

Residential Tenancies Dispute Resolution Scheme

This fact sheet is based on information contained in:

- [The Residential Tenancies Act 1997](#); and
- [Residential Tenancies \(COVID-19 Emergency Measures\) Regulations 2020](#)

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Scope of this Fact Sheet

Although the fact sheet is about residential tenancies it will not refer to rooming houses, caravan parks and moveable dwellings, site agreements, specialist disability accommodation or tenancies with a fixed term of more than 5 years. However, this does not mean that legislation and regulation have not changed for those categories of residential accommodation. They are excluded because most members are not involved in managing those types of residential accommodation.

Part 16 Residential Tenancies Act 1997

The COVID-19 Omnibus (Emergency Measures) Act 2020 had the effect of inserting Part 16 into the Residential Tenancies Act 1997.

Residential Tenancies (COVID-19 Emergency Measures) Regulations 2020

These regulations were referred to in the Act but were created after the Act was passed by Parliament. They:

- i. provide detail of the Residential Tenancies Dispute Resolution Scheme; and
- ii. they correct errors in and omissions arising from Part 16.

In this fact sheet they will be referred to as “the regulations”. Some regulations specific to those administering and applying dispute resolution scheme have been omitted.

Purpose and effect Part 16 of the Residential Tenancies Act (RTA)

- to temporarily change the RTA
- it applies despite anything to the contrary in another part of the RTA or any other Act or law apart from:
 - (i) the Charter of Human Right and Responsibilities; or
 - (ii) the COVID-19 Omnibus (Emergency Measures) Act 2020; or
 - (iii) the Constitution Act 1975and any subordinate instrument made under them, for example regulations.

Effective date of Part 16 of the Act

It is effective from 29th March 2020, despite having been created at a later date. Part 16 is repealed on 29th September 2020. The regulations are retrospectively effective from 12 May 2020.

Chief Dispute Resolution Officer (CDRO)

Part 16 establishes the office of chief dispute resolution officer.

Functions of the chief dispute resolution officer include:

- (i) assessing the suitability for alternative dispute resolution of eligible disputes
- (ii) conducting alternative dispute resolution in relation to eligible disputes

“CDRO” is only used for convenience in this fact sheet.

The Director Consumer Affairs Victoria

The Director or Consumer Affairs Victoria is referred to as “the Director”.

VCAT

VCAT is referred to as “the Tribunal”.

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Residential Tenancies Dispute Resolution Scheme

See:

Sections 597-607B of the Residential Tenancies Act; and
Regulations 4-33 of the Residential Tenancies (COVID-19 Emergency Measures) Regulations

Eligible dispute (section 597)

Part 16 and the regulations refer to an “eligible dispute” which means a dispute about any of the following-

- a) a matter arising in relation to an eligible agreement or residency right;
- b) an alleged breach of an eligible agreement or breach of a duty in respect of a residency right;
- c) an alleged breach of a provision of the RTA or regulations in relation to an eligible agreement or a residency right.

Eligible agreement (section 597)

Eligible agreement includes a tenancy agreement.

REIV Comment :

Neither the Act nor the regulations indicate what might be an ineligible dispute and there is no mention of who determines that a dispute is an eligible dispute. Given this and the breadth of the definition of an eligible dispute, it seems that all residential tenancy matters which might previously have been taken to the tribunal fall into the category of eligible disputes.

In addition, because a landlord can no longer give a tenant a notice to vacate (section 544) but the Tribunal can “...subject to the Residential Tenancies Dispute Resolution Scheme...” terminate a tenancy, many matters which were previously not disputes are now classified as eligible disputes.

Mandatory requirements before the tribunal may consider an application in relation to an eligible dispute (regulation 12)

An application made after 12th May 2020 must not be considered by the tribunal unless:

- a) the Director has referred it to the Tribunal; or
- b) the CDRO has decided not to accept the dispute or the dispute is no longer suitable for alternative dispute resolution; or
- c) the dispute has not been resolved by alternative dispute resolution; or
- d) there has been an alleged breach of a dispute resolution order and the CDRO has given a notice that there appears to have been a breach and that the applicant may apply to the Tribunal.

Mandatory assessment by the Director (regulation 6)

The Director must assess each eligible dispute and must decide to refer it to:

- a) the CDRO; or
- b) the Tribunal

REIV Comment :

The Act and regulations do not include a prescribed form or a format for submitting an eligible dispute to the Director.

Referral to the chief dispute resolution officer (regulation 7)

The Director must refer an eligible dispute to the CDRO if it is about:

- a) a payment related matter; or
- b) a payment related matter and other matters.

Meaning of payment related matter (regulation 10)

Payment related applications include:

- an application to reduce rent payable or for a payment plan under section 540
- any application under the Act that relates to payment of rent including-
 - an application under section 452 (General applications to the Tribunal)
 - an application for compensation and compliance under section 209 (breach of duty notice not complied with)
 - an application for compensation under section 210 (other grounds)

Applications that are not payment related (regulation 11)

For the avoidance of doubt, a payment related application does not include:

- an application by the landlord under section 414 or 417 for the bond
- an application under section 548 for an order to terminate a tenancy under section 549(2)(i) – the tenant has failed to pay rent and is able to comply without suffering severe hardship.

REIV Comment :

A Property Manager does not need to determine whether a matter is payment related or not, it is instead a decision for the Director. However, understanding it will help you to appreciate why matters take different paths, some to the CDRO and others to the Tribunal.

Refer to the Tribunal (regulation 8)

The Director must refer the eligible dispute to the Tribunal if:

- a) it is only about non-payment related matters; or
- b) the CDRO has decided to:
 - (i) not accept it for alternative dispute resolution and has notified the parties; or
 - (ii) the dispute is no longer suitable for alternative dispute resolution; or
- c) it is not resolved by alternative dispute resolution and the parties have been notified.

REIV Comment :

It seems that the only thing the Director can do with a request that a tenancy be terminated in line with many of the circumstances in section 549, is refer it to the Tribunal because it is about a non-payment related matter.

Matters the Director may consider in deciding on a referral (regulation 9)

The Director may:

- a) ask the person seeking to have the dispute dealt with to provide further information or documents relating to the dispute; and
- b) require the person to provide evidence that they have taken reasonable steps and have acted in good faith to resolve the dispute.

If the eligible dispute is referred to the CDRO that officer may request similar documents and evidence.

REIV Comment :

Providing the above documents and evidence before being asked to do so may hasten the progress of the dispute.

Mandatory requirements before the chief dispute resolution officer may deal with an eligible dispute (regulation 13)

The CDRO may only deal with disputes referred by the Director.

REIV Comment :

Therefore, a Property Manager must refer a dispute to the Director, not to the CDRO.

Accepting an eligible dispute for alternative dispute resolution (regulation 14)

The CDRO may decide whether to accept a dispute for alternative dispute resolution. If it is not accepted, or it is decided it is no longer suitable for alternative dispute resolution, the parties must be given notice and advised that the Tribunal is not prevented from considering an application in relation to the dispute.

REIV Comment :

It is unclear from the regulations whether "...the tribunal is not prevented from considering an application..." means it will automatically be referred to the Tribunal or whether one of the parties will have to take some action to initiate a Tribunal hearing.

Severing, dividing etc matters covered by eligible disputes (regulation 15)

The CDRO may:

- a) sever from the dispute any matter considered not suitable for alternative dispute resolution; or
- b) divide a dispute into 2 or more matters if it is convenient to resolve them separately.

Alternative dispute resolution powers (regulation 16)

The CDRO:

- 1) may do one or more of the following:
 - a. conduct a mediation
 - b. conduct a conciliation
 - c. determine a dispute

- 2) may decide if it is fair and reasonable to make an order without mediation or conciliation;
- 3) may make enquiries or obtain information and ask any party to the dispute to provide information or documents;
- 4) may specify a time for compliance with the above requests;
- 5) must prepare a written order if mediation or conciliation resolves the dispute;
- 6) may make a written order;
- 7) must ensure a written order contains specified information;
- 8) must give a copy of the order to each of the parties
- 9) may specify a time that the order comes into effect, otherwise it comes into effect immediately.

What a dispute resolution order may require [regulation 17(1)]

A dispute resolution order may do one or more of the following:

- restrain any action in breach of a tenancy agreement or the Act
- require any action in performance of a tenancy agreement or of duties under the Act
- require the return of goods unlawfully taken from rented premises by a party to a tenancy agreement
- require payment of compensation to any person
- reduce the rent payable
- require the tenant to enter into and abide by a payment plan
- vary the terms of a tenancy agreement to the extent necessary because of a reduction of rent or a payment plan
- include orders made under other powers conferred on the CDRO under the Act or Regulations
- subject to regulation 17(2) include orders that the Tribunal may make under the Act

REIV Comment :

The final point seems to suggest the CDRO may be able to make some orders in place of the Tribunal.

What a dispute resolution order must not include [regulation 17(2)]

A dispute resolution order must not include:

- an order in respect of a payment of a bond
- an order reducing a fixed term tenancy under section 543
- an order in respect of termination of a tenancy agreement (including where a new agreement is required) under sections 233B(1) or 549(1)
- a possession order under section 551

REIV Comment :

This has the effect of saying that bond matters, reduction in a fixed term tenancy, tenancy terminations and possession order applications can only be decided by the Tribunal. However, despite this clarity applications must be submitted to the Director before they may be heard by the Tribunal (regulation 12). There is no indication whether an application about the same matter could be submitted to the Director and the Tribunal at the same time. Such an

action, if permissible, might shorten the time before a matter is heard by the Tribunal.

Agreement for resolving eligible dispute (regulation 18)

If the CDRO resolves a dispute by mediation or conciliation, and the parties choose to enter into an agreement rather than consenting to the making of a dispute resolution order, the CDRO must prepare a written agreement. The agreement will detail the action to be taken by the parties and the timeframe in which it must be taken.

The CDRO may at the request of one of the parties, or on their own initiative, make corrections or changes to the agreement.

Notice of alleged failure to comply with terms of agreement (regulation 19)

A party to the agreement may give a notice of non-compliance to the CDRO.

Chief dispute resolution officer's powers in relation to notice under regulation 19 (regulation 20)

If the CDRO is satisfied there has been non-compliance, they may

- amend the agreement; or
- extend the time for compliance.

If they think these actions are not appropriate, they may:

- make a dispute resolution order; or
- give a notice stating the dispute has not been resolved by alternative dispute resolution.

These actions terminate the agreement.

REIV Comment :

This enables the matter to be heard by the Tribunal (regulation 12). It is not mentioned whether the matter would be automatically referred to the Tribunal or whether one of the parties would have to make an application.

Eligible dispute not resolved by alternative dispute resolution (regulation 21)

The CDRO must give a notice that the dispute has not been resolved by alternative dispute resolution if:

- it was not resolved by mediation or conciliation; or
- there has been non-compliance with the agreement; and
- they think it is not appropriate to make a dispute resolution order.

The notice may state that a party:

- did not participate in mediation or conciliation; or
- did not participate in mediation or conciliation in good faith.

The CDRO must advise the parties that the Tribunal is not prevented from considering an application.

REIV Comment :

It is not clear whether one of the parties would have to take action to bring the matter before the Tribunal.

Payment of rent into Rent Special Account (regulation 22)

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If a tenant has given a notice requiring repairs to be carried out, they may apply to the CDRO for an order authorising them to pay the rent into the Rent Special Account. An authorisation to pay the rent to the account for a specified period may be given if:

- a repair notice has been given; and
- the repairs have not been done.

The rent must be paid to the landlord at the end of the specified period. However, it may be paid to the landlord before the end of the specified period if requested and the repairs have been done or are being done.

Correction of error or omissions in a dispute resolution order (regulation 24)

On their own initiative or at the request of a party the CDRO may amend an order. In doing so they may consider any matter including:

- a clerical mistake; or
- an accidental slip of omission; or
- a miscalculation; or
- a misdescription of a person, thing, or matter; or
- a defect of form.

Request to amend cancel or extend a dispute resolution order (regulation 25)

At the request of a party the CDRO may decide to:

- amend the order; or
- cancel the order; or
- extend the period for compliance.

They may do this if:

- there has been a substantial change in the nature of the eligible dispute or to the circumstances of the parties; or
- there has been a failure or inability to comply due to factors outside the control of the non-compliant party.

Powers of chief dispute resolution officer in considering amending, cancelling, or extending a dispute resolution order (regulation 26)

The CDRO may:

- make enquiries or obtain information; and
- ask any party to provide information or documents.

They may also:

- specify a period for compliance with these requests; and
- may extend that period at the request of a party

Breach of dispute resolution orders (regulations 28)

If a party considers an order has not been complied with, they can apply to the CDRO for a notice stating:

- that there appears to have been a breach of the order; and
- that the applicant may make an application to the Tribunal.

The Tribunal may determine an application and make orders. In doing so it must consider:

- the original order and whether it was made with consent; and
- if it was not made with consent the reasons for making the order; and

- evidence of the conduct of the parties since the order came into effect; and
- any statement by the CDRO in the reasons for making the order, as to whether a party did not participate in mediation or conciliation or did not participate in good faith.

REIV Comment :

In this instance it seems clear that the applicant would need to make an application to the Tribunal.

Evidentiary status of statements made during alternative dispute resolution (regulation 29)

Evidence of anything said or done by the parties or the CDRO during mediation or conciliation is not admissible before the Tribunal or in any other legal proceeding unless all the parties agree in writing to the giving of the evidence. This restriction does not apply to:

- written communication from the CDRO to any of the parties
- anything said or done by a person authorised by the Director in a matter relating to the eligible dispute
- any written report prepared by the Director under section 486 relating to excessive rent or property repairs
- any information or document disclosed in a mediation or conciliation for the purposes of deciding whether an order may be made
- a dispute resolution order

REIV Comment :

This fact sheet is an introduction to the Dispute Resolution Scheme and is not a substitute for reading the Act and Regulations, which you should do if you are involved in submitting a dispute.

The scheme is new, so many procedures will evolve and become apparent as it is used and therefore cannot be included in the fact sheet from the beginning.