

Public Housing Legal Clinic report

December 2016 – June 2017

About Moonee Valley Legal Service

Moonee Valley Legal Service (MVLS) is a Community Legal Centre located within the Ascot Vale public housing estate. MVLS provides free legal advice, casework, information and referrals to anyone who lives works or studies with the City of Moonee Valley. The majority of MVLS's clients are public housing residents

MVLS provides dedicated support in family violence, tenancy, summary crime and infringements matters.

About Gadens

Gadens is a leading independent top 10 Australian law firm and one of the largest firms in Melbourne. Gadens has over 90 partners and over 700 staff across offices in Adelaide, Brisbane, Melbourne and Sydney.

Gadens have an established reputation as a leading legal service provider to clients in the banking and finance, as well as property and construction sectors. Gadens' expertise also encompasses corporate advisory and tax, insurance and insolvency, intellectual property and technology, dispute resolution, private clients, workplace, health and safety, planning and environment, as well as government.

Gadens works with major Australian and multinational clients, as well as small to medium sized enterprises, across a range of legal work types ranging from highly complex matters to day-to-day legal needs. Gadens' technology-enhanced legal solutions support clients in high volume banking and property transactional work areas.

Gadens provided pro bono support to establish and operate the MVLS Public Housing Clinic (the Clinic).

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Introduction

Catalyst for Clinic

MVLS has observed a disproportionate number of people living in substandard public housing that are in need of repairs. Requests for repairs are often ignored and repairs that are undertaken are frequently delayed by the Office of Housing (Department of Health and Human Services). People are often living in homes that are substandard for excessive periods of time, whilst waiting for the Office of Housing to perform essential repairs and upgrades.

MVLS has also observed a high number of frivolous claims by the Office of Housing unreasonably seeking to recover costs from tenants for damages and maintenance. This matter has also come to the attention of the Victorian Ombudsman and has been featured in a series of media reports in The Age newspaper.¹

The Office of Housing is the largest litigant of tenancy disputes at the Victorian Civil and Administrative Tribunal (**VCAT**). VCAT's recent annual report showed that the Director of Housing made 10,799 applications to VCAT in 2016/17. According to a recent study, up to 80% of claims against public housing tenants proceed uncontested.¹

In relation to the above, Victorian Ombudsman Deborah Glass commented that, "This practice also contributes to housing insecurity and homelessness. Once a tenant has a housing debt they are no longer able to access public housing."

Public housing tenants are some of Victoria's most vulnerable people. Eviction from public housing inevitably leads to homelessness, which in turn has a detrimental effect upon health, employability and a range of other wellbeing factors.

The Clinic sought to assist public housing tenants to assert and understand their legal rights. Through casework, the Clinic also has worked to address the myriad of common complaints raised by tenants of public housing. The Clinic also sought to improve the quality of public housing for individual tenants and raise the profile of public housing concerns generally.

Announcement by Department of Health and Human Services

In November 2016 the Department of Health and Human Services announced the Public Housing Renewal Program (PHRP), a \$185 million package which includes plans to renew key older public housing sites across Melbourne and increase the existing level of social housing by at least 10 per cent.

¹ <http://www.theage.com.au/victoria/public-housing-tenant-has-vcata-win-after-getting-2000-cleaning-bill-for-his-palace-20160825-gr0pah.html>
<http://www.theage.com.au/victoria/office-of-housing-under-investigation-for-pursuit-of-tenants-20160810-gqp8v1.html>

Victorian Ombudsman, Investigation into the management of maintenance claims against public housing tenants, October 2017.

The Clinic was intended to establish networks within the local community in anticipation of advocacy expected to flow from the PHRP. Changes in the delivery of the PHRP by the State Government meant that this aspect of the Clinic was not utilised. However those networks are now well established and the Clinic remains prepared to respond to issues flowing from the PHRP should the need arise.

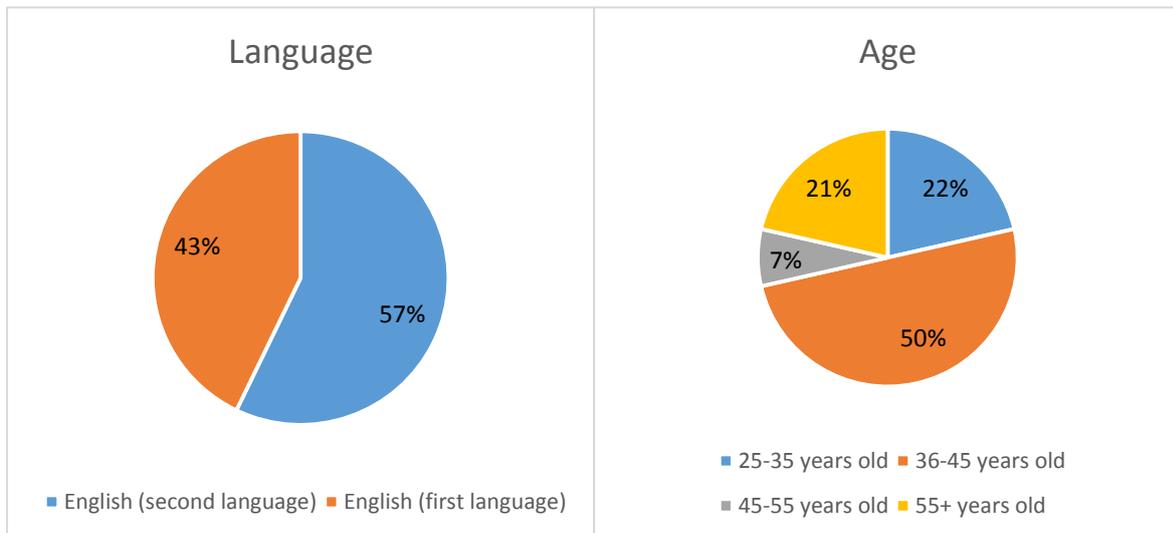
Year in Review

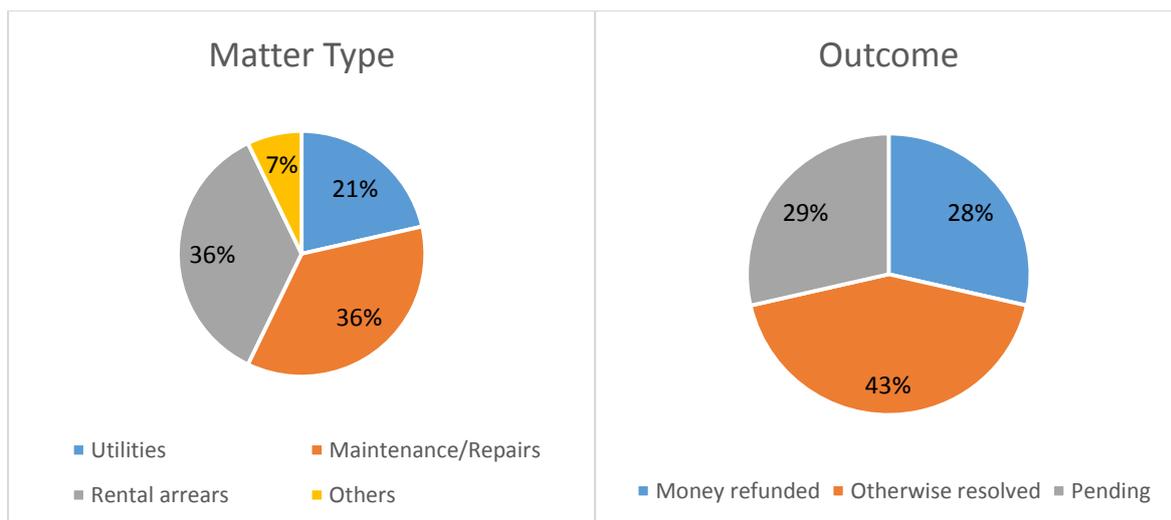
From the Clinic’s inception in December 2016 to the end of June 2017, the Clinic provided advice and casework in relation to fourteen tenancy matters through three appointments per week provided in alternating weeks at the Wingate Avenue Community Centre and the Flemington Community Centre.

The appointments were staffed solely through the pro bono support of lawyers from Gadens under the supervision of Moonee Valley Legal Service Staff.

The majority of matters assisted in the Clinic related to maintenance (36%), rental arrears (36%) and utilities (21%). Clients were generally from non-English speaking backgrounds with the bulk of matters resolved with either a monetary refund or repairs being undertaken by the Office of Housing.

Other key statistics are summarised below.





Findings and Recommendations

Based on issues and concerns raised in the Clinic, MVLS makes the following observations and recommendations:

<p>Lack of awareness of rights as tenants</p>	<p>Tenants are often unaware of their rights under the <i>Residential Tenancies Act 1997</i> (Vic) (RTA). Some tenants find it difficult to exercise their rights given the difficulties with terminology in the RTA, complex processes and the number of forms required to be completed. There is also very little leniency on tenants who may communicate their issues but do not follow the strict statutory requirements (for example, completing set forms and retaining receipts or evidence).</p> <p>Other tenants have expressed a reluctance to request repairs out of fear that they are "asking too much." There is also a reluctance to "rock the boat", by requesting repairs or peace and quiet in the property because of the risk the Director would choose to terminate the tenancy rather than adhere to their obligations.ⁱⁱⁱ</p> <p>MVLS recommends:</p> <ul style="list-style-type: none"> • Organising community information sessions to raise awareness of tenant's rights. • Introducing plain language forms. • Changing the requirements from completing certain forms to providing the requisite information.
<p>Ineffective communication system between the Office of Housing and tenants</p>	<p>There appears to be a lack of trust between the Office of Housing and the tenants. This often leads to further issues and both sides being dissatisfied with the process and outcomes.</p> <p>Examples include:</p>

	<ul style="list-style-type: none"> • Complex arrears notices that are difficult to understand. • Paper form notices that the Office of Housing claim to have sent but the tenants claim not to have received. • Instances where the Office of Housing claim they attempted to contact tenants via "door-knocking" which the tenants dispute. <p>MVLS recommends:</p> <ul style="list-style-type: none"> • Making it mandatory to send notices and communication in multiple formats (for example, text messages) to ensure that the communication is received and to avoid disputes about when notice was given. • Simplifying the ways to show when payments were made and how much is owing in addition to, or instead of complex statements that may be more relevant to private tenancies.
<p>Inappropriate response to maintenance problems</p>	<p>The Office of Housing has an obligation under section 68 of the RTA to maintain the premises in good repair throughout the tenancy.ⁱⁱⁱ If the premises are not in good repair, the public housing tenant may issue a "breach of duty notice" in accordance with section 208 of the RTA.</p> <p>In MVLS' experience, these provisions are inappropriate in the context of public housing.</p> <ul style="list-style-type: none"> • Firstly, repairs sought often fall outside the definition of "urgent repairs"^{iv} (for example, replacement of mouldy carpet). If non-urgent repairs are not carried out within 14 days of the "breach notice", then the tenant may make a written application to Consumer Affairs Victoria.^v In effect, the process is protracted and the tenant bears the onus of following up on the status of repairs. • Secondly, the Office of Housing is not in breach of its duty to maintain the premises in good repair "if the damage to the rented premises is caused by the tenant's failure to ensure that care was taken to avoid damaging the premises".^{vi} This may indirectly incentivise the Office of Housing to argue that the tenants themselves have caused the damage. • Thirdly, section 72 of the RTA allows tenants to seek reimbursement from the landlord for urgent repairs up to the value of \$1,800. However, this provision does not benefit public housing tenants unless they are in a financial position to pay for the repairs upfront. <p>MVLS recommends:</p> <ul style="list-style-type: none"> • Introducing a method for tenants to view the status of inspections and repairs which have been lodged with the Office of Housing. • Introducing a simpler method of keeping and sharing evidence

	<p>(for example, uploading photos to a website or app)</p> <ul style="list-style-type: none"> Establishing a fund to pay for urgent repairs until Office of Housing can properly assess the tenant's claim
<p>Inadequate protections for non-tenant occupants</p>	<p>Tenants (but not occupants) are afforded protection under the Act.^{vii} There is a mechanism that allows occupants to become registered as tenants. This is governed by Chapter 15 of the Tenancy Management Manual (i.e. Type B Request). In assessing a Type B Request, the Office of Housing will assess whether the non-tenant occupant has sufficient and continuous links with the premises. Generally, a non-tenant applicant that has resided at the premises for a minimum of 12 months has sufficient and continuous links to the premises.</p> <p>In our experience, there is a risk that the existing tenant may be liable for back-payments. Rental rebate is calculated based on the number of residents.</p> <p>The above deters proper disclosure of the number of household members. This disadvantages all parties involved. For the Office of Housing, this means inaccurate records. For the occupants, this means they are left in a precarious position without security of tenure. For both tenants and occupants, this can also exacerbate problems of overcrowding.</p> <p>MVLS recommends:</p> <ul style="list-style-type: none"> Making provision for the Office of Housing to waive back-payments for immediate family members Introducing a limitation period for back-payments Introducing a requirement that the Office of Housing use reasonable efforts to enter into a payment plan with the Tenants in respect of any back-payments^{viii}

Case Study A: Urgent repairs

Debbie* is a single mother who lives in social housing with her two teenage daughters. In April 2016, Debbie's apartment experienced significant flood damage. The issue arose after the Office of Housing failed to notify residents that the water supply to the premises would be turned off and an upstairs resident unknowingly left a tap on. The neighbour went out of town so once the water was reconnected, it flooded Debbie's apartment below. One of Debbie's daughters and her friend were home at the time and tried to mop up the water using clothes and towels. They also opened some windows in an attempt to air-out the apartment.

Debbie notified an employee of the Office of Housing (**Officer**) of the flood on the same day as its occurrence. The Officer visited the property but told Debbie that her daughter had contributed to the flooding by opening the windows and that they could not assist her due to the messy state of the apartment. The flooding caused extensive damage to the roof and carpet, as well as to other items such as a mattress, TV, iPad, clothes and shoes. The replacement cost of such items was estimated to be in excess of \$3,500. The Officer refused to provide Debbie with a letter for Centrelink

acknowledging that the flood was not her fault meaning that Debbie could not access a crisis payment and had to be assisted by charities in replacing some of their basic items.



Image 1 (left) shows how a build-up of water in to the ceiling caused a hole in the plaster (which remained unfixed for approximately 8 months)

Despite the Office of Housing being aware of the flood damage from the time of its occurrence in April, essential repairs did not take place until December 2016, almost eight months after the flooding. During this time, the premises was not fit for human habitation due to damage to the ceiling and extensive mould. One of Debbie's daughters became increasingly ill after the mould exacerbated her asthma and was forced to temporarily live in a rural area with her father. Debbie's daughter was unwell for much of the year and missed significant periods of school. The repairs only occurred after Debbie enlisted the help of MVLS to issue a Notice of Breach of Duty. Debbie has not been compensated for her loss.

Debbie's experience and interactions with the Office of Housing significantly exacerbated her anxiety and depression. Debbie felt as though she was being blamed for the damage and did not feel capable of enforcing her rights under the RTA.

Debbie's experience illustrates some of the difficulties public housing tenants face trying to arrange repairs to their property, even urgent repairs, within a reasonable timeframe, much less the time periods specified under the RTA. This difficulty is compounded by the fact that public housing tenants often experience a range of complex legal and non-legal issues, such as low disposable income, unemployment, language barriers and mental health issues, which make it more difficult for tenants to enforce their rights under the RTA. As Debbie's case illustrates, the power imbalance between public housing tenants and the Office of Housing can make tenants reluctant to pursue repairs, and tenants often require assistance from organisations such as MVLS to achieve any outcome, let alone an equitable outcome.

Case Study B: Repairs

Samara* is a single mother that lives with her two young children in a public housing rental property. In recent years, she has faced significant maintenance issues including:

- a cockroach infestation;
- extensive mould that exacerbated her children's asthma;
- defective electrical wiring that left her living room without electricity for months forcing Samara and her family to rely on candlesticks as a source of light;
- broken kitchen tiles, providing a cutting hazard; and
- the deterioration of oven seals that gave rise to a risk of gas leak.



Image 2 (above) shows the substandard condition of Samara's public housing rental property

After nearly two years of attempting to address the problems directly with the Office of Housing, Samara sought the assistance of MVLS.

MVLS issued a breach of duty notice and some repairs were undertaken thereafter, however substantial repairs remain outstanding and MVLS continues to assist Samara to seek further repairs and compensation.

Case Study C: Rebates

Jess* lives together with her two children at a rental property. In 2013 Jess applied to record another family member as an occupant of the property.

Some three years later in 2016, Jess was advised by the Office of Housing that she had not lodged the correct application and that she may have been underpaying rent over the three year period.

By seeking to have the relevant family member retrospectively recognised as an occupant, Jess risked being made liable for back-payments in respect of the three year period where she had inadvertently underpaid rent. Due to the risk of being pursued for rental arrears and no clear policy of the Office of Housing in relation to arrears arising out of honest and reasonable mistake, Jess chose not to record the family member.

Case Study D: Arrears

Diana* attended the MVLS clinic as she had received notice that she was in arrears. Unbeknown to Diana, her rent had increased without proper notification from the Office of Housing. By the time

Diana realised her rent had increased, a substantial amount of arrears had accumulated. This placed considerable stress on Diana given her financial constraints. This was exacerbated by the fact that the Office of Housing could potentially evict her for outstanding rental arrears.

MVLS assisted Diana to obtain a reasonable repayment arrangement and avoid eviction.

Conclusion

The above case studies highlight some of the difficulties faced by the tenants of the Ascot Vale and Flemington public housing estate in relation to their tenancies.

Many of these issues stem from the fact that the RTA governs public housing tenancies in the same manner as standard residential tenancies. This is not befitting of the unique circumstances and vulnerabilities of public housing tenants. Firstly, public housing tenants have substantially less bargaining power since the alternative to living in public housing is often homelessness. Secondly, public housing tenants are often unclear about their rights under the RTA. Lastly, that there is a higher prevalence of mental health issues, language barriers and family breakdown in public housing tenants which require additional support and care to strengthen these tenancies and avoid homelessness.

ⁱ Victorian Ombudsman, 'Investigation into the management of maintenance claims against public housing tenants' (October 2017), 5.

ⁱⁱ Justice Connect, "There's no place like home: Submission to the Residential Tenancies Act Review" (August 2015), 12.

ⁱⁱⁱ RTA, s 68(1). See also *Shields v Deliopoulos* [2016] 500.

^{iv} RTA, s 3. Urgent repairs include (amongst other things) flooding, serious flood damage, failure or breakdown or any essential service or appliance provided for hot water, water, cooking, heating or laundering.

^v RTA, s 74.

^{vi} RTA, s 68(2).

^{vii} RTA, s 10.

^{viii} Justice Connect, "There's no place like home: Submission to the Residential Tenancies Act Review" (August 2015), Recommendation 4.

* Names have been changed for privacy reasons.