



We acknowledge the traditional owners of the land on which we live and work, the Wurundjeri people of the Kulin Nation, and pay our respects to Elders past and present.

Anika Legal “Broken Bonds” Melbourne: Anika Legal, June 2024

This report can be viewed online at: <https://www.anikalegal.com/blog/broken-bonds/>

With thanks to the renters we work with for placing their trust in us to fight beside them for their bond, and to the renters who responded to our survey for sharing their stories with us.

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Broken Bonds

Renters tied up by unfair bond claims

June 2024



Who are we?



Anika Legal is a registered charity and community legal centre, and our vision is a world where everyone can access justice.

We provide free online legal support to Victorians who rent their homes.

Through casework, systemic advocacy, and by championing a more socially responsible legal profession, we fight for a fair housing system and empower renters to thrive in safe homes.

In the 2022-23 financial year, Anika Legal supported 200 renters, who were facing barriers to justice, to maintain safe housing.

The housing crisis has highlighted how the rental system is failing a huge and growing proportion of people in Australia. To address this, Anika Legal undertakes tenancy casework in relation to issues where change is most critical, and uses each case to build the evidence base for our systemic advocacy. This approach ensures our advocacy is data-driven, and grounded in the lived experience of renters.

Report summary

This report presents Anika's insights, derived from the first two years of our Bond Service casework, as well as findings from our survey of renters (Pages 4 - 9).

Using these insights, we identified **three barriers that impede renters from fairly accessing their bonds** at the end of a tenancy:

- Barrier 1: Existing power imbalances between renters and rental providers incentivise unfair bond claims (Pages 10 - 11)
- Barrier 2: Unfair bond claims clog tenancy dispute resolution, exacerbating delays (Page 12)
- Barrier 3: Delays in dispute resolution force renters into worse situations (Page 13)

Anika Legal believes that **these barriers can be overcome with three key recommendations:**

- Recommendation 1: Adjust the eligibility criteria for the RentAssist Bond Loan Scheme (Page 15)
- Recommendation 2: Implement the Portable Bonds Scheme urgently within 2024 (Page 16)
- Recommendation 3: Introduce and streamline enforcement of penalties to disincentivise baseless bond claims made as a matter of course (Page 17 - 18)

Once adopted, these recommendations will improve the Victorian renters' financial and personal wellbeing between tenancies, rebuild public trust in rental dispute resolution mechanisms and the rental market, and could lead to cost savings for the Victorian Government (Page 19).

Our Bond Recovery Service

One in three renters lose all or part of their bond at the end of their tenancy. The prevalence of rental providers who make bond claims as a matter of course at the end of each tenancy places a financial burden on renters, who may be relying on the return of their bond money to stay afloat. Without access to legal assistance, many Victorian renters agree to unfair bond claims just so they can quickly access a portion of their bond without having to deal with VCAT delays.

To help more renters recover unfairly withheld bond money, Anika Legal launched our Bond Recovery Service in January 2022.

Anika’s Bond Recovery Service provides free legal help that is specific to our clients’ circumstances and helps them take optimal steps in their legal journey. The scope of the service includes:

- Provision of advice regarding the renter’s legal position in relation to their bond
- Negotiation with the other party on the renter’s behalf
- Support to prepare for mediation, and
- Support to self-represent at a VCAT hearing.

Upon launching the Bond Recovery Service, Anika was immediately inundated with applications for assistance - indicating the service filled an unmet area of legal need for renters. Through our specialised casework in bond disputes, we have gained valuable insights into renters’ experience of the Victorian bond system.

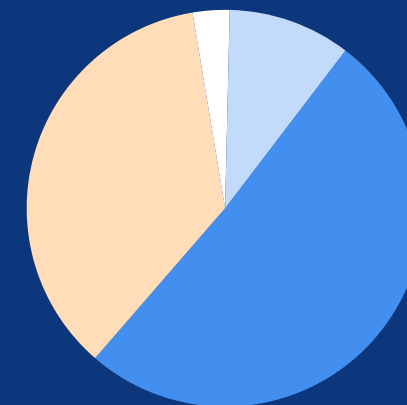
This report reflects the insights we gained from two years of casework conducted between 1 January 2022 - 31 December 2023 (the **Reportable Period**).

During the Reportable Period...

443 renters applied for help

and we provided **147 clients** with ongoing casework support

As at the end of the Reportable Period...



51% of our clients had resolved their dispute, and their file was closed.

36% of our clients still had open cases with Anika, as they awaited the resolution of their dispute at VCAT.

10% of our clients had resolved their dispute independently of Anika’s intervention, and their file was closed.

3% of our clients’ files were closed for other reasons.

Outcomes snapshot

During the Reportable Period, we assisted in resolving 51% of our clients' bond disputes. A further 10% of matters were resolved before Anika formally intervened.

82% of closed matters resulted in the rental provider receiving less than the amount they originally claimed.

39% of closed matters resulted in the rental provider receiving nothing at all.

We secured the release of **\$111,909** for renters.

\$1,688 was the average difference between a rental provider's original claim and what they actually received.

Anika's intervention proved successful in helping disputes reach resolution and assisted parties to avoid VCAT hearings.

- 57%** of resolved matters avoided the need for VCAT hearings
- 9%** Renter accepted the rental provider's claim
- 16%** Rental provider withdrew their claim upon Anika's intervention
- 5%** Resolved at mediation
- 32%** Resolved through Anika's negotiation with the other party

Renters had weaker legal positions than the rental provider in only 9% of the matters we helped to resolve.

The remainder all renters we represented had sufficiently strong legal positions to dispute the rental provider's claim.

In 16% of our resolved cases, the rental provider simply withdrew their claim as soon as it was challenged. In a further 37% of cases, the matter was resolved via negotiation on the renter's behalf.

32%
of resolved matters were finalised via a VCAT hearing

Where initial intervention was not successful in resolving disputes, Anika assisted our clients to secure resolutions at VCAT hearings.

In 30% of matters that were resolved at hearing, the rental provider was awarded no money at all - meaning their entire claim failed.

36%
still awaiting for VCAT hearing

As at the end of the Reportable Period, 36% of our clients were still waiting for a VCAT hearing as attempts to negotiate with the rental provider had failed.

On average, renters waited

502 days

for their hearing to be listed.

The impact of legal support on renters

"I really appreciated the support of the team at Anika in addressing the many questions I had, and patiently checking in when my anxiety made it difficult to respond, especially in the face of increasing pressure to give into the landlord's demands!"

"[Anika] gave me a lot of confidence and made me feel more comfortable about attending the VCAT hearing."

"[Anika] were super reassuring and affirming in moments where my stress and anxiety were through the roof. I couldn't have gone through this process without their support and I am eternally grateful."

Our bond survey

We asked renters what they think about the current bonds scheme.

We wanted a deeper understanding of the impact of the Victorian bond scheme on renters, so we developed a bond survey. The survey was open for two weeks and was promoted to past Anika clients and renters in online forums. Anika Legal is grateful to the respondents who generously gave us time to share their experiences.* This is what we learned:

Bond disputes are stressful for renters

84% reported feeling stressed and anxious about the situation

43% reported that the bond dispute impacted their ability to pay bond for a new rental home

14% reported not fighting the rental provider's claim as they needed the rest of the bond back

The impact of bond disputes on renters

"[As a result of the impact of our bond dispute] every time the real estate agents name is mentioned I have anxiety attacks I had to see a specialist to help deal with the anxiety."

"[The bond dispute has] given us severe anxiety leading to the end of our next lease now feeling like we may continuously have to deal with the reality of homelessness..."

The RentAssist bond loan program isn't accessible to many renters who need it

The Victorian Government operates the RentAssist bond loan program, which helps eligible renters by providing an interest free loan. The eligibility criteria includes stipulation that the renter must be paying 55% or less of their income on rent, and fall within eligible income limits depending on the size of their household.

From our survey, only 4% of respondents had successfully accessed RentAssist bond loans (despite 14% responding they had had to borrow money to pay the next bond).

Only 30% of respondents were aware of the program.

Only 8.4% of respondents had tried to access it - and half of these renters were ineligible as their rent was more than 55% of their income.

The remainder of the respondents who were aware of the program and did not try to access it because:

- they were able to pay the next bond without assistance (50%), or
- they self-selected out due to eligibility criteria, including their rent being too high (50%).

Renters are in support of the implementation of a Portable Bond Scheme

We also asked respondents about their sentiments regarding the Portable Bond Scheme (**PBS**) outlined in the Victorian Government's Housing Statement.

The majority of respondents (75%) were supportive of the Portable Bonds Scheme.

However, 82% of the same respondents were concerned that the implementation of the PBS would not address the prevalence of baseless or ill-conceived bond claims.

*We received 61 submissions to our survey.

Barriers to fair bonds

Victorian renters face an uphill battle in reclaiming their bond once it has been withheld. Anika has identified three key barriers to a fairer bonds system.

Barrier 1:

Existing power imbalances between renters and rental providers incentivise unfair bond claims

There is a power imbalance between renters and rental providers inherent in the Victorian tenancy system, and this extends to bonds.

- Rental providers are more likely to have access to the resources and representation needed to pursue a bond claim through VCAT - particularly since these claims will often be managed by a real estate agent on the rental provider's behalf.
- Rental providers tend to be in a much better financial position than renters, meaning that they are less impacted by wait times in progressing claims through VCAT. Additionally, rental providers often have access to landlord insurance to tide them over if they believe they have a real claim to the bond amount.

This power imbalance can incentivise rental providers to lodge bond claims with VCAT, even where there is little to no merit to the claim, without fear of repercussion. We see this through our casework at Anika, which reveals a trend of rental providers or their agents making baseless or inflated bond claims through VCAT as a matter of course. The fact that most matters were able to be resolved in favour of the renter once the renter had access to legal intervention through Anika supports this hypothesis.

For the majority of clients we helped to challenge a bond claim in VCAT, the landlord recovered none of the bond, or less than they had claimed. Our data shows that:

- in a third of the matters that went through to an order from VCAT, the rental provider did not receive any of the bond money claimed.
- for all the matters that reached resolution, the rental provider did not receive any of the bond money claimed in 39% of cases, and received under \$200 in 46% of cases.
- Across matters, there was an average difference of approximately \$1,688 between what rental providers claimed and what they ended up receiving.

In 2021, relevant provisions of the *Residential Tenancies Act 1997* (Vic) (RTA) were amended to encourage renters and rental providers to resolve bond disputes without further legal intervention. For example, the rental provider can only apply to the Residential Tenancies Bond Authority (RBTA) to release a portion of the bond where there is consent from the renter. However, our data shows that many rental providers simply circumvent this intention by applying to VCAT as a matter of course.

Victoria's current bond scheme enables rental providers and their agents to take advantage of existing power imbalances to pressure renters into relinquishing their entitlement to some or part of the bond. In the worst cases, agents may even explicitly use VCAT delays to pressure renters. This has dire social, financial and wellbeing outcomes for renters who are already struggling to navigate the current housing crisis - in particular those who are forced to move frequently.

The impact of the power imbalance on renters

"It was deeply distressing for our real estate agent to attempt to withhold our bond. It felt like they were playing chicken with us, relying on the fact that a lot of people need their bond money refunded ASAP and would cave to their requests rather than go through the lengthy process that is VCAT."

"It felt very unfair considering the rental provider had time and time again done wrong by us. The home we were living in was never repaired when we requested and because I was fearful we'd be out, I never argued with them..."

[This dispute has] made me feel worried about something like this happening to us again in the future. I always pride myself on treating rentals with the respect I would treat my own home and up until this incident I felt rental providers had always praised us for it, now it's made me feel people can be dishonest and get away with ruining your reputation... for the sake of greed. It's really made me feel like we're at the mercy of rental providers and sadly have realized not all of them care about the tenants or their rights at all."

Barriers to fair bonds

Barrier 2:

Unfair bond claims clog tenancy dispute resolution, exacerbating delays

The trend we observed in rental providers and their agents making baseless or inflated bond claims is concerning given the significant backlog that already exists at VCAT. Media cites the Tribunal's wait time for bond and compensation claims (which are not separately reported by VCAT) as sitting at approximately 50 weeks, or just shy of a year.* Our casework suggests an even longer delay in relation to bond matters - the average wait time for a VCAT hearing for our clients was 502 days, as at the end of the Reportable Period, and more than 35% of our clients were still awaiting their VCAT hearing.

11 Delays in VCAT create a significant barrier to renters' ability to challenge bond claims in a timely manner, which can discourage renters from defending their entitlements.

The prospect of a drawn out VCAT matter in relation to a contested bond claim - which can cost renters significant time, money and stress - leads renters forgoing their bond, or a portion of it. The average renter cannot afford to wait an average of 502 days for a hearing at VCAT, often relying on their returned bond money to cover moving costs or a new bond so that they can move into a new home. As a result, it will sometimes be in a renter's best interests to forgo the portion of bond claimed by the rental provider, in order to access the remaining bond in a timely manner. This comes at a significant cost to renters - the average bond claim made against Anika clients is \$1916.

In addition to individual outcomes, this trend creates barriers to effective and efficient administration of justice. Processing baseless bond applications and conducting hearings for matters that could easily be resolved without litigation eats away at VCAT resources, and has flow-on effects on more complex and legitimate disputes.

Barrier 3:

Delays in dispute resolution force renters into worse situations

Rental providers or agents exploiting the relative vulnerability of renters to withhold bonds can force renters into worse economic hardship and have a profound effect on renters' wellbeing.

Results from our external bond survey reflect the pressure that renters experience when faced with a bond claim:

- 84% reported feeling stressed and anxious about their situation
- 43% reported that their bond dispute impacted their ability to pay bond for a new rental home
- 14% reported not fighting the rental provider's claim as they needed the rest of the bond back.
- 14% sought assistance from the government or a charity to pay their new bond

The survey also show that government efforts to support renters with bond difficulties are falling short:

- 15% of renters we surveyed were deemed ineligible for Government assistance due to their rent being too high.
- 28% of renters we surveyed were aware of the Government's Rent Assistance program and attempted to access it, but, of these, 40% were unsuccessful.

This demonstrates that the eligibility criteria for accessing the Rent Assistance Program needs to be adjusted to align with the current economic environment that renters face: increasing rents and cost of living pressures, coupled with low wages growth.

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*The Age, Renters and landlords now waiting 50 weeks for VCAT bonds disputes (30 October 2023), accessible at: <https://www.theage.com.au/politics/victoria/renters-and-landlords-now-waiting-50-weeks-for-vcat-bond-disputes-20231029-p5efv1.html>

Recommendations

More needs to be done to fix Victoria's bonds system.

We welcome the Victorian Government's indication that it is willing to take these matters seriously in its Housing Statement, which proposes establishing a Portable Bond Scheme and a new regulatory body (Rental Dispute Resolution Victoria), along with a range of other new renter rights. We also acknowledge the Victorian Government's current implementation of the RentAssist Bond Loan Scheme.

While Anika Legal supports these initiatives in principle, we stress the need to incorporate the experience of renters in the design of these policies. It is critical that bond-related policies are targeted to address the actual issues that renters are encountering.

Anika Legal recommends that the Victorian Government:

- Adjust the eligibility criteria for the RentAssist Bond Loan Scheme
- Implement the Portable Bonds Scheme urgently within 2024
- Introduce and streamline enforcement of civil penalties for rental provider and agent misconduct, to disincentivise baseless bond claims made as a matter of course

Recommendation 1:

Adjust the eligibility criteria for the RentAssist Bond Loan Scheme to cater for rising rent

Homes Victoria's RentAssist Bond Loan Scheme provides interest-free bond loans to eligible renters who need assistance with paying bond. The eligibility criteria includes stipulation that the renter must be paying 55% or less of their income on rent, and fall within eligible income limits depending on the size of their household. These eligibility caps appear to have initially been designed with the policy intent to discourage renters from relying on government loans to obtain expensive rentals - but in the current economic climate the caps no longer make sense and are having adverse consequences for renters.

Unfortunately, many renters are finding they are not eligible to access the scheme due to their rent being too high as a proportion of their income. Based on the limited sample size in our survey response, only 4% of respondents were able to successfully access the scheme (despite a higher proportion reporting that they needed to borrow money to pay for their next bond). The problem may be more pronounced in the wider community, and particularly exacerbated for more vulnerable renters.

In the context of a housing crisis where affordable rental properties are increasingly scarce and rent prices continue to rise, renters may be forced to pay more than 55% of their income in order to avoid homelessness. Preclusion from accessing much needed bond loan support in these circumstances serves to deepen the financial vulnerability renters are already experiencing - forcing them to choose between rental stress and homelessness.

While applicants for this bond loan scheme may enquire with their local housing office to discuss whether exemptions to the eligibility criteria may apply, we note that a number of our survey respondents self-selected out of applying for assistance at all based on the eligibility criteria advertised on the Victorian Government's website.

With this in mind, Anika Legal recommends that the Victorian Government adjust the eligibility criteria for the RentAssist Bond Loan Scheme to account for the actual experience of renters - many of who have no choice but to enter into living arrangements that expose them to rental stress - so renters can get the help with their bond that they need.

This simple change does not require legislative reform, and can give financial certainty to many renters immediately.

Recommendation 2: That the Victorian Government implement the Portable Bond Scheme urgently within 2024

In its 2023 Housing Statement, the Victorian Government committed to building a portable bond scheme, where rental providers can carry their rental bond from one property straight over to another, rather than having to pay a new bond each time.

The Housing Statement contemplates some renter concerns about the current bonds system in articulating the potential benefits of the proposed scheme:

*“It’ll ease the financial burden on tenants, who won’t have to fork out a substantial amount of money every time they move – or wait until they’ve got their old bond back to pay their new one. It’ll streamline the administrative process for agents and property managers, who handle dozens of rentals at any one time. And it’ll create a more efficient rental market – which is good news for both renters and landlords.”**

In implementing the scheme, the Victorian Government needs to acknowledge that the automatic transfer of bond money will not in itself address the power imbalances that incentivises baseless and inflated claims.

The benefits of a portable bond scheme will not be realised if rental providers can prevent the transfer of bond by lodging inflated or baseless claims as a matter of course. In implementing the proposed scheme, the financial risk arising from unresolved disputes must be addressed and borne by a party that holds more systemic power and financial stability than the average renter. This risk is currently worn by renters everyday - at great cost to their financial, physical and mental wellbeing. The proposed scheme should be designed to explicitly protect renters from the financial risk arising from unresolved bond disputes, and be borne either by the outgoing rental provider or the Government.

We acknowledge that the creation of a Portable Bond Scheme is part of a legislative reform package that is currently being considered. Given the issues being experienced by renters highlighted in this report, **Anika Legal encourages the Victorian Government to proceed with this specific reform as a matter of urgency, and to prioritise the concerns of renters in designing the scheme.** We hope to see thorough and considered public consultation to ensure the real issues faced by renters are addressed.

Recommendation 3: Introduce and streamline enforcement of civil penalties for rental provider and agent misconduct, to disincentivise baseless bond claims made as a matter of course

Rental providers and their agents will continue to treat renters poorly as long as there is a low risk of negative consequences and no effective mechanisms to quickly address misconduct. **Anika Legal recommends further legislative reform, beyond the Housing Statement, to address the power imbalance between renters and rental providers is required.**

In the bonds context, civil penalties could be introduced to address repeated misconduct by rental providers and their agents who consistently make frivolous bond claims. The prospect of being liable for a small number of penalty units (around \$1000) for unsubstantiated claims would drastically reduce the number of bond disputes initiated by rental providers overnight.

Introduction of civil penalties would disincentivise rental providers from lodging claims as a matter of course, with the dual benefit of relieving undue burdens on renters, and helping to ease VCAT backlogs and costs. Further, if the financial risk arising from unresolved disputes is borne by the Government in the design of the portable bond scheme, as canvassed in recommendation 2, the introduction of civil penalties will help to minimise that financial risk.

We acknowledge that the introduction of penalties in isolation is unlikely to be effective if such penalties are not enforced regularly and stringently. On this point, we applaud Consumer Affairs Victoria’s (CAV) recent creation of a Rental Taskforce, and we encourage the Victorian Government to continue adequately resourcing CAV to carry out its important role as regulator of the rental market.

However, if this recommendation is to be adopted in the form of legislative amendments, there are further opportunities to strengthen provisions of the RTA to improve current enforcement mechanisms in Victoria.

We have listed some preliminary ideas on the final page of our report for consideration.

Maximising the utility of Rental Dispute Resolution Victoria

We see an important opportunity to streamline the identification and escalation of repeated baseless bond claims to CAV for enforcement action through the Victorian Government's intention to create Rental Dispute Resolution Victoria (**RDRV**). Similar to the legislative framework underpinning the Domestic Building Dispute Resolution Victoria (**DBDRV**), which was envisioned to be a mediation body "with teeth", Anika recommends that RDRV should be:

- guided by the goals of acting as a "first line of defence" for unmeritorious matters, and prevent those matters from reaching VCAT.
- resourced to collect important data about the prevalence of "baseless or inflated" claims and, in particular, agents or rental providers who habitually make such claims.
- empowered to assess and investigate instances of such behaviour, and seamlessly refer repeat offenders to CAV for enforcement action.

Expanding VCAT's powers to make civil penalty orders could streamline the enforcement process

While CAV serves an important function as regulator of the Victorian rental market, its ability to investigate and enforce penalty provisions only extend as far as renters are able to report rental provider wrongdoing. For many renters, whose priorities are to solve their immediate tenancy issue and/or moving on into a more secure home, complaining to CAV is simply not front of mind.

In contrast, renters must interact with VCAT in the course of resolving rental disputes, and already often confuse penalty provisions under the RTA as civil remedies that they can seek at VCAT. Given this, VCAT's powers to make civil penalty orders for bonds claims should be expanded.

Rental providers and agents may consider their claims more carefully before taking them to VCAT if the risk of incurring a civil penalty is on the table. The spectre of civil penalties to the rental provider may also incentivise real estate agencies to better support their employees to properly understand and fairly operate within tenancy law, so that they can act in their clients' best interest under Real Estate Agents' own ethical code.

Cost savings for Government

Implementing these measures can yield significant cost savings for Government by reducing the need for individuals to seek resolution through VCAT (or Rental Dispute Resolution Victoria, once operating.)

The average cost per case disposed of in VCAT for civil matters was \$1,509 in 2021-22*. Based on the number of hearings at VCAT**, and the proportion of bond disputes in a comparable jurisdiction***, it is estimated that the Victorian Government spends \$35,844,207 per year for VCAT to hear bond disputes.

Due to the high number of baseless and inflated bond claims currently made by rental providers, introducing a civil penalty or other deterrent against making such claims would significantly reduce this cost. In 39% of Anika's clients' bond cases, the rental provider recovered nothing. If we consider cases where no bond money was awarded to the rental provider as a baseless claim, then extrapolate to all bond cases, that's almost **\$14 million in annual VCAT costs for cases that should not have been brought in the first place.**

This is a rough estimate. The number of baseless claims that come to Anika for assistance are likely to be higher than the number of baseless bond claims made more broadly in the population, as matters that come to Anika are at a stage and seriousness that the renter has reached out for legal help. However this number also discounts cases where a negligible proportion of the claim is paid to the rental provider, like in our client William's case, where he was ordered by VCAT to pay the rental provider \$25 of a \$1,300 claim - a claim that is very likely baseless, but is not categorised as such.

Further, Anika's services were able to assist one third of clients to avoid a VCAT hearing, meaning **each legal service provided saved the government approximately \$500 in VCAT costs alone.** This cost saving doesn't include the economic benefits of alleviating demand for social housing by improving access to private rentals, preventing homelessness and housing instability, and reducing costs of associated health, welfare and other justice services.

*These are the most recent Government figures available. See Victorian Government of Australia, 2023-24 Budget, Court Service Delivery (Budget Paper No. 3).

**Court Services Victoria, (2024), [VCAT Residential Tenancies initiations 2024](#), Q1, *Court and VCAT Caseload data*, accessed 30th May 2024.

*** ACT Civil & Administrative Tribunal (2020-21), 'Annual Review 2020-21', *Council of Australasian Tribunals*, p.46.

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