

Keeping Doors Open

Submission in response to 'Pathways to a Fair and Sustainable Social Housing System' Public Consultation Discussion Paper

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1. Executive summary

1.1 Overview

The PILCH Homeless Persons' Legal Clinic (**HPLC**) welcomes the opportunity to contribute to this public consultation, which will inform Victoria's new Housing Framework that will set a long term plan for social housing in Victoria.

This submission addresses those aspects of the 'Pathways to a Fair and Sustainable Social Housing System' Public Consultation Discussion Paper (**Consultation Paper**) that, as an organisation that provides pro bono legal services to clients who are homeless or at risk of homelessness, the HPLC is well placed to comment on. A summary of the HPLC and the work we undertake is attached at **Annexure A**.

Because we are relying on the evidence derived from our direct casework to inform our submission, the HPLC has not directly addressed the issues of supply and finance identified in 'Social Housing – A Discussion Paper on the Options to Improve the Supply of Quality Housing' (**KPMG Paper**).

In preparing this submission, the HPLC spoke with 10 people who are living in, or waiting to live in, social housing (**HPLC Consultation Participants**). De-identified information about the HPLC Consultation Participants is summarised in **Annexure B**. The insights provided by these 10 people have informed this submission and we are grateful for their contribution.

This submission also contains nine case studies based on the HPLC's legal casework. These examples are part of the evidence-base that informs the suggestions and recommendations put forward by the HPLC in this submission.

In addition to this submission, the HPLC has contributed to the Consultation in the following ways:

- ▶ Working with housing, homelessness and family violence peaks to develop 'Building a Better Housing Future for Victoria – A Joint Statement from the Community Sector in Response to the Housing Framework'; and
- ▶ Collaborating with members of the Tenancy Working Group of the Federation of Community Legal Centres in the preparation of 'Pathways Home: Informing the pathway to fair and sustainable public housing through the lived experiences of vulnerable Victorians'.

This submission should be considered together with these collaborative contributions.

1.2 HPLC 10 key points in response to the Consultation Paper

At a time when '[t]he situation for public housing is critical',¹ it is understandable that policy-makers are focussed on the problems and challenges with public housing. It is important, though, to keep in mind the significant benefits that secure, affordable housing brings to struggling members of our community. The HPLC Consultation Participants remind us of this:

- ▶ 'Public housing has made a difference in my life by giving me a place to live that is more like a home. There is more stability, I don't need to move around as much and it is safer'.²
- ▶ 'It's safe, it's mine and I can afford the rent ... It's such a gift public housing. Public housing has resulted in stability, independence and a sense of achievement. It's mine. It's safe. It's my safe place. I'm not dependent on a bloke'.³

¹ Victorian Auditor-General's Report, *Access to Public Housing* (March 2012) 2011-12:24 vii (**VAGO Public Housing Report**).

² HPLC Consultation Participant 3.

- ▶ 'I've got schizophrenia – I've got to take medication night and day ... My health has been much better now ... Since I have been in stable housing I haven't had to go to hospital again. We are on our own and my nieces and nephews and my brothers come and visit us. I maintain the garden – make sure everything is clean outside. It keeps my mind active and I don't get sick ... So far I haven't been sick for 2–3 years ... Having stable housing has balanced us out. When we didn't have it, we were so stressed out, we didn't know what to do'.⁴

Informed by our direct casework and the insight of consumers, the HPLC makes the following 10 key points in response to the Consultation Paper.

HPLC – 10 KEY POINTS ABOUT SOCIAL HOUSING AND HOMELESSNESS

1. **Secure, affordable housing plays a critical role in improving the lives and wellbeing of vulnerable Victorians** – policy-makers should not focus solely on the challenges and difficulties of public housing.
2. **Transitioning public housing tenants into private rental (through limited tenure or eligibility reviews) presents a risk of eviction into homelessness** – private rental is unaffordable, insecure and difficult to sustain for low income tenants with other vulnerabilities.
3. **For public housing tenants who choose to move into private rental, measures are needed to minimise the risk of homelessness** – these include negotiation of long-term leases, provision of financial and casework support and stronger legislative protections for tenants.
4. **There are risks associated with the transfer of ownership or management of social housing to community housing providers** – if such transfer occurs, reporting and monitoring is needed in relation to affordability and evictions from community housing properties.
5. **Managing the public housing waiting list requires careful decision-making** – while having clear policies is essential, rigid application of policies should be avoided in making allocation decisions.
6. **Stable, affordable social housing improves people's ability to participate in training and employment** – limiting tenure will not act as an incentive to participation.
7. **Integrated service provision is key to sustaining tenancies** – there should be formal requirements on social landlords to link high risk tenants with support services before issues escalate and before eviction action is taken.
8. **Calculating rent at 25% of a public housing household's income is appropriate** – any increase in rent would impose financial hardship on public housing tenants.
9. **There are clear links between eviction from social housing and homelessness** – Victoria's Housing Framework must prioritise homelessness prevention and must make evictions from social housing a last resort.
10. **There are cost savings involved in providing secure, affordable housing to Victorians** – decision-makers must evaluate the costs avoided through the provision of social housing and avoiding evictions into homelessness (including reduced use of emergency accommodation, health and justice systems).

³ HPLC Consultation Participant 7. This woman was a victim of domestic violence and spoke of having to enter into dangerous relationships to keep a roof over her head before she was offered public housing two years ago.

⁴ HPLC Consultation Participant 8.

2. Housing, homelessness and HPLC casework

2.1 Housing and homelessness in Victoria

On census night in 2006 (still the most up-to-date figures available), approximately 20,500 Victorians were homeless,⁵ including approximately 6,800 children and young people.⁶

The most recent data from the Specialist Homelessness Services Collection for the December quarter 2011 shows that Victoria recorded the highest number of clients accessing assistance from specialist homelessness agencies in Australia (33,701 clients, 34% of all clients).⁷

There is a clear link between housing affordability, evictions and homelessness. Of those who sought assistance from specialist homelessness agencies in Victoria in the December quarter 2011:

- ▶ 22.5% listed financial difficulties, including housing affordability stress, as the main reason for needing support; and
- ▶ 36.2% listed accommodation issues, including housing crisis or eviction, as the main reason for needing support.⁸

These figures are not unexpected given the acute shortage of affordable private rental properties for low income earners in Victoria:

- ▶ the current rental vacancy rate in Melbourne is 1.8% and in regional Victoria is 2.7%;⁹
- ▶ there is *no* affordable and appropriate rental housing in Melbourne available for single people earning a minimum wage or living on Newstart, Youth Allowance or Austudy or for couples with two children on Newstart;¹⁰ and
- ▶ a single person on Newstart attempting to rent one-bedroom accommodation:
 - in regional Victoria, will pay between 42% and 61% of their total weekly income on rent;¹¹ and
 - in Melbourne, will pay 99% of their total weekly income on rent.¹²

⁵ Homeless Victorians fall into three broad groups, including those who are:

- sleeping rough (living on the streets);
- living in temporary accommodation, such as crisis accommodation and refuges or staying with friends or relatives; and
- staying in boarding or rooming houses or caravan parks with no secure lease and no private facilities.

See Chris Chamberlain and David MacKenzie, Australian Bureau of Statistics, *Australian Census Analytic Program: Counting the Homeless (2006) (Counting the Homeless Australia)*; Chris Chamberlain and David MacKenzie, Australian Institute of Health and Welfare, *Counting the Homeless 2006: Victoria (2006) (Counting the Homeless Victoria)*.

⁶ Chamberlain and MacKenzie, *Counting the Homeless Australia*, above n 5; Chamberlain and MacKenzie, *Counting the Homeless Victoria*, above n 5; Family and Community Development Committee, *Inquiry into the Adequacy and Future Directions of Public Housing in Victoria* (September 2010) (**2010 Public Housing Report**).

⁷ Australian Institute of Health and Welfare, *Specialist Homelessness Services Collection: December Quarter 2011* (2012) 8.

⁸ Ibid Table Vic7.

⁹ Real Estate Institute of Victoria, *Rental Market Snapshot – June 2012* (available at: <http://www.reiv.com.au/Property-Research/Rental-Data.aspx?0>).

¹⁰ Anglicare Australia, *Anglicare Australia Rental Affordability Snapshot* (2012) 50. For the purpose of this project, 'affordable rental' was defined as a property which requires less than 30% of the household's income. On 14 April 2012, researchers audited 65,350 (15,429 in metropolitan Melbourne) properties listed as available on www.realestate.com to determine whether they were affordable and appropriate for households living on a low income.

¹¹ Tenants Union Victoria, *Private Rental Affordability Bulletin: Regional Victoria* (December Quarter 2011) 2–3.

Housing stress¹³ and the inaccessibility of the private rental market for low income earners in Victoria place social housing under significant pressure and, as at June 2012, there were 36,940 people on the waiting list for a public housing property in Victoria.¹⁴

It is in this context that the Consultation is taking place and in which well considered, evidence-based policy needs to be developed to avoid the crisis in affordable housing translating directly to increased numbers of homeless Victorians.

2.2 The HPLC's casework

The HPLC conducts nine clinics at homelessness and housing services in Victoria, predominantly in the Melbourne CBD. We provide advice and representation to clients who are homeless or at risk of homelessness in relation to tenancy issues (including advocacy to avoid evictions into homelessness); public space offences; social security; credit and debt; and guardianship and administration. Since 2001, the HPLC has assisted over 5000 clients experiencing or at risk of homelessness.

The HPLC provides holistic services to some of the most disadvantaged people in the community. Our recent review of over 400 open files revealed that 24% of our clients present with multiple legal issues and that, of our clients, at least:

- ▶ 24% have severe mental health issues;
- ▶ 23% have drug and alcohol dependence issues; and
- ▶ 17% experience multiple complex needs.¹⁵

Housing and tenancy forms a significant and growing proportion of the HPLC's casework. In the 2007–08 financial year, tenancy formed 10% of the work of the HPLC. This figure rose to 16% in 2008–09 and to 18% in 2009–10. In 2010–11, almost 25% of the HPLC's casework related to tenancy matters.

The main ways in which the HPLC assists clients with tenancy issues are:

- ▶ Providing advice in relation to the rights and obligations as tenants under the *Residential Tenancies Act 1997 (Vic)* (**Residential Tenancies Act**);
- ▶ Negotiating and advocating with social landlords, including in relation to obligations under the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* (**Human Rights Charter**); and
- ▶ Representing clients at VCAT in relation to applications for possession or compliance orders.

A significant proportion of the housing and tenancy casework that the HPLC undertakes is defending eviction action being taken by social landlords. Through this work, we see that advice and representation is critical to supporting high risk tenants to maintain their tenancies and avoid eviction.¹⁶

¹² Tenants Union Victoria, *Private Rental Affordability Bulletin: Capital Cities* (December Quarter 2011) 2.

¹³ Rental stress occurs when households spend more than 30% of their income on rent (it is assessed for low income households i.e. those in the lowest 40% of disposable household incomes). See Productivity Commission, *Report on Government Services 2012* (2012). In Victoria, in 2009–10, 41.4% of low income households were experiencing rental stress (Table GA.5: 'Proportion of low income households in rental stress').

¹⁴ Department of Human Services Victoria, *Public Housing Waiting and Transfer List* (June 2012). The VAGO Public Housing Report, above n 1, 22 recognises that '[i]ncreasing housing stress places pressure on public housing'.

¹⁵ For the purposes of the file review, 'multiple complex needs' referred to more than one of: severe mental health issues, drug and alcohol dependence, cognitive impairment, domestic violence and challenging behaviour. We note that these needs are likely to be under reported as they were only recorded if the client's needs were expressly identified on the file.

¹⁶ Department of Human Services, *Support for High-Risk Tenancies Strategic Project* (2006) 5. The definition of 'high-risk tenancy' by the Project is '[a tenancy] that is at high risk of failure as a result of the negative impact of the tenant's social, health and/or welfare problems on their ability to responsibly manage the tenancy'.

Through our provision of legal services, the HPLC has gained evidence, expertise and insight into the clear links between insecure housing and homelessness. Given the increasingly vulnerable profile of social housing tenants in Victoria, exits from social housing present a strong likelihood of homelessness. This submission presents nine case studies that highlight this risk and we encourage the Government to make sure that the Housing Framework recognises the need to make evictions from social housing an absolute last resort.

3. HPLC participation in the Consultation

In addition to preparing this submission, which is based directly on our casework, the HPLC has contributed to the Consultation by:

- ▶ Working with housing, homelessness and family violence peaks to develop 'Building a Better Housing Future for Victoria – A Joint Statement from the Community Sector in Response to the Housing Framework' (**Joint Statement**);
- ▶ Consulting with 10 people who are living in, or waiting to live in, public housing in Victoria and recording their responses on key issues raised in the 'Pathways to a Fair and Sustainable Social Housing System' – Feedback Form (**Feedback Form**); and
- ▶ Collaborating with members of the Tenancy Working Group of the Federation of Community Legal Centres in the preparation of 'Pathways Home: Informing the pathway to fair and sustainable public housing through the lived experiences of vulnerable Victorians'.

More information about each of these contributions is below.

3.1 Joint Statement from the community sector

The HPLC worked with a coalition of housing, homelessness and family violence peak organisations to develop a Joint Statement supporting accessible, affordable and appropriate homes in Victoria. The Joint Statement was prepared by: Victorian Council of Social Service; Council to Homeless Persons; Tenants Union of Victoria; Community Housing Federation of Victoria; Victorian Public Tenants Association; Domestic Violence Victoria; and the HPLC.

The Joint Statement is a constructive document that sets out five key housing priorities:

- ▶ set strong goals and objectives for the Victorian housing system;
- ▶ finance an ongoing operating contribution for long-term public housing sustainability;
- ▶ develop innovative finance models to expand low-cost housing stock;
- ▶ support policies to promote tenant security and participation; and
- ▶ establish a state-wide affordable housing taskforce.¹⁷

Through taking a positive, consensus-based approach we hope to facilitate engagement across sectors in developing a sensible and evidence-based strategy for housing in the State.

A broad range of interested agencies and individuals are currently in the process of endorsing this document. The Joint Statement will be submitted to Government in late August 2012 with a list of endorsing parties.

3.2 Consultation

The HPLC supported 10 individuals to participate in the Consultation, including by providing assistance with the Feedback Form. De-identified information about the HPLC Consultation Participants is set out in **Annexure B** (including, age, gender, current housing status, source of income and other circumstances).

¹⁷ See Victorian Council of Social Service, Council to Homeless Persons, Tenants Union of Victoria, Community Housing Federation of Victoria, Victorian Public Tenants Association, Domestic Violence Victoria and Public Interest Law Clearing House – Homeless Persons' Legal Clinic, *Building a Better Housing Future for Victoria – A Joint Statement from the Community Sector in Response to the Housing Framework (Joint Statement)* (available at: <http://www.vcross.org.au/what-we-do/housing/housing-statement.html>).

Five males and five females contributed their views to the HPLC submission. These individuals are clients of the HPLC or connected to the host agencies that our clinics operate out of.

Six of these individuals currently live in public housing properties, the longest for 10 years and the shortest for one week. Of the remaining four, all reported being on the public housing waiting list; three were in transitional housing properties and one in crisis accommodation. Five consumers reported suffering from a mental illness; one was a carer for a mentally ill relative. This is reflected in the source of income with the majority of the sample listing Disability Support Pension or a related benefit as their main source of income. Most of the HPLC Consultation Participants were between the ages of 20 and 50 years and many participants reported distressing experiences associated with periods of current or previous homelessness, including residing in poorly managed rooming houses, difficulty managing health issues, living with violent partners and / or cycling through services for lengthy periods of time.

Five participants requested that the HPLC submit the Feedback Form on their behalf, which we have done. During the initial consultations, however, the HPLC identified that the Feedback Form was extremely inaccessible. The questions were difficult to comprehend; people did not know what they were being asked. We understand that DHS has been notified of the problematic nature of aspects of the Consultation¹⁸ and that attempts were made to rectify this through an amended Feedback Form and facilitation of public consultations with public housing residents.

Given the difficulty with the Feedback Form, five participants were happy to speak with the HPLC about issues raised in the Consultation, but did not want to complete and submit their own Feedback Form.

This submission incorporates quotes, comments and insight provided by the HPLC Consultation Participants and we are grateful for their contribution.

3.3 Tenancy Working Group submission

The Federation of Community Legal Centres' Tenancy Working Group (**TWG**) is comprised of community and Victoria Legal Aid lawyers who assist some of our most vulnerable community members with housing related legal issues. The TWG meets every two months to discuss law reform opportunities, new developments in tenancy case work and to exchange knowledge. Each member of the group has played a central role in seeking to assist their clients to avoid homelessness, and therefore to avoid other cyclical sources of hardship often arising from the instability created by homelessness.

In addition to making an individual submission, the HPLC contributed to and endorses the submission of the TWG, 'Pathways Home: Informing the pathway to fair and sustainable public housing through the lived experiences of vulnerable Victorians'.

¹⁸ See, eg. Ian Munro, 'English-Only Housing Survey Locks Out Many', *The Age* (14 May 2012).

4. The role of government in social housing

This section addresses Feedback Form questions 1 and 2(a).

This section addresses the following issues:

- ▶ The future of social housing – tenants and applicants are asking for support to help them access and sustain safe and appropriate housing.
- ▶ Benefits and risks associated with transferring ownership and / or management of social housing to community housing providers – the HPLC discusses risks of eviction and issues of affordability in community housing with reference to three case studies.
- ▶ Managing the waiting list for public housing – we communicate the views of the HPLC Consultation Participants about what can be done to make sure public housing is provided to people with the highest priorities, as well as comment on the new ‘homeless with support’ prioritisation and the need to avoid rigid decision-making when managing allocation of public housing.
- ▶ Integrating services and the need for early referrals and co-operative relationships – a case study highlights the intersection between a range of service providers in the lead up to potential homelessness and the risk of eviction that can arise from siloed decision-making.

4.1 The future of social housing – perspectives of tenants and applicants

The people who are best placed to comment on what the future of social housing should look like are those people who currently live in or are waiting to live in social housing. The views of HPLC Consultation Participants included:

- ▶ ‘It should be safe. You should feel safe in your own home’.¹⁹
- ▶ ‘Build more housing and make sure it is available for people regardless of nationality or disability. Homeless people should have preference’.²⁰
- ▶ ‘More housing for people on low incomes. More options for people who need housing. There shouldn’t be such a big waiting list’.²¹
- ▶ ‘Safe environment – part of the problem is that a lot of the housing have quite rough conditions, which is concerning. If offered a place like this one has to be careful’.²²
- ▶ ‘If there is not enough public housing for people, the government needs to ensure that there are the right kinds of support available for people so they can get through it’.²³
- ▶ ‘The government should mix renters and housing and spread it out. Don’t have all housing together’.²⁴
- ▶ ‘Having more affordable housing for everyone who needs it’.²⁵

¹⁹ HPLC Consultation Participant 2.

²⁰ HPLC Consultation Participant 3.

²¹ HPLC Consultation Participant 4.

²² HPLC Consultation Participant 5.

²³ HPLC Consultation Participant 8.

²⁴ HPLC Consultation Participant 9.

²⁵ HPLC Consultation Participant 10.

The key themes coming out of these comments are safety, access and support – people need to be supported to access and sustain safe and secure housing.

4.2 Community housing providers – benefits and risks

The HPLC recognises that there are benefits to community housing providers managing social housing properties.²⁶ In particular, tenants with multiple and complex needs may be able to access tailored services that meet their support requirements.²⁷ The HPLC has strong and positive relationships with a number of community housing providers – ultimately we share the same objectives of preventing and ending homelessness.

Through its work, however, the HPLC identifies a number of risks associated with community housing providers taking a greater ownership and management role of social housing. In the HPLC's experience, the key risks are:

- ▶ community housing tenancies are arguably less secure than public housing tenancies and there is a higher likelihood of eviction for vulnerable tenants;
- ▶ many community housing providers continue to have less transparent policies and procedures than the OOH, which can lead to lower levels of accountability; and
- ▶ many community housing providers do not have clear affordability guidelines or policies regarding rent adjustment, which can mean vulnerable tenants face arrears and eviction if their circumstances change.

These risks are discussed in more detail below.

Allocation and evictions in community housing

In the HPLC's experience, while vulnerable tenants also frequently face eviction from public housing, there is an increased likelihood of eviction for vulnerable tenants in community housing. Community housing providers are non-government entities that have slightly different imperatives, objectives and priorities to the OOH. This has been recognised by the Victorian Auditor-General in the 2010 'Access to Social Housing' Report (**VAGO Social Housing Report**): 'There is a tension in the housing association model between financial viability and growth objectives and social goals of fairly allocating social housing to those on low incomes'.²⁸

We note that the VAGO Social Housing Report concluded that, while the average rate of evictions from community housing rose from 5.6% to 6% between 2007–08 to 2008–09, tenancies maintained in long-term housing rose from 71% to 78% in the same period, indicating that 'housing associations function effectively to sustain tenancies'.²⁹

Considered differently, these figures indicate that 22% of tenants did not sustain their tenancies in that period. Further, it is not clear who is being sustained in their tenancies and whose tenancies are failing. For

²⁶ See State Government of Victoria, 'Pathways to a Fair and Sustainable Social Housing System' Public Consultation Discussion Paper (April 2012) 10 (**Consultation Paper**).

²⁷ See, eg, HPLC Consultation Participant 1, who stated: 'the properties should be managed by other organisations because they have more skills and better access to services'. Note, however, the case study in part 3.2 of the Submission by the Federation of Community Legal Centres Tenancy Working Group, *Pathways Home: Informing the Pathway to Fair and Sustainable Public Housing through the Lived Experiences of Vulnerable Victorians* (July 2012), which the HPLC endorses, that notes that 'community housing providers are not always able to provide the same level of support to tenants that the Office of Housing can'.

²⁸ Victorian Auditor-General's Report, *Access to Social Housing* (June 2010) 2009-10:30, vii (**VAGO Social Housing Report**).

²⁹ Ibid 24.

example, it would be helpful to interrogate whether segment 1 high needs clients are being evicted while less disadvantaged tenants are maintaining their tenancies.

On this point, the VAGO Social Housing Report notes that, in 2008–09, there were 288 vacancies in housing associations; the Housing and Community Building division in DHS (**HCB**) referred 243 applicants from the public housing waiting list, but only 48 of these applicants (17% of the vacancies) were housed by a housing association.³⁰ The VAGO Social Housing Report noted that this low take up was partly attributable to the fact that some housing associations were setting income requirements that were too high for clients on the public housing waiting list. Also, ‘all of the applicants referred to housing associations in 2008–09 by HCB were from the top of the “wait turn” segment of the list – that is, those without the pronounced disadvantage of special needs profile that characterises segments of the waiting list classified as those with greatest need.’³¹

Accordingly, in relation to housing associations, the HPLC’s concerns are that:

- ▶ Community housing providers are not necessarily allocating properties to the most vulnerable applicants;³² and
- ▶ Of those people who are allocated community housing, almost one-quarter do not sustain their tenancies.

More generally, in relation to both housing associations and housing providers, the HPLC has prepared a snap-shot of 34 tenancy matters opened by the HPLC in the last 12 months. The landlord breakdown is as follows:

- ▶ 12 community housing (including transitional housing);
- ▶ 15 public housing; and
- ▶ eight private rental.³³

In terms of matters where clients were facing eviction, all 12 of the community housing matters involved a Notice to Vacate and / or an application for a Possession Order. Ten of the clients in public housing were facing eviction and six clients were facing eviction from private rental.³⁴

The below case study shows the way in which the tension between financial objectives and social goals for community housing providers can impact on vulnerable tenants.

Young person evicted from community housing into homelessness for arrears

Rachel moved into her community housing property after exiting prison. She had spent over half her life incarcerated.

She struggled with institutionalisation, substance dependence and mental illness. These factors made it difficult for her to keep up with her rent and, when she came to the HPLC,

³⁰ Ibid 22.

³¹ Ibid.

³² The HPLC notes that this concern is raised in relation to community housing provided by housing associations. In our experience, housing providers provide accommodation for a highly disadvantaged client group.

³³ The HPLC’s current systems do allow us to produce an exhaustive list of each tenancy matter and who the landlord was. This ‘snap-shot’ has been compiled manually based on a random selection of tenancy matters run by HPLC lawyers between 1 July 2011 – 30 June 2012.

³⁴ The remaining six of the 34 clients were not being assisted with possession matters (other issues included goods left behind, waiting list appeals or compensation).

she was over \$2000 in arrears.

Despite Rachel's obvious difficulty maintaining her tenancy, the community housing provider did not facilitate her engagement with a housing support worker.

The community housing provider was on notice that the consequences of eviction for Rachel would be homelessness and, more than likely, deterioration of mental health, relapse and / or re-offending.

Rachel's offer to pay \$400 up front toward the arrears and to enter into a payment plan was rejected and the community housing provider refused to withdraw the application for possession.

The community housing provider refused to negotiate alternatives to eviction.

At the VCAT hearing, the community housing provider made submissions that they were not in a financial position to absorb Rachel's \$2000 in arrears (Rachel was not asking that the arrears be written off, she wanted to repay them through a manageable payment plan). This was accepted by the VCAT Member who found that the community housing provider would suffer 'financial loss' under section 331 of the Residential Tenancies Act.

The community housing provider successfully obtained a Possession Order from VCAT on the basis of Rachel's arrears.

When the warrant was executed, Rachel re-entered homelessness.

Rachel's case study highlights the financial imperatives of community housing providers. While the OOH similarly has these imperatives, government has greater capacity to absorb such amounts in the short term. Government is also arguably in a position to consider the cost savings in other sectors that will arise from sustaining tenancies (discussed in part 8). Rachel's case study also shows the clear links between evictions from social housing and homelessness (discussed in part 7).

Policies and practices of community housing providers

Through our work, the HPLC has encountered a lack of transparency and accountability in the practices of some community housing providers.

A particular example is the issuing of 'no reason' Notices to Vacate to tenants. By way of background, prior to the introduction of Victoria's Human Rights Charter, it was standard practice for transitional housing managers (**THMs**) to issue tenants with a 'no reason' Notice to Vacate when the tenant signed the lease. This Notice to Vacate gave the tenant 120 days to find alternative accommodation, after which the landlord could apply to VCAT for a Possession Order. Often these short-term leases were rolled over more than once, but having the Notice to Vacate constantly on foot meant the landlord could choose to apply for a Possession Order at the end of the four month period.

In relation to this practice, the HPLC's submission to the 2011 review of the Charter noted:

When it commenced, this process was a logical way for THMs to make sure that people were actively trying to find long-term accommodation, so that other people who needed short-term housing could access transitional properties. Unfortunately, the acute shortage of affordable housing in Victoria means that there is often no long-term accommodation for tenants to relocate to upon leaving transitional housing. For this reason, the standard practice of issuing 120 day Notices to Vacate to move people out of transitional properties was no longer an appropriate policy or practice.³⁵

³⁵ PILCH Homeless Persons' Legal Clinic, *Charting the Right Course: Submission to the Inquiry into the Charter of Human Rights and Responsibilities* (6 June 2011) 24 (available at: <http://www.pilch.org.au/Assets/Files/HPLC%20-%20Charter%20Review%20Submission.pdf>).

The flaws in this policy were also recognised in the 2010 'Inquiry into the Adequacy and Future Directions of Public Housing in Victoria' (**2010 Public Housing Inquiry**), which recommended that the 'Victorian Government reviews the Transitional Housing program to determine its effectiveness in the context of extensive waiting times to access public housing and in the context of broader changes to social housing provision'.³⁶

In the face of performance targets and funding agreements, however, there was no impetus to change the outdated practice until the Human Rights Charter was used to identify the impact on marginalised Victorians. The VCAT decisions in *HomeGround Services v Mohamed*³⁷ and *Metro West v Sudi*³⁸ drew attention to the fact that these policies risked pushing people into a revolving cycle of rough sleeping and emergency accommodation and, gradually, community housing providers stopped issuing tenants with no reason Notices to Vacate as standard practice.

Unfortunately, the 2011 decision of the Court of Appeal in *Director of Housing v Sudi (Sudi)*,³⁹ which held that VCAT does not have jurisdiction to consider Charter matters and that these issues must be assessed by the Supreme Court, had a significant impact on the operation of the Charter and the practices of housing providers.

In the post-Sudi landscape, the HPLC has witnessed less accountability for human rights compliance – authorities are less inclined to try to comply with human rights obligations, because there is little consequence of not doing so. As a casework service assisting vulnerable tenants, we have seen in practice that it is extremely unlikely that clients facing eviction from social housing will be able to escalate their matter to the Supreme Court. In particular, the HPLC has observed a regression to the practice of issuing 120 day Notices to Vacate to vulnerable tenants.

Community housing provider – 'no reason' evictions into homelessness

The HPLC has assisted a number of clients who have been served with a 'no reason' 120 day Notice to Vacate by a community housing provider. The HPLC has requested that the community housing provider withdraw the Notices to Vacate for a number of reasons, including that they are causing significant distress to already vulnerable clients. In response, the community housing provider has indicated that it is standard practice to serve a 120 day Notice to Vacate on all new residents. The community housing provider refused to withdraw the Notices and reiterated that these notices are served on all new incoming residents in accordance with the landlord's right under the Residential Tenancies Act.

In the HPLC's view, these matters show a worrying disregard for the obligations of community landlords under the Human Rights Charter. They also present an immediate risk of homelessness to some of Victoria's most disadvantaged tenants.

The HPLC raises these issues as a key example of the way in which operational imperatives of community housing providers (such as property turnover and rental revenue targets) can cause them to engage in practices and implement policies that present a higher risk of eviction to tenants.

³⁶ 2010 Public Housing Report, above n 6, xxxiii.

³⁷ *HomeGround Services v Mohamed* [2009] VCAT 1131 (6 July 2009).

³⁸ *Metro West v Sudi* [2009] VCAT 2025 (9 October 2009).

³⁹ *Director of Housing v Sudi* [2011] VSCA 266.

Affordability of community housing

The HPLC understands that the eligibility, targeting and rent affordability framework for community housing providers requires that tenants with incomes in the lower half of the income eligibility range pay no more than 30% of gross household income when they first move in.⁴⁰ The VAGO Social Housing Report notes, however, that the framework does not regulate rent charged to tenants after commencement of the tenancy; or set a cap on the proportion of income that can be charged as rent for tenants in the upper half of the income range.⁴¹

The case study of two clients below highlights the high risk of eviction that arises for tenants in community housing if affordability standards are not scrutinised and monitored.

Risk of homelessness as a result of inflexible rent policies when personal circumstances change

Background – two men with a history of homelessness

Jeff had a long history of homelessness having moved between crisis accommodation, couch surfing and sleeping rough for seven years.

Jeff's primary form of income was a Disability Support Pension (DSP) owing to an acquired brain injury, partial blindness and hearing loss. He had struggled with drug addiction in the past and had been diagnosed with a mental illness for which he was prescribed Valium.

Tony had lived in boarding houses and short term community housing properties for several years while he was on the public housing waiting list. Tony had never been a big drinker, but due to the stress associated with his housing situation he began drinking more heavily and smoking marijuana.

Tenancy agreement – rent and bond

Both men were accepted for community housing provided by a housing association in late 2011 and subsequently came off the public housing waiting list.

As part of Jeff's tenancy agreement, the community housing provider calculated his rent annually as 30% of his income. At the time of entering the tenancy agreement Jeff received both the DSP and a wage from part-time employment and rent was therefore calculated at around \$330 per week.

Similarly, Tony's rent was calculated at 30% of his weekly income and when he applied for the property he was in casual employment earning approximately \$680 per week. His employment was by no means steady: one week he would work two days, and another week nothing.

At the time of entering into the agreements both Jeff and Tony say that they were told by the housing association representative that their rent could be reduced if their circumstances changed and that the bond (approximately \$1000 each) could be paid at a later date.

Rental increase and risk of eviction

Shortly after entering into the tenancy agreement, both Jeff and Tony lost their jobs.

Tony managed to obtain sporadic work for three months, but the hours were not guaranteed and became increasingly few and far between. For a couple of months after

⁴⁰ VAGO Social Housing Report, above n 28, 23.

⁴¹ Ibid. The Report notes that there is a level of protection in that the Registrar is required to monitor the extent to which rent charged is below 75% of market rate or exceeds 25% or 30% of a tenant's income. However, it states: 'this reporting does not provide the protection that additional rent guidelines would deliver'.

that, Tony was unemployed and the Newstart Allowance was his only source of income.

When Jeff lost his part time job, his weekly income was reduced by two thirds. Without secure employment, Jeff could only afford to pay approximately \$107 per week.

Both Jeff and Tony requested a reassessment of their rental rates.

The community housing provider refused and referred to their strict policy of assessing rates annually, noting that this particular property attracted higher rents due to its central location.

Although each continued to make rental payments whenever he could, both Jeff and Tony began to fall into arrears and each was facing eviction when they approached the HPLC.

Given their disrupted rental histories, low incomes and other hardships, as well as the fact that they were no longer in line for public housing, both Tony and Jeff were at significant risk of homelessness if evicted.

Despite Tony and Jeff's attempts to make rental payments and requests for the rent to be adjusted so that it was affordable, the housing association applied for a Possession Order against both Jeff and Tony.

At the hearings, VCAT ordered a repayment plan instead of eviction. However, because they remained unable to secure employment neither Jeff nor Tony could keep up with their repayments.

The housing association recommenced possession proceedings against both Jeff and Tony.

Outcome

In response to negotiation, the housing association agreed to adjourn the possession hearings for three months. They also agreed to reduce the amount Jeff and Tony owe in arrears (in light of their reduced incomes) and to reduce the weekly rent Tony and Jeff are required to pay.

Tony and Jeff each entered into an arrears agreement to repay the amount outstanding along with their new rent payments.

Although, ultimately, it seems that Jeff and Tony have avoided eviction, this was after they had tried unsuccessfully to negotiate a rent reduction, been taken to VCAT twice and engaged pro bono legal representation. Their cases highlight that community housing providers need to be transparent about their policies for providing affordable housing to vulnerable tenants and accountable in their decision-making about when to pursue eviction proceedings.

The HPLC Consultation Participants were also particularly concerned with rent in community housing. When asked whether government or other services should manage social housing, responses included:

- ▶ 'If [community housing providers] did take on a greater ownership or management role it should still only cost the same amount as public housing'.⁴²
- ▶ 'If it's similar to public housing it would be alright (cost, safety etc). It should be as good as public housing. It needs to still be rebated rent – not like private rental'.⁴³

A number of the HPLC Consultation Participants expressed concerns about a transfer of ownership and management to community housing providers. They said:

⁴² HPLC Consultation Participant 4.

⁴³ HPLC Consultation Participant 3.

- ▶ ‘The government should have more than 65,000 houses and should continue to manage those houses’.⁴⁴
- ▶ ‘It should be government [that manages social housing]’.⁴⁵
- ▶ ‘I don’t want anything privatised; things become more hardcore. The buck has got to stop with government’.⁴⁶

The VAGO Social Housing Report recommended that the DOH should ‘extend the rent affordability guidelines to provide protection for tenants in the upper half of the income eligibility range, and for all tenants for the duration of their tenancies’.⁴⁷ The HPLC agrees with these recommendations – these standards are essential if community housing is to be appropriate, affordable and sustainable for vulnerable tenants.

Conclusions

The HPLC recognises that both public and community housing will play a vital role in the Housing Framework. It is imperative that community housing providers are transparent and accountable for decision-making, particularly in relation to affordability and decisions to evict tenants from properties. The Registrar of Housing Agencies under the *Housing Act* 1983 (Vic) should investigate and require community housing providers to report on:

- ▶ allocation and affordability policies and practices; and
- ▶ the number of evictions from their properties each year and the reasons for these evictions.

Reporting and accountability are crucial to making sure that community housing is accessible and affordable and that eviction of vulnerable tenants is a last resort, which occurs only after alternatives to eviction have been explored and exhausted.

4.3 Providing public housing to those with the highest priorities and meeting needs

Managing the waiting list for public housing

The HPLC works both with clients who are on the waiting list for public housing and those who are already living in public housing. We assist clients who are experiencing chronic homelessness and those who are currently housed but facing eviction. From this perspective, the HPLC is exposed to the complexity of managing the allocation of public housing in an environment where demand is vastly greater than supply.

The unbearably long wait for public housing and the fact that, when obtained, public housing does not always meet tenants’ needs, were two of the main issues raised by the HPLC Consultation Participants.

Of the 10 HPLC Consultation Participants, only six are currently living in public housing; four are on the waiting list for public housing; one while living in crisis accommodation and the other three in transitional properties.

⁴⁴ HPLC Consultation Participant 4.

⁴⁵ HPLC Consultation Participant 3.

⁴⁶ HPLC Consultation Participant 7.

⁴⁷ VAGO Social Housing Report, above n 28, x.

The HPLC Consultation Participants had a number of suggestions for how to make sure that public housing is provided to those with the highest priorities and that it meets their needs. Key themes raised by the participants were:

- ▶ Better assessments of people's situation and needs;
- ▶ More support from social workers or caseworkers; and
- ▶ Better quality housing.

The HPLC Consultation Participants' comments included:

- ▶ 'Better relationships with crisis housing services, people and organisations that know an individual's situation and needs'.⁴⁸
- ▶ 'Lifestyle and income assessment. Homelessness assessment – what is your current situation? Social worker could be involved in this assessment'.⁴⁹
- ▶ 'Make sure it goes to homeless people, those with disabilities or health issues, carers and single parents with children. Application process should identify this. Social workers should help with this'.⁵⁰
- ▶ 'Make sure that people have case managers or people to help guide them through the housing system to make sure their needs are met'.⁵¹
- ▶ 'Public housing doesn't meet my needs. I meet my needs. It meets my needs insofar as I have a roof over my head and it is near my methadone and my son's school, but I don't fit in socially. Tenants should be provided with clean houses, fences and properties with no mice. Tenants should also be matched to the right neighbourhoods. Don't put a young family in housing with very old people. This causes a lot of havoc with the people already living there. You can get labelled as scum for having a young, loud child who makes noise. If someone does not fit in culturally or socially it can be a very isolating experience for them'.⁵²
- ▶ 'There needs to be some movement regarding offers of housing, more flexibility. At the moment the tenant must accept or they go to the bottom of the list even if they are not accepting because the house is in a dangerous area for them'.⁵³
- ▶ 'My illness makes it easier for me to get public housing. But if you're homeless the wait for housing can be a really long time and the difficulty of getting housing is a massive barrier. If you are physically and mentally well this can be a barrier to you getting housing (even if you are also homeless or have other problems). They should not be giving people false hope by putting them on a list if they are never going to get housed'.⁵⁴

When asked specifically about how to make allocation of limited public housing stock fairer, the HPLC Consultation Participants said it was important to prioritise people experiencing homelessness:

- ▶ 'The system does not prioritise people who have been homeless ... for years. These people are left to sleep outside or to live in rooming houses or crisis centres. There needs to be more connection with case and support workers who can indicate priorities and who needs it ...'.⁵⁵

⁴⁸ HPLC Consultation Participant 1.

⁴⁹ HPLC Consultation Participant 2.

⁵⁰ HPLC Consultation Participant 3.

⁵¹ HPLC Consultation Participant 4.

⁵² HPLC Consultation Participant 6.

⁵³ HPLC Consultation Participant 7.

⁵⁴ HPLC Consultation Participant 10.

⁵⁵ HPLC Consultation Participant 1.

- ▶ 'I don't believe it is fair at the moment. There needs to be better ways of ensuring the people who need it the most and who have been homeless for a long time get housed'.⁵⁶

Changes to prioritisation

We note that DHS recently announced changes to the way the public housing waiting list is managed and the associated application process. The HPLC welcomes the more streamlined application process for priority housing, 'homeless with support', which requires less detail on the personal circumstances of applicants and instead recognises the knowledge and expertise held by support organisations. However, the HPLC is concerned that the most chronically homeless and disadvantaged individuals will be adversely impacted by these changes.

Many community services are stretched well beyond capacity meaning that limited support is available and, consequently, it is not uncommon for people to disconnect from services while on waiting lists for support or for support periods to end when individuals are difficult to engage in order to free up services for other clients. The individuals who struggle to connect due to their circumstances are those for whom the new waiting list may be disadvantageous and yet also the individuals for whom housing could make the biggest difference. The housing system must continue to facilitate appropriate responses to support these individuals and ensure they do not miss out on stable housing as a result of the restructure. The HPLC will watch with interest the implementation of the new waiting list and the impact it has on our client group.

Avoiding rigid decision-making

In relation to providing public housing to people with the highest priorities, the HPLC notes the importance of discretion and consideration of individual circumstances when making allocation decisions. By way of example, the HPLC has worked on a number of matters where a person had been living in an OOH property as their home but was facing eviction because they were not the listed tenant. On their face, these matters raise questions about 'queue jumping' and unfair allocation when others have been waiting for properties for longer. In reality, though, the issues are extremely complex and require careful case-by-case decision-making. The case study below illustrates this.

The need to avoid one-size-fits all decision-making in allocations policy – family with a two year old and new born baby avoid homelessness

Thomas's SHASP worker contacted the HPLC when Thomas, his wife and their two children were about to be removed from an OOH property.

Thomas had moved in there with his friend, Joseph, about 18 months ago. Joseph went overseas to see his parents and they arranged with the OOH for Thomas to pay Joseph's rent and live in the property while Joseph was away.

Joseph became ill while he was away and was unable to return to Melbourne. Civil war in his country made communication extremely difficult. Because Joseph was unable to update his rental rebate form, the rent went up to market rate. Thomas could not keep up with the rent because he was supporting his wife and two children on Austudy while he attempted to complete a diploma.

The OOH obtained a Possession Order against Joseph for outstanding arrears. The warrant was going to be executed and Thomas and his family were to be removed.

Thomas and his family had been living in the property for over 12 months. They kept it

⁵⁶ HPLC Consultation Participant 4.

immaculately clean, attended the local church and used the nearby maternal health services.

The SHASP worker explained to the HPLC lawyer that Thomas, his wife, two year old and new born baby would have to live in a rooming house if the eviction went ahead. The SHASP worker had looked into alternatives but there was no emergency or transitional accommodation available and Thomas could not afford private rental.

The HPLC negotiated with the OOH and encouraged consideration of alternatives to eviction. The HPLC reiterated that the family would be homeless if the eviction went ahead. The OOH decided 'after careful consideration' to offer Thomas and his family a vacant property on an 'out of turn' basis. In this way, the family was able to avoid homelessness, Thomas was able to continue with his studies and his children have a significantly better chance of leading healthy, happy lives.

This case study provides an example of the way in which flexible, well-considered decision-making is required to make sure that the needs of disadvantaged tenants are met. While having clear policies is essential, rigid application of policies will not lead to optimal allocation outcomes and risks leading to the eviction of vulnerable people into homelessness.

4.4 Working effectively with the community sector – integrated service provision

The HPLC's 10 years of experience as an outreach-based homelessness legal service has taught us about the importance of integrated service provision. The HPLC draws on the knowledge, skills and relationships of non-legal service providers to help us access and assist an otherwise difficult to reach client group.

In 2010, the HPLC received funding for a full-time Homeless Persons' Liaison Officer, a non-legal staff member with a social work background who is able to link clients with a range of supports and services that might otherwise be unknown to legal service providers.

In the HPLC's experience, integrated services are necessary to:

- ▶ facilitate early intervention and homelessness prevention;
- ▶ support people to access and sustain housing and other services needed to end homelessness;
- ▶ maintain client engagement; and
- ▶ prevent people falling through the cracks.

Integrating services – the need for early referrals and co-operative relationships

The case study below provides an example of the multiple barriers vulnerable individuals can face to sustaining tenancies. It highlights the intersection between a range of service providers in the lead up to potential homelessness (in this case, the OOH, child protection services, Centrelink, immigration and family violence services). It is an example of poor practice and siloed decision-making by the OOH – this is the kind of situation that the Housing Framework should aim to avoid.

Siloed service provision presents risk of homelessness for victim of family violence and her children

Background

Maria lived in public housing with her three young children. She had come to Australia about 10 years ago, but when her sister became terminally ill, Maria and her children returned home to visit her. Maria's sister passed away while they were visiting. Maria had intended to spend time with her family and then return to Australia, but while Maria was overseas her ex-partner (the father of her children) took steps to prevent her returning to Melbourne and she found herself stranded.

Maria and her children were stranded overseas for 12 months. As a result of events during that time, Maria was traumatised and now suffers from Post Traumatic Stress Disorder.

Maria's housing and rent

Throughout her tenancy Maria's rent had been paid by direct deduction from her Centrelink benefits. As she was away from Australia for an extended period of time her Centrelink benefits were stopped and she fell into substantial rental arrears. The Office of Housing was unsympathetic to Maria's situation and sought to evict her and her children due to the arrears.

The Office of Housing applied to VCAT for a Possession Order. They resisted attempts to negotiate on the basis of Maria's extreme hardship and repeatedly rejected her offers to enter into a payment plan.

OOH, Centrelink, child protection – the intersection

The HPLC successfully represented Maria at VCAT and managed to obtain a VCAT order adjourning the eviction subject to Maria's compliance with a payment plan. The Homeless Persons' Liaison Officer helped Maria to access funding from support organisations so she could make a payment toward the arrears – this was necessary because the Office of Housing demanded a lump sum payment of \$1500, which is a significant amount for a woman who is reliant on Centrelink with three children to care for.

Despite avoiding eviction, as a result of ongoing family violence since returning to Australia, Maria was extremely fearful of remaining in her property and she took refuge with family and friends. Over subsequent months, her ex-partner took steps to further marginalise Maria, including by refusing to return the children and causing her Centrelink single-parent payments to be cancelled. As a result, Maria was again at risk of falling into rental arrears and breaching her payment plan.

The HPLC assisted Maria to access emergency funds to pay her rent and to have an intervention order varied to exclude her ex-partner from the premises. He has since been removed from the property, the children are back with Maria and her Centrelink payments have been reinstated.

Outcome – eviction avoided

Maria has found a family who is willing to swap properties with her and the HPLC has advocated on behalf of Maria with the Office of Housing for this to take place. The Office of Housing have now agreed to the mutual swap, however a date has not yet been set for this to occur. Maria continues to pay rent and outstanding arrears to the Office of Housing, while she and her children wait for a transfer to a safer property.

If the eviction of Maria and her children had gone ahead, it is extremely unlikely that Maria would have been able to access alternative accommodation. There is a high likelihood that emergency accommodation would not have been available and it is probable that Maria would have had to stay in a rooming house. Given the unsuitability of these premises for children, it is likely that Maria's children would have been removed from her care. Maria's mental health would have been further jeopardised.

It is clear from the above case study and from the HPLC's work that integrated service provision is key to sustaining tenancies. In Maria's case, the intransigence of the OOH and their refusal to liaise with Centrelink or to listen to advice from family violence and legal supports created a risk of homelessness for a traumatised woman and her three children.

Workers in the public housing sector need to work closely with community sector workers who provide support to tenants. The benefits of this are recognised:

There is convincing evidence that provision of coordinated support to clients with complex needs is associated with positive tenancy outcomes. It is notable that high-needs people who can be identified as having service supports in place at the commencement of a tenancy, with a commitment to provide ongoing support, have far fewer issues.⁵⁷

One of the HPLC Consultation Participants also touched on the importance of communication between the OOH, community sector workers and tenants. When asked about whether reviews of tenancies should be conducted, she said:

A review should not just be for the Office of Housing but for tenants to tell management what they need. Half of the evictions happen because they are embarrassed to talk to people or tell them their problems.⁵⁸

In the event that tenants are not already linked with such services, public housing staff should support tenants to make these links with a view to helping high risk tenants to manage and sustain their tenancies. These links should be made early, not once a tenancy is already close to failing. For example, in Rachel's case in part 4.2 above, if she had been linked with supports when it became apparent that she was struggling to manage her obligations as a tenant, the tenancy could have remained on track. Once she was over \$2,000 in arrears, the tenancy was impossible to salvage and instead Rachel re-entered homelessness. High risk tenants must be targeted for ongoing support to maintain their tenancy and this support should form a key component of the relationship between the OOH and the tenant (i.e. no action should be taken in relation to the tenancy before speaking with the relevant support agency). There should be formal policies in place requiring OOH workers to contact (and consider the views of) tenants' support workers when making decisions about a person's tenancy.

SHASP – an essential component of effective integration

The role of Victoria's Social Housing Advocacy and Support Program (**SHASP**) is a perfect example of ways in which the public housing sector can effectively engage with the community sector to meet the needs of tenants.

In recent years, the HPLC has identified significant improvement in the practice by social landlords of linking clients with SHASP workers before commencing eviction proceedings. The advocacy and support provided by SHASP workers to high risk tenants is an essential component of any program aimed at sustaining tenancies and avoiding evictions into homelessness. SHASP workers help tenants to more effectively engage with their social landlords and to address or avoid further issues with their tenancies. In the HPLC's experience, SHASP workers can often address issues before they escalate to a point where legal representation is required. In other cases, the HPLC may assist clients to successfully defend eviction proceedings and then make sure that the client is linked with a SHASP worker to ensure that the tenancy is sustainable in the longer term.

These kinds of relationships that span between professions and sectors are essential to making sure that both tenants and landlords comply with their obligations. They are crucial to fostering sustainable housing and avoiding evictions into homelessness.

The recent cuts to funding of SHASP services are not consistent with the goal of meeting the needs of tenants and the community through government and community sector partnerships.⁵⁹ The reduction in

⁵⁷ DHS High Risk Tenancies Project, above n 16, 20 citing V Kolar, Hanover Welfare Services, *Home First: A Longitudinal Study of Outcomes for Families Who Have Experienced Homelessness* (2004).

⁵⁸ HPLC Consultation Participant 6.

services that can be provided to high risk tenants will place more pressure on social landlords. The HPLC urges the Government to recognise that properly integrated services require adequate funding. Reduced capacity of community organisations that support vulnerable tenants will mean there is an increased risk that tenancies will fail because tenants will not have access to advocacy, advice or support needed to help maintain their tenancies.

⁵⁹ See, eg, Reid Sexton, 'Welfare agencies despair at program cutback', *The Age* (20 July 2012).

5. Reviewing tenancies and limiting tenure

This section addresses Feedback Form questions 2, 4 and 5.

This section addresses the following issues:

- ▶ The importance of stable, secure housing, including the role a sense of long-term stability can play in the recovery and re-integration of people who have experienced homelessness, transience and trauma.
- ▶ The risks of limiting tenures, reviewing tenancies and transitioning people into private rental, including:
 - The strongly held view of the HPLC Consultation Participants that, to be sustainable, exits from public housing must be voluntary and occur only when the tenant is ready;
 - The risk of cycles of homelessness if a tenant's circumstances change once they are in private rental, for example, through job loss. The comments of the HPLC Consultation Participants point clearly to the precarious nature of employment and financial independence for low income earners and the risk of eviction that this presents;
 - The costs and uncertainty of the private rental market for low income tenants – while lack of secure tenure is an accepted feature of the private rental market, low income tenants with other vulnerabilities or support needs are often less well equipped to cope financially or personally with this uncertainty. One HPLC Consultation Participant tells of finding himself homeless after having to leave a private rental property because the owner was selling it; and
 - The realities of the private rental market – low income earners and Centrelink recipients face significant barriers to securing and sustaining private rental properties. In addition to the acute shortage of affordable housing, discrimination is still common in the private rental market, including on the grounds of receipt of Centrelink benefits, history of homelessness and engagement with a housing support agency.
- ▶ Public housing as a disincentive to social and economic participation – our experience is that this is not the case and that other hardships, including mental illness, caring obligations or disability more commonly prevent many public housing tenants from re-entering the workforce. The HPLC Consultation Participants explain that affordable housing in fact makes it easier to engage in education, training or employment.

The HPLC's view is that the decision to move from public housing into private rental must be a voluntary one. Any policy changes must be developed with the realities of the current private rental market in mind. In the absence of significant regulatory changes, including long-term leases and stronger legislative protection of tenants, as well as ongoing financial and casework support, eligibility reviews and limited tenures are likely to lead to increases in homelessness for vulnerable tenants.

5.1 The importance of stable, secure housing

In 2010, the HPLC made a submission to the 2010 Public Housing Inquiry.⁶⁰ In preparing that submission, the HPLC interviewed six tenants of public housing. They each had a history of homelessness and

⁶⁰ PILCH Homeless Persons' Legal Clinic, *"We Can't Go Private ..." Inquiry into the Adequacy and Future Directions of Public Housing in Victoria* (2010) (available at:

overwhelming hardship, including abuse, family breakdown, mental illness, substance dependence, disability and family violence. Their stories illustrate the realities of homelessness and the challenges of public housing. Importantly, though, their stories also identify the role housing can play in ameliorating disadvantage and promoting recovery. One participant, Marie, explained the impact quality, affordable, secure housing had on her and her children:

... Aboriginal housing offered me a property and it's the most beautiful house I've ever seen in my life. After over 10 years on the waiting list.

It was brand new, never been lived in. It's the best. It's like heaven! I just feel so lucky.

The impact of getting housing has been huge for the children. Not only because they weren't settled [and] the impact of moving around [but also because] even when you are allocated transitional housing you have to take whatever they offer you.

Well that's all good and well, but the majority of children that are involved in transitional housing or priority housing have experienced some sort of trauma in their life ... because that's the only way you're eligible for it. And the trauma and impact of them actually setting up a life somewhere and then moving once again to somewhere that may be nowhere near triggers other traumatic memories and creates an idea in the children's head that they have no security or stability.

No-one cares that they form friendships with kids at school and then they've got to change schools and even when you're in transitional housing, you can't create a life because you're not going to be there.

Our new house – it's the base of everything. It's the base of the structure of healing. It's everything. I'm just so grateful that I've got this beautiful house and we will always have this and that's all that really matters.⁶¹

Marie's comments remind us that secure and stable tenure is one of the major features of social housing that allow it to play a significant role in improving the lives and wellbeing of highly vulnerable tenants. For people who have experienced homelessness and transience, the suggestion of limited tenures and regular tenancy reviews may be a source of further stress and anxiety; and may diminish their ability to focus on recovery and reintegration into the community.

Marie speaks of the perpetual prospect of having to relocate and of the disruption and dislocation that comes with moving. In Marie's case, the fact that she had a stable home that she could be proud of and where her children could grow up was critical to her recovery.

The importance of stability and the opportunity to build a better life was also articulated the HPLC Consultation Participants:

[They need to] provide those who need it with a house to settle down in and a place in which to build a life. I am upset that I get put somewhere only to be moved 18 months later. More stability would be better. Something long term would provide this stability.⁶²

These considerations must be kept in mind when developing policies that contemplate shorter tenures and regular tenancy reviews for public housing tenants.

http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/56th/ph/submissions/S103_PILCH_HPLC.pdf (HPLC 2010 Submission).

⁶¹ Ibid 53, Marie's story (Appendix E), [49]–[54].

⁶² HPLC Consultation Participant 5.

5.2 Moving to private rental – the risks

While the HPLC welcomes the suggestion that greater support would be provided to tenants who choose to move out of public housing and into private rental, through our work we see a number of risks associated with the private rental market, which have the potential to jeopardise tenancies and present a risk of homelessness. These risks are discussed below.

Moving on needs to be by choice – tenant and applicant perspectives

A key theme coming out of the HPLC Consultation Participants' comments was that any steps to move tenants into private rental should be voluntary; it should be if and when the tenants are ready.

- ▶ 'Accommodation should be provided until you are able to provide the accommodation yourself. It should be the tenant's choice to reaccommodate. [This way, there is a] bigger possibility of maintaining stability'.⁶³
- ▶ '[Tenants] should be able to stay in public housing until they decide they are ready to leave. I don't believe tenants should have to move into private rental or community housing. They should be able to stay in housing until they are ready to leave'.⁶⁴
- ▶ 'If you can work and are healthy and have worked in the past maybe give them shorter leases but I wouldn't want someone to tell me to get out so I don't want to say that about someone else. I wouldn't like to be sleeping out on the street even for a night. I've seen the homeless in the city sleeping outside. It is awful ... If you haven't got a disability and have enough wealth they should be encouraged to move out but only if they want to'.⁶⁵
- ▶ 'They can [move tenants into private rental] – but it should be done with care ... Try to find something else in a similar area if the person has kids going to the local school, give them enough notice. It's how it's done. But I think that lots of people would protest to this because public housing is supposed to provide stability and security'.⁶⁶

Changing circumstances and the risk of homelessness

For low income, socio-economically disadvantaged people and families, periods of employment and financial independence can be precarious. The uncertainty about how long employment and relative stability might last was a key concern of many of the HPLC Consultation Participants. In response to the question of whether shorter tenancies should be offered to tenants with the potential to become self-sufficient, the HPLC Consultation Participants' responses included:⁶⁷

- ▶ 'No – they still should keep you in housing (and anyway the rent changes if you get a job). There also is not a lot of secure jobs. You got the house and then the job, maybe if you then lose your job or your house or both you would end up homeless again. Getting a job should not change your eligibility for renting public housing'.⁶⁸
- ▶ 'No because you can't know how someone's situation is going to turn out'.⁶⁹

⁶³ HPLC Consultation Participant 5.

⁶⁴ HPLC Consultation Participant 4.

⁶⁵ HPLC Consultation Participant 10.

⁶⁶ HPLC Consultation Participant 9.

⁶⁷ HPLC Consultation Participant 1 said 'depending on person, health' and HPLC Consultation Participant 5 said 'yes'.

⁶⁸ HPLC Consultation Participant 3.

⁶⁹ HPLC Consultation Participant 4.

- ▶ 'No – you should be able to keep your house even if you get a job. Housing shouldn't be at risk because you are bettering your life. Jobs aren't forever, they are not a reason to ask people to move. Only if they are secure and ongoing pay is proven, it is ongoing and sustainable and they can move forward. But don't totally cut people off, there still needs to be a safety net'.⁷⁰
- ▶ 'Tenants maybe should be prompted that there might be more out there for them but not forcing them out. People's circumstances are so unstable that they could just end up homeless again. If someone is able to get a job because of stable housing, taking that housing away could result in the loss of that job'.⁷¹
- ▶ 'Government should be aware that jobs are not forever and people might still need the housing even if they have a job'.⁷²

Through our casework, the HPLC regularly sees clients who experience 'cycles of homelessness'. Many clients have lived for periods in private rental but have found themselves unable to sustain it for various reasons, including job loss, health problems, relationship breakdown or family violence. Eviction pushes them (back) into homelessness where they may cycle between friends' couches, emergency accommodation and rooming houses.

The fragile nature of financial security for low income earners with limited assets must be kept in mind when deciding whether or not regular eligibility reviews and limiting tenure will be effective and appropriate tenancy management practices in public housing.

By way of example, moving a single mother and her children from public housing into private rental when the mother re-enters the workforce ostensibly seems like an appropriate way to make sure that a family living in a rooming house can be allocated that property. There is a risk, however, that this policy approach is short-sighted and presents an unanticipated risk of homelessness. If, for example, the woman loses her job or is unable to work because one of her children becomes ill, it is highly likely that she will find herself unable to keep up with her rent and facing eviction for arrears. Unlike her public rental property, the rent will not be adjusted to recognise her lower income and there will be probably be no scope to negotiate based on hardship. For a single mother, with limited rental history and a low income, the end of this tenancy presents a significant risk of homelessness. It is highly unlikely that she would be able to access another private rental property; emergency accommodation services are operating to capacity and turning half the people seeking accommodation away,⁷³ and she would be back at the bottom of the waiting list for public housing. The below case study of a client assisted by the HPLC shows the impact of eviction from private rental on families and children.

Mother and two children have locks changed and have to sleep in a motel

The HPLC was contacted by a woman who was being evicted from her private rental property. The legal processes had progressed to a point where there was no further action that could be taken to save the tenancy (there was a Possession Order and a warrant had been purchased). The tenancy had deteriorated after her daughter, who was working and contributing to the rent, lost her job. The family was otherwise dependent on Centrelink

⁷⁰ HPLC Consultation Participant 6.

⁷¹ HPLC Consultation Participant 9.

⁷² HPLC Consultation Participant 6.

⁷³ See, eg, Australian Institute of Health and Welfare, *People turned away from government-funded specialist homelessness accommodation 2009–10* (June 2011) which showed that 58% of people who sought immediate accommodation from government-funded specialist homelessness agencies were turned away.

payments. The lawyer provided the client with legal advice and referred her to the Homeless Persons' Liaison Officer (HPLO) for support.

The client was due to be evicted the day after she contacted the HPLC. She had two children, one of whom has autism. She had not left the property yet because she had no-where to go and no-where to store her belongings.

The HPLO was in contact with the client throughout the day of eviction to provide her with support. The HPLO arranged emergency accommodation and a taxi to pick the client up from the property after her locks were changed and take her to the arranged accommodation.

The arranged accommodation was highly unsuitable for the family, but an acute shortage of emergency accommodation means that there was nothing else that could be arranged at such short notice. The daughter suffering autism struggled in the new environment causing great distress to the other two family members.

In the following days the HPLO assisted to link the client with the local housing front door service and ensure that workers at that service were aware of her circumstances and that assistance was facilitated in a manner that caused the least stress to the client. The HPLO was also able to direct the client to other agencies that could offer emergency relief.

After a week of frequent phone contact, support and continual engagement with the local housing front door, a vacancy arose on a housing support program through a local outreach and support service. The client was referred to the support service, accepted on to the program and allocated a support worker.

For this client, primarily because of the high needs of her youngest daughter, housing was able to be accessed extremely quickly. It is very rare that this will be the case. It is more common for the HPLC to see people who are evicted from private rental cycling through rooming houses, friends' couches and emergency accommodation.

One of the HPLC Consultation Participants told of his experience of homelessness after he and his five children were evicted from their private rental property:

From when I was very young I was always self employed. I started up my own business in construction ... My partner left when my youngest was eight months old. I had to sell the business – the bank sold it for 80% of what it was worth and I lost all my equity and subsequently became bankrupt. I didn't care because I had all the kids. I had to become a full time carer and didn't work. I was living in private rental at the time but it became really hard to afford the rent.

In 2009 we found ourselves homeless – all these circumstances led us to be homeless. We were evicted. I then lived with 4 of my five kids in the car. We did that for 10 weeks. We then made contact with [front door service] and then we bounced all over the place for three months in crisis accommodation. We would spend a week in one motel and then another and then a caravan park and then we had to drive three hours away. Because it was the five of us and we had such a shitty car we had to make some kind of fun out of it so we pretended we were camping. We spent four weeks in one tiny hotel room – three boys, one girl and I.

[We also] tried rooming housing but it was really difficult because you couldn't say to the landlord 'oh hi, I have five kids.' I would rent the house and then basically sneak the kids in through the window.

In the early stages of our homelessness we went to 11 different hotels, until we got into transitional housing. We have been in transitional for four years.⁷⁴

⁷⁴ HPLC Consultation Participant 9.

These stories highlight the highly vulnerable position of low income tenants in private rental when their income decreases unexpectedly. They also prompt us to think about what happens to families if their private rental tenancies fail.

Of the HPLC's snap shot of 34 tenancy matters, six involved private rental.⁷⁵ Four of those six clients approached the HPLC for assistance because they were facing eviction for arrears (another for damage and one because the owner was moving in). All four of these clients (three were single mothers) had experienced a change in circumstance (job loss, health problems or family violence), which meant that their income was reduced and they were no longer able to keep up with their rental payments. Each was panicked about the stress and embarrassment of eviction, the impossibility of finding alternative accommodation on a single, low income and the prospect of the children having to sleep in the car and change schools.

These are the realities for low income renters. They are factors that must be considered when deciding whether the private rental market is the best option for tenants with low incomes, no assets and complex circumstances. While in some cases it may be, it is imperative that it is a choice that is made freely by tenants when they feel they are in a position to do so and that it is accompanied by a range of social and financial supports that are available for an extended period after the tenancy commences.

The case studies discussed in this section show why security of tenure is an important aspect of public housing. Tenancy eligibility reviews and short term leases would place tenants at risk of finding themselves back in the private rental market and unable to comply with their obligations. They present a risk that people will enter the revolving door of homelessness and find themselves back on the waiting list for public housing struggling with exacerbated levels of disadvantage and hardship.

⁷⁵ See above n 33 regarding the HPLC's tenancy snap shot.

The private rental market and low income tenants – costs and uncertainty

The section above identifies the risk that a household might find themselves unable to sustain their private rental tenancy because of changed circumstances and could therefore face eviction into homelessness.

It is also important to remember that a private rental tenancy can be terminated without any fault by the tenant. Under the Residential Tenancies Act, a tenancy can come to an end for various reasons, including, where the landlord would like to sell the property⁷⁶ or move into it⁷⁷ or because the fixed term lease has ended.⁷⁸

Tenancies can also be ended with ‘no reason’ if the tenant is given 120 days notice to vacate.⁷⁹

While private landlords are clearly entitled to deal with their properties in this way, the financial and personal disruption caused by tenancy termination should not be underestimated. Even if a person or family is able to access an alternative private rental property (which, as discussed in below, is by no means guaranteed), the relocation often requires financial and emotional resources they do not have.

The HPLC appreciates that this concern (i.e. that public housing tenants may be hesitant to move into private rental because of the lack of security) may be met with the response, ‘that’s the reality; that’s what people in the private rental market have to deal with everyday’. While the HPLC accepts this, through our work with Victoria’s most vulnerable tenants, it is very apparent that some people are better equipped to deal with the workings of the private rental market than others.

One of the HPLC Consultation Participants spoke of his and his mother’s eviction from private rental and their subsequent experience of homelessness:

We were renting private and then the owner died and his son who took over sold the entire block of flats. Since that time we have been homeless. We tried to get into other private rental but no one wanted to take low income earners who were on Centrelink. Also, we just couldn’t afford it.

We waited four years for public housing. We were homeless for six years.

When we were homeless we had nowhere to go, we didn’t have any good food and we couldn’t cook like everyone else cooks. We had to go into a rooming house. A guy died while we were living in there, he overdosed. There were syringes on the tables and drugs, lots of alcohol. People used to punch holes in the walls, kick the toilets and break them. We lived there for 6 months. The people there were giving my mum a hard time because she was trying to abide by the rules. They tried to grab her by the throat. We then went to temporary housing which was safer and we could cook. After that we were moved to [another location] and then to our new [public housing] house. We had a hard journey.⁸⁰

⁷⁶ Residential Tenancies Act 1997 (Vic) s 259.

⁷⁷ Residential Tenancies Act 1997 (Vic) s 258.

⁷⁸ Residential Tenancies Act 1997 (Vic) s 261.

⁷⁹ Residential Tenancies Act 1997 (Vic) s 263.

⁸⁰ HPLC Consultation Participant 8.

For people with a history of homelessness, people experiencing mental illness, parents with children in local schools, people experiencing poverty and people with disabilities or chronic health problems, the prospect of having to relocate can be a physically, emotionally and financially overwhelming one. One HPLC Consultation Participant explained this:

Private housing is not stable – if they want you out they can have you kicked out and then you need to find a new place again. I couldn't read and write when I was little and I have schizophrenia. Moving around is not good for me.⁸¹

Without intensive support to find alternative housing and facilitate the relocation, the prospect of insecure tenure is extremely stressful. Even if these supports were in place, the acute shortage of affordable private rental properties may mean that households have to move out of their local area where children are settled in schools and networks and supports have been built.

While the HPLC recognises that many struggling tenants in private rental currently face these challenges, this does not mean that it is good policy to extend this hardship to tenants who are currently in stable public housing. The pressures of the private rental market must be acknowledged by policy-makers and the potential for people to face homelessness in the event of private tenancies ending must be contemplated.

The negotiation of long-term leases, provision of financial and casework support and stronger legislative protections for tenants would all be necessary if eligibility reviews and limited tenures were to be introduced for public housing tenants.

Unless these reforms and measures are introduced, moving public housing tenants into the private rental market presents a significant risk of financial hardship, social dislocation and potential homelessness.

Private rental is out of reach for many

The HPLC notes the statement in the Consultation Paper: 'Public housing can also be a longer term measure for some, including the aged and profoundly disabled ... who may not be able to transition into the private rental market'.⁸² We point out that the current shortage of affordable housing in Victoria means that it is not just people who are elderly or who have a disability that face significant barriers to entering the private rental market:

- ▶ the current rental vacancy rate in Melbourne is 1.8% and in regional Victoria is 2.7%;⁸³
- ▶ there is *no* affordable and appropriate rental housing in Melbourne available for single people earning a minimum wage or living on Newstart, Youth Allowance or Austudy or for couples with two children on Newstart;⁸⁴ and
- ▶ a single person on Newstart attempting to rent one-bedroom accommodation:
 - in regional Victoria, will pay between 42% and 61% of their total weekly income on rent;⁸⁵ and
 - in Melbourne, will pay 99% of their total weekly income on rent.⁸⁶

⁸¹ HPLC Consultation Participant 8.

⁸² Consultation Paper, above n 26, 6.

⁸³ Real Estate Institute of Victoria, above n 9.

⁸⁴ Anglicare Australia, above n 10.

⁸⁵ Tenants Union Victoria, above n 11, 2–3.

⁸⁶ *Ibid* 2.

These figures show that low income earners or people reliant on Centrelink will have significant difficulty securing and sustaining housing in the private rental market.

In addition to unemployment or low income, other overlapping factors, including poor rental history, mental or physical health problems, caring obligations and substance dependence may also present barriers to vulnerable tenants accessing the private rental market. On top of this, persistently low vacancy rates and competition for properties mean that it is more difficult for 'lower income households and those perceived as higher risk such as large families, Indigenous households and sole parents, to access the market'.⁸⁷ Discrimination also continues to present a barrier to securing private rental.⁸⁸

Discrimination in private rental

In 2006, the HPLC conducted a series of detailed consultations with over 180 homeless Victorians about their experience of discrimination (**Discrimination Consultations**).

Seventy per cent of people surveyed in the HPLC's Discrimination Consultations reported that they had experienced discrimination on the basis of social status or homelessness at the hands of accommodation providers.⁸⁹

Participants reported countless cases where they had been capable of paying rent but had been denied tenancies on the basis of their history of homelessness, gaps in their rental history, reliance on social security payments and / or relationships with a welfare agency. One woman at the Discrimination Consultation explained: 'although I can't prove it, I applied for more than 40 flats in four weeks and didn't get one. Some places (share accommodation) also said "no" once I said I was on a benefit'.⁹⁰

A caseworker from the Emergency Accommodation Support Enterprise reported that women fleeing domestic violence often experience discrimination on the basis of their homelessness: 'It is this organisation's general experience that single women with children – whether they be victims of domestic violence or young homeless women who are pregnant or parenting – have great difficulty in obtaining private rental regardless of whether it is housing or caravan park accommodation'.⁹¹

The HPLC has also recently been involved in a survey being conducted by the Victorian Equal Opportunity and Human Rights Commission (**VEOHRC**) looking at people's experiences when accessing private rental accommodation in Victoria. The survey aims to identify the barriers preventing people from accessing private rental, including those stemming from personal attributes such as race, sex, age, disability, religion, mental health, marital status, sexuality or having children. In addition, the survey asks whether participants felt that in the last two years they were refused a private rental property

⁸⁷ Kath Hulse, Terry Burke, Liss Ralston and Wendy Stone, Australian Housing and Urban Research Institute Position Paper No. 149, *The Australian Private Rental Sector: Changes and Challenges* (July 2012) 38. See also, Tenants Union of Victoria, *Position Paper – Improving Access to the Private Rental Market: Addressing Discrimination and Other Barriers for Low-Income and Disadvantaged Households* (June 2008) 5 (**TUV Position Paper**) for a 'list of specific factors common to low-income and disadvantaged households that can impact on the decision-making process of agents and landlords in processing tenancy applications'.

⁸⁸ See, eg, Victorian Equal Opportunity and Human Rights Commission, *Discrimination in the Private Rental Market* (2012) (report forthcoming). See also TUV Position Paper, above n 87, 6–7: 'Although there are no precise statistics available regarding the extent of discrimination in rental accommodation, research and anecdotal evidence indicate that prejudice and discrimination is endemic'.

⁸⁹ PILCH Homeless Persons' Legal Clinic, *Report to the Department of Justice, Discrimination on the Grounds of Homelessness or Social Status* (2007) 12–13. Private rental or real estate agents (41% or 75 respondents), boarding houses (24% or 44 respondents), transitional or crisis accommodation (20% or 36 respondents), hotels and public housing (each 19% or 35 respondents) and caravan and backpackers (each 17% or 32 respondents).

⁹⁰ *Ibid* 16.

⁹¹ PILCH Homeless Persons' Legal Clinic, *Submission to the Victorian Attorney-General's Independent Review of the Equal Opportunity Act 1995 (Vic)* (January 2008) 18.

because of their source of income.

While the results of the survey have not yet been finalised, it is important to note that, even if high levels of discrimination on the basis of source of income are reported through this survey, discrimination on this basis is not currently unlawful in Victoria or in Australia. The potential to address this form of discrimination and, therefore, to support people to enter private rental and exit homelessness is significantly limited by the lack of legislation to back up any such initiatives.

A number of the HPLC Consultation Participants spoke about their prospects of accessing the private rental market:

- ▶ ‘People should not have to move out of public housing. We have no money, or anything, we couldn’t get private rental. Public housing makes it easier to find jobs since there is less hassles concerning rent’.⁹²
- ▶ ‘Where people are capable, offer support to transition in to alternative housing without closing the option of Office of Housing in case they are unsuccessful in getting something else’.⁹³
- ▶ ‘I’m not working, I’m on Disability Support Pension, I probably can’t afford it. I also have a bad credit rating’.⁹⁴
- ▶ ‘There are so many assholes out there that make private rental so difficult that some people can’t get it. If I were to get myself into a position that I wanted to move into private rental I would have to lie about how many kids I have – no one would take us. I would have to embellish my resume, my income etc. On top of that, once you’re in, you’re only in for usually 12 month increments. Every year is the same – you need to put in a renewal and just hope’.⁹⁵

We encourage the Government to base its Housing Framework on these social and economic realities. Public housing is not only for the most acutely vulnerable members of our community, it is ‘a safety net for those Victorians unable to afford or access the private housing market ...’⁹⁶ Unfortunately, in the current housing environment, the ability of low income earners and Centrelink recipients to access the private rental market is significantly constrained and, those who can access a property, may find themselves under severe housing stress or at risk of eviction.

5.3 Public housing as a disincentive to social and economic participation

The Consultation Paper comments: ‘Current eligibility and rental assessment criteria create disincentives for public housing tenants to work or participate in education and training. This reinforces disadvantage and discourages tenants from seeking a pathway to independence and out of public housing’.⁹⁷

The HPLC reiterates, as recognised to some extent in the Consultation Paper,⁹⁸ that in many cases, it is not public housing policy that is preventing people entering or re-entering the workforce, but a range of other

⁹² HPLC Consultation Participant 3.

⁹³ HPLC Consultation Participant 7.

⁹⁴ HPLC Consultation Participant 10.

⁹⁵ HPLC Consultation Participant 9.

⁹⁶ Consultation Paper, above n 26, 6.

⁹⁷ Ibid 24.

⁹⁸ Ibid 23: ‘The high level of labour force disengagement among social housing tenants is partly related to tenants’ needs for housing in the first place (i.e. profound disability)’.

hardships such as mental illness, caring obligations or disability. The HPLC Consultation Participants identified this:

- ▶ 'I've tried to go back to school but I couldn't concentrate [because of my] mental illness and then it doesn't work out'.⁹⁹
- ▶ 'I can't work because I have health issues. I used to work as a panel beater and I broke down from there'.¹⁰⁰
- ▶ 'My partner left when my youngest was eight months old ... I had to become a full time carer [for my five children] and didn't work'.¹⁰¹

Another HPLC Consultation Participant said that stable, secure housing in fact makes it easier to obtain employment: 'Public housing makes it easier to find jobs since there is less hassles concerning rent'.¹⁰² In response to the question about what measures Government could take to encourage tenants to work or undertake education or training, HPLC Consultation Participants said:

- ▶ 'Provide more stable housing. Being in transitional housing allows me to balance the money I'm not spending on rent and spend it on other things – like education. I can go to uni and not have to worry that I need to pay \$450 a week'.¹⁰³
- ▶ 'Public housing reduces some barriers because rent is more affordable'.¹⁰⁴

In the HPLC's experience, sustaining tenancies contributes significantly to people's ability to continue with education or to enter the workforce. For example in Thomas's case study in part 4.3, he would almost certainly have been unable to continue his education if he had been living in a rooming house or moving between short-term emergency accommodation. One of the HPLC Consultation Participants also referred to the way in which having affordable housing means that he can concentrate on educating his five children:

I always make an effort for my kids to have the best education – although we live in [suburb] – I don't send them to the local school (I send them to schools in [suburb]). A good percentage of our money goes to tuition (\$200 a week). I get about \$800 a week, \$200 goes to tuition then the rest rent, food, internet for the kids' school, bills. There's not much left over. I always teach the kids that we may be down but not out.¹⁰⁵

In terms of supporting tenants to engage in education and training if they choose to and are able to, the HPLC Consultation Participants suggested that the Government should:

- ▶ 'Provide courses geared to getting them on the right track'.¹⁰⁶
- ▶ 'Make more services available to tenants'.¹⁰⁷
- ▶ 'If someone is studying at the time they are offered a house it should be taken into account where they are studying, not to be too far away'.¹⁰⁸

⁹⁹ HPLC Consultation Participant 10.

¹⁰⁰ HPLC Consultation Participant 8.

¹⁰¹ HPLC Consultation Participant 9.

¹⁰² HPLC Consultation Participant 3.

¹⁰³ HPLC Consultation Participant 9.

¹⁰⁴ HPLC Consultation Participant 3.

¹⁰⁵ HPLC Consultation Participant 9.

¹⁰⁶ HPLC Consultation Participant 1.

¹⁰⁷ HPLC Consultation Participant 5.

¹⁰⁸ HPLC Consultation Participant 4.

Three HPLC Consultation Participants queried whether the Government needs to or should be playing a role in their education or participation through the housing system:

- ▶ ‘[I’m] concern[ed] that rewarding/encouraging participation would make things competitive. Tenants shouldn’t be rewarded because they work or participate in education or training’.¹⁰⁹
- ▶ ‘There are no measures they could take to help people. Often people cannot be helped in this way’.¹¹⁰
- ▶ ‘I don’t think this should be DHS’s business because I don’t think that they should control everything. Just because you have a government house does not mean they can control your every move’.¹¹¹

The HPLC encourages the Government to keep the important relationship between stable housing and employment or training in mind in developing policies to encourage socio-economic participation. We suggest, based on our experience and the insights of consumers, that limiting the security of a person’s housing or making it conditional on participation requirements will hinder rather than encourage public housing tenants’ ability to engage in work or education.

6. Calculating rent in public housing

This section addresses Feedback Form question 3.

Through our work, the HPLC sees day-to-day that people in public housing are struggling financially. While there are clearly significant fiscal concerns regarding the revenue generated from public tenants’ rent,¹¹² it is likely that increasing the proportion of rent payable beyond 25% of household income would impose financial strain on public housing tenants.

By way of example, we have included the fortnightly budget for a client who is living in public housing. In addition to struggling with his mental health, Joseph developed a back injury in 2010, which meant that he was no longer able to work. From that point, he was reliant on Newstart Allowance as his sole source of income. An outline of Joseph’s fortnightly expenses is set out below:

Expense	Amount per fortnight
Rent	\$115
Groceries and food	\$140
Personal mobile phone (capped)	\$15
Petrol	\$60
Electricity	\$30
Gas	\$20
Water	\$10
TOTAL	\$390

¹⁰⁹ HPLC Consultation Participant 6.

¹¹⁰ HPLC Consultation Participant 3.

¹¹¹ HPLC Consultation Participant 4.

¹¹² See VAGO Public Housing Report, above n 1, ix, which refers to the structural deficit of \$56.4 million and the fact that operating costs now exceed revenue by 42%.

Joseph receives \$486 in Newstart per fortnight. As the above budget shows, this leaves him with approximately \$96 per fortnight for any other expenses (including clothing, healthcare and medication for his mental health condition, which costs approximately \$5.50 per script).

This breakdown provides context for the proposal that rents should be recalculated or increased for public housing tenants. As the above budget shows, there is very little left over with current rent rates after basic day-to-day expenses are covered. It is important to avoid the inaccurate suggestion that capping rent for public housing tenants places them in an enviable financial situation – for the most part they are barely scraping by.

This was confirmed by the HPLC Consultation Participants. When asked about the existing rent policy and whether it should be retained or if there were better, fairer ways to charge rent, the HPLC Consultation Participants said:

- ▶ 'The current rate is good. [I'm] satisfied with the system of deducting money for rent from income'.¹¹³
- ▶ 'It is not affordable on Newstart but it might be on DSP'.¹¹⁴
- ▶ '20% would be better; 25% is a struggle'.¹¹⁵
- ▶ 'The rent is cheap. If I had to pay \$200 or \$300 a week I couldn't afford it and it would create anxiety and stress which would flare up my illness'.¹¹⁶
- ▶ '[T]he current way is fair. Tenants should have to use Centrelink pay to ensure that the government gets their money'.¹¹⁷
- ▶ 'Rents should stay the same'.¹¹⁸

The case study in part 4.2 highlights the risks associated with taking a different approach to setting rent for low income tenants (in those cases, tenants in community housing). These clients' matters show the risk of homelessness that can quickly arise if rental policies are not appropriately managed by social housing providers.

The HPLC recommends that the current method for calculating rent at no more than 25% of the household's income is retained. Changing this policy would risk of imposing significant financial hardship on public housing tenants. It would also increase the likelihood that people would not be able to keep up with their rent and would face eviction for arrears.

¹¹³ HPLC Consultation Participant 3.

¹¹⁴ HPLC Consultation Participant 6.

¹¹⁵ HPLC Consultation Participant 7.

¹¹⁶ HPLC Consultation Participant 10.

¹¹⁷ HPLC Consultation Participant 4.

¹¹⁸ HPLC Consultation Participant 10.

7. Tenancy management – preventing homelessness

This section addresses Feedback Form questions 6 and 7.

The HPLC is concerned that a policy focus on motivating good behaviour will manifest as a more punitive approach to difficult, challenging or anti social behaviour by public tenants and, consequently, to more evictions from social housing into homelessness.

This section addresses the following issues:

- ▶ High risk tenancies and the vulnerable tenant profile – the increasingly disadvantaged profile of public housing tenants and their vulnerability to tenancy failure, as well as the complicated dynamic of social housing which requires balancing the needs of other tenants.
- ▶ The links between evictions from social housing and homelessness – three case studies that show the high likelihood of homelessness in the event of eviction from social housing. They also highlight the benefits of engaging services, avoiding eviction and considering alternatives to help tenants manage their tenancy obligations; and the risks of taking an enforcement-based approach to problematic behaviour in social housing.
- ▶ Best practice models for sustaining tenancies and preventing homelessness – evidence indicates that the approach that most effectively generates ‘good behaviour’ in social housing is a tenancy sustainment approach that links clients with services to support them to manage the complex life circumstances that are jeopardising their tenancy.

Based on what we see in our casework with clients who are facing or have been evicted from social housing, the HPLC’s firm position is that evictions from social housing should be an absolute last resort. The vulnerability of public housing tenants and the acute shortage of emergency accommodation and affordable private rental mean that this is the end of the line – eviction from public housing will inevitably result in homelessness.

7.1 High risk tenancies and vulnerable tenant profile

Increasingly vulnerable tenant profile

As the Consultation Paper recognises, the profile of tenants living in social housing in Victoria is one of increasing vulnerability.¹¹⁹ The 2010 Public Housing Inquiry observed that tenants who either live in or seek to live in public housing are an ‘increasingly economically and socially disadvantaged’ group¹²⁰ and that the Victorian Government allocates the majority of its public housing to people who have experienced homelessness and / or tenancy failure in the past. The report identified that over 70% of people being allocated public housing in Victoria have experienced homelessness.¹²¹

The phenomenon of housing residualisation is often referred to i.e. the situation where ‘residents of social housing are increasingly drawn from vulnerable populations characterised by disadvantage and complex needs rather than just low income.’¹²² This has stemmed partly from the introduction of the segmented

¹¹⁹ Consultation Paper, above n 26.

¹²⁰ 2010 Public Housing Report, above n 6, xxi.

¹²¹ 2010 Public Housing Report, above n 6, 227 and 241 citing Dr J Hall et al, Australian Housing and Urban Research Institute, *Operating Deficits and Public Housing* (2007), 83.

¹²² Daphne Habibis et al, Australian Housing and Urban Research Institute, *A Sustaining Tenancies Approach to Managing Demanding Behaviour in Public Housing: A Good Practice Guide* (July 2007) vii.

waiting list, which aims to house those with the most acute need as a matter of priority. In addition, policies that provide financial incentives to encourage private home ownership to both investors and first home buyers have increased private home ownership but have negatively affected housing affordability. The outcome of such policies can be seen in the average rental vacancy rate between January 2006 to March 2012 of 1.6%, which is 'low in historical terms and is indicative of an ongoing tight supply situation'.¹²³

In such an environment it is unsurprising that vulnerable and disadvantaged people with complex needs rely on public housing. It is also not surprising that, within this vulnerable group, there are some people who will have extraordinary difficulty in managing their tenancy due to their complex needs. Previous research by the Department of Human Services indicates that the main support issues of high risk tenancies are nuisance behaviour, mental health issues, aggressive behaviour and addiction.¹²⁴ In relation to high risk tenants,¹²⁵ DHS stated: 'The capacity to manage the responsibilities of a tenancy amidst life contexts that may be fraught or chaotic cannot be assumed of this tenant population'.¹²⁶

The life experience of social housing tenants often leads to difficult behaviours or social interactions, which may in turn lead to conflict with landlords or neighbours and, potentially, to eviction. Tenants can face eviction from social housing for a number of reasons under the Residential Tenancies Act including for rental arrears, illegally using the premises, damaging the premises or endangering the safety of neighbouring occupiers.¹²⁷ The 'duty provisions' of the Residential Tenancies Act also provide that tenants can be evicted for causing nuisance or interference with the reasonable peace, comfort or privacy of a neighbour.

In summary:

- ▶ tenants in social housing are at higher risk of eviction because of a range of pre-existing social and economic disadvantages; and
- ▶ once evicted, social housing tenants have extremely limited prospects of accessing alternative housing and there is therefore a high likelihood that they will re-enter homelessness.¹²⁸

Complex dynamic in social housing

As mentioned above, in 2010, the HPLC made a submission to the 2010 Public Housing Inquiry,¹²⁹ which included detailed interviews with six public housing tenants. These interviews highlighted the tension that has arisen from the increasingly vulnerable profile of public housing tenants: people with mental health issues are living without the support they need; and neighbouring tenants are struggling to deal with their neighbours' symptoms, which can include aggression, noise and property damage.

A 2010 interviewee, Mark, described residents in his high rise who suffer mental health issues, and the lack of support they are offered:

We've got, on every floor, quite a few people – like two people on every floor have got severe mental health problems and mental health history. I believe everybody's got the right to public

¹²³ Department of Human Services, *Rental Report March Quarter 2012* (March 2012) 16.

¹²⁴ DHS High Risk Tenancies Project, above n 16, 16.

¹²⁵ DHS High Risk Tenancies Project, above n 16, 5. The definition of 'high-risk tenancy' by the Project is '[a tenancy] that is at high risk of failure as a result of the negative impact of the tenant's social, health and/or welfare problems on their ability to responsibly manage the tenancy'.

¹²⁶ *Ibid* 15.

¹²⁷ *Residential Tenancies Act 1997* (Vic) ss 246, 250, 243 and 244.

¹²⁸ See DHS High Risk Tenancies Project, above n 16, 19: 'Unstable housing is recognised as an entry point into homelessness'. The 'revolving door' or 'churn' describes 'a cyclic process where an individual or family moves between housing – unstable housing – homelessness'.

¹²⁹ See HPLC 2010 Public Housing Submission, above n 60.

housing. But the problem is it's impacting on everybody else that doesn't have chronic mental health issues. We've got a lady on my floor who just gives the other women hell ...

Because obviously there's no care for her, she's just been dumped there and it's known that she's got a huge mental health history and a lot of the women are frightened – she's violent ...

... I think these people need support and often care to remain healthy while in housing. Yet they dump them in a flat and expect us to deal with it. It's sad because no one cares, or gives a damn. We're not professional carers and it becomes our responsibility. I'm far from being a mental health professional and I'm going 'I'm not even getting paid for this job'. So therefore I think someone is derelicting their duties in reasonable care for people that have got these issues.¹³⁰

Another 2010 interviewee, Lukas, noted that there is a lack of support in his high rise:

There's two people who live close to me with mental issues ... One of them is screaming and yelling 24 hours non-stop. Police can't do nothing, security can't do nothing. It makes no difference.

I tell the Office, look, this person they don't need the police, they need medical attention. Some support, not police or this and that. They find out that the woman who makes this noise has cancer. And then they want me to lodge a complaint against this person and ask me to take her to court. I say, it's not my problem. I mean this problem was here before I moved in. This person she needs a doctor ... I don't want to make her live on the streets! She's a sick woman!¹³¹

In this way, the HPLC sees both perspectives of the difficult dynamic of social housing – we hear from people who are frightened of their neighbours whose mental illness or substance dependence causes aggressive behaviour; we also act for those clients facing eviction because of behaviour stemming from their mental illness or substance dependence. These perspectives have informed the HPLC's position that a co-ordinated service response is needed to support high risk tenants to manage their tenancies. Identification of high risk tenants should happen early before the tenancy is at imminent risk of failure and before the tenant's behaviour has caused stress or fear for surrounding tenants.

7.2 Behaviour-based evictions and homelessness

Through our casework, the HPLC sees first-hand the direct relationship between eviction from social housing and homelessness. The case studies set out in this section provide insight into the vulnerability of three single mothers facing eviction and the significant barriers they faced to accessing alternative housing. Each of these women was facing eviction for behavioural reasons. In this way, these case studies also highlight the risks associated with taking a punitive or enforcement-based approach to 'anti social' behaviour and the direct risk of homelessness that such an approach presents.

The case studies raise the same concerns as have been identified in the United Kingdom, where anti social behaviour is increasingly managed through an enforcement framework with limited success:

... vulnerable households are seen as having been targeted by anti social behaviour interventions.

This has the effect of punishing and stigmatizing those affected, undermining their housing rights, and pushing families to the margins of society. There are therefore increasing doubts as to whether enforcement can be an effective strategy for achieving sustainable solutions for

¹³⁰ HPLC 2010 Public Housing Submission, above n 60, 28, Mark's story, [Appendix C], [43–44].

¹³¹ HPLC 2010 Public Housing Submission, above n 60, 28, Lukas' story (Appendix D), [13–15].

anti social behaviour, and concerns about the negative impact that it has on households made homeless as a result.¹³²

Links between eviction from public housing and homelessness – mother with multiple complex needs would have to sleep in car if evicted

Background

When Emma was 10 years old she became a ward of the state because she was unable to live with her mother. She lived in Department of Human Services residential care units from the age of 11 to 14.

From about 14 years old, DHS assisted her to live independently in an Office of Housing flat. She lived alone in the flat for one year until her boyfriend Johnny moved in. Emma and Johnny lived together until his death in an accident five years later.

Soon after Johnny's death, Emma gave birth to their son, but she had trouble taking care of him. She struggled with addiction to heroin and other drugs and had a learning disability and mental health issues.

About two years after Johnny's death, Emma started a relationship with Brendan. Brendan also struggled with substance misuse and had spent time in prison. His relationship with Emma was not positive and after about 18 months, her son was removed from her care. Emma visited her son every week day and on weekends he would stay at her place.

Emma had recently been seriously assaulted as a result of an attack at the rented premises. She was on the waiting list for major surgery following the assault and had requested a transfer into safer housing.

Risk of eviction and homelessness

In 2011, Emma received a Notice to Vacate from the Office of Housing in relation to her rented premises. The Notice alleged that the premises had been illegally used.

Two weeks later Emma received an application for a Possession Order that was to be heard at VCAT. Emma had nowhere else to go and would lose all contact with her son if evicted. In her local area, the private rental vacancy rate was just over 1% and rent was out of reach for someone on a Disability Support Pension. Emma had no family who could provide emergency accommodation if she was evicted. Also, she had never rented privately and had no history or references to provide to private landlords.

Emma's housing support worker told her that she would probably need to sleep in her car if she was evicted. Alternatively, they said access to a rooming house would be the best case scenario.

Outcome – homelessness avoided

With less than two weeks until the hearing date, the HPLC lawyers began to assist Emma.

Emma explained to the lawyers that the details of the Notice were wrong. The HPLC lawyers secured an adjournment of the VCAT proceedings and, after extensive discussions, the Office of Housing withdrew their application for a Possession Order.

Emma also advised the HPLC that, due to her age, she was no longer eligible for assistance from her current caseworker. The Homeless Persons' Liaison Officer prepared a detailed referral letter to secure Emma a new caseworker as a matter of urgency, so that she could be supported to sustain her tenancy and avoid homelessness.

¹³² Simon Hoffman, Peter Mackie and John Pritchard, 'Anti-social behaviour law and policy in the United Kingdom: Assessing the impact of enforcement action in the management of social housing' (2010) 2(1) *International Journal of Law in the Built Environment* 26.

In the above case, linking Emma with intensive support had the potential to assist her to address her trauma and substance dependence and to maintain a positive relationship with her son. Addressing or managing these complex issues makes it significantly more likely that Emma will be able to comply with her obligations as a tenant. Eviction, however, would increase Emma's vulnerability; she would re-enter homelessness and cycle through the system where her challenging behaviours would persist.

In the matter below, the relationship between neighbours had deteriorated and become fraught and aggressive. The OOH took an enforcement-based approach, which presented the significant likelihood of re-entry to homelessness for a mother and her three young children. As in the case above, eviction was able to be avoided and, instead, the client was linked with supports and able to continue education while an alternative property was located.

Mother and three children face eviction for neighbourhood dispute

Jennifer was living in public housing with her three young children who attended the local primary school. They had been living there for three years and, prior to this, had experienced ongoing homelessness. Since moving into the property, Jennifer had been able to start studying and had engaged with support workers to assist her to manage her anxiety and depression.

The family had had an amicable relationship with the neighbours until an incident involving one of Jennifer's children being injured by the neighbours' son caused the relationship to deteriorate. Jennifer's former partner, who did not live at the property, had a number of altercations with the neighbours.

Jennifer's tenancy became insecure when the Office of Housing obtained a Compliance Order from VCAT, which required Jennifer and any visitor to the property to refrain from interfering with the privacy, peace and comfort of the neighbours. Three months later, a Notice to Vacate was issued as a result of Jennifer's alleged failure to comply with the Compliance Order and an application for a Possession Order was made.

The HPLC represented Jennifer in the proceedings. They advocated to obtain proper documentation from the Office of Housing, who had been reluctant to provide the evidence that they intended to rely on at the hearing. At the hearing, VCAT did not make a Possession Order. Instead, the Member adjourned the matter for six-months, subject to an undertaking by Jennifer to comply with the original Compliance Order, use her best efforts to ensure her children comply with it, seek alternative accommodation and not to invite Jennifer's former partner to the property.

Jennifer's tenancy remained insecure (because of the risk of eviction if she breached the Compliance Order), but she and her children had avoided eviction and returning to homelessness.

The VCAT adjournment has allowed Jennifer to remain in her home while making this application and for her children to continue attending the local school. The Office of Housing staff have been supportive of trying to arrange a "mutual swap" for Jennifer and her children so that they can remove themselves from the ongoing conflict with the neighbours.

Mary's matter below is yet to be determined. She currently faces imminent eviction into homelessness for behaviour stemming from an ongoing dispute with her neighbours. Mary's SHASP worker has advised that Mary will most likely be homeless if evicted and will probably have to live in a boarding house. This will substantially damage her alcohol rehabilitation and negatively impact on her relationship with her vulnerable son. Mary could benefit significantly from being supported to maintain her tenancy while she waits for an alternative property. Taking an enforcement-based approach will exacerbate Mary's hardship and, in addition to the heavy personal toll on Mary and her son, is very likely to bring with it high costs of emergency

accommodation, health care, rehabilitation and potential justice costs. Mary will require further support down the track and, by that point, she will be even less well equipped to manage her tenancy successfully.

Enforcement-based approaches to neighbourhood disputes and the risk of homelessness

Background

Mary has a lengthy history of alcohol dependence and has been on detox programs 30 times over the past 20 years. She currently resides in an Office of Housing flat. Though she does not have custody of her son, who has a disability, her son can and often does stay with her overnight.

On multiple occasions in early 2012, Mary and her son have been subjected to verbal abuse by her neighbours, including on the basis of her son's disability.

Mary has, at times, responded by yelling at her neighbour. VCAT made a Compliance Order against Mary in late 2011 requiring that Mary cease to scream, shout, or verbally abuse her neighbours or their visitors.

In response to ongoing disputes with her neighbours, it was alleged that Mary had breached the Compliance Order. She was served with a Notice to Vacate giving her 14 days to leave the property.

Mary and her SHASP worker approached the HPLC for assistance. At the hearing, VCAT dismissed the Notice to Vacate as it failed to comply with section 319 of the Residential Tenancies Act because it did not give Mary sufficient information about the alleged breaches of the Compliance Order.

Risk of eviction and homelessness

Mary has since been reissued with a Notice to Vacate and fears that she will become homeless if evicted. Her SHASP worker is particularly concerned as he is well aware of the acute lack of affordable housing available in Victoria. Mary would not be able to afford private housing and her ability to fund temporary accommodation options would be limited.

She is particularly vulnerable given her alcohol dependence, for which she is currently receiving counselling, and is under a considerable amount of stress. Mary's alcohol counsellor has noted that stressful situations invariably result in relapse for Mary. Without stable housing, Mary's health and rehabilitation will be severely jeopardised.

Mary's son recently attempted suicide and she is concerned that her eviction will mean that she can no longer adequately care for her son, 'her pride and joy', and provide him with the necessary support for his recovery.

Mary's social workers and her son's support worker unanimously believe that the fostering of a relationship between Mary and her son is very positive for both of them. This has proven to be the case over the last few months. If Mary were to be evicted, it is likely that she will find unstable crisis accommodation at best. This would seriously impact on her ability to foster a positive relationship with her son.

Outcome

Mary's future will be decided at an upcoming VCAT hearing.

These case studies and the HPLC's other casework are the foundation for the position that, evictions from public housing:

- ▶ Will almost certainly lead to homelessness for vulnerable tenants and their children; and
- ▶ Should be an absolute last resort, to be considered only after all alternatives to eviction have been exhausted (in particular, the provision of support by services that can assist high risk tenants to manage the issues that are jeopardising their tenancy).

In the above cases, an enforcement-based approach may have seemed like the only option for housing workers dealing with the fraught dynamic involving complex tenants and their neighbours. However, these cases show the clear benefits of engaging services, avoiding eviction and considering alternatives to help the tenants manage their behaviour and comply with their obligations as tenants. As the Department of Human Services has previously identified: 'High risk tenancies present an intervention opportunity for the prevention of homelessness. Stabilising housing has been shown to be an essential element for the progression or success of other treatment interventions, for example drug and alcohol, mental health'.¹³³

In each case above, avoiding eviction allowed families to stay together and prevented inevitable homelessness and severe hardship for the women and their children (although Mary's matter is still to be determined). The cases present clear evidence that jeopardising a person's tenancy is not an effective mechanism for managing complex behaviours.

Models and mechanisms for sustaining tenancies are discussed below.

7.3 Sustaining tenancies and preventing homelessness

This section discusses tenancy sustainment models as an effective way of managing challenging behaviour in social housing. In particular, it discusses the need for early intervention before issues escalate and access to advice and support for high risk tenants, including support to liaise, mediate and negotiate with landlords.

Best practice homelessness prevention

In 2010 HPLC Manager and Principal Lawyer, Chris Povey, was awarded a Churchill Fellowship which allowed him to travel to the United Kingdom, United States and Canada in 2011 to look at models of best practice for sustaining tenancies and avoiding evictions.¹³⁴

Over two months Chris spoke with a range of academics, peak landlord organisations, supportive housing experts and providers, consumers and tenants, tenant participation initiatives, mental health workers, housing workers, police, government, lawyers, anti social behaviour experts and social workers to increase understanding of why homelessness prevention is important and what it takes to effectively prevent homelessness. Chris has produced a detailed report on his findings, 'Investigating Tenancy Sustainment Programs and Approaches in relation to Clients at Risk of Homelessness' (**Churchill Report**).

Ten of the key messages from the Churchill Report are:

1. We must prioritise homelessness prevention – a broad commitment to 'homelessness prevention' is insufficient to achieve change.
2. We must implement a plan to prevent homelessness. The plan must:
 - a. be developed and implemented in consultation with 'affected groups'; and
 - b. include timetables, reporting and monitoring regimes, outcome measurements and complaints mechanisms.
3. Homelessness prevention requires a range of initiatives:
 - a. a high level of support is required for vulnerable tenants;
 - b. support must not be time limited; and
 - c. worker values and client trust are important.

¹³³ DHS High Risk Tenancies Project, above n 16, 81.

¹³⁴ See 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).

4. Regulating behaviour is difficult and struggles to address underlying issues.
5. Legislative and policy support is needed to drive homelessness prevention.
6. We need to increase access to private rental – for some tenants ‘rapid re-housing’ in the private rental market (with rental assistance, relocation and stabilisation services, outreach to property owners and case management) can effectively prevent homelessness.
7. Social landlords must have direct personal contact with tenants.
8. Identifying and understanding vulnerability is essential to sustaining tenancies and to appropriately scale support.
9. Embedding support workers within housing teams and providing mental health training assists housing workers to identify vulnerability and disadvantage.
10. We must develop personal skills and connections in order to prevent homelessness and sustain tenancies.

International best practice models for tenancy sustainment are discussed in detail in the Churchill Report. One example of the kind of practical, collaborative and regulatory efforts required for successful homelessness prevention is below. In particular, it includes:

- ▶ Establishment of a Homelessness Task Force;
- ▶ Introduction of legislative and regulatory protections that support the position of evictions as a ‘last resort’;
- ▶ A focus on early identification of ‘those getting into housing difficulties’ and access to advice and support for those tenants;
- ▶ Evidence-based policy and law reform (i.e. responding to evidence about what is working and what needs improvement); and
- ▶ Legislating a pre-eviction requirement for social landlords (a mandatory checklist that must be complied with before proceeding to eviction).

The Scottish Model – best practice homelessness prevention

Prioritising homelessness prevention – Homelessness Task Force

In 1999 the Scottish Government appointed a Homelessness Task Force: ‘To review the causes and nature of homelessness in Scotland; to examine current practice in dealing with cases of homelessness; and to make recommendations on how homelessness in Scotland can best be prevented and, where it does occur, tackled effectively’.¹³⁵

In addition to recommending the removal of ‘priority need’ in housing allocation, the Homelessness Task Force Final Report considered a broad range of issues including improvements to housing legislation, housing policy, benefits and homelessness responses.

In its 2002 Report, the Homelessness Task Force indicated that social landlords should review and potentially improve:

- i) the arrangements for early identification of those getting into housing difficulties, across

¹³⁵ Scottish Government, Press Release, ‘Task force to turn tide of homelessness’ (25 August 1999) (available at: <http://www.scotland.gov.uk/News/Releases/1999/08/b8910367-f38a-4b26-b6ac-baeb641f355e>).

the full range of tenures and landlords; and

ii) the advice and support available for those known to be at particular risk of homelessness
...¹³⁶

An evaluation of homelessness prevention activities in Scotland undertaken in 2007 noted that 'developing and operating a prevention centred service is widely seen as requiring a distinct break with the traditional reactive and legalistic culture of homelessness'.¹³⁷

The Homelessness Task Force's 2002 Report also noted:

'Eviction invariably deepens a household's problems and should always be a last resort. It is often an indication of failure on the part of the landlord as well as the tenant. We recommend that homelessness strategies should provide for specific, concentrated support programmes for those threatened with eviction across all tenures. These programmes should include the provision of access to independent advice and representation'.¹³⁸

Eviction as a last resort and a clear definition of 'homelessness prevention'

In 2009, the increased emphasis on homelessness prevention was marked by the release of the Prevention of Homelessness Guidance by the Scottish Government and the Convention of Scottish Local Authorities (**Homelessness Prevention Guidance**). The Homelessness Prevention Guidance states that eviction should be used as a 'last resort'¹³⁹ and sets out a three part definition of 'homelessness prevention':

(i) Early intervention: where those potentially at risk are identified and services provided to support the person and their environment before incipient problems or disputes escalate beyond repair;

(ii) Pre-crisis intervention: which can take the form of advice services, mediation services, negotiation with landlords to avoid imminent loss of a home and targeted services at known risk points ...; and

(iii) Preventing recurring homelessness: tenancy sustainment is seen as key to preventing recurring homelessness where there are problems that cannot be resolved by re-housing alone.¹⁴⁰

One clear example of the way in which Scotland genuinely prioritises homelessness prevention is the 'reasonableness test' that applies to all applications for possession. This 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.¹⁴¹

Evidence-based – Repossessions Group and pre-eviction requirement

In 2008, Shelter Scotland released a research report which was critical of the continuing rate of evictions in Scotland. In response, the Scottish Government established a Repossessions Group in 2009 to consider options to improve the 'consistency and rigour of pre-eviction processes and procedures'.¹⁴² The outcome was the introduction of a Pre-

¹³⁶ 'Helping Homeless People: An Action Plan for Prevention and Effective Response', *Homelessness Task Force Final Report* (6 March 2002) 55 (**HTF Final Report**).

¹³⁷ Hal Pawson, Emma Davidson and Gina Netto, *Evaluation of Homelessness Prevention Activities in Scotland* (2007) Scottish Executive Social Research, III.

¹³⁸ HTF Final Report, above n 136, 57.

¹³⁹ Scottish Government and the Convention of Scottish Local Authorities, *Prevention of Homelessness Guidance* (June 2009)11 (**Homelessness Prevention Guidance**), 12.

¹⁴⁰ Ibid.

¹⁴¹ *Housing (Scotland) Act* 2001 (UK) s 16.

¹⁴² See Scottish Government, *Eviction of Tenants in the Social Rented Sector: Protection of Tenants with Rent Arrears* (2010) 3 (**Scottish Arrears Report**).

Action Requirement checklist in the *Housing (Scotland) Act 2010* which inserts a new section into the *Housing (Scotland) Act 2001*. The Pre-action requirements for rental arrears require that the landlord must:

- (i) Provide the tenant with clear information about the terms of the tenancy agreement and outstanding rent and other financial obligations relating to the tenancy;
- (ii) Make reasonable efforts to provide the tenant with advice and assistance on the tenant's eligibility to receive housing benefits and other types of financial assistance;
- (iii) Provide the tenant with information about sources of advice and assistance in relation to debt management;
- (iv) Make reasonable efforts to agree with the tenant a reasonable plan for future payments of rent;
- (v) Not serve a notice seeking possession where a housing benefit application has been made and is likely to result in payment allowing the tenant to reduce the arrears;
- (vi) Not serve a notice seeking possession where the tenant is taking steps which in the opinion of the landlord are likely to result in payment to the landlord in a reasonable time of outstanding rent; and
- (vii) Encourage the tenant to contact the local authority.

Outcomes

In 2010, following the recommendation and implementation of pre-action requirements for rental arrears matters, Shelter released another eviction report which demonstrated a startling change: evictions had fallen by 33% and court orders of possession had fallen by 20%.¹⁴³ By any measure, this is an outstanding result.

The HPLC strongly encourages the Government to take practical measures, including through legislative and regulatory reform, that make evictions from social housing a last resort. We are concerned that an enforcement-based approach to anti social behaviour in social housing is not conducive to tenancy sustainment. Policy-makers should consider what has worked (and what hasn't) in an international context in developing the approach to managing behaviour in social housing. The evidence indicates that the approach that most effectively generates 'good behaviour' is a tenancy sustainment approach that involves linking clients with services to help them manage the complex problems of which their tenancy issues are a 'by-product'.¹⁴⁴

Using the Human Rights Charter to assist decision-makers

In 2011, the HPLC made a submission to the Scrutiny of Acts and Regulations Committee as part of the review of Victoria's Human Rights Charter (**HPLC Charter Submission**).¹⁴⁵ The HPLC Charter Submission contained 20 detailed case studies of clients for whom the HPLC had used the Human Rights Charter to negotiate and advocate. It showed that this work had prevented 42 people, including 21 children, being evicted from social housing into homelessness.

¹⁴³ Shelter, *Research Report: Evictions by Social Landlords in Scotland 2009 – 10* (December 2010) 8.

¹⁴⁴ DHS High Risk Tenancies Project, above n 16, 15: 'There is little research with people who have been evicted, but that which is available confirms that the individual or family often have complex problems and that the tenancy issues were often a by-product of their life situations'.

¹⁴⁵ PILCH Homeless Persons' Legal Clinic, *Charting the Right Course: Submission to the Inquiry into the Charter of Human Rights and Responsibilities* (6 June 2011).

The aspect of the Human Rights Charter that the HPLC most frequently relies on is the obligation on public authorities (including the OOH and community housing providers) to act compatibly with human rights and to give proper consideration to human rights in decision-making processes.¹⁴⁶ The Charter:

- ▶ requires consideration of a person's specific circumstances in the context of their relevant rights under the Charter (for example, the right under section 13(a) not to have his or her home arbitrarily or unlawfully interfered with, or the protections of children and families under section 17); and
- ▶ provides a framework for balancing these considerations with the broader objectives of social landlords (including management of tenancies and the waiting list for public housing).

In a paper called 'From Human Rights Compliance to Human Rights Culture', CEO of Hanover Welfare Services, Tony Keenan, stated:

The real impact of the Charter should be most evident in those areas of public activity which are difficult, complex and require a balance between competing rights, obligations, lawful coercion and safety. Organisations working in homelessness deal with many circumstances where it is quite possible for breaches of the Charter to occur. Managing the complex nature and behaviour of some clients, combined with the need to ration a scarce resource (subsidised and supported housing) to ensure those in greatest need receive it, presents significant challenges. This reinforces the need for considered policies and procedures in relation to the Charter, particularly if an organisation wants to move beyond basic compliance. Importantly in some circumstances it also means that organisations have to review and change the way they currently operate.¹⁴⁷

Mr Keenan identifies the important role for the Human Rights Charter in assisting decision-makers to make complex choices in relation to a vulnerable client group and in the face of limited resources. The Charter provides clear, binding standards and principles to assist social housing workers to deliver services that best balance multiple competing priorities.

The former Victorian Equal Opportunity and Human Rights Commissioner articulated this:

Whilst many examples that we hear about deal with the legal or political applications of the Charter it must be said that the Charter's greatest impact has been in its preventative role. When legally we question if a limitation of a human right is reasonable, necessary, justified and proportionate, it is this last – the 'proportionate' question – that has the most application. Many advocates are realigning this question in their everyday work to an even simpler question: **Is there another way I can do the same thing that will have less impact upon human rights?**¹⁴⁸

The legislative requirement to consider other options when making decisions – and to do so with human rights in mind – provides a practical, workable framework for social housing providers. These workers are forced to make difficult decisions on a day-to-day basis and providing clear obligations and a mandated balancing mechanism provides support in this process and leads to better, more transparent decision-making. This is of particular utility when making decisions involving challenging behaviour by social housing tenants.

Importantly, the HPLC Charter Submission also noted that the Human Rights Charter does not prohibit evictions. Social landlords can, and do, still evict people – the obligation under the Charter is to properly

¹⁴⁶ *Charter of Human Rights and Responsibilities Act 2006 (Vic)* s 38.

¹⁴⁷ Tony Keenan, CEO, Hanover Welfare Services, "From Human Rights Compliance to Human Rights Culture", Law Institute Human Rights Conference (May 2010), 4.

¹⁴⁸ Dr Helen Szoke, Former Commissioner – Victorian Equal Opportunity and Human Rights Commission, Government Lawyers' Conference, Law Institute Victoria (18 June 2010) (available at: <http://www.humanrightscommission.vic.gov.au>) (emphasis added).

consider human rights before making the decision to do this, rather than applying 'one-size-fits-all' policies to clients with complex circumstances and needs.

The HPLC strongly encourages the Government to incorporate Human Rights Charter obligations in a meaningful way in the Housing Framework. This should include a requirement to consider the consequences of enforcement action against social housing tenants, including the consequences of eviction and homelessness for the individual or family. These considerations can then be balanced against the decision-maker's other priorities (including the rights of other tenants) to reach a fair, transparent decision about whether eviction is justified and proportionate.¹⁴⁹

This is a practical framework that recognises the complexity of making decisions about social housing tenancies. It makes room for consideration of the individual or family's circumstances and the consequences of eviction. It is a process that encourages decision-makers to identify the underlying reasons for problematic behaviour and to link tenants with services to help address these needs. Essentially, it requires consideration of alternatives to eviction and makes sure that evictions from social housing occur only as a last resort.

¹⁴⁹ *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 7(2).

8. General response – cost savings from preventing homelessness

In developing the Housing Framework, the HPLC encourages the Government to analyse and evaluate the long-term cost benefits of investing in secure, affordable social housing and preventing homelessness.

While effectively sustaining tenancies and continuing investment in social housing for Victorians requires an ongoing financial commitment,¹⁵⁰ the Government must also calculate estimated savings to be derived in other sectors as a result of avoiding homelessness and providing safe and stable accommodation to vulnerable Victorians.

The Government will, of course, be in a better position to identify and analyse cost savings in Victoria, but we note the following sample figures:

- ▶ while homeless, the average annual health and justice costs for a single male are approximately \$10,200 above the normal population level;
- ▶ people experiencing homelessness use more health services:
 - on average, females experiencing homelessness use approximately \$6,800 more in health costs than average in a 12 month period (prior to receiving homelessness support); and
 - the average per annum health costs of a single man accessing homelessness services is approximately \$9,000 per person greater than the population average (the cost of hospital visits makes up 90% of the difference); and
- ▶ it costs approximately \$4,700 per annum for a single male to be provided with homelessness assistance.¹⁵¹

The Final Report of the Australian Housing and Urban Research Institute (**AHURI**) into the cost-effectiveness of homelessness programs concludes:

the cost of providing homelessness prevention services is more than offset by potential savings from reduced use of health and justice service, resulting in a net saving to government from preventing a period of homelessness.¹⁵²

The cost savings stemming from the provision of housing and support to men with a history of chronic homelessness has also been reported by Mission Australia's Michael Project:

In addition to changes in material circumstance and perception, there was evidence of a shift in service usage. Significantly, analysis of the health utilisation data suggests that while the fundamental health and mental health issues of the Michael Project clients often remained unchanged, use of the health system over the course of a year had altered substantially.

At 12 months a reduction in expenditure of \$8,222 per Michael Project client had been achieved over the year. Importantly, analysis of the health service usage data reveals that many men had moved away from using the crisis end to the community end of the health system.¹⁵³

¹⁵⁰ See Joint Statement, above n 17, priority 2.

¹⁵¹ These figures are taken from AHURI, *The Cost-Effectiveness of Homelessness Programs: Final Report* (June 2008) (available at: www.ahuri.edu.au). See AHURI, "The Cost-Effectiveness of Homelessness Programs", *AHURI Research and Policy Bulletin*, Issue 104 (July 2008).

¹⁵² *Ibid.*

¹⁵³ Mission Australia, *The Michael Project 2007 – 2012: New Perspectives and Possibilities for Homeless Men* (2012) 1.

This is consistent with the experience of the HPLC Consultation Participants. In particular, one HPLC Consultation Participant identified the health implications of homelessness and his increased use of services during that time:

I've got schizophrenia – I've got to take medication night and day ... My health has been much better now ... Since I have been in stable housing I haven't had to go to hospital again ... So far I haven't been sick for 2–3 years ... Having stable housing has balanced us out. When we didn't have it, we were so stressed out, we didn't know what to do.¹⁵⁴

The costs of insecure tenancies and tenancy failures should also be considered by Government. DHS's Support for High Risk Tenancies Project reported that: 'Instability of a public housing tenancy and/or tenancy failure is costly to tenant families, individuals, local communities and the housing and broader service sectors'.¹⁵⁵ The 2010 Public Housing Report stated that turnover of tenants is 'costly for tenants and the government',¹⁵⁶ and noted that the Victorian Government has recognised this with programs such as SHASP which support tenants to sustain tenancies and therefore reduce 'turnover and associated costs'.¹⁵⁷

This submission discusses the personal, social and economic benefits of a sustainable social housing system. As AHURI notes, many people who are evicted from social housing 'subsequently experience homelessness and consequent serious social and health harms. This is costly both in terms of human capital and financial resources since homeless people are high services users'.¹⁵⁸

The HPLC encourages the Government to make a long-term assessment of the cost benefits of providing secure and affordable housing to vulnerable Victorians that exist in addition to the obvious personal benefits for the individual tenants and families.

¹⁵⁴ HPLC Consultation Participant 8.

¹⁵⁵ Housing and Community Building Division, *Final Report – Support for High-Risk Tenancies Strategic Project* (2006), 19 cited in 2010 Public Housing Report, above n 6, 226. See also Australian Council of Social Service, *Submission to the Senate Community Affairs Committee Inquiry into Appropriation (Nation Building and Jobs) Bill (No. 2) 2008 – 2009 relating to the social housing program*, Appendix A – Background Paper (National Housing Advocacy Day, Housing for a Fairer Australia, 24 September 2008) (2009), which identifies an increase in costs of health and social support services in dealing with the social impact of a lack of affordable housing (cited in 2010 Public Housing Report, above n 6, 58).

¹⁵⁶ 2010 Public Housing Report, above n 6, 226.

¹⁵⁷ *Ibid* 227.

¹⁵⁸ Daphne Habibis et al, Australian Housing and Urban Research Institute, *A Sustaining Tenancies Approach to Managing Demanding Behaviour in Public Housing: A Good Practice Guide* (July 2007) 3.

Annexure A: PILCH and the Homeless Persons' Legal Clinic

The Public Interest Law Clearing House (Vic) Inc (**PILCH**) is a leading Victorian, not-for-profit organisation. It is committed to furthering the public interest, improving access to justice and protecting human rights by facilitating the provision of pro bono legal services and undertaking law reform, policy work and legal education. In carrying out its work, PILCH seeks to:

- ▶ address disadvantage and marginalisation in the community;
- ▶ effect structural change to address injustice;
- ▶ foster a strong pro bono culture in Victoria; and
- ▶ increase the pro bono capacity of the legal profession.

The HPLC is a project of PILCH and was established in 2001 in response to the unmet need for targeted legal services for people experiencing homelessness.¹⁵⁹ The HPLC works to address the causes and effects of homelessness in the Victorian community through:

- ▶ legal casework – assisting individuals;
- ▶ advocacy – reforming systems and structures; and
- ▶ capacity building – training and awareness raising.

Free legal services are offered by the HPLC on a weekly basis at nine outreach locations that are already accessed by people experiencing homelessness, including crisis accommodation centres and social and family services.

The HPLC's host agencies are Melbourne Citymission, The Big Issue, Ozanam House, Flagstaff Crisis Accommodation, Hanover Welfare Services, Victorian Association for the Care and Resettlement of Offenders (**VACRO**), HomeGround Housing Services, Northside Geelong and Salvation Army St Kilda Crisis Contact Centre. The HPLC collaborates with corporate law firms to provide pro bono legal assistance. Volunteer lawyers from the following firms provide services at the host agencies: Allens Linklaters, Clayton Utz, Corrs Chambers Westgarth, DLA Piper, Freehills, King & Wood Mallesons, Minter Ellison and Harwood Andrews

Since its establishment, the HPLC has assisted over 5000 people experiencing or at risk of homelessness in Victoria.

In 2005, the HPLC received the national Human Rights Law Award conferred by the Human Rights and Equal Opportunity Commission in recognition of its contribution to social justice and human rights. In 2009 it received a Melbourne Award for contribution to community in the City of Melbourne.

¹⁵⁹ See PILCH Homeless Persons' Legal Clinic <http://www.pilch.org.au/hplc>.

Annexure B: HPLC Consultation Participants

RESPONDENT	GENDER & AGE	CURRENT HOUSING STATUS	SOURCE OF INCOME	OTHER INFORMATION (eg. Mental illness, number of children, substance dependence)
1.	Male	Crisis housing, homeless 5+ years (on public house waiting list)	DSP	Mental illness, five years of homelessness.
2.	Female	Public housing	Centrelink benefit	Substance use issues.
3.	Female 51 years old	Public housing (1 week)	Carer pension, DSP	Primary carer for one child with severe mental illness.
4.	Female	Transitional housing (on public housing waiting list)	Newstart Allowance	Mother of five children not currently in care (access to children impacted by current housing situation).
5.	Male 37 years old	Transitional housing (on public housing waiting list)	Newstart Allowance	Mental illness, institutionalisation.
6.	Female 29 years old	Public housing (5 years)	Newstart Allowance	Substance use and domestic violence.
7.	Female 44 years old	Public housing (2 years)	DSP	Survivor of domestic violence. Substance use issues.
8.	Male 24 years old	Public housing (sharing with mother)	DSP	Suffers from schizophrenia.
9.	Male 44 years old	Transitional housing	Parenting payment, DSP, works two days a week through disability	Single father, 5 children aged 7, 9, 11 and two 14 year olds.

RESPONDENT	GENDER & AGE	CURRENT HOUSING STATUS	SOURCE OF INCOME	OTHER INFORMATION (eg. Mental illness, number of children, substance dependence)
			employment service	
10.	Male 46 years old	Public housing (10 years)	DSP	Suffers from a mental illness which limits his ability to work. Has special accommodation requirements on this basis.

