

Making social housing count for all Victorians

Submission on the Social Housing Regulatory Review

September 2021

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Executive summary and six recommendations

Justice Connect Homeless Law (**Justice Connect**) welcomes the Review of Social Housing Regulation (**Review**). Justice Connect has produced this submission in response to Consultation Papers 2 and 3 of the Review (**Consultation Papers**).¹

Given the Victorian government's commitment to the development of a 10-Year Social and Affordable Housing Strategy and the investment in the "Big Housing Build," the Review presents an important opportunity to create a regulatory framework that prioritises all renters in public and community housing (**social housing**) having safe, suitable, secure, and affordable homes. Currently, we have a two-tier social housing system where the rights, protections and supports for renters in community housing differ from those in public housing. As recognised in Consultation Paper, regulation of social housing should create equity, so that people in the same circumstances receive similar services, rights and protections, irrespective of their housing provider.² This will ensure that social housing in Victoria is fit for purpose and embeds long-term, positive outcomes for all social housing renters.

In this submission, Justice Connect draws on 20 years of frontline service delivery as Victoria's specialist legal service for people experiencing or at risk of homelessness, with particular expertise working with renters in public and community housing. In the last year, 37% of our tenancy legal matters related to social housing rentals.

Clear, consistent best-practice standard of rights for all renters who live in social housing (Parts 1 & 2)

With one Victorian Housing Register waitlist, people seeking social housing can be placed into either public or community housing. It is critical that Victorians are not worse-off, or left with fewer rights, based on the type of social housing that they are allocated. To strengthen security of tenure and rental sustainability, better protections of renters' rights are needed through improved, consistent and best-practice public and community housing policies. This includes the explicit recognition that community housing providers are bound by the *Victorian Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Charter**), as well as ensuring that the Victorian Civil and Administrative Tribunal (**VCAT**) has jurisdiction to consider the Charter. Public and community housing providers also need to be supported with adequate resources, staff training, access to renter support services and supply of housing stock, so that they can implement and embed clear, consistent and high-quality policies and practices.

Better procedural safeguards & dispute resolution to uphold renters' rights (Part 3)

Better-resourced and more robust accountability mechanisms are also required for public and community housing providers, so that social housing-related policies, rights and decisions are enforceable and reviewable. Currently, the complaint and appeal mechanisms for public and community housing are separate and largely inaccessible to renters, making it harder for them to enforce their rights and resolve disputes. To resolve these issues, the Victorian Government should establish a joint-housing appeals office that applies to both public and community housing, expand jurisdiction of the Victorian Ombudsman to community housing, and establish an internal appeal mechanism for decisions made in the VCAT Residential Tenancies List.

Ensure evictions into homelessness are an option of last resort (Parts 4 & 5)

Justice Connect regularly represents social housing renters facing eviction into homelessness – in the last year, 82% of our social housing rental matters related to eviction. As part of any new social housing regulatory framework, the community housing regulator should create new mandatory requirements in the performance standards that make eviction an option of last resort. In addition, increasing access to tailored and adequate supports, including integrated legal services, is a critical component in helping people stay securely housed in the long-term. Any new social housing regulatory system also needs to drive system-wide improvements and sustainable outcomes through the efficient collection, analysis and reporting of relevant, timely and accurate data. This will enable improved transparency, design and delivery of social housing to ensure that evictions are truly an option of last resort.

¹ Independent Panel of the Social Housing Regulation Review, *Social housing in Victoria: Consultation Paper 2 – Service delivery and the tenant experience* (Consultation Paper, July 2021) ('**Consultation Paper 2**'); Independent Panel of the Social Housing Regulation Review, *Social housing in Victoria: Consultation Paper 3 – The role of regulation in sector accountability, viability and growth* (Consultation Paper, August 2021) ('**Consultation Paper 3**').

² Consultation Paper 2 Part 2.3.



Six recommendations to make social housing count for all Victorians

Throughout this submission, we share stories and direct quotes from twenty former clients, and provide six recommendations to make social housing count. Our recommendations draw on evidence from providing intensive legal and social work assistance to Victorians with complex needs, as well as our leadership and engagement across the community and legal sectors.

SIX RECOMMENDATIONS TO MAKE SOCIAL HOUSING COUNT FOR ALL VICTORIANS

1. Create better, consistent policies and practices in social housing

To ensure better, consistent renters' rights across the social housing sector and help vulnerable Victorians to maintain or access sustainable housing, Justice Connect recommends:

- a. Supporting all social housing providers to develop fair, consistent, best-practice and publicly available Model Rules, which take into account renters' human and legal rights.
 - (i) The Model Rules should incorporate policies, including in relation to evictions, arrears and housing debt, temporary absence, disability modifications, internal appeals and rent setting;
 - (ii) These Model Rules should be the deemed policies of all registered housing agencies;
 - (iii) The Model Rules should be publicly and readily available in a variety of accessible formats.
- b. Providing resources, staff training and supply of appropriate housing stock to implement these policies and practices, ensure viability and reflect the true costs of delivering services to renters who are experiencing disadvantage.

2. Stronger protection for renters' human rights in all social housing

To ensure all social housing renters' human rights are protected, regardless of whether they are in community or public housing, Justice Connect recommends:

- a. Making legislative amendments to clarify that community housing providers are public authorities for the purposes of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Charter**).
- b. Giving the Victorian Civil and Administrative Tribunal (**VCAT**) jurisdiction to consider the human rights compatibility of eviction decisions by public and community housing landlords under the Charter.
- c. Amending the *Housing Act 1983* (Vic) to:
 - (i) Require all registered agencies registered to have a constitution which includes an acknowledgement of being bound by the Charter.
 - (ii) Require that all agencies applying for registration under that Act should include a report on how its policies provide for Charter-compatible decision making.
 - (iii) Include new performance standards that have mandatory requirements for all registered agencies in relation to their obligations under the Charter.
- d. Requiring the community housing regulator to prepare and publish guidance for registered agencies on how the Charter should be considered and applied in decision-making.
- e. Giving the community housing regulator the power to revoke or suspend an agency's registration under the Housing Act for repeated breaches of the Charter.

3. Fairer dispute resolution and accountability mechanisms for enforcing and upholding renters' rights

To ensure social housing renters are able to effectively resolve disputes and enforce their rights, Justice Connect recommends:

	<ul style="list-style-type: none"> a. Creating a joint Housing Appeals Office or equivalent decision-making body to oversee complaints from both public and community housing renters. b. Requiring that the joint Housing Appeals Office have the power to make a binding determination if a complaint is upheld. c. Ensuring that the joint Housing Appeals Office can hear complaints in a timely and efficient way after the complaint has been raised directly with the social housing provider. d. Enabling both landlords and renters to apply to the Review and Regulation List of VCAT for merits review of decisions of the joint Housing Appeals Office. e. Amending the definition of 'agency' in section 5(1) of the <i>Freedom of Information Act 1982</i> (Vic) and under s 2(1) of the <i>Ombudsman Act 1973</i> (Vic) to include any agency registered under s 84 of the <i>Housing Act 1983</i> (Vic). f. 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).
4.	<p>Improve access to specialised and integrated supports</p> <p>To assist all Victorians to maintain or access sustainable housing and achieve positive personal and health outcomes, Justice Connect recommends:</p> <ul style="list-style-type: none"> a. Extending the reach and number of independent housing support services, including programs with dedicated health and social work professionals and those closely integrated with specialised legal services. b. Ensuring all social housing renters get the right support at the right time by: <ul style="list-style-type: none"> (i) Using data and co-design to develop and deliver integrated, coordinated and timely support to social housing renters, prioritising early intervention and ongoing flexible supports. (ii) Providing secure, long-term resourcing for specialised support services.
5.	<p>Make evictions into homelessness an option of last resort</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"> a. The community housing regulator create new mandatory requirements in the performance standards that make eviction an option of last resort. b. The community housing regulator develop model policies, training and monitoring mechanisms on the use of notices to leave for registered housing agencies that operate rooming houses. c. The public and community housing regulator(s) undertake regular monitoring, analysis, and public reporting on the data sets in Annexure 2.
6.	<p>Fairer rental laws to prevent homelessness for Victorians with complex needs</p> <p>To prevent Victorians with complex needs from being evicted into homelessness, Justice Connect recommends:</p> <ul style="list-style-type: none"> 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). 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.

About Justice Connect

In the face of rising unmet legal need, Justice Connect designs and delivers high-impact interventions that increase access to legal support and progress social justice.

We believe in a fair and just world where people and communities are supported to engage with and fully participate in our legal and social system, and avoid the negative impacts on their wellbeing or organisational health that flow from unresolved legal problems.

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 staff social workers, allowing us to holistically address clients' legal and non-legal needs under one roof.

In 2020-2021, 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 661 new client files;
- Scaled our eviction prevention reach by helping 30,428 unique users through our digital product, 'Dear Landlord: Self-help tools and resources for Victorian renters';
- 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 or exiting prison, and people sleeping rough;
- Deepened our community and health justice partnerships, particularly through integrated co-locations and digital initiatives with frontline homelessness and health organisations, including Launch Housing, cohealth and Sacred Heart Mission – Journey to Social Inclusion and GreenLight; and
- Collaboratively advocated in the context of COVID-19 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 181 clients and their families from being evicted into homelessness. Based on findings by the Australian Housing and Urban Research Institute (**AHURI**), this equates to over \$5.3 million worth of savings to the Victorian Government and wider-community, through the avoidance of increased health, justice and welfare service costs.³

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.

³ 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, *The cost of homelessness and the net benefit of homelessness programs: a national study* (Final Report No 218, Australian Housing and Urban Research Institute, December 2013) 14 <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 shape our recommendations for reform.

Justice Connect recognises the high-quality work of secondees, **Tatum Joseph** and **Cameron Inglis (MinterEllison)**, during their time with Justice Connect. We also acknowledge our colleagues in the legal assistance and community-service sectors for consultations in relation to this submission.

We have also shared de-identified Justice Connect client stories and direct insights in this submission, which have informed and given light to our recommendations, and we thank those people for their valuable contributions.

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1. Creating better, consistent policies and practices in all social housing

Although community housing providers (**CHPs**) and the Department of Families, Fairness and Housing (**DDFH**) both provide housing to Victoria's most vulnerable, the legal protections and rights for renters are inconsistent across public and community housing. Community housing and public housing both need to adequately protect renters' rights and ensure that evictions are an option of last resort.

We also note that regulation has a primary role to play in protecting the interests of renters and providing them with a voice.⁴ However renters voice must not be a replacement for renters' rights, and indeed, any focus on renter voice and empowerment must first ensure that renters are adequately protected through enforceable rights.

The following section addresses Part 4.1.6 of Consultation Paper 2 (questions 19 and 22) and Part 4.2.1 of Consultation Paper 2 (questions 31 to 33).

1.1 The need for consistent policies and practices in public and community housing

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.⁵ However, there remain inconsistencies in organisational housing practices and policies regarding renters' rights.⁶

We note that although in the Consultation Paper, it is suggested that 'Homes Victoria policies, procedures, funding and contracts' apply to both public and community housing,⁷ many community housing providers do not adopt Homes Victoria policies and procedures, creating inequality in the system.

As recognised in the Consultation Paper, "regulation should encourage equity, such that people in the same circumstances receive similar services, rights and protections, irrespective of their housing provider."⁸ Without steps to align the policies applicable to community and public housing renters, there is a real risk of a two-tiered model becoming entrenched in social housing, which would result in erosion of housing security for Victoria's most vulnerable renters.

⁴ Consultation Paper 2 (n 1) 11, consultation questions 5–8; Consultation Paper 3 (n 1) 6, consultation question 2.

⁵ See Department of Families, Fairness and Housing, *Victorian Housing Register* (Web Page, September 2018), <<https://services.dhhs.vic.gov.au/victorian-housing-register>>.

⁶ Independent Panel of the Social Housing Regulation Review, *Terms of Reference* (January 2021) 3 ('**Terms of Reference**').

⁷ See the diagram in Consultation Paper 2 (n 1) 9.

⁸ Consultation Paper 2 (n 1) 6.



The need for transparent, consistent and clear public and community housing policies for vulnerable renters can be seen through the story of eight former clients, including Eddie,⁹ 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.

Through the Rooming House Project, all of Justice Connect's clients 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. His support worker noted that this reduced the "ongoing risk of relapse into substance 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 renters 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 renters like Eddie, where the stress of eviction has severe impacts on mental health, avoiding housing insecurity through strengthening community housing policies and supports cannot be understated.

1.2 The need for model rules for CHPs

As recognised in the Consultation Paper 2, "while a well-designed system of regulation should be able to accommodate differences in providers, many practices, such as property management, repairs, and dealing with anti-social behaviour should be consistent."¹⁰

In order to ensure consistent and transparent decision-making across the social housing sector, Justice Connect recommends the implementation of Model Rules for CHPs. Importantly, the Model Rules should be drafted in consultation with renters and the tenancy advocate and legal assistance sectors.

The Model Rules should contain detailed tenancy management policies and operational guidelines across all key tenancy management areas. At minimum, they should include the adoption of the following critical policies:

⁹ All client names in this Submission have been de-identified.

¹⁰ Consultation Paper 2 (n 1) 20.

- **Eviction policy** – Eviction should be used only as a mechanism of last resort. In circumstances of forced transfer, right of return should be allowed where it is available, and permanent and appropriate relocation offers should be made.
- **Arrears policy** – Repayment plans for rental arrears should be limited to a percentage of the weekly household income.
- **Hardship policy** – That applies when events occur that have or may fundamentally place a tenancy at risk due to an unavoidable change in financial position that leads to difficulties paying rent.
- **Temporary absence policy** – That allow for renters to be absent from their property for periods of time, including periods of up to 6 months, if special circumstances are approved. A funding arrangement with DFFH may be required to subsidise the rent during periods of temporary absence.
- **Disability modifications policy** – CHPs should undertake minor ‘reasonable adjustment’ modifications where there is a report recommending these be made from a treating health professional.
- **Internal appeals policy** – There should be an avenue for genuine internal review of decisions. The policy must recognise the procedural fairness obligations of a CHP and require that a CHP not take action that would extinguish a renter’s complaint remedies before the review is determined.
- **Rent setting policy** – Rent should be limited to 25% of household income. In addition, CHPs policies must also establish clear processes for a renter to have their rent reduced where household income is reduced.

These Model Rules should be the deemed policies of all registered housing associations and providers and should be made publicly available. Recognising the role of specialisation in the community housing sector, there could also be scope to permit individual CHPs to apply to the Housing Registrar or other relevant community housing regulator (**community housing regulator**) for a variation of the Model Rules where a provider-specific requirement for this can be established. If such a variation is granted, the amended policy and the basis for the variation should also be made publicly available. Jason’s¹¹ story below highlights the importance of consistent, Charter-compliant policies around eviction and people with complex needs, given that public and community housing in Victoria provides housing to some of the most vulnerable Victorians.

Aboriginal man with three young children and complex health issues pushed out of community housing during COVID-19

Jason is an Aboriginal man, with three young daughters, who had been living in a community housing property. Jason suffered from long-term mental health issues, including post-traumatic stress disorder. Prior to securing this housing, Jason had experienced periods of homelessness and incarceration.

When Jason first engaged with Justice Connect, his community housing provider (**CHP**) was trying to evict Jason based on alleged behavioural issues, which his neighbours had raised. Justice Connect’s lawyers attempted to negotiate with the CHP, including putting forward his Charter rights and the impact of eviction on Jason and his children. If Jason was evicted into homelessness, there was also a high-likelihood that he would lose contact with his daughters, along with being placed at greater risk of contracting COVID-19 during the height of Melbourne’s 2020 outbreak.

Although Justice Connect’s lawyers emphasised that Jason’s mental health issues had severely impacted his ability to comply with his obligations as a renter, and that he had begun engaging with various support services to increase his ability to control his behaviour, the CHP refused to negotiate with Justice Connect or withdraw its VCAT eviction proceedings. Despite the severe impacts of eviction on Jason and his children, the CHP considered that its decision to seek eviction was compliant with the Charter.

After several months of failed attempts to engage the CHP in negotiations, Jason eventually decided to voluntarily vacate his rental property. Jason’s lack of long-term housing stability is likely to have a detrimental impact on his mental and physical health, and his ability to maintain connections with his children, community and support services during COVID-19.

¹¹ All client names in this submission have been changed.



1.3 Implementing a standard model for rent-setting

The Consultation Paper explicitly excludes rent setting from the scope of the review, arguing this is a policy decision for government.¹² However, as rent-setting and affordable rent is a critical factor in social housing regulation, Justice Connect considers this an important question for the Review. The fair setting of rent and clear rental arrears policies are of core importance to ensuring that social housing delivers on its commitment to affordable housing.

Public and community housing is designed to provide affordable, long-term housing for people that the private market excludes, such as people on low incomes, or people who have specific or complex needs. However, there is no standard model for rent-setting across the community housing sector. In contrast rent from public housing renters is capped at 25 per cent of household income, which makes public housing rent more affordable for people on the lowest incomes.

Due to the business model of CHPs, including the reliance on rent revenue for financial viability, CHPs cannot often afford to house residents on very low incomes. In addition, a renter who is in community housing faces greater housing insecurity if they lose their capacity to pay rent, as CHPs are less able to withstand lost rental revenue.¹³

As recognised in the Consultation Paper, effective regulation should encourage equity, regardless of whether a renter is in community or public housing.¹⁴ In order to ensure consistency and equity across all social housing, Justice Connect recommends a model rent setting and arrears policies that applies to all community and public housing renters and providers.

1.4 The need for publicly available and accessible policies

The Consultation Paper recognises the importance of "transparency and accountability" to ensure compliance with regulation and policy.¹⁵ Therefore, it is critical that the policies and guidelines housing providers rely on to manage tenancies are publicly available and accessible.

Having publicly available policies improve accountability and transparency of decision-makers. In addition, consistent and clear policies ensure fair treatment of social housing renters. In some cases, CHP policies are difficult to find, inconsistent or not publicly available at all.¹⁶

Even though the *Performance Standards for Registered Housing Agencies (Performance Standards)* require that CHP policies are readily available, and the Housing Registrars Guidance Note (**2019 Guidance Note**) requests all registered agencies to publish key policies including in relation to evictions, rent setting, repairs and arrears management, some CHPs key tenancy management policies are still not publicly available.

1.5 Additional resources and training for public and community housing providers

Public and community housing providers need to be supported with adequate funding and resources, staff training, access to renter support services and supply of housing stock to allow them to implement and embed clear, consistent and best-practice policies. Further training, support, oversight and cultural change will be beneficial within DFFH 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.

¹² Consultation Paper 2 (n 1) 20.

¹³ Guy Johnson et al, 'How do housing and labour markets affect individual homelessness?' (2018) *Housing Studies* 18 <https://unison.org.au/cms_uploads/docs/journeys-home_housingmarkets.pdf>.

¹⁴ Consultation Paper 2 (n 1) 6.

¹⁵ Consultation Paper 2 (n 1) 6.

¹⁶ On a review of CHP policies as at 9 November 2020, a number of CHPs did not have particular policies online, and a number did not have the complete suite of policies required by the 2019 Guidance Note.

Recommendation 1: Create better, consistent policies and practices in social housing

To ensure better, consistent renters' rights across the social housing sector and help vulnerable Victorians to maintain or access sustainable housing, Justice Connect recommends:

- a. Supporting all social housing providers to develop fair, consistent, best-practice and publicly available Model Rules, which take into account renters' human and legal rights.
 - (i) The Model Rules should incorporate policies, including in relation to evictions, arrears and housing debt, temporary absence, disability modifications, internal appeals and rent setting;
 - (ii) These Model Rules should be the deemed policies of all registered housing agencies;
 - (iii) The Model Rules should be publicly and readily available in a variety of accessible formats.
- b. Providing resources, staff training and supply of appropriate housing stock to implement these policies and practices, ensure viability and reflect the true costs of delivering services to renters who are experiencing disadvantage.

2. Stronger protection of renters' human rights in social housing

As some of the most vulnerable Victorians, it is vital for both public and community housing renters to have greater protections and security of tenure, and that decisions made about their housing are compatible with human rights. The Victorian *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Charter**) is critical when it comes to protecting the human rights of renters, particularly around eviction. Section 38 of the Charter makes it unlawful for a public authorities to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right.

Justice Connect frequently engages in negotiations based on the 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 renter, the public or community housing landlord has not properly considered, or acted compatibly with, the renter's rights under the Charter.

As seen through Lara's story below, Charter negotiations can be central in stopping homelessness before it starts for Victorian renters and their families.

Multi-disciplinary legal advocacy ensures woman placed at risk by COVID-19 avoids eviction from her public housing property of 20 years

When Lara first engaged with Justice Connect, her public housing property of 20 years had recently been searched by police and she was facing charges related to alleged drug possession, and dealing with property reasonably suspected of being the proceeds of crime. This process had also caused her public housing landlord to apply for Lara's eviction due to alleged 'illegal use' of the property.

Justice Connect's lawyers provided Lara with specialised advice about her human rights and tenancy options. The Justice Connect lawyers then entered into extensive negotiations with the public housing landlord, particularly focussed on their policies and the Charter. Justice Connect also represented Lara at VCAT, where they advocated based on her rental rights.

This ongoing, tailored assistance through Justice Connect resulted in Lara avoiding the crisis of eviction into homelessness during COVID-19 and maintaining her long-term public housing property.

The following section addresses Part 3.1 of Consultation Paper 2 (question 4), Part 4.1.6 of Consultation Paper 2 (questions 19 and 22) and Part 4.2.1 of Consultation Paper 2 (questions 31 to 33).

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

The Charter provides a helpful framework for negotiating with public and community housing providers making difficult decisions because it:

- Encourages consideration of a renter'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 renters and reliance on rent revenue); and

- Encourages proper consideration of alternatives to eviction.¹⁷

However, for renters in community housing, the Charter does not clearly apply¹⁸ and there is an inconsistent approach to applying the Charter in decision-making. This results in considerable differences in the application of the Charter. Jade's story, below, illustrates these difficulties, and shows the failure of a CHP to consider the renter's human rights when proceeding with an eviction.

Family violence survivor with complex trauma and mental health issues taken to the brink of homelessness during COVID-19

Jade is an Aboriginal woman, who has faced extensive family violence and complex trauma which caused her to cycle between homelessness and prison for several years. Jade had most recently fled family violence perpetrated by an ex-partner, and secured a transitional community housing property. She had also invited her 17 year-old nephew, Pat,* to move in with her, partly because she was aware of his experiences of family separation and trauma and wanted him to have stable housing.

When Jade first engaged with Justice Connect, her housing provider had applied to VCAT for her eviction based on Jade's alleged breach of her tenancy obligations due to loud noise, including music, abusive language and yelling. These alleged breaches related to Pat's untreated schizophrenia, which causes him to have loud and aggressive outbursts. After advising Jade about her tenancy options, Justice Connect's specialised lawyers represented her at VCAT in August 2020, where they successfully prevented her eviction. At that hearing, VCAT made a compliance order requiring Jade and Pat to refrain from causing excessive noise or interfering with the reasonable peace of neighbouring residents.

In October 2020, the housing provider made a new eviction application to VCAT, alleging that Jade or Pat had breached the compliance order. After helping Jade to understand her legal and human rights, Justice Connect's lawyers engaged in intensive negotiations with the housing provider to withdraw the application and enable Jade to retain her tenancy. Justice Connect's lawyers set out the vulnerabilities faced by Jade, her high risk of homelessness if evicted, and the obligation on the housing provider to consider her human rights under Victoria's Human Rights Charter. In this matter, Jade's Charter rights included the right to privacy, including a right against arbitrary interference with the home; the right to protection of families and children; the right to property, including a leasehold interest; and the right to liberty and security of person. Despite this ongoing and intensive advocacy, the housing provider continued with eviction proceedings and VCAT granted termination and possession orders.

This could simply be rectified by amending the Charter to clarify that CHPs are public authorities for the purposes of the Charter. 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. This amendment was suggested by the 2015 independent review of the Charter.¹⁹ In the alternative, regulations could be made prescribing a list of CHPs as public authorities under the Charter.

CHPs are expressly recognised as public authorities in a number of other jurisdictions around Australia. For example, the Queensland *Human Rights Act 2019* (Qld) specifically states that a housing service by a state-funded provider or the state under the *Housing Act 2003* (Qld) is 'performing functions of a public nature'.²⁰ Similarly, the *Human Rights Act 2004* (ACT) provides that the provision of public housing is a function of a public nature when performed by entities on behalf the Australian Capital Territory.²¹

2.2 Ensuring consistent application of the Charter by social housing providers

Even when social housing providers recognise that they are bound by the Charter, there are issues with inadequate and inconsistent application of the Charter. This includes, for example:

¹⁷ Justice Connect, *Charting a Stronger Course: Homeless Law submission to the eight year Charter review* (16 June 2015) 7 <<https://justiceconnect.org.au/wp-content/uploads/2018/08/Charting-a-Stronger-Course-June-2015.pdf>> ('**Charting a Stronger Course**').

¹⁸ See *Durney v Unison Housing* [2019] VSC 6.

¹⁹ See Michael Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006* (Summary Report, September 2015) 7, recommendations 12 and 13.

²⁰ *Human Rights Act 2019* (Qld) ss 9(1)(f), 10(3)(b)(vi).

²¹ *Human Rights Act 2004* (ACT) ss 40(1)(g), 40A(3)(b)(vi).

- applying the Charter inconsistently;
- often refusing to provide explanations of the human rights assessments undertaken in their decision-making processes;
- not providing renters with information about their rights; and
- providing inadequate training to housing workers on their obligations under the Charter.

In particular, workers in community housing often have limited or no understanding of their obligations under the Charter. Without adequate policies and decision-making processes that incorporate the Charter, CHP workers are left confused about their obligations. Even where a CHP's policies or website references the Charter, it is often in an unclear manner that fails to recognise their obligations or provide a framework for Charter-compatible decision making.²² Justice Connect recommend the introduction of requirements and standards for CHPs to incorporate the Charter into their policies and decision-making processes to ensure human rights are protected and CHP decisions that engage human rights are lawful. The community housing regulator could play a key role in providing this guidance.

2.3 VCAT jurisdiction to consider the Charter

More resourced and robust accountability mechanisms are required to hold public authorities to account for a failure to consider Charter rights in decision-making. There are currently no accessible remedies for renters in these circumstances. A number of Supreme Court cases have now limited the ability for VCAT to consider Charter compliance, as well as the timeframes in which a renter can seek judicial review of a decision by public or community housing landlords.²³ Therefore, in order to have the Charter-compatibility and lawfulness of a decision reviewed, a renter must go to the Supreme Court. As Jacqueline's story below shows, this presents significant barriers to renters being able to fully exercise their rights under the Charter.

Aboriginal woman with a cognitive impairment facing imminent eviction forced to initiate Supreme Court proceedings on breach of human rights

Jacqueline is an Aboriginal woman who has a cognitive impairment and had been living in community housing and receiving a disability support pension for a number of 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. Jacqueline had hidden in the bathroom and called police during the incident.

When Jacqueline's CHP learned about the damage, they issued her with an immediate notice to vacate for malicious damage and sought for her to immediately repay over \$4000 in damage that had been caused. Jacqueline attended a VCAT hearing, unrepresented, where a possession order was made against her. Several days before police were due to remove her from the property, Jacqueline contacted Justice Connect for assistance.

Jacqueline's Justice Connect lawyers entered into urgent negotiations with the CHP in an attempt to prevent the eviction, which included providing detailed information about her history of family violence and cognitive impairment that the CHP had not previously been aware of. When the CHP refused to call off the eviction, Jacqueline's lawyers lodged an urgent injunction application in the Supreme Court, 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 withdraw 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 community housing property which has better security that improves her safety.

²² For example, Aboriginal Housing Victoria refers to the Charter under the heading 'Relevant legislation and regulation' in various chapters of its *Housing Services Manual*, but it does not then refer to human rights throughout the body of the Manual (see, eg, Aboriginal Housing Victoria, *Housing Services Manual* (February 2019) ch 7 <https://ahvic.org.au/cms_uploads/docs/ahv-tenant-housing-services--chapter-7-property-management-tenant-relocation.pdf>). Locations of Charter references in Victorian CHP policies are set out in Annexure 1.

²³ 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 v Director of Housing* [2014] VSC 648.



Proceedings in the Supreme Court are costly, lengthy, inaccessible and risky for renters. Regardless of the merits of an application, most renters and their legal representatives will be deterred by these negative factors.

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. The Charter encourages consideration of a renter'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 landlords²⁴ would work towards reducing the harmful consequences of housing insecurity.

Recommendation 2: Stronger protection for renters' human rights in all social housing

To ensure all social housing renters' human rights are protected, regardless of whether they are in community or public housing, Justice Connect recommends:

- a. Making legislative amendments to clarify that community housing providers are public authorities for the purposes of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Charter**).
- b. Giving VCAT jurisdiction to consider the human rights compatibility of eviction decisions by public and community housing landlords under the Charter.
- c. Amending the *Housing Act 1983* (Vic) to:
 - (i) Require all registered agencies registered to have a constitution which includes an acknowledgement of being bound by the Charter.
 - (ii) Require that all agencies applying for registration under that Act should include a report on how its policies provide for Charter-compatible decision making.
 - (iii) Include new performance standards that have mandatory requirements for all registered agencies in relation to their obligations under the Charter.
- d. Requiring the community housing regulator to prepare and publish guidance for registered agencies on how the Charter should be considered and applied in decision-making.
- e. Giving the community housing regulator the power to revoke or suspend an agency's registration under the Housing Act for repeated breaches of the Charter.

²⁴ For more detailed submissions on the legislative amendments required to give effect to this recommendation, see *Charting a Stronger Course* (n 16). See also Michael Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006* (Summary Report, September 2015) 11, 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'.

3. Improved dispute resolution and accountability mechanisms for renters

Consultation Paper 2 recognises the need for an improved system for dispute resolution in Part 4.3. Our following recommendations respond directly to consultation questions 39 and 40, which concern the shortcomings of the current dispute resolution system and ways to improve it.

3.1 The need for centralised and accessible appeal mechanisms for all public and community housing renters

Currently, the complaint and appeal mechanisms for public and community housing are separate and confusing to renters, making it harder for them to enforce their rights and resolve disputes. As acknowledged in the Consultation Paper, confusion can discourage renters from pursuing disputes or add unnecessary time to resolve a dispute.²⁵ More resourced and robust accountability mechanisms are required for public and community housing providers to make sure that policies, rights and decisions in a social housing context are enforceable and reviewable outside the tribunal or court system.

One critical issue with the existing accountability mechanisms for CHPs is that the Housing Registrar and individual CHPs have a narrow interpretation of the scope of s 96(2) of the Housing Act regarding the kinds of complaints that can be made. In particular, s 96(2) states that complaints cannot be made to CHPs or the Housing Registrar about matters that are capable of being referred to VCAT under the *Residential Tenancies Act 1997* (Vic) (**RTA**). Given the broadness of the RTA, this is theoretically any dispute arising under a tenancy agreement or residency agreement.

Further, as Samir's story below illustrates, it appears that the Housing Registrar does not consider that it has jurisdiction to investigate any aspect of a decision that might ultimately be referred to VCAT under the RTA. Given almost all disputes are capable of being referred to VCAT under the RTA (including repairs, disputes about rent increases, disputes about compensation, disputes about eviction, disputes about entry to the property) this interpretation gives the Housing Registrar incredibly limited jurisdiction to investigate complaints and results in the Housing Registrar not performing its statutory complaints function under the Housing Act.

²⁵ Consultation Paper 2 (n 1) 24.



Culturally diverse family violence victim-survivor and her children pushed into homelessness after Housing Registrar complaint denied

Samir is a culturally diverse woman who moved to Australia 13 years ago and lives with her two children, one of whom was born with autism and requires special care. Around 11 years ago, after leaving a violent relationship, Samir was offered a community housing property through a cooperative. To support her children, Samir worked intermittently in restaurants, where she met a man called Abdul, who was kind to her and occasionally helped her out financially. Given Samir felt indebted to Abdul, she agreed to him storing some belongings in her garage. One day, police arrived and discovered that Abdul had been growing marijuana in Samir's garage without her knowledge.

Police accepted that Samir was not aware of Abdul's actions and did not charge her. However, the CHP served her with an immediate notice to vacate and told her that she had to leave the property. The CHP also disconnected the property's electricity to the property for a number of weeks. When she first engaged with Justice Connect, Samir and her kids were sleeping in her car. Justice Connect's lawyers gave Samir urgent advice that she had not been lawfully evicted and could return home. At the hearing, VCAT dismissed the possession order application as the notice to vacate was invalid.

The CHP refused to engage with the Justice Connect lawyers and personally served a second notice to vacate on Samir, refusing to leave until Samir signed a document saying she agreed to relinquish her tenancy. At the second VCAT hearing, Samir instructed that she did not have the strength to keep fighting and only wanted to avoid being evicted until after Christmas. Despite the CHP's actions not complying with the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Charter**), Samir instructed her lawyers to agree to consent orders ordering her to vacate by mid-January.

Samir made a detailed complaint to the Housing Registrar about the CHP's conduct prior to the tenancy ending. The Justice Connect lawyers focused the complaint on the processes followed by the CHP, rather than framing the complaint around the notice to vacate or decision to go to VCAT, which are matters capable of being referred to VCAT under the *Residential Tenancies Act 1997* (Vic) and outside of the Housing Registrar's jurisdiction.

Several days before Samir's tenancy was due to end, the Housing Registrar wrote to Justice Connect, advising that the matters complained of were outside the Registrar's jurisdiction. Justice Connect then clarified that the matters were within the Housing Registrar's jurisdiction. In March, the Housing Registrar wrote to Justice Connect advising that it had found that the CHP's handling of Samir's matters did not amount to a breach of Performance Standards, the *Housing Act 1983* (Vic) or the Charter. The letter was one page, provided no written reasons, and did not address any specific issues complained of.

After Samir & her kids were pushed from their home, they experienced homelessness for over six months.

Samir's story clearly demonstrates that limited statutory complaints function for the Housing Registrar under the Housing Act. Unfortunately, under s 101 of the Housing Act, only CHPs have the right to bring merits review proceedings to VCAT meaning Samir was left homeless and with no rights.

Similarly, while the Housing Appeals office considers complaints on Charter grounds regarding the Director of Housing, the Housing Registrar currently refuses to consider complaints on Charter grounds relating to CHPs. This refusal is on the basis that they are not 'matters relating to rental housing' pursuant to s 96(1) of the Housing Act, or complaints capable of being referred to VCAT under the RTA. This prevents renters from having an accessible and low-cost means of resolving Charter disputes with CHPs.

In order to resolve these issues, Justice Connect recommends that the Victorian Government consider establishing a joint housing appeals office that applies to both public and community housing.²⁶ This joint Housing Appeals Office would provide greater clarity, consistency and accountability across social housing, and provide a more fit for purpose forum to address the complaints of all social housing renters.

²⁶ See Department of Health and Human Services, *Appeal a decision* (Web Page, January 2019) <<https://www.housing.vic.gov.au/appeal-decision>>.

3.2 The need for greater accountability mechanisms

Another contrast between public and community housing are the accountability mechanisms built in through Freedom of Information and the Victorian Ombudsman.

Registered Housing Agencies (CHPs which are registered under the Housing Act) and the Housing Registrar are not bodies covered by the FOI Act. This means that renters and their advocates are completely excluded from the decision-making processes of both CHPs and the Housing Registrar. In addition, the Victorian Ombudsman does not have jurisdiction over CHPs, which provides another layer of accountability to public housing renters.

This oversight and access to information are key accountability mechanisms for renters and ensures that decisions are made in a fair and transparent way.

3.3 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.²⁷ 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 renters (and their support services), along with landlords, it is simply not an option to pursue their appeal in this forum.

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

Mabel is a public housing renter 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, Director of Housing 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 rights, Justice Connect assisted her to apply for a review, and obtained a copy of the Director of Housing's application to VCAT.

At the VCAT review hearing, the Director of Housing 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.

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 in-built internal appeals.²⁸ 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 recent changes to Victoria's tenancy system and the ongoing impacts of COVID-19, it is a critical time to amend the

²⁷ *Victorian Civil and Administrative Tribunal Act 1998* (Vic) s 148.

²⁸ See, eg, *Civil and Administrative Tribunal Act 2008* (ACT) ss 79–81, which provide that decisions made by a member of the ACT Civil and Administrative Tribunal can be internally appealed on a question of fact or law.

VCAT Act and introduce an internal appeals mechanism for VCAT tenancy matters to reduce the risk of unnecessary evictions into homelessness for renters in social housing.

Recommendation 3: Fairer dispute resolution and accountability mechanisms for enforcing and upholding renters' rights

To ensure social housing renters are able to effectively resolve disputes and enforce their rights, Justice Connect recommends:

- a. Creating a joint Housing Appeals Office or equivalent decision-making body to oversee complaints from both public and community housing renters.
- b. Requiring that the joint Housing Appeals Office have the power to make a binding determination if a complaint is upheld.
- c. Ensuring that the joint Housing Appeals Office can hear complaints in a timely and efficient way after the complaint has been raised directly with the social housing provider.
- d. Enabling both landlords and renters to apply to the Review and Regulation List of VCAT for merits review of decisions of the joint Housing Appeals Office.
- e. Amending the definition of 'agency' in section 5(1) of the *Freedom of Information Act 1982* (Vic) and under s 2(1) of the *Ombudsman Act 1973* (Vic) to include any agency registered under s 84 of the *Housing Act 1983* (Vic).
- f. 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).

4. Increased access to specialist support services

Renters in social housing are often experiencing disadvantage and complexities that require specialised supports to access and sustain their tenancies. We note that in the last year, 26% of the community housing renters assisted by Justice Connect identified as Aboriginal and Torres Strait Islander, and 11% of public housing renters.

In order to ensure that social housing renters can stay safely housed and reduce the risk of evictions, investment in support services is critical, including:

- **Early intervention supports:** which support social housing renters to address factors that make increase their risk of eviction.
- **Ongoing flexible supports:** that provide flexible, multidisciplinary and ongoing support to people with complex needs. These are particularly effective for people who have experienced ongoing homelessness.

The following section addresses Part 4.4 (questions 41–44).

4.1 Independent specialist supports for renters with complex needs

Although social housing landlords play an important role in providing support to social housing renters, the role of a housing officer is distinct from independent support services. For many social housing renters, there can be a reluctance to engage with a housing officer for fear of the response and due to the power imbalance inherent in the landlord/renter relationship. Independent support services are critical to ensure that renters have an advocate to provide support, assist with understanding their rights and obligations as a renter, and to help resolve disputes.

As noted by the Consultation Paper at 4.4, there are a range of programs to support public and community housing renters, including Tenancy Plus, Indigenous Tenants at-Risk and Support for High Risk Tenancies. These programs play an important role in sustaining tenancies, however they can have limited accessibility due to eligibility and resourcing constraints.

Several other intensive housing assistance programs also 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 renters 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.²⁹

²⁹ This includes Sacred Heart Mission, The Salvation Army, and VincentCare. See Department of Health and Human Services, *Victoria's homelessness and rough sleeping action plan* (Report, January 2018) <https://dhhs.vic.gov.au/sites/default/files/documents/201802/Rough%20Sleeping%20Action%20Plan_20180207.pdf>.



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.

4.2 Integrated legal assistance models

Accessible and tailored legal services are a vital part of a multi-disciplinary service response to accessing and sustaining housing. Holistic, integrated services are key to ensure that both legal and non-legal needs can be collectively addressed. This approach allows for earlier intervention in sustaining tenancies and simultaneously addressing non-legal issues to prevent future legal issues occurring, such as in Mary's story below.

Aboriginal single-mother of four exits homelessness into safe housing during COVID-19 through wrap-around legal services

Mary is an Aboriginal single-mother of four, who is a family violence victim-survivor with diagnosed mental health issues. Mary has a history of homelessness, and when she first spoke with Justice Connect's lawyers, she was couch surfing with her baby daughter during the COVID-19 pandemic.

Mary asked for help with a public housing debt of \$5,500 from a previous property, which related to damage caused by her violent ex-partner. Justice Connect's specialised lawyers advised Mary about her legal rights and options, entering into tailored and extensive negotiations with the Director of Housing to resolve the debt. Mary also told Justice Connect's integrated social worker that she had a long list of fines, which had been incurred by her violent ex-partner stealing her car. The Justice Connect social worker then closely collaborated with the lawyers to remove the unfair burden of these fines for Mary. Through the trust built by Justice Connect, Mary also disclosed that she had a large Centrelink debt, which had been caused by an incorrect report about her children's care arrangements, so the social worker linked her with expert social security rights assistance to address this debt.

Due to this wrap-around legal and social work assistance, Mary was empowered to secure a safe, long-term private rental property. The Justice Connect social worker also secured financial brokerage to cover removalist costs, so Mary could move her belongings out of storage into her new house. Since achieving this crucial housing security, Mary has regained the care of her three older children, and she and her reunited family are looking forward to a better future in the COVID-19 recovery phase.

This integration can be through co-location, embedded partnerships or strong referral pathways. Some examples of Justice Connect programs include:

- Under One Roof - 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;
- 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; and
- Women's Homelessness Prevention Project (WHPP) - keeping women and children safely housed through integrated legal and social work assistance. Pitcher Partners 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

Targeted programs such as Greenlight and Journey to Social Inclusion, and other holistic legal and non-legal services, when coupled with other safeguards and reforms detailed in this paper, provide a wrap-around approach to empower renters with complex vulnerabilities to remain safely housed.

Recommendation 4: Improve access to specialised and integrated supports

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

- a. Extending the reach and number of independent housing support services, including programs with dedicated health and social work professionals and those closely integrated with specialised legal services.
- b. Ensuring all social housing renters get the right support at the right time by:
 - (i) Using data and co-design to develop and deliver integrated, coordinated and timely support to social housing renters, prioritising early intervention and ongoing flexible supports.
 - (ii) Providing secure, long-term resourcing for specialised support services.

5. Ensuring evictions into homelessness are an option of last resort

Ensuring that evictions from social housing are an option of last resort is a key component of any social housing regulatory framework.³⁰ Public and community housing providers are 'social landlords' with responsibility to support renters who are vulnerable or experiencing disadvantage and to maximise renter wellbeing.³¹ The social landlord framework aims to avoid evictions into homelessness for renters who would be at risk of eviction in other tenure types.

However Justice Connect regularly represents social housing renters facing eviction – in the last year, 37% of the tenancy matters opened were in relation to social housing, and 82% were evictions. It is clear that the current regulation does not adequately protect against evictions.

The following section addresses Part 3.1 of Consultation Paper 2 (question 4) and Part 4.1.6 of Consultation Paper 2 (questions 19, 21 and 22).

5.1 Embedding stronger performance standards

An object of the Housing Act is 'to promote security... of tenure'.³² The Performance Standards, which represent the standard of operation required of registered housing agencies, require registered CHPs to treat eviction as an outcome of last resort.³³ This aligns with the Charter and the obligations of public authorities to avoid acting in a way or making decisions that arbitrarily interferes with a renters' home.³⁴ Ultimately, as ongoing housing is linked to better wellbeing and health outcomes,³⁵ it reduces the total health costs for the state.³⁶

Treating eviction as a last resort recognises that social housing is intended to provide long-term, stable and affordable accommodation for disadvantaged Victorians. For social housing renters, eviction carries more serious consequences than other renter cohorts. It is often more difficult for social housing renters to find alternative accommodation when faced with an eviction and as a result, they are at a higher risk of homelessness as a result of an eviction.³⁷

Research commissioned by Unison Housing concluded that almost half of its tenancies ended within 18 months.³⁸ The majority of these exits (59%) were from what it describes as "negative push factors" such as rent arrears or conflict with neighbours.³⁹ The length of tenancies at community housing properties also greatly differs to public housing properties. According to data from the Australian Institute of Health and Welfare, 32.6% of all ongoing community housing tenancies were 0 months – 1 year compared to only 17.4% of all ongoing public housing

³⁰ Consultation Paper 2 (n 1) 17, consultation question 19.

³¹ Australian Housing and Urban Research Institute, *Examining the role of social landlords* (Web Page, 22 July 2020) <<https://www.ahuri.edu.au/research/ahuri-briefs/examining-the-role-of-social-housing-landlords>>.

³² Housing Act 1983 (Vic) s 6(1)(f).

³³ Housing Registrar, *Performance standards for registered housing agencies* (July 2015) 3; Housing Registrar, *Evidence guidelines* (April 2015) 3 <<https://www.vic.gov.au/performance-standards-and-evidence-guidelines>>.

³⁴ Charter ss 4(1)(c), 13(a), 38(1).

³⁵ Shelley Mallet et al, *Precarious Housing and Health Inequalities: What are the links?* (Summary Report, August 2011) <https://www.vichealth.vic.gov.au/~media/resourcecentre/publicationsandresources/health%20inequalities/precarious%20housing/precarious%20housing_summary%20report_web.pdf?la=en>.

³⁶ Estimated annual cost to government services of an individual experiencing homelessness is \$29,450 higher than for the rest of the Australian population. See Zaretsky and Flatau (n 3) 14.

³⁷ See Justice Connect Homeless Law, *There's No Place Like Home: Submission on the Security of Tenure Issues Paper* (December 2015) 21–27 ('Justice Connect Security of Tenure Submission'); Renters Union of Victoria, *Response to Security of Tenure Issues Paper of the Residential Tenancies Act Review* (December 2015) 12–13; Victoria Legal Aid, *Residential Tenancies Act Review: Security of Tenure Submission* (31 December 2015) 8–10.

³⁸ Guy Johnson, Susan McCallum and Juliet Watson, *Who stays, who leaves and why: Occupancy patterns at Unison Housing between 2014-2016* (Research Report No 2, Unison Housing Research Lab, February 2019) 3.

³⁹ Ibid 4.



tenancies in Australia.⁴⁰ Additionally, 43% of all public housing tenancies were for lengths of 10 years or more compared to only 18% of all community housing tenancies.⁴¹

John and Donna's stories below illustrate how the current regulatory frameworks do not provide enough protection against evictions.

Family violence victim-survivor with mental health complexities evicted back into homelessness during COVID-19 for allegedly playing loud music

John is a 48-year-old family violence victim-survivor and community housing renter, who has a history of extensive homelessness since he was a teenager and faces significant mental health issues, including schizoid tendencies. During COVID-19, John's CHP was seeking his eviction through VCAT for allegedly breaching a compliance order that related to playing loud music. More recently, John had been working with his social worker to reduce the noise he was making and engage with supports.

John does not have a phone, so his social worker tried to help him with dialling-into the VCAT possession order hearing, John was only present for 5-10 minutes before the worker's phone cut-out. John was unable to have his say in response to the CHP's allegations against him, and VCAT granted the possession order in his absence.

John then received urgent legal advice from Justice Connect's lawyers, and made an application to re-open the possession order under s 120 of the VCAT Act to put a hold on his eviction. VCAT refused this application on the basis that John was present in the hearing. Justice Connect then helped John to make another application under s 120 of the VCAT Act to review the termination order, as the VCAT orders noted that the client had not attended that hearing.

Justice Connect was told that the CHP planned to apply for a warrant of possession based on VCAT. After further advising John and given the pending review application, Justice Connect then submitted an urgent stay application to VCAT to prevent the CHP from obtaining a possession warrant. Although Justice Connect updated the CHP, they proceeded to purchase and execute the possession warrant with police.

VCAT eventually listed both review applications, but by this time, John had already been evicted into homelessness in the pandemic, and we understand he is still yet to secure new housing.

Woman with twenty-year history of homelessness maintains safe, secure housing in COVID-19 through collaborative legal supports

Donna has experienced homelessness for around 20 years and suffers from ongoing mental health issues. When Donna engaged with Justice Connect, her community housing provider had commenced eviction proceedings at VCAT based on allegations of 'danger', which were a direct result of her mental health complexities.

The Justice Connect lawyers worked closely with Donna's support workers and negotiated with the community housing provider. At the final VCAT hearing, Justice Connect provided evidence about how Donna's mental health had directly contributed to the allegations and that her poor mental health was an illness, and therefore a 'COVID-19 reason', for the purpose of the temporarily amended RTA.

VCAT confirmed that mental health was considered a 'COVID-19 reason', meaning Donna could not be taken to have breached her duties under the RTA. Based on this finding, VCAT was required to dismiss the landlord's application, enabling Donna to focus on improving her mental health from the stability of her home.

⁴⁰ See Australian Institute of Health and Welfare, 'Data tables: Social housing households', *Housing Assistance* (Web Page, 30 June 2021) sheet 'HOUSEHOLDS.6' <<https://www.aihw.gov.au/reports-data/health-welfare-services/housing-assistance/data>>.

⁴¹ Sarah Taylor and Guy Johnson, *Sustaining Social Housing: profiles and patterns* (Research Report No 7, May 2021) 16.

In addition to creating better policies and human rights compliance as detailed above to ensure evictions are an option of last resort, the performance standards need to be amended to require eviction to be treated as a mechanism of last resort as part of registration under the Housing Act, rather than as an 'indicator' of compliance within the performance standards.

5.2 Limiting the Use of Notices to Leave

Many CHPs also administer rooming houses, which house some of the most vulnerable and complex-needs renters. Rooming house operators (**RHO**) can issue a resident with a notice to leave for 'serious acts of violence'.⁴² This notice requires the resident to leave the property immediately for 48 hours and makes it an offence for them to return during this period. The notice to leave suspend the residency and during the 48 hour period the manager can apply to VCAT for an urgent order terminating the residency. The use of these notices is particularly problematic, as they can require the resident to leave immediately due to untested or unsubstantiated allegations, and place them at high risk of homelessness for that 48 hour period.

Through our casework at Justice Connect, we have seen misuse of these notices by community housing landlords. For example, these notices are sometimes issued to residents who raise legitimate issues about repairs or unfair house rules, or when a resident is being a nuisance but has not committed a serious act of violence. The risk of misuse of a notice to leave is highlighted in Sonja's story below.

Family violence victim-survivor with complex mental health issues and a history of homelessness avoids eviction during COVID-19

Sonja is a 52 year-old family violence victim-survivor, with complex mental health issues, including post-traumatic stress disorder, and an extensive history of homelessness.

Shortly after the end of Victoria's COVID-19 residential tenancies 'eviction moratorium', Sonja received a Notice to Leave (**NTL**) from her community rooming house provider. The NTL had been issued on the basis that her son had allegedly committed a serious act of violence at the rooming house, and it was effective immediately, which temporarily suspended Sonja's right to remain in her home.

The community rooming house provider then applied to VCAT for a possession order and the matter was listed for hearing just a few days later. The provider's application to evict Sonja included allegations against her son of damage to the rooming house, including graffiti and damage to a door. Sonja's son had recently been released from a psychiatric ward and she felt that she could not say no to her son staying with her, even though this may have been against the rules of the rooming house.

When Sonja engaged with Justice Connect, she shared that her son had had a psychotic episode while staying with her, which caused the alleged incidents in the NTL. Sonja also expressed concerns for her health and wellbeing if she were to be evicted back into homelessness.

Justice Connect's lawyers collaboratively identified multiple issues with the NTL, and provided urgent advice to Sonja about her legal rights and options. Given Sonja's hesitancy to provide evidence that her son was perpetrating family violence against her, the Justice Connect lawyers focused on the argument that the conduct in the NTL did not meet the required threshold for 'serious violence', and this advocacy successfully prevented Sonja's eviction. Through Justice Connect's timely and specialised legal assistance, Sonja has remained securely housed, which has empowered her to prioritise her mental health during COVID-19.

The RTA already provides sufficient protection to CHPs who have a reasonable belief that a resident has committed a serious act of violence or poses a danger to other residents. If a CHP believes that a resident has caused danger, they may issue a notice to vacate and obtain an urgent VCAT hearing. In addition, there are further protections under the law, including making use of personal safety intervention orders or contacting the police.

Notices to leave provide an unnecessary means of immediate eviction that carries significant risk to the rights of residents, and may put the resident at a high risk of homelessness. Notices to leave should only be used as an

⁴² RTA s 368.

option of last resort, and only where justified, for example, when a notice to vacate for danger is not appropriate. The person giving the notice should be aware of what it means and the consequences for the resident, and the resident must be provided with a proper opportunity to respond.

We recommend that model policies and training on notices to leave be developed for CHPs to reduce and limit the use of notices to leave.

5.3 Performance reporting and the need for comprehensive and transparent data

This responds directly to Part 4.1.5 (question 17-18) Consultation Paper 2.

As submitted in the joint Community Legal Centre (CLC) response to Consultation Paper 1, there is a lack of publicly available data about the activities of social housing providers, particularly as they relate to renter outcomes. This data is critical to allow an evidence-based understanding and assessment of social housing provider performance and outcomes for vulnerable Victorians in social housing. Comparable data across social housing types would ensure that the Victorian government's ten year social and affordable housing strategy is working effectively and fairly to keep people safely housed. It would also ensure that social housing providers' performance against the performance standards could be accurately and transparently tracked and investigated by the regulator.

Recommendation 5: Make evictions into homelessness an option of last resort

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

- a. The community housing regulator create new mandatory requirements in the performance standards that make eviction an option of last resort.
- b. The community housing regulator develop model policies, training and monitoring mechanisms on the use of notices to leave for registered housing agencies that operate rooming houses.
- c. The public and community housing regulator(s) undertake regular monitoring, analysis, and public reporting on the data sets in Annexure 2.

6. Fairer rental laws to prevent homelessness for Victorians with complex needs

The framing of Consultation Papers 2 and 3, in particular question 3 of Paper 2, focuses on the concept of the ‘social renter’ which would include current social housing renters, and prospective renters who are eligible for social housing but who rent through the private sector.

This Review presents a unique opportunity to improve the social housing sector and ensure it is well-positioned for the significant growth that the Big Housing Build will deliver. As such, the focus must be squarely on the regulation of social housing to ensure that all social housing renters are well supported, secure, are able to exercise their rights and live in comfortable, affordable, and appropriate accommodation.

There is a real risk that any proposal that covers all ‘social renters’ will result in a watering down of social housing renter rights, whilst also resulting in discrimination against low-income renters and less availability of affordable private housing options for low-income renters.

However we have identified two specific mechanisms of eviction that disproportionately affect Victorians who have marginalised circumstances:

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

The following section addresses Part 2.3 (question 3) and Part 4.2.2 of Consultation Paper 2 (questions 34 to 36).

6.1 Breach notices and evictions result in homelessness

Currently, renters 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.⁴³

In Justice Connect’s experience, breach notices are commonly issued by landlords to require renters to refrain from breaching one of the following duty provisions:

- a renter must not cause nuisance or interference;⁴⁴ or
- a renter must keep rented premises clean.⁴⁵

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 or fraught relationships within neighbourhoods and rooming houses.

To improve housing security in Victoria, notices to vacate for successive breaches of duty should be abolished. Under this approach, each instance of breach would require the landlord to issue a breach of duty notice and, if the notice is not complied with within the required time, the landlord could apply for a compliance order or compensation order from VCAT. Together with the amendments to the compliance order regime discussed below, this would prevent unnecessary evictions of highly vulnerable renters into homelessness.

⁴³ *Residential Tenancies Act 1997* (Vic) (**‘RTA’**) ss 249, 283, 308, 317ZB, 323.

⁴⁴ RTA s 60. See analogous duties in ss 113, 170, 206ZL for rooming house residents, caravan park residents and Pt 4A site tenants.

⁴⁵ RTA s 63. See analogous duties in ss 114, 171, 206ZM for rooming house residents, caravan park residents and Pt 4A site tenants.



6.2 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 notice⁴⁶ and the breach notice is not complied with or not remedied within the timeframe.⁴⁷

Once this compliance order is made, as seen through Connie's story below, renters are placed at real risk of receiving a notice to vacate for an alleged failure to comply,⁴⁸ and having a VCAT possession order application made against them.⁴⁹ The ability for renters to defend an application for a possession order based on breach of a compliance order is limited.⁵⁰

Aboriginal single mother of three facing discrimination avoids eviction into homelessness based on her human and legal rights

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. Director of Housing 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 Director of Housing. 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.

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 renters. 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 they can 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 breaches of the order, as highlighted through Amanda's story.

⁴⁶ RTA s 208.

⁴⁷ RTA s 209.

⁴⁸ RTA ss 248(1), 282(1), 307(1), 317ZA.

⁴⁹ RTA s 322(1), see also RTA ss 323, 324, 324A for rooming house residents, caravan park residents and site tenants.

⁵⁰ See Justice Connect Security of Tenure Submission (n 41) 27–32; Justice Connect, *There's no place like home: Submission to the Residential Tenancies Act Review Options Discussion Paper* (February 2017) 44–5.

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 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, Director of Housing 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 Director of Housing, 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.

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.⁵¹

Recommendation 6: Fairer rental laws to prevent homelessness for Victorians with complex needs

To prevent Victorians with complex needs from being evicted 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).
- 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.

⁵¹ Justice Connect welcomes the new provisions in section 330A of the *RTA* which 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.

Annexure 1 – Joint proposal – VCAT Residential Tenancies List Internal Appeals (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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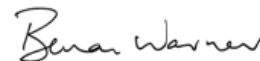
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Annexure 2 – Proposed data sets

- Comparable eviction and exit data across the social housing landscape (public housing, community housing), disaggregated by provider (for CHPs) and by tenure type (transitional, rooming housing etc), including where possible:
 - Notices to Vacate served
 - Rent arrears
 - Other reasons
 - Applications to VCAT for an order of possession (or termination order during COVID-19 temporary laws*)
 - Applications to VCAT for, and executions of, a warrant of possession
 - Number of, and reasons for, tenant exit
 - Number of breach of duty notices issued to tenants
 - Number of applications for a compliance or compensation Order made to VCAT
- Tenancy and eviction data should also be disaggregated by tenant demographics, including, where possible:
 - By allocation basis (Register of Interest or Priority Access)
 - Income source
 - Family type
 - Aboriginal and Torres Strait Islander identity
- Number of disability-related housing modification requests made (including the number of successful applications, the average spend and median spend)
- Number of temporary absences granted
- Number of repair request applications made to VCAT
- Rent arrears:
 - average number of days in arrears
 - average days of rent arrears before application to VCAT
- Rent calculation:
 - proportion of tenants paying 25% of income
 - proportion paying 30% of income
 - proportion paying market rent
 - proportion paying a 'service charge' in addition to rent.

