

Rich jump planning queue

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WEALTHY developers will be able to fast track multimillion-dollar projects through the Victorian Civil and Administrative Tribunal under a new user-pays system that critics say sets a "dangerous precedent" by putting a price-tag on justice.

The state government's push to reduce delays in "the people's tribunal" means developers of housing projects worth \$10 million or more can pay a premium to have their dispute decided in VCAT within 18 weeks, less than half the 40-week wait faced by ordinary consumers.

Attorney-General Robert Clark will announce today that developers may opt to pay an application fee of \$3000 - more than double the current amount - plus a new daily hearing fee of \$3115 to put their project on a "major cases list".

Mr Clark said the list, a version of which was previously funded by government, will now be fully paid for by applicants in residential developments worth \$10 million or more, and industrial and commercial projects of \$5 million or more. The new system would minimise delays on big projects that created much needed jobs, he said.

"It is not reasonable to expect the major cases list to be funded by taxpayers on an ongoing basis, particularly in the current financial climate," Mr Clark said.

But local councils, legal groups and consumer bodies slammed the user-pays scheme, describing it as a two-tier justice system for the rich and poor.

"It's offensive that if you pay more you get heard quicker. Access to courts and access to justice should be equal and fair for everybody," said Law Institute of Victoria chief Michael Brett Young. "The danger is governments will keep chipping away funding and it could eventually lead to all individuals having to pay to access justice - we say that's the obligation of the state not individuals."

The major cases list was trialled by the former government last year to stimulate the economy and to cut through Victoria's tortuous planning system, but was suspended when public funds ran out in March.

Mr Clark stressed that expediting such cases would not guarantee approval of major developments. "All cases included on the major cases list will be decided in accordance with the law, just as they would be if heard on the general planning list."

The Urban Development Institute of Australia's state president, John Cicero, said most developers would likely pay the premium to fast-track applications. "I suspect developers have no choice, because the alternative is waiting up to nine months for a hearing."

"We are going through a soft period in the development industry and anything we can do as a community and state to facilitate developers getting timely decisions is even more important in difficult times," he said.

Delays in VCAT - where planning cases typically take 40 weeks to determine - had forced some developers to stop work on major projects to avoid holding costs and interest penalties, he said.

But Mr Cicero, who is also a planning lawyer, criticised the government for passing on the full cost of cutting waiting times to developers. "The root of the problem is not developers, the root of the problem is the failure of the system to provide timely justice."

"The system is inefficient because the government is not prepared to commit funds to expedite hearing times," he said.

VCAT president Justice Iain Ross, who had proposed a lower impost on developers (a \$2500 application fee and daily fee of \$1750) said delays in planning cases had blown out since the suspension of the previous major cases list, which determined 85 per cent of cases within 16 weeks.

More than 360 developments, worth a total \$6.6 billion, were dealt with under the old government-funded list. Reinstating the list on a user-pays basis would help fund sessional members to hear more applications across VCAT, which handles 85,000 cases a year, Justice Ross said. "The extra resources will actually allow us to improve waiting-time performance across the list, so it will be a benefit ultimately for all applicants," he said.

"I have limited resources and growing demand. Those who have the capacity to pay and have a substantial economic interest in their case being determined within an expedited time frame, it is appropriate they pay."

A similar system in the Supreme Court allowed parties to pay a premium for an expedited directions hearing in commercial matters, he said.

"While I would like a system in which our appropriations funding was substantially increased, I think that's unrealistic ... I don't think it's an alternative to adopt a purist model and to simply say we shouldn't do anything, because it means everyone will suffer time delays."

But Mr Young said the tribunal should be treated differently to courts. "VCAT is the people's jurisdiction, it was created as a forum that most people could access fairly, cheaply and quickly. Our concern is if you start providing a fast track purely by payment of fees that the government will see this as a means of avoiding further funding."

Consumer Action Law Centre co-chief executive Carolyn Bond said letting big developers jump the queue could punish consumers and small businesses. "There is probably going to be some sense of frustration from consumers who may have to wait many months to get their case dealt with," she said.

Bill McArthur of the Municipal Association of Victoria, which represents local councils, described the user-pays system as a Band-Aid solution. "The whole system needs to be streamlined to reduce delays," he said.



Illustration: Matt Golding.