



5<sup>th</sup> June 2009

President Justice Bell  
President's Review  
VCAT  
Level 1  
55 King Street  
Melbourne Vic 3000

Sent to [review@vcatreview.com.au](mailto:review@vcatreview.com.au)

**VCAT PRESIDENT'S REVIEW: CONSULTATION PAPER 2009  
YOUTHLAW SUBMISSION - EXPERIENCES OF YOUNG PEOPLE**

Youthlaw welcomes this opportunity to provide input into the President's Review

Youthlaw is Victoria's state-wide community legal centre for young people under the age of 25 years. Youthlaw works to achieve systemic responses to the legal issues facing young people, through casework, policy development, advocacy and preventative education programs, within a human rights and social justice framework.

Youthlaw is co-located with seven other youth services as part of Frontyard Youth Services at 19 King St, Melbourne. In the 2006/7 financial year, Frontyard Services assisted 1832 young people and had 11,000 contacts with young people. Young people accessing Frontyard Services are mostly aged between 18 and 25 and are either homeless, experiencing significant family breakdown or deemed to be 'at risk'.

Youthlaw's legal case-work with young people over seven years has involved supporting a limited number of young people in matters before VCAT, the bulk being tenancy related matters where we either appeared as a "friend" of the tribunal or supported young people to run their own matters. Most recently Youthlaw has been supporting a group of young people who are members of WAYOUT, a youth-suicide prevention initiative that hosts gay support groups for young people based in Victorian regional areas, in relation to a discrimination application currently before VCAT.

In general terms we urge the President to be vigilant in ensuring and supporting participation of children and young people in Tribunal processes. The 1997 Report by the Australian Law Reform Commission (ALRC) and Human Rights and Equal Opportunity Commission (HREOC) *Seen and Heard: priority for children in legal processes* (ALRC and HREOC 1997) found that there was a 'consistent failure' by institutions of the legal system to consult with and listen to young people about matters that directly affected them. [1.30] Appropriate participation can be extremely difficult because the adult-orientated legal and administrative processes themselves are not designed for participation by children and young people. Although we have come some distance in the 12 years since the report, it still has relevance and currency for the review of the Tribunal.

Young Peoples Legal Rights Centre  
Inc No A0041616E  
ABN 12 794 935 230  
[www.youthlaw.asn.au](http://www.youthlaw.asn.au)

Tel 9611 2412 Fax 9620 3622 Email [info@youthlaw.asn.au](mailto:info@youthlaw.asn.au)  
At Frontyard, 19 King Street, Melbourne VIC 3000

**Recommendation:**

1. Review Tribunal processes in light of the report *Seen and Heard: priority for children in legal processes* (ALRC and HREOC 1997) to ensure they support young persons participation in Tribunal processes.

**Awareness of tribunal processes and how to make a claim**

Our casework has demonstrated the disadvantage faced by some children and young people in accessing and participating in Tribunal processes. Tribunal's statistics may well indicate a low number of young people make applications to VCAT. Here at Youthlaw there have been very few VCAT matters young people (as either applicants or respondents) have sought our assistance with. We believe that many young people don't identify their issue/s as a matter they have the right to take to VCAT, they don't know when or how to make these applications or feel intimidated by a system not seen as particularly 'youth or user friendly'.

We have received feedback that the small claims forms are very user friendly and clearly explained, however, the tenancy application forms are not as straightforward.

Young people have told Youthlaw that they find the initial contact at VCAT somewhat intimidating. They are usually anxious about the process at this stage and wish to be empowered with knowledge about the process and what to expect next. We have received feedback that counter staff, the first contact point with the Tribunal's, were not forthcoming with this information or guidance, and sometimes they are difficult to access. It has been reported that after lodging claims they were not given any information to take away about their matter.

Another major issue is costs. The most advantageous aspect of VCAT for our clients is that costs are minimal. However, some Youthlaw clients on very low income (e.g. Disability Support Pension) have been declined a fee waiver of application fees on the grounds of "financial hardship". These fees present a significant amount of money to many disadvantaged young people and a significant barrier to participating in Tribunal processes.

**Recommendations:**

2. Counter staff be appropriately trained to provide young people and other disadvantaged people with accessible information about VCAT applications and follow up processes.
3. Ensure all application and other Tribunal forms and guides are simple and youth user friendly.
4. Review the income levels guiding a fee waiver application and/or exercise discretion more widely for financially disadvantaged young people.

## **Representation of matters**

It is our observation that it is difficult for children and young people to access free legal representation via community legal centres or Victoria Legal Aid for tenancy or discrimination cases in the Tribunal. Currently community legal centres are limited in their capacity to provide more than initial advice. Victoria Legal Aid has very limited civil law capacity particularly out of metro areas.

### *Tenancy cases*

Despite the duty lawyer service provided by Victoria Legal Aid some young people have not been able to readily get representation in their tenancy matters. The duty lawyers may give them advice but not represent them in the hearing.

We have received feedback from clients that the Victoria Legal Aid office is difficult to locate within the VCAT building.

### *Discrimination cases*

Discrimination complainants are often unsure and/or unfamiliar with the legal system or processes involved with the Tribunal. Accordingly, when these marginalised complainants are left with an option to refer the matter to the Tribunal themselves, they are more likely to simply withdraw or stop pursuing the matter notwithstanding the merits of their case because of the absence of legal representation or support.

Applicants in the WayOut claim have stressed the importance of having good legal support explaining each step of the VCAT process, clarifying any questions and giving applicants the chance to opt out.

### ***Recommendations:***

5. If a young person, under 18 years, lodges an application the Tribunal refers them to a support person. The Tribunal may consider a dedicated position like the Self represented Coordinator operating in the Supreme Court.
- .
6. Increased funding for VLA and CLCs to provide more free legal advice and representation for young people.

## **Young applicants and VCAT operational issues**

Clients involved in tenancy matters have given feedback that their cases have been adjourned repeatedly and it is particularly onerous for them to see their matters through to resolution. Some of them have also reported not understanding why a decision is made in a particular way and, consequently, have become frustrated about the experience because they are unclear of the Member's reasons for decision.

Below is a summary of other reflections about VCAT processes from some of the young people involved in the current discrimination case.

It is very daunting for a young gay person to stand up and make a report (complaint) in the first place. On top of this you then have to endure a drawn out process that:

*“takes 5 years [exaggeration...but feels like it] to have the complaint resolved and you have to tell your story 50 times over”*

Given how long and complicated the process is, understandably many young people quit the process, as some of the original complainants in the Christian Brethren discrimination matter have done.

It is very intimidating for a young person to be up against respondents such as say the Christian Brethren or, say, the Department of Education and their legal team.

Mediation *“was a joke”*. Although the process felt fair, the other side didn't *“seem to get it”*. We wouldn't have gone to mediation alone.

The matter has had four directions hearings so far. Members spoke about each time they go to a directions hearing and have the matter referred to another they feel *“knocked down”* after having got their hopes up, and they feel insecure about what happens next.

Members feel respondents shouldn't be able to play the game and draw out the process they way they have in this discrimination case.

**Recommendation:**

7. Tribunal members to ensure adjournments and multiple directions hearings are kept to a minimum and matters are as streamlined as possible.

If you have any queries about this submission please do not hesitate to contact me.

Yours faithfully

Tiffany Overall  
Advocacy and Human Rights officer  
Youthlaw  
19 King Street  
Melbourne  
VIC 3000  
03 9611 2422  
tiffany@youthlaw.asn.au