



The Carlton Residents Association Inc.

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16 June 2010

Justice Ian Ross
Transforming VCAT
Level 1, 55 King St.
Melbourne 3000

Dear Justice Ross,

Re: Transforming VCAT

Having contributed a submission to the President's Review of VCAT in May 2009, we are grateful for your invitation to respond to the May 2010 Discussion Paper on the same subject.

The aim for VCAT to be "*An innovative, flexible and accountable organization which is accessible and delivers a fair and efficient dispute resolution service*" as stated in the discussion paper, is enthusiastically endorsed by CRA.

Regarding the current Discussion Paper, we offer the following comments:

- **Pro-bono Legal Aid:** in our view this proposal has merit, however it could entrench the current legalistic process with its attendant imbalance, which can be experienced in VCAT hearings.
Hearing outcomes, can be influenced by high profile senior counsel and their team of expert witnesses if not matched by the opposing team. Even VCAT Members can be intimidated and overwhelmed by the current legal process.
- **Member Accountability:** The plan to hold Members accountable for their actions during the Hearing process is strongly supported. In our experience a degree of familiarity can exist between Tribunal Members and regular legal professionals, which can disadvantage an un-represented party. It undermines the principle of equal access to justice.
- **Recording of Procedures:** The proposed digital recording of proceedings and their low cost availability is an important initiative.
- **Effectiveness in Addressing CRA's 2009 Concerns:** It is hoped that the Professional Development Programs envisaged will address items 2,3,5, & 7 raised in our 2009 submission (copy of which is attached for your reference). Items 1 and 8 of our 2009 submission relating to accessibility, affordability and un-represented participants are hopefully addressed by the espoused proposals.

Carlton Residents Association is concerned that the three remaining issues raised in our 2009 submission have not been addressed, so I will reiterate them here and request your serious consideration.

Items numbered 4, 6 & 9 in our 2009 submission.

4. Dubious independence of expert witnesses

There is a range of opinions on any specific issue. A hired witness is obliged to offer the most favourable version for his/her client and could hardly be criticised for that. Some less generous observers might even suggest that the bias of the opinion is beyond the “acceptable” range and has been bought.

The adoption of a pool system for expert witnesses administered by VCAT might produce a more equitable outcome.

6. Right of Reply for objectors and councils

Objectors and Council normally present before the proponent, but are often denied the opportunity to refute untruths or misrepresentations, which may be appended to the proponent’s lodged submission during the hearing.

Objectors and Council should have the right of reply in these cases.

9. Alternative Dispute Resolution

ADR is an admirable philosophy and when used properly it can be an expeditious and economical solution. However, too many ADRs seem to be approached with compromise as an essential element of the outcome. Compromise is not appropriate and should not be sought when either of the parties is clearly in the right.

All of the above comments are based on our experience with VCAT and are submitted for your consideration with the hope that a better VCAT will evolve from this review.

for Carlton Residents Association (Inc)

Warren Green