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*Conciliation
Policy*
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“ Conciliation Policy ”

1.1 Policy Purpose

The purpose of the Conciliation Policy is to set out the principles adopted by Consumer Affairs Victoria (CAV) in conciliating consumer and tenancy complaints, the CAV's dispute resolution model, and the criteria we consider in determining whether CAV will undertake conciliation.

1.2 Policy Statement

1.2.1 Introduction

CAV is able to accept complaints in circumstances where:

1. the subject matter of the complaint falls within the jurisdiction of CAV and is not appropriate for referral to another body
2. the circumstances give rise to an allegation that the conduct appears to be a breach of implied contractual rights or consumer legislation
3. the conduct complained of relates to areas CAV believes warrant its involvement in the interests of consumer protection or the promotion of an informed and responsible marketplace, including targeted industries or targeted traders
4. the consumer has made a reasonable attempt to resolve the dispute with the trader
5. the complaint does not relate to a breach of contract by the consumer
6. the complaint appears reasonably likely to be settled, and
7. the Victorian Civil and Administrative Tribunal (VCAT) or the Courts have not already determined the matter, or there is no case pending.

CAV can attempt to conciliate a dispute but cannot compel a trader to participate in the conciliation process nor to resolve a dispute. Complainants have the option of seeking civil remedies in VCAT or the courts and complainants will be informed of this.

Complaints can be made in writing or online on CAV's website. In some circumstances a complaint will be accepted over the telephone:

- Where complainants are unable to make a written complaint because of special circumstances, such as illiteracy, language difficulties, other impairment
- Where complainants are in need of urgent assistance such as threatened or actual repossession of property, harassment, disconnection of utilities to tenanted premises.

In these circumstances and in other circumstances where enquirers may be vulnerable and disadvantaged, CAV may refer them for additional assistance such as:

- face to face assistance in the provision of information or other forms of assistance relating to a consumer or tenancy issue, and/or
- assistance in preparation of a VCAT hearing,
- appearing with a client at a VCAT hearing.

CAV responds to complaints by using a conciliation process to resolve disputes between consumers and traders, landlords and tenants (and, where appropriate, by taking enforcement action – see CAV's Compliance and Enforcement Policy). The aim is to resolve complaints efficiently and constructively and to ensure systemic issues are identified, the inappropriate conduct is stopped and redress obtained where appropriate.

The conciliation process attempts to bring the parties to a dispute to an agreed resolution of the issues. Where there is no voluntary agreement between the parties and there is no breach of legislation, CAV cannot compel the trader to provide the outcome desired by the consumer, and is unable to make a binding determination of a matter.

1.2.2 Consumer Affairs Victoria's jurisdiction

A list of the legislation administered by CAV can be found on the CAV website (www.consumer.vic.gov.au). The legislation relevant to CAV's conciliation powers includes:

Fair Trading Act 1999

Section 104 of this Act provides the legislative authority for the Director of CAV to conciliate complaints.

104(1) The Director may refer to a consumer affairs employee for conciliation or mediation any dispute (which is reasonably likely to be settled):

- (a) between a purchaser (who is a natural person) or a possible purchaser (who is a natural person) and a supplier about a supply or possible supply of goods or services in trade or commerce*
- (b) between a purchaser (who is not a natural person) or a possible purchaser (who is not a natural person) and a supplier about a supply or possible supply of goods and services in trade or commerce, which the Director believes involves a matter of significant public interest.*

104(2) If the whole or any part of a dispute under subsection (1) falls within the jurisdiction of any prescribed person or body, the Director must refer the dispute, or that part of the dispute, to the person within whose jurisdiction it falls.

Attachment 1 sets out the prescribed bodies and other bodies to whom CAV refers enquiries and complaints.

Domestic Building Contracts Act 1995

Section 43C of this Act provides a legislative authority for the Director of CAV to conciliate domestic building disputes:

43C (1) If a complaint is made under section 43B, the Director may refer the dispute to a domestic building dispute conciliator for conciliation if the dispute is reasonably likely to be settled.

(2) In this section – "domestic building dispute conciliator" means is reasonably likely to be settled):

(a) a person employed under Part 3 of the Public Sector Management and Employment Act 1998 in the administration of this Act, or is reasonably likely to be settled):

(b) a person or body authorised by the Director for the purposes of this section.

Residential Tenancies Act 1986

Ss 486 & 487 of the *Residential Tenancies Act 1997* (RTA) give the Director of CAV power, inter alia, to conciliate disputes in relation to:

- a complaint as to the repair of rented premises
- any other dispute between a landlord and a tenant in relation to a tenancy agreement (apart from disputes as to excessive rent or hiring charges which are dealt with in separate provisions in the RTA as to inspections and reports) – the dispute must be referred by the landlord or the tenant
- any matter arising under the rooming house provisions of the RTA on the written application of a resident or a rooming house owner
- any matter arising under the caravan park provisions of the RTA on the written application of a resident, caravan park owner or caravan owner.

Retirement Villages Act 1986

S 18 of the *Retirement Villages Act 1986* (RVA) provides that the *Fair Trading Act 1999* applies to services or goods provided under a residence contract in relation to a retirement village (as defined in the RVA). Thus S 104 of the *Fair Trading Act 1999* in relation to conciliation of disputes would apply to disputes under the RVA.

Owners Corporation Act 2007

Ss 160 & 161 of the *Owners Corporation Act 2007* (OCA) allow the Director of CAV to refer to a CAV employee for conciliation or mediation any dispute which:

- is reasonably likely to be settled
- arises in relation to the operation of the owners corporation, and
- is between any of the following:
 - a current or former lot owner
 - a mortgagee of a lot
 - an insurer
 - an occupier of a lot
 - a purchaser of a lot
 - a manager of an owners corporation.

1.2.3 Consumer Affairs Victoria's approach

CAV provides both general conciliation services and two specialist conciliation services, the Estate Agents Resolution Service (EARS), and the Building Advice and Conciliation Victoria (BACV) which deals with domestic building disputes. In addition, there is a team devoted to residential accommodation disputes, including retirement villages and owners corporations.

CAV provides conciliation services for consumer complaints when trader and industry complaint handling mechanisms are unable to resolve a dispute, but we will not conciliate all complaints received. Matters must be within CAV's jurisdiction, must be reasonably likely to be settled and must be of a non-trivial nature.

Conciliation services are provided usually by telephone and involve guided conciliation where the conciliator provides advice on rights and responsibilities and can suggest a reasonable outcome to a dispute.

Principles

The key principles by which dispute resolution is conducted include:

- **Accessibility** – The conciliation service provided by CAV is free and is available to those who satisfy the dispute resolution criteria.
- **Independence** – CAV's conciliation power is a statutory power. We are not aligned with either industry or consumer organisations and are well placed to offer impartial assistance in the resolution of disputes.
- **Fairness** – CAV's conciliation processes ensure procedural fairness. In all cases, both sides of a dispute are elicited and parties are given the opportunity to rebut and provide further information about the arguments raised by the other party. Conciliators seek to promote outcomes that are based on what is fair and reasonable having regard to requirements specified in consumer protection legislation, good industry practice and/or codes of practice.
- **Accountability** – CAV is accountable, through the Minister, to the Parliament of Victoria and actions can be reviewed by the Ombudsman.
- **Efficiency and effectiveness** – Consistent with CAV's goals of empowered consumers and responsible traders, CAV expects traders to have effective complaint-handling systems and also expects that consumers will have firstly made reasonable attempts to resolve their disputes themselves with the trader. This ensures that complaints are not lodged with CAV unnecessarily. When complaints are lodged, CAV monitors its effectiveness against specific performance criteria, including timeliness and the nature and quality of outcomes. Our conciliation function is a cost effective and timely way to resolve disputes, providing a simpler avenue for consumers to settle matters and in many cases obtain redress, without having to resort to litigation through VCAT or the courts.

Criteria

The criteria used to assess whether a complaint is appropriate for conciliation include:

- Is the matter likely to be settled?
- Is the matter specifically within CAV's jurisdiction?
- Does the matter involve a breach of the legislation which is better dealt with by compliance or enforcement action?
- Are there other or better ways to deal with the matter?

The following table provides further information about the matters considered in the complaint assessment process.

Not all criteria need to be satisfied for the complaint to be conciliated.

Criteria - Matters for consideration

Jurisdiction (General)

- The dispute relates to the supply or possible supply of goods or services in trade or commerce.
- The circumstances give rise to an allegation that the conduct appears to be a breach of implied contractual rights or consumer legislation.
- The conduct complained of relates to areas CAV believes warrant its involvement in the interests of consumer protection or the promotion of an informed and responsible marketplace, including targeted industries or targeted traders.
- Having regard to the nature of the conduct, CAV is the most appropriate agency to handle the matter.
- The matter is not of a type for which a prescribed body or person, pursuant to section 104(2) of the *Fair Trading Act 1999*, has jurisdiction.
- VCAT or the courts have not already determined the matter, or there is no case pending.

Jurisdiction (Disputes between traders)

- The dispute is between traders and the Director believes that the dispute involves a matter of significant public interest.

Jurisdiction (Cross State matters)

- CAV will accept complaints if either the consumer or trader is based in Victoria, except where:
 - ▮ Action against the trader, if required, could more effectively and/or conveniently be taken in another jurisdiction, or
 - ▮ It is agreed with an agency in another jurisdiction that a complaint should be dealt with (exclusively or partly) by that agency.
- Referral to the ACCC or ASIC will be considered if:
 - ▮ The alleged conduct involves a national or multi-state firm, and is indicative of conduct that reaches beyond one State, or
 - ▮ The alleged conduct falls within a current ACCC or ASIC priority area.

Likelihood of Settlement

In CAV's view the dispute is reasonably likely to be settled where:

- The consumer has not contributed to the dispute through inappropriate behaviour.
- The dispute is not overly subjective, for example in relation to quality issues regarding dressmaking, dry cleaning or hairdressing.
- CAV's database of complaints does not indicate that the trader concerned has previously refused to participate or is not amenable to the conciliation process.
- The complaint is current and has not been unreasonably delayed.
- In CAV's view, the trader has not already made a reasonable offer of redress which has been rejected by the consumer.

Seriousness

- The consumer has already made reasonable attempts to resolve the matter themselves.
- The dispute involves financial detriment of a level which makes conciliation of the matter cost effective.
- The dispute involves a low level of financial detriment however a significant number of consumers are affected.
- The dispute though minor in nature is one which the Director believes to be of significant public interest.
- The conduct is widespread and intervention by CAV is likely to have a deterrent effect.
- There are special circumstances to the complaint that gives the complaint extra weight i.e.: any disability and/or characteristic of the class of complainant that puts them in a susceptible or a high risk category.
- The matter has been referred by another consumer protection agency or consumer advocate.
- The complaint is of a type for which a current CAV priority applies.

Priorisation

In addition to having regard to types of complaints where a CAV priority applies, CAV will also assess and prioritise complaints having regard to the volume of complaints it receives and its available resources.

Consumers may be able to go to the Victorian Civil and Administrative Tribunal (VCAT). CAV will refer to VCAT those callers whose:

- issue does not fall within CAV's conciliation and enforcement criteria, and
- reasonable steps to resolve the complaint have failed to reach an agreement as to the facts of the dispute with the trader.

A list of organisations that can deal with specific issues can be found at Attachment 1 of this document.

Consumers will be invited to make a written complaint to CAV in circumstances where:

- the subject matter of the complaint falls within the jurisdiction of CAV and is not appropriate for referral to another body
- the circumstances give rise to an allegation that the conduct appears to be a breach of implied contractual rights or consumer legislation
- the conduct complained of relates to areas CAV believes warrants its involvement in the interests of consumer protection or the promotion of a confident and informed marketplace, including targeted industries or targeted traders
- the consumer has made a reasonable attempt to resolve the dispute with the trader
- the complaint does not relate to a breach of contract by the consumer
- the complaint appears reasonably likely to be settled, and
- VCAT or the courts have not already determined the matter, or there is no case pending.

Callers will be informed that CAV can attempt to conciliate a dispute but cannot compel a trader to resolve an issue. Callers will also be informed of their options to go to VCAT and seek civil remedies in the tribunal or courts.

Complaints may be accepted over the telephone:

- where complainants are unable to make a written complaint because of special circumstances, such as illiteracy, language difficulties, other impairment
- where complainants are in need of urgent assistance such as threatened or actual repossession of property, a credit issue relating to a threat of bankruptcy or harassment or disconnection of utilities to tenanted premises.

“ Attachment 1 Other Organisations ”

S.104 Fair Trading

The Ombudsman

Enquires into or investigate complaints concerning administrative actions taken by any government department, public statutory body or by officers or employees of any municipality to which the *Ombudsman Act 1973* applies.

The Health Services Commissioner

Considers complaints about any health service provider under the terms of the *Health Services Act 1987*. Areas covered include nursing, dental, psychiatric, ambulance, pharmaceutical, community health, welfare, chiropractors, osteopaths and doctors.

The Legal Services Commissioner

Investigates complaints about legal practitioners.

The Private Health Insurance Ombudsman

Deals with any disputes or problems that consumers have in relation to private health funds.

Corporations Act ADR schemes

Financial Ombudsman Services (FOS) and Credit Ombudsman Services Ltd (COSL)

These ASIC-approved external dispute resolution schemes provide impartial and independent services to help resolve disputes between consumers and relevant financial service providers. The dispute resolution services are free for consumers.

Other bodies

Australian Securities & Investments Commission (ASIC)

ASIC enforces company, financial services and consumer credit laws to protect consumers and investors. It regulates Australian companies, financial markets, financial services organisations and professionals who deal with and advise on investments, superannuation, insurance, deposit-taking and credit.

Australian Competition and Consumer Commission (ACCC)

The ACCC administers the *Trade Practices Act 1974*. It promotes competition and fair trading in the market place to benefit consumers, business and the community.

A co-operation agreement between ACCC and Consumer Affairs Victoria exists in order to provide each agency with mutual assistance in relation to the exchange of information, appropriate referral of matters, and cooperation in compliance education and enforcement activities.

Energy and Water Industry Ombudsman (EWOV)

The EWOV has the power to investigate and resolve disputes between Victorian electricity, gas and water customers and their provider.

Telecommunications Industry Ombudsman (TIO)

The TIO investigates and helps resolve complaints about the provision or supply (or failure to provide or supply) telephone and Internet services.

Superannuation Complaints Tribunal (SCT)

The Tribunal is an independent Commonwealth body established to resolve most complaints in relation to super funds and other superannuation related products, such as approved deposit funds and annuities.

Australian Communications and Media Authority (ACMA)

The ACMA is the government body responsible for the regulation of broadcasting, the internet, radiocommunications and telecommunications.

Building matters

Building Commission

Provides a technical inspection service where deemed appropriate to help resolve a dispute. The Building Commission also administers the *Building Act 1993* and therefore collects levies on behalf of State Government and promotes the regulation and discipline of registered practitioners including builders, engineers, building surveyors, draftspersons. It creates, modifies and researches building regulations.

Royal Australian Institute of Architects (RAIA)

Body representing interests and activities of Architects. There is a separate registration board.

Plumbing Industry Commission (PIC)

Registers and regulates activities of plumbers. Where the enquiry is in relation to a stand alone plumbing contract (that is, only plumbing work being performed) or in relation to the plumbing work performed only; and the concern of the party making the enquiry is in relation to the issuing of a certificate in respect to the work performed and/or in relation to workmanship, the caller can be referred to the PIC for assistance.

Chief Electrical Inspector

Registers and regulates activities of electricians. Where the enquiry is in relation to a stand alone electrical contract (that is, only electrical work being performed) or in relation to the electrical work performed only; and the concern of the party making the enquiry is in relation to the work performed and/or in relation to workmanship, the caller can be referred to the Chief Electrical Inspector for assistance.

Australian Institute of Building Surveyors (Vic. Chapter) (AIBS)

Represents members within the profession. The building surveyor issues building permits and regulates and inspects building activity on site.

Master Builders Association of Victoria (MBAV)

Represents builders at domestic, commercial and industrial buildings.

Housing Industry Association (HIA)

Represents mainly domestic builders but has increasing representation of commercial builders.

Consumer Affairs Victoria

Victorian Consumer & Business Centre
113 Exhibition Street
Melbourne 3000
Telephone 1300 55 81 81 (local call charge)
Email consumer@justice.vic.gov.au
Website consumer.vic.gov.au

TIS Telephone Interpreting Service 131 450

TTY Textphone or modem users only, ring
the NRS on 133 677, then quote
1300 55 81 81

Callers who use Speech to Speech
Relay dial 1300 555 727, then quote
1300 55 81 81

Services from Consumer Affairs Victoria are available at Justice Service Centres in Ballarat, Bendigo, Berwick, Box Hill, Broadmeadows, Geelong, Mildura, Morwell, Wangaratta and Warrnambool. Our mobile service regularly visits rural communities. Call 1300 55 81 81 or visit www.consumer.vic.gov.au for more information.

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