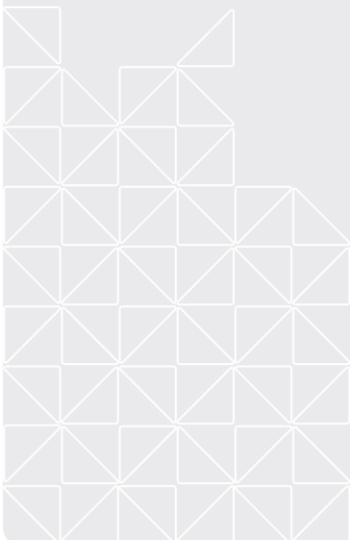


Home Safe: Submission to the Royal Commission into Family Violence

May 2015



About Justice Connect Homeless Law

Justice Connect Homeless Law (**Homeless Law**) is a specialist legal service for people experiencing or at risk of homelessness.

Homeless Law staff work closely with pro bono lawyers to provide legal advice and representation to over 400 people experiencing or at risk of homelessness each year. Our services are outreach based and client centred, and our two staff social workers allow us to respond to clients' legal and non-legal needs.

In 2013–14 Homeless Law prevented the eviction of 129 clients and their families through legal representation and social work support.

Homeless Law also runs a specialist women's program, the Women's Homelessness Prevention Project (**WHPP**). In its first 12 months of operation, the WHPP has provided 62 women with 102 children in their care with a combination of legal representation and social work support. Of these 62 women at risk of homelessness:

- 95% had experienced family in the last 10 years;
- 50% had experienced family violence in the last two years; and
- 35% had obtained either an interim or final family violence intervention order in the last two years.

Homeless Law's submission and recommendations are informed by our direct casework, including the significant evidence-base and insights collected through the Women's Homelessness Prevention Project. Justice Connect Homeless Law takes this opportunity to express our sincere thanks to the Lord Mayor's Charitable Foundation for generously funding the Women's Homelessness Prevention Project for its first two years. We also thank the City of Melbourne and Herbert Smith Freehills for their partnership in the project.

In preparing this submission, Homeless Law also conducted detailed interviews with three women to build our understanding of their experience of family violence. We sincerely thank these women for their time and courage in sharing their stories and insights with us.

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1. Executive summary and 12 key recommendations

“There was one time I was pregnant with my [child] and he punched me in the stomach ... there have been times when we were on the verge of splitting up – that I have actually looked into moving out on my own and I haven’t had the money to do it ... I had to stay in that situation because I didn’t have the money to get up and leave ...”¹

As a specialist legal service for people experiencing or at risk of homelessness, Homeless Law sees directly the multiple intersections between family violence and homelessness. In particular, we know that the shortage of affordable housing in Victoria:

1. Deters victims from leaving violent relationships.²
2. Pushes victims into homelessness.³
3. Can make perpetrators more isolated and increase the risk of repeated or escalated violence.⁴

We also see that evictions into homelessness happen too easily in Victoria. Given the increasing awareness of the chronic shortage of affordable housing, the overwhelming demand for homelessness services, the high rates of homelessness amongst people who have experienced family violence, and the hardship and long term impact of homelessness, we need a legal, policy and services framework for making evictions into homelessness a last resort.

Through Homeless Law’s Women’s Homelessness Prevention Project, we know that the combination of legal representation and social work support can play a vital role in preventing evictions into homelessness. Of the 62 women assisted through the WHPP in its first 12 months, 81% of finalised matters resulted in women being able to maintain safe and stable housing or resolve a debt or compensation claim that was a barrier to accessing housing. 95% of these clients had experienced family violence.

Informed by our direct casework, and consultation with consumers, Homeless Law makes 12 recommendations that aim to:

- Prevent evictions of victims of family violence into homelessness;
- Reduce barriers to securing affordable housing for victims of family violence; and
- Make sure both private and social landlords are better able to respond effectively to family violence to avoid unnecessary evictions into homelessness.

Homeless Law welcomes the opportunity to contribute to the Royal Commission into Family Violence (**Royal Commission**), which we are optimistic will shape significant reforms to laws, policies, practices, attitudes and ideas in a way that prevents family violence from occurring and provides effective responses when it does.

¹ Homeless Law Family Violence Consultation, participant interview (interview conducted on 7 April 2015) (**Homeless Law Consultation**). All quotes and case studies used in this submission have been de-identified and names have been changed.

² Just three in 100 two-bedroom rental lettings in the December 2014 quarter were affordable to a single parent reliant on Centrelink: Department of Health and Human Services, *Rental Report December Quarter 2014 (DHHS Rental Report)*. On 11–12 April 2015, less than 0.1% of private rental properties in metropolitan Melbourne were affordable and appropriate for a single mother of two children who relies on a parenting pension: Anglicare Australia, *Anglicare Australia Rental Affordability Snapshot (2015) (Anglicare Snapshot)*, 88. There are currently 33,933 people on the Victorian public housing waiting list; 9,556 are eligible for ‘early housing’ due to urgent needs including unsafe housing as a result of family violence: Department of Health and Human Services, *Public Housing Waiting and Transfer List March 2015 (Public Housing Waitlist)*.

³ 99,892 people sought assistance from specialist homelessness services in Victoria 2013–14. 28% of these people cited domestic or family violence as the main reason they needed assistance: 25,104 people in total; 2,892 male; 22,213 female. See Australian Institute of Health and Welfare, *Specialist Homelessness Services: 2013–2014 (2014) (AIHW Report)*, ‘Table VIC2.14: Clients, by main reasons for seeking assistance, 2013–14, adjusted for non-response’.

⁴ See, eg, Centre for Innovative Justice, *Opportunities for Early Intervention: Bringing perpetrators of family violence into view (2015) (CIJ Report)* 50: The report identifies that availability of housing for men excluded through the intervention order process is a key aspect of engaging with these men to address their issues and prevent further violence from occurring.

12 RECOMMENDATIONS TO BREAK THE CURRENT LINKS BETWEEN FAMILY VIOLENCE AND HOMELESSNESS

<p>Affordable housing, targeted homelessness prevention and mechanisms to make evictions into homelessness a last resort</p>	<ol style="list-style-type: none"> 1. Stronger, better resourced programs targeted at preventing the eviction of victims of family violence into homelessness and providing rapid re-housing. An investment of approximately \$23.4 million each year could assist an additional 4800 families through Safe at Home responses, the Social Housing Advocacy and Support Program, legal representation for women facing eviction, private rental brokerage schemes, and a rapid re-housing program. 2. Legislative and procedural safeguards to prevent unnecessary evictions into homelessness. Amending the factors VCAT can consider in eviction proceedings, introducing a checklist of pre-eviction requirements and a voluntary 'code of conduct for private landlords and real estate agents who support victims of family violence' will provide a legal, policy and cultural framework for making evictions into homelessness a last resort. 3. Growth in the supply of affordable housing. A long-term affordable housing strategy to address the soaring public housing waitlist and increasing unaffordability of private rental for low-income Victorians will create housing options for victims seeking to leave violent relationships, reduce the link between family violence and homelessness, and generate housing pathways for perpetrators of family violence to promote engagement with the justice system and services and reduce the risk of further violence. An affordable housing growth fund of \$200 million per year could build a minimum of 800 homes annually.
<p>Reform of Victoria's tenancy laws and practices</p>	<ol style="list-style-type: none"> 4. Amend the <i>Residential Tenancies Act 1997 (Vic)</i> (Residential Tenancies Act) to allow clear apportionment of liability in compensation claims against tenants who are victims of family violence. This will avoid victims of family violence being held liable for damage or debts caused by a perpetrator who was or is a co-tenant. It will reduce one barrier victims of family violence face when leaving violent relationships, by removing the fear that they will be legally responsible for damage they didn't cause and rent arrears that were accrued after they had fled. 5. Amend the Residential Tenancies Act to allow victims of family violence to prevent their personal details being listed on residential tenancy databases ('black lists') and to remove existing listings where the breach or damage occurred in the context of family violence. This will reduce the barriers victims of family violence face when seeking to re-enter the private rental market after leaving a violent relationship. It will contribute to a reduced risk of homelessness and shorter periods in crisis or refuge accommodation. 6. Promote the use of creation applications under section 233A of the Residential Tenancies Act by victims of family violence. A brokerage fund to sustain tenancies pending a final intervention order and guidelines to build awareness of these applications within Victoria Police, the Magistrates' Court and frontline service providers, will increase the use of this mechanism, which was introduced to assist victims of family violence to sustain their tenancies after the exclusion of a perpetrator via a final intervention order.
<p>Appropriate, transparent family violence policies</p>	<ol style="list-style-type: none"> 7. Amend public and community housing policies to allow tenants to be 'temporarily absent' while in women's refuge or family violence emergency accommodation, or experiencing homelessness (eg couch surfing or sleeping in their car) as a result of family violence. By reducing the risk that a tenancy will be terminated for arrears soon after a victim has fled, this will improve the ability of public and community housing tenants to maintain safe housing and avoid entering homelessness after experiencing family violence. 8. Amend Office of Housing policies to clearly and appropriately exempt victims of family violence from liability for damage or arrears caused by family violence. This will rectify the confusion about whether criminal charges are required for the family violence exemption from liability to apply. By reducing the risk of compensation claims and associated debts in the context of family violence, this will also reduce the likelihood of victims of family violence experiencing delays in urgent transfers or allocation of housing, which jeopardise safety and exacerbate hardship.

	<p>9. Create a single, publicly available information resource for public housing tenants, support workers and Office of Housing staff which clearly sets out policies that apply when tenants have experienced family violence. This will assist victims of family violence living in public housing to make better informed decisions about their housing. It will also contribute to better, fairer outcomes that support victims of family violence to sustain their public housing, avoid debts for damage they did not cause and reduce barriers to accessing safe alternative housing.</p>
<p>Family violence training across jurisdictions, agencies and sectors</p>	<p>10. Retain detailed, publicly available Office of Housing policies providing practical, appropriate guidance to staff. This will improve the accountability and consistency of decision-making by the OOH, including by providing guidance about appropriate responses to tenants affected by family violence in relation to arrears, abandonment, evictions, transfers or property damage.</p> <p>11. Targeted training for staff in the public, community and private housing sectors regarding family violence and its impacts in a housing and homelessness context. This will mean that housing decision-makers are better equipped, and supported, to understand family violence and to respond effectively, including with appropriate referrals that minimise the risk of eviction into homelessness. People with a direct experience of family violence should be involved in developing and delivering this training.</p> <p>12. Cross-jurisdictional education and training for VCAT members and Magistrates, as well as staff in both jurisdictions, regarding the overlapping provisions in the Residential Tenancies Act and Family Violence Protection Act 2008 (Vic). This will assist decision-makers in both VCAT and the Magistrates' Court to better understand each other's powers and responsibilities and encourage victims of family violence to exercise relevant rights in both jurisdictions.</p>

2. Family violence, affordable housing and homelessness

The links between family violence, affordable housing and homelessness are increasingly well understood:

- Family violence is the most common cause of homelessness in Victoria. 99,892 people sought assistance from specialist homelessness services in Victoria in 2013–14 and 28% of these people cited domestic or family violence as the main reason they needed assistance: 25,104 people in total; 2,892 male; 22,213 female.⁵
- Almost half of the women seeking assistance from specialist homelessness services in Victoria in 2013–14 cited family violence as one of the reasons they needed assistance.⁶
- Of the approximately 22,789 Victorians experiencing homelessness, almost half are women and one-sixth are children under the age of 12.⁷
- In Victoria there are currently 33,933 people on the state-wide public housing wait list, including 9,556 who are eligible for 'early housing' due to urgent needs including unsafe housing as a result of family violence.⁸
- A recent snapshot of private rental properties showed that less than 0.1% of rental properties in Metropolitan Melbourne are affordable for single parents relying on the single parenting pension,⁹ and only 0.8% of rental properties are affordable for these families in coastal or regional Victoria.¹⁰
- Specialist homelessness services in Victoria currently turn away 92 people each day because of overwhelming demand.¹¹

It is in this context that Homeless Law's Women's Homelessness Prevention Project was set up to keep women and children in housing through a combination of legal representation and social work support. It is a holistic, integrated model of providing legal services that focusses on preventing homelessness through addressing both legal and non-legal issues. We assist women living in private, community and public housing whose housing is at risk. The evidence from the WHPP is consistent with broader state-wide evidence pointing to clear links between an experience of family violence, the lack of affordable housing and a risk of homelessness. For example, of the 62 clients who were assisted in the WHPP's first 12 months:

- 95% reported a history of family violence;
- 84% were reliant on Centrelink as their sole source of income;
- 68% were at risk of eviction due to rent arrears; and
- 50% were living in private rental accommodation and 74% of these women were at risk of eviction due to rent arrears.

The below case study highlights the ways in which a history of family violence, severe financial hardship, health problems, caring obligations and an unaffordable private rental market with limited protections for tenants, combine to present a high risk of homelessness for women and children.¹²

This case study also identifies the way in which legal representation combined with social work support can prevent evictions and assist clients to avoid homelessness.

⁵ See AIHW Report, above n 3, 'Table VIC2.14: Clients, by main reasons for seeking assistance, 2013–14, adjusted for non-response'.

⁶ Ibid, 'Table VIC2.13: Clients, by reasons for seeking assistance, 2013–14, adjusted for non-response': 60,454 women sought assistance from specialist homelessness services in Victoria in 2013–14 and 27,655 cited family violence as a reason for needing assistance.

⁷ Australian Bureau of Statistics, *Census of Population and Housing: Estimating Homelessness 2011* (12 November 2012) 12 (available at: [http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/EB59F237159F7102CA257AB100170B61/\\$File/20490_2011.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/EB59F237159F7102CA257AB100170B61/$File/20490_2011.pdf)) (**Census 2011**).

⁸ See Public Housing Waitlist, above n 2.

⁹ See Anglicare Snapshot, above n 2, 88.

¹⁰ Ibid 89.

¹¹ See AIHW Report, above n 3, 'Table VIC 5.5: Daily average unmet requests for assistance, by type of service requested and sex, 2013–14, adjusted for non-response'.

¹² See also Justice Connect Homeless Law, *Five ways family violence puts women at risk of homelessness* (WHPP Newsletter) (March 2015).

Nicola: Single mother of five and victim of family violence facing eviction after paying childcare debt instead of rent

Nicola is a 38 year old woman with five children in her care. She lives in a private rental property and her only source of income is Centrelink payments.

Nicola and her children have all been exposed to family violence from Nicola's ex-partner. Nicola also suffers from depression and anxiety and does not sleep well. A few months ago, the family violence culminated with Nicola being hospitalised and her violent partner leaving their five children overnight with a family day care worker.

This resulted in a large childcare bill that Nicola paid instead of her rent. Nicola's landlord then issued her with a notice to vacate her private rental property and subsequently obtained a possession order from VCAT. Nicola didn't attend this VCAT hearing as she hadn't been regularly checking her mail due to the family violence and other stress. She contacted Homeless Law when she noticed a copy of the VCAT order had arrived in the mail, and was referred to the Women's Homelessness Prevention Project (WHPP) for urgent assistance.

At the initial WHPP appointment, Nicola saw lawyers and the social worker. Nicola found the retelling of her story emotionally taxing and was supported by the WHPP social worker. The lawyers determined that Nicola's landlord had purchased a warrant to have her removed, and assisted immediately by making an application to VCAT for a rehearing, which put a hold on the warrant being executed. The lawyers then obtained detailed instructions about Nicola's financial situation, and put together a plan for her to repay the arrears.

At the VCAT hearing, Nicola's lawyers successfully argued for a payment plan to be put in place, which enabled Nicola to repay the arrears at an affordable fortnightly rate. Nicola also indicated that she required assistance with beds and food for her children. The WHPP social worker was able to link Nicola to material aid providers to assist with these needs. The social worker also sourced financial brokerage to help Nicola clear a bond loan debt, and this has now helped her move into new and more affordable housing.

The WHPP lawyers and social worker were able to work together to avoid Nicola being evicted into homelessness. This gave her the time she needed to look for a more suitable rental property, as well as to establish crucial links with supports that are helping her and her children to find their feet again.

In addition to Homeless Law's clients assisted through the Women's Homelessness Prevention Project, Homeless Law represents hundreds of other clients who are homeless or at risk of homelessness each year. Amongst this client group – both men and women – there is an increasing awareness of the link between violence in childhood and homelessness in later life. By way of example, a recent qualitative study based on interviews with 35 people sleeping rough in the City of Melbourne found:

Rough sleeping pathways

... The early years of rough sleepers were often characterized by violence and neglect. Seventy eight percent of participants had been exposed to drugs and alcohol as a teenager, 70% experienced childhood sexual or physical abuse, 67% had left school early, 45% had a disability of some kind and 21% had been in state care.¹³

These findings are consistent with Homeless Law's findings from interviews with 14 people arrested for begging in Melbourne in 2014. Of those 14 people, 36% had experienced domestic or family violence, 36% reported being abused as children and 36% reported suffering family or relationship breakdown. A number of participants reported experiencing two or more of these traumas.

While the focus of this submission is primarily on women who have been victims of family violence and are consequently at risk of homelessness, Homeless Law reiterates that the links between an experience of family violence and the risk or reality of homelessness are multiple.¹⁴ Our recommendations in relation to increasing the supply of affordable housing, strengthening

¹³ City of Melbourne, *Living Rough in Melbourne: Street Count 2013* (January 2014). See also Child Family Community Australia, *Effects of child abuse and neglect for adult survivors* (January 2014) for a summary of key research.

¹⁴ Homeless Law recognises that family violence can take many forms, including violence against parents, violence in same sex relationships and violence by women against men. Our evidence-base is, however, focussed on women who have been victims of violence perpetrated by intimate male partners. In relation to elder abuse, we refer the Royal Commission to the submission of Justice Connect Seniors Law dated 29 May 2015.

targeted services to prevent homelessness and implementing measures to make evictions into homelessness a last resort will also deliver benefits to people whose childhood experience of family violence has contributed to the hardship of homelessness in later life.

3. Affordable housing and targeted homelessness prevention

3.1 Family violence and the risk of homelessness it presents

Although the Women's Homelessness Prevention Project is not targeted specifically at women who have experienced family violence, 95% of the women we have assisted – all of whom are homeless or at risk of homelessness – have experienced family violence. Through the WHPP, we see that women and children affected by family violence are at an increased risk of homelessness, including because:

- They are forced to leave their home due to violence;
- They stay in their housing, but with significantly reduced household incomes after the violent family member leaves or is excluded; and/or
- Long-term impacts of family violence, such as mental illness, financial hardship or isolation from family and friends, make their lives precarious.

In these ways, family violence can present both immediate and long-term risks of homelessness for women and children in their care.

For the 62 clients of the WHPP and the 102 children in their care, the following tenancy legal issues were putting them at risk of homelessness:

- **Rent arrears** – 42 clients (68%) were facing eviction due to rent arrears. Of these 42 women, 24 were living in private rental, 11 were living in public housing, four were living in community housing, two were living in transitional housing, and one woman was living in a private rooming house. The average amount of arrears owed amongst this group of 42 women at the time of their first appointment was \$2177, with the lowest amount owed being \$70, and the highest amount owed being \$7,700.
- **Conduct or compliance** – four clients required assistance in relation to compliance order applications or breach of duty notices.
- **'No reason' notices or end of fixed term lease** – three clients required assistance in relation to notices to vacate for end of lease or no specified reason.
- **Abandonment** – one client required assistance in relation to an abandonment application that had been made against her at VCAT.
- **'Creation' of a new tenancy** – two clients required assistance in relation to creation of tenancy applications, one of which was in the context of an intervention order excluding a co-tenant from the premises.
- **Debts and compensation** – six clients required assistance in relation to compensation claims that had been made against them by existing or previous landlords.¹⁵ Of these six women requiring assistance in relation to compensation claims, three women reported that the damage was caused by a violent ex-partner or family member. Half of these compensation claims related to women in public housing and had been lodged by the Director of Housing; the other half related to women in private rental properties and had been lodged by private landlords.
- **Ending a tenancy agreement** – four clients required assistance to terminate an existing tenancy agreement that they could not continue due to family violence.

¹⁵ In certain circumstances Homeless Law and the WHPP will assist tenants who are at risk of a sizeable compensation order being made against them. These compensation orders present a significant barrier to people accessing housing and can prolong a person's homelessness.

WHPP clients were also experiencing a number of non-legal issues that were contributing to a risk of homelessness:

- **Mental illness** – 90% of clients suffered from mental illness, with 81% suffering from anxiety and/or depression. Seven clients suffered from post-traumatic stress disorder (PTSD), all of whom reported a history of family violence.
- **Disability** – 19% of clients reported having a disability, with five women reporting a physical disability, three an intellectual disability, and one woman an acquired brain injury. A further four women reported that one or more of their children had a behavioural issue that impacted significantly on the family.
- **Substance dependence** – 45% of clients reported a current substance dependence issue, including amphetamines, cannabis, alcohol and prescription medication.
- **Multiple legal issues** – in addition to the primary tenancy issues outlined above, 33 WHPP clients (53%) were also experiencing one additional legal issue, whilst a further seven women (11%) reported experiencing multiple additional legal issues. Across all clients, a combined total of 46 additional legal issues were reported. The most common additional legal issue reported was family law related, including child custody proceedings, assistance with obtaining or varying family violence intervention orders, and divorce, with 12 women requiring assistance with these matters. A further 10 women reported having issues with fines and infringements,¹⁶ eight women had a credit and debt issue, seven had a criminal law issue, two had a child protection issue and four women had a tenancy issue not related to possible eviction or homelessness.¹⁷

Informed by this evidence base about the legal and non-legal issues putting victims of family violence at risk of homelessness, this section focusses on:

- Strengthening effective programs and services that prevent evictions into homelessness or rapidly re-house people;
- Improving mechanisms for avoiding unnecessary evictions into homelessness; and
- Addressing the shortage of affordable housing in Victoria.

These measures would have widespread benefits across the State and they are critical to Victoria's ability to effectively prevent and respond to family violence.

3.2 Targeted homelessness prevention

As the above data makes clear, for low-income women and children, an experience of family violence is too often followed by an experience of homelessness.

There are, however, a number of successful programs that work to break the link between family violence and homelessness by assisting women to sustain their housing, where safe and viable to do so, or supporting women to 'rapidly re-house' where needed.

This section focusses on:

- The Women's Homelessness Prevention Project as a model of service provision that successfully prevents the eviction of victims of family violence into homelessness through a combination of legal representation and social work support.
- Other successful programs for sustaining tenancies or rapid rehousing.
- The personal, financial and social benefits of preventing evictions into homelessness.

¹⁶ In relation to the current impact of the fines and infringements system on victims of family violence, Homeless Law endorses the recommendations of the Infringements Working Group in its submission to the Royal Commission into Family Violence dated 29 May 2015.

¹⁷ The prevalence of multiple legal issues for WHPP clients is consistent with the findings of the Legal Australia-Wide Survey (LAW Survey), which found that people who are homeless or in basic/public housing are at significantly increased risk of experiencing three or more legal issues. The LAW Survey found that people experiencing homelessness had a greater prevalence of legal problems of any type and a significantly higher number of problems. Specifically, it found that: 85% of people experiencing homelessness experienced at least one legal problem, compared to 54% of those in basic or public housing; 50.5% of those who identified as homeless experienced three or more legal issues, compared to 22.8% of those in basic/public housing, and only 15.7% in other types of housing; and people who were experiencing homelessness lived with multiple disadvantages having an average of 2.2 types of disadvantage compared to people in basic/public housing (1.9 types), and those in non-disadvantaged housing (1.1 types). See Christine Coumarelos, Deborah Macourt, Julie People, Hugh M McDonald, Zhigang Wei, Reiny Iriana & Stephanie Ramsey, Law and Justice Foundation of NSW, *Legal Australia-Wide Survey: legal need in Australia* (2012) (LAW Survey). Also, of the 33 WHPP clients with one or more additional legal issue, 6 were already engaged with external lawyers and were receiving assistance. The WHPP was able to refer 9 women with family law issues to external organisations for assistance, including 7 women to the Women's Legal Service of Victoria, and 4 women with infringements and criminal law issues to Victoria Legal Aid. A further 4 women with credit and debt issues were referred for assistance, with 3 of these women being referred internally through Homeless Law. Similarly, 4 women with additional tenancy issues were referred for assistance, with 3 of these referrals being internal within Homeless Law, and one being to the Tenants Union of Victoria.

3.2.1 Homelessness prevention through targeted, holistic legal assistance

As identified above, victims of family violence can find themselves at risk of homelessness both in the immediate aftermath of family violence or years down the track.¹⁸

It is also rare for the client's legal issue to exist in a vacuum and it is common for both legal and non-legal issues to be underpinning the risk of eviction.¹⁹

With this in mind, key aspects of the Women's Homelessness Prevention Project are:

- **Holistic, integrated service:** women who are at risk of eviction or experiencing another barrier to accessing safe and stable housing are provided with both legal representation and intensive social work support from an in-house social worker.
- **Preventative focus:** through our relationships with family violence services, the courts and VCAT, Homeless Law aims to attract early referrals, before legal issues have escalated to crisis point.
- **Mainstream location with a children's librarian:** Homeless Law identified that many of this client group did not associate with the concept of 'homelessness' and have not previously been engaged with homelessness services. We also understood that caring obligations prevented women attending appointments to seek assistance. Accordingly, we located our weekly clinic at a city library where a children's librarian can look after clients' children.

The outcomes of the WHPP are discussed throughout this report. Some key statistics from the first 12 months of operation are:

- 62 women with 102 children in their care – 95% of whom have experienced family violence – have been provided with a combination of legal representation and social work support.
- Of finalised matters, 81% of women with a total of 68 children in their care have either maintained safe and stable housing, or resolved a debt or compensation claim that was a barrier to their accessing to housing.
- 68% of all WHPP clients were facing eviction for rent arrears, with the average amount of \$2177 owing, and to date 82% of these women have avoided homelessness.
- One-third of women who avoided eviction for arrears were assisted with financial brokerage, and the average amount provided was \$560.20
- The WHPP social worker has made 78 referrals to non-legal professionals and support services, including:
 - 23 referrals to initial assessment and planning homelessness access points for assistance with accessing crisis accommodation, transitional housing and financial assistance to help sustain existing tenancies and transition into new housing.
 - 15 referrals to mental health care professionals including psychological services through mental health care plans, youth counselling, and assisting women to re-engage with previous mental health supports.
 - 15 referrals to other professionals including physiotherapists, chiropractors, support services for clients' children, and family violence specific counsellors.
 - 12 referrals to a general practitioner for a range of issues including medication review, referrals to specialists, medical support letters, activation of a mental health care plan and advice in relation to children's health and behaviour.
 - 11 referrals to financial counsellors to assist women with setting up automatic bill paying systems and making a budget to manage household income.
 - Two referrals to alcohol and other drug counsellors.

The below case study provides an example of the way in which a combination of legal representation and social work support can prevent evictions into homelessness. It highlights that these evictions are avoidable and, with the right combination of services, women who have experienced violence can be supported to sustain their tenancies.

¹⁸ See also VicHealth, *Preventing Violence against Women: Research Summary* (2011) 6: "the health consequences of violence can persist long after violent episodes have occurred" (available at: <https://www.vichealth.vic.gov.au/search/violence-against-women-in-australia-research-summary>).

¹⁹ See Suzie Forell, Emily McCarron and Louis Schetzer, 'No Home, No Justice? The Legal Needs of Homeless People in NSW' (Access to Justice and Legal Needs Monograph Series Vol 2, Law and Justice Foundation, July 2005) Christine Coumarelos and Julie People, 'Home is Where the Heart of Legal Need Is' (Working Paper No 23, Law and Justice Foundation, April 2013) 1, regarding the need for legal services to be more integrated and holistic to address barriers clients face to accessing legal services and resolving legal issues.

²⁰ See Justice Connect Homeless Law, *Dollar value: the role of financial brokerage in preventing homelessness* (WHPP Newsletter) (May 2015).

Patrice: Single mother addresses arrears just before eviction warrant purchased

Patrice is a single mother with two children aged three and six years old. She previously suffered family violence from an ex-partner and was forced to flee into a women's refuge to escape. Patrice had since moved into public housing and receives a disability support pension in relation to mental health issues including depression, anxiety and obsessive compulsive disorder.

Patrice had fallen into approximately \$3500 arrears to the Office of Housing, and had previously been taken to VCAT where a repayment plan had been ordered. Patrice had initially made good progress repaying the arrears pursuant to this agreement, but lately for a range of reasons including a decline in her mental health, she had ceased making rental payments altogether.

As a result, the OOH had renewed their application to VCAT and obtained a possession order and were threatening to purchase a warrant if Patrice could not repay the arrears quickly. Patrice had been too frightened to attend this hearing as she knew things would not go well for her. Patrice contacted Homeless Law for assistance as she wanted to transfer to a different OOH property due to feeling socially isolated in her current location.

Homeless Law advised Patrice that she would not be able to transfer to a new property if her current housing was lost, and contacted the OOH to seek a written undertaking that they would not purchase a warrant if a portion of the arrears could be quickly repaid. The OOH staff-member exercised their discretion and accepted this request.

The WHPP social worker was able to source funding from a range of sources to contribute towards Patrice's arrears, and the OOH subsequently allowed the existing possession order to lapse. Patrice's tenancy stabilised

Key messages to come out of the WHPP – and similar services focussed on prevention and integration – are:

- It is currently too easy to evict vulnerable people into homelessness in Victoria.
- With timely, effective support, the majority of evictions are preventable.
- We need more effective legal protections and strengthened services to avoid unnecessary evictions of victims of family violence into homelessness.



In addition, to the benefits of legal representation, early access to advocacy services such as the Social Housing Advocacy and Support Program (**SHASP**) has proven to be highly effective at preventing evictions into homelessness. A 2014 report found that 78% of public housing tenants supported by SHASP avoided eviction and 73% engaged in repaying rent debts.²¹ In 2012 SHASP's funding was reduced by approximately \$3 million. It is a vital service in preventing evictions and sustaining tenancies and restoration of its funding would allow an additional 1500 case management episodes per year.

For victims of violence who are not able to stay in their homes because they are no longer safe or have become financially unsustainable, Victoria needs to invest in rapidly re-housing women and children to prevent the hardship and long term impact that comes along with homelessness. Homeless Law endorses the submission of the Council to Homeless Persons, which identifies that an investment of \$10 million per year could assist over 1000 women and their children to be quickly re-housed. The funding is directed to rent subsidies and support costs, including funding assistance to search for suitable properties, incentives for landlords to participate and medium term rental subsidies (of up to six months) to ensure the rent remains affordable.²²

3.2.2 The benefits of homelessness prevention

Key data regarding the costs of homelessness includes:

- A 2013 Australian Housing and Urban Research Institute (**AHURI**) study that identified that people experiencing homelessness had higher interaction with health, justice and welfare systems than people with stable housing and estimated that an individual experiencing homelessness represents an annual cost to government services that is \$29,450 higher than for the rest of the Australian population. Of this increased cost, \$14,507 related to health services, \$5,906 related to justice services, and \$6,620 related to receipt of welfare payments.²³
- A 2006 Victorian Government paper, which identified a potential cost of over \$34,000 per year to support a tenant evicted from public housing through homelessness services. This was compared to approximately \$4,300 in service costs per year for a household in public housing.²⁴

²¹ See SHASP Managers Network (Victoria), *Social Housing Advocacy & Support Program (SHASP): Support that works* (September 2014).

²² Approximately \$2.3 million in annual rental subsidies and \$7.3 million in annual support costs could fund assistance to search for suitable properties, incentives for landlords to participate and medium term rental subsidies (of up to six months) to ensure the rent remains affordable. See Council to Homeless Persons, *Pre Budget Submission 2015-16* (2015).

²³ Kaylene Zaretsky et al, *The cost of homelessness and the net benefit of homelessness programs: a national study*, AHURI Final Report No 205 (2013) 4.

²⁴ Department of Human Services, *Support for High Risk Tenancies Strategic Project* (October 2006) cited in Department of Human Services, *Human Services: The case for change* (December 2011).

- A 2011 AHURI study, which identified the long term impact of homelessness on children. The study noted: “[we] know that children who become homeless, whether through domestic violence or other events, frequently suffer the trauma of disrupted schooling and friendships and that homeless families almost always experience financial disadvantage”.²⁵

In a 12 month period, the WHPP has directly prevented the eviction of 35 women and their families into homelessness. Using the AHURI figures, this would mean a cost saving of \$1,030,750. Twelve of these women were in public housing, so their costs of support if evicted would have been approximately \$408,000. These figures do not capture the costs in relation to the 68 children in these women’s care who have also avoided homelessness.

By comparison, the WHPP costs approximately \$220,000 per year to run, which includes a lawyer, a social worker and organisational infrastructure. Homeless Law is able to leverage the pro bono services of our project partner, Herbert Smith Freehills, who provide approximately 40 lawyers to the WHPP, which enables Homeless Law to significantly multiply the impact of its funding.

As is often the case, generous funding from philanthropic trusts and foundations – in this case the Lord Mayor’s Charitable Foundation – allows small organisations to innovate and create new models of service provision. The WHPP was funded for two years and this funding will end on 30 September 2015. Recognising the benefit of this model and the relatively modest funding required to deliver these services, Homeless Law is now seeking ongoing funding to continue to generate outcomes for women and children, as well as alleviate pressure on the homelessness, health and justice sectors through the WHPP’s preventative focus.

The WHPP model is one of a number of successful initiatives that are effectively working to prevent victims of family violence from entering homelessness. These models, which focus on prevention and addressing the underlying risks to a person’s housing, should be prioritised and expanded as part of Victoria’s efforts to respond effectively to family violence.²⁶

Recommendation 1: Stronger, better resourced services targeted at preventing the eviction of victims of family violence into homelessness and providing rapid re-housing.

An investment of \$23.4 million each year could assist an additional 4800 families through:

- Strengthening programs such as Safe at Home responses, costed at \$7.6 million to provide Safe at Home measures to 1521 households (\$5000 per package).
- Extending funding for the Social Housing Advocacy and Support Program (SHASP), costed at \$3 million to provide an additional 1500 case management episodes per year.
- Continuing and extending legal representation for women facing eviction, costed at \$1.8 million to provide 500 women at risk of eviction with legal representation and social work support, based on the WHPP model that has assisted 62 women in 12 months at an annual operating cost of \$220,000.
- Increasing private rental brokerage schemes, costed at \$1 million to double existing private rental brokerage packages to approximately 600 packages in total.
- Establishing a rapid re-housing program to assist women and children escaping family violence to be quickly re-housed with appropriate supports in place, costed at \$10 million per year to provide over 1000 women and their children with support to search for properties and medium term rental subsidies to ensure rent remains affordable.

3.3 Better mechanisms for avoiding unnecessary evictions into homelessness

In addition to the services and programs that are highly effective at preventing evictions into homelessness, Victoria needs a legal, policy and cultural framework to make sure evictions into homelessness – including of women and children who have experienced family violence – are only occurring as a last resort.

²⁵ Angela Spinney et al, *Homelessness prevention for women and children who have experienced domestic and family violence: innovations in policy and practice*, AHURI Final Report No 196 (2011) (AHURI Homelessness Prevention).

²⁶ Costings in this submission are indicative only.

This section focusses on:

- The prevalence of avoidable evictions;
- Effective use of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Human Rights Charter**) when making eviction decisions and the role it can play in balancing competing obligations for public and community landlords;
- The potential for a 'reasonableness test' in eviction decisions and for tools such as a 'pre-eviction checklist' to help make evictions a last resort; and
- The role private landlords could play in avoiding the eviction of victims of family violence into homelessness.

3.3.1 Preventable evictions happen too easily

Through Homeless Law's eviction prevention work, including the integrated work of the Women's Homelessness Prevention Project, we see that it is currently too easy for Victorian tenants to be evicted into homelessness. This is the case generally, and it is particularly the case in relation to evictions for rent arrears for victims of family violence.

In Victoria, VCAT can consider adjourning a landlord's rent arrears eviction application if the financial loss to the landlord can be avoided (for example through a lump sum payment and an ongoing payment plan to address the arrears).²⁷ When making a possession order, VCAT members can also postpone the eviction by up to 30 days if they are satisfied that the tenant would suffer hardship without the postponement and that this hardship would be greater than the landlord's hardship.²⁸ As the statistics in part 2 make clear, however, even with an extension of 30 days, it can be extremely difficult to locate alternative affordable housing, particularly for women and children who have experienced family violence.

Furthermore, where tenants do not attend the VCAT hearing or are not represented and are unable to present a case for remaining in the property or having additional time, the VCAT member will ordinarily make an order for their removal from the premises and allow the warrant to be purchased immediately.

After 12 months of operation, the WHPP has assisted 42 women at risk of eviction for rent arrears, and a further 10 women who were at risk of eviction for non-arrears issues, including compliance orders, creation of tenancy matters, and abandonment applications. The following results have been recorded:

- Of the 42 women at risk of eviction due to rent arrears, 17 women had already had a possession order made against them and a further seven women were facing imminent execution of a warrant of possession;
- Of matters that have been finalised to date, 82% of women (27 in total) who were at risk of eviction for arrears have maintained safe and stable housing;
- Of these 27 women, 25 were able to maintain their existing tenancy, and two were able to obtain additional time at VCAT through legal representation in order to relocate to more affordable housing;
- Of the 25 women who remained in their existing premises, 14 did so pursuant to a VCAT ordered repayment agreement for arrears;
- Financial brokerage funding was used in 11 cases (41%) where women at risk of eviction for rent arrears were able to avoid homelessness, with the average amount of brokerage per client being \$560;
- Only six clients (18%) were unable to avoid eviction as a result of the WHPP's involvement, and in four of these cases the women were granted additional time by the VCAT member in order to locate alternative accommodation; and
- Of the 10 women at risk of eviction due to non-arrears issues, eight have been able to avoid homelessness through the work of the WHPP.

These results confirm that access to appropriate legal representation and non-legal support, along with financial brokerage to assist with arrears payments, can often help turn things around and prevent a victim of family violence from being evicted into homelessness.

While we do not have a 'control group', Homeless Law is confident that the majority of WHPP clients would have been evicted if not for the provision of legal representation and social work support. As an indication, almost 60% of the women facing eviction for arrears had already had a possession order made at VCAT, including seven where a warrant had been purchased and the locks were going to be imminently changed when they approached Homeless Law.

²⁷ *Residential Tenancies Act 1997* (Vic) s 331.

²⁸ *Residential Tenancies Act 1997* (Vic) s 352.

Although Homeless Law was able to prevent the vast majority of these evictions, the fact that these matters had proceeded to this point prompts us to reflect on the legal and procedural safeguards that are in place to prevent unnecessary evictions into homelessness.

3.3.2 Considering human rights when making eviction decisions

In addition to their rights and responsibilities under the Residential Tenancies Act, public and community landlords (together, social landlords) also need to comply with section 38 of Victoria's Human Rights Charter when making decisions about evictions. Section 38 requires them to:

- Act in a way that is compatible with human rights; and
- When making a decision, give proper consideration to relevant Charter rights.²⁹

The decision to take steps to evict the tenant (for example, by issuing a notice to vacate, applying to VCAT for a possession order or purchasing a warrant), potentially engages the following Human Rights Charter rights:

- Section 13(a) – A person has the right 'not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with';
- Section 17(1) – 'Families are the fundamental group unit of society and are entitled to be protected by society and the State'; and/or
- Section 17(2) – 'Every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child'.

There is a built in mechanism for balancing competing priorities under section 7(2) of the Human Rights Charter, which sets out factors to be taken into account to determine if any limitation on rights was reasonable and 'demonstrably justified' in the circumstances.³⁰

Using the Charter in housing matters

For clients living in public or community housing, Homeless Law frequently engages in Charter-based negotiation with social landlords with a view to preventing the eviction of vulnerable tenants into homelessness. This is often on the basis that, in taking steps to evict the tenant, the landlord has not have given proper consideration to, or acted compatibly with, the tenant's rights under the Human Rights Charter.

The Human Rights Charter provides a helpful framework for making difficult decisions. It encourages consideration of a tenant's individual circumstances, including their family, any health problems and their risk of homelessness, and allows these considerations to be balanced against the competing obligations of social landlords (including, for example, the safety or comfort of other tenants). It encourages proper consideration of alternatives to eviction.

Prior to the Court of Appeal's decision in *Director of Housing v Sudi* [2011] VSCA 266 (**Sudi**), VCAT members were considering whether or not a social landlord had complied with section 38 of the Human Rights Charter when determining applications for possession. VCAT members were balancing human rights considerations against the competing obligations of social landlords in making their decisions about whether to make a possession order. In Homeless Law's experience, this accountability (i.e. the knowledge that VCAT would consider Charter compliance in eviction proceedings) provided a compelling incentive for social landlords to consider the client's circumstances and to contemplate reasonable alternatives to eviction.

In *Sudi*, however, the Court of Appeal held that VCAT does not have jurisdiction to consider whether a social landlord has complied with its obligations under section 38 of the Charter in proceeding with an eviction, and that any questions about Charter compliance in eviction matters must be considered by the Supreme Court.

Since *Sudi*, Homeless Law has witnessed less accountability for human rights compliance, which presents a greater risk of eviction for vulnerable tenants.

In our experience, social landlords are less motivated to try to comply with human rights obligations because there is little consequence of not doing so. Although social landlords still have an obligation under section 38 of the Human Rights Charter to act compatibly with human rights and to give proper consideration to human rights in decision-making, it is unlikely that tenants have meaningful recourse in the event of non-compliance given the costs associated in challenging the decisions of social landlords in the Supreme Court.

²⁹ *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 38.

³⁰ *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 7(2).

Restrictive timeframes for Charter-based challenges

In addition to the impact of *Sudi*, the recent decision of the Supreme Court in *Burgess & Anor v Director of Housing & Anor* [2014] VSC 648 (**Burgess**) has further limited vulnerable tenants' options for seeking judicial review of the eviction decisions of social landlords. While *Burgess* is a powerful decision in terms of confirming the Director of Housing's obligation to consider the Human Rights Charter when deciding whether to evict tenants, one unfortunate result of this decision is that tenants are now required to commence judicial review proceedings in relation to Charter unlawfulness:

- after the Director has made the decision to issue the notice to vacate but before VCAT has made a possession order; or
- after the Director has made a decision to purchase a warrant.

This further limits the accessibility of a mechanism for ensuring the human rights compliance of social housing providers in eviction proceedings. It is undesirable for low income tenants who may have a range of other vulnerabilities to have to make a decision to commence proceedings in the Supreme Court prior to exhausting the no cost, much less onerous avenue available to them in VCAT.

To overcome these barriers to meaningful consideration of human rights in the decision-making of social landlords, Homeless Law recommends legislative amendments which give VCAT jurisdiction to consider Charter compliance in eviction proceedings brought by social landlords.³¹ VCAT is a more accessible forum for both tenants and landlords and its ability to consider the human rights compatibility of evictions would play a significant role in making sure evictions of vulnerable tenants into homelessness only ever occur as a last resort.

For 50% of the Women's Homelessness Prevention Project's clients who are tenants in social housing, this amendment would be a genuine safeguard against preventable evictions.

3.3.3 Making sure evictions are 'reasonable' and a last resort

Approximately 50% Women's Homelessness Prevention Project clients are living in private rental properties and, for these clients, legislative amendments that provide VCAT with the jurisdiction to consider the Human Rights Charter will not minimise their risk of eviction.

For these tenants, the Residential Tenancies Act is the only layer of legal protection against eviction into homelessness. While the Residential Tenancies Act does provide VCAT members with discretion not to make a possession order in limited circumstances (for example, rent arrears evictions where financial arrangements to avoid loss to the landlord can be made), ordinarily the Residential Tenancies Act provides that VCAT members must make an order of possession if the landlord proves they were entitled to serve a notice to vacate.

Notably, there is no overarching requirement in the Residential Tenancies Act that a landlord's eviction of a tenant must be reasonable in the circumstances. In Homeless Law's view, this is an area where the legislation could be improved to give VCAT greater powers to prevent evictions where the Tribunal cannot be satisfied that the eviction is reasonable in the circumstances.

The Scottish model: A commitment to homelessness prevention

As part of Scotland's commitment to homelessness prevention, the *Housing (Scotland) Act 2001* (UK) provides that, for certain types of tenancy agreements, the court must be satisfied that the landlord has a statutory ground for recovery of possession and that 'it is reasonable to make the order' for possession.

The reasonableness test incorporates consideration of the nature, frequency and duration of action by the tenant leading to the application to evict, the degree to which the tenant is responsible for the eviction proceedings, the effect of the tenant's conduct on others and whether the landlord has considered other possible courses of conduct.

As part of its commitment to homelessness prevention, Scotland also introduced a legislated 'pre-eviction checklist' of requirements for landlords to satisfy before proceeding with evictions, which was reported to have reduced evictions by 33% in its first year in operation.

³¹ For more detailed submissions on the legislative amendments required to give effect to this recommendation, we refer the Royal Commission to Homeless Law's forthcoming submission to the Eight Year Review of Victoria's Human Rights Charter.

Legislative amendments of a similar nature in a Victorian context would give an additional layer of discretion to VCAT members who are confronted with applications for possession that, while legally valid, are otherwise unreasonable and inappropriate given the circumstances and background of the matter.

The guidelines or checklist for landlords before taking steps to evict could include requirements that the landlord has spoken to a tenant, or made attempts to speak with them, about the issue the eviction proceedings relate to, and attempted to understand the impact of eviction on the tenant, along with exploring other alternatives to eviction and linking the tenant with advice or supports wherever possible.

For many victims of family violence, the inclusion of a reasonableness requirement in the Residential Tenancies Act would provide an additional layer of legal protection that might give them an opportunity to stabilise their tenancy and avoid entering homelessness. The introduction of a set of pre-eviction criteria for landlords to satisfy prior to commencing eviction proceedings would also help to encourage the use of eviction as a last resort.³²

3.3.4 Voluntary code of conduct for landlords against family violence

It is increasingly well recognised that both family violence and homelessness are systemic and social problems that require whole of community responses. Businesses are playing a key role in responses to family violence and homelessness, including through new models of affordable housing and progressive family violence policies.³³

As the figures in this submission have highlighted, approximately 50% of Homeless Law's Women's Homelessness Prevention Project clients facing eviction into homelessness are living in private rental properties. With almost 34,000 people on the waiting list for public housing in Victoria, many women leaving violent relationships will be relying on the private rental market to provide housing.

With these factors in mind, private landlords and real estate agents have a significant role to play in effective responses to family violence.

Currently in Victoria, there is no existing code of conduct applying to landlords or real estate agents that covers circumstances where a tenant is having difficulty complying with their obligations under the Residential Tenancies Act, and is a victim of family violence. The existing Real Estate Institute of Victoria (REIV) Code of Conduct does not address specific instances of tenancy breach, or the ways in which agents might respond or otherwise advise a property owner in the event a tenant has experienced family violence.

In Homeless Law's view, this is an area where significant cultural change could be led. For example, introduction of a voluntary code of conduct for private landlords and real estate agents who support victims of family violence could be explored as a way of encouraging the use of eviction as a last resort. The code of conduct could set out a range of factors that landlords and agents will consider prior to proceeding with eviction of a tenant who identifies that they are a victim of family violence.

Signatories to such a code of conduct, particularly real estate agents, would be able to advertise their support for victims of family violence. They could also have knowledge of, and relationships with, local support services who they could link tenants with at the earliest possible point to try and sustain the tenancy.

This collaborative initiative, led by the private sector, would have significant potential to reduce evictions of victims of family violence into homelessness. It would better equip private landlords and real estate agents to make decisions about family violence, including to make early and appropriate referrals to services that can provide support.

³² See, eg, *Housing (Scotland) Act 2001* (UK) s 16. See also Chris Povey, *Investigating Tenancy Sustainment Programs and Approaches in relation to Clients at Risk of Homelessness* (The Winston Churchill Memorial Trust of Australia) (September 2011) for a more detailed discussion of the Scottish model.

³³ See, eg, 'Generous landlords have joined a scheme to offer lower rents to those in real need' *News.com.au* (19 December 2014) regarding the innovative partnership between the REA Group and non-profit real estate agency HomeGround Real Estate, which aims to help an extra 1000 people find low-cost housing, including up to 300 who would otherwise become homeless. See also Joanna Mather and Jaclyn Keast, 'Telstra introduces domestic violence leave' *Australian Financial Review* (13 January 2015), which reports that Telstra was joining Virgin Australia, some banks and universities in providing 10 days domestic violence leave for medical appointments, legal advice and counselling. Telstra's chief talent officer, Katherine Paroz, said: "This is a legitimate form of leave and as an iconic Australian organisation we see it as important that we have a prominent role in tackling violence against women ... We want our people to have long careers with us, to trust us and respect us as an employer".

Recommendation 2: Legislative and procedural safeguards to prevent unnecessary evictions into homelessness.

To make sure that evictions from both social and private tenancies only ever occur as a last resort, Homeless Law recommends:

- Law reform to give VCAT jurisdiction to consider the human rights compatibility of eviction decisions by social landlords;
- The introduction of a ‘reasonableness’ requirement for all evictions under the Residential Tenancies Act, to give VCAT members discretion to avoid eviction where they are not satisfied it is reasonable in the circumstances;
- Development of a pre-eviction checklist for landlords to satisfy before applying to VCAT for a possession order; and
- A voluntary ‘Code of Conduct for Private Landlords and Real Estate Agents who Support Victims of Family Violence’, to equip signatories to avoid eviction of victims of family violence into homelessness wherever possible.

3.4 Affordable housing is crucial to effective responses to family violence

Homeless Law is one of 129 organisations from across the housing, homelessness, legal, local government, health and family violence sectors to endorse a joint submission to the Royal Commission on the links between family violence, affordable housing and homelessness (**Joint Housing Affordability Submission**).

We reiterate the clear points made by the Joint Housing Affordability Submission that Victoria’s shortage of affordable housing:

- Deters victims from leaving violent relationships.³⁴
- Pushes victims into homelessness.³⁵
- Can make perpetrators more isolated and increase the risk of repeated or escalated violence.³⁶

One of Homeless Law’s consultation participants explained that she wasn’t able to leave her long-term violent relationship because she could not afford to:

“There was one time I was pregnant with my [child] and he punched me in the stomach ... there have been times when we were on the verge of splitting up – that I have actually looked into moving out on my own and I haven’t had the money to do it ... I had to stay in that situation because I didn’t have the money to get up and leave ...”³⁷

As discussed above, when women do leave or have a violent partner excluded, they find themselves in precarious personal and financial positions where homelessness becomes more likely. This was highlighted by a 2011 study by the Australian Housing and Urban Research Institute:

“Domestic and family violence are a major reason why women and children need to leave their homes in Australia. When they do so, they almost inevitably become poorer and their housing conditions deteriorate as they struggle to access private rental accommodation or public housing where, in both cases, demand is far greater than available supply”.³⁸

The following case study illustrates how a lack of affordable housing options can both deter women from leaving violent relationships and place them at increased risk of homelessness when they do.

³⁴ Just three in 100 two-bedroom rental lettings in the December 2014 quarter were affordable to a single parent reliant on Centrelink: see DHHS Rental Report, above n 2. On 11–12 April 2015, less than 0.1% of private rental properties in metropolitan Melbourne were affordable and appropriate for a single mother of two children who relies on a parenting pension: see Anglicare Snapshot, above n 2, 88. There are currently 33,933 people on the Victorian public housing waiting list; 9,556 are eligible for ‘early housing’ due to urgent needs including unsafe housing as a result of family violence: see Public Housing Waitlist, above n 2.

³⁵ 99,892 people sought assistance from specialist homelessness services in Victoria 2013–14. 28% of these people cited domestic or family violence as the main reason they needed assistance: 25,104 people in total; 2,892 male; 22,213 female. See AIHW Report, above n 3: ‘Table VIC2.14: Clients, by main reasons for seeking assistance, 2013–14, adjusted for non-response’.

³⁶ See CIJ Report, above n 4, 50: The report identifies that availability of housing for men excluded through the intervention order process is a key aspect of engaging with these men to address their issues and prevent further violence from occurring.

³⁷ See Homeless Law Consultation, above n 1.

³⁸ See AHURI Homelessness Prevention, above n 25, 4.

Paula: entering the private rental market for the first time after long-term violent relationship and at risk of homelessness

Paula is a 32 year old separated mother with care of three young children who works part time. Paula was made homeless at age 17 when she was forced to flee violence in the family home from her father. She became pregnant and was married at age 19.

Over the course of her marriage, Paula was routinely subjected to physical violence by her ex-husband, including being punched in the stomach whilst pregnant and repeatedly having her life threatened. Paula had wanted to leave her husband for years but was afraid of the financial repercussions and the risk of becoming homeless with children.

During one serious family violence incident where Paula's life was threatened, she managed to call the police and an IVO was later taken out excluding her ex-husband from being near her. This led to Paula leaving her husband's parents' home where she'd been staying, and entering her first private rental property along with her three children.

Soon after moving in, Paula began to accrue rental arrears as a result of confusion over the frequency of her rent payments. This confusion was exacerbated by her serious depression and anxiety issues and lack of any support or counselling to assist after the violence and breakdown of her marriage. In addition, Paula became very ill and had to take time off work. All of this made it difficult for her to maintain regular rent payments.

When Paula contacted Homeless Law for assistance, she was anxious she'd lose her job, her housing and her children as a result of these financial issues. Her lawyers quickly negotiated a repayment plan with the real estate agent and the Homeless Law social worker helped to source a \$900 payment to help save her tenancy. Paula was also linked in with a financial counsellor to assist with budgeting.

Paula is still employed and has remained at the property on a two year lease. She has also paid back all arrears owing and is obtaining support for her mental and physical health issues.

In addition to the impact on victims of violence, Victoria's lack of affordable housing for people who use violence has been identified as creating a risk that perpetrators will become more isolated, harder to engage with services and more volatile or dangerous as a result. In particular, the research of the Centre for Innovative Justice identifies that availability of housing for men excluded through the intervention order process is a key aspect of engaging with these men to address their issues and prevent further violence from occurring.³⁹

The below case study of a client recently assisted by Homeless Law highlights the ways in which perpetrators of family violence can become increasingly isolated and present a greater risk if they are transient.

³⁹ See CIJ Report, above n 4, 50: The report identifies that availability of housing for men excluded through the intervention order process is a key aspect of engaging with these men to address their issues and prevent further violence from occurring.

Sandra: unable to get protection because violent former partner is homeless, living in rooming houses and unable to be located

Sandra contacted Homeless Law due to issues with her housing. She was living in a unit at the back of a family member's home. She had moved there a number of years ago following a separation from her husband and diagnosis of health issues which required her to be closer to supports.

For various reasons, Sandra needed to move out of the unit into alternative accommodation. While she was dealing with this housing issue, her ex-husband was released from prison. She initially allowed him to have some contact, but gradually his behaviour became more extreme and eventually abusive.

Sandra suffered physical injuries, harassment and damage to her home. She had taken out an interim IVO against her ex-husband and since it had been granted Sandra called the police on six separate occasions to report concerning behaviour. However, the police advised that they hadn't been able to serve her ex-husband with a copy of the intervention order, and so couldn't breach him. The police had hoped they could serve a copy of the order on him when he next attended Sandra's home, but they were never able to as he always left before the police arrived.

Sandra's ex-husband was homeless, moving from place to place, including in rooming house accommodation. Without a fixed address he was difficult to track down and couldn't be served with the IVO or dealt with by the justice system.

As these case studies demonstrate, the availability of affordable housing can help to prevent the continuation and escalation of family violence by:

- Making it possible for victims of family violence to leave violent relationships and reducing the risk they will be made homeless as a result;⁴⁰ and
- Avoiding further isolation of perpetrators of violence, which increases their engagement with the justice system and services and improves opportunities for positive interventions.⁴¹

Recommendation 3: Strategy for and investment in increasing the supply of affordable housing so that victims of family violence have the option of leaving violent relationships, do not face a significant likelihood of homelessness and are better protected from ongoing violence because perpetrators are housed and linked with supports.

With a view to addressing the multiple links between family violence, Victoria's lack of affordable housing and homelessness, Homeless Law recommends:

- Developing a long-term affordable housing strategy to address the soaring public housing waitlist and increasing unaffordability of private rental for low-income Victorians. An affordable housing growth fund of \$200 million per year could build a minimum of 800 homes annually.
- Improving affordable housing pathways for perpetrators of family violence to ensure they remain engaged with relevant supports to help prevent the risk of further violence.

⁴⁰ In relation to a long-term affordable housing strategy, see *Making Social Housing Work: Better homes for low-income Victorians* (2014) (**Making Social Housing Work**), a joint paper of seven peak organisations, Community Housing Federation of Victoria, Victorian Council of Social Service, Council to Homeless Persons, Victorian Public Tenants Association, Tenants Union of Victoria, Domestic Violence Victoria, Justice Connect Homeless Law.

⁴¹ See Council to Homeless Persons, *Submission to the Royal Commission into Family Violence* (May 2015). See also Chris Johnston, 'Men violent in families need crisis housing: Council to Homeless Persons' *The Age* (29 May 2015).

4. Reforming Victoria's tenancy laws and practices

The 62 clients of Homeless Law's Women's Homelessness Prevention Project were living in the following types of housing:

- 31 in private rental (50%);
- 19 in public housing (31%);
- Seven in community housing (11%);
- Four in transitional housing (6%); and
- One in private rooming house accommodation (2%).

In Victoria, the *Residential Tenancies Act 1997* (Vic) (**Residential Tenancies Act**) is the main piece of legislation governing residential tenancy agreements, along with residency agreements in rooming houses and caravan parks. This section of the submission sets out three key ways in which the Residential Tenancies Act could be amended, or more effectively used, to support victims of violence to stay in their homes where possible, or to access alternative safe housing. It focusses on:

- Avoiding housing debts for victims of violence where damage was caused by the perpetrator.
- Preventing victims of violence from being on 'black lists' or otherwise precluded from accessing safe housing.
- Improving the use of the 'creation' provisions under the Residential Tenancies Act so that a victim of violence can enter into a new tenancy agreement after the exclusion of a violent partner.

If implemented, these modest changes could have significant potential to reduce evictions into homelessness and barriers to obtaining alternative safe accommodation.

4.1 Avoiding housing debts related to family violence

Victims of family violence living in rental accommodation, either public or private, are often burdened with compensation claims and debts that limit their ability to obtain safe alternative housing.

In Homeless Law's experience, these compensation claims are most commonly brought under the Residential Tenancies Act against victims of family violence in one of the following two ways:

- A landlord claims compensation against all co-tenants in relation to damage caused by a single co-tenant who is the perpetrator of family violence; and/or
- The landlord claims compensation for rent arrears that accrued after a victim of family violence fled the premises and a perpetrator remained in possession.

These claims are normally made against co-tenants after the tenancy agreement has terminated. Claims for rent arrears are most often made at the same time as the landlord initiates eviction proceedings due to rent arrears in order to formally end the tenancy.⁴²

These compensation claims or debts can prevent people being allocated a public housing property,⁴³ and block people from obtaining a private rental property because their name appears on the tenancy database or 'black list'.⁴⁴

The following case study provides an example of how such claims arise.

⁴² In this section, 'tenant' also refers to rooming house residents, caravan park residents, and occupants of moveable dwellings under part 4A of the Residential Tenancies Act. This is because apportionment of liability between co-tenants/residents/occupants, applies across all types of accommodation covered by the Residential Tenancies Act. Similarly, there is no reason why the commentary in section 210 of the Annotated Residential Tenancies Act, which refers to relevant provisions of the *Wrongs Act 1958* (Vic), would not also apply to compensation claims brought against rooming house and caravan park residents under section 452 of the Residential Tenancies Act.

⁴³ See, eg. OOH Allocations Manual, chapter 8 'Special Housing Needs' (**OOH Allocations Manual**), which provides that offers of housing cannot be made to applicants with special needs unless outstanding debts are addressed (available here: <http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/policies-guidelines-and-legislation/allocations-manual/special-housing-needs>).

⁴⁴ Issues with residential tenancy database listings are discussed in greater detail below in part 4.2.

Elaine (part 1): compensation claim against co-tenants in the context of family violence

Elaine is a 21 year old woman with an 11 month old baby. In late 2013 she entered a 12 month fixed term lease with her ex-partner who is the father of her child. Elaine's ex-partner used family violence against her, which escalated when he became addicted to ice and his behaviour became increasingly erratic.

There were numerous instances where Elaine was forced to call police to the property due to threatening and abusive behaviour, and in some of these instances damage was caused at the property. After six months at this premises, a serious incident took place which led Elaine to flee the property back into her family home.

After fleeing, Elaine's ex-partner remained in the premises but was not contributing any rent. For two months, Elaine paid all of the rent at the property to prevent him being evicted. Eventually, Elaine obtained an IVO against her ex-partner as he continued to harass her after she had fled the premises.

When Elaine couldn't afford to pay the rent anymore, the landlord applied to VCAT for a possession order and compensation of \$8000 for damage caused at the premises, and rent arrears that had accumulated. The claim was made against both Elaine and her ex-partner as co-tenants. Elaine hadn't spoken to her ex-partner in months, and was told by the real estate agent that he had not left a forwarding address and hadn't contacted them.

4.1.1 Relying on apportionment under the Wrongs Act

The default position under the Residential Tenancies Act is that a landlord seeking an award of compensation can make their claim against any or all of the co-tenants to the lease agreement. This is due to the principle of joint and several liability which provides that any one or all of the co-tenants can be pursued for any loss or damage that the landlord suffers as a result of a breach of the tenancy agreement or the Residential Tenancies Act by any one of the co-tenants.

Except in limited circumstances, the Residential Tenancies Act makes no distinction between co-tenants to a lease agreement.

This default position is altered to some extent as a result of Part IVA of the *Wrongs Act 1958* (Vic) (**Wrongs Act**), which provides scope for apportionment of claims between concurrent wrongdoers where the claim relates to economic loss or damage to property arising from a failure to take reasonable care.⁴⁵ Various parts of the commentary in the Annotated Residential Tenancies Act indicate that it is within VCAT's power to apportion liability for compensation between co-tenants in accordance with the Wrongs Act principles,⁴⁶ and VCAT members hearing disputes will generally consider this commentary provided it is brought to their attention.

However, as the provisions of the Wrongs Act and the commentary in the Residential Tenancies Act both make clear, there are limitations and issues with applying the Wrongs Act provisions to assist a victim of family violence against whom a compensation claim has been made. For example:

- A breach of the Residential Tenancies Act that does not involve a failure to take reasonable care, which would ordinarily include failure to pay rent, will not attract the operation of the Wrongs Act provisions. This means a victim of violence who fled a property will ordinarily be liable for subsequent arrears that accrue unless she can show the tenancy was legally varied after she fled.⁴⁷
- The power to apportion responsibility only exists against a 'concurrent wrongdoer', and therefore it may not be possible to apportion responsibility where one co-tenant is the sole wrongdoer and the other co-tenant is a blameless victim of family violence.
- In relation to the above, it is inappropriate for a victim of family violence to be forced to assert that she is a 'concurrent wrongdoer' in order for the beneficial provisions of the Wrongs Act to apply in a compensation claim.

⁴⁵ *Wrongs Act 1958* (Vic) ss 24AF and 24AH.

⁴⁶ See, eg, *Annotated Residential Tenancies Act 1997* (Vic) [3.03] and [210.08].

⁴⁷ See *Annotated Residential Tenancies Act 1997* (Vic) [3.03]. This is not a straightforward process. The commentary in the Annotated Residential Tenancies Act notes that whether or not a co-tenant can give notice of intention to vacate a joint lease is unclear and will depend on the particular facts of each case.

- In Homeless Law's experience, many landlords and real estate agents are unfamiliar with the annotated version of the Residential Tenancies Act which references the relevant Wrongs Act provisions, and are therefore unlikely to settle disputes outside of VCAT where arguments of apportionment are put by a tenant or their advocate.

In practice, it is Homeless Law's experience that compensation claims by landlords are usually made against all co-tenants, and a party must then argue at VCAT for apportionment of liability. The second part of Elaine's case study highlights the issues with this approach, and the way in which some VCAT members look outside the Wrongs Act provisions in order to achieve a fair outcome in apportionable compensation claim matters.

Elaine (part 2): relying on consent rather than apportionment under the Wrongs Act

When Elaine learned of the \$8000 compensation claim that had been made against her, she sought assistance from Homeless Law. Homeless Law obtained a copy of the IVO and other relevant evidence to demonstrate that Elaine had fled the property long before the VCAT possession order was made. They also obtained police reports that supported Elaine's instructions that most of the damage at the property was caused by the other co-tenant.

The Homeless Law lawyers tendered written submissions at the compensation hearing and argued that the member could apportion liability in accordance with the Wrongs Act provisions. Given the commentary in the Residential Tenancies Act and wording of the Wrongs Act provisions, there was uncertainty as to whether the VCAT member would agree to apportion the arrears that had accrued after Elaine fled the property.

After reviewing the written submissions, the member advised that they would prefer to resolve the matter by consent if possible, and urged the landlord to consent to an apportionment of liability so that Elaine was not liable for any aspect of the claim arising after she had fled the premises. The landlord consented to this arrangement, and the original claim of \$8000 was reduced to \$4500, with only \$900 payable by Elaine.

While the consent-based outcome was fair and appropriate in this case, it will not always be possible for a victim of family violence to obtain the landlord's consent to apportion claims in this way. Similarly, if the other co-tenant and perpetrator of family violence is also in attendance at the hearing, it is highly unlikely such a negotiated outcome would have been reached.

This case study highlights the deficiencies in the Wrongs Act provisions and the need for legislative reform to clarify how VCAT members can apportion liability in claims against co-tenants, without requiring the consent of the parties to a dispute.

4.1.2 Amendment to the Residential Tenancies Act

Homeless Law recommends that the Residential Tenancies Act is amended to provide VCAT members with a clearer method for apportioning liability between co-tenants in the context of family violence. The proposed amendment would directly assist victims of family violence in the following ways:

- Ensuring that victims of family violence are not held legally liable for compensation claims and debts that are properly attributable to perpetrators who are or were their co-tenants.
- Reducing one barrier to victims of family violence leaving violent relationships, by removing the fear that they will be legally responsible for damage they didn't cause, and rent arrears that were accrued after they had fled.
- Encouraging landlords and their agents to settle and/or withdraw compensation claims against victims of family violence outside of VCAT, where it can be shown that the victim will not be held liable for that claim at a hearing.

Recommendation 4: Amend the Residential Tenancies Act to allow clear apportionment of liability in compensation claims against tenants who are victims of family violence.

Homeless Law suggests that this might be most easily achieved by amending section 211 of the Residential Tenancies Act, '[m]atters which may be considered by [the] Tribunal' when assessing compensation claims, to provide that the Tribunal may take into account:

211(aa) "In the case of a claim against multiple tenants in respect of the same tenancy agreement, and where the Tribunal is satisfied that some or all of the damage or compensation sought has arisen as a result of family violence perpetrated by one party against another, whether any amount or amounts of the claim should be apportioned between the parties to take into account their respective responsibility for the damage or loss caused ..."

4.2 Addressing 'black listings' for victims of family violence

Victims of family violence are often forced to urgently leave rented properties, sometimes at the insistence of police officers who have attended the property in response to a reported family violence incident. For many, the weeks and months that follow are spent in crisis and refuge accommodation, where there are strict rules against disclosing the address of the premises to any outside parties, and requirements that women contribute financially towards the costs of their accommodation.

The victim's departure will often result in the tenancy being terminated via a legal process with a VCAT order,⁴⁸ for example because of unpaid rent, and the victim will be left with housing related debts. This can also mean the victim's personal details are recorded for three years on a database that future prospective landlords and real estate agents may rely on when assessing their applications for private rental properties.

These database listings can create a significant barrier for victims of family violence who are trying to access the private rental market, including those seeking to transfer out of crisis and refuge accommodation. According to safe steps Family Violence Response Centre, the service responsible for referrals to Victorian women's refuges:

"The period of time women and children are staying in refuge and emergency accommodation is steadily increasing. While refuges are funded for an accommodation period of 6 to 12 weeks by DHHS, women and children are regularly forced to stay for many months beyond this period due to lack of accommodation options. Sometimes they are forced to stay for more than 8 months if they lack income."

Residential tenancy database listings for victims of family violence are one of multiple factors contributing to these delays in transitioning women out of crisis and refuge accommodation.

4.2.1 Gaps in the regulation of 'black lists' for family violence victims

Part 10A of the Residential Tenancies Act provides a legislative framework for maintenance of residential tenancy databases by private companies, referred to in the legislation as 'database operators'. These provisions enable landlords and database operators to make listings on databases, often referred to as 'black lists' because landlords and real estate agents generally avoid leasing rented premises to tenants with a listing on the database.

A listing can be made where one or more tenants have breached certain provisions of the Residential Tenancies Act and the landlord is either owed more than the bond will cover, or VCAT has made a possession order in respect of the rented premises.⁴⁹ The listings themselves can include tenants' personal details as well as opinions about them, and the content of these listings can then be released to third parties, usually for a fee. Relevantly for victims of family violence, the types of breach that can result in a database listing include failure to pay rent, and damage to premises,⁵⁰ both of which are often the result of a perpetrator's actions (see part 4.1 above).

⁴⁸ VCAT members can make orders of possession pursuant *Residential Tenancies Act 1997* (Vic) s 330. Once a possession order has been made, a landlord can apply to VCAT for a warrant of possession to physically take back possession of the premises.

⁴⁹ *Residential Tenancies Act 1997* (Vic) s 439E sets out the relevant breaches that may allow a landlord or database operator to list a tenant's details on a residential tenancy database.

⁵⁰ *Residential Tenancies Act 1997* (Vic) s 439E.

Issues with notification

Prior to listing personal information on the database, a landlord or database operator must provide the tenant with 14 days notice in order for them to object to the information being listed if it is inaccurate, incomplete or ambiguous. However, for the reasons set out below, the notification requirement is unlikely to apply to many victims of family violence who have fled the premises into crisis or refuge accommodation:

- A landlord or database operator is not required to notify a tenant about a potential listing and their right to object if that tenant cannot be reasonably located, or the information contained in the listing is otherwise available on a publicly available order of VCAT;⁵¹ and
- Victims of family violence who flee to crisis and refuge accommodation are prohibited from revealing their address, which means they cannot be reasonably located, and are also unlikely to become aware of or attend a compensation or possession order hearing at VCAT.

For these reasons, many victims of family violence will not have the opportunity to object, and may not find out about a listing until they subsequently apply for a new private rental property.⁵²

Issues with applications to remove a listing

Where a tenant learns that information about them is listed on a database, and they believe this information is inaccurate, incomplete or ambiguous, they may be able to apply to the VCAT to have the listing removed or amended.

However, under the current legislative framework, it may be difficult for a victim of family violence to successfully apply to VCAT for the removal of a database listing where the relevant breach of the Residential Tenancies Act was committed by a previous co-tenant and perpetrator of family violence. This is because:

- Most landlords and their agents seek VCAT orders in relation to compensation owed by tenants after the termination of a tenancy agreement, as well as a possession order in cases where rent arrears have accrued and the landlord seeks a formal order ending the tenancy;
- The default position in the Residential Tenancies Act is that co-tenants are jointly and severally liable for each other's actions, and in the absence of argument and other evidence that liability should be apportioned, most VCAT orders for compensation or possession will not specify which co-tenant is in breach;
- If a co-tenant who is the victim of family violence cannot be reasonably located prior to a database listing, then the only grounds upon which they can subsequently apply to the VCAT for removal or amendment of a listing is if they can show the information is inaccurate, incomplete or ambiguous;⁵³ and
- It will be difficult to argue that the information listed is inaccurate, incomplete or ambiguous where there is a VCAT order for compensation or possession that lists the tenant's name along with information about the breach and/or amount owed.

In practice, a victim of family violence seeking to show that a listing is inaccurate, ambiguous or incomplete when a previous VCAT order has been made may need to first apply for review of the VCAT order,⁵⁴ and successfully argue that liability for the relevant breach should be appropriately apportioned between the parties.

This places a significant burden on the victim, and depending on how long ago the VCAT order was made, her application for review may not be accepted.⁵⁵ Even if it is accepted, there are currently significant limitations to the current regime for apportionment of liability as outlined above in part 4.1.

4.2.1 Amendment to the Residential Tenancies Act

Homeless Law recommends that the above issues could be resolved by amending the Residential Tenancies Act. The proposed amendments would assist victims of family violence who have previously fled rented premises to re-enter the private rental market independently. This includes women who are living in crisis and refuge accommodation and applying for private rental accommodation. In this regard, it is hoped the amendments will also help reduce the length of time some women are forced to remain in crisis and refuge accommodation due to negative tenancy database listings.

⁵¹ *Residential Tenancies Act 1997* (Vic) ss 439F(4)–(5).

⁵² *Residential Tenancies Act 1997* (Vic) ss 439D–E require landlords to advise tenants when a residential tenancy database is used to assess prospective tenancy applications, and to advise tenants when a listing appears on the relevant database search.

⁵³ *Residential Tenancies Act 1997* (Vic) s 439L.

⁵⁴ *Victorian Civil and Administrative Tribunal Act 1996* (Vic) s 120 provides that a party can seek review of an order made at a hearing where they were not present or represented.

⁵⁵ See, eg, *Victorian Civil and Administrative Tribunal Rules 2008* (Vic) r 4.19, which generally requires applications to re-open an order to be lodged within 14 days of a party becoming aware of the order.

Recommendation 5: Amend the Residential Tenancies Act to allow victims of family violence to prevent their personal details from being listed on residential tenancy databases and to remove existing listings where the relevant breach or damage occurred in the context of family violence.

Homeless Law recommends that the Residential Tenancies Act is amended as follows:

- Inserting into section 439F a stand-alone basis for a tenant to object to their personal information being listed where the relevant Residential Tenancies Act breach occurred in the context of family violence and can be attributed to the perpetrator of that violence.
- Inserting into section 439L a stand-alone basis for a tenant to apply to VCAT for the removal of their personal information from a database where it can be shown that the relevant Residential Tenancies Act breach occurred in the context of family violence and is attributable to the perpetrator of that violence.
- Inserting into section 439M a stand-alone power for VCAT to remove and amend listings where it is satisfied that the relevant breach is attributable to a perpetrator of family violence.

4.3 'Creating' new tenancies in victims' names

In 2008, the *Family Violence Protection Act 2008* (Vic) (**Family Violence Protection Act**) introduced section 233A to the Residential Tenancies Act. Section 233A is an important provision for victims of family violence, as it provides that where a tenant is excluded from the premises pursuant to a final Family Violence Intervention Order (**FVIVO**) (or a Personal Safety Intervention Order (**PSIVO**)), the protected person under that IVO can apply to VCAT for an order terminating the existing tenancy agreement and requiring the landlord to enter a new tenancy agreement with the protected person and any other persons.

When hearing a section 233A application, section 233B of the Residential Tenancies Act gives VCAT members a discretion to make these orders where they can be satisfied of five key criteria, including that the hardship the protected person would suffer if the order was not made outweighs the hardship of the landlord if the order was made.⁵⁶

As the relevant part of the second reading speech for the introduction of the Family Violence Protection Act notes:

*"The bill makes a range of changes to the Residential Tenancies Act 1997 to ensure that there are mechanisms to align residential tenancies with the family violence intervention order system. These amendments [including section 233A of the Residential Tenancies Act] may enable victims to remain in their home where they wish to and therefore reduce the risk of homelessness, poverty and social dislocation following family violence."*⁵⁷

Despite the laudable intention of section 233A, the very limited use of this provision outlined below indicates that additional measures are needed to ensure its effectiveness.

4.3.1 Factors limiting the use of section 233A of the Residential Tenancies Act

In practice, section 233A of the Residential Tenancies Act is very rarely used by tenants.

According to information provided by VCAT on Homeless Law's request, in 2013–14, a total of 22 section 233A creation applications were lodged, only 13 of which proceeded to a final hearing and determination. Given that in the same period, 35,135 family violence intervention orders were finalised by the Magistrates' Court,⁵⁸ the VCAT figures represent a concerning low level of uptake.

The underutilisation of section 233A may be due to a combination of the following factors:

⁵⁶ *Residential Tenancies Act 1997* (Vic) s 233B(1)(c).

⁵⁷ Second Reading Speech for the introduction of the *Family Violence Protection Act 2008* (Vic) *Hansard* 2649.

⁵⁸ Magistrates' Court of Victoria, *Annual Report 2013–2014* (2014) 68. Note, however, that this figure does not specify how many of these intervention orders included conditions excluding respondents from a rental property.

- The requirement under section 233A that an applicant has obtained a final IVO, by which time the tenancy may have terminated for other reasons, such as the accrual of rent arrears;
- Significant delays within the Magistrates' Court system for listing and finalisation of contested IVO applications;
- A lack of awareness amongst protected persons and relevant support workers, including members of Victoria Police, about the ability to apply for a new tenancy agreement pursuant to section 233A, and the way this provision operates; and
- The lack of any formal notification requirement for Magistrates to ensure that protected persons under interim and final IVOs are aware of their right to make an application under section 233A once a final IVO has been made.

In relation to the first point above, it is relevant that of the 20 WHPP clients who reported having experienced family violence in the past six months, 13 of these women (65%) were at risk of eviction for rent arrears. Although not all of these women had obtained interim or final IVOs excluding a perpetrator, this figure illustrates how quickly the risk of eviction for rent arrears can arise for women who have recently experienced family violence.

There may also be some women who have identified other people who could move into the rented premises to replace an excluded perpetrator but, in the absence of a final IVO, are unable to rely on section 233A to formalise any alteration to the tenancy. This delay could result in the opportunity being lost, given that some individuals will be reluctant to move into shared accommodation without their names being formally added to a lease agreement.

For public housing tenants, the delays in obtaining a final IVO are less likely to limit their ability to use section 233A of the Residential Tenancies Act. This is because the Office of Housing Rental Rebate Policy will ordinarily reduce the rent payable by a victim once a perpetrator has been removed, by taking into account the overall reduction in household income that has occurred.

This reduces the risk that the remaining protected person will fall into arrears while the IVO process is finalised, at which point they might then decide lodge an application pursuant to section 233A for creation of a new tenancy agreement. Without significant financial support, tenants in private rental accommodation will not be afforded the same opportunity.

The following case study illustrates how a recent client of Homeless Law's Women's Homelessness Prevention Project who was living in public housing was able to use section 233A to alter her tenancy agreement to remove the name of an excluded perpetrator and move on with rebuilding her life after the violent relationship.

Jacinta: 'creating' a sole tenancy after perpetrator excluded

Jacinta had been living as the sole tenant in a public housing property for several years before her ex-partner was also added to the lease in 2011. As a result of the Office of Housing (OOH) Rental Rebate Policy, the increase in household income when this ex-partner moved in led to an increase in the rent being charged at the premises.

After an initial period of stability, Jacinta's ex-partner began using violence against her. As the violence escalated, Jacinta sought assistance and was able to obtain an interim Family Violence Intervention Order (FVIVO) excluding her ex-partner from the property. Jacinta's ex-partner was disputing the FVIVO, and insisting he wanted to return to the premises where he was a tenant. During the time he was excluded, Jacinta's ex-partner was not contributing to the rent, and this led to rent arrears at the premises accruing.

Jacinta sought assistance from Homeless Law as she was very concerned about the arrears that were accruing, and the risk of losing her housing. Homeless Law wrote to the OOH and referred to their arrears policy that provides a discretion not to initiate legal proceedings for arrears where a household is affected by family violence. The lawyers also foreshadowed an application under section 233A for creation of a new tenancy agreement once the IVO proceedings had been finalised.

In late 2014, Jacinta obtained a final IVO in relation to her ex-partner and co-tenant. The lawyers were then able to assist her to make a section 233A application which was unopposed by the OOH. This resulted in a new tenancy agreement being created solely in her name, as well as the clearing of all arrears that had arisen since the exclusion of her ex-partner. Jacinta has been able to move on with her life and is contemplating a return to study in 2016.

4.3.2 Increasing the use of section 233A

The current low level of utilisation of section 233A means that victims of family violence are not getting access to a key legislative mechanism that was introduced to sustain tenancies and prevent victims entering homelessness as a result of family violence. The fact that just 22 of these applications were made in the last financial year – in the face of over 35,000 family violence intervention orders – is a clear indication that there are gaps in the provision and its implementation.

Recommendation 6: Implement measures to increase the use of section 233A creation applications by victims of family violence so they can sustain their tenancies after experiencing family violence.

Homeless Law recommends that implementation of the following measures would help address barriers to the effective use of section 233A of the Residential Tenancies Act by victims of family violence:

- Increasing private rental brokerage funding to help sustain the tenancies of protected persons under interim IVOs who are awaiting a final IVO before seeking to rely on section 233A to create a new tenancy agreement.
- Establishing a working group comprised of relevant Magistrates' Court staff, Victoria Police, Victoria Legal Aid, and legal services acting for protected persons in IVO applications to identify ways in which finalisation of IVO applications might be expedited in cases where the protected person is seeking to make an application pursuant to section 233A.
- Investing in further education and training for family violence support workers, Victoria Police and other support staff coming into contact with protected persons regarding the existence and operation of section 233A applications to promote broader awareness of this potential option for protected persons who choose to stay in their properties.
- Implementing a practice direction requiring all Magistrates hearing IVO applications with exclusion clauses to inquire as early as possible about whether the applicant and respondent are in shared rental accommodation and, if so, ensure the protected person is notified of the right to apply for a new tenancy agreement and provided with information about this process as well as the details of relevant agencies who may be able to assist.

5. Appropriate, transparent family violence policies

Social housing in Victoria is comprised of:

- Approximately 65,000 public housing dwellings accommodating approximately 127,000 tenants.
- Approximately 18,000 properties owned or managed by community housing, including nearly 4,000 transitional housing properties, together housing approximately 20,000 tenants.⁵⁹

The Department of Health and Human Services describes public and community housing as follows:

"Public housing is long-term rental housing that we manage. It is for people on low incomes that are most in need, especially those who have recently experienced homelessness or have other special needs".⁶⁰

"Community housing is rental housing managed by not-for-profit organisations for people on low incomes or with special needs. These organisations are registered and regulated by the state government and work closely with us. Some specialise in helping specific groups, like people with a disability, women, singles and older people".⁶¹

⁵⁹ See Making Social Housing Work, above n 40.

⁶⁰ Department of Health and Human Services, *Housing.vic.gov.au: Public Housing (DHHS Website)* (available at: <http://www.housing.vic.gov.au/public-housing>).

⁶¹ Department of Health and Human Services, *Housing.vic.gov.au: Community Housing* (available at: <http://www.housing.vic.gov.au/community-housing>).

Of the WHPP's 62 clients assisted in its first 12 months:

- 31% (19) were living in public housing;
- 11% (seven) were living in community housing; and
- 6% (four) were living in transitional housing.

Of these women, four were in custody when their initial appointment with the WHPP took place (by phone), three of whom had public housing tenancies and one of whom was living in community housing.

In addition to the rights and obligations of all tenants contained in the Residential Tenancies Act, public housing is also regulated by Office of Housing (OOH) policies. These policies provide important clarification and direction to Office of Housing staff and tenants in relation to a wide range of issues that can arise in public housing tenancies and the public housing system more generally.

There are a number of OOH policies that specifically refer to family violence and provide additional guidance to OOH staff when dealing with victims and perpetrators in relation to their housing. There are, however, also gaps in existing OOH policies where further clarification regarding appropriate responses to family violence is required.

This section makes recommendations to improve responses by public and community housing providers that reduce debts and minimise the risk of homelessness for victims of family violence. These include:

- Allowing tenants in public and community housing to be 'temporarily absent' when escaping family violence;
- Having and applying clear policies that appropriately recognise that victims of violence should not be financially or legally liable for damage or debts arising as a result of family violence;⁶² and
- Making policies setting out the rights and obligations of public and community housing tenants, including in relation to family violence, publicly available and easily accessible for tenants and advocates.

5.1 Allowing 'temporary absence' for victims of family violence

5.1.1 Current policies regarding temporary absence

The OOH Temporary Absence Policy aims to address instances where, for a variety of reasons, public housing tenants may need to be absent from the property for an extended period of time.⁶³ The policy indicates that the need for tenants to be absent from the property is balanced against the Director's aim of ensuring that housing stock is effectively and efficiently utilised.

The OOH Temporary Absence Policy takes into account a range of different situations and household make-ups. A high level overview of the policy is as follows:

- A tenant (or resident) who will be absent from the property for an extended period can apply for a reduced rent amount of \$15 per week during the period of absence;⁶⁴
- In order to be approved, the tenant must be able to show that the absence is due to 'special circumstances', which includes rehabilitation, respite care, or incarceration;
- If the tenant can demonstrate one of these special circumstances, the temporary absence policy may be applied in their favour for a maximum period six months, after which time the rebated rent of \$15 will be cancelled unless exceptional circumstances for an extension can be shown; and
- Where a household is comprised of two or more people, and not all persons will be absent from the property under the OOH Temporary Absence Policy, the remaining members will need to complete a new rental rebate application to determine the proper amount of rent they should pay to the OOH during the other party's period of absence.

⁶² Until recently, all OOH policies were publicly available on the DHHS website. However, DHHS has commenced a process of review that involves removal of these policies and replacement with shorter policy statements. Homeless Law understands that there are now two sets of policy documents: (1) short 'policy statements' that are publicly available; and (2) more detailed 'operational guidelines', which are only for internal use. This issue is addressed in more detail below.

⁶³ See OOH Temporary Absence Policy, chapter 8 of the 'Tenancy Management Manual' (available: <http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/policies-guidelines-and-legislation/tenancy-management-manual/temporary-absence>).

⁶⁴ Residents are persons living in public housing who are not tenants on a lease agreement, but whose income is included in the assessment of household income. Residents are also eligible to apply under the temporary absence policy, but will have more limited rights in relation to applications for transfer than listed tenants.

The below case study shows the way in which the Temporary Absence Policy can allow tenants to sustain their housing and avoid exiting prison, respite care or rehabilitation into homelessness.

Jillian: temporary absence policy allows single mother to retain her housing

Jillian is a 35 year old woman with a public housing tenancy who has experienced family violence throughout her life, including recent physical violence at the hands of her teenage child's father. She was incarcerated in late 2014 and is currently awaiting trial. Jillian's teenage child continued living at the public housing property under the care of a family friend who was paying rent to remain at the property.

Jillian was initially assisted by a social worker at prison to submit an application for temporary absence. This was approved and resulted in her weekly rent being reduced to \$15. However, after this six month period expired, Jillian's rent automatically reverted to the market amount, which led to significant arrears rapidly accruing at the property. In addition, the family friend who had moved in to care for Jillian's child had missed several rent payments and for various reasons was not engaging with the Office of Housing (OOH).

Jillian was referred to Homeless Law for a phone appointment after she received notification that the OOH had obtained a possession order at VCAT due to rent arrears, and had also lodged a separate application for compensation in relation to damage that had occurred at the property whilst she was incarcerated. Jillian had learned of the VCAT hearing the day before, and hadn't been able to submit a video-link application in time. Homeless Law assisted Jillian to seek review of the VCAT hearing, which was then adjourned in order for an application for extension of the temporary absence period to be submitted and reviewed. In the meantime, Jillian's family friend arranged a direct debit payment system to ensure he didn't miss any further rent payments, and the WHPP social worker obtained financial assistance for Jillian's child to get clothing and IT equipment for school.

The temporary absence extension was subsequently approved and backdated, and Jillian's tenancy is now back on track with a small amount of arrears being repaid by the family friend. In addition, the Homeless Law lawyers negotiated with OOH to reduce the compensation claim from \$800 to \$250, as it could not be shown that the damage at the property was Jillian or her son's fault.

Homeless Law notes that community housing providers do not generally have policies allowing tenants to be temporarily absent from their properties. As the below case study shows, this can place vulnerable tenants at risk of homelessness.

Maureen: lack of temporary absence policy puts victim of violence at risk of homelessness after being imprisoned for unpaid fines

Maureen is an older woman who was living in a community housing property with her two children and a grandchild when she was incarcerated due to outstanding infringements.

As a result of her incarceration, Maureen was forced to stop working her two part-time cleaning jobs. Unlike in public housing, community housing providers do not have a formal temporary absence policy, so Maureen was not able to make an application for reduced rent during her period of incarceration.

Maureen's incarceration led to arrears accruing at her property and the community housing provider took steps to obtain a VCAT possession order to end the tenancy. Maureen had been unaware of this VCAT hearing. There were also formal Child Protection Services agreements in place that meant Maureen's grandchild would be placed in state care if Maureen's housing was lost.

Maureen was referred to Homeless Law by the prison support worker as she had learned that the housing provider recently purchased a warrant of possession and was taking steps to imminently remove the family from the premises. The Homeless Law lawyers took urgent steps to apply for a review of the possession order hearing, and entered urgent negotiations with the community housing provider to accept an arrears repayment agreement with Maureen to avoid her eviction from the premises.

During these negotiations, Homeless Law lawyers raised the community housing provider's responsibility as a functional public authority under the *Charter of Human Rights and Responsibilities Act 2006* (Vic), and submitted that eviction of Maureen in these circumstances was a disproportionate limitation of the Charter rights to be free from arbitrary interference with home or privacy and the protection of families and children.

These negotiations were successful and at the subsequent VCAT review hearing an order by consent was made for Maureen to repay the arrears at an affordable rate.

5.1.2 Gaps in the current policies: don't exist or don't apply to victims leaving violent relationships

The current OOH Temporary Absence Policy fails to capture situations where a tenant or resident who is a victim of family violence is forced to live in women's refuge or family violence emergency accommodation after fleeing a premises to escape a perpetrator.

In practice, this means that a victim of family violence who urgently flees their public housing property into crisis or refuge accommodation will not be able to apply for a reduced rent amount for the period of absence. This is particularly problematic given that women who enter crisis and refuge accommodation are required to make financial contributions towards this accommodation, and are unlikely to be able to afford the additional cost of their ordinary public housing rent.

Where the victim who has fled is a sole tenant and rent payments to the OOH cease, it is likely that the OOH will commence legal proceedings to recover possession of the premises due to rent arrears. While the OOH Arrears Policy indicates that eviction proceedings may not be pursued where a household is affected by family violence,⁶⁵ this may not be apparent to an OOH staff member, and the tenant may not be in a position to inform them of this while living in emergency accommodation.

Homeless Law has also assisted clients who have fled public housing due to violence, and shortly afterwards the OOH has taken steps to terminate the tenancy agreement on the basis of abandonment, which is a much swifter process of termination.⁶⁶

Notably, the OOH policy on abandonment does not contain the same warning about considering whether a household is affected by family violence before taking legal action to end the tenancy.⁶⁷ This further decreases a victim's opportunity to notify the OOH about the circumstances of her fleeing the premises before the tenancy is terminated.

⁶⁵ See OOH Tenancy Management Manual, chapter 1 'Arrears' at point 1.1.18 (available here: <http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/policies-guidelines-and-legislation/tenancy-management-manual/1-arrears>).

⁶⁶ An application for possession due to abandonment of the premises can be made directly to the VCAT pursuant to the *Residential Tenancies Act 1997* (Vic) s 241. Unlike rent arrears eviction proceedings, there is no requirement that a notice to vacate be served first.

⁶⁷ See OOH Tenancy Management Manual, chapter 12 'Terminating tenancies and deceased estates' (available here: <http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/policies-guidelines-and-legislation/tenancy-management-manual/terminating-tenancies-and-deceased-estates>).

The situation may play out differently where the perpetrator of the violence is also a co-tenant at the public housing premises and remains in possession after the victim has fled. In these cases, the action the OOH takes in relation to the tenancy will depend on a variety of factors, including whether the perpetrator or another party informs them of the reason the victim is absent.

As noted above, community housing providers do not generally have temporary absence policies, so arrears quickly accrue when women who have experienced violence leave their homes while they spend time in refuges, crisis accommodation, rehabilitation or prison.

The current gaps in approaches to temporary absences heighten the risk that tenants who leave their homes to escape violence will lose their housing.

Both public and community housing should recognise the importance of victims of violence being able to maintain their tenancies after fleeing a violent relationship. While in crisis or refuge accommodation, the victim can engage with supports, the perpetrator may be excluded from the property, and the victim might be in a position to safely return to the property if the tenancy can be sustained. If the tenancy is terminated for arrears or abandonment while the victim is in crisis accommodation, a refuge, sleeping in her car or couch surfing, there is a high likelihood the victim will have commenced a cycle of homelessness as a result of leaving the violent relationship.

5.1.3 Extending temporary absence policies to recognise the effects of family violence

Homeless Law recommends amendments to the OOH Temporary Absence Policy that would allow victims who have fled premises due to family violence to submit applications for temporary absence and, while paying reduced rent, seek assistance from relevant support workers to help decide whether to return to the premises or request an urgent transfer to a new public housing property.

Homeless Law recommends that part 8.3 of the OOH Temporary Absence Policy should be amended by inserting an additional category of 'special circumstances' (proposed amendment in bold):

8.3.2 Reasons for temporary absence

The Department acknowledges that from time to time a household member may need to be temporarily absent from their property.

Additionally, there are special circumstances where it is accepted that a genuine need to be absent exists beyond the household's control. In these circumstances, they may be eligible to pay reduced rent.

Note: Temporarily absent tenants retain all tenancy rights and responsibilities.

8.3.3 Reduced rent where special circumstances exist

In the following 'special circumstances', the Department will charge a reduced rent of \$15 per week:

- *Nursing home: A sole tenant is temporarily residing in a nursing home and is required to pay accommodation costs*
- *Rehabilitation: A sole tenant is required to undergo psychiatric, physical, drug or alcohol rehabilitation treatment that necessitates living away from home for a period of time and is required to pay accommodation costs*
- *Respite care: A sole tenant has gone in to respite care and is required to pay accommodation costs*
- *Incarceration: A sole tenant is serving a prison sentence or is on remand*
- ***Family violence: A sole tenant is temporarily residing in women's refuge or family violence emergency accommodation, or experiencing homelessness (eg couch surfing or sleeping in their car) as a result of family violence.***

Homeless Law also recommends that temporary absence policies (with associated financial support to supplement the reduced rent) are adopted by community housing providers to enable victims of violence to sustain their tenancies during periods of absence related to health, incarceration or family violence.

Recommendation 7: Amend public and community housing policies to allow tenants to be 'temporarily absent' while in women's refuge or family violence emergency accommodation, or experiencing homelessness (eg couch surfing or sleeping in their car) as a result of family violence.

By reducing the risk that a tenancy could be terminated for arrears directly after a victim has fled, these policies will more effectively promote the ability of public and community housing tenants to maintain safe housing and prevent them entering into homelessness.

5.2 Clear policies on liability for damage caused by perpetrators

Homeless Law reiterates the importance of having and applying clear policies that appropriately recognise that victims of violence should not be financially or legally liable for damage or debts arising as a result of family violence.

5.2.1 Impact of debts for public housing tenants

In addition to the financial stress that repayment of a debt can cause victims of family violence in public housing, tenants with outstanding debts to the OOH can also experience delays in housing allocation or transfers unless existing debts can be repaid upfront or via a repayment agreement.⁶⁸ This barrier exists regardless of whether the debt has been legally pursued at VCAT or is only recorded on the OOH's internal system.

For this reason, it is particularly important that the Department of Health and Human Services establishes clear policies that indicate when the OOH will exercise discretion not to pursue compensation claims against public housing tenants. Equally, it is crucial that relevant OOH staff are aware of these policies and able to implement them in a consistent manner. This is particularly relevant in the family violence context, given the difficulties in apportioning liability between co-tenants outlined in part 4.1 above.

The case study below highlights the way in which housing debts arising from family violence can prevent victims accessing safe and secure alternative housing.

Bronwyn: victim of violence at risk because of housing debt

Bronwyn is a 30 year old woman with two children who presented to the Homeless Law's Women's Homelessness Prevention Project in fear for the safety of her children and herself. She had experienced severe family violence from the father of her first child, which resulted in his incarceration.

Since that time, Bronwyn had re-partnered and had another young baby. Due to the violent history of her ex-partner, the Director of Housing had already relocated Bronwyn's family once, however she'd recently learned that the ex-partner was soon due for parole and had learned of her new address. A further request for relocation had been made to the Director of Housing, but the Director of Housing refused this request on the basis that Bronwyn allegedly had housing debt of \$1600 from her previous property (which she had been removed from due to the risk of violence). The damage which led to this debt had been caused by Bronwyn's ex-partner, and included blood stains on the property's carpet.

It was both frustrating and traumatic for Bronwyn to repeat information about her circumstances during her appointment with the Homeless Law lawyers and social worker. During the interview Bronwyn received significant emotional support from the WHPP social worker. Bronwyn was subsequently represented at the VCAT compensation hearing in relation to the \$1600 debt. The lawyers were able to convince the Director of Housing's representative to waive the debt and undertake to urgently relocate the family. Bronwyn's name has now been added to a victim's register for her increased safety, and lawyers continue to work with her to have her youngest son's surname changed.

5.2.2 Backward step in policies dealing with family violence

Homeless Law regularly assists clients who are facing compensation claims lodged by the Director of Housing, particularly through our Women's Homelessness Prevention Project. In many cases, Homeless Law's clients are victims of family violence and the damage in question has been caused by a violent ex-partner.

⁶⁸ See OOH Allocations Manual, above n 43.

Until recently, the relevant OOH policy manual (*Maintenance Manual, Chapter 5: Tenant Property Damage (TPD Policy)*) contained a clear statement that compensation would not be payable by a tenant where it had arisen as a result of that household being affected by family violence.

The previous TPD Policy stated:

“The Department will not claim costs from a tenant in a range of different circumstances, including where:

- The damage is a result of family violence, as confirmed by the individual’s family violence worker or relevant support worker ...*
- The damage was a result of the criminal actions of a third party and a Police report is provided.”*

Homeless Law has relied on the TPD Policy on multiple occasions when acting for victims of family violence, including a situation where a compensation claim of \$8500 was withdrawn in full as a result of negotiation with reference to the TPD Policy and provision of a copy of the family violence intervention order and police records in relation to the violence at the property. The housing officer had initially been unwilling to reduce the compensation claim, so the matter had proceeded to VCAT and been adjourned for further evidence to be provided.

In February 2015, as a result of a policy review process currently being undertaken by the Department of Health and Human Services, this publicly available TPD Policy was replaced by a shorter ‘policy statement’, which provides only that:

The Department will generally not claim costs from the tenant for property damage if the damage was caused by:

- “The criminal actions of a third party and the tenant could not prevent it from occurring, for example, family violence.”⁶⁹*

As it is currently phrased, victims of violence are likely to think that the policy only applies if the perpetrator has been charged by police, which is an inappropriately narrow application of this exemption.

Homeless Law also understands that the newly developed internal ‘operational guideline’ employs different language, by providing that the DOH will not claim costs for property damage if the damage is the result of an accident that the tenant couldn’t avoid, including where the tenant is a victim of family violence.

Framing the exemption from liability for damage caused by family violence in this way is confusing for both victims of violence and OOH staff. It is unclear whether the policy will apply in instances where family violence has occurred, but no criminal charges have been laid against a perpetrator. In addition, the policy statement’s removal of examples of the types of evidence that might satisfy the OOH that the damage is linked to family violence (i.e. a letter from a relevant support worker) adds to the confusion.

The additional layer of internal inconsistency introduced by the phrasing of the new internal ‘operational guideline’ for OOH staff is also unhelpful, as the language places family violence related damage in the context of ‘accidental’ damage outside the tenant’s control. Unlike the accompanying publicly available ‘policy statement’, this operational guideline does not link this damage to criminal actions of a third party.

For these reasons, the new policy statement and operational guideline seem unlikely to promote a fair and consistent application of this OOH policy, or to encourage victims of family violence to question compensation claims made against them where the damage is the result of family violence but no criminal charges have been laid.

5.2.3 Appropriate exemptions from liability for damage caused by family violence

Homeless Law suggests that it is important to remove the unnecessary confusion about whether the policy can be relied upon by victims where no criminal charges have been laid against a perpetrator in relation to the damage. By including the previous policy’s evidentiary examples, it will also be clearer for victims that the family violence they have experienced is a stand-alone basis for challenging a compensation claim, which will encourage victims to disclose these incidents to the OOH when maintenance or compensation is being claimed.

Amending the new internal operational guideline for OOH staff in the same manner will ensure consistency in application of the policy, and reduce confusion amongst OOH staff members.

⁶⁹ Homeless Law also notes that the original version of this policy statement did not include any reference to family violence or domestic violence, and this was later added after Homeless Law raised its concerns.

Recommendation 8: Amend Office of Housing policies to clearly and appropriately exempt victims of family violence from liability for damage or arrears caused by family violence.

Homeless Law recommends that the wording of both the new policy statement and operational guideline be amended to reflect the previous OOH policy manual wording:

“The Department will not claim costs from a tenant in a range of different circumstances, including where:

- *The damage is a result of family violence, as confirmed by the individual’s family violence worker or relevant support worker ...*
- *The damage was a result of the criminal actions of a third party and a Police report is provided.”*

By reducing the risk of compensation claims and associated debts in the context of family violence, this will also reduce the likelihood of victims of family violence experiencing delays in urgent transfers or allocation of housing, which jeopardise safety and exacerbate hardship.

5.3 Centralised resources for victims of family violence

A number of Office of Housing policy manuals are relevant for victims of family violence. However, there is currently no central resource for victims to assist them to understand the interaction between their experience of family violence, and their rights and obligations as public housing tenants.

The following case study highlights the range of OOH policy issues that can arise for a public housing tenant who has fled their home due to family violence.

Tammy: family violence, damage, abandonment, arrears, and transfer – the maze of public housing policies

Tammy is a public housing tenant who had been living in a property in the Western suburbs for over 10 years. She was recently subjected to physical violence and intimidation by an ex-partner who was not a party to the tenancy agreement, but would often stay at the property overnight. When the violence escalated, Tammy was forced to flee the premises and began couch surfing at a friend's place.

After fleeing, Tammy was assisted by police to apply for a family violence intervention order, but unfortunately the perpetrator could not be served with a copy of this order and was unaware of its existence. As a result Tammy felt too unsafe to return to the property. While couch surfing, Tammy was unable to pay her rent, and one month after she fled the premises, the OOH applied for an abandonment order at the premises.

Tammy was advised by a housing worker to apply for review of the abandonment order, which she did. Tammy then contacted Homeless Law the day before her review hearing, and received legal advice that assisted her in having the abandonment order revoked.

Once the IVO had been served, Tammy returned to the premises to find it had been broken into and badly damaged in her absence. Tammy then received numerous threatening messages from the perpetrator, who frequently drove past her house and lived nearby. The OOH then took legal action in relation to the rent arrears that had accrued, and Tammy was required to attend VCAT to defend a possession order and enter a repayment agreement.

Tammy is now paying rent again and the OOH are requiring that she clean her premises and repair damage. Tammy feels too unsafe to spend significant amounts of time at the premises in order to engage with services to help her do this cleaning. She wants assistance to transfer to a different OOH property, but is concerned she won't be successful because of the damage at her current property and the arrears she is still repaying.

For Tammy and any support workers trying to assist her, the following OOH policies are likely to be relevant:

- Tenancy Management Manual, chapter 12, 'Terminating tenancies and deceased estates' – in relation to the abandonment application;
- Maintenance Manual, chapter 5, 'Policy statement: tenant property damage' – in relation to the damage caused to her premises whilst she was absent;
- Tenancy Management Manual, chapter 1, 'Arrears' – in relation to the VCAT arrears proceedings; and
- Allocations Manual, chapter 8, 'Special Housing Needs' – in relation to eligibility for early housing transfer due to family violence.

This policy framework is extremely difficult to navigate, particularly when you are experiencing the fear, strain and crisis associated with family violence. This could be rectified to some extent by the development of an accessible resource or website that brings together relevant OOH policies that victims of family violence need to be aware of.

Recommendation 9: Create a single, publicly available information resource for public housing tenants, support workers and OOH staff which clearly sets out relevant policies that apply when tenants have experienced family violence (including in relation to arrears, damage to the property, abandonment and applications for urgent transfer).

This resource would assist and empower victims of family violence living in public housing to make better informed decisions in relation to their housing after experiencing family violence. It would also assist both support workers and OOH staff to better understand how OOH policies apply in the context of family violence.

This would potentially contribute to higher quality housing assistance being provided to victims of family violence. It would lead to better, fairer outcomes that support victims of family violence to sustain their public housing, avoid debts for damage they did not cause and reduce barriers to accessing safe alternative housing.

5.4 Clear, transparent, publicly available policies

Until recently, all Office of Housing policies were made available on the Department of Health and Human Services (DHHS) website. This provided public housing tenants and their support workers or advocates with access to relevant policies and, where necessary, made it simpler for tenants and their workers to identify where a policy was not being properly applied.

As mentioned above in part 5.2, DHHS is currently engaged in a process of review that will result in the removal of all existing OOH policies from the website, and the replacement of these policies with shorter 'policy statements' that will be publicly available and 'operational guidelines', which are for internal use only.

5.4.1 The benefits of detailed, publicly available policies

Based on our legal case work with public housing tenants, Homeless Law's firm position is that the OOH's detailed policies should remain publicly available, along with the new policy statements designed to summarise the operation of those policies. This is because:

- While there are benefits in having short, clear, accessible factsheets for tenants, the availability of more detailed policies is critical to workers' ability to understand what the OOH's requirements are.
- This mutual understanding makes it more likely that the OOH's requirements (for example, in relation to the provision of supporting documentation) will be met. It means workers and advocates are better able to assist tenants to understand their rights and responsibilities.
- The policies are key to reaching negotiated outcomes and preventing matters proceeding to VCAT unnecessarily.
- The public availability of the policies or guidelines has an important role to play in encouraging the accountability of decision-makers because workers and advocates can point to particular provisions, which housing officers may not have been aware of or may not have properly applied when making their decision.
- This reduces the risk that inexperience, bias or deteriorated relationships between individual housing officers and tenants will impact on fair decision-making.
- From a human rights perspective, the policies provide practical guidance about how to make decisions that are compatible with section 38 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (including how to consider the tenant's circumstances, hardship, likelihood of homelessness and the needs of any children, and to balance these against the competing obligations of the OOH (for example, their waiting list, the safety of other tenants and their fiscal requirements in relation to payment of rent)).
- Ultimately, this transparency leads to more consistent decision-making, early resolution of matters and better outcomes for vulnerable tenants.

The following case study highlights the way in which Homeless Law and other tenant support services are able to use detailed and publicly available OOH policies to assist public tenants who have experienced family violence.

Cara: proper application of publicly available policy meant debt against victim of family violence not pursued

Cara contacted Homeless Law to advise that the Office of Housing (OOH) had made a compensation claim against her and that there was a VCAT hearing taking place in five days. Cara had been living in the OOH property since November 2013 along with her three children aged five, seven and 16. In early 2014, Cara's eldest son had become violent towards her, forcing Cara to flee the property into crisis accommodation with her other two children. She has been living there since.

Shortly after the incident, police obtained a family violence IVO on Cara's behalf in relation to her eldest son. Cara brought this to the OOH's attention, along with the fact that she had been forced to live in crisis accommodation as she was unsafe at the property. She also submitted an application for urgent property transfer. The tenancy was subsequently terminated and some months later the OOH inspected the premises and lodged a VCAT application for compensation against Cara, alleging damage at the property during her tenancy.

Cara had previously unsuccessfully attempted to negotiate with the relevant housing officer to point out that the damage was caused by her eldest son during the violent incident, and had provided support letters from her family violence worker.

In the lead up to the VCAT hearing the Homeless Law lawyers re-entered negotiations with the OOH and obtained a copy of the relevant IVO from the Magistrates' Court. The Homeless Law lawyer was able to negotiate with the OOH branch manager, and by making specific reference to the detailed policy manual, successfully negotiated a full withdrawal of the OOH's claim. As a result the VCAT hearing was cancelled.

The result obtained in this case may not have been achieved if the detailed OOH policy that identified the type of evidence required to establish that a tenancy was affected by family violence had not been publicly available.

5.4.1 Important mechanism for accountable decision-making

The OOH policy manuals were highly relevant to the recent decision in *Burgess & Anor v Director of Housing & Anor* [2014] VSC 648, a landmark decision in housing and human rights in which the eviction of Ms Burgess – who experienced mental illness, was recovering from substance dependence, had spent a period in prison, and was facing homelessness – and her teenage son, was prevented:

- **Decision to issue a notice to vacate:** In considering procedural fairness, His Honour contemplated the effect of the OOH Tenancy Management Manual (**Manual**). He found that the rule of natural justice applies to decisions to issue a notice to vacate. He further found that the fact that the Manual provided a procedure for making decisions and for obtaining a tenant's response indicated that these parts of the Manual influence the content of the rules of natural justice to be afforded to the tenant before the decision to issue the notice was made.⁷⁰ He concluded that the DOH was bound to consider the existence and content of the Manual when making the decision to issue the notice to vacate and failure to do so constituted a jurisdictional error.
- **Decision to purchase an eviction warrant:** His Honour considered whether the DOH had failed to take account of a matter he was bound to consider when deciding to apply for the warrant. He found that, prior to making the decision to apply for a warrant, the DOH should take into account relevant information that has come to his attention since making the decision to issue the notice to vacate that was not taken into account in making the decision to issue the notice to vacate or in making the decision to apply for possession. Such relevant information would include "information about the personal circumstances of the tenant and his or her household that bore upon any negative consequence to them by reason of the proposed eviction".⁷¹ His Honour commented that his conclusion was strengthened by these provisions in the Manual, including the note: "*The Department will no longer proceed with an eviction where the tenant's personal circumstances have changed to the extent that it is considered no longer proportionate or justifiable to seek possession*".

⁷⁰ *Burgess & Anor v Director of Housing & Anor* [2014] VSC 648 [199].

⁷¹ *Ibid* [228]–[229].

to achieve the policy aim and/or a reasonable alternative option other than eviction now exists to achieve the policy objective. The [Director's delegate] will specifically need to turn his or her mind to whether or not there are changed circumstances".⁷²

Homeless Law welcomed the *Burgess* decision:

"In terms of the obligations on the Director when making its decisions about when to pursue the eviction of its tenants, this judgment is a powerful one. The decision has significant potential to improve the accountability, consistency and fairness of the decision-making of the Director when choosing whether or not to proceed with the eviction of public housing tenants (including by affording tenants natural justice, adhering to the Director's own policies and guidelines and giving proper consideration to tenants' rights under the Charter)".⁷³

The potential for this decision to lead to improved decision-making and better outcomes for vulnerable tenants is, however, significantly reduced if the OOH does not make the policies that guide their decision-making publicly available.

As discussed throughout this section, the existence and application of clear, transparent policies that provide appropriate guidance to OOH staff dealing with victims of family violence is crucial to the OOH's ability to effectively respond to family violence. If staff are given more limited guidance in making their decisions, there is a greater risk that arbitrary or inconsistent decisions will be made and that OOH staff will not be supported to make well-informed decisions about transfers, arrears, evictions or debts relating to family violence. Furthermore, if these detailed policies are not publicly available, tenants and their support workers or advocates will be operating in the dark in terms of providing the OOH with the information the OOH requires to make their decision.

Recommendation 10: The Office of Housing should retain detailed policies providing practical, appropriate guidance to staff and these policies should continue to be publicly available.

This will help improve the quality, accountability and consistency of decision-making by OOH staff, including by providing guidance about appropriate responses to tenants affected by family violence in relation to arrears, abandonment, evictions, transfers or property damage.

6. Family violence related training and education

Generating appropriate, effective responses to family violence requires training and education for courts, tribunals, government and community agencies and private entities who are regularly in contact with victims of family violence.

Homeless Law reiterates that clear, transparent guidelines and policies for decision-makers are essential, but such guidelines or policies must also be accompanied by practice-based training and education.

In particular, the following organisations and agencies could benefit from targeted family violence training:

- Staff and decision-makers within the public, community and private housing sectors; and
- VCAT members and Magistrates, especially in relation to the cross-jurisdictional aspects of the Residential Tenancies Act and the *Family Violence Protection Act 2008* (Vic).

⁷² Ibid [230]–[231].

⁷³ See Lucy Adams, 'Supreme Court of Victoria finds Director of Housing failed to consider human rights when deciding to evict mother and son' *Human Rights Law Centre Bulletin* (December 2014).

6.1 Targeted family violence training for housing staff and landlords

As has been discussed throughout this submission, there are undeniable links between family violence and homelessness. Victims of family violence face multiple risks to their tenancies, including when they are forced to leave their property in response to violence or they fall into arrears because of their reduced household income and financial hardship. These risks are present across public, community and private housing and each of these sectors would benefit from targeted training to help understand family violence and its impacts in the context of housing and homelessness.

Office of Housing staff should be specifically trained in relation to the OOH policies that provide guidance on effective responses to family violence. The following case study provides an example of how more targeted family violence training and education of OOH staff might have prevented an unnecessarily protracted legal dispute that took significant resources to resolve and created ongoing stress for the client.

Erin: lack of awareness of policies dealing with family violence led to protracted, stressful dispute

Erin contacted Homeless Law for assistance as the OOH was claiming compensation of \$8500 against her at VCAT in relation to a previous property she had since transferred out of.

Erin had told the OOH staff that a large portion of the damage being claimed was caused by her adult son who was ultimately charged by police and removed from the premises into custody. Despite this information, the OOH were persisting with the claim.

Homeless Law spoke with OOH about the exception to maintenance claims arising from family violence, but the OOH would not re-assess their claim without further evidence. Over the course of several months, Homeless law obtained this relevant information from police and the Courts, and had to twice attend VCAT with the client to adjourn proceedings whilst the material was being provided.

Once the material had been obtained, Homeless Law wrote to the OOH confirming Erin's instructions that the damage was the result of family violence perpetrated by her son, who she couldn't control.

Two weeks after this letter was sent, the OOH withdrew its claim in full and the VCAT proceedings were discontinued.

As this case study highlights, appropriate training and education in relation to family violence might have prevented the OOH from commencing legal action against a victim of family violence. The OOH staff member would have been better equipped, and supported, to make appropriate decisions in relation to family violence that were consistent with OOH policy.

As discussed in part 3.3 above, there is also significant potential for private landlords and real estate agents to play a role in leading effective responses to family violence, which minimise the risk of homelessness for victims. These groups should be encouraged to undertake training in relation to family violence, including how it might impact on a victim's tenancy and appropriate services to refer to for support.

This training should involve direct perspectives from survivors of family violence to improve these decision-makers' understanding of family violence as explained by people who have personally experienced it.

Recommendation 11: Targeted training for staff in the public, community and private housing sectors regarding family violence and its impacts in a housing and homelessness context.

This will mean that housing decision-makers are better equipped, and supported, to understand family violence and to respond effectively, including with appropriate referrals that minimise the risk of eviction into homelessness. People with a direct experience of family violence should be involved in developing and delivering this training.

6.2 Inter-jurisdictional training for VCAT members and Magistrates

As discussed throughout this submission, there are several key areas of overlap between the Residential Tenancies Act and Family Violence Protection Act. The most obvious examples are specific amendments to the Residential Tenancies Act that were introduced by the Family Violence Protection Act, including:

- Creation of tenancy applications when a perpetrator is excluded from the property – sections 233A–D of the Residential Tenancies Act;
- Applications to reduce fixed term tenancy agreements where the applicant is a protected person under an IVO – section 234(2A) of the Residential Tenancies Act;
- Changing the locks at rented premises that are the subject of an intervention order – section 70A of the Residential Tenancies Act; and
- A specific right of entry to assess damage for the purposes of determining a creation application under section 233A – section 86(1)(g) of the Residential Tenancies Act.

The following general provisions of the Residential Tenancies Act will also often be relevant in matters where family violence and/or IVOs are a factor:

- Apportionment of liability in compensation claims by landlords against co-tenants (see part 4.1 above);
- Requirements for dealing with goods left behind at rented premises after a tenancy is terminated;⁷⁴
- Regulation of residential tenancy databases and the circumstances in which a listing can be made and removed;
- Termination of tenancy agreements, including the discretion to adjourn or dismiss applications for possession on the basis of arrears where financial loss to the landlord can be avoided, and to postpone the purchase of the warrant in recognition of hardship; and
- Distribution of bond at the conclusion of a tenancy agreement, including where one or more co-tenants cannot be located.

These legal issues could arise in either a VCAT hearing relating to a tenancy agreement or in Magistrates' Court hearings relating to family violence and intervention orders. For example:

- A Magistrate hearing an application for an interim IVO where the respondent could not be served and the applicant was afraid that he would return to the premises might inform the applicant of the ability to urgently change the locks without a landlord's prior consent.
- A VCAT member hearing an application for compensation against co-tenants where it becomes clear that one tenant had ceased living at the premises might be prompted to enquire whether this was due to family violence and, if so, whether an IVO could be produced that would allow the member to more fairly apportion liability for damage or rent arrears between the parties.
- A Magistrate determining an intervention order with an exclusion condition, where the applicant and respondent live in shared rental accommodation, might refer the applicant to VCAT or relevant services for advice in relation to a creation application under s 233A of the Residential Tenancies Act.

Targeted training for VCAT members and Magistrates about the overlap in their jurisdictions, as well as family violence more generally, would help to ensure better outcomes for victims of family violence by facilitating appropriate referrals and encouraging victims of family violence to make use of the legal protections available to them.

Recommendation 12: Improve cross-jurisdictional education and training for VCAT members and Magistrates, as well as staff in both jurisdictions, regarding the overlapping provisions in the Residential Tenancies Act and the *Family Violence Protection Act 2008* (Vic).

This will assist decision-makers in both VCAT and the Magistrates' Court to better understand each other's powers and responsibilities, to help minimise unnecessary delays and to encourage victims of family violence to exercise relevant rights in both jurisdictions.

⁷⁴ Residential Tenancies Act 1997 (Vic) part 9 contains the goods left behind provisions.