

# ***Finding shelter from the law: fairer responses to homelessness in our community***

**March 2020**

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# 1. Executive summary and ten recommendations

Housing insecurity continues to increase in our community and through our frontline work with homeless or at risk Victorians, we see that this directly leads to the spiralling of legal and life issues. Legal issues cause and compound homelessness, often making it impossible for people to move into stable housing. The Parliamentary Inquiry into Homelessness in Victoria (**Inquiry**) presents an important opportunity to focus on the intersection between legal issues, homelessness and housing insecurity, which needs to be addressed as part of an effective and lasting response to homelessness.

In this paper, Justice Connect Homeless Law (**Justice Connect**) draws on almost 20 years of frontline service delivery as Victoria's specialist legal service for people experiencing or at risk of homelessness. In addressing the Inquiry's three Terms of Reference,<sup>1</sup> we examine the changing nature and scale of homelessness in our community, particularly the urgent need for more suitable social (public and community) housing with supports, the prevalence of Victorian tenants facing evictions into homelessness and the justice system's increasing and disproportionate impact on homeless or at risk Victorians. We also share client stories and quotes to highlight the heavy personal, social and financial costs of legal issues on people experiencing or at risk of homelessness, and to emphasise the importance of access to holistic, integrated legal services in helping to end homelessness.

## *There's no place like home: more social housing and safer, better renting (Parts 3 and 4)*

Two of the major causes of homelessness in Victoria are family violence and the acute shortage of social housing.<sup>2</sup> In Justice Connect's experience, Victoria's acute shortage of social housing:

- Deters victim-survivors from leaving violent relationships;
- Places victim-survivors at risk of – and pushes them into – homelessness; and
- Makes perpetrators more isolated in some instances, which increases the risk of further violence.<sup>3</sup>

For many Victorians, the private rental market is volatile and unaffordable: 64% of women we helped in the last year through our Women's Homelessness Prevention Project (**WHPP**) faced eviction for rental arrears. All it takes is for one thing to go wrong – the kids getting sick, or the car breaking down – for Victorians to fall behind in rent and to end up on the brink of eviction into homelessness. Despite significant progress in rental laws and policies through recent reforms, the tenancy system still leaves vulnerable Victorians at risk of eviction. Access to integrated, holistic legal services, particularly for women and their children who are victim-survivors, is integral to intervene further upstream and prevent evictions into homelessness.

As at April 2019, no private rental properties in Australia were affordable for a single person on Newstart or Youth Allowance<sup>4</sup> and Victoria currently has an acute shortage of social housing.<sup>5</sup> In this context, an adequate supply of public and community housing is vital to provide long-term, affordable and secure homes for Victorians who are locked out of the private rental market. We will only see meaningful change in Victoria's growing cohort of people experiencing housing insecurity through major preventative action, including:

- Substantial investment in the supply of social housing with supports;
- Better rental laws and policies, and an accessible justice system that ensures evictions into homelessness are an option of last resort; and
- Early intervention models of support that integrate lawyers and social workers, address drivers and consequences of homelessness holistically, and prevent evictions into homelessness.

Victorian Government investment in these three priorities is essential for people to be able to live safely and securely, and to reduce costly interactions with the justice system.

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<sup>1</sup> Parliament of Victoria, *Terms of reference for the parliamentary inquiry into homelessness in Victoria* (7 June 2019) (**Terms of Reference**) Terms of Reference 1, 2 and 3, available at <https://www.parliament.vic.gov.au/lsc-lc/inquiries/article/4282>.

<sup>2</sup> See AIHW Specialist Homelessness Services Collection, 2016- 2017, available at: <https://www.aihw.gov.au/reports/homelessness-services/specialist-homelessness-services-2016-17/contents/contents>

<sup>3</sup> See *Joint submission on family violence, housing and homelessness endorsed by 129 organisations* (May 2015) available at: <https://justiceconnect.org.au/wp-content/uploads/2018/08/Joint-submission-affordable-housing-and-family-violence-May-2015.pdf>; and Centre for Innovative Justice, *Opportunities for Early Intervention: Bringing perpetrators of family violence into view* (Report, March 2015) 50.

<sup>4</sup> Anglicare Australia, *Anglicare Australia Rental Affordability Snapshot* (April 2019) (**Anglicare Snapshot**) 10, available at: <https://www.anglicare.asn.au/docs/default-source/default-document-library/final---rental-affordability-snapshots302da309d6962baacc1ff0000899bca.pdf?sfvrsn=4>.

<sup>5</sup> See, e.g. 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).



## Stopping the cycle between the justice system, incarceration and homelessness (Part 5)

Laws, policies and practices disproportionately affect people experiencing homelessness, and entrench their disadvantage and inequality before the law.<sup>6</sup> Enforcement-based responses to poverty, such as police issuing fines and charges directly related to homelessness, effectively criminalise social, health and financial issues for the most vulnerable in our community. This approach compounds homelessness and further burdens an already stretched justice system. Over the past 10 years in Victoria, there has been an 86% increase in the number of people in prison, and more than half of people exiting prison expect to be homeless on release.<sup>7</sup> If former prisoners exit into homelessness, they are twice as likely to return to prison within the first nine months of release.<sup>8</sup>

There are clear solutions to significantly reduce our reliance on the justice system and to move towards more effective, service-based approaches:

- The Victorian Government's leadership in committing to abolish the offence of public drunkenness presents a valuable opportunity and precedent to decriminalise other poverty offences, such as begging;
- We can intervene earlier to exit people out of the justice system by creating better frameworks for enforcement officers to use discretion and cautions (rather than issuing fines and charges to people where offending is directly related to homelessness) and provide greater access to diversionary programs; and
- We can break the cycle between incarceration and homelessness by reforming bail laws, creating a more flexible and responsive community corrections system, and investing in keeping prisoners housed with wrap-around supports.

### Ten recommendations to ensure fairer responses to homelessness

Throughout this paper, Justice Connect shares stories and direct quotes from 47 former clients, and makes 10 recommendations to achieve fairer responses to homelessness and housing insecurity in our community. Our recommendations draw on evidence from providing intensive legal and social work assistance to Victorians with complex vulnerabilities, as well as our leadership and engagement across the community and legal sectors.

## TEN RECOMMENDATIONS TO ACHIEVE FAIRER RESPONSES TO HOMELESSNESS AND HOUSING INSECURITY IN VICTORIA

### 1. More suitable, safe and stable public and community housing with supports

To enable Victorians to have secure, healthy and meaningful lives, we need more fit-for-purpose and long-term public and community housing with supports. Justice Connect recommends:

- a. Public and community housing stock in Victoria be increased by at least 6,000 properties each year for the next decade, helping to safely house many Victorians who are unable to access or afford the private rental market.
- b. New public and community housing supply should:
  - Be well located - near transport, education, jobs and services, so that tenants can access supports and integrate with the community;
  - Be safe and healthy - properties must be quality-built, energy efficient, and universally accessible;
  - Be focused on meeting priority and under-served needs, such as additional singles, large family units and accessible housing;
  - Include both Department of Health and Human Services – Director of Housing owned and managed public housing properties, and community housing properties.

<sup>6</sup> Law Council of Australia, *The Justice Project Final Report - Part 1, People who are Homeless* (Final Report, August 2018) 4 (**The Justice Project – People who are homeless**), available at: <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/People%20who%20are%20Homeless%20%28Part%201%29.pdf>; Term of Reference 3.

<sup>7</sup> See Corrections Victoria, *Corrections statistics: quick reference*, 3 June 2019 available at: <https://www.corrections.vic.gov.au/prisons/corrections-statistics-quick-reference>; Australian Institute of Health and Welfare, *The Health of Australia's Prisoners 2018, 2019*, pp. 22-24, (**AIHW Health of Prisoners**) available at: <https://www.aihw.gov.au/reports/prisoners/health-australia-prisoners-2018>.

<sup>8</sup> Baldry E, McDonnell D, Maplestone P and Peeters M 2006 'Ex-Prisoners, Homelessness and the State in Australia', *The Australian and New Zealand Journal of Criminology*, vol.39, no.1, pp. 24. For further discussion, please see part 5.4.



	<p>c. If public and community housing is built through mixed-sites with private rentals, designs should draw on best practice to ensure that housing is cohesive, indistinguishable and layout includes communal and green spaces accessible to all tenants.</p>
<b>2.</b>	<p><b>Fairer laws to make evictions into homelessness a last resort</b></p> <p>To create greater housing security for Victorians, and to prevent evictions into homelessness, Justice Connect recommends:</p> <ul style="list-style-type: none"> <li>a. Abolishing the notice to vacate for successive breaches of duty through the removal of ss 249, 283, 308 and 317ZB of the <i>Residential Tenancies Act 1997</i> (Vic) and ss 91ZP, 142ZH, 206AX and 207ZB of the <i>Residential Tenancies Amendment Act 2018</i> (Vic).</li> <li>b. 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.</li> <li>c. Ensuring that the <i>Residential Tenancies Regulations 2020</i> (Vic) adequately protect renters' rights, including by: <ul style="list-style-type: none"> <li>o amending the content and form of the Notice to Vacate, including changing the term 'Notice to Vacate' and providing information about legal rights and details of legal assistance services within the notices;</li> <li>o renaming the 'Notice to Leave' form to better explain that the requirement to leave is initially only of a temporary nature (of 24 hours or until a future VCAT hearing).</li> </ul> </li> </ul>
<b>3.</b>	<p><b>Better procedural safeguards to ensure housing security</b></p> <p>Given the importance of tenants' accessing VCAT to avoid evictions into homelessness, Justice Connect recommends:</p> <ul style="list-style-type: none"> <li>a. Creating an internal appeal mechanism for decisions made in the VCAT Residential Tenancies List through amendments to the <i>Victorian Civil and Administrative Tribunal Act 1998</i> (Vic).</li> <li>b. Giving VCAT jurisdiction to consider the human rights compatibility of eviction decisions by public and community housing landlords under the <i>Charter of Human Rights and Responsibilities Act</i> (Vic).</li> </ul>
<b>4.</b>	<p><b>Safer renting for victim-survivors of family violence</b></p> <p>To break the links between homelessness, family violence and poverty, Justice Connect recommends:</p> <ul style="list-style-type: none"> <li>a. Amending s 91W of the <i>Residential Tenancies Amendment Act 2018</i> (Vic), so that family violence victim-survivors can reduce a lease to avoid the safety and financial risks of being forced to remain in a tenancy.</li> <li>b. Guaranteeing that the <i>Residential Tenancies Regulations 2020</i> (Vic) adequately protect victim-survivors of family violence by empowering tenants to modify the rented property to improve security without the consent of the landlord.</li> <li>c. Making sure the prescribed documentary evidence required as part of the <i>Residential Tenancies Regulations 2020</i> (Vic) is as broadly worded as possible, as it will not always be safe for people experiencing or at-risk of family violence to obtain formal documents such as intervention orders.</li> <li>d. Increasing access to integrated tenancy legal assistance to ensure that people understand their rights and can avoid evictions into homelessness.</li> </ul>
<b>5.</b>	<p><b>Stronger protections for public and community housing tenants' rights and increased pathways to specialised services</b></p>

To assist vulnerable Victorians to maintain or access sustainable housing and achieve positive personal and health outcomes, Justice Connect recommends:

- a. Supporting public and community housing providers to develop fair, consistent, best-practice and publicly available policies, which take into account tenants' human and legal rights.
- b. Implementing resources, staff training, access to tenant support services and supply of appropriate housing stock to embed these policies.
- c. Ensuring that community housing providers are recognised as public authorities for the purposes of the *Charter of Human Rights and Responsibilities Act 2006* (Vic).
- d. Building on the implementation of the joint Victorian Housing Register, creating a central Housing Appeals Office to oversee complaints from both public and community housing tenants.
- e. Extending the reach and number of intensive housing-support services, including programs with dedicated health and social work professionals and those closely integrated with specialised legal services.

## 6. Reduce justice system and enforcement-based responses to homelessness

People experiencing or at risk of homelessness are more vulnerable to enforcement and justice system interactions. To reduce justice system interactions for people experiencing homelessness, Justice Connect recommends:

- a. Implementing a Protocol for enforcement agencies to respond to people experiencing homelessness, which would:
  - avoid unnecessary, enforcement-based interactions with people experiencing homelessness;
  - ensure that where interactions do occur, they are appropriate and respectful;
  - support enforcement officers to use their discretion and consider alternative options to fines and charges when interacting with people experiencing homelessness; and
  - train and equip enforcement officers to make referrals to appropriate services as an alternative to fines and charges.
- b. Ensuring the intended repeal of the offence of drunk in public (s 13 of the *Summary Offences Act 1966* (Vic)) is implemented, along with creating an appropriate public health response model in consultation with impacted communities.
- c. Repealing the offence of begging in s 49A of the *Summary Offences Act 1966* (Vic).

## 7. Decrease the burden of fines on people experiencing homelessness

People experiencing or at risk of homelessness regularly face overwhelming fines and infringements for conduct that is intricately linked to their vulnerable circumstances. To reduce the burden of fines on people experiencing homelessness, Justice Connect recommends:

- a. Creating an additional limb to the 'special circumstances test', so that people experiencing homelessness or other special circumstances can exit out of the fines system at the earliest possible opportunity.
- b. Ensuring that Fines Victoria correctly and consistently interprets eligibility for the Family Violence Scheme and does not impose an overly onerous evidentiary burden on victim-survivors, improving accessibility and reducing the risk of re-traumatisation.
- c. Implementing legislative change to extend the seven-day notice period to 28 days, or in the alternative, reverting to the system prior to the full commencement of the *Fines Reform Act 2014* (Vic), so that access to the different options to address fines is only extinguished after an enforcement warrant has been executed.
- d. Requiring a proposed 'pocket resource' to be provided by Sheriff's Officers when issuing all seven-day notices. This could offer a clear, practical and direct way for



	<p>people experiencing homelessness and related vulnerabilities to understand their options and to know the importance of taking prompt action to address their fines.</p> <p>e. Introducing concession-based infringements for financially disadvantaged Victorians who hold a Centrelink Low Income Health Card, which would be a rate of 20% of the infringement penalty.</p>
<b>8.</b>	<p><b>Improve access to diversion and therapeutic justice for homeless Victorians</b></p> <p>To achieve better outcomes for those in contact, or at risk of contact, with the justice system, people experiencing homelessness need to be provided with therapeutic outcomes and diversion. Justice Connect recommends:</p> <ul style="list-style-type: none"> <li>a. Amending section 59 of the <i>Criminal Procedure Act 2009</i> (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.</li> <li>b. Ensuring the continued operation of the Special Circumstances List at the Melbourne Magistrates' Court to provide therapeutic sentencing outcomes for vulnerable Victorians with fines.</li> </ul>
<b>9.</b>	<p><b>Close the revolving door between prisons and homelessness</b></p> <p>People in prison are more likely to face post-release housing insecurity, creating a significant barrier to community reintegration and contributing to the risk of reoffending. To break the cycle between prisons, homelessness and the justice system, Justice Connect recommends:</p> <ul style="list-style-type: none"> <li>a. Reviewing Victoria's current bail laws and their impact on people experiencing homelessness.</li> <li>b. Extending initiatives such as the Court Integrated Services Program and other bail support programs across Victoria.</li> <li>c. Creating a more flexible, tiered and responsive approach to Community Corrections Orders with built-in supports to increase compliance and completion rates.</li> <li>d. Increasing access to housing workers in prison so that Victorians have better community reintegration outcomes.</li> <li>e. Providing pre and post-release integrated legal services that support a person to access and maintain housing on release from prison.</li> <li>f. Improving and lengthening post-release support options, and resourcing rapid rehousing in safe accommodation for Victorians leaving institutional settings, so that community members do not exit into homelessness.</li> </ul>
<b>10.</b>	<p><b>Increase the availability of holistic, integrated legal services</b></p> <p>Wrap-around legal services should be seen as an important part of achieving long-term housing outcomes for people experiencing homelessness. Justice Connect recommends:</p> <ul style="list-style-type: none"> <li>a. Investing in early-intervention, client-centred and co-located legal services that can proactively resolve legal issues to minimise barriers to housing security.</li> <li>b. Supporting the integration of legal, social work, health and other community-support professionals to help people experiencing homelessness and housing insecurity in successfully accessing, navigating and exiting the justice system.</li> </ul>



# About Justice Connect

Justice Connect is a social justice organisation that addresses public interest, access to justice and unmet legal need issues through a range of programs and projects; and uses our learnings to influence law and policy reform. We lead innovative solutions to help to close the 'justice gap', including:

- brokering strategic, efficient use of pro bono lawyers and barristers—30,000 hours last year, equating to \$15.6 million of pro bono legal help.
- being an effective partner in delivering holistic and intensive legal services to support clients experiencing significant disadvantage. For example, co-located staff at homelessness agencies and health justice partnerships to engage with the hardest-to-reach clients.
- leading access to justice innovation through our Legal Gateway and other digital programs.

## Justice Connect Homeless Law

Justice Connect Homeless Law (**Justice Connect**) is Victoria's specialist free legal service for people experiencing or at risk of homelessness. Justice Connect staff work closely with pro bono lawyers to provide intensive legal representation (including ongoing casework, negotiations, court and tribunal appearances and advice) to homeless or at risk Victorians. Since 2001, Justice Connect 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 2018-2019, Justice Connect:

- Provided an integrated combination of specialised legal representation and social work supports to Victorians who are experiencing or at risk of homelessness through 612 new client files;
- Strategically prioritised our impactful and innovative work with three key cohorts facing housing insecurity: women and their children, particularly in the context of family violence, people in prison, and rough sleepers;
- Deepened our partnerships with cross-sector allies, including through co-locations and embedded partnerships with community-based health and homelessness services, including cohealth, Launch Housing and Sacred Heart Mission – Journey to Social Inclusion and GreenLight; and
- Collaboratively advocated for the best-practice implementation of Victoria's rental reforms, and a fairer, more effective and accessible fines system, along with using casework and client evidence to raise national awareness about the need for more social housing and the risks of criminalising homelessness.

In the last 12 months, Justice Connect has also directly prevented 157 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 \$4.6 million worth of savings to the Victorian Government and wider-community, through avoiding increased health, justice and welfare services costs.<sup>9</sup>

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

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<sup>9</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 Kaylene Zaretsky and Paul Flatau, Australian Housing and Urban Research Institute, *The cost of homelessness and the net benefit of homelessness programs: a national study* (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).





# Acknowledgements

Justice Connect thanks all of our government and philanthropic supporters, along with our partner law firms and pro bono lawyers, whose significant contributions continue to generate positive outcomes for Victorians who are experiencing or at risk of homelessness, and shapes our recommendations for reform.

Justice Connect particularly recognises our partner law firm **Norton Rose Fulbright** for their generous legal research support, and the high-quality work of secondee lawyers, **Claudia Kernan (Herbert Smith Freehills)** and **Maddison Smith (MinterEllison)**, during their time with Justice Connect. We also acknowledge our colleagues in the legal assistance, homelessness, housing, family violence and community-service sectors for consultations in relation to this paper.

We have shared de-identified Justice Connect client stories and direct insights throughout this paper, which have informed and given light to our recommendations, and we thank them for their valuable contributions.

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## 2. Context of homelessness, housing insecurity and the law

This paper builds on Justice Connect's appearance and submissions at the first public hearing of the Inquiry on 22 November 2019.

Victoria continues to face an increased prevalence of homelessness, an acute shortage of affordable housing and a justice system that is under significant pressure.<sup>10</sup> There are over 25,000 people experiencing homelessness every day in Victoria,<sup>11</sup> along with over 82,000 Victorians on the public and community housing waiting list (including more than 24,000 children).<sup>12</sup> Access to a safe, stable and secure home is essential for well-being and without secure housing, people face increased risk of vulnerability and a disproportionate likelihood of legal issues.

Justice Connect works closely with a range of homelessness and community-based health services, as well as cross-sector allies. From this integrated experience, it is clear that multiple, inter-connected legal needs can arise from the vulnerabilities associated with homelessness, and these issues cannot be considered in a vacuum.

### 2.1 Disproportionate impact of laws, policies and practices on people experiencing homelessness

Laws, policies and practices disproportionately affect people experiencing homelessness, and entrench their disadvantage and inequality before the law.<sup>13</sup> Research undertaken as part of the New South Wales Law and Justice Foundation's Legal Australia-Wide Survey (**LAW Survey**) identified that the legal needs of people experiencing homelessness are almost double those of the rest of the population.<sup>14</sup>

#### *Enforcement-based laws and the risks of criminalisation*

Due to living their lives in public places, people experiencing homelessness are more vulnerable to interactions with enforcement officers and are at a greater risk of being fined or charged for poverty-related offences.<sup>15</sup> Enforcement-based measures come in different forms with varying effects and intentions.<sup>16</sup> Specific examples of the types of enforcement laws that are currently enacted in Victorian legislation are further discussed in part 5.1 below.

As well as the negative impact on a person's general wellbeing, enforcement-based laws only serve to further marginalise and isolate people who are homeless,<sup>17</sup> and can have a range of detrimental impacts including:

- **Financial impacts:** those experiencing homelessness accrue excessive infringement notices, fines and charges for minor, poverty-related criminal offences, placing them under additional financial strain.<sup>18</sup>
- **Practical exclusion impacts:** Targeted enforcement approaches in response to community pressure on the visibility of poverty can result in people experiencing homelessness being 'moved on' or excluded from certain areas, forcing them into more isolated and dangerous areas where access to homelessness services are limited.<sup>19</sup>

<sup>10</sup> See, e.g. Victoria Legal Aid, *2018-2019 Annual Report* (October 2019) (<https://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla-2018-19-annual-report.pdf>); Australian Bureau of Statistics, *Census of Population and Housing: Estimating Homelessness* (March 2018) Table 1.1, available at <https://www.abs.gov.au/ausstats/abs@.nsf/lookup/2049.0Media%20Release12016>.

<sup>11</sup> Australian Bureau of Statistics, *Census of Population and Housing: Estimating Homelessness* (March 2018) Table 1.1

<sup>12</sup> Parliament of Victoria, *Inquiry into the Public Housing Renewal Program* (Report, 5 June 2018) xi, available at <https://www.parliament.vic.gov.au/923-lsic/inquiry-into>.

<sup>13</sup> The Justice Project – People who are homeless (n 6); Term of Reference 3.

<sup>14</sup> Law & Justice Foundation of New South Wales, *Legal Australia-Wide Survey – Legal Need in Australia* (August 2012) 20 (**Legal Australia-Wide Survey: Legal Need in Australia**), available at:

[http://www.lawfoundation.net.au/ljf/site/templates/LAW\\_AUS/\\$file/LAW\\_Survey\\_Australia.pdf](http://www.lawfoundation.net.au/ljf/site/templates/LAW_AUS/$file/LAW_Survey_Australia.pdf).

<sup>15</sup> The Justice Project – People who are homeless (n 6).

<sup>16</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* (16 April 2014) 11-12 (**In the Public Eye**), available at: <https://justiceconnect.org.au/wp-content/uploads/2018/08/In-the-Public-Eye-Churchill-Report-2013.pdf>; The Justice Project – People who are homeless (n 6) 39.

<sup>17</sup> The Justice Project – People who are homeless (n 6) 38.

<sup>18</sup> The Justice Project – People who are homeless (n 6) 42.

<sup>19</sup> Ibid 39-40.



- **Personal impacts:** enforcement-based measures disproportionately affect people experiencing homelessness. This can lead to changes in the attitudes of people experiencing homelessness towards police, the justice system and their own self-worth,<sup>20</sup> with individuals feeling targeted, harassed and discriminated against.<sup>21</sup>
- **Impacts on Aboriginal and Torres Strait Islanders:** Aboriginal and Torres Strait Islander peoples are impacted by enforcement-based laws to a significantly higher degree than other social groups.<sup>22</sup>

## 2.2 Key legal needs related to housing insecurity

People who are homeless experience high levels of legal need, and are vulnerable to substantial and multiple legal problems.<sup>23</sup> While individual legal needs differ, research indicates that those who are experiencing housing insecurity 'have poor legal knowledge, language or communication needs, cognitive impairment or mental health conditions, or limited technological capability or access'<sup>24</sup> and will require intensive legal assistance.<sup>25</sup> Legal issues are both a cause and a consequence of homelessness.<sup>26</sup>

### *Legal issues that stop people from exiting homelessness*

People experiencing homelessness not only face an increased likelihood of legal issues, but legal issues can compound homelessness and make it harder for people to exit homelessness:<sup>27</sup>

- **Housing and consumer debts:** debts are often both a cause and consequence of being homeless. In particular, if left unresolved, debts are likely to prevent people from exiting homelessness: since debt often compounds, it is more difficult to repay and leaves less available funds to secure adequate housing.<sup>28</sup>
- **Fines and minor criminal charges:** the increased public visibility of those experiencing homelessness results in more frequent and often repeat offences of minor crimes and inevitably results in a build-up of fines and minor criminal charges. This can lead to further physical exclusion through jail sentences.
- **Social security:** ineligibility for social security payments, termination of social security payments due to the recipient failing to comply with the requirements of their allowance, and Centrelink debts can all leave individuals financially vulnerable and exacerbate the risk or experience of homelessness.<sup>29</sup>
- **Family violence:** family violence is a substantial cause of homelessness, particularly for women. This is because victim-survivors of family violence often flee their homes in order to escape the violence, and they may also experience financial disadvantage as a result of leaving their partners.<sup>30</sup>
- **Family law:** family breakdown is a significant contributing factor to homelessness for both women and men. In particular, financial pressure from property settlements and child support payments worsen the risk and experience of homelessness.<sup>31</sup>
- **Victims of crime:** due to a lack of secure accommodation, people experiencing homelessness are more likely to be victims of violent crimes, such as physical and sexual assaults, which risk causing long-term health deterioration and entrenching them in poverty.

<sup>20</sup> In the Public Eye (n 14) 38.

<sup>21</sup> Ibid 53-54.

<sup>22</sup> The Justice Project – People who are homeless (n 6) 41.

<sup>23</sup> Law Council of Australia, *The Justice Project Final Report – Part 2, Legal Services* (Final Report, August 2018) 4 (**The Justice Project – Legal Services**), available at: <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/People%20who%20are%20Homeless%20%28Part%201%29.pdf>.

<sup>24</sup> Ibid 19.

<sup>25</sup> Ibid.

<sup>26</sup> The Justice Project – People who are homeless (n 6) 19-20.

<sup>27</sup> Law & Justice Foundation of New South Wales, *No Home No Justice? The legal needs of homeless people in NSW* (Report, July 2005) 95 (**Law & Justice Foundation – No Home, No Justice**).

<sup>28</sup> Ibid 97.

<sup>29</sup> Ibid 98.

<sup>30</sup> Ibid 71.

<sup>31</sup> Ibid 67.



## Legal issues that place people at risk of homelessness

### Evictions

Evictions are a primary driver of housing insecurity,<sup>32</sup> with research confirming that this key issue commonly involves:

- tenants falling behind in rent;
- disruptive behaviour, which is often linked to substance dependence or mental ill-health;
- taking advantage of vulnerable tenants by either illegally subletting or landlords resuming possession;
- termination due to incarceration.<sup>33</sup>

### Family violence

Family violence is one of the most common causes of homelessness in Victoria.<sup>34</sup> Some of the reasons why family violence victim-survivors are likely to experience homelessness include:

- being forced to leave their homes in an attempt to flee a violent family member;
- remaining in their housing after the perpetrator is excluded but having to function on a lower income;
- suffering from mental illness, isolation and other long term effects of domestic violence.<sup>35</sup>

People who are or have experienced family violence and who are at risk of homelessness may have varying degrees of legal needs. For example, for those remaining in their homes, assistance with apprehended violence orders and other family law and child-related matters may be needed,<sup>36</sup> as well as help with tenancy and debt problems.<sup>37</sup> For those who have fled, homelessness and family violence supports will also be needed to seek safe housing.<sup>38</sup>

## 2.3 Importance of legal services for people experiencing or at risk of homelessness

Accessible and tailored legal services are a vital part of a multidisciplinary service response to homelessness.<sup>39</sup> In Justice Connect's experience, legal problems are often related to personal, health and financial needs, highlighting the need for integrated programs to identify legal issues and provide wrap-around services. When disadvantaged people, such as those who are homeless, attempt to navigate the justice system without legal assistance, they achieve poor results.<sup>40</sup>

### Important features of legal services for those affected by homelessness

The traditional structure of legal services can present difficulties, because many people experiencing homelessness face multiple, complex legal issues – including those relating to criminal law, housing and tenancy, debts and fines – which each need targeted legal responses.<sup>41</sup> In order to address the legal needs of people experiencing homelessness, the following factors are important:<sup>42</sup>

- close geographical proximity to the homeless agencies, pro bono services and health services;<sup>43</sup>
- skilled staff members with good communication skills and an ability to understand complex needs;
- the capacity to coordinate non-legal services (e.g. housing and health) in conjunction with legal services;<sup>44</sup>
- the ability to respond to a range of legal issues;

<sup>32</sup> The Justice Project – People who are homeless (n 6), 44.

<sup>33</sup> Ibid.

<sup>34</sup> Australian Institute of Health and Welfare (AIHW), *Specialist homelessness services annual report 2017–18* (2018) (**Homelessness Services Annual Report 2017-18**) Data tables: Vic: Specialist homelessness services annual report 2017–18: Clients, services and outcomes, available at: <https://www.aihw.gov.au/reports/homelessness-services/specialist-homelessness-services-2017-18/data>.

<sup>35</sup> AHURI, *Housing, homelessness and mental health: towards systems change* (November 2018) (**Housing, homelessness and mental health: towards systems change**) 17 available at: <http://www.mentalhealthcommission.gov.au/media/252441/Housing-homelessness-and-mental-health-towards-systems-change.pdf>.

<sup>36</sup> Law & Justice Foundation – No Home, No Justice (n 27), 72.

<sup>37</sup> The Justice Project – People who are homeless, (n 6), 22.

<sup>38</sup> Ibid 17.

<sup>39</sup> Rhonda Phillips and Cameron Parsell, AHURI, *The role of assertive outreach in ending 'rough sleeping'* (Final Report No. 179, January 2012) 1.

<sup>40</sup> State Government of Victoria, *Access to Justice Review – Volume 1 Report and Recommendations* (Report, August 2016) 154.

<sup>41</sup> The Justice Project – People who are homeless (n 6) 30.

<sup>42</sup> Law & Justice Foundation – No Home, No Justice (n 27) xxi – xxii.

<sup>43</sup> Christine Coumarelos and Julie People, 'Home is where the heart of legal need is. A working paper on homelessness, disadvantaged housing and the experience of legal problems' (2013) 23 *Updating Justice* 1, 3.

<sup>44</sup> Legal Australia-Wide Survey: Legal Need in Australia (n 14) 26, 28, 220;



- long appointment times in order to cover the range of legal and non-legal problems; and
- the ability to provide timely legal services as people experiencing homelessness often wait for the legal situation to reach a crisis point.

The absence of these factors acts as a barrier to access to justice for people experiencing homelessness, as further discussed in part 2.4.

### ***The importance of specialist integrated services***

Specialist homeless persons' legal clinics are central in reducing entrenched homelessness and improving access to justice. Benefits include an increased focus on a target group of clients (the homeless or those at risk of homelessness), and those areas of law and specific legal problems identified in Parts 2.1 and 2.2 above. These services are able to identify the common barriers faced by this cohort and tailor innovative solutions to overcome those barriers. This stimulates identification of core issues and the facilitation of a more informed delivery of legal services.<sup>45</sup>

We explore in detail the need, benefits and demonstrated impact of integrated legal services for people experiencing or at risk of homelessness, as a key strategy to prevent and reduce impacts of homelessness, in parts 4.4 and 5.5 below.

### ***The importance of non-legal services and a holistic approach to legal services***

Community-based homeless, family violence and health services are also important in helping resolve the legal problems of people experiencing homelessness.<sup>46</sup> Research indicates that many homeless people first turn to non-legal services when they encounter a legal problem<sup>47</sup> and usually only seek help from one non-legal professional.<sup>48</sup> Holistic, integrated services are vital to ensure that both legal and non-legal needs can be collectively addressed.<sup>49</sup>

Multi-disciplinary services reduce the burden on people who are at risk or experiencing homelessness by identifying legal issues and navigating through multiple levels of assistance in a fragmented system.<sup>50</sup> This streamlined approach means that the problems that have contributed to, and resulted from, their interaction with the justice system are able to be dealt with concurrently, resulting in a more effective resolution.<sup>51</sup>

## **2.4 Access to justice barriers for people experiencing or at risk of homelessness**

Understanding the correlation between disadvantage and legal need is vital in supporting those who are vulnerable to access justice and to overcome barriers in getting legal help. Research into the experiences of people experiencing homelessness reveals that they face significant barriers in not only identifying their problems as legal issues which can be resolved, but also accessing legal services and addressing these problems through the justice system. The key barriers to access to justice for people experiencing homelessness include:

- **Competing needs:** People who are homeless or at risk of homelessness experience considerable barriers to accessing legal services, including having to prioritise more basic needs, such as food or accommodation. Unless presented with an imminent legal crisis (e.g. eviction or a police arrest), legal problems can be ignored or left to accumulate which can result in compounded and complex legal issues.
- **Socioeconomic disadvantage:** Socioeconomic disadvantage presents a large barrier to those who are homeless or at risk of homelessness in navigating and accessing the legal justice system. Socio-economic disadvantage is described by the Law Council of Australia as "both a cause and consequence of homelessness."<sup>52</sup>

<sup>45</sup> The Justice Project – Legal Services (n 23) 53.

<sup>46</sup> Law & Justice Foundation – No Home, No Justice (n 27) 179; Term of Reference 2.

<sup>47</sup> Ibid xxiv; Legal Australia-Wide Survey: Legal Need in Australia (n 14) 26.

<sup>48</sup> The Justice Project – Legal Services (n 23) 74.

<sup>49</sup> Legal Australia-Wide Survey: Legal Need in Australia (n 14) 26; The Justice Project – Legal Services (n 23) 74.

<sup>50</sup> Legal Australia-Wide Survey: Legal Need in Australia (n 14) 26; The Justice Project – Legal Services (n 23) 78.

<sup>51</sup> The Justice Project – Legal Services (n 23) 78.

<sup>52</sup> The Justice Project – People who are homeless (n 6) 27.



- **Cost of legal services:** Due to the costs involved in obtaining legal advice, people experiencing homelessness or at risk of homelessness are often not in a financial position where they are able to afford such services. These individuals are reliant upon pro bono or legal assistance sector help, which can be difficult to access.
- **Psychological barriers:** The homeless population represents “a higher than average prevalence of psychiatric disorders, substance abuse issues and trauma (including being a victim of crime).”<sup>53</sup> Research shows these issues can limit an individual’s ability to identify a legal problem and seek professional assistance.
- **Lack of legal knowledge:** Another barrier to accessing justice includes a lack of legal knowledge among the homeless and a view that these problems are the “norm”. This results in individuals not being aware of their legal rights, options or the legal procedure to follow.

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<sup>53</sup> Ibid 29.





### 3. Social housing works: prioritising more suitable and safe homes with supports

Effective measures to improve the housing stability of Victorians must include access to homes which are both safe and suitable for tenants. As discussed, Victoria currently has an acute shortage of social (public and community) housing and an increased prevalence of homelessness.<sup>54</sup> At 3.5%, our state has the lowest proportion of public and community housing stock per capita in Australia,<sup>55</sup> with a Productivity Commission Report on Government Services showing that Victoria spent significantly less than the national average on social housing stock in 2018-19.<sup>56</sup> To prevent the range of damaging consequences triggered by homelessness, increased public and community housing with supports must be at the centre of the Victorian government's response.<sup>57</sup>

#### 3.1 Increased public and community housing that is fit for purpose

Underlying all of Justice Connect's submissions is Victoria's fundamental need for increased public and community housing that is fit for purpose. The combined impact of an increasingly competitive private rental market, and the ongoing scarcity of public and community housing stock in Victoria, is forcing many low-income individuals and families to rely on unaffordable private rental properties in trying to avoid homelessness. Unaffordable private rentals place low-income people like our clients on the brink of eviction and present a real risk of homelessness for Victorians living on or below the poverty line.

Falling behind in rent remains the most common reason our clients find themselves on the brink of homelessness. Jennifer's story below highlights the stress and anxiety that comes when facing eviction for falling behind in rent, as well as the importance of integrated legal and social work services for tenancy sustainment.

##### ***Single-mother with health issues and escaping family violence avoids rental arrears eviction after accessing integrated legal and social work assistance***

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 fall behind in rent 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 Justice Connect after receiving a notice to vacate for arrears. Through Justice Connect's social worker, Jennifer gained access to \$900 private rental brokerage, which her lawyers then used as part of their negotiations for an affordable payment plan. Through this wrap-around advocacy, the landlord withdrew the eviction proceedings, avoiding 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 Justice Connect social worker, and has been able to maintain her job and a safe home for her young family.

<sup>54</sup> See, e.g. 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>55</sup> Ibid 25. The national average is 4.5%.

<sup>56</sup> Victoria spent \$92.02 per person in 2018-19 compared to the national average of \$159.10. See Australian Government, Productivity Commission, *Report on Government Services 2019: Housing Data Tables* (23 January 2020), Table18A.1, available at: <https://www.pc.gov.au/research/ongoing/report-on-government-services/2020/housing-and-homelessness/housing#downloads>.

<sup>57</sup> Term of Reference 1.



Although Jennifer was able to remain in her private rental, the current market conditions mean that many vulnerable Victorians are locked out of the private rental market and reliant on the public and community housing system to access safe and adequate housing. In this context, it is clear that more public and community housing is required to reduce the risk of homelessness.

## 6,000 new public and community housing properties needed each year

As part of the Victorian Housing Peaks alliance and the Everybody's Home campaign,<sup>58</sup> Justice Connect and seven other peak bodies across housing, homelessness, community-service and legal assistance sectors have consistently advocated for an increase in public and community housing.

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 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>59</sup>

During a previous consultation, Justice Connect client Marie,<sup>60</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.

Justice Connect welcomes the Victorian government's commitment to building 1,000 new public housing properties across the state.<sup>61</sup> However, given the unprecedented waiting list, rising demand and lock-out from the private rental market for many Victorians experiencing poverty, we need 6000 more public and community housing properties with specialist supports each year for the next decade (**Recommendation 1a**).

<sup>58</sup> See [www.everybodyshome.com.au](http://www.everybodyshome.com.au).

<sup>59</sup> Julie Lawson et al, AHURI, *Social housing as infrastructure: rationale, prioritisation and investment pathway* (Final Report, 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>60</sup> See 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). Justice Connect was formerly the PILCH Homeless Persons' Legal Clinic.

<sup>61</sup> Premier Daniel Andrews, 'Building New Homes To Fight Homelessness' (Media Release, 17 October 2018), available at: <https://www.premier.vic.gov.au/wp-content/uploads/2018/10/181017-Building-New-Homes-To-Fight-Homelessness.pdf>.



## Suitable and safe housing with supports for people with complex vulnerabilities

To achieve the best outcomes for disadvantaged Victorians, public and community 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, accommodation for support-animals and energy efficiency. New public and community housing supply should also be appropriately located, so it is connected to transport, education, jobs and services, ensuring that tenants can access supports and integrate within their local area (**Recommendation 1b**).

The availability of appropriate and stable public and community housing will create inclusive communities, offering tenants healthy environments where they can have vital stability and helping them to build fulfilling lives for themselves and their families.<sup>62</sup>

### *Managing integrated housing to prevent exacerbation of vulnerabilities*

In circumstances where public and community housing is increased through building mixed-sites of public and community housing and private rentals, such as through the state's current Public Housing Renewal Program,<sup>63</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 or the creation of further vulnerabilities.

#### ***Culturally diverse public housing tenant and family violence victim-survivor targeted by private tenants and placed further at-risk***

Nicole is a 50-year-old single woman who had lived 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 health issues, including 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 the Justice Connect lawyers and social worker, who negotiated with DHHS based on Nicole's human rights, and represented her at VCAT. Despite Justice Connect's advocacy, VCAT made a compliance order against Nicole.

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 Justice Connect's lawyers again represented Nicole, VCAT granted a possession order against her, placing her at significant risk of further hardship and mental health issues. Through ongoing holistic advocacy, Justice Connect'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.

<sup>62</sup> Term of Reference 1.

<sup>63</sup> 'Public housing redevelopment', DHHS (Web Page, May 2019), available at: <https://housing.vic.gov.au/public-housing-redevelopment>. See also Justice Connect, *Making public housing count: Submission to the Parliamentary Inquiry into the Public Housing Renewal Program* (November 2017).



To prevent the negative stigmatisation by private tenants and trauma experienced by community members like Nicole,<sup>64</sup> the Victorian Government needs to ensure that public and community housing is thoughtfully designed (**Recommendation 1c**). This should include inter-mixing of public and community 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.

The Victorian Government should draw on best practice, which indicates that mixed-tenure sites that integrate public and community housing and private rentals side-by-side, are more successful in achieving a socially cohesive neighbourhood than other mixed-housing models.<sup>65</sup>

## **Recommendation 1: More suitable, safe and stable public and community housing with supports**

To enable Victorians to have secure, healthy and meaningful lives, we need more fit-for-purpose and long-term public and community housing with supports. Justice Connect recommends:

- a. Public and community housing stock in Victoria be increased by at least 6,000 properties each year for the next decade, helping to safely house many Victorians who are unable to access or afford the private rental market.
- b. New public and community housing supply should:
  - Be well located - near transport, education, jobs and services, so that tenants can access supports and integrate with the community;
  - Be safe and healthy - properties must be quality-built, energy efficient, and universally accessible;
  - Be focused on meeting priority and under-served needs, such as additional singles, large family units and accessible housing;
  - Include both Department of Health and Human Services – Director of Housing owned and managed public housing properties, and community housing properties.
- c. If public and community housing is built through mixed-sites with private rentals, designs should draw on best practice to ensure that housing is cohesive, indistinguishable and layout includes communal and green spaces accessible to all tenants.

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<sup>64</sup> Term of Reference 1.

<sup>65</sup> See, e.g. Marion Roberts, 'Sharing Space: Urban Design and Social Mixing in Mixed Income New Communities' (2007) 8(2) *Planning Theory & Practice* 183.



## 4. Stopping homelessness before it starts

From decades of our work on the frontline, it is clear that existing legal frameworks make it too easy to evict vulnerable Victorians into homelessness.<sup>66</sup> The number of people in Victoria evicted and seeking help from homelessness services has more than doubled in five years,<sup>67</sup> and in this context, it has never been more important for us to focus on intervening earlier to prevent homelessness before it happens.

Recent reforms to the *Residential Tenancy Act 1997* (Vic) (**RTA**)<sup>68</sup> are significant in creating a safer, better and fairer tenancy system for all Victorians. A key component of realising the positive intentions of the new RTA is recognising that fairer laws are required to protect the most vulnerable in our community, and that access to holistic legal representation, which is closely integrated with social work supports, is an essential component of eviction prevention.

In addition to the need for more social housing with supports, an effective strategy for preventing homelessness must include:

- Fairer tenancy laws and protections for people with complex vulnerabilities – through further reforms of the RTA (Part 4.1);
- Better justice outcomes for renters – through greater accountability and application of human rights at VCAT (Part 4.2);
- Breaking the links between homelessness, family violence and poverty – through stronger protections and systems (Part 4.3);
- Specialist integrated legal services that have proven effective in keeping women and their children housed (Part 4.4); and
- More supports for public and community housing tenants – including through transparent housing policies and dispute resolution (Part 4.5).

### 4.1 Fairer tenancy laws and protections for people with complex vulnerabilities

Despite welcoming Victoria's residential tenancy reforms, there remain two specific mechanisms of eviction that disproportionately affect Victorians who have marginalised circumstances:

- evictions based on successive breaches of a tenant's duties; and
- evictions based on the breach of a compliance order.<sup>69</sup>

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<sup>66</sup> Term of Reference 1.

<sup>67</sup> Allison Worrall, 'Thousands of Victorians evicted into homelessness amid competitive rental market', *Domain* (online, 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/>; Term of Reference 1.

<sup>68</sup> Through the *Residential Tenancies Amendment Act 2018* (Vic) (**RT Amendment Act**), which will fully come into effect on 1 July 2020 (**residential tenancy reforms**).

<sup>69</sup> Term of Reference 1.



## Breach notices and evictions result in homelessness

Currently, and under the residential tenancy reforms,<sup>70</sup> 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>71</sup>

In Justice Connect'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>72</sup> or
- a tenant must keep rented premises clean.<sup>73</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 vulnerabilities, including mental ill-health, disability, their experience of family violence (see below for further discussion) or fraught relationships within neighbourhoods and rooming houses.

### *Elderly mother, daughter and grandson face homelessness for allegedly breaching a compliance order*

Amanda is a 52-year-old single woman who had been living in a Department of Health and Human Services – Director of Housing (DHHS) public housing property with her elderly mother and son for the past 23 years. Amanda has a history of family violence and mental health issues, 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 Justice Connect at a community-based homelessness service, DHHS had commenced eviction proceedings against her for the breach of a compliance order for allegedly failing to keep the property reasonably clean. Justice Connect 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. Justice Connect's social worker also provide ongoing supports to Amanda, which was crucial in helping her to engage with specialised hoarding cleaning services to help her de-clutter the property.

Justice Connect's holistic advocacy also involved connecting Amanda with long-term case management for her mental health and other intensive social supports. After an industrial clean was completed, 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.

To improve housing security in Victoria, notices to vacate for successive breaches of duty should be abolished (**Recommendation 2a**). 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 would prevent unnecessary evictions of highly vulnerable tenants into homelessness.<sup>74</sup>

<sup>70</sup> Residential Tenancies Amendment Act 2018 (Vic) (RT Amendment Act) ss 91ZP, 142ZH, 206AX, 207ZB.

<sup>71</sup> Residential Tenancies Act 1997 (Vic) (RTA) ss 249, 283, 308, 317ZB, 323.

<sup>72</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>73</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>74</sup> Term of Reference 3.





## Crucial constraints on compliance orders

Many Victorians with complex vulnerabilities are also at a disproportionate risk of eviction based on alleged breaches of compliance orders. Currently, a landlord can apply for a compliance order at VCAT if the landlord has issued a breach notice<sup>75</sup> and the breach notice is not complied with or not remedied within the timeframe.<sup>76</sup>

Once this compliance order is made, as seen through Amanda's story above, tenants are placed at real risk of receiving a notice to vacate for alleged failure to comply,<sup>77</sup> and having a VCAT possession order application made against them.<sup>78</sup> The ability for tenants to defend an application for a possession order based on breach of compliance order is limited.<sup>79</sup>

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

Victoria's residential tenancy reforms continue to allow indefinite and broadly worded compliance orders, which create housing insecurity for vulnerable tenants. There is no requirement for VCAT to set a timeframe when making a compliance order, and 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 often worded very broadly, allowing a wide range of behaviours to give rise to a breach of the order.

The ability to evict based on an alleged breach of a broad and indefinite compliance order facilitates housing insecurity and imposes unnecessary stress due to the indefinite risk of homelessness. To minimise the risk of arbitrary, unreasonable and avoidable evictions, compliance orders must be worded as specifically as possible, and be limited to a period of six months before lapsing (**Recommendation 2b**).<sup>80</sup>

## Residential Tenancies Regulations 2020 (Vic) and Prescribed Forms

### *Changing the title and content of the notice to vacate*

Justice Connect has been strongly advocating for a change to the terminology and content in the Notice to Vacate (NTV).<sup>81</sup> It is common for our clients to misunderstand the nature and effect of NTVs. This stops many Victorians from understanding or exercising their rental rights, causing stress, premature or unnecessary vacating of tenancies, and consistently low tenant attendance rates at VCAT, which cumulatively leads to an increased risk of homelessness.

The RT Regulations should ensure 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'). The NTV should also include referral information about specialist legal help for tenants to encourage them to engage with their rights and subsequent VCAT processes. Justice Connect also recommends other proposed measures<sup>82</sup> which would likely result in fewer tenants prematurely vacating their properties and may result in more tenants attending VCAT hearings.

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<sup>75</sup> RTA s 208.

<sup>76</sup> RTA s 209.

<sup>77</sup> RTA ss 248(1), 282(1), 307(1), 317ZA.

<sup>78</sup> RTA s 322(1), see also RTA ss 323, 324, 324A for rooming house residents, caravan park residents and site tenants.

<sup>79</sup> See Justice Connect, *There's no place like home: Submission on the Security of Tenure Issues Paper* (December 2015) 27-32 (**Security of Tenure Submission**); Justice Connect, *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>80</sup> Justice Connect welcomes the new provisions in section 330A of the RT Amendment Act 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. 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.

<sup>81</sup> Justice Connect has extensively consulted with the Department of Justice and Community Safety – Consumer Affairs Victoria (DJCS) in relation to the implementation of the reforms, including regarding the content of the Residential Tenancies Regulations 2020 (Vic) (RT Regulations). Through an evidence-based submission Justice Connect, Making Sure Renting is Safer and Fairer for Vulnerable Victorians: Submission on the *Residential Tenancies Regulations 2020* (Vic) (**RT Regulations Submission**) (December 2019). Justice Connect made fifteen key recommendations to DJCS, seeking to better safeguard housing security and to further break the links between homelessness, family violence and poverty. As part of this strategic engagement process, a number of Justice Connect's key recommendations were adopted and included for circulation in the proposed RT Regulations.

<sup>82</sup> See full submissions on the content and prescribed forms in the RT Regulations Submission (n 81).



These changes would increase the ability of tenants to understand their options and to obtain legal assistance further upstream in the eviction process. This would lead to more Victorians, who are facing similar situations to Ari's story below, remaining in secure housing, and allow marginalised tenants to focus on other aspects of their lives.<sup>83</sup>

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

Ari is a culturally diverse community housing tenant who received a notice to vacate for alleged 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 Justice Connect 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, Justice Connect entered into negotiations with the community housing provider, seeking to prevent Ari's eviction, which included offering detailed evidence about his mental health issues 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.

The availability of tenancy legal representation will be central to the successful full commencement of the residential tenancy reforms from 1 July 2020. For example, tailored legal help will be critical to empower victim-survivors to access the family violence protections under section 91ZZU(1) of the RT Amendment Act,<sup>84</sup> and allow vulnerable tenants facing eviction for breaches linked to their disadvantage to exercise their rights.<sup>85</sup>

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

In 12 months of our Women's Homelessness Prevention Project, 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 Justice Connect 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.

### ***Renaming the VCAT Notice to Leave as a 'Temporary Notice to Leave'***

Building on longstanding client insights, Justice Connect's RT Regulation Submission also raised concerns about the current notice to leave form.<sup>86</sup> Section 368(3) of the RTA provides that a manager may give a person a notice to leave in relation to serious acts of violence, which must be in the prescribed form. Justice Connect's view is that the current language is misleading, and should be clarified to explain that it is only a temporary suspension, and better information provided regarding tenants' legal rights and options (**Recommendation 2c**).

<sup>83</sup> Term of Reference 1.

<sup>84</sup> Residential Tenancies Amendment Act 2018 (Vic) Pt 8.

<sup>85</sup> Residential Tenancies Amendment Act 2018 (Vic) s 245.

<sup>86</sup> See RT Regulations Submission (n 81) Recommendation 6.



## Recommendation 2: Fairer laws to make evictions into homelessness a last resort

To create greater housing security for Victorians, and to prevent evictions into homelessness, Justice Connect recommends:

- a. Abolishing the notice to vacate for successive breaches of duty through the removal of ss 249, 283, 308 and 317ZB of the *Residential Tenancies Act 1997* (Vic) and ss 91ZP, 142ZH, 206AX and 207ZB of the *Residential Tenancies Amendment Act 2018* (Vic).
- b. 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.
- c. Ensuring that the *Residential Tenancies Regulations 2020* (Vic) adequately protect renters' rights, including by:
  - amending the content and form of the Notice to Vacate, including changing the term 'Notice to Vacate' and providing information about legal rights and details of legal assistance services within the notices;
  - renaming the 'Notice to Leave' form to better explain that the requirement to leave is initially only of a temporary nature (of 24 hours or until a future VCAT hearing).

## 4.2 Better access to justice for renters

In addition to strengthening laws to ensure greater housing security, VCAT needs improved accessibility and accountability to reduce the risk of vulnerable Victorians being evicted into homelessness.<sup>87</sup>

### Internal appeals for VCAT's 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>88</sup> As Mabel's story 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. For many tenants (and their support services), along with landlords, it is simply not an option to pursue their appeal in this forum.

<sup>87</sup> Term of Reference 3.

<sup>88</sup> *Victorian Civil and Administrative Tribunal Act 1998* (Vic) s 148.



### ***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 allegedly causing a nuisance to her neighbours. Mabel connected with Justice Connect after learning that, in her absence, DHHS had obtained a compliance order from VCAT. Mabel had not known about the VCAT hearing due to issues with receiving her mail. After advising Mabel about her tenancy rights, Justice Connect assisted her to apply for a review, and obtained a copy of DHHS's application to VCAT.

At the VCAT review hearing, DHHS sought to lead evidence about all the previous breach notices Mabel had been given over the years. When Justice Connect'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 VCAT Member. Soon afterwards, Justice Connect 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. Justice Connect 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 Justice Connect's calls before the 28-day period to lodge an appeal had expired.

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 (**recommendation 3a**).

Creating an internal appeal mechanism at VCAT through amendments to the *Victorian Civil & Administrative Tribunal Act 1998* (Vic) (**VCAT Act**) would also align Victoria with most other Australian jurisdictions, where civil tribunals have built-in internal appeals.<sup>89</sup> Since 2016, Justice Connect has been part of collective advocacy calling for reforms to the review process for VCAT and was one of the core organisations involved in a joint submission to the Victorian Government proposing an internal appeals division for the Residential Tenancies List (see **Annexure 1**).

Given the upcoming significant changes to Victoria's tenancy system, it is a critical time to amend the VCAT Act and introduce an internal appeals mechanism for VCAT tenancy matters to reduce the risk of unnecessary evictions into homelessness.<sup>90</sup>

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

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

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.

<sup>89</sup> For example, in the Australian Capital Territory, the *ACT Civil and Administrative Tribunal Act 2008* provides that decisions made by a member of the ACT Civil and Administrative Tribunal (**ACAT**) can be internally appealed on either a question of fact or law.

<sup>90</sup> Term of Reference 3.



### ***Aboriginal single-mother of three children, who have disabilities and mental health issues, 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. 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 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 Justice Connect when she was facing eviction for allegedly breaching the compliance order. Through Justice Connect's strong and continued negotiations, including based on the applicable human rights and responsibilities under the Charter, the eviction proceedings were withdrawn & a transfer to another public housing property was secured for Connie and her children. Connie has expressed her immense relief that she & her children have avoided homelessness & are now able to focus on their futures.

A number of Supreme Court cases have now limited the ability for VCAT to consider Charter compliance and also the timeframes in which a tenant can seek judicial review of a decision by public and community housing landlords.<sup>91</sup>

It is our strong view that VCAT must have jurisdiction to consider the human rights compatibility of eviction decisions by public and community housing landlords under the Charter (**recommendation 3b**). The Charter encourages consideration of a tenant's individual circumstances and allows these considerations to be balanced against the competing obligations of social housing landlords. Legislative amendments to give VCAT jurisdiction to consider Charter compliance in eviction proceedings brought by public and community housing landlords<sup>92</sup> would work towards reducing the harmful consequences of housing insecurity.<sup>93</sup>

### **Recommendation 3: Better procedural safeguards to ensure housing security**

Given the importance of tenants' accessing VCAT to avoid evictions into homelessness, Justice Connect recommends:

- a. 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).
- b. Giving VCAT jurisdiction to consider the human rights compatibility of eviction decisions by public and community housing landlords under the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

<sup>91</sup> Regarding VCAT consideration of the Charter, see *Director of Housing v Sudi* [2011] VSCA 266. Regarding the limited timeframes for lodging an appeal of a decision, see *Burgess & Anor v Director of Housing & Anor* [2014] VSC.

<sup>92</sup> For more detailed submissions on the legislative amendments required to give effect to this recommendation, see Justice Connect, *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* (Report, 1 September 2015) recommendation 27, 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'.

<sup>93</sup> Term of Reference 1.



## 4.3 Breaking the links between homelessness, family violence and poverty

Family violence is both a cause and a consequence of homelessness, with 62% of Victorian women accessing specialist homelessness services identifying as having experienced family violence last year.<sup>94</sup> Despite the Victorian Government's welcome commitment to tackle homelessness and family violence in response to the Royal Commission into Family Violence (RCFV), particularly through the \$2.7 billion investment to ensure women and children are safe and in housing<sup>95</sup>, family violence remains a key cause of homelessness in Victoria, and nearly two-in-three people accessing homelessness services are women.<sup>96</sup> Victoria's shortage of affordable housing disproportionately impacts family violence victim-survivors. As at April 2019, only 0.5% of private rental properties in Australia were affordable and appropriate for a single mother who relies on a single parenting pension, and none were affordable for a woman on Newstart.<sup>97</sup>

### Increased protections for victim-survivors of family violence

In our specialist work with family violence victim-survivors,<sup>98</sup> we see inadequate protection of tenancy rights, unfair debts incurred as a result of perpetrator damage or arrears and, consequently, the risk of homelessness. We welcome the government's adoption of five RTA-related recommendations as part of the RCFV, in particular:

- preventing victim-survivors being burdened with housing debts that limit their access to alternative housing;
- improving the mechanism for creating a new tenancy in a victim's name to allow them to maintain housing after an experience of violence.

However, there are still gaps in the legal framework which need to be addressed so that victim-survivors can maintain and access secure housing.

#### *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 Justice Connect for help.

After advising Jacqueline about her legal options and human rights, her Justice Connect 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 Justice Connect 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 overall well-being.

<sup>94</sup> See Homelessness Services Annual Report 2017-18 (n 34) Table CLIENTS.2: Clients and support periods, by state and territory, 2017-18 and Table DV.2: Clients who have experienced domestic and family violence, by state and territory, 2017-2018.

<sup>95</sup> State Government of Victoria, *Victorian Budget 19/20: Keeping women and children safe* (27 May 2019), available at <https://budget.vic.gov.au/keeping-women-and-children-safe>.

<sup>96</sup> See Homelessness Services Annual Report 2018-17 (n 34).

<sup>97</sup> Anglicare Australia, *Anglicare Australia Rental Affordability Snapshot* (April 2019) (**Anglicare Snapshot**) 10, available at: <https://www.anglicare.asn.au/docs/default-source/default-document-library/final---rental-affordability-snapshots302da309d6962baacc1ff0000899bca.pdf?sfvrsn=4>.

<sup>98</sup> Justice Connect, *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**).





## Family violence and breach notices

A specific concern in relation to the use of breach notices (discussed in part 4.1)<sup>99</sup> is the risk of eviction for victim-survivors of family violence due to perpetrator conduct. Family violence is linked to complex and multiple vulnerabilities and, as the Victorian Government has identified, there is strong evidence that family violence can trigger other conditions such as mental health issues.<sup>100</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 (see **Recommendation 2a** and **2b** above).<sup>101</sup> Jacqueline's story above highlights the importance of giving landlords and VCAT a framework for avoiding evictions of victim-survivors based on violent conduct by perpetrators.

## Improving legal mechanisms for exiting leases in cases of severe hardship

Women and children need to be able to safely exit leases in family violence circumstances. This can be achieved through consequential amendments to s 91W of the RT Amendment Act to give effect to the intended policy behind VCAT's power to create or reduce tenancy agreements in instances of family violence (**Recommendation 4a**).<sup>102</sup> Grace's story below shows the importance of getting these provisions right to ensure the safety of family violence victim-survivors and their children.

### *Single-mother of three accesses integrated legal and social work assistance to end lease nine months early after escalating family violence*

Grace is a single-mother of three young children. She previously lived in a private rental property with her ex-partner and father of her children, but was forced to leave due to escalating violence including threats to kill. Grace signed a twelve-month lease at her new private rental, but shortly afterwards her ex-partner discovered where she was and began to regularly attend the property to abuse her. As a result, Grace was forced to stop the successful business she had been running. When the violence escalated further, Grace contacted police and was told she had to leave immediately as her ex-partner had access to firearms.

After relocating again, Grace asked her previous landlord if the lease, which had nine months left to run, could be terminated early, but was told there would be significant upfront costs for breaking her lease. Grace then connected with Justice Connect for intensive legal and social work assistance. Grace's lawyer made an urgent application to VCAT to have the term of her lease reduced to the date of hearing, and negotiated with the landlord's agent to obtain their consent. At the VCAT hearing, Grace's lease was ordered to end the same day, meaning Grace would not accrue any more arrears, and was only liable for a small amount of arrears that had already accrued.

Justice Connect's social worker helped Grace cover these expenses by securing financial brokerage, and also referred her to a GP for help with a mental health care plan, and a service that assists with school related expenses for low income families. These wrap-around outcomes ensured that Grace could prioritise the safety and long-term wellbeing of herself and her kids.

Grace had the support of our specialist integrated lawyer and social worker to navigate her tenancy issues and VCAT. However, consequential amendments would ensure more people, who don't have the benefit of these supports, can also enforce their rights.

## Residential Tenancies Regulations 2020 (Vic) and family violence

Justice Connect's RT Regulations Submission contained a number of recommendations, drafted in collaboration with Domestic Violence Victoria, focussed on increasing the protections for people experiencing family violence.<sup>103</sup>

<sup>99</sup> RTA ss 249, 283, 308, 317ZB, 323.

<sup>100</sup> 'Family violence – identifying and responding' DHHS (Web Page), available at: <https://www2.health.vic.gov.au/mental-health/practice-and-service-quality/safety/family-violence-identifying-and-responding>.

<sup>101</sup> Chris Martin, Daphne Habibis, Lucinda Burns and Hal Pawson, AHURI, *Social housing legal responses to crime and anti-social behaviour: impacts on vulnerable families* (Report, June 2019) 2, available at: <https://www.ahuri.edu.au/research/final-reports/314>.

<sup>102</sup> See RT Regulations Submission (n 81).

<sup>103</sup> Ibid.



## Family violence victim-survivors should not require consent to make safety modifications

Section 64 of the RTA relates to prescribed modifications to a rental property that can be made without the landlord's consent.<sup>104</sup> Unfortunately, on the current drafting of the RT Regulations, tenants who are victim-survivors will still require their landlord's consent to make safety-related modifications, making it challenging for them to make their homes more secure in circumstances of family violence.

Justice Connect's view is that the proposed RT Regulations need to protect victim-survivors by empowering these tenants to easily make necessary safety modifications to rental properties without the consent of the landlord, aligning with Recommendation 116 of the RCFV (**Recommendation 4b**).<sup>105</sup>

## Evidence required to prove the existence of family violence should be as broad as possible

It will not always be safe for people experiencing or at-risk of family violence to obtain formal documents, such as intervention orders or court orders, and overly prescriptive evidentiary requirements can create difficulties for women experiencing family violence.<sup>106</sup>

Justice Connect calls for a broader range of matters to be prescribed by the RT Regulations in the context of the documentary evidence required to prove the existence of family violence (**Recommendation 4c**).<sup>107</sup> Specifically for:

- applications for termination or new tenancy agreements due to family violence;<sup>108</sup> and
- objections to tenancy database listings.<sup>109</sup>

Sonia's story below illustrates the barriers encountered where prescriptive evidence is required from people experiencing family violence.

### *Family violence victim-survivor concerned whether she will be able to terminate her lease without unfair debts*

Sonia, who has an extensive history of family violence, moved into a 12-month fixed term private rental with her new partner. Soon after that, the partner perpetrated physical violence and economic abuse, and after he left the property, she discovered a rental arrears debt of \$5000. The partner spent money that Sonia had allocated for rent on his gambling addiction.

Through friends and community-based supports, Sonia found enough money to begin paying back the rental arrears. However, the monthly rent was not affordable for Sonia by herself, and she wanted to end the fixed term lease to find a more affordable and safe home. The partner's name also remained on the lease, but he had stopped contributing to the rent and continued to make threats against Sonia.

Sonia's landlord was unhappy with her terminating the agreement early, and told her that she would need to pay rent until a new tenant was found, along with advertising and reletting fees, which would total over \$4000. Sonia was very concerned about the impact of this further financial burden, and she was unsure whether her evidence of economic abuse would be enough to secure an order reducing her tenancy agreement early without financial penalty.

<sup>104</sup> See RT Regulations rrs 26 and 28.

<sup>105</sup> See RT Regulations Submission (n 81).

<sup>106</sup> This is because: a final IVO can take considerable time to obtain, by which time the tenancy may have been terminated for other reasons – e.g. rent arrears attributable to a perpetrator as in the example above; there can be issues with serving an IVO after it has been made, with some orders remaining unserved for significant periods of time, which can significantly delay finalisation of an IVO; police do not always apply for exclusion conditions in IVO applications where they would be warranted; the victim-survivor must apply under two jurisdictions (the Magistrates' Court of Victoria and VCAT) in order to use this provision; and many victim-survivors of family violence will simply not seek an IVO. This can happen for a range of reasons, including fear of further escalation of the violence, lack of police enforcement, a belief that the order won't change the perpetrator's behaviour, the inconvenience and time investment that can be involved in obtaining an IVO, or other competing personal priorities following an incident of family violence (i.e. children's needs).

<sup>107</sup> See RT Regulations Submission (n 81).

<sup>108</sup> See section 91W(3)(c) of the RTA.

<sup>109</sup> See section 439F(7)(b) of the RTA.



If Sonia had been able to provide non-prescribed evidence, such as photos showing her violent partner's gambling habits, a bank statement or a letter from a friend or support worker, her landlord may have terminated Sonia's lease early so that she could look for more affordable housing and avoid becoming homeless.

## 4.4 Integrated legal help keeps women and children safely housed

We have outlined above the growing prevalence of homeless or at risk women and the compounding impact of family violence.

Accessible and tailored legal services are a vital part of a multidisciplinary service response to homelessness and family violence.<sup>110</sup> Research indicates that many homeless people first turn to non-legal services when they encounter a legal problem<sup>111</sup> and usually only seek help from one non-legal professional.<sup>112</sup> Holistic, integrated services are vital to ensure that both legal and non-legal needs can be collectively addressed.<sup>113</sup> This streamlined approach means that the problems that have contributed to, and resulted from, their interaction with the justice system are able to be dealt with concurrently, resulting in a more effective resolution.<sup>114</sup>

Since 2014, Justice Connect's Women's Homelessness Prevention Project (**WHPP**) has proven incredibly effective at keeping women and children safely housed through integrated legal and social work assistance. It is the only service of its type in Victoria, and the WHPP's specialised, early-intervention model was cited by the Law Council of Australia's Justice Project Final Report as best practice for successfully preventing and reducing homelessness.<sup>115</sup>

In five years, the WHPP:

- holistically helped 280 women and 391 children through wrap-around legal, housing and social work supports;
- achieved an 84% success rate in finalised legal matters;
- directly prevented 148 women and 202 children from being evicted into homelessness.

Pitcher Partners recently prepared a pro bono report that costed the benefit of the WHPP to be 6.3 times the level of investment, with a cost saving to government of \$4.9 million. This is a proven model that deserves adequate resourcing by Government, not only for the cost savings but also the health, wellbeing and social impacts on family violence victim-survivors and their children.

Direct client insights about the benefits of WHPP include:

***"Without that help I would have ended up on the street...their efficiency, hard work and friendliness cannot be praised enough."***

***"I really appreciate everything they did for me, otherwise, I would be homeless."***

Through the WHPP, we have also seen the volatile nature of the private rental market and how easy it is to fall behind in rent and be on the brink of eviction into homelessness. In the last year, 89% of clients were reliant on

<sup>110</sup> Rhonda Phillips and Cameron Parsell, AHURI, *The role of assertive outreach in ending 'rough sleeping'* (Final Report No. 179, January 2012) 1.

<sup>111</sup> Law & Justice Foundation – No Home, No Justice (n 27) 26.

<sup>112</sup> The Justice Project – Legal Services (n 23) 74.

<sup>113</sup> Legal Australia-Wide Survey: Legal Need in Australia (n 14) 26; The Justice Project – Legal Services (n 23) 74.

<sup>114</sup> The Justice Project – Legal Services (n 23) 78.

<sup>115</sup> The Justice Project – People who are homeless (n 6) 33; The Justice Project – Legal Services (n 23) 24, 77-78.



Centrelink, with the disproportionately low rates of payments making them struggle to keep up with basic living costs, and 56% of those facing eviction were in private rentals.

Sixty-four percent of women helped by the WHPP last year were facing eviction for rental arrears, and over the WHPP's five years, 84% of women we helped identified as having experienced family violence. Paula's story below shows the importance of specialist legal help to keep women experiencing financial hardship safely housed.

### ***Single-mother with history of family violence, homelessness and health issues supported to stay housed after falling behind in rent***

Paula is a 32 year old separated mother with care of three young children who works part time. Paula was made homeless at age 17 when she was forced to flee violence in the family home from her father. She became pregnant and was married at age 19. Paula's marriage broke down and her husband became violent, which led to Paula fleeing her husband's parents' home where she had been staying and entering her first private rental property with the three children.

Soon after moving in, Paula began to accrue rental arrears as a result of confusion over the frequency of her rent payments. This confusion was exacerbated by her serious depression and anxiety issues and lack of any support or counselling to assist after the violence and breakdown of her marriage. In addition, Paula became physically unwell, requiring surgery, and then suffered complications which led to her exhausting all sick leave from work. When Paula presented to Justice Connect, she was worried about losing her job, her housing and her children as a result of her financial circumstances.

Paula's Justice Connect lawyers entered into legal negotiations and achieved an affordable payment arrangement with the real estate agent, while our social worker organised an emergency meeting with her local housing access point. The Justice Connect social worker also secured financial brokerage for Paula and referred her to a financial counsellor. Our social worker further helped Paula to obtain food vouchers and warm clothing for her children, as well as engaging her with a GP for a mental health care plan.

Through Justice Connect's holistic and intensive assistance, Paula has remained in the property and is now on a two year lease, which has stabilised her health and enabled her return to work.

## **Impactful wrap-around legal services**

Justice Connect's targeted wrap-around legal and social assistance is focussed on intervening early to avoid evictions, and dealing with the key problems that prevent safe and sustainable housing, such as housing debts and advocating for victim-survivors with tenancies affected by family violence.

In the last 18 months, Justice Connect's multi-disciplinary services have successfully prevented 253 clients and their families from being evicted into homelessness, equating to over \$7.4 million worth of savings to the Victorian Government and wider-community, through avoiding increased health, justice and welfare services costs.<sup>116</sup> This impact can also be seen through the story of our former client, Clare.<sup>117</sup>

<sup>116</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 Kaylene Zaretzky and Paul Flatau, AHURI, *The cost of homelessness and the net benefit of homelessness programs: a national study* (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>117</sup> All client names have been de-identified in this submission.



### ***Single-mother of four with history of family violence and homelessness receives integrated legal help to avoid eviction after her son's death***

Clare is a single mother of four, who had been living in a private rental property for three years. She is a family violence victim-survivor, who slept rough in her youth and has complex mental health issues.

When Clare first connected with Justice Connect, her son had recently died in a car accident. As a result, Clare had fallen into rental arrears of \$3,000. Clare's landlord told her that she had 14 days to get out, but she had nowhere safe to go.

With help from her Justice Connect lawyers and social worker, Clare and her kids avoided the crisis of eviction and stayed safely in their home. But without holistic legal help, she would have been one of the growing number of Victorians, particularly women, experiencing homelessness.

It is clear that to end homelessness, we need to prioritise prevention and early intervention. Through integrated legal services, we can make evictions into homelessness a last resort and prevent people like Clare and her children from experiencing the trauma of becoming homeless (**Recommendation 4d**).

### ***Scaling the reach of homelessness prevention through digital innovation***

Given the growing housing and financial insecurity faced by women and children across Victoria, digital tools offer an emerging opportunity to scale impact and help more tenants to stay securely housed. For Victorians facing multiple complexities, access to integrated, wrap around legal services is vital. However for some Victorians, self-help tools and resources can help to intervene earlier in preventing evictions into homelessness.

An innovative example is Justice Connect's first digital project for tenants, [\*Dear Landlord: Resources for Victorians who have fallen behind in rent \(Dear Landlord\)\*](#). Dear Landlord, which has been developed through user-centred designed, scales up Justice Connect's reach by offering online tools that help tenants to know their rights, and to take steps earlier in avoiding eviction for falling behind in rent. Dear Landlord also involves a targeted, awareness-raising education program for help-seekers, frontline community workers and private real estate agents.

## **Recommendation 4: Safer renting for victim-survivors of family violence**

To break the links between homelessness, family violence and poverty, Justice Connect recommends:

- a. Amending s 91W of the *Residential Tenancies Amendment Act 2018* (Vic), so that family violence victim-survivors can reduce a lease to avoid the safety and financial risks of being forced to remain in a tenancy.
- b. Guaranteeing that the *Residential Tenancies Regulations 2020* (Vic) adequately protect victim-survivors of family violence by empowering tenants to modify the rented property to improve security without the consent of the landlord.
- c. Making sure the prescribed documentary evidence required as part of the *Residential Tenancies Regulations 2020* (Vic) is as broadly worded as possible, as it will not always be safe for people experiencing or at-risk of family violence to obtain formal documents such as intervention orders.
- d. Increasing access to integrated tenancy legal assistance to ensure that people understand their rights and can avoid evictions into homelessness.



## 4.5 Stronger protection of rights and more supports for public and community housing tenants

### Consistent and transparent housing policies are vital for people with complex vulnerabilities

As discussed, public and community housing providers play a critical role in providing secure and sustainable housing for vulnerable people in our community. Justice Connect welcomes the Victorian Government's introduction of the Victorian Housing Register (VHR), Australia's first online public and community housing register, which lists both public and community housing organisations on the same register.<sup>118</sup> However, there remain inconsistencies in organisational housing practices and policies regarding tenants' rights.<sup>119</sup>

The need for responsive, transparent and consistent public and community housing policies for vulnerable tenants (**Recommendation 5a**) can be seen through the story of eight former clients, including Eddie, below.

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

In 2018, Justice Connect 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 Justice Connect'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 six 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 contributing to a significant mental health deterioration. Eddie was 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 and stable alternative property, which his support worker noted, reduced the "ongoing risk of relapse into AOD abuse and psychotic symptoms."

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 a range of complex issues, 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 severe impacts on mental health, avoiding housing insecurity through strengthening public and community housing policies and supports cannot be understated.

<sup>118</sup> See 'Victorian Housing Register', DHHS (Web Page, September 2018), available at: <https://services.dhhs.vic.gov.au/victorian-housing-register>.

<sup>119</sup> Term of Reference 3.





The Victorian Housing Registrar recently published guidelines that aim to increase transparency and consistency of community housing policies.<sup>120</sup> In this context, the Housing Registrar needs to take further opportunities to strengthen accountability measures, including through consistent and transparent internal complaints procedures and more robust and prescriptive performance standards.

### **Additional resources and training for public and community housing providers**

Public and community housing providers need to be supported with adequate resources, staff training, access to tenant support services and supply of housing stock to allow them to implement and embed clear, consistent and best-practice policies (**Recommendation 5b**). Justice Connect recommends extending the reach and number of intensive housing-support services, including programs with dedicated social work and health professionals and those closely integrated with specialised legal services. Further training, support, oversight and cultural change will be beneficial within DHHS and the community housing sector, so that housing workers can facilitate the best housing outcomes for those with a range of intersecting and ongoing vulnerabilities.

### **Protecting tenants' human rights in public and community housing**

The Charter plays a critical role in the protection of tenants' human rights in public and community housing as noted above at 4.2. In Victoria, all public and community housing landlords are obliged to act compatibly with, and give proper consideration to, the applicable human rights under the Charter.<sup>121</sup> The Charter provides a helpful framework for negotiating with public and community housing providers making difficult decisions because it:

- 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 public and community 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>122</sup>

### **Amending the Charter to clearly apply to registered community housing providers in Victoria**

As some of the most vulnerable members of our community, it is vital for both public and community housing tenants to have greater protections and security of tenure than private renters, and that decisions made about their housing are compatible with human rights.

To facilitate this, Justice Connect recommends amending s 4 of the Charter to expressly include any community housing providers registered under s 84 of the *Housing Act 1983* (Vic) (**Housing Act**) as public authorities for the purposes of the Charter (**Recommendation 5c**). A number of other jurisdictions around Australia (including Queensland and the Australian Capital Territory) have taken this step to provide clarity to both community housing providers and their tenants,<sup>123</sup> and 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>124</sup>

### **Proposed central appeals mechanism for all public and community housing tenants**

More resourced and robust accountability mechanisms are required for public and community housing providers to ensure policies, rights and decisions in a social housing context are enforceable and reviewable outside the tribunal or court system.

Justice Connect recommends that the Victorian Government consider establishing a new 'Community Housing Appeals Office' to properly perform the complaint and dispute resolution functions under the Housing Act. One way

<sup>120</sup> Victorian Housing Registrar, *Agency publication of key policies*, available at:

<http://www.housingregistrar.vic.gov.au/files/assets/public/publications/guidance-notes/agency-publication-of-key-policies.pdf>

<sup>121</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.

<sup>122</sup> Justice Connect, *Charting a Stronger Course: Homeless Law submission to the eight year Charter review* (16 June 2015) (**Charting a Stronger Course**) 7, available at: <https://justiceconnect.org.au/wp-content/uploads/2018/08/Charting-a-Stronger-Course-June-2015.pdf>

<sup>123</sup> See *Human Rights Act 2019* (Qld) ss 9(1)(h), 10(3)(vi); *Human Rights Act 2004* (ACT) ss 40(1)(g), 40A(3)(b)(vi).

<sup>124</sup> See, e.g. the Community Housing Industry Association Victoria's position on the Charter in Tessa van Duyn, 'Community housing's Human Rights Obligations', *Community Housing Industry Association Victoria* (Web Page, 6 September 2019), available at <https://chiavic.com.au/human-rights-obligations/>.



this could be achieved is by widening the jurisdiction of the DHHS Housing Appeals Office,<sup>125</sup> so it performed this function on behalf of both public and community housing tenants. This would align with the VHR and would provide a more fit for purpose forum to address the complaints of all social housing tenants (**Recommendation 5d**).

## Specialist supports for tenants with complex needs

Several intensive housing assistance programs currently operate around various parts of Victoria, and they serve as best practice models to assist vulnerable people to maintain long-term, safe and appropriate housing. These programs are tailored to support tenants to sustain their housing and address ongoing conflicts with neighbours, as well as provide referral pathways to appropriate health, social, financial and legal services. Having the support of intensive caseworkers in addressing conflicts with neighbours can make a significant difference for disadvantaged Victorians 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 resourcing is required to increase the reach and number of intensive housing support programs to assist some of the most at-risk Victorians through secure housing. An example of a tailored support program is GreenLight Supportive Housing Program (**GreenLight**), which is discussed in the below snapshot, and involves several close community-based partners of Justice Connect.<sup>126</sup>

### *GreenLight: 'Housing first' and 'Sustaining tenancies' principles with wrap around support*

The GreenLight Supportive Housing Program is funded by the Victorian Government's 2018 Homelessness and Rough Sleeping Action Plan. 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 helps people to maintain their new housing through wrap-around supports.

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.

Justice Connect has built on existing partnerships to collaborate with GreenLight, including the establishment of strong bi-directional referral pathways and training for frontline Greenlight workers. Justice Connect's lawyers run regular, 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 and offer targeted and intensive legal and non-legal assistance.

## Integrated assistance models

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:

- Justice Connect's innovative Under One Roof project, which co-locates a staff lawyer at frontline housing-support and homelessness service, Launch Housing and has developed an embedded partnership with Sacred Heart Mission – Journey to Social Inclusion, has allowed our program to intervene earlier through a direct referral pathway to assist vulnerable Victorians;<sup>127</sup> and

<sup>125</sup> See 'Appeal a decision', *HousingVic* (Web Page, 21 January 2019), available at <https://www.housing.vic.gov.au/appeal-decision>.

<sup>126</sup> This includes Sacred Heart Mission, The Salvation Army, and VincentCare. 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)

<sup>127</sup> See part 5.5, 'Co-locations with frontline community and health services improve access to justice' which discusses Under One Roof in detail.



- Justice Connect’s integrated Homeless Persons’ Liaison Officer (**HPLO**) program, which involves co-locating a staff social worker within a homelessness health service, cohealth Central City Community Health Service (**cohealth**), offering clients of the many health and homelessness services at cohealth with an opportunity to connect with Justice Connect, and holistically address legal and non-legal needs.

In 2019, Justice Connect conducted a partnership survey and comments from cohealth 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 consults 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, Journey to Social Inclusion and cohealth, when coupled with legislative and procedural reforms, provide a wrap-around approach to empower tenants with complex vulnerabilities to remain safely housed (**Recommendation 5e**).

## **Recommendation 5: Stronger protections for public and community housing tenants’ rights and increased pathways to specialised services**

To assist vulnerable Victorians to maintain or access sustainable housing and achieve positive personal and health outcomes, Justice Connect recommends:

- a. Supporting public and community housing providers to develop fair, consistent, best-practice and publicly available policies, which take into account tenants’ human and legal rights.
- b. Implementing resources, staff training, access to tenant support services and supply of appropriate housing stock to embed these policies.
- c. Ensuring that community housing providers are recognised as public authorities for the purposes of the *Charter of Human Rights and Responsibilities Act 2006* (Vic).
- d. Building on the implementation of the joint Victorian Housing Register, creating a central Housing Appeals Office to oversee complaints from both public and community housing tenants.
- e. Extending the reach and number of intensive housing-support services, including programs with dedicated health and social work professionals and those closely integrated with specialised legal services.

## 5. Preventing the criminalisation of homelessness

Justice Connect has helped thousands of Victorians experiencing homelessness and housing insecurity to resolve overwhelming fines and charges for what we call ‘poverty offences’, including being drunk in public, begging and conduct on public transport.

From this extensive work, we see first-hand the disproportionate impact of fines and charges on people experiencing homelessness. Former Justice Connect client, Hayley, found herself homeless after fleeing from an ex-partner due to family violence and having nowhere safe to go. During this time, Hayley received several fines and charges, including for begging, which she said made her feel:

*‘Ashamed for getting them in the first place, because I’m one that doesn’t break the law.’*

Former Justice Connect client Julia reveals how financial penalties and charges only serve to increase the strain struggling people are already under:

*‘The effect of having the fines is very stressful because when you are unemployed or on a pension, it is pretty difficult to survive as it is... You don’t have a spare \$200 just to give to a fine and if you’re homeless as well it’s more stressful because it is already incredibly hard not having a place of your own.’*

Based on almost 20 years of experience, Justice Connect recommends five key ways to prevent the criminalisation of homelessness in Victoria:

- Reducing reliance on the justice system in responding to homelessness – through decriminalising poverty offences (Part 5.1);
- Fairer approaches to fines and homelessness – including through more effective and accessible special circumstances, Family Violence Scheme and concession-based processes/systems (Part 5.2);
- Increasing access to therapeutic justice options – including diversion and retaining the Special Circumstances List (Part 5.3);
- Breaking the cycle between homelessness, prison and the justice system—by preventing homeless people from entering prison and improving community reintegration through post-release supports (Part 5.4); and
- Further resourcing for holistic, integrated legal and social work services (Part 5.5).

### 5.1 Reducing reliance on the justice system in responding to homelessness

Due to their public visibility, people experiencing homelessness are at a greater risk of being fined or charged for low-level offending related to homelessness and poverty.<sup>128</sup> Of Victoria Legal Aid’s criminal law service clients in the 2018–19 financial year, 11 per cent self-identified as experiencing homelessness.<sup>129</sup>

<sup>128</sup> The Justice Project – People who are homeless (n 6), 24.

<sup>129</sup> See Victoria Legal Aid, ‘It starts with a home: Ten legal issues that cause – or are caused by – homelessness in Victoria’: Submission to the Victorian Homelessness Inquiry (February 2020).



As seen through Lilly's story below, relying on the justice system to respond to homelessness entrenches disadvantage, compounds homelessness and creates a further burden on an already stretched justice system.

### ***Homeless family violence victim-survivor helped to resolve criminal charges, secure safe housing & reconnect with her kids***

Lilly experienced extensive family violence committed by multiple perpetrators, which resulted in serious health concerns, pushed her into homelessness and caused her to lose care of her two young children. When she first met with Justice Connect, Lilly was facing charges at the Magistrates' Court related to her drug dependency, which she had developed when seeking to feel safe and to reduce the pain of her isolation and trauma. Lilly also faced a charge for possessing a weapon that she carried due to fear of her violent ex-partner.

Lilly's anxiety about going to court unsupported meant that she had failed to attend Court and a Magistrate had issued warrants on four separate occasions. Often in circumstances like these, the system's response is to remand people in custody until their matter can be heard. Thankfully, Lilly received specialised advice and ongoing representation through Justice Connect's criminal lawyer and targeted non-legal supports from our Homeless Persons' Liaison Officer (HPLO) social worker. This included the HPLO helping Lilly to access court, facilitating transport and short-term housing, and offering direct assistance to feel more comfortable at her hearings, along with a supporting letter to the Magistrate. Due to intensive legal & social work advocacy, Lilly secured a 12 month undertaking without conviction, which was an immense relief to her.

Although Lilly had previously struggled to engage with community workers, the HPLO built genuine trust with her over six months, providing vital brokerage for essential needs, securing her a new driver's licence and recommencing her Centrelink payments, actively referring her to alcohol and drug counselling and family violence case management, and helping her to make a priority public housing application. These holistic outcomes have given Lilly crucial safety and stability, empowering her to reconnect with her children and to prioritise her continued health recovery.

Justice Connect has identified several clear solutions, which would reduce Victoria's current reliance on the justice system and improve pathways out of homelessness for Lilly and many other vulnerable community members.

## **Decreasing enforcement-based approaches to homelessness: Victorian Protocol for Homeless People in Public Places**

Justice Connect, in collaboration with homelessness, justice, government and other agencies, has been working to revive the 2006 Protocol for Homeless People in Public Places, which was implemented for the Melbourne Commonwealth Games. This updated proposed protocol, entitled the '*Victorian Protocol for Responding to People Experiencing Homelessness in Public Places*' (**Proposed Victorian Protocol**), aims to facilitate a consistent, constructive approach to homelessness (**Recommendation 6a**). A copy of the Proposed Victorian Protocol can be found at **Annexure 2**.

The Proposed Victorian Protocol is a high-level policy document that allows for discretion and agency-specific implementation, providing a framework and guidance for enforcement officers making difficult decisions in complex situations. It is designed to be used as a tool by enforcement officers to assist them in exercising their discretion in a way that prevents people experiencing homelessness entering the justice system when their needs could be more appropriately dealt with by health, housing and other support services.

As well as guiding enforcement officers to consider alternatives to fines and charges, the Proposed Victorian Protocol helps to shape conversations and messaging to the public, so that people experiencing homelessness are treated with respect and are not discriminated against on the basis of their homeless status. In New South Wales (NSW), the City of Sydney has had a 'Protocol for Homeless People in Public Places' since 2000, which is discussed in the snapshot below.

### ***Responding effectively to homelessness: NSW Government Protocol for Homeless People in Public Places***

#### ***Aims and signatories***

The NSW Protocol aims to 'help ensure that homeless people are treated respectfully and appropriately and are not discriminated against on the basis of their homeless status' and to 'provide a framework for interactions between officials and homeless people in public places'. Signatories to the NSW Protocol include: Housing NSW, NSW Police Force, Community Services, Department of Premier and Cabinet, Office of Environment and Heritage, NSW Health, RailCorp, State Transit Authority of NSW, Sydney Harbour Foreshore Authority, Sydney Olympic Park Authority, Aboriginal Affairs and Ambulance Service of NSW. The City of Sydney recognises the NSW protocol and notes that it 'acknowledges the equal rights of all members of the community to access public places'.

#### ***Guidance on appropriate responses***

The NSW Protocol acknowledges that *'like all other members of the public, homeless people have a right to be in public places...at the same time respecting the right of local communities to live in a safe and peaceful environment'*. The Protocol is an agreement by government organisations to respond appropriately to homeless people who are in public places and acting lawfully. It doesn't prevent agencies from acting where health or safety is at risk or a breach of the peace or unlawful behaviour has occurred. It encourages officials to consider the individual's circumstances when enforcing laws and to use discretion which takes account of *'the complex needs of homeless people, including mental health issues, drug and alcohol misuse and cognitive impairment'*.

#### ***Implementation and evaluation***

'Guidelines for Implementation' have been published and it is recommended that the NSW Protocol is addressed in induction training for all new staff and in development training for existing staff. Housing NSW developed a 'Protocol Training Package' to support organisations to adopt and implement the protocol. Signatories are also advised to conduct internal monitoring and review of the NSW Protocol and its implementation and impact. The Protocol will be reviewed every two years.

The NSW Protocol has had significant support from enforcement agencies, including City of Sydney enforcement and NSW Police, and has been a successful tool for enforcement agencies in guiding their interactions with people experiencing homelessness.

### ***Providing a framework to train and support enforcement officers***

The negotiation, education and leadership that accompanies the development and implementation of the Proposed Victorian Protocol has the potential to play a significant role in improving the understanding of frontline officers and providing them with guidance about when and how to interact with people experiencing homelessness.

A tool such as the Proposed Victorian Protocol also provides an important framework to ensure enforcement officers exercise discretion and consider cautions as a first option for people where the offending is directly linked to their vulnerabilities, as well as encouraging referral pathways to appropriate community services or other support agencies as an alternative to fines and charges. Training opportunities include working closely in partnership with



support services to ensure enforcement officers better understand the experience of homelessness and can provide appropriate referrals.<sup>130</sup>

As well as being a likely means of reducing homelessness, the Proposed Victorian Protocol can also help councils and other public authorities to comply with their obligations under the Charter to make sure human rights are given proper consideration when making decisions.<sup>131</sup> This kind of practical, clear guidance provides the necessary support and resources to engage appropriately and effectively with people experiencing homelessness.

## Decriminalising poverty offences

Laws which prohibit begging and public drinking, street sweeping offences and 'move on' directions, often serve to effectively criminalise homelessness. They also endanger people experiencing homelessness by essentially excluding them from safe public spaces.<sup>132</sup> While outdated poverty offences are still in legal operation, there will always be pressure to use them and less opportunity for service-based responses to address the underlying causes of offending. Decriminalisation of poverty offences, including public drunkenness and begging<sup>133</sup>, has the potential to reduce the disproportionate impact that charges and fines can have on the most vulnerable Victorians, and assist to break the links between homelessness and the justice system. Decriminalisation also plays a significant role in reducing the negative stigma surrounding homelessness.<sup>134</sup>

### *Taking a more appropriate approach to public drunkenness in Victoria*

Justice Connect commends the Victorian government for its recent announcement that it will remove the offence of public drunkenness under s 13 of the *Summary Offences Act 1966* (Vic) (**Summary Offences Act**) and replace it with a health-based response in consultation with impacted communities, in order to provide vulnerable Victorians with appropriate help and support.<sup>135</sup> The Victorian government's commitment to promoting '*therapeutic and culturally safe pathways to assist alcohol-affected people in public places, who may be facing other challenges including homelessness, mental illness, family violence, and substance dependency*',<sup>136</sup> is a promising development in recognising that criminalisation and enforcement-based approaches to homelessness do not address the underlying issues of poverty.

In addition to being financially overwhelmed and caught up in the justice system, Darren's story below highlights how enforcement-based responses made it harder for Victorians to exit homelessness, and why Justice Connect looks forward to the timely implementation of the decriminalisation of public drunkenness (**Recommendation 6b**).

#### *Chronically homeless man overwhelmed by fines for public drunkenness*

Darren has been homeless on-and-off for almost 15 years and has struggled with alcohol dependence since his teens. A combination of these two factors has resulted in him getting about \$15,000 in fines, many of which he received for being drunk in public. He said:

*The impact of the fines in my case just got harder because I kept getting more of them. Before I was able to address or pay for the existing one I already had I would cop another one and another one and it just got overwhelming. I was unable to pay due to the fact that I was only on Newstart at that time and living in boarding houses, which the rent there was pretty much a third of my payment so I couldn't live.*

<sup>130</sup> For example, Victoria Police, Council to Homeless Persons and Justice Connect have collaborated on a 'Walk in my Shoes' tour for Victoria Police members where consumers educate police members around the lived experience of people experiencing homelessness. See Miki Perkins, 'Police walk and talk to put a face to homelessness', *The Age* (online, 26 May 2018), available at <https://www.theage.com.au/national/victoria/police-walk-and-talk-to-put-a-face-to-homelessness-20180526-p4zhpq.html>

<sup>131</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 38.

<sup>132</sup> The Justice Project – Legal Services (n 23).

<sup>133</sup> Other poverty offences include possession of drug of dependence for personal use.

<sup>134</sup> We note also that in addition to decriminalisation, other options to reduce the impact of summary offences on people experiencing homelessness include amending offences related to move on directions, obscene language and drunk and disorderly offences in the *Summary Offences Act 1966* (Vic), so as not to criminalise this conduct where that person commits the offence due to homelessness or other related vulnerabilities such as mental health issues or substance dependence.

<sup>135</sup> The Hon Jill Hennessy MP, Attorney-General, 'New Health-Based Response To Public Drunkenness' (Media Release, 22 August 2019), available at: <https://www.premier.vic.gov.au/new-health-based-response-to-public-drunkenness/>

<sup>136</sup> *Ibid*.





## Asking for change: the need to decriminalise begging

Begging alms remains a criminal offence in Victoria under s 49A of the Summary Offences Act, and attracts a maximum penalty of 12 months imprisonment. By criminalising begging, the state continues to rely on the police and courts to tackle what is overwhelmingly a health, housing and social issue. In doing this, we:

- impose a significant burden on police and the courts;
- cause highly vulnerable people to be caught up in the justice system as a result of homelessness and poverty; and
- fail to reduce the number of people who beg.<sup>137</sup>

Evidence and research has consistently shown that people who beg experience high levels of hardship. Studies continue to show how begging, homelessness, ill-health and substance dependence regularly intersect.<sup>138</sup> The strong conclusion is that begging is about social and financial poverty, not about crime. In this context, the criminalisation of begging punishes vulnerable people experiencing extreme hardship and minimises their visibility, as Chris' story demonstrates.

### **Woman experiencing homelessness charged with begging after fleeing violent relationship**

Chris was in a violent relationship. After suffering an assault, she fled her home with only the clothes on her back and some essentials. Chris made her way into the Melbourne CBD, believing that was the safest place to be and the most likely place she would be able to secure a night's accommodation at short notice.

Chris made a sign that read *"Homeless due to domestic abuse. I'm Chris. I'm 40 & am asking for your help to get a safe warm bed. Any donations of food, coffee or spare change are much appreciated. Thank you."* Police approached Chris who was sitting on the footpath with the sign beside her, and asked what she was doing. The police statement confirmed that Chris said that she was *"trying to get enough money so that I can get a room, go to somewhere safe, instead of going into a laneway getting raped and bashed"*.

Chris was then charged with begging. Unfortunately, Chris was unable to get any accommodation and was forced to return to her former home with her partner. After suffering further violence a couple of months later, a full intervention order was made to protect Chris. With appropriate supports, Chris was then able to enter transitional housing.

Justice Connect's criminal lawyer provided specialised legal advice about Chris' rights, including the option of representation to contest the charge. At court, police prosecutors chose not to exercise prosecutorial discretion and withdraw the charge on the basis that Chris did not to call police on the night she fled and did not report the incident. Chris ended up pleading guilty because she just wanted the matter dealt with, so she could safely move on with her life.

As part of Anti-Poverty Week in 2016, Justice Connect joined with leading homelessness and community organisations to launch 'Asking for Change: Calling for a More Effective Response to Begging in Victoria' (Asking

<sup>137</sup> 'Asking for Change: Calling for a More Effective Response to Begging in Victoria' Justice Connect (Web Page, 2016), available at <https://www.justiceconnect.org.au/askingforchange>; See also, *Asking For Change: Calling for a More Effective Response to Begging in Victoria* (Public Briefing Note, 2016), available at: <https://justiceconnect.org.au/wp-content/uploads/2018/08/Asking-for-change-a-better-response-to-begging.pdf>.

<sup>138</sup> See, e.g. Michael Horn and Michelle Cooke, *A Question of Begging: A study of the extent and nature of begging in the City of Melbourne* (Hanover Welfare Services, June 2001); Philip Lynch, 'Begging for Change: Homelessness and the Law' [2002] *Melbourne University Law Review* 35; Philip Lynch, 'Understanding and Responding to Begging' [2005] *Melbourne University Law Review* 16; PILCH Homeless Persons' Legal Clinic, *We Want Change: Public Policy Responses to Begging in Melbourne* (June 2005); PILCH Homeless Persons' Legal Clinic, *We Want Change! Calling for the abolition of the criminal offence of begging* (November 2010); City of Melbourne, *Begging Engagement Pathways and Support Program Evaluation Report* (June 2015).



**For Change).**<sup>139</sup> In two years of Asking for Change, Justice Connect consulted with 30 individuals who beg or have begged in Melbourne's CBD. Of these 30 participants:

- 87% reported having mental health issues;
- 77% identified as experiencing homelessness (including 63% sleeping rough);
- 63% had previously been in custody;
- 60% reported suffering family or relationship breakdown;
- 33% identified as victim-survivors of family violence.

When asked how begging made them feel, the participants shared:



### Decriminalisation of begging in Tasmania

Justice Connect acknowledges that there have been some positive announcements towards the decriminalisation of poverty offences at a national level. A recent example includes the Tasmanian government's announcement that it will remove the current offence of begging from the *Police Offences Act 1935* (Tas).<sup>140</sup> By committing to decriminalise begging, the Tasmanian government has set a key example for Victoria in more appropriately responding to the underlying reasons why community members beg in the first place.<sup>141</sup>

Building on the welcome commitment to decriminalise public drunkenness in Victoria, repealing the offence of begging alms would further contribute to creating alternative and effective responses to begging, rather than reliance on costly and ineffective enforcement-based strategies (**Recommendation 6c**).

<sup>139</sup> 'Asking for Change: Calling for a More Effective Response to Begging in Victoria' *Justice Connect* (Web Page, 2016), available at: <https://www.justiceconnect.org.au/askingforchange>; See also, *Asking For Change: Calling for a More Effective Response to Begging in Victoria* (Public Briefing Note, 2016), available at: <https://justiceconnect.org.au/wp-content/uploads/2018/08/Asking-for-change-a-better-response-to-begging.pdf>.

<sup>140</sup> See *Police Offences Amendment (Begging) Bill 2018* (Tas); Will Hodgson, Premier of Tasmania, *Removing the offence of begging* (27 June 2019), available at: [http://www.premier.tas.gov.au/releases/removing\\_the\\_offence\\_of\\_begging](http://www.premier.tas.gov.au/releases/removing_the_offence_of_begging).

<sup>141</sup> Will Hodgson, Premier of Tasmania, 'Removing the offence of begging' (Media Release, 27 June 2019), available at: [http://www.premier.tas.gov.au/releases/removing\\_the\\_offence\\_of\\_begging](http://www.premier.tas.gov.au/releases/removing_the_offence_of_begging).

## Recommendation 6: Reduce justice system and enforcement-based responses to homelessness

People experiencing or at risk of homelessness are more vulnerable to enforcement and justice system interactions. To reduce justice system interactions for people experiencing homelessness, Justice Connect recommends:

- a. Implementing a Protocol for responding to people experiencing homelessness for enforcement agencies, which would:
  - avoid unnecessary, enforcement-based interactions with people experiencing homelessness;
  - ensure that where interactions do occur, they are appropriate and respectful;
  - support enforcement officers to use their discretion and consider alternative options to fines and charges when interacting with people experiencing homelessness; and
  - train and equip enforcement officers to make referrals to appropriate services as an alternative to fines and charges.
- b. Ensuring the intended repeal of the offence of drunk in public (s 13 of the *Summary Offences Act 1966* (Vic)) is implemented, along with creating an appropriate public health response model in consultation with impacted communities.
- c. Repealing the offence of begging in s 49A of the *Summary Offences Act 1966* (Vic).

## 5.2 More effective approaches to fines and homelessness

Each year, Justice Connect provides legal assistance to highly marginalised people who have received fines and infringements for 'poverty offences', including having an open container of liquor in public, begging, being drunk in a public place,<sup>142</sup> littering, and public transport conduct. Justice Connect intensively helps these clients to have their fines waived based on their homelessness, which is often interconnected with mental health issues, family violence and substance dependence.

In addition to undertaking direct legal casework, Justice Connect uses the insights from our work, including data and direct client perspectives, to inform and lead conversations about effective, best-practice responses to homelessness and fines.<sup>143</sup> This includes convening the Infringements Working Group, which is an alliance of 37 legal and financial counselling organisations committed to evidence-based reforms of the fines system that benefit our clients, government agencies and the courts. Most recently, Justice Connect has consulted with the Fines Reform Advisory Board (**FRAB**) and made a detailed, collective submission in January 2020.

It is this evidence and experience that informs Justice Connect's fines-related recommendations in this submission. Targeted reforms will help to ensure that people experiencing complex vulnerabilities are not penalised for their disadvantaged circumstances and reduce their chances of interaction with the justice system.<sup>144</sup>

<sup>142</sup> See part 5.1, 'The need to decriminalise poverty offences'.

<sup>143</sup> For example Justice Connect has informed and influenced legislative reform to recognise homelessness as a 'special circumstance' in the *Infringements Act 2006* (Vic) and the 'social justice initiatives' achieved through the *Fines Reform Act 2014* (Vic), including through our consumer-led campaign, 'In the Public Eye: Personal Stories of Homelessness and Fines'.

<sup>144</sup> Term of Reference 3.



## Early intervention to prevent people entering the fines system

Where possible, people who are homeless should be assisted to avoid entering the fines system in the first place. Enforcement officers should be resourced to properly exercise their discretion, identify the risk of over-enforcement and appropriately interact with vulnerable people. They can be better supported to do this through training, guidelines and protocols (such as the Proposed Victorian Protocol – see part 5.1 above). Jade's story below illustrates how easily people experiencing homelessness can become caught up in the fines enforcement process and how important it is for people to avoid entering the infringements system in the first place.

### *Young, rough sleeping, family violence victim-survivor resolves \$5000 in poverty offence fines with support to navigate the fines system*

When Jade first spoke with Justice Connect, she had just moved into a rooming house after previously sleeping rough. She was trying to sort out the \$5000 in fines she had received while living her life in public - travelling on public transport without a valid ticket, being drunk in public, smoking and swearing on train platforms. She also had two court ordered fines for begging totalling almost \$500. Her Newstart income would not come close to covering them.

Contacting Justice Connect and coming to an appointment with lawyers was an achievement for Jade. Her depression and severe anxiety made accessing services confronting and her substance dependence made long term engagement difficult. Jade had also experienced family violence from her on-off boyfriend. Her caseworker collaborated closely with Justice Connect to support Jade to address her health and housing issues and to establish a safe distance from her boyfriend.

Obtaining records of Jade's fines was another challenge. Centrelink listed 24 previous addresses for her and compiling documents to support a special circumstances application was a lengthy process. In the meantime, Jade continued to live in unstable housing and obtain more fines. Eventually, Justice Connect was able to submit two applications for review. Five months later, Jade's Magistrates' Court special circumstances hearing was scheduled. The matter was adjourned for 6 months on an undertaking with conditions, including that Jade attend drug and alcohol counselling and not get any more fines. Jade complied with the conditions and her fines were dismissed, while a manageable payment plan was established for her remaining begging fines. Following Justice Connect's wrap-around help, Jade said she was *'doing well'*, having moved into public housing, connected with a psychologist and having recently become engaged.

As Jade's story demonstrates, punitive approaches to homelessness impose an unmanageable burden on struggling individuals, without achieving the desired results, and unnecessarily consume the already limited resources of government, the justice system, and the legal assistance, financial counselling and community-service sectors.

## Improving the implementation of the *Fines Reform Act 2014* (Vic)

From 31 December 2017, Victoria's fines system substantially changed with the full commencement of the *Fines Reform Act 2014* (Vic) (**FR Act**). The FR Act also amended substantial parts of the *Infringements Act 2006* (Vic) (**Infringements Act**). These reforms introduced various 'social justice initiatives', including the Family Violence Scheme and the Work and Development Permit scheme, which are aimed at providing fairer and more flexible ways for people experiencing homelessness and other special circumstances to address their fines.

However, as it stands, the fines system is not working effectively in practice and the positive intentions of the FR Act's social justice initiatives have not yet been realised.<sup>145</sup> Justice Connect acknowledges that a number of the challenges in implementing that FR Act are due to information technology system issues at Fines Victoria, but many of the difficulties also relate to legal, policy and practice-based issues, which are unintentionally continuing to entrench marginalised Victorians in the fines system.

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<sup>145</sup> Term of Reference 3.



## ***Special circumstances applications - nexus requirement***

Victoria's special circumstances system allows people experiencing homelessness, and other conditions or circumstances, to have their fines reviewed by Fines Victoria and withdrawn by enforcement agencies. To meet the definition of 'special circumstances' under s 3 of the Infringements Act, applicants must prove a direct causal link between the conduct constituting the offence and the homelessness or other circumstance (**nexus test**). This current nexus test excludes many vulnerable people with fines from accessing the special circumstances scheme, particularly as appropriate evidence of the nexus can be extremely difficult to obtain. Sometimes this is because the person was not accessing treatment or assistance at the time, or because a health or support service do not feel able to comment retrospectively on the causal link between a person's circumstances and their offending behaviour (particularly as fines are often years old).

Where special circumstances are significant and likely to be persistent, Justice Connect submits that adding an alternative limb to the nexus test would ensure access to the scheme for people who are unable to produce evidence of the nexus. This alternative limb, in effect a 'prognosis' test, would operate where a person can establish that their condition is "likely to be significant and longstanding" or where they suffer from a "severe episodic illness", together with other factors such as where their illness and disadvantaged status makes management of their fines difficult (**prognosis test**). As with the nexus test, this would need to be established by a support letter or report from a qualified professional.

Applicants would then be able to choose which arm of the test they attempt to meet – either the nexus test or the prognosis test – ensuring that a special circumstances application is available to some of the most complex and vulnerable Victorians (**Recommendation 7a**).

When fines are not withdrawn by enforcement agencies after a successful special circumstances review application, the Special Circumstances List at the Melbourne Magistrates' Court has provided highly disadvantaged people with a therapeutic setting to appropriately address their infringements for over a decade. The need to continue the Special Circumstances List's operation is further discussed at part 5.3 below.

## ***Making the current Family Violence Scheme more accessible***

The Family Violence Scheme (**FVS**) is an important new option for people who have experienced family violence and who have accrued fines as a result of family violence.<sup>146</sup> An application can be made to the FVS for the fine to be withdrawn if a person is a victim-survivor of family violence, and the family violence 'substantially contributed' to their inability to control the conduct that constitutes a FVS eligible offence.<sup>147</sup>

Despite the positive intentions of the scheme, Fines Victoria's interpretation and application of the FVS to date is limiting this option and causing victim-survivors of family violence to get caught up in the fines system.

### **Correctly interpreting "substantially contributed"**

Fines Victoria's current position is that the FVS application must establish a direct link between the family violence and the applicant's inability to control the offending behaviour, and that 'substantially contributed' means that the family violence was occurring *at the time of the offence*. As a result, Fines Victoria have rejected a number of applications because the family violence was not the *direct* cause of the person being unable to control conduct constituting an offence, or where the family violence was not current at the time of offending.

Justice Connect's view is that Fines Victoria's current interpretation of the FR Act is legally incorrect, and that Fines Victoria must correctly interpret and apply the meaning of 'substantially contributed' so that eligible victim-survivors are able to access the FVS.

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<sup>146</sup> See Part 2B of the FR Act.

<sup>147</sup> FR Act s 10M. This section also enables a victim-survivor of family violence to nominate the driver responsible for the FVS eligible offence. See also s 10T(1)(c)(i) of the FR Act, where the application needs to establish that the family violence 'substantially contributed' to the person's ability to control the conduct that constituted the offence.





## Reducing the evidentiary burden on victim-survivors

The level of detail required in the FVS application form is also overly onerous. The current FVS application form requires clients to include a statutory declaration, along with other supporting documents that sets out their experience of family violence. As seen through former Justice Connect client Elizabeth's story below, it is clear that repeating experiences of family violence in extensive detail through the FVS application process is re-traumatising for victim-survivors.

### *Family violence victim-survivor re-traumatised by having to provide detailed account of her experiences for FVS application*

When Elizabeth came to Justice Connect for help with fines that she had received for driving a vehicle while she was experiencing family violence, she found it very difficult to talk to the lawyer about her circumstances.

For this reason, Justice Connect needed to re-schedule Elizabeth's appointment on four separate occasions. Elizabeth became upset and distressed each time she was asked to recount her experience of family violence to the lawyer for the purposes of making the statutory declaration required for her application under the Family Violence Scheme. Although Elizabeth eventually lodged her FVS application after further support from her Justice Connect lawyer and social worker, she expressed that the detailed evidence required had placed a heavy burden on her.

Justice Connect recommends that supporting material provided with FVS applications (such as family violence intervention orders, or support worker letters attesting to the existence of the family violence at the time the fines were incurred) should sufficiently address the required nexus regarding family violence, and that the statutory declaration required as part of the application should be brief or simply confirm the experience of family violence as described in the supporting material (**Recommendation 7b**).

## **Amending the seven-day notice period under the FR Act**

The FR Act also introduced significant changes to the functioning of seven-day notices, where the Sheriff provides people facing fines with a seven-day notice as a warning that infringement warrants are imminently going to be executed. Through Justice Connect's work, we see that many vulnerable people do not take action to address their fines until a Sheriff's Officer personally engages with them.

Under the new system, the majority of options to deal with fines, including enforcement review, payment arrangements, the Family Violence Scheme and Work and Development Permit scheme, are all extinguished with the expiry of the seven-day notice.<sup>148</sup> Under the old system, a person's options to deal with their infringements remained open to them until a Sheriff executed an infringement warrant (often well after the expiry of the seven-day notice period). Justice Connect understands this was an unintended consequence of the FR Act reforms process, as the previous seven-day notice scheme was not clearly understood.

Depending on how quickly a Sheriff engages, the post-FR Act system can leave people with as little as 77 days from the issuing of their infringement to take action. This is an unreasonably short amount of time that locks vulnerable people out of the options designed to exit them from the fines system. Further, due to the complexities of disadvantaged community members, engaging with a legal service or other agency within seven days of the service of the notice is highly challenging and unlikely.<sup>149</sup>

In order to address this issue, Justice Connect recommends legislative reform to extend the seven-day notice period to 28 days, so that marginalised people can have certainty and a more reasonable time period to access meaningful options for their fines. If this extended time period is not possible, Justice Connect strongly encourages legislative

<sup>148</sup> FR Act ss 10B(2)(a), 10O(a), 32(4)(a), 42(3)(b)(i).

<sup>149</sup> The seven-day notice itself also does not provide information about WDPs, enforcement review or the Family Violence Scheme and the circumstances in which those applications can be made.





reform to revert to the pre-FR Act system, so that access to the different options to address fines is only extinguished after an enforcement warrant has been executed (**Recommendation 7c**).

### Proposed 'Pocket Resource' for Sheriff's Officers

In order to ensure that the FR Act is properly implemented, Justice Connect recommends that Sheriff's Officers be provided with a Proposed 'Pocket Resource' to give to debtors on the spot, which educates them about the effect of seven-day notices (**Recommendation 7d**). The Proposed Pocket Resource, which is provided at **Annexure 3**, provides the following benefits, and should be implemented as a priority alongside related training and support for Sheriff's Officers:

- It is in plain English and is easier to understand for people with limited English reading proficiency;
- It sets out more clearly the risks of doing nothing and encourages readers, in simple language, to act quickly;
- It very clearly states where to go for free legal information and advice;
- It alerts readers to personal circumstances which will determine which options are available to them, which is more meaningful and likely to connect with readers.

Justice Connect recommends that Sheriff's Officers be required to provide this Proposed Pocket Resource to vulnerable Victorians alongside the seven day notice. As recommended at part 5.1 above regarding enforcement agencies, Sheriff's Officers should also receive additional supports, including tailored training and clear, consistent and transparent guidelines, to exercise their available discretion under the FR Act when interacting with people experiencing homelessness and other special circumstances.

## Taking a more equitable approach through concession-based infringements

A 'one-size-fits-all' approach to the amount charged for infringements in Victoria disproportionately impacts vulnerable Victorians on low incomes and only serves to limit their chances of getting out of the system. Given that the Centrelink Newstart Allowance, which is currently \$279.50 a week,<sup>150</sup> has not been raised in any substantial way for 25 years<sup>151</sup> and amounts to 37.5% of the pre-tax national minimum wage,<sup>152</sup> even paying 50% of an infringement can be a crippling burden for marginalised community members.

NSW recently passed amendments as part of the *Fines Amendment Bill 2019* (NSW) (**NSW Fines Amendment Bill**), which aims to make it simpler and easier for the people in NSW to deal with their infringements.<sup>153</sup> Notably, the NSW Fines Amendment Bill permits an infringement to be reduced by 50% if the person is in receipt of a welfare payment and the Commissioner determines this reduction is appropriate. This change is designed to minimise the 'economically crippling' effects of the current NSW infringements system on disadvantaged people.

Justice Connect notes that this reform to the NSW infringements system also harmonises with the flexible approach to fines adopted by the Courts. A Court will generally take into account an individual's income, assets, expenses, dependents and personal circumstances in addition to other sentencing guidelines when hearing a plea in mitigation and when determining the size of a court fine. The Sentencing Advisory Council stated it was likely the establishment of a concessional penalty rate of infringement penalty could shift a significant number of people from cohorts of 'can't pay' to 'will pay', which could also avoid the cost of enforcement, the impact on the courts and support services. Previous research has also suggested that:

***"[f]ixed-rate infringement penalties disproportionately impact on those who are financially disadvantaged. Therefore, provisions should be implemented that allow those in financial hardship to apply for a standard concession rate. Those who have a concession card ...should be immediately issued with a concession fine amount."***<sup>154</sup>

<sup>150</sup> 'Newstart Allowance: How much you can get', *DHHS* (Web Page, 30 September 2019), available at:

<https://www.humanservices.gov.au/individuals/services/centrelink/newstart-allowance/how-much-you-can-get>.

<sup>151</sup> 'Newstart is not working', *Raise the Rate* (Web Page, 25 November 2019), available at: <https://raisetherate.org.au/>.

<sup>152</sup> Australian Fair Work Commission, *Order – Annual Wage Review 2018-19* (20 June 2019), available at:

<https://www.fwc.gov.au/documents/wage-reviews/2018-19/decisions/c20191-order.pdf>.

<sup>153</sup> See, e.g. The Greens New South Wales, 'Fines aren't fair but today they're a little fairer' (Media Release, 22 October 2019), available at:

<https://greens.org.au/nsw/news/fines-arent-fair-today-theyre-little-fairer>.

<sup>154</sup> Bernadette Saunders et al, *An Examination of the Impact of Unpaid Infringement Notices on Disadvantaged Groups and the Criminal Justice System – Towards a Best Practice Model* (Monash University, 2013) 12.



The introduction of a concession-based infringements scheme in Victoria would significantly benefit the fines system, and given the higher volume of fines debt due to the state's tolling network, Justice Connect suggests that Victorians reliant on a Centrelink Low Income Health Care Card should face a rate of 20% of the infringement penalty. For those who are eligible for a concessional-based rate, Justice Connect recommends that associated fees and costs are waived when a person pays in full, or establishes and completes a payment arrangement, for the infringement penalty amount (**Recommendation 7e**).

### Recommendation 7: Decrease the burden of fines on people experiencing homelessness

People experiencing or at risk of homelessness regularly face overwhelming fines and infringements for conduct that is intricately linked to their vulnerable circumstances. To reduce the burden of fines on people experiencing homelessness, Justice Connect recommends:

- a. Creating an additional limb to the 'special circumstances test', so that people experiencing homelessness or other special circumstances can exit out of the fines system at the earliest possible opportunity.
- b. Ensuring that Fines Victoria correctly and consistently interprets eligibility for the Family Violence Scheme and does not impose an overly onerous evidentiary burden on victim-survivors, improving accessibility and reducing the risk of re-traumatisation.
- c. Implementing legislative change to extend the seven-day notice period to 28 days, or in the alternative, reverting to the system prior to the full commencement of the *Fines Reform Act 2014* (Vic), so that access to the different options to address fines is only extinguished after an enforcement warrant has been executed.
- d. Requiring a proposed 'pocket resource' to be provided by Sheriff's Officers when issuing all seven-day notices. This could offer a clear, practical and direct way for people with complex needs to understand their options and to know the importance of taking prompt action to address their fines.
- e. Introducing concession-based infringements for financially disadvantaged Victorians who hold a Centrelink Low Income Health Card, which would be a rate of 20% of the infringement penalty.

## 5.3. Benefits of therapeutic justice for homeless Victorians

For those people experiencing homelessness or housing insecurity who do end up in the criminal justice system, we need to divert them out of the system as early as possible. In prioritising this early intervention, Justice Connect has developed an integrated practice model with a specialist criminal lawyer and social worker, recognising that diverting people away from the justice system requires legal, social and health responses.<sup>155</sup>

### Diversion of people experiencing housing insecurity out of the criminal justice system

The Criminal Justice Diversion Program (**Diversion**) provides highly vulnerable people with a therapeutic setting to appropriately address minor offences often directly linked to their experiences of housing insecurity. Diversion 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>156</sup> Ordering a Diversion plan allows the Magistrate to take into account

<sup>155</sup> Term of Reference 2.

<sup>156</sup> See, e.g. 'Diversion', *Magistrates' Court of Victoria* (Web Page, 26 November 2018), available at: <https://www.mcv.vic.gov.au/find-support/diversion>



each person's disadvantaged circumstances, including homelessness or mental health issues, intellectual impairments, family violence and substance dependence, when determining judicial outcomes.

Due to the nature of the charges faced by many of Justice Connect's clients, with offending often underpinned by poverty and other life-challenges, the opportunity to participate in the therapeutic setting of Diversion is often a desirable and sensible resolution. However, as it stands, police currently have complete discretion to consent to Diversion and there is no opportunity 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. As a result, many people experiencing homelessness who may be appropriate candidates are locked out of Diversion. The utilisation of Diversion over the last 13 years has gradually declined from 8.1% of sentenced cases in 2005-06 to 5.9% in 2017-18.<sup>157</sup>

In the first four years of Justice Connect's specialist criminal law program, Courting Justice, 19 clients accessed Diversion.<sup>158</sup> However, only six of these Diversion applications were prompted by police. Without the representation provided through Justice Connect, it is likely the other 13 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>159</sup> Importantly, as Annabell's story below demonstrates, Diversion can be used to support people living with complex needs in avoiding harsh judicial outcomes.

### *First-time offender with experience of homelessness helped to attend court and access diversion*

For her first 44 years, Annabell had never been in trouble with the law. She 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, as 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.

Justice Connect's HPLO social worker worked closely with Annabell and her Justice Connect criminal lawyer to develop an appropriate support plan. Annabell was granted a diversion based around ongoing support, allowing her to focus on her health and housing.

The multi-disciplinary supports from Justice Connect'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. 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 experiencing homelessness and enable them to exit the justice system earlier (**Recommendation 8a**).<sup>160</sup>

## **Retaining the Special Circumstances List at Melbourne Magistrates' Court**

As noted, the Special Circumstances List (**SC List**) at the Melbourne Magistrates' Court has provided highly marginalised people with a therapeutic setting to appropriately address their infringements for over a decade.

<sup>157</sup> 'Sentencing outcomes in the Magistrates' Court', *Sentencing Advisory Council* (Web Page, 8 August 2019), available at <https://www.sentencingcouncil.vic.gov.au/statistics/sentencing-statistics/sentencing-outcomes-magistrates-court>.

<sup>158</sup> See part 5.5, 'Courting Justice: Holistic criminal law outcomes for clients with complex needs', which discusses Courting Justice in detail.

<sup>159</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).

<sup>160</sup> Term of Reference 3.



The SC List carefully considered each person's circumstances, including family violence, drug and alcohol dependence, homelessness, mental health issues and intellectual impairment, when determining sentencing outcomes. It has functioned highly effectively to provide fair, efficient and rehabilitative sentencing outcomes for vulnerable community members as part of an infringements system that diverts marginalised people away from mainstream enforcement processes.

However, the Magistrates' Court has recently ceased actively listing any new matters in the SC List and Justice Connect is concerned about the following related consequences:

- The risk of vulnerable Victorians' matters proceeding to prosecution;
- The inconvenience and complexity of consolidating matters listed in open court; and
- Negative resourcing implications for the courts, government and the community-service sector.

Since the effective discontinuation of the SC List in 2019, if a special circumstances application is successful but enforcement agencies decide to prosecute, charges risk being dispersed across suburban and regional courts according to which court is closest to where the offence occurred. As demonstrated by Kelly's story below, a person may end up with dozens of different court dates and locations when seeking to resolve their infringements based on special circumstances enforcement review.

***Aboriginal woman who has experienced homelessness, family violence and mental health issues faces the prospect of 23 different court dates to resolve her infringements***

Kelly is a 30 year old Aboriginal woman with a history of experiencing homelessness, family violence and sexual abuse since the age of twelve, along with a drug dependence directly related to her past trauma. She has been diagnosed with borderline personality disorder and post-traumatic stress disorder.

Kelly has 23 different infringements, the majority of which relate to driving an unregistered vehicle without a licence during a period in which she was sleeping in her car. Justice Connect helped Kelly with her special circumstances enforcement review application for these infringements. The application was successful and Fines Victoria cancelled enforcement of the infringements based on Kelly's special circumstances. These infringements were then referred back to Victoria Police in accordance with s37(1)(b) of the FRA. Victoria Police decided to prosecute each of the 23 infringements separately in open court. Each infringement has been listed to be heard on a different date in a local Magistrates' Court. Kelly will seek substantially the same consideration of her special circumstances in each case. The lawyers have been attempting to consolidate all of her matters into one hearing to minimise Kelly's distress in attending court and to maximise the efficient and proper administration of justice. However, the lawyers have not been contacted by Victoria Police when each case is listed, and they are solely reliant on the online Magistrates' Court list to identify each new hearing.

It is unclear if all of Kelly's cases will be listed by Victoria Police before the consolidated hearing date and consequently, it is likely that she will face multiple hearings where the same evidence will be led. Given her complex vulnerabilities, the prospect of multiple hearings in open court has been overwhelming for Kelly, which has placed both her mental health and physical safety at risk.

Justice Connect views the ongoing operation of the SC List as essential for the most marginalised people with infringement matters, as it helps Victorians to exit the justice system with long-term, therapeutic outcomes (**Recommendation 8b**).

## Recommendation 8: Improve access to diversion and therapeutic justice for homeless Victorians

To achieve better outcomes for those in contact, or at risk of contact, with the justice system, people experiencing homelessness need to be provided with therapeutic outcomes and diversion. Justice Connect recommends:

- a. 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.
- b. Ensuring the continued operation of the Special Circumstances List at the Melbourne Magistrates' Court to provide therapeutic sentencing outcomes for vulnerable Victorians with fines.

## 5.4 Closing the revolving door between prisons and homelessness

The latest Australian survey of prisoner health indicates that 33% were experiencing homelessness prior to incarceration and over half of prisoners expect to be homeless on release.<sup>161</sup> Between 2014 and 2019, the number of people imprisoned in Australia has grown by more than one quarter,<sup>162</sup> despite the national rates of crime dropping over that time.<sup>163</sup> Meanwhile, between 2011 and 2016, homelessness in Australia has also increased by 14%.<sup>164</sup> With imprisonment costing around \$231 each day per prisoner,<sup>165</sup> and the number of full-time prisoners increasing significantly each year,<sup>166</sup> it has never been more vital to stop the cycle of incarceration and homelessness.

This evidence is supported by insights from Justice Connect's Closing the Revolving Door Prison Project (**Prison Project**),<sup>167</sup> which holistically works towards break the links between prison, housing insecurity and the justice system. Of the 59 Victorian prisoners assisted through the Prison Project last year, over half had experienced family violence and previous homelessness, and a third had previously been incarcerated. Many of the clients also had caring responsibilities, and maintaining housing was a crucial factor in keeping their children out of state care.

During that time, 70% of our Prison Project's clients identified as female, highlighting the growing prevalence of women being held on remand, or short sentences, for offences directly related to their marginalised circumstances. This further emphasises the importance of exploring opportunities to reduce homelessness and improve community reintegration for Victorian prisoners.<sup>168</sup>

<sup>161</sup> AIHW Health of Prisoners (n 7) 13.

<sup>162</sup> See 'Prisoners in Australia', *Australian Bureau of Statistics* (Web Page, 5 December 2019), available at <https://www.abs.gov.au/ausstats/abs@.nsf/mf/4517.0>.

<sup>163</sup> See, 'Recorded Crime – Offenders, 2013-14' *Australian Bureau of Statistics* (Web Page, 25 February 2015), available at <https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4519.0~2013-14~Main%20Features~Key%20Findings~1;> 'Recorded Crime – Offenders, 2018-19' *Australian Bureau of Statistics* (Web Page, 6 February 2020), available at <https://www.abs.gov.au/ausstats/abs@.nsf/0/DA308C67766C3735CA257751001BD477?Opendocument>.

<sup>164</sup> Australian Bureau of Statistics, *Census of Population and Housing: Estimating homelessness* (2016), available at: <https://www.abs.gov.au/ausstats/abs@.nsf/mf/2049.0>; Term of Reference 1.

<sup>165</sup> Australian Productivity Commission, *Report on Government Services 2020*, Table 8A.19.

<sup>166</sup> See Australian Bureau of Statistics (n 162).

<sup>167</sup> See Justice Connect, 'Closing the Revolving Door prison project' *Justice Connect* (Web Page) available at: <https://justiceconnect.org.au/our-services/homeless-law/tenancy-legal-help-for-prisoners/>.

<sup>168</sup> Term of Reference 2.





## Preventing homeless Victorians from entering prison

### ***Disproportionate impact of current bail laws on people experiencing housing insecurity***

Justice Connect regularly sees the detrimental and disproportionate impact that the current bail laws have on homeless or at risk Victorians, and in this context, recommends that these laws be reviewed (**Recommendation 9a**). Being on bail automatically escalates the likelihood that someone will be remanded, even for very minor offences such as marijuana possession or shop theft.<sup>169</sup> The remand population continues to grow<sup>170</sup>, and for many people, even a short period in prison is enough to enter the spiral of incarceration and homelessness.<sup>171</sup> The current bail laws have had a particularly detrimental impact for women, with 42.4% of women in prison on remand.<sup>172</sup> Corrections Victoria have stated that the doubling of the women's prison population in the last five years (and the 240% increase in incarcerated Aboriginal and Torres Strait Islander women) has largely been driven by the increase of women being held on remand.<sup>173</sup> Eighty-eight percent of all women entering prison are doing so on remand,<sup>174</sup> with:

- 1 in 4 being homeless prior to entering custody;
- 2 in 3 being victim-survivors of family violence;
- 1 in 2 having not applied for bail.<sup>175</sup>

When considering the impact and effectiveness of bail laws, it is also important to consider the type of crimes people are being remanded in custody for. For women, the most common offence to be held in remand were property offences, such as shoplifting, handling stolen goods, or motor theft.<sup>176</sup> Hope's story below shows how the current bail laws have led to many of Justice Connect's clients being at real risk of remand for relatively low-level offences.

### ***Rough sleeper with neuropsychological disabilities supported through the ARC***

When she first met with Justice Connect, Hope was a 34 year old mother of two. After the onset of schizophrenia in 2014, she lost custody of her kids and was evicted from her family home. Hope then spent four years sleeping rough, and accrued a number of low-level shop-theft charges and poverty offences.

Before obtaining her transitional housing she was placed on bail for a charge of stealing a CD from a music store. Given her diagnosis, she was eligible for the therapeutic Assessment and Referral Court (**ARC**). Unfortunately, due to limited capacity in the ARC, Hope was placed on a waitlist until a clinician became available to support her. In the intervening period, she was charged with further shop-thefts of items and had to 'show compelling reasons' for committing offences while on bail. Justice Connect's criminal lawyer was not notified of this, and Hope spent over 3 weeks in custody before a court granted her bail.

After almost 6 months in the ARC waitlist, in late January 2019, Hope was allocated a clinician. Unfortunately, one month later Hope was charged with further shop-thefts of clothing items. She was then required to show 'exceptional circumstances' to get bail, which is the same threshold imposed on someone who is charged with murder, commercial drug trafficking or certain terrorism offences. Thankfully, the Magistrate recognised the context of her low-level offending and granted her bail (and recognised that refusing bail would prevent Hope from accessing the ARC). An ARC neuropsychological report revealed significant issues with Hope's memory and ability to control impulses. Hope has now been on bail for over 18 months, and has been receiving on-going support from ARC to continue her mental health recovery.

<sup>169</sup> Under section 30B of the *Bail Act 1977* (Vic) (**Bail Act**), it is an offence to commit an indictable offence whilst being on bail. There are a set of designated offences in 'Schedule 2', and any offence against the bail act (including committing an indictable offence while being on bail) is a schedule 2 offence. Indictable offences include burglary, intentionally causing injury and murder, but they also include less serious offences including: Possessing illicit drugs such as cannabis; Shoplifting; Handling stolen goods. In these circumstances, an offender must 'show compelling reasons' why their continued detention in custody is not justified. Further, if a person is on bail for a Schedule 2 offence, and it is alleged they committed a further Schedule 2 (or Schedule 1) offence, they are required to show 'exceptional circumstances' as to why their continued detention in custody is not justified.

<sup>170</sup> As at 30 December 2019, 2,978 Victorians in prison had not been sentenced. See 'Monthly Prisoner and Offender Statistics', *Corrections Victoria* (Web Page, 18 February 2020), available at: <https://www.corrections.vic.gov.au/publications-manuals-and-statistics/monthly-prisoner-and-offender-statistics-2019-20>.

<sup>171</sup> Federation of Community Legal Centres, *Home, Connection & Healing – Pathways to Mental Wellness, Royal Commission into Victoria's Mental Health System, Submission Paper 3 of 3* (July 2019) 25 (**Federation of Community Legal Centres, Submission Paper 3**), available at [https://d3n8a8pro7vnm.cloudfront.net/fclc/pages/666/attachments/original/1564038121/FCLC\\_Submission\\_-\\_Home\\_Connection\\_Healing.pdf?1564038121](https://d3n8a8pro7vnm.cloudfront.net/fclc/pages/666/attachments/original/1564038121/FCLC_Submission_-_Home_Connection_Healing.pdf?1564038121).

<sup>172</sup> 'Annual Prisoner Statistics Profile 2017-18: Table 1.2', *Corrections Victoria* (Web Page, June 2018), available at: <https://www.corrections.vic.gov.au/publications-manuals-and-statistics/annual-prisoner-statistical-profile-2006-07-to-2017-18>.

<sup>173</sup> Corrections Victoria, *Women in the Victorian Prison System* (Report, January 2019) 5, available at: [https://www.corrections.vic.gov.au/sites/default/files/embridge\\_cache/emshare/original/public/2019/03/71/021fe80ab/women\\_in\\_prison2019.pdf](https://www.corrections.vic.gov.au/sites/default/files/embridge_cache/emshare/original/public/2019/03/71/021fe80ab/women_in_prison2019.pdf).

<sup>174</sup> *Ibid.*, 7.

<sup>175</sup> *Ibid.*, 4.; Federation of Community Legal Centres, Submission Paper 3 (n 171) 26.

<sup>176</sup> *Ibid.*, 8; Federation of Community Legal Centres, Submission Paper 3 (n 171) 26.





To participate in the therapeutic ARC program, Hope needed to be subject to a grant of bail,<sup>177</sup> and she faced the genuine prospect of being remanded, which would have exacerbated her existing complexities. Justice Connect's multi-disciplinary legal services advocate strongly to ensure that clients such as Hope are not remanded, or only remanded for short periods. However, given the resource limitations and a significant increase in the number of remand applications,<sup>178</sup> duty lawyers have less time to get the required information they need from their clients to reach the current bail thresholds, which reduces the likelihood of securing bail.

### **The importance of bail support programs and access to housing**

Access to stable accommodation is a key factor to successfully secure bail, without which people can spend prolonged periods in prison. Currently, the need for secure housing options far outweighs supply, with limited crisis accommodation and no long-term housing options.

The Court Integrated Services Program (**CISP**), which commenced in 2009, provides valuable assistance for vulnerable Victorians in the criminal justice system, coordinating external referrals to:

- drug and alcohol treatment services;
- crisis and supported accommodation;
- disability and mental health services;
- acquired brain injury services; and
- Koori specific services.

The CISP assigns a case manager to the accused, who meets regularly with the accused to help them through the program, review their progress and provide updates to the Magistrate. The CISP can also begin at any stage, from the point of being charged – up until sentencing.<sup>179</sup> In Justice Connect's experience, the CISP is an invaluable program for our clients, as it provides support to find housing and offers the required level of flexibility to enable people to focus on their vulnerabilities, decreasing the likelihood of reoffending.<sup>180</sup>

Further bail reforms and access to bail support programs, such as CISP, are needed to ensure people experiencing housing insecurity are not caught up in the prison system unnecessarily, focusing particularly on those who would not have otherwise received a custodial sentence for the alleged offence (**Recommendation 9b**).<sup>181</sup>

### **Community Correction Orders – creating a more flexible and tiered approach**

Through Justice Connect's criminal law program, we have seen how difficult it can be for people with complex needs to complete a Community Corrections Order (**CCO**). Given the limited number of sentencing options available, CCOs are a key sentencing option that reduces the number of people being sentenced to imprisonment. However, as it stands, the CCO system is inflexible and rigid in meeting the needs of homeless Victorians.

For people experiencing homelessness, managing complex mental health needs, suffering family violence, dealing with addictions, caring for children and living with other complexities, completing a CCO can be extremely challenging, such as for our client John.

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<sup>177</sup> The Magistrates' Court website articulates that '[t]he accused person must be on bail at the time of the referral' into the ARC court: 'Assessment and Referral Court', *Magistrates' Court of Victoria* (Web Page, 20 November 2018), available at <https://www.mcv.vic.gov.au/about-us/assessment-and-referral-court-arc>.

<sup>178</sup> See, e.g. Adam Carey, 'Jails bursting with unsentenced prisoners as costs also soar', *The Age* (online, 23 April 2018), available at: <https://www.theage.com.au/politics/victoria/jails-bursting-with-unsentenced-prisoners-as-costs-also-soar-20180423-p4zb8p.html>.

<sup>179</sup> 'Bail support (CISP)', *Magistrates' Court of Victoria* (Web Page, 4 July 2019), available at <https://mcv.vic.gov.au/find-support/bail-support-cisp>.

<sup>180</sup> An evaluation conducted into the CISP conducted by the University of Melbourne found that: "...magistrates and other stakeholders showed a high level of support for the [CISP] and its outcomes; and, compared with offenders at other court venues, offenders who completed CISP showed a significantly lower rate of re-offending in the months after they exited the program". See State Government of Victoria, Department of Justice, *Court Integrated Services Program: Tackling the causes of crime, Executive Summary Evaluation Report* (Report, 2010), available at: <https://www.mcv.vic.gov.au/sites/default/files/2018-10/CISP%20tackling%20the%20causes%20of%20crime.pdf>.

<sup>181</sup> Federation of Community Legal Centres, Submission Paper 3 (n 171) 26.



### ***Man facing housing insecurity and mental health issues unable to complete community corrections order due to inflexible approach***

John was found guilty of persistently breaching an intervention order having sent numerous texts to his ex-partner over a period of weeks. In recognising the seriousness of breaching a Court order the court sentenced John to a Community Corrections Order. Attached to this was an order suspending John's driver's licence – the Magistrate had been concerned that John had disclosed drug use.

John had lived all of his life in a community on the outskirts of Melbourne. After the breakdown of his relationship John's mental health suffered. He could not work and his house was repossessed by the bank. Before being sentenced, John had been living out of his vehicle and had relied on that to get around. Given his licence was suspended, continuing to drive would place him at risk of further charges but also breaching his order. John's order was being managed by the local Corrections office. John did not have a mailing address and could not always be contacted on the phone as he was sleeping rough. John often lost track of time and appointments and often expressed that he was not sufficiently deserving of supports.

John soon recognised that there were limited supports available for a middle-aged man without any children in the outer suburbs. He chose to move to the CBD where more support was available. He did not know that the office managing his order could be transferred. Though John has taken steps to address his needs, he has not done this through Corrections, and they plan to charge him with breaching his order.

Though some people manage, many like John need extra support. For these people there should be scope for an order which considers the need for further support. Where more intensive support is required, case managers with lower caseloads, greater training and a greater capacity for outreach and specialised support should be available (**Recommendation 9c**). More therapeutic programs such as Wulgunggo Ngalu<sup>182</sup> (a CCO program for Aboriginal men) could be expanded to include:

- People seeking drug and alcohol rehabilitation
- Perpetrators of family violence
- Victim-survivors of family violence

## **Preventing homelessness for people exiting prison**

As discussed, Justice Connect sees first-hand the importance of access to post-release housing. In the last 12 months, our Prison Project had an 87% success rate in resolving tenancy legal issues and debts that are direct barriers to stable housing on release. This includes directly preventing 29 prisoners with complex needs from being evicted into homelessness, which represents a cost saving of around \$854,000 to the health, justice and welfare systems.<sup>183</sup> Twenty-three prisoners have also had over \$105,000 in housing debts waived, allowing them to focus on securing housing and community reintegration.

For people who have been in the criminal justice system, the harsh reality is that homelessness is more common, more likely to reoccur and lasts longer.<sup>184</sup> If former prisoners exit into homelessness, they are also twice as likely to return to prison within the first nine months of release.<sup>185</sup> Notably, 57% percent of our Prison Project clients in the last 12 months had previously experienced homelessness.

Not only does exiting prison without a home increase the likelihood of reoffending, but without an address to return to, many remand prisoners are not able to secure bail, and sentenced prisoners are not able to access parole. This leaves many people in prison who should or could be in the community. Given the current rate of recidivism sits at

<sup>182</sup> For information on Wulgunggo Ngalu see: [http://assets.justice.vic.gov.au/corrections/resources/61a8b7f8-d793-4432-a445-600d83384537/wulgunggodl2015\\_acc.pdf](http://assets.justice.vic.gov.au/corrections/resources/61a8b7f8-d793-4432-a445-600d83384537/wulgunggodl2015_acc.pdf)

<sup>183</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 Kaylene Zaretsky and Paul Flatau, AHURI, *The cost of homelessness and the net benefit of homelessness programs: a national study* (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>184</sup> Mark Wooden et al, University of Melbourne *Journey Home Research Report* (Report No. 6, 2015).

<sup>185</sup> Eileen Baldry et al, 'Ex-Prisoners, Homelessness and the State in Australia' (2006) 39(1) *The Australian and New Zealand Journal of Criminology*, 24.



45.6%,<sup>186</sup> and with the cost of incarceration around \$118,000 per person every year,<sup>187</sup> access to secure housing with supports is a critical component of tackling Australia's growing and costly imprisonment rate (**Recommendation 9e & 9f**).

### ***Sustaining public and community housing tenancies for prisoners on remand or short sentences***

For people in prison who are public housing tenants, DHHS allows them to be absent from the property and pay a reduced rent for up to 6 months, recognising the cost of prisoners losing their housing when they are imprisoned for short periods of time.<sup>188</sup> Extensions to the six month period can currently only be granted in exceptional circumstances. Some community housing providers also have similar policies covering tenants' temporary absences, though generally for shorter periods of up to three months.

Integrated legal and social work advocacy is pivotal in helping prisoners to secure temporary absences from public and community housing, particularly where a Notice to Vacate has also been issued. For longer-term absences, legal assistance is also essential for many prisoners to ensure that they do not lose their personal belongings and potentially accrue a housing debt.<sup>189</sup> Madeleine's story below demonstrates the role of intensive legal help in making sure that women exiting prison to have a home to go to on their release.

#### ***Aboriginal woman in prison granted parole after holistic legal services keep her in public housing***

When Justice Connect first spoke with Madeleine, a young Aboriginal woman in prison, she was distressed after being told by DHHS that she was being evicted from her public housing property. Madeleine had lived in public housing for 10 years and had never had any issues with her tenancy. After Madeleine had been incarcerated for 6 months, she received a letter from DHHS telling her that she had been absent from her property for more than the allowed 6 month period and would need to give up her housing. She was eligible for parole in 3 weeks and her parole officer was positive about her chances, but they knew there was no chance of it being granted if she had no home to go to. An Aboriginal woman in her thirties with substantial mental and physical health issues, a Centrelink income that would not cover private rental and no family she could stay with, Madeleine was at risk of post-release homelessness.

Madeleine's rent was also being charged at market rent and she fell into rental arrears. She was soon issued with a Notice to Vacate for arrears. Justice Connect's specialist lawyers began negotiations immediately, working with the Justice Connect social worker to secure brokerage for the arrears. They were able to avoid eviction, but DHHS advised they would issue a 'no specified reason' Notice to Vacate if Madeleine was not released at the earliest possible parole date. Justice Connect extensively negotiated for DHHS to provide the parole board a letter advising that they would allow a short extension on the temporary absence period if she was released. Madeleine's application for parole was successful and she was allowed to go home.

Through Justice Connect's negotiations with DHHS, Madeleine had the chance to reconnect with her community. However, without targeted legal intervention, she would have been one of the 54% of prisoners who exit prison into homelessness.<sup>190</sup> Appropriate and flexible temporary absence policies are essential for both public and community housing providers. This is because most Victorians spend only short periods in prison,<sup>191</sup> and many prisoners are

<sup>186</sup> Australian Productivity Commission, *Report of Government Services 2019* Part C Table CA.4, available at: <https://www.pc.gov.au/research/ongoing/report-on-government-services/2019/justice#attachtables>

<sup>187</sup> Australian Productivity Commission, *Report on Government Services 2019*, Chapter 8, Table 8A.18, available at: <https://www.pc.gov.au/research/ongoing/report-on-government-services/2019/justice/corrective-services>

<sup>188</sup> DHHS, *Tenancy management manual - Temporary absence operational guidelines*, available at <https://providers.dhhs.vic.gov.au/tenancy-management-manual-temporary-absence-operational-guidelines-word>.

<sup>189</sup> Federation of Community Legal Centres, *Home, Connection & Healing – Pathways to Mental Wellness*, *Royal Commission into Victoria's Mental Health System, Submission Paper 1 of 3* (July 2019) (**Federation of Community Legal Centres Submission Paper 1**) available at [https://d3n8a8pro7vnmx.cloudfront.net/fclc/pages/666/attachments/original/1564038121/FCLC\\_Submission\\_-\\_Home\\_Connection\\_Healing.pdf?1564038121](https://d3n8a8pro7vnmx.cloudfront.net/fclc/pages/666/attachments/original/1564038121/FCLC_Submission_-_Home_Connection_Healing.pdf?1564038121), 17.

<sup>190</sup> AIHW *Health of Prisoners* (n 7) viii.

<sup>191</sup> Seventy-seven percent of sentenced people spend less than 12 months in prison. 'Annual Prisoner Statistics Profile 2017-18: Table 3.7', *Corrections Victoria* (Web Page, June 2018), available at: <https://www.corrections.vic.gov.au/publications-manuals-and-statistics/annual-prisoner-statistical-profile-2006-07-to-2017-18>.



now on remand.<sup>192</sup> Efforts should be made to maintain the housing they have, whether through brokerage programs or temporary absence policies that reduce rent.

### ***Addressing housing debts helps people exit prison into safe homes***

Research indicates that debt is one of the most significant and under-addressed legal problems for Australia's prison population.<sup>193</sup> For many prisoners, unpaid debts reduce their ability to reintegrate post-release and increase their likelihood of reoffending.<sup>194</sup>

Through Justice Connect's tailored work with prisoners, we identified that debts to DHHS for rental arrears, repairs or compensation were a significant barrier to prisoners being offered public housing on release. Prisoners with unpaid charges (including debts for compensation claims) were not being offered public housing unless certain repayment conditions were met.<sup>195</sup> Brett's story below shows just how imperative having a housing debt waived can be for people with complex vulnerabilities.

#### ***Intensive legal representation ensures prisoner with complex vulnerabilities has a clean slate to access housing and reunite with his son***

Brett, who has long-term mental health issues and has previously experienced family violence, was referred to Justice Connect by a Housing Pathways worker in prison, when DHHS requested he pay \$11,200 in compensation for maintenance at his recently vacated property.

The damage had been caused by unknown third parties when they squatted in his property during an earlier period of incarceration, and Brett was concerned that he was unfairly being held responsible for the related maintenance costs. Brett was particularly worried that he would not receive an offer of housing due to the debt, impacting directly on his chances of reuniting with his five year old son.

Justice Connect's lawyers advised Brett about his rights and options, and negotiated with DHHS to have the debt reviewed. Through this intensive advocacy, DHHS was satisfied that the property damage had been caused by third parties and agreed to waive the entire debt. During our engagement with DHHS, it became apparent Brett also had a rent arrears debt of \$1579. Through Justice Connect's legal intervention, Brett's rent was recalculated based on the DHHS temporary absence policy, resulting in the rent arrears being reduced by over \$500.

Brett expressed his relief, and through Justice Connect's Prison Project partnership pathways, he was linked into post-release housing services, allowing him to focus on reconnecting with his son.

### ***Increased social housing supply for prisoners***

Almost 44 per cent of prisoners released in Victoria return to jail within two years, often due to lack of housing on release, at a cost of \$118,000 per prisoner per year. Without access to suitable and safe housing with supports upon release, prisoners are being set up to fail. Given the high-level of vulnerability experienced by prisoners, an investment in housing and wrap-around supports would reduce the risks of prisoners cycling in-and-out of prison when their needs could be better met in the community.

As discussed in part 3.1, suitable supply of social housing is critical to break the cycle between prisons and homelessness. In line with the Victorian Ombudsman's recommendations, options for addressing post-release housing for prisoners, including expansion of existing services such as the Judy Lazarus Transition Centre, the development of a single housing service point,<sup>196</sup> and resourcing rapid rehousing are vital components in the reintegration of prisoners (**Recommendation 9f**).

<sup>192</sup> Federation of Community Legal Centres, Submission Paper 1 (n 189) 17.

<sup>193</sup> Anne Grunseit, Suzie Forell and Emily McCarron, *Taking justice into custody: the legal needs of prisoners* (Report, Law and Justice Foundation of New South Wales, 2008) 76; Justice Connect, *Prisoners Scoping Study: Investigating the Feasibility of a PILCH Civil Law Program for Prisoners* (Report, Justice Connect Homeless Law, 20 July 2012).

<sup>194</sup> Eileen Baldry et al, *Ex-prisoners and Accommodation: What Bearing Do Different Forms of Housing Have on Social Reintegration for Ex-Prisoners?* (Final Report No 46, AHURI, August 2003) 4.

<sup>195</sup> DHHS, *Allocations Manual: Introduction and Conditions of Public Housing Offers* (2017), 10.

<sup>196</sup> Victorian Ombudsman, *Investigation into the rehabilitation and reintegration of prisoners in Victoria* (Report, September 2015) 156.



## ***More housing support workers for people in prison***

The Corrections Victoria Housing Pathway Initiative is the key program in relation to post-release housing for prisoners. Through this initiative, Initial Assessment and Planning Workers (**IAP**) are employed to help prisoners get their Victorian Housing Register application up to date and discuss possible housing options on release. Despite a steep rise in prisoners over the last decade,<sup>197</sup> the resourcing of IAPs and housing workers remains low,<sup>198</sup> with long waiting lists and overstretched staff.

More housing workers should be employed who – together with legal services – could prevent prisoners exiting prison into homelessness.<sup>199</sup> Funding should also be increased for housing programs in Victorian prisons, in particular programs directed at prisoners on remand or short sentences, improving all prisoners' access to pre-release housing. These programs should continue to include brokerage funds to help sustain tenancies while people are in prison, and to assist prisoners to access post-release housing with supports (**Recommendation 9d**).

## ***Holistic, post-release services help to prevent homelessness and criminalisation***

For people exiting prison, there are significant legal and non-legal issues which can create barriers to reintegration.<sup>200</sup> In addition to social, health, education and employment issues<sup>201</sup>, unresolved civil legal issues can often increase prisoners' disadvantage upon release into the community.<sup>202</sup> While support services and programs exist for post-release prisoners for non-legal needs, there are by comparison far fewer avenues of support for legal needs, and more are required (**Recommendation 9e**).<sup>203</sup>

The costs incurred by the community if the legal needs of current and former prisoners are not addressed can be ongoing and significant. These costs include increased spending on prison infrastructure, costs incurred through the justice system (e.g. policing and attendance at court) and social costs (e.g. a workforce not at full capacity).

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<sup>197</sup> See Sentencing Advisory Council, *Victoria's Prison Population 2005-2016* (Report, November 2016), available at [https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Victorias\\_Prison\\_Population\\_2005\\_to\\_2016.pdf](https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Victorias_Prison_Population_2005_to_2016.pdf).

<sup>198</sup> In June 2015, there were 8.5 staff in these roles across all Victorian prisons, the same number as when the initiative was introduced in 2001. See Victorian Ombudsman, *Investigation into the rehabilitation and reintegration of prisoners in Victoria* (n 193) 106.

<sup>199</sup> See Lou Schetzer, Public Interest Advocacy Centre, *Beyond the Prison Gates – The experiences of people recently released from prison into homelessness and housing crisis*, (Report, 31 July 2013), available at [https://www.piac.asn.au/wp-content/uploads/2013.05.10\\_hpls\\_report.pdf](https://www.piac.asn.au/wp-content/uploads/2013.05.10_hpls_report.pdf).

<sup>200</sup> Annette Olesen, 'Ex Prisoners' Need for Legal Aid in Denmark' in Ole Hammerslev and Olaf Halvorsen Rønning (eds), *Outsourcing Legal Aid in Nordic Welfare States* (Denmark University Press, 2018).

<sup>201</sup> Law Council of Australia, *Prisoners and Detainees* (Consultation Paper, August 2017).

<sup>202</sup> PILCH, *Prisoners Scoping Study: Investigating the feasibility of a PILCH civil law program for prisoners* (Report, July 2012) 11.

<sup>203</sup> *Ibid.*





As a result, Justice Connect continues to prioritise sustaining and securing housing for prisoners post-release, with an increasing focus on delivering impactful, integrated services when people exit prison. With research suggesting that the risk of homelessness increases for prisoners 6 months after release,<sup>204</sup> Justice Connect is currently scoping best-practice models of integrated post-release support with a view to supporting community reintegration and reducing the risk of reoffending. Tanya's story below highlights the importance of wrap-around post release supports.

### ***Aboriginal woman with a history of homelessness, incarceration and state care exits into post-release housing through holistic legal services***

Tanya is an Aboriginal woman who lost both parents by the time she was 12 years old. From this young age she entered a spiral of state care, homelessness and incarceration. The trauma and grief Tanya experienced led to substance dependency. After years of couch surfing, sleeping rough and incarceration, Tanya secured transitional community housing, which she described as *"the best thing to happen to me"*. The housing offered security and was instrumental to reducing her offending and substance abuse.

When Tanya's uncle, who was a father figure, passed away she experienced a relapse, became paranoid and disengaged with support services. When Tanya was referred to Justice Connect by a housing support service in prison, she had received a 'no specified reason' Notice to Vacate for failing to engage with her support worker, which was a requirement of her transitional housing. The Notice to Vacate was due to expire two months prior to her release date. Justice Connect negotiated with the community housing landlord to withdraw the Notice to Vacate, including suggesting steps to support engagement post-release. During negotiations it became clear that Tanya was required to lodge an updated housing application, another requirement in transitional housing. Justice Connect worked with the support worker to ensure the application was lodged. Due to Justice Connect's holistic advocacy, the housing provider agreed not to enforce the Notice to Vacate. Tanya was released into her transitional housing property and engaged with post-release support.

## **Recommendation 9: Close the revolving door between prisons and homelessness**

People in prison are more likely to face post-release housing insecurity, creating a significant barrier to community reintegration and contributing to the risk of reoffending. To break the cycle between prisons, homelessness and the justice system, Justice Connect recommends:

- a. Reviewing Victoria's current bail laws and their impact on people experiencing homelessness.
- b. Extending initiatives such as the Court Integrated Services Program and other bail support programs across Victoria.
- c. Creating a more flexible, tiered and responsive approach to Community Corrections Orders with built-in supports to increase compliance and completion rates.
- d. Increasing access to housing workers in prison so that Victorians have better community reintegration outcomes.
- e. Providing pre and post-release integrated legal services that support a person to access and maintain housing on release from prison.
- f. Improving and lengthening post-release support options, and resourcing rapid rehousing in safe accommodation for Victorians leaving institutional settings, so that community members do not exit into homelessness.

<sup>204</sup> Julie Moschion and Guy Johnson, 'Homelessness and Incarceration: A Reciprocal Relationship?' (2019) 35(4) *Journal of Quantitative Criminology* 855.





## 5.5 Achieving more just lives through client-centred legal services

Victorians who experience 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 people's vulnerabilities. Through Justice Connect's work, we have seen that many people experiencing or at risk of homelessness are facing personal and financial complexities that make it impossible for them to address their legal issues without tailored, integrated legal and non-legal supports.

### Tailoring legal services to the complex needs of people experiencing homelessness

The interlinked and complex vulnerabilities often experienced by those who are homeless or at risk generally increases an individual's legal needs and the intensity of legal help required.<sup>205</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>206</sup>

Interaction with the justice system for those facing housing insecurity can be an overwhelming experience, with many having an inherent distrust of the justice system and often believing that legal problems may simply 'disappear' if ignored.<sup>207</sup> Women can find it difficult to access and navigate homelessness services and the justice system, and women who are homeless due to family violence can face particularly challenging psychological barriers.<sup>208</sup>

Based on Justice Connect's frontline work with homeless or at risk community members, we know that many clients struggle to access or attend court due to the complexities of their day-to-day lives. Particularly for those with multiple vulnerabilities, the inability to obtain tailored legal assistance prior to their hearings creates uncertainty and increased pressure, resulting in failures to appear at court.

### Justice Connect's multi-disciplinary practice

As discussed, many Victorians who are experiencing or at risk of homelessness require intensive, client-centred and multi-disciplinary support, and service models also need to be responsive to the range of different non-legal issues presented by people who are homeless. Homeless Victorians may not recognise that their problems are legal, or not know where to go for the appropriate legal support.<sup>209</sup> Given the vulnerable complexities of this priority cohort of justice system-users, non-legal services can provide a critical element in ensuring that homeless Victorians are able to access, understand and navigate the court process.

Holistic legal services that include community-service professionals create efficiencies within legal environments by assisting to identify legal issues and make appropriate referrals for legal assistance, as well as addressing some of the underlying causes of clients' contact with the justice system. For people experiencing or at risk of homelessness,

<sup>205</sup> See 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) 32, available at <https://www.legalaid.vic.gov.au/about-us/news/reflecting-on-intersections-between-mental-health-and-legal-issues>

<sup>206</sup> Victorian Government, *Access to Justice Review: Summary Report* (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)

<sup>207</sup> Pascoe Pleasence et al, Law and Justice Foundation of NSW, *Reshaping Legal Assistance Services: Building on the evidence base* (Discussion Paper, April 2014) 32.

<sup>208</sup> The Justice Project – People who are homeless (n 6) 29.

<sup>209</sup> Legal Australia-Wide Survey: Legal Need in Australia (n 14) 187. 12-17% of people seek legal advice, 27% see a health care professional like a doctor or psychologist.



having an ongoing social worker assisting them with their justice system interactions can reduce the emergence of new legal issues and increase the potential for positive and sustainable outcomes for clients.<sup>210</sup>



### ***Homeless Persons' Liaison Officer: specialised social work program***

Justice Connect's multi-disciplinary practice includes the specialised Homeless Persons' Liaison Officer (**HPLO**) program, which aims to reduce the burden on the justice system presented by people cycling through courts and tribunals unassisted and unsupported. The HPLO social worker has a unique perspective on the intersection of legal issues and homelessness, as the first non-legal program in Victoria to solely target this client group.

Since being established by Justice Connect in 2010, the HPLO program has supported over 1200 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>211</sup> Former client Steve 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'*

<sup>210</sup> Term of Reference 2.

<sup>211</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.

The HPLO also has a targeted focus on housing needs, helping people to both exit homelessness and to sustain safe housing. Sandy's case below illustrates the crucial role that the HPLO played in enabling her to access the justice system effectively and resolve her diverse needs.

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

Sandy connected with Justice Connect when she and her three young children were facing eviction. Sandy had experienced family violence for more than 10 years. Despite having an indefinite family violence intervention order 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.

Justice Connect'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 Justice Connect 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. Justice Connect'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 – housing options, safety and mental health recovery planning, material aid, petrol vouchers to see her children and connections to other services.

The HPLO also connected Sandy to Justice Connect's specialist criminal lawyer, and they 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, she was housed and finally reunited with her children.

### ***Courting Justice: Holistic criminal law outcomes for clients with complex needs***

Our HPLO work also helped Justice Connect to recognise that many homeless or at risk Victorians interact with the criminal justice system, but struggle to access ongoing criminal legal help for their issues. Over the last four years, our Courting Justice criminal law program has helped 312 highly complex clients with casework, advice or in-court representation for their criminal legal issues, with a focus on diverting people out of the criminal justice system at the earliest opportunity.

The Courting Justice model recognises that the clients we are working with require additional time and attention both at court and in the lead up to court due to their complex issues, which include one or more of primary homelessness, acute mental health concerns, family violence and substance dependence. These clients often require outreach and a high level of contact and flexibility from their legal representatives. In the last year, over half of Courting Justice clients were sleeping rough at the time they were charged with offences. This is an increase of 31% from the preceding year. Of the clients assisted with ongoing criminal legal casework, 91% had mental health issues and 71% had substance dependence issues, reflecting the increasing complexity of Courting Justice's clients.

For clients with a high level of vulnerability, particularly rough sleepers, there are multiple barriers to engaging and accessing the criminal justice system. The HPLO plays a vital role in preparing these clients for court by addressing non-legal issues early, facilitating clients attending court, and assisting clients to comply with court orders to prevent them returning to the justice system. In the last year alone, 100% of the HPLO's clients with Magistrates' Court matters successfully attended court and did not have warrants issued when the HPLO was involved.

One of Justice Connect's pro bono lawyers also noted the benefits of Justice Connect's multi-disciplinary model:

*‘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.’*

With intensive legal and non-legal services, Justice Connect’s most isolated and transient clients are able to successfully access, engage and exit the court system (**Recommendation 10a**). For James, who was assisted by Justice Connect 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 Justice Connect 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.’*

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

Justice Connect’s integrated practice model also involves embedding staff lawyers and social workers in community-based homelessness and health locations to reach the most transient and isolated people in our community.

As suggested above, Justice Connect’s ‘Under One Roof’ is an innovative co-location project involving a specialist lawyer and embedded partnerships with Launch Housing, Sacred Heart Mission – Journey to Social Inclusion and Project Greenlight. 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. Over three years, the frequency of referrals from caseworkers through Under One Roof increased by 25%.<sup>212</sup> Justice Connect 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 impact of holistic, multi-disciplinary services is reflected by former client Erin’s comments:

*‘[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.’*

<sup>212</sup> Justice Connect, *Under One Roof – Three years of embedding legal services to make justice accessible for homeless clients* (Report, November 2018), available at <https://justiceconnect.org.au/wp-content/uploads/2018/12/Homeless-Law-Under-One-Roof-3-Year-Report-Nov-2018.pdf>.



The Under One Roof model was profiled in the Victorian Government's 2016 *Access to Justice Review*<sup>213</sup> and the Law Council of Australia's 2018 *Justice Project Report*<sup>214</sup> as providing a best practice model of assistance for people experiencing disadvantage. The Justice Project 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 are more likely to experience multiple legal and non-legal needs, and often initially seek legal help from a trusted non-legal professional.'*<sup>215</sup>

Through Justice Connect's co-locations and deep partnerships, we know that providing people experiencing housing insecurity with targeted, flexible and collaborative assistance leads to better engagement with the justice system and fairer outcomes (**Recommendation 10b**). The value of these integrated models is evident in the wrap-around outcomes achieved for Holly, a rough sleeping single mother and family violence victim-survivor. Justice Connect helped her to resolve charges, fines and debts directly related to her homelessness, enabling her to secure safe public housing and reunite with her young child.

### ***Rough sleeping mother of three who had experienced family violence receives multi-disciplinary and holistic supports under one roof***

Holly is a mother of three who suffers from post-traumatic stress disorder, depression and anxiety due to extensive family violence. Holly's mental health concerns also contributed to substance dependence issues, further impeding her ability to exit homelessness. When Holly's Launch Housing caseworker connected her to Justice Connect through Under One Roof, she had lost custody of her children, spent time in prison and had been sleeping rough in Melbourne's CBD for around a year.

#### ***Criminal law matters***

Holly was facing several criminal law charges that she received while sleeping rough. Holly was wary of police from her negative interactions with them while rough sleeping. This also made her reluctant to engage with the court process. Holly had been working hard with her Launch caseworker to secure transitional housing and take control of her life, but she was worried that going to court would derail her progress.

The Under One Roof co-located lawyer engaged Holly with our criminal lawyer, who represented Holly at the Magistrates' Court and successfully resolved her various criminal law charges. Holly was relieved to have the matters finalised, which allowed her to continue moving forward without any charges hanging over her head.

#### ***Fines and imminent risk of imprisonment***

While helping with Holly's criminal matters, Justice Connect became aware that she also had an outstanding imprisonment warrant relating to unpaid fines. This meant that Holly was at serious risk of being arrested and going straight to prison to serve time in lieu of paying off the fines.

Justice Connect applied to the Magistrates' Court to recall and cancel the warrant, working with Holly's caseworker to obtain supporting documents for the application. At the hearing, the Magistrate agreed to recall the warrant and issue a new payment plan, removing Holly's risk of being immediately imprisoned.

In addition to the imprisonment warrant, Justice Connect discovered that Holly had over 20 unpaid infringements. Most of these fines related to traffic offences incurred when Holly was homeless and using her car for shelter and accessing vital services. Justice Connect used the previously prepared supporting materials to apply for review of the remaining infringements based on Holly's special circumstances, including homelessness and family violence.

#### ***Public housing debts***

<sup>213</sup> Victorian Government, *Access to Justice Review, Volume 1, Report and Recommendations* (August 2016) (**Access to Justice Review: Volume 1**), available at: <https://engage.vic.gov.au/accessjustice>.

<sup>214</sup> The Justice Project – Legal Services (n 23) 73.

<sup>215</sup> Ibid.



Justice Connect's lawyers also uncovered that Holly had an unpaid public housing debt, which had been preventing her from accessing safe and long-term public housing through DHHS. Holly incurred this debt when she had fled a previous public housing property while pregnant due to extreme incidents of family violence. Holly had been left with a significant debt for clean-up of the property when the tenancy eventually ended.

The lawyers used supporting documents and evidence to advocate for a debt waiver, which DHHS granted based on Holly's circumstances. This gave Holly a clean slate from the debts caused by her violent ex-partner, which directly helped her to achieve vital access to public housing.

### ***Integrated impact***

During Holly's court appearances and appointments with the lawyers, she was supported by her caseworker from our co-location partner, Launch Housing. Through this close partnership between the lawyers and the caseworker, we collaboratively ensured that Holly was supported through the process to achieve transformative outcomes.

Holly has made a genuine effort to implement positive changes to her life, and dealing with these legal issues has helped her to move forward and prioritise her wellbeing. Holly has recently been connected with counselling and is receiving ongoing support to stay sober. She has secured safe and affordable public housing and is motivated to provide her children with a secure and stable home, having regained custody of her youngest child.

## **Recommendation 10: Increase the availability of holistic, integrated legal services**

Wrap-around legal services should be seen as an important part of achieving long-term housing outcomes for people experiencing homelessness. Justice Connect recommends:

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



# Annexure 1 - Joint-proposal for internal appeals division of VCAT Residential Tenancies List (2016-17)

## 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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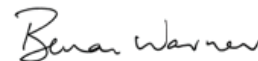
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## Annexure 2 - Proposed Victorian Protocol for Responding to People Experiencing Homelessness in Public Places

### Proposed Victorian Protocol for Responding to People Experiencing Homelessness in Public Places

The aim of the Victorian Protocol for Responding to People Experiencing Homelessness in Public Places (**Protocol**) is to provide a framework for relations between agencies<sup>216</sup> and people who are experiencing homelessness in public places. The Protocol has been developed to ensure that people experiencing homelessness are treated with respect and are not discriminated against on the basis of their homeless status. The Protocol aims to help agencies and their authorised representatives to respond effectively to people experiencing homelessness in public places by assisting people to receive services if they need or request them.

The Protocol is informed and underpinned by the Victorian Charter of Human Rights and Responsibilities Act 2006 (**Charter**), recognising the fundamental dignity and rights of people experiencing homelessness, and the importance of a rights-based approach to homelessness. The Protocol recognises that homelessness is not a crime. Most of the agencies that have contact with people experiencing homelessness are public authorities under the Charter, which means they must act compatibly with human rights and, in making decisions, they must properly consider relevant human rights. This Protocol assists agencies to comply with their human rights obligations.

Individual agencies are accountable for service delivery and implementation of this Protocol.

#### The Protocol

All Victorians have a right to be in a public place, and a person who is, or appears to be, homeless should not be approached unless:

- they request assistance;
- they appear distressed or in need of assistance;
- they are sheltering in circumstances that threaten the health and safety of themselves and/or others (e.g. in derelict buildings);
- they are a child who appears to be under the age of 18;<sup>217</sup>
- their behaviour threatens their immediate safety or the immediate safety and security of people around them;
- their behaviour is likely to result in damage to property or to the environment;
- their safety is threatened by others.

The Protocol does not override existing laws, statutory requirements or regulations. It does not reduce the powers of agencies or their authority to enforce specific laws and regulations.

The Protocol encourages agencies and their authorised representatives to take the Protocol and the circumstances of the person experiencing homelessness into consideration when enforcing laws and regulations and to use discretion as is appropriate under their own policies and procedures. This discretion should take into account the complex needs of people experiencing homelessness.<sup>218</sup> As public authorities

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<sup>216</sup> 'Agencies' refers to any organisation, including government departments, local councils, public authorities (as defined by the Charter) and public entities, that have endorsed the Protocol. 'Authorised representatives' include agency staff, contractors and any person authorised to act on behalf of the agency.

<sup>217</sup> In this situation, Victoria Police and Child Protection should be called.

<sup>218</sup> See also Principle 2 below.



under the Charter, agencies and their authorised representatives must exercise their discretion in a way that respects the fundamental dignity and rights of people experiencing homelessness.

Underpinning the Protocol is an acknowledgment that homelessness can be more effectively addressed through housing and services, rather than through a law enforcement response.

## **Who is considered homeless?**

People without conventional accommodation, including people sleeping rough, in improvised dwellings such as tents, sleeping in cars, squats, emergency accommodation, refuges, boarding houses and caravan parks. This includes people who are living in overcrowded and unsuitable accommodation and, as a result, are often forced into public places due to the unsafe nature of their accommodation.

## **Underlying Principles**

When approaching a person who is experiencing homelessness, authorised representatives need to consider whether their decisions and actions are compatible with the Protocol and therefore the Charter, as well as the intersection with other relevant laws and regulations.

The Protocol is based on the following principles:

### **PRINCIPLE 1: Right to be in public places**

A person experiencing homelessness has the same right as any member of the community to:

- be in public places, at the same time respecting the right of local communities to live in a safe and peaceful environment;<sup>219</sup>
- participate in public activities or events;<sup>220</sup> and
- carry with them and store their own belongings, at the same time respecting the right of other community members to safe and accessible public places.<sup>221</sup>

### **PRINCIPLE 2: Communicating reasons for contact**

If an authorised representative of an agency makes contact with a person experiencing homelessness, they should clearly communicate to that person who they are and on what basis they are approaching the person.<sup>222</sup>

### **PRINCIPLE 3: Consideration of needs and diverse backgrounds**

People experiencing homelessness have diverse backgrounds and needs, and these should be considered in all interactions:

- Cultural sensitivity and respect should be applied when communicating and engaging with people experiencing homelessness.
- People experiencing homelessness often face discrimination and may include:
  - Aboriginal and Torres Strait Islander people;
  - People from culturally, linguistically or religiously diverse backgrounds;
  - Young people;
  - Older people;
  - Lesbian, gay, bisexual, transgender or intersex (LGBTI) people;
  - People with a disability;

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<sup>219</sup> Relevant Charter rights: Section 8: Recognition and equality before the law; Section 12: Freedom of movement; Section 13: Privacy and reputation; Section 21: Liberty and security of person

<sup>220</sup> Relevant Charter rights: Section 16: Peaceful assembly and freedom of association

<sup>221</sup> Relevant Charter rights: Section 20: Property rights

<sup>222</sup> Relevant Charter rights: Section 21: Right to liberty and security of person





- People with a mental illness or cognitive impairment.<sup>223</sup>
  - People experiencing homelessness have often experienced trauma and can have complex social, mental and/or physical health needs. These issues may result in behaviour that is seen to be antisocial.<sup>224</sup>
  - People experiencing homelessness may have experienced other issues that impact on their needs, such as family violence, exiting custody or statutory care, or asylum seekers with no contacts in the community.
  - Interpreters should be used where necessary.

#### **PRINCIPLE 4: Access to complaint mechanisms**

People experiencing homelessness have the same access to complaints mechanisms as all members of the public and should be supported to exercise this right through the provision of information on relevant avenues of complaint.<sup>225</sup>

#### **PRINCIPLE 5: Partnerships, consistency and integrated responses**

All endorsing agencies are committed to working in partnership with community organisations, housing providers and other services to provide consistent and integrated responses to people experiencing homelessness.

#### **PRINCIPLE 6: Agencies and authorised representatives have sufficient information and training**

A range of agencies and their authorised representatives will come into contact with people experiencing homelessness and have to manage competing expectations within diverse communities. Agencies and authorised representatives should have sufficient information, support and training to respond appropriately to people experiencing homelessness and assist with referrals to appropriate services if needed.

### **HOMELESSNESS ASSISTANCE IN VICTORIA**

If people experiencing homelessness require assistance, there are specialist services to help them.

Where a person has existing support networks in place, they should be assisted to access these if requested.

***Note that these referrals are for state-wide services. Each agency is encouraged to develop their own set of local referrals.***

The following assistance is available in Victoria:

- **Opening Doors** (24-hour referrals for housing assistance)  
1800 825 955
- **Safe Steps** (24-hour family violence referral service for women and children)  
1800 015 188
- **Child protection**  
13 12 78 (after hours service)  
North Division Intake number 1300 664 977  
South Division Intake number 1300 655 795

<sup>223</sup> Relevant Charter rights: Section 8: Recognition and equality before the law; Section 19: Cultural rights; Section 14: Freedom of thought, conscience, religion and belief

<sup>224</sup> Relevant Charter rights: Section 8: Recognition and equality before the law

<sup>225</sup> Relevant Charter rights: Section 8: Recognition and equality before the law; Section 24: Right to a fair hearing



East Division Intake number 1300 360 391

West Division Intake - rural and regional only - number 1800 075 599

West Division Intake - metropolitan only - number 1300 664 977

- **Emergency services** (police/ambulance/fire brigade)  
000
- **Lifeline** (24 hour telephone crisis support and suicide prevention)  
13 11 14
- **Kids Helpline** (24 hour phone counselling for 5-25 year olds)  
1800 55 1800
- **MensLine Australia** (24 hour phone counselling for men)  
1300 78 99 78
- **Victoria Legal Aid** (state-wide legal advice weekdays 8.45am-5.15pm)  
1300 792 387

Where needed, interpreting services should be used.

**You can:**

- contact services directly on behalf of the person/s (with their consent);
- provide advice or information including location of available services;
- provide a contact point that the person experiencing homelessness can either call or go to for further advice or help.

**Where the Protocol applies**

The Protocol applies to all public places ordinarily accessible to the public, including parks, outdoor space, footpaths.

The following agencies have endorsed the Protocol:

Each of the endorsing agencies is responsible for implementing the Protocol within its own organisation and will determine how it should be used by its authorised representatives.

**Review of the Protocol**

This Protocol will be reviewed every two years from the date of its publication.



## Annexure 3 - Proposed Pocket resource for Sheriff's Officers

### Can't pay your fines?

#### You can still get help, but you need to act quickly

A 7-day notice means you only have **seven days to take action**. After your 7-day notice runs out the Sheriff can:

- take and sell your property, including your car or your house;
- put you on a community work order; or
- arrest you and you will have to go to court

#### What can I do?

Get free legal information **right now** to stop the Sheriff taking further action.

- Victoria Legal Aid on 1300 792 387
- Victorian Aboriginal Legal Service on 1800 064 865

All information and advice is free and confidential.

#### What do I need to tell the lawyer?

To find out all the options for you, make sure you tell the lawyer if you are experiencing or have previously experienced:

- an addiction to drugs or alcohol;
- a mental illness or intellectual disability;
- homelessness or housing instability;
- family violence;
- financial hardship; or
- other difficulties, such as loss of employment or being a single parent.

### It's not going to go away, deal with it straight away!



