing stock requires maintenance costing between \$5,000 and \$20,000.¹⁰⁷ The Inquiry identified concerns regarding the appropriateness of housing stock on offer to tenants and the quality of stock that tenants are asked to accept.

We assisted two clients who had suffered significant personal injuries due to the state of their public rental properties:

- James is an Ethiopian man who sought our assistance with a serious roof leak. His local OOH had ignored his complaints. Some 4 months after James first reported the issue he slipped over in water from the leak and seriously injured his leg. His leg injury prevented him from working.
- Rahel is an elderly Somali woman who lives with her husband. Over a 3-month period, the couple had complained to OOH about a gas leak in their unit and were told it was just a “smell” from the sink. One day, Rahel lit the oven and there was a gas explosion causing severe burns to her face, chest and arms. When Rahel approached our service 2 months after the incident, she and her husband had been living in a motel as their home was uninhabitable. OOH insisted that they continue to pay rent.

These cases highlight an urgent need for OOH to review repairs procedures and long-term asset management.¹⁰⁸

Recommendations 9(a)–(b)

DHS needs to implement procedures to ensure local housing offices are acting in accordance with their obligations as “model litigants”, including acting fairly and promptly, avoiding legal proceedings and resolving matters by agreement where possible.

DHS needs to improve procedures for dealing with repairs requests, in particular urgent repairs posing any risk to health and safety.

¹⁰⁶ Family and Community Development Committee, Parliament of Victoria *Inquiry into the adequacy and future directions of public housing* (2010) 306

¹⁰⁷ Ibid 317

¹⁰⁸ See “Chapter 14: Asset Management and Existing Public Housing Stock” in Roy Morgan Research, “National Social Housing Survey” (Research Report, AIHW, November 2007) 306–344

15 REFUGEE COMMUNITIES AND HOME OWNERSHIP

Our service was approached by a large number of refugee families who had purchased homes and were unable to meet mortgage repayments. An alarming number of clients in Melbourne's west have been lured into entering agreements for house and land packages, where the homes were not completed or poorly built. The builders involved also acted as conveyancers and mortgage brokers. Our service became aware of three separate scams that involved significant numbers of refugee families. Families were drawn to build a new home by the promise of escaping the rental market, where they felt trapped in housing which did not meet their needs and mistreated by landlords and agents.

15.1 Case Study

Achol's Story

Achol and her husband Atem arrived in Australia from a refugee camp in Kenya in 2005. After their arrival, they resided in overcrowded, run-down rental properties with their 6 children. In 2007, Achol and Atem were approached by a person at their church, Sam, who told them if they built their own home they would never have to rent again. Sam said he knew a good builder, "Splendour Homes" and could organise for them to purchase the land and get a loan from the bank. Achol and Atem were very excited by the idea of building a brand new home, which would comfortably accommodate their family. They went with Sam to various appointments at Splendour Homes and the bank and completed documents with Sam's assistance. Achol and Atem spoke minimal English and had no literacy skills.

Building commenced on their home in the outer western suburbs. From time-to-time, Sam took them to the bank to sign for the release of more funds to Splendour Homes. They also made several cash payments to the builders at Sam's insistence. After about one year, the home was only half built. Achol and Atem became worried, as they were paying rent on top of their loan repayments to the bank. Sam reassured them that the property would be completed soon. Several months later, building ceased completely and Sam became impossible to contact. In 2009 they approached our service for assistance.

Outcome

We assisted Achol and Atem to negotiate with the bank. After 18 months of negotiation, the bank agreed to sell the property and absorb any shortfall or allow the clients to keep any money left over from the sale. Achol and Atem eventually agreed to sell the house; it was sold for significantly less than the amount owing on their mortgage. They were able to walk away from the sale with no debt, but having incurred a great financial and emotional cost.

15.2 Building Disputes

The resources necessary to assist these clients were far beyond our means and we were only able to assist 8 families with the aid of expert pro bono legal assistance.¹⁰⁹

Community legal centres are not resourced to conduct building disputes and litigation; these cases were no exception. The builders were subject to injunctions to stop further work by CAV, applications to cancel their building registration by the Building Services Commission and insolvency proceedings in the Federal Court by their own financiers.

In order to assist these clients our service had to consider their rights under the *Domestic Building Contracts Act (1995)*, the issue of proceedings at VCAT and determine the likelihood of a successful claim against the domestic building home warranty insurance in the event of a successful claim at VCAT. We also had to consider the need to assist the clients with maladministration and financial hardship applications to the Financial Ombudsman Service in relation to their mortgages.

It is simply not possible for disadvantaged tenants to represent themselves in complex building disputes. CAV and VCAT need to consider options for consumers lacking the financial and legal capacity to pursue a builder in the Domestic Building List of VCAT.

15.3 The Urgent Need for Targeted Community Education

These cases had catastrophic effects on refugee families. In general, they could have been avoided with prior education. Our clients had little concept of a mortgage, interest rates or building contracts.

FCLC has produced a community education DVD, *Building a House*, which aims to educate emerging communities about the implications of purchasing a house. To whatever extent possible, community education needs to be targeted at at-risk communities to assist them to recognise housing “scams” and understand the implications of home purchase.

15.4 Maladministration of Lending

The cases revealed concerns about the conduct of several major banks in approving home loans to clients with minimal capacity. In our view, financial institutions should be put on notice as to the lack of financial literacy in refugee and newly arrived communities and warned that inadequate loan assessment could constitute maladministration in lending.

¹⁰⁹ Russell Kennedy Lawyers provided excellent pro bono assistance to a number of clients, including representation at VCAT.

Recommendations 10(a)–(c)

CAV and VCAT need to consider options for consumers lacking the financial and legal capacity to pursue a builder in the Domestic Building List of VCAT.

CAV should undertake targeted education outreach which assists refugee communities to avoid housing 'scams'. Community education resources, such as FCLC's 'Building a House' DVD, should be made widely available.

Financial institutions should be put on notice as to the lack of financial literacy in refugee communities and warned that inadequate loan assessment could constitute maladministration in lending.

16 CONCLUSION

Housing issues are of primary concern to emerging refugee communities. Our clinic demonstrated that tenants of refugee background are at an extreme disadvantage in navigating the private rental market. Existing housing support and tenancy advocacy services are inadequate for refugee tenants. The funding of advocacy, education and housing support services is vital to improving settlement outcomes for refugee tenants and their families.

However, power imbalances between landlords and disadvantaged tenants also need to be addressed on a structural level. These are problems broadly experienced by vulnerable renters. We expect that this report can make a useful contribution to policy and law reform in this respect.

Above all, our hope is that future generations of Australians, regardless of class, race or cultural background, will be better able to make a home in Australia.



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