



27 February 2018

**By email: [information@dtf.vic.gov.au](mailto:information@dtf.vic.gov.au)**

Department of Treasury and Finance  
1 Treasury Place  
EAST MELBOURNE VIC 3002

Dear Sir/Madam

### **2018-19 Pre-Budget Submission**

Consumer Action Law Centre (**Consumer Action**) is pleased to make this submission to the Department of Treasury and Finance during the 2018-19 Pre-Budget period. We have focused this submission on areas where budget action could make an immediate and discernible difference to the lives of Victorians on low and middle incomes, and those Victorians experiencing acute vulnerability.

- The establishment of a fair, independent and accessible Retirement Housing Ombudsman to resolve disputes between residents and housing operators. Not only is this a reform demanded by older Victorians and housing experts, but was recommended by the Parliamentary Inquiry into the Retirement Housing Sector, tabled almost a year ago on 7 March 2017.
- Lifting the maximum value of the Utility Relief Grant (URG) from \$500 to \$750, to give low income Victorians immediate relief with their energy bills, and reforming the application process to ensure that taxpayer money goes to the customer, not the energy retailer. Despite spiralling electricity and gas prices, the URGs cap has not increased since 2010.
- A specialist service to assist the resolution of disputes when a defective, lemon car is purchased, along with the provision of a free expert report solves a critical problem that hurts families and is a drain on productivity. The Government's Access to Justice review in 2016 recognised this problem and presented a sensible idea that should be developed.

Our comments are detailed more fully below.

### **About Consumer Action**

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer law and policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life

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easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice and representation, and policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just market place for all Australians.

## **A Retirement Housing dispute resolution service**

### The opportunity

Older Victorians need an effective External Dispute Resolution (**EDR**) service, such as an ombudsman, to resolve their disputes with retirement housing operators quickly, fairly and cheaply. This reform is critical to address the power imbalance between well-resourced retirement housing operators and residents.

The Victorian Parliamentary Inquiry into the Retirement Housing Sector<sup>1</sup> recommended that the Victorian Government introduce a new alternative for low cost, timely and binding resolution of disputes in the retirement housing sector. It suggested that this may be through a new body or by extending the powers of an existing ombudsman. We strongly support this recommendation, which is currently under review by the Victorian Government.

It should also be noted that the retirement village industry recently signalled its support for an ombudsman in its “Eight Point Plan”.<sup>2</sup>

Currently, residents must take their disputes to the Victorian Civil and Administrative Tribunal (**VCAT**). This is becoming an increasingly legalistic complaints forum, and is often a lengthy, stressful and costly experience for residents. Many residents simply can't face the prospect of going to VCAT. An ombudsman would provide residents with access to free and independent dispute resolution without the need for lawyers.

### How it is delivered

Consumer Action's preferred model for the EDR service is an industry-based model (such as the Financial Ombudsman Service, Energy and Water Ombudsman Victoria or Telecommunications Industry Ombudsman). The service would be largely funded by industry through scalable membership fees and dispute fees, which would reduce the financial burden for Government.

Generally, membership to an industry-funded ombudsman is required as a condition of licencing or registration. This would be relatively simple for retirement villages, which are already required to be registered with Consumer Affairs Victoria (CAV). A registration regime for residential parks and rental villages would need to be established, which we believe is long overdue in any case.

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<sup>1</sup> Parliament of Victoria (2017) *Inquiry into the retirement housing sector*, available at: [https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Retirement\\_Housing/Report/LSIC\\_58-06\\_Text\\_WEB.pdf](https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Retirement_Housing/Report/LSIC_58-06_Text_WEB.pdf)

<sup>2</sup> Property Council of Australia (2017) *Retirement Village Industry: 8 Point Plan*, available at: <http://www.retirementliving.org.au/wp-content/uploads/2017/08/Eight-Point-Action-Plan-Policy-platform-for-retirement-living.pdf>

An effective EDR scheme offers a fair, independent and accessible dispute resolution service for consumers who are unable to resolve complaints with service providers. They provide services at no cost to consumers, and focus on informal and timely resolution of disputes. However, where agreement cannot be reached, a decision binding on the service provider can be made.

The EDR scheme should be a no-costs jurisdiction. In line with other EDR schemes, such as the Financial Ombudsman Service, decisions of the scheme should be binding against industry participants. This avoids disputes being appealed to costs jurisdictions by operators in an attempt to discourage residents from making complaints.

A retirement housing EDR scheme should be able to resolve disputes in a flexible manner. For example, it could make orders including (but not limited) to:

- reinstate, rectify or properly perform a contract (for example, to repair a broken fence);
- repay, waive or vary a fee or other amount paid;
- vary the terms of a contract;
- forgive, or vary, a debt;
- pay a sum of money; or
- require a party to the dispute to apologise.

The role of EDR schemes also extends beyond resolving individual complaints. Where systemic issues are raised, the EDR scheme should look to service providers to provide redress to all affected persons and report systemic issues to the regulator. We note that the role of an EDR scheme is different to that of a regulator like Consumer Affairs Victoria (**CAV**). Regulators are responsible for enforcing the law (for example, by pursuing civil or criminal penalties), whereas an EDR scheme is responsible for resolving individual disputes between consumers and traders. However, EDR schemes are complemented by well-resourced and proactive regulators, as they can work together to address systemic issues.

We strongly endorse the existing Benchmarks and Key Practices for Industry-Based Customer Dispute Resolution<sup>3</sup> that apply to ombudsman schemes. The benchmarks relate to accessibility, independence, fairness, accountability, efficiency and effectiveness.

We expect any retirement housing EDR scheme to comply with these benchmarks. The Benchmarks and Key Practices are well-developed principles that have provided strong foundations for many EDR schemes in Australia and New Zealand. They should underpin the final dispute resolution framework for retirement housing implemented by the Victorian Government.

A retirement housing EDR service should, at a minimum, be available to residents of residential parks, retirement villages, rental villages and independent living units. In the event a resident dies or loses capacity, their appointed representatives should also have access to the service.

There will no doubt be further discussion about the types of matters that should be considered by an EDR scheme. However, at a minimum, we would expect consideration of the Australian Consumer Law, *Retirement Villages Act 1986*, *Residential Tenancies Act 1997*, *Owners*

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<sup>3</sup> Australian Government, The Treasury (2015) *Benchmarks and Key Practices for Industry-Based Customer Dispute Resolution*, available at: [https://static.treasury.gov.au/uploads/sites/1/2017/06/benchmarks\\_ind\\_cust\\_dispute\\_reso.pdf](https://static.treasury.gov.au/uploads/sites/1/2017/06/benchmarks_ind_cust_dispute_reso.pdf)

*Corporation Act 2006* and associated regulations, insofar as they relate to retirement housing. As noted above, we would also expect disputes to be resolved having regard to what is fair and reasonable for residents and operators, good industry practice and previous decisions.

### The investment

The Productivity Commission recently estimated the cost of running an ombudsman service. They found that in 2011-12 the 12 industry ombudsman schemes operating in Australia resolved 343,000 complaints (431,000 contacts) at a cost of \$114 million (an average cost of \$260 per contact). The eight government ombudsman schemes resolved 52,000 complaints (152,000 contacts) at a cost of \$64 million (an average cost of \$420 per contact)<sup>4</sup>

From these estimates, it is clear that industry ombudsman schemes generally resolve complaints at a lower cost than government schemes. Consumer Action has significant experience in supporting and acting on behalf of consumers with disputes considered by industry ombudsman schemes. We have formed the view that, in providing access to justice, the establishment of these schemes has been one of the most significant advances in consumer protection of the past 30 years.

Industry schemes are funded by members, not government. Generally, ombudsman membership is a requirement of registration or licensing for a business. We therefore anticipate there may be some government funding required to accelerate the establishment of a registration regime for retirement housing operators, and to establish the ombudsman scheme itself. However, the ongoing operation of the scheme would be funded by industry.

### *Investment (\$ million) – forward estimates*

<b>ITEM</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>
<i>Retirement Housing Ombudsman – seed funding</i>	\$1	\$1	\$0.75	\$0.5

## **Making energy more affordable and fair for low income Victorians**

### The opportunity

The Utility Relief Grant Scheme (URGS) has been in place in Victoria for over 20 years and plays a valuable role, supporting vulnerable households at risk of accumulating energy debts. The recent Independent Review into the Electricity and Gas Retail Markets (**the Review**) in Victoria acknowledged the importance of retailer hardship programs and the URGS as the primary points of contact for people having trouble paying energy bills.<sup>5</sup>

<sup>4</sup> Productivity Commission (2015) *Access to Justice Arrangements: Inquiry Report Overview*, p. 11, available at: <http://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-overview.pdf>.

<sup>5</sup> Victorian Government (2017) *Independent Review into the Electricity and Gas Retail Markets in Victoria*, available at: <https://engage.vic.gov.au/review-electricity-and-gas-retail-markets-victoria>

Energy and water prices continue to increase at a faster rate than the Consumer Price Index (CPI), while the value of grants available under the URGS has remained unchanged since 2010,<sup>6</sup> seriously limiting its usefulness. The price cap of URGS grants (based on the balance owing at the time of the application) is capped at six months of usage, up to a maximum of \$500.

As all Victorians households know, energy prices have increased rapidly. CME analysis undertaken in May 2017 for the Review, estimates a representative residential electricity bill at \$1,459 (based on 4MWh p.a.) and for gas residential customers at \$1,462 (based on 55GJ p.a.). Based on CPI and ABS National Accounts, the ANU estimates that the average electricity bill in Victoria has increased from \$841 per annum in 2006 to \$1,837 in 2016.<sup>7</sup>

The URGS application process is paper based and clumsy. Energy retailers receive \$37.50 for every form they sent to a customer. In the 2016-17 financial year, energy retailers sent 66,609 application forms to potential URGS recipients. Over half of these (33,665) were not returned by customers to the Department of Health and Human Services (DHHS)<sup>8</sup>. This means energy retailers received \$1.26 million for no social benefit, which could have provided at least 2,524 families with energy debt relief.

Recent state-wide polling by ReachTel found that Victorians have very little trust in their energy retailer. The polling not only found that 88.6% of Victorians are either concerned or very concerned about their electricity bills, and that 70.7% either had little or no trust in their electricity retailer. Just 4.1% had a lot of trust in their electricity company to act in their best interest.<sup>9</sup> Yet we rely on retailers to assist Victoria in this critical task of bringing relief to financially struggling Victorians.

### How it is delivered

By streamlining the URGS application process, and moving it online, consistent with the Victorian Government's Information Technology Strategy<sup>10</sup>, we can reduce inefficiencies and make URGS work for Victorians again. This long over due reform would be good for vulnerable Victorians, and will stop the waste of paying retailers to send out URGS forms, only for the forms to never be returned to DHHS.

We also recommend immediately raising the URGS cap to \$750 to reflect price movements since 2010, and for the cap to be reviewed annually to ensure it keeps pace with price rises.

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<sup>6</sup> VCOSS (2016) *State Budget Submission 2017-18*, Available at: [http://vcoss.org.au/state-budget-submission-2017-18/cut-the-cost-of-living/#\\_ftn19](http://vcoss.org.au/state-budget-submission-2017-18/cut-the-cost-of-living/#_ftn19)

<sup>7</sup> Victorian Government (2017) *Independent Review into the Electricity and Gas Retail Markets in Victoria*, available at: <https://engage.vic.gov.au/review-electricity-and-gas-retail-markets-victoria>

<sup>8</sup> Essential Services Commission (2017) *Victorian Energy Market Report 2016-17*, available at: <https://www.esc.vic.gov.au/document/energy/55678-victorian-energy-market-report-2016-17/>

<sup>9</sup> Consumer Action Law Centre (9 February 2018) *New polling shows Victorians don't trust power retailers and want a Fair Price Guarantee*, available at: <https://consumeraction.org.au/new-polling-shows-victorians-dont-trust-power-retailers-want-fair-price-guarantee/>

<sup>10</sup> Victorian Government (12 May 2016) *New digital start for Victorian Government*, available at: <https://www.premier.vic.gov.au/new-digital-start-for-victorian-government/> (media release)

## The investment

In 2016-17, Utility Relief Grants totalled \$13.4 million, which is a five per cent increase on the previous year.<sup>11</sup>

The budget investment will be two-fold; the establishment of an online application process for URGS, and the increased investment URGS themselves with the increased maximum payment from \$500 to \$750 dollars. Some of this additional investment will be mitigated by avoiding the waste of paying retailers to send applications that are never returned. Over the four-year period, the additional investment will increase year-on-year to cover annual increases in the URGS cap.

### *Investment (\$ million) – forward estimates*

<b>ITEM</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>
<i>Additional Investment – Utility Relief Grant (URG) scheme</i>	\$2	\$2.2	\$2.4	\$2.6

## **Protecting Victorians from lemon cars**

### The opportunity

We are strongly supportive of the proposal to establish a specialist car dispute resolution service to help Victorians who purchase a defective, or lemon, car. Whether it's travelling to work, school, or the supermarket, having a safe and working car is essential for many Victorians, particularly those living in regional areas.

Victorians almost unanimously (92.3%) agree it should be easy to get a refund or repair from a car dealer if they are sold a defective car.<sup>12</sup>

When buying a car or getting it repaired, Victorians have rights under the *Australian Consumer Law*. However, our casework experience consistently reveals that the process to enforce those rights against a car dealer at the Victorian Civil and Administrative Tribunal (**VCAT**) is too hard, too expensive and too slow, leaving many Victorians stranded or giving up on their claim.

The barriers to justice for everyday Victorians at VCAT was confirmed by research by Cameronralph Navigator, *Review of Tenants' and Consumers' Experience of VCAT*.<sup>13</sup> The Hall and Partners report prior to the establishment of the Domestic Building Dispute Resolution

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<sup>11</sup> Essential Services Commission (2017) *Victorian Energy Market Report 2016-17*, available at: <https://www.esc.vic.gov.au/document/energy/55678-victorian-energy-market-report-2016-17/>

<sup>12</sup> ReachTel conducted a survey of 1,124 residents across the state of Victoria (29 January 2018)

<sup>13</sup> Cameronralph Navigator (2016) *Review of Tenants' and Consumers' Experience of VCAT*, available at: <https://consumeraction.org.au/wp-content/uploads/2016/08/Research-report-Review-of-Tenants-and-Consumers-Experience-of-VCAT.pdf>

Victoria (**DBDRV**) stated emphatically following research into home owners pursuing complaints and disputes that, “no one really wants to go to VCAT”.<sup>14</sup>

The Report of the Access to Justice Review<sup>15</sup>, released in October 2016, examined this problem and recommended that the Victorian Government:

- propose legislation for compulsory conciliation of motor vehicle disputes by Consumer Affairs Victoria (**CAV**) before a claim can be made to VCAT; and
- fund CAV to provide a conciliation service for motor vehicle disputes, including to undertake a technical assessment to assist in dispute resolution (**Recommendation 5.8**).

We strongly support this recommendation, which will resolve a key problem in car disputes: getting a free, independent expert report at an early stage to substantiate claims. This expert report will assist the parties and the ultimate decision-maker to establish the cause of the mechanical problems, cost of repair, and whether the fault meets technical standards such as whether it is a “major failure” under the *Australian Consumer Law*. Neither lawyers nor Tribunal members have this mechanical expertise. Operating this service will also provide CAV with critical data for compliance and enforcement work, enabling it to identify systemic issues and problem car traders, tackling the problem at its source.

A new service is justified given the sheer number of people struggling to resolve car disputes. In the last financial year, approximately one in five calls to our legal advice line, totalling over one thousand, related to cars. Indeed, as outlined by the Access to Justice Review, in 2014-15, Consumer Affairs Victoria received a total of 7,848 contacts about motor car trading. In the same period, it undertook 8,975 dispute resolution processes (including conciliation and frontline resolution), of which 489 (5.4 percent) matters related to motor car trading.

In addition to this, in 2014-15 there were 643 motor vehicle dispute applications made to VCAT’s Civil Claims List, which accounted for nine percent of total applications in that List. Of those matters, 77 percent were for claims under \$10,000 (small claims) and 23 percent were for claims over \$10,000.<sup>16</sup>

The huge number of initial contacts, and the vast difference between the number of contacts, and the number of people enforcing their rights with existing dispute resolution forums, strongly suggests that not only is this a big problem, but the options available to consumers are not effective or accessible to Victorians with a defective lemon car.

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<sup>14</sup> Hall and Partners (July 2016) *Domestic Building Dispute Resolution Victoria Demand Estimates and Dispute Experiences*, available at: <https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwiunpyA6rPZAhVFv7wKHeNzBlgQFghDMAI&url=https%3A%2F%2Fwww.consumer.vic.gov.au%2Flibrary%2Fpublications%2Fresources-and-education%2Fresearch%2Fdomestic-building-dispute-resolution-victoria--demand-estimates-and-dispute-experiences-2016.pdf%3Ffla%3Den&usg=AOvVaw0dZhLn-ObxQUoSvwd6Gpp0>

<sup>15</sup> Victorian Government, Department of Justice and Regulation (2016) *Access to Justice Review*, available at: <https://engage.vic.gov.au/accesstojustice>

<sup>16</sup> Victorian Government, Department of Justice and Regulation (2016) *Access to Justice Review*, available at: <https://engage.vic.gov.au/accesstojustice>

## How it is delivered

Free, fair and fast specialist dispute resolution already exists for disputes about a phone, electricity bill and home loan as discussed in relation to a Retirement Housing Ombudsman.

Creating a new service here in Victoria is not without recent precedent. According to the Minister for Consumer Affairs the Hon Marlene Kairouz MP, the Domestic Building Dispute Resolution Victoria (**DBDRV**), established in April 2016, received over 1,000 complaints in its first month of operation,<sup>17</sup> revealing that when a free, fair and accessible service is available, people are empowered to pursue their rights.

The DBDRV provides for compulsory conciliation and can make binding dispute resolution orders, while the organisational structure of DBDRV comprises a Chief Dispute Resolution Officer, Dispute Resolution Officers, Building Assessors and a Legal Team.<sup>18</sup> This model should be adapted to motor vehicles.

The motor vehicle trader sector aligns easily to a cost-recovery or industry model of dispute resolution (as discussed in the Retirement Housing Ombudsman section) as all traders are required to be licenced and appear on the motor car traders register. In 2016-17, 2,056 traders were on the register.<sup>19</sup> As a condition of licencing, traders would be required to contribute to the dispute resolution service.

The purchase of a car is one of the big financial investments in our lives, and for some people it is their most important asset. This warrants the establishment of a specialist service to resolve lemon car disputes. We urge the Victorian Government to implement Recommendation 5.8 of the Access to Justice Review this year.

## The investment

Cost recovery to finance the dispute resolution service could take two forms. Firstly, a progressive levy charged based on the size of the trader to cover wages and administrative costs. If traders were charged an average levy of one thousand dollars (\$1000) per licence, \$2 million dollars a year could be used for the running of the service. However, seed funding from Government of \$1 million dollars a year, adjusted for CPI, would cover establishment costs, investigation of systemic issues and compliance.

The second form of cost recovery relates to the expert technical report on a defective lemon car. In Consumer Action's experience, an independent, expert report can cost a consumer between \$500 and \$2,000. With in-house staff, or a tendering process leveraging for scale, it is assumed that the cost would be closer to \$500. As with other industry ombudsman schemes, this "case"

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<sup>17</sup> Victorian Parliament, Public Accounts and Estimates Committee (31 May 2017) *Inquiry into Budget Estimates 2017-18*, available at: [https://www.parliament.vic.gov.au/images/stories/committees/paec/2017-](https://www.parliament.vic.gov.au/images/stories/committees/paec/2017-18_Budget_Estimates/transcripts/Verified_Kairouz_-_Consumer_Affairs_etc_2017-18_BEH.pdf)

18\_Budget\_Estimates/transcripts/Verified\_Kairouz\_-\_Consumer\_Affairs\_etc\_2017-18\_BEH.pdf

<sup>18</sup> Domestic Building Dispute Resolution Victoria (accessed on 20 February 2018) *About Us*, available at: <https://www.dbdrv.vic.gov.au/about-us>

<sup>19</sup> Consumer Affairs Victoria (2017) Annual Report 2016/17, available at: <https://www.consumer.vic.gov.au/annual-report/previous-annual-reports>



fee would be charged to the trader party to the dispute. This would have the added benefit to encourage resolution of the dispute at the earliest possible stage.

*Investment (\$ million) – forward estimates*

<b>ITEM</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>
<i>Motor Vehicle Dispute Resolution Victoria</i>	\$1	\$1.1	\$1.2	\$1.3

Please contact Mick Bellairs, Campaigns and Communications Officer on 03 9670 5088 or at michaelb@consumeraction.org.au if you have any questions about our comments on the review.

Yours sincerely

**CONSUMER ACTION LAW CENTRE**



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