

# ***Creating a fairer and stronger community for Victorians experiencing mental illness, homelessness & housing insecurity***

**Submission to the Royal Commission  
into Victoria's Mental Health System**

**July 2019**

# About Justice Connect Homeless Law

Justice Connect Homeless Law (**Homeless Law**) is Victoria's specialist free legal service for people experiencing or at risk of homelessness. Homeless Law staff work closely with pro bono lawyers to provide intensive legal representation (including ongoing casework, negotiations, court and tribunal appearances and advice) to over 400 homeless or at risk Victorians each year. Since 2001, Homeless Law has been outreach-based and client-centred, and from 2010, we have added depth to our practice by integrating two staff social workers, allowing us to holistically address clients' legal and non-legal needs under one roof.

In 2017-2018, Homeless Law:

- Opened 404 new client files to provide ongoing legal representation to people experiencing or at risk of homelessness;
- Connected 145 of the most transient and isolated Victorians, particularly rough sleepers, to legal services through co-locations and embedded partnerships with frontline community-based health and homelessness services, including cohealth, Launch Housing and Sacred Heart Mission – Journey to Social Inclusion;
- Provided tailored legal assistance to 124 clients facing fines and charges directly related to homelessness;
- Prevented the eviction of 111 clients and their families into homelessness; and
- Delivered specialised social work supports to 104 highly marginalised clients.

Across our legal clinics, in the last 18 months, Homeless Law has directly prevented 184 clients and their families from being evicted into homelessness. Based on findings by the Australian Housing and Urban Research Institute (**AHURI**), this equates to over \$5.4 million worth of savings to the Victorian Government and wider-community, through avoiding increased health, justice and welfare services costs.<sup>1</sup>

On any given night, there are around 25,000 people who are homeless in Victoria and between 2006 and 2016, homelessness in Victoria increased by 43%.<sup>2</sup> Homeless Law's clients often have complex and interconnected, legal and non-legal needs and vulnerabilities, including an overwhelming prevalence of mental illness.

In addition to our integrated model of service delivery, which focuses on early intervention and preventing legal issues escalating to crisis point, Homeless Law uses the evidence from our direct casework to inform systemic change aimed at stopping homelessness and its serious impacts on wellbeing before it starts and reducing the negative impact of the law on people experiencing homelessness.

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<sup>1</sup> Estimated annual cost to government services of an individual experiencing homelessness is \$29,450 higher than for the rest of the Australian population. See Zaretsky K. et al, Australian Housing and Urban Research Institute (**AHURI**), *The cost of homelessness and the net benefit of homelessness programs: a national study*. AHURI Final Report No 205 (2013) 14 available at [https://www.ahuri.edu.au/\\_\\_data/assets/pdf\\_file/0007/2032/AHURI\\_Final\\_Report\\_No218\\_The-cost-of-homelessness-and-the-net-benefit-of-homelessness-programs-a-national-study.pdf](https://www.ahuri.edu.au/__data/assets/pdf_file/0007/2032/AHURI_Final_Report_No218_The-cost-of-homelessness-and-the-net-benefit-of-homelessness-programs-a-national-study.pdf).

<sup>2</sup> Australian Bureau of Statistics, *Census: Estimating Homelessness*, (2016) cat no. 2049.0.



# Acknowledgements

Homeless Law thanks our partner law firms and pro bono lawyers whose casework continues to generate positive outcomes for Victorians who are experiencing or at risk of homelessness, and shapes our recommendations for reform. Homeless Law particularly recognises our partner law firm Clayton Utz for their generous legal research support, and we also acknowledge our colleagues in the legal assistance, homelessness, housing and community-service sectors for consultations in relation to this submission.

We have shared deidentified Homeless Law client stories and direct insights throughout this submission, which have informed and given light to our recommendations. We are grateful for the resilience and strength of homeless or at risk Victorians.

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# 1. Executive summary & seven recommendations

Homeless Law commends the Victorian Government for its commitment to improving mental health outcomes for Victorians and to eliminating disadvantage experienced by those living with mental illness through its establishment of the Royal Commission into Victoria's Mental Health System (**Commission**). Homeless Law's submission is based on evidence from our legal representation, human rights advocacy and social work assistance for homeless or at risk Victorians, many of who face mental illness. The focal points of our submission are the Commission's Terms of Reference 1, 2.3 and 4,<sup>3</sup> which we examine in the context of Homeless Law's casework and direct client insights.

Homeless Law observes day-to-day that housing insecurity and homelessness make it almost impossible to experience good mental health, and they are critical drivers behind community members facing mental illness. Housing is one of the core social determinate factors for mental health and should form an essential component of the Victorian Government's strategy to prevent mental illness and suicide, and to support mental health recovery.<sup>4</sup> Homeless Law's submission outlines constructive strategies to improve and address the poor mental health associated with homelessness and housing insecurity.

Current evidence suggests that the links between housing and mental health are complex, bi-directional and reinforcing, with 17,772 Victorians who presented at a homelessness services last year citing mental health as one of the reasons they needed help.<sup>5</sup> Homeless Law also notes:

- Mental illness is both a cause of homelessness and caused by homelessness. Studies have indicated that between 30% and 80% of people experiencing homelessness also experience mental illness.<sup>6</sup> Research also suggests that, over half of those experiencing homelessness with mental illness developed their illness as a consequence of becoming homeless.<sup>7</sup>
- People with a mental illness are also more likely to face eviction, particularly during times of mental health treatment and crisis.<sup>8</sup>
- Those experiencing mental illness will generally struggle to access safe, secure, affordable and appropriate housing.<sup>9</sup>

The 2018 AHURI publication for the National Mental Health Commission, *Housing, homelessness and mental health: towards systems change*, highlighted the significant links between mental wellness and secure, adequate, quality housing.<sup>10</sup> The ability of an individual to access safe, suitable and stable housing is key to maintaining mental health and treating mental illness, allowing a person to focus on prioritising treatment and rehabilitation. However, there is currently a lack of social and affordable housing with supports for people with lived experience of mental illness in Victoria.

<sup>3</sup> Victorian Government, *Terms of reference for the Royal Commission into Victoria's Mental Health System* (February 2019) (**Terms of Reference**) Terms of Reference 1, 2.3 and 4, available at: <https://engage.vic.gov.au/royal-commission-mental-health-terms-of-reference>.

<sup>4</sup> Terms of Reference, above n 3, Term of Reference 1.

<sup>5</sup> Australian Institute of Health and Welfare (AIHW), *Specialist homelessness services annual report 2017–18* (2018) (**Homelessness Services Annual Report 2018-17**) Data tables: Vic: Specialist homelessness services annual report 2017–18 available at: <https://www.aihw.gov.au/reports/homelessness-services/specialist-homelessness-services-2017-18/data>.

<sup>6</sup> Senate Committee for Mental Health, Parliament of Australia, 'Chapter 10: Support services for people facing mental health problems', in *A national approach to mental health – from crisis to community* (March 2006) 10.32 available at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Former\\_Committees/mentalhealth/report/c10](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Former_Committees/mentalhealth/report/c10).

<sup>7</sup> AIHW, *Australia's Welfare* (November 2011) 247 available at: <https://www.aihw.gov.au/getmedia/3efb9ce8-8c9b-4cbd-a686-d7757d04ec8e/12927-chapter8.pdf.aspx>.

<sup>8</sup> Victoria Legal Aid, *Intersections between mental health and the legal system and the impacts for people and communities: Submission to the Productivity Commission's Inquiry into the Economic Impact of Mental Ill-Health* (April 2019) (**VLA submission: Economic Impact of Mental Ill-Health**) 17-18 available at <https://www.legalaid.vic.gov.au/about-us/news/reflecting-on-intersections-between-mental-health-and-legal-issues>. See further below section 3.1.

<sup>9</sup> Productivity Commission, *The Social and Economic Benefits of Improving Mental Health; Productivity Commission Issues Paper*, (2019) (**The Social and Economic Benefits of Improving Mental Health**) 18-20 available at: <https://www.pc.gov.au/inquiries/current/mental-health/issues/mental-health-issues.pdf>. See further below section 3.3.

<sup>10</sup> AHURI, *Housing, homelessness and mental health: towards systems change* (November 2018) (**Housing, homelessness and mental health: towards systems change**) 13-5 available at: <http://www.mentalhealthcommission.gov.au/media/252441/Housing-homelessness-and-mental-health-towards-systems-change.pdf>.



It is in this context that Homeless Law provides legal and social work assistance to Victorians who are experiencing or at risk of homelessness. From this service delivery, Homeless Law sees first-hand the importance of maintaining or accessing safe housing for mental health:<sup>11</sup>

- Over the past financial year, an estimated 77% of Homeless Law's ongoing legal casework clients identified as having mental illness.
- Homeless Law runs a specialist women's program, the Women's Homelessness Prevention Project (WHPP). Over a four-year period, the WHPP has provided 214 women with 305 children in their care with a targeted combination of legal representation and social work support. Of these 214 women, 75% were living with mental illness and 84% had experienced family violence.
- In the first three years of Homeless Law's Courting Justice program that provides intensive criminal law representation, 73% of the 124 clients who received ongoing legal help reported having a mental illness.
- In the last year, Homeless Law's Closing the Revolving Door Project assisted 60 clients in prison with specialist legal help to sustain tenancies or resolve debts and other barriers to post-release housing, and an estimated 78% of these clients had a diagnosed mental illness.

People with mental illness have high levels of interaction with the justice system as both victim-survivors and offenders,<sup>12</sup> with disproportionate rates of incarceration and re-offending.<sup>13</sup> Interaction with the justice system for those with mental illness is often an intimidating, stressful and overwhelming experience.<sup>14</sup> Since Homeless Law commenced in 2001, fines, infringements and charges for 'public space offences' have remained one of the primary legal issues faced by homeless or at risk Victorians. Increasingly, Homeless Law is concerned about the criminalisation of conduct directly linked to mental illness, housing insecurity and homelessness.

Informed by our evidence-base from providing holistic legal representation to over 400 Victorians with complex vulnerabilities each year, Homeless Law shares case studies and direct quotes from twenty former clients and makes seven key recommendations to strengthen our community. Homeless Law's first four recommendations are focussed on creating housing security and preventing homelessness for all Victorians, recognising that having a safe home is vital for achieving better mental health outcomes. Our remaining three recommendations prioritise reducing justice system interactions, proposing opportunities to create fairer lives for people with mental illness across the state.

## SEVEN RECOMMENDATIONS TO CREATE A FAIRER AND STRONGER COMMUNITY FOR VICTORIANS EXPERIENCING MENTAL ILLNESS, HOMELESSNESS AND HOUSING INSECURITY

### 1. Fairer laws to make evictions of people with mental illness an option of absolute last resort

To improve mental health outcomes for Victorians through housing security and to prevent the onset of mental illness caused by homelessness, Homeless Law recommends:

- Abolishing the notice to vacate for successive breaches of duty through the removal of ss 249, 283, 308 and 317ZB of *Residential Tenancy Act 1997* (Vic) (RTA) and ss 91ZP, 142ZH, 206AX and 207ZB of the *Residential Tenancies Amendment Act 2018* (Vic) (RT Amendment Act).
- Introducing residential tenancies legislative provisions that require compliance orders to be worded as specifically as possible, and to be limited to a period of six months before lapsing. Only where subsequent orders are needed should there be discretion for compliance orders to be extended for a period of up to twelve months.
- Introducing a voluntary 'Code of Conduct for Private Landlords and Real Estate Agents who Support Victim-Survivors of Family Violence' to equip signatories to avoid eviction

<sup>11</sup> Terms of Reference, above n 3, Term of Reference 1.

<sup>12</sup> Law Council of Australia, The Justice Project, *Legal Services, Final report* (August 2018) (The Justice Project – Final Report) available at: [https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Justice%20Project%20\\_%20Final%20Report%20in%20full.pdf](https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Justice%20Project%20_%20Final%20Report%20in%20full.pdf), 20.

<sup>13</sup> Ibid, 27.

<sup>14</sup> Ibid, 32.



of victim-survivors of family violence into homelessness wherever possible. This voluntary code should include links to mental health services, helping to strengthen pathways and interfaces between Victoria's mental health system and frontline supports.

## **2. Better procedural safeguards to ensure housing security for people experiencing mental illness**

Given the importance of tenants' accessing the Victorian Civil and Administrative Tribunal (VCAT) to avoid preventable evictions, and the significance of maintaining a stable home for mental wellbeing, recovery and mental illness-prevention, Homeless Law recommends:

- Amending the content and form of both the Notice to Vacate and VCAT Notice of Hearing, including changing the term 'Notice to Vacate' and providing information about legal rights and details of legal assistance services within the notices.
- Strengthening pathways to mental health supports and increasing the tenancy system's accessibility by introducing a Mental Health Liaison Officer at VCAT.
- Creating an internal appeal mechanism for decisions made in the VCAT Residential Tenancies List through amendments to the *Victorian Civil and Administrative Tribunal Act 1998* (Vic).
- Giving VCAT jurisdiction to consider the human rights compatibility of eviction decisions by social housing landlords under the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

## **3. More suitable, safe and stable social housing with supports**

Improving the mental health of Victorians requires increased availability of fit-for-purpose and long-term social housing, allowing individuals to have an environment to recover and focus on mental wellness. Homeless Law recommends:

- Social (public and community) housing stock in Victoria be increased by at least 3,000 properties each year for the next decade, helping to safely house many Victorians who are unable to access or afford the private rental market, including a disproportionate cohort of those with mental illness.
- If social housing is built through mixed-sites of social and private tenancies, designs should draw on best practice to ensure that housing is integrated, indistinguishable and layout includes communal and green spaces accessible to all tenants.

## **4. Help social housing providers to prioritise tenants' rights and enhance pathways to specialised services**

To assist Victorians with mental illness to maintain or access sustainable housing and achieve positive health outcomes, Homeless Law recommends:

- Supporting social housing providers to develop fair, consistent, publicly available policies, which take into account tenants' human and legal rights.
- Implementing resources, staff training, access to tenant support services and supply of appropriate housing stock for the transfer options required by social housing providers to embed these policies.
- Extending the reach and number of intensive housing-support services, including programs with dedicated mental health professionals and those closely integrated with specialised legal services.



## 5. Reduce justice system and enforcement-based responses to mental illness and homelessness

People experiencing or at risk of homelessness, and those with mental illness, are more vulnerable to enforcement and justice system interactions. To ensure that Victorians can experience mental health and housing stability, Homeless Law recommends:

- Amending 3(1) of the *Infringements Act 2006* (Vic) to adopt language similar to the Family Violence Scheme.
  - (a) a mental or intellectual disability, disorder, disease or illness where the disability, disorder, disease or illness ~~results substantially contributed to~~ the person being unable—
    - (i) to understand that their conduct constitutes an offence; or
    - (ii) control their conduct that constitutes an offence;
- Amending s 9 of the *Fines Reform Act 2014* (Vic) to require Fines Victoria to waive or reduce costs where a person's special circumstances (particularly mental health) substantially contributed to the person being unable to attend to their fines in a timely manner.
- Repealing offences for begging and being drunk in public in ss 13 and 49A of the *Summary Offences Act 1966* (Vic).
- Amending offences related to move on directions, obscene language and drunk and disorderly offences in ss 4, 6, 14, 16, 17, 17A of the *Summary Offences Act*, so as not to criminalise this conduct where that person commits the offence due to addiction, mental illness or homelessness.
- Victoria Police should consider cautions as a first option for people where the offending is directly linked to their mental illness or homelessness.
- Victoria Police should be trained and equipped to make referrals to appropriate services as an alternative to fines and charges.
- Prosecutors should be given guidance to consider withdrawal of charges if a clear link can be drawn between the allegations and the person's mental illness or homelessness.
- Amending section 344 of the *Children, Youth and Families Act 2005* (Vic) to raise the age of criminal responsibility to 14 years, seeking to prevent the criminalisation of children and the significant life-long mental health risk associated.

## 6. Increase access to diversion and therapeutic justice for people with mental illness

To enhance mental health outcomes for those in contact, or at risk of contact, with the justice system, people experiencing mental illness and homelessness need to be provided with therapeutic outcomes and diversion. Homeless Law recommends:

- Amending section 59 of the *Criminal Procedure Act 2009* (Vic) to remove the requirement that the Prosecution consent to the Criminal Justice Diversion Program, so that the Court has the power to determine whether diversion is appropriate on balance in each matter.
- Empowering the Court to vacate pleas of guilty where it becomes apparent, after a plea is entered, that Diversion is the most appropriate outcome.
- Increasing access to therapeutic options, such as the Magistrates' Court of Victoria's Assessment and Referral Court, and making them available state-wide.



## **7. Improve the availability of holistic, integrated legal services**

Holistic legal services should be seen as an important part of achieving long-term mental health and housing outcomes for all Victorians, as well as improving referral pathways between mental health and legal services. Homeless Law recommends:

- Investing in early-intervention, client-centred and co-located legal services that can proactively resolve legal issues to minimise barriers to mental wellness and housing security.
- Supporting the integration of legal, social work, health and other community-support professionals to help people experiencing mental illness, homelessness and housing insecurity in successfully accessing, navigating and exiting the justice system.



## 2. Context of mental illness, homelessness, housing insecurity and legal needs

An individual's health and wellbeing relies heavily on the need for safe, stable and secure housing. Having a home is essential for the establishment of positive mental health outcomes, and without secure housing, several additional vulnerabilities can arise or be exacerbated. Australia's mental health system is suffering from a failure to properly respond to homelessness, which contributes to poor outcomes for consumers and decreases the efficiency of mental health care resources.

Homeless Law works closely with a range of health and homelessness service providers and allies across different sectors. From this integrated experience, it is clear that a multitude of legal needs can arise from the vulnerabilities associated with homelessness and mental health issues, and these issues cannot be considered in a vacuum.

There is a wealth of external evidence and research which highlights the importance of safe, secure housing to improve mental health outcomes.

### 2.1 The interconnectedness between mental health issues, housing insecurity and homelessness

#### Mental illness and homelessness are causal

Mental health and homelessness are strongly associated. Research has shown that insecure housing directly causes and prolongs mental ill health, and homelessness can also be a precursor to the development of a mental illness.<sup>15</sup> In 2017-18, almost 30 per cent of those aged ten and over who sought help from a specialist homelessness service in Australia reported a diagnosed mental health issue.<sup>16</sup>

Across Australia there is a chronic shortage of housing that is affordable to low income households. The National Housing Supply Council estimates that there is a current shortage of 600,000 rental dwellings that are affordable and available to households in the lower half of income distribution.<sup>17</sup> A 2018 Report prepared by AHURI also noted that there is a shortage of housing for persons with lived experience of mental ill health whose needs create challenges to living alone.<sup>18</sup> Eighty seven per cent of respondents to a SANE housing survey<sup>19</sup> reported a lack of support around the time that they became unwell and were hospitalised, which had also contributed to the loss of their accommodation.<sup>20</sup> Similarly, the episodic nature of mental illness, which may result in periods of hospitalisation or other absences from the home for treatment, can make it especially difficult for those affected to meet housing payments, thus putting them at risk of losing their housing.<sup>21</sup>

Eviction is the main reason for homelessness,<sup>22</sup> and long waiting lists for social housing mean homelessness is almost inevitable for low income people after eviction.<sup>23</sup> Further, people who are evicted from their homes generally have poorer physical and mental health than the average person, with the process of eviction itself having profound

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<sup>15</sup> Association of Mental Health Providers, *Brick by brick, a review of mental health and housing* (Report, November 2017) (**Brick by brick, a review of mental health and housing**), 5, available at: <https://www.mind.org.uk/media/26223865/brick-by-brick-a-review-of-mental-health-and-housing.pdf>; Department of Families, Housing, Community Services and Indigenous Affairs, Commonwealth of Australia, *The Road Home, A National Approach to Reducing Homelessness* (Report, December 2008) 6.

<sup>16</sup> Homelessness Services Annual Report 2018-17, above n 5 **Error! Bookmark not defined.**

<sup>17</sup> Council to Homeless Persons, Position Paper on the Victorian Homelessness Action Plan Reform Project: A Framework for Ending Homelessness (2014) available at: <http://chp.org.au/wp-content/uploads/2014/01/131224-CHP-position-paper-on-VHAP-FINAL-.pdf>, 12.

<sup>18</sup> Housing, homelessness and mental health: towards systems change, above n 10, 17.

<sup>19</sup> SANE Australia, *Housing and mental illness* (Research Bulletin 7), SANE Australia, Melbourne, 2008.

<sup>20</sup> Mental Health Council of Australia, *Home Truths: Mental Health, Housing and Homelessness in Australia* (Report, March 2009) available at: [https://mhaustralia.org/sites/default/files/imported/component/rsfiles/publications/MHCA\\_Home\\_Truths\\_Layout\\_FINAL.pdf](https://mhaustralia.org/sites/default/files/imported/component/rsfiles/publications/MHCA_Home_Truths_Layout_FINAL.pdf), 21.

<sup>21</sup> Ibid.

<sup>22</sup> Department of Families, Housing, Community Services and Indigenous Affairs, Commonwealth of Australia, *The Road Home, A National Approach to Reducing Homelessness* (Report, December 2008) 6.

<sup>23</sup> VLA submission: Economic Impact of Mental Ill-Health, above n 8, 18.



psychological consequences.<sup>24</sup> The number of people in Victoria evicted and seeking help from homelessness services has more than doubled in five years,<sup>25</sup> and people with a mental illness are also more likely to be evicted for anti-social behaviour.<sup>26</sup>

## Housing is fundamental for mental wellness

Stable housing is essential for the prevention of mental illness and the achievement of successful mental health outcomes. Evidence has shown that:

- secure tenure allows people to focus on mental health treatment and rehabilitation;
- greater choice and control over housing and support contributes to wellbeing and quality of life; and
- housing quality positively affects mental functioning, mental health care costs, wellbeing and residential stability.<sup>27</sup>

All of these factors suggest that having a stable home enables people to prioritise their mental health. However, merely having a physical roof over one's head is not enough - safe and secure housing, which includes accommodation features such as gardens, access to services, good neighbours and well-maintained properties, all contribute to positive mental wellbeing.<sup>28</sup>

## 2.2 Related vulnerabilities arising from mental health issues and homelessness

Persons with lived experience of mental ill health are more vulnerable to common risk factors for homelessness, such as family violence, alcohol and drug addiction, and unemployment.<sup>29</sup> Of the 77,600 people seeking assistance from Specialist Homelessness Services reporting a current mental health issue, over half reported additional vulnerabilities (including violence and drug and alcohol addiction).<sup>30</sup>

**Family Violence:** Family violence is a key cause of homelessness for women, young people, and children, who are vulnerable to mental ill health as a result of trauma associated with violence in the family home.<sup>31</sup> Research from the United States has shown that there is a correlation between family violence and homelessness, and that this can also trigger a slow recovery from mental illness.<sup>32</sup> Further, many women who experience family violence require intensive counselling and support after leaving violence, which will often include the need for referral to mental health services.<sup>33</sup>

**Alcohol and Drug Addiction:** entries into homelessness are affected by a combination of structural and individual factors, including drug and alcohol dependency.<sup>34</sup> Research conducted by Homelessness Australia found that a majority of people with long-term histories of chronic homelessness who present with mental health symptoms, will

<sup>24</sup> Brick by brick, a review of mental health and housing, above n 15; Department of Families, Housing, Community Services and Indigenous Affairs, Commonwealth of Australia, *The Road Home, A National Approach to Reducing Homelessness* (Report, December 2008) 5.

<sup>25</sup> Allison Worrall, 'Thousands of Victorians evicted into homelessness amid competitive rental market', *Domain* (11 February 2018), available at: <https://www.domain.com.au/news/thousands-of-victorians-evicted-into-homelessness-amid-competitive-rental-market-20180211-h0ufqn/>; Luke Michael, 'Growing Number of Victorians 'Evicted into Homelessness'', *Pro Bono Australia*, (12 February 2018) available at: <https://probonoaustralia.com.au/news/2018/02/growing-number-victorians-evicted-homelessness/>.

<sup>26</sup> Brick by brick, a review of mental health and housing, above n 15; Department of Families, Housing, Community Services and Indigenous Affairs, Commonwealth of Australia, *The Road Home, A National Approach to Reducing Homelessness* (Report, December 2008) 5.

<sup>27</sup> Housing, homelessness and mental health: towards systems change, above n 10, 13.

<sup>28</sup> Australian Government National Mental Health Commission Housing, Homelessness and Mental Health Outcomes from the National Mental Health Commission's consultation in 2017, (2017-18) available at: [https://www.mentalhealthcommission.gov.au/media/236260/NMH18-3754\\_Housing\\_Homeless\\_Report\\_ACC3.pdf](https://www.mentalhealthcommission.gov.au/media/236260/NMH18-3754_Housing_Homeless_Report_ACC3.pdf), 4.

<sup>29</sup> Housing, homelessness and mental health: towards systems change, above n 10, 13.

<sup>30</sup> Council to Homeless Persons, 'Housing Security, Disability and Mental Health', Council to Homeless Persons (19 November 2018) available at: <https://chp.org.au/mental-health-disability-and-homelessness/>.

<sup>31</sup> Housing, homelessness and mental health: towards systems change, above n 10, 14.

<sup>32</sup> Homelessness Australia, *States of being: Exploring the links between homelessness, mental illness and psychological distress*, An evidence based policy paper (2011) (**States of being: Exploring the links between homelessness, mental illness and psychological distress**) available at: [https://www.homelessnessaustralia.org.au/sites/homelessnessaus/files/2017-07/States\\_of\\_being\\_evidence\\_based\\_policy\\_paper\\_mental\\_illness\\_and\\_homelessness.pdf](https://www.homelessnessaustralia.org.au/sites/homelessnessaus/files/2017-07/States_of_being_evidence_based_policy_paper_mental_illness_and_homelessness.pdf), 20.

<sup>33</sup> *Ibid*, 21.

<sup>34</sup> Housing, homelessness and mental health: towards systems change, above n 10, 11.



also disclose alcohol and/or other drug use. These people are often unable to secure timely referrals to either alcohol and other drug services or mental health services, and social workers in homelessness services often find themselves having to manage complex behaviours within the confines of specialist homelessness services.<sup>35</sup>

**Unemployment:** Employment status has been found to be a “significant predictor of wellbeing”,<sup>36</sup> and is frequently identified as “a key ingredient in removing homeless persons with severe mental illness (HSMI) from homelessness and improving their quality of life”.<sup>37</sup> Contrastingly, poor mental health is strongly associated with reduced employment.<sup>38</sup>

**Prison:** evidence has shown that homelessness, mental illness and incarceration are clearly linked. There is an over-representation of people experiencing mental illness in prisons, and people who do not have access to adequate mental health supports are susceptible to being swept into a revolving cycle of homelessness and prison. Australian research indicates that as many as seven out of ten female prisoners and two-thirds of male prisoners may be suffering from mental illness, and people are often discharged from correctional facilities into either tenuous, insecure accommodation or homelessness.<sup>39</sup>

Other risk factors when combined include family breakdown, limited social support networks, poor planning and financial skills, poor acceptance of mental illness, poor acceptance of treatment and a history of brief repeating hospitalisations.<sup>40</sup>

## 2.3 Legal needs arising from mental health and homelessness

Many people experiencing homelessness, alongside complex mental illness, require periodic multidisciplinary support.<sup>41</sup> Access to legal services are a vital part of a multidisciplinary service response. People with mental health issues and those who are homeless experience high levels of legal need, and are vulnerable to substantial and multiple legal problems.<sup>42</sup> In Homeless Law’s experience, legal problems are often related to non-legal needs, and this further highlights the need for integrated programs to identify legal needs and provide wrap-around services.

### Higher and more challenging interactions with the justice system

People with mental illnesses have high levels of interaction with the criminal justice system as both victims and offenders,<sup>43</sup> with disproportionate rates of incarceration and re-offending.<sup>44</sup> Interaction with the justice system for those with mental illnesses can be an intimidating, stressful and overwhelming experience.<sup>45</sup> Similarly, for people experiencing homelessness, lack of affordable, safe and stable accommodation contributes to, and exacerbates, poor justice outcomes. For example, homelessness can increase the likelihood of a person being denied bail and instead being placed on remand, can prevent a person from escaping family violence, and can increase the risk of recidivism amongst recently released prisoners.<sup>46</sup>

Due to their public visibility, homeless people (particularly young homeless people), are often targeted by police and are at a greater risk of being charged with public space offences.<sup>47</sup> The traditional structure of legal services also presents difficulties, because many people experiencing homelessness face multiple, complex legal issues –

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<sup>35</sup> States of being: Exploring the links between homelessness, mental illness and psychological distress, above n 32, 22.

<sup>36</sup> Housing, homelessness and mental health: towards systems change, above n 10, 14.

<sup>37</sup> Pickett-Schenk, S.A., Cook, J.A., Grey, D. et al., 2002, ‘Employment Histories of Homeless Persons with Mental Illness’, *Community Mental Health Journal*, Volume 38, Issue 3, pp 199–211.

<sup>38</sup> Frijters, P., Johnston, D.W. and Shields, M.A., 2014, The effect of mental health on employment: evidence from Australian panel data, *Health Economics*, vol. 23, no. 9, pp. 1058–1071.

<sup>39</sup> States of being: Exploring the links between homelessness, mental illness and psychological distress, above n 32, 14, citing Johnson, G. and Chamberlain, C. (2015a) Evaluation of the Melbourne Street to Home Program, HomeGround Services, Melbourne.

<sup>40</sup> States of being: Exploring the links between homelessness, mental illness and psychological distress, above n 32, 17.

<sup>41</sup> Phillips, R. and Parsell, C., 2012, *The role of assertive outreach in ending 'rough sleeping'*, AHURI Final Report No. 179, Australian Housing and Urban Research Institute Limited, Melbourne, 1.

<sup>42</sup> The Justice Project – Final Report, above n 12.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid, 27.

<sup>45</sup> Ibid, 32.

<sup>46</sup> Ibid, 26.

<sup>47</sup> Ibid, 60.



including those relating to criminal law, housing and tenancy, credit and debt, and fines – which each need separate responses from different legal services.<sup>48</sup> All of these circumstances can have a detrimental effect for mental health.

## **Disproportionate impact of laws, policies and practices on people experiencing mental illness and homelessness**

Laws, policies and practices can disproportionately affect people experiencing homeless and people with mental illness, and entrench their disadvantage and inequality before the law.<sup>49</sup> For example, laws which prohibit begging and public drinking, street sweeping offences and ‘move on’ directions, may in effect criminalise homelessness. Such laws may also endanger homeless people by essentially excluding them from safe public spaces.<sup>50</sup> For people with mental illnesses, ‘fitness to stand trial’ laws potentially violate fundamental human rights under the *Convention on the Rights of Persons with Disabilities*, and people found unfit to stand trial may face protracted, sometimes indefinite, periods of detention at higher levels of security than is necessary.<sup>51</sup>

It is therefore imperative that governments and the justice sector address the intersectional needs of people with mental illness by developing informed, culturally competent responses throughout the justice system – which includes the legal needs of people with mental illness.<sup>52</sup> Legal assistance, together with essential health and community services, contributes to the prevention of avoidable homelessness, family separation, incarceration and involuntary treatment, all of which carry heavy costs, especially for people with mental illness.<sup>53</sup>

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<sup>48</sup> Ibid, 37.

<sup>49</sup> Ibid, 5.

<sup>50</sup> Ibid, 37.

<sup>51</sup> Ibid, 6.

<sup>52</sup> Ibid, 20.

<sup>53</sup> VLA submission: Economic Impact of Mental Ill-Health, above n 8, 33.



### 3. Better housing outcomes for people experiencing mental illness

Through over eighteen years of homelessness prevention work, Homeless Law has seen that existing legal frameworks make it too easy to evict vulnerable Victorians into homelessness, including many experiencing mental illness. Instead of having access to a safe and adequate home, which is required for mental health treatment and recovery,<sup>54</sup> tenants with a mental illness currently face a greater risk of eviction. Aboriginal and Torres Strait Islander tenants are one of the most at risk demographic groups, with research showing they are more likely to receive notices to vacate and are more likely to be evicted.<sup>55</sup>

Of further concern is that the risk of eviction for Victorians is particularly heightened during periods of acute mental illness. For example, a tenant who experiences an episode of psychosis may exhibit loud noise or behaviour that leads to a dispute with neighbours, which under the current legislative framework can lead to them being evicted into homelessness. To support Victorians recovering from mental illness and to prevent the onset of mental illness,<sup>56</sup> the Victorian Government must prioritise housing security.

#### 3.1 Fairer tenancy laws and protections for people with mental illness

Homeless Law congratulates the Victorian Government for its recent reforms to the *Residential Tenancy Act 1997* (Vic) (**RTA**), through the *Residential Tenancies Amendment Act 2018* (Vic) (**RT Amendment Act**), which will fully come into effect on 1 July 2020 (**residential tenancy reforms**) and work towards creating a safer, better and fairer tenancy system for all Victorians. As discussed, housing is a social determinate for mental wellness and key to preventing the onset of mental illness, as well as supporting recovery. As highlighted by former Homeless Law client Imogen, a home is vital:

*'[It's] somewhere where you've got your own room that you can lock the door. Leave your stuff & not worry it's going to get stolen. It takes a lot off your mind...keeps you focused on other things. Accomplishing something.'*

#### Breach notices and evictions linked to mental illness

Despite welcoming Victoria's residential tenancy reforms, there remain two specific mechanisms of eviction that disproportionately affect Victorians with a mental illness:

- evictions based on successive breaches of a tenant's duties; and
- evictions based on the breach of a compliance order.

Further reforms are required to ensure that, in line with the Commission's Term of Reference 1, people with mental illness are supported to remain housed, preventing the deterioration of their illness through an eviction into homelessness.<sup>57</sup>

<sup>54</sup> Terms of Reference, above n 3, Term of Reference 1.

<sup>55</sup> Robyn Kennedy Consultants, *Homelessness Action Plan Extended Evaluation: Support for people at risk of eviction: Coastal Sydney Aboriginal Tenancy Support Service* (Final Report, February 2013) (**Homelessness Action Plan Extended Evaluation**) 8-9 available at [https://www.facs.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0005/325463/SupportforpeopleatriskofevictionCoastalSydney.pdf](https://www.facs.nsw.gov.au/__data/assets/pdf_file/0005/325463/SupportforpeopleatriskofevictionCoastalSydney.pdf); Brackertz, N., AHURI, Research Service for Department of the Prime Minister and Cabinet, *Indigenous Housing and Education Inquiry* (May 2016) (**Indigenous Housing and Education Inquiry**) 19-20 available at: [https://www.pc.gov.au/\\_\\_data/assets/pdf\\_file/0018/201294/sub074-education-evidence.pdf](https://www.pc.gov.au/__data/assets/pdf_file/0018/201294/sub074-education-evidence.pdf).

<sup>56</sup> Terms of Reference, above n 3, Term of Reference 1.

<sup>57</sup> Terms of Reference, above n 3, Term of Reference 1.



Currently, tenants in Victoria can be given a notice to vacate their property for breaching a duty provision of the RTA if they have failed to comply with the same duty provision of the RTA twice before.<sup>58</sup> Successive breaches will continue to be an available mechanism of eviction after the residential tenancy reforms are fully implemented.<sup>59</sup>

In Homeless Law's experience, breach notices are commonly issued by landlords to require tenants to refrain from breaching one of the following duty provisions:

- a tenant must not cause nuisance or interference;<sup>60</sup> or
- a tenant must keep rented premises clean.<sup>61</sup>

Conduct that breaches these duties, including what is sometimes referred to as 'anti-social conduct', can often be clearly linked to behaviour that is the result of, or connected with, a person's mental illness, disability, their experience of family violence or fraught relationships within neighbourhoods and rooming houses.

One example Homeless Law sees through our casework is where clients face eviction for behaviour linked to their hoarding disorders. Under *The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)*,<sup>62</sup> hoarding disorders are a recognised mental illness, and are defined as a person having a persistent difficulty discarding or parting with possessions, regardless of their actual value.<sup>63</sup> This mental illness varies in acuteness and intensity and is difficult to treat, requiring therapy and strategies to manage the disorder. Further, a person who experiences other mental illness such as an intellectual disability, acquired brain injury, schizophrenia, depression or post-traumatic stress disorder can exhibit similar behaviours to a person with a hoarding disorder,<sup>64</sup> and consequently will face the same heightened risk of eviction for this behaviour.

Tenants with hoarding disorders are particularly susceptible to being given a breach notice for failing to keep their property reasonably clean or for causing nuisance to neighbours under the duty provisions of the RTA.<sup>65</sup> According to the DSM-5 "a substantial proportion of individuals with severe hoarding disorder have been involved in legal eviction proceedings and some have a history of eviction."<sup>66</sup>

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<sup>58</sup> *Residential Tenancy Act 1997* (Vic) (**RTA**) ss 249, 283, 308, 317ZB, 323.

<sup>59</sup> *Residential Tenancies Amendment Act 2018* (Vic) (**RT Amendment Act**) ss 91ZP, 142ZH, 206AX, 207ZB.

<sup>60</sup> RTA s 60, see analogous duties in ss 113, 170, 206ZL for rooming house residents, caravan park residents and Pt 4A site tenants.

<sup>61</sup> RTA s 63, see analogous duties in ss 114, 171, 206ZM for rooming house residents, caravan park residents and Pt 4A site tenants.

<sup>62</sup> American Psychiatric Association, *Diagnostic and statistical manual of mental disorders* (5<sup>th</sup> ed.) (2013) (**DSM-5**).

<sup>63</sup> *Ibid*, 247.

<sup>64</sup> *Ibid*, 250-1.

<sup>65</sup> RTA ss 60, 113, 170, 206ZL causing nuisance or disturbing quiet enjoyment; RTA ss 63, 114, 171, 206ZM keeping premises clean.

<sup>66</sup> DSM-5, above n 62, 250.



### ***Elderly mother, daughter and grandson face homelessness for allegedly breaching a compliance order through conduct directly related to mental illness***

Amanda is a 52-year-old single woman who had been living in a DHHS public housing property with her elderly mother and son for the past 23 years. Amanda has a history of family violence and mental illness, including post-traumatic stress disorder and a hoarding disorder, along with an acquired brain injury. Amanda's partner had recently passed away and she was struggling to cope with his death.

When Amanda met with Homeless Law at a community-based homelessness service, the DHHS had commenced eviction proceedings against her for the breach of a compliance order for allegedly failing to keep the property reasonably clean. Homeless Law lawyers advised Amanda about her legal rights, and extensively negotiated with DHHS, and represented her at VCAT, which prevented Amanda and her family from being evicted into homelessness. Homeless Law's social worker also provide ongoing supports to Amanda, which was crucial in helping her to engage with specialized hoarding cleaning services to help her de-clutter the property.

Homeless Law's holistic advocacy also involved connecting Amanda with long-term case management for her mental illnesses and other intensive social supports. After an industrial clean was completed at the property, Amanda, her mother and her son were able to safely return to their home. Amanda has continued to engage with her support programs, and she and her family remain securely housed without the threat of eviction.

For Amanda, it was only through the combination of intensive legal and non-legal supports, including long-term mental health case management, that she was able to remain in her home. Being supported and in stable housing with her family has allowed Amanda to achieve and sustain mental health outcomes, rather than facing an escalation of mental illness caused by a dislocation from services and entry into homelessness.

To improve mental health outcomes through secure housing in Victoria, notices to vacate for successive breaches of duty should be abolished. Under this approach, each instance of breach would require the landlord to issue a breach of duty notice and, if the notice is not complied with within the required time, the landlord could apply for a compliance order or compensation order from VCAT. Together with the amendments to the compliance order regime discussed below, this is an appropriate mechanism to prevent evictions of highly vulnerable tenants, and has a greater likelihood of increasing mental wellness for Victorians, particularly alongside referrals to appropriate mental health supports.<sup>67</sup>

### ***Mental illness, family violence and breach notices***

Another specific concern in relation to the use of breach notices is the risk of eviction for victim-survivors of family violence due to perpetrator conduct. Family violence is linked to complex and multiple vulnerabilities, including mental illness, and it is the single most common cause of homelessness in Victoria.<sup>68</sup> Based on the lived experiences of Homeless Law clients, particularly through the WHPP,<sup>69</sup> we see an overwhelming prevalence of family violence linked to a victim-survivor's experience of mental illness and housing insecurity. Of the 214 women assisted through the WHPP in its first four years, 84% reported facing family violence and 75% were living with mental illness. As the Victorian Government has identified, there is strong evidence that family violence can trigger mental illness or severely impact the capacity to recover.<sup>70</sup>

Under Victoria's current and upcoming residential tenancies legislation, family violence can be framed as 'nuisance,' leading to victim-survivors being evicted due to the violence perpetrated against them.<sup>71</sup> A study by AHURI of 59 tenancy proceedings with female tenants living at different social housing properties around Australia, found that 34

<sup>67</sup> Terms of Reference, above n 3, Terms of Reference 1 and 2.

<sup>68</sup> Homelessness Services Annual Report 2018-17, above n 5, 'Clients, services and outcomes'.

<sup>69</sup> Please see Justice Connect Homeless Law (**Homeless Law**), *Keeping Women and Children Housed: Women's Homelessness Prevention Project – Two Years, ten client stories and ten calls for change* (December 2016) (**WHPP Two Year Report**).

<sup>70</sup> DHHS, *Family violence – identifying and responding* (accessed on 26 June 2019) available at: <https://www2.health.vic.gov.au/mental-health/practice-and-service-quality/safety/family-violence-identifying-and-responding>.

<sup>71</sup> AHURI, *Social housing legal responses to crime and anti-social behaviour: impacts on vulnerable families* (June 2019) 2 available at: <https://www.ahuri.edu.au/research/final-reports/314>.



of these 59 cases involved misconduct arising wholly or partly from the conduct of a male occupier.<sup>72</sup> In 20 cases the women had experienced or were experiencing family violence and in 10 cases, family violence was part of the conduct at issue in the proceedings.<sup>73</sup>

Jacqueline's case study below highlights the importance of giving landlords and VCAT a framework for avoiding evictions of victim-survivors of family violence based on violent conduct by perpetrators.

### ***Family violence victim-survivor with a cognitive impairment facing imminent eviction due to perpetrator conduct***

Jacqueline is an Aboriginal woman who has a cognitive impairment and has been living in community housing for several years. She had previously obtained an intervention order against one of her children due to persistent family violence, but in a recent incident Jacqueline's child had attended her property and caused significant damage, while Jacqueline had hidden in the bathroom and called police. After the incident, Jacqueline's landlord issued her with an immediate notice to vacate for malicious damage and requested over \$4000 in compensation. VCAT made a possession order against her and several days before police were due to remove her from the property, Jacqueline contacted Homeless Law for help.

After advising Jacqueline about her legal options and human rights, her Homeless Law lawyers entered into urgent negotiations with her landlord, attempting to prevent her eviction. This included providing detailed information about her history of family violence and cognitive impairment that the landlord had not previously been aware of. When Jacqueline's landlord refused to call off the eviction, the Homeless Law lawyers worked with pro bono counsel and lodged an urgent injunction application in the Supreme Court of Victoria, arguing that the landlord had failed to give proper consideration to Jacqueline's human rights in reaching its decision to evict her. Shortly after these proceedings were commenced, Jacqueline's landlord agreed to cancel the eviction, and instead offered Jacqueline alternative housing in a new location, with no liability for the damage caused by her child. She has relocated to a different and more secure community housing property, which has improved her safety and consequently, her mental wellbeing.

Homeless Law commends the Victorian Government's implementation of safeguards within the residential tenancy reforms, which aim to prevent the eviction of victim-survivors of family violence. Part of the residential tenancy reforms include the introduction of section 91ZZU(1) of the RT Amending Act, which will allow renters to challenge a notice to vacate where the act or breach for which it was given was caused by the act of a person who has subjected the applicant to family violence or personal violence.<sup>74</sup>

While family violence is clearly challenging to manage from a landlord's perspective, eviction of a victim-survivor is not an appropriate response, with the threat of homelessness often exacerbating or triggering severe mental illness for an already at-risk individual. Early intervention and linking victim-survivor tenants with appropriate supports, including targeted mental health assistance, must be the priority.

Homeless Law reiterates our recommendation from our joint submission with safe steps Family Violence Response Centre to the *Rights and Responsibilities of Landlords and Tenants Issues Paper*, as well as Homeless Law's *Keeping Women and Children Housed: Women's Homelessness Prevention Project – Two Years, ten client stories and ten calls for change*, regarding the need to provide guidance to landlords and real estate agents to support them to act early to avoid evictions for clients experiencing family violence through a voluntary 'Code of Conduct for Private Landlords and Real Estate Agents who Support Victim-Survivors of Family Violence'.<sup>75</sup> In line with Term of Reference 2.3, this voluntary code should include links to mental health services, seeking to improve mental health outcomes by strengthening pathways and interfaces between Victoria's mental health system and the housing sector.<sup>76</sup>

<sup>72</sup> AHURI Social housing legal responses, above n 71, 45.

<sup>73</sup> AHURI Social housing legal responses, above n 71, 45.

<sup>74</sup> RT Amendment Act Pt 8.

<sup>75</sup> Homeless Law and Safe Steps Family Violence Response Centre, *Joint submission: Rights and Responsibilities of Landlords & Tenants* (May 2016) 39, recommendation 4; WHPP Two Year Report, above n 69, 24–5.

<sup>76</sup> Terms of Reference, above n 3, Term of Reference 2.3.

## Crucial constraints on compliance orders

Victorians with mental illness are also at genuine and significant risk of eviction based on alleged breaches of compliance orders. Despite the incoming residential tenancy reforms, including the welcome introduction of the reasonable and proportionate test discussed below, evictions based on the breach of a compliance order will continue to disproportionately impact people with mental illness. Homeless Law urges the Victorian Government to mandate constraints on compliance orders that balance the needs of landlords and vulnerable tenants, increasing housing security and preventing poor mental health outcomes associated with homelessness.<sup>77</sup>

The process of eviction for breach of compliance orders begins when the landlord issues a breach notice,<sup>78</sup> which as discussed above, will often have a direct link to a tenant's mental illness. Despite Victoria's incoming residential tenancy reforms, the exacerbated risks of eviction will remain for the most vulnerable tenants, particularly those experiencing mental illness.<sup>79</sup>

If the breach notice is not complied with or not remedied within the timeframe, the landlord can apply to VCAT for a compliance order.<sup>80</sup> If VCAT is satisfied that the landlord was entitled to give the breach notice and it was not complied with, VCAT may make a compliance order requiring the tenant to remedy the breach and/or refrain from committing a similar breach.<sup>81</sup>

Once this compliance order is made, the landlord may give the tenant a notice to vacate if the tenant fails to comply with the order<sup>82</sup> and can apply to VCAT for a possession order.<sup>83</sup> The ability for tenants to defend an application for a possession order based on breach of compliance order is limited, and this will remain the case without further reform.<sup>84</sup>

### *The risks of broad and indefinite compliance orders*

The incoming residential tenancy reforms do not go far enough to protect tenants with mental illness and will continue to allow indefinite and broadly worded compliance orders to create housing insecurity for tenants like Amanda, who we discussed above. After the RT Amendment Act is fully implemented on 1 July 2020, VCAT will still not be required to set a timeframe when making a compliance order, or be required to prescribe a period that compliance orders remain in effect for. It is common for compliance orders made by VCAT to have no fixed timeframe, which means that they last the entire length of a person's tenancy. Compliance orders are also often worded very broadly, allowing a wide range of behaviours to give rise to a breach of the order. Homeless Law sees that the use of compliance orders can, and will continue to, place a significant burden on tenants such as Amanda, who live with forms of mental illness that may make it difficult or impossible to permanently control the conduct involved in the alleged breach.

If a person is at risk of becoming homeless, the threat of ending up on the street, couch-surfing or living in a vehicle, for example, becomes an overwhelmingly immediate stressor. This threat is enough to trigger mental illness episodes, with a Swedish study finding that people facing eviction have a suicide rate three times that of the general population.<sup>85</sup> The ability to evict based on an alleged breach of a broad and indefinite compliance order creates housing insecurity for people with mental illness and imposes mental stress due to the indefinite risk of homelessness. This indefinite threat is also particularly problematic as many mental illnesses can often recur unpredictably several years after a recovery.

Perpetual compliance orders are a blunt tool for dealing with complex health, personal and financial circumstances of tenants. In an environment where eviction of vulnerable people carries a significant risk of homelessness and

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<sup>77</sup> Terms of Reference, above n 3, Term of Reference 1.

<sup>78</sup> RTA s 208.

<sup>79</sup> Evictions based on failure to comply with Tribunal orders will continue to be available under sections 91ZO, 142ZG, 206AW and 207ZA of the RT Amendment Act.

<sup>80</sup> RTA s 209.

<sup>81</sup> RTA s 212(1)(a) and (c).

<sup>82</sup> RTA ss 248(1), 282(1), 307(1), 317ZA.

<sup>83</sup> RTA s 322(1), see also RTA ss 323, 324, 324A for rooming house residents, caravan park residents and site tenants.

<sup>84</sup> See Homeless Law, *There's no place like home: Submission on the Security of Tenure Issues Paper* (December 2015) 27-32 (**Security of Tenure Submission**); Homeless Law, *There's no place like home: Submission to the Residential Tenancies Act Review Options Discussion Paper* (February 2017) 44-5 (**Options Discussion Paper Submission**).

<sup>85</sup> Council to Homeless Persons, 'Being evicted is bad for mental health and life expectancy; be wary of weakening rental laws, says visiting Swedish professor' (Media release, 2 March 2018) available at: [http://chp.org.au/wp-content/uploads/2018/03/180228\\_Being-evicted-is-bad-for-your-health-Prof-Sten-Ake-v2.docx.pdf](http://chp.org.au/wp-content/uploads/2018/03/180228_Being-evicted-is-bad-for-your-health-Prof-Sten-Ake-v2.docx.pdf), 1.



deterioration of mental health, the compliance regime in Victoria's residential tenancies legislation should be revisited to minimise the risk of arbitrary, unreasonable or avoidable evictions.

Homeless Law welcomes the new provisions in section 330A of the RT Amendment Act, commencing on 1 July 2020, which will introduce a reasonable and proportionate test, requiring VCAT to consider if it is reasonable and proportionate to make a possession order with reference to a number of factors.<sup>86</sup> However, given the stress of receiving a notice to vacate and the trauma caused by evictions into homelessness, more is needed to strengthen housing security for Victorians.

### **Recommendation 1: Fairer laws to make evictions of people with mental illness an option of absolute last resort**

To improve mental health outcomes for Victorians through housing security and to prevent the onset of mental illness caused by homelessness, Homeless Law recommends:

- Abolishing the notice to vacate for successive breaches of duty through the removal of ss 249, 283, 308 and 317ZB of *Residential Tenancy Act 1997* (Vic) and ss 91ZP, 142ZH, 206AX and 207ZB of the *Residential Tenancies Amendment Act 2018* (Vic).
- Introducing residential tenancies legislative provisions that require compliance orders to be worded as specifically as possible, and to be limited to a period of six months before lapsing. Only where subsequent orders are needed should there be discretion for compliance orders to be extended for a period of up to twelve months.
- Introducing a voluntary 'Code of Conduct for Private Landlords and Real Estate Agents who Support Victim-Survivors of Family Violence' to equip signatories to avoid eviction of victim-survivors of family violence into homelessness wherever possible. This voluntary code should include links to mental health services, helping to strengthen pathways and interfaces between Victoria's mental health system and frontline supports.

## **3.2 Improved procedural safeguards to create housing security for people with mental illness**

In addition to strengthening laws to ensure housing security for mental wellness, Homeless Law also recommends improving the accessibility of VCAT to reduce the risk of vulnerable Victorians being evicted into homelessness.<sup>87</sup>

### **Clearer notices and information for tenants**

Unfortunately, the rate of tenant engagement with and attendance at VCAT tenancy hearings remains low, which means rights are not being exercised. Homeless Law routinely helps clients who have missed their VCAT hearings by helping them to make applications for review, which often leads to the underlying VCAT order being revoked and varied under section 120 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) (**VCAT Act**). This is seen through the below snapshot of our WHPP's impactful work in sustaining safe housing for women and their children.

<sup>86</sup> RTA s 245.

<sup>87</sup> Terms of Reference, above n 3, Term of Reference 1.



### ***The importance of tenant attendance at VCAT: 10 eviction decisions reversed***

In 12 months of the WHPP, 62 women were assisted and 33 finalised outcomes were recorded for clients at risk of eviction for rent arrears. Of this number, 25 women were able to maintain their existing tenancy. In 10 of these cases, the Homeless Law lawyers lodged a review application in relation to a possession order that had been made in the client's absence. All 10 review applications were accepted by VCAT, which prevented further action being taken to end the tenancy.

These results indicate that for many tenants facing eviction proceedings, attendance at VCAT can significantly alter the outcome in their favour, and provide an important opportunity to avoid eviction and work towards repaying their rent arrears.

Given the importance of tenant's accessing VCAT to avoid evictions, and in turn, the importance of maintaining safe and secure housing for mental wellness, better procedural safeguards are required, including changes to notices to vacate and VCAT notices of hearing.

### ***Changing the notice to vacate***

The current name and content of the notice to vacate weakens the security of tenure for tenants, particularly by decreasing the probability that they will be informed of, and exercise, their rights. To make sure that Victorians can experience their best mental health through secure housing, it is critical that the documents and processes regarding VCAT Residential Tenancy proceedings aim to facilitate tenant engagement.

The term 'notice to vacate' continues to be misleading and problematic, as it creates the impression of finality, rather than identifying that it is only the initial step in an eviction process that in many cases is avoidable for a tenant. Homeless Law routinely helps tenants who have received a notice to vacate from their landlord, and have interpreted it as a finalised order to vacate their home by the specified date. Many of these tenants are initially of the belief that failure to comply with the notice to vacate will result in penalties being imposed, or additional costs being incurred. For this reason, they are more likely to vacate a property prematurely, and less likely to attend any subsequent VCAT hearings to present their case in the eviction proceedings.

In Homeless Law's view, residential tenancies regulations should be amended, so that the term 'notice to vacate' is replaced with something that more accurately reflects the legal status of the notice (e.g. 'request to vacate'). A brief explanatory note should also be included on the notice to vacate (e.g. 'Note to tenant. You are not required to vacate on this date and you can dispute this notice at VCAT'). This would likely result in fewer tenants prematurely vacating their properties and may result in more tenants attending VCAT hearings without fear of penalties being imposed for failure to comply with the termination date listed in the notice. These minor changes could lead to more Victorians remaining in safe and secure housing, preventing mental illnesses associated with homelessness and allowing marginalised tenants to focus on their mental wellbeing or recovery.<sup>88</sup>

### ***Changing the VCAT notice of hearing***

Once a party has made an application to VCAT and a hearing date has been set by VCAT, a notice of hearing must be sent to all parties, notifying them of the time, date and location of hearing, along with other information deemed relevant by VCAT.<sup>89</sup> The form of this notice for matters in the VCAT Residential Tenancies List remains an inaccessible double-sided folded and sealed document, which can be confusing and difficult to open, including for people with mental illness. Given the ongoing issue of tenant non-attendance and the increased likelihood of preventable evictions that this presents, Homeless Law reiterates the need for the VCAT notice of hearing to be in a more sensible form (i.e. documents in an envelope).

<sup>88</sup> Terms of Reference, above n 3, Term of Reference 1.

<sup>89</sup> *Victorian Civil and Administrative Tribunal Act 1998* (Vic) (**VCAT Act**) s 122.



Nicola's case study below highlights the barriers tenants with mental illness can face that affect their ability to engage with VCAT, and the potential consequences for tenants and their families if they miss the opportunity to explain their position and circumstances to VCAT.

### ***Single mother of five with complex mental illness pushed to the brink of eviction into homelessness after missing her VCAT hearing***

Nicola is a 38-year-old woman with five children in a private rental, who relies on a Centrelink payment. Nicola and her children have all been exposed to family violence from her ex-partner. Nicola also suffers from mental illness and does not sleep well. At one point, Nicola was hospitalised, and her youngest children had to stay overnight with a family day-care worker. This led to a large childcare bill that Nicola paid instead of her rent. Nicola's landlord then issued her with a notice to vacate her private rental property and applied for a possession order from VCAT. Nicola didn't attend this VCAT hearing as she hadn't been regularly checking her mail due to safety concerns, and the notice of hearing gave no indication that details of an upcoming VCAT hearing were inside.

When Nicola contacted Homeless Law, there was a possession warrant and the police were going to change the locks in the coming days. She was urgently booked into the WHPP for wrap-around assistance from Homeless Law's lawyers and social worker. After Nicola received advice about her legal and non-legal options, the Homeless Law lawyers made an urgent application for rehearing, which put the eviction on hold. Homeless Law's social worker helped Nicola access support for other essential expenses, so more money could be contributed to the rent, and linked Nicola with assistance to help recover from long-term family violence.

At the VCAT hearing, Homeless Law successfully advocated for a manageable payment plan, which enabled Nicola to repay the arrears at an affordable fortnightly rate. Because of specialist legal representation, social work support and attending VCAT, Nicola and her children were able to avoid the trauma of eviction and to move forward with their health and personal recoveries in safe housing.

In addition to changing the format of a notice of hearing, the information provided in the notice should be more targeted toward assisting tenants to understand key processes that affect their rights, including:

- The process for making adjournment requests.
- Contact information for the VCAT Residential Tenancies Registrar.
- Information about the right to apply for VCAT-ordered payment plans for evictions on the basis of rent arrears.
- A note that if they miss a hearing (and have a reasonable excuse for this), they may be able to apply for a review hearing and should seek legal advice.<sup>90</sup>

An informed tenant who participates in proceedings is far more likely to be able to maintain their tenancy than an uninformed tenant who fails to appear. Where housing has such a core impact on mental wellness, these relatively minor procedural changes could have significantly help to stop avoidable evictions and improve mental health recovery in our community.<sup>91</sup>

## **Key role of legal representation and targeted pathways**

Through Homeless Law's work, we see the important role of intensive legal help in supporting people to avoid crisis. Vulnerable Victorians face a range of barriers to accessing legal assistance, including mental illness. Access to holistic, integrated legal representation is vital to prevent evictions into homelessness and to improve mental health outcomes for those interacting with the justice system.<sup>92</sup>

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<sup>90</sup> VCAT Act, s 120.

<sup>91</sup> Terms of Reference, above n 3, Term of Reference 1.

<sup>92</sup> Terms of Reference, above n 3, Terms of Reference 1, 2.3, 4.4.



The role of early access to free legal help focussed on preventing issues from escalating was articulated by Victoria's Access to Justice Review:

*'Increasingly ... unresolved civil legal problems, such as those related to a community member's housing, mental health, employment or family, are recognised as having far reaching consequences for both the individuals involved and the state.*

*For individuals, unresolved legal problems can lead to diminishing health and restrict social and economic participation, as well as triggering further legal problems, including possible criminal legal issues. These consequences for individuals often generate costs which must be borne by the state, whether in the justice system or in other publicly funded systems.*

*Just as government has a role in providing access to healthcare and education, it has a role in supporting all Victorians, especially the disadvantaged and vulnerable, to gain access to justice.<sup>93</sup>*

### **Strengthen referrals to empower vulnerable tenants**

The lack of any referral information about specialist legal help for tenants on the notice to vacate or the VCAT notice of hearing represents a missed opportunity to encourage tenants to engage with their rights and subsequent VCAT processes. Given the potential consequences of eviction proceedings and subsequent impact on mental health, the prescribed forms of these notices should be amended to include telephone contact details and websites of relevant legal services (e.g. Victoria Legal Aid (VLA) or Tenants Victoria).

These changes would increase the ability of tenants to understand their options and to obtain legal advice and representation further upstream in the eviction process. In addition to playing a critical role in avoiding unnecessary evictions into homelessness, ensuring tenants can access appropriate legal advice is likely to result in fewer VCAT hearings being required, because:

- There is an increased likelihood that matters will resolve by consent, which may remove the need for a VCAT hearing; and
- There is a decreased likelihood that tenants will fail to appear at their initial hearings, and subsequently submit applications for review on obtaining legal advice after their missed hearings.

The value of connecting tenants facing mental illness to specialist tenancy legal help is demonstrated by Ari's case study below.

#### ***Young, culturally diverse man with inter-connected forms of mental illness almost evicted from community housing for relatively minor damage***

Ari is a culturally diverse community housing tenant who received a notice to vacate for malicious damage. Ari moved to Australia in his late teenage years, suffers from depression, schizophrenia and a mild intellectual disability. Ari had been working with a caseworker to find sustainable long-term housing.

He connected with Homeless Law after learning that, in his absence, the community housing provider had obtained a possession order from VCAT. This was based on allegations that Ari had caused malicious damage to the property, which included staining the carpet, breaking a light fitting, removing a bathroom fan and smoke alarm.

After advising Ari about his legal and human rights, Homeless Law entered into negotiations with the community housing provider, seeking to prevent Ari's eviction, which included offering detailed evidence about his mental illness and complex vulnerabilities. The community housing provider eventually agreed that the damage caused was 'relatively minor', and that it was important to work with tenants like Ari before evicting them.

<sup>93</sup> Victorian Government, *Access to Justice Review: Summary Report* (August 2016) (**Access to Justice Review: Summary Report**) 4 available at: [https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/9814/8601/7130/Access\\_to\\_Justice\\_Review\\_-\\_Summary\\_and\\_recommendations.PDF](https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/9814/8601/7130/Access_to_Justice_Review_-_Summary_and_recommendations.PDF).





The impact of legal representation also plays a crucial role in the implementation of the residential tenancy reforms. For example, tailored legal help will be critical to empower victim-survivors of family violence to access the family violence protections under section 91ZZU(1) of the RT Amendment Act,<sup>94</sup> and allow vulnerable tenants facing eviction for breaches linked to their mental health to exercise their rights.<sup>95</sup>

### **Proposed VCAT Mental Health Liaison Officer**

Barriers associated with mental illness can leave individuals unable to engage effectively and assert their rights within the justice system due to multiple and interconnected non-legal issues. A previous Homeless Law client Maggie, who has experienced extensive family violence, homelessness and mental health pressures, further highlights the impact of having both legal and non-legal supports when accessing VCAT:

*'When you're not in the right frame of mind, you let the system beat you; you become resigned to the idea, this is what happens, you get a notice to vacate and you have to go, not even knowing there's a service or a support out there... The wonderful lawyers made me feel safe at VCAT. I felt less vulnerable in this crisis.'*

*'Having wonderful support workers like [the Homeless Law social worker] is a vital lifeline to people in my circumstances. She orchestrated all the things that can slip your mind when you're buried down in life itself. She provided the aftercare for [my daughter] and me.'*

To overcome these barriers, one option is to embed non-legal supports directly within judicial venues. VCAT presently locates a specialised family violence officer and a Koori liaison officer within its venue, who provide targeted assistance and referrals for specific VCAT litigants who may benefit from tailored and specialised supports. Building-off these existing services, there is an opportunity to strengthen pathways to mental health services and increase the accessibility of VCAT for tenants with mental illness by introducing a mental health liaison officer at VCAT.<sup>96</sup>

As a precedent, eight Victorian Magistrates' Courts around Melbourne currently employ the Forensicare Mental Health Advice and Response Service (MHARS) onsite to connect court users with mental health treatment. This team of experienced mental health clinicians support individuals who may present at court with a mental illness. Individuals can either self-refer to this service or may be referred by others, including by a Magistrate, court personal or legal practitioner. MHARS officers facilitate general referrals to mental health services as well as make referrals under the *Mental Health Act 2014* (Vic) for individuals experiencing acute mental illness.<sup>97</sup>

The addition of a non-legal support tailored for VCAT users experiencing mental illness works not only to strengthen referral pathways to mental health services but also will increase the mental health outcomes of those in contact with VCAT.<sup>98</sup>

### **Internal appeal of residential tenancy decisions**

Currently decisions of VCAT members in the Residential Tenancies List can only be appealed on questions of law to the Supreme Court of Victoria.<sup>99</sup> As Mabel's case study below illustrates, even where an appeal to the Supreme Court has reasonable prospects of success, it is an inaccessible jurisdiction for vulnerable Victorians, which carries a risk of adverse costs and protracted proceedings. This may be particularly daunting for clients who experience mental illness, with the pressure of going to the Supreme Court highly likely to exacerbate or trigger mental illness.

<sup>94</sup> *Residential Tenancies Amendment Act 2018* (Vic) Pt 8.

<sup>95</sup> *Residential Tenancies Amendment Act 2018* (Vic) s 245.

<sup>96</sup> Terms of Reference, above n 3, Term of Reference 2.3.

<sup>97</sup> Victorian Institute of Forensic Mental Health, Forensicare, *Mental health advice and response service brochure*, (accessed on 27 June 2019) available at: [https://www.forensicare.vic.gov.au/wp-content/uploads/2016/11/Forensicare-MHARS-6pp-DL\\_v7.pdf](https://www.forensicare.vic.gov.au/wp-content/uploads/2016/11/Forensicare-MHARS-6pp-DL_v7.pdf).

<sup>98</sup> Terms of Reference, above n 3, Term of Reference 4.4.

<sup>99</sup> VCAT Act, s 148.



For many tenants (and their support services), along with landlords, it is simply not an option to pursue their appeal in this forum.

### ***Client unable to appeal potentially flawed eviction decision after being too disheartened by the result at VCAT***

Mabel is a public housing tenant who had received a number of breach of duty notices over several years. More recently, Mabel had been issued a breach notice for causing a nuisance to her neighbours. Mabel sought Homeless Law's help after learning that, in her absence, DHHS had obtained a compliance order from VCAT. Mabel hadn't known about the VCAT hearing due to issues with receiving her mail. After advising Mabel about her tenancy rights, Homeless Law assisted her to apply for a review, and obtained a copy of DHHS's application to VCAT, which had included only a copy of the recent breach notice Mabel had been given.

At the VCAT review hearing, DHHS sought to lead evidence about all the previous breach notices Mabel had been given over the years. When Homeless Law's lawyers objected to this on the basis that it was procedurally unfair, as the relevant application had not referred to any of this historical evidence, the VCAT Member disagreed and confirmed the previous compliance order.

Mabel was disappointed with VCAT's decision and how her matter had been handled by the Member. Soon afterwards, Homeless Law obtained an opinion from counsel who confirmed it was likely that the decision could be successfully appealed to the Supreme Court, as several errors of law could be identified. Homeless Law offered to assist Mabel with an appeal. However, Mabel was so discouraged by what had happened at VCAT that she became disengaged, and she did not return Homeless Law's calls before the 28-day period to lodge an appeal had expired.

For Mabel, the availability of an easily accessible review mechanism within VCAT may have provided her with a more appropriate forum for clarifying the VCAT Member's decision, without placing additional strain and pressures on an already struggling tenant.

A process for internal re-hearing would ensure that parties had an affordable and accessible right of appeal and that the quality of VCAT decision-making is monitored and maintained. An avenue for appeal of this nature has significant potential to reduce arbitrary evictions and to build trust and confidence in the decisions of VCAT, which may also directly benefit the mental wellness of tenants. Creating an internal re-hearing mechanism at VCAT would bring Victoria in line with most other Australian jurisdictions, where civil tribunals have built in internal appeals.

### ***Internal appeals in action - Australian Capital Territory***

The *ACT Civil and Administrative Tribunal Act 2008 (ACT)* provides for decisions made by a member of the ACT Civil and Administrative Tribunal (**ACAT**) to be appealed on either a question of fact or law.

The ACAT Appeal President will then determine whether the appeal is dismissed or if it is to be dealt with either as a new application or as a review of all or part of the original decision. The appeal tribunal can confirm, amend or set aside an order or make any other order that it considers appropriate in the circumstances.

Homeless Law has been part of collective advocacy calling for reforms to the review process for VCAT for many years and was one of the core organisations involved in a 2016-17 joint submission to the Victorian Government proposing an internal appeals division for the Residential Tenancies List (see **Annexure 1**). Given the incoming residential tenancy reforms and changing landscape of Victoria's tenancy system, it appears prudent to amend the VCAT Act and introduce an internal appeals mechanism for VCAT tenancy matters as a priority.

Avoiding these evictions will strengthen housing security preventing the severe impact of homelessness on mental wellbeing for Victorians.<sup>100</sup>

<sup>100</sup> Terms of Reference, above n 3, Term of Reference 1.



## VCAT jurisdiction to consider the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*

For clients living in public or community housing, Homeless Law frequently engages in negotiations based on the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* (**Charter**) with social housing landlords to prevent the eviction of disadvantaged community members, including those with mental illness, into homelessness. This is often on the basis that, in taking steps to evict the tenant, the social housing landlord has not properly considered, or acted compatibly with, the tenant's rights under the Charter.

The Charter provides a helpful framework for making difficult decisions. It encourages consideration of a tenant's individual circumstances, such as mental illness and their risk of homelessness, and allows these considerations to be balanced against the competing obligations of social landlords (including, for example, the safety or comfort of other tenants).

As seen through Connie's case study below, Charter negotiations are often central in stopping homelessness before it starts for Victorian tenants and their families.

### ***Aboriginal single-mother of three children, who have disabilities and mental illness, experiencing discrimination, faced eviction from public housing***

Connie is an Aboriginal woman and the sole parent of three children in a public housing property. One of Connie's children is hearing impaired, and the other two have mental and physical health issues, which cause them to express their emotions more loudly. The DHHS had obtained a compliance order against Connie, requiring her to prevent her children from making noise at a 'loud level audible to neighbours'. A neighbour had been regularly abusing Connie based on her Aboriginality and complaining about Connie and her children to the DHHS. However, Connie was reluctant to report any incidents to the police, particularly due to intergenerational trauma.

A specialist homelessness support service referred Connie to Homeless Law when she was facing eviction for allegedly breaching the compliance order. Through Homeless Law's strong and continued negotiations, including based on the applicable human rights and responsibilities under the *Charter*, the eviction proceedings were withdrawn and a transfer to another public housing property was secured for Connie and her children.

Connie has expressed her immense relief that she and her children have avoided homelessness and are now able to live safely and free from their former neighbour's discriminatory behaviour.

Prior to the Victorian Court of Appeal's decision in *Director of Housing v Sudi* [2011] VSCA 266 (**Sudi**), VCAT Members were considering whether a social housing landlord had complied with section 38 of the Charter when determining possession order applications. In Homeless Law's experience, the knowledge that VCAT would consider Charter compliance in eviction proceedings provided a compelling incentive for social housing landlords to turn their minds to a tenant's circumstances and to contemplate reasonable alternatives to eviction.

In *Sudi*, however, the Court of Appeal held that VCAT does not have jurisdiction to consider whether a social housing landlord has complied with its obligations under section 38 of the Charter in proceeding with an eviction, and that any questions about Charter compliance in eviction matters must be considered by the Supreme Court.<sup>101</sup> Since *Sudi*, social housing landlords have been less motivated to comply with human rights obligations due to the inaccessibility of the Supreme Court for tenants discussed above.

### ***Restrictive timeframes for Charter-based challenges***

In addition to the impact of *Sudi*, the more recent decision of the Supreme Court in *Burgess & Anor v Director of Housing & Anor* [2014] VSC 648 (**Burgess**) has further limited vulnerable tenants' options for seeking judicial review of the eviction decisions of social landlords. Tenants are now required to commence judicial review proceedings in relation to Charter unlawfulness:

<sup>101</sup> *Director of Housing v Sudi* [2011] VSCA 266.



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

This restricts the accessibility of a mechanism for ensuring the human rights compliance of social housing providers in eviction proceedings. To overcome these barriers to meaningful consideration of human rights in the decision-making of social landlords, legislative amendments should be made that give VCAT jurisdiction to consider Charter compliance in eviction proceedings brought by social housing landlords.<sup>102</sup> For social housing tenants, this amendment would be a genuine safeguard against preventable evictions and would work towards reducing the harmful mental health consequences of housing insecurity.<sup>103</sup>

## **Recommendation 2: Better procedural safeguards to ensure housing security for people experiencing mental illness**

Given the importance of tenants' accessing VCAT to avoid preventable evictions, and the significance of maintaining a stable home for mental wellbeing, recovery and mental illness-prevention, Homeless Law recommends:

- Amending the content and form of both the Notice to Vacate and VCAT Notice of Hearing, including changing the term 'Notice to Vacate' and providing information about legal rights and details of legal assistance services within the notices.
- Strengthening pathways to mental health supports and increasing the tenancy system's accessibility by introducing a Mental Health Liaison Officer at VCAT.
- Creating an internal appeal mechanism for decisions made in the VCAT Residential Tenancies List through amendments to the *Victorian Civil and Administrative Tribunal Act 1998* (Vic).
- Giving VCAT jurisdiction to consider the human rights compatibility of eviction decisions by social housing landlords under the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

## **3.3 More social housing with supports for people experiencing mental illness**

### **Increased social housing that is fit for purpose**

Effective measures to improve the mental health of Victorians must include access to safe and suitable homes. As noted above, Victoria is currently facing an unprecedented housing and homelessness crisis, with thousands of individuals and families unable to afford private rentals or access social housing due to extensive waiting lists. To prevent mental illness and suicide triggered by homelessness, and to allow community members to experience their best mental health, increased social (public and community) housing with supports must be at the centre of the Victorian Government's response.<sup>104</sup>

<sup>102</sup> For more detailed submissions on the legislative amendments required to give effect to this recommendation, see Homeless Law, *Charting a Stronger Course: Submission to the Eight Year Charter Review* (June 2015). See also Michael Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006* (1 September 2015), which recommends that VCAT 'be given original jurisdiction to hear and determine claims that a public authority has acted incompatibly with human rights protected under the Charter' (Recommendation 27).

<sup>103</sup> Terms of Reference, above n 3, Term of Reference 1.

<sup>104</sup> Terms of Reference, above n 3, Term of Reference 1.



Research indicates that poor mental health has strong links to reduced employment,<sup>105</sup> and 34% of those who receive the disability support pension do so due to mental illness.<sup>106</sup> The private rental market has very few options for people living in poverty or those receiving government payments as their sole source of income, including the many people whose low income results from mental illness.<sup>107</sup> Unaffordable private rentals place low-income people at risk of eviction and present a very real risk of homelessness for low-income Victorians experiencing mental illness.

This is consistent with Homeless Law's experience, where falling behind in rent remains the most common reason our clients find themselves on the brink of homelessness. Over the last four years the WHPP has assisted 214 women and 305 children in their care through holistic legal representation, with 67% of legal matters involving evictions. Of these matters, 60% of clients were facing eviction from private rentals due to arrears, and 75% had a mental illness. Jennifer's case study below highlights the susceptibility of people with mental illness facing eviction for rental arrears, as well as the importance of integrated legal and social supports for tenancy sustainment.

### ***Single-mother with mental illness escaping family violence avoids rental arrears eviction after accessing holistic support services***

Jennifer is a single mother working part time to support three young children. She experienced family violence from a young age, and more recently from her husband after their marriage broke down. This led to Jennifer fleeing the family home into a private rental property. She began to accrue rental arrears because of confusion over the frequency of her rent payments, and this confusion was exacerbated by serious depression and anxiety, a lack of any support or counselling after recent trauma, and further health complications that forced her to exhaust all her sick leave at work.

Jennifer contacted Homeless Law after receiving a notice to vacate for arrears. Through Homeless Law's social worker, Jennifer gained access to \$900 private rental brokerage, which her lawyers then used to negotiate a repayment plan with her real estate agent. The landlord was happy to withdraw the eviction proceedings and avoid the stress and inconvenience of attending VCAT.

Jennifer repaid her arrears and signed a new two-year lease. She is also now getting support for her mental and physical health issues following a referral from the Homeless Law social worker, and has been able to maintain her employment and a home for her young family.

Although Jennifer was able to remain in her private rental, the current market conditions mean that many Victorians with mental illness are locked out of the private rental market and reliant on the social housing system to access safe and adequate housing. There are, however, over 82,000 people, including more than 24,000 children, on the waiting list for social housing in Victoria.<sup>108</sup> This includes people who are homeless and people who are living in unsafe, insecure or unaffordable housing. Our state has the lowest proportion of social housing stock in Australia.

As part of the Victorian Housing Peaks alliance and the Everybody's Home campaign, Homeless Law and six other peak bodies across housing, homelessness, community-service and legal assistance sectors united to sign *The Whittlesea Declaration*, calling for the Victorian Government to take action in this housing crisis and build 3,000 public and community housing properties each year for the next ten years to meet the growing demand (see **Annexure 2**).<sup>109</sup> Further, a recent Australia-wide report published by AHURI identifies that an additional 730,000 public housing properties are required over the next 20 years across Australia, with 165,000 of those properties

<sup>105</sup> Frijters, P., Johnston, D.W. and Shields, M.A., The effect of mental health on employment: evidence from Australian panel data, *Health Economics*, vol. 23, no. 9, (2014) 1058–1071.

<sup>106</sup> The Social and Economic Benefits of Improving Mental Health, above n 9, 19.

<sup>107</sup> The 2019 annual rental affordability snapshot produced by Anglicare Victoria indicates that of 15,750 properties in Victoria advertised on a Saturday in March, only 21 properties, being 0.1%, were affordable for a single parent on Centrelink and only 34 properties, being 0.2%, were affordable for a person on the disability support pension. There was **not a single property** in Victoria that was affordable for a single person receiving Newstart. Anglicare Australia, Rental Affordability 2019 Victoria Snapshot (2019) 13 available at: [https://www.anglicarevic.org.au/wp-content/uploads/2019/04/41\\_Rental\\_Affordability\\_Report\\_FA\\_LR\\_03.pdf](https://www.anglicarevic.org.au/wp-content/uploads/2019/04/41_Rental_Affordability_Report_FA_LR_03.pdf)

<sup>108</sup> Parliament of Victoria, Legislative Council – Legal and Social Issues Committee, *'Inquiry into the Public Housing Renewal Program'* (June 2018) available at [https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Public\\_Housing\\_Renewal\\_Program/LSIC\\_58-11\\_PHRP\\_Text\\_WEB.pdf](https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Public_Housing_Renewal_Program/LSIC_58-11_PHRP_Text_WEB.pdf).

<sup>109</sup> Council to Homeless Persons, Victorian Council of Social Service, Community Housing Industry Association Vic, Family violence Vic, Victorian Public Tenants Association, Tenants Victoria, Justice Connect, *The Whittlesea Declaration*, (2018) (**The Whittlesea Declaration**) available at: <http://chp.org.au/wp-content/uploads/2018/10/Joint-housing-platform-two-pager.pdf>.





required in Victoria, in order to meet the needs of vulnerable Australians and ensure that everyone has the most basic right to a roof over their heads.<sup>110</sup>

During a previous consultation, Homeless Law client Marie,<sup>111</sup> who identifies as Aboriginal, expressed the relief for herself and her kids at being offered social housing after 10 years on the waiting list:

*‘...the most beautiful house I’ve ever seen in my life.*

*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.*

*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.’*

Marie’s comments remind us that secure and stable tenure is one of the major features of social housing, which allows both public and community housing to play a significant role in improving the lives and wellbeing of marginalised tenants.

Homeless Law welcomes the Victorian Government’s commitment to building 1,000 new public housing properties across the state.<sup>112</sup> However, given the unprecedented waiting list and lock-out from the private rental market for many with mental illness, more social housing is needed in our community. Homeless Law also supports the Victorian Government’s Inclusionary Housing Pilot program, which will see certain surplus government land being used to build extra social housing.<sup>113</sup> There is potential to expand this program to mandate inclusionary housing by requiring a minimum social housing percentage in all surplus government residential land sales, with the possibility of mandatory inclusionary zoning in private developments the future. Homeless Law believes that this approach will increase the feasibility and cost-effectiveness of increasing social housing to meet the needs of Victorians.

## **Suitable & safe housing with supports for people with mental illness**

To achieve the best mental health outcomes, social housing not only needs to meet demand, but must also be suitable and safe, including any modifications necessary for vulnerable people. This includes access points for mobility impairments, security features to protect those with heightened anxiety or risk of recurring family violence, or accommodation for support animals. The availability of appropriate and stable social housing will create inclusionary communities for people experiencing mental illness, offering them environments to recover and focus on mental wellness.<sup>114</sup>

### **‘Housing First’ models are necessary for an effective mental health system**

Tenants with mental illness who do not have the necessary wrap-around supports, can often face barriers settling into a new community of either purely social housing or where there is a mix of social and private housing. When needed, connecting social housing tenants to appropriate non-legal and legal services is key, so that these tenants

<sup>110</sup> AHURI, *Social housing as infrastructure: rationale, prioritisation and investment pathway* (June 2019) 4 available at: [https://www.ahuri.edu.au/\\_data/assets/pdf\\_file/0014/43214/AHURI-Final-Report-315-Social-housing-as-infrastructure-rationale-prioritisation-and-investment-pathway.pdf](https://www.ahuri.edu.au/_data/assets/pdf_file/0014/43214/AHURI-Final-Report-315-Social-housing-as-infrastructure-rationale-prioritisation-and-investment-pathway.pdf).

<sup>111</sup> See Homeless Law (formerly the 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: [http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/56th/ph/submissions/S103\\_PILCH\\_HPLC.pdf](http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/56th/ph/submissions/S103_PILCH_HPLC.pdf).

<sup>112</sup> Premier Daniel Andrews, *Building New Homes To Fight Homelessness* (17 October 2018) available at: <https://www.premier.vic.gov.au/wp-content/uploads/2018/10/181017-Building-New-Homes-To-Fight-Homelessness.pdf>.

<sup>113</sup> Victorian Government, *Our plan to create more social and community housing* (reviewed September 2018) available at: <https://www.vic.gov.au/our-plan-create-more-social-and-community-housing>.

<sup>114</sup> Terms of Reference, above n 3, Term of Reference 1.



have the support they need to set up and sustain their homes. 'Housing First' models which focus on 'permanent supportive housing', recognise that having a home is a precondition for positive mental health.<sup>115</sup> These models aim to eliminate homelessness by moving people into housing directly from streets and shelters without preconditions of treatment acceptance or compliance, combined with robust support services attached to the housing.<sup>116</sup> Notably, Housing First approaches, which operate in conjunction with mental health support services, have been found to sustain housing for 80% of people who have a severe mental illness and are at risk of long-term homelessness.<sup>117</sup> Housing First models have also been associated with increased optimism, improved continuity of care and reduced psychiatric admissions.<sup>118</sup>

### ***Young people, mental health and homelessness***

It is important to note that young people experience mental illness differently from adults, and Housing First approaches which focus on a person's 'independence' may not be suitable for those who require adult support and guidance. Existing housing and supports for young people with multiple-mental health, justice, and child protection interactions would significantly decrease the financial burden on the community if these interactions were addressed from an early age.<sup>119</sup>

### ***Managing integrated housing to prevent exacerbation of mental conditions***

In circumstances where social housing is increased through building mixed sites of social housing and private rental tenancies, such as through the state's current Public Housing Renewal Program,<sup>120</sup> the Victorian Government needs to be aware of the risks that vulnerable tenants may be targeted in 'salt and pepper' housing mix, potentially leading to the deterioration of mental health or the onset of mental illness. As Nicole's case below highlights, the risks of integrated housing can be closely tied with compliance order evictions and potential exacerbation of mental illness.

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<sup>115</sup> Pleace, N., *Housing First Guide Europe*, FEANTSA the European Federation of National Organisations working with the homeless, (2016) (**Housing First Guide Europe**) 12.

<sup>116</sup> States of being: Exploring the links between homelessness, mental illness and psychological distress, above n 32, 27.

<sup>117</sup> Housing First Guide Europe, above n 115.

<sup>118</sup> Alex Holmes et al, Australasian Psychiatry, *Housing First: permanent supported accommodation for people with psychosis who have experienced chronic homelessness* (Research Paper, 1 February 2017) 1, available at: <https://www.launchhousing.org.au/site/wp-content/uploads/2017/01/Housing-First-ESCG-full.pdf>, 3.

<sup>119</sup> Gaetz, S., *Can Housing First Work for Youth*, European Journal of Homelessness, Volume 8. No. 2, (December 2014), 164.

<sup>120</sup> DHHS, *Public housing redevelopment*, (updated in May 2019) available at: <https://housing.vic.gov.au/public-housing-redevelopment>. See also Homeless Law, *Making public housing count: Submission to the Parliamentary Inquiry into the Public Housing Renewal Program* (November 2017).





### ***Culturally diverse public housing tenant and family violence victim-survivor targeted by private tenants and pushed to a mental health crisis***

Nicole is a 50-year-old single woman who had resided in her public housing apartment since 2005. Soon after arriving in Australia, Nicole fled family violence and stayed in a refuge before being granted public housing. Nicole has a long history of physical and mental illness including depression, anxiety and post-traumatic stress disorder. Nicole was the only public housing tenant living in the apartment block and initially had good relations with her neighbours. However, a neighbour made a death threat against Nicole, which she reported to the police. Since that time, Nicole had faced ongoing abuse, including her neighbours calling her the building's "black sheep", kicking her door during the middle of the night, following her to work, opening her mail, banging on her walls, filming her and yelling racial abuse at her.

After Nicole's neighbours alleged that she was making loud noises throughout the night, DHHS issued her with a breach of duty notice, before lodging a VCAT application for a compliance order. Nicole then connected with Homeless Law, receiving specialist legal and social work assistance regarding her tenancy. Homeless Law's lawyers negotiated with DHHS based on Nicole's human rights, and represented her at VCAT. Despite Homeless Law being able to prove that on many of the dates of the alleged noise, Nicole was not at the property, DHHS refused to compromise and VCAT made a compliance order against Nicole.

Throughout this time, Homeless Law's social worker provided extensive help to Nicole, including offering emotional support at VCAT and at a personal safety order hearing commenced by one of the neighbours, making referrals to mental health service PhaMs and other supports, and completing applications to DHHS for both a mutual swap and a priority transfer.

Unfortunately, Nicole's neighbours continued to target her, and after they made more complaints, DHHS gave her a notice to vacate for alleged breach of compliance order. Although Homeless Law's lawyers again represented Nicole, VCAT granted a possession order against her, which caused Nicole to experience a mental health crisis. Through further holistic advocacy, Homeless Law's lawyers and social worker secured a 30-day postponement of the warrant, as well as a priority transfer to a safe new public housing property without an intervening period of homelessness.

To prevent the negative stigmatisation by private tenants and trauma experienced by community members like Nicole,<sup>121</sup> the Victorian Government needs to ensure that social housing is thoughtfully designed. This should include inter-mixing of social housing and private rental tenants, and the different types of housing should be indistinguishable, with layouts including communal and green spaces accessible to all tenants. In the continued progression of the Public Housing Renewal Program and more broadly, the Victorian Government should draw on best practice, which indicates that mixed-tenure sites that integrate social housing and private rentals side-by-side, are more successful in achieving a socially cohesive neighbourhood than other mixed-housing models.<sup>122</sup> As part of this process, it would be valuable to reflect on the ongoing social inclusion issues at the redeveloped Carlton public housing estate, where there are three buildings that are cordoned off from one another, and a physical barrier exists between the respective public spaces available to social housing tenants and private rental tenants.<sup>123</sup>

<sup>121</sup> Terms of Reference, above n 3, Term of Reference 1.

<sup>122</sup> See, for eg, Roberts, M, *Sharing Space: Urban Design and Social Mixing in Mixed Income New Communities* (2007) 183-204.

<sup>123</sup> Levin, I., Arthurson, K. and Ziersch, A., *Social mix and the role of design: Competing interests in the Carlton Public Housing Estate Redevelopment* (2014) 23-31.



### Recommendation 3: More suitable, safe and stable social housing with supports

Improving the mental health of Victorians requires increased availability of fit-for-purpose and long-term social housing, allowing individuals to have an environment to recover and focus on mental wellness. Homeless Law recommends:

- Social (public and community) housing stock in Victoria be increased by at least 3,000 properties each year for the next decade, helping to safely house many Victorians who are unable to access or afford the private rental market, including a disproportionate cohort of those with mental illness.
- If social housing is built through mixed-sites of social and private tenancies, designs should draw on best practice to ensure that housing is integrated, indistinguishable and layout includes communal and green spaces accessible to all tenants.

## 3.4 Improved social housing practices for tenants experiencing mental illness

### The role of social housing providers for people with mental illness

As discussed, social housing providers play a critical role in providing secure and sustainable housing for people with mental illness in our community. Homeless Law welcomes the Victorian Government's introduction of the Victorian Housing Register (VHR), Australia's first online social housing register, which lists both public and community housing organisations on the same register.<sup>124</sup> The inclusion of community housing increases access to affordable housing for Victorians most in need, including thousands of Victorians on the waitlist who are currently experiencing homelessness and mental illness. However, despite public and community housing providers sitting side-by-side on the VHR, there remain inconsistencies in organisational housing practices and policies regarding tenants' rights. Additionally, social housing providers who are not on the VHR, such as transitional or crisis accommodation providers, do not have access to the Tenancy Plus support program.<sup>125</sup>

The Victorian Housing Registrar recently published guidelines *Agency publication of key policies* that aim to increase transparency and consistency of community housing policies.<sup>126</sup> Homeless Law sees an increased role for the Housing Registrar to strengthen accountability measures, including through consistent and transparent internal complaints procedures and more robust and prescriptive performance standards.

The importance of responsive, transparent and consistent social housing policies for tenants with mental illness can be seen through Rachel's case study below.

<sup>124</sup> See DHHS, *Victorian Housing Register* (last updated September 2018) available at: <https://services.dhhs.vic.gov.au/victorian-housing-register>.

<sup>125</sup> DHHS, *Tenancy Plus support program* (October 2017) available at: <http://www.housing.vic.gov.au/tenancy-plus-support-programm>.

<sup>126</sup> Victorian Housing Registrar, *Agency publication of key policies* (accessed on 3 July 2019) available at: <http://www.housingregistrar.vic.gov.au/How-we-regulate/Guidelines-for-agencies>.



### ***Woman with mental illness evicted for rental arrears after not securing post-release public housing***

After Rachel left prison, she was unable to secure public housing, so she moved into a community housing property to avoid post-release homelessness. She had spent over half her life in custody. Rachel struggled with mental illness, which were intertwined with issues related to institutionalisation and substance dependence. These factors made it difficult for her to keep up with her rent and, when she came to Homeless Law, she was over \$2,000 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 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 \$2,000 in arrears, even though Rachel had proposed a 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 1997* (Vic).

The community housing provider successfully obtained a Possession Order from VCAT based on Rachel's arrears. When the warrant was executed, and the locks were changed, Rachel re-entered homelessness.

To avoid evicting Victorians like Rachel into homelessness and instead ensure access to stable housing for mental wellbeing,<sup>127</sup> social housing providers must be supported to develop consistent, publicly available policies. All social housing providers should also have access to the Tenancy Plus support program, which focusses on sustaining tenancies.

One key policy that does not exist consistently across community housing providers is a temporary absence policy. DHHS has a temporary absence policy, which allows public housing tenants to be absent for up to 6 months in special circumstances, with a subsidy applied that reduces rent to \$15 per week. The specified circumstances accepted for temporary absence include cases where a tenant is forced to leave the property due to family violence or where the tenant is in a psychiatric, physical or drug or alcohol rehabilitation treatment.<sup>128</sup> Further 6 month extensions are also available in exceptional circumstances. There is no current corresponding temporary absence policy adopted generally by community housing providers, with varied approaches being taken to the absence of tenants.

Social housing providers, including both DHHS and community housing providers, need to be supported with adequate resources, staff training, access to tenant support services and supply of housing stock for transfer options to allow them to implement and embed clear, consistent and best-practice policies. Further training, support, oversight and cultural change will be beneficial within DHHS and the community housing sector, so that housing workers can make vulnerable tenants aware of their rights and obligations and facilitate the best housing outcomes for those with mental illness.

### ***The importance of social housing tenants' human rights***

The Charter plays a critical role in the protection of tenants' human rights in social housing. All social housing landlords are obliged to act compatibly with, and give proper consideration to, the applicable human rights under the Charter.<sup>129</sup> The Charter provides a helpful framework for negotiating with social housing providers making difficult decisions because it:

<sup>127</sup> Terms of Reference, above n 3, Term of Reference 1.

<sup>128</sup> DHHS, *Temporary absence operational guidelines* (September 2018) (**Temporary absence guidelines**) available at: <https://providers.dhhs.vic.gov.au/tenancy-management-manual-temporary-absence-operational-guidelines-word>, 10.

<sup>129</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 38; *Burgess v Director of Housing* [2014] VSC 648; *Goode v Common Equity Housing Limited (Human Rights)* [2016] VCAT 93.



- Encourages consideration of a tenant's individual circumstances, including their family, any health problems and their risk of homelessness;
- Allows these considerations to be balanced against the competing obligations of social housing landlords (including, for example, the safety or comfort of other tenants and reliance on rent revenue); and
- Encourages proper consideration of alternatives to eviction.<sup>130</sup>

Many community housing providers are already making decisions that take into account human rights and consider themselves to be public authorities for the purposes of the Charter.<sup>131</sup> This best practice approach should be uniformly built into the policies of all Victorian community housing providers.

### ***Holistic legal intervention stops the crisis of eviction for eight rooming house residents***

Rooming houses are a common form of housing for people experiencing disadvantage, including a prominent cohort who experience mental illness.<sup>132</sup> In addition, the residents of rooming houses overwhelmingly report that rooming houses are violent, unsafe and detrimental to their mental health.<sup>133</sup> This is seen in Homeless Law's work, and it is critical that programs engaging with rooming houses are boosted, with funding, in-reach programs and training for rooming house staff, to ensure that the mental health needs of residents can be met.

Homeless Law sees this context through our casework, frequently assisting highly vulnerable clients in rooming houses who are on the edge of eviction into homelessness.

#### ***Collaborative and community-based legal, social and health services prevent homelessness for rooming house residents with mental illnesses and complex vulnerabilities***

In 2018, Homeless Law collaboratively ran a specialised Rooming House Eviction Prevention Project (**Rooming House Project**), which involved representing 8 of the 11 residents from a community rooming house in West Melbourne who were on the brink of homelessness. The 8 male residents faced 15 legal matters (12 evictions and 3 public housing debt issues) and all had complex vulnerabilities:

- 87.5% identified as having previously experienced homelessness;
- 87.5% identified as having physical health concerns or disabilities;
- 75% identified as having mental illness; and
- 50% identified as having substance dependence issues.

All of Homeless Law's clients through the Rooming House Project avoided eviction and secured safe, alternative housing, ensuring their marginalised circumstances were not further exacerbated. This high-impact outcome was achieved through holistic legal representation and 6 months of negotiations.

One individual resident at this rooming house, Eddie, who is from a culturally diverse background, was particularly impacted by facing eviction back into homelessness, with his housing insecurity resulting in significant mental health deterioration. This led to Eddie being placed on an Involuntary Treatment Order that required him to undergo emergency electroconvulsive treatment. Through integrated legal, health and social work advocacy, Eddie was ultimately rehoused in a suitable & stable alternative property, which his support worker noted, reduced the **"ongoing risk of relapse into AOD abuse & psychotic symptoms."**

The Rooming House Project illustrates the close correlation between mental illness, housing insecurity and homelessness. Homeless Law's work highlights the needs of clients in rooming houses facing unpredictable polices and the importance of the Charter in holding to account the decision making of social housing providers.

<sup>130</sup> Homeless Law, *Charting a Stronger Course: Homeless Law submission to the eight year Charter review* (16 June 2015) (**Charting a Stronger Course**) 7 available at: <https://www.justiceconnect.org.au/our-programs/homeless-law/law-and-policy-reform/preventing-evictions-and-sustaining-tenancies/charting-stronger-course-homeless-law-submission-eight-year-charter-review>.

<sup>131</sup> Ibid, 20-21.

<sup>132</sup> Goodman, R., Nelson, A., Dalton, T., Cigdem, M., Gabriel, M. and Jacobs, K., AHURI, *The experience of marginal rental housing in Australia: AHURI Final Report No.210.*, (2013) 35-6 (**The experience of marginal rental housing in Australia**) available at: [https://www.ahuri.edu.au/\\_\\_data/assets/pdf\\_file/0018/2196/AHURI\\_Final\\_Report\\_No210\\_The-experience-of-marginal-rental-housing-in-Australia.pdf](https://www.ahuri.edu.au/__data/assets/pdf_file/0018/2196/AHURI_Final_Report_No210_The-experience-of-marginal-rental-housing-in-Australia.pdf).

<sup>133</sup> Ibid, 25.



If the staff at the community housing provider involved in the Rooming House Project had been better equipped with clear policies, strategies and options for tenants who have mental illness and other complexities, it is possible that these clients would have not been in a position where intensive legal intervention was required. For tenants like Eddie, where the stress of eviction has catastrophic impacts on mental health, avoiding housing insecurity through strengthening social housing policies and supports cannot be understated.<sup>134</sup>

## Specialist supports for tenants with mental illness

Several intensive housing assistance programs currently operate around various areas of Melbourne and they serve as best practice models to assist vulnerable people, in particular those experiencing mental illness, maintain long-term, safe and appropriate housing. These programs are tailored to support tenants sustain their housing and address ongoing conflicts with neighbours, as well as provide referral pathways to appropriate health, social, financial and legal services. As discussed above, mental illness can often be directly linked to breach notices given after a conflict with neighbours. Having the support of intensive case workers in addressing conflicts with neighbours can make a significant difference for someone with ill-health and other vulnerabilities and prevent an escalation to eviction.

These services are highly beneficial but due to budget constraints, many programs have specific eligibility criteria and are geographically restricted. More funding is required to increase the reach and number of intensive housing support programs to assist some of the most at-risk Victorians and improve mental health outcomes through secure housing.<sup>135</sup> An example of a tailored support program is GreenLight Supportive Housing Program (**GreenLight**), which involves several close community-based partners of Homeless Law and is funded through the Victorian Government's 2018 Homelessness and Rough Sleeping Action Plan.<sup>136</sup>

### ***GreenLight: 'Housing first' and 'Sustaining tenancies' principles with wrap around support, including two mental health clinicians***

The GreenLight Supportive Housing Program is funded by the Victorian Government and is run through a partnership between Sacred Heart Mission, VincentCare and The Salvation Army. The service works with people over 25 who have experienced rough sleeping and/or chronic homelessness in the Port Phillip, Melbourne, and Yarra local government areas. GreenLight assists individuals stay in their new housing long term by providing wrap-around support.

There are three GreenLight teams located around inner Melbourne, as well as two program wide mental health clinicians, who provide clinical support, secondary consultation and capacity building to clients and staff. Each team has a team leader, supportive housing worker and peer settlement worker to assist clients manage their housing as well as connect with new community and enhance social inclusion and economic participation. These multidisciplinary teams provide brief intervention, floating support, case management and service coordination services, tailored to the needs of each individual client.

Homeless Law has built on existing partnerships to collaborate with GreenLight, including the establishment of strong bi-directional referral pathways and training for frontline Greenlight workers. Recently Homeless Law's lawyers ran customised training for workers to help them identify legal needs of individuals assisted through GreenLight, including tenancy issues, human rights, fines and charges. This connection has allowed both services to connect with clients facing complex vulnerabilities, including mental illness, and offer targeted and intensive legal and non-legal assistance.

<sup>134</sup> Terms of Reference, above n 3, Term of Reference 1.

<sup>135</sup> Ibid.

<sup>136</sup> This includes Sacred Heart Mission, VincentCare & The Salvation Army. See DHHS, *Victoria's homelessness and rough sleeping action plan* (January 2018) available at [https://dhhs.vic.gov.au/sites/default/files/documents/201802/Rough%20Sleeping%20Action%20Plan\\_20180207.pdf](https://dhhs.vic.gov.au/sites/default/files/documents/201802/Rough%20Sleeping%20Action%20Plan_20180207.pdf)



### ***Tailored support for tenants identifying as Aboriginal or Torres Strait Islander***

As stated above, Aboriginal and Torres Strait Islander tenants are at higher risk of homelessness and may also face a higher prevalence of mental illness.<sup>137</sup> For Aboriginal and Torres Strait Islander households to successfully avoid eviction, tenancy support programs need to provide additional culturally appropriate service provision to address underlying issues to tenancy problems and be more responsive to Aboriginal and Torres Strait Islander tenants.<sup>138</sup> Multi-agency partnerships are key to supporting the prevention of evictions through successful tenant support programs that will also consequently improve the mental health of tenants.<sup>139</sup>

### ***Integrated assistance programs***

These housing assistance programs can also benefit from close collaboration with specialist legal services, to provide legal intervention and negotiations with landlords to sustain their tenancies. This integration can be through co-location, embedded partnerships or strong referral pathways. For example, Homeless Law runs the innovative Under One Roof project, which co-locates a lawyer at frontline housing-support and homelessness service, Launch Housing, which has allowed our program to intervene earlier through the direct referral pathway and assist vulnerable Victorians. Homeless Law's integrated Homeless Persons' Liaison Officer (HPLO) program also involves co-locating our social worker within a homelessness health service, cohealth Central City Community Health Service (CCCHS). This health justice co-location provides clients of the many health services co-located at CCCHS with an opportunity to connect with Homeless Law, and holistically address legal and non-legal needs. In 2018, Homeless Law conducted a survey and comments from CCCHS staff included:

*'The direct access to the HPLO for workers and clients is invaluable. Putting a face to the service is really helpful for clients, and the HPLO is always available for secondary consult with workers. The collaborative work with mutual clients is really important and I think has been a real success.'*

Targeted programs such as Greenlight and other holistic legal and non-legal services, including Launch Housing and cohealth, when coupled with legislative and procedural reforms, provide a wrap-around approach to empower tenants with mental illness to remain safely housed. They also actively and appropriately connect marginalised Victorians with key pathways that will facilitate mental health recovery and treatment.<sup>140</sup>

## **Recommendation 4: Help social housing providers to prioritise tenants' rights and enhance pathways to specialised services**

To assist Victorians with mental illness to maintain or access sustainable housing and achieve positive health outcomes, Homeless Law recommends:

- Supporting social housing providers to develop fair, consistent, publicly available policies, which take into account tenants' human and legal rights.
- Implementing resources, staff training, access to tenant support services and supply of appropriate housing stock for the transfer options required by social housing providers to embed these policies.
- Extending the reach and number of intensive housing-support services, including programs with dedicated mental health professionals and those closely integrated with specialised legal services.

<sup>137</sup> Terms of Reference, above n 3, Term of Reference 4.1.

<sup>138</sup> Homelessness Action Plan Extended Evaluation, above n 55, 19-20.

<sup>139</sup> Ibid, 19-20.

<sup>140</sup> Terms of Reference, above n 3, Terms of Reference 1 and 2.3.





## 4. Moving on from the criminalisation of people experiencing mental illness and homelessness

Since Homeless Law commenced in 2001, fines, infringements and charges for ‘public space offences’ have remained one of the primary legal issues faced by homeless or at risk Victorians. Increasingly, Homeless Law is concerned about the criminalisation of conduct directly linked to mental illness, housing insecurity and homelessness. It remains common for people experiencing housing insecurity and mental illness who are arrested, to be taken to prison or into police custody as a method of safe management and containment.<sup>141</sup> Homeless Law calls for the Victorian Government to recognise that a law enforcement response to mental illness is a misplaced intervention for a person requiring support and healthcare.

To ensure that Victorians can experience their best mental health, the Victorian Government needs to take steps to reduce contact with the justice system for people experiencing mental illness and homelessness, along with minimising the related impacts of these interactions on mental wellbeing and housing stability.<sup>142</sup>

### 4.1 Reduce reliance on the justice system to respond to people experiencing mental illness and homelessness

#### Public space offences, homelessness and mental health

Each year, Homeless Law provides legal assistance to over 100 highly marginalised people who have received fines or charges for ‘public space offences’, including having an open container of liquor in public, begging, being drunk in a public place, littering, and public transport conduct. Homeless Law intensively helps these clients to have their charges addressed and to have their fines waived based on their homelessness, which is often interconnected with mental illness, family violence and substance dependence.

Homelessness and mental illness make it:

- More likely that you will come into contact with the justice system, by receiving fines or charges for public space offences because you are carrying out your private life in a public place; and
- Extremely difficult to deal with fines or charges either through payment or navigating the unwieldy legal process. (For an indication of the complex and protracted nature of an infringements matter, as well as the escalating costs if payment is not made on time, see **Annexure 3**).

Grant’s case study below is one of hundreds that highlight the impact on mental health and wellbeing of imposing financial penalties for conduct directly related to homelessness, increasing the strain people are already under and failing to address the underlying causes of offending.

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<sup>141</sup> Baldry, E., *Complex needs and the justice system*, in *Homelessness in Australia*, Council to Homeless Persons, Sydney (2014) (**Complex needs and the justice system**) 201.

<sup>142</sup> Terms of Reference, above n 3, Terms of Reference 1 and 4.4.





### ***Chronically homeless man experiencing mental illness and substance dependence issues faces \$18,000 in public space fines***

Grant has various mental illnesses, including depression and chronic suicidality, and a long history of substance dependence issues. When he first came to Homeless Law, Grant's crippling fines debt was over \$18,000, made up of around 50 fines for public space offences that he had accrued during decades of chronic homelessness, including significant periods of sleeping rough and seeking refuge in a variety of squats. He is reliant on the disability support pension and had no realistic prospects of being able to repay the \$18,000 in fines debt.

After gathering the necessary supporting evidence, Homeless Law assisted Grant to apply for his fines to be reviewed based on his special circumstances, including homelessness, substance dependence and mental illness. After protracted legal proceedings, the fines were dismissed, and Grant could prioritise his wellbeing, recovery and transition into secure housing with supports.

Grant's matter illustrates the way in which people experiencing mental illness and homelessness can be issued with overwhelming numbers of fines for conduct that is intricately linked to their vulnerable circumstances. In addition to doing nothing to aid recovery or engagement with services, the fines system places a burden on legal, community and health services that assist clients to deal with their fines and causes congestion in our court system.<sup>143</sup>

To improve mental health outcomes for Victorians who are currently at risk of contact with the justice system, targeted reforms to the *Infringements Act 2006* (Vic) (**Infringements Act**), *Fines Reform Act 2014* (Vic) (**Fines Reform Act**) and *Summary Offences Act 1966* (Vic) (**Summary Offences Act**), will help to ensure that people like Grant, living with complex vulnerabilities and mental illness, are not penalised for their disadvantaged circumstances.<sup>144</sup>

## **Breaking the cycle of criminalisation, mental health and homelessness**

Homeless Law's Courting Justice program was created in 2015 to assist clients with complex needs who are experiencing or at risk of homelessness to navigate the criminal justice system and access intensive criminal legal help. In the first three years of Courting Justice, 73% of the 124 clients who received ongoing criminal legal casework reported having a mental illness.

The criminal justice system should not be the first response to mental illness or a mental health crisis. Enforcement-based approaches to homelessness, mental illness and poverty have been recognised by local and international experts as exacerbating hardship and failing to address the underlying causes of offending, creating a barrier to engagement with services and recovery.<sup>145</sup> An example from South Carolina highlights the mismatch of a legal enforcement approach, where the need was for mental health and holistic supports.<sup>146</sup>

<sup>143</sup> See, eg, Homeless Law, *Fair's Fare: Improving access to public transport for Victorians experiencing homelessness* (March 2016) available at: <https://justiceconnect.org.au/wp-content/uploads/2018/08/Fares-Fair-Public-transport-position-paper-March-2016.pdf>.

<sup>144</sup> Terms of Reference, above n 3, Terms of Reference 1 and 4.4.

<sup>145</sup> See, e.g., Lucy Adams, The Winston Churchill Memorial Trust of Australia, *In the public eye: Addressing the negative impact of laws regulating public space on people experiencing homelessness* (April 2014), available at: <https://justiceconnect.org.au/wp-content/uploads/2018/08/In-the-Public-Eye-Churchill-Report-2013.pdf>.

<sup>146</sup> Clif Le Blanc, 'Being homeless in Columbia could get you arrested', *The State* (10 August 2013).



### South Carolina – Law enforcement approach

South Carolina proposed a plan to ban homeless people from the local downtown area of Columbia. The proposal involved extending the operation hours of the 240-bed homeless shelter on the outskirts of the city and having vans shuttle homeless clients to daily appointments for jobs, medical services or mental health treatment.

To implement this, police were required to ask the 1500 people experiencing homelessness to leave the city centre of Columbia and existing ordinances, including prohibitions on loitering, public urination and other nuisance violations, were going to be strictly enforced against homeless people in the city. Homelessness advocates expressed significant concern about the proposal, but the plan was passed by the Council. The Columbia police chief opposed the plan, identifying that this wasn't what he wanted to spend limited police resources on. He expressed that the plan would strain police resources.

Assistant Chief Diane Grooms of the District of Columbia Metropolitan Police Department summarised this well:

***'A lot of what we deal with now is not crime ... a lot of investment should go into services instead of using police to solve these problems: we're not psychologists ... At the moment it's so easy to find police, but people need services'.***

The Victoria Police e-Referral pathway for homelessness services has been inactive since early 2016,<sup>147</sup> which significantly limits the referral options that police have for people experiencing homelessness, including many with mental illness. Victoria Police faces ongoing pressures to 'deal' with people experiencing complex vulnerabilities and acute hardship.

To avoid the risk of over-criminalising people experiencing mental illness and homelessness, it is critical that Victoria Police exercise discretion and consider cautions as a first option for people where the offending is directly linked to their vulnerabilities. Police should also be adequately trained and supported to strengthen referral pathways to appropriate mental health services or other support agencies as an alternative to fines and charges.<sup>148</sup>

If we can prevent vulnerable people from entering the criminal justice system, or support them to exit without a formal finding of guilt and criminal record, we are supporting, rather than impeding, a person's pathway out of homelessness and mental illness towards treatment, recovery and stable housing.<sup>149</sup>

### Closing the revolving door between prisons, housing insecurity and mental illness

Mental illness and homelessness should not be factors that increase a person's risk of entering custody. However, the latest survey of prisoner health of those in Australian prisons indicates that:

- 61% of people entering Victorian prisons had a diagnosed mental illness, with 61% prisoners stating that their mental illness either stayed the same or deteriorated while incarcerated.<sup>150</sup>
- 33% were experiencing homelessness prior to incarceration, and over half of prisoners expect to be homeless or do not know their housing status upon release.<sup>151</sup>

Research has indicated that those experiencing both homelessness and mental illness are 40 times more likely to be arrested, and 20 times more likely to be imprisoned than those in secure housing.<sup>152</sup> People with mental illness

<sup>147</sup> Note that there is a trial of the VPeR homelessness pathway currently underway in the Hume area only.

<sup>148</sup> Examples of good consumer-led training programs include 'Walk in My Shoes' through the Council to Homeless Persons that Melbourne East police participated in in May 2018. See Police Life (Summer 2019), 16: available at [https://issuu.com/police-life/docs/10906\\_vpo\\_police-life\\_summer2019\\_fa\\_](https://issuu.com/police-life/docs/10906_vpo_police-life_summer2019_fa_)

<sup>149</sup> Terms of Reference, above n 3, Terms of Reference 1 and 4.4.

<sup>150</sup> AIHW, *The Health of Australia's Prisoners 2018*, (Health of Australia's Prisoners) Data tables: 03 – Mental Health – States & Territories, available at: <https://www.aihw.gov.au/reports/prisoners/health-australia-prisoners-2018/data#page2>.

<sup>151</sup> Health of Australia's Prisoners, above n 150, Data tables: 02 – Socioeconomic factors – States & Territories.

<sup>152</sup> NSW Department of Corrective Services, (2004), *Submission to Experiences of Injustice and Despair in Mental Health Care in Australia consultations by the Mental Health Council of Australia and the Brain and Mind Research Institute in association with the Human Rights and Equal Opportunity Commission*.



also have higher rates of recidivism and are more vulnerable to extended and repeat incarceration.<sup>153</sup> These highly disproportionate rates of incarceration can be explained through the mix of re-enforcing factors, including:

- Prisons have a negative impact on mental wellbeing;<sup>154</sup>
- People with mental illness are at a higher risk of being criminalised;<sup>155</sup>
- People with mental illness are more likely to experience homelessness or have their mental illness deteriorate as a result of becoming homeless;
- People experiencing homelessness are at a higher risk of being criminalised;<sup>156</sup>
- People in custody are more likely to lose their housing while incarcerated and face homelessness upon release.

These statistics are supported by insights from Homeless Law's Closing the Revolving Door Project,<sup>157</sup> which provides tailored legal help to prisoners, aiming to keep them housed while on short sentences or remand, and to address debts that are barriers to safe post-release housing. Of the 60 Victorian prisoners assisted through Closing the Revolving Door Project this year, 78% reported having mental illness, 65% had substance dependency, over half had experienced family violence and previous homelessness, and a third had previously been incarcerated.

Experiences of incarceration can also significantly affect a person's mental wellbeing and lead to further criminalisation. The Victorian Ombudsman's 2015 investigation into prisons revealed a shortage of specialised mental health beds and significant waiting times for prisoners to be transferred to hospital for involuntary treatment.<sup>158</sup> In addition to insufficient mental health supports, people with mental illness may face additional criminalisation of conduct within custody related to their conditions. This evidence highlights the imperative need for early intervention and prevention to reduce the rates of incarceration in Victoria, particularly for those experiencing mental illness, as well as the importance of access to mental health services and treatments for Victorians in custody.

### **Criminalisation of children and mental health**

To support mental wellbeing for Victorian children, Homeless Law strongly supports the Human Rights Law Centre's (HRLC) call to raise the age of criminal responsibility from 10 to 14 years old by amending the *Children, Youth and Families Act 2005* (Vic) (**Children, Youth and Families Act**). As noted by the HRLC:<sup>159</sup>

***'There is a clear link between wellbeing, mental health and youth detention, given one third of imprisoned children diagnosed with depression only experienced its onset once they were behind bars.<sup>160</sup> ... Youth imprisonment is associated with higher risks of suicide and depression.<sup>161</sup> Children and young people drawn into the youth justice systems have significantly higher rates of mental health disorders and cognitive disabilities when compared with general youth populations.'*<sup>162</sup>**

<sup>153</sup> The Justice Project – Final Report, above n 12.

<sup>154</sup> VLA submission: Economic Impact of Mental Ill-Health, above n 8, 8; Commonwealth of Australia, *A national approach to mental health – from crisis to community: First Report: Chapter 13 - Mental health and the criminal justice system* (30 March 2006) 13.38-13.41, available at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Former\\_Committees/mentalhealth/report/c13](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Former_Committees/mentalhealth/report/c13).

<sup>155</sup> Complex needs and the justice system, above n 141, 200-1.

<sup>156</sup> Health of Australia's Prisoners, above n 150.

<sup>157</sup> See Homeless Law, *Closing the Revolving Door prison project* (accessed on 3 July 2019) available at: <https://justiceconnect.org.au/our-services/homeless-law/tenancy-legal-help-for-prisoners/>.

<sup>158</sup> Victorian Ombudsman, *Investigation into the rehabilitation and reintegration of prisoners in Victoria* (September 2015) 6 available at: <https://www.ombudsman.vic.gov.au/getattachment/5188692a-35b6-411f-907e-3e7704f45e17>.

<sup>159</sup> Human Rights Law Centre, *Template Submission on Raising the Age of Criminal Responsibility for the Royal Commission into Victoria's Mental Health system (HRLC Raising the Age of Criminal Responsibility)* (June 2019).

<sup>160</sup> Holman, B. and Ziedenberg, J., *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, Justice Policy Institute (28 November 2006) available at: <http://www.justicepolicy.org/research/1978>, cited in HRLC Raising the Age of Criminal Responsibility, above n 159, 2-3.

<sup>161</sup> Commonwealth of Australia, Royal Commission into the Protection and Detention of Children in the Northern Territory, *Final Report* (2017), cited in HRLC Raising the Age of Criminal Responsibility, above n 159, 3.

<sup>162</sup> Cuneen, C., *Arguments for Raising the Minimum Age of Criminal Responsibility* (Paper presented at the Australian Social Policy Conference, Sydney, 25-27 September 2017), cited in HRLC Raising the Age of Criminal Responsibility, above n 159, 3.



Despite this evidence, in 2016-17, 35 children aged 10 to 13 were locked up in Victorian prisons.<sup>163</sup> Further, almost 70% of children trapped in youth justice systems across Australia are Aboriginal and Torres Strait Islander children.<sup>164</sup> This criminalisation is against current medical opinion<sup>165</sup> and stands at odds with international standards, with 14 being the medium minimum age worldwide.<sup>166</sup>

## Recommendation 5: Reduce justice system and enforcement-based responses to mental illness and homelessness

People experiencing or at risk of homelessness, and those with mental illness, are more vulnerable to enforcement and justice system interactions. To ensure that Victorians can experience mental health and housing stability, Homeless Law recommends:

- Amending 3(1) of the *Infringements Act 2006* (Vic) to adopt language similar to the Family Violence Scheme.
  - (a) *a mental or intellectual disability, disorder, disease or illness where the disability, disorder, disease or illness results substantially contributed to the person being unable—*
    - (i) *to understand that their conduct constitutes an offence; or*
    - (ii) *control their conduct that constitutes an offence;*
- Amending s 9 of the *Fines Reform Act 2014* (Vic) to require Fines Victoria to waive or reduce costs where a person's special circumstances (particularly mental health) substantially contributed to the person being unable to attend to their fines in a timely manner.
- Repealing offences for begging and being drunk in public in ss 13 and 49A of the *Summary Offences Act 1966* (Vic).
- Amending offences related to move on directions, obscene language and drunk and disorderly offences in ss 4, 6, 14, 16, 17, 17A of the *Summary Offences Act*, so as not to criminalise this conduct where that person commits the offence due to addiction, mental illness or homelessness.
- Victoria Police should consider cautions as a first option for people where the offending is directly linked to their mental illness or homelessness.
- Victoria Police should be trained and equipped to make referrals to appropriate services as an alternative to fines and charges.
- Prosecutors should be given guidance to consider withdrawal of charges if a clear link can be drawn between the allegations and the person's mental illness or homelessness.
- Amending section 344 of the *Children, Youth and Families Act 2005* (Vic) to raise the age of criminal responsibility to 14 years, seeking to prevent the criminalisation of children and the significant life-long mental health risk associated.

<sup>163</sup> AIHW, *Youth Justice in Australia 2016–17*. Cat. no. JUV 116. Canberra: AIHW, (2018) tables s74b, s140b and s1b, cited in HRLC Raising the Age of Criminal Responsibility, above n 159, 4.

<sup>164</sup> AIHW, *Youth Justice in Australia 2015–16*. Cat. No. AUS 211. Canberra: AIHW, (2017) table s78b, cited in HRLC Raising the Age of Criminal Responsibility, above n 159, 4.

<sup>165</sup> Becroft, A., 'From Little Things, Big Things Grow: Emerging Youth Justice Themes in the South Pacific' (Paper presented at the Australasian Youth Justice Conference on Changing Trajectories of Offending and Reoffending, New Zealand, 21-22 May 2013) 5 referring to Science Advisory Committee *Improving the Transition: Reducing Social and Psychological Morbidity During Adolescence* (May 2011) at 24. See also Richards, K., 'What makes juvenile offenders different from adult offenders?' (2011) 409 *Trends & issues in crime and criminal justice*, 4; Laurence Steinberg 'Risk Taking in Adolescence: New Perspectives from Brain and Behavioural Science' (2007) 16 *Current Directions in Psychological Science* 55, 56, cited in HRLC Raising the Age of Criminal Responsibility, above n 159, 2-3.

<sup>166</sup> Committee on the Rights of the Child, *General Comment No. 10 Children's rights in juvenile justice*, 44th sess, UN Doc CRC/C/GC/10 (25 April 2007), [32-33] cited in HRLC Raising the Age of Criminal Responsibility, above n 159, 3.



## 4.2 Better mental health outcomes through increased access to diversion and therapeutic justice

### The importance of access to diversion for people experiencing mental illness

The Criminal Justice Diversion Program provides an avenue for marginalised Victorians with mental illness to exit the justice system with long-term, therapeutic outcomes. The Criminal Justice Diversion Program is a legislative scheme that empowers a court to deal with a criminal charge by ‘diverting’ the matter from the criminal justice system, avoiding a finding of guilt.<sup>167</sup> Diversion provides highly vulnerable people with a therapeutic setting to appropriately address minor offences often directly linked to their experiences of mental illness or homelessness. Ordering a Diversion Plan allows the Magistrate to take into account each person’s disadvantaged circumstances, including mental illness or intellectual impairments, family violence, drug and alcohol dependence and homelessness, when determining judicial outcomes.

Due to the nature of the charges faced by many of Homeless Law’s clients, with offending often underpinned by poverty, mental illness, family violence and other life-challenges, the opportunity to participate in the therapeutic setting of Diversion is often a desirable and sensible resolution. However, many people with mental illness who may be appropriate candidates for Diversion are unable to access it. Of the 15 clients in the first three years of the Courting Justice program who accessed Diversion, only four of these applications were prompted by police. Without the representation provided through Homeless Law, it is likely the other 11 clients would have ended up with criminal records and the long-term impacts for their futures, particularly employment, that these records carry with them.<sup>168</sup> Importantly, as Annabell’s case study below demonstrates, Diversion can be used to support people living with complex needs avoid harsh judicial outcomes and instead be encouraged to engage with mental health treatment.

#### *First time offender with mental illness and a history of experiencing family violence helped to attend court and access diversion*

For her first 44 years, Annabell had never been in trouble with the law. Annabell was unable to work after suffering a car accident in 2015. Soon after, her relationship broke down and she was in significant debt. She was evicted from her family home because she was unable to maintain her rental payments. Annabell had suffered family violence and was dealing with mental illness and chronic alcohol dependence. After obtaining a new rental property, in early 2017 Annabell was again evicted for rental arrears. Annabell had nowhere safe to go. She broke back in to the vacant rental property from which she had just been evicted because she needed shelter and felt comfort in the familiar surroundings. Annabell was charged with trespass.

Annabell found attending court particularly difficult. She was still dealing with her alcohol dependence and had begun addressing her underlying mental illness through a mental health care plan. She was unfamiliar with the court process and was couch surfing in the outer north-western suburbs of Melbourne. It would take her several hours on public transport to get in to court.

Homeless Law’s HPLO social worker worked closely with Annabell and her Homeless Law criminal lawyer to develop an appropriate support plan. Annabell was granted a diversion based around ongoing support, allowing her to focus on her mental health recovery.

The multi-disciplinary supports from Homeless Law’s social worker and criminal lawyer played a key role in assisting Annabell to access the Diversion Plan, ensuring she successfully navigated and exited from the justice system. However, as it stands, police currently have complete discretion to consent to Diversion and there is no opportunity

<sup>167</sup> See e.g. Magistrates’ Court of Victoria, *Diversion*, (accessed on 30 June 2019) available at: <https://www.mcv.vic.gov.au/find-support/diversion>

<sup>168</sup> See also Emily Scott et al, Liberty Victoria’s Rights Advocacy Program, *Justice Diverted? Prosecutorial Discretion and the Use of Diversion Schemes in Victoria* (2018).





for the court or defence to intervene. For someone who is unrepresented, the effect is that they rely almost exclusively on the police to access this outcome.

For these reasons, the *Criminal Procedure Act 2009* (Vic) (**Criminal Procedure Act**) should be amended, so that the Court determines whether Diversion is appropriate. This decision should be informed by the views of both defence and the police, and would improve access to the therapeutic outcomes of Diversion for people with mental illness. By increasing access to Diversion, community members with mental illness, including those experiencing or at risk of homelessness, will be able exit the justice system and focus on recovery and treatment.<sup>169</sup>

## Benefits of therapeutic approaches to criminal offending

To improve mental health outcomes and reduce the negative mental health impacts of contact with the justice system for people experiencing mental illness, therapeutic justice plays a key role.<sup>170</sup> As identified in the VLA's *Intersections between mental health and the legal system and the impacts for people and communities: Submission to the Productivity Commission's Inquiry into the Economic Impact of Mental Ill-Health*, strong benefits have been achieved for Victorians, including those experiencing mental illness, through therapeutic responses to criminal offending.<sup>171</sup>

These benefits are particularly seen through outcomes in the Magistrates' Court of Victoria's Assessment and Referral Court (**ARC**), which is a specialised court for people with mental illness and/or cognitive impairments, including acquired brain injuries.<sup>172</sup>

At ARC, if the accused pleads guilty, they receive an individual support plan tailored to address the underlying factors that contributed to their offending, with sentencing to occur only after the support plan is completed.<sup>173</sup> The individual support plans often include attending psychological, mental health or housing-support services.

ARC is currently only available at five Magistrates' Courts around Victoria and the individual support plans are accompanied by extensive requirements on the accused person to regularly attend court before an ARC Magistrate to discuss their individual support plan progress. Homeless Law's Courting Justice program has seen that for some vulnerable clients, the stress of rigid requirements, penalties for non-compliance and uncertainty of final outcomes can create undue stress.

Increased availability and flexibility of therapeutic responses to criminal offending is necessary to improve mental health outcomes of those in contact or at risk of contact with the justice system.<sup>174</sup>

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<sup>169</sup> Terms of Reference, above n 3, Term of Reference 2.3 and 4.4.

<sup>170</sup> Terms of Reference, above n 3, Term of Reference 4.4.

<sup>171</sup> VLA submission: Economic Impact of Mental Ill-Health, above n 8, 8.

<sup>172</sup> VLA submission: Economic Impact of Mental Ill-Health, above n 8, 8.

<sup>173</sup> See Magistrates' Court of Victoria, *Assessment and Referral Court* (accessed on 3 July 2019) available at: <https://www.mcv.vic.gov.au/about-us/assessment-and-referral-court-arc>.

<sup>174</sup> Terms of Reference, above n 3, Term of Reference 4.4.





## **Recommendation 6: Increase access to diversion and therapeutic justice for people with mental illness**

To enhance mental health outcomes for those in contact, or at risk of contact, with the justice system, people experiencing mental illness and homelessness need to be provided with therapeutic outcomes and diversion. Homeless Law recommends:

- Amending section 59 of the *Criminal Procedure Act 2009* (Vic) to remove the requirement that the Prosecution consent to the Criminal Justice Diversion Program, so that the Court has the power to determine whether diversion is appropriate on balance in each matter.
- Empowering the Court to vacate pleas of guilty where it becomes apparent, after a plea is entered, that Diversion is the most appropriate outcome.
- Increasing access to therapeutic options, such as the Magistrates' Court of Victoria's Assessment and Referral Court, and making them available state-wide.

## 4.3 Achieving fairer and more just lives

Victorians who experience mental illness, homelessness and housing insecurity regularly face challenging barriers to accessing the justice system. Interactions with the police, enforcement officers, courts and tribunals without support can be overwhelming, leading to an exacerbation of mental illness and other complexities. Through Homeless Law's work, we have seen that integrated practice models enable highly vulnerable clients to access holistic legal help, which empowers them to achieve positive mental health and housing outcomes with wrap-around supports.<sup>175</sup>

### Tailoring legal services to the complex needs of people facing mental illness & homelessness

As discussed above, the interlinked vulnerabilities of mental illness, homelessness and housing insecurity often increase an individual's legal needs and the intensity of legal help required.<sup>176</sup> The NSW Law and Justice Foundation's Legal Australia-Wide Survey found that of the respondents who reported six or more legal problems, more than 60% reported experiencing a mental illness.<sup>177</sup> Early access to legal help is vital for people with complex needs, and crucial to avoiding an escalation of legal issues. The impacts of escalation were also recognised in the Victorian Governments' 2016 Access to Justice Review:

*'Increasingly though, unresolved civil legal problems, such as those related to a community member's housing, mental health, employment or family, are recognised as having far reaching consequences for both the individuals involved and the state.'*

*'For individuals, unresolved legal problems can lead to diminishing health and restrict social and economic participation, as well as triggering further legal problems, including possible criminal legal issues. These consequences for individuals often generate costs which must be borne by the state, whether in the justice system or in other publicly funded systems.'*<sup>178</sup>

For people experiencing mental illness and homelessness, the legal system can be largely inaccessible, resulting in unjust outcomes.<sup>179</sup> Barriers to accessing justice can include: inflexible court procedures, negative attitudes and stigma towards people with mental illness, lack of understanding of mental illness by those who work in the justice system, lack of critical supports at all stages of the justice system, and an under-resourced legal assistance sector.<sup>180</sup> Interaction with the justice system for those with mental illnesses can be an intimidating, stressful and overwhelming experience,<sup>181</sup> and legal support is essential during this time.

Current limitations on VLA's funding mean that their service model necessarily prioritises clients who are at risk of imprisonment.<sup>182</sup> We observed that most Homeless Law clients with matters in the Magistrates' Court were ineligible for grants of legal assistance from VLA. These clients were facing charges typically incurred as a direct result of poverty, mental illness and homelessness, such as begging, other public space offences under the Summary Offences Act, driving offences and minor drug or property offences. Prior to the Courting Justice program, Homeless Law's main option in many cases was assisting our homeless or at risk clients to access VLA's duty lawyer service on the day of their hearings. However, Homeless Law's experience was that many of our clients, particularly those with negative previous justice system interactions, were highly anxious about attending court and struggled with the duty lawyer model. Particularly for those with mental illness, the inability to obtain tailored legal assistance prior to their hearings (which can be months after charges are laid) creates uncertainty and increased pressure, resulting in failures to appear at court.

<sup>175</sup> Terms of Reference, above n 3, Term of Reference 1, 2.3 and 4.4.

<sup>176</sup> See VLA submission: Economic Impact of Mental Ill-Health, above n 8, 32.

<sup>177</sup> Law and Justice Foundation of New South Wales, *Legal Australia-Wide Survey: Legal Need in Victoria* (2012) (Legal Australia-Wide Survey: Legal Need in Victoria) 25, available at: [http://www.lawfoundation.net.au/ljf/site/templates/LAW\\_Vic/\\$file/LAW\\_Survey\\_Vic.pdf](http://www.lawfoundation.net.au/ljf/site/templates/LAW_Vic/$file/LAW_Survey_Vic.pdf).

<sup>178</sup> Access to Justice Review: Summary Report, above n 93.

<sup>179</sup> The Justice Project, above n 12, 20.

<sup>180</sup> The Justice Project, above n 12, 27.

<sup>181</sup> The Justice Project, above n 12, 32.

<sup>182</sup> Victoria Legal Aid, *Handbook for Lawyers – Criminal Law Guidelines* (September 2018), available at: <https://handbook.vla.vic.gov.au/handbook/3-criminal-law-guidelines>.



For James, who was assisted by Homeless Law with his criminal charges, the integrated legal and non-legal supports were critical in ensuring he would attend court:

*‘There are times when I thought about not showing up but [the Homeless Law criminal lawyer] has put a different spin on things and calmed me down. I’ve been at court and [the HPLO social worker] has been at court and she’s come over to wish me luck.*

*Just because people are homeless doesn’t mean they don’t deserve good, if not the best.’*

In this context, there is a clear need for specialised criminal law services targeted at meeting the complex needs of Victorians experiencing mental illness and homelessness. The integrated model of Homeless Law’s Courting Justice enables homeless or at risk clients to access criminal legal advice and representation throughout the court process. The model of ongoing engagement with one specialised lawyer and a trained social worker has increased the ability of Homeless Law’s clients to attend court, participate meaningfully in the judicial process and avoid becoming entrenched in the justice system. The Courting Justice model recognises that clients may require additional time and attention, both at court and in the lead up to court due, including due to their mental illness. One of Homeless Law’s pro bono lawyers summarised the benefits of Courting Justice for Victorians with acute mental illness:

*‘[The clients I have referred to the criminal lawyer] have all had severe mental health issues which make it difficult for them to engage or trust the system and criminal lawyers.*

*Having [the criminal lawyer] available to meet with a client who has such high vulnerabilities means that they can get help with their legal issues seamlessly and in cases where it is likely they wouldn’t go independently to see a lawyer when at court, or contact the VLA help line for advice. It’s such a great service for those people who wouldn’t access a criminal lawyer any other way.’*

As the VLA *In Summary: Evaluation of the Appropriateness and Sustainability of Victoria Legal Aid’s Summary Crime Program* report identified, provision of more intensive forms of legal assistance earlier on has wider system benefits, including saving court time.<sup>183</sup> Client-centred models of service provision that meet a cluster of legal and non-legal needs provide significant benefits to people facing mental illness, homelessness and housing insecurity, along with benefits to the broader community. These services are a worthwhile investment for government and should be funded as part of a fair and efficient justice system that improves mental health and housing outcomes for all Victorians.<sup>184</sup>

## **Integrated legal and non-legal supports achieve long-term mental health and housing outcomes**

Victorians with mental illness may not recognise that their problems are legal, or not know where to go for the appropriate legal support. Studies have shown that more people seek legal assistance from their doctor than a

<sup>183</sup> Hugh M McDonald et al, Law and Justice Foundation for New South Wales, *In Summary: Evaluation of the Appropriateness and Sustainability of Victoria Legal Aid’s Summary Crime Program* (2017) 255.

<sup>184</sup> Terms of Reference, above n 3, Term of Reference 1 and 4.4.



lawyer.<sup>185</sup> To increase access to justice and strong referral pathways between legal and mental health services,<sup>186</sup> lawyers should be embedded with health and community-service professionals through models of integrated practice. As highlighted above, Victorians who have mental illness, including those experiencing or at risk of homelessness, require intensive, client-centred and multi-disciplinary support. Service models need to be responsive to the range of different legal and non-legal issues presented by people who experience mental illness.

In 2010, Homeless Law became one of Victoria's first integrated legal practices through the addition of a social worker to our team. Since being established by Homeless Law with generous support from the Department of Justice and Community Safety in 2010, the HPLO program has supported over 1000 clients experiencing or at risk of homelessness to resolve Victorian court and tribunal matters, and to maintain or access housing. The HPLO provides a critical link to services for people who have multiple legal issues and complex social needs, providing support in addressing both legal and non-legal issues.<sup>187</sup> Former client Karl reflected on the difference the support of the HPLO made:

***'[The HPLO] enabled me to engage with the world...practical support enabled me to participate in a court system that excludes people with a disability.'***

The HPLO also has a specialist focus on housing needs, helping people to both exit homelessness and to sustain safe accommodation. The HPLO program has trained hundreds of community and pro bono lawyers in client management, been involved in significant policy and law reform work, and used casework evidence and client insights to support service development. Sandy's case illustrates the crucial role that the HPLO played in enabling her to access the justice system effectively and address her needs holistically.

### ***Mother of three navigates the justice system, resolving housing, mental illness, family violence, child protection and criminal law issues***

Sandy connected with Homeless Law when she and her three young children were facing eviction. Sandy had experienced family violence for more than 10 years. Despite having an indefinite IVO against her ex-partner, he continued to track her down and abuse her over many years, which had impacted on her mental health and safety.

Homeless Law's HPLO engaged with Sandy when it became clear she was dislocated from any supports ahead of her VCAT eviction hearing. Collaborating closely, the HPLO and Homeless Law lawyers were able to successfully prevent Sandy's eviction. Soon afterwards, the ex-partner found Sandy and perpetrated further violence, so she sent her children to their grandparents and started sleeping in her car. Homeless Law's lawyers assisted Sandy to end her lease and to resolve other legal barriers to accessing safe, alternate housing. The HPLO worked closely with Sandy to manage her highly vulnerable circumstances from a non-legal perspective – safety and mental health recovery planning, housing options, material aid, petrol vouchers to see her children and connections to other services.

The HPLO also connected Sandy to Homeless Law's specialist criminal lawyer through the Courting Justice program. The HPLO and criminal lawyer worked closely to support Sandy with her rights as a victim of crime and with her other minor criminal law issues. Our criminal lawyer provided ongoing advice and representation across Sandy's Magistrates' Court appearances, while the HPLO gathered supporting evidence, and successfully secured Sandy a new, safe property. The following week, just before Christmas, Sandy was housed and finally reunited with her children.

<sup>185</sup> Legal Australia-Wide Survey: Legal Need in Victoria, above n 177, 187. 12-17% of people seek legal advice, 27% see a health care professional like a doctor or psychologist.

<sup>186</sup> Terms of Reference, above n 3, Term of Reference 2.3.

<sup>187</sup> Assistance provided includes: assisting clients to access appropriate legal assistance at the earliest possible point before legal issues escalate; supporting clients to attend court or VCAT, including arranging accommodation prior to court, transport and accompanying clients to court; linking clients with long-term supports; supporting clients to sustain or access housing; providing periods of brief intense intervention to stabilise a client's situation whilst linking with services; liaising with services such as Centrelink, DHHS and other current support providers to coordinate and collaborate for optimal outcomes.

Holistic legal services that include non-legal supports create efficiencies within legal environments by addressing some of the underlying causes of clients' contact with the justice system, which directly reduces the emergence of new legal issues. For individuals with mental illness, having an ongoing social worker or health professional assisting them with their legal system interactions can increase the potential for positive and sustainable outcomes for clients. The impact of multi-disciplinary services was reflected by former Homeless Law client David, who shared:

*'[I felt] ashamed because I'm one that doesn't break the law... There is no way I could've dealt with the fines by myself... The only way I did was with the help of the worker and lawyer.'*

## Co-locations with frontline community & health services improve access to justice

Homelessness, housing and mental illness bring increased contact with the law, while simultaneously making it harder to navigate the justice system and access legal help. Homeless Law utilises co-locations at community-based support services to reach the most transient people in our community. Homeless Law's Under One Roof is an innovative project, which co-locates a specialist lawyer with Launch Housing and creates an embedded partnership with Sacred Heart Mission – Journey to Social Inclusion. Under One Roof has brought together experts across housing, social work, healthcare and the law to provide people with the holistic civil and criminal legal support they need to avoid or exit homelessness, and to prioritise mental wellness. From 2015 to 2018, the frequency of referrals from caseworkers through Under One Roof increased by 25%. Homeless Law was also able to intervene earlier in resolving clients' fines, charges, debts and tenancy issues through the direct referral pathway, avoiding the legal service 'referral roundabout' often faced by highly vulnerable Victorians.

The Under One Roof model was profiled in the Victorian Government's 2016 *Access to Justice Review*<sup>188</sup> and the Law Council of Australia's 2018 *Justice Report*<sup>189</sup> as providing a best practice model of assistance for people experiencing disadvantage. The Justice Report highlighted the importance of integrated models:

*'There is strong evidence and broad support for holistic, multi-disciplinary service collaborations which seek to address clients' legal and non-legal needs comprehensively and seamlessly. These are considered effective because people experiencing disadvantage or more likely to experience multiple legal and non-legal needs, and often initially seek legal help from a trusted non-legal professional.'*<sup>190</sup>

Intensive legal services should be seen as an important part of the strategies and programs aimed at improving participation and outcomes for people facing mental illness and marginalisation in Victoria.<sup>191</sup> Through Homeless Law's co-locations and deep partnerships, we know that providing people experiencing mental illness and homelessness with targeted, flexible and collaborative assistance leads to better engagement with the legal system and fairer outcomes. Pete's case study below confirms the importance of integrated legal advocacy in removing barriers to safe, long-term housing for people with complex vulnerabilities.

<sup>188</sup> Victorian Government, *Access to Justice Review, Volume 1, Report and Recommendations* (August 2016) (**Access to Justice Review: Volume 1**) available at: [https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/3314/8601/7221/Access\\_to\\_Justice\\_Review\\_-\\_Report\\_and\\_recommendations\\_Volume\\_1.PDF](https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/3314/8601/7221/Access_to_Justice_Review_-_Report_and_recommendations_Volume_1.PDF).

<sup>189</sup> Law Council of Australia, *The Justice Project, Legal Services, Final report – part 2* (August 2018) 73 (available at: <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/18%20-%202018%2009%20-%20Final%20-%20Legal%20Services%20%28Part%20%29.pdf>).

<sup>190</sup> Ibid.

<sup>191</sup> Terms of Reference, above n 3, Term of Reference 4.4.



### ***Chronically homeless man with mental illness has \$12,000 worth of public housing debts waived***

Pete's Launch outreach nurse referred him to the Under One Roof co-located lawyer as debt collectors were chasing him for over \$12,000 in public housing debts with the DHHS. Pete had recently been housed in a supported residence after spending a significant period sleeping rough.

Pete has severe paranoid schizophrenia and memory loss, so he struggled to recall living in the relevant public housing property or any details of the debt. Our co-located lawyer connected him with Homeless Law's pro bono lawyers for ongoing legal representation. Pete had limited literacy and the involvement of his Launch outreach nurse and intensive case manager was pivotal in helping Pete to understand the legal advice and build his confidence with our lawyers.

Homeless Law successfully negotiated with the DHHS for a waiver of the full \$12,000 based on his mental illness and his longstanding personal and financial hardship. The removal of Pete's crippling debt means that he has again been able to apply for long-term public housing, reducing the risk of being pushed back into homelessness and allow Pete to access secure housing key for his mental wellbeing.

### **Recommendation 7: Improve the availability of holistic, integrated legal services**

Holistic legal services should be seen as an important part of achieving long-term mental health and housing outcomes for all Victorians, as well as improving referral pathways between mental health and legal services. Homeless Law recommends:

- Investing in early-intervention, client-centred and co-located legal services that can proactively resolve legal issues to minimise barriers to mental wellness and housing security.
- Supporting the integration of legal, social work, health and other community-support professionals to help people experiencing mental illness, homelessness and housing insecurity in successfully accessing, navigating and exiting the justice system.



## Annexure 1 – 2016-17 joint submission proposing an internal appeals division for the Residential Tenancies List

### Briefing Paper:

### Reform Proposal for an Internal Appeals Division in the Residential Tenancies List

This briefing paper has been developed by a group of key stakeholders and users of the Residential Tenancies List ('RT List') of the Victorian Civil and Administrative Tribunal (VCAT), in the context of the current review of the *Residential Tenancies Act 1997* (Vic).

As peak bodies representing landlords, and legal assistance providers representing tenants, our constituents and clients are often on opposing sides, and our policy positions often reflect these different perspectives.

We have come together, however, to express significant concern with the current appeals mechanism as a means of ensuring consistency of decision-making in the RT List.

We agree that there are three main concerns with the RT List, that would be addressed by the introduction of an internal appeals division. These concerns are:

- Decisions are inconsistent and outcomes are hard to predict
- Appeal rights are difficult to access
- There is insufficient oversight of decision-making

These concerns are creating significant issues within the RT List.

The current appeals process from the RT List to the Supreme Court of Victoria is difficult to access because it is legalistic and expensive.

Applicants generally require legal representation to pursue formal and protracted proceedings, with a risk of adverse costs orders if they are unsuccessful. Respondents are rarely willing to expend the cost and time in defending an appeal, due to the temporary nature of residential tenancies, causing a high rate of settlement of proceedings, irrespective of whether the Tribunal decision is defensible. This restricts the ability of both tenants and landlords to seek review of VCAT decisions, which leads to a lack of oversight of RT List decision-makers and a lack of consistency in making decisions which are rarely subject to review.

All other amalgamated tribunals in Australia have a form of internal appeals jurisdiction for residential tenancies matters (except for the Northern Territory's Civil and Administrative Tribunal).

The RT List is the busiest list in VCAT and its Members are under significant time pressures. The impact of inconsistency is therefore greater than in other lists, where Members may have more time to spend on each decision and fewer Members are involved in making decisions. The number of people in the community affected by inconsistencies in the RT List is consequently also much greater. The RT List also has the lowest rates of legal representation, which increases the burden on Tribunal Members and the risk of legal error occurring.

It is time for Victoria to join the rest of Australia in providing a low-cost, accessible review mechanism for RT List decisions.

## What are the main concerns?

### 1. *Lack of consistency and predictability*

Lack of consistent decision-making by VCAT RT List Members is a key concern.

In the experience of key stakeholders, Tribunal Members' decisions are often unpredictable and based on the subjective views of Tribunal Members' interpretation of the law and applicable principles governing discretion.

A lack of consistency undermines trust and certainty in the RT List. This lack of certainty is likely to lead to inefficiencies and instability, as parties are unable to predict (within the discretion available to the Member) a possible or likely outcome. This limits the ability of stakeholders to act on and rely on a clear understanding of the law relating to the *Residential Tenancies Act* as interpreted by VCAT. This has social and economic impacts on the parties involved and society more generally.

A lack of consistency and predictability in decision making may reduce the general community's faith in the legal system as a whole, as VCAT is a visible frontline service where consumers often self-represent to enforce their rights.

### 2. *Inaccessible appeal rights*

Requiring parties to go to the Supreme Court to appeal an RT List decision creates a barrier for both landlords and tenants seeking review. Stakeholders view the Supreme Court appeal process as intimidating, onerous, and expensive.

Parties usually require legal representation for appeals to the Supreme Court and costs generally follow the event, which increases the risks and consequences for both parties. In comparison, VCAT is a more accessible jurisdiction, with much simpler and more cost-effective processes, and less requirement for legal representation.

The difficulty and inaccessibility of appealing RT List decisions to the Supreme Court is inconsistent with the reasons why VCAT was established: to provide accessible, low cost access to justice.

### 3. *Insufficient oversight of decision-making*

Stakeholders are also concerned that there is no accessible means of oversight of RT List Members' decision-making.

As Justice Bell noted in his *President's Review of VCAT*, the inaccessible nature of appeals to the Supreme Court means that it is likely that some parties with legitimate grounds for review are not able to pursue an appeal.

This means that inappropriate or incorrect decisions are often not being reviewed, leading to potential miscarriages of justice. RT List decisions can impact greatly on tenants and landlords and unjust outcomes that are difficult to review can make both parties feel powerless and lead to a loss of trust in the process.

In addition, stakeholders are concerned about the timeliness of decisions. Decisions often take too long to be listed by VCAT, and, once they come before a member, there can be substantial delays before receiving a final written decision, when requested. This can create significant issues for the users of the RT List.

## How would an internal appeals division address these concerns?

### 1. *More consistent decision-making*

An internal appeals jurisdiction would enhance consistency of decision-making. Tribunal Members exercise a significant amount of discretion in their decision-making and having a more accessible appeals process would ensure greater oversight.

Over time, an internal appeals jurisdiction would establish legal principles and build a body of jurisprudence. This would provide guidance for Members, and potentially avoid litigation between tenants and landlords as they would have a more solid basis for understanding how residential tenancy law would be applied in particular circumstances.



RT List Members have specialist expertise in residential tenancy law. Having an internal appeals process would allow these Members to build up specialist jurisprudence in this area that could then be relied upon by other RT List Members, enhancing consistency of decision-making.

## **2. Greater accessibility**

An internal appeals division would provide much greater access to appeals for both parties. Appeals would be more cost-effective, faster and less intimidating for applicants than the Supreme Court and would not require legal representation for self-represented parties.

An internal appeals division would be likely to increase the number of cases being appealed in the short term, due to being more accessible. However, in other jurisdictions internal appeals have been only a very small proportion of the total matters heard and have not had a great impact on clearance rates.

Over time, an internal appeals division would be likely to reduce the number of cases lodged at VCAT in the first place, as parties would have a clearer sense of how a matter would be determined.

## **3. Greater oversight of decision-making**

Providing access to an internal appeals division would allow parties to appeal decisions they believe are incorrect through a low-cost, accessible process. This would enhance the faith and trust of parties and the broader community in the RT List and would allow inappropriate decisions to be more easily corrected, reducing delays.

An internal appeals division is likely to lead to better decisions being made at first instance, as Members will be aware that their decisions can be reviewed more easily.

## **What could an internal appeals division look like?**

The organisations that have developed this briefing paper believe that an internal appeals division in the RT List would enhance the consistency and accessibility of the RT List.

The cost of such a division would be minimal (having regard to the experiences of other jurisdictions) and the benefits would be extensive. While an internal appeals division may cause delays for a small number of matters, the associated benefits of having an accessible means of ensuring fair and just decisions are important. The cost to the State and to parties of taking an appeal to the Supreme Court is much higher than an internal appeals process at VCAT would be. An internal appeals division could be developed with limits on the type of cases that can be appealed (such as requiring leave to appeal) which would limit unnecessary appeals and the associated delays.

VCAT already provides for general internal re-hearings (merits review) under s 60A *Guardianship and Administration Act 1986* (Vic), s 125 *Powers of Attorney Act 2014* (Vic) and s 198 *Disability Act 2006* (Vic), recognising that the impact of decisions made under these Acts on an individual's liberty and power to make decisions for themselves is serious. Decisions in the RT List can also have significant harmful consequences for tenants and landlords, including insecure tenure and eviction, extensive property damage or unpaid rent, which supports the need for an accessible method of reviewing erroneous decisions.

The details of what an internal appeals division in the RT List would look like should be developed through consultation with stakeholders and users of the list. We suggest that the internal appeals jurisdiction of the New South Wales Civil and Administrative Tribunal may be a useful starting model, however, improvement and amendments could be made to this model to ensure that it is best-suited to Victoria and addressing the concerns we have raised.



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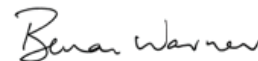
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## Annexure 2 – Whittlesea Declaration

# A shared vision for housing in Victoria



### CREATE AFFORDABLE HOUSING

#### **Build 3,000 extra public and community housing properties each year**

Such a building and renewal scheme is the minimum required to provide a housing safety net for the growing number of Victorians struggling to stay housed in private rentals.

#### **Include public and community housing in new developments**

Victoria builds 30,000 new units every year. Making just a few per cent of these units social housing would go a long way to addressing our housing crisis.

#### **Update housing standards so new homes are age and disability-friendly**

Very simple changes to the building code can make homes more easily adaptable to accommodate people's changing needs and abilities.

#### **Reform property taxes to promote housing affordability**

The move from stamp duties to a more progressive land tax should occur with appropriate concessions, exemptions and deferrals, particularly for low-income households.

### END HOMELESSNESS

#### **Stop homelessness before it begins**

Deliver services to people as soon as their housing comes under threat, rather than waiting until they are living on the streets. This includes legal help, financial advice, drug and alcohol assistance and tenancy support.

#### **Embrace a 'housing first' approach**

A 'housing first' approach means offering people permanent and affordable housing as quickly as possible, combined with the multidisciplinary support required to stay housed and avoid becoming homeless again.

#### **Don't leave people with nowhere to go**

People shouldn't be allowed to leave hospital, prison or out-of-home care and enter into homelessness. Instead, people must be given sustainable and long-term housing options.

### PROTECT FAIR RENTING

#### **Streamline problem-solving in rental disagreements**

A Housing Ombudsman should be established, to act as a more engaged, investigative and problem-solving regulator, overcoming the fear and complexity many people experience dealing with the Victorian Civil and Administrative Tribunal (VCAT).

#### **Set a benchmark for safe, secure and liveable rental homes**

Setting sensible health, safety and energy efficiency standards will systematically improve the quality of rental housing. This will improve the health and safety of Victorians renters, and help reduce their energy bills.

#### **Prevent people being needlessly forced to leave their rental homes**

Eviction should only be used as a last resort, when all avenues of saving someone's home have been exhausted.





The best way to help someone achieve a good life is by finding them a safe place to call home.

Every other life achievement is built on this bedrock. Homes are places to raise our families, express ourselves and store our memories, and stay safe, warm, clean and healthy.

Yet, for many Victorians, this basic human need is a luxury they can't afford. Nearly 25,000 Victorians are homeless on any given night. Another million live in housing stress.

Rising rents and stagnant social housing growth have made the problem worse.

Creating **affordable housing**, ending **homelessness** and protecting **fair renting** gives every Victorian a better chance at a great life.

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## Annexure 3 – Current infringements processes, timeframes and options

