# Regulatory Impact Statement for the proposed Victorian Civil and Administrative Tribunal (Fees) Regulations

Victoria Legal Aid (VLA) welcomes the opportunity to comment on the Regulatory Impact Statement (RIS) for the proposed *Victorian Civil and Administrative Tribunal (Fees) Regulations 2016.*

We support the proposed model, but have three areas of concern related to access to justice in the Residential Tenancies Division and for Working with Children Check matters.

## About Victoria Legal Aid

VLA is a major provider of legal advocacy, advice and assistance to socially and economically disadvantaged Victorians. We work to improve access to justice and legal remedies in the community and pursue innovative ways of providing assistance to reduce the prevalence of legal problems in the community. We assist people with their legal problems at courts, tribunals, prisons and psychiatric hospitals, as well as in our 15 offices across Victoria. We also deliver early intervention programs, including community legal education, and assist more than 110,000 people each year through Legal Help, our free phone advice service.

VLA provides duty lawyer services each day at the VCAT in Melbourne. We also provide services at VCAT hearings in Sunshine, Geelong, Frankston and Berwick. Our lawyers provide information, advice and advocacy for clients in the residential tenancies, guardianship and administration, anti-discrimination and civil claims jurisdictions, occupational regulation as well as general procedural advice.

## Support for the preferred model proposed in the RIS

VLA supports the preferred model proposed in the RIS. Of the three proposed models it best ensures the availability of low-cost access to justice at VCAT, particularly for those who are economically marginalised. In particular, we support the introduction of fees scaled to three classes of user which, combined with the retention of VCAT’s waiver power on the basis of financial hardship, will assist to prevent fees becoming an impediment to those with low income seeking a legal remedy in VCAT’s many jurisdictions.

## Areas of concern

### Injunctions in the Residential Tenancies Division

Under the preferred model it is proposed to introduce an additional fee to hear a matter as an injunction and to hear all urgent injunctions in the Civil Division[[1]](#footnote-1). The proposed fees schedule for Residential Tenancies Division (RTD) in the RIS seems to contradict this, as it states that the application fees in the RTD include injunctions, which suggests RTD injunctions will still be heard in the RTD without the new injunction fee[[2]](#footnote-2). As currently worded, the proposed regulations introduces a new fee for injunctions for all Divisions and they do not exempt the RTD[[3]](#footnote-3).

VLA considers there is a strong argument to exclude the RTD from injunction fees. VLA’s duty lawyer service at VCAT in King Street is frequently and regularly called upon to assist those who have been evicted from their premises in breach of the *Residential Tenancies Act 1997* (RTA) or who have been threatened with unlawful eviction. We also receive referrals from Justice Connect Homeless Law and the Tenants Union of Victoria for this purpose. In our experience, urgent injunctive relief to preserve a tenancy, or to have it reinstated, is the most effective way of preventing illegal evictions and is the most common remedy to prevent homelessness caused by illegal evictions[[4]](#footnote-4). An application fee is already payable for these matters. The introduction of an additional charge would significantly circumscribe the capacity for tenants to obtain essential protective orders for those at risk of unlawful eviction from their home.

Urgent access to an effective legal remedy is an essential and fundamental protection provided by the RTA. It is also the only tool available to tenants to preserve their rights under sections 13 and 20 of the *Charter of Human Rights and Responsibilities Act 2006* against unlawful interference with their home and deprivation of their property.

We note that if these matters are heard in the RTD, concession holders would not be charged a fee. However, we also assist many applicants on low-income who would not be eligible for concessional waiver and for whom the additional charge would be a significant impediment to obtaining orders to preserve their tenancy.

**Recommendation:** That matters usually listed in the Residential Tenancies Division be exempted from the new fee for injunctions.

### Hearing fees for claims where no monetary amount is specified

We are concerned by the proposed introduction of hearing fees for matters based solely on the criteria that there is no monetary amount specified in the applicant’s claim.

It is not clear in the material provided whether this will lead to hearing fees for RTD matters, and for matters such as applications under the *Working with Children Act 2005* (WWC Act). The RIS states that it is not intended for hearing fees to be payable for matters that are less than $10,000[[5]](#footnote-5). However, on the face of it, the proposed regulations introduce hearing fees for all applications to VCAT that are not claims for compensation[[6]](#footnote-6).

For hearing fees applied in the RTD, this would limit many applications that are essential to the speedy and efficient resolution of disputes between tenants and landlords. Common applications in the RTD that do not include a monetary amount include applications for repair and urgent repairs; other orders seeking compliance with the Act; applications for urgent restraining orders to prevent eviction; and, possession order applications by landlords. Hearing fees would be a significant financial impediment for all users of the RTD in resolving disputes under the RTA.

There are other public policy reasons to exempt the RTD from the hearing fees:

* The jurisdiction of the RTD to hear disputes under the RTA does not extend to claims over $10,000 except with the parties’ consent, so it is usually a jurisdiction involving claims that are less than $10,000[[7]](#footnote-7).
* The RTD is primarily funded by the interest on bonds held by the Residential Tenancies Bond Authority and almost 90 per cent of the funding for the list comes from this interest[[8]](#footnote-8).
* Many disputes under the RTA cannot be effectively resolved except by application to VCAT. For examples, the processes for repairs, excessive rent, and eviction all depend on VCAT’s intervention.
* The costs of proceeding in this Division are the lowest for any Division[[9]](#footnote-9). In our experience, VCAT members determine multiple applications an hour in this list. Therefore, there is less justification for hearing fees in this Division than in any other Division.

VLA also notes reference in the RIS to guidance from the Attorney-General that fees in residential tenancies matters should be relatively low[[10]](#footnote-10).

**Recommendation:** That the Residential Tenancies Division be exempted from hearing fees.

### Fees for Working with Children Check matters

We support affordable access to review of administrative decisions made by government. The WWC Act provides for review of decisions at VCAT.

Under the proposed regulations, the application fee for review of a decision under the WWC Act will rise to $593.20. This fee is in addition to the fee of approximately $100 already paid to the Department of Justice and Regulation by an applicant for a Working with Children Check.

We consider that the VCAT application fee may inhibit access to review of decisions by government or discourage people from seeking review of these decisions. For Category One applicants whose applications for a Working with Children Check are automatically refused, access to VCAT is particularly important as it provides the first opportunity to test the matters resulting in the automatic refusal of their application. Review of government decision-making at VCAT promotes fair and transparent primary decision-making. This is particularly important for decisions that affect the rights and interests of citizens, such as a decision whether or not a person can engage in certain types of employment.

Many of our clients who are applicants under the WWC Act are acutely disadvantaged. Those who end up at VCAT are more likely to have a criminal record and experience some form of social exclusion and isolation. They may have been unable to work since receiving a negative assessment notice due to the operation of the WWC Act. They may have little or no income as a result. Even a concessional fee of $150 is likely to pose a significant burden.

As set out above, there may also be hearing fees for these matters as they are also ‘a claim that is not for a sum’. Applicants in this list may also be subject to the increased fees associated with Complex Matters. It is often the case that the Applicant will be required to call expert evidence from psychologists or other professionals in relation to their likelihood of reoffending. This assists VCAT to properly determine the key issues in these matters but would bring the matter within the Complex Matter fees structure under the regulations, leading to significantly higher hearing fees.

We are concerned by high costs for person accessing the supervisory jurisdiction of VCAT in relation to government administrative decision making. A person should not have to incur significant expense to access the only review avenue open to them in relation to decisions under the WWC Act.

**Recommendation:** That the proposed fee for applications for review of decisions under the WWC Act be reduced, and that applicants be exempted from first day hearing fees and Complex Matter fees.

We welcome the opportunity to meet with you to discuss these matters.

1. RIS, p 49, “All injunctions will be heard in the Civil Division, irrespective of the type of matter.” [↑](#footnote-ref-1)
2. The table on page 94 of the RIS outlining proposed fees in the Residential Tenancies Divisions sets proposed application fees for “Other tenant/landlord matters, including injunctions”. [↑](#footnote-ref-2)
3. Proposed *Victorian Civil and Administrative Tribunal (Fees) Regulations 2016,* Schedule 1,Item 17. [↑](#footnote-ref-3)
4. Applications are made under s 452 of the RTA for orders under s 472 of the RTA. The orders sought either require action to comply with the tenancy agreement or the RTA, or they restrain a party from committing certain acts in breach of the tenancy agreement or the RTA. They are normally urgent ex-parte applications as they are either a response to an unlawful eviction, or arise due to an immediate threat of eviction, and therefore fall within the injunction provisions of the VCAT Act. [↑](#footnote-ref-4)
5. RIS, p 61. [↑](#footnote-ref-5)
6. Proposed *Victorian Civil and Administrative Tribunal (Fees) Regulations 2016,* Schedule 1, Item 19 states that a hearing fee is payable for all hearing days if the proceeding is a claim “that is not for a sum” with some limited exceptions. [↑](#footnote-ref-6)
7. RTA, section 447. [↑](#footnote-ref-7)
8. RIS, p 21. Income from the Residential Tenancies Fund is listed at $12,242,000, and expenses in the Residential Tenancies Division are listed as $13,647,000. [↑](#footnote-ref-8)
9. RIS, p 35. [↑](#footnote-ref-9)
10. RIS, p 45. [↑](#footnote-ref-10)