



Refugee Council of Australia

FAIRER SAFER HOUSING

RESIDENTIAL TENANCIES ACT REVIEW

Dispute Resolution

The Refugee Council of Australia (RCOA) is the national umbrella body for refugees, asylum seekers and the organisations and individuals who work with them, representing over 200 organisations and around 1,000 individual members. RCOA promotes the adoption of humane, lawful and constructive policies by governments and communities in Australia and internationally towards refugees, asylum seekers and humanitarian entrants. RCOA consults regularly with its members, community leaders and people from refugee backgrounds and this submission is informed by their views.

RCOA welcomes the opportunity to provide feedback on the *Residential Tenancies Act 1997 (Vic)* and its likely impact on refugees, asylum seekers and humanitarian entrants. This submission focuses on how the accessibility, cost and fairness of the dispute resolution system affect people seeking asylum. We also make recommendations which would better enable refugee tenants to engage in the processes and have their disputes resolved.

This submission is informed by RCOA's research project *The Home Stretch* (attached to this submission). The project involved consultations with organisations and community groups to identify challenges faced by refugees and asylum seekers in securing affordable, appropriate and sustainable housing, in order to develop the most effective strategies to help them do so. This project also included feedback regarding several issues associated with the residential tenancies dispute resolution system.

1. Accessibility: Lack of understanding of Australian rental systems

1.1. Several participants reported that people from refugee backgrounds often had limited understanding of private rental systems due to their experiences of forced displacement or because of different housing systems and expectations in their home countries. Service providers in two separate consultations, for example, noted that many people from refugee backgrounds have lived for extended periods in a camp situation where they were not required to negotiate leases or pay rent.

1.2. One of the key concerns voiced by the asylum seekers consulted for this project was that they did not know "how the system works". Many expressed apprehension and uncertainty about navigating the housing market on their own or with minimal support.

1.3. These concerns reflect the disadvantage experienced by people seeking asylum in terms of the accessibility of dispute resolution mechanisms, where there is limited understanding of the available processes and how to access and use them for their intended purpose.

1.4. In terms of tenancy responsibilities, numerous examples were provided during our consultations of tenants losing their bond, being charged for extensive repairs, developing a negative rental history or even facing eviction due to lack of understanding or misunderstanding of tenancy responsibilities. Consultation participants noted that some humanitarian entrants lacked the knowledge and skills needed

Sydney office:

Suite 4A6, 410 Elizabeth Street
Surry Hills NSW 2010 Australia
Phone: (02) 9211 9333 • Fax: (02) 9211 9288
admin@refugeecouncil.org.au

Web: www.refugeecouncil.org.au • Twitter: @OzRefugeeCouncil

Melbourne office:

Level 2, 313-315 Flinders Lane
Melbourne VIC 3000 Australia
Phone: (03) 9600 3302
admin@refugeecouncil.org.au

Incorporated in ACT • ABN 87 956 673 083

to maintain properties to expected standards or to use appliances and equipment properly and, as a result, could inadvertently cause significant damage to rental properties. Limited understanding of tenancy responsibilities could also lead to some tenants inadvertently failing to pay their rent.

1.5. These misunderstandings of tenancy responsibilities may contribute to the difficulties which ultimately require the intervention of the residential tenancies dispute resolution system. A greater awareness of these responsibilities would help avoid such disputes escalating, and help protect the interests of both tenants and landlords.

1.6. Similarly, as we noted in our report, many humanitarian entrants did not fully understand their rights as tenants. As such, they may be unaware of the steps they can take to protect their rights (such as filling in condition reports) or may not realise when a landlord or real estate agent's demands are unreasonable or even illegal.

1.7. Many refugee and humanitarian entrants may lack the necessary English language skills to communicate effectively on housing issues, to fully grasp the nature of tenancy arrangements or to advocate successfully if the accommodation is not appropriate to their needs or if they are having difficulty meeting their obligations as tenants. For example, tenants with limited English skills and a lack of understanding of Victorian residential tenancies dispute resolution mechanisms may not be empowered to access information and advice services or independent third party assistance. They are also unlikely to be able to represent themselves at the Victorian Civil and Administrative Tribunal and/or effectively defend a case against them, and may have limited knowledge of appeal options or procedures.

1.8. During our consultations, a number of participants reported that many real estate agents and landlords do not use interpreters when communicating with clients who have limited English language skills. This is sometimes due to the fact they do not know about the available services or how to use interpreters, and sometimes simply because they are unwilling to do so. This may make it difficult when they are directed to use dispute resolution mechanisms designed to help parties to resolve disputes independently, such as information and advice services.

2. Cost

2.1. Research has found that many refugee and humanitarian entrants arrive in Australia with few or no financial resources. They may be in debt and often face significant challenges in securing employment during the early stages of settlement. Additionally, many refugee and humanitarian entrants send a significant portion of their limited income to family members living overseas.

2.2. These factors make it very challenging for them to meet private rental costs, let alone to engage in dispute resolution processes which require the payment of fees. These financial constraints also place pressure on tenants where they are expected to be responsible for repairs and maintenance and can exacerbate problems with keeping up with rent payments. These circumstances may increase the likelihood of them being involved in disputes.

3. Fairness: Power imbalance

3.1. Some participants noted that even if people understand their rights, they are often reluctant to raise concerns or request repairs because they fear being evicted or tarnishing their rental history. One service provider, for example, reported that few of its clients seek advice on tenancy rights despite being actively encouraged to do so.

3.2. Consultation participants gave numerous examples of exploitative, unethical and even illegal behaviour, including:

- levying unlawful charges (such as charging additional rent to a tenant who had a friend stay over for one night);
- leasing properties in places which have not been approved as residential areas;

- failing to maintain safety standards (e.g. neglecting to replace broken fire alarms);
- charging tenants for repairs which should be considered ordinary wear and tear or which had been caused by previous tenants;
- demanding unreasonable compensation for minor damage (e.g. a family being asked to replace all of the locks in the house after losing one key);
- failing to provide essential and urgent repairs; and
- evicting tenants unlawfully or without notice.

3.3. Some participants expressed frustration at the lack of accountability for these violations. Reference was also made to a lack of accountability in the use of unregulated tenancy databases which allowed real estate agents and landlords to “blacklist” tenants.

3.4. This lack of accountability may be attributed to the inadequacy of dispute resolution mechanisms to assist vulnerable tenants or the perceived absence of consequences for these behaviours. The power imbalance associated with the relationship between tenants and landlords or real estate agents is particularly evident here in the context of vulnerable tenants.

3.5. A particularly unfair practice which demonstrates deceitful and exploitative treatment of tenants was identified by one refugee community member:

In the Eastern area of Melbourne, older properties bought by overseas investors are rented out at an inexpensive rate, which is attractive to people with limited financial means. Tenants subsequently find out that that the property is commercially zoned, and as the landlord plans to sell the property in the future and doesn't want to initiate the rezoning process with the council, the landlord refuses to make an application to change this. As a consequence, tenants will be charged at the higher commercial rate for utilities, and won't discover the truth about the zoning of the property until they have moved in and received their bills.

Upon notifying real estate agencies of the issues, tenants have been offered the termination of their agreement as their only option, essentially leaving them with a choice between staying and paying the higher rate or moving out, often not possible considering the difficulties associated with securing affordable accommodation. Also, tenants have already invested an enormous amount of time and money in finding and moving in to the property.

3.6. Another unethical approach highlighted was the attitude of landlords and real estate agents to addressing maintenance issues. Requests for repairs have been ignored or delayed for unreasonably excessive periods of time. Tenants are forced to wait many months to have dangerous and urgent problems such as broken windows fixed. A lack of clarity regarding the rights of tenants in relation to maintenance issues, coupled with limited English skills and access to information about dispute resolution processes, enable this unreasonable conduct to continue.

3.7. Further, disputes have arisen where tenants vacating a property have not had their bond returned. One refugee community member gave the example of a family moving in to a home with a small backyard in poor condition, and raising no complaint at the time as they were happy to have found a home. Upon leaving the property, a large proportion of the bond was withheld as a gardening charge, despite the condition of the backyard pre-dating their tenancy and the best efforts of the family to ensure the property was acceptably presented. Again, families lacking the resources to apply for a review of a decision to withhold bond money are vulnerable to this kind of dishonest and exploitative behaviour.

3.8. The role of discrimination in reducing the fairness and accessibility of dispute resolution mechanisms was also acknowledged in consultations. A study of housing experiences among African refugees in Western Sydney highlighted the system-wide discriminatory practice of real estate agents and housing providers using English when communicating with refugees who have limited English language skills, even when a telephone interpreting service is available for this purpose. This study further found

that discrimination heightens the risk of exploitation or people agreeing to leasing arrangements that are unfair or illegal.¹

3.9. This risk of exploitation associated with discrimination further demonstrates the importance of ensuring landlords and real estate agents are accountable for their conduct in relation to vulnerable populations who may not themselves be empowered to protect their rights as tenants.

4. Recommendations

Recommendation 1

RCOA recommends the development and implementation of tenancy education programs.

Strategies for delivering tenancy education were identified and included group tenancy training and skills workshops, one-on-one personalised tenancy training, ongoing tenancy support and advocacy and resources in community languages.

With regard to models, some of these group training models were delivered by people with particular expertise (for example, by real estate property managers, representatives from tenants' unions or consumer affairs), by bilingual and bicultural workers who could contextualise or through peer co-facilitators, by specialist housing support services or by settlement and asylum service providers. Many participants spoke of the importance of using practical demonstrations wherever possible. A number of group training programs provide certificates for participants to use as evidence of having undergone tenancy training when applying for a property.

Incorporating a focus on increasing awareness of rights and responsibilities of tenants in addition to dispute resolution mechanisms when delivering tenancy education programs would address some issues associated with accessibility of these processes for vulnerable and disadvantaged tenants.

One refugee community member expressed the view that the Department of Housing and other responsible areas of government should take a more active role in ensuring that the rights of refugee and asylum seeker tenants are protected. This was based on the perspective that residential tenancy issues are not seen as a priority, despite their importance for the safety and well-being of tenants. The provision of more information in order to increase awareness of rights and avenues to seek redress for tenants was suggested as a relatively simple measure which could address many of the identified problems and empower refugees and people seeking asylum to protect their residential tenancy rights.

Recommendation 2

RCOA recommends increased language support, including educating and encouraging real estate agents to use interpreters when providing services to people from refugee and asylum seeker backgrounds and the translation of resources.

A number of consultation participants identified the important role played by language services in enabling better communication between real estate agents and tenants with limited English.

Opening up the national Translating and Interpreting Service (TIS) to real estate agents to facilitate communication could be an effective initiative to help people to obtain more comprehensive information and advice and to resolve disputes between themselves early.

It was acknowledged that many property managers were reluctant or not confident to use interpreting services. Some settlement and asylum services have responded by providing practical training and

¹ S Evans and R Gavarotto, "Long Way Home? The plight of African Refugees obtaining decent housing in Western Sydney; Anglicare Sydney" (2010) <http://www.anglicare.org.au/news-research-events/latest-research/long-way-home>.

support to real estate agents on working with interpreters and have advocated to property managers the benefits of being able to communicate directly and effectively with tenants.

Translating resources and information into community languages also would help enable people seeking asylum to engage with the dispute resolution system. Translated material specific to tenancy rights and responsibilities and the ways of protecting these rights (including referral to free services) would be useful in this regard.

A number of people spoke about the value of supplementing tenancy training with written information translated into community languages as resources for people to take home and use when they needed it. This is particularly relevant because some housing issues are hard to convey or understand until a person is actually experiencing them (for example, what to do if you receive a notice to vacate). Useful resources mentioned in consultations included translated material from NSW Fair Trading and some tenants' unions. AMES in Victoria has translated an eight-page resource on tenancy rights and responsibilities.

Recommendation 3

RCOA recommends the provision of training to housing providers to build their capacity to meet the specific needs of asylum seekers and people from refugee backgrounds.

Many consultation participants highlighted the lack of knowledge and expertise among housing providers (including real estate agents, property owners and mainstream housing and homelessness services) in working with people seeking asylum and people from refugee backgrounds.

Addressing this knowledge gap in a systematic manner could involve providing funding to support professional development and training opportunities for real estate agents, specialist housing and homelessness services and other housing providers.

Recommendation 4

RCOA recommends that the Victorian government develops partnerships with refugee communities to support their role in addressing residential tenancy issues.

Refugee communities should be involved in addressing the challenges associated with residential tenancies. This may be achieved through the Victorian government developing productive relationships with communities to support their role in addressing residential tenancy issues. Further, train-the-trainer models can be used to train community leaders in knowing their tenancy rights which can then be delivered to community members in first language. Refugee community members often comment on the lack of direct consultation with new and emerging communities, and opportunities to address this issue are very welcome.

Recommendation 5

RCOA recommends that concessions be made available for those who do not have the means to pay for dispute resolution processes, including a consideration of the impact that bond, rent, income and other costs will have on people's ability to pay.

The ability of people seeking asylum or from refugee backgrounds to engage in dispute resolution processes will ultimately depend on their ability to pay for dispute resolution mechanisms. Given the multiple financial challenges faced by these vulnerable communities, it is highly likely that many will choose not to pay to resolve a dispute, and instead will simply accept what is given. This will exacerbate the existing disadvantages faced by these vulnerable communities in any process of dispute resolution.