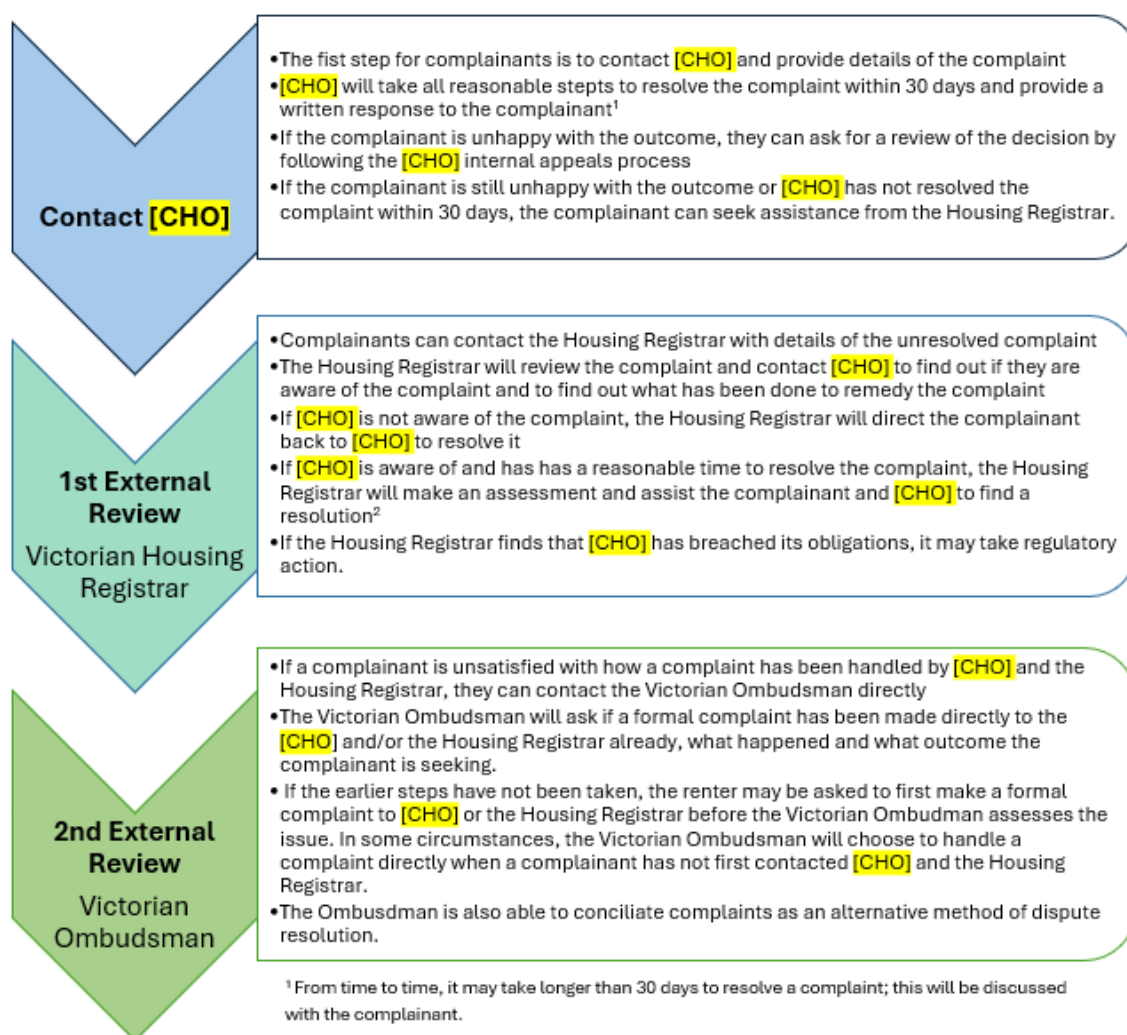


Overview

Complaints from community housing renters are welcomed, as a means of addressing concerns and as a key source of information in driving continual service improvements.

The purpose of this paper is to provide an overview of the obligations CHOs have in relation to complaints and outline the roles and authority of the relevant organisations which play a role in the oversight or management of complaints and dispute processes.

Complaint review process map



¹ From time to time, it may take longer than 30 days to resolve a complaint; this will be discussed with the complainant.

² In some circumstances it may not be possible to resolve the complaint to the complainants satisfaction however the reasons for this will be communicated.

Internal Complaint Management

The first step for community housing renters making a complaint is to contact their rental provider. To manage complaints, CHOs must establish and make available a Complaint Policy and Procedure/s which are open to their renters and others affected by decisions the CHO may make. CHOs must make their Complaints Policy available on their website, in accordance with the Housing Registrar's *Agency Publication of Online Policies* guidance.

CHOs are required to ensure they are fair, transparent and responsive in delivering housing assistance to renters and prospective renters, including managing and addressing complaints and appeals relating to the provision of housing services.

Internal complaints management policies and procedures must be:

- Readily and easily accessible and promoted to renters and prospective renters;
- Provide for prompt and fair resolution of complaints and appeals; and
- Regularly monitored to support the ongoing effectiveness of a CHOs complaints and appeals system.

Once a complaint is received by a CHO, they will take all reasonable steps to resolve the complaint within 30 days and provide a written response to the complainant.

If a complainant is not satisfied with the outcome of their complaint, the internal appeals process generally allows complainants to escalate their complaint to another and more senior decision maker within the CHO.

Complainants may refer their complaints to the Registrar of Housing Agencies (**Housing Registrar**) for investigation if the initial complaint is not resolved by the relevant CHO within 30 days of being made.¹

Housing Registrar

The Registrar of Housing Agencies, supported by the Office of the Housing Registrar, is established and authorised under the *Housing Act 1983* (Vic) and sits within the Department of Treasury and Finance.

In addition to the Housing Registrar's responsibilities for registering and regulating CHOs, the Housing Registrar is empowered to investigate renter complaints that are not

¹ *Housing Act 1983*(Vic), s98(1)



referrable to the Victorian Civil and Administrative Tribunal (**VCAT**) under the *Residential Tenancies Act 1997* (Vic) (**RTA**)² and not resolved by a CHO within 30 days of being made.

When investigating complaints, the Housing Registrar may request that CHOs produce relevant documents and provide responses to questions to assist in their investigation. In certain circumstances, they may inspect properties or offices, which may include taking statements and obtaining further evidence from renters, staff and other parties. A CHO must co-operate with an investigation conducted in relation to it by the Housing Registrar.³

Following an investigation, the Registrar will determine based on the available evidence if further regulatory action is required.

The Housing Registrar has broad intervention powers available under the *Housing Act* to remedy non-compliance with Performance Standards, including giving directions to a CHO where it is unwilling or unable to resolve the non-compliance. CHOs are required to comply with directions given by the Housing Registrar following an investigation.⁴

Victorian Ombudsman

The Victorian Ombudsman (the **Ombudsman**) is an independent officer of the Victorian Parliament. It does not advocate for members of the public or authorities. It makes evidence-based decisions and operates under the Ombudsman Act 1973 (Vic) (the **Ombudsman Act**)

The Ombudsman's purpose is to ensure fairness for citizens in their dealings with public authorities, and to improve public administration. Its day-to-day work includes taking complaints from the public about the administrative actions of State Government departments, statutory bodies, local councils, some publicly funded organisations, and some contractors acting on behalf of these bodies; and conciliating complaints between authorities and complainants and investigating if needed and making recommendations for change.

The Ombudsman Act defines 'administrative action' broadly and it can consider whether the action is compatible with Victoria's Charter of Human Rights and Responsibilities Act 2006 (Vic) and whether an authority has taken into consideration human rights in its operations.

² *Housing Act 1983* (Vic), s 96(2)

³ *Housing Act 1983* (Vic), s 99(2)

⁴ *Housing Act 1983* (Vic), s100(3)



The Victorian Ombudsman is empowered to make enquiries if a renter complains about the actions of an 'authority' for the purposes of the *Ombudsman Act 1973* (Vic). The extent to which CHOs are considered authorities for the purposes of the *Ombudsman Act* is not the same for every CHO given that CHOs carry out a broader mix of functions, including services that are not funded or contracted by government as well as services that may be construed as providing a public function. This will differ dependent upon the circumstances of, and services provided by, the CHO.

The Ombudsman has acknowledged that their jurisdiction over particular community housing organisations may be limited by the definition of '*public body*' in the *Ombudsman Act*⁵, and has recommended that the Ombudsman's jurisdiction be expanded by amending the *Ombudsman Act* to list CHOs as specified entities that are subject to the jurisdiction of their office.⁶

Under the Ombudsman Act in its current form, CHOs are only required to comply with requests from the Ombudsman with regard to investigations where a summons has been issued to a person and:

- The investigation relates to a CHO that may meet the definition of a '*public body*' under the Ombudsman Act, namely where the CHO:
 - Provides a specific service or function that is government-funded/supported; or
 - Provides a public function by the CHO on behalf of the State or an authority (under a contractual arrangement or otherwise); or
- The investigation relates to the actions of the Housing Registrar.

Before commencing an investigation, the Ombudsman must inform the CHO in writing that it intends to conduct an investigation (section 17(1) *Ombudsman Act*).

While it is not initially compulsory to participate in the investigation process, participation can be voluntary or compelled. Section 18 of the *Ombudsman Act* empowers the Ombudsman to issue a witness summons to a person to attend at a specified time and place on a specified date:

- To **produce documents or other things** to the Ombudsman; or
- To give evidence (answering questions) before the Ombudsman; or
- Before the Ombudsman, to give evidence and to produce documents or other things.

Failing to comply with a witness summons issued by the Ombudsman without reasonable excuse is an offence (section 18G, *Ombudsman Act*). A person served with a witness summons may make the following objection to the Ombudsman:

⁵ Investigation into complaint handling in the Victorian social housing sector, Victorian Ombudsman, July 2022, p72

⁶ Investigation into complaint handling in the Victorian social housing sector, Victorian Ombudsman, July 2022, p98



- That they have a reasonable excuse for failing to comply with the witness summons including (but not limited to):
 - Refusing to give information if the information might tend to incriminate the person or make the person liable to a penalty in relation to:
 - A proceeding for an offence with which the person has been charged and that has not been finally disposed of; or
 - A proceeding for the imposition or recovery of a penalty that has been commenced against the person but not finally disposed of;
- Where required to produce a document or other thing, that the document or other thing specified in the witness summons is not relevant to the subject matter of the Ombudsman's investigation.

VCAT

VCAT provides all renters (public, community and private) an independent and cost-effective avenue for resolving disputes where a rental provider is alleged to have breached a right or failed to fulfill a duty under the RTA or the residential rental agreement.

VCAT has the power to make binding orders compelling rental providers to pay compensation and/or take remedial action. All rental providers are bound to comply with directions made by VCAT in line with the Tribunal's powers under the *Victorian Civil and Administrative Tribunal Act 1998* (Vic).

Other Supplementary Supports

Victorian Equal Opportunity and Human Rights Commission

The Victorian Equal Opportunity and Human Rights Commission (**VEOHRC**) is an independent statutory body funded by the Victorian government with the purpose of protecting and promoting human rights in Victoria. VEOHRC undertakes a range of roles including a free, impartial dispute resolution service, an investigatory function and a range of advocacy and review activity to address systematic issues.

All social housing renters can contact the VEOHRC directly for advice and to assistance in understanding and protecting their rights if they feel they have been discriminated against due to a protected attribute in the provision of social housing.



The Commission is not a tribunal or a court. It helps people to resolve complaints by mutual agreement. It does not prosecute, make judgements for or against either side, nor can it award compensation.

Consumer Affairs Victoria

Consumer Affairs Victoria plays a role in administering the Residential Tenancies Act 1997 (Vic) and provides information about renters' rights and obligations, how to resolve residential tenancy disputes; and in certain circumstances offers dispute resolution services.

Support and advocacy services

There are a range of government funded advice and advocacy services that all social housing renters can access for assistance to understand and enforce their legal protections. This includes the advocacy services of Justice Connect, Victoria Legal Aid and Tenants Victoria amongst other charities and community legal centres. CHIA Vic has circulated a template info sheet that CHOs can provide to renters outlining available support services and their roles.

Social Housing Regulatory Review

The Victorian Government commissioned an independent Social Housing Regulation Review, which aims to identify future regulatory arrangements that will best support the long-term interests of social housing residents and their communities. The review panel has submitted their final report to Government but, as of November 2022, the final report is yet to be released or responded to.

Once this report is considered, Government may make changes to the regulatory system and to how complaints and disputes are managed, however, this is yet to occur and it is unclear whether changes will take place and, if so, what those changes will be.

Further Assistance

Should you have any questions or comments in relation to the information in this resource please email leadingpractice@chiavic.com.au.

This resource will be periodically reviewed and continually updated based on sector feedback.

